



Before You File an Ethics Complaint

Background

Boards and 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 Missouri REALTORS® ("MR") to learn more about utilizing an informal dispute resolving process – either mediation or ombudsman.

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-ASSOCIATE®s are subject to the Code of Ethics of the National Association of REALTORS® (the "Code").
- 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.
- Boards and associations of REALTORS® determine whether the Code 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. Typical forms of discipline include attendance at courses and seminars designed to increase REALTORS®' understanding of the ethical duties or other responsibilities of real estate professionals. REALTORS® may also be reprimanded, fined, or their membership can be suspended or terminated for serious or repeated violations. Boards and associations of REALTORS® cannot require REALTORS® to pay money to parties filing ethics complaints, cannot award "punitive damages" for violations of the Code, and cannot suspend or revoke a real estate professional's license.
- The primary emphasis of discipline for ethical lapses is educational, to create a heightened awareness of and appreciation for the duties the Code imposes. At the same time, more severe forms of discipline, including fines and suspension and termination of membership may be imposed for serious or repeated violations.

Filing an ethics complaint

The local board or association of REALTORS® can provide you with information on the procedures for filing an ethics complaint. Here are some general principles to keep in mind.

- Ethics complaints must be filed with the local board or association of REALTORS® within one hundred eighty (180) days from the time a complainant knew (or reasonably should have known) that potentially unethical conduct took place (unless the Board's informal dispute resolution processes are invoked in which case the filing deadline will temporarily be suspended).
- The Code 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 must include a narrative description of the circumstances that lead you to believe the Code may have been violated.
- Your complaint must cite one or more of the Articles of the Code which may have been violated. Hearing panels decide whether the Articles expressly cited in complaints were violated - not whether Standards of Practice or case interpretations were violated.
- The local board or association of REALTORS®' Grievance Committee may provide technical assistance in preparing a complaint in proper form and with proper content.

Before the hearing

- Your complaint will be reviewed by a panel of the MR Grievance Committee. Their job is to review complaints to determine if the allegations made, if taken as true, might support a violation of the Article(s) cited in the complaint.
- If the Grievance Committee dismisses your complaint, it does not mean they don't believe you. Rather, it means that they do not feel that your allegations would support a hearing panel's conclusion that the Article(s) cited in your complaint had been violated. You may want to review your complaint to see if you cited an Article appropriate to your allegations.
- If your complaint is dismissed as not requiring a hearing, you can appeal that dismissal to the board of directors of the local board or association of REALTORS®.
- Effective 1/22/16, MR adopted an Ethics Citation Policy. Per the attached Ethics Citation Policy and Summary of Ethics Citation Program documents, this policy was designed to save time, money, and other resources by possibly eliminating the need for a hearing in certain circumstances.
 - If the Grievance Committee does not dismiss your complaint, your complaint will be forwarded to the MR Citation Committee.
 - The Citation Committee will then determine if the complaint involves a "citable offense" and is otherwise covered by the Citation Program. If so, a fine (and possibly education requirements) may be imposed by issuing a "citation."
 - A respondent can elect to either pay the fine (and take any required classes), or request to proceed to a full hearing.
- If the Citation Committee decides that your complaint is ineligible for a citation (either because the alleged offenses are not "citable" under the Citation Program, or

because the alleged conduct described in your complaint is sufficiently egregious to warrant a hearing rather than a citation) and forwards your complaint for hearing, that does not mean they have decided the Code has been violated. Rather, it means the Committee feels 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 occurred.

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 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.
- 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 was violated.**

At the hearing

- Appreciate that panel members are unpaid volunteers giving their time as an act of public service. Their objectives are to:
 - be fair, unbiased, and impartial;
 - determine, based on the evidence and testimony presented to them, what actually occurred; and
 - determine whether the facts as they find them support a finding that the Article(s) charged have been violated.
- Hearing panels cannot conclude that an Article of the Code has been violated unless that Article(s) is specifically cited in the complaint.
- Keep your presentation concise, factual, and to the point. Your task is to demonstrate what happened (or what should have happened but didn't), and how the facts support a violation of the Article(s) charged in the complaint.
- Hearing panels base their decisions on the evidence and testimony presented during the hearing. If you have information relevant to the issue(s) under consideration, be sure to bring it up during your presentation.
- Recognize that different people can witness the same event and have differing recollections about what they saw. The fact that a respondent or their witness recalls things differently doesn't mean they aren't 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 doesn't become more believable through repetition or, through volume.
- You are involved in an adversarial process that is, to some degree, unavoidably confrontational. Many violations of the Code 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 involved. The fact that a hearing panel found no violation is not appealable.
- Refer to the procedures used by MR for detailed information on the bases and time limits for appealing decisions or requesting a rehearing. Rehearing's are generally granted only when newly discovered evidence comes to light (a) which could not reasonably have been discovered and produced at the original hearing and (b) which might have had a bearing on the hearing panel's decision. Appeals brought by ethics respondents must be based on (a) a perceived misapplication or misinterpretation of one or more Articles of the Code, (b) a procedural deficiency or failure of due process, or (c) the nature or gravity of the discipline proposed by the hearing panel. Appeals brought by ethics complainants are limited to procedural deficiencies or failures of due process that may have prevented a full and fair hearing.

Conclusion

- Many ethics complaints result from misunderstanding or a failure in communication. Before filing an ethics complaint, make reasonable efforts to communicate with your real estate professional or a principal broker in the firm. If these efforts are not fruitful, MR can give you the procedures and forms necessary to file an ethics complaint.

If you have questions about the complaint process, or want to submit a completed compliant form, please email Robert Campbell at robert@morealtor.com and 573-445-8400, ext. 1220; or Tracey Yost at tracey@morealtor.com and 573-445-8400, ext. 1280.

Completed complaints may be returned to: Missouri REALTORS®, Attn: Professional Standards, 2005 W Broadway, Suite 210 Columbia, MO 65203.

Form #E-1 ETHICS COMPLAINT

To the Missouri REALTORS® Statewide **Grievance Committee**:

Filed: _____ 20 _____

Complainant(s)

Respondent(s)

Complainant(s) charge(s):

An alleged violation of Article(s) _____ of the Code of Ethics or other membership duty as set forth in the bylaws of the Board in _____ and alleges that the above charge(s) (is/are) supported by the
Article, Section
attached statement, which is signed and dated by the complainant(s).

This complaint is true and correct to the best knowledge and belief of the undersigned and is filed within one hundred eighty (180) days after the facts constituting the matter complained of could have been known in the exercise of reasonable diligence or within one hundred eighty (180) days after the conclusion of the transaction, whichever is later.

I (we) declare that to the best of my (our) knowledge and belief, my (our) allegations in this complaint are true.

Are the circumstances giving rise to this ethics complaint involved in civil or criminal litigation or in any proceeding before the state real estate licensing authority (Missouri Real Estate Commission) or any other state or federal regulatory or administrative agency?

☐ Yes ☐ No

You may file an ethics complaint in any jurisdiction where a REALTOR® is a member or MLS participant. Note that the REALTORS® Code of Ethics, Standard of Practice 14-1 provides, in relevant part, "REALTORS® shall not be subject to disciplinary proceeding in more than one Board of REALTORS® . . . 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®?

☐ Yes ☐ No

If so, name of other Association(s): _____ Date(s) filed: _____

I understand that should the Grievance Committee dismiss this ethics complaint in part or in total, that I have twenty (20) days from my receipt of the dismissal notice to appeal the dismissal to the MR Board of Directors.

Complainant(s):

Type/Print Name

Signature

Type/Print Name

Signature

Address

Phone

Email