

REAL LIFE ETHICS FOR THE PROFESSIONAL REAL ESTATE MANAGER

A case study report based on actual IREM®
ethics cases



IREM Ethics History

The Institute was formed in 1933 by representatives of real estate firms whose primary concern was the financial responsibility of those who were managing property for others. Each founding member firm was required to follow certain ethical standards of practice. Specifically, each firm agreed to avoid commingling funds, to carry a fidelity bond for employees who handled money, and to refrain from reaping financial benefit from the use of a client's funds without full disclosure.

Today, these ethical ideals are still a cornerstone of IREM. IREM ethics education is a requirement to become a credentialed member – and all members are obliged to uphold the IREM Code of Professional Ethics, thus, conducting their professional activities in accordance with the Code. Likewise, ACCREDITED MANAGEMENT ORGANIZATION (AMO) Firms must abide by the AMO Code of Professional Ethics, which was revised effective October 12, 2012, and dictates member firms professional conduct. The Codes are reviewed periodically to ensure for ethical and competent practice of our members.

While many associations have codes of ethics, a study by the American Society of Association Executives (ASAE) found that only one-third fully enforce their codes. IREM is committed to ethics as one of its core values and therefore strictly enforces its Codes. Violations are processed within a defined structure, which provides due process for all parties involved, and includes an established peer review process that may result in disciplinary actions.

Since 1978, three boards comprised of IREM Members have driven the IREM ethics process. Each board has a very specific purpose:

- Ethics Inquiry Board – receives complaints and determines if there is reasonable cause for unethical conduct by a member or member firm.
- Ethics Hearing and Discipline Board – conducts hearings on complaints forwarded to it by the Ethics Inquiry Board, determines if a violation has occurred, and imposes discipline.
- Ethics Appeal Board – hears appeals to decisions made by Ethics Hearing and Discipline Board.

This Report

This report includes several case studies from actual complaints and hearings that have gone before one or more of the Ethics Boards. They are not official interpretations of IREM's ethical standards and do not establish binding precedents. All complaints alleging violations of the Codes of Ethics are considered and resolved on their merits through hearings conducted by the Ethics Hearing and Discipline Board taking into consideration all of the evidence and testimony presented. Guidance and prevention tips are provided on how to conduct business in an ethical manner – and in the case of IREM Members, to help avoid actions that can result in ethical complaints being filed. Finally, it helps to delineate between unethical behavior and business disputes.

ARTICLE 1. LOYALTY TO CLIENT, FIRM, AND/OR EMPLOYER

A CERTIFIED PROPERTY MANAGER, CPM Candidate, ACCREDITED RESIDENTIAL MANAGER, ACCREDITED COMMERCIAL MANAGER, or Associate Member (hereinafter referred to as MEMBER) shall at all times exercise loyalty to the interests of the client and the employer or firm with whom the MEMBER is affiliated. A Member shall be diligent in the maintenance and protection of the interests and property of the employer and of the client. A MEMBER shall not engage in any activity that could be reasonably construed as contrary to the interests of the client or employer. If an activity would result in a conflict between the interests of the firm or employer and the interests of the client, then the interests of the client shall take precedence.

Case Study 1: Stealing Business or Reasonable Competition?

Joe Smith, CPM, left his employer for another position. Over the years, Joe built up solid relationships with his clients. He informed these clients of his impending move, knowing they will want to follow him to his new firm.

Is this a scenario for success, or is Joe setting himself up for an ethics complaint? Joe has read the IREM Code of Professional Ethics and knows it does not restrict legal and reasonable business competition by and among real estate managers. As change is the nature of the property management business, is Joe competing in the marketplace or treading in ethics territory?

Timing is the difference between a smooth transition and a possible ethics complaint. To make a transition without an ethical bump, consider:

- A. When does employment with the previous firm cease?
- B. Are there any outstanding contractual obligations such as may be stated in a non-compete agreement? Is the agreement in writing and signed?
- C. Do the clients have contractual relationships with the previous firm and when do they terminate?
- D. If you talked to your clients, who initiated the conversations and when?

Case Study 1: Prevention Tips

- ✓ Remain loyal to current employer until termination of relationship.
- ✓ Do not solicit business from your employer's clients while still employed.
- ✓ When changing jobs, avoid discussions regarding your departure with your firm's current clients while still employed, even if the clients initiate the conversation.
- ✓ Absent a written employment contract, do not discuss your departure with clients or other prospective clients (or employees) without first notifying your employer in advance of your ending date and obtaining permission to contact clients.

- ✓ Your reputation demands that you do more than the minimum in obtaining approval and care to not cause damage to your previous employer. Treat others as you would like to be treated. “Do no harm” is your goal.
- ✓ Introduce a replacement manager as soon as possible and facilitate a smooth transition.
- ✓ When you terminate your employment, be sure you know what terms apply after you have left your previous employer.
- ✓ Avoid discussing the reasons for leaving or saying anything negative about your current employer.

Case Study 2: Company Policy

The Complainant charged the CPM Respondent with taking the largest client of his former employer with him when he formed his own management company. The complaint was brought by the Respondent’s former employer, who subsequently withdrew the complaint when both parties settled in court. The letter to the Hearing Board from the Complainant stated “we do not believe the behavior was in violation of Article 1 based on our resolution of the dispute.” The Inquiry Board determined that the settlement did not indicate that there was not an ethics violation and still forwarded the matter for hearing – the Inquiry Board as the Complainant.

The Hearing Board found Respondent in violation of Article 1. The CPM Respondent was suspended for one year but did not comply with the discipline. The Hearing Board voted to terminate the CPM Member’s membership status.

This case also illustrates that even when a complaint is withdrawn by the person who filed it, the complaint is not dismissed unless the Board finds no violation of the Code.

Case Study 2: Prevention Tips

- ✓ Know company policy regarding work performed independently outside the firm.
- ✓ Make the firm aware of any work performed outside the firm and get acknowledgment in writing.
- ✓ Refer solicitations to manage property to appropriate company personnel.

BY THE NUMBERS:

Since 1978, **31** complaints included a potential violation of this article.

ARTICLE 2. CONFIDENTIALITY

A MEMBER shall not disclose to a third party any confidential or proprietary information which would be injurious or damaging to a client concerning the client's business or personal affairs without the client's prior written consent, unless such disclosure is required or compelled by applicable laws and regulations.

Case Study 1: Handling Proprietary Information

The Board of Directors of a Cooperative charged a CPM with violation of Articles 1, 2 and 8 for breach of confidentiality and disloyalty. The CPM Respondent was alleged to have given a list of renters' contact information to unit owners, enabling owners to directly solicit renters instead of having the renters go through the Cooperative. After questioning the employees in the rental office, the Respondent found no proof that a list of renters existed. The CPM Respondent stated that without the alleged list, there was no basis for a complaint. The Responding CPM attended the hearing but the Complainant did not. The Hearing Board found no violation of the Code.

Case Study 1: Prevention Tips

- ✓ Treat all property information as proprietary in accordance with recently enacted "red flag" rule that requires the identification and prevention of threats to personal data to help prevent identity theft.
- ✓ Don't disclose the client's written or verbal information without written authorization from all appropriate entities and individuals.

Case Study 2: What Belongs to You in the Non-Disclosure Agreement?

A CPM Member was hired by the Complainant to serve as Vice President of Sales and Marketing. The Complainant alleged that in the course of forming a separate company, the Respondent plagiarized their business and marketing plan and client list, as well as their vision, mission and value statements. The Complainant withdrew the complaint moments before the hearing started. The CPM Respondent submitted a written response to the complaint and appeared at the hearing with an attorney. In light of the fact that the Complainant presented no evidence against the Respondent, the Hearing Board voted to dismiss the complaint.

Case Study 2: Prevention Tips

- ✓ Treat all property specific information as proprietary.
- ✓ All products developed as an employee remain the product of the employer.

BY THE NUMBERS:

Since 1978, **8** complaints included a potential violation of this article.

ARTICLE 3. ACCOUNTING AND REPORTING

Pursuant to the terms of the management agreement, a MEMBER shall use reasonable efforts to provide accurate, auditable financial and business records and documentation concerning each asset managed for the client, which records shall be available for inspection at all reasonable times by the client. A MEMBER shall furnish to the client, at mutually agreed upon intervals, regular reports concerning the client's assets under management. A MEMBER shall not exaggerate, misrepresent, or conceal material facts concerning the client's assets or any related transaction.

Case Study 1: Relationship Advice

Sometimes a complaint is examined not just by the possible violations of the Code, but by the relationship between the complaining party and the responding party. In a case considered by the Hearing Board and subsequently reviewed by the Appeal Board, a CPM entered into an agreement with the Complainant for the purchase, management, and sale of a shopping center. The Complainant alleged the CPM breached the terms of the contract by generally failing to comply with the duties of care and good faith imposed upon him by virtue of his position as leasing agent, sales agent and real estate broker. While the CPM Member's intention was to become a partner with the Complainant, the Board found his primary role was that of a property manager.

The CPM Member's response was based on repeated assertions that he and the Complainant were partners and that their agreement was not bound by the IREM Code. However, the Appeal Board confirmed the Hearing Board's finding that they had a client relationship as defined by the property management agreement which existed between the two parties for five years. Moreover, the Appeal Board agreed that missing monies totaling between \$30,000 and \$50,000 pointed to serious issues in financial reporting under the terms of the agreement.

The Board determined the CPM did not produce accurate reports of existing leases and free rental space extended to certain tenants who were prospective buyers of the property. The CPM also did not inform the Complainant that those tenants had plans to resell for \$4 million immediately after the purchase from the trust and that the CPM expected to receive a 20% payout from the \$4 million sale. The Appeal Board also supported the findings from the Hearing Board that the member violated provisions of the contract that all collected monies go into a trust account by taking improper commissions and withholding money from the account. The Appeal Board upheld the Hearing Board's decision which found the CPM in violation of Articles 3, 4, 7, and 8 and terminated the CPM Member's membership.

Case Study 1: Prevention Tips

- ✓ Know and meet all contractual requirements for reporting.
- ✓ In a multi-party situation, disclose all roles to all parties (and make sure appropriate written agreements are in place with each party.)
- ✓ Discuss all material changes in situation, especially where you might profit.
- ✓ As an IREM Member, you are bound by the Code, whether you are self-employed and whether or not your partner is also an IREM Member.

BY THE NUMBERS:

Since 1978, **36** complaints included a potential violation of this article.

Case Study 2: Who is Responsible?

The Complainant hired a CPM Member to manage out-of-state property. The Complainant's allegations of mismanagement were broken down into four categories: (1) Failure to deliver rent and monthly reports on time, (2) Failure to collect rent from tenants, (3) Failure to make timely repairs to the properties (including health and safety issues), and (4) Irresponsible handling and accounting of owner funds. The CPM attended the hearing and testified that the accounting and reporting problems were the result of errors made by unqualified staff. The Complainant did not appear. After hearing the testimony and examining the evidence, it was the conclusion of the Hearing Board that it was the CPM Member's responsibility as principal of the firm to oversee the accounting and reporting functions. The Hearing Board found the CPM in violation of Article 3. The Board determined that the CPM must successfully complete the IREM ethics course, ETH800, and issued an unpublished letter of censure.

Case Study 2: Prevention Tips

- ✓ The CPM is responsible for overseeing the implementation of the management agreement. Even if the CPM is not personally handling a certain aspect of the agreement, he is ultimately responsible.
- ✓ The CPM is responsible to hire qualified personnel for all contractual responsibilities accepted.
- ✓ Consider using a checklist for responsibilities.
- ✓ Consider in-house review of reports to clients to provide checks and balances.

Violations of
Article 3 (ACCOUNTING AND REPORTING)

and
Article 4 (PROTECTION OF FUNDS)
are often cited together.

ARTICLE 4. PROTECTION OF FUNDS

A MEMBER shall at all times serve as a fiduciary for the client and shall not commingle personal or company funds with the funds of a client or use one client's funds for the benefit of another client, but shall keep the client's funds in a fiduciary account in an insured financial institution or as otherwise directed in writing by the client. A MEMBER shall at all times exert due diligence for the maintenance and protection of the client's funds against all reasonably foreseeable contingencies and losses.

Case Study 1: Commingling Funds

A CPM Member found in violation of the Pledge and Articles 1, 3, 4, 8, 9, 10 & 12 was terminated following a hearing. The CPM was named as a defendant in a request for an entry of default. A court-appointed receiver assumed control of the CPM Member's firm and announced plans for liquidation. In addition, a lawsuit was filed after alleged financial irregularities were discovered in a receivership report submitted by the CPM. In the suit, the CPM was alleged to have commingled, diverted and personally used funds. Also, the tax authority placed federal tax liens in excess of \$2 million against the CPM Member's firm's assets.

Case Study 1: Prevention Tips

- ✓ Utilize outside oversight by an independent accounting service.
- ✓ Institute internal checks and balances and require more than one signer on all payments.

Case Study 2: Training for Trust Funds Accounting

A CPM Candidate member resubmitted his application for CPM candidacy and revealed that a real estate license restriction was currently in effect. The restriction resulted from mishandling trust funds, but only prohibited the Respondent from serving as a corporate officer. The Board found the Candidate in violation of Articles 4, 9 and 10. Because the Candidate had taken appropriate measures in responding to the findings of the Department of Real Estate, the Board determined to allow the application to proceed, provided that the Candidate successfully complete a course on trust fund accounting, IREM's ethics course (ETH800), and a candidate orientation before being eligible for CPM membership.

Case Study 2: Prevention Tips

- ✓ Provide training in trust fund accounting or hire someone with such knowledge.
- ✓ Obtain an outside audit of trust accounts.

BY THE NUMBERS:

Since 1978, **32** complaints included a potential violation of this article.

ARTICLE 5. RELATIONS WITH OTHER MEMBERS OF THE PROFESSION

A MEMBER shall not make, authorize or otherwise encourage any false or misleading comments concerning the practices of Members of the Institute of Real Estate Management. A MEMBER shall truthfully represent material facts in their professional activities. A MEMBER shall not exaggerate or misrepresent the services offered as compared with the services offered by other real estate managers. Nothing in this Code, however, shall restrict legal and reasonable business competition by and among real estate managers.

Case Study 1: Is Your Website Current?

One CPM Member charged another CPM with misrepresenting his broker status. The CPM Respondent was also alleged to have been denied renewal of his broker's license for falsifying an application regarding completion of required continuing education hours. The CPM Respondent stated that failure to provide additional requested information which resulted in the license not being renewed was not a basis for ethical sanction by IREM. It was the conclusion of the Hearing Board that the Complainant did not meet the burden of proof as required in the Statement of Policies, and thus did not prove violation of the cited articles.

Case Study 1: Prevention Tips

- ✓ Maintain awareness of any licensure status and follow through with complete disclosure.
- ✓ Update company website for status of licenses and all staff data.
- ✓ Have a responsible party monitor each employee status.

Case Study 2: Read the Non-Compete Before You Leap

In a complaint filed by two CPM Members, a CPM Candidate, who was a former employee of the Complainants, allegedly took business to the firm's competitor and worked on the account in violation of a non-compete agreement.

During the hearing, the Respondent admitted to informing the owner of the property that she would be leaving her employer. The CPM Candidate arranged a meeting between her new employer and the owner, both prior to tendering her resignation with her previous employer. In addition, she admitted to working on the property while employed by her former employer prior to the expiration of the non-compete agreement. The Board believed these activities could be reasonably construed as contrary to the obligation of loyalty and diligence to the employer.

The CPM Candidate was alleged to have violated the Pledge and Articles 5 and 9, but was found not to be in violation of those articles. The CPM Candidate was issued an unpublished letter of censure and was required to successfully complete the IREM ethics course (ETH800).

Case Study 2: Prevention Tips

- ✓ Seek outside counsel for questions on employment-related issues.
- ✓ Institute a company code of ethics and training.
- ✓ Utilize staff meetings, webinar training and employee handbooks to ensure staff is aware of their obligations.
- ✓ Fully understand any non-compete agreements.

BY THE NUMBERS:

Since 1978, **4** complaints included a potential violation of this article.

ARTICLE 6. CONTRACTS

Any written contract between a MEMBER and a client shall be in clear and understandable terms, and shall set forth the specific terms agreed upon between the parties, including a general description of the services to be provided by and the responsibilities of the MEMBER.

Case Study 1: When in Doubt, Disclose

A CPM and an AMO Firm were terminated for commingling funds in violation of Articles 1, 3, 6, and 9. The CPM failed to disclose to clients the firm's practice of depositing all client funds into one interest-bearing account and keeping the interest that was earned. The firm used an accounting system to keep separate client records and argued that the interest rightfully belonged to the firm because, had the accounts been kept separately, none of them on their own would have been large enough to earn interest.

Case Study 1: Prevention Tips

- ✓ Management agreement should disclose how client funds are handled.
- ✓ Know the law and use outside oversight when necessary.

Case Study 2: It's All in the Management Agreement

The Complainant, who as president of a townhome association, terminated the CPM Respondent, alleging that the CPM was uncooperative in providing documentation after termination. The CPM allegedly failed to provide a copy of the management agreement to the Complainant, despite written requests spanning 2 years. The Complainant also alleged that the CPM deducted more than \$2,000 for repairs from the property's account, despite the lack of authority in the management contract, alleging that the expense was to be covered by insurance. Finally, the Complainant noted that the Respondent paid an erroneous utility bill that exceeded the correct charge by approximately 80%.

The Board found sufficient evidence to conclude that the CPM failed to produce requested documentation in a reasonably timely manner. Specifically, a delay of more than two years to provide a copy of the management agreement after receiving written requests could not be excused as the result of a filing error. Instead, the delay was seen by the Board as indicative of a general lack of responsiveness that was evident both in the handling of the expense reimbursement and the management transition. Material facts were not communicated in a clear and timely manner. Finally, the Board found that the CPM exceeded the scope of his authority under the management agreement by incurring an expense exceeding \$500 without the consent of the association Board. The Hearing Board found the Respondent in violation of Articles 3, 8, and 9 and determined to suspend the Respondent's membership for a period of two years. The decision was subsequently appealed. The Appeal Board

upheld the decision of the Hearing Board.

Case Study 2: Prevention Tips

- ✓ Know the specifications and limitations of each client.
- ✓ Be timely in all responses and communications.

BY THE NUMBERS:

Since 1978, **5** complaints included a potential violation of this article.

ARTICLE 7. CONFLICT OF INTEREST

A MEMBER shall not represent personal or business interests divergent from or conflicting with those of the client or employer and shall not accept, directly or indirectly, any rebate, fee, commission, discount, or other benefit, monetary or otherwise, which could reasonably be seen as a conflict with the interests of the client, employer or firm, unless the client or employer is first notified in writing of the activity or potential conflict of interest, and consents in writing to such representation.

Case Study 1: Family Employees are Subject to the Same Rules

A CPM used a family member (a cousin) as the snow removal vendor for a property. A slip and fall accident occurred on the property as a result of sidewalks that were not adequately salted. The CPM was accused of not enforcing company standards with the family member vendor, which would have included adequate salting and shoveling. The CPM was found in violation of Article 7 and was issued an unpublished letter of censure.

Case Study 1: Prevention Tips

- ✓ Disclose family relationships in writing and in advance.
- ✓ Utilize proper business procedures in situations that call for a bid process, by obtaining 3 competitive bids. Disclose all terms and requirements of the bid equally with all bidders. NEVER disclose bid information submitted by one bidder to another without permission of the bidder. Any changes to the bid terms must be disclosed to all bidders.
- ✓ Hold all contractors to the same standard of behavior.

Case Study 2: Don't Take Your Vendors Home

A CPM was charged with violation of Article 7 for using her firm's vendor to paint and clean her personal residence without paying for those services. The Complainant also alleged the CPM provided the vendor with confidential bidding information of competitors who were bidding the same contract. The CPM attended the hearing with an attorney. The Complainant attended with an attorney and a witness. The Hearing Board found the CPM in violation of the article dealing with conflict of interest. The CPM was issued a published letter of censure, suspended for three years and assigned the discipline of successfully completing the IREM ethics course (ETH800) within a year or membership status would be terminated.

Case Study 2: Prevention Tips

- ✓ Avoid utilizing your firm's vendors for personal business – but if used, obtain written permission from your supervisor to do so.
- ✓ If your firm's vendor is utilized, ensure that it is documented and that you paid fair market price.
- ✓ Have a clear policy on what is an “acceptable” gift.

BY THE NUMBERS:

Since 1978, **43** complaints included a potential violation of this article.

ARTICLE 8. MANAGING THE ASSETS OF THE CLIENT

A MEMBER shall exercise due diligence in the maintenance and management of the client's assets and shall make all reasonable efforts to protect it against all reasonably foreseeable contingencies and losses.

Case Study 1: Spend Client Funds Only as Authorized

An AMO Firm was suspended for 12 months, and its Executive CPM was issued a published letter of censure and was required to successfully complete IREM's AMO course following an Appeal Board ruling. The firm allegedly billed the owner of a small rental property managed by the firm for unauthorized repair work. The property manager assigned to the account admitted that proceeding with the repairs exceeded the authority allowed under the management agreement, and the client was not consulted. The Appeal Board affirmed the findings and conclusions of the Hearing Board, which found the AMO Firm in violation of the AMO Code and the CPM in violation of Article 8 of the IREM Code.

Case Study 1: Prevention Tips

- ✓ Review management contract prior to proceeding with repair work.
- ✓ Make staff aware of limitations of management agreement authorizations.
- ✓ AMO Firms should have and enforce policy on written contracts between contractor and client.

Case Study 2: Keeping the Books

A CPM was issued a published letter of censure and was required to successfully complete IREM's ethics course (ETH800) after a hearing involving three outside-party complaints. Allegations involved unethical condominium management. Foreclosure proceedings resulted due to the CPM Member's alleged failure to make mortgage payments and homeowner's association dues payments. The CPM admitted that mistakes were made, but asserted that the management was for a partnership in which the CPM was involved, so normal client fiduciary obligations were not in effect. In addition, the CPM Member's bookkeeper admitted to inaccurate record-keeping. The CPM was found in violation of the Pledge and Articles 1, 3, 4, 8 and 10.

Case Study 2: Prevention Tips

- ✓ Maintain clear communication and documentation of all events.
- ✓ Make sure employees are knowledgeable about procedures and are adequately supervised.

✓ When working as part of a partnership, the IREM Member is still obliged to uphold the Code.

BY THE NUMBERS:

Since 1978, **21** complaints included a potential violation of this article.

ARTICLE 9. DUTY TO FORMER CLIENTS AND FORMER FIRMS OR EMPLOYERS

All obligations and duties of a MEMBER to clients, firms, and employers as specified in this Code shall also apply to relationships with former clients and former firms and employers. A MEMBER shall act in a professional manner when, for whatever reason, relationships are terminated between a MEMBER and a client and firm or employer. Nothing in this section, however, shall be construed to cause a MEMBER to breach obligations and duties to current clients and firm or employer.

Case Study 1: You Can't Take it With You

A CPM Candidate was suspended for one year and required to take Ethics 800 for misappropriating software from a former employer in violation of Article 9.

Case Study 1: Prevention Tips

- ✓ Observe all tenets of the confidentiality and non-disclosure agreement.
- ✓ At the end of employment, never take any item that is property of the employer.

Case Study 2: Loyalty is an Asset

The Complainants, the Executive CPM and the vice president of an AMO Firm, charged two former employees who are both CPM Members with stealing business while employed by the firm and after leaving the firm. The Complainants alleged that the CPM Members willfully interfered with the firm's contractual relationships with clients and attempted to damage the reputations of the firm's employees. One of the CPM Respondents, a former vice president of the firm, who was working as the designated broker for another firm, allegedly supplied the second CPM Respondent, who was still employed with the Complainant's firm at the time of the alleged conduct, with signed management agreements to be shared with the Complainant's clients.

The Hearing Board found the first CPM in violation of the articles of the Code having to do with loyalty to client, conflict of interest and duty to employer, and voted to issue a published letter of censure, a three year suspension, and successful completion of IREM's ethics course (ETH800) or risk termination of membership status.

The Hearing Board voted to issue an unpublished letter of censure to the second CPM, and a one year suspension. The second CPM must also successfully complete IREM's ethics course (ETH800) or membership status will be terminated.

Case Study 2: Prevention Tips

- ✓ Utilize clear and concise non-compete agreements and clauses.
- ✓ Remain loyal to current employer until termination of relationship.
- ✓ If employer does not use a non-compete or employment agreement, obtain written approval for any contact with clients prior to employment termination.

BY THE NUMBERS:

Since 1978, **15** complaints included a potential violation of this article.

ARTICLE 10. COMPLIANCE WITH LAWS AND REGULATIONS

A MEMBER shall at all times conduct business and personal activities with knowledge of and in compliance with all applicable laws and regulations.

Case Study 1: Ethical Duties of the Executive CPM

The Executive CPM of an AMO Firm was found in violation of Articles 10 and 12 stemming from the firm's alleged failure to disclose lead-based paint hazards. In a consent decree with the federal government, the firm agreed to spend nearly \$1 million to remove lead paint from rental units, to pay a \$10,000 civil penalty for failing to comply with the lead paint disclosure law, and give \$70,000 to the Sustainable Resource Center for lead paint abatement activities. The Hearing Board determined that the Executive CPM had a legal as well as an ethical duty to residents to inform them of lead-based paint hazards in pre-1978 buildings. The Hearing Board further determined that senior management was responsible for ensuring that leasing agents and employees follow the firm's policies and procedures. The AMO Firm was issued an unpublished letter of censure. As a condition of the discipline, the firm was required to submit its implementation plan to the Hearing Board by a date specified, or the letter of censure would be published.

Case Study 1: Prevention Tips

- ✓ Require disclosure as part of lease document.
- ✓ Regular training of staff to stay current with laws and regulations.

Case Study 2: Truth is the Only Safe Ground

A CPM Candidate had his membership terminated for providing false information on an IREM application, submitting false documents regarding REALTOR® board membership, and embezzling funds from a former employer in violation of the Pledge and Article 10.

Case Study 2: Prevention Tips

- ✓ Prior missteps will not preclude employment or membership; lying about them will.
- ✓ Fill out application forms honestly as the truth will come to light.

BY THE NUMBERS:

Since 1978, **68** complaints included a potential violation of this article, more than any other article of the Code.

ARTICLE 11. EQUAL OPPORTUNITY

A MEMBER shall not deny equal employment opportunity or equal professional services to any person for reasons of race, color, religion, sex, familial status, national origin, age, sexual orientation, or handicap and shall comply with all applicable laws and regulations regarding equal opportunity.

Case Study 1: Separating Truth From Allegations

A CPM successfully defended allegations of racial discrimination and termination of a residential manager for refusing to discriminate. The CPM provided evidence that the community was not discriminatory, demonstrating that the two applicants in question were rejected on valid grounds and that the employee was fired for poor job performance.

Case Study 1: Prevention Tips

- ✓ Provide, participate in and document annual Fair Housing training to stay up to date with federal and local laws.
- ✓ Use standard application forms and educate staff on forms and related articles of application process.
- ✓ Clearly document employee records for future use.

Case Study 2: Investing In Knowledge Pays the Best Interest

An AMO Firm was issued a letter of censure for racial discrimination which admonished the Executive CPM to maintain a professional work environment free from discriminatory remarks. The firm remedied the problem with a comprehensive educational program. The firm was also charged with violating Article 10, but was found not in violation.

Case Study 2: Prevention Tips

- ✓ Train employees on Fair Housing practices.
- ✓ Use consistent documentation on all applications.

BY THE NUMBERS:

Since 1978, **2** complaints included a potential violation of this article.

ARTICLE 12. DUTY TO TENANTS AND OTHERS

A MEMBER shall competently manage the property of the client with due regard for the rights, responsibilities, and benefits of the tenants or residents and others lawfully on the property. A MEMBER shall not engage in any conduct that is in conscious disregard for the safety and health of those persons lawfully on the premises of the client's property.

Case Study 1: Keep Tenants Informed

An AMO Firm was issued an unpublished letter of censure in response to a complaint filed by a tenant in a building where tenants were subject to noxious fumes and lead dust during sanding work. The AMO had not taken enough action to notify and protect tenants.

Case Study 1: Prevention Tips

- ✓ Provide contractors with a standard contractor guideline list to insure they adhere to all codes, safety practices, and building requirements.
- ✓ Make sure tenants are informed about hazardous situations.
- ✓ Hire qualified, experienced and insured contractors to provide services.

Case Study 2: Where Does The Responsibility Lie?

The Complainant, a condo owner whose main residence is in another state, alleged negligence and lack of fiduciary responsibility on the part of the CPM Member whose firm managed his property. The complaint was filed when the kitchen pipe burst, flooding the condo. According to the Complainant, he and the Association officers made repeated attempts to resolve the matter, which the CPM ignored.

The Hearing Board found the CPM in violation of the Pledge and Articles 1, 8, and 12 having to do with loyalty to client, managing the assets of a client, and the duty to protect the health and safety of tenants. The discipline was an unpublished letter of censure and successful completion of IREM's ethics course (ETH800). The CPM Respondent filed an appeal, stating that he was not employed as the manager of the Complainant's individual condo unit. The Appeal Board reviewed the CPM Member's written appeal and found the Respondent had a fiduciary responsibility to the common elements of the building. The Appeal Board upheld the decision of the Hearing Board.

Case Study 2: Prevention Tips

- ✓ Educate managers about tenant properties vs. homeowners associations.
- ✓ Make sure managers are aware of who is responsible for each area in shared ownership properties.

BY THE NUMBERS:

Since 1978, **11** complaints included a potential violation of this article.

ARTICLE 13. DUTY TO REPORT VIOLATIONS

Each MEMBER has a responsibility to provide the Institute of Real Estate Management with any significant factual information that reasonably suggests that another MEMBER may have violated this Code of Professional Ethics. Such information must be presented as outlined in the Institute of Real Estate Management's Bylaws and Statement of Policies.

Note: *This article was added to the Code in 2007. Research conducted by the Ethics and Discipline Committee found that other real estate and related organizations include similar requirements in their codes. While such ethical behavior was inherent in the previous IREM Codes, today's business conditions make it imperative to specifically spell out the Institute's expectations of all its members.*

Case Studies

No Case Studies are available yet.

Tips on Duty to Report

- ✓ Uphold your commitment to IREM ethics by reporting possible violations to the Ethics Inquiry Board. If you are not directly involved, it may not be necessary for you to act as the Complainant.
- ✓ Provide appropriate documentation when making a formal complaint.
- ✓ Make sure to demonstrate a possible violation of the Code(s), by tying allegations to the article violated.

ARTICLE 14. ENFORCEMENT

The interpretation of compliance with this Code is the responsibility of the Ethics and Discipline Committee of the Institute of Real Estate Management. Any violation of the obligations of this Code by a MEMBER and any disciplinary action for violation of any portion of this Code shall be determined and carried out in accordance with and pursuant to the terms of the Bylaws and Statement of Policies of the Institute of Real Estate Management. The result of such disciplinary action shall be final and binding upon the affected MEMBER and without recourse to the Institute, its officers, Governing Councillors, Members, employees, or agents.

Note: *This article explains that enforcement is an integral part of the IREM Code of Professional Ethics. The IREM Ethics program is described in the Bylaws and Statement of Policies of the Institute. While many associations have a code of conduct, IREM is one of the few to strictly and consistently enforce their code.*

