

## 2010 Summary of Key Professional Standards Changes

This summary highlights substantive issues and changes, but is not all-inclusive. For complete information detailing all changes see the 2009 Professional Standards Committee Actions for Midyear and the Annual Convention on the Board Policy and Programs website (<http://realtor.org/mempolweb.nsf/comnameweb>; search on "Professional Standards Committee Actions"). Also review the shaded portions of the 2010 *Code of Ethics and Arbitration Manual* which highlights all changes.

### Changes to the Code of Ethics and Standards of Practice (underscoring indicates additions, strikeouts indicate deletions)

- Standard of Practice 3-2 revised

~~REALTORS<sup>®</sup> shall, with respect to offers of compensation to another REALTOR<sup>®</sup>, timely communicate~~ To be effective, any change of in compensation offered for cooperative services must be communicated to the other REALTOR<sup>®</sup> prior to the time ~~such that~~ REALTOR<sup>®</sup> ~~produces~~ submits an offer to purchase/lease the property. (Amended 1/10)

Note: Professional Policy Statement 31, "Cooperation" Defined, was amended to reflect that to be effective changes to cooperative compensation need to be made prior to the time an offer to purchase is submitted (as opposed to produced).

- Standard of Practice 3-9 new

REALTORS<sup>®</sup> shall not provide access to listed property on terms other than those established by the owner or the listing broker. (Adopted 1/10)

- Revised Article 11

The services which REALTORS<sup>®</sup> 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<sup>®</sup> 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 revised

When REALTORS® prepare opinions of real property value or price, other than in pursuit of a listing or to assist a potential purchaser in formulating a purchase offer, such opinions 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 (Amended 1/10)

- Standard of Practice 12-5 revised

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. (Amended 1/10)

- Standard of Practice 15-2 revised

The obligation to refrain from making false or misleading statements about competitors, competitors' businesses and competitors' 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. (Amended 1/10)

- Standard of Practice 15-3 new

The obligation to refrain from making false or misleading statements about competitors, competitors' businesses and competitors' 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)

- Standard of Practice 16-20 revised

REALTORS®, prior to or after terminating 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. (Amended 1/10)

## Changes to the *Code of Ethics and Arbitration Manual*

- Sections 2 and 27, Qualification for Tribunal, amended administratively as follows:
  - (a) No more than one person licensed with any firm, partnership, or corporation may serve on the same tribunal. This limitation does not preclude two or more individuals from the same franchise from serving if the franchises are independently owned and operated. (Revised 11/09)

Note: Form #E-10 and Form #A-11, Certification of Qualification, amended to reflect the policy above.

- Sections 7(a) and 32(a), Notices, amended as follows:

Any notice required to be given or paper required to be served or filed may be personally handed to the party to be notified, ~~or~~ sent by registered or certified mail addressed to the party's last known mailing address, or sent to the party by email. ~~If mailed, a~~Any notice required to be given or paper required to be served or filed shall be deemed given, served, or filed when handed to the party, mailed to the party, or sent to the party by email, unless otherwise specified in this Manual. Notices sent by email shall include the association's request that delivery be acknowledged by the intended recipient within twenty-four (24) hours by return email. If receipt of the notice has not been acknowledged by the intended recipient within twenty-four (24) hours, the recipient will be contacted by telephone to confirm receipt and the recipient's confirmation will be noted in the file. If receipt of notices sent by email cannot be confirmed, the notices will be resent via registered or certified mail. (Revised 11/09)

Note: The following forms were administratively amended to help facilitate notification being provided to parties via email:

Form #E-1, Ethics Complaint  
Form #E-3, Reply (Ethics)  
Form #E-5, Response to Grievance Committee Request for Information  
Form #A-1, Request and Agreement to Arbitrate  
Form #A-2, Request and Agreement to Arbitration (Nonmember)  
Form #A-4, Response and Agreement to Arbitrate  
Form #A-6, Response to Grievance Committee Request for Information

- Section 23(e), Action of the Board of Directors, amended as follows:
  - (e) At the hearing before the Directors, the Chairperson of the Hearing Panel (or the Chairperson's designee) shall present a transcript of the case or, if there is no transcript, shall summarize the case. Either party shall be entitled to offer corrections to the summary. Either party may present to the Directors reasons why the Hearing Panel's recommendation should be followed or not, but no new evidence shall be received (except such new evidence as may bear upon a claim of deprivation of due process), and the appeal shall be determined on the transcript or summary. (Amended 5/09)

Note: A similar change was administratively made to Section 55(d), Request for Procedural Review by Directors.

- Section 23(j), Action of the Board of Directors, first paragraph, amended as follows:
  - (j) Upon final action by the Directors, the President shall disseminate to the complainant, the respondent, the Board of Directors, the Chairperson and members of the Hearing Panel, Board legal counsel, the President of any other Board in which the respondent holds membership, and any governmental agency as directed by the Board of Directors such notice of the action as the President deems appropriate under the circumstances ~~to effectuate the discipline prescribed~~, provided, however, that the nature, form, content, and extent of the notice shall be specifically approved by Board legal counsel prior to dissemination. Board Members, other than those specified, shall be notified only in respect to suspension or expulsion of membership of the Board Member unless the optional procedures established at the end of this Section have been adopted locally or unless notification is required to ensure compliance with the Board's bylaws (e.g. where a petition for removal of an officer or director must state the reason(s) an officer or director is deemed disqualified from further service.). (Revised 5/09)

### **Changes to the *Interpretations of the Code of Ethics***

- New Case Interpretation #12-25, Advertising Role in Sales After Changing Firm Affiliation, was adopted as follows:

REALTOR<sup>®</sup> Q was a non-principal broker licensed with ABC, REALTORS<sup>®</sup>. REALTOR<sup>®</sup> Q specialized in buyer representation. A prominent feature on her website carried the headline “I sold these – and I can help you buy or sell, too!”. Under the headline was a list of over a hundred street addresses of properties for which REALTOR<sup>®</sup> Q had found buyers.

For personal and professional reasons, REALTOR<sup>®</sup> Q chose to leave the ABC firm to affiliate with XYZ, REALTORS<sup>®</sup>. As she transitioned to her new firm, REALTOR<sup>®</sup> Q was careful to disclose the name of her new firm in a readily apparent manner on her website. Her website also continued to display the list of properties she had found buyers for during her time with the ABC firm.

REALTOR<sup>®</sup> Q's parting with ABC had been amicable, so she was surprised to receive a complaint brought by her former principal broker, REALTOR<sup>®</sup> C, alleging a violation of Article 12, as interpreted by Standard of Practice 12-7, based on her website's display of sales made while REALTOR<sup>®</sup> Q had been affiliated with ABC.

At the hearing, REALTOR<sup>®</sup> C, the complainant, noted that Standard of Practice 12-7 provides, in part, “Only REALTORS<sup>®</sup> who participated in the transaction as the listing broker or cooperating broker (selling broker) may claim to have ‘sold’ the property.” “It was ABC, REALTORS<sup>®</sup>,” REALTOR<sup>®</sup> C added, “that was the selling broker in these transactions, not our former sales associate REALTOR<sup>®</sup> Q. Her advertising our sales under the umbrella of her new firm, XYZ, REALTORS<sup>®</sup>, is confusing at best, and potentially misleading to consumers who

may get the impression the XYZ firm was involved in these transactions when that's not the case.”

REALTOR® Q defended herself and her website arguing that the fact that she had found the buyers for each of the properties listed on her website was still true, and that the only thing that had changed was her firm affiliation. “If it was true when I was licensed with ABC, then it's still true even though I'm now licensed with XYZ,” she reasoned.

The hearing panel agreed that REALTOR® Q had, in fact, sold the properties, albeit while licensed with ABC. The ad, however, suggested that the sales were made while the REALTOR® Q was licensed with XYZ, which was not the case. Consequently REALTOR® Q was found in violation of Article 12.

### **Additional Points of Interest**

1. The National Association's Professional Standards Education Seminar will be held August 26 and 27, 2010. For more information, please go to:  
[www.realtor.org/mempolweb.nsf/pages/2010PSSeminar](http://www.realtor.org/mempolweb.nsf/pages/2010PSSeminar).
2. The National Association's Mediation Training Seminar will be held April 28, 29, and 30, 2010 and December 8, 9, and 10, 2010 in Chicago. For more information, please go to:  
[www.realtor.org/mempolweb.nsf/pages/2010mediationtraining](http://www.realtor.org/mempolweb.nsf/pages/2010mediationtraining).