

Frequently Asked Questions About the Policies Approved by the NAR Board of Directors (FAQs)

What recommendations were presented by the Professional Standards Committee to the NAR Board of Directors?

The Committee presented a package of recommendations concerning, broadly, the Code of Ethics' applicability to discriminatory speech and conduct. The Board of Directors approved all the Committee's recommendations.

Why was the Professional Standards Committee looking at this issue?

[Download the Atlanta REALTORS® Call for NAR Response to Discriminatory Speech and Conduct](#)

During the social unrest throughout the nation in late spring and summer of 2020, NAR received an unprecedented number of complaints about REALTORS® posting discriminatory speech and conduct online, especially on social media. Local and state associations experienced a similar influx of these complaints. A local association of REALTORS® wrote to NAR President Vince Malta requesting that NAR consider the Code of Ethics' applicability to this type of speech and conduct.

A special meeting of the NAR Professional Standards Committee was held that included a panel discussion on race, real estate, and association leadership. The Committee ultimately referred the issue of the Code's applicability to discriminatory speech and conduct to the Interpretations and Procedures Advisory Board for their review.

The Advisory Board met virtually five times, and engaged in numerous discussions on the Hub, in order to create a package of recommendations. The Professional Standards Committee met in special meeting on October 5, 2020 and approved all the recommendations of the Advisory Board. Six of the eight recommendations approved by the Committee required approval by the NAR Board of Directors, who considered the recommendations during their meeting on November 13, 2020. All the recommendations were approved by the Board.

What do the policies approved by the Board of Directors include?

The policies can be grouped into three broad categories:

1. Changes to the Code of Ethics' applicability to a REALTOR®'s activities;
2. A Standard of Practice under Article 10 prohibiting discriminatory speech and conduct; and,
3. Revisions to the definition of "Public Trust".

Changes to the Code of Ethics' applicability to a REALTOR®'s activities

Previously, Policy Statement 29 in the *Code of Ethics and Arbitration Manual* limited the applicability of the Code to real estate-related activities and transactions involving REALTORS®. As such, members could engage in conduct and speech that is discriminatory and abhorrent, but unless it could be tied to a real estate-related activity or transaction, the Code of Ethics, specifically Article 10, did not apply. The Board of Directors approved a revised policy that expands applicability of the Code to all of a REALTOR®'s activities. While the Code's applicability would be expanded, most Articles and Standards of Practice remain specific to real estate transactions and other real estate-related activities.

The Board voted that these policy changes became effective on November 13, 2020.

A new Standard of Practice under Article 10 prohibiting discriminatory speech and conduct

The Board of Directors approved a Standard of Practice under Article 10:

Standard of Practice 10-5

REALTORS® must not use harassing speech, hate speech, epithets, or slurs based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity.

This Standard of Practice directly flows from the requirement to not deny equal professional services or be parties to a plan to discriminate. Specifically, bias against protected classes revealed through the public posting of hate speech could result in REALTORS® not taking clients from certain protected classes or not treating them equally, which would lead to violations of the Fair Housing Act due to overt discrimination or disparate impact.

The Board voted that this new Standard of Practice become effective on November 13, 2020.

Revisions to the definition of “Public Trust”

The Board of Directors approved expansion of the definition of “public trust” to include all discrimination against the protected classes under Article 10 of the Code of Ethics and all fraud.

Previously, the definition of “public trust” included demonstrated misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm. This policy change expanded the definition to include all discrimination against the protected classes under Article 10, and all fraud. As a result, associations are required to share with the state real estate licensing authority final ethics decisions holding REALTORS® in violation of the Code of Ethics in instances involving real estate-related activities and transactions where there is reason to believe the public trust, as expanded, may have been violated.

This policy change was effective January 1, 2021.

The Board of Directors further approved enhancements to the *Code of Ethics and Arbitration Manual* that are consistent with the three broad categories above.

When would these changes go into effect? Can the new Standard of Practice apply to behavior that occurred before it was passed?

The changes to Policy Statement 29 and the new Standard of Practice 10-5 went into effect immediately upon final approval by the Board of Directors, on November 13, 2020. **These ethical obligations would not apply to behavior that occurred before they become effective.** Also, any complaints must be filed within one hundred eighty (180) days after the facts constituting the matter complained of could have been known in the exercise of reasonable diligence, or within one hundred eighty (180) days after the conclusion of the transaction or event, whichever is later, per the *Code of Ethics and Arbitration Manual*.

The Standard of Practice seems to limit my right to free speech as established by the First Amendment to the Constitution. How can NAR legally adopt a policy like this?

The First Amendment provides that neither the United States Congress nor any state may abridge the freedom of speech of American citizens. With some exceptions, the First Amendment does not prohibit a private organization from restricting the speech of its members, employees, or users. NAR is a private association that is supported by dues from members, is not exercising any governmental function, and has no subpoena power or other powers generally available to state agencies. As such, the First Amendment does not preclude NAR from imposing this ethical duty as a condition of membership.

I should be able to say whatever I want on my personal social media profile. It doesn't impact my ability to do my job. Why is what I say there now subject to the Code? This is going too far.

The Board of Directors discussed that a REALTOR®'s speech and conduct reflect on the REALTOR® organization whether said publicly on a business social media profile, or privately on a personal one. According to the Preamble of the Code of Ethics, REALTORS® should be guided by the spirit of the Golden Rule of treating others as one would like to be treated. When a REALTOR® pledges to abide by the Code of Ethics, the highest principles and ethics of REALTORS® must followed in all their activities, and cannot be abandoned in a profession dedicated to protecting the best interests of consumers.

Put simply, when one REALTOR® engages in discriminatory speech and conduct, those actions demonstrate to consumers that they represent the actions of REALTORS® collectively. The REALTOR® brand is built on ethics and integrity. Discriminatory speech and conduct to the contrary depletes the strength of that brand. It is incumbent upon our organization to set the bar high, and communicate those elevated standards, to protect the REALTOR® brand and ensure its strength endures for years to come.

Additionally, these policies do not mean that the Code of Ethics would apply in all portions of a REALTOR®'s personal life, as many of the Code's provisions are specifically tied to real estate and real estate transactions.

- Standard of Practice 10-5 doesn't seem to have anything to do with Article 10. I'm able to say what I want and still not discriminate against clients that are members of the protected classes. How does this new Standard of Practice fit?

Article 10 provides as follows:

REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. (Amended 1/14)

REALTORS®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. (Amended 1/14)

Standard of Practice 10-5 directly flows from the requirement to not deny equal professional services or be parties to a plan to discriminate. Specifically, disparaging a particular protected class is evidence of one's inability to treat them equally. In addition, bias against protected classes revealed through the public posting of hate speech could result in REALTORS® not taking clients from certain protected classes or not treating them equally, which would lead to violations of the Fair Housing Act due to overt discrimination or disparate impact.

Doesn't the nature of Standard of Practice 10-5 invite the potential for inconsistent enforcement across the country?

The Board of Directors approved adoption of [Appendix XII to Part Four of the Code of Ethics and Arbitration Manual](#) which lays out, with great specificity, the proper application of Standard of Practice 10-5 and revised Policy Statement 29 such that consistent application of these policies can be achieved.

Standard of Practice 10-5 says "REALTORS® must not use harassing speech, hate speech, epithets, or slurs...". How are those terms defined?

The Board of Directors approved adoption of [Appendix XII to Part Four of the Code of Ethics and Arbitration Manual](#) which lays out, with great specificity, the proper application of proposed Standard of Practice 10-5, including an explanation of the terms used within the Standard of Practice, such that consistent application of these policies can be achieved.

Doesn't this mean that if I post my opinion online and someone doesn't agree with it, that I can lose my membership and be forced out of the business?

As with any alleged Code violation, ethics complaints alleging a violation of Article 10 as interpreted by Standard of Practice 10-5 will be processed consistent with the

local or state association's professional standards enforcement process, which affords all parties a full and fair opportunity to present their case, defend themselves, provide evidence and witnesses, and be represented by counsel.

Additionally, membership in an association of REALTORS® is voluntary, and any discipline imposed does not automatically impact an individual's ability to hold a real estate license.

Can't someone make up a story about me saying something discriminatory and use the ethics complaint process to hurt my career?

As with any alleged Code violation, ethics complaints alleging a violation of Article 10 as interpreted by Standard of Practice 10-5 will be processed consistent with the local or state association's professional standards enforcement process, which affords all parties a full and fair opportunity to present their case, defend themselves, provide evidence and witnesses, and be represented by counsel. A burden of proof must be met by the complainant in order to find a violation of the Code of Ethics.

This feels like a knee jerk reaction to the social unrest going on throughout the nation. Aren't these policies just a reflection of the organization trying to be politically correct?

The 2019 *Newsday* investigation of discrimination in real estate in Long Island, New York, and the events of 2020 have merely shed a light on discrimination that has persisted historically but that many were not in a position to experience or see happening. The Code of Ethics has embodied principles of fair housing for decades, and as such, these policies are consistent with the spirit and intent of the Code, as well as the guidance embodied in the Golden Rule.

What is the process used to evaluate potential violations?

NAR's professional standards policies include a defined [process of checks and balances](#) to protect members and evaluate potential Code violations.

How do these policies impact consumers?

When one REALTOR® posts discriminatory speech or conduct online, that content becomes reflective of REALTORS® on the whole. Left unchecked, those statements become who we are as an organization, and further reinforce the barriers to homeownership experienced by so many Americans. These policies are one very

impactful way we can advance equity and fairness in the real estate industry, and ensure access to the American Dream for all.