

Professional Standards Training

An Operational Definition of Ethics

Instructor: Matthew Meister, CRS, GRI

September 10, 2014

Due Process

1. Due Process: Uniform, Reasonable, Fair Enforcement, “Fair Play

2. Importance of Due Process to Code Enforcement

- a. Critical to the ability to self-police
- b. Guards against antitrust liability

3. Elements of Due Process

- a. Notice of charges – specificity required
- b. Adequate time to prepare a defense
- c. Opportunity to hear testimony and cross-examine those testifying against you
- d. Opportunity to present your side of the story
- e. Right to (legal) counsel
- f. Right to have matter decided by an impartial body
- g. Appropriate, authorized sanctions
- h. Availability of appeal

4. How does our system measure up?

Many court cases have been tried in an effort to “undo” the decisions of our system. There are many that have been decided in favor of the Association, but only those in which due process was afforded the respondent.

Rock Island Board of REALTORS v. Cuchra (Ill. App. Ct. 1998)

Jolly v. Texas Association of REALTORS (W.D. Tex. Oct. 16, 2008)

Wilson Realty & Construction, Inc. v. Asheboro-Randolph Board of REALTORS, Inc. (NC App. Ct. 1999)

Gaston Board of REALTORS v. Harrison (NC App. Ct. 1983)

Karavasilis v. Burch (Cir. Ct. Howard County 1995)

Pollen v. Romeo (Mass Super. Ct. Dec. 24, 2008)

Carper v. Nebraska Association of REALTORS (2009)

Kendler v. Rutledge (78 Ill. App. 3d 312 1979)

Role of the Grievance Committee in Ethics

1. Purpose

- a. Initially reviews and screens ethics complaints and arbitration requests.
- b. Operates in a similar fashion to a grand jury.
- c. Does NOT conduct hearings. (Grievance Committees hold meetings)
- d. Does NOT determine if a violation occurred or if monies are owed.
- e. Does NOT mediate or arbitrate business disputes.

2. Composition

- a. Appointed by the president, subject to confirmation by the board of directors, to staggered, three-year terms.
- b. When selecting members of a grievance committee, the president should consider this recommended criteria:
 - 1. number of years as a Realtor
 - 2. number of years in the real estate business
 - 3. primary and second fields of real estate expertise
 - 4. participation in post licensing real estate education
 - 5. trained on Code of Ethics
 - 6. position in firm (principal, non-principal)
 - 7. size of firm
 - 8. common sense
 - 9. open-mindedness
 - 10. receptive to instruction/training
 - 11. other relevant professional or procedural training
- c. Committee should have a balanced representation of:
 - 1. REALTORS and REALTOR-ASSOCIATES
 - 2. men and women
 - 3. various racial and ethnic groups
- d. Committee members should be mature, experienced, knowledgeable persons of judicial temperament

3. Grievance Committee's Role and Considerations in Ethics Complaints

- a. Is the complaint in an acceptable format?
- b. Are all the necessary parties named in the complaint?
- c. Was the complaint filed within 180 days of the time the alleged violation and facts relating to it could have been known, or within 180 days after the conclusion of the transaction, *whichever is later*.
- d. Is the respondent a member of the association and was the respondent a member of any association at the time of the alleged offense?
- e. Is there pending criminal or civil litigation related to the same transaction?
- f. Can the association provide an impartial hearing panel?
- g. Should any Articles be eliminated from the complaint?
- h. Should the complaint be amended to include any additional Articles and/or respondents?
- i. If the complaint were taken as true on its face, would it violate one or more Articles of the Code of Ethics?
- j. Complaints from members of the public:
 - i. might be vague, overly general, or in improper form
 - ii. may be assigned (by the chair) to a grievance committee member to assist the complainant in putting the complaint in proper form.

NOTE: A grievance committee member so selected DOES NOT participate in grievance committee deliberations or become an "advocate" for the complainant.

4. Options for Action

- a. Amend the complaint and forward for a hearing
- b. Forward the complaint, as submitted by the complainant, for a hearing.
- c. Dismiss the complaint.

5. Appealing of the Grievance Committee's Decision

- a. Within 20 days after the date of notice of the committee's decision, a complainant may appeal deletion of an Article from the complaint.
- b. Within 20 days after date of notice of committee's decision, a complainant may appeal the dismissal of the complaint.
- c. Parties do not have the right to attend this appeal hearing.
- d. During the appeal, the board of directors considers the materials presented to the grievance committee, together with the complainant's rationale challenging the grievance committee's dismissal.

Grievance Committee Scenarios

Scenario #1

June 15, 2009

Executive Officer
ABC Board of REALTORS®
1200 North Sunshine Road
Some Place, USA 66666

RE: Complainant's First Letter: "Donald Davis' License Should Be Revoked"

Dear Executive Officer.

I don't know where to begin, because I am overwhelmed by what I learned yesterday when my contractor came over to remove the carpeting from my new home. I had a horrible experience with my REALTOR®, Donald Davis, who represented me when I purchased the home. I am writing to let you know that I am **completely** dissatisfied with his work. His license should be revoked!

He didn't listen to me when I told him how important it was to find a home in "move-in" condition with hardwood floors, necessary because of my kids' allergies. He knew that I needed hardwood floors and couldn't afford to put them in, but simply disregarded my needs just to make a sale. I know that the market is tough right now and that brokers are desperate to make sales, but I shouldn't suffer simply because REALTOR® Davis wants to make one! I thought he was supposed to look after me, so why did I hire him if he wasn't going to do that?

The bottom line is that the home I naively purchased does **not** have hardwood floors in "move-in" condition. Yesterday, we pulled up the carpet only to find that the floors underneath are in appalling condition. They are severely damaged from pet waste and plant watering. In fact, my contractor tells me that all of the floors downstairs must be replaced at a cost of \$7,000. That's \$7,000 out of **my** pocket because of Mr. Davis' poor representation and lack of disclosure.

Please help me to somehow resolve this situation. I've seen the television commercials about the benefits of using REALTORS®, who I know are **supposed to** subscribe to a strict Code of Ethics. I found the attached complaint form on your board's Web site, have completed it and enclosed it with this letter. I hope your organization can help recoup all of the money I've spent as a result of Mr. Davis' negligence. His license should be revoked!

With regards,

Marcia Randolph

Ms. Marcia Randolph
241 Sandstone Drive
Lovely Town, USA 55550
555-222-1717 (Cell)

Form #E-1

ABC Board of REALTORS®

Board or State Association

1200 North Sunshine Road

Address

Some Place

City

USA

State

66666

Zip

Ethics Complaint

To the Grievance Committee of the

ABC Board of REALTORS®

Board or State Association

Filed

June 15

2009

Marcia Randolph

Donald Davis

Complainant(s)

Respondent(s)

Complainant(s) charge(s):

An alleged violation of Article(s) _____ of the Code of Ethics or other membership duty as set forth in the bylaws of the Board in _____ Article, Section _____ And alleges that the above charge(s) (is/are) supported by the attached statement, which is signed and dated by the complainant(s).

This complaint is true and correct to the best knowledge and belief of the undersigned and is 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, whichever is later.

I (we) declare that to the best of my (our) knowledge and belief, my (our) allegations in this complaint are true.

Are the circumstances giving rise to this ethics complaint involved in civil or criminal litigation or in any proceeding before the state real estate licensing authority or any other state or federal regulatory or administrative agency?

☐ Yes ☒ No

You may file an ethics complaint in any jurisdiction where a REALTOR® is a member or MLS participant. Note that the REALTORS® Code of Ethics, Standard of Practice 14-1 provides, in relevant part, "REALTORS® shall not be subject to disciplinary proceeding in more than one Board of REALTORS® . . . with respect to alleged violations of the Code of Ethics relating to the same transaction or event."

Have you filed, or do you intend to file, a similar or related complaint with another Association(s) of REALTORS®?

☐ Yes ☒ No

If so, name of other Association(s): _____ Date(s) filed: _____

I understand that should the Grievance Committee dismiss this ethics complaint in part or in total, that I have twenty (20) days from my receipt of the dismissal notice to appeal the dismissal to the Board of Directors.

Complainant(s):

Marcia Randolph

555-222-1717

Marcia Randolph

Type/Print Name

Phone

Signature

241 Sandstone Drive, Lovely Town, USA 55550

Address

June 27, 2009

Executive Officer
ABC Board of REALTORS®
1200 North Sunshine Road
Some Place, USA 66666

RE: Complainant's Second Letter: "Donald Davis Violated Articles 1 and 2, and Standard of Practice 2-1; Arbitration Request for \$7,000"

Dear Executive Officer:

Thank you for arranging a meeting for me with a member of the board's grievance committee. She was very helpful in explaining the ethics complaint and arbitration request filing processes. She also gave me some good advice – to be less emotional and more fact-specific about my experience with REALTOR® Davis. I am applying her advice in this letter.

REALTOR® Davis violated Article 1 because he failed to look after my best interests. He also violated Article 2 because he exaggerated the "good" condition of the hardwood floors in the home that I recently purchased. He misrepresented the condition of the floor, which now has cost me \$7,000. So, I request that REALTOR® Davis remit the same amount of money to me, because I had to spend \$7,000 to replace the floors in my home. Attached for your consideration are my revised E-1 Ethics Complaint Form and my A-2 Arbitration Request Form. I have enclosed a \$300 check to initiate the arbitration process.

On April 15, 2009, REALTOR® Davis and I signed an exclusive buyer agency agreement. Earlier this year, my partner's sister used Mr. Davis when she bought her home, so he came highly recommended to me by her. When I signed the agreement with Mr. Davis, I explained that it was **absolutely imperative** that any three-bedroom home I purchase in Lovely Town must be in "move-in" condition, with "usable" hardwood floors. I made it **crystal** clear that my three-year-old and my five-year-old have severe allergies, and that my five-year-old also has asthma. He knew that my requirements could not be compromised. However, even though we could not live in a carpeted house, we certainly could look at homes with carpeting, then figure out a solution if the house was right in every other way. I could simply have the carpeting removed if there were hardwood floors in good condition underneath.

I also made it clear to Mr. Davis that my budget would not allow me to purchase a brand new home or to install brand new hardwood floors in an older house, so I asked him to find a three-bedroom home, less than 20 years old, with hardwood floors **in good condition**.

On April 24, 2009, when REALTOR® Davis showed me 241 Sandstone Drive, I immediately fell in love with the kitchen and the upstairs layout. This home seemed a perfect fit for my family, especially because the property condition form (attached) says there are hardwood floors throughout. Although the carpeting was old, I didn't care, because I intended to have it removed.

After the showing and while he wrote my offer, I asked REALTOR® Davis to make absolutely sure that the hardwood floors in this home were in usable condition, because I intended to use them. He said, "I'm sure they are; the seller said there are hardwood floors throughout." I mistakenly trusted him and did not pursue the issue further, because I was so eager to purchase my new home. He led me to the misguided conclusion that all of the floors were in usable condition. On May 27, 2009, I closed, then lined up a contractor right away to install built-

in bookcases and remove all of the old carpeting. On June 14, 2009, my contractor, Brian Conner, came to the house to start work, and he immediately spotted areas on the carpeting downstairs that appeared to be problematic. The carpeting had "buckled" in some areas, and other areas were stained. Sure enough, when he pulled up the carpet, the floors looked atrocious! He said the damage had been caused by plant watering and pet waste. Attached are his affidavit and his \$7,000 bid to replace the ruined hardwood floors.

That day, after Brian left, I called REALTOR® Davis and the seller to discuss the nasty situation. I would have called the seller's broker, too, but the seller does not have one because he sold the home himself. Both REALTOR® Davis and the seller made it clear to me that they were **not** interested in helping me with the costs of replacing the floors.

Again, I think it's clear that REALTOR® Davis did not represent my best interests in this transaction. He only looked out for "number one," and only was interested in the \$10,000 he would earn when the property closed. Because I am a first-time home buyer, **he should have protected me!**

I hope that your organization will discipline him for violating Articles 1 and 2 and Standard of Practice 2-1 of the Code, and will award me with \$7,000 after the arbitration. REALTOR® Davis must not get away with failing to disclose a pertinent fact that someone with his 25 years of experience and expertise should have uncovered, especially when I asked him to be sure that the floors in my new home were in usable condition! If I had known that the floors were in such poor condition, my offer would have been \$10,000 or more lower to cover the cost of restoring or replacing them. But, REALTOR® Davis did not even care to ask, and now I have had to pay for his mistake. Please do not let him get away with this. It is not right.

Sincerely,

Marcia Randolph

Marcia Randolph
241 Sandstone Drive
Lovely Town, USA 55550
555-222-1717 (Cell)

Instructions: Please critique the grievance committee's review of this case.

#E-1

ABC Board of REALTORS®

Board or State Association

1200 North Sunshine Road

Address

Some Place

City

USA

State

66666

Zip

Amended Ethics Complaint

To the Grievance Committee of the

ABC Board of REALTORS®

Board or State Association

Filed

June 27

2009

Marcia Randolph

Donald Davis

Complainant(s)

Respondent(s)

Complainant(s) charge(s):

An alleged violation of Article(s) ^{A.S.B.}
1, 2, and SOP 2-1 of the Code of Ethics or other membership duty as set forth in the bylaws of the Board in _____ and alleges that the above charge(s) (is/are) supported by the attached statement, which is signed and dated by the complainant(s).
Article, Section

This complaint is true and correct to the best knowledge and belief of the undersigned and is 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, whichever is later.

I (we) declare that to the best of my (our) knowledge and belief, my (our) allegations in this complaint are true.

Are the circumstances giving rise to this ethics complaint involved in civil or criminal litigation or in any proceeding before the state real estate licensing authority or any other state or federal regulatory or administrative agency?

☐ Yes ☒ No

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I understand that should the Grievance Committee dismiss this ethics complaint in part or in total, that I have twenty (20) days from my receipt of the dismissal notice to appeal the dismissal to the Board of Directors.

Complainant(s):

Marcia Randolph

555-222-1717

Marcia Randolph

Type/Print Name

Phone

Signature

241 Sandstone Drive, Lovely Town, USA 55550

Address

Property Condition Disclosure Statement

Name of Seller or Sellers: Mr. Williams

Property Address: 241 Sandstone Drive

General Instructions:

The Property Condition Disclosure Act requires the seller of residential real property to cause this disclosure statement or a copy thereof to be delivered to a buyer or buyer's agent prior to the signing by the buyer of a binding contract of sale.

Purpose of Statement:

This is a statement of certain conditions and information concerning the property known to the seller. This Disclosure Statement is not a warranty of any kind by the seller or by any agent representing the seller in this transaction. It is not a substitute for any inspections or tests and the buyer is encouraged to obtain his or her own independent professional inspections and environmental tests and also is encouraged to check public records pertaining to the property.

A knowingly false or incomplete statement by the seller on this form may subject the seller to claims by the buyer prior to or after the transfer of title. In the event a seller fails to perform the duty prescribed in this article to deliver a Disclosure Statement prior to the signing by the buyer of a binding contract of sale, the buyer shall receive upon the transfer of title a credit of \$500 against the agreed upon purchase price of the residential real property.

"Residential real property" means real property improved by a one to four family dwelling used or occupied, or intended to be used or occupied, wholly or partly, as the home or residence of one or more persons, but shall not refer to (a) unimproved real property upon which such dwellings are to be constructed or (b) condominium units or cooperative apartments or (c) property on a homeowners' association that is not owned in fee simple by the seller.

Instructions to the Seller:

- Answer all questions based upon your actual knowledge.
- Attach additional pages with your signature if additional space is required.
- Complete this form yourself.
- If some items do not apply to your property, check "NA" (Non-applicable). If you do not know the answer, check "Unkn" (Unknown).

Seller's Statement:

The seller makes the following representations to the buyer based upon the seller's actual knowledge at the time of signing this document. The seller authorizes his or her agent, if any, to provide a copy of this statement to a prospective buyer of the residential real property. The following are representations made by the seller and are not the representations of the seller's agent.

General Information

1. How long have you owned the property? 32 years

2. How long have you occupied the property? SAME

3. What is the age of the structure or structures? 50 years

Note to buyer – If the structure was built before 1978 you are encouraged to investigate for the presence of lead based paint.

4. Does anybody other than you have a lease, easement or any other right to use or occupy any part of your property other than those stated in documents available in the public record, such as rights to use a road or path or cut trees or crops? Yes ☒ No ☐ Unkn ☐ NA

5. Does anybody else claim to own any part of your property? If Yes, explain below Yes ☒ No ☐ Unkn ☐ NA

6. Has anyone denied you access to the property or made a formal legal claim challenging your title to the property? If Yes, explain below Yes ☒ No ☐ Unkn ☐ NA
7. Are there any features of the property shared in common with adjoining landowners or a homeowner's association, such as walls, fences or driveways? If Yes, describe below Yes ☒ No ☐ Unkn ☐ NA
8. Are there any electric or gas utility surcharges for line extensions, special assessments or homeowner or other association fees that apply to the property? If Yes, explain below Yes ☒ No ☐ Unkn ☐ NA
9. Are there certificates of occupancy related to the property? If No, explain below Yes ☒ No ☐ Unkn ☐ NA

Environmental

Note to Seller:

In this section, you will be asked questions regarding petroleum products and hazardous or toxic substances that you know to have been spilled, leaked or otherwise been released on the property or from the property onto any other property. Petroleum products may include, but are not limited to, gasoline, diesel fuel, home heating fuel, and lubricants. Hazardous or toxic substances are products that could pose short or long-term danger to personal health or the environment if they are not properly disposed of, applied or stored. These include, but are not limited to, fertilizers, pesticides and insecticides, paint including paint thinner, varnish remover and wood preservatives, treated wood, construction materials such as asphalt and roofing materials, antifreeze and other automotive products, batteries, cleaning solvents including septic tank cleaners, household cleaners and pool chemicals and products containing mercury and lead.

Note to Buyer:

If contamination of this property from petroleum products and/or hazardous or toxic substances is a concern to you, you are urged to consider soil and groundwater testing of this property.

10. Is any or all of the property located in a designated floodplain? If Yes, explain below Yes ☒ No ☐ Unkn ☐ NA
11. Is any or all of the property located in a designated wetland? If Yes, explain below Yes ☒ No ☐ Unkn ☐ NA
12. Is the property located in an agricultural district? If Yes, explain below Yes ☒ No ☐ Unkn ☐ NA
13. Was the property ever the site of a landfill? If Yes, explain below Yes ☒ No ☐ Unkn ☐ NA
14. Are there or have there ever been fuel storage tanks above or below the ground on the property? Yes ☒ No ☐ Unkn ☐ NA
- If Yes, are they currently in use? Yes ☐ No ☐ Unkn ☒ NA

Location(s) _____

- Are they leaking or have they ever leaked? If Yes, explain below Yes ☒ No ☐ Unkn ☐ NA
15. Is there asbestos in the structure? If Yes, state location or locations below Yes ☒ No ☐ Unkn ☐ NA
16. Is lead plumbing present? If Yes, state location or locations below Yes ☒ No ☐ Unkn ☐ NA
17. Has a radon test been done? If Yes, attach a copy of the report Yes ☒ No ☐ Unkn ☐ NA
18. Has motor fuel, motor oil, home heating fuel, lubricating oil or any other petroleum product, methane gas, or any hazardous or toxic substance spilled, leaked or otherwise been released on the property or from the property onto any other property? If Yes, describe below Yes ☒ No ☐ Unkn ☐ NA

19. Has the property been tested for the presence of motor fuel, motor oil, home heating fuel, lubricating oil, or any other petroleum product, methane gas, or any hazardous or toxic substance? If Yes, attach report(s) Yes ☒ No ☐ Unkn ☐ NA

Structural

20. Is there any rot or water damage to the structure or structures? If Yes, explain below ... Yes ☒ No ☐ Unkn ☐ NA

21. Is there any fire or smoke damage to the structure or structures? If Yes, explain below. ... Yes ☒ No ☐ Unkn ☐ NA

22. Is there any termite, insect, rodent or pest infestation or damage? If Yes, explain below ... Yes ☒ No ☐ Unkn ☐ NA

23. Has the property been tested for termite, insect, rodent or pest infestation or damage? ... Yes ☒ No ☐ Unkn ☐ NA
If Yes, please attach report(s)

24. What is the type of roof/roof covering (slate, asphalt, other)? Yes ☐ No ☒ Unkn ☐ NA

• Any known material defects? Yes ☒ No ☐ Unkn ☐ NA

• How old is the roof? 20 years

• Is there a transferable warrantee on the roof in effect now? If Yes, explain below Yes ☐ No ☒ Unkn ☐ NA

25. Are there any know material defects in any of the following structural systems: footings, beams, girders, lintels, columns or partitions? If Yes, explain below Yes ☒ No ☐ Unkn ☐ NA

Mechanical Systems and Services

26. What is the water source? (Circle all that apply) well, private, ☒ municipal
other: _____

• If municipal, is it metered? ☒ Yes ☐ No ☐ Unkn ☐ NA

27. Has the water quality and/or flow rate been tested? If Yes, describe below Yes ☒ No ☐ Unkn ☐ NA

28. What is the type of sewage system? (Circle all that apply) ☒ public sewer, private sewer, septic, cesspool

• If septic or cesspool, age?

• Date last pumped?

• Frequency of pumping?

• Any known problems and/or defects? If Yes, explain below Yes ☒ No ☐ Unkn ☐ NA

29. Who is your electrical service provider? Johnson Electric

• What is the amperage? ?

• Does it have circuit breakers or fuses? both

• Private or public poles? Public

• Any known problems and/or defects? If yes, explain below Yes ☒ No ☐ Unkn ☐ NA

30. Are there any flooding, drainage or grading problems that resulted in standing water on any portion of the property? If Yes, state locations and explain below Yes ☒ No ☐ Unkn ☐ NA

31. Does the basement have seepage that results in standing water? Yes ☒ No ☐ Unkn ☐ NA
If Yes, explain below.

Are there any known problems and/or defects in any of the following? If Yes, explain below; use additional

sheets if necessary.

32. Plumbing system? Yes ☒ No Unkn NA
33. Security system? Yes ☒ No Unkn NA
34. Carbon monoxide detector? Yes ☒ No Unkn NA
35. Smoke detector? Yes ☒ No Unkn NA
36. Fire sprinkler system? Yes ☒ No Unkn NA
37. Sump pump? Yes ☒ No Unkn NA
38. Foundation/slab? Yes ☒ No Unkn NA
39. Interior walls/ceilings? Yes ☒ No Unkn NA
40. Exterior walls or siding? Yes ☒ No Unkn NA
41. Floors (all types)? *Hardwood floors throughout* Yes ☒ No Unkn NA
42. Chimney/fireplace or stove? Yes ☒ No Unkn NA
43. Patio/deck? Yes ☒ No Unkn NA
44. Driveway? Yes ☒ No Unkn NA
45. Air conditioner? Yes ☒ No Unkn NA
- 46.. Heating system? Yes ☒ No Unkn NA
47. Hot water heater? Yes ☒ No Unkn NA
48. Any other condition or aspect of the property which materially affects its value or use? ... Yes ☒ No Unkn NA
49. The property is located in the following school district:

Note: Buyer is encouraged to check public records concerning the property (e.g., tax records and wetland and floodplain maps).

The seller should use this area to further explain any item above. If necessary, attach additional pages and indicate here the number of additional pages attached.

Seller's Certification:

Seller certifies that the information in this Property Condition Disclosure Statement is true and complete to the seller's actual knowledge as of the date signed by the seller. If a seller of residential real property acquires knowledge which renders materially inaccurate a Property Condition Disclosure Statement provided previously, the seller shall deliver a revised Property Condition Disclosure Statement to the buyer as soon as practicable. In no event, however, shall a seller be required to provide a revised

Property Condition Disclosure Statement after the transfer of title from the seller to the buyer or occupancy by the buyer, whichever is earlier.

Seller's Signature Mr. W. Thang Date: 4/24/09
Seller's Signature _____ Date: _____

Buyer's Acknowledgment:

Buyer acknowledges receipt of a copy of this statement and buyer understands that this information is a statement of certain conditions and information concerning the property known to the seller. It is not a warranty of any kind by the seller or seller's agent and is not a substitute for any home, pest, radon or other inspections or testing of the property or inspection of the public records.

Buyer's Signature: Marcia Randolph Date: 4-24-09
Buyer's Signature: _____ Date: _____

July 1, 2009

Executive Officer
ABC Board of REALTORS®
1200 North Sunshine Road
Some Place, USA 66666

RE: Respondent's Letter

Dear Executive Officer:

I've read the letters accompanying Ms. Randolph's ethics complaint and arbitration request and can assure you that I indeed met my fiduciary duties to her, as her agent. Please allow me to clear things up.

I **did** ask the seller, Mr. Williams, about the age of the carpet and the condition of the hardwood floors underneath. On a few occasions, Mr. Williams said that the hardwood floors "are in good condition." Mr. Williams also explained that the carpet was 15 years old, so I was not surprised that it looked well worn. However, I had **no** idea that the underlying floors were damaged. There was **no** reason for me to think that they were!

Although I am a seasoned broker with 25 years of experience, I have no special expertise in the flooring business. Every time I was at that house, including the final walk-through, I noticed nothing alarming and no red flags. There was a lot of furniture inside, yes, but I did not spot anything that would lead me to believe that Mr. Williams was being less than truthful in any of his own representations of the floors. He must have moved the furniture and large plants around to cover areas with obvious damage, but at the time I had no reason to doubt him.

I also encouraged Ms. Randolph to arrange for a home inspection. I explained that if she did **not** arrange for an inspection, she might be liable for any damage if a problem were to arise. She declined to have the home inspected, because she is on a very tight budget. Now, I knew I couldn't make her do something she didn't want to do. If there were any indications the hardwood floors were in disrepair, I would have insisted on a home inspection.

There has been no violation of the Code of Ethics here. Given the seller's representations, I had no reason to pull up the carpet or be concerned about the floor's condition. Also, I certainly do not owe Ms. Randolph any money! Although I **am** sorry about the position she is in and that her family has had to live through some construction, none of this is my fault.

Sincerely,

Donald Davis

REALTOR® Donald Davis
Davis Realty

Findings of Fact

1. Components of an Ethics Hearing Panel's Decision

a. Findings of fact should:

- be comprehensive
- be succinct
- provide a clear rationale for the conclusion
- provide a reader who knows nothing about the case, with the rationale for the decision
- be written even if no violation of the Code is found

b. Potential conclusions reached by a hearing panel include:

- violation of specific Articles(s)
- no violation of specific Article(s)
- only some Articles charged were violated, and others were not

c. Types of discipline include:

- none
- letter of warning or reprimand
- education
- fine, not to exceed ~~\$5,000~~ 15,000.
- probation
- suspension of board membership and/or MLS access not less than 30 days nor more than one year \$15,000
- fine not to exceed ~~\$5,000~~ in lieu of suspension
- termination of board membership and/or MLS access not less than one year nor more than three years

d. Additional concerns about discipline include:

- stating specific discipline (such as “Ethics 101 class to be taken at the association prior to December 1, 2009”)
- defining specific time frame for the individual to comply with discipline (such as “ \$250 fine to be paid within ten days of transmittal of board of directors’ final decision”)
- defining a specific time frame for the suspension/expulsion; when it begins/ends
- including additional discipline to be automatically be imposed if the original discipline is not fulfilled
- if suspension or expulsion for noncompliance with other discipline has been imposed, then state whether the individual must first comply with outstanding discipline **before** he/she may be reinstated or readmitted to membership

NOTE: Administrative processing fees not to exceed \$500 charged to respondents found in violation of the Code are **not** considered to be discipline and may be administratively assessed by staff **only** if the board of directors has established such an amount to be unilaterally assessed to all respondents found in violation of the Code

2. Executive Session

- a. Association procedures dictate whether board counsel/staff remain.
- b. No new information may be solicited or received from parties.
- c. No witnesses are called or recalled.
- d. The tape recording of the hearing is not to be replayed.
- e. Standard of proof must be “clear, strong, and convincing.”
- f. There is no ability to amend the complaint.
- g. Findings of the hearing panel are to be determined and written.
- h. A majority of the hearing panel is to sign the decision.
- i. Dissenting opinions, if any, along with the decision, are to be transmitted to parties and the board of directors.

Ethics Appeal

1. Appeal Process

- a. Requires a maximum \$500 deposit **as prescribed by the local board.**
- b. Must be in writing.
- c. Should clearly state the bases for challenge.
- d. A respondent's bases for appeal are limited to:
 - misapplication of Articles of Code
 - misinterpretation of Articles of Code
 - procedural deficiency
 - lack of procedural due process
 - nature/extent of discipline imposed
- e. A Complainant's basis for appeal is limited to alleged procedural deficiency or other lack of due process that may have deprived him/her of opportunity for fair hearing.
- f. During the initial administrative review process:
 - president or delegate reviews appeal
 - it is determined whether appeal states any legitimate basis for appeal (if not, problem should be explained to party, and additional detail is requested)
 - all appeals are heard and there may be no "veto"
- g. Appeal request is reviewed by the board of directors, a panel of the board of directors, or the executive committee, if so designated by board of directors.
- h. During the appeal hearing:
 - the petitioner is limited only to those bases set forth in written request for appeal
 - the hearing panel chair presents the transcript of or summarizes the case
 - each party may offer corrections to the transcript or summary
 - each party may present arguments about why the hearing panel's decision should or should not be followed
 - no new evidence is allowed, except that which bears upon the claim of deprivation of due process

When No Appeal Has Been Filed

- a. All ethics hearing panel recommendations must be reviewed by the board of directors; when no appeal has been requested, then this review is conducted following the end of the time period for requesting an appeal; most hearing panel recommendations that are not appealed are adopted by the directors.
- b. Even when no appeal has been filed, if the directors are concerned with a possible procedural deficiency, they may refer the decision back to the professional standards committee for a hearing before a new hearing panel, comprised of different members; directors also may invalidate the hearing panel's decision.
- c. Even if no appeal is filed and the directors are concerned with the appropriateness of the recommendation for discipline, they either may reduce the recommended discipline or refer the matter back to the original hearing panel for further consideration; if referred back to the original hearing panel, then directors should provide written concerns about the discipline originally recommended by the hearing panel.
- d. If the directors conclude the findings of fact do not support a violation of the Code, the complaint is dismissed.