

23RD ANNUAL ADVANCED RESTRUCTURING & PLAN OF REORGANIZATION CONFERENCE

AIRA | Association of
Insolvency &
Restructuring Advisors

What You Must Do When Your Client Lies to You (Ethics)

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Ethics Rules for Financial Advisors

Financial Advisors

Organization		Credential
AICPA	American Institute of Certified Public Accountants	CPA, CFF, ABV
AIRA	Association of Insolvency & Restructuring Advisors	CIRA, CDBV
TMA	Turnaround Management Association	CTP
ACFE	Association of Certified Fraud Examiners	CFA
ACAMS	Association of Certified Anti-Money Laundering Specialists	CFE
CFAI	CFA Institute	CAMS
ASA	American Society of Appraisers	ASA



AICPA – Code of Professional Conduct

An Unswerving Commitment to Honorable Behavior

- **Responsibilities:** Exercise sensitive professional and moral judgments.
- **The Public Interest:** Act in a way that serves the public interest, honor the public trust, and demonstrate a commitment to professionalism.
- **Integrity:** Maintain and broaden public confidence by performing with the highest sense of integrity.
- **Objectivity and Independence:** Maintain objectivity and be free of conflicts of interest; be independent in fact and appearance when providing auditing and other attestation services.
- **Due Care:** Observe the profession's technical and ethical standards; strive to improve competence and the quality of services; discharge professional responsibility to the best of the member's ability.

AICPA – Code of Professional Conduct

Additional Guidance

- State CPA Societies
- SEC
- PCAOB
- GAO
- DOL
- Federal, state, & local tax authorities
- Other professional membership bodies

AICPA – Code of Professional Conduct

A Member Shall Not Commit an Act Discreditable to the Profession

- Negligence in the preparation of financial statements or records (2.400.040):
 - Failure to correct financial statements that are materially false and misleading
 - Signing a document containing materially false and misleading information

A CPA may be **required to disclose confidential information** to comply with professional standards and other ethics requirements or to report potential concerns regarding questionable accounting, auditing, or other matters. (2.400.070.06.c.iii & iv)

AICPA – Code of Professional Conduct

Expert Witness Services

- Expert witness services create the appearance of advocating for a client's position and would violate the requirement to be independent. CPAs thus generally cannot perform such services for **attest clients**.



AIRA – Code of Professional and Ethical Conduct

- Competence
- Confidentiality
- Integrity
- Objectivity
- Due Care

AIRA – Code of Professional and Ethical Conduct

Competence

- Maintain an appropriate level of professional competence by ongoing development of knowledge and skills.
- Perform professional duties in accordance with relevant laws, regulations and technical standards.
- Accept only assignments for which the member possesses, or can reasonably acquire, the necessary competence to complete.

AIRA – Code of Professional and Ethical Conduct

Confidentiality

- Refrain from disclosing confidential information acquired, except when authorized or legally obligated to do so.
- Inform subordinates of the confidentiality requirement and monitor their activities to assure confidentiality.
- Refrain from using or appearing to use confidential information for unethical or illegal advantage.

AIRA – Code of Professional and Ethical Conduct

Integrity

- Be honest and candid within the constraints of client confidentiality.
- Avoid actual or apparent conflicts of interest, and advise all appropriate parties of any potential conflicts.
- Do not knowingly misrepresent facts.
- Refrain from any activity that would prejudice the ability to carry out duties ethically.
- Recognize and communicate professional limitations or other constraints that would preclude responsible judgment or successful performance of an activity.
- Refrain from engaging in or supporting any activity that would discredit the profession.
- Observe the principles of objectivity and due care.

AIRA – Code of Professional and Ethical Conduct

Objectivity

- Be impartial, intellectually honest, and free of conflicts of interest.
- Communicate information fairly and objectively.

AIRA – Code of Professional and Ethical Conduct

Due Care

- Discharge professional responsibilities with competence and diligence.
- Adequately plan and supervise the performance of professional services.
- Obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed.

AIRA – Code of Professional and Ethical Conduct

Additional Guidance

- FASB
- SEC
- PCAOB



TMA – Code of Ethics

- General Obligations and Professional Boundaries
- Obligations to the Client
- Obligations to the Profession and to Colleagues

<https://turnaround.org.au/about/code-of-ethics-2/#:~:text=Responsibility%20to%20Colleagues:-,E.S.,to%20this%20Code%20of%20Ethics.>

TMA – Code of Ethics

General Obligations and Professional Boundaries

A member shall maintain and advance knowledge of the practice of turnaround and crisis management and corporate renewal, respect the practice and contribute to its growth.

- **Professional Boundaries:** A member must take care not to perform services that require a license, unless the member is so licensed to perform such services.
- **Standards of Excellence:** Improve professional knowledge and skill; demonstrate a consistent pattern of reasonable care and competence.
- **Conduct:** Uphold the law in the conduct of professional activities.
- **Human Rights:** Uphold human rights in all professional endeavors
- **Continuing Education:** Enhance professional knowledge

TMA – Code of Ethics

Obligations to the Client

A member shall serve his or her client independently, competently and in a professional manner. A member should exercise unprejudiced and unbiased judgment on the client's behalf.

- **Professional Responsibilities:** Perform engagements to the best of the member's ability; do not proceed with an engagement unless the client has agreed with the objectives, scope, and approach as well as the fee structure; only undertake engagements that can be fulfilled in a timely manner.
- **Independence:** Strive to remain independent of other affiliations that could compromise judgment or result in the appearance of compromise.
- **Competence:** Only undertake engagements for which the firm has the technical capability.
- **Candor and Truthfulness:** Communicate realistic results to the client as well as the potential ramifications of realistic and practical actions that must be undertaken.
- **Integrity:** Do not disclose confidential client information.
- **Contingency Fees:** Performance bonuses or other contingency fees are allowed.
- **Ownership:** Financial interests must be disclosed and effectively communicated to the client.

TMA – Code of Ethics

Obligations to the Profession and to Colleagues

A member shall uphold the integrity and dignity of the profession.

- Act with integrity and support the objectives and programs of the Association.
- A member shall not refer a client to a colleague in exchange for monetary consideration from that colleague.
- A member referring a client to another member shall not make any commitments on behalf of the member receiving the referral or misrepresent the qualifications of the member receiving the referral.
- A member shall not misrepresent his or her credentials or capabilities in the pursuit of engagements.
- A member shall not disparage or make false statements about another member competing for an engagement.
- A member shall not give the impression that membership in the TMA bestows any credentials or in any way guarantees minimum qualifications.
- A member shall represent that he or she subscribes to this Code of Ethics.



ACFE – Code of Professional Ethics

ACFE Members Should:

- Demonstrate a commitment to professionalism and diligence in the performance of their duties.
- Not engage in any illegal or unethical conduct, or any activity which would constitute a conflict of interest that has not been properly disclosed to the appropriate parties.
- Exhibit the highest level of integrity in the performance of all professional assignments and accept only assignments for which there is reasonable expectation that the assignment will be completed with professional competence.
- Comply with the lawful orders of the courts and testify to matters truthfully and without bias or prejudice.
- Obtain evidence or other documentation, in conducting examinations, to establish a reasonable basis for any opinion rendered. No opinion shall be expressed regarding the guilt or innocence of any person or party.
- Not reveal any confidential information obtained during a professional engagement without proper authorization.
- Reveal all material matters discovered during the course of an examination, which, if omitted, could cause a distortion of the facts.
- Continually strive to increase the competence and effectiveness of professional services performed under their direction.



ACAMS – Standards of Conduct

ACAMS Applicants and Members Pledge To:

- Work to maintain and enhance the integrity of the profession of anti-financial crime professionals.
- Maintain and exhibit the highest standards of business and professional ethics, including compliance with laws and regulations applicable to anti-financial crime professionals.
- Treat fellow applicants, members, ACAMS staff, and others with respect.
- Observe and adhere to all ACAMS policies and procedures applicable to members and applicants.

ACAMS – Standards of Conduct

Actions Leading to Disciplinary Action:

- Conviction of a felony or misdemeanor of moral turpitude.
- Intentionally making false or misleading oral or written statements, in the context of the anti-financial crime profession or ACAMS, about one or more persons or entities, where such statements could potentially cause damage to professional or business reputation to such persons or entities.
- Intentional misrepresentation of ACAMS membership qualifications or credentials to ACAMS or to the public.
- Acts of academic dishonesty in obtaining an ACAMS certificate or certification.
- Intentionally supplying false or misleading information to ACAMS.
- Unauthorized use of ACAMS property.
- Intimidation or harassment of ACAMS applicants, members or staff through threats or other means.
- Such other acts as ACAMS may deem worthy of discipline under existing facts and circumstances.



CFA Institute

CFA Institute – Code of Ethics

- Act with integrity, competence, diligence, and respect and in an ethical manner with the public, clients, prospective clients, employers, employees, colleagues in the investment profession, and other participants in the global capital markets.
- Place the integrity of the investment profession and the interests of clients above personal interests.
- Use reasonable care and exercise independent professional judgment when conducting investment analysis, making investment recommendations, and taking investment actions; act in a professional and ethical manner when engaging in other professional activities.
- Practice and encourage others to practice in a professional and ethical manner that will reflect well on themselves and the profession.
- Promote the integrity and viability of the global capital markets for the ultimate benefit of society.
- Maintain and improve professional competence and strive to maintain and improve the competence of other investment professionals.

CFA Institute – Standards of Professional Conduct

- Professionalism
- Integrity of the Capital Markets
- Duties to Clients
- Duties to Employers
- Investment Analysis, Recommendations, and Actions
- Conflicts of Interest
- Responsibilities as a CFA Institute Member or CFA Candidate



ASA – Principles of Appraisal Practice and Code of Ethics

- Primary Duties and Responsibilities
- Obligations to Clients
- Obligations to Other Appraisers and to the Society
- Unethical and Unprofessional Appraisal Practices

https://www.appraisers.org/docs/default-source/3---governing-documents/asa_code_of_ethics_2020_11_18.pdf?sfvrsn=7dbe7384_11

ASA – Principles of Appraisal Practice and Code of Ethics: Primary Duties and Responsibilities

- Develop and describe the appropriate type of value or estimated cost.
- Develop value conclusions and opinions with whatever degree of accuracy is required for the assignment.
- Avoid giving false conclusions and opinions.
- Pursue education and training to develop the required professional character of the appraisal practice.
- Reports must clearly state all intended users who will rely on the findings and conclusions.

ASA – Principles of Appraisal Practice and Code of Ethics: Obligations to Clients

- Maintain confidentiality.
- Provide competent service.
- When offering testimony, findings must be presented without bias.
- Document appraisal testimony.
- When serving two or more clients with respect to the same asset or legal action, the consent of all the parties must be obtained.
- Begin engagements with a written contract covering objectives and scope of work, time of delivery of report, and the amount of fees.

ASA – Principles of Appraisal Practice and Code of Ethics: Obligations to Other Appraisers and to the Society

- Protect the professional reputations of other appraisers.
- A member of the Society, having knowledge of an act by another member, which, in his/her opinion, is in violation of the ethical principles incorporated in the *Principles of Appraisal Practice and Code of Ethics of the Society*, has the obligation to report the matter in accordance with the procedure specified in the Constitution, Bylaws, and Administrative Rules. It is the appraiser's obligation to cooperate with the Society and its officers in all matters, including investigation, censure, discipline, or dismissal of members who are charged with violation of the *Principles of Appraisal Practice and Code of Ethics of the Society*.

ASA – Principles of Appraisal Practice and Code of Ethics: Unethical and Unprofessional Appraisal Practices

- Contingency fee assignments are unethical if compensation is contingent upon either the value conclusion or outcome of an assignment or an outcome specified by a client.
- Professional fees based on a percentage of value are unethical unless there is a juridical exception.
- Appraisers must disclose any present or contemplated interest in the subject of an appraisal.
- The signature attached to a report is assumed to be of the party responsible for the findings either because the work was done personally by him/her or under his/her supervision.
- It is unethical for an appraiser to act as an advocate for anything or anyone other than his/her own value conclusion, regardless of the circumstance or situation as the appraiser and appraisal will lack credibility.
- If an appraiser makes a preliminary report, a statement must be included to the effect that it is preliminary.
- It is not ethical to advertise the availability of appraisal services or to use any inaccurate, misleading, false or deceptive claim, promise, or representation in connection with any advertisement.
- It is unethical for a member to claim or imply that he/she holds a higher degree of membership than he/she has attained.
- Members shall not base their conclusions on information that might be discriminatory.

ASA – Principles of Appraisal Practice and Code of Ethics: Appraisals with Limited Data or Extraordinary Assumptions

Situations may occur in which data that the appraiser considers pertinent to the making of a valid appraisal are in existence but access to them is denied to the appraiser, either by the client or some other party. The appraiser should decide if he/she should:

1. Place a scope of work restriction paragraph in the appraisal highlighting the fact that he/she was restricted from obtaining certain records that could alter his/her opinion;
2. Determine a possible work-around for the missing documentation;
3. Resign from the assignment.

If the scope of work is so limited that the appraiser cannot reach a credible conclusion, he/she must decline or withdraw from the assignment.

Ethics Topics by Organization

	AICPA	AIRA	TMA	ACFE	ACAMS	CFAI	ASA
Professional Judgment	√			√		√	√
Serve the Public Interest	√					√	
Uphold the Law			√	√	√		
Integrity / Candor / Truthfulness	√	√	√	√	√	√	√
Objectivity and Independence	√	√	√	√			√
Due Care / Competence, Including CPE	√	√	√	√	√	√	√
Client Confidentiality	√	√	√	√			√
Human Rights			√				√
Professional Respect					√	√	√
Contingency Fees			√				√
Disclosure of Financial Interests			√			√	√
Integrity to the Profession			√	√	√	√	√