



BEFORE FILING 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 offer informal dispute resolving processes for consumers (e.g., ombudsman, mediation, etc.). Often parties are more satisfied with 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 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 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.
- 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.

MEDIATION OF POTENTIALLY UNETHICAL CONDUCT

Historically, we have found that the majority of complaints do not allege violation of specific provisions of the Code of Ethics nor relate specifically to conduct governed by the Code of Ethics but rather they are the result of miscommunication between the parties. Some concerns or questions relate to transactional, real estate practices, technical or procedural matters that could easily be responded to and could potentially be handled with the help of a neutral third party (Ombudsmen).

ROLE OF THE OMBUDSMAN

The Ombudsman's role is primarily one of communication and conciliation, not adjudication. Ombudsmen do not determine whether ethics violations have occurred; rather, they anticipate, identify, and resolve misunderstandings and disagreements before matters ripen into disputes and possible charges of unethical conduct. An Ombudsman is not an adjudicator, and therefore does not make decisions. Like a mediator, an Ombudsman helps parties find solutions.

INVOLVING THE OMBUDSMAN

There is considerable latitude in determining how and when Ombudsmen will be utilized. For example, Ombudsmen can field and respond to a wide variety of inquiries and complaints, including general questions about real estate practice, transaction details, ethical practice, and enforcement issues. Ombudsmen can also receive and respond to questions and complaints about members; can contact members to inform them that a client or customer has raised a question or issue; and can contact members to obtain information necessary to provide an informed response.

In cases where an Ombudsman believes that a failure of communication is the basis for a question or complaint, the Ombudsman can arrange a teleconference meeting of the parties and assist in facilitating a mutually acceptable resolution.

INITIATION OF ETHICS MEDIATION PROCEDURES

The ethics mediation process can be initiated in two ways. First, through filing a written ethics complaint. Second, through a personal, telephone, or written inquiry or complaint generally alleging potentially unethical conduct but which (a) is not filed on the appropriate form or (b) is not specific as to which Article(s) may have been violated.

Where a written ethics complaint in the appropriate form is received by GLVR, it can be initially referred to the Ombudsman who will attempt to resolve the matter, except that complaints alleging violations of the public trust (as defined in Article IV, Section 2 of the NAR Bylaws) may not be referred to an Ombudsman. "Public trust" refers to misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm.

In the event the Ombudsman concludes that a potential violation of the public trust may have occurred, the Ombudsman process shall be immediately terminated, and the parties shall be advised of their right to pursue a formal ethics complaint; to pursue a complaint with any appropriate governmental or regulatory body; to pursue litigation; and/or to pursue any other available remedy.

CONFIDENTIALITY OF WRITTEN OR ORAL COMMUNICATION

All communications made to the Ombudsman or the GLVR whether written or oral, shall be confidential and may not be disclosed (other than communicating information and results between staff and the Ombudsman) to any other person for any reason. The Ombudsman opening statement shall confirm the parties understanding of this prior to discussing the issue.

Statements, memoranda, work product, documents and other materials, otherwise subject to discovery in any legal action, mediation, or arbitration, that was prepared for, or during participation in the Program, shall be absolutely confidential and may not be disclosed to any other person through subpoena, deposition, or other such judicial or quasi-judicial or administrative proceeding.

Nothing contained in these procedures shall be construed to prohibit the parties from jointly agreeing to the disclosure or admissibility of documents or information that is otherwise deemed confidential. Additionally, any party, Realtor® or the company with which they are associated, the Ombudsman, or GLVR, may use confidential information in any adjudicatory proceeding, whether in court, arbitration, administrative and regulatory, including but not limited to any arbitration or ethics hearings administrated by GLVR or any Pennsylvania Real Estate Agency proceeding, in defending of any action or claim brought against them that relates to any of the services, functions, or other events arising during the Program, to the extent necessary to defend themselves.

PARTICIPATION IN ETHICS MEDIATION IS VOLUNTARY

Persons inquiring about the process for filing ethics complaints will be advised that Ombudsman services are available as an alternative to a formal ethics hearing to attempt to informally resolve their complaint provided that all parties agree to participate. Such persons will also be advised that they may decline Ombudsman services and may have their complaint considered by the Grievance Committee, and at a formal ethics hearing when appropriate. Similarly, REALTORS® complained about have the right to decline or withdraw from mediation and to have complaints against them considered at a formal ethics hearing.

RESOLUTION OF COMPLAINTS

If a matter complained of is resolved to the satisfaction of the complainant through the efforts of an Ombudsman, the formal ethics complaint brought initially (if any) will be dismissed by GLVR.

FAILURE TO COMPLY WITH AGREED UPON RESOLUTION

Failure or refusal of a member to resolve or comply with the terms of a mutually agreed on resolution shall entitle the complaining party to resubmit the original complaint or, where a formal complaint in the appropriate form had not been filed, to file an ethics complaint. The time the matter was originally brought to GLVR's attention will be tracked by the board's professional standards administrator and the 180-day filing deadline shall be suspended from the date of the complainant's (or potential complainant's) request for informal dispute resolution service or assistance and shall resume when the informal dispute resolution procedures are concluded or terminated. This information shall be provided to the Grievance Committee for purposes of determining whether an ethics complaint is timely filed.

REFERRALS TO THE GRIEVANCE COMMITTEE OR TO STATE REGULATORY BODIES

Ombudsmen cannot refer concerns they have regarding the conduct of any party utilizing their services to the Grievance Committee, to the Pennsylvania Real Estate Commission or to any other regulatory body. The prohibition is intended to ensure impartiality and avoid the possible appearance of bias. Ombudsmen are, however, authorized to refer concerns that the public trust may have been violated to the Grievance Committee.

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 or within one hundred eighty (180) days after the conclusion of the transaction or event, whichever is later (unless the Board's informal dispute resolution processes are invoked, in which case the filing deadline will momentarily be suspended).

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 Associations 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 Board or 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.

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.