

Is a Confederate flag hate speech? NAR won't say — for now

The trade group will create 'case interpretations' to help members and enforcement volunteers apply controversial policy changes if they're approved



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Could using the term “white privilege” or displaying a bumper sticker with the Confederate flag be considered hate speech under the [National Association of Realtors’ proposed ethics changes](#)?

Those were just two of the questions outstanding after the trade group’s Professional Standards Forum at its first-ever virtual Realtors Conference & Expo on Monday, in which members of NAR’s Professional Standards Committee [unpacked](#) controversial proposed changes to the 1.4 million-member trade group’s professional standards to crackdown on racist and [discriminatory speech and behavior](#) among members.

If implemented, the changes would apply [NAR’s Code of Ethics and Standards of Practice](#) to all of a Realtor’s activities, not just those related to real estate.

They would also prohibit hate and harassing speech against protected classes, as well as all discrimination, not just willful discrimination, against protected classes. And the changes would recommend that ethics violations be considered under membership qualification criteria, among other things.

NAR's board of directors will vote on the policy recommendations on Nov. 13.

One of the policies the committee is proposing, Standard of Practice 10-5, reads as follows: "Realtors must not use harassing speech, hate speech, epithets, or slurs based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity."

A Realtor that violates the policy would be charged under Article 10 of the Code of Ethics, which prohibits denying equal professional services to anyone in those protected classes.

In the chat function of the forum Monday, conference attendees asked not only about political bumper stickers and white privilege, but also how NAR will balance religious beliefs when those beliefs may insult or offend based on sexual orientation or gender identity. Other questions related to how the proposed policies would affect broker liability, how local and state associations will be required to enforce the policies, whether a listing agent would be impacted if a seller refuses access to an agent based on race, and whether it matters if a member is repeating hate speech made by a non-member, particularly an elected official.

NAR, which has 1.4 million members, offered specifics on some questions but not others. For instance, the trade group declined to specify whether something

would or would not violate the proposed policies.



Mantill Williams

“NAR cannot definitively state what would or would not be violations of Article 10 as interpreted by Standard of Practice 10-5, as that is the privilege and responsibility of hearing panels at local associations sitting in review of an ethics complaint,” Mantill Williams, NAR's vice president

of public relations and communication strategy, told Inman via email.

“The only exception would be that from time to time, the NAR Professional Standards Committee approves Case Interpretations that offer specific factual circumstances and then a determination of whether the conduct was or was not a violation of the Code of Ethics.”

Should the policy recommendations pass and someone file an ethics complaint alleging violation of the above policy, it would be up to a hearing panel at a local association to use a [new appendix](#) intended to provide guidance on the proposed policies to assess the circumstances of each individual case, according to Williams.

The Professional Standards Committee will also work “diligently” to develop case interpretations to help members and standards enforcement volunteers understand the code’s applicability, he added.

“If an ethics complaint is filed and is forwarded for a hearing by an association’s grievance committee, the complainant would have the obligation to present to the hearing panel clear, strong, and convincing evidence that the Respondent violated Article 10 as interpreted by Standard of Practice 10-5,” Williams said.

“Put simply, the complainant would need to meet that burden of proof in establishing 1) that the speaker used harassing speech, hate speech, epithets or slurs and 2) that the speech, epithets or slurs were based on the protected classes.”

Committee leaders at the forum on Monday said hearing panels will consider the context of a particular post and the circumstances surrounding it.

Another of the policy recommendations would amend Policy Statement 29 of the NAR Code of Ethics and Arbitration Manual to expand applicability of the Code of Ethics to all of a Realtor’s activities. A broker attendee at Monday’s forum worried that her liability would increase due to the proposed policies.

She fretted that “this will expand my obligation as a broker outside of a real estate transaction without having E & O insurance coverage or any way to mitigate costs that a brokerage firm will inevitably incur when brought in on this, specifically if the violation is moved forward to the state licensing board or to HUD [the U.S. Department of Housing and Urban Development].”

Williams said that the policy proposal would broaden enforcement of the Code of Ethics beyond real estate-related activities, “but to the extent that the

Professional Standards Committee proposes expanding the reach of the Code, this added reach ought not increase a Realtor's or Realtor-Principal's liability under the law."

Regarding moving a violation forward to government agencies, Williams noted that "the First Amendment does not preclude NAR from imposing ethical obligations on its members," but it does apply to the government.

"The Professional Standards Committee is looking to raise the bar on the private speech of members, but the government (e.g., HUD, state licensing agency, state human rights commission, etc.) is constitutionally limited in its ability to sanction private speech. Notable exceptions would exist for speech inciting violence or speech directly related to illegal discriminatory actions," Williams said.

A couple of forum attendees asked how local and state associations would be required to enforce the new policies in light of the change that would apply the Code of Ethics to all of a Realtor's activities, including whether they would have to "police" infractions. Williams stressed that enforcement would take place in the context of responding to ethics complaints rather than active policing.

"Policy Statement 29 in the Code of Ethics and Arbitration Manual provides guidance on the Code's applicability to Realtor members. This is a policy that is used in reviewing ethics complaints advanced against Realtor members, and in that context only," Williams said.

"In addition, associations are not, at present, required to proactively search for possible ethics violations; rather, they are charged with processing ethics complaints against Realtor members and providing due process protections that ensure fair and equitable consideration of the matter. That obligation would not change if the proposed changes to the Code of Ethics and professional standards policies are adopted by the NAR Board of Directors."

At the forum, in a video clip, JoAnne Poole, a former president of the Maryland Association of Realtors and a NAR Distinguished Service Award recipient, described a time when she, a Black woman, showed up at a home with her

buyer clients, a white couple, and the owner opened the door and said, “They’re allowed in, but you’re not.”

Poole reported the incident to the listing agent who said, “Oh well, it was the owner’s decision.” A forum attendee wanted to know: How would the policies impact the listing agent that was not there or involved at the time of the incident?

“JoAnne’s story was provided as an example of the discrimination she faced from a seller, not from a listing agent,” Williams said.

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