

Real Life Ethics for the Professional Real Estate Manager

A Case Study Report Based on
Actual IREM® Ethics Cases

Second Edition



IREM Institute of Real Estate Management

IREM® Headquarters
430 North Michigan Avenue
Chicago, IL 60611-4090
www.irem.org

Phone (800) 837-0706
(312) 329-6000
Fax (800) 338-4736
E-mail getinfo@irem.org

Table of Contents

IREM Ethics Overview	3
Acknowledgements	5
IREM Code of Professional Ethics	6
AMO Code of Professional Ethics	7
Case Studies	8
IREM Member Pledge	8
Article 1. Loyalty to Client, Firm, and/or Employer	9
Article 2. Confidentiality	11
Article 3. Accounting and Reporting	12
Article 4. Protection of Funds	14
Article 5. Relations with Other Members of the Profession	15
Article 6. Contracts	16
Article 7. Conflict of Interest	17
Article 8. Managing the Assets of the Client	18
Article 9. Duty to Former Clients and Former Firms or Employers	19
Article 10. Compliance with Laws and Regulations	20
Article 11. Equal Opportunity	21
Article 12. Duty to Tenants and Others	22
Article 13. Duty to Report Violations	23
Article 14. Enforcement	23

©2016 Institute of Real Estate Management. All rights reserved. IREM®, the IREM logo, CERTIFIED PROPERTY MANAGER®, CPM®, the CPM key logo, ACCREDITED RESIDENTIAL MANAGER®, ARM®, the ARM torch logo, ACCREDITED MANAGEMENT ORGANIZATION®, AMO®, the AMO circle logo, Income/Expense Analysis®, Expense Analysis® and JPM® are registered marks of the Institute of Real Estate Management.

IREM encourages diversity. We welcome individuals of all races, genders, creeds, ages, sexual orientations, gender identities, national origins, and individuals with disabilities. Our organization strives to provide an equal opportunity environment among its members, vendors, and staff.

IREM Ethics Overview

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; therefore, conducting their professional activities in accordance with the Code. Likewise, firms that have earned IREM's ACCREDITED MANAGEMENT ORGANIZATION® (AMO®) accreditation must abide by the AMO Code of Professional Ethics. The Codes are reviewed periodically to ensure relevancy and reflect contemporary business practices — and continue to provide meaningful ethical standards for all IREM 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, providing due process for all parties involved, and includes an established peer review process that may result in disciplinary actions.

The Process

Since 1978, three Boards comprised of IREM Members have driven the IREM ethics process — and each Board has a very specific purpose.

Ethics Inquiry Board

Receives complaints and determines if there may have been a possible violation of the Code(s) — if so, the complaint is forwarded to the Ethics Hearing & Discipline Board for a hearing; if not, the case is dismissed. Once a complaint has been filed, it may only be withdrawn if the Ethics Inquiry Board accepts the withdrawal. Even if the matter has been settled through other forums, the Ethics Inquiry Board may still move the complaint forward to a hearing if there is reason to believe there has been a violation.

Ethics Hearing & Discipline Board

Conducts hearings on complaints forwarded to it by the Ethics Inquiry Board, determines if a violation has occurred, and imposes discipline. Discipline may include:

- ▶ A letter of censure (published or unpublished).
- ▶ Suspension of membership for up to three years (published).
- ▶ Termination of membership (published and may re-apply for membership after no less than five years).

The discipline may also be conditional, meaning the member must also complete a task, such as taking the IREM ethics course by a certain date. Failure to meet a condition may result in termination of membership. The Ethics Hearing & Discipline Board may also determine that no discipline is warranted.

Ethics Appeal Board

Hears appeals to decisions made by the Ethics Hearing & Discipline Board, as requested by either a Complainant or Respondent. Its decisions are binding. The Ethics Appeal Board may:

- ▶ Adopt, reject, or modify the Ethics Hearing & Discipline Board's findings.
- ▶ Send the case back for a new hearing with the Ethics Hearing & Discipline Board.

Learning by Example

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 are considered and resolved on the merits through hearings conducted by the Ethics Hearing & Discipline Board, taking into consideration all of the evidence and testimony presented. Prevention tips are provided as guidance for 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, the report helps to delineate between unethical behavior and business disputes – business disputes are not necessarily the result of unethical behaviors.

For more information about IREM ethics, visit www.irem.org/ethics.

Acknowledgements

Thank you to the members of the 2016 IREM Ethics Committee for contributing their expertise, support, and time to create this second edition.

Kris Moore, CPM®, <i>Chair</i>	Elizabeth Ekre, CPM®	Carol MacDonald, CPM®
Jason Falcetta, CPM®, ACoM, <i>Vice Chair</i>	Benjamin Forsythe, CPM®	K. David Meit, CPM®, ARM®
Dwayne Alexander, CPM®, ACoM®	Michael Fried, CPM®	Helen Moise, CPM®
Shira Ali, CPM®	Vickie Gaskill, CPM®, ARM®	Regina Mullins, CPM®
Sheila Austin, CPM®	Jacqueline Harris, CPM®	Ann Reisch, CPM®
Shenea Bankhead, CPM® Candidate	Latonia Harris, CPM®, ARM®	James Reuschlein, CPM®
W. Steven Banner, CPM®	Teika Haymon, CPM®, ACoM	Kimberly Sisney, CPM®
Solomon Bickersteth, CPM®	Dee Herman, CPM®	Jason Stowe, CPM®
Barry Blanton, CPM®	Richard Hitt, CPM®	Jeffrey Symonds, CPM®
Eileen Conway, CPM®, ARM®	Karen Hodge, CPM®	Victor Vacek, CPM®
Colleen Costa, CPM®, ARM®	Stanley Johnson, CPM®	Gwen Volk, CPM®
Sara D'Elia, CPM®	Timothy Kramer, ARM®	Elizabeth Walker, CPM®
Afi Edim, CPM®	Hilary Leffler, CPM®	Vanessa Wood, CPM®, ARM®
	Brian Lozell, CPM®	Carl York, CPM®

Thank you to the members of the 2011 and 2012 IREM Ethics Committee for contributing their expertise, support, and time for the first edition.

Jeffrey M. Symmonds, CPM®, <i>Chair</i>	Roy L. Hanlin, CPM®	Ann E. Reisch, CPM®
Maleta J. Brown, CPM®, <i>Vice Chair</i>	John R. Hatton, CPM®	Nancy Rodriguez, ARM®
Cammie A. Allie, CPM®, ARM®	Dee L. Herman, CPM®	David "Nick" Schwendeman, CPM®
Skinner (Skip), Anderson II, CPM®, ARM®	Thomas P. Hix, CPM®	Mary Ann Sipos, CPM®, ARM®
Sheila A. Austin, CPM®	Deborah Ho-Beckstrom, CPM®	Jack W. Stafford, CPM®
Craig L. Cardwell, CPM®	Linda La Rae Jackson, CPM®	Carol A. Sweet, CPM®
Connie H. Carpenter, CPM®	Elizabeth E. Lane, CPM®	Lori A. Tillis, CPM®
Dawn M. Carpenter, CPM®	Carol A. MacDonald, CPM®	Bradley J. Toothaker, CPM®
Eileen M. Conway, CPM®, ARM®	William P.J. McCarthy, CPM®	Elizabeth G. Walker, CPM®
Marlene G. Dau, CPM®	Regina Taylor Mullins, CPM®	Mary W. Wilken, CPM®
Robert D. Demson, CPM®	Mary Faith Nugiel, CPM®	J. Todd, Willett, CPM®
Claudia S. Ferrara, CPM®	Karen L. Pharr, CPM®	Carl D. York, CPM®
	Marjean K. Pountain, CPM®,	

IREM® Code of Professional Ethics

Introduction

The purpose of this Code of Professional Ethics is to establish and maintain public confidence in the honesty, integrity, professionalism, and ability of the professional real estate manager. The Institute of Real Estate Management and its Members intend that this Code and performance pursuant to its provisions will be beneficial to the general public and will contribute to the continued development of a mutually beneficial relationship among CERTIFIED PROPERTY MANAGER® Members, CPM® Candidates, ACCREDITED RESIDENTIAL MANAGER® Members, ACCREDITED COMMERCIAL MANAGER Members, Associate Members, and other Members, national and international professional real estate associations and organizations, and clients, employers, and the public.

The Institute of Real Estate Management, as the professional society of real estate management, seeks to work closely with all other segments of the real estate industry to protect and enhance the interests of the public. To this end, Members of the Institute have adopted and, as a condition of membership, subscribe to this Code of Professional Ethics.

IREM® Member Pledge

I pledge myself to the advancement of professional real estate management through the mutual efforts of Members of the Institute of Real Estate Management and by any other proper means available to me.

I pledge myself to maintain the highest moral and ethical standards consistent with the objectives and higher purpose of the Institute.

I pledge myself to seek and maintain an equitable, honorable, and cooperative association with fellow Members of the Institute and with all others who may become a part of my business and professional life. I recognize and support the need to preserve and encourage fair and equitable practices and competition among all who are engaged in the profession of real estate management.

I pledge myself to place honesty, integrity, and industriousness above all else and to pursue my gainful efforts with diligent study and ongoing education so that my services shall be beneficial to the general public and my obligations to my clients shall always be maintained at the highest possible level.

I pledge myself to comply with the principles and declarations of the Institute of Real Estate Management as set forth in its Bylaws, Statement of Policies, and this Code of Professional Ethics.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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, gender identity, or handicap and shall comply with all applicable laws and regulations regarding equal opportunity.

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.

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.

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 by a MEMBER of the obligations of this Code 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.

Effective January 1, 2015

AMO[®] Code of Professional Ethics

Introduction

The purpose of this Code of Ethics is to establish and maintain public confidence in the honesty, integrity, professionalism, and ability of the professional real estate management organization. The Institute of Real Estate Management (IREM[®]) and its Members intend that this Code and performance pursuant to its provisions will be beneficial to the general public and will contribute to the continued development of a mutually beneficial relationship among ACCREDITED MANAGEMENT ORGANIZATION[®] (AMO[®]) Member Firms (AMO[®] Firms), and other Members, national and international professional real estate associations and organizations, clients, employers and the public.

The Institute of Real Estate Management, as the professional society of real estate management, seeks to work closely with all other segments of the real estate industry to protect and enhance the interests of the public. To this end, AMO[®] Firm Members of the Institute have adopted and, as a condition of membership, subscribe to the AMO[®] Code of Professional Ethics and the IREM[®] Code of Professional Ethics.

The AMO[®] Member Pledge

To advance professional real estate management through the mutual efforts of AMO[®] Firm Members of the Institute of Real Estate Management and by any other proper means available.

To maintain the highest moral and ethical standards consistent with the objectives and higher purpose of the Institute.

To comply with the principles and declarations of the Institute of Real Estate Management as set forth in its Bylaws, Statement of Policies, the AMO[®] Code of Professional Ethics and the IREM[®] Code of Professional Ethics.

Article 1. Services to Client

In accordance with the management agreement, an AMO[®] Firm shall make, or cause to be made, regular physical inspections of the clients' properties and shall keep its clients informed as to the condition of the properties. An AMO[®] Firm shall competently manage the properties of its clients with due regard for the rights, responsibilities and benefits of the tenants, residents and others lawfully on the property. An AMO[®] Firm 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.

Article 2. Contractual Duties

An AMO[®] Firm shall perform its contractual duties and maintain company, property, and client records in accordance with all applicable regulatory guidelines, contractual obligations, client objectives and company policies. It shall not act beyond its contractual scope of authority as an agent without documented client approval.

Article 3. Accounting

An AMO[®] Firm shall establish and adhere to sound internal financial controls for handling all company funds and client funds. It shall maintain, and update as needed, an accounting system that complies with accepted accounting procedures, client directives and obligations, applicable laws and regulations and support company operations.

Article 4. Reporting

Pursuant to the terms of the management agreement, an AMO[®] Firm 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 by the client at all reasonable times. An AMO[®] Firm shall furnish to the client, at mutually agreed upon intervals, regular reports concerning the client's assets under management. An AMO[®] Firm shall not exaggerate, misrepresent, or conceal material facts concerning the client's assets or any related transactions.

Article 5. Fiduciary Responsibility

An AMO[®] Firm 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. An AMO[®] Firm shall at all times exert due diligence for the maintenance and protection of the client's funds against all reasonably foreseeable contingencies and losses.

Article 6. Relations with Other Organizations in the Profession

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

Article 7. Conflict of Interest

An AMO[®] Firm shall not represent personal or business interests divergent from or conflicting with those of the client and shall not accept, directly or indirectly, any material rebates, gifts, fees, commissions, discounts, or other benefits, monetary or otherwise, which could reasonably be seen as a conflict with the interests of the client, employer, or firm, and which are not disclosed to the client.

Article 8. Disclosure

An AMO[®] Firm shall not disclose to a third party any confidential or proprietary information without the client's prior written consent except when disclosure is required or compelled by applicable laws and regulations.

Article 9. Compliance with Laws and Regulations

An AMO[®] Firm shall be established in compliance with all applicable laws and regulations. An AMO[®] Firm and its employees shall at all times conduct business activities with knowledge of and in compliance with all applicable laws and regulations.

Article 10. Equal Opportunity

An AMO[®] Firm 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, gender identity, or handicap and shall comply with all applicable laws and regulations regarding equal opportunity.

Article 11. Enforcement

The interpretation of compliance with this Code is the responsibility of the ethics boards of the Institute of Real Estate Management. Any violation by an AMO[®] Firm of the obligations of this Code 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 AMO[®] Firm and without recourse to the Institute, its officers, Governing Councilors, Members, employees, or agents.

Effective January 1, 2015

Case Studies

Definitions

“Complainant” is defined as the individual(s) who files an ethics complaint, who can be anyone — a fellow IREM Member, a current or former employer, a current or former employee, a colleague, a tenant, a resident, etc.

“Respondent” is the IREM Member (individual or AMO Firm) against whom the complaint is filed.

IREM Member Pledge

I pledge myself to the advancement of professional real estate management through the mutual efforts of Members of the Institute of Real Estate Management and by any other proper means available to me.

I pledge myself to maintain the highest moral and ethical standards consistent with the objectives and higher purpose of the Institute.

I pledge myself to seek and maintain an equitable, honorable, and cooperative association with fellow Members of the Institute and with all others who may become a part of my business and professional life. I recognize and support the need to preserve and encourage fair and equitable practices and competition among all who are engaged in the profession of real estate management.

I pledge myself to place honesty, integrity, and industriousness above all else and to pursue my gainful efforts with diligent study and ongoing education so that my services shall be beneficial to the general public and my obligations to my clients shall always be maintained at the highest possible level.

I pledge myself to comply with the principles and declarations of the Institute of Real Estate Management as set forth in its Bylaws, Statement of Policies, and this Code of Professional Ethics.

Case Study – IREM Member Pledge

The Pledge describes the core of ethical behavior which goes above and beyond complying with laws and regulations. In the Pledge, members promise to maintain high ethical and moral standards, and to act with honesty, integrity and industriousness. When the Pledge is cited in a complaint, it is usually cited with other Articles that relate to specific business practices. An example of a case that did cite only the Pledge was a CPM Candidate allegedly cheating on an exam.

Prevention Tips:

- ▶ Be honest and fair in business relationships.
- ▶ Take professional development courses.
- ▶ Stay current with real estate management best practices.
- ▶ Know and follow IREM’s Bylaws, Statement of Policies, and Code of Professional Ethics

By the numbers:

Since 1978, 45 complaints included a potential violation of the Pledge.

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?

A CPM left his employer for another position. Over the years, the CPM had built up solid relationships with his clients. He informed these clients of his impending move, knowing they would want to follow him to his new firm. Is this a scenario for success, or is the CPM setting himself up for an ethics complaint? The CPM 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 the CPM 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:

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

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. Follow the Golden Rule in any case. "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.
- ✓ Don't burn any bridges!

▲ Case Study 2 – Company Policy

A CPM decided to start his own management company. While still employed by his old company, he started managing properties through his newly formed company. When the largest client of his employer mentioned they were expanding and needed to revise their contract, the CPM didn't forward the client to his colleague who would normally handle this. Instead, the CPM discussed the services his new company could offer the client.

The former employer of the CPM filed a complaint stating the CPM had violated Article 1 by stealing his company's largest client to his new management company. The Ethics Inquiry Board determined a possible violation of the Code may have occurred, and forwarded the case to the Ethics Hearing & Discipline Board for a hearing. Before the hearing took place, the former employer withdrew the ethics complaint because the issue had been settled in court.

When a Complainant withdraws a complaint, the Ethics Inquiry Board has the option to move forward with the case and assume the position of the Complainant – the Complainant changing his/her mind does not mean the alleged ethical violation should not be addressed. In this case, the Ethics Hearing & Discipline Board found the CPM in violation and suspended membership for one year.

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/bids to manage property to appropriate company personnel.
- ✓ Seek outside counsel for questions on employment-related issues.
- ✓ Institute company training on standards of practices and ethics obligations.

By the numbers:

Since 1978, 45 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 Respondent stated that without the alleged list, there was no basis for a complaint. The CPM Respondent attended the hearing but the Complainant did not. The Ethics Hearing & Discipline Board found no violation of the Code.

Prevention Tips:

- ✓ Treat all property information as proprietary in accordance with recently enacted "red flag" rule 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 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 CPM 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, but the hearing continued. The Respondent had 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 Ethics Hearing & Discipline Board voted to dismiss the complaint.

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, 10 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

Complaints are examined for the possibility that a violation of the Code may have occurred, taking into consideration the relationship between the Complainant and the Respondent.

In a case considered by Ethics Hearing & Discipline Board, and subsequently reviewed by the Ethics 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 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 Ethics Hearing & Discipline Board found his primary role was that of the property manager in this situation. The CPM Member's defense was based on repeated assertions that he and the Complainant were partners and that their agreement was not bound by the Code. However, the Ethics Hearing & Discipline Board's determined that:

- ▶ There was a client relationship as defined by the property management agreement which existed between the two parties for five years.
- ▶ Missing monies totaling thousands of dollars pointed to serious issues in financial reporting under the terms of the agreement.
- ▶ The CPM did not produce accurate reports of existing leases and free rental space extended to certain tenants who were prospective buyers. The CPM also did not inform the Complainant that those tenants had plans to resell the property immediately after the purchase, and that the CPM expected to receive a payout from the sale.

The Ethics Appeal Board upheld the Ethics Hearing & Discipline Board's decision which found the CPM in violation of Articles 3, 4, 7, and 8 and terminated membership.

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 IREM Code of Professional Ethics, regardless of who you work for or with or whether or not your partner is also an IREM Member.

▲ Case Study 2 – The Buck Stops Here

The Complainant hired a CPM to manage an 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 Respondent attended the hearing, but the Complainant did not. The Respondent testified that the accounting and reporting problems were the result of errors made by unqualified staff. After hearing the testimony and examining the evidence, it was the conclusion of the Ethics Hearing & Discipline Board that it was the CPM Respondent's responsibility as principal of the firm to oversee the accounting and reporting functions, and found the CPM in violation of Article 3. The discipline imposed was for the CPM to successfully complete IREM's ethics course (ETH800), and issued an unpublished letter of censure.

Prevention Tips:

- ✓ Even if not personally handling every aspect of a management agreement, the property manager is ultimately responsible for overseeing its implementation.
- ✓ Hire responsible, qualified personnel for all contractual responsibilities.
- ✓ Consider using a checklist for responsibilities.
- ✓ Consider in-house review of reports to clients to provide checks and balances.

By the numbers:

Since 1978, 43 complaints included a potential violation of this article. Violations of Article (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

The Ethics Hearing & Discipline Board terminated the membership of a CPM found in violation of the Pledge and Articles 1, 3, 4, 8, 9, 10, and 12. The CPM was named as a defendant in a request for an entry of default. A court-appointed receiver assumed control of the firm owned by the CPM 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.

Prevention Tips:

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

▲ Case Study 2 – Training for Trust Funds Accounting

An ARM revealed upon application for CPM candidacy that a real estate license restriction was currently in effect. The restriction resulted from mishandling of trust funds, but only prohibited the ARM from serving as a corporate officer. The Ethics Hearing & Discipline Board found the ARM in violation of Articles 4, 9, and 10. Because the ARM had taken appropriate measures in responding to the Licensing Department's findings, the Ethics Hearing & Discipline Board allowed the Candidate application to proceed, provided that the ARM successfully complete a course on trust fund accounting, complete IREM's ethics course (ETH800), and attend a CPM Candidate orientation before being eligible for CPM membership.

Prevention Tips:

- ✓ Provide training in trust fund accounting or hire someone with the necessary skills.
- ✓ Conduct outside audits of trust accounts.

By the numbers:

Since 1978, 38 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 – Enough Information?

A CPM 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 that resulted in a license not being renewed was not a basis for an ethical sanction. It was the conclusion of the Ethics Hearing & Discipline Board that the CPM Complainant did not meet the burden of proof and did not prove violation of the cited articles, and the case was dismissed.

Prevention Tips:

- ✓ Maintain awareness of any licensure status and follow through with complete disclosure.
- ✓ Update company website for status of licenses and all relevant staff data.
- ✓ Have a designated person monitor employees' licensing status.

By the numbers:

Since 1978, 9 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

CPM and AMO membership 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 then crediting the interest to the firm. The company used a computer 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.

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 in the Management Agreement

The Complainant, who as president of a townhome association, terminated the CPM Respondent as manager, alleging that the CPM was uncooperative in providing documentation in the transitional period. The Complainant alleged that the CPM failed to provide a copy of the management agreement to the Complainant, despite written requests spanning two years; the CPM deducted thousands of dollars for repairs from the property's account, despite the lack of authority in the management contract; and the CPM paid an erroneous utility bill that exceeded the correct charge by approximately 80%.

The Ethics Hearing & Discipline 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 Ethics Hearing & Discipline 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 Ethics Hearing & Discipline Board found that the CPM exceeded the scope of his authority under the management agreement by incurring an expense exceeding a limited amount without the consent of the Association Board. The CPM was found in violation of Articles 3, 6, 8, and 9 of the Code and membership was suspended for a period of two years. The decision was subsequently appealed by the CPM Respondent, but the Ethics Appeal Board upheld the decision of the Ethics Hearing & Discipline Board.

Prevention Tips:

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

By the numbers:

Since 1978, 8 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 as the snow removal vendor for the property under management. 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.

Prevention Tips:

- ✓ Disclose family or other personal relationships in writing and in advance.
- ✓ Utilize proper business procedures in situations that call for a bid process, typically by obtaining at least three 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 standards.

▲ Case Study 2 – Don't Take Your Vendors Home

A CPM was charged with violation of Article 7 for using a company 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 on the same contract. The CPM attended the hearing with an attorney. The Complainant attended with an attorney and a witness. The CPM was issued a published letter of censure, suspended for three years and assigned the discipline of successfully completing ETH800 within a year or membership status would be terminated.

Prevention Tips:

- ✓ Avoid utilizing company vendors for personal business.
- ✓ If a company vendor is used for personal use, obtain written permission from your supervisor to do so, ensure that it is documented and that you pay fair market price.
- ✓ Company should have clear policy on what is an "acceptable" gift.

By the numbers:

Since 1978, 49 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

A complaint was filed against an AMO Firm alleging that the firm 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 Ethics Hearing & Discipline Board found the AMO Firm in violation of the AMO Code and the CPM in violation of Article 8 of the IREM Code. The firm's AMO status was suspended for 12 months, and its Executive CPM was issued a published letter of censure and was required to successfully complete the AMO course. The ruling was appealed by the Respondent, and the Ethics Appeal Board confirmed the decision of the Ethics Hearing & Discipline Board.

Prevention Tips:

- ✓ Review management contract prior to proceeding with contractor 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 alleged failure of the CPM 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.

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, an IREM Member is still obliged to uphold the Code.

By the numbers:

Since 1978, 27 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 IREM's ethics course (ETH800) for misappropriating software from a former employer in violation of Article 9.

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 Respondents 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, 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 Ethics Hearing & Discipline Board found the first CPM in violation of the Articles 1, 7, and 9, and issued a published letter of censure, a three year suspension, and completion of IREM's ethics course (ETH800) or risk termination of membership status.

The Ethics Hearing & Discipline Board issued an unpublished letter of censure to the second CPM, a one year suspension, and must complete IREM's ethics course (ETH800) or risk termination of membership status.

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, 17 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

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

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

The membership of a CPM Candidate/ARM was 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.

Prevention Tips:

- ✓ Prior missteps will not preclude employment or membership; lying about and not disclosing them will.
- ✓ Always fill out application forms honestly – the truth will come to light.

By the numbers:

Since 1978, 82 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, gender identity, 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.

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.

Prevention Tips:

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

By the numbers:

Since 1978, 3 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.

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 a CPM whose firm managed his property. The complaint was filed when a 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 Ethics Hearing & Discipline Board found the CPM in violation of the Pledge and Articles 1, 8, and 12. The discipline was an unpublished letter of censure and the requirement to complete 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 Ethics Appeal Board determined that the Respondent had a fiduciary responsibility to the common elements of the building and upheld the decision of the Ethics Hearing & Discipline Board.

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.
- ✓ Be very familiar with homeowners associations' bylaws.

By the numbers:

Since 1978, 18 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.

Prevention Tips:

- ✓ Uphold your commitment to the IREM Code by always reporting possible violations by fellow IREM Members through the ethics complaint process.

By the numbers:

While no case studies are available alleging violation of this Article, several complaints have been filed by members who state they are filing to be in compliance with this article.

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 by a MEMBER of the obligations of this Code 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.

Prevention Tips:

- ✓ If involved in a complaint, follow the ethics process as directed by the IREM Ethics Boards.
- ✓ If asked by an Ethics Board to appear as a witness, comply with the request.
- ✓ If filing a complaint, provide complete, factual information on alleged violations.
- ✓ Request to withdraw a complaint only if it was originally filed in error; do not request to withdraw a complaint because it was settled in another forum.
- ✓ Carry out any disciplinary action determined by the Ethics Boards.

By the numbers:

Since 1978, 1 complaint included a potential violation of this article.