

Oregon Association of REALTORS®
Essential Findings of Facts for Articles of the Code of Ethics
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Article 1

Text of the Article

When representing a buyer, seller, landlord, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their client. This obligation to the client is primary, but it does not relieve REALTORS® of their obligation to treat all parties honestly. When serving a buyer, seller, landlord, tenant or other party in a non-agency capacity, REALTORS® remain obligated to treat all parties honestly.

Summary of the Article

Article 1 requires REALTORS® to protect and promote their client's interests, but to be honest with all parties in any transaction in which they are involved. The protection and promotion of client interests imposes a due diligence standard measured against the reasonable conduct of other REALTORS® in the same circumstance. Failure to treat parties to a transaction honestly requires evidence of intent to deceive; in other words, willful conduct. REALTORS® remain obligated to the Code of Ethics even when acting as a principal in a transaction.

Findings of Fact Necessary for Article 1 Claim

1. Was the complained of conduct directed at a client or another party to a transaction with the client or REALTOR®? ____ Client ____ Another Party

2. If conduct was directed at someone other than a client, answer the following questions:

a. What was the nature of the transaction during which the conduct occurred? ____

b. What conduct during the transaction was fraudulent or deceptive? _____

b. What evidence is there the conduct was intentional? _____

3. If conduct was directed at a client, answer the following questions:

a. What is the interest claimed not to be protected or promoted? _____

b. In what way was the claimed interest important and in need of protection or promotion? _____

c. How did the respondent fail to protect or promote the interest? _____

d. Would the average REALTOR® in the same circumstances have protected or promoted the client's interest? ___ Yes ___ No

Finding of Fact Template for Violation of Article 1

Honesty Violation

Respondent did not represent complainant as an agent but did have the duty to treat all parties honestly. [Name of party] _____ was a party to the transaction. Respondent failed in the duty of honesty by [describe fraudulent or deceptive conduct] _____. This conduct was intentional because [describe evidence of intent] _____.

Respondent therefore violated Article 1 of the Code of Ethics.

Failure to Protect or Promote

Respondent represented [name of party] _____ as an agent. [Name of party] had an interest in [describe client's interest] _____.

The client's interest was legitimate because [explain how interest was important and in need of protection or promotion] _____.

Respondent failed to protect or promote the client's interest by [describe the agent's conduct] _____.

A reasonable REALTOR® in the same circumstances would have promoted or protected the client's interest. Respondent, therefore, violated Article 1.

Article 2

Text of Article

REALTORS® shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction. REALTORS® shall not, however, be obligated to discover latent defects in the property, to advise on matters outside the scope of their real estate license, or to disclose facts which are confidential under the scope of agency or non-agency relationships as defined by state law.

Summary of the Article

Article 2 applies, without regard to agency relationships, to any exaggeration, misrepresentation or concealment relating to the property or the transaction. The duty imposed is to “avoid” such conduct. The respondent must have failed to avoid the exaggeration, misrepresentation or concealment in circumstances where a similarly situated REALTOR® would not have failed. It is this negligence standard that distinguished Article 2 from the intentional “dishonestly” provision of Article 1. Article 2 expresses limitations on the duty it announces in case of latent material defects, matters outside the scope of a real estate license and confidential information.

Findings of Fact Necessary for Article 2 Claim

1. What facts were exaggerated, misrepresented or concealed? _____

2. How are these facts related to the property or transaction (pertinent)? _____

3. How did respondent fail to avoid the exaggeration, misrepresentation or concealment [evidence of negligence]? _____

4. Would a reasonable REALTOR® in the same circumstances have avoided the exaggeration, misrepresentation or concealment? ____ Yes ____ No
5. Did the failure involve latent material defects, matters beyond the scope of the REALTOR’S® license or confidential information ____ Yes ____ No

Findings of Fact Template for Article 2 Violation

Exaggeration

Respondent exaggerated the fact that [*describe the facts exaggerated*] _____

The facts exaggerated concerned the [*property*] [*transaction*] and were pertinent because _____

Respondent failed to avoid the exaggeration by [*describe respondent's negligent conduct*] _____

The average REALTOR® in the same circumstances would have avoided the exaggeration. Respondent, therefore, violated Article 2 of the Code of Ethics.

Misrepresentation

Respondent misrepresented the fact that [*describe the facts misrepresented*] _____

The facts misrepresented concerned the [*property*] [*transaction*] and were pertinent because _____

Respondent failed to avoid the misrepresentation by [*describe respondent's negligent conduct*] _____

The average REALTOR® in the same circumstances would have avoided the misrepresentation. Respondent, therefore, violated Article 2 of the Code of Ethics.

Concealment

Respondent concealed the fact that [*describe the facts concealed*] _____

The facts concealed concerned the [*property*] [*transaction*] and were pertinent because _____

Respondent failed to avoid the conceal by [*describe respondent's negligent conduct*] _____

The average REALTOR® in the same circumstances would have avoided the concealment. The facts concealed did not involve discovery of latent material defects, advice on matters beyond the scope of a real estate license or confidential information. Respondent, therefore, violated Article 2 of the Code of Ethics.

Article 3

Text of the Article

REALTORS® shall cooperate with other brokers except when cooperation is not in the client’s best interest. The obligation to cooperate does not include the obligation to share commissions, fees, or to otherwise compensate another broker.

Summary of the Article

Article 3 requires “cooperation” with other brokers, not just other REALTORS®. That obligation does not include any obligation to compensate the other broker. There is a specific exception to cooperation where that cooperation is not in the client’s interest. A client’s opinion of what is or isn’t in their interest is conclusive. “Cooperation” is defined separately in the Code as follows:

“The obligation to cooperate, established in Article 3 of the Code of Ethics, relates to a REALTOR’S® obligation to share information on listed property and make property available for showing to prospective purchasers when it is in the best interest of the seller. An offer of cooperation does not necessarily include an offer to compensate a cooperating broker. Compensation in cooperative transaction results from either a blanket offer of sub agency made through MLS or otherwise, or offers to compensate buyer agents, or, alternatively, individual offers made to subagents or to buyer agents, or other arrangements as negotiated between listing and cooperating brokers prior to the time an offer to purchase is produced.”

Findings of Fact Necessary for Violation of Article 3

1. Is the Complainant a broker? ___ Yes ___ No
2. Is the property listed by Respondent? ___ Yes ___ No
3. What information on the listed property was not shared with the other broker? _____

4. In what way was the listed property made unavailable for showing? _____

5. Was withholding the information or making the property unavailable in the client’s best interests? ___ Yes ___ No Why or why not? _____

Findings of Fact Template for Violation of Article 3

Respondent failed to cooperate with [*name of other broker*] _____,
another broker, by [*describe information not shared or how property was made*
unavailable] _____

_____.

The [*failure to share information*] [*failure to make availability for showing*] was not in
the client's best interests because [*describe client's interest*] _____

_____.

Respondent, therefore, violated Article 3.

Article 4

Text of the Article

REALTORS® shall not acquire an interest in or buy or present offers from themselves, any member of their immediate families, their firms or any member thereof, or any entities in which they have any ownership interest, any real property without making their true position known to the owner or the owner's agent or broker. In selling property they own, or in which they have any interest, REALTORS® shall reveal their ownership or interest in writing to the purchaser or the purchaser's representative.

Summary of Article

Article 4 operates when REALTORS®, or their immediate family, buy or sell real estate. It is a disclosure of potential conflict of interest provision. The first part of Article 4 deals with REALTORS® acquiring for themselves an interest in property, or presenting offers to purchase on behalf of members of their immediate family or a business entity in which they have an interest. The second part of the Article concerns REALTORS® selling their own property, or any property in which they have an interest. When buying property, or representing immediate family or business partners who are buying, REALTORS® must tell the person against whom they are negotiating their “true position” in the transaction. When selling property in which they have any interest, REALTORS® must disclose their interest in the property in writing. All disclosures under Article 4 must be in writing and provided prior to signing of any contract.

Findings of Fact Necessary for Article 4 Claim

Property Purchased by REALTOR® or Offer Written for Immediate Family or Interest Entity

1. What interest or relationship is involved?
 - a. ___ REALTOR® purchasing property or interest in property
 - b. ___ REALTOR® writing offer for immediate family (parents, spouse, children, siblings)
 - c. ___ REALTOR® writing offer for entity in which they have an interest

2. What was disclosed regarding the interest or relationship? _____

3. What was the REALTOR'S® true position? [*be specific: spouse, child, parent, sibling, partner, corporate officer, LLC manager, etc.*] _____

4. Was the REALTOR'S® true position disclosed in writing prior to the signing of the contract? ___ Yes ___ No

Sale of Property Owned by REALTOR® or in Which REALTOR® has an Interest

1. What was the REALTOR'S® property interest in the property being sold? _____

2. What was disclosed regarding the interest? _____

3. Was the REALTOR'S® interest disclosed in writing prior to the signing of the contract? ___ Yes ___ No

Finding of Fact Template for Violation of Article 4

Property Purchased by REALTOR® or Offer Written for Immediate Family or Interest Entity

Respondent was [*describe interest or relationship bringing transaction within Article 4*] _____

Respondent disclosed to the seller [*describe actual disclosure made if any*] _____

Respondent's true position in the transaction was [*describe*] _____

Respondent failed to disclose their true position to the seller in writing prior to the signing of the contract. Respondent, therefore, violated Article 4.

Sale of Property Owned by REALTOR® or in Which REALTOR® has an Interest

Respondent offered for sale property which they [*describe REALTOR'S interest (ownership or other property interest)*].

Respondent disclosed to buyers [*describe actual disclosure made, if any*] _____

Respondent failed to disclose their interest in the property being offered for sale in writing prior to the signing of the contract. Respondent, therefore, violated Article 4.

Article 5

Text of the Article

REALTORS® shall not undertake to provide professional services concerning a property or its value where they have a present or contemplated interest unless such interest is specifically disclosed to all affected parties.

Summary of the Article

Article 5 is a disclosure Article. The disclosure required applies when a REALTOR® is involved in any way, including just giving a CMA, in a transaction where they have a present interest in the property or contemplate interest in the property in the future. In such cases, the REALTOR® must disclose the present or contemplated interest to any party who is affected by the transaction.

Findings of Fact Necessary for Article 5 Claim

1. What was the Respondent's present interest, if any, in the property? _____

2. What evidence is there that Respondent, even though they did not have a present interest in the property, contemplated having an interest in the property? _____

3. What disclosure regarding the present or contemplated interest was given? _____

4. Was the disclosure specific enough to inform recipients of the actual present or contemplated interest of the REALTOR®? ___ Yes ___ No
5. Was the specific disclosure given to all affected parties? ___ Yes ___ No. If no, name the party and how they were affected by the transaction _____

Findings of Fact Template for Violation of Article 5

Respondent provided professional services concerning [*identify the property*] _____
_____.

At the time, Respondent had a [*present*] [*contemplated*] interest in the real property in that Respondent [*describe present interest or evidence of contemplated interest*] _____
_____.

Respondent failed to make a specific disclosure of their interest in the property to [*name of affected party*] _____, [*describe who party was in transaction*] _____
_____.

Respondent, therefore, violated Article 5 of the Code of Ethics.

Article 6

Text of the Article

REALTORS® shall not accept any commission, rebate, or profit on expenditures made for their client, without the client’s knowledge and consent.

Summary of the Article

Article 6 is a disclosure and consent Article. A REALTOR® cannot accept a commission or a rebate without both their client’s knowledge and their consent. The same duty attaches if the REALTOR® makes any kind of profit on a client’s expenditure. Disclosure is not enough under Article 6. The client must consent to the commission, rebate or profit. As a practical matter, however, if the commission, rebate or profit is disclosed to the client before it is accepted by the REALTOR®, the client’s consent can be implied. Disclosure after having accepted the commission, rebate or profit, would, however, require the specific consent of the client.

Findings of Fact Necessary for Article 6 Claim

1. What commission, rebate or profit did the Respondent accept? _____
_____.
2. What disclosure did the Respondent make to the client prior to accepting the rebate, commission or profit? _____
_____.
3. What evidence is there that the client consented to the disclosed rebate, commission or profit? _____
_____.

Finding of Fact Template for Violation of Article 6

Respondent accepted a [commission] [rebate] [profit] when they [describe the nature and source of the commission, rebate or profit] _____
_____.

Respondent failed to disclose the [commission] [rebate] [profit] and gain their client’s consent by [describe any lack of disclosure or failure to obtain consent prior to accepting the commission, rebate or profit] _____
_____.

Respondent, therefore, violated Article 6 of the Code of Ethics.

Article 7

Text of Article 7

In a transaction, REALTORS® shall not accept compensation from more than one party, even if permitted by law, without disclosure to all parties and the informed consent of the REALTOR'S® client or clients.

Summary of the Article

Article 7 applies when a REALTOR® accepts compensation from more than one party to a real estate transaction. State law is no defense. To avoid the violation, the REALTOR® must show that all parties to the real estate transaction knew two commissions were being paid. They must also show their client not only knew of the two commissions but gave their informed consent. Informed consent means they told of and understood the potential conflict involved.

Findings of Fact Necessary for Article 7 Claim

1. In what way did the Respondent receive compensation from more than one party? _____

2. What disclosure was made to the parties regarding compensation received? _____

3. How did the Respondent obtain the informed consent of their client(s)? _____

Findings of Fact Template for Violation of Article 7

Failure to disclose to all parties

Respondent received compensation from more than one party to the transaction when they [*describe two sources of compensation*] _____
_____.

The source of all compensation received was not disclosed to _____, [*name party*] a party to the transaction. Respondent, therefore, violated Article 7 of the Code of Ethics.

Failure to obtain informed consent of client

Respondent received compensation from more than one party to the transaction when they [*describe two sources of compensation*] _____
_____.

Respondent's client _____ [*name client*], did not give their informed consent to the compensation because [*describe lack of consent and/or failure to inform*]
_____.

Respondent, therefore, violated Article 7 of the Code of Ethics.

Article 8

Text of Article 8

REALTORS® shall keep in a special account in an appropriate financial institution, separated from their own funds, monies coming into their possession in trust for other persons, such as escrows, trust funds, clients’ monies and other like items.

Summary of Article

Article 8 is a client’s trust fund requirement. The Article applies to all monies belonging to another which come into the possession of the REALTOR®. Such monies must be kept in a special account separate from the REALTOR’S® own funds. The account must be in an “appropriate” financial institution. Under the Article, the obligation arises at the time of possession. A reasonableness standard may be assumed for the length of time monies can be held before deposit because the duty is to “keep” the money in a special account, not promptly “deposit” it. “Monies” is not defined in the Article, but the context suggests what was meant was “funds,” not just coin or paper currency.

Findings of Fact Necessary for Article 8 Claim

1. What monies belonging to another came into the Respondent’s possession? _____

2. Where did Respondent keep the monies? _____

3. Were the monies kept in an account at a financial institution? ___ Yes ___ No
4. Was the institution “appropriate” for the keeping funds in trust? ___ Yes ___ No
5. Was the account separated from the REALTOR’S® own funds? ___ Yes ___ No

Finding of Fact Template for Violation of Article 8

Respondent came into possession of monies belonging to _____ [*name of person to whom monies belonged*] when they [*describe Respondent’s receipt of the monies*] _____
 _____.

Thereafter, Respondent kept the monies [*describe what was done with the monies*] _____
 _____.

Respondent failed to keep the monies in a [*special account and/or at an appropriate financial institution and/or separated from their own funds*]. Respondent, therefore, violated Article 8 of the Code of Ethics.

Article 9

Text of Article 9

REALTORS®, for the protection of all parties, shall assure whenever possible that all agreements related to real estate transactions including, but not limited to, listing and representation agreements, purchase contracts, and leases are in writing in clear and understandable language expressing the specific terms, conditions, obligations and commitments of the parties. A copy of each agreement shall be furnished to each party to such agreements upon their signing or initialing.

Summary of Article 9

Article 9 imposes a duty to see to it that agreements related to real estate transaction are memorialized in clear and understandable writing. “Agreements” require mutual assent. Article 9 also requires that all parties to the agreement be furnished with a copy of the agreement at the time they sign or initial the agreement. The duty to memorialize agreements in clear and understandable writing applies only when that is “possible.” This creates a due diligence standard. The requirement to furnish each party to an agreement with a copy of the agreement at the time of signing or initialing is absolute and attaches upon signature or initialing.

Findings of Fact Necessary for Article 9 Claims

1. What agreement requiring mutual assent is claimed not to be in writing or not in clear or understandable terms? _____

2. If the claim is the agreement is in writing but not clear or understandable, what is unclear or not understandable and why? _____

3. In what way would it have been possible for the REALTOR® to assure the agreement was in writing or was clear and understandable? _____

4. Did the REALTOR® furnish a copy of the agreement to each party at the time of signing or initialing? ___ Yes ___No

Finding of Fact Template for Violation of Article 9

No Copy Furnished Violation

Respondent provided a [*describe agreement document*] _____ for the [*signature*] [*initial*] of [*name the party*] _____ without furnishing a copy to each party to the agreement. Respondent, therefore, violated Article 9 of the Code of Ethics.

Not in Writing Violation

_____ and _____ [*identify parties to agreement*] agreed by mutual assent to [*describe agreement*] _____

Respondent knew, or should have known, of the agreement because [*describe evidence of knowledge*] _____

Respondent was in a position to assure that the agreement was in writing because [*describe how Respondent could have assured agreement was in writing*] _____

Respondent, therefore, violated Article 9 of the Code of Ethics.

Terms and Conditions not Clear or Understandable Violation

_____ and _____ [*identify parties to agreement*] agreed by mutual assent to [*describe agreement*] _____

The terms and conditions of the agreement were not clear and understandable because [*describe problem with the terms and conditions*] _____

Respondent was in a position to assure that the terms and conditions of the agreement were clear and understandable because [*describe how Respondent, by drafting or otherwise, could have assured the terms and conditions were clear and understandable*] _____

Respondent, therefore, violated Article 9 of the Code of Ethics.

Article 10

Text of Article 10

REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, or national origin. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, or national origin.

REALTORS®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status or national origin.

Summary of Article

Article 10 is similar to federal, state and local fair housing laws. The Code, however, must be enforced as a code of ethics and not as if it were statutory law. Like all discrimination claims, a violation of Article 10 requires careful analysis of the motivation for conduct. In the case of Article 10, the conduct is failing to provide “equal professional services” to a member of a protected class. The person complaining of unequal services must prove they are member of a protected class and that they did not receive equal professional services. The Respondent must then offer a reasonable non-discriminatory reason for the unequal treatment. Article 10, in addition to the provision of equal professional services, also requires fair employment practices. That means not discriminating against protected class members in hiring, firing, pay, discipline, advancement or conditions of employment. The manner of proof is the same as with fair housing claims. The Complainant must show they are a member of protected class that that they were treated unequally in a term or condition of employment. The Respondent then has an opportunity to offer a reasonable non-discriminatory reason for the unequal treatment.

Findings of Fact Necessary for Article 10 Claim

Unequal Professional Services Claim

1. What professional services are claimed to have been denied or provided in an unequal manner? _____
2. In what way were these services denied or provided unequally? _____

3. To what protected class is Complainant claiming membership? _____

4. What evidence is there the reason for the unequal professional services was Complainant's membership in a protected class? _____

5. What non-discriminatory reason does Respondent offer for his/her conduct? _____

Discriminatory Real Estate Employment Practices Claim

1. Is the Complainant a real estate employee (including administrative or clerical) or independent contractor of respondent, or person seeking such a position? __ Yes __ No

2. To what protected class is Complainant claiming membership? _____

3. What real estate employment practice [hiring, firing, pay, discipline, advancement or conditions of employment] is claimed to have been denied or provided in an unequal manner? _____

4. What evidence is there the reason for the complained of real estate employment practice was Complainant's membership in a protected class?

5. What non-discriminatory reason does Respondent offer for the practice? _____

Finding of Fact Template for Article 10 Violation

Unequal Professional Services Claim

Respondent provided professional real estate services to _____ [*name of Complainant*] in the form of [*describe professional services*] _____
_____.

Complainant is entitled to equal professional services under the Code of Ethics on account of [*name protected class*] _____.

Respondent failed to provide equal professional services by [*describe how services were denied or provided in an unequal manner*] _____
_____.

The reason for the failure to provide equal professional service was Complainant's membership in a protected class because [*describe evidence of discrimination*] _____

The panel does not find Respondent’s non-discriminatory explanation of the professional services provided to be credible. Respondent, therefore, violated Article 10 of the Code of Ethics.

Discriminatory Real Estate Employment Practices Claim

Complainant, [*name Complainant*] _____ was [*an employee*] [*an independent contractor*] [*seeking employment*] with Respondent. Respondent had a duty to not discriminate in their real estate employment practices on account of [*name protected class*] _____. Respondent failed in that duty when they [*describe complained of employment practice*] _____

The reason for the failure was Complainant’s membership in a protected class because [*describe evidence of discrimination*] _____

The panel does not find Respondent’s non-discriminatory explanation of their real estate employment practices to be credible. Respondent, therefore, violated Article 10 of the Code of Ethics.

Article 11

Text of Article 11

The services which REALTORS® provide to their clients and customers shall conform to the standard of practice and competence which are reasonably expected in the specific real estate disciplines in which they engage; specifically, residential real estate brokerage, real property management, commercial and industrial real estate brokerage, land brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate.

REALTORS® shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth.

Summary of the Article

Article 11 is a competence and disclosure provision that requires REALTORS® to provide competent services conforming to the standard of care expected in certain named real estate disciplines. Article 11 also says REALTORS® cannot provide specialized professional services concerning property or services outside their field of competence unless they have assistance from a person who is competent with respect to the type of property or service. The obligation to be competent or seek assistance can be waived by the client if the facts are fully disclosed. If assistance is engaged, the person providing the assistance must be identified to the client. The disclosure should identify the assistant's contribution.

Findings of Fact Necessary for Article 11 Claim

Incompetent Service in Specific Discipline Case

1. What service(s) did Respondent provide? [*service provided*] _____

2. What specific real estate discipline was involved? __ *residential real estate brokerage*
__ *real property management* __ *commercial and industrial real estate brokerage* __ *real estate appraisal* __ *real estate counseling* __ *real estate syndication* __ *real estate auction* __ *international real estate*.
3. What is the standard of practice and competence for services in the specific real estate discipline involved? _____

4. How did the services provided by Respondent fail to conform to the standard of practice and competence for the specific real estate discipline? _____

Specialized Professional Service Case

1. What specialized professional service did Respondent provide? _____

2. In what way was the specialized service provided outside the Respondent's field of competence? _____

3. Did Respondent engage the assistance of someone competent in the property or service involved? Yes No

4. Was it fully disclosed that the specialized professional services involved were outside the field of Respondent's competence? Yes No

5. If an assistant was engaged, was the identity of the assistant and their contribution disclosed to the client? Yes No

Finding of Fact Template for Violation of Article 11

Incompetent Service in Specific Discipline Case

Respondent provided [*service provided*] _____ service in a real transaction involving the specific real estate discipline of [*residential real estate brokerage*] [*real property management*] [*commercial and industrial real estate brokerage*] [*real estate appraisal*] [*real estate counseling*] [*real estate syndication*] [*real estate auction*] [*international real estate*]. The standard of practice and competence for service in the discipline is _____

The services provided by Respondent failed to conform to the standard of practice and competence for the discipline because _____

Respondent, therefore, violated Article 11 of the Code of Ethics

Specialized Professional Service Case (no Assistant Engaged)

Respondent undertook to provide specialized professional service when Respondent [*describe services*] _____

The specialized professional service provided was outside Respondent's field of competence because [*why service outside field of competence*] _____.

Respondent's lack of competence in the field was not disclosed to the client. Respondent did not engage the assistance of anyone competent in the property or service involved in the transaction. Respondent, therefore, violated Article 11 of the Code of Ethics

Specialized Professional Service Case (Assistant Engaged)

Respondent undertook to provide specialized professional service when Respondent [*describe services provided*] _____.

The specialized professional service provided was outside Respondent's field of competence because [*why service outside field of competence*] _____.

Respondent engaged the assistance of someone competent in the [property] [service] involved, but failed to disclose the identity of the assistant or their contribution to the client. Respondent did not disclose their lack of competence in the field to their client. Respondent, therefore, violated Article 11 of the Code of Ethics.

Article 12

Text of Article 12

REALTORS® shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing and other representations. REALTORS® shall ensure that their status as real estate professionals is readily apparent in their advertising, marketing and other representations, and that the recipients of all real estate communications are, or have been, notified that those communications are from a real estate professional..

Summary of Article 12

Article 12 requires that real estate communications (those made as a real estate professional) be “honest” and “truthful.” “Communications” requires a document or message imparting news, views, information. To violate Article 12 the communication must either contain intentional false statements or be itself misleading enough to evidence dishonesty. In addition to being honest and truthful, communications, advertising, marketing and other representation must present a “true picture.” The standard requires more than truthfulness and honesty because the REALTOR® must present a “true picture.” This is a strict liability standard. The “picture” created by the advertising, or marketing or representation must be compared to the “true picture” at the time of the advertising, marketing or representation. If the advertisement, marketing or representation is inaccurate enough to mislead, it does not present a “true picture” and Article 12 is violated. Article 12 also demands that REALTORS® “ensure” that their status as a real estate professional is “apparent” in their advertising, marketing and other representation. To be “apparent,” the professional status must be capable of being obvious, easily perceived or understood or plain or clear on the face of the advertising, marketing or representation. Because the duty is to “ensure” status identity, REALTORS® are strictly liable for failing to do so. In addition to professional status being apparent in advertising, marketing and other representations, REALTORS® must ensure that the recipient of all real estate communications “are, or have been,” notified that the communications are from a real estate professional. There is no requirement that notice of the source of the communication be in the communication itself or in writing. Therefore, a violation of this standard will require proof that the recipient of a communication did not know the communication was from a real estate professional.

Findings of Fact Necessary for Article 12 Claim

Dishonest or Untruthful Communications

1. What was the document or message imparting news, views, information that is claimed to not be honest or truthful? (Include the exact text, graphics, sounds or whatever was actually communicated)

2. How did the communication deceive the recipient?

3. What words, phrases, ideas, concepts, graphics, sounds or other components of the communication were false or made the communication itself false? _____

4. What evidence is there that the respondent intended the communication to deceive the recipient?

5. What evidence is there that the respondent knew some component of the communication was false at the time the communication was made?

Failure to Present True Picture

1. What was the exact advertisement, marketing or representation? (*Include text and graphics, sound or whatever was actually displayed to the public.*)

2. What was the true picture at the time the advertising, marketing or other representations were made?

2. What inaccuracies, misstatements, exaggerations or misleading material is contained in the advertisement or representation that make it present less than a true picture? _____

Failure to Clearly Identify Status

1. Did the advertisement, marketing or representation identify respondent as a real estate professional? ___Yes ___No

2. In what way did the advertising, marketing or representation identify the respondent as a real estate professional?

3. In what way was the respondent’s identity as a real estate professional not obvious, easily perceived or understood, or plain or clear on the face of the advertising, marketing or representation?

Failure to Notify of Status

1. Who received a communication from the respondent?

2. What was the exact nature of the communication? _____

3. Did the communication contain notification of professional status? ___ Yes ___ No

4. Had the recipient been notified previously that they were communicating with a real estate professional? ___ Yes ___ No. If “Yes,” how were they notified? _____

5. How did the respondent fail to ensure notification? _____

Findings of Fact Template for Violation of Article 12

Dishonest or Untruthful Communications

Respondent engaged in the following real estate communication: _____

The communication was deceptive in the following way(s): _____

or contained the following false statements: _____

The respondent knew the statements or communication itself was false and/or intended the communication to deceive the recipient because [describe evidence of intent]

Respondent, therefore, violated Article 12 of the Code of Ethics.

Failure to Present True Picture

Respondent published the following advertisement, marketing or other representation:

The advertising, marketing or representation contained the following statements or representations: (include anything inconsistent with true picture) _____

The true picture at the time of the advertising, marketing or representation was: _____

Respondent, therefore, violated Article 12 of the Code of Ethics.

Failure to Identify Status

Respondent published the following advertisement, marketing or representation: _____

Respondent's status as a real estate professional was not readily apparent in the advertising, marketing or representation because: _____

Respondent, therefore, violated Article 12 of the Code of Ethics.

Failure to Notify of Status

Respondent, in the course of their real estate activities, communicated with _____ (name of recipient) by (describe communication)

The communication did not identify respondent as a real estate professional. _____ (name of recipient) did not at that time know the communication was from a real estate professional.

Respondent, therefore, failed to ensure the recipient was, or had been, notified that the communication was from a real estate professional in violation of Article 12 of the Code of Ethics.

Article 13

Text of Article 13

REALTORS® shall not engage in activities that constitute the unauthorized practice of law and shall recommend that legal counsel be obtained when the interest of any party to the transaction requires it.

Summary of the Article

In Oregon, a real estate licensee acting within the scope of their license to “arrange a real estate transaction” is not engaged in the practice of law. In the absence of case law guidance, the ordinary practices of the industry must be assumed to be within the scope of the license. Article 13 would, therefore, require a finding that the Respondent undertook matters, or gave advice regarding matters, affecting the legal rights of a party that were beyond the ordinary practices in the industry. Article 13 also contains a due diligence standard that requires REALTORS® to recommend legal counsel to any party to a transaction if a reasonable REALTOR® in the same circumstances would have known the interests of a party could be negatively affected by the lack of legal counsel.

Findings of Fact Necessary for Article 13 Claim

Engaged in Unauthorized Practice of Law

1. What matters affecting the legal rights of a party did Respondent undertake?

2. What is the industry practice regarding such matters? _____

3. In what way did Respondent’s activities exceed industry practices in arranging a real estate transaction? _____

Failed to Recommend Legal Counsel

1. What interest of a party was affected by the lack of legal counsel? _____

2. Why didn’t Respondent recommend that counsel be obtained? _____

3. Would a reasonable REALTOR® in the same circumstances have recommended the party obtain legal counsel? ____ Yes ____ No

Finding of Fact Template for Violation of Article 13

Engaged in Unauthorized Practice of Law

Respondent undertook to [*describe matters affecting the legal rights of a party*]

It is the industry practice to handle such matters by [*describe the industry practice*] _____

Respondent's activities exceeded industry practices in arranging a real estate transaction because? [*describe what respondent did that others would not*] _____

Respondent, therefore, violated Article 13 of the Code of Ethics

Failed to Recommend Legal Counsel

During a real estate transaction, a situation arose affecting the legal interest of a party when [*describe legal interest of party affected by lack of counsel*] _____

Respondent responded to the situation by [*describe why Respondent didn't recommend that counsel be obtained*] _____

A reasonable REALTOR® in the same circumstances would have recommended that the party obtain legal counsel.

Respondent, therefore, violated Article 13 of the Code of Ethics.

Article 14

Text of Article 14

If charged with unethical practice or asked to present evidence or to cooperate in any other way, in any professional standards proceeding or investigation, REALTORS® shall place all pertinent facts before the proper tribunals of the Member Board or affiliated institute, society, or council in which membership is held and shall take no action to disrupt or obstruct such process.

Summary of the Article

Article 14 imposes a duty to place all pertinent facts before the proper tribunal when charged with unethical practice or asked to present evidence or cooperate in any other way in a professional standards proceeding or investigation. The duty is only to a Member Board or affiliated institute, society, or council in which membership is held. This limitation stems from the fact that only members of the entity taking disciplinary action can be disciplined by the entity. One board cannot discipline another board's members. Article 14 also imposes a duty to take no action to disrupt or obstruct a professional standards proceeding or investigation covered by Article 14.

Findings of Fact Necessary for Article 14 Claim

1. Was Respondent ___ charged with unethical practice ___ asked to present evidence ___ asked to cooperate in any other way in a professional standards ___ proceeding ___ investigation?
2. Did Respondent hold membership in the ___ board ___ affiliated institute ___ society ___ council conducting the proceeding or investigation?
3. What facts did Respondent fail to place before the proper tribunal? _____

4. Why were the facts not placed before the tribunal pertinent to the proceeding or investigation? _____

5. In what way, other than not placing pertinent facts before the proper tribunal, did Respondent take action to disrupt or obstruct a professional standards proceeding or investigation covered? _____

Findings of Fact Template for Violation of Article 14

Withheld Pertinent Facts

Respondent was [*charged with unethical practice*] [*asked to present evidence*] [*asked to cooperate in any other way*] in a professional standards [*proceeding*] [*investigation*] conducted by a [*board*] [*affiliated institute*] [*society*] [*council*] in which Respondent held membership. Respondent failed to place before the proper tribunal the fact that [*describe the facts*] _____

_____.

These facts were pertinent to the [*proceeding*] [*investigation*] because _____

_____.

Respondent, therefore, violated Article 14 of the Code of Ethics.

Disrupted or Obstructed

Respondent was [*charged with unethical practice*] [*asked to present evidence*] [*asked to cooperate in any other way*] in a professional standards [*proceeding*] [*investigation*] conducted by a [*board*] [*affiliated institute*] [*society*] [*council*] in which Respondent held membership. Respondent took action to disrupt or obstruct the [*proceeding*] [*investigation*] when they _____

_____.

Respondent, therefore, violated Article 14 of the Code of Ethics.

Article 15

Text of Article 15

REALTORS® shall not knowingly or recklessly make false or misleading statements about competitors, their businesses, or their business practices.

Summary of Article 15

Article 15 is a business competitor defamation provision. Defamation is an attack on reputation; here, business reputation. Article 15 requires proof of intent. The statement must be false or misleading. The statement must be about a competitor, their businesses or business practices. A personal attack on an individual as an individual is not covered. An attack on the business of someone who is not in competition with the REALTOR® is not covered. The false or misleading statement must be made knowingly or recklessly. Recklessness requires a gross deviation from a standard of conduct. When applied to statements, that means the speaker must either know the statement is false or misleading (i.e., knows the truth and disregards or distorts it) or is indifferent to the truth or falsity of the statement in circumstance evidencing a gross disregard for the competitor's business reputation.

Findings of Fact Necessary for Article 15 Claim

1. What statement did Respondent make? _____

2. In what way was the statement false or misleading? _____

3. In what way was the statement about a competitor, the competitor's business or the competitor's business practices? _____

4. What evidence is there that the Respondent made the statement knowingly or recklessly? _____

Finding of Fact Template for Violation of Article 15

Respondent made the statement that [*actual statement found to have been made*] _____

Respondent's statement was [*false*] or [*misleading*] because [set out true facts] _____

The statement concerned [*a competitor*] [*competitor's business*] [*competitor's business practices*]? Respondent made the statement [*knowingly*] [*recklessly*] because [*evidence of intent*] _____

Respondent, therefore, violated Article 15 of the Code of Ethics.

Article 16

Text of Article

REALTORS® shall not engage in any practice or take any action inconsistent with exclusive representation or exclusive brokerage relationship agreements that other REALTORS® have with clients.

Summary of the Article

Article 16 forbids interference with the exclusive agency relationship other REALTORS® have with clients. An exclusive representation or exclusive brokerage agreement is required between the REALTOR® and the client. The normal industry practice of “working with” buyers does not fall within Article 16 because such relationships are not usually based on exclusive representation agreements. On the other hand, sellers who list are almost always covered because most listing agreements contain exclusive representation clauses. Conduct or practices must be taken that are inconsistent with the **exclusivity** of the relationship. The Respondent must provide, or offer to provide, services covered by another REALTOR’S® exclusive representation or exclusive brokerage agreement.

Findings of Fact Necessary for Article 16 Claim

1. What evidence is there of an exclusive representation or exclusive brokerage relationship agreement between REALTOR® and their client? _____
2. What service did Respondent provide, or offer to provide, the client that was covered by the exclusive representation or exclusive brokerage relationship agreement? _____

Findings of Fact Template for Violation of Article 16

REALTOR®, [name of other REALTOR®] _____ had an [exclusive representation] [exclusive brokerage] relationship with their client, [client’s name] _____. The relationship was evidenced by a [type of agreement] _____ agreement. Respondent provided, or offered to provide, the client services covered by the [exclusive representation] [exclusive brokerage] relationship agreement when they [describe respondent’s actions] _____

Because the services Respondent [provided] [offered to provide] were covered by the [exclusive representation] [exclusive brokerage] agreement, Respondent’s actions were inconsistent with another REALTOR’S® [exclusive representation] [exclusive brokerage] agreement.

Respondent, therefore, violated Article 16 of the Code of Ethics.

Article 17

Text of Article 17 (select operative text only)

In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between REALTORS® (principals) associated with different firms, arising out of their relationship as REALTORS®, the REALTORS® shall submit the dispute to arbitration in accordance with the regulations of their Board or Boards rather than litigate the matter.

Summary of the Article

For the purpose of ethics rather than arbitration itself, Article 17 imposes a simple duty. It is a violation of the Code of Ethics to file litigation and refuse to withdraw from it in a matter which is arbitrable under Article 17. A refusal to participate in an arbitration already filed under Article 17 violates Article 14, not Article 17 itself.

Findings of Fact Necessary for Article 17 Claim

1. Has litigation been filed by one REALTOR® against another? ___ Yes ___ No
2. Does the litigation involve a matter arbitrable under Article 17? ___ Yes ___ No (See Appendix I to Part 10 of the Code of Ethics and Arbitration Manual)
3. Has the Respondent refused to withdraw the litigation? ___ Yes ___ No

Finding of Fact Template for Violation of Article 17

Respondent, [name of REALTOR® principal] _____ filed litigation against [name of REALTOR® principal] _____ a fellow REALTOR®. The litigation involved a contractual dispute or specific non-contractual dispute as defined in Standard of Practice 17-4 between REALTORS® (principals) associated with different firms, arising out of their relationship as REALTORS®. Respondent was asked to withdraw the litigation and refused. Respondent, therefore, violated Article 17 of the Code of Ethics.