

NAR Code of Ethics  
and Arbitration  
Manual as adapted  
by Minnesota  
Realtors®

2025





# Code of Ethics and Arbitration Manual

A Manual for use by Minnesota Realtors®, a Member Board of the National Association of REALTORS®, to ensure due process in the conduct of hearings to enforce the Code of Ethics and in the arbitration of business disputes arising out of the real estate business. This manual reflects substantively the approved due process policies and procedures of the National Association of REALTORS® Code of Ethics and Arbitration Manual and includes adapted provisions to conform to local policy and comply with state law.

For ease of reference, all amended provisions where content has changed in this revision are shaded to highlight additions.

NOTE: All new and amended Case Interpretations become effective upon approval by the National Association's Professional Standards Committee and publication on [www.nar.realtor](http://www.nar.realtor). Case Interpretations approved by the Professional Standards Committee through 2024 are expected to be published on [www.nar.realtor](http://www.nar.realtor) no later than January 2025.

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**Statements of Professional Standards Policy**

*(Complete listing available online at [WWW.NAR.REALTOR](http://WWW.NAR.REALTOR))*

**Professional Standards**

**Training Guide**

*(Available online at [WWW.NAR.REALTOR](http://WWW.NAR.REALTOR))*

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# *The REALTOR®'s Code of Ethics*

## **A Gift of Vision**

(The following article by William D. North, former Executive Vice President and General Counsel, first appeared in the August 1978 edition of *The Executive Officer*.)

The Code of Ethics of the National Association of REALTORS® represents one of those rare creations of man- a living document; a document which somehow preserves its significance, relevance and usefulness despite the passing of years and the changing of the times.

The Code is an unusual Gift of Vision: the vision of those who dreamed that the business of real estate could become a profession, the vision of those who believed that the search for the highest and best use of the land required the highest and best measures of professional responsibility, and the vision of those who recognized private ownership of the land as indispensable to political democracy and a free and prosperous citizenry.

It is this Gift of Vision which has enabled the Code to survive half a century of unprecedented social, political, economic, and legal change substantially unchanged.

The creators and keepers of the Code have realized that to remain relevant and useful, the Code must be a great deal more than simply a set of rules for the conduct of real estate transactions. To endure, the Code must be a criterion of excellence while at the same time constituting a realistic standard of performance. It must be a guide to measure professional conduct, while at the same time representing the furthest reach of professional aspiration. The Code must remain constant without becoming absolute, must be enforceable without being oppressive, and must be meaningful without being dogmatic.

The Code of Ethics has been able to meet all these needs and reconcile all these objectives for one reason only - the vision of its creators in adopting as the unifying rationale of the Code the Concept of Service to the Public.

Every Article of the Code is premised on this single concept. This single concept provides the philosophical basis by which each Article must be interpreted and applied. This single concept, by which the various Articles of the Code are rationalized, is the reason the Code has been and is a "living document." "Service to the Public" is the "end" and the Code is the "means" to that end.

## **Origins of the Code**

In today's world, preoccupied as it is with social responsibility and oriented as it is to consumer concerns, it is hard to visualize how truly revolutionary the Code of Ethics was when it was adopted in 1913.

The history of the real estate business for the preceding 150 years was a history of rampant land speculation, exploitation, and disorder. It was an era before the adoption of state regulatory licensing systems. It was a time when real estate agents, if they were licensed at all, were licensed as "peddlers".

It was the era of the fraudulent subdivision, the fake city addition, the multiple "first" mortgage, the "net" listing, and a myriad of other "get rich quick" schemes involving the sale of land. It was the era of "caveat emptor" and the Robber Barons whose motto was not "Let the Public Be Served" but rather "Let the Public Be Damned."

This was the era which produced the Code of Ethics of the National Association. With the exception of a now defunct association of printers, the Realtors® were the first business group outside the "learned professions of medicine, engineering, and law" to adopt a Code of Ethics. It was an uncommon event with uncommon men and women making an uncommon commitment to business integrity and fair dealing.

It was not a commitment coerced by threat of government sanction but a commitment predicated on a need perceived by Realtors® themselves. It was not a commitment mandated by the marketplace because it involved the voluntary acceptance of liabilities and

responsibilities, duties and costs, limitations and obligations, which the public did not even perceive as their due. It was, in sum, a commitment to the concept of service to the public as an article of faith in professionalism.

## **Significance of the Code**

The significance of the Code rests not merely in the guidance it provides those who subscribe to it, but also in the guidance it has provided the National Association in its growth and development. From the very beginning, the Code has provided the impetus for Association involvement in education of Realtors® to support [the Preamble] and [Article] 11; in the protection of private property ownership to support [the Preamble]; in the creation and administration of multiple listing and other cooperative arrangements to support Articles [5] and [3]; in the arbitration of disputes to support Article [17]; in the protection of the consumer to support Articles [1] and [2].

The Code has been significant not merely in its impact on the focus of Association programs and activities, but also in its impact on Association organization and structure. Thus, the local Board of Realtors® is an indispensable constituent of the Realtor® family in large measure because it represents an effective forum for the enforcement of the Code. From this function, too, proceeds the need for Board jurisdictions and the structure of the State Association. Perhaps, more than anything else, the Code has provided the interdependent relationship which binds the National Association, its Member Boards, State Associations, and Institutes, Societies, and Councils into a single working constituency.

## **The Code and the Law**

The Code of Ethics is never opposed to the law. The Code, in its application or implementation, must always be construed harmoniously and consistently with the law.

But the Code is not the law. It is supported not by the coercive power of the state but rather by the principles of contract. Acceptance of Realtor® membership creates a form of “professional compact,” the terms of which the Code defines. No matter how similar the mandates of the Code may be to the dictates of the license laws and other legislation, the difference between them is fundamental and unavoidable.

The relation of the Code to the law is two-fold. First, the Code defines those duties and obligations required in the public interest which are beyond the capacity or power of the law to mandate, and second, the Code supports the law by requiring a higher sensitivity to the duties and obligations which it imposes.

In the performance of its first role, the Code is concerned with identifying the extensions of professionalism to serve the public’s evolving needs. In the performance of its other role, the Code is concerned with the refinement and specific application of legal principles to real estate transactions.

When the Code was first adopted, there were no statutory definitions of the professional responsibilities necessary to protect and serve the public. That such definitions exist today in state license laws is in large measure the result of the Code. Thus, as government came to recognize that the professional duties and obligations assumed by REALTORS® voluntarily under the Code truly served the public interest, it then conditioned licensure on the licensee’s acceptance to protect the whole public and not merely those served by Realtors®.

While the task of identifying the extensions of professionalism continues, certainly in recent years, with the general licensure of the profession, the role of the Code is sensitizing Realtors® to the full implications and applications of their legal obligations has become increasingly important. It is this role which has involved the Code so intimately with such legal doctrines as implied warranty, agency and fiduciary duty and equal opportunity. Because the Code is a living document and real estate is a dynamic business and profession, the law need never be its substitute. So long as the aspiration to better serve the public remains the underlying concept of the Code it must evolve and grow in significance and importance consonant with but independent of the law.

## **The Code and Its Use**

There is no idea which cannot be misapplied; no faith which cannot be exploited; no concept which cannot be abused; and no principle which cannot be perverted. For this reason, the integrity of the Code and the value of its vision of the real estate industry depends ultimately upon its use.

If it is applied inconsistently, it becomes arbitrary and hence oppressive. If it is applied without understanding, it becomes unreasonable and hence dogmatic. If it is used in ignorance, it becomes meaningless; if it is used inappropriately, it becomes irrelevant; and if it is used without moderation, it becomes irrational.

No Code of Ethics can long survive its misuse or misapplication. This is why the Realtors® Code of Ethics must be applied with continuing and conscientious concern for procedural due process. Procedural due process is both an explicit and implied requirement of the Code. It is required explicitly by Article [14], which requires a “proper tribunal” and implicitly by the Preamble’s reliance on the Golden Rule. The due process requirement, after all, requires nothing more than a fair and diligent search for the truth – with an opportunity for all facts to be gathered; all views to be heard; all defenses to be raised and all prejudice or bias to be expunged. But while due process requires nothing more than a fair and diligent search for the truth, so the Code may be properly applied, due process permits “nothing less.” There is no acceptable level of unfairness, no permissible slight of the search.

## **Conclusion**

In its Code of Ethics the family of Realtors® has been offered a farsighted vision of the profession as it could be and should be. This vision, however, must not be blurred by myopic applications of the Code for shortsighted gains at the expense of farsighted objectives. A Realtor® who serves the public serves themselves by guaranteeing their future.

But neither must this vision, however clear, obscure the fact that the goals of the Code must be reached step by step, following the path of due process rather than the line of least resistance.

To Realtors®, the Code of Ethics offers the lessons of hindsight, the guidance of foresight, and the understanding of insight – A Rare Gift of Vision.

# Pathways to Professionalism

The Code of Ethics and Standards of Practice of the National Association of REALTORS® establishes objective, enforceable ethical standards governing the professional conduct of REALTORS®. This list of suggested professional courtesies is meant to compliment the Code of Ethics, may not be all-inclusive, and may be supplemented by local custom and practice.

These Professional courtesies are intended to be used by Realtors® on a voluntary basis and cannot form the basis for a professional standards complaint.

## Respect for the Public

1. Follow the "Golden Rule": Do unto others as you would have them do unto you.
2. Respond promptly to inquiries and requests for information.
3. Schedule appointments and showings as far in advance as possible.
4. Communicate promptly if you are delayed or must cancel an appointment or showing. If a prospective buyer decides not to view an occupied home, promptly communicate the situation to the listing broker or the occupant.
5. When entering a property ensure that unexpected situations, such as pets, are handled appropriately.
6. Never criticize property in the presence of the occupant.
7. When showing an occupied home, always ring the doorbell or knock -- and announce yourself loudly before entering. Knock and announce yourself loudly before entering any closed rooms.
8. Present a professional appearance.
9. If occupants are home during showings, ask their permission before using the bathroom.
10. Encourage the clients of other brokers to direct questions to their agent or representative.
11. Communicate clearly; ensure specialized language and real estate terminology is understood.
12. Be aware of and respect cultural differences. Show courtesy and respect to everyone.
13. Be aware of -- and meet -- all deadlines.
14. Promise only what you can deliver -- and keep your promises.
15. Do not tell people what you think -- tell them what you know.

## Respect for Property

1. When showing a property, be responsible for your clients/customers and keep the group together.
2. Make reasonable and timely accommodations to provide access to listed properties.
3. Make reasonable and timely requests to access listed properties.
4. Leave the property as you found it (lights, heating, cooling, drapes, etc.). If you think something is amiss (e.g., vandalism) contact the listing broker immediately.
5. Be considerate of the seller's property. Do not allow anyone to eat, drink, smoke, dispose of trash, use bathing or sleeping facilities, or bring pets. When instructed or appropriate, remove footwear when entering property.
6. Obtain permission from appropriate parties (e.g., listing broker) before photographing, videographing, or streaming the interiors or exteriors of properties, or allowing others to do so.

## Respect for Peers

1. Respond to other real estate professionals' communications promptly and courteously.
2. Contact the listing broker if there appears to be a discrepancy in the listing information.
3. Inform anyone accessing the property about important information, (e.g., pets, security systems, video and audio recording equipment).
4. Inform if sellers or listing agent will be present during the showing.
5. Show courtesy, trust, and respect to other real estate professionals.
6. Avoid the inappropriate use of endearments or other denigrating language.
7. Do not prospect at other REALTORS®' open houses or similar events.
8. Secure property and lockbox and/or return keys promptly.
9. Real estate is a reputation business. What you do today may affect your reputation -- and business -- for years to come.

# Preface

## The Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®

The NATIONAL ASSOCIATION OF REALTORS® was formed in 1908 and was called The National Association of Real Estate Exchanges. The Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS® was first adopted on July 29, 1913, at the sixth Annual Convention of the National Association of Real Estate Exchanges (Association's name changed in 1916 to National Association of Real Estate Boards and again in 1974 to NATIONAL ASSOCIATION OF REALTORS®). The Code was first adopted as "Rules of Conduct" to be recommended to real estate boards for voluntary adoption. Compliance with the Code was made a condition of membership in the National Association in 1924 and has remained so to date.

The *Bylaws* of the National Association, Article IV, Code of Ethics and Member Board Business Practices, state:

**Section 1.** *Each Member Board shall adopt the Code of Ethics of the National Association as a part of its governing regulations for violation of which disciplinary action may be taken.*

*Adoption of the Code of Ethics includes responsibility for providing applicant/new member Code of Ethics orientation and ongoing member ethics training that satisfies the learning objectives and minimum criteria established by the National Association from time to time.*

**Section 2.** *Any Member Board which shall neglect or refuse to maintain and enforce the Code of Ethics with respect to the business activities of its members may, after due notice and opportunity for hearing, be expelled by the Board of Directors from membership in the National Association. Enforcement of the Code of Ethics also requires Member Boards to share with the state real estate licensing authority final ethics decisions holding REALTORS® in violation of the Code of Ethics in instances involving real estate related activities and transactions where there is reason to believe the public trust may have been violated. The "public trust", as used in this context, refers to demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud. Enforcement of the Code of Ethics also requires Member Boards to provide mediation and arbitration services to members and their clients so that the dispute resolution requirements of Article 17 of the Code of Ethics can be met. (Revised 1/21)*

*Enforcement of the Code of Ethics also includes responsibility for ensuring that persons primarily responsible for administration of enforcement procedures have successfully completed training that meets the learning objectives and minimum criteria established by the National Association from time to time. Enforcement of the Code of Ethics also prohibits Member Boards from knowingly granting REALTOR® or REALTOR-ASSOCIATE® membership to any applicant who has an unfulfilled sanction pending which was imposed by another Board or Association of REALTORS® for violation of the Code of Ethics.*

The charter revocation procedures that may be invoked should an allegation be made that a Board has failed to enforce the Code of Ethics may be found on [www.nar.realtor](http://www.nar.realtor) and in **Appendix VIII to Part Four**, The Ethics Hearing, of this Manual.

The establishment of a Code of Ethics recognizing high standards of business practice and professional conduct by real estate practitioners was a primary reason for the establishment of the National Association in 1908. Men of integrity wanted to ensure honorable, faithful, and competent service to clients, customers, and other members of the public. They believed that through their collective efforts the ends of national policy and the general welfare could be served. The history of their early meetings clearly reflects the desire to avoid careless "horseback" or uninformed advice to those who relied upon them and to avoid the use of special knowledge to prey upon the unsuspecting and unsophisticated. They sought to make the broker recognize the truly fiduciary relationship the broker has with the client and to assure service of a professional quality in all respects. They had an awareness, too, that a voluntary commitment to peer review by knowledgeable, informed men and women sharing the same commitment had immeasurable advantages over resort to courts of law and equity. Most of all, they recognized that self-discipline in the interest of protecting the public was not inconsistent with the preservation of a competitive marketplace.

Author Pearl Janet Davies in her *History of Real Estate in America* records that Edward S. Judd, 1912 President of the National Association, in accepting the presidency, "asked for a formal commitment by the voting body to a specific, written Code of Ethics. Himself a lawyer, he described the projected Code as 'similar to that of the American Bar Association' then recently approved and adopted by many local Bar Associations. 'A Committee on the Code of Ethics,' he-announced, 'is expected to report at the next Convention for adoption and recommendation to all local Boards a definite Code of Ethics, a Code which shall be as the Ten Commandments to the real estate fraternity.'" Author Davies notes that the following year, on July 29, 1913, it was Judd who put the motion for the Code. "The motion," he said, "is for the adoption of the Rules of Conduct and that a recommendation be sent to the local Boards that they be adopted as much as possible; and they be taken as the Code of Ethics of the National Association, and their

adoption recommended everywhere as far as possible." The motion was carried by voice vote amidst applause. A delegate rose to say, "We have heard many important things here, but nothing else is so important as the adoption of this resolution." Thus, according to Pearl Davies, "The national real estate organization may claim to be the second trade or business group in the United States to follow examples of the professions of medicine, law, and engineering in formulating a Code of Ethics."

The first paragraph of that historic code for real estate practice, adopted in 1913, established the tone for the 23 separate ethical precepts which followed and for all subsequent versions of the Code. It read: "The real estate agent should be absolutely honest, truthful, faithful, and efficient. They should bear in mind that they are an employee-that their client is their employer and is entitled to the best service the real estate salesperson can give their information, talent, time, services, loyalty, confidence, and fidelity."

The Code of Ethics of the National Association has survived as a viable and relevant guide because it is a living document. As times have changed, new needs and insights have been recognized and, as the law has developed, the Code has been amended. It has been amended approximately 53 times since its adoption. The amendments all have reflected an interest in refining, on a continuing basis, the principles obligating REALTORS® and REALTOR-ASSOCIATES® to the highest and best standards of personal and professional conduct in their practice of real estate. Such amendments have sought to simplify, clarify, and amplify the ethical principles established to preclude antisocial business practices and to accommodate current legal, cultural, and national perspectives.

The Code of Ethics and Standards of Practice were amended in 1914, 1915, 1924, 1928, 1950, 1952, 1955, 1956, 1961, 1962, 1974, 1975, 1976, 1977, 1980, 1982, 1984, 1985, 1986, 1987, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2015, 2017, 2018, 2019, 2020, 2021, 2022 and 2024. The Standards of Practice were first adopted in 1975; before then, there were only Articles. The Standards of Practice were printed separately from the Articles from 1975 through 1984, all Articles appearing first and all Standards of Practice following. It wasn't until 1985 that the Standards of Practice and Articles were integrated with the relevant Standards of Practice following each Article.

With all the amendments, however, the philosophical premise of the Code has remained unchanged and is reflected in the Preamble. That premise is that the interest of the nation and its citizens "... impose obligations [upon the REALTOR®] beyond those of ordinary commerce. They impose grave social responsibility and a patriotic duty to which REALTORS® should dedicate themselves, and for which they should be diligent in preparing themselves. REALTORS®, therefore, are zealous to maintain and improve the standards of their calling and share with their fellow REALTORS® a common responsibility for its integrity and honor. The term REALTORS® has come to connote competency, fairness, and high integrity in business relations. No inducement of profit and no instruction from clients can ever justify departure from this ideal."

In keeping with this philosophical premise, REALTORS® having direct personal knowledge of conduct that may violate the Code of Ethics involving misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm, bring such matters to the attention of the appropriate Association of REALTORS®.

Any Code of Ethics is meaningless unless it can be clearly understood by those who must live by it. To interpret and support the Code, the Professional Standards Committee of the National Association has adopted Standards of Practice which are "interpretations" of the Code. Such Standards of Practice are applications of ethical principles to specific conduct in specific circumstances as related to one or more Articles of the Code of Ethics.

To assist with the proper application of the Code of Ethics and Standards of Practice, approximately 153 different numbered case interpretations are set forth comprehensively in this publication.

The numbered Case Interpretations are of particular significance. These cases are intended to be used much like decisions in judicial proceedings. That is, they are specific and factual situations involving charges of alleged unethical conduct by REALTORS® and/or REALTOR-ASSOCIATES® and provide insight into the proper form of complaint, the procedures of a Board of REALTORS® in processing the complaint to ensure due process, and the rationale of the peer judgment rendered in each case. These cases do not detail the specific sanction imposed. This is because any sanction must always fit the offense and must involve every consideration of justice, equity, and propriety. Because of this, a wide range of sanctions are available to vindicate violations of the Code. Such sanctions include:

- (a) Letter of Warning with copy to be placed in member's file;
- (b) Letter of Reprimand with copy to be placed in member's file;
- (c) Requirement that member attend the ethics portion of the Board Indoctrination Course or other appropriate course or seminar specified by the Hearing Panel which the respondent could reasonably attend, taking into consideration cost, location, and duration;
- (d) Appropriate and reasonable fine not to exceed \$15,000; (*Amended 5/13*)

- (e) Membership of individual suspended for a stated period not less than thirty (30) days nor more than one (1) year, with automatic reinstatement of membership in good standing at the end of the specified period of suspension. The thirty (30) day minimum and one (1) year maximum do not apply where suspension is imposed for a remediable violation of a membership duty (e.g., failure to pay dues or fees or failure to complete educational requirements). The Directors may order suspension unconditionally, or they may, at their discretion, give the disciplined member the option of paying to the Board, within such time as the Directors shall designate, an assessment in an amount fixed by the Directors, which may not exceed \$15,000 and which can be utilized only once in any three (3) year period, in lieu of accepting suspension. But, if the conduct for which suspension is ordered consists of failure to submit a dispute to arbitration, the Directors may not permit the disciplined member to avoid suspension without submitting to the arbitration in addition to paying the assessment, unless in the meanwhile the dispute has been submitted to a court of law without any objection by any party that it should be arbitrated; (*Amended 11/13*)
- (f) Expulsion of individual from membership with no reinstatement privilege for a specified period of one (1) to three (3) years, with reinstatement of membership to be by application only after the specified period of expulsion on the merits of the application at the time received (decision should be written clearly articulating all intended consequences, including denial of MLS participatory or access privileges); (*Amended 4/96*)
- (g) Suspension or termination of MLS rights and privileges may also be utilized. Suspension of MLS services may be no less than thirty (30) days nor more than one (1) year; termination of MLS services shall be for a stated period of one (1) to three (3) years; (*Amended 5/02*)
- (h) REALTORS® who are not members of an Association from which they purchase the multiple listing service, and their users and subscribers remain obligated under the Code of Ethics on the same terms and conditions as REALTOR® and REALTOR-ASSOCIATE® members of that Board. Discipline that may be imposed may be the same as but shall not exceed the discipline that may be imposed on that Board's members. Boards entering into regional or reciprocal MLS agreements are encouraged to include provisions requiring signatory Boards to respect, to the extent feasible, decisions rendered by other Boards involving suspension or expulsion from membership or from MLS. (*Amended 4/96*)
- (i) Members may also be required to cease or refrain from continued conduct deemed to be in violation of the Code, or to take affirmative steps to ensure compliance with the Code, within a time period to be determined by the hearing panel. Where discipline is imposed pursuant to this subsection, the decision should also include additional discipline (e.g. suspension or termination of membership) that will be imposed for failure to document compliance by the date specified, and to continue to comply for a specified period not to exceed three (3) years from the date of required compliance. (*Adopted 05/24*)

In addition to imposing discipline, the Hearing Panel can also recommend to the Board of Directors that the disciplined member be put on probation. Probation is not a form of discipline. When a member is put on probation the discipline recommended by the Hearing Panel is held in abeyance for a stipulated period of time not longer than one (1) year. Any violation of the Code of Ethics which occurs during the probationary period may, at the discretion of the Board of Directors, result in the imposition of the suspended discipline. Absent any violation during the probationary period, both the probationary status and the suspended discipline are considered fulfilled, and the member's record will reflect the fulfillment. The fact that one or more forms of discipline will be held in abeyance during the probationary period does not bar imposition of other forms of discipline which will not be held in abeyance. (*Revised 11/23*)

In addition to any discipline imposed, Associations may, at their discretion, impose administrative processing fees not to exceed \$500 against respondents found in violation of the Code of Ethics or other membership duties. Any administrative processing fee will be in addition to, and not part of, any disciplinary sanction imposed. Associations shall determine in advance when, and under what circumstances, administrative processing fees will be imposed so that imposition is a matter of administrative routine. (*Revised 5/13*)

Acceptance of a Code of Ethics by the membership depends on its fair, reasonable, and impartial enforcement. Strict attention must be given to the requirements of due process. Acceptance of the Code must never involve a sacrifice of the right to counsel or of any other procedural safeguard. Consistent with this concept, the National Association has required each Member Board to establish a standing Professional Standards Committee and to establish appropriate Professional Standards procedures in its governing documents. The Association provides and recommends to Member Boards the adoption of the *Code of Ethics and Arbitration Manual* of the National Association, as reviewed and adapted by local legal counsel to conform to and comply with local law.

The *Code of Ethics and Arbitration Manual* contains approved provisions relating to enforcement of the Code of Ethics and arbitration of business disputes for inclusion in the bylaws of local Boards of REALTORS®. For ease of reference, the Manual contains separate sections covering **Ethics** and **Arbitration**.

Material covered in these sections includes:

- **Part One - Ethics General Provisions** and **Part Seven - Arbitration General Provisions** contain such things as definitions of terms, qualification for tribunal, and so forth.

- **Part Two and Part Eight, Membership Duties and Their Enforcement** describe, among other things, the duties of membership, power to take disciplinary action, the nature of discipline, and the establishment of Board Grievance Review Panels and Professional Standards Committees.
- **Part Three and Part Nine, The Grievance Review Panel** describe the authority and appropriate function of the Grievance Review Panel in reviewing ethics complaints and arbitration requests.
- **Part Four - The Ethics Hearing** explains the method of handling an ethics complaint from the time of original receipt through proper processing and hearing to final action by the Board in respect of the complaint.
- **Part Ten - Arbitration of Disputes** deals with the arbitration of business disputes between REALTORS® associated with different firms arising out of their relationship as REALTORS®, and with arbitration of certain other disputes subject to prescribed conditions explained in Section 44 of **Part Ten**. If this Manual is not adopted, the Board is nevertheless required to have local legal counsel review procedures as adopted and certify that this review assures the Board's procedures accord due process and are consistent with the requirements of applicable law. (Further, as noted on the title page of this Manual, professional standards procedures of Member Boards must reflect substantively the approved due process policies and procedures of this Manual in order to ensure Board entitlement to coverage by the Professional Liability Insurance Policy of the National Association in litigation involving the Board in connection with Board enforcement of the Code of Ethics, provided that such policies and procedures are consistent with applicable state law.)
- **Part Fourteen - State Association Professional Standards Committee** describes the function, jurisdiction, and responsibilities of the State Association Professional Standards Committee as to Code enforcement, including arbitration of contractual, and specific non-contractual, disputes under certain specified circumstances.
- **Part Eleven - Interboard Arbitration** tells how interboard arbitration may be handled.
- **Part Five and Part Twelve -Conduct of an Ethics or Arbitration Hearing** provide a detailed procedural guide for the conduct of an Ethics or Arbitration Hearing.
- **Part Six and Part Thirteen-Specimen Forms** provide forms (or, more accurately, "formats") which are recommended to Boards for their use in the processing of ethics complaints and arbitration requests.

Since the adoption of the Code of Ethics of the National Association in 1913, thousands of disciplinary hearings and arbitration hearings have been conducted by REALTORS® in the interest of protecting the public. The objective of such hearings in each case was to promote honesty, integrity, fairness, and competency, and to resolve controversies on the basis of the informed judgment of one's peers. The hearings have provided justice that has been both timely and economic. They have relieved overburdened civil courts and yet have resolved charges against REALTORS® effectively and without the distortion and injury to reputation that so often attends litigation. In January 1982, Chief Justice Warren Burger of the U.S. Supreme Court strongly endorsed arbitration as an alternative to litigation to resolve controversies. This basic principle has been followed by REALTORS® and REALTOR-ASSOCIATES® of America for many years

Article 14 of the Code of Ethics obligates REALTORS® and REALTOR-ASSOCIATES® to place all pertinent facts before the proper tribunal of the Member Associations or any institute, society, or council of which they are members if they are charged with unethical practice or are asked to present evidence in any disciplinary proceeding or investigation. The REALTOR® or REALTOR-ASSOCIATE® is expected to abide by the decision of the Board as rendered, once all appeal remedies have been exhausted. If a member refuses to accept a disciplinary decision after appeal, even then, before imposing the sanctions of suspension or expulsion, the Board will, if there remains any doubt as to the legal propriety of the judgment, make such sanctions effective only upon entry of final judgment in a court of competent jurisdiction in a suit by the Board for declaratory judgment declaring that the suspension or expulsion violates no rights of the member.

As a viable, living, developing guide for REALTORS®, the Code will continue to provide the protection the public deserves and requires. The National Association of REALTORS® and the respective State Associations and Member Boards of REALTORS® are committed and pledged to such protection.

# Code of Ethics and Standards of Practice

## of the NATIONAL ASSOCIATION of REALTORS®

Effective January 1, 2025

Where the word REALTOR® is used in this Code and Preamble, it shall be deemed to include REALTOR-ASSOCIATES®.

While the Code of Ethics establishes obligations that may be higher than those mandated by law, in any instance where the Code of Ethics and the law conflict, the obligations of the law must take precedence.

### **Preamble**

Under all is the land. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. REALTORS® should recognize that the interests of the nation and its citizens require the highest and best use of the land and the widest distribution of land ownership. They require the creation of adequate housing, the building of functioning cities, the development of productive industries and farms, and the preservation of a healthful environment.

Such interests impose obligations beyond those of ordinary commerce. They impose grave social responsibility and a patriotic duty to which REALTORS® should dedicate themselves, and for which they should be diligent in preparing themselves. REALTORS®, therefore, are zealous to maintain and improve the standards of their calling and share with their fellow REALTORS® a common responsibility for its integrity and honor.

In recognition and appreciation of their obligations to clients, customers, the public, and each other, REALTORS® continuously strive to become and remain informed on issues affecting real estate and, as knowledgeable professionals, they willingly share the fruit of their experience and study with others. They identify and take steps, through enforcement of this Code of Ethics and by assisting appropriate regulatory bodies, to eliminate practices which may damage the public or which might discredit or bring dishonor to the real estate profession. REALTORS® having direct personal knowledge of conduct that may violate the Code of Ethics involving misappropriation of client or customer funds or property, willful discrimination or fraud resulting in substantial economic harm, bring such matters to the attention of the appropriate Association of REALTORS®. *(Amended 1/00)*

Realizing that cooperation with other real estate professionals promotes the best interests of those who utilize their services, REALTORS® urge exclusive representation of clients; do not attempt to gain any unfair advantage over their competitors; and they refrain from making unsolicited comments about other practitioners. In instances where their opinion is sought, or where REALTORS® believe that comment is necessary, their opinion is offered in an objective, professional manner, uninfluenced by any personal motivation or potential advantage or gain.

The term REALTOR® has come to connote competency, fairness, and high integrity resulting from adherence to a lofty ideal of moral conduct in business relations. No inducement of profit and no instruction from clients ever can justify departure from this ideal.

In the interpretation of this obligation, REALTORS® can take no safer guide than that which has been handed down through the centuries, embodied in the Golden Rule, "Whatsoever ye would that others should do to you, do ye even so to them."

Accepting this standard as their own, REALTORS® pledge to observe its spirit in all of their activities whether conducted personally, through associates or others, or via technological means, and to conduct their business in accordance with the tenets set forth below. *(Amended 1/07)*

## Duties to Clients and Customers

### **Article 1**

When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their client. This obligation to the client is primary, but it does not relieve REALTORS® of their obligation to treat all parties honestly. When serving a buyer, seller, landlord, tenant or other party in a non-agency capacity, REALTORS® remain obligated to treat all parties honestly. *(Amended 1/01)*

#### • **Standard of Practice 1-1**

REALTORS®, when acting as principals in a real estate transaction, remain obligated by the duties imposed by the Code of Ethics. *(Amended 1/93)*

• **Standard of Practice 1-2**

The duties imposed by the Code of Ethics encompass all real estate-related activities and transactions whether conducted in person, electronically, or through any other means.

The duties the Code of Ethics imposes are applicable whether REALTORS® are acting as agents or in legally recognized non-agency capacities except that any duty imposed exclusively on agents by law or regulation shall not be imposed by this Code of Ethics on REALTORS® acting in non-agency capacities.

As used in this Code of Ethics, “client” means the person(s) or entity(ies) with whom a REALTOR® or a REALTOR®’s firm has an agency or legally recognized non-agency relationship; “customer” means a party to a real estate transaction who receives information, services, or benefits but has no contractual relationship with the REALTOR® or the REALTOR®’s firm; “prospect” means a purchaser, seller, tenant, or landlord who is not subject to a representation relationship with the REALTOR® or REALTOR®’s firm; “agent” means a real estate licensee (including brokers and sales associates) acting in an agency relationship as defined by state law or regulation; and “broker” means a real estate licensee (including brokers and sales associates) acting as an agent or in a legally recognized non-agency capacity. *(Adopted 1/95, Amended 1/07)*

• **Standard of Practice 1-3**

REALTORS®, in attempting to secure a listing, shall not deliberately mislead the owner as to market value.

• **Standard of Practice 1-4**

REALTORS®, when seeking to become a buyer/tenant representative, shall not mislead buyers or tenants as to savings or other benefits that might be realized through use of the REALTOR®’s services. *(Amended 1/93)*

• **Standard of Practice 1-5**

REALTORS® may represent the seller/landlord and buyer/tenant in the same transaction only after full disclosure to and with informed consent of both parties. *(Adopted 1/93)*

• **Standard of Practice 1-6**

REALTORS® shall submit offers and counter-offers objectively and as quickly as possible. *(Adopted 1/93, Amended 1/95)*

• **Standard of Practice 1-7**

When acting as listing brokers, REALTORS® shall continue to submit to the seller/landlord all offers and counter-offers until closing or execution of a lease unless the seller/landlord has waived this obligation in writing. Upon the written request of a cooperating broker who submits an offer to the listing broker, the listing broker shall provide, as soon as practical, a written affirmation to the cooperating broker stating that the offer has been submitted to the seller/landlord, or a written notification that the seller/landlord has waived the obligation to have the offer presented. REALTORS® shall not be obligated to continue to market the property after an offer has been accepted by the seller/landlord. REALTORS® shall recommend that sellers/landlords obtain the advice of legal counsel prior to acceptance of a subsequent offer except where the acceptance is contingent on the termination of the pre-existing purchase contract or lease. *(Amended 1/20)*

• **Standard of Practice 1-8**

REALTORS®, acting as agents or brokers of buyers/tenants, shall submit to buyers/tenants all offers and counter-offers until acceptance but have no obligation to continue to show properties to their clients after an offer has been accepted unless otherwise agreed in writing. Upon the written request of the listing broker who submits a counter-offer to the buyer’s/tenant’s broker, the buyer’s/tenant’s broker shall provide, as soon as practical, a written affirmation to the listing broker stating that the counter-offer has been submitted to the buyers/tenants, or a written notification that the buyers/tenants have waived the obligation to have the counter-offer presented. REALTORS®, acting as agents or brokers of buyers/tenants, shall recommend that buyers/tenants obtain the advice of legal counsel if there is a question as to whether a pre-existing contract has been terminated. *(Adopted 1/93, Amended 1/22)*

• **Standard of Practice 1-9**

The obligation of REALTORS® to preserve confidential information (as defined by state law) provided by their clients in the course of any agency relationship or non-agency relationship recognized by law continues after termination of agency relationships or any non-agency relationships recognized by law. REALTORS® shall not knowingly, during or following the termination of professional relationships with their clients:

- 1) reveal confidential information of clients; or
- 2) use confidential information of clients to the disadvantage of clients; or
- 3) use confidential information of clients for the REALTOR®’s advantage or the advantage of third parties unless:
  - a) clients consent after full disclosure; or
  - b) REALTORS® are required by court order; or
  - c) it is the intention of a client to commit a crime and the information is necessary to prevent the crime; or

- d) it is necessary to defend a REALTOR® or the REALTOR®'s employees or associates against an accusation of wrongful conduct.

Information concerning latent material defects is not considered confidential information under this Code of Ethics. *(Adopted 1/93, Amended 1/01)*

• **Standard of Practice 1-10**

REALTORS® shall, consistent with the terms and conditions of their real estate licensure and their property management agreement, competently manage the property of clients with due regard for the rights, safety and health of tenants and others lawfully on the premises. *(Adopted 1/95, Amended 1/00)*

• **Standard of Practice 1-11**

REALTORS® who are employed to maintain or manage a client's property shall exercise due diligence and make reasonable efforts to protect it against reasonably foreseeable contingencies and losses. *(Adopted 1/95)*

• **Standard of Practice 1-12**

When entering into listing contracts, REALTORS® must advise sellers/landlords of:

- 1) the REALTOR®'s company policies regarding cooperation and the amount(s) of any compensation that will be offered to subagents, buyer/tenant agents, and/or brokers acting in legally recognized non-agency capacities;
- 2) the fact that buyer/tenant agents or brokers, even if compensated by listing brokers, or by sellers/landlords may represent the interests of buyers/tenants; and
- 3) any potential for listing brokers to act as disclosed dual agents, e.g., buyer/tenant agents. *(Adopted 1/93, Renumbered 1/98, Amended 1/03)*

• **Standard of Practice 1-13**

When entering into buyer/tenant agreements, REALTORS® must advise potential clients of:

- 1) the REALTOR®'s company policies regarding cooperation;
- 2) the amount of compensation to be paid by the client;
- 3) the potential for additional or offsetting compensation from other brokers, from the seller or landlord, or from other parties;
- 4) any potential for the buyer/tenant representative to act as a disclosed dual agent, e.g., listing broker, subagent, landlord's agent, etc., and
- 5) the possibility that sellers or sellers' representatives may not treat the existence, terms, or conditions of offers as confidential unless confidentiality is required by law, regulation, or by any confidentiality agreement between the parties. *(Adopted 1/93, Renumbered 1/98, Amended 1/06)*

• **Standard of Practice 1-14**

Fees for preparing appraisals or other valuations shall not be contingent upon the amount of the appraisal or valuation. *(Adopted 1/02)*

• **Standard of Practice 1-15**

REALTORS®, in response to inquiries from buyers or cooperating brokers shall, with the sellers' approval, disclose the existence of offers on the property. Where disclosure is authorized, REALTORS® shall also disclose, if asked, whether offers were obtained by the listing licensee, another licensee in the listing firm, or by a cooperating broker. *(Adopted 1/03, Amended 1/09)*

• **Standard of Practice 1-16**

REALTORS® shall not access or use, or permit or enable others to access or use, listed or managed property on terms or conditions other than those authorized by the owner or seller. *(Adopted 1/12)*

## **Article 2**

REALTORS® shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction. REALTORS® shall not, however, be obligated to discover latent defects in the property, to advise on matters outside the scope of their real estate license, or to disclose facts which are confidential under the scope of agency or non-agency relationships as defined by state law. *(Amended 1/00)*

• **Standard of Practice 2-1**

REALTORS® shall only be obligated to discover and disclose adverse factors reasonably apparent to someone with expertise in those areas required by their real estate licensing authority. Article 2 does not impose upon the REALTOR® the obligation of expertise in other professional or technical disciplines. *(Amended 1/96)*

- **Standard of Practice 2-2**

*(Renumbered as Standard of Practice 1-12 1/98)*

- **Standard of Practice 2-3**

*(Renumbered as Standard of Practice 1-13 1/98)*

- **Standard of Practice 2-4**

REALTORS® shall not be parties to the naming of a false consideration in any document, unless it be the naming of an obviously nominal consideration.

- **Standard of Practice 2-5**

Factors defined as “non-material” by law or regulation or which are expressly referenced in law or regulation as not being subject to disclosure are considered not “pertinent” for purposes of Article 2. *(Adopted 1/93)*

### **Article 3**

REALTORS® shall cooperate with other brokers except when cooperation is not in the client’s best interest. The obligation to cooperate does not include the obligation to share commissions, fees, or to otherwise compensate another broker. *(Amended 1/95)*

- **Standard of Practice 3-1**

REALTORS®, acting as exclusive agents or brokers of sellers/landlords, establish the terms and conditions of offers to cooperate. Unless expressly indicated in offers to cooperate, cooperating brokers may not assume that the offer of cooperation includes an offer of compensation. Terms of compensation, if any, shall be ascertained by cooperating brokers before beginning efforts to accept the offer of cooperation. *(Amended 1/99)*

- **Standard of Practice 3-2**

Any change in compensation offered for cooperative services must be communicated to the other REALTOR® prior to the time that REALTOR® submits an offer to purchase/lease the property. After a REALTOR® has submitted an offer to purchase or lease property, the listing broker may not attempt to unilaterally modify the offered compensation with respect to that cooperative transaction. *(Amended 1/14)*

- **Standard of Practice 3-3**

Standard of Practice 3-2 does not preclude the listing broker and cooperating broker from entering into an agreement to change cooperative compensation. *(Adopted 1/94)*

- **Standard of Practice 3-4**

REALTORS®, acting as listing brokers, have an affirmative obligation to disclose the existence of dual or variable rate commission arrangements (i.e., listings where one amount of commission is payable if the listing broker’s firm is the procuring cause of sale/lease and a different amount of commission is payable if the sale/lease results through the efforts of the seller/landlord or a cooperating broker). The listing broker shall, as soon as practical, disclose the existence of such arrangements to potential cooperating brokers and shall, in response to inquiries from cooperating brokers, disclose the differential that would result in a cooperative transaction or in a sale/lease that results through the efforts of the seller/landlord. If the cooperating broker is a buyer/tenant representative, the buyer/tenant representative must disclose such information to their client before the client makes an offer to purchase or lease. *(Amended 1/02)*

- **Standard of Practice 3-5**

It is the obligation of subagents to promptly disclose all pertinent facts to the principal’s agent prior to as well as after a purchase or lease agreement is executed. *(Amended 1/93)*

- **Standard of Practice 3-6**

REALTORS® shall disclose the existence of accepted offers, including offers with unresolved contingencies, to any broker seeking cooperation. *(Adopted 5/86, Amended 1/04)*

- **Standard of Practice 3-7**

When seeking information from another REALTOR® concerning property under a management or listing agreement, REALTORS® shall disclose their REALTOR® status and whether their interest is personal or on behalf of a client and, if on behalf of a client, their relationship with the client. *(Amended 1/11)*

- **Standard of Practice 3-8**

REALTORS® shall not misrepresent the availability of access to show or inspect a listed property. *(Amended 11/87)*

• **Standard of Practice 3-9**

REALTORS® shall not provide access to listed property on terms other than those established by the owner or the seller. (Adopted 1/10, Amended 1/23)

• **Standard of Practice 3-10**

The duty to cooperate established in Article 3 relates to the obligation to share information on listed property, and to make property available to other brokers for showing to prospective purchasers/tenants when it is in the best interests of sellers/landlords. (Adopted 1/11)

• **Standard of Practice 3-11**

REALTORS® may not refuse to cooperate on the basis of a broker's race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity. (Adopted 1/20, Amended 1/23)

**Article 4**

REALTORS® who have a present ownership interest in property for sale or lease, or contemplated interest to purchase or lease property, must disclose in writing the existence of such interest to all parties to the transaction prior to a party signing any agreement. (Amended 1/25)

• **Standard of Practice 4-1**

The present ownership interest in property for sale or lease, or contemplated interest to purchase or lease property, includes transactions in which REALTORS®

1. represent themselves
2. represent a member of their immediate family
3. represent their firm or any broker or agent thereof
4. represent an entity in which the REALTOR® or member of their immediate family has a legal interest. (Adopted 2/86, Amended 1/25)

• **Standard of Practice 4-2**

REALTORS® are not required to disclose the identity of the client or customer, nor the specific nature of the interest referred to in Article 4, but must disclose that an interest exists. (Adopted 1/25)

**Article 5**

REALTORS® shall not undertake to provide professional services concerning a property or its value where they have a present or contemplated interest unless such interest is specifically disclosed to all affected parties.

**Article 6**

REALTORS® shall not accept any commission, rebate, or profit on expenditures made for their client, without the client's knowledge and consent.

When recommending real estate products or services (e.g., homeowner's insurance, warranty programs, mortgage financing, title insurance, etc.), REALTORS® shall disclose to the client or customer to whom the recommendation is made any financial benefits or fees, other than real estate referral fees, the REALTOR® or REALTOR®'s firm may receive as a direct result of such recommendation. (Amended 1/99)

• **Standard of Practice 6-1**

REALTORS® shall not recommend or suggest to a client or a customer the use of services of another organization or business entity in which they have a direct interest without disclosing such interest at the time of the recommendation or suggestion. (Amended 5/88)

**Article 7**

In a transaction, REALTORS® shall not accept compensation from more than one party, even if permitted by law, without disclosure to all parties and the informed consent of the REALTOR®'s client or clients. (Amended 1/93)

**Article 8**

REALTORS® shall keep in a special account in an appropriate financial institution, separated from their own funds, monies coming into their possession in trust for other persons, such as escrows, trust funds, clients' monies, and other like items.

**Article 9**

REALTORS®, for the protection of all parties, shall assure whenever possible that all agreements related to real estate transactions including, but not limited to, listing and representation agreements, purchase contracts, and leases are in writing in clear and

understandable language expressing the specific terms, conditions, obligations and commitments of the parties. A copy of each agreement shall be furnished to each party to such agreements upon their signing or initialing. *(Amended 1/04)*

• **Standard of Practice 9-1**

For the protection of all parties, REALTORS® shall use reasonable care to ensure that documents pertaining to the purchase, sale, or lease of real estate are kept current through the use of written extensions or amendments. *(Amended 1/93)*

• **Standard of Practice 9-2**

When assisting or enabling a client or customer in establishing a contractual relationship (e.g., listing and representation agreements, purchase agreements, leases, etc.) electronically, REALTORS® shall make reasonable efforts to explain the nature and disclose the specific terms of the contractual relationship being established prior to it being agreed to by a contracting party. *(Adopted 1/07)*

## Duties to the Public

### Article 10

REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity. *(Amended 1/23)*

REALTORS®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity. *(Amended 1/23)*

• **Standard of Practice 10-1**

When involved in the sale or lease of a residence, REALTORS® shall not volunteer information regarding the racial, religious or ethnic composition of any neighborhood nor shall they engage in any activity which may result in panic selling, however, REALTORS® may provide other demographic information. *(Adopted 1/94, Amended 1/06)*

• **Standard of Practice 10-2**

When not involved in the sale or lease of a residence, REALTORS® may provide demographic information related to a property, transaction or professional assignment to a party if such demographic information is (a) deemed by the REALTOR® to be needed to assist with or complete, in a manner consistent with Article 10, a real estate transaction or professional assignment and (b) is obtained or derived from a recognized, reliable, independent, and impartial source. The source of such information and any additions, deletions, modifications, interpretations, or other changes shall be disclosed in reasonable detail. *(Adopted 1/05, Renumbered 1/06)*

• **Standard of Practice 10-3**

REALTORS® shall not print, display or circulate any statement or advertisement with respect to selling or renting of a property that indicates any preference, limitations or discrimination based on race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity. *(Adopted 1/94, Renumbered 1/05 and 1/06, Amended 1/14 and 1/23)*

• **Standard of Practice 10-4**

As used in Article 10 “real estate employment practices” relates to employees and independent contractors providing real estate-related services and the administrative and clerical staff directly supporting those individuals. *(Adopted 1/00, Renumbered 1/05 and 1/06)*

• **Standard of Practice 10-5**

REALTORS® must not use harassing speech, hate speech, epithets, or slurs based on race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity. *(Adopted and effective November 13, 2020, Amended 1/23)*

### Article 11

The services which REALTORS® provide to their clients and customers shall conform to the standards of practice and competence which are reasonably expected in the specific real estate disciplines in which they engage; specifically, residential real estate brokerage, real property management, commercial and industrial real estate brokerage, land brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate.

REALTORS® shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth. *(Amended 1/10)*

• **Standard of Practice 11-1**

When REALTORS® prepare opinions of real property value or price they must:

- 1) be knowledgeable about the type of property being valued,
- 2) have access to the information and resources necessary to formulate an accurate opinion, and
- 3) be familiar with the area where the subject property is located

unless lack of any of these is disclosed to the party requesting the opinion in advance.

When an opinion of value or price is prepared other than in pursuit of a listing or to assist a potential purchaser in formulating a purchase offer, the opinion shall include the following unless the party requesting the opinion requires a specific type of report or different data set:

- 1) identification of the subject property
- 2) date prepared
- 3) defined value or price
- 4) limiting conditions, including statements of purpose(s) and intended user(s)
- 5) any present or contemplated interest, including the possibility of representing the seller/landlord or buyers/tenants
- 6) basis for the opinion, including applicable market data
- 7) if the opinion is not an appraisal, a statement to that effect
- 8) disclosure of whether and when a physical inspection of the property's exterior was conducted
- 9) disclosure of whether and when a physical inspection of the property's interior was conducted
- 10) disclosure of whether the REALTOR® has any conflicts of interest *(Amended 1/14)*

• **Standard of Practice 11-2**

The obligations of the Code of Ethics in respect of real estate disciplines other than appraisal shall be interpreted and applied in accordance with the standards of competence and practice which clients and the public reasonably require to protect their rights and interests considering the complexity of the transaction, the availability of expert assistance, and, where the REALTOR® is an agent or subagent, the obligations of a fiduciary or the applicable agency duties required by law. *(Adopted 1/95, Amended 1/25)*

• **Standard of Practice 11-3**

When REALTORS® provide consultative services to clients which involve advice or counsel for a fee (not a commission), such advice shall be rendered in an objective manner and the fee shall not be contingent on the substance of the advice or counsel given. If brokerage or transaction services are to be provided in addition to consultative services, a separate compensation may be paid with prior agreement between the client and REALTOR®. *(Adopted 1/96)*

• **Standard of Practice 11-4**

The competency required by Article 11 relates to services contracted for between REALTORS® and their clients or customers; the duties expressly imposed by the Code of Ethics; and the duties imposed by law or regulation. *(Adopted 1/02)*

**Article 12**

REALTORS® shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing, and other representations. REALTORS® shall ensure that their status as real estate professionals is readily apparent in their advertising, marketing, and other representations, and that the recipients of all real estate communications are, or have been, notified that those communications are from a real estate professional. *(Amended 1/08)*

• **Standard of Practice 12-1**

REALTORS® must not represent that their brokerage services to a client or customer are free or available at no cost to their clients, unless the REALTOR® will receive no financial compensation from any source for those services. *(Amended 1/22)*

• **Standard of Practice 12-2**

*(Deleted 1/20)*

• **Standard of Practice 12-3**

The offering of premiums, prizes, merchandise discounts or other inducements to list, sell, purchase, or lease is not, in itself, unethical even if receipt of the benefit is contingent on listing, selling, purchasing, or leasing through the REALTOR® making the offer. However, REALTORS® must exercise care and candor in any such advertising or other public or private representations so that any party interested in receiving or otherwise benefiting from the REALTOR®'s offer will have clear, thorough, advance understanding of all the terms and conditions of the offer. The offering of any inducements to do business is subject to the limitations and restrictions of state law and the ethical obligations established by any applicable Standard of Practice. *(Amended 1/95)*

• **Standard of Practice 12-4**

REALTORS® shall not offer for sale/lease or advertise property without authority. When acting as listing brokers or as subagents, REALTORS® shall not quote a price different from that agreed upon with the seller/landlord. *(Amended 1/93)*

• **Standard of Practice 12-5**

REALTORS® shall not advertise nor permit any person employed by or affiliated with them to advertise real estate services or listed property in any medium (e.g., electronically, print, radio, television, etc.) without disclosing the name of that REALTOR®'s firm in a reasonable and readily apparent manner either in the advertisement or in electronic advertising via a link to a display with all required disclosures. *(Adopted 11/86, Amended 1/16)*

• **Standard of Practice 12-6**

REALTORS®, when advertising unlisted real property for sale/lease in which they have an ownership interest, shall disclose their status as both owners/landlords and as REALTORS® or real estate licensees. *(Amended 1/93)*

• **Standard of Practice 12-7**

Only REALTORS® who participated in the transaction as the listing broker or cooperating broker (selling broker) may claim to have “sold” the property. Prior to closing, a cooperating broker may post a “sold” sign only with the consent of the listing broker. *(Amended 1/96)*

• **Standard of Practice 12-8**

The obligation to present a true picture in representations to the public includes information presented, provided, or displayed on REALTORS® websites. REALTORS® shall use reasonable efforts to ensure that information on their websites is current. When it becomes apparent that information on a REALTOR®'s website is no longer current or accurate, REALTORS® shall promptly take corrective action. *(Adopted 1/07)*

• **Standard of Practice 12-9**

REALTOR® firm websites shall disclose the firm's name and state(s) of licensure in a reasonable and readily apparent manner.

Websites of REALTORS® and non-member licensees affiliated with a REALTOR® firm shall disclose the firm's name and that REALTOR®'s or non-member licensee's state(s) of licensure in a reasonable and readily apparent manner. *(Adopted 1/07)*

• **Standard of Practice 12-10**

REALTORS® obligation to present a true picture in their advertising and representations to the public includes Internet content, images, and the URLs and domain names they use, and prohibits REALTORS® from:

- 1) engaging in deceptive or unauthorized framing of real estate brokerage websites;
- 2) manipulating (e.g., presenting content developed by others) listing and other content in any way that produces a deceptive or misleading result;
- 3) deceptively using metatags, keywords or other devices/methods to direct, drive, or divert Internet traffic; or
- 4) presenting content developed by others without either attribution or without permission, or
- 5) otherwise misleading consumers, including use of misleading images. *(Adopted 1/07, Amended 1/18)*

• **Standard of Practice 12-11**

REALTORS® intending to share or sell consumer information gathered via the Internet shall disclose that possibility in a reasonable and readily apparent manner. *(Adopted 1/07)*

• **Standard of Practice 12-12**

REALTORS® shall not:

- 1) use URLs or domain names that present less than a true picture, or
- 2) register URLs or domain names which, if used, would present less than a true picture. *(Adopted 1/08)*

• **Standard of Practice 12-13**

The obligation to present a true picture in advertising, marketing, and representations allows REALTORS® to use and display only professional designations, certifications, and other credentials to which they are legitimately entitled. *(Adopted 1/08)*

**Article 13**

REALTORS® shall not engage in activities that constitute the unauthorized practice of law and shall recommend that legal counsel be obtained when the interest of any party to the transaction requires it.

## **Article 14**

If charged with unethical practice or asked to present evidence or to cooperate in any other way, in any professional standards proceeding or investigation, REALTORS® shall place all pertinent facts before the proper tribunals of the Member Board or affiliated institute, society, or council in which membership is held and shall take no action to disrupt or obstruct such processes. *(Amended 1/99)*

### **• Standard of Practice 14-1**

REALTORS® shall not be subject to disciplinary proceedings in more than one Board of REALTORS® or affiliated institute, society, or council in which they hold membership with respect to alleged violations of the Code of Ethics relating to the same transaction or event. *(Amended 1/95)*

### **• Standard of Practice 14-2**

REALTORS® shall not make any unauthorized disclosure or dissemination of the allegations, findings, or decision developed in connection with an ethics hearing or appeal or in connection with an arbitration hearing or procedural review. *(Amended 1/92)*

### **• Standard of Practice 14-3**

REALTORS® shall not obstruct the Board's investigative or professional standards proceedings by instituting or threatening to institute actions for libel, slander, or defamation against any party to a professional standards proceeding or their witnesses based on the filing of an arbitration request, an ethics complaint, or testimony given before any tribunal. *(Adopted 11/87, Amended 1/99)*

### **• Standard of Practice 14-4**

REALTORS® shall not intentionally impede the Board's investigative or disciplinary proceedings by filing multiple ethics complaints based on the same event or transaction. *(Adopted 11/88)*

## **Duties to REALTORS®**

## **Article 15**

REALTORS® shall not knowingly or recklessly make false or misleading statements about other real estate professionals, their businesses, or their business practices. *(Amended 1/12)*

### **• Standard of Practice 15-1**

REALTORS® shall not knowingly or recklessly file false or unfounded ethics complaints. *(Adopted 1/00)*

### **• Standard of Practice 15-2**

The obligation to refrain from making false or misleading statements about other real estate professionals, their businesses, and their business practices includes the duty to not knowingly or recklessly publish, repeat, retransmit, or republish false or misleading statements made by others. This duty applies whether false or misleading statements are repeated in person, in writing, by technological means (e.g., the Internet), or by any other means. *(Adopted 1/07, Amended 1/12)*

### **• Standard of Practice 15-3**

The obligation to refrain from making false or misleading statements about other real estate professionals, their businesses, and their business practices includes the duty to publish a clarification about or to remove statements made by others on electronic media the REALTOR® controls once the REALTOR® knows the statement is false or misleading. *(Adopted 1/10, Amended 1/12)*

## **Article 16**

REALTORS® shall not engage in any practice or take any action inconsistent with exclusive representation or exclusive brokerage relationship agreements that other REALTORS® have with clients. *(Amended 1/04)*

### **• Standard of Practice 16-1**

Article 16 is not intended to prohibit aggressive or innovative business practices which are otherwise ethical and does not prohibit disagreements with other REALTORS® involving commission, fees, compensation or other forms of payment or expenses. *(Adopted 1/93, Amended 1/95)*

### **• Standard of Practice 16-2**

Article 16 does not preclude REALTORS® from making general announcements to prospects describing their services and the terms of their availability even though some recipients may have entered into agency agreements or other exclusive relationships with another REALTOR®. A general telephone canvass, general mailing or distribution addressed to all prospects in a given geographical area or in a given profession, business, club, or organization, or other classification or group is deemed "general" for purposes of this standard. *(Amended 1/04)*

Article 16 is intended to recognize as unethical two basic types of solicitations:

First, telephone or personal solicitations of property owners who have been identified by a real estate sign, multiple listing compilation, or other information service as having exclusively listed their property with another REALTOR® and;

Second, mail or other forms of written solicitations of prospects whose properties are exclusively listed with another REALTOR® when such solicitations are not part of a general mailing but are directed specifically to property owners identified through compilations of current listings, “for sale” or “for rent” signs, or other sources of information required by Article 3 and Multiple Listing Service rules to be made available to other REALTORS® under offers of subagency or cooperation. *(Amended 1/04)*

• **Standard of Practice 16-3**

Article 16 does not preclude REALTORS® from contacting the client of another broker for the purpose of offering to provide, or entering into a contract to provide, a different type of real estate service unrelated to the type of service currently being provided (e.g., property management as opposed to brokerage) or from offering the same type of service for property not subject to other brokers’ exclusive agreements. However, information received through a Multiple Listing Service or any other offer of cooperation may not be used to target clients of other REALTORS® to whom such offers to provide services may be made. *(Amended 1/04)*

• **Standard of Practice 16-4**

REALTORS® shall not solicit a listing which is currently listed exclusively with another broker. However, if the listing broker, when asked by the REALTOR®, refuses to disclose the expiration date and nature of such listing, i.e. an exclusive right to sell, an exclusive agency, open listing, or other form of contractual agreement between the listing broker and the client, the REALTOR® may contact the owner to secure such information and may discuss the terms upon which the REALTOR® might take a future listing or, alternatively, may take a listing to become effective upon expiration of any existing exclusive listing. *(Amended 1/94)*

• **Standard of Practice 16-5**

REALTORS® shall not solicit buyer/tenant agreements from buyers/tenants who are subject to exclusive buyer/tenant agreements. However, if asked by a REALTOR®, the broker refuses to disclose the expiration date of the exclusive buyer/tenant agreement, the REALTOR® may contact the buyer/tenant to secure such information and may discuss the terms upon which the REALTOR® might enter into a future buyer/tenant agreement or, alternatively, may enter into a buyer/tenant agreement to become effective upon the expiration of any existing exclusive buyer/tenant agreement. *(Adopted 1/94, Amended 1/98)*

• **Standard of Practice 16-6**

When REALTORS® are contacted by the client of another REALTOR® regarding the creation of an exclusive relationship to provide the same type of service, and REALTORS® have not directly or indirectly initiated such discussions, they may discuss the terms upon which they might enter into a future agreement or, alternatively, may enter into an agreement which becomes effective upon expiration of any existing exclusive agreement. *(Amended 1/98)*

• **Standard of Practice 16-7**

The fact that a prospect has retained a REALTOR® as an exclusive representative or exclusive broker in one or more past transactions does not preclude other REALTORS® from seeking such prospect’s future business. *(Amended 1/04)*

• **Standard of Practice 16-8**

The fact that an exclusive agreement has been entered into with a REALTOR® shall not preclude or inhibit any other REALTOR® from entering into a similar agreement after the expiration of the prior agreement. *(Amended 1/98)*

• **Standard of Practice 16-9**

REALTORS®, prior to entering into a representation agreement, have an affirmative obligation to make reasonable efforts to determine whether the prospect is subject to a current, valid exclusive agreement to provide the same type of real estate service. *(Amended 1/04)*

• **Standard of Practice 16-10**

REALTORS®, acting as buyer or tenant representatives or brokers, shall disclose that relationship to the seller/ landlord’s representative or broker at first contact and shall provide written confirmation of that disclosure to the seller/landlord’s representative or broker not later than execution of a purchase agreement or lease. *(Amended 1/04)*

• **Standard of Practice 16-11**

On unlisted property, REALTORS® acting as buyer/tenant representatives or brokers shall disclose that relationship to the seller/landlord at first contact for that buyer/tenant and shall provide written confirmation of such disclosure to the seller/landlord not later than execution of any purchase or lease agreement. *(Amended 1/04)*

REALTORS® shall make any request for anticipated compensation from the seller/landlord at first contact. *(Amended 1/98)*

- **Standard of Practice 16-12**

REALTORS®, acting as representatives or brokers of sellers/landlords or as subagents of listing brokers, shall disclose that relationship to buyers/tenants as soon as practicable and shall provide written confirmation of such disclosure to buyers/tenants not later than execution of any purchase or lease agreement. *(Amended 1/04)*

- **Standard of Practice 16-13**

All dealings concerning property exclusively listed, or with buyer/tenants who are subject to an exclusive agreement shall be carried on with the client's representative or broker, and not with the client, except with the consent of the client's representative or broker or except where such dealings are initiated by the client.

Before providing substantive services (such as writing a purchase offer or presenting a CMA) to prospects, REALTORS® shall ask prospects whether they are a party to any exclusive representation agreement. REALTORS® shall not knowingly provide substantive services concerning a prospective transaction to prospects who are parties to exclusive representation agreements, except with the consent of the prospects' exclusive representatives or at the direction of prospects. *(Adopted 1/93, Amended 1/04)*

- **Standard of Practice 16-14**

REALTORS® are free to enter into contractual relationships or to negotiate with sellers/landlords, buyers/tenants or others who are not subject to an exclusive agreement but shall not knowingly obligate them to pay more than one commission except with their informed consent. *(Amended 1/98)*

- **Standard of Practice 16-15**

In cooperative transactions REALTORS® shall compensate cooperating REALTORS® (principal brokers) and shall not compensate nor offer to compensate, directly or indirectly, any of the sales licensees employed by or affiliated with other REALTORS® without the prior express knowledge and consent of the cooperating broker.

- **Standard of Practice 16-16**

REALTORS®, acting as subagents or buyer/tenant representatives or brokers, shall not use the terms of an offer to purchase/lease to attempt to modify the listing broker's offer of compensation to subagents or buyer/tenant representatives or brokers nor make the submission of an executed offer to purchase/lease contingent on the listing broker's agreement to modify the offer of compensation. *(Amended 1/04)*

- **Standard of Practice 16-17**

REALTORS®, acting as subagents or as buyer/tenant representatives or brokers, shall not attempt to extend a listing broker's offer of cooperation and/or compensation to other brokers without the consent of the listing broker. *(Amended 1/04)*

- **Standard of Practice 16-18**

REALTORS® shall not use information obtained from listing brokers through offers to cooperate made through multiple listing services or through other offers of cooperation to refer listing brokers' clients to other brokers or to create buyer/tenant relationships with listing brokers' clients, unless such use is authorized by listing brokers. *(Amended 1/02)*

- **Standard of Practice 16-19**

Signs giving notice of property for sale, rent, lease, or exchange shall not be placed on property without consent of the seller/landlord. *(Amended 1/93)*

- **Standard of Practice 16-20**

REALTORS®, prior to or after their relationship with their current firm is terminated, shall not induce clients of their current firm to cancel exclusive contractual agreements between the client and that firm. This does not preclude REALTORS® (principals) from establishing agreements with their associated licensees governing assignability of exclusive agreements. *(Adopted 1/98, Amended 1/10)*

## **Article 17**

In the event of contractual disputes or specific non- contractual disputes as defined in Standard of Practice 17-4 between REALTORS® (principals) associated with different firms, arising out of their relationship as REALTORS®, the REALTORS® shall mediate the dispute if the Board requires its members to mediate. If the dispute is not resolved through mediation, or if mediation is not required, REALTORS® shall submit the dispute to arbitration in accordance with the policies of the Board rather than litigate the matter.

In the event clients of REALTORS® wish to mediate or arbitrate contractual disputes arising out of real estate transactions, REALTORS® shall mediate or arbitrate those disputes in accordance with the policies of the Board, provided the clients agree to be bound by any resulting agreement or award.

The obligation to participate in mediation and arbitration contemplated by this Article includes the obligation of REALTORS® (principals) to cause their firms to mediate and arbitrate and be bound by any resulting agreement or award. *(Amended 1/12)*

• **Standard of Practice 17-1**

The filing of litigation and refusal to withdraw from it by REALTORS® in an arbitrable matter constitutes a refusal to arbitrate. *(Adopted 2/86)*

• **Standard of Practice 17-2**

Article 17 does not require REALTORS® to mediate in those circumstances when all parties to the dispute advise the Board in writing that they choose not to mediate through the Board's facilities. The fact that all parties decline to participate in mediation does not relieve REALTORS® of the duty to arbitrate.

Article 17 does not require REALTORS® to arbitrate in those circumstances when all parties to the dispute advise the Board in writing that they choose not to arbitrate before the Board. *(Amended 1/12)*

• **Standard of Practice 17-3**

REALTORS®, when acting solely as principals in a real estate transaction, are not obligated to arbitrate disputes with other REALTORS® absent a specific written agreement to the contrary. *(Adopted 1/96)*

• **Standard of Practice 17-4**

Specific non-contractual disputes that are subject to arbitration pursuant to Article 17 are:

- 1) Where a listing broker has compensated a cooperating broker and another cooperating broker subsequently claims to be the procuring cause of the sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker and any amount credited or paid to a party to the transaction at the direction of the respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. *(Adopted 1/97, Amended 1/07)*
- 2) Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating broker claims to be the procuring cause of sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the seller or landlord and any amount credited or paid to a party to the transaction at the direction of the respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. *(Adopted 1/97, Amended 1/07)*
- 3) Where a buyer or tenant representative is compensated by the buyer or tenant and, as a result, the listing broker reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating broker claims to be the procuring cause of sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. *(Adopted 1/97)*
- 4) Where two or more listing brokers claim entitlement to compensation pursuant to open listings with a seller or landlord who agrees to participate in arbitration (or who requests arbitration) and who agrees to be bound by the decision. In cases where one of the listing brokers has been compensated by the seller or landlord, the other listing broker, as complainant, may name the first listing broker as respondent and arbitration may proceed between the brokers. *(Adopted 1/97)*

5) Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, claims to be the procuring cause of sale or lease. In such cases arbitration shall be between the listing broker and the buyer or tenant representative and the amount in dispute is limited to the amount of the reduction of commission to which the listing broker agreed. (*Adopted 1/05*)

• **Standard of Practice 17-5**

The obligation to arbitrate established in Article 17 includes disputes between REALTORS® (principals) in different states in instances where, absent an established inter-association arbitration agreement, the REALTOR® (principal) requesting arbitration agrees to submit to the jurisdiction of, travel to, participate in, and be bound by any resulting award rendered in arbitration conducted by the respondent(s) REALTOR®'s association, in instances where the respondent(s) REALTOR®'s association determines that an arbitrable issue exists. (*Adopted 1/07*)

### **Explanatory Notes**

The reader should be aware of the following policies which have been approved by the Board of Directors of the National Association:

In filing a charge of an alleged violation of the Code of Ethics by a REALTOR®, the charge must read as an alleged violation of one or more Articles of the Code. Standards of Practice may be cited in support of the charge.

The Standards of Practice serve to clarify the ethical obligations imposed by the various Articles and supplement, and do not substitute for, the Case Interpretations in *Interpretations of the Code of Ethics*.

Modifications to existing Standards of Practice and additional new Standards of Practice are approved from time to time. Readers are cautioned to ensure that the most recent publications are utilized.

# Introduction to the Code of Ethics and Arbitration Manual

The Code of Ethics is designed to establish a public and professional consensus against which the practice and conduct of REALTORS® and REALTOR-ASSOCIATES® may be judged. REALTORS® and REALTOR-ASSOCIATES® in joining a Board signify their intention to abide by the Code and thereby enhance the public and professional image of themselves and all other REALTORS®. Adherence to the Code is the first great bond between REALTORS® and REALTOR-ASSOCIATES® throughout the country, and is an obligation voluntarily accepted by them to ensure high standards of professional conduct to serve the interests of their clients and customers.

Each Board is responsible for enforcing the Code of Ethics pursuant to the Bylaws of the National Association. This duty must be discharged conscientiously and responsibly. Conscientious enforcement is essential if REALTORS® and REALTOR-ASSOCIATES® are to be recognized as professionals subscribing to standards of business and ethical conduct higher than those required by law. This duty must be discharged responsibly because of the importance to REALTORS® and REALTOR-ASSOCIATES® of their reputation and the esteem of their peers. (*Amended 4/96*)

Membership in a Board of REALTORS® has been recognized by the courts as a valuable property right. Therefore, any action by a Board limiting or denying the rights and privileges of a member must be justified, not only substantively but also procedurally. It is for this reason that failure to accord due process to a REALTOR® accused of a violation of the Code of Ethics can result in the reversal of the Board's decision by the civil courts and can expose the Board and its officers and members to liability for monetary damages and other penalties. Due process is not a difficult concept but is an essential one. Due process means nothing more or less than the right to a full and fair hearing before an impartial tribunal with a full and complete knowledge of the charges made and with adequate opportunity to prepare a defense.

While the concept of due process is not difficult, its application to specific situations involving enforcement of the Code of Ethics can be troublesome. Therefore, before taking any disciplinary action which may lead to diminution of a member's rights or privileges, it is strongly recommended that the Board's attorney be consulted. Counsel will bring to the proceedings an informed and objective view of the controversy. Moreover, counsel can assure that the due process provided satisfies the requirements of local law. Procedures outlined in the Code of Ethics and Arbitration Manual will satisfy most requirements of due process, but the individual differences in the laws of each state will require interpretation and possible supplementation of local counsel.

In exercising its responsibility for the enforcement of the Code of Ethics, it is particularly important for the Board to distinguish between controversies which are properly the subject of arbitration and controversies involving the Code of Ethics. The Code of Ethics must not be used as a club or lever to settle business disputes between REALTORS®. For this reason, in complaints involving both charges of unethical conduct and request for arbitration, the dual complaint must be severed and arbitration heard prior to hearing any ethics charges.

A violation of the Code of Ethics involves an offense against the Board and its members generally, as distinguished from an arbitration hearing which involves a dispute among two or more members individually, arising from some common transaction involving the rendering of real estate services. <sup>1</sup>For this reason, it is never appropriate for a Board, in an ethics proceeding, to award money damages to another REALTOR®.

An ethics proceeding has two essential purposes: education and vindication. It is educational in that it raises the consciousness of members to the meaning and significance of the Code. Many ethics violations occur inadvertently or through ignorance, and the hearing proceeding serves as an effective educational tool.

In filing a charge of an alleged violation of the Code of Ethics by a REALTOR®, the charge shall read as an alleged violation of one or more Articles of the Code. A Standard of Practice may be cited only in support of the charge. The Preamble is aspirational. Articles 1 through 17 establish specific obligations for which REALTORS® may be disciplined.

The Board has wide latitude in the sanctions which may be applied for violations of the Code of Ethics. It must, however, act responsibly in the application of these sanctions, attempting always to make the punishment commensurate with the offense.

<sup>1</sup> Under certain prescribed conditions, arbitration may be provided between a member and a nonmember of the Board, as, for example, between a REALTOR® and a client of the REALTOR®

Recommendations of Ethics Hearing Panels may range from a mild Letter of Warning to termination of membership as follows in order of severity, provided that such actions are specifically authorized in the Professional Standards procedures of the Board's bylaws:

- (a) Letter of Warning with copy to be placed in member's file;
- (b) Letter of Reprimand with copy to be placed in member's file;
- (c) Requirement that member attend the ethics portion of the Board Indoctrination Course or other appropriate course or seminar specified by the Hearing Panel which the respondent could reasonably attend, taking into consideration cost, location, and duration;
- (d) Appropriate and reasonable fine not to exceed \$15,000 (*Amended 5/13*);
- (e) Membership of individual suspended for a stated period of time not less than thirty (30) days nor more than one year, with automatic reinstatement of membership in good standing at the end of the specified period of suspension. The thirty (30) day minimum and one (1) year maximum do not apply where suspension is imposed for a remediable violation of a membership duty (e.g., failure to pay dues or fees or failure to complete educational requirements. The Directors may order suspension unconditionally, or they may, at their discretion, give the disciplined member the option of paying to the Board, within such time as the Directors shall designate, an assessment in an amount fixed by the Directors, which may not exceed \$15,000 and which can be utilized only once in any three (3) year period, in lieu of accepting suspension. But, if the conduct for which suspension is ordered consists of failure to submit a dispute to arbitration, the Directors may not permit the disciplined member to avoid suspension without submitting to the arbitration in addition to paying the assessment, unless in the meanwhile the dispute has been submitted to a court of law without any objection by any party that it should be arbitrated; (*Amended 11/13*))
- (f) Expulsion of individual from membership with no reinstatement privilege for a specified period of one (1) to three (3) years, with reinstatement of membership to be by application only after the specified period of expulsion on the merits of the application at the time received (decision should be written clearly articulating all intended consequences, including denial of MLS participatory or access privileges); (*Amended 4/96*)
- (g) Suspension or termination of MLS rights and privileges may also be utilized. Suspension of MLS services may be no less than thirty (30) days nor more than one (1) year; termination of MLS services shall be for a stated period of one (1) to three (3) years; (*Amended 5/02*)
- (h) REALTORS® who are not members of a Board from which they purchase the multiple listing service and their users and subscribers remain obligated under the Code of Ethics on the same terms and conditions as REALTORS® and REALTOR-ASSOCIATE® members of that Board. Discipline that may be imposed may be the same as but shall not exceed the discipline that may be imposed on that Board's members. Boards entering into regional or reciprocal MLS agreements are encouraged to include provisions requiring signatory Boards to respect, to the extent feasible, decisions rendered by other Boards involving suspension or expulsion from membership or from MLS. (*Amended 4/96*)
- (i) Members may also be required to cease or refrain from continued conduct deemed to be in violation of the Code, or to take affirmative steps to ensure compliance with the Code, within a time period to be determined by the hearing panel. Where discipline is imposed pursuant to this subsection, the decision should also include additional discipline (e.g., suspension or termination of membership) that will be imposed for failure to document compliance by the date specified, and to continue to comply for a specified period not to exceed three (3) years from the date of required compliance. (*Revised 05/24*)

In addition to imposing discipline, the Hearing Panel can also recommend to the Board of Directors that the disciplined member be put on probation. Probation is not a form of discipline. When a member is put on probation, the discipline recommended by the Hearing Panel will be held in abeyance for a stipulated period of time not longer than one (1) year. Any violation of the Code of Ethics which occurs during the probationary period may, at the discretion of the Board of Directors, result in the imposition of the suspended discipline. Absent any violation during the probationary period, both the probationary status and the suspended discipline are considered fulfilled, and the member's record will reflect the fulfillment. The fact that one or more forms of discipline will be held in abeyance during the probationary period does not bar the imposition of other forms of discipline which will not be held in abeyance. (*Revised 11/23*)

In addition to any discipline imposed, Associations may, at their discretion, impose administrative processing fees not to exceed \$500 against respondents found in violation of the Code of Ethics or other membership duties. Any administrative processing fee will be in addition to, and not part of, any disciplinary sanction imposed. Associations shall determine in advance when, and under what circumstances, administrative processing fees will be imposed so that imposition is a matter of administrative routine. (*Revised 5/13*)

Board Officers and Hearing Panels should consult with the Board attorney and refer to the Case Interpretations as well as the Board bylaws and this Code of Ethics and Arbitration Manual for additional assistance in properly enforcing the Code of Ethics.

This Manual has been prepared as a guide to local Boards and State Associations as to the procedures to be followed in bringing disciplinary action against members or hearing business disputes submitted to arbitration. It is a revision of the Code of Ethics and Arbitration Manual first adopted in 1973 and subsequently revised in 1976, 1980, 1982, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012,

2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023 and 2024. The first edition of this Manual was closely patterned after the Code of Ethics and Arbitration Manual of the California Association of REALTORS® that had been utilized by the local Boards in that state since January 1965. The initial favorable experience of California Boards and subsequently of Boards throughout the nation gives credence to the procedures contained in the Manual. The current edition incorporates revised provisions that reflect the experience and suggestions from Member Boards approved by the Professional Standards Committee and the Board of Directors of the National Association.

**Authority:** Article VIII, Section 3, Constitution National Association of REALTORS®, states:

*There shall be a Professional Standards Committee. It shall be the duty of this Committee to interpret the Code of Ethics, to consider and recommend appropriate action on inquiries of Member Boards and Board Members concerning enforcement thereof, and to recommend amendments thereto as it deems necessary or advisable.*

It shall be the duty of this Committee to:

- (1) interpret the Code of Ethics
- (2) consider and recommend appropriate action on inquiries of Member Boards and Board Members concerning enforcement thereof
- (3) recommend amendments thereto as it deems necessary or advisable

In fulfillment of its responsibility, the Professional Standards Committee has reviewed the content of this Manual, including the revisions made therein, and has adopted said Manual to be provided and recommended to local Boards and State Associations for adoption and incorporation into their respective bylaws, subject to review and adaptation by their legal counsel. This review and adaptation ensure that the procedures adopted by the local Board or State Association are consistent with the policies adopted by the National Association and with the requirements of law of the state in which they are located.

In no event should the Manual be adopted by a local Board or State Association without first having been approved by Board legal counsel. In this connection, it may be necessary for counsel to modify certain of the procedures described to assure that they are consistent with the state arbitration statute, if one is in effect. The adoption and incorporation of this Manual into the bylaws of the local Board or State Association, adapted and modified as may be necessary to ensure consistency with applicable law, will also ensure appropriate enforcement of the Code of Ethics and the establishment of appropriate arbitration procedures by the Member Boards. In the absence of adopting this recommended Manual and incorporating it into the bylaws, a Member Board is required by the National Association to establish appropriate Professional Standards procedures, to have them reviewed by Board legal counsel, and to provide to the National Association a letter from Board counsel indicating that such a review assures due process in Professional Standards procedures of the Board, and that they comply with applicable laws of the state. Such procedures must also comply substantively with the policies and procedures set forth in this Manual to the extent that such policies and procedures are consistent with applicable law.

**Objectives:** The courts have held that membership in a local Board is a valuable property right. It cannot be taken away without justifiable cause, whether provided for in the bylaws or not. The right to use the term “REALTOR®” or “REALTOR-ASSOCIATE®,” or to retain membership in a local Board, may not be withdrawn without the members being given reasonable opportunities to defend themselves. Failure to afford adequate “due process” in controversies involving the Code of Ethics or arbitration can, and in some instances already has, subjected the Boards and their members to adverse litigation.

This Manual, therefore, with appropriate modifications, which any local Board can adopt into its bylaws by reference, has the following objectives to:

- (1) provide a procedure which will be upheld by the courts
- (2) clearly define to members the types of conduct which may result in disciplinary action being taken
- (3) sufficiently outline the procedures so that officers of the Board from year to year can readily learn how to proceed in accordance with the Bylaws and general state law
- (4) eliminate haphazard methods which may result in confusion and dissatisfaction
- (5) clothe the disciplinary body with dignity which will demand respect by those brought before it
- (6) give the disciplinary body stability so that it may not be subject to personal pressure
- (7) create a method of settling business disputes which will command public respect and confidence of members
- (8) better protect the Board against legal actions, whether substantive or of the “nuisance” nature
- (9) require members to arbitrate those contractual and specific non-contractual disputes defined by this Manual within the framework of the Board rather than a court of law
- (10) give members reasonable assurance that:
  - (a) the Code of Ethics will be enforced

- (b) the procedure will protect them against unfair and unsubstantiated charges
- (c) only respected and qualified persons will sit in peer judgment
- (d) protection is given against the necessity of expensive and unjustified legal actions.

# Statements of Professional Standards Policy

## Applicable to Ethics Proceedings

Approved by Minnesota Realtors® and the National Association of REALTORS®

### **11. REALTOR® principal may be joined in any complaint filed against a REALTOR® nonprincipal or REALTOR® ASSOCIATE® licensed with the REALTOR® principal or their firm.**

(a) The REALTOR® principal with whom a REALTOR® nonprincipal or REALTOR-ASSOCIATE® is affiliated shall not be automatically joined in any ethics complaint against the REALTOR® nonprincipal or REALTOR-ASSOCIATE®. *(Revised 4/95)*

However, the REALTOR® principal may be joined as a respondent in the complaint by action of the complainant, by review of the Grievance Review Panel, or by determination of the Hearing Panel prior to the commencement of the hearing based on the facts of the complaint. If, however, the complaint is amended after the hearing has commenced, pursuant to Section 21(f)(2), the REALTOR® principal who has been added to the complaint has the right to have the hearing reheard from the beginning by the same Hearing Panel or may waive this right.

(b) The REALTOR® principal joined in such complaint shall not be automatically found in violation of the Code of Ethics if the REALTOR® nonprincipal or REALTOR-ASSOCIATE® is judged in violation, but the finding should be based on the facts and merits of the case.

(c) Discipline of the REALTOR® principal, if any, may vary from that imposed upon the REALTOR® nonprincipal or REALTOR-ASSOCIATE®.

### **12. Adoption of Code of Ethics or Standards of Practice by Member Boards and State Associations**

A local Board or State Association shall not adopt any set of rules, regulations, policies, and practices which purport to be in lieu of, in addition to, or an extension of the Code of Ethics and Standards of Practice of the NATIONAL ASSOCIATION OF REALTORS®. *(Amended 11/89)*

### **13. Articles and publications on the Code of Ethics**

The National Association reserves the exclusive right to interpret the Code, its applications, and its proper enforcement to Member Boards and Board Members.

The National Association does not endorse or recommend any article or publication concerning ethics which is not published by the National Association or its institutes, societies, and councils and authorized by the National Association.

### **14. Statement of policy to State Associations and local Boards concerning the state real estate regulatory authority adopting and incorporating the Code of Ethics of the National Association into state law or regulations**

Historically, the Professional Standards Committee of the National Association has sought to promulgate the awareness and understanding of REALTORS® and REALTOR-ASSOCIATES®, as well as the general public, of the Code of Ethics of the National Association and its distinctive obligations accepted voluntarily by the members of the constituent Member Boards of the NATIONAL ASSOCIATION OF REALTORS®.

The Code and its interpretations are copyrighted, and the National Association seeks on a continuing basis to diligently guard and protect its rights and the rights of its Member Boards to preserve the distinctive wording of the Code and the unique application of its obligations to members of Boards of REALTORS®. This protection is based upon a completely voluntary acceptance of and adherence to the Code by such members, subject to the sole right of interpretation of the Code by the Professional Standards Committee of the National Association and the appropriate enforcement of the Code by Member Boards of REALTORS® in accordance with the provisions of Article IV, Sections 1 and 2, Bylaws, NATIONAL ASSOCIATION OF REALTORS®.

At the same time, the National Association has sought to persuade states and their regulatory agencies to strengthen the laws and regulations governing the industry in order to better protect the public.

As a result of the coincidence of the professionalization and consumer protection objectives of the National Association and of state authorities, in some instances, state authorities have sought to adopt or incorporate the Code of Ethics of the National Association into the laws or regulations of the state, either expressly or by reference. Moreover, some State Associations and Member Boards have

encouraged such action on the theory that what is good for clients of REALTORS® should be good for clients of every real estate licensee.

While the National Association desires to promote in every way the strengthening of the consumer protection afforded by the real estate license laws and regulations, the adoption or incorporation of the Code of Ethics should **not** be encouraged or endorsed for the following reasons:

- First, the Code of Ethics is copyrighted by the NATIONAL ASSOCIATION OF REALTORS®, and such action would destroy or seriously erode the right of the Association to limit the usage of the Code and references to it to REALTORS®, REALTOR-ASSOCIATES®, and those authorized by the Association.
- Second, the Code of Ethics is subject to interpretation only by the Professional Standards Committee of the National Association. However, if enacted into law, the Code would be subject to interpretation by the regulatory authority or by the courts. Thus, there exists a serious risk that the same Code provision might be subject to differing interpretations in the same jurisdiction as well as differing interpretations in different jurisdictions, and the National Association would thereby be effectively preempted from control and administration of its own creation.
- Third, the enforcement of the Code of Ethics is a responsibility of the Board of REALTORS®. Should the Code be incorporated into law, enforcement responsibility would necessarily shift to governmental authorities. Not only would this constitute a fundamental preemption of a traditional Board function, but it would also hamper consistent comprehensive enforcement nationwide.
- Fourth, adoption of the Code of Ethics by states and their regulatory authority would obviate its aspirational objectives and character. Government cannot, by its nature, demand the highest standards of professional competence and performances without risking political attack on the ground that it has created a barrier to business entry. However, high standards may be adopted voluntarily by those engaged in the business who are prepared to accept the judgment of their peers and the highest measure of social responsibility. Hence, the private, voluntary Code can provide a direction for the development of professional responsibility which is rarely within the capacity of the Code if enacted into law.

#### **16. Filing fee to accompany requests for ethics hearings**

In the interest of effective and consistent enforcement of the Code of Ethics, no filing fee may be required to accompany a complaint alleging unethical conduct on the part of a Board Member.

#### **17. Applicability of Code of Ethics to Board Members**

REALTORS® are subject to the Code of Ethics of the National Association. Board Members holding other classifications of membership are encouraged to abide by the principles established in the Code but are not subject to the disciplinary authority of the local Member Board with regard to conduct inconsistent with the Code of Ethics. *(Amended 2/94)*

REALTORS® who participate in MLS or otherwise access MLS information through any Association in which they do not hold membership are subject to the Code of Ethics in that Association on the same terms and conditions as Board Members. Discipline that may be imposed may be the same as but shall not exceed the discipline that may be imposed on members. Boards entering into regional or reciprocal MLS agreements are encouraged to include provisions requiring signatory Boards to respect, to the extent feasible, decisions rendered by other Boards involving suspension or expulsion from membership or from MLS. *(Amended 4/96)*

#### **18. Local Member Board requests for the conduct of ethics and arbitration hearings by the State Association**

Minnesota Realtors® has entered into an agreement with the following local member boards which authorizes Minnesota Realtors® to implement Professional Standards enforcement on their behalf including the Code of Ethics, conducting mediations, and arbitration hearings.

- Fargo-Moorhead Area Association of REALTORS®
- Grand Forks Area Association of REALTORS®
- Greater Alexandria Area Association of REALTORS®
- Greater Lakes Association of REALTORS®
- Itasca County Board of REALTORS®
- Lake Superior Area REALTORS®
- Lake Region Association of REALTORS®
- Lakes Country Association of REALTORS®
- Minneapolis Area Association of REALTORS®
- Minnesota Commercial Association of REALTORS®

- Northwest Minnesota Association of REALTORS®
- Range Association of REALTORS®
- REALTOR® Association of Southern Minnesota
- Southeast Minnesota Association of REALTORS®
- St. Cloud Area Association of REALTORS®
- St. Paul Area Association of REALTORS®
- West Central Association of REALTORS®

#### **19. Confidentiality of determinations rendered in ethics and arbitration hearings**

The allegations, findings, and decisions rendered in ethics and arbitration hearings are confidential and should not be reported or published by the Board, any member of a tribunal, or any party under any circumstances except those established in the *Code of Ethics and Arbitration Manual* of the National Association as from time to time amended. (Revised 11/91)

#### **20. Statement of policy related to Article 17 of the Code of Ethics**

Article 17 is not to be construed as precluding a REALTOR® who is a defendant in litigation from joining a cooperating agent and/or subagent in the litigation.

#### **21. Adoption of the Code of Ethics and Arbitration Manual by Member Boards**

Member Boards and State Associations are not required to adopt the *Code of Ethics and Arbitration Manual* verbatim, but no Member Board may adopt or follow any procedures inconsistent with the precepts enunciated in the *Code of Ethics and Arbitration Manual* of the National Association as from time to time amended.

#### **22. Board and State Association publications or audiovisual programs concerning the Code of Ethics and its enforcement**

Any articles, audiovisual programs, or any type of publication related to the Code of Ethics, its interpretation, or its enforcement that has not been prepared by or approved by the Professional Standards Committee of the National Association must be prefaced by a statement indicating that the contents reflect the understanding and opinions of the author(s) and do not represent an official expression of policy by the National Association. To the extent that any article, audiovisual program, or publication prepared by any individual or organization other than the National Association varies in any degree from the Code of Ethics, its interpretation, or its enforcement procedures as approved by the Professional Standards Committee of the National Association, the policies of the National Association shall take precedence.

No article, audiovisual program, or other publication may be designated as an official expression of policy concerning the Code of Ethics, its interpretation, or its enforcement without the express written approval of the National Association.

Local Boards and State Associations are encouraged to consider preparation of such articles, audiovisual programs, or other publications and are requested to submit them to the Professional Standards Committee or its staff representatives for review and approval prior to publication.

#### **24. Formulation of Multi-Board or Regional Grievance or Professional Standards Committees for Code enforcement in areas where Boards have limited membership**

Member Boards are authorized to enter into collective agreements by which the Boards would share the responsibility for enforcement of the Code of Ethics, including the conduct of arbitration hearings, on a joint basis.<sup>2</sup>

#### **25. Expenses related to conduct of hearings by Multi-Board or regional Grievance or Professional Standards Committees**

Expenses related to the conduct of hearings by a multi-Board or regional Grievance Review Panel or Professional Standards Committee shall be as established by written agreement between the signatory Boards. The expenses of such hearings shall be borne by Minnesota Realtors® and shall not be supported by fees charged to the members other than as otherwise authorized by the *Code of Ethics and Arbitration Manual*. (Revised 11/98)

#### **26. Burdens and standards of proof in arbitration and ethics hearings**

In any ethics hearing or other hearing convened to consider alleged violations of membership duties and in any arbitration hearing, the ultimate burden of proving that the Code of Ethics or other membership duty has been violated, or that an arbitration award should be issued to the requesting party, is at all times on complainants and parties requesting arbitration.

<sup>2</sup> A sample format agreement approved by the MNR Professional Standards Policy Committee to establish a collective agreement is included in **Part Six** of this Manual

The standard of proof on which an arbitration hearing decision is based shall be a “preponderance of the evidence.” Preponderance of the evidence shall be defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the facts sought to be proved are more probable than not.

“Clear, strong, and convincing” shall be the standard of proof by which alleged violations of all membership duties, including violations of the Code of Ethics, are determined. Clear, strong, and convincing shall be defined as that measure or degree of proof which will produce a firm belief or conviction as to the allegations sought to be established. *(Revised 2/92)*

Appeals of ethics Hearing Panel decisions based on an alleged misapplication or misinterpretation of an Article(s) of the Code of Ethics shall be determined based on the correctness of the Hearing Panel’s decision.

Appeals of ethics Hearing Panel decisions based on an alleged procedural deficiency or failure of due process, and procedural review of arbitration hearing procedures shall be determined based on whether the effect of the deficiency was to deny the appellant a fair hearing.

Appeal panels may modify discipline proposed by Hearing Panels only in instances where the discipline proposed is not authorized or where the appeal panel concludes that the Hearing Panel abused its discretion. *(Adopted 11/99)*

### **29. Applicability of the Code of Ethics**

A REALTOR® shall be subject to disciplinary action under the Code of Ethics with respect to all of their activities. *(Revised and effective November 13, 2020)*

### **31. “Cooperation” defined**

The obligation to cooperate, established in Article 3 of the Code of Ethics, relates to a REALTOR®’s obligation to share information on listed property and to make property available to other brokers for showing to prospective purchasers when it is in the best interest of the seller. An offer of cooperation does not necessarily include an offer to compensate a cooperating broker. Compensation in a cooperative transaction results from either a blanket offer of subagency made through MLS or otherwise, or offers to compensate buyer agents, or, alternatively, individual offers made to subagents or to buyer agents, or other arrangements as negotiated between listing and cooperating brokers prior to the time an offer to purchase is submitted. *(Amended 11/09)*

### **32. “Expert witness” on the Code of Ethics**

The NATIONAL ASSOCIATION OF REALTORS® reserves to itself the exclusive right to interpret the Code of Ethics through consideration and action of the National Association’s Professional Standards Committee. A member, if called upon to testify on the Code of Ethics or its interpretation in civil litigation, must clearly indicate that the information provided reflects the REALTOR®’s personal opinion and sense of ethics in light of their experience in the real estate business. *(Adopted 2/89)*

### **33. Use of panels in place of Committees and the Board of Directors**

The Professional Standards Administrator shall appoint a panel of three members of the Professional Standards Committee to review ethics complaints and arbitration requests.

Any appeal matter to be brought before the Board of Directors shall be considered by a panel of Professional Standards Committee members appointed by the Professional Standards Administrator for that purpose. Five (5) members of the Professional Standards Committee shall constitute such a panel, which shall act on behalf of the Board of Directors.

The Professional Standards Administrator shall appoint a panel of three members of the MNR Executive Committee to review and ratify the recommendations from ethics Hearing Panels.

The Executive Committee shall be used in place of the Board of Directors to determine other matters as specified elsewhere in this manual. The decision of the panel or Executive Committee shall be final and binding and shall not be subject to further review by the full Board of Directors or the Professional Standards Committee, except as otherwise provided in this Manual.

In appointing such panels, the Professional Standards Administrator should consider the following recommended criteria:

- number of years as a REALTOR®
- number of years in the real estate business
- primary and secondary fields of real estate endeavor/ expertise
- participation in post-licensing real estate education
- training in the Code of Ethics
- position in firm (principal, nonprincipal)
- size of firm

- common sense
- open-mindedness
- familiarity with state(s) laws and regulations
- receptiveness to instruction/training
- other relevant professional or procedural training

Associations are also authorized to adopt policies and procedures assigning Grievance Committee functions to a panel of the Professional Standards Committee. Where Grievance Committee functions are delegated to a panel of the Professional Standards Committee, all provisions of this Manual applicable to Grievance Committees will apply to a panel of the Professional Standards Committee acting in that capacity. Three (3) or more members shall constitute a panel of the Professional Standards Committee to assume the responsibilities of the Grievance Committee. *(Adopted 5/15)*

Panel members should be mature, experienced, knowledgeable persons of judicial temperament.

When possible, panels should be strongly encouraged to use conference calls, virtual meetings, or alternative communication technologies for meetings to expedite the decision-making process. Use of conference calls, virtual meetings, or alternative communication technologies during the course of a hearing shall be governed by Professional Standards Policy Statement #56, Remote Testimony and Virtual Hearings. *(Revised 11/21)*

#### **34. Consolidation of ethics complaints arising out of the same transaction**

In the interest of maximizing the resources of Associations, Grievance Review Panels should use all reasonable efforts to ensure that all ethics complaints arising out of the same transaction or event are consolidated and scheduled for hearing in a single hearing. Respondents to ethics complaints do not have the right to a separate hearing unless they can demonstrate that consolidation of complaints would prevent them from receiving a fair hearing. *(Adopted 4/93)*

#### **35. Separation of ethics complaint and arbitration request**

When an ethics complaint and an arbitration request are filed at the same time arising out of the same facts and circumstances, the arbitration hearing shall be held first and the ethics hearing shall be conducted by a different Hearing Panel after the conclusion of the arbitration hearing. *(Adopted 11/93)*

#### **36. Translations of the Code of Ethics**

While Associations are encouraged to make information regarding the Code of Ethics and its appropriate enforcement available as widely as possible, translations (other than by the National Association) into languages other than English are not official and should carry a notice advising readers that they have been prepared for informational purposes only. *(Adopted 4/94)*

#### **37. Discipline for prior violations of the Code of Ethics**

In instances where REALTORS® are found to have violated the Code of Ethics, the Hearing Panel will consider all records of previous violations and sanctions imposed, whether by the current or by any other Association, in the member's file in determining discipline, and the rationale for the current disciplinary action can be provided to the parties and the Ratification Panel or Appeal Tribunal as part of the decision. The Hearing Panel's consideration will include whether prior disciplinary matters involve discipline that was held in abeyance and that will be triggered by a subsequent violation (including the matter currently under consideration by the Hearing Panel). *(Amended 11/13)*

#### **38. Hearing Panels to be conversant with applicable state law under board of choice across state lines**

Where membership is provided under board of choice across state lines, Hearing Panels must be conversant with and apply the relevant state's laws and regulations in determining how the Code of Ethics will be interpreted/applied in instances where the underlying transaction occurred out of state and involved a respondent licensed in that state. *(Adopted 11/95)*

#### **40. Cooperative enforcement agreements**

To ensure fair, impartial and knowledgeable enforcement of the Code of Ethics (including arbitration) there must be adequately large groups of knowledgeable, trained REALTORS® and REALTOR-ASSOCIATES® from which the necessary committees and tribunals can be appointed. To this end, Associations are required to enter into cooperative enforcement agreements to ensure Associations have an aggregate total of at least three hundred fifty (350) primary REALTOR® and/or REALTOR-ASSOCIATE® members from which to compose Hearing Panels. It is recommended but not required that representation/ participation in any multi-board regional cooperative enforcement agreement be on a pro-rata basis. This requirement does not apply in instances where, in the opinion of the state association, unique geographical considerations (e.g., islands, remote locale, etc.), logistical difficulties or other impediments make participation prohibitive. All Boards regardless of size (except Commercial Overlay Boards) must participate with at least one other Board (which may be the state association) in a cooperative enforcement agreement. *(Revised 5/08)*

#### **42. Previously dismissed ethics complaints/arbitration requests**

If an ethics complaint or arbitration request is received and reviewed by a Board's Grievance Review Panel or Hearing Panel and is dismissed as not warranting a hearing, the respondent(s) shall not subsequently become subject to the same (or substantially similar) ethics complaint or arbitration request in the same or another Board. (*Adopted 5/97*)

Dismissal of an arbitration request by an Association of REALTORS® because the dispute is not arbitrable based on Article 17 or other grounds established in the *Code of Ethics and Arbitration Manual*, does not prohibit REALTORS® from exercising other remedies that may be available to them, including litigation. (*Adopted 5/99*)

#### **44. Effective dates of the Code of Ethics and Standards of Practice and the *Code of Ethics and Arbitration Manual***

All changes to the Code of Ethics and Standards of Practice carry an annual effective date of January 1 of the year following their approval by the Board of Directors of the National Association and, where necessary, by the Delegate Body. (*Adopted 11/89*)

To ensure consistent, uniform enforcement of the Code of Ethics nationwide, all changes in professional standards policy normally incorporated into the National Association's *Code of Ethics and Arbitration Manual* become effective on January 1 of the year following their approval by the Board of Directors of the National Association. Unless specifically provided otherwise by the Board of Directors, associations shall have sixty (60) days from their effective date to adopt them. (*Revised 5/15*)

All new and amended Case Interpretations become effective upon approval by the National Association's Professional Standards Committee and publication on [www.nar.realtor](http://www.nar.realtor). (*Adopted 5/98*)

#### **45. Publishing the names of Code of Ethics violators**

Associations may, as a matter of local discretion, adopt one of the following options authorizing the publication of the names of ethics violators, subject to the following qualifications:

##### **Publication Option #1:**

- Publication can only occur after a second violation occurs within three (3) years.
- Ethic citations discipline may be included in the violation count if the association has affirmatively authorized publication within their citation policy.
- Publication can only be made in an official communication vehicle intended primarily for members of the Associations in which the violator holds (held) membership. Where the official communication vehicle is electronic or Internet-based, access must be limited to Association members.
- The name of the firm the violator is (or was) licensed with cannot be published.
- Publication must be consistent and uniform. This means that publication may not occur selectively but must be used in each instance where a second violation is determined within three (3) years.
- Other than the violator's name, the only additional information that may be published is the Article(s) violated, and the discipline imposed, except that in cases where the violator's name is similar to another member's name, the violator's license number or office address (or both) may also be published. (*Amended 11/99*)
- At least one of the violations must be based on conduct which occurs after the adoption of the Association's publication procedures.

Associations may adopt Publication Option #1 and may increase the timeframe with which publication occurs for certain discipline, the content of the publication to include photos or a description of the violation(s), or any combination thereof, only to the extent that is permissible under Publication Option #2. Any program that exceeds the scope of Publication Option #1, as defined above, must include local or state association legal counsel review of the decision, discipline, and information to be published.

##### **Publication Option #2:**

- Publication can occur in all instances in which violators are disciplined with a letter of reprimand, a fine (ethics citation fines are not included in publications unless the association has affirmatively adopted policy to include them), a suspension, and/or an expulsion.
- Prior to publication, local or state association legal counsel must review the decision, discipline, and information to be published.
- Publication can only be made in an official communication vehicle intended primarily for members of the Association(s) in which the violator holds (held) membership. Where the official communication vehicle is electronic or internet-based, access must be limited to Association members. The name of the firm the violator is (or was) licensed with cannot be published.

- Publication must be consistent and uniform. This means that publication may not occur selectively but must be used in each instance where the discipline imposed meets the Association's publication criteria.
- Other than the violator's name and a photo of the violator, the only additional information that may be published is the Article(s) violated, a description of the violation(s) with all names redacted except for the name of the violator, and the discipline imposed, except that in cases where the violator's name is similar to another member's name, the violator's license number or office address (or both) may also be published.
- Publication must be based on conduct which occurs after the adoption of the Association's publication procedures (*Revised 05/18*)
- Publication under this policy does not authorize dissemination of ethics complaints. Findings and decisions may not be disseminated in their original form and must be condensed prior to publication. (*Adopted 05/19*)

Minnesota Realtors® has adopted the provisions of Publication Option #1 in addition to the following.

- There shall be no increase in the timeframe with which publications occur and publication shall occur only in each instance where a second violation is determined within three (3) years.
- The publication will not include photos.
- The publication will not include a description of the violation(s).

#### **47. New member orientation program**

Effective January 1, 2001, applicants for REALTOR® membership shall complete an orientation program on the Code of Ethics of not less than two (2) hours and thirty (30) minutes of instructional time. This requirement can be satisfied through instruction provided by the local Board or by another Board and can include classroom instruction, home study, correspondence study, or Internet-based instruction. Any orientation program must meet the learning objectives and minimum criteria established by the NATIONAL ASSOCIATION OF REALTORS® from time to time. REALTORS® who having completed such orientation shall not be required to complete further Code of Ethics orientation upon application for membership in another Board provided that REALTOR® membership has been continuous or that any break in membership is for one (1) year or less. (*Adopted 11/99*)

#### **48. REALTORS® Code of Ethics training**

Effective January 1, 2001 through December 31, 2004, and for successive four (4) year periods ending December 31, 2016, REALTORS® were required to complete quadrennial ethics training of not less than two (2) hours and thirty (30) minutes of instructional time. Beginning January 1, 2017 through December 31, 2018 and for successive two (2) year periods thereafter, REALTORS® are required to complete biennial ethics training of not less than two (2) hours and thirty (30) minutes of instructional time. In 2019, the Board of Directors extended the training requirement from every two (2) years to every three (3) years and extended the then current cycle deadline from December 31, 2020 to December 31, 2021. The following cycle begins January 1, 2022 and ends December 31, 2024. REALTORS® completing such training during any three (3) year cycle shall not be required to complete additional ethics training in respect of this requirement as a requirement of membership in any other Association.

A REALTOR® completing the new member Code of Ethics orientation during any three (3) year cycle shall not be required to complete additional ethics training in respect of this requirement until a new three (3) year cycle commences.

Failure to complete the required periodic ethics training shall be considered a violation of a membership duty.

Failure to meet the requirement will result in suspension of membership for the first two months (January and February) of the year following the end of any three (3) year cycle or until the requirement is met, whichever occurs sooner. On March 1 of that year, the membership of a member who is still suspended as of that date will be automatically terminated.

Every Association is required to provide access to necessary ethics training programs either locally, in conjunction with other Associations, or through other providers the Association partners with. Any training offered pursuant to this requirement must meet the learning objectives and minimum criteria established by the NATIONAL ASSOCIATION OF REALTORS® from time to time. (*Amended 11/19*)

#### **49. Professional standards administration training**

Enforcement of the Code of Ethics is a privilege and responsibility of each Association as established in Article IV of the Bylaws of the NATIONAL ASSOCIATION OF REALTORS®. Every Association must designate a person or entity responsible for administration of professional standards processes. Persons primarily responsible for administration of professional standards processes must

successfully complete training every four (4) years on professional standards administration meeting the learning objectives and minimum criteria established by the NATIONAL ASSOCIATION OF REALTORS® from time to time. *(Revised 11/14)*

#### **50. Separate subcommittees for ethics, arbitration, and mediation**

Associations can meet their professional standards enforcement responsibility through separate committees or subcommittees specifically delegated responsibility for arbitration, mediation, the conduct of hearings to resolve ethics complaints and alleged violations of other membership duties, and to conduct ombudsman programs. *(Revised 5/15)*

#### **54. Personal safety in professional standards proceedings**

Associations should take reasonable steps to ensure the personal safety of parties, panelists, witnesses, staff, and others participating in professional standards proceedings.<sup>3</sup>

Improper conduct by a party or participant to an Association hearing or proceeding, including threatening, harassing, violent, coercive, or illegal behavior towards any Association staff, panelists, party, party's counsel, witnesses, or other hearing participant is strictly prohibited. Minnesota Realtors® reserves the right to take necessary steps to ensure the personal safety of all participants to any hearing or proceeding, including but not limited to, engaging security personnel to be present at hearings or proceedings.

During a hearing or proceeding, if the presiding committee or Hearing Panel Chair believes there is an unacceptable risk posed to the safety of any participant, the proceedings will be recessed so the Chair can consult with any or all of the following: the Professional Standards Administrator, other appropriate Association staff, the Professional Standards Committee Chair, Association counsel, or any other appropriate party or agency (including law enforcement authorities) to identify and take steps to ensure the safety of all participants and to permit the proceedings to resume.

Prior to commencement of any hearing or proceeding, if any participant feels that additional steps should be taken to ensure the safety of any participant to any future hearing or proceeding, that person should notify the Professional Standards Administrator as soon as possible. The Professional Standards Administrator shall consult with the Chief Executive Officer, the Professional Standards Committee Chair, Chair of the Hearing Panel or proceeding, if assigned, and any other appropriate party or agency (including law enforcement authorities), to review the request of that participant and determine, in its sole discretion, what, if any, additional actions will be taken by the Association. The Professional Standards Administrator may also consult with the above-referenced persons in their sole discretion, based on information of which the Professional Standards Administrator becomes aware during the pendency of the matter.

If after consulting with staff, Association counsel, and any other appropriate party or agency (including law enforcement authorities), and after taking reasonable steps to attempt to hold or resume the proceeding while ensuring the safety of all participants, the Association concludes it will be unduly difficult or impossible to ensure the safety of all participants, the proceedings will be postponed indefinitely and resumed only when the Association (or its successor) concludes that the proceedings can be safely resumed. Where proceedings are postponed indefinitely by action of the Association, a memorandum detailing the circumstances shall be appended to the case file and maintained on a permanent basis. The Association may, at their discretion, share any or all information including the complaint, response, or other documentation or information in their possession with appropriate law enforcement or other government agencies.

#### **55. Transmitting devices**

Cellular phones, two-way radios and other transmitting devices may not be operated during ethics hearings, arbitration hearings, appeal hearings, and procedural review hearings absent specific, advance authorization from the panel chair. *(Adopted 11/04)*

#### **56. "Remote" testimony and virtual hearings**

The policies and procedures established in the National Association's *Code of Ethics and Arbitration Manual* contemplate that parties and their witnesses will participate in ethics and arbitration hearings in the physical presence of Hearing Panels and the respective parties or, at the association's sole discretion, in virtual hearings. If hearings are in person, parties and their witnesses may request permission to participate in such proceedings remotely. *(Revised 11/21)*

Parties and witnesses to ethics and arbitration hearings may be permitted to participate remotely in hearings at the discretion of the hearing panel chair. Only those parties eligible to attend the entire hearing in person would be entitled to participate remotely for the entirety of the hearing. Witnesses may only participate remotely for their own testimony. *(Revised 11/21)*

<sup>3</sup> The reference to proceedings includes the association's informal dispute resolution process (e.g., ombuds, mediation, etc.). *(Revised 5/23)*

Hearing panels, association staff, or association counsel should employ steps to verify the identity of remote participants, to preclude unauthorized individuals from being in the presence of the remote participant, and to employ appropriate safeguards to ensure confidentiality of the proceedings. *(Adopted 11/21)*

#### **57. Case Interpretations are official policy**

The Case Interpretations of the Code of Ethics approved by the National Association's Professional Standards Committee and published in Interpretations of the Code of Ethics illustrate and explain the principles articulated in the Articles and Standards of Practice. While a REALTOR® cannot be found in violation of a Standard of Practice or a Case Interpretation, both are official statements of National Association policy and are not merely advisory. Both can be cited by complainants in support of alleged violations of Articles and by hearing panels in support of decisions that an Article(s) has been violated. *(Adopted 11/10)*

#### **59. Association to provide ombudsman services**

Every local and state association of REALTORS® is required to offer, either directly or as part of a cooperative enforcement agreement (consistent with Professional Standards Policy Statement #40, Cooperative Enforcement Agreements), ombudsman services to members, clients, and consumers on or before January 1, 2016. *(Adopted 11/14)*

#### **60. "Alternate" hearing panelists**

Associations may, but are not required to, convene hearing panels that include one or more alternate members. If alternates are present at hearings, they should be seated apart from the hearing panel, may not participate in any way unless called on to replace a panel member, and are bound by the same duties that are applicable to panel members.

If alternate panel members are not called on to replace a panel member and if the association's policy allows them to be present at post-hearing executive session deliberations, alternates may not be involved in deliberating or deciding the matter before the hearing panel. *(Adopted 11/14)*

#### **61. Retention of Records and File Requests**

The Association does not maintain an official record of documents filed in ethics hearings or proceedings on behalf of any party or participant and does not provide copies or access to the Association's case file. The Association retains the decisions of its panels indefinitely and the remainder of the Association's file for each matter for seven (7) years from the date of final determination on the matter prior to permanent disposal. Any complaints or requests submitted without a name or otherwise defective shall be retained for one (1) year from submission and permanently disposed of thereafter. For those proceedings that are postponed indefinitely by action of the Association due to safety reasons, a memorandum detailing the circumstances shall be appended to the case file and maintained on a permanent basis. If, at any time after the final determination on the matter, the Association receives a request from any party to any matter to receive a copy of documents or media from their respective case file, the Association, if able, will provide only a copy of documentation or other media that was submitted by the requesting party upon receipt of a \$50.00 fulfillment fee. The Association reserves the right to determine the method of delivery for any such documentation or media request. Any other demand for copies of file content must be made by subpoena.

#### **62. Redaction Policy of Submitted Information**

Association staff will review submitted documentation and redact confidential information that is not relevant to the Hearing Panel's determination on the matter presented (e.g. social security numbers, bank account information, children's names, birth dates, etc.). The association and its staff assume no responsibility or liability for redaction or failure to redact any such information.

#### **63. Weather Policy**

In the event of inclement weather, to ensure the safety of all hearing participants, the Case Administrator and Hearing Panel Chair will determine whether a hearing will be postponed 24 hours prior to the hearing time based on the National Weather Service's travel advisories. The Case Administrator will timely notify participants accordingly.

# Part One — Ethics General Provisions

## **Section 1. Definitions Relating to Ethics**

As used herein,

- (a) “Agent” means a real estate licensee (including brokers and sales associates) acting in an agency relationship as defined by state law or regulation. *(Revised 4/98)*
- (b) “Association” means this organization, Minnesota Realtors®. As used herein, the term “association(s)” refers to board(s) and association(s) of REALTORS®. *(Revised 11/17)*
- (c) “Broker” means a real estate licensee (including brokers and sales associates) acting as an agent or in a legally recognized non-agency capacity. *(Adopted 4/98)*
- (d) “Client” means the person(s) or entity(ies) with whom a REALTOR® or a REALTOR®’s firm has an agency or legally recognized non-agency relationship. *(Revised 11/97)*
- (e) “Counsel” means an attorney at law or a REALTOR® whether in the same or in another firm. *(Amended 11/95)*
- (f) “Customer” means a party to a real estate transaction who receives information, services, or benefits but has no contractual relationship with the REALTOR® or the REALTOR®’s firm. *(Revised 11/97)*
- (g) “Directors” means the Board of Directors of the Association (State Association) as interpreted by Policy Statement #33. *(Revised 11/91)*
- (h) “Electronically,” “electronic means,” “technology,” “technological means,” and related terms include, but are not limited to, the Internet, Internet-based websites, all forms of Internet communication, e-mail, facsimile correspondence, telephone, and all other forms of distance communication. *(Adopted 5/06)*
- (i) “Expulsion from Membership” means expulsion from membership in the Board for a period not less than one (1) but not more than three (3) years, with reinstatement to membership by application only as a new member after the end of the period of expulsion, with the application considered on its merits.
- (j) “Fine—Appropriate and Reasonable” means a fine commensurate with the gravity of the determined offense against the Code and against the Board, and ranging in any amount determined, but not to exceed \$15,000, to any Board Member with respect to any single ethics hearing, irrespective of the number of Code violations determined. *(Revised 5/13)*
- (k) “Hearing” may refer either to an ethics hearing relating to disciplinary matters or to an arbitration hearing in which the dispute generally involves entitlement to a commission or to compensation. *(Revised 11/93)*
- (l) “Immediate Family” as used in the Code of Ethics includes, but is not limited to, the REALTOR® and the REALTOR®’s spouse and their siblings, parents, grandparents, children (by birth or adoption), grandchildren, and other descendants. *(Adopted 11/89)*
- (m) “In person” means in one’s physical presence. *(Adopted 11/21)*
- (n) “Leadership Team” means the Chief Executive Officer, President, President-Elect, First Vice President, Treasurer, Immediate Past-President of the Association and the Professional Standards Committee Chair. Although the Chief Executive Officer has the right to be present at meetings involving the Leadership Team, the Chief Executive Officer shall not vote on any matter before the Leadership Team.
- (o) “Letter of Reprimand” means a letter to an Association Member advising of a lack of professional conduct determined by a due process hearing of the Professional Standards Committee and affirmed by the Board of Directors and advising that the letter is to be construed as an official reprimand. *(Revised 11/88)*
- (p) “Letter of Warning” means a letter to an Association Member advising of a lack of professional conduct determined by a due process hearing of the Professional Standards Committee and affirmed by the Board of Directors, and warning that future similar conduct could result in more severe sanction. *(Revised 11/88)*

- (q) “Member” means REALTOR® and REALTOR®-ASSOCIATE® members of this Association (State Association). REALTORS® who participate in MLS or otherwise access MLS information through any Board in which they do not hold membership are subject to the Code of Ethics in that Board. *(Amended 11/95)*
- (r) “On-site” means in the physical presence at a particular location or site. *(Adopted 11/21)*
- (s) “Party” (Parties) means the complainant(s) or respondent(s) in disciplinary proceedings and in arbitration hearings referred to in **Part Four** and **Part Ten** of this Manual. *(Revised 11/91)*
- (t) “Person” means a natural person. *(Adopted 11/13)*
- (u) “Probation” means that a form of discipline recommended by the Hearing Panel will be held in abeyance for a stipulated period of time which may not exceed one (1) year. Any violation of the Code of Ethics which occurs during the probationary period may, at the discretion of the Board of Directors, result in the imposition of the suspended discipline. Absent any violation during the probationary period, both the probationary status and the suspended discipline shall be considered fulfilled, and the record shall reflect the fulfillment. The fact that one or more forms of discipline will be held in abeyance during the probationary period does not bar imposition of other forms of discipline which will not be held in abeyance. *(Revised 11/23)*
- (v) “Professional Standards Administrator” is the Association staff person primarily responsible for the administration of professional standards processes. *(Adopted 11/15)*
- (w) “Public Trust” refers to demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud. *(Amended 11/20)*
- (x) “Real Estate Professionals”, for purpose of Article 15, are those engaged in the disciplines of real estate specified in Article 11. *(Adopted 5/22)*
- (y) “REALTOR® principal” includes licensed or certified individuals who are sole proprietors, partners in a partnership, officers or majority shareholders of a corporation, or office managers (including branch office managers) acting on behalf of principals of a real estate firm who subscribe to the Code of Ethics as a condition of membership in a local Board, State Association, and the National Association of REALTORS®. The phrase REALTOR® principal includes those REALTORS® who participate in a Multiple Listing Service through any Association in which they do not hold membership. *(Revised 5/97)*
- (z) “Remote” means from a distance without a physical presence, i.e., video or teleconference. *(Adopted 11/21)*
- (aa) “Suspension of Membership” means suspension of all Association provided membership rights, privileges and services (including those provided by the Local, State and National Association) not available to nonmembers for a period not less than thirty (30) days and not longer than one (1) year on terms and conditions expressly stated for an established period of time, including use of the terms REALTOR® and REALTOR-ASSOCIATE®, with automatic reinstatement of all withdrawn membership rights, privileges, and services at the end of the period of suspension. The thirty (30) day minimum and one (1) year maximum do not apply where suspension is imposed for a remediable violation of a membership duty (e.g., failure to pay dues or fees or failure to complete educational requirements). Although membership rights, privileges, and services are withdrawn as specified in the notice of suspension, membership, per se, including the duty to abide by the Code of Ethics and the obligation to pay membership dues continues during the period of suspension. Suspended members shall not be obligated for payment of other fees or charges except for continued optional services of the Association. Any failure to abide by the terms and conditions of the suspension, or the finding of a violation of the Code of Ethics after a hearing as provided by the professional standards procedures of the Association bylaws, shall be grounds for consideration as to possible extension of the suspension or expulsion from membership in the Association. *(Revised 05/04)*
- (bb) “Training Requirement for Ethics or other Appropriate Training” means a letter from the Professional Standards Administrator to an Association Member advising of a lack of professional conduct determined by a due process hearing by the Professional Standards Committee, and directing the member to attend the ethics portion of the Association Indoctrination Course or other appropriate course or seminar specified by the Hearing Panel which the respondent could reasonably attend taking into consideration cost, location, and duration.
- (cc) “Tribunal” means those persons serving in a given case on a Grievance Review Panel or a Hearing Panel of the Professional Standards Committee in either an ethics or arbitration proceeding, or a Board of Directors or appropriate body appointed by the Professional Standards Administrator to act in its behalf. No individual may participate in the deliberation of more than one tribunal on the same matter. *(Revised 5/88)*

Although ombuds and mediators who serve in either capacity are not part of a tribunal, they nonetheless may not participate in the deliberation of any tribunal on the same matter for which they provided the ombuds or mediation service. An ombuds may not serve as a mediator on the same matter for which they provided the ombuds service. *(Adopted 11/22)*

(dd) “Unauthorized disclosure” means a report or publication under any circumstances not established in this Manual. *(Adopted 11/91)*

(ee) “Virtual” means existing, seen, or happening on-line or on a computer screen, rather than in person or in the physical presence. *(Adopted 11/21)*

## Section 2. Qualification for Tribunal

(a) No more than one person licensed with any firm, partnership, or corporation may serve on the same tribunal. This limitation does not preclude two or more individuals from the same franchise from serving if the franchises are independently owned and operated. *(Revised 11/09)*

(b) A person shall automatically be disqualified as a member of a tribunal in any case in which the person is (1) related by blood or marriage to, or has an existing or past relationship with, the complainant, respondent, or a REALTOR® acting as counsel for either the complainant or respondent, witnesses, or other panel members; (2) an employer, partner, employee, or in any way associated in business with the complainant, respondent, or a REALTOR® acting as counsel for the complainant or respondent or has a personal interest in the outcome of the proceeding; (3) a party to the hearing, or a party or a witness in any other pending case involving a party to this hearing; (4) objected to by a party as provided in **Part One**, Section 2(f); or is a member that has already served on another panel in the same matter. *(Revised 4/96)*

(c) Before sitting in any case, each member of a tribunal (except any member of the Grievance Review Panel) shall sign a statement (1) that the member is not disqualified for any of the foregoing reasons, and (2) that the member knows of no other reason that might prevent them from rendering an impartial decision. (Form #E-10, *Certificate of Qualification*, **Part Six** of this Manual.)

(d) Every member of a tribunal (except a member of the Grievance Review Panel acting pursuant to the provisions of Section 20 of **Part Four** of this Manual) shall also avoid, as far as possible, discussing the case with any person other than a member of the tribunal prior to commencement of the hearing. If the member does engage in any such discussion before the hearing, the member must disclose the fact to the parties and to the other members of the tribunal no later than at the beginning of the hearing.

(e) All members of a tribunal shall have an obligation to maintain and protect the confidentiality of the proceedings and deliberations of the tribunal before, during, and after its determinations and recommendations. The tribunal member shall not discuss the tribunal proceedings and deliberations with any person(s) except as required by the Board of Directors, the bylaw provisions of the Association, or by law as may be required, except that a member of the Grievance Review Panel acting pursuant to the provisions of Section 20 of **Part Four** of this Manual shall not be precluded from discussion necessary to the preliminary review.

Unauthorized disclosure relates to tribunal members and to parties and includes any report or publication under any circumstances not established in this Manual. The following are circumstances where disclosure by a party to an ethics and/or arbitration proceeding is authorized:

- (1) Where the dissemination of the decision to individuals who have some knowledge of the proceeding might vindicate a member’s professional reputation.
- (2) Where there is a civil proceeding (including proceedings before the state real estate licensing authority or any other state or federal regulatory or administrative agency) involving the same facts and circumstances which gave rise to the proceeding before the Association. *(Revised 11/95)*
- (3) Where providing the decision of an arbitration hearing panel to an association of REALTORS® or to an MLS will enable that entity to correct records of sales or lease transactions or other historical records. *(Revised 11/06)*

(f) Any party may file with the Professional Standards Administrator a written request for disqualification of a member of a tribunal (Hearing Panel or Board of Directors, or any panel appointed in place of the Board of Directors), stating the grounds alleged as basis for disqualification (i.e., factors which would prevent a tribunal member from rendering an impartial, unbiased, and knowledgeable decision). Challenges submitted pursuant to this Section for ethics and arbitration hearings will be determined by the Chairperson of the panel, or, if challenge to the Chairperson is made, by the Professional Standards Committee Chairperson, or, if challenge to both the Chairperson of the panel and Chairperson of the Professional Standards Committee is made, by the Vice Chairperson of the Professional Standards Committee. Challenges submitted pursuant to this Section for matters to be considered by the Board of Directors will be determined by the Association President or, if the challenge is to the Association President’s qualifications, the next ranking Association officer. A party shall be deemed to have waived any grounds of disqualification of which they then have knowledge unless they file the request within ten (10) days from the date a list of names of members of the respective panel has been transmitted to the party (see **Part Four**, Section 21(c), Ethics Hearing). However, any member of the tribunal may be disqualified at

any time if a majority of the members of the tribunal are made aware of any grounds of automatic disqualification of a member or find any new or previously undiscovered facts which in their judgment may prevent, or appear to prevent, a member of a tribunal from rendering an impartial decision. *(Revised 11/14)*

However, none of the foregoing is to be construed to allow a challenge to the qualifications of members of a Board's or State Association's Grievance Review Panel or Board of Directors (or panel of Directors or Executive Committee) convened to review any action taken by a Grievance Review Panel. *(Revised 11/14)*

(g) If a member of a tribunal fails or is unable to participate in a hearing, the remaining members of the tribunal may, at their option, but only with the express consent of the parties, proceed with the hearing. Only the remaining members of the tribunal may participate in the hearing and the determination thereof. Should any member of the tribunal absent himself during the progress of the actual hearing, that individual shall likewise not participate in the deliberations nor determinations thereof. If all the parties do not agree to proceeding without the full number of the tribunal originally designated, the Chairperson of the tribunal will recess the hearing to a date on which all members of the tribunal can be present. If the Chairperson cannot at that time designate a new date, notice of a subsequent date shall be served on all parties as herein provided.

### **Section 3. Duty to Give Evidence**

The parties to ethics and arbitration hearings are primarily responsible for production of witnesses and evidence they intend to present to the Hearing Panel. If a member, when called as a witness, refuses or is unable to appear at a scheduled hearing, the witness's failure to appear can be the basis for a charge that Article 14 has been violated if it can be shown that the witness had information or evidence relevant to the issue or issues before the Hearing Panel and that there were no extenuating circumstances that would have made the witness's appearance unduly burdensome. Questions regarding a member's obligation to appear as a witness, including questions of relevancy, shall be determined by the Chair of the Hearing Panel either before the hearing commences, if possible, or at the time of the hearing. If a question of whether a witness is required to appear is raised at a hearing and the Chair rules that the witness must appear, the party seeking to compel the appearance of the witness may request that the hearing be recessed until such time as the witness can be advised of the witness's obligation to appear, and the hearing shall be rescheduled. The burden of demonstrating the relevance of the testimony or evidence rests with the party seeking to compel the witness's appearance. *(Revised 11/93)*

If, after being so advised, a witness refuses to appear, the Chair may, at its discretion, bring a charge against the witness for failure to comply with Article 14. *(Revised 11/93)*

### **Section 4. Right of Counsel to Appear**

Every party may be represented by legal counsel or by a REALTOR® of their choosing (or both). The role of counsel (whether legal or otherwise) includes the making of opening and closing statements on behalf of the party represented, examining and cross-examining witnesses, and introducing affidavits, documents, and other admissible relevant evidence, but does not include testifying as a witness unless the panel determines such testimony is essential to ensure due process. REALTORS® providing such representation are cautioned to avoid the unauthorized practice of law. In the event parties do not give fifteen (15) days' notice prior to the hearing of their intention to have counsel to the Association and all other parties, including counsel's name, address, and phone number, the panel shall take all steps, including continuance of the matter, if necessary, to guarantee the rights of all parties to representation by counsel. Where an ethics hearing takes place in a respondent's absence, the respondent is still entitled to be represented by counsel. The tribunal may have legal counsel present to advise it on issues of procedure and law. The presence of Association legal counsel during executive session is a matter of local Association discretion. The role of Association legal counsel during a hearing is to provide procedural and legal guidance as requested by the Chairperson or by panel members. Association counsel is not a part of the Hearing Panel and may not take an active role in the conduct of the hearing, including examination or cross-examination of the parties or their witnesses. If Association legal counsel believes an action or procedure is inconsistent with the Association's established procedures or may result in potential liability to the Association, counsel's concerns should be communicated to the Chairperson of the Hearing Panel and the Chairperson shall make the final decision. *(Revised 5/99)*

### **Section 5. Witnesses**

Every party may have witnesses present at the hearing, and the tribunal may summon its own witnesses. All witnesses, except those who are also parties, will be excused from the hearing after completion of their testimony and cross-examination unless otherwise provided for in the *Code of Ethics and Arbitration Manual*. *(Revised 11/14)*

All parties appearing at the hearing may be called as witnesses without advance notice. Any party who intends to call additional witnesses at the hearing must provide the Association and all other parties with the names of these witnesses at least fifteen (15) days prior to the hearing. Failure to provide this information within the time specified will constitute a waiver of the right to call those witnesses at the hearing, unless the other party agrees to allow their testimony. *(Revised 11/14)*

In any case where all of the names of witnesses a party intends to call at the hearing have not been provided within the time specified, if the Hearing Panel Chair believes that the testimony of that witness(es) is essential to ensure due process, the testimony may be permitted provided the other party has the right to request that the hearing be recessed and continued to a date certain not less than five (5) days later. *(Revised 11/23)*

Questions as to whether a member who has been called as a witness but who refuses to appear or asserts that their appearance will result in an unreasonable hardship, shall be determined by the Hearing Panel Chair as soon as practical. Refusal to appear, after the Chair has determined that the member's appearance is required, may result, at the Chair's discretion, in charges that Article 14 has been violated being filed against the member. *(Adopted 11/93)*

## **Section 6. Conduct of Hearing**

At any ethics or arbitration hearing, every party has the right to present any witnesses, to submit any evidence pertinent to the case, and to cross-examine witnesses. Witnesses giving oral testimony shall be sworn in or affirmed by the Chairperson in accordance with the policy of the association. Before permitting testimony relating to the character or general reputation of anyone, the tribunal shall satisfy itself that the testimony has a direct bearing on the case at issue. Attendance at any hearing is limited to the parties and the parties' respective counsel and/or witnesses (witnesses are excused from the hearing except during their testimony); the Hearing Panel members (including alternates); Association staff and/or counsel, as deemed necessary; any court reporter, as requested; any person to accommodate a physical or mental condition or disability, as requested; security personnel, as deemed necessary; and, in any ethics proceeding, the respondent's REALTOR® principal, consistent with **Part Two**, Section 13(d) of this Manual. *(Revised 11/21)*

The Association may take appropriate steps in the event any party has any physical or mental condition or disability that impairs the party's ability to meaningfully participate in any ethics hearing or proceeding. If any such person needs a reasonable accommodation in order to fully participate in any hearing conducted by the Association, whether that person is a party, witness, panel member, or other allowed attendee, that person should make such a request of the Chair, in writing, if possible, and at least five (5) days in advance of the hearing, if possible. The Chair shall, after consultation with the Professional Standards Administrator and/or Association counsel, determine what accommodations will be made based upon each request and direct the Professional Standards Administrator to take steps to make those accommodations.

The Association shall record the proceeding. Any party may, at the Association's discretion, record the proceeding or utilize a court reporter at their own expense. If a party utilizes a court reporter and orders a transcript, a copy of the transcription shall be made at the party's expense and presented to the Professional Standards Administrator. (See Form #E-9, *Outline of Procedure for Ethics Hearing, Part Six*, and *Conduct of an Ethics Hearing, Part Five*.) *(Revised 5/16)*

Videotaping of the proceedings shall not be permitted except by advance express consent of all parties and all members of the tribunal. Any and all recording should be conducted in accordance with state law. *(Revised 11/21)*

The Association's recording shall be considered the official record of the proceeding. Copies of any recording, or any transcript prepared from any recording of the hearing, are to be used only for the purpose of appeals or procedural reviews and may not be introduced into evidence at any subsequent hearing. Parties may not obtain a copy of the recording or transcription if the request is received outside of the time frame allowed for appeals or procedural reviews. Any unauthorized use of the recordings or transcripts may be construed as a violation of Article 14, as interpreted by the applicable Standards of Practice, and as a violation of these procedures.

Any party to a hearing has the right to obtain a copy of the Association's official recording, subject to the aforementioned limitations, and subject to payment of the Association's \$50.00 duplication cost. Any duplication will be conducted under the supervision of the Association. If the Association transcribes its official recording, any party to the hearing may obtain a copy of the transcript subject to the aforementioned limitations and paying the Association's transcription costs. If more than one party requests copies of the transcript, the Association's costs will be apportioned between or among the parties. *(Revised 5/16)*

If a party purchases a copy of the Association's official recording and subsequently has it transcribed, that party must provide a copy of the transcript to the Association at no cost. After the Association has received a copy of the transcript, (made from the Association's official recording), the Association shall make copies of the transcript available to any other party. Any costs incurred for the court reporter, transcription, and copy of the transcription required to be provided to the Association and to any other party shall be borne solely by the party arranging for the court reporter or transcription of the recording.

The audio recordings produced by the Association will be maintained in the confidential professional standards files until a date when any sanction imposed by the Association has been completed. Subsequently, recordings will be destroyed.

Appeals or procedural review proceedings shall not be recorded in any manner, including, but not limited to, use of a stenographer, court reporter, etc., by the Association or the parties. No witnesses may be presented; and no new evidence may be submitted, except such evidence as may bear upon a claim of deprivation of due process. (See Action of the Ratification Panel or Appeal Tribunal, **Part Four**) *(Revised 5/24)*

Improper conduct by a party or participant to an Association hearing or proceeding, including threatening, harassing, violent, coercive, or illegal behavior towards any Association staff, panelists, party, party's counsel, witnesses, or other hearing participant is strictly prohibited. Minnesota Realtors® reserves the right to take necessary steps to ensure the personal safety of all participants to any hearing or proceeding. (See Personal Safety in Professional Standards Proceedings paragraph for further details.)

#### **Section 7. Notices**

(a) Any notice required to be given or paper required to be served or filed may be personally handed to the party to be notified, sent by first class mail addressed to the party's last known mailing address, or sent to the party by email. When possible, email is the preferred form of service for notices and documents pursuant to the procedures specified in this Manual. Any notice required to be given or paper required to be served or filed shall be deemed given, served, or filed when handed to the party, mailed to the party, or sent to the party by email at the address or email address the party has provided to the Association, unless otherwise specified in this Manual.

The Association shall utilize an email service that confirms delivery of emailed notices that are sent to the email addresses the party has provided to the Association. If delivery of notices sent by email cannot be confirmed, the notices will be resent via first class mail. *(Revised 11/14)*

(b) Notice of hearing shall include the names of the members of the tribunal and be given not less than twenty-one (21) days beforehand. Twenty-one (21) days' notice is not required for postponed hearings (scheduled but extension granted before hearing commences) or for hearings that have commenced and been adjourned (recessed). *(Revised 11/14)*

#### **Section 8. Interpretation of Bylaws**

If any provision of the bylaws or a rule or regulation relative to the procedure of a tribunal's handling of a matter is involved, the interpretation by that tribunal of the bylaws or of a rule or regulation shall be set forth as a separate finding, and the Directors, on appeal from a decision of a Hearing Panel, shall not be bound by the panel's interpretation.

#### **Section 9. Waiver**

Every member, for and in consideration of their right to invoke arbitration proceedings and to initiate complaints under the Code of Ethics as a member of the National Association of REALTORS®, hereby waives any right of action against the Association, any Association Member, or any member of a Hearing Panel or tribunal arising out of any decisions, determinations, or other action taken or rendered under these procedures in the absence of willful or wanton misconduct. Further, as a condition of continued membership, every member expressly waives any cause of action for libel, slander, or defamation that might arise from the filing or consideration of any ethics complaint or arbitration request. *(Revised 11/87)*

#### **Section 10. The Professional Standards Administrator's Function**

The Professional Standards Administrator is the administrative channel through whom the Grievance Committee, the Professional Standards Committee and the Board of Directors correspond and carry out their respective functions. The Professional Standards Administrator does not make decisions or determinations concerning professional standards matters and must be careful to avoid making such determinations. Rather, the Professional Standards Administrator advises as to the procedures that are appropriate and required, and coordinates all professional standards and arbitration matters from receipt to final determination by order of the Board of Directors. This coordination involves contacts and correspondence with the complainant, the respondent, the Grievance Committee, the President, the Chairperson of the Professional Standards Committee or the Chairperson of the appointed Hearing Panel, witnesses, and the Board of Directors. Hearing arrangements and records are the Professional Standards Administrator's responsibility on all related matters. The Professional Standards Administrator has an exacting and detailed responsibility for each professional standards matter. *(Adopted 5/23)*

Communications shall be directed to the Professional Standards Administrator. The Professional Standards Administrator shall render all necessary assistance to the parties, shall furnish required forms, shall receive and file all documents or other papers, and shall receive all fees and disburse all monies payable to the Association.

#### **Section 11. Attempt to Influence Tribunal**

Any attempt, directly or indirectly, to influence a member of a tribunal in any matter before it, other than by giving evidence and argument in an open hearing or in writing submitted to the entire tribunal, is a breach of a duty of membership.

# Part Two —

## Membership Duties and Their Enforcement

### Section 12. Duties of Membership

The duties of membership include the following:

- (a) to abide by the Code of Ethics of the National Association of REALTORS®
- (b) to abide by the bylaws of this Association and its rules and regulations
- (c) to submit to arbitration all disputes specified in **Part Ten** of this Manual by the procedure therein provided, and to abide by the arbitrators' award<sup>4</sup> (*Revised 11/96*)

Subject to any preliminary consideration by any administrative body of the Association or its subsidiary MLS, allegations or charges that a member has violated any membership duty shall be referred to the Professional Standards Committee for review in conformity with the procedures established in the *Code of Ethics and Arbitration Manual* of the National Association as from time to time amended. Notwithstanding the foregoing, multiple listing services operated as committees of associations of REALTORS® or as subsidiary corporations wholly-owned by associations of REALTORS® may establish procedures for enforcement of their rules and regulations pursuant to the grant of authority and to the limitations established in Multiple Listing Policy Statement 7.21, Appropriate Procedures for Rules Enforcement, Handbook on Multiple Listing Policy. (*Revised 11/14*)

### Section 13. Power to Take Disciplinary Action

After a hearing before the Professional Standards Committee as provided hereinafter, the Directors, or a panel appointed on their behalf, may take disciplinary action against any member:

- (a) For violation by the member of any duty of membership
- (b) On a member being convicted, adjudged, or otherwise recorded as guilty by a final judgment of any court of competent jurisdiction of a felony or a crime involving moral turpitude; on a member being determined by a court of competent jurisdiction, or official of the State of Minnesota authorized to make the determination, as having violated a provision of the Minnesota real estate law or a regulation of the Minnesota real estate licensing authority; or on a final judgment or determination by a court of competent jurisdiction or by an authorized federal, state, or local official that a member has violated the federal, state, or local fair housing law. (*Revised 11/01*)
- (c) For any act of any persons who are not themselves REALTORS® but are employed by or affiliated with a REALTOR®, and who provide real estate related services within the scope of their or another's license. Lack of knowledge by the REALTOR® of such person's conduct shall go only to mitigation of discipline imposed. (*Revised 4/95*)
- (d) For any act of another who is also a member but is employed by or affiliated with the member as an independent contractor. In such an instance, the REALTOR® principal may be joined as a respondent by action of the complainant, by review of the Grievance Review Panel, or by determination of the Hearing Panel prior to commencement of the hearing based upon the facts of the complaint. If, however, the complaint is amended after the hearing has commenced, pursuant to **Part Four**, Section 21(f)(2), the REALTOR® principal who has been added to the complaint has the right to have the hearing reheard from the beginning by the same Hearing Panel or may waive this right. The finding of the Hearing Panel with respect to any violation of the REALTOR® principal and the other member employed by or affiliated with the REALTOR® principal as an independent contractor may be the same or different; and in the event both are found in violation, the sanctions, if any, may be the same or different.

<sup>4</sup> While most states recognize the enforceability of a prior agreement to arbitrate disputes, a few states prohibit an agreement to arbitrate until after the dispute has arisen and in a few instances such arbitration is not recognized at all (or at least is unenforceable by the court). Where such prohibition exists, Association (state) legal counsel should be consulted and the Manual modified accordingly. Arbitration conducted by Member Boards shall in all respects conform to the requirements of state law applicable to arbitration. If a member refuses to abide by an award in arbitration, enforcement of the award shall be accomplished only in the manner set forth in **Part Four**, **Section 24** and **Part Ten**, **Section 56** of this Manual.

In any proceeding where the REALTOR® principal is not joined in the complaint as a respondent, the respondent's REALTOR® principal has the right to be present during the proceeding without providing notice or may be required by the Hearing Panel to attend the hearing. The REALTOR® principal may make opening and closing statements on behalf of the respondent, examine and cross-examine parties and witnesses, introduce affidavits, documents, and other admissible relevant evidence, consult with or testify on behalf of the respondent, and respond directly to questions from the Hearing Panel. In all instances, the respondent's REALTOR® principal shall receive copies of the complaint and response, be provided with notice of the hearing, may be called by the parties or the Hearing Panel as a witness, and shall receive copies of the Hearing Panel's decision and recommendation for sanction, if any. If an appeal is required, the respondent's REALTOR® principal shall receive copies of the request(s), be provided with notice of the hearing, have the opportunity to be present, and receive a copy of the final action by the Appeal Tribunal. Such rights shall accrue to both the former REALTOR® principal and the current REALTOR® principal if the respondent REALTOR® or REALTOR-ASSOCIATE® changes their firm affiliation either before or after a complaint is filed but before the Hearing Panel reaches its decision. (*Revised 05/18*)

In any proceeding where a REALTOR® principal is not joined in the complaint as a co-complainant, the complainant may, at their sole discretion, allow their REALTOR® principal to receive documentation related to the complaint and participate in the hearing as a witness or as counsel (consistent with **Part One, Section 4** of this Manual).

(e) In the event the respondent named in any complaint alleging a violation of the Code of Ethics is involved in criminal or civil litigation or in any proceeding before the state real estate licensing authority or any other state or federal regulatory or administrative agency in a matter arising out of the same facts and circumstances giving rise to the complaint alleging unethical conduct, the complaint may, at the discretion of the Grievance Review Panel, or on appeal, at the discretion of the Appeal Tribunal, proceed to a hearing before a Hearing Panel of the Association's Professional Standards Committee. Association legal counsel should be consulted and the following factors shall be taken into consideration in determining whether the matter should proceed to a hearing or should be held in abeyance pending the conclusion of criminal or civil litigation or a proceeding before the state real estate licensing authority or any other state or federal regulatory or administrative agency:

- (1) the degree of similarity of factors giving rise to the pending litigation or regulatory or administrative proceeding and the ethics complaint
- (2) the degree to which resolution of the litigation or regulatory or administrative proceeding may make consideration of the ethics complaint unnecessary
- (3) the degree to which pending litigation or regulatory or administrative proceeding would delay prompt disposition of the ethics complaint
- (4) the nature of the alleged violation and the extent to which it impacts on cooperation with other Association Members
- (5) the assurance of Association legal counsel that consideration of the ethics complaint will not deprive the respondent of essential due process.

If after review of an ethics complaint by the Grievance Review Panel and referral of the complaint for hearing, it is subsequently discovered that criminal or civil litigation or regulatory or administrative proceedings related to the same facts and circumstances giving rise to the complaint alleging unethical conduct are pending, the Hearing Panel Chair, in consultation with association legal counsel, will determine whether the hearing will proceed or, alternatively, whether the complaint will be held in abeyance pending resolution of the litigation or regulatory or administrative proceedings. (*Revised 11/18*)

#### **Section 14. Nature of Discipline**

Disciplinary action may consist only of one or more of the following. Refer to **Appendix VII to Part Four** of this Manual for sanctioning guidelines.

- (a) Letter of Warning with copy to be placed in member's file;
- (b) Letter of Reprimand with copy to be placed in member's file;
- (c) Requirement that member attend the ethics portion of the Board Indoctrination Course or other appropriate course or seminar specified by the Hearing Panel which the respondent could reasonably attend taking into consideration cost, location, and duration;
- (d) Appropriate and reasonable fine not to exceed \$15,000 (*Revised 5/13*);
- (e) Membership of individual suspended for a stated period not less than thirty (30) days nor more than one (1) year with automatic reinstatement of membership in good standing at the end of the specified period of suspension. The thirty (30) day minimum and one (1) year maximum do not apply where suspension is imposed for a remediable violation of a membership duty (e.g., failure to pay dues or fees or failure to complete educational requirements). The Directors may order suspension unconditionally, or they may, at their discretion, give the disciplined member the option of paying to the Association, within such time as the Directors shall designate, an assessment in an amount fixed by the Directors, which may not exceed \$15,000 and which can be utilized only once in any three (3) year period, in lieu of accepting suspension. But, if the conduct for which suspension is ordered consists of failure to submit a dispute to arbitration, the Directors may not permit the disciplined member to avoid suspension without submitting to the arbitration in

addition to paying the assessment, unless in the meanwhile the dispute has been submitted to a court of law without any objection by any party that it should be arbitrated;<sup>5 6</sup>

*(Revised 11/13)*

(f) Expulsion of individual from membership with no reinstatement privilege for a specified period of one (1) to three (3) years, with reinstatement of membership to be by application only after the specified period of expulsion, on the merits of the application at the time received (decision should be written clearly articulating all intended consequences, including denial of MLS participatory or access privileges); *(Revised 4/96)*

(g) Suspension or termination of MLS rights and privileges may also be utilized. Suspension of MLS services may be no less than thirty (30) days nor more than one (1) year; termination of MLS services shall be for a stated period of one (1) to three (3) years; *(Revised 5/02)*

(h) REALTORS® who participate in MLS or otherwise access MLS information through any Association in which they do not hold membership are subject to the Code of Ethics in that Association on the same terms and conditions as Board members. Discipline that may be imposed may be the same as but shall not exceed the discipline that may be imposed on members. Boards entering into regional or reciprocal MLS agreements are encouraged to include provisions requiring signatory Boards to respect, to the extent feasible, decisions rendered by other Boards involving suspension or expulsion from membership or from MLS. *(Revised 4/96)*

(i) Members may also be required to cease or refrain from continued conduct deemed to be in violation of the Code, or to take affirmative steps to ensure compliance with the Code, within a time period to be determined by the hearing panel. Where discipline is imposed pursuant to this subsection, the decision should also include additional discipline (e.g. suspension or termination of membership) that will be imposed for failure to document compliance by the date specified, and to continue to comply for a specified period not to exceed three (3) years from the date of required compliance. *(Revised 05/24)*

In addition to imposing discipline, the Hearing Panel can also recommend to the Ratification Panel or Appeal Tribunal that the disciplined member be put on probation. Probation is not a form of discipline. When a member is put on probation the discipline recommended by the Hearing Panel is held in abeyance for a stipulated period of time not longer than one (1) year. Any violation of the Code of Ethics which occurs during the probationary period may, at the discretion of the Board of Directors, result in the imposition of the suspended discipline. Absent any violation during the probationary period, both the probationary status and the suspended discipline are considered fulfilled, and the member's record will reflect the fulfillment. The fact that one or more forms of discipline will be held in abeyance during the probationary period does not bar imposition of other forms of discipline which will not be held in abeyance. *(Revised 11/23)*

In addition to any discipline imposed, Associations may, at their discretion, impose administrative processing fees not to exceed \$500 against each respondent found in violation of the Code of Ethics or other membership duties. Any administrative processing fee will be in addition to, and not part of, any disciplinary sanction imposed. Associations shall determine in advance when, and under what circumstances, administrative processing fees will be imposed so that imposition is a matter of administrative routine. *(Revised 5/13)*

Minnesota Realtors® shall not impose an administrative processing fee.

5 \$15,000 is the maximum fine that may be assessed regardless of the number of Articles of the Code of Ethics that a member is determined to have violated in any given hearing. It is noted that a "reasonable and appropriate" fine may vary from \$1 to \$15,000 and should relate to the gravity of the offense and objective of the proposed sanction. *(Revised 5/13)*

6 Boards are advised that they should be guided by the provisions of **Part Four, Section 24, Initial Action by Directors**, and **Part Ten, Section 56, Enforcement, of this Manual**. Judicial enforcement should be used to enforce any award in arbitration. *(Revised 9/87)*

## **Section 15. Selection and Appointment of the Grievance Review Panel**

Upon receipt of an ethics complaint or request for arbitration, the Professional Standards Administrator shall make a preliminary review of the complaint or request, and if the complaint or request is in proper order the Professional Standards Administrator shall, in a timely manner, and on an as-needed basis, appoint three members of the Professional Standards Committee to serve on a Grievance Review Panel to review the complaint or arbitration request to make any necessary evaluation. The Professional Standards Administrator shall use their best effort to ensure there is no conflict of interest between the assigned reviewers and the parties to the complaint. The Grievance Review Panel will review complaints/arbitration requests not later than forty-five (45) days after receipt of the complaint/arbitration request. *(Revised 5/15)*

Members of a Grievance Review Panel shall not serve on more than one (1) tribunal in the same matter and may not serve on any tribunal if they have a conflict of interest as described elsewhere in this manual.

## **Section 16. Selection and Appointment of the Professional Standards Committee**

There shall be a Professional Standards Committee of Association members, in good standing, of whom at least a majority shall be REALTORS®, appointed by the Leadership Team for a one (1) year term. Members of the Professional Standards Committee shall be selected to serve on Grievance Review Panels, Hearing Panels, or panels appointed to serve on behalf of the Board of Directors as required to hear matters of alleged unethical conduct by Association Members, to provide arbitration as requested, or hear other matters as provided in this manual. The Leadership Team shall annually designate the Chairperson and Vice Chairperson of the committee.<sup>7</sup> Although the Chief Executive Officer has the right to be present at meetings involving the Leadership Team, the Chief Executive Officer shall not vote on any matter before the Leadership Team.

In selecting members of the Professional Standards Committee, the Leadership Team should consider the following recommended criteria:

- number of years as a REALTOR®
- number of years in the real estate business
- primary and secondary fields of real estate endeavor/expertise
- participation in post-licensing real estate education
- training in the Code of Ethics
- position in firm (principal, nonprincipal)
- size of firm
- common sense
- open-mindedness
- familiarity with state(s) laws and regulations
- receptiveness to instruction/training
- other relevant professional or procedural training

The committee should have balanced representation of REALTORS®, REALTOR-ASSOCIATES®, men, and women, and should include representatives of various racial and ethnic groups. Committee members should be mature, experienced, knowledgeable persons of a judicial temperament. Members of the Professional Standards Committee shall not serve on more than one (1) tribunal in the same matter and may not serve on any tribunal if they have a conflict of interest as described elsewhere in this manual.

<sup>7</sup> In Associations with larger memberships, it is desirable for a larger committee to be named to avoid an overload of work upon any individual which could result from the greater number of hearings in these Associations. In such Associations, an uneven number of members from the Professional Standards Committee may be appointed to constitute a Hearing Panel for each case to be heard. *(Revised 11/92)*

## **Section 16.1. Selection and appointment of Panels**

In the event a Grievance Review Panel forwards a complaint for a hearing before the Professional Standards Committee, a sufficient request for Appeal has been received, or some other matter requires a panel review, the Professional Standards Administrator shall, in a timely manner, appoint five members of the Professional Standards Committee a majority of whom shall be REALTORS® to serve on a Hearing Panel, Appeal Tribunal, or other panel appointed to serve on behalf of the Board of Directors to hear such complaint, arbitration request, appeal or other matter. One of the five members shall be appointed by the Professional Standards Administrator to serve as the Chair.

One additional member of the Professional Standards Committee may also be appointed by the Professional Standards Administrator to serve on a Hearing Panel or Appeal Tribunal as an alternate. The Alternate Panel Member will attend the hearing but shall not act as a participant in the hearing or the executive session nor vote on the decision unless one of the five originally appointed Panel members is unable to serve on the Panel from the commencement of the hearing. All requirements that pertain to members of a Hearing Panel shall also pertain to Alternate Panel Members.

In the event an appointed panel member is unable to serve, and no alternate has been appointed, the Professional Standards Administrator shall obtain consent from all parties to hold the ethics or arbitration hearings with less than five panel members<sup>8</sup>, but in no event, shall there be less than three panel members. In the event there is an even number of panel members remaining, the Chair shall not vote.

Any Hearing Panel or Appeal Tribunal must have an odd number of members. If the complainant or respondent is a REALTOR®-ASSOCIATE or a REALTOR® other than a principal, at least one member of the Hearing Panel or Appeal Tribunal shall be a REALTOR®-ASSOCIATE or a REALTOR® other than a principal. It shall be a membership duty of anyone so appointed to serve on the Hearing Panel or Appeal Tribunal unless disqualified.

Members of a Hearing Panel, Appeal Tribunal, or other panel shall not serve on more than one (1) tribunal in the same matter and may not serve on any tribunal if they have a conflict of interest as described elsewhere in this manual.

## **Section 16.2. Selection and appointment of Ratification Panel**

If no appeal of the Hearing Panel's decision is filed, as allowed in **Part Four** of this manual, the Professional Standards Administrator shall appoint three (3) members of the Association's Executive Committee, hereinafter referred to as the Ratification Panel, to review and ratify the Hearing Panel's recommendation.

Members of a Ratification Panel shall not serve on more than one (1) tribunal in the same matter and may not serve on any tribunal if they have a conflict of interest as described elsewhere in this manual.

<sup>8</sup> In case of appeal hearings where the parties are not present at the hearing, the appeal hearing may be held with three to five panel members without the consent of the parties.

# Part Two (A) — Ombudsman

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The Association is required to offer ombudsman services to members, clients, and consumers.

An ombudsman is an individual appointed to facilitate disputes through constructive communication and advocating for consensus and understanding. This procedure is intended to provide enhanced communications and initial problem-solving capacity.

The Ombudsman's role is primarily one of communication and conciliation, not adjudication. The Ombudsman does not determine whether ethics violations have occurred, rather they anticipate, identify, and resolve misunderstandings and disagreements before matters ripen into possible charges of unethical conduct.

The Ombudsman can field and respond to a wide variety of inquiries and complaints, including general questions about the real estate practice, ethical practice and enforcement issues. The Ombudsman can contact REALTOR® members to inform them that a client or customer has raised a question or issue; and can contact REALTOR® members to obtain information necessary to provide an informed response.

Persons filing ethics complaints or inquiring about the process for filing an ethics complaint will be offered the Ombudsman services and may request or decline the service. If a person files an ethics complaint and declines the ombudsman service, the complaint shall be processed through the normal ethics complaint process.

Responding REALTORS® may, but are not required to, participate in the Ombudsman process. However, if the complaint involves a salesperson, and the person has authorized communication with the salesperson, the Ombudsman will also notify the salesperson's broker of the complaint.

## **Suspension of Filing Deadline**

If the ombudsman service is invoked or initiated by a complainant (or potential complainant) with respect to conduct that becomes the subject of a subsequent ethics complaint, the one hundred eighty (180) day filing deadline shall be suspended beginning with 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. Questions about when informal dispute resolution began or ended will be determined by the Professional Standards Administrator. The filing deadlines shall also be suspended during any period when the respondent does not hold REALTORS® or REALTORS-ASSOCIATE® membership.

## **Suspension of Complaint Processing**

If a formal Complaint was submitted by a complainant and a request for ombudsman services is made either simultaneously or subsequent to the submission of the complaint, the complaint will be held, and not processed, until such time as the ombudsman process is concluded or terminated as determined by the Ombudsman. If the Ombudsman determines that a complainant or respondent has rejected the ombudsman service or there was a failure to resolve the disagreement through the Ombudsman service, then the Ombudsman shall notify the Professional Standards Administrator and the formal complaint will proceed through the ethics hearing process unless otherwise withdrawn by the complainant. If a matter complained of is resolved to the mutual satisfaction of all the parties involved in the Ombudsman service, then the formal ethics complaint will be dismissed.

## **Resolution of Complaints**

Although the Ombudsman can facilitate communication, there will be no formal in-person meeting of the parties and the Ombudsman will not be involved in documenting any resolution the parties may agree to. If the parties wish to formalize any resolution they will need to do so independently.

If a member fails to comply with the terms of a mutually agreed on resolution, the complainant is entitled to resubmit the original complaint or file a formal complaint. The time the matter was originally brought to the Association's attention will be considered the filing date for purposes of determining whether an ethics complaint is timely filed.

## **Referrals to the Professional Standards Committee or State Regulatory Bodies**

The Ombudsman cannot refer concerns they have regarding the conduct of any party utilizing their services to the Professional Standards Committee, to the Minnesota Department of Commerce, or to any other regulatory body. The prohibition is intended to ensure impartiality and avoid the possible appearance of bias.

The Ombudsman cannot be called as a witness at any resulting professional standards hearings or other venue the complainant seeks a remedy, nor can the Ombudsman be required to provide any other testimony or affidavits regarding the dispute or serve in any other capacity in the hearing process.

### **Confidentiality of Ombudsman Process**

The allegations, discussions, and decisions rendered in ombudsman process are confidential and shall not be reported or published by the Association, the Ombudsman, or any party under any circumstances except those established in the Code of Ethics and Arbitration Manual of the National Association as from time to time amended.

## Part Three —

# The Grievance Review Panel in Ethics Proceedings

### Section 17. Authority

The Grievance Review Panel is established in **Part Two, Section 15** of this Manual.

### Section 18. Function

The function of the Grievance Review Panel is clearly distinguishable from the function of the Professional Standards Committee Hearing Panels and Appeal Tribunals. The Professional Standards Committee Hearing Panels and Appeal Tribunals make decisions on matters involving ethics or arbitration. (*Revised 05/15*)

The Grievance Review Panel receives ethics complaints and arbitration requests to determine if, taken as true on their face, a hearing is to be warranted, or a citation is to be issued. The Grievance Review Panel makes only such preliminary review and evaluation of the complaint as is necessary to make these decisions. While the Grievance Review Panel has meetings, it does not hold hearings, does not decide whether members have violated the Code of Ethics, and does not dismiss ethics complaints because of lack of evidence. Complainants are not required to prove their case upon submission of their ethics complaint or arbitration request. The Grievance Review Panel does not mediate or arbitrate business disputes. Grievance Review Panels are appointed by the Professional Standards Administrator, in a timely manner, on an as-needed basis upon receipt of ethics complaints and arbitration requests and will review complaints/requests not later than forty-five (45) days after receipt of the complaint/request.

In evaluating ethics complaints or arbitration requests, the Grievance Review Panel shall not require or consider a written response from the respondent(s).

When Grievance Review Panels refer ethics complaints and arbitration requests for hearing, hearing panel chairs can determine if questions about:

- (1) whether ethics complaints and arbitration requests are timely filed,
- (2) whether arbitrable issues exist,
- (3) whether arbitration requests are too legally complex to be fairly arbitrated, and
- (4) other administrative issues

will be addressed through a pre-hearing meeting of the hearing panel or at the outset of the hearing prior to testimony relating to the ethics complaint or arbitration request commencing.

When a Grievance Review Panel has determined that the complaint or request is not timely filed, the complaint or request shall be summarily dismissed with no further review by the Grievance Review Panel. Complainant shall have the right to appeal the dismissal as provided in this Manual.

When the Grievance Review Panel has moved the complaint forward to a hearing and respondent wishes to challenge the Grievance Review Panel's decision on any of the pre-hearing matters (1) - (4) listed above, the respondent may request a pre-hearing meeting by using the Form entitled *Request for Pre-Hearing Meeting*. Alternatively, a Pre-Hearing Meeting may be scheduled in the absence of such a request from the respondent, to review the same issues, should the Chair of the Hearing Panel deem it appropriate.

If the Association receives a *Request for Pre-Hearing Meeting*, the Professional Standards Administrator shall forward the Request to the Hearing Panel Chair for review to determine if the Request will be addressed through a Pre-Hearing Meeting of the Hearing Panel at least 7 and no more than 10 days prior to the Hearing, or through a Pre-Hearing Meeting immediately prior to the Hearing. The determination of timing of the Pre-Hearing Meeting shall be within the Chair's discretion, and failure to hold a Pre-Hearing Meeting between 7 and 10 days prior to the Hearing shall not constitute a procedural deficiency. The Professional Standards Administrator shall appoint a Hearing Panel in accordance with **Part Two, Section 16.1** and schedule both a Pre-Hearing Meeting, in accordance with the Chair's determination, and a Hearing Date.

The materials and information that were available to the Grievance Review Panel when they made their decision along with the respondent's reply, and any supporting documents, if any, will be presented to the Hearing Panel prior to the Pre-Hearing Meeting. Neither the complaint nor the reply can be revised, modified or supplemented.

The complainant and respondent may, however, submit written statements regarding the contested pre-hearing matters. Any such written statement should be submitted to the Association at least three (3) days prior to the scheduled Pre-Hearing Meeting. If such written statements are submitted after this deadline, they will be forwarded to the Hearing Panel. However, the Hearing Panel may not have the opportunity to give them the same level of review before the Pre-Hearing Meeting as had they been submitted in the timeline requested.

If these matters arise during a hearing, the Hearing Panel will address them within the course of the hearing and in conjunction with all other issues related to the complaint.

No complainant(s), respondent(s), their counsel, witnesses or brokers, may appear or testify at the Pre-Hearing Meeting.

The complainant and respondent have the right to challenge the qualifications of any individual who may be appointed to serve on an ethics proceeding or arbitration matter. The parties will be provided with a list of the individuals who will be appointed to sit on the Panel and may challenge the qualifications of any panel member by completing Form #E- 7, *Challenge Form* and returning it to the Association. Challenges submitted will be determined by the Chairperson of the Hearing Panel, or if the challenge to the Chairperson is made, by the Professional Standards Committee Chairperson.

A party shall be deemed to have waived any grounds of disqualification of which the party has knowledge unless the party files the request within ten (10) days from the date a list of names of the appointed panel members has been transmitted to the party. However, any member of the tribunal may be disqualified at any time if a majority of the members of the tribunal are made aware of any grounds of automatic disqualification of a member or find any new or previously undiscovered facts which in their judgment may prevent, or appear to prevent, a member of a panel from rendering an impartial decision.

The Pre-Hearing Meeting will not be recorded, and no party will be permitted to have a court reporter or recording device present at the Pre-Hearing Meeting.

At the Pre-Hearing Meeting, the Hearing Panel will determine whether or not the complaint shall proceed to a hearing, depending upon their determination of any of the matters raised. The decision of the Hearing Panel will be determined by a simple majority vote of the panel members.

If the Hearing Panel's determination at a Pre-Hearing Meeting does not preclude proceeding with the Hearing as scheduled, the matter will proceed to the scheduled hearing.

In such case, the Hearing shall be held on the scheduled date and both the complainant and respondent have the right to raise all substantive and procedural issues at the hearing (including those issues reviewed within a Pre-Hearing Meeting).

If the conclusion of the Hearing Panel in its Pre-Hearing Meeting is that the matter should not proceed to a hearing, the Hearing Panel shall dismiss the complaint and the complainant shall have the right to appeal the decision of the Hearing Panel to an Appeal Tribunal of the Association on the same bases as dismissals by the Grievance Review Panel (See **Part Four, Section 20 (c)**).

The Association shall transmit the written decision of the Hearing Panel on these matters to the parties no later than three (3) days after the Hearing Panel makes their decision.

The allegations, findings, and decisions rendered in the Pre-Hearing Meeting are confidential and will not be reported or published by the Association, any member of the Panel, or any party under any circumstances except those established in the Code of Ethics and Arbitration Manual as from time to time amended.

## **Section 19. Grievance Review Panel's Review of an Ethics Complaint**

### ***A. Initial action upon receipt of an ethics complaint***

Upon receipt of an ethics complaint, the Professional Standards Administrator shall make a preliminary review of the complaint to determine if the matter pertains to a complaint on the same transaction or event <sup>9</sup> already heard by the Association, the complaint has

<sup>9</sup> When a double jeopardy type problem arises, before the Professional Standards Administrator forwards the matter to a Grievance Review Panel, the Professional Standards Administrator, in consultation with Association counsel, shall review the complaint and make a recommendation to the Grievance Review Panel to ensure the respondent is not exposed to being held in violation of the Code of Ethics twice for the same conduct and the Grievance Review Panel shall refer or dismiss the complaint accordingly.

been submitted in proper form, and is sufficient on its face, (e.g. Article(s) cited, not vague, not overly general and a sufficient written summary is attached). Any complaint that is not in proper form or insufficient on its face shall be returned to the complainant accompanied by the initial conclusions. The complainant shall be advised that they are free to refile an amended complaint in proper form. The 180-day filing deadline will continue to run when a complaint is not properly filed. If the complaint is in proper form and sufficient on its face, the Professional Standards Administrator shall, in a timely manner, appoint three members of the Professional Standards Committee to serve on a Grievance Review Panel to review the complaint and to make any necessary evaluation. The Professional Standards Administrator shall promptly provide the assigned reviewers with a copy of the complaint and schedule a meeting for the reviewers to review the complaint. Any evidence and documentation attached to the complaint will be considered only to the extent necessary to determine whether a complaint will be referred for hearing or a citation issued in accordance with the Citation Policy specified in this Manual. The reviewers may, if necessary, gather additional information on the matters complained of from the complainant if additional information is necessary to determine whether a complaint will be referred for hearing.

The reviewers shall complete the assignment promptly and prepare a report using Form #E-5.1, *Grievance Review Panel Report Form*.

#### B. *Consideration of an ethics complaint by the Grievance Review Panel*

In reviewing an ethics complaint, the Grievance Review Panel shall consider the following:

- (1) Is the ethics complaint acceptable in form as received by the Grievance Review Panel? If not in proper form, the Grievance Review Panel may request that the Professional Standards Administrator contact the complainant to advise that the complaint must be submitted in proper form. *(Revised 11/15)*

NOTE: If deemed appropriate by the Chairperson of the Professional Standards Committee, a member of the Professional Standards Committee may be assigned to contact the complainant and to provide procedural assistance to amend the complaint or resubmit a new complaint in proper form and with proper content. The Professional Standards Committee member providing such assistance shall ensure that only procedural assistance is provided to the complainant, and that the complainant understands that the member is not representing the complainant or advocating on behalf of the complainant. *(Revised 11/15)*

- (2) Are all necessary parties named in the complaint?
- (3) Was the complaint filed within one hundred eighty (180) days of the time that the alleged offense and facts relating to it could have been known by the complainant in the exercise of reasonable diligence or within one hundred eighty (180) days after the conclusion of the transaction or event, whichever is later? *(Revised 5/11)*

Note: See Suspension of Filing Deadlines in **Part Four**, Section 20(a).

- (4) Is the respondent named in the complaint a member of the Association, and was the respondent a member of any Association at the time of the alleged offense?
- (5) Is criminal or civil litigation or any government agency investigation or other action pending related to the same facts and circumstances giving rise to the complaint alleging unethical conduct?
  - (a) If criminal or civil litigation is pending related to the same facts and circumstances giving rise to the complaint alleging unethical conduct, the Grievance Review Panel shall instruct the Professional Standards Administrator to have Association legal counsel review the complaint filed and advise if any hearing should proceed (presuming the matter would otherwise warrant a hearing), with counsel considering the following:
    - (1) similarity of factors giving rise to pending litigation or regulatory or administrative proceeding and the ethics complaint
    - (2) degree to which resolution of the pending litigation or regulatory or administrative proceeding could make consideration of the ethics complaint unnecessary
    - (3) degree to which pending litigation or regulatory or administrative proceeding would delay prompt disposition of the ethics complaint
    - (4) the nature of the alleged violation and the extent to which it could impact on cooperation with other Association Members
    - (5) the assurance of Association legal counsel that consideration of an ethics complaint would not deprive the respondent of due process. *(Revised 11/18)*

- (6) Is there any reason to conclude that the Association would be unable to provide an impartial Hearing Panel?
- (7) Are the specific Articles cited in the complaint appropriate in light of the facts provided? Should additional Articles be cited? Should certain Standards of Practice be cited in support of the Articles charged? Are any inappropriate Articles cited?
- (8) If the facts alleged in the complaint were taken as true on their face, is it possible that a violation of the Code of Ethics occurred? Complainants are not required to prove their case when initially filing an ethics complaint. A complaint may not be dismissed for lack of evidence if the allegations(s), taken as true on their face, could constitute a violation of the Code of Ethics and the complaint is in an otherwise acceptable form. *(Revised 11/15)*

If all relevant questions have been answered to the satisfaction of the Grievance Review Panel, and the allegations, if taken as true could constitute a violation of the Code of Ethics, the Grievance Review Panel shall either refer the complaint to the Professional Standards Committee for a hearing by an ethics Hearing Panel or issue a Citation in accordance with the Citation Policy in this Manual. *(Revised 11/15)*

*C. Appeal from the decision of the Grievance Review Panel related to an ethics complaint.*

If the Grievance Review Panel dismisses the complaint, the notice of dismissal shall specify the reason(s) for dismissing and the complainant may appeal the dismissal to the Appeal Tribunal within (20) days from transmittal of Form #E-5.1, *Grievance Review Panel Report Form Ethics* using form #E- 22, *Appeal of Grievance Review Panel Decision*.

Upon receipt of form #E-22 the Professional Standards Administrator shall appoint an Appeal Tribunal in accordance with **Part Two, Section 16.1** to hear the appeal.

The complaint and any attachments to the complaint cannot be revised, modified, or supplemented. The complainant may, however, explain in writing why the complainant disagrees with the Grievance Review Panel's conclusion that the complaint should be dismissed. If the Grievance Review Panel deletes an Article or Articles from an ethics complaint, the complainant may also appeal to the Appeal Tribunal using Form #E-22, *Appeal of Grievance Review Panel Decision*. If an appeal is based on dismissal for failure to file within the time-period specified in this Manual, and an Appeal Tribunal determines the complaint was timely filed, then the Appeal Tribunal shall serve as the Grievance Review Panel and further review the complaint in accordance with Part Three, Section 19 B. The Appeal Tribunal shall consider only the information and documents considered by the Grievance Review Panel, together with the complainant's rationale for challenging the dismissal, and render its decision, which shall be final. The parties are not present at the meeting at which the appeal is considered. Appeals of dismissals shall be heard by an Appeal Tribunal no later than thirty (30) days after the date of receipt of the appeal. The Appeal Tribunal's decision shall be transmitted to the parties within five (5) days from the date of the decision. *(Revised 5/23)*

*D. Criminal or civil litigation or regulatory/administrative proceedings coming to light after an ethics complaint has been referred to an ethics Hearing Panel*

If after review of an ethics complaint by the Grievance Review Panel and referral of the complaint for hearing, it is subsequently discovered that criminal or civil litigation or regulatory or administrative proceedings related to the same transaction or event are pending, the Hearing Panel Chair, in consultation with association legal counsel, will determine whether the hearing will proceed or, alternatively, whether the complaint will be held in abeyance pending resolution of the litigation or regulatory or administrative proceedings. *(Revised 11/18)*

# Part Three (A) – Ethics Citation Policy

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## I. Preliminary Procedures/Initial Review by Grievance Review Panel

- A. Information about the Ethics Citation program, including the Citation Schedule, will be posted on the Minnesota Realtors® website and provided as part of the information to potential complainants who are considering filing complaints through the Minnesota Realtors® Professional Standards Program.
- B. When a complaint is submitted, Association staff shall make a preliminary review of the complaint consistent with the policies and procedures set forth in the NAR Code of Ethics and Arbitration Manual as adapted by Minnesota Realtors® (COEAM). The Professional Standards Administrator will also review the citation history of the respondent to determine eligibility for the Citation program.
- C. An anonymous ethics complaint may be submitted solely for alleged violations identified under Article 12 of the Citation Schedule. An anonymous complaint must be submitted on an Anonymous Complaint form (Form #E-1.1) (“Anonymous Complaint”) and will require a named complainant. The complainant’s name will remain anonymous to the respondent, respondent’s principal, and the Grievance Review Panel. However, in the event the respondent elects to have a hearing on the matter, or the respondent is not eligible for Citation, the complainant must elect, when filing the complaint, to either 1) agree to have their name become known to respondent and respondent’s principal and attend the hearing; or 2) withdraw the complaint. This applies to all respondents named in a complaint.
- D. Ethics complaints alleging violation of Articles other than those identified under Article 12 of the Citation Schedule or complaints that allege violations of Articles in addition to those identified under Article 12 cannot be filed anonymously and shall be filed on the standard Ethics Complaint.
- E. A copy of the complaint shall be forwarded to the respondent and the respondent’s REALTOR® principal (e.g. DR, office manager) upon its submission to the Association. Complainant’s name shall be withheld when forwarding Anonymous Complaints to respondent, respondent’s broker, and the Grievance Review Panel. A Grievance Review Panel shall be appointed to review the complaint consistent with the policies and procedures set forth in the COEAM. The Professional Standards Administrator shall try to ensure that the Grievance Review Panel members reviewing the matter include members that have a high level of experience in hearing professional standards cases.
- F. **Anonymous Complaint:** If the Grievance Review Panel is reviewing an Anonymous Complaint, the Panel will make the following determinations:
  - 1. Is the ethics complaint acceptable in form as received by the Grievance Review Panel? If not in proper form, the Grievance Review Panel may request that the Professional Standards Administrator contact the complainant to advise that the complaint must be submitted in proper form.
  - 2. Are all necessary parties named in the complaint?
  - 3. Was the complaint filed within one hundred eighty (180) days of the time that the alleged offense and facts relating to it could have been known by the complainant in the exercise of reasonable diligence or within one hundred eighty (180) days after the conclusion of the transaction or event, whichever is later?
  - 4. Is the respondent named in the complaint a member of the Association, and was the respondent a member of any Association at the time of the alleged offense?
  - 5. Are the allegations related only to citation eligible matters under Article 12 for all respondents?
  - 6. Are the Article 12 citation matters cited in the complaint appropriate in light of the facts provided? Should other Article 12 Standard of Practices be cited? Are there any inappropriate Article 12 Standard of Practices cited?
  - 7. Is criminal or civil litigation or any government agency investigation or other action pending related to the same facts and circumstances giving rise to the complaint alleging unethical conduct?

8. Is there any reason to conclude that the Association would be unable to provide an impartial Hearing Panel?
9. If all questions above have been answered to the satisfaction of the Grievance Review Panel, the Professional Standards Administrator will inform the panel whether or not all respondents named are eligible to receive a citation.
  - i. If any named respondent is not eligible for citation, then the Grievance Review Panel will determine if the complainant has elected to be known. If complainant has elected to be known, the Grievance Review Panel shall forward the complaint to a Hearing Panel of the Professional Standards Committee for hearing. If complainant elected to withdraw the complaint, the file shall be closed. If complainant elects to withdraw, complainant may not refile a complaint on the same matter.
10. If an Anonymous Complaint raises a double jeopardy question, before the Professional Standards Administrator forwards the matter to a Grievance Review Panel, the Professional Standards Administrator, in consultation with Association Counsel, shall review the complaint and make a recommendation to the Grievance Review Panel to ensure the respondent is not exposed to being held in violation of the Code of Ethics twice for the same conduct and the Grievance Review Panel shall refer or dismiss the complaint accordingly.
  - i. Multiple complaints by different complainants alleging a violation on the same event, before a Grievance Review Panel has reviewed the complaints, shall be consolidated for review.
  - ii. If a complaint is filed alleging a violation against the same respondent, on the same event, after final determination on a previously submitted complaint, but before the end of 30-day time period to cease or refrain from the violating conduct, then a Grievance Review Panel will review the complaint to determine if the subsequent filing is the same event. If it is determined to be the same event, the Grievance Review Panel shall dismiss the complaint and inform complainant that the allegation has already been adjudicated.
  - iii. If a complaint is filed alleging a violation against the same respondent, on the same event, after final determination on a previously submitted complaint, and after the end of 30-day time period to cease or refrain from violating conduct, then a Grievance Review Panel will review the complaint to determine if the alleged violation in the subsequent filing occurred before or after the 30-day time period to cease or refrain from the violating conduct. If it is determined that the allegations of a violation occurred after the 30-day time period to cease or refrain from violating conduct, it will be deemed a new violation and processed accordingly.

If all relevant questions have been answered to the satisfaction of the Grievance Review Panel, and the allegations, if taken as true could constitute a violation of the Code of Ethics, the Grievance Review Panel shall issue a Citation in accordance with Section II below.

If certain questions have not been answered to the satisfaction of the Grievance Review Panel, the complaint shall be dismissed.

If the complaint was dismissed due to allegations made in the complaint that were not related to Article 12, the complainant may refile the matter on the Standard Complaint form. However, the 180-day filing deadline will continue to run.

The Grievance Review Panel may not amend an Anonymous Complaint to include Articles other than Article 12 citation-eligible matters specified in this Policy. The Grievance Review Panel may only amend an Anonymous Complaint to add an additional Article 12 citation-eligible matter or to cite the appropriate Article 12 citation-eligible matter when it is determined that an inappropriate Article 12 citation-eligible matter was cited by complainant.

Complainant may appeal the Grievance Review Panel's dismissal as allowed under Part Three, Section 19 (c). Complainant may only appeal a dismissal of an Anonymous Complaint based on 1) failure to timely file the complaint; or 2) eligibility under Article 12 citation-eligible matters.

- G. **Standard Complaint:** If, after reviewing a Standard Complaint in accordance with **Part Three, Section 19 (B)** of the COEAM, the Grievance Review Panel determines that there is or are timely complaint(s) made against one or more respondents that are potential violations of the Code of Ethics, then the Grievance Review Panel will be informed by the Professional Standards Administrator whether the respondent is eligible for the Citation program. If the respondent is not eligible to receive a citation, the complaint will be forwarded to a Hearing Panel of the Professional Standards Committee for hearing. If the respondent is

eligible to receive a citation, then the Grievance Review Panel shall consider whether each issue raised qualifies for the Citation program as follows:

1. If the complaint does not include alleged violations included in the Citation Schedule, or it includes some covered by the Citation Schedule and some that are not, then the Grievance Review Panel shall refer the complaint to the Professional Standards Committee for hearing consistent with the policies and procedures set forth in the COEAM.

If the Grievance Review panel adds an article making the complaint ineligible for Citation and requiring the Complaint to proceed to a hearing, but the complainant does not accept the amendment within the ten (10) day period allowed in this COEAM, then the unamended complaint shall stand, and the Citation shall be issued.

2. If the complaint includes *only* allegations of violations included in the Citation Schedule, the Grievance Review Panel will proceed under subsection H and I below.
  3. If the complaint includes allegations against more than one respondent, the complaint is only eligible for Citation if all respondents have only citation eligible allegations charged against them and both respondents are eligible to receive a citation.
- H. If a Standard Complaint includes only allegations covered by the Citation Schedule, the Grievance Review Panel will review the information presented in the complaint and, taking all information in the complaint as true, determine if there is potential violation of the Code of Ethics. If the Grievance Review Panel eliminates Articles or allegations which are not subject to the Citation Schedule and all that remains of the complaint are citation eligible allegations, the Grievance Review Panel can issue a citation subject to the appeal of the Complainant. Complainant will have 20 days from the date of the notice of the Grievance Review Decision to request an appeal. During this time no action may be taken on the citation. Notice will be provided to each party regarding this right to appeal timeline and the subsequent delay in the processing of the citation. However, if a complaint that included only allegations covered by the Citation Schedule is amended by the Grievance Review Panel by adding Articles that are not covered by the Citation Schedule, then the Grievance Review Panel shall wait for Complainant's affirmation that Complainant will agree to amend the complaint. If the Complainant is not willing to agree to add the Articles or allegations to the complaint, the matter will proceed as a citation offense subject to the complaint's eligibility. If the Complainant agrees to add the Articles or allegations to the complaint, the Grievance Review Panel shall refer the matter to a hearing before the Professional Standards Committee in accordance with the procedures in the COEAM.
1. If the Grievance Review Panel determines there is a potential violation which is outlined in the Citation Schedule, it will issue a citation and impose discipline consistent with the Association's Citation Schedule pursuant to Section II, below, or;
  2. If the Grievance Review Panel determines there is a potential violation of the Code of Ethics which is outlined in the Citation Schedule, and further determines that the allegations are sufficiently egregious (e.g. public trust issues or serious harm caused) to warrant a hearing rather than a citation, the Grievance Review Panel shall refer the complaint to the Professional Standards Committee for hearing consistent with policies and procedures set forth in the COEAM, despite the complaint's applicability to the Citation process. This determination to forward to a hearing rather than issuing a citation on the matter is not subject to appeal by either complainant or respondent.

## **II. Issuance of Citations**

- A. The Grievance Review Panel's Report form shall include a written summary of the complaint, prepared by the Professional Standards Administrator, providing the respondent sufficient information to understand the basis of the citation. The Grievance Review Panel's Report form shall be sent to the complainant, respondent and respondent's REALTOR® principal.  
The issued citation shall be sent to the respondent, and copy shall be sent to the respondent's REALTOR® principal. If the respondent changes firms before or after the complaint is filed but before the citation is issued, both the former and current REALTOR® principal will receive a copy of the Grievance Review Panel's Report form and the citation.
- B. The respondent will have twenty (20) days from transmission of the citation to request a full due process hearing on the complaint.
  1. If the respondent does not reply with ten (10) days of transmission of the citation, a notice shall be issued to the respondent reminding the respondent of the deadline for requesting a hearing.

2. If the respondent accepts the citation, or if the respondent does not request a hearing within twenty days of transmission of the citation, this shall be deemed an acknowledgement of the conduct alleged in the complaint and an agreement to accept the discipline imposed. This will be a final resolution of the complaint, which shall not be appealable or subject to any further review.
3. If the Respondent accepts the citation, or if the respondent does not request a hearing within twenty days of transmission of the citation, payment of the issued fine must be received by the Minnesota Realtors® no later than five (5) days after the time-period to request a hearing has expired. Proof of completion of any sanctioned class(es) must be received by the Minnesota Realtors® no later than thirty (30) days after the time period to request a hearing has expired. All continuing education classes required to be completed under the Citation Schedule must be approved by the Minnesota Department of Commerce.
  - a. The case will be closed upon the Association's receipt of payment, proof of completion of the sanctioned class(es), and receipt of assurances from the respondent that respondent has taken affirmative steps to comply with the Code within the time period specified by the Grievance Review Panel. Notice will be provided to the complainant that the citation(s) has been issued and compliance fulfilled.
  - b. Failure to pay the citation amount within five (5) days after the time-period to request a hearing has expired, failure to provide proof of completion of the sanctioned class(es) within thirty (30) days after the time period to request a hearing has expired, or failure to provide assurances that affirmative steps have been taken to comply with the Code of Ethics will result in the automatic suspension of membership including membership and/or MLS services until the citation has been complied with in full.
- C. For a Standard Complaint, if the respondent requests a hearing within the time specified, the Professional Standards Administrator will inform the complainant of the hearing request and refer the matter for hearing before a Hearing Panel of the Professional Standards Committee as prescribed in the COEAM. Should the complainant be a member of the public who refuses or is unable to participate in the hearing, or should the complainant be a REALTOR® member who refuses or is unable to participate in the hearing, the provisions of Section 21(f)(3) in the COEAM shall apply.
- D. For an Anonymous Complaint, if the respondent requests a hearing within the time specified, the Professional Standards Administrator will proceed as follows:
  1. If the complainant elected to be known when submitting the complaint, the Professional Standards Administrator will inform the complainant of the hearing request and refer the matter for hearing before a Hearing Panel of the Professional Standards Committee as prescribed in the COEAM; or
  2. If the complainant elected to withdraw the complaint, the Professional Standards Administrator will close the file after informing respondent that the complaint was withdrawn.
- E. Issued citations may not be appealed, however, a respondent may appeal the deadline to accept the Citation or request a hearing solely on the basis that the Association failed to transmit, or timely transmit, the Citation, to the respondent. The appeal process will follow the appeal process for a Grievance Review Appeal. (*See Section 19 C of the COEAM.*)

### III. Limitations

- A. Any REALTOR® is limited in the number and type of citations that they may receive, according to the following rules:
  1. Each filed complaint is considered one (1) citation even if multiple offenses are named in the same complaint. One (1) citation may consist of multiple fines and or Continuing Education requirements. Therefore, a second offense would require the submission of a new complaint as would a subsequent third offense.
  2. No more than two (2) citations will be issued to a member within a consecutive twelve (12) month period, starting with the date the first complaint was filed.
  3. No more than three (3) citations will be issued to a member within a consecutive thirty-six (36) month period, starting on the date the first complaint was filed.
  4. No additional citations are permitted where the cumulative fine for the citations issued would be more than \$5,000 in any three (3) year period.

5. The Minnesota Realtors® has adopted an escalating fine and education schedule as specified in the Citation Schedule. The Grievance Review Panel may only consider the past citations for the particular conduct alleged in the complaint.
- B. Should an individual respondent reach the limitations in subsection A above, any further complaints received will be processed consistent with the policies and procedures set forth in the COEAM without the opportunity to participate in the Citation program.
- C. The fact that a respondent has previously been issued a citation for any violation, whether or not it was paid or the education completed, shall not be admissible in any ethics or arbitration hearing, including a hearing to consider a complaint where the respondent rejected a citation and requested a hearing. A hearing panel may consider citations previously issued to the respondent for the purpose of determining appropriate discipline as provided in Subsection G below.
- D. Publishing the names of citation violators can occur after a second citation occurs within three (3) years in accordance with the publishing procedures prescribed in the COEAM.
- E. Citation sanctions will remain with the respondent's membership file indefinitely.
- F. Citations will be considered in any publication of violations should such rules be adopted by the Association.
- G. Where a Hearing Panel has found a violation of the Code of Ethics after a hearing, it may consider past citations in determining an appropriate sanction. Hearing Panels will be informed of past citations for all other past violations.
- H. The Professional Standards Administrator will track the number of citations issued, the number of citations paid, and the violations for which citations were issued. This information may be provided in the aggregate to the Board of Directors but will not include details about the complaints nor identify the complainants or respondents.

#### **IV. Citation Schedule**

- A. The following Articles of the Code of Ethics and specified Standards of Practices (SOP) are covered by the Ethics Citation program. Please see attached Citation Schedule for further details.
  1. Article 1: Limited to SOP 1-5, 1-7 (2<sup>nd</sup> sentence only), 1-8 (2<sup>nd</sup> sentence only) and 1-16
  2. Article 3: Limited to SOP 3-2, 3-4 and 3-9
  3. Article 4: Including SOP 4-1
  4. Article 5 Limited to present interest, not contemplated.
  5. Article 6: Including SOP 6-1
  6. Article 12: Including SOP 12-1, 12-3, 12-4, 12-5, 12-6, 12-7, 12-8, 12-9, 12-10, 12-12, 12-13
  7. Article 14
  8. Article 16: Limited to SOP 16-16 and 16-19
- B. The Citation Schedule specifies the fines and required continuing education classes for initial and repeat violations of the Articles and Standards of Practices covered by the Citation program. All Citations will include a Letter of Reprimand to be placed in the membership file. Citations for certain Article 12 violations will include a cease and or refrain from the violating conduct requiring the respondent to take affirmative steps to comply with the Code within 30 days of final determination on the matter.

## Citation Schedule

|                                                                                                                                                                                                                                                                                                                                                                                                                    | <b>Applicable Article and Standard of Practice (SOP)</b> | <b>Discipline (1st Offense)</b>                    | <b>Discipline (2nd Offense)</b>                    | <b>Discipline (3rd Offense)</b>                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|----------------------------------------------------|----------------------------------------------------|----------------------------------------------------|
| <b>Article 1</b>                                                                                                                                                                                                                                                                                                                                                                                                   |                                                          |                                                    |                                                    |                                                    |
| Failure to fully disclose and obtain consent from both parties when representing both the seller/landlord and buyer/tenant in the same transaction.                                                                                                                                                                                                                                                                | Article 1, supported by SOP 1-5                          | \$250 fine                                         | \$1,000 fine; <b>plus</b> 3 hours of COE Education | \$1,750 fine; <b>plus</b> 3 hours of COE Education |
| Upon the written request of a cooperating broker who submits and offer to a listing broker, the listing broker shall provide a written affirmation to the cooperating broker that the offer has been submitted to the seller.                                                                                                                                                                                      | Article 1, supported by SOP 1-7 (second sentence only)   | \$250 fine                                         | \$1,000 fine; <b>plus</b> 3 hours of COE Education | \$1,750 fine; <b>plus</b> 3 hours of COE Education |
| Upon the written request of the listing broker who submits a counter-offer to the buyer's tenant's/broker, the buyer's/tenant's broker shall provide, as soon as practical, a written affirmation to the listing broker stating that the counter-offer has been submitted to the buyers/tenants, or a written notification that the buyers/tenants have waived the obligation to have the counter-offer presented. | Article 1, SOP 1-8 (second sentence only)                | \$250 fine                                         | \$1,000 fine; plus 3 hours of COE Education        | \$1,750 fine; plus 3 hours of COE Education        |
| REALTORS® accessing or using, or allowing others to access or use, a property managed or listed on terms other than those authorized by the owner or seller.                                                                                                                                                                                                                                                       | Article 1, supported by SOP 1-16                         | \$1,000 fine; <b>plus</b> 3 hours of COE Education | \$1,750 fine; <b>plus</b> 3 hours of COE Education | \$2,250 fine; <b>plus</b> 6 hours of COE Education |
|                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                          |                                                    |                                                    |                                                    |
| <b>Article 3</b>                                                                                                                                                                                                                                                                                                                                                                                                   |                                                          |                                                    |                                                    |                                                    |
| Failure to communicate a change in compensation for cooperative services prior to the time that REALTOR® submits an offer to purchase/lease the property.                                                                                                                                                                                                                                                          | Article 3, supported by SOP 3-2                          | \$250 fine                                         | \$1,000 fine; <b>plus</b> 3 hours of COE Education | \$1,750 fine; <b>plus</b> 3 hours of COE Education |
| As a listing broker, attempting to unilaterally modify the offered compensation with respect to a cooperative transaction after a REALTOR® has submitted an offer to purchase or lease that property.                                                                                                                                                                                                              | Article 3, supported by SOP 3-2                          | \$250 fine                                         | \$1,000 fine; <b>plus</b> 3 hours of COE Education | \$1,750 fine; <b>plus</b> 3 hours of COE Education |
| Failing to disclose existence of dual or variable rate commission arrangements.                                                                                                                                                                                                                                                                                                                                    | Article 3, supported by SOP 3-4                          | \$250 fine                                         | \$1,000 fine; <b>plus</b> 3 hours of COE Education | \$1,750 fine; <b>plus</b> 3 hours of COE Education |

|                                                                                                                                                                                     |                                 |                                                    |                                                    |                                                    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|----------------------------------------------------|----------------------------------------------------|----------------------------------------------------|
| Failure to disclose to cooperating brokers differential that would result in dual or variable rate commission arrangement if sale/lease results through efforts of seller/landlord. | Article 3, supported by SOP 3-4 | \$250 fine                                         | \$1,000 fine; <b>plus</b> 3 hours of COE Education | \$1,750 fine; <b>plus</b> 3 hours of COE Education |
| Providing access to listed property on terms other than those established by the owner or the listing broker.                                                                       | Article 3, supported by SOP 3-9 | \$1,000 fine; <b>plus</b> 3 hours of COE Education | \$1,750 fine; <b>plus</b> 3 hours of COE Education | \$2,250 fine; <b>plus</b> 6 hours of COE Education |

|                                                                                                                                                                                                                                      |                                                           |                                   |                                                                                  |                                                                                  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|-----------------------------------|----------------------------------------------------------------------------------|----------------------------------------------------------------------------------|
| <b>Article 4</b>                                                                                                                                                                                                                     |                                                           |                                   |                                                                                  |                                                                                  |
| Failing to disclose REALTOR®'s present or contemplated ownership or other interest in writing to all parties prior to signing any agreement.                                                                                         | Article 4 (second sentence), supported by SOP 4-1         | \$750 fine                        | \$1,250 fine; <b>plus</b> 3 hours of COE Education                               | \$2,000 fine; <b>plus</b> 6 hours of COE Education                               |
|                                                                                                                                                                                                                                      |                                                           |                                   |                                                                                  |                                                                                  |
| <b>Article 5</b>                                                                                                                                                                                                                     |                                                           |                                   |                                                                                  |                                                                                  |
| Providing professional services without disclosing REALTOR®'s present interest in property.                                                                                                                                          | Article 5 (limited to present interest, not contemplated) | \$750 fine                        | \$1,250 fine; <b>plus</b> 3 hours of COE Education                               | \$2,000 fine; <b>plus</b> 6 hours of COE Education                               |
|                                                                                                                                                                                                                                      |                                                           |                                   |                                                                                  |                                                                                  |
| <b>Article 6</b>                                                                                                                                                                                                                     |                                                           |                                   |                                                                                  |                                                                                  |
| Accepting any commission, rebate, or profit on expenditures without client's knowledge or consent.                                                                                                                                   | Article 6 (first paragraph)                               | \$750 fine                        | \$1,250 fine; <b>plus</b> 3 hours of COE Education                               | \$2,000 fine; <b>plus</b> 6 hours of COE Education                               |
| Failure to disclose to a client or customer REALTOR®'s financial benefits or fees received as a direct result of recommending real estate products or services.                                                                      | Article 6 (second paragraph)                              | \$750 fine                        | \$1,250 fine; <b>plus</b> 3 hours of COE Education                               | \$2,000 fine; <b>plus</b> 6 hours of COE Education                               |
| Failure to disclose REALTOR®'s direct interest in an organization or business entity when recommending to a client or customer that they use the services of that organization or business entity.                                   | Article 6, supported by SOP 6-1                           | \$750 fine                        | \$1,250 fine; <b>plus</b> 3 hours of COE Education                               | \$2,000 fine; <b>plus</b> 6 hours of COE Education                               |
|                                                                                                                                                                                                                                      |                                                           |                                   |                                                                                  |                                                                                  |
| <b>Article 12</b>                                                                                                                                                                                                                    |                                                           |                                   |                                                                                  |                                                                                  |
| Failing to present a true picture in real estate communications and advertising.                                                                                                                                                     | Article 12                                                | \$250 fine                        | \$1,000 fine; <b>plus</b> 3 hours of COE Education                               | \$1,750 fine; <b>plus</b> 3 hours of COE Education                               |
| Failing to disclose status as real estate professional in advertising and other representations.                                                                                                                                     | Article 12                                                | \$750 fine                        | \$1,250 fine; <b>plus</b> 3 hours of COE Education                               | \$2,000 fine; <b>plus</b> 6 hours of COE Education                               |
| REALTORS® must not represent that their brokerage services to a client or customer are free or available at no cost to their clients, unless the REALTOR® will receive no financial compensation from any source for those services. | Article 12, supported by SOP 12-1                         | \$250 fine; plus cease or refrain | \$1,000 fine; <b>plus</b> 3 hours of COE Education; <b>plus</b> cease or refrain | \$1,750 fine; <b>plus</b> 3 hours of COE Education; <b>plus</b> cease or refrain |

|                                                                                                                                                                                                                                                                           |                                    |                                                                                  |                                                                                  |                                                                                  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|----------------------------------------------------------------------------------|----------------------------------------------------------------------------------|----------------------------------------------------------------------------------|
| Failure to exercise care and candor when communicating the terms and conditions of premiums, prizes, merchandise discounts or other inducements to list, sell, purchase, or lease.                                                                                        | Article 12, supported by SOP 12-3  | \$250 fine                                                                       | \$1,000 fine; <b>plus</b> 3 hours of COE Education                               | \$1,750 fine; <b>plus</b> 3 hours of COE Education                               |
| Advertising property for sale/lease without authority of owner or listing broker.                                                                                                                                                                                         | Article 12, supported by SOP 12-4  | \$1,000 fine; <b>plus</b> 3 hours of COE Education; <b>plus</b> cease or refrain | \$1,750 fine; <b>plus</b> 3 hours of COE Education; <b>plus</b> cease or refrain | \$2,250 fine; <b>plus</b> 6 hours of COE Education; <b>plus</b> cease or refrain |
| Failing to disclose name of firm in advertisement for listed property.                                                                                                                                                                                                    | Article 12, supported by SOP 12-5  | \$250 fine                                                                       | \$1,000 fine; <b>plus</b> 3 hours of COE Education                               | \$1,750 fine; <b>plus</b> 3 hours of COE Education                               |
| Failing to disclose status as both owner/landlord and REALTOR® or licensee when advertising property in which REALTOR® has ownership interest.                                                                                                                            | Article 12, supported by SOP 12-6  | \$750 fine                                                                       | \$1,250 fine; <b>plus</b> 3 hours of COE Education                               | \$2,000 fine; <b>plus</b> 6 hours of COE Education                               |
| Falsely claiming to have “sold” property.                                                                                                                                                                                                                                 | Article 12, supported by SOP 12-7  | \$1,000 fine; <b>plus</b> 3 hours of COE Education; <b>plus</b> cease or refrain | \$1,750 fine; <b>plus</b> 3 hours of COE Education; <b>plus</b> cease or refrain | \$2,250 fine; <b>plus</b> 6 hours of COE Education; <b>plus</b> cease or refrain |
| Failure to take corrective action when it becomes apparent that information on a REALTOR®’s website is no longer current or accurate.                                                                                                                                     | Article 12, supported by SOP 12-8  | \$250 fine                                                                       | \$1,000 fine; <b>plus</b> 3 hours of COE Education                               | \$1,750 fine; <b>plus</b> 3 hours of COE Education                               |
| Failure to disclose firm name and state of licensure on REALTOR® firm website.                                                                                                                                                                                            | Article 12, supported by SOP 12-9  | \$250 fine                                                                       | \$1,000 fine; <b>plus</b> 3 hours of COE Education                               | \$1,750 fine; <b>plus</b> 3 hours of COE Education                               |
| Misleading consumers through deceptive framing, manipulating content, deceptively diverting internet traffic, or presenting other’s content without attribution or permission.                                                                                            | Article 12, supported by SOP 12-10 | \$1,000 fine; <b>plus</b> 3 hours of COE Education; <b>plus</b> cease or refrain | \$1,750 fine; <b>plus</b> 3 hours of COE Education; <b>plus</b> cease or refrain | \$2,250 fine; <b>plus</b> 6 hours of COE Education; <b>plus</b> cease or refrain |
| Registering or using of deceptive URL or domain name.                                                                                                                                                                                                                     | Article 12, supported by SOP 12-12 | \$1,000 fine; <b>plus</b> 3 hours of COE Education; <b>plus</b> cease or refrain | \$1,750 fine; <b>plus</b> 3 hours of COE Education; <b>plus</b> cease or refrain | \$2,250 fine; <b>plus</b> 6 hours of COE Education; <b>plus</b> cease or refrain |
| Representing that the REALTOR® has a designation, certification, or other credential they are not entitled to use.                                                                                                                                                        | Article 12, supported by SOP 12-13 | \$750 fine; <b>plus</b> cease or refrain                                         | \$1,250 fine; <b>plus</b> 3 hours of COE Education; <b>plus</b> cease or refrain | \$2,000 fine; <b>plus</b> 6 hours of COE Education; <b>plus</b> cease or refrain |
|                                                                                                                                                                                                                                                                           |                                    |                                                                                  |                                                                                  |                                                                                  |
| <b>Article 14</b>                                                                                                                                                                                                                                                         |                                    |                                                                                  |                                                                                  |                                                                                  |
| Failing to cooperate in a professional standards proceeding or investigation in circumstances when cooperation has been demanded by the association and association has advised REALTOR® failure to cooperate could result in an allegation of a violation of Article 14. | Article 14                         | \$1,000 fine; <b>plus</b> 3 hours of COE Education                               | \$1,750 fine; <b>plus</b> 3 hours of COE Education                               | \$2,250 fine; <b>plus</b> 6 hours of COE Education                               |
|                                                                                                                                                                                                                                                                           |                                    |                                                                                  |                                                                                  |                                                                                  |

| <b>Article 16</b>                                                                                                                            |                                    |                                                    |                                                    |                                                    |
|----------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|----------------------------------------------------|----------------------------------------------------|----------------------------------------------------|
| Conditioning submission of a buyer's offer on additional compensation from a listing broker.                                                 | Article 16, supported by SOP 16-16 | \$1,000 fine; <b>plus</b> 3 hours of COE Education | \$1,750 fine; <b>plus</b> 3 hours of COE Education | \$2,250 fine; <b>plus</b> 6 hours of COE Education |
| Placing for sale/lease sign on property without permission of seller/landlord.                                                               | Article 16, supported by SOP 16-19 | \$1,000 fine; <b>plus</b> 3 hours of COE Education | \$1,750 fine; <b>plus</b> 3 hours of COE Education | \$2,250 fine; <b>plus</b> 6 hours of COE Education |
| <b>* Note that any continuing education imposed may not exceed a total of 6 hours of COE education per Citation imposed. (Revised 11/24)</b> |                                    |                                                    |                                                    |                                                    |

# Part Four — The Ethics Hearing

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## Section 20. Initiating an Ethics Hearing

- (a) 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 in their own name with the Professional Standards Administrator, dated and signed by complainant, stating the facts on which it is based (Form #E-1, *Complaint, Part Six*), provided that the complaint is filed within one hundred eighty (180) days after the alleged offense and facts relating to it could have been known by the complainant in the exercise of reasonable diligence or within one hundred eighty (180) days after the conclusion of the transaction or event, whichever is later. *(Revised 11/22)*

Anonymous complaints other than those allowed for in the association's citation policy are prohibited. If the association's citation policy allows for anonymous complaints and the individual who brought the allegations chooses to remain anonymous, any complaint referred for hearing must include a complainant (e.g., a member of the Grievance Committee) to shoulder the burden of proof. *(Adopted 5/22)*

The procedures for processing complaints alleging violations of an Association's bylaws prohibiting harassment are available online at [www.nar.realtor](http://www.nar.realtor), and those procedures do not involve an Association's Grievance Review Panel, Professional Standards Committee, or Board of Directors. *(Adopted 11/11)*

Suspension of filing deadlines: If the Association's informal dispute resolution processes (e.g. ombudsman, mediation, etc.) are invoked or initiated by a complainant (or potential complainant) with respect to conduct that becomes the subject of a subsequent ethics complaint, the one hundred eighty (180) day filing deadline shall be suspended beginning with 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. Questions about when informal dispute resolution began or ended will be determined by the Grievance Review Panel. The filing deadline shall also be suspended during any period when the respondent does not hold REALTOR® or REALTOR-ASSOCIATE® membership. *(Amended 11/12)*

The Professional Standards Administrator shall promptly make a preliminary review in accordance with **Part Three, Section 19** and if approved, refer the complaint to a Grievance Review Panel, appointed by the Professional Standards Administrator in accordance with **Part Two, Section 15**, to review the complaint and determine whether to (1) dismiss the complaint as unworthy of further consideration, (2) refer it back to the complainant as appropriate for arbitration rather than disciplinary action, or (3) refer it back to the Professional Standards Administrator to schedule for hearing. This review process may include additional information from the complainant other than the written complaint itself only if necessary to determine whether a complaint will be referred for hearing. The Grievance Review Panel shall not request a response from respondent before making its determination. The function of the Grievance Review Panel is to make only such preliminary review and evaluation of the complaint as are required to determine whether the complaint warrants further consideration by a Hearing Panel of the Professional Standards Committee. If the facts alleged in the complaint could constitute a violation of the Code of Ethics, if taken as true on their face, the Grievance Review Panel is obligated to make a referral for hearing if the complaint is otherwise in acceptable form. The Grievance Review Panel does not conduct hearings, does not determine if a violation of the Code of Ethics has occurred, and does not dismiss ethics complaints because of lack of evidence. A complainant is not required to prove their case upon submission of their ethics complaint. *(Revised 11/15)*

When Grievance Review Panels refer ethics complaints and arbitration requests for hearing, hearing panel chairs can determine if questions about:

- (1) whether ethics complaints and arbitration requests are timely filed,
- (2) whether arbitrable issues exist,
- (3) whether arbitration requests are too legally complex to be fairly arbitrated, and
- (4) other administrative issues

will be addressed through a pre-hearing meeting of the hearing panel or at the outset of the hearing prior to testimony relating to the ethics complaint or arbitration request commencing.

When the Grievance Review Panel has moved the complaint forward to a hearing and respondent wishes to challenge the Grievance Review Panel's decision on any of the pre-hearing matters (1) - (4) listed above, the respondent may request a pre-hearing meeting by using the Form entitled *Request for Pre-Hearing Meeting*. Alternatively, a Pre-Hearing Meeting may be scheduled in the absence of such a request from the respondent, to review the same issues, should the Chair of the Hearing Panel deem it appropriate.

If the Association receives a *Request for Pre-Hearing Meeting*, the Professional Standards Administrator shall forward the Request to the Hearing Panel Chair for review to determine if the Request will be addressed through a Pre-Hearing Meeting of the Hearing Panel at least seven (7) and no more than ten (10) days prior to the Hearing, or through a Pre-Hearing Meeting immediately prior to the Hearing. The determination of timing of the Pre-Hearing Meeting shall be within the Chair's discretion, and failure to hold a Pre-Hearing Meeting between seven (7) and ten (10) days prior to the Hearing shall not constitute a procedural deficiency. The Professional Standards Administrator shall appoint a Hearing Panel in accordance with **Part Two, Section 16.1** and schedule both a Pre-Hearing Meeting, in accordance with the Chair's determination, and a Hearing Date.

The materials and information that were available to the Grievance Review Panel when they made their decision along with the respondent's reply, and any supporting documents, if any, will be presented to the Hearing Panel prior to the Pre-Hearing Meeting. Neither the complaint nor the reply can be revised, modified or supplemented.

The complainant and respondent may, however, submit written statements regarding the contested pre-hearing matters. Any such written statement should be submitted to the Association at least three (3) days prior to the scheduled Pre-Hearing Meeting. If such written statements are submitted after this deadline, they will be forwarded to the Hearing Panel. However, the Hearing Panel may not have the opportunity to give them the same level of review before the Pre-Hearing Meeting as had they been submitted in the timeline requested.

If these matters arise during a hearing, the Hearing Panel will address them within the course of the hearing and in conjunction with all other issues related to the complaint.

No complainant(s), respondent(s), their counsel, witnesses or brokers, may appear or testify at the Pre-Hearing Meeting.

The complainant and respondent have the right to challenge the qualifications of any individual who may be appointed to serve on an ethics proceeding or arbitration matter. The parties will be provided with a list of the individuals who will be appointed to sit on the Panel and may challenge the qualifications of any panel member by completing Form #E-7, *Challenge Form* and returning it to the Association. Challenges submitted will be determined by the Chairperson of the Hearing Panel, or if the challenge to the Chairperson is made, by the Professional Standards Committee Chairperson.

A party shall be deemed to have waived any grounds of disqualification of which the party has knowledge unless the party files the request within ten (10) days from the date a list of names of the appointed panel members has been transmitted to the party. However, any member of the tribunal may be disqualified at any time if a majority of the members of the tribunal are made aware of any grounds of automatic disqualification of a member or find any new or previously undiscovered facts which in their judgment may prevent, or appear to prevent, a member of a panel from rendering an impartial decision.

The Pre-Hearing Meeting will not be recorded, and no party will be permitted to have a court reporter or recording device present at the Pre-Hearing Meeting.

At the Pre-Hearing Meeting, the Hearing Panel will determine whether or not the complaint shall proceed to a hearing, depending upon their determination of any of the matters raised. The decision of the Hearing Panel will be determined by a simple majority vote of the panel members.

If the Hearing Panel's determination at a Pre-Hearing Meeting does not preclude proceeding with the Hearing as scheduled, the matter will proceed to the scheduled hearing.

In such case, the Hearing shall be held on the scheduled date and both the complainant and respondent have the right to raise all substantive and procedural issues at the hearing (including those issues reviewed within a Pre-Hearing Meeting).

If the conclusion of the Hearing Panel in its Pre-Hearing Meeting is that the matter should not proceed to a hearing, the Hearing Panel shall dismiss the complaint and the complainant shall have the right to appeal the decision of the Hearing Panel to an Appeal Tribunal of the Association on the same bases as dismissals by the Grievance Review Panel (See **Part Four, Section 20 (c)**).

The Association shall transmit the written decision of the Hearing Panel on these matters to the parties no later than three (3) days after the Hearing Panel makes their decision.

The allegations, findings, and decisions rendered in the Pre-Hearing Meeting are confidential and will not be reported or published by the Association, any member of the Panel, or any party under any circumstances except those established in the *Code of Ethics and Arbitration Manual* as from time to time amended.

In the event the complaint is from a client, customer, or a member of the general public, and the Professional Standards Administrator or Grievance Review Panel determines that the complaint is vague, overly general, does not allege violations of specific Article(s), or is otherwise insufficient on its face, a member of the Professional Standards Committee may be assigned by the Chairperson of the Professional Standards Committee to assist the complainant in preparing the complaint in proper form. The member providing such assistance shall not participate in any consideration or deliberations of the Grievance Review Panel with respect to the matter and are not and will not act as the complainant's advocate or representative. In such cases, the respondent shall receive the revised complaint with the original complaint and all other supporting documentation provided by the complainant incorporated as an appendix. (Revised 11/14)

- (b) A Grievance Review Panel may not review the actions of any member upon its own motion unless otherwise provided herein.
- (c) Any action by the Grievance Review Panel dismissing the complaint as unworthy of further consideration may be appealed to an Appeal Tribunal within twenty (20) days from transmittal of Form #E-5.1, *Grievance Review Panel's Report Form-Ethics* using form #E-22, *Appeal of Grievance Review Panel Decision*. The materials and information which were available to the Grievance Review Panel when the panel made its decision will be presented to the Appeal Tribunal and considered with the appeal. No complainant(s), respondent(s), their counsel, witnesses or brokers, may appear or testify at the appeal hearing. The complaint and any attachments to the complaint may not be revised, modified, or supplemented. The complainant may, however, explain in writing why the complainant disagrees with the Grievance Review Panel's conclusion that the complaint should be dismissed. The Professional Standards Administrator shall appoint a panel of five (5) members of the Professional Standards Committee in accordance with **Part Two, Section 16.1** to hear the appeal (Appeal Tribunal). Appeals of dismissals shall be heard as soon as practical, but no later than thirty (30) days after receipt of the appeal. The Appeal Tribunal's decision will be transmitted to the parties within five (5) days from the date of the decision. The decision of the Appeal Tribunal is final and binding and is not subject to further review by the Association. The complainant and the respondent do not have the right to challenge appointed panel members, however, the Professional Standards Administrator may only appoint panel members that do not have a conflict of interest as defined elsewhere in this manual. If the Appeal Tribunal determines that the complaint or portions of the complaint were improperly dismissed by the Grievance Review Panel, they shall refer it to the Professional Standards Committee for a hearing. (Revised 05/24)
- (d) If the complaint asserts multiple allegations of unethical conduct and the Grievance Review Panel determines that one or more of the allegations would not, under any circumstances, constitute a violation, that portion of the complaint may be dismissed while the balance of the complaint is forwarded for a hearing before a Hearing Panel of the Professional Standards Committee. However, the complainant has the right to appeal the dismissal to an Appeal Tribunal using Form #E-22, *Appeal of Grievance Review Panel Dismissal of Ethics Complaint*. The materials and information which were available to the Grievance Review Panel when the panel made its decision will be presented to the Appeal Tribunal and considered with the appeal. No complainant(s), respondent(s), their counsel, witnesses or brokers, may appear or testify at the appeal hearing. The complaint and any attachments to the complaint cannot be revised, modified or supplemented. The complainant may, however, explain in writing why the complainant disagrees with the Grievance Review Panel's dismissal. The Professional Standards Administrator shall appoint a panel of five (5) members of the Professional Standards Committee in accordance with **Part Two, Section 16.1** to hear the appeal (Appeal Tribunal). The decision of the Appeal Tribunal is final and binding and is not subject to further review by the Association. The complainant and the respondent do not have the right to challenge appointed panel members, however, the Professional Standards Administrator may only appoint panel members that do not have a conflict of interest as defined elsewhere in this manual. If the Appeal Tribunal determines that the portion of the complaint was improperly dismissed by the Grievance Review Panel, they shall refer it to the Professional Standards Committee for a hearing.

If the Grievance Review Panel feels that the respondent's alleged conduct may be the basis for a violation but that an inappropriate Article(s) has been cited, or that other applicable Articles have not been cited, the Grievance Review Panel may amend the complaint by deleting any inappropriate Article(s) and/or by adding any appropriate Article(s) and/or individuals to the complaint. If the complainant disagrees with the deletion of an Article(s) from the complaint, the complainant may appeal to an Appeal Tribunal requesting that the original complaint be forwarded to a Hearing Panel as filed using Form #E-22, *Appeal of Grievance Review Panel Decision*. The materials and information which were available to the Grievance Review Panel when the panel made its decision will be presented to the Appeal Tribunal and considered with the appeal. No complainant(s), respondent(s), their counsel, witnesses or brokers, may appear or testify at the appeal hearing. The complaint and any attachments to the complaint

cannot be revised, modified or supplemented. The complainant may, however, explain in writing why the complainant disagrees with the Grievance Review Panel's dismissal. The Professional Standards Administrator shall appoint a panel of five (5) members of the Professional Standards Committee in accordance with **Part Two, Section 16.1** to hear the appeal (Appeal Tribunal). The decision of the Appeal Tribunal is final and binding and is not subject to further review by the Association. The complainant and the respondent do not have the right to challenge appointed panel members, however, the Professional Standards Administrator may only appoint panel members that do not have a conflict of interest as defined elsewhere in this manual.

If the Grievance Review Panel determines there is glaring and obvious information in a complaint to warrant an Article or Articles be added to the complaint, the complainant shall have the opportunity to agree to the addition. If the complainant does not agree to the addition of the Article, the Grievance Review Panel shall not file its own complaint and only those Article(s) cited by the complainant shall be forwarded to the Hearing Panel. The Grievance Review Panel shall not add any respondent(s) to the complaint. Complainant shall be given ten (10) days from the transmission of the *Grievance Review Panel Report Form* to respond to the Grievance Review Panel's addition of articles to the complaint.

- (e) If an ethics respondent resigns or otherwise causes membership in the Association to terminate after an ethics complaint is filed but before final action is taken by the Ratification Panel or Appeal Tribunal, the Professional Standards Administrator shall cause the complaint to be forwarded to any other Board in which the respondent continues to hold membership. If the respondent does not hold membership in another Board, or if the Professional Standards Administrator is unable to determine if the respondent holds membership in another Board, the complaint shall continue to be processed until the decision of the association with respect to disposition of the complaint is final consistent with **Section 20, Initiating an Ethics Hearing**, or **Section 23, Action of the Ratification Panel or Appeal Tribunal, Code of Ethics and Arbitration Manual as adapted by Minnesota Realtors®**.<sup>10</sup> If an ethics respondent resigns or otherwise causes membership in all Boards to terminate before an ethics complaint is filed alleging unethical conduct occurred while the respondent was a REALTOR®, the complaint, once filed, shall be processed until the decision of the association with respect to disposition of the complaint is final consistent with **Section 20, Initiating an Ethics Hearing**, or **Section 23, Action of the Ratification Panel or Appeal Tribunal, Code of Ethics and Arbitration Manual as adapted by Minnesota Realtors®**.<sup>11</sup> In any instance where an ethics hearing is held subsequent to an ethics respondent's resignation or membership termination, any discipline ratified or upheld by the Ratification Panel or Appeal Tribunal, as applicable, shall be held in abeyance until such time as the respondent attempts to join / rejoin any association of REALTORS®. In any instance where a complaint is transferred to another Board, the complainant shall be so advised. (*Revised 5/23*)
- (f) 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 Professional Standards Administrator, dated and signed by the complainant, stating the facts on which it is based (Form #1, *Complaint, Part Six*); provided, however, that the complaint must be filed within one hundred eighty (180) days of the time that the alleged offense and facts relating to it could have been known by the complainant in the exercise of reasonable diligence or within one hundred eighty (180) days after the conclusion of the transaction or event, which is later.
- (g) Any complaint alleging a violation of the Code of Ethics by an Association Member or by any other person subject to the disciplinary authority of the Association, will be scheduled for review by a Grievance Review Panel as appointed by the Professional Standards Administrator. In evaluating ethics complaints or arbitration requests, the Grievance Review Panel shall not require or consider a written response from the respondent(s).
- (h) If the Professional Standards Administrator or the Grievance Review Panel concludes that the complaint is vague, overly general, does not allege violations of specific Article(s), or is otherwise insufficient on its face, the complaint shall be referred back to the complainant accompanied by the initial conclusions. The complainant shall be advised that they are free to refile an amended complaint in proper form. The 180-day filing deadline will continue to run when a complaint is not properly filed.
- (i) If the Grievance Review Panel concludes that the allegations in the complaint, if taken as true, could not support a finding that the Code of Ethics had been violated, then the complaint shall be dismissed and the complainant advised of the dismissal and of their right to appeal the dismissal to an Appeal Tribunal using Form #E-22, *Appeal of Grievance Review Panel Decision*. The complaint and any attachments to the complaint cannot be revised, modified, or supplemented. The complainant may, however, explain in writing why the complainant disagrees with the Grievance Review Panel's conclusion that the complaint should be dismissed.

<sup>10</sup> Failure of the respondent to attend will not prevent a hearing from being held.

<sup>11</sup> See footnote #10.

- (j) If the Grievance Review Panel concludes that the complaint alleges conduct which, if taken as true, could support a possible violation of the Code of Ethics and is not eligible for a citation, then staff or counsel, or in the absence of staff or counsel, the Professional Standards Committee Chairperson will ascertain whether or not there were any prior violations of the Code of Ethics in the past three (3) years. The complaint will then be sent to the respondent together with a response form (Form #E-20, *Notice to Respondent [Ethics] and Optional Waiver of Right to Hearing*), which will advise the respondent of the complaint; which will request the respondent reply within ten (10) days from transmittal of the complaint; which will ask the respondent to affirm that the respondent has not been found in violation of the Code of Ethics by any Board within the past three (3) years; which will give the respondent an opportunity to waive the right to a hearing by acknowledging the conduct alleged in the complaint and by agreeing to accept discipline which will not exceed a fine in excess of \$15,000 or suspension for a period of thirty (30) days should a violation of the Code ultimately be determined. Any response provided cannot contest the facts stated in the complaint but may offer information in mitigation of any discipline that might be imposed.

Notwithstanding the foregoing, in the event the members of the Grievance Review Panel determine the conduct described in the complaint is sufficiently egregious (e.g., public trust issues) to warrant a hearing rather than a waiver to a right to a hearing, the complaint shall be referred to the Professional Standards Committee for hearing consistent with the policies and procedures set forth in the Code of Ethics and Arbitration Manual for ethic hearings. (*Adopted 5/22*)

- (k) Alternatively, the respondent has the right to a hearing pursuant to the procedures established in **Part Four** of this Manual.
- (l) If the respondent does not acknowledge the conduct alleged in the complaint or waive the right to a hearing or does not respond within ten (10) days from transmittal of the Grievance Review Panel's decision a hearing shall be scheduled in the manner provided for in **Section 21, Ethics Hearing**, beginning with the five (5) day deadline for the Professional Standards Administrator to select a hearing date. (*Revised 5/16*)
- (m) If the respondent waives the right to a hearing and acknowledges the conduct alleged in the complaint, such elections will be affirmatively indicated on the response form which shall be returned to the Professional Standards Administrator, within ten (10) days from transmittal of the Grievance Review Panel's decision to the respondent. The Professional Standards Administrator will verify the respondent's assertions as to prior violations in the past three (3) years. In the absence of any prior violation within the past three (3) year period, the complaint will be referred to a panel of the Professional Standards Committee for consideration within thirty (30) days. The panel shall be appointed pursuant to the procedures established elsewhere in this Manual.
- (n) The panel of the Professional Standards Committee will meet in executive session. Neither the complainant nor the respondent will be present. Association staff and counsel will be present as deemed necessary by the Chairperson. The initial question to be determined by the panel will be whether the allegations in the complaint as acknowledged and agreed to by the respondent, support a violation of one or more of the Articles of the Code of Ethics. The Professional Standards Administrator shall prepare a brief, concise decision which shall include the panel's findings of fact, conclusions, and a recommendation for discipline if a violation is found. Discipline that may be imposed, if a violation is determined, may only include one or more of the following: letter of warning or reprimand, mandatory attendance at a relevant educational program, suspension for thirty (30) days, or a fine not in excess of \$15,000. In addition to imposing discipline, the Hearing Panel can also recommend to the Ratification Panel that the disciplined member be put on probation. Probation is not a form of discipline. (*Revised 11/14*)
- (o) The Professional Standards Administrator shall transmit a copy of the decision within five (5) business days from the hearing date. The procedures for dissemination of the decision shall be those in **Section 22(b), Decision of a Hearing Panel**. Appeals of decisions shall be pursuant to **Section 23, Action of the Appeal Tribunal**.<sup>12</sup>
- (p) The expedited Code enforcement procedures established in the *Code of Ethics and Arbitration Manual* are available only to REALTORS® holding primary or secondary membership in the Association enforcing the Code or other membership duties and are not available to REALTORS® who become subject to the Code of Ethics or other membership duties pursuant to their participation in or access to MLS under board of choice. (*Adopted 11/96*)
- (q) Where an ethics complaint names more than one respondent, the expedited Code enforcement procedures are available only when all respondents are eligible and all respondents elect to utilize these procedures. (*Adopted 11/98*)

<sup>12</sup> The Hearing Panel's decision should be considered final only when it is in writing and signed by the members of the panel and any review by legal counsel which may be required.

## Section 21. Ethics Hearing

- (a) After a complaint alleging a violation of membership duty (duties) has been referred to the Professional Standards Administrator by the Grievance Review Panel with instruction to arrange a hearing, the Professional Standards Administrator shall serve a copy of the complaint on each party complained of (hereafter called the respondent) and notify the respondent that the respondent may file a written reply (Forms #E-2, *Notice to Respondent [Ethics]*, and #E-3, *Reply, [Ethics]*, **Part Six**) with the Professional Standards Administrator within fifteen (15) days of the request for response being transmitted. A Hearing Panel may accept late filing of the reply at its discretion. The Professional Standards Administrator may require the complainant to supply the necessary number of copies of the complaint and the respondent to supply the necessary number of copies of the reply, except that such requirement shall not be made of a complainant who is not an Association Member. (*Revised 11/14*)

The Professional Standards Administrator, working with the Chair of the Hearing Panel, shall select a hearing date no later than five (5) days after the Grievance Review Panel's decision to forward for hearing is final or, a hearing is requested from an issued citation. (*Revised 5/16*)

- (b) The Professional Standards Administrator shall provide a copy of the reply (if any) to the complainant within five (5) days from receipt of the response. The Professional Standards Administrator shall also provide copies of the complaint and reply (if any) to the appointed members of the Hearing Panel and alternate if any or notify each that no reply has been filed. (*Amended 5/16*)
- (c) The Professional Standards Administrator shall, concurrently with the *Official Notice of Hearing*, transmit to each of the parties a list of the Hearing Panel members, and alternate if any, appointed to serve on the Ethics Hearing Panel to hear the complaint along with Form #E- 7, *Challenge to Qualification by Parties to Ethics Proceedings*. (See **Part One, Section 2, (a) through (f), Qualification for Tribunal**). If a party challenges one or more members, the challenge form must be returned to the Professional Standards Administrator no later than ten (10) days after the date the challenge forms were transmitted to the party. No later than five (5) days after the challenge forms are due, the Professional Standards Administrator shall appoint from the names not successfully challenged by either party the Hearing Panel in accordance with **Part Two, Section 16.1**. A party will be deemed to have waived all objections to any person whose name is not challenged. If a challenge to an appointed member of the Hearing Panel results in an insufficient number of members to constitute a panel, the Professional Standards Administrator may appoint other qualified members from the Professional Standards Committee to serve as panel members. If there is a challenge to the alternate appointed to the Hearing Panel, no alternate shall serve nor another alternate appointed. The Professional Standards Administrator, working with the Hearing Panel Chairperson, shall designate the time and place of the hearing, and the Professional Standards Administrator shall notify the complainant and the respondent (Form #E-8, *Official Notice of Hearing, Part Six*) minimally twenty-one (21) days before the hearing.<sup>13</sup> An appearance at a hearing without objection by a party will constitute a waiver of any defective notice of hearing. Parties' requests for continuances shall only be granted for extenuating circumstances when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the request for continuance would deny the requestor a fair hearing. (*Revised 11/14*)
- (d) The Chairperson of the panel shall prescribe any procedure for the hearing not inconsistent with these provisions.<sup>14</sup>
- (e) Complainants may withdraw their complaints at any time prior to adjournment of the ethics hearing. However, if complainant withdraws the complaint after transmission of the Grievance Review Panel's decision to forward the complaint to a hearing and prior to adjournment of the ethics hearing, the complainant may not resubmit the complaint on the same matter. If complainant withdraws the complaint before transmission of the Grievance Review Panel's decision to forward the complaint to a hearing, the complainant may resubmit the complaint on the same matter so long as it is filed within the 180-day filing deadline as defined in this Manual. If a complaint is withdrawn by the complainant after the Grievance Review Panel determines the complaint requires a hearing, **the complaint and response** will be referred back to a Grievance Review Panel to determine whether a potential violation of the public trust (as defined in Article IV, Section 2 of the National Association's Bylaws) may have occurred. If a Grievance Review Panel determines a potential violation of the public trust may have occurred, the complaint will be referred to the Leadership Team and the Leadership Team shall determine whether any further action should be taken. Although the Chief Executive Officer has the right to be present at meetings involving the Leadership Team, the Chief Executive Officer shall not

<sup>13</sup> Form #E-9, *Outline of Procedure for Ethics Hearing, Part Six*, should accompany the *Official Notice of Hearing* or be otherwise provided to the parties prior to the hearing.

<sup>14</sup> See Part Five, Conduct of an Ethics Hearing

vote on any matter before the Leadership Team. If the Leadership Team determines that further action is warranted, the Professional Standards Chair shall proceed as the complainant. If the Professional Standards Chair cannot serve, the Professional Standards Vice Chair will proceed as complainant. If neither are available, the Case Administrator will assist the Leadership Team in appointing a member of the Professional Standards Committee from the roster of Hearing Panel Chairs. *(Amended 5/24)*

The complaint and response, if any, shall be provided to the Hearing Panel members and the other parties prior to the hearing. Such time period shall be no later than seven (7) days prior to the hearing date and shall be adhered to for all hearings. Evidence submitted to the Association but not provided to the other party(ies) will be provided to the other party(ies) by the association at the time of submission. Evidence submitted at the time of the hearing will be evaluated for admissibility by the hearing panel chair. If the hearing is held in person, the party(ies) shall bring enough copies for each Hearing Panelist, the Professional Standards Administrator, and each opposing party however, failure of a party to bring the necessary copies will not affect the party's ability to introduce such evidence. No party shall be charged for the Association's costs to provide the necessary copies.

Witness statements or affidavits may be entered into evidence at the Hearing Panel Chair's discretion if a timely and properly served Notice of Witness was submitted with respect to that witness, and on the date of the hearing, the witness is unable to attend. In determining whether such a statement or affidavit should be allowed, the Hearing Panel Chair must determine that the subject matter of the statement or affidavit is relevant to the hearing, and the Chair must weigh the impact of the admission of such evidence on each party's due process rights.

(f) Amendment of Complaint:

- (1) At any time prior to the hearing of the complaint, the complainant may file an amended complaint with the Professional Standards Administrator (excluding amendments pertaining to an Article previously dismissed by the Grievance Review Panel relating to previously charged respondents). If an amended complaint, including facts upon which the amendment is based, is filed prior to the hearing, the respondent shall be notified, given a copy, and provided the opportunity to file an amended response. At any time prior to the hearing of the complaint, the Hearing Panel may name the REALTOR® principal as a respondent. Complaints cannot be amended to add, or substitute, other individuals as complainants except as mutually agreed to by the parties. *(Revised 5/20)*

- (2) At any time during the hearing, the complaint may be amended either by the complainant or upon motion of the Hearing Panel to add previously uncited Articles or additional respondents, including facts upon which those amendments are based. Neither the complainant nor the Hearing Panel may bar the other from making such amendments. Amendments to include Articles previously dismissed by the Grievance Review Panel may be made only on the motion of the Hearing Panel. In such event, the hearing, with the concurrence of the respondent, may proceed uninterrupted or be reconvened on a date certain, not less than fifteen (15) or more than thirty (30) days from the hearing date unless a "late" witness is allowed and then not less than five (5) days from the hearing date. If the respondent knowingly waives their right to the adjournment, the record should reflect the fact that the respondent was aware of the right to an adjournment but chose to proceed with the hearing without interruption on the basis of the amended complaint. If the hearing is adjourned to be reconvened at a later time, the amended complaint shall be filed in writing, signed by the complainant or by the Chairperson of the Hearing Panel, and shall be promptly served on the respondent as in all other cases provided herein.

However, in any instance where a Hearing Panel amends an ethics complaint pending before it, the respondent(s) shall be given the choice of proceeding before the same Hearing Panel (either without interruption or when reconvened pursuant to the procedures established elsewhere in this **Section**) or having the complaint considered in a new hearing before a different Hearing Panel. *(Amended 5/20)*

To prevent the appearance of bias, at no time during or after an ethics hearing may the Hearing Panel or any appellate body refer concerns regarding potentially unethical conduct to the Grievance Review Panel. This is based on the premise that the fundamental right and primary responsibility to bring potentially unethical conduct to the attention of the Grievance Review Panel rests with the parties and others with firsthand knowledge. This prohibition in no way limits or restricts the Hearing Panel from amending pending complaints as otherwise provided for in this section. *(Amended 11/16)*

- (3) In the event that the complaint scheduled for a hearing is from a member of the public who refuses or is unable to attend the hearing and who has not requested a continuance in writing or who has not been granted a continuance, the **complaint and response** shall be dismissed. However, in the event the complaint in such matter includes an alleged violation of public trust or safety, the Hearing Panel may forward the complaint to the Leadership Team and the Leadership Team shall determine whether any further action should be taken. Although the Chief Executive Officer has the right to be present at meetings involving the Leadership Team, the Chief Executive Officer shall not vote on any matter before the Leadership Team.

In the event the complaint scheduled for a hearing is from a REALTOR® or REALTOR®-ASSOCIATE who has not requested a continuance in writing or who has not been granted a continuance, and who refuses or is unable to attend the hearing, the complainant shall be advised that refusal to participate in the hearing, absent a satisfactory reason, may result in a charge that the complainant has violated Article 14's obligation to place all pertinent facts before the appropriate tribunal of the Association. In such instance, staff shall consult with the Chair of the Professional Standards Committee, or the Chair's designee, to determine whether the member shall be charged with a violation of Article 14.

If the REALTOR® or REALTOR®-ASSOCIATE complainant continues to refuse a duly noticed request to appear, or if the complainant is excused from appearing for reasons deemed valid by the Hearing Panel, the hearing shall not take place, **but rather the complaint and response** shall be dismissed. However, in the event the complaint in such matter includes an alleged violation of public trust or safety, the Hearing Panel may forward the complaint **and response** to the Leadership Team and the Leadership Team shall determine whether any further action should be taken. Although the Chief Executive Officer has the right to be present at meetings involving the Leadership Team, the Chief Executive Officer shall not vote on any matter before the Leadership Team.

If, however, there are two complainants and one of them does not or cannot attend the hearing, this will not preclude that complainant from attending the appeal hearing.

If any complainant fails to appear after proper notice of the hearing is given, and the complaint is dismissed, it may not be refiled. However, the complainant may appeal the dismissal of the complaint by the Hearing Panel within twenty (20) days of the hearing date by utilizing Form #E-22 *Appeal of Grievance Review Panel (or Hearing Panel) Decision (Ethics)*, and the complaint may be reinstated by an Appeal Tribunal and scheduled for a new hearing if the Appeal Tribunal determines that the complainant's failure to attend the scheduled hearing or request a continuance in writing was not within complainant's control. *(Revised 5/24)*

- (g) In the event that the respondent fails to appear at a duly noticed hearing without first obtaining a continuance or adjournment thereof, the Hearing Panel may proceed with the hearing in the respondent's absence and shall reach its decision based on the evidence made available at the hearing. Thereafter, all other procedures shall follow as hereinafter provided.

Where an ethics hearing takes place in a respondent's absence, the respondent is still entitled to be represented by counsel. Counsel may make opening and closing statements; call witnesses; cross-examine witnesses called by other parties; and introduce affidavits, documents, and other admissible relevant evidence. Counsel may not testify to events and facts of which counsel has no first-hand knowledge. Hearing Panels should be instructed by the Chair that counsel's arguments do not constitute testimony. *(Adopted 11/99)*

- (h) Upon notice by the Professional Standards Administrator, the parties shall with diligence present to the panelists in writing such statements and proof which they deem necessary to support their positions. Proof may be submitted in the form of affidavits or otherwise. The Hearing Panel Chair may require that statements be verified by affidavits or that accuracy or authenticity of any documents or other papers submitted be verified by affidavit. At the hearing, the panelists shall receive any further written statements, documents, or other papers, shall hear oral testimony and determine what personal appearances shall be made by the parties, and shall regulate the holding of hearings.<sup>15</sup> The Hearing Panel Chair may receive and consider any evidence they deem material and proper, including evidence of experts. Each party is responsible for the expenses of expert witnesses they call. Parties to the ethics complaint shall be entitled to have counsel present at any hearing. Each party is responsible for the expenses of their respective counsel. *(Amended 11/23)*

## Section 22. Decision of Hearing Panel

- (a) The decision of the Hearing Panel shall be by a simple majority vote and in writing (Form #E-11, *Decision [Ethics]* **Part Six** and the Professional Standards Training Guide) and shall contain findings of fact and a statement of the disciplinary action recommended, if any. Under no circumstances can the Association award money "damages" in an ethics proceeding. The decision shall include a clear, concise, and objective recitation of the specific facts upon which the Hearing Panel based its conclusion. Such decision shall not be disclosed during the ethics proceeding, or any appeal, to any persons except the Chair of the Hearing Panel, Appeal Tribunal, Ratification Panel, alternate panel members, the complainant, the respondent, counsel for

<sup>15</sup> Such hearings should be conducted according to **Part Five**, Conduct of an Ethics Hearing.

complainant and respondent if any, Association legal counsel, Association Executive for the Local Board of which respondent is a member, and the Professional Standards Administrator. However, failure of confidentiality shall not invalidate the decision.<sup>16</sup>

Copies of the decisions disseminated pursuant to these procedures shall be complete and unedited unless an Association, by affirmative action of its Board of Directors, adopts procedures under which decisions presented to the Ratification Panel for ratification will not include the names of the parties. In the event the respondent is found in violation, the Hearing Panel will consider all records of previous violations and sanctions imposed, whether by the current or by any other Association, in the member's file in determining discipline, and the rationale for the current disciplinary action can be provided to the parties and the Ratification Panel or Appeal Tribunal as part of the decision. The Hearing Panel's consideration will include whether prior disciplinary matters involve discipline that was held in abeyance and that will be triggered by a subsequent violation (including the matter currently under consideration by the Hearing Panel). *(Amended 10/20)*

- (b) The Professional Standards Administrator shall transmit a copy of the decision to the complainant and respondent within five (5) business days after the hearing, except that reasonable delay shall not invalidate the Association's procedures nor the decision (e.g. when it is necessary to obtain association counsel's review). *(Revised 11/14)*
- (c) To avoid any appearance of bias, ethics Hearing Panels shall make no referrals of ethical concerns to a Grievance Review Panel. This is based on the premise that the fundamental right and primary responsibility to bring potentially unethical conduct to the attention of a Grievance Review Panel rests with the parties and others with firsthand knowledge. *(Adopted 11/96)*

### **Section 23. Action of the Ratification Panel or Appeal Tribunal**

- (a) Within twenty (20) days after the Hearing Panel's final decision has been transmitted, the complainant or the respondent may file an appeal with the Professional Standards Administrator.<sup>17</sup> *(Revised 11/14)*
- (b) If no appeal is filed, the Professional Standards Administrator shall appoint the Ratification Panel in accordance with **Part Two, Section 16.2** to review the Hearing Panel's recommendation no later than thirty (30) days after the date the Hearing Panel's decision was transmitted to the parties.

The Ratification Panel will adopt the Hearing Panel's recommendation and issue its order accordingly, unless:

- (1) the Ratification Panel, if concerned with a possible procedural deficiency, refer the decision back to the Professional Standards Committee for a new hearing and recommendation by a different Hearing Panel; or
- (2) the Ratification Panel is concerned with the appropriateness of the recommendation of sanction, in which case the Ratification Panel may impose alternative discipline that does not exceed that recommended by the Hearing Panel, or may refer the decision back to the original Hearing Panel for further consideration and recommendation accompanied by the Ratification Panels' concerns regarding the proposed discipline (Hearing Panels are not required to accept the Ratification

Panels' recommendation to increase discipline. In instances where the Hearing Panel increases discipline, the respondent(s) will have an additional twenty (20) days from the date the Hearing Panel's revised decision has been transmitted to appeal the revised discipline); or *(Revised 11/16)*

- (3) the consequences for noncompliance with discipline are not specified, in which case the Ratification Panel must refer the decision back to the original Hearing Panel for determination of the consequences for noncompliance (in such instances, the respondent(s) will have an additional twenty (20) days from the date the Hearing Panel's revised decision has been transmitted to appeal only the severity of the consequences for noncompliance); or *(Adopted 5/16)*

<sup>16</sup> The Hearing Panel's decision shall be considered final only when it is in writing and signed by members of the panel following review by the Chair of the Hearing Panel and any review by legal counsel which may be required.

<sup>17</sup> Appeal is provided only from decisions rendered in hearings of alleged unethical conduct, and not from the decision of an arbitration panel. However, the Association reserves the right to review procedures of any ethics or arbitration hearing to ensure compliance with the governing documents of the Association and to rule thereon; and in arbitration hearings, a limited form of appeal is provided only in respect of alleged irregularities related to the arbitration as are alleged to have deprived the party of due process.

- (4) the Ratification Panel concludes the findings of fact do not support a violation of one or more Articles of the Code of Ethics, in which case the complaint will be dismissed, in part or in total. (*Revised 11/23*)

In such matters, advice of Association legal counsel should be requested and considered.

The Ratification Panel shall file their decision using Form #E-12, *Action of Ratification Panel* with the Professional Standards Administrator within ten (10) days of transmittal of the request for ratification. The Professional Standards Administrator shall forward the *Action of Ratification Panel* to the parties, the parties counsel if any, and the Association Executive for the Local Association of which respondent is a member in a timely manner.

- (c) All appeals must be in writing using form #E-13, *Request for Ethics Appeal* and must be accompanied by a deposit with the Professional Standards Administrator in the sum of \$400 (not to exceed \$500). In cases where a single appeal is filed jointly by more than one party, only one filing fee may be assessed. The appeal should clearly indicate the bases on which the Hearing Panel's decision and/or recommendation for discipline is being challenged – (1) misapplication or misinterpretation of an Article(s) of the Code of Ethics; (2) procedural deficiency or any lack of procedural due process; (3) the discipline recommended by the Hearing Panel – and set forth in reasonable detail the facts and evidence to support the bases cited. The complainant may appeal based only on alleged procedural deficiencies or other lack of procedural due process that may have deprived them of the opportunity for a full and fair hearing. The written request for appeal shall be reviewed by the Professional Standards Administrator within ten (10) days after the appeal was transmitted to the Association. The review is only for the purpose of determining whether the appeal states any legitimate basis for consideration by the Appeal Tribunal. If determined to be insufficient, the Professional Standards Administrator shall contact the appellant to explain and request additional detail to be received by the Association within ten (10) days. This initial administrative review is not a decision on the merits of the appeal request but is only intended to ensure compliance with the requirement that an appeal clearly set forth all bases that will be presented to the Appeal Tribunal for their consideration. The initial appeal request shall be forwarded to an Appeal Tribunal, irrespective of whether appellant provides an amended appeal upon request. All requests for appeals received by the Association must be considered by an Appeal Tribunal as appointed in accordance with **Part Two, Section 16.1**, and only those bases and issues raised in the written request for appeal may be raised by the appellant in any hearing before the Appeal Tribunal. (*Amended 11/24*)
- (d) When a request for appeal (as originally filed if in proper form, or as originally filed if no amendment is submitted, or as amended even if still deemed to be lacking) is received, the Professional Standards Administrator shall within one (1) day, as originally filed or as amended, send a copy of the request and any supporting documents to the other party, appoint an Appeal Tribunal in accordance with **Part Two, Section 16.1**, and notify all parties at least ten (10) days in advance of the time and place of hearing by the Appeal Tribunal (including challenge Form #E-7, *Challenge Form Part Six* of this Manual), and bring the matter before the Appeal Tribunal for hearing no later than forty-five (45) days after the date of receipt of the appeal. The Professional Standards Administrator shall provide to the Appeal Tribunal and the Chair (or representative) of the original Hearing Panel in advance of the hearing, copies of the complaint, response, the Hearing Panel's findings of facts and recommendation of discipline, if any, the Professional Standards Administrator's correspondence, if any, and the appeal request or amended appeal request and any supporting documents, if any. The Appeal Tribunal shall be advised that the information is confidential and not to be discussed with others at any time. Every party may be represented by legal counsel or by a REALTOR® of their choosing (or both). The role of counsel (whether legal or otherwise) includes offering corrections to the summary, presenting reasons why the Hearing Panel's recommendation should be followed or not, and introducing admissible evidence (only evidence as may bear upon a claim of deprivation of due process). REALTORS® providing such representation are cautioned to avoid the unauthorized practice of law. In the event parties do not give ten (10) days' notice of their intention to have counsel to the Association and all other parties, including counsel's name, address, and phone number, the panel shall take all steps, including continuance of the matter, if necessary, to guarantee the rights of all parties to representation by counsel. Where an ethics hearing takes place in a respondent's absence, the respondent is still entitled to be represented by counsel. The tribunal may have legal counsel present to advise it on issues of procedure and law. The presence of Association legal counsel during executive session is a matter of local Association discretion. The role of Association legal counsel during a hearing is to provide procedural and legal guidance as requested by the Chair or by panel members. Association counsel is not a part of the Appeal Tribunal and may not take an active role in the conduct of the hearing. If Association legal counsel believes an action or procedure is inconsistent with the Association's established procedures or may result in potential liability to the Association, counsel's concerns should be communicated to the Chair of the Appeal Tribunal and the Chair shall make the final decision.

The complainant, respondent, their counsel and/or broker, as allowed under **Part Two, Section 13(d)**, have the right to be present at the appeal hearing, however no witnesses are allowed. If there is more than one complainant and one or more of the complainants does not appear at the original Ethics Hearing, those complainants that did not attend may still attend the appeal hearing. Although the non-appellant may attend the appeal hearing, the hearing may proceed without the non-appellant. A postponement may be granted if there are extenuating circumstances. Parties' requests for continuances shall only be granted

when all parties mutually agree to a subsequent specified date, or when the Appeal Tribunal chair determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing and will be decided by the Chair. The complainant and respondent have the right to challenge the qualifications of any individual who may be appointed to serve on the Appeal Tribunal. The parties will be provided with a list of the individuals who will be appointed to sit on the Tribunal and may challenge the qualifications of any panel member by completing Form #E-7, *Challenge Form* and returning it to the Professional Standards Administrator. Challenges submitted will be determined by the Chairperson of the Appeal Tribunal, or if the challenge to the Chairperson is made, by the Professional Standards Committee Chairperson.

A party shall be deemed to have waived any grounds of disqualification of which the party has knowledge unless the party files the challenge form no later than ten (10) days after the date the challenge forms were transmitted to the party. However, any member of the tribunal may be disqualified at any time if a majority of the members of the tribunal are made aware of any grounds of automatic disqualification of a member or find any new or previously undiscovered facts which in their judgment may prevent, or appear to prevent, a member of a panel from rendering an impartial decision.

The Appeal Hearing will not be recorded, and no party will be permitted to have a court reporter, **stenographer** or recording device, **etc.** present at the Appeal Hearing. *(Revised 11/24)*

- (e) At the hearing before the Appeal Tribunal, the Chairperson of the Hearing Panel (or the Chairperson's designee) shall present a transcript of the case, or if there is no transcript, shall summarize the case. Either party shall be entitled to offer corrections to the summary. Either party may present to the Appeal Tribunal reasons why the Hearing Panel's recommendation should be followed or not, but no new evidence shall be received (except such new evidence as may bear upon a claim of deprivation of due process), and the appeal shall be determined on the summary.

The appeal request and response, if any, shall be provided to the Appeal Tribunal and the other parties prior to the hearing. Such time period shall be no later than seven (7) days prior to the scheduled hearing date and shall be adhered to for all appeal hearings. Evidence submitted to the association but not provided to the other party(ies) will be provided to the other party(ies) by the association at the time of submission. Evidence submitted at the time of the hearing will be evaluated for admissibility by the hearing panel chair. If the appeal hearing is held in person, the party(ies) shall bring enough copies for each Appeal Tribunal member, the Professional Standards Administrator, and each opposing party however, failure of a party to bring the necessary copies will not affect the party's ability to introduce such evidence. No party shall be charged for the Association's costs to provide the necessary copies.

- (f) The Professional Standards Administrator shall transmit the Appeal Tribunal's written decision within five (5) business days of the appeal hearing. Their decision may be to adopt or modify the recommendation of the Hearing Panel, including the discipline proposed, or the Appeal Tribunal will dismiss the matter if they conclude the findings of fact do not support, in part or in total, the Hearing Panel's conclusion as to unethical conduct. The Appeal Tribunal, if concerned with a substantial procedural deficiency, shall refer the decision back to the Professional Standards Committee for a new hearing and recommendation by a different Hearing Panel. If, however, the Appeal Tribunal is concerned with the appropriateness of the recommendation of sanction, they may impose alternative discipline that does not exceed that recommended by the Hearing Panel <sup>18</sup>, or may refer the decision back to the original Hearing Panel for further consideration and recommendation accompanied by the Appeal Tribunal's concerns regarding the proposed discipline. In such matters, the advice of Association legal counsel should be requested and considered. *(Revised 11/23)*
- (g) If the recommendation of the Hearing Panel is adopted, the money deposited by the appellant shall pass into the general treasury of the Association. If the recommendation is rejected, the deposit shall be returned to the party who made the deposit. If the recommendation is modified, one-half (1/2) of the deposit shall be returned to the party and one-half (1/2) of the deposit shall pass into the general treasury of the Association.
- (h) If the recommendation of the Hearing Panel is modified, or if the charge is dismissed, the Appeal Tribunal shall state their reasons in writing, but failure to do so shall not invalidate the decision of the Appeal Tribunal. Under no circumstances may the discipline exceed that recommended by the Hearing Panel. *(Revised 5/17)*

<sup>18</sup> Note: Appeal Tribunals may modify discipline proposed by Hearing Panels only in instances where the discipline proposed is not authorized or where the appeal panel concludes that the Hearing Panel abused its discretion. (Statements of Professional Standards Policy Applicable to Ethics Proceedings, Para. 26)

- (i) The decision of the Appeal Tribunal is final, and each member, by becoming and remaining a member agrees not to seek review in any court of law in the absence of willful or wanton misconduct.
- (j) Upon final action by the Appeal Tribunal, the Professional Standards Administrator shall disseminate to the complainant, the respondent, the Professional Standards Administrator of any other Association in which the respondent holds membership, and any governmental agency as directed by the Appeal Tribunal such notice of the action as deemed appropriate under the circumstances provided, however, that the nature, form, content, and extent of the notice shall be specifically approved by Association legal counsel prior to dissemination. The Professional Standards Administrator may disseminate the notice to the hearing panel. *(Revised 5/23)*

Association Members, other than those specified, shall not be notified except with respect to suspension or expulsion of membership of the Association Member, or unless one of the publication options in Professional Standards Policy Statement 45, Publishing the Names of Code of Ethics Violators, has been adopted, or unless notification is required to ensure compliance with the Association's bylaws (e.g. where a petition for removal of an officer or director must state the reason(s) an officer or director is deemed disqualified from further service). *(Revised 10/24)*

Final ethics decisions holding REALTORS® in violation of the Code of Ethics involving real estate related activities and transactions must be forwarded to the state real estate licensing authority, and may be forwarded to other governmental agency, in instances where there is reason to believe that the public trust may have been violated. The "public trust," as used in this context, refers to demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud. *(Revised 11/20)*

NOTE: The Association may publish periodic Code Enforcement Activity Reports specifying the number of complaints filed for the given period, the Articles of the Code of Ethics charged, the number of complaints dismissed by the Grievance Review Panel, the number of violations of particular Articles, the number of cases resulting in violations or, conversely, no violations, the number of cases in which sanctions were imposed, the range of sanctions imposed, and other appropriate information (See Form #E-17, *Ethics Activity Report*).

With respect to arbitration, such report could include the number of arbitration requests received, the number of arbitration requests dismissed without hearing, the number of mediations conducted, the number of arbitration hearings held, and other relevant information, provided that no Code Enforcement Activity Report shall include the names of individuals or firms. *(Revised 11/00)*

- (k) Any discipline imposed that requires an action on the part of the disciplined member should also indicate any additional penalties that may be automatically invoked for failure to comply by the date specified. In the absence of such a provision, failure to comply with the discipline imposed should not be considered grounds for an additional ethics hearing, but rather should constitute the basis for consideration by the Association's Executive Committee with regard to any additional action required to ensure compliance with the original discipline imposed. In the event that additional penalties are contemplated, the party failing to comply with the discipline originally imposed should have the opportunity to appear before the Association's Executive Committee to explain the failure to comply. Absent an explanation acceptable to the Association's Executive Committee additional discipline, including possible suspension or expulsion from membership, may be imposed in a manner consistent with the procedures established in the *Code of Ethics and Arbitration Manual* of the Association, and the notice of the Association's Executive Committee should include a date by which any proposed discipline will be imposed or by which implementation of sanction shall automatically occur.
- (l) If the respondent is currently on probation as the result of an earlier proceeding, the Leadership Team, upon reviewing the findings of fact and recommendation for discipline resulting from the subsequent hearing, shall also determine whether to impose the discipline that was held in abeyance during the probationary period. The Leadership Team shall consider whether the subsequent ethics violation occurring during the probationary period was minor, inadvertent, or otherwise unrelated to the original violation in making their determination. Although the Chief Executive Officer has the right to be present at meetings involving the Leadership Team, the Chief Executive Officer shall not vote on any matter before the Leadership Team. *(Adopted 5/87)*
- (m) Appeals to the Association shall be heard by a panel of Professional Standards Committee members appointed by the Professional Standards Administrator in accordance with **Part Two, Section 16.1** for that purpose. The decision of the Appeal Tribunal shall be final and binding and shall not be subject to further review by the Association.

## **Section 24. Initial Action by Executive Committee**

If the complainant alleges that a member has improperly refused to submit a dispute to arbitration, the complaint shall not be referred to a Grievance Review Panel or a Hearing Panel but shall be brought before the Executive Committee at the next regular meeting or at a special meeting called by the President for that purpose. The procedures for notices, time of notice, and hearing prescribed for matters before a Hearing Panel shall apply. The sole question of fact for the Executive Committee to decide will be whether the respondent has failed to submit an arbitrable matter to arbitration in violation of Article 17.

There can be no charge that there has been a refusal to arbitrate until a Grievance Review Panel determines the matter is arbitrable and of a mandatory nature and the respondent fails to submit to arbitration before the Association.

Upon determination that the member has refused to arbitrate a properly arbitrable matter, the Executive Committee may direct the implementation of appropriate sanction and should, if it has reason to believe that the imposition of sanction will become the basis of litigation and a claim for damages consequent to such sanction, delay the effective date of implementing the sanction to a date following receipt by the Executive Committee of a judicial decision in a petition for declaratory relief filed by the Association to confirm the propriety of its action.

On the other hand, if the complaint against the member is that, having properly submitted a dispute to arbitration, the member has refused to abide by the award or the resulting agreement, such refusal should not be referred to a Grievance Review Panel as a violation of the Code of Ethics unless it reflects an established pattern or practice of noncompliance with the commitment to arbitrate. The Chairperson of the Professional Standards Committee shall be the determiner of whether there is an established pattern or practice of non-compliance requiring referral of the matter to a Grievance Review Panel. A refusal to abide by an award in arbitration or any resulting agreement in mediation should be enforced in the manner set forth in **Part Ten, Section 56, Enforcement**.<sup>19</sup>

## **Section 25. Preliminary Judicial Determination Prior to Imposition of Discipline**

If the Leadership Team, in consultation with Association counsel, has reason to believe that the imposition of a proposed sanction will become the basis of litigation and a claim for damages, it may specify that the discipline shall become effective upon entry of the final judgment of a court of competent jurisdiction in a suit by the Association for declaratory relief declaring that the discipline proposed violates no rights of the member.<sup>20</sup> Although the Chief Executive Officer has the right to be present at meetings involving the Leadership Team, the Chief Executive Officer shall not vote on any matter before the Leadership Team.

<sup>19</sup> Refer to **Appendix III to Part Ten** for the rationale for use of judicial enforcement of arbitration awards when an Association Member refused to pay an award in arbitration.

<sup>20</sup> Refer to Rationale of Declaratory Relief Procedure provided in **Appendix IV to Part Four**.

# Appendix I to Part Four

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## Rationale for the Board of Directors Reviewing and Ratifying Ethics Decisions

Alleged violations of the Code of Ethics are considered by Hearing Panels of the Professional Standards Committee of the Association having jurisdiction. **Part Four** of the *Code of Ethics and Arbitration Manual* provides that the decision of the Hearing Panel will be made by a majority vote and will be in writing, containing findings of fact, conclusions, and any discipline proposed. (Revised 5/17)

The decisions of ethics Hearing Panels are actually recommendations to the Ratification Panel. They also serve as the basis on which the Hearing Panel's decision can be appealed.

Even where no appeal is filed, the Hearing Panel's decision must be provided to a Ratification Panel for their review and ratification. The Ratification Panel is not required to adopt a Hearing Panel's decision, even if the decision is not appealed. The procedures establish when and how a decision can be modified, sent back to the Hearing Panel, or sent to a new Hearing Panel.

A frequent question is how the Ratification Panel can be concerned about the adequacy of the procedures by which a hearing was conducted if no appeal is filed. Some argue the Ratification Panel should be required to adopt all decisions that aren't appealed or that decisions not appealed should be final and binding without any action by the Ratification Panel because the Ratification Panel doesn't have the benefit of the in-person testimony and evidence the Hearing Panel had.

Questions arise as to how the Ratification Panel can legitimately be concerned about a possible failure of due process without an appeal being filed or without listening to a recording or reviewing a written transcription of the entire hearing. Questions also arise regarding the severity of discipline recommended by Hearing Panels and the appropriateness of the Ratification Panel's involvement suggesting that discipline be increased or decreased in severity.

There are sound, fundamental reasons for decisions (even if not appealed) being acted on by a Ratification Panel.

First, the Ratification Panel has the ultimate responsibility for ensuring the rights of members are safeguarded and that the Association is operated in a legally defensible manner consistent with its governing documents.

Second, it is not always possible to ensure absolute impartiality in every professional standards proceeding. At times facts may come to light calling into question the impartiality of a Hearing Panel, or whether the parties received a fair, due process hearing. These concerns arise through threats of litigation made against the association, and while a court might direct a respondent-plaintiff to exercise the appeal remedy available through the association prior to filing a lawsuit against the association, dismissal of a legal challenge is not a certainty, particularly if the respondent-plaintiff can argue that the association's appeal remedy, though available, would result in a predetermined or sham conclusion. The procedural safeguards built into the *Code of Ethics and Arbitration Manual* provide associations with a simple way to correct mistakes without expending their human and financial resources on unnecessary litigation. In other words, the Ratification Panel's review provides associations with an internal, administrative "safety valve" to correct mistakes, particularly serious procedural mistakes, without becoming involved in litigation.

Third, in certain instances, the Ratification Panel may reasonably be concerned about the severity of discipline proposed by a Hearing Panel without knowing all the hearing details. For example, where a violation of the Code is a REALTOR®'s first, and the findings of fact demonstrate that only a minor violation occurred, likely the result of inadvertence or ignorance rather than gross negligence or intentional misconduct, and the proposed discipline is suspension or expulsion from membership, the Ratification Panel may be reasonably concerned about the severity of the proposed discipline. On the other hand, if the violation is part of a pattern of repeated unethical conduct and the findings of fact show the violation is serious but the discipline recommended is relatively insubstantial, the Ratification Panel might be reasonably concerned about the severity of the proposed discipline and could recommend to the Hearing Panel that the discipline be increased. In neither of these scenarios would the Ratification Panel need to refer to the transcript or the recording of the hearing to be legitimately concerned.

Last, in some cases, a Ratification Panel can be frustrated by the lack of detail in ethics decisions. Every decision, whether a finding of a violation is reached or not, needs to include a succinct, narrative description of the relevant facts based on the evidence and testimony presented to the Hearing Panel. A well written, comprehensive decision with detailed findings of fact not only enables the parties to understand the basis for the Hearing Panel's decision whether the Code was violated, it also enables the Ratification Panel to ratify the decision without an appeal, confident in the knowledge the Hearing Panel correctly applied the Code to the facts. (Revised 11/11)

# Appendix II to Part Four

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## Appropriate Interpretation of “Pertinent Facts” as Used in Article 2 of the Code of Ethics

Article 2 of the National Association’s Code of Ethics obligates REALTORS® to refrain from exaggerating, misrepresenting, or concealing pertinent facts related to a property or to a transaction. Faced with an increasing volume of inquiries concerning the appropriate interpretation and application of Article 2 of the Code of Ethics, the Professional Standards Committee of the National Association provides the following for consideration by Hearing Panels when asked to determine whether a violation of Article 2 has occurred.

A number of states have chosen, either through legislation or by regulation, to specify that real estate licensees have no obligation to discover or disclose certain facts regarding a property or its former or current occupants. In some instances, the disclosure of such information is expressly prohibited. In still other instances, states have chosen not to provide such guidance, and REALTORS® and others have looked to a variety of sources for guidance.

The Code of Ethics, which frequently establishes duties and obligations higher than those required by the law, must give way when those obligations conflict with the law. If the law prohibits disclosure of certain types of information to, for example, potential purchasers, then the Code of Ethics must not, under any circumstances, be read as requiring such disclosures.

At the same time, where the law simply provides that there is no express or implied duty to discover or disclose pertinent factors, the duties imposed by Article 2 come into play. Absent a legal prohibition, any material fact that could affect a reasonable purchaser’s decision to purchase, or the price that a purchaser might pay, should be disclosed as required by Standard of Practice 2-1 if known by the REALTOR® unless, again, otherwise prohibited by law or regulation. Such factors include, but are not limited to, those factors that might affect the habitability of the property. Other factors that do not affect the habitability of the property may nonetheless have an effect on the desirability of the property, the price a reasonable purchaser might pay for it, or the potential purchaser’s ability to resell the property at a future date.

Hearing Panels should also consider that a once-pertinent factor can, in some instances, diminish in relevancy over a period of years. For example, a traumatic death that occurred recently in a home could have a greater influence on a reasonable purchaser’s decision than a similar occurrence twenty (20), fifty (50), or one hundred (100) years earlier. By way of further example, the fact that a former occupant had died of scarlet fever fifty (50) years earlier would likely have less of an effect on a potential purchaser’s decision than the fact that there had been a murder on the premises within the past year.

It is no more possible to establish a black-letter definition of “pertinent facts,” as related to Article 2, than it would be to establish a “procuring cause” template or rule that would define with precision, in every instance, entitlement to compensation in an otherwise arbitrable situation. Rather, reasonableness and common sense must be relied on in making such determinations. The question that Hearing Panels should consider in determining whether a REALTOR® has exaggerated, misrepresented, or concealed a pertinent fact is whether disclosure of the fact in question could have had an effect on a reasonable purchaser’s decision. If the Hearing Panel concludes that the fact was material and was adverse but not necessarily subject to Standard of Practice 2-1’s discovery requirement, but was known by the REALTOR® and could have influenced a reasonable purchaser’s decision, then exaggeration, misrepresentation, or concealment of that fact could be the basis for finding that Article 2 had been violated. (*Approved 4/91*)

# Appendix III to Part Four

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## Responsibility of Member Boards with Respect to Article 10 of the Code of Ethics

### Nature of Complaints

REALTORS® and REALTOR-ASSOCIATES® recognize their social responsibility to conform their business conduct to the NATIONAL ASSOCIATION OF REALTORS®' Code of Ethics. Minnesota Realtors® has a Professional Standards Committee which is charged with enforcement of the Code of Ethics in accordance with the procedures set forth in the Association's bylaws. Equal professional service without regard to race, color, religion, sex, disability, familial status, national origin, sexual orientation or gender identity is a basic commitment embodied in Article 10 of the Code of Ethics. Any allegation that a member has violated this principle and Article 10 must be taken seriously by the Association. *(Revised 11/22)*

The complaints may not always be based specifically upon alleged denial of equal professional service and consequent violation of Article 10 of the Code of Ethics. Some complaints may be based upon alleged instances of "blockbusting," racial steering, inducement of "panic peddling," or allegation of outright discrimination based on race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity by REALTORS® and REALTOR-ASSOCIATES®. With respect to such complaints, the individual Articles of the Code of Ethics are the only grounds upon which a Member Board Professional Standards Committee may take disciplinary action or assess disciplinary penalties upon Association Members. *(Revised 11/22)*

### Handling of Complaints

The Fair Housing Partnership Agreement between the United States Department of Housing and Urban Development and the NATIONAL ASSOCIATION OF REALTORS® replaced the twenty (20) year old Voluntary Affirmative Marketing Agreement (VAMA). Under the VAMA there was specific language regarding the handling of complaints. The VAMA has expired and those specific requirements no longer are applicable. Complaints alleging violation of Article 10, or the Code for Equal Opportunity in Housing are to be handled in the same manner as other complaints under the Code of Ethics. Boards are urged to utilize their Equal Opportunity Committees to implement the new Fair Housing Partnership. Equal Opportunity Committees can be of assistance to the Board in helping the Grievance and Professional Standards Committees understand the fair housing issues facing a community and the nuances of specific discriminatory practices. *(Revised 11/97)*

The National Association recommends that training be conducted on the investigation and processing of complaints involving Article 10. The Association's Equal Opportunity Committee will be given anonymous summaries of the disposition of such complaints to permit the committee to better tailor its future activities and training to the types of fair housing problems being encountered within the Association.

### Resolution of Complaints

The Association's Professional Standards Committee must act on the complaint in accordance with procedures set forth in the Association's bylaws. In addition, no matter what the basis for the complaint is, the committee can judge and evaluate it only on the basis of the Code of Ethics. While an alleged act of discrimination may violate the Code of Ethics as well as applicable fair housing laws, the Professional Standards Committee may not attempt to enforce federal, state, or local fair housing and equal opportunity laws. It is charged only with enforcement of the NATIONAL ASSOCIATION OF REALTORS®, Code of Ethics. If the complaint is based solely on an alleged violation of the law, the Association's Professional Standards Committee must decline to hear it and instead refer the matter to the proper authorities.

Moreover, the committee, after receipt of a complaint, should decline to hold a hearing if the allegation that Article 10 has been breached is the subject of litigation involving alleged violation of law until after such litigation is concluded. In order to preserve the right of the complaining party to professional standards review, however, the Association should not refuse to accept the filing of a complaint in a matter subject to pending litigation. While the power of the Professional Standards Committee is not preempted by such litigation, the Association may properly elect to let issues of fact which are common to the litigation and the complaint under the Code be decided by the court in view of the court's substantially greater powers to compel discovery of relevant facts. In addition, under some circumstances the punishment imposed in a litigated case may render any action the Association might take a "meaningless act" (such as expulsion from the Association of a member who has already lost their license). However, the Association is not bound by any decision in a litigated controversy. *(Revised 11/97)*

## The Code for Equal Opportunity in Housing

In May 1972, the NATIONAL ASSOCIATION OF REALTORS®' Board of Directors approved the Code for Equal Opportunity in Housing and strongly urged all Member Boards to adopt it. The Code for Equal Opportunity in Housing recognized five (5) basic fair housing obligations governing REALTORS® and REALTOR-ASSOCIATES® in the conduct of their business. In November 1999, Article 10 of the Code of Ethics and its Standards of Practice were amended to include all obligations under the Code for Equal Opportunity in Housing. With these amendments, the Code for Equal Opportunity in Housing was sunset by the Board of Directors of the NATIONAL ASSOCIATION OF REALTORS®.

The five (5) basic fair housing obligations that were recognized by the Code for Equal Opportunity in Housing prior to it being sunset were:

*First:* In the sale, purchase, exchange, rental, or lease of real property, REALTORS® and their sales associates had the responsibility to offer equal services to all clients and prospects without regard to race, color, religion, sex, disability, familial status, or national origin. This encompassed:

- (a) standing ready to enter broker-client relationships with or show property equally to members of all racial, religious, or ethnic groups
- (b) receiving all formal written offers and communicating them to the owner
- (c) exerting their best efforts to conclude all transactions
- (d) maintaining equal opportunity employment practices

*Second:* Members, individually and collectively, in performing their agency functions, had no right or responsibility to volunteer information regarding the racial, religious, or ethnic composition of any neighborhood or any part thereof.

*Third:* Members would not engage in any activity which had the purpose of inducing panic selling.

*Fourth:* Members would not print, display, or circulate any statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, disability, familial status, or national origin.

*Fifth:* Members who violated the spirit or any provision of the Code for Equal Opportunity in Housing would be subject to disciplinary action.

When adoption of the Code for Equal Opportunity was integrated with Article 10 of the Code of Ethics, to which all REALTORS® and REALTOR-ASSOCIATES® must subscribe as members of the NATIONAL ASSOCIATION OF REALTORS®, the result is a positive public position on civil rights and on fair and equal housing opportunities

In January 2020, the leadership of the National Association of REALTORS® passed a Fair Housing Action Plan to reaffirm and strengthen the association's fair housing commitment. The Fair Housing Action Plan, abbreviated "ACT," specifically committed the National Association of REALTORS® to:

- work closely with state association executives to ensure that state licensing laws include effective fair-housing training requirements and hold real estate agents accountable to their fair housing obligations launch a public-service announcement campaign that reaffirm NAR's commitment to fair housing, and how consumers can report problems
- integrate fair housing into all REALTOR® conferences and engagements
- explore the creation of a voluntary self-testing program, in partnership with a fair housing organization, as a resource for brokers and others who want confidential reports on agent practices so they can address problems
- create more robust fair housing education, including unconscious-bias training, and education on how the actions of REALTORS® shape communities
- conduct a national study to determine what factors motivate discrimination in sales market
- profile leaders who exemplify the best fair housing practices and workplace diversity
- develop materials to help REALTORS® provide consumers with information on schools that avoids fair housing pitfalls (*Revised 10/20*)

# Appendix IV to Part Four

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## Rationale of Declaratory Relief Procedure

Central to the enforcement of the Code of Ethics is **Part Four, Section 25, Preliminary Judicial Determination** Prior to Imposition of Discipline, which provides:

*If the Leadership Team has reason to believe that the imposition of a proposed sanction will become the basis of litigation and a claim for damages, it may specify that the discipline shall become effective upon entry of the final judgment of a court of competent jurisdiction in a suit by the Association for declaratory relief declaring that the discipline proposed violates no rights of the member.*

The purpose of the declaratory relief procedure is to avoid, or at least minimize to the maximum extent possible, the risk that the Association or its members may be legally liable in damages as a result of their enforcement of the Code of Ethics.

Boards of REALTORS® are not courts of law, and REALTORS® are not members of the judiciary. However well-advised they may be by Board counsel, the requirements of substantive law or of procedural due process are often complex and difficult to perceive fully and to apply correctly. Moreover, in many states, Boards are without many of the powers and mechanisms which are available to courts of law, i.e., subpoena and other powers of discovery, etc., to aid in the identification and protection of legal rights.

The great value of seeking confirmation of decisions involving enforcement of the Code of Ethics, where the disciplined member does not appear to accept the decision, is that such confirmation permits the correction of any violations of law or procedure before such violations can cause injury and hence liability. This means, in turn, that the controversy will have little interest to the “contingent fee” attorney. It further means that the Board is on record with the court as having “clean hands;” that is, as seeking to do justice and construe its policies and rules in accordance with the law.

There is one principle all Boards must respect: the Code of Ethics must be construed and enforced, at all times, in a manner consistent with the requirements of law and due process. While the Code exacts a standard of performance from REALTORS® which goes beyond the law, the Code does not place the REALTOR® or the Board above the law.

Needless to say, in any instance in which a declaratory judgment is sought, the implementation of discipline should be stayed until final judgment is rendered confirming its propriety.

Procedures for securing declaratory judgments of the type contemplated by **Part Four, Section 25** will vary from state to state. For this reason, each State Association, working with its counsel, will want to develop, to the extent possible, detailed information as to how such proceedings may be instituted by Board counsel. These procedures should be periodically reviewed at meetings of Board attorneys and standard forms of pleadings developed wherever possible. Although no petition for declaratory relief should be prepared except by the Board’s legal counsel, a sample outline of content for a petition for declaratory relief may be found in Form #E-18, *Outline of Content of Petition for Declaratory Relief*.

While not without cost, the declaratory judgment procedure is nevertheless an economical form of litigation. By its very nature, it should avoid the usual heavy litigation costs of defending the issues of “damages”. By concerning itself with issues of law, it avoids the significant legal costs normally involved in arguing factual issues. Moreover, the procedure tends to avoid the polarization of the parties and the antagonism which attends litigation when a sanction has been imposed.

It has been said that the declaratory judgment proceeding is unsatisfactory because it delays the imposition of discipline, frustrates the consensus of the Board, and involves the Board in unnecessary litigation and costs.

There is a single answer to this complaint, and it is a complete one.

Any action taken by the Board which cannot survive a declaratory judgment proceeding would certainly subject the Board and its members to legal liability. Avoiding this liability is well worth the minimal delays and costs represented by the declaratory judgment proceeding. To the extent it frustrates the consensus of the Board, such consensus must be, and should be, frustrated, since it necessarily violates the law.

In a time of shifting social, economic, and political values, of uncertain legal precedents, and of arbitrarily escalated legal liability, the declaratory judgment procedure represents nothing more nor less than the legal implementation of the worthy maxim “Better safe than sorry.”

# Appendix V to Part Four

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## Ethics Hearing Checklist

- (1) **Complaint filed.** The Association Professional Standards Administrator (or Executive Officer) receives a complaint alleging unethical conduct on the part of an Association Member.
- (2) **Complainant.** An ethics complaint may be filed by any person, whether an Association Member or not.
- (3) **Time limitation.** An ethics complaint must be filed within one hundred eighty (180) days after the alleged offense and facts relating to it could have been known by the complainant in the exercise of reasonable diligence or within one hundred eighty (180) days after the conclusion of the transaction or event, whichever is later. *(Amended 5/22)*

Suspension of filing deadlines: If the Association's informal dispute resolution processes (e.g., ombudsman, mediation, etc.) are invoked or initiated by a complainant (or potential complainant) with respect to conduct that becomes the subject of a subsequent ethics complaint, the one hundred eighty (180) day filing deadline shall be suspended beginning with 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. Questions about when informal dispute resolution began or ended will be determined by the Grievance Review Panel. The filing deadlines shall also be suspended during any period when the respondent does not hold REALTOR® or REALTOR-ASSOCIATE® membership. *(Amended 11/12)*

- (4) **Initial assistance.** Depending upon established administrative procedures of the Association, the Professional Standards Administrator may provide additional information to the complainant concerning the required basis and form(s) for properly filing a written complaint. Only written complaints should be a basis for further consideration and action by the Association.
- (5) **Complaint to Grievance Review Panel.** When a written complaint is received, the Professional Standards Administrator shall, in a timely manner, appoint three members of the Professional Standards Committee to serve on a Grievance Review Panel to review the complaint to make any necessary evaluation in order to determine proper disposition of the complaint—i.e., whether to (1) dismiss the complaint as unworthy of further consideration, (2) refer it back to the complainant as appropriate for arbitration rather than disciplinary action, (3) issue a Citation, or (4) refer it to the Professional Standards Administrator to arrange a hearing by an ethics Hearing Panel of the Professional Standards Committee.

If the complaint is from a client, customer, or a member of the general public, and the Professional Standards Administrator or Grievance Review Panel determines that the complaint is not properly framed (or is ambiguous or otherwise insufficient), the Professional Standards Committee Chairperson may assign a member of the Professional Standards Committee to assist the complainant in preparing a proper complaint. In such instances, the Professional Standards Committee member so assigned does not become or act as an advocate or representative for the complainant but provides appropriate procedural information only. Further, the Professional Standards Committee member acting in this capacity shall not participate in any consideration of the complaint.

If the complaint asserts multiple allegations of unethical conduct and the Grievance Review Panel determines that one or more of the allegations are unworthy of further consideration, that portion of the complaint may be dismissed while the balance of the complaint is forwarded for a hearing. If the Grievance Review Panel determines that the complaint cites an inappropriate Article or Articles of the Code, the Grievance Review Panel may amend the complaint by deleting the inappropriate Article(s) and adding the appropriate Article(s). However, if an Article or Articles is added to the complaint by the Grievance Review Panel and the complainant does not agree with the addition, then only those Article(s) agreed to by the complainant shall be forwarded to the Hearing Panel.

- (6) **Preliminary review by Grievance Review Panel.** The Grievance Review Panel shall render its determination on the basis of the complaint received and shall not require or consider a written response from respondent(s). This review process may include additional information other than the written complaint itself only if necessary to determine whether a complaint will be referred for hearing.
- (7) **No Grievance Review Panel "hearings".** The Grievance Review Panel function does not include the holding of any hearings. Rather, it makes a preliminary review to determine the proper disposition of the complaint. *(Amended 4/94)*

- (8) **No decisions on Code violations by Grievance Review Panel.** The Grievance Review Panel does not render a determination purporting to find a violation, or the absence of a violation, of the Code of Ethics, nor does it purport to find a violation, or absence of a violation, of law.
- (9) **Action initiated by Grievance Review Panel.** The Grievance Review Panel may not review the actions of any member on its own motion.
- (10) **Dismissal of complaint by Grievance Review Panel subject to appeal.** The dismissal of a complaint or any portion of a complaint by the Grievance Review Panel may be appealed by the complainant to an Appeal Tribunal within the time specified in the Association's procedures using Form #E-22, *Appeal of Grievance Review Panel Decision*. If an appeal is based on dismissal for failure to file within the time-period specified in this Manual, and an Appeal Tribunal determines the complaint was timely filed, then the Appeal Tribunal shall serve as the Grievance Review Panel and further review the complaint in accordance with Part Three, Section 19 B. The complaint and any attachments to the complaint may not be revised, modified, or supplemented. The complainant may, however, explain in writing why the complainant disagrees with the Grievance Review Panel conclusion that the complaint should be dismissed. In considering the appeal, the Appeal Tribunal should consider only the same information that was considered by the Grievance Review Panel in making its determination to dismiss the complaint, and the complainant and respondent do not have the right to appear at the hearing before the Directors.

The appeal shall be heard by a panel of Professional Standards Committee members appointed by the Professional Standards Administrator in accordance with **Part Two, Section 16.1** The decision of the Appeal Tribunal is final and binding and is not subject to further review by the Association.

- (11) **Action if complaint is referred for hearing.** If the complaint is referred for hearing, the Professional Standards Administrator serves a copy of the complaint to each party complained of and notifies each party that they may file a written reply to the complaint within the time period specified in the Association's procedures.
- (12) **Late filing of reply.** A Hearing Panel, at its discretion, may accept late filing of a reply to a complaint.
- (13) **Resignation/termination of membership.** If the respondent resigns or otherwise terminates membership in the Association after an ethics complaint is filed but before final action is taken by the Ratification Panel or Appeal Tribunal, the Professional Standards Administrator forwards the complaint to any other Boards in which the respondent continues to hold membership. If the respondent does not hold membership in another Board, or if the Professional Standards Administrator is unable to determine if the respondent holds membership in another Board, the complaint shall continue to be processed until the decision of the association with respect to disposition of the complaint is final consistent with **Section 20, Initiating an Ethics Hearing**, or **Section 23, Action of the Ratification Panel or Appeal Tribunal**, *Code of Ethics and Arbitration Manual adapted by Minnesota Realtors®*.<sup>21</sup> If an ethics respondent resigns or otherwise causes membership in all Boards to terminate before an ethics complaint is filed alleging unethical conduct occurred while the respondent was a REALTOR®, the complaint, once filed, shall be processed until the decision of the association with respect to disposition of the complaint is final consistent with **Section 20, Initiating an Ethics Hearing**, or **Section 23, Action of the Ratification Panel or Appeal Tribunal**, *Code of Ethics and Arbitration Manual adapted by Minnesota Realtors®*.<sup>22</sup> In any instance where an ethics hearing is held subsequent to an ethics respondent's resignation or membership termination, any discipline ratified by the Ratification Panel or Appeal Tribunal shall be held in abeyance until such time as the respondent rejoins an association of REALTORS®. In any instance where a complaint is transferred to another Board, the complainant shall be so advised. (*Revised 5/16*)
- (14) **Request for additional copies from complainant and respondent.** As a matter of local option, the Professional Standards Administrator may request the complainant and respondent to supply a specified number of copies of the complaint and response, or other documentation, as needed for appropriate distribution, except a non-Association Member complainant should generally not be required to supply multiple copies. This could be construed as overly burdensome by the public.

<sup>21</sup> Failure of the respondent to attend will not prevent a hearing from being held.

<sup>22</sup> See Footnote 21

- (15) **Distribution of complaint and reply.** After fifteen (15) days, the Professional Standards Administrator shall transmit copies of the complaint and the reply (if any) to (1) the complainant (response only), (2) the appointed Hearing Panel members, and alternate if any, or notify each that no reply has been filed. *(Revised 11/14)*
- (16) **Appointment of Ethics Hearing Panel.** At the same time, the Professional Standards Administrator shall transmit a list of the names of the Hearing Panel members, and alternate, if any, appointed to serve on the Ethics Hearing Panel to hear the complaint and provide them with an opportunity to challenge proposed panel members for cause. Any disqualification must be filed within ten (10) days from the date the list is transmitted to the parties. From the names not successfully challenged by either party, the Professional Standards Administrator shall appoint, within five (5) days after challenge forms are due, a Hearing Panel of five (5) members, a majority of whom shall be REALTORS®. The Professional Standards Administrator shall also select one of the panel members to serve as Chairperson of the Hearing Panel. Any Hearing Panel must have an odd number of members. A majority must be REALTORS®, and if a REALTOR-ASSOCIATE® or REALTOR® other than a principal is a party to the ethics proceeding, one (1) of the panelists shall be a REALTOR-ASSOCIATE® or REALTOR® other than a principal. *(Revised 11/14)*
- (17) **Time and place of hearing.** The Professional Standards Administrator, working with the Hearing Panel Chairperson shall designate a time and place for hearing the complaint. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the Hearing Panel Chairperson determines that denying the continuance would deny the requestor a fair hearing. The complaint and response, if any, shall be provided to Hearing Panel members prior to the hearing. Such time period shall be seven (7) days prior to the scheduled hearing date and shall be adhered to for all hearings. *(Revised 04/14)*
- (18) **Proper notice of hearing.** It is important that the Professional Standards Administrator properly and promptly notify the parties of the time and place of hearing. The notice of hearing should include a listing of the members of the Hearing Panel (tribunal) who have been selected from the names of members of the Professional Standards Committee not successfully challenged by either party. An outline of the hearing procedures should also accompany the notice of hearing. *(Revised 11/98)*
- (19) **Withdrawal of complaint.** Complainants may withdraw their complaints at any time prior to adjournment of an ethics hearing. However, if complainant withdraws the complaint after transmission of the Grievance Review Panel's decision to forward the complaint to a hearing and prior to adjournment of the ethics hearing, the complainant may not resubmit the complaint on the same matter. If complainant withdraws the complaint before transmission of the Grievance Review Panel's decision to forward the complaint to a hearing, the complainant may resubmit the complaint on the same matter so long as it is filed within the 180-day filing deadline as defined in this Manual. If a complaint is withdrawn by the complainant after the Grievance Review Panel determines the complaint requires a hearing, the complaint and response will be referred back to a Grievance Review Panel to determine whether a potential violation of the public trust (as defined in Article IV, Section 2 of the National Association's Bylaws) may have occurred. If a Grievance Review Panel determines a potential violation of the public trust may have occurred, the complaint will be referred to the Leadership Team and the Leadership Team shall determine whether any further action should be taken. Although the Chief Executive Officer has the right to be present at meetings involving the Leadership Team, the Chief Executive Officer shall not vote on any matter before the Leadership Team. *(Amended 5/24)*
- (20) **Amendment of complaint.** The complainant can amend the complaint at any time prior to hearing, including facts upon which the amendment is based. However, the respondent must receive a copy of the amended complaint and have an opportunity to amend the response to the complaint. Complaints cannot be amended to add, or substitute, other individuals as complainants except as mutually agreed to by the parties. *(Revised 5/20)*
- (21) **Amendment during a hearing.** At any time during a hearing, the complainant or the Hearing Panel may amend the complaint, including facts upon which those amendments are based. Amendments to include Articles previously dismissed by the Grievance Review Panel may be made only on the motion of the Hearing Panel. With the concurrence of the respondent, the hearing may proceed uninterrupted or may be continued to a date certain not less than fifteen (15) nor more than thirty (30) days from date of adjournment. If the hearing continues uninterrupted, the fact that the respondent waived their right to an adjournment should be read into the record, and the hearing will proceed on the basis of the amended complaint. *(Amended 5/20)*
- (22) **Amended complaint in writing.** If the hearing is adjourned to a later date, the amended complaint must be filed in writing, signed by the complainant or chairperson of the Hearing Panel, and promptly served on the respondent to allow opportunity for response to the amended complaint.
- (23) **Failure to appear at duly noticed hearing.** If a respondent does not appear at a hearing without having obtained a continuance, the Hearing Panel may proceed with the hearing and reach a decision on the evidence available. The procedures to be followed

shall be those specified in the Code of Ethics and Arbitration Manual as adapted by Minnesota Realtors®. If a party does not appear, it is prudent to place a telephone call to determine if there is valid cause for the absence.

If a member of the public files an ethics complaint which is reviewed by the Grievance Review Panel and forwarded for a hearing before an ethics Hearing Panel, and the member of the public refuses or is unable to appear at the hearing, the complaint and response shall be dismissed. However, in the event the complaint in such matter includes an alleged violation of public trust or safety, the Hearing Panel may forward the complaint to the Leadership Team and the Leadership Team shall determine whether any further action should be taken. Although the Chief Executive Officer has the right to be present at meetings involving the Leadership Team, the Chief Executive Officer shall not vote on any matter before the Leadership Team. *(Amended 5/24)*

In the event the complaint scheduled for hearing is from a REALTOR® or REALTOR-ASSOCIATE® who refuses or is unable to attend the hearing, the complainant shall be advised that refusal to participate in the hearing, absent a satisfactory reason, may result in a charge that the complainant has violated Article 14's obligation to place all pertinent facts before an appropriate tribunal of the Association. *(Amended 11/98)*

If the REALTOR® or REALTOR-ASSOCIATE® complainant continues to refuse a duly noticed request to appear, or if the complainant is excused from appearing for reasons deemed valid by the Hearing Panel, the hearing shall not take place but rather the complaint and response shall be dismissed. *(Revised 5/24)*

If any complainant fails to appear after proper notice of the hearing is given, and the complaint is dismissed, it may not be refiled. However, the complainant may appeal the dismissal of the complaint by the Hearing Panel utilizing Form #E-22 *Appeal of Grievance Review Panel (or Hearing Panel)*<sup>23</sup> *Decision (Ethics)*, and the complaint may be reinstated by an Appeal Tribunal and scheduled for a new hearing if the Appeal Tribunal determines that the complainant's failure to show at the scheduled hearing was not within complainant's control.

- (24) **Decision by Hearing Panel.** The decision of the Hearing Panel shall be by simple majority vote, in writing, and contain findings of fact, a conclusion as to the alleged violation(s) of the Code of Ethics, and a statement of disciplinary action recommended, if any. The Hearing Panel will consider all previous violations and sanctions and the rationale for the current disciplinary action can be provided to the parties and the Ratification Panel or Appeal Tribunal as part of the decision. The Hearing Panel's consideration will include whether prior disciplinary matters involve discipline that was held in abeyance and that will be triggered by a subsequent violation (including the matter currently under consideration by the Hearing Panel). *(Amended 11/13)*
- (25) **When Hearing Panel decision is final.** The Hearing Panel decision shall be considered final only when it is in writing, signed by members of the panel, reviewed by the Chair of the Hearing Panel and legal counsel if required. The decision and recommendation of the sanction, if any, shall be a recommendation to the Ratification Panel and shall be implemented only upon review and approval by the Ratification Panel.
- (26) **Recommendation of sanction.** In its recommendation of sanction, the Hearing Panel may, at its discretion, consider all records of previous violations and sanctions, if any, in the member's file.
- (27) **Distribution of decision.** The Professional Standards Administrator shall send a copy of the decision to the complainant and the respondent within the time specified in the Association's procedures. However, reasonable delay will not invalidate the procedures of the Association.
- (28) **Right of appeal.** Either the complainant or the respondent in an ethics hearing may file an appeal with the Professional Standards Administrator within twenty (20) days after the final decision of the Hearing Panel is transmitted. However, the complainant may appeal based only on alleged procedural deficiencies or other lack of procedural due process that may have deprived the complainant of a fair hearing. The appeal should state a valid cause for seeking the appeal and the consideration of the appeal shall relate only to the bases stated in the appeal petition. *(Amended 11/14)*
- (29) **Prerogatives of Directors in respect of Hearing Panel recommendation.** If there is no appeal by any party to an ethics hearing, the Ratification Panel must adopt and direct implementation of sanction, except if the Ratification Panel members have a concern for procedural deficiency, in which case they may refer the decision back to the Professional Standards Committee for a new hearing and recommendation by a new Hearing Panel. If the Ratification Panel members are concerned with the appropriateness

<sup>23</sup> Failure of the respondent to attend will not prevent a hearing from being held

of the recommended sanction, they may refer the decision back to the original Hearing Panel for further consideration and recommendation. The Ratification Panel may also accept the decision of the Hearing Panel and may reduce the discipline recommended but may not increase the discipline beyond that recommended by the Hearing Panel.

- (30) **Appeal deposit.** Any appeal to the Appeal Tribunal from the decision and recommendation of the ethics Hearing Panel shall be accompanied by a deposit that may not exceed \$500 and should include a statement of the basis for the appeal—i.e., misapplication or misinterpretation of the Article(s) of the Code, procedural deficiency or lack of due process, or the recommended discipline. In cases where a single appeal is filed jointly by more than one party, only one filing fee may be assessed. *(Amended 11/12)*
- (31) **Notice of appeal to Appeal Tribunal.** Any appeal to an Appeal Tribunal shall be noticed properly to the parties and to the Appeal Tribunal. The written request for appeal shall be reviewed by the Professional Standards Administrator only for the purpose of determining whether the appeal states any legitimate basis for consideration by an Appeal Tribunal. All requests for appeals received by the Association must be considered by an Appeal Tribunal, and only those bases and issues raised in the written request for appeal may be raised by the appellant in any hearing before an Appeal Tribunal. *(Amended 11/24)*

The Professional Standards Administrator shall appoint an Appeal Tribunal in accordance with **Part Two, Section 16.1**. The appeal shall be heard no later than **forty-five (45)** days after the date of receipt of the appeal, giving a minimum of ten (10) days advance notice of the time and place of hearing. *(Amended 11/24)*

The decision of the Appeal Tribunal is final and binding and is not subject to further review by the Association.

- (32) **Information provided to Appeal Tribunal.** The Appeal Tribunal shall be provided in advance with copies of the complaint, response, the findings of fact, conclusion of the Hearing Panel as to violation(s) of the Code of Ethics, recommendation of discipline, the appeal request or amended appeal request, and the Professional Standards Administrator's correspondence, if any. All documents provided to the Appeal Tribunal are confidential, and no Appeal Tribunal member shall discuss materials received except in an appeal hearing of the Appeal Tribunal. However, a breach of confidentiality shall not invalidate the decision of the Appeal Tribunal.
- (33) **Information considered by the Appeal Tribunal in an appeal proceeding.** An appeal to an Appeal Tribunal shall be determined on the basis of the transcript, recording, or summary of the proceeding by the Hearing Panel Chairperson, and no new evidence shall be considered unless the basis of the appeal is the Hearing Panel's alleged refusal to admit or receive evidence a party feels properly should have been allowed. The parties may appeal to the merits of the Hearing Panel's findings of fact, decision, and recommendation for sanction and may correct the summary, the transcript, or recording. Only the bases and facts raised in the written appeal may be raised by the appellant at the hearing before the Appeal Tribunal.
- (34) **Disposition of deposit money.** The deposit filed with the petition for appeal will accrue to the general treasury of the Association if the Appeal Tribunal confirms the Hearing Panel's decision and recommendation. The deposit will be returned to the appellant if the Appeal Tribunal's decision is to dismiss the charge. If the Hearing Panel's decision and recommendation is modified, one-half (1/2) of the deposit shall be returned to the party and one-half (1/2) of the deposit shall pass into the general treasury of the Association.
- (35) **Appeal Tribunal's decision in writing.** The Appeal Tribunal's decision will be in writing. As soon as the decision is in final form, but within five (5) days, it shall be provided to the parties and the Hearing Panel. *(Revised 5/17)*
- (36) **Appeal Tribunal's decision final.** The Appeal Tribunal's decision in respect of any professional standards ethics proceeding shall be final and binding upon the parties. No further appeal procedure is provided by the State Association or the NATIONAL ASSOCIATION OF REALTORS®.
- (37) **Notice of final action.** When the decision is final, a notice of the action shall be provided by the Professional Standards Administrator to the following: (1) complainant, (2) respondent, (3) the parties counsel, if any, (4), the Professional Standards Administrator of any other Association in which the respondent holds membership, and (5), any government agency as may be directed by the Appeal Tribunal, based on advice of legal counsel. The Professional Standards Administrator may disseminate the notice to the Hearing Panel. *(Revised 11/23)*

Other Association Members shall be notified only of suspension or expulsion of a member, or unless one of the publication options in Professional Standards Policy Statement 45, Publishing the Names of Code of Ethics Violators, has been adopted, or unless notification is required to ensure compliance with the Association's bylaws (e.g. where a petition for removal of an officer or director must state the reason(s) an officer or director is deemed disqualified from further service). *(Revised 05/18)*

- (38) **Failure to comply with discipline imposed.** Any discipline that requires an action on the part of the disciplined member should also indicate any additional penalties that may be automatically invoked for failure to comply with the discipline by the date specified.

If the decision does not indicate that additional penalties may be automatically invoked for failure to comply with the discipline by the date specified, the member's failure to comply should not result in a new ethics hearing but should be referred to the Executive Committee for their consideration. If additional penalties are contemplated, the member should have the opportunity to appear before the Executive Committee and explain the failure to comply. The Executive Committee, if not satisfied with the explanation, may impose additional sanctions (including suspension or expulsion) in a manner consistent with the procedures in the Association's *Code of Ethics and Arbitration Manual*.

- (39) **Declaratory judgment.** If the Leadership Team believes a member may resort to litigation rather than abiding by the discipline imposed, the Leadership Team, in consultation with Association counsel, should consider making the imposition of discipline contingent upon entry of a judgment by a court of competent jurisdiction asserting that the Association's action will not violate any of the member's rights. Although the Chief Executive Officer has the right to be present at meetings involving the Leadership Team, the Chief Executive Officer shall not vote on any matter before the Leadership Team.
- (40) **Refusal to arbitrate.** If a member refuses to arbitrate, where arbitration is not precluded by law, the matter will not be referred to a Grievance Review Panel for a hearing by an ethics Hearing Panel, but shall be referred to the Executive Committee, and the Executive Committee shall consider only the sole fact of whether an Association Member has refused to arbitrate a properly arbitrable matter. Upon an affirmative finding of refusal to arbitrate, the Executive Committee may order sanction as deemed appropriate in accordance with the procedures of the Association.
- (41) **Refusal to abide by an award in arbitration.** There should be no ethics hearing in the first instance of such a refusal by an Association Member, but the Association should recommend that the award recipient seek judicial enforcement of the award rendered by the arbitration panel. The award recipient should seek reimbursement of legal fees, and if these legal fees are not reimbursed by the court in its final decision, the Association may, at its discretion, reimburse the award recipient for legal fees incurred up to \$2,000. If a member engages in a pattern of noncompliance, judicial enforcement should be utilized in each case for effective enforcement of the award, and the Association is not precluded from considering the action of the individual as an alleged violation of Article 17 of the Code of Ethics.

## Administrative Time Frames—Ethics Proceedings

| Situation                                            | Time Table                                                                                                                                                                                                                                                      |
|------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b><u>Grievance</u></b>                              |                                                                                                                                                                                                                                                                 |
| Complaint filed-----                                 | 180 days                                                                                                                                                                                                                                                        |
| Grievance Review Panel -----                         | 3-5 business days of receipt of complaint (no later 45 days from receipt of complaint/request)                                                                                                                                                                  |
| Response required/# of days to submit-----           | No response required at time of Grievance Review.<br>MNR shall not request a response from Respondent unless Grievance Review Panel (GRP) refers complaint to a hearing.<br><br>If referred for hearing, see Respondent provides response to Association below. |
| Complainant's appeal to Appeal Tribunal-----         | 20 days from transmittal of GRP Report Form                                                                                                                                                                                                                     |
| Respondent's request for pre-hearing meeting -----   | no time limit                                                                                                                                                                                                                                                   |
| Additional info request from GRP to complainant----- | 10 days from receipt of request                                                                                                                                                                                                                                 |
| Complainant's response of articles added by GRP----- | 10 days from receipt of GRP decision                                                                                                                                                                                                                            |
| Appeal Hearing -----                                 | Within 10 days after receipt of appeal                                                                                                                                                                                                                          |
| Decision of Appeal Tribunal -----                    | Within 5 days from the date of the decision                                                                                                                                                                                                                     |
| <b><u>Professional Standards</u></b>                 |                                                                                                                                                                                                                                                                 |
| Respondent provides response to Association -----    | 15 days from request for response being transmitted                                                                                                                                                                                                             |
| Response provided to complainant-----                | 5 days from receipt of response                                                                                                                                                                                                                                 |
| Challenge forms -----                                | 10 days to challenge from date forms transmitted                                                                                                                                                                                                                |
| Panel appointed -----                                | 5 days after challenge forms are due                                                                                                                                                                                                                            |
| Pre-Hearing Meeting -----                            | At least seven (7) days prior to the Hearing date but no sooner than ten (10) days from the date the list of panel members has been sent to the parties or as otherwise specified by Hearing Panel Chair                                                        |
| Hearing notice -----                                 | 21 days in advance of hearing                                                                                                                                                                                                                                   |
| Complaint/response to panel -----                    | 10 days in advance of hearing                                                                                                                                                                                                                                   |
| Notice of witnesses and counsel -----                | 15 days before hearing date to Association and other party                                                                                                                                                                                                      |
| Adjourned hearing -----                              | Not less than 15 days or more than 30 days from hearing (unless a "late" witness is allowed and then not less than five days from hearing.)                                                                                                                     |
| Decision Filed-----                                  | Day of hearing, or no later than 48 hours after hearing                                                                                                                                                                                                         |
| Decision Transmitted-----                            | 5 business days after decision by panel, except if it is necessary to obtain association counsel's review.                                                                                                                                                      |
| <b><u>Appeal</u></b>                                 |                                                                                                                                                                                                                                                                 |
| Appeal filed -----                                   | 20 days after decision transmitted                                                                                                                                                                                                                              |
| Preliminary Review -----                             | Within 10 days of transmittal to the Association                                                                                                                                                                                                                |
| Amendment received-----                              | Within 10 days of notice                                                                                                                                                                                                                                        |
| Appeal heard-----                                    | As scheduled, giving 10 days minimum notice, but not later than 45 days after receipt of appeal. Appeal Tribunal decision transmitted to parties within 5 days of appeal hearing.                                                                               |
| Challenge forms -----                                | 10 days to challenge from date forms transmitted                                                                                                                                                                                                                |
| Notice of counsel -----                              | 10 days before hearing to Association and other party                                                                                                                                                                                                           |

(Revised 11/24)

# Appendix VI to Part Four

## Cooperative Enforcement of the Code of Ethics

Professional Standards Policy Statement #40 provides:

*To ensure fair, impartial and knowledgeable enforcement of the Code of Ethics (including arbitration) there must be adequately large groups of knowledgeable, trained REALTORS® and REALTOR-ASSOCIATES® from which the necessary committees and tribunals can be appointed. To this end, Boards and Associations are required to enter into cooperative enforcement agreements to ensure Boards and/or Associations have an aggregate total of at least three hundred fifty (350) primary REALTOR® and/or REALTOR-ASSOCIATE® members from which to compose Hearing Panels. It is recommended but not required that representation/participation in any multi-board regional cooperative enforcement agreement be on a pro-rata basis. This requirement does not apply in instances where, in the opinion of the state association, unique geographical considerations (e.g., islands, remote locale, etc.), logistical difficulties or other impediments make participation prohibitive. All Boards regardless of size (except Commercial Overlay Boards) must participate with at least one other Board (which may be the state association) in a cooperative enforcement agreement. (Revised 5/08)*

At the outset, it is important to understand that the “aggregate total of at least three hundred fifty (350) primary REALTOR® and REALTOR-ASSOCIATE® members” refers to the total number of primary REALTOR® and REALTOR-ASSOCIATE® members of the Board or Boards, not to the number of members available to participate directly in Code enforcement activities. In other words, if a Board has one hundred (100) primary members, it will need to enter into an agreement with another Board with at least two hundred fifty (250) primary members of its own (or with two other Boards with at least two hundred fifty [250] primary members between them, and so on) or into an agreement with the state association so that the aggregate (or total) population of primary members is at least two hundred fifty (250). Again, this does not mean that all two hundred fifty (250) of these REALTORS® must be involved in enforcement activities. (Revised 5/08)

**State-wide Regionalization** Minnesota Realtors® (MNR) has entered into an agreement with certain local member Boards (listed below) which authorizes the MNR to implement Professional Standards enforcement on behalf of these signatory Boards. The purpose of this Agreement is to create state-wide Professional Standards enforcement procedures. This includes providing for the appointment of an Ombudsman, Mediation Officers and the establishment of a state-wide Professional Standards Committee comprising of members from the MNR for conducting mediations and hearings involving members of the local member Board in matters pertaining to enforcement of the Code of Ethics, and arbitration hearings. The Agreement seeks to establish impartial and unbiased mediators, panels and tribunals for the conduct of mediations or hearings that meet the responsibilities of the signatory Board in an efficient and effective basis to serve its members.

The Agreement does *not* authorize MNR to have jurisdiction for the enforcement of any alleged violations of the local member Board’s bylaws, rules, regulations or any associated Multiple Listing Service bylaws, rules or regulations of the local member board.

Following is a list of the local member Boards on whose behalf Minnesota Realtors® is authorized to implement Professional Standards enforcement:

- Fargo-Moorhead Area Association of REALTORS®
- Grand Forks Area Association of REALTORS®
- Greater Alexandria Area Association of REALTORS®
- Greater Lakes Association of REALTORS®
- Itasca County Board of REALTORS®
- Lake Region Association of REALTORS®
- Lake Superior Area REALTORS®
- Lakes Country Association of REALTORS®
- Minneapolis Area Association of REALTORS®
- Minnesota Commercial Association of REALTORS®
- Northwest Minnesota Association of REALTORS®
- Range Association of REALTORS®
- REALTOR® Association of Southern Minnesota
- Southeast Minnesota Association of REALTORS®
- St. Cloud Area Association of REALTORS®
- St. Paul Area Association of REALTORS®
- West Central Association of REALTORS®

All ethics complaints and arbitration requests are received and reviewed by the Minnesota Association’s Grievance Review Panels; hearings are conducted by panels of the Minnesota Association’s Professional Standards Committee; and appeals and requests for procedural review are considered by the Minnesota Association’s Appeal Tribunals.

Any alleged violations of local member board bylaws, rules, regulations or any associated Multiple Listing Service bylaws, rules or regulations shall be received and reviewed by the respective local member board.

# Appendix VII to Part Four

## Sanctioning Guidelines

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*The Code of Ethics is designed to establish a public and professional consensus against which the practice and conduct of REALTORS® and REALTOR-ASSOCIATES® may be judged. REALTORS® and REALTOR-ASSOCIATES® in joining a Board signify their intention to abide by the Code and thereby enhance the public and professional image of themselves and all other REALTORS®. Adherence to the Code is the first great bond between REALTORS® and REALTOR-ASSOCIATES® throughout the country, and is an obligation voluntarily accepted by them to ensure high standards of professional conduct to serve the interests of their clients and customers (from the Introduction to the Code of Ethics and Arbitration Manual, NATIONAL ASSOCIATION OF REALTORS®, 2025 edition).*

Local Associations of REALTORS®, supported by the state and National Associations, have the awesome responsibility of fostering awareness, understanding, and appreciation for the duties and obligations the Code imposes on those who accept it as their guide to professionalism. A corollary duty of Associations is to receive and resolve complaints alleging potentially unethical conduct by REALTORS®.

The REALTOR® organization is firmly committed to comprehensive education of REALTORS® and the public about the Code and the protections it affords, and also to vigorous, fair, and uniform enforcement when complaints are brought against members. The *Code of Ethics and Arbitration Manual* (Manual) details policies and procedures governing enforcement efforts.

Code enforcement achieves a number of goals. Where REALTORS® are wrongly or mistakenly charged with unethical conduct, the hearing process provides personal and professional vindication. Where violations are determined, the hearing process educates members about their professional obligations and serves as a meaningful deterrent to future violations. The Introduction goes on to point out that the ethics hearing process “. . . is educational in that it raises the consciousness of members to the meaning and significance of the Code” and that “many ethics violations occur inadvertently or through ignorance, and the hearing procedure serves as an effective educational tool.”

Allegations of unethical conduct are often understandably viewed by respondents as threats to their professional and personal reputations. This can result not only in the mounting of vigorous defenses but also, at times, to threats of legal challenge should a violation be determined and discipline imposed. Given that membership confers valuable rights, Associations need to strictly adhere to their established procedures when considering potential ethics violations. This caution ensures that the rights of the parties will be observed and that legal exposure of Associations will be minimized.

At the same time, well-founded caution should not be confused with reservation, reluctance, or hesitancy. The Code’s duties become aspirations at best, and potentially meaningless, if not enforced, and enforced with vigor and determination.

Fundamental to fair and consistent Code enforcement is reasonable and judicious use of discipline, as both an educational device and as punishment. The Manual authorizes a wide variety of sanctions that may be imposed for ethics violations and for violations of other membership duties. These range from simple letters of warning to expulsion from REALTOR® membership. Between these extremes are mandatory attendance at remedial educational sessions, fines, probation, and suspension. These sanctions, and the circumstances under which they may be imposed, are discussed in detail in the Manual.

The National Association does not recommend specific discipline for certain offenses, or for violations of particular Articles of the Code. This is in deference to the wisdom and autonomy of Hearing Panels privy to the details of complaints coming before them; in recognition of the fact that no two complaints are identical; and in view of the fact that the details of each hearing, including the experience of respondents, their history of prior violations, and mitigating or extenuating circumstances, may all come into play in determining an appropriate penalty. At the same time, there are key points to be considered with respect to discipline.

- Discipline that can be imposed is strictly limited to those forms authorized in the Code of Ethics and Arbitration Manual as adapted by Minnesota Realtors®.
- Discipline should be commensurate with the offense. Unintentional or inadvertent violations should result in penalties designed to educate respondents as to the conduct expected of them as REALTORS®. Conversely, if a REALTOR® intentionally violates the Code, for example to realize an economic gain, a more severe sanction would be appropriate. Only authorized forms of discipline may be utilized. (*Revised 11/13*)

- Discipline should be progressive. The disciplinary emphasis on violations by new members or by longstanding members with no history of unethical conduct should be primarily educational. Repeated or subsequent violations should be addressed with more serious forms of discipline including substantial fines, suspension, and termination of membership. (See the section of this **Appendix** entitled “Progressive Discipline” for a more detailed discussion of progressive discipline).
- A “gray area” can exist with respect to “first time violations” that are clearly not the result of ignorance or mistake but rather demonstrate flagrant disregard for the Code’s obligations. While the educational aspect of Code enforcement cannot be disregarded, the fact that the Code exists to protect the public must also be seriously considered in determining commensurate discipline.
- Mitigating or extenuating circumstances should be considered in determining appropriate discipline. The fact that a respondent recognized or acknowledged inappropriate or unethical conduct or took steps to remediate or minimize harm or injury that may have resulted from the respondent’s conduct, should be considered in determining appropriate discipline.
- Conversely, cases in which there is reason to believe that violations of the public trust, including demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud have occurred should be considered particularly egregious violations of the Code of Ethics when determining appropriate discipline. (*Adopted 11/20*)
- Respondents’ records of earlier violations (or, conversely, the fact that they have not violated the Code in the past) can be considered in determining appropriate discipline. Hearing Panels cannot consider past violations in deciding whether the conduct currently complained of violated the Code.

Crafting appropriate, meaningful discipline can challenge panels that have concluded that the Code has been violated. This discussion is offered as guidance, rather than as a hard and fast template, to assist panels in meeting their key role in ensuring the Code’s viability and vitality through vigorous and evenhanded enforcement. Suggested guidelines that can be modified locally so long as the discipline proposed is consistent with the permissible forms authorized in the National Association’s Code of Ethics and Arbitration Manual, can be found in the section of this **Appendix** entitled “Disciplinary Guidelines.”

## Progressive Discipline

Discipline imposed for violations of the Code of Ethics or for violations of other membership duties should be progressive, that is discipline should increase incrementally for subsequent violations. The disciplinary emphasis where first time violations occur should be primarily educational. Repeated or subsequent violations should result in more serious forms of discipline being utilized, including substantial fines, suspension, and termination of membership. At the same time, a gray area can exist where a first time violation is not attributable to ignorance or oversight but rather to blatant disregard for the Code and its obligations. While the educational emphasis of Code enforcement cannot be disregarded, the fact that the Code exists to protect the public must be carefully considered in determining appropriate discipline. Three (3) contrasting examples are provided to illustrate these points. (*Revised 11/20*)

**Example A:** REALTOR® A, who had recently earned their real estate license, was found to have violated Article 12 for advertising a listed property without disclosing their status as either a REALTOR® or as a real estate licensee. At the hearing, REALTOR® A acknowledged their oversight and it was clear to the Hearing Panel that the violation was inadvertent and unintentional. The panel concluded that a letter of reprimand and attendance at a three (3) hour Code of Ethics update session was appropriate.

Two months later, REALTOR® A was charged with a nearly identical violation. After concluding that they had, in fact, violated Article 12, the Hearing Panel was given access to REALTOR® A’s files to see whether REALTOR® A had previously violated the Code so that appropriate discipline could be recommended. It was the conclusion of the Hearing Panel that a second violation of the same Article, occurring just months after the first violation, warranted more serious discipline. REALTOR® A was fined \$1,000 and required to attend a full day ethics education program. (*Revised 11/13*)

Three months later, REALTOR® A was again found to have violated Article 12. The Hearing Panel was then given access to REALTOR® A’s file and, upon learning of the two (2) prior violations in less than a year, recommended a \$5,000 fine. (*Revised 11/13*)

**Example B:** REALTOR® B, who had recently received their real estate license, was found to have violated Article 4 for failing to disclose to their seller-client that the purchaser that REALTOR® B had procured was, in fact, REALTOR® B’s spouse. In determining appropriate discipline, the Hearing Panel considered REALTOR® B’s limited experience in the real estate business and the fact that this was the first time that REALTOR® B had been found in violation of the Code. The Hearing Panel also considered that REALTOR® B’s failure to disclose had not been inadvertent or unintentional and that REALTOR® B had knowingly concealed from their client a key fact that might have influenced the client’s decision to accept the offer from REALTOR® B’s spouse. Based on the seriousness of the

violation and REALTOR® B's conscious disregard for their disclosure obligation, the Hearing Panel recommended a \$5,000 fine and retaking the ethics orientation required for new members. *(Revised 11/13)*

**Example C:** In social media discussions, REALTOR® C posted several discriminatory and offensive comments which were deemed to be in violation of Article 10 as they discriminated against individuals on the basis of race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity. In determining appropriate discipline, the Hearing Panel considered REALTORS® C's comments as hate speech and discrimination in violation of Article 10 and had reason to believe that a violation of the public trust occurred. Based on the offensiveness of REALTOR® C's comments and their total disregard for the Code of Ethics' obligations to not be a party to any plan to discriminate against members of the protected classes of Article 10, the Hearing Panel recommended a \$5,000 fine and mandatory completion of implicit bias training. *(Revised 11/22)*

# Minnesota Realtors®

## SANCTIONING GUIDELINES

*The Code of Ethics is designed to establish a public and professional consensus against which the practice and conduct of REALTORS® and REALTOR-ASSOCIATES® may be judged. REALTORS® and REALTOR-ASSOCIATES® in joining a Board signify their intention to abide by the Code and thereby enhance the public and professional image of themselves and all other REALTORS®. Adherence to the Code is the first great bond between REALTORS® and REALTOR-ASSOCIATES® throughout the country, and is an obligation voluntarily accepted by them to ensure high standards of professional conduct to serve the interests of their clients and customers (from the Introduction to the Code of Ethics and Arbitration Manual, National Association of REALTORS®).*

Fundamental to fair and consistent Code enforcement is reasonable and judicious use of discipline, as both an educational device and as punishment. Discipline that can be imposed is **strictly limited** to those forms authorized in the Manual. The Manual authorizes a wide variety of sanctions one or more of which may be imposed for ethics violations and for violations of other membership duties including:

**Letter of Warning Letter of Reprimand**  
**Attendance of Education Class Fine**  
**Suspension Expulsion**  
**Cease or Refrain from Conduct**  
**Refer Matter to Licensing Authority (MN DOC)**

Code enforcement achieves a number of important goals. Where REALTORS® have been wrongly or mistakenly charged with unethical conduct, the hearing process provides personal and professional vindication. Where violations are determined, the hearing process and resulting discipline educates members about their professional obligations and serves as a meaningful deterrent to future violations.

Determining that a violation of one or more Articles has occurred is only a part of a Hearing Panel's job. Equally important is crafting discipline commensurate with the offense.

**COMMENSURATE WITH THE OFFENSE:** Panels will want to consider that many violations are unintentional or inadvertent due to lack of familiarity with the Code and its obligations, inexperience, oversight, or as unintentional mistakes. In such cases, the primary purpose of discipline should be educational to ensure that similar violations do not occur in the future and the respondent learns what conduct is expected of them. In other cases, violations can occur because of knowing disregard for the Code and its duties. In such cases, greater emphasis will be placed on the punitive nature of discipline and a more severe sanction would be appropriate.

Hearing Panels are cautioned of the due process concerns of considering a respondent's history of Code violations, as considering too long of a history involving different types of violations can unreasonably affect the severity of the discipline. If there is consistency in the types of violations or if the violations are of the public trust, considering a longer history of violations could be appropriate in crafting meaningful discipline aimed at stopping the behavior. *(Revised 11/23)*

**PROGRESSIVE DISCIPLINE:** Discipline imposed for violations of the Code of Ethics or for violations of other membership duties should increase incrementally for subsequent violations. The disciplinary emphasis where first time violations occur should be primarily educational. Repeated or subsequent violations should result in more serious forms of discipline being utilized, including substantial fines, suspension and termination of membership. At the same time, there may be instances where a first-time violation is not attributable to ignorance or oversight, but rather blatant disregard for the Code and its obligations. While the educational emphasis of Code enforcement cannot be disregarded, the fact that the Code exists to protect the public must be carefully considered in determining appropriate discipline.

- A "gray area" can exist with respect to "first time violations" that are clearly not the result of ignorance or mistake but rather demonstrate flagrant disregard for the Code's obligations. While the educational aspect of Code enforcement cannot be disregarded, the fact that the Code exists to protect the public must also be seriously considered in determining commensurate discipline.

# DISCIPLINARY GUIDELINES

**FACTORS TO BE CONSIDERED:** Factors that Ethics Hearing Panels should consider when determining appropriate discipline include, but are not limited to:

- The nature of the violation.
- Harm caused by the violation. Was the violation a minor mistake causing little or no harm or, alternatively, was a client, customer, member of the public, or another REALTOR® harmed? Was the violation one of the public trust, including demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud? (*Revised 11/20*)
- Was the violation inadvertent or unintentional or, conversely, was it the result of knowing disregard for the Code's obligations?
- How much real estate experience did the violator have? Did they, or should they, have known better?
- Has the violator been found in violation of the Code previously? How often? How recently? Is the current violation related or similar to earlier violations?
  - Respondents' records of earlier violations (or, conversely, the fact that they have not violated the Code in the past) can be considered in determining appropriate discipline. Hearing Panels cannot consider past violations in deciding whether the conduct currently complained of violated the Code.
- Are there mitigating or extenuating circumstances that should be considered in determining appropriate discipline?
  - The fact that a respondent recognized or acknowledged inappropriate or unethical conduct or took steps to remediate or minimize harm or injury that may have resulted from the respondent's conduct, should be considered in determining appropriate discipline.
- Did the violator acknowledge the violation? Did the violator express remorse or contrition
- Are there other factors that ought to be considered?

**DISSENTING VOTE:** Any Hearing Panel member not voting with the majority may dissent from all or any portion of the findings or decision.

## FINES

- A fine can be levied from a minimum of \$250 to a maximum of \$15,000, payable to the Minnesota Realtors®. If a fine is issued, it should be for an amount not less than \$250 and not more than \$15,000.
- Fines are to be determined on the basis of sanction imposed by the Hearing Panel and not on the basis of the number of Articles of the Code violated on a particular occasion.

## LETTER OF WARNING

- Letter to be placed in Member's file.
- Used for violations that do not include a fine but could include other disciplines such as educational classes or cease or refrain requirements.

## LETTER OF REPRIMAND

- Letter to be placed in Member's file.
- A fine of a minimum of \$250 should be included with the letter.

## ATTENDANCE AT EDUCATIONAL CLASS

- Member required to attend a designated continuing education class specified by the Hearing Panel (i.e. ethics, agency, forms, contracts, risk management, etc.).
- A fine of a minimum of \$500 should be included with the letter.

## MEMBERSHIP PLACED ON PROBATION

- For a period of time not less than thirty (30) days nor for more than one (1) year.
- A fine of a minimum of \$750 should be included along with the probation.
- All other discipline recommended by the Hearing Panel will be held in abeyance during the term of probation. Any subsequent finding of a violation of the Code of Ethics during the probationary period, may, at the discretion of the MNR Leadership Team, result in the imposition of the suspended discipline.

## MEMBERSHIP SUSPENDED

- For a stated period of time not less than thirty (30) days nor more than one (1) year, with automatic reinstatement of membership in good standing at the end of the specified period of suspension.
- If suspension includes MLS access, such suspension must be noted in discipline.

- A fine of a minimum of \$1000 should be included along with the suspension.

## **EXPULSION**

- A member expelled from REALTOR® organization with **no** reinstatement privilege for a specified period of one (1) to three (3) years, with reinstatement of membership to be by application only after the specified period of time and on the merits of the application at the time received and after all outstanding financial obligations have been satisfied.
- A discipline which includes expulsion must first be reviewed by MNR Legal Counsel before the decision and discipline is sent to the parties.

## **IN LIEU OF SUSPENSION OR EXPULSION**

- A member may be assessed an amount not to exceed \$15,000, in lieu of suspension or termination, which can be utilized only once in any three (3) year period.

## **CEASE OR REFRAIN FROM CONDUCT**

Members may also be required to cease or refrain from continued conduct deemed to be in violation of the Code, or to take affirmative steps to ensure compliance with the Code, within a time period to be determined by the hearing panel. Where discipline is imposed pursuant to this section, the decision should also include additional discipline (e.g. suspension or termination of membership) that will be imposed for failure to comply by the date specified, and to continue to comply for a specified period not to exceed three (3) years from the date of required compliance. *(Adopted 05/14)*

## **REFER TO STATE LICENSING AUTHORITY (Optional)**

A Hearing Panel may also recommend referring the matter to the Minnesota Department of Commerce for additional consideration if there are concerns regarding licensing and possible real estate regulatory violations. Such referral shall occur only after the Hearing Panel decision has been finalized either by an Appeal Tribunal or Ratification Panel.

## **REFER TO STATE LICENSING AUTHORITY (Mandatory)**

Final determination of ethics decisions holding REALTORS® in violation of the Code of Ethics must be forwarded to the Minnesota Department of Commerce in the following instances where “public trust” was determined to have been violated:

- Misappropriation of client or customer funds or property.
- Discrimination against the protected classes under the Code of Ethics.
- Fraud.

Such referral shall occur only after the Hearing Panel decision has been finalized either by an Appeal Tribunal or Ratification Panel.

### ***First violation example #1 (or first violation within three (3) years):***

- violation considered relatively minor, or
- little or no harm or injury caused to others, or
- violation resulted from ignorance or misunderstanding

#### ***Possible discipline:***

- letter of warning
- fine of \$500 or less
- attendance at relevant education session
- any combination of the above *(Revised 11/20)*

### ***First violation example #2 (or first violation within three (3) years):***

- violation considered relatively serious, or
- some harm or injury caused to others, or
- violation resulted from disregard for the Code’s obligations

#### ***Possible discipline:***

- letter of reprimand
- fine of \$2,000 or less
- attendance at relevant education session(s)
- any combination of the above *(Revised 11/20)*

### ***First violation example #3 (or first violation within three years):***

- violation considered very serious, or
- the violation was of Article 10 as interpreted by its Standards of Practice, or of Article 3 as interpreted by Standard of Practice 3-11, or
- substantial harm or injury caused to others, or

- violation resulted from knowing disregard of the Code's obligations

*Possible discipline:*

- letter of reprimand
- fine of \$10,000 or less
- attendance at relevant education session(s)
- suspension for ninety (90) days or less
- any combination of the above
- termination of membership for up to three (3) years

*(Revised 11/20)*

***Repeat violations example #1 (within three (3) years):***

- current violation considered relatively minor, or
- little or no harm or injury caused to others, or
- violation resulted from ignorance or misunderstanding

*Possible discipline:*

- attendance at relevant education session(s) or course
- fine of \$2,000 or less *(Revised 11/20)*

***Repeat violations example #2 (within three (3) years):***

- current violation considered relatively serious, or
- some harm or injury caused to others, or
- violation resulted from disregard for the Code's obligation

*Possible discipline:*

- attendance at relevant education session(s) or course
- fine of \$10,000 or less
- suspension for three (3) months or less
- any combination of the above *(Revised 11/20)*

***Repeat violations example #3 (within three (3) years):***

- violation considered very serious, or
- the violation was of Article 10 as interpreted by its Standards of Practice, or of Article 3 as interpreted by Standard of Practice 3-11, or
- substantial harm or injury caused to others, or
- violation resulted from knowing disregard for the Code's obligations

*Possible discipline:*

- attendance at relevant education session(s) or course
- fine of \$15,000 or less
- suspension for six (6) months or less
- any combination of the above
- termination of membership for up to three (3) years

*(Revised 11/20)*

**PROBATION:** In addition to imposing discipline, the Hearing Panel can also recommend that the disciplined member be put on probation. The fact that one or more forms of discipline will be held in abeyance during the probationary period does not bar imposition of other forms of discipline which will not be held in abeyance. Probation is not a form of discipline. When a member is put on probation the discipline recommended by the Hearing Panel is held in abeyance for a stipulated period of time not longer than one (1) year. Any violation of the Code of Ethics which occurs during the probationary period may, at the discretion of the Ratification Panel, result in the imposition of suspended discipline. Absent any violation during the probationary period, both the probationary status and the suspended discipline are considered fulfilled, and the member's record will reflect the fulfillment. The fact that one or more forms of discipline will be held in abeyance during the probationary period does not bar imposition of other forms of discipline which will not be held in abeyance. *(Revised 11/23)*

More serious forms of discipline (including possible termination of MLS privileges, suspension from membership for up to one [1] year, or termination of membership for up to three [3] years) may be appropriate in cases of very serious violations or in cases of repeated violations. Cases in which there is reason to believe that violations of the public trust, including demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud have occurred are considered particularly egregious. Associations are encouraged to critically examine these types of cases and

recommend discipline consistent with the seriousness of these violations, their harm to consumers, and to the reputation of REALTORS® as committed to the highest level of professionalism. *(Revised 11/20)*

**Important Note:** These are not sentencing rules or requirements, but rather simply suggestions to guide Hearing Panels in determining appropriate discipline based both on the current violation and the violator's previous record of ethical conduct.

**Waiver of Hearing:** If Respondent has waived their right to a hearing and agrees to accept the discipline, the discipline will not exceed a fine in excess of \$15,000 or suspension for a period of thirty (30) days should a violation of the Code ultimately be determined. Discipline that may be imposed if a violation is determined, may only include one or more of the following: a letter of warning or reprimand, mandatory attendance at a relevant education program, probation, suspension for thirty (30) days, or a fine not in excess of \$15,000. In addition to imposing discipline, the Hearing Panel can also recommend to the Ratification Panel that the disciplined member be put on probation. Probation is not a form of discipline.

# Appendix VIII to Part Four

## Procedures for Consideration of Alleged Violations of Article IV, Section 2, Bylaws, NATIONAL ASSOCIATION OF REALTORS®

Alleged violations of Article IV, Section 2, Bylaws, NATIONAL ASSOCIATION OF REALTORS® will be received and reviewed by the Chairman and Vice Chairman of the Professional Standards Committee in consultation with staff and counsel. A written response will be requested from any Board so charged. Staff and counsel will then attempt to provide technical and procedural assistance to the Board cited in the complaint when deemed appropriate by the Chairman and Vice Chairman. Where the efforts of staff and counsel to affect a resolution are unsuccessful, the Chairman of the Professional Standards Committee, the Vice Chairman, and the Immediate Past Chairman will determine if the complaint, if taken as true on its face, states a possible violation of Article IV, Section 2. If the Chairman, the Vice Chairman, and the Immediate Past Chairman determine that the complaint does not state a possible violation of Article IV, Section 2, the complaint will be dismissed and not be subject to further consideration. If the Chairman, the Vice Chairman, and the Immediate Past Chairman determine that the complaint, if taken as true on its face, states a possible violation of Article IV, Section 2, the alleged violation will be considered by a special Hearing Panel of five (5) members of the Professional Standards Committee selected by the Chairman that will meet at one of the regularly scheduled meetings of the National Association or, where deemed necessary by the President, at a special meeting called for the purpose. Any challenge to the qualifications of a panel member shall be decided by the Chairman. The burden shall be on the complainant to show that the Board has failed to satisfy its obligation under Article IV, Section 2. (*Revised 05/03*)

Both the complainant and respondent may submit supporting documentation of no more than one hundred (100) pages in support of the alleged violation or in support of the Board's response to the charge. Such materials must be received by the National Association no later than thirty (30) days prior to the date of the hearing and will be provided to the members of the Hearing Panel prior to the hearing.

Both the complainant and the respondent may be represented by counsel at the hearing. The procedures to be followed at the hearing will parallel, as closely as possible, those established in the *Code of Ethics and Arbitration Manual* for the conduct of an ethics hearing, in effect at the time the complaint is received by the National Association. Any variations from the procedures established in the *Code of Ethics and Arbitration Manual* will be made at the discretion of the Chairman of the Professional Standards Committee.

The decision of the Hearing Panel will be provided to the parties no more than sixty (60) days after the hearing. The decision will be signed by a majority of the Hearing Panel members or alternatively, will be accompanied by certification from staff that the panel's decision has been reviewed by and is concurred in by a majority of the Hearing Panel members.

If either the complainant or respondent chooses to appeal the Hearing Panel's decision, a written request for appeal must be filed with the National Association within thirty (30) days of receipt of the decision by the parties. The request for appeal must specify, in detail, the bases on which the Hearing Panel's decision is being challenged. Upon receipt of a request for appeal, staff will put the matter on the agenda of the Professional Standards Committee at its next regularly scheduled meeting. The appeal hearing will be the final matter of business on the committee's agenda and will be considered in executive session. The party requesting the appeal will have fifteen (15) minutes to explain why the decision of the Hearing Panel should be modified or should not be adopted. The Chairman of the Hearing Panel will then have fifteen (15) minutes to respond. Following that, the party requesting the appeal, the Chairman of the Hearing Panel, and the non-appealing party will each have five (5) minutes to offer any rebuttal and to make any closing statement. Following this, the parties will be dismissed.

Following the closing statements, the Professional Standards Committee will remain in executive session for the purpose of determining whether the Hearing Panel's decision should be affirmed, modified, or reversed. The decision of the Professional Standards Committee will be final and binding and not subject to any further review or appeal with the sole exception that any recommendation that a Board's status as a member of the National Association be terminated shall be reported to the Board of Directors with the final decision to be made by the Directors.

In instances where no appeal is made to the decision of the Hearing Panel within the allotted thirty (30) days, the decision of the Hearing Panel will be considered final and binding and not subject to further review or appeal but shall be reported by the Chairman of the Hearing Panel to the Professional Standards Committee at the next regularly scheduled meeting for informational purposes. Any recommendation that a Board's status as a member of the National Association be terminated shall be reported to the Board of Directors with the final decision to be made by the Directors.

In the event the charter of any Board is revoked, the jurisdiction shall revert to the status of territory unassigned by the National Association, and this shall be administratively entered upon the Board jurisdiction records of the National Association, and a report shall be made to the Membership Policy and Board Jurisdiction Committee.

# Appendix IX to Part Four

## Presenting and Negotiating Multiple Offers

“When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their clients. This obligation to the client’s interests is primary, but it does not relieve REALTORS® of their obligation to treat all parties honestly.” (from Article 1 of the Code of Ethics)

“REALTORS® shall submit offers and counteroffers objectively and as quickly as possible.” (Standard of Practice 1-6)

Perhaps no situation routinely faced by REALTORS® can be more frustrating, fraught with potential for misunderstanding and missed opportunity, and elusive of a formulaic solution than presenting and negotiating multiple purchase or lease offers and/or counteroffers on the same property. Consider the competing dynamics. Listing brokers are charged with helping sellers get the highest price and the most favorable terms for their property. Buyers’ brokers help their clients purchase property at the lowest price and on favorable terms. Balanced against the Code’s mandate of honesty is the imperative to refrain from making disclosures that may not, in the final analysis, be in a client’s interests. *(Revised 11/01)*

Will disclosing the existence of one offer make a second potential purchaser more likely to sign a full price purchase offer—or to pursue a different opportunity? Will telling several potential purchasers that each will be given a final opportunity to make their best offer result in spirited competition for the seller’s property—or in a table devoid of offers?

What is fair? What is honest? What is to be done? Who decides? And why is there not a simple way to deal with these situations?

As REALTORS® know, there are almost never simple answers to complex situations. And multiple offer presentations and negotiations are nothing if not complex. But, although there is not a single, standard approach to dealing with multiple offers, there are fundamental principles to guide REALTORS®. While these guidelines focus on negotiation of purchase offers, the following general principles are equally applicable to negotiation of lease agreements. *(Revised 11/01)*

- Be aware of your duties to your client—seller or buyer—both as established in the Code of Ethics and in state law and regulations. *(Revised 5/01)*

The Code requires you to protect and promote your client’s interests. State law or regulations will likely also spell out duties you owe to your client.

- The Code requires that you be honest with all parties. State law or regulations will likely spell out duties you owe to other parties and to other real estate professionals. Those duties may vary from the general guidance offered here. REALTORS® need to be familiar with applicable laws and regulations.

Be aware of your duties to other parties—both as established in the Code of Ethics and in state law and regulation.

- Remember that the decisions about how offers will be presented, how offers will be negotiated, whether counteroffers will be made and ultimately which offer, if any, will be accepted, are made by the seller—not by the listing broker. *(Revised 5/01)*
- Remember that decisions about how counteroffers will be presented, how counteroffers will be negotiated, and whether a counteroffer will be accepted, are made by the buyer—not by the buyer’s broker. *(Adopted 5/01)*
- When taking listings, explain to sellers that receiving multiple, competing offers is a possibility. Explain the various ways they may be dealt with (e.g., acceptance of the “best” offer; informing all potential purchasers that other offers are on the table and inviting them to make their best offer; countering one offer while putting the others to the side; countering one offer while rejecting the other offers, etc.).

Explain the pluses and minuses of each approach (patience may result in an even better offer; inviting each offeror to make their “best” offer may produce a better offer[s] than what is currently on the table—or may discourage offerors and result in their pursuing other properties).

Explain that your advice is just that and that your past experience cannot guarantee what a particular buyer may do.

Remember—and remind the seller—that the decisions are theirs to make—not yours, and that you are bound by their lawful and ethical instructions.

- When entering into buyer representation agreements, explain to buyers that you or your firm may represent more than one buyer-client, that more than one of your clients or your firm’s clients may be interested in purchasing the same property, and how offers and counteroffers will be negotiated if that happens. *(Adopted 5/01)*

Explain the pluses and minuses of various negotiating strategies (that a “low” initial offer may result in the buyer purchasing the desired property at less than the listed price—or in another, higher offer from another buyer being accepted; that a full price offer may result in the buyer purchasing the desired property while paying more than the seller might have taken for the property, etc.). *(Adopted 05/01)*

Explain to the buyer that sellers are not bound by the Code of Ethics. Sellers, in multiple offer situations, are not prohibited from “shopping” offers. Real estate brokers may, unless prohibited by law or regulation, “shop” offers. Therefore, REALTORS® assisting purchasers in formulating purchase offers should advise those purchasers it is possible that the existence, terms, and conditions of any offer they make may be disclosed to other purchasers by sellers or by sellers’ representatives except where such disclosure is prohibited by law or regulation. *(Adopted 5/05)*

Remember—and remind the buyer—that the decisions are theirs to make—not yours, and that you are bound by their lawful and ethical instructions. *(Adopted 5/01)*

- If the possibility of multiple offers—and the various ways they might be dealt with—were not discussed with the seller when their property was listed and it becomes apparent that multiple offers may be (or have been) made, immediately explain the options and alternatives available to the sellers—and get direction from them.
- When representing sellers or buyers, be mindful of Standard of Practice 1-6’s charge to “. . . submit offers and counteroffers objectively and as quickly as possible.” *(Revised 5/01)*
- With the sellers’ approval “. . . divulge the existence of offers on the property” consistent with Standard of Practice 1-15. *(Adopted 11/02)*
- While the Code of Ethics does not expressly mandate “fairness” (given its inherent subjectivity), remember that the Preamble has long noted that “. . . REALTOR® has come to connote competency, fairness, and high integrity. . .” If a seller directs you to advise offerors about the existence of other purchase offers, fairness dictates that all offerors or their representatives be so informed.
- Article 3 calls on REALTORS® to “. . . cooperate with other brokers except when cooperation is not in the client’s best interest.” Implicit in cooperation is forthright sharing of information related to cooperative transactions and potential cooperative transactions. Much of the frustration that occurs in multiple offer situations results from cooperating brokers being unaware of the status of offers they have procured. Listing brokers should make reasonable efforts to keep cooperating brokers informed. Similarly, buyer brokers should make reasonable efforts to keep listing brokers informed about the status of counteroffers their seller-clients have made. *(Revised 5/01)*
- Realize that in multiple offer situations only one offer will result in a sale and one (or more) potential purchasers will be disappointed that their offer was not accepted. While little can be done to assuage their disappointment, fair and honest treatment throughout the process; coupled with prompt, ongoing and open communication, will enhance the likelihood they will feel they were treated fairly and honestly. In this regard, “. . . REALTORS® can take no safer guide than that which has been handed down through the centuries, embodied in the Golden Rule, ‘Whatsoever ye would that others should do to you, do ye even so to them.’” (from the Preamble to the Code of Ethics). *(Revised 5/05)*

# Appendix X to Part Four

## Before You File an Ethics Complaint

### Background

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 Minnesota Realtors®. In addition to processing formal ethics complaints against its REALTOR® members, Minnesota Realtors® offers informal dispute resolving processes (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. *(Revised 11/15)*

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.
- 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 REALTORS® membership can be suspended or terminated. 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. *(Revised 11/15)*

- 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

Minnesota 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 Minnesota Realtors® within one hundred eighty (180) days after the alleged offense and facts relating to it could have been known by the complainant in the exercise of reasonable diligence or within one hundred eighty (180) days after the conclusion of the transaction or event, whichever is later (unless the Association'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.
- Minnesota Realtors® may appoint a member of the Professional Standards Committee to 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 or Association’s Grievance Review Panel. 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 Review Panel 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 Review Panel 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 an Appeal Tribunal of Minnesota 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 Minnesota Realtors® for detailed information on the bases and time limits for appealing decisions. (Revised 11/14)

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, Minnesota Realtors® can share options for dispute resolution, including the procedures and forms necessary to file an ethics complaint. (Revised 11/15)

# Appendix XII to Part Four

## Appropriate Interpretation of Standard of Practice 10-5 and Statement of Professional Standards Policy 29

Standard of Practice 10-5 prohibits REALTORS® from using harassing speech, hate speech, epithets or slurs based on the protected classes of Article 10. Statement of Professional Standards Policy 29 provides that REALTORS® are subject to disciplinary action with respect to all of their activities, except in those circumstances in which the Code of Ethics only applies to real estate related activities by virtue of its Articles or Standards of Practice. *(Revised 5/21)*

To assist Hearing Panels in the appropriate interpretation and application of Standard of Practice 10-5 of the Code of Ethics and Statement of Professional Standards Policy 29, the Professional Standards Committee of the National Association provides the following for consideration by Hearing Panels when asked to determine whether a violation of Article 10 as supported by Standard of Practice 10-5 has occurred.

While the overall focus of Standard of Practice 10-5 is on what might be loosely termed “offensive” or “discriminatory” speech, Hearing Panels should be clear that the Standard of Practice is narrowly limited to conduct related to the requirements of equal professional service and that a REALTOR® refrain from being a party to a plan or agreement to discriminate on the basis of the protected classes of Article 10. Hearing Panels should also be fully aware of the nature and scope of the Standards of Practice under Article 10 and their relationship to fair housing law as described in Appendix III to Part Four of the *Code of Ethics and Arbitration Manual*. As described in Appendix III, Article 10 and its Standards of Practice fully integrate the five basic fair housing obligations that were recognized by NAR’s Code of Fair Housing Practices before it was sunset. *(Revised 5/21)*

Hearing Panels should note that while all of the Standards of Practice under Article 10 inform them as to the interpretation and application of Standard of Practice 10-5, Standard of Practice 10-3 is particularly analogous in its application to discriminatory speech in advertising based on the protected classes of Article 10.

Standard of Practice 10-5 is not focused on types of speech that might be subjectively deemed “offensive” or “discriminatory” by one person and not another. The Standard of Practice is based on very particular types of speech that are directly connected to the protected classes of race, color, religion, sex, disability, familial status, national origin, sexual orientation or gender identity under Article 10. Only the use of harassing speech, hate speech, epithets and slurs **based on** the protected classes of Article 10 are prohibited. The terms “harassing speech,” “hate speech,” “epithets,” and “slurs” can be commonly understood by use of a dictionary as well as other easily available references. *(Revised 11/22)*

For example, NAR’s Code of Conduct and Anti-Harassment Policy clearly defines “harassment” and “sexual harassment.”

*Harassment includes inappropriate conduct, comment, display, action, or gesture based on another person’s sex, color, race, religion, national origin, age, disability, sexual orientation, gender identity, and any other protected characteristic.*

*Examples of harassment include, but are not limited to: epithets, slurs or negative stereotyping; threatening, intimidating or hostile acts; denigrating jokes; and the display or circulation of written or graphic material that denigrates or shows hostility toward an individual or group based on a protected characteristic.*

“Sexual Harassment” includes not only physical acts but also includes verbal and non-verbal/non-physical acts.

*Sexual harassment can be:*

- Verbal: Sexual innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions, or threats.
- Non-Verbal: Sexually suggestive objects or pictures, graphic commentaries, suggestive or insulting sounds, leering, whistling, or obscene gestures. ...

Harassing speech in Standard of Practice 10-5 is similar to the definition of harassment in NAR’s Code of Conduct and Anti-Harassment Policy, except that Standard of Practice 10-5 is limited to the protected classes under Article 10, Hearing Panels should look to this existing information on harassment to determine whether harassing speech has occurred and then look to determine whether the harassing speech was based on one of the protected classes. *(Revised 5/21)*

In similar fashion, Merriam Webster's Dictionary defines "hate speech," "epithets," and "slurs" as follows:

Hate Speech: *speech that is intended to insult, offend, or intimidate a person because of some trait (as race, religion, sexual orientation, national origin, or disability).*

Epithet: **1a:** *a characterizing word or phrase accompanying or occurring in place of the name of a person or thing; b:* *a disparaging or abusive word or phrase*

Slur: **1a:** *an insulting or disparaging remark or innuendo: ASPERSION; b:* *a shaming or degrading effect: STAIN, STIGMA*

Standard of Practice 10-5 should be interpreted as applying equally to speech, images, and symbols. *(Adopted 5/21)*

Again, Hearing Panels must look to whether the hate speech, epithet or slur is based on race, color, religion, sex, disability, familial status, national origin, sexual orientation or gender identity and not on some other non-protected characteristic. *(Revised 11/22)*

Under Statement of Professional Standards Policy #29, REALTORS® are subject to the Code of Ethics' standards in all of their activities. Thus, a violation of Article 10, as supported by Standard of Practice 10-5, can occur when a REALTOR® uses harassing speech, hate speech, epithets and slurs based on the protected classes in any media or context, regardless of whether related to their activities in the real estate business or their identification as a REALTOR®.

*(Adopted 11/20)*

# Part Five — Conduct of an Ethics Hearing

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An ethics hearing must be conducted in a manner which is fair to all parties. This means that the parties must know their rights and responsibilities in advance so they may properly prepare and present their positions. Procedures are required to assure an orderly hearing. But procedures may and should be modified as interests of justice and truth dictate. However, in modifying established procedures, care must be taken to assure that the rights and interests of all parties are protected. For this reason, variation from prescribed procedures should be reviewed with Association counsel and counsel for the parties prior to implementation.

Following are eleven (11) outlines. The first, second, third, fourth and fifth are outlines of procedural information of interest and concern primarily to the parties involved. This information should be provided to them well in advance of any hearing (Form #E-9, Form #E-9a, Form #E-9b, Form #E-9c, or Form #E-9d as appropriate, **Part Six**). The sixth, seventh, eighth and ninth outlines are primarily of interest to Hearing Panels and particularly to the Chairs who preside over ethics hearings. The tenth and eleventh outlines are primarily of interest to tribunals and particularly to Chairs who preside over ethics appeals.

## Outline of Procedure for Ethics Hearing

### Minnesota Realtors® State of Minnesota

*(To be transmitted in advance to both parties.)*

**Remote Testimony:** Hearings may be held in person, virtually, or a combination thereof. If the hearing is in person, testimony provided in the physical presence of the Hearing Panel is preferred, however, parties and witnesses to ethics hearings may be permitted to participate virtually in hearings at the discretion of the Hearing Panel Chair. Associations may, at their sole discretion, hold hearings where all parties must participate virtually. *(Adopted 11/21)*

**Postponement of hearing:** Postponement may be granted if there are extenuating circumstances. Parties' requests for continuance shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing. Requests are reviewed by the Hearing Panel Chair. If the request is approved by the Chair, all parties shall be advised of the date of the rescheduled hearing.

**Recording the hearing:** The Association shall record the proceeding and the Association's recording shall be the official record of the proceeding. Any party may, at the Association's discretion, record the proceeding or utilize a court reporter at their own expense. If a party utilizes a court reporter and orders a transcript, a copy of the transcription shall be made at the party's expense and presented to the Professional Standards Administrator. Videotaping is not permitted except with the advance express consent of the parties and the panelists. Any and all recordings should be conducted in accordance with state law. Copies of any recording or transcription are to be used only for the purpose of appeals or procedural reviews. Appeals and limited procedural reviews shall not be recorded by the Association or the parties. *(Revised 11/21)*

**Method and objective of procedure:** The Hearing Panel shall not be bound by the rules of evidence applicable in courts of law but shall afford all parties a full opportunity to be heard, present witnesses, and offer evidence, subject to its judgment as to relevance.

Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the other party(ies) and to the association at least seven (7) days prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. Evidence submitted to the association but not provided to the other party(ies) will be provided to the other party(ies) by the association at the time of submission. Evidence submitted at the time of the hearing will be evaluated for admissibility by the hearing panel chair. *(Adopted 05/15)*

**Due process procedure:** The hearing will proceed as follows:

- (1) Opening Statement by Chair - Chair cites authority to hear case and explains reason for hearing.
- (2) The basis of the complaint will be read into the record.
- (3) The testimony of all parties and witnesses will be affirmed. All witnesses will be excused from the hearing except while testifying.

- (4) Complainant will be given an opportunity to briefly explain Complainant's basic position and present evidence, testimony, and call witnesses on their behalf. All parties appearing at the hearing may be called as witnesses without advance notice.
- Respondent will be given an opportunity to cross-examine Complainant and witnesses.
  - Panel members may question Complainant and witnesses.
- (5) Respondent will be given an opportunity to briefly explain Respondent's basic position and present evidence, testimony, and call witnesses on their behalf.
- All parties appearing at the hearing may be called as witnesses without advance notice.
- Complainant will be given an opportunity to cross-examine Respondent and witnesses.
  - Panel members may question Respondent and witnesses.
- (6) The Panel members may ask questions at any time during the proceedings.
- (7) Chair may exclude any questions which they deem irrelevant or argumentative.
- (8) Each side may make a closing statement. Complainant will make the first closing statement and Respondent will make the final closing statement.
- (9) Chair will make closing statements and adjourn the hearing.
- (10) The Hearing Panel will go into executive session to decide the case. *(Revised 11/23)*

**Findings in ethics hearing:** The findings and recommendation for discipline, if any, shall be reduced to writing by the Hearing Panel and submitted to the Ratification Panel in accordance with the procedure of **Part Four, Section 23** of this Manual, unless otherwise appealed.

**Testimony:** Any testimony relating to the character or general reputation of either party shall not be permitted unless the Hearing Panel finds that such testimony has a direct bearing on the case. Chair may exclude any question which they deem irrelevant or argumentative.

**Use of counsel:** A party may be represented in any ethics hearing by legal counsel or by a REALTOR® of their choosing (or both). However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be nonappealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from the date of adjournment to enable the party to obtain alternate counsel, provided, however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing. *(Revised 11/96)*

**Confidential:** Be advised all matters discussed are strictly confidential.

## Outline of Procedure for Ethics Hearing Involving a Complaint and a Counter-Complaint

Minnesota Realtors®  
State of Minnesota

*(To be transmitted in advance to both parties.)*

**Remote Testimony:** Hearings may be held in person, virtually, or a combination thereof. If the hearing is in person, although testimony provided in the physical presence of the Hearing Panel is preferred, however parties and witnesses to ethics hearings may be permitted to participate virtually in hearings at the discretion of the Hearing Panel Chair. Associations may, at their sole discretion, hold hearings where all parties must participate virtually. *(Revised 11/21)*

**Postponement of hearing:** Postponement may be granted if there are extenuating circumstances. Parties' requests for continuance shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing. Requests are reviewed by the Hearing Panel Chair. If the request is approved by the Chair, all parties shall be advised of the date of the rescheduled hearing. *(Revised 11/14)*

**Recording the hearing:** The Association shall record the proceeding and the Association's recording shall be the official record of the proceeding. Any party may, at the party's sole expense, have a court reporter present or may record the proceedings and, if transcribed, shall furnish a copy to the Professional Standards Administrator. Videotaping is not permitted except with the advance express consent of the parties and the panelist. Any and all recordings should be conducted in accordance with state law. Copies of any recording or transcription are to be used only for the purpose of appeals or procedural reviews. Appeals and limited procedural reviews shall not be recorded by the Association or the parties. *(Revised 11/21)*

**Method and objective of procedure:** The Hearing Panel shall not be bound by the rules of evidence applicable in courts of law but shall afford all parties a full and fair opportunity to be heard, present witnesses, and offer evidence, subject to its judgment as to relevance.

Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the other party(ies) and to the association at least seven (7) days prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. Evidence submitted to the association but not provided to the other party(ies) will be provided to the other party(ies) by the association and the time of submission. Evidence submitted at the time of the hearing will be evaluated for admissibility by the hearing panel chair. *(Adopted 05/15)*

**Due process procedure:** The hearing will proceed as follows:

- (1) Opening statement by Chair - Chair cites authority to hear case and explains reason for hearing.
- (2) The basis of the complaint will be read into the record.
- (3) The testimony of all parties and witness(es) will be affirmed. All witnesses will be excused from the hearing except while testifying. All parties appearing at the hearing may be called as witnesses without advance notice.
- (4) Complainant/Counter-Respondent presents their case by offering testimony and evidence from themselves and/or their witness(es) to support the allegations of violations of the Code of Ethics by Respondent/Counter-Complainant.
  - (a) Respondent/Counter-Complainant may cross-examine Complainant/Counter-Respondent and/or their witness(es) immediately after each has testified.
  - (b) The Hearing Panel may question Complainant/Counter-Respondent and/or their witness(es) immediately after each has testified.
- (5) Respondent/Counter-Complainant presents their defenses and case by offering testimony and evidence from themselves and/or their witness(es) to rebut Complainant/Counter-Respondent's contention that they violated the Code of Ethics and support the allegations of violations of the Code of Ethics by Complainant/Counter-Respondent.
  - (a) Complainant/Counter-Respondent may cross-examine Respondent/Counter-Complainant and/or their witness(es) immediately after each has testified.

- (b) The Hearing Panel may question Respondent/Counter-Complainant and/or their witness(es) immediately after each has testified.
- (6) Complainant/Counter-Respondent presents their defenses to Counter-Complainant by offering testimony and evidence from themselves and/or their witness(es) to refute the allegations made by Counter-Complainant.
  - (a) Respondent/Counter-Complainant may cross-examine Complainant/Counter-Respondent and/or their witness(es) immediately after each has testified.
  - (b) The Hearing Panel may question Complainant/Counter-Respondent and/or their witness(es) immediately after each has testified.
- (7) The Panel members may ask questions at any time during the proceedings.
- (8) Chair may exclude any questions which they deem irrelevant or argumentative.
- (9) Complainant/Counter-Respondent may present uninterrupted closing statements addressing the allegations of violations of the Code of Ethics by Respondent/Counter-Complainant and/or refuting the allegations made by Respondent/Counter-Complainant.
- (10) Respondent/Counter-Complainant may present uninterrupted closing statements addressing the allegations of violations of the Code of Ethics by Complainant/Counter-Respondent and/or refuting the allegations made by Complainant/Counter-Respondent.
- (11) Chair will then make closing statements and adjourn the hearing.
- (12) Hearing Panel will go into executive session to decide the case.

**Findings in ethics hearing:** The findings and recommendation for discipline, if any, shall be reduced to writing by the Hearing Panel and submitted to the Ratification Panel in accordance with the procedure of **Part Four, Section 23** of this Manual, unless otherwise appealed.

**Testimony:** Any testimony relating to the character or general reputation of either party shall not be permitted unless the Hearing Panel finds that such testimony has a direct bearing on the case. The Chair may exclude any question which they deem irrelevant or argumentative.

**Use of counsel:** A party may be represented in any ethics hearing by legal counsel or by a REALTOR® of their choosing (or both). However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be nonappealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from the date of adjournment to enable the party to obtain alternate counsel, provided, however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

**Confidential:** Be advised all matters discussed are strictly confidential.

## Outline of Procedure for Consolidated Ethics Hearing

Minnesota Realtors®  
State of Minnesota

*(To be transmitted in advance to all parties.)*

**Remote Testimony:** Hearings may be held in person, virtually, or a combination thereof. If the hearing is in person, although testimony provided in the physical presence of the Hearing Panel is preferred, however parties and witnesses to ethics hearings may be permitted to participate virtually in hearings at the discretion of the Hearing Panel Chair. Associations may, at their sole discretion, hold hearings where all parties must participate virtually. *(Revised 11/21)*

**Postponement of hearing:** Postponement may be granted if there are extenuating circumstances. Parties' requests for continuance shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing. Requests are reviewed by Hearing Panel Chair. If the request is approved by the Chair, all parties shall be advised of the date of the rescheduled hearing.

**Recording the hearing:** The Association shall record the proceeding and the Association's recording shall be the official record of the proceeding. Any party may, at the party's sole expense, have a court reporter present or may record the proceedings and, if transcribed, shall furnish a copy to the Professional Standards Administrator. Any and all recordings should be conducted in accordance with state law.

**Method and objective of procedure:** Hearing Panel shall not be bound by the rules of evidence applicable in courts of law but shall afford parties a full and fair opportunity to be heard, present witnesses, and offer evidence, subject to its judgment as to relevance.

Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the other party(ies) and to the association at least seven (7) days prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. Evidence submitted to the association but not provided to the other party(ies) will be provided to the other party(ies) by the association at the time of submission. Evidence submitted at the time of the hearing will be evaluated for admissibility by the hearing panel chair. *(Revised 11/21)*

**Due process procedure:** The hearing will proceed as follows:

- 1) Opening statement by Chair - Chair cites authority to hear case and explains reason for hearing.
- 2) The basis of the complaint will be read into the record.
- 3) The testimony of all parties and witnesses will be affirmed. All witnesses will be excused from the hearing except while testifying.
- 4) Presentation by Complainant(s) - Complainant(s) will be given, in turn, an opportunity to present evidence, testimony and call witnesses supporting the allegations of violations of the specific Article(s) alleged in their complaint.
  - Respondent(s) will be given, in turn, an opportunity to cross-examine Complainant(s) and their witnesses.
  - Hearing Panel may question Complainant(s) and their witnesses.
- 5) Presentation by Respondent(s) - Respondent(s) will be given, in turn, an opportunity to present evidence, testimony and call witnesses refuting the allegations of violation of the specific Article(s) alleged in the complaint(s).
  - Complainant(s) will be given, in turn, an opportunity to cross-examine Respondent(s) and their witnesses.
  - Hearing Panel may question Respondent(s) and their witnesses.
- 6) Cross-examination in which all parties are given a final opportunity to cross-examine each other - Complainant(s) may first ask any remaining questions of Respondent(s). Respondent(s) may then ask any remaining questions of Complainant(s),
- 7) Panel members may ask questions at any time during the proceedings.

- 8) Chair may exclude any questions which they deem irrelevant or argumentative.
- 9) When the parties and Hearing Panel members have no further questions, Complainant(s) and Respondent(s) (respectively) may present uninterrupted closing statements.
- 10) Chair will then make closing statements and adjourn the hearing.
- 11) Hearing Panel will go into executive session to decide the case.

**Findings in ethics hearing:** The findings and recommendation for discipline, if any, shall be reduced to writing by the Hearing Panel and submitted to the Ratification Panel in accordance with the procedure of **Part Four, Section 23** of this Manual, unless otherwise appealed.

**Testimony:** Any testimony relating to the character or general reputation of either party shall not be permitted unless the Hearing Panel finds that such testimony has a direct bearing on the case. Chair may exclude any question which they deem irrelevant or argumentative.

**Use of counsel:** A party may be represented in any ethics hearing by legal counsel or by a REALTOR® of their choosing (or both). However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be nonappealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from the date of adjournment to enable the party to obtain alternate counsel, provided, however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

**Confidential:** Be advised all matters discussed are strictly confidential.

## Outline of Procedure for Ethics Appeal

Minnesota Realtors®  
State of Minnesota

*(To be transmitted in advance to all parties.)*

**Remote Testimony:** Hearings may be held in person, virtually, or a combination thereof. If the hearing is in person, although testimony provided in the physical presence of the Hearing Panel is preferred, however parties and witnesses to ethics hearings may be permitted to participate virtually in hearings at the discretion of the Hearing Panel Chair. Associations may, at their sole discretion, hold hearings where all parties must participate virtually. *(Adopted 11/15)(Revised 11/21)*

**Postponement of hearing:** Postponement may be granted if there are extenuating circumstances. Parties' requests for continuance shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing. Requests are reviewed by the Hearing Panel Chair. If the request is approved by the Chair, all parties shall be advised of the date of the rescheduled hearing.

**No Recording of Ethics appeal hearing:** Ethics appeals are not to be recorded either by the Association or the parties.

**Method and objective of procedure:** The Appeal Tribunal is not dealing with questions of law and shall not be bound by the rules of evidence applicable in a court of law. All parties and their representatives to these proceedings will be allowed a full opportunity to be heard on the matters relevant to this issue. The Appeal Tribunal will seek to determine all ascertainable and relevant facts pertaining to the matter under consideration to arrive at a peer judgment and decision by the Appeal Tribunal. The Appeal Tribunal may rule at any time during the Appeal Hearing on the relevance of testimony being given or may exclude any question ruled to be irrelevant or argumentative at any time within the following procedure. Evidence submitted to the association but not provided to the other party(ies) will be provided to the other party(ies) by the association at the time of submission. Evidence submitted at the time of the hearing will be evaluated for admissibility by the hearing panel chair.

**Due process procedure.** The hearing will proceed as follows:

1. Opening statement by Appeal Tribunal Chair – Chair cites authority to hear case and explains reason for hearing.
2. The basis of the appeal will be read into the record.
3. The testimony of all parties will be affirmed.
4. Chair or representative of the original Ethics Hearing Panel will summarize the case, unless the sole basis for appeal is a deprivation of due process (in which case Chair will address that basis of appeal only).
5. Appellant will have an opportunity to offer corrections or modifications to the summary of the case and then to explain the bases for the appeal.
6. Nonappellant, if present, will have an opportunity to offer corrections or modifications to the summary of the case and then to explain why the original Ethics Hearing Panel's decision should be upheld.
7. Chair or representative of the original Hearing Panel will then be given an opportunity to explain why the original Ethics Hearing Panel's decision should be upheld.
8. The Appeal Tribunal members may ask questions of either party and Chair or representative of the original Hearing Panel at any time during the proceeding.
9. Parties have no right: (a) of cross-examination; (b) to call witnesses; (c) to present new evidence (except such new evidence as may bear upon a claim of deprivation of due process).
10. Each party and Chair or representative of the original Hearing Panel will have an opportunity to make closing statements.
11. The chair will then make closing statements and adjourn the appeal hearing.
12. The Appeal Tribunal will go into executive session to render a decision.

**Findings in ethics hearing:** The written decision of the Appeal Tribunal shall be transmitted to the parties in accordance with the procedure of **Part Four, Section 23** of this Manual.

**Testimony:** Any testimony relating to the character or general reputation of either party shall not be permitted unless the Hearing Panel finds that such testimony has a direct bearing on the case. The chair may exclude any question which they deem irrelevant or argumentative.

**Use of counsel:** A party may be represented in any ethics hearing by legal counsel or by a REALTOR® of their choosing (or both). However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be nonappealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from the date of adjournment to enable the party to obtain alternate counsel, provided, however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

**Confidential:** Be advised all matters discussed are strictly confidential.

## Outline of Procedure for Ethics Appeal: Complaint and Counter-Complaint

Minnesota Realtors®  
State of Minnesota

*(To be transmitted in advance to both parties.)*

**Remote Testimony:** Hearings may be held in person, virtually, or a combination thereof. If the hearing is in person, although testimony provided in the physical presence of the Hearing Panel is preferred, however parties and witnesses to ethics hearings may be permitted to participate virtually in hearings at the discretion of the Hearing Panel Chair. Associations may, at their sole discretion, hold hearings where all parties must participate virtually. *(Revised 11/24)*

**Postponement of hearing:** Postponement may be granted if there are extenuating circumstances. Parties' requests for continuance shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing. Requests are reviewed by the Hearing Panel Chair. If the request is approved by the Chair, all parties shall be advised of the date of the rescheduled hearing.

**No Recording of Ethics appeal hearing:** Ethics appeals are not to be recorded either by the Board or the parties.

**Method and objective of procedure:** The Appeal Tribunal is not dealing with questions of law and shall not be bound by the rules of evidence applicable in a court of law. All parties and their representatives to these proceedings will be allowed a full opportunity to be heard on the matters relevant to this issue. The Appeal Tribunal will seek to determine all ascertainable and relevant facts pertaining to the matter under consideration to arrive at a peer judgment and decision by the Appeal Tribunal. The Appeal Tribunal may rule at any time during the Appeal Hearing on the relevance of testimony being given, or may exclude any question ruled to be irrelevant or argumentative at any time within the following procedure. Evidence submitted to the association but not provided to the other party(ies) will be provided to the other party(ies) by the association at the time of submission. Evidence submitted at the time of the hearing will be evaluated for admissibility by the hearing panel chair.

**Due process procedure.** The hearing will proceed as follows:

1. Opening statement by Appeal Tribunal Chair – Chair cites authority to hear case and explains reason for hearing.
2. The basis of the complaint will be read into the record.
3. The testimony of all parties will be affirmed.
4. The chair or representative of the original Ethics Hearing Panel will summarize the cases. If the sole basis for appeal is a deprivation of due process, the Chair will address that basis of appeal only.
5. Appellant will have an opportunity to offer corrections or modifications to the summary of the cases and then to explain the basis for the appeal for each case.
6. Nonappellant, if present, will have an opportunity to offer corrections or modifications to the summary of the cases and then to explain why the original Ethics Hearing Panel's decision should be upheld.
7. Chair or representative of the original Hearing Panel will then be given an opportunity to explain why the original Ethics Hearing Panel's decision should be upheld.
8. The Appeal Tribunal members may ask questions of either party and the Chair or representative of the original Hearing Panel at any time during the proceeding.
9. Parties have no right: (a) of cross-examination; (b) to call witnesses; (c) to present new evidence (except such new evidence as may bear upon a claim of deprivation of due process).
10. Each party and the Chair or representative of the original Hearing Panel will have an opportunity to make closing statements.
11. The chair will then make closing statements and adjourn the appeal hearing.
12. The Appeal Tribunal will go into executive session to render a decision.

**Findings in ethics hearing:** The written decision of the Appeal Tribunal shall be transmitted to the parties in accordance with the procedure of **Part Four, Section 23** of the Manual.

**Testimony:** Any testimony relating to the character or general reputation of either party shall not be permitted unless the Hearing Panel finds that such testimony has a direct bearing on the case. The Chair may exclude any question which they deem irrelevant or argumentative.

**Use of counsel:** A party may be represented in any ethics hearing by legal counsel or by a REALTOR® of their choosing (or both). However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be nonappealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from the date of adjournment to enable the party to obtain alternate counsel, provided, however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

**Confidential:** Be advised all matters discussed are strictly confidential.

## Chair's Procedural Guide: Conduct of an Ethics Hearing

### Minnesota Realtors® State of Minnesota

*(Ask the recording Professional Standards Administrator to make sure that the names of all parties present for the hearing have been added to this Guide and that all the appropriate blanks have been completed.)*

*(Ask all parties [including witnesses] to come into the hearing room.)*

**Start promptly:** Begin the hearing promptly at the noticed hearing time.

**Chair's opening statement and conduct of hearing:** Panel members and hearing participants, I now call this hearing to order. The Professional Standards Committee is charged with holding appropriate hearings for Minnesota Realtors® in accordance with the procedures as set forth in the Association's bylaws in matters concerning alleged unethical conduct of Members. The body meeting here is an impartial panel of the Professional Standards Committee that has been selected and called here today to ascertain the truth in the particular matter at hand, which is an ethics proceeding, and to render a decision on the testimony and evidence presented. It is to be noted that an ethics proceeding is to be clearly distinguished from an arbitration proceeding and should be treated as a completely separate matter. The particular matter to be considered by this panel at this time is an ethics proceeding.

If the parties have participated in Mediation, prior to this hearing, you are reminded that any offers of settlement that were not accepted or any suggested resolution proposed by the Mediation Office that was not accepted cannot be introduced as evidence nor considered in any manner during this hearing. No aspect of the mediation conference shall be relied upon or introduced as evidence in this (ethics/arbitration) hearing, including, but not limited to: views expressed or suggestions made by a party with respect to a possible settlement of the dispute; admissions made in the course of the mediation; proposals made or views expressed by the Mediator or the response of any party thereto.

The Professional Standards Committee is a body duly constituted under the authority of the bylaws of Minnesota Realtors® and has been duly appointed by the Leadership Team and approved by the Board of Directors. At this time, I would like to introduce members of this panel.

As you know, my name is \_\_\_\_\_, and I will serve as Chairperson of this panel.

At this time, I would like the members of the panel to introduce themselves as well as the Complainant(s) and Respondent(s), Respondent's Realtor® Principal, and any counsel and witnesses.

Also present at this hearing (if applicable) is:

1. **Alternate Panel Member:** *(If present – have them introduce themselves)*

We also have an Alternate Panel member attending the hearing here today. The Alternate Panel Member is a trained member of the MNR Professional Standards Committee and although they are attending the hearing they will not be acting as a participant in the hearing or the executive session nor vote on the decision unless one of the five originally appointed Hearing Panel members is unable to serve on the Hearing Panel from the commencement of the hearing until the hearing concludes.

2. **Case Administrator/ Counsel:**

All persons present are advised that this hearing is being recorded and that the recording may include audio and video.

No transcript will be prepared by the Association.

The parties are specifically advised that any recording or transcription that may be made of these proceedings can only be used for purposes of appeal, and any other use, including use in other ethics or arbitration hearings, is expressly prohibited.

Cellular phones, two-way radios and other transmitting devices may not be operated during the hearing absent specific advance authorization from the panel chair.

*(The Chair HAS/HAS NOT provided specific advanced authorization.)*

**Basis of hearing:** This hearing has been established to consider the complaint filed by (Complainant), the complainant, naming \_\_\_\_\_ (Respondent), the respondent, alleging a violation of Article(s) \_\_\_\_\_ of the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®.

This panel is not dealing with questions of law, and it is not governed by the technical rules of evidence which may apply in courts. This panel will seek to determine all ascertainable and relevant facts pertaining to the matter under consideration to arrive at a peer judgment and decision by the panel that is fair to all of the parties. The panel is governed and directed by the bylaws of Minnesota Realtors® and the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®. The panel determines its own rules of evidence and its own procedures to be followed with objectives of equity and due process. The following has been generally accepted by this panel as to the procedures to be followed during this hearing.

- (1) All parties or their representatives to these proceedings will be allowed a full opportunity to be heard on matters relevant to the issue. The panel may rule at any time during the hearing on the relevance of testimony being given or questions being directed to any party or their representative or to witnesses providing testimony. All parties and witnesses will be asked to affirm that the testimony given is the truth to the best of their knowledge.

*(Read #2 only if legal or REALTOR® counsel is present.)*

- (2) A party may be represented by legal counsel or a REALTOR® of their choosing (or both). However, no party may refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination or other grounds which the panel deems appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of their client if the panel desires direct testimony. Counsel is present to advise and consult with their client, and to speak for their client, subject to appropriate rulings or determinations by the panel. This panel will not tolerate any effort by any party or by counsel to any party to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings. The Chair may rule at any time on the admissibility of evidence. As Chair, I will act as keeper of the evidence introduced at this hearing and mark each with an exhibit identification number and date.
- (3) The members of this panel are authorized, individually, to ask questions as they deem pertinent and significant at any time during this hearing. To preserve order, I will rule on questions or testimony by the parties or their representatives, or by witnesses in these proceedings. If deemed necessary, I will consult with the members of the panel and with Association staff concerning such rulings. Association staff may offer procedural assistance from time to time throughout the proceedings. I ask that you direct all questions through me.
- (4) At this time, I request that all persons present in the room who expect to testify at this hearing stand and affirm.

*(Note to Chair: Please stand during affirmation)*

**Affirmation:** Raise your right hand and, following the question I pose, answer in the affirmative if you do affirm. “Do you affirm that the testimony you are about to give in this proceeding shall be the truth, the whole truth, and nothing but the truth?” Please be seated.

*Let the record show that all parties have answered in the affirmative.*

**(Note to Chair: Please read if there are witnesses present):**

**Excuse Witnesses:** *At this time, we will excuse all witnesses and ask them to wait outside until called.*

**Outline of procedure for hearing:** Both Complainant and Respondent were provided with a copy of the outline for these proceedings. Did each party receive the Outline?

*(If yes) Let the record show that both Complainant and Respondent have stated they did receive the Outline.*

*(If no, the party should be given a copy of the Outline and the Chair should determine whether that party has any objections to proceeding.)*

Do you have any questions concerning these proceedings?

*(If none) Let the record show that neither the Complainant nor the Respondent have any questions concerning the Outline of Procedure for an Ethics Hearing.*

Questions:

As noted in the Outline of Procedure, parties were strongly encouraged to provide any and all documents and evidence they intend to introduce prior to the hearing. If you find it necessary to submit evidence not previously provided, give it to the professional standards administrator. The administrator will first provide the evidence to the other party and shall determine if there are any objections. The Chair will rule on any objections and determine the relevance of the evidence prior to providing it to the panel.

We shall now proceed with the hearing.

Before I ask for statements from Complainant(s) and Respondent(s), please consider the following two points:

- (1) All the hearing panel members have read and re-read your written statements. You will be given an adequate opportunity to present your case, but I want to assure you that the panel members are familiar with the information you provided in the written statements.
- (2) Our express purpose today is to hear the arguments specifically related to the ethical issues raised by **Complainant**, against **Respondent**, alleging a violation of **Article(s) article numbers** of the Code of Ethics of the National Association of REALTORS®. If, in fact, the Chair finds anyone straying from that issue or bringing up situations unrelated to the hearing, you will be asked to stop.

**Presentation by Complainant(s):** The Complainant(s) will now state their case and present any evidence or witnesses desired.

**Cross-examination by Respondent(s):** Respondent, this is your time to ask questions of Complainant(s) and/or Complainant's witness(es) related to the testimony given or the materials submitted, if you have any.

**Questions from panel members of Complainant(s) and/or Complainant(s) witness(es):**

**(Note to Chair):** The Chair shall excuse all witnesses from the hearing after completion of their testimony, cross-examination, and questions from the panel.

**Presentation by Respondent(s):** Respondent(s) will now state their case and present any evidence or witnesses desired.

**Cross-examination by Complainant(s):** Complainant, this is your time to ask questions of Respondent(s) and/or Respondent's witness(es) related to the testimony given or materials submitted, if you have any.

**Questions from panel members of Respondent(s) and/or Respondent's witness(es):**

**Note to Chair:** The Chair shall excuse all witnesses from the hearing after completion of their testimony, cross-examination, and questions from the panel.

**PANEL MEMBERS:** Please take a few minutes and review your notes to make sure that you have all the information you need to make a determination on this matter. Are there any additional questions you would like to ask either party?

**Closing statement by Complainant(s) and Respondent(s):** At this time, both Complainant(s) and Respondent(s) will be given the opportunity to make a summary or closing statement if they so desire. Complainants' closing statement will be heard first followed by Respondents'.

**Closing statement by Panel Chair:** I will now make my closing statement.

Do each of you feel that this hearing has been conducted fairly?

*(If yes)* Let the record show that both Complainant(s) and Respondent(s) have indicated that they feel this hearing has been conducted fairly.

*(If "No")* Ask the party to state their concern for the record, and if there's any merit to the concern, take steps to remedy any possible deficiency.

Concern raised:

*(If party declines to answer the question, state that it is "duly noted for the record.")*

Party Declining to Answer:

Have each of you had an adequate opportunity to testify, present evidence and witnesses, and conduct cross-examination?

*(If yes)* Let the record show that both Complainant(s) and Respondent(s) have indicated that they have had an adequate opportunity to testify, present evidence and witnesses, and conduct cross-examination.

*(If “No”)* Ask the party to state any concern for the record, and if there’s any merit to the concern, take steps to remedy any possible deficiency.

*(If party declines to answer the question, state that it is “duly noted for the record.”)*

Party Declining to Answer:

**Confidential nature of hearing:** Before we adjourn the hearing of this panel, all persons present are advised that the report and findings of this panel are considered confidential. It will be available only to members of this panel, to the parties, to counsel and staff as required, or as otherwise specified in the Manual. The findings or conclusion of this panel shall be sent to the parties. The parties will be notified of the decision within five (5) business days after this hearing is adjourned. You are also reminded that any recording or transcription of these proceedings can only be used for purposes of appeal and that all other uses, including use in other ethics or arbitration hearings, is expressly prohibited.

**Adjournment:** There being no further business, this portion of the hearing stands adjourned. The parties are dismissed, and the Hearing Panel will remain to begin their Executive Session.

**Proceeding following hearing—executive session:** *(After adjournment, the panel will remain in executive session and frame a report of finding and opinion to set forth the decision. The panel will follow explicitly the procedure set forth in the Code of Ethics and Arbitration Manual as to opportunity for an opportunity for an appeal if provided. Association should consider having Association counsel review ethics decisions prior to any action of the panel becoming final or effective. This will serve to protect the Association by minimizing vulnerability to litigation). (Revised 11/23)*

## Chair's Procedural Guide: Conduct of a Virtual Ethics Hearing

### Minnesota Realtors® State of Minnesota

*(Ask the recording Professional Standards Administrator to make sure that the names of all parties present for the hearing have been added to this Guide and that all the appropriate blanks have been completed.)*

*(Ask administrator to hold all parties in the virtual waiting room until all panelists are present.)*

**Start promptly:** Begin the hearing promptly at the noticed hearing time.

#### **Chair's opening statement and conduct of hearing:**

My name is \_\_\_\_\_, and I will serve as Chairperson of this panel.

Before we begin this hearing, I would like to ask that all persons present mute themselves at all times, except for when they intend to speak. All persons present will need to have their video on and remain on screen at all times. If a party or panelist loses their connection, the hearing will be paused until the participant is able to rejoin the hearing. Contact the Professional Standards Administrator and they will readmit you into the hearing. The person rejoining may be required to re-affirm the remote hearing verifications.

If you have questions about how to use this virtual platform, including how to mute or unmute yourself, please let us know so we can assist you.

All persons present are advised that this virtual hearing is being recorded and that the recording may include audio, video and any screen sharing from the hearing.

#### **Chair's Opening Statement and Conduct of Hearing**

*Chair:* Panel members and hearing participants, I now call this hearing to order. The Professional Standards Committee is charged with holding appropriate hearings for Minnesota Realtors® in accordance with the procedures as set forth in the Association's Bylaws in matters concerning alleged unethical conduct of Members.

The body meeting here is an impartial panel of the Professional Standards Committee that has been selected and called here today to ascertain the truth in the particular matter at hand, which is an ethics proceeding, and to render a decision on the testimony and evidence presented.

If the parties have participated in Mediation, prior to this hearing, you are reminded that any offers of settlement that were not accepted or any suggested resolution proposed by the Mediation Office that was not accepted cannot be introduced as evidence nor considered in any manner during this hearing. No aspect of the mediation conference shall be relied upon or introduced as evidence in this ethics hearing, including, but not limited to: views expressed or suggestions made by a party with respect to a possible settlement of the dispute; admissions made in the course of the mediation; proposals made or views expressed by the Mediator or the response of any party thereto.

The Professional Standards Committee is a body duly constituted under the authority of the Bylaws of Minnesota Realtors® and has been duly appointed by the Leadership Team and approved by the Board of Directors.

1. As you know, my name is \_\_\_\_\_, and I will serve as Chairperson of this panel.
2. At this time, I would like the members of the panel to introduce themselves as well as the Complainant(s) and Respondent(s), Respondent's Realtor® Principal, and any counsel and witnesses.

Also present at this hearing (if applicable) is:

3. Alternate Panel Member: *(If present – have them introduce themselves)*  
We also have an Alternate Panel member attending the hearing here today. The Alternate Panel Member is a trained member of the MNR Professional Standards Committee and although they are attending the hearing they will not be acting as a participant in the hearing or the executive session nor vote on the decision unless one of the five originally appointed Hearing Panel members is unable to serve on the Hearing Panel from the commencement of the hearing until the hearing concludes.

4. Case Administrator/ Counsel:

**Affirmation:** At this time, I request that all persons present who expect to testify at this hearing affirm their testimony.

*Note to Chair: Do not stand for Virtual hearing.*

Raise your right hand and, following the question I pose, answer in the affirmative if you do affirm. “Do you affirm that the testimony you are about to give in this proceeding shall be the truth, the whole truth, and nothing but the truth?”

- ☐ Let the record show that all parties have answered in the affirmative.

I will now also ask that panelists, staff, Chair and legal and or REALTOR® Counsel affirm that they will answer these remote verification questions truthfully. Do you affirm that you will answer the following questions truthfully?

*(Ask each panelist, staff person, attorney or counsel that did not take the oath otherwise individually and state that you affirm as well.)*

- ☐ Let the record show that all panelists, counsel, staff and Chair have answered in the affirmative

REMOTE HEARING VERIFICATIONS

All parties will be participating in this hearing remotely through a virtual platform.

Minnesota Realtors® allows parties, witnesses, and panelists to appear remotely only if that person is in a private location that provides the ability to keep the information presented at this hearing from being heard or overhead by any person who is not authorized to participate in the hearing. Those persons are also strictly prohibited from recording these proceedings or using any electronic or other communication devices during the hearing other than those required to participate in the hearing.

I will now ask that panelists and alternates (where applicable), staff, and all parties answer the following remote verification questions truthfully.

*(Chair – after asking the questions below, call on each person for an answer. Do not accept a head nod but require a verbal answer).*

I will need each of you to verify the following:

1. That you are, in fact, the person you introduced yourself as at the outset of this hearing.
2. That you are in a private location that will protect the confidentiality of this hearing.
3. That there are no other persons that can hear or listen in on this hearing.
4. That you are not recording or allowing anyone else to record this hearing in any way.
5. That you are not accessing electronic devices other than to the extent necessary to participate in this hearing remotely.
6. That you will continue to take these measures to ensure the confidentiality of this hearing until the hearing is concluded?

As Chair, yes.

*(Call on each person until they each say “yes”. If “no”, the chair will need to take appropriate action to ensure the confidentiality of the proceeding including postponement, if necessary).*

- ☐ Let the record show that all persons present have answered in the affirmative

In an effort to make the best possible recording of these proceedings, I would ask everyone in the room to take note of the following:

- a. All responses must be verbal and audible. Shrugs of the shoulder, gestures, and nods of the head cannot be recorded.
- b. Only one speaker should speak at a time. I, as Chair of this panel, will call on each person to speak at the appropriate given time. Please wait for the speaker to finish their entire question or comment before responding.

No transcript will be prepared by the Association. The parties are specifically advised that any audio recording or transcription that may be made of these proceedings can only be used for purposes of appeal and any other use, including use in other ethics or arbitration hearings, is expressly prohibited

**Basis of hearing:** This hearing has been established to consider the complaint filed by Complainant, the complainant, naming **Respondent**, the respondent, alleging a violation of Article(s) **article number(s)** of the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®.

This panel is not dealing with questions of law, and it is not governed by the technical rules of evidence which may apply in courts. This panel will seek to determine all ascertainable and relevant facts pertaining to the matter under consideration to arrive at a peer judgment and decision by the panel that is fair to all of the parties. The panel is governed and directed by the Bylaws of Minnesota Realtors® and the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®. The panel determines its own rules of evidence and its own procedures to be followed with objectives of equity and due process. The following has been generally accepted by this panel as to the procedures to be followed during this hearing.

- (1) All parties or their representatives to these proceedings will be allowed a full opportunity to be heard on matters relevant to the issue. The panel may rule at any time during the hearing on the relevance of testimony being given or questions being directed to any party or their representative or to witnesses providing testimony. All parties and witnesses have affirmed that the testimony given is the truth to the best of their knowledge.

*(Read #2 only if legal or REALTOR® counsel is present.)*

- (2) A party may be represented by legal counsel or a REALTOR® of their choosing (or both). However, no party may refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination or other grounds which the panel deems appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of their client if the panel desires direct testimony. Counsel is present to advise and consult with their other client, and to speak for their subject to appropriate rulings or determinations by the panel. This panel will not tolerate any effort by any party or by counsel to any party to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings.
- (3) The Chair may rule at any time on the admissibility of evidence. As Chair, I will act as keeper of the evidence introduced at this hearing and mark each with an exhibit identification number and date.
- (4) The members of this panel are authorized, individually, to ask questions as they deem pertinent and significant at any time during this hearing. To preserve order, I will rule on questions or testimony by the parties or their representatives, or by witnesses in these proceedings. If deemed necessary, I will consult with the members of the panel and with Association staff concerning such rulings. Association staff may offer procedural assistance from time to time throughout the proceedings. I ask that you direct all questions through me.

**(Note to Chair:** *Please read if there are witnesses present:*)

**Excuse Witnesses:** *(At this time, we will excuse all witnesses and ask them to be placed in the virtual waiting room.)*

**Outline of procedure for hearing:** Both Complainant and Respondent were provided with a copy of the outline for these proceedings. Did each party receive the outline?

*(If yes) Let the record show that both Complainant and Respondent have stated they did receive the Outline.*

*(If no, the party should be given a copy of the Outline and Chair should determine whether that party has any objections to proceeding.)*

Do you have any questions concerning that Outline of Procedure?

*(If none) Let the record show that neither Complainant nor Respondent have any questions concerning the Outline of Procedure for an Ethics Hearing.*

As noted in the Outline of Procedure, parties were strongly encouraged to provide any and all documents and evidence they intend to introduce prior to the hearing. If you find it necessary to submit evidence not previously provided, transmit it to the professional standards administrator. The administrator will first provide the evidence to the other party and shall determine if there are any objections. The Chair will rule on any objections and determine the relevance of the evidence prior to providing it to the panel. In this virtual hearing, evidence will be transmitted electronically.

We shall now proceed with the hearing.

Before I ask for statements from Complainant(s) and Respondent(s), please consider the following two points:

- (3) All the hearing panel members have read and re-read your written statements. You will be given an adequate opportunity to present your case, but I want to assure you that the panel members are familiar with the information you provided in the written statements.
- (4) Our express purpose today is to hear the arguments specifically related to the ethical issues raised by Complainant, against Respondent, alleging a violation of Article(s) (article numbers) of the Code of Ethics of the National Association of REALTORS®. If, in fact, the Chair finds anyone straying from that issue or bringing up situations unrelated to the hearing, you will be asked to stop.

**Presentation by Complainant:** The Complainant will now state their case and present any evidence or witnesses desired.

**Cross-examination by Respondent(s):** Respondent, this is your time to ask questions of Complainant(s) and/or Complainant's witness(es) related to the testimony given or the materials submitted, if you have any.

**Questions from panel members of the Complainant(s) and/or complainant's witness(es):**

**(Note to Chair):** Chair shall excuse all witnesses from the hearing after completion of their testimony, cross-examination, and questions from the panel.

**Presentation by Respondent:** Respondent(s) will now state their case and present any evidence or witnesses desired.

**Cross-examination by Complainant(s):** Complainant, this is your time to ask questions of Respondent(s) and/or Respondent's witness(es) related to the testimony given or materials submitted, if you have any.

**Questions from panel members of Respondent(s) and/or Respondent's witness(es):**

**(Note to Chair):** Chair shall excuse all witnesses from the hearing after completion of their testimony, cross-examination, and questions from the panel.

**PANEL MEMBERS:** Please take a few minutes and review your notes to make sure that you have all the information you need to make a determination on this matter. Are there any additional questions you would like to ask either party?

**Closing statement by Complainant(s) and Respondent(s):** At this time, both Complainant(s) and Respondent(s) will be given the opportunity to make a summary or closing statement if they so desire. Complainants' closing statement will be heard first followed by Respondents'.

**Closing statement by Panel Chair:** I will now make my closing statement.

Do each of you feel that this hearing has been conducted fairly?

*(If yes)* Let the record show that both Complainant(s) and Respondent(s) have indicated that they feel this hearing has been conducted fairly.

*(If "No")* Ask the party to state their concern for the record, and if there's any merit to the concern, take steps to remedy any possible deficiency.

Concerns Raised:

*(If party declines to answer the question, state that it is "duly noted for the record.")*

Party Declining to Answer:

Have each of you had an adequate opportunity to testify, present evidence and witnesses, and conduct cross-examination?

*(If yes)* Let the record show that both Complainant(s) and Respondent(s) have indicated that they have had an adequate opportunity to testify, present evidence and witnesses, and conduct cross-examination.

*(If "No")* Ask the party to state their concern for the record, and if there's any merit to the concern, take steps to remedy any possible deficiency.

*(If party declines to answer the question, state that it is "duly noted for the record.")*

Party Declining to Answer:

**Confidential nature of hearing:** Before we adjourn the hearing of this panel, all persons present are advised that the report and findings of this panel are considered confidential. It will be available only to members of this panel, to the parties, to counsel and staff as required, or as otherwise specified in the Manual. The findings or conclusion of this panel shall be sent to the parties. The parties will be notified of the decision within five (5) business days after this hearing is adjourned. You are also reminded that any recording or transcription of these proceedings can only be used for purposes of appeal and that all other uses, including use in other ethics or arbitration hearings, is expressly prohibited.

**Adjournment:** There being no further business, this portion of the hearing stands adjourned. The parties are dismissed, and the Hearing Panel will remain to begin their Executive Session.

**Proceeding following hearing—executive session:** *(After adjournment, the panel will remain in executive session and frame a report of finding and opinion to set forth the decision. The panel will follow explicitly the procedure set forth in the Code of Ethics and Arbitration Manual as to opportunity for an opportunity for an appeal if provided. Associations should consider having Association counsel review ethics decisions prior to any action of the panel becoming final or effective. This will serve to protect the Association by minimizing vulnerability to litigation). (Revised 1/18)*

# CHAIR'S PROCEDURAL GUIDE: CONDUCT OF AN ETHICS HEARING INVOLVING A COMPLAINT AND COUNTER-COMPLAINT

## Minnesota Realtors® State of Minnesota

*(Ask the recording Professional Standards Administrator to make sure that the names of all parties present for the hearing have been added to this Guide and that all the appropriate blanks have been completed.)*

*(Ask all parties [including witnesses] to come into the hearing room.)*

**Start promptly:** Begin the hearing promptly at the noticed hearing time.

### CHAIR'S OPENING STATEMENT AND CONDUCT OF HEARING:

Panel members and hearing participants, I now call this hearing to order. The Professional Standards Committee is charged with holding appropriate hearings for Minnesota Realtors® in accordance with the procedures set forth in the Association's Bylaws in matters concerning alleged unethical conduct of Members.

The body meeting here is an impartial panel of the Professional Standards Committee that has been selected and called here today to ascertain the truth in the particular matter at hand, which is an ethics proceeding, and to render a decision on the testimony and evidence presented.

The Professional Standards Committee is a body duly constituted under the authority of the Bylaws of Minnesota Realtors® and has been duly appointed by the Leadership Team and approved by the Board of Directors.

At this time, I would like the members of the panel to introduce themselves as well as the Complainant(s) and Respondent(s) and any counsel and witnesses.

Also present at this hearing (if applicable) is:

**1. Alternate Panel Member:** *(If present – have them introduce themselves)*

We also have an Alternate Panel member attending the hearing here today. The Alternate Panel Member is a trained member of the MNR Professional Standards Committee and although they are attending the hearing they will not be acting as a participant in the hearing or the executive session nor vote on the decision unless one of the five originally appointed Hearing Panel members is unable to serve on the Hearing Panel from the commencement of the hearing until it concludes.

**2. Case Administrator:**

**3. Legal Counsel:** *(If present)* All persons present are advised that this hearing is being recorded and that the recording may include audio and video.

No transcript will be prepared by the Association.

The parties are specifically advised that any recording or transcription that may be made of these proceedings can only be used for purposes of appeal, and any other use, including use in other ethics or arbitration hearings, is expressly prohibited.

Cellular phones, two-way radios and other transmitting devices may not be operated during the hearing absent specific advance authorization from the panel chair.

*(The Chair ☐ HAS ☐ HAS NOT provided specific advanced authorization.)*

### BASIS OF HEARING:

This hearing has been established to consider the Complaint filed by **Complainant**, the complainant, naming **Respondent**, the respondent, alleging a violation of Article(s) **article numbers** of the Code of Ethics of the National Association of REALTORS® (“Code of Ethics”) and a Counter-Complaint filed by **Complainant2**, the complainant, naming **Respondent2**, the respondent, alleging a violation of Article(s) **article numbers** of the Code of Ethics.

This panel does not deal with questions of law, and it is not governed by the technical rules of evidence which may apply in courts. This panel will seek to determine all ascertainable and relevant facts pertaining to the matter under consideration to arrive at a peer judgment and decision by the panel that is fair to all of the parties. The panel is governed and directed by the Bylaws of Minnesota Realtors® and the Code of Ethics of the National Association of REALTORS®. The panel determines its own rules of evidence and its own procedures to be followed with objectives of equity and due process. The following has been generally accepted by this panel as to the procedures to be followed during this hearing.

1. All parties or their representatives at these proceedings will be allowed a full opportunity to be heard on matters relevant to the issue. The panel may rule at any time during the hearing on the relevance of testimony being given or questions being directed to any party or their representative or to witnesses providing testimony. All parties and witnesses will be asked to affirm that the testimony given is the truth to the best of their knowledge.

**(Read #2 only if legal or REALTOR® counsel is present.)**

2. A party may be represented by legal counsel or a REALTOR® of their choosing (or both). However, no party may refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination or other grounds which the panel deems appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of their client if the panel desires direct testimony. Counsel is present to advise and consult with their client, and to speak for their client subject to appropriate rulings or determinations by the panel. This panel will not tolerate any effort by any party or by counsel to any party to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings.
3. The Chair may rule at any time on the admissibility of evidence. As Chair, I will act as keeper of the evidence introduced at this hearing and mark each with an exhibit identification number and date.
4. The members of this panel are authorized, individually, to ask questions, as they deem pertinent and significant at any time during this hearing. To preserve order, I will rule on questions or testimony by the parties or their representatives, or by witnesses in these proceedings. If deemed necessary, I will consult with the members of the panel and with Association staff concerning such rulings. Association staff may offer procedural assistance from time to time throughout the proceedings. I ask that you direct all questions through me.
5. At this time, I request that all persons present in the room who expect to testify at this hearing stand and be sworn.

*(Note to Chair: Please also stand during affirmation.)*

#### **AFFIRMATION:**

Raise your right hand, and following the question I pose, answer in the affirmative if you do affirm. “Do you affirm that the testimony you are about to give in this proceeding shall be the truth, the whole truth, and nothing but the truth?” Please be seated.

☐ *Let the record show that all parties have answered in the affirmative.*

**EXCUSE WITNESSES:** (Please read if there are witnesses present):

*At this time we will excuse all witnesses, and ask them to wait outside until called.*

#### **OUTLINE OF PROCEDURES FOR HEARING:**

Both Complainant and Respondent were provided with a copy of the outline for these proceedings. Did each party receive the outline?

- ☐ *(If yes) Let the record show that both Complainant and Respondent have stated they did receive the Outline.*
- ☐ *(If no, the party should be given a copy of the Outline and the Chair should determine whether that party has any objections to proceeding.)*  
Objections: \_\_\_\_\_

Do you have any questions concerning these proceedings?

- ☐ (If none) Let the record show that neither Complainant nor the Respondent have any questions concerning the Outline of Procedure for an Ethics Hearing.

Questions: \_\_\_\_\_

Before I ask for statements from Complainants and Respondents, please consider the following two points:

1. All the hearing panel members have read and re-read your written statements. You will be given an adequate opportunity to present your case, but I did want to assure you that the panel members are familiar with the information you provided in the written statements.
2. Our express purpose today is to hear the arguments specifically related to the ethical issues raised by **Complainant** against **Respondent**, alleging a violation of Article(s) **article numbers** of the Code of Ethics and a Counter-Complaint filed by **Complainant2** against **Respondent2**, alleging a violation of Article(s) **article numbers** of the Code of Ethics. If, in fact, the Chair finds anyone straying from that issue or bringing up situations unrelated to the hearing, you will be asked to stop.

#### **PRESENTATION OF EVIDENCE BY THE COMPLAINANT/COUNTER-RESPONDENT:**

Complainant/Counter-Respondent presents their case by offering testimony and evidence from themselves and/or their witness(es) to support the allegations of violations of the Code of Ethics by Respondent/Counter-Complainant.

#### **CROSS EXAMINATION BY RESPONDENT/COUNTER COMPLAINANT:**

Respondent/Counter-Complainant may question Complainant/Counter-Respondent and/or their witness(es) immediately after each has testified.

**QUESTIONS FROM PANEL MEMBERS** of Complainant/ Counter-Respondent and/or their witness(es) immediately after each has testified.

#### **PRESENTATION OF EVIDENCE BY RESPONDENT/COUNTER-COMPLAINANT:**

Respondent/Counter-Complainant will now present their defenses and case by offering testimony and evidence from themselves and/or witness(es) desired.

#### **CROSS EXAMINATION BY COMPLAINANT/COUNTER RESPONDENT:**

Complainant/Counter-Respondent may question Respondent/Counter-Complainant and/or their witness(es) immediately after each has testified.

**QUESTIONS FROM HEARING PANEL** of Respondent/Counter-Complainant and/or their witness(es) immediately after each has testified.

*(Note to Chair): The Chair shall excuse all witnesses from the hearing after completion of their testimony, cross-examination, and questions from the panel.*

#### **REBUTTAL BY THE COMPLAINANT/COUNTER- RESPONDENT**

Complainant/Counter-Respondent presents their defenses to the Counter-Complaint by offering testimony and evidence from themselves and/or their witness(es) to refute the allegations made by Counter-Complainant.

#### **CROSS EXAMINATION BY RESPONDENT/ COUNTER COMPLAINANT:**

The Respondent/Counter-Complainant may question Complainant/Counter-Respondent and/or their witness(es) immediately after each has testified.

**QUESTIONS FROM PANEL MEMBERS** of Complainant/Counter-Respondent and/or their witness(es) immediately after each has testified.

**HEARING PANEL:** Panel members please take a few minutes and review your notes to make sure that you have all the information you need to make a determination on this matter. Are there any additional questions you would like to ask of either party?

### **CLOSING STATEMENT BY COMPLAINANT AND RESPONDENT:**

At this time both Complainants and Respondents will be given the opportunity to make a summary or uninterrupted closing statement if they so desire in regard to the Complaint and the Counter-Complaint.

1. Complainant One's closing statement will be heard first.
2. Respondent One's will make the final closing statement.

### **CLOSING STATEMENT BY PANEL CHAIR:**

I will now make my closing statement.

Do each of you feel that this hearing has been conducted fairly?

- ☐ (If yes) Let the record show that both Complainants and Respondents have indicated that they feel this hearing has been conducted fairly.
- ☐ (If "No" Ask the party to state their concern for the record, and if there's any merit to the concern, take steps to remedy any possible deficiency.  
Concerns raised: \_\_\_\_\_

- ☐ (If party declines to answer the question, state that it is "duly noted for the record.")

Party Declining to Answer: \_\_\_\_\_

Have each of you had an adequate opportunity to testify, present evidence and witnesses, and conduct cross-examination?

- ☐ (If yes) Let the record show that both Complainants and Respondents have indicated that they have had an adequate opportunity to testify, present evidence and witnesses, and conduct cross-examination.
- ☐ (If "No") Ask the party to state their concern for the record, and if there's any merit to the concern, take steps to remedy any possible deficiency.
- ☐ (If party declines to answer the question, state that it is "duly noted for the record.")

Party Declining to Answer: \_\_\_\_\_

### **CONFIDENTIAL NATURE OF HEARING:**

Before we adjourn the hearing of this panel, all persons present are advised that the report and findings of this panel are considered confidential. It will be available only to members of this panel, to the parties, to counsel and staff as required, or as otherwise specified in the *Manual*. The findings or conclusion of this panel shall be sent to the parties. The parties will be notified of the decision within five (5) business days after this hearing is adjourned. You are also reminded that any recording or transcription of these proceedings can only be used for purposes of appeal and that all other uses, including use in other ethics or arbitration hearings, is expressly prohibited.

### **ADJOURNMENT:**

There being no further business, this portion of the hearing stands adjourned. The parties are dismissed and the Hearing Panel will remain to begin their Executive Session.

**Proceeding following hearing—executive session:** *(After adjournment, the panel will remain in executive session and frame a report of finding and opinion to set forth the decision. The panel will follow explicitly the procedure set forth in the Code of Ethics and Arbitration Manual as to opportunity for an appeal if provided. Associations should consider having Association counsel review ethics decisions prior to any action of the panel becoming final or effective. This will serve to protect the Association by minimizing vulnerability to litigation).*

## CHAIR'S PROCEDURAL GUIDE: CONDUCT OF A CONSOLIDATED ETHICS HEARING

### Minnesota Realtors® State of Minnesota

*(Ask all parties [including witnesses] to come into the hearing room.)*

**Start promptly:** Begin the hearing promptly at the noticed hearing time.

### CHAIR'S OPENING STATEMENT AND CONDUCT OF HEARING:

Panel members and hearing participants, I now call this hearing to order. The Professional Standards Committee is charged with holding appropriate hearings for Minnesota Realtors® in accordance with the procedures set forth in the Association's Bylaws in matters concerning alleged unethical conduct of Members.

The body meeting here is an impartial panel of the Professional Standards Committee that has been selected and called here today to ascertain the truth in the particular matter at hand, which is an ethics proceeding, and to render a decision on the testimony and evidence presented.

The Professional Standards Committee is a body duly constituted under the authority of the Bylaws of Minnesota Realtors® and has been duly appointed by the Leadership Team and approved by the Board of Directors.

At this time, I would like the members of the panel to introduce themselves as well as the Complainant(s) and Respondent(s), any counsel, and witnesses.

Also present at this hearing (if applicable) is:

1. **Alternate Panel Member:** *(If present – have them introduce themselves)*  
We also have an Alternate Panel member attending the hearing here today. The Alternate Panel Member is a trained member of the MNR Professional Standards Committee and although they are attending the hearing they will not be acting as a participant in the hearing or the executive session nor vote on the decision unless one of the five originally appointed Hearing Panel members is unable to serve on the Hearing Panel from the commencement of the hearing until the hearing concludes.
2. **Case Administrator:**
3. **Legal Counsel:** *(If present)*

Please note that this hearing is being mechanically recorded. No transcript will be prepared by the Association.

The parties are specifically advised that any recording or transcription that may be made of these proceedings can only be used for purposes of appeal, and any other use, including use in other ethics or arbitration hearings, is expressly prohibited.

Cellular phones, two-way radios and other transmitting devices may not be operated during the hearing absent specific advance authorization from the panel chair.

*(The Chair ☐ HAS / ☐ HAS NOT provided specific advanced authorization.)*

According to the Code of Ethics and Arbitration Manual, in the interest of maximizing resources, ethics complaints arising out of the same transaction or event are consolidated and scheduled for hearing in a single proceeding.

### BASIS OF HEARING:

This hearing has been established to consider complaints filed by **Complainant(s)1**, the first complainants, naming **Respondent**, the respondent, alleging a violation of Article(s) **Article(s)**, and a second, separate complaint filed by **Complainant**, the second complainants, naming **Respondent**, alleging a violation of Article(s) **Article(s)** of the Code of Ethics of the National Association of REALTORS®, and both complaints stem from the same transaction and/or event.

This panel is not dealing with questions of law, and it is not governed by the technical rules of evidence which may apply in courts. This panel will seek to determine all ascertainable and relevant facts pertaining to the matter under consideration to arrive at a peer

judgment and decision by the panel that is fair to all the parties. The panel is governed and directed by the Bylaws of Minnesota Realtors® and the Code of Ethics of the National Association of REALTORS®. The panel determines its own rules of evidence and its own procedures to be followed with objectives of equity and due process. The following has been generally accepted by this panel as to the procedures to be followed during this hearing.

1. All parties or their representatives to these proceedings will be allowed a full opportunity to be heard on matters relevant to the issue. The panel may rule at any time during the hearing on the relevance of testimony being given or questions being directed to any party or their representative or to witnesses providing testimony. All parties and witnesses will be asked to affirm that the testimony given is the truth to the best of their knowledge.

**(Read #2 only if legal or REALTOR® counsel is present.)**

2. A party may be represented by legal counsel or by a REALTOR® of their choosing (or both). However, no party may refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination or other grounds which the panel deems appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of their client if the panel desires direct testimony. Counsel is present to advise and consult with their client, and to speak for their client, subject to appropriate rulings or determinations by the panel. This panel will not tolerate any effort by any party or counsel to any party to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings.
3. The Chair may rule at any time on the admissibility of evidence. As Chair, I will act as keeper of the evidence introduced at this hearing and mark each with an exhibit identification number and date.
4. The members of this panel are authorized, individually, to ask questions, as they deem pertinent and significant at any time during this hearing. To preserve order, I will rule on questions or testimony by the parties or their representatives, or by witnesses in these proceedings. If deemed necessary, I will consult with the members of the panel and with Association staff and counsel concerning such rulings. Association staff and counsel may offer procedural assistance from time to time throughout the proceedings. I ask that you direct all questions through me.
5. At this time, I request that all persons present in the room who expect to testify at this hearing stand and affirm.

*(Note to Chair: Please also stand during affirmation.)*

#### **AFFIRMATION:**

Raise your right hand and, following the question I pose, answer in the affirmative if you do affirm. “Do you affirm that the testimony you are about to give in this proceeding shall be the truth, the whole truth, and nothing but the truth?”

☐ *Let the record show that all parties have answered in the affirmative.*

#### **Excuse Witnesses: (Please read if there are witnesses present):**

*At this time, we will excuse all witnesses, if present, and ask them to wait outside until called and ask the remaining parties to be seated.*

#### **OUTLINE OF PROCEDURES FOR HEARING:**

Both Complainant and Respondents were provided with a copy of the outline for these proceedings. Did each party receive the outline?

- ☐ (If yes) Let the record show that both Complainant and Respondent have stated they did receive the Outline.
- ☐ If no, the party should be given a copy of the outline and the Chair should determine whether that party has objections to proceeding.

Objections: \_\_\_\_\_

Do you have any questions concerning these proceedings?

- ☐ (If none) Let the record show that neither the Complainant nor the respondent have any questions concerning the Outline of Procedure for an Ethics Hearing.

Questions: \_\_\_\_\_

Before I ask for statements from Complainant and Respondents, please consider the following two points:

1. All the hearing panel members have read and re-read your written statements. You will be given an adequate opportunity to present your case, but I did want to assure you that the panel members are familiar with the information you provided in the written statements.
2. Our express purpose today is to hear the arguments specifically related to the ethical issues raised by **Complainant**, naming **Respondent** alleging a violation of Article(s) **Article Number(s)** and a second, separate complaint filed by **Complainant**, naming **Respondent**, alleging a violation of **Article(s) Article Number(s)**, of the Code of Ethics of the National Association of REALTORS®. If, in fact, the Chair finds anyone straying from these issues or bringing up situations unrelated to the hearing, you will be asked to stop.

**PRESENTATION BY COMPLAINANT [1]:**

Complainant [1] will now state their case and present evidence and call witnesses desired.

**CROSS EXAMINATION BY RESPONDENT(S) OF COMPLAINANT [1]:**

Respondent, this is the time to ask questions of Complainant(s) One and/or Complainant witness(es) related to the testimony given or the materials submitted, if you have any.

- Cross examination by Respondent [2], *if applicable*.

**QUESTIONS FROM PANEL MEMBERS of the COMPLAINANT [1]:**

Panel members, this is your opportunity to ask any questions you may have of Complainant [1] and their witnesses.

**PRESENTATION BY COMPLAINANT[1] (if applicable):**

Complainant [2] will now state their case and present evidence and call witnesses desired.

**CROSS EXAMINATION BY RESPONDENT(S) OF COMPLAINANT [2]:**

Respondent, this is the time to ask questions of Complainant(s) Two and/or Complainant witness(es) related to the testimony given or the materials submitted, if you have any.

**QUESTIONS FROM PANEL MEMBERS of the COMPLAINANT [2]:**

Panel members, this is your opportunity to ask any questions you may have of Complainant [2] and their witnesses.

**PRESENTATION BY RESPONDENT [1]:**

Respondent [1], will now state their case and present evidence or witnesses desired.

**CROSS EXAMINATION BY COMPLAINANT(S):**

This is the time to ask questions of Respondent [1] and/or Respondent's witnesses related to the testimony given or the materials submitted, if you have any.

**QUESTIONS FROM PANEL MEMBERS OF RESPONDENT [1]:**

Panel members, this is your opportunity to ask any questions you may have of Respondent(s) and their witnesses.

**(If Applicable: PRESENTATION BY RESPONDENT [2]:**

Respondent [2], will now state their case and present evidence or witnesses desired.

**CROSS EXAMINATION BY COMPLAINANT(S):**

This is the time to ask questions of Respondent [2] and/or Respondent's witnesses related to the testimony given or the materials submitted, if you have any.

**QUESTIONS FROM PANEL MEMBERS OF RESPONDENT [2]:**

Panel members, this is your opportunity to ask any questions you may have of Respondent(s) and their witnesses.

**FINAL CROSS-EXAMINATION BY THE PARTIES:**

All parties will have a final opportunity to cross examine each other. Complainant(s) may first ask any remaining questions of Respondent(s). Respondent(s) may then ask remaining questions of Complainant(s).

**PANEL MEMBERS:**

Please take a few minutes and review your notes to make sure that you have all the information you need to make a determination on this matter. Are there any additional questions you would like to ask any of the parties or their witnesses?

**CLOSING STATEMENTS BY THE PARTIES:**

At this time, Complainant and the Respondents will be given the opportunity to make an uninterrupted summary or closing statement if they so desire. Complainants' closing statement will be heard first.

**CLOSING STATEMENT BY COMPLAINANT(S) 1:****If Applicable: CLOSING STATEMENT BY COMPLAINANT(S) 2:****CLOSING STATEMENT BY RESPONDENT(S) 1:****If Applicable: CLOSING STATEMENT BY RESPONDENT (S) 2:****CLOSING STATEMENT BY PANEL CHAIR:**

I will now make my closing statement.

Do each of you feel that this hearing has been conducted fairly?

- ☐ (If yes) Let the record show that both Complainant and Respondents have indicated that they feel this hearing has been conducted fairly.
- ☐ (If "No") Ask the party to state their concern for the record, and if there's any merit to the concern, take steps to remedy any possible deficiency.

Concerns raised: \_\_\_\_\_

- ☐ (If party declines to answer the question, state that it is "duly noted for the record.") Party Declining to Answer: \_\_\_\_\_

Have each of you had an adequate opportunity to testify, present evidence and witnesses, and conduct cross-examination?

- ☐ (If yes) Let the record show that both Complainant and Respondents have indicated that they have had an adequate opportunity to testify, present evidence and witnesses, and conduct cross-examination.
- ☐ (If "No") Ask the party to state their concern for the record, and if there's any merit to the concern, take steps to remedy any possible deficiency.
- ☐ (If party declines to answer the question, state that it is "duly noted for the record.") Party Declining to Answer: \_\_\_\_\_

**CONFIDENTIAL NATURE OF HEARING:**

Before we adjourn the hearing of this panel, all persons present are advised that the report and findings of this panel are considered confidential. It will be available only to members of this panel, to the parties, to counsel and staff as required, or as otherwise specified in the **Manual**. The findings or conclusion of this panel shall be sent to the parties. The parties will be notified of the decision within five (5) business days after this hearing is adjourned. You are also reminded that any recording or transcription of these proceedings can only be used for purposes of appeal and that all other uses, including use in other ethics or arbitration hearings, is expressly prohibited.

**ADJOURNMENT:**

There being no further business, this portion of the hearing stands adjourned. The parties are dismissed and the Hearing Panel will remain to begin their Executive Session.

**Proceeding following hearing executive session:** *(After adjournment, the panel will remain in executive session and frame a report of finding and opinion to set forth the decision. The panel will follow explicitly the procedure set forth in the Code of Ethics and Arbitration Manual as to opportunity for an appeal if provided. Associations should consider having Association counsel review ethics decisions prior to any action of the panel becoming final or effective. This will serve to protect the Association by minimizing vulnerability to litigation).*

## CHAIR'S PROCEDURAL GUIDE: CONDUCT OF AN ETHICS APPEAL HEARING

### Minnesota Realtors® State of Minnesota

*(Ask all parties to come into the hearing room.)*

**Start promptly:** Begin the hearing promptly at the noticed hearing time.

**Chair's opening statement and Conduct of Hearing:** Panel members and hearing participants, I now call this appeal hearing to order. The professional standards procedures of Minnesota Realtors® provide for the right to appeal the decisions rendered by ethics Hearing Panels. The complainant in the original ethics hearing may appeal based only on alleged procedural deficiencies that may have deprived the complainant of the opportunity for a full and fair hearing or other lack of procedural due process. The respondent in the original ethics hearing may appeal the decision and/or recommendation for discipline on the basis of (1) misapplication or misinterpretation of an Article(s) of the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®, (2) alleged procedural deficiency or any lack of procedural due process, or (3) the discipline recommended by the Hearing Panel. This particular appeal will be heard by Appeal Tribunal, hereinafter referred to as the Appeal Tribunal.

At this time, I would like the members of the panel to introduce themselves as well as the Representative to the Hearing Panel, Appellant(s) and non-Appellant(s), any counsel.

Please note that cellular phones, two-way radios and other transmitting devices may not be operated during the hearing absent specific advance authorization from the panel chair.

*(The Chair ☐ HAS / ☐ HAS NOT provided specific advanced authorization.)*

At this time, I request that all persons present in the room who expect to testify at this hearing affirm their testimony.

#### **AFFIRMATION:**

Please stand, raise your right hand and following the question I pose, answer in the affirmative if you do affirm. "Do you affirm that the testimony you are about to give in this proceeding shall be the truth, the whole truth, and nothing but the truth?"

☐ *Let the record show that all parties have answered in the affirmative.*

Basis of this hearing: This is an appeal of the decision of the original Ethics Hearing Panel composed of: \_\_\_\_\_, Chair;

\_\_\_\_\_; \_\_\_\_\_; and \_\_\_\_\_ at an ethics hearing conducted on **Date**. The basis of the original ethics hearing was a complaint filed by **Complainant**, the complainant, against **Respondent**, the respondent, alleging a violation of Article(s) **Articles** of the Code Ethics. The decision was as follows:

#### **Finding of Fact:**

**The Decision of the Hearing Panel is based upon the following factors:**

#### **Discipline:**

Prior to the original ethics hearing, the complaint was reviewed by a Grievance Review Panel and referred to the Board's Professional Standards Committee for a hearing.

**Authority:** The Appeal Tribunal present here today is a body duly constituted under the authority of the Bylaws of Minnesota Realtors®

**Disqualification of Appeal Tribunal Members:** Anyone who was a party to the original ethics hearing, a member of the Grievance Review Panel present during the meeting when the complaint was reviewed, a member of the original Ethics Hearing Panel, or who was otherwise involved in this matter prior to the appeal is disqualified from serving on this Appeal Tribunal. Furthermore, anyone who is related by blood or marriage to, or has an existing or past relationship with, any party to the hearing, or any related by blood or marriage to a REALTOR® acting as, or is an employer, partner, or employee, or is associated in business with any of the parties or a REALTOR® acting as counsel is also disqualified. I will now ask members of the Appeal Tribunal if they know of any reason why they should be disqualified.

*(If none)* Let the record show that the members of the Appeal Tribunal have not indicated any reason why they are not qualified to serve. Although the parties have been previously notified of their right to challenge members of this Appeal Tribunal, I will now ask the parties if they are aware of any reason why any member of this Appeal Tribunal is not qualified to serve.

*(If none)* Let the record show that the parties have not indicated any reason why any member of this Appeal Tribunal is not qualified to serve.

**Additional introductions:** At this time, I would ask that the complainant(s), respondent(s), the Chair (or representative) of the original Ethics Hearing Panel and any legal counsel introduce themselves.

**Also present at this hearing:**

**Case Administrator/Association Legal Counsel:**

**Appeal limitations:** In this appeal hearing we will consider the arguments of Appellant, hereinafter referred to as the appellant, who filed the Request for Appeal. The appeal is further limited to the bases set forth in writing in the Request for Appeal, which is as follows.

- 1) Misapplication or misinterpretation of an Article of the Code of Ethics;
- 2) Procedural deficiency or any lack of procedural due process;
- 3) the discipline recommended by the Hearing Panel

**Outline of procedure:** At this time, I would like to explain the procedure for this appeal hearing. First, the original Ethics Hearing Panel Chair (or a representative from the original panel) will summarize the case. Then, the appellant will have an opportunity to offer corrections or modifications to the summary, to introduce supporting evidence and/or the statements of any other parties to the original ethics hearing, and to explain the basis (bases) for the appeal. Next, the nonappellant will have an opportunity to explain why the original Ethics Hearing Panel's decision should be upheld. The Chair of the original Hearing Panel will then have an opportunity to explain why the original ethics Hearing Panel's decision should be upheld. At any time during this proceeding, members of the Appeal Hearing Tribunal may ask questions; however, parties have no right of cross-examination. Each party and the original Hearing Panel Chair will have an opportunity to make closing statements. Finally, following the appeal hearing, the Appeal Tribunal will go into executive session to render a decision. Do any of the parties have any questions regarding the outline of procedure?

*(If none)* Let the record show that none of the parties has any questions regarding the outline of procedure.

**Guidelines:** This Appeal Tribunal is not dealing with questions of law and is not governed by the technical rules of evidence which may apply in courts. This Appeal Tribunal will seek to determine all ascertainable and relevant facts pertaining to the matter under consideration to arrive at a peer judgment and decision by the Appeal Tribunal that is fair to all of the parties. After the Appeal Tribunal has heard all of the evidence and testimony, we will go into executive session to render our decision. The decision will be based solely upon the arguments and testimony offered during this appeal hearing. All parties or their representatives to these proceedings will be allowed a full opportunity to be heard on the matters relevant to this issue. This Appeal Tribunal may rule at any time during this Appeal Hearing on the relevance of testimony being given. All parties giving testimony will be asked to affirm that testimony given is the truth to the best of their knowledge. Association staff may offer procedural assistance from time to time throughout the proceedings.

*(If Legal or REALTOR® Counsel present)* A party may be represented by legal or REALTOR® counsel. This Appeal Tribunal need not accept the statements of counsel as being the statements of their clients if it desires direct testimony. Counsel is present to advise and consult with their clients, and to speak for them subject to appropriate rulings or determinations by this Appeal Tribunal.

This Appeal Tribunal will not tolerate any effort by any party or by counsel to any party to harass, intimidate, coerce, or confuse the Appeal Tribunal or any party to the proceedings.

**The appeal hearing:** We shall now proceed with the appeal hearing.

**Presentation by the original Ethics Hearing Panel Chair:** At this time the original ethics Hearing Panel Chair will summarize the case.

**Presentation by the Appellant:** At this time, the appellant may offer any corrections or modifications to the original Ethics Hearing Panel Chair's summary, introduce supporting evidence and/or the statements of any other parties to the original ethics hearing, and explain the basis (bases) for the appeal. (If REALTOR® or Legal Counsel has presented, ask appellant if they have anything to add.)

**Testimony of the Nonappellant – if present:** At this time the Nonappellant may offer any corrections or modifications to the Ethics Hearing Panel Chair's summary and will have an opportunity to explain why the decision of the Ethics Hearing Panel should be upheld by the Appeal Tribunal. Any party testifying must restrict their discussion to the issues raised in the appeal.

**Rebuttal by the original Ethics Hearing Panel Chair:** At this time the original Ethics Hearing Panel Chair will have an opportunity to explain why the original Ethics Hearing Panel's decision should be upheld by this Appeal Tribunal.

**Questions:** At this time the members of the Tribunal will be given an opportunity to ask questions of either of the parties and the Chair of the original Ethics Hearing Panel.

**Final Testimony by Parties:** Before we conclude this proceeding, the Appellant, the Nonappellant, and the original Hearing Panel Chair will be given a final opportunity to give final testimony concerning why the decision should be overturned or upheld. The Appellant will go first, followed by the Nonappellant, if present, and then by the original Hearing Panel Chair.

(If REALTOR® or Legal Counsel gives final testimony, ask party if they have anything to add.)

The Original Hearing Panel Chair may now give final testimony.

**Confirmation of fairness/opportunity to testify:** Thank you to the participants for your testimony today, I have two questions that I need to pose to you.

Do each of you feel this appeal hearing has been conducted fairly?

(If yes) Let the record show that all parties to this appeal hearing have indicated that they feel this appeal hearing has been conducted fairly.

Have each of you had an adequate opportunity to state why you believe that the decision of the original Ethics Hearing Panel should or should not be upheld by this Appeal Tribunal?

(If yes) Let the record show that all parties have indicated that they have had an adequate opportunity to state why they believe the decision of the original Ethics Hearing Panel should or should not be upheld by this Appeal Tribunal.

**Closing Statements from the Chair:** Before we adjourn this appeal hearing, all persons present are advised that the decision of this Appeal Tribunal is final and the report and findings of this Appeal Tribunal are considered confidential. Upon final action by this Appeal Tribunal, the Professional Standards Administrator shall disseminate to the complainant and the respondent in the original ethics hearing, the Chair and members of the original ethics Hearing Panel, association legal counsel, and the Association Executive of any other Association of REALTORS® in which the respondent holds membership, and any governmental agency, as directed by the final discipline imposed, such notice of the action of the Appeal Tribunal to effectuate the discipline prescribed. The final decision of this Appeal Tribunal will be disseminated to the parties by electronic mail, usually within five (5) business days.

**Adjournment:** There being no further business to be considered in this appeal hearing, this portion of the appeal hearing stands adjourned.

**Executive session:** The Appeal Hearing Tribunal will now go into executive session.

**Procedural note:** *(The Appeal Hearing Tribunal goes into executive session to deliberate the issues raised on appeal. The Appeal Hearing Tribunal may adopt or modify the recommendation of the original Hearing Panel, including the discipline imposed; or, alternatively, the Appeal Hearing Tribunal may dismiss the complaint if it concludes that the findings of fact do not support the*

*original Hearing Panel's conclusion as to unethical conduct. If the Appeal Hearing Tribunal is concerned with a possible procedural deficiency, it may refer the case back to the Professional Standards Committee for a new hearing before a different ethics Hearing Panel. If the Appeal Hearing Tribunal is concerned with the appropriateness of the recommendation for discipline, it may impose an alternative discipline that does not exceed that discipline recommended by the original ethics Hearing Panel or, alternatively, the Appeal Hearing Tribunal may refer the decision back to the original ethics Hearing Panel for further consideration. If the matter is referred back to the original ethics Hearing Panel for further consideration, it should be accompanied by the Appeal Hearing Tribunal's concerns regarding the proposed discipline. However, while the Appeal Hearing Tribunal may recommend that the discipline be increased, the original ethics Hearing Panel is not required to increase the discipline beyond that originally recommended.)*

**Declaratory relief:** *(If the Appeal Hearing Tribunal has reason to believe the decision will not be accepted and litigation may ensue, it should consider making disciplinary action effective only after a favorable decision in a suit for declaratory relief filed by the Association confirming the propriety of its action. This will minimize any legal vulnerability to the Association.)*

*(Revised 11/23)*

# CHAIR'S PROCEDURAL GUIDE: CONDUCT OF AN ETHICS APPEAL HEARING INVOLVING A COMPLAINT AND COUNTER-COMPLAINT

**Minnesota Realtors®**  
**State of Minnesota**

*(Ask all parties to come into the hearing room.)*

**Start promptly:** Begin the hearing promptly at the noticed hearing time.

**Chair's Opening Statement and Conduct of Hearing:** Panel members and hearing participants, I now call this appeal hearing to order. The professional standards procedures of Minnesota Realtors® provide for the right to appeal the decisions rendered by Ethics Hearing Panels. The complainant in the original ethics hearing may appeal based only on alleged procedural deficiencies that may have deprived the complainant of the opportunity for a full and fair hearing or other lack of procedural due process. The respondent in the original ethics hearing may appeal the decision and/or recommendation for discipline on the basis of (1) misapplication or misinterpretation of an Article(s) of the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®, (2) alleged procedural deficiency or any lack of procedural due process, or (3) the discipline recommended by the Hearing Panel. This particular appeal will be heard by Appeal Tribunal, hereinafter referred to as the Appeal Tribunal.

**Introduction of the Appeal Tribunal:** At this time, I would like to introduce the members of this Appeal Tribunal. My name is Appeal Chair and I will serve as Chair. The other members of this Appeal Tribunal are \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_.

Please note, that cellular phones, two-way radios and other transmitting devices may not be operated during the hearing absent specific advance authorization from the panel chair.

*(The Chair ☐ HAS / ☐ HAS NOT provided specific advanced authorization.)*

At this time, I will request that all persons present in the room who expect to testify at this hearing affirm their testimony.

**Affirmation:** Raise your right hand, and following the question I pose, answer in the affirmative if you do affirm. "Do you affirm that the testimony you are about to give in this proceeding shall be the truth, the whole truth, and nothing but the truth?"

☐ *Let the record show that all parties have answered in the affirmative.*

**Basis of this hearing:** This is an appeal of the decision of the original Ethics Hearing Panel composed of: \_\_\_\_\_, Chair; \_\_\_\_\_; and \_\_\_\_\_ at an ethics hearing conducted on Date. The basis of the original ethics hearing was a complaint filed by Complainant, the complainant, against Respondent, the respondent, alleging a violation of Article(s) Articles of the Code of Ethics and a Counter-Complaint filed by Complainant2 naming Respondent2 alleging a violation of Article(s) Articles of the Code of Ethics. The decision was as follows.

**Finding of Fact:**

**The Decision of the Hearing Panel is based upon the following factors:**

**Discipline:**

Prior to the original ethics hearing, the complaints were reviewed by a Grievance Review Panel and referred to the Board's Professional Standards Committee for a hearing.

**Authority:** The Appeal Tribunal present here today is a body duly constituted under the authority of the Bylaws of Minnesota Realtors®

**Disqualification of Appeal Tribunal Members:** Anyone who was a party to the original ethics hearing, a member of the Grievance Review Panels present during the meeting when the complaints were reviewed, a member of the original ethics Hearing Panel, or who was otherwise involved in this matter prior to the appeal is disqualified from serving on this Appeal Tribunal. Furthermore, anyone who is related by blood or marriage to any party to the hearing or anyone related by blood or marriage to a REALTOR® acting as counsel for either the complainant or respondent, or anyone who is an employer, partner, employee, or is associated in business with any of the parties or a REALTOR® acting as counsel is also disqualified. I will now ask members of the Appeal Tribunal if they know of any reason why they should be disqualified.

*(If none)* Let the record show that the members of the Appeal Tribunal have not indicated any reason why they are not qualified to serve.

Although the parties have been previously notified of their right to challenge members of this Appeal Tribunal, I will now ask the parties if they are aware of any reason why any member of this Appeal Tribunal is not qualified to serve.

*(If none)* Let the record show that the parties have not indicated any reason why any member of this Appeal Tribunal is not qualified to serve.

**Additional introductions:** At this time, I would ask that the complainant, respondent, the Chair (or representative) of the original Ethics Hearing Panel and any legal counsel introduce themselves.

**Also present at this hearing:**

**Case Administrator/Association Legal Counsel:**

**Appeal limitations:** In this appeal hearing we will consider the arguments of Appellant, hereinafter referred to as the appellant, who filed the Requests for Appeal. The appeal is further limited to the bases set forth in writing in the Requests for Appeal, which are as follows.

In the matter of Case #

- 1) Misapplication or misinterpretation of an Article of the Code of Ethics;
- 2) Procedural deficiency or any lack of procedural due process;
- 3) the discipline recommended by the Hearing Panel

In the matter of Case #

- 1) Procedural deficiency or any lack of procedural due process;

**Outline of procedure:** At this time, I would like to explain the procedure for this appeal hearing. First, the original Ethics Hearing Panel Chair (or a representative from the original panel) will summarize the cases. Then, the appellant will have an opportunity to offer corrections or modifications to the summaries, to introduce supporting evidence and/or the statements of any other parties to the original ethics hearing, and to explain the bases for the appeals. Next, the nonappellant will have an opportunity to explain why the original Ethics Hearing Panel's decision in both cases should be upheld. The Chair of the original Hearing Panel will then have an opportunity to explain why the original ethics Hearing Panel's decision in both cases should be upheld. At any time during this proceeding, members of the Appeal Hearing Tribunal may ask questions; however, parties have no right of cross-examination. Each party and the original Hearing Panel Chair will have an opportunity to make closing statements. Finally, following the appeal hearing, the Appeal Tribunal will go into executive session to render a decision.

Do any of the parties have any questions regarding the outline of procedure?

*(If none)* Let the record show that none of the parties has any questions regarding the outline of procedure.

**Guidelines:** This Appeal Tribunal is not dealing with questions of law and is not governed by the technical rules of evidence which may apply in courts. This Appeal Tribunal will seek to determine all ascertainable and relevant facts pertaining to the matter under consideration to arrive at a peer judgment and decision by the Appeal Tribunal that is fair to all of the parties. After the Appeal Tribunal has heard all of the evidence and testimony, we will go into executive session to render our decision. The decision will be based solely upon the arguments and testimony offered during this appeal hearing. All parties or their representatives to these proceedings will be allowed a full opportunity to be heard on the matters relevant to this issue. This Appeal Tribunal may rule at any

time during this Appeal Hearing on the relevance of testimony being given. All parties giving testimony will be asked to affirm that testimony given is the truth to the best of their knowledge. Association staff may offer procedural assistance from time to time throughout the proceedings.

(If Legal or REALTOR® Counsel present) A party may be represented by legal or REALTOR® counsel. This Appeal Tribunal need not accept the statements of counsel as being the statements of their clients if it desires direct testimony. Counsel is present to advise and consult with their clients, and to speak for them subject to appropriate rulings or determinations by this Appeal Tribunal. This Appeal Tribunal will not tolerate any effort by any party or by counsel to any party to harass, intimidate, coerce, or confuse the Appeal Tribunal or any party to the proceedings.

**The appeal hearing:** We shall now proceed with the appeal hearing.

**Presentation by the original Ethics Hearing Panel Chair:** At this time the original Ethics Hearing Panel Chair will summarize the cases and explain the decision, commencing with the case filed first: *[Insert case numbers in order of what case was first filed]*

**Presentation by the Appellant:** At this time the appellant may offer any corrections or modifications to the original Ethics Hearing Panel Chair's summary of the cases, introduce supporting evidence and/or the statements of any other parties to the original ethics hearing, and explain the bases for the appeals commencing with the case filed first. *[Insert case numbers in order of what case was first filed]*

(If REALTOR® or Legal Counsel has presented, ask appellant if they have anything to add.)

**Testimony of the Nonappellant – if present:** At this time the Nonappellant may offer any corrections or modifications to the Ethics Hearing Panel Chair's summary of the cases and will have an opportunity to explain why the decision of the Ethics Hearing Panel should be upheld by the Appeal Tribunal commencing with the case filed first. *[Insert case numbers in order of what case was first filed]*. Any party testifying must restrict his/her discussion to the issues raised in the appeals.

**Rebuttal by the original Ethics Hearing Panel Chair:** At this time the original Ethics Hearing Panel Chair will have an opportunity to explain why the original Ethics Hearing Panel's decision in both matters should be upheld by this Appeal Tribunal.

**Questions:** At this time the members of the Tribunal will be given an opportunity to ask questions of either of the parties and the Chair of the original Ethics Hearing Panel.

**Final Testimony by Parties:** Before we conclude this proceeding, the Appellant, the Nonappellant, and the original Hearing Panel Chair will be given a final opportunity to give final testimony concerning why the decision should be overturned or upheld. The Appellant will go first, followed by the Nonappellant, if present, and then by the original Hearing Panel Chair.

(If REALTOR® or Legal Counsel gives final testimony, ask party if they have anything to add.)

The Original Hearing Panel Chair may now give final testimony.

**Confirmation of fairness/opportunity to testify:** Thank you to the participants for your testimony today. I have two questions that I need to pose to you.

Do each of you feel this appeal hearing has been conducted fairly?

*(If yes)* Let the record show that all parties to this appeal hearing have indicated that they feel this appeal hearing has been conducted fairly.

Have each of you had an adequate opportunity to state why you believe that the decision of the original Ethics Hearing Panel should or should not be upheld by this Appeal Tribunal?

*(If yes)* Let the record show that all parties have indicated that they have had an adequate opportunity to state why they believe the decision of the original Ethics Hearing Panel should or should not be upheld by this Appeal Tribunal.

**Closing Statements from the Chair:** Before we adjourn this appeal hearing, all persons present are advised that the decision of this Appeal Tribunal is final and the report and findings of this Appeal Tribunal are considered confidential. Upon final action by this Appeal Tribunal, the Professional Standards Administrator shall disseminate to the complainant and the respondent in the original ethics hearing, the Chair and members of the original ethics Hearing Panel, Association legal counsel, and the Association Executive of any other Association of REALTORS® in which the respondent holds membership, and any governmental agency, as directed by the final

discipline imposed, such notice of the action of the Appeal Tribunal to effectuate the discipline prescribed. The final decision of this Appeal Tribunal will be disseminated to the parties by electronic mail, usually within five days.

**Adjournment:** There being no further business to be considered in this appeal hearing, this portion of the appeal hearing stands adjourned.

*(Revised*

*10/24)*

# Part Six - Specimen Forms

The Manual refers to certain forms used in connection with ethics proceedings conducted under it. Following are specimens of such forms.

## **General Instructions and Information for Filing and Replying to Ethics Complaints**

- (1) Complaints must be typewritten and submitted with a sufficient number of copies to enable the Association to provide one to each respondent plus one copy for the Association's records. Any reply must be typewritten and submitted with a sufficient number of copies to enable the Association to provide one to each complainant plus one copy for the Association's records. Additional copies of the complaint and reply should be furnished by the complainant and respondent as requested by the Professional Standards Administrator. If the complainant is a member of the public, extra copies of the complaint should not be requested.
- (2) Complaints will be referred to the Association Professional Standards Administrator (or Executive Officer), and by the Professional Standards Administrator to the Grievance Review Panel. If the Grievance Review Panel finds the matter to constitute a proper cause of action, it will be referred to the Association Professional Standards Administrator to arrange a hearing; if not found to constitute a proper cause of action, it will be returned to the complainant with the decision of the Grievance Review Panel, together with information advising the complainant of the procedures by which the Grievance Review Panel's decision may be appealed to an Appeal Tribunal.
- (3) If there is to be a hearing, respondent will have fifteen (15) days from when the request for response was transmitted to reply. A copy of the reply will be sent to the complainant. The date for the hearing will be set and all parties will be notified of the date and place of hearing at least twenty-one (21) days in advance. (*Revised 11/14*)
- (4) If no reply is received from respondent within fifteen (15) days from when the request for response was transmitted, the date, time, and place of hearing will be set. (*Revised 11/14*)
- (5) All parties may be represented by counsel, provided that notice of intention to be represented is transmitted to all other parties and to the Hearing Panel at least fifteen (15) days prior to the date of the hearing. Failure to provide timely notice may result in a continuance of the hearing.
- (6) It is the responsibility of each party to arrange for their witnesses to be present at the hearing. All parties appearing at a hearing may be called as a witness without advance notice. (*Revised 11/14*)
- (7) Parties are strongly encouraged to provide the Association with any and all documents and evidence they intend to introduce during the hearing at least seven (7) days prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. (*Adopted 5/15*)
- (8) Either party may file with the Professional Standards Administrator, within ten (10) days from the date the names of the Hearing Panel members are transmitted to the parties, a written request for disqualification of any potential member of the Hearing Panel for any of the following reasons:
  - (a) is related by blood or marriage to, or has an existing or past relationship with, any of the parties to the complaint, their counsel or representatives, witnesses (if applicable), or other panel members
  - (b) is an employer, partner, or employee, or in any way associated in business with the complainant, respondent, or counsel for either the complainant or respondent or has a personal interest in the outcome of the proceeding
  - (c) is a party to the hearing, or a party or a witness in another pending case involving complainant or respondent
  - (d) knows any reasons acceptable to the Hearing Panel, Appeal Tribunal, or other appointed Tribunal that may prevent the member from rendering an impartial decision
  - (e) has already served as a member of any other panel in the same manner.
- (9) The notice of hearing will contain names of members of the tribunal who will hear the case and should be accompanied by an "Outline of Procedure for Ethics Hearing." Parties' requests for continuance shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing.

- (10) The parties shall not discuss the case with any member of the Hearing Panel, Professional Standards Committee, or the Executive Committee at any time prior to announcement of a decision in the case.
- (11) No hearing will be held in the absence of a complainant. An ethics hearing may proceed in the absence of a respondent.

*(Revised 11/14)*

Form E-1  
Case #<CASENUMBER>**Ethics Complaint**

Dated: \_\_\_\_\_

**To the Grievance Review Panel of Minnesota Realtors®:**

---

*Complainant(s)*

vs.

*Respondent(s)*

---

Complainant(s) charge(s):

1. An alleged violation of Article(s) \_\_\_\_\_ of the Code of Ethics as supported by Standard of Practice(s) *(if any)*

*AND/OR;*

2. Other membership duty as set forth in Article(s) \_\_\_\_\_ of the bylaws of Minnesota Realtors®.

Complainant(s) allege(s) that the above charge(s) (is/are) supported by the attached statement, which is signed and dated by the complainant(s) and which explains when the alleged violation(s) occurred and, if a different date, when the complainant(s) first knew about the alleged violations.

This complaint is true and correct to the best knowledge and belief of the undersigned and is filed within one hundred eighty (180) days of the time that the alleged offense and facts relating to it could have been known by the complainant in the exercise of reasonable diligence or within one hundred eighty (180) days after the conclusion of the transaction or event, whichever is later.

Date(s) alleged violation(s) took place: \_\_\_\_\_

Date(s) you became aware of the facts on which the alleged violation(s) (is/are) based?  
\_\_\_\_\_

Date of the closing or conclusion of the transaction, if applicable: \_\_\_\_\_

Are the circumstances giving rise to this ethics complaint involved in civil or criminal litigation or in any proceeding before the state real estate licensing authority or any other state or federal regulatory or administrative agency?

☐ Yes    ☐ No    If "Yes", please specify: \_\_\_\_\_

You may file an ethics complaint in any jurisdiction where a REALTOR<sup>®</sup> is a member or MLS participant. Note that the REALTORS<sup>®</sup> Code of Ethics, Standard of Practice 14-1 provides, in relevant part, "REALTORS<sup>®</sup> shall not be subject to disciplinary proceeding in more than one Board of REALTORS<sup>®</sup> . . . with respect to alleged violations of the Code of Ethics relating to the same transaction or event."

Have you filed, or do you intend to file, a similar or related complaint with another Association(s) of REALTORS<sup>®</sup>?

☐ Yes ☐ No If "Yes", name of other Association(s): \_\_\_\_\_  
Date(s) filed: \_\_\_\_\_

I (we) declare that to the best of my (our) knowledge and belief, my (our) allegations in this complaint are true. ☐ Yes

I understand that should the Grievance Review Panel dismiss this ethics complaint in part or in total, that I have twenty (20) days from transmittal of the dismissal notice to appeal the dismissal to Minnesota Realtors<sup>®</sup> Appeal Tribunal. I understand and agree that all communication pertaining to this complaint may be sent to the e-mail address listed below and I am solely responsible for ensuring such emails are not blocked. The submitter(s) of this Complaint declare(s) they are the complainant(s) named below.

**Complainant(s):**

|                          |                    |
|--------------------------|--------------------|
| _____<br>Type/Print Name | _____<br>Signature |
| _____<br>Type/Print Name | _____<br>Signature |
| _____<br>Address         |                    |
| _____<br>Phone           | _____<br>Email     |

Form E-1.1  
Case #<CASENUMBER>

## Anonymous Ethics Complaint Citation – Article 12

Dated: \_\_\_\_\_

**To the Grievance Review Panel of Minnesota Realtors®:**

\_\_\_\_\_ VS. \_\_\_\_\_  
*Complainant(s)* *Respondent(s)*

**Complainant charges alleged violation(s) of Article 12 as checked below:**

|                          |                                                                                                                                                                                               |                                    |
|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
| <input type="checkbox"/> | Failing to present a true picture in real estate communications and advertising                                                                                                               | Article 12                         |
| <input type="checkbox"/> | Failing to disclose status as real estate professional in advertising and other representations                                                                                               | Article 12                         |
| <input type="checkbox"/> | Representing that their brokerage services to a client are free or available at no cost to their clients and the Realtor® received financial compensation from any source for those services. | Article 12, supported by SOP 12-1  |
| <input type="checkbox"/> | Failure to exercise care and candor when communicating the terms and conditions of premiums, prizes, merchandise discounts or other inducements to list, sell, purchase, or lease             | Article 12, supported by SOP 12-3  |
| <input type="checkbox"/> | Advertising property for sale/lease without authority of owner or listing broker                                                                                                              | Article 12, supported by SOP 12-4  |
| <input type="checkbox"/> | Failing to disclose name of firm in advertisement for listed property                                                                                                                         | Article 12, supported by SOP 12-5  |
| <input type="checkbox"/> | Failing to disclose status as both owner/landlord and REALTOR® or licensee when advertising property in which REALTOR® has ownership interest                                                 | Article 12, supported by SOP 12-6  |
| <input type="checkbox"/> | Falsely claiming to have “sold” property                                                                                                                                                      | Article 12, supported by SOP 12-7  |
| <input type="checkbox"/> | Failure to take corrective action when it becomes apparent that information on a REALTOR®’s website is no longer current or accurate                                                          | Article 12, supported by SOP 12-8  |
| <input type="checkbox"/> | Failure to disclose firm name and state of licensure on REALTOR® firm website                                                                                                                 | Article 12, supported by SOP 12-9  |
| <input type="checkbox"/> | Misleading consumers through deceptive framing, manipulating content, deceptively diverting internet traffic, or presenting other’s content without attribution or permission                 | Article 12, supported by SOP 12-10 |
| <input type="checkbox"/> | Registering or using of deceptive URL or domain name                                                                                                                                          | Article 12, supported by SOP 12-12 |
| <input type="checkbox"/> | Representing that the REALTOR® has a designation, certification, or other credential they are not entitled to use                                                                             | Article 12, supported by SOP 12-13 |

**Statement Supporting Charges:** Complainant(s) allege(s) that the above charge(s) (is/are) **supported by the attached statement**, which is signed and dated by the Complainant(s) and which explains when the alleged violation(s) occurred and, if a different date, when the Complainant(s) first knew about the alleged violations.

**Timely Filed:** This complaint is true and correct to the best knowledge and belief of the undersigned and is filed within one hundred eighty (180) days of the time that the alleged offense and facts relating to it could have been known by the complainant in the exercise of reasonable diligence or within one hundred eighty (180) days after the conclusion of the transaction or event, whichever is later.

**Date(s) alleged violation(s) took place:** \_\_\_\_\_

**Date(s) you became aware of the facts on which the alleged violation(s) (is/are) based?**  
\_\_\_\_\_

**Civil or Criminal Litigation/Investigation:** Are the circumstances giving rise to this ethics complaint involved in civil or criminal litigation or in any proceeding before the state real estate licensing authority or any other state or federal regulatory or administrative agency?

☐ Yes    ☐ No    If "Yes", please specify:

\_\_\_\_\_  
**Filing in other Jurisdiction:** You may file an ethics complaint in any jurisdiction where a REALTOR<sup>®</sup> is a member or MLS participant. Note that the REALTORS<sup>®</sup> Code of Ethics, Standard of Practice 14-1 provides, in relevant part, "REALTORS<sup>®</sup> shall not be subject to disciplinary proceeding in more than one Association of REALTORS<sup>®</sup> . . . with respect to alleged violations of the Code of Ethics relating to the same transaction or event."

Have you filed, or do you intend to file, a similar or related complaint with another Association(s) of REALTORS<sup>®</sup>?

☐ Yes    ☐ No    If "Yes", name of other Association(s):

\_\_\_\_\_  
**Date(s) filed:**  
\_\_\_\_\_

**Article 14 of the COE:** Realtors<sup>®</sup> are reminded that Article 14, SOP 14-4 prohibits Realtors<sup>®</sup> from intentionally impeding the Association's proceedings by filing multiple ethics complaints based on the same event or transaction.

**NOTE:** Page 3 of this document contains the Complainant(s)'s signature page and will be withheld from Respondent, Respondent's broker, and the Grievance Review Panel.

**Complainant Signature Page:**

**Request for Hearing:** Complainant understands that Respondent has a right to request a due process hearing on this matter. If Respondent requests a hearing, Complainant instruct(s) the Association to (Check one):

- ☐ Disclose Complainant's name and contact information to Respondent and Respondent's Broker. Complainant understands Complainant will be required to attend the hearing.
- ☐ Withdraw this Complaint. If withdrawn, this complaint may not be refiled.

**Respondent Ineligible:** Complainant understands that Respondent may not be eligible for Citation. In the event any Respondent listed is not eligible for Citation, this complaint must be referred to the Professional Standards Committee for a due process hearing. If Respondent is not eligible for a citation, Complainant instructs the Association to (Check one):

- ☐ Disclose Complainant's name and contact information to Respondent and Respondent's Broker. Complainant understands Complainant will be required to attend the hearing.
- ☐ Withdraw this Complaint. If withdrawn, this complaint may not be refiled.

**I (we) declare that to the best of my (our) knowledge and belief, my (our) allegations in this complaint are true.**

I understand that should the Grievance Review Panel dismiss this ethics complaint in part or in total, that I have twenty (20) days from transmittal of the dismissal notice to appeal the dismissal to Minnesota Realtors® Appeal Tribunal.

I understand and agree that all communication pertaining to this complaint may be sent to the e-mail address listed below and I am solely responsible for ensuring such emails are not blocked.

The submitter(s) of this Complaint declare(s) they is/are the complainant(s) named below.

**Complainant(s):**

|                 |           |
|-----------------|-----------|
| <hr/>           | <hr/>     |
| Type/Print Name | Signature |
| <hr/>           | <hr/>     |
| Type/Print Name | Signature |
| <hr/>           |           |
| Address         |           |
| <hr/>           |           |
| <hr/>           | <hr/>     |
| Phone           | Email     |

Form #E-2-C  
Case #<CASENUMBER>**Confirmation of Complaint Received  
(Ethics – Grievance Review)**

In the case of

<C\_NAMES>  
*Complainant(s)*

vs.

<R\_NAMES>  
*Respondent(s)*

To &lt;C\_NAMES&gt;,

This notice serves as confirmation that we have received the ethics complaint that you filed with this Association naming <R\_NAMES> as the Respondent(s). The complaint has been referred to a Grievance Review Panel for review of an alleged violation of <ARTICLE\_ID> of the Code of Ethics; and/or other membership duty as set forth in the bylaws of the Association.

The Grievance Review Panel of Minnesota Realtors will meet on <GC\_HEARINGDATE> to review the complaint.

If the Grievance Review Panel determines that the facts, if true, **would not** constitute a violation of the Code of Ethics or there is no basis for further consideration, the complaint will be dismissed.

If the Panel determines that the complaint is timely filed and the facts, if true, **would** constitute a violation of the Code of Ethics, the Panel will determine whether the Complaint is eligible for a Citation or must proceed to a hearing.

You will receive a copy of the Panel's decision, and if the Complaint is eligible for a Citation, one will be transmitted to the respondent.

If, instead, a hearing is determined to be necessary, a hearing will be scheduled before a Hearing Panel of the Professional Standards Committee, which you will be required to attend.

Please be advised that **we are not a court of law and cannot make any monetary awards or legal resolutions**. A Hearing Panel can only examine the ethical actions and statements of the member(s) named in the complaint.

Respectfully submitted,

Professional Standards  
Administrator Minnesota Realtors®Dated: <TODAY>

Form #E-2-R  
Case #<CASENUMBER>**Notice to Respondent  
(Ethics – Grievance Review)**

In the case of

<C\_NAMES>  
*Complainant(s)*

vs.

<R\_NAMES>  
*Respondent(s)*

To &lt;R\_NAMES&gt;,

Attached hereto is a copy of a complaint which names you as respondent, as filed with this Association and referred to a Grievance Review Panel for review of an alleged violation of <ARTICLE\_ID> and/or other membership duty as set forth in the bylaws of the Association.

The Grievance Review Panel of Minnesota Realtors® met on <GC\_HEARINGDATE> to review the complaint and made the following determination:

- ☐ The Complaint was not timely filed and therefore was dismissed.
- ☐ The Complaint did not provide sufficient allegations that, if able to be proven true, would constitute a violation of the Code of Ethics and therefore was dismissed.
- ☐ The Complaint was too vague or lacked sufficient information and so was rejected by the Grievance Review Panel.
- ☐ The Complaint was determined to be a potential violation of the Code of Ethics and so was moved forward as a Citation OR scheduled for an Ethics Hearing before the Professional Standards Committee.

Also attached is a copy of the Grievance Review Panel's decision. If the Complaint is eligible for a Citation, one will be transmitted to you along with the decision.

If, instead, a hearing has been determined to be necessary, you will be asked to submit a written response to the allegations made in the complaint. In that case, a hearing will be scheduled before a Hearing Panel of the Professional Standards Committee, which you will be asked to attend.

The Complainant has been advised that we are not a court of law and cannot make any monetary awards or legal resolutions. A Hearing Panel can only examine the ethical actions and statements of the member(s) named in the complaint.

Respectfully submitted,

Choose an item.

Professional Standards Administrator

Dated: <TODAY>



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Minnetonka, MN 55343  
952.935.8313  
mnrealtor.com

Form E-3  
Case #<CASENUMBER>

## Reply (Ethics)

To The Professional Standards Committee of Minnesota Realtors®:

Filed: <SUBMITTED>

<C\_NAMES>

vs.

<R\_NAMES>

Complainant(s)

Respondent(s)

in a matter of alleged violation of the Code of Ethics or other membership duty as set forth in the bylaws of this Association. Respondent(s) replies and substantiates such reply by the following facts and/or attached statement:

I/ We declare that to the best of my/our knowledge and belief, the statements contained in this Reply are true and correct.

Associations of REALTORS® where I hold or have held membership in the preceding three (3) years:

I understand that all communication pertaining to this complaint may be sent to the e-mail address listed below and I am solely responsible for ensuring such emails are not blocked.

Respondent(s):

Type/Print Name

Signature

Address

Phone

Email

Type/Print Name

Signature

Address

Phone

Email



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952.935.8313  
[mnrealtor.com](http://mnrealtor.com)

Form E-4  
Case #: <CASENUMBER>

## Grievance Committee Request for Information

To <C\_NAMES>,

The Grievance Review Panel of Minnesota Realtors® has met to review the Ethics Complaint that you have filed naming <R\_NAMES> as the Respondent. After careful review of the complaint, the panel concluded that the information provided was not sufficient on its face to determine whether the matter warrants further investigation before a hearing panel of the Professional Standards Committee.

The Grievance Review Panel has requested that you supply it with the following information:

1. Click or tap here to enter text.
2. Click or tap here to enter text.

Enclosed is *Form E-5, Response to Grievance Review Panel's Request for Information*. Please complete this form and return it along with the requested information within ten (10) days from transmittal of this notice to the Association at the address noted above. If no response is received within that time frame, the Grievance Review Panel will make a determination based upon the information previously submitted.

Respectfully submitted,

Professional Standards Administrator  
Minnesota Realtors®

Date: <TODAY>



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Form # E-5

Case #<CASENUMBER>

## Response to Grievance Committee Request for Information

To the Grievance Review Panel of Minnesota Realtors® :

Filed: <SUBMITTED>

\_\_\_\_\_ <C\_NAMES> vs. \_\_\_\_\_ <R\_NAMES>

in a matter of alleged violation of the Code of Ethics or other membership duty as set forth in the bylaws of this Association.

Complainant(s) replies and substantiates such reply by the following attached statement: \_\_\_\_\_

\_\_\_\_\_

This is true and correct to the best knowledge and belief of the undersigned. I (we) declare that to the best of my (our) knowledge and belief, the statements contained in this Response are true and correct.

Complainant(s):

\_\_\_\_\_  
*Type/Print Name*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
*Phone*

\_\_\_\_\_  
*Email*

\_\_\_\_\_  
*Type/Print Name*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
*Phone*

\_\_\_\_\_  
*Email*



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Form E-5.1

Case #<CASENUMBER>

## Grievance Review Panel Report Form - Ethics

<C\_NAMES>

*Complainant(s)*

vs.

<R\_NAMES>

*Respondent(s)*

On <GC\_HEARINGDATE> the Minnesota Realtors® (MNR) Grievance Review Panel met to review the above-referenced matter which is an ETHICS COMPLAINT, and if checked, ☐ an ALLEGED VIOLATION OF MNR BYLAW(S), RULE(S), OR REGULATION(S). As a result of that meeting, the Grievance Review Panel made the following determination(s):

☐ **1. INSUFFICIENT COMPLAINT:** The complaint is:

- ☐ vague
- ☐ overly general
- ☐ does not allege violations of specific Article(s), MNR bylaw(s), rule(s) or regulation(s)
- ☐ insufficient on its face

The complaint is hereby dismissed/rejected and referred back to the complainant. Complainant is free to re-file an amended complaint. The 180-day filing deadline will continue to run.

**Other initial conclusions:** \_\_\_\_\_

\_\_\_\_\_

☐ **2. POTENTIAL UNETHICAL CONDUCT:** The complaint, if taken as true on its face, supports a possible violation of the Code of Ethics and/or MNR bylaw(s), rule(s) or regulation(s) and is hereby:

- ☐ **Forwarded to the Professional Standards Administrator to schedule a hearing** before a Hearing Panel of the Professional Standards Committee of the MNR (and is not eligible for citation or the Panel has determined the allegations are sufficiently egregious); or
- ☐ **Referred for Citation** under the Minnesota Realtors® Citation Policy (see "Complaint Eligible for Citation" section below).
- ☐ **Other:** \_\_\_\_\_

\_\_\_\_\_

**Article(s) charged and forwarded:** \_\_\_\_\_

**Supported by Standard of Practice(s) (if any):** \_\_\_\_\_

**Bylaw(s), rule(s) or regulation(s) charged to have been violated (Article and Section):** \_\_\_\_\_

\_\_\_\_\_

- ☐ If Article(s)/Standard(s) of Practice are covered by the Citation Policy schedule, the reason for ineligibility for Citation Policy is as follows: \_\_\_\_\_

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If respondent does not agree with the Panel's determination that the complaint was timely filed or respondent believes there was some other administrative issue that would prohibit the complaint from moving forward to a hearing, respondent may request a pre-hearing meeting using the *Request for Pre-Hearing Meeting*, Form E-24.

**AMENDMENT(S) TO COMPLAINT:** *(Check all that apply, if applicable)*

- ☐ **A. PORTION OF COMPLAINT DISMISSED:** The complaint alleges multiple allegations of unethical conduct. The Panel determined that one or more of the allegations would not, under any circumstance, constitute a violation, and that portion of the complaint is hereby dismissed and the balance is hereby forwarded to the Professional Standards Administrator for a hearing before a Hearing Panel of the Professional Standards Committee.

**Articles Dismissed:** \_\_\_\_\_

---

*See Section 2 to determine what Article(s), MNR bylaws, rule(s) or regulation(s) have been forwarded for hearing.*

If the complainant does not agree with the dismissal of these Article(s), MNR bylaw(s), rule(s) or regulation(s), the complainant may appeal the dismissal to an Appeal Tribunal within 20 days of transmittal dismissal notice using the *Appeal of Grievance Review Panel Decision*, Form E-22.

- ☐ **B. INAPPROPRIATE ARTICLE:** The Panel determined that the respondent's alleged conduct may be the basis for a violation but an inappropriate Article(s) has been cited by complainant. The Panel hereby amends the complaint as follows:

**Articles Added:** \_\_\_\_\_

**Rationale for Article(s) added:** \_\_\_\_\_

---

**Articles Deleted:** \_\_\_\_\_

**Rationale for deleting Article(s):** \_\_\_\_\_

---

If the complainant does not agree with the above amendment, complainant may appeal to an Appeal Tribunal requesting that the original complaint be forwarded to a Hearing Panel as filed **within twenty (20) days** of transmittal of this dismissal notice using the *Appeal of Grievance Review Panel Decision*, Form E-22.

If no appeal is filed within the appeal timeframe, the complaint, as amended, shall be forwarded to the Professional Standards Committee for a hearing including the Article(s), and/or MNR bylaw(s), rule(s) or regulation(s) specified on Lines 32-38. If an appeal is filed, then ethics hearing will be held until the appeal is heard.

- ☐ **C. ARTICLE(S) ADDED:** Upon review of the complaint, the Panel determined there was glaring and obvious information contained in the complaint to warrant the following additional Article(s), bylaw(s), rule(s) or regulation(s) be added to the complaint: \_\_\_\_\_

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If the complainant does not agree with the above addition, the complainant may notify Minnesota Realtors® **within ten (10) days** of transmittal of this notice. If complainant disagrees with the addition, only those article(s), bylaw(s), rule(s) or regulation(s) agreed to by complainant shall be forwarded to a Hearing Panel.

☐ **3. COMPLAINT ELIGIBLE FOR CITATION:** The Panel determined that the complaint is eligible for a citation to be issued under the Citation Policy. The Panel decided to issue the following citation, per the Citation Policy Guidelines, for the following Article(s)/Standard(s) of Practice:

☐ **Fine:** Choose *Fine Amount* to be paid **within 5 days** after transmission of acceptance of the Citation to the Association or time-period to request a hearing has expired, comprised of the following fines corresponding with the Article(s)/Standard(s) of Practice:

☐ for Art./S.O.P. \_\_\_\_\_

☐ for Art./S.O.P. \_\_\_\_\_

☐ for Art./S.O.P. \_\_\_\_\_

☐ **Additional:** \_\_\_\_\_

☐ **Education:** \_\_\_\_\_ **hours** of education on the subject of the REALTOR® Code of Ethics to be completed **within 30 days** of transmission of acceptance of the Citation to the Association or time period to request a hearing has expired.

☐ **Letter of Reprimand:** A Letter of Reprimand advising a lack of professional conduct shall be placed in the membership file.

Respondent shall be deemed to have accepted the Citation if, within 20 days of the transmittal of the Citation, Respondent does not request a hearing. Should Respondent request a hearing, Respondent shall no longer be eligible to accept the Citation.

Other information or rationale: \_\_\_\_\_  
\_\_\_\_\_

☐ **4. COMPLAINT DISMISSED:** This complaint is hereby dismissed.

*(Reason for dismissing complaint:)*

☐ The Panel determined that the complaint was not filed within one hundred eighty (180) days of the time the alleged offense and facts relating to it could have been known by the complainant in the exercise of reasonable diligence or within one hundred eighty (180) days after the conclusion of the transaction or event, whichever is later.

☐ The Panel determined that the allegations in the complaint, if taken as true, do not demonstrate a possible violation of the Code.

☐ The Association does not have jurisdiction over the respondent.

☐ Other (explain): \_\_\_\_\_  
\_\_\_\_\_

☐ **5. REFERRED FOR ARBITRATION:** The complaint is hereby referred back to the complainant as appropriate for arbitration rather than disciplinary action.

☐ **6. ADDITIONAL RATIONALE FOR ACTION TAKEN:** \_\_\_\_\_

---

---

Respectfully submitted,

|                                             |                                     |
|---------------------------------------------|-------------------------------------|
| <hr/>                                       | <hr/>                               |
| <i>Professional Standards Administrator</i> | <i>&lt;TODAY&gt;</i><br><i>Date</i> |

**Grievance Review Panel Members:**

|                      |       |
|----------------------|-------|
| <hr/>                | <hr/> |
| <GC_MEMBER1>, Member |       |
| <hr/>                | <hr/> |
| <GC_MEMBER2>, Member |       |
| <hr/>                | <hr/> |
| <GC_MEMBER3>, Member |       |
| <hr/>                | <hr/> |

Form E-7

Case #: &lt;CASENUMBER&gt;

## Challenge to Qualifications by Parties to Ethics Proceeding

In the case of:

&lt;C\_NAMES&gt;

vs.

&lt;R\_NAMES&gt;

Complainant(s)

Respondent(s)

**Notice of Right to Challenge Tribunal Members:** Notice is given herewith to parties in this matter that a party has a right to challenge the qualifications of any individual who may be appointed to serve on a Hearing Panel or Appeal Tribunal for the following reasons, the member:

- a) is related by blood or marriage to, or has an existing or past relationship with, any of the parties to the complaint, their counsel or representatives, witnesses (if applicable), or other panel members
- b) is an employer, partner, or employee, or in any way associated in business with the complainant, respondent, counsel for either the complainant or respondent or has a personal interest in the outcome of the proceeding
- c) is a party to the hearing, or a party or witness in any pending case involving any party to this hearing
- d) knows of any reason acceptable to the Hearing Panel, Appeal Tribunal, or other appointed Tribunal that may prevent the member from rendering an impartial judgment
- e) has already served as a member of any other panel in the same matter

A list of panel/tribunal members is provided on the Form E-8, *Official Notice of Hearing*. If you wish to challenge the qualifications of any of the individuals listed in the form E-8, please complete the information below and return a copy of the Form E-7 to the Association office **within ten (10) days** from the date the Form E-8 has been transmitted to you.

I (We), as a party to the matter of <C\_NAMES> vs. <R\_NAMES>, hereby challenge the qualification of the following individual(s) as a member(s) of the Tribunal\* for the following reasons: (NOTE: Unsubstantiated challenges will be disregarded.)\*\*

Panel Member Challenged:

Reason:

Panel Member Challenged:

Reason:

(Name)

(Name)

(Signature)

(Date)

(Signature)

(Date)

\*Members of Ethics Hearing Panels, Appeal Tribunals, or Panels appointed on behalf of the Board of Directors. \*\*Use additional pages as required to list additional challenges to the qualifications of individuals who have been or may be selected to serve as member(s) of a Tribunal in an ethics proceeding to which you are a party.



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Minnetonka, MN 55343  
952.935.8313  
mnrealtor.com

Form E-8

Case #: <CASENUMBER>

## Official Notice of Hearing

In the case of:

|                        |     |                        |
|------------------------|-----|------------------------|
| <u>&lt;C_NAMES&gt;</u> | vs. | <u>&lt;R_NAMES&gt;</u> |
| <i>Complainant(s)</i>  |     | <i>Respondent(s)</i>   |

Above parties are hereby notified:

- (1) Your hearing date for the above case, will be held on: **<PS\_HEARINGDATE> Choose an item.** This hearing concerns alleged violation of **<ARTICLE\_ID>** of the Code of Ethics or other membership duty as set forth in the bylaws of the Association.
- (2) You are hereby notified to appear at the time and place so designated.\* Although testimony provided in person before a Hearing Panel is preferred, parties and witnesses to ethics hearings may be permitted to participate in hearings by teleconference or videoconference at the discretion of the Hearing Panel Chair.

- (3) The members of the Hearing Panel appointed to hear the case are:

|                                      |                           |                                      |
|--------------------------------------|---------------------------|--------------------------------------|
| <u>Chairperson, &lt;PS_CHAIR&gt;</u> | <u>&lt;PS_MEMBER1&gt;</u> | <u>&lt;PS_MEMBER2&gt;</u>            |
| <u>&lt;PS_MEMBER3&gt;</u>            | <u>&lt;PS_MEMBER4&gt;</u> | <u>&lt;PS_MEMBER5&gt;, Alternate</u> |

- (4) **Evidence:** Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing at least **seven (7) days prior**. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. All evidence submitted to the association will be provided to the other party(ies) at the time of submission. Evidence submitted at the time of the hearing will be evaluated for admissibility by the hearing panel chair.

- (5) **Counsel:** Either party may be represented by counsel. Each party is requested to provide written notice of an intention to have counsel present **fifteen (15) days prior** to the hearing to the Association and the other party. Notice shall include counsel's name, address, and phone number. Failure to provide this notice will not invalidate a party's right to representation, but may result in a continuance of the hearing if the Hearing Panel determines that the rights of any other party require representation by counsel.

- (6) **Witnesses:** Each party must provide a list of witnesses they intend to call at the hearing to the Association and to all other parties not less than **fifteen (15) days prior** to the hearing. If witness notification is given after this due date, the other party will be asked whether they are agreeable to go forward with the witness. If the other party objects, the Hearing Panel Chair will rule on the appearance of the witness based on the relevancy of their witness' proposed testimony. If the Chair rules that the testimony of the witness is relevant, the witness will be allowed to testify and the other party will have the right to request a continuance.

Each party shall arrange for their witnesses to be present at the time and place designated for the hearing. This includes REALTOR® principals consistent with Section 13(d), *Code of Ethics and Arbitration Manual*. All parties appearing at a hearing may be called as witnesses without advance notice.

- (7) The parties shall not discuss the case with any member of the Hearing Panel or the Appeal Tribunal prior to the hearing or after hearing and prior to the announcement of the decision.

- (8) **Failure of the REALTOR® member to appear at a hearing, may result in an Article 14 Code of Ethics complaint.**

Respectfully submitted,

Professional Standards Administrator

Minnesota Realtors®

Dated: <TODAY>

\*Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. All due dates are based on the hearing date, unless approved by the Hearing Panel Chair.

(Revised 10/24)

Form E-8a  
File #: <CASENUMBER>

### Official Notice of Executive Session-Respondent Waiver of Hearing

In the case of:

|                                                 |     |                                                |
|-------------------------------------------------|-----|------------------------------------------------|
| <u>&lt;C_NAMES&gt;</u><br><i>Complainant(s)</i> | vs. | <u>&lt;R_NAMES&gt;</u><br><i>Respondent(s)</i> |
|-------------------------------------------------|-----|------------------------------------------------|

Above parties are hereby notified:

- (1) The Chairperson of the Hearing Panel has designated <HEARINGDATE> as the date for the Hearing Panel to meet in executive session regarding the above-named case, which is concerning an alleged violation of <ARTICLE ID> of the Code of Ethics or other membership duty.

Respondent has waived their right to a hearing and acknowledges the conduct alleged in the complaint. The Hearing Panel shall consider whether the allegations in the complaint as acknowledged and agreed to by Respondent, support a violation of the Code of Ethics or other membership duty and if a violation is found, recommended discipline.

- (2) The members of the Hearing Panel appointed to consider the matter are:

|                                   |                                   |                                      |
|-----------------------------------|-----------------------------------|--------------------------------------|
| <u>&lt;PS_CHAIR&gt;, Chair</u>    | <u>&lt;PS_MEMBER1&gt;, Member</u> | <u>&lt;PS_MEMBER2&gt;, Member</u>    |
| <u>&lt;PS_MEMBER3&gt;, Member</u> | <u>&lt;PS_MEMBER4&gt;, Member</u> | <u>&lt;PS_MEMBER5&gt;, Alternate</u> |

- (3) **Neither the Complainant nor the Respondent, nor counsel or witnesses will be present at the executive session.**

- (4) The parties shall not discuss the case with any member of the Hearing Panel or any Appeal Tribunal prior to the Hearing or after the Hearing and prior to the announcement of the decision.

Respectfully submitted,

Professional Standards Administrator  
Minnesota Realtors®

Dated: **<TODAY>**

(Revised 10/24)

Form E-8b  
File #<CASENUMBER>**Official Notice of Dismissal and Executive Session –  
Failure of Complainant to Appear**

In the case of:

|                        |     |                        |
|------------------------|-----|------------------------|
| <u>&lt;C_NAMES&gt;</u> | vs. | <u>&lt;R_NAMES&gt;</u> |
| <i>Complainant(s)</i>  |     | <i>Respondent(s)</i>   |

Above parties are hereby notified:

- (1) **Dismissal of Complaint:** The Hearing Panel convened to hear the above-referenced matter on **<PS HEARINGDATE>**. The parties, and all relevant persons were properly notified of the date, time and location of the Hearing. Complainant in this matter is a member of the public and refused or was unable to attend the Hearing. The Association has no record of receiving a written request for continuance nor has the Association granted a continuance in this matter.

This complaint is hereby dismissed in accordance with Part Four, Section 21 of the Code of Ethics and Arbitration Manual as adapted by Minnesota Realtors®. This complaint may not be refiled.

- (2) **Appeal Rights:** Complainant may appeal the dismissal of the complaint by the Hearing Panel utilizing Form E-22 *Appeal of Grievance Review Panel (or Hearing Panel) Decision (Ethics)*. The complaint may be reinstated by an Appeal Tribunal and scheduled for a new hearing if the Appeal Tribunal determines that Complainant's failure to attend the scheduled hearing or request a continuance in writing was not within Complainant's control.
- (3) **Executive Session:** The Hearing Panel members convened in executive session solely to determine whether the complaint includes an alleged violation of public trust or safety. No parties, counsel, or witnesses were present at the executive session.

The Hearing Panel determined that:

☐ The complaint **DOES NOT** include an alleged violation of public trust or safety and no further action is necessary.

☐ The complaint **DOES** include an alleged violation of public trust or safety and the Hearing Panel has forwarded the complaint to the Leadership Team of Minnesota Realtors® to determine whether further action should be taken. The parties will receive further notice of any action taken by the Leadership Team.

The decision above was rendered by a Hearing Panel comprised of the following members whose signatures are affixed below.

|                                   |       |
|-----------------------------------|-------|
| <u>&lt;PS_CHAIR&gt;, Chair</u>    | _____ |
| <u>&lt;PS_MEMBER1&gt;, Member</u> | _____ |
| <u>&lt;PS_MEMBER2&gt;, Member</u> | _____ |
| <u>&lt;PS_MEMBER3&gt;, Member</u> | _____ |
| <u>&lt;PS_MEMBER4&gt;, Member</u> | _____ |

Respectfully submitted,

Professional Standards Administrator  
Minnesota Realtors®

Dated: <TODAY>

Form E-9

## **Outline of Procedure for Ethics Hearing**

**(To be transmitted in advance to all parties.)**

**Remote testimony:** Hearings may be held in person, virtually, or combination thereof. Testimony provided in the physical presence of the Hearing Panel is preferred, however parties and witnesses to ethics hearings may be permitted to participate virtually in hearings at the discretion of the Hearing Panel Chair. Associations may, at their sole discretion, hold hearings where all parties must participate virtually.

**Postponement of hearing:** Postponement may be granted if there are extenuating circumstances. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing and will be decided by the Chair. All parties shall be advised of a new hearing date if the hearing is rescheduled.

**Recording of ethics appeal hearing:** The Association shall record the proceeding and the Association's recording shall be the official record of the proceeding. Any party may, at the Association's discretion, record the proceeding or utilize a court reporter at their own expense. If a party utilizes a court reporter and orders a transcript, a copy of the transcription shall be made at the party's expense and presented to the Professional Standards Administrator. Videotaping is not permitted except with the advance express consent of the parties and the panelists. Any and all recordings should be conducted in accordance with state law. Copies of any recording or transcription are to be used only for the purpose of appeals or procedural reviews. Appeals and limited procedural reviews shall not be recorded by the Association or the parties. *(Revised 1/22)*

**Method and objective of procedure:** The Hearing Panel shall not be bound by the rules of evidence applicable in courts of law, but shall afford parties a full and fair opportunity to be heard, present witnesses, and offer evidence, subject to its judgment as to relevance.

**Evidence:** Parties are strongly encouraged to provide the Association with any and all documents and evidence they intend to introduce during the hearing at least seven (7) days prior to the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. Evidence submitted to the association but not provided to the other party(ies) will be provided to the other party(ies) by the association at the time of submission. Evidence submitted at the time of the hearing will be evaluated for admissibility by the hearing panel chair.

**Due process procedure:** The hearing will proceed as follows:

- (1) Opening statement by Chairperson – Chairperson cites authority to hear case and explains reason for hearing.
- (2) The basis of the appeal will be read into the record.
- (3) The testimony of all parties will be affirmed. All witnesses will be excused from the hearing except while testifying.
- (4) The complainant will be given an opportunity to present testimony, evidence, and call witnesses on their behalf. All parties appearing at the hearing may be called as witnesses without advance notice.
  - Respondent will be given an opportunity to cross-examine the complainant and witnesses.
  - Panel may question the complainant and witnesses.
- (5) The respondent will be given an opportunity to present testimony, evidence, and call witnesses on their behalf. All parties appearing at the hearing may be called as witnesses without advance notice.
  - Complainant will be given an opportunity to cross-examine the respondent and witnesses.
  - Panel may question the respondent and witnesses.

- (6) The panel members will have the opportunity to ask additional questions prior to closing statements by the parties.
- (7) The Chairperson may exclude any question ruled to be irrelevant or argumentative. Any testimony relating to the character or general reputation of either party shall not be permitted unless the Hearing Panel finds that such testimony has a direct bearing on the case.
- (8) Each side may make a closing statement. The complainant will make the first closing statement, and the respondent will make the final closing statement.
- (9) Adjournment of the hearing.
- (10) The Hearing Panel will go into executive session to decide the case.

**Findings in ethics hearing:** The findings and recommendation for discipline, if any, shall be reduced to writing by the Hearing Panel and submitted to a Ratification Panel in accordance with the procedure in **Part Four, Sections 22 and 23** of the Manual, unless otherwise appealed.

**Use of legal counsel:** A party may be represented in any ethics hearing by legal counsel or by a REALTOR® of their choosing (or both). However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be nonappealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from the date of adjournment to enable the party to obtain alternate counsel, provided, however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

**Confidential:** Be advised all matters discussed are strictly confidential.

Form E-9a

## **Outline of Procedure for Ethics Hearing Involving a Complaint and Counter-Complaint**

**(To be transmitted in advance to all parties.)**

**Remote testimony:** Hearings may be held in person, viturally, or combination thereof. If the hearing is in person, although testimony provided in the physical presence of the Hearing Panel is preferred, however parties and witnesses to ethics hearings may be permitted to participate virtually in hearings at the discretion of the Hearing Panel Chair. Associations, may, at their sole discretion, hold hearings where all parties must participate virtually.

**Postponement of hearing:** A postponement may be granted if there are extenuating circumstances. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing and will be decided by the Chair. All parties shall be advised of a new hearing date if the hearing is rescheduled.

**Recording of the hearing:** The Association shall record the proceeding and the Association's recording shall be the official record of the proceeding. Any party may, at the Association's discretion, record the proceeding or utilize a court reporter at their own expense. If a party utilizes a court reporter and orders a transcript, a copy of the transcription shall be made at the party's expense and presented to the Professional Standards Administrator. Videotaping is not permitted except with the advance express consent of the parties and the panelists. Any and all recordings should be conducted in accordance with state law. Copies of any recording or transcription are to be used only for the purpose of appeals or procedural reviews. Appeals and limited procedural reviews shall not be recorded by the Association or the parties. *(Revised 01/22)*

**Method and objective of procedure:** The Hearing Panel shall not be bound by the rules of evidence applicable in courts of law, but shall afford all parties a full opportunity to be heard, present witnesses, and offer evidence, subject to its judgment as to relevance.

Parties are strongly encouraged to provide the Association with any and all documents and evidence they intend to introduce during the hearing at least seven (7) days prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. Evidence submitted to the association but not provided to the other party(ies) by the association at the time of submission. Evidence submitted at the time of the hearing will be evaluated for admissibility by the hearing panel chair.

**Due process procedure:** The hearing will proceed as follows:

- (1) Opening statement by Chairperson – Chairperson cites authority to hear case and explains reason for hearing.
- (2) The basis of the Complaint and Counter-Complaint will be read into the record.
- (3) The testimony of all parties and witness(es) will be affirmed. All witness(es) will be excused from the hearing except while testifying. All parties appearing at a hearing may be called as a witness without advance notice.
- (4) Complainant/Counter-Respondent presents their case by offering testimony and evidence from themselves and/or their witness(es) in support of their complaint.
  - Respondent/Counter-Complainant may question Complainant/Counter-Respondent and/or their witness(es) immediately after each has testified.
  - The Hearing Panel may question Complainant/Counter-Respondent and/or their witness(es) immediately after each has testified.
- (5) Respondent/Counter-Complainant presents testimony and evidence from themselves and/or witness(es) to rebut Complainant's contention that they violated the Code of Ethics and support the allegations of violations of the Code of Ethics

by Complainant/Counter-Respondent.

- Complainant/Counter-Respondent may question Respondent/Counter-Complainant and/or their witness(es) immediately after each has testified.
  - The Hearing Panel may question Respondent/Counter-Complainant and/or their witness(es) immediately after each has testified.
- (6) Complainant/Counter-Respondent may present additional testimony and evidence from themselves and/or their witness(es) to refute the allegations made by Respondent/Counter-Complainant.
- Respondent/Counter-Complainant may question the Complainant/Counter-Respondent and/or their witness(es) immediately after each has testified.
  - The Hearing Panel may question the Complainant/Counter-Respondent and/or their witness(es) immediately after each has testified.
- (7) When the parties and Hearing Panel members have no further questions, Complainant/Counter-Respondent and Respondents/Counter-Complainant (respectively) may present uninterrupted closing statements.
- (8) Chair will then adjourn the hearing.
- (9) The Hearing Panel will go into executive session to decide the case.

**Findings in ethics hearing:** The findings and recommendation for discipline, if any, shall be reduced to writing and submitted to a Ratification Panel in accordance with the procedures of **Part Four, Section 23** of the *Manual*, *unless otherwise appealed*.

**Testimony:** Any testimony relating to the character or general reputation of either party shall not be permitted unless the Hearing Panel finds that such testimony has a direct bearing on the case. The Chairperson may exclude any question which they deem irrelevant or argumentative.

**Use of counsel:** A party may be represented in any ethics hearing or hearing by legal counsel or by a REALTOR® of their choosing (or both). However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be nonappealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from the date of adjournment to enable the party to obtain alternate counsel, provided, however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

**Confidential:** Be advised all matters discussed are strictly confidential.

Form E-9b

## **Outline of Procedure for Consolidated Ethics Hearing**

**(To be transmitted in advance to all parties.)**

**Remote testimony:** Hearings may be held in person, viturally, or combination thereof. If the hearing is in person, although testimony provided in the physical presence of the Hearing Panel is preferred, however parties and witnesses to ethics hearings may be permitted to participate virtually in hearings at the discretion of the Hearing Panel Chair. Associations, may, at their sole discretion, hold hearings where all parties must participate virtually.

**Postponement of hearing:** Postponement may be granted if there are extenuating circumstances. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing and will be decided by the Chair. All parties shall be advised of a new hearing date if the hearing is rescheduled.

**Recording of the hearing:** The Association shall record the proceeding and the Association's recording shall be the official record of the proceeding. Any party may, at the Association's discretion, record the proceeding or utilize a court reporter at their own expense. If a party utilizes a court reporter and orders a transcript, a copy of the transcription shall be made at the party's expense and presented to the Professional Standards Administrator. Videotaping is not permitted except with the advance express consent of the parties and the panelists. Any and all recordings should be conducted in accordance with state law. Copies of any recording or transcription are to be used only for the purpose of appeals or procedural reviews. Appeals and limited procedural reviews shall not be recorded by the Association or the parties. *(Revised 01/22)*

**Method and objective of procedure:** The Hearing Panel shall not be bound by the rules of evidence applicable in courts of law, but shall afford all parties a full opportunity to be heard, present witnesses, and offer evidence, subject to its judgment as to relevance.

Parties are strongly encouraged to provide the Association with any and all documents and evidence they intend to introduce during the hearing at least **seven (7) days prior** to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. Evidence submitted to the association but not provided to the other party(ies) by the association at the time of submission. Evidence submitted at the time of the hearing will be evaluated for admissibility by the hearing panel chair.

**Due process procedure:** The hearing will proceed as follows:

- (1) Opening statement by Chair – Chair cites authority to hear case and explains reason for hearing.
- (2) The basis of the complaint will be read into the record.
- (3) The testimony of all parties and witness(es) will be affirmed. All witness(es) will be excused from the hearing except while testifying.
- (4) Presentation by Complainant(s). Complainant(s) will be given, in turn, an opportunity to present evidence, testimony and call witnesses supporting the allegations of violations of the specific Article(s) alleged in their complaint. All parties appearing at the hearing may be called as witnesses without advance notice.
  - Respondent(s) will be given, in turn, an opportunity to cross-examine Complainant(s) and their witnesses.
  - The Hearing Panel may question Complainant(s) and their witness(es).
- (5) Presentation by Respondent(s). Respondent(s) will be given, in turn, an opportunity to present evidence, testimony and call witnesses refuting the allegations of violation of the specific Article(s) alleged in the complaint(s).
  - Complainant(s) will be given, in turn, an opportunity to cross-examine Respondent(s) and their witnesses.

- Hearing Panel may question Respondent(s) and their witnesses..
- (6) Chair may exclude any questions which they deem irrelevant or argumentative.
- (7) Cross-examination in which all parties are given a final opportunity to cross-examine each other. Complainant(s) may first ask any remaining questions of Respondent(s). Respondent(s) may then ask any remaining questions of Complainant(s),
- (8) The Hearing Panel members will have the opportunity to ask additional questions of any of the parties and their respective witnesses prior to closing statements.
- (9) When the parties and Hearing Panel members have no further questions, Complainant(s) and Respondent(s) (respectively) may present uninterrupted closing statements.
- (10) Chair will then adjourn the hearing.
- (11) The Hearing Panel will go into executive session to decide the case.

**Findings in ethics hearing:** The findings and recommendation for discipline, if any, shall be reduced to writing by the Hearing Panel, and submitted to a Ratification Panel in accordance with the procedures of **Part Four, Section 23** of the Manual, unless otherwise appealed.

**Testimony:** Any testimony relating to the character or general reputation of either party shall not be permitted unless the Hearing Panel finds that such testimony has a direct bearing on the case. The Chairperson may exclude any question which they deem irrelevant or argumentative.

**Use of counsel:** A party may be represented in any ethics hearing by legal counsel or by a REALTOR® of their choosing (or both). However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be nonappealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from the date of adjournment to enable the party to obtain alternate counsel, provided, however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

**Confidential:** Be advised all matters discussed are strictly confidential.

Form E-9c

## **Outline of Procedure for Ethics Appeal**

**(To be transmitted in advance to all parties.)**

**Remote testimony:** Hearings may be held in person, viturally, or combination thereof. Testimony provided in the physical presence of the Hearing Panel is preferred, however parties and witnesses to ethics hearings may be permitted to participate virtually in hearings at the discretion of the Hearing Panel Chair. Associations, may, at their sole discretion, hold hearings where all parties must participate virtually.

**Postponement of hearing:** Postponement may be granted if there are extenuating circumstances. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing and will be decided by the Chair. All parties shall be advised of a new hearing date if the hearing is rescheduled.

**No recording of ethics appeal hearing:** Ethics appeals are not to be recorded by either the Association or the parties.

**Method and objective of procedure:** The Appeal Tribunal is not dealing with questions of law and shall not be bound by the rules of evidence applicable in court of law. All parties and their representatives to these proceedings will be allowed a full opportunity to be heard on the matters relevant to this issue. The Appeal Tribunal will seek to determine all ascertainable and relevant facts pertaining to the matter under consideration to arrive at a peer judgment and decision by the Appeal Tribunal. The Appeal Tribunal may rule at any time during the Appeal Hearing on the relevance of testimony being given or may exclude any question ruled to be irrelevant or argumentative at any time within the following procedure.

**Due process procedure:** The hearing will proceed as follows:

- (1) Opening statement by Appeal Tribunal Chair – Chair cites authority to hear case and explains reason for hearing.
- (2) The basis of the appeal will be read into the record.
- (3) The testimony of all parties will be affirmed.
- (4) Chair or representative of the original Ethics Hearing Panel will summarize the case, unless the sole basis for appeal is a deprivation of due process (in which case the Chair will address that basis of appeal only).
- (5) Appellant will have an opportunity to offer corrections or modifications to the summary of the case and then to explain why the original Ethics Hearing Panel's decision should be upheld.
- (6) Nonappellant, if present, will have an opportunity to offer corrections or modicfications to the summary of the case and then to explain why the original Ethics Hearing Panel's decision should be upheld.
- (7) The Chair or representative of the original Hearing Panel will then be given an opportunity to exp;ain why the original Ethics Hearing Panel's decision should be upheld.
- (8) The Appeal Tribunal members may ask questions of either party and Chair or representative of the original Hearing Panel at any time during the proceeding.
- (9) Parties have no right: (a) of cross-examination; (b) to call witnesses; (c) to present new evidence (except such new evidence as may bear upon a claim of deprivation of due process).
- (10) Each party and the Chair or representative of the original Hearing Panel will have an opportunity to make closing statements.
- (11) Chair will then make closing statements and adjourn the appeal hearing.
- (12) The Appeal Tribunal will go into executive session to render a decision.

**Findings in ethics hearing:** The written decision of the Appeal Tribunal shall be transmitted to the parties in accordance with the procedure of **Part Four, Section 23** of the Manual.

**Testimony:** Any testimony relating to the character or general reputation of either party shall not be permitted unless the Hearing Panel finds that such testimony has a direct bearing on the case. The Chairperson may exclude any question which they deem irrelevant or argumentative.

**Use of counsel:** A party may be represented in any ethics hearing by legal counsel or by a REALTOR® of their choosing (or both). However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be nonappealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from the date of adjournment to enable the party to obtain alternate counsel, provided, however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

**Confidential:** Be advised all matters discussed are strictly confidential.

Form E-9d

## **Outline of Procedure for Ethics Appeal: Complaint and Counter-Complaint**

**(To be transmitted in advance to all parties.)**

**Remote testimony:** Hearings may be held in person, viturally, or combination thereof. Testimony provided in the physical presence of the Hearing Panel is preferred, however parties and witnesses to ethics hearings may be permitted to participate virtually in hearings at the discretion of the Hearing Panel Chair. Associations, may, at their sole discretion, hold hearings where all parties must participate virtually.

**Postponement of hearing:** Postponement may be granted if there are extenuating circumstances. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing and will be decided by the Chair. All parties shall be advised of a new hearing date if the hearing is rescheduled.

**No recording of ethics appeal hearing:** Ethics appeals are not to be recorded by neither the Association or the parties.

**Method and objective of procedure:** The Appeal Tribunal is not dealing with questions of law and shall not be bound by the rules of evidence applicable in court of law. All parties and their representatives to these proceedings will be allowed a full opportunity to be heard on the matters relevant to this issue. The Appeal Tribunal will seek to determine all ascertainable and relevant facts pertaining to the matter under consideration to arrive at a peer judgment and decision by the Appeal Tribunal. The Appeal Tribunal may rule at any time during the Appeal Hearing on the relevance of testimony being given or may exclude any question ruled to be irrelevant or argumentative at any time within the following procedure.

**Due process procedure:** The hearing will proceed as follows:

- (1) Opening statement by Appeal Tribunal Chair – Chair cites authority to hear case and explains reason for hearing.
- (2) The basis of the appeal will be read into the record.
- (3) The testimony of all parties will be affirmed.
- (4) Chair or representative of the original Ethics Hearing Panel will summarize the case. If the sole basis for appeal is a deprivation of due process, Chair will address that basis of appeal only.
- (5) Appellant will have an opportunity to offer corrections or modifications to the summary of the cases and then to explain the bases for the appeal for each case.
- (6) Nonappellant, if present, will have an opportunity to offer corrections or modifications to the summary of the cases and then to explain why the original Ethics Hearing Panel's decision should be upheld.
- (7) The Chair or representative of the original Hearing Panel will then be given an opportunity to explain why the original Ethics Hearing Panel's decision should be upheld.
- (8) The Appeal Tribunal members may ask questions of either party and Chair or representative of the original Hearing Panel at any time during the proceeding.
- (9) Parties have no right: (a) of cross-examination; (b) to call witnesses; (c) to present new evidence (except such new evidence as may bear upon a claim of deprivation of due process).
- (10) Each party and the Chair or representative of the original Hearing Panel will have an opportunity to make closing statements.
- (11) Chair will then make closing statements and adjourn the appeal hearing.
- (12) The Appeal Tribunal will go into executive session to render a decision.

**Findings in ethics hearing:** The written decision of the Appeal Tribunal shall be transmitted to the parties in accordance with the procedure of **Part Four, Section 23** of the Manual.

**Testimony:** Any testimony relating to the character or general reputation of either party shall not be permitted unless the Hearing Panel finds that such testimony has a direct bearing on the case. The Chairperson may exclude any question which they deem irrelevant or argumentative.

**Use of counsel:** A party may be represented in any ethics hearing by legal counsel or by a REALTOR® of their choosing (or both). However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be nonappealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from the date of adjournment to enable the party to obtain alternate counsel, provided, however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

**Confidential:** Be advised all matters discussed are strictly confidential.

Form E-9e

## **Outline of Procedure for Consolidated Ethics Appeal Hearing**

**(To be transmitted in advance to all parties.)**

**Remote testimony:** Hearings may be held in person, viturally, or combination thereof. Testimony provided in the physical presence of the Hearing Panel is preferred, however parties and witnesses to ethics hearings may be permitted to participate virtually in hearings at the discretion of the Hearing Panel Chair. Associations, may, at their sole discretion, hold hearings where all parties must participate virtually. *(Revised 01/22)*

**Postponement of hearing:** Postponement may be granted if there are extenuating circumstances. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing and will be decided by the Chair. All parties shall be advised of a new hearing date if the hearing is rescheduled.

**No recording of ethics appeal hearing:** Ethics appeals are not to be recorded by neither the Association or the parties.

**Method and objective of procedure:** The Appeal Tribunal is not dealing with questions of law and shall not be bound by the rules of evidence applicable in court of law. All parties and their representatives to these proceedings will be allowed a full opportunity to be heard on the matters relevant to this issue. The Appeal Tribunal will seek to determine all ascertainable and relevant facts pertaining to the matter under consideration to arrive at a peer judgment and decision by the Appeal Tribunal. The Appeal Tribunal may rule at any time during the Appeal Hearing on the relevance of testimony being given or may exclude any question ruled to be irrelevant or argumentative at any time within the following procedure.

**Due process procedure:** The hearing will proceed as follows:

- (1) Opening statement by Appeal Tribunal Chair – Chair cites authority to hear case and explains reason for hearing.
- (2) The basis of the appeal will be read into the record.
- (3) The testimony of all parties will be affirmed.
- (4) Chair or representative of the original Ethics Hearing Panel will summarize the case. If the sole basis for appeal is a deprivation of due process, Chair will address that basis of appeal only.
- (5) Presentation by Appellants.
  - a) Complainant/Appellant 1 will be given an opportunity to offer corrections or modifications to the summary of the case and then to explain the bases for their appeal.
    - i. Appeal Tribunal may question Appellant 1.
  - b) Respondent/Appellant 2 will be given an opportunity to offer corrections or modicfications to the summary of the case and then to explain the bases for their appeal.
    - i. Appeal Tribunal may question Appellant 2.
- (6) The Chair or representative of the original Hearing Panel will then be given an opportunity to explain why the original Ethics Hearing Panel's decision should be upheld.
- (7) The Appeal Tribunal members may ask questions of either party and Chair or representative of the original Hearing Panel at any time during the proceeding.
- (8) Parties have no right: (a) of cross-examination; (b) to call witnesses; (c) to present new evidence (except such new evidence as may bear upon a claim of deprivation of due process).
- (9) Each party and the Chair or representative of the original Hearing Panel will have an opportunity to make closing statements.
- (10) Chair will then make closing statements and adjourn the appeal hearing.
- (11) The Appeal Tribunal will go into executive session to render a decision.

**Findings in ethics hearing:** The written decision of the Appeal Tribunal shall be transmitted to the parties in accordance with the procedure of **Part Four, Section 23** of the Manual.

**Testimony:** Any testimony relating to the character or general reputation of either party shall not be permitted unless the Hearing Panel finds that such testimony has a direct bearing on the case. The Chairperson may exclude any question which they deem irrelevant or argumentative.

**Use of counsel:** A party may be represented in any ethics hearing by legal counsel or by a REALTOR® of their choosing (or both). However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be nonappealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from the date of adjournment to enable the party to obtain alternate counsel, provided, however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

**Confidential:** Be advised all matters discussed are strictly confidential.

Form E-10  
Case #<CASENUMBER>

## Certification of Qualification and Affirmation of Confidentiality

**This case is confidential.**

We, the undersigned, members of a Hearing Panel of the Professional Standards Committee (or Board of Directors or tribunal thereof) of Minnesota Realtors® do hereby acknowledge that any unauthorized disclosure or dissemination of the allegations, findings, or decision developed in connection with this case may violate Article 14 of the Code of Ethics and/or result in my removal from the Professional Standards Committee or Board of Directors, whichever is applicable.

Additionally, I hereby certify that I am not disqualified by any reason stated herein from hearing the case:

&lt;C\_NAMES&gt;

vs.

&lt;R\_NAMES&gt;

Cited case is a hearing addressing an alleged violation of the Code of Ethics or other membership duty as set forth in the bylaws of the Association.

**Reasons for disqualifications:** Any member of the Hearing Panel (or Board of Directors or tribunal thereof) shall be disqualified from hearing any case if the member:

- (a) is related by blood or marriage to, or has an existing or past relationship with, any of the parties to the complaint, their counsel or representatives, witnesses (if applicable) or other panel members
- (b) is an employer, partner, employee, or in any way associated in business with the complainant, respondent, counsel for either party or has a personal interest in the outcome of the proceeding
- (c) is a party to the hearing, or a party or witness in any pending case involving any party to this hearing
- (d) knows of any reason acceptable to the Hearing Panel, Appeal Tribunal, or other appointed Tribunal that may prevent the member from rendering an impartial judgment
- (e) has already served as a member of any other panel in the same manner

**Note:** Any member of the Hearing Panel has a continuing obligation to disclose to all parties to the ethics proceedings and to any other hearing panel members any facts that the panel member learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the Hearing Panel member.

&lt;HEARING\_CHAIR&gt;, Chair

Name

Signature

&lt;HEARING\_MEMBER1&gt;, Member

Name

Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

Dated: <TODAY>

**Note:** No more than one person licensed with any firm, partnership, or corporation may serve on the same tribunal. This limitation does not preclude two or more individuals from the same franchise from serving if the franchises are independently owned and operated.

Form E-11  
Case #<CASENUMBER>**Decision of Ethics Hearing Panel  
of the Professional Standards Committee**

Transmitted on: &lt;TODAY&gt;

&lt;C\_NAMES&gt;

Complainant(s)

&lt;R\_NAMES&gt;

Respondent(s)

**Findings of fact:** The Hearing Panel finds the following facts in support of its conclusion regarding the alleged violations of the Code of Ethics: (use additional pages if necessary)

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**Conclusions of the Hearing Panel:** We, the members of the Hearing Panel in the above-stated case, find the Respondent(s)

- ☐ in violation of Article(s) [Click or tap here to enter text.](#) of the Code of Ethics
- ☐ not in violation of Article(s) [Click or tap here to enter text.](#) of the Code of Ethics.

We further find: 

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**Prior violations, if any:** 

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**Recommendation for disciplinary action,** if any, if violation found, including time frame in which discipline must be complied with:  
We recommend to the Ratification Panel the following action:

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**Rationale for discipline, if any, if violation found: (e.g., previous violations):**

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### Consequences for noncompliance with discipline:

---

The findings of fact, conclusions and recommendation(s) preceding (the "Decision") were rendered by at least a simple majority of the ethics Hearing Panel comprised the following members whose signatures are affixed below. The hearing took place on <HEARINGDATE>.

<HEARING\_CHAIR>, Chairperson  
Name

\_\_\_\_\_  
Signature

<HEARING\_MEMBER1>, Member  
Name

\_\_\_\_\_  
Signature

<HEARING\_MEMBER2>, Member  
Name

\_\_\_\_\_  
Signature

<HEARING\_MEMBER3>, Member  
Name

\_\_\_\_\_  
Signature

<HEARING\_MEMBER4>, Member  
Name

\_\_\_\_\_  
Signature

**Notice:** This decision is final, however it is subject to certain rights of both Complainant and Respondent.

**Complainant's rights:** Within twenty (20) days of transmittal of this notification, complainant may file an appeal with the Administrator for a hearing before an Appeal Tribunal based only upon an allegation of procedural deficiencies or other lack of procedural due process that may have deprived the Complainant of a fair hearing. A transcript or summary of the hearing shall be presented to the Appeal Tribunal by the Chairperson of the Hearing Panel, and the parties and their counsel may be heard to correct the summary or the transcript. No new evidence will be received (except such new evidence as may bear upon a claim of deprivation of due process), and the appeal will be decided on the transcript or summary. Any appeal must be accompanied with a deposit of \$400.00\*

**Respondent's rights:** Within twenty (20) days of transmittal of this notification, respondent may file an appeal with the Administrator for a hearing before an Appeal Tribunal challenging this decision and/or recommendation for discipline. Respondent's bases for appeal are limited to (1) a misapplication or misinterpretation of an Article(s) of the Code of Ethics, (2) procedural deficiency or any lack of procedural due process, and (3) the discipline recommended by the Hearing Panel. A transcript or summary of the hearing shall be presented to the Appeal Tribunal by the Chairperson of the Hearing Panel, and the parties and their counsel may be heard to correct the summary or transcript. No new evidence will be received (except such new evidence as may bear upon a claim of deprivation of due process), and the appeal will be decided on the transcript or summary. Any appeal must be accompanied by a deposit of \$400.00\*

**Final action:** Both the complainant and respondent will be notified upon final action of the Ratification Panel or Appeal Tribunal.

**NOTE TO HEARING PANEL:** Respondents may only be found in violation of Articles they have been formally charged with having violated. If the respondent is found in violation, the Hearing Panel will consider all records of previous violations and sanctions imposed, whether by the current or by any other Association, when determining discipline and the rationale for the current action can be provided to the parties and the Ratification Panel or Appeal Tribunal as part of the decision. The Hearing Panel's consideration will include whether prior disciplinary matters involve discipline that was held in abeyance and that will be triggered by a subsequent violation (including the matter currently under consideration by the Hearing Panel).

Hearing Panels that find a matter not timely filed should transmit their decision via correspondence (not Form #E-11, *Decision of Ethics Hearing Panel of the Professional Standards Committee*). Appellants appealing a Hearing Panel's dismissal should use Form #E-22, *Appeal of Grievance Committee (or Hearing Panel) Dismissal of Ethics Complaint*.



11100 Bren Road West  
Minnetonka, MN 55343  
952.935.8313  
mnrealtor.com

Form E-12  
Case #<CASENUMBER>

**Action of the Ratification Panel (Ethics Hearing)**  
**(For use by the Ratification Panel if no appeal has been filed to the Hearing Panel's decision)**

The decision of the Hearing Panel in the matter of:

\_\_\_\_\_ <C\_NAMES> vs. \_\_\_\_\_ <R\_NAMES>

Dated <HEARINGDATE>, (copy attached), came before the Ratification Panel on <R HEARINGDATE>, and was considered by the Ratification Panel.

The decision of the Hearing Panel and its recommendation for disciplinary action, if any, in the above-referenced case is hereby:

☐ adopted verbatim    ☐ adopted, however the recommendation for discipline is modified as follows:  
(Note: If the Ratification Panel imposes alternative discipline, it may not exceed that recommended by the Hearing Panel.)

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☐ Articles(s) confirmed: \_\_\_\_\_ Article(s) dismissed: \_\_\_\_\_ because the findings of fact do not support a violation of one or more Articles of the Code of Ethics.

**This matter is referred as follows:**

☐ The Ratification Panel is concerned with a perceived procedural deficiency in the original Ethics Hearing that effectively denied the appellant a fair hearing. This matter is hereby referred to the Professional Standards Committee for a new hearing and recommendation by a different Hearing Panel. You will be notified in the near future concerning a hearing date.

☐ The Ratification Panel was concerned with the appropriateness of the recommendation of sanction. This matter is hereby referred back to the original Hearing Panel for further consideration and recommendation, accompanied by the Ratification Panel's concerns regarding the proposed discipline, which are as follows:

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---

☐ The consequences for noncompliance are not specified. This matter is hereby referred back to the original Hearing Panel for a recommendation on the consequences of noncompliance.

The decision of the Ratification Panel is final and binding and is not subject to further review or appeal. The decision above was rendered by a Ratification Panel comprised of the following members whose signatures are affixed below.

|                     |  |  |
|---------------------|--|--|
| <R_MEMBER1>, Member |  |  |
| <R_MEMBER2>, Member |  |  |
| <R_MEMBER3>, Member |  |  |

Dated: <TODAY>

Form E-13

Case #&lt;CASENUMBER&gt;

## Request for Appeal – Ethics

To the Appeal Tribunal of Minnesota Realtors®:

In the case of:

|                |     |               |
|----------------|-----|---------------|
| <C_NAMES>      | vs. | <R_NAMES>     |
| Complainant(s) |     | Respondent(s) |

I/We, \_\_\_\_\_, do hereby request an appeal before the Appeal Tribunal of Minnesota Realtors®.

My/Our appeal is based on the following:

*(Check one or more of the bases for the appeal and set forth in reasonable detail (narrative) the facts and evidence which support the bases cited. Attach narrative to Appeal Form.)*

**Note: Complainant(s) may only appeal based on procedural deficiency or lack of due process.**

- ☐ Misapplication or misinterpretation of (an) Article(s) of the Code of Ethics
- ☐ Procedural deficiency or any lack of procedural due process
- ☐ The discipline recommended by the Hearing Panel

The Request for Appeal Form must be accompanied by a deposit in the amount of \$400.00 made payable to Minnesota Realtors®

**Note #1:** If the decision of the Hearing Panel is ratified, the deposit will be retained by the Association. If the appeal is upheld, the deposit will be returned to the appellant. If the decision of the Hearing Panel is modified, disposition of the deposit will be as specified in the Fee Schedule.

**Note #2:** Only those facts and issues raised in this written request will be considered by the Appeal Tribunal at the appeal hearing.

|                   |        |                   |        |
|-------------------|--------|-------------------|--------|
| (Signature)       | (Date) | (Signature)       | (Date) |
| (Type/Print Name) |        | (Type/Print Name) |        |
| (Address)         |        | (Address)         |        |
| (Phone)           |        | (Phone)           |        |
| (Email)           |        | (Email)           |        |



11100 Bren Road West  
Minnetonka, MN 55343  
952.935.8313  
mnrealtor.com

Form E-14

Case #<CASENUMBER>

## Official Notice of Appeal Hearing (Ethics)

In the case of:

<C\_NAMES>

vs.

<R\_NAMES>

Complainant(s)

Respondent(s)

Above parties are hereby notified:

- (1) Choose an item. has appealed the decision of the Hearing Panel in the above-cited case, based on Click or tap here to enter text. A copy of the Request for Appeal, together with its supporting documentation, is attached.
- (2) The Appeal Tribunal will meet on <HA\_HEARINGDATE> Choose an item. to hear the appeal.
- (3) The members of the Appeal Tribunal who will hear the appeal are:

|                   |  |              |
|-------------------|--|--------------|
| <HA_CHAIR>, Chair |  | <HA_MEMBER1> |
| <HA_MEMBER2>      |  | <HA_MEMBER3> |
| <HA_MEMBER4>      |  | <HA_MEMBER5> |

- (4) **Counsel:** Either party may be represented by counsel, and each party is required to give the Association and the other party written notice of an intention to have counsel present **ten (10) days** before the hearing. Failure to provide this notice will not invalidate a party's right to representation but may result in a continuance of the hearing if the Appeal Tribunal determines that the rights of any other party require representation by counsel.
- (5) **Evidence:** No new evidence may be submitted except such evidence as may bear upon a claim of deprivation of due process. If a party intends to submit evidence that may bear upon a claim of deprivation of due process, parties are strongly encouraged to provide it to the Association at least **seven (7) days prior** to the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. Evidence submitted to the association but not provided to the other party(ies) will be provided to the other party(ies) by the association at the time of submission. Evidence submitted at the time of the hearing will be evaluated for admissibility by the hearing panel chair.
- (6) **Challenge:** Either party may file with the Professional Standards Administrator, no later than **ten (10) days after** the challenge forms were transmitted to the parties, a written request for disqualification from the appeal hearing of any member of the Appeal Tribunal for the following reasons, the member:
  - (a) is related by blood or marriage to, or has an existing or past relationship with, any of the parties to the complaint, their counsel or representatives, witnesses (if applicable), or other panel members.
  - (b) is an employer, partner, employee or in any way associated in business with the complainant, respondent, or counsel for either the complainant or respondent or has a personal interest in the outcome of the proceeding
  - (c) is a party to the hearing, or a party or witness in any pending case involving any party to this hearing
  - (d) knows of any reason acceptable to the Appeal Tribunal that may prevent the member from rendering an impartial judgment
  - (e) has already served as a member of any other panel in the same matter

- (7) The parties shall not discuss the case with any member of the Hearing Panel or the Appeal Tribunal prior to the appeal hearing or after the appeal hearing and prior to announcement of the decision of the Appeal Tribunal.

Respectfully submitted,

*Choose an item.*

Professional Standards Administrator  
Minnesota Realtors®

Dated: <TODAY>

**Checklist of Professional Standards Concerns for Elected Officers,  
Directors and Executive Officers of Associations of REALTORS®**

- ☐ (1) **Concern** for the obligation of the Association to enforce the Code of Ethics (see Article IV, Bylaws, NATIONAL Association of REALTORS®).
- ☐ (2) **Concern** for the enhanced public image and credibility of REALTORS®, REALTOR-ASSOCIATES®, and the Association.
- ☐ (3) **Concern** for liability of the Association related to Code enforcement - minimal if correct; serious if done inaccurately or inappropriately.
- ☐ (4) **Concern** for sound procedures, due process, and fairness - every member entitled.
- ☐ (5) **Concern** that the Association's professional standards procedures are substantively in compliance with National Association and State Association procedures - ensures coverage of Errors and Omissions Insurance.  
  
(The National Association recommends adoption of the *Code of Ethics and Arbitration Manual*, as adapted to comply with state law.)
- ☐ (6) **Concern** for wise appointments to the Professional Standards Committee - mature, experienced, and knowledgeable individuals of judicious temperament.
  - (a) **President-Elect**-start to consider potential appointees early.
  - (b) Select best possible **Chairperson**.
  - (c) Select competent **Committee Members**.
- ☐ (7) **Concern** for Leadership's Involvement - President's personal commitment to Code awareness training programs and proper Code enforcement.
- ☐ (8) **Concern** for accountability of Professional Standards Committee Members.
- ☐ (9) **Concern** for distinguishing between "ethics" and "arbitration" cases.
- ☐ (10) **Concern** that ethics hearings serve their purposes - education of members and vindication of the Code.
- ☐ (11) **Concern** that arbitration be limited to "properly arbitrable matters."
- ☐ (12) **Concern** that the Grievance Review Panel does not exceed its function of making preliminary reviews to determine proper disposition of ethics complaints and requests for arbitration.
- ☐ (13) **Concern** that Association Officers and staff not be given or assume responsibility beyond their proper role in professional standards matters.
- ☐ (14) **Concern** that ethics and arbitration matters be heard separately - arbitration first, then ethics.

- ☐ (15) **Concern** that the Association has access to legal counsel and that counsel's involvement in professional standards proceedings or in reviewing professional standards decisions is routine.
- ☐ (16) **Concern** that the public is provided adequate information and assistance to fully understand what the Association can do and does do, and what the Association cannot do.
- ☐ (17) **Concern** that Association hearings are conducted in strict accordance with the professional standards procedures of the Association's bylaws.
- ☐ (18) **Concern** that professional standards procedures and proceedings are unbiased and conducted without fear or favor - **ensure impartiality.**
- ☐ (19) **Concern** that the parties are aware that an appeal remedy is always available in ethics matters.
- ☐ (20) **Concern** that the Board of Directors understands its role in professional standards matters.
  - (a) Ethics - appeal.
  - (b) Arbitration - no review or appeal, except in respect to alleged procedural irregularities resulting in deprivation of "due process."
- ☐ (21) **Concern** for confidentiality of professional standards proceedings.
- ☐ (22) **Concern** for proper publication of decisions as specified in the *Code of Ethics and Arbitration Manual* - limited dissemination of findings.
- ☐ (23) **Concern** for matters that are currently being litigated.
 

On the advice of Association legal counsel, an ethics hearing may proceed **or** may be held in abeyance if criminal or civil litigation or proceeding before state real estate licensing authority or other state or federal regulatory or administrative agency is pending on the same matter.

**Never** hold an arbitration hearing when the arbitrable matter is the subject of litigation.
- ☐ (24) **Concern** for common sense - encourage resolution of disputes by mediation (reduces arbitration case load).
- ☐ (25) **Concern** for training - the National Association recommends that an Education Subcommittee of the Association's Professional Standards Committee be appointed and charged with providing a continuing education program for Association Members in Code of Ethics awareness, understanding, and procedures.
- ☐ (26) **Concern** for Code enforcement training - State and Association.
- ☐ (27) **Concern** for dealing promptly and fairly with complaints brought by the public.
- ☐ (28) **Concern** for liability of REALTORS® in dealing with the public.
- ☐ (29) **Concern** for changes in professional standards policies and procedures, in revisions of the Code, new or revised interpretations of the Code, and revised editions of training aids and National Association publications related to the Code and its enforcement.

### Seating Arrangements for Hearings

|                                                                                                                                                                                                                                           |                                                                                           |                                                                                                                                                                                                                                                                    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>attorney <input type="radio"/></p> <p>respondent <input type="radio"/></p> <p>witness <input type="radio"/></p><br><p>witness <input type="radio"/></p> <p>complainant <input type="radio"/></p> <p>attorney <input type="radio"/></p> | <div style="border: 1px solid black; width: 250px; height: 320px; margin: 0 auto;"></div> | <p><input type="radio"/> panel member</p> <p><input type="radio"/> panel member</p> <p><input type="radio"/> panel chairperson</p> <p><input type="radio"/> panel member</p> <p><input type="radio"/> panel member</p> <p><input type="radio"/> board attorney</p> |
| <p><input type="radio"/> recorder      <input type="radio"/> Professional Standards Administrator</p>                                                                                                                                     |                                                                                           |                                                                                                                                                                                                                                                                    |

|                                                                                                                     |                                                                                           |                                                                                                                                    |
|---------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|
| <p>attorney <input type="radio"/></p> <p>respondent <input type="radio"/></p> <p>witness <input type="radio"/></p>  | <div style="border: 1px solid black; width: 210px; height: 150px; margin: 0 auto;"></div> | <p><input type="radio"/> panel member</p> <p><input type="radio"/> panel member</p> <p><input type="radio"/> panel chairperson</p> |
| <p>witness <input type="radio"/></p> <p>complainant <input type="radio"/></p> <p>attorney <input type="radio"/></p> | <div style="border: 1px solid black; width: 210px; height: 150px; margin: 0 auto;"></div> | <p><input type="radio"/> panel member</p> <p><input type="radio"/> panel member</p> <p><input type="radio"/> board attorney</p>    |
| <p><input type="radio"/> recorder      <input type="radio"/> Professional Standards Administrator</p>               |                                                                                           |                                                                                                                                    |

## Ethics Activity Report

Boards are encouraged to publish periodic Code of Ethics activity reports. This model is a suggestion, and Boards may choose to provide other relevant information. \*

Number of ethics complaints filed from \_\_\_\_\_ to \_\_\_\_\_  
Date
Date

|               | Article(s) of the Code alleged to have been violated | Referred by Grievance Review Panel for hearing |    | Article(s) found by Hearing Panel to have been violated | Appeal of Hearing Panel decision |    | Board of Directors final action | Discipline imposed (if any) |
|---------------|------------------------------------------------------|------------------------------------------------|----|---------------------------------------------------------|----------------------------------|----|---------------------------------|-----------------------------|
|               |                                                      | Yes                                            | No |                                                         | Yes                              | No |                                 |                             |
| Complaint #1  |                                                      |                                                |    |                                                         |                                  |    |                                 |                             |
| Complaint #2  |                                                      |                                                |    |                                                         |                                  |    |                                 |                             |
| Complaint #3  |                                                      |                                                |    |                                                         |                                  |    |                                 |                             |
| Complaint #4  |                                                      |                                                |    |                                                         |                                  |    |                                 |                             |
| Complaint #5  |                                                      |                                                |    |                                                         |                                  |    |                                 |                             |
| Complaint #6  |                                                      |                                                |    |                                                         |                                  |    |                                 |                             |
| Complaint #7  |                                                      |                                                |    |                                                         |                                  |    |                                 |                             |
| Complaint #8  |                                                      |                                                |    |                                                         |                                  |    |                                 |                             |
| Complaint #9  |                                                      |                                                |    |                                                         |                                  |    |                                 |                             |
| Complaint #10 |                                                      |                                                |    |                                                         |                                  |    |                                 |                             |

\*No report shall include the names of individuals or firms.

## Outline of Content of Petition for Declaratory Relief

Click or tap here to enter text. Association of REALTORS® (hereafter “plaintiff”) complains of defendant Click or tap here to enter text. (hereafter “defendant”) and alleges:

- (1) Plaintiff is a corporation duly organized and existing under the laws of the State of Minnesota and is a Member Board of Minnesota Realtors® and the NATIONAL ASSOCIATION OF REALTORS®.

**Note to Preparer: Choose either (a) or (b) (or [i] [ii]) in each section throughout this form as appropriate.**

- (2) Plaintiff’s bylaws include, and at all times herein mentioned have included provisions.

- a) governing qualifications, eligibility, and application for membership and admission to membership therein.
- b) relating to discipline of members for violation of their obligations as members. A true and exact copy of the bylaws is attached as Exhibit A.

(3)

- (a) On or about Click or tap to enter a date. defendant applied for membership in plaintiff. After duly considering defendant’s application in accordance with its bylaws, plaintiff has concluded that defendant is not eligible or qualified for membership and that defendant’s application for membership should be rejected.
- (b) Heretofore a complaint was filed with plaintiff against defendant charging violation of membership obligations. Disciplinary proceedings were duly taken and had pursuant to the bylaws, and in consequence plaintiff has concluded that defendant should be Click or tap here to enter text. from membership and will Click or tap here to enter text. unless the Court holds otherwise.

- (4) An actual controversy exists between plaintiff and defendant in that defendant claims

- a) to be qualified and eligible for, and entitled to, membership in plaintiff and that plaintiff’s conclusion to the contrary is improper and unlawful, and defendant threatens
- b) that defendant should not be suspended or expelled and that plaintiff’s decision to suspend or expel and the suspension or expulsion are and would be improper and unlawful and defendant has threatened to sue plaintiff, its officers, directors, members, or some of them for damages in the event plaintiff denies membership to defendant, praying that this court enjoin plaintiff from Click or tap here to enter text..

Plaintiff disputes those contentions and contends that its conclusion

- a) not to admit defendant to membership is entirely proper and lawful and that rejection of defendant’s application would be entirely proper and lawful.

- b) that defendant should be suspended or expelled from membership and suspension or expulsion is and would be entirely proper and lawful.

(5) Plaintiff is

- a) holding defendant's application for membership
- b) not putting into effect its decision to suspend or expel defendant from membership until declaration of the rights of the parties in the premises is made in this case.

(6) WHEREFORE, plaintiff [Click or tap here to enter text.](#) Association of REALTORS® prays

- a) judgment declaring and determining the rights and duties of the parties and in particular adjudicating that plaintiff's decision to
  - i. reject the defendant's application for membership
  - ii. suspend or expel defendant is lawful and proper that such [Click or tap here to enter text.](#) will not give rise to any cause of action in favor of defendant against plaintiff, its officers, directors, or members or any of them
- b) for its costs of suit herein incurred, and
- c) for such other and further relief, as may be proper.

**Note:** (a) Relates to complaint based on intent to reject membership application. (b) Relates to complaint based on intent to suspend or expel a member. Petitions for declaratory relief must take the form established by local court procedure. **No petitions should be prepared except by** the Association's legal counsel.

Form #E-19

Agreement Between Minnesota Realtors®  
and the [Click or tap here to enter text.](#) of REALTORS®  
to Establish Regional Professional Standards Enforcement Procedures

**I. Authority**

- A. The authority for the establishment and utilization of Regional Professional Standards enforcement procedures shall be established by this Agreement as approved by the Boards of Directors of Minnesota Realtors® (MNR) and the [Click or tap here to enter text.](#) Association of REALTORS® (the “signatory Board”).

**II. Geographic Area**

- A. The geographic area served by this Agreement shall be the area of the combined territorial jurisdiction assigned by the NATIONAL ASSOCIATION OF REALTORS® (NAR) to the Boards which are signatories to this Agreement.

**III. Purpose**

- A. This Agreement authorizes MNR to implement Professional Standards enforcement on behalf of the signatory Board to this Agreement. This Agreement constitutes the entire agreement and supersedes any previous oral or written agreements between the parties. The purpose of this Agreement is to create state-wide Professional Standards enforcement procedures. This includes providing for the appointment of an Ombudsman, Mediation Officers and the establishment of a state-wide Professional Standards Committee comprising of members from MNR for conducting mediations and hearings involving members of the signatory Board in matters pertaining to enforcement of the Code of Ethics, and arbitration hearings. This Agreement seeks to establish impartial and unbiased mediators, panels and tribunals for the conduct of mediations or hearings that meet the responsibilities of the signatory Board in an efficient and effective basis to serve its members.
- B. This Agreement does not authorize MNR to have jurisdiction for the enforcement of any alleged violations of the signatory Board’s bylaws, rules, regulations or any associated Multiple Listing Service bylaws, rules or regulations of the signatory Board.

**IV. Composition of Committee and Tribunals**

- A. Professional Standards Committee. MNR shall solicit interested members to serve on the Professional Standards committee based on the criteria recommended by the NAR. (See Exhibit A attached.) Confirmation of appointment to the Professional Standards Committee shall be governed solely by MNR, which will require approval by the Leadership Team of MNR. No separate vote or approval shall be necessary from the Signatory Board. The Leadership Team of MNR shall appoint the Chair and Vice Chair of the Professional Standards Committee. All appointed Committee members must attend an MNR-provided annual training seminar. Members who do not complete such training will not be allowed to serve on the Professional Standards Committee.

- B. Panels and Tribunals. This Agreement authorizes the establishment of such panels and review procedures as are necessary to conduct the process established within the NAR Code of Ethics and Arbitration Manual (“COEAM”) as amended from time to time, and as adapted to conform to local policy and comply with the provisions of applicable state law. Such appointments, panels or review procedures include but are not limited to:
- i. Appointment of an Ombudsman to facilitate disputes through constructive communication and advocating for consensus and understanding.
  - ii. Grievance Review Panels, whereby designated MNR staff shall appoint three (3) members of the Professional Standards Committee to review code of ethics complaints and arbitration requests on an as-needed basis.
  - iii. Hearing Panels, whereby designated MNR staff shall appoint five (5) members of the Professional Standards Committee to conduct Code of Ethics Hearings or Arbitration Hearings as prescribed in the COEAM.
  - iv. Appeal Tribunals, whereby designated MNR staff shall appoint five (5) members of the Professional Standards Committee to conduct any matter on appeal that is set out in the COEAM as a matter to be heard as an appeal.
  - v. Appointment of a Mediation Officer. Although mediation of disputes is voluntary and not required of the parties to such dispute, all parties to any requested arbitration shall be provided the opportunity to mediate a controversy arising out of a real estate transaction and their relationship as REALTORS® prior to such controversy being heard by an Arbitration Hearing Panel.
  - vi. Ratification Panels, whereby designated MNR staff shall appoint three (3) members of MNR Executive Committee to ratify Hearing Panel recommendations that have not been appealed in accordance with the COEAM.

## **V. Operation**

- A. Professional Standards Hearings and the organization and procedures incident thereto shall be governed by the COEAM. The parties to this Agreement agree that the procedures and policies established by the NAR and adapted by MNR according to this authority shall be considered as adopted and incorporated into the Bylaws of each Board signatory to this Agreement.
- B. Appeal of a Grievance Review Panel determination or an ethics determination rendered by the respective Panel shall be heard by an Appeal Tribunal as described in Section IV, B (iii) above.
- C. The decision of an arbitration Hearing Panel established under this Agreement shall not be appealed, unless the appealing party alleges a deprivation of due process or other basis established by the COEAM as appropriate for such an appeal. Such a claim shall be heard by an Appeal Tribunal as described in Section IV, B (iii) above.
- D. MNR has the authority and the responsibility to enforce all discipline rendered by a Hearing Panel or Appeal Tribunal of the state-wide Professional Standards Committee in matters of alleged unethical conduct. This Agreement authorizes MNR to enforce any and all disciplinary action imposed by a Hearing Panel or Appeal Tribunal, including the right to fine, place on probation, suspend or expel a REALTOR® Member from a signatory Board. This Agreement further authorizes MNR to publish certain information regarding repeat ethics violators who have been found in

violation of the Code of Ethics two or more times during a three-year period. This information will be published in the official communication vehicle of MNR and in accordance with the COEAM. The signatory Board agrees to cooperate in any and all duly-prescribed discipline.

- E. In the event a party to arbitration refuses to pay an arbitration award, the MNR shall advise the award recipient to seek judicial enforcement as set forth in Section 56, Part Ten, and in Appendix III, Part Ten of the Code of Ethics and Arbitration Manual, which may be accompanied by financial support from MNR to offset some of the costs of such a procedure.
- F. In the event a complainant alleges that the respondent has improperly refused to submit a controversy to arbitration, and a Grievance Review Panel has found there to be an arbitrable matter in a mandatory arbitration situation, the allegation shall be brought before the Executive Committee. Such a hearing will follow the notice and other procedural requirements prescribed for a hearing, and the sole question of fact for determination is whether the party has refused to submit an arbitrable matter to arbitration in violation of Article 17. Upon determination that the member has refused to arbitrate a properly arbitrable matter, the Executive Committee may impose an appropriate sanction, including but not limited to, suspension or expulsion of the member from the signatory Board and/or its MLS. The decision of the Executive Committee shall be final and binding and is not subject to further review by MNR or any signatory Board, and the signatory Board agrees to cooperate in enforcing any such decision.
- G. In the event a party fails to, within ten (10) days of the date the award is transmitted, either pay the award to the party(ies) named in the award and notify the Board in writing of such payment or deposit the funds with the Professional Standards Administrator of MNR consistent with Section 53, *The Award, Code of Ethics and Arbitration Manual*, that failure shall be brought before the Leadership Team. The Leadership Team, consistent with Section 53, may, at its discretion impose discipline, including but not limited to termination of Board membership and/or MLS access/use, or may give the party an additional period to make the required deposit. The tribunal may also stipulate appropriate discipline to be automatically imposed if the party fails to make the deposit within the time established by the tribunal. The decision of the Leadership Team shall be final and binding and is not subject to further review by the Association or any signatory Board.
- H. This Agreement also authorizes MNR to access the membership files of the signatory Board of a party to an ethics hearing to determine whether there have been past violations, which may be utilized to determine the severity of sanction.

## **VI. Reservation of Rights**

- A. It is understood and agreed by the parties to this Agreement that each Board reserves to itself all authority, rights, and privileges as have been assigned to it by its Charter and agreement with the NAR except as modified within this Agreement.
- B. It is further understood and agreed that a party to this Agreement may terminate this Agreement at any time provided the withdrawing party shall provide notice to the other party ninety (90) days in advance of the date of withdrawal. Upon the effective date of such a termination, the parties to this Agreement shall be responsible for the application and enforcement of the COEAM independent of each other.

IN WITNESS THEREOF, the parties have hereto set their hands and seals on this Click or tap here to enter text. day of Click or tap here to enter text., Click or tap here to enter text..

The effective date of this Agreement shall be Click or tap here to enter text., Click or tap here to enter text..

Attested by:

|                                             |                                                                                                                                    |
|---------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|
| DATED: <u>Click or tap to enter a date.</u> | BY: _____<br>Click or tap here to enter text., Chief Executive Officer<br>Minnesota Realtors®                                      |
| DATED: <u>Click or tap to enter a date.</u> | BY: _____<br>Click or tap here to enter text., 2025 President<br>Minnesota Realtors®                                               |
| DATED: <u>Click or tap to enter a date.</u> | BY: _____<br>Click or tap here to enter text., Executive Officer<br>Click or tap here to enter text. Association of REALTORS®, Inc |
| DATED: <u>Click or tap to enter a date.</u> | BY: _____<br>Click or tap here to enter text., 2025 President<br>Click or tap here to enter text. Association of REALTORS®, Inc    |

### **Exhibit A**

Membership on the Professional Standards Committee (Committee) shall consist of Minnesota Realtors® Members (Members) in good standing and will be selected to serve on the Committee based upon the following criteria.

- (a) Members applying must have held membership as a MNR Member for a minimum of three years.
- (b) The Leadership Team shall annually select from those Members that meet the requirement above and upon reviewing criteria submitted by those Members consisting of a minimum number of closed transactions per year, as agreed to by the Leadership Team, and/or industry experience of the Member wishing to serve on the Professional Standards Committee.

The Leadership Team shall also consider the following recommended criteria:

- number of years in the real estate business
- primary and secondary fields of real estate endeavor/ expertise
- participation in post-licensing real estate education
- training in the Code of Ethics
- role or position in brokerage company or firm (principal, nonprincipal)
- size of brokerage company or firm
- common sense or judgment characteristics displayed by applicant
- open-mindedness
- familiarity with state(s) laws and regulations
- receptiveness to instruction/training
- other relevant professional or procedural training

The Leadership Team will seek to create a committee with a reasonably balanced composition, to include a balance of REALTORS®, REALTOR-ASSOCIATES®, men, and women, and representatives of various racial and ethnic groups. Committee members should be mature, experienced, knowledgeable persons of a judicial temperament. Members of the Professional Standards Committee are prohibited from serving on more than one (1) tribunal in the same matter.

- (c) Members who are selected to serve on the Professional Standards Committee will be required to attend an annual training program every year sponsored by the MNR.

Form #E-20

Case # &lt;CASENUMBER&gt;

**Notice to Respondent (Ethics) and  
Optional Waiver of Right to Hearing**

In the case of:

&lt;C\_NAMES&gt;

vs.

&lt;R\_NAMES&gt;

---

Complainant(s)

---

Respondent(s)

To &lt;R\_NAMES&gt;:

Attached is a copy of a complaint which names you as Respondent, as filed with this Association and referred to the Grievance Review Panel for review. You have the right to a hearing on this matter as provided in the *NAR Code of Ethics and Arbitration Manual as adapted by the Minnesota Realtors® (Manual)*, if you desire.

You may, if certain conditions are met, waive your right to a hearing. If you wish to waive your right to a hearing, please review the following points below and sign if you agree to all points below. If you do not acknowledge the conduct alleged in the complaint and do not waive the right to a hearing **within ten (10) days of transmittal** of the Grievance Review Decision, a hearing will be scheduled in accord with the *Manual*. You will then have the opportunity to reply to the complaint.

Respectfully submitted,

Professional Standards Administrator  
Minnesota Realtors®

Date of Transmittal: &lt;TODAY&gt;

---

---

**Waiver of Right to Hearing**

If you wish to waive your right to a hearing, you must affirm as follows:

Yes ☐ (1) I have not been found in violation of the Code of Ethics by any Board or Association of Realtors® in the preceding three (3) years.

Associations of REALTORS® where I hold or have held membership in the preceding three (3) years:

---

Yes ☐ (2) I acknowledge the conduct alleged in the complaint and understand that any response provided cannot contest the facts stated in the complaint but may offer information in mitigation of any discipline that may be imposed.

Yes ☐ (3) I agree to accept discipline which may include only one or more of the following: a letter of warning or reprimand, mandatory attendance at a relevant educational program, suspension for (30) days, or a fine not in excess of \$15,000, should a violation of the Code of Ethics ultimately be determined. I acknowledge that I may also be placed on probation.\*

Yes ☐ (4) I waive the right to a hearing.

---

*Signature of Respondent*

---

*Date*

**If you Request a Waiver of a Hearing:**

Your response to question 1 will be verified by the Professional Standards Administrator. If no violation has been found in the last three (3) years, and you answer the above questions in the affirmative, the complaint will be referred to a Professional Standards Hearing Panel. The panel will meet in executive session only; neither the complainant nor the respondent will be present. The Panel will determine whether the allegations, as acknowledged by the Respondent, support a violation of one or more Articles of the Code of Ethics. The panel will prepare a written decision including findings of fact, conclusions, and a recommendation for discipline if a violation is found. Discipline may include only one or more of the following: a letter of warning or reprimand, mandatory attendance at a relevant educational program, probation, suspension for thirty (30) days, or a fine not in excess of \$15,000. \*

The decision of the panel will be filed with the Professional Standards Administrator and disseminated as provided in the *Manual*. Any appeal of the decision will be in accordance with the *Manual*.

\* In addition to imposing discipline, the Hearing Panel can also recommend to the Board of Directors that the disciplined member be put on probation. Probation is not a form of discipline. When a member is put on probation the discipline recommended by the Hearing Panel is held in abeyance for a stipulated period of time not longer than one (1) year. Any subsequent finding of a violation of the Code of Ethics during the probationary period may, at the discretion of the Board of Directors, result in the imposition of the suspended discipline. Absent any subsequent findings of a violation during the probationary period, both the probationary status and the suspended discipline are considered fulfilled, and the member's record will reflect the fulfillment. The fact that one or more forms of discipline will be held in abeyance during the probationary period does not bar imposition of other forms of discipline which will not be held in abeyance.



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Form E-21-R

Case #<CASENUMBER>

## Letter of Reprimand

In the case of: <C\_NAMES> vs. <R\_NAMES>  
*Complainant(s)* *Respondent(s)*

To <R\_NAME>,

on <HEARINGDATE> a Hearing Panel of the Professional Standards Committee of Minnesota Realtors® considered the above-referenced case. It was the decision of the Ratification Panel or Appeal Tribunal, as applicable, to confirm the finding of a violation of <ARTICLE\_ID> of the Code of Ethics and the discipline recommended by the Hearing Panel.

Pursuant to the discipline imposed, you are to:

- ☐ remit a fine to be paid by Click or tap to enter a date.
- ☐ attend Click or tap here to enter text. and provide the Association with proof of completion of said course by Click or tap to enter a date.
- ☐ Failure to pay the fine or attend the course as stipulated will result in: Click or tap here to enter text.  
*Insert whatever additional discipline will automatically be imposed as recommended by the Hearing Panel and approved by the Ratification Panel or Appeal Tribunal.*

This letter is to be construed as an Official Letter of Reprimand advising of a lack of professional conduct as determined by a due process hearing of the Professional Standards Committee and affirmed by the Ratification Panel or Appeal Tribunal. Future similar conduct could result in more severe sanction.

This Official Letter of Reprimand will be forwarded to <R\_LOCALASSOCIATION> to be placed in your file. Upon completion of the discipline imposed by the date(s) specified above, this matter will be considered closed.

Respectfully Submitted,

Professional Standards Administrator  
Minnesota Realtors®

Dated: <TODAY>

cc: <R\_LOCALASSOCIATION>

(Revised 10/24)



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Form E-21-RC

Case #: <CASENUMBER>

## Letter of Reprimand - Citation

In the case of: <C\_NAMES> vs. <R\_NAMES>  
*Complainant(s)* *Respondent(s)*

To <R\_NAMES>:

on <GC\_HEARINGDATE> a Grievance Review Panel of the Professional Standards Committee of Minnesota Realtors® considered the above-referenced case. It was the decision of the Grievance Review Panel that the case was eligible for a citation and determined that a citation and Letter of Reprimand be issued finding the potential violation of <ARTICLE\_ID> of the REALTORS® Code of Ethics.

Pursuant to the discipline imposed in accordance with the Citation Policy and Schedule of Fines, you are to:

- ☐ remit a \$**Click or tap here to enter text.** fine to be paid to the Association in full within 5 days of the final date to request a hearing which is no later than **Click or tap to enter a date.**;
- ☐ attend **Click or tap here to enter text. hours of continuing education** on the topic of the REALTOR® Code of Ethics and provide the Association with proof of completion of said course within 30 days of the final date to request a hearing, which is no later than **Click or tap to enter a date.**.. All continuing education courses must be approved by the Minnesota Department of Commerce;

**Additional Discipline:** Failure to timely pay the fine or attend the course(s) and provide proof of completion as stipulated, if applicable, will result in suspension of REALTOR® Association membership(s) and suspension of MLS privileges and/or membership until the fine is paid and/or proof of completion of the sanctioned class is submitted.

This letter is to be construed as an Official Letter of Reprimand advising of a lack of professional conduct as determined by Grievance Review Panel in accordance with the Ethics Citation Policy. Future similar conduct could result in more severe sanction.

This Official Letter of Reprimand will be forwarded to <R\_LOCALASSOCIATION> to be placed in your file. Upon completion of the discipline imposed by the date(s) specified above, this matter will be considered closed.

Respectfully Submitted,

Dated: <TODAY>

Professional Standards Administrator  
Minnesota Realtors®

cc: <R\_LOCALASSOCIATION>, <RB\_NAME>, <RA\_NAME>

(Revised 10/24)



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Form E-21W

Case #<CASENUMBER>

## Letter of Reprimand

In the case of: <C\_NAMES> vs. <R\_NAMES>  
*Complainant(s)* *Respondent(s)*

To <R\_NAME>:

on <HEARINGDATE> a Hearing Panel of the Professional Standards Committee of Minnesota Realtors® considered the above-referenced case. It was the decision of the Ratification Panel or Appeal Tribunal, as applicable, to confirm the finding of a violation of <ARTICLE\_ID> of the Code of Ethics and the discipline recommended by the Hearing Panel.

Pursuant to the discipline imposed, you are to:

- ☐ remit a fine to be paid by Click or tap to enter a date.
- ☐ attend Click or tap here to enter text. and provide the Association with proof of completion of said course by Click or tap to enter a date.
- ☐ Failure to pay the fine or attend the course as stipulated will result in: Click or tap here to enter text.  
*Insert whatever additional discipline will automatically be imposed as recommended by the Hearing Panel and approved by the Ratification Panel or Appeal Tribunal.*

This letter is to be construed as an Official Letter of Warning advising of a lack of professional conduct as determined by a due process hearing of the Professional Standards Committee and affirmed by the Ratification Panel or Appeal Tribunal. Future similar conduct could result in more severe sanction.

This Official Letter of Warning will be forwarded to <R\_LOCALASSOCIATION> to be placed in your file. Upon completion of the discipline imposed by the date(s) specified above, this matter will be considered closed.

Respectfully Submitted,

Professional Standards Administrator  
Minnesota Realtors®

Dated: <TODAY>

CC: <R\_LOCALASSOCIATION>

Form E-22

Case #: &lt;CASENUMBER&gt;

## Appeal of Grievance Review Panel Decision - Ethics

In the case of:

&lt;C\_NAMES&gt;

vs.

&lt;R\_NAMES&gt;

Complainant(s)

Respondent(s)

Check the appropriate box:

- ☐ I/We appeal the dismissal of the above-referenced ethics complaint.
- ☐ I/We appeal the dismissal of Article(s) \_\_\_\_\_ from the above-referenced ethics complaint.
- ☐ I/We appeal the Grievance Review Panel's decision that the alleged conduct may be the basis for a violation but an inappropriate Article(s) has been cited and appeal the Grievance Review Panel's amendment to the complaint as follows:
- ☐ I/We disagree with the *addition* of Article(s) \_\_\_\_\_
- ☐ I/We disagree with the *deletion* of Article(s) \_\_\_\_\_
- I/We hereby request the complaint, as originally filed, be forwarded to a hearing before a Hearing Panel of the Professional Standards Committee.
- ☐ I/We disagree with the addition of Article(s) \_\_\_\_\_

The complaint and any attachments to the complaint cannot be revised, modified, or supplemented. The Appeal Tribunal considers only the information and documents considered by the Grievance Review Panel along with this form and explanation below. Complainant may explain in writing why Complainant disagrees with the Grievance Review Panel's decision. (Please attach additional pages if necessary.)

### Complainant(s):

\_\_\_\_\_  
*(Signature of Complainant)*

\_\_\_\_\_  
*(Date)*

\_\_\_\_\_  
*(Signature of Complainant)*

\_\_\_\_\_  
*(Date)*

\_\_\_\_\_  
*(Type/Print Name)*

\_\_\_\_\_  
*(Type/Print Name)*

\_\_\_\_\_  
*(Address)*

\_\_\_\_\_  
*(Address)*

\_\_\_\_\_  
*(Phone)*

\_\_\_\_\_  
*(Phone)*

\_\_\_\_\_  
*(Email)*

\_\_\_\_\_  
*(Email)*



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Form E-22 A-C

Case #: <CASENUMBER>

## Appeal of Grievance Review Panel Citation

In the case of:

<C\_NAMES>

vs.

<R\_NAMES>

*Complainant(s)*

*Respondent(s)*

Check the appropriate box:

- ☐ I/we appeal the Citation being issued due to a lack of notice.
- ☐ I/we request a hearing on the matter.

The complaint and any attachments to the complaint cannot be revised, modified, or supplemented. The Appeal Tribunal considers only the information and documents considered by the Grievance Review Panel (or Hearing Panel) along with this form and explanation below. The Complainant may explain in writing why Complainant disagrees with the Grievance Review Panel's (or Hearing Panel's) decision. (Please attach additional pages if necessary.)

### Complainant(s):

*(Signature of Complainant)*

*(Date)*

*(Signature of Complainant)*

*(Date)*

*(Type/Print Name)*

*(Type/Print Name)*

*(Address)*

*(Address)*

*(Phone)*

*(Phone)*

*(Email)*

*(Email)*



Form E-22 A-R

Case #: <CASENUMBER>

## Respondent Appeal of Grievance Review Panel - Citation

In the case of:

<C\_NAMES>

vs.

<R\_NAMES>

*Complainant(s)*

*Respondent(s)*

### Respondent:

Issued Citations may not be appealed however, a respondent may appeal a Citation deadline solely on the basis that the Association failed to transmit, or timely transmit, the Citation to the Respondent

☐

Respondent appeals the Citation deadline due to failure of the Association to transmit, or timely transmit, the Citation to the Respondent.

The Respondent may explain in writing why they believe the Association failed to transmit, or timely transmit, the Citation to the Respondent.

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### Respondent(s):

*(Signature of Respondent)*

*(Date)*

*(Signature of Respondent)*

*(Date)*

*(Type/Print Name)*

*(Type/Print Name)*

*(Address)*

*(Address)*

*(Phone)*

*(Phone)*

*(Email)*

*(Email)*

Form E-23a  
Case #<CASENUMBER>

## Action of the Appeal Hearing Tribunal Appeal of Grievance Review Panel (or Hearing Panel) Decision (Ethics)

The decision of the Grievance Committee (or Hearing Panel) to dismiss the ethics complaint, or portion of the ethics complaint in the matter of:

|                |     |               |
|----------------|-----|---------------|
| <C_NAMES>      | vs. | <R_NAMES>     |
| Complainant(s) |     | Respondent(s) |

Dated <SUBMITTED>, was appealed by [Click or tap here to enter text.](#) and was considered on <HA\_HEARINGDATE> by the Appeal Tribunal of the Professional Standards Committee of Minnesota Realtors®. The Appeal Tribunal's Decision in the above-referenced case is to:

- ☐ Deny the appeal and uphold the Grievance Review Panel's (or Hearing Panel's) decision to dismiss or amend the complaint. *(The full appeal deposit passes to general treasure of the Association.)*
  
- ☐ Grant the appeal and overturn the Grievance Review Panel's (or Hearing Panel's) decision as follows:
  - ☐ The complaint shall not be dismissed and the matter is hereby referred to a hearing before the Professional Standards Committee. You will be notified in the near future concerning a hearing date.
  - ☐ Article(s) [Click or tap here to enter text.](#) shall not be dismissed and are hereby referred to a hearing before the Professional Standards Committee.
  - ☐ No inappropriate Article(s) have been cited and the complaint as originally filed is hereby referred to a hearing before the Professional Standards Committee.
  - ☐ The following Article(s) [Click or tap here to enter text.](#) shall not be added to the complaint.

The decision rendered by an Appeal Tribunal is final and binding and is not subject to further review or appeal. The decision above was rendered by an Appeal Tribunal comprised of the following members whose signatures are affixed below.

<HA\_CHAIR>, Chairperson

\_\_\_\_\_  
*Signature*

<HA\_MEMBER1>, Member

\_\_\_\_\_  
*Signature*

<HA\_MEMBER2>, Member

\_\_\_\_\_  
*Signature*

<HA\_MEMBER3>, Member

\_\_\_\_\_  
*Signature*

<HA\_MEMBER4>, Member

\_\_\_\_\_  
*Signature*

Dated: <TODAY>

Form E-23b  
Case #<CASENUMBER>

## Action of the Appeal Hearing Tribunal Appeal of Hearing Panel Decision (Ethics)

The decision of the Hearing Panel in the matter of:

<C\_ LASTNAME>  
*Complainant(s)*
vs. <R\_ LASTNAME>  
*Respondent(s)*

Dated <SUBMITTED>, was appealed by [Click or tap here to enter text.](#) and was considered on <HA\_HEARINGDATE> by the Appeal Tribunal of the Professional Standards Committee of the Association.

The Appeal Tribunal's Decision in the above-referenced case is to:

- ☐ Deny the appeal and uphold the Hearing Panel's decision ☐ in part / ☐ in its entirety.  
(See Fee Schedule to determine disposition of appeal deposit.)

- ☐ The Appeal Tribunal determined that there was no substantial procedural deficiency in the original Hearing and/or the Appellant was not denied a fair hearing.

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- ☐ The Appeal Tribunal determined that the Hearing Panel's proposed discipline was authorized, and the original Hearing Panel did not abuse its discretion.

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- ☐ The Appeal Tribunal determined that the Hearing Panel did not misapply or misinterpret the Article(s) of the Code of Ethics.

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- ☐ Modify the Hearing Panel's decision as follows (**NOTE: If the Appeal Tribunal imposes alternative discipline, it may not exceed that recommended by the Hearing Panel.**):

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Appeal Tribunal's reasons for modification:

- ☐ The Appeal Tribunal determined that the discipline proposed by the Hearing Panel was not authorized by the Manual.

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- ☐ The Appeal Tribunal determined that the Hearing Panel abused its discretion.

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*(One-half of appeal deposit returned to appellant and one-half of appeal deposit passes to the general treasure of the Association.)*

- ☐ Grant the appeal, overturn the original Hearing Panel's decision and refer the matter. This matter is referred as follows:

☐ The Appeal Tribunal determined that there was a substantial procedural deficiency in the original Ethics Hearing that effectively denied the appellant a fair hearing. This matter is hereby referred to the Professional Standards Committee for a new hearing and recommendation by a different Hearing Panel. *(Appeal deposit returned to appellant in full.)*

☐ The Appeal Tribunal was concerned with the appropriateness of the recommendation of sanction. This matter is hereby referred back to the original Hearing Panel for further consideration and recommendation accompanied by the Appeal Tribunal's concerns regarding the proposed discipline which are as follows:

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*(One-half of appeal deposit returned to appellant and one-half of appeal deposit passes to the general treasure of the Association.)*

You will be notified in the near future concerning a hearing date.

- ☐ Grant the appeal and dismiss the matter. No further Hearings will be held, any discipline recommended by the original Hearing Panel is revoked and is no longer required, and this file will be closed. *(Appeal deposit returned to appellant in full.)*

Appeal Tribunal's reason(s) for dismissal:

- ☐ The Appeal Tribunal concluded that the findings of fact do not support the original Hearing Panel's conclusion as to the unethical conduct.

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- ☐ Other:

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The decision of the Appeal Tribunal is final and binding and is not subject to further review or appeal. The decision above was rendered by an Appeal Tribunal comprised of the following members whose signatures are affixed below.

|                      |  |                  |
|----------------------|--|------------------|
| <HA_CHAIR>, Chair    |  |                  |
|                      |  | <i>Signature</i> |
| <HA_MEMBER1>, Member |  |                  |
|                      |  | <i>Signature</i> |
| <HA_MEMBER2>, Member |  |                  |
|                      |  | <i>Signature</i> |
| <HA_MEMBER3>, Member |  |                  |
|                      |  | <i>Signature</i> |
| <HA_MEMBER4>, Member |  |                  |
|                      |  | <i>Signature</i> |
| <HA_MEMBER5>, Member |  |                  |
|                      |  | <i>Signature</i> |

Dated: <TODAY>



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Form E-24

Case #: <CASENUMBER>

## Request for Pre-Hearing Meeting - Ethics

In the case of:

<C\_NAMES>

vs.

<R\_NAMES>

Complainant(s)

Respondent(s)

I/We, \_\_\_\_\_, do hereby request a Pre-Hearing Meeting of the Ethics Hearing Panel of the Professional Standards Committee of Minnesota Realtor®.

My/Our request is based on the following:

- ☐ Whether the ethics complaint is timely filed
- ☐ Other administrative issue(s). Please specify: \_\_\_\_\_

**Written Statement:** Please attach any written statement you wish to provide setting forth in reasonable detail the facts and evidence to support the bases for your request. The materials and information that were available to the Grievance Review Panel when they made their decision along with the respondent's reply, if any, will also be presented to the Hearing Panel prior to the pre-hearing meeting. Neither the Complaint nor the Reply can be revised, modified or supplemented.

\_\_\_\_\_  
(Signature of Complainant)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of Complainant)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Type/Print Name)

\_\_\_\_\_  
(Type/Print Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Phone)

\_\_\_\_\_  
(Phone)

\_\_\_\_\_  
(Email)

\_\_\_\_\_  
(Email)

\*Hearing Panels that find a matter not timely filed should transmit their decision via Form # E-23a (not Form # E-11). Appellants appealing a Hearing Panel dismissal should use this form.

Form E-25

Case #: &lt;CASENUMBER&gt;

**Official Notice of Pre-Hearing Meeting - Ethics**

In the case of:

&lt;C\_NAMES&gt;

vs.

&lt;R\_NAMES&gt;

*Complainant(s)**Respondent(s)*

The above parties are hereby notified:

The Chair of the Hearing Panel has designated [Click or tap to enter a date.](#) as the date for the Pre-Hearing meeting in the above-state case.

The Hearing Panel will hold the Pre-Hearing Meeting in accordance with **Part Four, Section 20(a)** of the Manual to determine the following checked items:

- ☐ Whether the ethics complaint is timely filed
- ☐ Other administrative issue(s). Please specify: \_\_\_\_\_

Please **be advised** that:

- a. The Hearing Panel will convene this Pre-Hearing Meeting **without the presence of the parties** to the complaint or their counsel.
- b. You have the right to challenge the qualifications of any individual who has been appointed to serve on this Hearing Panel. The Hearing Panel members are noted on the ***Official Notice of Hearing*** (Form E-8) enclosed herein. If you wish to challenge any panel member, please do so by using **Form E-7**. The Challenge form must be returned to the Association office within **ten (10) days from transmission of this notice**. Your silence will indicate that you did not challenge any panel member.
- c. The materials and information that were available to the Grievance Review Panel when they made their decision along with Respondent's Reply will be presented to the Hearing Panel prior to the Pre-Hearing Meeting.

Please **also be advised** that:

- d. You may also submit written statements regarding the items checked above. Any such written statement you wish to submit to the Hearing Panel for consideration on these specific matters must be submitted to the Association **at least three (3) days prior to the Pre-Hearing Meeting date above**. If such written statements are submitted after this deadline, they will be forwarded to the Hearing Panel however, the Hearing Panel may not have the opportunity to give them the same level of review before the Pre-Hearing Meeting as had they been submitted in the timeline requested.
- e. If the Hearing Panel determines that the Ethics Complaint should be dismissed, the complainant shall have the right to appeal the decision of the Hearing Panel to an Appeal Tribunal of the Association.

- f. If the conclusion of the Hearing Panel in its Pre-Hearing Meeting is that the Ethics Complaint should be forwarded to a hearing, then the ethics Hearing shall be held on the date specified in the *Official Notice of Hearing* and all matters relating to this complaint may be raised to the Hearing Panel at the hearing, including but not limited to, the complaint being timely filed, administrative issues and the merits of the complaint. Please refer to the *Official Notice of Hearing* for important information pertaining to the Hearing.
- g. The Association will transmit the decision of the Hearing Panel on these pre-hearing matters to the parties no later than **three (3) days** after the Hearing Panel makes their decision.
- h. The parties shall not discuss the case with any member of the Hearing Panel (or Appeal Tribunal if appealed) prior to the Hearing or after the Hearing and prior to the announcement of the decision.

Respectfully submitted,

Professional Standards  
Administrator Minnesota Realtors®

Date of Transmission: <TODAY>

Form E-26

Case #: &lt;CASENUMBER&gt;

**Action of the Hearing Panel Pre-Hearing Meeting**

In the case of:

&lt;C\_NAMES&gt;

vs.

&lt;R\_NAMES&gt;

*Complainant(s)**Respondent(s)*A Hearing Panel was convened for a Pre-Hearing Meeting to determine *(check all that apply)*:

- ☐ Whether the ethics complaint is timely filed
- ☐ Other administrative issue(s). Please specify: \_\_\_\_\_

The Hearing Panel of the Professional Standards Committee held a Pre-Hearing Meeting on [Click or tap to enter a date.](#) to consider the issue(s) selected above.

After reviewing the materials submitted by the parties, the Hearing Panel's decision in the above-referenced case is to:

- ☐ Dismiss the entire ethics complaint for the following reason(s):
- ☐ The Hearing Panel determined that the complaint was not timely filed.

☐ The Hearing Panel determined that there was an administrative issue that would prohibit the complaint from moving forward to a hearing.

***If the complaint is dismissed, the complainant has the right to appeal the decision to an Appeal Tribunal of the Professional Standards Committee within twenty (20) days from transmittal of this notice.***

- ☐ Dismiss part of the ethics complaint for the following reason(s):
- ☐ The Hearing Panel determined that a portion of the complaint was not timely filed.

☐ The Hearing Panel determined that there was an administrative issue with a portion of the complaint that would prohibit the complaint or arbitration request from moving forward to a hearing.

***If the complaint is dismissed in part, the complainant has the right to appeal the decision to an Appeal Tribunal of the Professional Standards Committee within twenty (20) days from transmittal of this notice. Despite this right the ethics hearing will still proceed on the scheduled date unless the hearing panel Chair determines that the matter should be delayed in the interest of due process.***

☐ Proceed to a Hearing as scheduled, where the parties will be entitled to the full due process afforded to parties in such a hearing.

***If the complaint is forwarded to a Hearing, the Hearing shall be held on the scheduled date and both the complainant and respondent have the right to raise all substantive and procedural issues at the hearing (including those issues reviewed within the pre-hearing meeting).***

The decision above was rendered by a Hearing Panel comprised of following members whose Signatures are affixed below.

|                           |  |  |
|---------------------------|--|--|
| <HEARING_CHAIR>, Chair    |  |  |
| <HEARING_MEMBER1>, Member |  |  |
| <HEARING_MEMBER2>, Member |  |  |
| <HEARING_MEMBER3>, Member |  |  |
| <HEARING_MEMBER4>, Member |  |  |

Dated: <TODAY>

Form E-27

Case #: &lt;CASENUMBER&gt;

## Statement of Confidentiality

In the case of:

&lt;C\_NAMES&gt;

vs.

&lt;R\_NAMES&gt;

*Complainant(s)*
*Respondent(s)*

All panel and alternate members are hereby notified that the report and findings of this panel are considered confidential. You must leave all materials related to this case with the Hearing Administrator so they can be properly discarded. You must permanently destroy all materials related to this case in your possession that were not left with the Hearing Administrator. Please be advised you are not to discuss this case with anyone, including any of the involved parties. Should a party call you after this proceeding, please direct them to call the Hearing Administrator. Any conversations by you on this case outside the hearing could be grounds for dismissal from the Professional Standards Committee.

|                              |  |  |
|------------------------------|--|--|
| <HEARING_CHAIR>, Chair       |  |  |
| <HEARING_MEMBER1>, Member    |  |  |
| <HEARING_MEMBER2>, Member    |  |  |
| <HEARING_MEMBER3>, Member    |  |  |
| <HEARING_MEMBER4>, Member    |  |  |
| <HEARING_MEMBER5>, Alternate |  |  |

Dated: &lt;TODAY&gt;



11100 Bren Road West  
Minnetonka, MN 55343  
952.935.8313  
mnrealtor.com

Form #E-28

Case # <CASENUMBER>

## Notice of Witness(es)

In the case of:

<C\_NAMES>

*Complainant(s)*

vs.

<R\_NAMES>

*Respondent(s)*

Any party who intends to call witness(es) at the hearing, must provide notice to the Association and all other parties **no less than 15 days** prior to the scheduled Hearing.

**Scheduled hearing date: <HEARINGDATE>**

Every party to an Ethics or Arbitration Hearing may have witnesses present at the hearing and the tribunal may summon its own witnesses. All parties appearing at the hearing may be called as witnesses without advance notice. Any party who intends to call witnesses at the hearing must provide Minnesota Realtors® and all other parties with the names of the witnesses **at least fifteen (15) days prior** to the Hearing date. ***Failure to provide this information within the time specified will constitute a waiver of the right to call those witnesses at the hearing, unless*** the other party agrees to allow their testimony or the tribunal determines that the testimony of that witness(es) is essential to ensure due process.

Minnesota Realtors® and \_\_\_\_\_, are hereby notified on this \_\_\_\_\_, 20\_\_\_\_  
(Complainant or Respondent)

that \_\_\_\_\_ will be calling the following witnesses at the scheduled hearing:  
(Complainant or Respondent)

|                 |       |                          |
|-----------------|-------|--------------------------|
| Witness 1 Name: | _____ | <i>Please Print/Type</i> |
| Witness 2 Name: | _____ | <i>Please Print/Type</i> |
| Witness 3 Name: | _____ | <i>Please Print/Type</i> |

I understand that all witnesses are excused from the hearing except during their testimony and cross-examination. I also understand that it is my responsibility to notify the Association and all parties of these witnesses and arrange for the above witness(es) to be present at the time and place designated on the *Official Notice of Hearing* (Form #E-8).

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Print Name*

\_\_\_\_\_  
*Print Name*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Date*

Form #E-29

Case # &lt;CASENUMBER&gt;

## Notice of Legal or REALTOR® Counsel

In the case of

&lt;C\_NAMES&gt;

vs.

&lt;R\_NAMES&gt;

Complainant(s)

Respondent(s)

If you intend to have counsel, you must provide notice to Minnesota Realtors® and all other parties **no less than 15 days** prior to the scheduled hearing date.

**Scheduled hearing date: <HEARINGDATE>**

**Ethics Hearing:** Every party may be represented by legal counsel or by a REALTOR® of their choosing (or both) in an Ethics hearing.

The role of counsel includes the making of opening and closing statements on behalf of the party represented, examining and cross-examining witnesses, and introducing affidavits, documents, and other admissible relevant evidence but does not include testifying as a witness unless the panel determines such testimony is essential to ensure due process. **Every party that intends to have counsel, shall notify Minnesota Realtors® and all other parties of such intent to have counsel, including counsel's name, address and phone number, not later than 15 days prior to the originally scheduled hearing date.** In the event parties do not give 15 days advance notice of their intention to have counsel and the information required, the panel shall take steps, including continuance of the matter, if necessary, to guarantee the rights of all parties to representation by counsel.

Although a party may be represented by counsel of their choosing, parties may not refuse to directly respond to requests for information or questions addressed to them by members of a hearing panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. The panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony at the hearing. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, shall be grounds for exclusion of counsel by majority vote of the panel members and is nonappealable.

The Minnesota Realtors® and \_\_\_\_\_, are hereby notified

Complainant or Respondent

on this \_\_\_\_\_, 20\_\_ that \_\_\_\_\_ will be represented

Complainant or Respondent

by the following Legal and/or REALTOR® counsel relating to the above-stated case.

**Legal Counsel Information:**
**REALTOR® Counsel Information:**

Name:

Name:

Firm Name:

Firm Name:

Address:

Address:

Phone:

Phone:

Email:

Email:

I ☐DO ☐DO NOT authorize Minnesota Realtors® to provide copies of all notices and information pertaining to this case to said counsel at the address(es) above. I understand that it is my responsibility to notify the Association and all parties of my intent to have counsel.

\_\_\_\_\_  
Type/Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Type/Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Form #E-29b

Case # &lt;CASENUMBER&gt;

## Notice of Legal or REALTOR® Counsel – Ethics Appeal Hearing

In the case of

&lt;C\_NAMES&gt;

vs.

&lt;R\_NAMES&gt;

*Complainant(s)*
*Respondent(s)*

If you intend to have counsel, you must provide notice to Minnesota Realtors® and all other parties ***no less than 10 days*** prior to the scheduled hearing date.

**Scheduled hearing date: <HA\_HEARINGDATE>**

**Ethics Hearing:** Every party may be represented by legal counsel or by a REALTOR® of their choosing (or both) in an Ethics hearing.

The role of counsel at an Ethics Appeal Hearing includes offering corrections to the summary, presenting reasons why the Hearing Panel's recommendation should be followed or not, and introducing admissible evidence (only evidence as may bear upon a claim of deprivation of due process). ***Every party that intends to have counsel, shall notify Minnesota Realtors® and all other parties of such intent to have counsel, including counsel's name, address and phone number, not later than 10 days prior to the hearing date.*** In the event parties do not give 10 days advance notice of their intention to have counsel and the information required, the panel shall take steps, including continuance of the matter, if necessary, to guarantee the rights of all parties to representation by counsel.

Although a party may be represented by counsel of their choosing, parties may not refuse to directly respond to requests for information or questions addressed to them by members of a hearing panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. The panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony at the hearing. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, shall be grounds for exclusion of counsel by majority vote of the panel members and is nonappealable.

The Minnesota Realtors® and \_\_\_\_\_, are hereby notified  
*Complainant or Respondent*

on this \_\_\_\_\_, 20\_\_ that \_\_\_\_\_ will be represented  
*Complainant or Respondent*

by the following Legal and/or REALTOR® counsel relating to the above-stated case.

**Legal Counsel Information:**

**REALTOR® Counsel Information:**

Name:

Name:

Firm Name:

Firm Name:

Address:

Address:

Phone:

Phone:

Email:

Email:

I ☐DO ☐DO NOT authorize Minnesota Realtors® to provide copies of all notices and information pertaining to this case to said counsel at the address(es) above. I understand that it is my responsibility to notify the Association and all parties of my intent to have counsel.

\_\_\_\_\_  
Type/Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Type/Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Form #E-30

Case # &lt;CASENUMBER&gt;

**Request for Postponement of Hearing**

In the case of

&lt;C\_NAMES&gt;

vs.

&lt;R\_NAMES&gt;

*Complainant(s)**Respondent(s)*

I/we, \_\_\_\_\_, do hereby request a postponement of the hearing in the matter stated above due to the following extenuating circumstances:

---

---

I understand that postponement of a granted if there are extenuating circumstances however parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing.

---

*Signature**Date**Signature**Date*

---

*Print Name**Print Name*

---

**[OFFICE USE ONLY]****Final Action:**

- ☐ All parties have mutually agreed to a subsequent specified date.
- ☐ **The parties have not mutually agreed to a subsequent date and the Chair has determined that denying the continuance would deny the requestor a fair hearing and therefore has *granted* the parties' request for postponement.**
- ☐ **The parties have not mutually agreed to a subsequent date and the Chair has determined that denying the continuance would not deny the requestor a fair hearing and therefore has *denied* the parties' request for postponement. The hearing will be held as scheduled.**

Professional Standards Administrator  
Minnesota Realtors

Date

Form #E-31

Case # &lt;CASENUMBER&gt;

**Reduced Panel Waiver**

In the case of

&lt;C\_NAMES&gt;

vs.

&lt;R\_NAMES&gt;

*Complainant(s)**Respondent(s)*

I/we, \_\_\_\_\_, a party in the above-captioned matter, have been informed that Panel Member \_\_\_\_\_ will not be present to serve at the above-captioned hearing on <HEARINGDATE>. I understand that if we continue with the hearing as scheduled, the Hearing Panel Chair will conduct the Hearing and participate in Executive Session and, that in the absence of said panel member, the chair will abstain from voting and the three remaining Panel members

\_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_

will make up the voting body in this decision. I/we hereby consent to proceed with the Hearing as described above and waive my/our right to a continuance based on the number of Panel members.

Dated: \_\_\_\_\_, 2025

\_\_\_\_\_  
*Signature*\_\_\_\_\_  
*Date*\_\_\_\_\_  
*Signature*\_\_\_\_\_  
*Date*\_\_\_\_\_  
*Print Name*\_\_\_\_\_  
*Print Name*



Form #E-32  
Case # <CASENUMBER>

### Waiver of Legal / REALTOR® Counsel Notification

In the case of

\_\_\_\_\_ vs. \_\_\_\_\_  
*Complainant(s)* *Respondent(s)*

I, \_\_\_\_\_, a party in the above-captioned matter, have been informed that \_\_\_\_\_ will be acting as legal/REALTOR® counsel representing \_\_\_\_\_ regarding the above-captioned hearing.

Although I/we did not receive advance notification of this legal / REALTOR® counsel representation, I/we hereby consent to proceed with the Hearing today as described above and waive my/our right to a continuance based on lack of such notification.

Dated: \_\_\_\_\_, 2025

\_\_\_\_\_  
*Signature* *Date* *Signature* *Date*

\_\_\_\_\_  
*Print Name* *Print Name*

Form #E-33

Case # &lt;CASENUMBER&gt;

**Waiver of Notification of Witness**

In the case of

&lt;C\_NAMES&gt;

vs.

&lt;R\_NAMES&gt;

*Complainant(s)**Respondent(s)*

I, \_\_\_\_\_, a party in the above-captioned matter, have been informed that \_\_\_\_\_ will be be a witness for \_\_\_\_\_ regarding the above-captioned hearing.

Although I/we did not receive advance notification of this witness, I/we hereby consent to proceed with the Hearing today as described above and waive my/our right to a continuance based on lack of such notification.

Dated: &lt;TODAY&gt;

\_\_\_\_\_  
*Signature*\_\_\_\_\_  
*Date*\_\_\_\_\_  
*Signature*\_\_\_\_\_  
*Date*\_\_\_\_\_  
*Print Name*\_\_\_\_\_  
*Print Name*

Form #E-34

Case # &lt;CASENUMBER&gt;

**Action of the Grievance Review Panel After Complaint Withdrawal**

In the case of

&lt;C\_NAMES&gt;

vs.

&lt;R\_NAMES&gt;

*Complainant(s)**Respondent(s)*

Complainant(s) has withdrawn their complaint against the Respondent and the matter has been referred to a Grievance Review Panel to determine if the alleged violation of the Code of Ethics is an issue of public trust. The Grievance Review Panel has reviewed the complaint and has determined the following:

☐ The alleged violation is not a matter of public trust and the file is closed.

☐ The alleged violation of the Code of Ethics contains issues of public trust (as defined by Article IV, Section 2 of the National Association's Bylaws) and this matter is hereby referred to Minnesota Realtors® Leadership Team.

The decision above was rendered by a Grievance Review Panel comprised of the following members whose Signatures are affixed below.

&lt;GC\_MEMBER1&gt;, Member

&lt;GC\_MEMBER2&gt;, Member

&lt;GC\_MEMBER3&gt;, Member

Dated: &lt;TODAY&gt;

Form #E-34a

Case # &lt;CASENUMBER&gt;

## Action of the Hearing Panel After Complaint Withdrawal

In the case of

\_\_\_\_\_  
<C\_NAMES>

vs.

\_\_\_\_\_  
<R\_NAMES>

Complainant(s)

Respondent(s)

Complainant(s) has withdrawn their complaint against the Respondent and the matter has been referred to a Hearing Panel to determine if the alleged violation of the Code of Ethics is an issue of public trust. The Grievance Review Panel has reviewed the complaint and has determined the following:

☐ The alleged violation is not a matter of public trust and the file is closed.

☐ The alleged violation of the Code of Ethics contains issues of public trust (as defined by Article IV, Section 2 of the National Association's Bylaws) and this matter is hereby referred to Minnesota Realtors® Leadership Team.

The decision above was rendered by a Grievance Review Panel comprised of the following members whose Signatures are affixed below.

\_\_\_\_\_  
<HEARING\_MEMBER1>, Member

\_\_\_\_\_  
<HEARING\_MEMBER2>, Member

\_\_\_\_\_  
<HEARING\_MEMBER3>, Member

\_\_\_\_\_  
<HEARING\_MEMBER4>, Member

\_\_\_\_\_  
<HEARING\_MEMBER5>, Member

Dated: &lt;TODAY&gt;

Form #E-35

Case # &lt;CASENUMBER&gt;

### Citation

**Citation Date of Transmittal:** Click or tap to enter a date.

In the case of

|                       |     |                      |
|-----------------------|-----|----------------------|
| <C_NAMES>             | vs. | <R_NAMES>            |
| <i>Complainant(s)</i> |     | <i>Respondent(s)</i> |

To &lt;R\_NAMES&gt;,

On <GC\_HEARINGDATE>, a Grievance Review Panel of the Professional Standards Committee of Minnesota Realtors® (“Association”) considered the above-referenced case. It was the decision of the Grievance Review Panel that the case was eligible for a citation and determined that a citation be issued finding the potential violation of **Article(s)** Click or tap here to enter text. of the REALTORS® Code of Ethics.

#### IMPORTANT NOTICE – ACTION REQUIRED

Respondent must respond as follows:

1. Transmit the signed Citation back to the Association within 20 days of transmission of this Citation; or
2. Transmit a Request for Hearing (Form E-36) to the Association within 20 days from transmission of this Citation.

**If Respondent fails to either timely transmit the signed Citation or a Request for Hearing this Citation is deemed accepted by Respondent and all Discipline will become due and owing as follows.**

- Full payment of all fines must be received by the Association no later than 5 days after the time period to request a hearing has expired, and
- Proof of completion of any sanctioned education must be received by the Association no later than 30 days after the final date to request a hearing has expired.

**Respondent’s failure to timely pay the fine or complete education and provide proof of completion will result in immediate suspension from the REALTOR® Association and immediate suspension of MLS privileges and/or MLS membership until the fine is paid or proof of education has been received.**

**Respondent’s failure to pay the fine may also result in automatic termination of membership in the REALTOR® Association and MLS privileges and/or membership without further notice or hearing.**

In accordance with Minnesota Realtors® Citation Policy and Schedule of Fines, the following discipline was imposed by the Grievance Review Panel:

☐ Remit a \$\_\_\_\_\_ fine to be paid to the Association in full within 5 days of the final date to request a hearing which is no later than Click or tap to enter a date..

- ☐ Attend \_\_\_\_\_ hours of continuing education on the topic of the REALTOR® Code of Ethics and provide the Association with proof of completion of said course(s) within 30 days of the final date to request a hearing, which is no later than [Click or tap to enter a date..](#)
- ☐ Letter of Repirmand advising of a lack of professional conduct shall be placed in the membership file. (Attached)

**Citation Agreement:**

By signing below, I understand that I am admitting to the facts as presented in the Complaint in the above-referenced case, and to accept the above Citation and complete the above-referenced Discipline by the date(s) specified. I understand by accepting this Citation and Discipline that I have a right to request a hearing within 20 days of transmittal of this Citation; however, I am waiving my right to a hearing or any appeal in the above-referenced case. I also understand that the facts and outcome of this case may be utilized in determining any potential discipline in a future determination of a violation of the Code of Ethics if the violation in any future hearing is the same or a similar violation as the above-referenced case.

I understand that the **fine portion of the Discipline must be received by the Association within 5 calendar days** after the time period to request a hearing has expired. **Proof or completion of the education portion of the Discipline (if applicable) is due within 30 calendar days** after the time period to request a hearing has expired.

Finally, I understand that **failure to pay the citation** amount within 5 calendar days and/or **provide proof of completion of the sanctioned class** within 30 calendar days **will result in the immediate suspension of REALTOR® Association membership(s) and immediate suspension of MLS privileges and/or MLS membership** until the citation has been paid in full and/or proof of completion of the sanctioned class is received by Minnesota Realtors®. I understand that my failure to pay **may also result in automatic termination of membership in the REALTOR® Association and MLS privileges and/or membership without further notice or hearing.**

Having read and understood the information above, I hereby agree to this Citation.

Date: \_\_\_\_\_ Respondent: \_\_\_\_\_

This Citation will be forwarded to <R\_LOCALASSOCIATION> and will remain in your file indefinitely. Upon completion of the Discipline imposed by the date(s) specified above, this matter will be considered closed.

Respectfully submitted,

Professional Standards Administrator  
Minnesota Realtors®

Transmission Date: <TODAY>

Final Date to Request Hearing: [Click or tap to enter a date.](#)

Fine Due Date: [Click or tap to enter a date.](#)

Education Due Date: [Click or tap to enter a date.](#)

CC: <R\_LOCALASSOCIATION>, <RB\_NAME>, <RA\_NAME>

Encl: Letter of Reprimand

Form #E-35a  
Case # <CASENUMBER>

### Citation-Anonymous Complaint

**Citation Date of Transmittal:** Click or tap to enter a date.

In the case of

&lt;C\_NAMES&gt;

vs.

&lt;R\_NAMES&gt;

Complainant(s)

Respondent(s)

To &lt;R\_NAMES&gt;,

On <GC\_HEARINGDATE>, a Grievance Review Panel of the Professional Standards Committee of Minnesota Realtors® (“Association”) considered the above-referenced case. It was the decision of the Grievance Review Panel that the case was eligible for a citation and determined that a citation be issued finding the potential violation of **Article(s)** Click or tap here to enter text. of the REALTORS® Code of Ethics.

#### IMPORTANT NOTICE – ACTION REQUIRED

Respondent must respond as follows:

1. Transmit the signed Citation back to the Association within 20 days of transmission of this Citation; **or**
2. Transmit a *Request for Hearing (Form E-36)* to the Association within 20 days from transmission of this Citation.

**If Respondent fails to either timely transmit the signed Citation or a *Request for Hearing* this Citation is deemed accepted by Respondent and all Discipline will become due and owing as follows.**

- Full payment of all fines must be received by the Association no later than 5 days after the time period to request a hearing has expired, and
- Proof of completion of any sanctioned education must be received by the Association no later than 30 days after the final date to request a hearing has expired.

**Respondent’s failure to timely pay the fine or complete education and provide proof of completion or fail to refrain from violating conduct will result in immediate suspension from the REALTOR® Association and immediate suspension of MLS privileges and/or MLS membership until the fine is paid or proof of education has been received or violating conduct has ceased.**

**Respondent’s failure to pay the fine may also result in automatic termination of membership in the REALTOR® Association and MLS privileges and/or membership without further notice or hearing.**

#### Discipline Imposed:

In accordance with Minnesota Realtors® Citation Policy and Schedule of Fines, the following discipline was imposed by the Grievance Review Panel:

☐ Remit a \$\_\_\_\_\_ fine to be paid to the Association in full within 5 days of the final date to request a hearing which is no later than **Click or tap to enter a date.**

- ☐ Attend \_\_\_\_\_ hours of continuing education on the topic of the REALTOR® Code of Ethics and provide the Association with proof of completion of said course(s) within 30 days of the final date to request a hearing, which is no later than **Click or tap to enter a date..** All continuing education courses must be approved by the Minnesota Department of Commerce.
- ☐ Letter of Reprimand advising of a lack of professional conduct shall be placed in the membership file. **(Attached)**

---

**Citation Agreement:**

By signing below, I understand that I am admitting to the facts as presented in the Complaint in the above-referenced case, and to accept the above Citation and complete the above-referenced Discipline by the date(s) specified. I understand by accepting this Citation and Discipline that I ***have a right to request a hearing within 20 days of transmittal of this Citation***; however, I am waiving my right to a hearing or any appeal in the above-referenced case. I also understand that the facts and outcome of this case may be utilized in determining any potential discipline in a future determination of a violation of the Code of Ethics if the violation in any future hearing is the same or a similar violation as the above-referenced case.

I understand that the **fine portion of the Discipline must be received by the Association within 5 calendar days** after the time period to request a hearing has expired. **Proof or completion of the education portion of the Discipline (if applicable) is due within 30 calendar days** after the time period to request a hearing has expired. I understand that I must cease and/or refrain from the violating conduct and take affirmative steps to comply with the Code within 30 calendar days (if applicable) after the time period to request a hearing has expired.

Finally, I understand that **failure to pay the citation** amount within 5 calendar days and/or **provide proof of completion of the sanctioned class** within 30 calendar days **will result in the immediate suspension of REALTOR® Association membership(s) and immediate suspension of MLS privileges and/or MLS membership** until the citation has been paid in full and/or proof of completion of the sanctioned class is received by Minnesota Realtors®. I understand that my failure to pay **may also result in automatic termination of membership in the REALTOR® Association and MLS privileges and/or membership without further notice or hearing.**

Having read and understood the information above, I hereby agree to this Citation.

Date: \_\_\_\_\_ Respondent: \_\_\_\_\_  
<R\_NAMES>

---

This Citation will be forwarded to <R\_LOCALASSOCIATION> and will remain in your file indefinitely. Upon completion of the Discipline imposed by the date(s) specified above, this matter will be considered closed.

Respectfully submitted,

Professional Standards Administrator  
Minnesota Realtors®

Transmission Date: <TODAY>

Final Date to Request Hearing: Click or tap to enter a date.

Fine Due Date: Click or tap to enter a date.

Education Due Date: Click or tap to enter a date.

CC: <R\_LOCALASSOCIATION>, <RB\_NAME>, <RA\_NAME>

Encl: Letter of Reprimand



11100 Bren Road West  
Minnetonka, MN 55343  
952.935.8313  
mnrealtor.com

Form E-36

Case #: <CASENUMBER>

## Request for Hearing

In the case of: \_\_\_\_\_ vs. \_\_\_\_\_  
*Complainant(s)* *Respondent(s)*

A Grievance Review Panel of the Professional Standards Committee of Minnesota Realtors® ("Association") considered the above-referenced case. It was the decision of the Grievance Review Panel that the case was eligible for a citation and determined that a citation be issued. However, Respondent has a right to refuse the Citation and instead request a full ethics hearing on the Articles alleged in the Complaint if requested within twenty (20) days of transmission of the Citation.

**I HEREBY REJECT THE *CITATION* AND REQUEST AN ETHICS HEARING ON THE *COMPLAINT*.**

I understand that by doing so, I am permanently giving up the right to accept the Citation and that the above-captioned matter will proceed through the standard ethics complaint process in accordance with the Code of Ethics and Arbitration Manual. I also understand that should I be found in violation based on the Complaint, my sanctions will not be limited to those outlined in the Citation; rather, the Hearing Panel will have the full and usual discretion to impose any allowable sanctions in this case.

Upon timely receipt of this request for hearing, the complainant will be notified of the Request for Hearing. The Case administrator will establish a hearing date and a reply will be requested from me as Respondent.

<R\_NAME>

*Respondent Name*

*Respondent Signature*

Dated: \_\_\_\_\_



Case #: <CASENUMBER>

In the case of: <C\_NAMES> vs. <R\_NAMES>  
*Complainant(s)* *Respondent(s)*

If a complaint is withdrawn by complainant(s) after the Grievance Review Panel determines the complaint requires a hearing, it will be referred back to a Grievance Review Panel to determine whether a potential violation of the public trust (as defined in **Article IV, Section 2** of the National Association’s Bylaws) may have occurred, the complaint will be referred to the Leadership Team and the Leadership Team shall determine whether any further action should be taken.

Signature: \_\_\_\_\_ Signature: \_\_\_\_\_

| <u>&lt;C_NAMES&gt;</u>        | <u>&lt;C_NAMES&gt;</u>        |
|-------------------------------|-------------------------------|
| <i>Print Complainant Name</i> | <i>Print Complainant Name</i> |

(Date) \_\_\_\_\_ (Date) \_\_\_\_\_



11100 Bren Road West  
Minnetonka, MN 55343  
952.935.8313  
mnrealtor.com

Form E-38

Case #: <CASENUMBER>

## Action of the Leadership Team Code of Ethics Referral for Public Trust Matter

In the case of: \_\_\_\_\_ <C\_NAMES> vs. \_\_\_\_\_ <R\_NAMES>  
Complainant(s) Respondent(s)

The Leadership Team convened for a meeting to determine further action should be taken with respect to the allegations against Respondent in the above-referenced matter. While Complainant notified the Association that Complainant wished to withdraw the matter, the *Code of Ethics and Arbitration Manual as adapted by Minnesota Realtors®* states that after the Grievance Review Panel has met and forwarded the matter, that the complaint be referred back to the Grievance Review Panel to determine whether it should be referred to the Leadership Team as a matter of public trust.

Public trust, for this purpose, is defined in the National Association of REALTORS® bylaws, **Article IV, Section 2**, and “refers to demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud.”

The Grievance Review Panel found that an issue of public trust may have occurred and referred the matter to the Leadership Team for further review. The Leadership Team met on **Click or tap to enter a date.** to review the complaint for this purpose. The Leadership Team’s decision in the above-referenced case is to:

- ☐ Dismiss the complaint. (Note that if the complaint was withdrawn by Complainant prior to the transmission of the Grievance Review Panel decision to the parties, the Complainant may refile.). In this case, the Complainant ☐ may ☐ may not refile.
- ☐ Proceed with the complaint. The following member shall serve as Complainant on behalf of the Leadership Team: **Click or tap here to enter text.**

President, **Click or tap here to enter text.**

President-Elect, **Click or tap here to enter text.**

First Vice President, **Click or tap here to enter text.**

Treasurer, **Click or tap here to enter text.**

Immediate Past President, **Click or tap here to enter text.**

PS Committee Chair, **Click or tap here to enter text.**

Dated: <TODAY>

# Statements of Professional Standards Policy

## Applicable to Arbitration Proceedings

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Approved by Minnesota Realtors® and the National Association of REALTORS®

### 1. Article 17, Code of Ethics

“In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between REALTORS® (principals) associated with different firms, arising out of their relationship as REALTORS®, the REALTORS® shall mediate the dispute if the Board requires its members to mediate. If the dispute is not resolved through mediation, or if mediation is not required, REALTORS® shall submit the dispute to arbitration in accordance with the policies of the Board rather than litigate the matter.

In the event clients of REALTORS® wish to mediate or arbitrate contractual disputes arising out of real estate transactions, REALTORS® shall mediate or arbitrate those disputes in accordance with the policies of the Board, provided the clients agree to be bound by any resulting agreement or award.

The obligation to participate in mediation and arbitration contemplated by this Article includes the obligation of REALTORS® (principals) to cause their firms to mediate and arbitrate and be bound by any resulting agreement or award.” *(Amended 1/12)*

### 2. Circumstances under which REALTORS® must submit to arbitration<sup>1</sup>

- (a) Every REALTOR® of the Board who is a REALTOR® principal, every REALTOR® principal who participates in a Board’s MLS where they do not hold Board membership and every nonmember broker or licensed or certified appraiser who is a Participant in the Board’s MLS shall have the right to invoke the Board’s arbitration facilities in any dispute arising out of the real estate business with a REALTOR® principal in another real estate firm or with that firm (or both), or nonmember broker/appraiser or their firm (or both) who is a Participant in the Board’s MLS. At the discretion of their REALTOR® principal, REALTOR® nonprincipals and REALTOR-ASSOCIATES® who are affiliated with either the complainant or the respondent and have a vested financial interest in the outcome may be present throughout the proceedings and to participate but are not considered to be parties. *(Revised 10/24)*
- (b) A client of a REALTOR® principal may invoke the facilities of the Board in a business dispute with a REALTOR® principal or the REALTOR®’s firm (or arising out of an agency relationship, provided the client agrees to be bound by the arbitration. In the event of such request and agreement the Board will arbitrate the dispute subject to the Board’s right to decline arbitration based on the amount involved or the legal complexity of the dispute. A REALTOR® principal may also invoke arbitration against their client but no arbitration may be held without the client’s voluntary agreement to arbitrate and to be bound by the decision. *(Revised 10/24)*

### 3. Circumstances under which arbitration is contingent upon the REALTOR®’s voluntary participation<sup>2</sup>

- (a) REALTORS® and REALTOR-ASSOCIATES® who are or were affiliated with the same firm shall have the right to invoke the arbitration facilities of the Board, provided each party voluntarily agrees to the arbitration in writing and the Board finds the matter properly subject to arbitration. This privilege as stated applies to disputes arising when the parties are or were affiliated with the same firm, irrespective of the time request is made for such arbitration. *(Amended 11/95)*
- (b) A REALTOR® principal may invoke the arbitration facilities of the Board in a dispute arising out of the real estate business with a nonmember broker, provided each party agrees in writing to the arbitration and provided the Broker finds the matter

<sup>1</sup> Refer to **Part Ten, Section 44** of this Manual.

<sup>2</sup> Refer to **Part Ten, Section 44** of this Manual.

properly subject to arbitration. However, it shall be optional with the member as to whether they will submit to a claim to arbitration by a nonmember broker who is not an MLS Participant. A nonmember broker who is not an MLS Participant or nonmember salesperson may invoke the arbitration facilities of the Board of REALTORS® in cases where they believe they have an arbitrable dispute with a REALTOR®. Under these circumstances, REALTORS® are not required to agree to or participate in arbitration. *(Revised 10/24)*

- (c) Business disputes between a REALTOR® principal and a customer of the REALTOR® principal may be arbitrated by the Board if a written contractual relationship has been created by a REALTOR® principal between a customer and a client and provided all parties to the dispute (i.e., the customer and the REALTOR®) agree in writing to arbitrate the dispute. *(Amended 11/95)*

### **1. Association's right to release parties from their obligation to arbitrate**

If either the Grievance Review Panel or the arbitration panel determines that because of the amount involved or the legal complexity of the dispute the dispute should not be arbitrated, the arbitration shall automatically terminate unless either of the parties to the dispute appeals the decision to terminate the proceedings to an Appeal Tribunal of the Professional Standards Committee within twenty (20) days of the date of notice that the Grievance Review Panel or the arbitration panel declined to continue the proceeding. The Hearing Panel can also dismiss the arbitration request if the Hearing Panel concludes the matter is not arbitrable. In the event of such an appeal, the Grievance Review Panel or the arbitration panel shall report its conclusions to the Appeal Tribunal and, if the Appeal Tribunal concurs, the arbitration shall terminate and the parties shall be relieved of their obligation to arbitrate. In this event, or in the event of no appeal, any deposits made by the parties shall be returned to them. However, if the Appeal Tribunal decides that the arbitration should proceed, the matter shall be remanded to the Grievance Review Panel or the arbitration panel for further proceedings.

### **2. Failure to submit to arbitration**

If the complaint against a REALTOR® principal is that they have improperly refused to submit a dispute to arbitration, the complaint shall not be referred to a Grievance Review Panel or a Hearing Panel, but shall be brought before the Executive Committee at the next regular meeting or at a special meeting called by the President for that purpose. The procedures for notices, time of notice, and hearing prescribed for matters before a Hearing Panel shall apply. The sole question of fact for the Executive Committee to decide will be whether the respondent has failed to submit an arbitrable matter to arbitration. Upon determination that the member has refused to arbitrate a properly arbitrable matter, the Executive Committee may direct the implementation of appropriate sanction and should, if it has reason to believe that the imposition of sanction will become the basis of litigation and a claim for damages consequent to such sanction, delay the effective date of implementing the sanction to a date following receipt by the Executive Committee of a judicial decision in a petition for declaratory relief filed by the Association to confirm the propriety of its action.

### **3. Failure to abide by an award rendered by a Hearing Panel**

If the complaint against the REALTOR® principal is that, having properly submitted a dispute to arbitration, they have refused to abide by an award, such refusal should not be referred to a Grievance Review Panel as a violation of the Code of Ethics unless such refusal reflects an established pattern or practice of noncompliance with the commitment to arbitrate. The Chairperson of the Professional Standards Committee shall be the determiner of whether there is an established pattern or practice of non-compliance requiring referral of the matter to a Grievance Review Panel. A refusal to abide by an award in arbitration should be enforced in the manner set forth in **Part Ten, Arbitration of Disputes, Section 56, Enforcement.**

### **4. No predetermination of any award in an arbitrable matter (Interpretation No. 31, Article I, Section 2, Bylaws, NATIONAL ASSOCIATION OF REALTORS®)**

*A Board rule or a rule of a Multiple Listing Service owned by, operated by, or affiliated with a Board which establishes, limits, or restricts the REALTOR® in their relations with a potential purchaser, affecting recognition periods or purporting to predetermine entitlement to any award in arbitration, is an inequitable limitation on its membership.*

*Explanation of Official Interpretation No. 31: In essence, this is a specific Interpretation of the general rule established in Interpretation No. 6 that a Board may not have a rule which restricts or limits the REALTOR® in the conduct of their business unless it concerns ethical practice. Thus, a rule of a Board or Multiple Listing Service which would determine a protection period in reference to a prospective purchaser is an inequitable limitation. Further, the Board or its MLS may not establish a rule or regulation which purports to predetermine entitlement to any awards in a real estate transaction. If controversy arises as to entitlement to any*

awards, it shall be determined by a hearing in arbitration on the merits of all ascertainable facts in the context of the specific case of controversy.<sup>3</sup>

## **5. Holding of disputed funds by the Board of Directors**

Member Associations shall not make a requirement that disputed funds be deposited with the Board by the respondent in an arbitration matter prior to an arbitration hearing, as it is beyond the legitimate authority of the Board or its Professional Standards Committee. However, this does not relieve REALTORS® of their responsibility to be prepared to abide by any determination made by the Board's arbitration panel and to satisfy any award consistent with **Section 53** of the *Code of Ethics and Arbitration Manual*. (Revised 11/16)

## **6. Arbitration under circumstances other than those described in Section 44**

A Member Association may provide arbitration procedures only in those instances described in **Part Ten, Section 44, Duty and Privilege to Arbitrate**, in this Manual.

## **7. Determining jurisdiction for the conduct of arbitration hearings**

Absent an interboard arbitration agreement directing otherwise, the following factors determine the appropriate Board to conduct arbitration hearings in instances where parties hold membership in more than one Board or MLS:

(Revised 11/02)

- Where all parties hold REALTOR® membership or hold MLS participatory rights under the universal access to services component of Board of Choice in only one Board, that Board shall conduct arbitration.
- Where all parties hold REALTOR® membership or hold MLS participatory rights under the universal access to services component of Board of Choice in the same two (or more) Boards, arbitration will be conducted by the Board in which the property giving rise to the dispute is located. If the property is not within the jurisdiction of those Boards, the Board in which the arbitration request is filed will conduct arbitration.
- Where all parties do not hold membership in the same Board, and do not have MLS participatory rights under the universal access to services component of Board of Choice through the same Board, complainants may, at their discretion, invoke interboard arbitration or, alternatively, file arbitration requests with any Board in which the respondent holds REALTOR® membership or holds MLS participatory rights under the universal access to services component of Board of Choice. Pursuant to this provision, Boards must provide arbitration services in circumstances where it is determined by the Grievance Review Panel that an arbitrable dispute exists and the dispute is subject to mandatory arbitration. (Revised 11/00)

## **1. Adoption of Code of Ethics or Standards of Practice by Member Boards and State Associations**

A local Board or State Association shall not adopt any set of rules, regulations, policies, and practices which purport to be in lieu of, in addition to, or an extension of the Code of Ethics and Standards of Practice of the National Association of REALTORS®. (Amended 11/89)

## **2. Articles and publications on the Code of Ethics**

The National Association reserves the exclusive right to interpret the Code, its applications, and its proper enforcement to Member Boards and Board Members.

The National Association does not endorse or recommend any article or publication concerning ethics which is not published by the National Association or its institutes, societies, and councils and authorized by the National Association.

## **15. Arbitration between Board Members who are or were affiliated with the same firm**

No Member Board may require REALTORS® and REALTOR-ASSOCIATES® affiliated with the same firm to arbitrate disputes between themselves unless both parties voluntarily agree to arbitration in writing, and provided the Board finds the matter properly subject to arbitration.

<sup>3</sup>In connection with this National Association policy, refer to **Part Ten**, Appendix II, Arbitration Guidelines, in this Manual

## **18. Local Member Board requests for the conduct of ethics and arbitration hearings by the State Association Statewide Regionalization.**

Minnesota Realtors® (MNR) has entered into an agreement with certain local member Boards (listed below) which authorizes the MNR to implement Professional Standards enforcement on behalf of these signatory Boards. The purpose of this Agreement is to create state-wide Professional Standards enforcement procedures. This includes providing for the appointment of Mediation Officers and the establishment of a state-wide Professional Standards Committee comprising of members from the MNR for conducting mediations and hearings involving members of the local member Board in matters pertaining to enforcement of the Code of Ethics, and arbitration hearings. The Agreement seeks to establish impartial and unbiased mediators, panels, and tribunals for the conduct of mediations or hearings that meet the responsibilities of the signatory Board in an efficient and effective basis to serve its members.

The Agreement does *not* authorize MNR to have jurisdiction for the enforcement of any alleged violations of the local member Board's bylaws, rules, regulations or any associated Multiple Listing Service bylaws, rules or regulations of the local member board.

Following is a list of the local member Boards on whose behalf Minnesota Realtors® is authorized to implement Professional Standards enforcement:

- Fargo-Moorhead Area Association of REALTORS®
- Grand Forks Area Association of REALTORS®
- Greater Alexandria Area Association of REALTORS®
- Greater Lakes Association of REALTORS®
- Itasca County Board of REALTORS®
- Lake Region Association of REALTORS®
- Lake Superior Area REALTORS®
- Lakes Country Association of REALTORS®
- Minneapolis Area Association of REALTORS®
- Minnesota Commercial Association of REALTORS®
- Northwest Minnesota Association of REALTORS®
- Range Association of REALTORS®
- REALTOR® Association of Southern Minnesota
- Southeast Minnesota Association of REALTORS®
- St. Cloud Area Association of REALTORS®
- St. Paul Area Association of REALTORS®
- West Central Association of REALTORS®

## **19. Confidentiality of determinations rendered in ethics and arbitration hearings**

The allegations, findings, and decisions rendered in ethics and arbitration hearings are confidential and should not be reported or published by the Association, any member of a tribunal, or any party under any circumstances except those established in the Code of Ethics and Arbitration Manual of the National Association as from time to time amended. (*Revised 11/91*)

## **20. Statement of policy related to Article 17 of the Code of Ethics**

Article 17 is not to be construed as precluding a REALTOR® who is a defendant in litigation from joining a cooperating agent and/or subagent in the litigation.

## **21. Adoption of the Code of Ethics and Arbitration Manual by Member Boards**

Member Boards and State Boards are not required to adopt the Code of Ethics and Arbitration Manual verbatim, but no Member Board may adopt or follow any procedures inconsistent with the precepts enunciated in the Code of Ethics and Arbitration Manual of the National Association as from time to time amended.

## **22. Boards and State Association publications or audiovisual programs concerning the Code of Ethics and its enforcement**

Any articles, audiovisual programs, or any type of publication related to the Code of Ethics, its interpretation, or its enforcement that have not been prepared by or approved by the Professional Standards Committee of the National Association must be prefaced by a statement indicating that the contents reflect the understanding and opinions of the author(s) and do not represent an official expression of policy by the National Association. To the extent that any article, audiovisual program, or publication prepared by any individual or organization other than the National Association varies in any degree from the Code of Ethics, its interpretation, or its enforcement procedures as approved by the Professional Standards Committee of the National Association, the policies of the National Association shall take precedence.

No article, audiovisual program, or other publication may be designated as an official expression of policy concerning the Code of Ethics, its interpretation, or its enforcement without the express written approval of the National Association.

Local Boards and State Associations are encouraged to consider preparation of such articles, audiovisual programs, or other publications and are requested to submit them to the Professional Standards Committee or its staff representatives for review and approval prior to publication.

### **23. Disputes arising out of circumstances occurring prior to the time a REALTOR® is elected to Board membership**

While REALTORS® are encouraged to resolve all disputes through the arbitration facilities of their Associations, the intent of Article 17 is that only disputes arising from facts occurring after each of the parties has become a REALTOR® are subject to mandatory arbitration under Article 17 of the Code of Ethics.

### **24. Formulation of Multi-Board or Regional Grievance or Professional Standards Committees for Code enforcement in areas where Boards have limited membership**

Member Boards are authorized to enter into collective agreements by which the Associations would share the responsibility for enforcement of the Code of Ethics, including the conduct of arbitration hearings, on a joint basis.\*<sup>4</sup>

### **25. Expenses related to conduct of hearings by Multi-Boards or regional Grievance or Professional Standards Committees**

Expenses related to the conduct of hearings by a multi-boards or regional Grievance Review Panel or Professional Standards Committee shall be as established by written agreement between the signatory Boards. The expenses of such hearings shall be borne by Minnesota Realtors® and shall not be supported by fees charged to the members other than as otherwise authorized by the Code of Ethics and Arbitration Manual. *(Revised 10/24)*

### **26. Burdens and standards of proof in arbitration and ethics hearings**

In any ethics hearing or other hearing convened to consider alleged violations of membership duties and in any arbitration hearing, the ultimate burden of proving that the Code of Ethics or other membership duty has been violated, or that an arbitration award should be issued to the requesting party, is at all times on complainants and parties requesting arbitration.

The standard of proof on which an arbitration hearing decision is based shall be a “preponderance of the evidence.” Preponderance of the evidence shall be defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the facts sought to be proved are more probable than not.

“Clear, strong, and convincing” shall be the standard of proof by which alleged violations of all membership duties, including violations of the Code of Ethics, are determined. Clear, strong, and convincing shall be defined as that measure or degree of proof which will produce a firm belief or conviction as to the allegations sought to be established. *(Revised 2/92)*

Appeals of ethics Hearing Panel decisions based on an alleged misapplication or misinterpretation of an Article(s) of the Code of Ethics shall be determined based on the correctness of the Hearing Panel’s decision.

Appeals of ethics Hearing Panel decisions based on an alleged procedural deficiency or failure of due process, and procedural review of arbitration hearing procedures shall be determined based on whether the effect of the deficiency was to deny the appellant a fair hearing.

Appeal panels may modify discipline proposed by Hearing Panels only in instances where the discipline proposed is not authorized or where the appeal panel concludes that the Hearing Panel abused its discretion. *(Adopted 11/99)*

### **27. Consolidation of arbitration claims arising out of the same transaction**

When reviewing requests for arbitration, Grievance Review Panels should try to ensure that all appropriate parties are named as complainants or respondents. If it appears that there may be related claims involving other parties arising out of the same facts, the Grievance Review Panel may suggest to either the complainant or respondent (or both) that they may wish to request arbitration with additional respondents or third-party respondents so that all related claims may be resolved through a single arbitration hearing. Upon

<sup>4</sup> A sample format agreement approved by the Professional Standards Committee to establish a collective agreement is included as Specimen Forms #E-19 in **Part Six** and #A-19 in **Part Thirteen** of this Manual

motion by either the complainant or the respondent, an arbitration request may be amended to include any additional appropriate parties, or separate arbitration requests may be filed naming additional parties, so that all related claims arising out of the same transaction can be resolved at the same time. *(Revised 11/92)*

## **28. Participation in litigation rather than arbitration**

In instances where a REALTOR® is a party to litigation involving an otherwise arbitrable matter and none of the parties invokes the Board's arbitration facility prior to or during the course of litigation, any member involved in the litigation may not thereafter be charged with failing or refusing to arbitrate. *(Revised 11/92)*

## **30. Participation in voluntary arbitration**

Article 17 is not to be construed as precluding a REALTOR® from instituting litigation or causing a dispute to be brought before an alternative dispute-resolving forum other than the Board of REALTORS® under those circumstances where submission of the dispute to the Board would be voluntary. *(Adopted 5/88)*

## **31. "Cooperation" defined**

The obligation to cooperate, established in Article 3 of the Code of Ethics, relates to a REALTOR®'s obligation to share information on listed property and to make property available to other brokers for showing to prospective purchasers when it is in the best interest of the seller. An offer of cooperation does not necessarily include an offer to compensate a cooperating broker. Compensation in a cooperative transaction results from either a blanket offer of subagency made through MLS or otherwise, or offers to compensate buyer agents, or, alternatively, individual offers made to subagents or to buyer agents, or other arrangements as negotiated between listing and cooperating brokers prior to the time an offer to purchase is submitted. *(Revised 11/09)*

## **33. Use of panels in place of the Board of Directors**

Any procedural review matter to be brought before the Board of Directors shall be considered by a panel of Professional Standards Committee members appointed by the Professional Standards Administrator for that purpose. Five (5) members of the Professional Standards Committee shall constitute such a panel, which shall act on behalf of the Board of Directors. The decision of the panel shall be final and binding and shall not be subject to further review by the Board of Directors or the Professional Standards Committee, except as otherwise provided in this Manual.

Panel members should be experienced, knowledgeable persons of judicial temperament.

The Executive Committee, or a panel thereof, shall be used in place of the Board of Directors to determine other matters as specified elsewhere in this manual.

In appointing such panels, the Professional Standards Administrator should consider the following recommended criteria:

- number of years as a REALTOR®
- number of years in the real estate business
- primary and secondary fields of real estate endeavor/expertise
- participation in post-licensing real estate education
- training in the Code of Ethics
- position in firm (principal, nonprincipal)
- size of firm
- common sense
- open-mindedness
- familiarity with state(s) laws and regulations
- receptiveness to instruction/training
- other relevant professional or procedural training

Associations are also authorized to adopt policies and procedures assigning Grievance Review Panel functions to a panel of the Professional Standards Committee. Where Grievance Review Panel functions are delegated to a panel of the Professional Standards Committee, all provisions of this Manual applicable to Grievance Review Panels will apply to a panel of the Professional Standards Committee acting in that capacity. Three (3) or more members shall constitute a panel of the Professional Standards Committee to assume the responsibilities of the Grievance Review Panel. *(Adopted 5/15)*

When possible, panels should be strongly encouraged to use conference calls, virtual meetings, or alternative communication technologies for meetings to expedite the decision-making process. Use of conference calls, virtual meetings, or alternative communication technologies during the course of a hearing shall be governed by Professional Standards Policy Statement #56, Remote Testimony and Virtual Hearings. *(Revised 11/21)*

### **35. Separation of ethics complaint and arbitration request**

When an ethics complaint and an arbitration request are filed at the same time arising out of the same facts and circumstances, the arbitration hearing shall be held first and the ethics hearing shall be conducted by a different Hearing Panel after the conclusion of the arbitration hearing. *(Adopted 11/93)*

### **38. Hearing Panels to be conversant with applicable state law under board of choice across state lines**

Where membership is provided under Board of choice across state lines, Hearing Panels must be conversant with and apply the relevant state's laws and regulations in determining how the Code of Ethics will be interpreted/applied in instances where the underlying transaction occurred out of state and involved a respondent licensed in that state. *(Adopted 11/95)*

### **39. Awards escrowed under board of choice across state lines**

Where one or more parties to an arbitrable issue have obtained membership under board of choice across state lines, awards rendered shall be escrowed by the Board that conducted arbitration in a manner consistent with the procedures in **Section 53 (c-f), The Award**, Code of Ethics and Arbitration Manual. *(Adopted 11/95)*

### **40. Cooperative enforcement agreements**

To ensure fair, impartial and knowledgeable enforcement of the Code of Ethics (including arbitration) there must be adequately large groups of knowledgeable, trained REALTORS® and REALTOR-ASSOCIATES® from which the necessary committees and tribunals can be appointed. To this end, Associations are required to enter into cooperative enforcement agreements to ensure Associations have an aggregate total of at least three hundred fifty (350) primary REALTOR® and/or REALTOR- ASSOCIATE® members from which to compose Hearing Panels. It is recommended but not required that representation/participation in any multi-board regional cooperative enforcement agreement be on a pro-rata basis. This requirement does not apply in instances where, in the opinion of the state association, unique geographical considerations (e.g., islands, remote locale, etc.), logistical difficulties or other impediments make participation prohibitive. All Boards regardless of size (except Commercial Overlay Boards) must participate with at least one other Boards (which may be the state association) in a cooperative enforcement agreement. *(Revised 5/08)*

### **41. Arbitration Guidelines to parties**

Boards conducting arbitration are required to provide all parties and panel members with the Arbitration Guidelines and Arbitration Worksheet prior to commencement of any arbitration hearing. *(Revised 11/16)*

### **42. Previously dismissed ethics complaints/arbitration requests**

If an ethics complaint or arbitration request is received and reviewed by an Association's Grievance Review Panel or Board of Directors and is dismissed as not warranting a hearing, the respondent(s) shall not subsequently become subject to the same (or substantially similar) ethics complaint or arbitration request in the same or another Board. *(Adopted 5/97)*

Dismissal of an arbitration request by a Board of REALTORS® because the dispute is not arbitrable based on Article 17 or other grounds established in the Code of Ethics and Arbitration Manual, does not prohibit REALTORS® from exercising other remedies that may be available to them, including litigation. *(Adopted 5/99)*

### **43. Duty to arbitrate personal**

The privilege to invoke arbitration and the duty to arbitrate is personal. Although any REALTOR® principal may invoke the arbitration facilities of a Board and be required to arbitrate, REALTOR® principals may not delegate this privilege or obligation. *(Adopted 11/98)*

### **44. Effective dates of the Code of Ethics and Standards of Practice and the Code of Ethics and Arbitration Manual.**

All changes to the Code of Ethics and Standards of Practice carry an annual effective date of January 1 of the year following their approval by the Board of Directors of the National Association and, where necessary, by the Delegate Body. *(Adopted 11/89)*

To ensure consistent, uniform enforcement of the Code of Ethics nationwide, all changes in professional standards policy normally incorporated into the National Association's *Code of Ethics and Arbitration Manual* become effective on January 1 of the year following their approval by the Board of Directors of the National Association. Unless specifically provided otherwise by the Board of Directors, associations shall have sixty (60) days from their effective date to adopt them. *(Revised 5/15)*

All new and amended Case Interpretations become effective upon approval by the National Association's Professional Standards Committee and publication on [www.nar.realtor](http://www.nar.realtor). *(Adopted 5/98)*

#### **44. Duty to arbitrate after membership lapses or is terminated**

The duty to submit to arbitration continues in effect after membership lapses or is terminated provided that the dispute arose prior to the time the respondent's membership lapsed or was terminated. *(Adopted 5/99)*

#### **49. Professional Standards Administration Training**

Enforcement of the Code of Ethics is a privilege and responsibility of each Association as established in Article IV of the Bylaws of the National Association of REALTORS®. Every Association must designate a person or entity responsible for administration of professional standards processes. Persons primarily responsible for administration of professional standards processes must successfully complete training every four (4) years on professional standards administration meeting the learning objectives and minimum criteria established by the National Association of REALTORS® from time to time. *(Revised 11/14)*

#### **50. Separate subcommittees for ethics, arbitration, and mediation**

Associations can meet their professional standards enforcement responsibility through separate committees or subcommittees specifically delegated responsibility for arbitration, mediation, the conduct of hearings to resolve ethics complaints and alleged violations of other membership duties and to conduct ombudsman programs. *(Revised 5/15)*

#### **51. Mediators used by Associations**

Mediators used by Associations to resolve contractual disputes and noncontractual disputes defined in Standard of Practice 17-4 may be REALTORS®, Association staff, or others whose services an Association chooses to utilize. *(Adopted 11/99)*

#### **52. Associations to provide mediation**

The duty of local Associations to provide mediation services established in Article IV, Section 2 of the Bylaws of the National Association of REALTORS® can be met through provision of mediation services by local Associations; through multi-board/regional cooperative enforcement agreements; or through agreement/arrangement with the state association.

Upon receipt of an arbitration request, mediation services **may** be offered to disputants prior to review of the arbitration request by the Grievance Review Panel except where any party requests the Grievance Review Panel's determination whether an arbitrable issue exists between the named parties and whether the parties would be required to arbitrate. If the association requires its members to participate in mediation and the Grievance Review Panel determines that an arbitrable issue exists, the obligation to participate in mediation remains in effect.

Where any party initially declines to mediate pending the Grievance Review Panel's review of the arbitration request, the parties shall in all instances again be offered the opportunity to mediate following the Grievance Review Panel's review. *(Adopted 11/99, Amended 5/12, Revised 10/24)*

#### **53. Dispute resolution fees not to exceed maximum arbitration fee**

Effective January 1, 2002, the fees charged for Association dispute resolution services, i.e., mediation and arbitration, may not exceed the maximum arbitration filing fees authorized in the Code of Ethics and Arbitration Manual of the National Association of REALTORS®. Associations may, as a matter of local option, retain part or all of the filing fees paid, irrespective of whether disputes are resolved through mediation or arbitration. *(Adopted 11/99)*

#### **54. Personal safety in professional standards proceedings**

Associations should take reasonable steps to ensure the personal safety of parties, panelists, witnesses, staff, and others participating in professional standards proceedings.<sup>5</sup>

<sup>5</sup> The reference to proceedings includes the association's informal dispute resolution processes (e.g., ombuds, mediation, etc.).

Improper conduct by a party or participant to an Association hearing or proceeding, including threatening, harassing, violent, coercive, or illegal behavior towards any Association staff, panelists, party, party's counsel, witnesses, or other hearing participant is strictly prohibited. Minnesota Realtors® reserves the right to take necessary steps to ensure the personal safety of all participants to any hearing or proceeding, including but not limited to, engaging security personnel to be present at hearings or proceedings.

During a hearing or proceeding, if the presiding committee or Hearing Panel Chair believes there is an unacceptable risk posed to the safety of any participant, the proceedings will be recessed so the Chair can consult with any or all of the following: the Professional Standards Administrator, other appropriate Association staff, the Professional Standards Committee Chair, Association counsel, or any other appropriate party or agency (including law enforcement authorities) to identify and take steps to ensure the safety of all participants and to permit the proceedings to resume.

Prior to commencement of any hearing or proceeding, if any participant feels that additional steps should be taken to ensure the safety of any participant to any future hearing or proceeding, that person should notify the Professional Standards Administrator as soon as possible. The Professional Standards Administrator shall consult with the Chief Executive Officer, the Professional Standards Committee Chair, Chair of the Hearing Panel or proceeding, if assigned, and any other appropriate party or agency (including law enforcement authorities), to review the request of that participant and determine, in its sole discretion, what, if any, additional actions will be taken by the Association. The Professional Standards Administrator may also consult with the above-referenced persons in their sole discretion, based on information of which the Professional Standards Administrator becomes aware during the pendency of the matter.

If after consulting with staff, Association counsel, and any other appropriate party or agency (including law enforcement authorities), and after taking reasonable steps to attempt to hold or resume the proceeding while ensuring the safety of all participants, the Association concludes it will be unduly difficult or impossible to ensure the safety of all participants, the proceedings will be postponed indefinitely and resumed only when the Association (or its successor) concludes that the proceedings can be safely resumed. Where proceedings are postponed indefinitely by action of the Association, a memorandum detailing the circumstances shall be appended to the case file and maintained on a permanent basis. The Association may, at their discretion, share any or all information including the complaint, response, or other documentation or information in their possession with appropriate law enforcement or other government agencies.

#### **55. Transmitting devices**

Cellular phones, two-way radios and other transmitting devices may not be operated during ethics hearings, arbitration hearings, appeal hearings, and procedural review hearings absent specific, advance authorization from the panel chair. (*Adopted 11/04*)

#### **56. Remote testimony and virtual hearings**

The policies and procedures established in the National Association's *Code of Ethics and Arbitration Manual* contemplate that parties and their witnesses will participate in ethics and arbitration hearings in the physical presence of Hearing Panels and the respective parties or, at the associations sole discretion, in virtual hearings. If hearings are in person, parties and their witnesses may request permission to participate in such proceedings remotely. (*Revised 11/21*)

Parties and witnesses to ethics and arbitration hearings may be permitted to participate remotely in hearings at the discretion of the hearing panel chair. Only those parties eligible to attend the entire hearing in person would be entitled to participate "remotely" for the entirety of the hearing. Witnesses may only participate remotely for their own testimony. (*Revised 11/21*)

Hearing panels, association staff, or association counsel should employ steps to verify the identity of "remote" participants, to preclude unauthorized individuals from being in the presence of the "remote" participant, and to employ appropriate safeguards to ensure confidentiality of the proceedings. (*Revised 11/21*)

#### **54. Circumstances under which disputes may be mediated if REALTORS® voluntarily agree**

While mediation can only be mandated under the circumstances expressly established in Article 17 of the Code of Ethics, Associations may, at their discretion, offer mediation, and REALTORS® may voluntarily participate in mediation, where disputing parties voluntarily request mediation. The circumstances under which voluntary mediation may occur include:

1. disputes between REALTORS® associated with different firms where no arbitration request has been filed
2. disputes between REALTORS® and their clients where no arbitration request has been filed
3. disputes between REALTORS® who are or were affiliated with the same firm when the dispute arose

4. disputes between REALTORS® and non-member brokers
5. disputes between REALTORS® and their customers  
(Adopted 5/11)

#### **55. Association to provide ombudsman services**

Every local and state association of REALTOR® is required to offer, either directly or as part of a cooperative enforcement agreement (consistent with Professional Standards Policy Statement #40, Cooperative Enforcement Agreements), ombudsman services to members, clients, and consumers on or before January 1, 2016. (Adopted 11/14)

#### **56. “Alternate” hearing panelists**

Associations may, but are not required to, convene hearing panels that include one or more alternate members. If alternates are present at hearings, they should be seated apart from the hearing panel, may not participate in any way unless called on to replace a panel member, and are bound by the same duties that are applicable to panel members.

If alternate panel members are not called on to replace a panel member and if the association’s policy allows them to be present at post-hearing executive session deliberations, alternates may not be involved in deliberating or deciding the matter before the hearing panel. (Adopted 11/14)

#### **57. Arbitration procedures governing nonmembers**

Nonmembers arbitrating pursuant to an agreement to participate in a REALTOR® association owned and operated MLS shall be subject to all obligations under an association’s arbitration procedures, including, but not limited to, the obligation to pay an award promptly or deposit a like amount in the event of a challenge pursuant to **Section 53, The Award**, Code of Ethics and Arbitration Manual as adapted by Minnesota Realtors®.

Failure to pay arbitration awards or deposit a like amount in these circumstances may be a violation of the MLS rules and subject the nonmember to sanction. (Adopted 11/15)

#### **58. Retention of Records and File Requests**

The Association does not maintain an official record of documents filed in ethics hearings or proceedings on behalf of any party or participant and does not provide copies or access to the Association’s case file. The Association retains the decisions of its panels indefinitely and the remainder of the Association’s file for each matter for seven (7) years from the date of final determination on the matter prior to permanent disposal. Any complaints or requests submitted without a name or otherwise defective shall be retained for one (1) year from submission and permanently disposed of thereafter. For those proceedings that are postponed indefinitely by action of the Association due to safety reasons, a memorandum detailing the circumstances shall be appended to the case file and maintained on a permanent basis. If, at any time after the final determination on the matter, the Association receives a request from any party to any matter to receive a copy of documents or media from their respective case file, the Association, if able, will provide only a copy of documentation or other media that was submitted by the requesting party upon receipt of a \$50.00 fulfillment fee. The Association reserves the right to determine the method of delivery for any such documentation or media request. Any other demand for copies of file content must be made by subpoena.

#### **59. Weather Policy**

In the event of inclement weather, to ensure the safety of all hearing participants, the Case Administrator and Hearing Panel Chair will determine whether a hearing will be postponed 24-hours prior to the hearing time based on the National Weather Service’s travel advisories. The Case Administrator will timely notify participants accordingly.

#### **60. Redaction Policy of Submitted Information**

Association staff will review submitted documentation and redact confidential information that is not relevant to the Hearing Panel’s determination on the matter presented (e.g. social security numbers, bank account information, children’s names, birth dates, etc). The association and its staff assume no responsibility or liability for redaction or failure to redact any such information.

# Part Seven — Arbitration General Provisions

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## Section 26. Definitions Relating to Arbitration

As used herein,

- (a) “Agent” means a real estate licensee (including brokers and sales associates) acting in an agency relationship as defined by state law or regulation. *(Revised 4/98)*
- (b) “Association” means this organization Minnesota Realtors®. As used herein, the term “association(s)” refers to board(s) and association(s) of REALTORS®.
- (c) “Broker” means a real estate licensee (including brokers and sales associates) acting as an agent or in a legally recognized non-agency capacity. *(Adopted 4/98)*
- (d) “Client” means the person(s) or entity(ies) with whom a REALTOR® or a REALTOR®’s firm has an agency or legally recognized non-agency relationship. *(Revised 11/97)*
- (e) “Counsel” means an attorney-at-law. *(Adopted 4/91)*
- (f) “Customer” means a party to a real estate transaction who receives information, services, or benefits but has no contractual relationship with the REALTOR® or the REALTOR®’s firm. *(Revised 11/97)*
- (g) “Directors” means the Board of Directors of the Association (Minnesota Association) as interpreted by Policy Statement #33. *(Revised 11/91)*
- (h) “Electronically,” “electronic means,” “technology,” “technological means,” and related terms include, but are not limited to, the Internet, Internet-based websites, all forms of Internet communication, e-mail, facsimile correspondence, telephone, and all other forms of distance communication. *(Adopted 5/06)*
- (i) “Hearing” may refer either to an ethics hearing relating to disciplinary matters or to an arbitration hearing in which the dispute generally involves entitlement to a commission or to compensation. *(Revised 11/93)*
- (j) “In person” means in one’s physical presence. *(Adopted 11/21)*
- (k) “Leadership Team” means the Chief Executive Officer, President, President-Elect, First Vice President, Treasurer, Immediate Past-President of the Association, and the Professional Standards Committee Chair. Although the Chief Executive Officer has the right to be present at meetings involving the Leadership Team, the Chief Executive Officer shall not vote on any matter before the Leadership Team.
- (l) “Member” means REALTOR® and REALTOR-ASSOCIATE® members of this Association (Minnesota Realtors®). REALTORS® who participate in MLS or otherwise access MLS information through any Board in which they do not hold membership are subject to the Code of Ethics in that Board.
- (m) “On site” means in the physical presence at a particular location or site. *(Adopted 11/21)*
- (n) “Party” (Parties) means the complainant(s) or respondent(s) in disciplinary proceedings and in arbitration hearings referred to in **Part Four** and **Part Ten** of this Manual. *(Revised 11/91)*
- (o) “Person” means a natural person. *(Adopted 11/13)*
- (p) “REALTOR® principal” includes licensed or certified individuals who are sole proprietors, partners in a partnership, officers or majority shareholders of a corporation, or office managers (including branch office managers) acting on behalf of principals of a real estate firm who subscribe to the Code of Ethics as a condition of membership in a local Board, State Association, and the National Association of REALTORS®. The phrase REALTOR® principal includes those REALTORS® who participate in a Multiple Listing Service through any Association in which they do not hold membership. *(Revised 5/97)*
- (q) “Professional Standards Administrator” is the Association staff person primarily responsible for the administration of professional standards processes. *(Adopted 11/15)*

- (r) “Remote” means from a distance without physical presence, i.e., video or teleconference. *(Adopted 11/21)*
- (s) “Tribunal” means those persons serving in a given case on a Grievance Review Panel, a Hearing Panel, Appeal Tribunal, or Procedural Review Tribunal of the Professional Standards Committee in either an ethics or arbitration proceeding, or an Executive Committee or appropriate body appointed by the Professional Standards Administrator to act in its behalf. No individual may participate in the deliberation of more than one tribunal on the same matter.  
  
Although ombuds and mediators who serve in either capacity are not part of a tribunal, they nonetheless may not participate in the deliberation of any tribunal on the same matter for which they provided the ombuds or mediation service. An ombuds may not serve as a mediator on the same matter for which they provided the ombuds service. *(Adopted 11/22)*
- (t) “Unauthorized disclosure” means a report or publication under any circumstances not established in this Manual. *(Adopted 11/91)*
- (u) “Virtual” means existing, seen or happening on-line or on a computer screen rather than in person or in the physical presence. *(Adopted 11/21)*

## Section 27. Qualification for Tribunal

- (a) No more than one person licensed with any firm, partnership, or corporation may serve on the same tribunal. This limitation does not preclude two or more individuals from the same franchise from serving if the franchises are independently owned and operated. *(Revised 11/09)*
- (b) A person shall automatically be disqualified as a member of a tribunal in any case in which the person is (1) related by blood or marriage to, or has an existing or past relationship with, either complainant or respondent, their counsel or witnesses, or other arbitrators; (2) an employer, partner, employee, or in any way associated in business with either complainant or respondent, or counsel for either the complainant or respondent, or has a financial or personal interest in the outcome of the arbitration proceeding; (3) a party to the hearing, or a party or a witness in any other pending case involving a party to this hearing; (4) is objected to by a party as provided in **Part Seven, Section 27(f); or (5) a member that served on any other panel in the same matter** .
- (c) Before sitting in any case, each member of a tribunal (except any member of the Grievance Review Panel) shall sign a statement (1) that the member is not disqualified for any of the foregoing reasons, and (2) that the member knows of no other reason that might prevent them from rendering an impartial decision. (Form #A-11, *Certificate of Qualification*, **Part Thirteen** of this Manual.)
- (d) Every member of a tribunal (except a member of the Grievance Review Panel acting pursuant to the provisions of **Part Ten, Section 47** of this Manual) shall also avoid, as far as possible, discussing the case with any person other than a member of the tribunal prior to commencement of the hearing. If the member does engage in any such discussion before the hearing, the member must disclose the fact to the parties and to the other members of the tribunal no later than at the beginning of the hearing.
- (e) All members of a tribunal shall have an obligation to maintain and protect the confidentiality of the proceedings and deliberations of the tribunal before, during, and after its determinations and recommendations. The tribunal member shall not discuss the tribunal proceedings and deliberations with any person(s) except as required by the Board of Directors or the bylaw provisions of the Association, or by law as may be required, except that a member of the Grievance Review Panel acting pursuant to the provisions of **Part Ten, Section 47** of this Manual shall not be precluded from discussion necessary to the preliminary review.

Unauthorized disclosure relates to tribunal members and parties and includes any report or publication under any circumstances not established in this Manual. The following are circumstances where disclosure by a party to an ethics and/or arbitration proceeding is authorized:

- (1) Where the dissemination of the decision to individuals who have some knowledge of the proceeding might vindicate a member’s professional reputation.
- (2) Where there is a civil proceeding (including proceedings before the state real estate licensing authority or any other state or federal regulatory or administrative agency) involving the same facts and circumstances which gave rise to the proceeding before the Association. *(Revised 11/95)*
- (3) Where providing the decision of an arbitration hearing panel to an association of REALTORS® or to an MLS will enable that entity to correct records of sales or lease transactions or other historical records. *(Revised 11/06)*

- (f) Any party may file with the Professional Standards Administrator, a written request for disqualification of a member of a tribunal or any panel appointed in place of the Board of Directors, stating the grounds alleged as basis for disqualification (i.e., factors which would prevent a tribunal member from rendering an impartial, unbiased, and knowledgeable decision). Challenges submitted pursuant to this Section for ethics and arbitration hearings will be determined by the Chairperson of the panel or, if challenge to the Chairperson is made, by the Professional Standards Committee Chairperson, or, if challenge to both the Chairperson of the panel and the Professional Standards Committee is made, by the Professional Standards Committee Vice Chairperson. Challenges submitted pursuant to this Section for matters to be considered by a panel appointed in place of the Board of Directors will be determined in the same manner. A party shall be deemed to have waived any grounds of disqualification of which they then has knowledge unless they file the request within ten (10) days from the date a list of names of members of the Professional Standards Committee or Executive Committee has been transmitted to the party (see **Part Ten, Section 51(a), Arbitration Hearing**). However, any member of the tribunal may be disqualified at any time if a majority of the members of the tribunal are made aware of any grounds of automatic disqualification of a member or find any new or previously undiscovered facts which in their judgment may prevent, or appear to prevent, a member of a tribunal from rendering an impartial decision.

However, none of the foregoing is to be construed to allow a challenge to the qualifications of members of the Association's Panel convened to review any action taken by a Grievance Review Panel.

- (g) If a member of a tribunal fails or is unable to participate in a hearing, the remaining members of the tribunal may, at their option, but only with the express consent of the parties, proceed with the hearing. Only the remaining members of the tribunal may participate in the hearing and the determination thereof. Should any member of the tribunal absent themselves during the progress of the actual hearing, that individual shall likewise not participate in the deliberations nor determinations thereof. If all the parties do not agree to proceeding without the full number of the tribunal originally designated, the Chairperson of the tribunal will recess the hearing to a date on which all members of the tribunal can be present. If the Chairperson cannot at that time designate a new date, notice of a subsequent date shall be served on all parties as herein provided.

## **Section 28. Duty to Give Evidence**

The parties to ethics and arbitration hearings are primarily responsible for production of witnesses and evidence they intend to present to the Hearing Panel. If a member, when called as a witness, refuses or is unable to appear at a scheduled hearing, the witness's failure to appear can be the basis for a charge that Article 14 has been violated if it can be shown that the witness had information or evidence relevant to the issue or issues before the Hearing Panel and that there were no extenuating circumstances that would have made the witness's appearance unduly burdensome. Questions regarding a member's obligation to appear as a witness, including questions of relevancy, shall be determined by the Chair of the Hearing Panel either before the hearing commences, if possible, or at the time of the hearing. If a question of whether a witness is required to appear is raised at a hearing and the Chair rules that the witness must appear, the party seeking to compel the appearance of the witness may request that the hearing be recessed until such time as the witness can be advised of the witness's obligation to appear, and the hearing shall be rescheduled. The burden of demonstrating the relevance of the testimony or evidence rests with the party seeking to compel the witness's appearance. (*Revised 11/93*)

If, after being so advised, a witness refuses to appear, the Chair may, at its discretion, bring a charge against the witness for failure to comply with Article 14. (*Revised 11/93*)

## **Section 29. Right of Counsel to Appear**

Every party may be represented by legal counsel but such counsel may not testify as a witness unless the panel determines such testimony is essential to ensure due process. In the event parties do not give fifteen (15) days' notice prior to the hearing of their intention to have counsel to the Association and all other parties, including counsel's name, address, and phone number, the panel shall take all steps, including continuance of the matter, if necessary, to guarantee the rights of all parties to representation by counsel. The tribunal may have counsel present to advise it on issues of procedure and law. The presence of Association legal counsel during executive session is a matter of local Association discretion. The role of Association counsel during a hearing is to provide procedural and legal guidance as requested by the Chairperson or by panel members. Association counsel is not a part of the Hearing Panel and may not take an active role in the conduct of the hearing, including examination or cross-examination of the parties or their witnesses. If Association counsel believes an action or procedure is inconsistent with the Association's established procedures or may result in potential liability to the Association, counsel's concerns should be communicated to the Chairperson of the Hearing Panel and the Chairperson shall make the final decision. (*Revised 11/97*)

## **Section 30. Witnesses**

Every party may have witnesses present at the hearing, and the tribunal may summon its own witnesses. All witnesses, except those who are also parties, will be excused from the hearing after completion of their testimony and cross-examination, unless otherwise provided for in the Code of Ethics and Arbitration Manual. (*Revised 11/14*)

All parties appearing at the hearing may be called as witnesses without advance notice. Any party who intends to call additional witnesses at the hearing must provide the Association and all other parties with the names of these witnesses at least fifteen (15) days prior to the hearing. Failure to provide this information within the time specified will constitute a waiver of the right to call those witnesses at the hearing, unless the other party agrees to allow their testimony. *(Revised 11/14)*

In any case where all of the names of witnesses a party intends to call at the hearing have not been provided within the time specified, if the Hearing Panel Chair believes that the testimony of that witness(es) is essential to ensure due process, the testimony may be permitted provided the other party has the right to request that the hearing be recessed and continued to a date certain not less than five (5) days later. *(Revised 10/24)*

Questions as to whether a member who has been called as a witness but who refuses to appear or asserts that their appearance will result in an unreasonable hardship, shall be determined by the Hearing Panel Chair as soon as practical. Refusal to appear, after the Chair has determined that the member's appearance is required, may result, at the Chair's discretion, in charges that Article 14 has been violated being filed against the member. *(Adopted 11/93)*

### **Section 31. Conduct of Hearing**

- (a) At any ethics or arbitration hearing, every party has the right to present any witnesses, to submit any evidence pertinent to the case, and to cross-examine witnesses. Witnesses giving oral testimony shall be affirmed by the Chairperson. Before permitting testimony relating to the character or general reputation of anyone, the tribunal shall satisfy itself that the testimony has a direct bearing on the case at issue. *(Revised 5/16)*

Attendance at any hearing is limited to the parties and the parties' respective counsel and/or witnesses (witnesses are excused from the hearing except during their testimony [except those witnesses with a vested financial interest consistent with **Part Ten, Section 44(a)(2), Duty and Privilege to Arbitrate**]); the Hearing Panel members (including alternates); Association staff and/or counsel, as deemed necessary; and any court reporter, as requested. *(Revised 5/16)*

- (b) The Association may take appropriate steps in the event any party has any physical or mental condition or disability that impairs the party's ability to meaningfully participate in any ethics hearing or proceeding. If any such person needs a reasonable accommodation in order to fully participate in any hearing conducted by the Association, whether that person is a party, witness, panel member, or other allowed attendee, that person should make such a request of the Chair, in writing, if possible, and at least five (5) days in advance of the hearing, if possible. The Chair shall, after consultation with Association counsel and staff, determine what accommodations will be made based upon each request and direct the Professional Standards Administrator to take steps to make those accommodations.
- (c) The Association shall record the hearing. Parties may at the Association's discretion, record the hearing or utilize a court reporter at their own expense. If a party utilizes a court reporter and orders a transcript, a copy of the transcription shall be made at the party's expense and presented to the Professional Standards Administrator. (See Form #A-10, *Outline of Procedure for Arbitration Hearing*, **Part Thirteen**, and *Conduct of an Arbitration Hearing*, **Part Twelve**.) *(Revised 5/16)*

Videotaping of the proceedings shall not be permitted except by advance express consent of all parties and all members of the Hearing Panel. Any and all recording should be conducted in accordance with state law. *(Revised 11/21)*

Appeals or procedural review proceedings shall not be recorded in any manner, including, but not limited to, use of a stenographer, court reporter, etc., by the Association or the parties. *(Revised 5/24)*

The Association's recording shall be considered the official record of the proceeding. Copies of any recording, or any transcript prepared from any recording of the hearing, are to be used only for the purpose of appeals or limited procedural reviews, and may not be introduced into evidence at any subsequent hearing. Associations, at their discretion and upon the advice of counsel, may prohibit the parties from obtaining a copy of the recording or transcription if the request is received outside of the time frame allowed for appeals or procedural reviews. Any unauthorized use of the recordings or transcripts may be construed as a violation of Article 14, as interpreted by the applicable Standards of Practice, and as a violation of these procedures. *(Revised 5/16)*

Any party to a hearing has the right to obtain a copy of the Association's official recording subject to the aforementioned limitations, and subject to a written request and payment of the Association's duplication cost in the amount of \$50.00. Written requests must be received prior to the deadline to appeal or request a procedural review of the Hearing Panel decision, or the appeal or procedural review hearing date, if any, whichever is later. Any duplication will be conducted under the supervision of the Association. If the Association transcribes its official recording, any party to the hearing may obtain a copy of the transcript subject to paying the Association's transcription costs. If more than one party requests copies of the transcript, the Association's costs will be apportioned between or among the parties. *(Revised 5/16)*

If a party purchases a copy of the Association's official recording and subsequently has it transcribed at their own expense, that party must provide a copy of the transcript to the Association at no cost. After the Association has received a copy of the transcript (made from the Association's official recording), the Association shall make copies of the transcript available to any other party subject to their payment of the Association's duplication costs. *(Revised 11/10)*

It is recommended that recordings produced by the Association be maintained in the confidential professional standards files until a date when any sanction imposed by the Association has been completed. *(Revised 5/16)*

- (d) Improper conduct by a party or participant to an Association hearing or proceeding, including threatening, harassing, violent, coercive, or illegal behavior towards any Association staff, panelists, party, party's counsel, witnesses, or other hearing participant is strictly prohibited. Minnesota Realtors® reserves the right to take necessary steps to ensure the personal safety of all participants to any hearing or proceeding. (See *Personal Safety in Professional Standards Proceedings* paragraph for further details.)

### **Section 32. Notices**

- (a) Any notice required to be given or paper required to be served or filed may be personally handed to the party to be notified, sent by first class mail addressed to the party's last known mailing address, or sent to the party by email. When possible, email is the preferred form of service for notices and documents pursuant to the procedures specified in this Manual. Any notice required to be given or paper required to be served or filed shall be deemed given, served, or filed when handed to the party, mailed to the party, or sent to the party by email at the address or email address the party has provided to the Association, unless otherwise specified in this Manual. The Association shall utilize a secure email service that confirms delivery of emails that are sent to the email address provided by the party to the Association. If receipt of notices sent by email cannot be confirmed, the notices will be resent via first class mail. *(Revised 11/14)*
- (b) Notice of hearing shall include the names of the members of the tribunal and be given not less than twenty-one (21) days beforehand. Twenty-one (21) days' notice is not required for postponed hearings (scheduled but extension granted before hearing commences) or for hearings that have commenced and been adjourned (recessed). *(Revised 11/14)*

### **Section 33. Interpretation of Bylaws**

If any provision of the bylaws or a rule or regulation relative to the procedure of a tribunal's handling of a matter is involved, the interpretation by that tribunal of the bylaws or of a rule or regulation shall be set forth as a separate finding, and the Directors, on appeal from a decision of a Hearing Panel, shall not be bound by the panel's interpretation.

### **Section 34. Waiver**

Every member, for and in consideration of their right to invoke arbitration proceedings and to initiate complaints under the Code of Ethics as a member of the National Association of REALTORS®, hereby waives any right of action against the Association, any Association Member, or any member of a Hearing Panel or tribunal arising out of any decisions, determinations, or other action taken or rendered under these procedures in the absence of willful or wanton misconduct. Further, as a condition of continued membership, every member expressly waives any cause of action for libel, slander, or defamation that might arise from the filing or consideration of any ethics complaint or arbitration request. *(Revised 11/87)*

### **Section 35. Communication and Clerical**

Communications shall be directed to the Professional Standards Administrator. The Professional Standards Administrator shall render all necessary assistance to the parties, shall furnish required forms, shall receive and file all documents or other papers, and shall receive all fees and disburse all monies payable to the Association.

### **Section 36. Attempt to Influence Tribunal**

Any attempt, directly or indirectly, to influence a member of a tribunal in any matter before it, other than by giving evidence and argument in an open hearing or in writing submitted to the entire tribunal, is a breach of a duty of membership.

# Part Eight-Membership Duties and Their Enforcement

## Section 37. Duties of Membership

The duties of membership include the following:

- (a) to abide by the Code of Ethics of the National Association of REALTORS®
- (b) to abide by the bylaws of this Association and its rules and regulations
- (c) to submit to arbitration all disputes specified in **Part Ten** of this Manual by the procedure therein provided, and to abide by the arbitrators' award. *(Revised 11/96)*

Subject to any preliminary consideration by any administrative body of the Association or its subsidiary MLS, allegations or charges that a member has violated any membership duty shall be referred to the Professional Standards Committee for review in conformity with the procedures established in this Manual as from time to time amended. Notwithstanding the foregoing, multiple listing services operated as committees of associations of REALTORS® or as subsidiary corporations wholly owned by associations of REALTORS® may establish procedures for enforcement of their rules and regulations pursuant to the grant of authority and to the limitations established in Multiple Listing Policy Statement 7.21, Appropriate Procedures for Rules Enforcement, *Handbook on Multiple Listing Policy*. *(Revised 11/14)*

## Section 38. Selection and Appointment of the Grievance Review Panel

Upon receipt of an ethics complaint or request for arbitration, the Professional Standards Administrator shall make a preliminary review of the complaint or request, and if the complaint or request is in proper order the Professional Standards Administrator shall, in a timely manner, and on an as-needed basis, appoint three members of the Professional Standards Committee to serve on a Grievance Review Panel to review the complaint or arbitration request to make any necessary evaluation. The Professional Standards Administrator shall use their best effort to ensure there is no conflict of interest between the assigned reviewers and the parties to the complaint. The Professional Standards Administrator shall promptly provide the assigned reviewers with a copy of the complaint and schedule a meeting for the reviewers to review the complaint.

The Grievance Review Panel review complaints/arbitration requests not later than forty-five (45) days after the receipt of the complaint/arbitration request. *(Revised 05/15)*

Members of a Grievance Review Panel shall not serve on more than one (1) tribunal in the same matter and may not serve on any tribunal if they have a conflict of interest as described elsewhere in this manual.

## Section 39. Selection and Appointment of the Professional Standards Committee

There shall be a Professional Standards Committee of Association members, in good standing, of whom at least a majority shall be REALTORS®, appointed by the Leadership Team for a one (1) year term. Members of the Professional Standards Committee shall be selected to serve on Grievance Review Panels, Hearing Panels, or panels appointed to serve on behalf of the Board of Directors as required to hear matters of alleged unethical conduct by Association Members, to provide arbitration as requested, or hear other matters as provided in this manual. The Leadership Team shall annually designate the Chairperson and Vice Chairperson of the committee.<sup>6</sup> Although the Chief Executive Officer has the right to be present at meetings involving the Leadership Team, the Chief Executive Officer shall not vote on any matter before the Leadership Team.

In selecting members of the Professional Standards Committee, the Leadership Team should consider the following recommended criteria:

- number of years as a REALTOR®
- number of years in the real estate business
- primary and secondary fields of real estate endeavor/ expertise

<sup>6</sup> In Associations with larger memberships, it is desirable for a larger committee to be named to avoid an overload of work upon any individual which could result from the greater number of hearings in these Associations. In such Associations, an uneven number of members from the Professional Standards Committee may be appointed to constitute a Hearing Panel for each case to be heard. *(Revised 11/92)*

- participation in post-licensing real estate education
- training in the Code of Ethics
- position in firm (principal, nonprincipal)
- size of firm
- common sense
- open-mindedness
- familiarity with state(s) laws and regulations
- receptiveness to instruction/training
- other relevant professional or procedural training

The committee should have balanced representation of REALTORS®, REALTOR-ASSOCIATES®, men, and women, and should include representatives of various racial and ethnic groups. Committee members should be mature, experienced, knowledgeable persons of a judicial temperament. Members of the Professional Standards Committee shall not serve on more than one (1) tribunal in the same matter and may not serve on any tribunal if they have a conflict of interest as described elsewhere in this manual.

### **Section 39.1. Selection and appointment of Panels**

In the event a Grievance Review Panel forwards a complaint for a hearing before the Professional Standards Committee, a sufficient request for Appeal or Procedural Review has been received, or some other matter requires a panel review, the Professional Standards Administrator shall, in a timely manner, appoint five members of the Professional Standards Committee a majority of whom shall be REALTORS® to serve on a Hearing Panel, Appeal Tribunal, Procedural Review Tribunal, or other panel appointed to serve on behalf of the Board of Directors to hear such complaint, arbitration request, appeal or other matter. One of the five members shall be appointed by the Professional Standards Administrator to serve as the Chair.

One additional member of the Professional Standards Committee may also be appointed by the Professional Standards Administrator to serve on a Hearing Panel, Appeal Tribunal, or Procedural Review Tribunal as an alternate. The Alternate Panel Member will attend the hearing but shall not act as a participant in the hearing or the executive session nor vote on the decision unless one of the five originally appointed Panel members is unable to serve on the Panel from the commencement of the hearing. All requirements that pertain to members of a Hearing Panel shall also pertain to Alternate Panel Members.

In the event an appointed panel member is unable to serve, and no alternate has been appointed, the Professional Standards Administrator shall obtain consent from all parties to hold the ethics or arbitration hearings with less than five panel members<sup>7</sup>, but in no event, shall there be less than three panel members. In the event there is an even number of panel members remaining, the Chair shall not vote.

Any Hearing Panel, Appeal Tribunal, Procedural Review Tribunal, or other panel must have an odd number of members. If the complainant or respondent is a REALTOR®-ASSOCIATE or a REALTOR® other than a principal, at least one member of the Hearing Panel, Appeal Tribunal, Procedural Review Tribunal, or other panel shall be a REALTOR®-ASSOCIATE or a REALTOR® other than a principal. It shall be a membership duty of anyone so appointed to serve on the Hearing Panel, Appeal Tribunal, Procedural Review Tribunal, or other panel unless disqualified.

Members of a Hearing Panel, Appeal Tribunal, Procedural Review Tribunal or other panel shall not serve on more than one (1) tribunal in the same matter and may not serve on any tribunal if they have a conflict of interest as described elsewhere in this manual.

<sup>7</sup> In case of appeal hearings where the parties are not present at the hearing, the appeal hearing may be held with three to five panel members without the consent of the parties.

# Part Nine — The Grievance Review

## Panel in Arbitration Proceedings

### Section 40. Authority

The Grievance Review Panel is established in **Part Eight, Section 38** of this Manual.

### Section 41. Function

The function of the Grievance Review Panel is clearly distinguishable from the function of the Professional Standards Committee Hearing Panels and Appeal or Procedural Review Tribunals. The Professional Standards Committee Hearing Panels and Appeal or Procedural Review Tribunals make decisions on matters involving ethics or arbitration. (*Revised 05/15*)

The Grievance Review Panel receives ethics complaints and arbitration requests to determine if, taken as true on their face, a hearing is to be warranted. The Grievance Review Panel makes only such preliminary review and evaluation as is necessary to make these decisions. While the Grievance Review Panel has meetings, it does not hold hearings, does not decide whether members have violated the Code of Ethics, and does not dismiss ethics complaints because of lack of evidence. Complainants are not required to prove their case upon submission of their ethics complaint or arbitration request. The Grievance Review Panel does not mediate or arbitrate business disputes. Grievance Review Panels are appointed by the Professional Standards Administrator, in a timely manner, on an as-needed basis upon receipt of ethics complaints and arbitration requests and will review complaints/requests not later than forty-five (45) days after receipt of the complaint/request. (*Revised 05/15*)

When Grievance Review Panels refer ethics complaints and arbitration requests for hearing, hearing panel chairs can determine if questions about:

- (1) whether ethics complaints and arbitration requests are timely filed,
- (2) whether arbitrable issues exist,
- (3) whether arbitration requests are too legally complex to be fairly arbitrated, and
- (4) other administrative issues

will be addressed through a pre-hearing meeting of the hearing panel or at the outset of the hearing prior to testimony relating to the ethics complaint or arbitration request commencing.

When a Grievance Review Panel has determined that the complaint or request is not timely filed, the complaint or request shall be summarily dismissed with no further review by the Grievance Review Panel. Complainant shall have the right to appeal the dismissal as provided in this Manual.

When the Grievance Review Panel has moved the complaint forward to a hearing and respondent wishes to challenge the Grievance Review Panel's decision on any of the pre-hearing matters (1)-(4) listed above, the respondent may request a pre-hearing meeting by using the Form entitled *Request for Pre-Hearing Meeting*. Alternatively, a Pre-Hearing Meeting may be scheduled in the absence of such a request from the respondent, to review the same issues, should the Chair of the Hearing Panel deem it appropriate.

If the Association receives a *Request for Pre-Hearing Meeting*, the Professional Standards Administrator shall forward the Request to the Hearing Panel Chair for review to determine if the Request will be addressed through a Pre-Hearing Meeting of the Hearing Panel at least seven (7) and no more than ten (10) days prior to the Hearing, or through a Pre-Hearing Meeting immediately prior to the Hearing. The determination of timing of the Pre-Hearing Meeting shall be within the Chair's discretion, and failure to hold a Pre-Hearing Meeting between seven (7) and ten (10) days prior to the Hearing shall not constitute a procedural deficiency. The Professional Standards Administrator shall appoint a Hearing Panel in accordance with **Part Two, Section 16.1** and schedule both a Pre-Hearing Meeting, in accordance with the Chair's determination, and a Hearing Date.

The materials and information that were available to the Grievance Review Panel when they made their decision along with the respondent's reply, and any supporting documents, if any, will be presented to the Hearing Panel prior to the Pre-Hearing Meeting. Neither the complaint nor the reply can be revised, modified or supplemented.

The complainant and respondent may however, submit written statements regarding the contested pre-hearing matters. Any such written statement should be submitted to the Association at least three (3) days prior to the scheduled Pre-Hearing Meeting. If such

written statements are submitted after this deadline, they will be forwarded to the Hearing Panel. However, the Hearing Panel may not have the opportunity to give them the same level of review before the Pre-Hearing Meeting as had they been submitted in the timeline requested.

If these matters arise during a hearing, the Hearing Panel will address them within the course of the hearing and in conjunction with all other issues related to the complaint.

No complainant(s), respondent(s), their counsel, witnesses or brokers, may appear or testify at the Pre-Hearing Meeting.

The complainant and respondent have the right to challenge the qualifications of any individual who may be appointed to serve on an ethics proceeding or arbitration matter. The parties will be provided with a list of the individuals who will be appointed to sit on the Panel and may challenge the qualifications of any panel member by completing Form #E- 7 *Challenge to Qualifications by Parties* and returning it to the Association. Challenges submitted will be determined by the Chairperson of the Hearing Panel, or if the challenge to the Chairperson is made, by the Professional Standards Committee Chairperson.

A party shall be deemed to have waived any grounds of disqualification of which the party has knowledge unless the party files the request within ten (10) days from the date a list of names of the appointed panel members has been mailed to the party. However, any member of the tribunal may be disqualified at any time if a majority of the members of the tribunal are made aware of any grounds of automatic disqualification of a member or find any new or previously undiscovered facts which in their judgment may prevent, or appear to prevent, a member of a panel from rendering an impartial decision.

The Pre-Hearing Meeting will not be recorded, and no party will be permitted to have a court reporter or recording device present at the Pre-Hearing Meeting.

At the Pre-Hearing Meeting, the Hearing Panel will determine whether or not the complaint shall proceed to a hearing, depending upon their determination of any of the matters raised. The decision of the Hearing Panel will be determined by a simple majority vote of the panel members.

If the Hearing Panel's determination at a Pre-Hearing Meeting does not preclude proceeding with the Hearing as scheduled, the matter will proceed to the scheduled hearing.

In such case, the Hearing shall be held on the scheduled date and both the complainant and respondent have the right to raise all substantive and procedural issues at the hearing (including those issues reviewed within a Pre-Hearing Meeting).

If the conclusion of the Hearing Panel in its Pre-Hearing Meeting is that the matter should *not* proceed to a hearing, the Hearing Panel shall dismiss the complaint and the complainant shall have the right to appeal the decision of the Hearing Panel to an Appeal Tribunal of the Association on the same bases as dismissals by the Grievance Review Panel (See **Part Nine, Section 42 (c)**).

The Association shall transmit the written decision of the Hearing Panel on these matters to the parties no later than three (3) days after the Hearing Panel makes their decision.

The allegations, findings, and decisions rendered in the Pre-Hearing Meeting are confidential and will not be reported or published by the Association, any member of the Panel, or any party under any circumstances except those established in the *Code of Ethics and Arbitration Manual* as from time to time amended.

## **Section 42. Grievance Review Panel's Review and Analysis of a Request for Arbitration**

### ***A. Initial action upon receipt of a request for arbitration***

Upon receipt of a request for arbitration, the Professional Standards Administrator shall make a preliminary review of the request to determine if the request is in acceptable form. Any request that is not in acceptable form shall be returned to the complainant accompanied by the initial conclusions. The complainant shall be advised that they are free to refile an amended request in proper form. The 180-day filing deadline will continue to run when a request is not properly filed. If the request is acceptable, the Professional Standards Administrator shall, in a timely manner, appoint three members of the Professional Standards Committee to serve on the Grievance Review Panel to review the arbitration request and any evidence and documentation attached. The Grievance Review Panel shall review the arbitration request and make any necessary evaluation. The reviewers may, if necessary, gather additional information on the matters complained of from the complainant, if additional information appears necessary to make a knowledgeable disposition of the arbitration request. (*Amended 11/15*)

The reviewer(s) shall complete the assignment and prepare a report and recommendation using Form #A- 5.1, *Grievance Review Panel's Report Form - Arbitration*.

*B. Consideration by the Grievance Review Panel of a request for arbitration*

In reviewing a request for arbitration, the Grievance Review Panel shall consider the following:

- (1) Is the request for arbitration acceptable in the form as received by the committee? If not in proper form, the Chairperson may request that the Professional Standards Administrator, contact the complainant to advise that the request must be submitted in proper form. *(Revised 11/15)*

NOTE: If deemed appropriate by the Chairperson, a member of the Grievance Review Panel may be assigned to contact the complainant and to provide procedural assistance to amend the request or resubmit a new request in proper form and with proper content. The Grievance Review Panel member providing such assistance shall ensure that only procedural assistance is provided to the complainant, and that the complainant understands that the member is not representing the complainant or advocating on behalf of the complainant. *(Revised 11/15)*

- (2) Are all necessary parties named in the request for arbitration? The duty to arbitrate is an obligation of REALTOR® principals. REALTOR® principals include sole proprietors, partners in a partnership, officers or majority shareholders of a corporation, or office managers (including branch office managers) acting on behalf of principals of a real estate firm.
- (3) Was the request for arbitration filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known by the complainant in the exercise of reasonable diligence, whichever is later? *(Revised 10/24)*
- (4) Are the parties members in good standing or otherwise entitled to invoke arbitration through the Association's facilities? Were the parties members at the time the facts giving rise to the dispute occurred?
- (5) Is litigation concerning an otherwise arbitrable matter pending in connection with the same transaction?

NOTE: No arbitration shall be provided on a matter pending litigation unless the litigation is withdrawn with notice to the Association and request for arbitration, or unless the court refers the matter to the Association for arbitration.

- (6) Is there any reason to conclude that the Association would be unable to provide an impartial Hearing Panel?
- (7) If the facts alleged in the request for arbitration were taken as true on their face, is the matter at issue related to a real estate transaction and is it properly arbitrable, i.e., is there some basis on which an award could be based?
- (8) If an arbitrable issue exists, are the parties required to arbitrate or is their participation voluntary?
- (9) Is the amount in dispute too small or too large for the Association to arbitrate?
- (10) Is the matter too legally complex, involving issues that the arbitrators may not be able to address in a knowledgeable way?
- (11) Is there a sufficient number of knowledgeable arbitrators available?

If all of the relevant questions have been considered, and a majority of the Grievance Review Panel conclude that the matter is properly arbitrable by the Association, the Grievance Review Panel shall send the request for arbitration to the Professional Standards Administrator for arbitration by an arbitration Hearing Panel. Complainants are not required to prove their case when initially filing an arbitration request. An arbitration request may not be dismissed for lack of evidence if the arbitration request is otherwise arbitrable, timely filed, and the arbitration is one of the circumstances described in **Section 44, Duty and Privilege to Arbitrate**. *(Revised 11/15)*

*C. Appeals from the decision of the Grievance Review Panel related to a request for arbitration*

If the Grievance Review Panel determines that a matter should not be arbitrated by the Association (because of the amount involved or the legal complexity, or for any other valid reason specified in the decision and written report), the reason(s) for dismissing the request will be stated in the notice of dismissal. Any party may appeal the decision to the Appeal Tribunal within (20) days from transmittal of the notice of the Review Panel's decision (Form #A-5.1 *Grievance Review Panel's Report Form - Arbitration*) using form #A-20 *Appeal of Dismissal or Classification of Arbitration Request*. If an appeal is based on dismissal for failure to file within the time-period specified in this Manual and an Appeal Tribunal determines that the request was timely

filed, then the Appeal Tribunal shall serve as the Grievance Review Panel and further review the request in accordance with Part Nine, Section 42 B. The request for arbitration and any attachments cannot be revised, modified, or supplemented. The party appealing the dismissal may, however, explain in writing why they disagree with the Grievance Review Panel's conclusion that the request for arbitration should be dismissed. The Hearing Panel can also dismiss the arbitration request if the Hearing Panel concludes the matter is not arbitrable. Appeals of dismissals shall be heard by an Appeal Tribunal as soon as practical, but no later than thirty (30) days after the date of the receipt of the appeal. The Appeal Tribunal's decision shall be transmitted to the parties within five (5) days from the date of the decision. *(Revised 10/24)*

Upon receipt of Form #A-20 *Appeal of Grievance Review Panel Dismissal or Classification of Arbitration Request*, the Professional Standards Administrator shall appoint an Appeal Tribunal in accordance with **Part Eight, Section 39.1** to hear the appeal. No complainant(s), respondent(s), their counsel, witnesses or brokers, may appear or testify at the Appeal Hearing. The complainant and respondent may not record the proceeding and may not have a court reporter present at the Appeal Hearing. Minnesota Realtors® shall not record the Appeal Hearing.

The complainant and the respondent do not have the right to challenge appointed panel members however, the Professional Standards Administrator may only appoint panel members that do not have a conflict of interest as defined elsewhere in this manual.

The materials which were presented to the Grievance Review Panel when the Grievance Review Panel made its decision will be presented to the Appeal Tribunal and considered with the appeal, together with any party's rationale challenging the Grievance Review Panel's dismissal. In the event a request for arbitration is dismissed, any deposit submitted by the complainant shall be returned to the complainant.

If the Appeal Tribunal determines that the request was improperly dismissed by the Grievance Review Panel, they shall refer it to the Professional Standards Committee for arbitration by a Hearing Panel. If the Appeal Tribunal determines that the Grievance Review Panel properly dismissed the request, then the request is dismissed and will not be forwarded for arbitration by a Hearing Panel.

The appeal of the Grievance Review Panel's decision shall be determined based on the correctness of the Grievance Review Panel's decision. The decision of the Appeal Tribunal is final and binding and is not subject to further review by the Association.

# Part Ten — Arbitration of Disputes

## **Section 43. Arbitrable Issues and Appropriate Parties**

As used in Article 17 of the Code of Ethics and in **Part Ten** of this Manual, the terms “dispute” and “arbitrable matter” are defined as those contractual issues and questions, and specific non-contractual issues and questions defined in Standard of Practice 17-4, including entitlement to commissions and compensation in cooperative transactions, that arise out of the business relationships between REALTORS® and between REALTORS® and their clients and customers, as specified in **Part Ten, Section 44, Duty and Privilege to Arbitrate**. (*Revised 11/96*)

A Member Association should determine through advice of legal counsel:

- (1) Whether state law permits an agreement to binding arbitration in advance of a dispute or only after the dispute occurs, or
- (2) If binding arbitration is not recognized and is thus unenforceable by state law. The Association’s arbitration procedures must conform to applicable state law.

In 2001, Article 17 was amended by the addition of the following paragraph:

*The obligation to participate in arbitration contemplated by this Article includes the obligation of REALTORS® (principals) to cause their firms to arbitrate and be bound by any award.*

This expansion in the scope of Article 17 does not diminish the personal responsibility of REALTORS® to participate in arbitration. While Article 17 obligates REALTORS® to “...cause their firms to arbitrate and be bound by any award...,” it does not confer REALTOR® membership status on real estate firms. Membership, and the duties membership imposes including adherence to the Code of Ethics, is still personal to every REALTOR®.

The change to Article 17 enhances the dispute resolution process by increasing the availability of arbitration—and the likelihood that awards will be enforceable and paid. In many instances, the disputes giving rise to arbitration under Article 17 relate to contracts between REALTORS®, firms or between REALTORS® acting on behalf of their respective firms. Even where disputes are actually between firms, Article 17 has required that arbitration complainants and respondents be individual REALTORS® (principals), and that awards be rendered in favor of and against individual REALTORS® (principals). In some instances this requirement has resulted in unfair results or rendered the arbitration process impotent because awards were uncollectible. Examples include REALTOR® (principal) respondents leaving the association’s jurisdiction, leaving the real estate business, relinquishing their status as a principal in the firm, or being insolvent or “judgment-proof.”

The expansion of Article 17 does not require substantive changes to the way associations of REALTORS® conduct arbitration. It does, however, give both arbitration complainants and respondents greater latitude in determining who the parties are and how any resulting award will be made.

For example, a REALTOR® seeking to invoke arbitration could name a REALTOR® (principal) in another firm as the sole respondent; could name multiple REALTORS® (principals) in the other firm as respondents; could name a firm (comprised of REALTOR® principals) as the respondent; or could name both individual REALTORS® (principals) and their firm as respondents. In this way, the likelihood of the arbitration process being thwarted because a named respondent is no longer subject to an association’s jurisdiction before, during or after the arbitration process, or an award being uncollectible, is greatly reduced.

Similarly, individual REALTOR® respondents who want either additional REALTOR® principals or their firms (or both) to be parties to the dispute can file an arbitration request against the original complainants with additional REALTORS® (principals) or the firm (or both) named as complainants. In such cases both claims would be consolidated by the Grievance Review Panel and all claims would be resolved in a single hearing.

In 2012, Article 17 was further amended to provide Associations with discretionary authority to require REALTORS® (principals) and their firms to mediate otherwise arbitrable disputes and be bound by any resulting agreement. Requiring REALTORS® to mediate otherwise arbitrable disputes requires establishment of an affirmative obligation in the Association’s governing documents. Enabling language can be found at [www.nar.realtor](http://www.nar.realtor) (see Model Bylaws). (*Adopted 11/11*)

Common questions include:

- (1) If only an individual REALTOR® (principal) is named as the respondent in an arbitration request, can a Hearing Panel make an award against the respondent's firm?

*No. Awards can only be made against named parties in the arbitration request and agreement.*

- (2) If only an individual REALTOR® (principal) is named as the complainant in an arbitration request, can a Hearing Panel make an award in favor of the complainant's firm?

*No. Awards can only be made in favor of parties named in the arbitration request and agreement.*

- (3) If an award is made against an individual REALTOR® (principal), is it enforceable against the respondent's firm?

*Awards are generally enforceable against parties named in the award.*

- (4) Can I name both a REALTOR® (principal) and their firm as respondents in an arbitration request?

*Yes.*

- (5) What is the advantage to naming both a REALTOR® (principal) and their firm as respondents in an arbitration request?

*Naming a REALTOR® (principal) as respondent lets the complainant know who will appear at the hearing, and naming the firm as respondent increases the chances of collecting any resulting award.*

- (6) If a REALTOR®'s firm is named as the respondent in an arbitration request and refuses to arbitrate, who can be named as respondent in a complaint alleging that Article 17 has been violated?

*Any REALTOR® (principal) who holds membership locally or who enjoys MLS participatory rights through the association can be named as respondent.*

- (7) If only a REALTOR®'s firm is named as respondent in an arbitration request, who is served with notices?

*Any REALTOR® (principal) in the firm may be served with notices.  
(Revised 11/11)*

## **Section 44. Duty and Privilege to Arbitrate**

- (a) By becoming and remaining a member and by signing or having signed the agreement to abide by the bylaws of the Association, every member, where consistent with applicable law, binds themselves and agrees to submit to arbitration (and to mediation if required) by the Association's facilities all disputes as defined by Article 17 of the Code of Ethics and, as set forth in the provisions of this Manual, all disputes with any other member, as defined, under the following conditions. In addition, REALTOR® principals who participate in an Association's MLS where they do not hold Association membership, or nonmember brokers and nonmember licensed or certified appraisers who participate in the Association's MLS, having signed the agreement to abide by the Association's Multiple Listing Service rules and regulations binds themselves and agrees to submit to arbitration by the Association's facilities. The duty to submit to arbitration continues in effect even after membership lapses or is terminated, provided that the dispute arose while the respondent was a REALTOR® or an MLS Participant. *(Amended 11/11)*

### **Mandatory types of arbitration**

- (1) Every REALTOR® of the Association who is a REALTOR® principal, every REALTOR® principal who participates in a Association's MLS where they do not hold Association membership and every nonmember broker or licensed or certified appraiser who is a Participant in the Association's MLS shall have the right to invoke the Association's arbitration facilities in any dispute arising out of the real estate business with a REALTOR® principal in another real estate firm or with that firm (or both), or nonmember broker/appraiser or their firm (or both) who is a Participant in the Association's MLS. At the discretion of their Realtor principal, REALTOR® nonprincipals and REALTOR-ASSOCIATES® who are affiliated with either the complainant or the respondent and have a vested financial interest in the outcome may be present throughout the proceedings and to participate but are not considered to be parties. *(Amended 11/22, Revised 10/24)*
- (2) A client of a REALTOR® principal may invoke the arbitration facilities of the Association in a business dispute with a REALTOR® principal or the REALTOR®'s firm (or both) arising out of an agency relationship or legally recognized non-agency

relationship, provided the client agrees to be bound by the arbitration. In the event of such request and agreement the Association will arbitrate the dispute subject to the provisions of **Part Ten, Section 45**. A REALTOR® principal may also invoke arbitration against their client but no arbitration may be held without the client's voluntary agreement to arbitrate and to be bound by the decision. *(Amended 11/17)*

### **Voluntary types of arbitration**

- (3) REALTORS® and REALTOR-ASSOCIATES® who are or were affiliated with the same firm shall have the same right to invoke the arbitration facilities of the Association, provided each party voluntarily agrees to the arbitration in writing and the Association finds the matter properly subject to arbitration in accordance with the provisions of **Part Ten, Section 45** of this Manual. This privilege as stated applies to disputes arising when the parties are or were affiliated with the same firm, irrespective of the time request is made for such arbitration. *(Amended 11/95)*
- (4) A REALTOR® principal may invoke the arbitration facilities of their Association with a nonmember broker, provided each party agrees in writing to the arbitration and provided the Association finds the matter properly subject to arbitration in accordance with the provisions of **Part Ten, Section 45** of this Manual. However, it shall be optional with the member as to whether they will submit to a claim to arbitration with a nonmember broker who is not an MLS Participant. A nonmember broker who is not an MLS Participant or nonmember salesperson may invoke the arbitration facilities of the Association of REALTORS® in cases where they believe they have an arbitrable dispute with a REALTOR®. Under these circumstances, REALTORS® are not required to agree to or participate in arbitration. *(Amended 11/12)*
- (5) Business disputes between a REALTOR® principal and a customer of the REALTOR® principal may be arbitrated by the Association if a written contractual relationship has been created by a REALTOR® principal between a customer and a client and provided all parties to the dispute (i.e., the customer and the REALTOR®) agree in writing to arbitrate the dispute. *(Amended 11/95)*
- (b) Where mandatory arbitration (and mediation if required by an Association) is consistent with applicable state law, the Code of Ethics, Article 17, requires only those disputes arising out of the real estate business between REALTORS® "...associated with different firms..." be arbitrated (or mediated if required by a Association). The various provisions of this Section represent the interpretations of the Professional Standards Committee with approval of the Board of Directors of the National Association as to appropriate policy of a Member Association in the matter of providing arbitration and mediation facilities by the Association. Thus, Member Associations must provide arbitration and mediation facilities for Association Members in the types of arbitration described in the preceding paragraphs (1), (2), and (3) and the Association shall offer mediation but shall not require REALTORS® (principals) to mediate otherwise arbitrable matters. Member Associations may, and the Association will, provide arbitration and mediation facilities for the additional types of disputes described in the preceding paragraphs (4), (5), and (6). However, Member Associations shall not establish any mandatory requirement of its Association Members to arbitrate and/or mediate in the circumstances described in paragraphs (4), (5), and (6). No arbitration shall be initiated by the Association and no arbitration shall be undertaken by the Association unless it determines the dispute is properly arbitrable in accordance with the provisions of **Part Ten, Section 45** of this Manual. *(Revised 11/11)*

### **Section 45. Association's Right to Decline Arbitration**

- (a) If either the Grievance Review Panel or the arbitration panel selected in the manner hereinafter provided determine that because of the amount involved or the legal complexity of the dispute the dispute should not be arbitrated, the arbitration shall automatically terminate unless either of the parties to the dispute appeals the decision to terminate the proceedings to the Appeal Tribunal in writing within twenty (20) days of the date of notice that the Grievance Review Panel or the arbitration panel declined to continue the proceeding using Form #A-20, *Appeal of Grievance Review Panel (or Hearing Panel) Dismissal or Classification of Arbitration Request*. Upon receipt of Form #A-20, the Professional Standards Administrator shall appoint an Appeal Tribunal in accordance with **Part Eight, Section 39.1** to hear the appeal. No complainant(s), respondent(s), their counsel, witnesses or brokers, may appear or testify at the Appeal Hearing. The complainant and respondent may not record the proceeding and may not have a court reporter present at the Appeal Hearing. The Association shall not record the Appeal Hearing. The complainant and the respondent do not have the right to challenge appointed panel members, however, the Professional Standards Administrator may only appoint panel members that do not have a conflict of interest as defined elsewhere in this manual. The request for arbitration and any attachments cannot be revised, modified, or supplemented. The party appealing the dismissal may, however, explain in writing why they disagree with the Grievance Review Panel's conclusion that the request for arbitration should be dismissed. The Hearing Panel can also dismiss the arbitration request if the Hearing Panel concludes the matter is not arbitrable. The written appeal and those materials and information which were available to the Grievance Review Panel or the arbitration Hearing Panel when the decision to discontinue arbitration was made will be presented to the Appeal Tribunal and considered with the appeal at the Appeal Hearing which shall be held as soon as practical, but no later than thirty (30) days after

the date of receipt of the appeal. The Appeal Tribunals' decision shall be transmitted to the parties within five (5) days from the date of the decision. In the event of such an appeal, the Grievance Review Panel or the arbitration panel shall report its conclusions in writing to the Appeal Tribunal and, if the Tribunal members concur, the arbitration shall terminate, and the parties shall be relieved of their obligation to arbitrate. In this event, or in the case of no appeal, any deposits made by the parties shall be returned to them. However, if the Appeal Tribunal decides that the arbitration should proceed, the matter shall be remanded to the Grievance Review Panel or the arbitration panel for further proceedings. *(Revised 10/24)*

- (b) If an otherwise arbitrable matter is the subject of civil litigation, arbitration shall not take place unless the litigation is withdrawn or referred to the Association by the court for arbitration in accordance with Article 17. In instances where the arbitration is mandatory (as defined in **Part Ten, Section 44** of this Manual), the failure to arbitrate may result in a charge alleging violation of Article 17.
- (c) If either party to an arbitration request believes that the Grievance Review Panel has incorrectly classified the issue presented by the request ("mandatory" or "voluntary" arbitration situation), the party has twenty (20) days from the date of the transmittal of the Grievance Review Panel's decision (Form #A-5.1 *Grievance Review Panel's Report Form - Arbitration*) to file a written appeal of the Grievance Review Panel's determination using Form #A-20, *Appeal of Grievance Review Panel (or Hearing Panel) Dismissal or Appeal of Classification of Arbitration Request*. Upon receipt of form #A-20, the Professional Standards Administrator shall appoint an Appeal Tribunal in accordance with **Part Eight, Section 39.1** to hear the appeal. No complainant(s), respondent(s), their counsel, witnesses or brokers, may appear or testify at the Appeal Hearing. The complainant and respondent may not record the proceeding and may not have a court reporter present at the Appeal Hearing. Minnesota Realtors® shall not record the Appeal Hearing. The complainant and the respondent do not have the right to challenge appointed panel members however, the Professional Standards Administrator may only appoint panel members that do not have a conflict of interest as defined elsewhere in this manual. The materials and information which were available to the Grievance Review Panel when the Review Panel made its determination will be presented to the Appeal Tribunal and considered with the appeal, together with any party's rationale challenging the Grievance Review Panel's classification of the request. Appeals of classifications shall be heard no later than ten (10) days after the receipt of the appeal. The Appeal Tribunals' decision shall be transmitted to the parties within five (5) days from the date of the decision. In the event of such an appeal, the Grievance Review Panel must report its written conclusions to the Appeal Tribunal. If the Appeal Tribunal determines that the arbitration request was incorrectly classified, they shall reclassify the request as either "mandatory" or "voluntary" arbitration and refer it to the Professional Standards Administrator for appropriate processing. *(Revised 05/15)*

## Section 46. Duty to Arbitrate Before State Association

By becoming and/or remaining members of this Association, all members bind themselves and agree to submit to arbitration by the arbitration facilities of Minnesota Realtors® any dispute with a member of any other local Association or Minnesota Realtors®, provided:

- (1) The dispute is a dispute as defined and for which arbitration is required by Article 17 of the Code of Ethics, and
- (2) Minnesota Realtors® has established facilities for such arbitration.<sup>8</sup>

Disputes as defined in Article 17 of the Code of Ethics requiring arbitration between members having no commonality of Association membership or MLS participation may be submitted and conducted under the procedure established in **Part Eleven** of this Manual, subject to such modification as may be required by applicable state law. Whether arbitration is conducted by the state association or by an interboard arbitration panel pursuant to **Part Eleven**, the costs charged to parties, including filing fees, may not exceed \$500. Where arbitration is conducted by the state association, any costs incurred that exceed the parties' filing fees may be recouped from the parties' local association(s). *(Revised 5/06)*

The method set forth in **Part Eleven** may also be utilized for the conduct of arbitration between Association Members of different Associations of different states, subject to the parties' voluntary agreement in advance to accept the place, date, and time established by

<sup>8</sup> The State Association as a Member Association of the National Association has the obligation to establish arbitration procedures and facilities consistent with applicable state law, as required by the Constitution, National Association, Article IV, and by Article 17, Code of Ethics of the National Association, for individual members of the State Association.

the arbitration panel thus chosen for a hearing, and to pay all costs of such arbitration as may be directed by the panel, and further subject to applicable state law of the respective states permitting such binding arbitration.

## Section 47. Manner of Invoking Arbitration

- (a) Any person authorized by the provisions of **Part Ten, Section 44** of this Manual may request arbitration by the Association. A request for arbitration shall be in writing (Form #A-1 or #A-2, *Request and Agreement to Arbitrate*, **Part Thirteen**, or any other appropriate form permitted by law), must be signed by the complainant, must indicate the nature of the dispute and the amount in dispute, and must be accompanied by the required deposit of \$400.00<sup>9</sup>. Requests for arbitration must be filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known by the complainant in the exercise of reasonable diligence, whichever is later. Associations may provide mediation even if arbitration has not been requested provided the mediation is requested within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known by the complainant in the exercise of reasonable diligence, whichever is later. (Revised 10/24)

Suspension of filing deadlines: If the Association's informal dispute resolution processes (e.g., ombudsmen, mediation, etc.) are invoked or initiated by a complainant (or potential complainant) with respect to an otherwise potentially arbitrable matter that becomes the subject of a subsequent arbitration request, the one hundred eighty (180) day filing deadline shall be suspended beginning with 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. Questions about when informal dispute resolution began or ended will be determined by the Chair of the Professional Standards Committee.

- (b) Upon receipt of a request for arbitration, the Professional Standards Administrator shall make a preliminary review of the request to determine if the request is in acceptable form. Any request that is not in acceptable form shall be returned to the complainant accompanied by the initial conclusions. The complainant shall be advised that they are free to refile an amended request in proper form. The 180-day filing deadline will continue to run when a request is not properly filed. If the request is acceptable, the Professional Standards Administrator shall, in a timely manner, appoint three members of the Professional Standards Committee to serve on the Grievance Review Panel to review the arbitration request and any evidence and documentation attached. The Grievance Review Panel shall review the arbitration request and make any necessary evaluation. The reviewers may, if necessary, gather additional information on the matters complained of if additional information appears necessary to make a knowledgeable disposition of the arbitration request.

The function of the Grievance Review Panel is to make only such preliminary review and evaluation of the request for arbitration as is required to determine (1) whether the matter is properly arbitrable; (2) whether arbitration is mandatory or voluntary based upon the requirements of **Part Ten, Section 44** of this Manual; and (3) whether the proper parties are named in the request for arbitration. The Grievance Review Panel does not hold hearings, does not determine entitlement to awards, and does not dismiss arbitration requests because of a lack of evidence. A complainant is not required to prove their case upon submission of their arbitration request. (Revised 11/15)

The Grievance Review Panel shall not request the party(ies) named as respondent(s) in the request for arbitration provide the Grievance Review Panel with a written response to the request for arbitration.

- (c) If the Grievance Review Panel finds the matter properly subject to arbitration, the Panel shall refer it back to the Professional Standards Administrator with instructions to arrange a hearing, notifying the parties of the Grievance Review Panel's decision, informing the parties as to whether the arbitration is mandatory or voluntary (and, if voluntary, of the date certain by which the respondent is requested to inform the Association of their decision) and informing the parties of their ability to challenge the classification (see **Section 45[d], Association's Right to Decline Arbitration**). The Professional Standards Administrator shall select a hearing date which will be transmitted to the parties within five (5) days of transmittal of the Grievance Review Panel's

<sup>9</sup> This fee should not be so high as to deter parties from arbitration. This amount shall not exceed \$500. Where a party(ies) from the same firm is involved in more than one related request for arbitration, and the claims will be consolidated and resolved in a single hearing, no more than one deposit or filing fee may be required of that party(ies). When a REALTOR® requests arbitration to determine which of multiple respondents is entitled to disputed funds, or where a party makes no claim to the disputed funds, that party may not be assessed an arbitration filing fee. (Revised 11/96)

decision. The Professional Standards Administrator shall notify the respondent within five (5) days of receipt of the Grievance Review Panel's instructions by transmitting a copy of the request for arbitration, the *Notice to Respondent (Arbitration)* (Form #A-3), and a form for response (Form #A-4), *Response and Agreement to Arbitrate*, **Part Thirteen**), with directions to complete and return the written response and deposit amount of ~~400.00~~<sup>10</sup> within fifteen (15) days from the date of transmittal of the request for response to respondent. The Professional Standards Administrator shall, concurrently with the Official Notice of Hearing, transmit to each of the parties a list of Hearing Panel members, and alternate if any, appointed to serve on the Arbitration Hearing Panel to hear the request for arbitration along with Form #A-7 *Challenge to Qualifications by Parties to Arbitration Proceeding* (see **Part Seven, Section 27, (a) through (f)**). The respondent's response and affirmative claim shall be transmitted to the complainant not later than five (5) days after receipt. Within five (5) days from the date the challenge forms are due (forms due within ten (10) days from the date the list of names was transmitted), the Professional Standards Administrator shall appoint from the names not successfully challenged by either party a panel in accordance with **Part Eight, Section 39.1** who will hear the dispute. The Professional Standards Administrator shall also select one of the panel members to serve as Chairperson of the Hearing Panel. Any Hearing Panel must have an odd number of members. At least two (2) shall be REALTORS®, and in the event a REALTOR-ASSOCIATE® or REALTOR® other than a principal has invoked the arbitration through the REALTOR® principal, or is affiliated with the respondent, and has a vested interest in the outcome of the proceeding, one (1) of the arbitrators must be a REALTOR-ASSOCIATE® or REALTOR® other than a principal. It shall be a membership duty of anyone so appointed to serve as an arbitrator unless disqualified. The Professional Standards Administrator shall select the Chairperson of the Hearing Panel, who shall possess the powers of the neutral arbitrator within the meaning of the Minnesota arbitration statutes. A party will be deemed to have waived all objections to any person whose name they do not challenge. If challenge to members of the Professional Standards Committee results in an insufficient number of members to constitute a panel, the President may appoint other qualified Association Members to serve as panel members. No arbitration may proceed without three (3) or more arbitrators not disqualified pursuant to **Part Seven, Section 27, Qualification for Tribunal**. (Revised 05/15)

When Grievance Review Panels refer ethics complaint and arbitration requests for hearing, hearing panel chairs can determine if questions about:

- (1) whether ethics complaints and arbitration requests are timely filed,
- (2) whether arbitrable issues exist,
- (3) whether arbitration requests are too legally complex to be fairly arbitrated, and
- (4) other administrative issues

will be addressed through a pre-hearing meeting of the hearing panel or at the outset of the hearing prior to testimony relating to the ethics complaint or arbitration request commencing. If these matters rise during a hearing, the hearing panel will address them at that time.

When the Grievance Review Panel has moved the complaint forward to a hearing and respondent wishes to challenge the Grievance Review Panel's decision on any of the pre-hearing matters (1)-(4) listed above, the respondent may request a pre-hearing meeting by using the Form A22 entitled *Request for Pre-Hearing Meeting*. Alternatively, a Pre-Hearing Meeting may be scheduled in the absence of such a request from the respondent, to review the same issues, should the Chair of the Hearing Panel deem it appropriate.

If the Association receives a *Request for Pre-Hearing Meeting*, the Professional Standards Administrator shall forward the Request to the Hearing Panel Chair for review to determine if the Request will be addressed through a Pre-Hearing Meeting of the Hearing Panel at least seven (7) and no more than ten (10) days prior to the Hearing, or through a Pre-Hearing Meeting immediately prior to the Hearing. The determination of timing of the Pre-Hearing Meeting shall be within the Chair's discretion, and failure to hold a Pre-Hearing Meeting between 7 and 10 days prior to the Hearing shall not constitute a procedural deficiency. The Professional Standards Administrator shall appoint a Hearing Panel in accordance with **Part Two, Section 16.1** and schedule both a Pre-Hearing Meeting, in accordance with the Chair's determination, and a Hearing Date. (Revised 05/14)

<sup>10</sup> This fee should not be so high as to deter parties from arbitration. This amount shall not exceed \$500. Where a party(ies) from the same firm is involved in more than one related request for arbitration, and the claims will be consolidated and resolved in a single hearing, no more than one deposit or filing fee may be required of that party(ies). When a REALTOR® requests arbitration to determine which of multiple respondents is entitled to disputed fund, or where a party makes no claim to the disputed funds, that party may not be assessed an arbitration filing fee. (Revised 11/93)

The materials and information that were available to the Grievance Review Panel when they made their decision along with the respondent's reply, and any supporting documents, if any, will be presented to the Hearing Panel prior to the Pre-Hearing Meeting. Neither the complaint nor the reply can be revised, modified or supplemented.

The complainant and respondent may, however, submit written statements regarding the contested pre-hearing matters. Any such written statement should be submitted to the Association at least three (3) days prior to the scheduled Pre-Hearing Meeting. If such written statements are submitted after this deadline, they will be forwarded to the Hearing Panel. However, the Hearing Panel may not have the opportunity to give them the same level of review before the Pre-Hearing Meeting as had they been submitted in the timeline requested.

If these matters arise during a hearing, the Hearing Panel will address them within the course of the hearing and in conjunction with all other issues related to the complaint.

No complainant(s), respondent(s), their counsel, witnesses or brokers, may appear or testify at the Pre-Hearing Meeting.

The complainant and respondent have the right to challenge the qualifications of any individual who may be appointed to serve on an ethics proceeding or arbitration matter. The parties will be provided with a list of the individuals who will be appointed to sit on the Panel and may challenge the qualifications of any panel member by completing Form #E-7 *Challenge to Qualifications by Parties* and returning it to the Association. Challenges submitted will be determined by the Chairperson of the Hearing Panel, or if the challenge to the Chairperson is made, by the Professional Standards Committee Chairperson.

A party shall be deemed to have waived any grounds of disqualification of which the party has knowledge unless the party files the request within ten (10) days from the date a list of names of the appointed panel members has been transmitted to the party. However, any member of the tribunal may be disqualified at any time if a majority of the members of the tribunal are made aware of any grounds of automatic disqualification of a member or find any new or previously undiscovered facts which in their judgment may prevent, or appear to prevent, a member of a panel from rendering an impartial decision.

The Pre-Hearing Meeting will not be recorded, and no party will be permitted to have a court reporter or recording device present at the Pre-Hearing Meeting.

At the Pre-Hearing Meeting, the Hearing Panel will determine whether or not the complaint shall proceed to a hearing, depending upon their determination of any of the matters raised. The decision of the Hearing Panel will be determined by a simple majority vote of the panel members.

If the Hearing Panel's determination at a Pre-Hearing Meeting does not preclude proceeding with the Hearing as scheduled, the matter will proceed to the scheduled hearing.

In such case, the Hearing shall be held on the scheduled date and both the complainant and respondent have the right to raise all substantive and procedural issues at the hearing (including those issues reviewed within a Pre-Hearing Meeting).

If the conclusion of the Hearing Panel in its Pre-Hearing Meeting is that the matter should *not* proceed to a hearing, the Hearing Panel shall dismiss the complaint and the complainant shall have the right to appeal the decision of the Hearing Panel to an Appeal Tribunal of the Association on the same bases as dismissals by the Grievance Review Panel (See **Part Nine, Section 42 (c)**).

The Association shall transmit the written decision of the Hearing Panel on these matters to the parties no later than three (3) days after the Hearing Panel makes their decision.

The allegations, findings, and decisions rendered in the Pre-Hearing Meeting are confidential and will not be reported or published by the Association, any member of the Panel, or any party under any circumstances except those established in the *Code of Ethics and Arbitration Manual* as from time to time amended.

If the Grievance Review Panel dismisses the request as being unworthy of further consideration, the decision may be appealed to the Appeal Tribunal within twenty (20) days from transmittal of the Grievance Review Panel's decision using Form #A-20, *Appeal of Grievance Review Panel (or Hearing Panel) Dismissal or Classification of Arbitration Request*; however, no additional information may be added or attached to the form.

Upon receipt of form #A-20, the Professional Standards Administrator shall appoint an Appeal Tribunal in accordance with **Part Eight, Section 39.1** to hear the appeal. No complainant(s), respondent(s), their counsel, witnesses or brokers, may appear or

testify at the Appeal Hearing. The complainant and respondent may not record the proceeding and may not have a court reporter, stenographer, etc. present at the Appeal Hearing. The Association shall not record the Appeal Hearing.

The complainant and the respondent do not have the right to challenge appointed panel members however, the Professional Standards Administrator may only appoint panel members that do not have a conflict of interest as defined elsewhere in this manual.

Only those materials which were presented to the Grievance Review Panel when the Grievance Review Panel made its decision will be presented to the Appeal Tribunal and considered with the appeal, together with any party's rationale challenging the Grievance Review Panel's dismissal. The appeal shall be heard as soon as practical, but no later than thirty (30) days after the date of receipt of the appeal. The Appeal Tribunals' decision shall be transmitted to the parties within five (5) days of the date of the decision. In the event a request for arbitration is dismissed, any deposit submitted by the complainant shall be returned to the complainant.

If the Appeal Tribunal determines that the arbitration request was improperly dismissed by the Grievance Review Panel, they shall refer it to the Professional Standards Committee for hearing. If the Appeal Tribunal determines that the Grievance Review Panel properly dismissed the request, then the request is dismissed and will not be forwarded for arbitration by a Hearing Panel. If the Appeal Tribunal determines that the request was improperly classified, they shall reclassify it appropriately. The appeal of the Grievance Review Panel's decision shall be determined based on the correctness of the Grievance Review Panel's decision. The decision of the Appeal Tribunal is final and binding and is not subject to further review by the Association. In any event, the Appeal Tribunals' decision shall be transmitted to the parties within five (5) days of the date of the decision. *(Revised 10/24)*

- (d) Associations are required to offer mediation as a preliminary, voluntary alternative to arbitration. Where mediation is offered prior to review of an arbitration request by the Grievance Review Panel and one or more of the parties declines or the mediation attempt is unsuccessful, the parties will not again be offered mediation. If a party requests a second opportunity to mediate, a second mediation can be scheduled at the discretion of the Association. (See **Appendix VI to Part Ten, Mediation as a Service of Member Associations.**) *(Revised 11/03)*
- (e) Dismissal of an arbitration request by an Association of REALTORS® does not prohibit REALTORS® from exercising other remedies, including litigation, that may be available to them. *(Adopted 5/99)*

## Section 48. Submission to Arbitration

- (a) Submission of a dispute to arbitration by the Association shall consist of signing and delivering to the Professional Standards Administrator either a request or response form provided by the Association (Form #A-1 or #A-2, *Request and Agreement to Arbitrate*, or Form #A-4, *Response and Agreement to Arbitrate*) or any similar writing permitted by law and making the appropriate deposit of \$400.00 (not to exceed \$500).<sup>11</sup> Agreements to arbitrate are irrevocable except as otherwise provided under state law. *(Revised 05/01)*

No arbitration hearing may be held in the absence of the complainant, and no award may be rendered without a hearing on the merits. *(Revised 11/91)*

In the event the respondent fails or refuses to sign the *Response and Agreement Form (Part Thirteen, Form #A-4)*, fails or refuses to make the required deposit, or fails or refuses to take part in the arbitration hearing, the arbitration hearing may be scheduled and conducted in the absence of the respondent.

NOTE: Arbitration in the absence of a respondent may take place only where permitted by state statute or case law. In such instances, the Association should ensure that all preliminary procedural steps, including the provision of adequate prior notice, are complied with. In the event a respondent fails to appear, it is strongly recommended that an attempt be made to determine whether the failure to appear is because of the respondent's refusal to arbitrate or due to unforeseen circumstances. *(Revised 11/91)*

<sup>11</sup> This fee should not be so high as to deter parties from arbitration. This amount shall not exceed \$500. Where a party(ies) from the same firm is involved in more than one related request for arbitration, and the claims will be consolidated and resolved in a single hearing, no more than one deposit or filing fee may be required of that party(ies). When a REALTOR® requests arbitration to determine which of multiple respondents is entitled to disputed fund, or where a party makes no claim to the disputed funds, that party may not be assessed an arbitration filing fee. *(Revised 11/93)*

Where arbitration takes place in a respondent's absence, the respondent is still entitled to be represented by legal counsel. Counsel may make opening and closing statements; call witnesses; cross-examine witnesses called by other parties; and introduce affidavits, documents, and other admissible relevant evidence. Counsel may not testify to events and facts of which counsel has no firsthand knowledge. Hearing Panels should be instructed by the Chair that counsel's arguments do not constitute testimony. *(Adopted 11/98)*

Associations are encouraged, but not required, to refund part or all of the parties' deposits in cases where disputes are resolved through mediation. Associations are also encouraged to adopt and follow a consistent policy regarding the disposition of arbitration deposits. *(Adopted 5/10)*

See MNR Professional Standards Fee Schedule for refund policies.

## **Section 49. Initial Action by Executive Committee**

If the complainant alleges that a member has improperly refused to submit a dispute to arbitration the complaint shall not be referred to a Grievance Review Panel or a Hearing Panel but shall be brought before the Executive Committee at the next regular meeting or at a special meeting called by the President for that purpose. The procedures for notices, time of notice, and hearing prescribed for matters before a Hearing Panel shall apply. The sole question of fact for the Executive Committee to decide will be whether the respondent has failed to submit an arbitrable matter to arbitration in violation of Article 17.

There can be no charge that there has been a refusal to arbitrate until a Grievance Review Panel determines the matter is arbitrable and of a mandatory nature and the respondent fails to submit to arbitration before the Association.

Upon determination that the member has refused to arbitrate a properly arbitrable matter, the Executive Committee may direct the implementation of appropriate sanction and should, if it has reason to believe that the imposition of sanction will become the basis of litigation and a claim for damages consequent to such sanction, delay the effective date of implementing the sanction to a date following receipt by the Executive Committee of a judicial decision in a petition for declaratory relief filed by the Association to confirm the propriety of its action.

On the other hand, if the complaint against the member is that, having properly submitted a dispute to arbitration, the member has refused to abide by the award or the resulting agreement, such refusal should not be referred to a Grievance Review Panel as a violation of the Code of Ethics unless it reflects an established pattern or practice of noncompliance with the commitment to arbitrate. The Chairperson of the Professional Standards Committee shall be the determiner of whether there is an established pattern or practice of non-compliance requiring referral of the matter to a Grievance Review Panel. A refusal to abide by an award in arbitration or any resulting agreement in mediation should be enforced in the manner set forth in **Part Ten, Section 56, Enforcement\***.<sup>12</sup>

## **Section 50. Preliminary Judicial Determination Prior to Imposition of Discipline**

If the Leadership Team, in consultation with Association counsel, has reason to believe that the imposition of a proposed sanction will become the basis of litigation and a claim for damages, it may specify that the discipline shall become effective upon entry of the final judgment of a court of competent jurisdiction in a suit by the Association for declaratory relief declaring that the discipline proposed violates no rights of the member.<sup>13</sup> Although the Chief Executive Officer has the right to be present at meetings involving the Leadership Team, the Chief Executive Officer shall not vote on any matter before the Leadership Team.

## **Section 51. Arbitration Hearing**

- (a) Not later than five (5) days after receipt of the response and affirmative claim, the Professional Standards Administrator shall transmit to the complainant a copy of the response and respondent's affirmative claim, if any. *(Revised 11/15)*

<sup>12</sup> Refer to **Appendix III** to **Part Ten** for the rationale for use of judicial enforcement of arbitration awards when an Association Member refuses to pay an award in arbitration.

<sup>13</sup> \*\* Refer to Rationale of Declaratory Relief Procedure provided in **Appendix IV** to **Part Four**.

In the case of an arbitration request involving issues related to areas of the real estate business such as commercial, investment, industrial, etc., where there is an insufficient number of qualified practitioners on the Association's Professional Standards Committee to provide a representative peer panel, the Professional Standards Administrator shall appoint other Association Members qualified in that field to serve as panel members. If the Professional Standards Administrator is unable to identify a sufficient number of qualified members to serve on a panel, the Professional Standards Administrator shall report that fact to the Executive Committee at their next regularly scheduled meeting. If the Association is unable to provide a representative peer panel, the parties shall be released from their obligation to arbitrate.

- (b) The Professional Standards Administrator shall inform the parties of the date, time, and place of the hearing established by the arbitrators (Form #A-9, *Official Notice of Hearing, Part Thirteen*).<sup>14</sup> The arbitration request and response, if any, shall be provided to the Hearing Panel members and the other parties prior to the hearing. Such time period shall be no later than seven (7) days prior to the hearing date and shall be adhered to for all hearings. Associations conducting arbitration must also provide all parties and panel members with the Arbitration Guidelines prior to commencement of any arbitration hearing (including the Arbitration Work Sheet). The parties shall be given at least twenty-one (21) days' prior notice of the hearing, but appearance at a hearing without objection by a party will constitute a waiver of any defective notice of the hearing. The arbitrators may recess the hearing from time to time as necessary. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the request for continuance would deny the requestor a fair hearing. (*Revised 11/14*)
- (c) Upon notice by the Professional Standards Administrator, the parties to the dispute shall with diligence present to the arbitrators in writing such statements and proof which they deem necessary to support their claims. Proof may be submitted in the form of affidavits or otherwise. The Hearing Panel Chair may require that statements be verified by affidavits or that accuracy or authenticity of any documents or other papers submitted be verified by affidavit. At the hearing, the arbitrators shall receive any further written statements, documents, or other papers, shall hear oral testimony, and determine what personal appearances shall be made by the parties, and shall regulate the holding of hearings.<sup>15</sup> Any additional documentation submitted to the association but not provided to the other party(ies) will be provided to the other party(ies) by the association at the time of submission. Evidence submitted at the time of the hearing will be evaluated for admissibility by the hearing panel chair. If the hearing is held in person, the party(ies) shall bring enough copies for each arbitrator, the Professional Standards Administrator, and each opposing party, however, failure of a party to bring the necessary copies will not affect the party's ability to introduce such evidence. No party shall be charged for the Association's costs to provide necessary copies. (*Revised 10/24*)

Witness statements or affidavits may be entered into evidence at the Hearing Panel Chair's discretion if a timely and properly served Notice of Witness was submitted with respect to that witness, and on the date of the hearing, the witness is unable to attend. In determining whether such a statement or affidavit should be allowed, the Hearing Panel Chair must determine that the subject matter of the statement or affidavit is relevant to the hearing, and the Chair must weigh the impact of the admission of such evidence on each party's due process rights.

The Hearing Panel Chair may receive and consider any evidence they deem material and proper, including evidence of other experts. Each party is responsible for the expenses of expert witnesses they call. Parties to arbitration shall be entitled to have legal counsel present at any hearing. Each party is responsible for the expenses of their respective counsel. (*Revised 11/23*)

## Section 52. Settlement

The parties to an arbitration may settle the issue between them by agreement at any time. In such event, upon notification to the Professional Standards Administrator, the arbitration proceedings shall be terminated and the termination shall be recorded in the file.

A portion of each party's deposit may be retained by the Association to cover the costs incurred by the Association up to the point of settlement of the dispute. Refer to the *Fee Schedule* in this Manual for further details.

<sup>14</sup> Form #A-10, *Outline of Procedure for Arbitration Hearing, Part Thirteen*, should accompany the notice of the hearing or be otherwise provided to the parties prior to the hearing.

<sup>15</sup> Such hearings should be conducted according to **Part Twelve**, Conduct of an Arbitration Hearing

## Section 53. The Award

- (a) The award of the arbitrators (Form #A-12, *Award of Arbitrators, Part Thirteen*) shall be made the day of the hearing, or no later than forty-eight (48) hours following the conclusion of the hearing. The award shall be in writing and signed by the arbitrators or a majority of them, shall state only the amount of the award, and, when so signed and transmitted to each of the parties, shall be valid and binding and shall not be subject to review or appeal. The award shall be transmitted to the parties within five (5) days after the award is reduced to writing. Any award rendered may not be greater than the amount in dispute, may not include punitive damages, may not include attorney's fees unless expressly provided for in the agreement giving rise to the dispute, and may not include interest unless called for in the arbitration agreement and permitted by state law. Notwithstanding the foregoing, a party to an arbitration proceeding may appeal to the Procedural Review Tribunal only with respect to such alleged irregularities occurring in the conduct of the proceeding as may have deprived the party of fundamental "due process." (*Revised 05/15*)
- (b) If an award has been rendered, the non-prevailing party must, within ten (10) days following transmittal of the award, either (1) pay the award to the party(ies) named in the award and notify the Association in writing of such payment, or (2) deposit the funds with the Association Professional Standards Administrator to be held in an escrow or trust account maintained for this purpose. Failure to satisfy the award and notify the Association of such payment or to deposit the funds with the Association within this time period may be considered a violation of a membership duty and may subject the member to disciplinary action at the discretion of the Leadership Team. The Leadership Team may, at its discretion impose discipline, including but not limited to, termination of Association membership and/or MLS access/use, or may give the party an additional period to make the required deposit. The Leadership Team may also stipulate appropriate discipline to be automatically imposed if the party fails to make the deposit within the time established by the Leadership Team. The decision of the Leadership Team shall be final and binding and is not subject to further review by the Association. If the non-prevailing party fails to pay or deposit such funds within the ten (10)-day deadline, the Professional Standards Administrator shall refer the matter to the Leadership Team after the twenty (20) day time period to request a procedural review has elapsed and no request is filed or after the procedural review hearing if a request is filed. Although the Chief Executive Officer has the right to be present at meetings involving the Leadership Team, the Chief Executive Officer shall not vote on any matter before the Leadership Team. (*Revised 1/22*)
- (c) After the award has been transmitted to each of the parties, they have twenty (20) days to request procedural review of the arbitration hearing procedure by the Procedural Review Tribunal. The non-prevailing party shall also have the same twenty (20) days following transmittal of the award to notify the Professional Standards Administrator that a legal challenge to the validity of the award has been initiated. (*Revised 05/15*)

If no such procedural review is requested, the award becomes final and binding following the twenty (20) day period. However, if procedural review is requested, the award is not considered final and binding until after the Procedural Review Tribunal has concluded that the hearing was conducted in a manner consistent with the Association's procedures and the parties had been afforded due process. (*Revised 05/15*)

- (d) If a request for procedural review of the arbitration procedure is received within twenty (20) days, the funds deposited with the Association shall be retained in the Association's escrow or trust account until the review is completed. If the Procedural Review Tribunal determines that a substantial procedural deficiency occurred or a member was otherwise deprived of due process and refers the matter to the Professional Standards Committee for a hearing on the merits by a different hearing panel, the funds deposited shall be returned to the non-prevailing party. If the arbitration award is confirmed by the Procedural Review Tribunal following the conduct of the limited procedural review, the non-prevailing party shall have an additional fifteen (15) days from the transmittal of the Procedural Review Tribunals' decision to institute an appropriate legal challenge to the validity of the arbitration award. In such case, the non-prevailing party shall also cause legal counsel to advise the Association in writing that a suit challenging the validity of the arbitration award has been filed during this additional fifteen (15) day period. After fifteen (15) days from the transmittal of the Procedural Review Tribunals' decision, if written notice of a suit challenging the validity of the arbitration award has not been received by the Association, the funds shall be released from the escrow or trust account and paid to the prevailing party. If written notification is received during the fifteen (15) day period, the funds will be held in the escrow or trust account pending the determination of the matter by a court of competent jurisdiction. (*Revised 5/15*)

If the non-prevailing party does not request the Association to conduct a procedural review of the arbitration hearing process during the twenty (20) day period following transmittal of the award, then written notification that a legal challenge has been instituted must be received within the twenty (20) days following transmittal of the award. Failure to provide written notification that a suit challenging the validity of the award has been filed within twenty (20) days following transmittal of the award will result in the award being paid from the Association's escrow or trust account to the prevailing party. (*Revised 05/15*)

- (e) Any failure to either (1) pay the award to the party(ies) named in the award and notify the Association in writing of such payment or (2) make the necessary deposits with the Association shall be referred to the Leadership Team for action at a special meeting

called for that purpose to be held after the twenty (20) day time period to request a procedural review has elapsed and no request is filed or after the procedural review hearing if a request is filed. The party failing to make the deposit on a timely basis shall be advised of the date, time, and place of the meeting and shall have an opportunity to explain why the required deposits were not made on a timely basis. The Leadership Team may, at its discretion, impose discipline or may give the party an additional period to make the required deposits. The Leadership Team may also stipulate appropriate discipline to be automatically imposed if the party fails to make the deposit within the time established by the Leadership Team. If a procedural review tribunal determines there was an error that necessitates a new arbitration hearing, the Leadership Team shall not require escrow of the Hearing Panel Award until after the conclusion of the new arbitration hearing. Although the Chief Executive Officer has the right to be present at meetings involving the Leadership Team, the Chief Executive Officer shall not vote on any matter before the Leadership Team. *(Revised 05/18)*

- (f) Any interest accrued on the escrowed funds shall become the property of the party to whom the funds are ultimately released by the Association. *(Revised 5/15)*

NOTE: Escrowing of arbitration awards to secure timely payment as addressed in **Section 53 (b-c)** is not required in states where escrowing awards by associations is prohibitively expensive, and where the state association recommends alternative aggressive and cost-effective enforcement procedures that maximize enforcement/payment under state law, and local associations adopt those procedures, provided that nothing in those procedures is prohibited by National Association policy. *(Adopted 05/15)*

## Section 54. Costs of Arbitration

The deposits of the parties shall be used by the Professional Standards Administrator to cover the costs of arbitration as it may be required. Any portion not used specifically to cover the costs of the arbitration shall go into the general operating funds of the Association of REALTORS®.<sup>16</sup> When a REALTOR® requests arbitration to determine which of multiple respondents is entitled to disputed funds, or where a party makes no claim to the disputed funds, that party may not be assessed an arbitration filing fee. *(Revised 11/95)*

NOTE: At the option of each Member Association procedures providing for alternative disposition of arbitration deposits may be adopted. These can include returning the deposit to any prevailing party or returning a portion of the deposit to each party should the award rendered be an amount other than that requested by any of the parties. In any instance where return of part or all of any party's deposit is involved, disposition of such deposits shall be determined by the arbitrators or as prescribed in the MNR Professional Standards Fee Schedule.

Where parties successfully mediate an otherwise arbitrable dispute, \$200.00 is returned to both parties. \$400.00 is retained by the MNR.

If parties settle the dispute after the hearing begins but before the executive session begins, a portion of each party's deposit may be retained by the Association to cover the costs incurred by the Association up to the point of settlement of the dispute. Refer to the *Fee Schedule* in this Manual for further details. *(Adopted 11/16)*

## Section 55. Request for Procedural Review by Procedural Review Tribunal

- (a) A written request for procedural review of the arbitration hearing procedures must be filed with the Professional Standards Administrator within twenty (20) days after the award has been transmitted to the parties and be accompanied by a deposit in the sum of \$400.00 (not to exceed \$500). The request for procedural review should cite the alleged procedural deficiencies or other irregularities the party believes constitute a deprivation of due process (e.g., fraud, coercion, bias, prejudice, evident partiality, etc.) on the part of Hearing Panel members or others acting on behalf of the Association. The request for procedural review shall be reviewed within ten (10) days of receipt of the request by the Professional Standards Administrator only for the purpose of determining whether the request states any legitimate basis for consideration by the Procedural Review Tribunal. If determined to be insufficient, the Professional Standards Administrator shall explain to the requester why the request for procedural review is insufficient and request additional detail to be received by the Association within ten (10) days of notice. This initial administrative review is not a decision on the merits of the request for procedural review but is intended only to ensure compliance

<sup>16</sup> In cases of arbitration not mandated by the Association, and in which the Association provides arbitration as a service to the parties voluntarily seeking arbitration, the Association may recover its legal fees as it deems appropriate.

with the requirement that the request cite the alleged procedural deficiency or irregularity on which the request is based and which will be presented to the Procedural Review Tribunal for its consideration. All requests for procedural review received by the Association must be considered by the Procedural Review Tribunal, and only the bases raised in the written request for procedural review may be raised during the review before the Tribunal. *(Amended 11/24)*

- (b) When a request for procedural review (as originally filed if in proper form, or as originally filed if no amendment is submitted, or as amended even if still deemed to be lacking) is received, the Professional Standards Administrator shall within one (1) day of receipt of the request or within one (1) day of receipt of additional detail, if provided or the date that the period to provide additional detail has elapsed send a copy to the other party, notify all parties of the time and place of the review hearing by the Procedural Review Tribunal at least ten (10) days in advance (including challenge Forms #A-7 and #A-8, **Part Thirteen** of this Manual), and bring the matter before the Procedural Review Tribunal as scheduled, but not later than **forty-five (45)** days after the date of receipt of the procedural review. The Professional Standards Administrator shall provide to the Procedural Review Tribunal, in advance, a copy of the request for procedural review or the amended request for procedural review, if any. The Procedural Review Tribunal shall be advised that the information provided is confidential and not to be discussed with others at any time. *(Revised 11/24)*
- (c) The decision of the Procedural Review Tribunal shall be final and binding and shall not be subject to further review by the Association.
- (d) At the procedural review hearing, the party filing the request will have an opportunity to explain the bases on which the party is requesting that the award of the arbitrators be overturned. The Chairperson of the arbitration panel (or the Chairperson's designee) will have an opportunity to respond to the allegations. The other party shall have the opportunity to present to the Procedural Review Tribunal reasons why the arbitration Hearing Panel's award should not be overturned.
- (e) Every party may be represented by legal counsel. The role of counsel includes presenting reasons why the Hearing Panel's award should be overturned. In the event parties do not give ten (10) days' notice of their intention to have counsel to the Association and all other parties, including counsel's name, address, and phone number, the panel shall take all steps, including continuance of the matter, if necessary, to guarantee the rights of all parties to representation by counsel. Where a procedural review hearing takes place in a respondent's absence, the respondent is still entitled to be represented by counsel. The tribunal may have legal counsel present to advise it on issues of procedure and law. The presence of Association legal counsel during executive session is a matter of local Association discretion. The role of Association legal counsel during a hearing is to provide procedural and legal guidance as requested by the Chair or by panel members. Association counsel is not a part of the Procedural Review Tribunal and may not take an active role in the conduct of the hearing. If Association legal counsel believes an action or procedure is inconsistent with the Association's established procedures or may result in potential liability to the Association, counsel's concerns should be communicated to the Chair of the Procedural Review Tribunal and the Chair shall make the final decision.

The complainant, respondent, their legal counsel and/or interested agent have the right to be present at the procedural review hearing, however no witnesses are allowed. The complainant and respondent have the right to challenge the qualifications of any individual who may be appointed to serve on the Procedural Review Tribunal. The parties will be provided with a list of the individuals who will be appointed to sit on the Tribunal and may challenge the qualifications of any panel member by completing Form #A-7 *Challenge to Qualifications by Parties* and returning it to the Association. Challenges submitted will be determined by the Chairperson of the Procedural Review Tribunal, or if the challenge to the Chairperson is made, by the Professional Standards Committee Chairperson.

A party shall be deemed to have waived any grounds of disqualification of which the party has knowledge unless the party files the request within ten (10) days from the date a list of names of the appointed tribunal members has been transmitted to the party. However, any member of the tribunal may be disqualified at any time if a majority of the members of the tribunal are made aware of any grounds of automatic disqualification of a member or find any new or previously undiscovered facts which in their judgment may prevent, or appear to prevent, a member of a panel from rendering an impartial decision.

The Procedural Review Hearing will not be recorded, and no party will be permitted to have a court reporter or recording device present at the Procedural Review Hearing.

- (f) The Procedural Review Tribunal shall not hear an appeal with respect to the merits of an arbitration award, and shall not, on appeal, review such evidence offered with respect to the merits of that award, except as such evidence may bear upon a claim of deprivation of due process. The Procedural Review Tribunal shall transmit their decision within five (5) days from the date of the procedural review hearing. This decision may be to adopt the award of the arbitrators or to overturn the award based on a substantial procedural error in the arbitration hearing process that resulted in a denial of due process or on a determination that the member was otherwise deprived of due process. *(Revised 05/15)*

- (g) If the Procedural Review Tribunal determines that a substantial procedural error occurred or a member was otherwise deprived of due process, the Procedural Review Tribunal shall invalidate the original arbitration award and direct that the matter be referred to the Professional Standards Committee for a hearing on the merits before a different Hearing Panel or alternatively, the Procedural Review Tribunal may release the parties from their obligation to arbitrate if the Procedural Review Tribunal concludes that the Association will be unable to impanel an impartial Hearing Panel.
- (h) After all procedural remedies provided for in the Association's procedures have been exhausted, a member is not precluded from asserting any legal rights to which he is they are entitled. Assertion of such legal rights in the courts does not violate Article 17 of the Code of Ethics. The exercise of such legal rights by a member would result in judicial review similar to that set forth in Part Ten, Section 56 of this Manual. Section 56 recommends that, in instances where a member fails to comply with an award, the award recipient seek judicial enforcement, which results in judicial review, and, absent any showing of deprivation of due process, the judicial review will generally affirm the award rendered through the arbitration process and will enable the recipient to have it enforced. (Revised 11/88)

## **Section 56. Enforcement**

The judgment of any competent court of record in Minnesota, state or federal, may be rendered upon the award. If a member fails to comply with an award or the terms of a mediated settlement agreement, the recipient to whom the award has been rendered by the arbitration panel or the beneficiary of a settlement agreement reached by the parties in mediation shall be advised by the Association to seek judicial enforcement and to request reimbursement of legal fees incurred in seeking enforcement. The Association will reimburse the recipient up to \$2,000 towards attorneys' fees for this action if the court does not grant reimbursement of legal costs to the plaintiff. To obtain such reimbursement, the recipient shall send a written request along with the invoice for the legal services incurred for the matter for Association review and approval. (Revised 11/14)

# Appendix I to Part Ten Arbitrable Issues

## **Article 17 of the Code of Ethics provides:**

*In the event of contractual disputes or specific noncontractual disputes as defined in Standard of Practice 17-4 between REALTORS® (principals) associated with different firms, arising out of their relationship as REALTORS®, the REALTORS® shall mediate the dispute if the Association requires its members to mediate. If the dispute is not resolved through mediation, or if mediation is not required, REALTORS® shall submit the dispute to arbitration in accordance with the policies of the Association rather than litigate the matter.*

*In the event clients of REALTORS® wish to mediate or arbitrate contractual disputes arising out of real estate transactions, REALTORS® shall mediate or arbitrate those disputes in accordance with the policies of the Association, provided the clients agree to be bound by any resulting agreement or award.*

*The obligation to participate in mediation and arbitration contemplated by this Article includes the obligation of REALTORS® (principals) to cause their firms to mediate and arbitrate and be bound by any resulting agreement or award. (Amended 1/12)*

## **Part Ten, Section 43, Arbitrable Issues,** in this Manual provides in part:

*As used in Article 17 of the Code of Ethics and in **Part Ten** of this Manual, the terms “dispute” and “arbitrable matter” refer to contractual issues and questions, and certain specific non-contractual issues and questions outlined in Standard of Practice 17-4, including entitlement to commissions and compensation in cooperative transactions, that arise out of the business relationships between REALTORS®, and between REALTORS® and their clients and customers, as specified in **Part Ten, Section 44, Duty and Privilege to Arbitrate**. (Revised 11/96)*

## **Part Nine, Section 42, Grievance Review Panel’s Review and Analysis of a Request for Arbitration,** provides, in part, in subsection (b):

*If the facts alleged in the request for arbitration were taken as true on their face, is the matter at issue related to a real estate transaction and is it properly arbitrable—i.e., is there some basis on which an award could be based?*

Despite the guidance provided in the above-referenced sections of the *Code of Ethics and Arbitration Manual*, questions continue to arise as to what constitutes an arbitrable issue, who are the appropriate parties to arbitration requests, etc. To provide guidance to Board Grievance Review Panels in their review of arbitration requests, the Professional Standards Committee of the National Association provides the following information.

Arbitration by Associations of REALTORS® is a process authorized by law in virtually every state. Arbitration is an economical, efficient, and expeditious alternative to civil litigation. Jurists, including the former U.S. Supreme Court Chief Justice Warren Burger, have endorsed arbitration as a method of reducing the litigation backlog in the civil courts.

To conduct arbitration hearings, Associations of REALTORS®, acting through their Grievance Review Panels and Professional Standards Committees, must have a clear understanding of what constitutes an arbitrable issue. An arbitrable issue includes a contractual question arising out of a transaction between parties to a contract in addition to certain specified non-contractual issues set forth in Standard of Practice 17-4. Many arbitrations conducted by Associations of REALTORS® involve entitlement to compensation offered by listing brokers through a multiple listing service or otherwise to cooperating brokers acting as subagents, as agents of purchasers, or in some other recognized agency or non-agency capacity. Frequently, at closing, the listing broker will be paid out of the proceeds of the sale and will direct that a disbursement be made to the cooperating broker who the listing broker believes was the procuring cause of the sale. Subsequently, another broker who may have been previously involved in the transaction will file an arbitration request claiming to have been the procuring cause of sale, and the question arises as to who is the proper respondent. (Revised 11/96)

In our example, assume that the listing broker is Broker A, the cooperating broker who was paid is Broker B, and the cooperating broker who was not paid, but who claims to be the procuring cause of sale, is Broker C. It is not unusual for arbitration requests filed by one cooperating broker to name another cooperating broker as the respondent. This is based on the assumption that the monies the listing broker paid to Broker B are unique and that the listing broker’s obligation to compensate any other broker is extinguished by the payment to Broker B, irrespective of whether Broker B was the procuring cause of sale or not. However, the mere fact that the listing

broker paid Broker B in error does not diminish or extinguish the listing broker's obligation to compensate Broker C if a Hearing Panel determines that Broker C was, in fact, the procuring cause of sale. *(Revised 11/96)*

Does this mean that a listing broker is always potentially obligated to pay multiple commissions if a property was shown by more than one cooperating broker? Not necessarily. When faced with Broker C's arbitration request, the listing broker could have initiated arbitration against Broker B, requesting that the Hearing Panel consider and resolve all of the competing claims arising from the transaction at the same time. Professional Standards Policy Statement 27, Consolidation of arbitration claims arising out of the same transaction, provides:

*When reviewing requests for arbitration, Grievance Review Panels should try to ensure that all appropriate parties are named as complainants or respondents. If it appears that there may be related claims involving other parties arising out of the same facts, the Grievance Review Panel may suggest to either the complainant or respondent (or both) that they may wish to request arbitration with additional respondents or third-party respondents so that all related claims may be resolved through a single arbitration hearing. Upon motion by either the complainant or the respondent, an arbitration request may be amended to include any additional appropriate parties, or separate arbitration requests may be filed naming additional parties, so that all related claims arising out of the same transaction can be resolved at the same time. (Revised 11/92)*

A listing broker may realize, prior to the closing of a transaction, that there may be more than one cooperating broker claiming compensation as the procuring cause of sale. In such instances, to avoid potential liability for multiple compensation claims, the listing broker, after the transaction has closed, can initiate an arbitration request naming all of the potential claimants (cooperating brokers) as respondents. In this way, all of the potential competing claims that might arise can be resolved through a single arbitration hearing. *(Revised 11/96)*

There is also an alternative avenue of arbitration available to REALTORS® involved in disputes arising out of cooperative real estate transactions. Standard of Practice 17-4 recognizes that in some situations where a cooperating broker claims entitlement to compensation arising out of a cooperative transaction, a listing broker will already have compensated another cooperating broker or may have reduced the commission payable under a listing contract because a cooperating broker has expressly sought and/or chosen to accept compensation from another source, e.g., the seller, the purchaser, etc. Under the circumstances specified in Standard of Practice 17-4, the cooperating brokers may arbitrate between themselves without naming the listing broker as a party. If this is done, all claims between the parties, and claims they might otherwise have against the listing broker, are extinguished by the award of the arbitrators. Similarly, Standard of Practice 17-4 also provides for arbitration between brokers in cases where two (or more) brokers each have open listings and each claims to have procured the purchaser. Since the determiner of entitlement to a commission under an open listing is generally production of the purchaser, arbitration between the two (or more) "open" listing brokers resolves their claims against the seller. This open listing scenario is to be distinguished from the situation in which two (or more) listing brokers each have exclusive listings and each claim entitlement to a commission pursuant to their respective listing agreements. Because exclusive listing agreements generally provide for payment of a commission if the listed property is sold - whether through the listing broker's efforts or not - each listing broker could have a legitimate, enforceable right to a commission from their client. Thus, Standard of Practice 17-4 does not obligate listing brokers to arbitrate between themselves when both (or all) have independent claims to commissions based on their respective exclusive listing agreements. *(Amended 5/02)*

In reviewing requests for arbitration, it is important that Grievance Review Panels not take actions that could be construed as rendering decisions on the merits. For example, a Grievance Review Panel should not dismiss an otherwise arbitrable claim simply because Grievance Review Panel members believe the respondent would undoubtedly prevail in a hearing. On the other hand, an arbitration request that cites no factual basis on which a Hearing Panel could conceivably base an award should not be referred for hearing. A party requesting arbitration must clearly articulate, in the request for arbitration, facts that demonstrate a contractual relationship between the complainant and the respondent, or a relationship described in Standard of Practice 17-4, and an issue that could be the basis on which an arbitration award could be founded. *(Revised 11/96)*

Another question that frequently arises with respect to arbitration requests is whether the fact that the listing broker was paid out of the proceeds of the closing is determinative of whether a dispute will be considered by a Hearing Panel. Initially, it should be noted that the Arbitration Guidelines (**Appendix II to Part Ten**) provide that an arbitrable issue involving procuring cause requires that there have been a "successful transaction." A "successful transaction" is defined as "a sale that closes or a lease that is executed." Some argue that if the listing broker is not paid, or if the listing broker waives entitlement to the commission established in the listing contract, then there is nothing to pay to the cooperating broker and, thus, no issue that can be arbitrated. This is an improper analysis of the issue. While the listing broker needs the consent of the seller/client to appoint subagents and to compensate subagents, buyer agents, or brokers acting in some other recognized agency or non-agency capacity, the offer to compensate such individuals, whether made through the multiple listing service or otherwise, results in a separate contractual relationship accepted through performance by the cooperating broker. Thus, if the cooperating broker performs on the terms and conditions established by the listing broker, the fact that

the listing broker finds it difficult to be paid or, alternatively, waives the right to be paid, has no bearing on whether the matter can be arbitrated but may have a direct impact on the outcome. Many cooperative relationships are established through MLS and the definition of the MLS provides, in part: *(Revised 11/97)*

*While offers of compensation made by listing brokers to cooperating brokers through MLS are unconditional,<sup>17</sup> a listing broker's obligation to compensate a cooperating broker who was the procuring cause of sale (or lease) may be excused if it is determined through arbitration that, through no fault of the listing broker, and in the exercise of good faith and reasonable care, it was impossible or financially unfeasible for the listing broker to collect a commission pursuant to the listing agreement. In such instances, entitlement to cooperative compensation offered through MLS would be a question to be determined by an arbitration Hearing Panel based on all relevant facts and circumstances including, but not limited to, why it was impossible or financially unfeasible for the listing broker to collect some or all of the commission established in the listing agreement; at what point in the transaction did the listing broker know (or should have known) that some or all of the commission established in the listing agreement might not be paid; and how promptly had the listing broker communicated to cooperating brokers that the commission established in the listing agreement might not be paid. (Amended 11/98)*

Still another common question is whether a REALTOR® (often a cooperating broker with an arguably - arbitrable claim) can thwart the process by remaining silent for one hundred eighty (180) days and then bringing a lawsuit against another REALTOR® (often the listing broker). As noted previously, arbitration requests must be filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known by the complainant in the exercise of reasonable diligence, whichever is later. REALTORS® cannot reasonably be expected to request arbitration in circumstances where they have no reason to know that a dispute with another broker or firm even exists. Under these circumstances, a listing broker with no prior knowledge of a dispute would have one hundred eighty (180) days from receipt of notice of a lawsuit to invoke arbitration with the other broker. *(Adopted 11/13, Revised 10/24)*

The foregoing are by no means all-inclusive of the consideration that must be taken into account by a Grievance Review Panel in determining whether a matter will be arbitrated. However, they are some of the common questions raised with respect to arbitrable issues, and this discussion is provided to assist Grievance Review Panels in their important role in evaluating arbitration requests. *(Adopted 4/91)*

#### **Non-Arbitrable Issues that Can be Mediated as a Matter of Local Determination**

As stated above, an arbitrable issue includes a contractual question arising out of a transaction between parties to a contract, in addition to certain specified non-contractual issues set forth in Standard of Practice 17-4. Arbitration proceedings should be limited to these issues, and Associations of REALTORS® should not arbitrate other types of claims. Examples of non-arbitrable issues include:

- tortious interference with business relationships
- tortious interference with a contractual relationship
- economic duress
- intentional infliction of emotional distress
- other tort claims, such as libel/slander
- employment claims, other than commission disputes
- fraud/misrepresentation claims
- property claims, both real and personal
- disputes between two listing brokers where no contract exists between the parties and the dispute is not as specified in Standard of Practice 17-4(4). *(Revised 11/16)*

In addition, **Section 53** of the *Code of Ethics and Arbitration Manual* limits the award in an arbitration proceeding to the amount in dispute and so an arbitration award will not include punitive damages, attorney's fees, or interest, unless the agreement between the parties specifically provides for such damages and the award is permitted by state law.

The Association will not provide mediation services for disputes of the type listed above.

<sup>17</sup> Compensation is unconditional except where local MLS rules permit listing brokers to reserve the right to reduce compensation offers to cooperating brokers in the event that the commission established in a listing contract is reduced by court action or by actions of a lender. Refer to **Part One**, G. Commission/Cooperative Compensation Offers, **Section 1**, Information Specifying the Compensation on Each Listing Filed with a Multiple Listing Service of an Association of REALTORS®, *Handbook on Multiple Listing Policy*. *(Adopted 11/98)*

# Appendix II to Part Ten

## Arbitration Guidelines

### (Suggested Factors for Consideration by a Hearing Panel in Arbitration)

A key element in the practice of real estate is the contract. Experienced practitioners quickly become conversant with the elements of contract formation. Inquiry, invitation, offer, counteroffer, contingency, waiver, acceptance, rejection, execution, breach, rescission, reformation, and other words of art become integral parts of the broker's vocabulary.

Given the significant degree to which Article 3's mandate for cooperation - coupled with everyday practicality, feasibility, and expediency - make cooperative transactions facts of life, it quickly becomes apparent that in virtually every real estate transaction there are actually several contracts which come into play. Setting aside ancillary but still important contracts for things such as mortgages, appraisals, inspections, title insurance, etc., in a typical residential transaction (and the same will be true in many commercial transactions as well) there are at least three (and often four) contracts involved, and each, while established independently of the others, soon appears to be inextricably intertwined with the others.

First, there is the listing contract between the seller and the listing broker. This contract creates the relationship between these parties, establishes the duties of each and the terms under which the listing broker will be deemed to have earned a commission, and frequently will authorize the listing broker to cooperate with or compensate (or both) cooperating brokers who may be subagents, buyer agents, or acting in some other capacity.

Second, there is the contract between the listing broker and cooperating brokers. While this may be created through an offer published through a multiple listing service or through some other method of formalized cooperative effort, it need not be. Unlike the bilateral listing contract (where generally the seller agrees to pay a commission in return for the listing broker's production of a ready, willing, and able purchaser), the contract between the listing broker and the cooperating broker is unilateral in nature. This simply means that the listing broker determines the terms and conditions of the offer to potential cooperating brokers (and this offer may vary as to different potential cooperating brokers or as to cooperating brokers in different categories). This type of contract differs from a bilateral contract also in that there is no contract formed between the listing broker and the potential cooperating brokers upon receipt of the listing broker's offer. The contract is formed only when accepted by the cooperating broker, and acceptance occurs only through performance as the procuring cause of the successful transaction. (*Revised 11/97*)

Third, there is the purchase contract - sometimes referred to as the purchase and sale agreement. This bilateral contract between the seller and the buyer establishes their respective promises and obligations to each other, which may also impact on third parties. The fact that someone other than the seller or buyer is referenced in the purchase contract does not make them a party to that contract, though it may create rights or entitlements which may be enforceable against a party (the buyer or seller).

Fourth, there may be a buyer-broker agreement in effect between the purchaser and a broker. Similar in many ways to the listing contract, this bilateral contract establishes the duties of the purchaser and the broker as well as the terms and conditions of the broker's compensation.

These contracts are similar in that they are created through offer and acceptance. They vary in that acceptance of a bilateral contract is through a reciprocal promise (e.g., the purchaser's promise to pay the agreed price in return for the seller's promise to convey good title), while acceptance of a unilateral contract is through performance (e.g., in producing or procuring a ready, willing, and able purchaser).

Each of these contracts is subject to similar hazards in formation and afterward. The maker's (offeror's) offer in any of these scenarios may be accepted or rejected. The intended recipient of the offer (or offeree) may counteroffer. There may be questions as to whether a contract was formed - e.g., was there an offer, was it accepted, was the acceptance on the terms and conditions specified by the maker of the offer - or was the "acceptance" actually a counteroffer (which, by definition, rejects the first offer). A contract, once formed, may be breached. These and other questions of contract formation arise on a daily basis. There are several methods by which contractual questions (or "issues" or "disputes") are resolved. These include civil lawsuits, arbitration, and mediation.

Another key contract is the one entered into when a real estate professional joins a local Association of REALTORS® and becomes a REALTOR®. In return for the many benefits of membership, a REALTOR® promises to abide by the duties of membership including strict adherence to the Code of Ethics. Among the Code's duties is the obligation to arbitrate, established in Article 17. Article 17 is

interpreted through five Standards of Practice among which is Standard of Practice 17-4 which enumerates four situations under which REALTORS® agree to arbitrate specified non-contractual disputes. (*Adopted 11/96*)

Associations of REALTORS® provide arbitration to resolve contractual issues and questions and specific non-contractual issues and questions that arise between members, between members and their clients, and, in some cases, between parties to a transaction brought about through the efforts of REALTORS®. Disputes arising out of any of the five above-referenced contractual relationships may be arbitrated, and the rules and procedures of Associations of REALTORS® require that certain types of disputes must be arbitrated if either party so requests. (Information on “mandatory” and “voluntary” arbitration is found elsewhere in the *Code of Ethics and Arbitration Manual*.) (*Revised 11/96*)

While issues between REALTORS® and their clients - e.g., listing broker/seller (or landlord) or buyer broker/buyer (or tenant) - are subject to mandatory arbitration (subject to the client’s agreement to arbitrate), and issues between sellers and buyers may be arbitrated at their mutual agreement, in many cases such issues are resolved in the courts or in other alternative dispute resolution forums (which may also be administered by Associations of REALTORS®). The majority of arbitration hearings conducted by Associations involve questions of contracts between REALTORS®, most frequently between listing and cooperating brokers, or between two or more cooperating brokers. These generally involve questions of procuring cause, where the panel is called on to determine which of the contesting parties is entitled to the funds in dispute. While awards are generally for the full amount in question (which may be required by state law), in exceptional cases, awards may be split between the parties (again, except where prohibited by state law). Split awards are the exception rather than the rule and should be utilized only when Hearing Panels determine that the transaction would have resulted only through the combined efforts of both parties. It should also be considered that questions of representation and entitlement to compensation are separate issues. (*Revised 11/98*)

In the mid-1970s, the National Association of REALTORS® established the Arbitration Guidelines to assist Associations in reaching fair and equitable decisions in arbitration; to prevent the establishment of anyone, single rule or standard by which arbitrable issues would be decided; and to ensure that arbitrable questions would be decided by knowledgeable panels taking into careful consideration all relevant facts and circumstances.

The Arbitration Guidelines have served the industry well for nearly two decades. But, as broker-to-broker cooperation has increasingly involved contracts between listing brokers and buyer brokers and between listing brokers and brokers acting in nonagency capacities, the time came to update the Guidelines so they remained relevant and useful. It is to this end that the following is intended.

### **Procuring Cause**

As discussed earlier, one type of contract frequently entered into by REALTORS® is the listing contract between sellers and listing brokers. Procuring cause disputes between sellers and listing brokers are often decided in court. The reasoning relied on by the courts in resolving such claims is articulated in Black’s Law Dictionary, Fifth Edition, definition of procuring cause:

*The proximate cause; the cause originating a series of events which, without break in their continuity, result in the accomplishment of the prime object. The inducing cause; the direct or proximate cause. Substantially synonymous with “efficient cause.”*

*A broker will be regarded as the “procuring cause” of a sale, so as to be entitled to commission, if their efforts are the foundation on which the negotiations resulting in a sale are begun. A cause originating a series of events which, without break in their continuity, result in accomplishment of prime objective of the employment of the broker who is producing a purchaser ready, willing, and able to buy real estate on the owner’s terms. Mohamed v. Robbins, 23 Ariz. App. 195, 531 p.2d 928, 930.*

*See also Producing cause; Proximate cause.*

Disputes concerning the contracts between listing brokers and cooperating brokers, however, are addressed by the National Association’s Arbitration Guidelines promulgated pursuant to Article 17 of the Code of Ethics. While guidance can be taken from judicial determinations of disputes between sellers and listing brokers, procuring cause disputes between listing and cooperating brokers, or between two cooperating brokers, can be resolved based on similar though not identical principles. While a number of definitions of procuring cause exist, and a myriad of factors may ultimately enter into any determination of procuring cause, for purposes of arbitration conducted by Associations of REALTORS®, procuring cause in broker-to-broker disputes can be readily understood as the uninterrupted series of causal events which results in the successful transaction. Or, in other words, what “caused” the successful transaction to come about. “Successful transaction,” as used in these Arbitration Guidelines, is defined as “a sale that closes or a lease that is executed.” Many REALTORS®, Executive Officers, lawyers, and others have tried, albeit unsuccessfully, to develop a single, comprehensive template that could be used in all procuring cause disputes to determine entitlement to the sought-after award without the need for a comprehensive analysis of all relevant details of the underlying transaction. Such efforts, while well-intentioned, were doomed to failure in view of the fact that there is no “typical” real estate transaction any more than there is

“typical” real estate or a “typical” REALTOR®. In light of the unique nature of real property and real estate transactions and acknowledging that fair and equitable decisions could be reached only with a comprehensive understanding of the events that led to the transaction, the National Association’s Board of Directors, in 1973, adopted Official Interpretation 31 of Article I, Section 2 of the Bylaws. Subsequently amended in 1977, Interpretation 31 establishes that:

*A Board rule or a rule of a Multiple Listing Service owned by, operated by, or affiliated with a Board, which establishes, limits or restricts the REALTOR® their relations with a potential purchaser, affecting recognition periods or purporting to predetermine entitlement to any award in arbitration, is an inequitable limitation on its membership.*

The explanation of Interpretation 31 goes on to provide, in part:

*. . . [T]he Board or its MLS may not establish a rule or regulation which purports to predetermine entitlement to any awards in a real estate transaction. If controversy arises as to entitlement to any awards, it shall be determined by a hearing in arbitration on the merits of all ascertainable facts in the context of the specific case of controversy.*

It is not uncommon for procuring cause disputes to arise out of offers by listing brokers to compensate cooperating brokers made through a multiple listing service. A multiple listing service is defined as a facility for the orderly correlation and dissemination of listing information among Participants so that they may better serve their clients and customers and the public; is a means by which authorized Participants make blanket unilateral offers of compensation to other Participants (acting as subagents, buyer agents, or in other agency or nonagency capacities defined by law); is a means by which information is accumulated and disseminated to enable authorized Participants to prepare appraisals and other valuations of real property; and is a means by which Participants engaging in real estate appraisal contribute to common databases. Entitlement to compensation is determined by the cooperating broker’s performance as procuring cause of the sale (or lease). While offers of compensation made by listing brokers to cooperating brokers through MLS are unconditional,<sup>18</sup> the definition of MLS and the offers of compensation made through the MLS provide that a listing broker’s obligation to compensate a cooperating broker who was the procuring cause of sale (or lease) may be excused if it is determined through arbitration that, through no fault of the listing broker and in the exercise of good faith and reasonable care, it was impossible or financially unfeasible for the listing broker to collect a commission pursuant to the listing agreement. In such instances, entitlement to cooperative compensation offered through MLS would be a question to be determined by an arbitration Hearing Panel based on all relevant facts and circumstances including, but not limited to, why it was impossible or financially unfeasible for the listing broker to collect some or all of the commission established in the listing agreement; at what point in the transaction did the listing broker know (or should have known) that some or all of the commission established in the listing agreement might not be paid; and how promptly had the listing broker communicated to cooperating brokers that the commission established in the listing agreement might not be paid. *(Revised 11/98)*

## **Factors for Consideration by Arbitration Hearing Panels**

The following factors are recommended for consideration by Hearing Panels convened to arbitrate disputes between brokers, or between brokers and their clients or their customers. This list is not all-inclusive nor can it be. Not every factor will be applicable in every instance. The purpose is to guide panels as to facts, issues, and relevant questions that may aid them in reaching fair, equitable, and reasoned decisions.

### **Factor #1. No predetermined rule of entitlement**

Every arbitration hearing is considered in light of all of the relevant facts and circumstances as presented by the parties and their witnesses. “Rules of thumb,” prior decisions by other panels in other matters, and other predeterminants are to be disregarded.

Procuring cause shall be the primary determining factor in entitlement to compensation. Agency relationships, in and of themselves, do not determine entitlement to compensation. The agency relationship with the client and entitlement to compensation are separate issues. A relationship with the client, or lack of one, should only be considered in accordance with the guidelines established to assist panel members in determining procuring cause. *(Adopted 4/95)*

<sup>18</sup> Compensation is unconditional except where local MLS rules permit listing brokers to reserve the right to reduce compensation offers to cooperating brokers in the event that the commission established in a listing contract is reduced by court action or by actions of a lender. Refer to Part One, G. Commission/Cooperative Compensation Offers, Section 1, Information Specifying the Compensation on Each Listing Filed with a Multiple Listing Service of a Board of REALTORS®, Handbook on Multiple Listing Policy. (Adopted 11/98)

## **Factor #2. Arbitrability and appropriate parties**

While primarily the responsibility of the Grievance Review Panel, arbitration Hearing Panels may consider questions of whether an arbitrable issue actually exists and whether the parties named are appropriate to arbitration. A detailed discussion of these questions can be found in **Appendix I to Part Ten**, Arbitrable Issues.

## **Factor #3. Relevance and admissibility**

Frequently, Hearing Panels are asked to rule on questions of admissibility and relevancy. While state law, if applicable, controls, the general rule is that anything the Hearing Panel believes may assist it in reaching a fair, equitable, and knowledgeable decision is admissible.

Arbitration Hearing Panels are called on to resolve contractual questions, not to determine whether the law or the Code of Ethics has been violated. An otherwise substantiated award cannot be withheld solely on the basis that the Hearing Panel looks with disfavor on the potential recipient's manner of doing business or even that the panel believes that unethical conduct may have occurred. To prevent any appearance of bias, arbitration Hearing Panels and procedural review panels shall make no referrals of ethical concerns to the Grievance Review Panel. This is based on the premise that the fundamental right and primary responsibility to bring potentially unethical conduct to the attention of the Grievance Review Panel rests with the parties and others with firsthand knowledge. At the same time, evidence or testimony is not inadmissible simply because it relates to potentially unethical conduct. While an award (or failure to make a deserved award) cannot be used to "punish" a perceived "wrongdoer", it is equally true that Hearing Panels are entitled to (and fairness requires that they) consider all relevant evidence and testimony so that they will have a clear understanding of what transpired before determining entitlement to any award. (*Amended 11/96*)

## **Factor #4. Communication and contact—abandonment and estrangement**

Many arbitrable disputes will turn on the relationship (or lack thereof) between a broker (often a cooperating broker) and a prospective purchaser. Panels will consider whether, under the circumstances and in accord with local custom and practice, the broker made reasonable efforts to develop and maintain an ongoing relationship with the purchaser. Panels will want to determine, in cases where two cooperating brokers have competing claims against a listing broker, whether the first cooperating broker actively maintained ongoing contact with the purchaser or, alternatively, whether the broker's inactivity, or perceived inactivity, may have caused the purchaser to reasonably conclude that the broker had lost interest or disengaged from the transaction (abandonment). In other instances, a purchaser, despite reasonable efforts by the broker to maintain ongoing contact, may seek assistance from another broker. The panel will want to consider why the purchaser was estranged from the first broker. In still other instances, there may be no question that there was an ongoing relationship between the broker and purchaser; the issue then becomes whether the broker's conduct or, alternatively, the broker's failure to act when necessary, caused the purchaser to terminate the relationship (estrangement). This can be caused, among other things, by words or actions or lack of words or actions when called for. Panels will want to consider whether such conduct, or lack thereof, caused a break in the series of events leading to the transaction and whether the successful transaction was actually brought about through the initiation of a separate, subsequent series of events by the second cooperating broker. (*Revised 11/99*)

## **Factor #5. Conformity with state law**

The procedures by which arbitration requests are received, hearings are conducted, and awards are made must be in strict conformity with the law. In such matters, the advice of Association legal counsel should be followed.

## **Factor #6. Consideration of the entire course of events**

The standard of proof in Association-conducted arbitration is a preponderance of the evidence, and the initial burden of proof rests with the party requesting arbitration (see Professional Standards Policy Statement 26). This does not, however, preclude panel members from asking questions of the parties or witnesses to confirm their understanding of testimony presented or to ensure that panel members have a clear understanding of the events that led to the transaction and to the request for arbitration. Since each transaction is unique, it is impossible to develop a comprehensive list of all issues or questions that panel members may want to consider in a particular hearing. Panel members are advised to consider the following, which are representative of the issues and questions frequently involved in arbitration hearings.

### **Nature and status of the transaction**

- (1) What was the nature of the transaction? Was there a residential or commercial sale/lease?
- (2) Is or was the matter the subject of litigation involving the same parties and issues as the arbitration?

### **Nature, status, and terms of the listing agreement**

- (1) What was the nature of the listing or other agreement: exclusive right to sell, exclusive agency, open, or some other form of agreement?
- (2) Was the listing agreement in writing? If not, is the listing agreement enforceable?
- (3) Was the listing agreement in effect at the time the sales contract was executed?
- (4) Was the property listed subject to a management agreement?
- (5) Were the broker's actions in accordance with the terms and conditions of the listing agreement?
  - (a) Were all conditions of the listing agreement met?
  - (b) Did the final terms of the sale meet those specified in the listing agreement?
  - (c) Did the transaction close? (Refer to **Appendix I to Part Ten**, Arbitrable Issues.)
  - (d) Did the listing broker receive a commission? If not, why not? (Refer to **Appendix I to Part Ten**, Arbitrable Issues.)

### **Nature, status, and terms of buyer representation agreements**

- (1) What was the nature of any buyer representation agreement(s)? Was the agreement(s) exclusive or non-exclusive? What capacity(ies) was the cooperating broker(s) functioning in, e.g., agent, legally-recognized non-agent, other?
- (2) Was the buyer representation agreement(s) in writing? Is it enforceable?
- (3) What were the terms of compensation established in the buyer representation agreement(s)?
- (4) Was the buyer representative(s) a broker or firm to which an offer of compensation was made by the listing broker?
- (5) Was the buyer representative(s) actions in accordance with the terms and conditions of the buyer representation agreement(s)?
- (6) At what point in the buying process was the buyer representation relationship established? (*Revised 05/03*)

### **Nature, status, and terms of the offer to compensate**

- (1) Was an offer of cooperation and compensation made in writing? If not, how was it communicated?
- (2) Is the claimant a party to whom the listing broker's offer of compensation was extended?
- (3) Were the broker's actions in accordance with the terms and conditions of the offer of cooperation and compensation (if any)? Were all conditions of the agreement met?

### **Roles and relationships of the parties**

- (1) Who was the listing broker?
- (2) Who was the cooperating broker or brokers?
- (3) Were any of the brokers acting as subagents? As buyer brokers? In another legally recognized capacity?
- (4) Did the cooperating broker(s) have an agreement, written or otherwise, to act as agent or in another legally recognized capacity on behalf of any of the parties?
- (5) Were any of the brokers (including the listing broker) acting as a principal in the transaction?
- (6) What were the brokers' relationships with respect to the seller, the purchaser, the listing broker, and any other cooperating brokers involved in the transaction?
  - (a) Was the buyer represented by a party with whom the broker had previously dealt?
  - (b) Is the primary shareholder of the buyer-corporation a party with whom the broker had previously dealt?
  - (c) Was a prior prospect a vital link to the buyer?
- (7) Are all appropriate parties to the matter joined?  
(*Revised 05/03*)

### **Initial contact with the purchaser**

- (1) Who first introduced the purchaser or tenant to the property?
- (2) When was the first introduction made?
  - (a) Was the introduction made when the buyer had a specific need for that type of property?
  - (b) Was the introduction instrumental in creating the desire to purchase?
  - (c) Did the buyer know about the property before the broker contacted them? Did they know it was for sale?
  - (d) Were there previous dealings between the buyer and the seller?
  - (e) Did the buyer find the property on their own?
- (3) How was the first introduction made?
  - (a) Was the property introduced as an open house?
  - (b) What subsequent efforts were made by the broker after the open house? (Refer to Factor #1.)
  - (c) Was the introduction made to a different representative of the buyer?

- (d) Was the “introduction” merely a mention that the property was listed?
- (e) What property was first introduced?

### **Conduct of the brokers**

- (1) Were all required disclosures complied with?
- (2) Was there a faithful exercise of the duties a broker owes to their client/principal?
- (3) If more than one cooperating broker was involved, was either (or both) aware of the other’s role in the transaction?
- (4) Did the broker who made the initial introduction to the property engage in conduct (or fail to take some action) which caused the purchaser or tenant to utilize the services of another broker? (Refer to Factor #4.)
- (5) Did the cooperating broker (or second cooperating broker) initiate a separate series of events, unrelated to and not dependent on any other broker’s efforts, which led to the successful transaction—that is, did the broker perform services which assisted the buyer in making their decision to purchase? (Refer to Factor #4.)
  - (a) Did the broker make preparations to show the property to the buyer?
  - (b) Did the broker make continued efforts after showing the property?
  - (c) Did the broker remove an impediment to the sale?
  - (d) Did the broker make a proposal upon which the final transaction was based?
  - (e) Did the broker motivate the buyer to purchase?
- (6) How do the efforts of one broker compare to the efforts of another?
  - (a) What was the relative amount of effort by one broker compared to another?
  - (b) What was the relative success or failure of negotiations conducted by one broker compared to the other?
- (7) If more than one cooperating broker was involved, how and when did the second cooperating broker enter the transaction?

### **Continuity and breaks in continuity (abandonment and estrangement)**

- (1) What was the length of time between the broker’s efforts and the final sales agreement?
- (2) Did the original introduction of the purchaser or tenant to the property start an uninterrupted series of events leading to the sale or lease, or was the series of events hindered or interrupted in any way?
  - (a) Did the buyer terminate the relationship with the broker? Why? (Refer to Factor #4.)
  - (b) Did negotiations break down?
- (3) If there was an interruption or break in the original series of events, how was it caused, and by whom?
  - (a) Did the seller change the listing agreement from an open listing to an exclusive listing agreement with another broker?
  - (b) Did the purchaser’s motive for purchasing change?
  - (c) Was there interference in the series of events from any outside or intervening cause or party?
- (4) Did the broker who made the initial introduction to the property maintain contact with the purchaser or tenant, or could the broker’s inaction have reasonably been viewed by the buyer or tenant as a withdrawal from the transaction?
- (5) Was the entry of any cooperating broker into the transaction an intrusion into an existing relationship between the purchaser and another broker, or was it the result of abandonment or estrangement of the purchaser, or at the request of the purchaser?

### **Conduct of the buyer**

- (1) Did the buyer make the decision to buy independent of the broker’s efforts/information?
- (2) Did the buyer negotiate without any aid from the broker?
- (3) Did the buyer seek to freeze out the broker?
  - (a) Did the buyer seek another broker in order to get a lower price?
  - (b) Did the buyer express the desire not to deal with the broker and refuse to negotiate through them?
  - (c) Did the contract provide that no brokers or certain brokers had been involved?

### **Conduct of the seller**

- (1) Did the seller act in bad faith to deprive the broker of their commission?
  - (a) Was there bad faith evident from the fact that the difference between the original bid submitted and the final sales price equaled the broker’s commission?
  - (b) Was there bad faith evident from the fact that a sale to a third party was a straw transaction (one in which a non-involved party posed as the buyer) which was designed to avoid paying commission?
  - (c) Did the seller freeze out the broker to avoid a commission dispute or to avoid paying a commission at all?
- (2) Was there bad faith evident from the fact that the seller told the broker they would not sell on certain terms, but did so via another broker or via the buyer directly?

## Leasing transactions

- (1) Did the cooperating broker have a tenant representation agreement?
- (2) Was the cooperating broker working with the “authorized” staff member of the tenant company?
- (3) Did the cooperating broker prepare a tenant needs analysis?
- (4) Did the cooperating broker prepare a market analysis of available properties?
- (5) Did the cooperating broker prepare a tour book showing alternative properties and conduct a tour?
- (6) Did the cooperating broker show the tenant the property leased?
- (7) Did the cooperating broker issue a request for proposal on behalf of the tenant for the property leased?
- (8) Did the cooperating broker take an active part in the lease negotiations?
- (9) Did the cooperating broker obtain the tenant’s signature on the lease document?
- (10) Did the tenant work with more than one broker; and if so, why? (*Revised 11/96*)

## Other information

Is there any other information that would assist the Hearing Panel in having a full, clear understanding of the transaction giving rise to the arbitration request or in reaching a fair and equitable resolution of the matter?

These questions are typical, but not all-inclusive, of the questions that may assist Hearing Panels in understanding the issues before them. The objective of a panel is to carefully and impartially weigh and analyze the whole course of conduct of the parties and render a reasoned peer judgment with respect to the issues and questions presented and to the request for award.

## Sample Fact Situation Analysis

The National Association’s Professional Standards Committee has consistently taken the position that arbitration awards should not include findings of fact or rationale for the arbitrators’ award. Among the reasons for this are the fact that arbitration awards are not appealable on the merits but generally only on the limited procedural bases established in the governing state arbitration statute; that the issues considered by Hearing Panels are often myriad and complex, and the reasoning for an award may be equally complex and difficult to reduce to writing; and that the inclusion of written findings of fact or rationale (or both) would conceivably result in attempts to use such detail as “precedent” in subsequent hearings which might or might not involve similar facts. The end result might be elimination of the careful consideration of the entire course of events and conduct contemplated by these procedures and establishment of local, differing arbitration “templates” or predeterminants of entitlement inconsistent with these procedures and Interpretation 31.

Weighed against these concerns, however, was the desire to provide some model or sample applications of the factors, questions, and issues set forth in these Arbitration Guidelines. The following “fact situations” and analyses are provided for informational purposes and are not intended to carry precedential weight in any hearing.

### ***Fact Situation #1***

Listing Broker L placed a listing in the MLS and offered compensation to subagents and to buyer agents. Broker Z, not a participant in the MLS, called to arrange an appointment to show the property to a prospective purchaser. There was no discussion of compensation. Broker Z presented Broker L with a signed purchase agreement, which was accepted by the seller. Subsequently, Broker Z requested arbitration with Broker L, claiming to be the procuring cause of sale.

**Analysis:** While Broker Z may have been the procuring cause of sale, Broker L’s offer of compensation was made only to members of the MLS. Broker L never offered cooperation and compensation to Broker Z, nor did Broker Z request compensation at any time prior to instituting the arbitration request. There was no contractual relationship between them, and therefore no issue to arbitrate.

### ***Fact Situation #2***

Same as #1, except Broker Z is the buyer’s agent.

**Analysis:** Same result, since there was no contractual relationship between Broker L and Broker Z and no issue to arbitrate.

### ***Fact Situation #3***

Broker L placed a listing in the MLS and offered compensation to subagents and to buyer agents. Broker S (a subagent) showed the property to Buyer #1 on Sunday and again on Tuesday. On Wednesday, Broker A (a subagent) wrote an offer to purchase on behalf of Buyer #1 which was presented to the seller by Broker L and which was accepted. At closing, subagency compensation is paid to Broker A. Broker S subsequently filed an arbitration request against Broker A, claiming to be the procuring cause of sale.

**Analysis:** Broker S's claim could have been brought against Broker A (pursuant to Standard of Practice 17-4) or against Broker L (the listing broker), who had promised to compensate the procuring cause of sale, thus arguably creating a contractual relationship between Broker L and Broker S. (*Amended 11/96*)

**Fact Situation #4**

Same as #3, except Broker S filed the arbitration request against Broker L (the listing broker).

**Analysis:** This is an arbitrable matter, since Broker L promised to compensate the procuring cause of sale. Broker L, to avoid the possibility of having to pay two cooperating brokers in the same transaction, should join Broker A in arbitration so that all competing claims can be resolved in a single hearing. The Hearing Panel will consider, among other things, why Buyer #1 made the offer to purchase through Broker A instead of Broker S. If it is determined that Broker S initiated a series of events which were unbroken in their continuity and which resulted in the sale, Broker S will likely prevail.

**Fact Situation #5**

Same as #3, except Broker L offered compensation only to subagents. Broker B (a buyer agent) requested permission to show the property to Buyer #1, wrote an offer which was accepted, and subsequently claimed to be the procuring cause of sale.

**Analysis:** Since Broker L did not make an offer of compensation to buyer brokers, there was no contractual relationship between Broker L and Broker B and no arbitrable issue to resolve.

If, on the other hand, Broker L had offered compensation to buyer brokers either through MLS or otherwise and had paid Broker A, then arbitration could have been conducted between Broker B and Broker A pursuant to Standard of Practice 17-4. Alternatively, arbitration could occur between Broker B and Broker L.

**Fact Situation #6**

Listing Broker L placed a listing in the MLS and made an offer of compensation to subagents and to buyer agents. Broker S (a subagent) showed the property to Buyer #1, who appeared uninterested. Broker S made no effort to further contact Buyer #1. Six weeks later, Broker B (a buyer broker) wrote an offer on the property on behalf of Buyer #1, presented it to Broker L, and it was accepted. Broker S subsequently filed for arbitration against Broker L, claiming to be the procuring cause. Broker L joined Broker B in the request so that all competing claims could be resolved in one hearing.

**Analysis:** The Hearing Panel will consider Broker S's initial introduction of the buyer to the property, the period of time between Broker S's last contact with the buyer and the time that Broker B wrote the offer, and the reason Buyer #1 did not ask Broker S to write the offer. Given the length of time between Broker S's last contact with the buyer, the fact that Broker S had made no subsequent effort to contact the buyer, and the length of time that transpired before the offer was written, abandonment of the buyer may have occurred. If this is the case, the Hearing Panel may conclude that Broker B instituted a second, separate series of events that was directly responsible for the successful transaction.

**Fact Situation #7**

Same as #6, except that Broker S (a subagent) showed Buyer #1 the property several times, most recently two days before the successful offer to purchase was written by Broker B (a buyer broker). At the arbitration hearing, Buyer #1 testified they were not dissatisfied in any way with Broker S but simply decided that "I needed a buyer agent to be sure that I got the best deal."

**Analysis:** The Hearing Panel should consider Broker S's initial introduction of the buyer to the property; that Broker S had remained in contact with the buyer on an ongoing basis; and whether Broker S's efforts were primarily responsible for bringing about the successful transaction. Unless abandonment or estrangement can be demonstrated, resulting, for example, because of something Broker S said or did (or neglected to say or do but reasonably should have), Broker S will likely prevail. Agency relationships are not synonymous with nor determinative of procuring cause. Representation and entitlement to compensation are separate issues. (*Amended 11/99*)

**Fact Situation #8**

Similar to #6, except Buyer #1 asked Broker S for a comparative market analysis as the basis for making a purchase offer. Broker S reminded Buyer #1 that they (Broker S) had clearly disclosed their status as subagent, and that they could not counsel Buyer #1 as to the property's market value. Broker B based their claim to entitlement on the grounds that they had provided Buyer #1 with information that Broker S could not or would not provide.

**Analysis:** The Hearing Panel should consider Broker S's initial introduction of the buyer to the property; that Broker S had made early and timely disclosure of his their status as a subagent; whether adequate alternative market information was available to enable Buyer #1 to make an informed purchase decision; and whether Broker S's inability to provide a comparative market analysis of the property

had clearly broken the chain of events leading to the sale. If the panel determines that the buyer did not have cause to leave Broker S for Broker B, they may conclude that the series of events initiated by Broker S remained unbroken, and Broker S will likely prevail.

***Fact Situation #9***

Similar to #6, except Broker S made no disclosure of their status as subagent (or its implications) until faced with Buyer #1's request for a comparative market analysis.

**Analysis:** The Hearing Panel should consider Broker S's initial introduction of the buyer to the property; Broker S's failure to clearly disclose their agency status on a timely basis; whether adequate alternative market information was available to enable Buyer #1 to make an informed purchase decision; and whether Broker S's belated disclosure of their agency status (and its implications) clearly broke the chain of events leading to the sale. If the panel determines that Broker S's failure to disclose their agency status was a reasonable basis for Buyer #1's decision to engage the services of Broker B, they may conclude that the series of events initiated by Broker S had been broken, and Broker B will likely prevail.

***Fact Situation #10***

Listing Broker L placed a property on the market for sale or lease and offered compensation to brokers inquiring about the property. Broker A, acting as a subagent, showed the property on two separate occasions to the vice president of manufacturing for ABC Corporation. Broker B, also acting as a subagent but independent of Broker A, showed the same property to the chairman of ABC Corporation, whom they had known for more than fifteen (15) years. The chairman liked the property and instructed Broker B to draft and present a lease on behalf of ABC Corporation to Broker L, which was accepted by the owner/landlord. Subsequent to the commencement of the lease, Broker A requested arbitration with Broker L, claiming to be the procuring cause.

**Analysis:** This is an arbitrable matter as Broker L offered compensation to the procuring cause of the sale or lease. To avoid the possibility of having to pay two commissions, Broker L joined Broker B in arbitration so that all competing claims could be resolved in a single hearing. The Hearing Panel considered both brokers' introductions of the property to ABC Corporation. Should the Hearing Panel conclude that both brokers were acting independently and through separate series of events, the Hearing Panel may conclude that Broker B was directly responsible for the lease and should be entitled to the cooperating broker's portion of the commission. (*Adopted 11/96*)

***Fact Situation #11***

Broker A, acting as the agent for an out-of-state corporation, listed for sale or lease a 100,000 square foot industrial facility. The property was marketed offering compensation to both subagents and buyer/tenant agents. Over a period of several months, Broker A made the availability of the property known to XYZ Company and, on three (3) separate occasions, showed the property to various operational staff of XYZ Company. After the third showing, the vice president of finance asked Broker A to draft a lease for their review with the president of XYZ Company and its in-house counsel. The president, upon learning that Broker A was the listing agent for the property, instructed the vice president of finance to secure a tenant representative to ensure that XYZ Company was getting "the best deal." One week later, tenant representative Broker T presented Broker A with the same lease that Broker A had previously drafted and the president of XYZ Company had signed. The lease was accepted by the out-of-state corporation. Upon payment of the lease commission to Broker A, Broker A denied compensation to Broker T and Broker T immediately requested arbitration claiming to be the procuring cause.

**Analysis:** The Hearing Panel should consider Broker A's initial introduction of XYZ Company to the property, Broker A's contact with XYZ Company on an on-going basis, and whether Broker A initiated the series of events which led to the successful lease. Given the above facts, Broker A will likely prevail. Agency relationships are not synonymous with nor determinative of procuring cause. Representation and entitlement to compensation are separate issues.

***Fact Situation #12***

Broker A has had a long-standing relationship with Client B, the real estate manager of a large, diversified company. Broker A has acquired or disposed of twelve (12) properties for Client B over a five (5) year period. Client B asks Broker A to locate a large warehouse property to consolidate inventories from three local plants. Broker A conducts a careful evaluation of the operational and logistical needs of the plants, prepares a report of their findings for Client B, and identifies four (4) possible properties that seem to meet most of Client B's needs. At Client B's request, they arrange and conduct inspections of each of these properties with several operations level individuals. Two (2) of the properties were listed for sale exclusively by Broker C. After the inspections, Broker A sends Broker C a written registration letter in which they identifies Client B's company and outlines expectation to be paid half of any commission that might arise from a transaction on either of the properties. Broker C responds with a written denial of registration, but agrees to share any commission that results from a transaction procured by Broker A on either of the properties. Six (6) weeks after the inspections, Client B selects one of the properties and instructs Broker A to initiate negotiations with Broker C. After several weeks the negotiations reach an impasse. Two (2) weeks later, Broker A learns that Broker C has presented a proposal directly to

Client B for the other property that was previously inspected. Broker A then contacts Broker C, and demands to be included in the negotiations. Broker C refuses, telling Broker A that they have “lost control of their prospect,” and will not be recognized if a transaction takes place on the second property. The negotiations proceed, ultimately resulting in a sale of the second property. Broker A files a request for arbitration against Broker C.

**Analysis:** This would be an arbitrable dispute as a compensation agreement existed between Broker A and Broker C. The Hearing Panel will consider Broker A’s introduction of the property to Client B, the property reports prepared by Broker A, and the time between the impasse in negotiations on the first property and the sale of the second property. If the Hearing Panel determines that Broker A initiated the series of events that led to the successful sale, Broker A will likely prevail. (*Adopted 11/96*)

## Arbitration Worksheet

**NOTE: Transmit to all parties.** This worksheet is intended to assist Hearing Panels in identifying relevant issues and facts in determining questions of entitlement to disputed funds. It is intended to supplement – and not replace – the comprehensive list of questions found in Factor #6 in the Arbitration Guidelines. These questions are not listed in order of priority and are not weighted equally.

| Question                                                                                                                                                                                                                              | Answer | Favors<br>Complainant | Favors<br>Respondent | Favors<br>Neither | Other |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|-----------------------|----------------------|-------------------|-------|
| 1. Was an offer of compensation made through the MLS or otherwise?                                                                                                                                                                    |        |                       |                      |                   |       |
| 2. Is the claimant a party to whom the listing broker's offer of compensation was extended?                                                                                                                                           |        |                       |                      |                   |       |
| 3. What was the nature of any buyer representation agreement(s)? Was the agreement(s) exclusive or non-exclusive? What capacity(ies) was the cooperating broker(s) functioning in, e.g., agent, legally- recognized non-agent, other? |        |                       |                      |                   |       |
| 4. Were any of the brokers acting as subagents? As buyer brokers? In another legally recognized capacity?                                                                                                                             |        |                       |                      |                   |       |
| 5. How was the buyer/tenant first introduction to the property that was sold/leased made?                                                                                                                                             |        |                       |                      |                   |       |
| a. Did the buyer/tenant find that property on their own?                                                                                                                                                                              |        |                       |                      |                   |       |
| b. Who first introduced the purchaser or tenant to that property?                                                                                                                                                                     |        |                       |                      |                   |       |
| c. Was the introduction made to a different representative of the buyer/tenant?                                                                                                                                                       |        |                       |                      |                   |       |
| d. Was the "introduction" merely a mention that the property was listed?                                                                                                                                                              |        |                       |                      |                   |       |
| e. Was the property introduced as an open house?                                                                                                                                                                                      |        |                       |                      |                   |       |
| f. What subsequent efforts were made by the broker after the open house?                                                                                                                                                              |        |                       |                      |                   |       |
| g. What property was first introduced?                                                                                                                                                                                                |        |                       |                      |                   |       |
| 6. When was the first introduction to the property that was sold/leased made?                                                                                                                                                         |        |                       |                      |                   |       |
| a. Was the introduction made when the buyer/tenant had a specific need for that type of property?                                                                                                                                     |        |                       |                      |                   |       |

## Arbitration Worksheet

*(continued)*

NOTE: This worksheet is intended to assist Hearing Panels in identifying relevant issues and facts in determining questions of entitlement to disputed funds. It is intended to supplement – and not replace – the comprehensive list of questions found in Factor #6 in the Arbitration Guidelines. These questions are not listed in order of priority and are not weighted equally.

| Question                                                                                                                                                                                                                                                 | Answer | Favors<br>Complainant | Favors<br>Respondent | Favors<br>Neither | Other |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|-----------------------|----------------------|-------------------|-------|
| b. Was the introduction made when the buyer/tenant had a specific need for that type of property?                                                                                                                                                        |        |                       |                      |                   |       |
| c. Was the introduction instrumental in creating the desire to purchase/lease?                                                                                                                                                                           |        |                       |                      |                   |       |
| d. Did the buyer know about the property before the broker contacted them? Did they know it was for sale/lease?                                                                                                                                          |        |                       |                      |                   |       |
| e. Were there previous dealings between the buyer and the seller?                                                                                                                                                                                        |        |                       |                      |                   |       |
| 7. What efforts subsequent to the first introduction to the property were made by the broker introducing the property that was sold or leased?                                                                                                           |        |                       |                      |                   |       |
| 8. If more than one cooperating broker was involved, how and when did the second cooperating broker enter the transaction?                                                                                                                               |        |                       |                      |                   |       |
| 9. Did the broker who made the initial introduction to the property engage in conduct (or fail to take some action) which caused the purchaser or tenant to utilize the services of another broker (estrangement)?                                       |        |                       |                      |                   |       |
| a. Were agency disclosures made? When?                                                                                                                                                                                                                   |        |                       |                      |                   |       |
| a. Was the potential for dual agency disclosed? When?                                                                                                                                                                                                    |        |                       |                      |                   |       |
| 1. Did the broker who made the initial introduction to the property maintain contact with the purchaser or tenant, or could the broker's inaction have reasonably been viewed by the buyer or tenant as a withdrawal from the transaction (abandonment)? |        |                       |                      |                   |       |

## Arbitration Worksheet

*(continued)*

NOTE: This worksheet is intended to assist Hearing Panels in identifying relevant issues and facts in determining questions of entitlement to disputed funds. It is intended to supplement – and not replace – the comprehensive list of questions found in Factor #6 in the Arbitration Guidelines. These questions are not listed in order of priority and are not weighted equally.

| Question                                                                                                                                                                                                                    | Answer | Favors Complainant | Favors Respondent | Favors Neither | Other |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|--------------------|-------------------|----------------|-------|
| 11. Was the entry of any cooperating broker into the transaction an intrusion into an existing relationship between the purchaser and another broker, or was it the result of abandonment or estrangement of the purchaser? |        |                    |                   |                |       |
| 12. Did the buyer make the decision to buy independent of the broker's efforts/information?                                                                                                                                 |        |                    |                   |                |       |
| 13. Did the seller act in bad faith to deprive the broker of their commission?                                                                                                                                              |        |                    |                   |                |       |
| a. Was there bad faith evident from the fact that the difference between the original bid submitted and the final sales price equaled the broker's commission?                                                              |        |                    |                   |                |       |
| b. Was there bad faith evident from the fact that a sale to a third party was a straw transaction (one in which a non-involved party posed as the buyer) which was designed to avoid paying commission?                     |        |                    |                   |                |       |
| c. Did the seller freeze out the broker to avoid a commission dispute or to avoid paying a commission at all?                                                                                                               |        |                    |                   |                |       |
| 14. Did the buyer seek to freeze out the broker?                                                                                                                                                                            |        |                    |                   |                |       |
| a. Did the buyer seek another broker in order to get a lower price?                                                                                                                                                         |        |                    |                   |                |       |
| b. Did the buyer express the desire not to deal with the broker and refuse to negotiate through them?                                                                                                                       |        |                    |                   |                |       |
| c. Did the contract provide that no brokers or certain brokers had been involved?                                                                                                                                           |        |                    |                   |                |       |

## Arbitration Worksheet

*(continued)*

NOTE: This worksheet is intended to assist Hearing Panels in identifying relevant issues and facts in determining questions of entitlement to disputed funds. It is intended to supplement – and not replace – the comprehensive list of questions found in Factor #6 in the Arbitration Guidelines. These questions are not listed in order of priority and are not weighted equally.

| Question                                                                                                                                                                                                                                                                                                            | Answer | Favors<br>Complainant | Favors<br>Respondent | Favors<br>Neither | Other |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|-----------------------|----------------------|-------------------|-------|
| 15. Did the original introduction of the purchaser or tenant to the property start an uninterrupted series of events leading to the sale or lease, or was the series of events hindered or interrupted in any way?                                                                                                  |        |                       |                      |                   |       |
| 16. If there was an interruption or break in the original series of events, how was it caused, and by whom?                                                                                                                                                                                                         |        |                       |                      |                   |       |
| a. Did the seller change the listing agreement from an open listing to an exclusive listing agreement with another broker?                                                                                                                                                                                          |        |                       |                      |                   |       |
| b. Did the buyer terminate the relationship with the broker? Why?                                                                                                                                                                                                                                                   |        |                       |                      |                   |       |
| c. Was there interference in the series of events from any outside or intervening cause or party?                                                                                                                                                                                                                   |        |                       |                      |                   |       |
| d. Was there abandonment or estrangement?                                                                                                                                                                                                                                                                           |        |                       |                      |                   |       |
| 17. Did the cooperating broker (or second cooperating broker) initiate a separate series of events, unrelated to and not dependent on any other broker's efforts, which led to the successful transaction – that is, did the broker perform services which assisted the buyer in making their decision to purchase? |        |                       |                      |                   |       |
| a. Did the broker make preparations to show the property to the buyer?                                                                                                                                                                                                                                              |        |                       |                      |                   |       |
| b. Did the broker make continued efforts after showing the property?                                                                                                                                                                                                                                                |        |                       |                      |                   |       |
| c. Did the broker remove an impediment to the sale?                                                                                                                                                                                                                                                                 |        |                       |                      |                   |       |
| d. Did the broker make a proposal upon which the final transaction was based?                                                                                                                                                                                                                                       |        |                       |                      |                   |       |
| e. Did the broker motivate the buyer to purchase?                                                                                                                                                                                                                                                                   |        |                       |                      |                   |       |

# Appendix III to Part Ten

## Rationale of Declaratory Relief and of Judicial Enforcement in Matters of Arbitration

With respect to arbitration awards rendered by Member Associations, it is important that the Association utilize the powers of local courts to support and enforce its arbitration awards and any Association actions contemplated in connection with arbitration by the Association. Both the Petition for Declaratory Relief and Petition for Judicial Enforcement should be employed by the Association where it will confirm the propriety of the Association's actions and will minimize legal vulnerability and liability to the Association and its members. These legal procedures, or similar legal devices available in a given state, should be employed in the following circumstances:

- (1) **Refusal to Arbitrate:** If a membership obligation to arbitrate disputes is permitted by applicable law, it is required of members in accordance with the Association's professional standards procedures. Refusal of a member to arbitrate, or mediate if required by the Association, shall be determined by a hearing by the Executive Committee as specified in **Part Ten, Section 49, Initial Action of Directors**. *(Revised 05/15)*

Upon determination of the sole question of fact that a Association Member has refused to arbitrate or mediate a properly arbitrable matter, the Executive Committee may direct the implementation of appropriate sanction, and should, if it has reason to believe that the imposition of sanction will become the basis of litigation and a claim for damages consequent to such sanction, delay the effective date of implementing the sanction to a date following receipt by the Association of a judicial decision in a petition for declaratory relief filed by the Association to confirm the propriety of its action. *(Revised 05/15)*

- (2) **Refusal to, within Ten (10) Days of Transmittal of Award, Abide by Award or Deposit a Like Amount with the Professional Standards Administrator:** Consistent with **Section 53, The Award**, the non-prevailing party must, within ten (10) days following transmittal of the award, either pay the award to the party(ies) named in the award and notify the Association in writing of such payment or deposit the funds with the Professional Standards Administrator to be held in an escrow or trust account maintained for that purpose. Failure to satisfy the award or deposit the funds in the escrow or trust account within the time specified may be considered a violation of a membership duty and may subject the member to disciplinary action at the discretion of the Leadership Team, consistent with **Section 53, The Award**. Although the Chief Executive Officer has the right to be present at meetings involving the Leadership Team, the Chief Executive Officer shall not vote on any matter before the Leadership Team. *(Adopted 05/15)*

Requiring the non-prevailing party to, within ten (10) days, either pay the award and notify the Association in writing of such payment or deposit the funds with the Association reduces instances of non-prevailing parties refusing to pay arbitration awards by shifting the burden of initiating litigation from the prevailing party to the non-prevailing party. *(Adopted 05/15)*

With respect to a party agreeing and submitting to arbitration but then refusing to abide by the award, the Association should encourage the award recipient to seek enforcement of the award in the courts, and suggest that a request be made for payment of legal costs incurred in seeking judicial enforcement. *(Amended 05/15)*

Although the primary responsibility for the enforcement of the award rests with the beneficiary of that award (with the support, financial or otherwise, of the Association), the Association may consider reimbursing the recipient of the award for any cost incurred in seeking the judicial enforcement when such costs are not reimbursed by the court. If these legal fees are not reimbursed by the court in its final decision, the Association may, at its discretion, reimburse the award recipient for legal fees incurred up to \$2,000. *(Revised 05/15)*

If a member engages in a pattern of noncompliance, the Association is not precluded from considering the action of the individual as an alleged violation Article 17 of the Code of Ethics.

# Appendix IV to Part Ten

## Rationale for No Findings of Fact in Awards

Arbitration awards, unlike ethics decisions, are not subject to appeal and do not include findings of fact or rationale. While arbitration awards may, at times, involve significant sums of money, they differ from the decisions rendered by ethics hearing panels in two significant ways. First, the fact that a party in arbitration does not prevail is in no way an indication that the non-prevailing party behaved in anything other than an ethical manner. It simply means that they were not entitled to a particular sum of money with respect to a particular transaction. Second, the determinations rendered through arbitration have no effect on a REALTOR®'s continued good standing in the association or in the real estate community generally, whereas an adverse decision in a matter involving ethics demonstrates that the respondent has, in some way, failed to live up to the standards expected of REALTORS® and may result in discipline being imposed, including the possibility of suspension or expulsion from membership.

Arbitration awards are based on the hearing panel's analysis of the entire course of conduct giving rise to a dispute as demonstrated by the evidence and testimony presented in the course of the arbitration hearing. There is generally not a single act (or in some cases failure to act), statement, or particular event, but rather the entire course of conduct or events related to a transaction that forms the basis for the hearing panel making its arbitration award. Reducing, to a comprehensive writing, the grounds on which an arbitration award was made, could frequently be far more complex - and difficult - than formulating the findings of fact (which may involve a single act or disclosure, or failure to act or disclose) which results in a determination that the Code of Ethics has been violated.

Consider that the obligations imposed by the Code of Ethics are, in most instances, clearly articulated in the Articles themselves, in the Standards of Practice, or in the official case interpretations. Thus, it is frequently readily apparent what a REALTOR® must do or say or, alternatively, must avoid saying or doing to ensure compliance with the Code. Arbitrable disputes, on the other hand, are very often (though not always) determined on the basis of procuring cause, a concept that cannot readily be reduced to a prescribed or proscribed action or event.

It is not uncommon for a non-prevailing party in arbitration to request an explanation or justification of a hearing panel's rationale for making an award. While this might be beneficial, at least in the sense that the non-prevailing party might understand, if not appreciate, the basis on which the award was based, there has been an on-going concern that, given the task of comprehensively and accurately articulating all of the acts and factors that are taken into account by an arbitration panel in rendering its award, there might be an understandable (and possibly unavoidable) tendency to oversimplify or generalize the basis on which an award was made, with the resulting explanation or rationale or "findings", whether written or oral, being relied on by the non-prevailing party (and likely by others) as "precedent" to be introduced and relied on at future arbitration hearings. The unintended consequence of providing explanations or rationale or "findings" is contrary to the policy embodied in Official Interpretation 31 of Article I, Section 2 of the National Association's bylaws which prohibits any rule or policy predetermining awards in arbitration. Arbitrable matters must be decided not on the basis of a single aspect of the total transaction, such as making the first showing, or writing the contract, but rather on careful, deliberate consideration of all relevant facts and circumstances.

While the question of whether arbitration decisions should include findings of fact has been discussed by the Professional Standards Committee on several occasions over the years, the Committee has consistently held that any possible educational benefits are far outweighed by the possibility that a proliferation of local association "arbitration case law" might quickly come into existence and that hearing panels would come to rely on these local determinations as the basis for subsequent arbitration awards instead of looking at each disputed transaction in its totality. It is for these reasons that the policies and procedures in the *Code of Ethics and Arbitration Manual* do not contemplate that written or oral explanations or rationale or "findings" will be part of arbitration awards rendered by hearing panels of associations of REALTORS®.

(Adopted 11/06)

# Appendix V to Part Ten

## Arbitration Hearing Checklist

(1) **Arbitration of disputes.** "Dispute" and "arbitrable matter" refer to those contractual issues and questions, and certain specific non-contractual issues and questions outlined in Standard of Practice 17-4, including entitlement to commissions and compensation in cooperative transactions between REALTORS® and between REALTORS® and their clients and customers. (See **Part Ten, Section 43 of this Manual.**) *(Revised 11/96)*

Requests for arbitration must be filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known by the complainant in the exercise of reasonable diligence, whichever is later. Boards may provide mediation even if arbitration has not been requested provided the mediation is requested within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known by the complainant in the exercise of reasonable diligence, whichever is later. *(Revised 10/24)*

Suspension of filing deadlines: If the Board's informal dispute resolution processes (e.g., ombudsmen, mediation, etc.) are invoked or initiated by a complainant (or potential complainant) with respect to an otherwise potentially arbitrable matter that becomes the subject of a subsequent arbitration request, the one hundred eighty (180) day filing deadline shall be suspended beginning with 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. Questions about when informal dispute resolution began or ended will be determined by the Chair of the Professional Standards Committee.

(2) **Must be consistent with state law.** All arbitration hearings must be conducted in a manner consistent with state law.

(3) **Three (3) or more arbitrators necessary.** No arbitration may proceed without three (3) or more arbitrators not disqualified pursuant to the provisions of paragraphs (a) through (f) of **Part Seven, Section 27** of this Manual.

(4) **Substitute arbitrator.** If an arbitrator is disqualified, the Professional Standards Administrator shall appoint another member qualified to serve as an arbitrator.

(5) **Duty and privilege to arbitrate.** By becoming and remaining a member, and by signing or having signed the agreement to abide by the bylaws of the Board, every member, where consistent with applicable state law, binds themselves and agrees to submit to arbitration (and mediation if required) by the Board all disputes as defined in **Part Ten, Section 44** of this Manual. Refer to **Section 44** to determine the types of arbitration that are mandatory obligations upon members where not precluded by state law, and those types that should be offered as a service of the Board but are not mandatory obligations upon members. *(Revised 11/11)*

(6) **Conformity to state law.** Refer to **Part Ten, Section 43** of this Manual for important information concerning the necessity to know the applicable state statutes or case law governing arbitration and to conform the Board's arbitration procedures to the law. Board or State Association legal counsel may advise the Board in this respect.

(7) **Board's right to decline arbitration.** The Board should be aware of its right to decline to arbitrate a dispute between members or between members and nonmembers. If either the Grievance Review Panel or the arbitration Hearing Panel determines that the matter should not be arbitrated because of the amount involved (too little or too much), or because of the legal complexity of the matter, the arbitration automatically terminates unless either of the parties appeals the decision to the Appeal Tribunal within twenty (20) days of the date of the notice of the Grievance Review Panel's (or Hearing Panel's) decision using Form #A-20, *Appeal of Grievance Review Panel (or Hearing Panel) Dismissal or Classification of Arbitration Request*; however, no additional information may be added or attached to the form. The Hearing Panel can also dismiss the arbitration request if the Hearing Panel concludes the matter is not arbitrable. If the Board declines to arbitrate the matter, any deposits shall be returned to the parties. If the Executive Committee, or a panel thereof, decides that arbitration should proceed, the matter is remanded to the Grievance Review Panel or arbitration Hearing Panel for further processing.

If an appeal is filed, the Professional Standards Administrator shall appoint an Appeal Tribunal in accordance with **Part Eight, Section 42** to hear the appeal. The decision of the Appeal Tribunal is final and not subject to further review by the Association.

If an otherwise arbitrable matter is the subject of civil litigation, arbitration shall not take place unless the litigation is withdrawn or referred to the Board by the court for arbitration in accordance with Article 17. In instances where the arbitration is mandatory (as defined in **Part Ten, Section 44** of this Manual) the failure to arbitrate may result in a charge alleging violation of Article 17.

(8) **Duty to arbitrate before State Association.** As a member of a local Board, the Board Member is obligated to arbitrate a dispute with a member of another Board or a member who is directly a member of the State Association.

(9) **Interstate arbitration.** The procedures described in **Part Eleven** of this Manual may be used for arbitrating disputes between REALTOR® members of Boards located in different states, subject to the parties' voluntary agreement in advance to the place, date, and time established by the arbitration Hearing Panel, and agreement to pay all costs of the arbitration as may be directed by the panel, and further subject to the applicable law of the state in which the arbitration is held.

(10) **Manner of invoking arbitration.** Any Board Member, client, or customer authorized to do so may request arbitration by the Board. The request shall be in writing, indicating the nature of the dispute and the amount in dispute, and must be accompanied by the required arbitration filing fee (deposit). The request may be on a Board form or other form permitted by law. The Professional Standards Administrator shall refer the request to the Grievance Review Panel for determination within the time specified by the Board's professional standards procedures as to whether the matter is properly subject to arbitration, and as to whether the circumstances impose a mandatory obligation to arbitrate or arbitration is voluntary (to be conducted only if all parties voluntarily agree to arbitrate and be bound by the decision).

(11) **Dismissal of request for arbitration.** If the request for arbitration is dismissed by the Grievance Review Panel or the Hearing Panel, the complainant (requester) shall be informed of the dismissal and the reasons for the dismissal, and may appeal to the Appeal Tribunal within (20) days from transmittal of the notice of the Review Panel's (or Hearing Panel's) decision using Form #A-20, *Appeal of Grievance Review Panel (or Hearing Panel) Dismissal or Classification of Arbitration Request*. If an appeal is based on dismissal for failure to file within the time-period specified in this Manual, and an Appeal Tribunal determines that the request was timely filed, then the Appeal Tribunal shall serve as the Grievance Review Panel and further review the request in accordance with Part Nine, Section 42 B. The arbitration request and any attachments to the request may not be revised, modified, or supplemented. The complainant may, however, explain in writing why the complainant disagrees with the Grievance Review Panel's (or Hearing Panel's) conclusion that the request should be dismissed. With the appeal, the Appeal Tribunal shall consider only the same information that was available to the Grievance Review Panel or Hearing Panel at the time of dismissal of the request for arbitration. The complainant and respondent do not have the right to be present at the Appeal Tribunal meeting.

(12) **Function of Grievance Review Panel.** The function of the Grievance Review Panel is to make only such preliminary review as is required to determine proper disposition of the request for arbitration. In reviewing a request for arbitration, the purpose of the review is to determine (1) if the requester is authorized to invoke arbitration by the professional standards procedures in the Board's bylaws; (2) if the requested arbitration is mandated by the Board's bylaws or is voluntary on the part of the parties; (3) if the dispute described is an arbitrable matter; and (4) if the matter, either as to monetary amount (too small or too large) or as to legal complexity, is such that the Board should decline to arbitrate the matter and release the Board Members from their obligation to arbitrate, and thus free the members to seek other recourse to resolve the dispute.

(13) **Grievance Review Panel.** Members of the Professional Standards Committee appointed to serve on panels, shall not serve on more than one (1) tribunal in the same matter and may not serve on any tribunal if they have a conflict of interest as described elsewhere in this Manual.

(14) **If matter referred for arbitration.** If the request for arbitration is referred for hearing, the Professional Standards Administrator shall arrange an arbitration hearing. The Professional Standards Administrator shall notify the other party within the five days of receipt of the Grievance Review Panel's decision, except that a reasonable delay does not invalidate the procedure. The Professional Standards Administrator shall transmit a copy of the complaint to the respondent and provide forms for reply by the respondent, with directions to complete the forms, including the "Arbitration Agreement," and return them to the Professional Standards Administrator within fifteen (15) days from the date of transmittal to respondent.

(15) **Obligation to arbitrate.** The Board Member is obligated to arbitrate under certain circumstances if mandatory arbitration is permitted by state law. The member, by becoming and remaining a member, has entered into a prior agreement to arbitrate and acknowledges this prior agreement by signing an agreement to arbitrate and abide by the award in each case. If the applicable state law does not permit prior agreements to arbitrate, then arbitration may be voluntarily agreed to by the parties after the dispute arises.

(16) **Content of agreement to arbitrate.** The Arbitration Agreement shall acknowledge the membership duty voluntarily accepted when the party sought and received membership in the Board, and shall specify that the party does now, in accordance with the prior agreement to arbitrate, acknowledge and enter into such agreement and agree to abide by the award. The Arbitration Agreement shall be accompanied by a concise statement of the matter in dispute. Each party must sign and file the Agreement with the Professional Standards Administrator, along with any required deposit. The deposit may be returned to the recipient of the arbitration award. *(Amended 11/95)*

(17) **Refusal of respondent to appear and/or sign the Arbitration Agreement.** The circumstances under which Member Boards may conduct arbitration will vary based on state arbitration statutes and case law. In some states, arbitration may be conducted only if both parties sign the Arbitration Agreements, deposit the required amounts, and appear and take part in the hearing. In other states, arbitration may proceed in the absence of signed Arbitration Agreements and deposits if the parties appear and take part in the hearing. In still other states, arbitration may take place and a valid award may be rendered even if the respondent refuses to sign the Arbitration Agreement and refuses to take part in the hearing. Refer to **Part Ten, Section 48(b)** of this Manual for important information on the need to determine whether state law permits arbitration to proceed if the respondent refuses to appear at the hearing and/or refuses to sign the Arbitration Agreement.

(18) **Reply from respondent.** No sooner than fifteen (15) days nor later than twenty-one (21) days after transmitting notice of hearing and a copy of the complaint to the respondent, the Professional Standards Administrator shall transmit a copy of any reply by the respondent to the complainant within five (5) days from receipt of the response. A Board may ask for a response to an arbitration request but may not require one. *(Revised 11/14)*

(19) **Opportunity for challenge of possible arbitrators.** When the Professional Standards Administrator transmits a copy of the reply, if any, from the respondent, the Professional Standards Administrator shall also transmit to the parties a list of members of the Professional Standards Committee appointed to serve on the Hearing Panel, and advise of their right to challenge for cause the qualification of any member to serve as an arbitrator, if such list has not already been transmitted to the parties with notification of the Grievance Review Panel's referral for hearing. Any disqualification must be filed within ten (10) days from the date the list of names was transmitted to the parties. Within fifteen (15) days from the date the list of names is transmitted to the parties, the arbitration Hearing Panel members shall be appointed by the Professional Standards Administrator from the members of the Professional Standards Committee who are not successfully challenged by the complainant or respondent for cause. A majority must be REALTORS®, and if a REALTOR-ASSOCIATE® or REALTOR® other than a principal has invoked the arbitration through the REALTOR® principal, or is affiliated with the respondent, and has a vested interest in the outcome of the proceeding, one (1) of the arbitrators shall be a REALTOR-ASSOCIATE® or REALTOR® other than a principal. The Professional Standards Administrator shall also select one (1) of the panel members to serve as Chairperson of the Hearing Panel. *(Revised 11/14)*

If the arbitration involves issues related to areas of the real estate business such as commercial, investment, industrial, etc., and the Association cannot impanel a qualified peer panel, the complainant and respondent are released from their obligation to arbitrate.

(20) **Date, time, and place of hearing.** The Professional Standards Administrator, working with the Chair, will establish the date, time, and place for the arbitration hearing. Notice shall be given at least twenty-one (21) days prior to the date of hearing. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. (However, appearance by a party at an arbitration hearing waives the right to such notice.) The arbitration request and response, if any, shall be provided to Hearing Panel members prior to the hearing. Such time period shall be 21 days (except for substitute panel members) and shall be adhered to for all hearings.

(21) **Written statements and proof.** In addition to the request for arbitration and the response to the arbitration request, the parties to the arbitration shall, upon notice of the hearing, present to the arbitrators, in writing, such statements and proof as they deem

necessary to support their claims. The Hearing Panel may require statements to be verified by affidavit and/or that the accuracy or authenticity of documents or papers be verified by affidavit. In addition to written statements and proof provided to the arbitrators prior to the hearing, the Hearing Panel may, at the hearing, receive any further written statements, documents, or other papers, and shall hear oral testimony as described in **Part Ten, Section 51** of this Manual.

(22) **Arbitrators to regulate hearing.** The Hearing Panel determines (1) date, time, and place of hearing; (2) what appearances are to be made by the parties; (3) what evidence it will receive and consider, including the evidence of accountants and other experts; and (4) interpretations of Board bylaw provisions. Each party is responsible for the expenses of their expert witnesses and legal counsel.

Arbitration hearings should be conducted in accordance with the Chairperson's Procedural Guide, **Part Ten, Section 51** and **Part Twelve** of this Manual.

(23) **Witnesses sworn or affirmed.** Prior to testifying, all parties and witnesses shall be sworn or affirmed by the Chairperson as described in the Chairperson's Procedural Guide in **Part Twelve** of this Manual.

(24) **Witnesses present only as necessary to hearing.** Witnesses shall be present during the arbitration hearing only as necessary to receive instructions, to be sworn or affirmed, to give testimony, and to respond to cross-examination. Witnesses should be excused during other parts of the hearing.

(25) **Opening statement by parties or attorneys.** Each party or the party's attorney-at-law shall be given an opportunity for an opening statement which shall briefly outline the basic premise of the party's position in respect of the matter to be arbitrated.

(26) **Testimony of character or general business reputation of party.** No testimony may be admitted related to the character or general business reputation of any party, unless such testimony has a direct bearing on the matter being heard.

(27) **Testimony.** The complainant may give testimony and present evidence as deemed appropriate to the arbitration by the Hearing Panel. Following presentation by the complainant, the respondent shall testify. The parties shall present to the arbitrators their oral testimony and such written statements and proof as the arbitrators may require. Proof may be by affidavit or other form acceptable to the arbitrators.

(28) **Right to cross-examine.** At the conclusion of testimony by each party, or by a witness, the opposing party and/or their counsel may cross-examine the party or witness.

(29) **Arbitrators' examination of parties or witnesses.** Upon completion of testimony and cross-examination of any party or witness, the arbitrators may examine the party or witness.

(30) **Summary of each party.** Upon completion of all testimony, each party or party's attorney may summarize the proceedings for the Hearing Panel. The complainant's summary shall be presented first, and the respondent's summary follows.

(31) **Parties excused for executive session and decision by arbitrators.** After the summary by each party, the parties shall be excused from the hearing room, and the arbitrators shall, in executive session, render their decision. The arbitrators shall be guided in the evaluation of all the evidence by the Arbitration Guidelines in **Part Ten, Appendix II** of this Manual.

(32) **Parties' settlement of the issue at any time.** The parties to the arbitration may settle the issue between them at any time. If they settle, they shall advise the Professional Standards Administrator, and the arbitration shall be terminated and so recorded in the file. See Fee Schedule regarding disbursement of deposits.

(33) **The award.** The award shall be made as soon as possible after the evidence is presented. The award shall be in writing and signed by the arbitrators or a majority of them, and shall state only the amount of the award, and when transmitted to each of the parties shall not be subject to review or appeal. Notwithstanding the foregoing, a party may appeal to the Procedural Review Tribunal only on the basis of alleged irregularity(ies) of the proceeding as may have deprived the party of fundamental due process. The Procedural Review Tribunal shall not receive or review evidence offered as to the merits of the award, except as such evidence may bear upon a claim of deprivation of due process. After the award has been transmitted to each of the parties, they have twenty (20) days to request procedural review of the arbitration hearing by the Procedural Review Tribunal. If no such review is requested, the award becomes final and binding following the twenty (20) day period. However, if procedural review is requested, the award is not considered final and binding until after the Procedural Review Tribunal has concluded that the hearing had been conducted in a

manner consistent with the Board's procedures and the parties had been afforded due process. (See **Part Ten, Sections 53 and 55** of this Manual.) *(Revised 11/14)*

(34) **Escrowing of arbitration awards.** Boards must adopt procedures that require the nonprevailing party to either pay the award or deposit the amount with the Board within ten (10) days of transmittal of the award. Please refer to **Part Ten, Section 53** of this Manual. *(Revised 05/15)*

In the event a party fails to, within ten (10) days of the date the award is transmitted, either pay the award to the party(ies) named in the award and notify the Board in writing of such payment or deposit the funds with the Professional Standards Administrator of the Board consistent with **Section 53, The Award**, Code of Ethics and Arbitration Manual, that failure shall be referred to the Leadership Team within one (1) day of such failure; however no special meeting on the matter shall occur until after the procedural review, if any is filed, is concluded, or until after the time to request a procedural review has passed. The Leadership Team, consistent with **Section 53**, may, at their discretion, impose discipline, including but not limited to termination of Board Membership and/or MLS access/use, or may give the party an additional period to make the required deposit. The Leadership Team may also stipulate appropriate discipline to be automatically imposed if the party fails to make the deposit within the time established by the Leadership Team. However, if a procedural review determines there was an error that necessitates a new arbitration hearing, the Leadership Team shall take that into account during special meeting, and escrow of the Award shall not be required until after the conclusion of the new arbitration hearing. Although the Chief Executive Officer has the right to be present at meetings involving the Leadership Team, the Chief Executive Officer shall not vote on any matter before the Leadership Team. *(Revised 01/22)*

(35) **Request for procedural review.** The Procedural Review Tribunal shall be appointed by the Professional Standards Administrator in accordance with **Part Eight, Section 39.1**. The decision of the Procedural Review Tribunal is final and binding and is not subject to further review by the Association. All requests for procedural review received by the Board must be considered by the Procedural Review Tribunal and only the bases raised in the written request for procedural review may be raised during the review before the Procedural Review Tribunal.

(36) **If a REALTOR® refuses to arbitrate.** If a REALTOR® is charged in an ethics complaint of improperly refusing to submit a dispute to arbitration (or mediation if required by a Board) as specified in **Part Ten, Section 49** of this Manual, the complaint shall not be referred to the Grievance Review Panel or a Hearing Panel, but shall be brought before the Executive Committee at the next regularly scheduled meeting or at a special meeting called by the President for that purpose. The procedures for notice, time of notice, and hearing prescribed for matters before a Hearing Panel shall apply. The sole question of fact for the Executive Committee to decide will be whether the respondent failed to submit an arbitrable matter (as defined in **Part Ten, Sections 43 and 44** of this Manual) to arbitration or mediation in violation of Article 17. Upon determination that the member has refused to arbitrate or mediate a properly arbitrable matter, the Executive Committee may direct the imposition of appropriate sanction and should, if they have reason to believe that the imposition of sanction will become the basis for litigation and a claim for damages consequent to such sanction, delay the effective date of implementing the sanction to a date following receipt by the Board of a judicial decision in a petition for declaratory relief filed by the Board to confirm the propriety of its action.

(37) **Enforcement of award.** If a party refuses to abide by an award in arbitration or the terms of a mediated settlement agreement, such refusal should not be referred to the Grievance Review Panel as a violation of the Code of Ethics unless it reflects an established pattern or practice of noncompliance with the commitment to arbitrate/mediate. The award recipient, or the beneficiary of a settlement agreement reached by the parties in mediation, should be advised by the Board to seek judicial enforcement of the award/agreement by a local court of competent jurisdiction and to request reimbursement of legal fees incurred in seeking enforcement. (Refer to **Part Ten, Section 56** of this Manual.) If the court does not award reimbursement of legal fees, the Board may, at its discretion, reimburse the award recipient/beneficiary for legal fees incurred in seeking enforcement. (See **Part Ten, Appendix III** of this Manual for the rationale of judicial enforcement of awards in arbitration.) *(Revised 11/14)*

## Summary of Administrative Time Frames—Arbitration Proceedings

| Situation                                              | Time Table                                                                                                                                                                                                                                |
|--------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b><u>Grievance</u></b>                                |                                                                                                                                                                                                                                           |
| Request filed-----                                     | 180 days                                                                                                                                                                                                                                  |
| Response required/# of days to submit-----             | Optional/15 days from transmitting request to respondent if response solicited                                                                                                                                                            |
| Appeal dismissal to Directors-----                     | 20 days from transmitting dismissal notice                                                                                                                                                                                                |
| Appeal of mandatory vs. voluntary classification ----- | 20 days from transmittal of decision                                                                                                                                                                                                      |
| <b><u>Hearing</u></b>                                  |                                                                                                                                                                                                                                           |
| Notification to respondent of request-----             | 5 days from transmittal of Grievance Review Panel's instruction                                                                                                                                                                           |
| Response required -----                                | 15 days from transmitting request to respondent; staff transmits response to complainant within 5 days from receipt                                                                                                                       |
| Challenge forms -----                                  | 10 days to challenge from date forms transmitted                                                                                                                                                                                          |
| Panel named -----                                      | 10 days from transmitting challenge forms                                                                                                                                                                                                 |
| Hearing notice* -----                                  | 21 days before hearing                                                                                                                                                                                                                    |
| Arbitration case to panel -----                        | Association option                                                                                                                                                                                                                        |
| Notice of witnesses and attorney -----                 | 15 days before hearing to Association and other party                                                                                                                                                                                     |
| <b><u>Procedural Review</u></b>                        |                                                                                                                                                                                                                                           |
| Request filed-----                                     | 20 days from transmitting award                                                                                                                                                                                                           |
| Preliminary review -----                               | Within 10 days of receipt of request                                                                                                                                                                                                      |
| Amendment received-----                                | Within 10 days of notice                                                                                                                                                                                                                  |
| Review held by Procedural Review Tribunal-----         | As scheduled giving not less than 10 days' notice but not later than 45 days after receipt of procedural review request; Professional Standards Administrator transmits written decision within 5 days from the procedural review hearing |
| Notice of attorney-----                                | 10 days before hearing to Association and other party                                                                                                                                                                                     |

(Revised 11/24)

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\*Notice of hearing should be transmitted to the parties with the *Outline of Procedure* (Form #A-10 or Form #A-10a, as appropriate) and the *Arbitration Guidelines* (including the Worksheet contained in **Appendix II to Part Ten**).

# Appendix VI to Part Ten

## Mediation as a Service of Member Boards

Although no party to an arbitrable matter can be required to submit to mediation (unless REALTORS® [principals] are required by their Board to mediate otherwise arbitrable disputes pursuant to Article 17) and mediation cannot and is not intended to be a substitute for the arbitration procedures described elsewhere in this Manual, mediation can be a useful tool in resolving the conflicts that arise involving Board Members and their clients and customers. Mediation must be available in instances where arbitration would be provided under **Part Ten, Section 44** of this Manual and a Board can require REALTORS® (principals) to mediate otherwise arbitrable disputes pursuant to Article 17. Mediation can resolve disputes, promote amicable resolutions, and reduce the number of cases requiring the more formal and complex arbitration procedures of the Board, thus reducing the time and effort required of Board Members serving on the Professional Standards Committee. *(Revised 11/11)*

### **Benefits of Mediation**

Mediation is an attractive alternative to arbitration because mediation:

- works; most disputes are successfully resolved
- there may be low or no cost when compared to arbitration
- can be scheduled in days as opposed to months and mediations are typically shorter than formal hearings
- is a flexible process allowing the parties to determine their solution and maintain control of the outcome as opposed to having arbitrators control the outcome
- provides parties with an opportunity to maintain, and in some instances improve, relationships
- improves communication and clarifies misunderstandings because parties come together and talk with a trained neutral mediator
- allows parties to discover and address their true interests
- moves beyond different views of fact and law
- allows for a maximum range of creative solutions beyond win/lose
- is as binding and enforceable as an arbitration award if a mediated resolution is reached.
- *(Adopted 11/23)*

### **Selection of Association Mediation Officer:**

Conducting successful mediation procedures requires tact, diplomacy, and a sense of equity. Careful consideration should be given by the Board President (or the Board of Directors of the Association) in selecting the Board's Mediation Officer. Many Boards will find that one Mediation Officer will be sufficient. However, in large Boards, consideration can be given to appointing a standing panel of two, three, or more Mediation Officers depending upon the number of requests for arbitration normally filed in the course of a year.

A Board Mediation Officer should be appointed for a term of at least one (1) year. Consideration can be given by the local Board to making the appointment for two (2) or even three (3) years. It is strongly recommended that any individual serving as a Board Mediation Officer have extensive prior experience on the Board's Grievance Review Panel, Professional Standards Committee, and/or Board of Directors. The Mediation Officer should be thoroughly conversant with the Board's arbitration procedures as well as with the real estate rules and regulations of the state. It is recommended that the Mediation Officer not serve concurrently as either an officer or director of the Board, or as a member of the Grievance Review Panel, or as a member of the Professional Standards Committee. If Mediation Officers are members of the Grievance Review Panel, they shall not participate in the consideration of requests for arbitration or ethics complaints arising out of the same facts and circumstances giving rise to a matter they attempted to mediate. If Mediation Officers are members of the Professional Standards Committee, they shall not serve on an arbitration Hearing Panel in cases where they had initially attempted to resolve the dispute prior to an arbitration hearing, or on an ethics Hearing Panel in cases where an ethics complaint arises out of the same facts and circumstances giving rise to a matter they attempted to mediate.

Although ombuds and mediators who serve in either capacity are not part of a tribunal, they nevertheless may not participate in the deliberation of any tribunal on the same matter for which they provided the ombuds or mediation service. An ombuds may not serve as a mediator on the same matter for which they provided the ombuds service. *(Adopted 11/22)*

The Mediation Officer should be someone widely respected for fairness, experience, and impartiality. Only to the degree that all parties to the mediation can be confident that the mediator is impartial will mediation procedures be successful. By having more than one Mediation Officer, assignments can be made to utilize a particular individual whose experience, abilities, and relationship renders them most appropriate for the particular assignment. *(Revised 11/91)*

#### **Mediation is Mandatory or Voluntary as Determined by the Board:**

It must be understood by all parties that participation in mediation procedures is entirely voluntary unless REALTORS® (principals) are required by their Board to mediate otherwise arbitrable disputes pursuant to Article 17. If the Board does not require REALTORS® (principals) to mediate otherwise arbitrable matters, the parties should be offered the opportunity and encouraged to participate in the mediation process (and must be offered mediation if an arbitration request is filed either prior to or after review by the Grievance Committee) in good faith, and, further, encouraged to abide by the determination. The parties to mediation should be aware that they may withdraw from the process at any point prior to reaching an agreement. Any offers of settlement that were not accepted or any suggested resolution proposed by the Mediation Officer that was not accepted will not be introduced as evidence nor considered in any manner should the matter require arbitration by the Board's Professional Standards Committee. However, if the parties agree to a settlement of the dispute, and the settlement has been reduced to writing and has been signed by all of the parties, the matter is deemed resolved and cannot be the subject of a subsequent arbitration hearing. In the event either of the parties later fails to abide by the terms of the settlement, the matter may not be arbitrated; instead, the other party should be encouraged to have the settlement agreement judicially enforced by a court of competent jurisdiction. (A sample settlement agreement is included as Form #A-17, in **Part Thirteen** of this Manual.) *(Revised 11/24)*

#### **Need for Adequate Notice:**

In mediation the need for due process remains. Generally, there will be no need for the parties to be represented by legal counsel nor for the Board to have legal counsel present at a mediation proceeding. However, since mediation is an attempt to bring the disputing parties together in an informal setting to resolve their differences, every effort should be made to ensure that the parties are provided with adequate prior notice (at least ten (10) days) and that the time and location of the proceeding is mutually convenient to all involved. However, this requirement shall not preclude parties to a dispute waiving such notice and agreeing to mediate at any time agreed by all parties. *(Revised 5/12)*

#### **Initiation of Mediation Proceedings:**

The Professional Standards Administrator, upon receipt of a request for arbitration, will advise all parties of their mediation obligations and options to participate in mediation prior to or after review of the arbitration request by the Grievance Review Panel. If mediation is voluntary and the parties agree, the matter will be referred to the Mediation Officer. The Mediation Officer or the Professional Standards Administrator, will arrange a mutually convenient time and location for mediation. When mediation is voluntary and the mediation attempt is unsuccessful, or if either of the parties wishes to discontinue the mediation process for any reason, then mediation will be terminated and the request for arbitration will be referred to the Grievance Review Panel for review. Regardless of whether mediation is voluntary or mandatory, if either party requests that mediation be deferred until after the arbitration request can be reviewed by the Grievance Review Panel, the arbitration request will be referred to the Grievance Review Panel for that committee's determination whether (a) an arbitrable issue exists, and (b) whether arbitration would be voluntary or mandatory. Where any party initially declines to mediate pending the Grievance Review Panel's review of the arbitration request, the parties shall in all instances again be offered the opportunity to mediate following the Grievance Review Panel's review. *(Revised 10/24)*

Boards may also offer disputing parties an opportunity to mediate prior to an arbitration request being filed. *(Adopted 11/11)*

NOTE: If a Board requires REALTORS®(principals) to mediate otherwise arbitrable disputes, there can be no allegation of a violation of Article 17 if a party refuses to mediate unless an arbitration request has been filed, the Grievance Review Panel has referred the arbitration request for hearing on a mandatory basis, and the party then refuses to mediate. *(Adopted 11/11)*

#### **Conduct of Mediation Procedures:**

If for any reason, any of the parties (or the Mediation Officer) is unable to participate on the date agreed, the procedure should be rescheduled to the earliest mutually acceptable date. Witnesses, if any, should be kept to a minimum. *(Revised 11/03)*

Realizing that a dispute already exists between the parties, the Mediation Officer should make every effort to encourage a conciliatory atmosphere while ensuring a full discussion of all pertinent facts. The complainant and respondent should be encouraged to appreciate each other's position in the matter and to effect a solution that will eliminate the need for arbitration by the Board's Professional Standards Committee. The parties can agree to a mutual resolution of the matter at any time during the mediation procedure. If,

following a thorough discussion of all the pertinent facts, the parties are still unable to resolve the matter, the Mediation Officer may, at the Mediation Officer's discretion, then make a recommendation. Any recommendation for resolution can be oral or in writing and will be provided to both parties at the conclusion of the mediation procedure. The parties can agree to the Mediation Officer's proposed resolution at that time. If neither of the parties desires to give additional consideration to the Mediation Officer's resolution, both parties will be given a specified period of time, not to exceed forty-eight (48) hours, to consider the resolution and to advise the Mediation Officer of their acceptance or rejection of it. If either of the parties rejects the proposed resolution, the mediation procedure will be deemed concluded and the matter will proceed to arbitration. Any party who does not respond to the Mediation Officer within seventy-two (72) hours will be deemed to have rejected the suggested solution and arbitration will proceed. *(Revised 11/96)*

NOTE: When the Board adopts the mediation procedures described in this Manual or develops similar procedures, they should be included in the Board's *Code of Ethics and Arbitration Manual* in whole or by reference. *(Revised 11/96)*

## Mediation Procedures Adapted by Minnesota Realtors®

(1) Arbitration request received by the Association <sup>19</sup>

(2) The Professional Standards Administrator will advise parties of their option to participate in voluntary mediation prior to review of the arbitration request by the Grievance Review Panel.

If either the complainant or respondent check on the Arbitration Request that they are interested in Mediation, an Agreement to Mediate shall be forwarded to the complainant and the respondent along with a Notice of Request for Mediation.

**Send to requesting party:**

- Agreement to Mediate form with request to return Agreement to Mediate no later than three (3) days after transmission of the Agreement to Mediate.

(3) Upon receipt of completed forms, **send to other party:**

- Notice of Request for Mediation
- Agreement to Mediate form

(4) Upon receipt of all completed forms, the Association may assign any Mediator not challenged to serve as the Mediation Officer.

**Send to both complainant and respondent:**

- Notice of Selection of Mediation Officer form
- Written Statement of Mediator's Qualifications including a description of the mediator's educational background and relevant training and experience in the field.

(5) The Mediation Officer or Professional Standards Administrator should contact the complainant and respondent directly to set an acceptable time and location for the mediation conference.

**Send to both complainant and respondent:**

*Official Notice of Mediation Conference* confirming date, time, and location of conference.

(6) (a) **If the mediation conference successfully resolves the dispute:**

Original signed *Mediation Resolution Agreement* (Form #M-6) should be forwarded to the Association by the Mediation Officer. The *Resolution Agreement* should be kept in the file with all pertinent records pertaining to that case.

Both the complainant and respondent should receive a copy of the *Resolution Agreement*. See *Fee Schedule* for disposition of mediation fees.

(b) **If the mediation conference does not successfully resolve the dispute:**

If the parties are unable to resolve their dispute, the Mediation Officer may make the determination that the parties have reached an impasse and may recommend an equitable solution. The recommendation for resolution can be oral or in writing and may be provided to both parties at the conclusion of the mediation procedure. The parties shall respond to the recommendation of resolution, if any, not later than 48 hours from transmission of the recommendation.

Any party who does not respond to the Mediation Officer within 48 hours will be considered to have rejected the suggested solution.

Mediation Officer should advise the Association that the mediation conference has been terminated without resolution of the dispute. Mediation Officer will send *Termination of Mediation Conference* form to Association. See *Fee Schedule* for disposition of mediation fees.

Request for Arbitration will be forwarded to the Association's Grievance Review Panel for review.

<sup>19</sup> Associations may also offer disputing parties an opportunity to mediate prior to an arbitration request being filed.

Form M-1  
Case #<CASENUMBER>**Notice of Request for Mediation****In the matter of:**

|                                                 |     |                                                |
|-------------------------------------------------|-----|------------------------------------------------|
| <u>&lt;C_NAMES&gt;</u><br><i>Complainant(s)</i> | vs. | <u>&lt;R_NAMES&gt;</u><br><i>Respondent(s)</i> |
|-------------------------------------------------|-----|------------------------------------------------|

A request for mediation involving the above-named case prior to a hearing of this matter by the Professional Standards Committee of the Association has been received. A copy of the dispute is enclosed. If you wish to participate in the voluntary mediation process at this time, please complete Form M-3 *Agreement to Mediate* and return it to the Association office at the address shown on this form by [Click or tap to enter a date.](#) . The Agreement must be signed and dated by the REALTOR® principal or their authorized designee. If no response is received from you by the date above, the case shall be referred to the Grievance Review Panel of the Association for determination at its next scheduled meeting.

Respectfully submitted,

Dated: &lt;TODAY&gt;

Professional Standards Administrator  
Minnesota Realtors®

Form M-2  
Case #<CASENUMBER>**Mediation Officer Selection Form****In the matter of:**

|                                                 |     |                                                |
|-------------------------------------------------|-----|------------------------------------------------|
| <u>&lt;C_NAMES&gt;</u><br><i>Complainant(s)</i> | vs. | <u>&lt;R_NAMES&gt;</u><br><i>Respondent(s)</i> |
|-------------------------------------------------|-----|------------------------------------------------|

The following individual(s) have agreed to serve as Mediation Officer(s) for disputes between REALTOR® members of those Associations that have entered into a Regional Enforcement Agreement with Minnesota Realtors®. A written statement of the Mediation Officer's qualifications is listed below each name.

As a party to this mediation, you have the right to challenge any Mediator that you believe would not be acceptable to serve as the Mediation Officer for your mediation conference. This form must be returned to the Board office before the Mediation Conference scheduled on <M\_HEARINGDATE>.

1. Name: [Click or tap here to enter text.](#)

[Insert the written statement of the Mediator's qualifications including a description of the mediator's educational background and relevant training and experience in the field.]

I ☐ will ☐ will not accept this person as a Mediator for this dispute for the following reason(s):

---

---

---

2. Name: [Click or tap here to enter text.](#)

[Insert the written statement of the Mediator's qualifications including a description of the mediator's educational background and relevant training and experience in the field.]

I ☐ will ☐ will not accept this person as a Mediator for this dispute for the following reason(s):

---

---

---

3. Name: [Click or tap here to enter text.](#)

[Insert the written statement of the Mediator's qualifications including a description of the mediator's educational background and relevant training and experience in the field.]

I ☐ will ☐ will not accept this person as a Mediator for this dispute for the following reason(s):

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Signature of REALTOR® Principal/Authorized Designee

---

Date

---

Print Name of REALTOR® Principal/Authorized Designee

Form M-3  
Case #<CASENUMBER>**Agreement to Mediate***(To be used for Mediation between REALTOR® Members)***In the matter of:**

|                        |     |                        |
|------------------------|-----|------------------------|
| <u>&lt;C_NAMES&gt;</u> | vs. | <u>&lt;R_NAMES&gt;</u> |
| <i>Complainant(s)</i>  |     | <i>Respondent(s)</i>   |

The undersigned agree that they are involved in a contractual dispute defined by Article 17 of the Code or in a specific non-contractual dispute as outlined in Standard of Practice 17-4 or in a dispute arising out of their relationship as REALTORS®.

The undersigned agrees to submit this dispute to mediation in accordance with the mediation guidelines, as set forth in the *Code of Ethics and Arbitration Manual* of the National Association Of REALTORS® and adopted by Minnesota Realtors®.

Any Agreement signed by the parties, pursuant to the mediation conference, shall be binding.

**As a party to the mediation process, I understand and agree as follows:**

Participation in mediation procedures is voluntary. Parties to mediation may withdraw from the process at any point prior to reaching an agreement. The mediation process shall terminate upon written notice from either party, or the Mediator delivered by certified mail or personally to the other people who signed this Agreement. Parties to mediation that do not reach an agreement shall be free to pursue arbitration of the dispute in accordance with the guidelines set forth in the *Code of Ethics and Arbitration Manual* of the National Association Of REALTORS®. Each party acknowledges that prior to the commencement of the mediation each party was provided a written disclosure of the qualifications of the Mediator, including a description of the Mediator's educational background and relevant training and experience in mediation. Each party acknowledges the Mediator has given them written notice that (a) the Mediator has no duty to protect their interests or provide them with information about their legal rights; (b) signing a mediated settlement agreement may adversely affect their legal rights; (c) the Mediator is not providing legal representation, legal advice, or legal services, and that the parties are advised of their right to be represented by counsel at the mediation and also of their right to obtain independent legal advice (if counsel are not at the mediation) before signing any final settlement agreement; and (d) the parties should consult an attorney before signing a mediated settlement agreement if they are uncertain about their rights.

Any offers of settlement that were not accepted or any suggested resolution proposed by the Mediator that was not accepted will not be introduced as evidence nor considered in any manner

should the matter require arbitration by the Association's Professional Standards Committee. However, if the parties agree to a settlement of the dispute, and the settlement is reduced to writing and has been signed by all of the parties, the matter shall be considered resolved and shall not be the subject of a subsequent arbitration hearing. In the event that either of the parties fails to abide by the terms of the settlement, the matter may not be arbitrated; instead, the other party should be encouraged to have the settlement agreement judicially enforced by a court of competent jurisdiction.

No aspect of this mediation conference shall be relied upon or introduced as evidence in any arbitration, judicial, or other proceeding, including, but not limited to: views expressed or suggestions made by a party with respect to a possible settlement of the dispute; admissions made in the course of the mediation; proposals made or views expressed by the Mediator or the response of any party thereto.

No privilege shall be affected by disclosures made in the course of mediation. Disclosure of any records, reports, or other documents received or prepared by the Association or Mediator shall not be compelled. The parties agree to negotiate in good faith and while they may refuse to divulge information they may not give false information. Neither the Association nor the Mediator shall be compelled to disclose or to testify in any proceeding as to information disclosed or representations made in the course of the mediation or communication to the Mediator in confidence. Neither the Mediator, Minnesota Realtors® nor the National Association Of REALTORS® or any of its Member Associations shall be deemed "necessary parties" in any judicial proceedings relating to mediation under this Agreement. The parties acknowledge that the mediation proceedings will not be tape recorded and that weapons of any type are prohibited.

Are the circumstances giving rise to this request for mediation the subject of civil or criminal litigation or in any proceeding before the state real estate licensing authority or any other state or federal regulatory or administrative agency? ☐ Yes ☐ No

By my signature on this Agreement to Mediate, I acknowledge my rights and agree to the terms of the mediation procedures as stated above. I hereby affirm that I have the authority to enter into and sign a binding written agreement to settle this dispute.

**COMPLAINANT(S):**

|                          |                  |             |
|--------------------------|------------------|-------------|
| _____                    | _____            | _____       |
| <i>Type / Print Name</i> | <i>Signature</i> | <i>Date</i> |

|                          |                  |             |
|--------------------------|------------------|-------------|
| _____                    | _____            | _____       |
| <i>Type / Print Name</i> | <i>Signature</i> | <i>Date</i> |

\_\_\_\_\_

*Address*

**RESPONDENT(S):**

|                                   |                           |                      |
|-----------------------------------|---------------------------|----------------------|
| _____<br><i>Type / Print Name</i> | _____<br><i>Signature</i> | _____<br><i>Date</i> |
| _____<br><i>Type / Print Name</i> | _____<br><i>Signature</i> | _____<br><i>Date</i> |
| _____<br><i>Address</i>           |                           |                      |

---

**Mediator of Minnesota Realtors®:** The undersigned has agreed to serve as the Mediator for this mediation conference.

|                                   |                           |                      |
|-----------------------------------|---------------------------|----------------------|
| _____<br><i>Type / Print Name</i> | _____<br><i>Signature</i> | _____<br><i>Date</i> |
|-----------------------------------|---------------------------|----------------------|

Form M-4  
Case #<CASENUMBER>

## Notice of Selection of Mediation Officer

### In the matter of:

|                                                 |     |                                                |
|-------------------------------------------------|-----|------------------------------------------------|
| <u>&lt;C_NAMES&gt;</u><br><i>Complainant(s)</i> | vs. | <u>&lt;R_NAMES&gt;</u><br><i>Respondent(s)</i> |
|-------------------------------------------------|-----|------------------------------------------------|

The above parties are notified that <M\_CHAIR> has agreed to serve as the Mediation Officer for your mediation conference. Attached to this Notice is a written statement of the Mediator's qualifications including a description of the mediator's educational background and relevant training and experience in the field. The Mediation Officer or the Board staff will contact you directly to set up the date, time, and location of the mediation conference.

### The Mediation Process:

- (1) Participation in the mediation process is voluntary.
- (2) Parties to a mediation conference may withdraw from the process at any point prior to reaching an agreement. Should you choose to withdraw from the process prior to reaching an agreement, the complainant is free to pursue arbitration of the dispute in accordance with the guidelines set forth in the *Code of Ethics and Arbitration Manual* of the National Association Of REALTORS®.
- (3) If the parties to the mediation conference agree to a settlement of the dispute, and the settlement is reduced to writing and has been signed by all of the parties, the matter shall be considered resolved and shall not be the subject of a subsequent arbitration hearing. In the event that either of the parties fail to abide by the terms of the settlement, the matter may not be arbitrated; instead, the other party should be encouraged to have the settlement agreement judicially enforced by a court of competent jurisdiction.
- (4) Parties to the mediation may be accompanied by and represented at the conference by legal counsel. If it is your intent to have legal counsel present at the mediation conference, the Mediation Officer or the Board staff should be advised of this fact at least ten (10) days prior to the mediation conference.
- (5) Parties to the mediation may agree to a mutual resolution of the matter at any time during the mediation conference. If following a thorough discussion of all the pertinent facts, the parties are still unable to resolve the matter, the Mediation Officer may make a recommendation for the resolution of the dispute. The recommendation for resolution can be oral or in writing and may be provided to both parties at the conclusion of the mediation conference. The parties can agree to the Mediation Officer's proposed

resolution at the time it is presented to them. If neither of the parties desire to give additional consideration to the Mediation Officer's resolution, both parties will be given a specified period of time, not to exceed forty-eight (48) hours, to consider the resolution and to advise the Mediation Officer of their acceptance or rejection of the recommended resolution. Failure to respond to the recommended resolution within the specified time period will be deemed as a rejection of the suggested resolution. If either of the parties reject the proposed resolution, the mediation conference will be deemed concluded and the matter will proceed to the Board's Grievance Committee for determination. If the Grievance Committee has previously referred the dispute to the Board's Professional Standards Hearing Panel, the matter will proceed to arbitration.

- (6) If the parties to the mediation conference are unable to resolve the dispute, any offers of settlement that were not accepted or any suggested resolution proposed by the Mediation Officer that was not accepted will not be introduced as evidence nor considered in any manner should the matter require arbitration by the Board's Professional Standards Committee.

Respectfully submitted,

Date: <TODAY>

Professional Standards  
Administrator Minnesota Realtors®

Form M-5  
Case #<CASENUMBER>**Official Notice of Mediation Conference**

|                                                 |     |                                                |
|-------------------------------------------------|-----|------------------------------------------------|
| <u>&lt;C_NAMES&gt;</u><br><i>Complainant(s)</i> | vs. | <u>&lt;R_NAMES&gt;</u><br><i>Respondent(s)</i> |
|-------------------------------------------------|-----|------------------------------------------------|

**Parties are hereby notified:**

1. A mediation conference has been set for <M\_HEARINGDATE> **Choose an item..**
2. Please notify the Board at your earliest convenience if a conflict should arise with the scheduled conference.
3. The procedures for a mediation conference are less formal than the procedures for an arbitration hearing conducted by an Association of REALTORS®. Since a mediation conference is not an arbitration proceeding or court action, but rather a structured negotiation to find a mutually acceptable solution to a dispute, it is not necessary for you to present testimony from witnesses. However, if you believe you cannot fully explain your position without a witness, you may ask a witness(es) to be present. Additionally, the decision of whether to be represented by legal counsel at the conference is an individual decision to be made by each of the parties to the dispute. If you intend to have legal counsel or witnesses present, please advise by **Click or tap to enter a date..**
4. **Counsel:** Either party may be represented by counsel, and each party is requested to provide written notice of an intention to have counsel present, by the date specified in paragraph three (3) above, to the Association and the other party including counsel's name, address, and phone number. Failure to provide this notice will not invalidate a party's right to legal representation, but may result in a continuance of the Conference, if the Mediation Officer determines that the rights of any other party require representation by counsel.
5. **Witness(es):** Each party must provide a list of the names of the witnesses they intend to call at the Conference to the Association and to all other parties by the date specified in paragraph three (3) above. If witness notification is given after this due date, the other party will be asked whether they are agreeable to go forward with the witness. If the other party objects, the Mediation Officer will rule on the appearance of the witness based on the relevancy of the witness' proposed testimony. If the Mediation Officer rules that the testimony of the witness is relevant the witness will be allowed to testify and the other party will have the right to request a continuance.

Each party shall arrange for witnesses to be present at the time and place designated for the Conference.

6. The parties shall not discuss the case with the Mediation Officer prior to the Conference or after the Conference and prior to conclusion of the matter.

Respectfully submitted,

Date: <TODAY>

Professional Standards Administrator  
Minnesota Realtors®

Form M-6  
Case #<CASENUMBER>**Mediation Resolution Agreement**

<C\_NAMES> vs. <R\_NAMES>  
*Complainant(s)* *Respondent(s)*

The undersigned, as Members of the Association of REALTORS® and pursuant to the mediation guidelines incorporated into Minnesota Realtors® professional standards procedures, have voluntarily participated in and agree to the following resolution:

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The undersigned agree to be bound by the above resolution and waive any and all future rights to submit the dispute to arbitration before the Professional Standards Committee of Minnesota Realtors® or to litigate the matter. The undersigned acknowledge that the Mediation Officer has no duty to protect the parties' interests or to provide the parties with information about the parties' legal rights and signing a mediated settlement agreement may adversely affect the parties' legal rights. We further hold Minnesota Realtors® harmless, acknowledge that we were advised of our right to attorney representation at the mediation and are advised to consult an attorney to review this Resolution Agreement before signing if we are uncertain of our rights, and expressly waive any and all liability of Minnesota Realtors®, or any claim that we have against Minnesota Realtors® arising out of the manner in which Minnesota Realtors® conducted the mediation or the resolution of the dispute reached as a result of Minnesota Realtors® mediation procedures. Further, if the Resolution Agreement is judicially enforced, the non-complying party agrees to reimburse the other party for court costs and reasonable attorneys' fees.

**Complainant(s):**

|                          |                  |             |
|--------------------------|------------------|-------------|
| _____                    | _____            | _____       |
| <i>Type / Print Name</i> | <i>Signature</i> | <i>Date</i> |

|                          |                  |             |
|--------------------------|------------------|-------------|
| _____                    | _____            | _____       |
| <i>Type / Print Name</i> | <i>Signature</i> | <i>Date</i> |

**Respondent(s):**

|                          |                  |             |
|--------------------------|------------------|-------------|
| _____                    | _____            | _____       |
| <i>Type / Print Name</i> | <i>Signature</i> | <i>Date</i> |

|                          |                  |             |
|--------------------------|------------------|-------------|
| _____                    | _____            | _____       |
| <i>Type / Print Name</i> | <i>Signature</i> | <i>Date</i> |

**Mediator of Minnesota Realtors®:** As the Mediation Officer of Minnesota Realtors®, I do attest that I was present during the mediation process and that the above resolution agreement was voluntarily entered into by the parties to the dispute.

|                          |                  |             |
|--------------------------|------------------|-------------|
| _____                    | _____            | _____       |
| <i>Type / Print Name</i> | <i>Signature</i> | <i>Date</i> |



## Part Eleven — Interboard Arbitration Procedures

**Introduction:** By becoming and remaining a member of the National Association, each Member Board is required to provide and participate in interboard arbitration when arbitrable issues arise between a Board Member and a member of another Board within the state, as defined in Article 17 of the Code of Ethics and **Sections 43 and 44** of this Manual. **However, the complainant should be advised that should they voluntarily agree to travel to the Board having jurisdiction over the respondent and submit to arbitration conducted by that Board, that Board shall provide arbitration as requested subject to the provisions of the NAR Code of Ethics and Arbitration Manual.** Minnesota Realtors® provides interboard arbitration for those Boards listed in the *Statements of Professional Standards Policy Applicable to Arbitration Proceedings*, Paragraph 18.

**Initiation of procedures:** Interboard arbitration is initiated by the written request of a REALTOR® to the Professional Standards Administrator of the Minnesota Realtors. Minnesota Realtors® is authorized to implement Professional Standards enforcement, including interboard arbitration, with the Boards listed in the *Statements of Professional Standards Policy Applicable to Arbitration Proceedings*, Paragraph 18. The determination as to whether an arbitrable matter exists shall be made pursuant to the procedures in this *Manual*. Where no agreement exists between Boards, interboard arbitration may take place provided that the Grievance Review Panels of each Board determine that a properly arbitrable matter exists. Appeals of arbitration requests dismissed by the Grievance Review Panel and alleged misclassification of an issue as being subject to either voluntary or mandatory arbitration shall be considered by the Appeal Tribunal of the Association whose Grievance Review Panel's decision is being challenged to the existing procedures of that Board.

**Fee deposit and arbitration agreement:** The request for arbitration shall be accompanied by a deposit of \$400.00 (not to exceed \$500), which shall go toward the costs of arbitration as determined by the panel, and by a signed *Arbitration Agreement*, Form #A-1, **Part Thirteen** of this Manual.

Interboard arbitration involving parties in Boards distant from each other may involve costs including travel expenses of the arbitration panel and other expenses of the arbitration. (*Revised 5/06*)

Hearings and the organization and procedures incident thereto shall be governed by the NAR Code of Ethics and Arbitration Manual as adapted by the Minnesota Realtors®.

**Special Note Concerning Interstate Arbitration:** The interboard arbitration method may also be utilized for the conduct of arbitration between Board Members of different Boards in different states, subject to the parties' voluntary agreement in advance to accept the place, date, and time established by the arbitration panel chosen and to pay all costs of such arbitration as may be directed by the panel, provided that the state in which each of the parties to the arbitration resides, and the state in which the arbitration is held, permits binding arbitration. Or, alternatively, if a Board Member voluntarily agrees to travel to the Board having jurisdiction of the other Board Member in another state and to submit to arbitration by that Board, the Board shall provide arbitration as requested if it deems the dispute an arbitrable matter and further subject to the provisions of **Part Ten, Section 45** of this Manual, which sets forth the right of the Board to decline to arbitrate a dispute.

## Part Twelve — Conduct of an Arbitration Hearing

An arbitration hearing must be conducted in a manner which is fair to all parties. This means that the parties must know their rights and responsibilities in advance so they may properly prepare and present their positions. Procedures are required to assure an orderly hearing. But procedures may and should be modified as interests of justice and truth dictate. However, in modifying established procedures, care must be taken to assure that the rights and interests of all parties are protected. For this reason, variation from prescribed procedures should be reviewed with Association counsel and counsel for the parties prior to implementation.

Following are seven (7) outlines. The first, second and third are outlines of procedural information of interest and concern primarily to the parties involved. This information should be provided to them well in advance of any hearing (Form #A- 10, Form #A-10a and Form #A-10b, as appropriate, **Part Thirteen**). The fourth, fifth and sixth outlines are primarily of interest to Hearing Panels and particularly to the Chairpersons who preside over arbitration hearings. The seventh outline is primarily of interest to tribunals and particularly to Chairpersons who preside over procedural review requests.

### **Outline of Procedure for Arbitration Hearing**

**(To be transmitted in advance to both parties)**

**Minnesota Realtors®  
State of Minnesota**

**Remote Testimony:** Hearings may be held in person, virtually, or a combination thereof. If the hearing is in person, testimony provided in the physical presence of the Hearing Panel is preferred, however parties and witnesses to arbitration hearings may be permitted to participate virtually in hearings at the discretion of the Hearing Panel Chair. Associations may, at their sole discretion, hold hearings where all parties must participate virtually. *(Adopted 11/21)*

**Postponement of hearing:** Postponement may be granted if there are extenuating circumstances. Parties' requests for continuance shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing. Requests are reviewed by the Hearing Panel Chair. If the request is approved by the Chair, all parties shall be advised of the date of the rescheduled hearing by a Form E8a *Revised Official Notice of Arbitration Hearing*. However, the granting of a postponement of the hearing date shall not constitute a like extension of all original deadlines related to the case, such as notices for witnesses, counsel and submission of additional documentation.

**Recording the hearing:** The Association shall record the proceeding and the Association's recording shall be the official record of the proceeding. Any party may, at the Association's discretion, record the proceeding or utilize a court reporter at their own expense. If a party utilizes a court reporter and orders a transcript, a copy of the transcription shall be made at the party's expense and presented to the Professional Standards Administrator. Videotaping is not permitted except with the advance express consent of the parties and the panelists. Any and all recording should be conducted in accordance with state law. Copies of any recording or transcription are to be used only for the purpose of appeals or procedural reviews. Appeals and limited procedural reviews shall not be recorded by the Association or the parties. *(Revised 5/16)*

**Method and objective of procedure:** The Hearing Panel shall not be bound by the rules of evidence applicable in courts of law but shall afford all parties a full opportunity to be heard, present witnesses, and offer evidence, subject to its judgment as to relevance.

Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the Association at least seven (7) days prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. Evidence submitted to the association but not provided to the other party(ies) will be provided to the other party(ies) by the association and the time of submission. Evidence submitted at the time of the hearing will be evaluated for admissibility by the hearing panel chair. *(Revised 11/21)*

**Due process procedure:** The hearing procedures will be as follows:

1. Opening statement by Chair – Chair cites authority to hear case and explains reason for hearing.

2. The arbitration request will be read into the record.
3. The testimony of all parties and witnesses will be affirmed. All witnesses will be excused from the hearing except while testifying. All parties appearing at a hearing may be called as witnesses without advance notice.
4. Complainants will be given an opportunity to briefly explain the party's basic position, present evidence and testimony in their behalf, and call and examine witnesses.
  - Respondents will be afforded an opportunity to cross-examine the complainants and witnesses.
  - Panel members may question the complainants and witnesses.
5. Respondents will be given an opportunity to briefly explain the party's basic position, present evidence and testimony in their behalf, and call and examine witnesses.
  - Complainants will be given an opportunity to cross-examine the respondents and witnesses.
  - Panel may question the respondents and witnesses.
6. The Panel members may ask questions at any time during the proceedings.
7. Chair may exclude any questions which they deem irrelevant or argumentative.
8. Each side may make a closing statement. Complainant will make the first closing statement and then Respondent will make the final closing statement.
9. Chair will make closing statements and adjourn the hearing.
10. The Hearing Panel will go into executive session to decide the case. *(Revised 11/12)*

**Settlement:** Parties are encouraged to settle the dispute at any time. At the outset of the hearing, the Hearing Panel Chair should inform the parties that settlement is an option. At any time during the hearing, the parties can ask for a recess in an attempt to reach a settlement agreement. The parties, with the assistance of their respective counsel, if any, will determine the terms of their settlement agreement. *(Revised 11/16)*

**Award in arbitration hearing:** The decision of the Hearing Panel in an arbitration proceeding shall be reduced to writing (setting forth only the amount of the award) and be signed by the Arbitrators or a majority of them, and a copy shall be furnished to each of the parties to the arbitration. A copy also shall be filed with the Professional Standards Administrator of the Association.

**Use of legal counsel:** A party may be represented in any hearing by legal counsel. However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be non-appealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from the date of adjournment to enable the party to obtain alternate counsel, provided however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

**Confidential:** Be advised all matters discussed are strictly confidential.

## Outline of Procedure for Arbitration Hearing (Request/Counter-Request)

*(To be transmitted in advance to both parties)*

### Minnesota Realtors® State of Minnesota

**Remote Testimony:** Hearings may be held in person, virtually, or a combination thereof. If the hearing is in person, testimony provided in the physical presence of the Hearing Panel is preferred, however parties and witnesses to arbitration hearings may be permitted to participate virtually in hearings at the discretion of the Hearing Panel Chair. Associations may, at their sole discretion, hold hearings where all parties must participate virtually. *(Revised 11/21)*

**Postponement of hearing:** Postponement may be granted if there are extenuating circumstances. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing. Requests are reviewed by the Hearing Panel Chair. If the request is approved by the Chair, all parties shall be advised of the date of the rescheduled hearing by a Form E8a *Revised Official Notice of Arbitration Hearing*. However, the granting of a postponement of the hearing date shall not constitute a like extension of all original deadlines related to the case, such as notices for witnesses, counsel and submission of additional documentation.

**Recording the hearing:** The Association shall record the proceeding and the Association's recording shall be the official record of the proceeding. Any party may, at the Association's discretion, record the proceeding or utilize a court reporter at their own expense. If a party utilizes a court reporter and orders a transcript, a copy of the transcription shall be made at the party's expense and presented to the Professional Standards Administrator. Videotaping is not permitted except with the advance express consent of the parties and the panelists. Any and all recording should be conducted in accordance with state law. Copies of any recording or transcription are to be used only for the purpose of appeals or procedural reviews. Appeals and limited procedural reviews shall not be recorded by the Association or the parties. *(Revised 5/16)*

**Method and objective of procedure:** The Hearing Panel shall not be bound by the rules of evidence applicable in courts of law, but shall afford all parties a full opportunity to be heard, present witnesses, and offer evidence, subject to its judgment as to relevance.

Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the Association at least seven (7) days prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. Evidence submitted to the association but not provided to the other party(ies) will be provided to the other party(ies) by the association and the time of submission. Evidence submitted at the time of the hearing will be evaluated for admissibility by the hearing panel chair. *(Revised 11/21)*

**Due process procedure:** The hearing procedures will be:

- (1) Opening statement by Chair - Chair cites authority to hear case and explains reason for hearing.
- (2) The arbitration request and counter-request will be read into the record.
- (3) The testimony of all parties and witness(es) will be affirmed. All witnesses will be excused from the hearing except while testifying. All parties appearing at the hearing may be called as witnesses without advance notice.
- (4) Complainant/Counter-Respondent will be given an opportunity to briefly explain the party's basic position, present evidence and testimony on their behalf, and call and examine witnesses to support the contention that monies are owed to the Complainant by Respondent/Counter-Complainant.
  - a. Respondent/Counter-Complainant may cross-examine Complainant/Counter-Respondent and/or their witness(es) immediately after each has testified.
  - b. The Hearing Panel may question Complainant/Counter-Respondent and/or their witness(es) immediately after each has testified.
- (5) Respondent/Counter-Complainant will be given an opportunity to briefly explain the party's basic position, present evidence and testimony in their behalf, and call and examine witnesses to rebut the Complainant/Counter-Respondent's contention that they owe monies to Complainant/Counter-Respondent and support the contention that monies are owed to them by Complainant/Counter-Respondent.

- a. Complainant/Counter-Respondent may cross-examine Respondent/Counter-Complainant and/or their witness(es) immediately after each has testified.
  - b. The Hearing Panel may question Respondent/Counter-Complainant and/or their witness(es) immediately after each has testified.
- (6) Complainant/Counter-Respondent presents their defenses to the counter-complaint by offering testimony and evidence from themselves and/or their witness(es) to refute the contention that they owe monies to Respondent/Counter-Complainant.
    - a. Respondent/Counter-Complainant may cross-examine Complainant/Counter-Respondent and/or their witness(es) immediately after each has testified.
    - b. The Hearing Panel may question Complainant/Counter-Respondent and/or their witness(es) immediately after each has testified.
  - (1) The Panel members may ask questions at any time during the proceedings.
  - (2) Chair may exclude any questions which they deem irrelevant or argumentative.
  - (3) Complainant/Counter-Respondent may present uninterrupted closing statements to support the contention that monies are owed to Complainant by the Respondent/Counter-Complainant and/or refute the contention that they owe monies to Respondent/Counter-Complainant.
  - (4) Respondent/Counter-Complainant may present uninterrupted closing statements addressing the contention that they owe monies to Complainant/Counter-Respondent and support the contention that monies are owed to them by Complainant/Counter-Respondent.
  - (5) Chair will then make closing statements and adjourn the hearing.
  - (6) The Hearing Panel will go into executive session to decide the case.

**Settlement:** Parties are encouraged to settle the dispute at any time. At the outset of the hearing, the Hearing Panel Chair should inform the parties that settlement is an option. At any time during the hearing, the parties can ask for a recess in an attempt to reach a settlement agreement. The parties, with the assistance of their respective counsel, if any, will determine the terms of their settlement agreement. *(Revised 11/16)*

**Award in arbitration hearing:** The decision of the Hearing Panel in an arbitration proceeding shall be reduced to writing (setting forth only the amount of the award by the panel) and signed by the arbitrators or a majority of them, and a copy shall be furnished to each of the parties to the arbitration. A copy also shall be filed with the Professional Standards Administrator of the Association.

**Use of legal counsel:** A party may be represented in any hearing by legal counsel. However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on ground of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be non-appealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from date of adjournment to enable the party to obtain alternate counsel, provided, however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

**Confidential:** Be advised all matters discussed are strictly confidential.

## Outline of Procedure for Arbitration Procedural Review Hearing

*(To be transmitted in advance to both parties)*

### Minnesota Realtors® State of Minnesota

**Remote Testimony:** Hearings may be held in person, virtually, or a combination thereof. If the hearing is in person, testimony provided in the physical presence of the Hearing Panel is preferred, however parties and witnesses to arbitration hearings may be permitted to participate virtually in hearings at the discretion of the Hearing Panel Chair. Associations may, at their sole discretion, hold hearings where all parties must participate virtually. *(Revised 11/21)*

**Postponement of hearing:** Postponement may be granted if there are extenuating circumstances. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing. Requests are reviewed by the Hearing Panel Chair. If the request is approved by the Chair, all parties shall be advised of the date of the rescheduled hearing. However, the granting of a postponement of the hearing date shall not constitute a like extension of all original deadlines related to the case, such as notices for witnesses, counsel and submission of additional documentation.

**No Recording of Procedural Review hearing:** Procedural Review hearings are not to be recorded neither by the Association nor the parties.

**Method and objective of procedure:** The Procedural Review Tribunal shall not be bound by the rules of evidence applicable in courts of law but shall afford all parties a full opportunity to be heard subject to its judgment as to relevance.

**Due process procedure:** The hearing procedures will be as follows:

1. Opening statement by Chair – Chair cites authority to hear case and explains reason for hearing.
2. The Procedural Review request will be read into the record.
3. The testimony of all parties will be affirmed.
4. Appellants will be given an opportunity to briefly explain the basis (bases) upon which they are requesting that the Award of Arbitrators be overturned.
  - Panel members may question the Appellants.
5. The original arbitration Hearing Panel Chair (or a representative) will have an opportunity to explain why the Award of Arbitrators should be upheld by the Tribunal.
  - Panel members may question Chair.
6. Nonappellants will have an opportunity to explain why the Award of Arbitrators should be upheld by the Tribunal.
  - Panel may question the nonappellants.
7. Parties have no right: (a) of cross-examination; (b) to call witnesses; (c) to present new evidence (except such new evidence as may bear upon a claim of deprivation of due process).
8. The Panel members may ask questions at any time during the proceedings.
9. Chair may exclude any questions which they deem irrelevant or argumentative.
10. Each party and the original Arbitration Hearing panel Chair (or representative) will be given an opportunity to make a brief closing statement. Appellant will make the first closing statement followed by Nonappellant and finishing with the original Arbitration Hearing panel Chair (or representative).
11. Chair will make closing statements and adjourn the hearing.
12. The Hearing Panel will go into executive session to decide the case.

**Decision in Procedural Review hearing:** The decision of the Procedural Review Tribunal is final and considered confidential. The decision shall be reduced to writing and be signed by the Arbitrators or a majority of them, and a copy shall be furnished to each of the parties to the arbitration. A copy also shall be filed with the Professional Standards Administrator of the Association.

**Use of legal counsel:** A party may be represented in any hearing by legal counsel. However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on ground of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as

being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be non-appealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from the date of adjournment to enable the party to obtain alternate counsel, provided however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

**Confidential:** Be advised all matters discussed are strictly confidential

## Chair's Procedural Guideline - Conduct of an Arbitration Hearing

Minnesota Realtors®  
State of Minnesota

### Chair's Opening Statement and Conduct of Hearing:

Panel members and hearing participants, I now call this hearing to order. The Professional Standards Committee is charged with holding appropriate hearings for Minnesota Realtors® in accordance with the procedures as set forth in our Bylaws in matters concerning the arbitration of a business dispute arising out of the real estate business and as defined in the Bylaws of the Association.

The body meeting here is an impartial panel of the Professional Standards Committee that has been selected and called here today to ascertain the truth in the particular matter at hand, which is an arbitration proceeding, and to render a decision on the testimony and evidence presented. It is to be noted that an ethics proceeding is to be clearly distinguished from an arbitration proceeding and should be treated as a completely separate matter. The particular matter to be considered by this panel at this time is an arbitration proceeding.

If the parties have participated in Mediation, prior to this hearing, you are reminded that any offers of settlement that were not accepted or any suggested resolution proposed by the Mediation Office that was not accepted cannot be introduced as evidence nor considered in any manner during this hearing. No aspect of the mediation conference shall be relied upon or introduced as evidence in this (ethics/arbitration) hearing, including, but not limited to: views expressed or suggestions made by a party with respect to a possible settlement of the dispute; admissions made in the course of the mediation; proposals made or views expressed by the Mediator or the response of any party thereto.

The Professional Standards Committee is a body duly constituted under the authority of the Bylaws of Minnesota Realtors® and has been duly appointed by the President and approved by the Board of Directors. At this time, I would like the members of the Panel, as well as the complainant(s) and respondent(s), salespersons, and any legal counsel, and witnesses to introduce themselves.

Also present at this hearing (if applicable) is:

1. **Alternate Panel Member:** *(If present – have them introduce themselves)*

We also have an Alternate Panel member attending the hearing here today. The Alternate Panel Member is a trained member of the MNR Professional Standards

Committee and although they are attending the hearing they will not be acting as a participant in the hearing or the executive session nor vote on the decision unless one of the five originally appointed Hearing Panel members is unable to serve on the Hearing Panel from the commencement of the hearing until hearing concludes.

2. **Case Administrator/Association Legal Counsel:**

Please note that this hearing is being mechanically recorded; no transcript will be prepared. The parties are specifically advised that any recording or transcription that may be made of these proceedings can only be used for purposes of procedural review, and any other use, including use in other ethics or arbitration hearings, is expressly prohibited.

Cellular phones, two-way radios and other transmitting devices may not be operated during the hearing absent specific advance authorization from the panel chair.

*(The Chair HAS/HAS NOT provided specific advanced authorization.)*

### Basis of Hearing:

This hearing is to arbitrate a business dispute arising out of the real estate business in accordance with the request of **Complainant** that they be awarded a commission or part of a commission of **\$(Commission)** on the sale of the property at **(Property Address)**. Is this information correct?

Any prior offers of settlement or proposed resolutions of the case, during mediation or otherwise, will not be considered by the Hearing Panel.

However, the parties are encouraged to settle their dispute at any time during or after the hearing. If the parties wish to discuss settlement during the hearing, they may ask for a recess. The parties, with the assistance of their respective counsel, if any, will determine the terms of the settlement agreement.

Please be advised, the Hearing Panel will base its decision on the disputed commission. **Section 53** of the Code of Ethics and Arbitration Manual limits the award in an arbitration proceeding to the amount in dispute and so an arbitration award will not include punitive damages, attorney's fees, or interest, unless the agreement between the parties specifically provides for such damages and the award is permitted by state law. This panel is not governed by the technical rules of evidence which may apply in courts. This panel will seek to determine all ascertainable and relevant facts pertaining to the matter under consideration to arrive at a peer judgment and decision that is fair to all parties. The panel is governed and directed by the Bylaws of Minnesota Realtors® and the Code of Ethics of the National Association of REALTORS®. The panel determines its own rules of evidence and its own procedures to be followed with objectives of equity and due process. The following are the procedures during this hearing.

1. All parties or their representatives to these proceedings will be allowed a full opportunity to be heard on matters relevant to the issue. The Panel may rule at any time during the hearing on the relevance of testimony being given or on questions being directed to any party or their representative or to the witnesses providing testimony. All parties and witnesses will be asked to affirm that the testimony is the truth to the best of their knowledge.

**(If no legal counsel is present, proceed to paragraph 3.)**

2. A party may be represented by legal counsel. However, no party may refuse to directly respond to requests for information or questions addressed to them by members of the Panel except on grounds of self-incrimination or other grounds which the Panel deems appropriate. In this connection, the Panel is not required to accept the statements of counsel as being the statements of their client if the panel desires direct testimony.

Counsel is present to advise and consult with their client, and to speak for them subject to appropriate rulings or determination by the Panel. This Panel will countenance no effort by any party or by counsel to any party to harass, intimidate, coerce or confuse the panel members or any party to the proceedings.

3. The Panel may rule at any time on the admissibility of evidence. As the Chair, I will act as keeper of the evidence introduced at this hearing and mark each with an exhibit identification number and date.
4. The members of this Panel are authorized, individually, to ask questions as they deem pertinent and significant at any time during this hearing. To preserve order, I will rule on questions or testimony by the parties and their representatives, or by witnesses in these proceedings. If deemed necessary, I will consult with the members of the Panel and with the Association staff and counsel concerning such rulings. Association staff may offer procedural assistance from time to time throughout the proceeding. I ask that you direct all questions through me.
5. At this time, I request that all persons in the room who expect to testify at this hearing stand and affirm. *(Note to Chair: Please also stand during affirmation.)*

**AFFIRMATION:** Raise your right hand, and following the question I pose, answer in the affirmative if you do so affirm.

"Do you affirm that the statements you are about to give in this proceeding shall be the truth, the whole truth, and nothing but the truth?" Please be seated.

Let the record show that all parties have answered in the affirmative.

**(Read if there are witnesses present):**

*At this time, we will excuse all witnesses if present and ask them to wait outside until called.*

**Outline of Procedure for Hearing:**

Both the complainant and respondent were provided with a copy of the *Outline of Procedure for an Arbitration Hearing*.

Did each party receive the outline?

*(If “Yes”) Let the record show that both the complainant and the respondent have stated they did receive the Outline.*

*(If “No”, the party should be given a copy of the Outline and the Chair should determine whether that party has any objections to proceeding.)*

Do you have any questions concerning that *Outline of Procedure*?

*(If none) Let the record show that neither the complainant nor the respondent have any questions concerning the Outline of Procedure for an Arbitration Hearing.*

Before I ask for statements from the complainant(s) and respondent(s), please consider the following two points:

1. All hearing panel members have read and re-read your written statements. You will be given an adequate opportunity to present your case, but I did want to assure you that the panel members are familiar with the information you provided in the written statements.
2. Our express purpose today is to hear the arguments specifically related to a business dispute arising out of the real estate business **between (Complainant), the complainant, and (Respondent), as the respondent**. If, in fact, the Chair finds anyone straying from that issue or bringing up situations unrelated to the hearing, you will be asked to stop.

**Presentation by Complainant(s):**

The complainant will now outline the basic premise of the complainant’s position, state their case and present any evidence or witnesses that they may desire.

**Cross-Examination by Respondent(s)**

Before we ask for your statement, this is the time to ask questions of Complainant or Complainant’s witnesses related to the testimony given or the evidence submitted, if you have any.

**Questions From the Panel of Complainant(s) and Complainant’s Witnesses**

**Presentation by Respondent(s):**

The respondent will now outline the basic premise of the respondent’s position, state their case and present any evidence or witnesses that they may desire.

**Cross-Examination By Complainant(s)**

This is the time to ask questions of Respondent(s) or Respondent’s witnesses related to the testimony given or the materials submitted, if you have any.

**Questions From the Panel of the Respondent(s) or Respondent’s Witnesses**

**PANEL MEMBERS:**

At this time, I would like the panel members to take a few minutes to review your notes to make sure you have all the information you will need during Executive Session. Do you have any final questions of either of the parties?

**Closing Statements:**

At this time both the complainant and respondent will be given an opportunity to make an uninterrupted summary or closing statement if they so desire. The complainant’s statement will be heard first followed by the respondent’s.

**Closing Statement by Panel Chair:**

I will now make my closing statement.

Do each of you feel that this hearing has been conducted fairly?

(If “Yes”) Let the record show that both the complainant(s) and the respondent(s) have indicated that they feel this hearing has been conducted fairly.

(If “No”) Ask the party to state their concern for the record, and if there’s any merit to the concern, take steps to remedy any possible deficiency.

(If party declines to answer the question, state that it is “duly noted for the record.”)

Have each of you had an adequate opportunity to testify, present evidence and witnesses, and conduct cross-examination?

(If yes) Let the record show that both the complainant and the respondent have indicated that they have had an adequate opportunity to testify, present evidence and witnesses, and conduct cross-examination.

(If “No”) Ask the party to state their concern for the record, and if there’s any merit to the concern, take steps to remedy any possible deficiency.

(If party declines to answer the question, state that it is “duly noted for the record.”)

#### **Confidential Nature of Hearings:**

All persons are advised that the award of this panel is considered confidential. It will be available only to members of this panel, to the parties, to counsel and staff as required or as otherwise specified in the *Code of Ethics and Arbitration Manual as adapted by Minnesota Realtors®*. Upon final action by the Hearing Panel in an arbitration proceeding, the decision, when signed by the members of the Panel (or a majority of them), shall be served upon the parties to the dispute. The parties will be notified of the decision within the required time after this hearing is adjourned, usually five (5) business days. You are reminded that any recording or transcription that may be made of these proceedings can only be used for purposes of procedural review, and any other use, including use in other ethics or arbitration hearings, is expressly prohibited.

**At this point, parties may be offered an additional opportunity to settle.** Before we adjourn the hearing of this panel, we would like to give both parties fifteen (15) minutes to discuss any settlement or resolution of their dispute that they would like to consider prior to the Hearing Panel entering executive session. The parties (and their counsel, if any) will be provided a private space to meet and discuss any resolution. If settlement is reached, the parties will execute an agreement and the arbitration process will be terminated. If settlement is not reached, the panel will reconvene in executive session and determine the award.

#### **Adjournment:**

There being no further business to be considered, this portion of the hearing stands adjourned. The Hearing Panel will remain to begin Executive Session.

## Chair's Procedural Guide: Conduct of a Virtual Arbitration Hearing

### Minnesota Realtors® State of Minnesota

**Start promptly:** Begin the hearing promptly at the noticed hearing time.

#### **Chair's opening statement and conduct of hearing:**

My name is (Chair), and I will serve as Chairperson of this panel

Before we begin this hearing, I would like to ask that all persons present mute themselves at all times, except for when they intend to speak. All persons present will need to have their video on and remain on screen at all times. If a party or panelist loses their connection, the hearing will be paused until the participant is able to rejoin the hearing. Contact the Professional Standards Administrator and they will readmit you into the hearing. The person rejoining may be required to re-affirm the remote hearing verifications.

If you have questions about how to use this virtual platform, including how to mute or unmute yourself, please let us know so we can assist you.

All persons present are advised that this virtual hearing is being recorded and that the recording may include audio, video and any screen sharing from the hearing.

#### **Chair's Opening Statement and Conduct of Hearing**

Panel members and hearing participants, I now call this hearing to order. The Professional Standards Committee is charged with holding appropriate hearings of Minnesota Realtors® in accordance with the procedures as set forth in our Bylaws in matters concerning the arbitration of a business dispute arising out of the real estate business and as defined in the Bylaws of the Association.

The body meeting here is an impartial panel of the Professional Standards Committee that has been selected and called here today to ascertain the truth in the particular matter at hand and to render a decision on the testimony and evidence presented. It is to be noted that an ethics proceeding is to be clearly distinguished from an arbitration proceeding and should be treated as a completely separate matter. The particular matter to be considered by this panel at this time is an arbitration proceeding.

If the parties have participated in Mediation, prior to this hearing, you are reminded that any offers of settlement that were not accepted or any suggested resolution proposed by the Mediation Office that was not accepted cannot be introduced as evidence nor considered in any manner during this hearing. No aspect of the mediation conference shall be relied upon or introduced as evidence in this (ethics/arbitration) hearing, including, but not limited to: views expressed or suggestions made by a party with respect to a possible settlement of the dispute; admissions made in the course of the mediation; proposals made or views expressed by the Mediator or the response of any party thereto.

The Professional Standards Committee is a body duly constituted under the authority of the Bylaws of Minnesota Realtors® and has been duly appointed by the Leadership Team and approved by the Board of Directors.

(1) As you know, my name is \_\_\_\_\_, and I will serve as Chairperson of this panel.

At this time, I would like the members of the panel as well as the complainant(s), respondent(s), salespersons, any legal counsel, and witnesses to introduce themselves

Also present at this hearing (if applicable) is:

6. **Alternate Panel Member:** *(If present – have them introduce themselves)*

We also have an Alternate Panel member attending the hearing here today. The Alternate Panel Member is a trained member of the MNR Professional Standards Committee and although they are attending the hearing they will not be acting as a participant in the hearing or the executive session nor vote on the decision unless one of the five originally appointed Hearing Panel members is unable to serve on the Hearing Panel from the commencement of the hearing until hearing concludes.

7. **Case Administrator/Legal Association Counsel:**

**Affirmation:** At this time, I request that all persons in the room who expect to testify at this hearing affirm their testimony. *(Note to Chair: Do not stand for Zoom hearings.)*

Raise your right hand and, following the question I pose, answer in the affirmative if you do so affirm: “Do you affirm that the statements you are about to give in this proceeding shall be the truth, the whole truth, and nothing but the truth?”

☐ Let the record show that all parties have answered in the affirmative.

I will now also ask that panelists, staff, Chair and legal counsel affirm that they will answer these remote verification questions truthfully. Do you affirm that you will answer the following questions truthfully?

*(Ask each panelist, staff person, attorney our counsel that did not take the oath otherwise individually and state that you affirm as well.)*

☐ Let the record show that all panelists, counsel, staff and Chairs have answered in the affirmative

**Remote Hearing Verifications:** All Parties will be participating in this hearing remotely through Zoom.

Minnesota Realtors® allows essential parties and witnesses, panelists, counsel, and staff to appear remotely only if that person is in a private location that provides the ability to keep the information presented at this hearing from being heard or overheard by any person who is not authorized to participate in the hearing. Those persons are also strictly prohibited from recording these proceedings or using any electronic or other communication devices during the hearing other than those required to participate in the hearing.

I will now ask that panelists and alternates (where applicable), staff, and all parties answer the following remote verification questions truthfully.

*(Chair – after asking the questions below, call on each person for an answer. Do not accept a head nod but require a verbal answer.)*

I will need each of you to verify the following:

1. That you are, in fact, the person you introduced yourself as at the outset of this hearing.
2. That you are in a private location that will protect the confidentiality of this hearing
3. That there are no other persons that can hear or listen in on this hearing
4. That you are not recording or allowing anyone else to record this hearing in any way
5. That you are not accessing electronic devices other than to the extent necessary to participate in this hearing remotely
6. That you will continue to take these measures to ensure the confidentiality of this hearing until the hearing is concluded?

As Chair, yes.

*(Call on each person until they each say “yes”. If “no”, the chair will need to take appropriate action to ensure the confidentiality of the proceeding including postponement, if necessary.)*

In an effort to make the best possible recording of these proceedings, I would ask everyone in the room to take note of the following :

- a. All responses must be verbal and audible. Shrugs of the shoulder, gestures, and nods of the head cannot be recorded.
- b. Only one speaker should speak at a time. I, as Chair of this panel, will call on each person to speak at the appropriate given time. Please wait for the speaker to finish their entire question or comment before responding.

No transcript will be prepared by the Association. The parties are specifically advised that any audio recording or transcription that may be made of these proceedings can only be used for purposes of appeal and any other use, including use in other ethics or arbitration hearings, is expressly prohibited

**Basis of Hearing:** This hearing is to arbitrate a business dispute arising out of the real estate business in accordance with the request of **(Complainant)** that they be awarded a commission or part of a **(commission)** from the sale of the property at **(Property Address)**. Is this information correct?

Any prior offers of settlement or proposed resolutions of the case, during mediation or otherwise, will not be considered by the Hearing Panel.

However, the parties are encouraged to settle their dispute at any time during or after the hearing. If the parties wish to discuss settlement during the hearing, they may ask for a recess. The parties, with the assistance of their respective counsel, if any, will determine the terms of the settlement agreement.

Please be advised, the Hearing Panel will base its decision on the disputed commission. **Section 53** of the Code of Ethics and Arbitration Manual limits the award in an arbitration proceeding to the amount in dispute and so an arbitration award will not include punitive damages, attorney's fees, or interest, unless the agreement between the parties specifically provides for such damages and the award is permitted by state law. This panel is not governed by the technical rules of evidence which may apply in courts. This panel will seek to determine all ascertainable and relevant facts pertaining to the matter under consideration to arrive at a peer judgment and decision that is fair to all parties. The panel is governed and directed by the Bylaws of Minnesota Realtors® and the Code of Ethics of the National Association of REALTORS®. The panel determines its own rules of evidence and its own procedures to be followed with objectives of equity and due process. The following are the procedures during this hearing.

- (1) All parties or their representatives to these proceedings will be allowed a full opportunity to be heard on matters relevant to the issue. The Panel may rule at any time during the hearing on the relevance of testimony being given or on questions being directed to any party or their representative or to the witnesses providing testimony. All parties and witnesses have been asked to affirm that the testimony is the truth to the best of their knowledge.

*(If no legal counsel is present, proceed to paragraph 3.)*

- (2) A party may be represented by legal counsel. However, no party may refuse to directly respond to requests for information or questions addressed to them by members of the Panel except on grounds of self-incrimination or other grounds which the Panel deems appropriate. In this connection, the Panel is not required to accept the statements of counsel as being the statements of their client if the panel desires direct testimony.

Counsel is present to advise and consult with their client, and to speak for them subject to appropriate rulings or determination by the Panel. This Panel will not countenance no effort by any party or by counsel to any party to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings.

- (3) The Chair may rule at any time on the admissibility of evidence. As the Chair, I will act as keeper of the evidence introduced at this hearing and mark each with an exhibit identification number and date.
- (4) The members of this Panel are authorized, individually, to ask questions as they deem pertinent and significant at any time during this hearing. To preserve order, I will rule on questions or testimony by the parties and their representatives, or by witnesses in these proceedings. If deemed necessary, I will consult with the members of the Panel and with the Association staff concerning such rulings. Association staff and counsel may offer procedural assistance from time to time throughout the proceeding. I ask that you direct all questions through me.

*(Read if there are witnesses present: At this time, we will excuse all witnesses and ask them to be placed in the virtual "waiting room.")*

**Outline of Procedure for Hearing:** Both the complainant and respondent were provided with a copy of the *Outline of Procedure for an Arbitration Hearing*.

Did each party receive the outline?

*(If "Yes") Let the record show that both the Complainant and Respondent have stated they did receive the Outline.*

*(If "No", the party should be given a copy of the Outline and the Chair should determine whether that party has any objections to proceeding.)*

Do you have any questions concerning that Outline of Procedure?

*(If none) Let the record show that neither the complainant nor the respondent have any questions concerning the Outline of Procedure for an Arbitration Hearing.*

As noted in the Outline of Procedure, parties were strongly encouraged to provide any and all documents and evidence they intend to introduce prior to the hearing. If you find it necessary to submit evidence not previously provided, transmit it to the professional standards administrator. The administrator will first provide the evidence to the other party and shall determine if there are any objections. The Chair will rule on any objections and determine the relevance of the evidence prior to providing it to the panel. In this virtual hearing, evidence will be transmitted electronically.

Before I ask for statements from the complainant(s) and respondent(s), please consider the following two points:

- (1) All hearing panel members have read and re-read your written statements. You will be given an adequate opportunity to present your case, but I did want to assure you that the panel members are familiar with the information you provided in the written statements.
- (2) Our express purpose today is to hear the arguments specifically related to a business dispute arising out of the real estate business **between (Complainant), the complainant, against (Respondent) as the respondent**. If, in fact, the Chair finds anyone straying from that issue or bringing up situations unrelated to the hearing, you will be asked to stop

**Presentation by Complainant(s):** The complainant will now outline the basic premise of the complainant's position, state their case and present any evidence or witnesses that they may desire.

**Cross-Examination by Respondent(s):** Before we ask for your statement, this is the time to ask questions of the complainant or Complainant's witnesses related to the testimony given or the evidence submitted, if you have any.

**Questions from the Panel of the Complainant(s) and/or Complainant's Witness(es):**

**Note to Chair:** *Chair shall excuse all witnesses from the hearing after completion of their testimony, cross-examination, and questions from the panel.*

**Presentation by Respondent(s):** The respondent will now outline the basic premise of the respondent's position, state their case and present any evidence or witnesses that they may desire.

**Cross-Examination by Complainant(s):** This is the time to ask questions of the respondent or respondent's witnesses related to the testimony given or the materials submitted, if you have any.

**Questions from the Panel of Respondent(s) and Respondent's Witness(es):**

**PANEL MEMBERS:** At this time, I would like the panel members to take a few minutes to review your notes to make sure you have all the information you will need during Executive Session. Do you have any final questions of either of the parties?

**Closing Statement:** At this time both the complainant and respondent will be given an opportunity to make an uninterrupted summary or closing statement if they so desire. The complainant's statement will be heard first followed by the respondent's.

**Closing Statement by Panel Chair:** I will now make my closing statement.

Do each of you feel that this hearing has been conducted fairly?

*(If "Yes")* Let the record show that both the complainant and respondent have indicated that they feel this hearing has been conducted fairly.

*(If "No")* Ask the party to state their concern for the record, and if there's any merit to the concern, take steps to remedy any possible deficiency.

*(If party declines to answer the question, state that it is "duly noted for the record.")*

Have each of you had an adequate opportunity to testify, present evidence and witnesses, and conduct cross-examination?

*(If yes)* Let the record show that both the complainant and respondent have indicated that they have had an adequate opportunity to testify, present evidence and witnesses, and conduct cross-examination.

*(If "No")* Ask the party to state their concern for the record, and if there's any merit to the concern, take steps to remedy any possible deficiency.

(If party declines to answer the question, state that it is “duly noted for the record.”)

**Confidential Nature of Hearing:** All persons present are advised that the award of this panel is considered confidential. It will be available only to members of this panel, to the parties, to counsel and staff as required or as otherwise specified in the *Code of Ethics and Arbitration Manual as adapted by Minnesota Realtors®*. Upon final action by the Hearing Panel in an arbitration proceeding, the decision, when signed by the members of the Panel (or a majority of them), shall be served upon the parties to the dispute. The parties will be notified of the decision within the required time after this hearing is adjourned, usually five (5) business days. You are reminded that any recording or transcription that may be made of these proceedings can only be used for purposes of procedural review, and any other use, including use in other ethics or arbitration hearings, is expressly prohibited.

**At this Point, Parties may be Offered an Additional Opportunity to Settle.** Before we adjourn the hearing of this panel, we would like to give both parties fifteen (15) minutes to discuss any settlement or resolution of their dispute that they would like to consider prior to the Hearing Panel entering executive session. The parties (and their counsel, if any) will be provided a private space to meet and discuss any resolution. If settlement is reached, the parties will execute an agreement and the arbitration process will be terminated. If settlement is not reached, the panel will reconvene in executive session and determine the award.

**Adjournment:** There being no further business to be considered, this portion of the hearing stands adjourned. The Hearing Panel will remain to begin Executive Session.

## Chair's Procedural Guideline - Conduct of an Arbitration Hearing (Request/Counter-Request)

Minnesota Realtors®  
State of Minnesota

### Chair's Opening Statement and Conduct of Hearing:

Panel members and hearing participants, I now call this hearing to order. The Professional Standards Committee is charged with holding appropriate hearings of Minnesota Realtors® in accordance with the procedures as set forth in our Bylaws in matters concerning the arbitration of a business dispute arising out of the real estate business and as defined in the Bylaws of the Association.

The body meeting here is an impartial panel of the Professional Standards Committee that has been selected and called here today to ascertain the truth in the particular matter, which is an arbitration proceeding, at hand and to render a decision on the testimony and evidence presented. It is to be noted that an ethics proceeding is to be clearly distinguished from an arbitration proceeding and should be treated as a completely separate matter. The particular matter to be considered by this panel at this time is an arbitration proceeding.

The Professional Standards Committee is a body duly constituted under the authority of the Bylaws of Minnesota Realtors® and has been duly appointed by the President and approved by the Board of Directors. At this time, I would like the members of the Panel, as well as the complainant(s), respondent(s), salespersons, any legal counsel, and witnesses to introduce themselves.

Also present at this hearing (if applicable) is:

1. **Alternate Panel Member:** *(If present – have them introduce themselves)*

We also have an Alternate Panel member attending the hearing here today. The Alternate Panel Member is a trained member of the MNR Professional Standards Committee and although they are attending the hearing they will not be acting as a participant in the hearing or the executive session nor vote on the decision unless one of the five originally appointed Hearing Panel members is unable to serve on the Hearing Panel from the commencement of the hearing until the hearing concludes.

2. **Case Administrator/Legal Counsel:**

Please note that this hearing is being mechanically recorded; no transcript will be prepared. The parties are specifically advised that any recording or transcription that may be made of these proceedings can only be used for purposes of procedural review, and any other use, including use in other ethics or arbitration hearings, is expressly prohibited.

Cellular phones, two-way radios and other transmitting devices may not be operated during the hearing absent specific advance authorization from the panel chair.

*(The Chair HAS/HAS NOT provided specific advanced authorization.)*

### Basis of Hearing:

This hearing is to arbitrate a business dispute arising out of the real estate business in accordance with the request of **(Complainant)** that they be awarded a commission of **\$(Commission)** from the sale of the property at **(Property Address)** and a counter-claim request of **(respondent/counter-complainant)** that they be awarded a commission of **\$(Commission)** from the sale of the same property.

*Is this information correct?*

However, the parties are encouraged to settle their dispute at any time during or after the hearing. If the parties wish to discuss settlement during the hearing, they may ask for a recess. The parties, with the assistance of their respective counsel, if any, will determine the terms of the settlement agreement. The parties are advised that the arbitration will continue to be processed until formally withdrawn by the complainant.

Please be advised, the Hearing Panel will base its decision on the disputed commission. **Section 53** of the Code of Ethics and Arbitration Manual limits the award in an arbitration proceeding to the amount in dispute and so an arbitration award will not

include punitive damages, attorney's fees, or interest, unless the agreement between the parties specifically provides for such damages and the award is permitted by state law. This panel is not governed by the technical rules of evidence which may apply in courts. This panel will seek to determine all ascertainable and relevant facts pertaining to the matter under consideration to arrive at a peer judgment and decision that is fair to all parties. The panel is governed and directed by the Bylaws of Minnesota Realtors® and the Code of Ethics of the National Association of REALTORS®. The panel determines its own rules of evidence and its own procedures to be followed with objectives of equity and due process. The following are the procedures during this hearing.

1. All parties or their representatives to these proceedings will be allowed a full opportunity to be heard on matters relevant to the issue. The Panel may rule at any time during the hearing on the relevance of testimony being given or on questions being directed to any party or their representative or to the witnesses providing testimony.

All parties and witnesses will be asked to affirm that the testimony is the truth to the best of their knowledge.

**(If no legal counsel is present, proceed to paragraph 3.)**

2. A party may be represented by legal counsel. However, no party may refuse to directly respond to requests for information or questions addressed to them by members of the Panel except on grounds of self-incrimination or other grounds which the Panel deems appropriate. In this connection, the Panel is not required to accept the statements of counsel as being the statements of their client if the panel desires direct testimony.

Counsel is present to advise and consult with their client, and to speak for them subject to appropriate rulings or determination by the Panel. This Panel will countenance no effort by any party or by counsel to any party to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings.

3. The Panel may rule at any time on the admissibility of evidence. As the Chair, I will act as keeper of the evidence introduced at this hearing and mark each with an exhibit identification number and date.
4. The members of this Panel are authorized, individually, to ask questions as they deem pertinent and significant at any time during this hearing. To preserve order, I will rule on questions or testimony by the parties and their representatives, or by witnesses in these proceedings. If deemed necessary, I will consult with the members of the Panel and with the Association staff and counsel concerning such rulings. Association staff may offer procedural assistance from time to time throughout the proceeding. I ask that you direct all questions through me.
5. At this time, I request that all persons in the room who expect to testify at this hearing stand and affirm. *(Note to Chair: Please also stand during affirmation.)*

**Affirmation:**

Raise your right hand, and following the question I pose, answer in the affirmative if you do affirm.

"Do you affirm that the statements you are about to give in this proceeding shall be the truth, the whole truth, and nothing but the truth?" Please be seated.

If "Yes", *let the record show that all parties have answered in the affirmative.*

**(Read if there are witnesses present):**

*At this time, we will excuse all witnesses if present and ask them to wait outside until called.*

**Outline of Procedure for Hearing:**

Both the complainant and respondent were provided with a copy of the *Outline of Procedure for an Arbitration Hearing*.

Did each party receive the outline?

*(If yes) Let the record show that both the complainant and respondent have stated they did receive the Outline.*

*(If "No", the party should be given a copy of the Outline and the Chair should determine whether that party has any objections to proceeding.)*

Do you have any questions concerning that *Outline of Procedure*?

*(If none)* Let the record show that neither the complainant nor respondent have any questions concerning the *Outline of Procedure for an Arbitration Hearing*.

Before I ask for statements from the complainant and respondent, please consider the following two points:

1. All hearing panel members have read and re-read your written statements. You will be given an adequate opportunity to present your case, but I did want to assure you that the panel members are familiar with the information you provided in the written statements.
2. Our express purpose today is to hear the arguments specifically related to a business dispute arising out of the real estate business **between (Complainant), the complainant, and (Respondent), as respondent** and a counter-claim request of **(respondent/counter-complainant)**. If, in fact, the Chair finds anyone straying from that issue or bringing up situations unrelated to the hearing, you will be asked to stop.

**Presentation by the Complainant(s)/Counter-Respondent(s):**

Complainant(s)/Counter-Respondent(s) may now briefly explain their basic position, present evidence and testimony in their behalf, and call and examine witnesses to support the contention that monies are owed to Complainant by Respondent/Counter-Complainant.

**Cross-Examination by Respondent(s)/Counter-Complainant(s):**

Before we ask for your statement, this is the time to ask questions of the complainant and their witnesses related to the testimony given or the materials submitted regarding the Request, if you have any.

**Questions From the Panel of Complainant(s)/Counter-Respondent(s) and their Witnesses.**

**Presentation By Respondent(s)/Counter-Complainant(s):**

Respondent(s)/Counter-Complainant(s) may now briefly explain their basic position, present evidence and testimony in their behalf, and call and examine witnesses to:

- a. rebut Complainant/Counter-Respondent's contention that they owe monies to Complainant/Counter-Respondent, and
- b. support the contention that monies are owed to them by Complainant/Counter-Respondent.

**Cross-Examination by the Complainant(s)/Counter-Respondent(s):** This is the time to ask questions of Respondent(s)/Counter-Complainant(s) and their witnesses related to the testimony given or the materials submitted regarding the Request, if you have any.

**Questions from the Panel of Respondent(s)/Counter-Complainant(s) and their Witnesses.**

**Complainant(s)/Counter-Respondent(s) Presents Defense of Counter-Complaint:**

At this time Complainant(s)/Counter-Respondent(s) presents their defenses to the counter-complaint to refute the contention that they owe monies to Respondent(s)/Counter-Complainant(s).

**Cross-Examination by Respondent(s)/Counter-Complainant(s):**

This is the time to ask questions of the complainant(s)/counter-respondent(s) and their witnesses related to their defenses to the Counter-Complaint.

**Questions from the Panel of Complainant(s)/Counter-Respondent(s) and their Witnesses.**

**Panel Members:**

At this time, I would like the panel members to take a few minutes to review your notes to make sure you have all the information you will need during Executive Session. Do you have any final questions of either of the parties?

**Closing Statements:**

At this time both the complainant/counter-respondent and respondent/counter-complainant will be given an opportunity to make an uninterrupted summary or closing statement if they so desire.

The complainant(s)/counter-respondent(s)' statement will be heard first followed by the respondent(s)/counter-complainant(s).

**Closing Statement by Panel Chair:**

I will now make my closing statement.

Do each of you feel that this hearing has been conducted fairly?

*(If "Yes")* Let the record show that both Complainant and Respondent have indicated that they feel this hearing has been conducted fairly.

*(If "No")* Ask the party to state their concern for the record, and if there's any merit to the concern, take steps to remedy any possible deficiency.

*(If party declines to answer the question, state that it is "duly noted for the record.")*

Have each of you had an adequate opportunity to testify, present evidence and witnesses, and conduct cross-examination?

*(If "Yes")* Let the record show that both Complainant and Respondent have indicated that they have had an adequate opportunity to testify, present evidence and witnesses, and conduct cross-examination.

*(If "No")* Ask the party to state their concern for the record, and if there's any merit to the concern, take steps to remedy any possible deficiency.

*(If party declines to answer the question, state that it is "duly noted for the record.")*

**Confidential Nature of Hearings:**

All persons are advised that the award of this panel is considered confidential. It will be available only to members of this panel, to the parties, to counsel and staff as required or as otherwise specified in the *Code of Ethics and Arbitration Manual as adapted by the Association*. Upon final action by the Hearing Panel in an arbitration proceeding, the decision, when signed by the members of the Panel (or a majority of them), shall be served upon the parties to the dispute. The parties will be notified of the decision within the required time after this hearing is adjourned, usually five (5) business days. You are reminded that any recording or transcription that may be made of these proceedings can only be used for purposes of procedural review, and any other use, including use in other ethics or arbitration hearings, is expressly prohibited.

**At this point, parties may be offered an additional opportunity to settle.** Before we adjourn the hearing of this panel, we would like to give the parties fifteen (15) minutes to discuss any settlement or resolution of their dispute that they would like to consider prior to the Hearing Panel entering executive session. The parties (and their counsel, if any) will be provided a private space to meet and discuss any resolution. If settlement is reached, the parties will execute an agreement and the arbitration process will be terminated. If settlement is not reached, the panel will reconvene in executive session and determine the award.

**Adjournment:**

There being no further business to be considered, this portion of the hearing stands adjourned. The Hearing Panel will remain to begin Executive Session.

## Chair's Procedural Guide: Conduct of a Procedural Review Hearing

Minnesota Realtors®  
State of Minnesota

### Chair's Opening Statement:

Panel members and hearing participants, I now call this procedural review hearing to order. The professional standards procedures of Minnesota Realtors® provide for the right to a procedural review of the arbitration hearing procedures used in arbitration hearings. Both the complainant and/or the respondent in an arbitration hearing have the right to request a procedural review. The request for procedural review will be heard by the Procedural Review Tribunal, hereinafter referred to as the Tribunal.

The body meeting here is an impartial panel of the Professional Standards Committee that has been selected and called here today to render a decision on the testimony and evidence presented.

### Introduction of the Tribunal:

At this time, I would like the members of the Tribunal, as well as the complainant(s), respondent(s), the Chair (or representative of the original Arbitration Hearing Panel, salespersons, and any legal counsel to introduce themselves.

Also present at this hearing (if applicable) is:

1. **Alternate Panel Member:** *(If present – have them introduce themselves)*

We also have an Alternate Panel member attending the hearing here today. The Alternate Panel Member is a trained member of the MNR Professional Standards Committee and although they are attending the hearing they will not be acting as a participant in the hearing or the executive session nor vote on the decision unless one of the five originally appointed Hearing Panel members is unable to serve on the Hearing Panel from the commencement of the hearing until the hearing concludes.

2. **Case Administrator/Legal Counsel:**

Please note that this hearing shall not be recorded.

Cellular phones, two-way radios and other transmitting devices may not be operated during the hearing absent specific advance authorization from the panel chair.

*(The Chair HAS/HAS NOT provided specific advanced authorization.)*

At this time, I request that all persons present in the room who expect to testify at this hearing affirm their testimony.

### **AFFIRMATION:**

Raise your right hand, and following the question I pose, answer in the affirmative if you do affirm. “Do you affirm that the testimony you are about to give in this proceeding shall be the truth, the whole truth, and nothing but the truth?”

☐ *Let the record show that all parties have answered in the affirmative.*

### **Basis of this Procedural Review:**

The particular matter to be considered by this Tribunal is a request for procedural review of the arbitration hearing procedures used in an arbitration hearing conducted on **(Date)**. The original arbitration Hearing Panel was composed of **(Chair); (member);(member); (member); and(member)**. The basis of the original hearing was a Request and Agreement to Arbitrate filed by **(Complainant)**, the complainant, against **(Principal, Brokerage)**, the respondent(s), claiming that a dispute arising out of the real estate business existed between the complainant and the respondent. The *Award of Arbitrators* from the original arbitration hearing was as follows:

### **Award (read the Award)**

Prior to the original arbitration hearing, the arbitration request was reviewed by the Grievance Review Panel and referred to the Professional Standards Committee for a hearing.

**Authority:**

The Tribunal present here today is a body duly constituted under the authority of the Bylaws of Minnesota Realtors®.

**Disqualification:**

Anyone who was a party or witness to the original arbitration hearing or any pending case involving any party to this hearing, a member of the Grievance Review Panel present during the meeting when the arbitration request was reviewed, a member of the original Arbitration Hearing Panel, or who was otherwise involved in this matter prior to the procedural review request is disqualified from serving on this Tribunal. Furthermore, anyone who is related by blood or marriage to any of the parties to the hearing, their counsel for either or the parties, or anyone who is an employer, partner, employee, or in any way is associated in business with any of the parties or their counsel is also disqualified. I will now ask the members of the Tribunal if they know of any reason why they should be disqualified.

*(If none)* Let the record show that the members of the Tribunal have not indicated any reason why they are not qualified to serve.

Although the parties have been previously notified of their right to challenge members of this Tribunal, I will now ask the parties if they are aware of any reason why any member of this Tribunal is not qualified to serve.

*(If none)* Let the record show that the parties have not indicated any reason why any member of this Tribunal is not qualified to serve.

**Appeal limitations:**

In this procedural review hearing we will consider the arguments of (Appellant), hereinafter referred to as the appellant, who filed the *Request for Procedural Review*. The basis for the procedural review is limited to alleged procedural deficiencies or other irregularities the appellant believes constitute a deprivation of due process (e.g. fraud, coercion, bias, prejudice, evident partiality, etc.). The procedural review is further limited to the basis (bases) set forth in writing in the *Request for Procedural Review*, which is as follows:

**Basis****Outline of procedure:**

At this time, I would like to explain the procedure for this procedural review hearing. First, the appellant will have an opportunity to explain the basis upon which they are requesting that the *Award of Arbitrators* be overturned. Next, the original Arbitration Hearing Panel Chair (or a representative from the original Hearing Panel) will have an opportunity to respond to the allegations raised by the appellant. Then, any of the other parties to the original arbitration hearing will have the opportunity to explain why the *Award of Arbitrators* should not be overturned. At any time during the proceeding, members of the Tribunal may ask questions; however, parties have no right of cross-examination. Each party will be given an opportunity to make a brief closing statement. Finally, following the procedural review hearing, the Tribunal will go into executive session to render a decision.

Do any of the parties have any questions regarding the outline of procedure?

*(If none)* Let the record show that none of the parties has any questions regarding the outline of procedure.

**Guidelines:**

This Tribunal is not dealing with questions of law and is not governed by the technical rules of evidence which may apply in court. This Tribunal will seek to determine all ascertainable and relevant facts pertaining to the matter under consideration to arrive at a peer judgment and decision by the Tribunal that is fair to all of the parties. After the Tribunal has heard all of the evidence and testimony, we will go into executive session to render our decision. The decision will be based solely upon the arguments, evidence, and testimony offered during this procedural review hearing. All parties or their representatives to these proceedings will be allowed a full opportunity to be heard on matters relevant to the issue.

This Tribunal may rule at any time during this hearing on the relevance of testimony being given. All parties giving testimony will be asked to affirm that testimony given is the truth to the best of their knowledge. Association staff may offer procedural assistance from time to time throughout the proceeding.

A party may be represented by legal counsel. This Tribunal need not accept the statements of counsel as being the statements of their clients if it desires direct testimony. Counsel is present to advise and consult with their clients, and to speak for them subject to appropriate rulings or determinations by this Tribunal. This Tribunal will not tolerate any effort by any party or by counsel to any party to harass, intimidate, coerce, or confuse the Tribunal or any party to the proceedings.

**The procedural review hearing:**

We shall now proceed with the procedural review hearing.

**Presentation by the Appellant:**

At this time the appellant may explain the basis (bases) upon which they are requesting that the Award of Arbitrators be overturned. However, no new evidence shall be received except as such new evidence may bear upon the claim of deprivation of due process.

**Rebuttal by the original Arbitration Hearing Panel Chair:**

At this time the original Arbitration Hearing Panel Chair (or representative) will have an opportunity to explain why the Award of Arbitrators should be upheld by this Tribunal.

**Testimony of other parties to the original arbitration hearing:**

At this time any other parties to the original arbitration hearing will have an opportunity to explain why the Award of Arbitrators should be upheld by the Tribunal. Any party testifying must restrict their discussion to the issues raised in the Request for Procedural Review.

**Questions from the Panel**

The members of this panel are authorized to ask questions at any time during this procedural review. Are there any questions from the Panel to any of the parties?

**Closing statements**

Before we adjourn this proceeding, each party will be given an opportunity to make a brief closing statement. We'll hear first from the appellant, followed by the other party (if present) and then the Chair (or representative) of the original arbitration hearing.

**Panel Members:**

Panel members, please take a few minutes to review your notes and make sure you have all the information you need to make a determination on this matter. Are there any additional questions that you would like to ask?

**Confirmation of fairness/opportunity to testify:**

I now must ask each party some questions relative to their participation here today.

Do each of you feel that this hearing has been conducted fairly?

*(If "Yes")* All parties to this procedural review hearing have indicated that they feel this procedural review hearing has been conducted fairly.

*(If "No")* Ask the party to state their concern for the record, and if there's any merit to the concern, take steps to remedy any possible deficiency.

*(If party declines to answer the question, state that it is "duly noted for the record.")*

Have each of you had an adequate opportunity to state why you believe that the original Award of Arbitrators should or should not be upheld by this Tribunal?

*(If yes)* Let the record show that the parties have indicated that they have had adequate opportunity to state why they believe the original Award of Arbitrators should or should not be upheld by this Tribunal.

(If “No”) Ask the party to state their concern for the record, and if there’s any merit to the concern, take steps to remedy any possible deficiency.

(If party declines to answer the question, state that it is “duly noted for the record.”)

#### **Closing statements:**

The decision of this Procedural Review Hearing Tribunal is final. Before we adjourn this procedural review hearing, all persons present are advised that the decision of this Procedural Review Hearing Tribunal is considered confidential. The decision will be available only to members of this Tribunal, to the parties, to counsel, to members of the original arbitration Hearing Panel and staff as required, or as otherwise specified in the **Code of Ethics and Arbitration Manual**. The final decision of the Tribunal shall be sent to the parties usually within five (5) business days after this hearing is adjourned.

#### **Adjournment:**

There being no further business, this portion of this procedural review hearing stands adjourned.

#### **Executive Session:**

The Tribunal will now go into executive session to render its final decision, which will be based solely on the arguments, evidence, and testimony offered at the procedural review hearing.

**Procedural Note:** The sole issue for the Tribunal to decide is whether the arbitration procedures utilized in rendering the Award of the Arbitrators afforded all parties due process. If the Tribunal determines that the original arbitration hearing process was defective in any significant way, then the Award of the Arbitrators will be invalidated and the matter will be referred to a different arbitration Hearing Panel for a new hearing, or alternatively, the Tribunal may release the parties from their obligation to arbitrate if it concludes that the Association will be unable to impanel an impartial arbitration Hearing Panel. (*Adopted 4/92*)

#### **Confidential Nature of Hearings:**

All persons are advised that the decision of this panel is considered confidential. It will be available only to members of this panel, to the parties, to counsel and staff as required or as otherwise specified in the *Code of Ethics and Arbitration Manual as adapted by the Association*. Upon final action by the Procedural Review Tribunal in an arbitration proceeding, the decision, when signed by the members of the Tribunal (or a majority of them), shall be served upon the parties to the dispute. The parties will be notified of the decision within the required time after this hearing is adjourned, usually five (5) business days.

## Part Thirteen — Specimen Forms

The Manual refers to certain forms used in connection with arbitration proceedings conducted under it. Following are specimens of such forms.

The Specimen Forms are intended to provide a format and may require further adaptation and modification by the Association prior to implementation and use.

### **General Instructions and Information for Filing and Replying to Arbitration Requests**

- (1) Arbitration requests must be typewritten and submitted to the Association. Any reply must be typewritten and submitted to the Association.
- (2) Arbitration requests will be referred to the Association Professional Standards Administrator. The Professional Standards Administrator shall appoint a Grievance Review Panel to review the Request. If the Grievance Review Panel finds the matter to constitute a proper cause of action, it will be referred to the Professional Standards Administrator to arrange a hearing; if not found to constitute a proper cause of action, it will be returned to the complainant with the decision of the Grievance Review Panel, together with information advising the complainant of the procedures by which the Grievance Review Panel's decision may be appealed to the Appeal Tribunal.
- (3) If there is to be a hearing, respondent will have fifteen (15) days after service of copy of the arbitration request to reply. Copy of the reply will be sent to complainant. The date for hearing will be set and all parties will be notified of the date and place of hearing at least twenty-one (21) days in advance.
- (4) If no response is filed to the arbitration request within fifteen (15) days from when the request for response was transmitted, the complainant and Chair of the Hearing Panel will be advised that no reply has been filed. (*Revised 05/15*)
- (5) All parties may be represented by legal counsel, provided that notice of intention to be represented is transmitted to all other parties and to the Hearing Panel at least fifteen (15) days prior to the date of the hearing. Failure to provide timely notice may result in a continuance of the hearing.
- (6) It is the responsibility of each party to arrange for their witnesses to be present at the hearing. All parties appearing at the hearing may be called as witnesses without advance notice. (*Revised 11/14*)
- (7) Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the Association at least seven (7) days prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. (*Adopted 5/15*)
- (8) Either party may file with the Professional Standards Administrator, within ten (10) days from the date the names of the members of the Professional Standards Committee are transmitted to the parties, a written request for disqualification of any potential member of the Hearing Panel for any of the following reasons:
  - (a) is related by blood or marriage to, or has an existing or past relationship with, any of the parties to the complaint, their counsel or representatives, witnesses (if applicable), or other arbitrators
  - (b) is an employer, partner, or employee, or in any way associated in business with the complainant, respondent, or counsel for either the complainant or respondent or has a personal or financial interest in the outcome of the proceeding
  - (c) is a party to the hearing, or a party or a witness in another pending case involving any party to the hearing
  - (d) knows any reasons acceptable to the Hearing Panel, Appeal Tribunal or Procedural Review Tribunal that may prevent the member from rendering an impartial decision
  - (e) has already served as a member of any other panel in the same matter.
- (9) The notice of hearing will contain names of members of the tribunal who will hear the case and should be accompanied by an "Outline of Procedure for Arbitration Hearing" and the *Arbitration Guidelines* (including the Worksheet). Parties' requests for

continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. *(Revised 11/14)*

(10) The parties shall not discuss the case with any member of the Hearing Panel or Appeal Tribunal at any time prior to announcement of a decision in the case.

(11) No hearing will be held in the absence of a complainant. An arbitration hearing may proceed in the absence of the respondent.

*(Revised 05/15)*



11100 Bren Road West  
Minnetonka, MN 55343  
952.935.8313  
mnrealtor.com

Form A-1

## Request and Agreement to Arbitrate

- (1) The undersigned, by becoming and remaining a member of Minnesota Realtors® (hereinafter "Association") (or Participant in a local or Regional MLS), has previously consented to arbitration through the Association under its rules and regulations.
- (2) I am informed that each person named below is a member, in good standing, of the Association (or participant in a local or regional MLS) or was a member of said Association at the time the dispute arose.
- (3) A dispute arising out of the real estate business as defined by Article 17 of the Code of Ethics exists between

me (or my firm)

and *(List all persons and/or firms you wish to name as respondents to this arbitration. \*):*

**Complainant:**

**Respondent(s):**

\_\_\_\_\_  
*(Name of Principal)\**

\_\_\_\_\_  
*(Name of Principal)\**

\_\_\_\_\_  
*(Address)*

\_\_\_\_\_  
*(Address)*

\_\_\_\_\_  
*(Name of Firm)\*\**

\_\_\_\_\_  
*(Name of Firm)\*\**

\_\_\_\_\_  
*(Telephone)*

\_\_\_\_\_  
*(Telephone)*

\_\_\_\_\_  
*(Email)*

\_\_\_\_\_  
*(Email)*

(NOTE: Arbitration is generally conducted between REALTOR® (principals) or between firms comprised of REALTOR® principals. Naming a REALTOR® [principal] as respondent enables the complainant to know who will participate in the hearing from the respondent's firms; naming a firm may increase the likelihood of collecting any resulting award.)

The following REALTOR® non-principal affiliated with my firm has a financial interest in the outcome of the proceeding and may be called as a witness, and has the right to be present throughout the hearing: \_\_\_\_\_.

- (4) There is due, unpaid, and owing to me (or I retain) from the above-named persons the sum of \$ \_\_\_\_\_. My claim is predicated upon the statement attached, marked Exhibit I and incorporated by reference into this application. The disputed funds are currently held by: \_\_\_\_\_.

Parties are strongly encouraged to make sure the Association receives any and all documents and evidence they intend to introduce during the hearing at least **seven (7) days prior** to the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. Evidence submitted to the Association but not provided to the other party(ies) will be provided to the other party(ies) by the Association at the time of submission. Evidence submitted at the time of the hearing will be evaluated for admissibility by the hearing panel chair.

- (5) I request and consent to arbitration through the Association in accordance with its *Code of Ethics and Arbitration Manual*. I agree to abide by the arbitration award and, if I am the non-prevailing party, to, within ten (10) days following transmittal of the award, either (1) pay the award to the party(ies) named in the award and notify the Association in writing of such payment, or (2) deposit the funds with the Professional Standards Administrator to be held in an escrow or trust account maintained for this purpose. Failure to satisfy the award or to deposit the funds in the escrow or trust account within this time period may be considered a violation of a membership duty and may subject the member to disciplinary action at the discretion of the Leadership Team consistent with **Section 53, The Award, Code of Ethics and Arbitration Manual**.

In the event I do not comply with the arbitration award and it is necessary for any party to this arbitration to obtain judicial confirmation and enforcement of the arbitration award against me, I agree to pay the party obtaining such confirmation the costs and reasonable attorney's fees incurred in obtaining such confirmation and enforcement.

- (6) I understand any party may request mediation of a dispute by contacting the Association's Professional Standards Administrator.
- (7) I enclose my check in the sum of \$400.00 for the arbitration filing fee deposit made payable to Minnesota Realtors®.
- (8) I understand that I may be **represented by legal counsel**, and that I should give **written notice no less than fifteen (15) days before the hearing** of the name, address, and phone number of my attorney **to all parties and the Association**. Failure to provide this notice may result in a continuance of the hearing, if the Hearing Panel determines that the rights of the other party(ies) require representation.
- (9) Each party must **provide a list of the names of witnesses** he intends to call at the hearing **to the Association and to all other parties not less than fifteen (15) days prior to the hearing**. Each party shall arrange for their witnesses to be present at the time and place designated for the hearing. All parties appearing at the hearing may be called as witnesses without advance notice.
- (10) I declare that this application and the allegations contained herein are true and correct to the best of my knowledge and belief and this request for arbitration is filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known by the complainant in the exercise of reasonable diligence, whichever is later.

Date(s) alleged dispute took place:

The Sale/Lease closed on:

- (11) If either party to an arbitration request believes that the Grievance Review Panel has incorrectly classified the issue presented in the request (i.e., mandatory or voluntary), the party has **twenty (20) days** from the date of transmittal of the Grievance Review Panel's decision to file a written appeal of the decision. Only those materials that the Grievance Review Panel had at the time of its determination may be considered with the appeal by the Appeal Tribunal.
- (12) Are the circumstances giving rise to this arbitration request the subject of civil litigation? ☐ Yes ☐ No
- (13) **MEDIATION:** Voluntary mediation is a process in which the parties, with the assistance of a qualified Mediation Officer, attempt to resolve the dispute. The Mediation Officer will attempt to create and maintain an atmosphere of communication between the parties while facilitating their negotiation but will not dictate an award. Mediation is a viable alternative to formal arbitration, if the parties are willing to compromise.

Are you interested in the option of mediation on this dispute? ☐ Yes ☐ No

(14) Important note related to arbitration conducted pursuant to Standard of Practice 17-4 (1) or (2): Where arbitration is conducted between two (or more) cooperating brokers pursuant to Standard of Practice 17-4 (1) or (2), the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker, seller, or landlord and any amount credited or paid to a party to the transaction at the direction of the respondent.

(15) Address of the property in the transaction giving rise to this arbitration request (if applicable):

---

(16) Agreements to arbitrate are irrevocable except as otherwise provided under state law.

(17) The submitter(s) of this Request declare(s) they are the complainant(s) named below:

**Complainant(s):**

---

*Signature of REALTOR® Principal/Broker (Required)*

---

*Name (Please Print)*

---

*Date*

\*Complainants may name one or more REALTOR® principals or a firm comprised of REALTOR® principals as respondent(s). Or, complainants may name REALTOR® principals and firms as respondents. "REALTOR® principal" includes licensed or certified individuals who are sole proprietors, partners in a partnership, officers or majority shareholders of a corporation, or office managers (including branch office managers) acting on behalf of principals of a real estate firm. \*\*In cases where arbitration is requested in the name of a firm comprised of REALTOR® (principals), the request must be signed by at least one of the REALTOR® principals of the firm as a co-complainant. (See Part 7, Section 26 of the COEAM for the definition of a REALTOR® principal.)



Form A-2

11100 Bren Road West  
Minnetonka, MN 55343  
952.935.8313  
mnrealtor.com

## Request and Agreement to Arbitrate (Non-Member)

- (1) The undersigned agrees and wants to submit to arbitration before a Hearing Panel of Minnesota REALTORS® (hereinafter "Association") with the understanding that the arbitration will be conducted pursuant to the *Code of Ethics and Arbitration Manual* of the Association. The undersigned acknowledges having had the opportunity to review the Association's procedures or having been provided with a copy of the procedures.
- (2) I am informed that each person named below is a member, in good standing, of the Association (or participant in a local or regional MLS) or was a member of said Association at the time the dispute arose.
- (3) A dispute arising out of the real estate business as defined by Article 17 of the Code of Ethics exists between

me (or my firm)

and (List all persons and/or firms you wish to name as respondents to this arbitration. \*):

**Complainant:**

**Respondent(s):**

\_\_\_\_\_  
(Name of Complainant/Principal)

\_\_\_\_\_  
(Name of Principal)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Name of Firm)

\_\_\_\_\_  
(Name of Firm)

\_\_\_\_\_  
(Telephone)

\_\_\_\_\_  
(Telephone)

\_\_\_\_\_  
(Email)

\_\_\_\_\_  
(Email)

(NOTE: Naming a REALTOR® [principal] as respondent enables the complainant to know who will participate in the hearing from the respondent's firms; naming a firm may increase the likelihood of collecting any resulting award. Complainants may name one or more REALTOR® principals or a firm comprised of REALTOR® principals as respondent(s). Or, complainants may name REALTOR® principals as respondents.)

The following non-principal affiliated with my firm has a financial interest in the outcome of the proceeding and may be called as a witness, and has the right to be present throughout the hearing: \_\_\_\_\_.

- (4) There is due, unpaid, and owing to me (or I retain) from the above-named persons the sum of \$ \_\_\_\_\_. My claim is predicated upon **the statement attached, marked Exhibit I** and incorporated by reference into this application. The disputed funds are currently held by: \_\_\_\_\_.

Parties are strongly encouraged to make sure the Association receives any and all documents and evidence they intend to introduce during the hearing at least seven (7) days prior to the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. Evidence submitted to the Association but not provided to the other party(ies) will be provided to the other party(ies) by the Association at the time of submission. Evidence submitted at the time of the hearing will be evaluated for admissibility by the hearing panel chair.

- (5) The undersigned confirms that execution of this Agreement is wholly voluntary and, pursuant to this Agreement, agrees and promises to abide absolutely by the award of the Hearing Panel. In the event of adverse decision, I agree to, within ten (10) days following transmittal of the award, either (1) pay the award to the party(ies) named in the award and notify the Association in writing of such payment, or (2) deposit the funds with the Professional Standards Administrator to be held in an escrow or trust account maintained for this purpose consistent with Section 53, The Award, *Code of Ethics and Arbitration Manual*.
- (6) I understand any party may request mediation of a dispute by contacting the Association's Professional Standards Administrator.
- (7) I enclose my check in the sum of \$400.00 for the arbitration filing fee deposit made payable to Minnesota Realtors®.
- (8) I understand that I may be **represented by legal counsel**, and that I should give **written notice no less than fifteen (15) days before the hearing** of the name, address, and phone number of my attorney **to all parties and the Association**. Failure to provide this notice may result in a continuance of the hearing, if the Hearing Panel determines that the rights of the other party(ies) require representation.
- (9) Each party must **provide a list of the names of witnesses** he intends to call at the hearing **to the Association and to all other parties not less than fifteen (15) days prior to the hearing**. Each party shall arrange for their witnesses to be present at the time and place designated for the hearing. All parties appearing at the hearing may be called as witnesses without advance notice.
- (10) I declare that this application and the allegations contained herein are true and correct to the best of my knowledge and belief and this request for arbitration is filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known by the complainant in the exercise of reasonable diligence, whichever is later.

Date(s) alleged dispute took place:

The Sale/Lease closed on:

- (11) If either party to an arbitration request believes that the Grievance Review Panel has incorrectly classified the issue presented in the request (i.e., mandatory or voluntary), the party has **twenty (20) days** from the date of transmittal of the Grievance Review Panel's decision to file a written appeal of the decision. Only those materials that the Grievance Review Panel had at the time of its determination may be considered with the appeal by the Appeal Tribunal.

- (12) Are the circumstances giving rise to this arbitration request the subject of civil litigation? ☐ Yes ☐ No

- (13) **MEDIATION:** Voluntary mediation is a process in which the parties, with the assistance of a qualified Mediation Officer, attempt to resolve the dispute. The Mediation Officer will attempt to create and maintain an atmosphere of communication between the parties while facilitating their negotiation but will not dictate an award. Mediation is a viable alternative to formal arbitration, if the parties are willing to compromise.

Are you interested in the option of mediation on this dispute? ☐ Yes ☐ No

- (14) Important note related to arbitration conducted pursuant to Standard of Practice 17-4 (1) or (2): Where arbitration is conducted between two (or more) cooperating brokers pursuant to Standard of Practice 17-4 (1) or (2), the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker, seller, or landlord and any amount credited or paid to a party to the transaction at the direction of the respondent.

- (15) Address of the property in the transaction giving rise to this arbitration request (if applicable):

(16) Agreements to arbitrate are irrevocable except as otherwise provided under state law.

(17) The submitter(s) of this Request declare(s) they are the complainant(s) named below:

**Complainant(s):**

---

*Signature*

---

*Name(Please Print)*

---

*Date*

Form A-3-C

Case #&lt;CASENUMBER&gt;

**Confirmation of Request Received - (Arbitration-Grievance Review)**

In the case of

&lt;C\_NAMES&gt;

Complainant(s)

vs.

&lt;R\_NAMES&gt;

Respondent(s)

To &lt;C\_NAMES&gt;,

This notice serves as confirmation that we have received the *Request and Agreement to Arbitrate* that you have filed that names <R\_NAMES> and/or <R\_COMPANY> as filed with this Association and referred to a Grievance Review Panel for review as provided in the *Code of Ethics and Arbitration Manual* of this Association.

The Grievance Review Panel of Minnesota Realtors® will meet on <GC HEARINGDATE> to review the Request and determine arbitrability.

- If the Grievance Review Panel of Minnesota Realtors® determines that it is a mandatory, arbitrable matter, you will be asked to file a written *Response and Agreement to Arbitrate*. A hearing will then be scheduled before a Hearing Panel of the Professional Standards Committee, which you will be required to attend.
- If the Grievance Review Panel determines that it is a voluntary, arbitrable matter the respondent(s) will be asked if they wish to voluntarily participate in arbitration.
- If the Grievance Review Panel determines that it is not an arbitrable matter, the Request will be dismissed.

You will be advised of the Grievance Review Panel's decision regarding the Request.

Respectfully submitted,

Professional Standards Administrator  
Minnesota Realtors®

Dated: <TODAY>

(Revised 10/24)

Form A-3-R  
Case #<CASENUMBER>

### Notice to Respondent(Arbitration-Grievance Review)

In the case of

<C\_NAMES>  
*Complainant(s)*

vs.

<R\_NAMES>  
*Respondent(s)*

To <R\_NAMES>:

Attached hereto is a copy of a Request and Agreement to Arbitrate which names <R\_NAMES> and/or <R\_COMPANY> as filed with this Association and referred to a Grievance Review Panel for review as provided in the *Code of Ethics and Arbitration Manual* of this Association.

The Grievance Review Panel of Minnesota Realtors® will meet on <GC\_HEARINGDATE>, to review the Request and determine arbitrability.

- If the Grievance Review Panel of Minnesota Realtors® determines that it is a mandatory, arbitrable matter, you will be asked to file a written *Response and Agreement to Arbitrate*. A hearing will then be scheduled before a Hearing Panel of the Professional Standards Committee, which you will be asked to attend.
- If the Grievance Review Panel determines that it is a voluntary, arbitrable matter you will be asked if you wish to voluntarily participate in arbitration.
- If the Grievance Review Panel determines that it is not an arbitrable matter, the Request will be dismissed.

You will be advised of the Grievance Review Panel's decision regarding the Request.

Respectfully submitted,

Professional Standards Administrator  
Minnesota Realtors®

Dated: <TODAY>

cc: <RB\_NAME>

Form A-4  
Case #<CASENUMBER>

## Response and Agreement to Arbitrate

To the **Professional Standards Committee**:

<C\_NAMES>  
Complainant(s)

<R\_NAMES>  
Respondent(s)

- (1) The undersigned, by becoming and remaining a member of the Minnesota Realtors® (or Participant in a local or regional MLS), has previously consented to arbitration through the Association under its rules and regulations.
- (2) I am a member of the \_\_\_\_\_ Association of REALTORS® or Participant in a local or regional MLS (or was a member of the Board at the time the dispute arose).
- (3) I acknowledge the existence of a dispute arising out of the real estate business as defined by Article 17 of the Code of Ethics but deny any indebtedness as claimed.
- (4) My denial is predicated upon **the statement attached marked Exhibit A**, which is hereby incorporated by reference into this response.

Parties are encouraged to make sure the Association receives any and all documents and evidence they intend to introduce during the hearing at least **seven (7) days prior** to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. Evidence submitted to the association but not provided to the other party(ies) will be provided to the other party(ies) by the association at the time of submission. Evidence submitted at the time of the hearing will be evaluated for admissibility by the hearing panel chair.

- (5) (Complete if applicable) Affirmatively, I claim that a monetary dispute arising out of the real estate business exists between the parties wherein there is due to me the sum of \$ \_\_\_\_\_. My claim is predicated **upon the statement attached, marked Exhibit B**, which is hereby incorporated by reference into this Response.
- (6) I request and consent to arbitration through the Association in accordance with its *Code of Ethics and Arbitration Manual*. I agree to abide by the arbitration award and, if I am the non-prevailing party, to, **within ten (10) days** following transmittal of the award, either (1) pay the award to the party(ies) named in the award and notify the Association in writing of such payment, or (2) deposit funds with the Professional Standards Administrator to be held in an escrow or trust account maintained for this purpose. Failure to satisfy the award or to deposit the funds in the escrow or trust account within this time period may be considered a violation of a membership duty and may subject the member to disciplinary action at the discretion of the Leadership Team consistent with **Section 53, The Award, Code of Ethics and Arbitration Manual**.
- (7) I understand any party may request mediation of a dispute by contacting the association's Professional Standards Administrator.
- (8) Enclosed is payment in the amount of \$400.00 for the arbitration filing fee made payable to Minnesota Realtors®.
- (9) I understand that I may be represented by legal counsel, and that I should give written notice no less than **fifteen (15) days before the hearing** of the name, address and phone number of my attorney to all parties and the Association. Failure to provide this notice may result in a continuance of the hearing, if the Hearing Panel determines that the rights of the other party(ies) require representation.

Each party must provide a list of the names of witnesses they intend to call at the hearing to the Association and to all other parties not less than **fifteen (15) days prior to the hearing**. Each party shall arrange for their witnesses to be present at the time and place designated for the hearing. The following REALTOR® nonprincipal affiliated with my firm has a financial interest in the outcome of the proceeding and may be called as a witness and has the right to be present throughout the hearing:

---

All parties appearing at a hearing may be called as a witness without advance notice.

- (10) I declare that the information provided with this response is true and correct to the best of my knowledge and belief.
- (11) If either party to an arbitration request believes that the Grievance Review Panel has incorrectly classified the issue presented in the request (i.e., mandatory or voluntary), the party has twenty (20) days from the date of transmittal of the Grievance Committee's decision to file a written appeal of the decision using Form A-20 *Appeal of Grievance Review Dismissal or Classification of Arbitration Request*. Only those materials that the Grievance Review Panel had at the time of its determination along with the party's rationale challenging the Grievance Review Panel's decision may be considered by the Appeal Tribunal. I understand that should I contend this matter is not arbitrable for any of the reasons specified in **Part 9, Section 41** of the *Manual*, I have an opportunity to request a Pre-Hearing Meeting of the Hearing Panel to consider dismissal of the arbitration request by submitting a *Request for Pre-Hearing Meeting* form to the Association.
- (12) Important note related to arbitration conducted pursuant to Standard of Practice 17-4 (1) or (2): Where arbitration is conducted between two (or more) cooperating brokers pursuant to Standard of Practice 17-4 (1) or (2), the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker and any amount credited or paid to a party to the transaction at the direction of the respondent.
- (13) To be completed where arbitration is between two (or more) cooperating brokers pursuant to Standard of Practice 17-4 (1) or (2): The compensation paid to me or to my firm by the listing broker, seller, or landlord, and any amount credited or paid to any party to the transaction at my direction is \$\_\_\_\_\_ (amount of compensation paid to me or my firm by the listing broker, seller, or landlord) and \$\_\_\_\_\_ (paid or credited to any party at my direction).
- (14) **MEDIATION:** Voluntary mediation is a process in which the parties, with the assistance of a qualified neutral Mediation Officer, attempt to resolve the dispute. The Mediation Officer will attempt to create and maintain an atmosphere of communication between the parties which facilitating their negotiation. Mediation is a viable alternative to formal arbitration, if the parties are willing to compromise.

Are you interested in the option of mediation on this dispute?    ☐ yes    ☐ no

- (15) The submitter(s) of this Response declare(s) they are the respondent(s) named below.

**Respondent(s):**

|                   |                                 |      |
|-------------------|---------------------------------|------|
|                   |                                 |      |
| Name (Type/Print) | Signature of REALTOR® Principal | Date |
|                   |                                 |      |
| Address           |                                 |      |
|                   |                                 |      |
| Telephone         | Email                           |      |
|                   |                                 |      |
| Name (Type/Print) | Signature of REALTOR® Principal | Date |
|                   |                                 |      |
| Address           |                                 |      |
|                   |                                 |      |
| Telephone         | Email                           |      |

Form A-5  
Case # <CASENUMBER>

### **Grievance Review Panel Request for Information - Arbitration**

To <C\_NAMES>,

The Grievance Review Panel of Minnesota Realtors® has met to review the arbitration request which you have filed naming <R\_NAMES> AT <R\_COMPANY> as the Respondent. After careful review of the complaint, the Panel concluded that the information provided was not sufficient on its face to determine whether the matter is arbitrable.

The Grievance Review Panel has requested that you supply them with the following information:

1. Click or tap here to enter text..
2. Click or tap here to enter text..

Enclosed is Form A-6, *Response to Grievance Review Panel's Request for Information*. Please complete this form and return it, along with the requested information within **ten (10) days** from transmittal of this notice to the Association at the address noted above.

Respectfully submitted,

Dated: <TODAY>

Professional Standards Administrator  
Minnesota Realtors®

Form A-5.1

Case #<CASENUMBER>

## Grievance Review Panel Report Form - Arbitration

\_\_\_\_\_  
<C\_NAMES> vs. \_\_\_\_\_  
Complainant(s) Respondent(s)

On <GC\_HEARINGDATE>, Minnesota Realtors® (Association) Grievance Review Panel met to review the above-referenced matter which is a *Request for Arbitration*. As a result of that meeting, the Grievance Review Panel recommends the following action.

- ☐ **MANDATORY ARBITRATION:** The arbitration request is a matter for mandatory arbitration and shall be forwarded to the Professional Standards Committee for a hearing.
- ☐ **VOLUNTARY ARBITRATION:** The arbitration request is a matter for voluntary arbitration and shall be forwarded to the Professional Standards Committee for a hearing, provided that all parties agree.
- ☐ **ARBITRATION DISMISSED:** The arbitration request is not a matter for arbitration and the Grievance Review Panel dismisses the request. The complainant has the right to appeal the dismissal to the Appeal Tribunal of the Association within 20 days from transmittal of this notice.

*Reason for dismissal:*

- ☐ not timely filed ☐ not arbitrable ☐ does not have jurisdiction ☐ other (Please Explain)

\_\_\_\_\_  
\_\_\_\_\_

Dated: <TODAY>

Professional Standards Administrator  
Minnesota Realtors®

### Grievance Review Panel Members:

\_\_\_\_\_  
<GC\_MEMBER1>, Member

\_\_\_\_\_  
<GC\_MEMBER2>, Member

\_\_\_\_\_  
<GC\_MEMBER3>, Member



Case #<CASENUMBER>

In the case of: <C\_NAMES> vs. <R\_NAMES>  
*Complainant(s)* *Respondent(s)*

Filed: <SUBMITTED>

Complainant(s) replies and substantiates such response by the following **attached statement**.

**COMPLAINANT(S):**

Telephone \_\_\_\_\_ Email \_\_\_\_\_



11100 Bren Road West  
Minnetonka, MN 55343  
952.935.8313  
mnrealtor.com

Form A-7

Case # <CASENUMBER>

## Notice of Right to Challenge Tribunal Members

**Notice of Right to Challenge Panel/Tribunal Members:** Notice is given herewith to parties in this matter that a party has a right to challenge the qualifications of any individual who may be appointed to serve on a Hearing Panel or Appeal Tribunal for the following reasons, the member:

- a) Is related by blood or marriage to, or has an existing or past relationship with, any of the parties to the complaint, their counsel or representatives, witnesses, or other arbitrators
- b) Is an employer, partner, employee, or in any way is associated in business with either complainant, respondent, or counsel for either the complainant or respondent or has a financial or personal interest in the outcome of the arbitration proceeding
- c) Is a party to the hearing, or a party or witness in any pending case involving any party to this hearing.
- d) Knows of any reason acceptable to the Hearing Panel, Appeal Tribunal, or Procedural Review Tribunal that may prevent the member from rendering an impartial judgment.
- e) Has already serves as a member of any other panel in the same matter.

A list of panel/tribunal members is provided in the Official Notice of Hearing. If you wish to challenge the qualifications of any of the individuals listed in the Official Notice of Hearing, please complete the information below and return a copy of this Form A-7 to the Association office **within ten (10) days** from the date the Official Notice of Hearing has been transmitted to you.

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I (We), as a party to the matter of <C NAMES> vs <R NAMES>, hereby challenge the qualification of the following individual(s) as a member(s) of the Tribunal\* for the following reasons: (NOTE: Unsubstantiated challenges will be disregarded.)\*\*

Panel Member Challenged: \_\_\_\_\_

Reason: \_\_\_\_\_

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Panel Member Challenged: \_\_\_\_\_

Reason: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
*(Type/Print Name)*

\_\_\_\_\_  
*(Type/Print Name)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Date)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Date)*

Form A-9

Case #&lt;CASENUMBER&gt;

## Official Notice of Arbitration Hearing

In the case of:                     <C\_NAMES>                     vs.                     <R\_NAMES>                      
*Complainant(s)* *Respondent(s)*

The above parties are hereby notified:

- (1) The Chairperson of the Hearing Panel has designated <HEARINGDATE> Choose an item. for hearing the above-stated case, which is a hearing concerning the arbitration of a business dispute as defined in Article 17 of the Code of Ethics or in the *Code of Ethics and Arbitration Manual* of the bylaws of the Association. Attached are the *Arbitration Guidelines*, **Appendix II to Part Ten**, for your review.
  
- (2) You are hereby notified to appear at the time and place so designated.\* Although testimony provided in person before a Hearing Panel is preferred, parties and witnesses to arbitration hearings may be permitted to participate in hearings by teleconference or videoconference at the discretion of the Hearing Panel Chair.
  
- (3) The members of the Hearing Panel appointed to hear the case are:
  - <HEARING\_CHAIR\_BROKER>, Chair
  - <HEARING\_MEMBER\_BROKER1>, Member
  - <HEARING\_MEMBER\_BROKER2>, Member
  - <HEARING\_MEMBER\_BROKER3>, Member
  - <HEARING\_MEMBER\_BROKER4>, Member
  
- (4) **Evidence:** Parties are strongly encouraged to make sure the Association receives any and all documents and evidence they intend to introduce during the hearing and to the Association at least seven (7) days prior to the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. Evidence submitted to the association but not provided to the other party(ies) will be provide to the other party9ies) by the association at the time of submission. Evidence submitted at the time of the hearing will be evaluated for admissibility by the hearing panel chair.
  
- (5) **Counsel:** Either party may be represented by counsel, and each party is requested to provide written notice of an intention to have counsel present **fifteen (15) days prior** to the date of the hearing to the Association and the other party including counsel's name, address, and phone number. Failure to provide this notice will not invalidate a party's right to legal representation but may result in a continuance of the hearing if the Hearing Panel determines that the rights of any other party require representation by counsel.

- (5) **Witness(es):** Each party must provide a list of the names of the witnesses he intends to call at the hearing to the Association and to all other parties not less than **fifteen (15) days prior** to the hearing. Each party shall arrange for his witnesses to be present at the time and place designated for the hearing. All parties appearing at the hearing may be called as witnesses without advance notice.
- (6) The parties shall not discuss the case with any member of the Hearing Panel, Appeal Tribunal, or the Procedural Review Tribunal prior to the hearing or after the hearing and prior to announcement of the decision.
- (7) The parties to an arbitration proceeding are encouraged to settle the issue between themselves by joint agreement at any time and shall provide written notice of such settlement to the Professional Standards Administrator. If the parties settle the issue between them and notify the Professional Standards Administrator not later than 24-hours prior to the scheduled Arbitration Hearing time, then the \$400.00 deposit shall be returned to the parties. Notification less than 24-hours prior to the schedule Hearing will result in a partial return of the deposit.

Respectfully submitted,

Professional Standards Administrator  
Minnesota Realtors®

Dated: <TODAY>

Form A-10

**Outline of Procedure for Arbitration Hearing**

(To be transmitted in advance to both parties with Arbitration Guidelines and Worksheet)

**Remote Testimony:** Although testimony provided in person before a Hearing Panel is preferred, parties and witnesses to arbitration hearings may be permitted to participate in hearing by teleconference or videoconference at the discretion of the Hearing Panel Chair.

**Postponement of hearing:** Postponement may be granted if there are extenuating circumstances. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing. Requests are reviewed by the Hearing Panel Chair. If the request is approved by the Chair, all parties shall be advised of the date of the rescheduled hearing by a Form E8A *Official Notice of Rescheduled Arbitration Hearing*. However, the granting of a postponement of the hearing date shall not constitute a like extension of all original deadlines related to the case, such as notices for witnesses, counsel and submission of additional documentation.

**Recording the hearing:** The Association shall record the proceeding and the Association's recording shall be the official record of the proceeding. Any party may, at the Association's discretion, record the proceeding or utilize a court reporter at their own expense. If a party utilizes a court reporter and orders a transcript, a copy of the transcription shall be made at the party's expense and presented to the Professional Standards Administrator. Videotaping is not permitted except with the advance express consent of the parties and the panelists. Copies of any recording or transcription are to be used only for the purpose of appeals or procedural reviews. Appeals and limited procedural reviews shall not be recorded by the Association or the parties.

**Method and objective of procedure:** The Hearing Panel shall not be bound by the rules of evidence applicable in courts of law but shall afford all parties a full opportunity to be heard, present witnesses, and offer evidence, subject to its judgment as to relevance.

Parties are strongly encouraged to make sure the Association receives any and all documents and evidence they intend to introduce during the hearing at least seven (7) days prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances.

**Due process procedure:** The hearing procedures will be as follows:

1. Opening statement by Chair – Chair cites authority to hear case and explains reason for hearing.
2. The arbitration request will be read into the record.

3. The testimony of all parties and witnesses will be affirmed. All witnesses will be excused from the hearing except while testifying. All parties appearing at a hearing may be called as witnesses without advance notice.
4. Complainants will be given an opportunity to briefly explain the party's basic position, present evidence and testimony on their behalf, and call and examine witnesses.
  - Respondents will be afforded an opportunity to cross-examine the complainants and witnesses.
  - Panel members may question the complainants and witnesses.
5. Respondents will be given an opportunity to briefly explain the party's basic position, present evidence and testimony on their behalf, and call and examine witnesses.
  - Complainants will be given an opportunity to cross-examine the respondents and witnesses.
  - Panel may question the respondents and witnesses.
6. The Panel members may ask questions at any time during the proceedings.
7. The Chair may exclude any questions which they deem irrelevant or argumentative.
8. Each side may make a closing statement. Complainant will make the first closing statement and Respondent will make the final closing statement.
9. The Chair will make closing statements and adjourn the hearing.
10. The Hearing Panel will go into executive session to decide the case.

**Settlement:** Parties are encouraged to settle the dispute at any time. At the outset of the hearing, the Hearing Panel Chair should inform the parties that settlement is an option. At any time during the hearing, the parties can ask for a recess in an attempt to reach a settlement agreement. The parties, with the assistance of their respective counsel, if any, will determine the terms of their settlement agreement.

**Award in arbitration hearing:** The decision of the Hearing Panel in an arbitration proceeding shall be reduced to writing (setting forth only the amount of the award) and be signed by the Arbitrators or a majority of them, and a copy shall be furnished to each of the parties to the arbitration. A copy also shall be filed with the Professional Standards Administrator of the Association.

**Use of legal counsel:** A party may be represented in any hearing by legal counsel. However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed

by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be non-appealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from the date of adjournment to enable the party to obtain alternate counsel, provided however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

**Confidential:** Be advised all matters discussed are strictly confidential.

Form A-10a

**Outline of Procedure for Arbitration Hearing (Request/Counter-Request)**  
**(To be transmitted in advance to both parties.)**

**Remote Testimony:** Although testimony provided in person before a Hearing Panel is preferred, parties and witnesses to arbitration hearings may be permitted to participate in hearings by teleconference or videoconference at the discretion of the Hearing Panel Chair.

**Postponement of hearing:** Postponement may be granted if there are extenuating circumstances. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing. Requests are reviewed by the Hearing Panel Chair. If the request is approved by the Chair, all parties shall be advised of the date of the rescheduled hearing date.

**Recording the hearing:** The Association shall record the proceeding and the Association's recording shall be the official record of the proceeding. Any party may, at the Association's discretion, record the proceedings or utilize a court reporter at their own expense. If a party utilizes a court reporter and orders a transcript, a copy of the transcription shall be made at the party's expense and presented to the Professional Standards Administrator. Videotaping is not permitted except with the advance express consent of the parties and the panelists. Copies of any recording or transcription are to be used only for the purpose of appeals or procedural reviews. Appeals and limited procedural reviews shall not be recorded by the Association or the parties.

**Method and objective of procedure:** The Hearing Panel shall not be bound by the rules of evidence applicable in courts of law but shall afford all parties a full opportunity to be heard, present witnesses, and offer evidence, subject to its judgment as to relevance.

Parties are strongly encouraged to make sure the Association receives any and all documents and evidence they intend to introduce during the hearing at least seven (7) days prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances.

**Due process procedure:** The hearing procedures will be:

- (1) Opening statement by Chair-Chair cites authority to hear case and explains reason for hearing.
- (2) The arbitration request and counter-request will be read into the record.
- (3) The testimony of all parties and witness(es) will be affirmed. All witnesses will be excused from the hearing except while testifying. All parties appearing at the hearing may be called as witnesses without advance notice.

- (4) Complainant/Counter-Respondent will be given an opportunity to briefly explain the party's basic position, present evidence and testimony on their behalf, and call and examine witnesses to support the contention that monies are owed to Complainant by Respondent/Counter-Complainant.
  - a. Respondent/Counter-Complainant may cross-examine Complainant/Counter-Respondent and/or their witness(es) immediately after each has testified.
  - b. The Hearing Panel may question Complainant/Counter-Respondent and/or their witness(es) immediately after each has testified.
- (5) Respondent/Counter-Complainant will be given an opportunity to briefly explain the party's basic position, present evidence and testimony in their behalf, and call and examine witnesses to rebut Complainant/Counter-Respondent's contention that they owe monies to Complainant/Counter-Respondent and support the contention that monies are owed to them by Complainant/Counter-Respondent.
  - a. Complainant/Counter-Respondent may cross-examine Respondent/Counter-Complainant and/or their witness(es) immediately after each has testified.
  - b. The Hearing Panel may question Respondent/Counter-Complainant and/or their witness(es) immediately after each has testified.
- (6) Complainant/Counter-Respondent presents their defenses to the counter-complaint by offering testimony and evidence from themselves and/or their witness(es) to refute the contention that they owe monies to the Respondent/Counter-Complainant.
  - a. Respondent/Counter-Complainant may cross-examine Complainant/Counter-Respondent and/or their witness(es) immediately after each has testified.
  - b. The Hearing Panel may question Complainant/Counter-Respondent and/or their witness(es) immediately after each has testified.
- (7) The Panel members may ask questions at any time during the proceedings.
- (8) The Chair may exclude any questions which they deem irrelevant or argumentative.
- (9) Complainant/Counter-Respondent may present uninterrupted closing statements to support the contention that monies are owed to Complainant by Respondent/Counter-Complainant and/or refute the contention that they owe monies to Respondent/Counter-Complainant.
- (10) Respondent/Counter-Complainant may present uninterrupted closing statements addressing the contention that they owe monies to Complainant/Counter-Respondent and support the contention that monies are owed to them by Complainant/Counter-Respondent.
- (11) The Chair will then make closing statements and adjourn the hearing.
- (12) The Hearing Panel will go into executive session to decide the case.

**Settlement:** Parties are encouraged to settle the dispute at any time. At the outset of the hearing, the Hearing Panel Chair should inform the parties that settlement is an option. At any time during the hearing, the parties can ask for a recess in an attempt to reach a settlement agreement. The parties, with the assistance of the respective counsel, if any, will determine the terms of their settlement agreement.

**Award in arbitration hearing:** The decision of the Hearing Panel in an arbitration proceeding shall be reduced to writing (setting forth only the amount of the award by the panel) and signed by the arbitrators or a majority of them, and a copy shall be furnished to each of the parties to the arbitration. A copy also shall be filed with the Professional Standards Administrator of the Association.

**Use of legal counsel:** A party may be represented in any hearing by legal counsel. However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be non-appealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from date of adjournment to enable the party to obtain alternate counsel, provided, however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

**Confidential:** Be advised all matters discussed are strictly confidential.

Form A-10b

**Outline of Procedure for Arbitration Procedural Review Hearing**

(To be transmitted in advance to both parties)

**Remote Testimony:** Although testimony provided in person before a Hearing Panel is preferred, parties to arbitration hearings may be permitted to participate in a hearing by teleconference or videoconference at the discretion of the Hearing Panel Chair.

**Postponement of hearing:** Postponement may be granted if there are extenuating circumstances. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing. Requests are reviewed by the Hearing Panel Chair. If the request is approved by the Chair, all parties shall be advised of the date of the rescheduled hearing date.

**No Recording of Procedural Review hearing:** Procedural Review hearings are not to be recorded neither by the Association nor the parties.

**Method and objective of procedure:** The Procedural Review Tribunal shall not be bound by the rules of evidence applicable in courts of law but shall afford all parties a full opportunity to be heard subject to its judgment as to relevance.

**Due process procedure:** The hearing procedures will be as follows:

1. Opening statement by Chair – Chair cites authority to hear case and explains reason for hearing.
2. The basis (bases) of the Procedural Review request will be read into the record.
3. The testimony of all parties will be affirmed.
4. Appellants will be given an opportunity to briefly explain the basis (bases) upon which they are requesting that the Award of Arbitrators be overturned.
  - Panel members may question Appellant(s).
5. The original arbitration Hearing Panel Chair (or a representative) will have an opportunity to explain why the Award of Arbitrators should be upheld by the Tribunal.
  - Panel members may question the Chair.
6. Nonappellants will have an opportunity to explain why the Award of Arbitrators should be upheld by the Tribunal.
  - Panel may question the nonappellants.

7. Parties have no right: (a) of cross-examination; (b) to call witnesses; (c) to present new evidence (except such new evidence as may bear upon a claim of deprivation of due process).
8. The Panel members may ask questions at any time during the proceedings.
9. The Chair may exclude any questions which they deem irrelevant or argumentative.
10. Each party and the original Arbitration Hearing panel Chair (or representative) will be given an opportunity to make a brief closing statement. Appellant will make the first closing statement followed by Nonappellant and finishing with the original Arbitration Hearing panel Chair (or representative).
11. The Chair will make closing statements and adjourn the hearing.
12. The Hearing Panel will go into executive session to decide the case.

**Decision in Procedural Review hearing:** The decision of the Procedural Review Tribunal is final and considered confidential. The decision shall be reduced to writing and be signed by the Arbitrators or a majority of them, and a copy shall be furnished to each of the parties to the arbitration, members of the original arbitration Hearing Panel, Association legal counsel and the Professional Standards Administrator.

**Use of legal counsel:** A party may be represented in any hearing by legal counsel. However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be non-appealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from the date of adjournment to enable the party to obtain alternate counsel, provided however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

**Confidential:** Be advised all matters discussed are strictly confidential.



11100 Bren Road West  
Minnetonka, MN 55343  
952.935.8313  
mnrealtor.com

Form A-11  
Case #<CASENUMBER>

## Certification of Qualification and Affirmation of Confidentiality

**This case is confidential.**

We, the undersigned, members of a Hearing Panel of the Professional Standards Committee of Minnesota Realtors® do hereby acknowledge that any unauthorized disclosure or dissemination of the allegations, findings, or decision developed in connection with this case may violate Article 14 of the Code of Ethics and/or result in my removal from the Professional Standards Committee or tribunal thereof, whichever is applicable.

Additionally, I hereby certify that I am not disqualified by any reason stated herein from hearing the case:

<C\_NAMES>

vs.

<R\_NAMES>

Cited case is a hearing involving arbitration of a business dispute as defined in Article 17 of the *Code of Ethics* or in the *Code of Ethics and Arbitration Manual* of the Association.

**Reasons for disqualifications:** Any member of the Hearing Panel (or Executive Committee or tribunal thereof) shall be disqualified from hearing any case if the member:

- (a) is related by blood or marriage to, or has an existing or past relationship with, any of the parties to the complaint, their counsel or representatives, witnesses (if applicable) or other panel members
- (b) is an employer, partner, employee, or in any way associated in business with the complainant, respondent, counsel for either party or has a personal interest in the outcome of the proceeding
- (c) is a party to the hearing, or a party or witness in any pending case involving any party to this hearing
- (d) knows of any reason acceptable to the Hearing Panel (or Executive Committee or tribunal thereof) that may prevent the member from rendering an impartial judgment
- (e) has already served as a member of any other panel in the same manner

**Note:** Any member of the Hearing Panel has a continuing obligation to disclose to all parties to the arbitration proceedings and to any other arbitrators any facts that the arbitrator learns after

accepting appointment which a reasonable person would consider likely to affect the impartiality of the Hearing Panel member.

|                                                                  |                            |
|------------------------------------------------------------------|----------------------------|
| <hr/> <div>&lt;HEARING_CHAIR&gt;, Chair</div> <div>Name</div>    | <hr/> <div>Signature</div> |
| <hr/> <div>&lt;HEARING_MEMBER1&gt;, Member</div> <div>Name</div> | <hr/> <div>Signature</div> |
| <hr/> <div>&lt;HEARING_MEMBER2&gt;, Member</div> <div>Name</div> | <hr/> <div>Signature</div> |
| <hr/> <div>&lt;HEARING_MEMBER3&gt;, Member</div> <div>Name</div> | <hr/> <div>Signature</div> |
| <hr/> <div>&lt;HEARING_MEMBER4&gt;, Member</div> <div>Name</div> | <hr/> <div>Signature</div> |

Dated: <TODAY>

**Note:** No more than one person licensed with any firm, partnership, or corporation may serve on the same tribunal. This limitation does not preclude two or more individuals from the same franchise from serving if the franchises are independently owned and operated.



11100 Bren Road West  
Minnetonka, MN 55343  
952.935.8313  
mnrealtor.com

Form A-12  
Case #<CASENUMBER>

### Award of Arbitrators

The undersigned, who were duly appointed as the Hearing Panel to hear and determine a business dispute as defined in Article 17 of the Code of Ethics or as further set forth in the *Code of Ethics and Arbitration Manual* of the Association, and existing between

<C\_NAMES>

vs.

<R\_NAMES>

do hereby certify that on <HEARINGDATE> Choose an item., we heard the evidence of the parties to the said dispute after giving 21 days notice to each of the parties in writing of the time and place of the hearing, and having heard all the evidence and arguments of the parties, a majority of the Panel finds there is due and owing the sum of \$Click or tap here to enter text., which sum is ordered **to be paid within ten (10) days** following transmittal of this Award as follows, either:

- (1) By Click or tap here to enter text. directly to Click or tap here to enter text. and a written notice of such payment shall be provided to the Association; or
- (2) By Click or tap here to enter text. to the Association to be held in a special Association escrow account maintained for this purpose.

Failure to satisfy the award or to deposit the funds in the escrow with the Association within this time period may be considered a violation of a membership duty and may subject the member to disciplinary action at the discretion of Minnesota Realtors® Leadership Team.

The deposit of the non-prevailing party shall be used by the Association to cover the costs of arbitration as may be required. Any portion not used specifically to cover the costs of the arbitration will go into the general operating funds of Minnesota Realtors®. In the event the award of the arbitrators is in an amount other than that requested by any of the parties, the disposition of the deposits shall be directed by the arbitrators.

Requests for procedural review of the arbitration hearing procedures must be filed in writing with the Association within twenty (20) days after the award has been transmitted to the parties\* and must be accompanied by a deposit of \$400.00. The request for procedural review should cite the alleged procedural deficiencies or other irregularities the party believes constitute a deprivation of due process. If no procedural review is filed within twenty (20) days following

\* Award becomes final twenty (20) days from the date the award is transmitted absent a procedural review request being filed.

transmittal of the award and the non-prevailing party does not notify the Professional Standards Administrator that a legal challenge to the validity of the award has been initiated during that time, the award will be paid from the escrow or trust account. If a procedural review request is timely filed and the award is confirmed by the Appeal Tribunal following the procedural review, the award will be paid from the escrow unless the non-prevailing party advises the Association in writing within fifteen (15) days from the transmittal of the Procedural Review Tribunal's confirmation that a suit challenging the validity of the award has been filed. If the Procedural Review Tribunal invalidates the award, the funds shall be returned to the individual who made the deposit.

Date: <TODAY>

|                                                |                        |
|------------------------------------------------|------------------------|
| <hr/> <HEARING_CHAIR>, Chair<br><i>Name</i>    | <hr/> <i>Signature</i> |
| <hr/> <HEARING_MEMBER1>, Member<br><i>Name</i> | <hr/> <i>Signature</i> |
| <hr/> <HEARING_MEMBER2>, Member<br><i>Name</i> | <hr/> <i>Signature</i> |
| <hr/> <HEARING_MEMBER3>, Member<br><i>Name</i> | <hr/> <i>Signature</i> |
| <hr/> <HEARING_MEMBER4>, Member<br><i>Name</i> | <hr/> <i>Signature</i> |

Many arbitration hearings are convened to determine questions of procuring cause. For purposes of arbitration conducted by Minnesota Realtors®, procuring cause is considered to be the initiation of the unbroken chain of causal events that results in a successful transaction, defined as a sale that closes or a lease that is executed.

Transmitted on: \_\_\_\_\_, 20\_\_\_\_

*\*Award becomes final twenty (20) days from the date the award is transmitted, absent a procedural review request being filed.*



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952.935.8313  
mnrealtor.com

Form A-13

Case #<CASENUMBER>

## Request for Procedural Review of an Arbitration Hearing

In the case of: \_\_\_\_\_ vs. \_\_\_\_\_  
Complainant(s) Respondent(s)

I/We, \_\_\_\_\_, do hereby request a procedural review of the arbitration hearing procedures in the above-cited case before the Procedural Review Tribunal of Minnesota Realtors®.

**NOTE:** The Procedural Review Tribunal will **not** hear an appeal on the merits of the arbitration award and **may not** review any evidence offered with respect to the merits of that award, except such evidence as may bear upon a claim of deprivation of due process.

The request for procedural review **must** cite the alleged procedural deficiency(ies) or other irregularities the party believes constitute a deprivation of due process (e.g. fraud, coercion, bias, prejudice, evident partiality, etc.) on the part of Hearing Panel members or others acting on behalf of the Association.

My/Our request is based on the following: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*(Please set forth in reasonable detail [narrative] the facts which support the request for review. Attach narrative to this Request form if the narrative exceeds the space above. Only those facts raised in this Request will be considered by the Procedural Review Tribunal at the procedural review hearing.)*

This Request must be accompanied by an appeal **deposit in the amount of \$400.00**, payable to Minnesota Realtors®, and **must** be filed **within twenty (20) days following transmittal of the Arbitration Award**.

Date: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Principal's Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
E-mail

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Principal's Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
E-mail

\_\_\_\_\_  
Phone



Case #<CASENUMBER>

In the case of: <C\_NAMES> vs. <R\_NAMES>  
*Complainant(s)* *Respondent(s)*

(1) [Click or tap here to enter text.](#) has requested a procedural review of the arbitration hearing procedures used in the above-cited case before the Procedural Review Tribunal of Minnesota Realtors<sup>a</sup>.

(2) The Procedural Review Tribunal will meet on <HA HEARINGDATE>, Choose an item. to hear the request that the award of the arbitrators be overturned.

<HA\_CHAIR\_BROKER>, Chair

---

<HA\_MEMBER\_BROKER1>, Member

---

<HA\_MEMBER\_BROKER2>, Member

---

<HA\_MEMBER\_BROKER3>, Member

---

<HA\_MEMBER\_BROKER4>, Member

(5) Either party may file with the Professional Standards Administrator, **not less than 10 days** prior to the date of Procedural Review, a written request to challenge any member of the Procedural Review Tribunal by submitting Form #A-7 *Challenge to Qualifications by Parties to Arbitration Proceeding* for the following reasons, the member:

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- (b) is an employer, partner, or employee, or in any way associated in business with the complainant, respondent, or counsel for either the complainant or respondent or has a personal or financial interest in the outcome of the proceeding
  - (c) is a party to the hearing, or a party or witness in any pending case involving any party to this hearing
  - (d) knows of any reason acceptable to the Hearing Panel or Appeal Tribunal that may prevent the member from rendering an impartial judgment.
  - (e) has already served as a member of any other panel in the same matter.
- (6) The parties shall not discuss the case with any member of the Procedural Review Tribunal prior to, or after, the procedural review hearing and prior to announcement of the decision of the Procedural Review Tribunal.

Respectfully submitted,

Professional Standards Administrator  
Minnesota Realtors®

Date: <TODAY>



Case #<CASENUMBER>

Procedural Review of the arbitration hearing in the matter of:

Respondent(s)

The Procedural Review Tribunal's decision is as follows:

- ☐ Affirm the award of the Arbitration Hearing Panel
- ☐ Overturn the award of the Arbitration Hearing Panel based on a substantial procedural error in the arbitration hearing process that resulted in a denial of due process or in a determination that the appellant was otherwise deprived of due process, and
- ☐ The matter is to be referred to the Professional Standards Committee for a new hearing on the merits before a different Hearing Panel.
- ☐ The parties are released from their obligation to arbitrate and are free to pursue any other remedy that may be available to them.

<HA\_MEMBER4>, Member

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**Checklist of Professional Standards Concerns for Elected Officers and Directors  
and for Executive Officers of Associations of REALTORS®**

- ☐ (1) **Concern** for the obligation of the Association to enforce the Code of Ethics (see Article IV, Bylaws, National Association of REALTORS®).
- ☐ (2) **Concern** for the enhanced public image and credibility of REALTORS®, REALTOR-ASSOCIATES®, and the Association.
- ☐ (3) **Concern** for liability of the Association related to Code enforcement-minimal if correct; serious if done inaccurately or inappropriately.
- ☐ (4) **Concern** for sound procedures, due process, and fairness - every member entitled.
- ☐ (5) **Concern** that the Association's professional standards procedures are substantively in compliance with National Association and State Association procedures-ensures coverage of Errors and Omissions Insurance.  
(The National Association recommends adoption of the *Code of Ethics and Arbitration Manual*, as adapted to comply with state law.)
- ☐ (6) **Concern** for wise appointments to the Professional Standards Committee-mature, experienced, and knowledgeable individuals of judicious temperament.
  - (a) **President-Elect**- start to consider potential appointees early.
  - (b) Select best possible **Chairperson**.
  - (c) Select competent **Committee Members**.
- ☐ (7) **Concern** for Leadership's Involvement-President's personal commitment to Code awareness training programs and proper Code enforcement.
- ☐ (8) **Concern** for accountability of Professional Standards Committee Members.
- ☐ (9) **Concern** for distinguishing between "ethics" and "arbitration" cases.
- ☐ (10) **Concern** that ethics hearings serve their purposes - education of members and vindication of the Code.
- ☐ (11) **Concern** that arbitration be limited to "properly arbitrable matters".
- ☐ (12) **Concern** that the Grievance Review Panel does not exceed its function of making preliminary reviews to determine proper disposition of ethics complaints and requests for arbitration.
- ☐ (13) **Concern** that Association Officers and staff not be given or assume responsibility beyond their proper role in professional standards matters.
- ☐ (14) **Concern** that ethics and arbitration matters be heard separately - arbitration first, then ethics.
- ☐ (15) **Concern** that the Association has access to legal counsel and that counsel's involvement in professional

standards proceedings or in reviewing professional standards decisions is routine.

- ☐ (16) **Concern** that the public is provided adequate information and assistance to fully understand what the Association can do and does do, and what the Association cannot do.
- ☐ (17) **Concern** that Association hearings are conducted in strict accordance with the professional standards procedures of the Association's bylaws.
- ☐ (18) **Concern** that professional standards procedures and proceedings are unbiased and conducted without fear or favor - **ensure impartiality**.
- ☐ (19) **Concern** that the parties are aware that an appeal remedy is always available in ethics matters.
- ☐ (20) **Concern** that the Board of Directors understands its role in professional standards matters.
  - (a) Ethics - appeal.
  - (b) Arbitration- no review or appeal, except in respect to alleged procedural irregularities resulting in deprivation of "due process."
- ☐ (21) **Concern** for confidentiality of professional standards proceedings.
- ☐ (22) **Concern** for proper publication of decisions as specified in the *Code of Ethics and Arbitration Manual* - limited dissemination of findings.
- ☐ (23) **Concern** for matters that are currently being litigated.
  - (a) **No** ethics hearing while criminal litigation is pending on same matter.
  - (b) On the advice of Association legal counsel, an ethics hearing may proceed or may be held in abeyance if civil litigation or proceeding before state real estate licensing authority or other state or federal regulatory or administrative agency is pending on the same matter.
  - (c) **Never** hold an arbitration hearing when the arbitrable matter is the subject of litigation.
- ☐ (24) **Concern** for common sense - encourage resolution of disputes by mediation (reduces arbitration case load).
- ☐ (25) **Concern** for training - the National Association recommends that an Education Subcommittee of the Association's Professional Standards Committee be appointed and charged with providing a continuing education program for Association Members in Code of Ethics awareness, understanding, and procedures.
- ☐ (26) **Concern** for Code enforcement training - State and Association.
- ☐ (27) **Concern** for dealing promptly and fairly with complaints brought by the public.
- ☐ (28) **Concern** for liability of REALTORS® in dealing with the public.
- ☐ (29) **Concern** for changes in professional standards policies and procedures, in revisions of the Code, new or revised interpretations of the Code, and revised editions of training aids and National Association publications related to the Code and its enforcement.

### Seating Arrangements for Hearings

|                                   |  |                                         |
|-----------------------------------|--|-----------------------------------------|
| attorney <input type="radio"/>    |  | <input type="radio"/> panel member      |
| respondent <input type="radio"/>  |  | <input type="radio"/> panel member      |
| witness <input type="radio"/>     |  | <input type="radio"/> panel chairperson |
| witness <input type="radio"/>     |  | <input type="radio"/> panel member      |
| complainant <input type="radio"/> |  | <input type="radio"/> panel member      |
| attorney <input type="radio"/>    |  | <input type="radio"/> board attorney    |

☐ recorder    ☐ Professional Standards Administrator

|                                   |  |  |                                         |
|-----------------------------------|--|--|-----------------------------------------|
| attorney <input type="radio"/>    |  |  | <input type="radio"/> panel member      |
| respondent <input type="radio"/>  |  |  | <input type="radio"/> panel member      |
| witness <input type="radio"/>     |  |  | <input type="radio"/> panel chairperson |
| witness <input type="radio"/>     |  |  | <input type="radio"/> panel member      |
| complainant <input type="radio"/> |  |  | <input type="radio"/> panel member      |
| attorney <input type="radio"/>    |  |  | <input type="radio"/> board attorney    |

☐ recorder    ☐ Professional Standards Administrator



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Form A-17a  
Case #<CASENUMBER>

## Notice of Settlement, Withdrawal of Arbitration Request

Notice is given herewith to Minnesota Realtors® that in the matter of:

|                                             |     |                                            |
|---------------------------------------------|-----|--------------------------------------------|
| _____<br><C_NAMES><br><i>Complainant(s)</i> | vs. | _____<br><R_NAMES><br><i>Respondent(s)</i> |
|---------------------------------------------|-----|--------------------------------------------|

that the parties have reached a settlement. The parties have satisfied the terms of the settlement agreement, and the arbitration request in the above-referenced matter is hereby withdrawn by the complainant(s), and the withdrawal shall be recorded in the case file.

A portion of each party's deposit may be retained by Minnesota Realtors® to cover the costs incurred by the Association up to the point of settlement of the dispute. Refer to the *Fee Schedule* in the *Code of Ethics and Arbitration Manual as adapted by Minnesota Realtors®* for further details.

\_\_\_\_\_  
*Complainant Name*

\_\_\_\_\_  
*Signature* *Date*

\_\_\_\_\_  
*Complainant Name*

\_\_\_\_\_  
*Signature* *Date*

*Note: This form, or substantively similar, may be required by associations when complainants wish to withdraw their arbitration requests after settlement.*



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Form A-17b

Case #<CASENUMBER>

## Arbitration Settlement Agreement

|                                                 |     |                                                |
|-------------------------------------------------|-----|------------------------------------------------|
| <u>&lt;C_NAMES&gt;</u><br><i>Complainant(s)</i> | vs. | <u>&lt;R_NAMES&gt;</u><br><i>Respondent(s)</i> |
|-------------------------------------------------|-----|------------------------------------------------|

The undersigned, as Members of Minnesota Realtors® and pursuant to the arbitration guidelines incorporated into Minnesota Realtors'® professional standards procedures, have voluntarily participated in and agree to the following settlement of their pending arbitration:

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The undersigned agree to be bound by the above resolution and waive any and all future rights to submit the dispute to arbitration before the Professional Standards Committee of Minnesota Realtors® or to litigate the matter. We further hold Minnesota Realtors® harmless, acknowledge that we are advised of our right to

attorney representation at the arbitration and attorney review of the Settlement Agreement, and expressly waive any and all liability of Minnesota Realtors®, or any claim that we have against Minnesota Realtors® arising out of the manner in which Minnesota Realtors® conducted the arbitration or the resolution of the dispute reached as a result of Minnesota Realtors® arbitration procedures. Further, if the agreement is judicially enforced, the non-complying party agrees to reimburse the other party for court costs and reasonable attorney’s fees.

|                  |           |       |
|------------------|-----------|-------|
| _____            | _____     | _____ |
| Complainant Name | Signature | Date  |
| _____            | _____     | _____ |
| Complainant Name | Signature | Date  |

*\*Use of this form is at the discretion of the parties. It is strongly recommended that the parties commit to writing all elements of their settlement agreement, including any timeframes for completion of the parties’ obligations. To avoid the unauthorized practice of law, this settlement should only be drafted by the parties or their legal counsel.*



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Form A-18

## Arbitration Activity Report

Associations are encouraged to publish periodic Code of Ethics activity reports. This model is a suggestion, and Associations may choose to provide other relevant information.\*

Number of arbitration requests filed from \_\_\_\_\_ to \_\_\_\_\_.  
Date Date

|                         | Dollar amount requested | Mediation attempted |    | Resolved through Mediation |    | Dollar amount awarded | Procedural review request filed |    | Final action by Board of Directors |
|-------------------------|-------------------------|---------------------|----|----------------------------|----|-----------------------|---------------------------------|----|------------------------------------|
|                         |                         | Yes                 | No | Yes                        | No |                       | Yes                             | No |                                    |
| Arbitration Request #1  |                         |                     |    |                            |    |                       |                                 |    |                                    |
| Arbitration Request #2  |                         |                     |    |                            |    |                       |                                 |    |                                    |
| Arbitration Request #3  |                         |                     |    |                            |    |                       |                                 |    |                                    |
| Arbitration Request #4  |                         |                     |    |                            |    |                       |                                 |    |                                    |
| Arbitration Request #5  |                         |                     |    |                            |    |                       |                                 |    |                                    |
| Arbitration Request #6  |                         |                     |    |                            |    |                       |                                 |    |                                    |
| Arbitration Request #7  |                         |                     |    |                            |    |                       |                                 |    |                                    |
| Arbitration Request #8  |                         |                     |    |                            |    |                       |                                 |    |                                    |
| Arbitration Request #9  |                         |                     |    |                            |    |                       |                                 |    |                                    |
| Arbitration Request #10 |                         |                     |    |                            |    |                       |                                 |    |                                    |

\*No report shall include the names of individuals or firms.



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Form A-19

## **Agreement Between Minnesota Realtors® and the \_\_\_\_\_ of REALTORS® to Establish Regional Professional Standards Enforcement Procedures**

### **I. Authority**

- A. The authority for the establishment and utilization of Regional Professional Standards enforcement procedures shall be established by this Agreement as approved by the Associations of Directors of the Minnesota Realtors® (MNR) and the \_\_\_\_\_ Association of REALTORS® (the "signatory Association").

### **II. Geographic Area**

- A. The geographic area served by this Agreement shall be the area of the combined territorial jurisdiction assigned by the National Association Of REALTORS® (NAR) to the Associations which are signatories to this Agreement.

### **III. Purpose**

- A. This Agreement authorizes the MNR to implement Professional Standards enforcement on behalf of the signatory Association to this Agreement. This Agreement constitutes the entire agreement and supersedes any previous oral or written agreements between the parties. The purpose of this Agreement is to create state-wide Professional Standards enforcement procedures. This includes providing for the appointment of an Ombudsman, Mediation Officers and the establishment of a state-wide Professional Standards Committee comprising of members from the MNR for conducting mediations and hearings involving members of the signatory Association in matters pertaining to enforcement of the Code of Ethics, and arbitration hearings. This Agreement seeks to establish impartial and unbiased mediators, panels and tribunals for the conduct of mediations or hearings that meet the responsibilities of the signatory Association in an efficient and effective basis to serve its members.
- B. This Agreement does not authorize MNR to have jurisdiction for the enforcement of any alleged violations of the signatory Association's bylaws, rules, regulations or any associated Multiple Listing Service bylaws, rules or regulations of the signatory Association.

### **IV. Composition of Committee and Tribunals**

- A. Professional Standards Committee. The MNR shall solicit interested members to serve on the Professional Standards committee based on the criteria recommended by the NAR. (See Exhibit A attached.) Confirmation of appointment to the Professional Standards Committee shall be governed solely by the MNR, which will require approval by the Leadership Team of the MNR. No separate vote or approval shall be necessary from the Signatory Association. The Leadership Team of the MNR shall appoint the Chair and Vice Chair of the Professional Standards Committee. All appointed Committee members must attend an MNR-provided annual training seminar. Members who do not complete such training will not be allowed to serve on the Professional Standards Committee.

- B. Panels and Tribunals. This Agreement authorizes the establishment of such panels and review procedures as are necessary to conduct the process established within the NAR Code of Ethics and Arbitration Manual ("COEAM") as amended from time to time, and as adapted to conform to local policy and comply with the provisions of applicable state law. Such appointments, panels or review procedures include but are not limited to:
- i. Appointment of an Ombudsman to facilitate disputes through constructive communication and advocating for consensus and understanding.
  - ii. Grievance Review Panels, whereby designated MNR staff shall appoint three (3) members of the Professional Standards Committee to review code of ethics complaints and arbitration requests on an as-needed basis.
  - iii. Hearing Panels, whereby designated MNR staff shall appoint five (5) members of the Professional Standards Committee to conduct Code of Ethics Hearings or Arbitration Hearings as prescribed in the COEAM.
  - iv. Appeal Tribunals, whereby designated MNR staff shall appoint five (5) members of the Professional Standards Committee to conduct any matter on appeal that is set out in the COEAM as a matter to be heard as an appeal.
  - v. Appointment of a Mediation Officer. Although mediation of disputes is voluntary and not required of the parties to such dispute, all parties to any requested arbitration shall be provided the opportunity to mediate a controversy arising out of a real estate transaction and their relationship as REALTORS® prior to such controversy being heard by an Arbitration Hearing Panel.
  - vi. Ratification Panels, whereby designated MNR staff shall appoint three (3) members of the MNR Executive Committee to ratify Hearing Panel recommendations that have not been appealed in accordance with the COEAM.

## **V. Operation**

- A. Professional Standards Hearings and the organization and procedures incident thereto shall be governed by the COEAM. The parties to this Agreement agree that the procedures and policies established by the NAR and adapted by MNR according to this authority shall be considered as adopted and incorporated into the Bylaws of each Association signatory to this Agreement.
- B. Appeal of a Grievance Review Panel determination or an ethics determination rendered by the respective Panel shall be heard by an Appeal Tribunal as described in Section IV, B (iii) above.
- C. The decision of an arbitration Hearing Panel established under this Agreement shall not be appealed, unless the appealing party alleges a deprivation of due process or other basis established by the COEAM as appropriate for such an appeal. Such a claim shall be heard by an Appeal Tribunal as described in Section IV, B (iii) above.
- D. The MNR has the authority and the responsibility to enforce all discipline rendered by a Hearing Panel or Appeal Tribunal of the state-wide Professional Standards Committee in matters of alleged unethical conduct. This Agreement authorizes the MNR to enforce any and all disciplinary action imposed by a Hearing Panel or Appeal Tribunal, including the right to fine, place on probation, suspend or expel a REALTOR® Member from a signatory Association. This Agreement further authorizes the MNR to publish certain information regarding repeat ethics violators who have been found in violation of the Code of Ethics two or more times during a three-year period.

This information will be published in the official communication vehicle of MNR and in accordance with the COEAM. The signatory Association agrees to cooperate in any and all duly-prescribed discipline.

- E. In the event a party to arbitration refuses to pay an arbitration award, the MNR shall advise the award recipient to seek judicial enforcement as set forth in Section 56, Part Ten, and in Appendix III, Part Ten of the Code of Ethics and Arbitration Manual, which may be accompanied by financial support from the MNR to offset some of the costs of such a procedure.
- F. In the event a complainant alleges that the respondent has improperly refused to submit a controversy to arbitration, and a Grievance Review Panel has found there to be an arbitrable matter in a mandatory arbitration situation, the allegation shall be brought before the Executive Committee. Such a hearing will follow the notice and other procedural requirements prescribed for a hearing, and the sole question of fact for determination is whether the party has refused to submit an arbitrable matter to arbitration in violation of Article 17. Upon determination that the member has refused to arbitrate a properly arbitrable matter, the Executive Committee may impose an appropriate sanction, including but not limited to, suspension or expulsion of the member from the signatory Association and/or its MLS. The decision of the Executive Committee shall be final and binding and is not subject to further review by the MNR or any signatory Association, and the signatory Association agrees to cooperate in enforcing any such decision.
- G. In the event a party fails to, within ten (10) days of the date the award is transmitted, either pay the award to the party(ies) named in the award and notify the Association in writing of such payment or deposit the funds with the Professional Standards Administrator of the MNR consistent with Section 53, *The Award, Code of Ethics and Arbitration Manual*, that failure shall be brought before the Leadership Team. The Leadership Team, consistent with Section 53, may, at its discretion impose discipline, including but not limited to termination of Association membership and/or MLS access/use, or may give the party an additional period to make the required deposit. The tribunal may also stipulate appropriate discipline to be automatically imposed if the party fails to make the deposit within the time established by the tribunal. The decision of the Leadership Team shall be final and binding and is not subject to further review by the Association or any signatory Association.
- H. This Agreement also authorizes the MNR to access the membership files of the signatory Association of a party to an ethics hearing to determine whether there have been past violations, which may be utilized to determine the severity of sanction.

#### **VI. Reservation of Rights**

- A. It is understood and agreed by the parties to this Agreement that each Association reserves to itself all authority, rights, and privileges as have been assigned to it by its Charter and agreement with the NAR except as modified within this Agreement.
- B. It is further understood and agreed that a party to this Agreement may terminate this Agreement at any time provided the withdrawing party shall provide notice to the other party ninety (90) days in advance of the date of withdrawal. Upon the effective date of such a termination, the parties to this Agreement shall be responsible for the application and enforcement of the COEAM independent of each other.

IN WITNESS THEREOF, the parties have hereto set their hands and seals on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

The effective date of this Agreement shall be \_\_\_\_\_, 20 \_\_\_\_.

Attested by:

DATED: \_\_\_\_\_, 20 \_\_\_\_ BY: \_\_\_\_\_  
\_\_\_\_\_, Chief Executive Officer  
Minnesota Realtors®

DATED: \_\_\_\_\_, 20 \_\_\_\_ BY: \_\_\_\_\_  
\_\_\_\_\_, 20\_\_\_\_ President  
Minnesota Realtors®

DATED: \_\_\_\_\_, 20 \_\_\_\_ BY: \_\_\_\_\_  
\_\_\_\_\_, Executive Officer  
\_\_\_\_\_, Association of REALTORS®, Inc.

DATED: \_\_\_\_\_, 20 \_\_\_\_ BY: \_\_\_\_\_  
\_\_\_\_\_, 20\_\_\_\_ President  
\_\_\_\_\_, Association of REALTORS®, Inc.



Case #<CASENUMBER>

In the case of: <C\_NAMES> vs. <R\_NAMES>  
*Complainant(s)* *Respondent(s)*

☐ I/We appeal the dismissal of the above-referenced arbitration request.

☐ I/We appeal the classification (mandatory or voluntary) of the above-referenced arbitration request.

|  |
|--|
|  |
|  |
|  |
|  |

|                               |             |
|-------------------------------|-------------|
| <i>Signature of Appellant</i> | <i>Date</i> |
| <i>Print Name</i>             |             |
| <i>Address</i>                |             |
| <i>E-mail</i>                 |             |
| <i>Phone</i>                  |             |

|                               |             |
|-------------------------------|-------------|
| <i>Signature of Appellant</i> | <i>Date</i> |
| <i>Print Name</i>             |             |
| <i>Address</i>                |             |
| <i>E-mail</i>                 |             |
| <i>Phone</i>                  |             |

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### Action of the Appeal Hearing Tribunal (Arbitration Request)

☐ dismiss the arbitration request; ☐ classify the request as: ☐ required ☐ arbitrary

&lt;R NAMES&gt;

Respondent(s)

☐ **Deny the appeal** and uphold the Grievance Review Panel's decision.

☐ This matter is hereby dismissed. This decision is final, binding and not subject to further review.

☐ An arbitrable issue exists and arbitration is: ☐ voluntary ☐ mandatory.

☐ **Grant the appeal** and overturn the Grievance Review Panel's decision.

☐ This matter is not dismissed and is hereby referred to a hearing before the Professional Standards Committee. You will be notified in the near future concerning a hearing date.

☐ An arbitrable issue exists and arbitration is: ☐ voluntary ☐ mandatory.

The appeal was considered and decision deemed final on <HA\_HEARINGDATE>.

Signature

---

*Name*

Signature

---

*Name*

Signature

---

*Name*

*Signature*

---

*Name*

*Signature*



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Minnetonka, MN 55343  
952.935.8313  
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Form A-22

Case #<CASENUMBER>

## Request for Pre-Hearing Meeting (Arbitration)

In the case of:                     <C\_NAMES>                     vs.                     <R\_NAMES>                      
*Complainant(s)* *Respondent(s)*

I/We, \_\_\_\_\_, do hereby request a Pre-Hearing Meeting of the Arbitration Hearing Panel of the Professional Standards Committee of Minnesota Realtors®.

My (our) request is based on the following:

- ☐ Whether the arbitrable request is timely filed.
- ☐ Whether an arbitrable issue exists
- ☐ Whether the arbitration request is too legally complex to be fairly arbitrated
- ☐ Other administrative issue(s). Please specify: \_\_\_\_\_

**Written Statement:** Please attach any written statement you wish to provide setting forth in reasonable detail the facts and evidence to support the bases for your request. The materials and information that were available to the Grievance Review Panel when they made their decision along with the respondent's Reply, if any, will also be presented to the Hearing Panel prior to the pre-hearing meeting. Neither the Arbitration Request nor the Response can be revised, modified or supplemented.

Date: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
*Principal's Signature*

\_\_\_\_\_  
*Print Name*

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
*E-mail*

\_\_\_\_\_  
*Phone*

\_\_\_\_\_  
*Principal's Signature*

\_\_\_\_\_  
*Print Name*

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
*E-mail*

\_\_\_\_\_  
*Phone*



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Form A-23

Case #<CASENUMBER>

## Official Notice of Pre-Hearing Meeting - Arbitration

In the case of: <C\_NAMES> vs. <R\_NAMES>  
*Complainant(s)* *Respondent(s)*

The above-named parties are hereby notified:

The Chairperson of the Hearing Panel has designated [Click or tap to enter a date.](#) as the date for the pre-hearing meeting in this case.

1. The Hearing Panel will hold the Pre-Hearing Meeting in accordance with Part Nine, Section 41 of the *Manual* to determine the following:

- ☐ Whether the arbitrable request is timely filed.
- ☐ Whether an arbitrable issue exists.
- ☐ Whether the arbitration request is too legally complex to be fairly arbitrated
- ☐ Other administrative issue(s). Please specify: \_\_\_\_\_

2. Please be advised that:

- a. The Hearing Panel will convene this Pre-Hearing Meeting **without the presence of the parties** to the complaint or their counsel.
- b. You will have the right to challenge the qualification of any individual who has been appointed to serve on this Hearing Panel. The Hearing Panel members are noted on the *Official Notice of Hearing*, Form A-9, enclosed herein. If you wish to challenge any panel member, please do so by using Form A-7. The *Challenge* form must be returned to the Association office **within ten (10) days from the transmission of this notice**. Your silence will indicate that you did not challenge any panel member.
- c. The materials and information that were available to the Grievance Review Panel when they made their decision along with the Respondent's Response will be presented to the Hearing Panel prior to the Pre-Hearing Meeting.
- d. You may also submit written statements regarding the items checked above. Any such written statement you wish to submit to the Hearing Panel for consideration on these specific matters must be submitted to MNR at least **three (3) days prior** to the Pre-Hearing Meeting date above. If such written statements are submitted after this deadline, they will be forwarded to the Hearing Panel, however, the Hearing Panel may not have the opportunity to give them the same level of review before the Pre-Hearing Meeting as had they been submitted in the timeline requested.
- e. If the Hearing Panel determines that the Request for Arbitration should be dismissed, the complainant shall have the right to appeal the decision of the Hearing Panel to an Appeal

Tribunal of the Association.

- f. If the conclusion of the Hearing Panel in its Pre-Hearing Meeting is that the Request for Arbitration should be forwarded to a hearing, then the Hearing shall be held on the date specified in the Official Notice of Hearing and all matters relating to this complaint may be raised to the Hearing Panel at the hearing, including but not limited to, the complaint being timely filed, administrative issues and the merits of the complaint. Please refer to the Official Notice of Hearing for important information pertaining to the Hearing.
- g. The Association will transmit the decision of the Hearing Panel on these pre-hearing matters to the parties no later than three (3) days after the Hearing Panel makes their decision.
- h. The parties shall not discuss the case with any member of the Hearing Panel (or Appeal Tribunal if appealed) either prior to the Hearing or after the Hearing and prior to the announcement of the decision.

Respectfully submitted,

Professional Standards Administrator  
Minnesota Realtors

Dated: <TODAY>



Case #<CASENUMBER>

In the case of: <C\_NAMES> vs. <R\_NAMES>  
*Complainant(s)* *Respondent(s)*

☐ Whether the arbitration request is timely filed.

☐ Whether arbitrable issues exist.

☐ Whether arbitration requests are too legally complex to be fairly arbitrated

☐ Other administrative issue(s). Please specify: \_\_\_\_\_

☐ Dismiss the arbitration request for the following reason(s):

☐ The Hearing Panel determined that the arbitration request was not timely filed.

\_\_\_\_\_

\_\_\_\_\_

☐ The Hearing Panel determined that no arbitrable issues existed.

\_\_\_\_\_

\_\_\_\_\_

☐ The Hearing Panel determined that the arbitration request was too legally complex to be fairly arbitrated.

\_\_\_\_\_

\_\_\_\_\_

☐ The Hearing Panel determined that there was an administrative issue that would prohibit the complaint or arbitration request from moving forward to a hearing.

\_\_\_\_\_

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☐ Proceed to a Hearing as scheduled, where the parties will be entitled to the full due process afforded to parties in such a hearing.

*If the arbitration request is forwarded to a Hearing, the Hearing shall be held on the scheduled date and both the complainant and respondent have the right to raise all substantive and procedural issues at the hearing (including those issues reviewed within the pre-hearing meeting.)*

The decision above was rendered by a Hearing Panel comprised of the following members whose signatures are affixed below.

|                              |  |  |
|------------------------------|--|--|
| <HEARING_CHAIR>, Chair       |  |  |
| <HEARING_MEMBER1>, Member    |  |  |
| <HEARING_MEMBER2>, Member    |  |  |
| <HEARING_MEMBER3>, Member    |  |  |
| <HEARING_MEMBER4>, Member    |  |  |
| <HEARING_MEMBER5>, Alternate |  |  |

Dated: <TODAY>



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Form A-25  
Case #<CASENUMBER>

### Notice of Legal Counsel - Arbitration

In the case of: <C\_NAMES> vs. <R\_NAMES>  
*Complainant(s)* *Respondent(s)*

If you intend to have legal counsel, you must provide notice to Minnesota Realtors® and all other parties no less than fifteen (15) days prior to the scheduled hearing date. **The scheduled hearing date is <HEARINGDATE>.**

**Arbitration Hearing:** Every party may be represented by legal counsel in an Arbitration Hearing. The role of legal counsel includes the making of opening and closing statements on behalf of the party represented, examining and cross-examining witnesses, and introducing affidavits, documents, and other admissible relevant evidence. It does not include testifying as a witness unless the panel determines such testimony is essential to ensure due process. ***Every party that intends to have legal counsel, shall notify Minnesota Realtors® and all other parties of such intent by providing legal counsel's name, address, phone number and email address no less than fifteen (15) days prior to the hearing.*** In the event parties do not give fifteen (15) days' notice of their intention to have legal counsel and to provide contact information, the panel shall take steps, including continuance of the matter, if necessary, to guarantee the rights of all parties to representation by legal counsel.

Although a party may be represented by legal counsel of their choosing, parties may not refuse to directly respond to request for information or questions addressed to them by members of a hearing panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. The panel need not accept the statements of legal counsel as being the statements of their client if the panel desires direct testimony at the hearing. Parties shall be held responsible for the conduct of their legal counsel. Any effort by legal counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, shall be grounds for exclusion of legal counsel by majority vote of the panel members and is nonappealable.

Minnesota Realtors® and \_\_\_\_\_ are hereby notified on this \_\_\_\_\_, 20\_\_\_\_ that \_\_\_\_\_ will be represented by the following legal counsel relating to the above-stated case.

#### Legal Counsel Information:

Name: \_\_\_\_\_  
Firm Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

I ☐ **DO** ☐ **DO NOT** authorize Minnesota Realtors® to provide copies of all notices and information pertaining to this case to said legal counsel at the address(es) above. I understand that it is my responsibility to notify the Association and all parties of my intent to have legal counsel.

|                   |             |                   |             |
|-------------------|-------------|-------------------|-------------|
|                   |             |                   |             |
| <i>Signature</i>  | <i>Date</i> | <i>Signature</i>  | <i>Date</i> |
|                   |             |                   |             |
| <i>Print Name</i> |             | <i>Print Name</i> |             |



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Form A-26

Case #<CASENUMBER>

### Notice of Legal Counsel – Arbitration Procedural Review Hearing

In the case of: <C\_NAMES> vs. <R\_NAMES>  
*Complainant(s)* *Respondent(s)*

If you intend to have legal counsel, you must provide notice to Minnesota Realtors® and all other parties no less than ten (10) days prior to the scheduled hearing date. **The scheduled hearing date is <HEARINGDATE>.**

**Arbitration Hearing:** Every party may be represented by legal counsel in an Arbitration Procedural Review Hearing. The role of legal counsel at a Procedural Review includes explaining why the Award of Arbitrators should be overturned, making closing statements on behalf of the party represented, and introducing admissible relevant evidence (only evidence as may bear upon a claim of deprivation of due process). **Every party that intends to have legal counsel, shall notify Minnesota Realtors® and all other parties of such intent by providing legal counsel's name, address, phone number and email address no less than ten (10) days prior to the hearing.** In the event parties do not give ten (10) days' notice of their intention to have legal counsel and to provide contact information, the panel shall take steps, including continuance of the matter, if necessary, to guarantee the rights of all parties to representation by legal counsel.

Although a party may be represented by legal counsel of their choosing, parties may not refuse to directly respond to request for information or questions addressed to them by members of a hearing panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. The panel need not accept the statements of legal counsel as being the statements of their client if the panel desires direct testimony at the hearing. Parties shall be held responsible for the conduct of their legal counsel. Any effort by legal counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, shall be grounds for exclusion of legal counsel by majority vote of the panel members and is nonappealable.

Minnesota Realtors® and \_\_\_\_\_ are hereby notified on this \_\_\_\_\_, 20\_\_\_\_ that \_\_\_\_\_ will be represented by the following legal counsel relating to the above-stated case.

#### Legal Counsel Information:

Name: \_\_\_\_\_  
Firm Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

I ☐ **DO** ☐ **DO NOT** authorize Minnesota Realtors® to provide copies of all notices and information pertaining to this case to said legal counsel at the address(es) above. I understand that it is my responsibility to notify the Association and all parties of my intent to have legal counsel.

\_\_\_\_\_  
*Signature* *Date* *Signature* *Date*

\_\_\_\_\_  
*Print Name* *Print Name*



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Form A-27  
Case # <CASENUMBER>

## Official Notice of Leadership Team Review – Arbitration

In the case of:                     <C\_NAMES>                     vs.                     <R\_NAMES>                      
*Complainant(s)* *Respondent(s)*

1. Click or tap here to enter text. is hereby notified that Click or tap here to enter text. has failed to either timely pay the arbitration award to the party(ies) named in the award or timely make the necessary deposits with the Association which was due on Click or tap to enter a date. Therefore, this matter has been referred to the Leadership Team for further action as required by the Code of Ethics and Arbitration Manual as adapted by Minnesota Realtors®.
2. The Leadership Team will meet on Click or tap to enter a date. at Click or tap here to enter text. Choose an item. to further the action.
3. The members of the Leadership Team who will review this matter are:

|                                         |                                         |
|-----------------------------------------|-----------------------------------------|
| <u>Click or tap here to enter text.</u> | <u>Click or tap here to enter text.</u> |
| <u>Click or tap here to enter text.</u> | <u>Click or tap here to enter text.</u> |
| <u>Click or tap here to enter text.</u> | <u>Click or tap here to enter text.</u> |
| <u>Click or tap here to enter text.</u> |                                         |

4. Click or tap here to enter text. is hereby advised that they may attend this meeting and shall have an opportunity to explain why the required deposits were not made on a timely basis.
5. Any member of the Leadership Team that has any of the following conflicts shall be excluded from this Review. The member:
  - a. is related by blood or marriage to, or has an existing or past relationship with, any of the parties to the complaint, their counsel or representatives, witnesses (if applicable), or other panel members
  - b. is an employer, partner, or employee, or in any way associated in business with the complainant, respondent, or counsel for either the complainant or respondent or has a personal or financial interest in the outcome of the proceeding
  - c. is a party to the hearing, or a party or witness in any pending case involving any party to this hearing
  - d. knows of any reason acceptable to the Hearing Panel or Appeal Tribunal that may

prevent the member from rendering an impartial judgment  
e. has served as a member of any other panel in the same matter

6. The parties shall not discuss the case with any member of the Leadership Team prior to, or after, the meeting and prior to announcement of the decision of the Leadership Team.
7. Although the Chief Executive Officer is a part of the Leadership Team and has the right to be present at this Review, the Chief Executive Officer will not vote on any matter before the Leadership Team.

Respectfully submitted,

Professional Standards Administrator  
Minnesota Realtors®

Date: <TODAY>



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Form A-28  
Case #<CASENUMBER>

### Action of the Leadership Team Failure to Abide by Award – Arbitration

In the case of:                     <C\_NAMES>                     vs.                     <R\_NAMES>                      
*Complainant(s)* *Respondent(s)*

The Leadership Team convened for a meeting to determine further action against <R\_NAMES> for failure to either timely pay the award to the party(ies) named in the award and notify the Association of such payment or timely make the necessary deposits with the Association in relation to the above-referenced case.

The Leadership Team met on Click or tap to enter a date. to hear Respondent's explanation as to why the award had not been paid or deposited with the Association in the above-captioned matter. The Leadership Team carefully considered the testimony presented by Click or tap here to enter text.

The Leadership Team's decision in the above-referenced case is to:

- ☐ Provide the nonpaying party an additional Choose an item. to either pay the award to the party(ies) named or make the required deposits with the Association. If Respondent fails to pay the award or make the required deposits with the Association within the time frame specified above, then the following discipline will automatically be imposed;
  - ☐ Respondent shall pay a fine of Click or tap here to enter text. due and payable to Minnesota Realtors® by Click or tap to enter a date.. Failure to pay this fine and the award to the party(ies) or make necessary deposits with the Association by the date specified above will result in:
    - ☐ Respondent's REALTOR® Association membership and MLS privileges and/or membership being suspended for a period of Click or tap here to enter text..
    - ☐ Respondent's REALTOR® Association membership and MLS privileges and/or membership shall be immediately terminated.
  - ☐ Immediately suspend Respondent's REALTOR Association membership and MLS privileges and/or membership for a period of Click or tap here to enter text. or until such time as Respondent either pays the award or makes the necessary deposits with the Association, whichever is sooner.
  - ☐ Immediately terminate Respondent's REALTOR® Association membership and MLS privileges

and/or membership for a period of Choose an item.. Respondent may reapply for REALTOR® Association and MLS membership upon application and contingent upon payment of the award to the party(ies) named in the award or making the required deposits with the Association.

☐ Other:

This decision above was rendered by the Leadership Team comprised of the following members whose signatures are affixed below:

|                                             |                                                         |
|---------------------------------------------|---------------------------------------------------------|
| <div>Click or tap here to enter text.</div> | <div></div> , President                                 |
| <div>Click or tap here to enter text.</div> | <div></div> , President Elect                           |
| <div>Click or tap here to enter text.</div> | <div></div> , First Vice President                      |
| <div>Click or tap here to enter text.</div> | <div></div> , Treasurer                                 |
| <div>Click or tap here to enter text.</div> | <div></div> , Immediate Past President                  |
| <div>Click or tap here to enter text.</div> | <div></div> , Professional Standards<br>Committee Chair |

Dated: <TODAY>



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Form A-29  
Case # <CASENUMBER>

### Waiver of Notification of Witness

In the case of: \_\_\_\_\_ <C\_NAMES> \_\_\_\_\_ vs. \_\_\_\_\_ <R\_NAMES> \_\_\_\_\_  
*Complainant(s)* *Respondent(s)*

I, \_\_\_\_\_, a party in the above-captioned matter, have been informed that \_\_\_\_\_ will be acting as a witness for \_\_\_\_\_ regarding the above-captioned hearing.

Although I/we did not receive advance notification of this witness, I/we hereby consent to proceed with the Hearing today as described above and waive my/our right to a continuance based on lack of such notification.

\_\_\_\_\_  
*Signature* *Date*

\_\_\_\_\_  
*Signature* *Date*

\_\_\_\_\_  
*Print Name*

\_\_\_\_\_  
*Print Name*



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Form A-30  
Case #<CASENUMBER>

### Notification of Witness

In the case of: \_\_\_\_\_ <C\_NAMES> vs. \_\_\_\_\_ <R\_NAMES>  
Complainant(s) Respondent(s)

Any party who intends to call witness(es) at the hearing, must provide notice to the Association and all other parties no less than 15 days prior to the scheduled hearing date.

**Scheduled Hearing Date: <HEARINGDATE>**

Every party to an Ethics or Arbitration Hearing may have witnesses present at the hearing and the tribunal may summon its own witnesses. For an Arbitration Hearing, a non-principal (salesperson) affiliated with the Broker's firm that has a financial interest in the outcome of the proceeding as noticed in the *Request and Agreement to Arbitrate* or the *Reply and Agreement to Arbitrate* may be called as a witness and has the right to be present throughout the hearing. All parties appearing at the hearing may be called as witnesses without advance notice. Any party who intends to call witnesses at the hearing must provide Minnesota Realtors® and all other parties with the names of the witnesses at least fifteen (15) days prior to the hearing date. ***Failure to provide this information within the time specified will constitute a waiver of the right to call those witnesses at the hearing,*** unless the other party agrees to allow their testimony or the tribunal determines that the testimony of that witness(es) is essential to ensure due process.

---

Minnesota Realtors® and \_\_\_\_\_ are hereby notified on this day,

\_\_\_\_\_, 20\_\_ that \_\_\_\_\_ will be calling the

following witnesses at the scheduled hearing:

Witness 1: \_\_\_\_\_

Witness 2:

---

Witness 3:

---

I understand that all witnesses are excused from the hearing except during their testimony and cross-examination. I also understand that it is my responsibility to notify the Association and all parties of these witnesses and arrange for the above witness(es) to be present at the time and place designated on the *Official Notice of Hearing* (Form A-9).

---

*Signature*

*Date*

---

*Signature*

*Date*

---

*Print Name*

---

*Print Name*



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Form A-31  
Case # <CASENUMBER>

### Statement of Confidentiality

In the case of:                     <C\_NAMES>                     vs.                     <R\_NAMES>                      
*Complainant(s)* *Respondent(s)*

All panel and alternate members are hereby notified that the report and findings of this panel are considered confidential. You must leave all materials related to this case with the Hearing Administrator so they can be properly discarded. You must permanently destroy all materials related to this case in your possession that were not left with the Hearing Administrator. Please be advised you are not to discuss this case with anyone, including any of the involved parties. Should a party call you after this proceeding, please direct them to call the Hearing Administrator. Any conversations by you on this case outside the hearing could be grounds for dismissal from the Professional Standards Committee.

<HEARING\_CHAIR>, Chair

<HEARING\_MEMBER1>, Member

<HEARING\_MEMBER2>, Member

<HEARING\_MEMBER3>, Member

<HEARING\_MEMBER4>, Member

<HEARING\_MEMBER5>, Alternate



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Form A-31-W  
Case #<CASENUMBER>

## Letter of Warning

In the case of:                     <C\_NAMES>                     vs.                     <R\_NAMES>                      
*Complainant(s)* *Respondent(s)*

To <R\_NAMES>,

On Click or tap to enter a date., the Leadership Team of Minnesota Realtors® considered the membership duty of Respondent to timely pay the arbitration award amount directly to the prevailing party directly or to deposit the funds with the Association as directed by the Arbitrators Award in the above-referenced case. The Leadership Team confirmed that Respondent failed to timely pay the prevailing party or timely escrow the funds with the Association. The Leadership Team has imposed this Letter of Warning as discipline for such violation.

This letter is to be construed as an Official Letter of Warning advising of a lack of professional conduct as determined by a due process meeting of the Leadership Team. Future similar conduct could result in more severe sanction. This Official Letter of Warning will be forwarded to <R\_LOCALASSOCIATION> and will remain in your file. This matter will now be considered closed.

Respectfully submitted,

Professional Standards Administrator  
Minnesota Realtors®

Dated: <TODAY>

cc: <R\_LOCALASSOCIATION>

# *MNR Professional Standards Fee Schedule*

| <b>CODE OF ETHICS</b> |                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-----------------------|-----------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.                    | <b>Code of Ethics Complaint</b>                     | No cost to file                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 2.                    | <b>Appeal of Grievance Review Panel – Dismissal</b> | No cost to file                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 3.                    | <b>Request for pre-hearing meeting</b>              | No cost to file                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 4.                    | <b>Appeal of Ethics Hearing Panel Decision</b>      | \$400.00 filing fee paid by appellant                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 5.                    | <b>Disposition of Appeal Filing fee</b>             | <p>a. If the Appeal Tribunal upholds the Hearing Panel’s decision, the \$400.00 filing fee is deposited into the General Fund of the MNR.</p> <p>b. If the Appeal Tribunal modifies the Hearing Panel’s decision, \$200.00 of the filing fee is returned to appellant and \$200.00 is retained by the MNR.</p> <p>c. If the Appeal Tribunal dismisses the complaint or refers for a new hearing, the \$400.00 filing fee is returned in full to the appellant.</p> |
| 6.                    | <b>Administrative Processing Fee</b>                | \$0 – No COE administrative processing fee charged by the MNR.                                                                                                                                                                                                                                                                                                                                                                                                     |
| 7.                    | <b>Hearing Recording Duplication Fee</b>            | \$50.00                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 8.                    | <b>Document/Media Request Fulfillment Fee</b>       | \$50.00                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

## ARBITRATION

|    |                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|----|--------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | <b>Request/Agreement for Arbitration</b>                           | \$400.00 filing fee paid by both Complainant and Respondent                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 2. | <b>Disposition of Arbitration Filing Fees</b>                      | <p>a. If the Grievance Review Panel dismisses the request, then the \$400.00 filing fee shall be returned to the parties.</p> <p>b. If the matter is decided at an Arbitration Hearing:</p> <ol style="list-style-type: none"> <li>The non-prevailing party forfeits the \$400.00 filing fee. Prevailing party's fee is returned.</li> <li>If there is a split decision, \$200.00 returned to both parties and \$400.00 shall be retained by the MNR.</li> <li>Note: If the parties unsuccessfully mediated the dispute prior to arbitration, the full administrative fee from both parties shall be retained by the MNR.</li> </ol> <p>c. Settlement 24-hours prior to Scheduled Hearing: If the parties settle the dispute between them and duly notify the MNR not later than 24-hours prior to the scheduled Arbitration Hearing time, then the filing fee shall be returned in full to all parties. Notification of settlement less than 24-hours prior to the scheduled Arbitration Hearing will result in a forfeiture of one-half of the deposit from each party.</p> <p>d. Note: When a REALTOR® requests arbitration to determine which of multiple respondents is entitled to the disputed funds or where a party makes no claim to the disputed funds, that party may not be assessed an arbitration filing fee.</p> |
| 3. | <b>Appeal of Grievance Review Panel – Dismissal/Classification</b> | No cost to file                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 4. | <b>Request for Procedural Review of Arbitration Hearing Panel</b>  | \$400.00 filing fee paid by requesting party                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 5. | <b>Disposition of Administrative Fee on Procedural Review</b>      | <p>a. If the Procedural Review Tribunal adopts the award of the arbitrators, the \$400.00 filing fee is retained by the MNR.</p> <p>b. If the Procedural Review determines that a substantial procedural error occurred or a member was otherwise deprived of due process, the \$400.00 filing fee shall be returned in full to requesting party.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 6. | <b>Hearing Recording Duplication Fee</b>                           | \$50.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 7. | <b>Document/Media Request Fulfillment Fee</b>                      | \$50.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

# MEDIATION

## MEDIATION OF COMPENSATION DISPUTE

|    |                                                    |                                                                                                                                                                                                                                                                                                                         |
|----|----------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | <b>Request / Agreement to Mediate</b>              | \$400.00 filing fee from both parties                                                                                                                                                                                                                                                                                   |
| 2. | <b>Disposition of Mediation Administrative Fee</b> | <p>a. If the parties successfully mediate an otherwise arbitrable dispute, \$200.00 is returned to both parties. \$200.00 is retained by the MNR.</p> <p>b. If the parties do not successfully mediate an otherwise arbitrable dispute, the full administrative fee from both parties shall be retained by the MNR.</p> |
| 3. | <b>Document/Media Request Fulfillment Fee</b>      | \$50.00                                                                                                                                                                                                                                                                                                                 |

## Questions and Answers

### **1. Can the Board of Directors direct a Grievance Review Panel to always solicit responses in ethics and arbitration proceedings?**

No. Only if the Grievance Review Panel is in need of additional information which the complainant cannot provide pertaining to the questions in **Section 19, Grievance Review Panel's Review of an Ethics Complainant**, or **Section 42, Grievance Review Panel's Review and Analysis of a Request for Arbitration**, may the Grievance Review Panel solicit a response. *(Revised 11/15)*

### **2. A respondent in an ethics hearing has notified the Board that they will be represented by legal counsel. Is it appropriate for their counsel to take an active role in the hearing?**

Every party to an ethics or arbitration hearing has the right to be represented by legal counsel. Counsel may take an active role in presenting the opening and closing statements, the party's claim/defense, and the cross-examination of the other party and the other party's witnesses. Regardless of how actively counsel participates in a hearing, it is important to remember that no REALTOR® may refuse to answer questions directly put to them (though the party may confer with counsel prior to answering), and at no time must a Hearing Panel countenance any attempt by counsel to harass, intimidate, coerce, or confuse the panel or any party to the proceeding.

### **3. A salesperson is the respondent in an ethics complaint. The respondent asks that their principal broker (who is also a REALTOR®) serve as their counsel during the hearing. Is this permitted?**

Yes. As used in the *Code of Ethics and Arbitration Manual*, the term "counsel" refers to an attorney at law or to a REALTOR® of the parties' choosing (or both) in an ethics proceeding. However, it would be inappropriate for anyone other than a licensed attorney to act as counsel for a party to an arbitration proceeding.

### **4. What does NAR recommend with respect to an Executive Officer's role in ethics and arbitration hearings?**

Whether the Professional Standards Administrator attends hearings in an administrative capacity, or participates pursuant to the optional hearing officer policies, is a matter of local discretion. Some Associations have determined that it is beneficial to have the Professional Standards Administrator present to provide technical assistance and expertise, while other Associations choose to have one of the panelists (or Board counsel) provide procedural guidance. This is a matter to be determined by each Association depending on, for example, staff resources, staff experience in professional standards matters, hearing panelists' experience relative to procedures and enforcement of the Code of Ethics, the complexity of the issue, and whether or not Board counsel will be present.

### **5. Our Board is small, and if we are unable to impanel an impartial tribunal of five Directors to consider an appeal, can we refer the appeal to another Board?**

No; if a Board is unable to impanel an impartial appeal tribunal, the Board of Directors could refer the matter to the State Association. Refer to Professional Standards Policy Statement #18 in the *Code of Ethics and Arbitration Manual*.

### **6. How long should our Board retain professional standards records?**

The National Association has no policy governing retention of professional standards records. Boards are encouraged to consult legal counsel when determining how long professional standards records should be kept. NAR recommends that the results of an ethics hearing be retained permanently; records relative to the rest of the ethics file should be retained for one year after any discipline has been complied with absent a threat of litigation. In arbitration cases, records should be retained for one year after the award has been paid absent a threat of litigation. Minimally, all professional standards records should be retained until the appeal or procedural review period has expired and it is recommended that the final decision of arbitration Hearing Panels and the Board of Directors relative to ethics proceedings be retained permanently in the respondent's membership file. For more information on document retention see the articles on [www.nar.realtor](http://www.nar.realtor): "Document Retention: What Not to Trash" and "Association Record Retention". *(Revised 11/14)*

**7. Can an extension be granted for responses to be submitted to the Board of REALTORS®?**

Yes; extensions can be granted as a matter of discretion by the appropriate tribunal.

**8. Can an individual who is not a named party attend an ethics or arbitration hearing?**

No; attendance at any hearing is limited to the parties and the parties' respective counsel and/or witnesses (witnesses are excused except during their testimony); the Hearing Panel members (including alternates); Board staff and/or counsel, as deemed necessary; and the court reporter, if utilized. In any ethics proceeding, the REALTOR® principal, consistent with **Part Two, Section 13(d)** of the *Code of Ethics and Arbitration Manual* may attend. In any arbitration proceeding, REALTOR® nonprincipals and REALTOR-ASSOCIATES® who have a vested financial interest consistent with **Part Ten, Section 44(a)(2)** of this Manual may also attend.

**9. Must our Board grant a postponement each time one is requested? Or, if one party receives a postponement, is the other party automatically entitled to a postponement if requested?**

A Board is under no obligation to grant a postponement, much less honor repeated requests for postponement. However, extenuating circumstances should be considered in determining if a requested continuance will be granted. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the Hearing Panel chair determines that denying the continuance would deny the requestor a fair hearing. (*Revised 11/14*)

**10. What is an "arbitrable issue?"**

An arbitrable issue is defined as a question arising out of a transaction between parties to a contract (and specific non-contractual disputes as defined in Standard of Practice 17-4). To proceed with arbitration, there must be a dispute between the parties that arises out of a real estate transaction and a disagreement between the parties as to entitlement to a sum of money. See **Part Ten, Section 43, Arbitrable Issue, of this Manual**.

**11. Can a mandatory arbitration exist between two cooperating brokers?**

Possibly. Refer to **Appendices I and II to Part Ten** of the *Code of Ethics and Arbitration Manual* and Standard of Practice 17-4.

**12. A Board has scheduled an arbitration hearing, and the respondent advises the Board that they will not attend the hearing. Can the scheduled hearing proceed?**

Arbitration in the absence of a respondent may take place where permitted by state statute or case law. The *Code of Ethics and Arbitration Manual*, in **Part Ten, Section 48**, provides three (3) options addressing the circumstances under which Boards may conduct arbitration. Boards should consult with Board or State Association legal counsel and determine which of these options the Board should adopt.

Additionally, no arbitration hearing may be held in the absence of the complainant, and no award may be rendered without a hearing on the merits.

**13. Can a Board, prior to an arbitration hearing being held, hold the disputed funds in its escrow account if voluntarily submitted by the parties?**

Yes, but this is a matter of local option. Under no circumstances may a Board require the parties to deposit the funds prior to an arbitration hearing being held. See Professional Standards Policy Statement #8.

**14. Can a client request arbitration with a REALTOR® principal?**

Yes.

**15. Can a REALTOR® principal invoke arbitration if the dispute arose prior to the time the requester became a REALTOR®?**

No; refer to the Professional Standards Policy Statement #23, *Code of Ethics and Arbitration Manual*.

## **16. Who can amend an ethics complaint, and when can it be amended?**

Before an ethics complaint is referred to the Hearing Panel for hearing, it may be amended either by the complainant or by the Grievance Review Panel. If the Grievance Review Panel dismisses an Article(s) cited by the complainant, the complainant may appeal that dismissal to the Hearing Panel.

After referral to the Hearing Panel, the complaint may be amended by the complainant, including facts upon which the amendments are based. The respondent should then be provided with a copy of the amended complaint and be given an opportunity to file an amended response. *(Revised 5/20)*

An ethics complaint may also be amended by either the complainant, or upon action of the Hearing Panel during the hearing to add previously uncited Articles or additional respondents, including facts upon which the amendments are based. If this occurs, the respondent should be given an opportunity to request a postponement to prepare a response to the amended complaint. *(Revised 5/20)*

Arbitration requests may be amended to add or delete parties only by the complainant or respondent. During its initial review, however, the Grievance Review Panel may suggest that such amendments be made in order to ensure that all related claims arising out of the same transaction can be resolved at the same time. Refer to Professional Standards Policy Statement #27, *Code of Ethics and Arbitration Manual*. *(Revised 05/15)*

## **17. Who can withdraw a complaint, and when can this be done?**

Complainants may withdraw their complaints at any time prior to adjournment of the ethics hearing. However, if complainant withdraws the complaint after transmission of the Grievance Review Panel's decision to forward the complaint to a hearing and prior to adjournment of the ethics hearing, the complainant may not resubmit the complaint on the same matter. If complainant withdraws the complaint before transmission of the Grievance Review Panel's decision to forward the complaint to a hearing, the complainant may resubmit the complaint on the same matter so long as it is filed within the 180-day filing deadline as defined in this Manual. If a complaint is withdrawn by the complainant after the Grievance Review Panel determines the complaint requires a hearing, **the complaint and response** will be referred back to the Grievance Review Panel to determine whether a potential violation of the public trust (as defined in Article IV, Section 2 of the National Association's Bylaws) may have occurred. Only where the Grievance Review Panels determines a potential violation of the public trust may have occurred may the Grievance Review Panel proceed as the complainant. *(Amended 5/24)*

## **18. An ethics complaint has been filed with our Board alleging a violation of an MLS regulation. How should we process this complaint?**

If the alleged offense is a violation of an MLS rule or regulation and does not involve a charge of unethical conduct or request for arbitration, it shall be referred to the respective local Association for consideration and determination by the Multiple Listing Service Committee, and if a violation is determined, that committee may direct the imposition of a sanction. The recipient of such a sanction, however, may then request a hearing before the Multiple Listing Service Committee within twenty (20) days following receipt of the Multiple Listing Service Committee's decision.

Any alleged violation of an MLS rule or regulation that includes charges of unethical conduct should be forwarded to the Minnesota Association of Realtors' Grievance Review Panel to review only the charges of unethical conduct and for possible referral to the Professional Standards Committee for hearing. Refer to Section 7.1, *Handbook on Multiple Listing Policy*.

## **19. Is there a policy that would allow ethics complaints that involve several REALTORS® to be consolidated into one ethics hearing?**

Professional Standards Policy Statement #34 provides:

*Consolidation of Ethics Complaints Arising Out of the Same Transaction. In the interest of maximizing the resources of Boards and Associations, Grievance Review Panels should use all reasonable efforts to ensure that all ethics complaints arising out of the same transaction or event are consolidated and scheduled for hearing in a single hearing. Respondents to ethics complaints do not have the right to a separate hearing unless they can demonstrate that consolidation of complaints would prevent them from receiving a fair hearing.*

**20. A principal broker has not been named as a respondent in an ethics complaint but wants to attend the hearing in which their sales associate is a respondent. Can they do so?**

A principal who is not joined in an ethics complaint as a respondent may be present and participate during the hearing and may even be required by the Hearing Panel to attend the hearing, consistent with the provisions of **Section 13(d)**, Code of Ethics and Arbitration Manual. Whether the principal attends the hearing or not, the principal should receive copies of the complaint and response and be provided with notice of hearing. *(Revised 05/18)*

**21. Can our Board impose "conditional" discipline? For example, can we stipulate that a respondent be suspended until a fine is paid?**

Yes. Although suspension may not be imposed as a sanction for greater than one (1) year (and expulsion for not more than three [3] years), a Board can stipulate that a respondent be suspended (or expelled) until a fine is paid or an educational course is completed. The respondent would be seen as having the "keys to their own cell," meaning that the length of their suspension or expulsion is dependent on their own actions.

**22. Does the complainant's REALTOR® principal, if not a co-complainant, have the right to be present during an ethics hearing?**

No; only the respondent's REALTOR® principal has the right to attend the ethics hearing (unless the complainant's REALTOR® principal is acting as counsel). Refer to **Section 4** and **Section 13** of the *Code of Ethics and Arbitration Manual*.

**23. A member found in violation has asked for an extension in order to complete the discipline imposed. Can such an extension be granted?**

Yes, at the discretion of the Appeal Tribunal.

**24. Our Association is considering publication of ethics violations. What do we need to do?**

Ensure your Association has adopted one of the two Publication Options described in Policy Statement 45, Publishing the names of Code of Ethics violators, Code of Ethics and Arbitration Manual. Publication Option #2 builds on the authority provided in Publication Option #1 by authorizing publication in all instances in which violators are disciplined with a letter of reprimand, a fine, a suspension, and/or an expulsion, and by expanding the content of the publication notice. The nature, form, content, and extent of this notice should not exceed what is authorized by the Publication Option adopted by the Association as provided in Policy Statement 45, Publishing the names of Code of Ethics violators, *Code of Ethics and Arbitration Manual*. *(Revised 05/18)*

**25. A member who is a respondent in an ethics complaint is demanding that the complainant produce certain documents. Can they do so?**

No; only a duly authorized tribunal of the Board may require information to be submitted, consistent with Article 14.

**26. Can a Board consolidate an ethics complaint and arbitration request filed by the same complainant against the same respondent?**

Such an arbitration request and ethics complaint cannot be consolidated in one proceeding, and the member filing them must be so advised. If the complainant still wished to pursue both the arbitration request and the charge of alleged unethical conduct, the two matters must be handled separately. In such cases, the arbitration should be held first to avoid prejudice to the arbitration by reason of any finding as to violation of the Code of Ethics. When the ethics hearing is held at a later time, it should be before a different Hearing Panel and individuals having served on the arbitration panel may not serve on the ethics Hearing Panel.

**27. What does the National Association recommend be included in the “Findings of Fact” section of sample form #E-11?**

The purpose of the “Findings of Fact” section of Form #E-11 is to provide a clear and concise statement of the facts that led the Hearing Panel to reach its conclusion. For example, the findings of fact for a violation of Article 12 could read as follows: “REALTOR® B was charged with a violation of Article 12. Evidence provided during the hearing showed that their firm had a listing on 123 Pleasant Drive, and that they ran an ad on October 4 for the property which did not disclose the name of their firm. Consequently, the Hearing Panel finds them in violation of Article 12 as interpreted by Standard of Practice 12-5.”

Conversely, if a violation was not found, the “Findings of Fact” could read: “REALTOR® B was charged with a violation of Article 12. Evidence provided during the hearing showed that their firm had a listing on 123 Pleasant Drive, and that the advertisement they ran for that property on October 4 disclosed the name of their firm. Consequently, the Hearing Panel finds him not in violation of Article 12 as interpreted by Standard of Practice 12-5.”

**28. A REALTOR® belongs to Board A only and is a Participant only in Board B’s MLS. Can Board A forward the professional standards records of this individual to Board B if the individual has been found in violation of the Code of Ethics at Board B?**

Yes, if a REALTOR® is found in violation of the Code of Ethics at one Board, another Board may share that member’s professional standards record for progressive disciplinary purposes.

**29. If either an ethics complaint or arbitration request is dismissed, in whole or in part, what information should be included in the dismissal notice?**

A notice of dismissal shall specify the reason(s) for dismissing (e.g., the matter is not timely filed, or the allegations, if taken as true, do not appear to support a possible violation of the Article(s) cited, or there is no contractual dispute [or specific noncontractual dispute consistent with Standard of Practice 17-4] between the parties named in arbitration). Any notice of dismissal shall also inform the complainant of their opportunity to appeal the dismissal and should inform the complainant that although the complaint/arbitration request and attachments cannot be revised, modified, or supplemented, the complainant may explain in writing why the complainant disagrees with the conclusion that the matter be dismissed. (*Revised 5/07*)

**30. If a REALTOR® principal resigns or otherwise causes their REALTOR® membership to terminate and there is a current arbitration request pending against them, can a complainant amend an arbitration request to name the new REALTOR® principal?**

The new REALTOR® principal may only be required to arbitrate if the new REALTOR® principal was a REALTOR® principal of that firm at the time the dispute arose. The complainant can name any REALTOR® principal of the firm at the time the dispute arose and the arbitration can proceed. If the original respondent simply moved from Company A and re-affiliated as a REALTOR® nonprincipal with Company B, the arbitration could proceed against the original respondent because the duty to arbitrate is personal.

**31. Can the sample forms contained in the *Code of Ethics and Arbitration Manual* be amended/changed?**

Yes, however, amended forms should not be used until they are first reviewed by counsel to ensure that they conform to state law and to any special requirements established by the Board.

**32. If a party appeals an ethics decision or requests procedural review of an arbitration hearing, do they have the right to counsel?**

Yes.

**33. If a party who has appealed an ethics decision or requested procedural review of an arbitration hearing fails to appear, must the board of directors proceed with the appeal hearing (or procedural review) in the absence of the involved party?**

A board may proceed with an ethics appeal or request for procedural review if the party who instituted the appeal (or request for procedural review) fails to appear.

**34. If a procedural review (arbitration) is to be conducted and a REALTOR® (non-principal) with a financial interest finds themselves unable to attend, must they be granted a postponement?**

No. While a REALTOR® (non-principal) also has a financial interest in the dispute and who is affiliated with a party to an arbitration hearing has the right to attend the arbitration hearing (and any subsequent procedural review proceeding), they are not a party to the proceedings and the proceedings may take place in their absence.

**35. How should probation be used by a hearing panel that finds a violation of the Code of Ethics?**

Probation should be used if a hearing panel wants to hold a form of discipline (e.g., a fine) in abeyance during the probationary period not to exceed one (1) year. Any subsequent finding of a violation of the Code of Ethics during the probationary period may, at the discretion of the Board of Directors, or a panel thereof, result in the imposition of the suspended discipline. Absent any subsequent finding of a violation during the probationary period, both the probationary status and suspended discipline will be considered fulfilled. Conversely, if the hearing panel wants the respondent to comply with discipline, the hearing panel should not place the respondent on probation. *(Adopted 11/14)*

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NOTE: To find any word or topic, go to the [Minnesota Realtor](#) website and search the Code of Ethics and Arbitration Manual by using Ctrl + F for fast and comprehensive results.

[Case Interpretations online at Nar.Realtor](#)

NOTE: New and amended Case Interpretations are effective upon approval by the National Association's Professional Standards Committee and publication at <https://www.nar.realtor/code-of-ethics-and-arbitration-manual/case-interpretations>. Case Interpretations approved by the Professional Standards Committee through 2024 are expected to be published online at nar.realtor no later than January 2025.

## Code Comprehension online at nar.realtor

NOTE: To provide additional guidance and direction on several Articles and Standards of Practice in the Code of Ethics, there are also short Q&As found by searching "Code Comprehension."





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