

IMPORTANT INFORMATION BEFORE FILING AN ETHICS COMPLAINT

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 Association of REALTORS® can give you the procedures and forms necessary to file an ethics complaint.

BACKGROUND

Associations 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 law or regulation. These only apply 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 (managing broker, owner) 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 principal broker in that firm, you are still not satisfied, you may want to contact the local Association of REALTORS®. (You may also want to first try an informal dispute resolution system, such as the Ombudsman Program.)

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® are subject to the Code of Ethics of the National Association of REALTORS®.
- If the real estate professional you are dealing with is not a REALTOR®, your only recourse may be the state real estate licensing authority or the courts.
- Associations of REALTORS® determine whether the Code of Ethics has been violated, not whether the law or real estate regulations have been broken.
- 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. REALTORS® may also be reprimanded, fined or their membership may be suspended or terminated for serious or repeated violations.

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- 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 of ethical lapses is education; to create a heightened awareness of, and appreciation for, the duties imposed by the Code of Ethics. At the same time, more severe forms of discipline, including fines and suspension and termination of membership, may be imposed.

FILING AN ETHICS COMPLAINT

The local 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 within one hundred and eighty (180) days from the time that the alleged offense and facts relating to it could have been known by the complainant in the exercise of reasonable diligence or within one hundred and eighty (180) days after the conclusion of the transaction or event, whichever is later.
- 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 Articles of the Code of Ethics that you feel 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.
- Hearing Panels cannot conclude that an Article of the Code has been violated unless that Article(s) is specifically cited in the complaint.
- The local Association of REALTORS® Grievance Committee may provide technical assistance in preparing a complaint in proper form and with proper content.

BEFORE THE HEARING

- The local Association’s Grievance Committee will review your complaint. Their job is to review complaints to determine if the allegations made, if taken as true on their face, might support a violation of the Article(s) cited in the complaint.

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- 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 your complaint is dismissed, you can appeal that dismissal to the Board of Directors of the local Association of REALTORS®
- If the Grievance Committee forwards your complaint for a hearing that does not mean that 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.

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 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 the 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 and to determine, based on the evidence and testimony presented to them, what actually occurred. The panel will determine whether the facts, as they find them, support a finding that the Article(s) charged have been violated.

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- 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 to come up with a Findings of Fact, which will be part of their decision, and determine what actually happened.
- 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.
- 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 Association of REALTORS® for detailed information on the basis and time limits for appealing decisions.

Appeals brought by ethics Respondents must be based on:

- a perceived misapplication or misinterpretation of one or more Articles of the Code of Ethics,
- a procedural deficiency or failure of due process, or
- 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.

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GENERAL INSTRUCTIONS AND INFORMATION FOR FILING AND REPLYING TO COMPLAINTS

- (1) Complaints will be referred to the Grievance Committee. If the Grievance Committee finds the matter to constitute a proper cause of action, it will be referred back to the Professional Standards Administrator 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.
- (2) If there is to be a hearing, the Respondent will have fifteen (15) days after transmittal of the complaint to submit a reply. A copy of the reply will be sent to the Complainant. The date of 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. All parties and the panel members will receive a copy of the complaint, response, and hearing information.
- (3) If no reply is received from Respondent within fifteen (15) days from transmittal of the complaint, the hearing panel will be advised that no reply was filed.
- (4) Legal counsel may represent any party to a complaint provided that notice of intention of representation is transmitted to all other parties and the Professional Standards Administrator at least fifteen (15) days prior to the hearing. Failure to provide timely notice may result in a continuance.
- (5) It is the responsibility of each party to arrange for their witnesses (if any) to be present at the hearing. A notice of intention to have witnesses present is also required to be transmitted to all parties and the Professional Standards Administrator at least fifteen (15) days prior to the hearing date.
- (6) All parties will be provided a copy of the "Outline of Procedure for an Ethics Hearing".
- (6) The notice of hearing will contain the names of those members serving on the hearing tribunal.
- (7) No hearing will be held in the absence of a Complainant. An ethics hearing may proceed in the absence of a Respondent.

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ETHICS COMPLAINT

To the Grievance Committee of North Shore-Barrington Association of REALTORS®:

Filed: _____

Complainant(s)

Respondent(s)

Complainant(s) Charges(s):

An alleged violation of Article(s) _____ of the Code of Ethics and/or other membership duties as set forth in the Bylaws of the Association in _____ (Article, Section) and alleges that the above charge(s) (is/are) supported by the attached statement, which is signed and dated by the Complainant(s) and which explains when the alleged violation(s) occurred and, if a different date, when the Complainant(s) first knew about the alleged violation(s).

This complaint is true and correct to the best knowledge and belief of the undersigned and is filed within one hundred eighty (180) days after the facts constituting the matter complained of could have been known in the exercise of reasonable diligence or within one hundred eighty (180) days after the conclusion of the transaction, whichever is later.

Date(s) alleged violation(s) took place: _____

Date(s) you became aware of the facts on which the alleged violation(s) (is/are) based: _____.

I (we) declare that to the best of my (our) knowledge and belief, my (our) allegations in this complaint are true.

Are the circumstances giving rise to this ethics complaint involved in civil or criminal litigation or in any proceeding before the State real estate licensing authority or any other State or federal regulatory or administrative agency? _____Yes _____No

You may file an ethics complaint in any jurisdiction where a REALTOR® is a member or MLS participant. Note: the REALTOR® Code of Ethics, Standard of Practice 14-1, in

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relevant part states, "REALTORS® shall not be subject to disciplinary proceeding in more than one Board/Association of REALTORS®...with respect to alleged violations of the Code of Ethics relating to the same transaction or event."

Have you filed, or do you intend to file, a similar or related complaint with another Association(s) of REALTORS®? Yes _____ No _____

If so, name of other Association(s): _____

Date filed: _____

I understand that should the Grievance Committee dismiss this ethics complaint in part or in total, that I have twenty (20) days from my receipt of the dismissal notice to appeal the dismissal to the Board of Directors.

COMPLAINANTS:

Type/Print Name

Type/Print Name

Signature

Signature

Address

Address

Phone

Phone

Email address

Email address

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