

**GENERAL INSTRUCTIONS AND INFORMATION FOR FILING AND REPLYING TO  
ETHICS COMPLAINTS**

1. Complaints must be typewritten and submitted with a sufficient number of copies to enable the Association to provide one to each Respondent plus one copy for the Association's records. Any reply must be typewritten and submitted with a sufficient number of copies to enable the Association to provide one to each Complainant plus one copy for the Association's records. Additional copies of the Complaint and Reply should be furnished by the Complainant and Respondent as requested by the Executive Officer. If the Complainant is a member of the public, extra copies of the Complaint should not be requested.
2. Complaints will be referred to the Association Executive Officer and by the Executive Officer to the Chairman of the Grievance Committee. If the Grievance Committee finds the matter to constitute a proper cause of action, it will be referred to the Association Executive Officer to send a "Notice to Respondent (Ethics) and Optional Waiver of Right to Hearing" form to the Respondent. If no response is received to the optional waiver within twenty (20) days, it will be referred to the Association Executive Officer to arrange a hearing:

If not found to constitute a proper cause of action, it will be returned to the Complainant with the decision of the Grievance Committee together with information advising the Complainant of the procedures by which the Grievance Committee's decision may be appealed to the Board of Directors.
3. If there is to be a hearing, Respondent will have fifteen (15) days after service of copy of Complaint to make Reply to it. Copy of Reply will be sent to Complainant, the Association President, and the Professional Standards Committee Chairman. The date for the hearing will be set and all parties will be notified of the date and place of hearing at least twenty-one (21) days in advance.
4. If no Reply is received from Respondent within fifteen (15) days from when the request for response was transmitted, the date, time and place of hearing will be set.
5. All parties may be represented by legal counsel provided that notice of intention to be represented is transmitted in writing to all other parties and to the Hearing Panel at least 15 days prior to the date of the hearing. Failure to provide timely notice may result in a continuance of the hearing.
6. It is the responsibility of each party to arrange for his witnesses to be present at the hearing. All parties appearing at a hearing may be called as a witness without advance notice.
7. Either party may file with the Executive Officer, within ten (10) days from the date the names of the members of the Professional Standards Committee are transmitted to the parties, a written request for disqualification of any potential member of the Hearing Panel for any of the following reasons:
  - (a) Is related by blood or marriage to the Complainant, Respondent or a REALTOR® acting as counsel for either the complainant or respondent.
  - (b) Is an employer, partner, or employee, or in any way associated in business with the Complainant, Respondent or a REALTOR® acting as counsel for either the complainant or respondent.
  - (c) Is a party to the hearing, or a party or a witness in another pending case involving Complainant or Respondent.
  - (d) Knows any reason acceptable to the Hearing Panel or tribunal which may prevent him from rendering an impartial decision.
8. The notice of hearing will contain names of members of the tribunal who will hear the case and should be accompanied by an "Outline of Procedure for Ethics Hearing." Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requester a fair hearing.
9. The parties shall not discuss the case with any member of the Hearing Panel or the Board of Directors at any time prior to announcement of a decision in the case.
10. No hearing will be held in the absence of a complainant. An ethics hearing may proceed in the absence of a respondent.

## APPENDIX X TO PART FOUR

### BEFORE YOU FILE AN ETHICS COMPLAINT

#### Background

Boards and Associations of REALTORS® are responsible for enforcing the REALTORS® Code of Ethics. The Code of Ethics imposes duties above and in addition to those imposed by law or regulation which apply **only** to real estate professionals who choose to become REALTORS®.

Many difficulties between real estate professionals (whether REALTORS® or not) result from misunderstanding, miscommunication, or lack of adequate communication. If you have a problem with a real estate professional, you may want to speak with them or with a principal broker in the firm. Open, constructive discussion often resolves questions or differences, eliminating the need for further action.

If, after discussing matters with your real estate professional or a principal broker in that firm, you are still not satisfied, you may want to contact the local Board or Association of REALTORS®. In addition to processing formal ethics complaints against its REALTOR® members, many Boards and Associations have informal dispute resolving processes (e.g., ombudsmen, mediation, etc.). Often parties are more satisfied with informal dispute resolution processes, as they are quicker, less costly, and often help repair damaged relationships. (Rev 11/15)

If, after taking these steps, you still feel you have a grievance, you may want to consider filing an ethics complaint. You will want to keep in mind that . . .

- Only REALTORS® and REALTOR-ASSOCIATE®S are subject to the Code of Ethics of the National Association of REALTORS®.
- If the real estate professional (or their broker) you are dealing with is not a REALTOR®, your only recourse may be the state real estate licensing authority or the courts.
- Boards and Associations of REALTORS® determine whether the Code of Ethics has been violated, not whether the law or real estate regulations have been broken. Those decisions can only be made by the licensing authorities or the courts.
- Boards and Associations of REALTORS® can discipline REALTORS® for violating the Code of Ethics. Typical forms of discipline include attendance at courses and seminars designed to increase REALTORS®' understanding of the ethical duties or other responsibilities of real estate professionals. Additional examples of authorized discipline are a letter of reprimand and appropriate fines. For serious or repeated violations, a REALTOR®s membership can be suspended or terminated. Boards and Associations of REALTORS® cannot require REALTORS® to pay money to parties filing ethics complaints; cannot award "punitive damages" for violations of the Code of Ethics; and cannot suspend or revoke a real estate professional's license. (Rev 11/15)
- The primary emphasis of discipline for ethical lapses is educational, to create a heightened awareness of and appreciation for the duties the Code imposes. At the same time, more severe forms of discipline, including fines and suspension and termination of membership may be imposed for serious or repeated violations.

#### Filing an Ethics Complaint

The local Board or Association of REALTORS® can provide you with information on the procedures for filing an ethics complaint. Here are some general principles to keep in mind.

- Ethics complaints must be filed with the local Board or Association of REALTORS® within one hundred eighty (180) days from the time a complainant knew (or reasonably should have known) that potentially unethical conduct took place.
- The REALTORS® Code of Ethics consists of seventeen (17) Articles. The duties imposed by many of the Articles are explained and illustrated through accompanying Standards of Practice or case interpretations.

- Your complaint should include a narrative description of the circumstances that lead you to believe the Code of Ethics may have been violated.
- Your complaint must cite one or more of the seventeen (17) Articles of the Code of Ethics which may have been violated. Hearing Panels decide whether the Articles expressly cited in complaints were violated—not whether Standards of Practice or case interpretations were violated.
- The local Board or Association of REALTORS®' Grievance Committee may provide technical assistance in preparing a complaint in proper form and with proper content.

### **Before the Hearing**

- Your complaint will be reviewed by the local Association's Grievance Committee. Their job is to review complaints to determine if the allegations made, if taken as true, might support a violation of the Article(s) cited in the complaint.
- If the Grievance Committee dismisses your complaint, it does not mean they do not believe you. Rather, it means that they do not feel that your allegations would support a Hearing Panel's conclusion that the Article(s) cited in your complaint had been violated. You may want to review your complaint to see if you cited an Article appropriate to your allegations.
- If the Grievance Committee forwards your complaint for hearing, that does not mean they have decided the Code of Ethics has been violated. Rather, it means they feel that if what you allege in your complaint is found to have occurred by the Hearing Panel, that panel may have reason to find that a violation of the Code of Ethics occurred.
- If your complaint is dismissed as not requiring a hearing, you can appeal that dismissal to the Board of Directors of the local Board or Association of REALTORS®.

### **Preparing for the Hearing**

- Familiarize yourself with the hearing procedures that will be followed. In particular you will want to know about challenging potential panel members, your right to counsel, calling witnesses, and the burdens and standards of proof that apply.
- Complainants have the ultimate responsibility ("burden") of proving that the Code of Ethics has been violated. The standard of proof that must be met is "clear, strong and convincing," defined as "... that measure or degree of proof which will produce a firm belief or conviction as to the allegations sought to be established." Consistent with American jurisprudence, respondents are considered innocent unless proven to have violated the Code of Ethics.
- Be sure that your witnesses and counsel will be available on the day of the hearing. Continuances are a privilege—not a right.
- Be sure you have all the documents and other evidence you need to present your case.
- Organize your presentation in advance. Know what you are going to say and be prepared to demonstrate what happened and **how you believe the Code of Ethics was violated.**

### **At the Hearing**

- Appreciate that panel members are unpaid volunteers giving their time as an act of public service. Their objective is to be fair, unbiased, and impartial; to determine, based on the evidence and testimony presented to them, what actually occurred; and then to determine whether the facts as they find them support a finding that the Article(s) charged have been violated.
- Hearing Panels cannot conclude that an Article of the Code has been violated unless that Article(s) is specifically cited in the complaint.
- Keep your presentation concise, factual, and to the point. Your task is to demonstrate what happened (or what should have happened but did not), and how the facts support a violation of the Article(s) charged in the complaint.
- Hearing Panels base their decisions on the evidence and testimony presented during the hearing. If you have information relevant to the issue(s) under consideration, be sure to bring it up during your presentation.

- Recognize that different people can witness the same event and have differing recollections about what they saw. The fact that a respondent or their witness recalls things differently does not mean they are not telling the truth as they recall events. It is up to the Hearing Panel, in the findings of fact that will be part of their decision, to determine what actually happened.
- The Hearing Panel will pay careful attention to what you say and how you say it. An implausible account does not become more believable through repetition or through volume.
- You are involved in an adversarial process that is, to some degree, unavoidably confrontational. Many violations of the Code of Ethics result from misunderstanding or lack of awareness of ethical duties by otherwise well-meaning, responsible real estate professionals. An ethics complaint has potential to be viewed as an attack on a respondent's integrity and professionalism. For the enforcement process to function properly, it is imperative for all parties, witnesses, and panel members to maintain appropriate decorum.

### **After the Hearing**

- When you receive the Hearing Panel's decision, review it carefully.
- Findings of fact are the conclusions of impartial panel members based on their reasoned assessment of all of the evidence and testimony presented during the hearing. Findings of fact are not appealable.
- If you believe the hearing process was seriously flawed to the extent you were denied a full and fair hearing, there are appellate procedures that can be invoked. The fact that a Hearing Panel found no violation is not appealable.
- Refer to the procedures used by the local Board or Association of REALTORS® for detailed information on the bases and time limits for appealing decisions. (Rev 11/14)
- Appeals brought by ethics respondents must be based on
  - (a) a perceived misapplication or misinterpretation of one or more Articles of the Code of Ethics,
  - (b) a procedural deficiency or failure of due process, or
  - (c) the nature or gravity of the discipline proposed by the Hearing Panel.

Appeals brought by ethics complainants are limited to procedural deficiencies or failure of due process that may have prevented a full and fair hearing.

### **Conclusion**

- Many ethics complaints result from misunderstanding or a failure in communication. Before filing an ethics complaint, make reasonable efforts to communicate with your real estate professional or a principal broker in the firm. If these efforts are not fruitful, the local Board or Association of REALTORS® can share options for dispute resolution, including the procedures and forms necessary to file an ethics complaint. (Rev 11/15)