



Updates to the NAR Bylaws & Code of Ethics



Evian White De Leon, Esq.
Chief Legal Counsel

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AGENDA

BACKGROUND

CHANGES TO THE BYLAWS & CODE OF ETHICS

1. New Standard of Practice 10-5 Prohibits Discriminatory Speech and Conduct
2. Changes to Policy Statement 29 and the Code of Ethics' Applicability to ALL of a REALTOR®'s Activities
3. Revised Definition of "Public Trust"

RESOURCES

Q&A





BACKGROUND

After the murder of George Floyd, and the social justice movement that followed, NAR and MIAMI REALTORS® received an unprecedented number of complaints about REALTORS® posting discriminatory speech and conduct online, especially on social media. A local association in Atlanta wrote to the NAR President requesting that NAR consider the Code of Ethics' applicability to this type of speech and conduct.

At NAR, the Professional Standards Committee and Procedures Advisory Board met numerous times to review the proposed changes and to consider feedback.

On November 13, 2020, NAR's Board of Directors voted to approve changes to the Bylaws and Code of Ethics. The changes focus on REALTORS®' language and actions and prohibit REALTORS® from using harassing speech, hate speech, epithets, or slurs based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity in ANY context.



WHAT YOU NEED TO KNOW

01 **NEW STANDARD OF PRACTICE 10-5 PROHIBITS DISCRIMINATORY SPEECH AND CONDUCT**

SOP 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.

02 **CHANGES TO POLICY STATEMENT 29 AND THE CODE OF ETHICS' APPLICABILITY TO A REALTOR®'S ACTIVITIES**

Expands the applicability of the Code of Ethics to ALL of a REALTOR®'S activities. Even so, most Articles and the Standards of Practice remain specific to real estate transactions and other real-estate related activities.

03 **REVISED DEFINITION OF "PUBLIC TRUST"**

Previously, "public trust" was only defined as misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm. Now, it is expanded to include all discrimination against the protected classes in Article 10 and all fraud. MIAMI is required to share these final ethics decisions with FREC.



01

NEW STANDARD OF PRACTICE 10-5 PROHIBITS DISCRIMINATORY SPEECH AND CONDUCT

ARTICLE 10:

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:

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.

HARASSING SPEECH, HATE SPEECH, EPITHETS, AND SLURS

APPENDIX XII TO PART FOUR:

Appropriate Interpretation of Standard of Practice 10-5 and Statement of Professional Standards Policy 29 (<https://bit.ly/appendixxii>)

Appendix XII to Part Four Appropriate Interpretation of Standard of Practice 10-5 and Statement of Professional Standards Policy 29

Standard of Practice 10-5 prohibits REALTORS® from using harassing speech, hate speech, epithets or slurs based on the protected classes of Article 10. Statement of Professional Standards Policy 29 provides that REALTORS® are subject to disciplinary action with respect to all of their activities.

To assist Hearing Panels in the appropriate interpretation and application of Standard of Practice 10-5 of the Code of Ethics and Statement of Professional Standards Policy 29, the Professional Standards Committee of the National Association provides the following for consideration by Hearing Panels when asked to determine whether a violation of Article 10 as supported by Standard of Practice 10-5 has occurred.

While the overall focus of Standard of Practice 10-5 is on what might be loosely termed "offensive" or "discriminatory" speech, Hearing Panels should be clear that the Standard of Practice is narrowly limited to conduct related to the requirements of equal professional service of Article 10. Hearing Panels should also be fully aware of the nature and scope of the Standards of Practice under Article 10 and their relationship to fair housing law as described in Appendix III to Part Four of the *Code of Ethics and Arbitration Manual*. As described in Appendix III, Article 10 and its Standards of Practice fully integrate the five basic fair housing obligations that were recognized by NAR's Code of Fair Housing Practices before it was sunset.

Hearing Panels should note that while all of the Standards of Practice under Article 10 inform them as to the interpretation and application of Standard of Practice 10-5, Standard of Practice 10-3 is particularly analogous in its application to discriminatory speech in advertising based on the protected classes of Article 10.

Standard of Practice 10-5 is not focused on types of speech that might be subjectively deemed "offensive" or "discriminatory" by one person and not another. The Standard of Practice is based on very particular types of speech that are directly connected to the protected classes of race, color, religion, sex, handicap, familial status, national origin, sexual orientation or gender identity under Article 10. Only the use of harassing speech, hate speech, epithets and slurs **based on** the protected classes of Article 10 are prohibited. The terms "harassing speech," "hate speech," "epithets," and "slurs" can be commonly understood by use of a dictionary as well as other easily available references.

For example, NAR's Code of Conduct and Anti-Harassment Policy clearly defines "harassment" and "sexual harassment."

"Harassment includes inappropriate conduct, comment, display, action, or gesture based on another person's sex, color, race, religion, national origin, age, disability, sexual orientation, gender identity, and any other protected characteristic.

Examples of harassment include, but are not limited to: epithets, slurs or negative stereotyping; threatening, intimidating or hostile acts; denigrating jokes; and the display or

circulation of written or graphic material that denigrates or shows hostility toward an individual or group based on a protected characteristic."

"Sexual Harassment" includes not only physical acts but also includes verbal and non-verbal/non-physical acts.

"Sexual harassment can be:

- Verbal: Sexual innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions, or threats.
- Non-Verbal: Sexually suggestive objects or pictures, graphic commentaries, suggestive or insulting sounds, leering, whistling, or obscene gestures. ..."

Hearing Panels should look to this existing information on harassment to determine whether harassing speech has occurred and then look to determine whether the harassing speech was based on one of the protected classes.

In similar fashion, Merriam Webster's Dictionary defines "hate speech," "epithets," and "slurs" as follows:

Hate Speech: "speech that is intended to insult, offend, or intimidate a person because of some trait (as race, religion, sexual orientation, national origin, or disability)."

Epithet: "**1a:** a characterizing word or phrase accompanying or occurring in place of the name of a person or thing; **b:** a disparaging or abusive word or phrase"

Slur: "**1a:** an insulting or disparaging remark or innuendo; ASPERSION; **b:** a shaming or degrading effect: STAIN, STIGMA"

Again, Hearing Panels must look to whether the hate speech, epithet or slur is based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation or gender identity and not on some other non-protected characteristic.

Under Statement of Professional Standards Policy #29, REALTORS® are subject to the Code of Ethics' standards in all of their activities. Thus, a violation of Article 10, as supported by Standard of Practice 10-5, can occur when a REALTOR® uses harassing speech, hate speech, epithets and slurs based on the protected classes in any media or context, regardless of whether related to their activities in the real estate business or their identification as a REALTOR®.

CHANGES TO POLICY STATEMENT 29 AND THE CODE OF ETHICS' APPLICABILITY

BEFORE: While REALTORS® are encouraged to follow the principles of the Code of Ethics in all of their activities, a REALTOR® shall be subject to disciplinary action under the Code of Ethics only with respect to real estate related activities and transactions involving the REALTOR®.

NOW: A REALTOR® shall be subject to disciplinary action under the Code of Ethics with respect to all of their activities.



03

REVISED DEFINITION OF “PUBLIC TRUST”

BEFORE: "Public trust" was only defined as demonstrated misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm.

NOW: "Public trust" is expanded to include ALL discrimination against the protected classes in Article 10 and ALL fraud because they are considered "particularly egregious violations." MIAMI REALTORS® is now required to share final ethics decisions with FREC when they find REALTORS® in violation of the Code of Ethics in instances where there is reason to believe that the public trust, as expanded, may have been violated.

WHAT ABOUT YOUR FIRST AMENDMENT RIGHTS?

5. This proposed new 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.



430 N. Michigan Ave
Chicago, IL 60611-4087
(800) 874-6500
www.nar.realtor



**NATIONAL
ASSOCIATION OF
REALTORS®**



SOURCE: NAR FAQ

<https://bit.ly/narfaqcoe>



EFFECTIVE DATE

NOVEMBER 13, 2020

The changes to the NAR Bylaws and Code of Ethics are effective November 13, 2020.

They are NOT retroactive, which means they do not apply to behavior that occurred before November 13, 2020.



RESOURCES

NAR PROFESSIONAL STANDARDS COMMITTEE RECOMMENDATIONS

Please visit the link below for information on the Committee's recommendations, as well as frequently asked questions and other resources.

bit.ly/narrecommendations

[Home](#)[National Leadership](#)[Committee Members & Liaisons](#)

NAR Professional Standards Committee Recommendations

Approved by NAR Board of Directors on November 13, 2020

The NAR Professional Standards Committee met on October 5, 2020, to consider recommendations from its Interpretations and Procedures Advisory Board on the Code of Ethics' applicability to discriminatory speech and conduct. The Committee approved the Advisory Board's recommendations, and six of them were presented to and approved by the NAR Board of Directors at their November 13, 2020 meeting. The changes will be effective immediately. Training schedules and materials will be available in the coming weeks.

Please see below for information on the Committee's recommendations, as well as frequently asked questions and other resources.



QUESTIONS?

PROFESSIONAL STANDARDS TEAM

Evian White De Leon, Esq., Chief Legal Counsel

305.468.7020

evian@miamire.com

Xochitl Rieche, Professional Standards Manager

305.468.7044

xochitl@miamire.com

Leslie Fernandez Rosales, MPA, SVP of Business Development

305.468.7029

leslie@miamire.com

