

# **ETHICS in the Age of Disruption**

## **A Tale of Challenges & Hope**



**A NAR Code of Ethics  
Course Provided by  
Superior School of Real  
Estate**

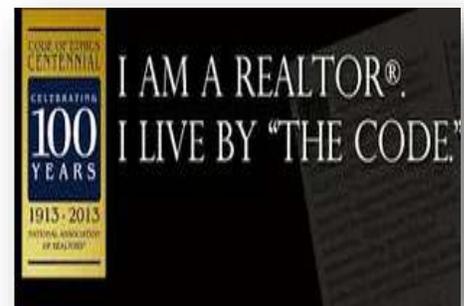
## **Student Playbook**

### Student Notes

## About the Code of Ethics Course

This course was created and designed to train and instruct REALTORS® on the practical application of the REALTOR® Code of Ethics and fulfills both a NCREC CE requirement and the REALTOR® Triennial Ethics Requirement.

Every three years the National Association of REALTORS® requires members to complete a REALTOR® Code of Ethics course in order to remain in good standing with their local, state and national association. Courses that qualify and meet this requirement are offered by Associations. This course covers professional conduct, courtesies, business etiquette and real-life scenarios. REALTORS® are required to provide a valid certificate of course completion to their local association. The course must be one provided by a local, state or national REALTOR® Association.



The deadline for all REALTORS® to complete the mandatory Code of Ethics course is 12/31/2021 and every three-year period following that deadline.



## About Superior School of Real Estate

Superior School of Real Estate is the premier real estate education partner in North Carolina. Founded by the legendary Bill Gallagher, Superior School's promise to its students is to focus on providing high quality instruction that is as entertaining as it is informative.

Superior has more DREI designated instructors than any other school in the country. Whether you are just getting started or a seasoned pro, Superior has you covered with high-quality North Carolina real estate courses, industry expertise and convenience.

Superior School of Real Estate owns this course, and it was created in conjunction with NAR requirements for ethics courses. We are pleased to bring you this course!

**Student Notes**

# North Carolina Real Estate Commission

## Continuing Education

### Student Information Sheet

## READ IMMEDIATELY UPON CHECKING IN

### Basic CE Requirement (21 NCAC 58A.1702)

The CE requirement to maintain a license on active status is **eight (8) classroom hours per year** (each license period) consisting of the four (4) hour Real Estate Update course (mandatory for all licensees) and a four (4) hour elective. The content of the Update course changes each year.

### Important Points to Note

- Newly licensed licensees do NOT need to take any CE prior to their **first license renewal** but must satisfy the CE requirement prior to their **second license renewal**.
- A course may not be taken for CE credit twice in the same license period. Make sure you have not already taken this course during the current license period.
- If your license is **inactive**, you should check with the Commission to ascertain the amount of CE you need to activate your license.

### Attendance Requirement

In order to receive CE credit for a course, students must attend the entire scheduled class session. Sponsors and instructors may, on an individual basis, excuse a student for good reason for up to 10% of the scheduled class session (20 minutes for a 4 hours class session); however, a student must attend a minimum of 90% of the scheduled class session in order to receive a course completion certificate and CE credit. No exceptions to the 90% attendance requirement are permitted for any reason.

### Student Participation Requirement

To help assure that the mandatory continuing education program will be one of high quality, students comply with the student participation guidelines that are set forth in the Superior School of Real Estate Policies and Procedures Document. Those include the following:

Instructors will specify the appropriate use of laptops and electronic devices. Cell phones must be silenced during class time and utilization of such devices will occur at one of the course breaks. Students are expected to conduct themselves in a manner which does not disrupt the class or other students. Visiting social media networking sites, checking email, or otherwise performing non-class related activities is considered a disruption to the classroom and is not acceptable student conduct. Students are expected to be engaged and participate in classroom activities as directed by the instructor.

## Course Completion Reporting

Sponsors are responsible for reporting course completion information to the Commission via the Internet within **7 days of course completion**. Licensees are responsible for assuring that the real estate license number that they provide to the course sponsor is correct.

Licensees may address comments/complaints about courses, instructors, and/or sponsors to:

**Continuing Education Officer**  
North Carolina Real Estate Commission  
P.O. Box 17100  
Raleigh, North Carolina 27619-7100

## Certificates of Course Completion

Course sponsors will provide each licensee who satisfactorily completes an approved CE course a Certificate of Completion on a form prescribed by the Commission within 15 calendar days following a course. The certificate should be retained as the licensee's personal record of course completion. **It should not be submitted to the Commission unless the Commission specifically requests it.**

**Please avoid calling the Commission office to verify the crediting of continuing education credit hours to your license record unless you believe that an error has been made.** Please use our website to verify that your credit hours have been reported. Your cooperation in this regard will be especially needed during the May 15 - June30 period each year.

## About the Author & Producer of this Course

### Producer, Len Elder, JD, DREI, CDEI, REALTOR®



Len Elder, JD, DREI, CDEI, REALTOR® has accumulated over 40,000 hours of live classroom presentations and teaching, Len has excelled to the top of his field and is recognized nationally as an author, speaker, course developer and a Distinguished Real Estate Instructor (DREI) by the national Real Estate Educators Association.

With a B.A. degree in Speech Communications & Broadcasting and a law degree from Capital University, Len brings a multi-disciplinary approach into the classroom. His professional life spans the private practice of law, the mortgage banking industry, the real estate profession and the educational profession. He has served on numerous committees. Len is the 2018 North Carolina Real Estate Instructor of the Year, author of the national 2018 Course of the Year and holds several other awards. More than anything else, Len believes that real estate education ought to have real value, be engaging and help real estate professionals in their careers.

Len is a long-standing member of the National Association of REALTORS®. He has spoken at the REALTOR® national convention and over the years has taught several thousand hours of courses that focus on the REALTOR® Code of Ethics. In 2018 Len created a REALTOR® Code of Ethics course entitled “Drama and the Code.” That previous course was recognized and awarded “Classroom Program of the Year,” by the National Real Estate Educators Association.

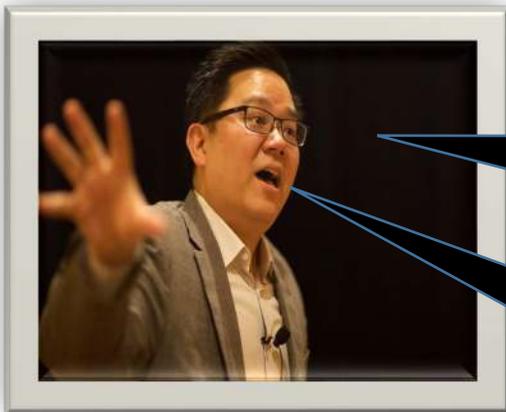
We are confident you will enjoy Len’s new course written for Superior School of Real Estate entitled “Ethics in the Age of Disruption.”

## Why This Course Was Written

At present the real estate industry is experiencing an Age of Disruption. There are massive technology changes that make the world in which real estate professionals practice much different than it was only a few short years ago.

The technology involves an avalanche of advertising and marketing on social media sites from Facebook to twitter. It involves the concepts of syndication and the marketing of properties across hundreds of listing databases and the dissemination of information to consumers at a record pace.

New business models are challenging the fundamental way that real estate transactions have frequently been conducted and in opposition to the role that real estate professionals previously played. Nobu Hata, National speaker and Director of Industry Outreach and Engagement Strategy for the National Association of REALTORS® has said the following:



Right now, agents are trying new concepts without regard to the REALTOR® Code of Ethics and the various rules and regulations which govern the industry. They are begging for forgiveness rather than seeking permission.

What if, the real question posed by iBuyer companies was “How much would a consumer pay to avoid a real estate agent?” And what if the answer that consumers were providing was “A lot”.

In this Age of Disruption where there are so many challenges to the professionalism of real estate licensees, our only hope as a profession rests on how well we fulfill fiduciary duties, our adherence to the REALTOR® Code of Ethics and the elevation of professionalism. This course was written to place the REALTOR® Code of Ethics in a contemporary light and to empower agents to use the Code in order to battle the current challenges they face.

## Table of Contents / Course Outline

<b>Introduction – The Code and Disruption Preparedness</b>	<b>10</b>
The Origin of the REALTOR® Code of Ethics	11
The Preamble to the REALTOR® Code of Ethics	12
Where Are We Today	13
The REALTOR® Code of Ethics Roadmap	14
<b>Module 1 – Professional Conduct Tsunamis</b>	<b>15</b>
Advertising on Social Media	16
Article 12 of the REALTOR® Code of Ethics	
SOP 12-5 of the REALTOR® Code of Ethics	
SOP 1-3 of the REALTOR Code of Ethics	
SOP 1-4 of the REALTOR® Code of Ethics	
SOP 12-9 of the REALTOR® Code of Ethics	
SOP 12-5 of the REALTOR® Code of Ethics	
SOP 1-9 of the REALTOR® Code of Ethics	
SOP 12-10 of the REALTOR® Code of Ethics	
SOP 12-12 of the REALTOR® Code of Ethics	
Ethics Demands Reasonable Competence	18
Article 11 of the REALTOR® Code of Ethics	
Ethics Demands Professionalism	19
Article 12 of the REALTOR® Code of Ethics	
<b>Module 2 – Consumer &amp; Courtesy Tornadoes</b>	<b>21</b>
Introduction to the NAR Annual Profiles of Home Buyers & Sellers	23
Where’s the Hope	23
Dispute Resolution Options	24
The Parties to Complaints	26
Different Types of Complaints	26
Ethics Complaints	26
Code of Ethics Violation Penalties	27
Arbitration Complaints	29
The Role of the Grievance Committee	30
Grievance Committee’s Review of an Ethics Complaint	31
Factors Considered in Reviewing an Ethics Complaint	31
The Role & Purpose of Mediation	33

Guidelines for Mediators	35
Issues of Procedure & Evidence in Arbitration	36
The Burden of Proof	37
<b>Module 3 – Eruptions of Business Etiquette</b>	<b>39</b>
The Evolution of Business Models	39
Article 15 of the REALTOR® Code of Ethics	40
iBuyers & A Professional Ethical Approach	40
Who Are the Major Players?	41
Airbnb & Property Management Models	44
The Ethics of Relationships & Activities with Other Brokers	46
Article 15 of the REALTOR Code of Ethics	
Article 16 of the REALTOR Code of Ethics	
Article 17 of the REALTOR Code of Ethics	
The Commission Discussions	47
Avoiding Eruptions Outside Your Area of Expertise	48
New Developments & Changes	50
NAR’s New Clear Cooperation Policy	51
<b>Module 4 – Hurricanes Over North Carolina</b>	<b>52</b>
Advertising in Accordance with NC Rules & Statutes	52
Consent of the Broker-in-Charge	53
The Limits of Licensed Activity	55
Fiduciary Duties	56
Competence	57
North Carolina Professionalism & Competence in Property Management	58
A Local Lesson on Airbnb	59
The Hope That Lies Ahead	60
<b>APPENDIX – REALTOR® Code of Ethics</b>	



# INTRODUCTION

## The Code and Disruption Preparedness

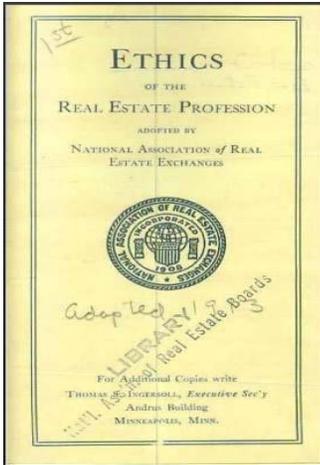
### Origin of the Code

In the 1800's real estate was host to the Gilded Age of schemes. No professional licensure or regulatory agencies existed regarding real estate. Most of the regulatory commissions, departments of real estate and licensing entities that we have today were not created until the 1950's or 1960's.

These were the times of the infamous Boss Tweed. William Magear Tweed (1823-1878) was an American politician who acted as the boss of Tammany Hall, the democratic political machine in New York City. Through graft and corruption, Boss Tweed became the third largest landowner in New York City. He defrauded thousands of real estate owners and cost the city of New York millions of dollars. In political cartoons he was often depicted as the "vulture of real estate."

George Washington Plunkitt also operated within the framework of Tammany Hall and was heavily involved in corruption and graft involving politics and real estate. He is best known for his quote, "I seen my opportunities and I took 'em." Throughout his career, he defended his actions as a distinction between dishonest graft where you work only for your own interests and honest graft where you work for your interests and the interests of your friends.

Throughout the late 1800's and early 1900's commentary and exposure of the graft and corruption was made public by journalists and political cartoonists. In 1904 Lincoln Steffens published the Shame of Cities, a collection of articles for McClure's magazine that detailed the corruption across several major U.S. cities. At the same time, Thomas Nast, a cartoonist for Harper's Weekly brought attention to the abuse and created a major campaign that exposed Tammany Hall.



It was within this context that eleven leading members first met in Chicago on May 12, 1908 to form the National Association of Real Estate Exchanges (which would later become the National Association of REALTORS®) with 120 founding members. It consisted of 18 boards and one state association. Its founding objective was “to unite the real estate men of America for the purpose of effectively exerting a combined influence upon matters affecting real estate interests.” The goal was to create a code of conduct that elevated real estate from a self-serving business into a trusted profession.

In 1913 the very first Code of Ethics was written to help elevate the professionalism of real estate. Today we often look at the Code of Ethics as a set of rules, obligations and regulatory framework which if we do not follow can result in disciplinary action and civil liability. That viewpoint provides us a very narrow interpretation of the Code of Ethics and can prevent us from understanding its true value in protecting and promoting the interests of clients and the public. We sometimes fail to recognize the importance of the Code in building the trusted relationships that underlie and help define our profession. The Code of Ethics was not written to simply be a set of rules and regulations that REALTORS® were required to follow in order to avoid disciplinary action.

The first Board of Directors set out on a mission to help define why the public held certain professions in higher esteem than others. Collectively they wrote a set of instructions that outlined the conduct and activities that would positively add to the public’s perception of real estate practitioners. The Code was intended to provide insight and guidance as to how real estate professionals could enhance an image which was tarnished at the time. Rather than a set of regulatory rules, the Code was the guide by which we could improve our professionalism and build a better image in the eyes of the public.

### Student Notes

## The Preamble to the Code of Ethics

### CODE OF ETHICS and STANDARDS OF PRACTICE of the NATIONAL ASSOCIATION OF REALTORS®

#### PREAMBLE...

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

Such interests impose obligations beyond ordinary commerce. They impose grave social responsibility and a patriotic duty to which REALTORS® should dedicate themselves and for which they should be diligent in preparing themselves. REALTORS® therefore, are zealous to maintain and improve the standards of their calling and share with their fellow REALTORS® a common responsibility of its integrity and honor. The term REALTOR® has come to connote competency, fairness, and high integrity resulting from adherence to a lofty ideal of moral conduct in business relations. No inducement of profit and no instruction from clients can ever justify departure from this ideal.

#### Student Notes

## Where Are We Today

Today the real estate profession is facing as much disruption as existed in the late 1800' and early 1900's. It just appears in a different form. The heavy use of technology and social media has made real estate professionals and their conduct more visible to the public. New business models challenge existing ways of doing business and are providing alternatives to consumers from the traditional role of client relationships and interaction with real estate professionals. The avalanche of information available to consumers on hundreds of listing databases means that real estate professionals are no longer the guardians of information. Growing concerns exist regard the professionalism of real estate licensees.

With all these changes, real estate professionals must rethink their approaches to the practice of real estate. The best defenses that real estate licensees have in this age of disruption to distinguish themselves and provide value is more attention to fiduciary duties, the REALTOR® Code of Ethics and increased professionalism. Such attention increases trust.



**Professionalism and Trust**

**Case Study #1**



**How do you elevate professionalism and trust on Day #1**

**Student Notes**

The National Association of REALTORS® has reduced the Code of Ethics to a single page for use with consumers. The Code is reframed from what it means to real estate professionals to what it means to the public. Entitled the REALTORS® Pledge of Performance and Service these documents are available for REALTORS® at [NAR.REALTOR](http://NAR.REALTOR).

## Student Notes

## Your REALTOR® Code of Ethics Roadmap

### Duties to Clients & Customers

**Article 1 – Protect & Promote the Interests of Clients**

**Article 2 – Present Accurate Facts**

**Article 3 – Co-operate with Other Brokers**

**Article 4 – Disclose Conflicts of Interest**

**Article 5 – Disclose Interests in the Property**

**Article 6 – Don't Accept Compensation without Consent**

**Article 7 – Don't Represent Multiple Parties without Consent**

**Article 8 – Keep Client Monies Separate**

**Article 9 – Get All Agreements in Writing**

### Duties to the Public

**Article 10 – Don't Discriminate**

**Article 11 – Act in the Area of Your Expertise**

**Article 12 – Be Honest & Truthful in All Advertising & Marketing**

**Article 13 – Don't Engage in the Unauthorized Practice of Law**

**Article 14 – Cooperate with Disciplinary Actions**

### Duties to REALTORS®

**Article 15 – Don't Make Reckless or False Statements About Others**

**Article 16 – Don't Interfere in Other's Agency Relationships**

**Article 17 – Mediate or Arbitrate Disputes**



# Module 1

## Professional Conduct Tsunamis

### An Overview

#### Student Notes

The practice of real estate today looks nothing like it did even a few short years ago. The advent and use of technology are everywhere. The profession now involves technology at every turn. Today's typical transactions are likely to include all the following scenarios:

- Agents regularly posting information on social media sites
- Sellers who want pricing consistent with their Zestimate
- A seller who is considering selling to an iBuyer company
- A buyer who is buying a residence with the intention of renting it out on an AirBNB site



You will not find the words “social media,” “Facebook,” “twitter” or “syndication” “Zestimate,” “iBuyer” or “AirBNB” anywhere within the REALTOR® Code of Ethics. However, it would be a mistake to believe that the Code does not speak to or address these issues. Learning how to apply the provisions of the REALTOR® Code of Ethics to these waves of change is an important lesson in this course.

## Advertising on Social Media



September 18 at 5:37 PM

Want to get your house sold quick for Top Dollar? Call me today

KEEPINGCURRENTMATTERS.COM  
4 Tips to Sell Your Home Faster  
Since June of last year, we have seen an increase in the inventory of homes...

**Case Study #2**

**What provisions of the Code of Ethics might this ad violate?**

### Student Notes

The provisions of Article 12 of the Code of Ethics state that:

**“REALTORS® shall assure their status as real estate professionals is readily apparent in their advertising, marketing and other representations.**

When violations of the REALTOR® Code of Ethics are charged against REALTORS® only the actual Article itself is cited. The Code also contains standards of practice (SOP) that add additional insight and detail to the Article. A REALTOR® is never cited for violating an SOP, they are cited for violating the Article which is supported by the Standards of Practice.

Standard of Practice 12-5 of the Code of Ethics states that:

**“REALTORS® shall not advertise...without disclosing the name of the REALTORS® firm.**

### Student Notes



**Case Study #3**

Do the words “sold quick” and “for Top Dollar” violate the Code of Ethics?

**Student Notes**

The provisions of Standard of Practice 1-3 state:

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

The provisions of Standard of Practice 1-4 state:

**“REALTORS® when seeking to become a representative shall not mislead as to savings or benefits that might be realized through the use of the REALTORS® services.”**



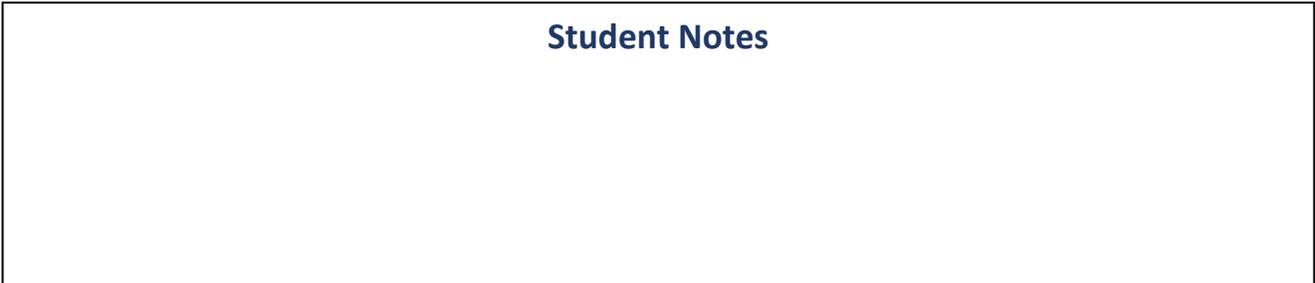
**Case Study #4**

What provisions of the Code does this website violate?

**Student Notes**

The provisions of Standard of Practice 12-9 state:

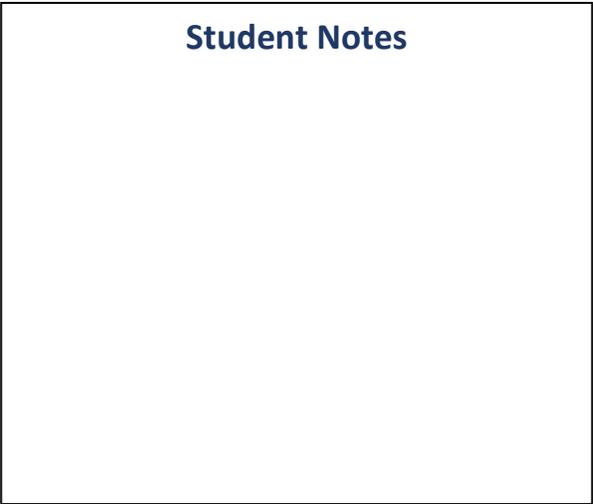
**“REALTOR® firm websites shall disclose the firm’s name and state of licensure in a reasonable and apparent manner.”**



**Student Notes**

The provisions of Standard of Practice 12-5 state:

**“...the name of that REALTOR®’s firm in a reasonable and readily apparent manner either in the advertisement or in electronic advertising via a link to the display with all required disclosures.”**



**Student Notes**

The provisions of Standard of Practice 1-9 state:

**“REALTORS® shall not knowingly...reveal confidential information of clients.”**

Real estate professionals should know to never share personal, financial and motivational information regarding their clients. Such protections are necessary to fulfill the fiduciary duty that licensees have to their clients. Yet on social media, such sharing of information happens far too frequently. How many times have you seen posts on Facebook containing any of the following?

- Congratulations to...for being the new owners at...
- I wrote an offer today on a property at...
- We are negotiating on...
- Off to show my buyers a property at...

Marketing and promoting business on social media is important today. The moment however, that licensees begin typing in the names of their clients, a specific address under negotiation or one which their buyer may be interested in purchasing, licensees are sharing information that should be kept confidential.

The image shows a screenshot of the VirginiaMLS website. A magnifying glass is positioned over a section of the page. The magnified text reads: "Case Study #6" and "What provisions of the Code does this website page violate?". The background of the magnified area is blue. The website content visible includes a navigation bar with "Home", "About Us", "How It Works", "Our Services", "Find a Home", and "Special Features". Below the navigation bar, there are several news items and a "Selling a Home..." section. The "Selling a Home..." section lists two service plans: "1. Full Service Plan for never more than 4% Total Commission." and "2. Online Service Plan for never more than 2.75% Total Commission."

## Student Notes

The provisions of Standard of Practice 12-10 state:

**“the URLs and domain names they use prohibit REALTORS® from: Engaging in deceptive framing, manipulating content, deceptively using metatags and keywords to divert traffic, misleading consumers with images...”**

The provisions of Standard of Practice 12-12 state:

**“REALTORS® shall not: use URLs or domain names that represent less than a true picture, or register URLs or domain names which, if used, would present less than a true picture.**

## Ethics Demands Reasonable Competence

The REALTOR® Code of Ethics demands that real estate professionals act with reasonable competence. The services that are provided to consumers are expected to meet the standards of the profession. Reasonable competence is a fluid and fluctuating standard that is determined by statutes, rules, court cases and the state of the industry.

The provisions of Article 11 of the Code state:

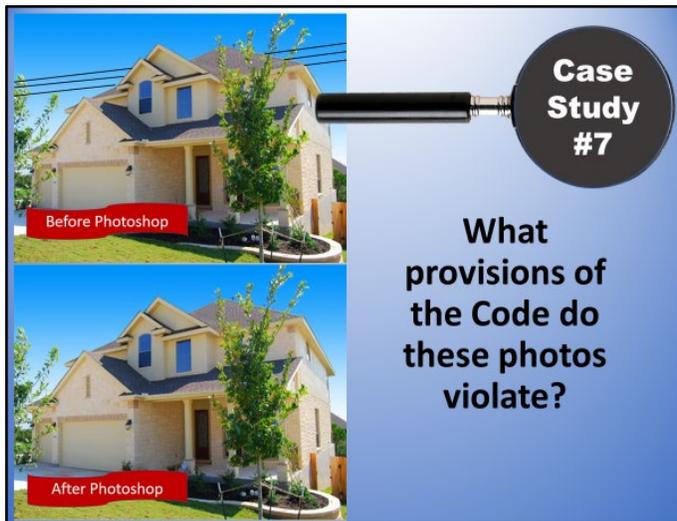
**“The services which REALTORS® provide to their clients and customers shall conform to the standards of practice and competence which are reasonably expected in the specific real estate disciplines which they engage.”**

**Engaging in deceptive framing, manipulating content, deceptively using metatags and keywords to divert traffic, misleading consumers with images...”**

## What Does Reasonable Competence Look Like?

Student Notes

Practicing with reasonable competence regarding the REALTOR® Code of Ethics means more than just complying with the law or treating real estate as a business. The Code demands that REALTORS® treat real estate as a profession. It demands honesty, truthfulness in all aspects including the representations that are made by REALTORS®. Due to today's technology misrepresentations and omissions can occur in ways other than words.



### Student Notes

## Ethics Demands Professionalism

As real estate professionals it is time to take a closer look at how we appear to the public. Today we need to look no further than social media and the collective presence that is created in the public arena. If we try to put ourselves in the position of consumers, how would you perceive real estate professionals who post all the following on social media? How do these posts relate to the provisions of the REALTOR® Code of Ethics?

- Posts that demean or disparage other religions?
- Facebook ads that target gender, age, race or demographics?
- Posts that take political positions?
- Posts that take positions on controversial social issues?
- Posts that highlight wealth or money?
- Posts that deride or chide clients and consumers?

**Student Notes**

Recently, firms have begun to take action against agents who present themselves in a non-professional manner. Several agents across the country have been terminated for items posted on social media.

It would be incredibly unusual for consumers to find social media posts by doctors or lawyers that took political stances, ranted about controversial issues, bragged about their wealth or derided patients and clients. The real estate profession has been less cautious about such comments. The result is damaging to the way the public perceives the profession of real estate. If we are to abide by the Code of Ethics and remain professional in all that we do, then it is time to be more attentive to the way that we appear in the eyes of the public.

If we are facing a tsunami in terms of the eroding of professionalism in the industry, maybe, just maybe a large cause of that perception are the actions that each of us take.

**Student Notes**



## Module 2 Consumers & Courtesy Tornadoes

### Introduction to the Profiles

#### Student Notes

If we truly want to gain insight into the current state of ethics and professionalism through the eyes of the public, we should ask them directly what they think and find effective ways to deal with their concerns. That is exactly the task that has been undertaken by the National Association of REALTORS®.

Every year the National Association of REALTORS® sends out over 100,000 questionnaires to consumers that were involved in real estate transactions. The contact list is built based on public record filings and those who respond had to be involved in both the sale and the purchase of a home in that year. The results are collected by NAR's marketing and research department and published every year as the ***Profile of Home Buyers and Sellers***. The Profile contains a wealth of information.

By visiting the NAR website at [NAR.REALTOR](http://NAR.REALTOR) students can obtain the full Profile. There is a link to download just the highlights, but the full report complete with graphs, charts and insights can be purchased by NAR members for \$19.95.

#### Student Notes

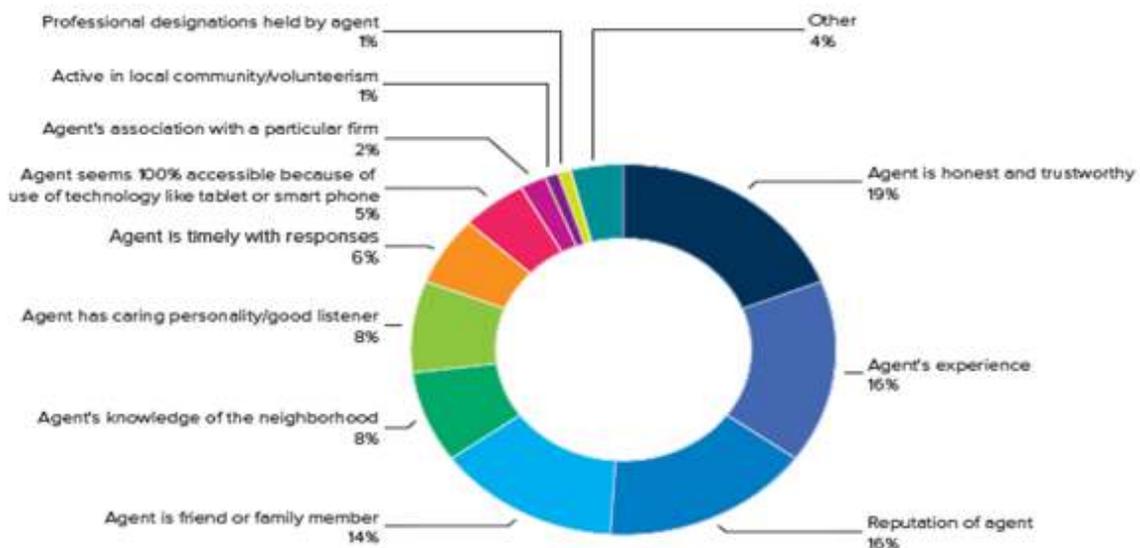
As real estate agents we sometimes hear that factors like the reputation of an agent's firm, the holding of professional designations or our specific knowledge of a neighborhood are the most important factors in how consumers choose a real estate professional. According to the Profile, nothing could be further from the truth.

When asked, "What was the most important factor when choosing an agent?" consumers responded that trust, reputation and experience outweighed everything else.

## Trust, Experience & Reputation Outweigh Everything Else

**Exhibit 4-16: Most Important Factors When Choosing an Agent**

(Percentage Distribution)



When asked to rank the most important real estate agent skills and qualities a full 97% indicated that honesty and integrity ranked highest.

Only 64% of respondents were very satisfied with the selling process and 52% did not feel that they were provided with an adequate explanation of the negotiating of commission rates or fees.

CoreLogic which collects and distributes data to real estate professionals recently published their Image of Professionals survey. Their analysis starts with an analysis of why people hate real estate agents which concluded:



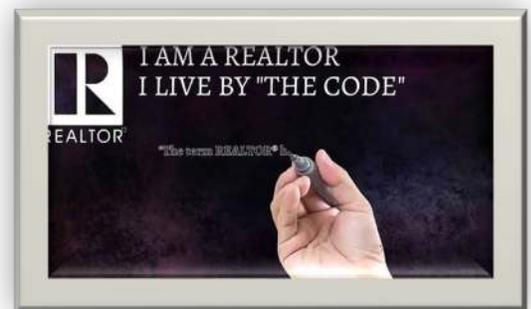
- Agents don't gain enough experience and knowledge to be true professionals in their industry.
- The agents seem too focused on money and their commissions.
- Agents don't know how to develop trust and relationships.
- Agents hound people for business.
- The process was more complicated and time consuming than clients thought.

The actual statistics from Core Logic's research are even more revealing:

- Only 9% of respondents claim real estate agents are trustworthy
- 1/3 expect to have a bad experience with a real estate agent
- Satisfaction with the agent declined 20% during the transaction
- 72% of agents don't share times on market with their client
- 49% did not show their recent sales
- 31% said they would not recommend their agent
- Nearly 20% were upset with their agent after the sale

## Where's the Hope After the Storm?

With statistics such as these it is evident that the lack of professionalism and adherence to industry standards is harming the real estate profession. Such shortcomings make it difficult to build trust and impossible to elevate the perception of real estate professionals in the marketplace. The best way to change the direction of the industry and elevate real estate agents is to live by "The Code" that is required in order to maintain good standing as a REALTOR®.



The solution requires that real estate professionals engage in conduct which reflects an adherence to fiduciary duties. It demands that they follow a code of conduct as set forth in the REALTOR® Code of Ethics and that they constantly strive to elevate and display professionalism.

Increasing all of these elements requires providing consumers with an effective and meaningful way to resolve disputes and disagreements they may have with the real estate profession and the REALTORS® who serve it.

## Dispute Resolution Options

In protecting and promoting the interests of the public it is critical that REALTOR®'s provide a method and manner of effectively and fairly dealing with disputes under the REALTOR® Code of Ethics. Let's face it, the typical consumer or REALTOR® who has a dispute with a member of the National Association of REALTORS® has three basic options if they feel aggrieved and want to seek remedy or redress:

1. **Contact a lawyer and pursue litigation**
2. **File a disciplinary action or complaint with the North Carolina Real Estate Commission**
3. **Utilize the dispute resolution methods set up by the National Association of REALTORS®**

### Student Notes

Not all real estate licensees are subject to the REALTOR® Code of Ethics. Only REALTORS® are subject to the Code. They are held to the highest ethical standards as outlined by NAR's Code of Ethics and Standards of Practice. The Code of Ethics is designed to establish a public and professional consensus against which the practice and conduct of REALTORS® and REALTOR-ASSOCIATE®s may be judged. REALTORS® and REALTOR-ASSOCIATE®s in joining a Board signify their intention to abide by the Code and thereby enhance the public and professional image of themselves and all other REALTORS®. Adherence to the Code is the first great bond between REALTORS® and

REALTOR-ASSOCIATE®s throughout the country, and is an obligation voluntarily accepted by them to ensure high standards of professional conduct to serve the interests of their clients and customers. Each Board is responsible for enforcing the Code of Ethics pursuant to the Bylaws of the National Association. This duty must be discharged conscientiously and responsibly.

Conscientious enforcement is essential if REALTORS® and REALTOR-ASSOCIATE®s are to be recognized as professionals subscribing to standards of business and ethical conduct higher than those required by law. This duty must be discharged responsibly because of the importance to REALTORS® and REALTOR-ASSOCIATE®s of their reputation and the esteem of their peers. (*Amended 4/96*) Membership in a Board of REALTORS® has been recognized by the courts as a valuable property right. Therefore, any action by a Board limiting or denying the rights and privileges of a member must be justified, not only substantively but also procedurally. It is for this reason that failure to accord due process to a REALTOR® accused of a violation of the Code of Ethics can result in the reversal of the Board's decision by the civil courts and can expose the Board and its officers and members to liability for monetary damages and other penalties.

Due process is not a difficult concept, however, it is an essential one. Due process means nothing more or less than the right to a full and fair hearing before an impartial tribunal with a full and complete knowledge of the charges made and with adequate opportunity to prepare a defense. While the concept of due process is not difficult, its application to specific situations involving enforcement of the Code of Ethics can be troublesome. Therefore, before taking any disciplinary action which may lead to diminution of a member's rights or privileges, it is strongly recommended that the Board's attorney be consulted. Counsel will bring to the proceedings an informed and objective view of the controversy. Moreover, counsel can assure that the due process provided satisfies the requirements of local law. Procedures outlined in the *Code of Ethics and Arbitration Manual* will satisfy most requirements of due process, but the individual differences in the laws of each state will require interpretation and possible supplementation of the process in individual states.

### Student Notes

## The Parties to Complaints

The Board or Association may hear and resolve complaints involving all the following:

- Client vs. REALTOR®
- REALTOR® vs. Client
- Customer vs. REALTOR®
- REALTOR® vs. Customer
- REALTOR® vs. REALTOR®
- Board vs. REALTOR®
- REALTOR® vs. Board



## Different Types of Complaints

### Two Different Types of Complaints

#### Ethics Complaints



#### Arbitration Requests



In exercising its responsibility for the enforcement of the Code of Ethics, it is particularly important for the Board to distinguish between controversies which are properly the subject of arbitration and controversies involving the Code of Ethics. The Code of Ethics must not be used as a club or lever to settle business disputes between REALTORS®. For this reason, in complaints involving both charges of unethical conduct and request for arbitration, the dual complaint must be severed and arbitration heard prior to hearing any ethics charges.

## Ethics Complaints

A violation of the Code of Ethics involves an offense against the Board and its members generally, as distinguished from an arbitration hearing which involves a dispute among two or more members individually, arising from some common transaction involving the rendering of real estate services. For this reason, it is never

appropriate for a Board, in an ethics proceeding, to award money damages to another REALTOR®. An ethics proceeding has two essential purposes: education and vindication. It is educational in that it raises the consciousness of members to the meaning and significance of the Code. Many ethics violations occur inadvertently or through ignorance, and the hearing proceeding serves as an effective educational tool. In filing a charge of an alleged violation of the Code of Ethics by a REALTOR®, the charge shall read as an alleged violation of one or more Articles of the Code. A Standard of Practice may be cited only in support of the charge. The Preamble is aspirational. Articles 1 through 17 establish specific obligations for which REALTORS® may be disciplined.

## Code of Ethics Violation Penalties

The Board has wide latitude in the sanctions which may be applied for violations of the Code of Ethics. It must, however, act responsibly in the application of these sanctions, attempting always to make the punishment commensurate with the offense. Recommendations of Ethics Hearing Panels may range from a mild Letter of Warning to termination of membership as follows in order of severity, provided that such actions are specifically authorized in the Professional Standards procedures of the Board's bylaws:

- (a) Letter of Warning with copy to be placed in member's file;
- (b) Letter of Reprimand with copy to be placed in member's file;
- (c) Requirement that the member attend the ethics portion of the Board Indoctrination Course or other appropriate course or seminar specified by the Hearing Panel which the respondent could reasonably attend, taking into consideration cost, location, and duration;
- (d) Appropriate and reasonable fine not to exceed \$15,000 (*Revised 5/13*);
- (d) Membership of individual suspended for a stated period of time not less than thirty (30) days or more than one (1) year, with automatic reinstatement of membership in good standing at the end of the specified period of suspension. The thirty (30) day minimum and one (1) year maximum do not apply where suspension is imposed for a remediable violation of a membership duty (e.g., failure to pay dues or fees or failure to complete educational requirements.) The Directors may order suspension unconditionally, or they may, at their

discretion, give the disciplined member the option of paying to the Board, within such time as the Directors shall designate, an assessment in an amount fixed by the Directors, which may not exceed \$15,000 and which can be utilized only once in any three (3) year period, in lieu of accepting suspension. But, if the conduct for which suspension is ordered consists of failure to submit a dispute to arbitration, the Directors may not permit the disciplined member to avoid suspension without submitting to the arbitration in addition to paying the assessment, unless in the meanwhile the dispute has been submitted to a court of law without any objection by any party that it should be arbitrated; *(Revised 11/13)*

(f) Expulsion of individual from membership with no reinstatement privilege for a specified period of one (1) to three (3) years, with reinstatement of membership to be by application only after the specified period of expulsion, on the merits of the application at the time received (decision should be written clearly articulating all intended consequences, including denial of MLS participatory or access privileges); *(Amended 4/96)*

(g) Suspension or termination of MLS rights and privileges may also be utilized. Suspension of MLS services may be no less than thirty (30) days nor more than one (1) year; termination of MLS services shall be for a stated period of one (1) to three (3) years; *(Revised 5/02)*

(h) REALTORS® who participate in MLS or otherwise access MLS information through any Board or Association in which they do not hold membership are subject to the Code of Ethics in that Board or Association on the same terms and conditions as Board members. Discipline that may be imposed may be the same as but shall not exceed the discipline that may be imposed on members. Boards entering into regional or reciprocal MLS agreements are encouraged to include provisions requiring signatory Boards to respect, to the extent feasible, decisions rendered by other Boards involving suspension or expulsion from membership or from MLS. *(Revised 4/96)*

(i) Members may also be required to cease or refrain from continued conduct deemed to be in violation of the Code or take affirmative steps to ensure compliance with the Code, within a time period to be determined by the hearing panel. Where discipline is imposed pursuant to this subsection, the decision should also include additional discipline (e.g., suspension or termination of membership) that will be imposed for failure to comply by the

date specified, and to continue to comply for a specified period not to exceed three (3) years from the date of required compliance. *(Adopted 05/14)*

## Arbitration Complaints

Requests for arbitration are separate from Code of Ethics complaints. As mentioned earlier, they are usually disputes arising between the parties regarding the providing of some type of real estate services. Usually, the heart of most arbitration complaints is regarding fees. Often they are related to offers of cooperation within the Multiple Listing Service. One of the most common types of arbitrations that Boards may have to deal with involve the issue of procuring cause and the entitlement to fees from cooperating brokers.



In arbitration hearings the Hearing Panel does not usually get involved in Code of Ethics sanctions. In fact, if a Code of Ethics violation is in order it should be handled separately and pursued subsequent to the arbitration. In the arbitration the Hearing Panel has full authority to make an award in any manner which it determines is just and equitable based on the Findings of Fact.

**There are a lot of resources, including the Code of Ethics and Arbitration Manual on the National Association of REALTORS® website. NAR.REALTOR.**

Student Notes

## The Role of the Grievance Committee



The first stage of dispute resolution is review of the filed Complaints by a Grievance Committee. The function of the Grievance Committee is clearly distinguishable from the function of the Professional Standards Committee. The Professional Standards Committee is similar to a court. The court adjudicates matters that come before it. The Professional Standards Committee makes decisions on matters involving ethics or arbitration. If the function of the Professional

Standards Committee is understood as similar to a court, the function of the Grievance Committee can then be understood as similar to that of the grand jury. A grand jury evaluates potentially criminal conduct to determine whether the evidence and testimony presented warrants indictment and trial.

In a similar manner, the Grievance Committee receives ethics complaints and arbitration requests to determine if, taken as true on their face, a hearing is to be warranted. The Grievance Committee makes only such preliminary evaluation as is necessary to make these decisions. While the Grievance Committee has meetings, it does not hold hearings, and it does not decide whether members have violated the Code of Ethics. The Grievance Committee does not mediate or arbitrate business disputes. Grievance Committees are encouraged to hold regularly scheduled meetings. Meetings should be called often enough to ensure timely review of ethics complaints and arbitration requests.

In evaluating ethics complaints, the Grievance Committee may require a written response from the respondent(s). In such instances the respondent(s) should be provided with a copy of the ethics complaint and advised that failure to respond may be the basis for a charge of having violated Article 14 of the Code of Ethics. ***(See Form #E-4, Grievance Committee Request for Information [Ethics Complaint] and Form #E-5, Response to Grievance Committee Request for Information.)***

In evaluating arbitration requests, the Grievance Committee may request a written response to the arbitration request from the respondent(s). ***(See Form #A-5,***

***Grievance Committee Request for Information [Arbitration Request] and Form #A-6, Response to Grievance Committee Request for Information).***

If no response is filed within the time allotted, the Grievance Committee shall make its determination as to whether an arbitration hearing should be scheduled based upon the information set forth in the arbitration request.

## **Grievance Committee's Review of an Ethics Complaint**

Upon receipt of an ethics complaint from the Board Secretary, the Chairperson of the Grievance Committee shall review the complaint and any evidence and documentation attached. The Chairperson may assign one or more members of the Grievance Committee to review the complaint and to make any necessary evaluation. The member(s) may, if necessary, gather additional information on the matters complained of if additional information appears necessary to make a knowledgeable disposition of the complaint. The complaint shall be provided to the assigned members by the Board Secretary upon instruction from the Chairperson.

The reviewer(s), if appointed, shall complete the assignment promptly and prepare a report and recommendation for the Grievance Committee. After reviewing the report, the Chairperson shall schedule a meeting of the Grievance Committee and may instruct the Secretary to provide members of the Grievance Committee with copies of the case file including the reviewer's report, if any. At the option of the Board, such file may be sent to the Grievance Committee members prior to the meeting or may be distributed at the meeting. **(PPT SLIDE # 40)**

## **Factors Considered in Reviewing an Ethics Complaint**

In reviewing an ethics complaint, the Grievance Committee shall consider the following:

- (1) Is the ethics complaint acceptable in form as received by the Committee? If not in proper form, the Chairperson may request that the Elected Secretary or the Executive Officer contact the complainant to advise that the complaint must be submitted in proper form.
  
- (2) Are all necessary parties named in the Complaint?

- (3) Was the Complaint filed within one hundred eighty days (180) days of the time that the alleged offense and facts relating to it could have been known by the complainant in the exercise of reasonable diligence or within 180 days after the conclusion of the transaction, whichever is later?
- (4) Is the respondent named in the Complaint a member of the Board and was the respondent a member of the Board at the time of the alleged offense?
- (5) Is litigation or any government agency investigation or other action pending related to the same transaction?
- (6) Is there any reason to conclude that the Board would be unable to provide an impartial Hearing Panel?
- (7) Are the specific Articles cited in the complaint appropriate in light of the facts provided? Should additional Articles be cited? Should certain Standards of Practice be cited in support of the Articles charged? Are any inappropriate Articles cited?
- (8) If the facts alleged in the complaint were taken as true on their face, is it possible that a violation of the Code of Ethics occurred?

The Grievance Committee after reviewing all relevant facts must make a determination as to the eventual disposition and further handling of the Complaint. The Grievance Committee may:

- 1. Dismiss the Complaint if it does not meet the above criteria, must give Notice to all parties and notify the parties of appeal rights;**
- 2. Refer the Complaint to Mediation**
- 3. Refer the Complaint to the Professional Standards Committee for Arbitration**

## The Role & Purpose of Mediation



Ethics mediation is a process that may be adopted at the discretion of boards and associations. Ethics mediation will require adoption of these procedures (either verbatim or as amended locally) by action of the local board of directors (or as otherwise provided in the local bylaws).

The Chair of the Professional Standards Committee and/or the Board President will select one or more ethics mediators to act on behalf of the committee. Mediators should be thoroughly familiar with the Code of Ethics, state real estate regulations, and current real estate practice.

Complaints brought by the public or by other REALTORS® may be mediated under these procedures. Complaints brought by the Grievance Committee and complaints alleging a violation of the public trust (as defined in Article IV, Section 2 of the NAR Bylaws) may not be mediated.

The ethics mediation process can be initiated in two ways. First is through filing a written ethics complaint. Second, through a personal, telephone, or written inquiry or complaint generally alleging potentially unethical conduct but which (a) is not filed on the appropriate form or (b) is not specific as to which Article(s) may have been violated.

Where a written ethics complaint in the appropriate form is received, it will be reviewed by the Grievance Committee so a determination can be made whether a possible violation may have occurred or, alternatively, whether the complaint should be dismissed as not requiring a hearing. Where an informal inquiry or general letter of complaint that does not allege a potential violation of the public trust is received, it will not be reviewed by the Grievance Committee, but will be referred to an ethics mediator.

Persons inquiring about the process for filing ethics complaints will be advised that ethics mediation is available as an alternative to a formal ethics hearing provided that all parties agree to participate, and also be advised they may decline or withdraw from mediation and have their complaint considered at a formal ethics hearing.

Similarly, REALTORS® complained about have the right to decline or withdraw from mediation and to have complaints against them considered at a formal ethics hearing.

When either a written ethics complaint in the appropriate form is reviewed by the Grievance Committee and the Grievance Committee concludes that a hearing is warranted, or when a general letter of inquiry or complaint is received, and the matter(s) complained of do not involve a possible violation of the “public trust”, the materials received will be referred to the ethics mediator who will contact the parties to schedule a meeting at a mutually agreeable time. During the mediation session the mediator will encourage all parties to openly and candidly discuss all issues and concerns giving rise to the inquiry or complaint, and to develop a resolution acceptable to all of the parties. In the event the mediator concludes that a potential violation of the public trust may have occurred, the mediation process shall be immediately terminated, and the parties shall be advised of their right to pursue a formal ethics complaint; to pursue a complaint with any appropriate governmental or regulatory body; to pursue litigation; or to pursue any other available remedy.

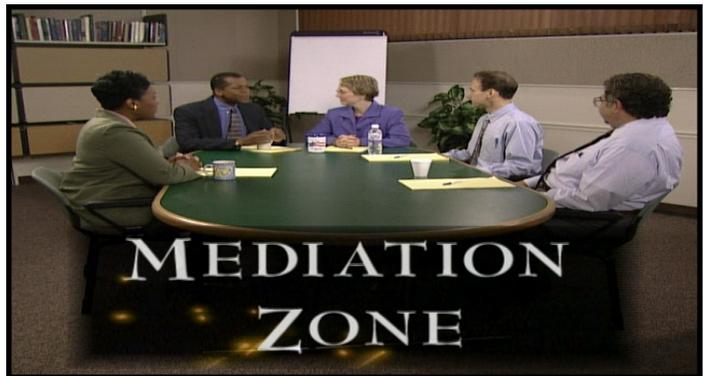
The mediator and the parties have considerable latitude in fashioning a mutually acceptable resolution. Resolutions can include, but are not limited to, payment of disputed funds, repairs or restoration of property, written or oral apology, or acknowledgement of a violation of the Code of Ethics. In cases where a REALTOR® acknowledges that the Code has been violated, that admission may be sufficient to resolve the matter or, alternatively, the parties may agree that discipline should be imposed. The discipline may, at the agreement of all parties, include any of the forms of discipline established in the *Code of Ethics and Arbitration Manual* and may also include payment of monies to the complainant or to a third party. Also, the parties may agree that the complainant will withdraw a complaint or agree not to file a formal, written ethics complaint in return for the respondent’s action or acknowledgement. Again, any discipline imposed must be agreed to by all of the parties.

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

Failure or refusal of a respondent to comply with the terms of any mutually agreed on resolution shall entitle the complaining party to resubmit the original complaint or, where a formal complaint in the appropriate form had not been filed, to file an ethics complaint. The time the matter was originally brought to the board or association's attention shall be considered the filing date for purposes of determining whether an ethics complaint is timely filed.

## Guidelines for Mediators

The following guidelines are only suggestions for the mediation conference and are not intended to restrict the flexibility that is necessary for successful mediation. Failure to follow the guidelines does not affect an agreement otherwise acceptable to all parties.



- At the mediation conference, the Mediator advises the parties that the purpose of the conference is to afford them a place to amicably resolve the dispute themselves and thus to avoid an inter-board arbitration hearing where they will have no control over the decision handed down by the arbitrators.
- The Mediator may ask the complainant the nature of the dispute and/or what he/she is claiming, e.g. the dollar amount claimed and the basis for the claim.
- The Mediator may then ask the respondent why he/she feels the claim should be denied.
- The Mediator encourages the parties to discuss the disputed matter(s) and executes control only as needed. Communication between the parties is vitally important and encouraged.
- The Mediator may pull each party into a private discussion or caucus where he/she can note the strengths and weaknesses of each party's argument and discuss these with the parties.
- The Mediator may also point out the alternative to a mediated settlement - arbitration - where the parties have no control over the amount of the award.

## Student Notes



## Issues of Procedure & Evidence in Arbitration

Part Ten of the Code of Ethics and Arbitration Manual details the procedures for conducting arbitration hearings. Traditionally, and pursuant to the procedures in the Manual, hearings have been conducted by panels of REALTOR® members of the Professional Standards Committee, with a panel chair appointed by the Chair of the committee.

Any of the following four (4) hearing officer options may be adopted locally to supplement the hearing procedures in the Manual. It is important to note that authorizing use of hearing officers supplements and is not a substitute for the Manual's arbitration hearing procedures.

Local boards/associations electing to implement the hearing officer concept in their arbitration processes will need to choose one of the following:

- 1) ***REALTOR® hearing officer(s) who chairs arbitration hearing panels of the Professional Standards Committee (either as an employee or as a volunteer).***
- 2) **Staff hearing officer(s) who chairs arbitration hearing panels of the Professional Standards Committee.**
- 3) ***REALTOR® hearing officer(s) who sits alone and conducts arbitration hearings.***
- 4) **Staff hearing officer(s) who sits alone and conducts arbitration hearings.**

Where a board/association routinely utilizes hearing officers (either REALTOR® or staff) sitting alone, complainants and respondents retain the right to have arbitration requests considered by a panel composed of members of the local Professional Standards Committee. Boards and associations have considerable latitude in establishing criteria that hearing officers must satisfy on an ongoing basis.

At a minimum, hearing officers must be thoroughly familiar with the arbitration procedures outlined in the Code of Ethics and Arbitration Manual, state real estate regulations, and current real estate practice. Hearing officers may also be required to periodically complete procedural training determined locally (e.g. seminars conducted by state or national associations, “distance learning” programs, including the Professional Standards component of NAR’s Advanced Administrative Concepts program, etc.).

Since enforcement of the Code of Ethics (including dispute resolution pursuant to Article 17) is a duty of the local Professional Standards Committee, hearing officers will act on behalf of and under the supervision of the Professional Standards Committee.

## The Burden of Proof

In any ethics hearing or other hearing convened to consider alleged violations of membership duties and in any arbitration hearing, the ultimate burden of proving that the Code of Ethics or other membership duty has been violated, or that an arbitration award should be issued to the requesting party, is at all times on complainants and parties requesting arbitration.

The standard of proof on which an arbitration hearing decision is based shall be a “preponderance of the evidence.” Preponderance of the evidence shall be defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the facts sought to be proved are more probable than not. “Clear, strong, and convincing” shall be the standard of proof by which alleged violations of all membership duties, including violations of the Code of Ethics, are determined. Clear, strong, and convincing shall be defined as that measure or degree of proof which will produce a firm belief or conviction as to the allegations sought to be established.

**Ethics Complaints**

**Clear, Strong & Convincing**

**Arbitration Requests**

**Preponderance of the Evidence**

**Student Notes**

# Administrative Time Frames—Arbitration Proceedings

## Situation Timetable

### Grievance

- Request filed 180 days
- Response required/# of days to submit Optional/15 days from mailing request to respondent if response solicited
- Appeal dismissal to Directors 20 days from mailing dismissal notice
- Appeal of mandatory vs. voluntary classification 20 days from receipt of decision

### Hearing

- Notification to respondent of request 5 days from receipt of Grievance Committee's instruction
- Response required 15 days from mailing request to respondent
- Challenge forms 10 days to challenge from date forms mailed
- Panel named 15 days from mailing challenge forms
- Hearing notice 21 days before hearing
- Arbitration case to panel Board option
- Notice of witnesses and attorney 15 days before hearing to Board and other party

### Procedural Review

- Request filed 20 days from mailing award
- Preliminary review Optional number of days
- Amendment received Within 10 days of notice
- Review held by Directors Next/special meeting giving not less than 10 days' notice

### Student Notes



## Module 3 Eruptions of Business Etiquette

### The Evolution of Business Models

The real estate profession is currently experiencing an eruption of various business models which take different approaches to the practice of real estate and the providing of services to consumers. Dealing with these various models of business will require REALTORS® to increase the level of their professionalism, heighten the level of their services and deal with these issues consistent with the provisions of the REALTOR® Code of Ethics.

#### Student Notes

### The Open Letter to NAR



What Code of Ethics Concerns Does That Video Raise?

Case Study #8

#### Student Notes

The provisions of Article 15 of the Code of Ethics state:

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

We should take note that the language of Article 15 does not simply say that REALTORS® should refrain from making such comments about other “REALTORS®.” Article 15 states that such comments should not be made about “other real estate professionals, their businesses, or their practices.” What some of us have failed to realize is that real estate professionals work for all the following:

- Zillow
- Redfin
- OpenDoor
- Knock
- Offer Pad



If REALTORS® realize this basic fact and are truly living by the Code of Ethics then negative comments and posting about these alternative business models would appear to be in violation of the spirit and the intent of the Code. We should be hesitant to adopt an us versus them mentality. Maybe our paradigm about alternative business models in the industry needs revision to achieve a more professional approach.

## **iBuyers & A Professional Ethical Approach**

iBuyers are simply a different business model by which real estate professionals and real estate companies are approaching the home buying and selling process. It is not a new concept. For many years there have been brokerages in the market who promoted and utilized programs that offered consumers the option of having the brokerage purchase the home if the home did not sell within a certain time frame at a certain price. iBuyer companies are an extension and expansion of this concept.

The premises and concepts upon which these alternative business models are based include the following fundamental beliefs:

- The process of selling a home can be a lengthy and torturous process.
- The tough part for most consumers is the interim period between selling their current home and buying the next one.
- There are a lot of real estate commissions charged in the transactions.
- Consumers will place a premium value on speed and certainty.
- There should be a way to use investor money to accelerate the process, avoid the uncertainty and ease consumer pain points.

Therefore, iBuyer companies were formed using investment pools of money to capitalize on real estate transactions. There are already millions of dollars invested in such endeavors and venture capital companies like Softbank Group literally have billions of dollars to invest if the appropriate rate of return can be achieved.

## Who Are the Major Players?



Student Notes

### OpenDoor

- Founded 2014
- Bid on homes
- Purchase & Resale Immediately
- 2019 Home Purchase Budget 2.5 Billion
- Total fundraising of over \$a billion and \$1.5 billion in debt
- Expansion from 10 to 50 markets planned
- Has Raised Over \$1 Billion After 6 Rounds of Funding

**Knock**

- Based in Atlanta, Founded 2017
- January 2017 Raised \$30 Million
- Buy Future Home in Advance
- Buyer Pays Both Loans Until Previous Home is Sold

**Offerpad**

- Offers Selling & Buying Experiences
- Selling Similar to OpenDoor
- Buyers Get Access Without a Licensee
- Fees Typically 7%
- New to Charlotte & Raleigh
- Limits on Types
  - Less than \$500,000
  - Not more than 1 acre
  - Newer than 1960

**Side by Side Comparison**

Selling to Offerpad		Traditional offer	
Offerpad offer	\$235,000	Sales price	\$235,000
<u>Service fee</u>	-\$17,625	<u>6% agent commissions</u>	-\$14,100
<u>Seller concessions</u>	-\$0	<u>2% seller concessions</u>	-\$4,700
Repairs requested by Offerpad	TBD	Market-ready improvements	TBD
Overlap ownership costs	-\$0	Overlap ownership costs (1%)	-\$2,350
<b>Net cash to seller</b>	<b>\$217,375</b>	<b>Net cash to seller</b>	<b>\$213,850</b>

**Zillow**

- iBuyer is called Zillow Homes
- Greatest Benefit is Initial Contact with the Seller Lead
- Zillow Offers is Purchasing Leads as a Premier Agent (Competing Against Licensees)
- 2017 Revenues for all Lines \$1.07 Billion
- Projections are that listing leads alone could equal all of Zillow’s revenue

**Student Notes**

There are a lot of things to keep in mind when competing with and encountering these different business models in the market:

- They have yet to be tested by downturns in the market
- Raising money does not equal profit
- Raising money does not equal market share
- Structuring these transactions is more complicated than it sounds
- Consumers must still participate in a closing process
- Lenders and Fannie Mae aren't necessarily fans

There are industry experts that predict the iBuyer models could achieve as much as a 60% share of all sales and purchases in the next year. However, in the end the only thing that is truly going to matter is the consumer's voice. Consumers will be the ones to answer two fundamental questions:

1. Is the convenience worth the cost?
2. Is the service worth the cost?

Viewed with these two questions in mind real estate professionals rather than denigrate or bash these services, would be well advised to take a hard look at the services they provide and approach the iBuyer phenomenon with a stance that is more in line with Article 15 of the Code of Ethics. Former Brokerage Outreach Director at Zillow, Jay Thompson, makes this argument in a well written article for Inman News.

## The Role of Expertise

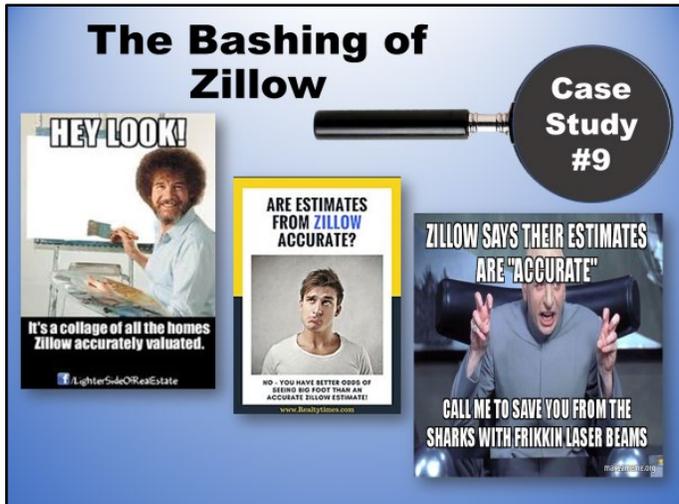
"More than ever, sellers need the help of a professional real estate agent, especially when there is an iBuyer offer on the table. The implication is they can go it alone or use a professional. The way we see it consumers need professional help to make the right decision."

FORBES, March 6, 2019



## Student Notes

Potential violations of Article 15 by REALTORS® on social media posts is not limited to their collective comments about iBuyer companies. Zillow is another real estate entity and model often under attack. Remember real estate professionals work with Zillow and for Zillow on a regular basis.



### Student Notes

Imagine if a REALTOR® from one real estate company such as ABC Realty posted such comments about a competitive firm in their market. The reason that Article 15 prohibits the making of false or misleading statements about other real estate professionals is because such remarks are damaging the reputation and integrity of the industry.

## Airbnb & Property Management Business Models

Beyond the realm of sales, alternative business models are also appearing in the area of property management. Airbnb has become an online marketplace for rental properties that includes 4 million properties worldwide and has over 600,000 listings in the U.S. The listings range from entire properties to simple rooms. The site charges commissions to host bookings and also receives anywhere between 6% to 12% from the guests who choose this form of rental.



What Airbnb truly represents is the disintermediation of the hotel industry and the firing of property managers. It is yet another consumer empowered tool, just like the iBuyer companies. As an industry, real estate professionals should be focused on figuring out why these alternatives have become so popular and where have REALTORS® failed consumers that made these types of approaches attractive. Some of those reasons include:

- **Better value accommodation**
- **Huge ranges of price points**
- **Unique and unusual spaces**
- **Cost savings to both consumers and owners**
- **Convenience**

Many REALTORS® attended the most recent NAR National Conference in San Francisco and chose themselves to stay in Airbnb properties, only to walk down the street to the conference and complain about consumers choosing alternative business models throughout the real estate profession and demand that the leaders of our industry do something to stop these trends. As Jay Thompson suggested maybe rather than plead with leaders to address the problem, maybe we should be asking more personal questions about our own businesses such as:



- **Where are we failing to provide value?**
- **Are we offering consumers a range of price points and services?**
- **Are we focusing on their needs or our own?**
- **What can we do to lower consumer costs?**
- **How can we provide convenience more effectively than in the past?**

The Airbnb experiment requires additional knowledge and competence from real estate professionals when listing their own properties, helping consumers select properties that they can rent in this fashion and assisting clients in the use of Airbnb services. Just because the rentals of properties can occur on Airbnb sites, does not in

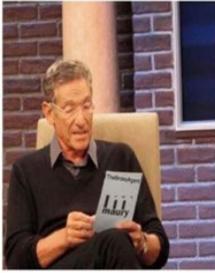
many states relieve the owner or the licensee from basic rental property requirements. Items that often get overlooked are:

- Tax consequence
- Insurance consequences
- HOA & zoning restrictions
- State rental law violations
- Mishandling of security deposits
- Safety issues such as smoke and carbon monoxide detectors

## The Ethics of Relationships & Activities with Other Brokers

Throughout the REALTOR® Code of Ethics the importance of relationships between REALTORS® is addressed in several articles. Articles 15, 16 & 17 all deal with our duties to REALTORS®

In the description, you wrote that the property was "easy to show." After 8 Voicemails, 14 texts, & 5 emails to everyone on your "team" just to set up a time, WE HAVE DETERMINED THAT WAS A LIE





Case Study #10

What provisions of the Code do you think this post violates?

### Student Notes

REALTORS® have obligations to not knowingly or recklessly make false statements. REALTORS® also have obligations to not take any action inconsistent with exclusive representation or exclusive brokerage relationship agreements that other REALTORS® have with clients.

## The Commission Discussions

**The Commission Discussions**

**Case Study #11**

**What are the ramifications of a post of this Nature?**

Identity Hidden

Your opinion needed. If buyer's agent compensation posted in the MLS is significantly lower than the customary one, what do you do? Do you still take your buyers there? Do you negotiate it? Do you ask Buyers to compensate you? Any other ideas?

104 Comments

Like Comment

**Student Notes**

Two recently filed class-action antitrust lawsuits are now pending against the National Association of REALTORS®, several MLS's and several major real estate franchisors alleging that consumers have no ability to negotiate commissions with real estate professionals, that industry standards have been established and that policies of the association and its related MLS operations are in violation of federal anti-trust laws.

In *Moerhl v. National Association of REALTORS®*, Realogy Holdings, HomeServices of America, RE/MAX and Keller Williams, home sellers who listed their properties on several multiple listing services are claiming that NAR's MLS policies, which require all participants to cooperate with and compensate other participants, is a violation of antitrust law. The second lawsuit filed in the North District of Illinois by Sawbill Strategic alleges that NAR, Realogy, Home Services of America, RE/MAX and Keller Williams violated federal antitrust laws by requiring property sellers to pay the buyer's broker an inflated fee.

The claims are based in large part on the Sherman Antitrust Act which was created in 1890 and prohibits a conspiracy to fix prices and a conspiracy to boycott a competitor.

Also at issue in the cases are the MLS policies of requiring all brokers in a firm to belong to the Association in order to participate in MLS, limiting cooperating

compensation only to buyer's agents that agree to pay Association dues and some MLS policies which prohibit individual sole proprietor brokers from joining the MLS.

Any discussions regarding commissions, averages and the amounts charged should not be posted on social media sites, but there has been an avalanche of such postings. Even if the defendants in the lawsuits are not guilty of federal antitrust violations, many of the posts where agents have said all of the following probably are in violation:

- "I always charge the typical commission for my area."
- "I don't show properties which pay less than the average commission."
- "I don't have to work for anything other than what is common in my area."



The answer to elevating oneself professionally or ethically will always lie in the approach of delineating what you do best, how you approach this business, what you charge and the services you provide. Caution and warnings should always attach to any comments that REALTORS® may make about the business practices and operations of someone else. You can't build yourself up by tearing other people down.

## Avoiding Eruptions Outside of Your Area of Expertise

Professional ethics and competence always demand that real estate professionals act within the area of their expertise. While many state licenses legally allow many REALTORS® to practice across an entire state and practice within any aspect of real estate, such a fact does not mean that they are necessarily competent to do so. REALTORS® should continually ask themselves two fundamental questions:

1. Do I have the necessary training and education to act regarding this topic?
2. Do I have the necessary experience, skill and care to deal with this area or issue?

Consider the number of times that you have seen real estate professionals post a legal or tax question in social media. One such recent post asked a question about suing a potential buyer for foundation problems. Although every real estate licensee is advised against providing legal or tax advice the post contained 29 comments from real estate professionals providing legal opinions based on the content of a five-line post.

The provisions of Article 11 of the Code state:

**“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.”**

**Identity Hidden**

Trying to rent a home ... got an applicant who verbally told me on the phone he has an emotional support animal ! The rental says no pets allowed but am I allowed to discriminate against an emotional support animal ? My guess is no ... but I asked what kind of animal and he says it doesn't matter ... thoughts ? Rules ?

5 173 Comments

The potential candidate' answer tells me he/she is a smart-ass wanna be...a legit pet owner will have no problem to tell you what they have. I see lots of Bit-bulls and similar aggressive breeds owners pushing this angle  
Anyone, for \$90 on line can get a letter from a shrink they never talked to, spoke to or met, even from out of state:(

Like · Reply · 2d

Well private rentals a little tricky, my client rented her house for 4 years to a tenant with a cat and dog, apparently when she moved out, her dog and cat would pee everywhere , it went to her subfloor and she had to rip out everything, cost her thousands. She would never rent her house again with someone with pets!, she has a right to put in the listing no pets no smoking.

The Service dogs are not considered pets, but more like a medical aid/medication. The Emotional Support pet field is nuts; most cases are fake via a certificate on line. I wish the Feds would do something about it...

Like · Reply · 2d

**Case Study #11**

**Lack of Knowledge About Basic Common Issues**

### Student Notes

## New Developments & Changes

Article 3, at present, prohibits discrimination against a cooperating broker on the basis of any personal characteristic, including their membership in a protected class. This new standard of Practice highlights Article 3's prohibition on discrimination in order to reaffirm the National Association's commitment to diversity and a real estate industry free from the scourge of discrimination.

The language of the new proposed Standard of Practice to be included under Article 3 is proposed as follows:

**REALTORS® may not refuse to cooperate on the basis of a broker's race, color, religion, sex, handicap, familial status, national origin, sexual orientation or gender identity.**

There are also changes to Standard of Practice 12-2. The new provision will state:

**Unless they are receiving no compensation from any source for their time or services REALTORS® may use the term "free" and similar terms in their advertising and in other representations only if they clearly and conspicuously disclose (a) by whom they are being, or expect to be paid (b) the amount of the payment or anticipated payment (c) any conditions associated with the payment, offered product or service and (d) any other terms relating to their compensation.**

## NAR's New Clear Cooperation Policy

To address a growing use of off-MLS listings, the National Association of Realtors® (NAR) Board of Directors voted 729-70 to approve a new rule affecting off-MLS listings, saying they must be submitted to the MLS within one business day after first marketing them to the public. The policy passed at the Board of Directors meeting on Monday. All MLSs must now adopt the policy before a May 1, 2020, deadline.

According to the committee's panelists, MLS Statement 8.0 does not prohibit brokers from taking office-exclusive listings, nor does it impede their ability to meet clients' privacy needs. It simply ensures that all buyers have fair access to the full range of residential listings. NAR doesn't want to overly regulate," says Jon Colie, vice president of MLS and industry relations for HomeServices of America and current chairman of the board for Mid-Atlantic regional Bright MLS. The policy doesn't eliminate private-office exclusives, "coming soon" listings, or even pocket listings, Colie says. Instead, it addresses what he called hybrids, meaning, "We're marketing it everywhere except the MLS."

Bill Lublin, broker-owner of Century 21 Philadelphia and a former chair of the committee, was among the majority of forum attendees who spoke in favor of the proposal, calling it a critical step in preserving cooperation in an increasingly fractionalized environment.

"There's no fractionalized market that is not exclusive, and that is not who we are," Lublin said in a direct appeal to the committee prior to its vote. "I have had the honor of teaching real estate in many countries. They would open a vein to have the MLS that you are here to protect today."

### Full text of MLS Statement 8.0

*Within one (1) business day of marketing a property to the public, the listing broker must submit the listing to the MLS for cooperation with other MLS participants. Public marketing includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public facing websites, brokerage website displays (including IDX and VOW), digital communications marketing (email blasts), multi-brokerage listing sharing networks, and applications available to the general public.*

**Student Notes**

## Module 4 Hurricanes Over North Carolina

REALTORS® who practice in North Carolina are required to comply with both the REALTOR® Code of Ethics and the statutes and rules of the State of North Carolina.

**Student Notes**

## Advertising in Accordance with NC Rules & Statutes

Every real estate advertisement in North Carolina requires two fundamental parts. It is required that the ad be published with the consent of the broker-in-charge and also that the name of the broker or firm appear in each ad. These fundamental principles are contained in Rule A.0105 which provides as follows:

**(a) Authority to Advertise.**

- (1) A broker shall not advertise any brokerage service or the sale, purchase, exchange, rent, or lease of real estate for another or others without the consent of his or her broker-in-charge and without including in the advertisement the name of the firm or sole proprietorship with whom the broker is affiliated.**

Since it is clear that both the rules of the NC Real Estate Commission and the provisions of the NAR Code of Ethics extend beyond the traditional advertising in which brokers engaged, licensees should be cautious and prudent about including firm names on all social media and listing databases.

The Commission rule requires that the advertisement contain the name of the brokerage firm, not just a franchise name. Licensees should use the formal name of the brokerages with which they are affiliated according to NCREC records. Just uploading a logo for a major franchise does not provide the name of the brokerage.

Although the Code contains a limited “linkage exemption,” such an exemption only exists where the display of the firm name is not practical. The North Carolina Real Estate Commission rules DO NOT contain a linkage exception and the firm name needs to appear on websites and social media posts without the consumer needing to click anywhere in order to see the firm name.

All licensees should make certain that their brokerage names are appearing on the social media sites that they create.

## **Consent of the Broker-in-Charge**

The consent of the broker-in-charge requirements in Rule A.105 is a reiteration of the duties and obligations of a broker-in-charge as set forth in Rule A.0110(g)(3) which states that:

**(g) A designated BIC shall:**

**(3) be responsible for the conduct of advertising by or in the name of the firm at such office;**

While it is not technically required that the broker-in-charge specifically review every single advertisement that is conducted in a real estate brokerage, the Commission's rule imposes full liability on the broker-in-charge for advertising issues. Therefore, at a minimum the BIC should have:

- Office policies that accurately reflect the rules and regulations
- A system or process for reviewing and approving advertisements
- Periodic review of the advertising that is being conducted by the firm's brokers
- A policy for maintaining accurate records and copies of advertising



### Student Notes

## The Limits of Licensed Activity

**craigslist**

\$191,500, 5br, Beautiful NEW Home Now

**Case Study #13**

Reply

This home is loaded with closet space and 5 large bedrooms all with walk in closets! The kitchen is chef ready including brand new kitchen appliances! Start the new year off with a brand new home for 2016!

**The Madison Plan**  
 Bedrooms: 5  
 Bathrooms: 2.5  
 Price: \$191,500  
 \$0 Down Option Available

Call: (980) 320-1830 extension 466

**Motivated private seller willing to pay \$1,000 referral fee to any person who refers a buyer.**

Bedrooms: 5

Enlarge Picture

Enlarge Picture

Enlarge Picture

Enlarge Picture

Enlarge Picture

Enlarge Picture

Is this legal?

### Student Notes

It is important to understand where the authority of the NCREC begins and where it ends. In North Carolina, the Commission has authority over those engaged in real estate brokerage. The scope of that authority is defined by statute. §93A-1 provides in pertinent part that:

***It shall be unlawful for any person, partnership, corporation, limited liability company, association, or other business entity in this state to act as a real estate broker, or directly or indirectly to engage or assume to engage in the business of real estate broker or to advertise or hold himself or herself or themselves out as engaging in or conducting such business without first obtaining a license issued by the North Carolina Real Estate Commission...***

§93A-2(a) assists us in defining that further by providing that:

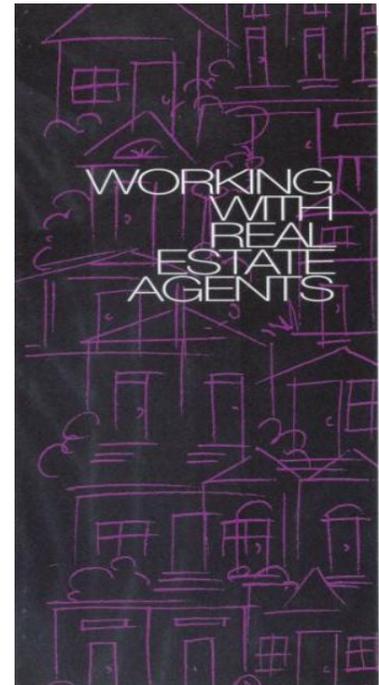
***A real estate broker within the meaning of this chapter is any person, partnership, corporation, limited liability, association, or other business entity who for compensation or valuable consideration or promise thereof lists or offers to list, sells or offers to sell, buys or offers to buy, options or offers to auction (specifically not including a mere crier of sales), or negotiates the purchase or sale or exchange of real estate, or who leases or offers to lease, or who sells or offers to sell leases of whatever character, or rents or offers to rent any real estate for the improvement thereon, for others.***

Even though individual owners are exempt when advertising or marketing their own property, they should be cautious about engaging in real estate brokerage activities. For example, private homeowners who advertise their homes for sale in Craigslist cannot offer a referral fee to any person who refers a buyer. The payment of such compensation by an unlicensed person to an unlicensed person would be in violation of the North Carolina statute regarding the providing of brokerage services.

## Fiduciary Duties

Similar to the REALTOR® Code of Ethics, licensees in North Carolina are bound to fulfill obligations of fiduciary duties to clients and have professional obligations to customers. The requirements of North Carolina agency agreements and disclosure are set forth in Rule A.0104. The provisions of Rule A.104 include all of the following:

- Use of the Working with Real Estate Agents Publication
- Disclosure of Duties & Obligations
- Requirements of Dual & Designated Agency
- Requirements of Agency Employment Agreements



Because of the fiduciary duties owed in North Carolina to clients, licensees should also be aware that in North Carolina the representation of buyers on residential properties that the licensee owns is prohibited by Rule A.104(o):

**A broker who is selling property in which the broker has an ownership interest shall not undertake to represent a buyer of that property except that a broker who is selling commercial real estate as defined by Rule .1802 of this Subchapter in which the broker has less than 25% ownership interest may represent the buyer of that property if the buyer consents to the representation after full written disclosure of the broker's ownership interest.**



**Current Issues Group Discussion**

**Student Notes**

**Competence**

Acting competently is important enough that the 2019-2020 General Update Course and the Broker-in-Charge Update Course contain a substantial portion of material on the issue.



**Current Issues Group Discussion**

**Student Notes**



## North Carolina Professionalism & Competence in Property Management

In North Carolina three separate statutes govern the rules for the conduct and practices of property management. These include:

- NC Residential Rental Agreements Act
- NC Security Deposit Act
- NC Vacation Rental Act

Because these laws are state statutes and not NC Commission Rules they must be followed by everyone who leases property in North Carolina.



Those who choose to promote and lease properties through Airbnb sites should do so in a manner that is consistent with state laws. If the property meets the definition of a vacation rental by being provided for recreation or leisure purposes for a period of less than 90 days the NC Vacation Rental Act requires:

- All security deposits to go into a trust account
- All deposits must be returned within 45 days
- All leases less than 90 days must be in writing
- Vacation rentals require all advance deposits to be held in trust until occupancy



## A Local Lesson on Airbnb from the March 2019 NC Real Estate Bulletin

SHAWN THOMAS JOHNSON (Buncombe County) – By Consent, the Commission permanently revoked the broker license of Mr. Johnson effective February 13, 2019. The Commission found that Mr. Johnson’s broker license restricted him from becoming a broker-in-charge or a qualifying broker until June 19, 2022. Mr. Johnson consented to the restrictions on his license. Mr. Johnson operated a property management business for a fee, sometimes under the business entity Stay Asheville Inc. His property management business focused on short-term rentals, specifically using Airbnb as a platform to rent properties. Mr. Johnson failed to obtain a real estate firm license for Stay Asheville Inc., has rented at least nine properties on behalf of others for a fee without entering into a written property management agreement, failed to maintain a trust account to hold the rental proceeds for his owner clients, and failed to keep any trust account records. Instead, Mr. Johnson directed Airbnb to deposit rental proceeds into his personal bank accounts, thus commingling personal money with trust money in these bank accounts. Mr. Johnson failed to account for and disburse trust money to his owner clients. Mr. Johnson rented three properties on Airbnb, each within the Asheville city limits, as short-term rentals without first obtaining a Homestay Permit from the City of Asheville as required under the city’s ordinances. Mr. Johnson failed to execute, maintain, or produce to the Commission’s investigator any records related to his property management operation. Mr. Johnson neither admits nor denies that he modified pre-approval and prequalification letters written for other individuals to use for his own purposes.

### Student Notes



## Professional Conduct, Courtesies & Business Etiquette as the Hope That Lies Ahead

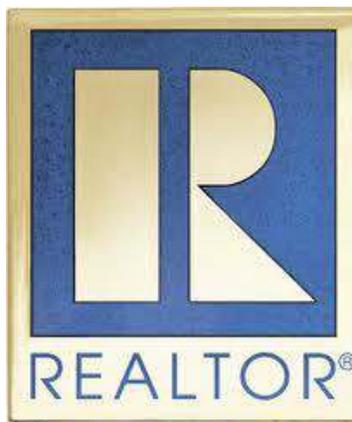
Today, more than ever the real estate profession is challenged by a changing world in the age of disruption. Consumers' attitudes and demands are changing, new business models proliferating and increased demands for value exist.

REALTORS® have the opportunity to lead consumers and the industry through this age of disruption. That leadership and opportunity should not be squandered on complaining, engaging in unprofessional conduct or demeaning others and their business approaches. Our only way through is to take the high road that is outlined in the REALTOR® Code of Ethics and live it daily.

That means that we together have to increase professionalism, increase business etiquette and courtesies and hold the responsibilities we carry in higher regard.

There is no other organization more dedicated to the dreams of homeownership, the protection of consumers and to high integrity than the National Association of REALTORS®. We must demonstrate and reflect that in all we do.

After all, we agreed to "Live by the Code." That's who we R.



**This Course Requires the Attachment  
of the Current Copy of the REALTOR®  
Code of Ethics as a Supplement HERE**