

**NATIONAL ASSOCIATION OF REALTORS®**  
**SPECIAL MEETING OF THE PROFESSIONAL STANDARDS COMMITTEE**

October 5, 2020 – 3:30-5:00pm Central

**AGENDA**

<b>CHAIR</b>	Matt Difanis (Champaign, Illinois)
<b>VICE CHAIR</b>	Mark Mansour (Barboursville, West Virginia)
<b>COMMITTEE LIAISON</b>	Robert Bailey (Aptos, California)
<b>STAFF EXECUTIVE</b>	Kate Lawton (Chicago, Illinois)

**PURPOSE**

To advise and make recommendations to the Board of Directors on matters relating to the Code of Ethics; upon request, the Committee advises member boards on interpretations on the Code; upon receiving notice of lack of enforcement thereof by member boards, the Committee inquires into the situation, seeks remedial action and, if necessary, brings to the attention of the Board of Directors or the proper official of the Association in case of failure or refusal to enforce the Code.

- I. Opening Remarks: Matt Difanis, Chair
- II. Approval of the Minutes: Appendix 1
- III. The Code of Ethics' Applicability to Discriminatory Speech and Conduct: Appendix 2
- IV. Other Business and Closing Remarks
- V. Adjournment

# Appendix 1

## **MINUTES**

<b>CHAIR</b>	Matt Difanis (Champaign, IL)
<b>VICE CHAIR</b>	Mark Mansour (Barboursville, WV)
<b>COMMITTEE LIAISON</b>	Robert Bailey (Aptos, CA)
<b>STAFF EXECUTIVE</b>	Kate Lawton (Chicago, IL)

### **CALL TO ORDER:**

The meeting of the Professional Standards Committee was called to order at 10:00 AM by Chair Matt Difanis.

### **OPENING REMARKS:**

Chair Difanis introduced 2020 Committee leaders, and made several introductory comments, including reminding committee members of the prohibition on virtual campaigning, and the Ownership Disclosure and Conflict of Interest Policy.

### **APPROVAL OF PREVIOUS MEETING MINUTES:**

The minutes of the November 9, 2019 meeting of the Professional Standards Committee were approved as written.

### **SUMMARY OF ACTIONS TAKEN:**

- Providing Rationale for Amending an Ethics Complaint
- Article 12 and Photography, Virtual Tours, and Virtual Staging in the COVID Era

## PROVIDING RATIONALE FOR AMENDING AN ETHICS COMPLAINT:

It was moved, seconded, and carried:

### Motion:

To amend Sections 21(f)(1) and (2), Ethics Hearing, *Code of Ethics and Arbitration Manual*, as follows (underscoring indicates additions):

(f) *Amendment of complaint:*

- (1) *At any time prior to the hearing of the complaint, the complainant may file an amended complaint with the Professional Standards Administrator (excluding amendments pertaining to an Article previously dismissed by the Grievance Committee relating to previously charged respondents). If an amended complaint, including facts upon which the amendment is based, is filed prior to the hearing, the respondent shall be notified, given a copy, and provided the opportunity to file an amended response. At any time prior to the hearing of the complaint, the Hearing Panel may name the REALTOR® principal as a respondent. Complaints cannot be amended to add, or substitute, other individuals as complainants except as mutually agreed to by the parties. (Revised 5/15)*
- (2) *At any time during the hearing, the complaint may be amended either by the complainant or upon motion of the Hearing Panel to add previously uncited Articles or additional respondents, including facts upon which those amendments are based. Neither the complainant nor the Hearing Panel may bar the other from making such amendments. Amendments to include Articles previously dismissed by the Grievance Committee may be made only on the motion of the Hearing Panel. In such event, the hearing, with the concurrence of the respondent, may proceed uninterrupted or be reconvened on a date certain, not less than fifteen (15) or more than thirty (30) days from the hearing date unless a "late" witness is allowed and then not less than five (5) days from the hearing date. If the respondent knowingly waives his right to the adjournment, the record should reflect the fact that the respondent was aware of the right to an adjournment but chose to proceed with the hearing without interruption on the basis of the amended complaint. If the hearing is adjourned to be reconvened at a later time, the amended complaint shall be filed in writing, signed by the complainant or by the Chairperson of the Hearing Panel, and shall be promptly served on the respondent as in all other cases provided herein. However, in any instance where a Hearing Panel amends an ethics complaint pending before it, the respondent(s) shall be given the choice of proceeding before the same Hearing Panel (either without interruption or when reconvened pursuant to the procedures established elsewhere in this Section) or having the complaint considered in a new hearing before a different Hearing Panel.*

*To prevent the appearance of bias, at no time during or after an ethics hearing may the Hearing Panel or any appellate body refer concerns regarding potentially unethical conduct to the Grievance Committee. This is based on the premise that the fundamental right and primary responsibility to bring potentially unethical conduct to the attention of the Grievance Committee rests with the parties and others with firsthand knowledge. This prohibition in no way limits or restricts the Hearing Panel from amending pending complaints as otherwise provided for in this section. (Amended 11/16)*

(Note: This recommendation was approved at the May 14, 2020 meeting of the NAR Board of Directors.)

#### **ARTICLE 12 AND PHOTOGRAPHY, VIRTUAL TOURS, AND VIRTUAL STAGING IN THE COVID ERA:**

Chair Difanis and Vice Chair Mansour covered photography, virtual tour, and virtual staging tools and technologies, along with their suggested considerations and best practices in order to ensure compliance with Article 12 as consumers rely heavily on virtual exposure to properties.

#### **Other Business**

Chair Difanis provided Committee members an opportunity to raise other business.

#### **Adjournment**

There being no further business to come before the Committee, the meeting was adjourned at 11:00am on May 6, 2020.

**NATIONAL ASSOCIATION OF REALTORS®  
SPECIAL MEETING OF THE NAR PROFESSIONAL STANDARDS COMMITTEE**

June 29, 2020 – 12:00 PM to 2:00 PM Central

**MINUTES**

<b>CHAIR</b>	Matt Difanis (Champaign, IL)
<b>VICE CHAIR</b>	Mark Mansour (Barboursville, WV)
<b>COMMITTEE LIAISON</b>	Robert Bailey (Aptos, CA)
<b>STAFF EXECUTIVE</b>	Kate Lawton (Chicago, IL)

**CALL TO ORDER:**

The meeting of the Professional Standards Committee was called to order at 12:00 PM by Chair Matt Difanis.

**OPENING REMARKS:**

Chair Difanis introduced 2020 Committee leaders and invited NAR leadership.

**APPROVAL OF PREVIOUS MEETING MINUTES:**

The minutes of the May 6, 2020 meeting of the Professional Standards Committee were approved by unanimous consent as written on The Hub prior to the Committee’s meeting.

**SUMMARY OF ACTIONS TAKEN:**

- Panel on Race, Real Estate, and Association Leadership
- The Code of Ethics’ Applicability to Discriminatory Speech and Conduct

**PANEL ON RACE, REAL ESTATE, AND ASSOCIATION LEADERSHIP:**

Chair Difanis led a panel discussion on race, real estate, and association leadership. Panelists included:

- Bikel Frenelle, 2020 Chair, Diversity Committee (Lagrange, GA)
- Ezekiel “Zeke” Morris, 2020 REALTOR® Party Community Engagement Liaison (Chicago, IL)
- Sarah Ware, Immediate Past Chair, Housing Opportunity Committee (Chicago, IL)
- Courtney Jones, President, Dearborn Real Estate Board (Chicago, IL)
- JoAnne Poole, 2020 Chair, Multicultural Real Estate Leadership Advisory Group, Distinguished Service Award Recipient (Baltimore, MD)

**THE CODE OF ETHICS' APPLICABILITY TO DISCRIMINATORY SPEECH AND CONDUCT:**

After extensive discussion, it was moved, seconded, and carried:

**Motion:**

To refer the issue of the Code of Ethics' applicability to discriminatory speech and conduct to the Interpretations and Procedures Advisory Board for their consideration at a special meeting or meetings convened for this purpose.

**Adjournment**

There being no further business to come before the Committee, the meeting was adjourned at 2:15 pm on June 29, 2020.

## Appendix 2

## Policy Consideration

The Code of Ethics' Applicability to Discriminatory Speech and Conduct

## Background Information

On June 29, 2020, the Professional Standards Committee met in a special meeting to hear a panel on race, real estate, and association leadership, and to consider the issue of the Code of Ethics' applicability to discriminatory speech and conduct. This meeting was held following widespread social unrest throughout the nation and members' use of hate speech or offensive behavior in response to this unrest.

NAR received numerous complaints about this speech and conduct, including in a communication sent directly to 2020 NAR President Vince Malta from Atlanta REALTORS® (this letter has been included as Appendix 2A for the Committee's reference). As such, the Leadership Team referred consideration of the issue to this body.

At its June 29, 2020 meeting, due to time constraints, the Committee referred the issue of the Code's applicability to discriminatory speech and conduct to its Interpretations and Procedures Advisory Board. The Advisory Board then considered the issue at a series of meetings on July 1, 8, 21, 27, and August 20, 2020, and in extensive discussions on the Hub.

What follows are the policy enhancements recommended by the Advisory Board for consideration by the Committee.

## Action / Recommendation of the Committee

Recommendations #1 through 8 are related and should be considered together.

### Possible Recommendation #1:

To amend Policy Statement 29, *Code of Ethics and Arbitration Manual*, to expand applicability of the Code of Ethics' to all of a REALTOR®'s activities.

*Rationale:* At present, Policy Statement 29 limits the applicability of the Code to real estate-related activities and transactions involving REALTORS®. As such, members can engage in conduct and speech that is discriminatory and abhorrent, but unless it can be tied to a real estate-related activity or transaction, the Code of Ethics, specifically Article 10, does not apply. This revised policy expands applicability to all of a REALTOR®'s activities. If this recommendation is approved, the revised policy would be as follows (strikeouts indicate deletions, underscoring indicates additions):

### **29. Applicability of the Code of Ethics ~~to non-real estate-related activities~~**

~~While REALTORS® are encouraged to follow the principles of the Code of Ethics in all of their activities, a~~ REALTOR® shall be subject to disciplinary action under the Code of Ethics only with respect to real estate-related all of their activities, ~~and transactions involving the REALTOR®.~~

Possible Recommendation #2:

That the proposed changes to Policy Statement 29, *Code of Ethics and Arbitration Manual*, become effective upon final approval.

*Rationale:* Making the proposed changes to Policy Statement 29 effective upon final approval, rather than on January 1, 2021, sends a clear message that the National Association of REALTORS® is committed to the highest ethical standards for its members.

Possible Recommendation #3:

To add the following new Standard of Practice under Article 10:

*Standard of Practice 10-5*

*REALTORS® must not use harassing speech, hate speech, epithets, or slurs based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity.*

*Rationale:* This proposed Standard of Practice directly flows from the requirement to not deny equal professional services or be parties to a plan to discriminate. Specifically, bias against protected classes revealed through the public posting of hate speech could result in REALTORS® not taking clients from certain protected classes or not treating them equally, which would lead to violations of the Fair Housing Act due to overt discrimination or disparate impact.

Possible Recommendation #4:

That proposed Standard of Practice 10-5 become effective upon final approval.

*Rationale:* Making the proposed Standard of Practice effective upon final approval, rather than on January 1, 2021, sends a clear message that the National Association of REALTORS® condemns discriminatory speech and conduct.

Possible Recommendation #5:

That the definition of “public trust” be expanded to include all discrimination against the protected classes under Article 10 of the Code of Ethics and all fraud.

*Rationale:* At present, the definition of “public trust” includes demonstrated misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm. This recommendation would expand the definition to include *all* discrimination against the protected classes under Article 10, and all fraud. As a result, associations would be required to share with the state real estate licensing authority final ethics decisions holding REALTORS® in violation of the Code of Ethics in instances where there is reason to believe the public trust, as expanded, may have been violated. This is recommended so the real estate licensing authority, and other governmental agencies as recommended by the Association, are made aware of any findings of a violation of the Code of Ethics involving discrimination.

If this recommendation is adopted, Article IV Code of Ethics, Section 2 of the NAR Bylaws would be amended as follows (strikeouts indicate deletions, underscoring indicates additions):

**Section 2.** *Any Member Board which shall neglect or refuse to maintain and enforce the Code of Ethics with respect to the business activities of its members may, after due notice and opportunity for hearing, be expelled by the Board of Directors from membership in the National Association. Enforcement of the Code of Ethics also requires Member Boards to share with the state real estate licensing authority final ethics decisions holding REALTORS® in violation of the Code of Ethics in instances where there is reason to believe the public trust may have been violated. The "public trust", as used in this context, refers to demonstrated misappropriation of client or customer funds or property, ~~willful discrimination~~ against the protected classes under the Code of Ethics, or fraud ~~resulting in substantial economic harm~~. Enforcement of the Code of Ethics also requires Member Boards to provide mediation and arbitration services to members and their clients so that the dispute resolution requirements of Article 17 of the Code of Ethics can be met.*

*Enforcement of the Code of Ethics also includes responsibility for ensuring that persons primarily responsible for administration of enforcement procedures have successfully completed training that meets the learning objectives and minimum criteria established by the National Association from time to time.*

*Enforcement of the Code of Ethics also prohibits Member Boards from knowingly granting REALTOR® or REALTOR-ASSOCIATE® membership to any applicant who has an unfulfilled sanction pending which was imposed by another Board or Association of REALTORS® for violation of the Code of Ethics.*

In addition, the following portions of the *Code of Ethics and Arbitration Manual* would be revised consistent with the aforementioned revisions.

- Preamble, Code of Ethics
- Preface, The Code of Ethics of the National Association of REALTORS®, *Code of Ethics and Arbitration Manual*
- Section 1(t), Definitions Related to Ethics, *Code of Ethics and Arbitration Manual*
- Section 23(j), Action of the Board of Directors, *Code of Ethics and Arbitration Manual*
- Appendix XI to Part Four, Ethics Mediation, *Code of Ethics and Arbitration Manual*
- Part Fourteen, State Association Professional Standards Committee, *Code of Ethics and Arbitration Manual*
- Local and State Association Ombudsman Services Policy
- Other resources and educational materials as needed

Possible Recommendation #6:

To refer the consideration of the Membership Qualification Criteria in instances where an individual has been found in violation of Article 10 or Article 3 as interpreted by Standard of Practice 3-11 to the Membership Policy and Board Jurisdiction Committee for discussion at their next meeting.

*Rationale:* At present, the Membership Qualification Criteria do not *require* consideration of violations of the Code of Ethics, including those involving discrimination under Article 10 or Article 3 as interpreted by Standard of Practice 3-11. It is recommended that the Membership Policy and Board Jurisdiction Committee consider this issue.

Possible Recommendation #7:

To amend Section 23(j), Action of the Board of Directors, *Code of Ethics and Arbitration Manual*, to reiterate the Association's ability to refer final ethics decisions to governmental agencies.

*Rationale:* This amendment reiterates in a second location in Section 23(j) what is articulated in the first paragraph of this section, which is that the Association has the ability to refer final ethics decisions to governmental agencies. If this recommendation is approved, Section 23(j), Action of the Board of Directors, *Code of Ethics and Arbitration Manual*, would be revised as follows (underscoring indicates additions):

- (j) *Upon final action by the Directors, the President shall disseminate to the complainant, the respondent, the Chairperson and members of the Hearing Panel, Association legal counsel, the President of any other Association in which the respondent holds membership, and any governmental agency as directed by the Board of Directors such notice of the action as the President deems appropriate under the circumstances provided, however, that the nature, form, content, and extent of the notice shall be specifically approved by Association legal counsel prior to dissemination.*

*Association Members, other than those specified, shall not be notified except with respect to suspension or expulsion of membership of the Association Member, or unless one of the publication options in Professional Standards Policy Statement 45, Publishing the Names of Code of Ethics Violators, has been adopted, or unless notification is required to ensure compliance with the Association's bylaws (e.g., where a petition for removal of an officer or director must state the reason(s) an officer or director is deemed disqualified from further service). (Revised 05/18)*

*Final ethics decisions holding REALTORS® in violation of the Code of Ethics must be forwarded to the state real estate licensing authority and may be forwarded to any other governmental agency in instances where there is reason to believe that the public trust may have been violated. The "public trust," as used in this context, refers to demonstrated misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm. (Adopted 11/99)*

Possible Recommendation #8:

To amend Appendix VII to Part Four, Sanctioning Guidelines, *Code of Ethics and Arbitration Manual*, to provide more specific guidance for hearing panels on determining discipline for violations of Article 10, Article 3 as interpreted by Standard of Practice 3-11, and violations of the public trust; to amend Appendix III to Part Four of the *Code of Ethics and Arbitration Manual* to reference NAR's new Fair Housing "ACT" Plan; and to adopt a new Appendix that would provide guidance on revised Policy Statement 29 and Standard of Practice 10-5.

*Rationale:* These revised or new appendices provide additional enhancement to existing policy

in order to provide guidance on appropriate sanctions in ethics cases involving discrimination, reference NAR's new Fair Housing "ACT" Plan, and provide additional guidance on the application of revised Policy Statement 29 and Standard of Practice 10-5. If this recommendation is adopted, the revised and new appendices appear in Appendices 2B, 2C, and 2D, respectively (underscoring indicates additions, strikeouts indicate deletions. Appendix 2D is an entirely new Appendix.)

# Appendix 2A



The Voice of Real Estate In Atlanta



June 19, 2020

Vince Malta, President  
National Association of REALTORS®

President Malta,

At this important time in our history, Americans are coming together to express outrage and grief for the senseless murder of George Floyd and other victims of injustice. We must not be silent, but speak out against racism and in support of equal rights for all Americans. The diversity of the REALTOR® Organization is one of our greatest strengths, and we need to stand with our members, partners, staff, and communities, ready to be a part of the solution.

This process starts with looking internally at our membership and identifying issues that do not represent the ideals and values of our organization. The hate rhetoric, discriminatory language, practices, and actions by members on social media and other avenues, while at the same time promoting the REALTOR brand should not be allowed to continue. With all of the effort we have made to promote professionalism in the industry, we cannot continue to allow the REALTOR brand to be damaged by these hateful few. This must be stopped.

As the professional trade association for the industry, now is the time for us to make the necessary changes to create consequences for these actions. We ask that NAR, 1) identify potential changes or additions that can be made to the Code of Ethics, and 2) identify potential changes to the qualifications for REALTOR® membership. As REALTORS®, we need to ensure that we continue to promote Fair Housing and Equality, not just in our business practices, but in everything we do.

The Atlanta REALTORS® stand ready to support you and NAR in any way possible. We understand the need and the urgency and hope we can work together for positive, enduring solutions that can be a legacy of hope for future generations.

Respectfully,

Jennifer Pino, President  
Atlanta REALTORS® Association

## Appendix 2B

## Appendix VII to Part Four

### Sanctioning Guidelines

The Code of Ethics is designed to establish a public and professional consensus against which the practice and conduct of REALTORS® and REALTOR-ASSOCIATE®s may be judged. REALTORS® and REALTOR-ASSOCIATE®s in joining a Board signify their intention to abide by the Code and thereby enhance the public and professional image of themselves and all other REALTORS®. Adherence to the Code is the first great bond between REALTORS® and REALTOR-ASSOCIATE®s throughout the country, and is an obligation voluntarily accepted by them to ensure high standards of professional conduct to serve the interests of their clients and customers (from the Introduction to the Code of Ethics and Arbitration Manual, National Association of REALTORS®, 2018 edition).

Local Boards Associations of REALTORS®, supported by the state and National Associations, have the awesome responsibility of fostering awareness, understanding, and appreciation for the duties and obligations the Code imposes on those who accept it as their guide to professionalism. A corollary duty of Boards Associations is to receive and resolve complaints alleging potentially unethical conduct by REALTORS®.

The REALTOR® organization is firmly committed to comprehensive education of REALTORS® and the public about the Code and the protections it affords, and also to vigorous, fair, and uniform enforcement when complaints are brought against members. The Code of Ethics and Arbitration Manual (Manual) details policies and procedures governing enforcement efforts.

Code enforcement achieves a number of goals. Where REALTORS® are wrongly or mistakenly charged with unethical conduct, the hearing process provides personal and professional vindication. Where violations are determined, the hearing process educates members about their professional obligations and serves as a meaningful deterrent to future violations. The Introduction goes on to point out that the ethics hearing process “. . . is educational in that it raises the consciousness of members to the meaning and significance of the Code” and that “many ethics violations occur inadvertently or through ignorance, and the hearing procedure serves as an effective educational tool.”

Allegations of unethical conduct are often understandably viewed by respondents as threats to their professional and personal reputations. This can result not only in the mounting of vigorous defenses but also, at times, to threats of legal challenge should a violation be determined and discipline imposed. Given that membership confers valuable rights, Boards Associations need to strictly adhere to their established procedures when considering potential ethics violations. This caution ensures that the rights of the parties will be observed and that legal exposure of Boards Associations will be minimized.

At the same time, well-founded caution should not be confused with reservation, reluctance, or hesitancy. The Code’s duties become aspirations at best, and potentially meaningless, if not enforced, and enforced with vigor and determination.

Fundamental to fair and consistent Code enforcement is reasonable and judicious use of discipline, as both an educational device and as punishment. The Manual authorizes a wide variety of sanctions that may be imposed for ethics violations and for violations of other

membership duties. These range from simple letters of warning to expulsion from REALTOR® membership. Between these extremes are mandatory attendance at remedial educational sessions, fines, probation, and suspension. These sanctions, and the circumstances under which they may be imposed, are discussed in detail in the Manual.

The National Association does not recommend specific discipline for certain offenses, or for violations of particular Articles of the Code. This is in deference to the wisdom and autonomy of Hearing Panels privy to the details of complaints coming before them; in recognition of the fact that no two complaints are identical; and in view of the fact that the details of each hearing, including the experience of respondents, their history of prior violations, and mitigating or extenuating circumstances, may all come into play in determining an appropriate penalty. At the same time, there are key points to be considered with respect to discipline.

- Discipline that can be imposed is strictly limited to those forms authorized in the Manual.
- Discipline should be commensurate with the offense. Unintentional or inadvertent violations should result in penalties designed to educate respondents as to the conduct expected of them as REALTORS®. Conversely, if a REALTOR® intentionally violates the Code, for example to realize an economic gain, a more severe sanction would be appropriate. Only authorized forms of discipline may be utilized. (Revised 11/13)
- Discipline should be progressive. The disciplinary emphasis on violations by new members or by longstanding members with no history of unethical conduct should be primarily educational. Repeated or subsequent violations should be addressed with more serious forms of discipline including substantial fines, suspension, and termination of membership. (See the section of this Appendix entitled “Progressive Discipline” for a more detailed discussion of progressive discipline).
- A “gray area” can exist with respect to “first time violations” that are clearly not the result of ignorance or mistake but rather demonstrate flagrant disregard for the Code’s obligations. While the educational aspect of Code enforcement cannot be disregarded, the fact that the Code exists to protect the public must also be seriously considered in determining commensurate discipline.
- Mitigating or extenuating circumstances should be considered in determining appropriate discipline. The fact that a respondent recognized or acknowledged inappropriate or unethical conduct, or took steps to remediate or minimize harm or injury that may have resulted from the respondent’s conduct, should be considered in determining appropriate discipline.
- Conversely, cases in which there is reason to believe that violations of the public trust, including demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud have occurred should be considered particularly egregious violations of the Code of Ethics when determining appropriate discipline.
- Respondents’ records of earlier violations (or, conversely, the fact that they have not violated the Code in the past) can be considered in determining appropriate discipline. Hearing Panels cannot consider past violations in deciding whether the conduct currently complained of violated the Code.

Crafting appropriate, meaningful discipline can challenge panels that have concluded that the Code has been violated. This discussion is offered as guidance, rather than as a hard and fast template, to assist panels in meeting their key role in ensuring the Code's viability and vitality through vigorous and evenhanded enforcement. Suggested guidelines that can be modified locally so long as the discipline proposed is consistent with the permissible forms authorized in the National Association's Code of Ethics and Arbitration Manual, can be found in the section of this Appendix entitled "Disciplinary Guidelines."

### Progressive Discipline

Discipline imposed for violations of the Code of Ethics or for violations of other membership duties should be progressive, that is discipline should increase incrementally for subsequent violations. The disciplinary emphasis where first time violations occur should be primarily educational. Repeated or subsequent violations should result in more serious forms of discipline being utilized, including substantial fines, suspension, and termination of membership. At the same time, a gray area can exist where a first time violation is not attributable to ignorance or oversight but rather to blatant disregard for the Code and its obligations. While the educational emphasis of Code enforcement cannot be disregarded, the fact that the Code exists to protect the public must be carefully considered in determining appropriate discipline. ~~Two~~Three contrasting examples are provided to illustrate these points.

**Example 1A:** REALTOR® A, who had recently earned her real estate license, was found to have violated Article 12 for advertising a listed property without disclosing her status as either a REALTOR® or as a real estate licensee. At the hearing, REALTOR® A acknowledged her oversight and it was clear to the Hearing Panel that the violation was inadvertent and unintentional. The panel concluded that a letter of reprimand and attendance at a three (3) hour Code of Ethics update session was appropriate.

Two months later, REALTOR® A was charged with a nearly identical violation. After concluding that she had, in fact, violated Article 12, the Hearing Panel was given access to REALTOR® A's files to see whether REALTOR® A had previously violated the Code so that appropriate discipline could be recommended. It was the conclusion of the Hearing Panel that a second violation of the same Article, occurring just months after the first violation, warranted more serious discipline. REALTOR® A was fined \$1,000 and required to attend a full day ethics education program. (Revised 11/13)

Three months later, REALTOR® A was again found to have violated Article 12. The Hearing Panel was then given access to REALTOR® A's file and, upon learning of the two (2) prior violations in less than a year, recommended a \$5,000 fine. (Revised 11/13)

**Example 2B:** REALTOR® B, who had recently received his real estate license, was found to have violated Article 4 for failing to disclose to his seller-client that the purchaser that REALTOR® B had procured was, in fact, REALTOR® B's wife. In determining appropriate discipline, the Hearing Panel considered REALTOR® B's limited experience in the real estate business and the fact that this was the first time that REALTOR® B had been found in violation of the Code. The Hearing Panel also considered that REALTOR® B's failure to disclose had not been inadvertent or unintentional and that REALTOR® B had knowingly concealed from his client a key fact that might have influenced the client's decision to accept the offer from

REALTOR® B's wife. Based on the seriousness of the violation and REALTOR® B's conscious disregard for his disclosure obligation, the Hearing Panel recommended a \$5,000 fine and retaking the ethics orientation required for new members. (Revised 11/13)

**Example C:** In social media discussions, REALTOR® C posted several discriminatory and offensive comments which were deemed to be in violation of Article 10 as they discriminated against individuals on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. In determining appropriate discipline, the Hearing Panel considered REALTOR® C's comments as hate speech and discrimination in violation of Article 10 and had reason to believe that a violation of the public trust occurred. Based on the offensiveness of REALTOR® C's comments and his total disregard for the Code of Ethics' obligation to not be a party to any plan to discriminate against members of the protected classes of Article 10, the Hearing Panel recommended a \$5,000 fine and mandatory completion of implicit bias training.

### Disciplinary Guidelines

Code enforcement achieves a number of important goals. Where REALTORS® have been wrongly or mistakenly charged with unethical conduct, the hearing process provides personal and professional vindication. Where violations are determined, the hearing process and resulting discipline educates members about their professional obligations and serves as a meaningful deterrent to future violations.

Determining that a violation of one or more Articles has occurred is only a part of a Hearing Panel's job. Equally important is crafting discipline commensurate with the offense. Panels will want to consider that many violations occur due to lack of familiarity with the Code and its obligations, inexperience, oversight, or as unintentional mistakes. In such cases, the primary purpose of discipline should be educational to ensure that similar violations do not occur in the future. In other cases, violations can occur because of knowing disregard for the Code and its duties. In such cases, greater emphasis will be placed on the punitive nature of discipline.

Hearing Panels are cautioned of the due process concerns of considering a Respondent's history of Code violations, as considering too long of a history involving different types of violations can unreasonably effect the severity of the discipline. Typically, Associations might look back a minimum of three years, however, if there is consistency in the types of violations or if the violations are of the public trust, considering a longer history of violations could be appropriate in crafting meaningful discipline aimed at stopping the behavior.

Factors Hearing Panels should consider in determining appropriate discipline include, but are not necessarily limited to:

- (1) The nature of the violation.
- (2) Harm caused by the violation. Was the violation a minor mistake causing little or no harm or, alternatively, was a client, customer, member of the public, or another REALTOR® harmed? Was the violation one of the public trust, including demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud?

- (3) Was the violation inadvertent or unintentional or, conversely, was it the result of knowing disregard for the Code's obligations?
- (4) How much real estate experience did the violator have? Did he, or should he, have known better?
- (5) Has the violator been found in violation of the Code previously? How often? How recently? Is the current violation related or similar to earlier violations?
- (6) Are there mitigating or extenuating circumstances that should be considered in determining appropriate discipline?
- (7) Did the violator acknowledge the violation? Did the violator express remorse or contrition?
- (8) Are there other factors that ought to be considered?

With these questions in mind, panels can be guided by (but are not bound by) the following guidelines which may be modified locally at the discretion of each local ~~Board~~ Association.

**First violation example #1** ~~(or first violation within three [3] years):~~

- violation considered relatively minor, or
- little or no harm or injury caused to others, or
- violation resulted from ignorance or misunderstanding

Possible discipline:

- letter of warning
- fine of \$500 or less
- attendance at relevant education session
- any combination of the above (Revised 11/13)

**First violation example #2** ~~(or first violation within three [3] years):~~

- violation considered relatively serious, or
- some harm or injury caused to others, or
- violation resulted from disregard for the Code's obligations

Possible discipline:

- letter of reprimand
- fine of \$2,000 or less
- attendance at relevant education session(s)
- any combination of the above (Revised 11/13)

**First violation example #3** ~~(or first violation within three [3] years):~~

- violation considered very serious, or
- the violation was of Article 10 as interpreted by its Standards of Practice, or of Article 3 as interpreted by Standard of Practice 3-11, or
- substantial harm or injury caused to others, or
- violation resulted from knowing disregard of the Code's obligations

Possible discipline:

- letter of reprimand
- fine of \$10,000 or less

- attendance at relevant education session(s)
- suspension for ninety (90) days or less
- any combination of the above
- Termination of membership for up to three (3) years

**Repeat violations example #1** (~~within three~~ [3] years):

- current violation considered relatively minor, or
  - little or no harm or injury caused to others, or
  - violation resulted from ignorance or misunderstanding
- Possible discipline:
- attendance at relevant education session(s) or course
  - fine of \$2,000 or less (Revised 11/14)

**Repeat violations example #2** (~~within three~~ [3] years):

- current violation considered relatively serious, or
  - some harm or injury caused to others, or
  - violation resulted from disregard for the Code's obligation
- Possible discipline:
- attendance at relevant education session(s) or course
  - fine of \$10,000 or less
  - suspension for three (3) months or less
  - any combination of the above (Revised 11/14)

**Repeat violations example #3** (~~within three~~ [3] years):

- violation considered very serious, or
  - the violation was of Article 10 as interpreted by its Standards of Practice, or of Article 3 as interpreted by Standard of Practice 3-11, or
  - substantial harm or injury caused to others, or
  - violation resulted from knowing disregard for the Code's obligations
- Possible discipline:
- attendance at relevant education session(s) or course
  - fine of \$15,000 or less
  - suspension for six (6) months or less
  - any combination of the above
  - Termination of membership for up to three (3) years

In addition to imposing discipline, the Hearing Panel can also recommend to the Board of Directors that the disciplined member be put on probation. The fact that one or more forms of discipline will be held in abeyance during the probationary period does not bar imposition of other forms of discipline which will not be held in abeyance. Probation is not a form of discipline. When a member is put on probation the discipline recommended by the Hearing Panel is held in

abeyance for a stipulated period of time not longer than one (1) year. Any subsequent finding of a violation of the Code of Ethics during the probationary period may, at the discretion of the Board of Directors, result in the imposition of the suspended discipline. Absent any subsequent findings of a violation during the probationary period, both the probationary status and the suspended discipline are considered fulfilled, and the member's record will reflect the fulfillment. ~~The fact that one or more forms of discipline will be held in abeyance during the probationary period does not bar imposition of other forms of discipline which will not be held in abeyance.~~ (Revised 5/14)

More serious forms of discipline (including possible termination of MLS privileges, suspension from membership for up to one [1] year, or termination of membership for up to three [3] years) may be appropriate in cases of very serious violations or in cases of repeated violations. Cases in which there is reason to believe that violations of the public trust, including demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud have occurred are considered particularly egregious. Associations are encouraged to critically examine these types of cases and recommend discipline consistent with the seriousness of these violations, their harm to consumers, and to the reputation of REALTORS® as committed to the highest level of professionalism. (Revised 11/13)

**Important Note:** These are not sentencing rules or requirements, but rather simply suggestions to guide Hearing Panels in determining appropriate discipline based both on the current violation and the violator's previous record of ethical conduct.

## Appendix 2C

## Part 4, Appendix III — Responsibility of Member Boards with Respect to Article 10 of the Code of Ethics

### Nature of Complaints

REALTORS® and REALTOR-ASSOCIATE®s recognize their social responsibility to conform their business conduct to the NATIONAL ASSOCIATION OF REALTORS®' Code of Ethics. All Member Boards have a Professional Standards Committee which is charged with enforcement of the Code of Ethics in accordance with the procedures set forth in the Board's bylaws. Equal professional service without regard to race, color, religion, sex, handicap, familial status, and national origin, sexual orientation, or gender identity is a basic commitment embodied in Article 10 of the Code of Ethics. Any allegation that a member has violated this principle and Article 10 must be taken seriously by the Board. (Revised 11/13)

The complaints may not always be based specifically upon alleged denial of equal professional service and consequent violation of Article 10 of the Code of Ethics. Some complaints may be based upon alleged instances of "blockbusting," racial steering, inducement of "panic peddling," or allegation of outright discrimination based on race, color, religion, sex, handicap, familial status, or national origin, sexual orientation, or gender identity by REALTORS® and REALTOR-ASSOCIATE®s. With respect to such complaints, the individual Articles of the Code of Ethics are the only grounds upon which a Member Board Professional Standards Committee may take disciplinary action or assess disciplinary penalties upon Board Members. (Revised 11/13)

### Handling of Complaints

The Fair Housing Partnership Agreement between the United States Department of Housing and Urban Development and the NATIONAL ASSOCIATION OF REALTORS® replaced the twenty (20) year old Voluntary Affirmative Marketing Agreement (VAMA). Under the VAMA there was specific language regarding the handling of complaints. The VAMA has expired and those specific requirements no longer are applicable. Complaints alleging violation of Article 10 or the Code for Equal Opportunity in Housing are to be handled in the same manner as other complaints under the Code of Ethics. Boards are urged to utilize their Equal Opportunity Committees to implement the new Fair Housing Partnership. Equal Opportunity Committees can be of assistance to the Board in helping the Grievance and Professional Standards Committees understand the fair housing issues facing a community and the nuances of specific discriminatory practices. (Revised 11/97)

The National Association recommends that training be conducted on the investigation and processing of complaints involving Article 10. The Board's Equal Opportunity Committee will be given anonymous summaries of the disposition of such complaints to

permit the committee to better tailor its future activities and training to the types of fair housing problems being encountered within the Board.

### **Resolution of Complaints**

The Board's Professional Standards Committee must act on the complaint in accordance with procedures set forth in the Board's bylaws. In addition, no matter what the basis for the complaint, the committee can judge and evaluate it only on the basis of the Code of Ethics. While an alleged act of discrimination may violate the Code of Ethics as well as applicable fair housing laws, the Professional Standards Committee may not attempt to enforce federal, state, or local fair housing and equal opportunity laws. It is charged only with enforcement of the NATIONAL ASSOCIATION OF REALTORS®' Code of Ethics. If the complaint is based solely on an alleged violation of the law, the Board's Professional Standards Committee must decline to hear it and instead refer the matter to the proper authorities.

Moreover, the committee, after receipt of a complaint, should decline to hold a hearing if the allegation that Article 10 has been breached is the subject of litigation involving alleged violation of law until after such litigation is concluded. In order to preserve the right of the complaining party to professional standards review, however, the Board should not refuse to accept the filing of a complaint in a matter subject to pending litigation. While the power of the Professional Standards Committee is not preempted by such litigation, the Board may properly elect to let issues of fact which are common to the litigation and the complaint under the Code be decided by the court in view of the court's substantially greater powers to compel discovery of relevant facts. In addition, under some circumstances the punishment imposed in a litigated case may render any action the Board might take a "meaningless act" (such as expulsion from the Board of a member who has already lost his license). However, the Board is not bound by any decision in a litigated controversy. (Revised 11/97)

### **The Code for Equal Opportunity in Housing**

In May 1972, the NATIONAL ASSOCIATION OF REALTORS®' Board of Directors approved the Code for Equal Opportunity in Housing and strongly urged all Member Boards to adopt it. The Code for Equal Opportunity in Housing recognized five (5) basic fair housing obligations governing REALTORS® and REALTOR-ASSOCIATE®s in the conduct of their business. In November 1999, Article 10 of the Code of Ethics and its Standards of Practice were amended to include all obligations under the Code for Equal Opportunity in Housing. With these amendments, the Code for Equal Opportunity in Housing was sunset by the Board of Directors of the NATIONAL ASSOCIATION OF REALTORS®.

The five (5) basic fair housing obligations that were recognized by the Code for Equal Opportunity in Housing prior to its sunset were:

First: In the sale, purchase, exchange, rental, or lease of real property, REALTORS® and their sales associates had the responsibility to offer equal services to all clients and prospects without regard to race, color, religion, sex, handicap, familial status, or national origin. This encompassed:

- (a) standing ready to enter broker-client relationships with or show property equally to members of all racial, religious, or ethnic groups
- (b) receiving all formal written offers and communicating them to the owner
- (c) exerting their best efforts to conclude all transactions
- (d) maintaining equal opportunity employment practices

Second: Members, individually and collectively, in performing their agency functions, had no right or responsibility to volunteer information regarding the racial, religious, or ethnic composition of any neighborhood or any part thereof.

Third: Members would not engage in any activity which had the purpose of inducing panic selling.

Fourth: Members would not print, display, or circulate any statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin.

Fifth: Members who violated the spirit or any provision of the Code for Equal Opportunity in Housing would be subject to disciplinary action.

When adoption of the Code for Equal Opportunity was integrated with Article 10 of the Code of Ethics, to which all REALTORS® and REALTOR-ASSOCIATE®s must subscribe as members of the NATIONAL ASSOCIATION OF REALTORS®, the result is a positive public position on civil rights and on fair and equal housing opportunities.

In January 2020, the leadership of the NATIONAL ASSOCIATION OF REALTORS® passed a Fair Housing Action Plan to reaffirm and strengthen the association's fair housing commitment. The Fair Housing Action Plan, abbreviated 'ACT,' specifically committed the NATIONAL ASSOCIATION OF REALTORS® to:

- Work closely with State Association Executives to ensure that state licensing laws include effective fair-housing training requirements and hold real estate agents accountable to their fair housing obligations;
- Launch a Public-Service Announcement Campaign that reaffirm NAR's commitment to fair housing, and how consumers can report problems;
- Integrate fair housing into all REALTOR® conferences and engagements;
- Explore the creation of a voluntary self-testing program, in partnership with a fair housing organization, as a resource for brokers and others who want confidential reports on agent practices so they can address problems;
- Create more robust fair housing education, including unconscious-bias training, and education on how the actions of REALTORS® shape communities.
- Conduct a national study to determine what factors motivate discrimination in sales market
- Profile leaders who exemplify the best fair housing practices and workplace diversity
- Develop materials to help REALTORS® provide consumers with information on schools that avoids fair housing pitfalls.

## Appendix 2D

## **Appendix XII to Part Four Appropriate Interpretation of Standard of Practice 10-5 and Statement of Professional Standards Policy 29**

Standard of Practice 10-5 prohibits REALTORS® from using harassing speech, hate speech, epithets or slurs based on the protected classes of Article 10. Statement of Professional Standards Policy 29 provides that REALTORS® are subject to disciplinary action with respect to all of their activities.

To assist Hearing Panels in the appropriate interpretation and application of Standard of Practice 10-5 of the Code of Ethics and Statement of Professional Standards Policy 29, the Professional Standards Committee of the National Association provides the following for consideration by Hearing Panels when asked to determine whether a violation of Article 10 as supported by Standard of Practice 10-5 has occurred.

While the overall focus of Standard of Practice 10-5 is on what might be loosely termed “offensive” or “discriminatory” speech, Hearing Panels should be clear that the Standard of Practice is narrowly limited to conduct related to the requirements of equal professional service of Article 10. Hearing Panels should also be fully aware of the nature and scope of the Standards of Practice under Article 10 and their relationship to fair housing law as described in Appendix III to Part Four of the *Code of Ethics and Arbitration Manual*. As described in Appendix III, Article 10 and its Standards of Practice fully integrate the five basic fair housing obligations that were recognized by NAR’s Code of Fair Housing Practices before it was sunset.

Hearing Panels should note that while all of the Standards of Practice under Article 10 inform them as to the interpretation and application of Standard of Practice 10-5, Standard of Practice 10-3 is particularly analogous in its application to discriminatory speech in advertising based on the protected classes of Article 10.

Standard of Practice 10-5 is not focused on types of speech that might be subjectively deemed “offensive” or “discriminatory” by one person and not another. The Standard of Practice is based on very particular types of speech that are directly connected to the protected classes of race, color, religion, sex, handicap, familial status, national origin, sexual orientation or gender identity under Article 10. Only the use of harassing speech, hate speech, epithets and slurs **based on** the protected classes of Article 10 are prohibited. The terms “harassing speech,” “hate speech,” “epithets,” and “slurs” can be commonly understood by use of a dictionary as well as other easily available references.

For example, NAR’s Code of Conduct and Anti-Harassment Policy clearly defines “harassment” and “sexual harassment.”

“Harassment includes inappropriate conduct, comment, display, action, or gesture based on another person’s sex, color, race, religion, national origin, age, disability, sexual orientation, gender identity, and any other protected characteristic.

Examples of harassment include, but are not limited to: epithets, slurs or negative stereotyping; threatening, intimidating or hostile acts; denigrating jokes; and the display or circulation of written or graphic material that denigrates or shows hostility toward an individual or group based on a protected characteristic.”

“Sexual Harassment” includes not only physical acts but also includes verbal and non-verbal/non-physical acts.

“Sexual harassment can be:

- Verbal: Sexual innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions, or threats.
- Non-Verbal: Sexually suggestive objects or pictures, graphic commentaries, suggestive or insulting sounds, leering, whistling, or obscene gestures. ... ”

Hearing Panels should look to this existing information on harassment to determine whether harassing speech has occurred and then look to determine whether the harassing speech was based on one of the protected classes.

In similar fashion, Merriam Webster’s Dictionary defines “hate speech,” “epithets,” and “slurs” as follows:

Hate Speech: “speech that is intended to insult, offend, or intimidate a person because of some trait (as race, religion, sexual orientation, national origin, or disability).”

Epithet: “**1a**: a characterizing word or phrase accompanying or occurring in place of the name of a person or thing; **b**: a disparaging or abusive word or phrase”

Slur: “**1a**: an insulting or disparaging remark or innuendo: ASPERSION; **b**: a shaming or degrading effect: STAIN, STIGMA”

Again, Hearing Panels must look to whether the hate speech, epithet or slur is based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation or gender identity and not on some other non-protected characteristic.

Under Statement of Professional Standards Policy #29, REALTORS® are subject to the Code of Ethics' standards in all of their activities. Thus, a violation of Article 10, as supported by Standard of Practice 10-5, can occur when a REALTOR® uses harassing speech, hate speech, epithets and slurs based on the protected classes in any media or context, regardless of whether related to their activities in the real estate business or their identification as a REALTOR®.