This is an optional pen-and-paper quiz (unlike the final which is automatically graded online). We recommend you print this PDF document, take the quiz by marking your answers with a pen, and then read the explanations for the answers following the quiz.

The questions on this quiz are not representative of the questions on the final. Most quiz questions are true/false while 90% of the questions on the final are multiple choice. The quiz questions tend to be longer and more difficult than the questions on the final.

1. The License Law is enforced by NAR®’s local grievance committees. T F

2. Linda is convicted of drunk driving. She was arrested while showing homes to prospective buyers. If her conviction should come to the attention of the DRE, the DRE could restrict or even revoke her license. T F

3. Linda’s memory is failing. She forgets to deposit checks into her trust account, fails to present offers, omits disclosures, and forgets appointments. The DRE may revoke her license. T F

4. Bob is represented by Betty. Linda sells her vacation home to Bob but does not tell either Bob or Betty she is a real estate licensee. Linda is in violation of the real estate law. T F

5. Linda is Sam’s listing agent. Linda tells Bob that across the street from Sam’s home is a trailhead leading to miles of trails over pristine chaparral preserved for posterity as open space. As Bob is an avid nature lover, access to wild lands is as important to him as ocean views are to homeowners at the beach. After selling his home and just before close of escrow, Linda presents Bob with an addendum to his purchase contract. That addendum discloses that the “trailhead” is actually a conservation easement and that its owner intends to fence off his land from the public. Heartbroken but too committed to back out, he signs the agreement. Bob has an actionable claim against Linda and Sam for negligent misrepresentation. T F

6. Walter manages apartment buildings for his clients. After negotiating a 25% volume discount for landscaping services, he continues to bill his clients for landscaping at the original price. Walter’s failure to pass along the discount to his customers is illegal. T F

7. Linda offers every painter, plumber, gardener, handyman, electrician, pool maintenance man, and tree trimmer she can find a $500 gift certificate at Home Depot for any referral which leads to a listing and another $500 gift certificate should the listing result in a sale. Linda …
   A. is in violation of RESPA.
   B. has taken an illegal “secret profit.”
   C. is in violation of the Real Estate Law.
   D. has committed no violation.

8. REALTORS® are not obligated to continue to market a property after the seller has accepted an offer. T F

9. Linda has a listing appointment with Mrs. Smith. At that appointment Mrs. Smith tells Linda she must sell her home quickly because she needs funds to pay for her husband’s liver transplant. ¶ Mrs. Smith lists her home with another broker. ¶ Linda finds Bob, a potential buyer for Mrs. Smith’s home. Linda must tell Bob about Mrs. Smith’s desperate situation so that Bob may better negotiate a lower price with Mrs. Smith. T F

The objective of the quiz is education while the objective of the final is to measure your understanding of the course material.

While the DRE prohibits us from giving you the answers to the final, we give you the answers to the quiz with explanations supported by citations from the course’s textbook.

In all questions referencing Linda, Sam, Betty, or Bob; Linda is a listing broker, Sam a seller, Betty a buyer’s broker, and Bob a buyer.
10. Bob wants to move from his current home into Sam’s home. Bob retains Betty as his exclusive buyer’s agent. Bob asks Betty to write an offer to purchase Sam’s home. Betty agrees to write the offer but only if Bob promises to give her the listing to sell his current home if Sam accepts his offer. Betty is in violation of the Code. **T**  **F**

11. A prospective buyer asks Linda if any of her seller’s immediate neighbors have children. Linda answers “no.” Linda is in violation of the Code. **T**  **F**

12. Walter is a REALTOR® specializing in property management. Linda learns that Walter has appropriated 20% of his client’s rental income to buy lottery tickets. As a REALTOR®, it is Linda’s duty to report Walter to the DRE. **T**  **F**

13. Walter leases an apartment to Bob for two months. Walter forgets to have Bob sign a lease agreement. Walter is in violation of the Code. **T**  **F**

14. George offers Linda a fee to appraise his apartment building but Linda says to George, “… but I have no appraisal experience.” George hires Linda and Linda performs the appraisal and collects her fee. Linda is in violation of the Code. **T**  **F**

15. Babbitt is a prominent REALTOR® in Zenith. He advertises his home as a “For Sell By Owner.” Bob purchases his home. At no time does Babbitt disclose to Bob that he is a REALTOR® because, he claims, everyone in Zenith knows this. Babbitt violates Article 12, “The True Picture Test,” of the Code. **T**  **F**

16. If charged with an ethics violation, it is the duty of the REALTOR® to obtain the name of his accuser from the Board’s investigator so that he, the REALTOR®, may contact his accuser to mediate a resolution. **T**  **F**
ANSWERS

We defend each answer with an explanation based on citations from the book. Often we quote more content than necessary to justify our answers. We do this to put our answers into context and to make the quizzes a richer learning experience. Citations from the book appear on a yellow background in Times-Roman.

Paragraphs labeled as Notes contain supplemental information we think useful but which is not part of the course and is, therefore, not the basis for any question on the course final. Paragraphs labeled as Comments represent the author’s comments which you are free to ignore or ridicule.

1. 1.1: Overview

The License Law is enforced by NAR®’s local grievance committees.

False The License Law is enforced by the [DRE] Commissioner whose principal power is to grant, restrict, and revoke licenses; the Code is enforced by local grievance committees of the National Association of REALTOR®’s.

2. 2.1: The Foundation: BPC §§10176, 10177

Linda is convicted of drunk driving. She was arrested while showing homes to prospective buyers. If her conviction should come to the attention of the DRE, the DRE could restrict or even revoke her license.

True BPC §10177(b) gives the DRE the authority to restrict the license of any licensee “convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee…” (Specifics are given in DRE Reg. 2910(a).) Since driving under the influence is a crime (see note #1) and Linda’s offense was related to her duties as a real estate licensee (showing property), the DRE has the power to restrict or revoke her license for her DUI conviction.

Note #1: A DUI is usually prosecuted as a misdemeanor and not a felony (source). So if a DUI is not a felony, then is it a crime? “Yes,” because a crime is “an act or the commission of an act that is forbidden or the omission of a duty that is commanded by a public law and that makes the offender liable to punishment by that law” (source). Since DUI offenders are prosecuted and punished, a misdemeanor conviction for DUI is a crime. (A broader definition of a crime is: “any violation of the law in which the offender may be incarcerated.”)

Note #2: The DRE has a small article about license discipline for DUI offenses in its Spring, 2006 Real Estate Bulletin. It discusses a specific regulation regarding DUIS, DRE Regulation 2910(a)(11), which reads: “When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime … two or more convictions involving the consumption or use of alcohol or drugs when at least one of the convictions involve driving and the use or consumption of alcohol or drugs.”

3. 2.1: The Foundation: BPC §§10176, 10177

Linda’s memory is failing. She forgets to deposit checks into her trust account, fails to present offers, omits disclosures, and forgets appointments. The DRE may revoke her license.

True The Department proceeds in those cases where the licensee is so careless or unqualified that to allow the licensee to handle a transaction would endanger the interests of clients or customers.

The DRE’s mission is to protect the public in its real estate transactions – not to protect the interests of its licensees. The DRE is not your friend!

Note: The DRE publishes a monthly, online report of disciplinary actions available here. A commonly cited violation is BPC §10177(g): “Negligence or incompetence in performing licensed acts.”
4. 2.1: The Foundation: BPC §§10176, 10177

Bob is represented by Betty. Linda sells her vacation home to Bob but does not tell either Bob or Betty she is a real estate licensee. Linda is in violation of the real estate law.

**False** Yes, this was a tricky one. Linda does not need to disclose that she, as the seller, is a licensee. BPC §10177(o) reads failure to disclose to buyer the nature and extent of ownership interest a licensee has in property which is the subject of a transaction in which the licensee is an agent for the buyer. Note the qualification, “in which the licensee is an agent for the buyer”: Linda is a seller not an agent.

**Note**: Bob Hunt in this article for Realty Times discusses this problem and concludes “there is no requirement that a real estate licensee, acting as a principal, must disclose his or her licensee status.” But he also concludes that it is probably unethical, by NAR®’s Code of Ethics, not to make this disclosure.

5. 2.2: Seller Beware! A Case History

Linda is Sam’s listing agent. Linda tells Bob that across the street from Sam’s home is a trailhead leading to miles of trails over pristine chaparral preserved for posterity as open space. As Bob is an avid nature lover, access to wild lands is as important to him as ocean views are to homeowners on the beach. After selling his home and just before close of escrow, Linda presents Bob with an addendum to his purchase contract. That addendum discloses that the “trailhead” is actually a conservation easement and that its owner intends to fence off his land from the public. Heartbroken but too committed to back out, he signs the agreement. Bob has an actionable claim against Linda and Sam for negligent misrepresentation.

**True** (This question was also used on the quiz for the Demo.)

Bob’s situation is analogous to the Jue’s in Jue v. Smiser. In that case, the Jue’s purchased the Smiser’s home believing the listing agent’s claim that it was designed by Julia Morgan. That agent presented the Jue’s with a disclosure just before they were to close escrow stating that the home probably was not designed by that famous architect. As did Bob, the Jue’s signed an addendum to their purchase contract acknowledging their receipt of the disclosure and then completed escrow.

The Jue’s sued the listing agent (and others) claiming negligent misrepresentation but the trial court agreed with the Smiser’s that the Jue’s case was not actionable because the Jue’s had acknowledged the disclosure. The Jue’s appealed and the appellate court reversed the trial court citing Bagdasarian v. Gragnon: “When a party learns that he has been defrauded, he may, instead of rescinding, elect to stand on the contract and sue for damages.”

6. 2.3.1: Undisclosed Compensation

Walter manages apartment buildings for his clients. After negotiating a 25% volume discount for landscaping services, he continues to bill his clients for their landscaping services at the original price. Walter’s failure to pass along the discount to his customers is illegal.

**True** Walter is guilty of “taking a secret profit” (violation of BPC §10176(g). The prohibition against an agent taking a “secret profit” includes any compensation, direct or indirect, no matter how trivial – this includes mark-ups and the practice of adding a surcharge to another vendor’s bill for a product or service. All compensation must be disclosed to the client before the agent requests payment.

What if Walter provided a cover letter with his client’s invoices in which he made this disclosure: “Good news, I’ve negotiated a discount for landscaping services. You’ll continue paying the same amount for landscaping but I’m going to keep the savings for myself.”? That would, in effect, be to give himself a raise at the expense of his clients. Moreover, as his client’s fiduciary they would have every right to expect that Walter would extend the discounts to their benefit just as surely as they would expect Walter to pass on any price increases to their detriment.
7. 2.3.4: Referral Fees

Linda offers every painter, plumber, gardener, handyman, electrician, pool maintenance man, and tree trimmer she can find a $500 gift certificate at Home Depot for any referral which leads to a listing and another $500 gift certificate should the listing result in a sale. Linda …

(A) is in violation of RESPA.
(B) has taken an illegal "secret profit."
(C) is in violation of the Real Estate Law.
(D) has committed no violation.

[D]: There are several laws which prohibit referral fees. Rather than remember which laws prohibit which referral fees, some licensees erroneously conclude all referral fees are illegal. Linda’s payment of a referral fee for leads is not only legal, it may be good business.

The payment of a referral fee by a licensee is just fine providing the payment is not for a licensed act (an act which requires a real estate license). If the payment is for a licensed act, it must be from one broker to another broker or from a broker to one of his licensees. The single exception is that a broker may pay a referral fee to an out-of-state broker for a licensed act even if the out-of-state broker does not have a California license.

There are several prohibitions on accepting a referral fee by a licensee:

(1) RESPA prohibits anyone from accepting a referral fee for any settlement service involving a federally-related mortgage loan (i.e., any loan backstopped by a federal agency such as Fannie, Freddie, or FHA).

(2) The prohibition against taking a “secret profit” (BPC §10176(g)) makes it illegal for a licensee to accept an undisclosed referral fee from anyone for a service performed by the licensee on behalf of his client.

(3) BPC §10177.4 categorically prohibits a licensee from accepting a referral fee from any escrow agent, structural pest control firm, home protection company, title insurer, or escrow company (BPC §10177.4).

The following referral fees are examples of referral fees which are not illegal:

• A fee received by a licensee from an escrow service for referring a seller who provides the buyer with financing. This would not violate RESPA since RESPA applies only to federally-related mortgage loans; however if the licensee is the agent of either the seller or the buyer, the licensee must disclose to his client(s) the fee he receives from the escrow service; otherwise he would be guilty of taking a “secret profit.”

• A fee received by a licensee from a house painter for referral of a prospect.

• Payment of a fee to a home inspector to encourage him to give his client priority.

The remainder of the questions pertain to NAR®’s Code of Ethics.

8. 3.2.2.1: Article 1: Revere Your Client and Treat Everyone Honestly

REALTORS® are not obligated to continue to market a property after the seller has accepted an offer.

True. The Code states that offers must be presented until the sale is finalized but Article 1, Standard 7 states REALTOR®’s shall not be obligated to continue to market the property after an offer has been accepted by the seller/landlord.

9. 3.2.2.1: Article 1: Revere Your Client and Treat Everyone Honestly

Linda has a listing appointment with Mrs. Smith. At that appointment Mrs. Smith tells Linda she must sell her home quickly because she needs funds to pay for her husband’s liver transplant. ¶ Mrs. Smith lists her home with another broker. ¶ Linda finds Bob, a potential buyer for Mrs.
Smith’s home. Linda must tell Bob about Mrs. Smith’s desperate situation so that Bob may better negotiate a lower price with Mrs. Smith.

False But, in truth, we’re not really sure this is the correct answer.

We’re not sure the Code’s duty to maintain confidentiality applies in this situation. Article 1, Standard 9 of the Code states that it is the obligation of REALTOR®’s to preserve confidential information (as defined by state law) provided by their clients in the course of any agency relationship or non-agency relationship recognized by law continues after termination of agency relationships or any non-agency relationships recognized by law.

But Mrs. Smith was never Linda’s client. Subsequent to her listing appointment with Mrs. Smith, Bob became her client and so she owes Bob her loyalty – not Mrs. Smith. And what Linda knows about Mrs. Smith’s unfortunate situation could greatly assist Bob in negotiating a very good price for Mrs. Smith’s home.

And yet, it seems unfair, even inhumane, for Linda to exploit Mrs. Smith’s unfortunate situation just to get a good price for Bob.

In such ambiguous cases we should consider the “Golden Rule” on which the Code of Ethics is based. As stated in the Code’s preamble: “Whatsoever ye would that others should do to you, do ye even so to them.” By this rule, if the tables were turned, Linda would want Mrs. Smith to keep what she told her during their listing appointment confidential.

Note: The Code makes several references to “non-agency relationship recognized by law.” This is a reference to “transaction brokerages” which are legally recognized in some states but not in California (source).

A transaction broker is a “non-agent.” He acts as a “facilitator” in a real estate purchase transaction. He performs “ministerial acts” on behalf of the customer taking care not to exercise discretion or judgment. A transaction broker takes care not to form a fiduciary relationship with his “customer.”

10. 3.2.2.1: Article 1: Revere Your Client and Treat Everyone Honestly

Bob wants to move from his current home into Sam’s home. Bob retains Betty as his exclusive buyer’s agent. Bob asks Betty to write an offer to purchase Sam’s home. Betty agrees to write the offer but only if Bob promises to give her the listing to sell his current home if Sam accepts his offer. Betty is in violation of the Code.

True Betty requires Bob to sign a “prelisting agreement” as a condition to writing and presenting an offer to Sam. As Bob’s agent, Betty is obligated to protect and promote Bob’s interests above her own. But in giving Bob an ultimatum Betty places her own interest (a future listing) above Bob’s interest (to purchase Sam’s home) – a clear violation of Article 1 which reads When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTOR®’s pledge themselves to protect and promote the interests of their client.

Citation: In Case Interpretation #1-14 it is written, [a] buyer’s agent must never condition his presentation of a purchase offer on his client’s signing of a pre-listing agreement (i.e., an agreement that should the buyer’s offer be accepted, the buyer agrees to list another home with the buyer’s agent).

Note: A description of the actual case upon which Case Interpretation #1-14 is based can be found here. In that case, the buyer was from out of town and the prelisting agreement his agent insisted he sign was an agreement for the buyer to list the home he wanted should he purchase it and later decide to sell it. The buyer originally balked and refused to sign the agreement but later changed his mind. The buyer signed the prelisting agreement and then filed an ethics complaint against his agent.

Comment: Had Betty incorporated her prelisting requirement into her representation agreement with Bob, she would not have been in violation of the Code since the prelisting would be part of her compensation.

11. 3.2.2.2: Disclosure Material Facts

A prospective buyer asks Linda if any of her seller’s immediate neighbors have children. Linda answers “no.” Linda is in violation of the Code.

True Although Article 2 states that “REALTOR®’s shall avoid … concealment of pertinent facts relating to the property or the transaction” the Code also compels the REALTOR® to conceal facts which are “legally
immaterial.” Factors defined as “non-material” by law or regulation or which are expressly referenced in law or regulation as not being subject to disclosure are considered not “pertinent” for purposes of Article 2 … [a]n example of information which must not be mentioned, let alone be disclosed, is any reference to any person’s race, color, religion, sex, national origin, familial status, or handicap.

Since the buyer asks about the neighbor’s “familial status” when she refers to children, this question is legally immaterial and Linda should not answer it. (BTW, if Linda answered the question she would also be in violation of the Fair Housing Act as explained in our Fair Housing course.)

12. 3.2.2.8: Article 8: Maintain Trust Funds

Walter is a REALTOR® specializing in property management. Linda learns that Walter has appropriated 20% of his client’s rental income to buy lottery tickets. As a REALTOR®, it is Linda’s duty to report Walter to the DRE.

False Of course Walter’s use of 20% of his client’s rental income to buy himself lottery tickets is not only criminal it is a clear violation of Article 8 of the Code: REALTOR®s shall keep in a special account in an appropriate financial institution, separated from their own funds, monies coming into their possession in trust for other persons, such as escrows, trust funds, clients’ monies, and other like items.

In the preamble to the Code, it is stated REALTOR®s having direct personal knowledge of conduct that may violate the Code involving misappropriation of client or customer funds or property … [should] bring such matters to the attention of the appropriate Board or Association of REALTOR®s. Since Linda knows that Walter is misappropriating his client’s rental income, the Code compels her to report her to her Board – not the DRE.

In §3.2.2.8 (Case Interpretation #8-2) we learn that if the Board finds that an agent has violated this article [Article 8: “Maintenance of Trust Funds”], it may forward its finding to the state real estate commission as a possible violation of public trust (Case Interpretation #8-2). In California, the real estate commission is, of course, the DRE. But it is the Board who must decide to report Walter to the DRE and not Linda.

13. 3.2.2.9: Article 9: Document Agreements in Writing

Walter leases an apartment to Bob for two months. Walter forgets to have Bob sign a lease agreement. Walter is in violation of the Code.

True Article 9 of the Code states REALTOR®s… shall assure … that all agreements related to real estate transactions including, but not limited to, listing and representation agreements, purchase contracts, and leases are in writing in clear and understandable language expressing the specific terms, conditions, obligations and commitments of the parties.

State law requires that only agreements with terms of one year or more be in writing: The California Statute of Frauds (CC §1624) requires the following agreements to be in writing: listing agreements, purchase contracts, leases longer than one year, and any contract that can not be performed within one year.

The Code requires Walter to put the two-month lease agreement in writing while the Real Estate Law (i.e., the Statute of Frauds) does not.

14. 3.2.3.2: Article 11: Provide Competent Consulting

George offers Linda a fee to appraise his apartment building but Linda says to George, “… but I have no appraisal experience.” George hires Linda and Linda performs the appraisal and collects her fee. Linda is in violation of the Code.

False Article 11 of the Code permits Linda to provide a service for which she is unqualified providing she discloses her lack of qualifications to her principal: … REALTOR®s shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth.
15. 3.2.3.3: Article 12: Convey a “True Picture” When Advertising

Babbitt is a prominent REALTOR® in Zenith. He advertises his home as a “For Sell By Owner.” Bob purchases his home. At no time does Babbitt disclose to Bob that he is a REALTOR® because, he claims, everyone in Zenith knows this. Babbitt violates Article 12, “The True Picture Test,” of the Code.

True Babbitt is being disingenuous in advertising his home as if he was an inexperienced FiSBO; that is, an owner without real estate experience who sells his own home to avoid paying a real estate agent a commission. While it is true Babbitt is the owner, he is also a REALTOR® and, as such, puts Bob at a disadvantage in negotiating a sale. He is not really presenting a “true picture” of himself in advertising his home as if he were a run-of-the-mill FiSBO.

Citation: Article 12/Standard 6: REALTOR®s, when advertising unlisted real property for sale/lease in which they have an ownership interest, shall disclose their status as both owners/landlords and as REALTOR®s or real estate licensees.

Note: This question is based on Case Interpretation #12-8. In that case the hearing panel concluded that...

Article 12 as interpreted by Standard of Practice 12-6, does establish a requirement to disclose both ownership interest and licensure status when the REALTOR® advertises his own unlisted property for sale. Merely indicating REALTOR®’s name in the advertisement and assuming that his prominence in the real estate business was well known was not enough. The panel concluded that the REALTOR® was obliged to disclose his licensure status in the advertisement, since this knowledge might well have affected Mr. X’s [Bob’s] negotiations on the property as well as his eventual decision to purchase.

Comment: Though Babbitt may have tainted our profession, he has broken no law (see quiz question #4).

16. 3.2.3.5: Article 14: Cooperate in Investigations

If charged with an ethics violation, it is the duty of the REALTOR® to obtain the name of his accuser from the Board’s investigator so that he, the REALTOR®, may contact his accuser to mediate a resolution.

False. Article 14 reads, If charged with unethical practice … in any professional standards proceeding or investigation, REALTOR®s shall place all pertinent facts before the proper tribunals of the Member Board … and shall take no action to disrupt or obstruct such processes.

Consequently, a REALTOR® charged with an ethics violation should answer all questions and furnish all materials requested by the Board investigator and let the Board resolve the complaint.