

Maryland Real Estate Code of Ethics

Instructional Material

The CE Shop, Inc.

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Course Introduction

Welcome to *Maryland Real Estate Code of Ethics*. Ethical real estate professionals who adhere to a high set of standards create and maintain consumer confidence and stability in an ever-changing marketplace. Recognizing the need to promote ethical business practices, the Maryland Real Estate Commission (MREC) maintains and enforces the Maryland Code of Ethics, which details the standards of conduct Maryland licensees must adhere to in their daily activities.

We begin this three-hour course with a full review of the Maryland and National Association of REALTORS® (NAR) codes of ethics, because even if you're not a member of NAR, some of your colleagues certainly are. And if they're rising to NAR standards, so should you. In addition, we'll review the enforcement processes and penalties associated with both codes.

We also discuss several workplace case studies that illustrate the codes in practice and touch on such relevant matters as agency, fiduciary responsibilities, disclosures, and more. Finally, we wrap up your course with a review of state of federal laws enacted to protect consumers from predatory lenders, property flippers, and unscrupulous foreclosure consultants.



Course Objectives

Upon completion of this course, you will be able to:

- Explain the history of the Maryland Real Estate Code of Ethics and its relationship to the NAR Code of Ethics.
- Recognize the provisions in the Maryland Code of Ethics and compare them to the articles of the NAR Code of Ethics; explain the critical role licensees play in protecting the public against fraud and misrepresentation; and apply the state's ethical rules to real-life scenarios.
- Explain the interpreting and enforcing entities of the Maryland and NAR codes of ethics, including the handling of the complaint process and matters relating to public trust.
- Identify the possible penalties for violating the Maryland and NAR codes of ethics.
- Describe types of fraud prevalent in real estate and the legislative and regulatory efforts to stop these, including key provisions of the Protection of Homeowners in Foreclosure Act.

Unit 1: An Introduction to the History of the Maryland Real Estate Code of Ethics and the NAR Code of Ethics

Introduction

Let's begin with an introduction to the Maryland Code of Ethics, including a look at Title 17-207 Code of Ethics and Title 09, Subtitle 11 Real Estate Commission. We'll also examine the origins and evolution of the NAR Code of Ethics and Standards of Practice.



[Maryland Code of Ethics; NAR Code of Ethics and Standards of Practice](#)



Objective

Upon completion of this unit, you will be able to:

- Explain the history of the Maryland Real Estate Code of Ethics and its relationship to the NAR Code of Ethics.

Lesson: The History of the Maryland Code of Ethics

The Maryland Code of Ethics

Title § 17-207 of the Maryland Code empowers the Maryland Real Estate Commission (MREC) to adopt a code of ethics and set the professional standards for Maryland real estate licensees. Title §17–207 states:

(a) To protect the interests of the public, the Commission shall adopt, by regulation, a code of ethics to set standards of conduct for all individuals licensed under this title.

(b) The Commission:

(1) at least once every 2 years, shall provide a copy of the code of ethics to each licensee; and

(2) on request of any person, shall make available a copy of the code of ethics to that person.

A Three-Part Code

The Maryland Code of Ethics can be found in the Code of Maryland Regulations (COMAR) under Subtitle 11: Real Estate Commission. Maintained and enforced by the MREC, the code details the standards of conduct licensees must follow in their daily activities. The code is divided into three categories:

- Relations to the Public
- Relations to the Client
- Relations to Fellow Licensees



[Maryland Code of Ethics](#)

Code Updates

From time to time, the commission updates the code to reflect current state and federal laws, as well as the changing needs of consumers.

For instance, in January 2017, MREC proposed an addition to the code requiring that licensees verify that service providers are properly licensed before recommending them. The proposed COMAR 09.11.02.01(J) states:

J. If the licensee offers the name of a service provider, including, but not limited to, a mortgage lender or mortgage broker, a real estate appraiser, a home inspector, a home improvement contractor, a plumber, an electrician, or a heating/ventilation/air conditioning/cooling (HVAC) contractor, in the provision of real estate brokerage services, the licensee shall first verify that the provider's state license to perform those services is current. The licensee shall also give the person the electronic link to the licensing record information as well as the date on which the licensee last verified the information, so that the person may verify continued license status before entering into a contract with the provider.



[Maryland Real Estate Commission Website](#)

Lesson: The History of the NAR Code of Ethics and Standards of Practice

The Golden Rule

Even if you're not a member of NAR, some of your colleagues likely are, so it's important to know the additional code of ethics that they're agreed to abide by—and to rise to the occasion yourself. NAR relies on its Code of Ethics to ensure that all REALTORS® conduct business honestly and with the highest degree of integrity. Based on the Golden Rule—"Whatsoever ye would that others should do to you, do ye even so to them"—the Code of Ethics spells out the fundamental principles of an honest real estate practice. The code also outlines the behaviors and actions expected of REALTORS®.

Integrating the code into your professional practices has many benefits. By maintaining the best interests of your clients, your reputation will remain spotless, and hopefully clients will recommend their friends and family to you. Above all, incorporating the Golden Rule into your professional life is the right thing to do.

History of the Code

The NAR adopted a Code of Ethics at its annual convention in Winnipeg, Manitoba, on July 29, 1913. Yes, you read that right. This historic milestone took place in Canada, rather than in the U.S. This occurred because several local and provincial real estate associations in Canada were members of NAR once upon a time.



NAR members agree to abide by the conduct outlined in the Code of Ethics. This means that if you're a licensed real estate professional, but you aren't a REALTOR®, then you haven't agreed to abide by the code. But as we said before, if your competition is abiding by it, you should too.

A Living Document

As you can imagine, today's code has changed quite a bit from the one adopted more than a 100 years ago. In fact, as the industry evolves and changes, NAR keeps the Code of Ethics under constant scrutiny and care. NAR has a careful process in place to ensure that the code stays as up to date as possible:

- When needed, amendments to the articles of the code, the standards of practice (SOPs), and the official interpretations are made at the NAR Midyear Meetings and the REALTORS® Conference and Expo. (Interpretation and changes to the code can only be made at the national level.)
- The NAR Interpretations and Procedures Subcommittee frequently makes recommendations to the Professional Standards Committee about enhancements to professional standards procedures and to the Code of Ethics.
- All proposed changes to the articles of the code and to the policies and procedures by which the code is enforced must be approved by the board of directors. Amendments to the 17 articles must also be approved by the delegate body.

The Latest and Greatest

The Code of Ethics and Standards of Practice is updated annually, with a revised version appearing on the NAR website in January of each year.

Of course, crucial revisions can be made at any time, so it's important to stay current on industry changes and guidelines. For instance, in 2013, NAR became one of the earliest national organizations to include gender identity as a protected class.

Course activities and exams contain many examples drawn from the articles, standards of practice, and case interpretations. It will be helpful to review this Code of Ethics before the exams to refresh your memory.



[NAR Code of Ethics](#)

The Preamble

The preamble, which begins with the words “Under all is the land,” allows all who read it to know what the public, customers, clients, and other REALTORS® should expect from REALTORS®. The preamble discusses the broader perspectives of how widespread property ownership is good for the country, stating:

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.

The preamble also summarizes the philosophies and goals that drive the Code of Ethics. According to NAR, the aspirational goals include:

- Becoming and staying informed about federal, state, and local laws, as well as of industry policies and procedures
- Staying informed on current market conditions
- Maintaining and improving the standards of the profession
- Sharing the responsibility for the integrity and honor of the profession
- Identifying and eliminating practices that damage the public or might discredit or bring dishonor to the profession
- Properly handling requests for opinions and unsolicited criticism
- Actively participating in the enforcement of laws, regulations, and the Code of Ethics
- Seeking and honoring agreements related to the exclusive representation of clients
- Sharing knowledge and experience with others
- Refraining from taking an unfair advantage over competitors



The preamble may not be used as the basis for disciplining REALTORS®. Any complaint must be based on a violation of one of the articles.

Ethical Principles

The NAR code combines broad ethical principles with practical guidelines. The Code of Ethics includes 17 articles, each of which is supported and expanded upon by numerous standards of practice that further illustrate how the code should be used to guide your professional conduct

- Articles are broad statements of ethical principles.
- Standards of practice support, interpret, and amplify the articles.
- Case interpretations further clarify the code and its articles and support local boards during hearings on ethics violations, by reviewing real situations which resulted in an ethics complaint, along with the final decision on the matter.

Just like the Maryland Code of Ethics, the NAR Code of Ethics is broken into three sections. These sections include:

- Duties to Clients and Customers
- Duties to the Public
- Duties to REALTORS®

These sections are designed to ensure respect for the public, respect for property, and respect for other industry professionals.

Lesson: A Licensee's Duties to Protect the Public, Peers, and Property, Part I

Two Codes Offer Guidance for Professionalism

Just like the Maryland Code of Ethics, the NAR Code of Ethics is broken into three sections. These sections include:

- Duties to Clients and Customers
- Duties to the Public
- Duties to REALTORS®

These sections are designed to ensure respect for the public, respect for property, and respect for other industry professionals: public, property, and peers.

Duties to Clients and Customers: Article 1 of the Maryland Code of Ethics

Among other duties, Article 1 of the Maryland Code of Ethics states that REALTORS®:

- Must promote the interests of their clients, even when acting as principals in a real estate transaction.
- Must not mislead a property owner as to market value to secure a listing.
- Must not mislead buyers or tenants as to savings or other benefits that may be realized by using the REALTOR®'s services.

- Must only represent both sides of a transaction with full disclosure and informed consent of all parties.
- Must submit offers and counter-offers as quickly as possible.
- Must preserve confidential information of their clients’.
- Must, when managing a client’s property, competently manage and protect the property against foreseeable losses.
- Must, when listing a property, disclose the compensation offered to cooperating agents, the fact that the cooperating agents may represent the interests of the buyers/tenants.
- Must advise buyer clients of the REALTOR®’s company policies regarding cooperation, the amount of compensation to be paid by the client, the potential for offsetting compensation from other brokers, the seller, or landlord, any potential to act as a disclose dual agent, and must advise the buyer/tenant that the sellers or sellers’ representatives may not treat the client’s confidential information as confidential.
- When acting as a listing agent, disclose the existence of other offers on the property (with the seller’s approval) including whether the other offers were obtained by the listing licensee, a member of the listing licensee’s firm, or a cooperating broker.
- Must not use, permit, or enable others to use listed or managing property other than by the terms authorized by the property owner.

In addition, fees for preparing appraisals or other valuations may not be contingent upon the amount of the appraisal or valuation.

Duties to Clients and Customers: Article 2 of the Maryland Code of Ethics

Article 2 prohibits REALTORS® from exaggeration, misrepresentation, or concealment of pertinent facts regarding the property. They are expected to discover and disclose reasonably apparent adverse facts concerning the transaction.

REALTORS® must not be party to falsifying pertinent information in documents.

Duties to Clients and Customers: Article 3 of the Maryland Code of Ethics

Among other items, Article 3 requires REALTORS® to cooperate with other brokers except when it’s not in the client’s best interest. Cooperation doesn’t require compensation. When compensation is offered to cooperating brokers, any change to that compensation must be communicated before an offer is made, but the licensees may agree to alter cooperation with mutual consent. Listing brokers must disclose to cooperating brokers any dual or variable commission arrangements (such as when a listing agent offers a seller a lower commission rate if the agent also represents the buyer). Buyer/tenant representatives must make this information available to their clients.

REALTORS® must not misrepresent the availability of a property, and must not provide access to a property on terms other than those agreed to by the owner or listing broker. Per 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. “

Lesson: A Licensee's Duties to Protect the Public, Peers, and Property, Part II

Duties to Clients and Customers: Articles 4 -9 of the Maryland Code of Ethics

- Article 4 of the Maryland Code of Ethics requires REALTORS® to disclose any personal interest in writing prior to making an offer on a property (e.g., themselves or family members as buyers).
- Article 5 prohibits REALTORS® from offering property valuations when a conflict of interest exists unless that conflict of interest is specifically disclosed to all affected parties.
- Article 6 prohibits REALTORS® from making third-party referrals in which they have an interest without disclosing that interest.
- Article 7 prohibits REALTORS from accepting compensation from more than one party without disclosure and the informed consent of the parties.
- Article 8 requires REALTORS® to keep client funds, escrows, and trust funds separate from their own funds.
- Article 9 requires real estate contracts to be in writing and in clear, unambiguous terms, and for copies of agreements to be provided to each signing party. This includes listing and representation agreements, purchase agreements, and leases), and in particular when providing these contracts electronically. It also requires REALTORS® to use reasonable care to ensure that transactional documentation be kept current through written extensions or amendments.

Duties to the Public: Article 10 of the Maryland Code of Ethics

Per Article 10 of the Maryland Code of Ethics, REALTORS®:

- May not deny professional services based on protected class status nor be party to any act of discrimination based on protected class status.
- May not volunteer information regarding the protected class composition of a property in connection with a sale or lease; when not in connection with a sale or lease, demographic information from reliable sources may be provided if the intent does not conflict with Article 10. Sources must be cited, along with any additions, deletions, modifications, interpretations, or other changes.
- May not advertise in a discriminatory manner.

Duties to the Public: Article 11 of the Maryland Code of Ethics

Article 11 is all about competence and not acting outside a REALTOR®'s field of expertise. For instance, when preparing an opinion of property value, the licensee must be knowledgeable about the property and area, and have access to data necessary to form an accurate opinion. A licensee must disclose a lack of knowledge in any one of these areas to the party requesting the opinion of value before providing same.

If the opinion of value is requested from a source other than a seller intending to list or a buyer intending to buy, it must include (per Standard of Practice 11-1):

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*

Duties to the Public: Article 11 of the Maryland Code of Ethics (continued)

Article 11 goes on to require competence in other areas (besides merely property valuation) to protect the rights and interests of clients and the public, taking into account the complexity of the transaction, “the availability of expert assistance and, where the REALTOR® acts as an agent or subagent, the obligations of a fiduciary.” (Standard of Practice 11-2)

Standard of Practice 11-3 regards fees licensees may charge for consulting services, other than commission. The advice must be made objectively and the fee may not be contingent on the substance of the advice or counsel. Separate compensation may also be paid for brokerage services with prior agreement between the client and REALTOR®.

Duties to the Public: Article 12 of the Maryland Code of Ethics

Article 12 relates to honesty, truthfulness, and disclosure of license status in advertising, marketing, and other representations. In addition, Article 12 specifies the following.

- When using the word “free” in advertising, all terms must be simultaneously disclosed.
- Offering premiums, prizes, and other inducements to list, sell, buy, or lease is acceptable only when all terms and conditions of the offer are made clear.
- REALTORS® may not offer a property for sale without authority, nor quote a price different from that agreed upon with a seller/landlord client.
- The REALTOR®’s firm name must be apparent in any advertising; this may be via a link for electronic advertising.
- When advertising unlisted property in which the REALTOR® has an ownership interest, disclosure of same is required.
- No REALTOR® may claim to have “sold” a property unless he was the listing broker or selling broker. Prior to closing, a cooperating broker may post a sold sign only with the consent of the listing broker.
- Websites belonging to REALTORS® and non-member licensees must be truthful, not misleading, and kept up to date. Firm names must be posted on the firm’s site and licensees’ sites in a readily apparent manner, together with state of licensure.

Duties to the Public: Article 12 of the Maryland Code of Ethics (continued)

The obligation of REALTORS® to present a true picture in advertising extends to online content, images, URLs, and domain names. Specifically, members are prohibited from:

- Deceptive or unauthorized framing of real estate brokerage websites
- Presenting content in any way that results in deception or misleading the public
- Presenting content developed by others without appropriate attribution or permission
- Misleading consumers in any way, including a misleading use of images
- Using or registering URLs or domain names that mislead
- Displaying credentials, designations, or certifications to which they are not entitled

If a REALTOR® intends to share or sell consumer information gathered online, she must disclose that possibility in a reasonably apparent manner.

Duties to the Public: Articles 13 and 14 of the Maryland Code of Ethics

Article 13 states that REALTORS® must not engage in unauthorized practice of law (e.g., giving legal advice) and must recommend legal counsel to the parties when appropriate.

Article 14 requires cooperation in any professional standards proceeding or investigation, including providing all pertinent facts before the hearing panel and not taking any action to disrupt or obstruct the process.

Duties to Peers: Article 15 of the Maryland Code of Ethics

Article 15 prohibits REALTORS® from recklessly making false or misleading statements about other real estate professionals, their businesses, or their business practices. This includes prohibiting the filing of false or unfounded ethics complaints, republishing or repeating misleading statements made by others, and it requires publishing a clarification and removing statements made by others on electronic media the REALTOR® controls.

Example

Nan has a website called Nan Sells Houses. On her website is a blog that allows visitors to comment. One visitor posted misleading statements about one of Nan's competitors. It's Nan's duty to correct or remove the statement.

Duties to Peers: Article 16 of the Maryland Code of Ethics

Article 16 prohibits contractual or agency interference with exclusive representation agreements. While competitiveness isn't discouraged, Article 16 expressly calls unethical two types of solicitations:

- Solicitation by telephone or in person of property owners identified by a real estate sign, multiple listing posting, or other information as having an exclusive listing with another REALTOR®
- Mail solicitations targeted at listed properties.

Before entering into a representation agreement, REALTORS® must make a reasonable effort to determine whether the prospect is already under an exclusive agreement to provide the same type of service.

Key Points

- Title § 17-207 of the Maryland Code empowers the Maryland Real Estate Commission (MREC) to adopt a code of ethics and set the professional standards for Maryland real estate licensees.
- Maintained and enforced by MREC, the code details the standards of conduct licensees must follow in their daily activities.
- The Maryland Code of Ethics is divided into three parts: relations to the public, relations to the client, and relations to fellow licensees.
- From time to time, the commission updates the code to reflect current state and federal laws, as well as the changing needs of consumers.
- The NAR Code of Ethics is based on the Golden Rule and was adopted in 1913.
- The NAR Code of Ethics was designed to evolve to meet the needs of a changing culture.
- When needed, amendments to the articles of the code, the standards of practice (SOPs), and the official interpretations are made at the NAR Midyear Meetings and the REALTORS® Conference and Expo.
- All proposed changes to the articles of the code and to the policies and procedures by which the code is enforced must be approved by the board of directors. Amendments to the 17 articles must also be approved by the delegate body.
- The preamble, which begins with the words “Under all is the land,” allows all who read it to know what the public, customers, clients, and other REALTORS® should expect from REALTORS®.
- The preamble may not be used as the basis for disciplining REALTORS®. Any complaint must be based on a violation of one of the articles.
- Articles are broad statements of ethical principles.
- Standards of practice support, interpret, and amplify the articles.
- Case interpretations further clarify the code and its articles and support local boards during hearings on ethics violations, by reviewing real situations which resulted in an ethics complaint, along with the final decision on the matter.

Unit: The Maryland Real Estate Code of Ethics, the NAR Code of Ethics, and Workplace Case Studies

Introduction

Now that we've looked at the histories of the Maryland Code of Ethics and the NAR Code of Ethics, let's continue with a review of the Maryland Code of Ethics, which, as we discussed, can be found in the Code of Maryland Regulations (COMAR) under Subtitle 11: Real Estate Commission.

Throughout this unit, we'll look at the rules and regulations included in the Maryland Code of Ethics. In addition, we'll review the NAR Code of Ethics and Standards of Practice, with an eye toward how the standards set forth there compare and contrast with those set forth in the Maryland Code of Ethics. We'll also apply the code to relevant workplace case studies.



Objective

Upon completion of this unit, you will be able to:

- Recognize the provisions in the Maryland Code of Ethics and compare them to the articles of the NAR Code of Ethics; explain the critical role licensees play in protecting the public against fraud and misrepresentation; and apply the state's ethical rules to real-life scenarios.

Lesson: The Knowledgeable and Ethical Agent

Knowledge Is Power

The first two items in the Relations to the Public section in the Maryland code (COMAR 09.11.02.01) involve your expertise as a licensee. Holding a real estate license elevates you in the minds of the public. You are the expert. As such, you must stay up-to-date on all matters affecting real estate—locally, state-wide, and nationally—to ensure you're able to serve your clients effectively.

COMAR 09.11.02.01(A) and (B):

A. The licensee shall remain informed of matters affecting real estate in the community, the State, and the nation.

B. The licensee shall be informed on current market conditions in order to be in a position to advise clients as to the fair market price.

Protecting the Public

You're also charged with protecting the public against unethical practices. If a client were interested in an "alternative" transaction, do you know whether or not it constitutes fraud? Are you comfortable explaining to a buyer why his "creative financing idea" is fraudulent and severing your relationship with him if he wants to proceed anyway?

Licensees like you protect the industry by eliminating shady and unethical practices. They police one another, ensuring that all licensees live up to the highest standards of integrity. COMAR 09.11.02.01(C) states:

C. The licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field. The licensee shall endeavor to eliminate in the community any practices which could be damaging to the public or to the dignity and integrity of the real estate profession. The licensee shall assist the commission charged with regulating the practices of brokers, associate brokers, and salespersons in this State.

Back to the Preamble

The preamble of the NAR Code of Ethics summarizes the philosophies and goals that drive the NAR code, including the importance of remaining informed about matters relating to the real estate industry. The preamble states, in part:

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.

Legal Advice

While you must stay informed so that you can provide your clients and customers with accurate guidance and support, you should be careful not to inadvertently provide legal advice.

Article 13 of the NAR code prohibits REALTORS® from engaging in the unauthorized practice of law. The code goes on to recommend the use of legal counsel to clients and customers when their interests require it. Basically, this guideline protects the public from well-intended but potentially flawed legal advice from someone who isn't qualified to actually give it. Being honest and advocating for your client includes understanding your own limits.

Article 13 states:

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.

Case Study: Protecting the Public

Margo accepted a new listing for a property owned by Helena, an 85-year-old woman who lived alone. Helena gave written authorization to install a lockbox at her home for showings, but she requested that showings take place by appointment only.

One day, Doug, a salesperson with another brokerage, called CSS to schedule an appointment for a showing. At this time, he received a one-day security code to open the lockbox for a specific period of time.

Later that same day, perspective buyers Mitch and Regina Sanders arrived at the property for a showing. They were not accompanied by a licensed salesperson. They proceeded to use Doug's lockbox code to attempt to access the property.

When Helena heard the lockbox being opened, she became alarmed and went to the door. She was frightened to find buyers who were not accompanied by a licensed agent trying to access her property.

Doug later admitted that he gave his code to another salesperson—Ryan—who had agreed to show the property on Doug's behalf. Ryan, who was running late to the showing, thought the property was vacant, so he gave the code to the would-be buyers.

MREC found Doug to be in violation of COMAR 09.11.02.01(C) and 09.11.02.02(A). In addition, he was found to be in violation of §17-322(b)(25), (32), and (33), as well as §17-532(c)(1)(vi) and (v).

Doug's license was suspended for six months, and he agreed to pay a civil penalty of \$500 within 30 days.

Lesson: Material Facts and Disclosures

Material Facts

Being informed about the properties you list and sell includes doing your research on property details. When you agree to list a property, you must make a reasonable effort to gather all material facts affecting the property. This fact-finding effort could include investigating neighborhood bylaws, a home's property tax history, or any other details your clients need to make well-reasoned decisions.

COMAR 09.11.02.01(D) states:

D. The licensee shall make a reasonable effort to ascertain all material facts concerning every property for which the licensee accepts the agency, in order to fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of material facts.

Back to the Code

Article 2 of the NAR Code of Ethics also stresses the importance of proper disclosure practices. Article 2, which is supported by five SOPs, states:

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.

Disclosure Issues

A material fact is a problem with a property that would have a negative impact on the property value or pose an unreasonable risk to the people who will reside in it. A material fact is one that might determine whether or not a particular buyer client would purchase a particular property.

A material fact might also be a factor in determining the initial sales price that might be offered. Known conditions that may affect the health and/or safety of a subsequent owner of a property are material facts that must be disclosed. This would apply to a condition that might not be readily discovered or easily seen by a potential buyer. Part of a listing agent's responsibility is advising clients of their responsibilities to disclose all known material facts.

While these definitions are simple enough, the problems stemming from disclosure issues are plentiful. In fact, an NAR study revealed that almost 70% of the legal charges against real estate professionals pertain to misrepresentation, negligence, or fraud relating to the disclosure of material facts about a property. This is significant. It does not matter if charges are dismissed or upheld—if a case is brought against you, you are sure to lose considerable time and money.



Proper disclosures are essential to risk management. Of course, for a disclosure to be most effective, it needs to be in writing. Make sure you are prepared to get all your disclosures in writing.

Case Study: Disclosure of Material Facts

Max Smith entered into an agreement to purchase a property at 1818 Chesterfield Lane. While the MRIS listing indicated that the property was subject to a monthly HOA fee, a Homeowner's Association Notice was not included with the contract of sale.

After the home inspection, the seller and Mr. Smith agreed to a "general addendum" to increase the contract price by \$10,000. The money would be held in escrow by the title company until a contractor—the listing agent's husband—could install a new roof and repave the walkway and driveway.

On April 10, the seller ordered the HOA disclosures and documents package. On April 11, a new asphalt driveway was installed. On April 12, at the settlement table, Mr. Smith was finally given the HOA disclosures and documents. Neither licensee advised Mr. Smith to delay the settlement until he had the opportunity to review the disclosures and documents. (Note that the Maryland Homeowner's Association Act specifies that a buyer should be given such documents within 20 days of entering into the contract of sale.)

On April 22 of the following year, Mr. Smith got a letter from the neighborhood HOA informing him that his asphalt driveway was a violation and that he had 20 days to correct the matter. Mr. Smith learned that it would cost him \$5,700 to replace the new asphalt driveway with a concrete one in order to comply with HOA rules.

MREC ultimately found that both the buyer's agent and the listing agent violated §17-322(b)(4), (25), (32), and (33), in addition to §17-532 Duties to Client (c)(1)(iii) and (vi). They also were found to be in violation of the state code, specifically COMAR 09.11.02.01(D) and 09.11.02.02(A).

Each licensee was ordered to pay the buyer \$2,850 within 30 days. Failure to pay would result in the automatic license suspension until the payment was made.

Property Disclosure and Disclaimer Statement

Learning and following correct material fact disclosure procedures will help you to close more sales while you satisfy buyers' and sellers' needs alike. In Maryland, most sellers are required to complete a property disclosure and disclaimer statement form prior to the transfer of a property. This document helps the seller outline the property's condition at the time of the proposed transfer and includes all material facts about the property known by the seller.

Per COMAR 09.11.02.02(I), buyers need to have the property disclosure and disclaimer statement in hand before submitting an offer. Advise your buyer clients not to submit an offer to purchase unless they have a copy of disclosure statement.

According to the code, if your clients make an offer on a property before they've received the statement, and this failure results in the contract becoming voidable, then you can be considered to have failed to protect and promote their interest



Take the time to review the property disclosure and disclaimer statement with your buyer clients to ensure they understand everything that appears on it. If anything odd or confusing appears on the statement, follow up with the listing agent to clear up the matter before an offer is submitted.

Lesson: Discrimination and Protected Classes

Don't Be a Part of the Problem

Discrimination has no place in the industry. If any of your MLS listings currently include the phrase "great for families," or you find yourself prioritizing the properties to show your buyers based on whether the neighborhood is a good match for their cultural demographic, you need to brush up on your fair housing guidelines.

Being honest and dealing fairly with the public leaves no room for discrimination, even if your actions are well-intentioned.

Per COMAR 09.11.02.01(E):

E. The licensee, acting as agent, may not discriminate in the sale, rental, leasing, trading, or transferring of property to any person or group of persons in violation of State Government Article, §20-402, Annotated Code of Maryland.

Article 10

Article 10 of the NAR Code of Ethics also stresses the importance of equality. The article states:

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.

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.

Protected Classes in Maryland

The state of Maryland recognizes 10 protected classes. Per §20-702 of the Annotated Code of Maryland, the state aims to “provide for fair housing throughout the state, to all its citizens, regardless of race, color, religion, sex, familial status, national origin, marital status, sexual orientation, gender identity, or disability.”

The state of Maryland recognizes more protected classes than the federal Fair Housing Act, which only recognizes seven, including race, color, religion, sex, familial status, national origin, and disability.

Note: The Anne Arundel County Council passed [Bill 55-19](#), which added seven protected classes in Anne Arundel County that are in addition to the federal and state protected classes. These additional classes are:

1. Age
2. Ancestry
3. Citizenship
4. Gender expression
5. Creed
6. Occupation
7. Source of income

This bill’s effective date is October 27, 2019.

Lesson: Honesty and Truthfulness

Avoid Dishonesty

Being honest and truthful in your dealings with the public is a job requirement. Per COMAR 09.11.02.01(F):

F. The licensee may not be a party to the naming of a false consideration in any document.

Article 2

Article 2 of the NAR Code of Ethics echoes this notion of avoiding exaggeration, misrepresentation, and concealment. Standard of Practice 2-4 states:

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.

Lesson: Advertising Guidelines and Basic Requirements

Accuracy and Transparency

The Maryland Code of Ethics lays out several key advertising rules. First and foremost, you need to make certain that your advertisements contain honest and truthful information. Additionally, the code puts forth the following requirements:

- Brokers must include their name or brokerage name, as registered with MREC, in all of their advertisements.
- Associate brokers and salespersons cannot use their individual names in advertisements unless the connection with their broker is obvious.

Per COMAR 09.11.02.01(G):

G. Advertisement.

(1) The licensee in advertising shall be especially careful to present a true picture. A broker may not advertise without disclosing the broker's name or the company name as it appears on the license. A broker may not permit associate brokers or salespersons to use individual names unless the connection with the broker is obvious in the advertisement.

Phone Numbers

Associate brokers or salespersons who include their personal telephone numbers in an advertisement must also include their broker's or branch manager's phone number.

Per COMAR 09.11.02.01(G)(2):

(1) Effective October 1, 2004, an associate broker or salesperson may not use an individual telephone number or email address in an advertisement, as defined in Business Occupations and Professions Article, §17-527.2(a)(3), Annotated Code of Maryland, unless the identified telephone number of the broker or branch office manager also appears in the advertisement.

What's in a Name?

Your name or trade name, as registered with MREC, must prominently appear on your for sale signs, business cards, and office signs, as well as any document connected to your real estate activities.

In addition, in accordance with §17-527.2, the name of your broker must also be included in all of your advertisements.

(2) A licensee using a trade name on a for-sale sign, business card, office sign, sales contract, listing contract, or other document relating to real estate activities as defined under Business Occupations and Professions Article, §17-101, Annotated Code of Maryland, shall clearly and unmistakably include on any of these documents his name, or trade name, as registered with the Commission.

Article 12

Article 12 and its 13 supporting SOPs are designed to ensure that, when it comes to marketing properties, you use advertising to inform the public about listings and to induce interest in them. Always keep in mind that you're obligated to present a true picture of properties in your advertising and in all representations to the public.

Standard of Practice 12-5 states:

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.

Penalties

MREC can discipline licensees who commit any of the following violations:

- Failing to disclose their name in an advertisement
- Advertising in a misleading or untruthful manner
- Failing to identify the broker for whom they're working (associate brokers and salespersons)

If you commit any of these violations, you could face a stiff penalty from MREC—including the potential suspension or revocation of your license. Associate brokers and salespersons should have their advertising reviewed by the broker.

More Penalties

Per §17-322, the commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license for violations.

(b) Subject to the hearing provisions of § 17-324 of this subtitle, the Commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee:

(18) as a real estate broker, an associate real estate broker, or a real estate salesperson, advertises the sale or rent of or an offer to buy real property while failing to disclose in the advertisement the name of the advertiser and the fact that the advertiser is a real estate broker, an associate real estate broker, or a real estate salesperson;

(19) advertises in any misleading or untruthful manner or violates § 17-527.2 of this title;

(20) as a licensed associate real estate broker or a licensed real estate salesperson, advertises the sale or rent of or an offer to buy real property in the name of the associate broker or the salesperson while failing to disclose in the advertisement the name of the real estate broker on behalf of whom the associate broker or the salesperson is acting.

Case Study: Advertising

Arnold Hayes, a broker for ABC Home Sellers, placed a newspaper advertisement that failed to include the registered trade name of his brokerage. The MREC investigated the matter and found that Hayes violated the provisions in COMAR 09.11.01.19C. He was ordered to pay a fine of \$750.

Lesson: Financial Obligations and Disclosures

Get It in Writing

To protect your clients and yourself, it's absolutely essential that you put all financial obligations and commitments connected to your real estate transactions down in writing. These contractual details need to be clear, complete, and accurate.

Written agreements must be given to all parties within a reasonable time frame. All real estate documents must be signed in your own name, not in the name of a group or a team.

Per COMAR 09.11.02.01(H) and (I):

H. For the protection of all parties with whom the licensee deals, the licensee shall see to it that financial obligations and commitments regarding real estate transactions are in writing, expressing the exact agreement of the parties, and that copies of these agreements are placed in the hands of all parties involved within a reasonable time after the agreements are executed.

I. All real estate documents shall be signed by a licensee in the licensee's own name, and may not be signed in the name of a group or team.

Article 9

Article 9 of the NAR Code of Ethics also encourages you to always secure agreements in writing. What's more, it requires you to provide copies of any document to the person who signed that document. Article 9, which is supported by two SOPs, states:

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)

Case Study: Written Agreements

In 2012, Peggy retained Don to represent her upcoming home purchase. Peggy found a home she loved, but there was a sinkhole in the backyard. Don contacted the seller's agent, Roger, who told Don that they were aware of the sinkhole, and it would be repaired. Neither Don nor Roger added this information to the written contract. At closing, the sinkhole was still not repaired.

Both Don and Roger admitted that they failed to see that all financial obligations and commitments regarding the transaction were put in writing, and they violated the Maryland Code of Ethics. They both received reprimands against their licenses and were required to take an additional three-hour course on contracts. They had to fix the sinkhole, splitting the \$1,350 bill.

The bottom line is this: Put all financial obligations and commitments in writing, make sure all parties to the transaction sign the agreement, and give signed copies of the agreement to each party.

Lesson: The Needs of the Client vs. the Needs of the Agent

The Client Comes First

You have a duty to protect and promote the interests of your clients, while at the same time respecting the rights of other parties to a transaction.

COMAR 09.11.02.02(A) and (B) state:

A. In accepting employment as an agent, the licensee shall protect and promote the interests of the client. This obligation of absolute fidelity to the client's interest is primary, but it does not relieve the licensee from the statutory obligations towards the other parties to the transaction.

B. In justice to those who place their interests in the licensee's care, the licensee shall endeavor always to be informed regarding laws, proposed legislation, governmental orders, and other essential information and public policies which affect those interests.

Article 1

Article 1 of the NAR Code of Ethics, along with its 16 SOPs, is designed to further protect and promote clients' interests. This is, after all, your primary obligation to your clients. Article 1 states:

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.

Case Study: The Needs of the Client

Ronald Pearson, a Maryland broker, was the listing agent for the Miller family in the sale of their home in Chesapeake Beach. The home went on the market for \$189,000, and within a few weeks, the Millers

received and accepted an offer of \$173,000 from the Smith family. The home inspection revealed several needed repairs, and the Millers agreed to credit the Smiths \$5,000 at closing to cover these expenses.

Before the closing took place, the sellers received another offer for the home, this time from a client represented by Pearson, the listing agent. Even though his seller clients were already under contract to sell the home, Pearson advised them to accept the second offer. They took his advice, which upset the Smiths and led to months of costly litigation for all the parties involved in the transaction.

MREC investigated the matter and found that Pearson egregiously violated the Code of Ethics. It concluded that he failed to protect the interests of his clients and that his unethical conduct damaged the integrity of the real estate profession. Pearson, a broker for 18 years, was fined \$8,000 and had his license revoked.

An Important Difference

Note an important difference between the NAR Code of Ethics and Maryland regulations. Standard of Practice 1-5 found in the NAR Code of Ethics states the following:

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.

However, single licensee dual agency is prohibited in Maryland, because it's extremely challenging for a single person to fairly and equally represent the interests of both parties in a transaction.

When a dual agency situation arises in Maryland, the broker or his or her designee must assign one intra-company agent to work for the seller and another to work for the buyer. As a result, each transaction party receives the proper guidance and care. This type of relationship is only acceptable if all parties have first been advised in writing that the licensees are part of the same team, and that the team could have a financial interest in the outcome of the transaction.

§17-546(A) and (B) of the Maryland Broker's Act states:

(a) A real estate broker or a designee of the real estate broker may designate two members of a team as intracompany agents for the seller and the buyer in the same transaction if the parties have first been advised in writing that the licensees are part of the same team and the team could have a financial interest in the outcome of the transaction.

(b) If a broker's designee designates intracompany agents under subsection (a) of this section, the broker's designee may not be a member of the real estate team.

Case Study: Dual Agency

Mary Jones filed a complaint with MREC against John Smith, a licensed salesperson. John was the listing agent for a property on Aisquith Court. Mary telephoned John and asked for help purchasing a home. John showed her many homes, including his listing on Aisquith Court. Mary decided to purchase John's listing

and was the sole purchaser in the transaction. John failed to inform the buyer and his broker that he was acting as a dual agent.

During a subsequent visit to the home, Mary's husband, Victor, mentioned to John that he thought there might have been some flood damage to the home. Mary asked John if she should get an inspection. John told Mary that it would be a waste of time because the home was virtually new. However, according to the property listing, the home was eight years old.

John prepared the offer and had Mary sign the documents. She did not read them, because English was her second language and she didn't read it very well. There was no issue with verbal communication, as John spoke Mary's native language. Mary closed the sale and moved into her home.

Less than a year later, the home flooded. Mary's insurance company paid \$40,118 in damages, and Mary paid an additional \$11,500 out of her own pocket.

The administrative law judge for MREC found that John was in violation of agency laws that require the disclosure of dual agency, as well as the assignment of intra-company agents by the designated broker. John also violated laws that require licensees to treat all parties in a transaction honestly and fairly. In addition, John made a willful misrepresentation about the home's age.

MREC suspended John's real estate license for six months and ordered him to pay \$5,000 in fines. Additionally, Mary received \$11,500 from the Guaranty Fund, which John had to reimburse.

Lesson: Compensation and Special Accounts

Money Matters

You cannot accept compensation from more than one party to a transaction without the full knowledge of all of the transaction's parties. For example, the buyer's broker could not receive a commission from the seller's broker as well as a cash bonus from the property seller without everyone's knowledge.

Per COMAR 09.11.02.02(C):

C. A licensee may not accept compensation from more than one party to a transaction without the full knowledge of all the parties.



A buyer's agent needs to obtain his or her client's permission—typically included in the buyer representation agreement—to accept a commission that is offered by the seller's broker. Similarly, the property seller's permission is required to pay the buyer's agent a commission.

Compensation and Agency

Maryland Code § 17-534 states:

(d) The payment or promise of payment of compensation to a licensed real estate broker by a seller, lessor, buyer, or lessee, or by a licensee acting for a seller, lessor, buyer, or lessee:

(1) is not determinative of whether a brokerage relationship has been created or exists; and

(2) does not create or determine the existence of a brokerage relationship between a broker and a seller, lessor, buyer, lessee, or licensee.

(d) The payment or promise of payment of compensation to a licensed real estate broker by a seller, lessor, buyer, or lessee, or by a licensee acting for a seller, lessor, buyer, or lessee:

(1) is not determinative of whether a brokerage relationship has been created or exists; and

(2) does not create or determine the existence of a brokerage relationship between a broker and a seller, lessor, buyer, lessee, or licensee.

Articles 6, 7, and 8

Articles 6, 7, and 8 of the NAR Code of Ethics also address matters concerning compensation and the need for special accounts. Consider the following articles:

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.

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.

Trust Money

Brokers must handle all trust money in accordance with local, state, and federal laws. This means that, per § 17-502 of the Broker's Act, if a broker is holding trust money, she must deposit it within seven business days of contract acceptance. According to the statute:

(a) An associate real estate broker or a real estate salesperson who obtains trust money while providing real estate brokerage services promptly shall submit the trust money to the real estate broker on whose behalf the associate real estate broker or the real estate salesperson provided the real estate brokerage services.

(b)(1) Except as otherwise provided in subsection (c) of this section, a real estate broker promptly, but not more than 7 business days after the acceptance of a contract of sale by both parties, shall deposit trust money in an account that is maintained by the real estate broker:

(i) Separately from the real estate broker's own accounts; and

(ii) Solely for trust money

(2) A real estate broker may not use trust money for any purpose other than that for which it is entrusted to the real estate broker.



In addition to the above, it's also important to remember that you owe it to the buyer or seller to make sure that the deposit is secure. For your own protection, you should require proof that the payment has cleared. When a third party is holding the money, you have less control, and should put even more emphasis on verifying the deposit of the money.

Article 8

Article 8 of the NAR Code of Ethics states:

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.

Case Study: Earnest Money Deposits

Theodore Riddick represented a buyer, Montero Valentine. Seller Norris Laws entered into a contract with Valentine. The sales price was \$265,000 with a \$2,650 earnest money deposit held in escrow by Capital Title, and closing was scheduled for a month later.

Although Riddick's broker had a written policy stipulating that licensees must turn contracts in to the broker within five days of acceptance, Riddick neglected to do so.

Two days before closing, the listing agent learned the bank had returned the buyer's earnest money deposit for insufficient funds. Riddick did not return the listing agent's calls, thus the seller filed a complaint with the MREC.

When questioned by MREC, Riddick explained that he had personally taken the earnest money deposit to the title company, and he said the title company did not tell him that the bank had returned the deposit for insufficient funds until much later. During a later phone call, Riddick informed MREC that the contract date was actually February 6 (not July 6) and that the check was returned on February 23. When MREC asked for further clarification of the dates, Riddick did not respond.

On August 13, MREC sent Riddick a notice of hearing via certified mail. He signed for the receipt of that notice on August 24. He did not file a request to postpone the hearing, and he failed to appear at the hearing on October 18.

The administrative law judge for MREC decided to hold the hearing even though Riddick failed to appear. Additionally, MREC found that he:

- Failed to timely advise the seller and listing agent of the return of the earnest money check
- Did not provide proper evidence of the timely deposit of that check
- Did not turn in the contract to his broker
- Failed to supply additional information MREC requested

MREC found Riddick in violation of the laws pertaining to duty—i.e., he did not treat all parties honestly and fairly, answer all questions truthfully, and exercise reasonable care and diligence. In addition, he was found to be in violation of the Maryland Code of Ethics by not protecting and promoting the interest of the client.

MREC penalized Riddick with a formal reprimand and a \$1,000 civil penalty. This was the first complaint ever filed against him.

Lesson: Personal Interest and Disclosures

Licensee Disclosures

Licensees who attempt to buy or rent a property on their own behalf must inform the seller or lessor of their status as a licensee in writing. They must also disclose their licensed status when representing an immediate family member or an entity in which they have an ownership interest. Per COMAR 09.11.02.02(D):

D. Disclosure Requirement for Licensees and Employees Buying, Selling, Leasing, and Renting Property.

(1) A licensee seeking to acquire an interest in real property must disclose the licensee's licensing status in writing to the seller or lessor of the property no later than the time that an offer is submitted.

(2) The disclosure requirement of §D(1) of this regulation also applies when the licensee is acting on behalf of or representing:

- a) A member of the licensee's immediate family;*
- b) An entity in which the licensee has an ownership interest;*
- c) An employee of the real estate brokerage with which the licensee is affiliated; or*
- d) An employee of a team or group of which the licensee is a member.*

(3) *A licensee seeking to sell or lease real property owned by the licensee must disclose that ownership interest in writing at the time that the property is offered for sale or lease.*

Selling and Leasing

The same goes for licensees who sell or lease their own property; they must inform the buyer or lessee of their license status and ownership interest in the property in writing. They must also make this disclosure when representing an immediate family member or an entity in which they have an ownership interest in selling or leasing a property.

(1) *The disclosure requirement of §D(3) of this regulation also applies when the licensee is acting on behalf of or representing:*

- a) *A member of the licensee's immediate family;*
- b) *An entity in which the licensee has an ownership interest;*
- c) *An employee of the real estate brokerage with which the licensee is affiliated; or*
- d) *An employee of a team or group of which the licensee is a member.*

(2) *Written notice required by §D(3) and (4) of this regulation may be given through the multiple list service and through any other written means effective in bringing the information to the attention of prospective buyers or lessees.*

(3) *The licensee's immediate family shall include the licensee's spouse or domestic partner, child, stepchild, child's spouse, stepchild's spouse, parent, sibling, grandparent, or grandchild.*

Article 4

Article 4 of the NAR Code of Ethics also states that REALTORS® must disclose any personal interest in a property. The article states:

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.

Lesson: Property Management and Other Professional Services

Owner Consent

If you're involved in property management, you cannot accept any compensation on expenditures made for an owner without the property owner's knowledge and permission. Per COMAR 09.11.02.02(E):

E. When acting as agent in the management of property, the licensee may not accept any commission, rebate, or profit on expenditures made for an owner without the owner's knowledge and consent.

Article 5

Article 5 of the NAR Code of Ethics also addresses this matter. The article states:

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.

Lesson: CMAs, Disclosure Requirements, and Areas of Expertise

CMAs Are Not Appraisals

Competitive market analyses (CMAs) can be incredibly useful tools when utilized correctly. However, haphazard CMAs can create headaches on the way to closing, especially if the suggested value is substantially different from the sales price. CMAs also harm clients when the clients do not understand what the information means.

A CMA must prominently state that it's not an appraisal. Also, if a licensee has an interest in one of the comparable properties included in a CMA, this fact must be disclosed. Per COMAR 09.11.02.02(F):

F. Competitive Market Analysis.

(1) A licensee may prepare a competitive market analysis of a specific property for a client, prospective client, or customer. The analysis shall include the following statement printed conspicuously and without change on the first page:

COMPETITIVE MARKET ANALYSIS DISCLOSURE

This analysis is not an appraisal. It is intended only for the purpose of assisting buyers or sellers or prospective buyers or sellers in deciding the listing, offering, or sale price of the real property.

(2) If a licensee includes a property in which the licensee has an interest as one of the comparables, that fact shall be disclosed to the client, prospective client, or customer.

CMA vs. Appraisal

Make sure your clients understand the difference between a CMA and an appraisal. While this may be common knowledge in your world, consumers rarely understand how a CMA differs from an appraisal, and instead assume that, based on your CMA, they have a good idea of what a property is worth.

If an appraiser assigns a different value, the confusion can cast suspicion over the whole process. Well-informed consumers turn into return clients who refer friends and family. Take the time to discuss the details of the process, and your referral business will reap the benefits.

Article 11

Article 11 of the NAR Code of Ethics reminds REALTORS® that when it comes to providing services to seller clients, it's important to stick to their areas of expertise. This includes such activities as preparing CMAs. Article 11 states:

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.

Standard of Practice 11-1

Standard of Practice 11-1 specifically states that when REALTORS® prepare opinions of real property value or price, they must:

- Be knowledgeable about the type of property being valued
- Have access to the information and resources necessary to formulate an accurate opinion
- Be familiar with the area where the subject property is located

Standard of Practice 11-1 (Continued)

The SOP goes on to specify that 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 must include the following, unless the party requesting the opinion requires a specific type of report or different data set:

- Identification of the subject property
- Date prepared
- Defined value or price
- Limiting conditions, including statements of purpose(s) and intended user(s)
- Any present or contemplated interest, including the possibility of representing the seller/landlord or buyers/tenants
- Basis for the opinion, including applicable market data
- If the opinion is not an appraisal, a statement to that effect
- Disclosure of whether and when a physical inspection of the property's exterior was conducted
- Disclosure of whether and when a physical inspection of the property's interior was conducted
- Disclosure of whether the REALTOR® has any conflicts of interest

Lesson: Authority to Advertise

Get Permission

This scenario has become a familiar story:

An ambitious new agent, eager to prove himself and win the confidence of a hesitant client, takes the initiative. The seller signs a representation agreement, and the agent takes a few photos of her home. The agent goes back to the office, lists the property on the MLS, selects a price he feels will bring in attractive offers, and waits for the phone to ring.

The next day, the voice on the phone is not an excited buyer but a furious seller. She had not agreed to publicly list the property yet. She had not told anyone at the office she was moving, and her boss happened upon the listing. She was forced to either lie to her boss or prematurely tell him about her upcoming move out of state.

You must obtain official permission from the client before you can advertise the property, and you have to list the property at the price the client sets. Bring all offers to your client, even if they are already negotiating a different offer.

Per COMAR 09.11.02.02(G):

G. The licensee may not submit or advertise property without authority. In any offering, the price quoted may not be other than that agreed upon with the owners as the offering price.

Article 12

Article 12 of the NAR Code of Ethics stresses honest and truthful communications in relation to “advertising, marketing, and other representations.” Standard of Practice 12-4 of the NAR Code of Ethics states:

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.

Lesson: Offers and Counter-Offers

Submit All Offers

You must be prepared to submit offers and counter-offers objectively and as quickly as possible, per COMAR 09.11.02.02(H).

H. Presentation of Offers.

(1) A licensee shall present all written offers or counteroffers received by the licensee to the client, as required by Business Occupations and Professions Article, §17-532(c)(ii)(3), Annotated Code of Maryland, in accordance with §H(2) of this regulation.

(2) *Unless otherwise specified in the brokerage agreement, all written offers or counteroffers shall be presented to the client:*

- a) *In full; and*
- b) *In hard copy or electronic format.*

Article 1

Article 1 of the NAR Code of Ethics also stresses the importance of promptly presenting written offers. Standards of Practice 1-6 and 1-7 of the NAR Code of Ethics state:

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 applies these same standards to REALTORS® acting as agents or brokers of buyers/tenants.

Lesson: Existing Agency Agreements

Respect the Agreement

The Maryland Code of Ethics makes clear that a licensee must respect a contractual agency agreement between another licensee and that licensee's client. You cannot attempt to interfere with or disrupt an agency agreement held by a peer licensee. You may believe that you could provide superior representation to another licensee's client, but this belief—even if it's justified—does not give you the right to advise clients that they'd be better served by working with you.

Per COMAR 09.11.02.03(A):

A. The agency of a licensee who holds an exclusive listing, shall be respected.

Article 16

Article 16 of the NAR Code of Ethics also states that you must honor existing agency agreements. Article 16, which is supported by 20 SOPs, states:

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)

Determining Agency

In the case of an exclusive listing, to respect the exclusivity of the listing broker's relationship, you must be able to determine with certainty whether an exclusive listing exists. If the listing broker refuses to disclose the nature (type) and duration of a listing, Article 16 recognizes your right to contact the seller or lessor directly to obtain this essential information.

Under these circumstances, you can also discuss the terms of a future listing on the property or may enter into a listing to become effective upon the expiration of the current listing.

Respecting Relationships

Be careful to avoid taking any action that's inconsistent or could be construed as a breach of the exclusive relationship between a client and his or her broker.

Some actions that violate an exclusive relationship can occur when you:

- Provide unauthorized information to a prospective purchaser or tenant
- Fail to obtain permission to show the property from the listing broker, but contact the owner directly
- Take an offer directly to the client without the knowledge and consent of the listing broker
- Use the showing of a property as an opportunity to make unsolicited, derogatory remarks about the listing broker that are untrue

Lesson: Cooperation and Best Interests

When to Cooperate

Above all, licensees must cooperate with each other whenever it's in the best interest of the client. Perhaps a listing agent has had negative experiences with a certain licensee. Nonetheless, the listing agent must not refuse to work or cooperate with that licensee. It's almost always in the best interest of the seller for licensees to be cooperating with each other and for the seller's property to be exposed to as many potential buyers as possible.

Also, the code stipulates that negotiations to purchase a property must be with the listing broker. A buyer's agent cannot attempt to negotiate directly with the property owner. Per COMAR 09.11.02.03(B):

B. The licensee shall cooperate with other brokers on property listed by the licensee exclusively whenever it is in the interest of the client, and share commissions on a previously agreed basis. Negotiations concerning property listed exclusively with one broker shall be carried on solely with the listing broker.

Article 3

Article 3 of the NAR Code of Ethics also reminds us that cooperation is good business. Article 3, which is supported by 10 SOPs, states:

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.

Gray Areas

Cooperating with other licensees can get complicated. Consider this scenario: A buyer calls you regarding a property you listed. She loves the place, but her exclusive agent is out of town for the weekend, and she wants to put in an offer right away. She asks you to write up everything for her now, although she plans to continue through the rest of the steps with her own agent later. Can you do this? The answer is not necessarily clear.

This example shows the gray areas that often arise in the real world, confusing guidelines that seem black and white before you actually get involved in a complicated transaction.

When it comes to cooperation, know that scenarios like this present a fine line. The line between cooperating and interfering with other licensees' clients can be difficult to define. Again, whenever you're unsure how to handle a situation, discuss it with your broker or legal counsel and reference Maryland law for guidance.

Article 15

In the spirit of cooperation, Article 15 of the NAR Code of Ethics encourages REALTORS® to resist the urge to gossip about other industry professionals. The article states:

REALTORS® shall not knowingly or recklessly make false or misleading statements about other real estate professionals, their businesses, or their business practices.

Lesson: Signs and Consent

For Sale Signs

You cannot place a for sale sign on a property without the owner's consent. Consider this example:

You're contacted by the daughter of a deceased property owner in Maryland. The daughter lives out of state, and over the phone she tells you that she plans to sign an agency agreement with your broker soon. You're confident that the property, which is in a desirable neighborhood, will sell within a week or two. Though you may feel tempted to place a for sale sign in the property's yard to generate quick interest for the seller, you must not do so until you've secured a written agency agreement that includes the seller's permission to put the sign on the property.

Per COMAR 09.11.02.03(C):

C. Signs giving notice of property for sale, rent, lease, or exchange may not be placed on any property without the owner's prior consent.

Article 16

Article 16 of the NAR Code of Ethics also speaks to this guideline. Standard of Practice 16-19 of the NAR Code of Ethics states:

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

Key Points

- Licensees must stay up-to-date on all matters affecting real estate—locally, state-wide, and nationally—to ensure they're able to serve their clients effectively.
- Licensees are also charged with protecting the public against unethical practices, and ensuring that all licensees live up to the highest standards of integrity.
- The preamble of the NAR Code of Ethics summarizes the philosophies and goals that drive the NAR code, including the importance of remaining informed about matters relating to the real estate industry.
- While licensees must stay informed so that you can provide their clients and customers with accurate guidance and support, they should be careful to not inadvertently provide legal advice.
- When licensees agree to list a property, they must make a reasonable effort to gather all material facts affecting the property.
- Article 2 of the NAR Code of Ethics also stresses the importance of proper disclosure practices.
- A material fact is a problem with a property that would have a negative impact on the property value or pose an unreasonable risk to the people who will reside in it.
- Known conditions that may affect the health and/or safety of a subsequent owner of a property are material facts that must be disclosed.
- An NAR study revealed that almost 70% of the legal charges against real estate professionals pertain to misrepresentation, negligence, or fraud relating to the disclosure of material facts about a property.
- In Maryland, most sellers are required to complete a property disclosure and disclaimer statement form prior to the transfer of a property.
- Buyers need to have the property disclosure and disclaimer statement in hand before submitting an offer.
- Being honest and dealing fairly with the public leaves no room for discrimination, even if the licensee's actions are well-intentioned.
- Article 10 of the NAR Code of Ethics also stresses the importance of equality.
- Maryland has 10 fair housing protected classes: race, color, religion, sex, familial status, national origin, marital status, sexual orientation, gender identity, and disability.
- The federal Fair Housing Act recognizes seven protected classes: race, color, religion, sex, national origin, familial status, and disability.

- Licensees must be honest and truthful in their dealings with the public.
- Article 2 of the NAR Code of Ethics echoes this notion of avoiding exaggeration, misrepresentation, and concealment.
- Licensees must assure that their advertisements contain honest and truthful information.
- Brokers must include their name or brokerage name, as registered with MREC, in all of their advertisements.
- Associate brokers and salespersons cannot use their individual names in advertisements unless the connection with their broker is obvious.
- Associate brokers or salespersons who include their personal telephone numbers in an advertisement must also include their broker's or branch manager's phone number.
- The licensee's name or trade name, as registered with MREC, must prominently appear on any for sale signs, business cards, and office signs, as well as any document connected to the licensee's real estate activities.
- The broker's or brokerage's name must be included on all advertisements.
- Article 12 of the NAR Code of Ethics requires licensees to paint a true picture of the properties they sell, and SOP 12-5 requires the brokerage's firm to be included in advertising.
- All financial obligations and commitments should be put into writing. Written agreements must be given to all parties within a reasonable time frame.
- Article 9 of the NAR Code of Ethics also encourages licensees to secure agreements in writing whenever possible, and to provide copies of any document to the person who signed that document.
- Licensees have a duty to protect and promote the interests of their clients, while at the same time respecting the rights of other parties to a transaction.
- Article 1 of the NAR Code of Ethics, along with its 16 SOPs, is designed to further protect and promote clients' interests.
- When a dual agency situation arises in Maryland, the broker or his or her designee must assign one intra-company agent to work for the seller and another to work for the buyer.
- Licensees cannot accept compensation from more than one party to a transaction without the full knowledge of all of the transaction's parties.
- A buyer's agent needs to obtain his or her client's permission—typically included in the buyer representation agreement—to accept a commission that is offered by the seller's broker.
- Compensation does not determine agency.
- Articles 6, 7, and 8 of the NAR Code of Ethics also address matters concerning compensation and the need for special accounts.
- If a broker is holding trust money, she must deposit it within seven business days of contract acceptance.
- Licensees who attempt to buy or rent a property on their own behalf must inform the seller or lessor of their status as a licensee in writing.
- Licensees must also disclose their licensed status when representing an immediate family member or an entity in which they have an ownership interest.
- The same goes for licensees who sell or lease their own property; they must inform the buyer or lessee of their license status and ownership interest in the property in writing.
- They must also make this disclosure when representing an immediate family member or an entity in which they have an ownership interest in selling or leasing a property.

- Article 4 of the NAR Code of Ethics also states that REALTORS® must disclose any personal interest in a property.
- Property managers may not accept any compensation on expenditures made for an owner without the property owner's knowledge and permission.
- A CMA must prominently state that it's not an appraisal.
- If a licensee has an interest in one of the comparable properties included in a CMA, this fact must be disclosed.
- Consumers rarely understand how a CMA differs from an appraisal, and instead assume that, based on your CMA, they have a good idea of what a property is worth.
- Article 11 of the NAR Code of Ethics reminds REALTORS® that when it comes to providing services to seller clients, it's important to stick to their areas of expertise.
- SOP 11-1 states that when REALTORS® prepare value opinions, they must be knowledgeable about the property, have access to needed resources and information, and be familiar with the geographic area.
- Licensees must obtain official permission from the client before they can advertise the property, and must list the property at the price the client sets.
- Unless instructed otherwise, licensees must present all offers to the client.
- Article 12 of the NAR Code of Ethics stresses honest and truthful communications in relation to "advertising, marketing, and other representations."
- Licensees must submit offers and counter-offers objectively and as quickly as possible.
- Article 1 of the NAR Code of Ethics also stresses the importance of promptly presenting written offers.
- The Maryland Code of Ethics makes clear that a licensee must respect a contractual agency agreement between another licensee and that licensee's client.
- Article 16 of the NAR Code of Ethics also states that licensees must honor existing agency agreements.
- If the listing broker refuses to disclose the nature (type) and duration of a listing, Article 16 gives the REALTOR® permission to contact the seller or lessor directly to obtain this essential information.
- Under these circumstances, the REALTOR® can also discuss the terms of a future listing on the property or may enter into a listing to become effective upon the expiration of the current listing.
- Licensees must be careful to avoid taking any action that's inconsistent or could be construed as a breach of the exclusive relationship between a client and his or her broker.
- Above all, licensees must cooperate with each other whenever it's in the best interest of the client.
- It's almost always in the best interest of the seller for licensees to be cooperating with each other and for the seller's property to be exposed to as many potential buyers as possible.
- Negotiations to purchase a property must be with the listing broker. A buyer's agent cannot attempt to negotiate directly with the property owner.
- Article 3 of the NAR Code of Ethics also reminds us that cooperation is good business.
- In the spirit of cooperation, Article 15 of the NAR Code of Ethics encourages REALTORS® to resist the urge to gossip about other industry professionals.
- Licensees may not place a for sale sign on a property without the owner's consent.
- Article 16 of the NAR Code of Ethics requires owner consent before a for sale sign is placed on a property.

Unit 3: The Process of Enforcement

Introduction

In Unit 3, we'll look at the processes of enforcement relating to both the Maryland Code of Ethics and the NAR Code of Ethics. In particular, we'll look at which entity officially interprets and is responsible for enforcing each code. Finally, we'll review the complaint processes for both codes.



Objective

Upon completion of this unit, you will be able to:

- Explain the interpreting and enforcing entities of the Maryland and NAR codes of ethics, including the handling of the complaint process and matters relating to public trust.

Lesson: Interpreting and Enforcing the Maryland Code of Ethics

The Maryland Real Estate Commission

The Maryland Real Estate Commission (MREC) is responsible for interpreting the Maryland Code of Ethics, as well as determining penalties for violations.

Per §17-322(b):

(b) Subject to the hearing provisions of § 17–324 of this subtitle, the Commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee:

(33) violates any regulation adopted under this title or any provision of the code of ethics;

Title 17

Title 17 of the Business Occupations and Professions, Annotated Code of Maryland further addresses the commission's authority. For more on the commission's authority to interpret and enforce the Maryland Code of Ethics, look to §17-209:

(a)(1) The Commission shall administer and enforce the provisions of this title.

(2) In connection with any disciplinary action under Subtitle 3 of this title or any investigation or proceeding brought for an alleged violation of this title, the Commission, a hearing board, the executive director of the Commission, or the assistant director of the Commission may:

(i) hold hearings;

(ii) administer oaths;

(iii) issue a subpoena for the attendance of a witness to testify or the production of evidence; and

(iv) take depositions in the same manner as provided in civil cases in the State.

(3) If a person fails to comply with a subpoena issued under this subsection, on petition of the Commission or another party, a circuit court may compel compliance with the subpoena.

(b)(1) If the Commission concludes that conduct alleged to be a violation of any provision of this title may result in irreparable harm to a person, the Commission may sue to enforce a provision of this title by ex parte, interlocutory, or final injunction.

(2) In seeking an injunction under this subsection, the Commission is not required to:

(i) post bond, if the injunction is sought against a person who does not hold a license issued under this title; or

(ii) allege or prove that an adequate remedy at law does not exist.

(c)(1) Subject to the provisions of this section, the Commission shall conduct an investigation that relates to any complaint alleging that an unauthorized person has provided real estate brokerage services.

(2) A complaint shall:

(i) be in writing;

(ii) state specifically the facts on which the complaint is based; and

(iii) be filed with the Commission.

(3) If a complaint is made by any person other than a member of the Commission, the complaint shall be made under oath by the person who submits the complaint.



We'll take a closer look at the complaint process itself in the next lesson.

Replying to the Commission

Per COMAR 09.11.01.12, license applicants and licensees must respond to any written inquiries they receive from the commission within 30 days:

A. If an applicant or licensee receives from the Commission a written communication requesting a response, the applicant or licensee shall respond in writing within 30 days of the date of the mailing.

B. The Commission shall send a written communication by first-class mail to the last known address furnished to the Commission by the applicant or licensee.

C. It is a responsibility of an applicant or licensee to notify the Commission in writing if there has been a change in applicant's or licensee's address.

D. Failure to respond as required by this regulation may be considered by the Commission to be a violation of Business Occupations and Professions Article, §17-322(b), Annotated Code of Maryland.

Lesson: Understanding the Complaint Process for Maryland Code of Ethics Violations

Submission of Complaints

Per MREC guidelines, complaints must be submitted in writing on the Real Estate Complaint and Guaranty Fund Claim Form. In addition, you should be prepared to submit any supporting documentation with your complaint.

See §17-323 through §17-330.



[MREC Online Complaint Form](#)

Time Limit

Per COMAR 09.11.01.18, the commission can dismiss complaints brought after the three-year time limitation.

The Commission may summarily dismiss any complaint brought against a licensee after 3 years from the date of the written listing contract, contract of sale, lease agreement, option, or actions upon which the complaint is based, unless the Commission finds that the complainant's delay in bringing the complaint was justified and that the delay does not result in an undue burden for the licensee.

Determining Jurisdiction

Once a complaint is received, the commission determines jurisdiction. A number of different steps occur once the commission receives a complaint. Per MREC:

- *Complaints are reviewed to determine whether the complaint falls within the jurisdiction of the commission.*
- *An acknowledgement letter is sent to the complainant.*
- *Copies of complaints are sent to the brokers of the involved companies for responses to allegations.*
- *A review process takes place and the submitted evidence determines the case's progress.*
- *The case is either administratively dismissed or sent for an investigative process.*



As outlined by MREC, only commissioners have the authority to charge any violation of the law and/or regulation or to dismiss a complaint.

Involving the AG

If the commission recommends criminal charges, the attorney general's office reviews the case for legal sufficiency. From there, the majority of cases set for a hearing are sent to the Office of Administrative Hearings for a hearing date.

Review Requests

Complainants can request a review of certain documents related to the case. Per MREC:

A complainant may request an inspection of certain documents maintained by the Commission as part of the respondent's licensing file, so long as the request is limited to documents relating to the complaint and for which inspection is allowed under the Department's regulations.

Homebuilders and Inspectors

A complaint must be based on circumstances that occurred in a real estate transaction in the state of Maryland. MREC has no jurisdiction over the following:

- New homebuilders
- Home inspectors
- Sellers
- Mortgage brokers

For more information about the "services related to real estate transactions, or to file a complaint against a new homebuilder, home inspector, or mortgage broker," visit the MREC website.



[MREC - File a Complaint](#)

Lesson: Interpreting and Enforcing the NAR Code of Ethics

Maryland REALTORS

Ethical complaints related to violations of the NAR Code of Ethics and Standards of Practice should be filed with the Maryland REALTORS® for further review. Only REALTORS® are subject to the NAR Code of Ethics. For complaints against agents and brokers who are not REALTORS®, it's necessary to contact MREC.

Any complaints must deal only with issues regarding the NAR Code of Ethics, not legal issues or real estate regulations.

Public Trust Violations

If a complaint alleges a public trust violation, the complaint must be referred to the Maryland Real Estate Commission. NAR's *Code of Ethics and Arbitration Manual* defines a public trust violation as any of the following:

- A misappropriation of client or customer funds or property
- Willful discrimination
- Fraud resulting in substantial economic harm

NAR Complaint Process

The complaint process for NAR code violations is fairly straightforward, as outlined by Maryland REALTORS®:

1. *An ethics complaint must be filed within 180 days from the time a complainant knew (or reasonably should have known) that potentially unethical conduct took place. Complaints must cite one or more articles of the Code of Ethics that may have been violated.*
2. *The complaint is reviewed by the presiding association's Grievance Committee to determine if the allegations made, if taken as true, might support a violation of the article(s) cited in the complaint.*
3. *The Grievance Committee may forward the complaint to a hearing panel or dismiss the complaint. A decision to forward the complaint to a hearing panel does not mean the Grievance Committee has decided the Code of Ethics has been violated. This decision is based solely on the determination that if the allegations are found by the hearing panel to have occurred, then a violation of the Code of Ethics may also have occurred.*
4. *The burden of proof is "clear, strong, and convincing." Respondents are considered innocent unless proven to have violated the Code of Ethics. Only articles cited in a complaint may be considered by a hearing panel. Findings of fact are not appealable. Complainants may appeal if they feel they were denied a full and fair hearing.*



[NAR Ethics Complaint Form](#)

Look to the Articles

The complaint must cite one or more of the 17 articles of the code that may have been violated. According to NAR, hearing panels decide whether the articles expressly cited in complaints were violated—not whether standards of practice or case interpretations were violated.

Local boards and associations have jurisdiction of disputes and complaints.

The following local boards and associations have jurisdiction over disputes or complaints:

- Anne Arundel County Association (Anne Arundel County)
- Greater Baltimore Board (Baltimore County and Baltimore City)

- Bay Area Association (Caroline, Kent, and Queen Anne’s Counties)
- Greater Capital Area Association (Montgomery County and the District of Columbia)
- Carroll County Association (Carroll County)
- Cecil County Board (Cecil County)
- Coastal Association (Somerset, Wicomico, and Worcester Counties)
- Frederick County Association (Frederick County)
- Garrett County Board (Garrett County)
- Harford County Association (Harford County)
- Historic Highlands Association (Allegany County)
- Howard County Association (Howard County)
- Mid-Shore Board (Dorchester and Talbot Counties)
- Pen-Mar Regional Association (Washington County)
- Prince George’s County Association (Prince George’s County)
- Southern Maryland Association (Calvert, Charles, and St. Mary’s Counties)

Source: Maryland REALTORS®

Obstruction of Investigation

REALTORS® are required to cooperate with professional standards proceedings or investigations, as outlined in Article 14 of the NAR code:

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.



[MD REALTOR Video - Professional Standards Process](#)

Local Boards and Associations

Local boards and associations determine whether the code has been violated, not whether the law or real estate regulations have been broken. Those decisions can only be made by the licensing authorities or the courts. Typical forms of discipline for violating the code include:

- Mandatory attendance at educational courses and seminars
- Reprimand
- Fines
- Membership suspension or termination



REALTOR® boards and associations can’t require REALTORS® to pay money to parties filing ethics complaints. The NAR notes:

“The primary emphasis of discipline for ethical lapses is educational, to create a heightened awareness of and appreciation for the duties the Code imposes. At the same time, more severe forms of discipline, including fines and suspension and termination of membership may be imposed for serious or repeated violations.”

Lesson: Hearings for NAR Ethics Complaints

Be Prepared

If you're called to an NAR hearing, familiarize yourself with the hearing procedures that will be followed. In particular, make sure you understand how to:

- Challenge potential panel members
- Exercise your right to counsel
- Call witnesses

In addition, strive to keep your presentation concise, factual, and to the point. In this situation, it's your job to demonstrate what happened (or what should have happened), and how the facts support a violation of the article(s) charged in the complaint.

NAR outlines some additional tips to help ensure you go into your hearing as prepared as possible:

- *Be sure that your witnesses and counsel will be available on the day of the hearing. Continuances are a privilege—not a right.*
- *Be sure you have all the documents and other evidence you need to present your case.*
- *Organize your presentation in advance. Know what you are going to say and be prepared to demonstrate what happened and how you believe the Code of Ethics was violated.*

Burden of Proof

Complainants have the ultimate responsibility (“burden”) of proving that the Code of Ethics has been violated. The standard of proof that must be met is “clear, strong and convincing,” defined as “... that measure or degree of proof which will produce a firm belief or conviction as to the allegations sought to be established.”



Respondents are considered innocent unless it's been proven they have violated the Code of Ethics.

Appeals

Ethics complainants and respondents can file an appeal. Appeals brought by ethics complainants are limited to procedural deficiencies or failure of due process that may have prevented a full and fair hearing.

On the other hand, appeals brought by ethics respondents must be based on:

- A perceived misapplication or misinterpretation of one or more articles of the Code of Ethics
- A procedural deficiency or failure of due process
- The nature or gravity of the discipline proposed by the hearing panel



Findings of fact are not appealable, nor is a hearing panel dismissal of a complaint. Findings of fact are the conclusions of impartial panel members based on their assessment of all the evidence and testimony presented during the hearing.

Rehearings

Rehearing requests are generally granted only when newly discovered evidence comes to light. "New evidence" is evidence that could not reasonably have been discovered and produced at the original hearing and that might have had a bearing on the hearing panel's decision.

Lesson: Understanding the Difference Between Mediation and Arbitration

Mediation Is the Goal

Article 17 guidelines send REALTORS® to mediation first, followed by arbitration if needed:

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 their 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 or arbitration contemplated by this Article includes the obligation of REALTORS® (principals) to cause their firms to mediate or arbitrate and be bound by any resulting agreement or award.



There is a built-in exception, specified in SOP 17-2: If all parties advise the local board in writing that they choose not to mediate, they will not be required to. They may still be required to arbitrate, however.



[MD REALTORS® Mediation/Arbitration Webpage](#)

Mediation Benefits

Mediation can set the stage for a win-win scenario. Litigation and arbitration can be time consuming and costly for all parties involved. Mediation can help clear up communication problems so often at the root of disputes and help all parties reach an understanding. It also has a number of other benefits for real estate professionals, including:

- **It's consensual, so the parties get to decide the outcome.** The final outcome of mediation is decided by both involved parties. The mediator doesn't make any final decisions, and you don't have to face the uncertainty of a courtroom.
- **You can voice your needs and interests.** Mediation looks at the underlying causes of a problem and at what solutions best suit your needs and interests.
- **You can preserve your relationships.** Your dispute might be with another industry professional that you're going to be working with again in the future. Mediation helps you to preserve a relationship by encouraging cooperation rather than hostility.



[MD REALTORS Video - Mediation and Arbitration](#)

Mediation Process

The mediation process can be a fairly quick and amicable one. During the process:

- Disputing parties meet with a mediator appointed by the association.
- Parties explain their issues and positions and have an opportunity to ask each other questions.
- Mediators use a wide variety of techniques to move the parties toward a mutually acceptable resolution.
- If an agreement is reached, the parties put the agreement into a signed document expressing the terms, and no arbitration hearing is held.

Mediation Goals

Mediators seek to guide parties to a fair solution. The need-to-know aspects of Article 17 include the following:

- If your local board of REALTORS® requires that disputes go to mediation first, rather than arbitration, you must abide by this requirement. However, mediation is not required if all parties inform the board that they choose not to mediate the matter.
- Article 17 also requires that a REALTOR® mediate or arbitrate a dispute with a client if the client requests the mediation or arbitration and agrees to be bound by the decision.
- Mediation differs from arbitration in that the mediator does not decide the matter. Instead, the mediator guides the parties to a fair solution.
- Arbitration is binding on all parties. Unless there is evidence of procedural error, 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.



Anyone, at any time, can make a formal, written ethics complaint against a REALTOR®.

Key Points

- The Maryland Real Estate Commission (MREC) is responsible for interpreting the Maryland Code of Ethics, as well as determining penalties for violations.
- Title 17 of the Business Occupations and Professions, Annotated Code of Maryland further addresses the commission's authority.
- Per COMAR 09.11.01.12, licensees must respond to any written inquiries they receive from the commission within 30 days.
- Per MREC guidelines, complaints must be submitted in writing on the Real Estate Complaint and Guaranty Fund Claim Form.
- Complaints must be submitted within three years of the incident. Per COMAR 09.11.01.18, the commission can dismiss complaints brought after the three-year time limitation.
- MREC determines the jurisdiction of received complaints, sends an acknowledgement letter to the complainant, and sends copies of the complaint to the brokers of the involved licensees.
- Only commissioners have the authority to charge any violation of the law and/or regulation or to dismiss a complaint.
- If the commission recommends criminal charges, the attorney general's office reviews the case for legal sufficiency. From there, most cases set for a hearing are sent to the Office of Administrative Hearings for a hearing date.
- Complainants can request a review of certain documents related to the case.
- Ethical complaints related to violations of the NAR Code of Ethics and Standards of Practice should be filed with the Maryland REALTORS® for further review.
- For complaints against agents and brokers who are not REALTORS®, it's necessary to contact MREC.
- If a complaint alleges a public trust violation, the complaint must be referred to the Maryland Real Estate Commission.
- NAR ethics violation complaints must be filed within 180 days of the alleged misconduct.
- A Grievance Committee reviews received complaints and either dismisses them or forwards the complaint to a hearing panel.
- The complaint must cite one or more of the 17 articles of the code that may have been violated.
- REALTORS® are required to cooperate with professional standards proceedings or investigations, as outlined in Article 14 of the NAR code.
- Local boards and associations determine whether the code has been violated, not whether the law or real estate regulations have been broken.
- REALTOR® boards and associations can't require REALTORS® to pay money to parties filing ethics complaints.
- If you're called to an NAR hearing, familiarize yourself with the hearing procedures that will be followed.
- Strive to keep your presentation concise, factual, and to the point.

- Complainants have the ultimate responsibility (“burden”) of proving that the Code of Ethics has been violated.
- The standard of proof that must be met is “clear, strong and convincing,” defined as “... that measure or degree of proof which will produce a firm belief or conviction as to the allegations sought to be established.”
- Respondents are considered innocent unless it’s been proven they have violated the Code of Ethics.
- Appeals brought by ethics complainants are limited to procedural deficiencies or failure of due process that may have prevented a full and fair hearing.
- Appeals brought by a respondent may also file an appeal based upon a perceived misapplication or misinterpretation of the code, or the nature or gravity of the hearing panel’s proposed discipline.
- Findings of fact are not appealable.
- Rehearing requests are generally granted only when newly discovered evidence comes to light.
- "New evidence" is evidence that could not reasonably have been discovered and produced at the original hearing and that might have had a bearing on the hearing panel’s decision.
- Article 17 guidelines send REALTORS® to mediation first, followed by arbitration if needed.
- If all parties advise the local board in writing that they choose not to mediate, they will not be required to. They may still be required to arbitrate, however.
- Litigation and arbitration can be time consuming and costly for all parties involved. Mediation can help clear up communication problems so often at the root of disputes and help all parties reach an understanding.
- Anyone, at any time, can make a formal, written ethics complaint against a REALTOR®.

Unit: Penalties

Introduction

In Unit 4, we’ll review the possible penalties you could face if you’re found guilty of violating either the Maryland Code of Ethics or the NAR Code of Ethics. We’ll also take a look at the factors MREC considers when determining a punishment, as well as at the factors considered by a REALTOR® hearing panel for NAR Code of Ethics violations.



Objective

Upon completion of this unit, you will be able to:

- Identify the possible penalties for violating the Maryland and NAR codes of ethics.

Lesson: Penalties for Violating the Maryland Code of Ethics

Violation Penalties

As noted earlier in this course, per §17-322(b), violators of the Maryland Code of Ethics may face a range of penalties:

(b) Subject to the hearing provisions of § 17–324 of this subtitle, the Commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee:

(33) violates any regulation adopted under this title or any provision of the code of ethics;

Fines

In addition to license sanctions, violators also may have to pay a hefty fine for each offense. Per §17-322(c):

(c)(1) Instead of or in addition to reprimanding a licensee or suspending or revoking a license under this section, the Commission may impose a penalty not exceeding \$5,000 for each violation.

(2) To determine the amount of the penalty imposed, the Commission shall consider:

(i) the seriousness of the violation;

(ii) the harm caused by the violation;

(iii) the good faith of the licensee; and

(iv) any history of previous violations by the licensee.

(3) The Commission shall pay any penalty collected under this subsection into the General Fund of the State.

(4) The Commission may not impose a fine based solely on a violation of subsection (b)(35) of this section.

Considerations

In determining penalties, MREC considers a number of factors. Per §17-322(d):

(d) The Commission shall consider the following facts in the granting, denial, renewal, suspension, or revocation of a license or the reprimand of a licensee when an applicant or licensee is convicted of a felony or misdemeanor described in subsection (b)(24)(i) and (ii) of this section:

(1) the nature of the crime;

(2) the relationship of the crime to the activities authorized by the license;

(3) with respect to a felony, the relevance of the conviction to the fitness and qualification of the applicant or licensee to provide real estate brokerage services;

(4) the length of time since the conviction; and

(5) the behavior and activities of the applicant or licensee before and after the conviction.

Lesson: Penalties for Violating the NAR Code of Ethics

Penalties

In accordance with “Part 2, Section 14—Nature of Discipline” of the *Code of Ethics and Arbitration Manual*, disciplinary action may consist only of one or more of the following:

- a) *Letter of Warning with copy to be placed in member’s file;*
- b) *Letter of Reprimand with copy to be placed in member’s file;*
- c) *Requirement that member attend the ethics portion of the Board Indoctrination Course or other appropriate course or seminar specified by the Hearing Panel which the respondent could reasonably attend taking into consideration cost, location, and duration;*
- d) *Appropriate and reasonable fine not to exceed \$15,000*

Violators may also have their membership suspended "for a stated period not less than thirty (30) days nor more than one (1) year with automatic reinstatement of membership in good standing at the end of the specified period of suspension."

At their discretion, the Directors may give violators the option of paying a fine (of as much as \$15,000) in lieu of the membership suspension.

Members may be expelled from membership for between one and three years, with future membership being subject to the regular application process.

MLS suspension or termination is also a possibility. Suspensions may be for 30 days to up to one year, and terminations may last between one and three years.

a) *REALTORS® who participate in MLS or otherwise access MLS information through any Board or Association in which they do not hold membership are subject to the Code of Ethics in that Board or Association on the same terms and conditions as Board members. Discipline that may be imposed may be the same as but shall not exceed the discipline that may be imposed on members. Boards entering into regional or reciprocal MLS agreements are encouraged to include provisions requiring signatory Boards to respect, to the extent feasible, decisions rendered by other Boards involving suspension or expulsion from membership or from MLS. (Revised 4/96)*

b) *Members may also be required to cease or refrain from continued conduct deemed to be in violation of the Code, or to take affirmative steps to ensure compliance with the Code, within a time period to be determined by the hearing panel. Where discipline is imposed pursuant to this subsection, the decision should also include additional discipline (e.g., suspension or termination of membership) that will be*

imposed for failure to comply by the date specified, and to continue to comply for a specified period not to exceed three (3) years from the date of required compliance. (Adopted 05/14)

Hearing Panels

In accordance with “Part 4, Appendix VII—Sanctioning Guidelines” of the *Code of Ethics and Arbitration Manual*, hearing panels consider a number of factors when determining appropriate discipline. These factors include, but aren’t limited to:

1. *The nature of the violation.*
2. *Harm caused by the violation. Was the violation a minor mistake causing little or no harm or, alternatively, was a client, customer, member of the public, or another REALTOR® harmed?*
3. *Was the violation inadvertent or unintentional or, conversely, was it the result of knowing disregard for the Code’s obligations?*
4. *How much real estate experience did the violator have? Did he, or should he, have known better?*
5. *Has the violator been found in violation of the Code previously? How often? How recently? Is the current violation related or similar to earlier violations?*
6. *Are there mitigating or extenuating circumstances that should be considered in determining appropriate discipline?*
7. *Did the violator acknowledge the violation? Did the violator express remorse or contrition?*
8. *Are there other factors that ought to be considered?*



Per the NAR *Code of Ethics and Arbitration Manual*, “With these questions in mind, panels can be guided by (but are not bound by) the following guidelines which may be modified locally at the discretion of each local Board.”

Key Points

- Persons who violate the Maryland Code of Ethics face penalties such as: license denial, suspension, or revocation; reprimand; and fines of as much as \$5,000 per violation.
- REALTORS® who violate the NAR Code of Ethics face penalties such as: letter of warning/reprimand; ethics course requirement; fines of as much as \$15,000; membership suspension/termination; and MLS membership suspension/termination.

Unit: Predatory Lending, Flipping, and Other Fraudulent Real Estate Practices

Introduction

Predatory lending involves lenders making questionable loans to less than qualified buyers TV shows on house flipping have increased interest in this investment strategy over the years. Flipping—buying a house, fixing it up, and selling it for a profit—can be a great way to make money if you know what you’re doing. However, there’s a flipside to flipping that’s illegal. That type of flipping is mortgage fraud.

It's not the only type of fraud to plague the real estate industry. Despite legislative and regulatory efforts to stop criminal activity, incidences of fraud persist.

As a real estate licensee, you're well-positioned not just to identify fraud, but to take steps to stop it. Moreover, you have an ethical responsibility to keep informed on real estate laws and advise your clients to err on the side of being conservative—in terms of acting within the laws—when buying and selling properties.



Objective

Upon completion of this unit, you will be able to:

- Describe types of fraud prevalent in real estate and the legislative and regulatory efforts to stop these, including key provisions of the Protection of Homeowners in Foreclosure Act.

Lesson: Government Efforts to Rein in Predatory Lending

The NMLS

Recognizing the need to monitor mortgage practices more closely, state regulators launched the Nationwide Mortgage Licensing System (NMLS) in 2008. The NMLS aims to:

- Protect consumers against mortgage fraud and predatory lending
- Create a uniform and efficient method for licensing mortgage loan originators (MLOs)

NMLS Registration

On the federal level, the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) requires that MLOs be either registered with the federal government or licensed by the states.

Under the SAFE Act, state-licensed MLOs need to register with the NMLS. Additionally, they must do the following:

- Submit fingerprints for an FBI background check
- Fulfill pre-licensure and continuing education requirements
- Achieve a passing score on the SAFE Mortgage Loan Originator Test
- Submit their credit score for authorization



MLOs who work for federally regulated financial institutions are not required to be licensed as MLOs. However, they still must register with the NMLS.

History of the NMLS

Speaking before an audience of mortgage professionals in 2011, David Mills, director of the Indiana Department of Financial Institutions, discussed the motivation behind the creation of the NMLS:

“The changes in the residential mortgage industry over the past two decades have been dramatic and far-reaching. Over the past 20 years, the market has ushered in new players, new products, a new originate-to-distribute securitization model, and has had a tremendous impact on the economy as a whole.

“This evolution, which may be more aptly described as a revolution, brought with it a number of good things, such as a vast flow of liquidity into the mortgage market, increased availability of mortgage credit, and higher rates of homeownership. But it has also brought moral hazard, as the allocation of risk of a default became dispersed through complex arrangements that begin with the local mortgage broker and ultimately end up with a Wall Street investor. Controls that had previously been in place to govern the industry were simply overwhelmed by the revolution and supervision could not keep pace with industry advancements.”

The Dodd-Frank Act

Government leaders have sought to eliminate predatory lending through the adoption of laws and regulations, the most prominent being the Dodd-Frank Wall Street Reform and Consumer Protection Act (aka Dodd-Frank Act). Among Dodd-Frank’s many provisions is the Mortgage Reform and Anti-Predatory Lending Act, which includes the following anti-predatory lending measures:

- Requires that lenders ensure a borrower’s ability to repay a loan
- Establishes national underwriting standards for residential loans
- Prohibits financial incentives for subprime loans that encourage lenders to steer borrowers into more costly loans
- Prohibits mortgage loan originators from receiving compensation, directly or indirectly, that varies based on the terms of the loan, other than the amount of the principal
- Establishes penalties for irresponsible lending
- Expands the protections available under federal rules on high-cost loans
- Lowers the interest rate and the point and fee triggers that define high cost loans
- Forces lenders to disclose the maximum rate a consumer could pay on a variable rate mortgage and a warning that payments will vary based on interest rate changes
- Establishes an Office of Housing Counseling within HUD to boost homeownership and rental housing counseling



[Website - The Truth About Mortgage](#)

The CFPB

In addition to the provisions we've already discussed, Dodd-Frank created the Consumer Financial Protection Bureau (CFPB), an agency that serves to protect consumers by carrying out federal consumer financial laws.

The CFPB's responsibilities include the following:

- Supervise and enforce federal consumer financial protection laws
- Stop unfair, deceptive, or abusive practices
- Collect, investigate, and respond to consumer complaints
- Promote financial education
- Research consumer behavior
- Monitor financial markets to identify new risks to consumers
- Enforce laws that prohibit discrimination and other unfair treatment in consumer finance



The CFPB has the authority to levy significant financial penalties against firms that violate consumer protection laws and regulations.

Lesson: Illegal Flipping Involving a Straw Buyer

Property Flipping

First off, not all forms of property flipping are illegal. Legal property flipping became a popular money-making technique during the housing boom, when property values were steadily rising. A “flipper” would typically purchase a property that was in disrepair, renovate it, and then sell it at a profit. This type of flipping—which, again, is perfectly legal—remains a common practice today.

Several types of illegal flipping exist. In this lesson, we'll examine the two most prevalent forms of illegal flipping, one of which involves a “straw buyer” and one that involves taking advantage of a homebuyer who has poor credit.



A straw buyer is someone who is compensated for the use of his or her identity and credit history on a mortgage loan application.

Illegal Property Flipping

An illegal form of property flipping is when a con artist buys a property, makes minor improvements to it, and then resells it for a considerable profit to a straw buyer. The con artist pays the appraiser a fee—illegally—to ensure the property is appraised at the inflated sales price. After the sale goes through, neither the con artist nor the straw buyer makes mortgage payments, causing the lender to incur significant losses.

Red Flags

When property flipping involving a straw buyer occurs, you may see the following red flags:

- The seller's property ownership has changed more than two times within a short amount of time.
- The parties in the transaction are family members or business partners.
- The property seller is not on the title or there are discrepancies in any of the buyer or seller's paperwork.
- There is a double escrow (two or more closings occurring simultaneously), or the appraisal does not align with comparable market sales.
- Flip sales may be used to hide the borrowers' or the sellers' true identities, indicating that identity thieves or straw buyers are involved.

Disciplinary Action

An illegal flipping scam often involves multiple parties engaging in fraud. Note that all of these parties can be punished for participating in the scam. To emphasize this point, let's look at a real-world example of a flipping scam that relied on an appraiser fraudulently inflating the value of homes.

Case Study: Real Estate Appraisers

Gordon Sampson, a licensed real estate appraiser, was accused of performing four inflated appraisals for Robert Jones, a Delaware resident who had flipped more than 100 Baltimore homes.

An administrative law judge conducted two days of public hearings to investigate the charges against Sampson. The judge then ruled that Sampson had "failed to exercise reasonable diligence and was at the very least negligent or incompetent in the development and preparation of the appraisals."

The judge used language such as "dishonesty and misrepresentation" and "fraudulent" to describe Sampson's appraisals.

The Maryland Real Estate Appraisers Commission revoked Sampson's license and fined him \$5,000.

The property flipper, Jones, was charged with fraud. He pleaded guilty and admitted that his fraudulent deals cost lenders \$800,000 to \$1.5 million. He was sentenced to three years in prison.

Lesson: Illegal Property Flipping Involving a Buyer with Poor Credit

Guide for Homebuyers

Maryland has endured a flipping epidemic in recent years, costing lenders and the government many millions of dollars, scarring neighborhoods with vacant homes, and financially harming countless buyers. In response to the problem, Maryland's Office of the Attorney General produced a helpful guide for consumers titled, "Home Buyers: Beware of Flipping Scams." The content in this lesson is adapted from the guide.



In adapting the guide's content for this course, we've made slight changes to the text to reflect the fact that this course's audience is real estate licensees, not homebuyers.



[Home Buyers: Beware of Flipping Scams](#)

Precautions to Take

As seen in the "Home Buyers: Beware of 'Flipping' Scams" notice from the Office of the Attorney General:

Before your clients agree to buy a home, make sure they're not dealing with a criminal flipper who preys on buyers with poor credit. Such a flipper buys a home cheap and then sells it to an unsuspecting homebuyer for a price that far exceeds its real value. The flipper finds his victims by looking for someone who needs a new place to live but believes they can't afford to buy a home or qualify for a mortgage loan. The flipper gains the buyer's trust by promising to put the buyer in a home and arrange a mortgage loan, even if the buyer has bad credit or little money. Not surprisingly, these buyers often feel that the flipper is making their dreams come true by getting them a home and a loan when no one else could.

The flipper does not tell the buyer that the sales price of the home is much higher than the home is worth. The flipper arranges a mortgage loan to cover the inflated sales price, but the loan is based on a false appraisal of the property and often exaggerates the buyer's income and assets. The flipper walks away from the deal with all the loan money, but the buyer winds up with a home that is not worth the amount owed on the loan. Too often, the buyer can't afford to pay the inflated loan and soon loses the home to foreclosure.

Before Signing

Facts need to be gathered before signing a contract. Your clients can find out how much the home is worth; they shouldn't just take the seller's asking price as being a fair market price. Ask the seller to complete and sign the Office of the Attorney General's "Seller's Statement" form.

The seller's answers will give your clients the facts they need to begin to find out what the true value of the home is. They can take this information and consult either with you or with a certified home ownership counselor.



The seller is not required by law to fill out and sign the form. However, the completed statement will help your clients make an informed decision.



[MD Office of the Attorney General: Seller's Statement](#)

Homeownership Counselors

Per the attorney general's pamphlet:

Homeownership counselors can educate consumers on the homebuying process, review their qualifications for a loan, and help them understand what they need to do to become a homeowner. You, as the buyers' agent, can—and should—assist the buyers by finding out the prices of other homes in the immediate neighborhood to assist in determining the fair market price.

For a referral to a homeownership counselor, your clients can call the Maryland Department of Housing and Community Development at 1-877-462-7555.

Buyer Representation

Consumers have the right to select their homeownership counselor, real estate agent, mortgage lender, title company, appraiser, and home inspector. They should not trust the seller or the seller's agent to make these selections for them.

Warning Signs

The following red flags should alert you that a home's sales price may not reflect its real value:

- *The seller or lender does not answer the buyers' questions about the price and condition of the home.*
- *The person with whom the buyers are dealing is not the person who holds the title to the property. The property may have been sold recently at a much lower price and the person is trying to sell it fast to make a quick profit. Find out under what right the person is authorized to sell the property.*
- *The price of the home is much higher than the prices for which similar homes in the neighborhood have sold.*
- *The seller offers to let the buyer move in right away, before purchasing the home, or offers the buyer free rent.*
- *The home is in poor condition and the seller promises to make repairs either before or after the settlement, but refuses to put those promises into writing or in the contract.*

Mortgage Red Flags

The mortgage loan may be either fraudulent or more than your clients can afford if:

- *The seller says she can get the buyers a loan even though they have bad credit, or the seller offers to give or lend the buyers money to make payments on their debts, but does not disclose the buyers' bad credit or the seller's payments in the mortgage application.*
- *The seller or lender wants to give the buyers a "gift" or "grant," or arranges for a relative or friend to give the buyers a gift for the down payment or closing costs, but fails to disclose the gift in the mortgage application.*

- *The seller tells the buyers that they can buy a home for the same monthly payment as they are paying in rent. Often, the seller is not telling the buyers about the other costs involved in owning a home, such as insurance and tax escrow, utilities, and repairs.*
- *The seller wants to make all the arrangements for getting the loan, inspections, and settlement, or discourages the buyers from getting independent advice or shopping for a different loan.*
- *The seller or lender exaggerates the buyers' income and assets, or understates the buyers' debts, in order to make the buyers look better on the loan application. The buyers may even be asked to list additional income from a fake second job or self-employment, or to exaggerate their actual salary or overtime pay.*

Help

Buyers who have recently purchased a home or entered into a contract to buy one and who think they may be a victim of a flipping scam should contact the Attorney General's Consumer Protection Division at 410-528-8662 or toll-free 1-888-743-0023. The division can try to resolve the dispute through mediation.

Lesson: Regulating the Activities of Foreclosure Consultants

PHIFA

Maryland's Protection of Homeowners in Foreclosure Act (PHIFA) provides consumer protections and disclosure requirements for the activities of foreclosure consultants. PHIFA covers three types of foreclosure consultant activities: foreclosure consulting services, foreclosure surplus acquisition, and reconveyances (that is, the transferring of a property title to the buyer after a secured debt has been fully paid).



The remainder of the content in this lesson is taken from the testimony of Secretary Thomas E. Perez, Maryland Department of Labor, Licensing, and Regulation, before the U.S. Senate Special Committee on Aging, February 12, 2008.

Foreclosure Consultant Services

Before we move forward, we need to define "foreclosure consultant." Under PHIFA, a foreclosure consultant is a person who contacts a homeowner to offer to perform services, such as the following:

- *Stop, delay, or postpone a foreclosure sale*
- *Assist a homeowner who's in default in obtaining a loan or advance of funds*
- *Avoid having the homeowner's credit impaired by the foreclosure*
- *Save the homeowner's residence from foreclosure*
- *Obtain an option to purchase the homeowner's residence within 20 days of an advertised or docketed foreclosure sale*
- *Arrange for the homeowner to become a lessee or renter who's entitled to continue to live in the homeowner's residence after a sale or transfer*



If a person offers the services described above to a mortgage borrower who is at least 60 days in default, it's likely that the person is considered a foreclosure consultant under PHIFA.

PHIFA Prohibitions

PHIFA prohibits foreclosure consultants from engaging in a number of different activities. Among other things, foreclosure consultants are prohibited from the following:

- *Demanding or receiving compensation until after the foreclosure consultant has fully performed each and every service she promised or contracted to perform.*
- *Demanding or receiving interest or any other compensation for a loan that the foreclosure consultant makes to the homeowner that exceeds 8% per year.*
- *Receiving compensation from any third party in connection with foreclosure consulting services provided to a homeowner unless the consideration is first fully disclosed in writing to the homeowner, is clearly listed on any settlement documents, and is not in violation of any provision of PHIFA.*
- *Receiving a commission, regardless of how described, for the sale of a residence in default that exceeds 8% of the sales price.*
- *Receiving any money to be held in escrow or on a contingent basis on behalf of the homeowner.*



"Residence in default" is defined as residential real property located in Maryland on which the mortgage is at least 60 days in default.

Homeowner Rights

PHIFA provides homeowners with various rights of rescission, including, but not limited to, the following:

- *The right to rescind a foreclosure consulting contract at any time.*
- *The right to rescind a contract for the sale or transfer of the residence in default within five days after the execution of the contract.*

PHIFA Violations

A person who violates PHIFA is guilty of a misdemeanor and, on conviction, faces a prison sentence of up to three years or a fine of up to \$10,000, or both.

Maryland's attorney general or commissioner of financial regulation can seek an injunction to prohibit a person who has violated PHIFA from continuing to engage in the violation.

Cost Recovery

Per the Office of the Commissioner of Financial Regulation:

In any action brought by the Attorney General or the Commissioner under PHIFA, the Attorney General or Commissioner is entitled to recover the costs of the action for the use of the State.

A violation of PHIFA is an unfair and deceptive trade practice within the meaning of Title 13 of the Commercial Law Article, and is subject to the enforcement and penalty provisions contained therein.

Private Actions

Moreover, PHIFA provides for a private right of action. Therefore, in addition to any action by the Attorney General or the Commissioner, a homeowner may bring an action for damages incurred as the result of a practice prohibited by PHIFA. A homeowner who brings an action under PHIFA and who is awarded damages may also seek, and the court may award, reasonable attorney's fees.

If the court finds that the defendant willfully or knowingly violated PHIFA, the court may award damages equal to three times the amount of actual damages.

Careful Review

Anyone who provides loss mitigation consulting, foreclosure prevention, mortgage loan modification, or similar services should carefully review PHIFA to ensure compliance with the law.

The state's commissioner of financial regulation will investigate complaints alleging PHIFA violations and will pursue appropriate remedies. Consumers who wish to file a complaint with the commissioner may do so by calling 888-784-0136 or 410-230-6097.

Case Study: Foreclosure Fraud

George and Jackie Smith purchased a three-bedroom home in PG County for \$146,000. Medical bills caused the Smiths to fall a month behind on their \$1,100 mortgage payment. With an appraisal showing that their residence had doubled in value to \$340,000, the couple decided to pull some equity out of the home to pay off their debts.

The Smiths met with The Credit Doctors (TCD), a foreclosure rescue company that offered financing help to homeowners with credit problems. TCD advised the couple to skip their next few mortgage payments to qualify for a credit repair program. The Smiths followed this advice and, two months later, they received a foreclosure notice.

TCD told the Smiths that they now could get into a program that would keep them in their home and improve their credit scores, which were in the 600s—too low to obtain loans at a good interest rate. TCD had the Smiths sign a tall pile of paperwork, which they thought was for the credit-repair program, but in reality involved the signing over the deed of their home to a straw buyer. George and Jackie had unknowingly signed away more than \$100,000 in equity.

The straw buyer failed to make any mortgage payments on the home, and within months, it was foreclosed on and sold at a bank auction. The Smiths had not only lost more than \$100,000, they'd also lost their home.

Lesson: Fraudulent Real Estate Activity: Mortgage Fraud

Fraudulent Real Estate Activity: Mortgage Fraud

Real estate fraud occurs in a number of ways besides the illegal flipping we just covered. It occurs any time an individual or entity uses false information in a real estate transaction. Types of real estate fraud include:

- **Mortgage fraud.** This includes straw buyers, which we've already discussed, but also the following:
 - **Inflated appraisals:** An appraiser intentionally submits a misleading report to a lender that indicates an inflated property value.
 - **Silent second:** A property buyer accepts a second mortgage without disclosing it to the original lender. This is often used when a buyer can't afford the down payment on a home.
- **Equity skimming:** An investor receives title to a property—often by using a straw buyer—doesn't make the mortgage payments, and usually rents out the home until foreclosure occurs.
- **Misleading/False Loan Application:** Borrowers may use a stolen or fictitious identity to obtain a home loan. They may also invent income streams, assets, and use other means to qualify for a loan.
- **Undisclosed buyer rebate:** The seller or another party provides funds that aren't included in the settlement statement. In order to be legal, rebates must be disclosed to the lender and must appear on the settlement statement.

Signs of Mortgage Fraud

- Large adjustments to the sales price without supporting comparable data, or a request that the list price be changed to reflect appraised value.
- The buyer requests a particular appraiser.
- The seller contributions include large décor or improvement allowances.
- Signs that the buyer doesn't intend to live on the property (when the loan is intended to be a principal residence).
- The buyer's credit history is limited and provided by companies that either charge high interest rates, or the buyer's loan payoff history doesn't include interest payments.
- The stated income is unrealistic.
- Drastic increase in income from a recent raise or new job.
- Missing or inconsistent information on purchase and sales agreement.

Key Points

- Disclosures are required to be provided at two major points in the mortgage transaction: at the point of origination and at the closing.
- Borrowers should take their time in reviewing all of the disclosure documents associated with their loan.

- Some predatory lenders may ask borrowers to sign blank documents, promising that the necessary information will be inserted later in the process. Borrowers should see this as a huge red flag.
- Shopping around to compare rates is an essential step in researching and selecting a loan that is not only right for today, but for the years of home ownership ahead.
- Borrowers should do their homework before signing anything.
- The Nationwide Mortgage Licensing System serves to protect consumers against mortgage fraud and predatory lending.
- NMLS makes the licensing of MLOs uniform and more efficient.
- The SAFE Act requires that MLOs either be registered with the federal government or licensed by the states. Under the SAFE Act, state-licensed MLOs need to register with NMLS.
- The Dodd-Frank Act includes numerous anti-predatory lending measures and created the Consumer Financial Protection Bureau (CFPB), an agency that protect consumers by carrying out federal consumer financial laws.
- The CFPB possesses the authority to levy significant financial penalties against firms that violate consumer protection laws and regulations.
- A straw buyer is someone who is compensated for the use of his or her identity and credit history on a mortgage loan application.
- An illegal form of property flipping is when a con artist buys a property, makes minor improvements to it, and then resells it for a considerable profit to a straw buyer. The con artist pays the appraiser a fee—illegally—to ensure the property is appraised at the inflated sales price.
- Be on the lookout for practices that are a red flag for illegal property flipping, such as ownership changing more than twice in a short amount of time, related transaction parties, multiple closings at the same time, and other issues.
- An illegal flipping scam often involves multiple parties engaging in fraud. Note that all of these parties can be punished for participating in the scam.
- Before your clients agree to buy a home, make sure they're not dealing with a criminal flipper who preys on buyers with poor credit.
- Consumers have the right to select their homeownership counselor, real estate agent, mortgage lender, title company, appraiser, and home inspector. They should not trust the seller or the seller's agent to make these selections for them.
- Red flags that a home's price doesn't reflect its value include: the seller/lender doesn't answer the buyer's questions; the person with whom the buyer is dealing isn't the person who holds the title; and the price is higher than comparable properties in the neighborhood.
- Maryland's Protection of Homeowners in Foreclosure Act (PHIFA) provides consumer protections and disclosure requirements for the activities of foreclosure consultants.
- PHIFA covers three types of foreclosure consultant activities: foreclosure consulting services, foreclosure surplus acquisition, and reconveyances.
- If a person offers the services described above to a mortgage borrower who is at least 60 days in default, it's likely that the person is considered a foreclosure consultant under PHIFA.
- PHIFA prohibits foreclosure consultants from engaging in a number of practices, including getting paid before their services are rendered.
- PHIFA offers homeowners several rights of rescission.
- A person who violates PHIFA is guilty of a misdemeanor and, on conviction, faces a prison sentence of up to three years or a fine of up to \$10,000, or both.

- PHIFA provides for a private right of action. Therefore, in addition to any action by the Attorney General or the Commissioner, a homeowner may bring an action for damages incurred as the result of a practice prohibited by PHIFA.
- When working with sellers to complete property disclosures, you must ensure that the seller completes a thorough and honest disclosure—and when in doubt, you should always disclose, even at the risk of losing a sale.
- The intent to commit fraud and the degree to which damages were caused are key elements that prosecutors use to construct a fraud case.