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## Position Statement and Defense of the NAHI™ Code of Ethics

In recent years, great debate has ensued among nationally recognized home inspection trade associations and their members with regard to ethical standards of practice. This debate is not one to be taken lightly given the importance of maintaining professional standards by which a home inspector interacts with their client and consumers. A sound code of ethics does not set a minimum standard of ethical practice, but rather should embody a more holistic set of ethical principles that allow for inspector growth while simultaneously ensuring protection of the consumer. A holistic approach is designed to ensure balance and places equal importance on each provision of a code of ethics. The key concept of a holistic code of ethics is interdependence. No one provision stands alone.

The National Association of Home Inspectors, Inc. (NAHI™) believes that two key components exist within a sound code of ethics. The first component is a focus on ensuring the inspector acts as an unbiased third-party to the real estate transaction. This principle is designed to ensure that a fundamental level of consumer protection exists throughout the inspection process. The second focus is designed to protect the inspector and his/her ability to compete within a business environment. The U.S. economy is founded on the principle of free-market competition. Given this reality, a code of ethics should protect an inspector's ability to compete in a competitive business environment and promote growth, not hinder it.

The reality is that not all businesses grow at the same rate. Some businesses have an established consumer base, while others may be new to a market. A code of ethics is not designed to control the market or level of competition within it. It is the responsibility of the businessperson to determine the viability of his/her business and pursue avenues in which to compete in a given market. Therefore, NAHI™ does not believe it is prudent for our Code of Ethics to prohibit a home inspector or an inspection company and preferred vendor list providers from maintaining business relationships that are not in violation of state or federal law.

Businesses of all types maintain relationships with companies that provide ancillary services. For instance, a rental car company may provide a discount for specific hotels or restaurants to clients using their service. In most, if not all cases, the hotel or restaurant pays a fee to be listed with or referred by the rental car company. The NAHI™ Code of Ethics does not prohibit similar relationships among home inspectors or home inspection companies and other service providers. To single out a specific industry is counterproductive because the effect of prohibiting these relationships is borne solely by the home inspection industry. A code of ethics should not be used as a mechanism for hindering innovative marketing strategies and revenue streams. The emphasis must be on growth in an atmosphere of competitive markets.

The idea that such relationships as those cited above compromise the accepted industry principle of providing an unbiased, third-party opinion has been proposed. This only stresses the need for a code of ethics to be holistic in nature. An inspector who provides his/her inspection services to a client, while offering ancillary services or referring ancillary service providers to the client, is in no way exempt from the responsibility to offer those services based on the unbiased and factual results of the completed home inspection. It is an unfair code of ethics that assumes it is the predisposition of the home inspector to provide misleading or false reporting on the condition of the inspected property for financial gain. The U.S. judicial system is based on the principle of innocence before guilt. This same principle should be upheld within any code of ethics.

The NAHI™ Code of Ethics goes even further to ensure consumer protection by requiring that each inspector provide a written disclosure to all parties, which discloses any potential financial benefit on behalf of the inspector or inspection company. The emphasis should be on the client and/or their agent to determine the need for such referred ancillary services, not on prohibiting the inspector or inspection company from referring such services or maintaining business-related relationships that may promote an inspector's services.

The use of a holistic framework in the creation of a code of ethics creates a living document that can easily conform to trends and accepted standards of a given industry without compromising existing market principles, consumer protection concerns, or adherence to law. Each provision contained within the NAHI™ Code of Ethics must be weighed in concert with its complementary provisions. An example of this relationship is illustrated below.

**Code of Ethics #3** states, "The inspector will only express an opinion on any aspect of an inspected property when it is based on the experience, training, education and professional opinion of the inspector."

***This requires the inspector to act in an unbiased manner, using objective standards when providing advice on the condition of an inspected property.***

**Code of Ethics #6** states, "The inspector may recommend or offer products or additional services to the client consistent with the provisions of this Code of Ethics if the services or products recommended or offered by the inspector are:

- (a) to be purchased from or provided by the inspector, their agents, or employees;
- (b) to be purchased from or provided by any entity, organization, or venture in which the inspector has an interest; or
- (c) will result in any compensation or benefit to the inspector, financial or otherwise, then the products or services may only be recommended or offered after a written disclosure to the client of the inspector's interest in the transaction and advising the client to obtain competitive bids."

***This allows the inspector to refer additional services in which the inspector has a financial interest--above and beyond that of the inspection to the client—if that interest is disclosed to the client. This does not exempt the inspector from providing those services based on the intent of Code of Ethics #3.***

It may be argued that if referring ancillary products or services is allowed for financial interest, the opinion of the inspector is compromised. This argument would be based on the presumption that the inspector is:

- (a) concerned foremost with his/her own financial interest;
- (b) willing to act in disregard with common standards of consumer protection; and
- (c) does so without regard to their responsibility as defined in Code of Ethics #3.

It can be argued conversely that while taking actions authorized under Code of Ethics #6, the inspector can be in compliance with Code of Ethics #3. If products or services are referred or offered, and the inspector is doing so based on the findings contained within an inspection report completed in adherence to Code of Ethics #3, there is no factual or implied conflict of interest. Given the findings of a completed inspection report are based on fact, the inspector should not be prohibited from referring or offering products or services that are designed to remediate any of those deficiencies cited in the factual and completed inspection report.

When reviewed with a holistic eye, one can readily see that the NAHI™ Code of Ethics is designed to promote accepted ethical standards based on common business principles and a quasi-judicial presumption of innocence. *The NAHI™ Code of Ethics presumes the inspector will act foremost with personal integrity in upholding the principle of consumer protection.* Arguing that an inspector is encouraged to falsify their report based on the ability to offer ancillary services is misguided. One cannot rightly presume guilt without proving cause.

On July 13, 2005, the United States District Court for the Western District of Kentucky struck down a regulation instituted by the Kentucky Real Estate Commission regarding the prohibition of providing rebates, discounts, or inducements. This ruling applied to the use of advertising to inform consumers of rebates, discounts, or inducements.

In this ruling, the following definitions are relevant:

- 1) "Inducement" means money, a free gift, a prize, or any other thing of value that a Licensee would offer a potential client or customer.
- 2) "Price Advertising" means advertising information about the Licensee price or any discount, rebate, or inducement.
- 3) "Rebate" means a payment of monies or anything of value by, or on behalf of, a Licensee to a client or customer (or third party authorized by the client or customer to receive payments) that is in connection with the provision of Real Estate Brokerage Services. Examples of rebates directed to third parties include, but are not limited to, payments to charities, home inspectors, and moving services.

*This ruling in effect prohibits any restriction that may be a restraint of trade as derived from Section One of the Sherman Act. The United States Department of Justice, in Part D of the Competitive Impact Statement, uses the following case law as precedence to make its judgment.*

As alleged in the Complaint, the Commission's promulgation and enforcement of the Rebate Ban is the product of an agreement, combination, or conspiracy among Broker-Commissioners and others that has restricted the ability of brokers to compete on the basis of price. "In construing and applying the Sherman Act's ban against contracts, conspiracies, and combinations in restraint of trade, the [Supreme Court] has held that certain agreements or practices are so 'plainly anticompetitive' and so often 'lack . . . any redeeming virtue,' that they are conclusively presumed illegal without further examination under the rule of reason." *Catalano v. Target Sales, Inc.*, 446 U.S. 643, 646 (1980) (conspiracy to eliminate short-term credit to retailers *per se* illegal) (citations omitted); *see also United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 221 (1940) (any combination which tampers with price structures is unlawful); *TFWS, Inc. v. Schaefer*, 242 F.3d 198, 210 (4<sup>th</sup> Cir. 2001) (volume discount ban *per se* illegal). The agreement among the Broker-Commissioners and others to ban rebates and inducements through the promulgation and enforcement of the Rebate Ban is a *per se* violation of Section One of the Sherman Act. Given its pernicious effect on competition and lack of any redeeming virtue, the agreement is conclusively presumed to be unreasonable without the need for an elaborate inquiry into the precise harm that it caused or the potential business justification for its use. *Northern Pacific Ry. Co. v. United States*, 356 U.S. 1, 5 (1958)

*Competitive Impact Statement: U.S. v. Kentucky Real Estate Commission, United States Department of Justice*

The above example illustrates that any prohibition of competitive practices, either by regulation or through a code of ethics, is not lawful in nature. This is the very essence of why the NAHI™ Code of Ethics uses a holistic approach to its Code of Ethics. While protecting the consumer, it does not prohibit business practices such as offering ancillary services or contracting with any related industry to be included on a preferred vendor list. Offering ancillary services or paying to be included on a preferred vendor list is a competitive business practice that is not in violation of Federal statute, and any prohibition could be challenged in a court of law. Furthermore, preferred vendor lists do not guarantee inspections and are by definition a form of advertising your business to a client base.

NAHI™ and its Board of Directors strongly defends the NAHI™ Code of Ethics based on the principles, statements, and precedence set forth above. The Board feels that a permissive code of ethics, combined with confidence in the integrity of our fellow members, is more effective and equitable than one that is restrictive and places undo burden on one's ability to compete.

**--Adopted November 3, 2005**