



Enclosed are the materials required to file an Ethics Complaint. You, as the Complainant, may file a complaint against a REALTOR[®] member alleging a violation of the Code of Ethics, providing the complaint:

1. is in writing
2. is signed
3. states the facts surrounding the case
4. is filed within 180 days after the facts became known
5. is article specific, citing the article(s) of the Code of Ethics alleged in the violation
6. specifies each alleged violation of each article cited separately on the article specific sheet

ALL documents pertaining to each transaction are to be attached

When stating the facts surrounding your complaint, be as specific as possible stating what, where, when, why and how you think each Article was violated. You may cite a Standard of Practice to support the claim. Along with the complaint, and written summary, please **include a copy of all the pertinent documents** such as, but not limited to, Listing Agreements, Sales and Purchase Agreements, MLS print outs, &/or history, Addendums, inspection reports, etc. as they pertain to the transaction, and any notarized statements from witnesses. **PLEASE do not staple your information** – I will need to make copies for all involved. Also any highlighted areas do not show up on copies, please underline in ink if you wish to draw attention to a certain area. **Please do not number the pages** of your complaint, they will be stamped and numbered by the Professional Standards Administrator.

The Grievance Committee will review the complaint and proceed forward to set a hearing, or dismiss the case if the complaint is determined to be frivolous, harassing, unfounded, or not timely filed. You will be notified of the Grievance Committee's decision either way. If your complaint is forwarded to the Professional Standards Committee for a hearing you will be notified and asked if you have any challenges to those who may be sitting on the hearing panel, asked if you will be represented by an attorney, and asked if you will be bringing witnesses. You will also be given dates in which to show your availability. *Please cross off **only** those dates that you are unavailable to attend a hearing.* A minimum of 21 days prior to the hearing you will be provided with the hearing notice, as well as numbered copies of the Complaint and Response.

Sincerely,

Laura Sallie, *IAR Professional Standards Administrator*

**Send the completed complaint form and all accompanying documents to:
Indiana Association of REALTORS[®], Attn: Laura Sallie, Professional Standards Administrator
800 East 86th Avenue, Merrillville, Indiana 46410**

PROFESSIONAL STANDARDS ADMINISTRATOR

800 EAST 86TH AVENUE
MERRILLVILLE, IN 46410
PHONE (219) 895-5357
LSALLIE@INDIANAREALTORS.COM





ETHICS COMPLAINT

To the Grievance Committee of the Indiana Association of Realtors®.

Case # _____
(Office use only)

Date Filed: ____/____/____

Complainant(s)

Respondent(s)

Complainant(s) charge that on/or about _____, an alleged violation of Article(s) _____
(date)
_____ of the Code of Ethics occurred and alleges that the above charge(s) is/are supported by the attached statement, which is signed and dated by the complainant(s).

I (we) declare that to the best of my (our) knowledge and belief, my (our) allegations in this complaint are true.

Are the circumstances giving rise to this ethics complaint involved in civil or criminal litigation or in any proceeding before the state real estate licensing authority or any other state or federal regulatory or administrative agency?
Yes ___ No ___ If yes, Cause # _____

You may file an ethics complaint in any jurisdiction where a REALTOR® is a member or MLS participant. Note that the REALTORS® Code of Ethics, Standard of Practice 14-1 provides, in relevant part, "REALTORS® shall not be subject to disciplinary proceeding in more than one Board of REALTORS®...with respect to alleged violations of the Code of Ethics relating to the same transaction or event." Have you filed, or do you intend to file, a similar or related complaint with another Association(s) of REALTORS®? Yes ___ No ___

This complaint is true and correct to the best knowledge and belief of the undersigned and is filed within one hundred eighty (180) days after the facts constituting the matter complained of could have been known in the exercise of reasonable diligence.

I understand that should the Grievance Committee dismiss this ethics complaint in part or in total, that I have twenty (20) days from my receipt of the dismissal notice to appeal the dismissal to the Executive Committee of the Indiana Association of REALTORS®.

COMPLAINANT(S):

(TYPE/PRINT) (SIGNATURE) (TYPE/PRINT) (SIGNATURE)

(Address, City, State, Zip)

(Home Phone) (Cell Phone)

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ARTICLE SPECIFIC SHEET

*(Please List Each **Article** Separately, Return with Ethics Complaint Form)*

ARTICLE _____

REASON

ARTICLE _____

REASON:

ARTICLE _____

REASON:

PROFESSIONAL STANDARDS ADMINISTRATOR

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Code of Ethics and Standards of Practice

of the NATIONAL ASSOCIATION OF REALTORS®

Effective January 1, 2016

Where the word REALTORS® is used in this Code and Preamble, it shall be deemed to include REALTOR-ASSOCIATE®S.

While the Code of Ethics establishes obligations that may be higher than those mandated by law, in any instance where the Code of Ethics and the law conflict, the obligations of the law must take precedence.

Preamble

Under all is the land. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. REALTORS® should recognize that the interests of the nation and its citizens require the highest and best use of the land and the widest distribution of land ownership. They require the creation of adequate housing, the building of functioning cities, the development of productive industries and farms, and the preservation of a healthful environment.

Such interests impose obligations beyond those of ordinary commerce. They impose grave social responsibility and a patriotic duty to which REALTORS® should dedicate themselves, and for which they should be diligent in preparing themselves. REALTORS®, therefore, are zealous to maintain and improve the standards of their calling and share with their fellow REALTORS® a common responsibility for its integrity and honor.

In recognition and appreciation of their obligations to clients, customers, the public, and each other, REALTORS® continuously strive to become and remain informed on issues affecting real estate and, as knowledgeable professionals, they willingly share the fruit of their experience and study with others. They identify and take steps, through enforcement of this Code of Ethics and by assisting appropriate regulatory bodies, to eliminate practices which may damage the public or which might discredit or bring dishonor to the real estate profession. REALTORS® having direct personal knowledge of conduct that may violate the Code of Ethics involving misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm, bring such matters to the attention of the appropriate Board or Association of REALTORS®. (Amended 1/00)

Realizing that cooperation with other real estate professionals promotes the best interests of those who utilize their services, REALTORS® urge exclusive representation of clients; do not attempt to gain any unfair advantage over their competitors; and they refrain from making unsolicited comments about other practitioners. In instances where their opinion is sought, or where REALTORS® believe that comment is necessary, their opinion is offered in an objective, professional manner, uninfluenced by any personal motivation or potential advantage or gain.

The term REALTOR® has come to connote competency, fairness, and high integrity resulting from adherence to a lofty ideal of moral conduct in business relations. No inducement of profit and no instruction from clients ever can justify departure from this ideal.

In the interpretation of this obligation, REALTORS® can take no safer guide than that which has been handed down through the centuries, embodied in the Golden Rule, "Whatsoever ye would that others should do to you, do ye even so to them."

Accepting this standard as their own, REALTORS® pledge to observe its spirit in all of their activities whether conducted personally, through associates or others, or via technological means, and to conduct their business in accordance with the tenets set forth below. (Amended 1/07)

Duties to Clients and Customers

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 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. (Amended 1/01)

• Standard of Practice 1-1

REALTORS®, when acting as principals in a real estate transaction, remain obligated by the duties imposed by the Code of Ethics. (Amended 1/93)

• Standard of Practice 1-2

The duties imposed by the Code of Ethics encompass all real estate-related activities and transactions whether conducted in person, electronically, or through any other means.

The duties the Code of Ethics imposes are applicable whether REALTORS® are acting as agents or in legally recognized non-agency capacities except that any duty imposed exclusively on agents by law or regulation shall not be imposed by this Code of Ethics on REALTORS® acting in non-agency capacities.

As used in this Code of Ethics, "client" means the person(s) or entity(ies) with whom a REALTOR® or a REALTOR®'s firm has an agency or legally recognized non-agency relationship; "customer" means a party to a real estate transaction who receives information, services, or benefits but has no contractual relationship with the REALTOR® or the REALTOR®'s firm; "prospect" means a purchaser, seller, tenant, or landlord who is not subject to a representation relationship with the REALTOR® or REALTOR®'s firm; "agent" means a real estate licensee (including brokers and sales associates) acting in an agency relationship as defined by state law or regulation; and "broker" means a real estate licensee (including brokers and sales associates) acting as an agent or in a legally recognized non-agency capacity. (Adopted 1/95, Amended 1/07)

• Standard of Practice 1-3

REALTORS®, in attempting to secure a listing, shall not deliberately mislead the owner as to market value.

• Standard of Practice 1-4

REALTORS®, when seeking to become a buyer/tenant representative, shall not mislead buyers or tenants as to savings or other benefits that might be realized through use of the REALTOR®'s services. (Amended 1/93)

• Standard of Practice 1-5

REALTORS® may represent the seller/landlord and buyer/tenant in the

same transaction only after full disclosure to and with informed consent of both parties. *(Adopted 1/93)*

• **Standard of Practice 1-6**

REALTORS® shall submit offers and counter-offers objectively and as quickly as possible. *(Adopted 1/93, Amended 1/95)*

• **Standard of Practice 1-7**

When acting as listing brokers, REALTORS® shall continue to submit to the seller/landlord all offers and counter-offers until closing or execution of a lease unless the seller/landlord has waived this obligation in writing. REALTORS® shall not be obligated to continue to market the property after an offer has been accepted by the seller/landlord. REALTORS® shall recommend that sellers/landlords obtain the advice of legal counsel prior to acceptance of a subsequent offer except where the acceptance is contingent on the termination of the pre-existing purchase contract or lease. *(Amended 1/93)*

• **Standard of Practice 1-8**

REALTORS®, acting as agents or brokers of buyers/tenants, shall submit to buyers/tenants all offers and counter-offers until acceptance but have no obligation to continue to show properties to their clients after an offer has been accepted unless otherwise agreed in writing. REALTORS®, acting as agents or brokers of buyers/tenants, shall recommend that buyers/tenants obtain the advice of legal counsel if there is a question as to whether a pre-existing contract has been terminated. *(Adopted 1/93, Amended 1/99)*

• **Standard of Practice 1-9**

The obligation of REALTORS® to preserve confidential information (as defined by state law) provided by their clients in the course of any agency relationship or non-agency relationship recognized by law continues after termination of agency relationships or any non-agency relationships recognized by law. REALTORS® shall not knowingly, during or following the termination of professional relationships with their clients:

- 1) reveal confidential information of clients; or
- 2) use confidential information of clients to the disadvantage of clients; or
- 3) use confidential information of clients for the REALTOR®'s advantage or the advantage of third parties unless:
 - a) clients consent after full disclosure; or
 - b) REALTORS® are required by court order; or
 - c) it is the intention of a client to commit a crime and the information is necessary to prevent the crime; or
 - d) it is necessary to defend a REALTOR® or the REALTOR®'s employees or associates against an accusation of wrongful conduct.

Information concerning latent material defects is not considered confidential information under this Code of Ethics. *(Adopted 1/93, Amended 1/01)*

• **Standard of Practice 1-10**

REALTORS® shall, consistent with the terms and conditions of their real estate licensure and their property management agreement, competently manage the property of clients with due regard for the rights, safety and health of tenants and others lawfully on the premises. *(Adopted 1/95, Amended 1/00)*

• **Standard of Practice 1-11**

REALTORS® who are employed to maintain or manage a client's property shall exercise due diligence and make reasonable efforts to protect it against reasonably foreseeable contingencies and losses. *(Adopted 1/95)*

• **Standard of Practice 1-12**

When entering into listing contracts, REALTORS® must advise sellers/landlords of:

- 1) the REALTOR®'s company policies regarding cooperation and the amount(s) of any compensation that will be offered to subagents, buyer/tenant agents, and/or brokers acting in legally recognized non-agency capacities;

- 2) the fact that buyer/tenant agents or brokers, even if compensated by listing brokers, or by sellers/landlords may represent the interests of buyers/tenants; and
- 3) any potential for listing brokers to act as disclosed dual agents, e.g., buyer/tenant agents. *(Adopted 1/93, Renumbered 1/98, Amended 1/03)*

• **Standard of Practice 1-13**

When entering into buyer/tenant agreements, REALTORS® must advise potential clients of:

- 1) the REALTOR®'s company policies regarding cooperation;
- 2) the amount of compensation to be paid by the client;
- 3) the potential for additional or offsetting compensation from other brokers, from the seller or landlord, or from other parties;
- 4) any potential for the buyer/tenant representative to act as a disclosed dual agent, e.g., listing broker, subagent, landlord's agent, etc., and
- 5) the possibility that sellers or sellers' representatives may not treat the existence, terms, or conditions of offers as confidential unless confidentiality is required by law, regulation, or by any confidentiality agreement between the parties. *(Adopted 1/93, Renumbered 1/98, Amended 1/06)*

• **Standard of Practice 1-14**

Fees for preparing appraisals or other valuations shall not be contingent upon the amount of the appraisal or valuation. *(Adopted 1/02)*

• **Standard of Practice 1-15**

REALTORS®, in response to inquiries from buyers or cooperating brokers shall, with the sellers' approval, disclose the existence of offers on the property. Where disclosure is authorized, REALTORS® shall also disclose, if asked, whether offers were obtained by the listing licensee, another licensee in the listing firm, or by a cooperating broker. *(Adopted 1/03, Amended 1/09)*

• **Standard of Practice 1-16**

REALTORS® shall not access or use, or permit or enable others to access or use, listed or managed property on terms or conditions other than those authorized by the owner or seller. *(Adopted 1/12)*

Article 2

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. *(Amended 1/00)*

• **Standard of Practice 2-1**

REALTORS® shall only be obligated to discover and disclose adverse factors reasonably apparent to someone with expertise in those areas required by their real estate licensing authority. Article 2 does not impose upon the REALTOR® the obligation of expertise in other professional or technical disciplines. *(Amended 1/96)*

• **Standard of Practice 2-2**

(Renumbered as Standard of Practice 1-12 1/98)

• **Standard of Practice 2-3**

(Renumbered as Standard of Practice 1-13 1/98)

• **Standard of Practice 2-4**

REALTORS® shall not be parties to the naming of a false consideration in any document, unless it be the naming of an obviously nominal consideration.

• **Standard of Practice 2-5**

Factors defined as "non-material" by law or regulation or which are expressly referenced in law or regulation as not being subject to disclosure are considered not "pertinent" for purposes of Article 2. *(Adopted 1/93)*

Article 3

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. *(Amended 1/95)*

- **Standard of Practice 3-1**

REALTORS®, acting as exclusive agents or brokers of sellers/ landlords, establish the terms and conditions of offers to cooperate. Unless expressly indicated in offers to cooperate, cooperating brokers may not assume that the offer of cooperation includes an offer of compensation. Terms of compensation, if any, shall be ascertained by cooperating brokers before beginning efforts to accept the offer of cooperation. *(Amended 1/99)*

- **Standard of Practice 3-2**

Any change in compensation offered for cooperative services must be communicated to the other REALTOR® prior to the time that REALTOR® submits an offer to purchase/lease the property. After a REALTOR® has submitted an offer to purchase or lease property, the listing broker may not attempt to unilaterally modify the offered compensation with respect to that cooperative transaction. *(Amended 1/14)*

- **Standard of Practice 3-3**

Standard of Practice 3-2 does not preclude the listing broker and cooperating broker from entering into an agreement to change cooperative compensation. *(Adopted 1/94)*

- **Standard of Practice 3-4**

REALTORS®, acting as listing brokers, have an affirmative obligation to disclose the existence of dual or variable rate commission arrangements (i.e., listings where one amount of commission is payable if the listing broker's firm is the procuring cause of sale/lease and a different amount of commission is payable if the sale/lease results through the efforts of the seller/landlord or a cooperating broker). The listing broker shall, as soon as practical, disclose the existence of such arrangements to potential cooperating brokers and shall, in response to inquiries from cooperating brokers, disclose the differential that would result in a cooperative transaction or in a sale/lease that results through the efforts of the seller/landlord. If the cooperating broker is a buyer/tenant representative, the buyer/tenant representative must disclose such information to their client before the client makes an offer to purchase or lease. *(Amended 1/02)*

- **Standard of Practice 3-5**

It is the obligation of subagents to promptly disclose all pertinent facts to the principal's agent prior to as well as after a purchase or lease agreement is executed. *(Amended 1/93)*

- **Standard of Practice 3-6**

REALTORS® shall disclose the existence of accepted offers, including offers with unresolved contingencies, to any broker seeking cooperation. *(Adopted 5/86, Amended 1/04)*

- **Standard of Practice 3-7**

When seeking information from another REALTOR® concerning property under a management or listing agreement, REALTORS® shall disclose their REALTOR® status and whether their interest is personal or on behalf of a client and, if on behalf of a client, their relationship with the client. *(Amended 1/11)*

- **Standard of Practice 3-8**

REALTORS® shall not misrepresent the availability of access to show or inspect a listed property. *(Amended 11/87)*

- **Standard of Practice 3-9**

REALTORS® shall not provide access to listed property on terms

other than those established by the owner or the listing broker. *(Adopted 1/10)*

- **Standard of Practice 3-10**

The duty to cooperate established in Article 3 relates to the obligation to share information on listed property, and to make property available to other brokers for showing to prospective purchasers/tenants when it is in the best interests of sellers/landlords. *(Adopted 1/11)*

Article 4

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. *(Amended 1/00)*

- **Standard of Practice 4-1**

For the protection of all parties, the disclosures required by Article 4 shall be in writing and provided by REALTORS® prior to the signing of any contract. *(Adopted 2/86)*

Article 5

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.

Article 6

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

When recommending real estate products or services (e.g., homeowner's insurance, warranty programs, mortgage financing, title insurance, etc.), REALTORS® shall disclose to the client or customer to whom the recommendation is made any financial benefits or fees, other than real estate referral fees, the REALTOR® or REALTOR®'s firm may receive as a direct result of such recommendation. *(Amended 1/99)*

- **Standard of Practice 6-1**

REALTORS® shall not recommend or suggest to a client or a customer the use of services of another organization or business entity in which they have a direct interest without disclosing such interest at the time of the recommendation or suggestion. *(Amended 5/88)*

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. *(Amended 1/93)*

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.

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. *(Amended 1/04)*

- **Standard of Practice 9-1**

For the protection of all parties, REALTORS® shall use reasonable care to ensure that documents pertaining to the purchase, sale, or lease of real estate are kept current through the use of written extensions or amendments. *(Amended 1/93)*

- **Standard of Practice 9-2**

When assisting or enabling a client or customer in establishing a contractual relationship (e.g., listing and representation agreements, purchase agreements, leases, etc.) electronically, REALTORS® shall make reasonable efforts to explain the nature and disclose the specific terms of the contractual relationship being established prior to it being agreed to by a contracting party. *(Adopted 1/07)*

Duties to the Public

Article 10

REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. 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, national origin, sexual orientation, or gender identity. *(Amended 1/14)*

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, national origin, sexual orientation, or gender identity. *(Amended 1/14)*

- **Standard of Practice 10-1**

When involved in the sale or lease of a residence, REALTORS® shall not volunteer information regarding the racial, religious or ethnic composition of any neighborhood nor shall they engage in any activity which may result in panic selling, however, REALTORS® may provide other demographic information. *(Adopted 1/94, Amended 1/06)*

- **Standard of Practice 10-2**

When not involved in the sale or lease of a residence, REALTORS® may provide demographic information related to a property, transaction or professional assignment to a party if such demographic information is (a) deemed by the REALTOR® to be needed to assist with or complete, in a manner consistent with Article 10, a real estate transaction or professional assignment and (b) is obtained or derived from a recognized, reliable, independent, and impartial source. The source of such information and any additions, deletions, modifications, interpretations, or other changes shall be disclosed in reasonable detail. *(Adopted 1/05, Renumbered 1/06)*

- **Standard of Practice 10-3**

REALTORS® shall not print, display or circulate any statement or advertisement with respect to selling or renting of a property that indicates any preference, limitations or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. *(Adopted 1/94, Renumbered 1/05 and 1/06, Amended 1/14)*

- **Standard of Practice 10-4**

As used in Article 10 “real estate employment practices” relates to employees and independent contractors providing real estate-related services and the administrative and clerical staff directly supporting those individuals. *(Adopted 1/00, Renumbered 1/05 and 1/06)*

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; 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. *(Amended 1/10)*

- **Standard of Practice 11-1**

When REALTORS® prepare opinions of real property value or price they must:

- 1) be knowledgeable about the type of property being valued,
- 2) have access to the information and resources necessary to formulate an accurate opinion, and
- 3) be familiar with the area where the subject property is located

unless lack of any of these is disclosed to the party requesting the opinion in advance.

When an opinion of value or price is prepared other than in pursuit of a listing or to assist a potential purchaser in formulating a purchase offer, the opinion shall include the following unless the party requesting the opinion requires a specific type of report or different data set:

- 1) identification of the subject property
- 2) date prepared
- 3) defined value or price
- 4) limiting conditions, including statements of purpose(s) and intended user(s)
- 5) any present or contemplated interest, including the possibility of representing the seller/landlord or buyers/tenants
- 6) basis for the opinion, including applicable market data
- 7) if the opinion is not an appraisal, a statement to that effect
- 8) disclosure of whether and when a physical inspection of the property's exterior was conducted
- 9) disclosure of whether and when a physical inspection of the property's interior was conducted
- 10) disclosure of whether the REALTOR® has any conflicts of interest *(Amended 1/14)*

- **Standard of Practice 11-2**

The obligations of the Code of Ethics in respect of real estate disciplines other than appraisal shall be interpreted and applied in accordance with the standards of competence and practice which clients and the public reasonably require to protect their rights and interests considering the complexity of the transaction, the availability of expert assistance, and, where the REALTOR® is an agent or subagent, the obligations of a fiduciary. *(Adopted 1/95)*

- **Standard of Practice 11-3**

When REALTORS® provide consultive services to clients which involve advice or counsel for a fee (not a commission), such advice shall be rendered in an objective manner and the fee shall not be contingent on the substance of the advice or counsel given. If brokerage or transaction services are to be provided in addition to consultive services, a separate compensation may be paid with prior agreement between the client and REALTOR®. *(Adopted 1/96)*

- **Standard of Practice 11-4**

The competency required by Article 11 relates to services contracted for between REALTORS® and their clients or customers; the duties expressly

imposed by the Code of Ethics; and the duties imposed by law or regulation. *(Adopted 1/02)*

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. *(Amended 1/08)*

• Standard of Practice 12-1

REALTORS® may use the term “free” and similar terms in their advertising and in other representations provided that all terms governing availability of the offered product or service are clearly disclosed at the same time. *(Amended 1/97)*

• Standard of Practice 12-2

REALTORS® may represent their services as “free” or without cost even if they expect to receive compensation from a source other than their client provided that the potential for the REALTOR® to obtain a benefit from a third party is clearly disclosed at the same time. *(Amended 1/97)*

• Standard of Practice 12-3

The offering of premiums, prizes, merchandise discounts or other inducements to list, sell, purchase, or lease is not, in itself, unethical even if receipt of the benefit is contingent on listing, selling, purchasing, or leasing through the REALTOR® making the offer. However, REALTORS® must exercise care and candor in any such advertising or other public or private representations so that any party interested in receiving or otherwise benefiting from the REALTOR®’s offer will have clear, thorough, advance understanding of all the terms and conditions of the offer. The offering of any inducements to do business is subject to the limitations and restrictions of state law and the ethical obligations established by any applicable Standard of Practice. *(Amended 1/95)*

• Standard of Practice 12-4

REALTORS® shall not offer for sale/lease or advertise property without authority. When acting as listing brokers or as subagents, REALTORS® shall not quote a price different from that agreed upon with the seller/landlord. *(Amended 1/93)*

• Standard of Practice 12-5

REALTORS® shall not advertise nor permit any person employed by or affiliated with them to advertise real estate services or listed property in any medium (e.g., electronically, print, radio, television, etc.) without disclosing the name of that REALTOR®’s firm in a reasonable and readily apparent manner either in the advertisement or in electronic advertising via a link to a display with all required disclosures. *(Adopted 11/86, Amended 1/16)*

• Standard of Practice 12-6

REALTORS®, when advertising unlisted real property for sale/lease in which they have an ownership interest, shall disclose their status as both owners/landlords and as REALTORS® or real estate licensees. *(Amended 1/93)*

• Standard of Practice 12-7

Only REALTORS® who participated in the transaction as the listing broker or cooperating broker (selling broker) may claim to have “sold” the property. Prior to closing, a cooperating broker may post a “sold” sign only with the consent of the listing broker. *(Amended 1/96)*

• Standard of Practice 12-8

The obligation to present a true picture in representations to the public includes information presented, provided, or displayed on REALTORS® websites. REALTORS® shall use reasonable efforts to ensure that information on their websites is current. When it becomes apparent that information on a REALTOR®’s website is no longer current or accurate, REALTORS® shall promptly take corrective action. *(Adopted 1/07)*

• Standard of Practice 12-9

REALTOR® firm websites shall disclose the firm’s name and state(s) of licensure in a reasonable and readily apparent manner.

Websites of REALTORS® and non-member licensees affiliated with a REALTOR® firm shall disclose the firm’s name and that REALTOR®’s or non-member licensee’s state(s) of licensure in a reasonable and readily apparent manner. *(Adopted 1/07)*

• Standard of Practice 12-10

REALTORS®’ obligation to present a true picture in their advertising and representations to the public includes Internet content posted, and the URLs and domain names they use, and prohibits REALTORS® from:

- 1) engaging in deceptive or unauthorized framing of real estate brokerage websites;
- 2) manipulating (e.g., presenting content developed by others) listing and other content in any way that produces a deceptive or misleading result;
- 3) deceptively using metatags, keywords or other devices/methods to direct, drive, or divert Internet traffic; or
- 4) presenting content developed by others without either attribution or without permission, or
- 5) to otherwise mislead consumers. *(Adopted 1/07, Amended 1/13)*

• Standard of Practice 12-11

REALTORS® intending to share or sell consumer information gathered via the Internet shall disclose that possibility in a reasonable and readily apparent manner. *(Adopted 1/07)*

• Standard of Practice 12-12

REALTORS® shall not:

- 1) use URLs or domain names that present less than a true picture, or
- 2) register URLs or domain names which, if used, would present less than a true picture. *(Adopted 1/08)*

• Standard of Practice 12-13

The obligation to present a true picture in advertising, marketing, and representations allows REALTORS® to use and display only professional designations, certifications, and other credentials to which they are legitimately entitled. *(Adopted 1/08)*

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.

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 processes. *(Amended 1/99)*

- **Standard of Practice 14-1**

REALTORS® shall not be subject to disciplinary proceedings in more than one Board of REALTORS® or affiliated institute, society, or council in which they hold membership with respect to alleged violations of the Code of Ethics relating to the same transaction or event. *(Amended 1/95)*

- **Standard of Practice 14-2**

REALTORS® shall not make any unauthorized disclosure or dissemination of the allegations, findings, or decision developed in connection with an ethics hearing or appeal or in connection with an arbitration hearing or procedural review. *(Amended 1/92)*

- **Standard of Practice 14-3**

REALTORS® shall not obstruct the Board's investigative or professional standards proceedings by instituting or threatening to institute actions for libel, slander, or defamation against any party to a professional standards proceeding or their witnesses based on the filing of an arbitration request, an ethics complaint, or testimony given before any tribunal. *(Adopted 11/87, Amended 1/99)*

- **Standard of Practice 14-4**

REALTORS® shall not intentionally impede the Board's investigative or disciplinary proceedings by filing multiple ethics complaints based on the same event or transaction. *(Adopted 11/88)*

Duties to REALTORS®

Article 15

REALTORS® shall not knowingly or recklessly make false or misleading statements about other real estate professionals, their businesses, or their business practices. *(Amended 1/12)*

- **Standard of Practice 15-1**

REALTORS® shall not knowingly or recklessly file false or unfounded ethics complaints. *(Adopted 1/00)*

- **Standard of Practice 15-2**

The obligation to refrain from making false or misleading statements about other real estate professionals, their businesses, and their business practices includes the duty to not knowingly or recklessly publish, repeat, retransmit, or republish false or misleading statements made by others. This duty applies whether false or misleading statements are repeated in person, in writing, by technological means (e.g., the Internet), or by any other means. *(Adopted 1/07, Amended 1/12)*

- **Standard of Practice 15-3**

The obligation to refrain from making false or misleading statements about other real estate professionals, their businesses, and their business practices includes the duty to publish a clarification about or to remove statements made by others on electronic media the REALTOR® controls once the REALTOR® knows the statement is false or misleading. *(Adopted 1/10, Amended 1/12)*

Article 16

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. *(Amended 1/04)*

- **Standard of Practice 16-1**

Article 16 is not intended to prohibit aggressive or innovative business practices which are otherwise ethical and does not prohibit disagreements with other REALTORS® involving commission, fees,

compensation or other forms of payment or expenses. *(Adopted 1/93, Amended 1/95)*

- **Standard of Practice 16-2**

Article 16 does not preclude REALTORS® from making general announcements to prospects describing their services and the terms of their availability even though some recipients may have entered into agency agreements or other exclusive relationships with another REALTOR®. A general telephone canvass, general mailing or distribution addressed to all prospects in a given geographical area or in a given profession, business, club, or organization, or other classification or group is deemed "general" for purposes of this standard. *(Amended 1/04)*

Article 16 is intended to recognize as unethical two basic types of solicitations:

First, telephone or personal solicitations of property owners who have been identified by a real estate sign, multiple listing compilation, or other information service as having exclusively listed their property with another REALTOR® and

Second, mail or other forms of written solicitations of prospects whose properties are exclusively listed with another REALTOR® when such solicitations are not part of a general mailing but are directed specifically to property owners identified through compilations of current listings, "for sale" or "for rent" signs, or other sources of information required by Article 3 and Multiple Listing Service rules to be made available to other REALTORS® under offers of subagency or cooperation. *(Amended 1/04)*

- **Standard of Practice 16-3**

Article 16 does not preclude REALTORS® from contacting the client of another broker for the purpose of offering to provide, or entering into a contract to provide, a different type of real estate service unrelated to the type of service currently being provided (e.g., property management as opposed to brokerage) or from offering the same type of service for property not subject to other brokers' exclusive agreements. However, information received through a Multiple Listing Service or any other offer of cooperation may not be used to target clients of other REALTORS® to whom such offers to provide services may be made. *(Amended 1/04)*

- **Standard of Practice 16-4**

REALTORS® shall not solicit a listing which is currently listed exclusively with another broker. However, if the listing broker, when asked by the REALTOR®, refuses to disclose the expiration date and nature of such listing, i.e., an exclusive right to sell, an exclusive agency, open listing, or other form of contractual agreement between the listing broker and the client, the REALTOR® may contact the owner to secure such information and may discuss the terms upon which the REALTOR® might take a future listing or, alternatively, may take a listing to become effective upon expiration of any existing exclusive listing. *(Amended 1/94)*

- **Standard of Practice 16-5**

REALTORS® shall not solicit buyer/tenant agreements from buyers/tenants who are subject to exclusive buyer/tenant agreements. However, if asked by a REALTOR®, the broker refuses to disclose the expiration date of the exclusive buyer/tenant agreement, the REALTOR® may contact the buyer/tenant to secure such information and may discuss the terms upon which the REALTOR® might enter into a future buyer/tenant agreement or, alternatively, may enter into a buyer/tenant agreement to become effective upon the expiration of any existing exclusive buyer/tenant agreement. *(Adopted 1/94, Amended 1/98)*

- **Standard of Practice 16-6**

When REALTORS® are contacted by the client of another REALTOR® regarding the creation of an exclusive relationship to provide the same type of service, and REALTORS® have not directly or indirectly initiated such discussions, they may discuss the terms upon which they might enter into a future agreement or, alternatively, may enter into an agreement which becomes effective upon expiration of any existing exclusive agreement. *(Amended 1/98)*

- **Standard of Practice 16-7**

The fact that a prospect has retained a REALTOR® as an exclusive representative or exclusive broker in one or more past transactions does not preclude other REALTORS® from seeking such prospect's future business. *(Amended 1/04)*

- **Standard of Practice 16-8**

The fact that an exclusive agreement has been entered into with a REALTOR® shall not preclude or inhibit any other REALTOR® from entering into a similar agreement after the expiration of the prior agreement. *(Amended 1/98)*

- **Standard of Practice 16-9**

REALTORS®, prior to entering into a representation agreement, have an affirmative obligation to make reasonable efforts to determine whether the prospect is subject to a current, valid exclusive agreement to provide the same type of real estate service. *(Amended 1/04)*

- **Standard of Practice 16-10**

REALTORS®, acting as buyer or tenant representatives or brokers, shall disclose that relationship to the seller/landlord's representative or broker at first contact and shall provide written confirmation of that disclosure to the seller/landlord's representative or broker not later than execution of a purchase agreement or lease. *(Amended 1/04)*

- **Standard of Practice 16-11**

On unlisted property, REALTORS® acting as buyer/tenant representatives or brokers shall disclose that relationship to the seller/landlord at first contact for that buyer/tenant and shall provide written confirmation of such disclosure to the seller/landlord not later than execution of any purchase or lease agreement. *(Amended 1/04)*

REALTORS® shall make any request for anticipated compensation from the seller/landlord at first contact. *(Amended 1/98)*

- **Standard of Practice 16-12**

REALTORS®, acting as representatives or brokers of sellers/landlords or as subagents of listing brokers, shall disclose that relationship to buyers/tenants as soon as practicable and shall provide written confirmation of such disclosure to buyers/tenants not later than execution of any purchase or lease agreement. *(Amended 1/04)*

- **Standard of Practice 16-13**

All dealings concerning property exclusively listed, or with buyer/tenants who are subject to an exclusive agreement shall be carried on with the client's representative or broker, and not with the client, except with the consent of the client's representative or broker or except where such dealings are initiated by the client.

Before providing substantive services (such as writing a purchase offer or presenting a CMA) to prospects, REALTORS® shall ask prospects whether they are a party to any exclusive representation agreement. REALTORS® shall not knowingly provide substantive services concerning a prospective transaction to prospects who are parties to exclusive representation agreements, except with the consent of the prospects' exclusive representatives or at the direction of prospects. *(Adopted 1/93, Amended 1/04)*

- **Standard of Practice 16-14**

REALTORS® are free to enter into contractual relationships or to negotiate with sellers/landlords, buyers/tenants or others who are not subject to an exclusive agreement but shall not knowingly obligate them to pay more than one commission except with their informed consent. *(Amended 1/98)*

- **Standard of Practice 16-15**

In cooperative transactions REALTORS® shall compensate cooperating REALTORS® (principal brokers) and shall not compensate nor offer to compensate, directly or indirectly, any of the sales licensees employed by or affiliated with other REALTORS® without the prior express knowledge and consent of the cooperating broker.

- **Standard of Practice 16-16**

REALTORS®, acting as subagents or buyer/tenant representatives or brokers, shall not use the terms of an offer to purchase/lease to attempt to modify the listing broker's offer of compensation to subagents or buyer/tenant representatives or brokers nor make the submission of an executed offer to purchase/lease contingent on the listing broker's agreement to modify the offer of compensation. *(Amended 1/04)*

- **Standard of Practice 16-17**

REALTORS®, acting as subagents or as buyer/tenant representatives or brokers, shall not attempt to extend a listing broker's offer of cooperation and/or compensation to other brokers without the consent of the listing broker. *(Amended 1/04)*

- **Standard of Practice 16-18**

REALTORS® shall not use information obtained from listing brokers through offers to cooperate made through multiple listing services or through other offers of cooperation to refer listing brokers' clients to other brokers or to create buyer/tenant relationships with listing brokers' clients, unless such use is authorized by listing brokers. *(Amended 1/02)*

- **Standard of Practice 16-19**

Signs giving notice of property for sale, rent, lease, or exchange shall not be placed on property without consent of the seller/landlord. *(Amended 1/93)*

- **Standard of Practice 16-20**

REALTORS®, prior to or after their relationship with their current firm is terminated, shall not induce clients of their current firm to cancel exclusive contractual agreements between the client and that firm. This does not preclude REALTORS® (principals) from establishing agreements with their associated licensees governing assignability of exclusive agreements. *(Adopted 1/98, Amended 1/10)*

Article 17

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 mediate the dispute if the Board requires its members to mediate. If the dispute is not resolved through mediation, or if mediation is not required, REALTORS® shall submit the dispute to arbitration in accordance with the policies of the Board rather than litigate the matter.

In the event clients of REALTORS® wish to mediate or arbitrate contractual disputes arising out of real estate transactions, REALTORS® shall mediate or arbitrate those disputes in accordance with the policies of the Board, provided the clients agree to be bound by any resulting agreement or award.

The obligation to participate in mediation and arbitration contemplated by this Article includes the obligation of REALTORS® (principals) to cause their firms to mediate and arbitrate and be bound by any resulting agreement or award. *(Amended 1/12)*

• **Standard of Practice 17-1**

The filing of litigation and refusal to withdraw from it by REALTORS® in an arbitrable matter constitutes a refusal to arbitrate. *(Adopted 2/86)*

• **Standard of Practice 17-2**

Article 17 does not require REALTORS® to mediate in those circumstances when all parties to the dispute advise the Board in writing that they choose not to mediate through the Board's facilities. The fact that all parties decline to participate in mediation does not relieve REALTORS® of the duty to arbitrate.

Article 17 does not require REALTORS® to arbitrate in those circumstances when all parties to the dispute advise the Board in writing that they choose not to arbitrate before the Board. *(Amended 1/12)*

• **Standard of Practice 17-3**

REALTORS®, when acting solely as principals in a real estate transaction, are not obligated to arbitrate disputes with other REALTORS® absent a specific written agreement to the contrary. *(Adopted 1/96)*

• **Standard of Practice 17-4**

Specific non-contractual disputes that are subject to arbitration pursuant to Article 17 are:

- 1) Where a listing broker has compensated a cooperating broker and another cooperating broker subsequently claims to be the procuring cause of the sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker and any amount credited or paid to a party to the transaction at the direction of the respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. *(Adopted 1/97, Amended 1/07)*
- 2) Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating broker claims to be the procuring cause of sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the seller or landlord and any amount credited or paid to a party to the transaction at the direction of the respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. *(Adopted 1/97, Amended 1/07)*

- 3) Where a buyer or tenant representative is compensated by the buyer or tenant and, as a result, the listing broker reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating broker claims to be the procuring cause of sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. *(Adopted 1/97)*

- 4) Where two or more listing brokers claim entitlement to compensation pursuant to open listings with a seller or landlord who agrees to participate in arbitration (or who requests arbitration) and who agrees to be bound by the decision. In cases where one of the listing brokers has been compensated by the seller or landlord, the other listing broker, as complainant, may name the first listing broker as respondent and arbitration may proceed between the brokers. *(Adopted 1/97)*

- 5) Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, claims to be the procuring cause of sale or lease. In such cases arbitration shall be between the listing broker and the buyer or tenant representative and the amount in dispute is limited to the amount of the reduction of commission to which the listing broker agreed. *(Adopted 1/05)*

• **Standard of Practice 17-5**

The obligation to arbitrate established in Article 17 includes disputes between REALTORS® (principals) in different states in instances where, absent an established inter-association arbitration agreement, the REALTOR® (principal) requesting arbitration agrees to submit to the jurisdiction of, travel to, participate in, and be bound by any resulting award rendered in arbitration conducted by the respondent(s) REALTOR®'s association, in instances where the respondent(s) REALTOR®'s association determines that an arbitrable issue exists. *(Adopted 1/07)*

Explanatory Notes

The reader should be aware of the following policies which have been approved by the Board of Directors of the National Association:

In filing a charge of an alleged violation of the Code of Ethics by a REALTOR®, the charge must read as an alleged violation of one or more Articles of the Code. Standards of Practice may be cited in support of the charge.

The Standards of Practice serve to clarify the ethical obligations imposed by the various Articles and supplement, and do not substitute for, the Case Interpretations in *Interpretations of the Code of Ethics*.

Modifications to existing Standards of Practice and additional new Standards of Practice are approved from time to time. Readers are cautioned to ensure that the most recent publications are utilized.

"No Losers in Mediation" Article

The following article, first published in the September/October 2001 issue of *Real Estate Business*, provides practical information on mediation. It is reproduced with the permission of the Counsel of Residential Specialists and the Council of Real Estate Brokerage Managers, which jointly publish *Real Estate Business*.

*****IAR has adopted a policy requiring Mandatory Mediation. The information in this NAR article is strictly for general information and not to be interpreted in opposition to IAR policy mandating mediation before arbitration.*****

NAR is encouraging REALTORS® to use an alternative to the adversarial approach of arbitration: mediation. What is mediation and why is it so much better than arbitration?

To offer members an alternative to arbitration, the National Association of REALTORS® (NAR) is requiring all REALTOR® Associations to offer mediation services as of January 2002. Until now, mediation has been optional; associations could offer it to their members, but were not required to do so. The new mediation services will be used exclusively to settle commission disputes between REALTORS®.

What is mediation?

Simply put, mediation is a structured negotiation facilitated by a neutral third person called a "mediation officer." The mediation officer assists the parties in a dispute to arrive at a mutually agreeable settlement.

The mediation officer clarifies issues while remaining dispassionate and focused. He or she guides the discussions between the parties. By providing a forum in which the parties can tell their sides of the story in a nonconfrontational way, the mediation officer helps find common ground on which to resolve the dispute.

How is mediation different from arbitration?

Arbitration and mediation are both methods of resolving disputes outside the courtroom. With arbitration, however, a hearing panel plays a role similar to a judge. The procedures, while abbreviated and informal, are like those used in our judicial system.

There is an arbitration hearing (like a trial) where every party has the right to present evidence and witnesses and to cross-examine the other parties and their witnesses. The hearing panel renders a decision, called an award, based on the evidence and arguments presented. After the hearing, the parties have no control over the hearing panel's award and are bound by its decision.

When a real estate professional becomes a member of a REALTOR® Association, he or she agrees that in exchange for the benefits of membership in the association, he or she will be bound by the duties imposed by the NAR Code of Ethics, including the duty to arbitrate.

Arbitration under Article 17 of the NAR Code of Ethics is binding on all parties. Unless there is evidence of procedural deficiency, it is not subject to further review or appeal. In other words, the parties have to accept the hearing panel's decision. Mediation, on the other hand, is simply a form of negotiation. None of the parties can be forced to accept a settlement. Participation in mediation by individual REALTORS® is completely voluntary. No party can be forced into mediation. It will be offered only as an alternative to arbitration.

What are the advantages of mediation over arbitration and litigation?

Mediation is less adversarial than arbitration or litigation. The arbitration process produces a decision imposed upon the parties whether they like it or not. With mediation, the parties will optimally settle their differences by consensus rather than by the decree of a hearing panel.

Mediation is more likely to allow the parties to maintain their former relationship. By achieving a "win-win" result through mediation, all of the parties should feel that they are getting fair treatment. This should optimally preserve or even improve relationships between the parties and make it easier for REALTORS® to work amicably with each other in future transactions.

Mediation is quicker and less expensive than arbitration. Because of the less confrontational process involved, mediation takes less time and effort. In addition, under the new NAR requirements, mediation will be offered to members free of charge, except for a nominal filing fee. If the association determines that it must hire an outside professional mediator, the association, not the participating parties, will bear the cost of the mediation.

Mediation is more flexible than arbitration. Mediation provides a casual forum in which the parties can design a creative resolution to their dispute. They have a vested interest in the successful outcome of the mediation and may be more likely to comply with the settlement than if the decision is imposed on them. If the parties cannot reach a settlement, arbitration is still available to them.

Can the mediation officer make a decision to resolve the dispute?

No. The mediation officer does not have the authority to impose a decision on the parties. If all the parties agree, the mediation officer can, however, offer settlement proposals. The mediation officer can also offer an evaluation of the likely outcome of arbitration.

How does one become a mediation officer?

Sufficient numbers of well-trained mediation officers are critical to the success of the mediation program. NAR is holding a series of training sessions for mediation officers. Local associations select REALTORS® and association executives with previous experience or training in dispute resolution to attend. The training sessions provide instruction in negotiation strategies and emphasize communication skills.

How is a mediation officer chosen?

As of this year, all REALTOR® Associations are required to enter into multi-board Professional Standards Enforcement Agreements with at least one other Board. Boards participating in these enforcement agreements will jointly appoint a sufficient number of mediation officers to serve the geographic regions they cover. Mediation officers can be REALTORS®, association staff or outside professional mediators.

After the parties have agreed to participate in the mediation process, the association sends them a form listing the available mediation officers. Each party accepts or rejects mediation officers listed on the form.

The assignment of a mediation officer is made by the association from the names of mediation officers that are acceptable to all the parties. The assignment may also take into consideration any area of special expertise that a mediation officer may have that is relevant to the dispute.

The mediation officer remains neutral and must disclose any conflict of interest. He or she cannot be related by blood or marriage to any of the parties, be a business associate of any of the parties, or be a party in or witness to any other pending case that involves these agents.

How is mediation initiated?

A REALTOR® can file either a request for arbitration or a request for mediation. The request (whether for arbitration or mediation) will be referred to the Grievance Committee for a determination of whether the dispute is properly arbitrable. If the Grievance Committee determines that the dispute is arbitrable, the parties will be notified and will be offered mediation to settle the dispute.

How is mediation conducted?

The way a mediation session is run varies depending on the individual mediation officer conducting the session. The general format of a mediation session follows.

The mediation officer establishes the seating arrangements for the session. The arrangement should allow all the parties to see and hear each other as well as the mediation officer.

The mediation session begins with the mediation officer giving an opening statement. He introduces himself and explains his role in the process. He explains the ground rules to be followed. The parties sign a mediation agreement in which they voluntarily submit to the mediation process, acknowledge that they have the authority

to enter into and sign any written settlement agreement that may be produced by the mediation and agree that they will be bound by any such written settlement.

Each party explains its side of the dispute. The mediation officer may allow the parties to address questions to each other. Next, the mediation officer and the parties work together to identify the issues that need to be addressed. The mediation officer clarifies each party's needs, ideas and criteria for resolution of the dispute. The mediation officer may allow each party to meet privately with him to discuss information and options for resolution. This is called a caucus.

Finally, the parties, with the help of the mediation officer, explore alternative solutions to the dispute. If the parties reach agreement, they write down the terms of the agreement on a settlement form before leaving the mediation session. If, on the other hand, no agreement is reached, the parties sign a "no settlement form" and the mediation officer explains the next steps to the parties.

Does a REALTOR® need to be represented by an attorney in a mediation?

No. Mediation is intended to be non-adversarial and no findings of fact or law are made. If one party decides to have an attorney present, the other party must be notified before the mediation session. If one party arrives at the mediation session with an attorney without giving notice, the other party can request that the session be rescheduled to allow that party to have its attorney present.

Will a REALTOR® need to have witnesses or evidence prepared for a mediation?

No. Mediation is not a fact-finding procedure, so witnesses are usually not needed and the parties do not need to assemble exhibits or other documentation. In some cases, a witness may be able to clear up a misunderstanding. If so, the witness may be asked to attend some or all of the session. Similarly, if a document would clarify an issue, it can be used.

If a settlement of the dispute is reached through mediation, what form should the settlement take?

The agreement, which should be clearly written in simple language, is approved by all the parties. It should state what each party has agreed to do, or how much is to be paid and by whom, and when the agreed-upon things will be done. The written agreement should be positive in tone and should focus on the agreement reached by the parties, not on assigning blame.

Can a REALTOR® withdraw from the mediation process without penalty?

Yes. A REALTOR® can withdraw from the mediation at any time before the parties reach agreement. However, once the parties have signed an agreement, the matter cannot be the subject of a later arbitration.

What happens if one of the parties does not abide by the terms of agreement?

If one side does not follow the written mediation agreement, arbitration is not available to settle the matter. The appropriate action is for the other side to go to court to have the mediation agreement enforced. Any terms that the parties agree to during the course of the mediation session that aren't put into writing in the mediation agreement cannot be judicially enforced.

If I participate in a mediation, can any information I reveal during the mediation be used by the other side in a later proceeding?

No. All discussions, statements and documents that are obtained through mediation are confidential. If an arbitration follows a mediation in which there was no agreement, any information gathered in the mediation can only be used in the arbitration if it is obtained independent of the mediation process.

Any offers of settlement made during the mediation that are not accepted cannot be introduced as evidence in a later arbitration. Similarly, any resolution suggested by the mediation officer that is not accepted cannot be introduced in a later arbitration. The mediator cannot be called on to testify in any subsequent proceeding and is required to destroy notes or other documentation 30 days after the mediation is concluded. Neither the parties nor the mediation officer are required to report any potential ethical violations that may be discovered during the mediation process.

Mediation makes the most efficient use of REALTORS®' time and resources and gives them control over the outcome of a dispute.

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Mediation Makes Room To Negotiate

The process of bringing two parties together to come to agreement is precisely what REALTORS® do day in and day out, says Tom Johnson, CRB, CRS. "Real estate is a mediation process in itself," he says. "If we can get buyers and sellers to come together and work out their differences, why in the world wouldn't we do that with each other when we have disputes? If we didn't have the predisposition to go to arbitration, this would be the logical option."

Johnson, associate broker with RE/MAX Commonwealth in Richmond, Va., a member of the Council of Real Estate Brokerage Managers Board of Directors and a trained mediator, strongly advocates that agents begin to consider mediation as that logical option over arbitration. "Mediation is faster and easier to set up; I'm acting as a mediator in a case next week, and I was only contacted about it last week. Getting a hearing panel of five arbitrators together is harder and takes longer. It costs more and it creates a lot more paperwork." But most important, Johnson says, "The arbitration process is adversarial in nature and is designed to impose a 'win-lose' outcome. The process is more formal, confrontational and cumbersome than mediation. By demanding arbitration, both parties are taking the position that they can't work out their differences."

Toni Sherman, CRS, of Coldwell Banker Residential Brokerage in Glen Ellyn, Ill., says that opting for mediation sends a very different message. "By virtue of choosing mediation over arbitration, both parties are conceding there is room for negotiation. And when I open a mediation, I start by saying that the parties have already shown their ability to reach consensus because they agreed to go to mediation, and they agreed to choose me as the mediator. That starts things off on a positive note."

Sherman also goes in with no prior knowledge of the facts of the dispute. "This gives me a chance to hear the story fresh from both sides," she says. "I don't go in with any preconceived notions." She prefers to let each party speak to her privately, in a caucus, because "that gives each person the opportunity to say all the things they need and want to say. They can call the other person all the names they want without having anyone else hear it. That venting gets them to a point at which they're ready to negotiate." Sherman may talk to each party two or three times in a proceeding, to get all the facts and consider all the perspectives. "Talking to each party at different times lets me see if we're making any headway and allows us to get to the specifics."

Her role, Sherman says, is to guide the parties and ask the right questions, but not to force a resolution or even make recommendations. Johnson concurs. "In arbitration, a resolution is imposed on the parties in the dispute. Mediation is guided negotiation; no one imposes anything. The mediator is a neutral party whose role is simply to help the people in the dispute find a solution for themselves."

Sherman finds that many disputes could avoid mediation if REALTORS® communicated more openly with each other. "I had a client who went to an open house one weekend when I was away, liked the house and wanted to make an offer. When I came back and found out about this, I immediately called the listing agent to explain the situation — that I had been working with that buyer for some time and wasn't around when the buyer went off alone to the open house. The listing agent honored my relationship with the client. If REALTORS® would communicate directly and openly, a lot of conflicts would be avoided."

Why can't brokers play a more active role in mediating disputes between agents, one might ask. They often do but, Sherman notes, "The process can be time-consuming, and some brokers just don't want to spend the time." In addition, Johnson notes, brokers are often vested in the outcome of these disputes. "Depending on the type of brokerage, the broker may have a financial stake in the agent's commission. The money may already be in the bank. In those cases, the broker isn't going to be any more willing than the agent to settle the dispute without mediation."

For mediation to become the preferred alternative to arbitration, Johnson says, "We have to have a mindset change, a paradigm shift. We're so used to thinking in terms of arbitration that we tend not to consider mediation unless it's suggested." That direct suggestion must begin to come from professional standards administrators at local associations, he says. "When an agent calls up, angry over a problem and wants to schedule an arbitration hearing, the administrator needs to talk to the agent about considering mediation first. Part of the training we're doing to implement the mediation process involves working with these administrators to familiarize them with mediation and get them to think of it first, before going ahead with arbitration."

Why take the time to act as a mediator? Johnson does it because "it's in our best interests to keep relationships in our business civil, and that is much more likely to happen through mediation than through an adversarial proceeding. And to be honest, often in arbitrations the disputing parties can end up looking petty and foolish to their clients and others involved. Mediation can help build our image as real professionals."

Sherman agrees. "I believe that mediation can do a lot for the professional image of REALTORS® and of the industry."



INDIANA ASSOCIATION OF REALTORS®, INC.

Dear Principal or Managing Broker Requesting Mediation Services:

Enclosed are the materials required to request Mediation. You may file a request for Mediation against a REALTOR® Principal member and his/her agent alleging a claim to a commission or part of a commission only after the transaction closes. Mediation of arbitrable matters is mandatory. Mediation services will be offered both before and after the Grievance Committee's review of a mediation and/or arbitration request. The Request for Mediation must name all necessary parties to the Mediation, their firm name, address, and phone number.

Please return the signed "Request for Mediation" form along with the Agreement to Arbitrate.

There is NO CHARGE for Mediation services provided by the volunteer mediators of the Indiana Association of REALTORS®.

I recommend that you read the article, "No Losers in Mediation" to have a better understanding of the Mediation process and how it differs from Arbitration.

PROFESSIONAL STANDARDS ADMINISTRATOR
800 EAST 86TH AVENUE
MERRILLVILLE, IN 46410
PHONE (219) 895-5357
LSALLIE@INDIANAREALTORS.COM





Request for Mediation

In the matter of _____ vs. _____
Complainant(s) Respondent(s)

I am requesting mediation with the above-named disputant. There is due, unpaid, and owing to me (*or I retain*) from the above-named person the sum of \$_____.

The property address is: _____.

My claim is predicated upon the statement attached and incorporated by reference into this application.

Signature of REALTOR® Principal/Managing Broker

Signature of REALTOR®

Type/Print Name

Type/Print Name

Phone

Phone

E-mail

E-mail

Office Name and Address

**Send the Request for Mediation form and all accompanying documents to:
Indiana Association of REALTORS®
Attn: Laura Sallie, Professional Standards Administrator
800 East 86th Avenue, Merrillville, Indiana 46410**

PROFESSIONAL STANDARDS ADMINISTRATOR
800 EAST 86TH AVENUE
MERRILLVILLE, IN 46410
PHONE (219) 895-5357
LSALLIE@INDIANAREALTORS.COM





INDIANA ASSOCIATION OF REALTORS®, INC.

Dear Principal or Managing Broker Requesting Arbitration Services:

Enclosed are the materials required to request Arbitration. You may file a request for arbitration against a REALTOR® Principle member alleging a claim to a commission or part of a commission after the transaction closes, if you have already mediated the dispute, and providing the request:

1. Is in writing
2. Is signed by the Complainant(s)
3. States the chronological facts surrounding the case (a narrative)
4. Is filed within 180 days after closing the transaction *or* within 180 days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence.
5. Names all necessary parties to the arbitration (Principle/Manager/Agent)
6. **A check for \$250, payable to IAR is attached**

When stating the facts surrounding your request for arbitration, include a copy of all the pertinent documents, such as copies of Listing Agreements, Purchase and Sales Agreements, Addendums, inspection reports, MLS Rules & Regs if applicable, the closing statement, MLS printouts/history, notarized statements from witnesses if necessary, and other piece of corroborating documentation to support your case.

The Grievance Committee will review the request for arbitration. They will either forward the case to the Professional Standards Committee for a hearing or dismiss the case. They will dismiss the case if the amount in dispute is (1) considered too small or too large for the Association to arbitrate, (2) if the matter is too legally complex, (3) if the matter is not arbitrable, (4) or if the request is not timely filed. You will be notified of the Grievance Committee's decision within days of the committee meeting.

Respectfully Yours,

Laura L. Sallie

Laura L. Sallie
Professional Standards Administrator

Send the Request and Agreement to Arbitrate form and all accompanying documents to:

**Indiana Association of REALTORS®
Attn: Laura Sallie, Professional Standards Administrator
800 East 86th Avenue, Merrillville, Indiana 46410**

Laura L. Sallie
PROFESSIONAL STANDARDS ADMINISTRATOR
800 EAST 86TH AVENUE
MERRILLVILLE, IN 46410
PHONE (219) 895-5357
LSALLIE@INDIANAREALTORS.COM





REQUEST AND AGREEMENT TO ARBITRATE

Form #A-1

1. The undersigned, by becoming and remaining a member of the Indiana Association of REALTORS® has previously consented to arbitration through the Association under its rules and regulations.
2. I am informed that each person named below is a member in good standing of the Indiana Association of REALTORS® or was a member of said Association of REALTORS® at the time the dispute arose.
3. A dispute arising out of the real estate business as defined by Article 17 of the Code of Ethics exists between me (or my firm) and (List all persons and/or firms you wish to name as respondents to this arbitration):

_____, Principal Broker _____
 Name Firm

4. There is due, unpaid and owing to me (or I retain) from the above named persons the sum of \$ _____. My claim is predicated upon the statement attached.

The disputed funds are currently held by _____.

Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the association 21 days prior to the day of the hearing so the Administrator can provide copies to the other party and the Hearing Panel. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances.

5. I request and consent to arbitration through the Association in accordance with its *Code of Ethics and Arbitration Manual* (alternatively, "in accordance with the professional standards procedures set forth in the bylaws of the Association"). I agree to abide by the arbitration award and, if I am the non-prevailing party, to, within ten (10) days following transmittal of the award, either (1) pay the award to the party(ies) named in the award, or (2) deposit the funds with the Professional Standards Administrator to be held in an escrow or trust account maintained for this purpose. Failure to satisfy the award or to deposit the funds in the escrow or trust account within this time period may be considered a violation of a membership duty and may subject the member to disciplinary action at the discretion of the Executive Committee of the IAR Board of Directors consistent with Section 53, The Award, Code of Ethics and Arbitration Manual.

In the event I do not comply with the arbitration award and it is necessary for any party to this arbitration to obtain judicial confirmation and enforcement of the arbitration award against me, I agree to pay the party obtaining such confirmation the costs and reasonable attorney's fees incurred in obtaining such confirmation and enforcement.

6. I enclose my check in the amount of \$250.00 for the arbitration filing fee.*

*NOT TO EXCEED \$500.00

Laura L. Sallie
 Professional Standards Administrator
 800 East 86th Avenue
 Merrillville, IN 46410
 Phone (219) 895-5357
 lsallie@indianarealtors.com





INDIANA ASSOCIATION OF REALTORS®, INC.

7. I understand that I may be represented by legal counsel, and that I should give written notice no less than 15 days before the hearing of the name, address, and phone number of my attorney to the Association. Failure to provide this notice may result in a continuance of the hearing, if the Hearing Panel determines that the rights of the other party(ies) require representation.

8. Each party must provide a list of the names of witnesses he/she intends to call at the hearing to the Association not less than 15 days prior to the hearing. Each party shall arrange for his/her witnesses to be present at the time and place designated for the hearing. The following REALTOR® nonprincipal affiliated with my firm has a financial interest in the outcome of the proceeding and has the right to be present throughout the hearing:

All parties appearing at a hearing may be called as a witness without advance notice.

9. I declare that this application and the allegations contained herein are true and correct to the best of my knowledge and belief and this request for arbitration is filed within 180 days after the closing of the transaction, or within 180 days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later.

10. If either party to an arbitration request believes that the Grievance Committee has incorrectly classified the issue presented in the request (i.e., mandatory or voluntary), the party has 20 days from the date of receipt of the Grievance Committee's decision to file a written appeal of the decision. Only those materials that the Grievance Committee had at the time of its determination may be considered with the appeal by the Board of Directors.

Date(s) alleged dispute took place: _____

11. Are the circumstances giving rise to this arbitration request the subject of civil litigation?
_____ Yes _____ No

12. Important note related to arbitration conducted pursuant to Standard of Practice 17-4 (1) or (2): Where arbitration is conducted between two (or more) cooperating brokers, the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker, seller, or landlord and any amount credited or paid to a party to the transaction at the direction of the respondent.

LAURA L. SALLIE
PROFESSIONAL STANDARDS ADMINISTRATOR
800 EAST 86TH AVENUE
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LSALLIE@INDIANAREALTORS.COM





INDIANA ASSOCIATION OF REALTORS®, INC.

13. Address of the property in the transaction giving rise to this arbitration request:

_____.

14. The sale/lease closed on: _____.

The Sales Agent involved (if other than the Principal Broker) _____

15. Agreements to arbitrate are irrevocable except as otherwise provided under state law.

Dated: _____

Signature of Principal Broker

Print Name

Office: _____

Address: _____

Email: _____

Cell Phone: _____

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