Chapter 2 Codes of Ethics

Objectives

By the end of this part, the reader will be able to:

1. Describe the possible purposes of a code of ethics.
2. Discuss the key differences between the 1913 NAR Code of Ethics and the current version.
3. Contrast the reasonable personal standard and the professional person standard.
4. Identify aspirational elements in the Preamble to the NAR Code of Ethics.
5. Analyze the significance of NAR Code's Article 1 and Article 2 to real estate practitioners.
6. Briefly describe the professional standards enforcement process of a local association of Realtors®.

Kay Terms

code of ethics

mediation

NAR Code of Ethics

Preamble

professional person standard

reasonable person standard

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.

However, having a code of ethics doesn't prevent misconduct. Codes do, however, help recognize 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 in an earlier module, a code of ethics is both a vehicle for occupational identity and a mark of occupational maturity.

Codes of ethics vary in content, format, and length. For example, The Kraft/Heinz code of ethics contains just 10 short rules of ethical behavior that all employees must follow: make food that is safe to eat; market responsibly; treat people fairly; respect the free market; compete fairly; respect the environment; deal honesty with the government; keep honest books and records; never trade on inside information; give Kraft Foods your complete business loyalty.

The Colgate-Palmolive code of ethics is a long document, but is broken down into individual areas of conduct. The code covers 10 areas: Our Relationship with Each Other; Our Relationship with the Company; Our Relationship with Consumers; Our Relationship with Government and the Law; Our Relationship with Society and Our Relationship with the Environment.

Can a code of conduct help a company or industry navigate treacherous ethical terrain? The 1982 Tylenol tampering case serves as the gold standard in terms of crisis management. The tragedy took place when seven people in the Chicago area collapsed suddenly and died after taking Extra-Strength Tylenol capsules, manufactured by McNeil Consumer Healthcare, a subsidiary of Johnson & Johnson. The pills had been laced with cyanide. This was the first known case of product tampering. Johnson and Johnson faced an immediate crisis with little guidance to go by except the company's Credo. According to the company, it was this aspirational document that helped them to manage the crisis in an ethical manner.

Following disclosure of the tainted product, the firm removed the product from the shelves of supermarkets, provided free replacements of Tylenol capsules with the tablet form of the product, and made public statements of assurance that the company would not sell an unsafe product. The company became a model for how to handle an ethical crisis.

Here is the critical passage in the company's credo which compelled the firm's action:

"We believe our first responsibility is to the doctors, nurses and patients, to mothers and fathers and all others who use our products and services. In meeting their needs everything we do must be of high quality."

The National Association of Realtor® (NAR) Code of Ethics was first adopted in 1913 and was one of the first codifications of ethical duties adopted by any business group. Modeled on ethical codes of physicians, engineers, and lawyers, the Code was created before California enacted the first real estate license law in the country in 1919.

The current NAR Code consists of 17 Articles, 71 supporting Standards of Practice, and 131 explanatory case interpretations. However, the 1913 version was considerably shorter than today's version and uses some language and references that seem quaint by comparison:

The 1913 Code of Ethics

T*he Duty of Real Estate Men toward their Clients*

The real estate agent should be absolutely honest, truthful, faithful and efficient. He should ever bear in mind that he is an employee that his client is his employer and is entitled to the best service the real estate man can give his information, talent, time, services, loyalty, confidence and fidelity.

A real estate agent should be conservative in giving advice and where he is not reasonably well posted should refrain from giving his opinion of value.

A real estate agent should inspect his client's property, if possible, before offering it for sale, and he should always inform the buyer if he has not done so.

An agent should not depreciate the price of property unless the price is too high; he should ask that the price be reasonable and tell the owner that it must be so if he expects his agent to make an attempt to sell it.

An agent should have the sole agency, in writing, if it is property he is willing to make a special effort to sell.

An agent should advocate either the real consideration to be shown in a deed to property, or one dollar and other valuable considerations.

An agent should not give special information to inquirers over the telephone or otherwise, unless they are willing to give their names and addresses. Let them understand he deals in the open and expects them to do likewise.

An agent should not ask for a net price on property, unless he intends to buy it himself and so notifies his client.

An agent should request his client not to discuss price with the prospective buyer, but persuade his client to refer the matter to the agent, thus strengthening the agent's position with the buyer, and thus helping the agent to make a better deal for his client.

An agent should always exact the regular real estate commission prescribed by the board or exchange of which he is a member, and should always give his client to understand at the beginning that he is entitled to such, and expects it.

The Duty of a Real Estate Man to Other Real Estate Men

An agent should respect the listings of his brother agent and cooperate with him to sell, provided the other agent has the most suitable place.

An agent should advise an owner to renew a selling contract with some other agent rather than solicit the agency himself, provided the other agent has made a reasonable attempt to sell the property during the life of his contract.

An agent should always be loyal, square, frank end earnest in the matters that require the cooperation of brokers, and should always speak kindly of his competitors, refusing to pass judgment on others from hearsay evidence.

An agent should not advertise anything but facts, and should be careful not to criticize by any method a competitor's proposition.

An agent should give an honest opinion concerning a competitor's proposition when asked to do so by a prospective purchaser, even though such opinion will result in a sale by the competitor.

An agent should refuse to put a "For Sale" or "For Rent" sign on property on which his competitor already has his sign, providing the placing of such sign was through the authorization of the owner.

If an agent cannot efficiently handle a proposition he should refer the matter to some competitor who can.

An agent should solicit cooperation of the members of the board in selling sole agency listings unless he has a deal on or has some particular buyer in sight to whom he expects to make a sale, and he should always be ready and willing to divide the regular commission equally with any member of the board who can produce a buyer for any of his clients.

An agent should invoke friendly arbitrations by the real estate board, rather than action through the courts of law, in settling differences between himself and other agents.

He should not disregard the rights of other agents. He should never take the position with an owner that he will not work through his regular agent, or that he will not try to sell his property to a live buyer he may have unless he handles the entire deal and gets all the commission.

He should not put his name in the newspapers in connection with a deal unless really representing at least one of the parties and receiving a part of the commission, for such publicity is a sham, and the result is to the disadvantage of all.

When a sale or exchange is handled by two agents each agent shall be given due credit in the report of such sale or exchange.

He should not relay property, which means he should not submit to one agent that which he obtains from another agent, unless in exceptional cases and then he should let the third agent know that he does not have the property directly. For in case he relays, he represents neither side, and is not entitled to the same consideration as either of the other agents.

Standards for Business Conduct

Codes of ethics have their shortcomings. One problem is the complexity of issues that cannot often 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 community standards or needs.

For example, building codes often do not change until damage is done or a tragedy results. The tragedy in 1942 at the Cocoanut Grove nightclub (Boston, Massachusetts) compelled architects, interior design professionals and government officials to establish much higher safety standards. On the night of the fire, more than 1,000 revelers occupied the club. A lit match used while changing a light bulb ignited flammable decorations, spreading the fire rapidly. Authorities estimated that possibly 300 of the 491 who died could have been saved had the nightclub doors swung outward. The Cocoanut 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 for emergency lighting and occupant capacity placards in places of assembly. Exit lights were also required as a result 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. 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' needs 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, as a consequence, countries responded by establishing new oversight agencies, laws and 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, in 2010, the Dodds-Frank Wall Street Reform and Consumer Protection Act created the Consumer Financial Protection Bureau (CFPB). A legislative response to the financial crisis of 2007–08 and the subsequent , the CFPB demonstrates thaw when an industry fails to police itself, it is not unusual for jurisdictions to take action.

Textbox…………………

"In the wake of the Enron and Worldcom corporate scandals, codes of ethics have taken on yet another dimension. Legislation passed in 2002, the Sarbanes-Oxley 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 also publish any changes to these codes as they are made. This requirement has given corporations strong incentives to formulate codes of ethics in order 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.

THE REASONABLE PERSON STANDARD

The reasonable person standard assumes a hypothetical person in society who exercises average care, skill, and judgment in conduct and who serves as a comparative standard for determining liability. Beauchamp and Bowie describe the elements of the reasonable person standard as follows:

- Customers or public representatives judge whether professional determinations are adequate in terms of standards of reasonableness.

- A professional's conduct may be found negligent or otherwise deficient even if his or her behavior conforms perfectly to recognize and routine professional practice.

- The reasonable person standard is objective in that it is designed to incorporate the common body of assumptions that the members of a society make about their fellow citizens in order to cooperate efficiently.

Consider an employee going to a supervisor with a complaint about sexual harassment from a co-worker or leaving extension cords strews in a hallway. Turning a blind eye to harassment between co-workers or forgetting to wind up the extension cord in the hallway are the sorts of omissions that the hypothetical “reasonable person” would respond to with some urgency because the danger of ignoring these problems is obvious and imminent. Moreover, a reasonable person would take positive actions to prevent harm, such as sexual harassment training and changing the location of outlets, if necessary. These are the responses of a reasonable person.

Similarly, if an employee indicates that a co-worker could possibly be embezzling from client accounts, a supervisor would take immediate action to determine if the allegation is true. A reasonable person would also have internal controls, such as adequate supervision and training of staff and careful review of work, to make sure that embezzlement does not occur.

PROFESSIONAL PRACTICE STANDARD

The professional practice standard is another test often used in court to examine appropriate business conduct. In civil court cases, professional organizations' codes are often cited as the norm for conduct. The professional practice standard holds that duties are properly determined by the customary practices of a professional community.

Here are the key elements of a professional practice standard:

- Duties and other standards of moral conduct are determined by the customary practices of a professional community.
- A business person is charged professionally with various responsibilities (for example, avoiding harm, honoring warranties, removing conflicts of information and obeying legal requirements) and must use proper professional criteria for determining appropriate actions.
- Custom in the profession establishes the standards of obligatory conduct, such as "due care."
- Since a person without expert knowledge is unqualified to establish what should be done, the professional community is the appropriate source of standards.

REALTORS® are different from non-member licensees in that they voluntarily subscribe to the NAR Code of Ethics.[1] The Code of Ethics is an illustration of the professional practice standard and is routinely used by judges and jurists to determine the verdict in cases against real estate licensees, whether or not those licensees are members of the association of Realtors®.

Because of the NAR Code’s importance to its numerous members and is used as a standard by which to judge all brokers, the Code is worthy of a more elaborate review. Please go to to

[1] “Realtor” is a trademarked term that refers to a real estate agent who is an active member of the National Association of Realtors (NAR), the largest trade association in the United States. Headquartered in Chicago, NAR has more than 1 million members across the country. Members may also be property managers, appraisers, real estate counselors and other professionals involved in the real estate industry.

https://www.nar.realtor/about-nar/governing-documents/code-of-ethics/2020-code-of-ethics-standards-of-practice to read the current Code.

The NAR Code of Ethics

The NAR Code is a living document that undergoes regular revision to keep it updated and relevant as the real estate industry evolves, so today's Code of Ethics looks much different from the one that was adopted in 1913. Social customs, industry practices and federal laws have had a significant impact on the Code. No longer do we see references to real estate men or "brothers." References to clients can include not only sellers and buyers but also landlord and tenants. References to technology, such as telephones in the first version of the Code are gone, and terms such as "metatags" have replaced them to keep up with changing times. Fair housing and agency legislation and other laws have also influenced revisions, deletions, and additions to the Code.

The Preamble

The Code of Ethics was over a decade old before the preamble was introduced. In 1924, the National Association's committee assigned with revising and modernizing the Code decided that the rules should have an introduction, and prepared two versions of a preamble for consideration. The first one was written as a personal pledge but the second one, and the one that was accepted by the board of directors was considered more poetic. Written by a minister, the preamble "… [set] forth the social responsibility of the association and of the local real estate boards who make up its membership."[2]

In 1955, the Preamble was revised again but in 1961, the NAR went back to its original wording. The Preamble as it appears today changed one more time in 1994, when the first six Articles of the Code were incorporated into the Preamble, adding the paragraphs regarding Realtors® obligations to share their professional knowledge and stressing the importance of maintaining a spirit of cooperation with other real estate professionals.

It should be noted that a member of the Association of Realtors® cannot be expelled from the organization because of a violation of the Preamble. The Preamble is meant to be aspirational rather than enforceable. The Preamble cannot be used as a basis for disciplinary action against a Realtor®. Only the Articles of the Code are used as the basis for discipline of Realtor® membership.

Of the numerous lofty ideals expressed in the Preamble, two deserve special mention: sharing knowledge and experience and the Golden Rule. Realtors® are exhorted to "willingly share the fruit of their experience and study with others." This concept encourages a high standard rarely established by business and professional groups. As a general rule, business competitors do not share the lessons of their experience with each other for the benefit of the public. Rather, such experience is zealously guarded lest it fall into the hands of competitors. But REALTORS®, although intensely competitive with each other, at the same time cooperate with each other in the best interest of clients and customers. In cooperative transactions, it is desirable that the combined professional abilities and talents, as well as the shared commitment to high standards of conduct, prevail.

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[2] http://infoservices.blogs.realtor.org/2013/02/05/uncovering-the-origins-of-%E2%80%9Cunder-all-is-the-land%E2%80%A6%E2%80%9D/

The collegial spirit also benefits competitors. Veteran brokers know that they will do business with their colleagues many times during their careers. Not only does it reward long-term relationships if co-brokers help each other, this spirit also makes transactions go more smoothly for the benefit of all participants. Moreover, cooperation and mentorship helps the public realize the challenges of the profession and brings more respect to everyone in the industry.

The Preamble also refers to the Golden Rule--treat others as you would want to be treated. The Golden Rule is a pillar of most of the world's great religions. It lies at the heart of secular ethics. It is an expression of the basic human instinct to bond with others, to feel their pain, and to act accordingly. The Golden Rule is a unilateral moral commitment to others without the expectation of anything in return.

Textbox:

Here are some examples of the Golden Rule from various ethical systems and religious texts:

Confucius: What you do not want done to yourself, do not do to others.

Aristotle: We should behave to others as we wish others to behave to us.

Judaism: What you hate, do not do to anyone. All else is commentary.

Hinduism: Do nothing to thy neighbor which thou wouldst not have him do to thee thereafter.

Islam: No one of you is a believer unless he loves for his brother what he loves for himself.

Buddhism: Hurt not others with that which pains thyself.

Christianity: Do unto others as you would have them do unto you.

textbox

There is scientific evidence that the Golden Rule has its origins in the way that human brains operate. One neurobiologists suggests that human beings have neural mechanisms that make us care about others. These systems generate empathy by making us literally feel another's pain in our own brains. This mirroring of emotion often motivates us to alleviate the other's distress. The key molecule inducing empathy is called oxytocin, a simple chemical ancient in origin that motivates us to care about others - even complete strangers. Oxytocin released in the brain modestly moves the balance between distrust and trust of others towards the latter. It is trust that causes us to play fair.[3]

textbox

Is the Golden Rule a practical business strategy? According to one analysis,

> When a company treats you right or sells you a terrific product, you feel happy. You feel loyal. You're likely to buy more from that company. You're likely to recommend that company's products and services to friends, family and colleagues. And here's some math: In most

[3] Pfaff, Donald W., "The Neuroscience of Fair Play: Why We (Usually) Follow the Golden Rule", Dana Press, The Dana Foundation, New York, 2007.

industries, *companies that are the loyalty leaders have a compound annual growth rate that is more than twice that of their competitors.* [Emphasis added.]

The reverse is true as well. When customers feel mistreated or misled, they give what they got. They leave—if they can—and complain if they can't. They demoralize your employees. And they badmouth your company, alienating your prospects. They're costly.[4]

As discussed earlier, the current NAR Code of Ethics has three sections: Duties to Clients and Customers (Articles 1-9); Duties to the Public (Articles 10-14) and Duties to REALTORS® (Articles 15-17). They are summarized here:

A BRIEF SUMMARY OF THE CODE OF ETHICS[5]

Article 1
Protect and promote your client's interests, but be honest with all

Article 2
Avoid exaggeration, misrepre-sentation, and concealment of facts that are confidential under the scope

of your agency relationship

Article 3
Cooperate with other real estate Professionals to advance client's interests

Article 4
When buying or selling, make your Position in the transaction or interest

Article 5
Disclose present or contemplated interest in any property to all Parties

Article 6
Avoid side deals without client's Informed consent

Article 7
Accept compensation from only party, except with full dis-Closure and informed consent

Article 8
Keep the funds of clients and

Article 9
Assure, whenever possible, that transactional details are in writing parties

Article 10
provide equal service to all clients & customers pertinent facts, do not reveal

Article 11
be knowledgeable and competent in the fields of practice in which you ordinarily engage. Obtain assistance or disclose lack of experience if necessary best

Article 12
present a true picture in your advertising and other public representations known

Article 13
do not engage in the unauthorized practice of law

Article 14
Be a willing participant in code enforcement procedures

Article 15
Ensure that your comments about other real estate professionals are truthful, and not misleading one

Article 16
Respect the agency relationships of other exclusive relationships recognized by law, that other

[4] https://www.linkedin.com/pulse/20121106215128-7928939-why-the-golden-rule-is-good-business
[5] Greater Rochester Association of Realtors®, https://www.grar.org/file/sites%7C*%7C662%7C*%7CResources%7C*%7Cgr4briefsummaryofethicscode.pdf

Customer’s in escrow	Realtors® have with their clients.
	Article 17 Arbitrate contractual and specific non- contractual disputes with other Realtors® and with your clients

While all of the Articles merit discussion and analysis, it is Articles 1 and 2 that are most frequently cited in complaints filed against Realtors®. In general, issues regarding representation and disclosure, the subjects of Articles 1 and 2, are the most common cited causes of litigation against real estate brokers. According to a National Association of Realtor® (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 members face.[6]

ARTICLE 1

The nature of real estate brokerage services, particularly those provided in residential sales transactions, has changed significantly in the last seventy years. Through the 1950s, real estate brokerage firms were primarily one-office, family-run operations. The broker listed the owner’s property for sale and found a buyer without assistance from other companies. Then the sale was negotiated and closed. It was relatively clear that the broker represented the seller’s interests. But things started to change in the 1960s when brokers started to share information about properties they had listed by participating in multiple-listing services (MLSes). This sharing resulted in two brokers/firms cooperating with one another to sell a property.

The result was confusion over which party the brokers represented in co-brokered transactions. Consumers thought that the broker who had the property listed for sale represents the seller; the broker who found the buyer represents the buyer. However, this was not the case. Up until the mid-1990s, it was commonplace in these shared transactions that both brokerage firms and their brokers or salespersons represented the seller as agents and owed all loyalty to the seller and owed no duties other than honesty and fairness to the buyer.

Brokers were as confused as the public. Often brokers who worked with buyers felt a closer kinship with their buyers but had to act in their legal capacities as representatives of the seller. These brokers were subagents of the seller and the seller’s listing firm. Sometimes this subagency relationship was established by local MLSes which provided for a unilateral subagency, a relationship created when a seller listed property with a listing broker or firm.

This confusion ultimately led to a lawsuit that gained national prominence and forced the industry to acknowledge that often buyers were harmed by their lack of information about agency relationships (See Chapter 3, Applied Ethics, and the Edina Realty lawsuit.) Starting in the mid-1990s, U.S. states

[6] https://www.nar.realtor/articles/top-legal-risks-members-face-today

passed legislation coercing real estate firms and their affiliated brokers to more candidly disclose the possibilities of representation.

Today's consumers are much more likely to receive information about agency relationships early in their dealings with brokers. They are also likely to have much more choice in whether they are going to be represented or not.

The Edina case also motivated brokers to re-evaluate their services. They choose whether they will represent the seller, the buyer, or both (if permitted by state law) in the sale or rental of property. They also must decide how they will cooperate with other brokers in a transaction. Since the Edina case, the brokerage business has undergone many changes as brokers focus on ways to enhance their services to buyers and sellers.

As a consequence of these industry changes, the Code now anticipates the possibility of a variety of agency and even non-agency relationships where the seller, buyer, landlord or tenant could be clients or customers. Article 1 also emphasizes that regardless of a Realtor®'s legal relationship with a principal, the duty of honesty remains an ethical obligation. (See Part 3 for a more extensive discussion of the application of Article 1).

ARTICLE 2

Article 2 of the NAR Code of Ethics cautions that Realtors® should not exaggerate, misrepresent or conceal relevant facts relating to the property or the transaction. Further, while Realtors® are not obligated to discover latent defects in the property or to disclose those matters which are confidential as described by various state laws.

This mandate is challenging to follow because of the patchwork quilt of legislation and rules under which brokers operate. The general standard is that brokers must disclose to any and all consumers, regardless of agency relationship, any property defect, such as defective heating system. However, some states also require that brokers disclose to buyers that a seller is facing imminent foreclosure or a short sale or that buyers have poor credit. These disclosure may be required in spite of rules regarding client confidentiality.

In some states, it is unlawful to disclose issues related to stigmatized properties; for example, it may be unlawful to disclose that a murder or suicide took place on the property. Yet in some U.S jurisdictions, it is required to disclose certain crimes, such as murders, that took place on the property within a certain period of time prior to the listing. In some states, such as Georgia, there is a geographical limitation to disclosure: the broker must also inform the buyer of any material information known to the broker about the neighborhood within one mile of the home.

The very definition of "material facts" varies from state to state, and independent of those definitions, buyers often believe that information about a property that is important to them is therefore "material." In other words, buyers may want to know about the ethnicity of the neighbors, but real estate brokers are not permitted under Federal and state fair housing laws to discuss these matters.

Some states require that sellers complete and provide to buyers comprehensive property disclosure forms and separate forms about issues such as Megan's Law, radon or mold. Federal laws may also require property owners to make disclosures. Some of these forms, once completed, may create liability for the owners; some do not, permitted the owners to answer “no representation.”

It is no wonder that consumers sometimes think that they have not been the recipient of important information and allege that their brokers have omitted or misrepresented critical information. (See Chapter 3 for a discussion of cases regarding disclosure issues.)

Enforcement of the Code

The enforcement of the Code is handled mainly by the local Realtor® associations. The Code describes the enforcement process that available to anyone who believes a Realtor® has committed a violation of the Code. Associations of REALTORS® only determine whether the Code of Ethics or association membership duties have been violated, *not* whether the law or real estate regulations have been broken. When broken laws or regulations are suspected or when the real estate professional is not a Realtor, consumers should contact the real estate licensing authority in that jurisdiction or take their concerns to the courts. Typically, if litigation is being pursued by the complainant, the local association will usually not proceed with the ethics or arbitration complaint until the litigation has concluded.

There two basic types of complaints that are handled by local associations: an ethics complaint and requests for arbitration.

An ethics complaint is a complaint about a Realtor®'s conduct that has allegedly violated one of the Articles of the Code of Ethics. Under Article 17 of the Code, Realtors® are required to arbitrate certain types of monetary disputes they have with other Realtors®. So, a second type of matter handled most frequently by local associations is a request for arbitration falling under Article 17 of the Code.

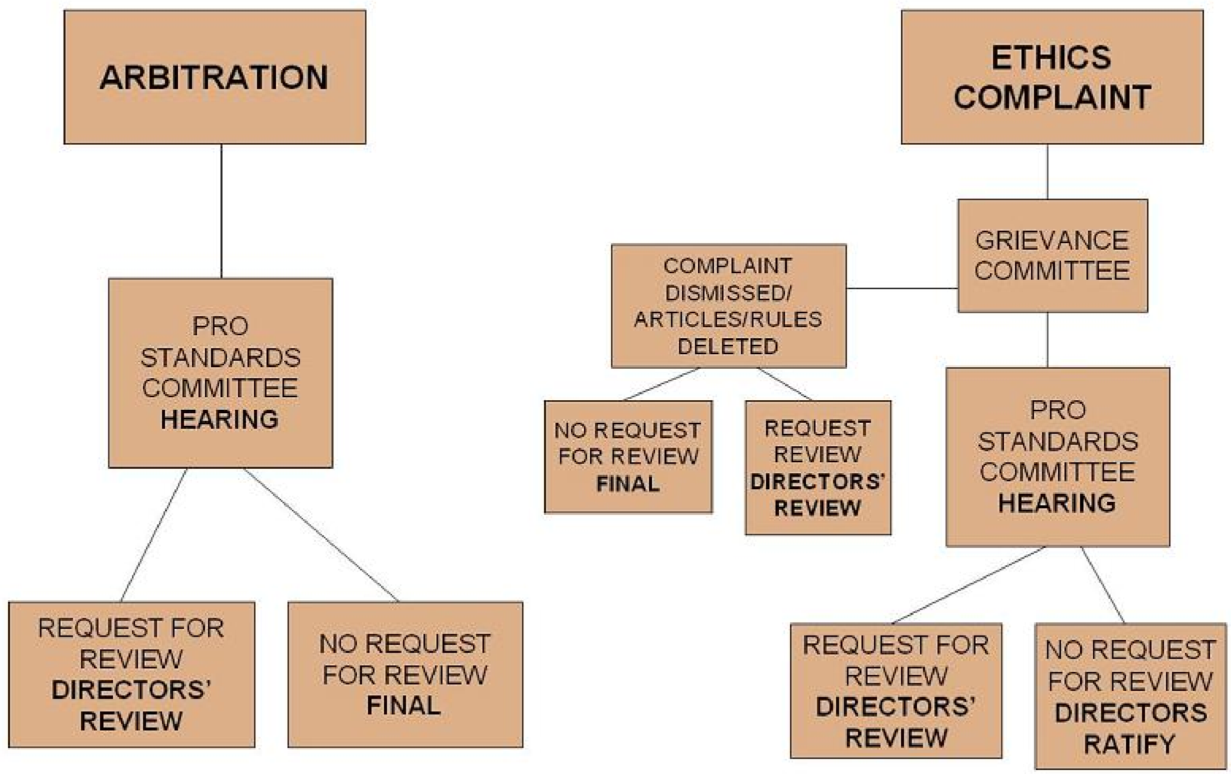
Generally, a request for mandatory arbitration is based on a monetary dispute. The dispute must be of a contractual or specific non-contractual nature, and it must be between Realtors® (principals) in different firms arising out of their relationship as Realtors®. Article 17 specifies the types of disputes that are required to be arbitrated. A request for arbitration is most commonly based on a dispute about a cooperative (selling) commission, sometimes also known as a co-brokerage commission. In the residential field, the offer of compensation is most commonly made by a listing broker in the context of filing listings with the MLS. In the commercial field, offers of compensation are often made directly among brokers in a market.

There are three committees or groups that are involved in the Code enforcement process: the Grievance Committee, the Professional Standards Committee, and the Board of Directors

The Grievance Committee is a screening committee that initially reviews ethics complaints and requests for arbitration. The Grievance Committee does not hold hearings but simply determines, on the basis of the written information presented in the complaint/request, whether a possible violation of the Code may exist or whether the request for arbitration presents a matter that can be arbitrated within Article 17.

If the Grievance Committee believes that a possible violation may exist or that a matter can be arbitrated, it forwards the complaint/request to the Professional Standards Committee. The Professional Standards Committee appoints a hearing panel (usually three or five members of the Committee) to conduct a hearing. The hearing is a "due process" hearing similar to a court proceeding. The hearing panel decides whether a violation of the Code occurred and makes a recommendation for discipline, if any. In an arbitration request, the hearing panel decides which party is entitled to the monetary award. In either case, a right of appeal or review exists to the Board of Directors. See Figure X.

Figure 1. Code enforcement process.[7]



As part of the due process that is afforded to those involved in complaints, there may be hearings where the parties can bring legal counsel, and there may be penalties (the most extreme being expulsion from the association). A common remedy for disputes, and a method that has become more popular for resolving conflicts, is mediation. **Mediation** is an entirely voluntary alternative dispute resolution method that is available to parties to an arbitration dispute. Mediation provides an opportunity for the parties to come together in an informal setting to resolve their differences amicably without the time and expense of a formal arbitration proceeding. It is not required and is not intended as a substitute for arbitration.

Summary

As discussed earlier, the NAR Code of Ethics provides a framework for acceptable conduct for real estate professionals and serves as an example of the professional personal standard. In many cases the professional practice standard and the reasonable person standard will bring us to the same conclusion: the practitioner was (or was not) negligent. In other circumstances, the reasonable person standard

[7] https://www.ivaor.com/association/professional-standards-and-ethics/

would hold us to a tougher standard; that is, it would have us consider what would an average practitioner need to know about risks, alternatives and consequences in order to make an informed decision rather than consider routine practices in the real estate industry.

Of course, not all ethical dilemmas can be resolved using professional codes of ethics. Some of our dilemmas are going to be the result of new technologies that no one could have anticipated. This will be particularly true of medical research where genome research will make it possible to alter the DNA of humans. The ethical implications are difficult to imagine. A code of ethics developed today may be inadequate to cope with the challenges of tomorrow.

Some ethical dilemmas will not be from the workplace. They will be personal, rooted in family relationships and friendships, perhaps. Again, a professional code of conduct may not be of much use.

In many cases, ethical dilemmas are resolved privately. No one may be aware of our thoughts or actions in the unfolding events. In fact, in many situations, our thoughts and actions are not often held up to the scrutiny of our peers and colleagues. We may consider, "Who will know? Who will 'catch' me?"

It is at these times when laws, regulations, and codes of conduct may provide little guidance or relief, that we must rely on our personal codes of ethics.

Once we are aware of your deepest values and the fundamental principles that guide our choices, that give use our identities and self-esteem, we are empowered. Our personal environments may change daily, but with these principles. We have an unchanging personal constitution that allows us to act ethically.

Of course, knowing what the right thing is can be different that acting ethically. What will make us to do is having the will to do so. We must see ourselves capable of doing the right, having the moral courage to do so, and believing that we can make a difference in the lives of people who depend on us.

Recall the story of the starfish:

A young man is walking along the ocean and sees a beach on which thousands and thousands of starfish have washed ashore. Further along he sees an old man, walking slowly and stooping often, picking up one starfish after another and tossing each one gently into the ocean. “Why are you throwing starfish into the ocean?” he asks. “Because the sun is up and the tide is going out and if I don’t throw them further in they will die.” “But, old man, don’t you realize there are miles and miles of beach and starfish all along it! You can’t possibly save them all, you can’t even save one-tenth of them. In fact, even if you work all day, your efforts won’t make any difference at all.” The old man nodded calmly and then bent down to pick up another starfish and threw it into the sea. “It made a difference to that one.”

If we root our personal code of ethics in moral principles, we can offer guidance and inspire others. Ethics is vital to our success as professionals, as wives and husbands, as parents, as friends, and ultimately, as human beings.

Review Questions

1. Which statement is FALSE regarding the NAR Code of Ethics?

A. It was created before any state enacted licensing laws.
B. It has been revised numerous times since it was first enacted.

C. It is an example of the reasonable person standard.
D. It has three sections: duties to clients and customers; duties to the public; and duties to Realtors®.

2. The reasonable practice standard:

A. considers what would an average practitioner need to know about risks, alternatives and consequences in order to make an informed decision.
B. holds that duties are properly determined by the customary practices of a professional community.
C. is illustrated by the NAR Code of Ethics.
D. is never used by judges and juries.

3. The Golden Rule:

A. refers to the common business precept that "He who has the gold, rules."
B. originated in the United States.
C. is not mentioned in the NAR Code of Ethics.
D. considers the impact of behavior on others.

4. The issues that cause Realtors® and brokers the most problems in terms of complaints and litigation are:
A. zoning and plumbing problems
B. title issues and property defects.
C. foreclosures and short sales.
D. representation and disclosure.

5. Under Article 17 of the Code, Realtors® are required to _____________ certain types of monetary disputes they have with other Realtors®.
A. litigate
B. settle
C. arbitrate
D. mediate