

NATIONAL ASSOCIATION OF REALTORS®
Code of Ethics Video Series

Appendix II to Part Four from the *Code of Ethics and Arbitration Manual*

Appropriate Interpretation of “Pertinent Facts” as Used in Article 2 of the Code of Ethics

Article 2 of the National Association’s Code of Ethics obligates REALTORS® to refrain from exaggerating, misrepresenting, or concealing pertinent facts related to a property or to a transaction. Faced with an increasing volume of inquiries concerning the appropriate interpretation and application of Article 2 of the Code of Ethics, 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 2 has occurred.

A number of states have chosen, either through legislation or by regulation, to specify that real estate licensees have no obligation to discover or disclose certain facts regarding a property or its former or current occupants. In some instances, the disclosure of such information is expressly prohibited. In still other instances, states have chosen not to provide such guidance, and REALTORS® and others have looked to a variety of sources for guidance.

The Code of Ethics, which frequently establishes duties and obligations higher than those required by the law, must give way when those obligations conflict with the law. If the law prohibits disclosure of certain types of information to, for example, potential purchasers, then the Code of Ethics must not, under any circumstances, be read as requiring such disclosures.

At the same time, where the law simply provides that there is no express or implied duty to discover or disclose pertinent factors, the duties imposed by Article 2 come into play. Absent a legal prohibition, any material fact that could affect a reasonable purchaser’s decision to purchase, or the price that a purchaser might pay, should be disclosed as required by Standard of Practice 2-1 if known by the REALTOR® unless, again, otherwise prohibited by law or regulation. Such factors include, but are not limited to, those factors that might affect the habitability of the property. Other factors that do not affect the habitability of the property may nonetheless have an effect on the desirability of the property, the price a reasonable purchaser might pay for it, or the potential purchaser’s ability to resell the property at a future date.

Hearing Panels should also consider that a once-pertinent factor can, in some instances, diminish in relevancy over a period of years. For example, a traumatic death that occurred recently in a home could have a greater influence on a reasonable purchaser’s decision than a similar occurrence twenty (20), fifty (50), or one hundred (100) years earlier. By way of further example, the fact that a former occupant had died of scarlet fever fifty (50) years earlier would likely have less of an effect on a potential purchaser’s decision than the fact that there had been a murder on the premises within the past year.

It is no more possible to establish a black-letter definition of “pertinent facts,” as related to Article 2, than it would be to establish a “procuring cause” template or rule that would

define with precision, in every instance, entitlement to compensation in an otherwise arbitrable situation. Rather, reasonableness and common sense must be relied on in making such determinations. The question that Hearing Panels should consider in determining whether a REALTOR® has exaggerated, misrepresented, or concealed a pertinent fact is whether disclosure of the fact in question could have had an effect on a reasonable purchaser's decision. If the Hearing Panel concludes that the fact was material and was adverse but not necessarily subject to Standard of Practice 2-1's discovery requirement, but was known by the REALTOR® and could have influenced a reasonable purchaser's decision, then exaggeration, misrepresentation, or concealment of that fact could be the basis for finding that Article 2 had been violated. (Approved 4/91)