

## **FILING AN ETHICS COMPLAINT**

### **WHO CAN FILE AN ETHICS COMPLAINT AGAINST A REALTOR®?**

The National Associations' *Code of Ethics and Arbitration Manual* provides:

- Any person, whether a member or not, having reason to believe that a member is guilty of any conduct subject to disciplinary action, may file a complaint in writing with the secretary of the Association of REALTORS®, dated and signed by the complainant, stating the facts on which it is based, provided that the complaint 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.

The complaint should contain the detailed facts and dates, but should avoid opinions, recriminations and personalities. Complaints must be typewritten.

If necessary, the association may offer assistance in the way of an association member to advise you about the procedures. This member will not become your advocate, but will advise only on procedure.

### **BASIS FOR FILING AN ETHICS COMPLAINT**

The basis for filing an ethics complaint against a REALTOR® should be an allegation by the complainant that a REALTOR® violated one or more of the Articles of the Code of Ethics of the National Association of REALTORS®. A charge of violating the law or the real estate regulations of the state is not a matter that can be considered by the association of REALTORS®

### **COMPLAINTS REFERRED TO THE GRIEVANCE COMMITTEE**

The Grievance Committee is charged with preliminary evaluation and assessment of whether complaints should be dismissed or scheduled for hearing.

The Grievance Committee does not hold hearings or make decisions regarding ethical violations. Rather, the Grievance Committee conducts a review of the complaint and makes such investigation as deemed necessary to determine whether the complaint could be construed as a Code violation if the complaint is taken as true on its face. If so, the Grievance Committee will refer it to the Professional Standards Committee for hearing.

### **APPEAL TO THE BOARD OF DIRECTORS**

Dismissal of a complaint by the Grievance Committee may be appealed to the Board of Directors within a time-frame specified by the association's bylaws.

Only materials considered by the Grievance Committee can be reviewed by the Directors with the appeal. The parties do not have the right to appear before the Board of Directors. The Directors may affirm the Grievance Committee's dismissal or may refer the matter for hearing.

### **GRIEVANCE COMMITTEE MAY AMEND A COMPLAINT**

The Grievance Committee may conclude that one or more of the cited Article(s) are improperly included in a complaint and delete such Article(s). If it feels an Article should be added to a complaint, it may do so if the complainant agrees.

If a complaint is referred by the Grievance Committee for hearing, the secretary notifies the respondent of the complaint, using appropriate forms and instructions, and oversees the procedures.

### **DUE PROCESS AND RIGHTS OF BOTH PARTIES**

A complainant may be frustrated by what appears to be unnecessary delay. However, the association must ensure due process.

At the hearing, each party will have the opportunity to present its testimony, bring witnesses and evidence, question the other parties and witnesses, have an attorney present, and may be questioned by the other party and members of the panel.

It is important to understand that the association does not process legal complaints, nor does it award damages or cancel a real estate license.

Also, if the complaint is involved in civil or criminal litigation or in a proceeding before the state real estate licensing authority or any other state or federal regulatory or administrative agency, the association may not be able to take action until these proceedings have been resolved. These will be given to Association Legal Counsel for review and guidance.

After the hearing, the parties will be notified in writing of the decision of the panel.

### **REHEARINGS AND APPEALS**

After an ethics hearing is concluded, the complainant or respondent can petition for a rehearing solely on the basis of new evidence that could not have been discovered and produced at the original hearing in the exercise of reasonable diligence.

The complainant also has a right of appeal limited solely to alleged failures of due process. The respondent has a wider basis for appeal, including misapplication or misinterpretation of an Article(s), appropriateness of the recommended sanction, failure of due process, or other valid bases.

### **DECISION OF BOARD OF DIRECTORS IS FINAL**

The Directors may adopt or modify the recommendation of the hearing panel, including the discipline proposed. The Directors may reduce the recommended discipline or refer the matter back to the panel for reconsideration. The Directors may dismiss the recommendation of the hearing panel if they feel it is not supported by the panel's finding of fact.

The decision of the Board of Directors is final, and there is no appeal to the state association or to the National Association of REALTORS®.

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