



Real Estate

Ethics



William H. Pivar



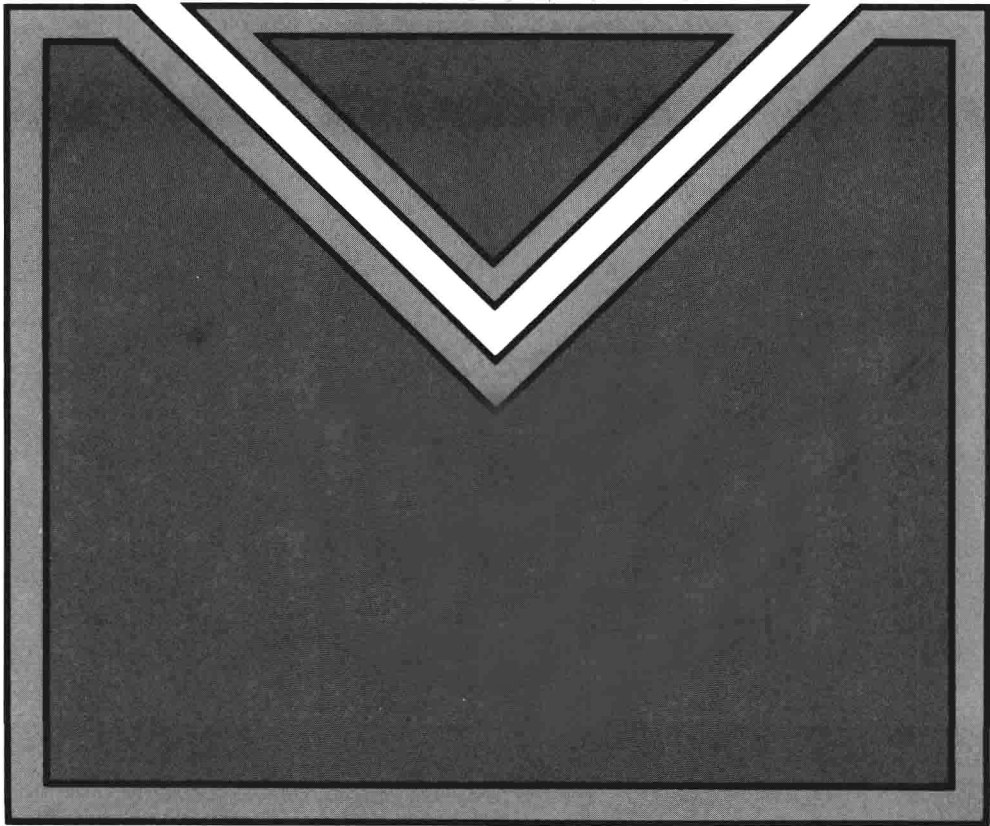


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Preface

In recent years our society has seen a moral reawakening. For the first time many people are examining their actions not as to what is legal but as to what is right.

In real estate we have long been aware of our ethical duties, but questions of what is right and what is wrong are becoming more complex. This book was written to help real estate licensees in analyzing and understanding their moral relationships with others.

Specific problem areas were suggested by many state licensing agencies and real estate boards. The cases presented in this book, while in most part based on real situations, are not typical of the real estate profession. The great majority of real estate brokers and salespeople are dedicated professionals, mindful of their duties to their principals, their customers, other licensees, and to the general public.

The moral and legal opinions expressed in this book are those of the author. While these interpretations are intended to serve as guidelines for ethical conduct, they do not illustrate the only “proper” course of action in any given circumstance.

Acknowledgments

I would like to offer my sincere gratitude to the NATIONAL ASSOCIATION OF REALTORS® and their subsidiary groups as well as to the many local boards of Realtors® and state licensing agencies who provided assistance in preparing this book.

Special thanks to George Williamson, real estate ethics ombudsman for the Newport Harbor/Costa Mesa Board of Realtors®, for his guidance, to Douglas Garrison, assistant professor of English at College of the Desert, Palm Desert, California, whose hard work was instrumental in the production of this book, and, of course, to all those men and women who strive in their daily lives to make real estate a true profession.

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Understanding Ethics

Among philosophers, you will not find universal agreement as to what, exactly, ethics is. Immanuel Kant believed that what is right is based on pure reason. Moral philosophers believe right to be that which will produce the greatest good. Religious philosophers say that right is determined by the will of God, and wrong is that which is contrary to God's will. For the purpose of this book, however, we will use Albert Schweitzer's definition:

Ethics is the name we give to our concern for good behavior. We feel an obligation to consider not only our own personal well-being but also that of others and of human society as a whole.

Dr. Schweitzer applied this idea of "duty beyond the group" to all of humanity. He believed that the ultimate goal of ethics is the fullest measure of justice for all. If we were to distill the philosophy of Dr. Schweitzer into three words, they would be "**regard for others.**"

ETHICAL CONSIDERATIONS

When we discuss ethics, we are not dealing with a set of hard-and-fast scientific precepts, but rather with subjective, emotional feelings.

Ethics is really a set of instructions for a way of life. The Bible, with all of its stories and philosophies, sets forth a way to live together in harmony. Basically, the Ten Commandments are ethical laws of conduct showing a regard for others. Nearly all religions favor the group

over the individual, holding to the philosophy that if an individual is completely self-seeking, the group will suffer. The maxim “Love thy neighbor as thyself” is pure ethics—it serves as a brake on antisocial behavior.

Ethics is not a concept limited to civilized society; even tribal taboos set forth a moral code by which primitive people could live without conflict. Such moral codes served to further the continuity of these aboriginal societies.

Confucius believed ethics to be the foundation of peace in a society. He believed that a body politic of “good brothers” living in moral harmony would result in an orderly and peaceful nation. Underlying all of Confucian teachings is the golden rule: **“Do unto others as you would have others do unto you.”** The golden rule provides us with the most basic test concerning ethical conduct. You can easily determine whether or not a course of action is ethical simply by asking, “Would I want someone else to act in this manner toward me?” Failure to apply the golden rule will result in two separate standards of ethics—a double standard. One is how you treat others, the second is how you expect others to treat you. Application of the golden rule in your daily life will make these two separate standards one.

Why bother to be a moral person? The answer is not “Because you will go to heaven if you are good”—this reasoning is based on self-interest. You should be good because you should. George Bernard Shaw stated, “You cannot believe in honor until you have achieved it.” Similarly, you cannot fully understand why you should be a moral person until you become moral. Unfortunately, our society isn’t always critical of wrongdoing. For example, many people are impressed with the great wealth accumulated by early families; they ignore the means by which much of the “cream of society” came by their money. Immoral statements, such as Vanderbilt’s “The public be damned” have traditionally been overshadowed by the awe of great wealth.

We have a similar problem within the real estate profession. Incentives such as “Million Dollar Clubs” or “Top Producers of the Month” have tended to overemphasize financial success. We sometimes find ourselves giving professional recognition to those who have served themselves best, while we disregard their attitudes toward professionalism and public service. Rather, we should be honoring colleagues who have achieved ethical success—those who have best served the needs of their

principals and the public. Instead, we tend to treat money as the sole purpose of our endeavors, thus equating dollars with success. Over-emphasis on financial rewards can lead to a pragmatic attitude, with customers and clients appraised on the basis of “What can I get from them?” Overemphasis on dollars can lead to the conclusion that any means to the desired end is acceptable.

When asked why they chose real estate as a profession, students in real estate license preparation classes most often answer, “Money.” Real estate ads for salespersons generally stress dollars and not the fact that real estate allows a person to fulfill an interesting and rewarding service in meeting the needs of people in a professional capacity. Certainly we expect to be adequately rewarded for success, and money is important in our society, but the first concern of professionalism is to properly and in an ethical manner, meet the needs of our clients and the public. Self-interest is fine, but not when maintained at any cost—**not at the cost of your self-respect, not at the cost of friends, and not at the cost of others.**

Ethics does not have to be incompatible with capitalism; profit is not a dirty word. In the long run, good ethics is good business.

Real estate is an aggressive profession in which you should compete vigorously. In fact, vigorous competition will lead to better serving of the public’s needs. Applying the golden rule does not mean that you should allow someone else to make a sale, in the hope that he or she might let you make the next one. Through hard but fair competition, the public cannot help but benefit.

In order to show regard for others, we must be professionals, doing work in a skillful and professional manner. Failure to serve the needs of others in a proper manner is failure to show regard for others. The real estate profession should lead, not follow, prevailing business morality. “Everybody does it” is the type of excuse heard all too often. We cannot accept immorality in ourselves simply because others are doing the same thing.

Thomas Watson, former president of IBM, stated, “If you reach for a star you will never get a star but neither will you get a handful of mud.” He meant that we should strive for an ideal. Though we may never reach it, if we didn’t have that ideal, we would never raise ourselves at all.

Lately, the Federal Trade Commission (FTC) has been interpreting unfair trade practices as those that are against good morals. It has also been trying diligently to upgrade business morals. But, ethics should not have to be dictated by the government. Unfortunately, unless the real estate profession takes it upon itself to lead the moral conscience of the community, that is what will occur. If brokers fail to continually strive for improvement and to police themselves, consumer groups and the government will assume those responsibilities. The problem is that one unethical broker can reflect on the entire real estate profession.

The place for codes of ethics is, of course, the peer groups. The National Association of Realtors® has done a great deal to promote professionalism and to instill in licensees a concern that ethics play a part in their daily lives. Real estate practitioners must feel that they are part of a group and that they have mutual obligations. There must be a commitment that real estate is to be their lifetime profession, and not a stopgap until they can find a more suitable vocation. In real estate we meet one of the most basic needs of our community. The job is important and must not be taken lightly.

The best introduction to ethical conduct within the real estate industry is the “Code of Ethics” of the NATIONAL ASSOCIATION OF REALTORS®. The Code is reprinted in full on the following pages.

CODE OF ETHICS*

NATIONAL ASSOCIATION OF REALTORS®

REVISED AND APPROVED BY THE
DELEGATE BODY OF THE ASSOCIATION
AT ITS 67th ANNUAL CONVENTION
NOVEMBER 14, 1974

Preamble . . .

Under all is the land. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. The REALTOR® 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. They require the creation of adequate housing, the building of functioning cities, the development of productive industries and farms, and the preservation of a healthful environment.

Such interests impose obligations beyond those of ordinary commerce. They impose grave social responsibility and a patriotic duty to which the REALTOR® should dedicate himself, and for which he should be diligent in preparing himself. The REALTOR®, therefore, is zealous to maintain and improve the standards of his calling and shares with his fellow-REALTORS® a common responsibility for its integrity and honor. The term REALTOR® has come to connote competency, fairness, and high integrity resulting from adherence to a lofty ideal of moral conduct in business relations. No inducement of profit and no instruction from clients ever can justify departure from this ideal.

In the interpretation of his obligation, a REALTOR® can take no safer guide than that which has been handed down through the centuries, embodied in the Golden Rule. "Whatsoever ye would that men should do to you, do ye even so to them."

Accepting this standard as his own, every REALTOR® pledges himself to observe its spirit in all of his activities and to conduct his business in accordance with the tenets set forth below.

Article 1

The REALTOR® should keep himself informed on matters affecting real estate in his community, the state, and nation so that he may be able to contribute responsibly to public thinking on such matters.

* Published with the consent of the NATIONAL ASSOCIATION OF REALTORS®, author of and owner of all rights in the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®, NATIONAL ASSOCIATION OF REALTORS® 1974—All Rights Reserved.

The NATIONAL ASSOCIATION OF REALTORS® reserves exclusively unto itself the right to comment on and interpret the CODE and particular provisions thereof. For the NATIONAL ASSOCIATION's official interpretation of the CODE, see INTERPRETATIONS OF THE CODE OF ETHICS; NATIONAL ASSOCIATION OF REALTORS®.

Article 2

In justice to those who place their interests in his care, the REALTOR® should endeavor always to be informed regarding laws, proposed legislation, governmental regulations, public policies, and current market conditions in order to be in a position to advise his clients properly.

Article 3

It is the duty of the REALTOR® to protect the public against fraud, misrepresentation, and unethical practices in real estate transactions. He should endeavor to eliminate in his community any practices which could be damaging to the public or bring discredit to the real estate profession. The REALTOR® should assist the governmental agency charged with regulating the practices of brokers and salesmen in his state.

Article 4

The REALTOR® should seek no unfair advantage over other REALTORS® and should conduct his business so as to avoid controversies with other REALTORS®.

Article 5

In the best interests of society, of his associates, and his own business, the REALTOR® should willingly share with other REALTORS® the lessons of his experience and study for the benefit of the public, and should be loyal to the Board of REALTORS® of his community and active in its work.

Article 6

To prevent dissension and misunderstanding and to assure better service to the owner, the REALTOR® should urge the exclusive listing of property unless contrary to the best interest of the owner.

Article 7

In accepting employment as an agent, the REALTOR® pledges himself to protect and promote the interests of the client. This obligation of absolute fidelity to the client's interests is primary, but it does not relieve the REALTOR® of the obligation to treat fairly all parties to the transaction.

Article 8

The REALTOR® shall not accept compensation from more than one party, even if permitted by law, without the full knowledge of all parties to the transaction.

Article 9

The REALTOR® shall avoid exaggeration, misrepresentation, or concealment of pertinent facts. He has an affirmative obligation to discover adverse factors that a reasonably competent and diligent investigation would disclose.

Article 10

The REALTOR® shall not deny equal professional services to any person for reasons of race, creed, sex, or country of nation origin. The REALTOR® shall not be a party to any plan or agreement to discriminate against a person or persons on the basis of race, creed, sex, or country of national origin.

Article 11

A REALTOR® is expected to provide a level of competent service in keeping with the Standards of Practice in those fields in which the REALTOR® customarily engages.

The REALTOR® shall not undertake to provide specialized professional services concerning a type of property or service that is outside his field of competence unless

he engages 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 person engaged to provide such assistance shall be so identified to the client and his contribution to the assignment should be set forth.

The REALTOR® shall refer to the Standards of Practice of the National Association as to the degree of competence that a client has a right to expect the REALTOR® to possess, taking into consideration the complexity of the problem, the availability of expert assistance, and the opportunities for experience available to the REALTOR®.

Article 12

The REALTOR® shall not undertake to provide professional services concerning a property or its value where he has a present or contemplated interest unless such interest is specifically disclosed to all affected parties.

Article 13

The REALTOR® shall not acquire an interest in or buy for himself, any member of his immediate family, his firm or any member thereof, or any entity in which he has a substantial ownership interest, property listed with him, without making the true position known to the listing owner. In selling property owned by himself, or in which he has any interest, the REALTOR® shall reveal the facts of his ownership or interest to the purchaser.

Article 14

In the event of a controversy between REALTORS® associated with different firms, arising out of their relationship as REALTORS®, the REALTORS® shall submit the dispute to arbitration in accordance with the regulations of their board or boards rather than litigate the matter.

Article 15

If a REALTOR® is charged with unethical practice or is asked to present evidence in any disciplinary proceeding or investigation, he shall place all pertinent facts before the proper tribunal of the member board or affiliated institute, society, or council of which he is a member.

Article 16

When acting as agent, the REALTOR® shall not accept any commission, rebate, or profit on expenditures made for his principal-owner, without the principal's knowledge and consent.

Article 17

The REALTOR® 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.

Article 18

The REALTOR® shall keep in a special account in an appropriate financial institution, separated from his own funds, monies coming into his possession in trust for other persons, such as escrows, trust funds, clients' monies, and other like items.

Article 19

The REALTOR® shall be careful at all times to present a true picture in his advertising and representations to the public. He shall neither advertise without disclosing his name nor permit any person associated with him to use individual names or telephone numbers, unless such person's connection with the REALTOR® is obvious in the advertisement.

Article 20

The REALTOR®, for the protection of all parties, shall see that financial obligations and commitments regarding real estate transactions are in writing, expressing the exact agreement of the parties. A copy of each agreement shall be furnished to each party upon his signing such agreement.

Article 21

The REALTOR® shall not engage in any practice or take any action inconsistent with the agency of another REALTOR®.

Article 22

In the sale of property which is exclusively listed with a REALTOR®, the REALTOR® shall utilize the services of other brokers upon mutually agreed upon terms when it is in the best interests of the client.

Negotiations concerning property which is listed exclusively shall be carried on with the listing broker, not with the owner, except with the consent of the listing broker.

Article 23

The REALTOR® shall not publicly disparage the business practice of a competitor nor volunteer an opinion of a competitor's transaction. If his opinion is sought and if the REALTOR® deems it appropriate to respond, such opinion shall be rendered with strict professional integrity and courtesy.

Article 24

The REALTOR® shall not directly or indirectly solicit the services or affiliation of an employee or independent contractor in the organization of another REALTOR® without prior notice to said REALTOR®.

Where the word REALTOR® is used in this Code and Preamble, it shall be deemed to include REALTOR-ASSOCIATE®. Pronouns shall be considered to include REALTORS® and REALTOR-ASSOCIATE®s of both genders.

The Code of Ethics was adopted in 1913. Amended at the Annual Convention in 1924, 1928, 1950, 1951, 1952, 1955, 1956, 1961, 1962, and 1974.

While the preceding Code of the NATIONAL ASSOCIATION OF REALTORS® provides its members with a good framework for ethical conduct, the California Department of Real Estate believes that a code of ethics and professional conduct should cover every licensee. Further, they propose mandating a code, which, if adopted, will make many acts now considered unethical actual violations of the law.

The working draft of the California Department of Real Estate's Ethics and Professional Conduct Code is reprinted on the following pages.

DRE WORKING DRAFT

Article 11. Ethics and Professional Conduct Code

2785. *Standards of Professional Conduct and Business Practices.* In order to achieve the maximum protection for the purchasers of real property and for those members of the public dealing with real estate licensees and to further the understanding among real estate licensees of their duties and obligations under the Real Estate Law and the regulations of the Real Estate Commissioner, the following standards of professional conduct and business practices are prescribed:

- (a) "Fraud" or "dishonest dealing" or "conduct which would have warranted the denial of an application for a real estate license" on the part of a real estate licensee as those terms are used in Section 10176 and 10177 of the code include, but are not limited to the following acts and omissions:
 - (1) Failing to disclose to the seller of real property in a transaction in which the licensee is acting in the capacity of an agent, the nature and extent of any interest, whether direct or indirect, that the licensee expects to acquire as a result of the purchase of the property. The prospective purchase of the property by a person who is related to the licensee by blood or marriage or the purchase by an entity other than a natural person in which the licensee has an ownership interest or the purchase by any other person with whom the licensee occupies a special relationship that suggests a reasonable possibility that the licensee could be indirectly acquiring an interest in the property shall be disclosed.
 - (2) A false or misleading representation to the seller of real property by an agent in the transaction as to the form and amount of a deposit toward purchase of the property by an offeror.
 - (3) Knowingly making a misrepresentation to the owner of real property by for the purpose of securing a listing of the property relative to the price that the property will be likely to command on the market.
 - (4) The willful failure of a real estate broker who has a listing to sell real property to present or to cause to be presented to the owner of the property, any offer to purchase the property received by the broker prior to the closing of a sale of the property unless the broker has been expressly instructed by the owner not to present such an offer or unless the offer is patently frivolous.
 - (5) The presentation of competing offers to purchase real property to the owner by the listing broker in such a manner as to induce the owner to accept the offer which will provide the greatest

compensation to the listing broker without regard to the benefits and advantages to the owner.

- (6) The failure on the part of any licensee acting in the capacity of an agent in a transaction for the sale, lease or exchange of real property to disclose to a prospective purchaser or lessee, facts known to the licensee which materially affect the value or desirability of the property if the facts are not known to, nor readily observable by, the prospective purchaser or lessee and if the licensee knows or has reason to believe that the prospective purchaser or lessee does not know the facts.
 - (7) The statement or implication by a licensee to an owner of real property in the course of negotiations for a listing that the licensee is precluded by law, regulation or by the rules of any organization from charging less than the commission or fee quoted to the owner by the licensee.
 - (8) Knowingly underestimating the probable closing costs in a transaction in a communication to the prospective buyer or seller of real property in order to induce that person to make or to accept an offer to purchase the property.
 - (9) A representation to an owner of real property for the purpose of securing a listing on the property wherein the licensee states or implies that he has obtained a bona fide written offer to purchase the property unless at the time of the representation the licensee has in his possession or custody a written offer to purchase by a person whom the licensee reasonably believes to be able to consummate the purchase on specified terms and conditions which the licensee reasonably believes will be acceptable to the owner.
 - (10) The refunding by a licensee of an earnest money deposit, or some portion thereof, to the offeror who has made the earnest money payment in a real estate sales transaction in which the seller has accepted the offer to purchase unless the licensee has the express permission of the seller to make the refund.
- (b) Business practices which, if avoided, will aid real estate licensees to comply with the Real Estate Law and Sections 10176 and 10177 of the Business and Professions Code in particular, include but are not limited to the following:
- (1) Representing to a customer or prospective customer that the licensee or his broker is a member of, or is affiliated with, a national or regional real estate brokerage organization unless the licensee concurrently discloses the extent of the legal responsibility that the organization bears for the acts and omissions of members or affiliates.
 - (2) Representing as an agent that specific services are free when, in

fact, the services are included in that for which a fee is to be charged.

- (3) Disclosing to a real estate examination preparatory course offering entity, or representative thereof, the language of a specific question in a real estate license examination.
- (4) Claiming to be an expert in an area of specialization in real estate brokerage, e.g., appraisal, property management, industrial siting, etc., if, in fact, the licensee has had no special training, preparation or experience in that specialty.
- (5) The demanding of a commission or discount by a licensee purchasing real property for his own account after an agreement in principle has been reached with the owner as to the terms and conditions of purchase without any reference to price reduction because of the licensee's licensed status.
- (6) Failing to respond to inquiries of a principal as to the status or extent of efforts to market property listed exclusively with the licensee.
- (7) Failing to inspect a property prior to soliciting an offer for its purchase or lease.
- (8) Failing to explain to the parties or prospective parties to a real estate transaction, the meaning and probable significance of a contingency in an offer or contract that the licensee knows or reasonably believes may affect the closing date of the transaction, vacating of the property by the seller or the occupancy of the property by the buyer.
- (9) Failing to notify the parties to a real estate transaction of a delay which the licensee believes may affect the time of closing or payment.
- (10) Using the term "appraisal" in any advertising of offering for promoting real estate brokerage business to describe a real property evaluation service to be provided by the licensee unless the evaluation process will involve a written estimate of value based upon the assembling, analyzing and reconciling of facts and value indicators for the real property in question.
- (11) The recommending by a salesperson to a party to a real estate transaction that the party use lending or escrow services of an entity in which the salesperson believes his or her broker has a monetary interest without disclosing at the time of making the recommendation that such an interest may exist.
- (12) The use by a licensee in purchasing real property for his own account, of information about the seller's personal or financial condition which the licensee obtained while in a fiduciary relationship to the seller.