

ETHICS COMPLAINTS

Background

The National Association of REALTORS® adopted its Code of Ethics in 1913, imposing duties above and in addition to those imposed by law and regulation. Not all real estate agents are REALTORS®; only those agents who belong to their local Association of REALTORS® may claim this designation. With the REALTORS® designation comes the obligation to abide by the professional behavior to clients, customers, other members of the public and fellow real estate professionals as detailed in the Code of Ethics. It is because of this obligation to the Code of Ethic that you may file a complaint with the Association. To determine whether an agent is a REALTORS®, please call the Association for verification (530-529-0430).

Many difficulties between real estate professionals may result from misunderstandings or miscommunications. Therefore, before filing a complaint, it is recommended that you speak with your real estate professional and/or with the principal broker of the firm prior to filing a complaint. Differences may often be resolved by such communication.

Associations of REALTORS® only determine whether the Code of Ethics or association membership duties have been violated, not whether the law or real estate regulations have been broken. When broken laws or regulations are suspected or when the real estate professional is not a REALTORS®, you may need to contact the California Department of Real Estate (916-227-0864) or the courts. And if litigation is being pursued by the complainant, the Association will usually not proceed with the ethics complaint until the litigation has concluded.

For violations of the Code of Ethics, the association may discipline its REALTORS® members. Such discipline may involve letters of warning or reprimand, require appropriate education relevant to the violation, impose fines and/or suspend or terminate association membership for serious or repeated violations. The Association may not require REALTORS® to pay the complainant(s) monetary damages or punitive damages or revoke a real estate license.

Filing an Ethics Complaint

To file a complaint you must:

- Complete, sign and date the Ethics Complaint Form. (Ethics complaints must be filed with the Association within 180 days of the time the complainant knew—or reasonably should have known—that potentially unethical conduct took place).
- List the Article(s) of the Code of Ethics believed violated. The articles are illustrated through Standards of Practice, but the Standard of Practice may only be used as support for the Article(s) being charged. The Article number(s) must be cited.

- Include a narrative description of the circumstances and facts surrounding the complaint, being as specific as possible.
- Attach copies of all relevant documents such as listing and sales contracts, letters etc. Labeling these as Exhibit 1, 2, 3, etc.
- **Make 4 copies** of the complaint package and forward it to the Professional Standard Coordinator of the Association which has jurisdiction over the complainant.

Before a Hearing

Your complaint will be referred to the Association's Grievance Committee. This committee is similar to a Grand Jury. It does not determine innocence or guilt. The committee's job is to review ethics complaints to determine if the allegations made and taken as true, might support a violation of the Article(s) cited in the complaint. The Committee may; 1) refer the complaint to a Professional Standards disciplinary hearing, 2) dismiss the complaint 3) amend the complaint by deleting or adding Article(s) of the Code of Ethics or 4) postpone its decision to await more information from the complainant.

In the event the Grievance Committee dismisses the entire complaint or deletes Article(s), the complainant may request that the Directors review the Committee's decision. The Directors may either uphold or overturn the Grievance Committee's decision. The Complainant does not have the right to be present at the Directors' review. There is no other type of review of the Grievance Committee's decision.

If the complaint is referred to a disciplinary hearing, the Respondent(s) will be mailed a copy of the complaint. A response is due within fifteen (15) days of the date of which the complaint is mailed. Complainant(s) will be mailed a copy of the response. Complainant(s) and Respondent(s) are given a list of potential panelists and may challenge the qualifications of any potential member for cause.

Panel members may be excused for any of the following reasons: a) is related by blood or marriage to either Complainant(s) or Respondent(s); b) is an employer, partner, employee or in any way associated in business with either party; c) is a party; or d) knows of any reason which may prevent them from rendering an impartial decision.

Complainant(s) and Respondent(s) will be notified in writing at least twenty-one (21) days in advance of the time, date and place of the hearing. Once a hearing date is set, it will not be rescheduled unless the complainant or the respondent (parties to the disciplinary hearing) requesting a new date files a written request for a continuance and can demonstrate good cause for granting the continuance. The fee for the request for continuance of a hearing is \$75 and the fee for a second continuance to the same party will be \$200.

The Hearing

It is the ultimate responsibility of the complainant to provide “clear, strong and convincing” proof of a violation of the Code of Ethics in a hearing. Be sure that you have all the documents and other evidence that you need to present your case. Organize your presentation in advance and be prepared to demonstrate what happened (or didn’t happen but should have happened) as it relates to how you believe the Article(s) of the Code of Ethics were violated. And appreciate that panel members are trained, unpaid volunteers with active real estate careers giving their time to determine in a fair, unbiased and impartial manner whether the evidence and testimony presented support a finding of violation. They, as well as the parties involved, are sworn to confidentiality regarding the facts surrounding this complaint and hearing.

At the Hearing:

- Either party may be represented by legal counsel, providing that written notice of intention to do so, including name, address and telephone number of the attorney, is transmitted to the Tehama County of Association of REALTORS® not less than fifteen (15) calendar days prior to the date of the hearing.
- Each party shall arrange to make available sufficient numbers of all evidence and exhibits prior to the hearing for distribution.
- Each party shall arrange for his/her witnesses to be present at the time and place designated for the hearing.
- The hearing will be conducted in the English language. Interpreters are allowed to assist any party or witness at the hearing. Arrangements for having an interpreter is the responsibility of the party requiring such services and the cost for the same shall be paid by that party. Notification of interpreter presence shall be transmitted to the association no less than 15 (calendar) days prior to the hearing date.
- In accordance with the Professional Standards rules and procedures for disciplinary hearing matters, a Hearing Officer will conduct the hearing proceedings. In addition to presiding at the hearing, the presiding officer will rule on the admission and exclusion of evidence and questions of hearing procedures.
- The complaint will be read into the record.
- The testimony of all parties and witnesses will be sworn or affirmed. All witnesses will be excused from the hearing except while testifying.
- Each party or the party’s attorney shall be given the opportunity of making an opening statement.
- The parties will be given an opportunity to present evidence and testimony on their behalf and they may call witnesses.

- The parties and their counsel will be afforded an opportunity to examine and cross-examine all witnesses and parties.
- Members of the hearing panel may ask questions at any time during the proceedings.
- The Hearing Officer may exclude any questions ruled to be irrelevant or argumentative.
- Each side may make a closing statement. The complainant will make the first closing statement and the respondent will make the final closing statement.
- The Hearing Panel will go into executive session to decide the case.
- The hearing will be audio taped and copies will be available at the cost of \$50 per tape to any of the parties and/or the appellant who appeal the findings and discipline recommended by the Hearing Panel

After the Hearing

- You will receive a “Recommendations of Hearing Panel” and “Findings of Facts”, the conclusions of the panel members based on the evidence and testimony presented during the hearing. Findings of fact may not be appealed.
- If you feel that the hearing process did not afford you a full and fair hearing, there are appellate procedures available. The finding of no violation is not a basis for appeal.
- The Association will send you information regarding the bases and time limits for appealing decisions or requesting a rehearing.
- A Petition for a rehearing must be based solely on newly discovered evidence that a party could not, with reasonable diligence, have discovered or presented at the time of the hearing.
- Requests for review brought by ethics respondents must be based on (1) misapplication or misinterpretation of one or more Articles of the Code of Ethics or membership duties (2) procedural deficiency or failure to due process and (3) unwarranted discipline by the hearing panel. Ethics complainants may only appeal based on procedural deficiencies or failure of due process.

Role of Association Staff

The Association’s paid professional staff is not licensed REALTORS® or lawyers. The professional standards Coordinator is responsible for ensuring that the Professional Standards process of paperwork administration, notifications, correspondence, and maintenance of the confidential case files are done in a timely and efficient manner according to the policies and procedures set forth in the California and National Association of

REALTORS® Professional Standards manual. The staff is not allowed to dispense legal advice or counsel to you on your case.

The entire ethics process usually takes a minimum of 3 months but may take longer. It is the ultimate duty of staff to ensure due process to all parties. You can assist staff by making sure that additional requests for information and any pertinent deadlines in the process are responded to in a timely manner.