

Terra Firma

UNDER ALL IS THE LAND



The REALTORS®' "Golden Thread" Celebrates 100 Years

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The year 2013 marks the centennial of the Code of Ethics and Standards of Practice of the NATIONAL ASSOCIATION OF REALTORS®. The Code establishes the standards of ethical practice that all REALTORS® agree to follow as a condition of their membership. These ethical requirements are a key factor separating REALTORS® from all other real estate practitioners. The Code, a living document that today undergoes annual review and revision, has been called a "golden thread," uniting those devoted to raising the standards of professionalism and service in real estate.

When the National Association of REALTORS® was founded in 1908, the real estate industry was a much different world than it is today. Aside from a few municipal ordinances, there were virtually no laws regulating how real estate brokers conducted their business. No real estate licensing laws were in place, and there was no national Code of Ethics—although some local real estate boards, beginning with the Baltimore board in 1858, adopted codes of conduct for their own members.

While there were plenty of trustworthy people trying to build successful careers in real estate and help their customers work through the increasingly complex world of property transactions, there was also no shortage of people seeking to take advantage of an unwary public and make a quick buck. Curbstoners, as dishonest brokers were called, were holding back the real estate industry, with almost no way for the public to tell which brokers were trustworthy and which were swindlers. Anyone could put out a sign advertising their expertise as a real estate broker. "It is easier to become a real estate man and handle thousands of dollars' worth of property and money," complained R. Bruce Douglas, executive secretary of the Milwaukee Real Estate Exchange, in an address before the members of several Midwestern real estate boards in 1907, "than it is to become a barber charging 10 cents for a shave."

Those devoted to the real estate business needed to find a way to raise the standards of their chosen career, gain the public trust, and chase away the curbstoners.

It was largely in response to this situation that the National Association of REALTORS® was organized in Chicago in May 1908. In her 1958 book *Real Estate in American History*, author Pearl Janet Davies recalled: "A code of ethics for the real estate business had been the national real estate organization's primary objective. Its constitution had a mandatory provision for a committee on code of ethics. Its founders realized that one principal task must be to formulate in clear words the essentials of proper real estate business conduct. Those rules of conduct must be such that men in the business could agree upon them. They must be an expression of the group consciousness."

At NAR's second annual convention, in 1909, Milwaukee broker Edward Barber, first chairman of the Ethics Committee, presented an address in which he summarized the task ahead. "Never go into a deal with a person without first having a definite and distinct understanding as to

just where his interests leave off and yours begin," Barber declared. "We must insist that no dishonest deal be permitted to pass through our hands."

During the first few years of NAR's existence, members of the Ethics Committee were not yet prepared to produce an actual code of ethics. Instead, through speeches at the national meetings, presentations to local boards, and articles in the *National Real Estate Journal*, the committee explored and debated the concept of ethics as it applied to real estate and discussed ways to incorporate meaningful rules that could apply to real estate practitioners across the country.

Two enduring features of today's Code were developed during this period. In 1910, ethics committee chairman C. F. Harrison of Omaha, NE, pointed out that a code of ethics "naturally divides itself into two parts, the broker's duty to his clients and the broker's duty to his fellow brokers." Today's Code has a third section: duties to the public. Frank Craven of Philadelphia, PA, in June 1912 suggested the Golden Rule as an ideal starting point, a concept which is now incorporated into the Code's Preamble.

At the same 1912 meeting in which Craven presented his idea, John T. Sears of Kansas City, MO, submitted his real estate board's statement of ethics to help guide the National committee in its work. The Kansas City code had been developed in January 1912, and was divided into 13 "positive" and 14 "negative" rules.

This move seemed to have had the desired effect, as the committee finally put pen to paper and wrapped up five years of intensive work and debate over the concept of ethics in the real estate business. In July 1913 at the National Association's annual convention in Winnipeg (Canada was part of NAR's territory until the early 1940s), the committee submitted its long-awaited proposal for a national Code of Ethics.

The 1913 version of the Code was largely adapted from Kansas City's code, and was divided into two sections, "The Duty of Real Estate Men Towards Their Clients" and "The Duty of Real Estate Men Towards Other Real Estate Men." It was adopted by the National Association after a brief discussion, with recommendations that it be printed and distributed to all members and adopted by local boards.

The 1913 Code was considered to be a first attempt at a national code of ethics for the real estate industry, one that would be revised and perfected over time. William V. Ebersole, 1914 chair of the ethics committee, invited all members of the association to "carefully consider the code of ethics adopted at Winnipeg, suggesting such improvements or changes as may seem advisable, adopting the spirit and text of the rules as far as practicable, the object being to enlist the personal cooperation of each individual member of the National Association, in this great movement forward...."

Feedback was quickly gathered, and the Code was almost completely

revised and expanded by July 1914. The new Code was divided into three sections, with a section of ten rules outlining the broker's duty to clients; five rules outlining duties to prospective buyers; and another ten rules outlining duties to other brokers. It was revised again in 1915, this time modeled after the Chicago Real Estate Board's own code and featuring two new sections, one addressing the "Duty to Organize" and another listing four "Suggestions to Owners and Investors."

One interesting aspect of these first renditions of the Code is that they included no provisions for enforcement. The general assumption was that brokers, once made aware of the rules, would simply abide by them. That didn't always prove to be the case, however, and by 1915 the National Association was actively encouraging local real estate boards to develop their own enforcement procedures. Adoption of the Code was also voluntary, so even after the national Code was presented in 1913, some state and local associations continued to develop and use their own rules of conduct. The New York State association, for example, issued its "10 Commandments of Real Estate" in April 1915, a concise version of the Code of Ethics intended to dissect the National Association's "elaborate treatises" of 1913 and 1914.

In October 1923, ten years after the Code was first adopted, the National Association finally amended its bylaws to make it mandatory for each local board to adopt the national Code of Ethics and put in place a system to enforce the Code among their members.

The following year, 1924, the Code underwent its third revision, making the articles more relevant to the rapidly changing structure of the real estate industry. Several new provisions were added to help correct the problem local real estate boards were experiencing in enforcing the Code among their members. "Any code that we adopt [...] should carry an adequate provision for its own enforcement," explained ethics committee chair A. H. Barnhisel of Tacoma, WA. "The jazz and joyride stage of realty operations has had its day. It is the business of REALTORS® to see that the new era of service to the individual and civic responsibility has come to stay."

The 1924 Code of Ethics also included what is perhaps the best-known feature of today's Code, both among REALTORS® and the public: the preamble. The familiar "Under all is the land" language setting forth the social responsibilities of the association and its members was not part of the original Code, but was written by Barnhisel and adopted along with many other revisions to the Code in 1924. The preamble's language was modernized in 1955, but REALTORS® were so unhappy with the results that the changes were overturned in 1961. No further attempts were made to alter the preamble until the early 1990s.

One further change was made to the Code in the following years, when an amendment addressing the problem of "horseback appraisals" (what we would now call drive-by appraisals) was added in 1928.

After 1928, the Code, which was originally intended to be a fluid, ever-changing document, was declared "complete" and wasn't altered again for over twenty years. Although the enforcement process was refined and the concepts of mediation and arbitration were developed during those two decades, the Code itself remained unchanged. Even the Committee on Ethics, an integral part of the National Association since its founding, had completely vanished by 1933.

Even after twenty-plus years of stagnation, the Code of Ethics was still seen as a vital benchmark for conducting real estate business the right way, and calls to revitalize it grew louder. Led by Philadelphia's Roland R. Randall, the Code's supporters finally got their chance in May 1946 with the formation of the Committee on Professional Standards, filling a gap left by the old ethics committee. "The idea of a Committee on Professional Standards grew out of criticism from members of the National Association of Real Estate Boards that the term REALTOR® 'didn't mean anything,'" explained Randall. "Some members felt that the Code of Ethics was not adhered to rigidly, if at all. Other members felt that, after 25 years, changes should be made in the Code and additions made to it. The Professional Standards Committee was therefore appointed [...] to devote its attention to the raising of professional standards nationally in the transaction of business concerning real estate in all its branches."

A Code of Ethics for Farm & Land Brokers

Today's Code of Ethics acknowledges the specialized expertise and services provided by farm and land brokers in Article 11, which states: "The services which REALTORS® provide to their clients and customers shall conform to the standards of practice and competence which are reasonably expected in the specific real estate disciplines in which they engage; specifically, residential real estate brokerage, real property management, commercial and industrial real estate brokerage, land brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate."

The mention of land brokerage is a very recent addition to the Code, and took many decades to achieve.

The National Association's Farm Lands Division, established in 1920, made no mention of the Code in its bylaws. The bylaws stipulated that the Division's members be REALTORS®, however, who by definition were required to follow the principles set out in the Code.

In 1928, NAR's Home Builders & Subdividers Division created its own Code of Ethics. Its members were required to follow NAR's Code, in addition to the Division Code, which addressed situations specific to home builders and subdivision developers, such as specifying which improvements and utilities would be included with the purchase of a lot.

The Farm Lands Division saw advantages in creating a similar code for farm and land specialists, and soon appointed a Committee on Ethics and Standards of Practice to examine the matter. The Committee was told to make its recommendation at the Division's annual meeting in 1929.

The dire condition of the farm economy, coupled with the onset of the Great Depression, caused many of the Division's members to leave the business in 1929, including several of the ethics committee members, and so the proposed farm specialists' code was never written. A second unsuccessful attempt at writing a farm code was made in 1933.

When the REALTORS® Land Institute was founded in 1944, the organization's bylaws specified that members "shall agree to abide by the Code of Ethics of the National Association of Real Estate Boards."

So throughout the decades, members of the Farm Lands Division and the REALTORS® Land Institute have always been required to abide by the REALTORS® Code of Ethics, although the Code itself didn't mention farm and land brokerage. Commercial and industrial property, international real estate, real estate auction, and other specialties were acknowledged as specific disciplines when Article 11 was amended in 1995. Land brokerage was finally added to that list in 2010.

The new Professional Standards Committee immediately set about revising the Code of Ethics. "It has been 23 years since a change has been made in our Code of Ethics and as changes have come in our business life over the last two decades, it has become quite apparent that new provisions should be added and certain sections should be clarified," declared Randall, the committee's first chairman.

In the summer of 1947, just as the revisions were about to be presented to the National Association's board of directors for consideration, the federal government brought an antitrust action against the National Association, putting the Code's planned updates on hold. At issue was the Code's Article 9, which required REALTORS® to follow their board's published commission rates and fees. The National Association said the provision protected consumers from paying unfair and arbitrary rates for real estate services, but the Department of Justice called the rate setting anticompetitive. The case eventually reached the U.S. Supreme Court, which ruled in 1950 that Article 9 was a clear violation of the law.

The National Association immediately revised Article 9 to bring it in line with the Supreme Court ruling. Over the next few years, though, further attempts to revise the rest of the Code were rejected. A special committee appointed to review proposed revisions to the Code in 1952 concluded that "the task of putting such a Code through would be enormous."

In November 1955, the Professional Standards Committee's tried again, and this time the revised Code of Ethics was finally accepted, constituting the most significant changes to the Code since 1924. It

renumbered and rearranged the Code's articles to follow the original 1913 format, and omitted several articles that were outdated or redundant. A number of new provisions were also included, covering such topics as multiple offers, the REALTOR®'s duty to keep abreast of market conditions and changes in the law, and the necessity of keeping escrow funds in a separate account.

Since 1955, the Code of Ethics has been subject to regular reviews and been revised or amended over thirty times. REALTORS® serving on NAR's Professional Standards Committee have labored long and hard to ensure that the Code is a living document that protects the sellers, buyers, landlords, tenants, and others who place their trust in REALTORS®; that the Code's obligations are phrased in clear, objective, and unambiguous terms; and that the Code remains relevant and meaningful in the constantly changing real estate environment.



About the author: **Frederick Heller, Manager of the Virtual Library & Archives at the National Association of REALTORS®**, preserves documents from the real estate industry's past and makes them available for future use. Before moving to the NAR group in Chicago in 2006, Heller was a manager of NAR's Washington D.C. library.



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