

COLDWELL BANKER PREMIER  
REALTY

BL UNIVERSITY

A PREMIER TRAINING & EDUCATION SERIES

ETHICS AND STANDARDS OF  
THE PROFESSION  
CE.6316000-RE



COLDWELL BANKER  
PREMIER REALTY

## **ETHICS AND STANDARDS OF THE PROFESSION**

Course Objectives – As a result of this course, students will be able to:

- Describe the Articles of the REALTOR Code of Ethics and be able to indicate which have been violated
- Cite the REALTOR Associations forms of conflict resolutions for Ethics and for Money disputes
- Explain the process for determining procuring cause
- Describe the role of the Real Estate Division and the Real Estate Commission in the complaint process
- Cite the discipline authorized for violated NRS Statute and Code
- Determine which NRS Statutes have been violated

## **REALTOR® Code of Ethics**

- Precursor to many States Licensing Laws
- Preamble
- 17 Articles

Duties to Clients and Customers

Duties to the Public

Duties to Realtors

Standards of Practice – Provides further interpretations of the Articles

The Code of Ethics is a living document

How the Code of Ethics Evolves:

- Amendments made during Midyear Meetings and REALTORS® Conference and Expo
- Revisions require approval by NAR Professional Standards Committee and Board of Directors
- Interpretations and Procedures Subcommittee of the Professional Standards Committee recommend many of the changes
- Any change to an Article of the Code also must be approved by the NAR Delegate Body

**Let's Analyze the Code** – Break into groups and identify the appropriate article, 1-17.

1. Must not make false or misleading statements about competitors \_\_\_\_\_
2. Avoid the unauthorized practice of law \_\_\_\_\_
3. Must present evidence in a professional standard hearing if asked \_\_\_\_\_
4. Keep clients' funds separate from your own \_\_\_\_\_
5. Must disclose if receiving compensation from more than one source \_\_\_\_\_
6. Respect exclusive relationships \_\_\_\_\_
7. Cooperate with other brokers unless it's not in the best interest of client \_\_\_\_\_
8. Disclose current or contemplated interest in property \_\_\_\_\_
9. Protect and promote the best interest of the client \_\_\_\_\_
10. Bound to arbitration \_\_\_\_\_
11. Provide equal professional services to all \_\_\_\_\_
12. Make true ownership position know when purchasing or selling \_\_\_\_\_
13. Do not act outside your field of expertise \_\_\_\_\_
14. Get all agreements in writing \_\_\_\_\_
15. Avoid exaggeration or misrepresentation of facts \_\_\_\_\_
16. Disclose any fees received when recommending professional services \_\_\_\_\_
17. Paint a true picture in advertising \_\_\_\_\_

## **Ethics Case Study**

Shortly after REALTOR® Aaron, the listing agent, closed the sale of a home to Buyer Barbara, a complaint was received by the Board charging Aaron. The charge indicated that the house was not connected to the city sewage system as was stated in the MLS but rather had a septic tank. Aaron also had it printed on flyer for the property that the home was connected to Public Sewer.

Barbara, after moving in, discovered that some homes on that street were connected to the sewer system, but not all of them, including the home she purchased. This home was located in a rural area just outside of city limits in an area that Aaron had not previously worked before.

Did Aaron violate the Code of Ethics?

What article(s) do you believe were violated?

## **Enforcement of the Code of Ethics**

### **Role of the Association**

- Every association is responsible for enforcing the Code
- This includes providing mediation and conducting ethics and arbitration hearings
- Only REALTORS® and REALTOR-ASSOCIATES® are subject to the Code

### **Dispute Resolution Options**

	<b>INFORMAL</b>	<b>FORMAL</b>
<b>ETHICAL DISPUTE</b>	Ombudsman	Ethics Complaint
<b>MONEY DISPUTE</b>	Mediation	Arbitration

### **Ombudsman**

- Often a member or past member of the Professional Standard Committee
- Primary role is communication and conciliation (not adjudication)
- Does not determine an ethics violation
- Anticipates, identifies, helps resolve misunderstandings or disagreements before disputes or unethical conduct charges arise

### **Mediation**

- Often a member or past member of the Professional Standards Committee
- Voluntary process
- Parties create a mutually acceptable resolution of the dispute, rather than go before an arbitration hearing panel
- If a resolution is reached, parties sign an agreement containing the terms of the settlement, and no arbitration hearing is held

### **Ethics Complaint**

- Grievance Committee
  - Members of the Association selected by the president
  - Reviews the complaint, acts as a screening committee (Grand Jury)
  - If based on the allegation, a violation existed, it is moved forward
- Professional Standards Committee
  - Made up of members of the association that have served on Grievance Committee

- Chairman appoints panel for a formal hearing to take place
- All parties present, attorneys, Realtor counsel, and witnesses
- Panel decides whether the Code of Ethics has been violated through clear, strong, and convincing evidence
- The panel also determines the discipline

Authorized discipline:

- Letter of warning
- Letter of reprimand
- Education
- Fine, not to exceed \$15,000
- Probation of one year or less
- Suspension of not less than 30 days, nor more than one year
- Expulsion from membership for one to three years
- Suspension or termination of MLS privileges

### Arbitration

- Grievance Committee determines if there is an arbitrable issue (Article 17)
- Forwards to Professional Standards for formal hearing
- Panel decides procuring cause based on a preponderance of evidence (unbroken chain of events, leading to the sale, as determined by a panel of your peers),
- NO PREDETERMINED RULES
  - Threshold Rule
  - Contract Rule
- Representation does not equal Compensation

### Procuring Cause

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## Procuring Cause case study?

Angie is holding a busy open house, but she can't fail to notice when Mary Magic walks in. Mary is 6 feet 8 inches tall and a professional basketball player. She seems very interested in the house: She spends a long time looking at the MLS data sheet Angie provided, tours the whole place, and asks Angie lots of questions about terms and financing. Angie is a fan of the Women's National Basketball Association and recognizes Mary. They talk about the WNBA and Angie even gets Mary's autograph—both in her address book and at the bottom of the agency disclosure form that informs Mary that Angie represents the seller.

The next day Angie receives a telephone call from Barry. He advises Angie that he's a buyer's agent and has an offer on the property. Angie doesn't recall his ever making an appointment to show the property, but the offer is very attractive, and the owner agrees to accept it. It's only after Angie receives the faxed contract from Barry that she realizes the buyer is Mary Magic. Angie then calls Barry to inform him that she'll be claiming both the listing and the selling sides of the commission because Mary saw the house at the open house the previous day and asked all kinds of questions. Clearly, Angie asserts, that proves that she's the procuring cause of Mary's offer to purchase.

Barry contends he was the procuring cause of the sale. Although he acknowledges that he hadn't shown Mary the inside of the house, he'd told Mary about the property and encouraged her to visit the open house. Barry knew the house well, since he'd sold it to the current owners. In addition, he'd driven Mary by the house after she'd attended the open house and before she made the offer. And as her buyer's agent, he'd consulted with her concerning the value of the property and the terms and conditions of the offer she eventually made.

After the closing, the selling portion of the commission is placed in escrow with the REALTOR® association, and Barry commences arbitration.

Who was the procuring cause?

What questions would you want to ask if you were on the panel?

## **Etiquette**

- Respect Agency Relationships (Article 16)
- Communicate
- Observe showing procedures
- Coverage when not available

## **Nevada Revised Statute and Nevada Administrative Code**

What is the difference?

How do they evolve?

## Enforcement of NRS 645 and NAC 645

### Role of the Nevada Real Estate Division / Real Estate Commission

- Compliance
- Administrative Fines (NAC 645.695)
- Investigation
  - Assigned to an investigator
  - Determines if there is a violation of NRS, NAC, or both
  - Investigator will determine if it should be dismissed or stipulation
  - A stipulation will be presented to and approved by the commission
  - If stipulation isn't reached, a hearing before the commission is conducted
  - Commission determines if a violation occurred and the discipline

### Authorized discipline

- Cost of hearing
- Education
- Fine up to \$10,000 per incident
- License – downgrade, restrictions, suspension, revocation

### **NRS Case Study**

In the previous case against REALTOR Aaron, the Association turned the complaint over to the Real Estate Division upon discovering other facts regarding the compliant. It turns out that Buyer Barbara did not have her own agent and was not provided a Duties Owed Form. It was also discovered that there was another offer from another agent that the seller was not aware of.

Looking at the NRS Provisions below, what Statues do you believe Aaron may have violated?

What do you think the penalty should be for these violates?

## **NRS Provisions**

### **NRS 645.251**

Licensee not required to comply with certain principles of common law. A licensee is not required to comply with any principles of common law that may otherwise apply to any of the duties of the licensee as set forth in NRS 645.252, 645.253 and 645.254 and the regulations adopted to carry out those sections.

### **NRS 645.252**

Duties of licensee acting as agent in real estate transaction. A licensee who acts as an agent in a real estate transaction:

1. Shall disclose to each party to the real estate transaction as soon as is practicable:

(a) Any material and relevant facts, data or information which he knows, or which by the exercise of reasonable care and diligence he should have known, relating to the property which is the subject of the transaction.

(b) Each source from which he will receive compensation as a result of the transaction.

(c) That he is a principal to the transaction or has an interest in a principal to the transaction.

(d) Except as otherwise provided in [NRS 645.253](#), that he is acting for more than one party to the transaction. If a licensee makes such a disclosure, he must obtain the written consent of each party to the transaction for whom he is acting before he may continue to act in his capacity as an agent. The written consent must include:

(1) A description of the real estate transaction.

(2) A statement that the licensee is acting for two or more parties to the transaction who have adverse interests and that in acting for these parties, the licensee has a conflict of interest.

(3) A statement that the licensee will not disclose any confidential information for 1 year after the revocation or termination of any brokerage agreement entered into with a party to the transaction, unless he is required to do so by a court of competent jurisdiction or he is given written permission to do so by that party.

(4) A statement that a party is not required to consent to the licensee acting on his behalf.

(5) A statement that the party is giving his consent without coercion and understands the terms of the consent given.

(e) Any changes in his relationship to a party to the transaction.

2. Shall exercise reasonable skill and care with respect to all parties to the real estate transaction.

3. Shall provide the appropriate form prepared by the Division pursuant to [NRS 645.193](#) to:

(a) Each party for whom the licensee is acting as an agent in the real estate transaction; and

(b) Each unrepresented party to the real estate transaction, if any.

4. Unless otherwise agreed upon in writing, owes no duty to:

(a) Independently verify the accuracy of a statement made by an inspector certified pursuant to [chapter 645D](#) of NRS or another appropriate licensed or certified expert.

(b) Conduct an independent inspection of the financial condition of a party to the real estate transaction.

(c) Conduct an investigation of the condition of the property which is the subject of the real estate transaction.

#### NRS 645.254

Additional duties of licensee entering into brokerage agreement to represent client in real estate transaction. A licensee who has entered into a brokerage agreement to represent a client in a real estate transaction:

1. Shall exercise reasonable skill and care to carry out the terms of the brokerage agreement and to carry out his duties pursuant to the terms of the brokerage agreement;

2. Shall not disclose confidential information relating to a client for 1 year after the revocation or termination of the brokerage agreement, unless he is required to do so pursuant to an order of a court of competent jurisdiction or he is given written permission to do so by the client;

3. Shall seek a sale, purchase, option, rental or lease of real property at the price and terms stated in the brokerage agreement or at a price acceptable to the client;

4. Shall present all offers made to or by the client as soon as is practicable, unless the client chooses to waive the duty of the licensee to present all offers and signs a waiver of the duty on a form prescribed by the Division;

5. Shall disclose to the client material facts of which the licensee has knowledge concerning the transaction;

6. Shall advise the client to obtain advice from an expert relating to matters which are beyond the expertise of the licensee; and
7. Shall account for all money and property he receives in which the client may have an interest as soon as is practicable.

NOTES: