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Re: Code of Ethics and COVID-19

Dear Members:

During this difficult and unprecedented period, society is navigating issues never considered before. Health, liability, financial, and political issues seem to arise every day. Your Professional Standards Administrator is receiving calls and questions daily. The Association is concerned that members may be taking steps that may unknowingly lead to liability down the road. This is the first in a series meant to help avoid these liability concerns. In this article we return to the basics and revisit the NAR Code of Ethics (COE), the basis for much of California law. We will highlight those COE sections that NAR and this author believe need to be reviewed as part of your risk management strategy.

Article 1. Your fiduciary duty to your client is primary. It is not limited to their financial interest. You need to protect and promote all their interests, in light of current realities.

- These duties exist whether contacts are in person or electronic/virtual.
- You cannot mislead sellers while securing a listing.
- All offers/counteroffers must be submitted objectively and quickly.
- You must advise buyer's agents, if asked, that other offers have been submitted.
- You must be cautious about confidential and privacy issues while revealing any health-related concerns.
- You must act with due regard for the safety of all concerned.
- You must be diligent about "foreseeable" contingencies. Issues that were not foreseeable in March are front and center today.
- If information comes from a third party, either verify it or advise, in writing, you have not.
- You must obtain and disseminate information truthfully.
- Do not access the property or allow others to do so without clear direction from the seller.

Article 2. It is more important than ever that you do not conceal or misrepresent facts. You must truthfully discuss and review the source of information, especially regarding any COVID-19 issues.

- Stay within your expertise, especially relating to health issues. Do not engage in discovery other than within your license. Follow C.A.R guidelines. You are not health care workers. Be careful when expressing your opinion on non-real estate related issues.
- Do not mislead about any financial or health-related issues. Know what is confidential and private.
- Use the forms provided correctly. READ THEM.

Article 3. Cooperation, for the benefit of the client and parties, is crucial.

- Seller's instruction about limiting access should be disclosed as soon as possible. Your MLS is a great place to start. If a PEAD is required, say so. Send to non-members ahead of time.
- DO NOT play games with the commissions or offers of compensation in any way.
- Once you have consulted with your client disclose ALL pertinent facts.
- Be truthful regarding availability of showings and access, especially limits placed by the seller. Whenever possible, showings are to be virtual. Disclose at your earliest opportunity if the seller will require a PEAD.
- Share information willingly.
- Be extra careful and avoid ALL discriminatory practices.

Article 9. It is critical that ALL agreements, including addendums and/or contract amendments, be in writing, properly signed and initialed, and that copies be provided to all parties. Understand the importance and limitations of electronic signatures. Document conversations and disclosures. Use the special COVID-19 forms. They are excellent. Document extensions, contract amendments, and modifications, and stay current on forms. C.A.R. and the Association are doing everything they can to keep you current.

Article 10. Be very attentive to Fair Housing issues. Do not discriminate in any way when advertising or showing. Treat all qualified persons the same.

Article 11. Stay within your area of expertise. Now may not be the best time to learn new specialties. Use the forms, guidelines, and practice tips being created by NAR, C.A.R. and the Association. Attend webinars and special programs. Read and ASK QUESTIONS. (Everyone is attempting to determine how to best proceed.)

Article 12. Be especially honest and truthful in ALL your advertising and real estate communications. Be careful to adhere to copyrights and how you properly (and virtually) stage. Avoid door-to-door marketing. Real estate communications cover more than advertising.

Article 16. Be extra careful not to interfere with the exclusive representation of others.

Remember, violating local laws, ordinances, and HOA rules, whether you agree or not, could also be a violation of your membership duties; thus, an ethics issue. Check with C.A.R. or the HOA for local restrictions. Soon you will have new MLS Clear Cooperation Rules. Violations of those Rules could also end up as violations of the COE, specifically Article 1, 2, 3, and 12.

Next time: Tips on showings and use of COVID-19 forms.

Very truly yours,

TYLER & BURSCH, LLP

Handwritten signature in blue ink, appearing to read "John V. Giardinelli".

John V. Giardinelli, Of Counsel
Association Counsel

JVG:lmc