




Code of Ethics: & Fair Housing

Participant Workbook

THE NATIONAL ASSOCIATION OF REALTORS®

**WA Course #
Instructor ID: I4192
School ID:
7.5 Clock Hours**



About the Instructor

Karene Loman

Building relationships while creating ease and comfort has been Karene Loman's specialty throughout her diverse career. Karene jokes that she's done everything from flipping burgers at McDonald's to running highly successful marketing and advertising campaigns for national companies, to teaching college level classes. Karene holds a master's degree from Eastern Washington University in Public Relations and Organizational Communications and has completed most of the coursework towards a PhD at Gonzaga University in Spokane, WA.

As a Realtor, Karene takes pride in providing the most comprehensive marketing campaign for her sellers. As a result, her home sellers are getting an average of 98% of their list price. Karene is also a Relocation Specialist and strives to provide the same superior service to all of her buyers as she does sellers. She frequently finishes in the top 5% of all Realtors in the Spokane Association of Realtors. Karene is a Certified Residential Specialist (the PhD of real estate with only 4% of all Realtors holding the designation).

Karene also holds real estate instructor certifications in both Washington and Idaho where she teaches the Code of Ethics, Core Curriculum and Purchase and Sale. In addition, Karene is a Business Coach for real estate agents across the country.

In her spare time, she enjoys photography, reading, pretending to be a graphic designer, playing with technology, and most of all, spending quality time with her family – which includes her husband; 18-year-old twins; 2 bonus daughters; and 3 grandchildren – and a whole slew of extended family and friends.

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Objectives

Upon completion of “The Code of Ethics: Our Promise of Professionalism” course, participants will be able to:

- Identify key aspirational concepts found in the Preamble to the NATIONAL ASSOCIATION OF REALTORS® Code of Ethics
- Describe “general business” ethics, and compare and contrast the REALTORS®’ Code of Ethics with business ethics, generally
- Describe the concepts established in Articles 1, 2, 3, 11, and 16 of the Code of Ethics and identify possible violations of the Code of Ethics specifically related to those Articles
- Describe the professional standards process for enforcing the Code of Ethics, including the duty to arbitrate
- Identify critical elements of due process as they relate to Code enforcement
- Identify how the Code of Ethics should be used in daily business practices.
- Explain how the Pathways to Professionalism tool provides guidelines for respecting property, the public, and peers.

Exercise: Ice-Breaker

Instructions: Read each statement and select the Article of the Code of Ethics from the list below that the statement most closely describes. Write the correct Article number in the space next to each statement. No Articles are to be selected twice.

NOTE: The statements in this exercise do not fully represent the comprehensive ethical principles of each Article of the Code of Ethics. To gain a full understanding of the principles of the REALTORS® Code of Ethics, each Article must be read and understood in its entirety.

Choose from Articles: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17	
1. Make only truthful and objective statements.	_____
2. Avoid the unauthorized practice of law.	_____
3. Participate in professional standards enforcement.	_____
4. Keep client funds in separate escrow accounts.	_____
5. Receive compensation from one party only with informed consent.	_____
6. Respect exclusive relationships.	_____
7. Cooperate with other brokers.	_____
8. Disclose present or contemplated interests in property.	_____
9. Treat all parties honestly.	_____
10. Arbitrate contractual disputes.	_____
11. Equal professional services for all.	_____
12. Make your "true position" known when presenting offers.	_____
13. Be competent in your field of practice.	_____
14. Get transactional details in writing.	_____
15. Disclose pertinent facts.	_____
16. Disclose financial benefits from recommending products/services.	_____
17. Paint a true picture in advertising.	_____

Part 1: History of the Code of Ethics

Pre-1900

- There was no licensing of real estate practitioners.
- Speculation, exploitation, and disorder was the rule.
- *Caveat emptor* (buyer beware) governed transactions.

1908

- NATIONAL ASSOCIATION OF REALTORS® formed

1913

- Code of Ethics adopted
 - Established professional standards of conduct.
 - The first business ethical code, after those of medicine, engineering, and law.
 - Standards to protect the buying and selling public.

1989 - the Present

- Since 1989 the Code has changed almost each year
 - Are you familiar with the most recent changes?
 - How the Code is enforced?
 - How to use the Code to your benefit?

Part 1: History of the Code of Ethics (Continued)

The Code is:

- Our commitment to professionalism.
- Recognized as the measure of high standards in real estate.
- The “Golden Thread” that binds the REALTOR® family together.
- A living document that evolves with the real estate business.

Part 1: History of the Code of Ethics

3. Business Ethics and the Code

- What are "business ethics?"
 - Industry codes and standards
 - Company policies and practices
 - Individual values
- Legal standards generally set minimum standards of conduct required by law, while ethical standards encompass principles higher than legal standards.
- Business ethics and the REALTORS® Code of Ethics

Note: REALTORS® engage in many specialty areas and may be subject to the various codes and canons of those fields (such as legal ethics, the Uniform Standards of Professional Appraisal Practice [USPAP], the National Auctioneers Association [NAA] Code of Ethics, and the codes of the NATIONAL ASSOCIATION OF REALTORS®' Institutes, Societies, and Councils, etc.).

Regardless of their real estate specialties or fields of practice, all REALTORS® are bound by the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®.

Part 2: Structure and Major Categories of the Code

1. Aspirational Concepts of the Preamble to the Code

- Under all is the land . . .
- The Golden Rule
- “Widely allocated ownership” and “widest distribution of land ownership”
- Maintain and improve the standards of our calling.
- Share our common responsibility for the integrity and honor of the real estate profession.
- Become and remain informed about issues affecting real estate.
- Share your experience and expertise with others.
- Identify and eliminate practices that damage the public or might discredit or bring dishonor to the real estate profession.
- Urge exclusive representation of clients.
- Refrain from taking unfair advantage of your competitors.
- Don’t make unsolicited comments about other practitioners.
- If your opinion is sought about a competitor (or if you believe a comment is necessary), offer it in an objective, professional manner.
- Remember, the term “REALTOR®” stands for competency, fairness, high integrity, moral conduct in business relations.
- Keep in mind that no inducement of profit or instruction from clients can justify departure from the Code’s duties.

Important Note: The Preamble may **not** be the basis for disciplining a REALTOR®.

Part 2: Structure and Major Categories of the Code

2. Sections of the Code

- Three major sections
 - Duties to Clients and Customers
 - Duties to the Public
 - Duties to REALTORS®
- The Code's 17 Articles are broad statements of ethical principles

Important Note: Only violations of the Articles can result in disciplinary action.

- The Standards of Practice support, interpret, and amplify the Articles under which they are stated
 - REALTORS® may not be found in violation of a Standard of Practice, only its foundational Article.
 - Standards of Practice may be cited in support of an alleged violation of an Article (such as a violation of Article 1, as interpreted by Standard of Practice 1-3).
- "Interpretations to the Code of Ethics" (or Case Interpretations) found on nar.realtor include specific applications of the Articles and/or Standards of Practice.

Part 3: Code of Ethics: Arbitration Process

1. Background

- Ethics complaints deal with the perceived unethical “action” or “conduct” of a REALTOR®.
- Arbitration requests deal with contractual disputes or specific non-contractual disputes identified in Standard of Practice 17-4 of the Code of Ethics, involving money arising out of a real estate transaction.
- Mediation is the National Association’s preferred dispute resolution system for otherwise arbitrable disputes.
- As of 2000, all REALTOR® associations must offer mediation as an optional service to its REALTORS®.
- In mediation, the disputing parties work with a neutral third-party, a mediation officer, to identify and discuss the issues relative to the dispute and to craft an enforceable resolution voluntarily entered into between the parties.
- Many difficulties between real estate professionals (whether REALTORS® or not) result from misunderstandings, miscommunication, or lack of adequate communication.
- Prior to pursuing an ethics complaint, arbitration request or mediation request, REALTORS® are encouraged to work with each other to resolve their differences.

Part 3: Code of Ethics: Arbitration Process

2. Background

Arbitration is defined by -- and the arbitration of disputes is limited to -- circumstances that fall within the parameters of Article 17.

- They must be “contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between REALTORS® (principals) associated with different firms, **arising out of their relationship as REALTORS®.**”
 - For example, the desire to collect damages for an automobile accident is not an arbitrable matter under the Code just because two REALTORS® were involved in the accident. Such a claim is not one “arising out of their relationship as REALTORS®” as provided in Article 17.
- Arbitration requests must be filed within one hundred eighty (180) days after:
 - the closing, if any
 - or
 - the realization that a dispute existed, whichever is later.

Arbitration can be mandatory or voluntary. Participants in arbitration are:

Mandatory	Voluntary
REALTOR® principals associated with different firms	REALTORS® within the same firm
REALTOR® principals associated with different firms when requested by their REALTOR® licensees	REALTORS® and real estate professionals that do not hold REALTOR® membership
Clients and the REALTOR® principals who represent them as agents. In this situation, the client must agree to arbitrate the dispute through the association of REALTORS®.	REALTORS® and customers (no agency relationship)

Part 3: Code of Ethics, Arbitration Process

3. Grievance Committee

Role of the Grievance Committee

A Grievance Committee makes a preliminary review of ethics complaints and arbitration requests to determine if a full due process hearing is warranted.

The Grievance Committee handles:

- **Ethics** complaints to determine if the complaint supports a violation of the Article(s) cited.
- **Arbitration** requests to determine if the request relates to a monetary dispute arising out of a real estate transaction that is properly subject to arbitration.

The Grievance Committee ensures that:

- ethics complaints and arbitration requests are in proper form
- the appropriate parties are named
- filing deadlines are followed
- litigation or governmental investigations aren't pending related to the same transaction or event that might delay consideration of the matter by a hearing panel
- the board can impanel an impartial hearing panel
- **for ethics complaints:** the right Articles are named, and if appropriate, Standards of Practice are cited to support the charge of a violation
- **for arbitration requests:** the amount involved is not too small or too large; and the complaint is categorized as mandatory or voluntary

An appeal to the local association's Board of Directors can be made:

- If the Grievance Committee dismisses an ethics complaint or arbitration request
- Over the classification of the dispute as "voluntary" or "mandatory"

Once the Grievance Committee forwards an ethics complaint or arbitration request for hearing, the parties will have the opportunity to present their case to a hearing panel for a determination on the merits, unless the hearing panel chair or one of the parties believes there was a mistake in forwarding the matter to a hearing in the first place, in which case the hearing panel can consider that objection in what is called a "pre-hearing meeting."

Part 3: Code of Ethics, Arbitration Process

4. Professional Standards Hearings

What is a Professional Standards Hearing?

Professional Standards hearings for ethics and arbitration are full “due process” hearings, including sworn testimony, and if desired by a party, representation by counsel.

Hearings are to be fair, unbiased, and impartial, to determine, based on the evidence and testimony presented, whether a violation of the Code occurred or an award should be rendered.

Who hears complaints?

Hearing panelists:

- are unpaid volunteers giving their time as an act of association service.
- can be disqualified from serving if it is determined that they are incapable of rendering an impartial decision.

At the hearing

1. Each party may make an opening statement to present their case.
2. Witnesses may be called to provide testimony.
3. Witnesses can be cross-examined by the other party.
4. Supporting documents/information may be presented.
5. Parties may make closing arguments.

The decisions of hearing panels

- Decisions are based on the evidence and testimony presented during the hearing.
- Hearing panels cannot conclude that an Article of the Code has been violated unless that Article(s) is specifically cited in the complaint.

Part 3: Code of Ethics, Arbitration Process

5. Professional Standards Hearings: Ethics Hearing Results

Who can serve as counsel in an ethics hearing?

In Ethics Hearings, “counsel” can include legal representation and representation by another REALTOR® knowledgeable in the Code.

The Burden of Proof

Respondents in Ethics Hearings are considered innocent unless proven to have violated the Code of Ethics.

The burden of proof in an ethics complaint is "clear, strong and convincing," defined as the "measure or degree of proof which will produce a firm belief or conviction as to the allegations sought to be established."

Ethics Hearing Panel Decisions

The hearing panel's decision includes:

1. Findings of fact
2. Conclusion
3. Recommended discipline (if any).

Findings of Fact

The findings of fact are the story behind the hearing panel's conclusion. The findings of fact are a written account of what took place based on the panel's assessment of all of the evidence and testimony presented. Findings of fact are not appealable and must support the hearing panel's conclusion.

Discipline

Discipline should correspond to the offense and the severity of the REALTORS®' actions.

- Unintentional or inadvertent violations should result in penalties designed to educate
- Intentional violations or repeated violations should result in more severe sanctions

Authorized forms of discipline include:

- Letters of warning or reprimand
- Fines up to \$15,000
- Attendance at educational courses/seminars
- Suspension or termination of membership
- Suspension or termination of services including MLS.
- Cease or refrain from continued conduct deemed unethical or take affirmative steps to ensure compliance with the Code

Part 3: Code of Ethics, Arbitration Process

6. Professional Standards Hearings: Arbitration Hearing Results

The Standard of Proof

The standard of proof in which an arbitration hearing decision is based shall be a “preponderance of the evidence,” defined as, “evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it, that is, evidence which as a whole shows that the facts sought to be proved are more probable than not.” *There are no findings of fact in arbitration.*

Arbitration Awards

The panel will award an amount to the prevailing party. The amount cannot be more than what was requested in the arbitration request, though it can be less.

Making an Appeal

The fact that a hearing panel found no violation of the Code of Ethics is not appealable.

If a party believes that the hearing process was seriously flawed to the extent of denying a full and fair hearing, there are procedures for both ethics and arbitration to appeal that decision on what is called a “procedural deficiency.”

Grounds for Appeal

In addition to procedural deficiencies, appeals brought by ethics respondents can also be based on:

- A perceived misapplication or misinterpretation of one or more Articles of the Code of Ethics
- The nature or gravity of the discipline proposed by the hearing panel

The appeal panel’s decision is final.

Part 3: Code of Ethics, Arbitration Process

7. Mediation

What is Mediation?

Mediation a powerful tool to help disputing REALTORS®, and sometimes REALTORS® and their clients, resolve disputes that might otherwise be arbitrated.

- Mediation must be offered by an association of REALTORS® as an alternative to arbitration. If the mediation is unsuccessful, the parties are free to arbitrate.
- Mediation is typically a voluntary process, though REALTOR associations can mandate mediation of otherwise arbitrable disputes pursuant to Article 17.
- Mediation can resolve disputes, promote amicable resolutions, and reduce the number of cases requiring the more formal and complex arbitration procedures of the association of REALTORS®.

Mediation Officer

The mediation officer is a neutral third party. If any party objects to the mediation officer (i.e., potential conflict of interest) another mediation officer can be assigned.

Difference Between Mediation and Arbitration

Mediation	Arbitration
Low cost	Moderate cost
Little delay	Moderate delay
Maximum range of solutions	Win/lose/split
Parties control the outcome	Arbitrators control the outcome
Uncertain closure	Definite closure
Maintains/improves relationships	May harm relationships

Part 3: Code of Ethics, Arbitration Process

8. Benefits of Mediation

Benefits of Mediation

- Mediation process is private
- The parties have complete control over the outcome
- The mediator officer is an experienced facilitator familiar with real estate practice and custom
- Low cost
- Improves relationships (parties respond to each other and explain/explore information, needs, ideas and feelings)
- Maximum range of solutions beyond money.

Mediation Process

1. **Explain process**

Mediation officer explains the process and rules/goals, including the mediator's and parties' roles, voluntary outcome, neutrality and confidentiality.

2. **Make statements**

Parties make statements to explain their perspective of the dispute and ask questions.

3. **Identify issues**

All parties and the mediation officer identify the issues to be addressed.

4. **Cross-talk**

The parties may respond to each other and explain/explore information, needs, feelings and ideas.

5. **Caucus**

The mediation officer may meet privately with parties to discuss feelings, information and options.

6. **Find solutions**

The parties, with the mediation officer's assistance, explore and refine workable solutions.

7. **Reach agreement**

Agreement is reached/signed before leaving mediation or all parties agree that no further progress can be made, in which case parties are free to pursue arbitration.

Part 4: Ombudsman Services

1. Introduction

What is an Ombudsman?

An ombudsman is an individual appointed to receive and resolve disputes through constructive communication and advocating for consensus and understanding.

What is the purpose of an Ombudsman?

Ombudsman procedures are intended to provide enhanced communications and initial problem-solving capacity at the local level.

Many “complaints” received by boards and associations do not expressly allege violations of specific Articles of the Code of Ethics, and many do not detail conduct related to the Code. Some “complaints” are actually transactional, technical, or procedural questions readily responded to.

Who must provide Ombudsman services?

All associations must provide ombudsman services to their members and members’ clients and customers, according to Professional Standards Policy Statement #59: Associations to Provide Ombudsmen Services, *Code of Ethics and Arbitration Manual*.

Part 4: Ombudsman Services

2. Role of the Ombudsman

The ombudsman's role is primarily one of communication and conciliation, not adjudication.

Ombudsmen DO

Ombudsmen anticipate, identify, and resolve misunderstandings and disagreements before matters ripen into disputes and possible charges of unethical conduct.

Ombudmen DON'T

Ombudsmen do not determine whether ethics violations have occurred or who is entitled to what amount of money.

The following are examples of some situations in which an ombudsman would be covered by the NAR errors and omissions insurance program and other situations when the ombudsman would not be covered:

Ombudsman Covered	Ombudsman NOT Covered
A seller contacts the association because they feel their listing broker, who is a REALTOR®, is not responding to phone calls, and may have received offers that they haven't presented to the seller yet.	A buyer contacts the association for help with a short sale transaction.
REALTOR® A contacts the association because she has reason to believe REALTOR® B has been criticizing her business on Facebook after a difficult transaction.	

Part 4: Ombudsman Services

3. Involving the Ombudsman

Boards and associations have considerable latitude in determining how and when ombudsmen will be utilized.

What types of issues do ombudsmen deal with?

Ombudsmen can respond to:

- general questions about real estate practice
- transaction details
- ethical practice
- enforcement issues
- questions and complaints about members

Ombudsmen can also:

- contact members to inform them that a client or customer has raised a question or issue
- contact members to obtain information necessary to provide an informed response.

In cases where an ombudsman believes that a failure of communication is the basis for a question or complaint, the ombudsman can arrange a meeting of the parties and to facilitate a mutually acceptable resolution.

What issues can ombudsmen NOT deal with?

Complaints alleging violations of the public trust (as defined in Article IV, Section 2 of the NAR Bylaws) may not be referred to an ombudsman. “Public trust” refers to misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm.

If the ombudsman determines there has been a violation of the public trust, the process shall be immediately terminated. Parties may then:

- pursue a formal ethics complaint
- pursue a complaint with any appropriate governmental or regulatory body
- pursue litigation
- pursue any other available remedy.

Part 4: Ombudsman Services

4. Right to Decline Ombudsman Services

Persons filing complaints, or inquiring about the process for filing ethics complaints, will be advised that ombudsman services are available to attempt to informally resolve their complaint.

Such persons will also be advised that they may decline ombudsman services and can have their complaint referred to ethics mediation (if available), or considered at a formal ethics hearing.

Part 4: Ombudsman Services

5. Resolution of Complaints & Failure to Comply with Agreed Upon Resolution

Resolution of Complaints

If a matter complained of is resolved to the mutual satisfaction of all parties through the efforts of an ombudsman, the formal ethics complaint brought initially (if any) will continue to be processed until withdrawn by the complainant.

Failure to Comply with Agreed Upon Resolution

Failure or refusal of a member to comply with the terms of a mutually agreed on resolution shall entitle the complaining party to resubmit the original complaint or, where a formal complaint in the appropriate form had not been filed, to file an ethics complaint.

The time the matter originally brought to the board or association's attention will be considered the filing date for purposes of determining whether an ethics complaint is timely filed.

Part 4: Ombudsman Services

6. Referrals to the Grievance Committee or to State Regulatory Bodies

Ombudsmen cannot refer concerns they have regarding the conduct of any party utilizing their services to the Grievance Committee, to the state real estate licensing authority, or to any other regulatory body. The prohibition is intended to ensure impartiality and avoid the possible appearance of bias. Ombudsmen are, however, authorized to refer concerns that the public trust may have been violated to the Grievance Committee.

Part 5: Case Studies of Selected Articles of the Code of Ethics

Exercise: Article 1, Case Study 1

Shortly after the death of his Uncle Dan, Grant received word that he inherited a vacant warehouse that previously housed his uncle's business. This was quite a surprise to Grant, who had only met his uncle twice. As a dentist, Grant had no use for the warehouse. He decided it would be best to sell the building and put the money toward opening his own practice. Grant contacted Bob, a REALTOR®, and asked him to look at the property and suggest a listing price. Bob checked out the property and suggested \$100,000. This price seemed low to Grant given the commercial growth occurring around the warehouse, but he agreed to it.

Within two weeks Bob called Grant with an offer. Bob stated he would be the buyer at the listed price, less his commission. Grant became increasingly uneasy about the price. He told Bob he intended to have the warehouse appraised before accepting the offer. Bob got upset and said, "Listen, you can take my offer or not – that's up to you. But it's a legitimate offer based on the price you agreed to. So as far as I'm concerned, I've done my job and you owe me a commission."

Questions:

1. Do you think Bob is in violation of the Code?

- a. No, he's right. It's a legitimate offer and Grant should sell to Bob or pay him the commission.
- b. Yes. The Code prohibits REALTORS® from buying property listed with them.
- c. Yes. Bob placed his interests above those of his client's.
- d. No. Bob is not obligated to pay the appraised price even if it is higher than the original listing price.

2. What was Bob's obligation to Grant?

- a. Bob's obligation was to protect and promote the interests of Grant, his client, and not put his own interests ahead of Grant's.
- b. Bob's obligation was to serve his client, Grant, but Bob is allowed to make a reasonable profit in buying a client's property.
- c. Bob had no obligation to Grant other than to get his property sold, which he tried to do.

Part 5: Summaries and Case Studies of Selected Articles of the Code of Ethics

Exercise: Article 1, Case Study 2

The small commercial building is reasonably priced, in good condition, and located on a high-traffic street in a quaint neighborhood of Chicago, so it is no surprise that two offers are made only after a few days on market. John, the listing broker, presents both offers to the seller, Kathy. One of the offers is from a client of John's and the other is an offer from Buyer Broker Bob's client.

"These offers are both full price, with no contingencies, and there seems to be no difference between them," says Kathy to John. "Can we make a counter-offer for more money?" she asks. John explains that countering a full-price offer could result in one or both buyers walking away from the table.

"Okay, I'll tell you what," says Kathy, "If you reduce your commission, I'll accept the offer you procured. Although you will earn a little less than we agreed in the listing contract, you'll still get more than you would if you had to pay the other buyer's broker." John agrees.

Buyer Broker Bob learns from his client, who contacted seller Kathy directly to find out why her full-price offer wasn't accepted, that listing broker John had reduced his commission to make the offer that he procured more desirable. Bob is very upset.

Questions:

1. **Can John renegotiate his listing commission at the time he presents the two offers?**
 - a. No. John is bound to the commission he agreed to in the listing contract.
 - b. Yes, John may renegotiate the listing commission, but only before he presents the offers.
 - c. Yes, John is permitted to renegotiate the listing commission at any time.
 - d. John may only raise the listing commission, not lower it.

2. **By reducing the listing commission, can John present both offers in an objective manner, as required by Standard of Practice 1-6?**
 - a. No. John could not possibly be objective when presenting an offer from his own client.
 - b. Yes. Standard of Practice 1-6 requires only that offers be presented "quickly".
 - c. No. By agreeing to reduce the commission, John indicates that Bob's client's offer is no good.

- d. Yes. John's reduction of the listing commission alone does not mean he cannot be objective in his presentation. Agreeing to reduce the listing commission is simply part of the negotiation process.

3. Under Article 3, as established in Standard of Practice 3-4, is John obligated to inform Bob that he modified the listing commission prior to the offer being accepted?

- a. Yes. By reducing the listing commission for the offer he procured, John created a “dual commission arrangement”, one that must be disclosed.
- b. No. Even though John might have created a “dual commission arrangement”, disclosure of such to Bob is not “practical” given the situation.
- c. No. Standard of Practice 3-4 does not require a listing broker to disclose a dual commission arrangement.
- d. No. Reduction of the listing commission during negotiations does not create a dual or variable rate commission arrangement as defined in Standard of Practice 3-4.

Part 5: Summaries and Case Studies of Selected Articles of the Code of Ethics

Exercise: Article 2, Case Study 1

Ron, a REALTOR®, listed a motel for sale and prepared a sales prospectus setting out figures reporting the operating experience of the owner in the preceding year. The prospectus contained small type at the bottom of the page stating that the facts contained therein, while not guaranteed as to accuracy, were "accurate to the best of our knowledge and belief," and carried the name of Ron as the broker.

Buyer Jeff received the prospectus, inspected the property, discussed the operating figures in the prospectus and other features with Ron, and signed the contract. Six months after taking possession, Jeff ran across some old records that showed discrepancies when compared with the figures in Ron's prospectus. Jeff had not had as profitable an operating experience as had been indicated for the previous owner in the prospectus, and the difference could be substantially accounted for by these figures. He filed a charge of misrepresentation against Ron.

At the hearing, Ron took responsibility for the prospectus, acknowledging that he had worked with the former owner in its preparation. The former owner had built the motel and operated it for five years. Ron explained that he had advised him that \$10,000 in annual advertising expenses during these years could reasonably be considered promotional expenses in establishing the business, and need not be shown as annually recurring items.

Maid service, he also advised, need not be an expense item for a subsequent owner if the owner and his family did the work themselves. Ron cited his disclaimer of a guarantee of accuracy. Jeff testified that he had found maid service a necessity to maintain the motel, and it was apparent that the advertising was essential to successful operation. He protested that the margin of net income alleged in the prospectus could not be attained as he had been led to believe by Ron.

Questions:

1. Do you think Ron is in violation of the Code?

- a. No. Ron disclosed all pertinent information about the financial operation of the motel in the prospectus.
- b. Yes. Ron withheld pertinent information about the financial operation of the motel in the prospectus.
- c. No. The disclaimer stating the prospectus was "accurate to the best of our knowledge and belief" protects Ron from any omissions.
- d. Yes. Ron had an obligation to arrange a meeting between Jeff and the previous owner to review the motel's financial records.

2. What was Ron's obligation to Jeff?

- a. To fully disclose financial information that he reasonably should have known to be relevant and significant.
- b. To formulate an optimistic prospectus to encourage Jeff to purchase the property.
- c. To accurately convey information given to him by the seller.

Part 5: Summaries and Case Studies of Selected Articles of the Code of Ethics

Exercise: Article 2, Case Study 2

Dr. Luis, who recently completed his medical residency, decides to return home to the neighborhood where he grew up to open a small medical practice. He enlists the services of REALTOR® Sara to find him a suitable space for his clinic. Sara emails Dr. Luis several properties that fit his requirements. One property is a two-story building listed by REALTOR® Tom that shows in the remarks section, "Rental apartment upstairs."

Dr. Luis calls Sara to tell her that something about Tom's listing seems odd. "That building is in the neighborhood I grew up in," says Dr. Luis, "and I remember there being a problem with the Building Department when the owners added a kitchen to the second floor so they could live above their business."

Sara assures Dr. Luis that she will make the necessary inquiries, then promptly get back to him. A call to the Building Department confirms Dr. Luis' suspicion – that the building is zoned "commercial" and does not provide for a residential apartment."

Feeling embarrassed and misled by an apparent misrepresentation of the property in the MLS, Sara contacts Listing Broker Tom who acknowledges the seller told him the rehab was "up to code," but was completed without the necessary permits. According to Tom, the apartment had never been rented. "I assumed the new owners could get a zoning change or variance from the Building Department," he said.

Sara contemplates filing an ethics complaint against Tom, charging a violation of Article 2 for publishing inaccurate information in the MLS.

Questions:

1. Did Tom violate Article 2?

- a. No. Once he was contacted by Sara, Tom explains to her exactly why he thinks the future owners might be able to obtain a zoning change or variance from the Building Department.
- b. Yes. Tom misrepresents the property information in the MLS.
- c. No. It is outside Tom's expertise to know whether the property's zoning provides for an apartment.
- d. Maybe, depending on whether the seller told Tom to list the property in the MLS that way.

2. Should Tom have identified the building as having a revenue generating apartment?

- a. Yes. As indicated by the seller, the apartment was built "to code".
- b. No. Tom knew that the building would need to have a zoning change or variance from the Building Department before it could legally be rentable.

- c. Yes. The former owners did write-off the apartment on their taxes.
- d. Yes. Tom made no representation that the apartment was legally built.

Part 5: Summaries and Case Studies of Selected Articles of the Code of Ethics

Exercise: Article 3, Case Study 1

Lucy is a listing broker who published an offer of cooperation and compensation in MLS for one of her listings, prices of \$100,000). The offer of compensation to MLS participants was for X percent. Sam saw the MLS listing, showed the property and wrote an offer on the property for Barney Buyer. When Sam delivered the offer to Lucy, she said "Oh, by the way, I had to reduce my commission the other day to keep the seller happy. I can only pay Y percent co-op fee now." (Y is 1 percent less than X.)

Questions:

1. What Standard of Practice under Article 3 applies to this case?

- a. Standard of Practice 3-4 (dual or variable rate commissions).
- b. Standard of Practice 3-2 (changes in compensation offers).
- c. Standard of Practice 3-1 (terms of compensation offers).
- d. Standard of Practice 3-3 (mutually agreed changes in compensation).
- e. Standard of Practice 3-8 (availability of listed property).

2. Is Lucy in violation of the Code?

- a. Yes. She failed to timely communicate the change in cooperative compensation before Sam produced an offer to purchase.
- b. No. Listing brokers establish the terms and conditions of offers to cooperate and Sam had the obligation to ascertain those terms.
- c. Yes. It is unethical for Lucy to change the cooperative compensation once it is established.
- d. No. Whatever the seller dictates to Lucy is what the cooperating broker must accept.

3. If Sam files an arbitration claim against Lucy for the compensation offered through the MLS, should Sam prevail?

- a. No. A possible violation of the Code of Ethics is not a determining factor in an arbitration claim.
- b. No. Lucy is the "master of her offer" and can change it at any time before the closing.
- c. Yes. An arbitration panel would likely rule in Sam's favor if Sam can prove that he produced an offer that resulted in the sale before Lucy attempted to change her compensation offer.

- d. No. Lucy is only obligated to split based on what the seller pays, regardless of what was originally published in the MLS.

Part 5: Summaries and Case Studies of Selected Articles of the Code of Ethics

Exercise: Article 3, Case Study 2

The offer, contingent on the sale of the buyer's current office building, is accepted by Seller Sam. But, Sam instructs Bill, the listing broker, to continue to market the property with the hope that a better offer or one without a contingency would be made.

One week later, Buyer Broker Steve contacts Bill to arrange a showing of the property to an out-of-town client. "I think it's the perfect building and location for my client's business. He'll be here this weekend," says Steve. Bill sets up the showing for the weekend, but says nothing about the previously-accepted purchase offer.

After seeing the property with his client, Steve drafts a purchase offer and sends it to Bill's office. At Seller Sam's instruction, Bill informs the original buyer of the second offer, and the buyer waives the contingency.

Bill informs Steve that Sam intends to close on a previously-accepted contract now that the "sales contingency" has been removed. Steve is very upset that Bill did not tell him about the previously-accepted offer. Bill says he continued to market the property and did not make other brokers aware it was under contract to promote his client's best interest by continuing to attract buyers.

Questions:

1. **Is Bill obligated to disclose the accepted offer to other cooperating brokers?**
 - a. Yes. Standard of Practice 3-6 clearly establishes that Bill must disclose accepted offers.
 - b. No. It could have affected Bill's ability to obtain future offers.
 - c. No, not if the seller instructed Bill to keep it confidential.
 - d. No, not if the offer included unresolved contingencies.

2. **Does Bill's obligation under Article 1 to protect and promote his seller client's interests mean that he should not reveal the accepted offer?**
 - a. Yes. Bill's obligation to protect and promote the client's interests controls and Bill should not be found in violation of the Code.
 - b. Yes. Because Article 1 is a higher priority than Article 3, Article 1 controls.
 - c. No. Article 1 also requires that Bill be honest with all parties. This obligation of honesty, along with the requirement of Standard of Practice 3-6, requires Bill to make the disclosure of the accepted offer.

- d. Yes. Article 1 emphasizes fiduciary obligations and overrides any other obligation that potentially conflicts with it.

Part 5: Summaries and Case Studies of Selected Articles of the Code of Ethics

Exercise: Article 11, Case Study 1

It was a listing that Leo, a REALTOR®, now wished he had never taken. Keith, Leo's close friend, was selling his home and was adamant about having Leo list the property. Leo appreciated the gesture, but repeatedly told Keith that his experience was in commercial properties and not residential. In addition, Keith's home was in an area of the city that Leo didn't know much about. Leo strongly urged Keith to have the house appraised. Keith insisted he knew the area and that \$166,000 was the home's fair market value. This amount seemed low to Leo, but he listed the house at this price. It quickly sold to a young couple, Linda and Brian.

Five months later Leo received a call from Keith, who was upset. Keith told Leo that he met the buyers, Linda and Brian, at a party and found out the two were moving because Linda had been reassigned to another city by her company. The couple had received an offer on the house for \$190,000, which they declined, feeling they could do better. Keith was upset at Leo for not giving him better advice concerning the \$166,000 sale price.

Questions:

1. In addition to Article 11, which other Article might apply to this case?

- a. Article 5
- b. Article 10
- c. Article 1
- d. Article 2

2. Is Leo in violation of the Code?

- a. Yes. He failed to do a market analysis when listing the home. In addition, he should have provided Keith an appraisal at his cost.
- b. No. He had no obligation to Keith once Keith insisted on Leo listing the property.
- c. Yes. Even though he told Keith about residential sales being outside his field of expertise, he was also required to "engage the assistance" of a residential real estate broker.
- d. No. He fully disclosed to Keith that he was a commercial broker and that Keith's property was outside his area of expertise. He also recommended that Keith have the property appraised.

Part 5: Summaries and Case Studies of Selected Articles of the Code of Ethics

Exercise: Article 11, Case Study 2

Sean considers refinancing a twenty-three unit apartment building he has owned for several years to unlock some of the equity. The lending firm, ABC Mortgage, orders an appraisal for the property from REALTOR® Paul, who happens to be a licensed appraiser and a commercial real estate broker. The appraisal report is complete with the property address, date prepared, value, purpose, and market data. After receiving the appraisal, Sean is surprised to learn how much the building has appreciated and decides to sell the property instead of refinancing it.

Because Sean likes how thorough REALTOR® Paul was with the appraisal process and knowing that he is a commercial broker, Sean hires Paul to represent him as his listing broker. Within one week, an offer is made on the property and accepted.

During the loan application, the prospective purchaser informs the new lender that the property was recently appraised for ABC Mortgage. The lender is surprised to learn that Paul is both the listing broker and the appraiser, and that no disclosure was made about his “contemplated interest” as established in Standard of Practice 11-1.

Questions:

- 1. As used in Standard of Practice 11-1, does Paul have a “present or contemplated interest” in the property when he does the appraisal?**
 - a. Yes, as a licensed commercial broker, there always is the chance that Paul could have listed the property in the future.
 - b. No. At the time of the appraisal, Sean had no interest in selling the property.
 - c. Yes, Paul was paid to conduct the appraisal.
 - d. No, ABC Mortgage ordered the appraisal.

- 2. Is Paul in Violation of Article 11?**
 - a. Yes. Paul should have disclosed in the appraisal that he is a licensed broker.
 - b. No, Paul provided all of the appropriate information in his appraisal, and at that time, he had no intention of listing Sean’s property.
 - c. Yes, Paul is not qualified to conduct the appraisal.
 - d. Yes, Paul is not qualified to list the property.

Part 5: Summaries and Case Studies of Selected Articles of the Code of Ethics

Exercise: Article 16, Case Study 1

Tony operates a small accounting firm and owns the building that houses his offices. Given the recent growth of his firm, Tony purchased a larger office building and is planning to relocate. He enlisted the services of Sue, a REALTOR®, to sell his current office building and entered into a 90-day exclusive agreement.

Three months later and one week before Tony was to close on the new building, Tony's previous building remained unsold. Sue had shown the property only five times in the three months. "I think I should get another agent," Tony said to Fred, his friend. Fred suggested that Tony talk to Laura, a REALTOR® who had helped Fred sell his office building. Fred told Tony, "I'll give Laura a call, tell her about your situation, and see if she can help."

After Laura received Fred's call, she decided to call Sue to ask when her listing agreement with Tony expired. Laura had heard of Sue, but had never spoken to her. When Laura finally reached Sue after leaving a number of messages, Sue was abrupt, refusing to discuss her listing or disclose when it expired. Laura explained that under the circumstances she could go directly to the seller to get the information, thinking this might elicit a response from Sue. Instead, Sue hung up.

Laura then called Tony. He recognized Laura's name from his conversation with Fred and was happy to hear from her. Laura explained her services and indicated she would be happy to list Tony's office building after his exclusive listing agreement with Sue expired.

Two weeks later Sue's listing expired and Laura listed Tony's property. By the end of the month, it was sold.

Remember, if there is a conflict between state law and the Code, state law prevails.

Check your state law to be sure the actions in this case are permissible in your state.

Questions:

1. What Standard of Practice under Article 16 applies to this situation?

- a. Standard of Practice 16-6 (discussions with other's clients).
- b. Standard of Practice 16-4 (soliciting other's clients).
- c. Standard of Practice 16-2 (general mailings).
- d. All of the above.

2. Is Laura in violation of Article 16?

- a. Yes, Laura's call to Tony was an unethical solicitation.
- b. No, Article 16 doesn't apply.
- c. No, Laura followed the exact procedure specified by Standard of Practice 16-4.
- d. Yes, Laura was required to get Sue's permission to deal with Sue's client Tony.

3. What was Laura's obligation?

- a. Not to solicit Sue's listing unless Sue refused to tell Laura the nature and expiration date of the listing.
- b. None. Listings are fair game for solicitation at any time.
- c. Not to solicit Sue's listing under any circumstances.
- d. Not to solicit Sue's listing unless Sue's client, Tony, called Laura directly without Laura directly or indirectly initiating the discussion.

4. Is Sue in violation of Article 16?

- a. Yes, Sue is required to give Laura the nature and expiration date of the listing when Laura asks.
- b. No, Sue is not required to give Laura the requested information.
- c. Sue is not in violation of Article 16, but she is in violation of Article 3 by refusing to cooperate with Laura.

Part 5: Summaries and Case Studies of Selected Articles of the Code of Ethics

Exercise: Article 16, Case Study 2

REALTOR® Barbara has an exclusive listing on Sue's property – a banquet hall that seats 2400 people. An offer for the property is submitted by Buyer Broker Mike. Barbara takes Mike with her to present the offer to Seller Sue later that evening. Sue is interested, but wants time to think it over.

The next day, Mike thinks about what an inept job Barbara did presenting his client's offer -- it was as if she didn't fully understand it. There were several important considerations that Barbara did not explain to Sue. Because he attended the presentation and was involved in the negotiations, Mike decides to contact Sue directly to ask if she has any questions and to explain some of the finer points of the offer. Although the offer is less than the list price, Mike thinks it is fair and recommends that Sue accept it. After a little more discussion, Sue agrees. The contract is signed and a copy is faxed to Mike's office.

When Mike calls Barbara to tell her about the sale, she becomes very upset because Mike worked directly with Sue, rather than her.

Questions:

1. Identify the Standard of Practice that applies to this situation?

- a. 16-2
- b. 16-4
- c. 16-13
- d. 16-14

2. Is there an obligation on Mike's part to work through Barbara?

- a. No, the fact that Barbara had introduced Mike to Sue opened the door for him to carry on the negotiations with Sue directly.
- b. It depends on whether Barbara had expressly precluded Mike from contacting Sue directly.
- c. No. Mike has always been able to contact Sue directly.
- d. Yes. Mike should have worked only through Barbara, Sue's listing agent.

Part 6: Pathways to Professionalism & Marketing the Code of Ethics

1. How do you use the Code of Ethics in your business?

- Provides a competitive advantage
- You have agreed to abide by the tenets of the Code
- Point this advantage out to customers
- REALTORS® always put the client first
- A tool for training new agents
- Constant reminder of your professional services

Part 6: Pathways to Professionalism & Marketing the Code of Ethics

2. When do you look to the Code of Ethics for guidance? Part I

- Situations arise that might make you question how to handle them—the Code provides you with a way to respond professionally.
 - Customers who question whether they should work with more than one agent
 - Customers who ask your opinion of another agent
 - Customers who think it's best to buy through the listing agent to get the best price
 - Customers you know personally who inquire about pocket listings

Some foreign buyers may not understand the Code because of language difficulties. The Code of Ethics is available on Realtor.org in the following languages:

- [Chinese - Simplified](#) (DOC: 137 KB)
- [Chinese - Traditional](#) (DOC: 127 KB)
- [Danish](#) (DOC: 44 KB)
- [French](#) (DOC: 54 KB)
- [German](#) (DOC: 82 KB)
- [Italian](#) (DOC: 47 KB)
- [Japanese](#) (DOC: 40 KB)
- [Korean](#) (DOC: 227 KB)
- [Portuguese](#) (DOC: 70 KB)
- [Romanian](#) (DOC: 68 KB)
- [Russian](#) (DOC: 43 KB)
- [Spanish](#) (DOC: 50 KB)
- [Tagalog](#) (DOC: 46 KB)
- [Vietnamese](#) (DOC: 223 KB)

Part 6: Pathways to Professionalism & Marketing the Code of Ethics (continued)

- Social media brings a new set of challenges to REALTORS®
- Article 12 of Code guides REALTORS® to be honest and truthful in all communication forms
- You might question the workings of another agent
- Code provides reassurance among all REALTORS® that all parties will act professionally

Part 6: Pathways to Professionalism & Marketing the Code of Ethics

4. How do you promote your ethical duties as a real estate professional to consumers?

- Use it as a marketing tool
- Let buyers and sellers know you have agreed to this standard of professionalism
- As a REALTOR® you will act in the client's best interest
- Pledge of Performance available in printable form at realtor.org and can be customized
- Use the Pledge in buying and listing presentations
- Wear and display your REALTOR® pin
- Make the Code a key component of all professional correspondence

Part 6: Pathways to Professionalism & Marketing the Code of Ethics

5. A Pathway to Professional Conduct: Respect Starts Here Part I

Can take years to build a good reputation, but seconds to lose it.

Today's actions affect your business and reputation for years to come.

NAR Professional Standards Committee created Pathways to Professionalism.

- Not all-inclusive
- Should be guided by local custom and practice
- Cannot be the basis of a professional standards complaint

Six Timeless Tips:

1. Follow the "Golden Rule."
2. Show courtesy and respect to everyone.
3. Communicate with all parties in a timely fashion.
4. Always present a professional appearance.
5. Be aware of and meet all deadlines.
6. Be aware of and respectful of all cultural differences.

Part 6: Pathways to Professionalism & Marketing the Code of Ethics (continued)

Three key areas of respect: property, the public, and peers.

Remember, you are the protector of that home.

RESPECT FOR PROPERTY

- Be responsible.
- Keep all members of the group together.
- Never give anyone unaccompanied access to a listed property.
- Enter property only with permission.
- Leave property as you found it.
- Contact listing broker immediately if something seems amiss with property.
- Be considerate of sellers' property. Don't let clients eat, drink, smoke, dispose of trash, use facilities, or bring pets without permission.
- Use sidewalks to protect landscaping.
- Remove footwear in inclement weather.
- Avoid cell phone distractions when showing property.
- Be alert to surroundings to avoid unexpected issues (such as owner being home during showing).
- If the owner is home during a showing, you should
 - Ring the doorbell and announce yourself before entering the property.
 - Be prepared to deal with the unexpected.
 - Ask before using the telephone or facilities.
 - Never criticize the property in front of the occupant.
 - Inform occupants when leaving.

Part 6: Pathways to Professionalism & Marketing the Code of Ethics (continued)

RESPECT FOR THE PUBLIC

- Identify your REALTOR® and professional status.
- Leave your business card unless prohibited by local rules.
- Encourage clients of other brokers to direct questions to that broker.
- Don't tell people what you think, tell them what you know.
- Respond promptly to inquiries.
- Call if you're delayed or need to cancel an appointment.
- Promptly explain situation to listing broker if a client decides not to view a listing.
- Communicate clearly—avoid jargon or slang.
- Schedule appointments as far in advance as possible.
- Promise only what you can deliver.

RESPECT FOR PEERS

- Identify your REALTOR® and professional status.
- Promptly and courteously respond to other agents' communications.
- Be cognizant of file sizes you send electronically as it might be a burden to the recipient.
- Notify listing broker if it appears there is inaccurate information on a listing.
- Share important information about a property, such as pets or a security system.
- Show courtesy, trust, and respect to other agents.
- Avoid inappropriate use of endearments or language that may be culturally insensitive.
- Do not prospect at other realtors' open houses or events.
- Return keys promptly after a showing.

The actions of a single REALTOR® affect the public perception of all REALTORS®.

Part 6: Pathways to Professionalism & Marketing the Code of Ethics

Exercise: Case Study 1

Buyer agent Olivia represents Tom. On March 18, she picks Tom up to view several properties. Tom immediately notices that Olivia's car is a mess. CDs, listing sheets, kids' toys, food wrappers and coffee cups litter the floors and seats. "What can I say, I'm a busy agent with little time to clean my car", she laughs to Tom. After clearing a place for Tom to sit, they drive off to the first showing.

Agent Olivia found the first property in the local MLS. The showing instructions mention a lockbox on the property, and Olivia learns from another agent in her office that the sellers are out of town. Olivia does not contact the listing broker to show the property because she already has a lockbox access code. Just before entering the property, Olivia gets a call from her son's school. She gives Tom the access code to the lockbox and tells him to take a look while she takes the call. After she hangs up, Olivia is surprised to see a dog running around the front yard. Tom left the front door open and the owner's dog got out. She manages to get the dog back inside. Then Olivia realizes she and the dog have tracked mud in the foyer. Frustrated and surprised by the dog being there, Olivia decides it might be best to take Tom to the next showing before she tracks mud throughout the home. She hurries Tom out of the house, without turning off the lights, locking the front door, or replacing the key in the lockbox.

At the next property, the listing broker told Olivia to expect the seller to be home. Olivia knocks loudly – but no one answers. She uses the lockbox key to unlock the door. Before entering she announces that she and Tom have an appointment to look at the home. Hearing nothing, Olivia and Tom walk through the home, room to room. Once in the master bedroom, Olivia and Tom discuss the room's features, and their own likes and dislikes about the owner's decorating. They hear noise from the master bath and realize the seller is in the shower. Embarrassed, Olivia and Tom hurry out of the property without speaking to the seller.

While they were in the second home, it started to rain. Tom and Olivia are soaked by the time they get to Olivia's car. In order to dry off and get comfortable, Olivia pulls into a nearby gas station and uses the bathroom to change into the gym clothes she'd worn two days earlier. She and Tom then head to the third and last showing for the day. On the way there, Tom tells Olivia that he'd rather skip the showing and just go home. She takes him home and continues on her day without cancelling the third appointment or changing her clothes.

Questions

1. Olivia obviously makes several errors that violate the Code of Ethics. Based on Pathways to Professionalism, in which incident is Olivia displaying a lack of respect for her peers?
 - a. She allows Tom to look around the house without accompanying him.
 - b. She tracks mud into the foyer and leaves before cleaning it up.
 - c. She does not clean up her car before taking Tom to view properties.
 - d. She does not contact the listing broker because she has a lockbox access code.
2. Using the guidelines in Pathways to Professionalism, list five guidelines Olivia violates in terms of respect for property. (Note: there may be more than five guidelines that have been violated).

Part 6: Pathways to Professionalism & Marketing the Code of Ethics

Exercise: Case Study 2

Buyer agent Courtney has been working with Max for several months. Max has high expectations, and Courtney hasn't been able to find the right property for him. When 1101 Wellington hits the market, it looks like it could be the one. Courtney promises Max that she will schedule a showing right away – before anyone else. Unfortunately, she's unable to reach the listing broker. The first opportunity for Courtney and Max to see the property is the open house on the following weekend. Courtney and Max attend the open house. While there, Courtney tells several other people touring the home that she is an agent, and she would be willing to work with them. On their way out, Max runs into an old friend and they begin to talk. While waiting for Max, Courtney is approached by a woman she talked to in the house. The woman indicates that her agent couldn't attend the open house, and that she had a few questions. Courtney answers her questions to the best of her ability.

The following day, Max wants to see the property again. He's very interested. Courtney contacts the listing broker to set up another showing. The listing broker agrees to meet them at the property and indicates that the seller will be there, too. Due to terrible traffic, Courtney and Max are 45 minutes late. Courtney does not call the listing agent to let her know they are running late. At the property, Courtney, Max, and Max's new puppy tour the home. Courtney is delighted at the prospect of Max submitting an offer. While in the large great room, Max comments that he would paint the room a better color. Courtney responds, with the homeowner in a different room - but close enough to hear, "Yes, the colors in some of the rooms are dreadful." After they finish touring the home, Courtney thanks the seller and the listing agent for their time.

The next day, Courtney receives an e-mail from the listing agent following up on last night's showing. Courtney reads the e-mail but figures she'll respond only if Max decides to make an offer. A week later Max decides to make an offer. Courtney faxes the offer along with numerous comparable properties to justify the purchase price (52 pages total) to the listing agent.

Questions

1. Taking into consideration the Pathways to Professionalism guidelines, what is Courtney demonstrating a lack of respect for when she and Max comment that the paint color in some rooms is dreadful?
 - a. the public
 - b. her peers
 - c. the property
2. Of the many errors Courtney makes in this scenario, which incident demonstrates her lack of respect for the public?
 - a. Courtney does not account for traffic and she and Max are late for the showing.
 - b. During the open house, Courtney tells other people touring the home that she would be willing to work with them.
 - c. Courtney does not contact the listing agent when she knows she will be late for the showing.
 - d. Courtney faxes the offer and comparable properties in a 52-page packet to listing agent.

Ethics
of the
Real Estate Profession

Adopted by
National Association of Real Estate Exchanges

Adopted 1913

DUTIES TO CLIENTS

1. Be absolutely honest, truthful, faithful and efficient. Ever bear in mind that the broker is an employee, that his client is his employer and is entitled to the best service the real estate men can give – his information, talent, time, services, loyalty, confidence and fidelity.
2. Be conservative in giving advice and, where not reasonably well posted, refrain from giving opinion of value.
3. Inspect client's property, if possible, before offering it for sale, and always inform the buyer if that has not been done.
4. Do not depreciate the price of property unless the price is too high; ask that the price be reasonable, and tell the owner that it must be so if he expects his agent to make an attempt to sell it.
5. Obtain sole agency, in writing, if it is property worthy of a special effort to sell.
6. Advocate that the real consideration be shown in a deed to property, or one dollar and other valuable considerations.
7. Do not give special information to inquiries over the telephone, or otherwise, unless they are willing to give their names and addresses. Let them understand that the broker deals in the open, and expects them to do likewise.
8. An agent should not ask for a net price on property, unless he intends to buy it himself, and so notifies his client.
9. He should request his client not to discuss price with the prospective buyer, but persuade his client to refer the matter to the agent, - thus strengthening the agent's position with the buyer, and thus helping the agent to make a better deal for his client.
10. An agent should always exact the regular real estate commission of the Association of which he is a member, and always give his client to understand at the beginning that he is entitled to such and expects it.

DUTIES TO OTHER BROKERS

1. An agent should respect the listings of his brother agent, and co-operate with him to sell, - provided the other agent has the most suitable place.
2. Advise an owner to renew a selling contract with some other agent, rather than solicit the agency, provided the other agent has made a reasonable attempt to sell the property during the life of his contract.
3. Always be loyal, square, frank and earnest in the matters that require the co-operation of brokers, and always speak

kindly of competitors, refusing to pass judgment on others from hearsay evidence.

4. Advertise nothing but facts, and be careful not to criticize by any method a competitor's proposition.
5. Give an honest opinion concerning a competitor's proposition when asked to do so by a prospective purchaser, even though such opinion will result in a sale by the competitor.
6. Refuse to put a "For Sale" or "For Rent" sign on property on which a competitor already has his sign, provided the placing of such sign was through the authorization of the owner.
7. If an agent can not efficiently handle a proposition, he should refer the matter to some competitor who can.
8. Solicit co-operation of other members of the Association in selling Sole Agency listings, unless there is a deal on, or there is some particular buyer in sight, to whom a sale is expected, and always be ready and willing to divide the regular commission equally with any member of the Association who can produce a buyer for any client.
9. Invoke friendly arbitrations by the Real Estate Association rather than through the courts of law, in settling differences with other agents.
10. Do not disregard the rights of other agents. Never refuse to work through an owner's regular agent, or refuse to try to sell his property to a live buyer unless handling the entire deal and getting all the commission.
11. A broker will not put his name in the newspapers in connection with a deal unless really representing a least one of the parties and receiving a part of the commission, for such publicity is a sham, and the result is to the disadvantage of all.
12. When a sale or exchange is handled by two agents, each agent shall be given due credit in the report of such sale or exchange.
13. Do not relay property, - i.e., do not submit to one agent or broker that which is obtained from another unless the case be exceptional, in which case the third agent should know that the property is not obtained direct. A broker who relays represents neither side, and is not entitled to the same consideration as either of the other agents.

Code of Ethics and Standards of Practice

of the NATIONAL ASSOCIATION OF REALTORS®

Effective January 1, 2020

Where the word REALTORS® is used in this Code and Preamble, it shall be deemed to include REALTOR-ASSOCIATE®S.

While the Code of Ethics establishes obligations that may be higher than those mandated by law, in any instance where the Code of Ethics and the law conflict, the obligations of the law must take precedence.

Preamble

Under all is the land. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. REALTORS® should recognize that the interests of the nation and its citizens require the highest and best use of the land and the widest distribution of land ownership. They require the creation of adequate housing, the building of functioning cities, the development of productive industries and farms, and the preservation of a healthful environment.

Such interests impose obligations beyond those of ordinary commerce. They impose grave social responsibility and a patriotic duty to which REALTORS® should dedicate themselves, and for which they should be diligent in preparing themselves. REALTORS®, therefore, are zealous to maintain and improve the standards of their calling and share with their fellow REALTORS® a common responsibility for its integrity and honor.

In recognition and appreciation of their obligations to clients, customers, the public, and each other, REALTORS® continuously strive to become and remain informed on issues affecting real estate and, as knowledgeable professionals, they willingly share the fruit of their experience and study with others. They identify and take steps, through enforcement of this Code of Ethics and by assisting appropriate regulatory bodies, to eliminate practices which may damage the public or which might discredit or bring dishonor to the real estate profession. REALTORS® having direct personal knowledge of conduct that may violate the Code of Ethics involving misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm, bring such matters to the attention of the appropriate Board or Association of REALTORS®. (Amended 1/00)

Realizing that cooperation with other real estate professionals promotes the best interests of those who utilize their services, REALTORS® urge exclusive representation of clients; do not attempt to gain any unfair advantage over their competitors; and they refrain from making unsolicited comments about other practitioners. In instances where their opinion is sought, or where REALTORS® believe that comment is necessary, their opinion is offered in an objective, professional manner, uninfluenced by any personal motivation or potential advantage or gain.

The term REALTOR® has come to connote competency, fairness, and high integrity resulting from adherence to a lofty ideal of moral conduct in business relations. No inducement of profit and no instruction from clients ever can justify departure from this ideal.

In the interpretation of this obligation, REALTORS® can take no safer guide than that which has been handed down through the centuries, embodied in the Golden Rule, "Whatsoever ye would that others should do to you, do ye even so to them."

Accepting this standard as their own, REALTORS® pledge to observe its spirit in all of their activities whether conducted personally, through associates or others, or via technological means, and to conduct their business in accordance with the tenets set forth below. (Amended 1/07)

Duties to Clients and Customers

Article 1

When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their client. This obligation to the client is primary, but it does not relieve REALTORS® of their obligation to treat all parties honestly. When serving a buyer, seller, landlord, tenant or other party in a non-agency capacity, REALTORS® remain obligated to treat all parties honestly. (Amended 1/01)

- **Standard of Practice 1-1**

REALTORS®, when acting as principals in a real estate transaction, remain obligated by the duties imposed by the Code of Ethics. (Amended 1/93)

- **Standard of Practice 1-2**

The duties imposed by the Code of Ethics encompass all real estate-related activities and transactions whether conducted in person, electronically, or through any other means.

The duties the Code of Ethics imposes are applicable whether REALTORS® are acting as agents or in legally recognized non-agency capacities except that any duty imposed exclusively on agents by law or regulation shall not be imposed by this Code of Ethics on REALTORS® acting in non-agency capacities.

As used in this Code of Ethics, "client" means the person(s) or entity(ies) with whom a REALTOR® or a REALTOR®'S firm has an agency or legally recognized non-agency relationship; "customer" means a party to a real estate transaction who receives information, services, or benefits but has no contractual relationship with the REALTOR® or the REALTOR®'S firm; "prospect" means a purchaser, seller, tenant, or landlord who is not subject to a representation relationship with the REALTOR® or REALTOR®'S firm; "agent" means a real estate licensee (including brokers and sales associates) acting in an agency relationship as defined by state law or regulation; and "broker" means a real estate licensee (including brokers and sales associates) acting as an agent or in a legally recognized non-agency capacity. (Adopted 1/95, Amended 1/07)

- **Standard of Practice 1-3**

REALTORS®, in attempting to secure a listing, shall not deliberately mislead the owner as to market value.

- **Standard of Practice 1-4**

REALTORS®, when seeking to become a buyer/tenant representative, shall not mislead buyers or tenants as to savings or other benefits that might be realized through use of the REALTOR®'S services. (Amended 1/93)

- **Standard of Practice 1-5**

REALTORS® may represent the seller/landlord and buyer/tenant in the

same transaction only after full disclosure to and with informed consent of both parties. *(Adopted 1/93)*

• **Standard of Practice 1-6**

REALTORS® shall submit offers and counter-offers objectively and as quickly as possible. *(Adopted 1/93, Amended 1/95)*

• **Standard of Practice 1-7**

When acting as listing brokers, REALTORS® shall continue to submit to the seller/landlord all offers and counter-offers until closing or execution of a lease unless the seller/landlord has waived this obligation in writing. Upon the written request of a cooperating broker who submits an offer to the listing broker, the listing broker shall provide, as soon as practical, a written affirmation to the cooperating broker stating that the offer has been submitted to the seller/landlord, or a written notification that the seller/landlord has waived the obligation to have the offer presented. REALTORS® shall not be obligated to continue to market the property after an offer has been accepted by the seller/landlord. REALTORS® shall recommend that sellers/landlords obtain the advice of legal counsel prior to acceptance of a subsequent offer except where the acceptance is contingent on the termination of the pre-existing purchase contract or lease. *(Amended 1/20)*

• **Standard of Practice 1-8**

REALTORS®, acting as agents or brokers of buyers/tenants, shall submit to buyers/tenants all offers and counter-offers until acceptance but have no obligation to continue to show properties to their clients after an offer has been accepted unless otherwise agreed in writing. REALTORS®, acting as agents or brokers of buyers/tenants, shall recommend that buyers/tenants obtain the advice of legal counsel if there is a question as to whether a pre-existing contract has been terminated. *(Adopted 1/93, Amended 1/99)*

• **Standard of Practice 1-9**

The obligation of REALTORS® to preserve confidential information (as defined by state law) provided by their clients in the course of any agency relationship or non-agency relationship recognized by law continues after termination of agency relationships or any non-agency relationships recognized by law. REALTORS® shall not knowingly, during or following the termination of professional relationships with their clients:

- 1) reveal confidential information of clients; or
- 2) use confidential information of clients to the disadvantage of clients; or
- 3) use confidential information of clients for the REALTOR®'s advantage or the advantage of third parties unless:
 - a) clients consent after full disclosure; or
 - b) REALTORS® are required by court order; or
 - c) it is the intention of a client to commit a crime and the information is necessary to prevent the crime; or
 - d) it is necessary to defend a REALTOR® or the REALTOR®'s employees or associates against an accusation of wrongful conduct.

Information concerning latent material defects is not considered confidential information under this Code of Ethics. *(Adopted 1/93, Amended 1/01)*

• **Standard of Practice 1-10**

REALTORS® shall, consistent with the terms and conditions of their real estate licensure and their property management agreement, competently manage the property of clients with due regard for the rights, safety and health of tenants and others lawfully on the premises. *(Adopted 1/95, Amended 1/00)*

• **Standard of Practice 1-11**

REALTORS® who are employed to maintain or manage a client's property shall exercise due diligence and make reasonable efforts to protect it against reasonably foreseeable contingencies and losses. *(Adopted 1/95)*

• **Standard of Practice 1-12**

When entering into listing contracts, REALTORS® must advise sellers/landlords of:

- 1) the REALTOR®'s company policies regarding cooperation and the amount(s) of any compensation that will be offered to subagents, buyer/tenant agents, and/or brokers acting in legally recognized non-agency capacities;
- 2) the fact that buyer/tenant agents or brokers, even if compensated by listing brokers, or by sellers/landlords may represent the interests of buyers/tenants; and
- 3) any potential for listing brokers to act as disclosed dual agents, e.g., buyer/tenant agents. *(Adopted 1/93, Renumbered 1/98, Amended 1/03)*

• **Standard of Practice 1-13**

When entering into buyer/tenant agreements, REALTORS® must advise potential clients of:

- 1) the REALTOR®'s company policies regarding cooperation;
- 2) the amount of compensation to be paid by the client;
- 3) the potential for additional or offsetting compensation from other brokers, from the seller or landlord, or from other parties;
- 4) any potential for the buyer/tenant representative to act as a disclosed dual agent, e.g., listing broker, subagent, landlord's agent, etc.; and
- 5) the possibility that sellers or sellers' representatives may not treat the existence, terms, or conditions of offers as confidential unless confidentiality is required by law, regulation, or by any confidentiality agreement between the parties. *(Adopted 1/93, Renumbered 1/98, Amended 1/06)*

• **Standard of Practice 1-14**

Fees for preparing appraisals or other valuations shall not be contingent upon the amount of the appraisal or valuation. *(Adopted 1/02)*

• **Standard of Practice 1-15**

REALTORS®, in response to inquiries from buyers or cooperating brokers shall, with the sellers' approval, disclose the existence of offers on the property. Where disclosure is authorized, REALTORS® shall also disclose, if asked, whether offers were obtained by the listing licensee, another licensee in the listing firm, or by a cooperating broker. *(Adopted 1/03, Amended 1/09)*

• **Standard of Practice 1-16**

REALTORS® shall not access or use, or permit or enable others to access or use, listed or managed property on terms or conditions other than those authorized by the owner or seller. *(Adopted 1/12)*

Article 2

REALTORS® shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction. REALTORS® shall not, however, be obligated to discover latent defects in the property, to advise on matters outside the scope of their real estate license, or to disclose facts which are confidential under the scope of agency or non-agency relationships as defined by state law. *(Amended 1/00)*

• **Standard of Practice 2-1**

REALTORS® shall only be obligated to discover and disclose adverse factors reasonably apparent to someone with expertise in those areas required by their real estate licensing authority. Article 2 does not impose upon the REALTOR® the obligation of expertise in other professional or technical disciplines. *(Amended 1/96)*

• **Standard of Practice 2-2**

(Renumbered as Standard of Practice 1-12 1/98)

• **Standard of Practice 2-3**

(Renumbered as Standard of Practice 1-13 1/98)

• **Standard of Practice 2-4**

REALTORS® shall not be parties to the naming of a false consideration in any document, unless it be the naming of an obviously nominal consideration.

- **Standard of Practice 2-5**

Factors defined as “non-material” by law or regulation or which are expressly referenced in law or regulation as not being subject to disclosure are considered not “pertinent” for purposes of Article 2. *(Adopted 1/93)*

Article 3

REALTORS® shall cooperate with other brokers except when cooperation is not in the client’s best interest. The obligation to cooperate does not include the obligation to share commissions, fees, or to otherwise compensate another broker. *(Amended 1/95)*

- **Standard of Practice 3-1**

REALTORS®, acting as exclusive agents or brokers of sellers/ landlords, establish the terms and conditions of offers to cooperate. Unless expressly indicated in offers to cooperate, cooperating brokers may not assume that the offer of cooperation includes an offer of compensation. Terms of compensation, if any, shall be ascertained by cooperating brokers before beginning efforts to accept the offer of cooperation. *(Amended 1/99)*

- **Standard of Practice 3-2**

Any change in compensation offered for cooperative services must be communicated to the other REALTOR® prior to the time that REALTOR® submits an offer to purchase/lease the property. After a REALTOR® has submitted an offer to purchase or lease property, the listing broker may not attempt to unilaterally modify the offered compensation with respect to that cooperative transaction. *(Amended 1/14)*

- **Standard of Practice 3-3**

Standard of Practice 3-2 does not preclude the listing broker and cooperating broker from entering into an agreement to change cooperative compensation. *(Adopted 1/94)*

- **Standard of Practice 3-4**

REALTORS®, acting as listing brokers, have an affirmative obligation to disclose the existence of dual or variable rate commission arrangements (i.e., listings where one amount of commission is payable if the listing broker’s firm is the procuring cause of sale/lease and a different amount of commission is payable if the sale/lease results through the efforts of the seller/landlord or a cooperating broker). The listing broker shall, as soon as practical, disclose the existence of such arrangements to potential cooperating brokers and shall, in response to inquiries from cooperating brokers, disclose the differential that would result in a cooperative transaction or in a sale/lease that results through the efforts of the seller/landlord. If the cooperating broker is a buyer/tenant representative, the buyer/tenant representative must disclose such information to their client before the client makes an offer to purchase or lease. *(Amended 1/02)*

- **Standard of Practice 3-5**

It is the obligation of subagents to promptly disclose all pertinent facts to the principal’s agent prior to as well as after a purchase or lease agreement is executed. *(Amended 1/93)*

- **Standard of Practice 3-6**

REALTORS® shall disclose the existence of accepted offers, including offers with unresolved contingencies, to any broker seeking cooperation. *(Adopted 5/86, Amended 1/04)*

- **Standard of Practice 3-7**

When seeking information from another REALTOR® concerning property under a management or listing agreement, REALTORS® shall disclose their REALTOR® status and whether their interest is personal or on behalf of a client and, if on behalf of a client, their relationship with the client. *(Amended 1/11)*

- **Standard of Practice 3-8**

REALTORS® shall not misrepresent the availability of access to show or inspect a listed property. *(Amended 11/87)*

- **Standard of Practice 3-9**

REALTORS® shall not provide access to listed property on terms other than those established by the owner or the listing broker. *(Adopted 1/10)*

- **Standard of Practice 3-10**

The duty to cooperate established in Article 3 relates to the obligation to share information on listed property, and to make property available to other brokers for showing to prospective purchasers/tenants when it is in the best interests of sellers/landlords. *(Adopted 1/11)*

- **Standard of Practice 3-11**

REALTORS® may not refuse to cooperate on the basis of a broker’s race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. *(Adopted 1/20)*

Article 4

REALTORS® shall not acquire an interest in or buy or present offers from themselves, any member of their immediate families, their firms or any member thereof, or any entities in which they have any ownership interest, any real property without making their true position known to the owner or the owner’s agent or broker. In selling property they own, or in which they have any interest, REALTORS® shall reveal their ownership or interest in writing to the purchaser or the purchaser’s representative. *(Amended 1/00)*

- **Standard of Practice 4-1**

For the protection of all parties, the disclosures required by Article 4 shall be in writing and provided by REALTORS® prior to the signing of any contract. *(Adopted 2/86)*

Article 5

REALTORS® shall not undertake to provide professional services concerning a property or its value where they have a present or contemplated interest unless such interest is specifically disclosed to all affected parties.

Article 6

REALTORS® shall not accept any commission, rebate, or profit on expenditures made for their client, without the client’s knowledge and consent.

When recommending real estate products or services (e.g., homeowner’s insurance, warranty programs, mortgage financing, title insurance, etc.), REALTORS® shall disclose to the client or customer to whom the recommendation is made any financial benefits or fees, other than real estate referral fees, the REALTOR® or REALTOR®’S firm may receive as a direct result of such recommendation. *(Amended 1/99)*

- **Standard of Practice 6-1**

REALTORS® shall not recommend or suggest to a client or a customer the use of services of another organization or business entity in which they have a direct interest without disclosing such interest at the time of the recommendation or suggestion. *(Amended 5/88)*

Article 7

In a transaction, REALTORS® shall not accept compensation from more than one party, even if permitted by law, without disclosure to all parties and the informed consent of the REALTOR®’S client or clients. *(Amended 1/93)*

Article 8

REALTORS® shall keep in a special account in an appropriate financial institution, separated from their own funds, monies coming into their possession in trust for other persons, such as escrows, trust funds, clients’ monies, and other like items.

Article 9

REALTORS®, for the protection of all parties, shall assure whenever possible that all agreements related to real estate transactions including, but not limited to, listing and representation agreements, purchase contracts, and leases are in writing in clear and understandable language expressing the specific terms, conditions, obligations and commitments of the parties. A copy of each agreement shall be furnished to each party to such agreements upon their signing or initialing. *(Amended 1/04)*

• Standard of Practice 9-1

For the protection of all parties, REALTORS® shall use reasonable care to ensure that documents pertaining to the purchase, sale, or lease of real estate are kept current through the use of written extensions or amendments. *(Amended 1/93)*

• Standard of Practice 9-2

When assisting or enabling a client or customer in establishing a contractual relationship (e.g., listing and representation agreements, purchase agreements, leases, etc.) electronically, REALTORS® shall make reasonable efforts to explain the nature and disclose the specific terms of the contractual relationship being established prior to it being agreed to by a contracting party. *(Adopted 1/07)*

Duties to the Public

Article 10

REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. *(Amended 1/14)*

REALTORS®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. *(Amended 1/14)*

• Standard of Practice 10-1

When involved in the sale or lease of a residence, REALTORS® shall not volunteer information regarding the racial, religious or ethnic composition of any neighborhood nor shall they engage in any activity which may result in panic selling, however, REALTORS® may provide other demographic information. *(Adopted 1/94, Amended 1/06)*

• Standard of Practice 10-2

When not involved in the sale or lease of a residence, REALTORS® may provide demographic information related to a property, transaction or professional assignment to a party if such demographic information is (a) deemed by the REALTOR® to be needed to assist with or complete, in a manner consistent with Article 10, a real estate transaction or professional assignment and (b) is obtained or derived from a recognized, reliable, independent, and impartial source. The source of such information and any additions, deletions, modifications, interpretations, or other changes shall be disclosed in reasonable detail. *(Adopted 1/05, Renumbered 1/06)*

• Standard of Practice 10-3

REALTORS® shall not print, display or circulate any statement or advertisement with respect to selling or renting of a property that indicates any preference, limitations or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. *(Adopted 1/94, Renumbered 1/05 and 1/06, Amended 1/14)*

• Standard of Practice 10-4

As used in Article 10 “real estate employment practices” relates to employees and independent contractors providing real estate-related services and the administrative and clerical staff directly supporting those individuals. *(Adopted 1/00, Renumbered 1/05 and 1/06)*

Article 11

The services which REALTORS® provide to their clients and customers shall conform to the standards of practice and competence which are reasonably expected in the specific real estate disciplines in which they engage; specifically, residential real estate brokerage, real property management, commercial and industrial real estate brokerage, land brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate.

REALTORS® shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth. *(Amended 1/10)*

• Standard of Practice 11-1

When REALTORS® prepare opinions of real property value or price they must:

- 1) be knowledgeable about the type of property being valued,
- 2) have access to the information and resources necessary to formulate an accurate opinion, and
- 3) be familiar with the area where the subject property is located

unless lack of any of these is disclosed to the party requesting the opinion in advance.

When an opinion of value or price is prepared other than in pursuit of a listing or to assist a potential purchaser in formulating a purchase offer, the opinion shall include the following unless the party requesting the opinion requires a specific type of report or different data set:

- 1) identification of the subject property
 - 2) date prepared
 - 3) defined value or price
 - 4) limiting conditions, including statements of purpose(s) and intended user(s)
 - 5) any present or contemplated interest, including the possibility of representing the seller/landlord or buyers/tenants
 - 6) basis for the opinion, including applicable market data
 - 7) if the opinion is not an appraisal, a statement to that effect
 - 8) disclosure of whether and when a physical inspection of the property's exterior was conducted
 - 9) disclosure of whether and when a physical inspection of the property's interior was conducted
 - 10) disclosure of whether the REALTOR® has any conflicts of interest
- (Amended 1/14)*

• Standard of Practice 11-2

The obligations of the Code of Ethics in respect of real estate disciplines other than appraisal shall be interpreted and applied in accordance with the standards of competence and practice which clients and the public reasonably require to protect their rights and interests considering the complexity of the transaction, the availability of expert assistance, and, where the REALTOR® is an agent or subagent, the obligations of a fiduciary. *(Adopted 1/95)*

• Standard of Practice 11-3

When REALTORS® provide consultative services to clients which involve advice or counsel for a fee (not a commission), such advice shall be rendered in an objective manner and the fee shall not be contingent

the substance of the advice or counsel given. If brokerage or transaction services are to be provided in addition to consultive services, a separate compensation may be paid with prior agreement between the client and REALTOR®. *(Adopted 1/96)*

- **Standard of Practice 11-4**

The competency required by Article 11 relates to services contracted for between REALTORS® and their clients or customers; the duties expressly imposed by the Code of Ethics; and the duties imposed by law or regulation. *(Adopted 1/02)*

Article 12

REALTORS® shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing, and other representations. REALTORS® shall ensure that their status as real estate professionals is readily apparent in their advertising, marketing, and other representations, and that the recipients of all real estate communications are, or have been, notified that those communications are from a real estate professional. *(Amended 1/08)*

- **Standard of Practice 12-1**

Unless they are receiving no compensation from any source for their time and services, REALTORS® may use the term “free” and similar terms in their advertising and in other representations only if they clearly and conspicuously disclose:

- 1) by whom they are being, or expect to be, paid;
- 2) the amount of the payment or anticipated payment;
- 3) any conditions associated with the payment, offered product or service, and;
- 4) any other terms relating to their compensation. *(Amended 1/20)*

- **Standard of Practice 12-2**

(Deleted 1/20)

- **Standard of Practice 12-3**

The offering of premiums, prizes, merchandise discounts or other inducements to list, sell, purchase, or lease is not, in itself, unethical even if receipt of the benefit is contingent on listing, selling, purchasing, or leasing through the REALTOR® making the offer. However, REALTORS® must exercise care and candor in any such advertising or other public or private representations so that any party interested in receiving or otherwise benefiting from the REALTOR®’s offer will have clear, thorough, advance understanding of all the terms and conditions of the offer. The offering of any inducements to do business is subject to the limitations and restrictions of state law and the ethical obligations established by any applicable Standard of Practice. *(Amended 1/95)*

- **Standard of Practice 12-4**

REALTORS® shall not offer for sale/lease or advertise property without authority. When acting as listing brokers or as subagents, REALTORS® shall not quote a price different from that agreed upon with the seller/landlord. *(Amended 1/93)*

- **Standard of Practice 12-5**

REALTORS® shall not advertise nor permit any person employed by or affiliated with them to advertise real estate services or listed property in any medium (e.g., electronically, print, radio, television, etc.) without disclosing the name of that REALTOR®’s firm in a reasonable and readily apparent manner either in the advertisement or in electronic advertising via a link to a display with all required disclosures. *(Adopted 11/86, Amended 1/16)*

- **Standard of Practice 12-6**

REALTORS®, when advertising unlisted real property for sale/lease in which they have an ownership interest, shall disclose their status as both owners/landlords and as REALTORS® or real estate licensees. *(Amended 1/93)*

- **Standard of Practice 12-7**

Only REALTORS® who participated in the transaction as the listing broker or cooperating broker (selling broker) may claim to have “sold” the property. Prior to closing, a cooperating broker may post a “sold” sign only with the consent of the listing broker. *(Amended 1/96)*

- **Standard of Practice 12-8**

The obligation to present a true picture in representations to the public includes information presented, provided, or displayed on REALTORS® websites. REALTORS® shall use reasonable efforts to ensure that information on their websites is current. When it becomes apparent that information on a REALTOR®’s website is no longer current or accurate, REALTORS® shall promptly take corrective action. *(Adopted 1/07)*

- **Standard of Practice 12-9**

REALTOR® firm websites shall disclose the firm’s name and state(s) of licensure in a reasonable and readily apparent manner.

Websites of REALTORS® and non-member licensees affiliated with a REALTOR® firm shall disclose the firm’s name and that REALTOR®’s or non-member licensee’s state(s) of licensure in a reasonable and readily apparent manner. *(Adopted 1/07)*

- **Standard of Practice 12-10**

REALTORS® obligation to present a true picture in their advertising and representations to the public includes Internet content, images, and the URLs and domain names they use, and prohibits REALTORS® from:

- 1) engaging in deceptive or unauthorized framing of real estate brokerage websites;
- 2) manipulating (e.g., presenting content developed by others) listing and other content in any way that produces a deceptive or misleading result;
- 3) deceptively using metatags, keywords or other devices/methods to direct, drive, or divert Internet traffic; or
- 4) presenting content developed by others without either attribution or without permission; or
- 5) otherwise misleading consumers, including use of misleading images. *(Adopted 1/07, Amended 1/18)*

- **Standard of Practice 12-11**

REALTORS® intending to share or sell consumer information gathered via the Internet shall disclose that possibility in a reasonable and readily apparent manner. *(Adopted 1/07)*

- **Standard of Practice 12-12**

REALTORS® shall not:

- 1) use URLs or domain names that present less than a true picture, or
- 2) register URLs or domain names which, if used, would present less than a true picture. *(Adopted 1/08)*

- **Standard of Practice 12-13**

The obligation to present a true picture in advertising, marketing, and representations allows REALTORS® to use and display only professional designations, certifications, and other credentials to which they are legitimately entitled. *(Adopted 1/08)*

Article 13

REALTORS® shall not engage in activities that constitute the unauthorized practice of law and shall recommend that legal counsel be obtained when the interest of any party to the transaction requires it.

Article 14

If charged with unethical practice or asked to present evidence or to cooperate in any other way, in any professional standards proceeding or investigation, REALTORS® shall place all pertinent facts before the proper tribunals of the Member Board or affiliated institute, society, or council in

which membership is held and shall take no action to disrupt or obstruct such processes. *(Amended 1/99)*

- **Standard of Practice 14-1**

REALTORS® shall not be subject to disciplinary proceedings in more than one Board of REALTORS® or affiliated institute, society, or council in which they hold membership with respect to alleged violations of the Code of Ethics relating to the same transaction or event. *(Amended 1/95)*

- **Standard of Practice 14-2**

REALTORS® shall not make any unauthorized disclosure or dissemination of the allegations, findings, or decision developed in connection with an ethics hearing or appeal or in connection with an arbitration hearing or procedural review. *(Amended 1/92)*

- **Standard of Practice 14-3**

REALTORS® shall not obstruct the Board's investigative or professional standards proceedings by instituting or threatening to institute actions for libel, slander, or defamation against any party to a professional standards proceeding or their witnesses based on the filing of an arbitration request, an ethics complaint, or testimony given before any tribunal. *(Adopted 11/87, Amended 1/99)*

- **Standard of Practice 14-4**

REALTORS® shall not intentionally impede the Board's investigative or disciplinary proceedings by filing multiple ethics complaints based on the same event or transaction. *(Adopted 11/88)*

Duties to REALTORS®

Article 15

REALTORS® shall not knowingly or recklessly make false or misleading statements about other real estate professionals, their businesses, or their business practices. *(Amended 1/12)*

- **Standard of Practice 15-1**

REALTORS® shall not knowingly or recklessly file false or unfounded ethics complaints. *(Adopted 1/00)*

- **Standard of Practice 15-2**

The obligation to refrain from making false or misleading statements about other real estate professionals, their businesses, and their business practices includes the duty to not knowingly or recklessly publish, repeat, retransmit, or republish false or misleading statements made by others. This duty applies whether false or misleading statements are repeated in person, in writing, by technological means (e.g., the Internet), or by any other means. *(Adopted 1/07, Amended 1/12)*

- **Standard of Practice 15-3**

The obligation to refrain from making false or misleading statements about other real estate professionals, their businesses, and their business practices includes the duty to publish a clarification about or to remove statements made by others on electronic media the REALTOR® controls once the REALTOR® knows the statement is false or misleading. *(Adopted 1/10, Amended 1/12)*

Article 16

REALTORS® shall not engage in any practice or take any action inconsistent with exclusive representation or exclusive brokerage relationship agreements that other REALTORS® have with clients. *(Amended 1/04)*

- **Standard of Practice 16-1**

Article 16 is not intended to prohibit aggressive or innovative business practices which are otherwise ethical and does not prohibit disagreements with other REALTORS® involving commission, fees,

compensation or other forms of payment or expenses. *(Adopted 1/93, Amended 1/95)*

- **Standard of Practice 16-2**

Article 16 does not preclude REALTORS® from making general announcements to prospects describing their services and the terms of their availability even though some recipients may have entered into agency agreements or other exclusive relationships with another REALTOR®. A general telephone canvass, general mailing or distribution addressed to all prospects in a given geographical area or in a given profession, business, club, or organization, or other classification or group is deemed "general" for purposes of this standard. *(Amended 1/04)*

Article 16 is intended to recognize as unethical two basic types of solicitations:

First, telephone or personal solicitations of property owners who have been identified by a real estate sign, multiple listing compilation, or other information service as having exclusively listed their property with another REALTOR® and

Second, mail or other forms of written solicitations of prospects whose properties are exclusively listed with another REALTOR® when such solicitations are not part of a general mailing but are directed specifically to property owners identified through compilations of current listings, "for sale" or "for rent" signs, or other sources of information required by Article 3 and Multiple Listing Service rules to be made available to other REALTORS® under offers of subagency or cooperation. *(Amended 1/04)*

- **Standard of Practice 16-3**

Article 16 does not preclude REALTORS® from contacting the client of another broker for the purpose of offering to provide, or entering into a contract to provide, a different type of real estate service unrelated to the type of service currently being provided (e.g., property management as opposed to brokerage) or from offering the same type of service for property not subject to other brokers' exclusive agreements. However, information received through a Multiple Listing Service or any other offer of cooperation may not be used to target clients of other REALTORS® to whom such offers to provide services may be made. *(Amended 1/04)*

- **Standard of Practice 16-4**

REALTORS® shall not solicit a listing which is currently listed exclusively with another broker. However, if the listing broker, when asked by the REALTOR®, refuses to disclose the expiration date and nature of such listing, i.e., an exclusive right to sell, an exclusive agency, open listing, or other form of contractual agreement between the listing broker and the client, the REALTOR® may contact the owner to secure such information and may discuss the terms upon which the REALTOR® might take a future listing or, alternatively, may take a listing to become effective upon expiration of any existing exclusive listing. *(Amended 1/94)*

- **Standard of Practice 16-5**

REALTORS® shall not solicit buyer/tenant agreements from buyers/tenants who are subject to exclusive buyer/tenant agreements. However, if asked by a REALTOR®, the broker refuses to disclose the expiration date of the exclusive buyer/tenant agreement, the REALTOR® may contact the buyer/tenant to secure such information and may discuss the terms upon which the REALTOR® might enter into a future buyer/tenant agreement or, alternatively, may enter into a buyer/tenant agreement to become effective upon the expiration of any existing exclusive buyer/tenant agreement. *(Adopted 1/94, Amended 1/98)*

- **Standard of Practice 16-6**

When REALTORS® are contacted by the client of another REALTOR® regarding the creation of an exclusive relationship to provide the same type of service

and REALTORS® have not directly or indirectly initiated such discussions, they may discuss the terms upon which they might enter into a future agreement or, alternatively, may enter into an agreement which becomes effective upon expiration of any existing exclusive agreement. *(Amended 1/98)*

• **Standard of Practice 16-7**

The fact that a prospect has retained a REALTOR® as an exclusive representative or exclusive broker in one or more past transactions does not preclude other REALTORS® from seeking such prospect's future business. *(Amended 1/04)*

• **Standard of Practice 16-8**

The fact that an exclusive agreement has been entered into with a REALTOR® shall not preclude or inhibit any other REALTOR® from entering into a similar agreement after the expiration of the prior agreement. *(Amended 1/98)*

• **Standard of Practice 16-9**

REALTORS®, prior to entering into a representation agreement, have an affirmative obligation to make reasonable efforts to determine whether the prospect is subject to a current, valid exclusive agreement to provide the same type of real estate service. *(Amended 1/04)*

• **Standard of Practice 16-10**

REALTORS®, acting as buyer or tenant representatives or brokers, shall disclose that relationship to the seller/landlord's representative or broker at first contact and shall provide written confirmation of that disclosure to the seller/landlord's representative or broker not later than execution of a purchase agreement or lease. *(Amended 1/04)*

• **Standard of Practice 16-11**

On unlisted property, REALTORS® acting as buyer/tenant representatives or brokers shall disclose that relationship to the seller/landlord at first contact for that buyer/tenant and shall provide written confirmation of such disclosure to the seller/landlord not later than execution of any purchase or lease agreement. *(Amended 1/04)*

REALTORS® shall make any request for anticipated compensation from the seller/landlord at first contact. *(Amended 1/98)*

• **Standard of Practice 16-12**

REALTORS®, acting as representatives or brokers of sellers/landlords or as subagents of listing brokers, shall disclose that relationship to buyers/tenants as soon as practicable and shall provide written confirmation of such disclosure to buyers/tenants not later than execution of any purchase or lease agreement. *(Amended 1/04)*

• **Standard of Practice 16-13**

All dealings concerning property exclusively listed, or with buyer/tenants who are subject to an exclusive agreement shall be carried on with the client's representative or broker, and not with the client, except with the consent of the client's representative or broker or except where such dealings are initiated by the client.

Before providing substantive services (such as writing a purchase offer or presenting a CMA) to prospects, REALTORS® shall ask prospects whether they are a party to any exclusive representation agreement. REALTORS® shall not knowingly provide substantive services concerning a prospective transaction to prospects who are parties to exclusive representation agreements, except with the consent of the prospects' exclusive representatives or at the direction of prospects. *(Adopted 1/93, Amended 1/04)*

• **Standard of Practice 16-14**

REALTORS® are free to enter into contractual relationships or to negotiate with sellers/landlords, buyers/tenants or others who are not subject to an exclusive agreement but shall not knowingly obligate them to pay more than one commission except with their informed consent. *(Amended 1/98)*

• **Standard of Practice 16-15**

In cooperative transactions REALTORS® shall compensate cooperating REALTORS® (principal brokers) and shall not compensate nor offer to compensate, directly or indirectly, any of the sales licensees employed by or affiliated with other REALTORS® without the prior express knowledge and consent of the cooperating broker.

• **Standard of Practice 16-16**

REALTORS®, acting as subagents or buyer/tenant representatives or brokers, shall not use the terms of an offer to purchase/lease to attempt to modify the listing broker's offer of compensation to subagents or buyer/tenant representatives or brokers nor make the submission of an executed offer to purchase/lease contingent on the listing broker's agreement to modify the offer of compensation. *(Amended 1/04)*

• **Standard of Practice 16-17**

REALTORS®, acting as subagents or as buyer/tenant representatives or brokers, shall not attempt to extend a listing broker's offer of cooperation and/or compensation to other brokers without the consent of the listing broker. *(Amended 1/04)*

• **Standard of Practice 16-18**

REALTORS® shall not use information obtained from listing brokers through offers to cooperate made through multiple listing services or through other offers of cooperation to refer listing brokers' clients to other brokers or to create buyer/tenant relationships with listing brokers' clients, unless such use is authorized by listing brokers. *(Amended 1/02)*

• **Standard of Practice 16-19**

Signs giving notice of property for sale, rent, lease, or exchange shall not be placed on property without consent of the seller/landlord. *(Amended 1/93)*

• **Standard of Practice 16-20**

REALTORS®, prior to or after their relationship with their current firm is terminated, shall not induce clients of their current firm to cancel exclusive contractual agreements between the client and that firm. This does not preclude REALTORS® (principals) from establishing agreements with their associated licensees governing assignability of exclusive agreements. *(Adopted 1/98, Amended 1/10)*

Article 17

In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between REALTORS® (principals) associated with different firms, arising out of their relationship as REALTORS®, the REALTORS® shall mediate the dispute if the Board requires its members to mediate. If the dispute is not resolved through mediation, or if mediation is not required, REALTORS® shall submit the dispute to arbitration in accordance with the policies of the Board rather than litigate the matter.

In the event clients of REALTORS® wish to mediate or arbitrate contractual disputes arising out of real estate transactions, REALTORS® shall mediate or arbitrate those disputes in accordance with the policies of the Board, provided the clients agree to be bound by any resulting agreement or award.

The obligation to participate in mediation and arbitration contemplated by this Article includes the obligation of REALTORS® (principals) to cause their firms to mediate and arbitrate and be bound by any resulting agreement or award. *(Amended 1/12)*

• **Standard of Practice 17-1**

The filing of litigation and refusal to withdraw from it by REALTORS® in an arbitrable matter constitutes a refusal to arbitrate. *(Adopted 2/86)*

- **Standard of Practice 17-2**

Article 17 does not require REALTORS® to mediate in those circumstances when all parties to the dispute advise the Board in writing that they choose not to mediate through the Board's facilities. The fact that all parties decline to participate in mediation does not relieve REALTORS® of the duty to arbitrate.

Article 17 does not require REALTORS® to arbitrate in those circumstances when all parties to the dispute advise the Board in writing that they choose not to arbitrate before the Board. *(Amended 1/12)*

- **Standard of Practice 17-3**

REALTORS®, when acting solely as principals in a real estate transaction, are not obligated to arbitrate disputes with other REALTORS® absent a specific written agreement to the contrary. *(Adopted 1/96)*

- **Standard of Practice 17-4**

Specific non-contractual disputes that are subject to arbitration pursuant to Article 17 are:

- 1) Where a listing broker has compensated a cooperating broker and another cooperating broker subsequently claims to be the procuring cause of the sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker and any amount credited or paid to a party to the transaction at the direction of the respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. *(Adopted 1/97, Amended 1/07)*
- 2) Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating broker claims to be the procuring cause of sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the seller or landlord and any amount credited or paid to a party to the transaction at the direction of the respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. *(Adopted 1/97, Amended 1/07)*
- 3) Where a buyer or tenant representative is compensated by the buyer or tenant and, as a result, the listing broker reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating broker claims to be the procuring cause of sale or

lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. *(Adopted 1/97)*

- 4) Where two or more listing brokers claim entitlement to compensation pursuant to open listings with a seller or landlord who agrees to participate in arbitration (or who requests arbitration) and who agrees to be bound by the decision. In cases where one of the listing brokers has been compensated by the seller or landlord, the other listing broker, as complainant, may name the first listing broker as respondent and arbitration may proceed between the brokers. *(Adopted 1/97)*
- 5) Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, claims to be the procuring cause of sale or lease. In such cases arbitration shall be between the listing broker and the buyer or tenant representative and the amount in dispute is limited to the amount of the reduction of commission to which the listing broker agreed. *(Adopted 1/05)*

- **Standard of Practice 17-5**

The obligation to arbitrate established in Article 17 includes disputes between REALTORS® (principals) in different states in instances where, absent an established inter-association arbitration agreement, the REALTOR® (principal) requesting arbitration agrees to submit to the jurisdiction of, travel to, participate in, and be bound by any resulting award rendered in arbitration conducted by the respondent(s) REALTOR®'s association, in instances where the respondent(s) REALTOR®'s association determines that an arbitrable issue exists. *(Adopted 1/07)*

Explanatory Notes

The reader should be aware of the following policies which have been approved by the Board of Directors of the National Association:

In filing a charge of an alleged violation of the Code of Ethics by a REALTOR®, the charge must read as an alleged violation of one or more Articles of the Code. Standards of Practice may be cited in support of the charge.

The Standards of Practice serve to clarify the ethical obligations imposed by the various Articles and supplement, and do not substitute for, the Case Interpretations in *Interpretations of the Code of Ethics*.

Modifications to existing Standards of Practice and additional new Standards of Practice are approved from time to time. Readers are cautioned to ensure that the most recent publications are utilized.

Introduction

Boards and associations of REALTORS® are charged with the responsibility of receiving and resolving ethics complaints. This obligation is carried out by local, regional and state grievance committees and professional standards committees.

Many “complaints” received by boards and associations do not expressly allege violations of specific Articles of the [Code of Ethics](#), and many do not detail conduct related to the Code. Some “complaints” are actually transactional, technical, or procedural questions readily responded to.

It is the belief of the National Association’s [Professional Standards Committee](#) that many ethics complaints might be averted with enhanced communications and initial problem-solving capacity at the local level. These ombudsman procedures are intended to provide that capacity.

Role of Ombudsmen

The ombudsman’s role is primarily one of communication and conciliation, not adjudication. Ombudsmen do not determine whether ethics violations have occurred or who is entitled to what amount of money, rather they anticipate, identify, and resolve misunderstandings and disagreements before matters ripen into disputes and possible charges of unethical conduct.

Qualification and Criteria for Ombudsmen

Boards and associations have considerable latitude in developing criteria for service as ombudsmen.

At a minimum, ombudsmen should be thoroughly familiar with the Code of Ethics, state real estate regulations, and current real estate practice. Ombudsmen may be REALTORS®, staff members, or others acting on behalf of the local board/association.

Insurance Coverage

Ombudsman are covered through the NAR insurance program, as long as they are acting within the coverage limits described in the policy.

As provided in the [FAQ](#) about the National Association of REALTORS® Professional Liability Insurance Program for Associations of REALTORS®, the policy defines an “ombudsman” (or “ombudsperson”) as an individual designated by an association to be available for consultation about the association’s ethics hearing, arbitration, and/or DRS processes. Only association staff or members may serve as an ombudsman. The policy excludes from coverage any claim that alleges or arises out of any action committed by ombudsman that does not involve an association’s ethics hearing, arbitration or the DRS processes.

The following are examples of some situations in which an ombudsman would be covered and other situations when the ombudsman would not be covered:

- ❖ A seller contacts the association because they feel their listing broker, who is a REALTOR®, is not responding to phone calls, and may have received offers that they haven’t presented to the seller yet. If an ombudsman were appointed to assist the parties, the ombudsman’s actions would be covered by the NAR insurance program.

- ❖ A buyer contacts the association for help with a short sale transaction. If an ombudsman assisted the buyer, the ombudsman's actions would not be covered by the NAR insurance program.
- ❖ REALTOR® A contacts the association because she has reason to believe REALTOR® B has been criticizing her business on Facebook after a difficult transaction. If an ombudsman were appointed to assist the parties, the ombudsman's actions would be covered under the NAR insurance program.

For more information about insurance coverage, visit the <http://www.realtor.org/user/login?destination=/programs/professional-liability-insurance-program>

Involving the Ombudsman

Boards and associations have considerable latitude in determining how and when ombudsmen will be utilized. For example, ombudsmen can field and respond to a wide variety of inquiries and complaints, including general questions about real estate practice, transaction details, ethical practice, and enforcement issues. Ombudsmen can also receive and respond to questions and complaints about members; can contact members to inform them that a client or customer has raised a question or issue; and can contact members to obtain information necessary to provide an informed response.

In cases where an ombudsman believes that a failure of communication is the basis for a question or complaint, the ombudsman can arrange a meeting of the parties and to facilitate a mutually acceptable resolution.

Where a written ethics complaint in the appropriate form is received, it can be initially referred to the ombudsman who will attempt to resolve the matter, except that complaints alleging violations of the public trust (as defined in Article IV, Section 2 of the NAR Bylaws) may not be referred to an ombudsman. "Public trust" refers to misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm.

In the event the ombudsman concludes that a potential violation of the public trust may have occurred, the ombudsman process shall be immediately terminated, and the parties shall be advised of their right to pursue a formal ethics complaint; to pursue a complaint with any appropriate governmental or regulatory body; to pursue litigation; or to pursue any other available remedy.

Right to Decline Ombudsman Services

Persons filing complaints, or inquiring about the process for filing ethics complaints, will be advised that ombudsman services are available to attempt to informally resolve their complaint. Such persons will also be advised that they may decline ombudsman services and can have their complaint referred to ethics mediation (if available), or considered at a formal ethics hearing.

Resolution of Complaints

If a matter complained of is resolved to the mutual satisfaction of all parties through the efforts of an ombudsman, the formal ethics complaint brought initially (if any) will continue to be processed until withdrawn by the complainant.

Failure to Comply With Agreed Upon Resolution

Failure or refusal of a member to comply with the terms of a mutually agreed on resolution shall entitle the complaining party to resubmit the original complaint or, where a formal complaint in

the appropriate form had not been filed, to file an ethics complaint. The time the matter was originally brought to the board or association's attention will be considered the filing date for purposes of determining whether an ethics complaint is timely filed.

Referrals to the Grievance Committee or to State Regulatory Bodies

Ombudsmen cannot refer concerns they have regarding the conduct of any party utilizing their services to the Grievance Committee, to the state real estate licensing authority, or to any other regulatory body. The prohibition is intended to ensure impartiality and avoid the possible appearance of bias. Ombudsmen are, however, authorized to refer concerns that the public trust may have been violated to the Grievance Committee.

Confidentiality of Ombudsman Process

The allegations, discussions and decisions made in ombudsman proceedings are confidential and shall not be reported or published by the board, any member of a tribunal, or any party under any circumstances except those established in the *Code of Ethics and Arbitration Manual* of the National Association as from time to time amended.

Last revised 12.30.15

PROCESS OVERVIEW

Pre-mediation Preparation

- Ten days prior to session, parties receive a letter explaining the mediation process and logistical issues.
- Parties agree to mediate.
- Mediator is selected/appointed by random rotation, mutual request, or objection to a proposed mediator.
- Arrangements are made via letter or telephone.
 - Pre-mediation concerns are addressed.
 - Date and time typically scheduled at the convenience of the parties within 30 days of the request for mediation or 30 days following the Grievance Committee's determination of arbitrability.
- Witnesses and/or attorneys may attend, but this is not necessary because the process is non-adversarial; does not invoke findings of fact.
- Information is exchanged.
 - Parties need not prepare exhibits or extensive documentation. If a document will clarify an issue it may be used, but parties are reminded that mediation is not a fact-finding conference.

MEDIATION CONFERENCE

- 1. Mediator's opening statement/questions**
Explain process/rules/goals, including voluntariness, neutrality, and confidentiality.
- 2. Parties' initial statements/questions**
 - Understanding perspectives
 - Venting
- 3. Identification of issues**
- 4. Create agenda**
- 5. Cross-talk**
Parties respond to each other and explain/explore information, needs, and feelings.
- 6. Caucus (private meeting)**
Mediator may meet privately with the parties to clarify needs and explore options for resolution and proposals.
- 7. Building an agreement**
With the mediator's assistance, parties explore and refine workable solutions.
- 8. Conclusion**
Agreement is reached/signed before leaving mediation, or all agree that no further progress can be made, in which case parties are free to pursue arbitration.

Interested in saving
time and money?



SAMPLE

MEDIATION

the winning solution

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Item 166-29 IP
(12/10)

Even REALTORS®

who are committed to high standards of conduct occasionally have honest business disputes with other professionals, clients, or customers. There is an ongoing need for efficient and economical mechanisms to resolve such disputes. Arbitration is valuable, but mediation is simpler and easier.

WHAT IS MEDIATION?

“The act or process of mediating; intervention between conflicting parties to promote reconciliation, settlement, or compromise.”

—Webster’s Ninth New Collegiate Dictionary

- Arbitration and mediation are valuable in resolving business disputes.
- Both mediation and arbitration are private and neutral/with expertise.

But ...

- Mediation is an attractive alternative to arbitration.

SAMPLE

Mediation is user-friendly. It takes a potential conflict, turns it around and saves relationships. —Larry Apple

WHY USE MEDIATION?

Mediation

Low or no cost
Little delay
Win/win outcome
Collaborative
Maximum range of solutions
Improves relationships

Arbitration

Moderate cost
Moderate delay
Win/lose/split Adversarial
Result limited to monetary award
May damage relationships

KEY FEATURES

Voluntary/Private Process

- Parties decide to enter the mediation process.
- Parties can leave the mediation process at any time.
- Parties have complete control over the outcome.

Neutral/Impartial Mediator

- Understands issues quickly because typically, the facilitator is familiar with real estate practices and customs.
- Mediates only matters in which he/she remains neutral and impartial.
- Discloses conflicts of interest (parties may agree to continue following disclosure or terminate session).
- Facilitates and assists with negotiations – controls the process, not the substance.

Mediation is the ONLY win/win solution in dispute resolution. —Mike Wasmann

- Honors the concepts of self-determination, respect, and civility.
- Enhances the parties’ abilities to understand their own and each other’s needs.
- Helps parties understand the alternatives to settling.
- Should possess these qualities, according to William Simkin in *Settling Disputes*:
 - wisdom of Solomon
 - the hide of a rhinoceros
 - the patience of Job
 - abilities of a half-back
 - wit of the Irish

SAMPLE CONFIDENTIAL PROCESS

- Mediation is a confidential settlement process.
- Neither the mediator nor the parties disclose the communications or conduct of the mediation, unless all parties agree (with limited exceptions, such as risk of harm).
- Ethical violations discovered as a result of participation in the mediation are not reported.
- Settlements discussed in mediation are not admissible in arbitration.
- A mediator cannot be a witness in arbitration or court (cannot be subpoenaed).
- Information gathered and exchanged may be used in arbitration only to the extent that it was obtained independently from the mediation process.

Mediation lets participants accept responsibility for the outcome of their disputes, as opposed to relinquishing that authority to a third party. —C. Hilea Walker

WHY MEDIATION WORKS

- Most disputes are successfully resolved
- High speed
- Low or no cost
- Flexible
- Maintains/improves relationships
- Improves poor communication/clarifies misunderstandings because parties come together and talk
- Discovers/addresses the true interests of parties
- Moves beyond different views of law/fact
- Allows creative solutions beyond win/lose
- Respect and civility are the ground rules
- Solution is just as binding and enforceable as arbitration

WHEN IT WILL NOT WORK

- When a precedent is necessary
- When there is no relationship and it is cheaper to contest the claim
- When vindication/punishment remains the main objective

SAMPLE

When the “jackpot syndrome” is involved (maximize/minimize recovery)

Mediation is purely voluntary. No one has to use it, but it can save time and money and can be quicker, easier, and more amicable for resolving business disputes than arbitration.

Mediation is the best alternative because you have more control over the results, a better chance to communicate your story, and it strengthens REALTOR® relationships through mutual gain and satisfaction. —Pat Reilly

"No Losers in Mediation" Article

The following article, first published in the September/October 2001 issue of *Real Estate Business*, provides practical information on mediation. It is reproduced with the permission of the Counsel of Residential Specialists and the Council of Real Estate Brokerage Managers, which jointly publish *Real Estate Business*.

NAR is encouraging REALTORS® to use an alternative to the adversarial approach of arbitration: mediation. What is mediation and why is it so much better than arbitration?

To offer members an alternative to arbitration, the National Association of REALTORS® (NAR) is requiring all REALTOR® Associations to offer mediation services as of January 2002. Until now, mediation has been optional; associations could offer it to their members, but were not required to do so. The new mediation services will be used exclusively to settle commission disputes between REALTORS®.

What is mediation?

Simply put, mediation is a structured negotiation facilitated by a neutral third person called a "mediation officer." The mediation officer assists the parties in a dispute to arrive at a mutually agreeable settlement.

The mediation officer clarifies issues while remaining dispassionate and focused. He or she guides the discussions between the parties. By providing a forum in which the parties can tell their sides of the story in a nonconfrontational way, the mediation officer helps find common ground on which to resolve the dispute.

How is mediation different from arbitration?

Arbitration and mediation are both methods of resolving disputes outside the courtroom. With arbitration, however, a hearing panel plays a role similar to a judge. The procedures, while abbreviated and informal, are like those used in our judicial system.

There is an arbitration hearing (like a trial) where every party has the right to present evidence and witnesses and to cross-examine the other parties and their witnesses. The hearing panel renders a decision, called an award, based on the evidence and arguments presented. After the hearing, the parties have no control over the hearing panel's award and are bound by its decision.

When a real estate professional becomes a member of a REALTOR® Association, he or she agrees that in exchange for the benefits of membership in the association, he or she will be bound by the duties imposed by the NAR Code of Ethics, including the duty to arbitrate.

Arbitration under Article 17 of the NAR Code of Ethics is binding on all parties. Unless there is evidence of procedural deficiency, it is not subject to further review or appeal. In other words, the parties have to accept the hearing panel's decision. Mediation, on the other hand, is simply a form of negotiation. None of the parties can be forced to accept a settlement. Participation in mediation by individual REALTORS® is completely voluntary. No party can be forced into mediation. It will be offered only as an alternative to arbitration.

What are the advantages of mediation over arbitration and litigation?

Mediation is less adversarial than arbitration or litigation. The arbitration process produces a decision imposed upon the parties whether they like it or not. With mediation, the parties will optimally settle their differences by consensus rather than by the decree of a hearing panel.

Mediation is more likely to allow the parties to maintain their former relationship. By achieving a “win-win” result through mediation, all of the parties should feel that they are getting fair treatment. This should optimally preserve or even improve relationships between the parties and make it easier for REALTORS® to work amicably with each other in future transactions.

Mediation is quicker and less expensive than arbitration. Because of the less confrontational process involved, mediation takes less time and effort. In addition, under the new NAR requirements, mediation will be offered to members free of charge, except for a nominal filing fee. If the association determines that it must hire an outside professional mediator, the association, not the participating parties, will bear the cost of the mediation.

Mediation is more flexible than arbitration. Mediation provides a casual forum in which the parties can design a creative resolution to their dispute. They have a vested interest in the successful outcome of the mediation and may be more likely to comply with the settlement than if the decision is imposed on them. If the parties cannot reach a settlement, arbitration is still available to them.

Can the mediation officer make a decision to resolve the dispute?

No. The mediation officer does not have the authority to impose a decision on the parties. If all the parties agree, the mediation officer can, however, offer settlement proposals. The mediation officer can also offer an evaluation of the likely outcome of arbitration.

How does one become a mediation officer?

Sufficient numbers of well-trained mediation officers are critical to the success of the mediation program. NAR is holding a series of training sessions for mediation officers. Local associations select REALTORS® and association executives with previous experience or training in dispute resolution to attend. The training sessions provide instruction in negotiation strategies and emphasize communication skills.

How is a mediation officer chosen?

As of this year, all REALTOR® Associations are required to enter into multi-board Professional Standards Enforcement Agreements with at least one other Board. Boards participating in these enforcement agreements will jointly appoint a sufficient number of mediation officers to serve the geographic regions they cover. Mediation officers can be REALTORS®, association staff or outside professional mediators.

After the parties have agreed to participate in the mediation process, the association sends them a form listing the available mediation officers. Each party accepts or rejects mediation officers listed on the form.

The assignment of a mediation officer is made by the association from the names of mediation officers that are acceptable to all the parties. The assignment may also take into consideration any area of special expertise that a mediation officer may have that is relevant to the dispute.

The mediation officer remains neutral and must disclose any conflict of interest. He or she cannot be related by blood or marriage to any of the parties, be a business associate of any of the parties, or be a party in or witness to any other pending case that involves these agents.

How is mediation initiated?

A REALTOR® can file either a request for arbitration or a request for mediation. The request (whether for arbitration or mediation) will be referred to the Grievance Committee for a determination of whether the dispute is properly arbitrable. If the Grievance Committee determines that the dispute is arbitrable, the parties will be notified and will be offered mediation to settle the dispute.

How is mediation conducted?

The way a mediation session is run varies depending on the individual mediation officer conducting the session. The general format of a mediation session follows.

The mediation officer establishes the seating arrangements for the session. The arrangement should allow all the parties to see and hear each other as well as the mediation officer.

The mediation session begins with the mediation officer giving an opening statement. He introduces himself and explains his role in the process. He explains the ground rules to be followed. The parties sign a mediation agreement in which they voluntarily submit to the mediation process, acknowledge that they have the authority to enter into and sign any written settlement agreement that may be produced by the mediation and agree that they will be bound by any such written settlement.

Each party explains its side of the dispute. The mediation officer may allow the parties to address questions to each other. Next, the mediation officer and the parties work together to identify the issues that need to be addressed. The mediation officer clarifies each party's needs, ideas and criteria for resolution of the dispute. The mediation officer may allow each party to meet privately with him to discuss information and options for resolution. This is called a caucus.

Finally, the parties, with the help of the mediation officer, explore alternative solutions to the dispute. If the parties reach agreement, they write down the terms of the agreement on a settlement form before leaving the mediation session. If, on the other hand, no agreement is reached, the parties sign a "no settlement form" and the mediation officer explains the next steps to the parties.

Does a REALTOR® need to be represented by an attorney in a mediation?

No. Mediation is intended to be non-adversarial and no findings of fact or law are made. If one party decides to have an attorney present, the other party must be notified before the mediation session. If one party arrives at the mediation session with an attorney without giving notice, the other party can request that the session be rescheduled to allow that party to have its attorney present.

Will a REALTOR® need to have witnesses or evidence prepared for a mediation?

No. Mediation is not a fact-finding procedure, so witnesses are usually not needed and the parties do not need to assemble exhibits or other documentation. In some cases, a witness may be able to clear up a misunderstanding. If so, the witness may be asked to attend some or all of the session. Similarly, if a document would clarify an issue, it can be used.

If a settlement of the dispute is reached through mediation, what form should the settlement take?

The agreement, which should be clearly written in simple language, is approved by all the parties. It should state what each party has agreed to do, or how much is to be paid and by whom, and when the agreed-upon things will be done. The written agreement should be positive in tone and should focus on the agreement reached by the parties, not on assigning blame.

Can a REALTOR® withdraw from the mediation process without penalty?

Yes. A REALTOR® can withdraw from the mediation at any time before the parties reach agreement. However, once the parties have signed an agreement, the matter cannot be the subject of a later arbitration.

What happens if one of the parties does not abide by the terms of agreement?

If one side does not follow the written mediation agreement, arbitration is not available to settle the matter. The appropriate action is for the other side to go to court to have the mediation agreement enforced. Any terms that the parties agree to during the course of the mediation session that aren't put into writing in the mediation agreement cannot be judicially enforced.

If I participate in a mediation, can any information I reveal during the mediation be used by the other side in a later proceeding?

No. All discussions, statements and documents that are obtained through mediation are confidential. If an arbitration follows a mediation in which there was no agreement, any information gathered in the mediation can only be used in the arbitration if it is obtained independent of the mediation process.

Any offers of settlement made during the mediation that are not accepted cannot be introduced as evidence in a later arbitration. Similarly, any resolution suggested by the mediation officer that is not accepted cannot be introduced in a later arbitration. The mediator cannot be called on to testify in any subsequent proceeding and is required to destroy notes or other documentation 30 days after the mediation is concluded. Neither the parties nor the mediation officer are required to report any potential ethical violations that may be discovered during the mediation process.

Mediation makes the most efficient use of REALTORS®' time and resources and gives them control over the outcome of a dispute.

Seth G. Weissman is an attorney with Weissman, Nowack, Curry & Wilco, P.C., Atlanta, Ga., and is general counsel to the Georgia Association of REALTORS®. Contact him at 404.885.9215 or send e-mail to sethweissman@wncwlaw.com. Another version of this article appeared in the Georgia Realtor® Magazine.

Mediation Makes Room To Negotiate

The process of bringing two parties together to come to agreement is precisely what REALTORS® do day in and day out, says Tom Johnson, CRB, CRS. "Real estate is a mediation process in itself," he says. "If we can get buyers and sellers to come together and work out their differences, why in the world wouldn't we do that with each other when we have disputes? If we didn't have the predisposition to go to arbitration, this would be the logical option."

Johnson, associate broker with RE/MAX Commonwealth in Richmond, Va., a member of the Council of Real Estate Brokerage Managers Board of Directors and a trained mediator, strongly advocates that agents begin to consider mediation as that logical option over arbitration. "Mediation is faster and easier to set up; I'm acting as a mediator in a case next week, and I was only contacted about it last week. Getting a hearing panel of five arbitrators together is harder and takes longer. It costs more and it creates a lot more paperwork." But most important, Johnson says, "The arbitration process is adversarial in nature and is designed to impose a 'win-lose' outcome. The process is more formal, confrontational and cumbersome than mediation. By demanding arbitration, both parties are taking the position that they can't work out their differences."

Toni Sherman, CRS, of Coldwell Banker Residential Brokerage in Glen Ellyn, Ill., says that opting for mediation sends a very different message. "By virtue of choosing mediation over arbitration, both parties are conceding there is room for negotiation. And when I open a mediation, I start by saying that the parties have already shown their ability to reach consensus because they agreed to go to mediation, and they agreed to choose me as the mediator. That starts things off on a positive note."

Sherman also goes in with no prior knowledge of the facts of the dispute. "This gives me a chance to hear the story fresh from both sides," she says. "I don't go in with any preconceived notions." She prefers to let each party speak to her privately, in a caucus, because "that gives each person the opportunity to say all the things they need and want to say. They can call the other person all the names they want without having anyone else hear it. That venting gets them to a point at which they're ready to negotiate." Sherman may talk to each party two or three times in a proceeding, to get all the facts and consider all the perspectives. "Talking to each party at different times lets me see if we're making any headway and allows us to get to the specifics."

Her role, Sherman says, is to guide the parties and ask the right questions, but not to force a resolution or even make recommendations. Johnson concurs. "In arbitration, a resolution is imposed on the parties in

the dispute. Mediation is guided negotiation; no one imposes anything. The mediator is a neutral party whose role is simply to help the people in the dispute find a solution for themselves.”

Sherman finds that many disputes could avoid mediation if REALTORS® communicated more openly with each other. “I had a client who went to an open house one weekend when I was away, liked the house and wanted to make an offer. When I came back and found out about this, I immediately called the listing agent to explain the situation — that I had been working with that buyer for some time and wasn’t around when the buyer went off alone to the open house. The listing agent honored my relationship with the client. If REALTORS® would communicate directly and openly, a lot of conflicts would be avoided.”

Why can’t brokers play a more active role in mediating disputes between agents, one might ask. They often do but, Sherman notes, “The process can be time-consuming, and some brokers just don’t want to spend the time.” In addition, Johnson notes, brokers are often vested in the outcome of these disputes. “Depend-ing on the type of brokerage, the broker may have a financial stake in the agent’s commission. The money may already be in the bank. In those cases, the broker isn’t going to be any more willing than the agent to settle the dispute without mediation.”

For mediation to become the preferred alternative to arbitration, Johnson says, “We have to have a mindset change, a paradigm shift. We’re so used to thinking in terms of arbitration that we tend not to consider mediation unless it’s suggested.” That direct suggestion must begin to come from professional standards administrators at local associations, he says. “When an agent calls up, angry over a problem and wants to schedule an arbitration hearing, the administrator needs to talk to the agent about considering mediation first. Part of the training we’re doing to implement the mediation process involves working with these administrators to familiarize them with mediation and get them to think of it first, before going ahead with arbitration.”

Why take the time to act as a mediator? Johnson does it because “it’s in our best interests to keep relationships in our business civil, and that is much more likely to happen through mediation than through an adversarial proceeding. And to be honest, often in arbitrations the disputing parties can end up looking petty and foolish to their clients and others involved. Mediation can help build our image as real professionals.”

Sherman agrees. “I believe that mediation can do a lot for the professional image of REALTORS® and of the industry.”

Mediation - The Alternative for “Win-Win”

Bruce H. Aydt, ABR, ABRM, CRB

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Mediation is a process that is part of the broad field known as “alternative dispute resolution,” or “ADR.” Included in that broad field are several different processes, including binding arbitration and non-binding arbitration. The “alternative” in the name “alternative dispute resolution” refers to an alternative to litigation. In the REALTOR® context, the organization has long recognized and preferred ADR in that arbitration has been an obligation of membership since the Code of Ethics was adopted in 1913. However, mediation as an additional tool in the ADR process is relatively more recent than arbitration.

The type of arbitration used in the REALTOR® organization for the most part is binding arbitration. In other words, the member is obligated to arbitrate disputes with other REALTORS® under the terms of Article 17 of the Code of Ethics, the Code of Ethics and Arbitration Manual and the local Board’s membership duties. On the other hand, for the parties, mediation is a completely voluntary tool that seeks a resolution of the dispute before the parties go to a binding arbitration hearing.

Essentially, mediation might be called “assisted negotiation” where the mediator assists the parties to a resolution of their dispute. This is the concept that forms the basis for mediation’s “win-win” perspective. Other forms of conflict resolution usually have a “winner” and a “loser.” In a lawsuit, there is a winner and a loser. In an arbitration, there is a winner and a loser. In a mediation, both parties have the opportunity to “win.” In litigation and arbitration, there is a “decider,” whether it is judge, jury or arbitrator, who is NOT one of the parties. In mediation, the “deciders” are the parties themselves, NOT the mediator. The mediator’s job is to assist the parties to come to their own resolution, not to decide the merits of the case and/or make any recommendations. As a completely voluntary process, the parties are always in control of their own destinies. If, at any time, one of the parties wants to stop the process or feels that an impasse has been reached, that party may just “quit” and leave the matter to the next phase, which, in the REALTOR® context, is a binding arbitration hearing. The association may choose to offer mediation before or after the case has been reviewed by the Grievance Committee or at both times.

In a REALTOR® mediation (as in most others), a certain protocol is usually followed. At the mediation session, the mediator proceeds through several steps or “stages” to assist the parties in resolving their dispute. Generally, they are listed in the following loose order – mediator’s opening statement, parties’ statements (or “storytelling”), cross talk (or “clarifications and responses”), generating options, working out agreement and writing up agreement. Not every mediation has every phase and there is no set time limit to each stage. There is no requirement that the mediation proceed in a “linear” fashion. The stages may overlap and/or intertwine. The mediator has the choice to vary any procedure she or he believes is in the best interest of achieving resolution. However, certain aspects remain constant. These constants include the confidentiality of the session, the neutrality of the mediator, and the fact that matters discussed in a mediation cannot be used later in an arbitration hearing. A brief description of

each stage is next. (This description presumes that the dispute is a procuring cause dispute concerning a commission.)

Mediator's Opening Statement: The mediator will begin the mediation session by introducing him/herself and the parties. She will then tell the parties about how a mediation works, its confidentiality aspects and give a brief description of the stages and protocols. The mediator will ask the parties to sign the NAR mediation agreement if they have not yet done so.

Parties' Statements (or "Storytelling"): The mediator will invite one of the parties to begin by "telling their story" - that is, to present their side of the facts and explain why they believe they are entitled to the commission. After they have completed telling their story, the mediator will ask the other party to tell their story. Usually, no questions are being asked between the parties at this time. This stage is simply an opportunity for all parties, including the mediator, to get as complete a picture as possible of the facts.

Crosstalk (or "Clarifications and Responses"): This stage is the one in which the parties ask each other questions to clarify any facts which the parties told during storytelling. The mediator may ask questions as well. The parties being asked the questions may respond and clarify their answers.

Generating Options: It is this phase that the work of hopeful agreement begins. The mediator can handle this process in any way he sees fit, whether asking the parties whether there had been prior offers or asking whether the parties have any new understandings after hearing the stories and responses or asking whether the parties have any ideas about a fair resolution of the case. It is possible that the mediator may want to give the parties a short break before moving into this stage to allow them to talk among themselves and/or reflect upon what they have heard. This technique is often helpful if either or both sides are comprised of both broker and agent or agents. It allows the broker and agent(s) to discuss any new understandings they may have and to assess or reassess their thoughts about settlement. Ideally, the mediator and the parties would generate a list of possible choices for settlement. Many times, however, the mediator chooses to go to the next stage.

Working Out Agreements: This can be the hard work of negotiation. The mediator's role here is to keep the parties talking about options and assist them in resolving their own dispute. The mediator generally should not comment about the merits of the case or her prediction of the outcome in arbitration. However, the mediator may comment on parts of the respective cases, pointing out how certain facts may fit into the procuring cause factors that panels use, so that the parties may consider this in their decision to settle. Hopefully, this stage ends in an agreement of the parties to resolve the dispute. If there is no resolution, the mediator or the parties will make a decision to end the mediation session. It is possible to agree to continue the matter to another mediation session. If the mediation ends without agreement, the parties will proceed to a binding arbitration hearing.

Writing Up Agreements: If the parties work out an agreement in the previous stage, the mediator will ask the parties to propose appropriate language that reflects the agreement they have reached. The NAR Code of Ethics and Arbitration manual has the appropriate form for the written agreement. When the parties sign the written agreement and make the appropriate payments called for in the agreement, the arbitration is not held and the deposits of the parties are returned.

If the parties successfully complete a mediation with an agreement, both can walk away as “winners.” While it is true that both may not have “won” a complete “victory,” the result is only their decision and not that of a third party. This alone is a “victory”. Mediation may resolve up to 75% or 80% of the cases filed. It can and often does result in a more satisfying decision for both parties. It also allows the parties to each preserve future business relationships without the rancor and bad feeling which often can prevail after a lawsuit or arbitration hearing. These intangible factors are icing on the “cake” of the resolution of the agreement and truly make the mediation the “Win-Win Alternative.”

DEED AND PROPERTY COVENANTS OR RESTRICTIONS OF RECORD

During the history of our country, some persons have placed restrictions on property based on race, color, religion, sex, handicap, familial status, or national origin. Generally, these restrictions are void and unenforceable, with limited exceptions for particular types of religious housing and qualified housing for older persons. The publication of these void restrictions may convey a message that the restrictions continue to be valid. Any time a sales associate or broker is asked to provide a copy of the covenants or restrictions of record relating to the use of a property the following message should be included:

These documents may contain restrictions or covenants based on race, color, religion, sex, handicap, familial status, or national origin. Such restrictions or covenants generally are void and unenforceable as violations of fair housing laws.

Be assured that all property is marketed and made available without discrimination based on race, color, religion, sex, handicap, familial status, or national origin. Should you have any questions regarding such restrictions, please contact your attorney.

THE EQUAL OPPORTUNITY PROGRAM

The NATIONAL ASSOCIATION OF REALTORS® has developed a Fair Housing Program to provide resources and guidance to REALTORS® in ensuring equal professional services for all people.

The Code of Ethics

Article 10 of the NATIONAL ASSOCIATION OF REALTORS® Code of Ethics requires that "REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, or sexual orientation. REALTORS® shall not be a party to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, or sexual orientation. REALTORS®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, or sexual orientation."

A REALTOR® pledges to conduct business in keeping with the spirit and letter of the Code of Ethics. Article 10 imposes obligations upon REALTORS® and is also a firm statement of support for equal opportunity in housing.

FURTHER ASSISTANCE

Local Boards of REALTORS® will accept complaints alleging violations of the Code of Ethics filed by a home seeker who alleges discriminatory treatment by a REALTOR® in the availability, purchase or rental of housing. Local Boards of REALTORS® have a responsibility to enforce the Code of Ethics through professional standards procedures and corrective action in cases where a violation of the Code of Ethics is proven to have occurred.

Complaints alleging discrimination in housing may be filed with the nearest office of the Department of Housing and Urban Development (HUD), or by calling HUD's Discrimination Hotline at 1-800-669-9777, 1-800-927-9275 (TDD). For information and publications on fair housing, call HUD's Customer Service Center at 1-800-767-7468. Contact HUD on the Internet at <http://www.hud.gov/> and select the Fair Housing section.

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Item # 166-799
(BFC 08/12)

430 North Michigan Avenue • Chicago, IL 60611-4087
800.874.6500 • www.REALTOR.org



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What Everyone Should Know About Equal Opportunity in Housing





What Everyone Should Know About Equal Opportunity in Housing

The sale or purchase of a home is one of the most significant events that people will experience in their lifetimes. It is more than the simple purchase of housing, for it includes the hopes, dreams, aspirations, and economic destiny of those involved.

THE LAW

Civil Rights Act of 1866

The Civil Rights Act of 1866 prohibits all racial discrimination in the sale or rental of property.

Fair Housing Act

The Fair Housing Act declares a national policy of fair housing throughout the United States. The law makes illegal any discrimination in the sale, lease or rental of housing, or making housing otherwise unavailable, because of race, color, religion, sex, handicap, familial status, or national origin.

Americans with Disabilities Act

Title III of the Americans with Disabilities Act prohibits discrimination against persons with disabilities in places of public accommodation and commercial facilities.

Equal Credit Opportunity Act

The Equal Credit Opportunity Act makes discrimination unlawful with respect to any aspect of a credit application on the basis of race, color, religion, national origin, sex, marital status, age or because all or part of the applicant's income derives from any public assistance program.

State and Local Laws

State and local laws often provide broader coverage and prohibit discrimination based on additional classes not covered by federal law.

THE RESPONSIBILITIES

The home seller, the home seeker, and the real estate professional all have rights and responsibilities under the law.

For the Home Seller

You should know that as a home seller or landlord you have a responsibility and a requirement under the law not to discriminate in the sale, rental and financing of property on the basis of race, color, religion, sex, handicap, familial status, or national origin. You may not instruct the licensed broker or salesperson acting as your agent to convey for you any limitations in the sale or rental, because the real estate professional is also bound by law not to discriminate. Under the law, a seller or landlord cannot:

- (1) establish discriminatory terms or conditions in the purchase or rental of housing;
- (2) advertise a preference for certain buyers or tenants because of their race, color, religion, sex, handicap, familial status, or national origin; or
- (3) misrepresent that housing is unavailable to persons who are members of these protected classes.

For the Home Seeker

You have the right to expect that housing will be available to you without discrimination or other limitations based on race, color, religion, sex, handicap, familial status, or national origin.

This includes the right to expect:

- 🏠 housing in your price range made available to you without discrimination
- 🏠 equal professional service
- 🏠 the opportunity to consider a broad range of housing choices
- 🏠 no discriminatory limitations on communities or locations of housing
- 🏠 no discrimination in the financing, appraising or insuring of housing
- 🏠 reasonable accommodations in rules, practices and procedures for persons with disabilities
- 🏠 non-discriminatory terms and conditions for the sale, rental, financing, or insuring of a dwelling
- 🏠 to be free from harassment or intimidation for exercising your fair housing rights

For the Real Estate Professional

As a home seller or home seeker, you should know that the term REALTOR® identifies a licensed professional in real estate who is a member of the NATIONAL ASSOCIATION OF REALTORS®. Not all licensed real estate brokers and salespersons are members of the National Association, and only those who are can identify themselves as REALTORS®. They conduct their business and activities in accordance with a strict Code of Ethics. As agents in a real estate transaction, licensed brokers or salespersons are prohibited by law from discriminating on the basis of race, color, religion, sex, handicap, familial status, or national origin. A request from the home seller or landlord to act in a discriminatory manner in the sale, lease or rental cannot legally be fulfilled by the real estate professional.

Washington State
Department of Licensing

Real Estate Advertising Guidelines



dol.wa.gov

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The Department of Licensing and the Washington State Real Estate Commission would like to thank the Real Estate Council of Alberta, Canada for their contributions to the development of the Washington State Real Estate Commission Advertising Guidelines.

These guidelines are for real estate industry professionals licensed by the Washington State Department of Licensing (DOL).

Disclaimer

These are guidelines only. This guide does not include every possible advertising situation and it is not legal advice. Please review the appropriate legislation concerning advertising as an industry professional in Washington State before proceeding with any advertising. This includes, but is not limited to, the Real Estate Licensing Law (RCW 18.85), the Real Estate Brokerage Relationships (“Agency”) Act (RCW 18.86), the Uniform Regulation of Business and Professions Act (RCW 18.235), and the Washington Administrative Code (WAC 308-124 through 308-124I).

DOL may periodically update this guide. To obtain the current version, please visit the DOL website:
www.dol.wa.gov.

Industry professionals are encouraged to share these guidelines with third-party service providers who assist them in their advertising and marketing.

*We are committed to providing equal access to our services.
For information visit dol.wa.gov/access (TDD/TTY call 711).*





Introduction

Understanding the law related to real estate broker advertising is critical

No matter what role you play in the real estate industry, advertising is critical to your success! Advertising can be fun and creative and it WILL make the difference between a professional who builds a business portfolio and achieves results in moving property for sellers from an industry professional who just gets by. Advertising is an unavoidable and substantial component of the real estate brokerage industry, provided by all successful real estate firms, brokers and managing brokers.

The requirements of lawful advertising obligate and regulate every real estate licensee, regardless of the license that is held. Brokers, managing brokers, licensed assistants and firms are all accountable for compliance with advertising requirements. Therefore, it is critical that all licensees understand the requirements of lawful advertising within the real estate industry. This guide will provide the fundamental advertising requirements for real estate professionals in Washington State.

Before getting to that, however, it is important for all licensees to know how and to whom they are accountable for compliance with advertising requirements.

A **designated broker** is responsible for all real estate brokerage services provided by any person licensed to the designated broker's firm. A **branch manager** is responsible for all licensed conduct provided by any licensee operating under the branch manager. This is not a passive responsibility. The Licensing Law requires designated brokers and managing brokers and branch managers who are given management authority, to actively "supervise" the conduct of licensees.

With respect to advertising, this means that designated brokers and branch managers should establish a policy and training system within the firm or branch that ensures compliance with 79

advertising requirements. DOL will not dictate what a firm or branch must do to ensure compliance. DOL recognizes and respects the autonomy and professionalism inherent in the status of designated broker and branch manager. This publication will synthesize advertising requirements. It is up to the professionals charged with supervision and responsibility to create mechanisms that ensure compliance.

With that said, one of the easiest ways for firms to help ensure that their licensed professionals comply with advertising requirements is to have a firm policy and training program that includes information about advertising. DOL expects firms to exercise robust oversight of all licensee advertising. If a real estate licensee uses advertising that is false, deceptive or misleading, DOL may sanction that industry professional and their firm.

Managing Brokers, Brokers, and Licensed Assistants are responsible for personal compliance with all advertising laws and rules and firm policies.

Where are the advertising laws and rules found?

Numerous laws and rules in Washington State and the United States regulate, in one way or another, the rules and requirements associated with real estate brokerage advertising. In Washington, the Real Estate Licensing Law (RCW 18.85), the Real Estate Brokerage Relationships (“Agency”) Act (RCW 18.86) and the Washington Administrative Code (WAC 308-124 through 308-124I) address real estate brokerage advertising. Additionally, the Uniform Regulation of Business and Professions Act (RCW 18.235), the Consumer Protection Act (RCW 19.86.020) and the Washington Fair Housing law (RCW 49.60.222) regulate real estate advertising in some respect.



Washington law obligates DOL to require industry professionals to comply with the advertising laws and rules identified above. If an industry professional fails to comply with laws or rules, consequences can include an advisory letter, letter of reprimand, administrative penalty for minor infractions, or referral for criminal or civil charges for major violations. In addition, every industry professional is subject to civil liability if a consumer is damaged by a licensee’s failure to comply with advertising requirements. Defense of a claim for civil liability consumes the time and resources necessary for adjudication through a lawsuit. Ensuring that advertising complies with rules and laws protects the professional as an individual, protects the reputation of each firm, protects consumers and protects the image of the industry.

Advertising Basics

What is advertising?

Advertising includes any activity, public notice, or representation an industry professional makes or that someone makes on their behalf to promote the industry professional, their services, or the real property the professional is promoting.

Examples of advertising include but are not limited to:

- ALL printed material (circulars, pamphlets, newspapers, magazines, brochures, hand-outs, flyers, etc.)
- Websites, including websites controlled by the licensee as well as websites that licensee does not control, but on which licensee's advertising is found
- Social media accounts and profiles used to advertise the licensee's business or market real property
- All promotional events, including open houses
- Billboards, television and radio commercials
- Signs (yard signs, sandwich board signs, directional signs, etc.)
- Business cards, letterhead, fax cover sheets, e-mails, text messages, and other promotional materials

Advertising requirements

When you may advertise real property

Industry professionals may only advertise properties for sale or lease, or properties that have been sold or leased, when they have written authorization from the owner or the owner's lawful representative. This means industry professionals cannot place signs or other advertising that designate property as being on the market, such as "for sale," "sold," "for rent," "will develop to suit," etc., without the written

consent of the owner of that property or the owner's authorized representative. Membership in a multiple listing service may grant some authority for sharing and promotion of property information but it is a licensee's responsibility to ensure they have sufficient authorization for any advertising of property owned by another. In addition, the licensee should ensure compliance with any applicable multiple listing service rules.



Must include licensed name of firm

All advertising of professional services and any marketing of a client's property, without exception, must include the firm's licensed name. The firm's name must be included, in a clear and conspicuous manner. "Clear and conspicuous" in an advertising statement means the representation or term being used is of such a color, contrast, size, or audibility. This means that the firm name must be presented in a manner so as to be readily noticed and understood. Said differently, a reasonable consumer

should be able to identify the firm based only on the advertisement. Licensees advertising their personally owned real property must only disclose that they hold a real estate license.

- Industry professionals must clearly indicate the name of their firm, as it appears on the firm's license, in all advertising. It is not sufficient to advertise only the franchise name if the firm's licensed name, includes additional words. For example, firm's licensed name is "Big Franchise/South Sound". All advertisements must include "Big Franchise/South Sound." It would be unlawful to include only "Big Franchise" or "South Sound."
- The licensed firm name is the name that appears on the firm's license. If the firm applied and received a DBA (doing business as), the DBA name must be clearly and conspicuously identified in all forms of advertising.
- The firm name cannot be abbreviated or include abbreviations in advertisements if those abbreviations are not commonly understood. For example, if the name of the brokerage contains the words "Real Estate," industry professionals cannot use "R.E" as an abbreviation. If the name includes "Realty," use of "Rlty" is not appropriate. Commonly understood abbreviations, such as "Inc." or "Corp." may be used. If the firm license has the abbreviations, then those abbreviations can be used.
- Including a firm logo or website address does not qualify as including the firm's licensed name.
- The advertised firm name can be an "assumed name" so long as the firm holds an "assumed name" license for the firm name. For more information, see the section below entitled "Assumed Name Licenses".

Assumed name licenses

Firms may obtain, from DOL, an assumed name license. The assumed name license may be the firm's DBA or it may be the name of a team of broker's licensed to the firm. There is no limit on the number of assumed name licenses a firm may obtain. The assumed name license is owned by the firm. The obligation to include the firm's licensed name, on all advertising, is satisfied by use of any assumed name duly licensed to the firm.



DOL may deny, suspend, or reject an assumed name license application that, in DOL's opinion, is derogatory, similar to another licensed firm name, implies that the firm is a government agency, or that the firm is a non-profit or research organization. A bona fide franchisee may be licensed using the name of the franchisor with the firm name of the franchisee.

An industry professional may use the assumed name in advertising, or use both the complete firm name and assumed name as licensed. It is unlawful, however, to use only part of either the firm name or the assumed name. For example, the firm's originally licensed name is "Big Franchise/South Sound." The firm's assumed name license is "Team Terrific." Advertising can include either licensed name without the other, but advertising could not include, for example, "Big Franchise/Team Terrific".

Inclusion of name in social media and on-line advertising

All Internet related advertising that consumers can view or experience, as a separate unit, (for example, email messages or web pages) require disclosure of the firm's name as licensed *and* disclosure of the broker's or managing broker's name, as licensed. Once an agency relationship has been established with a buyer or seller, the disclosure of licensed firm and broker name is no longer required in this medium.

Whenever a licensee owns a website or controls its content, every viewable page should include disclosure of the firm's and the broker's or managing broker's licensed name. (A "viewable page" is one that may or may not scroll beyond the borders of the screen and includes the use of framed pages.) When using such formats as newsgroups, discussion lists or bulletin boards, licensee should include disclosure of the firm's and the broker's or managing broker's licensed name at the beginning or end of each message. When using social media, disclosure of the firm's and the broker's or managing broker's licensed name should be prominently displayed and easily understood and be no more than one click away from the viewable page. Multimedia advertising (e.g. web based, executable e-mail attachments, etc.) and banner ads should disclose the firm's and the broker's or managing broker's licensed name and/or should link to a webpage that has full disclosure that is a single click away from the viewable page.

Advertising shall not be false, deceptive or misleading

Industry professionals shall make no statements known to be false, deceptive or misleading in any of licensee's advertising. Moreover, licensees are not shielded from responsibility for making a false statement because licensee was unaware of the falsity if, by reasonable care or inquiry, licensee

could have learned of the falsity. In other words, it is not a defense for a licensee to claim ignorance of falsity if, through reasonable care and inquiry, broker could have discovered the truth.

To determine if advertising is false, deceptive or misleading, DOL considers the literal meaning of the advertisement and the general impression it creates. Truth in advertising goes beyond simple truthfulness; advertising must not mislead or be capable of misleading a reasonable consumer.

When an industry professional makes claims in an advertisement, information substantiating those claims should be readily available to consumers from the firm upon request. Claims may include the firm's or an individual professional's guarantee, performance, accomplishments, service levels, etc. or it may include a representation regarding the condition of seller's property. A broker is entitled to rely on the representations of a seller regarding seller's property and thus, it is always a good idea for a firm to retain proof in its transaction file that seller reviewed and approved all representations regarding the condition of seller's property.

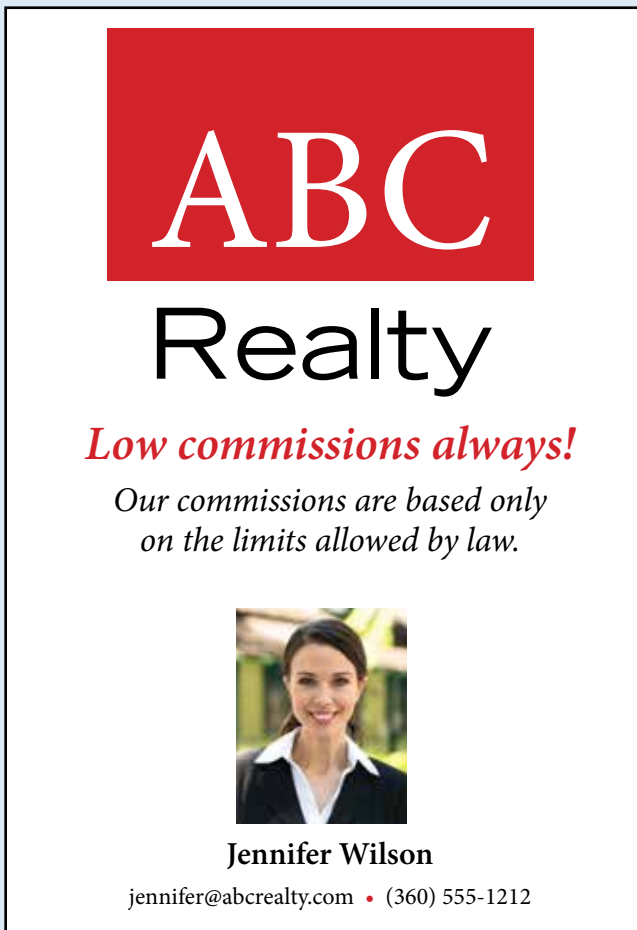
Advertising can be false, deceptive or misleading even if there is no proof a consumer was misled. DOL must show only that the advertisement is capable of misleading a reasonable consumer.

Carelessness, negligence, incompetence, and recklessness can result in false, deceptive or misleading advertising, as can intentional misrepresentations (intentionally untrue statements). Licensees are equally responsible in both cases.

Examples of false, deceptive, or misleading advertising



- A. *Business cards are misleading if industry professionals hold themselves out as specialists in a given area when they do not have the necessary education or experience to advertise such a specialty. If broker's business card includes the statement "VA loan specialist," broker should have specialized training and/or significant experience successfully assisting VA buyers with the purchase of property. If broker's business card says "condo specialist," broker should have specialized training and/or significant experience in condominium transactions.*



- B. *Advertising is false if broker makes a deliberate misrepresentation with the intention of enticing a party to act such as advertising that broker's commission will be "the rate established by law." Because it is untrue that any commission rate is established by law, it is false advertising for broker to state the commission charged by the broker is established by law. There is nothing unlawful associated with a licensee advertising the rate of commission charged by the licensee, but it is unlawful for broker to state or imply that the commission rate is established by law, rule or industry standard.*



\$450,000

Gorgeous contemporary home

This four bedroom, three bath home borders a green belt and features modern amenities, including an open concept with a gourmet kitchen, large master bedroom and bathroom with jetted tub and so much more!

C. Advertising for property is deceptive if it says that the property is buffered by a “green belt” when broker knows that the trees, described as a “green belt,” are scheduled for removal as part of a construction project. Use of the term “green belt” is intended to create the impression in a consumer’s mind, that the trees are protected from being cut. Even though a broker could argue that they intended nothing more than to illustrate that the green trees were present and “belted” the property when buyer viewed the property, it is clear that use of the term “green belt” would deceive the average consumer into believing that the trees were protected and would remain in place long-term.



\$475,000

Modern Craftsman

Looking for a classic modern look? This home has it all. Beautiful exterior features and landscaping. The nearly new roof is in great condition.

D. Buyer’s broker attaches a home inspector’s report to an email sent to seller’s broker. The inspector’s report describes the condition of seller’s property, including a roof vent leak that has resulted in mold infested attic insulation and rotten trusses, notwithstanding that the roof is relatively new. Buyer does not purchase the property. Seller’s broker chooses not to open the attached inspector’s report and says, when advertising the property, “nearly new roof in great condition”. Broker’s advertisement is false, deceptive and misleading because, with reasonable care and inquiry, broker should have learned the truth regarding the condition of seller’s roof. Broker is not permitted to make a false statement because broker chose to avoid knowledge of the truth.

Leaking vent discovered during inspection and not disclosed in subsequent statements or advertisements.

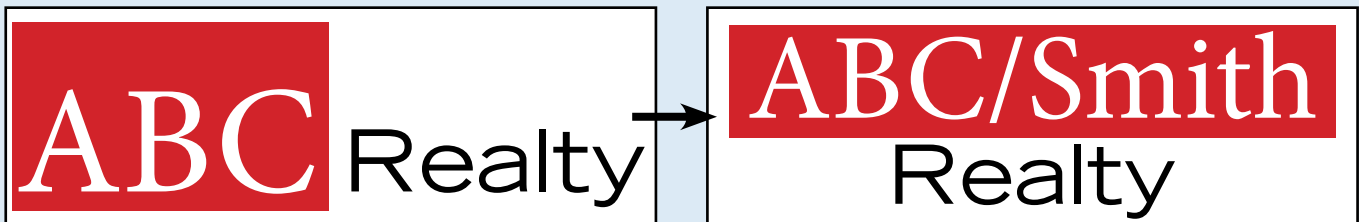


Consider the duration of an advertisement

Industry professionals may avoid problems associated with false, deceptive and misleading advertisements by considering the duration of the intended advertisement. Advertisements in circulation for long periods of time, such as firm signage, business cards and listings that are launched into on-line, secondary marketing sources present special problems for industry professionals. The problem is the facts that support the claims in the advertising may change while the advertisement is still active. Industry professionals should consider whether statements made in the advertisement are likely to change. If so, licensee must have a plan for monitoring the advertisement and removing or modifying the advertisement should the facts supporting the advertisement change. When the facts supporting an advertisement change, the industry professional must make immediate corrections to the advertisement or delete the advertisement in order to avoid false, deceptive and misleading advertising.

Examples

- A. *Firm's licensed name is ABC Realty. Firm purchases signage for the front of the office advertising ABC REALTY. Firm's owner then takes a partner and they change the licensed name to ABC/Smith Realty. The signage on the firm must change to reflect the newly licensed name of the firm.*



- B. *Broker's business card claims "Most Listings in the MLS". Broker did, in fact, have more listings than any other broker in the MLS at the time the business card was printed. However, the MLS report generated in the subsequent reporting period showed that broker no longer occupied that status. Broker must change the statement on the business card to avoid making a false, deceptive or misleading statement.*



\$450,000

Gorgeous contemporary home

This four bedroom, three bath home borders a green belt and features modern amenities, including an open concept with a gourmet kitchen, large master bedroom and bathroom with jetted tub and so much more!

C. A listing placed in the MLS is advertised through secondary marketing sources. The listing expires and is not renewed. Seller takes the property off the market. The listing remains in the secondary marketing sources. Broker must take every reasonable step to remove seller's listing from the secondary marketing sources.

Implied endorsements are prohibited

Industry professionals must avoid giving the impression that someone or some entity endorses the professional unless there is written confirmation of the endorsement. Using information that implies an endorsement without actually stating that a certain individual or organization endorses the business or professional could also result in a misrepresentation. Licensees should be certain to use only logos they have permission to use. Using a logo other than one's own could be an improperly implied endorsement, in addition to potential copyright or trademark infringement.

Example

Broker is a huge fan and season ticket holder of the local, professional football team. Based on broker's fond affection for the team, broker includes the team's logo on all of broker's advertising. Use of the football team's logo creates the impression that the football team endorses broker's business. For broker to create that impression in broker's advertising, broker must be able to provide a copy of the football team's written endorsement. If there is no written endorsement from the football team, the team's logo must be removed from broker's advertising.

Avoid bait and switch

(Use of "Restrictions" or "terms and conditions apply" does not make a false representation true).

In promoting their business model, licensees will often offer incentives for consumers to hire the licensee. The incentive often creates a catchy headline, but if the headline does not match the program that is offered, then the advertisement is false, deceptive or misleading. After the consumer has agreed to hire the professional, the contract used by the professional must present contract terms that mirror the advertised incentive. Use of the statement "terms and conditions apply" means that the terms and conditions will not materially alter the substance of the offer. If the terms and conditions materially alter the program from the description in the headline, that is considered "bait and switch" and is unlawful. Details of all restrictions or terms and conditions must be available to consumers before the consumer is asked to sign a contract.

Examples

**Sell your home in
30 days or I will buy it!**



ABC Realty

Susan Mendoza
susan@abcrealty.com
(360) 555-1212

- A. *Broker advertises “Sell Your Home in Thirty Days or Broker will Buy.” Seller hires broker, seller signs broker’s contract and listing agreement. Seller’s home does not sell in thirty days and seller asks broker to purchase the property. Broker presents a purchase agreement for seller’s property with a purchase price that is 50% of the market value of seller’s property. Seller objects and broker points to the language in broker’s contract indicating that broker will only pay 50% of the value of seller’s property. Broker engaged in unlawful “bait and switch.”*

Free Caribbean Cruise!

**Buy a home
from me and
I will give you
a Caribbean
Cruise!**



ABC Realty

Riley Owens • riley@abcrealty.com
(360) 555-1212

- B. *Broker advertises “Buy a home from me and I will give you a Caribbean Cruise.” Buyer buys and seeks information regarding the cruise. Broker responds that the promotion was only available to buyers who purchased a home in excess of one million dollars, which buyer did not do. Those program details were never given to buyer. Broker engaged in deceptive advertising without fully informing consumer of the limitations prior to consumer’s agreement to utilize broker’s services.*



It should be further noted that if the program details include reference to industry terminology or abbreviations, those must be explained sufficiently for a consumer to understand the reference. For example, if an incentive is offered only in transactions where there is a “3% BAC” or a “3% SOC,” broker will have to prove that the consumer understood the meaning of that reference and understood that a buyer has no control over what the “buyer agent commission” or “selling office commission” is, because those are typically negotiated between seller and listing firm before buyer is introduced to the property.

Copyright concerns

Licensees must avoid using, in all advertising, photographs, images, text, graphs, illustrations and other content that broker does not own or have a license to use. If broker did not take the photograph or create the other representations set forth in advertising, then broker does not have authority to include them in advertising unless broker has obtained specific permission from the photographer, author, creator, etc. Unauthorized use of another person’s creative work may result in a civil damages claim.

Fair Housing

It is unlawful for a licensee to discriminate against any person, in the sale or leasing of real property, based on the person’s race, color, national origin, religion, disability, sex, familial status, creed, marital status, sexual orientation, gender identity, HIV/ AIDS and hepatitis C status and veteran/military status. There are additional classes protected by local ordinances. Fair Housing laws impact advertising by industry professionals. Generally, when advertising a property for sale, licensee should market and describe the features of the property and not the buyer or the tenant who is sought for the property. When marketing services, the industry professional’s advertising should present no limitations on the consumer who is sought and, moreover, the industry professional must be prepared to reasonably accommodate any consumer who seeks the advertised services of the industry professional.

Specific Advertising Issues

Teams/Branding

Teams are not firms, but they sometimes create their own administration that, in some ways, mimics the appearance of a firm in order to attract, retain, and service clients. The team concept can lead to confusion with respect to advertising. Advertising a team name or a “brand” must be consistent with all rules of advertising previously discussed. Additionally, the advertising cannot include wording that suggests a legal entity separate from the real estate firm, such as “Inc.,” “LLC,” or “Corp.” or that is commonly understood to reference an entire firm or office, such as “realty,” “realtors,” “firm,” or “real estate.”

- All advertising must include the firm’s name or the firm’s DBA or assumed name as licensed.
- If the team name is licensed as one of the firm’s assumed names, then the team may advertise in the licensed assumed name/team name, in the absence of any other licensed firm name.
- If the team name is not a licensed assumed name, then all team advertising must include the firm’s licensed name in a clear and conspicuous manner, meaning that a reasonable consumer should be able to clearly identify the licensed firm based only on the advertisement.
- Teams should be aware that when a firm obtains an assumed name license in the team’s name, the firm owns the name and the license and the firm is not required to surrender ownership of the name or the license for so long as the firm renews the assumed name license.

To advertise that a potential client will be hiring an entire “team” may be misleading. It must be remembered that based on the Agency Law, RCW 18.86.020, the only team member(s) who represent

a seller are the team member(s) who have been appointed as an agent or sub agent of the seller.

Example

Team Terrific consists of four members. One team member obtains a listing and is the only broker identified on the listing agreement as the listing agent. As a result, the only licensees who represent seller are the listing agent and the listing agent’s managing broker(s). Other team members involved in the sale of the seller’s property may represent the buyer.

Teams must also be careful not to create false impressions in an effort to bolster team statistics. It is not acceptable, for example, for a single team member to be identified on all purchase agreements as the broker representing a party or to be identified in the MLS as the agent who represented all clients of the team unless that team member did actually represent all clients of the team.

Example

Team Terrific has four members, one of whom is the team leader, Beth. Fred, a member of the team, meets and works with a buyer, writes an offer and shepherds the transaction through to closing. Fred is the only team member who worked with the buyers. It would be unlawful for Beth to include her name on the purchase agreement or in the MLS as buyer’s agent. Beth may be Fred’s delegated managing broker and if so, can be disclosed as such. But, it would be misleading for Beth to be identified as buyer’s agent if Beth never worked with the buyer.

Commission policies

Some firms may have a policy with respect to the amount of commissions it charges clients. Industry professionals must not advertise that commission rates are somehow “set” or regulated by a higher authority, such as a governing body or trade association. Commission rates are negotiable between a firm and a client, and to say otherwise is false and misleading. The industry professional is the firm’s representative in those negotiations.

A firm may be unwilling to negotiate commission, but the client must understand that is a firm policy. Industry professionals cannot give clients the impression that all firms charge the same, non-negotiable commission.



Performance guarantees

A firm, through its industry professionals, may wish to offer a performance guarantee, such as a commission reduction if the property fails to sell by a specific date. Firms may advertise performance guarantees as long as the advertisements are not false or misleading. Firms are not required to include full particulars of the guarantee in the advertisement, so long as the advertisement and the written guarantee are materially consistent and so long as the actual guarantee is available to consumers before the consumer is asked to enter an agency agreement based on the guarantee. If firm fails to put the performance guarantee

in writing, then the guarantee created by the advertised statement will constitute the totality of the guarantee. DOL encourages firms to put all performance guarantees in writing. If there is a link between the performance guarantee and an evaluation of the property’s market value, the valuation must reflect the reality of the market. The industry professional should keep the information for the basis of the property’s valuation in the transaction file.

Stated experience

Industry professionals often advertise special qualifications, experience, or expertise in specific industry sectors, or in certain geographic areas. Professionals make these representations for the purpose of enticing consumers to do business with the professional, in reliance on this special qualification. When making these claims, industry professionals must ensure they are in a position to demonstrate the related qualification or experience they claim. If an industry professional advertises special qualifications or expertise, the consumer and DOL expect them to perform at that level, and if not, the advertisement could be considered false, deceptive or misleading.

A person holding a managing broker’s license may advertise “managing broker” even though the advertiser does not manage any other brokers. The description “managing broker” refers to a category of license held denoting additional training and experience. Similarly, a person claiming a title from another industry, such as military, union membership, athletics, and others, may claim the title earned in that industry, but if the title was previously earned and not currently held, then the advertisement should make that clear. For example, “Major, US Army, retired” or “Former Superior Court Judge” both indicate the status achieved by the advertiser and put the consumer on notice that it was a formerly held, but no longer current.

Material representations and verifiable statements

Statements such as “We sell every home we list in 60 days or less!” is a material representation intended to induce a consumer to select this specific professional. DOL does not prohibit such statements, but upon receipt of a complaint, will hold the advertiser accountable to prove the claims are accurate. Advertisements that are accurate when created, but that become inaccurate with the passage of time, must be withdrawn or modified. It is not a defense against disciplinary action for an advertiser to claim the statement was true when made but became false by the time the consumer relied on it. If an industry professional knowingly makes or sustains a false claim about their credentials or abilities for the purpose of inducing a consumer to do business, that is known as “fraudulent inducement.” It is unlawful and will likely be sanctioned by DOL. Moreover, it exposes the licensee to a civil claim by the consumer.

Making statements along the lines of “#1 industry professional” is inherently false, deceptive and misleading because there is no way of knowing the basis or data that could support the statement. If a licensee intends to use such a statement in advertising, the licensee must include enough information in the advertisement to avoid deceiving or misleading the public. A verifiable and quantifiable identification statement in any advertising must provide enough information so that a reasonable member of the public discerns the true meaning of the message.

If broker advertises that the broker “Sold 400 Homes Last Year,” broker must be able to prove that broker, personally, was the broker who sold 400 homes last year. This advertisement would be false, deceptive and misleading if broker was merely licensed to a firm that sold 400 homes last year or if broker was part of a team that sold 400 homes last year. The

firm or the team could make the representation but it would be unlawful for broker to claim that statistic in a personal advertisement when broker did not personally earn the statistic. Team leaders falsely advertise their accomplishments when they personally claim all the transactions handled by other team members if the team leader was not the professional who actually provided brokerage services to the consumer. It would be appropriate for the team to make claims based on team statistics and data but it is false, deceptive and misleading for an individual team member, even the team leader, to personally claim the accomplishments of the team.

Industry professionals must:

- be able to support and prove claims asserted in advertising using current facts and/or data
- update and refresh advertising so that stated claims remain accurate as facts, statistics and data evolve

An industry professional who wants to refer to him or herself as “#1” needs to include more information in the ad—such as information about the market in which the professional is #1 and information about what makes the industry professional #1 (i.e. most homes sold, most homes listed, most money made). The advertisement also needs to include a timeframe.



Comparative statements in advertising

Advertising that compares the industry professional to competitors or other industry professionals is lawful if, as with all advertising, it is accurate.

Industry professionals who use comparative advertising must:

- present measurable facts and figures in a clear, straightforward way
- disclose the source of facts and figures they include
- take no facts or figures out of context
- be able to prove the truth of comparative statements upon request by a consumer or DOL.

A statement like “Team Terrific will get more for your listing than any other broker” is inherently false, deceptive and misleading because there is no way of proving the truth of the statement. There is no comparison showing the sales price achieved by Team Terrific on specific properties as opposed to the sales price achieved by another professional for the same properties in the same market. This statistic is impossible to determine because real estate can only be sold by one professional in the market that existed at the precise time of the sale. This is different from commodity sales. For example, an auto dealer, who sells exactly the same cars at exactly the same time as competitors, could potentially support a claim such as this. Because all real estate is unique, a claim such as this cannot be supported and is, therefore, false, deceptive and misleading.

If Team Terrific says “Team Terrific closed more sales in 2016 than any other member of the Clark County Association of REALTORS” that is a statement with enough specificity that it can be proven.

Achievement awards/association memberships

Many firms, franchises, and industry associations have a system of awards to recognize professional achievements. These awards may recognize sales achievements, service to the industry, service to the community, or years of industry or association affiliation. Examples of these awards include language such as “President’s Club,” “100% Club,” “Million Dollar Club,” “REALTOR® of the Year” and “Top Producer Award.” The rules for granting these awards may vary greatly between each brokerage, as well as between associations.

DOL accepts that industry professionals may receive this type of recognition and does not prohibit industry professionals from including these awards in advertising. Industry professionals who include awards in their advertising must be able to provide verification of the achievement of the award. As with all advertising, industry professionals must be certain that claimed “awards” are current or that the claim indicates past accomplishment. For example, if the award was for a specific time period, such as the year 2013, then today’s advertisement should say, “2013 Franchise Top Producer”.

Additionally, it is unlawful for an industry professional to falsely claim membership in an association or to wrongfully use the logo or trademarks of an association to create the impression that licensee is a member of an association. The term “REALTOR” and the capital “R” logo associated with the National Association of REALTORS are both registered trademarks. Use of those trademarks in advertising by non-members is not only a potential violation of the trademarks, it is also false, deceptive and misleading.

Professional designations

An industry professional who is a licensed professional in another profession, such as an engineer or lawyer, may include it in their advertising as long as they are a member in good standing and/or remain licensed. Likewise, real estate professionals may hold a professional designation or certification given to them through a professional or industry association, and they can include those in advertising as long as they are current.

Years of experience

Industry professionals may want to indicate the number of years of experience they have working in real estate, but any such statement must clearly indicate the actual experience gained in those years. For example, five years of experience as an unlicensed assistant in a real estate office plus five years of experience as a licensed real estate broker does not equal 10 years of experience as a broker. Broker may be able to advertise that broker has 10 years of experience working in the industry but broker's advertising is deceptive if it creates the impression, in the mind of a reasonable consumer, that broker has held a real estate broker's license for 10 years.

Advertised inducement or referral fees

It is lawful for an industry professional to advertise that they will give any or all of their compensation to either party in the transaction. Rebating commission back to one of the parties, either in the form of cash or a gift, is nothing more than a reduction in the compensation charged to a consumer and industry professionals are free to reduce their compensation. Any reduction by a broker or managing broker, however, must be approved by the firm before the advertising statement is made. All compensation for real estate brokerage services is payable only to

a firm, so it would be false, deceptive or misleading for a broker or managing broker to advertise a return of commission to a consumer if the broker or managing broker did not have permission of the firm to give away compensation belonging to the firm. In addition, if funds or a gift are being given to a buyer who is obtaining financing, then buyer's lender must be made aware of the commission rebate or gift. Some lenders have regulations restricting payment of money or gifts to a buyer.

Advertising a return of money or gifts to a client or other party in the transaction is very different from advertising a willingness to pay a referral fee to an unlicensed, third party who refers a buyer or seller to an industry professional. With respect to payment of referral fees to unlicensed people who are not parties to the transaction, the question is more complicated. The License Law, RCW 18.85, says that a real estate licensee may pay a referral fee to a third party, unlicensed person, so long as payment of the referral fee is not contingent upon receipt of compensation by the licensee or the real estate firm. There is no dollar limit on the referral fee that may be paid. Advertising the referral fee is lawful so long as the advertisement, and subsequent payment, create no contingency on a successful closing.

RESPA, a federal law ("Real Estate Settlement Procedures Act"), indicates that any payment made in direct exchange for a referral, is prohibited. RESPA prohibits settlement service providers from giving or receiving anything of value in exchange for a referral. "Settlement service provider" is a broadly defined term which could include unlicensed, non-professional individuals. HUD, the federal agency charged with enforcement of RESPA, has not indicated whether RESPA prohibits payment of referral fees to unlicensed, non-professional people.

Examples

- A. Broker advertises that she will pay \$1,000 of her commission toward buyer's closing costs as an inducement to attract buyer clients. The advertisement is lawful so long as: 1) broker's firm approved the advertised payment from the firm's commission; 2) buyer is made aware that buyer's acceptance of the inducement is dependent on buyer's lender's approval of broker's contribution toward payment of buyer's closing costs; and 3) broker actually contributes the promised funds toward payment of buyer's closing costs, assuming such payment is authorized by buyer's lender.

***I will pay \$1,000
towards your closing!***



ABC Realty

Jennifer Wilson
jennifer@abc Realty.com
(360) 555-1212



**FREE \$500
Gift Card!**

Refer a buyer or seller
to me after you close
and get a free gift card!

ABC Realty

Susan Mendoza • susan@abc Realty.com • (360) 555-1212



- B. Broker advertises that he will give a \$500 gift card, after closing, to any person who refers a buyer or seller to him. This advertisement is unlawful because it makes the obligation to give the gift card to an unlicensed person contingent on the broker's receipt of compensation from the referral.

- C. Broker advertises that she will give a \$50 gift card to any person, if and as soon as they refer a potential buyer or seller to her. This advertisement is lawful under Washington law because the promise of the gift to an unlicensed person is not contingent upon broker's receipt of compensation. Depending on how HUD interprets RESPA, the advertisement may violate RESPA.



**FREE \$50
Gift Card!**

Refer a buyer or seller
to me and get a free
gift card!

ABC Realty

Susan Mendoza • susan@abc Realty.com • (360) 555-1212





ABC Realty
Jennifer Wilson

D. Broker is a member of a children's hospital charity board and offers to make a \$5,000 donation, at closing, to the charity, in the name of any other member who buys or sells from broker. This advertisement is lawful, so long as broker's firm has approved the payment, even though the funds are going to a third party and are contingent upon a successful closing. Because the charitable funds are donated in the name of one of the parties to the transaction, that is tantamount to the broker giving the funds to the party, who in turn, donates the funds to the charity. So long as broker makes the promised donation, this advertisement is lawful.

Seller advertising

DOL does not regulate buyers or sellers. If sellers want to advertise their own property, separate from advertising offered by their listing firm, that is fine. However, if sellers do their own advertising and include the name of their real estate professional, they must also include and clearly indicate the firm's name as licensed.

Guidelines for advertising listings online

The primary issues associated with online listings relate to keeping the online information current and accurate with all marketing sources. Consumers should be able to assume that information they find in an online listing is current and accurate. Online listing information needs to be consistent with the property description and actual status of the listing. Real estate professionals must update material changes to the listing status or property description in a timely manner.

It can be difficult for a broker to effect changes in on-line listings presented by secondary marketing sources. To comply with licensee's obligations for truthful advertising, the licensee must be able to demonstrate that licensee took all reasonable steps to communicate with and persuade the secondary marketing source to update the listing or transaction information. Real estate professionals should also be aware of the terms and conditions of any secondary marketing sources, like the right of the secondary marketing source to distribute the listing to third party websites.

If real estate professionals want to display listing information from other firms, they must have an agreement with the other firm to do so. DOL recommends that real estate professionals do not display listing information from other firms unless they can ensure current and accurate information.

Key points:

- Online listing information should be consistent with the property description and actual status of the listing. When a real estate professional



Example: Twitter

In this tweet, the real estate broker is advertising a listing, an act that requires she disclose her brokerage. As long as the link in the tweet contains the necessary brokerage disclosure, this tweet is acceptable.


controls a website, they must make updates in a timely manner if there are material changes to the listing status or property description.

- When a real estate professional has a website maintained by a third-party, the professional needs to make sure they submit requests in writing to that third-party in a timely manner if there are updates reflecting material changes to the listing status or property description.
- When a real estate professional authorizes advertisement of a listing by a secondary marketing source, the professional must maintain proof of all efforts to communicate with and to persuade the secondary marketing source to make necessary changes to the listing information in a timely manner.
- As a best practice, real estate professionals should not advertise listings from other firms without written permission and, if given, should not alter the online display or any informational part of the listing without written permission from the listing firm.

Domain names, email addresses, meta tags and descriptions

A domain name is the Internet address of a website. For example, the DOL domain name (website address) is www.dol.wa.gov. Metatags are descriptive words hidden in a web site's code that search engines use to index the web site. Most sites use common words such as real estate, Washington, city names, homes, houses, etc. Those uses are fine. But some web site owners have also inserted their competitor's names into the metatags, so that when a potential customer searches for their site, the competitor's site will also come up as a match. This should not be done. Courts have ruled that this constitutes trademark infringement. Domain names, email address, and meta tags should not contain any trademark that the industry professional is not authorized to use.

Industry professionals must also avoid registering and using domain names for their websites that include the names of their competitors. For example, if broker's name is John Doe, it would be inappropriate for broker to register under a competitor's name, such as www.BobSmith.com

 **Jennifer Wilson**
Real Estate Specialist

HOME FEATURED LISTINGS SEARCH FOR HOMES BUYER/SELLER INFO MORE

Location:


Bedrooms:

Bathrooms:


Min Price:


Max Price:

SEARCH



Featured Listings [VIEW ALL](#)

 **Bainbridge Island \$595,000**
Executive home with high end finishes. Situated on 1.4 acres. Mature landscaping and irrigation system.

 **Magnolia \$895,000**
Vintage home with high end finishes. Situated on extra large city lot. Mature landscaping with fruit trees.

Contact me about these and other properties!

(800) 555-1212
jennifer@abc Realty.com

Example A:
On this broker's website, her name and specialty is prominent at the top, but the brokerage company name is not obvious. Brokerage names must be clearly displayed and prominent on every page within the website. See Example B.

ABC Realty

HOME FEATURED LISTINGS SEARCH FOR HOMES BUYER/SELLER INFO MORE

Location:


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Vintage home with high end finishes. Situated on extra large city lot. Mature landscaping with fruit trees.

Example B:
The brokerage name is displayed prominently at the top of each page correctly and also shows the licensed broker who represents the properties.

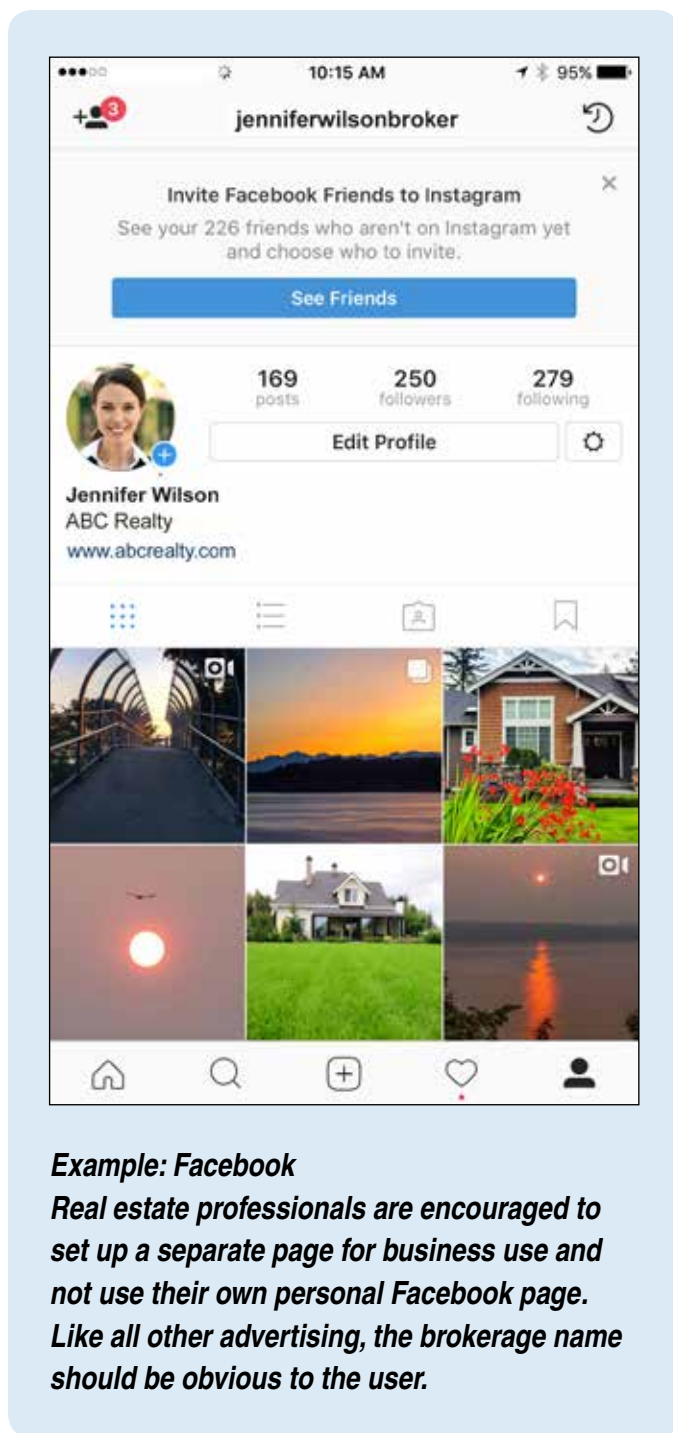
and then advertise services—or redirect Bob Smith’s website visitors to John Doe’s website.

Industry professionals must not make representations or carry on conduct that misleads or deceives, or is likely to mislead or deceive, consumers. Misleading meta tags or the use of inappropriate domain names could mislead consumers.

Links, deep links and frames

Links are either graphics or words on a webpage that, when a user clicks on them, takes them to another webpage, either within the same site or a different website. Deep links are links that take a user to a webpage other than the homepage of a specific website.

Frames are a design element that are created when one website captures information from another website or webpage and displays it graphically within the original window. A website is “framed” if one web page appears to be a part of, or embedded in, another page. A website designer may do this to retain design elements and links within certain frames on the website, even while the user changes the information presented in another frame. Some website designers also use frames to post content from other websites, and embed that content within their own website, such as outside mortgage calculators or multiple listing service information.



Example: Facebook
Real estate professionals are encouraged to set up a separate page for business use and not use their own personal Facebook page. Like all other advertising, the brokerage name should be obvious to the user.

There are a number of issues relating to linking and framing.

1. Regardless of which website hosts the listings of a local multiple listing service, there are rights of compilation in those databases. Industry professionals must adhere to the guidelines established by the relevant multiple listing service for linking to that listing information.
2. Embedding content from another website within a frame of an industry professional's website can lead to copyright and/or trademark infringement. Licensee should have permission from the website owner prior to framing.
3. Industry professionals must not misrepresent the relationship between their services and the services offered by a site to which their site links. If the link creates the impression the industry professional is participating in, or endorsing the services the other side offers, the industry professional may be assuming responsibility for the performance of those services.



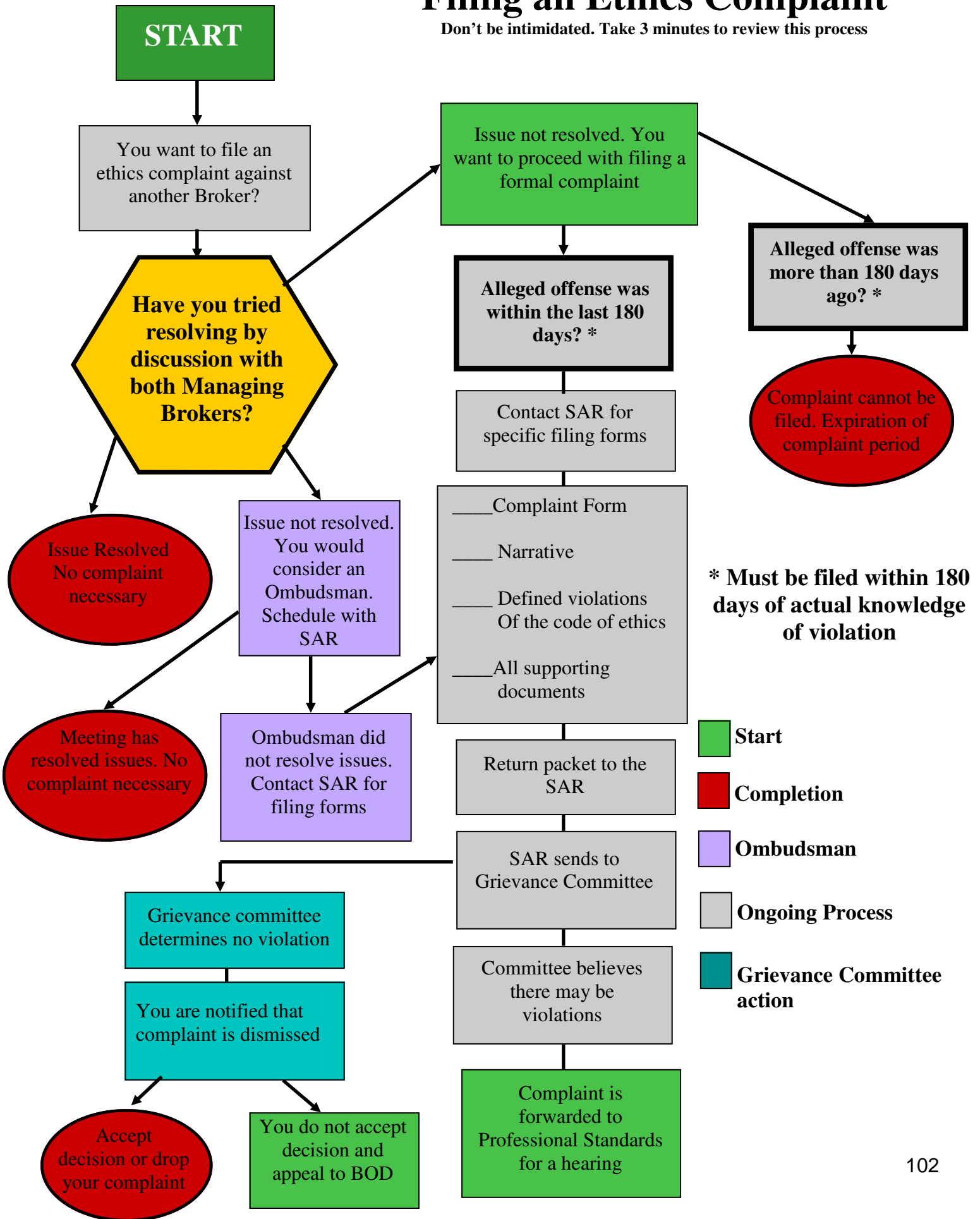
Example: Instagram

In this Instagram ad, the broker has the space to clearly indicate her brokerage. The character limit on Instagram posts is 2,200 characters; more than enough space to clearly indicate a brokerage name within the ad copy.



Filing an Ethics Complaint

Don't be intimidated. Take 3 minutes to review this process



Fair Housing

6

Real estate brokers are subject to a web of federal, state and local fair housing laws that are intended to eradicate discriminatory conduct in the sale or rental of dwellings and promote residential integration. The methods of enforcing these laws are varied and the penalties that can be exacted for a violation are severe. For most real estate firms, the practical effect of a finding of liability is a serious financial loss, coupled with public embarrassment and reputational loss. Noncompliance with fair housing laws is a risk that responsible real estate brokers simply cannot assume as a cost of doing business. Thus, to reduce risk, real estate brokers should consider offering comprehensive education and training of all sales associates and staff to ensure a thorough understanding of the obligations and prohibitions outlined in fair housing laws.

This chapter includes:



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Case Summaries: 15



Training Module with 2 Exercises

Fair Housing Laws

Federal Law



The body of federal law that is commonly called the fair housing laws consists of the Civil Rights Act of 1866 and Title VIII of the Civil Rights Act of 1968 (Title VIII).

The 1866 Act provides that:

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, sell, hold, and convey real and personal property.



In 1968, the United States Supreme Court held that the 1866 Act prohibits all forms of racial discrimination in real estate, whether committed by government or by private parties. See *Jones v. Mayer*, 392 U.S. 40988 S.Ct. 218620 L.Ed.2d 1189 (1968). Persons suing under the 1866 Act are entitled to recover actual and punitive damages, and their attorney fees and costs.

Title VIII is a comprehensive fair housing law that addresses not only racial discrimination, but also discrimination on the basis of other protected classes: race, color, religion, national origin, sex, handicap¹ and familial status. Title VIII prohibits five different types of discrimination:

- **To refuse to sell or rent, or to otherwise make unavailable, a dwelling because of a person's membership in a protected class**
- **Discrimination in the terms, conditions or privileges of a sale or rental of housing, or in the provision of services in connection with same**
- **Use of advertising that expresses a preference for or against certain persons because of their membership in a particular protected class**
- **Representations that a dwelling is not available for sale or rent, when in fact the dwelling is available**
- **Attempts to induce a person to sell or rent a dwelling by referring to the prospective entry of persons of a particular race, color, sex, religion, national origin, handicap or familial status**

In addition to prohibiting specific practices involving the sale or rental of dwellings, Title VIII also prohibits redlining, including discrimination in financing and insuring of housing, as well as discrimination in access to Boards of REALTORS®, Multiple Listing Services, or other services, organizations or facilities that relate to the business of selling or renting dwellings.

Further, a housing provider may be found to have violated Title VIII through what is known as disparate impact liability. Under disparate impact liability, no intent to discriminate is required. Instead, the housing provider may be in violation of Title VIII where a facially-neutral policy or practice has a disparate impact on one of Title VIII's seven protected classes if the policy or practice is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the housing provider or the interest could be served by another practice that has a less discriminatory effect.

Enforcement

The federal government has broad authority to enforce Title VIII. In 1988, Congress amended Title VIII to add handicapped persons and families with children as protected classes, and also to dramatically strengthen the enforcement procedures under Title VIII. A person who believes he or she is a victim of a discriminatory housing practice may bring an action directly in federal court and recover actual and punitive damages, as well as reasonable attorney fees and costs. Also, the United States Attorney General may bring an action where a pattern or practice of discrimination has occurred, as opposed to a single isolated act. The Attorney General may secure injunctive relief

¹ While discrimination against "the disabled" is prohibited by other civil rights laws, the FHA uses the term "handicapped." 104
The two words handicap and disability are used interchangeably throughout this chapter.

and damages for victims of discrimination, together with civil penalties of \$55,000 for a first offense, and \$110,000 for any subsequent offense.

In addition to suing directly in federal court, an aggrieved person — that is, a person who believes he or she has been a victim of discrimination — may file a complaint with the Department of Housing and Urban Development (HUD). In addition to aggrieved persons, fair housing agencies may file complaints if they can show that they devoted significant resources to identify and act against discriminatory practices and did so to the detriment of their other efforts on behalf of equal access to housing. HUD will investigate the complaint to determine whether or not there is reasonable cause to believe that a violation has occurred, and HUD will attempt to resolve the complaint through conciliation. If reasonable cause is found, HUD will issue a charge against the respondent. The respondent, the aggrieved person, and HUD have 20 days to determine whether to resolve the charge before a HUD administrative law judge (ALJ) or before a federal district judge. The matter will be removed to a federal district court if any one of the parties with the right to remove the matter so elects. If no election is made, and the case proceeds before a HUD ALJ, an attorney from HUD will represent the aggrieved party before the HUD ALJ. If the case is removed to a federal district court, then an attorney from the Department of Justice will prosecute the case.

In addition to suing directly in federal court, an aggrieved person may file a complaint with the Department of Housing and Urban Development (HUD).

Both ALJs and federal courts may award the aggrieved person actual damages and issue injunctions to prevent any further discriminatory practices. An aggrieved person may recover attorney's fees as well, in either forum. If the respondent is found to have committed a discriminatory housing practice, a HUD ALJ may also assess civil penalties, if necessary, to vindicate the public interest. These penalties are limited to \$11,000 if there are no prior offenses, \$27,500 if there is one prior offense within five years, and \$55,000 if there are two prior offenses within seven years. But if the prior offenses were committed by the same individual, rather than the same firm, then additional penalties may be imposed without regard to the time limitations. ALJs may also assess multiple civil penalties in cases where multiple violations have occurred. For instance, if a landlord advertises that a property is not available to families with children, the ALJ could assess one penalty against the landlord; if the landlord also unlawfully refuses to rent to a family with children that inquires about the property, the ALJ could assess a second penalty against the landlord.

If the case proceeds to federal court, the judge does not have authority to impose civil penalties, but may impose actual and punitive damages in favor of an aggrieved person shown to have been injured by a discriminatory housing practice; injunctive relief; as well as reasonable attorney's fees and costs to the prevailing party, other than the United States.

State and Local Fair Housing Laws

Title VIII expressly recognizes that state and local governments may also enact fair housing statutes and ordinances. Title VIII authorizes the Secretary of HUD to review state and local ordinances and certify those that are substantially equivalent to Title VIII. If a state or local statute is deemed by HUD to be substantially equivalent to Title VIII, then HUD will refer all complaints it receives from that jurisdiction to the state or local agency for processing. HUD regulations make clear that substantially equivalent state or local statutes may include those that provide broader protection than Title VIII.

Thus, in addition to the seven protected classes under Title VIII, state or local ordinances may include a prohibition against discrimination for additional classes, such as:

- **Age**
- **Source of income**
- **Marital status**
- **Sexual orientation**
- **Occupation**
- **Gender identity**

Conduct Prohibited by the Fair Housing Laws

Refusals to Sell or Rent

Any refusal to sell or rent a dwelling because of race, color, sex, religion, national origin, handicap or familial status violates Title VIII. A refusal to sell can, for example, include applying more stringent qualification criteria for minority prospects than for nonminority prospects or a flat out refusal to sell to a person because of their national origin. Title VIII only applies to discrimination in the sale or rental of dwellings. The 1866 Act applies to the sale or rental of any type of real estate, but only applies to discrimination based upon race.

Steering



Steering is conduct designed to influence a person's housing choice based upon race, religion, sex, color, national origin, handicap or familial status. The classic example of racial steering is a real estate agent directing minority prospects to integrated or all-minority neighborhoods, and white prospects to all-white neighborhoods. Evidence of steering is often gathered through the use of testers. Lawsuits challenging steering are often brought by the testers themselves or the fair housing organizations that employ them.

Blockbusting



Blockbusting, also known as panic peddling, refers to the suggestion, during an effort to solicit a listing, that the seller should sell or otherwise dispose of the property because persons of a particular race, religion, sex, national origin, color, handicap or familial status are moving into the neighborhood. Title VIII specifically prohibits blockbusting. Real estate professionals should exercise great caution when engaging in listing solicitations in neighborhoods known to be experiencing racial transition.

Advertising

While HUD regulations do not require that all advertising of residential real estate for sale, rent or financing include an equal housing opportunity logo, statement or slogan, HUD may view their inclusion as evidence of compliance with the Fair Housing Act's (FHA) prohibitions against discriminatory advertising. HUD regulations do require the prominent display of HUD's fair housing posters, which are available online and from HUD area offices, in the following locations:

- **At brokerage offices and any other places of business where covered dwellings are offered for sale or rent; and**
- **At dwellings under new construction, beginning with the commencement of construction and maintained throughout construction and until such dwellings are sold or rented.**

As a rule of thumb, ads should focus on property descriptions, rather than descriptions of potential buyers or tenants.

Title VIII prohibits the use of advertising that indicates a preference for or against prospective buyers or tenants of a particular race, religion, sex, color, national origin, handicap or familial status. As a rule of thumb, ads should focus on property descriptions, rather than descriptions of potential buyers or tenants. Stating that a property is near a jogging trail (focusing on location) is more acceptable than saying that it's great for joggers (focusing on potential buyer or tenant). Also keep in mind that violations of the Fair Housing Act can occur even when there is no overt discriminatory reference or intent. The determinative consideration is whether a reasonable reader would find the reference discriminatory.

Acknowledging whether or not an advertisement is discriminatory is not always clear, a 1995 Fair Housing and Equal Opportunity Memo was published in order to set forth helpful guidelines that are still applicable today. The following are some of the guidelines regarding acceptable and unacceptable advertising phrases from that 1995 Memo.

The entire 1995 Fair Housing and Equal Opportunity Memo is available at:
www.hud.gov/offices/fheo/disabilities/sect804achtenberg.pdf



Advertising Guidelines for Acceptable/Unacceptable Phrases

RACE, COLOR AND NATIONAL ORIGIN

- **Unacceptable:** Wording that describes the housing, the current or potential residents, and neighbors or neighborhood in racial or ethnic terms (e.g., white family homes, no Irish)
- **Acceptable:** Racially and ethnically neutral terms (e.g., master bedroom, rare find, desirable neighborhood)

RELIGION

- **Unacceptable:** Ads with blatant phrases (e.g., no Jews, Christian home)
- **Unacceptable:** Ads that use the legal name of an entity containing a religious reference (e.g., Roselawn Catholic Home), or a religious symbol such as a cross, unless there is a disclaimer indicating that the property does not unlawfully discriminate
- **Acceptable:** Secular terms such as Merry Christmas, Happy Easter, or images of Santa Claus, an Easter Bunny, or a St. Valentine's Day graphic

SEX

- **Unacceptable:** Ads that indicate a gender preference (e.g., males/females only apply), except where a shared living arrangement applies to the property
- **Acceptable:** Commonly used physical descriptions of housing units which are not preferential or limiting terms (e.g., mother-in-law's suite, bachelor apartment)

HANDICAP

- **Unacceptable:** Ads that disallow handicap accessories (e.g., no wheelchairs)
- **Acceptable:** Phrases which describe a property's features, services, facilities, or neighborhood (e.g., great view, fourth-floor walk-up, walk-in closets, jogging trails, walking distance to bus stop)

FAMILIAL STATUS

- **Unacceptable:** Ads that limit the number or ages of children allowed or express a preference for adults, couples or singles (see Older Persons' Exemption later in this section)
- **Acceptable:** Descriptions of properties, their services and facilities (or lack thereof), or their neighborhood (e.g., two-bedroom, cozy family room, no bicycles allowed, quiet streets)

Ad Placement

Using advertising media solely in selective publications targeted at members of a particular protected class can also lead to discriminatory results and may violate the Fair Housing Act. For example, problems may arise when an advertisement is placed in particular geographic or zoned edition of major metropolitan newspapers or in smaller newspapers that reach a particular segment of the community. Use consistent language about the properties and communities when advertising in several small newspapers that reach different audiences. These principles apply regardless of whether the advertisement is placed in a print or online publication.

Use of Models

Caution should be exercised when using human models in real estate advertising. Courts around the country have held that the use of racially exclusive human models to advertise dwellings may violate Title VIII, and a claim can be successful even when there was no intent to discriminate. HUD regulations state that, if human models are used, the models should reasonably represent the majority and minority populations in the relevant metropolitan area, as well as both sexes and families with children. The ads should indicate that housing is open to all without regard for any protected characteristic.

Using advertising media solely in selective publications targeted at members of a particular protected class can also lead to discriminatory results and may violate the Fair Housing Act.

Target Marketing

Brokers often struggle with how to create an effective marketing plan that focuses on one or more parts of the population without running afoul of the Fair Housing Act. Target marketing is a popular technique used by real estate professionals to drive business, but it can lead brokers astray if they're not careful.

When planning a marketing strategy, brokers should avoid basing their marketing decisions on prospective clients' membership (or nonmembership) in any of the classes protected by the federal Fair Housing Act or by their state or local fair housing laws. For example, brokers should not focus on only Hispanic buyers, to the exclusion of African Americans or Asians or Caucasians. Nor should brokers market their services only to Christians, to the exclusion of non-Christians, or advertise in publications designed to reach seniors, to the exclusion of families with children.

The rule not to market on the basis of membership in a protected class applies even if the protected class is one that the real estate professional belongs to. There is, however, nothing wrong with a broker marketing his or her brokerage as having agents with certain language skills that would be of interest to people of a certain national origin. The broker just needs to be sure that the client's decision to work with his or her brokerage comes from the clients themselves. Brokers should not assign a particular sales associate to represent all members of a group he or she is a member of.

In general, brokers will usually be on safe ground if they niche market in accordance with the rule for composing ads for properties: focus on the property's characteristics, not those of the prospective buyer or tenant. For instance, a niche marketing plan that is based on any of the following property types is perfectly lawful and can be quite effective:

Real estate professionals may market directly to first-time home buyers and clients who are relocating.

- **Luxury communities**
- **Fixer-uppers**
- **Condominiums**
- **Single-family homes**
- **Resort housing**
- **Properties in foreclosure**
- **Homes on the historic register**

An exception to these general rules about focusing on the property characteristics is that, real estate professionals may market directly to first-time home buyers and clients who are relocating. A brokerage may also focus on seniors by developing expertise on issues that are of interest to seniors (for example, retirement planning and reverse mortgages). Brokers should be sure, however, to make their knowledge and services available to anyone who has an interest in them, regardless of age, familial status or any other protected characteristic. Brokers should never refuse or forget to show families with children properties that are not qualified senior housing just because many seniors live there.

Handicapped Discrimination

In 1988, Congress amended Title VIII to include handicapped persons and families with children as protected classes. These amendments took effect on March 12, 1989.

The definition of handicap includes both physical and mental handicaps. Specifically included, according to HUD regulations, are alcoholics and persons with the HIV virus, AIDS, and other communicable diseases. On the other hand, Title VIII specifically excludes from the definition of handicap persons who are current abusers of controlled substances. Nothing in the Fair Housing Act would require a dwelling to be made available to an individual who poses a direct threat to the health and safety of other individuals or whose tenancy would result in substantial damage to the property of others.

HUD regulations state that real estate brokers or agents may not inquire whether a person has a handicap, or the extent of any handicap, in evaluating a person's qualifications to buy or rent a dwelling. A broker or agent may, however, ask questions about a prospect's rental history or other relevant issues — so long as the same questions are asked of every prospect.

Title VIII prohibits property owners from refusing to permit handicapped occupants of a dwelling to make reasonable modifications to a unit, at the tenant's expense, in order to allow the handicapped tenant to fully enjoy the premises. The property owner may, however, condition modifications to the interior of a unit on the tenant's agreement to restore the unit to its original condition when the handicapped person's occupancy ends. The property owner may also require that all modifications be done in a safe and workmanlike manner. Examples of reasonable modifications that must be permitted include:

- **Installation of grab bars around bath tubs and toilet seats**
- **Widening of a door to permit passage of a wheelchair**
- **Installation of a flashing light in lieu of a door bell**
- **Relocation of environmental controls**

In addition to requiring the tenant to agree to pay for the modification and the restoration of the unit, a property owner may, where appropriate, create an escrow account into which the tenant will pay a monthly amount necessary to cover the cost of restoring the interior modifications made by the tenant. While permissible, such escrow accounts should be used only where the modifications are unusual and the expense of restoration is significant. HUD has made clear that it will carefully review the necessity of any escrow account that is the subject of a discriminatory housing practice allegation.

Title VIII also requires property owners, as well as homeowner associations where property is owned, to make reasonable accommodations in any rules or regulations governing the housing development that are necessary to permit the tenant or owner to fully enjoy the premises. In addition, homeowner associations must allow owners to make reasonable modifications to their units to fully enjoy the premises. Examples of reasonable accommodations that must be permitted include:

- **The allowance of a seeing eye dog, notwithstanding a no-pet rule**
- **Assignment of a parking space to a handicapped tenant near the tenant's building entrance, notwithstanding a first-come, first-served policy governing tenant parking**
- **Waiver of a rule banning vans in a building parking lot when a van is necessary to a handicapped person's transportation**

New Construction

Title VIII further provides that all covered multifamily dwellings, must meet certain basic accessibility and adaptability requirements. A covered multifamily dwelling includes all units in a building of four or more dwelling units if the building has an elevator, and ground-floor dwelling units in a building of four or more dwelling units without an elevator.

HUD regulations also define "first occupancy" to mean the building's first use for any purpose. Design and construction requirements do not apply to nonresidential buildings that are rehabilitated for residential use and are first used for residential purposes after March 13, 1991. Simply put, the first occupancy requirements limit the applicability of the design and construction requirements only to new construction.

The design and construction requirements that covered multifamily dwellings must meet include:

- **Public and common use areas that are readily accessible to and usable by handicapped persons**
- **Doors that are sufficiently wide to allow passage by a wheelchair**

HUD regulations state that real estate brokers or agents may not inquire whether a person has a handicap, or the extent of any handicap, in evaluating a person's qualifications to buy or rent a dwelling.

- **The inclusion of the following features of adaptable design:**
 - an accessible route into and through the unit
 - reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower stall and shower seat, where provided
 - usable kitchens and bathrooms, such that an individual in a wheelchair can maneuver about the space
 - light switches, electrical outlets, thermostats and other environmental controls in accessible locations

HUD's regulations further state that design and construction requirements do not apply to townhouses or other cluster arrangements without elevators, where four or more single-family homes share common walls, and each individual dwelling has two or more stories. In short, HUD has defined a ground-floor unit to mean units where the entire unit is on a ground floor.

Families with Children

Title VIII forbids property owners or agents from refusing to sell or rent a dwelling to an otherwise qualified prospect simply because the prospect has children under the age of 18 in the household. Familial status protection encompasses a parent or guardian who has legal custody, as well as those in the process of acquiring legal custody, of children under the age of 18, and pregnant women.

While Title VIII prohibits discrimination based upon familial status, the statute does not preempt reasonable state or local regulation limiting the number of persons who may occupy a particular dwelling. HUD regulations further provide that when state or local law does not include occupancy limitations, property owners may adopt their own limitations, provided that such limitations do not operate unreasonably to limit or exclude families with children. HUD has stated that an "occupancy policy of two persons in a bedroom, as a general rule, is reasonable" under the Fair Housing Act. (It has also stated that additional occupants might be reasonable if there are additional rooms, like a den or a study.)

HUD regulations further assert that property owners may not establish dual-purpose facilities where certain sections of a housing complex are reserved for adults only and other sections for families with children. Such policies would be analyzed under the same standard as if the segregation were on the basis of race.

On the other hand, HUD regulations state that Title VIII is not intended to limit the ability of property owners to develop and implement reasonable rules relating to the use of facilities associated with dwellings, such as weight rooms, swimming pools or saunas, as long as the rules are based upon legitimate health or safety considerations and are not unduly restrictive. Courts examine whether such rules are discriminatory in the "terms, conditions, and privileges" available to families with children.

Older Persons' Exemption

Notwithstanding Title VIII's prohibition on discrimination against families with children, Title VIII specifically authorizes the exclusion of children from qualified housing for older persons. Qualified housing for older persons includes any housing provided pursuant to a state or federal program designed to accommodate the needs of senior citizens, as well as two other types of housing:

- **Housing intended for, and exclusively occupied by, persons 62 years of age or older**
- **Housing intended for residents age 55 and older, where 80 percent of the units are occupied by at least one person 55 years of age or older per unit, a statement is published by the housing provider that it adheres to policies and procedures that demonstrate the intent to provide for senior housing, and the facility or community complies with HUD's regulatory requirements for age verification of residents**

Title VIII specifically authorizes the exclusion of children from qualified housing for older persons.

To satisfy the age-55-or-over exemption, a property manager must carefully monitor the ages of the occupants in the units to ensure that at all times no less than 80 percent of the units are occupied by at least one person 55 years of age or older. Additionally, the owner must publish and adhere to policies and procedures that demonstrate an intent to provide housing to persons 55 years of age or older. Such policies and procedures include advertising used to market the development, lease provisions, and the development's rules and regulations. Real estate professionals should rely only on the written assertions of owners or managers, that the licensees have seen for themselves, that a property is exempt based on the ages of the residents, and on the existence and enforcement of such policies and procedures.

Prior regulations also mandated that the development provide significant facilities and services specifically designed to meet physical or social needs of persons over 55 years of age. Even though it's no longer required by the FHA, some state laws still require properties to provide significant facilities and services in order to qualify for the 55-or-older exemption.

It is important to note that, while the housing for older persons' exemptions does exempt a housing provider from the prohibition against familial status discrimination, the exemptions do not exempt a housing provider from discrimination based on any other protected characteristic.

Compliance Program

An effective fair housing compliance program consists of four basic components:

- **The firm's policy and public commitment to fair housing**
- **Agent education and training in methods that ensure compliance with the fair housing laws**
- **Regular and systematic documentation of the firm's practice of providing equal opportunity and service**
- **Identification and correction of failures in compliance**

The Firm's Policy and Public Commitment

All REALTORS® and REALTOR-ASSOCIATES® are bound by the REALTOR® Code of Ethics, which prohibits REALTORS® from denying equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, sexual orientation or gender identity. The Code, however, does not represent the firm's personal commitment to fair housing. The firm's personal commitment to fair housing, as expressed through a compliance program as outlined in this section, is important for two reasons:

1. There is no obligation for a plaintiff, a tester, or a fair housing agency to give advance warning before it files a complaint. Adoption of a compliance program only after a complaint has been filed will be viewed as self-serving and not reflective of a true commitment.
2. Everyone is presumed to know the legal obligations of fair housing. Thus, simply acknowledging awareness of one's legal duty will not defeat a pattern of practice case, or even a claim for punitive damages. The conduct necessary to overcome such claims must be outward, overt and resolute programs designed affirmatively to ensure compliance with the law. The fact that a company has not yet experienced any fair housing complaints is not a valid reason to avoid public commitment to fair housing compliance.

Over the years, HUD and NAR have developed various mechanisms to demonstrate their commitment to fair housing. The first was the Voluntary Affirmative Marketing Agreement (VAMA) between HUD and NAR, which laid out a number of specific requirements relating to fair housing practices and was replaced in 1996 by the Fair Housing Partnership Agreement (Partnership Agreement). The Partnership Agreement provided for the development of a REALTOR® Fair Housing Declaration (see Figure 6-1) that REALTORS® may use to promote fair housing to the public and within their firms. While the Partnership Agreement is no longer in effect, the Declaration is still relevant and may be used as an important tool to raise awareness and commitment to fair housing.



Figure 6-1 REALTOR® Fair Housing Declaration

REALTOR® Fair Housing Declaration

I agree to:

Provide equal professional service without regard to the race, color, religion, sex, handicap, familial status, national origin, sexual orientation or gender identity of any prospective client, or customer, or of the residents of any community.

Keep informed about fair housing law and practices, improving my clients' and customers' opportunities and my business.

Develop advertising that indicates that everyone is welcome and no one is excluded, expanding my clients' and customers' opportunities to see, buy or lease property.

Inform my clients and customers about their rights and responsibilities under the fair housing laws by providing brochures and other information.

Document my efforts to provide professional service, which will assist me in becoming a more responsive and successful REALTOR®.

Refuse to tolerate noncompliance.

Learn about those who are different from me, and celebrate those differences.

Take a positive approach to fair housing practices and aspire to follow the spirit as well as the letter of the law.

Develop and implement fair housing practices for my firm to carry out the spirit of this declaration.



The implementation of a firm's public commitment begins by creating a written policy. A sample of a company fair housing policy, as well as other helpful information and materials, including the Equal Services Checklist (see checklist on next page), can be found in NAR's Fair Housing Handbook, available at www.store.realtor. Once a brokerage policy is in place, it's critical that the broker make sure that all agents and associates are familiar with and have committed to that policy. The appointment of a "Fair Housing Officer" in a firm can be helpful in this regard, by making someone responsible for the following:

- **Keeping current on developments in fair housing law**
- **Providing fair housing training**
- **Answering fair housing questions**
- **Tracking your company's compliance with fair housing law**

EQUAL SERVICES CHECKLIST



Develop policies or procedures concerning treatment of prospects and clients during their initial contact with your firm.

For example:

- Hospitality (greeting, refreshments, etc.)
- Explaining the services offered by your firm relative to their needs
- Obtaining initial prospect information (name, address, phone number)
- Assignment to agents
- Explaining your commitment to fair housing laws
- Keeping records of these contacts
- Follow-up

Obtain objective information regarding the prospect's or customer's needs and wants.

For example:

- Identify objective needs, such as price, size, features, and location.
- Respond to subjective requests in such a way to elicit objective criteria.
- Determine whether the customer knows what they are financially qualified to buy.

Let the customer set the limits in the housing search.

- Provide prospective buyers and renters with complete and accurate information on the availability of housing, alternative methods of financing, and other facts affecting the choice of location (such as schools, employment or transportation).
- Allow the prospect to make the choices:
 1. Features in a house or apartment
 2. Price
 3. Financing options
 4. Communities or areas

Offer a variety of choices:

- In financing options
- In location
- In types/styles of houses

Require good recordkeeping for all prospects and inquiries:

- Housing requested
- Housing options and alternatives offered
- Service provided

Establish a method of monitoring contacts and evaluating service being provided.

Agent Education and Training

A commitment to fair housing compliance that is not coupled with agent education and training is, at best, a commitment in name only. Remember that a brokerage firm could be held liable for the discriminatory acts of its agents, whether or not the firm has committed to fair housing compliance.

Keeping this in mind, it is the broker's responsibility — and in the broker's best interest — to make sure agents know that:

- **Stereotyping and prejudice have no place in the marketing of real estate**
- **Nondiscriminatory qualification criteria must be applied uniformly**
- **Judgments about whether a prospect will fit in a neighborhood because of the prospect's race, color, religion, sex, national origin, handicap, familial status, sexual orientation or gender identity cannot be a basis for showing or failing to show a particular listing**
- **All prospects must be treated courteously and professionally**
- **All prospects must be given equivalent service and assistance during any showings, and in completing rental applications or offer forms**
- **Failure to adhere to these policies will be grounds for dismissal**
- **Prospective agents who will not commit to these policies will not be hired**

Even the most thorough fair housing training program will fail if the corporate culture does not place a high value on it. This means that the company's officers, or the principal of the firm, must take the program seriously. If management does not take the program seriously, neither will the agents. A company must make noncompliance with fair housing obligations strictly taboo, not merely a calculated risk of doing business.

Lastly, companies should endeavor to educate individual sellers and buyers since they may be the single greatest source of pressure on a broker to discriminate or steer. Sellers must understand that the firm will not accept a listing on those conditions, and a clause to this effect should be included in the listing contract. As to how to handle questions from prospective buyers regarding the ethnic or racial make-up of a community, a smart response would be to direct buyers to other sources of such information.

Documentation of the Firm's Fair Housing Compliance Policy

When confronted with an allegation of a discriminatory housing practice, especially one grounded upon the use of testers, a real estate broker or agent, or their legal counsel, is likely to be presented with detailed written records in which the complainants have identified the specific conduct of the agent that has led to the charge. At a minimum, the complainants will have their own vivid recollection of the events that occurred.

The real estate broker or agent, on the other hand, may only have a hazy memory of the prospect as one of hundreds encountered in the last month or year. The broker or agent may have no written records with which to refresh this recollection or establish that the prospect was in fact afforded equal professional service, unless required to keep them by their brokerage's policies.

For this reason, it is imperative that brokers instruct their agents to keep records of the name, address, phone number and the perceived race and national origin of each prospect, as well as their stated requirements for housing and the price they can afford. To the extent that prospects are willing to see several properties that satisfy their criteria, the agent should record the address of the properties offered to the prospects, whether they were shown, and when they were shown. The form that may be used for this purpose is the Equal Service Report. (See Figures 6-2 and 6-3.)

Properly used, the Equal Service Report, or its equivalent, may provide a strong defense against a charge of steering or disparate treatment. In addition to the Equal Service Report, agents should be instructed to keep records of qualifying information and of when an offer was received. If any standard practices were not followed, or if additional qualifying information was required, the agent should record the reasons why deviations from regular

It is imperative that brokers instruct their agents to keep records of the name, address, phone number and the perceived race and national origin of each prospect, as well as their stated requirements for housing and the price they can afford.

office policies occurred. These records should be kept for at least two years, and in many instances, longer in accordance with state law.

Brokers should also consider developing or purchasing a brochure that can be given to all prospective buyers and tenants. The brochure should inform the prospect of laws requiring equal opportunity in housing and the firm's commitment to those policies. A brochure developed by NAR for this purpose is *What Everyone Should Know About Equal Opportunity in Housing*. You can obtain copies of this brochure by going to www.store.realtor.

Brokers should also develop and encourage agents to use a follow-up survey to send to all prospective buyers and tenants who, after two weeks, cease to be in active contact with the firm. The survey should ask the prospect to provide certain data concerning how they were served by the firm. When returned, the data from the survey may provide an early warning of any potential complaints. The survey should also provide a critique of an agent's performance in terms of affording equal service. Finally, the survey may alert the firm to reasons why a prospect found alternative housing, and permit the firm to adjust its own marketing strategies as appropriate.

Identifying and Correcting Failures in Performance

Identifying and correcting failures of performance by agents may be the most difficult component of a fair housing compliance program for a broker to implement, but it is arguably the most important. While a second chance is available in almost every other walk of life, it is not available as a means to avoid legal liability, especially under the fair housing laws.

Brokers must be alert to subtle indications that agents are insensitive to their fair housing responsibilities. Agents who use racial slurs or make excessive use of racial, ethnic or sexual humor, will very likely carry these attitudes into their business affairs. When brokers observe this type of behavior, they should address it immediately by putting the agent on notice that this behavior must change or, if warranted, terminating the agent.

Brokers should also take care to regularly review and modify their procedures to respond to changes in the law and new fair housing issues.



To help avoid legal liability, be alert to indications that agents are insensitive to fair housing responsibilities.



Figure 6-2 Equal Service Report

Instructions

The NATIONAL ASSOCIATION OF REALTORS® is committed to the provision of equal housing opportunities. The Prospect Equal Service Report is designed to incorporate basic prospect information; needs and wants; properties shown; and a record of service provided. This report will help you keep uniform records for all prospects. The form is not a checklist of service to be provided; the level and type of service you provide will be determined by your firm and should be consistent. The report will, however, document your consistency and provide two fair housing tools:

1. It provides you with evidence of your firm's compliance with the law, which may be an invaluable defense in the event you become involved in a housing discrimination complaint.
2. It allows you and your agents to monitor and review compliance with your fair housing policy and make corrections before you get involved in a discrimination complaint.

You should complete or update the report during or following each contact with the prospect. The report is composed of the following components:

- **Prospect Information**

(Space is provided for two adults in a household.)

Recording race or national origin — Recording the perceived race or national origin of a prospect is invaluable in your efforts to document equal professional service and to monitor your firm's compliance with the law and your equal opportunity policy.

- **Prospect Needs and Wants**

(Note: the "Prospect Equal Service Report — Rentals" form is recommended for rental prospects.)

Housing for older persons — If you receive a request for housing for older persons, record whether a member of the household is over age 55.

- **Service Provided** — Complete the questions financially qualifying the prospect, attaching qualification forms, if any. Then list your contact dates with the prospect.

- **Property Shown** — Complete the three sections on the back of the report. Use space provided to indicate prospect's comments, clarifying the prospect's needs and wants.

Part 1 — Record the prospect's initial requests for specific properties and whether these were shown.

Part 2 — List any properties or areas offered for general consideration, such as a computer printout for a specific community.

Part 3 — List properties offered or shown by address. Space is provided to indicate who selected the property shown.

- **Disposition** — Indicate that the prospect bought property or that no further service was provided. List additional materials, such as community profiles or the Home Guide, that you provided the prospect.

Figure 6-2 Equal Service Report, continued

Date:	Sales Associate:	Office:
PROSPECT INFORMATION		
Name:	Name:	
Address:	Address:	
Home phone:	Home phone:	
Work phone:	Work phone:	
<input type="checkbox"/> Owns now <input type="checkbox"/> Rents now <input type="checkbox"/> Must sell to purchase <input type="checkbox"/> Owns now <input type="checkbox"/> Rents now <input type="checkbox"/> Must sell to purchase		
Race/national origin:*		Race/national origin:*
<i>*For affirmative marketing purposes. Information on the perceived race or national origin of the prospect is sought to assist in monitoring the firm's commitment to equal professional service. Article 10 of the NATIONAL ASSOCIATION OF REALTORS® Code of Ethics states in part: REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, familial status, handicap, national origin, sexual orientation or gender identity. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, familial status, handicap, national origin, sexual orientation or gender identity.</i>		
Prospect came to us as a result of:		
<input type="checkbox"/> Walk in <input type="checkbox"/> Past customer <input type="checkbox"/> Sign <input type="checkbox"/> www.NAR.REALTOR <input type="checkbox"/> Other website:		
Referral (source):		<input type="checkbox"/> Phone solicitation <input type="checkbox"/> Mail solicitation
<input type="checkbox"/> Ad (source): <input type="checkbox"/> Other:		
PROSPECT NEEDS AND WANTS		
Prospect wishes to: <input type="checkbox"/> Purchase <input type="checkbox"/> Rent <input type="checkbox"/> Possession Date:		
Prospect's price range preference:	Purchase price range:	Rental: (use rental form)
Prospect requested locations:		
Type of home:	# of bedrooms:	# of baths:
<input type="checkbox"/> Dining Room <input type="checkbox"/> Family Room <input type="checkbox"/> Fireplace <input type="checkbox"/> Garage Other features:		
Does prospect desire information regarding housing for older persons? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If so, is any member of prospect's household over 55? <input type="checkbox"/> Yes <input type="checkbox"/> No		
SERVICE PROVIDED		
Was prospect asked questions regarding his/her finances? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If yes, indicate information obtained.		
Income:	Down payment:	Other (specify):
Was prospect offered information on financing options? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Indicate any rate information provided.		
<input type="checkbox"/> Conventional/fixed rate:	<input type="checkbox"/> Adjustable rate:	<input type="checkbox"/> FHA/VA: <input type="checkbox"/> Other (specify):
Did you financially qualify the prospect? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable		
If yes, attach worksheets.		If yes, qualified purchase price:
Did you refer the prospect elsewhere for financial qualification? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable		
If yes, to whom:		If yes, qualified purchase price:

Figure 6-2 Equal Service Report, continued

Contact Dates and Comments _____

PART 1

Did the prospect initially request information on or ask to view any specific property(s)? Yes No
 (Requests made prior to assistance being provided to the prospect.)

If yes, list address for each request. Include street address, unit # and community. Use additional sheets if necessary.

Price: _____ Was property shown? _____

If shown, buyer's comments indicating preferences. _____

If not shown, why not? _____

Was any written information provided? Yes No

PART 2

Were additional properties or areas offered to the prospect for general consideration? Yes No

List areas of properties. _____

PART 3

List properties shown or offered for consideration, including those selected by prospect. Include street address, unit # and community. Use additional sheets if necessary. In the first column, indicate who selected the property: P = Prospect, A = Real estate agent

Property A _____

Property B _____

Property C _____

Property D _____

Property	P/A	Price	Was property shown?	If shown, buyer's comments indicating preferences. If not shown, why not?	Was written information on property provided?
A					
B					
C					
C					

DISPOSITION

List materials (such as *What Everyone Should Know About Equal Opportunity in Housing*) provided:



Figure 6-3 Equal Service Report — Rentals

Instructions

The NATIONAL ASSOCIATION OF REALTORS® is committed to the provision of equal housing opportunities. The Prospect Equal Service Report is designed to incorporate basic prospect information; needs and wants; properties shown; and a record of service provided. This report will help you keep uniform records for all prospects. The form is not a checklist of service to be provided; the level and type of service you provide will be determined by your firm and should be consistent. The report will, however, document your consistency and provide two fair housing tools:

1. It provides you with evidence of your firm's compliance with the law, which may be an invaluable defense in the event you become involved in a housing discrimination complaint.
2. It allows you and your agents to monitor and review compliance with your fair housing policy and make corrections before you get involved in a discrimination complaint.

You should complete or update the report during or following each contact with the prospect. The report is composed of the following components:

- **Prospect Information**

(Space is provided for two adults in a household.)

Recording race or national origin — Recording the perceived race or national origin of a prospect is invaluable in your efforts to document equal professional service and to monitor your firm's compliance with the law and your equal opportunity policy.

Housing for older persons — If you receive a request for housing for older persons, record whether a member of the household is over age 55.

- **Service Provided/Property Shown**

Indicate prospect's comments clarifying needs and wants.

Application — Record if and when you gave the prospect an application and indicate for which unit. Record if and when the prospect returned the application. Keep the application on file with this report.

Application requirements — Record what applicant requirements were told to the prospect. Indicate any dollar amounts for application fees, credit check fee and deposit. Indicate whether fees were refundable.

- **Disposition** — Indicate that the prospect rented a unit or that no further service was provided. List any additional materials you provided the prospect, such as community profiles or brochures.

Continued on the next page.

Figure 6-3 Equal Service Report — Rentals, continued

Date:	Agent:	Office:			
PROSPECT INFORMATION					
Name:				Name:	
Address:				Address:	
Home phone:				Home phone:	
Work phone:				Work phone:	
Race/national origin:*				Race/national origin:*	
<i>*For affirmative marketing purposes. Information on the perceived race or national origin of the prospect is sought to assist in monitoring the firm's commitment to equal professional service. Article 10 of the NATIONAL ASSOCIATION OF REALTORS® Code of Ethics states in part: REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, familial status, handicap, national origin, sexual orientation or gender identity. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, familial status, handicap, national origin, sexual orientation or gender identity.</i>					
Prospect came to us as a result of:					
<input type="checkbox"/> Ad (source):		<input type="checkbox"/> For Rent Sign		<input type="checkbox"/> Website:	
<input type="checkbox"/> Referral (source):		<input type="checkbox"/> Other:			
Prospect is: <input type="checkbox"/> Current Tenant <input type="checkbox"/> Previous Tenant					
PROSPECT NEEDS AND WANTS					
Prospect preferences: _____			Possession date: _____		
Rent range: _____		Size and type of unit: _____		# bedrooms: _____	
Other features: _____					
Does prospect desire information regarding housing for older persons? <input type="checkbox"/> Yes <input type="checkbox"/> No					
If so, is any member of prospect's household over 55? <input type="checkbox"/> Yes <input type="checkbox"/> No					
Requested locations: _____					
SERVICE PROVIDED					
Did the prospect initially request information on or ask to view any specific property(ies)? <input type="checkbox"/> Yes <input type="checkbox"/> No					
If yes, list address for each request. Include street address, unit # and community.					
Property A					
Property B					
Property C					
Property D					
Property	Rent	Deposit	Was unit shown?	If shown, prospect's comments and preferences. If not shown, why not?	Application offered?
A					
B					
C					
C					
Did you offer to put the prospect on a waiting list for any property requested? <input type="checkbox"/> Yes <input type="checkbox"/> No					
If so, indicate which properties: _____					
Were other properties offered to the prospect? <input type="checkbox"/> Yes <input type="checkbox"/> No					

Figure 6-3 Equal Service Report — Rentals, continued

List properties offered or shown. Include community, address & unit number.

Property A _____

Property B _____

Property C _____

Property D _____

Property	Rent	Deposit	Was unit shown?	If shown, prospect's comments and preferences. If not shown, why not?	Application offered?
A					
B					
C					
C					

Were qualifying questions asked prior to application? Yes No

If yes, indicate information obtained:
 Income: _____ Employment: _____
 Current Rent: _____ Other (specify): _____

Was an application offered to the prospect? Yes No

Did the prospect complete and return the application? Yes No

Keep application on file for reference. Yes No

Application and credit check fees quoted to prospect. Yes No

DISPOSITION, CONTACT DATES AND COMMENTS



CASE SUMMARIES

Broker Liability for Discrimination by Agents

In **Meyer v. Holley**, 537 U.S. 280, 123 S. Ct. 824 (U.S. 2003) — the Supreme Court of the United States ruled that traditional principles of law applied when determining direct and vicarious liability under the FHA. Reversing the appellate court decision, the Supreme Court found there to be no public policy or other reason why the FHA would impose personal liability on a corporate officer, here the broker of a brokerage company, for the acts of an agent.

Questions from and Discriminatory Conduct of Clients

In **Coldwell Banker Real Estate Corp. v. DeGraft-Hanson**, Nos. A03A2032 & A03A2033, 266 Ga. App. 23 (Ga. Ct. App. Mar. 3, 2004), the court ruled that a brokerage is not liable for the discriminatory actions of the seller when the brokerage was not acting in violation of the fair housing laws. When the listing broker brought prospective buyers to the property who were African American, the seller refused entry to the property because of their race and thereafter asked that the listing should state that the property should not be shown to “blacks.” The listing broker told the seller that was illegal and ended its relationship with the seller shortly thereafter. The prospective buyers brought a lawsuit against the listing broker for violating the fair housing laws because of the seller’s actions, but the courts dismissed the lawsuit because there was no evidence that the listing broker had played any role in the seller’s discriminatory conduct.

In **Hannah v. Sibcy Cline REALTORS®**, 769 N.E.2d 876, 147 Ohio App. 3d 198 (Ohio Ct. App. 2001), an Ohio court ruled that a real estate professional does not have a duty to provide information about the racial composition of a neighborhood, even if the client requests the information. Following their purchase of a home, buyers claimed that their salesperson breached her fiduciary duty when she refused to provide demographic information about the town where their home was located. The salesperson told the buyers that the FHA prevented her from sharing this information. The appellate court affirmed the lower court’s ruling in favor of the salesperson.

Disparate Impact Liability

In **Texas Dep’t of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.**, No. 13-1371, 135 S.Ct. 2507 (2015), the Supreme Court of the United States ruled that a disparate impact theory could be used to prove liability in cases brought under the FHA. A Texas municipality was accused of disproportionately distributing low-income tax credits to predominately black inner-city areas, resulting in a disparate impact on minorities in violation of the FHA. Disparate-impact claims challenge practices of housing providers that have a disproportionately adverse effect on minorities without having to demonstrate that there was intentional discrimination. The Supreme Court stated that a disparate-impact liability theory could be used in FHA cases, but limited its scope in order to ensure that housing providers could still maintain a policy that serves a legitimate business interest. After a plaintiff establishes a prima facie case showing of disparate impact, the burden shifts to the defendant to prove the challenged practice is necessary to achieve one or more substantial, legitimate, non-discriminatory interests. The burden then shifts back to the plaintiff to show the existence of another practice with a less discriminatory effect that would still serve the defendant’s legitimate business interest. In addition, central to this burden-shifting framework is the requirement that a plaintiff be able to show a causal connection between a specific policy or policies of a defendant and the disparate impact.

Pattern of Discriminatory Practice

In **United States v. Garden Homes Mgmt., Corp.**, 156 F. Supp.2d 413 (D.N.J. 2001), a court determined that a pattern of discriminatory conduct could serve as the basis for FHA liability based on the licensee's conduct. Three apartment complexes under common ownership were investigated by the U.S. Department of Justice and a New Jersey fair housing organization for possible FHA violations. In each of three tests, the white and black testers were treated differently by the leasing agent. The government filed a lawsuit alleging FHA violations, naming the housing complexes and one of its owners individually. The court found that more than one instance of discriminatory conduct could constitute a pattern, and that FHA liability was nondelegable and so an owner could be liable for FHA violations of its rental agent, but the owner can avoid liability if the owner can show that they were not involved in anti-discriminatory conduct. Therefore, the allegations moved to the jury for resolution.

Standing to Sue

In **NAACP v. City of Kyle**, No. A-05-CA-979 LY, 2006 WL 1751767 (W.D. Tex. June 16, 2006), a Texas federal court ruled that a home builder's trade association had standing to bring a lawsuit over a city's ordinance that allegedly violated the FHA. The city ordinance required that all new homes have certain features such as a garage. These changes caused the entry level price for new homes increase to \$138,000, up from \$100,000. The trade association alleged that the proposed changes would have disproportional adverse effect on minorities because it increased the price of entry level housing. The city filed a motion to dismiss the lawsuit, claiming the association lacked standing to bring a lawsuit against the city for violations of the FHA. The court ruled that the association had standing to sue because: (i) an association has standing if the association's members would be able to bring the lawsuit on their own; (ii) the interests the association seeks to protect are related to the association's purpose; and (iii) neither the claim nor the resolution of the lawsuit involves the actual participation of an association member.

In **Lane v. Cole**, 88 F. Supp.2d 402 (E.D. Pa. 2000), the court allowed a property guest's lawsuit for violations of the FHA to proceed to trial. Following her rental, a tenant invited to her apartment a friend and her two children, who were black. When the other tenants and the landlord learned the tenant had black visitors, they engaged in threatening behavior to both the tenant and the guests. The tenant and guests brought a lawsuit for violations of the FHA against the landlord. The landlord moved to dismiss the allegations brought by the guests, claiming they lacked standing to bring FHA allegations because they were not the party renting the property. The court ruled that the FHA allows an "aggrieved person," or person who has suffered some type of injury, to bring a lawsuit for FHA violations so long as the discriminatory harm suffered is unique and identifiable. Since the guests had suffered harm from the landlord's discriminatory housing practice of conditioning leasing on the exclusion of black guests, the guests had stated a valid claim under the FHA.

National Origin Discrimination

In **Housing Rights Ctr. v. Donald Sterling Corp.**, 274 F. Supp. 2d 1129 (C.D. Cal. 2003), a court ruled that a property owner violated the FHA by favoring tenants with a particular national origin over other applicants. A housing group alleged that the landlord violated the FHA because he improperly used national origin as a consideration, as he sought Korean tenants for his apartments. The court found that using "Korean" in building names impermissibly signaled a preference for a certain group, while inquiring about a tenant's national origin could serve no other purpose except a discriminatory one. Therefore, the court entered a preliminary injunction barring landlord from using the word "Korean" in its building names and from inquiring about the national origin of his tenants.

Familial Status Discrimination

In **United States of America v. Westwater Commons Corp.**, 02 Civ. 5241 (WCC), Consent Decree (S.D.N.Y. filed Nov. 25, 2002), a New York federal court approved a consent decree between the federal government and a co-op building for the co-op's alleged violations of the FHA by denying purchaser's application because she had children living with her who were under 18 years old. The purchaser and her 14-year old were interviewed by the co-op board after her offer to purchase a unit in the building was accepted. The purchaser's unit was above a co-op board of director's unit, and the evidence showed that the only reason her application was rejected was because the board member did not want children living above her unit. The purchaser filed a complaint with HUD, and HUD issued a "Charge of Discrimination" against the co-op board. The purchaser then filed a lawsuit alleging familial status discrimination. The parties agreed to settle the case, and to the entry of a Consent Decree, wherein the co-op was enjoined from any further violations of the Fair Housing Act's prohibition on familial discrimination, and the co-op agreed to pay the purchaser a sum of \$102,500.

Handicap Discrimination Against Disabled Individuals

In **United States of America v. Space Hunters, Inc.**, No. 00 Civ. 1781 (RCC), 2004 WL 2674608 (S.D.N.Y. Nov. 23, 2004), the court upheld a jury verdict in favor of a deaf individual who was discriminated against when a tenant referral company refused to accept calls from relay operator services. The U.S. Department of Justice filed a lawsuit against the tenant referral company after HUD issued a Charge of Discrimination against the company on behalf of the prospective tenant. The appellate court upheld the jury's finding that refusing to communicate through a relay service constituted intentional discrimination against an individual with a disability.

In **Giebeler v. M&B Assoc.**, 343 F.3d 1143 (9th Cir. 2003), the court ruled that a tenant's request to have a co-signer on his lease because his disability prevented him from qualifying financially for the apartment was a reasonable accommodation request that the landlord should not have rejected. An individual with AIDS wanted to rent an apartment but he was unable to meet the income requirements because his illness limited his ability to work. The tenant requested that the landlord make an accommodation for his illness by allowing his mother to act as a co-signer on the lease. When the landlord refused, the tenant filed a lawsuit for violations of the FHA. A federal appellate court ruled that the FHA required the landlord to make accommodations in evaluating the financial means of disabled individuals, when such means are directly impacted by the disability. The court found in favor of the tenant because his request was reasonable since he was not seeking to pay the landlord any less money in rent and he was not seeking to alter the obligations of tenancy (i.e., the requirement to pay rent in a timely fashion).

In **Canady v. Prescott Canyon Estates Homeowners Assoc.**, 60 P.3d 231 (Ariz. Ct. App. 2002), the court ruled that senior living communities are not immune from the FHA prohibition on discrimination against individuals with disabilities. An elderly couple entered into an agreement to purchase a unit in a senior living community, and they planned to live with their severely disabled 26-year old son, but were denied because the community had a rule that no one under the age of 55 could live in the community. The parents and the seller then filed a complaint and eventually a lawsuit against the community, alleging disability discrimination. The trial court dismissed the lawsuit because there is an FHA exemption for qualified "housing for older persons," but the appellate court reversed and reinstated the case, finding that while there is an exemption from charges of discrimination based on familial status, nowhere in the FHA is there an exemption for handicap discrimination by a "housing for older persons" community.

In **Marks v. BLDG. Mgmt. Co.**, No. 99 CIV 5733 (THK), 2002 WL 764473 (S.D.N.Y. Apr. 26, 2002), the court ruled that a landlord does not have to make economic accommodations to individuals with disabilities. A tenant living in a rent-controlled apartment in New York City told the building management company that her AIDS diagnosis required her to live in warmer climates during the winter and that she would sublet her apartment during that time. The property manager prohibited subletting of apartments, and rejected the tenants request for accommodation to sublet the apartment. When she sublet the apartment, the landlord began eviction proceedings against the tenant. The court ruled that The court found in favor of the landlord because the tenant's accommodation request had nothing to do with her AIDS and instead was motivated by her economic situation and the FHA does not require the landlord to grant the tenant's accommodation request.

Which Act Applies?

The following cases look at how to determine which of the federal statutes that prohibit discrimination against the disabled is applicable: the Fair Housing Act (FHA), the Americans with Disabilities Act (ADA) or the Rehabilitation Act (Rehab Act).

In **Robinson v. Gorman**, 145 F. Supp. 2d 201 (D. Conn. 2001), a landlord refused to reasonably accommodate a tenant with a disability by permitting an aide to live with her. The court ruled that:

1. Tenant's claims could not be brought under state or federal fair housing laws because tenant's unit was in an owner-occupied building with only two units. Under the federal FHA, there is an exemption for owner-occupied buildings with no more than four units; under state fair housing laws, the exemption applied to owner-occupied buildings with no more than two units.
2. The ADA was not applicable because it only governs discrimination in "places of public accommodation," like a hotel or inn, not residential housing.

However, the court determined that tenant's claims could be heard under the Rehab Act. The Rehab Act provides that "no otherwise qualified individual with a disability ... shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving" federal funding. Since the landlord received federal rent payments for the premises, the court held that tenant's lawsuit should be allowed to proceed.

In **Hanks v. Tilley**, 15 Nat'l Disability L. Rep. §155 (M.D.N.C. 1999), a tenant who at times required a wheelchair, requested permission to install temporary ramps, a removable above-ground swimming pool and a portable whirlpool on the leased property, all at her own expense. When the landlord refused to allow such improvements, the tenant sued, claiming that the landlord's failure to allow her to make reasonable modifications to the property was unlawful under the ADA.

The trial court granted the landlord's motion to dismiss, holding that Title III of the ADA does not apply to residential housing, but only to "places of public accommodation" such as hotels, motels, convention centers, restaurants, schools and other facilities accessible to the public. The court addressed the possibility of the tenant having brought her claim under the FHA, instead of the ADA, but concluded that the tenant would not have been successful there either because of the exemption for landlords who do not own more than three single-family residences.



Resources

NAR's Field Guide to Fair Housing

www.nar.realtor, see “Library” section to access Field Guides

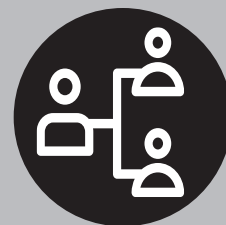
NAR's Field Guide to Complying with the Americans with Disabilities Act (ADA)

www.nar.realtor, see “Library” section to access Field Guides

At Home with Diversity

www.nar.realtor/designations-and-certifications/at-home-with-diversity

Fair Housing



Talking Points

- Real estate brokers are subject to federal, state and local fair housing laws. These laws are intended to eradicate discriminatory conduct in the sale or rental of dwellings.
- Serious financial loss plus public embarrassment and reputational loss are practical effects of a finding of liability for most real estate firms.
- Fair housing cases are sometimes excluded from errors and omissions insurance policies.
- The available risk reduction techniques available include comprehensive education and training of all sales associates, adoption of a strict fair housing compliance policy, and action to ensure that salespeople adhere to that policy.
- 3. Use of advertising that expresses a preference for or against persons of a particular race, color, religion, sex, national origin, handicap or familial status.
- 4. Representations that a dwelling is not available for sale or rent, when in fact the dwelling is available.
- 5. Attempts to induce a person to sell or rent a dwelling by referring to the prospective entry of persons of a particular race, color, sex, religion, national origin, handicap or familial status.

Fair Housing Laws that Apply to Real Estate Brokers

Federal Law

Fair housing laws consist of:

- Civil Rights Act of 1866, 42 U.S.C. § 1982 (hereinafter the 1866 Act) — Prohibits all forms of racial discrimination in real estate, whether committed by government or by private parties. Persons suing under the 1866 Act are entitled to recover actual and punitive damages, and their attorney fees and costs.
- Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3601 *et seq.* (hereinafter, Title VIII) — Addresses not only racial discrimination, but also discrimination on the basis of religion, color, national origin, sex, handicap and familial status. Five types of discrimination are prohibited:
 1. Refusal to sell or rent or to otherwise make unavailable a dwelling because of a person's protected characteristic.
 2. Discrimination in the terms, conditions or privileges of sale or rental of housing or in the provision of services in connection with the same.
- Title VIII also prohibits redlining, including discrimination in financing and insuring of housing, as well as discrimination in access to REALTOR® boards and associations, MLSs, or other services, organizations, or facilities that relate to the business of selling or renting dwellings. Title VIII prohibits actions that have a disparate impact on persons of a protected class.

Enforcement

- Congress amended Title VIII to add handicapped persons and families with children as protected classes.
- A person who believes he or she is a victim of discriminatory housing practices may bring action in federal court and recover actual and punitive damages, as well as reasonable attorney fees and costs.
- The United States Attorney General may bring an action where a pattern or practice of discrimination has occurred, as opposed to a single isolated act.
- In addition to suing directly in federal court, an aggrieved person may file a complaint with the Department of Housing and Urban Development (HUD).
- Fair housing agencies may file complaints if they can show that they devoted significant resources to identify and act against discriminatory practices and did so to the detriment of their other efforts on behalf of equal access to housing.

- Both HUD administrative law judges (ALJs) and federal courts may award the aggrieved person actual damages and issue injunctions to prevent any further discriminatory practices. An aggrieved person may recover attorneys' fees as well.
- If the respondent is found to have committed a discriminatory housing practice, an ALJ may also assess civil penalties.
- Additional civil penalties may be imposed in an amount based on whether the individual has been adjudged to have committed a discriminatory housing practice and when such discriminatory practice occurred.
- If the case proceeds in federal court, the judge does not have authority to impose civil penalties, but may impose punitive damages in favor of an aggrieved person shown to have been injured by a discriminatory housing practice.

State and Local Fair Housing Laws

- State and local statutes may include broader coverage than Title VIII.
- If a state or local law is deemed by HUD to be substantially equivalent to Title VIII, then HUD will refer all complaints from that jurisdiction to the state or local agency.
- State or local ordinances may include coverage for discrimination based upon additional classes, such as:
 - Age
 - Source of income
 - Marital status
 - Sexual preference
 - Occupation

Conduct Prohibited by the Fair Housing Laws

Refusals to Sell or Rent

- **Violation of Title VIII** — Any refusal to sell or rent a dwelling because of race, color, sex, religion, national origin, handicap or familial status. This can include applying more stringent qualification criteria for minority than non-minority prospects.
- **Violation of 1866 Act** — Refusal to sell or rent any type of real estate because of race.

Steering

- Conduct designed to influence a person's housing choice based upon race, religion, sex, color, national origin, handicap or familial status.
- Evidence of steering is often gathered through the use of testers.
- Testers can bring lawsuits challenging steering themselves or through the fair housing organizations that employ them.

Blockbusting

- Also known as panic peddling.
- Blockbusting refers to the suggestion, during an effort to solicit a listing, that the seller should sell or otherwise dispose of a property because persons of a particular race, religion, sex, national origin, color, handicap or familial status are moving into the neighborhood.
- Blockbusting is specifically prohibited by Title VIII.

Advertising

- HUD regulations do not require that advertising of residential real estate for sale or for rent, or for financing, include an equal housing opportunity logo, statement, or slogan as a means of advising homebuyers and sellers of their fair housing rights. However, HUD may view their inclusion as evidence of compliance with the Fair Housing Act's prohibitions against discriminatory advertising.
- HUD regulations do require prominent display (for example, businesses, individual, and new construction dwellings for sale or rent) of HUD's fair housing posters, which are available from HUD area offices and contain a fair housing slogan and logo.
- Title VIII prohibits use of advertising that indicates a preference for or against prospective buyers or tenants of a particular race, religion, sex, color, national origin, handicap or familial status.
- Ads should focus on property descriptions, and not on the potential buyer.

Advertising Guidelines for Acceptable/ Unacceptable Phrases

Race, Color and National Origin

- **Unacceptable:** Words describing the housing, current or potential residents and neighbors, or neighborhood in racial or ethnic terms (for instance, white family homes, no Irish).
- **Acceptable:** Racially neutral terms (including master bedroom, rare find, desirable neighborhood).

Religion

- **Unacceptable:** Ads with blatant phrases (such as no Jews, Christian home). Ads that use the legal name of an entity containing a religious reference (for instance, Roselawn Catholic Home) or a religious symbol (like a cross) unless there is a disclaimer indicating that the property does not unlawfully discriminate.
- **Acceptable:** Secular terms (like Merry Christmas, Happy Easter) or images (such as Santa Claus, Easter Bunny, St. Valentine's Day graphics).

Sex

- **Unacceptable:** Ads that indicate a gender preference (such as male/females only apply) except where there are shared living arrangements.
- **Acceptable:** Commonly used physical descriptions of housing units that are not preferential or limiting terms (for instance, mother-in-law's suite, bachelor apartment).

Handicap

- **Unacceptable:** Ads that disallow handicap accessories (for instance, no wheelchairs).
- **Acceptable:** Phrases that describe a property's features, services, facilities, or neighborhood (including great view, fourth-floor walk-up, walk-in closets, close to parks, close to public transportation).

Familial Status

- **Unacceptable:** Ads that limit the number or ages of children allowed or express a preference for adults, couples or singles.
- **Acceptable:** Descriptions of properties, their services, facilities (or lack thereof), their neighborhood (for instance, two-bedroom, cozy family room, no bicycles allowed, quiet streets).

Ad Placement

- **Do not** use advertising media in selective publications.
- **Do** use consistent language about the properties and communities when advertising in several small newspapers that reach different audiences.

Use of Models

- When using human models in advertising, make special efforts to use models from various protected classes and who are representative of the community.

Target Marketing

- Brokers should be sure not to base their company's marketing decisions on prospective clients' membership (or non-membership) in any of the classes protected by the Fair Housing Act or by their state or local fair housing laws.
- It is acceptable for a broker to market their company as having licensees with certain language skills that would be of interest to people of a certain national origin.
- Brokers should not assign a particular sales associate to represent all members of a group that he or she is a member of; the decision to work with a brokerage and/or a sales associate should come from the clients themselves.
- It is appropriate to create niche marketing on the basis of a property's characteristics. The following list includes some examples:
 - Luxury communities
 - Fixer-uppers
 - Condominiums
 - Single-family homes
 - Resort housing
 - Properties in foreclosure
 - Homes on the historic register
- Real estate professionals may market directly to first-time home buyers and clients who are relocating.
- Brokerages can focus on senior citizens by developing expertise on issues that are of interest to seniors (for example, retirement planning, and reverse mortgages). However, this knowledge must also be made available to anyone who expresses interest, regardless of age and familial status.
- Never refuse or forget to show families with children properties that are not qualified as senior housing just because many seniors live there.

Handicapped Discrimination

- Title VIII was amended in 1988 to include handicapped persons and families with children as protected classes.
- Definition of handicap includes the following:
 - Physical handicaps
 - Mental handicaps
 - Alcoholics
 - Persons with the HIV virus, AIDS
- Definition of handicap excludes:
 - Current abusers of controlled substances
 - Persons presenting a current threat to the health, safety or property of others
- Real estate brokers or agents may not inquire whether a person has a handicap, or the extent of any handicap, in evaluating a person's qualifications to buy or rent a dwelling.
- If the same questions are asked of every person, a broker or agent may ask questions about a prospect's rental history or other relevant information.
- Title VIII prohibits property owners from refusing to permit handicapped occupants of a dwelling to make reasonable modifications to a unit, at the tenant's expense, to allow the handicapped tenant to enjoy the premises fully.
- The property owner may condition modifications to the interior of a unit on the tenant's agreement to restore the unit to its original condition when the handicapped person's occupancy ends. The property owner may require all modifications be done in a safe and workmanlike manner.
- Examples of reasonable modifications that must be permitted include the following:
 - Installation of grab bars around bathtubs and toilet seats
 - Widening of a door to permit passage of a wheelchair
 - Installation of a flashing light in lieu of a doorbell
 - Relocation of environmental controls
- A property owner may, where appropriate, create an escrow account into which the tenant will pay a monthly amount to cover the cost of restoring the interior modifications made by the tenant. This type of escrow account should be used only when the modifications are unusual and the cost of restoration is significant.

- Title VIII also requires property owners and homeowner associations to make reasonable accommodations in any rules or regulations governing housing developments that are necessary to permit the tenant to enjoy the premises fully.
- Examples of reasonable accommodations that must be permitted include the following:
 - The allowance of a seeing eye dog, notwithstanding a no-pet rule
 - Assignment of a parking space to a handicapped tenant near the tenant's building entrance, notwithstanding a first-come, first-serve policy governing tenant parking
 - Waiver of a rule banning vans in a building parking lot when a van is necessary to a handicapped person's transportation

New Construction

Covered Multifamily Dwelling — A building of four or more dwelling units if the building has an elevator.

Ground Floor Dwelling — A building of four or more dwelling units without an elevator.

"First Occupancy" — The building's first use for any purpose.

The design and construction requirements that covered multifamily dwellings must meet include the following:

- Public and common use areas readily accessible to and usable by handicapped persons
- Doors that are sufficiently wide to allow passage by a wheelchair
- The inclusion of the following features of adaptable design:
 - An accessible route into and through the unit
 - Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower stall and shower seat, where provided
 - Usable kitchens and bathrooms, such that an individual in a wheelchair can maneuver about the space
 - Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations
- These requirements do not apply to townhouse or other cluster arrangements without elevators where four or more single-family homes share common walls

Families with Children

- Title VIII forbids property owners or agents from refusing to sell or rent a dwelling to an otherwise qualified prospect because the prospect has children under the age of 18 in the household.
- Familial status protection encompasses a parent or guardian who has legal custody of children under the age of 18, as well as pregnant women.
- HUD regulations provide that when state or local law does not include occupancy limitations, property owners may adopt their own limitations, provided that such limitations do not operate unreasonably to limit or exclude families with children.
- HUD regulations also state that property owners may not establish dual-purpose facilities where certain sections of a housing complex are reserved for adults only and other sections for families with children.
- Title VIII not intended to limit the ability of property owners to develop and implement reasonable rules relating to the use of facilities associated with dwellings, such as weight rooms, swimming pools, or saunas, as long as they are based upon legitimate health or safety considerations and are not unduly restrictive.

Older Persons' Exemption

- Title VIII specifically authorizes the exclusion of children from housing for older persons.
- Housing for older persons includes any housing provided pursuant to a state or federal program designed to accommodate the needs of senior citizens. The older person exemption also includes the following types of housing:
 - Occupied solely by persons 62 years of age or older
 - Where 80 percent of the units are occupied by at least one person 55 years of age or older per unit, and for whom the development is intended and marketed as housing for persons 55 or older
- Property owners must do the following:
 - Carefully monitor the ages of the occupants in the units to ensure that, at all times, no less than 80 percent of units are occupied by at least one person who is 55 years of age or older
 - Publish and adhere to policies and procedures (for instance, advertising used to market the development, lease provisions, and the development's rules and regulations) that

demonstrate an intent to provide housing to persons 55 years of age or older

- Real estate professionals should rely only on the written assertions of owners or managers, that the licensees have seen for themselves, that a property is exempt based on the ages of the residents and on the existence and enforcement of such policies and procedures.
- Prior regulations mandate that the development provide significant facilities and services specifically designed to meet physical or social needs of persons over 55 years of age. Congress removed the facilities and services language from the regulations in 1995.
- Some state laws still require properties to provide significant facilities and services to qualify for the 55-or-older exemption.

Program for Compliance

Effective program of compliance consists of the following components:

- A firm's policy and public commitment to fair housing
- Agent education and training in methods that ensure compliance with the fair housing laws
- Regular and systematic documentation of the firm's practice of affording equal opportunity and service
- Identification and correction of failures in performance

The Firm's Policy and Public Commitment

- All REALTORS® and REALTOR-ASSOCIATES® are bound by the REALTOR® Code of Ethics, which requires REALTORS® to provide equal professional services to all persons. The Code, however, does not represent a firm's personal commitment to fair housing.
- A firm's personal commitment to fair housing is important for two reasons:
 1. There is no obligation for a plaintiff, a tester, or a fair housing agency to give advance warning before it files a complaint. Adoption of a compliance program only after a complaint has been filed will be properly viewed as self-serving and not reflective of a true commitment.

2. Everyone is presumed to know the legal obligations of fair housing. Thus, simply acknowledging awareness of one's legal duty will not defeat a pattern of practice case, or even a claim for punitive damages. The conduct necessary to overcome such claims must be outward, overt and resolute programs designed affirmatively to ensure compliance with the law. The fact that a company has not yet experienced any fair housing complaints is not a valid reason to avoid public commitment to fair housing compliance.
- The implementation of a firm's public commitment begins by creating a written policy. Then a firm must make sure that all agents and associates are familiar with and have committed to that policy.
 - Appoint a Fair Housing Officer for the firm who is responsible for the following items:
 - Keeping current on developments in fair housing law
 - Providing fair housing training
 - Answering fair housing questions
 - Tracking the company's compliance with fair housing law

Agent Education and Training

- The legal doctrine of respondeat superior (which makes an employer responsible for the conduct of its employees) may render a company liable for discriminatory acts committed by its agents regardless of whether the company has committed itself to fair housing compliance.
- Make sure agents know the following:
 - Stereotyping and prejudice have no place in the marketing of real estate.
 - Nondiscriminatory qualification criteria must be applied uniformly.
 - Subjective judgments about whether a prospect will fit in a neighborhood cannot be a basis for showing or failing to show a particular listing.
 - Judgments about whether a prospect will fit in a neighborhood because of the prospect's race, color, religion, sex, national origin, handicap or familial status cannot be a basis for showing or failing to show a particular listing.
 - All prospects must be treated courteously and professionally.
 - All prospects must be given equivalent service and assistance during any showings and in completing rental applications or offer forms.

- Failure to adhere to these policies will be grounds for dismissal.
- Prospective agents who will not commit to these policies will not be hired.

Documentation of the Firm's Fair Housing Compliance Policy

- When confronted by allegations of discriminatory housing practice, remember the following:
 - Complainants will most likely provide detailed written records identifying the specific conduct of the broker or agent that led to the charges. Brokers or agents, however, may be likely to have a hazy memory and may not have written records to refresh his or her memory.
- Brokers must instruct agents to keep records of the names, addresses, phone numbers, and the perceived race of prospects, as well as their stated requirements for housing and the price they can afford. The agent should record the address of the properties offered to the prospects, whether they were shown, and when they were shown.
- If properly used, the Equal Service Report, or its equivalent, should provide a strong defense against a charge of steering or disparate treatment.
- Agents should also be instructed to keep records of qualifying information and when an offer was received. If any standard practices were not followed, or if additional qualifying information was required, the agent should record the reasons why deviations from regular office policies occurred.
- Brokers should keep records for at least two years.
- Brokers should develop a brochure informing prospective buyers and tenants of laws requiring equal opportunity in housing and the firm's commitment to those policies. NAR's brochure, *What Everyone Should Know About Equal Opportunity in Housing* is a good example.
- Brokers should develop, and encourage agents to use, a follow-up survey to send to all prospective buyers and tenants who, after two weeks, cease to be in active contact with the firm. The survey should ask the prospect to provide certain data concerning how he or she was served by the firm.
 - The data from the returned surveys should provide an early warning of any potential complaints.
 - The data should also provide critiques of agents' performances in terms of affording equal service. 132

- Survey results should alert the firm to reasons why a prospect found alternative housing, and permit the firm to adjust its own marketing strategies as appropriate.

Identifying and Correcting Failures in Performance

- Brokers must be alert to subtle indications that agents are insensitive to their fair housing responsibilities.
 - Agents who use racial slurs, or make excessive use of racial, ethnic or sexual humor will very likely carry these attitudes into their business affairs.
 - Short cuts, such as qualifying prospects on a hit or miss basis may also indicate an agent's insensitivity to his or her responsibilities.

- When brokers observe this type of behavior, they should address it immediately.
- Agents who engage in this conduct should be counseled, put on notice that this behavior must change, and, if necessary, asked to leave the firm.
- Brokers should regularly review and modify their procedures to respond to changes in the law and new fair housing issues.

Situational Questions and Answers

Situation

- Jane Jones, who has a hearing disability, is a tenant of ABC Properties, which has a *strict* no-pets policy.
- Jane has asked to be exempted from this policy so that she can utilize an assistance dog in her apartment.
- This dog would help Jane by alerting her when the doorbell and phone ring. (Jane has a device that allows her to utilize the phone once she knows it has rung.)
- The property manager of ABC Properties, Jack Smith, has refused Jane's request, noting that an exception to the no pets policy would only be made in the case of a seeing-eye dog.

Question

Has Jack done anything wrong in refusing Jane's request?

Answer

- Jack violated the Fair Housing Act by refusing to provide a *reasonable accommodation* to a tenant with a handicap.
- Permitting Jane to keep an "assistance dog" in her unit would have imposed *no undue financial or administrative burden and would not have undermined the basic purpose* of the no-pets policy.
- Jack's failure to provide this reasonable accommodation *subjects the owner of ABC Properties to liability* under the Fair Housing Act.

Situation

- Irving Patel contacts Bob Broker for help in finding a home to purchase.
- Bob perceives Irving as being of East Indian descent.
- Bob takes Irving and his family to five or six homes, all of which are located in areas with high concentrations of East Indian residents.
- When Irving asks why Bob has only shown him homes in these areas, Irving replies: "I thought these were the neighborhoods you would feel most comfortable in!"

Question

Has Bob done anything wrong by making this assumption?

Answer

- Bob's assumption, which is based on his perception of Irving's national origin, unlawfully limits the Patels' housing choice.
- Bob failed to ask Irving to specify which neighborhoods he was interested in.
- Bob has violated the Fair Housing Act by steering.

Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation

JANUARY 20, 2021 • PRESIDENTIAL ACTIONS

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. Every person should be treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love. Children should be able to learn without worrying about whether they will be denied access to the restroom, the locker room, or school sports. Adults should be able to earn a living and pursue a vocation knowing that they will not be fired, demoted, or mistreated because of whom they go home to or because how they dress does not conform to sex-based stereotypes. People should be able to access healthcare and secure a roof over their heads without being subjected to sex discrimination. All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation.

These principles are reflected in the Constitution, which promises equal protection of the laws. These principles are also enshrined in our Nation's anti-discrimination laws, among them Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e *et seq.*). In *Bostock v. Clayton County*, 590 U.S. ____ (2020), the Supreme Court held that Title VII's prohibition on

discrimination “because of . . . sex” covers discrimination on the basis of gender identity and sexual orientation. Under *Bostock*’s reasoning, laws that prohibit sex discrimination — including Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681 *et seq.*), the Fair Housing Act, as amended (42 U.S.C. 3601 *et seq.*), and section 412 of the Immigration and Nationality Act, as amended (8 U.S.C. 1522), along with their respective implementing regulations — prohibit discrimination on the basis of gender identity or sexual orientation, so long as the laws do not contain sufficient indications to the contrary.

Discrimination on the basis of gender identity or sexual orientation manifests differently for different individuals, and it often overlaps with other forms of prohibited discrimination, including discrimination on the basis of race or disability. For example, transgender Black Americans face unconscionably high levels of workplace discrimination, homelessness, and violence, including fatal violence.

It is the policy of my Administration to prevent and combat discrimination on the basis of gender identity or sexual orientation, and to fully enforce Title VII and other laws that prohibit discrimination on the basis of gender identity or sexual orientation. It is also the policy of my Administration to address overlapping forms of discrimination.

Sec. 2. Enforcing Prohibitions on Sex Discrimination on the Basis of Gender Identity or Sexual Orientation. (a) The head of each agency shall, as soon as practicable and in consultation with the Attorney General, as appropriate, review all existing orders, regulations, guidance documents, policies, programs, or other agency actions (“agency actions”) that:

(i) were promulgated or are administered by the agency under Title VII or any other statute or regulation that prohibits sex discrimination, including any that relate to the agency’s own compliance with such statutes or regulations; and

(ii) are or may be inconsistent with the policy set forth in section 1 of this order.

(b) The head of each agency shall, as soon as practicable and as appropriate and consistent with applicable law, including the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), consider whether to revise, suspend, or rescind such agency actions, or promulgate new agency actions, as necessary to fully implement statutes that prohibit sex discrimination and the policy set forth in section 1 of this order.

(c) The head of each agency shall, as soon as practicable, also consider whether there are additional actions that the agency should take to ensure that it is fully implementing the policy set forth in section 1 of this order. If an agency takes an action described in this subsection or subsection (b) of this section, it shall seek to ensure that it is accounting for, and taking appropriate steps to combat, overlapping forms of discrimination, such as discrimination on the basis of race or disability.

(d) Within 100 days of the date of this order, the head of each agency shall develop, in consultation with the Attorney General, as appropriate, a plan to carry out actions that the agency has identified pursuant to subsections (b) and (c) of this section, as appropriate and consistent with applicable law.

Sec. 3. Definition. “Agency” means any authority of the United States that is an “agency” under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

Sec. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN JR.

THE WHITE HOUSE,
January 20, 2021.



Fair Housing Declaration

I agree to:

- Provide equal professional service without regard to the race, color, religion, gender (sex), disability (handicap), familial status, national origin, sexual orientation or gender identity of any prospective client, customer, or of the residents of any community.
- Keep informed about fair housing law and practices, improving my clients' and customers' opportunities and my business.
- Develop advertising that indicates that everyone is welcome and no one is excluded;, expanding my client's and customer's opportunities to see, buy, or lease property.
- Inform my clients and customers about their rights and responsibilities under the fair housing laws by providing brochures and other information.
- Document my efforts to provide professional service, which will assist me in becoming a more responsive and successful REALTOR®.
- Refuse to tolerate non-compliance.
- Learn about those who are different from me, and celebrate those differences.
- Take a positive approach to fair housing practices and aspire to follow the spirit as well as the letter of the law.
- Develop and implement fair housing practices for my firm to carry out the spirit of this declaration.