

## CODE OF ETHICS- CHANGES

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Changes to Policy Statement 29, Code of Ethics and Arbitration Manual:  
Policy Statement 29, Code of Ethics and Arbitration Manual, was amended to expand applicability of the Code of Ethics to all of a REALTOR®'s activities. These changes are effective immediately.

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

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

### New Standard of Practice 10-5:

A new Standard of Practice under Article 10 was adopted. This new Standard of Practice is effective immediately.

#### Standard of Practice 10-5

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

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

### Revisions to the definition of "Public Trust":

The definition of "public trust" was expanded to include all discrimination against the protected classes under Article 10 of the Code of Ethics and all fraud, and to limit the reporting requirement to final ethics decisions involving real estate-related activities and transactions.

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Rationale: At present, the definition of “public trust” includes demonstrated misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm. This recommendation would expand the definition to include all discrimination against the protected classes under Article 10, and all fraud. As a result, associations would be required to share with the state real estate licensing authority final ethics decisions holding REALTORS® in violation of the Code of Ethics in instances involving real estate-related activities and transactions and where there is reason to believe the public trust, as expanded, may have been violated. This is recommended so the real estate licensing authority, and other governmental agencies as recommended by the Association, are made aware of any findings of a violation of the Code of Ethics involving discrimination, but only where the discrimination is related to real estate related-activities and transactions. This leaves discrimination related to real estate actionable under the Code and license law, but addresses the concern that the regulatory agency is being asked to act on personal, ethical matters which may be beyond the scope of license law.

As a result of these changes being adopted, Article IV Code of Ethics, Section 2 of the NAR Bylaws is amended as follows (strikeouts indicate deletions, underscoring indicates additions):

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

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

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

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The new Standard of Practice seems to limit my right to free speech as established by the First Amendment to the Constitution. How can NAR legally adopt a policy like this?

The First Amendment provides that neither the United States Congress nor any state may abridge the freedom of speech of American citizens. With some exceptions, the First Amendment does not prohibit a private organization from restricting the speech of its members, employees, or users. NAR is a private association that is supported by dues from members, is not exercising any governmental function, and has no subpoena power or other powers generally available to state agencies. As such, the First Amendment does not preclude NAR from imposing this ethical duty as a condition of membership.

I should be able to say whatever I want on my personal social media profile. It doesn't impact my ability to do my job. Why is what I say there now subject to the Code? This is going too far.

The Board of Directors discussed that a REALTOR®'s speech and conduct reflect on the REALTOR® organization whether said publicly on a business social media profile, or privately on a personal one. According to the Preamble of the Code of Ethics, REALTORS® should be guided by the spirit of the Golden Rule of treating others as one would like to be treated. When a REALTOR® pledges to abide by the Code of Ethics, the highest principles and ethics of REALTORS® must followed in all their activities, and cannot be abandoned in a profession dedicated to protecting the best interests of consumers. Put simply, when one REALTOR® engages in discriminatory speech and conduct, those actions demonstrate to consumers that they represent the actions of REALTORS® collectively. The REALTOR® brand is built on ethics and integrity. Discriminatory speech and conduct to the contrary depletes the strength of that brand. It is incumbent upon our organization to set the bar high, and communicate those elevated standards, to protect the REALTOR® brand and ensure its strength endures for years to come. Additionally, this proposed change does not mean that the Code of Ethics will apply in all portions of a REALTOR®'s personal life as many of the Code's provisions are specifically tied to real estate and real estate transactions.

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## **Social Media Best Practices**

***The rewards are great – and so are the risks. Develop a policy before you post!***

Social media is great. In just a few years it has completely changed the way that we communicate, interact, keep in touch with friends and connect with new ones. Social media is great in business and in real estate. It provides easy exposure, increases your reach and audience, offers a source of referrals and it is free! But social media is tricky. It is social - meaning that you should use it to be social – meet people, connect, share who you are. And it is a form of media - meaning that it should be used and approached as any other media tool. So how do you balance the two? Strategically. You wouldn't write a commercial spot in ten seconds and publicly air it, would you? Similarly, don't use social media with such little disregard. This applies to both your personal and business account – because they both represent you.

### **Your Personal Policy**

Start using social media like any other business tool. Before you write another post, stop and develop your own social media policy. Consider your business and personal strategies and goals and be sure they align – with who you are as a person, with your brand, and how you want to be perceived. Don't think you can be one person on your business page and a completely different one on your personal page. Your clients – the world – will see right through you. Set expectations about the purpose of each account and each page you manage and be consistent about your messaging and the information you share. Understand that each social media platform has a different purpose and develop a strategy for each. If it sounds like too much work then embrace one at a time and don't create a new account until you understand how it works, how you will use it and what your goal for it is. Facebook is not the same as Twitter and if you try and use them in the same way, you will be wasting your time.

### **Risks to be Aware of**

We have all heard the stories. The smart, well-respected business professional that should have known better but made a bonehead mistake on Facebook, costing them their job and self-dignity. It all seems like common sense, but people keep doing it. The thing about social media is that when you make a mistake – it is there for the world to see. Even when you delete it – it doesn't go away. When it comes to real estate, there are some serious risks to be considered. Here are a few that you should be aware of.

- Code of Ethics – As a REALTOR® you are subject to the Code of Ethics and the Code applies to the digital world. Review the Code with your social media strategy in mind.
  - Online advertising – All the rules that apply to traditional advertising apply to online advertising. Remember this the next time you create a Facebook campaign.
    - Plagiarism – If you copy or share someone else's work (whether ideas, text or images) be sure to give them credit and properly attribute the author.
    - Fair Housing – Be careful that what you post doesn't violate Fair Housing laws or it could be interpreted as discrimination. In the world of 140 characters it is much easier to miscommunicate.
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- Anti-trust – Any activity that amounts to an unreasonable restraint of competition is a violation of antitrust law.
- Disclosure Issues – Be careful not to share or disclose private or confidential information entrusted to you as a REALTOR®. Oversharing is a true temptation of social media.
- Defamation – Everyone is braver behind a keyboard. Making an insulting or libelous statement or comment online is still considered defamation.
- Intellectual Property Infringement (including copyright and trademark issues and DMCA) - When you post or share anything online that is protected by copyright or trademark without the permission of the creator, you could be guilty of copyright infringement.

Social media can be risky because technology is outpacing the law and the rules are shades of gray rather than black and white. When it comes to avoiding risks, it is best to play it safe. If you are unsure how it could be interpreted, don't post it.

### Don't:

- Don't friend everyone. Be selective about who you accept as a friend or connect with. When you determine your purpose for each page, think about your audience. If you intend to keep your personal page personal, then don't accept requests from people you don't know. Manage your online world wisely.
- Don't spam or sell. Be human and be real. Use social media to connect with people and form relationships. Posting nothing but automated listings will just annoy people. Being too "salesy" is a turn off too. People use social media for the human interaction – not to be sold to.
- Don't vent. Do not use social media as your personal journal. Do not vent about clients, coworkers or other agents. Just don't do it, ever.
- Don't talk about clients or deals. You may be excited about that deal you just closed but don't risk ruining it by oversharing on social. Even if you are vague about the details, be very cautious.
- Don't assume your friends or family or clients have the same views as you on religion, politics or social issues. We all know what assuming does.
- Don't assume anything on social media is private – this includes private groups and direct messages. It is way too easy for someone to take a screen shot of your "behind closed doors" comment and use it against you. Be cautious of anything you put in writing.
- Don't let social media take the place of face-to-face interaction. Your online presence should augment who you are in person. Use it to connect but don't let it take the place of the real thing.

Social media is fun, exciting and when used correctly - rewarding. However, it takes work to make it work. Put the time in up front. Practice strategy and discipline and be aware of the risks. Remember that you are representing yourself, your business and the real estate industry as a whole. Represent well!

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