

RESIDENTIAL-FOCUSED CASE STUDIES

PARTICIPANT'S GUIDE

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

1. Article 1

When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their client. This obligation to the client is primary, but it does not relieve REALTORS® of their obligation to treat all parties honestly.

When serving a buyer, seller, landlord, tenant or other party in a non-agency capacity (such as Transaction Broker relationship) REALTORS® remain obligated to treat all parties honestly. (Amended 1/01)

Instructor Notes

- The motion to amend Article 1 was made by New Mexico real estate broker, Lou Tulga.
- Agents (fiduciaries) protect and promote their clients' interests.
- "While the Code of Ethics establishes obligations that may be higher than those mandated by law, in any instance where the Code of Ethics and the law conflict, the obligations of the law must take precedence."
- Under New Mexico Law, Transaction Brokers are non-fiduciaries. Therefore, they cannot protect and promote as an Agent could. They can promote their client's interests, but they cannot protect their client's interests by "standing in for" or "acting for" their principal.
- Transaction Brokers, like Agents, put their clients' interests before their own.

Standard of Practice 1-15:

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

Exercise: Article 1 Case Study (Based on Case Interpretation #1-26)

REALTOR® Leo is a sales associate with Done Right, REALTORS®. To promote Done Right's in-house listings, the firm's principals offer \$1,000 bonuses to the company's sales associates for each listing sold.

Dr. Newcomer, a recent transferee to the town, enters into a buyer's representation agreement with Done Right, REALTORS® through REALTOR® Leo.

Dr. Newcomer explains he has specific needs, foremost of which is that any home he purchases must be convenient for and readily accessible to Dr. Newcomer's spouse, who is physically challenged. "Part of my wife's physical conditioning program is swimming," says Dr. Newcomer. "So," he explains, "in addition to everything else, I am looking for a home with a pool or room to build a pool."

During the next few days, REALTOR® Leo shows Dr. Newcomer several properties in the Blackacre Subdivision, all of which are listed with Done Right, including one with an outdoor swimming pool. Not included among the properties shown to Dr. Newcomer are several similar homes in Blackacre that are listed with other firms, including one with an indoor pool.

After considering the properties he sees with REALTOR® Leo, Dr. Newcomer makes an offer on the home with the outdoor pool. His offer is accepted, and the transaction closes.

Several months later, REALTOR® Leo receives notice that an ethics complaint has been filed against him by Dr. Newcomer. From a colleague at the hospital who lives on the same block, Dr. Newcomer learned about the home with the indoor pool that REALTOR® Leo failed to show him when Dr. Newcomer was looking for just the right property. The complaint alleges that REALTOR® Leo put his own interests and those of Done Right ahead of Dr. Newcomer's interests by exclusively promoting Done Right's listings and by not telling Dr. Newcomer about the similarly priced property with the indoor pool. Dr. Newcomer also says in the complaint that he believes the unshown property suited his family's needs much better than the property he did purchase, because his wife would have been able to use the pool all year long. The complaint spells out that REALTOR® Leo received a bonus for selling one of Done Right's listings to Dr. Newcomer, and that Dr. Newcomer believes that REALTOR® Leo's failure to tell him about the house with the indoor pool was motivated by REALTOR® Leo's desire for the bonus.

During the hearing, REALTOR® Leo defends his actions, explaining that properties rarely meet all of a potential purchaser's desires, and that he made Dr. Newcomer aware of several properties that met most of his requirements, including one property with an outdoor pool. REALTOR® Leo goes on to say that Dr. Newcomer must have been satisfied, because he ultimately purchased that home

When questioned by the hearing panel, REALTOR® Leo acknowledges he knew about but did not show the house with the indoor pool to Dr. Newcomer. He concedes that a year-round, indoor pool was better suited to the family's needs than a seasonal, outdoor pool. He also admits that failing to tell Dr. Newcomer about the house with the indoor pool was, at least in part, motivated by the prospect of the bonus offered by his firm. "But," he also argues, "aside from the indoor pool, that house is no different than the one that Dr. Newcomer bought."

Questions

1. REALTOR® Leo's obligations under Article 1 call for him to (check all that apply):
 - A. find Dr. Newcomer a house that he is willing to buy
 - B. show Dr Newcomer all properties that meet his specific needs and requirements, regardless of whether those properties are listed with Done Right, REALTORS® or another firm
 - C. subordinate his own interests to those of Dr Newcomer
 - D. explain that he honestly believes other physical conditioning programs might be better than swimming for Dr. Newcomer's wife

2. Article 1 requires REALTOR® Leo to disclose the \$1,000 bonus at the time of entering into the exclusive buyer's representation agreement with Dr. Newcomer.
 - A. True
 - B. False

3. If a second offer was submitted for the property by another real estate office at the same time as Dr. Newcomer's offer was submitted, what disclosures to that cooperating broker, if any, would Done Right REALTORS® be required to make?
 - A. The existence of Dr. Newcomer's offer
 - B. That Dr Newcomer's offer was obtained by another licensee within Done Right REALTORS®
 - C. The existence of Dr. Newcomer's offer and that it was obtained by another licensee within Done Right REALTORS®, but only if asked by the other cooperating broker and given approval to do so by the seller
 - D. There are no disclosure requirements for multiple offer situations

2. Article 2

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

Instructor Notes

Latent Defect

A latent defect in real estate is a hidden issue that can't be discovered during a reasonable inspection.

Standard of Practice 2-1

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

NMREC Broker Duties

Written disclosure of any adverse material facts **actually known** by the associate broker or qualifying broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts requiring disclosure do not include any information covered by federal fair housing laws or the New Mexico Human Rights Act.

Exercise: Article 2 Case Study (Based on Case Interpretation #2-7)

Homebuilder REALTOR® Dean shows one of his newly constructed houses to Buyer Bert. Bert sees some construction beginning nearby and asks REALTOR® Dean about it. "I don't know," says REALTOR® Dean, "but I believe it's the attractive new shopping center planned for this area."

Following Buyer Bert's purchase of one of the houses, Buyer Bert learns that the "construction" is a bottling plant, and the adjacent area is zoned as "industrial." Buyer Bert files a complaint with the board of REALTORS®, charging REALTOR® Dean with unethical conduct for failing to disclose a pertinent fact. He says in his complaint that, had he known about the proximity of the new bottling plant when he first saw the house, he would not have purchased it.

During the ethics hearing, REALTOR® Dean's defense is that he honestly answered Bert's question because, at the time, he did not know what was being built. All he knew was that other developers were planning an extensive shopping center somewhere in the general area, so he simply ventured a guess. REALTOR® Dean goes on to say that, as indicated in Buyer Bert's testimony, he prefaced his response to Bert by saying he didn't know the answer to Bert's question.

Questions

1. Is REALTOR® Dean in violation of Article 2?
 - A. No, because he prefaced his response by clearly saying he didn't know.
 - B. No, because Buyer Bert could have researched the new construction and zoning himself.
 - C. Yes, because REALTOR® Dean is obligated to discover and disclose adverse factors that are reasonably apparent to a licensed real estate professional.
 - D. Maybe, if the new construction was identified as a "non-material" fact in law or regulation.

2. How should REALTOR® Dean have responded when asked about the new construction?
 - A. Refer Bert to the developer.
 - B. Explain that although he didn't know the answer, he would research it and get back to Bert.
 - C. Say he didn't know the answer and leave it at that.
 - D. Advise Bert to wait and see if the construction is a shopping center or something else before submitting an offer.

3. Article 12

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

Exercise: Article 12 Case Studies

Case #1 (Based on Case Interpretation #12-17)

REALTOR® X, a principal broker in the firm XYZ, was constantly looking for ways to use the Internet to promote his firm and drive additional traffic to his website.

REALTOR® X had registered, but not used, domain names that incorporated or played on the names of many of his competitors and their firms, including ABC, REALTORS®.

REALTOR® X and his information technology staff concluded that one way to drive traffic to the firm's website would be to take advantage of the search engines commonly used by potential buyers and sellers. When potential buyers or sellers searched on key words like "real estate" or "REALTORS®" or on similar words, lists of search hits would appear, and when consumers searched for ABC, REALTORS®, one of the domain names that might appear would be REALTOR® X's domain name, abcREALTORS.com.

REALTOR® X decided to take advantage of the domain names that he had previously registered, and pointed several that used, in various ways, the names of his competitors, including "abcREALTORS.com," to his site.

In a matter of days, REALTOR® X learned that he had been charged with a violation of Article 12 of the Code of Ethics by REALTOR® A, the owner of ABC, REALTORS®, alleging that his (REALTOR® X's) use of the domain name "abcREALTORS.com" presented a false picture to potential buyers and sellers and others on the Internet.

At the hearing, REALTOR® X defended himself indicating that, in his opinion, use of a domain name was not advertising or a "representation" to the public but simply a convenient way for Internet users to find relevant websites. Moreover, "When consumers reach my home page, there is no question that it is my site since I clearly show XYZ's name and our status as REALTORS®," he continued. "These complaints are just a lot of sour grapes from dinosaurs who aren't keeping up and who don't realize that on the Internet it's 'every man for himself.'"

Case #1 Questions

1. Which Standard of Practice applies to this situation?
 - A. Standard of Practice 12-9
 - B. Standard of Practice 12-10
 - C. Standard of Practice 12-11
 - D. Standard of Practice 12-12

2. Has REALTOR® Bob violated Article 12?
 - A. Yes.
 - B. No.
 - C. Only if using a domain name based on another firm's name is precluded by law or regulation.
 - D. It depends on the disclosures and any other information displayed on REALTOR® Bob's Web site.

Exercise: Article 12 Case Studies

Case #2 (Based on Case Interpretation #12-19)

REALTOR® A, a residential specialist in a major metropolitan area, spent several weeks each year in a cabin in the north woods he had inherited from a distant relative. Always looking for investment opportunities, he paid careful attention to “for sale” signs, online ads, and local brokerage websites in the area.

Returning from the golf course one afternoon, REALTOR® A spotted a dilapidated “for sale” sign on an attractive wooded lot. Getting out of his car, he could discern REALTOR® Z's name. Returning to his cabin, he looked online to locate REALTOR® Z and REALTOR® Z's company website. Visiting REALTOR® Z's website, he found detailed information about the lot he'd seen that afternoon.

He e-mailed REALTOR® Z and asked for information about the lot, including its dimensions and asking price. Several days later, REALTOR® Z said, “That listing expired.”

The following day, REALTOR® A, hoping to learn whether the lot was still available, contacted REALTOR® X, another area real estate broker. “As it turns out, we have an exclusive listing on the property you're interested in,” said REALTOR® X. In response to REALTOR® A's questions, REALTOR® X advised that he had had an exclusive listing on the property for almost six months. “That's funny,” responded REALTOR® A, “REALTOR® Z has a ‘for sale’ sign on the

property and information about it on her website. Looking at her website, I got the clear impression that she still had that property listed.”

While the wooded lot proved to be out of REALTOR® A's price range, REALTOR® Z's “for sale” sign and website were still on his mind when he returned home. Ultimately, he contacted the local association of REALTORS® and filed an ethics complaint alleging that REALTOR® Z's “for sale” sign, coupled with her offering information on her website made it appear as if the wooded parcel was still listed with her firm, when that had not been the case for over six months. REALTOR® A noted that this conduct, in his opinion, violated Article 12 since REALTOR® Z was not presenting a “true picture” in her public representations and was, in fact, advertising without authority, a practice prohibited by Article 12, as interpreted by Standard of Practice 12-4.

At the hearing, REALTOR® Z claimed that failure to remove the “for sale” sign was simply an oversight, and if anyone was to blame, it was her personal assistant who was responsible for removing signs and lockboxes from expired and sold listings. “If you want to blame anyone, blame my assistant since he’s supposed to bring back our ‘for sale’ and ‘sold’ signs.” Turning to the stale listing information on her website, REALTOR® Z acknowledged that information about her former listing had continued to appear for more than six months after the listing had expired. REALTOR® Z analogized the continued presence of that information to an old newspaper advertisement. “It’s possible someone might come across a six month old newspaper with my listings in it. Those ads were true when I ran them but how could I ever control when and where someone will come across them, possibly months or even years later?” she asked. “Besides,” she added, “REALTORS® have better things to do than constantly inspect their websites to make sure everything is absolutely, positively up-to-the-minute.” “If we did that, none of us would have time to list or sell,” she concluded.

Case #2 Questions

1. Is REALTOR® Z obligated to keep her company's listing information up to date on her firm's website?
 - A. Yes.
 - B. No.
 - C. Only if the same listing information does not also appear in a newspaper.

2. If she is obligated to keep her website current, then how long does REALTOR® Z have to remove outdated or expired property information from the website?
 - A. REALTORS®' websites must be immediately and continuously updated to avoid the inclusion of outdated and misleading information.
 - B. REALTORS® should use reasonable efforts to ensure information on their websites is current and accurate.
 - C. It depends on the multiple listing service's IDX and VOW Rules.
 - D. Both B and C.
 - E. REALTORS® are not obligated to update the information shown on their websites.

3. When he took the listing, REALTOR® Z received permission from the seller to post a sign on the property and to advertise it on his website. Such authority remains in effect even after the listing expires.
 - A. True
 - B. False

4. Article 17

- REALTORS® (principals) are required to arbitrate contractual and specific non-contractual disputes identified in Standard of Practice 17-4 that they have with REALTORS® (principals) in other firms.
- REALTORS®' clients may invoke mandatory arbitration with their REALTOR® (principal).
- REALTORS® are obligated to cause their firms to arbitrate.

Exercise: Article 17 Case Study (Based on Case Interpretation #17-1)

REALTORS® Linda and Amy participate in a cooperative transaction that results in a dispute over entitlement to compensation. Rather than request arbitration at the local association of REALTORS®, REALTOR® Linda instead files a lawsuit against REALTOR® Amy for the compensation she feels is owed to her. When REALTOR® Amy receives notification a lawsuit has been filed, she turns around and requests arbitration at the local association.

Because Linda and Amy are REALTOR® principals in different firms, the association's Grievance Committee classifies the arbitration as "mandatory" and schedules it for a hearing. REALTOR® Linda receives notice of the grievance committee's decision, but refuses to withdraw her lawsuit, so REALTOR® Amy then files an ethics complaint alleging that REALTOR® Linda has violated Article 17, as interpreted by Standard of Practice 17-1.

After receiving the complaint, the association schedules a hearing before the Board of Directors. During that hearing, REALTOR® Amy presents evidence that she sought REALTOR® Linda's agreement to submit the dispute to arbitration. REALTOR® Linda defends her actions by asserting that under state law, REALTOR® associations have no authority to bar her access to the courts, or to require her to arbitrate disputes with other REALTORS®.

The Board of Directors acknowledges that REALTOR® Linda is correct about her legal rights and about the association's inability to prevent her from filing a lawsuit. That said, the Board of Directors points out the association is a voluntary organization whose members agree to assume certain obligations with respect to their relations with other REALTORS®. The board advises Linda that if she wishes to continue as a REALTOR® member, she is obligated to adhere to the Code's duty to arbitrate, as established in Article 17.

Questions

1. Does filing litigation against another REALTOR® over a contractual dispute always lead to a violation of Article 17?
 - A. Yes.
 - B. No, because everyone is entitled to file litigation.
 - C. It depends on whether: (1) a request for arbitration has been filed, (2) the grievance committee determines the matter to be arbitrable and of a mandatory nature, and (3) a separate ethics complaint alleging a charge of Article 17 has been filed.
 - D. Arbitration always is voluntary.

2. REALTORS® may be relieved of their obligation to arbitrate through the local association of REALTORS® when:
 - A. a grievance committee or a hearing panel find the matter to be too legally complex or the amount involved to be too large or too small
 - B. both parties voluntarily choose to litigate, rather than arbitrate
 - C. the arbitration is classified as “voluntary” by a grievance committee
 - D. the request for arbitration is filed after the filing deadline
 - E. All of the above.

3. Is failing to pay an arbitration award always a violation of Article 17?
 - A. Yes.
 - B. Only if a pattern of arbitrarily refusing to pay arbitration awards is established.
 - C. Yes, depending on whether the arbitration is mandatory or voluntary.
 - D. No, arbitration awards must be enforced through the courts.

FACILITATOR'S NOTES FOR RESIDENTIAL CASE STUDIES

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

□ Facilitator's Notes – General

Suggested Method of Delivery: Generally Introduce Part 5, which features summaries and case studies of four particular Articles of the Code of Ethics. The material is divided into Article summaries and case studies, so present the accompanying slides and discussion points for each Article. When studying each Article, introduce the related case study and each case study thereafter in the same manner. Direct participants to work through each case study in their groups (three to six individuals recommended). Time permitting, ask for feedback from each group's spokesperson or debrief the exercise in "town hall" format if time is limited. **Answers to the case study questions are indicated by boldfaced type in the Facilitator's Notes for Part 5.**

Alternative Method of Delivery: A short video segment for each Article of the Code of Ethics is available on line at www.Realtor.org/codevideos and may be used in place of or to supplement the lecture for this section. Each video may be directly streamed from Realtor.org, or downloaded and saved to a DVD to play during class. Also included with each video segment are discussion questions and support materials. Note that Article 1 features two video segments – one devoted to Article 1 and the other devoted to Article 13. The video for Article 2 also includes a segment focused on Article 3. **All case studies are based on actual Case Interpretations in the NAR Code of Ethics and Arbitration Manual.**

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 **Slide 55**

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1. Article 1

□ Facilitator's Notes

Suggested Method of Delivery: Using accompanying slides, summarize the central concepts of Article 1 presented in the Participant's Guide. Standard of Practice 1-2 is mentioned because it defines various terms used in the Code. This Standard of Practice also establishes the concept that the Code applies to all types of agency and non-agency relationships recognized by law. Work through the group case study for Article 1.

Alternative Method of Delivery: Use the Article 1 video segments (there are two, because Article 13 also is covered), available on line at www.Realtor.org/codevideos.



Suggested Time: 5 minutes

Start time: _____

End time: _____

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 **Slide 56**