

KNOXVILLE AREA ASSOCIATION OF REALTORS®

PROFESSIONAL STANDARDS PROCEDURES

Background

The Knoxville Area Associations of Realtors® (“The Association”) is 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 Realtor® members of The Association.

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 Professional Standards Secretary of The Association.

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® 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.
- The Association will 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.
- The Association 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 can be suspended or terminated for serious or repeated violations. The Association cannot require Realtors® to pay money to parties filing ethics complaints; can-not 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 Association 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 Association 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 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 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 Association's 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 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 Association.

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 or requesting a rehearing. Rehearings are generally granted only when newly discovered evidence comes to light
 - (a) which could not reasonably have been discovered and produced at the original hearing and
 - (b) 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 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 Association can give you the procedures and forms necessary to file an ethics complaint.

KNOXVILLE AREA ASSOCIATION OF REALTORS® PROFESSIONAL STANDARDS PROCEDURES

FILING AN ETHICS COMPLAINT

Who can file an Ethics Complaint ?

- A REALTOR® Members
- A Member of the Public

Preparing an Ethics Complaint

- Ethics Complaints must be filed on an Official Complaint Form, complete with all required information
- The correct Respondent(s) must be named
- The correct facts must be stated (leave out “emotion”)
- Attach a detailed explanation of the complaint in date order sequence
- Collect and arrange evidence to support the complaint
- Attach all the exhibits to be viewed by the Respondent
- Additional exhibits may be presented to the Panel at the Hearing
- Arrange everything in logical order

Preparing a Response to an Ethics Complaint

- A Response to an Ethics Complaint must be filed on an Official Response Form, complete with all required information
- Keep the response to the facts alleged in the complaint (leave out “emotion”)
- Follow the Complaint’s allegations
- Attach a detailed explanation of the response to the complaint’s allegation in date order sequence
- Collect and arrange evidence to support the response
- Attach all the exhibits to be viewed by the Complainant
- Additional exhibits and evidence may be presented to the Panel at the Hearing
- Arrange everything in logical order

Review of the Ethics Complaint by the Association

- The Professional Standards Secretary will review the Complaint to determine if
 - the Complaint is complete
 - the correct parties are named
 - the Respondent is a REALTOR® member or was at the time of the alleged offense
 - the time limit has expired (180 Day Rule)
 - the format is proper
 - Ethics Articles are listed
 - the Complaint should be forwarded to the Respondent for a reply
 - litigation or TREC action is pending related to the same transaction
- The Professional Standards Secretary will forward the Complaint to the Grievance Committee upon receipt of the Respondent’s Reply and forward a copy of the Respondent’s Reply to the Complainant

Review of the Ethics Complaint by the Grievance Committee

- The Grievance Chairman will review the Complaint to determine
 - which Committee Members should not participate because of Conflicts of Interests;
 - if a Committee Member should be designated to contact the Complainant if procedural assistance is needed;
 - if all the necessary parties are named
- The Grievance Committee will review the Complaint to determine if the facts stated in the Complaint
 - relate to the Code Articles listed
 - appear to indicate a possible violation of the Code of Ethics
 - warrant a Professional Standards Hearing
 - warrant a dismissal
- The Professional Standards Secretary will forward the actions of the Grievance Committee to the parties involved

The Knoxville Area Association of REALTORS®
609 Weisgarber Road, Knoxville, Tennessee 37919

Ethics Complaint

To the Grievance Committee

A. Complainant (Person filing complaint)

1. Name _____
(Last) (First) (Middle)

2. Residence _____
(Street / Apt.No. / Suite No.) (City / Zip Code)

3. Business Address _____
(Street / Suite No.) (City / Zip Code)

4. Business Phone # _____ 5. Home Phone # _____ 6. Fax Phone # _____

B. Respondent(s) [Party or Parties Complained Against]

1. Name of Respondent(s)
a. _____
(Last) (First) (Middle)
b. _____
(Last) (First) (Middle)
c. _____
(Last) (First) (Middle)

2. Business Address of Respondents
a. _____
(Firm Name) (Address / Zip)
b. _____
(Firm Name) (Address / Zip)

C. Complaint Charges: An alleged Violation of Article(s) _____
of the Code of Ethics or other membership duty as set forth in the By-Laws of the Association in Article(s) _____
Section(s)_____, and alleges that the above charges are supported by the attached typewritten statement,
which is signed and dated by the complainant(s). [State chronological order of events as they happened, action
desired by the Association, include all pertinent documents, contracts, etc.]

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.

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 Tennessee Real Estate Commission or any other State or Federal regulatory or
administrative agency? _____Yes _____No

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.

Filed _____ Signed _____
(Month & Day & Year) (Complainant)

KNOXVILLE AREA ASSOCIATION OF REALTORS®

PROFESSIONAL STANDARDS PROCEDURES

The Ethics Hearing Process

The Pre-Hearing

- The Professional Standards Secretary and the Association Executive make the pre-hearing preparation and
 - select the hearing panel
 - arrange a Hearing Date and Time with the Hearing Panel Chairman
 - give proper Notices to all parties involved
 - prepare copies of documents for all parties involved

The Hearing

- The Association Executive will
 - make the proper room arrangements
 - operate the recording equipment
 - be present to ensure the procedural conduct of the Hearing
 - make certain the Chairman and Panel are prepared
- The Hearing Panel and Chairman will meet immediately prior to the Hearing to
 - review the Professional Standards Rules and Procedures
 - sign the "Qualification Form"
 - assure that there are no potential conflicts that would prevent an "impartial panel"
 - review the documents and materials provided
- The Parties are responsible to
 - be on time
 - be prepared
 - know the process and procedures
 - review all documents
 - bring prepared witnesses
 - bring counsel of choice
 - show respect for the Hearing Panel
 - be responsible for your conduct and the conduct of your counsel and witnesses
 - bring any additional evidence and exhibits
 - know the elements of your case
 - read the applicable Articles and Standards of Practice
 - plan question in advance with a particular objective in mind
 - be formal, precise and respectful
- The Association is responsible for Due Process in all Professional Standards Hearings and must ensure that:
 - the proper procedure are followed as per the Code of Ethics and Arbitration Manual
 - proper notification has been given to all Parties
 - all Parties know the nature of the matter to be heard
 - Respondents have been provided an opportunity to prepare a defense
 - all Parties have been informed of their right to call witnesses
 - all Parties have been given an opportunity to have witnesses
 - all Parties have the opportunity to present evidence
 - all Parties have the opportunity to cross examine the other Parties' witnesses
 - all Parties have been informed of their right to have counsel (Legal or a fellow Realtor®)
 - all Parties have been provided an impartial Hearing Panel
 - the proceedings are electronically recorded
- The Panel Chairman will
 - call the Hearing to Order and Read the Official Opening Statement
 - allow each party to present his case

- be the keeper of the exhibits
- rule on the admissibility of evidence
- The Complainant will
 - state his case
 - call his witnesses
 - present his evidence and exhibits
 - be cross examined by the Respondent and Hearing Panel
 - be provided an opportunity to make a closing statement
- The Respondent will
 - state his case
 - call his witnesses
 - present his evidence and exhibits
 - be cross examined by the Respondent and Hearing Panel
 - be provided an opportunity to make a closing statement
- The Hearing Panel will, after hearing the presentations of both the Complainant and Respondent
 - adjourn to an executive session to reach their findings of fact and make a decision using "clear, strong and convincing" as the standard of proof
 - upon reaching their findings of fact, declare in a decision, if a violation has occurred
 - if a violation has occurred, set any disciplines from the following approved sanctions:
 1. Letter of Warning
 2. Letter of Reprimand
 3. Educational Course Work
 4. Fine
 5. Probation
 6. Suspension
 7. Expulsion
 8. Suspension or termination of MLS rights
- The Association will
 - give notice of the hearing Panel's decision to all parties
 - provide a process for an appeal of the decision
 - provide a process to "reconsider the hearing"
 - forward requests for reconsiderations and appeals to the Board of Directors
 - assist the Board of Directors in conducting requests for reconsideration and appeals
 - file any Declaratory Judgements
 - give final notice to all parties