

2020 Summary of Key Professional Standards Changes

This summary highlights substantive issues and changes, but is not all-inclusive. For complete information detailing all the changes see the 2019 Professional Standards Committee Actions for the REALTORS® Legislative Meetings and Trade Expo and the REALTORS® Conference and Expo at nar.realtor:

(<https://www.nar.realtor/natmeet.nsf/ViewROAgMinCategory?ReadForm<r=P&cmt=Professional%20Standards%20Committee>). Also, review the shaded portions of the 2020 *Code of Ethics and Arbitration Manual* which highlights all the changes.

Change to the *Code of Ethics and Standards of Practice*

(underscoring indicates additions, strikeouts indicate deletions)

- **Standard of Practice 1-7 is amended as follows:**

When acting as listing brokers, REALTORS® shall continue to submit to the seller/landlord all offers and counter-offers until closing or execution of a lease unless the seller/landlord has waived this obligation in writing. Upon the written request of a cooperating broker who submits an offer to the listing broker, the listing broker shall, as soon as practical, provide a written affirmation to the cooperating broker stating that the offer has been submitted to the seller/landlord, or a written notification that the seller/landlord has waived the obligation to have the offer presented. REALTORS® shall not be obligated to continue to market the property after an offer has been accepted by the seller/landlord. REALTORS® shall recommend that sellers/landlords obtain the advice of legal counsel prior to acceptance of a subsequent offer except where the acceptance is contingent on the termination of the pre-existing purchase contract or lease.

- **New Standard of Practice 3-11 is adopted as follows:**

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

- **Standard of Practice 12-2 is deleted, and Standard of Practice 12-1 is revised as follows:**

Unless they are receiving no compensation from any source for their time or services, REALTORS® may use the term "free" and similar terms in their advertising and in other representations provided that all terms governing availability of the offered product or service are clearly disclosed at the same time only if they clearly and conspicuously disclose:

1) by whom they are being, or expect to be, paid;

2) the amount of the payment or anticipated payment;

3) any conditions associated with the payment, offered product, or service; and

4) any other terms relating to their compensation.

Changes to the *Code of Ethics and Arbitration Manual (Manual)*

(underscoring indicates additions, strikeouts indicate deletions)

- **PS Policy Statement #45, Publishing the Names of Code of Ethics Violators**

Associations may, as a matter of local discretion, adopt one of the following options authorizing the publication of the names of ethics violators, subject to the following qualifications:

Publication Option #1:

Publication can only occur after a second violation occurs within three (3) years.

Ethics citation discipline is not included in the violation count unless the association has affirmatively authorized publication within their citation policy.

Publication can only be made in an official communication vehicle intended primarily for members of the Association(s) in which the violator holds (held) membership. Where the official communication vehicle is electronic or Internet-based, access must be limited to Association members.

The name of the firm the violator is (or was) licensed with cannot be published.

Publication must be consistent and uniform. This means that publication may not occur selectively but must be used in each instance where a second violation is determined within three (3) years.

Other than the violator's name, the only additional information that may be published is the Article violated, and the discipline imposed, except that in cases where the violator's name is similar to another member's name, the violator's license number or office address (or both) may also be published.

At least one of the violations must be based on conduct which occurs after the adoption of the Association's publication procedures.

Associations may adopt Publication Option #1 and may increase the timeframe with which publication occurs for certain discipline, the content of the publication to include photos or a description of the violation(s), or any combination thereof, only to the extent that is permissible under Publication Option #2. Any program that exceeds the scope of Publication Option #1, as defined above, must include local or state association legal counsel review of the decision, discipline, and information to be published.

Publication Option #2:

Publication can occur in all instances in which violators are disciplined with a letter of reprimand, a fine (ethics citation fines are not included in publications unless the association has affirmatively adopted policy to include them), a suspension, and/or an expulsion.

Prior to publication, local or state association legal counsel must review the decision, discipline, and information to be published.

Publication can only be made in an official communication vehicle intended primarily for members of the Association(s) in which the violator holds (held) membership. Where the official communication vehicle is electronic or internet-based, access must be limited to Association members.

The name of the firm the violator is (or was) licensed with cannot be published.

Publication must be consistent and uniform. This means that publication may not occur selectively but must be used in each instance where the discipline imposed meets the Association's publication criteria.

Other than the violator's name and a photo of the violator, the only additional information that may be published is the Article(s) violated, a description of the violation(s) with all names redacted except for the name of the violator, and the discipline imposed, except that in cases where the violator's name is similar to another member's name, the violator's license number or office address (or both) may also be published.

Publication must be based on conduct which occurs after the adoption of the Association's publication procedures.

Publication under this policy does not authorize dissemination of ethics complaints. Findings and decisions may not be disseminated in their original form, and must be condensed prior to publication.

- **PS Policy Statement, #48, REALTORS® Code of Ethics Training**

Effective January 1, 2001 through December 31, 2004, and for successive four (4) year periods ending December 31, 2016, REALTORS® were required to complete quadrennial ethics training of not less than two (2) hours and thirty (30) minutes of instructional time. Beginning January 1, 2017 through December 31, 2018, and for successive two (2) year periods thereafter, REALTORS® ~~are~~ were required to complete biennial ethics training of not less than two (2) hours and thirty (30) minutes of instructional time. In 2019, the Board of Directors extended the training requirement from every two (2) years to every three (3) years and extended the then current cycle deadline from December 31, 2020 to December 31, 2021. The following cycle begins January 1, 2022 and ends December 31, 2024. REALTORS® completing such training during any ~~two (2)~~ three (3) year cycle shall not be required to complete additional ethics training in respect of this requirement as a requirement of membership in any other Board or Association.

A REALTOR® completing the new member Code of Ethics orientation during any ~~two (2)~~ three (3) year cycle shall not be required to complete additional ethics training in respect of this requirement until a new ~~two (2)~~ three (3) year cycle commences.

Failure to complete the required periodic ethics training shall be considered a violation of a membership duty.

Failure to meet the requirement will result in suspension of membership for the first two months (January and February) of the year following the end of any ~~two (2)~~ three (3) year cycle or until the requirement is met, whichever occurs sooner. On March 1 of that year, the membership of a member who is still suspended as of that date will be automatically terminated.

Every Board and Association is required to provide access to necessary ethics training programs either locally, in conjunction with other Boards and Associations, or through other providers the Association partners with ~~methods (including, but not limited to, home study, correspondence courses, or Internet-based instruction)~~. Any training offered pursuant to this requirement must meet the learning objectives and minimum criteria established by the National Association of REALTORS® from time to time.

Please note: In 2019, the National Association's Leadership Team also approved several recommendations of the Code of Ethics Presidential Advisory Group that did not require a Board of Directors vote. To view those changes, listen to a webinar explaining the changes, view a comprehensive implementation chart related to those changes, and see a list of frequently asked questions, go to:

<https://www.nar.realtor/about-nar/governing-documents/code-of-ethics/code-of-ethics-training-requirement-now-every-three-years>

Additional Points of Interest

1. Both form #E-15 and A-15, Checklist of Professional Standards Concerns for Elected Officers and Directors and for Professional Standards Administrators of Boards of REALTORS®, was revised in paragraph numbered (23) to delete the requirement to hold an ethics complaint in abeyance if there is criminal litigation pending.
2. In 2019, there were four case interpretation revised and two new case interpretations adopted. All new and revised case interpretations may be found mid-January at nar.realtor. All new and revised cases are also included in Appendix 1 to this document.
3. The Citation Policy's Schedule of Fines (first page) was revised given the amendment to Standard of Practice 1-7, as reflected in Appendix 2 to this document.
4. The National Association's Mediation Training Seminar will be held in Chicago September 9, 10, and 11, 2020. To register any time after February 1, please go to: <https://www.nar.realtor/events/mediator/mediation-training>.
5. The complete listing of all Statements of Professional Standards Policy, in chronological order, is available on-line at nar.realtor. Policy Statements applicable to ethics and arbitration remain in the *Code of Ethics and Arbitration Manual* in their respective sections, but the complete list appears on-line: <http://www.nar.realtor/policy/statements-of-professional-standards-policy>

6. The Professional Standards Training Guide, NAR Model Citation Policy, the Ombudsman Procedures, Ethics Mediation, and the Ethics Fast Track Supplement are found on-line:

<http://www.nar.realtor/policy/professional-standards-training-guide>

<https://www.nar.realtor/policy/nar-model-citation-policy-and-schedule-of-fines>

<https://www.nar.realtor/ae/manage-your-association/local-and-state-association-ombudsman-services>

<https://www.nar.realtor/code-of-ethics-and-arbitration-manual/ethics/part-4-appendix-xi-ethics-mediation>

<https://www.nar.realtor/about-nar/policies/fast-track-supplement-to-ceam>

Revised January 23, 2020 dmn

Appendix 1 to the 2020 PS Summary of Changes

Revised Case 1 – 30, Multiple Offers Where Listing Broker Agrees to Reduce Listing Broker’s Commission) (strikeouts indicate deletions, underscoring indicates additions):

REALTOR® A listed Seller S’s house. He filed the listing with the MLS and ~~conducted advertising~~ intended to interest prospective purchasers. Seller S’s house was priced reasonably and attracted the attention of several potential purchasers.

Buyer B learned about Seller S’s property from REALTOR® A’s website, called REALTOR® A for information, and was shown the property by REALTOR® A several times.

Buyer X, looking for property in the area, engaged the services of REALTOR® R as a buyer representative. Seller S’s property was one of several REALTOR® R introduced to Buyer X.

After the third showing, Buyer B was ready to make an offer and requested REALTOR® A’s assistance in writing a purchase offer. REALTOR® A helped Buyer B prepare an offer and then called Seller S to make an appointment to present the offer that evening.

Later that same afternoon, REALTOR® R called REALTOR® A and told him that he was bringing a purchase offer to REALTOR® A’s office for REALTOR® A to present to Seller S. REALTOR® A responded that he would present Buyer X’s offer that evening.

That evening, REALTOR® A presented both offers to Seller S for his consideration. Seller S noted that both offers were for the full price and there seemed to be little difference between them. REALTOR® A responded, “They’re both good offers and they’ll both net you the same amount.” Seller S asked about the feasibility of countering one or both of the offers. REALTOR® A agreed that was a possibility, but noted that countering a full price offer could result in the buyer walking away from the table. Besides, he reminded Seller S, production of a full price offer triggered REALTOR® A’s entitlement to a commission under the terms of their listing agreement. Seller S acknowledged that obligation but expressed regret that, faced with two full price offers, there was no way to increase the proceeds he would realize from the sale of his property. “I’ll tell you what,” said Seller S, “if you’ll reduce your commission, I’ll accept the offer you procured. While you’ll get a little less than we’d agreed in the listing contract, you’ll still have more than if you had to pay the other buyer’s broker.”

Seeing the logic of Seller S’s proposal, and realizing that he and the seller were free to renegotiate the terms of their agreement, REALTOR® A agreed to reduce his commission by one percent. Seller S, in turn, accepted Buyer B’s offer and the transaction closed shortly thereafter.

Upset that his purchase offer hadn’t been accepted, Buyer X called Seller S directly and asked, “Just to satisfy my curiosity, why didn’t you accept my full price offer to buy your house?” Seller S explained that he had accepted a full price offer produced by REALTOR® A because of REALTOR® A’s willingness to reduce his commission by one percent.

Buyer X shared Seller S's comments with REALTOR® R the next day. REALTOR® R, in turn, filed an ethics complaint alleging that REALTOR® A's commission reduction had induced Seller S to accept the offer REALTOR® A had produced, that REALTOR® A's commission reduction made his presentation of the competing offer less than objective and violated Article 1, as interpreted by Standard of Practice 1-6, and that REALTOR® A's failure to inform him of the change in his (REALTOR® A's) commission arrangement violated Article 3, as interpreted by Standard of Practice 3-4.

At the hearing, REALTOR® A defended his actions stating that he had said nothing inaccurate, untruthful, or misleading about either of the offers and that he understood that his fiduciary duties were owed to his client, Seller S, and that he and Seller S were free to renegotiate the terms of their listing agreement at any time. REALTOR® A acknowledged that by reducing his commission with respect to an offer he produced, he might arguably have created a dual or variable rate commission arrangement of the type addressed in Standard of Practice 3-4. He pointed out that if that commission arrangement had been a term of their agreement when the listing agreement was entered into, or at some point other than Seller S's deciding which offer he would accept, then he would have taken appropriate steps to disclose the existence of the modified arrangement. He noted that Standard of Practice 3-4 requires disclosure of variable rate commission arrangements "as soon as practical" and stated that he saw nothing in the Standard that required him and his client to call "time-out" while the existence of their renegotiated agreement was disclosed to other brokers whose buyers had offers on the table—or to all other participants in the MLS. He acknowledged that if the accepted offer had subsequently fallen through and Seller S's property had gone back on the market with a variable rate commission arrangement in effect (where one hadn't existed before), then the existence of the variable rate commission arrangement would have had to have been disclosed. But, he concluded, the accepted offer hadn't fallen through so disclosure was not feasible or required under the circumstances.

The Hearing Panel agreed with REALTOR® A's reasoning and concluded that he had not violated either Article 1 or Article 3, regardless of whether he or the seller had suggested the reduction of REALTOR® A's commission.

New Case #3-13: Timing of Commission Negotiations

REALTOR® A signs a listing agreement with Seller B for the sale of her home. The home is priced at \$1,000,000, and REALTOR® A files the listing with the MLS, offering a certain percentage of cooperative compensation.

REALTOR® C sees the listing and knows it would be a perfect fit for her buyers, but unfortunately it's out of their price range. She discusses it with them, and they ask her to submit an offer for \$900,000. REALTOR® C explains the risks in submitting an offer so far below asking price, but the buyers are in love with the home and ask her to submit the offer anyway.

REALTOR® C submits the offer to REALTOR® A, who discusses it with Seller B. Seller B is concerned about accepting an offer so far below the home's asking price, so REALTOR® A offers to reduce her commission, as articulated in the listing agreement, by 1% if Seller B wants to accept the offer of \$900,000 and ensure a quick sale. Seller B agrees to accept the offer and reduce the commission she pays to REALTOR® A by 1%.

REALTOR® A informs REALTOR® C that their offer was accepted, but that REALTOR® A is now being paid 1% less in commission. "Listen", she explains to REALTOR® C, "it seems like both of our clients are happy with the price if it means the sale moves quickly. Would you be willing to split the difference on my reduced commission and I pay you 0.5% less in cooperative compensation than I specified in the MLS?"

REALTOR® C agrees to accept 0.5% less than the commission specified in the MLS. After closing, REALTOR® C files an ethics complaint against REALTOR® A, alleging a violation of Article 3, as illustrated by Standard of Practice 3-2.

At the hearing on the matter, REALTOR® C argued that by asking her to accept 0.5% less in cooperative compensation after the offer was submitted, REALTOR® A was unilaterally modifying the compensation with regard to that transaction. The Hearing Panel disagreed and found no violation of Article 3, noting that Standard of Practice 3-3 specifically authorizes listing and cooperating brokers to enter into an agreement to change the compensation for a transaction at any time, and that the Code of Ethics would never interfere with the negotiation of commissions between listing and cooperating brokers. The Panel also noted that REALTOR® C could have said no to the reduced commission, and in that instance REALTOR® A would have been obligated to pay the commission stated in the MLS.

Revised Case #12-7, REALTOR® Advertising Free Market Analysis (strikeouts indicate deletions, underscoring indicates additions):

REALTOR® A advertised on his website as follows: “Free Market Analysis With No Obligation.”

A property owner complained about REALTOR® A’s attempts to solicit the listing, and the complaint was referred for a hearing before a Hearing Panel of the Professional Standards Committee.

At the hearing the property owner testified he had called REALTOR® A to have him prepare a market analysis of his residential property, “. . . with no obligation. . .” as claimed in REALTOR® A’s ads. However, the property owner said that when he and REALTOR® A spoke, he explained that he would be glad to provide the market analysis, but said, “I presume you understand that when we provide this service, we also expect that if you list your property, you will permit us to serve you.” The property owner testified that REALTOR® A did not press the matter at the time and did provide a market analysis. The property owner told the panel that for the next three weeks REALTOR® A or one of his representatives called “practically every single day” soliciting the listing of his home. The property owner testified that on several occasions, someone from REALTOR® A’s office reminded him that REALTOR® A had provided a “valuable free service and we feel that you owe us the listing of the property.”

REALTOR® A responded that he had provided the “free market analysis” as represented in his advertising, and had provided it “. . . with no obligation.” He stated that he had neither asked for nor received a fee for the market analysis. He could not understand why he was required to appear before a Hearing Panel in connection with allegations of a violation of Article 12 of the Code of Ethics.

The Hearing Panel noted that offering premiums or prizes as inducements, or the advertising of anything described as “free” is not prohibited by the Code of Ethics.

While REALTOR® A was free to advertise “free market analysis with no obligation,” such a representation was not a “true picture” if ~~all of the terms governing availability are~~ the terms and conditions of the offer were not clearly disclosed in the ad or representation. The Hearing Panel noted that the statement by REALTOR® A when he provided the “free market analysis” that it was “presumed” the property owner would list with REALTOR® A if the property was offered for sale, and the subsequent “reminders” by sales representatives of REALTOR® A about the “expectation” made the representation less than a “true picture.” The panel noted that the property owner did not have a clear, thorough, advance understanding of what would occur at the time the offer was made. The panel concluded that REALTOR® A was in violation of Article 12.

Revised Case #16:18, Assumed Consent for Direct Contact (strikeout indicates deletion, underscoring indicates addition):

REALTOR® A, who held an exclusive listing of Client B's property, invited REALTOR® C to cooperate with him. When REALTOR® C, shortly thereafter, received an offer to purchase the property and took it to REALTOR® A, the latter took REALTOR® C with him to present the offer to Client B, and negotiations for the sale were started. The next day, REALTOR® C called on Client B alone, recommended that he accept the offer which was at less than the listed price, and Client B agreed. The contract was signed and the sale was made.

These facts were detailed in a complaint by REALTOR® A to the ~~Board~~ Association of REALTORS® charging REALTOR® C with unethical conduct in violation of Article 16, having made his second contact with the client without his, REALTOR® A's, consent.

At the subsequent hearing, REALTOR® C defended his actions on the basis that since he had been invited to cooperate with REALTOR® A, and particularly since REALTOR® A had invited him to be present when his offer was presented to the seller, REALTOR® C had assumed that he had REALTOR® A's consent for subsequent direct contacts with Client B. He stated further that he had a good reason for going alone because in his first visit to the client, REALTOR® A had undertaken to present his, REALTOR® C's, offer without fully understanding it and had made an inept presentation. Questioning by members of the Hearing Panel revealed that there had been some important considerations that REALTOR® A had not understood or explained to the client.

The conclusion of the panel was that the consent of the listing broker required by Article 16, as interpreted by Standard of Practice 16-13, cannot be assumed, but must be expressed; and that REALTOR® C had violated Article 16 by negotiating directly with REALTOR® A's client without REALTOR® A's consent.

Revised Case #16:20, Continued Contact With Potential Seller Who Enters Into an Exclusive Listing with Another REALTOR (strikeouts indicate deletions, underscoring indicates additions):

At the conclusion of a detailed listing presentation, REALTOR® B asked the sellers whether they had any questions. “No,” said Seller Z. “Your presentation was professional and complete and we very much appreciate your time. We have appointments with two other ~~realty~~ firms and after we talk to them we’ll make our decision.” REALTOR® B thanked the sellers and encouraged them to contact him with any questions they might have. “I really look forward to being your broker,” he added.

Several days later, REALTOR® B noticed that Seller Z’s property had come on the market, listed with REALTOR® A. REALTOR® B and REALTOR® A were friends, but were also quite competitive, both frequently pursuing the same potential seller-clients. “I wonder why Seller Z decided to list with REALTOR® A,” mused REALTOR® B, “it won’t matter if I just call and ask why they decided to list with my friend REALTOR® A instead of me.” REALTOR® B called the sellers and left a message on their ~~answering machine~~ voicemail asking for a return call at their convenience.

That evening, Seller Z returned REALTOR® B’s phone call. REALTOR® B started the conversation by thanking Seller Z and his wife for their time. “What I’d like to know is why you chose to give your listing to REALTOR® A instead of me?” he then asked. “Don’t get me wrong, REALTOR® A is a good broker and will do a good job for you. I’m not suggesting you cancel your listing with REALTOR® A but if your listing expires and REALTOR® A hasn’t sold it, I’d be pleased to talk to you about listing with me.”

Seller Z did not follow up on REALTOR® B’s offer and the following weekend at REALTOR® A’s open house Seller Z and his wife recounted REALTOR® B’s follow-up phone call. Over the next few days REALTOR® A debated filing an ethics complaint. He weighed his friendship with REALTOR® B against what he saw as his duty to bring potentially unethical conduct to the attention of the association of REALTORS®. Somewhat reluctantly, he filed an ethics complaint alleging a violation of Article 16, as interpreted by Standard of Practice 16-13.

At the hearing, REALTOR® A called Seller Z as a witness. Seller Z faithfully recounted the substance of REALTOR® B’s conversation with Seller Z and his wife, commenting that while REALTOR® B had said he was only trying to understand why he hadn’t been given the listing, it appeared to Seller Z that REALTOR® B wanted Seller Z to cancel his listing with REALTOR® A. Then REALTOR® B testified in his own defense. He acknowledged he had been aware that REALTOR® A had already exclusively listed the property when he contacted Seller Z and asked for a follow-up appointment. He defended his actions stating he was not trying to induce Seller Z to cancel the listing, he was simply trying to find out what he had said – or failed to say – that led Seller Z to list with REALTOR® A instead of with him, and wanted Seller Z and his wife to be fully aware of the services he would provide if their listing with REALTOR® A expired. The Hearing Panel did not agree with REALTOR® B’s defense, noting that REALTOR® B’s curiosity or desire to enhance his listing presentation skills did not justify continued contact with a potential seller-client after that seller had entered into an exclusive representation agreement with another broker. REALTOR® B was found in violation of Article 16 as interpreted by Standard of Practice 16-13.

New Case #16:22, Ascertaining Whether a Consumer is Subject to an Exclusive Representation Agreement

REALTOR® A was holding an open house for their client's home, which had been on the market for several months, so REALTOR® A was thrilled to see Buyer C approach the home after two hours with no visitors. REALTOR® A gave her a tour of the space, but Buyer C indicated she was looking for more of a "fixer upper", as she had almost singlehandedly completed some significant renovation projects in her previous homes, and was looking for the perfect next project.

REALTOR® A had another listing that she knew was perfect for Buyer C, and hadn't been listed in the MLS yet as the client had just signed their agreement earlier that morning. REALTOR® A described the home to Buyer C, and offered to show it to her. Buyer C replied, "Oh, thank you, I am actually working with someone. I should probably ask them about it." REALTOR® A responded, "that's fine, but to be honest, I'm not sure if your agent will even get a chance to see it. At the price at which it's listed, I'm confident it will sell before I can even get it in the MLS." Somewhat reluctantly, Buyer C agreed to let REALTOR® A show her the second home. REALTOR® A drafted an offer, which was accepted, and the parties completed a quick close.

Proud of a job well done for her client, REALTOR® A was shocked when she received notice of an ethics complaint filed against her by REALTOR® B, alleging a violation of Article 16 for interfering with his exclusive relationship with Buyer C. At the hearing, REALTOR® B provided the hearing panel with copies of this exclusive buyer agency agreement with Buyer C, and Buyer C testified that she did tell REALTOR® A she was working with someone, but felt pressured to tour and submit an offer with REALTOR® A or risk losing the house.

REALTOR® A defended her actions, stating, "Listen, if I had known that Buyer C had an *exclusive* agreement with someone, I would have backed off. But she never said that she was working with someone *exclusively*; just that she was working with someone. It's not my responsibility to fill in the gaps on what she told me or hammer her with questions and drive away a potential buyer just to determine what sort of relationship she has. That doesn't serve my client well."

The Hearing Panel decided that REALTOR® A had violated Article 16, as Standard of Practice 16-9 provides, "REALTORS®, prior to entering into a representation agreement, have an affirmative obligation to make reasonable efforts to determine whether the prospect is subject to a current, valid exclusive agreement to provide the same type of real estate service." As REALTOR® A had made no affirmative effort to ascertain whether Buyer C's relationship with another agent was exclusive or not, the Hearing Panel concluded she had made no reasonable efforts to determine the nature of the relationship as required by Article 16.

Appendix 2 to the 2020 PS Summary of Changes

NAR Model Citation Policy

This model citation policy and schedule of fines can be adopted by state and local associations. The model policy includes information on the process, how citations are issued, and the circumstances where it can be used. The model schedule of fines details “citable” conduct so state and local associations can determine in advance the fines or education requirements applicable for each citable offense.

Associations adopting this Citation Policy model must also adopt a “Citation Schedule” of potential violations covered, and must specify the fines that apply to those violations. Information about the Ethics Citation Program, including the Citation Schedule, will be provided as part of the information sent to potential complainants considering filing ethics complaints with the association.

Associations adopting this Citation Policy shall establish a Citation Panel, comprised of at least three (3) individuals, who will review complaints to determine eligibility for the citation program and the appropriate citations. It is recommended that the Citation Panel be a subset of the association’s Professional Standards Committee, and that the individuals on the Citation Panel have a high level of experience in hearing professional standards cases.

Complaints must be filed within one hundred eighty (180) days after the facts constituting the matter complained of could have been known in the exercise of reasonable diligence or within one hundred eighty (180) days after the conclusion of the transaction or event, whichever is later.

Any citation policy adopted by local or state associations after approval of this policy by the NAR Board of Directors cannot cite violations based on Articles or Standards of Practice other than those spelled out in this policy, cannot impose fines in excess of those in the policy, and cannot be utilized more frequently than provided for in this policy.

Initial Review by Grievance Committee and Citation Panel

- I. When a Grievance Committee receives a written ethics complaint, it will review the complaint consistent with Sections 19 and 20 of the current NAR *Code of Ethics and Arbitration Manual*. The Grievance Committee may add or delete articles or respondents at this stage in the proceedings.
- II. If the Grievance Committee determines that the complaint should be forwarded for a hearing, the Grievance Committee will first forward the complaint to the Association’s Citation Panel to determine if it includes allegations covered by the Citation Schedule, i.e., if it is a “citable offense”.
 - A. If the complaint does not include alleged violations included in the Citation Schedule, or it includes some covered by the Citation Schedule and some that are not, the complaint shall be referred to the Professional Standards Committee for hearing consistent with the policies and procedures set forth in the *Code of Ethics and Arbitration Manual* for ethics hearings.

- B. If the complaint includes *only* allegations of violations included in the Citation Schedule, the Citation Panel will issue a citation and impose discipline consistent with the association's Citation Schedule. In the event the members of the Citation Panel determine the conduct described in the complaint is sufficiently egregious to warrant a hearing rather than a citation, the complaint shall be referred to the Professional Standards Committee for hearing consistent with the policies and procedures set forth in the *Code of Ethics and Arbitration Manual* for ethics hearings.
- C. When an ethics complaint and an arbitration request arising out of the same facts and circumstances are filed at the same time, the arbitration hearing shall be held first, and the citation(s) issued or ethics hearing held after the conclusion of the arbitration hearing consistent with Professional Standards Policy Statement #35, Separation of Ethics Complaint and Arbitration Request, *Code of Ethics and Arbitration Manual*.

Issuance of Citations

- I. Citations will be sent to respondents. A copy of the citation shall also be sent to the REALTOR® principal of respondents' office. If the respondent changes firms before or after the complaint is filed but before the citation is issued, both the former and current REALTOR® principal will receive a copy of the citation.
 - A. Staff will prepare a written summary of the complaint and the summary will be included with the citation to give the respondent sufficient information to understand the basis of the citation.
 - B. *At the option of the association*, the complaint itself may be provided to the respondent, including the identity of the complainant. *Alternatively*, the complaint itself and the identity of the complainant may be kept confidential and unavailable to the respondent. The practice of the association should be established in advance and followed consistently. If an association has adopted the practice of allowing the identity of the complainant to be kept confidential, the complainant shall be advised when filing a complaint that their identity will not remain confidential should the respondent request a hearing.
- II. The respondent will have twenty (20) days from transmission of the citation to request a full due process hearing on the complaint.
 - A. If the respondent does not reply within ten (10) days of transmission of the citation, a notice shall be transmitted to the respondent reminding the respondent of the deadline for requesting a hearing.
 - B. If the respondent accepts the citation, or if the respondent does not request a hearing within twenty (20) days of transmission of the citation, this shall be deemed to be a final resolution of the complaint, which shall not be appealable or subject to any further review.
 - C. If the respondent accepts the citation, or if the respondent does not request a hearing within twenty (20) days of transmission of the citation, payment must be received by the association no later than ____ days (to be established by the association, but in any instance not more than five [5] days) after the date of acceptance or time period to request a hearing has elapsed.

1. The case will be deemed to be closed upon receipt of payment, and notice will be provided to the complainant that a citation has been issued and paid.
 2. Failure to pay the citation amount within ____ days (to be established by the association, but in any instance not more than five (5) days) after the date of acceptance or after the time period to request a hearing has expired will result in the automatic suspension of membership until the citation has been paid.
- D. If the respondent requests a hearing within the time specified, the complaint shall be referred for hearing. The complainant who initially filed the complaint shall be given the option to proceed as the complainant for the purposes of the hearing, and will be afforded all due process rights provided for in the *Code of Ethics and Arbitration Manual*. Should the complainant be a member of the public who refuses or is unable to participate in the hearing, or should the complainant be a REALTOR® member who refuses or is unable to participate in the hearing, the provisions of Section 21(f)(3) in the NAR *Code of Ethics and Arbitration Manual* shall apply.
- E. Associations should determine in advance what information will be provided to complainants prior to citations being issued and paid, or respondents requesting a hearing, including the point at which complainants will be notified of the status of their complaint, and what information will be provided to complainants about citations issued, including the amount of any fine. These procedures should be established in advance and followed consistently.

Limitations

- I. Any REALTOR® is limited in the number and type of citations that he/she may receive, according to the following rules:
 - A. No more than two (2) citations will be issued to a member within a consecutive twelve (12) month period, starting on the date the first complaint was filed, at the same association.
 - B. No more than three (3) citations will be issued to a member within a consecutive thirty-six (36) month period, starting on the date the first complaint was filed, at the same association.
 - C. No additional citations are permitted where the cumulative fine for the citations issued would be more than \$_____ (not to exceed \$5,000) in any three (3) year period at the same association.
 - D. Associations may, at their discretion, adopt an escalating fine schedule for repeat citations. If an escalating fine schedule is used, the citation panel may only consider the past citations for the particular conduct alleged in the complaint.
- II. The fact that a respondent has previously been issued a citation for any violation – whether or not it was paid – shall not be admissible in any ethics or arbitration hearing, including a hearing to consider a complaint where the respondent rejected a citation and requested a hearing. A hearing panel may consider citations previously issued to the respondent for the purpose of determining appropriate discipline as provided in Subsection IV below.

- III. Citations will not be considered in any publication of violations should such rules be adopted by the association.
- IV. Where a hearing panel finds a violation of the Code of Ethics after a hearing, it may consider past citations in determining an appropriate sanction only if the citation was issued for the same violation at issue in the hearing. By way of example, if a citation was issued for failure to disclose a dual or variable rate commission under Standard of Practice 3-4, that citation could not be considered if a hearing panel later found a violation of Article 3 on some other grounds. Hearing panels will not be informed of past citations for other violations.
- V. Association staff will track the number of citations issued, the number of citations paid, and the violations for which citations were issued. This information may be provided in the aggregate to the Board of Directors, but will not include details about the complaints, nor identify the complainants or respondents.
- VI. The allegations, discussions and decisions made in the citation process are confidential and shall not be reported or published by the board, any member of a tribunal, or any party under any circumstances except those established in Limitations, Section V of this policy and the *Code of Ethics and Arbitration Manual* of the National Association as from time to time amended.

Model Citation Schedule of Fines

	Applicable Article and Standard of Practice	Fine	Ethics Training available in lieu of or in addition to fine?
Article 1			
Failure to fully disclose and obtain consent from both parties when representing both the seller/landlord and buyer/tenant in the same transaction	Article 1, supported by Standard of Practice 1-5		
Failure to submit offers and counter-offers objectively and as quickly as possible	Article 1, supported by Standard of Practice 1-6		
Failure on the part of a listing broker to provide, <u>as soon as practical</u> , written affirmation that an offer was presented or written notification that the seller/landlord has waived the obligation to have the offer presented, upon written request of a cooperating broker submitting an offer.	Article 1, supported by Standard of Practice 1-7		
Failure to advise sellers/landlords of information specified in Standard of Practice 1-12 prior to entering into a listing contract	Article 1, supported by Standard of Practice 1-12		
Failure to advise buyers/tenants of information specified in Standard of Practice 1-13 prior to entering into a buyer/tenant agreement	Article 1, supported by Standard of Practice 1-13		
Accessing or using, or allowing others to access or use, a property managed or listed on terms other than those authorized by the owner or seller	Article 1, supported by Standard of Practice 1-16		
Article 3			
Failure to communicate a change in compensation for cooperative services prior to the time that REALTOR® submits an offer to purchase/lease the property	Article 3, supported by Standard of Practice 3-2		
As a listing broker, attempting to unilaterally modify the offered compensation with respect to a cooperative transaction after a REALTOR® has submitted an offer to purchase or lease that property	Article 3, supported by Standard of Practice 3-2		
Failing to disclose existence of dual or variable rate commission arrangements	Article 3, supported by Standard of Practice 3-4		

Failure to disclose to cooperating brokers differential that would result in dual or variable rate commission arrangement if sale/lease results through efforts of seller/landlord	Article 3, supported by Standard of Practice 3-4		
Failing to disclose existence of accepted offers, including offers with unresolved contingencies, to cooperating brokers	Article 3, supported by Standard of Practice 3-6		
Misrepresenting the availability of access to show or inspect a listed property	Article 3, supported by Standard of Practice 3-8		
Providing access to listed property on terms other than those established by the owner or the listing broker	Article 3, supported by Standard of Practice 3-9		
Article 4			
Failing to disclose REALTOR®'s ownership or other interest in writing to the purchaser or their representative	Article 4 (second sentence)		
Article 5			
Providing professional services without disclosing REALTOR®'s present interest in property	Article 5 (limited to present interest, not contemplated)		
Article 6			
Accepting any commission, rebate, or profit on expenditures without client's knowledge or consent	Article 6 (first paragraph)		
Failure to disclose to a client or customer REALTOR®'s financial benefits or fees received as a direct result of recommending real estate products or services	Article 6 (second paragraph)		
Failure to disclose REALTOR®'s direct interest in an organization or business entity when recommending to a client or customer that they use the services of that organization or business entity	Article 6, supported by Standard of Practice 6-1		
Article 12			
Failing to present a true picture in real estate communications and advertising	Article 12		

Failing to disclose status as real estate professional in advertising and other representations	Article 12		
Failure to provide all terms governing availability of a “free” product or service in an advertisement or other representation	Article 12, supported by Standard of Practice 12-1		
Failure to disclose potential to obtain a benefit from third party when REALTOR® represents their services as “free” or without cost	Article 12, supported by Standard of Practice 12-2		
Failure to exercise care and candor when communicating the terms and conditions of premiums, prizes, merchandise discounts or other inducements to list, sell, purchase, or lease	Article 12, supported by Standard of Practice 12-3		
Advertising property for sale/lease without authority of owner or listing broker	Article 12, supported by Standard of Practice 12-4		
Failing to disclose name of firm in advertisement for listed property	Article 12, supported by Standard of Practice 12-5		
Failing to disclose status as both owner/landlord and REALTOR® or licensee when advertising property in which REALTOR® has ownership interest	Article 12, supported by Standard of Practice 12-6		
Falsely claiming to have “sold” property	Article 12, supported by Standard of Practice 12-7		
Failure to take corrective action when it becomes apparent that information on a REALTOR®’s website is no longer current or accurate	Article 12, supported by second sentence of Standard of Practice 12-8		
Failure to disclose firm name and state of licensure on REALTOR® firm website	Article 12, supported by Standard of Practice 12-9		
Misleading consumers through deceptive framing, manipulating content, deceptively diverting internet traffic, presenting other’s content without attribution or permission, or using misleading images	Article 12, supported by Standard of Practice 12-10		
Registering or using of deceptive URL or domain name	Article 12, supported by Standard of Practice 12-12		

Representing that the REALTOR® has a designation, certification, or other credential they are not entitled to use	Article 12, supported by Standard of Practice 12-13		
Article 14			
Failing to cooperate in a professional standards proceeding or investigation in circumstances when cooperation has been demanded by the association and association has advised REALTOR® failure to cooperate could result in an allegation of a violation of Article 14	Article 14		
Article 16			
Conditioning submission of a buyer's offer on additional compensation from a listing broker	Article 16, supported by Standard of Practice 16-16		
Placing for sale/lease sign on property without permission of seller/landlord	Article 16, supported by Standard of Practice 16-19		

NOTE: Associations may adopt all or some of the above citations. No additional citations may be added. Fines for each citable offense, as well as any possible training requirements, must be established in advance and should be followed consistently.

Associations, at their discretion, may adopt an escalating fine schedule for repeat citations and also may impose a training requirement in addition to or as an alternative to payment of a fine for any of the citable offenses adopted. If an escalating fine schedule is adopted, it may only be used in circumstances where citations are issued by the same association.

The amount of fine for any citation is at the option of the association, but aggregated fines levied against any member may not exceed \$5,000 in any three (3) year period.