

NAR Code of Ethics: Article 2

The National Association of REALTORS® Code of Ethics, Article 2

The truth is a foolproof business tactic. Article 2 and its seven standards of practice emphasize honesty and transparency. The article 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. (Amended 1/00)

Article 2 is limited in that REALTORS® aren't obligated to investigate or discover latent material facts (i.e., facts that aren't readily visible or observable based on a review of the property). REALTORS may not advise on matters outside the scope of their real estate license or disclose confidential matters under agency or non-agency relationships. Licensees are only held responsible for the knowledge of facts or conditions that the average practicing licensee would typically recognize. Licensees are obligated to disclose material facts, which are problems with a property that would negatively impact the property's value or pose an unreasonable risk to the people who reside in it.

Standard of Practice 2-1

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

The discovery obligation extends only to those factors within the knowledge required within the scope of a real estate license. Licensees should avoid guesswork when a potential buyer asks a question pertinent to the property or transaction, and avoid expressing opinions about a property's future. When in doubt, licensees should tell clients that they require more information, do research, and ask their broker's advice. If still in doubt, licensees should refer clients (or customers) to a professional in the area questioned.

Material Facts

Sellers must also disclose all known material facts. When you represent the sellers in a transaction, part of your responsibility is to advise them of their duty to disclose all known material facts. One way to think about a material fact is to think of its opposite—an immaterial fact. An immaterial fact is one that has no importance and is considered inconsequential. A material fact is one that might determine whether or not a particular buyer client would purchase a particular property.

A material fact may also influence the price a buyer will offer. In virtually all states, sellers must disclose as material facts all known conditions that may affect the health and safety of a subsequent owner of a property. Required disclosure applies to a condition that might not be readily discovered or easily seen by a potential buyer.

Article 2: Case Study

Licensing authorities don't expect licensees to know everything, but how licensees handle prospective buyer's questions may get them into trouble. Such was the case for REALTOR® A, who was also a homebuilder. He showed one of his latest newly constructed homes to Buyer B, who liked the home. However, Buyer B noticed some construction nearby and asked REALTOR® A what was going on. REALTOR® A admitted that he wasn't sure, but went on to state that he believed it was construction for an attractive new shopping center.

After purchasing the property, Buyer B discovered that the construction was actually for a bottling plant and that the adjacent area was zoned for industrial purposes. Buyer B filed a complaint.

Article 2: Outcome

The hearing panel determined that Buyer B's question constituted a pertinent fact. What's more: The panel determined that REALTOR® A's competence required him to know the answer. Ultimately, the panel found him in violation of Article 2.

Tips to Reduce the Risk of an Article 2 Complaint and Liability

To minimize the risk of exaggeration, misrepresentation, or concealment of pertinent facts:

Ensure that sellers understand the legal consequences of withholding material fact information about their property from prospective buyers. If you're unsure whether a client should disclose a specific matter, refer the client to the client's legal counsel.

Avoid making statements about the property that you believe to be false after you, or another certified professional, have viewed or examined a property.

Avoid expressing opinions about a property's future, such as, "I'm sure the value of this home will go through the roof," or, "You'll never have zoning difficulties at this location." Such statements leave you vulnerable to charges of misrepresentation, negligence, or both.

Maintain records about the information you provide to clients and others, whether the information was given verbally or in writing.

View the properties you list. Based on your visual inspection, inform sellers and potential buyers about any evidence of material facts (or if you suspect these) in a timely manner. You may not delegate this responsibility.

Inform buyer clients that seller disclosures don't replace the need for professional inspections.

To minimize the risk of exaggeration, misrepresentation, or concealment of pertinent facts:

Tell clients that you need more information if you don't know the answer to a question. Then, perform the research and ask the advice of your broker. If you're still in doubt, refer the clients to an expert in the area.