



CAMPBELL & BRANNON

ACRISURE® PARTNER

Code of Ethics

Continuing Education Class

WWW.CAMPBELLANDBRANNON.COM/CODEOFETHICS

Objectives

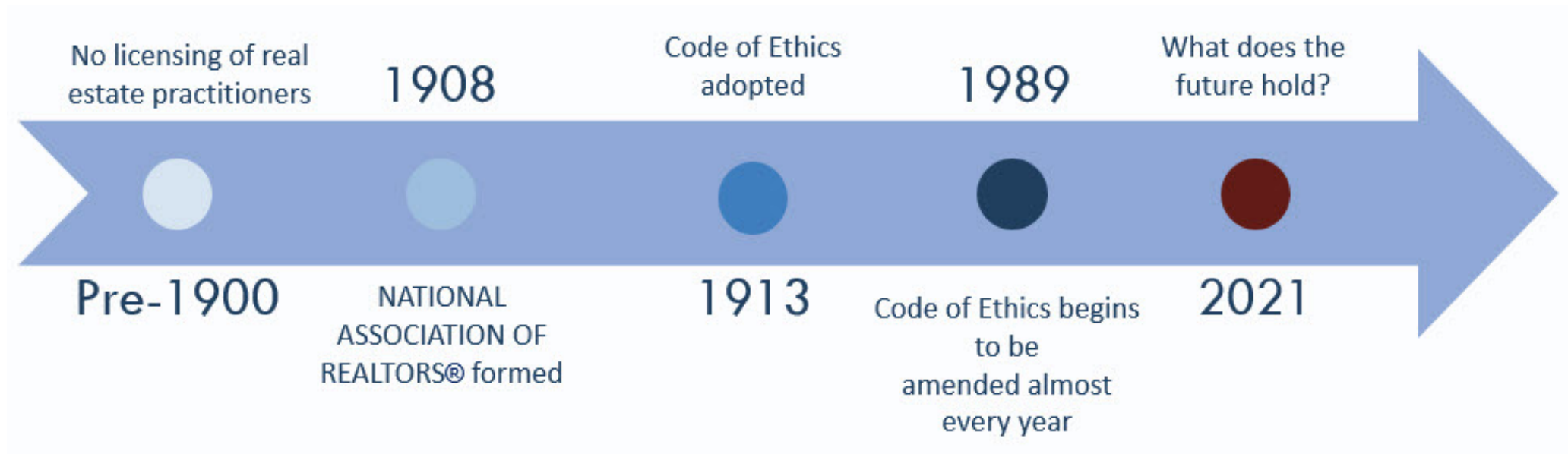
- 1) Identify key aspirational concepts found in the Preamble to the NATIONAL ASSOCIATION OF REALTORS® Code of Ethics
- 2) Describe the structure of the REALTORS® Code of Ethics
- 3) Describe the concepts established in Articles 1, 2, 3, 11, and 16 and identify possible violations
- 4) Identify discriminatory speech and conduct that violates Article 10
- 5) Describe the professional standards process for enforcing the Code, including arbitration
- 6) Identify critical elements of due process as they relate to Code enforcement



History of the Code



A Timeline of the Code



History - What is the Code?

- The Code is an ever-changing document that evolves over time to maintain the high standards in real estate.
- It is a REALTORS® commitment to professionalism.
- Regardless of what broker or what specialty a real estate agent practices, **all** REALTORS® are bound by the Code of Ethics.



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History – Embracing Change!

- Code of Ethics serves as a reminder of how our words and actions reflect on the industry as a whole
- By embracing change, REALTORS® demonstrate respect for clients, peers, and the public
- Code has evolved throughout its existence to prohibit discrimination
- Standard of Practice 10-5 introduced in 2020
- Protected classes face many barriers to homeownership
- Understand basic definitions of hate speech, epithets, slurs

History – Ethics & The Code

- The Code of Ethics includes:
 - Industry-wide standards
 - Company policy
 - Individual moral values
- Regardless of real estate business specialty, all REALTORS® are bound by the Code of Ethics.





Code Structure



Structure – Preamble & Aspirational Concepts

- 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.

Structure – There are 17 Articles



Each section is comprised of Articles, which are broad statements of ethical principles



Only Articles of Code may be violated. Thus, one alleging an ethics violation must cite a particular Article



Structure – Standards of Practice

- Support, interpret, and amplify each Article
- May not be charged, but cited in support of an alleged violation



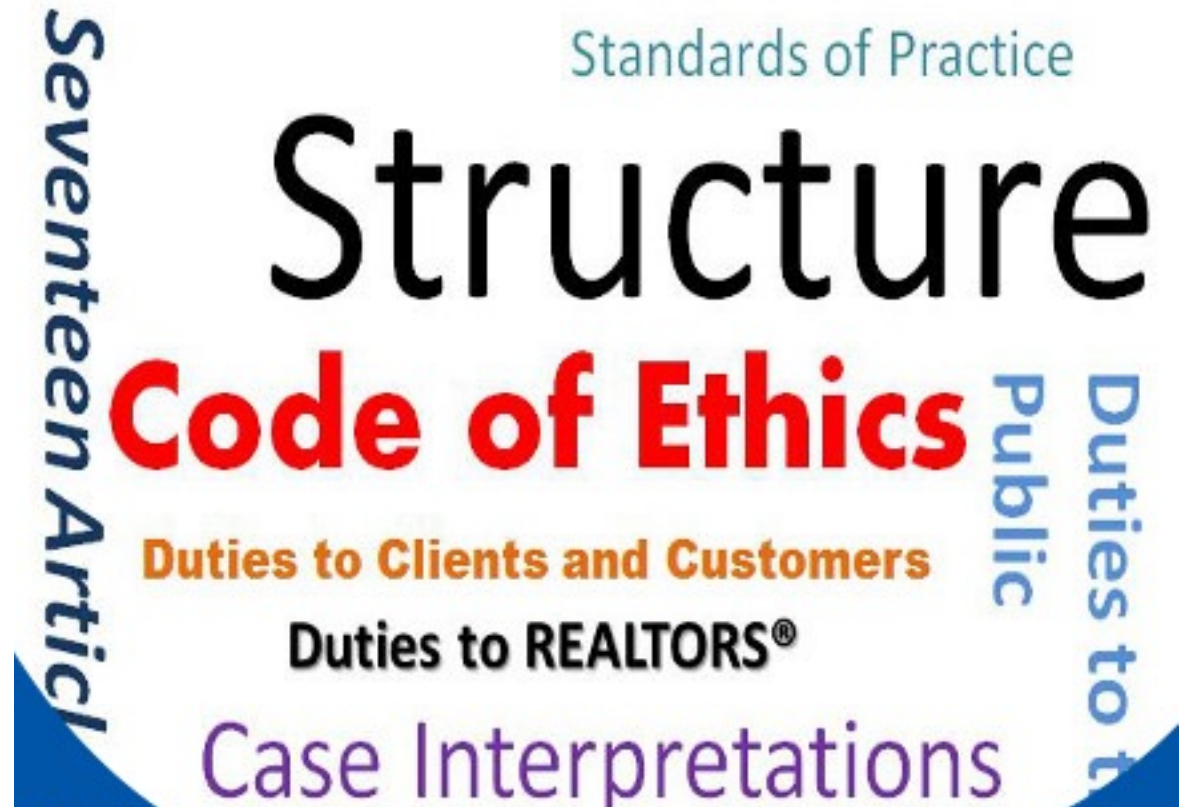
Structure – Official Case Interpretations

- Factual, specific applications for each Article and/or Standard of Practice of the Code.



Structure – Three Main Sections

1. Duties to Clients and Customers
2. Duties to the Public
3. Duties to Other REALTORS®



Article 1 – Duties to Clients and Customers

- 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.

Article 2 – Duties to Clients and Customers

- 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.

Article 3 – Duties to Clients and Customers

- 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

Article 4 – Duties to Clients and Customers

- 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.

Article 5 – Duties to Clients and Customers

- 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 – Duties to Clients and Customers

- 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.

Article 7 – Duties to Clients and Customers

- 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 8 – Duties to Clients and Customers

- 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 – Duties to Clients and Customers

- 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.

Article 10 – Duties to the Public

- REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, disability, 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, disability, familial status, national origin, sexual orientation, or gender identity.
- REALTORS®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity.

Article 11 – Duties to the Public

- 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.

Article 12 – Duties to the Public

- 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.

Article 13 – Duties to the Public

- 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 – Duties to the Public

- 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.

Article 15 – Duties to Realtors©

- REALTORS ® shall not knowingly or recklessly make false or misleading statements about other real estate professionals, their businesses, or their business practices.

Article 16 – Duties to Realtors®

- 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

Article 17 – Duties to Realtors©

- 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 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.

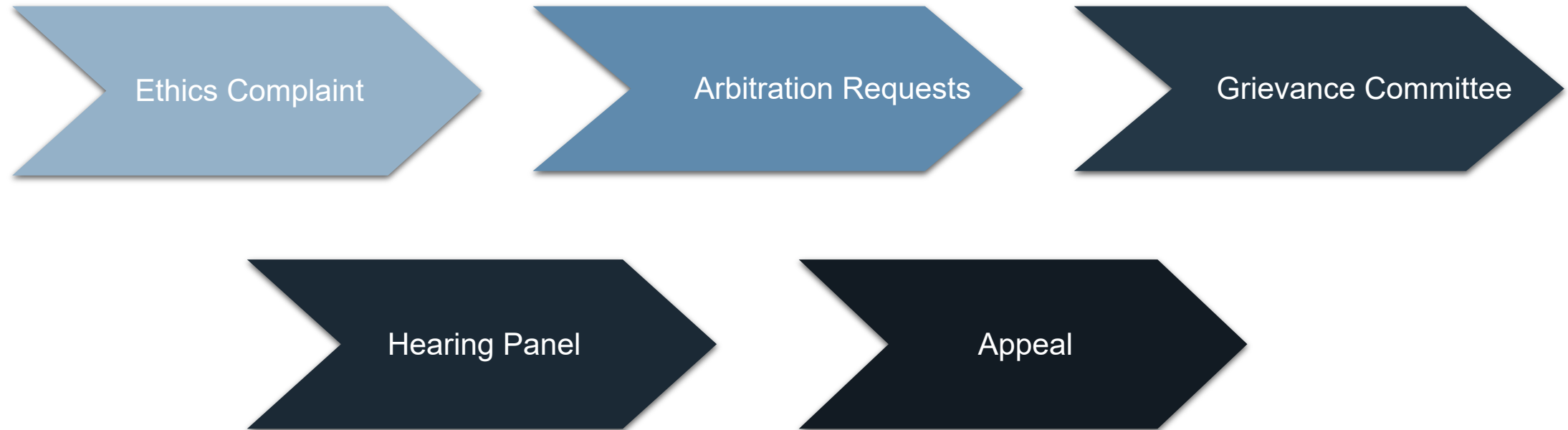


Arbitration & Mediation



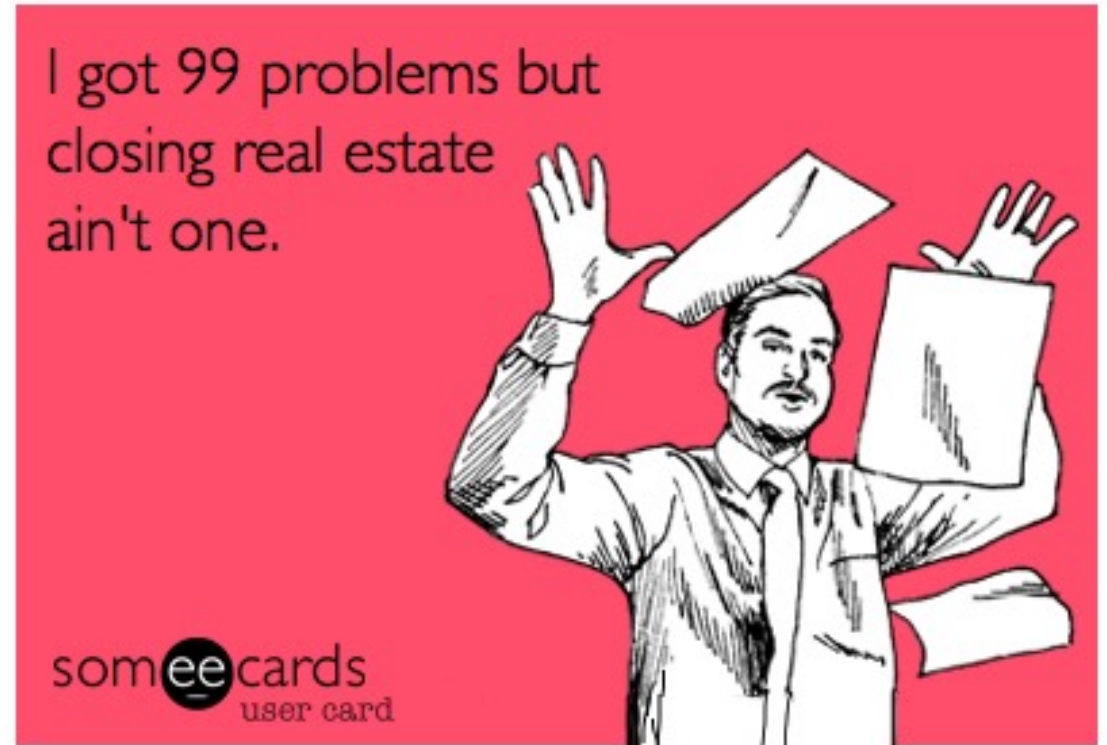
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The Arbitration Process



Arbitration Process – Step 1 – Ethics Complaint

- Ethics complaints deal with the perceived unethical “actions” or “conduct” of a REALTOR®



Arbitration Process – Step 2 – Arbitration Request

- Arbitration requests must fall within the parameters of Article 17
 - Article 17-4: Contractual Disputes involving money arising out of their relationship as REALTORS®.
- Arbitration must be requested within 180 days of the later:
 - The closing; or
 - The realization that a dispute existed

Arbitration Process – Step 2 – Arbitration Request

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)

Arbitration Process – Step 2 – Arbitration Request

- After an arbitration hearing, the panel may award an amount to the prevailing party
- **HOWEVER**, this amount cannot be more than what was requested in the party's request for arbitration
- They can award less than the amount requested

Arbitration – Step 3 – Grievance Committee

- The Grievance Committee reviews ethics complaints and arbitration requests to determine if a full due process hearing is warranted.

ETHICS

If the allegations are taken as true on their face, is it possible that a violation of the Code occurred?

ARBITRATION

Is it related to a monetary dispute arising out of a real estate transaction that is subject to arbitration?

Arbitration – Step 3 – Grievance Committee

- The Committee ensures that complaints and arbitration requests are in proper form and:
 - Proper parties, Articles, and Standards of Practice are named
 - Deadlines are followed
 - There is no litigation or investigation pending involving the same event that could cause a delay
 - The amount involved is within the range for arbitration and if it is mandatory or voluntary

Arbitration – Step 3

Grievance Committee

- Grounds for a Grievance Committee appeal?
- If the Committee dismissed an ethics complaint or arbitration request
- Classification of the dispute as “voluntary” or “mandatory”



Arbitration – Step 4 – Hearing Panel

- A full “due process” hearing
- Fair, unbiased, and impartial
- Determine whether a violation of the Code occurred or an award should be rendered
- The named violator is deemed INNOCENT until provide guilty of violation the Code
- The burden of proof is “clear, strong, and convincing.”



Arbitration – Step 4 – Hearing Panel

What happens at a hearing?

1. Parties make an opening statement briefly explaining their basic position
2. Parties present their respective cases, including any witnesses.
3. Parties and witnesses cross-examined by the other party and panel
4. Supporting documents & information presented
5. Parties make closing arguments
6. Decision made based on the evidence

Arbitration – Step 4 – Hearing Panel

Common Authorized Discipline

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

Arbitration – Step 5 - Appeal

- The fact that a hearing panel found no violation of the Code of Ethics is not appealable.
- The appeal panel's decision is final.
- 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 Mediation Process

- Mediation is an alternative to Arbitration and may help REALTORS® and their clients resolve the dispute
- Must be offered by an Association as an alternative to arbitration. However, if mediation is unsuccessful the parties are still free to arbitrate.



Mediation v. 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

- 1 Explain process
- 2 Make statements
- 3 Identify issues
- 4 Cross-talk
- 5 Caucus
- 6 Find solutions
- 7 Reach agreement



Ombudsman



What is an Ombudsman?

- An Ombudsman is an individual appointed to **resolve disputes** through constructive communication and advocating for consensus and understanding.

The Role of an Ombudsman

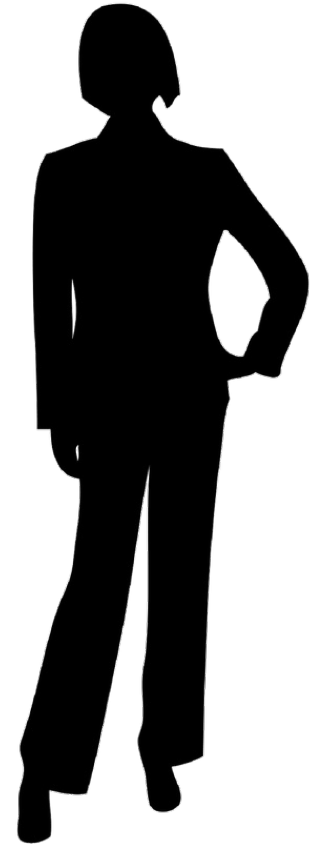
- The ombudsman's role is primarily communication and conciliation, not adjudication.

Ombudsmen DO:

- Anticipate, identify, and resolve misunderstandings and disagreements before matters ripen into disputes and charges of unethical conduct.

Ombudsmen DO NOT:

- Determine whether ethics violations have occurred or who is entitled to what amount of money.



What Disputes does an Ombudsman Hear?

General questions about real estate practice

Transaction details

Ethical practices

Enforcement issues

Questions and complaints about members

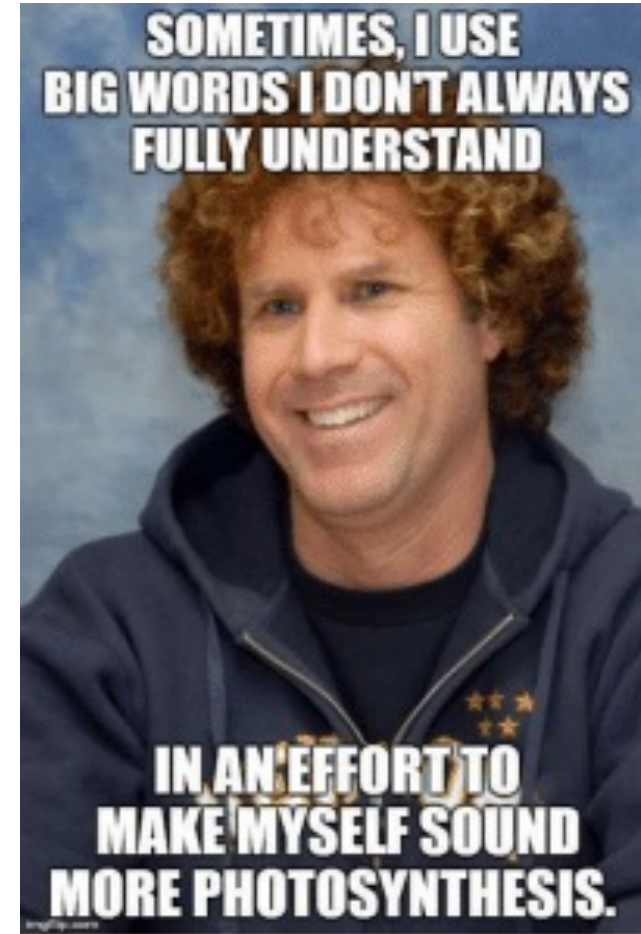
Ombudsman

An Ombudsman will NOT:

1. Adjudicate the issues presented; or
 2. Address complaints alleging violations of the public trust (newly defined in 2020; Article IV).
- The Ombudsman may refer cases involving the violation of public trust to the Grievance Committee.

Ombudsman

- Complainants do not have to accept the services of an ombudsman
- The formal ethics complaint will continue to be processed until withdrawn by the complainant
- The complainant may resubmit the original complaint if they refuse to comply with the terms of a mutually agreed on resolution



Ombudsman & Referrals

- Ombudsmen **CANNOT** refer concerns about **conduct of parties** to:
 - the Grievance Committee
 - the state real estate licensing authority
 - any other regulatory body
- The prohibition is intended to **ensure impartiality and confidentiality and** avoid the possible appearance of **bias**.





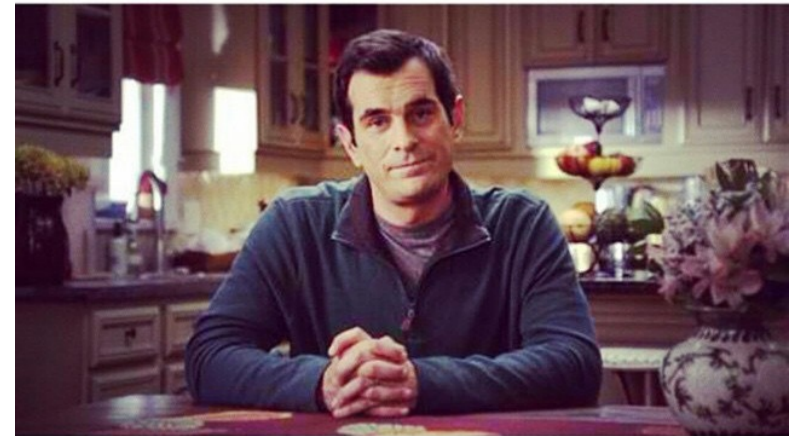
Real Estate License



Real Estate License

- Requirements to Obtain Your Georgia Salesperson License:
 - Must be 18 years old
 - Have a high school or equivalent diploma
 - Complete the required education
 - Complete a background check and lawful presence verification
 - Pass the Georgia salesperson licensing exam.

Can I sit around an empty house and wait for someone?



Baby, I'm a REALTOR®. I have a license for that.



Real Estate License

The law provides that the Commission/Board shall grant licenses:

- *“ . . . only to persons who bear a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of a licensee in such manner as to safeguard the interest of the public and only after satisfactory proof of such qualifications has been presented to the Commission/Board.” OCGA 43-40-15*



Real Estate License

- The absence of any prior criminal conviction or prior disciplinary action on another professional license gives the applicant a presumption of a good reputation for honesty, trustworthiness, and integrity.
- When an applicant has a prior record, they must provide additional proof that he or she currently possesses the requisite good reputation since the prior record is proof that at least at one time the applicant lacked that good reputation.
- The Commission's/Board's completion and review of its background investigations lead it to deny issuing a license to about 15% of applicants who report a prior record.

Real Estate License – Grounds for Denial

The reasons for denial/suspension include, but are not limited to:

- Felony Convictions
- Misdemeanor convictions that are crimes of moral turpitude
 - Examples: forgery, embezzlement, obtaining money under false pretenses, theft, extortion, or conspiracy to defraud
- Lack of passage of time since previous ethical violation
- Failure to disclose all criminal offenses on the application
- Inadequate character reference

Real Estate License - Denial

An applicant or licensee may be denied or lose their license based on:

- Noncompliance with an order for child support
- Borrower in default, who is not in satisfactory repayment status
- Failure to notify (within 60 days) of felony conviction or misdemeanor of moral turpitude



Real Estate License

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- When an applicant has a prior record, they must provide additional proof that he or she currently possesses the requisite good reputation since the prior record is proof that at least at one time the applicant lacked that good reputation.
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Recent Code Revisions



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Code Revisions

- On November 13, 2020 NAR Board of Directors approved new and amended policies
 - Policy Statement 29 was amended and expanded
 - NEW standard of practice 10-5
 - Standard of Practice 10-5 REALTORS® must not use harassing speech, hate speech, epithets, or slurs based on race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity. (Adopted and effective November 13, 2020, Amended 1/23)
 - Revised definition of “Public Trust”

Code Revisions

- On January 2022, Standard of Practice 12-1 adopted in response to recent DOJ investigations and class action lawsuits.
 - Standard of Practice 12-1 REALTORS® must not represent that their brokerage services to a client or customer are free or available at no cost to their clients, unless the REALTOR® will receive no financial compensation from any source for those services. (Amended 1/22)

Code Revisions

On January 2023, NAR Board of Directors approved new and amended policies

- Added “sexual orientation” and “gender identity” to Standard of Practice 3-11, Article 10, Standard of Practice 10-5
 - **Standard of Practice 3-11** REALTORS® may not refuse to cooperate on the basis of a broker’s race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity. (Adopted 1/20, Amended 1/23)
 - **Article 10** REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, disability, 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, disability, familial status, national origin, sexual orientation, or gender identity. (Amended 1/23). REALTORS®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity. (Amended 1/23).
 - **Standard of Practice 10-5** REALTORS® must not use harassing speech, hate speech, epithets, or slurs based on race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity. (Adopted and effective November 13, 2020, Amended 1/23)
- Updated Standard of Practice 3-9 to include “seller” to compliment “owner”

Code Revisions – Policy Statement 29

- Amended and expanded the applicability of the code to ALL REALTOR® activities
 - Previously Article 10 did not apply to discriminatory and abhorrent conduct and speech unless it was related to a real estate activity or transaction
- Updated Policy Statement 29 now applies Article 10 to ALL activities



DISABILITY



RACE



SEX



COLOR



NATIONAL
ORIGIN



RELIGION



FAMILY
STATUS

Code Revisions – Standard of Practice 10-5

“REALTORS® must not use harassing speech, hate speech, epithets, or slurs based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity.”

- Rationale: Bias against protected classes posted publicly could result in REALTORS® not taking clients from a protected class or treat them equally – this violates Fair Housing



Code Revisions – Public Trust Defined

- The definition of “public trust” expanded to include: 1) ALL discrimination against protected classes under Article 10; 2) ALL fraud; and 3) limits on the reporting requirement to final ethics decisions involving real estate activities and transactions.
 - As a result, real estate related discrimination is left actionable under the Code and license law. However, the regulatory agency is not being asked to act on personal, ethical matters outside of the scope of license law.
 - The Code requires boards to share with the regulatory agency final ethics decisions where the REALTOR® is found in violation of the Code when the violation is related to real estate related activities and transactions.
 - NAR sanctioning guidelines state: “Cases in which there is reason to believe that violations of the public trust, including demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud have occurred are considered particularly egregious.”



Case Studies



Case Study - 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.

Article 1, Case Study 1

1. Do you think Bob is in violation of the Code?
2. What was Bob's obligation?



Article 1, Case Study 2

1. Can John renegotiate his listing commission at the time he presents the two offers?
2. By reducing the listing commission, can John present both offers in an objective manner, as required by Standard of Practice 1-6?
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?



Case Study - 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.

Article 3, Case Study 1

1. What Standard of Practice under Article 3 applies to this case?
2. Is Lucy in violation of the Code?
3. If Sam files an arbitration claim against Lucy for the compensation offered through the MLS, should Sam prevail?



Article 3, Case Study 2

1. Is Bill obligated to disclose the accepted offer to other cooperating brokers?
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?



Case Study - 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.

Article 11, Case Study 1

1. In addition to Article 11, which other Article might apply to this case?
2. Is Leo in violation of the Code?



Article 11, Case Study 2

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?

2. Is Paul in Violation of Article 11?



Case Study - 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.

Article 16, Case Study 1

1. What Standard of Practice under Article 16 applies to this situation?
2. Is Laura in violation of Article 16?
3. What was Laura's obligation?
4. Is Sue in violation of Article 16?



Article 16, Case Study 2

1. Identify the Standard of Practice that applies to this situation?
2. Is there an obligation on Mike's part to work through Barbara?





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Thank You!

We appreciate your time and attention during this presentation. Please feel free to reach out to us with any additional questions or feedback. We're here to support you throughout the closing process.

Email: Attorneys@CB.Law

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