



A Few Things Every AE Needs to Know

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A Few Things Every AE Needs to Know

✘ Antitrust

Questions:

- How do we deal with ABC Realty – what they're doing is not fair for the rest of us? I'm not going to show their listings (let them show mine, etc.)
- I'm from the next town over and the agents in your town are boycotting my listing.
- XYZ Realty pre-prints their commission in the Association listing agreement, is this ok?

✘ Fair Housing

Questions:

- I heard that if someone is selling their own house without a REALTOR® they're exempt from Fair Housing laws. Is that right?
- What can I say when I'm advertising a property, I was told I couldn't say 'walking distance' to something.

✘ RESPA

Questions:

- There's a lender offering referral fees to my agents if they'll send him business. He said it's been approved under RESPA. Can this be true?
- Can I do shared advertising with a lender, share the expense and not be in violation of RESPA?

✘ Professional Standards

Questions:

- I want to file a complaint, what do I do?
- The Grievance Committee dismissed my complaint, how do I file an appeal?
- How long do I have to do it?
- ABC Realty is not disclosing they have a Variable Rate.
- I sold XYZ's listing and they didn't pay me what was published in the MLS

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You are advised that this program is being presented for educational purposes only. The Rules and Regulations of individual Associations and MLS's, as well as individual state laws need to be reviewed prior to instituting any suggestions made.

- What if my seller has to do a short sale and the bank won't pay what the seller agreed to. Will I still owe the selling broker what was published in the MLS?
- The listing I sold wasn't in our MLS and now the listing office won't pay me. How can I get my money?
- The listing was in our MLS. How come I can't get paid on the sale just because it was in a different state?

✘ Transaction – Agency – Contract Issues

Questions:

- Can I be a dual agent when I sell my own house?
- The buyer agent wants to be there when we present the offer to my seller – do I have to let her?
- The listing agent won't return my phone calls and I have an offer on his listing.
- The buyer hasn't brought in his earnest money/deposit – is the contract dead?

✘ MLS

Questions:

- We don't have enough room or time to list them all!!!! Plus – the answers are all different! But there's probably no area more important to your members – so learn all you can.

✘ Multiple offers

Questions:

- What's the procedure?
- Do I have to disclose multiple offers?
- Can my seller counter back to both buyers?
- My seller wants me to disclose the price of the other buyer's offer to the second buyer – can I do that?



✘ Advertising

Questions:

- Can I offer an inducement to a buyer or seller to work with me?
- Can I offer a referral fee to someone who isn't licensed?
- ABC Realty has listings on their website that have sold and expired. How long can they keep them up there?
- XYZ Realty is advertising my listing on their website – and not through the VOW or IDX program.
- If I put how much the monthly payment will be in my ad, what else do I have to disclose? (Regulation Z)



Antitrust issues

What REALTORS® Need to Know about the DOJ Lawsuit Against NAR from REALTOR.org

No doubt you have read the news about the U.S. Department of Justice's decision to sue NAR over its new policy governing the display of multiple listing service data on Internet Web sites.

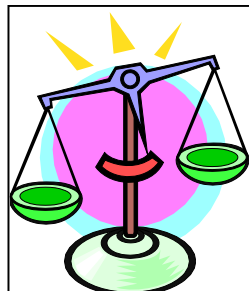
NAR is disappointed that its multi-year attempt to develop a Web listings policy that's a win for consumers and also preserves the rights of real estate brokers will end up in court. We worked long and hard to understand and accommodate the government's demands. In the end, however, it proved impossible to do so without fatally compromising our members' interests. We know we stand on firm ground legally, and we are very confident the issue will be decided in our favor.

At stake is a principle that's vital to our members and central to the cause of organized real estate: We believe REALTORS® should be free to market their customers' properties as they see fit and that consumers who wish to have their property listed in the MLS should have the right to choose whether their homes are displayed on the Internet or not. After all, MLSs are not public utilities; they are private databases created for and maintained by real estate professionals for real estate professionals.

The government would have NAR restrict how our members do their business. They believe every property included in the MLS must also be available for display on hundreds of web sites, even if listing brokers, with the property owners' consent, choose not to do so.

Despite the points being presented as central in many news reports, this issue is not fundamentally about discount brokers or new business models. NAR supports **ALL** REALTORS® and we have led the way in innovation, including REALTOR.COM®, which continues to set the standard for REALTORS® on line.

Unfortunately, this legal issue will likely take a long time - even years - to resolve. We are entirely confident we will prevail. We hope that the government will reconsider its position and save both NAR and the taxpayers a lot of time and money.



from REALTOR.org / REALTOR® Magazine (on-line)

4 Antitrust Traps to Avoid

Although the subject of avoiding possible antitrust violations covers many areas, a few of the most sensitive antitrust concerns include

1. Price/term fixing. In most businesses, including real estate, many competitors may charge similar prices for the same services. This isn't illegal as long as each competitor sets prices independently. An antitrust violation occurs when you discuss and actually agree to charge the same prices or offer exactly the same terms as one or more of your competitors.

Avoid problems by: Establishing your company's fees, commission splits, and listing terms independently and without any discussion with competitors. Even informal conversations where you have no intention of actually setting prices could be misinterpreted as the basis of a price-fixing agreement.

2. Territorial assignments. Agreements between competitors to divide the market geographically, by price range, type of property, or some other segmentation are considered anticompetitive because they conspire to establish dominance in a particular market. This isn't the same as an individual company's practice of specializing in certain properties such as historic buildings or custom-built housing.

Avoid problems by: Documenting your decisions to focus on certain property types with marketing and demographic studies.

3. Boycotts. Boycotts occur when a group of businesses agree not to do business with a particular party. A typical group boycott allegation in the real estate brokerage business involves a claim that two or more brokerages have agreed to refuse to cooperate, or to cooperate on less favorable terms, with a third brokerage company. The intent is to eliminate that company as a competitor or to force it to abandon certain practices. Another form of boycott would occur if several companies collectively determined not to use a particular service provider, such as a certain newspaper.

Avoid problems by: Making decisions on whether to do business with other real estate companies or service providers based on your company's own judgments, goals, and experiences.

5. Association meetings. Associations are groups of competitors who come together to promote their common business interests. As such, they are vulnerable to allegations that agreements by members to use identical business practices are illegal conspiracies.

Avoid problems by: Remaining alert to discussions at meetings relating to commission rates, pricing structures, listing policies, or marketing practices of other brokers.

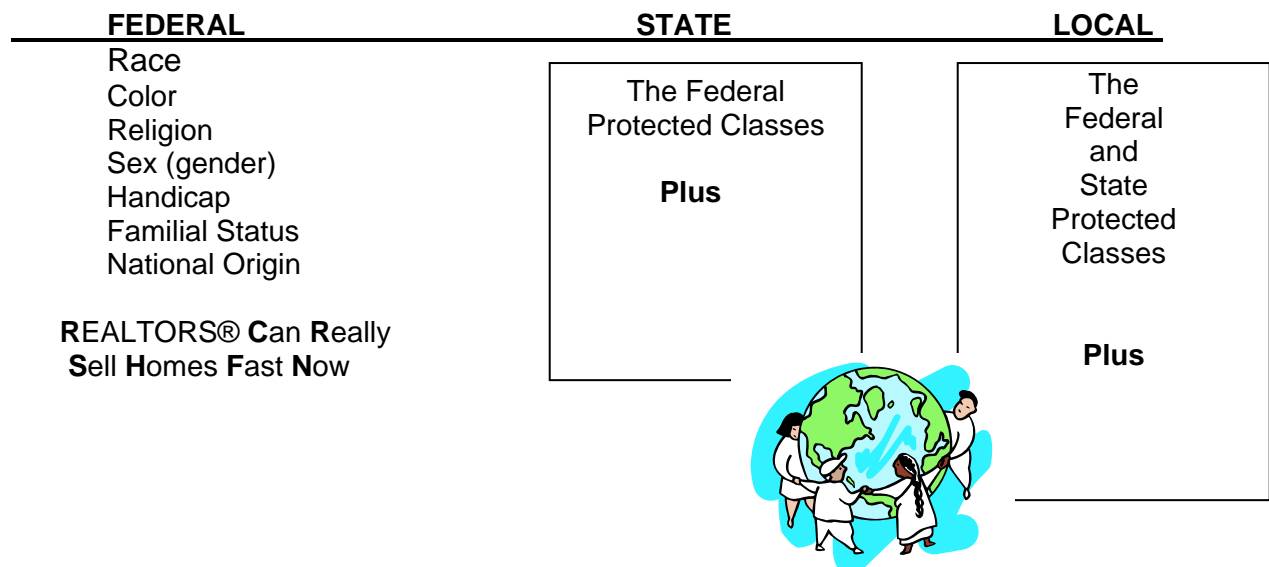
6 Simple Antitrust Prevention Tips

Compliance with antitrust laws doesn't involve a lot of expense and rigorous documentation. It does require that you and your company's salespeople have a clear understanding of the law, a sensitivity to potential problem areas, and a consistent commitment to avoiding circumstance that might imply violations.

1. Analyze market conditions, transaction costs, and income to justify your company's prices or fees. Even if they happen to be the same as the competition's, you will be able to defend against inferences of conspiracy.
2. Never preprint commission percentages or listing periods into your listing agreements.
3. Develop a written antitrust compliance policy for your company. Brokers may be held liable if salespeople violate antitrust laws.
4. Teach sales associates the proper way to differentiate themselves from competitors by emphasizing the quality and service the company provides rather than disparaging the competition.
5. Instruct your sales associates on the meaning of antitrust law, and train them not to discuss your company's pricing and commission policies with competitors.
6. Never use the word "standard" or "prevailing" when describing your fees and services.



The Protected Classes



Advertising Practices

The Fair Housing Act prohibits using any advertising or making any statement or notice in connection with the sale or rental of houses that indicates a preference for applicants or prospects of a particular race, religion, sex, color, national origin, handicap, or familial status. HUD regulations require the prominent display of HUD's fair housing poster containing a fair housing slogan and logo. Posters are available from HUD area offices.

Following are some guidelines issued by HUD regarding acceptable and unacceptable advertising phrases.

Race, color, and national origin

Unacceptable: Wording that describes the housing, the current or potential residents and neighbors, or neighborhood in racial or ethnic terms, such as "white family homes," "no Irish."

Acceptable: Racially neutral terms, such as "master bedroom," "rare find," "desirable neighborhood."

Religion

Unacceptable: Ads with blatant phrases, such as "no Jews," "Christian home." Ads that indicate nearby proximity to an entity containing a religious reference, such as – "Roselawn Catholic Home," or a religious symbol such as a cross.

Acceptable: Secular terms, such as "Merry Christmas," "Happy Easter," or images of Santa Claus, Easter Bunny, or St. Valentine's day graphics.

Sex (Gender)

Unacceptable: Ads that indicate a gender preference, such as "Males/females only apply."

Acceptable: Commonly used physical descriptions of housing units that are not preferential or limiting in terms, such as "Mother-in-law's suite."

Handicap

Unacceptable: Ads that disallow handicap accessories, such as -- "no wheelchairs."

Acceptable: Phrases that describe a property's features, services, facilities, or neighborhood, such as -- "great view," "fourth-floor walk-up," "walk-in closets," "jogging trails nearby," "walking distance to bus stop."

Familial Status

Unacceptable: Ads that limit the number or ages of children allowed, or that express a preference for adults, couples, or singles.

Acceptable: Descriptions of properties, their services, facilities (or lack thereof), or the neighborhood, such as -- "two-bedroom," "cozy family room," "no bicycles allowed," "quiet streets."

A good rule to follow is to focus advertisements on property descriptions rather than on the potential buyers. Describing a property as being near a jogging trail (focus is on location) is more acceptable than stating only joggers can live there (focus is on potential buyer).

Placing Advertisements

Advertising in the media including selective publications might also lead to discriminatory results and could violate fair housing laws. For example, problems might arise when an advertisement is placed in a particular geographic or zoned edition of a major metropolitan newspaper or in smaller newspapers that reach only a particular segment of a community. Be consistent when advertising properties and communities in each medium -- advertise in media that will reach **all** different audiences, not just one.

Using Human Models in Real Estate Advertising

Exercise caution when using human models in real estate advertising. Under certain circumstances, the exclusive use of Caucasian models has been held to communicate a preference for Caucasian applicants or prospects. While the Fair Housing Act does not contain an affirmative obligation to choose human models in direct proportion to the racial composition of the market place, a real estate professional who uses human models in advertising is well advised to make special efforts to use minority and Caucasian models, and children and disabled persons.


Ethics Appeals and Procedural Reviews for Arbitration

The following information is from Section 23 – Action of the Board of Directors, *CEAM*.

Appeal of an Ethics Decision

Within 20 days after a hearing panel's final decision has been rendered, if no petition for a "rehearing" has been filed, or within 20 days after the hearing panel's final decision, subsequent to the rehearing, or within 10 days after denial of a petition for a rehearing, the complainant or respondent may file an appeal with the president.

1. Appellant makes appeal

All appeals:

- must be in writing
- must be accompanied by a deposit in the sum of \$_____ (not to exceed \$500)
- should clearly indicate the bases on which the hearing panel's decision and/or recommendation for discipline is being challenged (1. misapplication or misinterpretation of an Article(s) of the Code of Ethics; 2. procedural deficiency or any lack of procedural due process; 3. discipline recommended by the hearing panel) and set forth in reasonable detail the facts and evidence to support bases cited

A complainant may appeal based only on alleged procedural deficiencies or other lack of procedural due process that may have deprived him or her of the opportunity for a full and fair hearing.

NOTE: All ethics requests must be heard; there is no "veto".

2. President reviews appeal

The written request for appeal is reviewed by the board president or the president's designee – only for the purpose of determining whether the appeal states any legitimate basis for consideration by the board of directors. If determined to be insufficient, the request is returned to the appellant, accompanied by an explanation and a request for additional information to be received by the board within ten (10) days. This initial administrative review is NOT a decision on the merits of the appeal request, but is only intended to ensure compliance with the requirement that an appeal clearly set forth all bases to be presented to the board of directors for consideration.

3. All parties are notified of the time and place of the ethics appeal by the directors

The secretary immediately sends a copy of the ethics appeal to the other party, notifies all parties of the time and place of the directors' review, and brings the matter before the directors for their review at their next regular meeting or during a special meeting called by the secretary for that purpose, giving at least ten days' notice.

In advance, the secretary provides a copy of the ethics appeal (or amended appeal) and the president's correspondence (if any) to the directors. The directors keep this information confidential.

4. The ethics appeal may be heard by an appointed panel of directors or by the executive committee, not the full board of directors

The ethics appeal may be heard by a panel of directors appointed by the president for that purpose (or, alternatively, by the association's executive committee). Five directors or a quorum of the board of directors, whichever is less, shall constitute such a panel acting on behalf of the board of directors. The decision of this entity shall be final and binding and is not subject to further review.

5. All parties and the chair participate in the ethics appeal hearing

During the appeal hearing, the chair of the panel has an opportunity to explain why the ethics hearing panel's decision should be upheld; the party that files the appeal has an opportunity explain the basis on which the party is requesting that the decision be overturned or amended; and the other party presents to the directors reasons why the hearing panel's decision should be upheld.

6. Board of directors reviews appeal and makes decision

The board of directors renders its decision promptly. The decision may be to adopt or modify the recommendation of the hearing panel, including the discipline proposed, or the directors may dismiss the matter if they conclude the findings of fact do not support the hearing panel's conclusion about unethical conduct.

If concerned about a substantial procedural deficiency, the directors may:

- refer the decision back to the professional standards committee for a new hearing and recommendation of sanction by a different hearing panel
- impose alternative discipline that does not exceed that recommendation by the hearing panel
- refer the decision back to the original hearing panel for further consideration and recommendation accompanied by the directors' concerns regarding the proposed discipline (in such matters, request and consider the advice of board legal counsel)

Procedural Review of an Arbitration Award

The following information is from Section 55 – Request for Procedural Review by Directors, CEAM.

1. A written request for procedural review of the arbitration hearing procedures is filed

A written request for procedural review must be filed with the association president within twenty (20) days after the award has been served on the parties and be accompanied by a deposit in the sum of \$_____ (not to exceed \$500).

In this request, the alleged procedural deficiencies or other irregularities the party believes constitute a deprivation of due process on the part of Hearing Panel members or others acting on behalf of the Board are cited. Some examples of alleged procedural deficiencies cited might be:

- fraud
- coercion
- bias
- prejudice
- evident partiality, etc.



The request for procedural review is reviewed by the association president or his or her designee **only for the purpose of determining whether the request states any legitimate basis for consideration by the board of directors.**

If determined to be insufficient, the request is returned to the requester with an explanation and a request for additional detail to be received by the association within ten (10) days of notice.

The initial administrative review is not a decision on the merits of the request for procedural review, but is intended only to ensure compliance with the requirement that the request cite the alleged procedural deficiency or irregularity on which the request is based and which will be presented to the Board of Directors for its consideration.

NOTE: All procedural review requests must be heard; there is no “veto”.

2. All parties are notified of the time and place of the review by the directors

The secretary immediately sends a copy of the procedural review to the other party, notifies all parties of the time and place of the directors’ review, and brings the matter before the directors for their review at their next regular meeting or during a special meeting called by the secretary for that purpose, giving at least ten days’ notice.

In advance, the secretary provides a copy of the request (or amended request) and the president’s correspondence (if any) to the directors. The directors keep this information confidential.

3. The request may be heard by an appointed panel of directors or by the executive committee, not the full board of directors

The request for procedural review may be heard by a panel of directors appointed by the president for that purpose (or, alternatively, by the association's executive committee). Five directors or a quorum of the board of directors, whichever is less, shall constitute such a panel acting on behalf of the board of directors. The decision of this entity shall be final and binding is not subject to further review.

4. All parties and the chair participate in the procedural review hearing

During the procedural review hearing, the party that files the request has an opportunity to explain the bases on which the party is requesting that the award of the arbitrators be overturned. The chair of the arbitration panel has an opportunity to respond to the allegations. The other party presents to the directors reasons why the hearing panel's arbitration award should not be overturned.

5. The board of directors reviews the evidence only related to deprivation of due process

The merits of an arbitration award are not reviewed by the board of directors – only evidence that may bear upon a claim of deprivation of due process.

The directors render their decision promptly.

Such a decision might be to adopt the award of the arbitrators, or to overturn the award based on a substantial procedural error in the arbitration hearing process that resulted in a denial of due process or on a determination that the member was otherwise deprived of due process.

6. The directors make a decision

If the directors determine that a substantial procedural error occurred or that a member has been deprived of due process, they invalidate the original arbitration award and direct that the matter be referred to the Professional Standards Committee for a hearing on the merits before a different hearing panel.

If no procedural error is found, the directors may release the parties from their obligation to arbitrate, if they conclude that the association/board will be unable to impanel an impartial hearing panel.

7. Legal rights may be exercised

A member is not precluded from asserting any legal rights to which he or she is entitled after all procedural remedies provided for in the association's procedures have not been exhausted. Assertion of such legal rights in the courts at any time after the award is rendered does not violate Article 17 of the Code of Ethics.





Administrative Time Frames - Ethics Proceedings

Situation	Time Table
Grievance	
Complaint filed	180 days...
Response required/# of days to submit	Optional/15 days from complaint being mailed to the respondent if response solicited
Complainant's appeal to Directors	20 days from receipt of dismissal notice
Directors review	Next meeting
Professional Standards	
Respondent provides response	15 days from complaint being mailed
Challenge forms	10 days to challenge from date forms mailed
Panel named	15 days from mailing challenge forms
Hearing notice	21 days in advance of hearing
Complaint/response to panel	Board option
Notice of witnesses and counsel	15 days before hearing to Board and other party
Adjourned hearing	Not less than 15 days or more than 30 days from hearing
Decision filed	10 days after decision final
Transmit decision	5 business days after decision filed with staff
Rehearing	
Rehearing filed	20 days after decision mailed
Panel decision on rehearing request	Automatically denied 14 days from filing if not answered.
If denied, party can appeal	10 days after denial
If granted, party can appeal	20 days after decision mailed
Appeal	
Appeal filed	20 days after decision mailed (or 10 days after rehearing request denied)
Preliminary review	Optional number of days
Amendment received	Within 10 days of notice
Appeal heard	Next/special meeting giving 10 days minimum notice



Administrative Time Frames - Arbitration Proceedings

Grievance

Request filed	180 days...
Response required/ # of days to submit	Optional/15 days from mailing request to respondent if response solicited
Appeal dismissal to Directors	20 days from mailing dismissal notice
Appeal of mandatory vs. voluntary	20 days from <u>RECEIPT</u> of decision

Hearing

Notification to respondent of request	5 days from receipt of Grievance's instructio
Response required	15 days from mailing request to respondent
Challenge forms	10 days to challenge from date forms mailed
Panel named	15 days from mailing challenge forms
Hearing notice	21 days before hearing
Arbitration case to panel	Board option
Notice of witnesses and attorney	15 days before hearing to Board and other party

Procedural Review

Request filed	20 days from mailing award
Preliminary review	Optional number of days
Amendment received	Within 10 days of notice
Review held by Directors	Next/special meeting giving not less than 10 days notice

This page is located on the U.S. Department of Housing and Urban Development's Homes and Communities Web site at <http://www.hud.gov:80/offices/hsg/sfh/res/resindus.cfm>.



FAQs About RESPA for Industry

- 1. Can a lender set up a contest for real estate agents under which the agent who provides the lender with the most business will win a trip to Hawaii?**

No. Under RESPA, the trip itself, and even the opportunity to win the trip, would be a thing of value given in exchange for the referral of business.

- 2. Can a lender give a borrower an incentive, such as a chance to win a trip or a rebate, for doing business with the lender?**

RESPA does not prohibit a lender or other settlement provider from giving the borrower an incentive for doing business with it as long as the incentive is not based on the borrower referring business to the lender.

- 3. Can a mortgage banker and a real estate broker advertise their services together, for example, on the same brochure or newspaper advertisement?**

Nothing in RESPA prevents joint advertising. However, if one party is paying less than a pro-rata share for the brochure or advertisement, there could be a RESPA violation.

- 4. Can a lender give a real estate agent note pads with the lender's name on it?**

Yes. Such note pads with the lender's name on it would be allowable as normal promotional items. However, if the lender gives the real estate agent note pads with the real estate agent's name on it for the agent to use to market clients for its real estate business, then the note pads could be a thing of value given for referral of loan business, because it defrays a marketing expense that the real estate agent would otherwise incur.

- 5. Can a mortgage broker be compensated for referring business to a lender that is unrelated to a real estate transaction, such as automobile loans?**

Yes, provided that the compensation is exclusively related to the automobile loan and does not represent, in whole or in part, compensation for the referral of real estate business, and no lien is placed on a residence to secure the auto loan.



With over twenty years in the real estate business, Lynn has enjoyed success as a top producer, successful managing broker and award winning educator. As owner of Lynn Madison Seminars, Lynn has been involved in writing and presenting seminars throughout the country primarily in the areas of agency, professional standards, fair housing and risk management.

Lynn also conducts Leadership training for associations as well as professional standards and ethics training and is a REBAC ABR and At Home With Diversity certified instructor.

Check out Lynn's website – www.lynnmadison.com – for tools and tips to help your members make more money – and stay out of trouble while they're doing it. For more in-depth information there are CD's available:



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