

The REALTOR®'s Code of Ethics — A Gift of Vision

(The following article by William D. North, former Executive Vice President and General Counsel first appeared in the August 1978 edition of *The Executive Officer*.)

The Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS® represents one of those rare creations of man—a living document; a document which somehow preserves its significance, relevance and usefulness despite the passing of years and the changing of the times.

The Code is an unusual Gift of Vision: the vision of those who dreamed that the business of real estate could become a profession, the vision of those who believed that the search for the highest and best use of the land required the highest and best measures of professional responsibility, and the vision of those who recognized private ownership of the land as indispensable to political democracy and a free and prosperous citizenry.

It is this Gift of Vision, which has enabled the Code to survive half a century of unprecedented social, political, economic, and legal change substantially unchanged.

The creators and keepers of the Code have realized that to remain relevant and useful, the Code must be a great deal more than simply a set of rules for the conduct of real estate transactions. To endure, the Code must be a criterion of excellence while at the same time constituting a realistic standard of performance. It must be a guide to measure professional conduct, while at the same time representing the furthest reach of professional aspiration. The Code must remain constant without becoming absolute, must be enforceable without being oppressive, and must be meaningful without being dogmatic.

The Code of Ethics has been able to meet all these needs and reconcile all these objectives for one reason only—the vision of its creators in adopting as the unifying rationale of the Code the Concept of Service to the Public.

Every Article of the Code is premised on this single concept. This single concept provides the philosophical basis by which each Article must be interpreted and applied. This single concept, by which the various Articles of the Code are rationalized, is the reason the Code has been and is a "living document." "Service to the Public" is the "end" and the Code is the "means" to that end.

Origins of the Code

In today's world, preoccupied as it is with social responsibility and oriented as it is to consumer concerns, it is hard to visualize how truly revolutionary the Code of Ethics was when it was adopted in 1913.

The history of the real estate business for the preceding 150 years was a history of rampant land speculation, exploitation, and disorder. It was an era before the adoption of state regulatory licensing systems. It was a time when real estate agents, if they were licensed at all, were licensed as "peddlers."

It was the era of the fraudulent subdivision, the fake city addition, the multiple "first" mortgage, the "net" listing, and a myriad of other "get rich quick" schemes involving the sale of land. It was the era of "caveat emptor" and the Robber Barons whose motto was not "Let the Public Be Served" but rather "Let the Public Be Damned."

This was the era that produced the Code of Ethics of the National Association. With the exception of a now defunct association of printers, the REALTORS® were the first business group outside the "learned

professions of medicine, engineering, and law" to adopt a Code of Ethics. It was an uncommon event with uncommon men and women making an uncommon commitment to business integrity and fair dealing.

It was not a commitment coerced by threat of government sanction but a commitment predicated on a need perceived by REALTORS® themselves. It was not a commitment mandated by the marketplace because it involved the voluntary acceptance of liabilities and responsibilities, duties and costs, limitations and obligations, which the public did not even perceive as their due. It was, in sum, a commitment to the concept of service to the public as an article of faith in professionalism.

Significance of the Code

The significance of the Code rests not merely in the guidance it provides those who subscribe to it, but also in the guidance it has provided the National Association in its growth and development. From the very beginning, the Code has provided the impetus for Association involvement in education of REALTORS® to support [the Preamble] and [Article] 11; in the protection of private property ownership to support [the Preamble]; in the creation and administration of multiple listing and other cooperative arrangements to support Articles [5] and [3]; in the arbitration of disputes to support Article [17]; in the protection of the consumer to support Articles [1] and [2].

The Code has been significant not merely in its impact on the focus of Association programs and activities, but also in its impact on Association organization and structure. Thus, the local Board of REALTORS® is an indispensable constituent of the REALTOR® family in large measure because it represents an effective forum for the enforcement of the Code. From this function, too, proceeds the need for Board jurisdictions and the structure of the State Association. Perhaps, more than anything else, the Code has provided the interdependent relationship which binds the National Association, its Member Boards, State Associations, and Institutes, Societies, and Councils into a single working constituency.

The Code and the Law

The Code of Ethics is never opposed to the law. The Code, in its application or implementation, must always be construed harmoniously and consistently with the law.

But the Code is not the law. It is supported not by the coercive power of the state but rather by the principles of contract. Acceptance of REALTOR® membership creates a form of "professional compact," the terms of which the Code defines. No matter how similar the mandates of the Code may be to the dictates of the license laws and other legislation, the difference between them is fundamental and unavoidable.

The relation of the Code to the law is two-fold. First, the Code defines those duties and obligations required in the public interest which are beyond the capacity or power of the law to mandate, and second, the Code supports the law by requiring a higher sensitivity to the duties and obligations which it imposes.

In the performance of its first role, the Code is concerned with identifying the extensions of professionalism to serve the public's evolving needs. In the performance of its other role, the Code is concerned with the refinement and specific application of legal principles to real estate transactions.

When the Code was first adopted, there were no statutory definitions of the professional responsibilities necessary to protect and serve the public. That such definitions exist today in state license laws is in large measure the result of the Code. Thus, as government came to recognize that the professional duties and

obligations assumed by REALTORS® voluntarily under the Code truly served the public interest, it then conditioned licensure on the licensee's acceptance to protect the whole public and not merely those served by REALTORS®.

While the task of identifying the extensions of professionalism continues, certainly in recent years, with the general licensure of the profession, the role of the Code is sensitizing REALTORS® to the full implications and applications of their legal obligations has become increasingly important. It is this role which has involved the Code so intimately with such legal doctrines as implied warranty, agency and fiduciary duty and equal opportunity.

Because the Code is a living document and real estate is a dynamic business and profession, the law need never be its substitute. So long as the aspiration to better serve the public remains the underlying concept of the Code it must evolve and grow in significance and importance consonant with but independent of the law.

The Code and Its Use

There is no idea, which cannot be misapplied; no faith, which cannot be exploited; no concept, which cannot be abused; and no principle, which cannot be perverted. For this reason, the integrity of the Code and the value of its vision of the real estate industry depends ultimately upon its use.

If it is applied inconsistently, it becomes arbitrary and hence oppressive. If it is applied without understanding, it becomes unreasonable and hence dogmatic. If it is used in ignorance, it becomes meaningless; if it is used inappropriately, it becomes irrelevant; and if it is used without moderation, it becomes irrational.

No Code of Ethics can long survive its misuse or misapplication. This is why the REALTORS® Code of Ethics must be applied with continuing and conscientious concern for procedural due process. Procedural due process is both an explicit and implied requirement of the Code. It is required explicitly by Article [14], which requires a "proper tribunal" and implicitly by the Preamble's reliance on the Golden Rule. The due process requirement, after all, requires nothing more than a fair and diligent search for the truth—with an opportunity for all facts to be gathered; all views to be heard; all defenses to be raised and all prejudice or bias to be expunged. But while due process requires nothing more than a fair and diligent search for the truth, so the Code may be properly applied, due process permits "nothing less." There is no acceptable level of unfairness, no permissible slight of the search.

Conclusion

In its Code of Ethics the family of REALTORS® has been offered a farsighted vision of the profession as it could be and should be. This vision, however, must not be blurred by myopic applications of the Code for shortsighted gains at the expense of farsighted objectives. A REALTOR® who serves the public serves himself by guaranteeing his future.

But neither must this vision, however clear, obscure the fact that the goals of the Code must be reached step by step, following the path of due process rather than the line of least resistance.

To REALTORS®, the Code of Ethics offers the lessons of hindsight, the guidance of foresight, and the understanding of insight—A Rare Gift of Vision.