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2005 Professionalism in Real Estate Practice (Preface to Part V)

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PREFACE

The Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS® is universally recognized by lawyers and laymen alike as the measure of professionalism in real estate. It does not describe the lowest common denominator of permissible performance as do the licensing laws of several states. Rather, it describes the optimum performance the public has the right to expect and makes that performance the norm for REALTORS®.

But, as the real estate marketplace is a dynamic, demanding environment, so the Code is, has been, and will continue to be a demanding and dynamic document; a plan for professionalism in real estate capable of including and accommodating every change, challenge, and controversy which arises.

And, it is precisely because the Code must continue as a meaningful and relevant standard of professional performance that this Manual is especially dedicated to the men and women who have served on the Professional Standards Committee of the National Association with unstinting devotion, as well as the men and women who staff Member Policy which has staff responsibility to the Professional Standards Committee. It is their charge to give early warning of the changes, challenges, and controversies which the Code must confront; it is they who must identify the misapplications and misinterpretations of the Code which, if uncorrected or unnoticed, would discredit and ultimately destroy it.

This Manual reflects the efforts and contributions of the entire staff of Member Policy on behalf of the Professional Standards Committee to meet the REALTOR®'s need for a ready reference synthesis of the Code.

It is in hope of satisfying this need, that this Manual is published.

William D. North
Executive Vice President
December, 1984

INTRODUCTION

Professionalism in Real Estate Practice is intended to provide REALTORS® and REALTOR-ASSOCIATE®s with a concise explanation of the meaning and intent of each of the Articles of the Code of Ethics and with a brief summary of the Standards of Practice and the official Case Interpretations. Reference is made in each instance to one or more Standards of Practice or Case Interpretations.

It is anticipated that wide use of this Manual will ensure that Members will become increasingly aware of their ethical obligations, and the responsibility of each

REALTOR® principal for the acts of all licensees affiliated with the REALTOR®, whether Members or not.

In the back of this Manual is a form which may be used by REALTOR® principals to enable brokers, sales-people, and licensed or certified appraisers affiliated with them to certify that they have reviewed the contents of this Manual.

Always refer to the Standards of Practice and Case Interpretations for comprehensive ethical guidance.

Questions concerning the meaning or application of the Code of Ethics should always be initially directed to your local Board. If your Board is unable to provide the requested information, your request should be sent to your State Association. If the information cannot be obtained from the State Association, then a request may be sent to Member Policy of the Board Policy and Programs Division, NATIONAL ASSOCIATION OF REALTORS®, 430 North Michigan Avenue, Chicago, Illinois 60611-4087. Member Policy has staff responsibility concerning the Code of Ethics and its interpretations. It is essential that any inquiry be in writing, and include copies of all related correspondence with your Board and State Association. Correspondence to the National Association should be copied to the Board and State Association for informational purposes.

Please note that wherever the term REALTOR® is used in this publication, it refers to both REALTORS® and REALTOR-ASSOCIATE®s.

**The Code of Ethics of the
National Association of REALTORS®
An Assurance
of Public Service and Protection**

One of the fundamental objectives of the founders of the NATIONAL ASSOCIATION OF REALTORS® was a Code of Ethics which would be, “. . . as the ten commandments to the real estate fraternity.” When the first Code was approved in 1913 at the Annual Convention in Winnipeg, Canada, a delegate arose to say, “. . . many important things have occurred here today, but none so important as the action we have just taken.”

And thus the Code was born, and it has served since 1913 as a “golden thread” binding REALTORS® together in a common, continuing quest for professionalism through the ethical obligations premised upon moral integrity and competent service to clients and customers, and dedication to the public interest and welfare. The Code has been amended many times to reflect changes in the real estate marketplace, the needs of property owners, and the perceptions and values of society, but its demand for high standards of professional conduct protecting the interests of clients and customers, and safeguarding the rights of consumers of real estate services has not and will never change.

The Code of Ethics was amended at the 1994 Annual Convention to make the aspirational objectives of the former first six Articles an integral part of the Preamble to ensure that the duties and obligations imposed by the Code, through its Articles, are objective, readily understood, and will be interpreted and applied consistently and uniformly nationwide.

The 17 Articles of the Code establish standards of conduct which the REALTOR® must satisfy. These Articles govern the REALTOR®’s conduct in everyday business dealings with clients, customers, and other REALTORS®. Failure to observe these standards can result in disciplinary action.

**Aspirational Objectives
in the Preamble
to the Code of Ethics**

- **Becoming and remaining informed.**

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The amount of information a REALTOR® may have can vary at different states of the REALTOR®'s professional life. The REALTOR® should strive to:

- (1) become informed as rapidly and thoroughly as feasible about laws, proposed legislation, government regulations, public policies, and current market conditions; and
- (2) seek reliable information on matters that depend, in whole or in part, upon information or knowledge the REALTOR® may provide to clients and customers.

REALTORS® will find it difficult to advise clients and customers properly if they do not know the requirements and limitations imposed by laws impacting upon a property or its owner. REALTORS® must provide accurate information, but must refrain from the unauthorized practice of law. REALTORS® should avoid engaging in activities where they lack sufficient knowledge or when the activity is beyond the scope of their licensure.

An important corollary is to admit any lack of pertinent knowledge and recommend that information be sought from others who are adequately informed. Intelligence and integrity are measured in part by the awareness an individual has as to that which the individual does not know.

REALTORS® cannot be fully informed on all matters at all times, but must always be honest and forthright and should constantly increase their knowledge and expertise consistent with the reasonable expectations of clients and customers.

Only informed REALTORS® can contribute responsibly to public thinking. With so many issues affecting the practice of real estate and the rights of property owners, it is recommended that REALTORS® be informed and contribute responsibly to debate and decision as best they can.

- **Requests for opinions and unsolicited criticism.**

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A REALTOR® is not precluded from responding to a request for an opinion as to a competitor's business practices in general, or a real estate transaction in particular. If the REALTOR® deems it appropriate to respond, the REALTOR® should provide the opinion with strict professional integrity and courtesy (i.e., provide objective, reliable information in a professional manner). This requires careful language and a thoughtful and analytical approach based on facts. REALTORS® can always refrain from comment if they choose.

Nothing is gained and much may be lost by "sounding off" in public. Uninvited criticism is counterproductive, impairs cooperative efforts, and diminishes the public's appreciation for the valuable services provided by REALTORS®.

Stress the value and merit of your own work rather than criticizing or making derogatory comments about the efforts of other REALTORS®.

- **Active participation in enforcement of law, regulations, and the Code of Ethics.**

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If the REALTOR® becomes aware of any practice damaging to the public or which may bring discredit upon the real estate profession, the Preamble encourages the REALTOR® to bring such actions to the attention of the State Real Estate Commission.

Such reports should not be prompted by personal whim, preference or spite, but should be a manifestation of respect for the law and the Code of Ethics.

Reports should never be made for the purpose of restraining a competitor who provides new or different services. Any challenge of a competitor's practice must be based solely upon an unbiased and disinterested analysis of the practice or service itself and whether it damages the public or brings discredit upon the real estate profession.

REALTORS® should be aware that they must arbitrate certain business disputes with

other Members rather than resorting to litigation. However, the obligation to arbitrate does not obviate the obligation to report any potential violations of the law to the governmental agency charged with regulating the practices of brokers and salespeople in the state.

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, should bring such matters to the attention of the appropriate Board or Association of REALTORS®.

- **Exclusive representation of clients.**

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REALTORS® should urge the exclusive listing of property unless contrary to the best interest of the owner. This prevents dissension and misunderstanding and assures better service to the owners and lessors.

The exclusive listing includes both exclusive right to sell and exclusive agency agreements which benefit sellers and lessors since they establish a clear line of responsibility on the part of the seller or lessor and the listing broker. Listing brokers know they will not be paid unless they meet the specific terms and conditions of the listing, but are assured of payment if they do perform. Sellers and lessors know they will incur an obligation to pay only one commission. Sellers and lessors are assured that property will be shown only to bona-fide, pre-qualified prospective buyers or tenants. Such certainties, established by the exclusive listing agreement, minimize dissension and misunderstanding and sellers and lessors are assured of the best efforts of listing brokers and cooperating brokers.

- **Sharing knowledge and experience.**

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This concept encourages a high standard rarely established by business and professional groups. As a general rule, business competitors do not share the lessons of their experience with each other for the benefit of the public. Rather, such experience is zealously guarded lest it fall into the hands of competitors. But REALTORS®, although intensely competitive with each other, at the same time cooperate with each other in the best interest of clients and customers. In cooperative transactions, it is desirable that the combined professional abilities and talents, as well as the shared commitment to high standards of conduct, prevail. This cooperation benefits clients and customers.

Programs offered by Boards provide opportunities to share information on public policy, politics, and legislation affecting private ownership of real property and the practice of real estate; technology to improve service and maintain competency; methods of financing real estate transactions; and standards of professional conduct. They also provide opportunities to share information on better methods of selling, buying, leasing, managing, counseling, appraising, developing, and syndicating.

REALTORS® should share their knowledge and expertise with other REALTORS® for the benefit of their clients and customers.

- **Avoidance of unfair advantage.**

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If disagreements did not arise between Members, there would be little need for ethics or arbitration hearings. REALTORS® should strive to minimize the likelihood of disagreements through professional practice, including adherence to the Code of Ethics, understanding and respect for the law, and general competence in all transactions undertaken. A REALTOR® cannot guarantee that disagreements will never arise, but should always seek to avoid even the appearance of impropriety.

Perhaps unfair advantage can be best avoided by caring, consideration, and communication. REALTORS® who care for the interests of every individual involved in a real estate transaction are not apt to take any unfair advantage. REALTORS® who consider all points of view are not likely to take unfair advantage. Good relationships and good results in real estate matters are commensurate with good communication between principals, agents, and cooperating brokers.

The phrase “unfair advantage” is not intended to discourage aggressive competition. Rather, it is intended to discourage, among other things, misrepresentation of law or fact; misleading clients and customers with respect to the competence, honesty, or loyalty of other REALTORS®; resorting to technicalities to justify questionable actions; and attempts to induce a breach of contract. It is not inappropriate to list or sell aggressively, or to work harder and longer than others. Ultimately, unfairness works to the disadvantage of clients and customers since it limits their power of choice; exposes them to possible litigation; and deprives them of the full benefits of an open and cooperative relationship.

Narrative Explanation of Each Article with Synthesis of Related Standards of Practice and Case Interpretations

Article 1

When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge them-selves 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.

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Article 1 establishes a balanced obligation to clients and customers. The Code of Ethics and Arbitration Manual, defines “agent,” “client,” and “customer” as:

Agent: a real estate licensee acting in an agency relationship as defined by state law or regulation;

Client: 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: 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.

By entering into a contractual agreement to act as agents, REALTORS® are both legally and ethically obligated to the client to use their best efforts to accomplish the client’s objective, be it the sale, purchase, or lease of real property, or managing, counseling, syndicating, or other real estate related service. REALTORS® must be completely faithful to the client they have committed to serve. At the same time, a REALTOR® must also be honest with all parties to the transaction. If a REALTOR® is the agent of a seller, the REALTOR® nonetheless must be honest with buyers and cooperating brokers. If the REALTOR® is the agent of a prospective purchaser, the REALTOR® must also be honest with sellers and their agents by making his/her relationship with the buyer clearly known to all. If a REALTOR® leases property as the agent of the owner or landlord, the REALTOR® must be honest with the lessee and any other brokers involved in the transaction. Even when a REALTOR® is not acting as an agent, the REALTOR® remains obligated to treat all parties honestly. This has particular significance to REALTORS® engaging in appraising, counseling, facilitating, and other activities when a principal-agent relationship is not involved.

Remember that you are obligated under the Code of Ethics even when acting as a principal in a real estate transaction. (Refer to Standard of Practice 1-1)

Regardless of what capacity you are acting in (e.g., facilitator, transaction broker, etc. . .), you are obligated by the duties established in the Code of Ethics. (Refer to Standard of Practice 1-2)

Be forthright and honest when advising prospective sellers about the value of their property. (Refer to Standard of Practice 1-3)

When seeking to become a buyer or tenant representative, do not mislead buyers or tenants as to savings or other benefits that might be realized by using your services.

(Refer to Standard of Practice 1-4)

REALTORS® may be dual agents but only after full disclosure to and with consent of both parties. (Refer to Standard of Practice 1-5)

Transmit all offers and counter-offers objectively to the seller and landlord as quickly as possible for the owner's decision regardless of who produced the offer. (Refer to Standards of Practice 1-6 and 1-7 and Case Interpretations #1-29 and #1-30)

REALTORS® as agents or brokers of buyers and tenants are not obligated to continue to show properties to their clients after an offer has been accepted unless agreed otherwise in writing. (Refer to Standard of Practice 1-8)

Remember that your obligation to preserve confidential information provided by your client continues after the termination of your agency relationship or non-agency relationship recognized by law. Latent material defects are not considered confidential. (Refer to Standard of Practice 1-9)

As a property manager, you must competently manage the property with regard for the rights, safety, and health of those lawfully on the premises. (Refer to Standard of Practice 1-10)

As a property manager, you must exercise due diligence and make reasonable efforts to protect the client's property. (Refer to Standard of Practice 1-11)

When entering into listing contracts, you must advise sellers and landlords of 1) your company policy regarding cooperation and the amount(s) of any compensation, 2) that buyer and tenant agents or brokers may represent the interests of the buyer or tenant even if compensated by you or the seller or landlord, and 3) any potential for you to act as a disclosed dual agent. (Refer to Standard of Practice 1-12)

When entering into buyer/tenant agreements, you must advise potential clients of 1) your 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; and 4) any potential for you to act as a disclosed dual agent. (Refer to Standard of Practice 1-13)

When preparing appraisals or other valuations, do not make your fee contingent upon the amount of the approval or valuation. (Refer to Standard of Practice 1-14)

As a listing broker, divulge, with the seller's approval, the existence of offers on the property in response to inquiries from buyers or cooperating brokers. (Refer to Standard of Practice 1-15 and Case Interpretation #1-28)

When acting as the seller's agent, don't suggest an offering price other than the listed price unless instructed by the seller to do so. (Refer to Case Interpretation #1-1)

Inform buyers of pertinent and relevant facts that may affect their decision to purchase. (Refer to Case Interpretation #1-2)

Avoid net listing agreements. They create an unavoidable conflict with the client's best interests. (Refer to Case Interpretation #1-3)

As an agent, the best interests of your client must always come before any contemplated interest you or any member of your firm may have in the property. (Refer to Case Interpretations #1-4, #1-21, and #1-22)

If you are the listing broker or subagent, refrain from suggesting to a buyer that a property is overpriced without the seller's authorization. (Refer to Case Interpretation #1-5)

Even when managing property, submit any offers to purchase received to the owner. (Refer to Case Interpretation #1-6)

Don't leave property unsecured or available for unsupervised inspection, even if vacant, without the knowledge and consent of the seller. (Refer to Case Interpretation #1-7)

Promptly deposit checks received on behalf of clients or inform them of any reason for not doing so. (Refer to Case Interpretation #1-8)

When attempting to list a property, determine whether the property is already listed with another broker. Before taking a second, concurrent listing, advise the client of the potential liability for multiple commissions. (Refer to Case Interpretation #1-9)

Advise your client promptly if you become convinced the client's property is overpriced. (Refer to Case Interpretation #1-10)

Remember that as an agent or subagent of the seller, you are required to submit all offers to the seller for the seller's consideration even after an offer has already been accepted, unless prohibited by state law or unless the listing contract specifically relieves you of this responsibility. (Refer to Case Interpretations #1-12 and #1-13)

As a subagent, never condition writing a purchase contract on the buyer's execution of a "pre-listing" agreement. (Refer to Case Interpretation #1-14)

Use your expertise as a real estate professional to advise your clients as to the market value of their homes, even where they claim to know what their properties are worth. (Refer to Case Interpretation #1-15)

Recommend that the client obtain an appraisal if you are unable to advise on the property's market value, either because of your lack of experience or your limited knowledge of the area or of the type of property. (Refer to Case Interpretations #1-16 and #1-22)

Never misuse a prospective client's personal opinion of the property's value to obtain a listing. Base your recommendation for an asking price on a thorough inspection of the property and a systematic review of comparable sales in the area. (Refer to Case Interpretation #1-17)

Recommend that legal advice be sought when in the client's best interest. (Refer to Case Interpretation #1-18)

Be aware of pending or enacted changes in the zoning ordinances that may affect the market value or use of property listed by you. (Refer to Case Interpretation #1-19)

REALTORS® remain bound by the obligations of the Code of Ethics even when dealing among themselves as principals. (Refer to Case Interpretation #1-20)

As an agent, the best interests of your client must always come before any contemplated interest you or any member of your firm may have in the property. (Refer to Case Interpretation #1-21)

Although a listing broker may offer to purchase property listed with him, a listing broker may not step out of his role as an agent and become a principal without the client's knowledgeable consent. (Refer to Case Interpretation #1-22)

Do not "guarantee savings" unless you can demonstrate them in each and every instance. (Refer to Case Interpretation #1-23)

Do not deceive your client. (Refer to Case Interpretation #1-24)

Remember that latent material defects are not considered confidential under the Code. (Refer to Case Interpretation #1-25)

Your clients' interests always take precedence over your personal gain or advantage. (Refer to Case Interpretation #1-26)

Decline any appraisal assignment where your employment or your fee is contingent upon the amount of the appraisal. (Refer to Case Interpretation #1-27)

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 or to advise on matters

outside the scope of their real estate license or disclose facts which are confidential under the scope of agency or non-agency relationships as defined by state law.

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Article 2 guarantees faithful service to both clients and customers as consumers of real estate services.

Article 2 protects the consumer by ensuring that the REALTOR® provides accurate, factual information without exaggeration; that the REALTOR® communicates truthfully and does not misrepresent the facts; and that the REALTOR® does not remain silent concerning pertinent facts including adverse factors affecting the property. As a real estate professional, the REALTOR® is obligated to discover and disclose adverse factors apparent to someone with the REALTOR®'s level of expertise, but is not required to discover and disclose latent (hidden) defects in property or to advise clients or customers on matters requiring specialized knowledge and training not required by the state licensing authority or in the REALTOR®'s area of expertise. The REALTOR® is not expected to possess knowledge or skills generally attributable to specialists in other fields such as architects, structural engineers, soils experts, etc. Nor is the REALTOR® obligated to disclose facts which are confidential under the scope of agency or non-agency relationships as defined by state law. The necessity to safeguard the confidence of clients must be respected unless there is some superseding ethical obligation or legal duty.

Remember that you are obligated to discover and disclose adverse factors reasonably apparent to someone with expertise in the real estate profession, but that you are not required to provide expert advice on matters involving specialized knowledge or training outside the scope of your real estate license. In such cases, advise your clients and customers to use the services of appropriate experts. (Refer to Standard of Practice 2-1)

Avoid naming a false consideration in any document unless it is an obviously nominal consideration. (Refer to Standard of Practice 2-4 and Case Interpretations #2-10 and #2-11)

Factors defined or expressly referenced in law or regulation as “non-material” or as not being subject to disclosure are not considered “pertinent” for purposes of Article 2. (Refer to Standard of Practice 2-5)

Be truthful and accurate concerning property for which you are responsible. If any inaccuracy occurs, act promptly to remedy the matter to the best of your ability. (Refer to Case Interpretation #2-1)

Remember that you are responsible for the statements and actions of those licensed with you. (Refer to Case Interpretations #2-2 and #2-9)

When acting as the listing broker, faithfully represent to prospective purchasers information provided by the sellers, unless you have reason to suspect that the information is not accurate. (Refer to Case Interpretations #2-3 and #2-4)

Be familiar with the requirements of law and regulations that may affect a purchaser's use of property and suggest that the advice of experts be sought, if the situation warrants. (Refer to Case Interpretation #2-5)

Make no guarantees regarding the future value of property unless you are prepared to make good your guarantee. (Refer to Case Interpretation #2-6)

Remember that the public relies on your superior knowledge of the real estate market. Avoid “guesses” which may be misconstrued as facts by those relying on you. (Refer to Case Interpretation #2-7)

Failure to accurately disclose pertinent information cannot be excused by the use of a “disclaimer of accuracy.” (Refer to Case Interpretation #2-8)

REALTORS® remain bound by the obligations of the Code of Ethics even when dealing among themselves as principals. (Refer to Case Interpretation #2-13)

Promptly communicate any change in the amount of cooperating broker compensation being offered prior to the time the cooperating broker has a signed offer to purchase in hand. (Refer to Case Interpretation #2-14)

The obligation to “avoid misrepresentation or concealment of pertinent facts” also requires REALTORS® to provide tribunals of their Board with information on the activities of other REALTORS® which may have violated Article 2. (Refer to Case Interpretation #2-15)

Avoid falsifying credit information. (Refer to Case Interpretation #2-16)
Inform buyers of pertinent and relevant facts that may affect their decision to purchase. (Refer to Case Interpretation #2-18)

Be sure information in MLS compilations is truthful and accurate. (Refer to Case Interpretation #2-19)

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.

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Article 3 obligates REALTORS® to cooperate with their competitors on mutually agreed upon terms when it is in the best interest of the client. This obligation promotes harmonious teamwork by competitors to the benefit of buyers/tenants and sellers/lessors. The real estate market is best served when individuals with a variety of skills and resources work together. Cooperation optimizes the benefits available to clients and customers, as well as agents and their subagents. Cooperation ensures sellers and lessors of the broadest possible market exposure. Through cooperation, brokers are able to enhance the market exposure of listed property and their ability to serve the needs of prospective purchasers and tenants.

Compensation in cooperative transactions should be agreed upon by the listing and cooperating brokers prior to the time the cooperating broker begins efforts to accept the offer of cooperation. (Refer to Standard of Practice 3-1)

Promptly communicate any change in the amount of compensation being offered prior to the time the cooperating broker produces an offer to purchase or lease the property. (Refer to Standard of Practice 3-2 and Case Interpretation #2-14)

Listing brokers and cooperating brokers may enter into an agreement to change the cooperative compensation after the cooperating broker produces an offer to purchase or lease the property if both REALTORS® agree to the change. (Refer to Standard of Practice 3-3)

As a listing broker, as soon as practical, disclose the existence of a dual or variable rate commission arrangement. As the buyer/tenant representative, disclose such information to your client before the client makes an offer to purchase or lease. (Refer to Standard of Practice 3-4)

Where a dual commission arrangement exists, the REALTOR®, as listing broker, must disclose the existence of the “special arrangement,” and must indicate, in response to an inquiry from a potential cooperating broker, the differential that would result in the total commission in a cooperative transaction or in a sale that results through the efforts of the seller. (Refer to Standard of Practice 3-4 and Case Interpretations #1-30, #3-8 and #3-9)

As a subagent, immediately advise the listing broker of all pertinent facts you discover concerning a property or prospective purchaser either before or after a contract is executed. (Refer to Standard of Practice 3-5)

Disclose the existence of accepted offers, including offers with unresolved contingencies, to brokers seeking to cooperate on your listing. (Refer to Standard of Practice 3-6 and Case Interpretations #3-10)

Disclose your REALTOR® or licensed status when seeking information about a property from another REALTOR® concerning property under a management or listing agreement. (Refer to Standard of Practice 3-7)

Avoid misrepresenting the availability of property listed with your firm. (Refer to Standard of Practice 3-8)

Recognize the agency of listing brokers and make all arrangements to show property through them unless they grant you specific authority to deal directly with their clients. (Refer to Case Interpretation #3-1)

Cooperate in the sale of listed property unless you have valid reason for believing that cooperation would not further the best interests of your client or the client instructs you to withhold cooperation. Be prepared to justify your refusal to cooperate if you are charged with an arbitrary refusal to cooperate. (Refer to Case Interpretations #3-3 and #3-4)

Realize that under certain circumstances a REALTOR® may legitimately withhold cooperation when it is not in the client's best interest or when the REALTOR® is dealing as a principal. (Refer to Case Interpretations #3-4 and #3-5)

Promptly communicate any change in the amount of cooperating broker compensation being offered prior to the time the cooperating broker has a signed offer to purchase in hand. (Refer to Case Interpretation #3-7)

Recognize that listing brokers must disclose the existence of dual and variable commission arrangements and must, in response to questions from cooperating brokers, disclose the compensation differential resulting from a cooperative transaction versus one brought about through the listing broker's efforts. (Refer to Case Interpretation #3-8)

Recognize that "special" or "side" deals may be dual or variable commission arrangements that must be disclosed pursuant to Standard of Practice 3-4. (Refer to Case Interpretation #3-9)

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.

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Article 4 prohibits the REALTOR® from buying, presenting offers, or selling property owned by the REALTOR®, or in which the REALTOR® has any interest, without making full disclosure of the ownership or interest to the buyer or seller or their agent or representative.

This prohibition applies not only to buying and selling by the REALTOR®, but also any member of the REALTOR®'s immediate family, firm, or any entity in which the REALTOR® has any ownership interest.

"Immediate family" includes "in-laws" because, at least in some instances, the transaction may benefit the REALTOR® in the future. A purchase or sale for the REALTOR®'s firm or any member thereof must be disclosed because it can be reasonably presumed that an individual will tend to favor the interests of business colleagues over the interests of strangers. Any entity in which the REALTOR® has any ownership interest is included to ensure that the buyer or seller or respective agents will be fully informed, in advance, of the REALTOR®'s position and interest in the transaction.

Article 4 protects the public by ensuring their full awareness of any direct or indirect personal interest of the REALTOR® in a real estate transaction involving property owned by the REALTOR® or property the REALTOR® is interested in acquiring. If

the seller or buyer knows of the REALTOR®'s interest in a real estate transaction, in advance, they can make knowledgeable decisions, secure competent assistance, if necessary, and deal with the REALTOR® in an arm's length transaction.

Written disclosure of any present or contemplated interest, direct or indirect, that you have in a property must be given to buyers and sellers or their respective agents before entering into any contracts involving the property. (Refer to Standard of Practice 4-1 and Case Interpretation #4-6)

Be sure your client (seller) understands your position when you intend to acquire any interest in listed property. (Refer to Case Interpretation #4-1)

Even when the need to disclose a remote "indirect" interest is questionable, full disclosure is preferable since it avoids possible appearance of impropriety. (Refer to Case Interpretation #4-2)

Disclose in writing the fact that an offer is being presented on behalf of a family member, including in-laws. (Refer to Case Interpretation #4-3)

Be aware that REALTORS® have responsibility for ensuring that individuals licensed with the REALTOR® disclose the fact that an offer is being presented on behalf of a family member. (Refer to Case Interpretation #4-4)

As an agent, the best interests of your client must always come before any contemplated interest you may have in the property. (Refer to Case Interpretation #4-5)

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.

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Article 5 protects the public by requiring REALTORS® to disclose any present or contemplated interest they may have in a property for which they are undertaking to provide professional services.

These services include buying, selling, leasing, appraising, managing, counseling, and other real estate related services.

Article 5 prevents REALTORS® from using their professional knowledge to gain an unfair advantage in a real estate transaction.

REALTORS® should remain aware that even indirect interests may obscure their objectivity and jeopardize the quality of their service. Such indirect interests could include interest in adjoining property, or could relate to transactions involving relatives or business associates. REALTORS® must be alert and utilize care in any real estate transaction that could be seen as benefiting them either directly or indirectly.

When appraising a property disclose any current or contemplated interest you may have in the property to your client before accepting the assignment. (Refer to Case Interpretation #5-1)

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.

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Article 6 protects clients and customers from conflicts of interest by the REALTOR®

by requiring advance disclosure of the REALTOR®'s connection or interest in any organization or business entity before the REALTOR® recommends such services or products.

Many REALTORS® have interests in service firms, including contracting, roofing, brickwork, plumbing, electrical, air conditioning, title insurance, home owner's insurance, pest control, moving, etc. The REALTOR® is not precluded from offering such services, and it should be noted that such services may be among the best available. But, to recommend such services without first disclosing the REALTOR®'s interest, making it clear that the clients and customers are free to obtain these services elsewhere, can raise suspicion and create the appearance of impropriety.

Article 6 also prevents the REALTOR® from benefiting directly or indirectly from the providers of such goods or services without the client's prior knowledge and consent. Remember to disclose when you or your firm will receive any fee or will benefit directly from recommending a real estate service or product to a client or customer.

Advise clients and customers about any direct or indirect interests you have in businesses or organizations to which you refer them. (Refer to Standard of Practice 6-1)

Don't profit from your client's expenditures without the client's prior knowledge and consent. (Refer to Case Interpretation #6-1)

Be sure your client is aware of any use of the client's property which may result in a benefit or profit to you. (Refer to Case Interpretation #6-2)

Exercise caution when dealing in matters that may be inconsistent with your client's interests. Try to avoid potentially conflicting situations. (Refer to Case Interpretation #6-3)

Don't accept rebates or other considerations from those providing goods or services to your client without your client's prior knowledge and consent. (Refer to Case Interpretation #6-4)

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.

.....

Article 7 imposes an ethical obligation that may go beyond the requirements of state law. A REALTOR® may never accept compensation from more than one party without the informed consent of all parties. Only through adequate prior disclosure can the parties be fully aware of any potential conflicts of interest that may affect their ability or willingness to rely on the objectivity of the REALTOR®'s advice and counsel.

Prior to representing both the buyer/tenant and the seller/landlord in the same transaction, you must disclose that fact to all parties and secure their agreement. (Refer to Case Interpretation #7-3)

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.

.....

REALTORS®, as fiduciaries, are in positions of trust. They must keep monies coming into their possession in trust funds, separate from their own funds.

Stated simply, REALTORS® must not commingle their firm's monies or their personal monies with money accepted in trust for others. Such money must be placed

in a separate account to safeguard against its unauthorized use.

Never commingle funds entrusted to you with your personal funds. (Refer to Case Interpretation #8-1)

Be aware that the Board may institute a complaint with the real estate commission based upon facts brought to light at an ethics hearing. (Refer to Case Interpretation #8-2)

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.

.....

To avoid any misunderstanding and to prevent future controversy, all contractual agreements should be in writing and should set forth, in detail, the understanding of each of the parties. This can substantially reduce questions relating to the terms of the listing agreements, offers to purchase, financing instruments, and other agreements and commitments.

Remember to use timely written extensions or amendments to purchase and sale contracts. (Refer to Standard of Practice 9-1)

Article 10

REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, or national origin. 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, or national origin.

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 or national origin.

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The law prohibits discrimination in housing on the basis of race, color, religion, sex, handicap, familial status, or national origin.

Article 10 illustrates the REALTOR®'s commitment to fair housing. A charge alleging that a REALTOR® has violated a fair housing law may also form the basis of a charge alleging a violation of Article 10.

The REALTOR® can have nothing to do with any plan or agreement to discriminate on the basis of race, color, religion, sex, handicap, familial status, or national origin with respect to any real estate transaction.

To ensure strict compliance with fair housing laws, Boards of REALTORS® are authorized to require training in fair housing as a condition of continued membership and REALTORS® are encouraged to establish ongoing equal opportunity educational training programs for individuals in their firms.

Article 10 also calls on REALTORS® to refrain from discrimination in selecting and retaining employees and independent contractors who provide real estate-related services, and the administrative and clerical staff who support them.

Except as permitted under Standard of Practice 10-3, do not volunteer information on the racial, religious, or ethnic composition of any neighborhood and do not engage in

any activity which may result in panic selling. (Refer to Standards of Practice 10-1 and 10-3)

When selling or renting any property, do not convey any preference, limitations, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin. (Refer to Standard of Practice 10-2)

Offer equal professional services to every client and customer regardless of their race, color, religion, sex, handicap, familial status, or national origin. (Refer to Case Interpretations #10-1 and #10-3)

Educate those affiliated with you to ensure that they provide equal professional service to all. (Refer to Case Interpretation #10-2)

Ensure that advertising campaigns and other marketing strategies cannot be construed as expressing a preference that a potential buyer be of a specific racial or ethnic group. (Refer to Case Interpretations #10-4 and #10-5)

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, 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 person engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth.

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Article 11 is explicit in setting forth REALTORS®' responsibilities to refrain from attempting to provide service for which they are inadequately prepared.

For example, if a REALTOR® as a residential broker with no commercial experience was asked to market a complex business property, the REALTOR® would be obligated to disclose to the client that the REALTOR® did not possess the experience and expertise to provide the requested service. In certain instances, a prospective client may value the general abilities and integrity of a particular REALTOR® and may insist on engaging that REALTOR®'s services despite the REALTOR®'s lack of experience and competency needed to undertake the assignment. In such a case, the REALTOR® may undertake the assignment if, having fully disclosed his lack of experience, the REALTOR® obtains assistance from someone competent in the field. The REALTOR® must fully inform the client as to whose assistance was utilized and the degree to which that person contributed to the assignment.

When preparing an opinion of property value or price other than in pursuit of a listing or to assist a purchaser in formulating an offer, make sure you identify the property; include the date prepared; include the defined value or price; provide limiting conditions, including statements of purpose(s) and intended user(s); disclose any present or contemplated interest, including the possibility of representing the seller/landlord or buyers/tenants; provide the basis for the opinion, including applicable market data; and provide, if the opinion is not an appraisal, a statement to that effect. (Refer to Standard of Practice 11-1)

In real estate disciplines other than appraisal, REALTORS® are expected to comply with the standards of competence and practice which clients and the public reasonably require to protect their rights and interests. (Refer to Standard of Practice 11-2)

If you are providing consultive services to clients which involves advice or counsel for a fee (not a commission) be sure to provide any advice given in an objective manner

and do not make the fee contingent on the substance of the information provided. A separate compensation may be paid with prior agreement between you and your client if you are providing brokerage or transaction services in addition to consultative services. (Refer to Standard of Practice 11-3)

Remember that the competency expected of you relates to services contracted for between you and your customer/client, the duties addressed by the Code of Ethics, and the duties imposed by law and regulation. (Refer to Standard of Practice 11-4)

Disclose your lack of experience to the client before accepting any appraisal assignment outside your area of competency. (Refer to Case Interpretations #11-1 and #11-4)

Identify in appraisal reports the names of any individuals or firms that provide assistance enabling you to prepare the report unless the information is general in nature. (Refer to Case Interpretations #11-2 and #11-3)

Don't accept an appraisal assignment for which you are not qualified unless you disclose your lack of experience to the client and obtain qualified assistance. (Refer to Case Interpretation #11-5)

Consider all pertinent factors when making an appraisal. (Refer to Case Interpretation #11-6)

Remember that you must avoid conflicts of interest (e.g., listing and appraising the same property in a transaction) which might prevent you from acting as a disinterested third party rendering an unbiased appraisal, review, or consulting service. (Refer to Case Interpretation #11-10)

The fact that you have previously appraised real property does not preclude you from subsequently listing it if requested to do so by the seller. (Refer to Case Interpretation #11-11)

Article 12

REALTORS® shall be careful at all times to present a true picture in their advertising and representations to the public. REALTORS® shall also ensure that their professional status (e.g., broker, appraiser, property manager, etc.) or status as REALTORS® is clearly identifiable in any such advertising.

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In marketing properties, REALTORS® use advertising to inform the public about listings and to induce interest in them. REALTORS® are obligated to present a "true picture" in their advertising and in all representations to the public. A "true picture" is truthful, accurate advertising, and nothing less. Descriptions that go beyond "puffing" may mislead the public. Statistics indicating a REALTOR®'s sales volume and comparisons with other firms can be impressive, but if they are inaccurate, untrue, or misleading, their use injures the public and violates Article 12.

REALTORS® must always disclose their status as real estate professionals in their advertisements. This may be accomplished by including the terms "REALTOR®," "REALTORS®," or "REALTOR-ASSOCIATE®," or by disclosing their status as a licensed broker, appraiser, property manager, or other real estate professional.

In advertising listed property, REALTORS® must also disclose the name of their firm so that the public will be aware that they are dealing with the property owner's agent. Further, the REALTOR® must ensure that all brokers and salespeople affiliated with the firm include the firm's name in their advertisements of listed properties.

When advertising unlisted property in which the REALTOR® has any ownership interest, the advertisement must disclose the interest and the existence of Board membership or real estate licensure.

Services and products should be described as "free" or "free of charge" only when all terms governing availability are clearly disclosed at the same time as when the "free" product or service is offered. (Refer to Standard of Practice 12-1 and Case

Interpretations #12-7 and #12-10)

You may represent your services as “free” or without cost even if you expect to receive compensation from a source other than your client provided that the potential for you to obtain a benefit from a third party is clearly disclosed at the same time. (Refer to Standard of Practice 12-2)

If you offer incentives to list, sell, purchase, or lease property, be sure the terms and conditions of your offer are clear and readily understandable. (Refer to Standard of Practice 12-3)

Obtain the client’s permission to advertise the client’s property. Never advertise listed property at a price other than that agreed to by the client. (Refer to Standard of Practice 12-4)

All advertisements of listed property must include the name of your firm. (Refer to Standard of Practice 12-5)

When acting as a principal in the sale or lease of your own property, disclose your status as a REALTOR® or as a licensee so that prospective purchasers or tenants will be aware of your special knowledge and expertise. (Refer to Standard of Practice 12-6 and Case Interpretation #12-8)

Only listing brokers or cooperating (selling) brokers have the right to advertise that they “sold” the property. Either the listing broker or the cooperating broker may claim to have “sold” the property upon acceptance of a purchase offer by the seller. However, prior to closing, a cooperating broker may only post a “sold” sign with the consent of the listing broker. (Refer to Standard of Practice 12-7 and Case Interpretations #12-11, #12-12, and #12-13)

Remember that “For Sale” signs are a form of advertising subject to the requirements of Article 12. (Refer to Case Interpretation #12-1)

Avoid exaggeration and dishonesty in your advertisements. Strive to present a “true picture.” (Refer to Case Interpretations #12-2, #12-3, and #12-4)

Advertising claims should not be based upon uncertain or unpredictable factors over which you have little or no control. (Refer to Case Interpretation #12-4)

While a “sold” sign may be placed on a property when an offer to purchase has been accepted, it should be removed if the transaction falls through. (Refer to Case Interpretation #12-5)

Don’t mislead the public into believing they can save money by purchasing from you if that is not the case. (Refer to Case Interpretation #12-6)

Avoid false advertising. (Refer to Case Interpretation #12-9)

Remember to observe Article 12’s “true picture” mandate when advertising property as being “offered exclusively.” (Refer to Case Interpretation #12-14)

“Linking” to other Internet Web sites, even if those sites include listings of other real estate professionals, does not constitute advertising of the type contemplated by Article 12. (Refer to Case Interpretation #12-15)

You cannot copy information from the Internet Web sites of other real estate professionals and publish it on your Web site without the listing broker’s permission even if the information on your Web site identifies the listing broker. (Refer to Case Interpretation #12-16)

Article 12’s “true picture” assurance bars the use of misleading Internet domain names, including use of the names of competitors or their firms. (Refer to Case Interpretation #12-17)

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.

.....

The REALTOR® is prohibited by the law and by the Code from engaging in the unauthorized practice of law. The REALTOR® has an affirmative obligation to recommend the use of legal counsel to clients and customers when their interests require it.

If the REALTOR® is also an attorney, Article 13 would not preclude the offering of legal services in a manner consistent with the standards of the Bar Association. However, REALTORS® must be mindful of their agency relationship and the duties owed to clients and to customers, and must avoid all conflicts of interest.

Article 13 encourages respect for the law and protects clients and customers from well intended but potentially misguided “legal advice” from those unqualified to provide it.

Refrain from any activities that could be construed as the unauthorized practice of law. (Refer to Case Interpretation #13-1)

Even when standard form contracts are utilized, questions concerning the meaning or effect of any provision should be addressed to competent legal counsel. (Refer to Case Interpretation #13-2)

Advise clients and customers to seek legal review of any contractual agreement where, in your judgment, the client or customer needs legal guidance. (Refer to Case Interpretation #13-3)

Avoid expressions of opinion which may be misconstrued as a definitive legal opinion. (Refer to Case Interpretation #13-3)

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, the REALTOR® shall place all pertinent facts before the proper tribunal 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.

.....

The Code of Ethics is meaningful because it is respected and enforced. Article 14 establishes an absolute obligation to cooperate with the Board when charged with unethical practice, or when asked to present evidence in any professional standards proceeding or investigation. In either event the REALTOR® must place all pertinent facts before a proper tribunal.

REALTORS® are required to take an active part in Code enforcement. If this were not so, the Code would lose its relevance and influence in promoting and enforcing high standards of professional conduct.

Boards must provide due process in professional standards proceedings, as well as in enforcement of the Board’s bylaws, and other rules and regulations. Due process requires as much factual support as can be reasonably ascertained to substantiate violations of the Code or arbitration awards or failure to abide by other membership obligations. With fairness established in the Board’s procedures, and with the facts in hand, the Board can respect and protect the rights of all its members while strictly enforcing the Code.

If, in connection with a professional standards proceeding or an investigation, a REALTOR® is requested by the Board to answer a charge or to appear as a witness, the REALTOR® must do so, and must take no action to disrupt or obstruct such processes.

A REALTOR® may not be subject to disciplinary proceedings before more than one Board, or affiliated institute, society, or council in which the REALTOR® holds membership, for alleged violations of the Code of Ethics relating to the same

transaction. (Refer to Standard of Practice 14-1)*

Avoid unnecessary discussions of the details of any hearing, appeal, or review. (Refer to Standard of Practice 14-2)

A REALTOR® may not attempt to frustrate the Board’s disciplinary or investigative processes by filing or threatening to file suits against parties to the proceeding or their witnesses alleging slander, libel, or defamation based on the filing of an ethics complaint or an arbitration request. (Refer to Standard of Practice 14-3)

REALTORS® should not attempt to obstruct or disrupt the investigative or disciplinary proceedings of a Board by filing multiple ethics complaints based on the same transaction. (Refer to Standard of Practice 14-4)

Cooperate with those charged with enforcing the Code by providing requested information to any duly authorized tribunal in accordance with the Board’s procedures. (Refer to Case Interpretation #14-1)

Respond fully and accurately to questions from professional standards panel members. (Refer to Case Interpretation #14-2)

Remember that you may be required to respond to charges of unethical conduct, regardless of who is the complainant. (Refer to Case Interpretation #14-3)

**Also see Professional Standards Policy Statement 42, Previously dismissed ethics complaints/arbitration requests, Code of Ethics and Arbitration Manual.*

Article 15

REALTORS® shall not knowingly or recklessly make false or misleading statements about competitors, their businesses, or their business practices.

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Article 15 logically flows from the REALTOR®’s duty established in Article 12 “to present a true picture in . . . representations.” This includes comparisons with competitors, and comments or opinions offered about other real estate professionals.

Article 15 is not intended to limit or inhibit the free flow of commercial information that is often of value to potential users of the many and varied services that REALTORS® provide. Article 15 requires that REALTORS® make good faith efforts to ensure that statements and representations they make, including those made in their advertising, are truthful and accurate.

REALTORS® should consider that while truthfulness is the ultimate measuring stick of Article 15, little is gained, and often much is lost, through negative, non-constructive criticism which can impair the cooperative efforts that make the service provided by REALTORS® so valuable to the public.

Do not knowingly or recklessly file false or unfounded ethics complaints. (Refer to Standard of Practice #15-1)

Good faith representations which are unknowingly inaccurate that are based on generally reliable information do not violate Article 15. (Refer to Case Interpretation #15-1)

Do not rely on normally reliable sources of information when information is obviously inaccurate. (Refer to Case Interpretation #15-2)

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.

.....

Competition among brokers to provide appraising, brokerage, managing, leasing, syndicating, or counseling services is extremely intense until the prospective client enters into a binding agreement for such services. When an exclusive relationship is

created, the competition shifts to the search for buyers or to otherwise fulfill the agreement. At this point Article 16 comes into play.

Once clients have selected a particular broker to serve their interests, the competition that prevailed earlier ceases and cooperation takes its place. Cooperation between REALTORS® is the normal professional practice that is contemplated when it is in the best interest of the client. Generally, cooperation exists in great measure, since it benefits the clients and customers in virtually every case. REALTORS® must carefully avoid taking any action inconsistent with the exclusive relationship between the seller and the listing broker and avoid any action that could be construed to induce a breach of the contractual agreement made with the client. The client has made a decision and is entitled to the benefit of his or her bargain. This includes relief for the duration of the relationship from direct overtures of other REALTORS® seeking to interest the seller or lessor in the services they provide. This limited protection from direct solicitation does not preclude general advertising efforts by other REALTORS®, but does prohibit efforts to induce the breach of an existing contract so that another REALTOR® can substitute himself in the place of the current listing broker.

In the case of an exclusive listing, to respect the exclusivity of the listing broker's relationship, other REALTORS® must be able to determine with certainty that an exclusive listing exists. If the listing broker refuses to disclose the nature (type) and duration of a listing, Article 16 recognizes the REALTOR®'s right to contact the seller or lessor directly to obtain this essential information. Under these circumstances, the REALTOR® may also discuss the terms of a future listing on the property or may enter into a listing to become effective upon the expiration of the current listing.

Article 16 also acknowledges the right of property owners whose properties are listed exclusively to contact other REALTORS® if they are not satisfied with the listing broker's performance. A REALTOR® is free to discuss the terms of a future listing on the property and may enter into a listing to become effective upon the expiration of the current listing if the discussion and contact were initiated by the property owners.

Actions inconsistent with the exclusive relationship of the listing broker can occur when a REALTOR® provides unauthorized information to a prospective purchaser or tenant. It can occur when a cooperating broker fails to obtain permission to show the property from the listing broker, but contacts the owner directly. It can occur when a cooperating broker takes an offer directly to the client without the knowledge and consent of the listing broker. It can occur when a cooperating broker uses the showing of a property as an opportunity to make unsolicited, derogatory remarks about the listing broker that are untrue.

REALTORS® are obligated to respect the exclusive representation or exclusive brokerage relationship agreements of other REALTORS® and to work through them as long as the exclusive relationship remains in effect. Professionalism, integrity, and courtesy require it and buyers/tenants and sellers/lessors benefit from it.

Aggressive, innovative marketing practices are not inherently unethical, but any business practice must comply with the other requirements imposed by the Code. (Refer to Standard of Practice 16-1)

Recognize that Article 16 does not prohibit general advertising, including telephone canvassing, mailings, or distributions to all property owners in a given area or to all members of a class, organization, or group, even though one or more of the recipients may currently be party to an exclusive listing agreement. (Refer to Standard of Practice 16-2 and Case Interpretations #16-3 and #16-9)

A REALTOR® is not prohibited from offering to provide unrelated services to the client of another REALTOR® or from offering the same type of service for property not subject to other brokers' exclusive agreements. (Refer to Standard of Practice 16-3)

When another REALTOR® requests information from you concerning one of your listings, you are encouraged to disclose the type of listing you have and its expiration date so that the other REALTOR® can avoid an inadvertent interference in your

relationship with your client. If, for any reason, you choose not to share that information, you should be aware that your refusal will entitle the other REALTOR® to obtain it directly from your client and to discuss the terms of a future listing with the client or to take a listing to become effective upon the expiration of any current listing. (Refer to Standard of Practice 16-4 and Case Interpretations #16-7 and #16-10)

When another REALTOR® requests information from you concerning one of your buyers/tenants who is subject to an exclusive buyer/tenant agreement, you are encouraged to disclose the type of agreement you have and its expiration date so that the other REALTOR® can avoid an inadvertent interference in your relationship with your client. If you choose not to share that information, you should be aware that your refusal will entitle the other REALTOR® to directly obtain the information from your client and discuss the terms of any future buyer/tenant agreement to become effective upon expiration of any existing exclusive buyer/tenant agreement. (Refer to Standard of Practice 16-5)

Recognize that if the discussion is initiated by the property owner, a REALTOR® may discuss taking a future listing on a property currently listed exclusively with another REALTOR® and may take a listing to become effective upon the expiration of the current listing. (Refer to Standard of Practice 16-6)

Be aware that a prospect's prior selection and use of a REALTOR® in previous transactions cannot prevent other REALTORS® from trying to obtain that individual's future business. (Refer to Standard of Practice 16-7)

Understand that once a listing has expired, other REALTORS® are free to solicit the listing. (Refer to Standard of Practice 16-8 and Case Interpretation #16-5)

Before accepting a listing, use your best efforts to make sure the property is not already currently listed on an exclusive basis with another broker. (Refer to Standard of Practice 16-9)

If you are acting as the buyer or tenant representative or broker, you must disclose that fact to the listing broker the first time you contact the listing broker, such as when making an appointment to show the property. (Refer to Standard of Practice 16-10)

Advise the seller or landlord at your first contact if you are acting as a buyer's or tenant's representative or broker and the property is unlisted. (Refer to Standard Practice 16-11)

At the first practical opportunity, disclose to buyers/tenants that you are acting on behalf of the seller/landlord or subagent of the listing broker. (Refer to Standard of Practice 16-12)

When you are aware that a principal has retained an exclusive representative or broker, deal through that representative or broker, and not directly with the principal except when the representative or broker has authorized direct contact unless the client has initiated dealings with you. Ask prospects if they are party to an exclusive representation agreement before providing substantive services. (Refer to Standard of Practice 16-13 and Case Interpretations #16-13 and 16-14)

Before you exclusively list or lease a property which is not currently listed or leased with another broker on an exclusive basis, you have an obligation to advise the client of the potential liability for multiple commissions. (Refer to Standard of Practice 16-14)

Be aware of your obligation to compensate the cooperating broker (principal) in a cooperative transaction rather than any sales licensees affiliated with the cooperating broker without the prior express knowledge and consent of the cooperating broker. (Refer to Standard of Practice 16-15)

Do not use the terms of an offer to purchase or lease, or the threat of withholding an executed offer to purchase or lease, to attempt to obtain additional compensation from the listing broker. (Refer to Standard of Practice 16-16)

Obtain permission from the listing broker before giving information on the broker's listings to another broker. (Refer to Standard of Practice 16-17)

Obtain the listing broker's consent before using information about the listing broker's listing to create a referral prospect or a buyer prospect. (Refer to Standard of Practice 16-18 and Case Interpretation #16-8)

Obtain the client's consent before placing signs for sale, rent, or lease on property. (Refer to Standard of Practice 16-19)

Prior to or after terminating your relationship with your current firm, do not induce clients of that firm to cancel exclusive contractual agreements between the client and that firm. (Refer to Standard of Practice 16-20)

Avoid inviting cooperation by a third broker without the consent of the listing broker. (Refer to Case Interpretation #16-1)

While unintentional contact with another REALTOR®'s client is not unethical, subsequent contacts prior to the expiration of the other REALTOR®'s listing can be unethical. (Refer to Case Interpretation #16-2)

Don't put your interest in a brokerage commission ahead of your responsibilities to your clients, even if the sale is made to a customer to whom you have shown the property but were unable to negotiate a sale. (Refer to Case Interpretation #16-4)

Be aware that general advertisements by other REALTORS® do not violate the exclusive relationship of the listing broker when not directed towards the owner of the particular property listed. (Refer to Case Interpretation #16-9)

Determine the amount of subagency compensation being offered before commencing your efforts as a subagent. Do not try to modify the amount offered by making the subagency compensation an integral term of an offer to purchase. (Refer to Case Interpretation #16-15)

When acting as the agent or broker of a buyer, do not suggest or recommend that the buyer use the terms of a purchase offer to attempt to modify the terms and conditions of the listing broker's contract with the seller. (Refer to Case Interpretation #16-16)

As the buyer's agent or broker, you can suggest or recommended that your client ask the seller to pay some or all of your commission. (Refer to Case Interpretation #16-17)

As a subagent, do not negotiate directly with the listing broker's client unless you have been authorized to do so by the listing broker. (Refer to Case Interpretation #16-18)

Article 17

In the event of contractual disputes or specific noncontractual 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 submit the dispute to arbitration in accordance with the regulations of their Board or Boards rather than litigate the matter.

In the event clients of REALTORS® wish to arbitrate contractual disputes arising out of real estate transactions, REALTORS® shall arbitrate those disputes in accordance with the regulations of their Board, provided the clients agree to be bound by the decision.

The obligation to participate in arbitration contemplated by this Article includes the obligation of REALTORS® (principals) to cause their firms to arbitrate and be bound by any award.

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Generally, arbitration is used to settle disputes between REALTOR® principals of two different real estate firms concerning entitlement to a commission or to cooperating brokers' compensation. Entitlement is determined on the basis of determining the "procuring cause." In most instances, the decision awards the disputed amount to one party or the other. In certain cases, and if not precluded by state law, the disputed amount may be divided between the parties if the arbitrators determine that both parties contributed, without interruption, to the successful transaction.

Article 17 also requires a REALTOR® to arbitrate disputes with clients, if the client requests the arbitration and agrees to be bound by the decision.

The Code of Ethics and Arbitration Manual advises Boards and State Associations to determine whether (1) state law authorizes prior agreements to arbitrate future disputes in advance of a dispute or only after the dispute occurs or (2) if state law does not recognize binding arbitration at all. In the latter case, Boards can only offer arbitration and cannot require REALTORS® and REALTOR-ASSOCIATE®s to participate in it.

The Code of Ethics and Arbitration Manual also specifies three circumstances under which REALTORS® must submit to arbitration.

- (1) Arbitration of a dispute between REALTOR® principals of different firms.
- (2) Arbitration between REALTORS® (other than principals) or REALTOR-ASSOCIATE®s in different firms, provided the REALTOR® principals join in the arbitration.
- (3) Arbitration between REALTOR® principals and their clients when the client or REALTOR® invokes the arbitration and the client agrees to be bound by the decision.

The Manual also specifies three circumstances under which the REALTOR®'s participation in arbitration is voluntary:

- (1) Arbitration between REALTOR® principals and REALTORS® and REALTOR-ASSOCIATE®s (nonprincipals) who are or were affiliated with the same firm, provided each party voluntarily agrees to the arbitration in writing. This applies to disputes arising when the parties are, or were, affiliated with the same firm, irrespective of the time the request is made for such arbitration.
- (2) Arbitration between a REALTOR® principal with a nonmember broker, provided each party agrees in writing to be bound by the decision. However, it is the member's choice whether the member will submit to arbitration with a nonmember broker who is not an MLS Participant. A nonmember broker who is not an MLS Participant is not entitled to invoke the arbitration facilities of a Board of REALTORS®.
- (3) Arbitration between a REALTOR® principal and a customer if a written contractual relationship has been created by the REALTOR® principal between a customer and a client, and provided all parties to the dispute (i.e., the customer and the REALTOR®) agree in writing to arbitrate the dispute.

REALTORS® and REALTOR-ASSOCIATE®s who participate in the Board's MLS or otherwise access MLS information through any Board in which they do not hold membership have the same rights and responsibilities as any Board member relative to the Code of Ethics.

For more detailed information on arbitration procedures, refer to the Code of Ethics and Arbitration Manual which includes Case Interpretations.

Remember that Article 17 requires REALTORS® to arbitrate their disputes. If you file suit against a REALTOR® when a properly arbitrable matter exists and refuse to withdraw the suit and participate in arbitration when requested, you may be subject to disciplinary action. (Refer to Standard of Practice 17-1 and Case Interpretation #17-1)

Parties to an otherwise arbitrable matter may agree not to use the Board's arbitration facility without becoming subject to a charge of violating Article 17 provided they advise the Board in writing of their decision. (Refer to Standard of Practice 17-2)

Under certain circumstances, REALTORS® are obligated to participate in interboard arbitration or in arbitration conducted by the State Association. (Refer to Case Interpretations #17-2 and #17-10)

Once a matter has been arbitrated by a Board of REALTORS®, neither party may initiate a second arbitration before a different Board based on the same issue. (Refer to Case Interpretation #17-3)

Have a clear understanding of your rights and obligations, related to arbitration, as established by Article 17 and your Board's procedures. (Refer to Case Interpretations #17-4, #17-5, #17-6, and #17-11)

REALTORS® are free to bring alleged violations of law or regulations to the attention of appropriate enforcement bodies without fear of retaliation. (Refer to Case Interpretation #17-7)

REALTORS® cannot disclaim their personal obligations under Article 17 by asserting that the transaction was consummated through their corporation. (Refer to Case Interpretation #17-8)

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. (Refer to Standard of Practice 17-3 and Case Interpretations #17-12 and #17-13)

There are five specific non-contractual disputes that are subject to arbitration pursuant to Article 17. (Refer to Standard of Practice 17-4)

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