

# **Before You File an Ethics Complaint**

## **Appendix X to Part Four/ *Code of Ethics and Arbitration Manual***

**\*This document should ALWAYS accompany the Ethics Complaint Form (E-1) provided to a potential complainant.**

### **Background**

Boards of REALTORS® are responsible for enforcing the REALTOR® Code of Ethics. The Code of Ethics imposes duties above and in addition to those imposed by the state license law and apply **only** to real estate professional 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 offer informal dispute resolving processes (e.g., ombudsman, meditation, etc.). Often parties are more satisfied informal dispute resolution processes, as they are quicker, less costly, and often help repair damaged relationships.

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®-Associates 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 to the courts.
- Boards 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 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 or 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.
- 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 of REALTORS® or the State Professional Standards Administrator can provide you with information on the procedures for filing an ethics complaint. Here are some general principles to keep in mind.

- Your complaint will be reviewed by the local Board's Grievance Committee whose job it is to review complaints and determine if the allegations made, if taken as true, would 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 will want to review your complaint to be sure you described how the REALTOR® violated the particular Article(s) you cited on the complaint form.
- If the Grievance Committee forwards your complaint for a 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 has 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 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 *and convincing evidence* that the Code of Ethics was violated.
- 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 your 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 witnesses' recalls thing 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 of 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 Boards of REALTORS® for detailed information on the bases and time limits for appealing decision or requesting a rehearing. Rehearings are generally granted only when newly discovered evidence comes to light.
  - (a) which could not have reasonable been discovered and produced at the original hearing and which might have had a bearing on the Hearing Panel's decision.
 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 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.