



# **RE33RC11: REAL ESTATE BROKERAGE PROFESSIONAL ETHICS FOR RESIDENTIAL AND COMMERCIAL REAL ESTATE BROKERAGE~Approved Jan. 11, 2011**

## **I. Fundamentals of Real Estate Industry**

A. Land: Land is the foundation of many aspects of society, whether it is the basics of food and shelter, or the more sophisticated aspects of economy and prosperity. Licensees deal in one of society's most important commodities.

B. "Widely allocated ownership" and "widest distribution of land ownership": These concepts speak to a fundamental premise upon which our nation was founded. Given that much of our law and governance derived from England, under which the king held much of the available land, it is easy to see why the founders of our nation would have a desire not to have a few individuals own vast quantities of land. The accumulation of land can lead to inordinate power in the hands of a few.

C. Integrity of Real Estate Profession: Competency and fairness. M.G.L. sec. 87AAA

## **II. Business Ethics**

A. Law vs. Ethics: Legal standards generally set minimum standards of conduct. Ethical standards usually encompass principles higher than legal standards. Example: Cooperative compensation

B. Industry Codes, Company Policies, Individual Moral conduct, license laws. 254 CMR 2.00(7)

C. Some groups actually impose self-discipline for ethical violations: ex: lawyers, doctors, and REALTORS®. Internal measures including sanctions to regulate behaviors. Discuss alternative dispute resolution systems.

## **III. Ethical Duties 254 CMR 2.00**

A. Duties to Clients & Customers, duties to public, duties to other licensees. None more important than the rest.

B. Some industries provide internal dispute resolution alternatives: arbitration and mediation. These industries, in order to preserve ethical behavior, allow anyone to file a complaint. These complaints result in legally enforceable decisions.

C. Give examples of commercial mediation and ethic standard boards.

D. Ethics and procuring cause disputes.

## **IV. Specific Ethical Issues for Licensees M.G.L. sec. 87AAA**

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- A. Promote and Protect your client's best interests and treat all parties honestly. Examples, the golden rule. Define "client," "customer," "agent," & "licensee."
- B. Avoid exaggeration, misrepresentation and concealment of pertinent facts about the property or the transaction. But there is no obligation to discover latent defects, matters outside scope of license, or matters confidential under agency or non-agency relationships.
- C. Cooperative Transactions: MLS systems, CoStar, LoopNet, and other commercial property exchange systems, contract for compensation comes from either membership or other agreement between licensees. Always disclose what compensation structure is in transaction and your agency role within transaction. What if the broker is a commercial broker? There is no obligation to compensate?

#### V. Massachusetts Law: 254 CMR 2.00(7)

- Defines "Moral character" as follows:

##### **Moral Character:**

- Each individual seeking a real estate license shall furnish evidence of good moral character.
- Applications for license shall include recommendations of *reputable* citizens, not related to the applicant, who reside in or have their place of business in Massachusetts.
- Each recommendation shall certify that the individual bears a good reputation for *honesty and fair dealing* and shall recommend that a license be granted to such individual.
- That is the extent of defining "moral character." Do you believe it is adequate?

#### VI. Industry Code of Conduct

- The main goal of industry code of conduct is to:
  1. Improve public image
  2. Avoidance of government regulations
  3. Protection from lawsuits
  4. Protection of the general public
- Mediation, Arbitration, Professional Grievance Standards, etc.

#### 5. For Example SIOR Code of Ethical Principals & Standards of Professional Practice

- Here is the code of ethics for the US premier office and industrial brokerage accreditation. It may be different with other brokerage trade or accreditation associations in other countries
- NAR and ABA, for instance have Code of Ethics
- The Code is to establish a group of duties and related requirements, such as to undertake or to refrain from specified conduct or activities, to make



disclosures, to withhold disclosures, to obtain acknowledgements or to obtain consents.

- **The edited version and titles of each code principal is as follows:**
  1. Act in the Best Interest of those who should benefit from your conduct
  2. Be Honest at all times and with all parties
  3. Honor your fiduciary duties
  4. Be sensitive to potential conflict of interest
  5. Disclose and Obtain Approval for self-dealing
  6. Document all agreements and keep accurate records
  7. Do not discriminate
  8. Obey the law
  9. Other codes govern certain activities
  10. Be truthful in all representation and advertising
  11. Do not make false or misleading statements about others
  12. Disclose the nature of your relationship
  13. Offer to cooperate with and compensate other real estate professionals (but not obligated to compensate)
  14. Do not interfere with the relationships or rights of other real estate professionals
  15. Cooperate in all professional standards proceedings
  16. Resolve financial disputes through mediation and/or arbitration

#### VII. Commercial Real Estate Firms with Ethic Standards

- Some of the commercial brokerage firms that are publicly listed have published ethic standards perhaps due to Sarbannes-Oxley
- Sarbannes-Oxley reflects the new ethic responsibility and protection of the consumer
- Many commercial and public companies have a "Chief Ethics Officer"
- There is no formal, industry-wide system of conduct in real estate
- In many ways, the business is self-policing
- How do you deal with international brokers that are unethical but are allowed to legally act that way in their countries?
- Review of the US Foreign Corrupt Practices Act

#### REFERENCES:

- NAR Code of Ethics
- SIOR Code of Ethics
- "Ethics in Real Estate" Howard Hughes Co. and American Real Estate Society
- "What's Fair: Ethics for Negotiators" by Carrie Menkel-Meadow and Michael Wheeler at Harvard Law School
- "Ethical Divide: Where do you draw the line?" by Paul Rosta, Commercial Property News, March 16, 2007, p. 28

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