

## **AIM FOR THE UPRIGHTS: Ethics & The Realtor®**

Doug Sinclair: Version 10/04/24

Student Manual

### **Forward: Introduction Course Description**

Stu Crum and Doug Clark wrote, "Aim for the Uprights." Having played college sports (Florida State), I connected with Stu's thoughts and realized how they related to ethics in real estate. As in all sports – you could call real estate a sport – your objective is to win.

Stu was a college and professional football kicker. His game plan was to be intentional, purposely driven, setting priorities, staying clear of distractions, instilling harmony, taking time to evaluate and identifying his thoughts and feelings, taking responsibility for your actions. Because all decisions have consequences, increasing your self-awareness through deep emotional intelligence is important. I know, you are thinking "what the ..." is he talking about. Here we go again. Please listen to me. This relates to how we connect and conduct ourselves with buyers and sellers, and other brokers.

If you watch college or professional football, the place kickers can make the difference between winning or losing a game. And ethics is a major part of our ability to win...close the transaction. How we approach this can make the difference of whether we keep or lose our license to practice.

Ethics and real estate practice are tightly bound. The result is most often about managing expectations and emotions. If the agent takes out their frustrations on a client they could lose the transaction, and worse their license, or receive heavy sanctions from the Board of REALTORS®.

Even the most seasoned real estate agents can accidentally make a mistake that could end in an ethics violation, or a lawsuit. That is why it's vital to understand ethical issues and potential legal problems – especially if you're a new real estate agent. In North Carolina, it is tough bridging the gap between Ethics and License Law / Rules Violations. It is quicksand for sure.

There are different rules for both the NCREC and Board of REALTORS®, one thing is certain. No matter who you represent, you can only advocate for the seller or the buyer, but not both (dual agency). In dual agency you cannot

advocate for your client. You owe your fiduciary duties to discover and disclose. This is not a choice; it is the law.

I was also an executive recruiter for many years. Recruiting senior executives to technology companies and consulting firms like Anderson Consulting, Ross Systems, IBM Global Services, and others both domestically, in western Europe, and the Pacific Rim. Speaking multiple languages surely helped. As you will find in the top real estate firms may ask you to take a battery of tests, a mix of IQ and EQ challenges that measure a person's ability to perceive emotions, think clearly, and manage emotions.

You may wonder what they are looking for. After all, you just want to sell real estate. How about emotional self-awareness, assertiveness, and independence? And, then stress tolerance—yes, be ready for super stress in dealing with toxic people, their emotions and anxiety. Brokers get in trouble because they have just adopted that client to their bosom of responsibility, sometimes to the detriment of the client and themselves. And there is empathy (or not), and social responsibility developed in early childhood into adulthood. Our environment shapes us with values that are intrinsic, and you must control their outcomes. That is why it is important to discipline children when they are young.

Confronted with a situation, we always want to do the right thing but may go about it the wrong way. I have received countless calls over the years from brokers who are in a situation they do not know how to handle. Depending on the situation, I will always ask, "Have you contacted your BIC?"

They are usually leaning the right way, but after talking with their friends they find themselves in a real dilemma and confused. "What do I do?" Call your real estate instructor? No, maybe. Have you called your BIC?

From my perspective, if I solve their problem, they will not learn how to solve anything. Because no two problems are the same. That is why this elective will review some real-life scenarios, consider ways to solve them, before the agent ends up on the other side of a complaint, or worse, a fine.

Here are a couple of takeaways from college football that mirror what you deal with every day in your pursuit of this profession. Whether you agree or not there is bias and discrimination in this sport called real estate. You seek out the best actions, plan your strategy, and punt! You need to aim for the uprights so your client will have the best possible outcome.

If you have children, a great friend of mine said, you must be consistent. Sometimes, especially for single parents, you must play the role of nurturing mother and/or stern responsible father, all at the same time.

Never get confused with the roles. Are you like that with your clients? Do you feel comfortable bringing them back to reality? Do you know when to push or back off? You might compromise a transaction by becoming too emotionally attached to your client. Remember, you are not part of their family. If you play that role, you will never have control. And that is what you want. But it must be professional. You can care about them, but remember you need to be able to dish out the good news with the bad, be conciliatory when you need to and be stern as well. We protect our clients' interest even when they go astray.

Stu and his wife Mia had to balance consistency with love and nurturing. I remember a good friend who was moving from DC to Chicago. His son had a fish tank in his bedroom. It had the usual goldfish and then some exotic tank fish. He said he could get the fish to swim to Chicago as he was dumping them down the toilet. His 6-year-old son was really upset and was not buying it. So, he told him the fish were going to swim to Chicago. He was in hot water. He called his brother and had him go out and purchase a tank and fill it with identical fish. I guess you could call that an ethical issue, since he lied to his son about fish swimming to Chicago.

Remember, look in the mirror and smile. Try to keep a straight face. I have a friend that if I told her to do that, she would be laughing. Try to keep a straight face. You will fail. Maintain a positive outlook in stressful times. Remember this is not the end of your life. Controlling your emotions and the outcomes will be better than you realized.

Learning to make critical decisions in real estate is stressful. Be careful with what advice you give. Remember you are not a lawyer, and you are not a lender. Let the professionals give advice. But when it comes to real estate, it is just as important for you to educate your clients. Walk them through the forms (2-T, etc.). The more they understand the process the better they will be prepared.

Dan Thurman, one of my favorite TedX speakers, spoke about the importance of being *Off-Balance On-Purpose: The future of Engagement and Work-Life Balance*. Meaning that you cannot grow if you are status quo. We are all programmed to repeat, repeat, repeat. But we cannot and will not

grow on that premise alone. Change is good. Do not rely on someone else to get the information. It does not matter if you are the Listing or Buyer Agent. Your job is to find the information, Discover and Disclose. Don't assume anything. Real Estate transactions require the sourcing of different types of information. If you have a scheduled listing appointment, then have materials available to take the listing, i.e., a note pad, measuring tape, notes about the property, a copy of the WWREA.

You can refer to the County GIS for everything about the property, but do not use GIS property schematics. Measure the property yourself.

Remember HLA is the outside measurements, not the inside measurements. A broker in Jacksonville once told me that he used the scan function in his iPhone to scan a room which gave him the square footage for that room. He repeated the process many times to get the square footage of all the rooms then added it for total HLA. I told him NO! HLA is the outside dimensions. "Do your job." SLF from your cell phone is not the answer, nor dependable. And do not trust the HLA from a previous listing (they could have had it wrong also). Check the address, pull the property card and the deed. A licensed appraiser can certify the square footage for a nominal fee.

Another issue is taking the words of the previous MLS listing for the septic. This information is readily available from the county GIS and the Department of Environmental Health. A 5-minute phone call is not going to wreck your day. Find out, is the property on septic or sewer. Get a copy of the permit. Most counties will email you a copy of the septic permit. It will indicate how many bedrooms are permitted. And include it with your transaction documents.

A former student was going on a new listing appointment for a 4-bedroom three bath home. They did their research into the property just to find out the four-bedroom house was only permitted for three bedrooms. She was all in a fright because she did not know how to approach this on a listing appointment with the seller. She had a copy of the permit and had to explain to the seller that the property was a 3-bedroom home, not four. Be honest with your clients, they will thank you in the end. The agent who initially listed the property that the buyer purchased was not happy with the truth, but there it was. [note: they can still file a complaint with the Commission.]

We will discuss case studies. All are real, and all shared with me from various brokers. You will decide on the course of action and if any violations

occurred. We will also review research about ethics and antidotes for recognizing patterns in behavior that can help you in your practice.

The primary objective of this course is to provide instruction at a level that is especially important in the active practice of real estate in North Carolina.

**Topics include.**

- Broker Responsibilities
- Buyer Issues
- Buyer Agent Issues
- Seller Issues
- Listing Agent Issues
- Identifying patterns of behavior
- Material Facts and other disclosures
- License Law & Rule Violations
- MLS Violations

**Instruction:**

Instructors should review and discuss the topic in substantial depth, using examples to reinforce understanding of ideas, principles, and practices, and require students to engage by demonstrating their understanding of the topic and their ability to apply this knowledge to common fact situations that will be encountered in real estate.

<b>Section Title</b>	<b>Minutes</b>
Introduction	10
Broker Responsibilities	15
Course and Learning Objectives	10
Purpose of the Code of Ethics and Review	20
Case Studies (1- 6)	50
Case Studies (7-11)	60
Decision Making Models:	
Kew Gardens Principle	15
The White Lie Test	15
The Parent Test	15

Pinocchio Alert	15
Summary	15
Total Minutes/Hours	240/4

[Note: 10-minute break every 50 minutes of instruction.]

### **Mission Statement:**

This course was developed to assist NC Real Estate Brokers in identifying and taking appropriate action to resolve situations that occur during the practice of collaborating with buyers or sellers, or both. Too often, we are in a rush to get the property under contract and overlook actions that could prove problematic. Sometimes things get out of hand and brokers try to back pedal only to find themselves (and their BICs) in quicksand.

It is easy to forget that the agreements are between the firm and the client, not you and the client. Everything you do as a broker reflects on you and the firm. Remember if your BIC reassigns a client, that client belongs to the firm, not you.

### **Questions To Consider:**

- Could I have managed that better?
- Have I discovered everything I can about the property?
- Have I completed my fiduciary duties?
- Have I communicated with my client?
- Does my client understand the nuances of this transaction?
- Am I teetering on a License Law violation?
- Is this an ethical issue, and how can I resolve it without civil action?

### **Course Objectives:**

- 1) Identify challenges brokers face representing clients and/or consumers.
- 2) Explain the differences between an ethics and law violation.
- 3) Define situations that call for restraint in real estate practice.
- 4) Describe the steps that must be followed from the start of the broker/consumer/client relationship through closing.

## **Learning Objectives:**

1. Identify those situations where you and/or your client are vulnerable.
2. Explain the standards of practice and how you can maintain objectivity while still representing your client.
3. Learn to make sound and critical thinking decisions about your client and how to advise them in a Fiduciary relationship.
4. Recognize the situation that could be ethics or license law violations.
5. Learn to use the various ethical indicators in solving tough situations.
6. Identify areas of your behavior that can be improved.

## **Broker Responsibilities: A Practical Overview**

This section is a review of basic agency relationships. Instructors are strongly encouraged to utilize situational discussions and activities that model real-world brokerage scenarios to help students internalize the concepts. Real world examples should include:

- 1. Duties of Real Estate Agents** (NC RE Manual, Chapter 8, Relationships in Brokerage Practice, pp. 141-178) [“Definition of Fiduciary: A relationship of trust and confidence wherein one person is usually entrusted to hold or manage property or money for another.” A fiduciary (e.g., agent) is bound to act primarily for the benefit of the principal (e.g., client) before any self-interest.
- 2. Basic Agency Duties** [NCGS 93A-6] Instructor Note: Focus on common fact situations that illustrate compliance with and violation of each duty from both buyer and seller viewpoints. OLD CAR acronym is used for clarification below.

**OLD CAR** [Obedience, Loyalty, Disclosure, Confidentiality, Accountability And Reasonable Care, Skill And Diligence]

- a) Obedience to all client’s lawful instructions pertaining to the transaction.
- b) Loyalty to client’s best interests over and above interests of others including those of agent [NCGS 93A-6(a)(4)]
  - i. Avoidance of self-dealing by agent
  - ii. Written client consent to represent adverse interests (e.g., dual agency) [Rule 58A .0104(d), (i), (o), (p)] Page 8 of 56.

- c) Disclosure of Information to include agent's affirmative duty to discover and disclose all transactional information including, but not limited to, material facts [NCGS 93A-6(a)(1)] Note: Personal information known to an agent about a third party that might influence the agent's principal in the transaction must be disclosed to the principal. (see STUDENT MANUAL)
- d) Confidentiality of client's personal information that would hurt the client's bargaining position, unless disclosure is required by law or rule [Rule 58A .0104(k) & (n)]
- e) Accounting for safeguarding goods & funds managed plus retention of transactional records [NCGS 93A-6(a)(7), (13) & (14); Rules 58A .0106, .0108, .0116, .0117]
- f) Reasonable Skill, Care and Diligence in delivery of brokerage services to the standard of other competent brokers [NCGS 93A 6(a)(8)]
- g) Examples of services expected from a real estate agent:
  - o Reliable information relevant to transaction
  - o Competent advice on property's probable selling price
  - o Discover pertinent facts related to the property.
  - o Effectively advertise listed property
  - o Contract preparation with appropriate addenda.
  - o Duties to Principals and Third persons under the Real Estate License Law and Commission Rules [NCGS 93A-6(a)] (Manual, Chapter 8, Agent's Duties Under Real Estate License Law, pp. 163-176.

**3. Duties to Principals and Third persons** under the Real Estate License Law and Commission Rules [NCGS 93A-6(a)] (Manual, Chapter 8, Agent's Duties Under Real Estate License Law, pp. 163-176). This is particularly important when discussing issues about the property with the buyer and seller. Depending on who you represent in the transaction, the objective is to assist the consumer in either selling or purchasing property. For example,

- a) What do you know about the property?
- b) What should you know about the property?
- c) If you were purchasing the property, what would you want to know?



d) What are the buyer's intentions and/or expectations for the property?

License law requires that you review the WWREA disclosure with the consumer at first substantial contact, and prior to entering into any agreement with a consumer. **It's the law!** Both the listing agreement and the buyer agency agreement note this in the second paragraph of the form.

### **Code of Ethics Standards of Practice [NAR January 1, 2024]**

“Where the word REALTORS® is used in this Code and Preamble, it shall include REALTOR-ASSOCIATE®s. While the Code of Ethics establishes obligations that may be higher than those mandated by law, in any instance where the Code of Ethics and the law conflict, **the obligation of the law MUST take precedence.**”

Standards for Business Conduct Codes of ethics have their shortcomings. One problem is the complexity of issues that cannot easily be reduced to a simple statement. The problem of dealing with complex issues is that codes written too broadly can be difficult to apply.

The other concern is the potential gap between the ethical requirements of a society and the standards of a particular group. Additionally, a code may also experience significant time lags in reflecting changes in community standards or needs.

Cocoanut Grove nightclub Fire in Boston, Massachusetts for example, building codes often do not change until damage is done or a tragedy results. The tragedy in 1942, when the Cocoanut Grove nightclub in Boston, Massachusetts, burned down, compelled architects, interior design professionals, and government officials to establish much higher safety standards.

On the night of the fire, more than one thousand revelers occupied the club. A lit match used while changing a light bulb ignited flammable decorations, and the fire spread rapidly. Authorities estimated that perhaps as many as 300 of the 491 people who died could have been saved had the nightclub

doors swung outward. The Coconut Grove fire prompted major efforts in the field of fire prevention and control for nightclubs and other related places of assembly. Immediate steps were taken to provide emergency lighting and occupant capacity placards in places of assembly.

Exit lights were also required because of the concern generated by this fire. Building and occupancy codes at the time of this tragic fire simply did not anticipate the consequences of poor design. Likewise, codes today cannot keep pace with new technologies that permit us to create new ideas, products, and materials. The economic meltdown experienced by many countries in the 2000s provides another example of the potential gap between an industry or profession and consumers' need for ethical conduct by those groups. For example, unregulated or poorly regulated lenders and other financial services providers were largely to blame for many banking failures, and, consequently, countries responded by establishing new oversight agencies, laws, regulations, and other supervisory measures. It wasn't until after these failures that statutory codes and laws were enacted and/or enforced.

For example, in the United States, the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act created the Consumer Financial Protection Bureau (CFPB). A legislative response to the financial crisis of 2007–2008 and the subsequent fallout (resulting in 4 million foreclosures), the CFPB demonstrates that when an industry fails to police itself, it is not unusual for jurisdictions to act.

In the wake of the Enron and Worldcom corporate scandals, codes of ethics have taken on yet another dimension. Legislation passed in 2002, the SarbanesOxley Act ("SOX"), requires that corporations whose stock is traded under the provisions of the Securities Exchange Act of 1934 must publish their codes of ethics, if these exist, and publish any changes to these codes as they are made. This requirement has given corporations strong incentives to formulate codes of ethics to win investor confidence. Sometimes, victims of financial malpractice don't wait for legislation to change the way business is done. Sometimes, they take their cases to court. How are professionals judged when they are brought in front of a jury? In some cases, when professionals are brought to court, the court chooses to use another test of

reasonableness in business conduct, referred to as the reasonable person standard. In some cases, the test is the professional person standard.

## **QUICK OVERVIEW OF THE REALTOR® CODE OF ETHICS**

**The Purpose of a Code of Ethics** Sometimes called a credo or mission statement or code of conduct, a code of ethics is a vital document for any business, as breaches of ethics can land companies in serious trouble with consumers, other organizations, or government authorities. Creating a code of ethics makes decision making easier at all levels of an organization by reducing ambiguity and considerations of individual perspectives in ethical standards.

### **A code of ethics can:**

- inspire individuals and to exhort them to high principles of conduct.
- regulate individuals by spelling out prohibited conduct.

- provide guidelines for decision making in areas of discretion.
- define and protect the company or industry's culture.

Having a code of ethics does not prevent misconduct. Codes do however, help clarify the baseline for behavior and set the minimum level of conduct we will tolerate from one another. Most industries and professional associations have a code of conduct. As mentioned earlier, a code of ethics is both a vehicle for occupational identity and a mark of occupational maturity.

Standards for Business Conduct Codes of ethics have their shortcomings. One problem is the complexity of issues that cannot easily be reduced to a simple statement. The problem of dealing with complex issues is that codes written too broadly can be difficult to apply. The other concern is the potential gap between the ethical requirements of a society and the standards of a particular group. Additionally, a code may also experience considerable time lags in reflecting changes in community standards or needs.

## **Duties to Clients and Customers (Articles 1-9)**

**Article 1:** Protect and promote the interests of their clients.

**Article 2:** Avoid exaggeration, misrepresentation, or concealment of facts relating to the property, or the transaction.

**Article 3:** Cooperate with other brokers except when it isn't in the client's best interest.

**Article 4:** Realtor®s shall not acquire an interest in or buy or present offers from themselves without disclosing this to all parties.

**Article 5:** Realtor®s shall not undertake to provide professional services where they have a personal interest.

**Article 6:** Realtor®s shall not accept any commission, rebate, or profit on expenditures made for their client, without the client's knowledge and consent.

**Article 7:** Realtor®s shall not accept compensation from more than one party without disclosure to all parties.

**Article 8:** Realtor®s shall keep a special account regarding trust monies.

**Article 9:** Realtor®s shall assure that all agreements be provided to the parties upon their signing.

### **Duties To the Public: (Articles 10-14)**

**Article 10:** Realtors® shall not deny equal professional services for reasons of race, religion, color, sex, disability, familial status, national origin, sexual orientation, or gender identity.

**Article 11:** Realtors® shall provide to their clients and customers shall conform to the standards of practice and competence which are expected in the specific real estate disciplines in which they engage. This is required in the Realtors® field of competence.

**Article 12:** Realtor® shall be honest and truthful in their real estate communications and shall present a true picture in advertising, marketing, and other representations.

**Article 13:** Realtors® shall not engage in activities that constitute the unauthorized practice of Law and shall recommend legal counsel when the interest of any party to the transaction requires it.

**Article 14:** If charges with unethical practice or asked to present evidence or to cooperate in any other way, in a professional standards proceeding or investigation, Realtors® shall place all pertinent facts before the proper tribunals of the Member Board...

### **Duties To Realtors®: (Articles 15-17)**

**Article 15:** REALTORS® shall not knowingly or recklessly file false or unfounded ethics complaints about other real estate professionals, their businesses, or their business practices.

**Article 16:** REALTORS® shall not engage in any practice or take any action inconsistent with exclusive representation or exclusive brokerage relationship agreements that other REALTORS® have with their clients. Do not ever break this rule. This is libelous.

**Article 17:** In the event of contractual disputes or specific non-contractual disputes between REALTORS®, the REALTORS® shall mediate the dispute.

While all the Articles merit discussion and analysis, Articles 1 and 2 are most frequently cited in complaints filed against REALTORS®. In general, these issues regarding representation and disclosure, the subjects of Articles 1 and 2, are the most common causes of litigation against real estate brokers.

According to a NAR report, breach of fiduciary duty lawsuits accounts for the largest single number of residential real estate-related court cases. Notably, in the cases where a determination was made, licensees were found liable only 40% of the time. Nevertheless, brokers who are sued must still bear the financial and professional trauma of the lawsuit. The NAR report indicated that property condition disclosure and “as is” clauses are an ongoing source of disputes and the second most common legal issues.

The best way to tackle these issues is by reviewing the content of the code of ethics or through the experiences of other brokers. If you have been in the same situation but did not know what to do. [Note: you may recognize some of these case studies. Know that names are absent from the discussions to protect those you may know. There is no intent to “slam” anyone. It would be a coincidence if any broker feels this is targeting them personally. This is not the intent]. Many situations were my own. Consider these questions:

- How often have you been in a situation where you just had no clue what to do? Was there something missing in the MLS about the property? Do you think the property is over-priced, and the agent or

the seller is taking advantage of a market that is on fire? Did you do a CMA for your buyer client?

- Have you been in situations where the home inspection comes back late, and you do not notice a problem with the septic system?
- When you did the walk through with the seller did you notice that the ceiling in one corner looked wet? Did you ask the seller about it?
- Why was the floor squishy when you walked on it in the bedroom?
- You turned on the water faucet, but the water never got hot.
- What if you are using a transaction coordinator, have they found anything that is suspicious and needs clarification?
- Your job is to ask questions, discover and disclose!

**Ok, enough of this. Let us get this show on the road.**

### **Case study 1: Is It Septic or Sewer?**

A family purchased a 4-bedroom house in the historic district six years ago. The listing agent thought the house was on Sewer, because most all the homes in that area were on sewer. I bet you can guess where this is going.

This was an old neighborhood just off downtown. The buyers were thrilled with their new home and their children loved being able to walk to the park and along the river. After about seven months, the wife noticed that the plumbing was not working very well. The sink would clog up when they flushed the toilet. They called a plumber.

The plumber put water under high pressure to see where the clog was located. After a couple of hours, they noticed water bubbling up in the backyard. Turns out the home was on septic, not sewer. The buyer called their agent who helped them purchase the property. The agent contacted the listing agent and soon sparks flew.

The home, once occupied by a family of eight, never had a problem. After the children grew up and moved away only two people lived in the house. And, then the husband died. With a septic system designed

for a large family, the only way it works well is if it has fluid flowing through it, otherwise the drainage (leeching) field will not work properly.

Moral to the story. Always, regardless of whether you are the listing agent or the buyer's agent check with Environmental Health Department in the county where the property is located and ask, "is it septic or sewer?" Is it so hard to ask the question? Is it so hard to make a three-minute phone call? It was. Consider these questions:

- a) Whose responsibility is it to verify the septic or sewer?
- b) Should the buyer's agent have been aware of this?
- c) Has any license law or ethics rule been violated?
- d) How would you resolve this issue?

**Outcome:**

Both firms ended up in Civil Court. The listing firm committed negligent misrepresentation, and the buyers firm took the word of the listing side without doing their due diligence for the buyer. Both had to purchase a hookup to the sewer system for the buyer at a cost to both firms of \$27,000. The agents received violations from the real estate commission and posted this in the local newspaper. Yes, this happened before social media, and disciplinary actions are now found in the Commission eBulletin.

Initially, this falls on the listing agent (firm), but both agents must discover the facts about the property. Of course, it is true that NC is a buyer beware state, and a seller knowing about a material defect can answer "No Representation", but the agents are not relieved of this responsibility regarding septic or sewer, or other material facts. Both were culpable. Furthermore, if the seller lies about a defect on the property and the buyer finds out later, then the buyer could sue the seller.



## Case study 2: The Drive-By

"I have a listing. My seller called me this morning to tell me that a vehicle pulled into her driveway." Two adults and four children got out and started towards her backyard. Thank God my seller has security cameras and was able to intercept them!

When she asked what they were doing, the response was "our real estate agent told us to go by and see if we like it". The buyer's agent was not with them on the property review.

Naturally the seller was upset and considered calling the police. She did not find out which agent sent them, but I sure wish she had.

The buyer's agent told the buyer to "drive" by and see if they liked it. Bad communication and sloppiness by the Buyer Agent. This is a situation that could have gone wrong in a lot of respects.

A drive-by is NOT getting out and trying to go on someone's private property. "A buyer can never go to a property without their agent present!" No complaints were filed but could have been with the Commission and the Board of REALTORS®.

### Outcome:

The buyer's agent and the listing agent could be facing MLS fines and discipline, and/or discipline from the Real Estate Commission.

Is the broker-in-charge culpable here? Yes, training and supervision falls to the BIC.

Obviously, there was no training in that firm on how brokers handle showings when they aren't available to show the property to their client. Someone else from their office could attend in their place. If it was disclosed to everyone who was representing whom.

### Case study 3: Buyer's Agent & Misrepresentation of Material Facts

You notice a potential buyer is especially concerned about the risk of termites at a property you are representing. She asks if the home has ever incurred any damage from termites, to which you respond, "no, none." But you fail to mention that there has been evidence of the presence of termites on the property in the past, though they have never caused any severe damage to date.

- Have you violated license law? Yes, you did not disclose a material fact.
- Are you required to disclose that you knew about the previous termite damage? Yes!

**Outcome:** You could be at risk of a lawsuit, or even of losing your license. Agents who misrepresent a property, mislead clients or fail to disclose property defects quickly make themselves vulnerable to a civil lawsuit, or other legal action.

If the potential buyer ultimately buys the home, then months later starts seeing termite damage on their property. This becomes an issue for the buyer. And, ultimately for the buyer's agent because even if the agent never noticed, the licensee violated her fiduciary duties by intentionally misrepresenting a material fact. This will come back to bite both agents for failing to disclose the presence of termites.

The seller or listing agent could also be liable even if failing to disclose termites to the buyer was not intentional. Other common related items that an agent can get into trouble for not disclosing include:

- foundation issues,
- previous roof damage,
- improvements made without permits, or leaks.

Remember if you know, or if you should know, you must disclose it to everyone. For example, years ago I represented a buyer client on an expensive waterfront property. He was a General Contractor from Delaware. When reviewing the property, we both noticed dry rot in the

ceiling joists of an outside storage room. The steep roof above had leveled out a little and there was no knock-out flashing, to shed the water away. Rain from recent storms seeped into the upper part of the shed and flowed down to the outside wall.

The roof rafters were white/black splotches, indicating dry rot. This condition was not disclosed by the seller or listing agent. We estimated the fix to cost about \$25,000 and adjusted our offer accordingly. The listing agent said there were multiple offers, and he offered about \$20,000 more but the buyer from Cary won the contract. I shared what we had found with the listing agent. And it was their responsibility to share that with the winning offer and the other buyers. Two months later I received a call from the Listing Agent who said the house was back on the market. So naturally I inquired about the material fact. Still nothing was disclosed to any of the buyers and we walked away.

Fast forward four years. I am reviewing listings on the MLS. I notice that this house is listed again by one of my favorite Realtors. I called and wished her well on the property, then started to tell her about my experience. She did not want to hear what I had found. If I did not tell her then she would not have to disclose it, right? "Wrong!"

Common misrepresentation issues also include property boundaries or issues with roofs, or even an agent's relationship to the buyer, seller, or anyone else involved in the transaction.

My buyer loved the property with the row of hemlocks stretching from the street to the back of the property. It was a row hedge, but not on their property. My buyer refused to get a survey, so I notified the closing attorney and relayed my concerns. The attorney ordered the survey, after having a discussion with my client. There is also the issue of protection relating to title insurance. Then my buyers ordered the survey and found that the row of hemlocks was not on the property. They went through with the transaction anyway.

#### Case study 4: The Ernest Money Check

Your buyer is under contract for a property. The buyers are thrilled with the “perfect” home you have helped them find. The Listing Agent meets with you on a Friday afternoon to collect the EMD for escrow. The listing agent takes EMD check and puts it in an interior pocket of her purse, and promptly forgets all about the check on her way to the beach. Then the listing agent notices it in her purse the following Tuesday.

**Outcome:** You could be sued and potentially have your license sanctioned if you have a pattern of similarly mishandling of funds.

According to the 2T Offer to Purchase and Contract, the “initial Earnest Money Deposit is made payable and delivered to Escrow Agent named in Paragraph 1(f) within five (5) days of the Effective Date of this Contract by

- cash
- personal check
- official bank check
- wire transfer
- electronic transfer.”

Earnest money must be deposited into escrow within 5 days of a ratified contract.

Agents should not take this lightly. They should also avoid moving money around, not keeping up their books, or borrowing money from clients.

The bottom line is, when it comes to handling clients’ money, keep it organized, and get it to the appropriate parties immediately. Also, do not ever write a receipt if you don’t physically have the check in hand. And be sure to make copies of the check for your files. Do not ever write a receipt if you haven’t received the funds. Here’s an example from the NCREC eBulletin.

- eBulletin article: May, 2013 [Bulletin 2013-V44-1](#); A material fact is any fact that could affect a reasonable person's decision to buy, sell, or lease real property.

### **Case study 5 – Loan Fraud**

A newly licensed agent that has had her license for less than one month called me. She secures a \$1.3 million listing. The seller has a long-term lease on the property that ends in 18 months. The buyer agent presents an offer, and the seller accepts it. They are under contract.

What the two agents are unaware of is that they are in dual agency. The buyer's agent should know better, and the new listing agent should have been supervised by the Broker-in-Charge. The listing agent did not realize that the buyer agent was from her firm. Obviously, there is a breakdown with training and supervision of the Broker-in-Charge.

Four days before closing, the buyer agent contacts the listing agent and asks for a five-day delay due to funding issues with their buyer. Listing agent contacts the seller, and all agree to the 5-day extension in writing.

On the fourth day of the extension period, the buyer agent contacts the listing agent and asks her to write a statement that says the lease will expire in six months.

The listing broker is now upset because the Buyer Agent has asked her to lie about the lease agreement. The buyer's agent is also with the same firm ... they are in dual agency and both brokers have not disclosed this to their parties. Undisclosed dual agency is illegal. The Listing Agent contacts her BIC and relays the story. The BIC is now in a tight situation because both brokers are in dual agency, and there has been no disclosure to the parties.

**Outcome:** The buyer agent has asked the listing agent to commit loan fraud. But because they are in dual agency neither broker can advocate for their side. The BIC is culpable as well. The situation is complicated by the dual agency, and whatever policies the firm should employ to avoid these types of situations in the future.

1. What would you have done?
2. How would you advise the Listing Agent?
3. How would you advise the Buyer's Agent?
4. What would be a course of action to prevent this from happening again?
5. What type of training and supervision should the BIC be providing their agents?

### **Case study 6 – The Buyer Love Letter**

This is a classic. Your seller receives a buyer love letter in one offer on their home that hits them in a personal way — the buyer couple reveals that they have two kids the same age apart as the sellers, and the seller now envisions their family growing up in their home. The seller accepts their offer, and later, a competing buyer with a higher offer and who is single learns that the seller accepted the offer of the other buyer because they had a family.

**Outcome:** The seller and/or listing agent could be sued, this could be a fair housing violation.

When buyers give away personal details in buyer love letters that might sway sellers, it opens the sellers to liability in a fair housing lawsuit. At a Realtors Conference in 2020, Barbara Betts, broker-owner of the Betts Realty Group and a director of the National Association of Realtors, the California Association of Realtors and the Pacific West Association of Realtors, suggested that listing agents speak with their sellers about not accepting these kinds of letters at all because of their potential for liability. Of course, if letters only discuss the merits of the

house buyers are hoping to win, that is a different story. But it is impossible to know the content of a love letter in advance.

### Case study 7: Coming Soon

You list a property and clearly state in the MLS that no showings will be available on the property until a certain date the sellers have specified, when they plan to go on an extended vacation. The day before the sellers were supposed to leave, they mention to you that they left early and have already vacated the house. A potential buyer had reached out to you wanting to see the house ASAP, so you contact them and let them know you can now show them the house this afternoon. Well, you can't show the house under "No Showings".

**Outcome:** You can't show the property because of the "No Showings" stipulation. You have violated MLS rules. And your fiduciary duty to the seller.

Under the Realtor Code of Ethics, we are required to cooperate with other brokers, unless it is not in their client's best interest. By showing the home yourself a day before explicitly stating when it would be available to see, you are misrepresenting the availability of access to the property and going against their obligation to share information about the property and make it available to other brokers.

This also happens with "pocket listings." When the broker already has a buyer in mind and holds the property off the market. "Days on the Market" 1 day. This is usually a good sign that the listing agent had a buyer in their pocket and went under contract fast. The problem with this is unfair or deceptive trade practices, a form of discrimination.

[NCAR] NO SHOWINGS!! Listings in the Coming Soon – No Showings are not eligible for showings, Open Houses, or Broker Caravans. Any showing of a listing in the Coming Soon-No Showing status, whether that showing is made to the public or other participants and subscribers, will immediately disqualify the property from the Coming Soon – No Showing status. And the listing subscriber will be cited for a violation of these rules.

### NC Association of Realtors® Penalties:

- First Violation: \$1,000 fine
- Second Violation: \$2,000 fine
- Third and subsequent Violations within a 12-month period: \$5,000 fine plus a 30-day suspension of the MLS subscribers MLS privileges.

### **Case study 8: Do Not Call/EMAIL**

You have hit a bit of a dry spell and could really use some new leads. You remember an old leads list you have in your database from before you started a texting plan through your CRM, and think, “Bingo! Why didn’t I text these leads?” You add their cell numbers into your texting campaign plan and wait for those leads to warm on up.

**Outcome:** You’ve just done something illegal and made yourself vulnerable to a lawsuit.

According to the Federal Communications Commission (FCC) regulations, consumers must give their consent to receive marketing communications. Just because someone opted in to receive communications from you previously does not mean they now want to start receiving new text messages from you. “That is a major no-no,” Robby Trefethren, an inside sales agent (ISA) coach at Hatch Coaching, told Inman. “You are opening yourself up to major legal and financial liability, and I don’t recommend doing that to anyone.”



### Case study 9: The Video Tour

Your client is interested in a property and have poured over the listing multiple times, but really wish they could get a video tour of the home before deciding whether to go see it in person.

The only problem is, the listing doesn't have any kind of video or virtual tour of the home with it. You tell your clients, no problem, you can go visit the property for them and take some videos on your iPhone while you're there to pass along to them.

**Outcome:** You've made yourself vulnerable to a lawsuit. By recording video footage of a home without the seller's consent, you've given them the option to take legal action against you.

Sure, it's possible that the listing agent just didn't have the tech or know-how to create a video tour of the home, but it's also possible that the sellers did not want to have video footage of their home on the internet. Without asking, you have no way of knowing.

### Case study 10: I want to Fire my Realtor®

Some friends of one of your current clients reaches out to you because they are unhappy with their current Realtor®, whom they say, "Just isn't getting the job done." They are having a difficult time communicating with them, "they don't answer our phone calls or text messages."

Because you are responsible and want your clients to see that you're willing to help their friends, you tell them you'd be happy to help out and are sorry their current Realtor isn't doing their job right.

**Outcome:** You've just violated Article 16 of the Realtor Code of Ethics. If a client already has a representation agreement in place with another Realtor, you're violating Article 16 by agreeing to work with them before their existing contract with the other Realtor® expires.

It is, however, permissible to discuss with someone like this who reaches out to you that you could help them once their existing

contract expires. However, if the other firm feels you are poaching their client you could face a civil lawsuit. This situation is called "tortious interference".

1. What would you do in this circumstance?
2. How would you discuss working with real estate agents?

### **Case study 11: The First Time Home Buyer**

A first-time home buyer was looking for investment property. She located one on Zillow and contacted the agent online. A different agent ended up calling her. The agent identified themselves as a Realtor® and said she would help organize a walk-through.

The only time available was at 4 pm on Monday, and I agreed to meet. About an hour later she told me that the tenants are asking that I come at 4:40 instead because they didn't know they wouldn't be available until after 4:30. An hour before the meeting, she messaged me saying that a coworker would be meeting me instead due to a possible covid exposure over a week ago and she didn't want to meet to put us at risk.

She went to the walkthrough and the coworker who met me didn't have any information about the house. She just said that "I'm only here to let you in, I don't know anything else about this property."

A few hours later she texted the original agent and asked about the next steps. She didn't follow up after the walkthrough. Then called and asked her for her contact info and how much she wanted to offer on the property. She was then asked to put down a \$250 nonrefundable deposit and a \$500 refundable deposit.

She emailed several documents in one. The Working with Real Estate Agent Disclosure, Exclusive Buyer Agency Agreement, and the Offer to Purchase. She told me to electronically sign everything. The buyer asked if she could walk her through the documents because she didn't know what any of the documents meant.

She did not go over the Working with Real Estate Agent brochure, she just said it was basic information that said she would be representing me. Then she went on to the next form the Exclusive Buyers Agency Agreement, she said this form is necessary to submit the offer. Rather than an actual date, the duration of agency would expire on "closing date" was written in. (by whom?)

She said this is just a lot of legal mumbo jumbo. She then skipped ahead to the Offer to Purchase and verified the terms of my offer then said to sign. The phone call lasted less than 5 mins.

A binding contract was finally reached with the seller over the next couple of days. Once again, she was hit by uneasiness because she never met her nor anyone in that office. The buyer had \$750 worth of checks with no indication of where they were supposed to go. No further communication happened.

She followed up twice with no response. It was at this point she called the office. Neither the agent nor the BIC were available.

Home inspection day came, and classes were too important to miss. I talked to the home inspector the night before and he said I didn't need to be there. The realtor asked me that morning if I was still coming to the inspection. I said yes, but after my class. My class got out and I told her I could head over there, and she said don't worry about it, she already left, and the inspector would be done in an hour or so.

I received the inspection report, and it had several glaring issues, and I asked if she would be available to go over the report with me. She said she received a copy of it before she left and would print it out in the morning to go over it with me. We came up with a number based on the partial quote and waited 3 days for the seller's agent to get back to us and after some back and forth agreed on an amount. She said great, sent me another contract to sign and send back. I told her great, I can schedule the appraisal now.

The realtor at this point calls me and asks if I would go to lunch with her, this is Feb 17, and the date of initial contact was Jan 22. Nearly a month later. I agree and then go to lunch and meet her and her partner. I asked if they had any advice for a new person just starting out, the partner gave

great advice about picking the right firm and the culture that you want to work with.

Then my realtor said her advice is not to burn bridges. That in a town like this everyone knows everyone and that she refuses to work with certain people and has the pull with a lot of people in the area. She said that when people refuse to work with a certain agent then their career could suffer a lot. I was taken aback and immediately felt as though she was threatening my future career. The partner very casually shifted topics, but the hostility was in the air.

Four days later I asked again about the copies of the leases and the verification of security deposit amounts. She said that we don't get the leases until closer to closing. I asked how could I make an informed decision about the house and inheriting its tenants if I don't have a copy of the lease I'm bound to? Shouldn't this also be taken care of during the due diligence period? She then responds that the seller is going to get them to her.

I asked again when final walkthrough would be and she gave me time on the Sunday before the closing appointment. On the Saturday before closing, I asked her when the final closing disclosure would be available, and she said the morning of closing. This was different from what we were taught in class, so I asked her if the 3 days prior to rule applied. She said if I received a preliminary disclosure around 3 days prior, it's ok if I receive the final disclosure after the 3-day mark.

At the final walkthrough, one of the tenants wasn't available and again the tenant that was home didn't know we were coming. I was unable to get into the other half of the duplex and the realtor had no resolution for me to see inside before closing the next day and didn't call the seller agent about it. As we were parting ways, I asked her when I would be receiving the address for the attorney seeing as closing was the next day. She sent me a screenshot of a google search for the attorney. She said I didn't think I needed to message you the address, you could've just googled the attorney's name.

The buyer's agent never discussed the closing disclosure with the buyer. And tops it off by not attending the closing.

This is just one of many scenarios that give our industry a bad name. Who could you trust in this scenario?

## Outcome:

There are many license law and ethics violations.

### First Substantial Contact

- The agent did not go over the Working with Real Estate Agent disclosure, she just said it was basic information and she would be representing me.
- Exclusive Buyers Agency Agreement, she said this form is necessary to submit the offer.
- the duration of agency would expire on "closing date" was written in. (requires a termination date)
- She said this is legal mumbo jumbo, but did not explain it to the buyer.

- 1) What are the obvious violations of NCREC Laws?
- 2) What would you expect from the BIC and Agent?

### The Offer to Purchase and Contract

- 1) Were there any violations of License law or ethics?
- 2) She didn't know what to offer
- 3) The agent never reviewed the OTP with her
- 4) She didn't explain what the checks were for
- 5) Or who to drop them off too
- 6) You can receive the Buyer's CDC after the 3-day mark. (really?)

### The Inspection Report

The agent clearly was not representing the buyer, but rather herself. She did not seem to care at all or take the initiative to spend the time necessary to help this first-time buyer. The seller asked if she would accept \$\$ instead of repairs? She hadn't received a quote so how could she say what the seller should pay?

## Meeting with the Broker and the BIC

Clearly this hinges on serious ethics violations.

- 1) Don't burn bridges...
- 2) Has pull with a lot of brokers in area
- 3) Your career could suffer

Let's consider some models of behavior that we can learn from.

## **THE KEW GARDENS PRINCIPLE**

Sometimes real estate agents face an ethical dilemma where "doing NO HARM" is not enough. Avoiding doing harm may be an appropriate response to the conflict between a buyer's right to know about a murder suicide on the property before making an offer to purchase. But what if, by avoiding injury to one party, we have not exhausted the full range of possible moral actions? How is the real estate agent's dilemma different from a murder-suicide?

- 1) What are some ethical concerns that the seller agent faces in dealing with a murder suicide?
- 2) What should the agent do if the seller decides to sell to this buyer with full knowledge of the situation?

The **Kew Gardens Principle** takes its name from a shocking New York City homicide case in the 1960s where it was at first thought that a young woman, Kitty Genovese, had been brutally murdered in front of numerous witnesses, none of whom called police or even called for help, even though they were all safe inside their homes. Review the case of the child molester again, this time considering the four elements of the Kew Gardens Principle: 29 October 2021. [Realtor® Ethics pg. 11]

- Is there a clear need for aid?
- How close is the agent to the situation? (proximity)
- How culpable is the agent?
- Is anyone else likely to help? (last resort) Recent investigations suggest that Ms. Genovese's assault was not witnessed.

## Applying the Kew Gardens Principle

An agent has an increased moral obligation to aid another person based on four factors:

1. **Need.** Is there a clear need for aid (for example, harm has been or is about to be done)?
2. **Proximity**...Are you close to the situation (not necessarily in space, but in terms of notice)?
3. **Do you know of the need**, or could you reasonably be held responsible for knowing?
4. **Do you have the means** to provide help without taking undue risk?

### **Last Resort is anyone else likely to help?**

(source: D.G.Jones, Doing Ethics in Business: New Ventures in Management Development (Cambridge: Oelgeschlager, Gunn, & Hain, 1982)

## THE WHITE LIE TEST

While many business issues deal with potentially catastrophic matters, such as bridge design and automotive safety, fortunately most ethical problems that real estate practitioners face do not involve life and death issues. More frequently, they deal with ethical issues that require them to choose between loyalty to their firms/colleagues and obligations to clients or the possibility of earning commissions. Some practitioners choose the "If I'm not asked, I won't tell" philosophy about problems.

Real estate professionals may also minimize problems or re-characterize them in a better light. But when serious defects or risks in properties became known, [29 October 2021, Realtor® Ethics pg. 12] courts have made it clear that risk is not considered a confidential issue and must be disclosed to clients and, in some cases, to the public.

Here are the questions to ponder regarding disclosure concerns:

- Why am I considering concealing this information?
- Is it because I want to spare the client or firm unnecessary concern?
- Am I concerned the client will not accept the firm's proposal or go through with a contract if the truth is known?
- Do I not know how to tell the truth in a tactful way?
- How will failure to disclose appear to the prospective client?
- Will it appear as a white lie?
- Will the client say, "Thanks for sparing our feelings?" or they say, "Now that we know you lied to us about this issue, what else have you lied to us about?" In other words, will my relationship with the client or firm be damaged?

Michael Josephson, founder of the Josephson Institute of Ethics, notes that in relationships of trust, any act of concealment, any undelivered promise, any exaggeration will be perceived as a lie. It is also likely that the lie will be found out, and when it is, the public is rarely forgiving of the professional who failed to provide information that was perceived as critical and necessary to their decisions.

Most professionals do not want to lie, but they often don't know how to tell the truth. Real estate licensing boards usually state that problems that have been properly corrected do not have to be discussed with prospective buyers. However, because it is often difficult for brokers to determine whether repairs have been properly dealt with, it is best to disclose the issue and let the buyers take the appropriate steps. In the case of a fire, it would be important to determine whether the fire was caused, for example, by faulty wiring or by a grease fire in the kitchen. The former would be of more concern than the latter, but brokers should disclose the occurrence so that the buyers can decide for themselves.

Brokers have a duty to discover and disclose all known facts or facts that can be discovered, facts relating to the property, facts relating to a principal's ability to perform, facts of special concern to the parties. Brokers have a duty to disclose patent and latent defects when they are discovered, including those surfaced during a home inspection, to everyone.



This is unfortunately one of the areas where brokers fall short. Not all brokers, and not intentionally. Think of all the moving parts to a transaction and something is bound to fall through the cracks. That's why the checklists are so important, and if you are lucky enough to have a compliance officer in your brokerage, helping you foresee any problems prior to closing. The transaction coordinator can only do so much, and issues could be missed.

## **THE PARENT TEST**

Michael Josephson, a former attorney, became an ethicist when he first became a father. He realized that he did not want his children to decide ethical outcomes based on legal parsing's and interpretations, which was the way he used to teach ethics to his law students. He suggests that a viable way of choosing the best ethical outcome is to take the perspective of a parent:

"Would I do it, if my children were looking over my shoulder?"

Even professionals who do not have children can benefit from this outlook. All of us are being observed—by our spouses, our families, our friends, and our work colleagues. They watch how we manage ourselves in tough situations.

Children learn from what we do, not from what we say. In this way, we are all role models for ethics (or lack of them), even if we did not ask for the nomination. Considering what our children and peers would think and feel if they "caught us in the act" can be a powerful deterrent to unethical behavior.

In Arthur Miller's play, *All My Sons*, a father must defend his illegal conduct to his teenage son. He says, "Son, I'm no worse than anyone else." His son responds, "No, Dad, you are right. But I thought you were better."

None of us want to disappoint those who look up to us. A similar lesson is learned from the dialogue between Andy and Opie on the old RFD Mayberry TV show. Can you justify covering up imperfections by painting over the place where the roof leaked, or taking a washer out of the garbage disposal so it does not make any noise? How do you justify that action? The dialogue between father and son concluded in Opie saying: "you mean it's ok for grown-ups to lie, but not kids?"

While Barney (as a real estate agent) was showing the house, Opie was pointing out things concealed. The buyers were ready to make an offer. Coming down the stairs from the upper floor, the buyer asked if the roof had ever leaked. Andy responded, "Well maybe just a little, if it should be a heavy downpour," Opie, "but dad, you had to get out that big bucket." The buyers left and Barney was furious with Opie because he just lost his commission. To Andy at the station he said, "your kid just cost me three thousand, two hundred and forty-five dollars."

Remember there is always an Opie out there. Be careful when you stretch the truth. Barney was mad because Opie's actions cost him a commission. Remember that. Your focus should not be on the commission. If you do, that action could cost you professionally. Why do brokers get in trouble? Because when they are so focused on their commissions they forget about the process, their fiduciary responsibilities, and the details, and that they are representing the client, not themselves.

### **THE PINOCCHIO ALERT**

Pinocchio faced moral dilemmas as he weighed responsibility with pleasure, which fills Pinocchio with many questions for philosophical discussion. In the Disney animation, real boyhood is bestowed on Pinocchio as a reward for being good by the Blue Fairy with a touch of her magic wand; or, as the Blue Fairy herself says, because Pinocchio has proven himself "brave, truthful, and unselfish."

Too often brokers find themselves in predicaments that require judgements and actions. Ethics is about discerning between truth and mistruths (lies). Toymaker Gepetto created a wooden puppet toy

named Pinocchio and wished on a star that he would be a real boy. But he must prove himself worthy to make his father's wish come true.

Pinocchio has important moral lessons for children and adults: e.g., disobedience does not pay, telling lies is seldom prudent, and boys who love and take care of their parents will be rewarded. Its pedagogical mission notwithstanding, the story remains a timeless classic.

What is Pinocchio syndrome? By consciously negating, concealing, or reframing conflicting ideas and emotions, the client escapes the exploration and the resulting awareness of unpleasant facts, painful realities, or prescribed wishes. This is not unlike what Brokers encounter daily, when their fellow brokers conceal material facts. Sellers lie, Buyers lie, Agents lie. Who will be held accountable? And, by whom?

Like Pinocchio, Brokers/Realtors have many issues to deal with from NC Real Estate Commission rules and regulations to the code of ethics, and new changes to the many disclosures and forms required.

- 1) Are these decisions based on fact?
- 2) Are they motivated by emotions?
- 3) Could they result in either ethical or license law violations?

One thing is for sure, never lie, not even a little white lie because it will come back to haunt you.

### **SUMMARY – A Review and Pep Talk**

Today we have learned that there are many challenges with real estate. We are learning more about our behavior every day. The basis for our actions is **“do no harm.”**

Remember to be professional in what you do, and who you speak with. It never hurts to offer empathy and consideration to other people. Do not get stuck in a quagmire of emotions.

Remember who you are “representing.” You are not a member of their family. So, learn to separate yourself from a personal connection with your buyer or seller. After the transaction has concluded you will move on with your life, and they with theirs, unless something goes wrong. And you will hear from them, and it could be painful.

“Too be old and wise, you first have to be dumb and stupid.” I heard that long ago, from my grandfather. With age comes experience. Experience is a fascinating aspect of life that shapes our values, personal relationships, empathy for other people, and our understanding. It encompasses both the joys and disappointments along the way. And, sometimes after setting our goals we fall short. Do not despair! This is part of life!

It is important to remember that setbacks and failures are not a reflection of our worth or potential. They are valuable opportunities for growth and selfdiscovery. The fundamental aspect of experience is to teach us resilience. In moments of disappointment, we may be faced with challenges or obstacles that assess our perseverance (one of my favorite words). At these times, learn to adapt, to pick yourself up, and to keep moving forward.

Years ago, Barbara Corcoran of Shark Tank said she could tell the best agents by how well they took a hit. Learn to pick yourself up. The world will not end. Through each setback become stronger and able to manage any situation. Do not become narrow-minded or blinded. Look at alternative possibilities. In the end, we represent our clients. Remember your fiduciary responsibilities.

## **Additional Resources:**

1. NAR Code of Ethics
2. The DANGER Report
3. NAR Member Profile

4. The Ethical Decision-Making Model
5. Most Common Complaints
6. State Economic impact of real estate activity report North Carolina (04-09-2024)