Criteria and Minimum Content Components - Professional Standards Administrator Training

The criteria and minimum content components of the Professional Standards Administrator Training are described below in connection with each learning objective established for the course. These criteria and minimum content components are intended to describe the information which should be conveyed to accomplish the corresponding learning objective. Boards and associations should feel free to convey this information which is considered to accomplish the learning objective in a variety of methods which best fit the board’s or association’s needs for the class.

To this end, the format of the class may include brief lecturettes, group exercises, quizzes, group discussions, case studies and the like.

In order to measure understanding of the minimum content, a test must be administered at the conclusion of the course or class and the board/association or organization sponsoring the test must maintain adequate records proving the successful completion of the test. A minimum passing grade of 75% is required to fulfill this requirement for the participant.

**Learning Objective #1**

**Briefly describe the history of the Code of Ethics as it relates to its origins its influence on state licensing laws and its establishment of arbitration as the monetary dispute resolution process between REALTORS®.**

This learning objective is directed to content of the following nature:

1. The Code of Ethics was adopted in 1913 as one of the first industry codes of ethics.
2. The Code of Ethics is a living document which is changed as necessary to meet the challenges of new business concepts which have developed during its history.
3. However, the Code of Ethics includes timeless concepts such as honesty, obligations to clients and avoidance of self-dealing.
4. The Code of Ethics was a precursor to state licensing of real estate practitioners.
5. The Code of Ethics was a model for many of the original state licensing laws.
6. The Code of Ethics has mandated the arbitration of money disputes between REALTORS® since its inception in 1913. REALTORS® have participated in this "Culture of Cooperation" for one hundred plus years and, as a result, have a unique system in which competitors cooperate and pay commissions to each other for such cooperation. This system is clearly to the public’s benefit in the efficient sale of real property.

**Learning Objective #2**

**Identify concepts in the Preamble to the Code of Ethics, including concepts such as the wide distribution of land ownership, highest and best use of the land, principles of competency, fairness and high integrity and the concept of adherence to the Code regardless of an inducement of profit and/or an instruction from clients to the contrary.**

This learning objective should be accomplished by an examination of the concepts in the Preamble to the Code of Ethics. A recommended list of concepts to be discussed include those listed in the learning objective and the following:

1. The concept of striving to become and remain informed on issues affecting real estate.
2. Willingly sharing the fruit of one’s experience and study with other REALTORS®.
3. The elimination of practices which may damage the public, or bring discredit or dishonor to the real estate profession through Code enforcement and assisting regulatory bodies.
4. Urging the exclusive representation of clients.
5. The concept of not attempting to gain any unfair advantage over competitors.
6. Refraining from unsolicited comments about other practitioners and offering any opinions about competitors in an objective and professional manner.

**Learning Objective #3**

**List the major categories of Articles in the Code (Duties to Clients and Customers, Duties to the Public and Duties to REALTORS®).**

This learning objective begins the process of demonstrating the structure of the Code. Information to be included in this learning objective is a discussion of the way the Code is prioritized as to its categories, Articles and Standards of Practice. The instructor should discuss the fact that the Code is divided into these three categories by design, with the idea that Duties to Clients and Customers is the first priority in the Code, Duties to the Public is the next priority, and Duties to REALTORS® is the final priority. The instructor should also then introduce the idea that the material within the categories is also prioritized. This introduction should lead into the next learning objective.

**Learning Objective #4**

**Describe the structure of the Code and its supporting materials (Articles, Standards of Practice and Case Interpretations).**

Within this learning objective, the material should describe the Articles of the Code as the broadest statements of ethical principles embodied by the Code. Discussion should then proceed to the concept that the Standards of Practice further define the Article under which they are placed. Then, the Case Interpretations should be presented as hypothetical factual situations which have been described by the NAR Professional Standards Committee in which a hypothetical REALTOR® has been found in violation of the Code of Ethics or in which a hypothetical REALTOR® has been exonerated of an allegation of a violation of the Code of Ethics. In addition, further discussion should be included which describes the prioritization of the Articles of the Code beginning with the duties of highest priority (i.e. Article 1 and its obligation to protect and promote the interests of the client). The Standards of Practice within each Article should also be described within the same context as being prioritized "under" their respective Articles.

**Learning Objective #5**

List Articles of the Code which are commonly the subject of complaints.

This learning objective envisions a simple listing of Articles such as 1, 2, 9, 12, and 16, which are commonly the subject of complaints in many boards and associations. If a board or association has particular experience with Articles other than those listed, it should include those Articles.

**Learning Objective #6**

**Describe the concepts of these commonly cited Articles of the Code, including Articles 1, 2, 9, 12, and 16.**

Content for this learning objective includes an analysis of the commonly cited Articles identified in Objective #5. A synopsis of the concepts of the noted Articles and recommended Standards of Practice follows. The citing of "recommended" Standards of Practice does not preclude a board or association from using different Standards of Practice in the program.

Article 1: Basic concepts of the Article include the obligation to protect and promote the interests of the client and an explanation that this obligation is one of fidelity in the nature of a fiduciary relationship. The Article also specifies that this obligation of fidelity does not relieve the REALTOR® of the obligation to treat all parties honestly. Important Standards of Practice under Article 1 which are recommended to be discussed, as time allows, include:

Standard of Practice 1-5 defines the conditions under which a REALTOR® may engage in disclosed dual agency.

Standard of Practice 1-6 specifies the obligation to present all offers and counter-offers objectively and as quickly as possible.

Standards of Practice 1-7 and 1-8 include the obligation to present all offers until closing and/or acceptance (depending on the party with whom the REALTOR® is working) and specify additional conditions as to how and when this obligation applies.

Standard of Practice 1-9 defines the obligation of confidentiality.

Standards of Practice 1-12 and 1-13 specify disclosure obligations of REALTORS® upon taking a listing or entering into a buyer/tenant agreement.

Article 2: Article 2 might be commonly termed the "property or transaction disclosure" article. Its principles include the obligation not to exaggerate, misrepresent or conceal pertinent facts about the property or the transaction. Article 2 is limited, however, in that it does not include an obligation to discover latent defects, advise on matters outside the scope on one’s real estate license or to disclose facts which are confidential under the scope of agency duties. Standard of Practice 2-1 should be discussed in that it further clarifies the obligation to discover and disclose adverse factors. The discovery obligation extends only to those factors which would be within the expertise required by the real estate licensing authority and does not impose an obligation of expertise in other professional or technical disciplines.

Article 9: Article 9’s primary concept is to require REALTORS® to assure, whenever possible, that agreements be in writing, expressing the specific terms and obligations of the parties. In addition, Standard of Practice 9-1 amplifies this obligation by requiring REALTORS® to use reasonable care to ensure that these documents are kept current through the use of written extensions or amendments.

Article 12: Article 12 might be called the "truth in advertising" article. Its call is for REALTORS® to present a "true picture" in advertising, marketing,and other representations to the public. Standard of Practice 12-7 should be included for discussion. This Standard of Practice covers the use of the term "sold" in signs and advertising.

Article 16: Article 16 encompasses the idea of non-interference with agency and other exclusive relationships of other REALTORS®. Its central premise is that a REALTOR® shall not engage in any practice or take any action which is inconsistent with the agency or other exclusive relationship that other REALTORS® have with clients. While Article 16 is a relatively short Article, it has many Standards of Practice which have been established to support it. Discussion of the following Standards of Practice is recommended as time allows:

Standard of Practice 16-2: This Standard of Practice clarifies the types of personal, mail and other forms of written solicitations which are ethical and unethical. Explanation should be given that "general" types of solicitation, as defined in the Standard of Practice, are not unethical and that the Standard of Practice is narrow and specific as to the types of solicitations which are recognized as unethical under Article 16.

Standard of Practice 16-4 and 16-6: These two companion Standards of Practice specify the appropriate conduct of a REALTOR® when confronted with issues regarding solicitation of a listed property. While the basic premise of Standard of Practice 16-4 is that solicitation of a listing which is currently listed exclusively with another REALTOR® is unethical, procedures are set out in Standard of Practice 16-4 and 16-6 which modify this basic premise under certain limited conditions. Standard of Practice 16-5 deals with parallel issues in the solicitation of buyers/tenants subject to exclusive buyer/tenant agreements.

Standard of Practice 16-9: This Standard of Practice specifies the conditions under which a REALTOR® is required to inquire of a prospective client as to the client being subject to another exclusive agreement. The Standard of Practice requires REALTORS® to make reasonable efforts to determine whether the client is subject to another current, valid, exclusive agreement prior to the REALTOR® entering into an agency agreement or other exclusive relationship with the client.

Standard of Practice 16-13: Standard of Practice 16-13 sets out the obligation not to deal with another REALTOR®’s client who is subject to an exclusive agreement unless the client’s agent or broker gives consent or unless the client initiates such dealings.
Return to outline

**Learning Objective #7**

**List the concepts of providing due process in a hearing.**

Included should be the components which provide for the idea of fundamental fairness in a hearing, such as:

1. Right to know nature of complaint/arbitration in advance.
2. Opportunity to prepare an adequate defense.
3. Right to call witnesses.
4. Right to present evidence/testimony.
5. Right to cross-examine witnesses called by other side.
6. Right to have legal counsel present.
7. Right to a hearing before an impartial peer panel.

**Learning Objective #8**

**Identify antitrust concerns which may arise in the application of the professional standards process.**

Minimum content for this objective includes a list of the elements of an antitrust violation and a description of situations which may occur which could form the basis of an antitrust complaint against a board/association. Example situations include misapplication or misinterpretation of the Code of Ethics, inappropriate application of discipline, failure to provide fundamental due process rights and failure to exhibit fundamental fairness in a hearing.

**Learning Objective #9**

**Describe the general processing of an ethics complaint and of an arbitration complaint, including those eligible to file complaints, the difference between an ethics and an arbitration complaint, and the difference between the Grievance Committee and the Professional Standards/Arbitration Committee.**

Minimum content for this objective is described in the objective itself.

**Learning Objective #10**

**Describe the role and composition of the Grievance Committee, in general, in an ethics complaint and in an arbitration claim.**

Content for this objective may be derived from the Code of Ethics and Arbitration Manual (CEAM). In particular, the composition of the Grievance Committee must be taught and the Grievance Committee must be identified as a screening committee which does not hold hearings, does not investigate complaints and should follow the standards set forth in the appropriate sections of the CEAM for processing a complaint.

**Learning Objective #11**

**Identify the factors which the Grievance Committee uses in an ethics complaint and in an arbitration claim.**

This content should be derived from the CEAM. An example section is Section 19 in Part 3 of the CEAM.
Return to outline

**Learning Objective #12**

**Describe the confidentiality provisions of the professional standards process.**

Content can be found in the CEAM, references in the Index to "Confidentiality".

**Learning Objective #13**

**List the bases and procedure for challenges to Hearing Panel members.**

Content is as referenced in the CEAM.

**Learning Objective #14**

**Define the notice procedures for witnesses and attorneys.**

Content is as referenced in the CEAM.

**Learning Objective #15**

**Describe the hearing procedures used in both an ethics hearing and an arbitration hearing.**

Content is per the hearing procedure outlines in the CEAM, e.g. Part Five-Conduct of an Ethics Hearing: Outline of Procedure for Ethics Hearing.

**Learning Objective #16**

**Define the requirements for recording a hearing and the appropriate use of the hearing records.**

Content is as referenced in the CEAM.

**Learning Objective #17**

**Define the standards of proof used in both an ethics hearing and an arbitration hearing.**

Content is as referenced in the CEAM.

**Learning Objective #18**

**Describe the role of both staff and board counsel in a hearing and in an executive session.**

Content is as referenced in the CEAM as to role of board counsel (e.g. Part One, Section 4) and the Professional Standards Training Guide as to the role of staff.

**Learning Objective #19**

**Describe the components of a decision form which an ethics panel must complete.**

Content is per the CEAM and appropriate forms therein (e.g. Form #E-11, Decision of Ethics Hearing Panel of the Professional Standards Committee).

**Learning Objective #20**

**List the available disciplinary actions which an ethics panel may impose.**

Content is per the CEAM.

**Learning Objective #21**

**Identify the options a board must adopt in conducting an arbitration hearing with the attendance of the respondent or in the absence of the respondent.**

Content is per the CEAM, particularly Part Ten, Section 48.

**Learning Objective #22**

**Identify the procedure for processing a complaint alleging a violation of Article 17.**

This Learning Objective is narrowly directed to the forwarding to the Board of Directors of an allegation of a violation of Article 17, specifically Part Ten, Section 49.

**Learning Objective #23**

**Describe the components of an arbitration award.**

Reference for this Learning Objective is to Form #A-12, Award of Arbitrators, Part Ten, Section 53, and the differences between the components of an ethics decision with its findings of fact and conclusions and an arbitration award with its statement of the amount of the award only without findings of fact.

**Learning Objective #24**

**Describe the difference between a refusal to arbitrate and a refusal to abide by an award.**

This Learning Objective seeks to contrast the concepts of what is a refusal to arbitrate which can be the basis for an allegation of a violation of Article 17 versus the refusal to pay an award. The refusal to arbitrate should be guided by the concepts in Article 17 and its related Standards of Practice regarding the submission of a dispute to arbitration and Part Ten, Section 49 of the CEAM. Sections 49, 53 and 56 of Part Ten of the CEAM should be referenced to discuss the refusal to abide by an award.

**Learning Objective #25**

**Describe the mediation process in an arbitration claim, and the opportunity for associations to adopt mediation of potentially unethical conduct.**

Content should be as referenced in the Mediation Section of the CEAM and https://www.nar.realtor/ae/manage-your-association/association-policy/ethics-mediation

**Learning Objective #26**

**Describe the ombudsman process.**

The requirement to offer ombudsman services is stated at Professional Standards Policy Statement 59; educational resources are offered at https://www.nar.realtor/ae/manage-your-association/local-and-state-association-ombudsman-services

**Learning Objective #27**

**Describe the citation policy and schedule of fines, if adopted.**

Associations interested in adopting a citation policy and a citation schedule of potential violations and specific fines and/or education that apply to those violations should view the National Association’s Model Citation Policy found at: http://www.realtor.org/policy/nar-model-citation-policy-and- schedule-of-fines

**Learning Objective #28**

**List the actions the Board of Directors may take in an ethics case with an appeal and without an appeal.**

Content is as per the CEAM.

**Learning Objective #29**

**Describe the process for a rehearing in an ethics case.**

Content is as per the CEAM.

**Learning Objective #30**

**Describe the process for an appeal from the Grievance Committee.**

Content is as per the CEAM.

**Learning Objective #31**

**Describe the availability of and procedure for an ethics appeal.**

Content is as referenced in the CEAM.

**Learning Objective #32**

**Describe the availability of and procedure for an a procedural review in an arbitration case.**

Content is as referenced in the CEAM.

**Learning Objective #33**

**Briefly describe the bases upon which a procuring cause arbitration claim is decided.**

This Learning Objective is not intended to be a course on arbitration or procuring cause. However, the minimum content for this Objective should include a brief discussion of the concept of procuring cause as the standard by which REALTOR® to REALTOR® commission disputes are decided; that the concept of procuring cause is determined by the factors specified by the NAR Professional Standards Committee in the Code of Ethics and Arbitration Manual; that no one factor, such as who showed the property first, who wrote the successful offer to purchase, or who secured a written agency agreement with the buyer, will determine the outcome of the case.

**Learning Objective #34**

**Identify the resources available in the Code of Ethics and Arbitration Manual (CEAM) related to:**

1. Checklists for ethics complaints and arbitration claims.
2. Time frames for processing ethics complaints and arbitration claims.
3. Forms available for use in ethics and arbitration cases.
4. Actions required to be taken by a board or association to properly adopt the CEAM.

This Learning Objective is directed toward the participant being able to identify the appropriate sections of the CEAM which will provide the checklists, time frames, forms and options. It is not directed at a memorization process of time frames, etc., but simply to familiarize the participant with the source of this type of information.