

## **Before You 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, and these duties apply only to real estate professionals who choose to become REALTORS®<sup>1</sup>.

While REALTORS® are encouraged to follow the principles of the Code of Ethics in all of their activities, a REALTOR® may be subject to disciplinary action under the Code of Ethics only with respect to real estate-related activities and transactions involving the REALTOR®.

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 him/her 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 the real estate professional or a principal broker in that firm, you are still not satisfied, you may want to contact the local association of REALTORS®. Many associations have informal dispute resolution processes available to consumers (e.g. ombudsmen, mediation, etc.)

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 you are dealing with is not a REALTOR®, your only recourse may be the state real state 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. Those decisions can only be made by the licensing authorities or the courts.
- Associations of REALTORS® can discipline a REALTOR® for violating the Code of Ethics. Typical forms of discipline include attendance at courses and seminars designed to increase the REALTOR'S® understanding of ethical duties or other responsibilities of real estate professionals. A REALTOR® may also be reprimanded or fined, or his/her membership can be suspended or terminated for serious or repeated violations. Associations of REALTORS® cannot require a REALTOR® to pay money to a party filing an ethics complaint; award “punitive

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<sup>1</sup> The term REALTOR® is a registered trademark of the National Association of REALTORS®. Only real estate professionals who join the National Association of REALTORS® and who subscribe to a strict Code of Ethics may call themselves REALTORS®. Not all licensed real estate agents are REALTORS®.

damages” for violations of the Code of Ethics; or suspend or revoke a real estate professional’s license.

- The primary emphasis on 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 or termination of membership, may be imposed for serious or repeated violations.

## **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 with the local association of REALTORS® within one hundred eighty (180) days from the time you knew (or reasonably should have known) that potentially unethical conduct took place (unless the Association’s informal dispute resolution processes are invoked, in which case the filing deadline will temporarily be suspended).
- The REALTOR® 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 may have been violated. Hearing panels decide whether the Articles cited in complaints were violated - not whether Standards of Practice or case interpretations were violated.
- The local association of REALTOR’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 local 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 don’t 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 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 occurred.
- If your complaint is dismissed as not requiring a hearing, you can appeal that dismissal to the board of directors of the local association of REALTORS®.

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Selkirk 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.
- You 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, a respondent is considered innocent until proven to have violated the Code of Ethics.
- Be sure that your witnesses and counsel will be available on the day of the hearing. A continuance is 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 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 didn’t), 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 a witness recalls things differently doesn’t mean they aren’t telling the truth. 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 doesn’t 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 the potential to be viewed as an

attack on a respondent's integrity and professionalism. For the enforcement process to function properly, it is imperative that all parties, witnesses, and panel members 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 appeal procedures. The fact that a hearing panel found no violation is not appealable, however.
- Refer to the procedures used by the local 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 failures 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 association of REALTORS® can give you the procedures and forms necessary to file an ethics complaint.