CARROLL COUNTY ASSOCIATION OF REALTORS®, INC

ANTITRUST COMPLIANCE MANUAL

Adopted May 23, 1984
Updated January 2009

IT IS THE CARROLL COUNTY ASSOCIATION OF REALTORS®, INC. FIRMLY ESTABLISHED POLICY TO COMPLY FULLY WITH ALL ANTITRUST LAWS, STATE AND FEDERAL. THIS MEANS NOT ONLY SIMPLY FOLLOWING THE WRITTEN LAW, IT MEANS CONDUCTING BUSINESS IN CONFORMITY WITH THE HIGHEST STANDARDS OF ETHICS AND MORALITY AND AVOIDING CONDUCT THAT MIGHT GIVE EVEN THE APPEARANCE OF WRONG-DOING.

PREFACE

For many years the National Association of REALTORS®, through mandatory policies such as the Eight-Point Membership Qualification Criteria for REALTOR® Membership, Six-Point Membership Qualification Criteria for REALTOR® Associate Membership, Fourteen-Point Multiple Listing Policy and recommended procedures in the Code of Ethics and Arbitration Manual, has prescribed important guidelines for compliance with the antitrust laws. In 1982 N.A.R. published Antitrust and Real Estate. This has since been updated with several pamphlets and videos directed to associations, brokers and agents.

This Carroll County Association of REALTORS® (CCAR) Manual is intended as a supplement to and not a substitute for N.A.R.'s Program for Compliance. It is CCAR's purpose to reinforce and reemphasize the theme that in today's real estate brokerage market every REALTOR® must be informed about and sensitive to antitrust laws as they apply to the marketing of real estate. The firm with which an agent is associated and the Association of REALTORS® of which he/she is a member must also be fully informed and follow procedures of strict compliance.

As has been noted by an authority on defending antitrust lawsuits:

> "The best way to win antitrust lawsuits is to avoid them, and the best way to avoid them is to maintain a continuing and effective compliance program.[1] This requires three related but separate kinds of activity. First, there must be an antitrust educational program for all executives and other employees who have authority to act for the firm. Second, when any sensitive question arises, there must be continuing consultation with lawyers sophisticated in antitrust law. Third, there must be the establishment and enforcement of protective policies."[2]

A POSITIVE APPROACH TO ANTITRUST COMPLIANCE

REALTORS® have every reason to want to comply with antitrust laws. REALTORS® have continuously affirmed their belief in the free enterprise system, unfettered competition and the preservation of our democratic institutions. For such purposes were the antitrust laws enacted.

The relationship between antitrust laws and economic freedom has been expressed by the courts and other authorities. The United States Supreme Court has noted that:

> The Sherman Act was designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as a rule of trade. It rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic, political and social institutions.[3]

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[1] Unless otherwise indicated, emphasis by underlining through the Manual is supplied.
[2] Am Jur Trials 128, "Defending Antitrust Lawsuits", Lee Loevinger

[3] Northern Pacific Railway Co. v. United States, 356 U.S. 1,4 (1958)

In a more recent opinion the Court put it this way:

> Antitrust laws in general, and the Sherman Act in particular are the Magna Charta of free enterprise. They are as important to the preservation of economic freedom and our free enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms. And the freedom guaranteed each and every business, no matter how small, is the freedom to compete to assert with vigor, imagination, devotion, and ingenuity whatever economic muscle it can muster.[4]

One of the leading writers on antitrust law concluded:

> The antitrust burdens currently imposed upon business may well have freed us from the necessity to surrender our persons and our property to the state.....our American dream, in which the antitrust laws play an imperfect role, may be illusory; but at least it is better thus to dream, in a free society, than to cower behind cement walls in a communistic state.[5]

REALTORS® should have renewed enthusiasm for carrying out an effective antitrust compliance program, and the foregoing statements of the underlying purposes and objectives of such laws provide the impetus to carry through on the National Association of REALTORS®, the Maryland Association of REALTORS® and the Carroll County Association of REALTORS® efforts to insure compliance by all REALTOR® organizations and REALTORS®.

CONSEQUENCES AND COST OF FAILURE TO COMPLY

If not persuaded by the positive approach to antitrust compliance, alternative practical reasons must be considered. In other words, will an antitrust compliance program for CCAR and its membership be "cost effective"? It is going to take considerable expenditure of money, staff time and membership time to institute and maintain a continuous, ongoing antitrust compliance program. To make that judgment, consideration must be given to the awesome consequences and costs of the failure to carry on a continuous antitrust compliance program. Those who choose to ignore the antitrust laws or fail to educate themselves about such laws and develop a sensitivity to antitrust risk very serious consequences and costs for themselves, those with whom they are associated and their fellow REALTORS®:

1. Criminal prosecution - The criminal penalties for violating antitrust laws are severe and the present enforcement trend is to prosecute not only the association, corporation or firm involved, but also the officers, directors, staff and employees personally. A violation of the Sherman Act for example, is a felony for which any corporation may be fined up to one million dollars for each offense and an individual can be fined up to $100,000 and imprisoned for up to three years for each offense. The fines are not tax deductible. Also, if a taxpayer is indicted and subsequently pleads guilty or nolo contendere or is convicted, payments or damages in civil treble-damage actions are only one-third deductible.

[4] United States v. Topco Associates, Inc., 405 U.S. 596, 610 (1972)
[5] Van Cise, The Federal Antitrust Laws (3rd Rev. Ed.), 1975, p. 69

Jail sentences and probation, which by now are by no means uncommon, can be great personal tragedies. It is not a pleasant trip through the typical arrest, fingerprinting, photographing and bail processes! Furthermore, convicted felons incur many civil disadvantages with respect to voting, holding of public office and the like.

The emphasis today in the Justice Department is on stronger and more frequent criminal enforcement. Nolo contendere pleas are usually opposed by the government, and larger fines and sentences are being sought. The U.S. Attorney General appointed by President Reagan, William French Smith, announced that under his administration the Department:

> "...will seek out and prosecute those who engage in anti-competitive activities. When we find agreements between competitors to fix prices, allocate markets, or otherwise refrain from competition, we intend to bring criminal actions. We will not be satisfied by having corporations pay fines. In these cases of knowing violations of clear-cut antitrust prohibitions, indictment of and prison sentences for, the individuals involved will be vigorously pursued."[6]

2. Private Treble Damage Suits - Antitrust laws also provide for civil penalties. Persons or businesses injured by violations of the antitrust laws may recover three times the amount of their damages, plus attorney's fees and all costs of litigation. The potentially enormous size of these judgments, particularly in a class action suit, can spell disaster for all real estate brokerage firms and Associations of REALTORS® which are involved.

3. Injunctions - The government and injured persons or businesses may also obtain injunctions against further antitrust violation. The severe requirements of these injunctions will handicap any brokerage business or Association of REALTORS®.

4. Consent Decrees - To avoid the shocking expense of defending antitrust suits, some defendants elect to "settle out of court" by agreeing to consent decrees. However, these consent decrees can severely restrict an association's operations or a company's business, and, in some instances, the result is that the officers, directors and staff of a defendant daily carry on the operations under peril of contempt of court citations or threats of civil penalties of up to $10,000 per day. Conduct and practices which have not been adjudicated to be unlawful are often prohibited in consent decrees.

5. Time - Antitrust litigation usually requires years of preparation before trial and many months of appeals. From the filing of suit to settlement or judgment, on the average litigation may take from 4 to 5 years. Not only may the defendant Association or real estate firm in an antitrust case face years of uncertainty, but the valuable time of REALTORS® and other personnel almost certainly will be spent in long hours of preparing testimony giving depositions, producing documents, tabulating statistics and performing other necessary preparations for trial. It is almost impossible for Association executives and REALTORS® in antitrust cases to appreciate the time lost and the expense involved until they actually experience serious antitrust litigation.

6. High Cost of Antitrust Litigation - The cost of defending antitrust suits, civil or criminal, are astonishing. It is not at all unusual in

[6] Smith, Federal Antitrust Enforcement Goals, 5 CCH Trade Reg. Rep. (June 24, 1981).

criminal antitrust cases for the cost of litigation to exceed the fines imposed. Even defendants confident of acquittal are faced with the prospect of spending shocking amounts of money and countless days of employee time and effort in establishing their innocence. So called "simple" antitrust cases usually cost hundreds of thousands of dollars to defend. It is, therefore, imperative that Association executive staff and employees and REALTORS® involved in the real estate brokerage business not only comply with the antitrust laws, but also avoid even the suspicion of any violation.

7. Adverse Publicity - Whether the antitrust case is civil or criminal, once the suit is filed, damages to the reputation and public image of both the local Association as well as the individual defendants and especially the image of REALTOR® as an ethical and responsible business person are incalculable. Even if the government's prosecution or a private plaintiff's treble damage suit against a REALTOR® Association or a real estate business operating under the name of REALTOR® is without merit and the cases are eventually won by the defendants, the bad publicity lingers on.

8. Internal Strife and Tension - No matter how well organized and managed a local Association of REALTOR® firm may be, once an antitrust investigation is launched or an antitrust suit is filed, internal strife and tension among the staff and employees is unavoidable. Personnel will be kept busy assisting in matters involving the investigation or in preparing for litigation, and some inevitably will seek to disassociate themselves from others whom they perceive to have contributed to the charge. The loss of work efficiency and production resulting from these conflicts is expensive and can be ruinous to any Association or REALTOR® business.

CONTINUOUS ANTITRUST COMPLIANCE PROGRAM ESSENTIAL

Any illusions that adoption of high sounding resolutions of commitments to the antitrust laws, an annual speech by a Association executive or legal counsel or showing a film once a year on the subject constitutes an effective or meaningful antitrust compliance program can be dangerous. While each of these may be a part of an effective program, they are not sufficient in themselves and may very well be construed as "window dressing" or "for show" only. As one writer on the subject has put it, an antitrust compliance program "which is only for show will be about only as effective as the use of leeches by physicians to bleed patients."[7]

Such half-hearted attempts at an antitrust compliance program are actually dangerous in that they may very well be construed by antitrust enforcers as an attempt at concealment or cover-up of unlawful antitrust activity.

Antitrust compliance programs to be effective must be continuous, on-going, in depth year after year so that every member of the Carroll County Association of REALTORS® is thoroughly educated and sensitized to the point that he/she knows and follows the basics of antitrust compliance and such compliance can be documented.

[7] Lipson, Pennsylvania Law Journal Reporter, Vol. IV, No. 43, p. 5, Nov. 1981.

SUMMARY OF PRINCIPAL FEDERAL ANTITRUST LAWS

The basic statutes making up the body of law known as the antitrust laws are the Sherman Act, the Clayton Act, the Robinson-Patman Act, and the Federal Trade Commission Act.

THE SHERMAN ACT - This statute enacted in 1890 was the first modern United States antitrust law and remains the cornerstone of all the federal antitrust statutes. It establishes two broadly stated principles of antitrust policy:

(1) Section 1 of the Sherman Act prohibits agreements, combinations or conspiracies between two or more persons, firms, corporations or associations which unreasonably restrain trade.

(2) Section 2 of the Act prohibits the monopolization or any attempted monopolization of any market for a particular product or service.

These very general precepts of the Sherman Act have achieved specific meaning through a process of court interpretation which has continued for more than 90 years. The selected cases most applicable to real estate brokers and the real estate industry have been compiled by the National Association of REALTORS® as Volume 2 of its publication, Antitrust and Real Estate. CCAR’s legal counsel shall, and the legal counsel of any person, firm or corporation in the real estate brokerage business would, do well to have this publication for ready reference. It is the Sherman Act to which Associations of REALTORS® and REALTORS® must be the most sensitive. Since a Association of REALTORS®, by its very nature, is an organization of competitors and a REALTOR® is automatically a part of that organization, any conduct by them in “restraint of trade” is a violation of the law. The most sensitive areas touching on the Sherman Act with which Association Executives and REALTORS® must be cognizant are MLS activities, admission and expulsion of members, professional standards hearings, arbitration hearings and so forth, etc.

It is not necessary to show a written contract to prove a violation of the Act. “Understandings”, formal or informal, written or oral, express or implied, are enough for a court or jury to infer that an agreement has been reached. As the Supreme Court said in a leading antitrust case, “wink of the eye or a shrug of the shoulder is often more important than a formal handshake.”

THE CLAYTON ACT - The Clayton Act was enacted by Congress in 1914, and was the next major antitrust statute. Its approach differs from the Sherman Act in two basic ways:

(1) while the Sherman Act applies to restraints of trade which have a present anti-competitive effect, the Clayton Act represents an effort to stop anti-competitive practices in the beginning by outlawing practices which may in the future result in an unreasonable restraint of trade;

(2) while the Sherman Act deals in broad principles, the Clayton Act is concerned with a limited number of specific subjects such as exclusive bidding arrangements (Section 3); acquisitions or mergers (Section 7); interlocking boards of directors (Section 8).

THE ROBINSON-PATMAN ACT - The Robinson-Patman Act enacted in 1936 amended the Clayton Act and deals with discrimination in prices charged various customers. The basic purpose of the Robinson-Patman Act was to protect small businessmen by putting constraints on the ability of a large company to command price discounts by use of greater purchasing power. The Federal Trade Commission is the enforcing agency for this law.

THE FEDERAL TRADE COMMISSION ACT - The Federal Trade Commission Act authorizes the FTC to enforce these federal laws. Such authority is shared with the Department of Justice. The FTC also enforces Section 5 of the Federal Trade Commission Act, which prohibits "unfair methods of competition" and "deceptive practices." Under this general provision, the FTC has enjoined potentially anti-competitive conduct before it could ripen into a violation of any of the antitrust laws.

In addition to having the authority to seek injunctions, the FTC is authorized to sue in federal court to recover refunds for consumers who have been injured by violation of an FTC rule or cease and desist order.

CCAR'S ANTITRUST COMPLIANCE POLICY STATEMENT

Acting through its Board of Directors meeting in Westminster, Maryland on May 23, 1984, the membership of the Carroll County Association of REALTORS® reaffirmed its policy of compliance with the antitrust laws by adopting CCAR's Resolution of Antitrust Policy, a copy of which is attached hereto as Appendix 1. This states the official policy of CCAR of continuing commitment to securing compliance with the antitrust laws. It must be read and understood by all members of CCAR.

SUGGESTED GUIDELINES FOR ANTITRUST COMPLIANCE

In antitrust cases, whether criminal prosecutions or civil treble damage suits, proof against the defendant is most likely to come from the defendant's own files and records or from statements made by the defendant or his associates. Thus, an antitrust compliance program must not only avoid actual violations of antitrust laws, but must also avoid creating or permitting the creation of files, records, documents, statement or conversations which might create an appearance of violation.

It is impossible, of course, to formulate a set of guidelines to cover all situations at all times, but insofar as the principles of antitrust compliance can be stated in specific rules, REALTORS® would be well advised to remember the following:

1. DO NOT Discuss Your Business With Competitors - At any time, in any place, or under any circumstances or have any personal or telephone conversations with competitors concerning commissions, fees, charges or any other business practices of your real estate business or those of the firm with which you are associated. This applies at social gatherings, on the golf course, while hunting, in the bar, cocktail parties, Association functions and at all times and at all places. At Association or Association meetings, confine discussions to topics of Association or Association business directly involved in the purpose of the organization and the meeting.

2. Written Communications Must Be Clear and Explicit - When you discuss a real estate transaction or the superiority of your business

practices over your business competitors, talk to your broker or associates in the firm with which you are associated. Regardless of how carefully you may phrase your letter or memorandum, things look much different in writing than they sound when spoken between knowledgeable people.

Of course, financial and economic data sometimes must be written, but in many instances, any information relevant to business or legal relations can be communicated by talking, and talking only to those who have legitimate justification for receiving the information you are transmitting. More than one antitrust defendant has had his letter, correspondence, memoranda and written notes admitted in evidence against him for purposes for which the writer never intended. It is amazing how differently what you wrote sounds when it is read back to you in the grand jury room or during trial. All correspondence and memoranda must be clear and specific.

3. <u>DO NOT Talk Unless You Know To Whom You Are Talking and What You're Talking About</u> - In any business, complete candor among trusted business associates is necessary. It is not necessary, however, to tell everyone your business. Inform only those who <u>need to know</u> such matters as how and in what manner commission or fee contracts were negotiated, how much business you're doing, what business prospects are, how many and which properties you have sold, and anything else which might be of interest to someone investigating your business for a reason you know nothing about. Do not discuss these subjects with competitors or someone investigating your business for a reason you know nothing about.

If you receive a telephone call from anyone who refuses to identify himself or who begins what amounts to a probing cross examination about your business practices, terminate the conversation as quickly and courteously as possible. In this day of ever improved recording devises for both telephonic use and miniature recording devices easily concealed in a room or on the person of an investigator, it is well to make it a rule in discussing business matters to <u>speak as if you were being recorded</u>. The chances are better than you think that you are!

4. <u>DO NOT Deceive Yourself Or Let Anyone Else Deceive You Into Believing That Any Transgression Of The Antitrust Laws Has Little Risk Of Discovery</u> - The federal government possesses extensive investigatory powers, such as grand juries and civil investigative demands, as well as ingenious and dedicated investigators: Also, in private litigation, parties have litigation discovery tools to examine corporate or firm records and documents and to compel testimony. Even though an antitrust violator may not keep records, its competitors or the injured parties may. In this age of photocopying, it is difficult to restrict distribution. Unexpected records such as telephone bills, expense accounts, a secretary's notes, engagement calendars or a forgotten written report may be uncovered. In a prosecution or suit for antitrust violations, a party may be faced with surprise witnesses such as former associates and employees and plea bargainers. Also, an alleged co-conspirator may take advantage of the antitrust division's leniency program and confess, thus perhaps avoiding indictment, a jail sentence and fines and keeping the tax deductibility of civil damage payments.

5. <u>DO NOT Use Such Terms As "Please Destroy When Read," "For Your Eyes Only", "No Copies," Or Similar Terms and Phrases.</u> Experience has demonstrated that even if no copies are made, the original of such documents eventually end up in somebody's file. Even when marked "personal and

confidential," the document is usually retained by the recipient and eventually filed. When an antitrust investigation is underway or documents are produced on a civil investigative demand or in private antitrust litigation, such terms and phrases are red flags for the investigator or opposing counsel. All written documents must comply with the antitrust laws whether inspected or discovered and should not indicate or infer an attempt to conceal any document.

6. <u>DO NOT At Any Time Use Any Of The Words And Phrases Which NAR's Program For Compliance Designates As "Dangerous."</u> Since such statements are so improper, incorrect and <u>dangerous</u>, they need to be emphasized here along with some other words and phrases.

(a) "We would like to charge a lower commission, but the Association has a rule....."
(b) "This is the rate that all REALTORS® charge."
(c) "The MLS will not accept less than a 120 day listing."
(d) "Before you list with XYZ Realty, you should know that nobody is going to work on their listings."
(e) If John Doe is really professional (or ethical) he would have joined the Association."
(f) "The Association requires that all REALTORS® force their sales people to join."
(g) "The best way to deal with John Doe is to boycott him" or "we don't worry about John Doe; we just don't show his listings."
(h) "If you valued your services as a professional, you wouldn't cut y our commission."
(i) "No Association member will accept a listing for less than 90 days."
(j) "Let him stay in his own part of town, this is our territory."
(k) "If he was really a professional, he wouldn't use part-timers."
(l) "X is the going rate in this area."
(m) "We have to charge that commission since our rates are set by the Maryland Real Estate Commission."
(n) "The standard commission in this area is X."
(o) "When I see that guy's signs, I just drive the prospect down another street."
(p) "We've all agreed that any commission below X is unfair."
(q) "Something's got to be done about that company, nobody can charge such a low commission and make a living."
(r) "That price cutter has no business being a member of the Association."
(s) "You will not get a lower commission from a REALTOR®."

7. <u>All Association and Committee Meetings Should Follow The Following Procedures.</u>

(a) There should be a written agenda prepared in advance for all meetings, including committees and subcommittees.
(b) Minutes should be prepared which accurately reflect official action taken.
(c) Agendas and minutes should be precise in describing matters discussed and action taken. Where questions arise, legal counsel should have an opportunity to examine agendas prior to meetings and should review all minutes.
(d) Keep any discussions to agenda items only.

(e) Avoid discussions of business matters of substance outside formal meetings.

(f) Grievance and arbitration proceedings should comply strictly with practices, policies and procedures set forth in NAR's Ethics and Arbitration Manual.

(g) Membership matters should be reviewed by legal counsel to assure that the policies of NAR and the Association are followed and that no person is boycotted or denied due process of law in membership consideration.

8. If In Doubt, Consult - No compliance program or manual can spell out all the answers to questions which may arise. Situations are bound to arise which create doubt. If you do have doubts about the legal wisdom of any Association or business practice, procedure or activity, consult your Association executive officer, the broker under whose license you work or legal counsel knowledgeable about antitrust matters.

9. Without Clearance: Don't Do It - If neither the Association executive officer, and executive officer of your firm nor legal counsel will not give clearance to a proposed business deal or activity with antitrust implications - don't do it.

DOCUMENT RETENTION POLICY

Documents should not be kept any longer than reasonably necessary and should be destroyed when their useful life is over. CCAR has previously implemented a document retention and destruction policy, a copy of which is attached hereto as Appendix III.

CONCLUSION

Effective antitrust compliance is a responsibility of management. If officers, directors, Association executives, real estate firm executives, staff level employees and leaders of the industry do not take seriously the necessity for continuing to emphasize and re-emphasize antitrust compliance programs, policies, practices and procedures, the message will never get to the membership.

Under CCAR's policy, antitrust compliance is not a choice - it is a command! The risks are too high for any real estate broker to remain part of an organization which fails to enforce its antitrust compliance program. Lawyers can help with designing antitrust or advising on antitrust compliance matters when they arise, but in the final analysis it will be CCAR and its executive officer, Professional Standard and Ethics Committee, Arbitration Committee and Membership Committee who will have to act as the first line of defense against the costs and consequences inherent in failure in antitrust compliance.

However, it remains the responsibility of every member of CCAR to support and implement this Antitrust Compliance Program and demonstrate that REALTORS® are true to that which they profess to believe - the free enterprise system is the best ever devised to secure our economic and personal freedom.

APPENDIX I

A RESOLUTION

WHEREAS, the antitrust laws of the United States are dedicated to the preservation of economic freedom and our free enterprise system; and,

WHEREAS, the application of such federal antitrust laws to the real estate industry makes it essential that Association executives, elected officers and directors and all REALTORS® have a basic understanding of the federal antitrust laws and be sensitive to their impact on the day-to-day business practices of real estate brokers; and,

WHEREAS, the Carroll County Association of REALTORS® is in full support of the purposes and objectives of such federal antitrust laws and is desirous of securing compliance therewith on the part of its officers, directors, staff, and the entire membership of CCAR; now, therefore,

BE IT RESOLVED BY THE CARROLL COUNTY ASSOCIATION OF REALTORS®, acting by and through its Board of Directors in Westminster, Maryland, May 23, 1984, that it is the official policy of CCAR to support the federal and state antitrust laws and promote compliance therewith by its officers, directors, and membership; and,

BE IT FURTHER RESOLVED that, as soon as practicable after the adoption of this resolution, the officers, directors, staff and employees of CCAR institute, establish and maintain educational programs directed at the indoctrination of all members of CCAR with a basic understanding of the federal antitrust laws as well as a respect for an awareness of such laws and their impact upon the real estate industry in general and the real estate brokerage business in particular; and,

BE IT FURTHER RESOLVED that the basic educational tools to be used in such indoctrination programs shall be the CCAR Antitrust Compliance Manual, N.A.R.'s antitrust compliance media and such other educational publications and other educational materials as shall from time to time be developed for the purpose of educating REALTORS® concerning the federal antitrust laws and the necessity of compliance therewith; and,

BE IT FURTHER RESOLVED that such antitrust compliance programs and indoctrination courses be continued throughout the jurisdiction of CCAR so as to assure that every member of CCAR shall have the opportunity to attend at least one such indoctrination course on antitrust compliance which attendance shall be certified to by the member and placed in such member's official records, it being the intent of this Resolution that attendance at such antitrust compliance indoctrination programs by each member of CCAR be strongly recommended and in recognition of the fact that any member of CCAR who is not informed concerning the federal antitrust laws and their application to the real estate industry and the real estate brokerage business constitutes a clear and present danger not only to himself but to his fellow REALTORS® with whom he is associated and the Carroll County Association of REALTORS®; and,

BE IT FURTHER RESOLVED that CCAR has taken the following action to fully comply with federal and state antitrust laws and that such action is hereby reaffirmed by CCAR.

1. CCAR has adopted “reasonable and non-discriminatory written requirements for REALTOR® membership” which are summarized as follows:

   a. Applicant shall be actively engaged in the real estate business;
   b. Applicant shall successfully complete a non-discriminating examination on Association, State and National services prior to admission;
   c. Applicant will abide by the bylaws and rules of CCAR;
   d. Applicant maintains a place of business within the state of Maryland or states contiguous thereto which is in compliance with applicable zoning regulations and deed restrictions or is associated with such an office.

2. CCAR does not own or operate a Multiple Listing Service (MLS). However, it is a participant in the regional MLS which has adopted and fully complies with the Fourteen Points of the National Association of REALTORS®: The purpose of the Multiple Listing Service is a means by which the Participant makes a blanket unilateral offer of sub agency to the other participants and is a facility for the orderly correlation and dissemination of listing information among the participants so that they may better serve their clients and the public.

   A MLS shall not enact or enforce any rule which restricts, limits or interferes with the actions of its members in their relations with each other or in their REALTOR®/Client relationship or in the conduct of their business, including, but not limited to the following:

   (a)The MLS shall not:

   (1) Fix, control, recommend, suggest or maintain commission rates or fees for services to be rendered by members.
   (2) Fix, control, recommend, suggest or maintain any percentage division of commissions or fees between cooperating members and between members and nonmembers.
   (3) Require financial support of MLS operations by any formula based on commission or sales price.
   (4) Require or use any form which establishes or implies the existence of any contractual relationship between the MLS and the client (buyer or seller).
   (5) Make any rule relating to the posting or use of signs.
   (6) Make any rule prohibiting or discouraging cooperation with nonmembers.
   (7) Limit or interfere with the terms of the relationship between a member and his licensee.
   (8) Prohibit or discourage any members from political participation or activity.
   (9) Make any rule granting blanket consent to a selling member to negotiate directly with the seller (owner).
   (10) Make any rule regulating the advertising or promotion of any listing.
   (11)Prohibit, or discourage a member from accepting a listing from a seller (owner) preferring to give an “office exclusive.”

(l2) Adopt any rule denying a listing member from controlling the posting of "sold signs."
(13) Reject any exclusive listing submitted by a member on the basis of the quality or price of the listing.
(14) Adopt rules authorizing the modification or change of any listing without the express written permission of the listing member.

CCAR, acting through its members who are duly elected to serve as directors of the MLS, shall insure that the above described limitations and restrictions on the MLS shall be properly observed and adhered to at all times and neither CCAR nor any member of CCAR shall be authorized to do any act in contradiction to the above limitations and restrictions.

(b) THE CARROLL COUNTY ASSOCIATION OF REALTORS® AND THE MLS DO NOT FIX, CONTROL, RECOMMEND, SUGGEST OR MAINTAIN COMMISSION RATES OR FEES FOR SERVICES TO BE RENDERED BY ITS MEMBERS OR THE DIVISION OF COMMISSIONS OR FEES BETWEEN COOPERATING PARTICIPANTS OR BETWEEN PARTICIPANTS AND NONPARTICIPANTS.

3. The amount of REALTOR® compensation and the contract terms are not prescribed by law and are subject to negotiation between the broker and seller.

4. CCAR has adopted an Ethics and Arbitration Procedures Manual that fully affords the complainant and respondent due process of law. All REALTORS® who chair or serve on a hearing panel are required to attend an annual ethics and arbitration procedures orientation.

5. CCAR retains Association counsel familiar with antitrust law who performs the following services:

(a) Reviews and assists in preparation of bylaws, documents, forms, contracts and other legally sensitive materials;
(b) Reviews procedures for admission to and expulsion from membership;
(c) Continuously monitors all association activities and daily communication with CCAR's professional staff to guard against a course of conduct, activity or policy that will create antitrust problems;
(d) Attends at least annually a legal antitrust update seminar;
(e) Attends state and national REALTOR® meetings to keep informed of changing policies;
(f) Provides regular instruction to REALTOR® members regarding antitrust laws through speeches and articles;
(g) Reviews ethics and arbitration decisions.

6. Semi-annually the Association publishes the following notice to all members:

NOTICE TO ASSOCIATION MEMBERS

Under the long established policy of this Association, the Maryland Association of REALTORS®, and the National Association of REALTORS®:

1. The broker's compensation for services rendered in respect to any agency agreement whether with an owner, purchaser or tenant, is

solely a matter of negotiation between the broker and his or her client, and is not fixed, controlled, recommended or maintained by any person not a party to the agency agreement.

2. The compensation offered by a listing broker to a cooperating broker, whether acting as a subagent or buyer agent, in respect to any listing is established by the listing broker in the offer of compensation and is not fixed, controlled, recommended or maintained by any persons or entity other than the listing broker and the cooperating broker .

The compensation, if any, offered by a listing broker to a cooperating broker representing a prospective purchaser or tenant in respect to any listing is established by the seller or lessor, and is not fixed, controlled, recommended, or maintained by any persons or entity other than the seller or lessor.

APPENDIX III

DOCUMENT AND RECORD RETENTION POLICY

CARROLL COUNTY ASSOCIATION OF REALTORS®

It is the policy of the Carroll County Association of REALTORS® to avoid the undue accumulation of documents that are no longer likely to be needed in its business operations. The regular discarding of outdated business records keeps our storage costs down and enables CCAR personnel to make more efficient use of those company documents and files that are needed for current operations. Unless specifically notified to the contrary, department managers, under the direction of the executive vice president, are responsible for retaining the following types of documents for the respective periods indicated following the date such documents were written.

Any document pertaining to a subject as to which a claim has been made against CCAR, or which is involved in an investigation or lawsuit against CCAR, must not be destroyed. The executive vice president, in consultation with CCAR's legal counsel, has the responsibility for promptly notifying all department managers of such a contingency and for ensuring that a proper "HOLD" is placed on the destruction of any such documents.

(CONTINUED ON NEXT PAGE)

CARROLL COUNTY ASSOCIATION OF REALTORS®, INC.

Document and Record Retention Policy

I. Corporate/Organizational Records		
Incorporation documents including articles of incorporation, bylaws amendments and related documents	Store in corporate record book	**Permanent**
Tax-exemption documents including application for tax exemption (IRS Form 1023), IRS determination letter, and any related documents	Store in corporate record book	**Permanent** Federal law requires copies of these documents to be held at organization's headquarters office. These records must be made available for public inspection upon request.
Board of Directors and Committee meeting documents including agendas, minutes and related documents	Compile and file records on a yearly basis. Store in the corporate record book	**Permanent** Care should be taken to include only necessary information in these documents
II. Financial Records		
Year-end Treasurer's financial report/statement	Store in corporate record book	**Permanent**
Treasurer's reports, periodic	Compile and file records on yearly basis	**Three Years** Store with financial records. Destroy after three years.

Bank statements, canceled checks, check registers, investment statements, and related documents	Compile and file records on a yearly basis	**Seven Years** Store with financial records. Destroy after seven years.
Annual information returns (IRS Forms 990)	Federal law requires that the three most recent years returns be kept in the organization's headquarters office and be made available for public inspection upon request	**Seven Years** Store with financial records. Destroy after seven years.
III. Professional Standards and Code of Ethics See attached separate document		
IV. Membership Records		
Membership application forms and code of ethics violations	Store in secure file area either on site or off site	**Three years** after membership lapses or since last ethics violation

RECOMMENDED DOCUMENT RETENTION POLICY
CODE OF ETHICS AND ARBITRATION PROCEEDINGS

The NAR Code of Ethics and Arbitration Manual provides in question and answer number 6, as it appears on Page 237 of the 2008 Edition of the Manual, provides as follows:

> "The National Association has no policy governing retention of professional standards records. Boards are encouraged to consult legal counsel in determining how long professional standards records should be kept. NAR recommends that records relative to ethics hearings be retained for one year after any discipline has been complied with, absent a threat of litigation. In arbitration cases, records should be retained for one year after the award has been paid, absent a threat of litigation. Minimally, all professional standards records should be retained until the appeal or procedural review period has expired and it is recommended that the final decision of the arbitration Hearing Panels and Board of Directors relative to ethics proceedings be retained permanently in the respondent's membership file."

A. **Ethics Proceedings:** The original signed Decision of the Ethics Hearing Panel (Form #E-11), signed by the members of the Hearing Panel and the original Action of the Board of Directors (Form #E-12), if applicable, shall be retained permanently.

All remaining documents, audiotape recordings, correspondence and exhibits pertaining to the case shall be destroyed one (1) year following the closing of the file except in the event of any pending litigation of which the Board or Association has actual knowledge.

For the purpose of the above-recommended policy, in an ethics proceeding where the Respondent has not been found in violation of the Code of Ethics, the term "closing of the file" shall mean thirty (30) days following the final action of the Board of Directors and dissemination of the Decision of Ethics Hearing Panel as provided for in the Code of Ethics and Arbitration Manual (the "Manual"), provided no appeal has been filed. In the event an appeal has been filed, the file shall be deemed closed thirty (30) days following the final action by the Board of Directors with respect to such appeal. In the case where a Respondent has been found in violation of the Code of Ethics and a sanction is imposed involving the payment of a fine, attendance at a specified course or seminar or membership is suspended, the file shall be deemed closed on the date the Respondent pays the fine, presents satisfactory evidence of completion of the required course or seminar, or upon the expiration of the suspension period.