



## The Ethics Complaint Process

### General Information

- Only members of a REALTOR® Association are subject to the National Association of REALTORS® Code of Ethics.
- The ethics complaint process can only determine whether the Code of Ethics has been violated, not whether the law or governmental regulations have been broken.
- The primary emphasis of discipline for ethical violations is educational. Typical forms of discipline for Code of Ethics violations include mandatory attendance at educational courses, letters of warning, and/or monetary fines. For more serious or repeat violations, a REALTORS'® membership can be suspended or terminated. REALTOR® Associations cannot award monetary damages to the complainant for violations of the Code of Ethics.

### Before filing an Ethics Complaint

- Before filing a complaint, we suggest speaking with the REALTOR® or with a principal broker in the brokerage firm. Many disputes result from misunderstandings or miscommunication. An open and constructive discussion often resolves disputes, eliminating the need for further action.
- Texas REALTORS® offers informal dispute resolution such as ombudsman and mediation services. Parties are often more satisfied with informal dispute resolution, as they are quicker, less costly, and can help repair damaged relationships.

### Filing and Replying to an Ethics Complaint

- The REALTOR® Code of Ethics consists of seventeen (17) Articles that express the duties a REALTOR® owes to their clients and customers, to the general public, and to other REALTORS®. The Code of Ethics also includes several Standards of Practice which serve to illustrate a REALTORS'® duty in specific situations.
- An ethics complaint must allege violations of one or more **Articles** of the Code of Ethics, not a Standard of Practice. Standards of Practice can be used to support an allegation.
- **Narrative Description** – Complaints and replies should include a narrative description of the circumstances that show a REALTOR® may have violated the Code of Ethics (for complainants) or show there was no violation (for respondents).
- **Evidence and Document Submission** – Parties may submit evidence and documents to help prove their case. Please keep the following tips in mind regarding document submission:
  - **Be concise.** When deciding what documents and evidence to submit, note that only relevant evidence will be considered by the hearing panel. It is **NOT** necessary to include the entire transaction file as evidence. All evidence submitted should relate in some way to the actual Articles that have been alleged to have been violated. It will be harder to prove your case to the hearing panel if the panel has to read through hundreds of pages of irrelevant material.
  - **Be organized.** It will be easier for the hearing panel to follow along if your documentation is well organized. Combine various documents into one file, if possible. Include a table of contents with page numbers so different pieces of evidence can easily be located. Please note: If you submit multiple documents, Texas REALTORS® may combine them into one document before being given to the hearing panel. You will be notified if this occurs.
  - **Be ready.** The hearing panel may request to see documents during the hearing. If the document was not previously submitted, it can be emailed to the hearing officer during the hearing. Be ready to email requested documents during the hearing.
- **Page Limit** – The narrative description is limited to ten (10) letter size pages. All other evidence and documentation submitted with the complaint or reply is limited to fifty (50) letter size pages. Texas

REALTORS® will not remove any documentation from your submission. It is the responsibility of all parties to submit or resubmit documents that do not exceed these limits. Submission of documents that exceed these page limits may be permitted for more complex cases with the approval of Texas REALTORS® legal counsel. Parties may be required to provide an explanation on how each piece of evidence or document is relevant to the case.

- For members of the public, a member of the Professional Standards Committee may be appointed to help in preparing a complaint in proper form and with proper content.
- **180 Day Rule** - Ethics complaints must be filed within one hundred eighty (180) days from the time a complainant knew (or reasonably should have known) that potentially unethical conduct took place or within one hundred eighty (180) days after the conclusion of the transaction or event, whichever is later. The filing deadline may be extended if the parties use an informal dispute resolution process (e.g. ombudsman services).
- **Citation Policy** - Texas REALTORS® has adopted a Citation Policy to handle certain complaints. The Citation Policy is an alternative to conducting full hearings. It includes a schedule of set fines and is only available with complaints that allege violations of Articles 3, 4, 5, 6, 12, 14, and/or 16. If a complaint qualifies, the Grievance Tribunal may issue a Citation to the Respondent in lieu of holding a hearing. If the respondent accepts the Citation and pays the fine, the matter will be closed. If the respondent does not accept the Citation, a hearing will be scheduled.
- **Anonymous Complaints** – Ethics complaints may be filed anonymously. With anonymous complaints, the complainant must identify themselves to Texas REALTORS® staff who will keep their identity strictly confidential from all other parties. Anonymous complaints are only processed using the Texas Citation Policy where only alleged violations of Articles 3, 4, 5, 6, 12, 14, and/or 16 will be considered. If a complaint contains any other Article(s), it cannot be processed anonymously.
- **Filing an Ethics and Arbitration Case** – If an ethics complaint and request for arbitration are filed regarding the same event/transaction, the arbitration request will be heard first. The ethics complaint will be held in abeyance until after the arbitration hearing has been conducted.

### **Grievance Tribunal review**

- After an Ethics Complaint is submitted, the complaint will be reviewed by a Grievance Tribunal. Their job is to determine if the allegations made in the complaint support a possible violation of the Code of Ethics. The Grievance Tribunal does not decide if a violation occurred. They only decide if the complaint should proceed to the next step, which is an ethics hearing.
- The Grievance Tribunal may dismiss a complaint if they do not feel that the allegations support even a possible violation of the Article(s) cited in the complaint. Complainants may want to review the complaint to ensure it cites an Article appropriate to the allegations. Complainants will be provided information regarding appealing the Grievance Tribunal's dismissal.
- If the Grievance Tribunal feels the allegations support the possibility of a violation, they will forward the complaint for hearing. The case will be heard before a hearing panel, which determines if a violation has occurred.
- The Grievance Tribunal's decision will be based on the allegations contained in the Ethics Complaint form and any documents attached to the complaint when the complaint is first submitted. Additional documents sent to Texas REALTORS® after initial submission of the complaint will not be considered by the Grievance Tribunal, however, they may still be used at a hearing, subject to the Hearing Officer's determination of relevancy.
- The respondent will be notified of the complaint and the decision of the Grievance Tribunal. The respondent may submit a reply and documentation to defend against the allegations.

### **Before the hearing**

- The parties will be given a list of potential hearing panel members prior to the hearing. Either party may file a written request for disqualification of any potential member of the hearing panel. Hearing panel members may be disqualified if the panel member is:
  - Related by blood or marriage to any party or REALTOR® counsel in the case,

- A partner, employer, employee, or in any way associated in business with any party or REALTOR® counsel in the case,
- A party to the hearing, or a party or witness in any pending case involving any party in the case, or
- For any other reason that may prevent the member from rendering an impartial judgment (subject to a ruling by the Hearing Officer).
- The parties will be notified of the date, time, and place of the hearing at least twenty-one (21) days in advance. The notice will include a detailed outline of procedures that will be used during the hearing.
- Legal or REALTOR® Counsel – The parties may be accompanied by legal counsel or a REALTOR® acting as counsel, or both. Parties must send written notice of their intention to have counsel present to all other parties and to Texas REALTORS® at least fifteen (15) days before the hearing. Failure to provide timely notice may result in a continuance of the hearing. It is the responsibility of the parties to keep their counsel informed of all proceedings and documentation.
- Witnesses – It is the responsibility of each party to arrange for witnesses to be present at the hearing. Parties must send written notice of their intention to have witnesses to all other parties and to Texas REALTORS® at least fifteen (15) days before the hearing. Failure to provide timely notice may result in a waiver of the right to call the witness or a continuance of the hearing as determined by the Hearing Officer. The parties appearing at the hearing may be called as witnesses without advance notice.
- Parties are strongly encouraged to provide all documents and evidence they intend to introduce during the hearing to all other parties and to Texas REALTORS® prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly unnecessary continuances. We request the parties provide documents at least five (5) business days before the hearing date.

### **Preparing for the hearing**

- The Parties will receive an outline of the procedures that will be followed during the hearing. The parties should familiarize themselves with the hearing procedures. The parties will want to know about challenging potential panel members, their 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 evidence” defined as “...that measure or degree of proof which will produce a firm belief or conviction as to the allegations sought to be established.” Respondents are considered innocent unless proven to have violated the Code of Ethics.
- The parties should ensure that their witnesses and counsel will be available on the day of the hearing. Continuances are a privilege.
- The parties should ensure they have all the documents and other evidence needed to present their case.
- Parties should think about and organize their testimony and evidence before the hearing.

### **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 determine whether the facts support a finding of an ethical violation.
- Hearing panels cannot conclude that an Article of the Code has been violated unless that Article(s) is specifically cited in the complaint.
- Keep the presentation concise, factual, and to the point. Parties should demonstrate what happened, or what should have happened but didn't.
- Hearing panels base their decisions on the evidence and testimony presented during the hearing. Hearing panels do not conduct research on their own. If a party has information relevant to the issue(s) under consideration, it is their responsibility to bring up the information during their

presentation.

- Recognize that different people can witness the same event and have differing recollections about what they saw. It is up to the hearing panel to determine, in their view, what happened.
- An ethics hearing is an adversarial process and is, to some degree, unavoidably confrontational. For the enforcement process to function properly, it is imperative all parties, witnesses, counsel, and panel members maintain appropriate decorum.

### **After the hearing**

- The parties will receive a copy of the hearing panel's decision, review it carefully.
- The decision includes Findings of Facts, which are the conclusions of the panel members based on their reasoned assessment of all the evidence and testimony presented during the hearing. Findings of Fact are not appealable.
- If a party believes the hearing process was flawed to the extent they were denied a full and fair hearing; there are appellant procedures that can be invoked. The fact that a hearing panel found no violation is not appealable.
- The parties will be provided information regarding the procedures for appealing the decision after the hearing.