

DOING BUSINESS

The Law & You



Commit to the Code

Use NAR's Code of Ethics as a guidebook for staying out of court.

BY BARBARA NICHOLS

Have you read the NAR Code of Ethics lately? Maybe you should, before it's read to you in court.

As a NATIONAL ASSOCIATION OF REALTORS® member, you agree to abide by the explicit obligations set forth in the Code of Ethics.

When a real estate licensee's conduct is questioned, the Code of Ethics is one thing the courts use to determine the standard of care expected of real estate professionals—regardless of whether they belong to NAR.

If your failure to adhere to the Code of Ethics causes significant damage to your client or customer, you may be sued or brought before your board's or association's grievance committee.

To understand the standard of care you must meet to prevail in a lawsuit,

you need to be familiar with the current version of the Code. The Code of Ethics is an organic document that's revised regularly to address new issues affecting the real estate industry.

Here are the articles of the Code that, in my experience as an expert witness, are most commonly cited in lawsuits. Following each article are examples—taken from actual lawsuits—of the behavior that allegedly violated those tenets.

ARTICLE 1: "When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their client. This obligation . . . is primary, but it does not relieve REALTORS® of their obligation to treat all parties honestly . . ."

Behavior to avoid:

■ A buyer's representative refers a client to an inspector without quali-

fying the inspector's credentials, such as checking whether he's a licensed contractor or a member of the American Society of Home Inspectors.

■ A housing development has a history of foundation problems, but the salesperson fails to disclose this generally known fact or recommend a structural inspection, and the buyer's house is now sliding down a hill.

■ A listing agent for an REO property observes the seller covering up extensive cracks in the foundation and doesn't disclose this to the buyer.

■ A salesperson encourages her client to make a full-price offer but doesn't provide comparable sales.

■ There are large metal drums on a property, but the buyer's rep doesn't advise the client to have an expert inspect them for hazardous contents.

■ A termite inspection finds extensive dry rot extending to structural beams. The seller's agent gets a repair quote of only \$250, but doesn't question the oddly low estimate.

ARTICLE 2: "REALTORS® shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or transaction . . ."

Behavior to avoid:

■ The listing salesperson claims a foundation problem was fixed but provides no supporting documentation, such as permits or a current engineer's report.

■ Only one flaw is noted by the listing agent on the seller's property condition disclosure form, when there are many other obvious flaws.

■ The listing agent knows about a prior unfavorable termite inspection and doesn't provide the information to the buyer.

ARTICLE 4: ". . . In selling property they own, or in which they have any interest, REALTORS® shall reveal their

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ownership or interest in writing to the purchaser or the purchaser's representative."

Behavior to avoid:

- The listing agent doesn't tell the buyers in writing about her ownership interest in a property before the buyers are bound by the contract.

ARTICLE 9: "REALTORS®, for the protection of all parties, shall ensure whenever possible that agreements shall be in writing, and shall be in clear and understandable language expressing the specific terms, conditions, obligations, and commitments of the parties . . ."

Behavior to avoid:

- The salesperson fails to ensure that agreed repairs or price concessions relating to repairs are specified in writing and, preferably, signed by the buyers and sellers.
- The salesperson fails to get contract changes, such as inspection period extensions or closing dates, in writing and signed by all parties.

ARTICLE 11: "The services which REALTORS® provide to their clients and customers shall conform to the standards of practice and competence which are reasonably expected in the specific real estate disciplines in which they engage . . ."

Behavior to avoid:

- The buyer's rep fails to stipulate that repairs *requiring a licensed contractor* (electrical repairs, for example) must be done by a licensed contractor, and then fails to ensure that the buyer gets copies of the receipts showing that the relevant repairs were completed by a licensed contractor.
- The buyer's rep doesn't monitor transaction deadlines. As a result, his clients lose their contractual right to withdraw from the deal.
- The property inspector recom-

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mends additional inspections by a structural engineer, but the buyer's rep makes no effort to encourage his client, in a written recommendation, to hire these experts.

Your best defense against lawsuits based on Code requirements is to know and adhere to the Code's tenets. To become an ethics expert:

- Read the Code often. (It appears every January in REALTOR® Maga-

zine and is online at REALTOR.org.)

- Attend an ethics class at your local association of REALTORS®.
- Participate in your board's grievance or professional standards committees.
- Read articles in your board publications and REALTOR® Magazine that interpret the Code and its changes.

One thing's certain: The Code's lessons are better learned outside a court of law.

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