THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM HORRY COUNTY
Court of Common Pleas

Cynthia Graham Howe, Master-In-Equity

RECEIVED
JUN 12 2019
SC Court of Appeals

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Appellate Case No. 2018-001590

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Andrew Waldo; Jane Zheng; and SC Coast Properties, LLC d/b/a Keller Williams Realty.....Respondents,

v.

Michael Cousins; Founders Five, LLC d/b/a Sperry Van Ness Founders Group; and South Carolina Association of REALTORS® .....Appellants.

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**RECORD ON APPEAL**
**Volume 2 of 2**

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| | |
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| STATE OF SOUTH CAROLINA<br><br>COUNTY OF HORRY | IN THE COURT OF COMMON PLEAS |
| Andrew Waldo,<br><br>Plaintiff,<br><br>vs.<br><br>Michael Cousins and South Carolina Association of REALTORS®,<br><br>Defendants. | Case No. 2016-CP-26-01498<br><br>**AFFIDAVIT OF LINDSEY DAVIDSON** |

PERSONALLY APPEARED BEFORE ME, **Lindsey Davidson**, who, after being duly sworn, deposes and states the following:

1. I am Lindsey Davidson and I am Director of Member Services for the South Carolina Association of REALTORS®.

2. I am over 18 years of age and have personal knowledge of the matters contained herein.

3. As part of my duties as Director of Member Services, I maintain records regarding our members and any arbitration disputes they may have.

4. The document attached to this Affidavit is kept and updated in the ordinary course of business by the Association, and used in the regular course of business by the South Carolina Association of REALTORS® to provide dispute resolution services to its members.

5. The document attached is a genuine and accurate copy of the rules used in the arbitration and all others filed at a similar time.

6. Attachment A to this Affidavit is the National Association of REALTORS®'s Code of Ethics and Arbitration Manual used by the South Carolina Association of REALTORS®.

FURTHER AFFIANT SAYETH NAUGHT.

Lindsey Davidson

Lindsey Davidson

SWORN TO BEFORE ME

This 6 day of October, 2016.

Notary Public for South Carolina

My Commission Expires: My Commission Expires On: March 14, 2017

# Code of Ethics and Arbitration Manual

A Manual for use by Member Boards of the National Association 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. 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.

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

NOTE: This edition includes all Case Interpretations approved by the Professional Standards Committee through 2015. All new and amended Case Interpretations become effective upon approval by the National Association's Professional Standards Committee and publication on REALTOR.org.

NATIONAL ASSOCIATION OF REALTORS®
430 North Michigan Avenue
Chicago, Illinois 60611-4087

REALTOR® is a registered collective membership mark which
may be used only by real estate professionals who are members of the
NATIONAL ASSOCIATION OF REALTORS® and subscribe to its strict Code of Ethics.

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This Manual is dedicated to the memory of

## Chesley J. ("Chet") Smith

(1921–2001)

Chet Smith served America in war and peace for nearly four decades in the Army Air Corps and the U.S. Air Force, and he served REALTORS® for nearly a quarter century at the local, state, and national levels. His dedication to the REALTOR® organization was exceeded only by his dedication to his family, his faith in God, and his commitment to the Code of Ethics.

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**Professional Standards Training Guide (Available online at REALTOR.org)**

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**NOTE:** To find any word or topic, go to REALTOR.org and search the *Code of Ethics and Arbitration Manual* electronically for fast and comprehensive results.

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**NOTE:** All new and amended Case Interpretations become effective upon approval by the National Association's Professional Standards Committee and publication on REALTOR.org.

# Areas of the *Code of Ethics and Arbitration Manual* Requiring Board/Association Action

Associations interested in adopting a citation policy and a citation schedule of potential violations and specific fines and/or education that apply to those violations should view the National Association's Model Citation Policy found at:
http://www.realtor.org/policy/nar-model-citation-policy-and-schedule-of-fines

Associations interested in adopting an optional "fast track" process for receipt, consideration, and resolution of ethics complaints may view an online supplement to the *Code of Ethics and Arbitration Manual* at:
http://www.realtor.org/policy/fast-track-supplement-to-ceam

The following provisions of the Manual are referenced to assist Boards and Associations in adapting the Manual to conform to local policy and comply with state law. Throughout the Manual, the following symbol appears to assist Boards and Associations in quickly identifying those provisions:

Fill in the name of the Board or Association in:
Section 1(b) and 26(b), *Definitions*
Section 13(b), *Power to Take Disciplinary Action*
Section 46, *Duty to Arbitrate Before the State Association*
Section 56, *Enforcement*

Fill in the name of the Board or Association and decide if the Hearing Panel chair or the Professional Standards Committee chair will rule on postponement requests in:

**Part Five and Part Twelve**
*Conduct of an Ethics Hearing* with related procedures and outlines
*Conduct of an Arbitration Hearing* with related procedures and outlines

**Part Six and Part Thirteen**
*Specimen Forms*

**Part Fourteen**
*State Association Professional Standards Committee, Ethics and Arbitration Proceedings*
*Duty to Arbitrate Before State Association*

**Statements of Professional Standards Policy**
#3. *Circumstances under which arbitration is contingent upon the* REALTOR®*'s voluntary participation.* Establish whether voluntary arbitration will or will not be provided as a service. Also, see Section 44, *Duty and Privilege to Arbitrate*, specifying whether voluntary arbitration will be provided in (4), (5), and (6).

#25. *Expenses related to conduct of hearings by multi-board or regional grievance committee or professional standards committee.* Specify how expenses of hearings shall be shared by the signatory Boards.

NOTE: The new and continuous member education criteria referenced in Professional Standards Policy Statements #47 and #48, and the criteria for staff administration training referenced in Professional Standards Policy Statement #49, can be found on REALTOR.org. Educational materials to conduct the new member and continuous member training can also be found on REALTOR.org.

Also, Forms #E-19 and #A-19, Sample Format of Agreement Between _____ and _____ Boards of REALTORS® . . .

**Part Fourteen,** *State Association Professional Standards Committee,* Expenses of Hearings Conducted by State Association.

**Part Eleven,** *Interboard Arbitration Procedures,* Costs of Arbitration.

#33. *Use of panels in place of board of directors.* Specify what matters, if any, will be considered by panels of Directors and the composition of such panels. Also decide whether core Grievance Committee functions will be delegated to a panel of the Association's Professional Standards Committee, eliminating the need for a standing Grievance Committee. Also, see Section 13(b), *Power to Take Disciplinary Action;* Section 19(c), *Appeals from the Decision of the Grievance Committee Related to an Ethics Complaint;* Section 42(c), *Appeals from the Decision of Grievance Committee Related to a Request for Arbitration;* Section 20(c) and (d), *Initiating an Ethics Hearing;* Section 23, *Action of the Board of Directors;* Sections 24 and 49, *Initial Action by Directors;* Sections 25 and 50, *Preliminary Judicial Determination Prior to Imposition of Discipline;* Section 45, *Board's Right to Decline Arbitration;* Section 47(c), *Manner of Invoking Arbitration;* Section 55, *Request for Procedural Review by Directors;* **Part Fourteen,** *State Association Professional Standards Committee, Composition of Hearing Panels and Appellate or Review Panels.*

**Part One and Part Seven: General Provisions**
Sections 6 and 31, *Conduct of Hearing.* Clarify whether the parties may or may not record the proceeding if your association does not use a court reporter. If your association does use a court reporter, the association must allow parties to record the proceeding.

**Part Two and Part Eight: Membership Duties and Their Enforcement**
Sections 15 and 38, *Grievance Committee,* and Sections 16 and 39, *Professional Standards Committee.* Specify the number of members on each committee and how the chairpersons will be selected.

#45. *Publishing the names of Code of Ethics violators.* Determine whether the board will or will not publish violators' names.

Information about alternative enforcement procedures (e.g., use of hearing officers, ombudsmen, and mediation of ethics complaints) which may be adopted locally can be found on REALTOR.org.

**Part Three and Part Nine: The Grievance Committee**
Sections 17 and 40, *Authority*. Specify how many members will serve on the committee and how the chairperson will be selected.

**Part Four: The Ethics Hearing**
Section 14, last paragraph, *Discipline*. Board of Directors to determine in advance the Board's policy concerning if, and under what circumstances, an administrative processing fee will be imposed. Also determine amount.

Section 20(a), *Initiating an Ethics Hearing*. Clarify if a response will or will not be solicited at the Grievance Committee.

Section 20(f–q), *Initiating an Ethics Hearing*. Determine if the optional provisions in subsections f–q will be adopted.

Section 21(e), *Ethics Hearing*, and Section 51(b), *Arbitration Hearing*. Specify when the respective Hearing Panels will be provided with ethics complaints and arbitration requests.

Section 22(a), *Decision of Hearing Panel*. Determine if ethics decisions presented to the Directors for ratification will or will not include the names of the parties.

Section 23(b) and (m), *Action of the Board of Directors*. Decide if panels will act on behalf of your Board of Directors.

Section 23(c), *Action of the Board of Directors*. Establish the amount of appeal deposit, if any.

Section 23(n), *Action of the Board of Directors*. Determine if names will be published if respondent violates the Code of Ethics twice within three years.

**Part Ten: Arbitration of Disputes**
Section 47(a–c), *Manner of Invoking Arbitration*, and Section 48(a) and (b), *Submission to Arbitration*. Specify the amount of deposit; the number of days the Grievance Committee has to review a request; if a response will be asked for at the Grievance Committee and, if so, the number of days for providing written response; and select one of the three options regarding signed agreements and deposits.

Section 54, *Cost of Arbitration*. Determine if the arbitration filing fee of the prevailing party is to be returned and, if there is a split award, if the parties may receive a portion of their deposits back as determined by the arbitrators.

Also determine whether the association will refund all or part of parties' arbitration filing deposits if the dispute is resolved through mediation.

Section 55(a), *Request for Procedural Review by Directors*. Determine whether the Board will require a deposit to file a procedural review request and, if so, what the amount of the deposit will be.

Section 55(c), *Request for Procedural Review by Directors*. Determine if the procedural review will be heard by the full Board of Directors or a subset thereof.

**Appendix VI to Part Ten,** *Mediation as a Service of Member Boards*.

Determine whether the Board will require REALTORS® (principals) to mediate otherwise arbitratable disputes pursuant to Article 17. Requiring REALTORS® to mediate otherwise arbitratable disputes requires establishment of an affirmative obligation in the Board's governing documents. Enabling model bylaw provisions can be found at REALTOR.org (see Model Bylaws).

Also decide if the Board will offer disputing parties an opportunity to mediate prior to an arbitration request being filed.

**Part Eleven: Interboard Arbitration Procedures**
Establish a filing fee for interboard arbitration. Establish the number of days after the Hearing Panel is formed that the Secretary must send a copy of the arbitration request to the respondent. Clarify whether a party may or may not tape record the proceeding.

**Part Five and Part Twelve: Conduct of an Ethics or Arbitration Hearing**
Decide if the Hearing Panel Chair or the Professional Standards Committee Chair rules on postponement requests.

Clarify whether a party may or may not record the proceeding.

**Part Six and Part Thirteen: Specimen Forms**
Form #E-4, **Grievance Committee Request for Information (Ethics Complaint).** Specify the number of days a respondent has to submit a response and the number of copies required (should be consistent with Section 21(a), *Ethics Hearing*).

Form #A-1, **Request and Agreement to Arbitrate,** and Form #A-2, **Request and Agreement to Arbitrate (Nonmember).** Specify the amount of the arbitration deposit (should be consistent with Section 47(a), *Manner of Invoking Arbitration*, and Section 48(a), *Submission to Arbitration*).

Form #A-5, **Grievance Committee Request for Information (Arbitration Request).** Specify the number of days the respondent has to submit a response.

Form #E-2, **Notice to Respondent (Ethics)** and Form #A-3, **Notice to Respondent (Arbitration).** Specify the number of copies that must be submitted.

Form #E-3, **Reply (Ethics);** Form #E-5, **Response to Grievance Committee Request for Information;** and Form #E-8, **Official Notice of Hearing (Ethics).** Board of Directors to determine in advance the Board's policy concerning if, and under what circumstances, an administrative processing fee will be imposed. Also determine amount. Should be consistent with Section 14, last paragraph, *Discipline*.

Form #A-4, **Response and Agreement to Arbitrate.** Specify the amount of the filing fee (should be consistent with Section 47(a), *Manner of Invoking Arbitration*, and Section 48(a), *Submission to Arbitration*).

Form #E-9, **Outline of Procedure for Ethics Hearing** and Form #A-10, **Outline of Procedure for Arbitration Hearing.** Clarify whether the parties may or may not record the proceeding.

Form #E-13, **Request for Appeal (Ethics).** Specify the amount of the filing fee, if any (should be consistent with Section 23(c), *Action of the Board of Directors*).

Form #A-13, **Request for Procedural Review (Arbitration).** Specify the amount of the filing fee, if any (should be consistent with Section 55, *Request for Procedural Review by Directors*).

Form #E-14, **Official Notice of Appeal Hearing (Ethics)** and Form #A-14, **Official Notice of Procedural Review (Arbitration).** Specify the number of days' notice required if counsel is to be present (should be consistent with Sections 4 and 29, *Right of Counsel to Appear*) and the number of days required to challenge the qualifications of an appeal panel (should be consistent with Sections 2(f) and 27(f), *Qualification for Tribunal*).

Form #E-19 and Form #A-19, **Sample Format to Establish Multi-Board (or Regional) Professional Standards Enforcement Procedures.** Clarify on refusals to arbitrate what tribunal will hear allegation. Also, clarify on appeals of the Grievance Committee's dismissal of an ethics complaint or arbitration request (or challenges to the classification of arbitration requests) what tribunal will hear matter. Also clarify which Board(s) will be responsible for administering the process.

# 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 himself by guaranteeing his 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

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. Call if you are delayed or must cancel an appointment or showing.
5. If a prospective buyer decides not to view an occupied home, promptly explain the situation to the listing broker or the occupant.
6. Communicate with all parties in a timely fashion.
7. When entering a property, ensure that unexpected situations, such as pets, are handled appropriately.
8. Leave your business card if not prohibited by local rules.
9. Never criticize property in the presence of the occupant.
10. Inform occupants that you are leaving after showings.
11. 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 room.
12. Present a professional appearance at all times; dress appropriately and drive a clean car.
13. If occupants are home during showings, ask their permission before using the telephone or bathroom.
14. Encourage the clients of other brokers to direct questions to their agent or representative.
15. Communicate clearly; don't use jargon or slang that may not be readily understood.
16. Be aware of and respect cultural differences.
17. Show courtesy and respect to everyone.
18. Be aware of—and meet—all deadlines.
19. Promise only what you can deliver—and keep your promises.
20. Identify your REALTOR® and your professional status in contacts with the public.
21. Do not tell people what you think—tell them what you know.

**Respect for Property**

1. Be responsible for everyone you allow to enter listed property.
2. Never allow buyers to enter listed property unaccompanied.
3. When showing property, keep all members of the group together.
4. Never allow unaccompanied access to property without permission.
5. Enter property only with permission even if you have a lockbox key or combination.
6. When the occupant is absent, 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.
7. 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. Leave the house as you found it unless instructed otherwise.
8. Use sidewalks; if weather is bad, take off shoes and boots inside property.
9. Respect sellers' instructions about photographing or videographing their properties' interiors or exteriors.

**Respect for Peers**

1. Identify your REALTOR® and professional status in all contacts with other REALTORS®.
2. Respond to other agents' calls, faxes, and e-mails promptly and courteously.
3. Be aware that large electronic files with attachments or lengthy faxes may be a burden on recipients.
4. Notify the listing broker if there appears to be inaccurate information on the listing.
5. Share important information about a property, including the presence of pets, security systems, and whether sellers will be present during the showing.
6. Show courtesy, trust, and respect to other real estate professionals.
7. Avoid the inappropriate use of endearments or other denigrating language.
8. Do not prospect at other REALTORS®' open houses or similar events.
9. Return keys promptly.
10. Carefully replace keys in the lockbox after showings.
11. To be successful in the business, mutual respect is essential.
12. Real estate is a reputation business. What you do today may affect your reputation—and business—for years to come.

*(Revised 11/13)*

# 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 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, willful discrimination, or fraud resulting in substantial economic harm. 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 1/02)
>
> *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 Realtor.org 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. He should bear in mind that he is an employee — that his client is his employer and is entitled to the best service the real estate man can give — his 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 45 times since its adoption. The amendments all have reflected an interest in refining, on a continuing basis, the principles obligating REALTORS® and REALTOR-ASSOCIATE®s 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, and 2015. 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 Board or 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 147 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-ASSOCIATE®s 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 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 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 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)*

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. *(Revised 05/14)*

In addition to any discipline imposed, Boards and 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. Boards and 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 Committees and Professional Standards Committees.

- **Part Three** and **Part Nine, The Grievance Committee** describe the authority and appropriate function of the Grievance Committee 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-ASSOCIATE®s of America for many years.

Article 14 of the Code of Ethics obligates REALTORS® and REALTOR-ASSOCIATE®s to place all pertinent facts before the proper tribunal of the Member Board 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, 2016

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

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 Board or 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. 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 1/93)*

- **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. 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 1/99)*

- **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 listing broker. *(Adopted 1/10)*

- **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)*

## Article 4

REALTORS® shall not acquire an interest in or buy or present offers from themselves, any member of their immediate families, their firms or any member thereof, or any entities in which they have any ownership interest, any real property without making their true position known to the owner or the owner's agent or broker. In selling property they own, or in which they have any interest, REALTORS® shall reveal their ownership or interest in writing to the purchaser or the purchaser's representative. *(Amended 1/00)*

- **Standard of Practice 4-1**
  For the protection of all parties, the disclosures required by Article 4 shall be in writing and provided by REALTORS® prior to the signing of any contract. *(Adopted 2/86)*

## 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, handicap, 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, handicap, familial status, national origin, sexual orientation, or gender identity. *(Amended 1/14)*

REALTORS®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. *(Amended 1/14)*

- **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, handicap, familial status, national origin, sexual orientation, or gender identity. *(Adopted 1/94, Renumbered 1/05 and 1/06, Amended 1/14)*

- **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)*

## 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. *(Adopted 1/95)*

- **Standard of Practice 11-3**
  When REALTORS® provide consultive 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 consultive 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® may use the term "free" and similar terms in their advertising and in other representations provided that all terms governing availability of the offered product or service are clearly disclosed at the same time. *(Amended 1/97)*

- **Standard of Practice 12-2**
  REALTORS® may represent their services as "free" or without cost even if they expect to receive compensation from a source other than their client provided that the potential for the REALTOR® to obtain a benefit from a third party is clearly disclosed at the same time. *(Amended 1/97)*

- **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 posted, 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) to otherwise mislead consumers. *(Adopted 1/07, Amended 1/13)*

- **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-ASSOCIATE®s may be judged. REALTORS® and REALTOR-ASSOCIATE®s 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-ASSOCIATE®s 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-ASSOCIATE®s 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-ASSOCIATE®s 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.* 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. 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 (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

*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®.

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 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)*

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 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 the imposition of other forms of discipline which will not be held in abeyance. *(Revised 5/14)*

In addition to any discipline imposed, Boards and 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. Boards and 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, and 2015. 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 ensures 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

# ETHICS

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# Statements of Professional Standards Policy Applicable to Ethics Proceedings

*Approved by the Professional Standards Committee and the Board of Directors of 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 his 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 Committee, 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-ASSOCIATE®s, 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-ASSOCIATE®s, 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 Board or Association in which they do not hold membership are subject to the Code of Ethics in that Board or 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

A local Board, prior to referring an ethics complaint or arbitration request for review to the State Association, should exhaust all efforts to impanel an impartial panel to conduct either the original hearing or the appeal or procedural review. These efforts may include the appointment of knowledgeable members of the Board on an ad hoc basis to serve either on a Hearing Panel or on behalf of the Board of Directors. If, after making all reasonable efforts, the Board still cannot impanel an impartial tribunal, the Board may refer the matter to the State Association, and the State Association may delegate to another Board or a regional enforcement facility the authority to hear the case on behalf of the State Association. No Board or regional enforcement facility, however, may be required to accept this delegation of authority. If no other entity is amenable to conducting the review, the State Association shall be responsible for conducting the hearing. State Associations may, at their discretion, require that the President or Association Executive of the Board referring an ethics complaint or arbitration request certify that all reasonable efforts to impanel an impartial panel had been made, and may further require that those efforts be documented. *(Amended 11/03)*

In instances where a local Member Board determines by resolution of its Board of Directors that it is incapable of providing an impartial panel for the conduct of an ethics or arbitration hearing (or appeal or procedural review hearing), the complaint or the request for arbitration (and the ethics appeal or procedural review request, if any) may be referred by the Board President to the State Association of REALTORS® for a hearing. With regard to requests for arbitration, in the event the State Association declines to conduct the arbitration or to delegate its authority to another Board or regional enforcement facility, the parties shall be relieved of their obligation to arbitrate as established in Article 17 of the Code of Ethics. With regard to alleged violations of the Code of Ethics, such allegations may be received and considered by the State Association and (1) dismissed as unworthy of further consideration, (2) heard by a Hearing Panel of the State Association's Professional Standards Committee, or (3) referred to another Board or regional enforcement facility. If referred for a hearing to the State Association's Professional Standards Committee or to another local Board or regional enforcement facility, a Hearing Panel will be appointed to conduct the hearing and forward the determination and sanction, if any, to the local Member Board. The Board of Directors of the local Member Board shall then implement the decision of the Hearing Panel in strict accordance with its terms and conditions. Any requests for appeal or procedural review should be considered by an appropriate body of the State Association or "deputized" local Board or regional enforcement facility in accordance with the relevant established professional standards procedures. *(Amended 11/93)*

## 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.*

## 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 Committee or Professional Standards Committee shall be as established by written agreement between the signatory Boards. The expenses of such hearings shall be borne by the signatory Boards 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.

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)*

*A sample format agreement approved by the Professional Standards Committee to establish a collective agreement is included as Specimen Form #E-19 in **Part Six** and #A-19 in **Part Thirteen** of this Manual.

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 to non-real estate-related activities

While REALTORS® are encouraged to follow the principles of the Code of Ethics in all of their activities, a REALTOR® shall be subject to disciplinary action under the Code of Ethics only with respect to real estate-related activities and transactions involving the REALTOR®. *(Adopted 2/88)*

## 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. *(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 his experience in the real estate business. *(Adopted 2/89)*

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

Any matter brought before the Grievance Committee, Professional Standards Committee, or Board of Directors may be considered by a panel of members or Directors appointed by the President for that purpose (or, alternatively, by the Board's Executive Committee). Three (3) or more members shall constitute a panel of the Grievance and Professional Standards Committees that can act on behalf of those committees. Five (5) Directors or a quorum of the Board of Directors, whichever is less, shall constitute a panel of the Board of Directors, that can act on behalf of the Board of Directors. The decision of the panel (or Executive Committee) shall be final and binding and shall not be subject to further review by the full Committee or the full Board of Directors, except as otherwise provided in this Manual.

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

In appointing such a panel, the President 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 05/15)*

When possible, panels should be strongly encouraged to use conference calls or alternative communication technologies for meetings other than hearings and appeals/procedural reviews to expedite the decision-making process. Use of conference calls or alternative communication technologies during the course of a hearing shall be governed by Professional Standards Policy Statement #56, "Remote" Testimony. *(Revised 11/14)*

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

In the interest of maximizing the resources of Boards and Associations, Grievance Committees 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 Boards and 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 Board or 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 Directors 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, 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)*

## 42. Previously dismissed ethics complaints/ arbitration requests

If an ethics complaint or arbitration request is received and reviewed by a Board's Grievance Committee 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 RESALTORS® 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 05/15)*

All new and amended Case Interpretations become effective upon approval by the National Association's Professional Standards Committee and publication on REALTOR.org. *(Adopted 5/98)*

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

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

- Publication can only occur after a second violation occurs within three (3) years.
- Publication can only be made in an official communication vehicle intended primarily for members of the Board (or Boards) in which the violator holds (held) membership. Where the official communication vehicle is electronic or Internet-based, access must be limited to Board members. *(Amended 11/04)*

- 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 (or Articles) 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 these procedures. *(Adopted 2/99)*

## 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 thereafter, REALTORS® are required to complete quadrennial ethics training of not less than two (2) hours and thirty (30) minutes of instructional time. REALTORS® completing such training during any four (4) year cycle shall not be required to complete additional ethics training in respect of this requirement as a requirement of membership in any other Board or Association.

A REALTOR® completing the new member Code of Ethics orientation during any four (4) year cycle shall not be required to complete additional ethics training in respect of this requirement until a new four (4) 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 four (4) 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 Board and Association is required to provide access to necessary ethics training programs either locally, in conjunction with other Boards and Associations, or through other methods (including, but not limited to, home study, correspondence courses, or Internet-based instruction). 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 11/10)*

## 49. Professional standards administration training

Enforcement of the Code of Ethics is a privilege and responsibility of each Board and Association as established in Article IV of the *Bylaws* of the NATIONAL ASSOCIATION OF REALTORS®. Every Board and 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

Boards and 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 05/15)*

## 54. Personal safety in professional standards proceedings

Boards and Associations should take reasonable steps to ensure the personal safety of parties, panelists, witnesses, staff, and others participating in professional standards proceedings. In instances where, in the opinion of the presiding committee or Hearing Panel Chair, there is an unacceptable risk posed to the safety of any participant, the proceedings will be recessed so the Chair can consult with staff, Board or Association elected leadership, or Board or Association counsel to identify and take steps to ensure the safety of all participants and to permit the proceedings to resume.

If after consulting with staff, Board or Association counsel, and any other appropriate party or agency (including law enforcement authorities), and after taking reasonable steps to attempt to resume the proceeding while ensuring the safety of all participants, the Board of Directors 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 Board of Directors (or its successor) concludes that the proceedings can be safely resumed. Where proceedings are postponed indefinitely by action of the Board of Directors, a memorandum

detailing the circumstances shall be appended to the case file and maintained on a permanent basis. The Board of Directors 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. *(Adopted 5/00)*

## 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

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. Parties and their witnesses may request permission to participate in such proceedings via teleconference or videoconference. *(Revised 11/14)*

Parties and witnesses to ethics and arbitration hearings may be permitted to participate in those hearings by teleconference or videoconference 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 11/14)*

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 11/14)*

The costs of "remote" testimony shall be the responsibility of the party requesting the opportunity to participate or offer testimony by teleconference or videoconference. *(Adopted 11/04)*

## 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. Associations 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)*

# 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) "Board" means this organization, either the _____ _____ (local) Board/Association of REALTORS® or the _____ (state) Association 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 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 Board (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) "Letter of Reprimand" means a letter to a Board 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)*

(n) "Letter of Warning" means a letter to a Board 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)*

(o) "Member" means REALTOR® and REALTOR-ASSOCIATE® members of this Board (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)*

(p) "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)*

(q) "Person" means a natural person. *(Adopted 11/13)*

(r) "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 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 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 11/14)*

(s) "Professional Standards Administrator" is the Board staff person primarily responsible for the administration of all professional standards processes. *(Adopted 11/15)*

(t) "Public Trust" refers to demonstrated misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm. *(Adopted 1/02)*

(u) "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 Board or Association in which they do not hold membership. *(Revised 5/97)*

(v) "Suspension of Membership" means suspension of all Board/Association provided membership rights, privileges and services (including those provided by the 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 Board. 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 Board bylaws, shall be grounds for consideration as to possible extension of the suspension or expulsion from membership in the Board. *(Revised 05/04)*

(w) "Training Requirement for Ethics or other Appropriate Training" means a letter from the Board President or Professional Standards Chairperson to a Board 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 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.

(x) "Tribunal" means those persons serving in a given case on a Grievance Committee 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 a Board of Directors to act in its behalf. No individual may participate in the deliberation of more than one tribunal on the same matter. *(Revised 5/88)*

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

## 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 the complainant, respondent, or a REALTOR® acting as counsel for either the complainant or respondent; (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; (3) a party to the hearing, or a party or a witness in any other pending case involving a party to this hearing; or (4) objected to by a party as provided in **Part One,** Section 2(f). *(Revised 4/96)*

(c) Before sitting in any case, each member of a tribunal (except any member of the Grievance Committee) 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 him 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 Committee 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 Board, or by law as may be required, except that a member of the Grievance Committee 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 Board. *(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), 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 Professional Standards Committee Chairperson, or, if challenge to the Chairperson is made, by the Professional Standards Committee Vice Chairperson, or, if challenge to both the Chairperson and Vice Chairperson is made, by the Board President. Challenges submitted pursuant to this Section for matters to be considered by the Board of Directors will be determined by the Board President or, if the challenge is to the Board President's qualifications, the next ranking Board officer. A party shall be deemed to have waived any grounds of disqualification of which he then has knowledge unless he files the request within ten (10) days from the date a list of names of members of the Professional Standards Committee or Board of Directors 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 Committee or Board of Directors (or panel of Directors or Executive Committee) convened to review any action taken by a Grievance Committee. *(Revised 11/98)*

(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 Board 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 Board legal counsel

during executive session is a matter of local Board discretion. The role of Board legal counsel during a hearing is to provide procedural and legal guidance as requested by the Chairperson or by panel members. Board 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 Board legal counsel believes an action or procedure is inconsistent with the Board's established procedures or may result in potential liability to the Board, 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 Board 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 believes that the testimony of that witness(es) is essential to ensure due process, his 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 11/88)*

Questions as to whether a member who has been called as a witness but who refuses to appear, or asserts that his 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 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. The Board shall, and any party (may/may not), at his own expense, have a court reporter present at the hearing, or may record* the proceeding, and, if transcribed, shall present a copy to the Professional Standards Administrator.** If the Board utilizes a court reporter in lieu of recording, the parties may not be prohibited from making their own recording. (See Form #E-9, Outline of Procedure for Ethics Hearing, **Part Six**, and Conduct of an Ethics Hearing, **Part Five.**) Ethics and arbitration hearings must be recorded, not appeals or limited procedural review proceedings. Boards shall prohibit parties from recording appeals or limited procedural review proceedings. *(Revised 11/14)*

The Board's recording or transcription 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.*** Any party to a hearing has the right to obtain a copy of the Board's official recording subject to payment of the Board's duplication costs, and any duplication will be conducted under the supervision of the Board. If the Board transcribes its official recording, any party to the hearing may obtain a copy of the transcript subject to paying the Board's transcription costs. If more than one party requests copies of the transcript, the Board's costs will be apportioned between or among the parties. *(Revised 11/14)*

If a party purchases a copy of the Board's official recording and subsequently has it transcribed at his own expense, that party must provide a copy of the transcript to the Board at no cost. After the Board has received a copy of the transcript (made from the Board's official recording), the Board shall make copies of the transcript available to any other party subject to their payment of the Board's duplication costs. *(Revised 11/10)*

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); Board staff and/or counsel, as deemed necessary; any court reporter, as requested; and, in any ethics proceeding, the REALTOR® principal, consistent with **Part Two,** Section 13(d) of this Manual. *(Adopted 4/93)*

## 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 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, unless

*It is recommended that recordings produced by the Board be maintained in the confidential professional standards files until a date when any sanction imposed by the Board has been completed.

**Videotaping of the proceedings shall not be permitted except by advance express consent of all parties and all members of the tribunal.

***Recordings or transcripts from ethics hearings may be used only by the parties for the purpose of appeals, and may not be introduced into evidence at any subsequent hearing. Any other 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 11/14)*

otherwise specified in this Manual. Notices sent by email shall include the association's request that delivery be acknowledged by the intended recipient within twenty-four (24) hours by return email. If receipt of the notice has not been acknowledged by the intended recipient within twenty-four (24) hours, the recipient will be contacted by telephone to confirm receipt and the recipient's confirmation will be noted in the file. 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 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 his 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 Board, any Board 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. 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 Board.

## 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 Board 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 Board 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 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 _____ (state) authorized to make the determination, as having violated a provision of the _____ (state) real estate law or a regulation of the _____ (state) 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 Committee, 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.

In any proceeding where the REALTOR® principal is not joined in the complaint as a respondent, the REALTOR® principal nonetheless retains the right to be present during the proceeding or may be required by the Hearing Panel to attend the hearing. At the request of the respondent, the REALTOR® principal may consult with or testify on behalf of the respondent. In all instances, the 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 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 Directors. Such rights shall accrue to both the former REALTOR® principal and the current REALTOR® principal if the respondent REALTOR® or REALTOR-ASSOCIATE® changes his firm affiliation either before or after a complaint is filed but before the Hearing Panel reaches its decision. *(Revised 11/14)*

NOTE: A Member Board cannot establish or maintain procedures whereby the REALTOR® principal would automatically be joined as a respondent in any ethics

*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, Board (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.

complaint filed against another REALTOR® nonprincipal or REALTOR-ASSOCIATE® licensed with the REALTOR® principal. *(Amended 4/95)*

(e) In the event the respondent named in any complaint alleging a violation of the Code of Ethics is involved in any criminal litigation arising out of the same facts and circumstances giving rise to the complaint alleging unethical conduct, the complaint shall not proceed to a hearing before the Professional Standards Committee but rather shall be held in abeyance until the pending criminal proceedings have been concluded.

In the event the respondent named in any complaint alleging a violation of the Code of Ethics is involved in 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 Committee, or on appeal, at the discretion of the Board of Directors, proceed to a hearing before a Hearing Panel of the Board's Professional Standards Committee. Board 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 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 civil litigation or regulatory or administrative proceeding may make consideration of the ethics complaint unnecessary

(3) the degree to which pending civil 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 Board Members

(5) the assurance of Board 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 Committee and referral of the complaint for hearing, it is subsequently discovered that 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. If after review of an ethics complaint by the Grievance Committee and referral of the complaint for hearing it is discovered that criminal proceedings related to the same transaction or event are pending, the complaint will be held in abeyance pending conclusion of the criminal proceedings. *(Adopted 5/11)*

## 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 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;* ** *(Revised 11/13)*

*$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)*

**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)*

(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 Board or Association in which they do not hold membership are subject to the Code of Ethics in that Board or 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 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)*

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. *(Revised 05/14)*

In addition to any discipline imposed, Boards and 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. Boards and 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)*

## Section 15. Selection and Appointment of the Grievance Committee

There will be a standing committee, known as the Grievance Committee, of at least _____ Board Members, in good standing, of whom at least a majority shall be REALTORS®. The members of the committee shall be appointed by the President, subject to confirmation by the Board of Directors, for staggered three (3) year terms. The committee shall annually select its own Chairperson and Vice Chairperson (or, alternatively, the President shall annually designate the Chairperson and Vice Chairperson of the committee). The Grievance Committee will hold regularly-scheduled meetings and/or review complaints/arbitration requests not later than forty-five (45) days after receipt of the complaint/arbitration request. *(Revised 05/15)*

In selecting members of the Grievance Committee, the President 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) law and regulations
- receptiveness to instruction/training
- other relevant professional or procedural training

The committee should have balanced representation of REALTORS®, REALTOR-ASSOCIATE®s, 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. It is suggested that, to the extent practical, members of the Grievance Committee not serve simultaneously on the Professional Standards Committee or on the Board of Directors to avoid conflict with the prohibition on serving on more than one (1) tribunal in the same matter. *(Revised 11/96)*

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

There shall be a Professional Standards Committee of at least _____ Board Members, in good standing, of whom at least a majority shall be REALTORS®, appointed by the President, subject to confirmation by the Board of Directors. Members of the Professional Standards Committee shall be selected to serve on Hearing Panels as required to hear matters of alleged unethical conduct by Board Members or to provide arbitration as requested. The committee shall annually select its own Chairperson and Vice Chairperson (or, alternatively, the President shall annually designate the Chairperson and Vice Chairperson of the committee).*

In selecting members of the Professional Standards Committee, the President 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-ASSOCIATE®s, 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. It is suggested that, to the extent practical, members of the Professional Standards Committee not serve simultaneously on the Grievance Committee or on the Board of Directors to avoid conflict with the prohibition on serving on more than one (1) tribunal in the same matter. *(Revised 11/96)*

*In Boards 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 Boards. In such Boards, 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)*

# Part Three — The Grievance Committee in Ethics Proceedings

## Section 17. Authority

The Grievance Committee is established in **Part Two,** Section 15 and **Part Eight,** Section 38 of this Manual, which provide in part:

> *There will be a standing committee, known as the Grievance Committee, of at least _____ Board Members in good standing, of whom at least a majority shall be REALTORS®. The members of the committee shall be appointed by the President, subject to confirmation by the Board of Directors, for staggered three (3) year terms. The committee shall annually select its own Chairperson and Vice Chairperson (or, alternatively, the President shall annually designate the Chairperson and Vice Chairperson of the committee).*

## Section 18. Function

The function of the Grievance Committee is clearly distinguishable from the function of the Professional Standards Committee. The Professional Standards Committee makes decisions on matters involving ethics or arbitration. *(Revised 05/15)*

The Grievance Committee receives ethics complaints and arbitration requests to determine if, taken as true on their face, a hearing is to be warranted. The Grievance Committee makes only such preliminary evaluation as is necessary to make these decisions. While the Grievance Committee 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 Committee does not mediate or arbitrate business disputes. The Grievance Committee will hold regularly-scheduled meetings and/or review complaints not later than forty-five (45) days after receipt of the complaint. *(Revised 05/15)*

In evaluating ethics complaints, the Grievance Committee may require a written response from the respondent(s) only if the committee is in need of additional information pertaining to the questions in Section 19, Grievance Committee's Review of an Ethics Complaint, and the complainant cannot provide such information. In such instances the respondent(s) should be provided with a copy of the ethics complaint and advised that failure to respond may be the basis for a charge of having violated Article 14 of the Code of Ethics. (See Form #E-4, Grievance Committee Request for Information [Ethics Complaint] and Form #E-5, Response to Grievance Committee Request for Information, **Part Six** of this Manual). In evaluating arbitration requests, the Grievance Committee may request a written response to the arbitration request from the respondent(s) only if the committee is in need of additional information pertaining to the questions in Section 42, Grievance Committee's Review and Analysis of a Request for Arbitration, and the complainant cannot provide such information. (See Form #A-5, Grievance Committee Request for Information [Arbitration Request] and Form #A-6, Response to Grievance Committee Request for Information, **Part Thirteen** of this Manual.) If no response is filed within the time allotted, the Grievance Committee shall make its determination as to whether an arbitration hearing should be scheduled based upon the information set forth in the arbitration request. *(Revised 11/15)*

When Grievance Committees 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. If these matters rise during a hearing, the hearing panel will address them at that time.

Dismissals of ethics complaints and arbitration requests by hearing panels can be appealed to the Board of Directors on the same bases as dismissals by the Grievance Committee.

Where such issues are considered at a pre-hearing meeting of the hearing panel, the chair will determine whether the parties may be present, and the extent to which their participation will be permitted. *(Revised 05/14)*

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

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

Upon receipt of an ethics complaint from the Professional Standards Administrator, the Chairperson of the Grievance Committee shall review the complaint. Any evidence and documentation attached will be considered only to the extent necessary to determine whether a complaint will be referred for hearing. The Chairperson may assign one or more members of the Grievance Committee to review the complaint and to make any necessary evaluation. The member(s) 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 complaint shall be provided to the

assigned members by the Professional Standards Administrator upon instruction from the Chairperson. *(Amended 11/15)*

The reviewer(s), if appointed, shall complete the assignment promptly and prepare a report and recommendation for the Grievance Committee. After reviewing the report, the Chairperson shall schedule a meeting of the Grievance Committee and may instruct the Professional Standards Administrator to provide members of the Grievance Committee with copies of the case file including the reviewer's report, if any. At the option of the Board, such file may be sent to the Grievance Committee members prior to the meeting or may be distributed at the meeting. *(Amended 4/94)*

B. *Consideration of an ethics complaint by the Grievance Committee*

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

(1) Is the ethics complaint acceptable in 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 complaint must be submitted in proper form. *(Revised 11/15)*

NOTE: If deemed appropriate by the Chairperson, a member of the Grievance 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 Grievance 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)*

(4) Is the respondent named in the complaint a member of the Board, and was the respondent a member of any Board at the time of the alleged offense?

(5) Is litigation or any government agency investigation or other action pending related to the same transaction or event?

(a) If criminal litigation is pending related to the same transaction or event, the Grievance Committee shall cease its considerations and instruct the Professional Standards Administrator to hold the file pending until such time as the criminal litigation is concluded. A report shall be made to the Board President. *(Revised 5/11)*

(b) If civil litigation is pending related to the same transaction or event, the Grievance Committee shall instruct the Professional Standards Administrator to have Board 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: *(Revised 5/11)*

(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 civil 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 Board Members

(5) the assurance of Board legal counsel that consideration of an ethics complaint would not deprive the respondent of due process

(6) Is there any reason to conclude that the Board 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 complainant may not be dismissed for lack of evidence if the allegation(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 Committee, and the allegations, if taken as true, could constitute a violation of the Code of Ethics, the Grievance Committee shall refer the complaint to the Professional Standards Committee for a hearing by an ethics Hearing Panel. *(Revised 11/15)*

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

If the Grievance Committee dismisses the complaint, the notice of dismissal shall specify the reason(s) for dismissing and the complainant may appeal the dismissal to the Board of Directors within twenty (20) days from transmittal of the dismissal notice using Form #E-22, Appeal of Grievance Committee (or Hearing

Panel) Dismissal of Ethics Complaint. 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 Committee's conclusion that the complaint should be dismissed. If the Grievance Committee deletes an Article or Articles from an ethics complaint, the complainant may also appeal to the Board of Directors using Form #E-22, Appeal of Grievance Committee (or Hearing Panel) Dismissal of Ethics Complaint. The Directors (or a panel of Directors or the Executive Committee) shall consider only the information and documents considered by the Grievance Committee, 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 at the Directors' next regularly scheduled meeting or a special meeting designated for that purpose, but no later than ten (10) days after the date of receipt of the appeal. The Directors' decision shall be transmitted to the parties within five (5) days from the date of the decision. *(Revised 11/15)*

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 Committee and referral of the complaint for hearing, it is subsequently discovered that 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. If after review of an ethics complaint by the Grievance Committee and referral of the complaint for hearing it is discovered that criminal proceedings related to the same transaction or event are pending, the complaint will be held in abeyance pending conclusion of the criminal proceedings. *(Adopted 5/11)*

# Part Four — The Ethics Hearing

## 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 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 or event, whichever is later. *(Revised 5/13)*

The procedures for processing complaints alleging violations of an Association's bylaws prohibiting harassment are available on-line at REALTOR.org, and those procedures do not involve an Association's Grievance Committee, Professional Standards Committee, or Board of Directors. *(Adopted 11/11)*

Suspension of filing deadlines: If the Board'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 Board President or the President's designee. 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 refer any complaint to the Chairperson of the Grievance Committee, who may designate one or more members of the Grievance Committee to review the complaint and report their findings to the Grievance Committee for its determination as to 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 Committee may, if it thinks it appropriate, send a copy of the complaint to the party complained of and require the respondent to furnish it with a response before making its determination only if the committee is in need of additional information pertaining to the questions in Section 19, Grievance Committee's Review of an Ethics Complaint, and the complainant cannot provide such information. (See Form #E-4, Grievance Committee Request for Information [Ethics Complaint] and Form #E-5, Response to Grievance Committee Request for Information, **Part Six** of this Manual). In such an instance, the party complained of shall be advised that failure to respond to the Grievance Committee's request may result in the complaint being forwarded for a hearing and may subject the respondent to a charge of having violated Article 14 for failing to submit pertinent facts to an appropriate tribunal. The function of the Grievance Committee 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 Committee is obligated to make a referral for hearing if the complaint is otherwise in acceptable form. The Grievance Committee 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 Committees 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. If these matters rise during a hearing, the hearing panel will address them at that time.

Dismissals of ethics complaints and arbitration requests by hearing panels can be appealed to the Board of Directors on the same bases as dismissals by the Grievance Committee.

Where such issues are considered at a pre-hearing meeting of the hearing panel, the chair will determine whether the parties may be present, and the extent to which their participation will be permitted. *(Revised 05/14)*

In the event the complaint is from a client, customer, or a member of the general public, and the Grievance Committee determines that the complaint is vague, overly general, does not allege violations of specific Articles, or is otherwise insufficient on its face, a member of the Grievance Committee may be assigned by the Chairperson of the Grievance 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 Committee 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) Upon its own motion the Grievance Committee may, and upon instruction of the Directors must, review the actions of any member when there is reason to believe that the member's conduct may be subject to disciplinary action, and, if the evidence of unethical conduct warrants a hearing, shall prepare a complaint, refer it to the Professional Standards Administrator, and designate one of its members to present the case at the subsequent hearing on its behalf as complainant. However, no member of the Grievance Committee shall serve as a member of the Hearing Panel. *(Revised 4/94)*

(c) Any action by the Grievance Committee dismissing the complaint as unworthy of further consideration may be appealed to the Board of Directors within twenty (20) days from transmittal of the dismissal notice using Form #E-22, Appeal of Grievance Committee Dismissal of Ethics Complaint. The materials and information which were available to the Grievance Committee when the committee made its decision will be presented to the Directors and considered with the appeal. The complainant and respondent do not have the right to appear at the hearing before the Directors. 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 Committee's conclusion that the complaint should be dismissed. Appeals of dismissals shall be heard at the Directors' next regularly scheduled meeting or a special meeting designated for that purpose, but no later than ten (10) days after receipt of the appeal. The Directors' decision will be transmitted to the parties within five (5) days from the date of the decision. If the Directors determine that the complaint or portions of the complaint were improperly dismissed by the Grievance Committee, they shall refer the complaint or the appropriate portions of the complaint to the Professional Standards Committee for a hearing. If referred for hearing, the Professional Standards Administrator shall at that time provide a copy of the response to the complainant if one had been submitted for review by the Grievance Committee. *(Revised 11/15)*

The President may appoint a panel of Directors, acting on behalf of the Board of Directors, to hear the appeal. Any appeal panel so appointed must be composed of at least five (5) Directors or a quorum of the Board of Directors, whichever is less. (Alternatively, the appeal may be heard by the Board's Executive Committee.) The decision of the appeal panel (or the Executive Committee) is final and binding and is not subject to further review by the Board of Directors. *(Revised 11/91)*

(d) If the complaint asserts multiple allegations of unethical conduct and the Grievance Committee 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 the Board of Directors using Form #E-22, Appeal of Grievance Committee Dismissal of Ethics Complaint. 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 Committee's dismissal. *(Revised 5/06)*

If the Grievance Committee feels that the respondent's alleged conduct may be the basis for a violation but that an inappropriate Article(s) has been cited, the Grievance Committee may amend the complaint by deleting any inappropriate Article(s) and 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 the Board of Directors requesting that the original complaint be forwarded to a Hearing Panel as filed using Form #E-22, Appeal of Grievance Committee Dismissal of Ethics Complaint. 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 Committee's dismissal. If the Grievance Committee determines that an Article(s) or an additional respondent(s) should be added to the complaint and the complainant will not agree to the addition, the Grievance Committee may file its own complaint and both complaints will be heard simultaneously by the same Hearing Panel. *(Revised 5/06)*

(e) If an ethics respondent resigns or otherwise causes membership in the Board to terminate after an ethics complaint is filed but before final action is taken by the Board of Directors, the hearing process shall suspend and 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 be held in abeyance until such time as the respondent rejoins the Board or it can be determined that the respondent holds membership in another Board. In any instance where a complaint is transferred to another Board, the complainant shall be so advised. *(Adopted 5/88)*

NOTE: Adoption of the following expedited ethics administration procedures (Sections 20 [f-q]), is at the option of each Member Board.

(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 Nine**); provided, however, that the complaint must be 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. *(Revised 11/97)*

(g) Any complaint alleging a violation of the Code of Ethics by a Board Member or by any other person subject to the disciplinary authority of the Board, will be scheduled for review by the Grievance Committee (or by a panel thereof) at the next regular meeting. It will be a matter of local determination whether responses will be sought or accepted in instances where these optional enforcement procedures are utilized. *(Revised 11/04)*

(h) If the Grievance Committee 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 Grievance Committee's initial conclusions. The complainant shall be free to refile an amended complaint.

(i) If the Grievance Committee 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 the Board of Directors using Form #E-22, Appeal of Grievance Committee (or Hearing Panel) Dismissal of Ethics Complaint. 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 Committee's conclusion that the complaint should be dismissed. *(Revised 5/06)*

(j) If the Grievance Committee concludes that the complaint alleges conduct which, if taken as true, could support a possible violation of the Code of Ethics, then staff or counsel, or in the absence of staff or counsel, the Grievance 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 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. *(Revised 05/14)*

(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 complaint, a hearing shall be scheduled in the manner provided for in Section 21, Ethics Hearing, beginning with the twenty (20) day deadline for the Professional Standards Committee chair to select a hearing date. *(Revised 11/14)*

(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 Grievance Committee Chairperson (or staff or counsel) within ten (10) days from transmittal of the complaint to the respondent. The Grievance Committee Chairperson (or staff or counsel) 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. *(Revised 11/14)*

(n) The panel of the Professional Standards Committee will meet in executive session. Neither the complainant nor the respondent will be present. Board 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 panel shall prepare a brief, concise decision which shall include 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 Board of Directors that the disciplined member be put on probation. Probation is not a form of discipline. *(Revised 11/14)*

(o) The decision of the panel will be filed with the Professional Standards Administrator the day of the hearing, or no later than forty-eight (48) hours following the hearing.* 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 Board of Directors, of this Manual. *(Revised 11/14)*

(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 Board 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)*

*The Hearing Panel's decision shall be considered final only when it is in writing and signed by members of the panel following their personal review and any review by legal counsel which may be required.

(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)*

## 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 Committee 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 a Board Member. *(Revised 11/14)*

The Professional Standards Administrator will inform the Professional Standards Committee Chair of the referral and the Chair shall select a hearing date no later than twenty (20) days after the Grievance Committee's decision to forward for hearing is final. *(Adopted 11/14)*

(b) The Professional Standards Administrator shall provide a copy of the reply (if any) to the complainant within fifteen (15) days from receipt of the response. The Professional Standards Administrator shall also provide copies of the complaint and reply (if any) to the Board President and Chairperson of the Professional Standards Committee, or notify each that no reply has been filed (unless the President and/or Professional Standards Chairperson indicate that they do not wish to receive copies or be so informed). *(Amended 11/14)*

(c) The Professional Standards Administrator shall, concurrently with the notification that the ethics complaint has been referred for hearing, transmit to each of the parties a list of the names of members of the Professional Standards Committee (See **Part One**, Section 2, (a) through (f), Qualification for Tribunal, **Part Six**, Form #E-6, Notice of Right to Challenge Tribunal Members, and Form #E-7, Challenge to Qualification by Parties to Panel Members). 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 Committee Chairperson shall appoint, from the names not successfully challenged by either party, three (3) or more members for a Hearing Panel, a majority of whom shall be REALTORS®. The Chairperson 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. If the complainant or respondent is a REALTOR-ASSOCIATE® or a REALTOR® other than a principal, at least one member of the Hearing 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 unless disqualified. A party will be deemed to have waived all objections to any person whose name is not challenged. 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 Board Members to serve as panel members. The Chairperson of the Professional Standards Committee (or the Hearing Panel itself) 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.* 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 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.**

(e) Complainants may withdraw their complaints at any time prior to the start of an ethics hearing. If a complaint is withdrawn by the complainant after the Grievance Committee determines the complaint requires a hearing, it will be referred back to the Grievance Committee 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 Committee determines a potential violation of the public trust may have occurred may the Grievance Committee proceed as the complainant. A complaint so withdrawn shall not be deemed a final determination on the merits. *(Amended 5/04)*

The complaint, and response, if any, shall be provided to Hearing Panel members prior to the hearing. Such time period shall be _____ (as determined by the Board of Directors) and shall be adhered to for all hearings. *(Amended 4/91)*

(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

*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.

**See **Part Five,** Conduct of an Ethics Hearing.

Committee relating to previously charged respondents). If an amended complaint 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 5/15)*

(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. Neither the complainant or the Hearing Panel may bar the other from making such amendments. Amendments to include Articles previously dismissed by the Grievance Committee 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 his 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. 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 Committee. This is based on the premise that the fundamental right and primary responsibility to bring potentially unethical conduct to the attention of the Grievance Committee 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. 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 11/15)*

(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 shall be referred back to the Grievance Committee. If the Grievance Committee determines that there is sufficient information for a Hearing Panel to consider (i.e., that there is clear, strong, and convincing proof), the complaint shall be amended to name the Grievance Committee as complainant and the hearing shall be continued to a new date. The respondent shall be provided with a copy of the amended complaint in such cases. *(Revised 5/12)*

If the Grievance Committee determines that there is insufficient information for a Hearing Panel to consider, the complaint shall be dismissed.

In the event the complaint scheduled for 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 an appropriate tribunal of the Board. *(Revised 5/12)*

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 shall be referred back to the Grievance Committee. If the Grievance Committee determines that there is sufficient information for a Hearing Panel to consider (i.e., that there is clear, strong, and convincing proof), the complaint shall be amended to name the Grievance Committee as complainant and the hearing shall be continued to a new date. The respondent shall be provided with a copy of the amended complaint in such cases. *(Revised 11/98)*

(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 5/99)*

(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 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.* The Hearing Panel may receive and consider any evidence it deems material and proper, including evidence of experts. Each party is responsible for the expenses of expert witnesses he calls. Parties to the ethics complaint shall be entitled to have counsel present at any hearing. Each party is responsible for the expenses of his respective counsel. *(Adopted 11/96)*

## 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 Board 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 Directors, the complainant, the respondent, Board legal counsel, and the Professional Standards Administrator. However, failure of confidentiality shall not invalidate the decision. The decision shall be filed with the Professional Standards Administrator the day of the hearing, or no later than forty-eight (48) hours following the hearing.** *(Revised 11/14)*

Any member of the Hearing Panel not voting with the majority may dissent from all or any portion of the findings or decision and may file a dissent in writing with the Professional Standards Administrator for consideration by the Directors at the same time the decision is considered. 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 Board of Directors for ratification will not include the names of the parties. The dissenting opinion should also be provided to 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 Board or 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 Directors 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)*

(b) The Professional Standards Administrator shall transmit a copy of the decision to the complainant and respondent within five (5) days after the Professional Standards Administrator has received the Hearing Panel's decision in writing, except that reasonable delay shall not invalidate the Board'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 the Grievance Committee. This is based on the premise that the fundamental right and primary responsibility to bring potentially unethical conduct to the attention of the Grievance Committee rests with the parties and others with firsthand knowledge. *(Adopted 11/96)*

## Section 23. Action of the Board of Directors

(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 President.*** *(Revised 11/14)*

(b) If no appeal is filed, the Directors will adopt the Hearing Panel's recommendation and issue its order accordingly (at its next regularly scheduled meeting or a special meeting designated for that purpose, but no later than thirty [30] days after the date the Hearing Panel's decision was transmitted to the parties), unless: *(Revised 11/14)*

(1) the Directors, 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 Directors are concerned with the appropriateness of the recommendation of sanction, in which case the Directors 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 Directors' concerns regarding the proposed discipline; or

(3) the Directors conclude the findings of fact do not support a violation of the Code of Ethics, in which case the complaint will be dismissed.

In such matters, advice of Board legal counsel should be requested and considered. *(Revised 11/14)*

(c) All appeals must be in writing and must be accompanied by a deposit with the President in the sum of $_____ (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

*Such hearings should be conducted according to **Part Five,** Conduct of an Ethics Hearing.

**The Hearing Panel's decision shall be considered final only when it is in writing and signed by members of the panel following their personal review and any review by legal counsel which may be required.

***Appeal is provided only from decisions rendered in hearings of alleged unethical conduct, and not from the decision of an arbitration panel. However, the Board of Directors reserves the right to review procedures of any ethics or arbitration hearing to ensure compliance with the governing documents of the Board 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.

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 him of the opportunity for a full and fair hearing. The written request for appeal shall be reviewed within ten (10) days after the appeal was transmitted to the Association by the Board President or the President's designee only for the purpose of determining whether the appeal states any legitimate basis for consideration by the Board of Directors. If determined to be insufficient, it shall be returned to the appellant accompanied by an explanation and a request for additional detail to be received by the Board within ten (10) days of notice. 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 Board of Directors for their consideration. All requests for appeals received by the Board must be considered by the Board of Directors, and only those bases and issues raised in the written request for appeal may be raised by the appellant in any hearing before the Board of Directors. *(Amended 11/14)*

(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 to the other party, notify all parties at least ten (10) days in advance of the time and place of hearing by the Directors (including challenge Forms #E-6 and #E-7, **Part Six** of this Manual), and bring the matter before the Directors for hearing at their next regular meeting or at a special meeting called by the Professional Standards Administrator for the purpose, but no later than thirty (30) days after the date of receipt of the appeal. The Professional Standards Administrator shall provide to the Directors in advance of the hearing, copies of the complaint, response, the Hearing Panel's findings of fact and recommendation of discipline, if any, the President's correspondence, if any, and the appeal request or amended appeal request, if any. The Directors shall be advised that the information is confidential and not to be discussed with others at any time. *(Revised 11/14)*

(e) At the hearing before the Directors, 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 Directors 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 transcript or summary. *(Amended 5/09)*

(f) The Directors shall transmit their written decision within five (5) 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 Directors will dismiss the matter if they conclude the findings of fact do not support the Hearing Panel's conclusion as to unethical conduct. The Directors, 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 Directors are concerned with the appropriateness of the recommendation of sanction, they 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 Directors' concerns regarding the proposed discipline. In such matters, the advice of Board legal counsel should be requested and considered. *(Amended 05/15)*

(g) If the recommendation of the Hearing Panel is adopted, the money deposited by the appellant shall pass into the general treasury of the Board. If the recommendation is rejected, the deposit shall be returned to the party who made the deposit. If the recommendation is modified, the Directors shall determine the disposition of the deposit.

(h) If the recommendation of the Hearing Panel is modified, or if the charge is dismissed, the Directors shall state their reasons in writing, but failure to do so shall not invalidate the decision of the Directors. Any Director not concurring with the decision of the other Directors shall be entitled to file a dissenting opinion which will be provided to the parties and to the Hearing Panel. Under no circumstances may the discipline exceed that recommended by the Hearing Panel. *(Revised 11/98)*

(i) The decision of the Directors 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 Directors, the President shall disseminate to the complainant, the respondent, the Board of Directors, the Chairperson and members of the Hearing Panel, Board legal counsel, the President of any other Board in which the respondent holds membership, and any governmental agency as directed by the Board of Directors such notice of the action as the President deems appropriate under the circumstances provided, however, that the nature, form, content, and extent of the notice shall be specifically approved by Board legal counsel prior to dissemination. Board Members, other than those specified, shall be notified only in respect to suspension or expulsion of membership of the Board Member unless the optional procedures established at the end of this Section have been adopted locally or unless notification is required to ensure compliance with the Board'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 5/09)*

Final ethics decisions holding REALTORS® in violation of the Code of Ethics must be forwarded to the state real estate licensing

authority 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, willful discrimination, or fraud resulting in substantial economic harm. *(Adopted 11/99)*

NOTE: Boards are encouraged to 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 Committee, 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 Board of Directors 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 Board of Directors to explain the failure to comply. Absent an explanation acceptable to the Directors, 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 Board, and the notice of the Directors 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 Directors, 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 Directors 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. *(Adopted 5/87)*

(m) Appeals to the Board of Directors may be heard by a panel of Directors appointed by the President for that purpose (or, alternatively, by the Board's Executive Committee). Five (5) Directors or a quorum of the Board of Directors, whichever is less, shall constitute such an appeal panel, which shall act on behalf of the Board of Directors. The decision of the appeal panel (or Executive Committee) shall be final and binding and shall not be subject to further review by the Board of Directors. *(Revised 11/91)*

NOTE: Adoption of the following optional procedures to permit publication of the names of Code of Ethics violators after a second violation occurs within a three (3) year period is at the discretion of each Member Board. These procedures may not be utilized unless the Member Board has adopted them.

(n) If the respondent is found in violation of the Code of Ethics a second time within three (3) years, the respondent's name, the fact that the respondent has been found in violation of the Code of Ethics, the Article(s) violated, and the discipline imposed will be published in the official communication vehicle of the Board. Such publication shall not include the name of the firm the respondent is (or was) licensed or affiliated with. 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)*

## Section 24. Initial Action by Directors

If the complainant alleges that a member has improperly refused to submit a dispute to arbitration (or mediation if required by the Board), the complaint shall not be referred to the Grievance Committee or a Hearing Panel, but shall be brought before the Board of Directors 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 Directors to decide will be whether the respondent has failed to submit an arbitrable matter to arbitration or mediation in violation of Article 17. *(Revised 11/11)*

There can be no charge that there has been a refusal to arbitrate (or mediate if required by the Board) until the Grievance Committee determines the matter is arbitrable and of a mandatory nature and the respondent fails to submit to arbitration or mediation before the Board. *(Revised 11/11)*

Upon determination that the member has refused to arbitrate or mediate a properly arbitrable matter, the Board of Directors 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 Board of a judicial decision in a petition for declaratory relief filed by the Board to confirm the propriety of its action. *(Revised 11/11)*

On the other hand, if the complaint against the member is that, having properly submitted a dispute to arbitration or mediation, the member has refused to abide by the award or the resulting agreement, such refusal should not be referred to the Grievance Committee as a violation of the Code of Ethics unless it reflects

an established pattern or practice of noncompliance with the commitment to arbitrate or mediate. 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.* *(Revised 11/11)*

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

If the Board of Directors 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 Board for declaratory relief declaring that the discipline proposed violates no rights of the member.**

*Refer to Appendix III to **Part Ten** for the rationale for use of judicial enforcement of arbitration awards when a Board Member refuses to pay an award in arbitration.

**Refer to Rationale of Declaratory Relief Procedure provided in Appendix IV to **Part Four.**

# Appendix I to Part Four

## 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 Board or 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. Any member of a Hearing Panel dissenting can write a separate opinion that will be provided to the parties and will be reviewed by the Board of Directors together with the Hearing Panel's decision.

The decisions of ethics Hearing Panels are actually recommendations to the Board of Directors. 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 the Board of Directors for their review and ratification. The Directors are 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 Directors can be concerned about the adequacy of the procedures by which a hearing was conducted if no appeal is filed. Some argue the Board of Directors 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 Board of Directors because the Directors don't have the benefit of the in-person testimony and evidence the Hearing Panel had.

Questions arise as to how the Directors 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 Directors' 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 the Directors.

First, the Board of Directors 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 Directors' 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 Directors 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 Directors 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 Directors 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 Directors need to refer to the transcript or the recording of the hearing to be legitimately concerned.

Last, in some cases, Directors 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 Directors 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

## 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

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

### Nature of Complaints

REALTORS® and REALTOR-ASSOCIATE®s recognize their social responsibility to conform their business conduct to the NATIONAL ASSOCIATION OF REALTORS®' Code of Ethics. All Member Boards have a Professional Standards Committee which is charged with enforcement of the Code of Ethics in accordance with the procedures set forth in the Board's bylaws. Equal professional service without regard to race, color, religion, sex, handicap, familial status, national origin, sexual orientation or gener 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 Board. *(Revised 11/13)*

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, handicap, familial status, national origin, sexual orientation, or gender identity by REALTORS® and REALTOR-ASSOCIATE®s. 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 Board Members. *(Revised 11/13)*

### 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 Board'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 Board.

### Resolution of Complaints

The Board's Professional Standards Committee must act on the complaint in accordance with procedures set forth in the Board's bylaws. In addition, no matter what the basis for the complaint, 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 Board'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 Board 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 Board 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 Board might take a "meaningless act" (such as expulsion from the Board of a member who has already lost his license). However, the Board 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-ASSOCIATE®s 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, handicap, 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, handicap, 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-ASSOCIATE®s 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.

# Appendix IV to Part Four

## 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 Board of Directors 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 Board 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 Board 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.

Moreover, whenever a declaratory judgment proceeding is contemplated by a Board, it is recommended that a copy of the complaint be submitted to the State Association prior to filing. The purpose of such submission is threefold: first, to permit the State Association to acquaint the Board with any other relevant precedents; second, to advise the Board of any problems perceived in the complaint or issues presented; and third, to acquaint the State Association, and through it the NATIONAL ASSOCIATION OF REALTORS®, with controversies involving issues having state or national implications and requiring state or national involvement.

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

## Ethics Hearing Checklist

(1) **Complaint filed.** The Professional Standards Administrator receives a complaint alleging unethical conduct on the part of a Board Member.

(2) **Complainant.** An ethics complaint may be filed by any person, whether a Board Member or not.

(3) **Time limitation.** An ethics complaint must be filed within one hundred eighty (180) days after the facts constituting the matter could have been known 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 5/11)*

Suspension of filing deadlines: If the Board'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 Board President or the President's designee. 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 local Member Board, 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 Board, except the Grievance Committee is not precluded at any time from investigating, at its discretion, any written or oral complaint against a member, or from reviewing any information which may come to its attention concerning a Board Member. *(Amended 4/94)*

(5) **Complaint to Grievance Committee.** When a written complaint is received, the Professional Standards Administrator refers it to the Chairperson of the Grievance Committee for preliminary review by the Grievance Committee 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, or (3) refer it to the Professional Standards Administrator to arrange a hearing by an ethics Hearing Panel of the Professional Standards Committee. *(Amended 4/94)*

If the complaint is from a client, customer, or a member of the general public, and the Grievance Committee determines that the complaint is not properly framed (or is ambiguous or otherwise insufficient), the Grievance Committee Chairperson may assign a member of the Grievance Committee to assist the complainant in preparing a proper complaint. In such instances, the Grievance 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 Grievance Committee member acting in this capacity shall not participate in any consideration of the complaint by the Grievance Committee. *(Revised 11/14)*

If the complaint asserts multiple allegations of unethical conduct and the Grievance Committee 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 Committee determines that the complaint cites an inappropriate Article or Articles of the Code, the Grievance Committee may amend the complaint by deleting the inappropriate Article(s) and adding the appropriate Article(s) and/or individual(s). However, if an Article or Articles or an additional respondent(s) is added to the complaint by the Grievance Committee and the complainant does not agree with the addition, the Grievance Committee may file its own complaint citing those Article(s) and/or individual(s), and both complaints would be heard simultaneously by the same Hearing Panel. *(Revised 11/91)*

(6) **Preliminary review by Grievance Committee.** The Grievance Committee may render its determination on the basis of the complaint received, or it may, at its discretion, send a copy of the complaint to the party complained of and require him to furnish a response before making its determination as to the proper disposition of the complaint. 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. Failure to respond to the Grievance Committee's request may result in the complaint being forwarded for a hearing and in a possible charge that the respondent has not complied with the obligations of Article 14 of the Code of Ethics. *(Revised 11/13)*

(7) **No Grievance Committee "hearings".** The Grievance Committee's 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 Committee.** The Grievance Committee 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 Committee.** On its own motion, the Grievance Committee may— or, upon instruction from the Board of Directors, must review the actions of any member when there is reason to believe that the member's conduct may be subject to disciplinary action. *(Amended 4/94)*

(10) **Grievance Committee as complainant.** If review by the Grievance Committee, acting on its own motion or upon instruction from the Board of Directors, reveals evidence of potentially unethical conduct sufficient to warrant a hearing, the Grievance Committee prepares a complaint and refers it to the Professional Standards Administrator to arrange an ethics hearing. The Chairperson of the Grievance Committee or a member of the Grievance Committee designated by the Chairperson will act as the complainant at the hearing before a Hearing Panel of the Professional Standards Committee (the Grievance Committee as complainant is acting on behalf of the Board of REALTORS®). *(Amended 4/94)*

(11) **Dismissal of complaint by Grievance Committee subject to appeal.** The dismissal of a complaint or any portion of a complaint by the Grievance Committee may be appealed by the complainant to the Board of Directors within the time specified in the Board's procedures using Form #E-22, Appeal of Grievance Committee (or Hearing Panel) Dismissal of Ethics Complaint. 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 Committee's conclusion that the complaint should be dismissed. In considering the appeal, the Directors should consider only the same information that was considered by the Grievance Committee 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. *(Revised 5/06)*

The appeal may be heard by a panel of Directors appointed by the President. Any appeal panel must be composed of at least five (5) Directors or a quorum of the Board of Directors, whichever is less. (Alternatively, the appeal may be heard by the Board's Executive Committee.) The decision of the appeal panel (or Executive Committee) is final and binding and is not subject to further review by the Board of Directors. *(Revised 11/91)*

(12) **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 he may file a written reply to the complaint within the time period specified in the Board's procedures.

(13) **Late filing of reply.** A Hearing Panel, at its discretion, may accept late filing of a reply to a complaint.

(14) **Resignation/termination of membership.** If the respondent resigns or otherwise terminates membership in the Board after an ethics complaint is filed but before final action is taken by the Board of Directors, the hearing process suspends and the Professional Standards Administrator forwards the complaint 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 if the respondent holds membership in another Board, the complaint is held in abeyance until such time as the respondent rejoins the Board or it can be determined that the respondent holds membership in another Board. In any instance where a complaint is transferred to another Board, the Board notifies the complainant. *(Adopted 5/88)*

(15) **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-Board Member complainant should generally not be required to supply multiple copies. This could be construed as overly burdensome by the public.

(16) **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 Board President, and (3) the Chairperson of the Professional Standards Committee, or notify each that no reply has been filed. *(Revised 11/14)*

(17) **Appointment of Ethics Hearing Panel.** At the same time, the Professional Standards Administrator shall transmit a list of names of the members of the Professional Standards Committee to the parties 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 Committee Chairperson shall select, no later than five (5) days after challenge forms are due, a Hearing Panel of three (3) or more members, a majority of whom shall be REALTORS®. The Chairperson 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)*

(18) **Time and place of hearing.** The Chairperson of the Professional Standards Committee, or the panel itself, or its 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 chair 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 _____ (as determined by the Board of Directors) and shall be adhered to for all hearings. *(Revised 04/14)*

(19) **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)*

(20) **Withdrawal of complaint.** Complainants may withdraw their complaints at any time prior to the start of an ethics hearing. If a complaint is withdrawn by the complainant after the Grievance Committee determines the complaint requires a hearing, it will be referred back to the Grievance Committee 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 Committee determines a potential violation of the public trust may have occurred may the Grievance Committee proceed as the complainant. A complaint so withdrawn shall not be deemed a final determination on the merits. *(Amended 5/04)*

(21) **Amendment of complaint.** The complainant can amend the complaint at any time prior to hearing. 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 5/13)*

(22) **Amendment during a hearing.** At any time during a hearing, the complainant or the Hearing Panel may amend the complaint. Amendments to include Articles previously dismissed by the Grievance Committee 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 his right to an adjournment should be read into the record, and the hearing will proceed on the basis of the amended complaint. *(Amended 11/93)*

(23) **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.

(24) **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*. 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 Committee 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 should be referred back to the Grievance Committee for amendment to name the Grievance Committee as complainant if the Grievance Committee determines that there is sufficient information for a Hearing Panel to consider (i.e., clear, strong, and convincing proof). *(Amended 11/98)*

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 Board. *(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 shall be referred back to the Grievance Committee. If the Grievance Committee determines that there is sufficient information for a Hearing Panel to consider (i.e., clear, strong, and convincing proof), the complaint shall be amended to name the Grievance Committee as complainant and the hearing shall be continued to a new date. The respondent shall be provided with a copy of the amended complaint in such cases. *(Revised 11/98)*

(25) **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 Directors 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)*

(26) **When Hearing Panel decision is final.** The Hearing Panel decision shall be considered final only when signed, reviewed by legal counsel, and filed with the Professional Standards Administrator. The decision and recommendation of the sanction, if any, shall be a recommendation to the Board of Directors and shall be implemented only upon review and approval by the Board of Directors.

(27) **Dissenting opinion.** Any member of the Hearing Panel may file a written dissent with the Professional Standards Administrator to be provided initially to the parties and ultimately to the Board of Directors with the decision and recommendation of the Hearing Panel. *(Amended 11/98)*

(28) **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.

(29) **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 Board's procedures after receipt from the Hearing Panel in its final form. However, reasonable delay will not invalidate the procedures of the Board.

(30) **Right of appeal.** Either the complainant or the respondent in an ethics hearing may file an appeal with the President 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)*

(31) **Prerogatives of Directors in respect of Hearing Panel recommendation.** If there is no appeal by any party to an ethics hearing, the Directors must adopt and direct implementation of sanction, except if the Directors 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 Directors are concerned with the appropriateness of the recommended sanction, they may refer the decision back to the original Hearing Panel for further consideration and recommendation. The Directors 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.

(32) **Appeal deposit.** Any appeal to the Board of Directors 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)*

(33) **Notice of appeal to Directors.** Any appeal to the Board of Directors shall be noticed properly to the parties and to the Directors. The written request for appeal shall be reviewed by the Board President or the President's designee only for the purpose of determining whether the appeal states any legitimate basis for consideration by the Board of Directors. All requests for appeals received by the Board must be considered by the Board of Directors, and only those bases and issues raised in the written request for appeal may be raised by the appellant in any hearing before the Board of Directors. *(Amended 11/94)*

The matter will be heard at the next regularly scheduled meeting of the Directors or at a special meeting called for the purpose of hearing the appeal, but no later than thirty (30) days after the date of receipt of the appeal, giving a minimum of ten (10) days notice. *(Amended 11/14)*

The appeal may be heard by a panel of Directors appointed by the President. Any appeal panel must be composed of at least five (5) Directors or a quorum of the Board of Directors, whichever is less. (Alternatively, the appeal may be heard by the Board's Executive Committee.) The decision of the appeal panel (or Executive Committee) is final and binding and is not subject to further review by the Board of Directors. *(Revised 11/91)*

(34) **Information provided to Directors.** The Directors 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 President's correspondence, if any. All documents provided to the Board of Directors are confidential, and no Director shall discuss materials received except in an appeal meeting of the Board of Directors. However, a breach of confidentiality shall not invalidate the decision of the Board of Directors.

(35) **Information considered by Directors in an appeal proceeding.** An appeal to the Board of Directors 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 Board of Directors.

(36) **Disposition of deposit money.** The deposit filed with the petition for appeal will accrue to the general treasury of the Board if the Directors confirm the Hearing Panel's decision and recommendation. The deposit will be returned to the appellant if the Board of Directors' decision is to dismiss the charge. If the Hearing Panel's decision and recommendation is modified, the Directors will determine the disposition of the deposit.

(37) **Directors' decision in writing.** The Directors' decision will be in writing, and any Director may file a dissenting opinion. 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, including the dissenting opinion. *(Revised 11/14)*

(38) **Directors' decision final.** The Directors' decision in respect of any professional standards ethics proceeding shall be final and binding upon the parties. No appeal procedure is provided by the State Association or the NATIONAL ASSOCIATION OF REALTORS®.

(39) **Notice of final action.** When the decision is final, a notice of the action shall be provided by the President to the following: (1) complainant, (2) respondent, (3) Board of Directors, (4) Hearing Panel, (5) Board legal counsel, (6) the President of any other Board in which the respondent holds membership, and (7) any government agency as may be directed by the Board of Directors, based on advice of legal counsel. *(Revised 5/88)*

Such notice shall be provided as the President deems appropriate under the circumstances provided the proposed notice has been reviewed and approved by Board legal counsel. Other Board Members shall be notified only of suspension or expulsion of a member.

(40) **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 Board of Directors for their consideration. If additional penalties are contemplated, the member should have the opportunity to appear before the Board of Directors and explain the failure to comply. The Board of Directors, if not satisfied with the explanation, may impose additional sanctions (including suspension or expulsion) in a manner consistent with the procedures in the Board's *Code of Ethics and Arbitration Manual*.

(41) **Declaratory judgment.** If the Directors believe a member may resort to litigation rather than abiding by the discipline imposed, the Directors should consider making the imposition of discipline contingent upon entry of a judgment by a court of competent jurisdiction asserting that the Board's action will not violate any of the member's rights.

(42) **Refusal to arbitrate.** If a member refuses to arbitrate, where arbitration is not precluded by law, the matter will not be referred to the Grievance Committee for a hearing by an ethics Hearing Panel, but shall be referred to the Board of Directors, and the Directors shall consider only the sole fact of whether a Board Member has refused to arbitrate a properly arbitrable matter. Upon an affirmative finding of refusal to arbitrate, the Directors may order sanction as deemed appropriate in accordance with the procedures of the Board.

(43) **Refusal to abide by an award in arbitration.** There should be no ethics hearing in the first instance of such a refusal by a Board Member, but the Board 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 Board of Directors may, at its discretion, reimburse the award recipient for legal fees incurred. 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 Board is not precluded from considering the action of the individual as an alleged violation of Article 17 of the Code of Ethics.

# Summary of Administrative Time Frames — Ethics Proceedings

| Situation | Time Table |
|---|---|
| **Grievance** | |
| Complaint filed | 180 days . . . |
| Response required/# of days to submit | 15 days from request for response being transmitted if response solicited |
| Complainant's appeal to Directors | 20 days from transmittal of dismissal notice |
| Directors review | Next meeting |
| **Professional Standards** | |
| Respondent provides response | 15 days from request for response being transmitted |
| Challenge forms | 10 days to challenge from date forms transmitted to parties |
| Panel named | 5 days after challenge forms are due |
| Hearing notice | 21 days in advance of hearing |
| Complaint/response to panel | Board option |
| Notice of witnesses and counsel | 15 days before hearing to Board 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 |
| Transmit decision | 5 days after decision filed with staff, except if it is necessary to obtain association counsel's review |
| **Appeal** | |
| Appeal filed | 20 days after decision transmitted |
| Preliminary review | Within 10 days after appeal transmitted to association |
| Amendment received | Within 10 days of notice |
| Appeal heard | Next/special meeting giving 10 days minimum notice, but not later than 30 days after receipt of appeal |

*(Revised 11/14)*

# 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)

Numerous questions have arisen with respect to what is required by this policy and what approaches/techniques are available to Boards/Associations in meeting these standards. The following is provided by the National Association's Professional Standards Committee to provide assistance. The models that are described below do not exclude other approaches.

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)*

It is equally important to understand that there are a variety of ways that these aggregate totals can be realized. The following are offered for the consideration of Boards and Associations.

**Limited Regionalization.** Under this approach, two or more Boards retain their respective Grievance Committees to receive and review ethics complaints and arbitration requests. Similarly, requests for procedural review (arbitration) and appeals (ethics) would be considered by the Board of Directors (or a panel thereof) of the Board that had received and initially processed the complaint or arbitration request. Only the Professional Standards Committees of the Boards would be consolidated so that hearing panelists would be drawn from an expanded "pool".

**Comprehensive Regionalization.** Similar to limited regionalization except that Grievance Committees and Boards of Directors are consolidated for Code enforcement activities. Thus, if three Boards were party to a comprehensive regionalization agreement, they would have only one Grievance Committee and one Professional Standards Committee among them. For obvious reasons, each Board would retain its own Board of Directors but Directors would be "pooled," and panels drawn from the "pool," when engaged in Code enforcement activities other than imposition of discipline.

**Regionalization with State Association involvement.** If available, Boards may enter into agreements with their State Association of REALTORS® under which the local Board retains primary responsibility for providing hearing panelists but the State Association agrees to augment these efforts by providing members of the State Association's Professional Standards Committee to serve on Hearing Panels on an "as needed" basis.

(NOTE: Regionalization efforts of the types described above may appropriately include Boards in different states.)

**State-wide Regionalization.** Under this approach, ethics complaints and arbitration requests are initially received and reviewed by the State Association's Grievance Committee; hearings are conducted by panels of the State Association's Professional Standards Committee; and appeals and requests for procedural review are considered by the State Association's Board of Directors. Where appropriate, these committees may be divided into regions within the state to carry out their enforcement responsibilities.

**Reciprocal enforcement agreements.** Under this approach, two or more Boards agree to "exchange" enforcement responsibilities. For example, a complaint filed against a member of Board A would be reviewed by the Grievance Committee of Board B; the hearing would be conducted by a Hearing Panel of Board B's Professional Standards Committee; and any appeal or request for procedural review would be

conducted by the Board of Directors of Board B. Imposition of discipline would remain that of Board A's Board of Directors. Reciprocal agreements may be between Boards in different states.

While State Associations are not required to enter into agreements to support and assist local Boards in their Code enforcement efforts, the National Association's Professional Standards Committee strongly encourages their active involvement in these efforts.

# Appendix VII to Part Four

## 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-ASSOCIATE®*s may be judged.* REALTORS® *and* REALTOR-ASSOCIATE®*s 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-ASSOCIATE®*s 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®, 2015 edition).*

Local Boards 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 Boards 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, Boards 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 Boards 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 Manual.

- 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.

- 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. Two contrasting examples are provided to illustrate these points.

**Example 1:** REALTOR® A, who had recently earned her real estate license, was found to have violated Article 12 for advertising a listed property without disclosing her status as either a REALTOR® or as a real estate licensee. At the hearing, REALTOR® A acknowledged her 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 she 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 2:** REALTOR® B, who had recently received his real estate license, was found to have violated Article 4 for failing to disclose to his seller-client that the purchaser that REALTOR® B had procured was, in fact, REALTOR® B's wife. 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 his client a key fact that might have influenced the client's decision to accept the offer from REALTOR® B's wife. Based on the seriousness of the violation and REALTOR® B's conscious disregard for his disclosure obligation, the Hearing Panel recommended a $5,000 fine and retaking the ethics orientation required for new members. *(Revised 11/13)*

## Disciplinary Guidelines

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. Panels will want to consider that many violations occur 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. 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.

Factors Hearing Panels should consider in determining appropriate discipline include, but are not necessarily limited to:

(1) The nature of the violation.

(2) 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?

(3) Was the violation inadvertent or unintentional or, conversely, was it the result of knowing disregard for the Code's obligations?

(4) How much real estate experience did the violator have? Did he, or should he, have known better?

(5) 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?

(6) Are there mitigating or extenuating circumstances that should be considered in determining appropriate discipline?

(7) Did the violator acknowledge the violation? Did the violator express remorse or contrition?

(8) Are there other factors that ought to be considered?

With these questions in mind, panels can be guided by (but are not bound by) the following guidelines which may be modified locally at the discretion of each local Board.

***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 11/13)*

***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 11/13)*

***First violation example #3*** (or first violation within three [3] years):
- violation considered very serious, 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 *(Revised 11/14)*

***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 11/14)*

***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 11/14)*

***Repeat violations example #3*** (within three [3] years):
- violation considered very serious, 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 *(Revised 11/13)*

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. *(Revised 5/14)*

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. *(Revised 11/13)*

**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.

# 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 effect 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 2014 REALTORS® Code of Ethics)

"REALTORS® shall submit offers and counter-offers 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 counter-offers 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 counter-offers 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 counter-offers will be presented, how counter-offers will be negotiated, and whether a counter-offer 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 counter-offers 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 counter-offers 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 counter-offers 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

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 the local Board or Association of REALTORS®. In addition to processing formal ethics complaints against its REALTOR® members, many boards and associations offer informal dispute resolving processes (e.g., ombudsman, meditation, 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-ASSOCIATE®s 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.
- Boards and 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 REALTOR®'s membership can be suspended or terminated. 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 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

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 or within one hundred eighty (180) days after the conclusion of the transaction or event, whichever is later (unless the Board'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.
- The local Board or Associations 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 the local Board or Association's Grievance Committee. Their job is to review complaints to determine if the allegations made, if taken as true, might support a violation of the Article(s) cited in the complaint.
- If the Grievance Committee dismisses your complaint, it does not mean they 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 Committee 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 the Board of Directors of the local Board or Association of REALTORS®.

## Preparing for the Hearing

- Familiarize yourself with the hearing procedures that will be followed. In particular you will want to know about challenging potential panel members, your right to counsel, calling witnesses, and the burdens and standards of proof that apply.

- 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 the local Board or Association of 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, the local Board or Association of REALTORS® can share options for dispute resolution, including the procedures and forms necessary to file an ethics complaint. *(Revised 11/15)*

# Appendix XI to Part Four

## Ethics Mediation

### Adoption of ethics mediation procedures

Ethics mediation is a process that may be adopted at the discretion of boards and associations. Ethics mediation will require adoption of these procedures (either verbatim or as amended locally) by action of the local board of directors (or as otherwise provided in the local bylaws).

### Appointment of mediators

The chair of the Professional Standards Committee and/or the Board President will select one or more ethics mediators to act on behalf of the committee. Mediators should be thoroughly familiar with the Code of Ethics, state real estate regulations, and current real estate practice.

### Complaints that may be mediated

Complaints brought by the public or by other REALTORS® may be mediated under these procedures. Complaints brought by the Grievance Committee and complaints alleging a violation of the public trust (as defined in Article IV, Section 2 of the NAR Bylaws) may not be mediated.

### Initiation of ethics mediation procedures

The ethics mediation process can be initiated in two ways. First, through filing a written ethics complaint. Second, through a personal, telephone, or written inquiry or complaint generally alleging potentially unethical conduct but which (a) is not filed on the appropriate form or (b) is not specific as to which Article(s) may have been violated.

Where a written ethics complaint in the appropriate form is received, it will be reviewed by the Grievance Committee so a determination can be made whether a possible violation may have occurred or, alternatively, whether the complaint should be dismissed as not requiring a hearing. Where an informal inquiry or general letter of complaint that does not allege a potential violation of the public trust is received, it will not be reviewed by the Grievance Committee, but will be referred to an ethics mediator.

### Participation in ethics mediation is voluntary

Persons inquiring about the process for filing ethics complaints will be advised that ethics mediation is available as an alternative to a formal ethics hearing provided that all parties agree to participate, and also be advised they may decline or withdraw from mediation and have their complaint considered at a formal ethics hearing. Similarly, REALTORS® complained about have the right to decline or withdraw from mediation and to have complaints against them considered at a formal ethics hearing.

### Referral of complaints to the mediator

When either a written ethics complaint in the appropriate form is reviewed by the Grievance Committee and the Grievance Committee concludes that a hearing is warranted, or when a general letter of inquiry or complaint is received, and the matter(s) complained of do not involve a possible violation of the "public trust", the materials received will be referred to the ethics mediator who will contact the parties to schedule a meeting at a mutually agreeable time. "Public trust" refers to misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm.

During the mediation session the mediator will encourage all parties to openly and candidly discuss all issues and concerns giving rise to the inquiry or complaint, and to develop a resolution acceptable to all of the parties. In the event the mediator concludes that a potential violation of the public trust may have occurred, the mediation process shall be immediately terminated, and the parties shall be advised of their right to pursue a formal ethics complaint, to pursue a complaint with any appropriate governmental or regulatory body, to pursue litigation, or to pursue any other available remedy.

### Nature of the mediated resolution

The mediator and the parties have considerable latitude in fashioning a mutually acceptable resolution. Resolutions can include, but are not limited to, payment of disputed funds, repairs or restoration of property, written or oral apology, or acknowledgement of a violation of the Code of Ethics. In cases where a REALTOR® acknowledges that the Code has been violated, that admission may be sufficient to resolve the matter or, alternatively, the parties may agree that discipline should be imposed. The discipline may, at the agreement of all parties, include any of the forms of discipline established in the *Code of Ethics and Arbitration Manual* and may also include payment of monies to the complainant or to a third party. Also, the parties may agree that the complainant will withdraw a complaint or agree not to file a formal, written ethics complaint in return for the respondent's action or acknowledgement. Again, any discipline imposed must be agreed to by all of the parties.

### Referrals to the Grievance Committee or to state regulatory bodies

Ethics mediators cannot refer concerns they have regarding the conduct of any party to mediation to the Grievance Committee, to the state real estate licensing authority or to any other regulatory body. This prohibition is intended to ensure impartiality and avoid the possible appearance of bias. Mediators are, however, authorized to refer concerns that the public trust may have been violated to the Grievance Committee.

## Refusal to comply with agreed upon discipline

Failure or refusal of a respondent to comply with the terms of any mutually agreed on resolution shall entitle the complaining party to resubmit the original complaint or, where a formal complaint in the appropriate form had not been filed, to file an ethics complaint. The time the matter was originally brought to the board or association's attention shall be considered the filing date for purposes of determining whether an ethics complaint is timely filed.

Associations will continue to process filed ethics complaints until withdrawn by the complainant. *(Revised 05/15)*

## Confidentiality of mediation process

The allegations, discussions, and decisions rendered in ethics mediation proceedings are confidential and shall 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.

# Part Five — Conduct of an Ethics Hearing

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 Board counsel and counsel for the parties prior to implementation.

Following are four (4) outlines. The first and second 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 or Form #E-9a, as appropriate, **Part Six**). The third outline is primarily of interest to Hearing Panels and particularly to the Chairpersons who preside over ethics hearings. The fourth outline is primarily of interest to tribunals and particularly to Chairpersons who preside over ethics appeals.

## Outline of Procedure for Ethics Hearing

_____ **Board of REALTORS®**

**State of** _____

*(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 ethics hearings may be permitted to participate in hearings by teleconference or video conference at the discretion of the Hearing Panel Chair. *(Adopted 11/15)*

**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. Permission can be given by the Chairperson. All parties shall be advised of the date of the rescheduled hearing. *(Revised 11/14)*

**Recording the hearing:** The Board shall, and any party (may/may not), at their own expense, have a court reporter present at the hearing, or may record the proceeding, and, if transcribed, shall furnish a copy to the Professional Standards Administrator. *(Revised 11/14)*

**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 prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. *(Adopted 05/15)*

**Due process procedure:** The hearing will proceed as follows:

(1) Chairperson cites authority to hear case and explains reason for hearing.

(2) The complaint will be read into the record.

(3) The testimony of all parties and witnesses will be sworn or affirmed. All witnesses will be excused from the hearing except while testifying.

(4) Opening statements, first by complainant, then by respondent, briefly explaining the party's basic position.

(5) The parties will be given an opportunity to present evidence and testimony in their behalf and they may call witnesses. All parties appearing at the hearing may be called as witnesses without advance notice. *(Revised 11/14)*

(6) The parties and their legal counsel will be afforded an opportunity to examine and cross-examine all witnesses and parties.

(7) The panel members may ask questions at any time during the proceedings.

(8) The Chairperson may exclude any questions which he or she deems irrelevant or argumentative.

(9) Each side may make a closing statement. The complainant will make the first closing statement and the respondent will make the final closing statement.

(10) Adjournment of hearing.

(11) The Hearing Panel will go into executive session to decide the case. *(Revised 11/12)*

**Findings in ethics hearing:** The finding and recommendation for discipline, if any, shall be reduced to writing by the Hearing Panel and submitted to the Board of Directors in accordance with the procedure of **Part Four,** Section 23 of this Manual.

**Use of counsel:** A party may be represented in any 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)*

## Outline of Procedure for Ethics Hearing Involving a Complaint and a Counter-Complaint

_____ **Board of REALTORS®**

**State of** _____

*(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 ethics hearings may be permitted to participate in hearings by teleconference or videoconference at the discretion of the Hearing Panel Chair. *(Adopted 11/15)*

**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. Permission can be given by the Chairperson. 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 Board shall, and any party (may/may not), at their own expense, have a court reporter present at the hearing, or may record the proceeding, and, if transcribed, shall furnish a copy to the Professional Standards Administrator. *(Revised 11/14)*

**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 prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. *(Adopted 05/15)*

**Due process procedure:** The hearing will proceed as follows:

(1) Chairperson cites authority to hear case and explains reason for hearing.

(2) The complaint and counter-complaint will be read into the record.

(3) The testimony of all parties and witness(es) will be sworn or affirmed. All witness(es) will be excused from the hearing except while testifying. All parties appearing at the hearing may be called as witnesses without advance notice. *(Revised 11/14)*

(4) Complainant/counter-respondent will present a brief opening statement uninterrupted, identifying the specific Article(s) of the Code of Ethics that he feels have been violated, explaining how the respondent/counter-complainant violated each Article and refuting the contention that he violated any provisions of the Code of Ethics.

(5) Respondent/counter-complainant will present a brief opening statement uninterrupted, identifying the specific Article(s) of the Code of Ethics that she feels have been violated, explaining how the complainant/counter-respondent violated each Article and refuting the contention that she violated any provision of the Code of Ethics.

(6) Complainant/counter-respondent presents his/her case and defenses by offering testimony and evidence from himself and/or his witness(es) to support the allegations of violations of the Code of Ethics by the respondent counter-complainant and refuting the allegations made by the counter-complainant.

(a) The respondent/counter-complainant may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.

(b) The Hearing Panel may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.

(7) Respondent/counter-complainant presents her case, offering testimony and evidence from herself and/or witness(es) to support the allegations of violations of the Code of Ethics by the complainant/counter-respondent and rebutting the complainant's contention that she violated the Code of Ethics.

(a) The complainant/counter-respondent may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.

(b) The Hearing Panel may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.

(8) The complainant/counter-respondent may present additional testimony and evidence from himself and/or his witness(es) to further support the allegations of violations of the Code of Ethics by the respondent/counter-complainant and/or refute the allegations made by the respondent/counter-complainant.

(a) The respondent/counter-complainant may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.

(b) The Hearing Panel may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.

(9) The respondent/counter-complainant may present additional testimony and evidence from herself and/or her witness(es) to further support the allegations of violations of the Code of Ethics by the complainant counter-respondent and/or refute the allegations made by the complainant/counter-respondent.

(a) The complainant/counter-respondent may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.

(b) The Hearing Panel may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.

(10) Cross-examination in which the parties are given a final opportunity to examine each other. The complainant/counter-respondent may first ask any remaining questions of the respondent/counter-complainant and/or the respondent/counter-complainant's witness(es). The respondent/counter-complainant may then ask any remaining questions of the complainant/counter-respondents and/or of the complainant/counter-respondent's witness(es).

(11) The Hearing Panel may question either the complainant/counter-respondent and/or the respondent/counter-complainant and/or their respective witness(es).

(12) When the parties and Hearing Panel members have no further questions, the complainant/counter-respondent and respondent/counter-complainant (respectively) may present uninterrupted closing statements.

(13) The Chair will then adjourn the hearing.

(14) 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 the Board of Directors in accordance with the procedure of **Part Four,** Section 23 of the *Code of Ethics and Arbitration 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 he or she deems irrelevant or argumentative.

**Use of counsel:** A party may be represented in any 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.

Be advised all matters discussed are strictly confidential.

*(Adopted 11/98, Amended 11/12, 11/14, and 11/15)*

## Chairperson's Procedural Guide: Conduct of an Ethics Hearing

_____ **Board of REALTORS®**

**State of** _____

*(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.)*

**Display:** Board banner and the American flag

**Seating arrangements:** See **Part Six,** Form #E-16 of this Manual for recommended seating arrangements.

**Start promptly:** Rap gavel to open meeting.

**Chairperson's opening statement and conduct of hearing:** Ladies and gentlemen, I now call this hearing to order. The Professional Standards Committee is charged with holding appropriate hearings for the _____ Board of REALTORS® in accordance with the procedures as set forth in the Board's bylaws in matters concerning alleged unethical conduct of a Board Member or Members, or in the arbitration of a business dispute arising out of the real estate business as defined in the bylaws of the Board. 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.

The Professional Standards Committee is a body duly constituted under the authority of the bylaws of the _____ Board of REALTORS® and has been duly appointed by the Board President and approved by the Board of Directors. At this time, I would like to introduce members of this panel.

(1) My name is _____, and I will serve as Chairperson of this panel.

(2) The other members of this panel are:

_____, _____, _____, and _____.

(3) Present at this hearing is _____, the complainant, and his/her sales associate(s) _____.

*(If the complainant is accompanied by an attorney and/or witnesses, they should be introduced at this time.)*

_____, _____, _____, and _____.

*(If the complainant is represented by counsel, and/or accompanied by witnesses, confirm that the respondent was notified in advance. If not, ask if there is an objection. If none, have the respondent sign a statement to that effect.)*

(4) Also present at this hearing is _____, the respondent, and his/her sales associate(s), _____.

*(If the respondent is accompanied by counsel and/or witnesses, they should be introduced at this time.)*

_____, _____, _____, and _____.

*(If the respondent is represented by counsel, and/or accompanied by witnesses, confirm that the complainant was notified in advance. If not, ask if there is an objection. If none, have complainant sign a statement to that effect.)*

(5) Also present at this hearing is _____, the recording Professional Standards Administrator for the _____ Board of REALTORS®, and (if appropriate) _____, the court reporter present to transcribe these proceedings.

*(Or, alternatively: This hearing is being mechanically recorded.)*

*(If an attorney representing the Board is present, he/she should be introduced at this time.)*

_____.

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.

**Basis of hearing:** This hearing has been established to consider the complaint of _____ against _____, alleging violation of Article(s) _____ of the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®.

The complaint as filed by the complainant is as follows:

*(Read the Article[s] the respondent has been charged with violating into the record.)*

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 t hat is fair to all of the parties. The panel is governed and directed by the bylaws of the _____ Board of 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 and ruled on 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 this hearing on the relevance of testimony being given or questions being directed to any party or his/her representative or to witnesses providing testimony. All parties and witnesses will be asked to swear or affirm that testimony given is the truth to the best of their knowledge.

*(If no counsel is present, proceed to 3.)*

(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 him/her 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 his/her client if the panel desires direct testimony. Counsel is present to advise and consult with his/her client, and to speak for him/her subject to appropriate rulings or determinations 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 Chairperson, I will act as keeper of the evidence introduced at this hearing and mark each with an exhibit identification number or letter 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 Board counsel concerning such rulings.

(5) At this time, I request that all persons present in the room who expect to testify at this hearing stand and be sworn or make appropriate affirmation in lieu of being sworn.

*(The Chairperson should determine if any of the parties prefer affirmation in lieu of being sworn.)*

**Swearing:** Raise your right hand and, following the question I will pose, answer in the affirmative if you do so swear . . . "Do you swear that the statements you are about to make at this hearing are the truth, the whole truth, and nothing but the truth so help you God?" Let the record show that all parties have answered in the affirmative.

*(And/or if needed)*

**Affirmation:** Raise your right hand and, following the question I will pose, answer in the affirmative if you do so 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 _____ has/have answered in the affirmative.

*(At this time, the Chairperson should excuse any witnesses and ask them to wait outside until called, and ask the remaining parties to be seated.)*

**Outline of procedure for hearing:** Both the complainant and the respondent were mailed a copy of the Outline of Procedure for an Ethics Hearing (**Part Six,** Form #E-9 of this Manual). Did each of you 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 Chairperson 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 Ethics Hearing.

We shall now proceed with the hearing.

**Opening statement by parties or counsel:** Each party or the party's counsel shall be given an opportunity for an opening statement which shall briefly outline the basic premise of the party's position. You will have an opportunity to present your entire case at a later time during this hearing.

**Presentation by complainant:** The complainant will now state his/her case and present any evidence or witnesses that he/she may desire.

**Cross-examination by respondent**

**Questions from panel members**

**Presentation by respondent:** The respondent will now state his/her case and present any evidence or witnesses that he/she may desire.

**Cross-examination by complainant**

**Questions from panel members**

**Closing statement by complainant:** At this time, both the complainant and the respondent will be given an opportunity to make a summary or closing statement if they so desire. The complainant's closing statement will be heard first.

**Closing statement by respondent**

**Closing statement by Panel Chairperson:** Do each of you feel that this hearing has been conducted fairly?

*(If yes)* Let the record show that both the complainant and the respondent have indicated that they feel this hearing has been conducted fairly.

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 any party answers "no," ask him/her to state any concern and, if there's any merit to the concern, take steps to remedy any possible deficiency.)*

**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, and to the Board of Directors of the _____ Board of REALTORS® as directed by provisions of **Part Four,** Sections 22 and 23 of this Manual or as otherwise specified in the Manual. Upon final action by the Directors, the findings or conclusions of this panel shall be disseminated to the parties by the President of the Board, as directed by **Part Four,** Section 23 of this Manual. The parties will be notified of the decision within the required time 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 to be considered in this hearing, this portion of the hearing stands adjourned.

**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. Boards should consider having Board counsel review ethics decisions prior to any action of the panel becoming final or effective. This will serve to protect the Board by minimizing vulnerability to litigation.)*

*(Revised 11/14)*

## Chairperson's Procedural Guide: Conduct of an Appeal Hearing (Ethics)

_____ **Board of REALTORS®**

**State of** _____

*(Ask the 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. Also note that ethics appeals are not to be recorded.)*

*(Ask all parties to come into the hearing room.)*

**Display:** Board banner and the American flag

**Seating arrangements:** See **Part Six,** Form #E-16 of this Manual for recommended seating arrangements.

**Start promptly:** Rap gavel to open meeting.

**Chairperson's opening statement:** Ladies and gentlemen, I now call this appeal hearing to order. The professional standards procedures of the _____ Board of 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 (the Board of Directors) (or) (a panel of Directors appointed by the President) (or) (the Board's Executive Committee), hereinafter referred to as the Appeal Hearing Tribunal.

**Basis of this hearing:** The particular matter to be considered by this Appeal Hearing Tribunal is an appeal of the decision of the ethics Hearing Panel composed of:

_____, _____,
_____, _____,
and chaired by _____, at an ethics hearing conducted on _____, 20_____. The basis of the original ethics hearing was a complaint brought by
_____, _____,
and _____, the complainant(s), against
_____, _____,
and _____, the respondent(s), alleging violation of Article(s) _____ of the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®. The decision was as follows:

*(Read the decision of the ethics Hearing Panel of the Professional Standards Committee [**Part Six,** Form #E-11 of this Manual].)*

Prior to the original ethics hearing, the complaint was reviewed by (the Board's Grievance Committee) (or) (a panel of the Board's Grievance Committee members) and referred to the Board's Professional Standards Committee for a hearing.

**Authority:** The Appeal Hearing Tribunal present here today is a body duly constituted under the authority of the bylaws of the _____ Board of REALTORS®.

**Introduction of the Appeal Hearing Tribunal:** At this time, I would like to introduce the members of this Appeal Hearing Tribunal. My name is _____, and I will serve as Chairperson. The other members of this Appeal Hearing Tribunal are _____,
_____, _____,
_____, _____,
_____, _____,
and _____.

**Disqualification:** Anyone who was a party to the original ethics hearing, a member of the Grievance Committee 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 Hearing 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 the members of the Appeal Hearing Tribunal if they know of any reason why they should be disqualified.

*(If none)* The members of the Appeal Hearing 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 Hearing Tribunal, I will now ask the parties if they are aware of any reason why any member of this Appeal Hearing Tribunal is not qualified to serve.

*(If none)* The parties have not indicated any reason why any member of this Appeal Hearing Tribunal is not qualified to serve.

**Additional introductions:** Also present at this appeal hearing is _____, _____, and _____, the complainant(s) in the original ethics hearing; _____, _____, and _____, the respondent(s) in the original ethics hearing; _____, the original ethics Hearing Panel Chairperson; and _____, the Professional Standards Administrator for the _____ Board of REALTORS®.

*(If any attorneys are present, they should be introduced at this time.)*

_____, _____,
_____, and _____.

**Appeal limitations:** In this appeal hearing we will consider the arguments of _____, hereinafter referred to as the appellant, who filed the Request for Appeal. The appeal is further limited to the basis (bases) set forth in writing in the Request for Appeal, which is as follows.

*(Read the Request for Appeal, [**Part Six,** Form #E-13 of this Manual].)*

**Outline of procedure:** At this time I would like to explain the procedure for this appeal hearing. First, the original ethics Hearing Panel Chairperson (or a representative from the original panel) will summarize the case (or provide copies of transcripts). Then, the appellant will have an opportunity to offer any corrections or modifications to the summary (or transcripts), 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 original Hearing Panel Chairperson and/or other parties to the original ethics hearing will 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. Finally, following the appeal hearing, the Appeal Hearing 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)* None of the parties has any questions regarding the outline of procedure.

**Guidelines:** This Appeal Hearing 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 Hearing 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 Hearing Tribunal that is fair to all of the parties. After the Appeal Hearing 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 appeal 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 Appeal Hearing 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 swear or affirm that testimony given is the truth to the best of their knowledge. A party may be represented by counsel. This Appeal Hearing 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 Hearing Tribunal. This Appeal Hearing Tribunal will countenance no effort by any party or by counsel to any party to harass, intimidate, coerce, or confuse the Appeal Hearing Tribunal or any party to the proceedings.

**Swearing:** At this time I will request that all persons present in the room who expect to testify at this appeal hearing stand and be sworn or make appropriate affirmation in lieu of being sworn. (The Chairperson should determine if any of the parties prefer affirmation in lieu of being sworn.) Please stand, raise your right hand and, following the question I pose, answer in the affirmative if you do so swear. "Do you swear that the statements you are about to make at this hearing are the truth, the whole truth, and nothing but the truth so help you God?"

*(If yes)* All parties have answered in the affirmative. Please be seated.

*(And/or if needed)*

**Affirmation:** Please stand, 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 make at this hearing are the truth, the whole truth, and nothing but the truth?"

*(If yes)* All parties have answered in the affirmative. Please be seated.

**The appeal hearing:** We shall now proceed with the appeal hearing.

**Presentation by the original ethics Hearing Panel Chairperson:** At this time the original ethics Hearing Panel Chairperson will summarize the case (or provide copies of transcripts).

**Presentation by the appellant:** At this time, the appellant may offer any corrections or modifications to the original ethics Hearing Panel Chairperson's summary (or) (the transcript), introduce supporting evidence and/or the statements of any other parties to the original ethics hearing, and explain the basis (bases) for the appeal.

**Rebuttal by the original ethics Hearing Panel Chairperson:** At this time the original ethics Hearing Panel Chairperson will have an opportunity to explain why the original ethics Hearing Panel's decision should be upheld by this Appeal Hearing Tribunal.

**Testimony of other parties to the original ethics hearing:** At this time, any other parties to the original ethics hearing will have an opportunity to explain why the decision of the ethics Hearing Panel should be upheld by the Appeal Hearing Tribunal. Any party testifying must restrict his/her discussion to the issues raised in the appeal.

**Questions from panel members:** The members of this panel are authorized to ask questions at any time during this appeal.

**Confirmation of fairness/opportunity to testify:** Do each of you feel that this appeal hearing has been conducted fairly?

*(If yes)* 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 Hearing Tribunal?

*(If yes)* The 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 Hearing Tribunal.

**Closing statements:** The decision of this Appeal Hearing Tribunal is final. Before we adjourn this appeal hearing, all persons present are advised that the report and findings of this Appeal Hearing Tribunal are considered confidential. Upon final action by this Appeal Hearing Tribunal, the Board President shall disseminate to the complainant and the respondent in the original ethics hearing, the Board of Directors, the Chairperson and members of the original ethics Hearing Panel, Board legal counsel, the President of any other Board of REALTORS® in which the respondent holds membership, and any governmental agency, as directed by the Board of Directors, such notice of the action as the Board President deems appropriate under the circumstances to effectuate the discipline prescribed, provided, however, that the nature, form, content, and extent of the notice shall be specifically approved by Board legal counsel prior to dissemination.

**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 Board confirming the propriety of its action. This will minimize any legal vulnerability to the Board.)*

*(Revised 11/11)*

# 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.

They should not be used until they are first reviewed by Board counsel to assure that they conform to state law and to any special requirements established by the Board. (NOTE: The State Association may wish to have State Association legal counsel review the contents of the Manual, including the Specimen Forms, to adapt it to comply with state law, and to recommend adoption of the amended Manual by all local Boards within the state.) The Specimen Forms are intended to provide a format and may require further adaptation and modification by the local Board prior to implementation and use. For example, Form #E-11, Decision of the Ethics Hearing Panel of the Professional Standards Committee, should include adequate space for a comprehensive statement of the "Findings of Fact" and the "Decision and Recommendation for Disciplinary Action."

After such review and modification as necessary, the local Board or State Association may add to the forms the appropriate identification data of the Board and reproduce them in quantities desired by the Board.

## 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 Board to provide one to each respondent plus one copy for the Board's records. Any reply must be typewritten and submitted with a sufficient number of copies to enable the Board to provide one to each complainant plus one copy for the Board'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 Professional Standards Administrator, and by the Professional Standards Administrator to the Chairperson of the Grievance Committee. If the Grievance Committee 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 Committee, together with information advising the complainant of the procedures by which the Grievance Committee's decision may be appealed to the Board of Directors.

(3) If there is to be a hearing, respondent will have fifteen (15) days from when the request for response was transmitted, to reply. Copy of the reply will be sent to complainant, the Board President, and the Professional Standards Committee Chairperson. 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. *(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 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 his 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 any and all documents and evidence they intend to introduce during the hearing to the other party(ies) and to the association prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. *(Adopted 05/15)*

(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 the complainant, respondent, or a REALTOR® acting as counsel for either the complainant or respondent

(b) is an employer, partner, or employee, or in any way associated in business with the complainant, respondent, or a REALTOR® acting as counsel for either the complainant or respondent

(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 or tribunal which may prevent him from rendering an impartial decision *(Revised 11/14)*

(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 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 the Board of Directors 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 05/15)*

## Form #E-1

_____
Board or State Association

_____
Address City State Zip

# Ethics Complaint

To the **Grievance Committee** of the _____
Board or State Association

Filed _____, 20_____

_____ _____

_____ _____
Complainant(s) Respondent(s)

Complainant(s) charge(s):

An alleged violation of Article(s) _____ of the Code of Ethics and/or other membership duty as set forth in the bylaws of the Board in _____ and alleges that the above charge(s)
Article, Section

(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 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, 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: _____

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 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 transmittal of the dismissal notice to appeal the dismissal to the Board of Directors.

Complainant(s):

_____ _____
Type/Print Name Signature

_____ _____
Type/Print Name Signature

_____
Address

_____ _____
Phone Email

*(Revised 11/15)*

**Form #E-2**

_____
Board or State Association

_____
Address City State Zip

## Notice to Respondent (Ethics)

In the case of _____ vs. _____

To _____ (respondent).

Attached hereto is a copy of a complaint which names you as respondent, as filed with this Board and referred to a Hearing Panel

for hearing as a matter of an alleged violation of Article(s) _____ of the Code of Ethics or other membership duty as set forth in the bylaws of the Board.

Please be advised that, under the bylaws of the Board, you have fifteen (15) days from the transmittal of this request to transmit a response to, or file your reply at, the office of the Board at the address above.

Your reply must be typewritten, with original and _____ copies for this office, and must be signed and dated.

Respectfully submitted,

_____ _____, Professional Standards Administrator
Type/Print Signature

_____
Board or State Association

Dated: _____, 20_____

*(Revised 11/14)*

## Form #E-3

_____
Board or State Association

_____
Address City State Zip

### Reply (Ethics)

To the **Professional Standards Committee** of the

_____
Board or State Association

Filed _____, 20_____

_____ _____

_____ _____
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 Board.

Respondent(s) replies and substantiates such reply by the following facts and/or 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 Reply are true and correct.

I understand that, if found in violation of the Code of Ethics or other membership duty, a respondent will be assessed an administrative processing fee of _____*.

Respondent(s):

_____ _____
Type/Print Name Signature

_____
Address

_____ _____
Phone Email

_____ _____
Type/Print Name Signature

_____
Address

_____ _____
Phone Email

*(Revised 11/09)*

*Fee not to exceed $500 and may not be assessed unless the Board of Directors has established policy to assess this fee against respondents found in violation of the Code of Ethics or other membership duty.

**Form #E-4**

_____
Board or State Association

_____
Address City State Zip

## Grievance Committee Request for Information (Ethics Complaint)

To _____,

named by _____ as respondent.

Attached hereto is a copy of a complaint which names you as respondent, as filed with this Board and referred to the Grievance Committee for review, in accordance with Section 20 of the Board's *Code of Ethics and Arbitration Manual.*

Please be advised that you have fifteen (15) days from transmittal of this notice to transmit to, or file your reply at, the address above. Your reply must be typewritten, with original and _____ copies for this office, and must be signed and dated.

Failure to provide a response may result in the complaint being forwarded for a hearing and may also result in the Grievance Committee's filing of a complaint against you, alleging a violation of Article 14 of the Code of Ethics for failure to submit pertinent facts to a proper Tribunal, pursuant to Section 20 of this Manual.

Respectfully submitted,

_____ _____, Professional Standards Administrator
Type/Print Signature

_____
Board or State Association

Dated: _____, 20_____

*(Revised 11/14)*

## Form #E-5

_____
Board or State Association

_____
Address City State Zip

### Response to Grievance Committee Request for Information

To the **Grievance Committee** of the

_____
Board or State Association

Filed _____, 20_____

_____ _____

_____ _____
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 Board.

Respondent(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 Reply are true and correct.

I understand that, if found in violation of the Code of Ethics or other membership duty, a respondent will be assessed an administrative processing fee of _____*.

Respondent(s):

_____ _____
Type/Print Name Signature

_____
Address

_____ _____
Phone Email

_____ _____
Type/Print Name Signature

_____
Address

_____ _____
Phone Email

*(Revised 11/09)*

*Fee not to exceed $500 and may not be assessed unless the Board of Directors has established policy to assess this fee against respondents found in violation of the Code of Ethics or other membership duty.

**Form #E-5.1**

## Grievance Committee Report Form

(Return to Association when completed)

Case #:_____ _____ _____

Complainant(s) Respondent(s)

On _____, the _____

Date Name of Board

Grievance Committee met to review the above-referenced matter which is a(n) ❒ Request for Arbitration ❒ Ethics Complaint
As a result of that meeting, the Grievance Committee recommends the following action.

### Arbitration Request

❒ The arbitration request is a matter for mandatory arbitration and shall be forwarded to the Professional Standards Committee for a hearing.

❒ 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.

❒ The arbitration request is not a matter for arbitration and the Grievance Committee dismisses the request. The complainant has the right to appeal the dismissal to the Board of Directors within 20 days from the date that staff transmits the dismissal notice.

*Reason for dismissal:* ❒ not timely filed ❒ not arbitrable ❒ board does not have jurisdiction

❒ other *(explain)* _____

### Ethics Complaint

❒ The complaint, if taken as true on its face, constitutes potentially unethical conduct and will be forwarded to the Professional Standards Committee for a hearing. Articles originally charged:_____.

❒ The complaint is amended by adding and/or deleting the following Articles and will be forwarded to the Professional Standards Committee for a hearing:

_____ _____

Articles Added Articles Deleted

Rationale for Article(s) added: _____

_____

*Reason for dismissing Articles:* ❒ not timely filed ❒ allegations do not demonstrate a possible violation of the Code

❒ other *(explain)*_____

Note which reason is applicable to which Article(s) dismissed. If the complainant does not agree with deleting an Article(s), complainant may appeal the dismissal of the Article(s) to the Board of Directors within 20 days of transmittal of the dismissal notice.

If no appeal is filed, the complaint, as amended, shall be forwarded to the Professional Standards Committee for hearing. If an appeal is filed, then no hearing will be held until the appeal is heard.

*Reason for dismissing complaint:* ❒ not timely filed ❒ allegations do not demonstrate a possible violation of the Code

❒ association does not have jurisdiction over the respondent

❒ other *(explain)* _____

If the complainant does not agree with the dismissal of the complaint, the complainant may appeal the dismissal to the Board of Directors within 20 days from transmittal of dismissal notice.

_____ _____

Grievance Committee Chairperson Date

*(Revised 11/14)*

## Form #E-6

_____
Board or State Association

_____
Address City State Zip

### Notice of Right to Challenge Tribunal Members*

Notice is given herewith to parties in the matter of _____ vs. _____, an ethics proceeding, that a party has a right to challenge the qualifications of any individual who may be appointed to serve on a Hearing Panel or the Board of Directors. A list of such individuals is provided below. If you wish to challenge the qualifications of any of the individuals listed who may be appointed to sit on the Tribunal, please indicate by checking the appropriate blank, and return this form or a copy of same with a letter (or enclosed Form #E-7, if preferred) to the (Professional Standards Committee Chairperson) (Professional Standards Administrator) explaining your reason ("cause") for challenge. If your reason is deemed sufficient to support your challenge, the individual challenged will not be appointed to the Tribunal. Pursuant to Section 2, Qualification for Tribunal, challenges must be filed with the Board not later than ten (10) days after the date the list of names is transmitted.

_____ Challenge: _____ Yes _____ No

_____ Challenge: _____ Yes _____ No

_____ Challenge: _____ Yes _____ No

_____ Challenge: _____ Yes _____ No

_____ Challenge: _____ Yes _____ No

_____ Challenge: _____ Yes _____ No

_____ Challenge: _____ Yes _____ No

_____ Challenge: _____ Yes _____ No

_____ Challenge: _____ Yes _____ No

_____ Challenge: _____ Yes _____ No

_____ Challenge: _____ Yes _____ No

_____ _____
Party's Name (Type/Print) Party's Signature Date

_____ _____
Party's Name (Type/Print) Party's Signature Date

*(Revised 11/14)*

*Members of ethics Hearing Panels or the Board of Directors. Does not include members of a Grievance Committee. See Section 2, Qualifications for Tribunal, *Code of Ethics and Arbitration Manual.*

**Form #E-7**

_____
Board or State Association

_____
Address City State Zip

## Challenge to Qualifications by Parties to Ethics Proceeding

I (we), as party to the matter in _____ vs. _____, hereby challenge the qualification of the following named individual(s) who may be appointed 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: _____

_____

_____

Panel Member Challenged: _____

Reason: _____

_____

_____

Type/Print Name of Party: _____

Signed: _____ Date: _____

Type/Print Name of Party: _____

Signed: _____ Date: _____

Type/Print Name of Party: _____

Signed: _____ Date: _____

*Members of ethics Hearing Panels or 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.

## Form #E-8

_____
Board or State Association

_____
Address City State Zip

### Official Notice of Hearing (Ethics)

In the case of _____ vs. _____
Complainant Respondent

Above parties are hereby notified:

(1) The Chairperson of the Hearing Panel has designated the _____, 20 _____
Day Month Year

_____ A.M./P.M. at _____.
Time Place of Hearing

as the time for hearing the above case, which is a hearing concerning alleged violation of Article(s) _____

_____ of the Code of Ethics or other membership duty as set forth in the bylaws of the Board in

_____.
Article, Section

(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:

_____ _____

_____ _____

_____ _____

(4) 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 prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances.

(5) 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 before the hearing to the Board 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 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) Each party must provide a list of the names of the witnesses he intends to call at the hearing to the Board 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. 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 a witness without advance notice.

(7) The parties shall not discuss the case with any member of the Hearing Panel or the Board of Directors prior to the hearing or after hearing and prior to announcement of the decision.

(8) The Board of Directors has adopted a policy to assess an administrative processing fee of _____** should a respondent be found in violation of the Code of Ethics or other membership duty.

Respectfully submitted,

_____ _____, Professional Standards Administrator
Type/Print Signature

_____
Board or State Association

Dated: _____, 20_____

*(Revised 11/15)*

*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.

**Board of Directors must adopt a policy to assess this fee uniformly and consistently, prior to it being assessed. Fee may not exceed $500.

**Form #E-9**

Board or State Association

Address City State Zip

## Outline of Procedure for Ethics Hearing
### (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 ethics 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. Permission can be given by the Chairperson. All parties shall be advised of the date of the rescheduled hearing.

**Recording the hearing:** The Board shall, and any party (may/may not), at the party's expense, have a court reporter present or may record the proceeding and, if transcribed, shall present a transcript to the Professional Standards Administrator. If the Board utilizes a court reporter in lieu of recording, the parties may not be prohibited from making their own recording.

**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 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) Chairperson cites authority to hear case and explains reason for hearing.
(2) The complaint will be read into the record.
(3) The testimony of all parties and witnesses will be sworn or affirmed. All witnesses will be excused from the hearing except while testifying.
(4) Opening statements, first by complainant, then by respondent, briefly explaining party's basic position.
(5) The parties will be given an opportunity to present evidence and testimony on their behalf and they may call witnesses. All parties appearing at the hearing may be called as witnesses without advance notice.
(6) The parties and their counsel will be afforded an opportunity to examine and cross-examine all witnesses and parties.
(7) The panel members may ask questions at any time during the proceedings.
(8) The Chairperson may exclude any question ruled to be irrelevant or argumentative.
(9) Each side may make a closing statement. The complainant will make the first closing statement and the respondent will make the final closing statement.
(10) Adjournment of 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 the Board of Directors in accordance with the procedures of **Part Four,** Sections 22 and 23 of the *Code of Ethics and Arbitration Manual.*

**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 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.

Be advised that all matters discussed are strictly confidential.

*(Revised 11/15)*

## Form #E-9a

Board or State Association

Address City State Zip

### Outline of Procedure for Ethics Hearing Involving a Complaint and Counter-Complaint
**(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 ethics 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. Permission can be given by the Chair. If the request is approved by the Chair, all parties shall be advised of the rescheduled hearing date.

**Recording of the hearing:** The Board shall, and any party (may/may not), at their own expense, have a court reporter present at the hearing, or may record the proceeding and, if transcribed, shall furnish a copy to the Professional Standards Administrator. If the Board utilizes a court reporter in lieu of recording, the parties may not be prohibited from making their own recording.

**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 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 will proceed as follows:

(1) Chairperson cites authority to hear case and explains reason for hearing.

(2) The complaint and counter-complaint will be read into the record.

(3) The testimony of all parties and witness(es) will be sworn or 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 will present a brief opening statement uninterrupted, identifying the specific Article(s) of the Code of Ethics that he feels have been violated, explaining how the respondent/counter-complainant violated each Article and refuting the contention that he violated any provisions of the Code of Ethics.

(5) Respondent/counter-complainant will present a brief opening statement uninterrupted, identifying the specific Article(s) of the Code of Ethics that she feels have been violated, explaining how the complainant/counter-respondent violated each Article and refuting the contention that she violated any provision of the Code of Ethics.

(6) Complainant/counter-respondent presents his case and defenses by offering testimony and evidence from himself and/or his witness(es) to support the allegations of violations of the Code of Ethics by the respondent/counter-complainant and refuting the allegations made by the counter-complainant.

   (a) The respondent/counter-complainant may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.

   (b) The Hearing Panel may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.

(7) Respondent/counter-complainant presents her case, offering testimony and evidence from herself and/or witness(es) to support the allegations of violations of the Code of Ethics by the complainant/counter-respondent and rebutting the complainant's contention that she violated the Code of Ethics.

   (a) The complainant/counter-respondent may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.

(b) The Hearing Panel may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.

(8) The complainant/counter-respondent may present additional testimony and evidence from himself and/or his witness(es) to further support the allegations of violations of the Code of Ethics by the respondent/counter-complainant and/or refute the allegations made by the respondent/counter-complainant.

(a) The respondent/counter-complainant may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.

(b) The Hearing Panel may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.

(9) The respondent/counter-complainant may present additional testimony and evidence from herself and/or her witness(es) to further support the allegations of violations of the Code of Ethics by the complainant/counter-respondent and/or refute the allegations made by the complainant/counter-respondent.

(a) The complainant/counter-respondent may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.

(b) The Hearing Panel may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.

(10) Cross-examination in which the parties are given a final opportunity to examine each other. The complainant/counter-respondent may first ask any remaining questions of the respondent/counter-complainant and/or the respondent/counter- complainant's witness(es). The respondent/counter-complainant may then ask any remaining questions of the complainant/ counter-respondent and/or of the complainant/counter-respondent's witness(es).

(11) The Hearing Panel may question either the complainant/counter-respondent and/or the respondent/counter-complainant and/or their respective witness(es).

(12) When the parties and Hearing Panel members have no further questions, the complainant/counter-respondent and respondent/ counter-complainant (respectively) may present uninterrupted closing statements.

(13) The Chair will then adjourn the hearing.

(14) 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 the Board of Directors in accordance with the procedures of **Part Four,** Section 23 of the *Code of Ethics and Arbitration 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 he or she deems irrelevant or argumentative.

**Use of counsel:** A party may be represented in any 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.

Be advised all matters discussed are strictly confidential.

*(Adopted 11/98, Revised 11/15)*

## Form #E-10

_____
Board or State Association

_____
Address City State Zip

### Certificate of Qualification and Affirmation of Confidentiality

**This case is confidential.**

I, the undersigned, member of a Hearing Panel of the Professional Standards Committee (or Board of Directors or tribunal thereof) of the

_____
Board or State Association

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:

_____ vs. _____.

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 Board.

**Reasons for disqualification:** 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 the complainant, respondent, or a REALTOR® acting as counsel for either the complainant or respondent

(b) is an employer, partner, employee, or in any way is associated in business with the complainant, respondent, or a REALTOR® acting as counsel for either the complainant or respondent

(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 Board of Directors or tribunal thereof) that may prevent the member from rendering an impartial judgment

_____ _____,
Type/Print Name Signature

Dated: _____, 20_____

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.

*(Revised 11/15)*

**Form #E-11**

Board or State Association

Address City State Zip

## Decision of Ethics Hearing Panel of the Professional Standards Committee

Filed _____, 20_____

Complainant(s) 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:

**Conclusions of the hearing panel:** We, the members of the Hearing Panel in the above-stated case, find the Respondent(s)

(in violation) (not in violation) of Article(s) _____ of the Code of Ethics.

**Prior violations, if any:**

**Recommendation for disciplinary action, if any, if violation found:** We recommend to the Board of Directors the following action:

**Rationale for discipline, if any, if violation found:** (e.g., previous violations):

**Consequences for noncompliance with discipline:**

The decision, findings of fact, and recommendation(s) preceding were rendered by an ethics Hearing Panel comprising the following members whose signatures are affixed below. The hearing took place on _____, 20_____.

_____, Chairperson
Type/Print Name

_____
Signature

_____, Member
Type/Print Name

_____
Signature

_____, Member
Type/Print Name

_____
Signature

_____, Member
Type/Print Name

_____
Signature

_____, Member
Type/Print Name

_____
Signature

**Notice:** This decision is not final and is subject to certain rights of both the complainant and the respondent.

**Complainant's rights:** Within twenty (20) days of transmittal of this notification, the complainant may file an appeal with the President for a hearing before the Directors 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 Directors 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 $_____.*

**Respondent's rights:** Within twenty (20) days of transmittal of this notification the respondent may file an appeal with the President for a hearing before the Directors challenging the decision and/or recommendation for discipline. The 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 Directors 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 with a deposit of $_____.*

**Final action by directors:** Both the complainant and respondent will be notified upon final action of the Directors.

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 Directors 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).

*Fee not to exceed $500.

**Form #E-11a**

## Sample "Findings of Fact and Conclusions"

ABC Board of REALTORS®, Inc.
Board or State Association

| 123 Elm Street | Anywhere | Any State | 00000 |
|---|---|---|---|
| Address | City | State | Zip |

## Decision of Ethics Hearing Panel of the Professional Standards Committee

Filed January 1, 2016

| Buyer C | REALTOR® A |
|---|---|
| Complainant(s) | Respondent(s) |

**Findings of fact:** The hearing panel finds the following facts in support of its conclusion regarding the alleged violation of the Code of Ethics.

REALTOR® A obtained a check for earnest money deposit from Buyer C along with a signed offer to purchase. REALTOR® A deposited this check in his personal savings account and presented the offer to Seller B. Seller B rejected the offer, and Buyer C was unwilling to offer a higher price and requested REALTOR® A return his deposit. REALTOR® A was unable to return the deposit as requested because his wife, unbeknownst to him, had made a substantial withdrawal from the savings account.

**Conclusions of the hearing panel:** We, the members of the Hearing Panel in the above-stated case, find REALTOR® A in violation of Article 8 of the Code of Ethics for having failed to put Buyer C's money into an escrow account separate from his personal funds.

**Prior violations, if any:** Not applicable.

**Recommendation for disciplinary action, if any, if violation found:** We recommend to the Board of Directors the following action: That REALTOR® A be fined $10,000 and that the directors refer this matter to the regulatory body as a violation of the public trust.

**Rationale for discipline, if any, if violation found** (e.g., previous violations)**:** Although this is the respondent's first violation of the Code, this violation is considered very serious.

**Consequences for noncompliance with discipline:** If the fine is not paid within ten (10) days from transmittal of the directors' final decision, REALTOR® A will be expelled from board membership until such time as he pays the fine.

The decision, findings of fact, and recommendation(s) preceding were rendered by an ethics Hearing Panel comprised of the following members whose signatures are affixed below. The hearing took place on January 1, 2016.

| _____, Chairperson | _____, Member |
|---|---|
| Type/Print | Type/Print |
| _____ | _____ |
| Signature | Signature |
| _____, Member | _____, Member |
| Type/Print | Type/Print |
| _____ | _____ |
| Signature | Signature |
| _____, Member | |
| Type/Print | |
| _____ | |
| Signature | |

*(Revised 11/15)*

## Form #E-12

_____
Board or State Association

_____
Address City State Zip

### Action of the Board of Directors (Ethics Hearing)

**For use by the Board of Directors if no appeal has been filed to the Hearing Panel's decision:**

The decision of the Hearing Panel in the matter of _____ vs. _____
Complainant Respondent

dated _____, 20_____ (copy attached), came before the Board of Directors on _____, 20_____, and was considered by the Directors.

The decision of the Hearing Panel and its recommendation for disciplinary action, if any, in the above-referenced case is hereby (check one):

❒ adopted verbatim ❒ adopted, but the recommendation for discipline is modified as follows:

_____

_____

_____

_____

_____

❒ remanded to the Hearing Panel for further consideration of the discipline recommended

❒ remanded to the Professional Standards Committee for a new hearing by a different Hearing Panel based on perceived procedural deficiency(ies)

❒ reversed and the complaint is dismissed because the findings of fact do not support a possible violation of the Code of Ethics

Reason(s) for rejection/Directors' concerns with Hearing Panel's decision and/or recommendation(s):

_____

_____

_____

_____

_____

The action of the Board of Directors was adopted on _____, 20_____, by resolution.

For the Board of Directors:

_____ _____, Professional Standards Administrator
Type/Print Signature

**For use by the Board of Directors if appeal is held:**

The decision of the Hearing Panel in the matter of _____ vs. _____
Complainant Respondent

dated _____, 20_____ (copy of the Hearing Panel's decision attached), was appealed by _____
Appellant

and was considered by the Board of Directors on _____, 20_____.

A copy of _____'s appeal alleging _____ is attached.
Appellant Indicate Basis(es) for Appeal

The Hearing Panel's decision and recommendation for disciplinary action, if any, in the above-referenced case is hereby (check one):

❒ adopted verbatim ❒ adopted, but the recommendation for discipline is modified as follows:

_____

_____

_____

_____

_____

❒ remanded to the Hearing Panel for further consideration of the discipline recommended

❒ remanded to the Professional Standards Committee for a new hearing by a different Hearing Panel based on perceived procedural deficiency(ies)

❒ reversed and the complaint is dismissed

Reason(s) for modification/remand/rejection of the Hearing Panel's decision:

_____

_____

_____

_____

_____

Disposition of Appeal Deposit (if any):

❒ to be returned to Appellant

❒ to be retained by the Board

The action of the Board of Directors was adopted on _____, 20_____, by resolution.

For the Board of Directors:

_____ _____, Professional Standards Administrator
Type/Print Signature

*(Revised 5/07)*

## Form #E-13

_____
Board or State Association

_____
Address City State Zip

### Request for Appeal (Ethics)

To the President of the _____
Board or State Association

In the case of: _____ vs. _____.
Complainant Respondent

I (we), _____, do hereby request an appeal before the Board of Directors of

the _____.
Board or State Association

My (our) appeal is based on the following:

Check one or more and set forth in reasonable detail (narrative) the facts and evidence which support the bases cited. Attach narrative to Appeal Form. Complainant may only appeal 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 $_____* made payable to the

_____.
Board or State Association

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 determined by the Directors considering the appeal.

NOTE #2: Only those facts and issues raised in this written request will be considered by the Board of Directors at the appeal hearing.

Dated: _____

Name (Type/Print ) _____ Name (Type/Print) _____

Signature _____ Signature _____

Address _____ Address _____

_____ _____

Phone _____ Phone _____

*(Revised 5/05)*

*Not to exceed $500.

**Form #E-14**

_____
Board or State Association

_____
Address City State Zip

## Official Notice of Appeal Hearing (Ethics)

In the case of: _____ vs. _____
Complainant Respondent

Above parties are hereby notified:

(1) _____ has appealed the decision of the Hearing Panel in the above-cited case, based on
Appellant

_____.
Indicate Basis(es) for Appeal

A copy of the Request for Appeal, together with its supporting documentation, is attached.

(2) The Board of Directors will meet on _____, 20_____, _____ A.M. or _____ P.M.
Day Month

at _____to hear the appeal.
Place of Hearing

(3) The members of the Board of Directors who will hear the appeal are:

_____ _____

_____ _____

_____ _____

(If more space is needed, attach list of other Directors who will hear the appeal.)

(4) Either party may be represented by counsel, and each party is required to give the Board and the other party written notice of an intention to have counsel present fifteen (15) 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) Either party may file with the Professional Standards Administrator, no later than ten (10) days after the date challenge forms were transmitted, a written request for disqualification from the appeal hearing of any member of the Board of Directors for the following reasons:

(a) is related by blood or marriage to the complainant, respondent, or a REALTOR® acting as counsel for either the complainant or respondent

(b) is an employer, partner, or employee or in any way associated in business with the complainant, respondent, or a REALTOR® acting as counsel for either the complainant or respondent

(c) is a party to the hearing

(d) knows of any reason that may prevent the member from rendering an impartial judgment

(e) has served as a member of the Grievance Committee initially reviewing the ethics complaint or as a member of the professional standards Hearing Panel which reached the decision currently on appeal

(6) The parties shall not discuss the case with any member of the Hearing Panel or Board of Directors prior to the appeal hearing or after the appeal hearing and prior to announcement of the decision of the Directors.

Respectfully submitted,

_____ _____, Professional Standards Administrator

Type/Print Signature

_____

Board or State Association

Dated: _____, 20_____

*(Revised 05/15)*

**Form #E-15**

## Checklist of Professional Standards Concerns for Elected Officers and Directors and for Professional Standards Administrators of Boards of REALTORS®

- ❒ (1) **Concern** for the obligation of the Board 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-ASSOCIATE®s, and the Board.
- ❒ (3) **Concern** for liability of the Board 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 Board'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 Grievance Committee and 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 Involvement — President's personal commitment to Code awareness training programs and proper Code enforcement.
- ❒ (8) **Concern** for accountability of Grievance Committee and 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 Committee does not exceed its function of making preliminary reviews to determine proper disposition of ethics complaints and requests for arbitration.
- ❒ (13) **Concern** that Board 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 Board 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 Board can do and does do, and what the Board cannot do.
- ❒ (17) **Concern** that Board hearings are conducted in strict accordance with the professional standards procedures of the Board'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 Board 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 Board's Professional Standards Committee be appointed and charged with providing a continuing education program for Board Members in Code of Ethics awareness, understanding, and procedures.

- ❒ (26) **Concern** for Code enforcement training — State and Board.

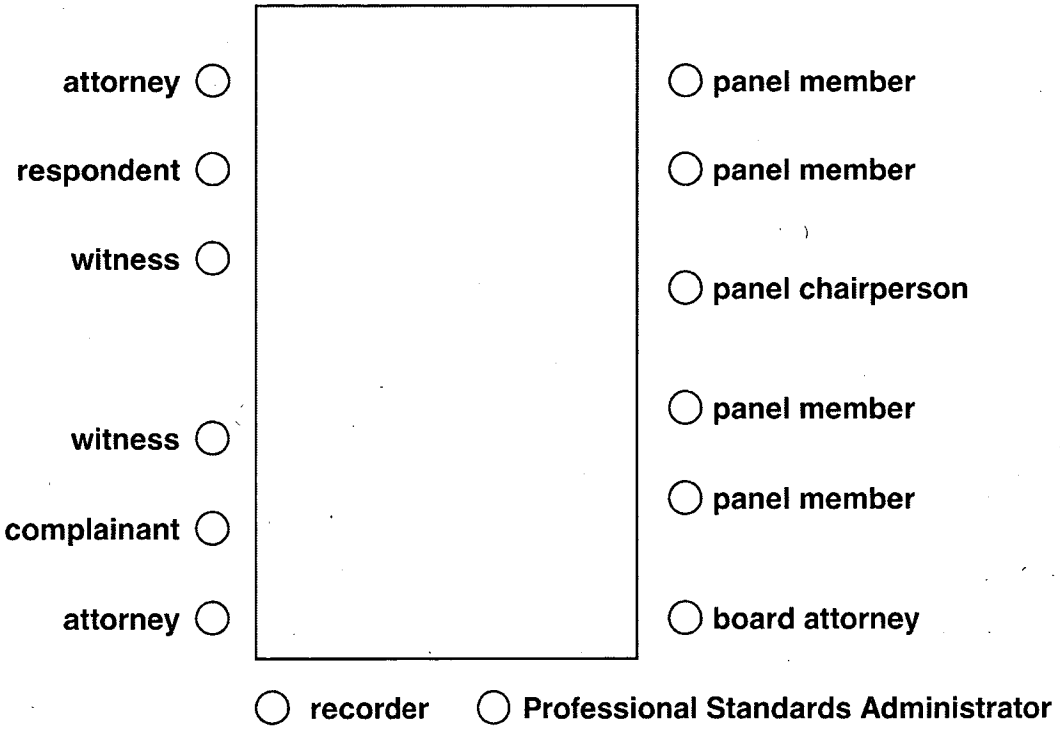
- ❒ (27) **Concern** for dealing promptly and fairly with complaints brought by the public.

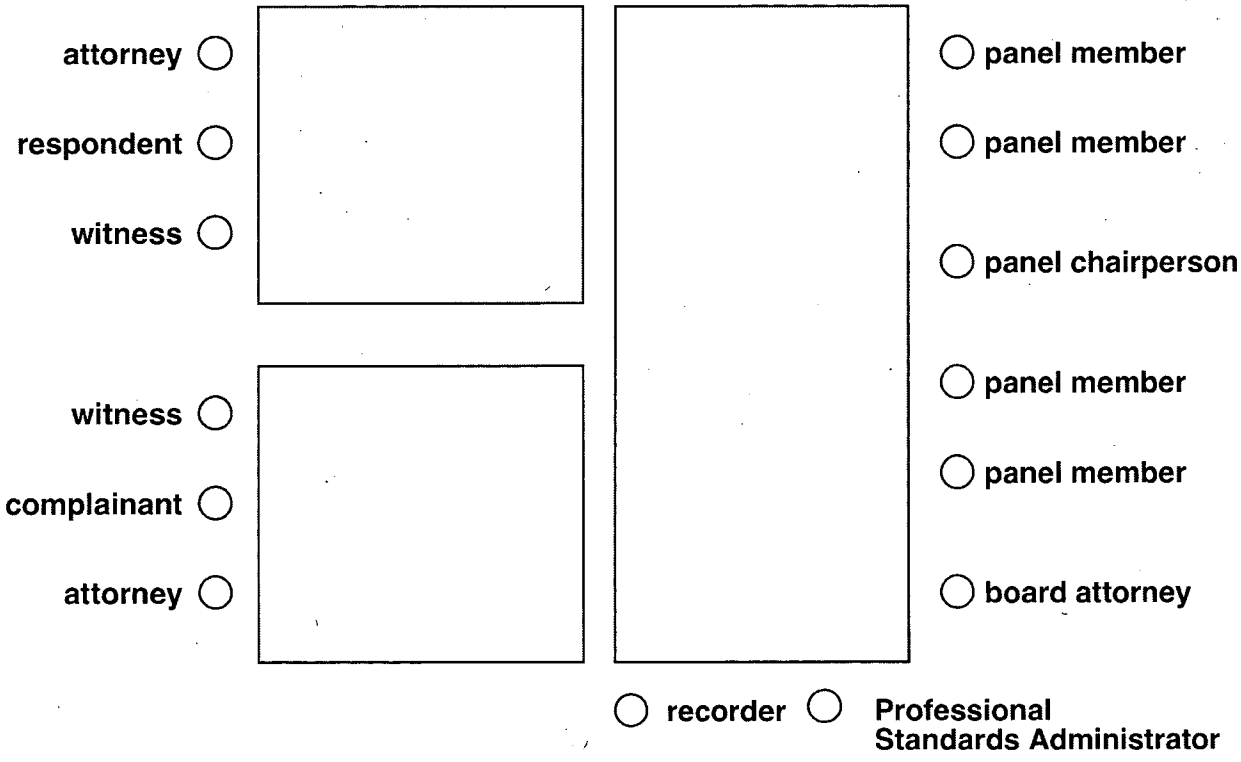
- ❒ (28) **Concern** for liability of REALTORS® in dealing with the public.

- ❒ (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.

**Form #E-16**

## Seating Arrangements for Hearings



## Form #E-17

### 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 Committee 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.

*(Revised 11/00)*

**Form #E-18**

## Outline of Content of Petition for Declaratory Relief

_____ Board of REALTORS® (hereafter "plaintiff")
Name

complains of defendant _____ (hereafter "defendant") and alleges:
Name

(1) Plaintiff is a corporation duly organized and existing under the laws of the State of _____
State

and is a Member Board of _____ Association and the NATIONAL ASSOCIATION OF REALTORS®.
State

**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 _____ defendant applied for membership in plaintiff. After duly considering defendant's
Date
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 _____ from membership and will _____ unless the Court holds otherwise.
Suspended or expelled as the case may be — Suspend or expel

(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 _____.
Denying defendant's application for membership/Suspending or expelling defendant's membership

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 _____ Board of REALTORS® prays
Name
(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 _____ will not give rise to any cause of
Rejection/Suspension or expulsion
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 Board's legal counsel.**

## Form #E-19

### Sample Format of Agreement Between _____ and _____ Boards of REALTORS® to Establish Multi-Board (or Regional) Professional Standards Enforcement Procedures

(1) **Authority**

The authority for the establishment and utilization of multi-Board (or regional) professional standards enforcement procedures shall be established by this Agreement approved by the Boards of Directors of _____ and _____ Boards of REALTORS® and confirmed by approval of the general membership at a duly called meeting with notice as required by the Boards' bylaws.

(2) **Geographic Area**

The geographic area served by this Agreement shall be the area of the combined territorial jurisdiction assigned by the NATIONAL ASSOCIATION OF REALTORS® to the Boards which are signatories to this Agreement.

(3) **Purpose**

The purpose of this Agreement is to create multi-Board (or regional) professional standards enforcement procedures providing for the appointment of Mediation Officers and the establishment of a joint Grievance Committee, Professional Standards Committee, and an Appeal Panel comprising members from each signatory Board for enforcement of the Code of Ethics, including the mediation of disputes and the conduct of arbitration hearings, involving members of the signatory Boards to ensure impartial and unbiased Hearing Panels for the conduct of hearings on a basis designed to provide this service and meet the responsibilities of the signatory Boards on an efficient and effective basis to better serve their members.

(4) **Composition of Tribunals**

(a) This Agreement authorizes the establishment of a multi-Board (or regional) Grievance Committee. The Grievance Committee shall be composed of at least one (1) member in good standing of each signatory Board.

Members of the Grievance Committee from each signatory Board shall be appointed by the Presidents of the respective Boards, subject to confirmation by the respective Boards of Directors, provided that the Presidents shall have the power to appoint, on a timely basis, and without necessity of confirmation by the Boards of Directors, a substitute member to the Committee for any member from their respective Boards who may be unable to serve for any reason. The Grievance Committee shall select its own Chairperson (or, alternatively, the Grievance Committee Chairperson shall be selected from members of the Grievance Committee by a majority vote of the Presidents of the Boards which are signatories to this Agreement).

NOTE: There must be at least three (3) individuals serving on the multi-Board Grievance Committee, and it is desirable that the number be greater to provide an adequate number of members to handle the anticipated case load without undue stress.

(b) This Agreement also authorizes the establishment of a multi-Board (or regional) Professional Standards Committee. The Professional Standards Committee shall be composed of at least two (2) members in good standing from each signatory Board.

The members of the Professional Standards Committee shall be appointed by the Presidents of the respective Boards, subject to confirmation by the respective Boards of Directors, provided that the Presidents shall have the power to appoint, on a timely basis, and without necessity of confirmation by the Boards of Directors, a substitute member to the Committee for any member from their respective Boards who may be disqualified for any valid reason from hearing a particular matter. The Professional Standards Committee shall select its own Chairperson (or, alternatively, the Chairperson shall be selected from members of the Professional Standards Committee by a majority vote of the Presidents of the Boards which are signatories to this Agreement).

NOTE: There shall be at least nine (9) members of the Professional Standards Committee, and more, if feasible, to handle the anticipated case load without undue stress.

(c) Members of the Grievance Committee and the Professional Standards Committee shall be appointed initially in terms of one (1), two (2), and three (3) years (one-third for each term). New appointments shall be made for three (3) year terms as each term expires. Members of the committees shall be eligible for reappointment.

(d) This Agreement also authorizes the appointment of a panel of Mediation Officers to include at least one (1) such Mediation Officer from each signatory Board. Although utilization of the service of mediation shall be voluntary, unless REALTORS® (principals) are required by their Board which is a signatory to this agreement to mediate otherwise arbitrable disputes pursuant to Article 17,* and although the process is not defined as a tribunal, all parties to any requested arbitration shall be provided the opportunity to mediate a dispute arising out of a real estate transaction and their relationship as REALTORS® prior to the arbitration of the dispute. *(Revised 11/11)*

(5) **Operation**

(a) Professional standards hearings and the organization and procedures incident thereto shall be governed by the *Code of Ethics and Arbitration Manual* of the NATIONAL ASSOCIATION OF REALTORS® as amended from time to time, and as adapted to conform to the provisions of applicable state law, and which is hereby agreed shall be considered as adopted and incorporated into the bylaws of each Board signatory to this Agreement.

NOTE: Any matters of local Board option should be considered and agreed on in advance as necessary and the signatory Boards should also clarify which Board will be responsible for administering the process. The following is an example of such clarification:

*The respondent's local Board, or the Board through which the respondent gains access to and use of the MLS, will be responsible for administering the procedures and all optional provisions (see pages i and ii of the* Code of Ethics and Arbitration Manual*) of that Board will control.*

(b) Appeals of the Grievance Committee's dismissal of an ethics complaint or arbitration request (or challenges to the classification of arbitration requests) shall be heard by those members of the Committee who did not serve on the original tribunal. If panels of the Grievance Committee are not used, any appeal of the Grievance Committee's dismissal (or challenge to an arbitration request classification) shall be heard by a tribunal of five (5) members selected from the Boards of Directors of the signatory Boards to be appointed by the Boards' Presidents. *(Adopted 11/96)*

Appeal to an ethics determination rendered by the multi-Board (or regional) Professional Standards Committee shall be heard by those members of the Committee who did not constitute the original Hearing Panel. (For this reason, there should be an adequate number of members appointed to the Committee to provide an Appeal Panel of at least five [5] members.)

(c) Appeal is not provided from the decision of an arbitration panel established under this Agreement, except with respect to a claim by a party alleging deprivation of due process. Such a claim shall be heard by an Appeal Panel as described in the second paragraph of (b) above.

(d) In matters of alleged unethical conduct, any determination rendered by a Hearing Panel of the multi-Board (or regional) Professional Standards Committee that has not been appealed, or as finally determined if appealed, will be provided to the respondent's Board of original jurisdiction for ratification or implementation, as appropriate.

(e) In matters involving arbitration, any determination rendered by a Hearing Panel of the multi-Board (or regional) Professional Standards Committee will be provided to each respective party's Board of original jurisdiction for informational purposes. In the event a party to an arbitration refuses to pay an award in arbitration, the Board in which the award recipient holds membership 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.*

(f) In the event a complainant alleges that the respondent has improperly refused to submit a dispute to arbitration (or to mediation if the respondent's signatory Board requires REALTORS® [principals] who are parties to a dispute to mediate otherwise arbitrable matters pursuant to Article 17), the allegation shall be brought before (choose one: a tribunal of five [5] members selected from the multi-Board's Professional Standards Committee to be appointed by the Committee's Chairperson and chosen from the individuals who were not selected to serve on the original Arbitration Hearing Panel, or a tribunal of five [5] members selected from the Board of Directors of the signatory Boards to be appointed by the Board Presidents). The procedure for notices, time of notices, and hearing prescribed for matters before a Hearing Panel shall apply. The sole question of fact to decide will be whether the party has refused to submit an arbitrable matter to arbitration (or mediation if required) in violation of Article 17. Upon determination that the member has refused to arbitrate or mediate a properly arbitrable matter, the (specify body — name of tribunal) may direct implementation of appropriate sanction, including, but not limited to, suspension or expulsion of the member from the local Board of REALTORS® and/or its MLS. The decision of the (specify body — name of tribunal) shall be final and binding and is not subject to further review by the State Association or any signatory Board. *(Revised 11/15)*

* Requiring REALTORS® (principals) to mediate otherwise arbitrable disputes requires establishment of an affirmative obligation in the Board's governing documents. Enabling bylaw provisions can be found at REALTOR.org (see Model Bylaws).

(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 or deposit the funds with the Professional Standards Administrator of the Board administering the arbitration consistent with Section 53, The Award, *Code of Ethics and Arbitration Manual*, that failure shall be brought before (choose one: a tribunal of five [5] members selected from the multi-Board Professional Standards Committee to be appointed by the Committee's Chairperson and chosen from the individuals who were not selected to serve on the original arbitration Hearing Panel, or a tribunal of five [5] members selected from the Board of Directors of the signatory Boards to be appointed by the Board Presidents). This tribunal, 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 tribunal shall be final and binding and is not subject to further review by the State Association or any signatory Board. *(Adopted 11/15)*

(6) **Reservation of Rights**

(a) It is understood and agreed by the Boards signatory 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 NATIONAL ASSOCIATION OF REALTORS®, except as voluntarily modified by this Agreement.

(b) It is further understood and agreed that any Board signatory to this Agreement may withdraw from the Agreement at any time provided the withdrawing Board shall provide notice to the other signatory Boards ninety (90) days in advance of the date of withdrawal.

**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**

| | |
|---|---|
| Type/Print President's Name | President's Signature |
| Board of REALTORS® | Date |
| Type/Print Association Executive's Name | Association Executive's Signature |
| Board of REALTORS® | Date |
| Type/Print President's Name | President's Signature |
| Board of REALTORS® | Date |
| Type/Print Association Executive's Name | Association Executive's Signature |
| Board of REALTORS® | Date |
| Type/Print President's Name | President's Signature |
| Board of REALTORS® | Date |
| Type/Print Association Executive's Name | Association Executive's Signature |
| Board of REALTORS® | Date |

*(Revised 11/15)*

**Form #E-20**

_____
Board or State Association

_____
Address City State Zip

## Notice to Respondent (Ethics) and Optional Waiver of Right to Hearing

In the case of _____ vs. _____
Complainant Respondent

To _____, Respondent:

Attached is a copy of a complaint which names you as Respondent, as filed with this Board and referred to the Grievance Committee

for review as a matter of an alleged violation of Article(s) _____ of the Code of Ethics or other conduct subject to disciplinary action.

You have a right to a hearing on this matter as provided in the *Code of Ethics and Arbitration 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 complete and sign the reverse side of this form. 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 complaint, you will have the opportunity to reply to the complaint and a hearing will be scheduled in accordance with the *Code of Ethics and Arbitration Manual.*

Respectfully submitted,

_____ _____, Professional Standards Administrator
Type/Print Signature

_____
Board or State Association

Dated: _____, 20_____

*(Revised 11/14)*

**Waiver of Right to a 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.

yes _____ (2) I acknowledge the conduct alleged in the complaint.

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 thirty (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.

_____, _____, 20_____.
Signature of Respondent Date

**If You Request A Waiver of a Hearing**
Your response to question 1 will be verified by the Grievance Committee Chairperson. 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; 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, 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 of the Board and disseminated as provided in the *Code of Ethics and Arbitration Manual*. Any appeal of the decision will be in accordance with the *Code of Ethics and Arbitration 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.

*(Revised 11/14)*

**Form #E-21**

_____
Board or State Association

_____
Address City State Zip

## Sample Letter of Reprimand/ Letter of Warning

RE: Letter of Reprimand (or Letter of Warning), Case _____

Dear _____:

The Board of Directors met on _____ to consider the above-referenced case. It was the decision of the
Date
Board of Directors to confirm the finding of a violation of Article(s) _____ of the Code of Ethics
Article(s)
and the discipline recommended by the Hearing Panel.

Pursuant to the discipline imposed, you are to remit a $250 fine to be paid by _____ and
Date
attend _____ by _____,
Specific Name of Education Course Date
providing the Board with proof of completion of the course. Failure to pay the fine or attend the course as stipulated will result in

_____.
Insert whatever additional discipline will automatically be imposed as recommended by the Hearing Panel and approved by the Board of Directors

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 Board of Directors (or 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 Board of Directors. Future similar conduct could result in more severe sanction).

Upon completion of the discipline imposed by the time specified above, this matter will be considered closed.

Sincerely,

President (or Professional Standards Administrator)

NOTE: The second paragraph of this letter is an example; a letter of reprimand or warning may be the only discipline imposed. Likewise, the third paragraph of the sample letter could be deleted if no letter of reprimand or warning is issued when informing the parties of the Board of Director's final action.

## Form #E-22

_____
Board or State Association

_____
Address City State Zip

### Appeal of Grievance Committee (or Hearing Panel)* Dismissal of Ethics Complaint

In the case of _____ vs. _____
Complainant Respondent

Check the appropriate box. Note that the complaint and any attachments to the complaint cannot be revised, modified, or supplemented. Directors consider only the information and documents considered by the Grievance Committee (or Hearing Panel)* with this form and explanation below.

☐ 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.

Explanation of why complainant disagrees with the Grievance Committee's (or Hearing Panel's) dismissal of complaint/Article(s):

_____

_____

_____

_____

**Complainant(s):**

| | |
|---|---|
| Signature of Complainant | Signature of Complainant |
| Type/Print Name | Type/Print Name |
| Street Address | Street Address |
| City State Zip Code | City State Zip Code |
| (_____) _____ Phone | (_____) _____ Phone |
| Dated | Dated |

*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 this form.

*(Revised 5/06)*

**Form #E-23**

_____
Board or State Association

_____
Address City State Zip

## Action of the Appeal Hearing Tribunal (Ethics Complaint)

The decision of the Grievance Committee (or Hearing Panel) to dismiss the ethics complaint, or a portion of the complaint, in the matter of:

_____ vs. _____,
Complainant Respondent

dated _____, was appealed by _____ and was considered on _____
Date Appellant Date

by the Appeal Tribunal of the Board of Directors of _____.
Board/Association

The Appeal Tribunal's decision in the above-referenced case is to:

❒ Deny the appeal and uphold the Grievance Committee's (Hearing Panel's) decision.

❒ Grant the appeal and overturn the Grievance Committee's (Hearing Panel's) decision. This matter is hereby referred to a hearing before the Professional Standards Committee. You will be notified in the near future concerning a hearing date.

❒ Overturn the dismissal of Article(s) _____ while upholding the dismissal of Article(s) _____.

The decision above was rendered by an Appeal Tribunal of the Board of Directors of the _____ comprised of the following members whose signatures are affixed below.
Board/Association

The appeal was considered and decision deemed final on _____.
Date

_____, Chairperson
Type/Print Name

_____
Signature

_____, Member
Type/Print Name

_____
Signature

_____, Member
Type/Print Name

_____
Signature

_____, Member
Type/Print Name

_____
Signature

_____, Member
Type/Print Name

_____
Signature

*(Revised 11/15)*

# ARBITRATION

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# Statements of Professional Standards Policy Applicable to Arbitration Proceedings

*Approved by the Professional Standards Committee and the Board of Directors of 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*

(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. *(Revised 5/01)*

(b) A REALTOR® other than a principal or a REALTOR-ASSOCIATE® shall have the right to invoke the arbitration facilities of the Board in a business dispute with a REALTOR® or REALTOR-ASSOCIATE® in another firm or with their firm (or both), whether in the same or a different Board, provided the REALTOR® principal with whom he is associated joins in the arbitration request, and requests arbitration with the REALTOR® principal of the other firm or with their firm (or both). Arbitration in such cases shall be between the REALTOR® principals or their firms (or both). REALTOR® nonprincipals and REALTOR-ASSOCIATE®s who invoke arbitration in this manner, or who are affiliated with a respondent and have a vested financial interest in the outcome, have the right to be present throughout theproceedings and to participate but are not considered to be parties. *(Amended 5/01)*

(c) 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 both) 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 his client but no arbitration may be held without the client's voluntary agreement to arbitrate and to be bound by the decision. *(Revised 5/01)*

## 3. Circumstances under which arbitration is contingent upon the REALTOR®'s voluntary participation*

(a) REALTORS® and REALTOR-ASSOCIATE®s 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 Board finds the matter properly subject to arbitration. However, it shall be optional with the member as to whether he 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 11/12)*

*Refer to **Part Ten,** Section 44 of this Manual.

*Refer to **Part Ten,** Section 44 of this Manual.

(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)*

## 4. Board's right to release parties from their obligation to arbitrate

If either the Grievance Committee 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 the Board of Directors within twenty (20) days of the date of notice that the Grievance Committee 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 Committee or the arbitration panel shall report its conclusions to the Board of Directors and, if the Board of Directors 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 Board of Directors decides that the arbitration should proceed, the matter shall be remanded to the Grievance Committee or the arbitration panel for further proceedings. *(Revised 11/95)*

## 5. Failure to submit to arbitration

If the complaint against a REALTOR® principal is that he has improperly refused to submit a dispute to arbitration (or to mediation if required by the Board), the complaint shall not be referred to the Grievance Committee or a Hearing Panel but shall be brought before the Board of Directors 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 Directors to decide will be whether the respondent has failed to submit an arbitrable matter to arbitration or mediation. Upon determination that the member has refused to arbitrate or mediate a properly arbitrable matter, the Board of Directors 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 Board of a judicial decision in a petition for declaratory relief filed by the Board to confirm the propriety of its action. *(Revised 11/11)*

## 6. 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, he has refused to abide by an award, such refusal should not be referred to the Grievance Committee as a violation of the Code of Ethics unless such refusal reflects an established pattern or practice of noncompliance with the commitment to arbitrate. 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. *(Revised 11/95)*

## 7. 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 his 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 his 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.**

## 8. Holding of disputed funds by the Board of Directors

Member Boards 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 in a prompt manner. (Revised 11/87)

## 9. Arbitration under circumstances other than those described in Section 44

A Member Board may provide arbitration procedures only in those instances described in **Part Ten,** Section 44, Duty and Privilege to Arbitrate, in this Manual.

*In connection with this National Association policy, refer to **Part Ten,** Appendix II, Arbitration Guidelines, in this Manual.

## 10. 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 Committee that an arbitrable dispute exists and the dispute is subject to mandatory arbitration. *(Revised 11/00)*

## 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.

## 15. Arbitration between Board Members who are or were affiliated with the same firm

No Member Board may require REALTORS® and REALTOR-ASSOCIATE®s 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.

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

A local Board, prior to referring an ethics complaint or arbitration request for review to the State Association, should exhaust all efforts to impanel an impartial panel to conduct either the original hearing or the appeal or procedural review. These efforts may include the appointment of knowledgeable members of the Board on an ad hoc basis to serve either on a Hearing Panel or on behalf of the Board of Directors. If, after making all reasonable efforts, the Board still cannot impanel an impartial tribunal, the Board may refer the matter to the State Association, and the State Association may delegate to another Board or a regional enforcement facility the authority to hear the case on behalf of the State Association. No Board or regional enforcement facility, however, may be required to accept this delegation of authority. If no other entity is amenable to conducting the review, the State Association shall be responsible for conducting the hearing. State Associations may, at their discretion, require that the President or Association Executive of the Board referring an ethics complaint or arbitration request certify that all reasonable efforts to impanel an impartial panel had been made, and may further require that those efforts be documented. *(Amended 11/03)*

In instances where a local Member Board determines by resolution of its Board of Directors that it is incapable of providing an impartial panel for the conduct of an ethics or arbitration hearing (or appeal or procedural review hearing), the complaint or the request for arbitration (and the ethics appeal or procedural review request, if any) may be referred by the Board President to the State Association of REALTORS® for a hearing. With regard to requests for arbitration, in the event the State Association declines to conduct the arbitration or to delegate its authority to another Board or regional enforcement facility, the parties shall be relieved of their obligation to arbitrate as established in Article 17 of the Code of Ethics. With regard to alleged violations of the Code of Ethics, such allegations may be received and considered by the State Association and (1) dismissed as unworthy of further consideration, (2) heard by a Hearing Panel of the State Association's Professional Standards Committee, or (3) referred to another Board or regional enforcement facility. If referred for a hearing to the State Association's Professional Standards Committee or to another local Board or regional enforcement facility, a Hearing Panel will be appointed to conduct the hearing and forward the determination and sanction, if any, to the local Member Board. The Board of Directors of the local Member Board shall then

implement the decision of the Hearing Panel in strict accordance with its terms and conditions. Any requests for appeal or procedural review should be considered by an appropriate body of the State Association or "deputized" local Board or regional enforcement facility in accordance with the relevant established professional standards procedures. *(Amended 11/93)*

## 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 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 Board or Boards, 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 Boards would share the responsibility for enforcement of the Code of Ethics, including the conduct of arbitration hearings, on a joint basis.*

## 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 Committee or Professional Standards Committee shall be as established by written agreement between the signatory Boards. The expenses of such hearings shall be borne by the signatory Boards 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.

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.

*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.

"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 Committees 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 Committee 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)*

## 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 Committees and the Board of Directors

Any matter brought before the Grievance Committee, Professional Standards Committee, or Board of Directors may be considered by a panel of members or Directors appointed by the President for that purpose (or, alternatively, by the Board's Executive Committee). Three (3) or more members shall constitute a panel of the Grievance and Professional Standards Committees that can act on behalf of those committees. Five (5) Directors or a quorum of the Board of Directors, whichever is less, shall constitute a panel of the Board of Directors, that can act on behalf of the Board of Directors. The decision of the panel (or Executive Committee) shall be final and binding and shall not be subject to further review by the full Committee or the full Board of Directors, except as otherwise provided in this Manual.

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

In appointing such a panel, the President 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 05/15)*

When possible, panels should be strongly encouraged to use conference calls or alternative communication technologies for meetings other than hearings and appeals/procedural reviews to expedite the decision-making process. Use of conference calls or alternative communication technologies during the course of a hearing shall be governed by Professional Standards Policy Statement #56, "Remote" Testimony. *(Revised 11/14)*

## 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, 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)*

## 41. Arbitration Guidelines to parties

Boards conducting arbitration are required to provide all parties and panel members with the Arbitration Guidelines prior to commencement of any arbitration hearing. *(Adopted 11/96)*

## 42. Previously dismissed ethics complaints/ arbitration requests

If an ethics complaint or arbitration request is received and reviewed by a Board's Grievance Committee 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 05/15)*

All new and amended Case Interpretations become effective upon approval by the National Association's Professional Standards Committee and publication on REALTOR.org. *(Adopted 5/98)*

## 46. 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 Board and Association as established in Article IV of the *Bylaws* of the NATIONAL ASSOCIATION OF REALTORS®. Every Board and 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

Boards and 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 05/15)*

## 51. Mediators used by Boards

Mediators used by Boards and Associations to resolve contractual disputes and noncontractual disputes defined in Standard of Practice 17-4 may be REALTORS®, Board/Association staff, or others whose services a Board/Association chooses to utilize. *(Adopted 11/99)*

## 52. Boards to provide mediation

The duty of local Boards and 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 Boards and Associations; through multi-Board/regional cooperative enforcement agreements; or through agreement/arrangement with the state association.

Upon receipt of an arbitration request, mediation services shall be offered to disputants prior to review of the arbitration request by the Grievance Committee except where any party requests the Grievance Committee'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 Committee 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 Committee's review of the arbitration request, the parties shall in all instances again be offered the opportunity to mediate following the Grievance Committee's review. *(Adopted 11/99, Amended 5/12)*

## 53. Dispute resolution fees not to exceed maximum arbitration fee

Effective January 1, 2002, the fees charged for Board/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®. Boards/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

Boards and Associations should take reasonable steps to ensure the personal safety of parties, panelists, witnesses, staff, and others participating in professional standards proceedings. In instances where, in the opinion of the presiding committee or Hearing Panel Chair, there is an unacceptable risk posed to the safety of any participant, the proceedings will be recessed so the Chair can consult with staff, Board or Association elected leadership, or Board or Association counsel to identify and take steps to ensure the safety of all participants and to permit the proceedings to resume.

If after consulting with staff, Board or Association counsel, and any other appropriate party or agency (including law enforcement authorities), and after taking reasonable steps to attempt to resume the proceeding while ensuring the safety of all participants, the Board of Directors 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 Board of Directors (or its successor) concludes that the proceedings can be safely resumed. Where proceedings are postponed indefinitely by action of the Board of Directors, a memorandum detailing the circumstances shall be appended to the case file and maintained on a permanent basis. The Board of Directors 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. *(Adopted 5/00)*

## 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

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. Parties and their witnesses may request permission to participate in such proceedings via teleconference or videoconference. *(Revised 11/14)*.

Parties and witnesses to ethics and arbitration hearings may be permitted to participate in those hearings by teleconference or videoconference 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 11/14)*

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.

The costs of "remote" testimony shall be the responsibility of the party requesting the opportunity to participate or offer testimony by teleconference or videoconference. *(Adopted 11/04)*

## 58. 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, Boards and Association 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)*

## 59. Associations 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. 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*.

Failure to pay arbitration awards or deposit a like amount in these circumstances may be a violation of the MLS rules and subject to the nonmember to sanction. *(Adopted 11/15)*

# Part Seven — Arbitration General Provisions

## 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) "Board" means this organization, either the _____ _____ (local) Board/ Association of REALTORS® or the _____ (state) Association 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 REALTORS® 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 REALTORS® or the REALTOR®'s firm. *(Revised 11/97)*

(g) "Directors" means the Board of Directors of the Board (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) "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) "Member" means REALTOR® and REALTOR-ASSOCIATE® members of this Board (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)*

(k) "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)*

(l) "Person" means a natural person. *(Adopted 11/13)*

(m) "Professional Standards Administrator" is the Board staff person primarily responsible for the administration of all professional standards processes. *(Adopted 11/15)*

(n) "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 Board or Association in which they do not hold membership. *(Revised 5/97)*

(o) "Tribunal" means those persons serving in a given case on a Grievance Committee 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 a Board of Directors to act in its behalf. No individual may participate in the deliberation of more than one tribunal on the same matter. *(Revised 5/88)*

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

## 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 either complainant or respondent; (2) an employer, partner, employee, or in any way associated in business with either complainant or respondent; (3) a party to the hearing, or a party or a witness in any other pending case involving a party to this hearing; or (4) is objected to by a party as provided in **Part Seven,** Section 27(f).

(c) Before sitting in any case, each member of a tribunal (except any member of the Grievance Committee) 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 him 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 Committee 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 Board, or by law as may be required, except that a member of the Grievance Committee 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 Board. *(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), 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 Professional Standards Committee Chairperson, or, if challenge to the Chairperson is made, by the Professional Standards Committee Vice Chairperson, or, if challenge to both the Chairperson and Vice Chairperson is made, by the Board President. Challenges submitted pursuant to this Section for matters to be considered by the Board of Directors will be determined by the Board President or, if the challenge is to the Board President's qualifications, the next ranking Board officer. A party shall be deemed to have waived any grounds of disqualification of which he then has knowledge unless he files the request within ten (10) days from the date a list of names of members of the Professional Standards Committee or Board of Directors 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. *(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 Committee, or Board of Directors (or panel of Directors or Executive Committee) convened to review any action taken by a Grievance Committee. *(Revised 11/98)*

(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 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 Board 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 Board legal counsel during executive session is a matter of local Board discretion. The role of Board counsel during a hearing is to provide procedural and legal guidance as requested by the Chairperson or by panel members. Board 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 Board counsel believes an action or procedure is inconsistent with the Board's established procedures or may result in potential liability to the Board, 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 Board 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 believes that the testimony of that witness(es) is essential to ensure due process, his 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 11/88)*

Questions as to whether a member who has been called as a witness but who refuses to appear, or asserts that his 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

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 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. The Board shall, and any party (may/may not), at his own expense, have a court reporter present at the hearing, or may record* the proceeding, and, if transcribed, shall present a copy to the Professional Standards Administrator.** If the Board utilizes a court reporter in lieu of recording, the parties may not be prohibited from making their own recording. (See Form #A-10, Outline of Procedure for Arbitration Hearing, **Part Thirteen**, and Conduct of an Arbitration Hearing, **Part Twelve**.) Ethics and arbitration hearings must be recorded, not appeals or limited procedural review proceedings. Boards shall prohibit parties from recording appeals or limited procedural review proceedings. *(Revised 11/14)*

The Board's recording or transcription 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 procedural reviews.*** Any party to a hearing has the right to obtain a copy of the Board's official recording subject to payment of the Board's duplication costs, and any duplication will be conducted under the supervision of the Board. If the Board transcribes its official recording, any party to the hearing may obtain a copy of the transcript subject to paying the Board's transcription costs. If more than one party requests copies of the transcript, the Board's costs will be apportioned between or among the parties. *(Revised 11/10)*

If a party purchases a copy of the Board's official recording and subsequently has it transcribed at his own expense, that party must provide a copy of the transcript to the Board at no cost. After the Board has received a copy of the transcript (made from the Board's official recording), the Board shall make copies of the transcript available to any other party subject to their payment of the Board's duplication costs. *(Revised 11/10)*

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

*It is recommended that recordings produced by the Board be maintained in the confidential professional standards files until a date when any sanction imposed by the Board has been completed.

**Videotaping of the proceedings shall not be permitted except by advance express consent of all parties and all members of the tribunal.

***Recordings or transcripts from arbitration hearings may be used only by the parties for the purpose of procedural review requests, and may not be introduced into evidence at any subsequent hearing. Any other 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 11/10)*

44(a)(2), Duty and Privilege to Arbitrate]); the Hearing Panel members (including alternates); Board staff and/or counsel, as deemed necessary; and any court reporter, as requested. *(Revised 11/98)*

## 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 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, unless otherwise specified in this Manual. Notices sent by email shall include the association's request that delivery be acknowledged by the intended recipient within twenty-four (24) hours by return email. If receipt of the notice has not been acknowledged by the intended recipient within twenty-four (24) hours, the recipient will be contacted by telephone to confirm receipt and the recipient's confirmation will be noted in the file. 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 his 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 Board, any Board 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 Board.

## 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 Board 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 Board 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 38. Selection and Appointment of the Grievance Committee

There will be a standing committee, known as the Grievance Committee, of at least ____ Board Members, in good standing, of whom at least a majority shall be REALTORS®. The members of the committee shall be appointed by the President, subject to confirmation by the Board of Directors, for staggered three (3) year terms. The committee shall annually select its own Chairperson and Vice Chairperson (or, alternatively, the President shall annually designate the Chairperson and Vice Chairperson of the committee). The Grievance Committee will hold regularly-scheduled meetings and/or review complaints/arbitration requests not later than forty-five (45) days after receipt of the complaint/arbitration request. *(Revised 05/15)*

In selecting members of the Grievance Committee, the President 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-ASSOCIATE®s, 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. It is suggested that, to the extent practical, members of the Grievance Committee not serve simultaneously on the Professional Standards Committee or on the Board of Directors to avoid conflict with the prohibition on serving on more than one (1) tribunal in the same matter. *(Revised 11/96)*

## Section 39. Selection and Appointment of the Professional Standards Committee

There shall be a Professional Standards Committee of at least _____ Board Members, in good standing, of whom at least a majority shall be REALTORS®, appointed by the President, subject to confirmation by the Board of Directors. Members of the Professional Standards Committee shall be selected to serve on Hearing Panels as required to hear matters of alleged unethical conduct by Board Members or to provide arbitration as requested. The committee shall annually select its own Chairperson and Vice Chairperson (or, alternatively, the President shall annually designate the Chairperson and Vice Chairperson of the committee).*

In selecting members of the Professional Standards Committee, the President 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

*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 instance such arbitration is not recognized at all (or at least is unenforceable by the court). Where such prohibition exists, Board (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 Boards 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 Boards. In such Boards, 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)*

- 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-ASSOCIATE®s, 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. It is suggested that, to the extent practical, members of the Professional Standards Committee not serve simultaneously on the Grievance Committee or on the Board of Directors to avoid conflict with the prohibition on serving on more than one (1) tribunal in the same matter. *(Revised 11/96)*

# Part Nine — The Grievance Committee in Arbitration Proceedings

## Section 40. Authority

The Grievance Committee is established in **Part Two,** Section 15 and **Part Eight,** Section 38 of this Manual, which provide in part:

> *There will be a standing committee, known as the Grievance Committee, of at least _____ Board Members in good standing, of whom at least a majority shall be REALTORS®. The members of the committee shall be appointed by the President, subject to confirmation by the Board of Directors, for staggered three (3) year terms. The committee shall annually select its own Chairperson and Vice Chairperson (or, alternatively, the President shall annually designate the Chairperson and Vice Chairperson of the committee).*

## Section 41. Function

The function of the Grievance Committee is clearly distinguishable from the function of the Professional Standards Committee. The Professional Standards Committee makes decisions on matters involving ethics or arbitration *(Revised 05/15)*

The Grievance Committee receives ethics complaints and arbitration requests to determine if, taken as true on their face, a hearing is to be warranted. The Grievance Committee makes only such preliminary evaluation as is necessary to make these decisions. While the Grievance Committee 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 a lack of evidence. Complainants are not required to prove their case upon submission of their ethics complaint or arbitration request. The Grievance Committee does not mediate or arbitrate business disputes. The Grievance Committee will hold regularly-scheduled meetings and/or review arbitration requests not later than forty-five (45) days after receipt of the request. *(Revised 05/15)*

In evaluating ethics complaints, the Grievance Committee may require a written response from the respondent(s) only if the committee is in need of additional information pertaining to the questions in Section 19, Grievance Committee's Review of an Ethics Complaint, and the complainant cannot provide such information. In such instances the respondent(s) should be provided with a copy of the ethics complaint and advised that failure to respond may be the basis for a change or having violated Article 14 of the Code of Ethics. (See Form #E-4) Grievance Committee Request for Information [Ethics Complaint] and Form #E-5, Response to Grievance Committee Request for Information, **Part Six** of this Manual). In evaluating arbitration requests, the Grievance Committee may request a written response to the arbitration request from the respondent(s) only if the committee is in need of additional information pertaining to the questions in Section 42, Grievance Committee's Review and Analysis of a Request for Arbitration, and the complainant cannot provide such information. (See Form #A-5, Grievance Committee Request for Information [Arbitration Request] and Form #A-6, Response to Grievance Committee Request for Information, **Part Thirteen** of this Manual.) If no response is filed within the time allotted, the Grievance Committee shall make its determination as to whether an arbitration hearing should be scheduled based upon the information set forth in the arbitration request. *(Revised 11/15)*

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

(1) whether ethics complaints and arbitration request 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 requests commencing. If these matters rise during a hearing, the hearing panel will address them at that time.

Dismissals of ethics complaints and arbitration request by hearing panels can be appealed to the Board of Directors on the same bases as dismissals by the Grievance Committee.

Where such issues are considered at a pre-hearing meeting of the hearing panel, the chair will determine whether the parties may be present, and the extent to which their participation will be permitted. *(Revised 05/14)*

## Section 42. Grievance Committee'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 refer the arbitration request to the Chairperson of the Grievance Committee. The Chairperson shall review the arbitration request and any evidence and documentation attached. The Chairperson may assign one or more members of the Grievance Committee to review the request and to make any necessary evaluation. The member(s) 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. The request shall be provided to the assigned members by the Professional Standards Administrator upon instruction from the Chairperson. *(Amended 11/15)*

The reviewer(s), if appointed, shall complete the assignment promptly and prepare a report and recommendation for the

Grievance Committee. After reviewing the report, the Chairperson shall schedule a meeting of the Grievance Committee and may instruct the Professional Standards Administrator to provide members of the Grievance Committee with copies of the case file including the review's report, if any. At the option of the Board, such file may be sent to the Grievance Committee members prior to the meeting or may be distributed at the meeting. *(Amended 4/94)*

B. *Consideration by the Grievance Committee of a request for arbitration*

In reviewing a request for arbitration, the Grievance Committee 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 Committee 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 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 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 in the exercise of reasonable diligence, whichever is later?

(4) Are the parties members in good standing or otherwise entitled to invoke arbitration through the Board'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 Board and request for arbitration, or unless the court refers the matter to the Board for arbitration.

(6) Is there any reason to conclude that the Board 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 Board 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 Committee conclude that the matter is properly arbitable by the Board, the Grievance Committee shall send the request for arbitration to the Chairperson of the Professional Standards Committee 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 arbitable, 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 Committee related to a request for arbitration*

If the Grievance Committee determines that a matter should not be arbitrated by the Board (because of the amount involved or the legal complexity, or for any other valid reason specified in the Grievance Committee decision and written report), the reason(s) for dismissing the request will be stated in the notice of the dismissal. Any party may appeal the decision to the Board of Directors within twenty (20) days from transmittal of notice of the committee decision using Form #A-20, Appeal of Grievance Committee (or Hearing Panel) Dismissal or Appeal of Classification of Arbitration Request. 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 Committee'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/classifications shall be heard at the Directors' next regularly scheduled meeting or at a special meeting designated for that purpose, but no later than ten (10) days after the date of receipt of the appeal. The Directors' decision shall be transmitted to the parties within five (5) days from the date of the decision. *(Amended 11/15)*

The materials which were presented to the Grievance Committee when the Grievance Committee made its decision will be presented to the Board of Directors and considered with the appeal, together with any party's rationale challenging the Grievance Committee's dismissal. The parties to the arbitration (complainant and respondent) do not have the right to appear at the appeal hearing before the Directors. In the event a request for arbitration is dismissed, any deposit submitted by the complainant shall be returned to the complainant. *(Revised 11/12)*

# 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 Board 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 Board'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 Committee and all claims would be resolved in a single hearing.

In 2012, Article 17 was further amended to provide Boards 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 Board's governing documents. Enabling language can be found at realtor.org (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 his firm as respondents in an arbitration request?

Yes.

(5) What is the advantage to naming both a REALTOR® (principal) and his 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 Board, every member, where consistent with applicable law, binds himself or herself and agrees to submit to arbitration (and to mediation if required) by the Board'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 a Board's MLS where they do not hold Board membership, or nonmember brokers and nonmember licensed or certified appraisers who participate in the Board's MLS, having signed the agreement to abide by the Board's Multiple Listing Service rules and regulations binds himself or herself and agrees to submit to arbitration by the Board'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)*

(a) **Mandatory types of arbitration**

(1) 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. *(Amended 5/01)*

(2) A REALTOR® other than a principal or a REALTOR-ASSOCIATE® shall have the right to invoke the arbitration facilities of the Board in a business dispute with a REALTOR® or REALTOR-ASSOCIATE® in another firm or with their firm (or both), whether in the same or a different Board, provided the REALTOR® principal with whom he is associated joins in the arbitration request, and requests the arbitration with the REALTOR® principal of the other firm or with their firm (or both). Arbitration in such cases shall be between the REALTOR® principals or their firms (or both). REALTOR® nonprincipals and REALTOR-ASSOCIATE®s who invoke arbitration in this manner, or who are affiliated with a respondent and have a vested financial interest in the outcome, have the right to be present throughout the proceedings and to participate but are not considered to be parties. *(Amended 5/01)*

(3) A client of a REALTOR® principal may invoke the arbitration facilities of the Board in a business dispute with a REALTOR® principal or the REALTOR®'s firm (or both) 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 provisions of **Part Ten,** Section 45. A REALTOR® principal may also invoke arbitration against his client but no arbitration may be held without the client's voluntary agreement to arbitrate and to be bound by the decision. *(Amended 5/01)*

**Voluntary types of arbitration**

(4) REALTORS® and REALTOR-ASSOCIATE®s who are or were affiliated with the same firm shall have the same 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 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)*

(5) A REALTOR® principal may invoke the arbitration facilities of his Board with a nonmember broker, provided each party agrees in writing to the arbitration and provided the Board 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 he 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 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. *(Amended 11/12)*

(6) 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)*

(b) Where mandatory arbitration (and mediation if required by a Board) is consistent with applicable state law, the Code of Ethics, Article 17, requires only that disputes arising out of the real estate business between REALTORS® "... associated with different firms . . ." be arbitrated (or mediated if required by a Board). 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 Board in the matter of providing arbitration and mediation facilities by the Board. Thus, Member Boards must provide arbitration and mediation facilities for Board Members in the types of arbitration described in the preceding paragraphs (1), (2), and (3) and a Board may require REALTORS® (principals) to mediate otherwise arbitrable matters. Member Boards may provide arbitration and mediation facilities for the additional types of disputes described in the preceding paragraphs (4), (5), and (6). However, Member Boards shall not establish any mandatory requirement of its Board Members to arbitrate and/or mediate in the circumstances described in paragraphs (4), (5), and (6). No arbitration shall be initiated by the Board and no arbitration shall be undertaken by the Board 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. Board's Right to Decline Arbitration

(a) If either the Grievance Committee 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 Board of Directors in writing within twenty (20) days of the date of notice that the Grievance Committee or the arbitration panel declined to continue the proceeding using Form #A-20, Appeal of Grievance Committee (or Hearing Panel) Dismissal or Appeal of Classification of Arbitration Request. 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 Committee'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 Committee or the arbitration Hearing Panel when the decision to discontinue arbitration was made will be presented to the Directors and considered with the appeal at the Directors' next regularly scheduled meeting or a special meeting designated for that purpose, but no later than ten (10) days after the date of receipt of the appeal. The Directors' decision shall be transmitted to the parties within five (5) days from the date of the decision. The complainant and respondent do not have the right to appear at the hearing before the Directors. In the event of such an appeal, the Grievance Committee or the arbitration panel shall report its conclusions in writing to the Directors and, if the Directors 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 Board of Directors decides that the arbitration should proceed, the matter shall be remanded to the Grievance Committee or the arbitration panel for further proceedings. *(Revised 5/15)*

(b) The President may appoint a panel of Directors, acting on behalf of the Board of Directors, to hear the appeal. Any appeal panel so appointed must be composed of at least five (5) Directors or a quorum of the Board of Directors, whichever is less. (Alternatively, the appeal may be heard by the Board's Executive Committee.) The decision of the appeal panel (or Executive Committee) is final and not subject to further review by the Board of Directors. *(Revised 11/91)*

(c) 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 of Directors 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.

(d) If either party to an arbitration request believes that the Grievance Committee has incorrectly classified the issue presented by the request ("mandatory" or "voluntary" arbitration situation), the party has twenty (20) days from the transmittal of the Grievance Committee's decision to file a written appeal of the Grievance Committee's determination using Form #A-20, Appeal of Grievance Committee (or Hearing Panel) Dismissal or Appeal of Classification of Arbitration Request. The materials and information which were available to the Grievance Committee when the Committee made its determination will be presented to the Directors and considered with the appeal, together with any party's rationale challenging the Grievance Committee's classification of the request. Appeals of classifications shall be heard at the next regularly scheduled Directors' meeting or a special meeting designated for that purpose, but no later than ten (10) days after receipt of the appeal. The Directors' decision shall be

transmitted to the parties within (5) days from the date of the decision. The complainant and respondent do not have the right to appear at the hearing before the Directors. In the event of such an appeal, the Grievance Committee must report its written conclusions to the Board of Directors. If the Directors determine 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 Board, all members bind themselves and agree to submit to arbitration by the arbitration facilities of the _____ (state) Association of REALTORS® any dispute with a member of any other local Board or _____ (state) Association of 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) The _____ (state) Association of REALTORS® has established facilities for such arbitration.*

Disputes as defined in Article 17 of the Code of Ethics requiring arbitration between members having no commonality of Board 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 Board Members of different Boards of different states, subject to the parties' voluntary agreement in advance to accept the place, date, and time established by 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 Board. 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 $_____.** 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 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 in the exercise of reasonable diligence, whichever is later. *(Revised 11/00)*

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 Board President or the President's designee. *(Adopted 11/00)*

(b) The Professional Standards Administrator shall promptly refer the request for arbitration to the Chairperson of the Grievance Committee for determination by the Committee within ____ days as to whether the matter is subject to arbitration. *(Revised 11/98)*

The function of the Grievance Committee 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 Committee 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 Committee may request the party(ies) named as respondent(s) in the request for arbitration to provide the

*The State Association as a Member Board 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.

**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)*

Grievance Committee with a written response to the request for arbitration within _____ days only if the committee is in need of additional information pertaining to the questions in Section 42, Grievance Committee's Review and Analysis of a Request for Arbitration, and the complainant cannot provide such information. (See Form #A-5, Grievance Committee Request for Information [Arbitration Request] and Form #A-6, Response to Grievance Committee Request for Information, **Part Thirteen** of this Manual.) If no response is filed within fifteen (15) days from transmittal of the request for the response, the Grievance Committee shall make its determination as to whether an arbitration hearing should be scheduled based upon the information set forth in the request for arbitration. *(Revised 11/15)*

(c) If the Grievance Committee finds the matter properly subject to arbitration, the Chairperson shall refer it back to the Professional Standards Administrator with instructions to arrange a hearing, notifying the parties of the Grievance Committee'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 Board of his decision) and informing the parties of their ability to challenge the classification (see Section 45[d], Board's Right to Decline Arbitration). The Professional Standards Administrator or Chairperson shall select a hearing date which will be transmitted to the parties within five (5) days of transmittal of the Grievance Committee's decision. The Professional Standards Administrator shall also notify the respondent within five (5) days of receipt of the Grievance Committee's instructions by transmitting a copy of the request for arbitration, the Notice to Respondent (Arbitration) (Form #A-3), and two (2) forms 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 $_____* within fifteen (15) days from the date of transmittal of the request for response to the respondent. The Professional Standards Administrator shall within five (5) days of transmittal of the Grievance Committee's decision transmit to each of the parties a list of names of members of the Professional Standards Committee (see **Part Seven,** Section 27, (a) through (f), Qualification for Tribunal; **Part Thirteen,** Form #A-7, Notice of Right to Challenge Tribunal Members; and Form #A-8, Challenge to Qualifications by Parties to Panel Members). 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 Committee Chairperson shall appoint from the names not successfully challenged by either party three (3) or more arbitrators who will hear the dispute. The Chairperson 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 Committee Chairperson shall select the Chairperson of the Hearing Panel, who shall possess the powers of the neutral arbitrator within the meaning of the _____ arbitration statutes.** A party will be deemed to have waived all objections to any person whose name he does 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 Board 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 Committees 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. If these matters rise during a hearing, the hearing panel will address them at that time.

Dismissals of ethics complaints and arbitration requests by hearing panels can be appealed to the Board of Directors on the same bases as dismissals by the Grievance Committee.

Where such issues are considered at a pre-hearing meeting of the hearing panel, the chair will determine whether the parties may be present, and the extent to which their participation will be permitted. *(Revised 05/14)*

If the Grievance Committee dismisses the request as being unworthy of further consideration, the decision may be appealed to the Board of Directors within twenty (20) days from transmittal of the Grievance Committee's decision using

*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)*

**As an alternative, the Board may, as a matter of Board procedure, elect to have the Board President appoint the Chairperson of each Hearing Panel.

Form #A-20, Appeal of Grievance Committee Dismissal or Classification of Arbitration Request; however, no additional information may be added or attached to the form.* Only those materials which were presented to the Grievance Committee when the committee made its decision will be presented to the Board of Directors and considered with the appeal, and the complainant and respondent do not have the right to appear at the hearing before the Directors. The appeal shall be heard at the next regularly scheduled meeting or a special meeting designated for that purpose, but no later than ten (10) days after the date of receipt of the appeal. The Directors' decision shall be transmitted to the parties within five (5) days of the date of the decision. In the case of a dismissed arbitration request, the deposit shall be returned to the complainant. If the Directors determine that the arbitration request was improperly dismissed they shall refer it to the Professional Standards Committee for hearing. If the Directors determine that the request was improperly classified, they shall reclassify it appropriately. Upon determination of the Directors that the arbitration request should be referred for hearing, the Professional Standards Administrator shall at that time provide a copy of the response to the complainant if one had been submitted for review by the Grievance Committee. In any event, the Directors' decision shall be transmitted to the parties within five (5) days of the date of the decision. *(Revised 05/15)*

(d) Boards 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 Committee 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 V to **Part Ten,** Mediation as a Service of Member Boards.) *(Revised 11/03)*

(e) Dismissal of an arbitration request by a Board 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 Board shall consist of signing and delivering to the Professional Standards Administrator either a request or response form provided by the Board (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 $_____ (not to exceed $500).** Agreements to arbitrate are irrevocable except as otherwise provided under state law. *(Revised 5/01)*

NOTE: The circumstances under which Member Boards may conduct arbitration will vary based upon state arbitration other statutes and case law. Member Boards should consult with Board or State Association legal counsel and select the appropriate procedure from those listed below as Options #1, #2, and #3. 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 any instance where arbitration has been conducted and an award rendered under Option #2 or #3 of this Section; where the amount requested by the party initiating the arbitration has been awarded; and where the respondent has failed to make the specified deposit, it shall be the responsibility of the respondent to pay an amount equal to the deposit to the Board within ten (10) days of receipt of notice from the Board requesting payment. Where the respondent has not made the deposit and a partial award is made, the respondent shall pay to the Board an amount to be determined by the Hearing Panel that will not exceed the deposit originally made by the complainant. Failure to make such payment on a timely basis, upon receipt of a request from the Board, shall be treated in the manner specified in the Board's bylaws for failure to satisfy financial obligations to the Board. *(Adopted 5/88)*

***Option #1***

(b) Arbitration shall not proceed unless the signed Response and Agreement Form (**Part Thirteen,** Form #A-4) and deposit amount have been received from the respondent and the respondent appears and takes part in the hearing *(Revised 11/05)*.

***Option #2***

(b) In the event the respondent fails to sign and return the Response and Agreement Form (**Part Thirteen,** Form #A-4), or fails or refuses to make the required deposit, arbitration may proceed, and a valid award may be rendered if the respondent appears and takes part in the hearing.

NOTE: This option may be adopted only where state law permits arbitration to proceed in the absence of signed arbitration agreements. The advice of legal counsel should be obtained to determine whether Board membership creates an enforceable obligation to arbitrate under the circumstances established in **Part Ten,** Section 44 of this Manual.

*Any member of a Grievance Committee who is a member of the Board of Directors shall not sit as a Director during any appeal from a decision of the Grievance Committee, nor shall such individual participate in any vote of the Directors with respect to such matters.

**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 11/93)*

*Option #3*

(b) 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 Board 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)*

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)*

## Section 49. Initial Action by Directors

If the complainant alleges that a member has improperly refused to submit a dispute to arbitration (or mediation if required by the Board), the complaint shall not be referred to the Grievance Committee or a Hearing Panel, but shall be brought before the Board of Directors 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 Directors to decide will be whether the respondent has failed to submit an arbitrable matter to arbitration or mediation in violation of Article 17. *(Revised 11/11)*

There can be no charge that there has been a refusal to arbitrate (or mediate if required by the Board) until the Grievance Committee determines the matter is arbitrable and of a mandatory nature and the respondent fails to submit to arbitration or mediation before the Board. *(Revised 11/11)*

Upon determination that the member has refused to arbitrate or mediate a properly arbitrable matter, the Board of Directors 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 Board of a judicial decision in a petition for declaratory relief filed by the Board to confirm the propriety of its action. *(Revised 11/11)*

On the other hand, if the complaint against the member is that, having properly submitted a dispute to arbitration or mediation, the member has refused to abide by the award or the resulting agreement, such refusal should not be referred to the Grievance Committee as a violation of the Code of Ethics unless it reflects an established pattern or practice of noncompliance with the commitment to arbitrate or mediate. 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.* *(Revised 11/11)*

## Section 50. Preliminary Judicial Determination Prior to Imposition of Discipline

If the Board of Directors 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 Board for declaratory relief declaring that the discipline proposed violates no rights of the member.**

## 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)*

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 Board's Professional Standards Committee to provide a representative peer panel, the Board President shall appoint other Board Members qualified in that field to serve as panel members. If the Board President is unable to identify a sufficient number of qualified members to serve on a panel, the President shall report that fact to the Directors at their next regularly scheduled meeting. If the Board of Directors concurs, the request shall be referred to the State Association pursuant to **Part Fourteen** of this Manual. If the State Association is unable to provide a representative peer panel, the parties shall be released from their obligation to arbitrate. *(Revised 11/98)*

(b) The Professional Standards Administrator shall inform the parties of the date, time, and place of the hearing established by

*Refer to Appendix III to **Part Ten** for the rationale for use of judicial enforcement of arbitration awards when a Board Member refuses to pay an award in arbitration.

**Refer to Rationale of Declaratory Relief Procedure provided in Appendix IV to **Part Four.**

the arbitrators (or the Chairperson of the Professional Standards Committee) (Form #A-9, Official Notice of Hearing, **Part Thirteen**).* The arbitration request and response, if any, shall be provided to Hearing Panel members prior to the hearing. Such time period shall be _____ (as determined by the Board of Directors) and shall be adhered to for all hearings. Board's 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 of arbitrators 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.** The Hearing Panel may receive and consider any evidence they deem material and proper, including evidence of accountants and other experts. Each party is responsible for the expenses of expert witnesses he calls. Parties to arbitration shall be entitled to have legal counsel present at any hearing. Each party is responsible for the expenses of his respective counsel.

## 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 Board to cover the costs incurred by the Board up to the point of settlement of the dispute.

## 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 Board of Directors 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 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 Board of Directors. *(Revised 05/15)*

(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 Board of Directors. 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 Board of Directors has concluded that the hearing was conducted in a manner consistent with the Board'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 shall be retained in the escrow or trust account until the review is completed. If the arbitration award is confirmed by the Board of Directors following the conduct of the limited procedural review, the nonprevailing party shall have an additional fifteen (15) days from the transmittal of the Directors' decision to institute an appropriate legal challenge to the validity of the arbitration award. In such case, the nonprevailing party shall also cause legal counsel to advise the Board 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 Directors' decision, if written notice of a suit challenging the validity of the arbitration award has not been received by the

*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.

**Such hearings should be conducted according to **Part Twelve,** Conduct of an Arbitration Hearing.

Board, 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 05/15)*

If the nonprevailing party does not request the Board 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 escrow or trust account to the prevailing party. *(Revised 05/15)*

(e) Any failure to make the necessary deposits shall be referred to the Board of Directors for action at their next meeting or at a special meeting called for that purpose. 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 Board of Directors may, at its discretion, impose discipline or may give the party an additional period to make the required deposits. The Directors may also stipulate appropriate discipline to be automatically imposed if the party fails to make the deposit within the time established by the Directors. *(Revised 05/15)*

(f) Any interest accrued on the escrowed funds shall become the property of the party to whom the funds are ultimately released. *(Revised 05/15)*

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 Board of REALTORS®.* 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)*

*In cases of arbitration not mandated by the Board, and in which the Board provides arbitration as a service to the parties voluntarily seeking arbitration, the Board may recover its legal fees as it deems appropriate.

NOTE: At the option of each Member Board 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. *(Adopted 11/95)*

NOTE: Associations are strongly encouraged to refund all or part of parties' filing deposits where disputes are resolved through mediation. If an association elects to adopt this optional procedure, the following should be incorporated as part of the association's dispute resolution procedures:

"Where parties successfully mediate an otherwise arbitrable dispute, their arbitration filing fees will be refunded," **or** "Where parties successfully mediate an otherwise arbitrable dispute _____ % (or $ _____ ) of their filing fee will be refunded." *(Adopted 5/10)*

## Section 55. Request for Procedural Review by Directors

(a) A written request for procedural review of the arbitration hearing procedures must be filed with the President within twenty (20) days after the award has been transmitted to the parties and be accompanied by a deposit in the sum of $_____ (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 Board. The request for procedural review shall be reviewed within ten (10) days of receipt of the request by the Board President or the President's designee only for the purpose of determining whether the request states any legitimate basis for consideration by the Board of Directors. If determined to be insufficient, it shall be returned to the requester accompanied by an explanation and a request for additional detail to be received by the Board 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 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 Board of Directors for its consideration. All requests for procedural review received by the Board must be considered by the Board of Directors, and only the bases raised in the written request for procedural review may be raised during the review before the Directors. *(Amended 11/15)*

(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 Directors 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 Directors for review at their next regular meeting or at a special meeting called by the Professional Standards Administrator for that purpose, but not later than thirty (30) days after the date of receipt of the procedural review. The Professional Standards Administrator shall provide to the Directors, in advance, a copy of the request for procedural review or the amended request for procedural review, if any, and the President's correspondence, if any. The Directors shall be advised that the information provided is confidential and not to be discussed with others at any time. *(Revised 05/15)*

(c) The request for procedural review may be heard by a panel of Directors appointed by the President for that purpose (or, alternatively, by the Board's Executive Committee). Five (5) Directors or a quorum of the Board of Directors, whichever is less, shall constitute such panel, which shall act on behalf of the Board of Directors. The decision of the panel (or Executive Committee) shall be final and binding and shall not be subject to further review by the Board of Directors. *(Revised 11/91)*

(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 Directors reasons why the arbitration Hearing Panel's award should not be overturned. *(Revised 5/09)*

(e) The Board of Directors 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 Directors 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)*

(f) If the Directors determine that a substantial procedural error occurred or a member was otherwise deprived of due process, the Directors 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 Directors may release the parties from their obligation to arbitrate if the Directors conclude that the Board will be unable to impanel an impartial Hearing Panel.

(g) After all procedural remedies provided for in the Board's procedures have been exhausted, a member is not precluded from asserting any legal rights to which he is 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 _____ (state), 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 Board to seek judicial enforcement and to request reimbursement of legal fees incurred in seeking enforcement. At the discretion of the Board of Directors, the Board may support the request for judicial enforcement in the court, and at its further discretion, the Board may reimburse the individual for costs incurred in seeking such judicial enforcement if the court does not grant reimbursement of legal costs to the plaintiff. *(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 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)

**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 Committee'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 Committees in their review of arbitration requests, the Professional Standards Committee of the National Association provides the following information.

Arbitration by Boards 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, Boards of REALTORS®, acting through their Grievance Committees 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 Boards 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 Committees 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 Committee 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 Committees not take actions that could be construed as rendering decisions on the merits. For example, a Grievance Committee should not dismiss an otherwise arbitrable claim simply because Grievance Committee 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,* 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*

*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)*

*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 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)*

The foregoing are by no means all-inclusive of the consideration that must be taken into account by a Grievance Committee 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 Committees 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 Boards 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

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.

Associations may, but are not required to, provide mediation services for disputes of the type listed above. *(Revised 5/13)*

# 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 him/her 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 Board 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)*

Boards and 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 Boards and 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 Boards or Associations of REALTORS®). The majority of arbitration hearings conducted by Boards and 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 Boards and Associations in reaching fair and equitable decisions in arbitration; to prevent the establishment of any one, 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 his 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 Boards and 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®, Professional Standards Administrators, 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® in his 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,* 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.

*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 #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)*

**Factor #2. Arbitrability and appropriate parties**
While primarily the responsibility of the Grievance Committee, 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 Committee. This is based on the premise that the fundamental right and primary responsibility to bring potentially unethical conduct to the attention of the Grievance Committee 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 Board legal counsel should be followed.

**Factor #6. Consideration of the entire course of events**

The standard of proof in Board-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 5/03)*

**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 5/03)*

**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 him? Did he know it was for sale?
  (d) Were there previous dealings between the buyer and the seller?
  (e) Did the buyer find the property on his 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 his 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 his 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 him?
  (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 his 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 he 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 she was 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 he (Broker S) had clearly disclosed his status as subagent, and that he could not counsel Buyer #1 as to the property's market value. Broker B based his claim to entitlement on the grounds that he 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 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 his 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 his 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 his 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 his 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 he 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 his 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 his 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, he arranges and conducts 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 he identifies Client B's company and outlines his 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 he has "lost control of his 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 Complainant | Favors Respondent | Favors 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 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? | | | | | |

## 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 |
|---|---|---|---|---|---|
| (a) Was the introduction made when the buyer/tenant had a specific need for that type of property? | | | | | |
| (b) Was the introduction instrumental in creating the desire to purchase/lease? | | | | | |
| (c) Did the buyer know about the property before the broker contacted him? Did he know it was for sale/lease? | | | | | |
| (d) 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? | | | | | |
| (b) Was the potential for dual agency disclosed? When? | | | | | |
| 10. Did the broker who made the initial introduction to the property maintain contact with the purchaser or tenant, or could the brokers 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 his 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 him? | | | | | |
| (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 Complainant | Favors Respondent | Favors 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 his 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? | | | | | *(Adopted 11/03)* |

# 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 Boards, it is important that the Board utilize the powers of local courts to support and enforce its arbitration awards and any Board actions contemplated in connection with arbitration by the Board. Both the Petition for Declaratory Relief and Petition for Judicial Enforcement should be employed by the Board where it will confirm the propriety of the Board's actions and will minimize legal vulnerability and liability to the Board 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 Board's professional standards procedures. Refusal of a member to arbitrate, or meditate if required by the Board, shall be determined by a hearing by the Board of Directors as specified in **Part Ten,** Section 49, Initial Action of Directors. *(Revised 05/15)*

Upon determination of the sole question of fact that a Board Member has refused to arbitrate or mediate a properly arbitrable matter, the Board of Directors 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 Board of a judicial decision in a petition for declaratory relief filed by the Board 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 Board Staff:** 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 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 Board of Directors, consistent with Section 53, The Award. *(Adopted 05/15)*

Requiring the non-prevailing party to, within ten (10) days, either pay the award or deposit the funds with the Board 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 Board 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 Board), the Board 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. *(Revised 05/15)*

# 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 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 in the exercise of reasonable diligence, whichever is later.

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 Board President or the President's designee. *(Revised 11/00)*

(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 President (or other individual) 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 himself or herself 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 Committee 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 Board of Directors within twenty (20) days of the date of the notice of the Grievance Committee's or arbitration Hearing Panel's decision using Form #A-20, Appeal of Grievance Committee 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 Board of Directors decides that arbitration should proceed, the matter is remanded to the Grievance Committee or arbitration Hearing Panel for further processing. *(Amended 5/97)*

If an appeal is filed, the President may appoint a panel to hear the appeal composed of at least five (5) Directors or a quorum of the Board of Directors, whichever is less. (Alternatively, the appeal may be heard by the Board's Executive Committee.) The decision of the appeal panel (or Executive Committee) is final and not subject to further review by the Board of Directors. *(Revised 11/91)*

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. (State Association bylaws have provisions of professional standards procedures as they relate to ethics and arbitration proceedings.)

(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 Committee 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 Committee or the Hearing Panel, the complainant (requester) shall be informed of the dismissal and the reasons for the dismissal, and may appeal to the Board of Directors within the time specified in the Board's procedures using Form #A-20, Appeal of Grievance Committee Dismissal or Classification of Arbitration Request. 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 Committee's conclusion that the request should be dismissed. With the appeal, the Directors shall consider only the same information that was available to the Grievance Committee 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 Directors' meeting. *(Revised 5/07)*

(12) **Function of Grievance Committee.** The function of the Grievance Committee 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) **Director on Grievance Committee.** A member of the Grievance Committee who is a member of the Board of Directors may not sit as a Director during an appeal to the Board of Directors of the Grievance Committee's decision to dismiss a request for arbitration, and may not vote on such appeal.

(14) **If matter referred for arbitration.** If the request for arbitration is referred for hearing, the Chairperson of the Grievance Committee shall refer it to the Professional Standards Administrator with instructions to arrange an arbitration hearing. The Professional Standards Administrator shall notify the other party within the time specified in the Board's procedures, except that a reasonable delay does not invalidate the procedure. The Professional Standards Administrator shall mail 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 the time specified in the Board's procedures.

(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. 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 from whom an arbitration Hearing Panel of at least three (3) members will be appointed, 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 Committee'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 Committee Chairperson 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 Chairperson 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 there is not a sufficient number of qualified practitioners on the Board's Professional Standards Committee to constitute a representative peer panel, the President shall appoint other Board Members qualified in that field to serve on the panel. If other qualified members cannot be identified, that fact is reported by the President to the Board of Directors, and if the Directors concur, the matter is referred to the State Association as outlined in **Part Fourteen** of this Manual. If the State Association cannot impanel a qualified peer panel, the complainant and respondent are released from their obligation to arbitrate. *(Revised 11/98)*

(20) **Date, time, and place of hearing.** The arbitration Hearing Panel 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 _____ (as determined by the Board of Directors) and shall be adhered to for all hearings. *(Revised 11/14)*

(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 his/her 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 his/her 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.

(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 Board of Directors only on the basis of alleged irregularity(ies) of the proceeding as may have deprived the party of fundamental due process. The Directors 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 Board of Directors. 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 Board of Directors 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 or deposit the funds with the Professional Standards Administrator of the Board administering the arbitration consistent with Section 53, The Award, Code of Ethics and Arbitration Manual, that failure shall be brought before the Directors. The Directors, 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 directors may also stipulate appropriate discipline to be automatically imposed if the party fails to make the deposit within the time established by the Directors. *(Adopted 05/15)*

(35) **Request for procedural review.** The appeal may be heard by a panel of Directors appointed by the President or heard by the Board's Executive Committee. The request for procedural review shall be reviewed by the Board President or the President's designee only for the purpose of determining whether the request states any legitimate basis for consideration by the Board of Directors. Any appeal panel must be comprised of five (5) Directors or a quorum of the Board of Directors, whichever is less. The decision of the appeal panel (or Executive Committee) is final and binding and is not subject to further review by the Board of Directors. All requests for procedural review received by the Board must be considered by the Board of Directors and only the bases raised in the written request for procedural review may be raised during the review before the Directors. *(Amended 11/94)*

(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 Committee or a Hearing Panel, but shall be brought before the Board of Directors 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 Directors 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 Directors 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. (Amended 11/11)

(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 Committee 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 of Directors 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 |
|---|---|
| **Grievance** | |
| 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 |
| **Hearing** | |
| Notification to respondent of request | 5 days from transmittal of Grievance Committee's instruction |
| Response required | 15 days from transmitting request to respondent |
| Challenge forms | 10 days to challenge from date forms transmitted |
| Panel named | 15 days from transmitting challenge forms |
| Hearing notice* | 21 days before hearing |
| Arbitration case to panel | Board option |
| Notice of witnesses and attorney | 15 days before hearing to Board and other party |
| **Procedural Review** | |
| Request filed | 20 days from transmitting award |
| Preliminary review | Optional number of days |
| Amendment received | Within 10 days of notice |
| Review held by Directors | Next/special meeting giving not less than 10 days notice |

*(Revised 11/15)*

* 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)*

**Selection of Board 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 Board) 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 Committee, 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 Committee, or as a member of the Professional Standards Committee. If Mediation Officers are members of the Grievance Committee, 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. 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 him/her 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 or Association 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 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 5/12)*

**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 review of the arbitration request by the Grievance Committee. If mediation is voluntary and the parties agree, the matter will be referred to the Mediation Officer, who 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 Committee 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 Committee, the arbitration request will be referred to the Grievance Committee 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 Committee's review of the arbitration request, the parties shall in all instances again be offered the opportunity to mediate following the Grievance Committee's review. *(Revised 5/12)*

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 Committee 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

(1) Arbitration request received by the Board*

(2) Association Executive will advise parties of their mediation obligations and options to participate in mediation prior to review of the arbitration request by the Grievance Committee.
**Send to complainant:**
Request for Mediation form — *Boards may prefer to complete this step by telephone rather than mail*
Agreement to Mediate form
(Set time frame for completed and signed forms to be returned to the Board)

(3) Upon receipt of completed forms from complainant, **send to respondent:**
Notice of Request for Mediation form with attached copy of complainant's completed Request for Mediation form — *Boards may prefer to complete this step by telephone rather than mail*
Agreement to Mediate form
Mediation Officer Selection form (should be sent to both complainant and respondent)
(Set time frame for completed and signed forms to be returned to the Board)

(4) Upon receipt of all completed forms, the Board 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

(5) The Mediation Officer should contact the complainant and respondent directly to set an acceptable time and location for the mediation conference.
**Send to both complainant and respondent:**
Mediation Officer form letter confirming date, time, and location of conference.
(Adequate prior notice should be given parties for scheduling mediation conference — ten [10] days suggested)

(6) (a) **If the mediation conference successfully resolves the dispute:**
Original signed Mediation Resolution Agreement (Form #A-17) should be forwarded to the Board 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.

(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. (Set time frame for response from parties — not to exceed forty-eight [48] hours)

Any party who does not respond to the Mediation Officer within seventy-two (72) hours will be considered to have rejected the suggested solution.

Mediation Officer should advise the Board that the mediation conference has been terminated without resolution of the dispute.

Mediation Officer will send Termination of Mediation Conference form to Board.

Request for Arbitration will be forwarded to the Board's Grievance Committee for review.

*Boards may also offer disputing parties an opportunity to mediate prior to an arbitration request being filed.

*(Amended 11/12)*

Board or State Association

Address City State Zip

## Request for Mediation

In the matter of _____ vs. _____
Complainant Respondent

I am requesting mediation with the above-named disputant. There is due, unpaid, and owing to me (or I retain) from the above-named person the sum of $_____. My claim is predicated upon the statement attached, marked Exhibit I and incorporated by reference into this application.

Signature of REALTOR* Principal/Authorized Designee Date

Type/Print Name Phone

Address City State Zip

**Form Optional:** This may be accomplished by telephone.

*(Amended 11/12)*

Board or State Association

Address City State Zip

## Notice of Request for Mediation

In the matter of _____ vs. _____
Complainant Respondent

A request for mediation involving the above-named case prior to a hearing of this matter by the Professional Standards Committee of the Board has been received. A copy of the dispute is enclosed. If you wish to participate in the mediation process at this time, please complete the Mediation Agreement form and return it to the Board office at the address shown on this form by

_____. The Agreement must be signed and dated by the REALTOR® principal or his/her
Date
authorized designee. If no response is received from you by the appointed date, the case shall be referred to the Grievance Committee of the Board for determination at its next scheduled meeting.

_____ _____
Signature of Professional Standards Administrator Date

**Form Optional:** This may be accomplished by telephone.

*(Amended 11/12)*

## Mediation Officer Selection Form

In the matter of _____ vs. _____
Complainant Respondent

The following individuals have agreed to serve as Mediation Officers for disputes between REALTOR® members of the _____ Board of REALTORS®. 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 by _____ .

Name: _____

I (will _____ ) (will not _____ reason_____) accept this person as a Mediator for this dispute.

Name: _____

I (will _____ ) (will not _____ reason_____) accept this person as a Mediator for this dispute.

Name: _____

I (will _____ ) (will not _____ reason_____) accept this person as a Mediator for this dispute.

Name: _____

I (will _____ ) (will not _____ reason_____) accept this person as a Mediator for this dispute.

Name: _____

I (will _____ ) (will not _____ reason_____) accept this person as a Mediator for this dispute.

Name: _____

I (will _____ ) (will not _____ reason_____) accept this person as a Mediator for this dispute.

_____
Name of REALTOR® Principal/Authorized Designee (Type/Print)

_____
Signature of REALTOR® Principal/Authorized Designee Date

*(Adopted 11/11)*

## Agreement to Mediate

The undersigned agree that they are involved in a contractual dispute defined by Article 17 of the Code or in a specific noncontractual dispute as outlined in Standard of Practice 17-4.

The undersigned agree 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 _____.
Board of 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:**
Parties to mediation may withdraw from the process at any point prior to reaching an 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®. The parties acknowledge that 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.

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 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 ethics, 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 Board or Mediation Officer shall not be compelled. Neither the Board or the Mediation Officer 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 Mediation Officer, the _____ of REALTORS®, the _____ Association of REALTORS® nor the NATIONAL
Board State
ASSOCIATION OF REALTORS® or any of its Member Boards 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 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.

| Complainants: | Respondents: |
|---|---|
| _____ Type/Print Name | _____ Type/Print Name |
| _____ Signature Date | _____ Signature Date |
| _____ Address | _____ Address |
| _____ Type/Print Name | _____ Type/Print Name |
| _____ Signature Date | _____ Signature Date |
| _____ Address | _____ Address |

*(Revised 11/12)*

Board or State Association

Address City State Zip

## Notice of Selection of Mediation Officer

In the matter of _____ vs. _____
Complainant Respondent

The above parties are notified that _____ has agreed to serve as the Mediation Officer for your mediation conference. 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.

Signature of Professional Standards Administrator Date

*This form may be revised to reflect that mediation of otherwise arbitrable disputes is mandatory.

*(Revised 11/11)*

Board or State Association

Address City State Zip

## Sample Letter Advising of Mediation Officer

To: Send to both the complainant and respondent for mediation conference

Dear _____:

Thank you for agreeing to mediate your dispute with _____.*

Your mediation conference has been scheduled for _____, 20 _____
Time Day and Date

at the _____.
Location and Address

Please advise me by _____ if you have a conflict with this date.
Date

The procedures for a mediation conference are less formal than the procedures for an arbitration hearing conducted by a Board 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 it is your intent to have legal counsel or witnesses present, please so advise by _____.
Date

This will allow appropriate notice to be provided to all parties to the dispute of your intention to be represented by legal counsel and/or to have witnesses present at the conference.

I may be reached at _____ if you have any questions with regard to your scheduled mediation
Phone

conference or the mediation process in general. I look forward to the opportunity of assisting you in reaching a mutually acceptable solution to the dispute.

Sincerely,

Professional Standards Administrator

cc: The Mediation Officer

*This form may be revised if the Board of Directors requires mediation of otherwise arbitrable matters.

*(Adopted 11/11)*

Board or State Association

Address City State Zip

## Mediation Resolution Agreement

The undersigned pursuant to the mediation guidelines incorporated into the _____'s
Board or State Association
professional standards procedures, have participated in mediation and agree to the following resolution:

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 the _____ or to litigate the matter. We further hold
Board or State Association
the _____ harmless, acknowledge that we were advised of our right to attorney representation at the mediation and
Board or State Association
attorney review of the Resolution Agreement, and expressly waive any and all liability of the _____ or claim that
Board or State Association
we have against the _____ arising out of the manner in which the _____ conducted the mediation,
Board or State Association Board or State Association
or the resolution of the dispute reached as a result of the _____'s mediation procedures. Further, if the award is
Board or State Association
judicially enforced, the non-complying party agrees to reimburse the other party for court costs and reasonable attorney's fees.

Name (Type/Print) Signature Date

Name (Type/Print) Signature Date

As Mediation Officer of the _____, I do attest that I was present during the mediation process and that the above
Board or State Association
resolution agreement was voluntarily entered into by the parties to the dispute.

Type/Print Name Signature Date

*(Amended 11/11)*

Board or State Association

Address City State Zip

## Termination of Mediation Conference

In the matter of _____ vs. _____
Complainant Respondent

The above named parties have not been able to resolve their dispute through mediation, and the mediation conference has been terminated.

Name of Mediation Officer (Type/Print)

Signature of Mediation Officer Date

*(Amended 11/11)*

# 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 he 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 this Manual.** In instances where the State Association does not provide procedures for conducting interboard arbitration, the arbitration should be arranged by joint effort of the two (2) Boards having members involved in an arbitrable issue, and the following procedures shall apply. *(Revised 11/96)*

**Initiation of procedures:** Interboard arbitration is initiated by the written request of a REALTOR® to the Professional Standards Administrator of the Board of which the REALTOR® is a member, who shall, in turn, arrange interboard arbitration with the other Board. Where a written interboard arbitration agreement exists between two (2) or more Boards, the determination as to whether an arbitrable matter exists shall be made pursuant to those procedures. Where no agreement exists between Boards, interboard arbitration may take place provided that the Grievance Committees of each Board determine that a properly arbitrable matter exists. Appeals of arbitration requests dismissed by the Grievance Committee and alleged misclassification of an issue as being subject to either voluntary or mandatory arbitration shall be considered by the Board of Directors of the Board whose Grievance Committee's decision is being challenged pursuant to the existing procedures of that Board. *(Revised 11/98)*

**Fee deposit and arbitration agreement:** The request for interboard arbitration shall be accompanied by a deposit not to exceed $500, which shall go toward the costs of arbitration as determined by the panel, and by a signed arbitration agreement, which may be in the form of Specimen Form #A-1, **Part Thirteen** of this Manual, or in any other appropriate form provided or permitted by law. *(Revised 11/96)*

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)*

Boards should establish a filing fee for interboard arbitration that may be the same as or different from filing fees for arbitration not conducted pursuant to **Part Eleven**, provided that the total cost that may be charged any party, including any filing fee, may not exceed $500. Boards administering arbitration pursuant to **Part Eleven** should agree prior to any hearing which Board will retain the respective parties' filing fees. *(Revised 5/06)*

**Selection of panel:** Each Board participating in the interboard arbitration procedure shall select one member of the arbitration panel from its Professional Standards Committee. The Chair of each Board's Professional Standards Committee shall agree upon the third member of the panel. The panel shall select its Chairperson. The Professional Standards Administrator of the Board of which the Chairperson is a member shall serve as Professional Standards Administrator of the panel. *(Revised 11/03)*

All parties have the right to challenge the qualifications of any arbitrator so selected upon showing good and sufficient cause why the arbitrator should not serve. Questions concerning the qualification of any arbitrator shall be determined by the President of the Board from which the arbitrator was selected.

Hearings and the organization and procedures incident thereto shall be governed by the *Code of Ethics and Arbitration Manual* of the National Association as adapted to conform to the provisions of applicable state law and the optional provisions adopted by the Professional Standards Administrator and Chairperson of the panel's Board. *(Adopted 11/98)*

**Arbitration request and response:** The Professional Standards Administrators of the Boards involved with the interboard arbitration shall ensure that the panel Professional Standards Administrator receives all documents related to the arbitration request. The panel Professional Standards Administrator may require the complainant to submit sufficient copies of the arbitration request and related documents for each member of the panel and the respondent or respondents. Within _____ days after the interboard arbitration panel has been formed, the panel Professional Standards Administrator shall send a copy of the arbitration request to the respondent, informing the respondent that he may file a written response with the panel Professional Standards Administrator (if the respondent has not already received a copy of the arbitration request and had an opportunity to submit a response) within twenty-one (21) days from the date of the notification in which the request for arbitration was transmitted to him, including sufficient copies for each Hearing Panel member and the complainant. If the arbitration request has already been provided to the respondent and a response solicited, the panel Professional Standards Administrator shall obtain the response from the Board which requested it and ensure that the complainant receives a copy. The panel Professional Standards Administrator may require the respondent to submit sufficient copies of the response for each member of the panel and the complainant or complainants. Any response shall be accompanied by a signed arbitration agreement, which may be in the form of Specimen Form #A-4, **Part Thirteen** of this Manual, or in any other appropriate form provided or permitted by law, and a deposit not to exceed $500, which shall go toward costs of such arbitration if so determined by the arbitration panel, or shall be returned as determined by the panel. *(Revised 11/14)*

The panel Professional Standards Administrator shall then schedule a hearing consistent with the procedures established in the *Code of Ethics and Arbitration Manual* of the NATIONAL ASSOCIATION OF REALTORS®. Interboard arbitration shall not proceed unless signed arbitration agreements and deposits have been received from the complainant and respondent. *(Revised 11/95)*

**Right of interboard arbitration panel to release members from obligation to arbitrate:** If the arbitration panel determines that, because of the amount involved or the legal complexity of the dispute, the dispute should not be arbitrated, it shall advise the parties, the arbitration shall terminate, and the parties shall be relieved of their obligation to arbitrate. The Hearing Panel can also dismiss the arbitration request if the Hearing Panel concludes the matter is not arbitrable, and the parties shall be relieved of their obligation to arbitrate. If no interboard hearing on the merits is held, any deposits made by the parties shall be returned to them. *(Revised 11/98)*

Further, if the panel determines that an arbitrable matter exists but it is not subject to mandatory arbitration, neither party may be compelled to arbitrate, and the arbitration shall terminate unless all parties voluntarily agree to take part and abide by the decision.

Either party has twenty (20) days to appeal from the date of notice that the panel declined to continue the proceeding. The materials presented to the Hearing Panel when the Hearing Panel made its decision to dismiss together with any party's written rationale challenging the panel's reasons for dismissal and the dismissal itself will be presented to the appeal panel comprised of a minimum of five (5) members (who did not previously sit in review of the arbitration request) from the parties' Boards to be appointed by the Boards' Presidents. The request for arbitration and any attachments thereto cannot be revised, modified, or supplemented. The parties do not have the right to appear at the hearing before the appeal panel. *(Revised 5/07)*

**Place, date, and time of hearing:** The panel Chairperson shall designate the date, time, and place of the 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. Each party shall be given at least twenty-one (21) days' prior notice of the hearing, but appearance at the hearing waives the right to such notice. The arbitrators may recess the hearing from time to time as necessary and, on request of a party or upon the arb itrators' own motion, may postpone the hearing for not more than thirty (30) days, unless otherwise agreed to by the parties. *(Revised 11/14)*

**Conduct of hearing:** The Chairperson shall preside at the hearing, which shall not be bound by the strict rules of evidence applicable to judicial tribunals, but by the Outline of Procedure for Arbitration Hearing found in **Part Twelve** of this Manual, and by the Chairperson's Procedural Guide: Conduct of an Interboard Arbitration Hearing, also in **Part Twelve** of this Manual.

**Testimony and documentary evidence:** Parties to disputes may testify on their own behalf and may present testimony of witnesses and introduce documentary evidence. Any party may examine and cross-examine witnesses, and at the request of any party or on its own motion, the panel, at its discretion, may exclude witnesses or evidence.

**Legal counsel:** Parties may, at their own expense, have legal counsel present during the hearing, provided they notify the panel and the other party, in writing, of their intention to do so at least fifteen (15) days prior to the date fixed for the hearing, including counsel's name, address, and phone number. The panel may have legal counsel present. *(Revised 11/97)*

**The arbitration hearing:** The following procedure is to be followed in conducting the hearing:*

(a) Prior to the giving of any testimony, all witnesses shall be sworn or affirmed by the panel Chairperson.

(b) Each party or his attorney shall be given the opportunity of making an opening statement.

(c) Witnesses shall be present only as necessary to present their testimony.

(d) The complainant may present evidence and give testimony as deemed applicable to the arbitration by the Hearing Panel. 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.

(e) The parties to the dispute shall present to the arbitrators, in writing, such statements and proof as they deem necessary or desirable, or as the arbitrators request. Proof may be submitted in the form of affidavits or in any other acceptable form. The arbitration panel may require that statements be verified by affidavit or that the accuracy or authenticity of any documents or other papers submitted be verified by affidavit. The panel shall receive and consider any evidence it deems material and proper, including evidence of accountants and other experts. Each party is responsible for the expenses of expert witnesses he calls.

(f) At the conclusion of direct examination, the opposing party or his counsel may cross-examine the witness.

(g) When both parties have concluded their examination or cross-examination of a witness, the arbitrators may examine the witness.

(h) Upon completion of all testimony, each party or his attorney may summarize the proceedings to the arbitration panel. The complainant will open the summation and the respondent will close the summation.

*Such hearing shall be conducted according to the Chairperson's Procedural Guide: Conduct of an Interboard Arbitration Hearing, in **Part Twelve** of this Manual.

(i) Thereafter, the parties shall be excused and the matter will stand submitted.

**Recordation:** Any party (may/may not), at his own expense, have a court reporter present, or may record the proceeding, and, if transcribed, shall furnish a transcript to the panel. The panel may also cause the hearing to be transcribed or recorded on its own motion.

**Adjournment:** The panel may adjourn the hearing from time to time as necessity or convenience dictates.

**Settlement:** The parties to the arbitration may settle the dispute by agreement at any time. In such event, the arbitration proceedings shall be terminated.

**The award:** The award of the arbitrators (Form #A-12, **Part Thirteen** of this Manual) shall be made as soon as feasible after the evidence is presented. The award shall be in writing and signed by the arbitrators, or a majority of them, and when so signed and transmitted to each of the parties shall be final and binding, and shall not be subject to review or appeal except as required by other provisions of this Manual or by applicable state law. Any procedural review request (which must be limited to issues of due process) shall be filed with the panel Professional Standards Administrator for consideration by a special review panel comprising an equal number of Directors from each Board, chosen by the respective Board President, which shall select its own Chairperson who will preside but will not vote. (This ensures an odd number of panelists.) Dissemination of the award shall be limited to the parties involved, the Board of Directors of each Board of REALTORS®, and legal counsel and staff on a need-to-know basis. *(Revised 11/14)*

The non-prevailing party shall, within ten (10) days of the date the award is transmitted, either pay the award to the party(ies) named in the award or deposit the funds with the Professional Standards Administrator of the Board administering the arbitration consistent with Section 53, The Award, *Code of Ethics and Arbitration Manual*. Failure to either pay the award or deposit the funds as provided for in Section 53, The Award, may subject the nonprevailing party to discipline, including but not limited to termination of Board membership and/or MLS access/use, consistent with Section 53. The tribunal reviewing an allegation that a nonprevailing party either did not timely pay the award or deposit a like amount will be composed of an equal number of Directors from each Board, chosen by the respective Board President, which shall select its own Chairperson who will preside but not vote. *(Adopted 05/15)*

**Costs of arbitration:** Interboard arbitration may involve travel and necessary out-of-pocket expenses by the arbitrators. The arbitrators shall receive reimbursement of travel and out-of-pocket expenses incurred in connection with their service as arbitrators. Expenses of the arbitrators and all other expenses, including the panel's use of legal counsel and recordation or transcription of the hearing, shall be borne by the Boards involved as agreed in advance of the hearing. *(Revised 5/06)*

**Refusal to arbitrate:** In the event a complainant alleges that the respondent has improperly refused to submit a dispute to arbitration (or to mediation if the respondent's Board requires REALTORS® [principals] to mediate otherwise arbitrable disputes pursuant to Article 17),* the allegation shall be brought before a tribunal of five (5) members selected by the Board President from members of the respondent's Board of Directors. The procedures for notices, time of notices, and hearing prescribed for matters before a Hearing Panel shall apply. The sole question of fact will be to decide whether the party has refused to submit an arbitrable matter to arbitration (or to mediation if required) in violation of Article 17. Upon determination that the member has refused to arbitrate or mediate a properly arbitrable matter, the tribunal may direct implementation of appropriate sanction, including suspension or expulsion of the member from the local Board of REALTORS®. The decision of the tribunal shall be final and binding and is not subject to further review by the State Association or any local Board. *(Revised 11/11)*

**Enforcement:** 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 panel to seek judicial enforcement and request reimbursement of all legal costs incurred in seeking such enforcement. At the discretion of the Board of Directors of the Board of which the award recipient, or the beneficiary of a settlement agreement, is a member, the Board may support the request for judicial enforcement in the court and, at the further discretion of the Board of Directors, reimburse the award recipient/beneficiary for costs incurred in seeking such enforcement if the courts do not award reimbursement of such costs. *(Revised 11/14)*

**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.

*Requiring REALTORS® (principals) to mediate otherwise arbitrable disputes requires establishment of an affirmative obligation in a Board's governing documents. Enabling bylaw provisions can be found at REALTOR.org (see *Model Bylaws*).

# 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 Board counsel and counsel for the parties prior to implementation.

Following are six (6) outlines. The first and second 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 and Form #A-10a, as appropriate, **Part Thirteen**). The third outline is primarily of interest to Hearing Panels and particularly to the Chairpersons who preside over arbitration hearings. The fourth outline is primarily of interest to Hearing Panels and particularly to the Chairpersons who preside over interboard arbitration hearings. The fifth and sixth outlines are primarily of interest to tribunals and particularly to Chairpersons who preside over procedural review requests and interboard procedural review requests, respectively.

## Outline of Procedure for Arbitration Hearing

_____ **Board of REALTORS®**

**State of** _____

*(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. *(Adopted 11/15)*

**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. Permission can be given by the Chairperson. All parties shall be advised of the date of the rescheduled hearing. *(Revised 11/14)*

**Recording the hearing:** The Board shall, and any party (may/may not), at their own expense, have a court reporter present at the hearing, or may record the proceeding, and, if transcribed, shall furnish a copy to the Professional Standards Administrator. *(Revised 11/14)*

**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 prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. *(Adopted 05/15)*

**Due process procedure:** The hearing will proceed as follows:

(1) Chairperson 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 sworn or affirmed. All witnesses will be excused from the hearing except while testifying.

(4) Opening statements first by complainant and then by respondent, briefly explaining the party's basic position.

(5) The parties will be given an opportunity to present evidence and testimony in their behalf and they may call witnesses. All parties appearing at a hearing may be called as a witness without advance notice. *(Revised 11/14)*

(6) The parties and their legal counsel will be afforded an opportunity to examine and cross-examine all witnesses and parties.

(7) The panel members may ask questions at any time during the proceedings.

(8) The Chairperson may exclude any questions which he or she deems irrelevant or argumentative.

(9) Each side may make a closing statement. The complainant will make the first closing statement and the respondent will make the final closing statement.

(10) Adjournment of hearing.

(11) 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. The parties should be advised that the arbitration will continue to be processed until formally withdrawn by the complainant. *(Revised 11/15)*

**Award in arbitration hearing:** The decision of the Hearing Panel in an arbitration proceeding shall be reduced to writing by the panel (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 Board.

**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 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.

## Outline of Procedure for an Arbitration Hearing Involving a Request and a Counter-Request

_____ Board of REALTORS®

State of _____

*(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. *(Adopted 11/15)*

**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 rescheduled hearing date. *(Revised 11/14)*

**Recording of the hearing:** The Board shall, and any party (may/may not), at their own expense, have a court reporter present at the hearing, or may record the proceeding and, if transcribed, shall furnish a copy to the Professional Standards Administrator. *(Revised 11/14)*

**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 prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. *(Adopted 05/15)*

**Due process procedure:** The hearing will proceed as follows:

(1) Chairperson 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 sworn or 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. *(Revised 11/14)*

(4) Complainant/counter-respondent will present a brief opening statement uninterrupted, stating the amount to be arbitrated and an explanation of the source of the dispute (i.e., commission dispute, request for security deposit refund, etc. . . .) and refuting the contention that any monies are owed.

(5) Respondent/counter-complainant will present a brief opening statement uninterrupted, stating the amount to be arbitrated and an explanation of the source of the dispute (i.e., commission dispute, request for security deposit refund, etc. . . . ) and refuting the contention that any monies are owed.

(6) Complainant/counter-respondent presents his case and defense by offering testimony and evidence from himself and/or his witness(es) to support the contention that monies are owed to the complainant by the respondent and refuting the contention that monies are owed to the counter-complainant.

(a) The respondent/counter-complainant may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.

(b) The Hearing Panel may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.

(7) Respondent/counter-complainant presents her case, offering testimony and evidence from herself and/or witness(es) to support the contention that monies are owed to her by the counter-respondent and refuting the contention that she owes monies to the complainant.

(a) The complainant/counter-respondent may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.

(b) The Hearing Panel may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.

(8) The complainant/counter-respondent may present additional testimony and evidence from himself and/or his witness(es) to further support his position as a complainant/counter-respondent.

(a) The respondent/counter-complainant may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.

(b) The Hearing Panel may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.

(9) The respondent/counter-complainant may present additional testimony and evidence from herself and/or her

witness(es) to further support her position as respondent/ counter-complainant.

(a) The complainant/counter-respondent may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.

(b) The Hearing Panel may question the respondent/ counter-complainant and/or her witness(es) immediately after each has testified.

(10) Cross-examination in which the parties are given a final opportunity to examine each other. The complainant/ counter-respondent may first ask any remaining questions of the respondent/counter-complainant and/or the respondent/ counter-complainant's witness(es). The respondent/ counter-complainant may then ask any remaining questions of the complainant/counter-respondent and/or of the complainant's/counter-respondent's witness(es).

(11) The Hearing Panel may question either the complainant/ counter-respondent and/or the respondent/ counter-complainant and/or their respective witness(es).

(12) When the parties and Hearing Panel members have no further questions, the complainant/counter-respondent and respondent/counter-complainant (respectively) may present uninterrupted closing statements.

(13) The Chair will then adjourn the hearing.

(14) 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. The parties should be advised that the arbitration will continue to be processed until formally withdrawn by the complainant. *(Revised 11/15)*

**Award in arbitration hearing:** The decision of the Hearing Panel in an arbitration proceeding shall be reduced to writing by the panel (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 Board.

**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 he or she deems irrelevant or argumentative.

**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 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.

Be advised all matters discussed are strictly confidential.

*(Amended 11/15)*

## Chairperson's Procedural Guide: Conduct of an Arbitration Hearing

_____ **Board of REALTORS®**

**State of** _____

*(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.)*

**Display:** Board banner and the American flag

**Seating arrangements:** See **Part Thirteen,** Form #A-16 of this Manual for recommended seating arrangements.

**Start promptly:** Rap gavel to open meeting.

**Chairperson's opening statement and conduct of hearing:** Ladies and gentlemen, I now call this hearing to order. The Professional Standards Committee is charged with holding appropriate hearings for the _____ Board of REALTORS® in accordance with the procedures as set forth in the Board's bylaws in matters concerning alleged unethical conduct of a Board Member or Members, or in the arbitration of a business dispute arising out of the real estate business and as defined in the bylaws of the Board. 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.

The Professional Standards Committee is a body duly constituted under the authority of the bylaws of the_____ Board of REALTORS® and has been duly appointed by the Board President and approved by the Board of Directors. At this time, I would like to introduce members of this panel.

(1) My name is _____, and I will serve as Chairperson of this panel.

(2) The other members of this panel are:
_____, _____,
_____, and _____.

(3) Present at this hearing is _____, the complainant, and his/her sales associate(s), _____.

*(If the complainant is accompanied by an attorney and/or witnesses, they should be introduced at this time.)*

_____, _____,
_____, and _____.

*(If the complainant is represented by legal counsel, and/or accompanied by witnesses, confirm that the respondent was notified in advance. If not, ask if there is an objection. If none, have the respondent sign a statement to that effect.)*

(4) Also present at this hearing is _____, the respondent, and his/her sales associate(s), _____.

*(If the respondent is accompanied by an attorney and/or witnesses, they should be introduced at this time.)*

_____, _____,
_____, and _____.

*(If the respondent is represented by legal counsel, and/or accompanied by witnesses, confirm that the complainant was notified in advance. If not, ask if there is an objection. If none, have complainant sign a statement to that effect.)*

(5) Also present at this hearing is _____, the recording Professional Standards Administrator for the _____ Board of REALTORS®, and (if appropriate) _____, the court reporter present to transcribe these proceedings.

*(Or, alternatively: This hearing is being mechanically recorded.)*

*(If an attorney representing the Board is present, he/she should be introduced at this time.)*

_____.

The parties are specifically advised that any recording or transcription that may be made of these proceedings can only be used for purpose of procedural review, 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 _____, that he/she be awarded a commission or part of a commission on the sale of _____. The request for arbitration is as follows:

*(Read the amount and nature of the dispute into the record.)*

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. The parties

are advised that the arbitration will continue to be processed until formally withdrawn by the complainant.

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 by the panel that is fair to all of the parties. The panel is governed and directed by the bylaws of the _____ Board of 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 and ruled on 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 this hearing on the relevance of testimony being given or questions being directed to any party or his/her representative or to witnesses providing testimony. All parties and witnesses will be asked to swear or affirm that testimony given is the truth to the best of their knowledge.

*(If legal counsel is not present, proceed to 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 him/her 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 his/her client if the panel desires direct testimony. Counsel is present to advise and consult with his/her client, and to speak for him/her subject to appropriate rulings or determinations 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 Chairperson, I will act as keeper of the evidence introduced at this hearing and mark each with an exhibit identification number or letter 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 Board counsel concerning such rulings.

(5) At this time, I request that all persons present in the room who expect to testify at this hearing stand and be sworn or make appropriate affirmation in lieu of being sworn.

*(The Chairperson should determine if any of the parties prefer affirmation in lieu of being sworn.)*

**Swearing:** Raise your right hand and, following the question I will pose, answer in the affirmative if you do so swear . . . "Do you swear that the statements you are about to make at this hearing are the truth, the whole truth, and nothing but the truth so help you God?" Let the record show that all parties have answered in the affirmative.

*(And/or if needed)*

**Affirmation:** Raise your right hand and, following the question I will pose, answer in the affirmative if you do so 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 _____ has/have answered in the affirmative.

*(At this time, the Chairperson should excuse any witnesses and ask them to wait outside until called, and ask the remaining parties to be seated.)*

**Outline of procedure for hearing:** Both the complainant and the respondent were mailed a copy of the Outline of Procedure for an Arbitration Hearing (**Part Thirteen,** Form #A-10 of this Manual). Did each of you receive the Outline?

*(If yes)* Let the record show that both the complainant and respondent have stated that they did receive the Outline.

*(If no, the party should be given a copy of the Outline and the Chairperson should determine whether that party has any objections to proceeding.)*

Do you have any questions concerning the 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.

We shall now proceed with the hearing.

**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. You will have an opportunity to present your entire case at a later time during this hearing.

**Presentation by complainant:** The complainant will now state his/her case and present any evidence or witnesses that he/she may desire.

**Cross-examination by respondent**

**Questions from panel members**

**Presentation by respondent:** The respondent will now state his/her case and present any evidence or witnesses that he/she may desire.

**Cross-examination by complainant**

**Questions from panel members**

**Closing statement by complainant:** At this time, both the complainant and the respondent will be given an opportunity to make a summary or closing statement if they so desire. The complainant's closing statement will be heard first.

**Closing statement by respondent**

**Closing statement by Panel Chairperson:** Do each of you feel that this hearing has been conducted fairly?

*(If yes)* Let the record show that both the complainant and the respondent have indicated that they feel this hearing has been conducted fairly.

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 any party answers "no," ask him/her to state any concern and, if there's any merit to the concern, take steps to remedy any possible deficiency.)*

**Confidential nature of hearing:** Before we adjourn the hearing of this panel, 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*. Upon final action by the Hearing Panel in an arbitration proceeding, the decision, when signed by the members of the Hearing 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. You are reminded that any recording or transcription that may be made of these proceedings can only be used for the purpose of procedural review, and any other use, including use in other ethics or arbitration hearings, is expressly prohibited.

**Adjournment:** There being no further business to be considered in this hearing, this portion of the hearing stands adjourned.

**Proceeding following hearing — executive session:** *(After adjournment, the panel will remain in executive session and determine the award. The panel will follow explicitly the procedure set forth in the* Code of Ethics and Arbitration Manual *as to opportunity for procedural review. Boards should consider having Board counsel review awards prior to issuance. This will serve to protect the Board by minimizing vulnerability to litigation.)*

## Chairperson's Procedural Guide: Conduct of an Interboard Arbitration Hearing

_____ **Board of REALTORS®**

**State of** _____

*(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 appropriate blanks have been completed.)*

*(Ask all parties [including witnesses] to come into the hearing room.)*

**Display:** Board banner and the American flag

**Seating arrangements:** See **Part Thirteen,** Form #A-16 of this Manual for recommended seating arrangements.

**Start promptly:** Rap gavel to open meeting.

**Chairperson's opening statement and conduct of hearing:** Ladies and gentlemen, I now call this hearing to order. Professional Standards Committees are charged with conducting hearings for their respective Boards of REALTORS® in accordance with the procedures as set forth in the Boards' bylaws in matters concerning alleged unethical conduct by a Board Member or Members, or in the arbitration of business disputes arising out of the real estate business as defined in the bylaws of the respective Boards. The body meeting here is an impartial panel of Professional Standards Committee members who have been selected and called today to ascertain the truth in the particular matter at hand, which is the subject of an interboard 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 the two should be treated as completely separate matters. The particular matter to be considered by this panel at this time is an interboard arbitration proceeding.

The Professional Standards Committee is a body duly constituted under the authority of the bylaws of the respective Boards of REALTORS® whose members have been duly appointed by their Board Presidents and approved by their Boards of Directors. At this time, I would like to introduce the members of this panel.

(1) My name is _____; I am a member of the _____ Board of REALTORS®, and I will serve as Chairperson of this panel.

(2) The other members of this panel are: _____, a member of the _____ Board of REALTORS®, and _____, a member of the _____ Board of REALTORS®.

(3) Present at this hearing is _____, the complainant, and his/her sales associate(s) _____ _____.

*(If the complainant is accompanied by an attorney, and/or witnesses, they should be introduced at this time.)*

_____, _____, _____, and _____.

*(If the complainant is represented by legal counsel, and/or accompanied by witnesses, confirm that the respondent was notified in advance. If not, ask if there is an objection. If none, have the respondent sign a statement to that effect.)*

(4) Also present at this hearing is _____, the respondent, and his/her sales associate(s), _____ _____.

*(If the respondent is accompanied by an attorney and/or witnesses, they should be introduced at this time.)*

_____, _____, _____, and _____.

*(If the respondent is represented by legal counsel, and/or accompanied by witnesses, confirm that the complainant was notified in advance. If not, ask if there is an objection. If none, have complainant sign a statement to that effect.)*

(5) Also present at this hearing is _____, the recording Professional Standards Administrator for the _____ Board of REALTORS®, and (if appropriate) _____, the court reporter present to transcribe these proceedings.

*(Or, alternatively: This hearing is being mechanically recorded.)*

*(If an attorney representing the Board is present, he/she should be introduced at this time.)*

_____.

The parties are specifically advised that any recording or transcription that may be made of these proceedings can only be used for purpose of procedural review, 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 _____ that he/she be awarded a commission or part of a commission on the sale of _____.

The request for arbitration is as follows:

*(Read the amount and nature of the dispute into the record.)*

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. The parties are advised that the arbitration will continue to be processed until formally withdrawn by the complainant.

This panel is not dealing with questions of law, and it is not governed by the 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 of the parties. The panel is governed and directed by the bylaws of the respective Boards of 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 that will be followed during this hearing.

(1) All parties or their representatives to these proceedings will have a full opportunity to be heard on matters relevant to the issue. The panel may rule at any time during this hearing on the relevance of testimony being given or on questions being directed to any party or their representative or to witnesses providing testimony. All parties and witnesses will be asked to swear or affirm that testimony given 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 determinations 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 Chairperson, I will act as keeper of the evidence introduced at this hearing and mark each with an exhibit identification number or letter 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, and by witnesses in these proceedings. If deemed necessary, I will consult with the members of the panel and with Board counsel concerning such rulings.

(5) At this time, I request that all persons present in the room who expect to testify at this hearing stand and be sworn or make appropriate affirmation in lieu of being sworn.

*(The Chairperson should determine if any of the parties prefer affirmation in lieu of being sworn.)*

**Swearing:** Raise your right hand and, following the question I will pose, answer in the affirmative if you do so swear . . . "Do you swear that the statements you are about to make at this hearing are the truth, the whole truth, and nothing but the truth so help you God?" Let the record show that all parties have answered in the affirmative.

*(And/or if needed)*

**Affirmation:** Raise your right hand and, following the question I will pose, answer in the affirmative if you do so 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 _____ has/have answered in the affirmative.

*(At this time, the Chairperson should excuse any witnesses and ask them to wait outside until called, and ask the remaining parties to be seated.)*

**Outline of procedure for hearing:** Both the complainant and the respondent were provided with a copy of the Outline of Procedure for an Arbitration Hearing (**Part Thirteen,** Form #A-10 of this Manual). Did each of you receive the Outline?

*(If yes)* Let the record show that both the complainant and respondent did receive the Outline.

*(If a party responds that he has not received the Outline, the party should be given a copy and asked if he has any objection to proceeding.)*

Do you have any questions concerning the 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.

We shall now proceed with the hearing.

**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. You will have an opportunity to present your entire case at a later time during this hearing.

**Presentation by complainant:** The complainant will now state his/her case and present any evidence or witnesses that he/she may desire.

**Cross-examination by respondent**

**Questions from panel members**

**Presentation by respondent:** The respondent will now state his/her case and present any evidence or witnesses that he/she may desire.

**Cross-examination by complainant**

**Questions from panel members**

**Closing statement by complainant:** At this time both the complainant and the respondent will be given an opportunity to make a summary or closing statement if they so desire. The complainant's closing statement will be heard first.

**Closing statement by respondent**

**Closing statement by Panel Chairperson:** Do you feel that this hearing has been conducted fairly?

*(If yes)* Let the record show that both the complainant and the respondent have indicated that they feel this hearing has been conducted fairly.

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 any party answers "no," ask him/her to state any concerns and, if there's any merit to the concern, take steps to remedy any possible deficiency)*

**Confidential nature of hearing:** Before we adjourn this 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*. Upon final action by the Hearing Panel in an arbitration proceeding, the decision, when signed by the members of the Hearing 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. You are reminded that any recording or transcription that may be made of these proceedings can only be used for the purpose of procedural review, and any other use, including use in other ethics or arbitration hearings, is expressly prohibited.

**Adjournment:** There being no further business to be considered in this hearing, this portion of the hearing stands adjourned.

**Proceeding following hearing — executive session:** *(After adjournment, the panel remains in executive session to determine the award, if any. The panel will follow the procedure set forth in the* Code of Ethics and Arbitration Manual *as to the opportunity for procedural review. Boards should consider having Board counsel review awards prior to issuance. This will serve to protect the Board by minimizing vulnerability to litigation.) (Revised 11/12)*

*(Revised 05/15)*

## Chairperson's Procedural Guide: Conduct of a Procedural Review Hearing (Arbitration)

_____ **Board of REALTORS®**

**State of** _____

*(Ask the 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. Also note that procedural reviews are not to be recorded.)*

*(Ask all parties to come into the hearing room.)*

**Display:** Board banner and the American flag

**Seating arrangements:** See **Part Thirteen,** Form #A-16 in this Manual for recommended seating arrangements.

**Start promptly:** Rap gavel to open meeting.

**Chairperson's opening statement:** Ladies and gentlemen, I now call this procedural review hearing to order. The professional standards procedures of the _____ Board of 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 Board of Directors) (or) (a panel of Directors appointed by the President) (or) (the Board's Executive Committee), hereinafter referred to as the Procedural Review Hearing Tribunal.

**Basis of this procedural review:** The particular matter to be considered by this Procedural Review Hearing Tribunal is a request for procedural review of the arbitration hearing procedures used in an arbitration hearing conducted on _____, 20_____. The original arbitration Hearing Panel was composed of _____, _____, _____, _____, and was chaired by _____. The basis of the original arbitration hearing was a Request and Agreement to Arbitrate filed by _____ and _____, the complainant(s), against _____ and _____, the respondent(s), claiming that a dispute arising out of the real estate business existed between the complainant(s) and the respondent(s). The Award of Arbitrators from the original arbitration hearing was as follows:

*(Read the Award of Arbitrators [**Part Thirteen,** Form #A-12 of this Manual].)*

Prior to the original arbitration hearing, the arbitration request was reviewed by (the Board's Grievance Committee) (or) (a panel of the Board's Grievance Committee members) and referred to the Board's Professional Standards Committee for a hearing.

**Authority:** The Procedural Review Hearing Tribunal present here today is a body duly constituted under the authority of the bylaws of the _____ Board of REALTORS®.

**Introduction of the Procedural Review Hearing Tribunal:** At this time, I would like to introduce the members of this Procedural Review Hearing Tribunal. My name is _____, and I will serve as Chairperson. The other members of this Procedural Review Hearing Tribunal are _____, _____, _____, _____, _____, _____, _____ and _____.

**Disqualification:** Anyone who was a party to the original arbitration hearing, a member of the Grievance Committee 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 Procedural Review Hearing Tribunal. Furthermore, anyone who is related by blood or marriage to any party to the original arbitration hearing, who is an employer, partner, employee, or is associated in business with any of the parties to the original arbitration hearing is also disqualified. I will now ask the members of the Procedural Review Hearing Tribunal if they know of any reason why they should be disqualified.

*(If none)* The members of the Procedural Review Hearing 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 Procedural Review Hearing Tribunal, I will now ask the parties if they are aware of any reason why any member of this Procedural Review Hearing Tribunal is not qualified to serve.

*(If none)* The parties have not indicated any reason why any member of this Procedural Review Hearing Tribunal is not qualified to serve.

**Additional introductions:** Also present at this procedural review hearing is _____, the complainant in the original arbitration hearing; _____, the respondent in the original arbitration hearing; _____, the original Arbitration Hearing Panel Chairperson; and _____, the Professional Standards Administrator for the _____ Board of REALTORS®.

*(If any attorneys are present, they should be introduced at this time.)*

_____, _____, _____, and _____.

**Appeal limitations:** In this procedural review hearing we will consider the arguments of _____, 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.

*(Read the Request for Procedural Review [Form #A-13 in **Part Thirteen** of this Manual].)*

**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 (bases) upon which he/she is requesting that the Award of Arbitrators be overturned. Next, the original arbitration Hearing Panel Chairperson (or a representative from the original 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 this proceeding, members of the Procedural Review Hearing Tribunal may ask questions; however, parties have no right of cross-examination. Finally, following the procedural review hearing, the Procedural Review Hearing 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)* None of the parties has any questions regarding the outline of procedure.

**Guidelines:** This Procedural Review Hearing Tribunal is not dealing with questions of law and is not governed by the technical rules of evidence which may apply in courts. This Procedural Review Hearing 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 Procedural Review Hearing Tribunal that is fair to all of the parties. After the Procedural Review Hearing 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 Procedural Review Hearing Tribunal may rule at any time during this hearing on the relevance of testimony being given. All parties giving testimony will be asked to swear or affirm that testimony given is the truth to the best of their knowledge. A party may be represented by legal counsel. This Procedural Review Hearing 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 Procedural Review Hearing Tribunal. This Procedural Review Hearing Tribunal will countenance no effort by any party or by counsel to any party to harass, intimidate, coerce, or confuse the Procedural Review Hearing Tribunal or any party to the proceedings.

**Swearing:** At this time I will request that all persons present in the room who expect to testify at this procedural review hearing stand and be sworn or make appropriate affirmation in lieu of being sworn. (The Chairperson should determine if any of the parties prefer affirmation in lieu of being sworn.) Please stand, raise your right hand and, following the question I pose, answer in the affirmative if you do so swear. "Do you swear that the statements you are about to make at this hearing are the truth, the whole truth, and nothing but the truth so help you God?"

*(If yes)* All parties have answered in the affirmative. Please be seated.

*(And/or if needed)*

**Affirmation:** Please stand, 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 make at this procedural review hearing are the truth, the whole truth, and nothing but the truth?"

*(If yes)* All parties have answered in the affirmative. Please be seated.

**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 he/she is 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 Chairperson:** At this time, the original arbitration Hearing Panel Chairperson will have an opportunity to explain why the Award of Arbitrators should be upheld by this Procedural Review Hearing 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 Procedural Review Hearing Tribunal. Any party testifying must restrict his/her discussion to the issues raised in the Request for Procedural Review.

**Questions from panel members:** The members of this panel are authorized to ask questions at any time during this procedural review.

**Confirmation of fairness/opportunity to testify:** Do each of you feel that this procedural review 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.

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 Procedural Review Hearing Tribunal?

*(If yes)* The parties have indicated that they have had an adequate opportunity to state why they believe the original Award of Arbitrators should or should not be upheld by this Procedural Review Hearing Tribunal.

**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 final determination of this Procedural Review Hearing Tribunal is considered confidential. Upon final action by this Procedural Review Hearing Tribunal, the Board President shall disseminate to the complainant and the respondent in the original arbitration hearing, the Board of Directors, the Chairperson and members of the original arbitration Hearing Panel, and Board legal counsel such notice of the action as the Board President deems appropriate under the circumstances.

**Adjournment:** There being no further business to be considered in this procedural review hearing, this portion of the procedural review hearing stands adjourned.

**Executive session:** The Procedural Review Hearing 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 Procedural Review Hearing Tribunal to decide is whether the arbitration procedures utilized in rendering the Award of Arbitrators afforded all parties due process. If the Procedural Review Hearing Tribunal determines that the original arbitration hearing process was defective in any significant way, then the Award of Arbitrators will be invalidated and the matter will be referred to a different arbitration Hearing Panel for a new hearing or, alternatively, the Procedural Review Hearing Tribunal may release the parties from their obligation to arbitrate if it concludes that the Board will be unable to impanel an impartial arbitration Hearing Panel. *(Adopted 4/92)*

## Chairperson's Procedural Guide: Conduct of a Procedural Review Hearing (Interboard Arbitration)

_____ **Board of REALTORS®**

**State of** _____

*(Ask the 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. Also note that procedural reviews are not to be recorded.)*

*(Ask all parties to come into the hearing room.)*

**Display:** Board banner and the American flag

**Seating arrangements:** See **Part Thirteen,** Form #A-16 in this Manual for recommended seating arrangements.

**Start promptly:** Rap gavel to open meeting.

**Chairperson's opening statement:** Ladies and gentlemen, I now call this procedural review hearing to order. The Professional Standards procedures of the _____ (name of Board or Association) and the _____ (name of Board or Association) 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 duly appointed members from the Boards of Directors of the _____ (name of Board or Association), and the _____, (name of Board or Association) hereinafter referred to as the Procedural Review Hearing Tribunal.

**Basis of this procedural review:** The particular matter to be considered by this Procedural Review Hearing Tribunal is a request for procedural review of the arbitration hearing procedures used in an arbitration hearing conducted on _____, 20_____. The original arbitration Hearing Panel was composed of: _____, _____, _____, _____, _____, _____ and was chaired by _____. The basis of the original arbitration hearing was a Request and Agreement to Arbitrate filed by _____ and _____, the complainant(s), against _____ and _____, the respondent(s), claiming that a dispute arising out of the real estate business existed between the complainant(s) and the respondent(s). The Award of Arbitrators from the original arbitration hearing was as follows:

*(Read the Award of Arbitrators [**Part Thirteen,** Form #A-12 of this Manual] into the record.)*

Prior to the original arbitration hearing, the arbitration request was reviewed by the Grievance Committees of each Board and referred for a hearing consistent with **Part 11** of this Manual.

**Authority:** The Procedural Review Hearing Tribunal present here today is a body duly constituted under the authority of the bylaws of the _____ (name of Board or Association) and the _____ (name of Board or Association).

**Introduction of the Procedural Review Hearing Tribunal:** At this time, I would like to introduce the members of this Procedural Review Hearing Tribunal. My name is _____, and I will serve as Chairperson. The other members of this Procedural Review Hearing Tribunal are:

_____, _____
_____, and _____.

**Disqualification:** Anyone who was a party to the original arbitration hearing, a member of the Grievance Committee 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 Procedural Review Hearing Tribunal. Furthermore, anyone who is related by blood or marriage to any party to the original arbitration hearing, who is an employer, partner, employee, or is associated in business with any of the parties to the original arbitration hearing is also disqualified. I will now ask the members of the Procedural Review Hearing Tribunal if they know of any reason why they should be disqualified.

*(If none)* The members of the Procedural Review Hearing 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 Procedural Review Hearing Tribunal, I will now ask the parties if they are aware of any reason why any member of this Procedural Review Hearing Tribunal is not qualified to serve.

*(If none)* The parties have not indicated any reason why any member of this Procedural Review Hearing Tribunal is not qualified to serve.

**Additional introductions:** Also present at this procedural review hearing is _____, the complainant in the original arbitration hearing; _____, the respondent in the original arbitration hearing; _____, the original Arbitration Hearing Panel Chairperson; and _____, the Professional Standards Administrator for the _____ Board of REALTORS®.

*(If any attorneys are present, they should be introduced at this time.)*

_____, _____
_____, and _____.

**Appeal limitations:** In this procedural review hearing we will consider the arguments of _____, 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:

*(Read the Request for Procedural Review [Form #A-13 in **Part Thirteen** of this Manual] into the record.)*

**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 (bases) upon which he/she is requesting that the Award of Arbitrators be overturned. Next, the original arbitration Hearing Panel Chairperson (or a representative from the original 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 this proceeding, members of the Procedural Review Hearing Tribunal may ask questions; however, parties have no right of cross-examination. Finally, following the procedural review hearing, the Procedural Hearing 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)* None of the parties has any questions regarding the outline of procedure.

**Guidelines:** This Procedural Review Hearing Tribunal is not dealing with questions of law and is not governed by the technical rules of evidence which may apply in courts. This Procedural Review Hearing 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 Procedural Review Hearing Tribunal that is fair to all of the parties. After the Procedural Review Hearing 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 Procedural Review Hearing Tribunal may rule at any time during this hearing on the relevance of testimony being given. All parties giving testimony will be asked to swear or affirm that testimony given is the truth to the best of their knowledge. A party may be represented by legal counsel. This Procedural Review Hearing 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 Procedural Review Hearing Tribunal. This Procedural Review Hearing Tribunal will countenance no effort by any party or by counsel to any party to harass, intimidate, coerce, or confuse the Procedural Review Hearing Tribunal or any party to the proceedings.

**Swearing:** At this time I will request that all persons present in the room who expect to testify at this procedural review hearing stand and be sworn or make appropriate affirmation in lieu of being sworn. (The Chairperson should determine if any of the parties prefer affirmation in lieu of being sworn.) Please stand, raise your right hand and, following the question I pose, answer in the affirmative if you do so swear. "Do you swear that the statements you are about to make at this hearing are the truth, the whole truth, and nothing but the truth so help you God?"

*(If yes)* All parties have answered in the affirmative. Please be seated.

*(And/or if needed)*

**Affirmation:** Please stand, 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 make at this procedural review hearing are the truth, the whole truth, and nothing but the truth?"

*(If yes)* All parties have answered in the affirmative. Please be seated.

**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 he/she is 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 Chairperson:** At this time, the original arbitration Hearing Panel Chairperson will have an opportunity to explain why the Award of Arbitrators should be upheld by this Procedural Review Hearing 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 Procedural Review Hearing Tribunal. Any party testifying must restrict his/her discussion to the issues raised in the Request for Procedural Review.

**Questions from panel members:** The members of this panel are authorized to ask questions at any time during this procedural review.

**Confirmation of fairness/opportunity to testify:** Do each of you feel that this procedural review 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.

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 Procedural Review Hearing Tribunal?

*(If yes)* The parties have indicated that they have had an adequate opportunity to state why they believe the original Award of Arbitrators should or should not be upheld by this Procedural Review Hearing Tribunal.

**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 final determination of this Procedural Review Hearing Tribunal is considered confidential. Upon final action by this Procedural Review Hearing Tribunal, the Board President shall disseminate to the complainant and the respondent in the original arbitration hearing, the Board of Directors, the Chairperson and members of the original Arbitration Hearing Panel, and Board legal counsel such notice of the action as the Board President deems appropriate under the circumstances.

**Adjournment:** There being no further business to be considered in this procedural review hearing, this portion of the procedural review hearing stands adjourned.

**Executive session:** The Procedural Review Hearing 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 Procedural Review Hearing Tribunal to decide is whether the arbitration procedures utilized in rendering the Award of Arbitrators afforded all parties due process. If the Procedural Review Hearing Tribunal determines that the original arbitration hearing process was defective in any significant way, then the Award of Arbitrators will be invalidated and the matter will be referred to a different arbitration Hearing Panel for a new hearing or, alternatively, the Procedural Review Hearing Tribunal may release the parties from their obligation to arbitrate if it concludes that the Board will be unable to impanel an impartial arbitration Hearing Panel.

*(Revised 11/11)*

# 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.

They should not be used until they are first reviewed by Board counsel to assure that they conform to state law and to any special requirements established by the Board. (NOTE: The State Association may wish to have State Association legal counsel review the contents of the Manual, including the Specimen Forms, to adapt it to comply with state law, and to recommend adoption of the amended Manual by all local Boards within the state.) The Specimen Forms are intended to provide a format and may require further adaptation and modification by the local Board prior to implementation and use.

After such review and modification as necessary, the local Board or State Association may add to the forms the appropriate identification data of the Board and reproduce them in quantities desired by the Board.

## General Instructions and Information for Filing and Replying to Arbitration Requests

(1) Arbitration requests must be typewritten and submitted with a sufficient number of copies to enable the Board to provide one to each respondent plus one copy for the Board's records. Any reply must be typewritten and submitted with a sufficient number of copies to enable the Board to provide one to each complainant plus one copy for the Board's records. Additional copies of the arbitration request 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 arbitration request should not be requested.

(2) Arbitration requests will be referred to the Professional Standards Administrator, and by the Professional Standards Administrator to the Chairperson of the Grievance Committee. If the Grievance Committee 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 Committee, together with information advising the complainant of the procedures by which the Grievance Committee's decision may be appealed to the Board of Directors.

(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 Board President, and the Professional Standards Committee Chairperson. 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 (15) fifteen days from when the request for response was transmitted, the Grievance Committee shall make its determination as to whether an arbitration hearing should be scheduled based upon the information set forth in the request. Complainant, the Board President, and the Professional Standards Committee Chairperson 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 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 his 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 other party(ies) and to the association 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 either complainant or respondent

(b) is an employer, partner, or employee, or in any way associated in business with either complainant or respondent

(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 or tribunal which may prevent him from rendering an impartial decision

(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 ofthe Hearing Panel or the Board of Directors 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 (depending on state law and the option selected by the Board) proceed in the absence of the respondent.

*(Revised 05/15)*

## Form #A-1

_____
Board or State Association

_____
Address City State Zip

### Request and Agreement to Arbitrate

(1) The undersigned, by becoming and remaining a member of the _____ Board of REALTORS® (or Participant in its MLS), has previously consented to arbitration through the Board under its rules and regulations.

(2) I am informed that each person named below is a member in good standing of the Board (or Participant in its MLS), or was a member of said Board of REALTORS® 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):*

_____, REALTOR® principal _____
Name Address

_____, REALTOR® principal _____
Name Address

_____
Firm Address

(NOTE: Arbitration is generally conducted between REALTORS® [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 firm; naming a firm may increase the likelihood of collecting any resulting award.)

(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 provide any and all documents and evidence they intend to introduce during the hearing to the other party(ies) and to the association prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances.

(5) I request and consent to arbitration through the Board in accordance with its *Code of Ethics and Arbitration Manual* (alternatively, "in accordance with the professional standards procedures set forth in the bylaws of the Board"). 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 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 Board of Directors 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 enclose my check in the sum of $_____ for the arbitration filing deposit.**

(7) 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 Board. 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.

*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.
**Not to exceed $500.

(8) Each party must provide a list of the names of witnesses he intends to call at the hearing to the Board 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. The following REALTOR® nonprincipal (or REALTOR-ASSOCIATE® 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.

(9) 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 in the exercise of reasonable diligence, whichever is later.

Date(s) alleged dispute took place _____

(10) If either party to an arbitration request believes that the Grievance Committee 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. Only those materials that the Grievance Committee had at the time of its determination may be considered with the appeal by the Board of Directors.

(11) Are the circumstances giving rise to this arbitration request the subject of civil litigation? _____ Yes _____ No

(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, seller, or landlord and any amount credited or paid to a party to the transaction at the direction of the respondent.

(13) Address of the property in the transaction giving rise to this arbitration request:

_____

(14) The sale/lease closed on: _____

(15) Agreements to arbitrate are irrevocable except as otherwise provided under state law.

**Complainant(s):**

Name (Type/Print) Signature of REALTOR® Principal Date

Address

Telephone Email

Name (Type/Print) Signature of REALTOR® Principal Date

Address

Name of Firm* Address

Telephone Email

*In cases where arbitration is requested in the name of a firm comprised of REALTORS® (principals), the request must be signed by at least one of the REALTOR® principals of the firm as a co-complainant.

*(Revised 11/15)*

## Form #A-2

_____
Board or State Association

_____
Address City State Zip

### Request and Agreement to Arbitrate (Nonmember)

(1) The undersigned agrees and wants to submit to arbitration before a Hearing Panel of the _____ Board of REALTORS® with the understanding that the arbitration will be conducted pursuant to the *Code of Ethics and Arbitration Manual* of the Board (or, alternatively, "in accordance with the professional standards procedures set forth in the Board's bylaws"). The undersigned acknowledges having had the opportunity to review the Board'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 Board (or Participant in its MLS), or was a member of said Board of REALTORS® 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 and (list all persons and/or firms you wish to name as respondents to this arbitration. Naming a REALTOR® [principal] as respondent enables the complainant to know who will participate in the hearing from the respondent's firm; naming a firm may increase the likelihood of collecting any resulting award.):*.

_____, REALTOR® principal _____
Name Address

_____, REALTOR® principal _____
Name Address

_____
Firm Address

(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.

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 prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances.

(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 of (2) deposit the funds with the Professional Standards Administrator to be held in an escrow or trust account maintained for this purposes consistent with Section 53, The Award, *Code of Ethics and Arbitration Manual*.

(6) I enclose my check in the sum of $_____ for the arbitration filing fee deposit.**

(7) 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 Board. 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 he intends to call at the hearing to the Board 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.

(8) 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 in the exercise of reasonable diligence, whichever is later.

Date(s) alleged dispute took place: _____

*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.
**Not to exceed $500.

(9) If either party to an arbitration request believes that the Grievance Committee has incorrectly classified the issue presented in the request (i.e., mandatory or voluntary), the party has twenty (20) days from the date of the receipt of the Grievance Committee's decision to file a written appeal of the decision. Only those materials that the Grievance Committee had at the time of its determination may be considered with the appeal by the Board of Directors.

(10) Are the circumstances giving rise to this arbitration request the subject of civil litigation? _____ Yes _____ No

(11) 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.

(12) Agreements to arbitrate are irrevocable except as otherwise provided under state law.

**Complainant(s):**

Name (Type/Print) Signature of complainant Date

Address

Telephone Email

Name (Type/Print) Signature of complainant Date

Address

Telephone Email

*(Revised 11/15)*

## Form #A-3

_____
Board or State Association

_____
Address City State Zip

### Notice to Respondent (Arbitration)

In the case of _____ vs. _____
Complainant Respondent

to _____, respondent.

Attached hereto is a copy of a request for arbitration which names you as respondent, as filed with this Board and referred to a Hearing Panel as a business dispute as defined in Article 17 of the Code of Ethics or as provided for in the *Code of Ethics and Arbitration Manual* of this Board.

Please be advised that, under the bylaws of the Board, you have fifteen (15) days from the date of this notification in which to mail or transmit your reply at the office of the Board at the address above.

Your reply must be typewritten, with original and _____ copies for this office, and must be signed and dated.

Respectfully submitted,

_____ _____ Professional Standards Administrator
Type/Print Signature

_____
Board or State Association

Dated: _____, 20_____

*(Revised 11/14)*

**Form #A-4**

_____
Board or State Association

_____
Address City State Zip

## Response and Agreement to Arbitrate

To the **Professional Standards Committee:**

_____ _____

_____ _____
Complainant(s) Respondent(s)

(1) The undersigned, by becoming and remaining a member of the Board of REALTORS® (or Participant in its MLS), has previously consented to arbitration through the Board under its rules and regulations.

(2) I am a member of the _____ Board of REALTORS® or Participant in its 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 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 prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances.

(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 consent to arbitration through the Board in accordance with its *Code of Ethics and Arbitration Manual* (alternatively, "in accordance with the professional standards procedures set forth in the bylaws of the Board"). 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 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 Board of Directors 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.

(7) I enclose my check in the sum of $_____ for the arbitration filing fee deposit.*

(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 Board. 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.

*Revised (05/15)*

*Not to exceed $500.

Each party must provide a list of the names of witnesses he intends to call at the hearing to the Board 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. The following REALTOR® nonprincipal (or REALTOR-ASSOCIATE® 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.

(9) I declare that the information provided with this response is true and correct to the best of my knowledge and belief.

(10) If either party to an arbitration request believes that the Grievance Committee has incorrectly classified the issue presented in the request (i.e., mandatory or voluntary), the party has twenty (20) days from the date of receipt of the Grievance Committee's decision to file a written appeal of the decision using Form A-20. Only those materials that the Grievance Committee had at the time of its determination along with the party's rationale challenging the Grievance Committee's decision may be considered with the appeal by the Board of Directors. I understand that should I contend this matter is not arbitrable, I have an opportunity to petition the arbitration Hearing Panel to dismiss the arbitration request.

(11) 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.

(12) 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).

**Respondent(s):**

| Name (Type/Print) | Signature of REALTOR® Principal | Date |
|---|---|---|
| Address | | |
| Telephone | | Email |
| Name (Type/Print) | Signature of REALTOR® Principal | Date |
| Address | | |
| Telephone | | Email |

*(Amended 05/15)*

**Form #A-5**

_____
Board or State Association

_____
Address City State Zip

## Grievance Committee Request for Information (Arbitration Request)

To _____,

named by _____ as respondent.

Attached hereto is a copy of a request for arbitration which names you as respondent, as filed with this Board and referred to the Grievance Committee for review, in accordance with Section 47 of the Board's *Code of Ethics and Arbitration Manual.*

The Grievance Committee requests the respondent provide a written response to the Request for Arbitration within _____ days of this notice being transmitted. If no response is filed within the time allotted, the Grievance Committee shall make its determination as to whether an arbitration hearing should be scheduled based upon the information set forth in the Request for Arbitration.

Respectfully submitted,

_____ _____ Professional Standards Administrator
Type/Print Signature

_____
Board or State Association

Dated: _____, 20_____

*(Revised 11/14)*

## Form #A-6

_____
Board or State Association

_____
Address City State Zip

### Response to Grievance Committee Request for Information

To the **Grievance Committee** of the:

_____
Board or State Association

Filed _____, 20_____

_____ _____

_____ _____
Complainant(s) Respondent(s)

In a matter of 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 Board.

Respondent(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 reply are true and correct.

**Respondent(s):**

_____
Name (Type/Print) Signature of REALTOR® Principal Date

_____
Address

_____
Telephone Email

_____
Name (Type/Print) Signature of REALTOR® Principal Date

_____
Address

_____
Telephone Email

*(Revised 11/09)*

**Form #A-7**

_____
Board or State Association

_____
Address City State Zip

## Notice of Right to Challenge Tribunal Members*

Notice is given herewith to parties in the matter of _____ vs. _____, an arbitration proceeding, that a party has a right to challenge the qualifications of any individual who may be appointed to serve on a Hearing Panel or the Board of Directors. A list of such individuals is provided below. If you wish to challenge the qualifications of any of the individuals listed who may be appointed to sit on the Tribunal, please indicate by checking the appropriate blank, and return this form or a copy of same with a letter (or enclosed Form #A-8, if preferred) to the (Professional Standards Committee Chairperson) (Professional Standards Administrator) explaining your reason ("cause") for challenge. If your reason is deemed sufficient to support your challenge, the individual challenged will not be appointed to the Tribunal. Pursuant to Section 27, Qualification for Tribunal, challenges must be filed with the Board within ten (10) days from the date the list of names is transmitted.

_____ Challenge: _____ Yes _____ No

_____ Challenge: _____ Yes _____ No

_____ Challenge: _____ Yes _____ No

_____ Challenge: _____ Yes _____ No

_____ Challenge: _____ Yes _____ No

_____ Challenge: _____ Yes _____ No

_____ Challenge: _____ Yes _____ No

_____ Challenge: _____ Yes _____ No

_____ Challenge: _____ Yes _____ No

_____ Challenge: _____ Yes _____ No

_____ Challenge: _____ Yes _____ No

_____ _____
Party's Name (Type/Print) Party's Signature Date

_____ _____
Party's Name (Type/Print) Party's Signature Date

*(Revised 11/14)*

*Members of arbitration Hearing Panels or the Board of Directors. Does not include members of a Grievance Committee. See Section 27, Qualifications for Tribunal, *Code of Ethics and Arbitration Manual*.

## Form #A-8

_____
Board or State Association

_____
Address City State Zip

### Challenge to Qualifications by Parties to Arbitration Proceeding

I (we), as party to the matter in _____ vs. _____, hereby challenge the qualification of the following named individual(s) who may be appointed 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: _____

_____

_____

Panel Member Challenged: _____

Reason: _____

_____

_____

Type/Print Name of Party: _____

Signed: _____ Date: _____

Type/Print Name of Party: _____

Signed: _____ Date: _____

Type/Print Name of Party: _____

Signed: _____ Date: _____

*Members of arbitration Hearing Panels or 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 arbitration proceeding to which you are a party.

**Form #A-9**

_____
Board or State Association

_____
Address City State Zip

## Official Notice of Hearing (Arbitration)

In the case of _____ vs. _____
Complainant Respondent

Above parties are hereby notified:

(1) The Chairperson of the Hearing Panel has designated the _____, 20_____
Day Month Year

_____ A.M./P.M. at _____
Time Place of Hearing

as the time for hearing the above 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 Board. 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:

_____ _____

_____ _____

_____ _____

(4) 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 prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances.

(5) 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 before the hearing to the Board 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.

(6) Each party must provide a list of the names of the witnesses he intends to call at the hearing to the Board 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.

(7) The parties shall not discuss the case with any member of the Hearing Panel or the Board of Directors prior to the hearing or after hearing and prior to announcement of the decision.

(8) The parties to an arbitration proceeding are encouraged to settle the issue between them by joint agreement at any time and shall provide written notice of such settlement to the Professional Standards Administrator.

Respectfully submitted,

_____ _____, Professional Standards Administrator
Type/Print Signature

_____
Board or State Association

Dated: _____, 20_____

*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 11/15)*

## Form #A-10

Board or State Association

Address City State Zip

### 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 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. Permission can be given by the Chairperson. All parties shall be advised of the date of the rescheduled hearing.

**Recording the hearing:** The Board shall, and any party (may/may not), at the party's expense, have a court reporter present or may record the proceeding and, if transcribed, shall present a transcript to the Professional Standards Administrator. If the Board utilizes a court reporter in lieu of recording, the parties may not be prohibited from making their own recording.

**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 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) Chairperson 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 sworn or affirmed. All witnesses will be excused from the hearing except while testifying.
(4) Opening statement first by complainant and then by respondent, briefly explaining the party's basic position.
(5) The parties will be given an opportunity to present evidence and testimony on their behalf and they may call witnesses. All parties appearing at a hearing may be called as a witness without advance notice.
(6) The parties and their legal counsel will be afforded an opportunity to examine and cross-examine all witnesses and parties.
(7) The panel members may ask questions at any time during the proceedings.
(8) The Chairperson may exclude any question ruled to be irrelevant or argumentative.
(9) Each side may make a closing statement. The complainant will make the first closing statement and the respondent will make the final closing statement.
(10) Adjournment of hearing.
(11) The Hearing Panel will go into executive session to decide the case.

**Settlement:** The 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. The parties should be advised that the arbitration will continue to be processed until formally withdrawn by the complainant.

**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 Board.

**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 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 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.

Be advised that all matters discussed are strictly confidential.

*(Revised 11/15)*

**Form #A-10a**

Board or State Association

Address City State Zip

## Outline of Procedure for Arbitration Hearing Involving a Request and a Counter-Request

### (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 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 rescheduled hearing date.

**Recording of the hearing:** The Board shall, and any party (may/may not), at their own expense, have a court reporter present at the hearing, or may record the proceeding and, if transcribed, shall furnish a copy to the Professional Standards Administrator.

**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 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 will proceed as follows:

(1) Chairperson 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 sworn or affirmed. All witness(es) 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 present a brief opening statement uninterrupted, stating the amount to be arbitrated and an explanation of the source of the dispute (i.e., commission dispute, request for security deposit refund, etc. . .) and refuting the contention that any monies are owed.

(5) Respondent/counter-complainant will present a brief opening statement uninterrupted, stating the amount to be arbitrated and an explanation of the source of the dispute (i.e., commission dispute, request for security deposit refund, etc. . .) and refuting the contention that any monies are owed.

(6) Complainant/counter-respondent presents his case and defense by offering testimony and evidence from himself and/or his witness(es) to support the contention that monies are owed to the complainant by the respondent and refuting the contention that monies are owed to the counter-complainant.

   (a) The respondent/counter-complainant may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.

   (b) The Hearing Panel may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.

(7) Respondent/counter-complainant presents her case, offering testimony and evidence from herself and/or witness(es) to support the contention that monies are owed to her by the counter-respondent and refuting the contention that she owes monies to the complainant.

   (a) The complainant/counter-respondent may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.

   (b) The Hearing Panel may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.

(8) The complainant/counter-respondent may present additional testimony and evidence from himself and/or his witness(es) to further support his position as a complainant/counter-respondent.

(a) The respondent/counter-complainant may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.

(b) The Hearing Panel may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.

(9) The respondent/counter-complainant may present additional testimony and evidence from herself and/or her witness(es) to further support her position as respondent/counter-complainant.

(a) The complainant/counter-respondent may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.

(b) The Hearing Panel may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.

(10) Cross-examination in which the parties are given a final opportunity to examine each other. The complainant/counter-respondent may first ask any remaining questions of the respondent/counter-complainant and/or the respondent/ counter-complainant's witness(es). The respondent/counter-complainant may then ask any remaining questions of the complainant/counter-respondent and/or of the complainant/counter-respondent's witness(es).

(11) The Hearing Panel may question either the complainant/counter-respondent and/or the respondent/counter-complainant and/or their respective witness(es).

(12) When the parties and Hearing Panel have no further questions, the complainant/counter-respondent and respondent/ counter-complainant (respectively) may present uninterrupted closing statements.

(13) The Chair will then adjourn the hearing.

(14) The Hearing Panel will go into executive session to decide the case.

**Settlement:** The 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. The parties should be advised that the arbitration will continue to be processed until formally withdrawn by the complainant.

**Award in arbitration hearing:** The decision of the Hearing Panel in an arbitration proceeding shall be reduced to writing by the panel (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 Board.

**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 he or she deems irrelevant or argumentative.

**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 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.

Be advised all matters discussed are strictly confidential.

*(Revised 11/15)*

**Form #A-11**

_____
Board or State Association

_____
Address City State Zip

## Certificate of Qualification and Affirmation of Confidentiality

**This case is confidential.**

I, the undersigned, member of a Hearing Panel of the Professional Standards Committee (or Board of Directors or tribunal thereof) of the

_____
Board or State Association

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:

_____ vs. _____.

Cited case is a hearing involving arbitration of a business dispute as defined in Article 17 of the Code of Ethics and/or in the professional standards procedures contained in the bylaws of the Board.

**Reasons for disqualification:** 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 either complainant or respondent

(b) is an employer, partner, employee, or in any way is associated in business with either complainant or respondent

(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 Board of Directors or tribunal thereof) that may prevent the member from rendering an impartial judgment

_____ _____
Type/Print Signature

Dated: _____, 20_____

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.

*(Revised 11/15)*

## Form #A-12

_____
Board or Association

_____
Address City State Zip

### Award of Arbitrators

The undersigned, duly appointed as the Hearing Panel to hear and determine an arbitrable dispute between

_____ and _____
Complainant Respondent

certify that on _____, 20_____, we heard the evidence of the parties and having heard all the evidence and arguments of the parties, a majority of the panel finds there is due and owing $_____ to be paid by _____ to _____. 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 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 Board of Directors.

The deposits of the parties shall be used to cover the costs of arbitration or shall go into the general operating funds of the Association of 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 President within twenty (20) days after the award has been transmitted to the parties* and must be accompanied by a deposit of $_____. **The request for procedural review must 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 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 directors following the procedural review, the award will be paid from the escrow or trust unless the non-prevailing party advises the association in writing within fifteen (15) days from the transmittal of the directors' confirmation that a suit challenging the validity of the award has been filed. If the directors invalidate the award, the funds shall be returned to the individual who made the deposit.

Dated: _____, 20_____

Arbitrators:

_____ _____, Chairperson

_____ _____, Member

_____ _____, Member

_____ _____, Member

_____ _____, Member
Type/Print Signature

Many arbitration hearings are convened to determine questions of procuring cause. For purposes of arbitration conducted by Boards and Associations of 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.

*(Revised 05/15)*

*Award becomes final twenty (20) days from the date the award is transmitted absent a procedural review request being filed.
**Appeal deposits can not exceed $500.

**Form #A-13**

_____
Board or State Association

_____
Address City State Zip

## Request for Procedural Review (Arbitration)

To the President of the _____.
Board or State Association

In the case of: _____ vs. _____
Complainant Respondent

I (we), _____, do hereby request a procedural review of the arbitration hearing procedures in the above-cited case before the Board of Directors of the _____.

NOTE: The Directors will not hear an appeal on the merits of the arbitration award. A request for procedural review must be based on allegation(s) of procedural deficiency or other irregularities which may have deprived a party of due process.

My (our) request is based on the following:

(Set forth in reasonable detail [narrative] the facts which support the request for review. Attach narrative to request form if the narrative exceeds the space below. The procedural review request must be accompanied by a deposit in the amount of $_____* made payable to the _____ Board or Association).

_____

_____

_____

NOTE: Only those facts and issues raised in this written request will be considered by the Board of Directors at the procedural review hearing.

Dated: _____

Name (Type/Print): _____ Name (Type/Print): _____

Signature: _____ Signature: _____

Address: _____ Address: _____

_____ _____

Phone: _____ Phone: _____

*(Revised 5/05)*

*Not to exceed $500.

## Form #A-14

_____
Board or State Association

_____
Address City State Zip

### Official Notice of Procedural Review (Arbitration)

In the case of: _____ vs. _____
Complainant Respondent

Above parties are hereby notified:

(1) _____ has requested a procedural review of the arbitration hearing procedures used in the above-cited case before the Board of Directors of the _____.
Board or State Association

A copy of the Request for Review, together with its supporting documentation, is attached.

(2) The Board of Directors will meet on _____, 20_____, _____ A.M./P.M.
Day Month Year Time

at _____
Place of Hearing

to hear the request that the award of the arbitrators be overturned.

(3) The members of the Board of Directors who will hear the request are:

_____ _____

_____ _____

_____ _____

(If more space is needed, attach list of other Directors who will hear the request.)

(4) Either party may be represented by legal counsel, and each party is required to give the Board and the other party written notice of an intention to have counsel present _____ days before the hearing. 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 Appeal Tribunal determines that the rights of any other party require representation by legal counsel.

(5) Either party may file with the Professional Standards Administrator not less than _____ days prior to the date of the procedural review hearing written request for disqualification from the hearing of any member of the Board of Directors for the following reasons:
(a) is related by blood or marriage to either complainant or respondent
(b) is an employer, partner, or employee or is in any way associated in business with either complainant or respondent
(c) is a party to the hearing
(d) knows of any reason that may prevent the member from rendering an impartial judgment
(e) has served as a member of the Grievance Committee initially reviewing the request for arbitration or as a member of the arbitration Hearing Panel which rendered the award

(6) The parties shall not discuss the case with any member of the arbitration Hearing Panel or Board of Directors prior to or after the procedural review hearing and prior to announcement of the decision of the Directors.

Respectfully submitted,

_____ _____, Professional Standards Administrator
Type/Print Signature

Dated: _____, 20_____

**Form #A-14a**

_____
Board or State Association

_____
Address City State Zip

## Decision of the Procedural Review Hearing Tribunal

Procedural review of the arbitration hearing in the matter of:

_____ vs. _____
Complainant Respondent

Copy of Award of Arbitrators (attached) was requested by _____

and was considered by the Procedural Review Tribunal on _____, 20_____.

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 Board's Professional Standards Committee for a new hearing on the merits before a different Hearing Panel.
- ❒ the matter is to be referred to the State Association for a new hearing on the merits before a different Hearing Panel pursuant to Professional Standards Policy Statement #18, Local Member Board Requests for the Conduct of Ethics and Arbitration Hearing by the State Association.
- ❒ the parties are released from their obligation to arbitrate and are free to pursue any other remedy that may be available to them.

Procedural Review Tribunal:

| | |
|---|---|
| _____ | _____, Chairperson |
| _____ | _____, Member |
| _____ | _____, Member |
| _____ | _____, Member |
| _____ | _____, Member |
| Type/Print | Signature |

Dated: _____, 20_____

*(Adopted 11/97)*

## Form #A-15

### Checklist of Professional Standards Concerns for Elected Officers and Directors and for Professional Standards Administrators of Boards of REALTORS®

❒ (1) **Concern** for the obligation of the Board 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-ASSOCIATE®s, and the Board.

❒ (3) **Concern** for liability of the Board 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 Board'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 Grievance Committee and 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 Grievance Committee and 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 Committee does not exceed its function of making preliminary reviews to determine proper disposition of ethics complaints and requests for arbitration.

❒ (13) **Concern** that Board 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 Board 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 Board can do and does do, and what the Board cannot do.

- ❒ (17) **Concern** that Board hearings are conducted in strict accordance with the professional standards procedures of the Board'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 Board 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 Board's Professional Standards Committee be appointed and charged with providing a continuing education program for Board Members in Code of Ethics awareness, understanding, and procedures.

- ❒ (26) **Concern** for Code enforcement training — State and Board.

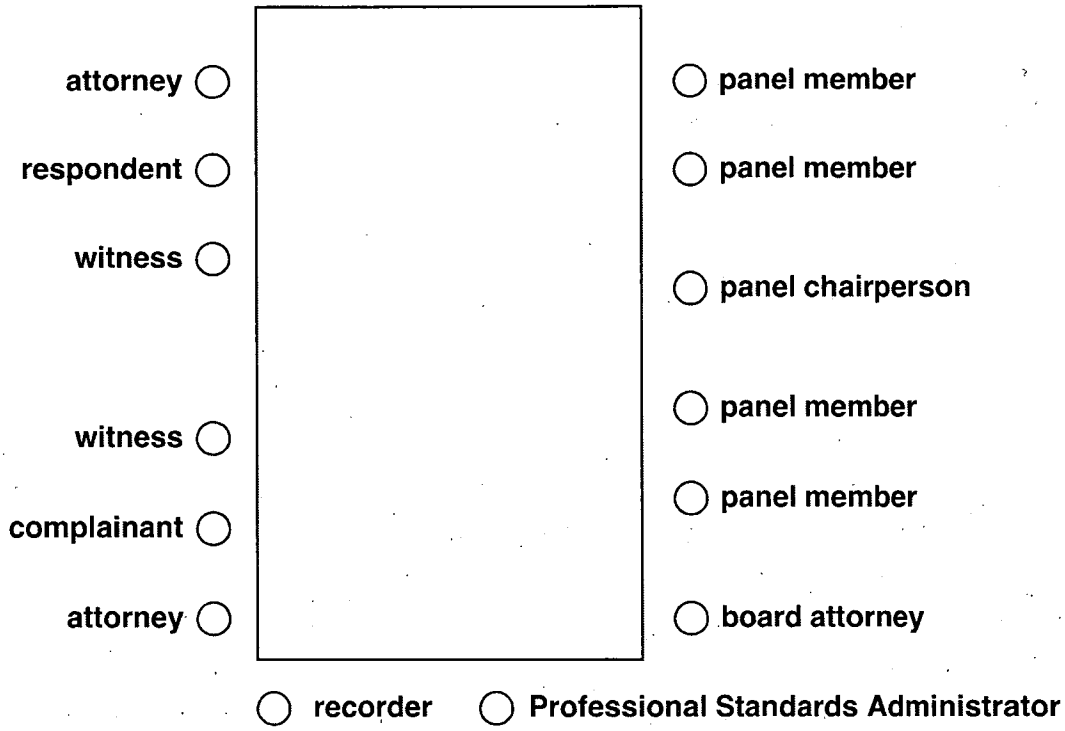
- ❒ (27) **Concern** for dealing promptly and fairly with complaints brought by the public.

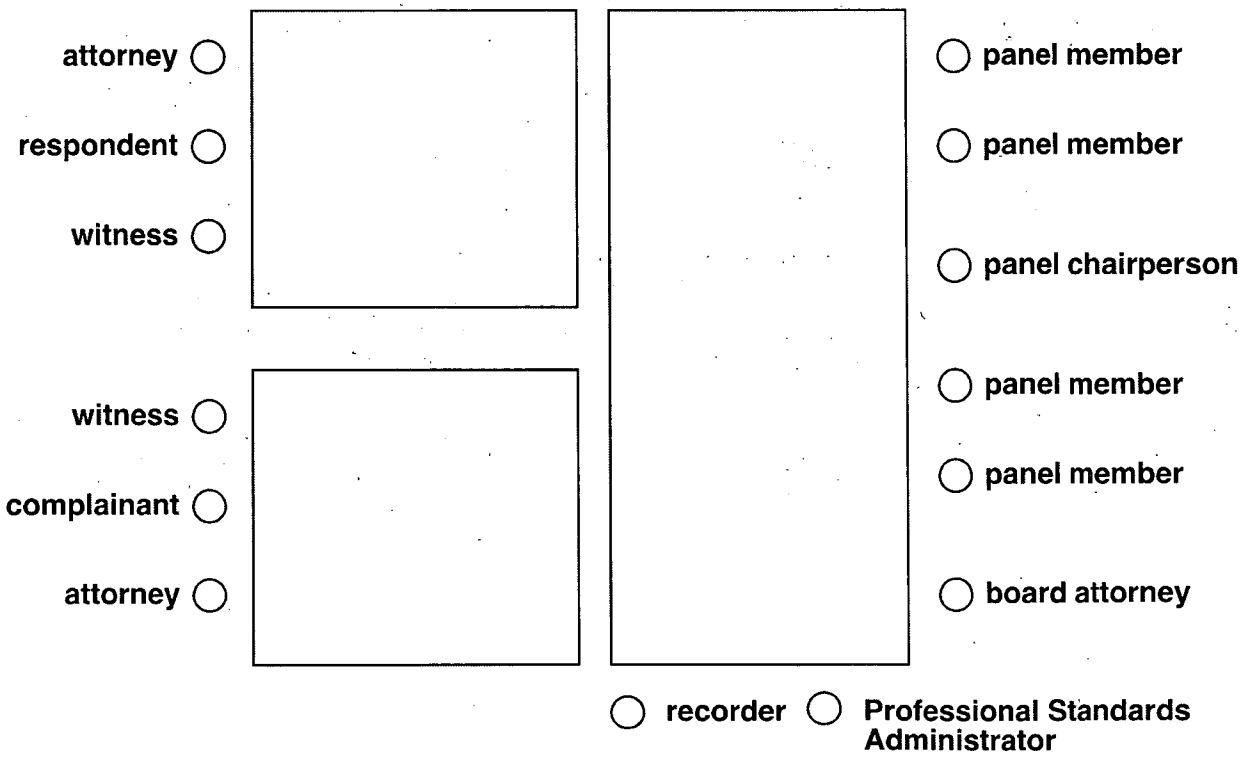
- ❒ (28) **Concern** for liability of REALTORS® in dealing with the public.

- ❒ (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.

## Form #A-16

### Seating Arrangements for Hearings



**Form #A-17**

_____
Board or State Association

_____
Address City State Zip

## Mediation Resolution Agreement

The undersigned, as Members of the _____ and pursuant to the mediation guidelines
Board or State Association

incorporated into the _____'s professional standards procedures, have voluntarily
Board or State Association

participated in and agree to the following resolution:

_____

_____

_____

_____

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 the _____ or to litigate the matter. We further hold the
Board or State Association

_____ harmless, acknowledge that we were advised of our right to attorney representation at the mediation and
Board or State Association

attorney review of the Resolution Agreement, and expressly waive any and all liability of the _____, or any claim
Board or State Association

that we have against the _____ arising out of the manner in which the _____ conducted the
Board or State Association Board or State Association

mediation or the resolution of the dispute reached as a result of the _____'s mediation procedures. Further, if the
Board or State Association

award is judicially enforced, the non-complying party agrees to reimburse the other party for court costs and reasonable attorney's fees.

_____
Type/Print Signature Date

_____
Type/Print Signature Date

As Mediation Officer of the _____, I do attest that I was present during the mediation process and that the above
Board or State Association

resolution agreement was voluntarily entered into by the parties to the dispute.

_____
Type/Print Signature Date

## Form #A-18

### Arbitration 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 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.

## Form #A-19

## Sample Format of Agreement Between _____ and _____ Boards of REALTORS® to Establish Multi-Board (or Regional) Professional Standards Enforcement Procedures

(1) **Authority**

The authority for the establishment and utilization of multi-Board (or regional) professional standards enforcement procedures shall be established by this Agreement approved by the Boards of Directors of _____ and _____ _____ Boards of REALTORS® and confirmed by approval of the general membership at a duly called meeting with notice as required by the Boards' bylaws.

(2) **Geographic Area**

The geographic area served by this Agreement shall be the area of the combined territorial jurisdiction assigned by the NATIONAL ASSOCIATION OF REALTORS® to the Boards which are signatories to this Agreement.

(3) **Purpose**

The purpose of this Agreement is to create multi-Board (or regional) professional standards enforcement procedures providing for the appointment of Mediation Officers and the establishment of a joint Grievance Committee, Professional Standards Committee, and an Appeal Panel comprising members from each signatory Board for enforcement of the Code of Ethics, including the mediation of disputes and the conduct of arbitration hearings, involving members of the signatory Boards to ensure impartial and unbiased Hearing Panels for the conduct of hearings on a basis designed to provide this service and meet the responsibilities of the signatory Boards on an efficient and effective basis to better serve their members.

(4) **Composition of Tribunals**

(a) This Agreement authorizes the establishment of a multi-Board (or regional) Grievance Committee. The Grievance Committee shall be composed of at least one (1) member in good standing of each signatory Board.

Members of the Grievance Committee from each signatory Board shall be appointed by the Presidents of the respective Boards, subject to confirmation by the respective Boards of Directors, provided that the Presidents shall have the power to appoint, on a timely basis, and without necessity of confirmation by the Boards of Directors, a substitute member to the Committee for any member from their respective Boards who may be unable to serve for any reason. The Grievance Committee shall select its own Chairperson (or, alternatively, the Grievance Committee Chairperson shall be selected from members of the Grievance Committee by a majority vote of the Presidents of the Boards which are signatories to this Agreement).

NOTE: There must be at least three (3) individuals serving on the multi-Board Grievance Committee, and it is desirable that the number be greater to provide an adequate number of members to handle the anticipated case load without undue stress.

(b) This Agreement also authorizes the establishment of a multi-Board (or regional) Professional Standards Committee. The Professional Standards Committee shall be composed of at least two (2) members in good standing from each signatory Board.

The members of the Professional Standards Committee shall be appointed by the Presidents of the respective Boards, subject to confirmation by the respective Boards of Directors, provided that the Presidents shall have the power to appoint, on a timely basis, and without necessity of confirmation by the Boards of Directors, a substitute member to the Committee for any member from their respective Boards who may be disqualified for any valid reason from hearing a particular matter. The Professional Standards Committee shall select its own Chairperson (or, alternatively, the Chairperson shall be selected from members of the Professional Standards Committee by a majority vote of the Presidents of the Boards which are signatories to this Agreement).

NOTE: There shall be at least nine (9) members of the Professional Standards Committee, and more, if feasible, to handle the anticipated case load without undue stress.

(c) Members of the Grievance Committee and the Professional Standards Committee shall be appointed initially in terms of one (1), two (2), and three (3) years (one-third for each term). New appointments shall be made for three (3) year terms as each term expires. Members of the committees shall be eligible for reappointment.

(d) This Agreement also authorizes the appointment of a panel of Mediation Officers to include at least one (1) such Mediation Officer from each signatory Board. Although utilization of the service of mediation shall be voluntary, unless REALTORS® (principals) are required by their Board which is a signatory to this agreement to mediate otherwise arbitrable disputes pursuant to Article 17,* and although the process is not defined as a tribunal, all parties to any requested arbitration shall be provided the opportunity to mediate a dispute arising out of a real estate transaction and their relationship as REALTORS® prior to the arbitration of the dispute. *(Revised 11/11)*

(5) **Operation**

(a) Professional standards hearings and the organization and procedures incident thereto shall be governed by the *Code of Ethics and Arbitration Manual* of the NATIONAL ASSOCIATION OF REALTORS® as amended from time to time, and as adapted to conform to the provisions of applicable state law, and which is hereby agreed shall be considered as adopted and incorporated into the bylaws of each Board signatory to this Agreement.

NOTE: Any matters of local Board option should be considered and agreed on in advance as necessary and the signatory Boards should also clarify which Board will be responsible for administering the process. The following is an example of such clarification:

*The respondent's local Board, or the Board through which the respondent gains access to and use of the MLS, will be responsible for administering the procedures and all optional provisions (see pages i and ii of the* Code of Ethics and Arbitration Manual*) of that Board will control.*

(b) Appeals of the Grievance Committee's dismissal of an ethics complaint or arbitration request (or challenges to the classification of arbitration requests) shall be heard by those members of the Committee who did not serve on the original tribunal. If panels of the Grievance Committee are not used, any appeal of the Grievance Committee's dismissal (or challenge to an arbitration request classification) shall be heard by a tribunal of five (5) members selected from the Boards of Directors of the signatory Boards to be appointed by the Boards' Presidents. *(Adopted 11/96)*

Appeal to an ethics determination rendered by the multi-Board (or regional) Professional Standards Committee shall be heard by those members of the Committee who did not constitute the original Hearing Panel. (For this reason, there should be an adequate number of members appointed to the Committee to provide an Appeal Panel of at least five [5] members.)

(c) Appeal is not provided from the decision of an arbitration panel established under this Agreement, except with respect to a claim by a party alleging deprivation of due process. Such a claim shall be heard by an Appeal Panel as described in the second paragraph of (b) above.

(d) In matters of alleged unethical conduct, any determination rendered by a Hearing Panel of the multi-Board (or regional) Professional Standards Committee that has not been appealed, or as finally determined if appealed, will be provided to the respondent's Board of original jurisdiction for ratification or implementation, as appropriate.

(e) In matters involving arbitration, any determination rendered by a Hearing Panel of the multi-Board (or regional) Professional Standards Committee will be provided to each respective party's Board of original jurisdiction for informational purposes. In the event a party to an arbitration refuses to pay an award in arbitration, the Board in which the award recipient holds membership 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.*

(f) In the event a complainant alleges that the respondent has improperly refused to submit a dispute to arbitration (or to mediation if the respondent's signatory Board requires REALTORS® [principals] who are parties to a dispute to mediate otherwise arbitrable matters pursuant to Article 17), the allegation shall be brought before (choose one: a tribunal of five [5] members selected from the multi-Board's Professional Standards Committee to be appointed by the Committee's Chairperson and chosen from the individuals who were not selected to serve on the original Arbitration Hearing Panel, or a tribunal of five [5] members selected from the Board of Directors of the signatory Boards to be appointed by the Board Presidents). The procedure for notices, time of notices, and hearing prescribed for matters before a Hearing Panel shall apply. The sole question of fact to decide will be whether the party has refused to submit an arbitrable matter to arbitration (or mediation if required) in violation of Article 17. Upon determination that the member has refused to arbitrate or mediate a properly arbitrable matter, the (specify body — name of tribunal) may direct implementation of appropriate sanction, including but not limited to suspension or expulsion of the member from the local Board of REALTORS® and/or its MLS. The decision of the (specify body — name of tribunal) shall be final and binding and is not subject to further review by the State Association or any signatory Board. *(Revised 11/15)*

(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 or deposit the funds with the Professional Standards Administrator of the Board administering the arbitration consistent with Section 53, The Award, *Code of Ethics and Arbitration Manual*, that failure shall be brought before (choose one: a tribunal of five [5] members selected from the multi-Board Professional Standards Committee to be appointed by the Committee's Chairperson and chosen from the individuals who were not selected to serve on the original arbitration Hearing Panel; or a tribunal of five [5] members selected from the Board of Directors of the signatory Boards to be appointed by the Board Presidents). This tribunal, consistent with Section 53, may, at its discretion, impose discipline, including but not limited

*Requiring REALTORS® (principals) to mediate otherwise arbitrable disputes requires establishment of an affirmative obligation in the Board's governing documents. Enabling bylaw provisions can be found at REALTOR.org (see NAR *Model Bylaws*).

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 tribunal shall be final and binding and is not subject to further review by the State Association or any signatory Board. *(Adopted 05/15)*

(6) **Reservation of Rights**

(a) It is understood and agreed by the Boards signatory 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 NATIONAL ASSOCIATION OF REALTORS®, except as voluntarily modified by this Agreement.

(b) It is further understood and agreed that any Board signatory to this Agreement may withdraw from the Agreement at any time provided the withdrawing Board shall provide notice to the other signatory Boards ninety (90) days in advance of the date of withdrawal.

**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:**

| | |
|---|---|
| Type/Print President's Name | President's Signature |
| Board of REALTORS® | Date |
| Type/Print Association Executive's Name | Association Executive's Signature |
| Board of REALTORS® | Date |
| Type/Print President's Name | President's Signature |
| Board of REALTORS® | Date |
| Type/Print Association Executive's Name | Association Executive's Signature |
| Board of REALTORS® | Date |
| Type/Print President's Name | President's Signature |
| Board of REALTORS® | Date |
| Type/Print Association Executive's Name | Association Executive's Signature |
| Board of REALTORS® | Date |

*(Revised 05/15)*

## Form #A-20

_____
Board or State Association

_____
Address City State Zip

### Appeal of Grievance Committee (or Hearing Panel) Dismissal or Appeal of Classification of Arbitration Request

In the case of _____ vs. _____
Complainant Respondent

Check the appropriate box. Note that the arbitration request and any attachments to the request cannot be revised, modified, or supplemented. Directors consider only the information and documents considered by the Grievance Committee (or Hearing Panel) with this form and explanation below.

❒ I/we appeal the dismissal of the above-referenced arbitration request.

❒ I/we appeal the classification of the above-referenced arbitration request.

Explanation of why complainant or respondent disagrees with the Grievance Committee's (or Hearing Panel's) dismissal of the arbitration request or classification of the request:

_____

_____

_____

_____

**Appellant(s):**

| | |
|---|---|
| Signature of Appellant | Signature of Appellant |
| Name (Type/Print) | Name (Type/Print) |
| Street Address | Street Address |
| City State Zip Code | City State Zip Code |
| (_____) Phone | (_____) Phone |
| Dated | Dated |

*(Revised 11/12)*

**Form #A-21**

_____
Board or State Association

_____
Address City State Zip

## Action of the Appeal Hearing Tribunal (Arbitration Request)

The decision of the Grievance Committee (or Hearing Panel) to dismiss the arbitration request in the matter of:

_____ vs. _____
Complainant Respondent

dated _____, was appealed by _____ and was considered on _____
Date Appellant Date

by the Appeal Tribunal of the Board of Directors of _____.
Board/Association

The Appeal Tribunal's decision in the above-referenced case is to:

☐ Deny the appeal and uphold the Grievance Committee's (Hearing Panel's) decision.

☐ Grant the appeal and overturn the Grievance Committee's (Hearing Panel's) decision. This matter is hereby referred to a hearing before the Professional Standards Committee. You will be notified in the near future concerning a hearing date.

The decision above was rendered by an Appeal Tribunal of the Board of Directors of the _____ comprised of the following members whose signatures are affixed below.
Board/Association

The appeal was considered and decision deemed final on _____.
Date

_____, Chairperson
Type/Print Name

_____
Signature

_____, Member
Type/Print Name

_____
Signature

_____, Member
Type/Print Name

_____
Signature

_____, Member
Type/Print Name

_____
Signature

_____, Member
Type/Print Name

_____
Signature

*(Adopted 11/01)*

# Part Fourteen — State Association Professional Standards Committee

**Authority and Requirement:** The obligation of the State Association concerning the Code of Ethics of the National Association is established in Article IV, Code of Ethics and Member Board Business Practices, Sections 1 and 2, *Bylaws*, National Association:

> ***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 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, willful discrimination, or fraud resulting in substantial economic harm. 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 01/02)
>
> *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 separation of arbitration proceedings from proceedings under the Code of Ethics should not be construed as precluding consideration by the Hearing Panel of all factors, including the propriety of the conduct of the parties; relevant to the dispute which is the subject of the arbitration.

**Jurisdiction of State Association:** (if stated in State Association bylaws; also refer to provisions relating to professional standards in the *State Association Model Bylaws* recommended by the National Association):

(1) A local Board, prior to referring an ethics complaint or arbitration request for review to the State Association, should exhaust all efforts to impanel an impartial panel to conduct either the original hearing or the appeal or procedural review. These efforts may include the appointment of knowledgeable members of the Board on an ad hoc basis to serve on either a Hearing Panel or on behalf of the Board of Directors. If, because of notoriety, etc., the Board cannot impanel an impartial tribunal, the Board may refer the matter to the State Association, and the State Association may delegate to another Board or a regional enforcement facility, the authority to hear the case on behalf of the State Association. No Board or regional enforcement facility, however, may be required to accept this delegation of authority. If no other entity is amenable to conducting the review, the State Association shall be responsible for conducting the hearing. State Associations may, at their discretion, require that the President or Association Executive of the Board referring an ethics complaint or arbitration request certify that all reasonable efforts to impanel an impartial panel had been made, and may further require that those efforts be documented. *(Amended 11/03)*

(2) Allegations of unethical conduct and contractual disputes (and specific non-contractual disputes as defined in Standard of Practice 17-4) between REALTORS® and between REALTORS® and their customers or clients may be submitted to an ethics or arbitration panel at the State Association level under the following circumstances: *(Amended 11/96)*

   (a) Allegations of unethical conduct made against a REALTOR® or REALTOR-ASSOCIATE® who is directly a member of the State Association and not a member of any local Board. *(Amended 11/95)*

   (b) Allegations of unethical conduct made against a REALTOR® or REALTOR-ASSOCIATE® in the instance in which the local Board, because of size or other valid reason, determines that it cannot provide a due process hearing of the matter and petitions the State Association to conduct a hearing. *(Amended 11/95)*

   (c) Contractual disputes (and specific non-contractual disputes as defined in Standard of Practice 17-4) between REALTORS® who are not members of the same Board where the matter has been referred to the State Association by both local Boards. *(Amended 11/96)*

(d) Contractual disputes (and specific non-contractual disputes as defined in Standard of Practice 17-4) between REALTORS® who are directly members of the State Association and are not members of any Board.* *(Amended 11/96)*

(e) Contractual disputes (and specific non-contractual disputes as defined in Standard of Practice 17-4) between a REALTOR® who does not hold membership in any Board, but is directly a member of the State Association, and a REALTOR® who is a member of a Board.** *(Amended 11/96)*

(f) Contractual disputes (and specific non-contractual disputes as defined in Standard of Practice 17-4) between REALTOR® Members of the same Board where the Board with good and sufficient reason is unable to arbitrate the dispute. (This provision is not designed to relieve the local Board of its primary responsibility to resolve differences arising between members of the same Board. The section recognizes that in some Boards with limited membership usual arbitration procedures may be impossible.) *(Amended 11/96)*

(g) Contractual disputes between a customer or a client and a REALTOR® where the Board with good and sufficient reason is unable to arbitrate the dispute or the REALTOR® is a direct member of the State Association. *(Adopted 11/95)*

**Ethics and Arbitration Proceedings:** Professional standards hearings and the organization and procedures incidental thereto shall be governed by the *Code of Ethics and Arbitration Manual* of the _____ (state) Association of REALTORS®, as from time to time amended, which by this reference is made a part of these bylaws.

It is recommended to State Associations that they adapt and adopt the *Code of Ethics and Arbitration Manual* of the NATIONAL ASSOCIATION OF REALTORS® to conform to the provisions of applicable state law. It is further recommended that the State Association expand the provisions of the *Code of Ethics and Arbitration Manual* as adopted to include detailed procedures for handling interboard arbitration of business disputes, as defined by Article 17 of the Code of Ethics, between REALTORS® of different Boards within the state. This fulfills the obligation of the State Association described in the preceding paragraphs and as established by Articles 14 and 17 of the Code of Ethics. If state law does not recognize or restricts arbitration within the state, the State Association is requested to so advise the National Association as a matter of information and record, and to comply with applicable state law. It is intended in all instances that State Associations and local Boards comply with applicable state law and that they do not act in contravention of law.

In adapting the *Code of Ethics and Arbitration Manual* of the National Association to include procedures for handling interboard arbitration, the following should receive special attention:

(1) **Geographic distribution of professional standards panel members:** Inasmuch as disputes may arise between Board Members from different Boards located distant from each other, it is desirable to establish members from the Professional Standards Committee in all areas of the state. When disputes arise requiring interboard arbitration, Hearing Panel members may be selected from the area where the hearing will take place to avoid unnecessary travel time. Further, it is desirable to include representative members from all districts or regions, or perhaps from each Board of the state.

(2) **Further extension of available Professional Standards Committee members:** It may be desired that the state will provide in its *Code of Ethics and Arbitration Manual* that members of the State Association Professional Standards Committee be empowered, upon direction from the President of the State Association, to appoint additional members of the committee from a given district or region of the state to have all the powers of regular members of the Professional Standards Committee and to conduct a hearing as required in that particular district or region of the state. (Alternate method of appointment may be preferred by a State Association to accomplish the statewide facility on a workable basis.)

(3) **Duties of the committee:** Duties of the Professional Standards Committee are set forth in the "Suggested Model Bylaws, State Association of REALTORS®," as recommended by the National Association, and in this *Code of Ethics and Arbitration Manual*. However, the State Association should exercise care to adapt the provisions contained in this Manual to be applicable to the special and particular responsibilities of the State Association.

(4) **Complaints of alleged unethical conduct or requests for arbitration:** The *Code of Ethics and Arbitration Manual* of the State Association should clearly delineate the specific circumstances under which complaints of alleged unethical conduct or requests for arbitration may be properly directed to the State Association, and to describe the method by which such complaints or requests may be filed.

(5) **Method of determining propriety of a complaint of alleged unethical conduct or request for arbitration:** It is suggested that the State Association have a standing Grievance Committee, which shall be the committee to examine a complaint of alleged unethical conduct or request for arbitration to determine if it is properly presented by

*The State Association is a "Member Board" of the National Association by definition set forth in Article III, Section 1(B) and Section 4, Constitution, NATIONAL ASSOCIATION OF REALTORS®.

**Reference is made to members of the State Association who are outside the jurisdiction of and are not members of any local Board within the state.

a Member Board or Board Member and has validity and substance to warrant a hearing before the State Association's professional standards facilities. This Grievance Committee should have sufficient members throughout the state to enable the Committee Chairperson to appoint one or more members to evaluate the complaint or request and to make such preliminary review as required to assist in the evaluation. If deemed appropriate to arrange a hearing before a Hearing Panel of the Professional Standards Committee, the matter will be referred by the Chairperson of the Grievance Committee to the Executive Vice President of the State Association with request to arrange the necessary hearing by having the appropriate officer of the State Association make necessary appointment of panel members, etc., to accomplish the hearing. The Grievance Committee's work is not that of a Hearing Panel of the Professional Standards Committee, but has the special function of determining the propriety of the complaint or request and the propriety of conducting a hearing. It is similar in function to the "grand jury" in the American judicial system. This committee is authorized in the *Code of Ethics and Arbitration Manual,* if adopted and adapted by the State Association.

(6) **Expenses of hearings conducted by State Association:** The conduct of hearings by the State Association can be less convenient than a local Board hearing. It involves distance, time, and costs which are significantly greater. Therefore, the provisions of the *Code of Ethics and Arbitration Manual,* as adapted, should specify to the extent possible the appropriate allocation of costs of any hearing conducted by the State Association. Notification of the allocation of such costs should be made in advance of the hearing, or at least the method by which such determination shall be made should be understood and agreed in advance of the hearing. This will avoid misunderstanding and further dispute between the parties, local Boards, and the State Association. For example, the State Association's *Code of Ethics and Arbitration Manual* should state whether the deposits (not to exceed $500) made by each party in requesting arbitration shall be retained by the State Association and go toward the cost of arbitration, or whether only the deposit of the nonprevailing party shall be retained, etc. Further, it should be clearly stated if the award shall include any of the costs incurred by the prevailing party. It should be clearly set forth if the State Association will bear all or part of the costs involved, or whether the costs are to be borne entirely by the parties. If partial costs are involved, the procedure should delineate which costs are to be borne by the parties and which, if any, by the State Association. However, under no circumstances should a party to an ethics proceeding be responsible for another party's costs or the State Association's costs. A party that appeals an ethics determination may be charged an appeal deposit (not to exceed $500). If the Hearing Panel's decision is overturned, the deposit shall be returned to the appellant; if the decision is adopted, the money shall pass into the general treasury of the Association; if the decision is modified, the appeal tribunal shall determine the disposition of the deposit. *(Amended 11/95)*

(7) **Composition of Hearing Panels and appellate or review panels:** State Associations have certain latitude in establishing the procedures for appointing Hearing Panels for ethics and arbitration hearings and for determining the appropriate composition of appeal panels (ethics) and procedural review panels (arbitration). The State Association's Board of Directors need not be involved in the appeal or review process. For example, a State Association could adopt procedures whereby Hearing Panels would be selected from the Professional Standards Committee, and any subsequent appeal or request for review would be considered by those members of the Professional Standards Committee who did not take part in the initial hearing. Alternatively, the State Association's Executive Committee or a group of Directors selected by the State Association President could serve as the appeal or procedural review panel. Any procedure established should be made an integral part of the State Association's written professional standards procedures.

The procedures to be followed when no appeal is filed or after any appeal has been determined should also be made an integral part of the State Association's written procedures. Final decisions may be ratified by the Board of Directors of the State Association; by a group of Directors selected by the state President; or by the State Association's Executive Committee. *(Adopted 11/96)*

(8) **Refusals to arbitrate:** In the event a member is alleged to have improperly refused to submit a dispute to arbitration (or to mediation if the respondent's Board requires REALTORS® [principals] to mediate otherwise arbitrable disputes pursuant to Article 17),* the allegation shall be brought before (choose one: the Board of Directors of the State Association or five (5) Directors of the State Association or the State Association's Executive Committee or a Tribunal of five (5) members selected from the State's Professional Standards Committee to be appointed by the President and chosen from the individuals who did not serve on the original arbitration Hearing Panel, etc.). The procedures for notices, time of notices, and hearing prescribed for matters before a Hearing Panel shall apply. The sole question of fact to decide is whether the party has refused to submit an arbitrable matter to arbitration (or to mediation if required). Upon determination that the member has refused to arbitrate or to mediate a properly arbitrable matter, the (specify body — name of tribunal) may direct implementation of appropriate sanction, including suspension or expulsion of the member from the local Board of REALTORS®. The decision of the (specify body — name of tribunal) shall be final and binding and is not subject to further review by the State Association or any Board. *(Adopted 11/11)*

*Requiring REALTORS® (principals) to mediate otherwise arbitrable disputes requires establishment of and affirmative obligation in a Board's governing documents. Enabling bylaw provisions can be found at REALTOR.org (see NAR *Model Bylaws*)

(9) **Refusal to Pay or Deposit Funds:** 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 or deposit the funds with the Professional Standards Administrator consistent with Section 53, The Award, *Code of Ethics and Arbitration Manual*, that failure shall be brought before a tribunal comprised of members of the State Association chosen from individuals who did not serve on the original arbitration Hearing Panel. That tribunal may, at its discretion, impose discipline, including but not limited to termination of Board membership and/or MLS access/use consistent with Section 53, The Award.

**Final note:** The preceding guidelines do not purport to be detailed provisions for inserting into State Association professional standards procedures as adopted, but are intended to direct certain areas of consideration to the State Association for careful review in its adoption of professional standards procedures, particularly with respect to interboard arbitration conducted by the State Association.

**Duty to arbitrate before State Association (Part Ten, Section 46, *Code of Ethics and Arbitration Manual,* NATIONAL ASSOCIATION OF REALTORS®):** By becoming and/or remaining a member of this Board (i.e., each local Board), every member binds himself or herself and agrees to submit to arbitration by the arbitration facilities of the _____ (state) Association of REALTORS® any dispute with a member of any other local Board of the _____ (state) Association of REALTORS®, provided:

(1) It is a dispute as defined and for which arbitration is required by Article 17 of the Code of Ethics, and

(2) The _____ (state) Association of REALTORS® has established facilities for such arbitration.*

In the absence of established procedures and facilities by the _____ (state) Association of REALTORS® for interboard arbitration, disputes requiring arbitration as defined in Article 17 of the Code of Ethics shall 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.

This method described in **Part Eleven** of this Manual may also be utilized for the conduct of arbitration between Board Members of different Boards of different states, subject to the parties' voluntary agreement in advance to accept the place, date, and time established for a hearing by the arbitration panel chosen in accordance with prescribed procedures, 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 regarding binding arbitration.**

*The State Association, as a Member Board of the National Association, has the obligation to establish arbitration procedures and facilities consistent with applicable state law, as required by the *Bylaws*, National Association, Article IV, and by Article 17, Code of Ethics, National Association, for individual members of the State Association.

**Interstate arbitration is subject to many problems of administration and logistics and can be accomplished only if both parties agree voluntarily to such arbitration and agree to pay the required costs. Further, the applicable law of the state in which the arbitration will be held should be carefully considered prior to the arbitration, for this will relate to any necessary judicial enforcement if the nonprevailing party should refuse to pay the award.

# Questions and Answers

### 1. Can the Board of Directors direct a Grievance Committee to always solicit responses in ethics and arbitration proceedings?

No. Only if the Grievance Committee is in need of additional information which the complainant cannot provide pertaining to the questions in Section 19, Grievance Committee's Review of an Ethics Complainant, or Section 42, Grievance Committee's Review and Analysis of a Request for Arbitration, may the Grievance Committee solicit a response. *(Revised 11/15)*

### 2. A respondent in an ethics hearing has notified the Board that she will be represented by legal counsel. Is it appropriate for her 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 him or her (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 his principal broker (who is also a Realtor®) serve as his 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 Professional Standards Administrator's role in ethics and arbitration hearings?

Whether an 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 Boards and Associations have determined that it is beneficial to have the Professional Standards Administrator present to provide technical assistance and expertise, while other Boards and Associations choose to have one of the panelists (or Board counsel) provide procedural guidance. This is a matter to be determined by each Board and 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 REALTOR.org: "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-ASSOCIATE®s 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 he 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 Professional Standards Committee for hearing, it may be amended either by the complainant or by the Grievance Committee. If the Grievance Committee dismisses an Article(s) cited by the complainant, the complainant may appeal that dismissal to the Board of Directors.

After referral to the Professional Standards Committee, the complaint may be amended by the complainant. The respondent should then be provided with a copy of the amended complaint and be given an opportunity to file an amended response.

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. If this occurs, the respondent should be given an opportunity to request a postponement to prepare a response to the amended complaint.

Arbitration requests may be amended to add or delete parties only by the complainant or respondent. During its initial review, however, the Grievance Committee 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 the start of an ethics hearing. If a complaint is withdrawn by the complainant after the Grievance Committee determines the complaint requires a hearing, it will be referred back to the Grievance Committee 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 Committee determines a potential violation of the public trust may have occurred may the Grievance Committee proceed as the complainant. A complaint so withdrawn shall not be deemed a final determination on the merits. *(Amended 5/04)*

### 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 may be administratively considered and determined 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 Professional Standards 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 Grievance Committee for review and possible referral to the Professional Standards Committee. 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 Committees 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 his sales associate is a respondent. Can he do so?

A principal who is not joined in an ethics complaint as a respondent may be present during the hearing and may even be required by the Hearing Panel to attend the hearing. 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.

### 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 his own cell," meaning that the length of his suspension or expulsion is dependent on his 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 **Part Two,** 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 Board of Directors.

### 24. Our Board is considering publishing the fact that a member has been suspended. What should be contained in such a notice?

The nature, form, content, and extent of this notice should be reviewed by legal counsel prior to dissemination. However, such notice would not be expected to go beyond providing the following: 1) respondent's name; 2) respondent's license number or office address, or both, if necessary for identification purposes to distinguish the respondent from another member with the same or similar name; 3) length of suspension/ expulsion, when it becomes effective, and when, if suspension is imposed, the individual will have all withdrawn membership rights, services, and privileges automatically reinstated; and 4) the Article violated (or notification of what other duty of membership was breached).

### 25. A member who is a respondent in an ethics complaint is demanding that the complainant produce certain documents. Can he 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 his firm had a listing on 123 Pleasant Drive, and that he ran an ad on October 4 for the property which did not disclose the name of his firm. Consequently, the Hearing Panel finds him 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 his firm had a listing on 123 Pleasant Drive, and that the advertisement he ran for that property on October 4 disclosed the name of his 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. Can a complainant refile an ethics complaint or an arbitration request if the complainant withdraws the complaint/request?

Yes, assuming the Grievance Committee has not previously dismissed the ethics complaint/arbitration request and the Grievance Committee finds the refiled matter timely filed.

### 30. 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)*

### 31. If a REALTOR® principal resigns or otherwise causes his or her REALTOR® membership to terminate and there is a current arbitration request pending against him or her, 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.

### 32. 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.

### 33. If a party appeals an ethics decision or requests procedural review of an arbitration hearing, do they have the right to counsel?

Yes.

### 34. 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.

### 35. If a procedural review (arbitration) is to be conducted and a REALTOR® (non-principal) with a financial interest finds himself or herself unable to attend, must he or she 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), he or she is not a party to the proceedings and the proceedings may take place in his or her absence.

## 36. 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, 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:** All new and amended Case Interpretations become effective upon approval by the National Association's Professional Standards Committee and publication on REALTOR.org.

# Preface to the Twenty Ninth Edition of *Interpretations of the Code of Ethics*

The Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS® establishes a public and professional consensus against which the practice and conduct of REALTORS® and REALTOR-ASSOCIATE®s may be judged. In joining a Board of REALTORS®, REALTORS®, and REALTOR-ASSOCIATE®s 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® throughout the country.

*Interpretations of the Code of Ethics* has been developed by the Professional Standards Committee of the National Association of REALTORS® to help REALTORS® and REALTOR-ASSOCIATE®s, understand the ethical obligations created by the Code of Ethics, and as a reference work for Grievance Committees, ethics and arbitration Hearing Panels, and Boards of Directors.

*Interpretations of the Code of Ethics* presents specific situations involving charges of alleged unethical conduct by REALTORS® and/or REALTOR-ASSOCIATE®s, which are reviewed by a peer panel of Board Members and in which decisions as to ethical conduct are reached. Each case provides the Hearing Panel's decision based on the facts and the rationale for the decision, but does not specify a specific sanction or discipline to be imposed. There are two reasons for this. First, any sanction imposed must always fit the offense and must involve every consideration of justice, equity, and propriety. Second, a Hearing Panel may base its recommendation for discipline on a Member's past record of ethics violations.

For this reason, the *Code of Ethics and Arbitration Manual* establishes that a Member Board may utilize a wide range of sanctions for ethics violations. These 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; (e) Membership of individual suspended for a stated period not to exceed one (1) year, with automatic reinstatement of membership in good standing at the end of the specified period of suspension (decision should be written clearly articulating all intended consequences, including denial of MLS participatory or access privileges). 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; (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); (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; (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; (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 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)*

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. *(Revised 05/14)*

In addition to any discipline imposed, Boards and 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. Boards and 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)*

While Boards of REALTORS® have wide latitude in the sanctions which may be imposed for violations of the Code of Ethics, they must always act responsibly in the application of these sanctions, attempting to make the punishment commensurate with the offense. The mildest forms of sanction, a Letter of Warning or a Letter of Reprimand, would generally be the appropriate sanction for first offenses, except in cases involving gross or willful misconduct. Where ignorance of the Code of Ethics is involved, the Board may find that requiring the Member to attend a course or seminar reviewing the Code of Ethics and its interpretations to be the most appropriate sanction.

*Interpretations of the Code of Ethics* is formatted to provide the reader with information on each Article of the Code of Ethics and its interpretations in sequence. *Interpretations of the Code of Ethics* contains citations to Case Interpretations which were deleted, amended, or adopted as a result of the work of the Interpretations Subcommittee in 1986–2000, providing a complete historical record for the reader. All new and amended Case Interpretations become effective upon approval by the National Association's Professional Standards Committee and publication on REALTOR.org.

# CASE INTERPRETATIONS RELATED TO ARTICLE 1:

## Case #1-1: Fidelity to Client (Originally Case #7-1. Revised May, 1988. Transferred to Article 1 November, 1994.)

Client A complained to a Board of REALTORS® that two of its members, REALTORS® B and his sales associate, REALTOR-ASSOCIATE® C, had failed to represent the client's interests faithfully by proposing to various prospective buyers that a price less than the listed price of a house be offered. His complaint specified that REALTOR® B, in consultation with him, had agreed that $137,900 would be a fair price for the house, and it had been listed at that figure. The complaint also named three different prospective buyers who had told Client A that while looking at the property, REALTOR-ASSOCIATE® C, representing REALTOR® B, when asked the price had said, "It's listed at $137,900, but I'm pretty sure that an offer of $130,000 will be accepted."

REALTOR® B and REALTOR-ASSOCIATE® C were notified of the complaint and requested to be present at a hearing on the matter scheduled before a Hearing Panel of the Board's Professional Standards Committee.

During the hearing, REALTOR® B confirmed that he had agreed with Client A that $137,900 was a fair price for the house, and that it was listed at that figure. He added that he had asked for a 90 day listing contract as some time might be required in securing the full market value. Client A had agreed to do this but had indicated that he was interested in selling within a month even if it meant making some concession on the price. The discussion concluded with an agreement on listing at $137,900 and with REALTOR® B agreeing to make every effort to get that price for Client A.

REALTOR-ASSOCIATE® C said in the hearing that REALTOR® B had repeated these comments of Client A and he, REALTOR-ASSOCIATE® C, had interpreted them as meaning that an early offer of about 10 percent less than the listed price would be acceptable to the seller, Client A. Questioning by the Hearing Panel established that neither REALTOR® B nor REALTOR-ASSOCIATE® C had been authorized to quote a price other than $137,900.

It was the Hearing Panel's conclusion that REALTOR® B was not in violation of Article 1 since he had no reason to know of REALTOR-ASSOCIATE® C's actions. The panel did find REALTOR-ASSOCIATE® C in violation of Article 1 for divulging his knowledge that the client was desirous of a rapid sale even if it meant accepting less than the asking price. The panel noted that such a disclosure was not in the client's best interest and should never be made without the client's knowledge and consent.

## Case #1-2: Honest Treatment of All Parties

(Originally Case #7-2. Revised May, 1988. Transferred to Article 1 November, 1994. Cross-reference Case #2-18.)

As the exclusive agent of Client A, REALTOR® B offered Client A's house for sale, advertising it as being located near a bus stop. Prospect C, who explained that his daily schedule made it necessary for him to have a house near the bus stop, was shown Client A's property, liked it, and made a deposit. Two days later, REALTOR® B read a notice that the bus line running near Client A's house was being discontinued. He informed Prospect C of this, and Prospect C responded that he was no longer interested in Client A's house since the availability of bus transportation was essential to him. REALTOR® B informed Client A and recommended that Prospect C's deposit be returned.

Client A reluctantly complied with REALTOR® B's recommendation, but then complained to the Board of REALTORS® that REALTOR® B had not faithfully protected and promoted his interests; that after Prospect C had expressed his willingness to buy, REALTOR® B should not have made a disclosure that killed the sale since the point actually was not of major importance. The new bus route, he showed, would put a stop within six blocks of the property.

In a hearing before a Hearing Panel of the Board's Professional Standards Committee, REALTOR® B explained that in advertising Client A's property, the fact that a bus stop was less than a block from the property had been prominently featured. He also made the point that Prospect C, in consulting with him, had emphasized that Prospect C's physical disability necessitated a home near a bus stop. Thus, in his judgment, the change in bus routing materially changed the characteristics of the property in the eyes of the prospective buyer, and he felt under his obligation to give honest treatment to all parties in the transaction, that he should inform Prospect C, and that in so doing he was not violating his obligation to his client.

The Hearing Panel concluded that REALTOR® B had not violated Article 1, but had acted properly under both the spirit and the letter of the Code of Ethics. The panel noted that the decision to refund Prospect C's deposit was made by the seller, Client A, even though the listing broker, REALTOR® B, had suggested that it was only fair due to the change in circumstances.

## Case #1-3: Net Listing (Originally Case #7-3. Revised May, 1988. Transferred to Article 1 November, 1994.)

Client A called REALTOR® B to list a small commercial property, explaining that he wanted to net at least $170,000 from its sale. He inquired about the brokerage commission and other selling costs. REALTOR® B's response was: "You have indicated that $170,000 net to you from the sale will be satisfactory. Suppose we just leave it at that and take all of the selling costs from the proceeds of the sale above $170,000." Client A agreed.

The property was sold to Buyer C for $220,000. After settlement, in which it was apparent that $50,000 would go to REALTOR® B as commission, Client A and Buyer C both complained to the Board of REALTORS® about REALTOR® B's conduct in the matter, and a hearing was scheduled before the Board's Professional Standards Committee.

REALTOR® B's defense was that he had performed the service that Client A engaged him for precisely in conformance with their agreement. Buyer C had considered the property a good buy at $220,000 and was happy with the transaction until he learned the amount of the commission.

The Hearing Panel found REALTOR® B in violation of Article 1 of the Code. The panel concluded that REALTOR® B had departed completely from his obligation to render a professional service in fidelity to his client's interest; that he had, in fact, been a speculator in his client's property; and that he had not dealt honestly with either party to the transaction.

## Case #1-4: Fidelity to Client (Originally Case #7-5. Revised May, 1988. Transferred to Article 1 November, 1994. Cross-reference Case #4-5.)

Client A contacted REALTOR® B to list a vacant lot. Client A said he had heard that similar lots in the vicinity had sold for about $50,000 and thought he should be able to get a similar price. REALTOR® B stressed some minor disadvantages in location and grade of the lot, and said that the market for vacant lots was sluggish. He suggested listing at a price of $32,500 and the client agreed.

In two weeks, REALTOR® B came to Client A with an offer at the listed price of $32,500. The client raised some questions about it, pointing out that the offer had come in just two weeks after the property had been placed on the market which could be an indication that the lot was worth closer to $50,000 than $32,500. REALTOR® B strongly urged him to accept the offer, stating that because of the sluggish market, another offer might not develop for months and that the offer in hand simply vindicated REALTOR® B's own judgment as to pricing the lot. Client A finally agreed and the sale was made to Buyer C.

Two months later, Client A discovered the lot was no longer owned by Buyer C, but had been purchased by Buyer D at $55,000. He investigated and found that Buyer C was a brother-in-law of REALTOR® B, and that Buyer C had acted on behalf of REALTOR® B in buying the property for $32,500.

Client A outlined the facts in a complaint to the Board of REALTORS®, charging REALTOR® B with collusion in betrayal of a client's confidence and interests, and with failing to disclose that he was buying the property on his own behalf.

At a hearing before a panel of the Board's Professional Standards Committee, REALTOR® B's defense was that in his observation of real estate transactions there can be two legitimate prices of property — the price that a seller is willing to take in order to liquidate his investment, and the price that a buyer is willing to pay to acquire a property in which he is particularly interested. His position was that he saw no harm in bringing about a transaction to his own advantage in which the seller received a price that he was willing to take and the buyer paid a price that he was willing to pay.

The Hearing Panel concluded that REALTOR® B had deceitfully used the guise of rendering professional service to a client in acting as a speculator; that he had been unfaithful to the most basic principles of agency and allegiance to his client's interest; and that he had violated Articles 1 and 4 of the Code of Ethics.

## Case #1-5: Promotion of Client's Interests

(Originally Case #7-6. Revised May, 1988. Transferred to Article 1 November, 1994.)

Client A gave an exclusive listing on a house to REALTOR® B, stating that he thought $132,500 would be a fair price for the property. REALTOR® B agreed and the house was listed at that price in a 90-day listing contract. REALTOR® B advertised the house without response, showing it to a few prospective buyers who lost interest when they learned the price. In a sales meeting in his office, REALTOR® B discussed the property, advised his associates that it appeared to be overpriced, and that advertising and showing of the property had proved to be a waste of time and money.

After six weeks had gone by without a word from REALTOR® B, Client A called REALTOR® B's office without identifying himself, described the property, and asked if the firm was still offering it for sale. The response he received from one of REALTOR® B's nonmember associates was: "We still have the house listed, but there is little interest in it because, in our opinion, it is overpriced and not as attractive a value as other property we can show you."

Client A wrote to the Board of REALTOR® complaining of REALTOR® B's action, charging failure to promote and protect the client's interest by REALTOR® B's failure to advise the client of his judgment that the price agreed upon in the listing contract was excessive, and by REALTOR® B's failure to actively seek a buyer.

In a hearing on the complaint before a Hearing Panel of the Board's Professional Standards Committee, REALTOR® B's response was that Client A had emphatically insisted that he wanted $132,500 for the property; that by advertising and showing the property he had made a diligent effort to attract a buyer at that price; that in receiving almost no response to this effort he was obliged to conclude that the house would not sell at the listed price; that in view of the client's attitude at the time of listing, he felt it would be useless to attempt to get Client A's agreement to lower the listed price; and that he had instructed his staff not to actively market the property at that price.

The Hearing Panel concluded that REALTOR® B was in violation of Article 1; that he had been unfaithful in his obligations in not advising his client of his conclusion that the property was overpriced, based on the response to his initial sales efforts; and in withholding his best efforts to bring about a sale of the property in the interests of his client.

## Case #1-6: Fidelity to Client's Interests

(Originally Case #7-7. Reaffirmed May, 1988. Transferred to Article 1 November, 1994. Revised November, 2001.)

REALTOR® A managed an apartment building owned by Client B. In his capacity as property manager, REALTOR® A received a written offer to purchase the building from Buyer C. REALTOR® A responded that the building was not for sale. A few days later Buyer C met Client B and told him that he thought he had made an attractive offer through his agent, and indicated that he would be interested in knowing what price would interest Client B. Client B answered that he had received no offer through REALTOR® A and asked for the details.

Client B then filed a complaint against REALTOR® A with the local Board of REALTOR® charging failure to represent and promote his interests. His complaint specified that while REALTOR® A had been engaged as a property manager, he had at no time told him not to submit any offers to buy, and that in the absence of any discussion whatever on this point, he felt that REALTOR® A should have recognized a professional obligation to acquaint him with Buyer C's offer which, he stated in the complaint, was definitely attractive to him.

REALTOR® A was notified of the complaint and directed to appear before a panel of the Board's Professional Standards Committee. In his defense, REALTOR® A stated that his only relationship with Client B was a property manager under the terms of a management contract; that he had not been engaged as a broker; that at no time had the client ever indicated an interest in selling the building; that in advising Buyer C that the property was not on the market, he felt that he was protecting his client against an attempt to take his time in discussing a transaction which he felt sure would not interest him.

It was the conclusion of the Hearing Panel that REALTOR® A was in violation of Article 1; that in the absence of any instructions not to submit offers, he should have recognized that fidelity to his client's interest, as required under Article 1 of the Code of Ethics, obligated him to acquaint his client with a definite offer to buy the property; and that any real estate investor would obviously wish to know of such an offer.

## Case #1-7: Obligation to Protect Client's Interests

(Originally Case #7-8. Reaffirmed May, 1988. Transferred to Article 1 November, 1994. Revised November, 2001.)

Client A, an army officer, was transferred to a new duty station and listed his home for sale with REALTOR® B as the exclusive agent. He moved to his new station with the understanding that REALTOR® B, as the listing broker, would obtain a buyer as soon as possible. After six weeks, during which no word had come from REALTOR® B, the client made a weekend visit back to his former community to inspect his property. He learned that REALTOR® B had advertised the house: "Vacant — Owner transferred," and found an "open" sign on the house but no representative present. Upon inquiry, Client A found that REALTOR® B never had a representative at the property but continually kept an "open" sign in the yard. Client A discovered that the key was kept in a combination lockbox, and when REALTOR® B received calls from potential purchasers about the property, he simply gave callers the address, advised that the key was in the lockbox, gave them the combination, and told them to look through the house by themselves and to call him back if they needed other information or wanted to make an offer.

Client A filed a complaint with the Board of REALTORS® detailing these facts, and charging REALTOR® B with failure to protect and promote a client's interests by leaving Client A's property open to vandalism, and by not making appropriate efforts to obtain a buyer.

REALTOR® B's defense during the hearing was that his advertising of the property was evidence of his effort to sell it. He stated, without being specific, that leaving keys to vacant listed property in lockboxes and advising callers to inspect property on their own was a "common local practice."

The Hearing Panel concluded that REALTOR® B was in violation of Article 1 of the Code of Ethics because he had failed to act in a professional manner consistent with his obligations to protect and promote the interests of his client.

## Case #1-8: Knowledge of Essential Facts

(Originally Case #7-10. Reaffirmed May, 1988. Transferred to Article 1 November, 1994.)

Client A listed a small house with REALTOR® B who obtained an offer to buy it and a deposit in the form of a check for $2,000. Client A agreed to accept the offer, then heard nothing from REALTOR® B, the listing broker, for three weeks. At that time REALTOR® B called him to say that the sale had fallen through and that the buyer's check had been returned by the bank marked "Not Sufficient Funds."

Client A complained to the local Board of REALTORS® against REALTOR® B charging him with dilatory and unprofessional conduct and apparent unfamiliarity with essential facts under laws governing procedures in real estate transactions.

At the hearing, it was established that two days after making the offer the buyer had refused to sign escrow instructions, and that REALTOR® B had not deposited the buyer's check until ten days after receiving it.

REALTOR® B's defense was that since the return of the check he had received numerous promises from the buyer that it would be made good, and that the buyer's reason for refusing to sign escrow instructions was to give the buyer's attorney time to read them. Questioning during the hearing established that the check had not been made good, the escrow instructions had not been signed, and that the delay had caused great inconvenience and possible loss to Client A.

The Hearing Panel concluded that REALTOR® B should have deposited the check immediately, in which event it would either have been accepted, or its NSF status could have been known and reported to the client at once; that REALTOR® B should have advised his client immediately of the buyer's refusal to sign escrow instructions; that in this negligence REALTOR® B reflected a lack of adequate knowledge of essential facts under laws governing real estate transactions, and was in violation of Article 1 of the Code of Ethics, having failed to protect the client's interests.

## Case #1-9: Exclusive Listing During Term of Open Listing (Originally Case #7-11. Revised May, 1988. Transferred to Article 1 November, 1994. Revised November, 2001.)

During a Board of REALTORS® luncheon, REALTOR® A described to those at the table an old house in a commercial area which was open listed with him and invited the others to cooperate with him in selling the property. REALTORS® X and Y said they also had the property open listed but had found very little interest in it. REALTOR® B made no comment, but feeling he could find a buyer for it, went to the owner and discussed the advantages of an exclusive listing. The owner was persuaded and signed an exclusive listing agreement with REALTOR® B, telling him at the time that he had listed the property on an "open" basis for 30 more days with REALTORS® A, X, and Y. REALTOR® B's comment was, "Just don't renew those open listings when they expire."

A few days later, REALTOR® A brought the owner a signed offer to purchase the property at the asking price. The owner told REALTOR® A that he now had the property exclusively listed with REALTOR® B, and asked him to submit the offer through REALTOR® B. Before REALTOR® A could contact REALTOR® B, REALTOR® B had taken another offer to purchase the property at the asking price to the owner. Confronted with two identical offers, the owner found both REALTOR® A and REALTOR® B expected full commissions for performance under their respective existing listing agreements. The owner filed an ethics complaint with the Board of REALTORS® alleging violations of Article 1 of the Code of Ethics because of the difficult position he had been placed in by REALTOR® A and REALTOR® B. The owner alleged neither of them had warned him that he might be liable for payment of more than one commission.

A hearing before a panel of the Board's Professional Standards Committee established the facts to be as outlined above. In reviewing the actions of REALTOR® A, the Hearing Panel found that he was not at fault; that he had performed as requested under his listing agreement. On the other hand, it was the conclusion of the Hearing Panel that REALTOR® B had violated Article 1 by failing to advise the owner of his potential commission obligation to the other listing brokers when the client told him other listing agreements were in force.

The Hearing Panel pointed out that because of REALTOR® B's omission his client, through no fault of his own, may have incurred legal liability to pay two commissions; that REALTOR® B should have advised the owner of his potential liability for multiple commissions; and that by not doing so REALTOR® B had failed to protect his client's interests as required by Article 1.

## Case #1-10: Obligations Under Exclusive Listing (Originally Case #7-12. Reaffirmed May, 1988. Transferred to Article 1 November, 1994. Revised November, 2001.)

At the time Client A signed an exclusive listing agreement with REALTOR® B, they discussed market conditions and prevailing prices, and agreed on listing at $156,900. After six weeks with no apparent interest in the house, Client A called REALTOR® B to learn why his property was receiving scant attention from prospective buyers. REALTOR® B said, "It's not hard to diagnose the trouble. Your property is overpriced. That was clear to me by the time we had it listed for ten days. In this market, it would take a really interested buyer to go as high as $149,000 for it. That's why it hasn't been possible for us to push it." "When you reached that conclusion, why didn't you tell me?" asked Client A. "Because," said REALTOR® B, "it wouldn't have done any good. I know from experience that sellers can't be convinced that they are overpricing their property until they get tired of waiting for an offer that will never come. Now that the market has taught you something that you would not take as advice, let's reduce the price to $148,900 and push it."

Client A complained about REALTOR® B to the Board of REALTORS®, detailing these circumstances, strongly insisting that REALTOR® B had fully agreed with him on the price at which the property was originally listed.

Client A reiterated this point strongly at the hearing of his complaint which was held before a Hearing Panel of the Board's Professional Standards Committee. REALTOR® B did not contest this, taking the position that at the time of the listing it was his judgment that a price of $156,900 was fair and obtainable in the market. He stated that a strong immediate sales effort had convinced him that the listed price was excessive, and he defended his action of reducing his sales effort as he had done in his discussion with the client. He said that many years of experience as a broker had convinced him that once a seller decides on a definite price for his property, no argument or analysis will shake his insistence on getting that price; that only inaction in the market is convincing to the sellers.

The Hearing Panel concluded that REALTOR® B's conduct had violated Article 1 of the Code of Ethics, which requires REALTORS® to protect and promote their clients' interests. The panel also found that since REALTOR® B honestly felt the original listing price of $156,900 was the fair market value at the time he listed it, REALTOR® B had not violated the Code of Ethics by suggesting that the price be lowered. However, since REALTOR® B later concluded the property was overpriced, he should have immediately notified Client A of his conclusion and not waited for Client A to call him six weeks later.

## Case #1-11: Responsibilities of Cooperating Broker (Originally Case #7-13. Revised May, 1988. Transferred to Article 1 November, 1994. Cross-reference Case #16-4. Deleted November, 2001.)

## Case #1-12: Presentation of Subsequent Offers After an Offer to Purchase Had Been Accepted by the Seller (Adopted November, 1987 as Case #7-16. Transferred to Article 1 November, 1994.)

REALTOR® A, the listing broker, presented an offer to purchase to his client, Seller X, which was $20,000 less than the property's listed price. The property had been on the market for several months and had not generated much interest. In his presentation, REALTOR® A told Seller X that, in his opinion, the offer was a good one and Seller X should consider accepting it. "With interest rates on their way up again," said REALTOR® A, "properties are just not moving the way they did six months ago." Seller X decided to accept the offer and the transaction closed. Several months after the sale, Seller X filed a complaint against REALTOR® A alleging a violation of Article 1, as interpreted by Standard of Practice 1-7. It had come to Seller X's attention that a second offer had been made on the property after Seller X had accepted the first offer but prior to closing. This second offer, alleged Seller X, had not been submitted to him by REALTOR® A and was for $2,500 more than the first offer. Seller X's complaint stated that by not presenting the second offer to him, REALTOR® A had not acted in his (the seller's) best interest, as required by Article 1.

At the hearing, REALTOR® A produced a copy of the listing contract, which contained a provision reading: "Seller agrees that Broker's responsibility to present offers to purchase to Seller for his consideration terminates with Seller's acceptance of an offer." REALTOR® A told the Hearing Panel that he had explained this provision to Seller X at the listing presentation and that Seller X had agreed to it, as indicated by Seller X's signature on the listing contract.

Seller X admitted that he had understood and agreed to the provision at the time he listed the property, but he felt that REALTOR® A should have advised him of the second, higher offer nonetheless.

The Hearing Panel found REALTOR® A not in violation of Article 1. In their decision, the panel noted that REALTOR® A had explained the contract provision relieving him of the obligation to submit subsequent offers to Seller X; that Seller X had agreed to the provision and had signed the listing contract; and that, while it was unfortunate that Seller X had received less than full price for the property, REALTOR® A had fulfilled his obligations under the listing contract once the first offer to purchase had been accepted by Seller X.

## Case #1-13: Obligation to Present Subsequent Offers After an Offer to Purchase Has Been Accepted by the Seller (Adopted November, 1987 as Case #7-17. Transferred to Article 1 November, 1994.)

REALTOR® A had a 90-day exclusive listing on Seller X's property. Seller X instructed REALTOR® A to list the property at $150,000 based upon the sales price of a neighbor's house, which had sold a month earlier.

REALTOR® A aggressively marketed the property, filing the listing with the Board's MLS, running a series of advertisements in the local newspaper, holding several "Open Houses," and distributing flyers on the property at local supermarkets. REALTOR® A, whose listing contract was nearing expiration, held another "Open House" on the property, which resulted in an offer to purchase from Buyer Y at $15,000 less than the listed price. REALTOR® A, convinced that this was the best offer Seller X was likely to obtain, persuaded Seller X to accept the offer. Seller X expressed dissatisfaction with REALTOR® A's failure to obtain a full price offer, but signed the purchase agreement nonetheless.

The next day, REALTOR® B, a cooperating broker, delivered to REALTOR® A a full price offer on Seller X's property from Buyer Z. Buyer Z had attended an earlier "Open House" and was very enthusiastic about the home's location, stating that it would be perfect for his mother.

REALTOR® A advised REALTOR® B and Buyer Z that an offer had already been accepted by Seller X and that he, REALTOR® A, would not present Buyer Z's offer. REALTOR® B and Buyer Z then promptly filed a complaint with the Board charging REALTOR® A with a violation of Article 1, as interpreted by Standard of Practice 1-7.

At the hearing, REALTOR® A stated that he felt he was under no obligation to present Buyer Z's offer, since the listing agreement did not specifically provide that subsequent offers would be presented to the seller. Further, REALTOR® A felt that such a practice could only lead to controversy between buyers and sellers, as well as result in breached contracts. "Why get everyone in an uproar," said REALTOR® A, "by presenting offers after one has been accepted? And what would I do if Seller X wanted to back out of the first purchase contract and accept Buyer Z's offer?"

The Hearing Panel found REALTOR® A in violation of Article 1. In their "Findings of Fact and Conclusions," the Hearing Panel cited REALTOR® A's lack of understanding of the requirements of Article 1, as interpreted by Standard of Practice 1-7. The panel noted that state law did not prohibit the presentation of offers after an offer had been accepted by the seller; that the fact that the listing contract was silent on whether subsequent offers would be presented did not relieve REALTOR® A from the obligation to present such offers; that as the agent of the seller, REALTOR® A must always act in the seller's best interest and advise the seller of all offers submitted; and that should the seller wish to consider accepting a subsequent offer, REALTOR® A must advise the seller to seek the advice of legal counsel.

## Case #1-14: Conditioning Submission of Purchase Offer on Execution of a Prelisting Agreement (Adopted May, 1988 as Case #7-18. Transferred to Article 1 November, 1994. Revised November, 2001.)

Owner A listed his home with REALTOR® B on an exclusive listing which was disseminated through the Multiple Listing Service.

Mr. C, a recent transferee to the city, was represented by REALTOR® D, who showed Mr. and Mrs. C a number of properties. Of the properties they had seen, Mr. and Mrs. C decided that Owner A's home was the only one that suited their needs. They told REALTOR® D they were prepared to make a full price offer to maximize their chances of purchasing the home.

REALTOR® D agreed to write the offer, but first produced a prelisting agreement which, if signed, would obligate Mr. and Mrs. C to give REALTOR® D or his assigns the exclusive right to sell the property for 90 days should they ever decide to list the property for sale.

Mr. and Mrs. C objected to committing to a future listing, but REALTOR® D insisted he would not prepare or submit their offer to REALTOR® B and Owner A unless the C's signed the prelisting agreement. Mr. and Mrs. C left without making an offer or signing the prelisting agreement. The next morning they called REALTOR® D stating that if the property was still available they would enter into the prelisting agreement since they still wanted to purchase the house. The prelisting agreement and the purchase offer were signed, their offer was accepted by Owner A, and the sale subsequently closed. After the closing, Mr. and Mrs. C filed an ethics complaint with the local Board of REALTORS®, alleging a violation of Article 1 on the part of REALTOR® D.

At the hearing, REALTOR® D defended his actions arguing that his conduct in no way had injured the buyers or sellers. He noted that Owner A's home had sold at the full price, and Mr. and Mrs. C purchased the home they wanted at a price they were willing to pay. In addition, REALTOR® D was prepared to put forth his best efforts to sell Mr. and Mrs. C's home if they ever decided to sell.

After hearing the evidence and testimony, the Hearing Panel concluded that REALTOR® D had violated Article 1. By entering into a principal/client relationship, REALTOR® D was obligated to protect and promote his clients' interests. The Hearing Panel concluded that by conditioning submission of his clients' offer on their signing a prelisting agreement, REALTOR® D had placed his financial gain ahead of his clients' interests, which is prohibited under Article 1.

## Case #1-15: Obligation to Advise Client on Market Value (Originally Case #2-1. Revised and transferred to Article 7 as Case #7-19 May, 1988. Transferred to Article 1 November, 1994.)

Client A went from his hotel to REALTOR® B's office and advised that he formerly lived in the community, and had kept his home as an income property after he moved away. The house had been vacant for several months and he had decided to sell it. He asked if REALTOR® B could drive him to look at it. As they inspected it, Client A stated that he would be happy to get $80,000 for it. REALTOR® B listed it at that price and after a few days it was sold to Buyer C.

Six months later, Client A was in town again. Hoping to recover a box of old photographs he had left in the attic, he called on Buyer C, whom he had met at settlement. When he arrived he found that Buyer D then lived in the house. He expressed some surprise that Buyer C had sold it so soon, and learned that Buyer D paid $140,000 for it. Astonished, Client A then made some inquiries as to market values and learned that he had grossly under priced his house when listing it with REALTOR® B. He went to the Board of REALTORS® office and filed a complaint against REALTOR® B charging him with unethical conduct in not having advised him as to the property's fair market value.

At the hearing, REALTOR® B's defense was that he had not been asked to put a price on the house, but had accepted agency on the basis of a price set by the client; that the client had stated he "would be happy" to get $80,000 for it; that he was glad to get a listing that would move quickly in the market; that he had done nothing unethical since he had not bought it himself; and that while he had honestly pointed out to the buyer that the house was a bargain, he had made no effort to induce relatives or business associates to buy it.

On questioning, he conceded that after looking at the house with Client A, he realized the property was being listed at about half its fair market value, but insisted that was his client's business; that different owners have different reasons for selling and pricing their property, but acknowledged that Client A had not indicated that he needed a quick sale or that he would make any price concession.

The Hearing Panel pointed out that brokers have no hesitation in advising clients that properties are overpriced when this is the case, and they are obligated to be equally candid in providing their best judgment to clients when properties being offered for sale are obviously underpriced.

The panel concluded that in view of the wide discrepancy between the owner's asking price and the property's market value, which REALTOR® B conceded was apparent to him, it was REALTOR® B's obligation as an agent to advise his client that the house was worth considerably more, especially since it was apparent that Client A had been away from the community for years and was out of touch with local values. The Hearing Panel found REALTOR® B in violation of Article 1.

## Case #1-16: Obligation to Advise Client of Market Value

(Originally Case #2-2. Revised and transferred to Article 7 as Case #7-20 May, 1988. Transferred to Article 1 November, 1994.)

REALTOR® A listed Client B's house at $136,000. The house was sold to Buyer C, who met Client B at a cocktail party a month later and told him that he had just been offered $148,000 for the house but declined the offer feeling that if he decided to sell, he could do considerably better.

On the basis of this information, Client B charged REALTOR® A with unethical conduct in not having advised him as to fair market value and pointing out that the offering price was considerably below market value. The Board's Grievance Committee referred the complaint to the Professional Standards Committee for hearing.

The Hearing Panel reviewed the facts. At the time the listing contract was signed, REALTOR® A advised his client that he had not recently been active in the part of the city where the house was located and that before fixing the price definitely it might be well to have an appraisal made, but the client declined saying that he felt $136,000 was a fair price.

REALTOR® A's defense was that he had indicated the desirability of an appraisal to determine a fair asking price; that he had indicated he was not active in the neighborhood where the home was located; and that while he had a feeling that the client might be placing a low price on his property, he felt his professional obligation to the client was discharged when he suggested having an appraisal made.

It was the finding of the Hearing Panel that REALTOR® A's defense was valid and that he was not in violation of Article 1.

## Case #1-17: Listing Property at Excessive Price

(Originally Case #2-3. Revised and transferred to Article 7 as Case #7-21 May, 1988. Transferred to Article 1 November, 1994.)

Mr. A was about to retire and move to a warmer climate, and had discussed the sale of his house with a number of brokers. He dropped in on REALTOR® B to discuss the matter and said that various brokers had told him he should expect to sell the property at from $150,000 to $158,000. "Oh, that sounds low to me," said REALTOR® B, "property moves well in that neighborhood and I recall that your house is in good shape and well landscaped. Give us an exclusive on it at $168,000 and we'll make a strong effort to get you what your property is really worth." REALTOR® B got the listing.

He advertised the property, held it open on weekends, had many inquiries about it, and showed numerous prospective buyers through it for a few weeks, but received no offers. When activity slowed, and the client became concerned, REALTOR® B was reassuring. "We'll just keep plugging till the right buyer comes along," he said. When the 90-day exclusive expired, REALTOR® B asked for a renewal. He told the client that new houses coming on the market were adversely affecting the market on resales of existing houses, and recommended lowering the price to $158,900. Client A ruefully agreed, but the lowered price did not materially increase buyer interest in the property. As the term of the 90-day extension of the listing neared, REALTOR® B brought Client A an offer of $150,000 and strongly recommended that it be accepted. But the client objected. "You told me it was worth about $168,000 and sooner or later the right buyer would pay that price. Meanwhile similar houses in the neighborhood have been selling within 30 to 60 days at around $156,000."

"I know," REALTOR® B said, "but six months ago we had a stronger market and were at the most favorable time of the year and $168,000 was not an out-of-line price at that time. But now we're in the slow time of the year and the market is off. All things considered, I think the $150,000 offer in hand is a good one. I doubt that a better one will come along."

Client A accepted the offer and complained against REALTOR® B to the local Board of REALTORS®, charging REALTOR® B with misinforming him as to fair market value apparently as a means of obtaining the listing of his property.

At the hearing, the facts as set out above were not disputed. Questioning developed the additional fact that at the time of the original listing REALTOR® B had not gone through the house to make a systematic appraisal of opinion of value, and that his recommended offering price was not based on a systematic review of sales in the neighborhood. Members of the Hearing Panel pointed out that the neighborhood in question was a development of houses, basically the same in size and quality, that had been put on the market about 10 years earlier at prices varying from $145,000 to $150,000; that good location and land development practices had maintained a good market for resales, but there was no indication that any property in the immediate neighborhood had been resold for as high as $160,000. When told that circumstances tended to bear out the complainant's charge that REALTOR® B's recommended price was a stratagem to obtain the listing, REALTOR® B's defense was that he felt he had a right to take an optimistic view of the market.

It was concluded that REALTOR® B was in violation of Article 1 of the Code of Ethics.

## Case #1-18: REALTOR® Not Responsible for Legal Advice

(Originally Case #2-4. Revised and transferred to Article 7 as Case #7-22 May, 1988. Transferred to Article 1 November, 1994.)

Client A listed a commercial property with REALTOR® B who sold it. Following the sale, Client A learned that his total tax position would have been more favorable if he had disposed of the property in a trade. He complained to the Board of REALTORS® against REALTOR® B stating that in connection with his listing of the property he had discussed his total tax position with REALTOR® B, and that REALTOR® B, in spite of his obligation under Article 1 of the Code of Ethics to "be informed regarding laws" had failed to advise him that a trade would be more to his advantage than a sale.

At the hearing, REALTOR® B defended his actions by stating that it was true that Client A had briefly outlined his total tax situation at the time he listed the property for sale. REALTOR® B advised that he had told Client A that sale of the listed property might result in unfavorable tax consequences and suggested that Client A consult an attorney. The client had not taken this advice.

After several weeks of advertising and showing the property, in the absence of a change of instructions from the client, the property was sold in accordance with the terms of the listing contract.

The Hearing Panel concluded that advising the client to consult an attorney had demonstrated REALTOR® B's attempt to protect the best interest of his client; that in giving this advice REALTOR® B had fully discharged his obligation under Article 1; that a REALTOR® is not responsible for rendering legal advice beyond the advice that legal advice be sought when the client's interest requires it; and that REALTOR® B was not in violation of Article 1.

## Case #1-19: Knowledge of Proposed Legislation

(Originally Case #2-5. Revised and transferred to Article 7 as Case #7-23 May, 1988. Transferred to Article 1 November, 1994.)

REALTOR® A received a letter from the ABC College in another city stating that one of its old graduates in REALTOR® A's city had willed a vacant property in that community to the college. The letter explained that the college had no use for the property, and wanted REALTOR® A to sell it at its fair market value. The proceeds would go to the endowment fund of the college. REALTOR® A suggested a price for the property, an exclusive listing contract was executed, and in less than a month the lot was sold and settlement made with the college. Two weeks later, a trustee of the college, who handled its investments, filed a complaint against REALTOR® A charging negligence in knowledge of proposed local legislation which had resulted in sale of the property at approximately one-eighth of its fair market value. The Grievance Committee referred it for hearing before a panel of the Professional Standards Committee.

The Professional Standards Committee scheduled a hearing and notified Realtor A and the college trustee to be present. The hearing developed these facts:

(1) The client's property was in an area which had been approved for rezoning from residential to commercial use in a general revision of the local zoning map and ordinance that was in preparation. (2) Although specific sections of the revisions, including the section involving the lot in question, had been tentatively approved, final approval had not been given to the complete revision at the time of the sale, but this action had been taken a few days following the sale. For several months prior to the sale there had been a public notice of the proposal to rezone affixed to a sign near one corner of the property. (3) In his one inspection of the property, REALTOR® A had not noticed the sign. (4) Other sales in the rezoned area substantiated the client's belief that the shift to commercial zoning supported a value at approximately eight times the price received for the lot.

REALTOR® A's defense was that the ordinance putting the rezoning into effect had not been enacted at the date of his sale of the client's property, and that he had no knowledge at the time of the rezoning proposal.

The Hearing Panel's conclusion was that REALTOR® A had violated Article 1 and was definitely deficient in his professional obligations in this instance; that before suggesting a price to his client he should have checked the property carefully enough to have seen the notice concerning a proposal for rezoning; and that as a REALTOR® active in the area he should have been aware of the extensive changes that were being proposed in his city's zoning ordinance. Such knowledge was within his obligation under Article 1 to protect the best interests of his client.

## Case #1-20: REALTORS® Buying and Selling to One Another are Still Considered REALTORS®

(Originally Case #7-24. Revised May, 1988. Transferred to Article 1 November, 1994. Cross-reference Case #2-13.)

REALTOR® A owned a home which he listed through his own brokerage firm. The property listing was filed with the Multiple Listing Service of the Board. REALTOR® B called REALTOR® A and told him of his interest in purchasing the home for himself. REALTOR® A suggested a meeting to discuss the matter. The two agreed upon terms and conditions and the property was sold by REALTOR® A to REALTOR® B.

A few months later, during hard rains, leakage of the roof occurred with resultant water damage to the interior ceilings and side walls. REALTOR® B had a roofing contractor inspect the roof. The roofing contractor advised REALTOR® B that the roof was defective and advised that only a new roof would prevent future water damage.

REALTOR® B then contacted REALTOR® A and requested that he pay for the new roof. REALTOR® A refused, stating that REALTOR® B had had a full opportunity to look at it and inspect it. REALTOR® B had then charged REALTOR® A with violation of Articles 1 and 2 of the Code of Ethics by not having disclosed that the roof had defects known to REALTOR® A prior to the time the purchase agreement was executed.

At the subsequent hearing, REALTOR® B outlined his complaint and told the Hearing Panel that at no time during the inspection of the property, or during the negotiations which followed, did REALTOR® A disclose any defect in the roof. REALTOR® B acknowledged that he had walked around the property and had looked at the roof. He had commented to REALTOR® A that the roof looked reasonably good, and REALTOR® A had made no comment. The roofing contractor REALTOR® B had employed after the leak occurred told him that there was a basic defect in the way the shingles were laid in the cap of the roof and in the manner in which the metal flashing on the roof had been installed. It was the roofing contractor's opinion that the home's former occupant could not have been unaware of the defective roof or the leakage that would occur during hard rains.

REALTOR® A told the panel that he was participating only to prove that he was not subject to the Code of Ethics while acting as a principal as compared with his acts as an agent on behalf of others. He pointed out that he owned the property and was a principal, and that REALTOR® B had purchased the property for himself as a principal. The panel concluded that the facts showed clearly that REALTOR® A, the seller, did have knowledge that the roof was defective, and had not disclosed it to REALTOR® B, the buyer. Even though a REALTOR® is the owner of a property, when he undertakes to sell that property he accepts the same obligation to properly represent its condition to members of the public, including REALTOR® who are purchasers in their own name, as he would have if he were acting as the agent of a seller.

The panel concluded that REALTOR® A was in violation of Articles 1 and 2 of the Code.

## Case #1-21: REALTOR®'s Purchase of Property Listed with the Firm (Adopted May, 1989 as Case #7-25. Transferred to Article 1 November, 1994. Revised November, 2001.)

Mr. and Mrs. A visited REALTOR® B's office and explained they had owned a four-bedroom ranch house nearby for thirty years but since their children were grown and Mr. A was retiring, they wanted to sell their home and tour the country in their motor home.

REALTOR® B and Mr. and Mrs. A entered into an exclusive listing agreement. REALTOR® B conducted an open house, advertised in the local paper, and took other steps to actively promote the sale.

Four weeks after the property went on the market, REALTOR® B received a call from REALTOR® Z, a broker affiliated with the same firm who worked out of the firm's principal office downtown. REALTOR® Z explained that she had seen information regarding Mr. and Mrs. A's home in the MLS and was interested in the property as an investment. She indicated she was sending an offer to purchase to REALTOR® B through the firm's inter-office mail.

When REALTOR® B met with Mr. and Mrs. A to present REALTOR® Z's offer, he carefully explained and presented a written disclosure that REALTOR® Z was a member of the same firm although he was not personally acquainted with her. Mr. and Mrs. A, being satisfied with the terms and conditions of the purchase offer, signed it and several weeks later the sale closed and a commission was paid to REALTOR® B.

Several weeks later, REALTOR® B received a letter from Attorney T, representing Mr. and Mrs. A. Attorney T's letter indicated that since a member of REALTOR® B's firm had purchased the property, in Attorney T's opinion, REALTOR® B was not entitled to a commission. The letter went on to demand that REALTOR® B refund the commission that had been paid by Mr. and Mrs. A.

REALTOR® B politely, but firmly, refused to refund the commission.

Mr. and Mrs. A filed a complaint with the Board of REALTORS® alleging that REALTOR® B's refusal to refund the commission constituted a violation of Article 1 of the Code of Ethics.

REALTOR® B, in his response, agreed with the facts as stated in Mr. and Mrs. A's complaint but indicated that he had faithfully represented the best interests of Mr. and Mrs. A and had no obligation to refund the commission.

The Grievance Committee concluded that the matter should be referred to a Hearing Panel of the Board's Professional Standards Committee.

At the hearing, Mr. and Mrs. A repeated the facts as set forth in their written complaint and, in response to REALTOR® B's cross-examination, acknowledged that REALTOR® Z had not influenced their decision to list the property with REALTOR® B or their decision as to the asking price. They also agreed that REALTOR® B had carefully disclosed that REALTOR® Z was a member of the same firm; and that REALTOR® B had represented their best interests throughout the transaction. Their only disagreement with REALTOR® B, they stated, was that since their home had been purchased by a member of REALTOR® B's firm, they should not have been obligated to pay a commission and REALTOR® B's refusal to refund the commission violated Article 1.

The Hearing Panel concluded that REALTOR® B had promoted Mr. and Mrs. A's interests; and had carefully disclosed that REALTOR® Z was a member of the same firm; and that REALTOR® B's refusal to refund commission did not constitute a violation of Article 1.

## Case #1-22: REALTOR®'s Offer to Buy Property He has Listed (Adopted May, 1989 as Case #7-26. Transferred to Article 1 November, 1994. Revised November, 2001.)

Doctor A, a surgeon in a major city, inherited a summer house and several wooded acres on the shores of a lake over a thousand miles from Doctor A's home. Being an extremely busy individual, Doctor A paid little attention to his inheritance for almost two years. Then, planning a vacation trip, Doctor A and his wife decided to visit their property since it was located in a part of the country that they had never seen. Doctor A and his wife spent a week in the house during which they concluded that it was too far from their home town to use on any regular basis. Consequently, Doctor A decided to sell the property and made an appointment with REALTOR® B whose office was located in a town nearby.

Doctor A explained that he had inherited the summer house two years earlier and wanted to sell it since it was impractical to keep for his personal use. Doctor A mentioned that he had no idea what the property was worth since it had not previously changed hands in forty years and that he was not familiar with local property values.

REALTOR® B explained that sales of vacation homes had been slow for a number of months and recommended a listing price of $75,000. When Doctor A commented that the price seemed low given that the house was located on a lake and included several wooded acres, REALTOR® B responded by asking Doctor A what he thought the property was worth. Doctor A repeated that he really had no idea what it was worth since he was completely unfamiliar with the area and concluded that he would have to rely on REALTOR® B's judgment. Doctor A and REALTOR® B executed an exclusive listing on the property and two days later Doctor A and his wife returned home.

Three weeks later, Doctor A received a letter from REALTOR® B to which was attached a purchase contract for $75,000 less the amount of the listing commission signed by REALTOR® B as the purchaser. REALTOR® B's letter indicated his belief that Doctor A should not expect any other offers on the property due to the slow market and that REALTOR® B's "full price" offer was made to "take the property off Doctor A's hands."

Doctor A immediately called REALTOR® B and advised him that while he might agree to sell the vacation house to REALTOR® B, he would not do so until he could have the property appraised by an independent appraiser. Under no circumstances, continued Doctor A, would he recognize REALTOR® B as his agent and pay a commission if REALTOR® B purchased the house.

REALTOR® B responded that there was no reason to obtain an independent appraisal since Doctor A had little choice in the matter. In REALTOR® B's opinion Doctor A could either sell the property to REALTOR® B for $75,000 less the amount of the commission or, should Doctor A refuse REALTOR® B's offer, REALTOR® B would be entitled to a commission pursuant to the listing agreement.

Believing that he had no choice, Doctor A signed the purchase agreement and returned it to REALTOR® B. Shortly thereafter, the transaction closed.

Several weeks later, reading a local news article, Doctor A learned that Boards of REALTORS® had Professional Standards Committees that considered charges of unethical conduct by REALTORS® and REALTOR-ASSOCIATES®. He wrote a detailed letter to REALTOR® B's Board spelling out all of the details of the sale of his summer house. In his letter, Doctor A indicated that he had no problem with REALTOR® B offering to purchase the property but rather his unhappiness resulted from REALTOR® B's insistence on being compensated as Doctor A's agent even though he had become a principal in the transaction. Doctor A quoted Article 1 questioning how REALTOR® B's duty to promote Doctor A's interests could have been served when REALTOR® B had taken an essentially adversarial role in the transaction. Finally, Doctor A commented, REALTOR® B's "take it or leave it" attitude had certainly seemed less than honest.

The Board's Professional Standards Administrator referred Doctor A's letter to the Grievance Committee which concluded that a hearing should be held. At the hearing before a panel of the Board's Professional Standards Committee, both Doctor A and REALTOR® B told their sides of the story. After all of the evidence and testimony was heard, the Hearing Panel went into executive session and concluded that while the Code of Ethics did not prohibit REALTOR® B's offering to purchase property listed by him, REALTOR® B had stepped out of his role as agent and had become a principal in the transaction. Article 1 of the Code of Ethics requires the REALTOR® to "protect and promote the interests of the client." Once REALTOR® B expressed his interest in purchasing the property, he could no longer act as Doctor A's agent except with Doctor A's knowledgeable consent. This consent had not been granted by Doctor A. Further, REALTOR® B's advice that Doctor A had no choice but to view REALTOR® B as his agent and to compensate him accordingly had been incorrect and had been a decisive factor in Doctor A's decision to sell to REALTOR® B. The Hearing Panel also found that REALTOR® B had significantly influenced Doctor A's decision as to the listing price, perhaps with knowledge that he (REALTOR® B) would like to purchase the property for himself. Consequently, the Hearing Panel found REALTOR® B in violation of Article 1.

## Case #1-23: Claims of Guaranteed Savings

(Adopted November, 1993 as Case #7-27. Revised April, 1994. Transferred to Article 1 November, 1994.)

In response to REALTOR® A's advertisement, "Guaranteed Savings! Don't purchase without representation," Mr. and Mrs. B signed an exclusive buyer representation contract with REALTOR® A. After viewing several homes accompanied by REALTOR® A, Mr. and Mrs. B decided to make an offer on 1234 Hickory. The seller did not accept the offer. The listing broker explained to REALTOR® A that the sellers were well-situated, spent much of their time at their vacation home, and had determined not to accept anything other than the listed price. REALTOR® A, in turn, explained that to Mr. and Mrs. B. In response to their questions, he indicated that there appeared to be little point in making anything other than a full price offer but that he would be happy to continue to show them other properties. Mr. and Mrs. B responded that they were not interested in other properties and had decided to make a full price offer on the Hickory Street residence. They did and their offer was accepted.

Following closing, and after discussing their transaction with friends, they wrote a letter to the Board of REALTORS® indicating that while they were pleased with the service provided by REALTOR® A, they thought that his claim of "guaranteed savings" was an exaggeration. After obtaining and reviewing a copy of the Code of Ethics, they filed a formal complaint alleging that Article 1, as interpreted by Standard of Practice 1-4, had been violated.

At the hearing, REALTOR® A defended his advertisement on the basis that as a buyer's agent he was able to aggressively negotiate purchase agreements on behalf of his clients whereas the listing broker or subagents, with their loyalty to the seller, could not. He also indicated that, in many instances, his buyer clients paid less, often substantially less, than buyers dealing through listing brokers, subagents, or even through other buyer agents. However, in response to questioning by Mr. B's attorney, REALTOR® A acknowledged that, while savings were not uncommon, they were not ensured in every instance, particularly in cases where the seller was determined to receive full price. "But I offered to show them other properties and, if we looked long enough, I am sure I could have found them a bargain," offered REALTOR® A in his defense.

The Hearing Panel disagreed with REALTOR® A's reasoning, concluding that while savings might be possible, REALTOR® A had been unable to demonstrate them in every instance and that this guarantee of savings was misleading. Consequently, his advertisement was in violation of Article 1.

## Case #1-24: Advantage Gained Through Deception of Client

(Originally Case #4-3. Revised and transferred to Article 6 as Case #6-5 May, 1988. Revised November, 1993. Transferred to Article 1 November, 1994. Revised November, 1997.)

Client X listed his unique parcel of land on a lake exclusively with REALTOR® A, who worked diligently for months to sell Client X's property. Finally, REALTOR® A came up with the idea of selling the property to the county for a park, and made arrangements for its presentation at a special meeting.

Client X went before the County Commissioners with his attorney. REALTOR® A, the listing broker, was in the audience. REALTOR® A commented about the property and told the County Commissioners that if the County purchased the property he, REALTOR® A, would receive a real estate commission. The County Commissioners agreed to take the matter under advisement.

REALTOR® B, a member of the County Commission, approached Client X and suggested that if the property were listed with REALTOR® B exclusively, and REALTOR® B then cooperated with REALTOR® A so that the real estate commission would be split between them, the County would probably purchase the property from Client X. Otherwise, REALTOR® B indicated, the County would not purchase it. Unknown to Client X, the County Commissioners had already voted to buy the land. Worried that he might not sell the land, Client X immediately signed a second written exclusive listing with REALTOR® B. Thereafter, a sales contract was executed which provided that the real estate commission was to be divided equally between REALTOR® A and REALTOR® B. Unknown to REALTOR® B, Client X had told REALTOR® A the entire story about REALTOR® B's approach to and conversation with Client X.

REALTOR® A filed a complaint against REALTOR® B alleging violations of Article 1 and Article 16. The Grievance Committee found enough evidence of REALTOR® B's alleged violations of the Code to warrant a hearing before a Hearing Panel of the Board's Professional Standards Committee.

At the hearing, REALTOR® B defended himself, indicating that he had been instrumental in influencing the County Commission to vote to buy Client X's land, and had voted for it himself. Accordingly, REALTOR® B felt it was appropriate for him to receive a commission.

It was the Hearing Panel's conclusion that REALTOR® B had used his official position as County Commissioner to deceive Client X with respect to the prospects of the County purchasing his property, and had coerced Client X into executing an exclusive listing while the property was already listed exclusively with REALTOR® A. The Hearing Panel found REALTOR® B in violation of Article 1 for having advised Client X dishonestly and Article 16 for having acted inconsistently with the exclusive relationship that existed between Client X and REALTOR® A.

## Case #1-25: Disclosure of Latent Defects

(Adopted November, 2000.)

REALTOR® A had listed Seller S's vintage home. Buyer B made a purchase offer that was contingent on a home inspection. The home inspection disclosed that the gas furnace was in need of replacement because unacceptable levels of carbon monoxide were being emitted.

Based on the home inspector's report, Buyer B chose not to proceed with the purchase.

REALTOR® A told Seller S that the condition of the furnace and the risk that it posed to the home's inhabitants would need to be disclosed to other potential purchasers. Seller S disagreed and instructed REALTOR® A not to say anything about the furnace to other potential purchasers. REALTOR® A replied that was an instruction he could not follow so REALTOR® A and Seller S terminated the listing agreement.

Three months later, REALTOR® A noticed that Seller S's home was back on the market, this time listed with REALTOR® Z. His curiosity piqued, REALTOR® A phoned REALTOR® Z and asked whether there was a new furnace in the home. "Why no," said REALTOR® Z. "Why do you ask?" REALTOR® A told REALTOR® Z about the home inspector's earlier findings and suggested that REALTOR® Z check with the seller to see if repairs had been made.

When REALTOR® Z raised the question with Seller S, Seller S was irate. "That's none of his business," said Seller S who became even angrier when REALTOR® Z advised him that potential purchasers would have to be told about the condition of the furnace since it posed a serious potential health risk.

Seller S filed an ethics complaint against REALTOR® A alleging that the physical condition of his property was confidential; that REALTOR® A had an ongoing duty to respect confidential information gained in the course of their relationship; and that REALTOR® A had breached Seller S's confidence by sharing information about the furnace with REALTOR® Z.

The Hearing Panel disagreed with Seller S's contentions. It noted that while REALTORS® do, in fact, have an obligation to preserve confidential information gained in the course of any relationship with the client, Standard of Practice 1-9 specifically provides that latent material defects are not considered "confidential information" under the Code of Ethics. Consequently, REALTOR® A's disclosure did not violate Article 1 of the Code of Ethics.

## Case #1-26: Subordination of Client's Interests to REALTOR®'s Personal Gain (Adopted May, 2001.)

REALTOR® B was a sales associate with XYZ, REALTORS®. To promote XYZ's in-house listings, the firm's principals offered $1,000 bonuses to the company's sales associates at time of closing on each of XYZ's listings they sold.

Dr. Z, a recent transferee to the town, entered into a buyer representation agreement with XYZ through REALTOR® B.

Dr. Z explained he had specific needs, foremost of which was any home he purchased be convenient for and readily accessible by Dr. Z's spouse who was physically challenged. "Part of my wife's physical conditioning program is swimming," said Dr. Z, "so in addition to everything else, I am looking for a home with a pool or room to build a pool."

REALTOR® B knew there were a number of homes for sale meeting most of Dr. Z's general specifications, several of which were listed with XYZ.

Over the next few days, REALTOR® B showed Dr. Z several properties in the Blackacre subdivision, all of which were listed with XYZ, including one with an outdoor swimming pool. Not included among the properties shown to Dr. Z were several similar properties in Blackacre listed with other firms; including one with an indoor pool.

After considering the properties shown to him by REALTOR® B, Dr. Z made an offer on the home with the outdoor pool. His offer was accepted and the transaction closed shortly thereafter.

Several months later, REALTOR® B received notice of an ethics complaint filed against him by Dr. Z. Dr. Z had learned about the home with the indoor pool from a colleague at the hospital who lived on the same block. The complaint alleged that REALTOR® B had put his interests, and those of his firm, ahead of Dr. Z's by promoting XYZ's listings exclusively and by not telling Dr. Z about a similarly-priced property with an indoor pool, which suited his family's needs better than the property he had purchased. The complaint went on to indicate that REALTOR® B had received a bonus for selling one of XYZ's listings and that Dr. Z suspected that REALTOR® B's failure to tell him about the home with the indoor pool was motivated by the opportunity to receive a bonus.

At the hearing, REALTOR® B defended his actions stating that properties rarely meet all of potential purchasers desires; that he had made Dr. Z aware of several properties that met most of his requirements, including one with an outdoor pool; and that Dr. Z must have been satisfied with REALTOR® B's service since he had purchased a home.

Upon questioning by Dr. Z's attorney, REALTOR® B acknowledged that he knew about but had not shown the house with the indoor pool to Dr. Z. He conceded that a pool that could be used year round was better suited to the family's needs than one that could be used only four months each year. He also admitted his failure to tell Dr. Z about the house with the indoor pool had at least in part been motivated by the bonus offered by his firm. "But," he argued, "aside from the indoor pool, that house was no different than the one Dr. Z bought."

The Hearing Panel concluded that REALTOR® B had been fully aware that one of Dr. Z's prime concerns was his wife's ongoing physical conditioning needs and REALTOR® B's decision to show Dr. Z only properties listed with XYZ and to not tell him about the home with the indoor pool had been motivated by the possibility of earning an in-house bonus. The Hearing Panel determined that REALTOR® B had placed his interests ahead of those of his client and had violated Article 1.

## Case #1-27: Appraisal Fee as Percentage of Valuation (Originally Case #11-7. Revised November, 2001. Transferred to Article 1 November, 2001.)

REALTOR® A was approached by Client B who engaged him to make an appraisal of an apartment building located in a proposed public redevelopment area. Client B explained that he had recently inherited the property and recognized that it was in a neglected condition. Client B also explained that he wanted the appraisal performed in order to have a definite idea of the property's value before discussing its possible sale with negotiators for the redevelopment project. REALTOR® A and Client B entered into a contractual relationship whereby REALTOR® A promised to perform the appraisal of Client B's property. Client B, at REALTOR® A's suggestion, agreed to compensate REALTOR® A for his appraisal services based on a percentage of the amount of the appraised value to be determined.

Several months later, Client B complained to the Board of REALTORS® against REALTOR® A, specifying that he had been overcharged for the appraisal. Client B explained that the appraisal fee he had agreed upon with REALTOR® A was based on a percentage of the valuation shown in the appraisal report. Client B's letter to the Board stated that his attempt to negotiate with the redevelopment agency on the basis of REALTOR® A's appraisal had broken down and that the redevelopment agency had gone into court, under eminent domain proceedings, and that the award made by the court was approximately one-fourth of the amount of REALTOR® A's appraisal. Client B contended that by making his valuation so unrealistically high, REALTOR® A had grossly overcharged him. He added that the experience had been embarrassing to him, since in his attempts to negotiate with the redevelopment agency it had not been his intention to seek an unreasonably high price. By relying on REALTOR® A's appraisal, he had been placed in a position of seeming to have sought an excessive price for his apartment building. Client B said that it was his opinion that REALTOR® A had overvalued the property to obtain a higher fee.

Client B's complaint was considered by the Board's Grievance Committee which, upon review, referred it to the Board's Professional Standards Administrator to be scheduled for a hearing before a Hearing Panel of the Board's Professional Standards Committee. The appropriate notices were sent out and a hearing was scheduled.

At the hearing, REALTOR® A defended his actions stating that he was unaware of any prohibition in the Code of Ethics prohibiting a REALTOR® from charging a percentage of the valuation of a property as an appraisal fee. REALTOR® A stated that the client had freely agreed to the arrangement; that he felt that his appraisal was a fair one; and that he was not shaken in this view by the award made by the court since he felt that the court's award was unreasonably low.

After considering all of the evidence submitted by both parties, the Hearing Panel did not accept REALTOR® A's argument that he was unaware of the Code's prohibition of charging an appraisal fee contingent upon the value as determined by the appraisal. The panel concluded that REALTOR® A, by basing his fee on the amount of valuation, had violated Article 1 of the Code of Ethics as interpreted by Standard of Practice 1-14.

## Case #1-28: Disclosure of Existence of Offers to Prospective Purchasers (Adopted November, 2002.)

Seller S listed her home for sale with REALTOR® B. The property was priced reasonably and REALTOR® B was confident it would sell quickly. The listing agreement included the seller's authorization for publication in the MLS and authority to disclose the existence of offers to prospective purchasers.

Within days, REALTOR® B had shown the property to several prospective purchasers and one of them, Buyer Z, wrote a purchase offer at close to the asking price.

REALTOR® B called Seller S to make an appointment to present the offer. After hanging up with Seller S, REALTOR® B received another call, this time from REALTOR® A. REALTOR® A explained that he represented a buyer who was interested in making an offer on Seller S's property. REALTOR® A explained that while his buyer-client was quite interested in the property, price was also a concern. He asked REALTOR® B if there were other offers on the property, indicating that his buyer-client would likely make a higher offer if there were competing offers on the table. REALTOR® B responded telling REALTOR® A, "That's confidential information. Please tell your client to make his best offer."

Taken aback by REALTOR® B's comments, REALTOR® A shared them with his buyer-client, who chose not to make an offer and instead pursued other properties.

Buyer Z's offer was accepted by Seller S later that evening and, sometime later, the transaction closed.

Several months afterward, Seller S and REALTOR® A met at a social event. REALTOR® A related his conversation with REALTOR® B. Seller S asked REALTOR® A if he thought that REALTOR® A's buyer-client would have made an offer on Seller S's home absent REALTOR® B's refusal to disclose whether there were other offers pending. REALTOR® A responded that it was impossible to tell for certain, but his buyer-client had certainly not been favorably impressed by REALTOR® B's response to a seemingly routine question.

Seller S subsequently filed an ethics complaint against REALTOR® B alleging violation of Article 1 as interpreted by Standard of Practice 1-15. He noted that he had clearly authorized REALTOR® B to disclose to buyers and cooperating brokers the existence of pending offers and that REALTOR® B's arbitrary refusal to share information he was authorized to share could have been the reason, or part of the reason, why REALTOR® A's client had chosen not to make an offer on Seller S's home.

REALTOR® B defended his actions indicating that while he agreed that he had an obligation to promote Seller S's interests, his obligation to REALTOR® A and to REALTOR® A's buyer-client was simply to be honest. He had not, in any fashion, misrepresented the availability of Seller S's property. Rather, he had simply told REALTOR® A to encourage his client to make her best offer. "I'm not required to turn every sale into an auction, am I?" he asked rhetorically. "I feel that I treated all parties honestly and fairly," he concluded.

The Hearing Panel did not agree with REALTOR® B's reasoning, indicating that he had violated Article 1 as interpreted by Standard of Practice 1-15. They noted that Standard of Practice 1-15 requires REALTORS®, if they have the seller's approval, to divulge the existence of offers to purchase on listed property in response to inquiries from either potential buyers or from cooperating brokers. REALTOR® B had not met that obligation and, consequently, the Hearing Panel concluded that REALTOR® B had violated Article 1.

## Case #1-29: Multiple Offers to be Presented Objectively (Adopted November, 2002.)

REALTOR® A listed Seller S's house. He filed the listing with the MLS and conducted advertising intended to interest prospective purchasers. Seller S's house was priced reasonably and attracted the attention of several potential purchasers.

Buyer B learned about Seller S's property from REALTOR® A's website, called REALTOR® A for information, and was shown the property by REALTOR® A several times.

Buyer X, looking for property in the area, engaged the services of REALTOR® R as a buyer representative. Seller S's property was one of several REALTOR® R introduced to Buyer X.

After the third showing, Buyer B was ready to make an offer and requested REALTOR® A's assistance in writing a purchase offer. REALTOR® A helped Buyer B prepare an offer and then called Seller S to make an appointment to present the offer that evening.

Later that same afternoon, REALTOR® R called REALTOR® A and told him that he was bringing a purchase offer to REALTOR® A's office for REALTOR® A to present to Seller S. REALTOR® A responded that he would present Buyer X's offer that evening.

That evening, REALTOR® A presented both offers to Seller S for his consideration. Seller S noted that both offers were for the full price and there seemed to be little difference between them. REALTOR® A responded, "I'm not telling you what to do, but you might consider that I have carefully pre-qualified Buyer B. There's no question but that she'll get the mortgage she'll need to buy your house. Frankly, I don't know what, if anything, REALTOR® R has done to pre-qualify his client. I hope he'll be able to get a mortgage, but you never can tell." REALTOR® A added, "Things can get complicated when a buyer representative gets involved. They make all sorts of demands for their clients and closings can be delayed. You don't want that, do you? Things are almost always simpler when I sell my own listings," he concluded.

Seller S, agreeing with REALTOR® A's reasoning, accepted Buyer B's offer and the transaction closed shortly thereafter.

Upset that his purchase offer hadn't been accepted, Buyer X called Seller S directly and asked, "Just to satisfy my curiosity, why didn't you accept my full price offer to buy your house?" Seller S explained that he had accepted another full price offer, had been concerned about Buyer X being able to obtain the necessary financing, and had been concerned about delays in closing if a buyer representative were involved in the transaction.

Buyer X shared Seller S's comments with REALTOR® R the next day. REALTOR® R, in turn, filed an ethics complaint alleging that REALTOR® A's comments had intentionally cast Buyer X's offer in an unflattering light, that his comments about buyer representatives hindering the closing process had been inaccurate and unfounded, and that REALTOR® A's presentation of the offer had been subjective and biased and in violation of Article 1 as interpreted by Standard of Practice 1-6.

At the hearing, REALTOR® A tried to justify his comments, noting that although he had no personal knowledge of Buyer X's financial wherewithal and while he hadn't had a bad experience dealing with represented buyers, it was conceivable that an overzealous buyer representative could raise obstacles that might delay a closing. In response to REALTOR® R's questions, REALTOR® A acknowledged that his comments to Seller S about Buyer X's ability to obtain financing and the delays that might ensue if a buyer representative were involved were essentially speculation and not based on fact.

The Hearing Panel concluded that REALTOR® A's comments and overall presentation had not been objective as required by Standard of Practice 1-6 and found REALTOR® A in violation of Article 1.

## Case #1-30: Multiple Offers Where Listing Broker Agrees to Reduce Listing Broker's Commission (Adopted November, 2002.)

REALTOR® A listed Seller S's house. He filed the listing with the MLS and conducted advertising intended to interest prospective purchasers. Seller S's house was priced reasonably and attracted the attention of several potential purchasers.

Buyer B learned about Seller S's property from REALTOR® A's website, called REALTOR® A for information, and was shown the property by REALTOR® A several times.

Buyer X, looking for property in the area, engaged the services of REALTOR® R as a buyer representative. Seller S's property was one of several REALTOR® R introduced to Buyer X.

After the third showing, Buyer B was ready to make an offer and requested REALTOR® A's assistance in writing a purchase offer. REALTOR® A helped Buyer B prepare an offer and then called Seller S to make an appointment to present the offer that evening.

Later that same afternoon, REALTOR® R called REALTOR® A and told him that he was bringing a purchase offer to REALTOR® A's office for REALTOR® A to present to Seller S. REALTOR® A responded that he would present Buyer X's offer that evening.

That evening, REALTOR® A presented both offers to Seller S for his consideration. Seller S noted that both offers were for the full price and there seemed to be little difference between them. REALTOR® A responded, "They're both good offers and they'll both net you the same amount." Seller S asked about the feasibility of countering one or both of the offers. REALTOR® A agreed that was a possibility, but noted that countering a full price offer could result in the buyer walking away from the table. Besides, he reminded Seller S, production of a full price offer triggered REALTOR® A's entitlement to a commission under the terms of their listing agreement. Seller S acknowledged that obligation but expressed regret that, faced with two full price offers, there was no way to increase the proceeds he would realize from the sale of his property. "I'll tell you what," said Seller S, "if you'll reduce your commission, I'll accept the offer you procured. While you'll get a little less than we'd agreed in the listing contract, you'll still have more than if you had to pay the other buyer's broker."

Seeing the logic of Seller S's proposal, and realizing that he and the seller were free to renegotiate the terms of their agreement, REALTOR® A agreed to reduce his commission by one percent. Seller S, in turn, accepted Buyer B's offer and the transaction closed shortly thereafter.

Upset that his purchase offer hadn't been accepted, Buyer X called Seller S directly and asked, "Just to satisfy my curiosity, why didn't you accept my full price offer to buy your house?" Seller S explained that he had accepted a full price offer produced by REALTOR® A because of REALTOR® A's willingness to reduce his commission by one percent.

Buyer X shared Seller S's comments with REALTOR® R the next day. REALTOR® R, in turn, filed an ethics complaint alleging that REALTOR® A's commission reduction had induced Seller S to accept the offer REALTOR® A had produced, that REALTOR® A's commission reduction made his presentation of the competing offer less than objective and violated Article 1, as interpreted by Standard of Practice 1-6, and that REALTOR® A's failure to inform him of the change in his (REALTOR® A's) commission arrangement violated Article 3, as interpreted by Standard of Practice 3-4.

At the hearing, REALTOR® A defended his actions stating that he had said nothing inaccurate, untruthful, or misleading about either of the offers and that he understood that his fiduciary duties were owed to his client, Seller S, and that he and Seller S were free to renegotiate the terms of their listing agreement at any time. REALTOR® A acknowledged that by reducing his commission with respect to an offer he produced, he might arguably have created a dual or variable rate commission arrangement of the type addressed in Standard of Practice 3-4. He pointed out that if that commission arrangement had been a term of their agreement when the listing agreement was entered into, or at some point other than Seller S's deciding which offer he would accept, then he would have taken appropriate steps to disclose the existence of the modified arrangement. He noted that Standard of Practice 3-4 requires disclosure of variable rate commission arrangements "as soon as practical" and stated that he saw nothing in the Standard that required him and his client to call "time-out" while the existence of their renegotiated agreement was disclosed to other brokers whose buyers had offers on the table—or to all other participants in the MLS. He acknowledged that if the accepted offer had subsequently fallen through and Seller S's property had gone back on the market with a variable rate commission arrangement in effect (where one hadn't existed before), then the existence of the variable rate commission arrangement would have had to have been disclosed. But, he concluded, the accepted offer hadn't fallen through so disclosure was not feasible or required under the circumstances.

The Hearing Panel agreed with REALTOR® A's reasoning and concluded that he had not violated either Article 1 or Article 3.

## Case #1-31: Protecting Client's Interest in Auction Advertised as "Absolute" (Adopted May, 2005. Cross-referenced with Case #12-18.)

Seller T, a widowed elementary school teacher in the Midwest inherited a choice parcel of waterfront property on one of the Hawaiian islands from a distant relative. Having limited financial resources, and her children's' college educations to pay for, she concluded that she would likely never have the means to build on or otherwise enjoy the property. Consequently, she decided to sell it and use the proceeds to pay tuition and fund her retirement.

Seller T corresponded via the Internet with several real estate brokers, including REALTOR® Q whose website prominently featured his real estate auction services. An exchange of email followed. REALTOR® Q proposed an absolute auction as the best way of attracting qualified buyers and ensuring the highest possible price for Seller T. Seller T found the concept had certain appeal but she also had reservations. "How do I know the property will sell for a good price?" she e-mailed REALTOR® Q. REALTOR® Q responded "You have a choice piece of beachfront. They aren't making any more of that, you know. It will easily bring at least a million five hundred thousand dollars." Seller T acquiesced and REALTOR® Q sent her the necessary contracts which Seller T executed and returned.

Several days prior to the scheduled auction, Seller T decided to take her children to Hawaii on vacation. The trip would also afford her the chance to view the auction and see, firsthand, her future financial security being realized.

On the morning of the auction only a handful of people were present. Seller T chatted with them and, in casual conversation, learned that the only two potential bidders felt the property would likely sell for far less than the $1,500,000 REALTOR® Q had assured her it would bring. One potential buyer disclosed he planned to bid no more than $250,000. The other buyer wouldn't disclose an exact limit but said he was expecting a "fire sale."

Seller T panicked. She rushed to REALTOR® Q seeking reassurance that her property would sell for $1,500,000. REALTOR® Q responded, "This is an auction. The high bidder gets the property." Faced with this dire prospect, Seller T insisted that the auction be cancelled. REALTOR® Q reluctantly agreed and advised the sparse audience that the seller had cancelled the auction.

Within days, two ethics complaints were filed against REALTOR® Q. Seller T's complaint alleged that REALTOR® Q had misled her by repeatedly assuring her—essentially guaranteeing her—that her property would sell for at least $1,500,000. By convincing her she would realize that price— and by not clearly explaining that if the auction had proceeded the high bidder—at whatever price—would take the property, Seller T claimed her interests had not been adequately protected, and she had been lied to. This, Seller T concluded, violated Article 1.

The second complaint, from Buyer B, related to REALTOR® Q's pre-auction advertising. REALTOR® Q's ad specifically stated "Absolute Auction on July 1." Nowhere in the ad did it mention that the auction could be cancelled or the property sold beforehand. "I came to bid at an auction," wrote Buyer B, "and there was no auction nor any mention that it could be cancelled." This advertising, Buyer B's complaint concluded, violated Article 12's "true picture" requirement.

Both complaints were forwarded by the Grievance Committee for hearing. At the hearing, REALTOR® Q defended his actions by noting that comparable sales supported his conclusion that Seller T's property was worth $1,500,000. "That price was reasonable and realistic when we entered the auction contract, and it's still reasonable today. I never used the word 'guarantee;' rather I told her the chances of getting a bid of $1,500,000 or more were very good." "But everyone knows," he added, "that anything can happen at an auction." If Seller T was concerned about realizing a minimum net return from the sale, she could have asked that a reserve price be established.

Turning to Buyer B's claim of deceptive advertising, REALTOR® Q argued that his ad had been clear and accurate. There was, he stated, an auction scheduled for July 1 and it was intended to be an absolute auction. "The fact that it was advertised as 'absolute' doesn't mean the property can't be sold beforehand—or that the seller can choose not to sell and cancel the auction. Ads can't discuss every possibility. It might have rained that day. Should my ad have cautioned bidders to bring umbrellas?" he asked rhetorically.

The Hearing Panel concluded that while REALTOR® Q had not expressly guaranteed Seller T her property would sell for $1,500,000, his statements had led her to that conclusion and after realizing Seller T was under that impression, REALTOR® Q had done nothing to disabuse her of that misperception. Moreover, REALTOR® Q had taken no steps to explain the auction process to Seller T, including making her aware that at an absolute auction the high bidder—regardless of the bid— would take the property. REALTOR® Q's actions and statements had clearly not protected his client's interests and, in the opinion of the Hearing Panel, violated Article 1.

Turning to the ad, the Hearing Panel agreed with REALTOR® Q's position. There had been an absolute auction scheduled—as REALTOR® Q had advertised—and there was no question but that REALTOR® Q had no choice but to cancel the auction when he had been instructed to do so by his client. Consequently, the panel concluded REALTOR® Q had not violated Article 12.

# CASE INTERPRETATIONS RELATED TO ARTICLE 2

## Case #2-1: Disclosure of Pertinent Facts (Revised Case #9-4 May, 1988. Transferred to Article 2 November, 1994.)

REALTOR® A, acting as a management agent, offered a vacant house for rent to a prospective tenant, stating to the prospect that the house was in good condition. Shortly after the tenant entered into a lease and moved into the house, he filed a complaint against REALTOR® A with his Board of REALTORS®, charging misrepresentation, since a clogged sewer line and a defective heater had been discovered, contrary to REALTOR® A's statement that the house was in good condition.

At the hearing, it was established that REALTOR® A had stated that the house was in good condition; that the tenant had reported the clogged sewer line and defective heater to REALTOR® A on the day after he moved into the house; that REALTOR® A responded immediately by engaging a plumber and a repairman for the heater; that REALTOR® A had no prior knowledge of these defects; that he had acted promptly and responsibly to correct the defects, and that he had made an honest and sincere effort to render satisfactory service. It was the Hearing Panel's decision that REALTOR® A was, therefore, not in violation of Article 2.

## Case #2-2: Responsibility for Sales Associate's Error (Revised Case #9-5 May, 1988. Transferred to Article 2 November, 1994.)

REALTOR® A, a REALTOR® principal, was asked to list a neglected house that obviously needed a wide range of repairs. He strongly advised the owner that it would be to his advantage to put the house in good repair before offering it for sale, but the owner wanted it sold at once on an "as is" basis. REALTOR® A wrote a novel advertisement offering a "clunker" in poor condition as a challenge to an ambitious do-it-yourself hobbyist.

A few days later, Sales Associate B, who was not a Board member, from REALTOR® A's office showed the house to a retired couple who liked the location and general features, and who had been attracted by the ad because the husband was looking forward to applying his "fix-up" hobby to improving a home. The sale was made. Shortly thereafter, REALTOR® A was charged by the buyer with having misrepresented the condition of the property.

REALTOR® A accompanied Sales Associate B to the hearing, armed with a copy of his candid advertisement. The hearing established that the buyer fully understood that the house was represented to be generally in poor condition, but that while inspecting the house with a view to needed repairs, Sales Associate B had commented that since the house was of concrete block and stucco construction, there would be no termite worries since termites could not enter that type of construction. Sales Associate B confirmed this and his belief that the statement was correct. However, after the sale was made, the buyer ripped out a sill to replace it and found it swarming with termites, with termite damage to floors in evidence. Further questioning established that there had been no evidence of termite infestation prior to the sale, and that the Sales Associate had volunteered an assurance that he thought was well grounded.

REALTOR® A, prior to the conclusion of the hearing, offered to pay the cost of exterminating the building and the cost of lumber to repair termite damage in view of Sales Associate B's failure to recommend a termite inspection, which was the usual and customary practice in this area. The complainant stated that this would satisfy him completely. It was the Hearing Panel's view that while REALTOR® A's actions were commendable, and would be taken into account by the Hearing Panel, REALTOR® A was still responsible for the errors and misstatements of the sales associates affiliated with him. The Hearing Panel concluded that REALTOR® A was in violation of Article 2.

## Case #2-3: Obligation to Disclose Defects

(Revised Case #9-9 May, 1988. Transferred to Article 2 November, 1994.)

Seller A came to REALTOR® B's office explaining that his company was transferring him to another city and he wished to sell his home. In executing the listing contract, Seller A specified that the house had hardwood floors throughout and that the selling price would include the shutters and draperies that had been custom made for the house. Seller A said that he would like to continue to occupy the house for 90 days while his wife looked for another home at his new location, and agreed that REALTOR® B could show the house during this time without making a special appointment for each visit. Accordingly, REALTOR® B advertised the house, showed it to a number of prospective buyers, and obtained a purchase contract from Buyer C. Settlement was completed and at the expiration of the 90-day period from the date of listing, Seller A moved out and Buyer C moved in.

On the day that Buyer C moved in, seeing the house for the first time in its unfurnished condition, he quickly observed that hardwood flooring existed only on the outer rim of the floor in each room that had been visible beyond the edges of rugs when he inspected the house, and that the areas that had been previously covered by rugs in each room were of subflooring material. He complained that REALTOR® B, the listing broker, had misrepresented the house in his advertisements and in the description included in his listing form which had specified "hardwood floors throughout." Buyer C complained to REALTOR® B, who immediately contacted Seller A. REALTOR® B pointed out that the house had been fully furnished when it was listed and Seller A had said that the house had hardwood floors throughout. Seller A acknowledged that he had so described the floors, but said the error was inadvertent since he had lived in the house for ten years since it had been custom built for him. He explained that in discussing the plans and specifications with the contractor who had built the house, the contractor had pointed out various methods of reducing construction costs, including limiting the use of hardwood flooring to the outer rim of each room's floor. Since Seller A had planned to use rugs in each room, he had agreed, and after ten years of living in the house with the subflooring covered by rugs, he had "simply forgotten about it."

REALTOR® B explained, however, that Seller A's description, which he had accepted, had resulted in misrepresentation to the buyer. "But it's a small point," said Seller A. "He'll probably use rugs too, so it really doesn't make any difference." After further pressure from REALTOR® B for some kind of adjustment for Buyer C, Seller A concluded, "It was an honest mistake. It's not important. I'm not going to do anything about it. If Buyer C thinks this is a serious matter, let him sue me."

REALTOR® B explained Seller A's attitude to Buyer C, saying that he regretted it very much, but under the circumstances could do nothing more about it. It was at this point that Buyer C filed a complaint with REALTOR® B's Board.

At the hearing before a Hearing Panel of the Professional Standards Committee of REALTOR® B's Board, during which all of these facts were brought out, the panel found that REALTOR® B had acted in good faith in accepting Seller A's description of the property. While Article 2 prohibits concealment of pertinent facts, exaggeration, and misrepresentation, REALTOR® B had faithfully represented to Buyer C information given to him by Seller A. There were no obvious reasons to suspect that hardwood floors were not present throughout as Seller A had advised. REALTOR® B was found not in violation of Article 2.

## Case #2-4: Obligation to Ascertain Pertinent Facts

(Revised Case #9-10 May, 1988. Transferred to Article 2 November, 1994.)

Shortly after REALTOR® A, the listing broker, closed the sale of a home to Buyer B, a complaint was received by the Board charging REALTOR® A with an alleged violation of Article 2 in that he had failed to disclose a substantial fact concerning the property. The charge indicated that the house was not connected to the city sanitary sewage system, but rather had a septic tank.

In a statement to the Board's Grievance Committee, Buyer B stated that the subject was not discussed during his various conversations with REALTOR® A about the house. However, he pointed out that his own independent inquiries had revealed that the street on which the house was located was "sewered" and he naturally assumed the house was connected. He had since determined that every other house on the street for several blocks in both directions was connected. He stated that REALTOR® A, in not having disclosed this exceptional situation, had failed to disclose a pertinent fact.

REALTOR® A's defense in a hearing before a Hearing Panel of the Professional Standards Committee was:

(1) that he did not know this particular house was not connected with the sewer;

(2) that in advertising the house, he had not represented it as being connected;

(3) that at no time, as Buyer B conceded, had he orally stated that the house was connected;

(4) that it was common knowledge that most, if not all, of the houses in the area were connected to the sewer; and

(5) that the seller, in response to REALTOR® A's questions at the time the listing was entered into, had stated that the house was connected to the sewer.

The panel determined that the absence of a sewer connection in an area where other houses were connected was a substantial and pertinent fact in the transaction; but that the fact that the house was not connected to the sewer was not possible to determine in the course of a visual inspection and, further, that REALTOR® A had made appropriate inquiries of the seller and was entitled to rely on the representations of the seller The panel concluded that REALTOR® A was not in violation of Article 2.

## Case #2-5: Ascertainment and Disclosure of Pertinent Facts (Revised Case #9-11 May, 1988. Transferred to Article 2 November, 1994.)

Mrs. A, a retired college professor, came to the office of REALTOR® B, a cooperating broker, in search of a large house in which she could occupy a small apartment, using the remainder of the building to operate a residential club for graduate students. What she had in mind was a deluxe "rooming house" in which the tenants would have use of a parlor, dining room, kitchen, and laundry. She felt confident, from previous experience in the community, that she could obtain from 10 to 16 "roomers", and indicated that she would be guided in her charges to the tenants by the amount of mortgage payments she would have to make.

Most of the large houses on the market were inadequate. Finally, REALTOR® B located a massive old mansion listed with REALTOR® C that appealed to Buyer A. After repeated visits to the house and after discussing financing with a local lending institution, Buyer A said she was interested in the house if it could accommodate as many as 11 tenants. REALTOR® B accompanied her for another inspection to check on this point.

By planning double occupancy of the large bedrooms she found she could accommodate eight roomers. In addition, there were three small rooms upstairs that had been used for storage which REALTOR® B suggested might make acceptable single rooms. Buyer A agreed, and the sale was made.

Two months later, the buyer filed a complaint with the local Board, charging REALTOR® B with failing to disclose pertinent facts. The complaint alleged that REALTOR® B knew the buyer was taking on a substantial obligation with the expectation of housing 11 persons in the structure; that REALTOR® B had suggested that three rooms might make acceptable single rooms; and that she had been subsequently advised by the building department that these rooms could not be used as dwelling rooms since the windows were too small to meet code requirements. She had been advised that it would cost $1,480 to replace the windows. She charged REALTOR® B with negligence in not advising her of this deficiency. After reviewing the complaint, the Grievance Committee referred it for hearing before a Hearing Panel of the Professional Standards Committee.

At the hearing, REALTOR® B acknowledged the facts set out in Buyer A's complaint, but advised that the complaint did not state all of the relevant facts. With respect to the house in question, as with many other houses shown to Buyer A, he had made a special check at city hall as to zoning regulations to be sure that the kind of occupancy intended by the buyer would be lawful; that the buyer's specifications were unusual and that in attempting to meet them, he had devoted an unusual amount of time and effort to help her realize her objective; and that he had acted in good faith and had not deliberately failed to disclose any pertinent fact but had, in fact, urged the buyer to consult with an engineer and to check with the zoning authorities prior to making an offer to ensure that the property could be utilized as a residential club.

The Hearing Panel found that REALTOR® B had satisfied his duty to the buyer by recommending that the advice of experts be sought out and considered by the buyer prior to making an offer to purchase.

REALTOR® B was found not in violation of Article 2.

## Case #2-6: Misrepresentation (Reaffirmed Case #9-12 May, 1988. Transferred to Article 2 November, 1994.)

REALTOR® A, a cooperating broker, had shown four houses to Buyer B, and Buyer B's wife had asked to see one of them a second time. There was a third inspection, and a fourth. They seemed at the point of decision but said they would like to "sleep on it." When there was no word the next day, REALTOR® A called. Buyer B said he was a bit hesitant on the price; that some transfers of executives in his company had been rumored; that this could affect him within the year; that he hesitated to buy at a price that might mean taking a loss if he should be transferred within a year.

REALTOR® A tried to reassure the prospect by telephone. Then he dictated a letter stating that the house was an exceptional bargain at the asking price and "our office guarantees to get your money out of it for you any time in the next year if you should need to sell." Buyer B came in and signed the contract.

Six months later, Buyer B came to REALTOR® A as a seller. He was being transferred. He would need to get his equity out of the house to be able to afford a purchase in the new community. REALTOR® A listed the house at the price Buyer B had paid for it. After a month there had been no offers. Buyer B reminded REALTOR® A of his written assurance that his office had guaranteed he would get his money out of the house within the year.

REALTOR® A explained that the market had become much less active and that Buyer B might have to reduce his price by $10,000 to $15,000 to attract a buyer. Whereupon, Buyer B filed a complaint with the Board of REALTORS® charging REALTOR® A with misrepresentation, exaggeration, and failure to make good a commitment. After examination of the complaint, the Grievance Committee referred it to the Professional Standards Committee for a hearing.

In response to questioning by the Hearing Panel, REALTOR® A admitted that he had written the letter to Buyer B in good faith and, at the time the letter was written, he had been certain that his office could obtain a price for the property that would ensure Buyer B was "getting his money out of the house." However, REALTOR® A explained that although he had held such an opinion in good faith, the market had softened and now the circumstances were different. The Hearing Panel reminded REALTOR® A that the pertinent fact being considered was not his opinion at the time of the previous sale as compared to his opinion now, but rather his written "guarantee" to Buyer B and his current failure to make good his written commitment. It was the conclusion of the Hearing Panel that REALTOR® A had engaged in misrepresentation and was in violation of Article 2.

## Case #2-7: Obligation to Determine Pertinent Facts (Revised Case #9-13 May, 1988. Transferred to Article 2 November, 1994.)

REALTOR® A, a home builder, showed one of his newly constructed houses to Buyer B. In discussion, the buyer observed that some kind of construction was beginning nearby. He asked REALTOR® A what it was. "I really don't know," said REALTOR® A, "but I believe it's the attractive new shopping center that has been planned for this area." Following the purchase, Buyer B learned that the new construction was to be a bottling plant and that the adjacent area was zoned industrial.

Charging that the proximity of the bottling plant would have caused him to reject purchase of the home, Buyer B filed a complaint with the Board of REALTORS® charging REALTOR® A with unethical conduct for failing to disclose a pertinent fact. The Grievance Committee referred the complaint for a hearing before a Hearing Panel of the Professional Standards Committee.

During the hearing, REALTOR® A's defense was that he had given an honest answer to Buyer B's question. At the time he had no positive knowledge about the new construction. He knew that other developers were planning an extensive shopping center in the general area, and had simply ventured a guess. He pointed out, as indicated in Buyer B's testimony, that he had prefaced his response by saying he didn't know the answer to this question.

The Hearing Panel concluded that Buyer B's question had related to a pertinent fact; that REALTOR® A's competence required that REALTOR® A know the answer or, if he didn't know the answer, he should not have ventured a guess, but should have made a commitment to get the answer. The Hearing Panel also noted that although REALTOR® A had prefaced his response with "I don't know," he had nonetheless proceeded to respond and Buyer B was justified in relying on his response. REALTOR® A was found to have violated Article 2.

## Case #2-8: Misrepresentation (Reaffirmed Case #9-14 May, 1988. Transferred to Article 2 November, 1994.)

REALTOR® A listed a motel for sale and prepared a sales prospectus setting out figures reporting the operating experience of the owner in the preceding year. The prospectus contained small type at the bottom of the page stating that the facts contained therein, while not guaranteed as to accuracy, were "accurate to the best of our knowledge and belief," and carried the name of REALTOR® A as the broker.

Buyer B received the prospectus, inspected the property, discussed the operating figures in the prospectus and other features with REALTOR® A, and signed a contract.

Six months after taking possession, Buyer B ran across some old records that showed discrepancies when compared with the figures in REALTOR® A's prospectus. Buyer B had not had as profitable an operating experience as had been indicated for the previous owner in the prospectus, and the difference could be substantially accounted for by these figures. He filed a charge of misrepresentation against REALTOR® A with REALTOR® A's Board.

At the hearing, REALTOR® A took responsibility for the prospectus, acknowledging that he had worked with the former owner in its preparation. The former owner had built the motel and operated it for five years. REALTOR® A explained that he had advised him that $10,000 in annual advertising expenses during these years could reasonably be considered promotional expenses in establishing the business, and need not be shown as annually recurring items. Maid service, he also advised, need not be an expense item for a subsequent owner if the owner and his family did the work themselves. REALTOR® A cited his disclaimer of a guarantee of accuracy. Buyer B testified that he had found maid service a necessity to maintain the motel, and it was apparent that the advertising was essential to successful operation. He protested that the margin of net income alleged in the prospectus could not be attained as he had been led to believe by REALTOR® A.

The Hearing Panel concluded that REALTOR® A had engaged in misrepresentation in omitting from the prospectus information which he reasonably should have known to be relevant and significant and that the disclaimer did not, in any respect, avoid his obligation of full disclosure.

REALTOR® A was found in violation of Article 2.

## Case #2-9: REALTOR®'s Responsibility for REALTOR-ASSOCIATE®'s Statement (Reaffirmed Case #9-15 May, 1988. Transferred to Article 2 November, 1994.)

REALTOR-ASSOCIATE® D, associated with the firm of REALTOR® A, obtained an offer to buy a property at less than the listed price. The offer was rejected. The property had been exclusively listed by REALTOR® B and had been published through the Multiple Listing Service of the local Board of REALTORS®. The owner received no further offers and at the expiration of the exclusive listing with REALTOR® B, he approached REALTOR® C and exclusively listed the property with him.

About this time, REALTOR-ASSOCIATE® D terminated his association with REALTOR® A and became affiliated with REALTOR® C's organization.

The prospect who had made the unsuccessful offer on the property continued to seek the assistance of REALTOR-ASSOCIATE® D and made another offer on the property, this time at the full listed price. REALTOR-ASSOCIATE® D and REALTOR® C, the listing broker, submitted this offer to the owner, and it was accepted.

A few months following the sale, the purchaser complained to the Board of REALTORS® that REALTOR-ASSOCIATE® D had made a statement that "a visible gas pipeline easement extended to the property but did not go onto any part of the property." The complainant presented evidence that the easement, in fact, crossed the property, and the complainant charged REALTOR® C and REALTOR-ASSOCIATE® D with misrepresentation.

The complaint was reviewed by the Grievance Committee and then referred to the Board's Professional Standards Committee which promptly scheduled a hearing and asked REALTOR® C and REALTOR-ASSOCIATE® D to be present to answer charges of unethical conduct in violation of Article 2 of the Code of Ethics.

At the hearing, REALTOR-ASSOCIATE® D confirmed that he had made the statement attributed to him; that he thought it was correct because the information had been given to him by a neighboring property owner. Questioning revealed that REALTOR-ASSOCIATE® D had made no effort to verify the information from authoritative sources. REALTOR® C protested he knew nothing about the matter; that he had not been present when REALTOR-ASSOCIATE® D made the statement; that he was not responsible for the oral statements made by a REALTOR-ASSOCIATE®; and that REALTOR-ASSOCIATE® D's first contact with the buyer had occurred while REALTOR-ASSOCIATE® D was associated with REALTOR® A.

It was concluded by the Hearing Panel that REALTOR® C and REALTOR-ASSOCIATE® D were in violation of Article 2 of the Code of Ethics in a way that materially imposed upon the buyer, who actually received measurably less in his package of ownership rights when he purchased the property than he was led to believe he was buying. Since it had been demonstrated that REALTOR-ASSOCIATE® D made the statement containing misinformation on a pertinent fact while he was affiliated with REALTOR® C, and in view of the fact that REALTOR® C was the exclusive agent of the seller at the time, REALTOR® C was held to be responsible.

He was advised that a REALTOR® is definitely responsible for pertinent statements of his salespersons in real estate transactions.

REALTOR® C and REALTOR-ASSOCIATE® D were found in violation of Article 2.

## Case #2-10: Use of State Revenue Stamps to Mislead (Reaffirmed Case #9-16 May, 1988. Transferred to Article 2 November, 1994. Revised November, 2001.)

REALTOR® A, the listing broker, had shown a house to Buyer B on several occasions. It was an old house in a desirable location in which Buyer B had become interested for extensive modernization. It was listed at $140,000. Buyer B had offered $125,000, but the owner had held firm to his asking price. While negotiations were at this point, REALTOR® A received a call from the owner saying that because of a sudden death in the family a number of family plans were being rapidly changed, and if a signed offer was presented within 24 hours, the price of $125,000 would be accepted. REALTOR® A called on Buyer B, obtained a written offer, and closed the transaction.

Buyer B then continued his discussion with REALTOR® A concerning financing for the modernization of the house that he contemplated. In this connection, REALTOR® A advised him that state revenue stamps in the amount of $5.00 per thousand of the price paid for the house would have to be affixed to the deed when it was filed, and suggested that Buyer B spend an extra $75 for stamps to give the appearance of a $140,000 purchase price for the house. This, he pointed out, would be to his advantage in obtaining a liberal mortgage, should it be checked by the financing institution when Buyer B applied for a mortgage loan to finance his modernization program.

An official of a local mortgage company learned from Buyer B of this advice given by REALTOR® A, and made a formal complaint to the Board of REALTORS® that REALTOR® A had violated Article 2 of the Code by making this suggestion. He pointed out that mortgage finance institutions in the locality generally regarded the state revenue stamps as an indication of selling price.

At the hearing, REALTOR® A's defense was that he had not been a party to the naming of any false consideration in a document; that the deed in this case stated that the consideration was "ten dollars and other consideration"— a nominal consideration expressly permitted by the Code of Ethics; that the state revenue stamps are not required as a means of indicating prices paid for property, but as a means of deriving state revenue; that while a buyer may not lawfully place less in such revenue stamps on a deed than $5.00 per thousand in price paid, there was nothing illegal or unethical in placing a greater amount in stamps on the deed than the minimum required.

It was the finding of the Hearing Panel that the circumstances under which REALTOR® A gave his advice to Buyer B respecting state revenue stamps made his action tantamount to urging a false consideration of a document, since it obviously showed intent to mislead and deceive a financing institution which, in keeping with general practice, might check the deed and the stamps affixed to it as a factor in appraising the property for mortgage loan purposes. The panel's decision pointed out that Buyer B's comments had shown he so interpreted the intent of REALTOR® A's advice. It stated that while use of an excessive amount of state revenue stamps is, in itself, not necessarily unethical, the circumstances and intent can make such action unethical.

REALTOR® A was found in violation of Article 2 of the Code of Ethics.

## Case #2-11: False Consideration in a Deed

(Revised Case #9-17 May, 1988. Transferred to Article 2 November, 1994.)

Commissioner B, a member of a state conservation commission, filed a complaint with a Board of REALTORS® charging that REALTOR® A had been a party to the naming of a false consideration in a deed.

In his response, REALTOR® A denied the charge and protested that all of his actions had been clearly necessary in his client's interest and justifiable in view of the unusual circumstances.

At the hearing, Commissioner B, the complainant, produced a photocopy of a deed to 300 acres of undeveloped land with the consideration stated to be $1,000 an acre; an affidavit from Seller C, who had deeded the land to the XYZ Development Company, affirming that the price actually paid for the land by the company was $600 an acre; and a letter from the president of the XYZ Development Company stating that the deed was prepared in consultation with, and upon advice of, REALTOR® A, upon whom the company depended in its land acquisition and home selling activities.

REALTOR® A explained that he had assisted XYZ Development Company over a period of several years in working out a long-range building program, and that in keeping with this plan the company would need 300 acres of undeveloped land in that area before the end of the year. At the time he began negotiations, a news story emanating from the state conservation commission announced that it would acquire extensive tracts of undeveloped land. The story had indicated that this acquisition would take place in five counties, including the county where the property under discussion was located. The story had also indicated that the commission would be limited in its acquisitions to land that would be purchased for not more than $800 an acre.

REALTOR® A had advised his clients that suitable land for their proposed development could probably be purchased for $500 an acre. He recommended, however, that he be authorized to offer $600 per acre. This authority was given and REALTOR® A negotiated purchase from Seller C of the 300 acre tract on behalf of the Development Company for $600 an acre.

REALTOR® A expressed concern that the state conservation commission might undertake to acquire the property from the company, since the price at which it was bought was below the commission per acre limit. An officer suggested asking Seller C to deed the property for "ONE DOLLAR AND OTHER CONSIDERATIONS" and then placing revenue stamps indicative of a $1,000 per acre price on the deed.

REALTOR® A pointed out that it was unlikely that a $1,000 per acre value could be supported by revenue stamps alone. He suggested that Seller C be asked to agree to a deed that would state the consideration to have been at a rate of $1,000 per acre.

Commissioner B testified that he had reviewed recorded deeds in recent sales, had visited the property in question, and had called on the sellers because of the high price at which it apparently had been sold. He had commented on the very favorable price to Seller C, who had inadvertently let it slip that the price shown on the deed was not the price paid. He later confirmed this in an affidavit that was presented at the hearing. The Hearing Panel found REALTOR® A in violation of Article 2 of the Code of Ethics by becoming a party to the naming of a false consideration.

## Case #2-12: Implied Membership in Institute, Society, or Council of National Association

(Revised Case #9-19 May, 1988. Transferred to Article 2 November, 1994. Deleted November, 2001.)

## Case #2-13: REALTOR® Buying and Selling to One Another are Still Considered REALTORS®

(Revised Case #9-23 May, 1988. Transferred to Article 2 November, 1994. Cross-reference Case #1-20.)

REALTOR® A owned a home which he listed through his own brokerage firm. The property listing was filed with the Multiple Listing Service of the Board. REALTOR® B called REALTOR® A and told him of his interest in purchasing the home for himself. REALTOR® A suggested a meeting to discuss the matter. The two agreed upon terms and conditions and the property was sold by REALTOR® A to REALTOR® B.

A few months later during hard rains, leakage of the roof occurred with resultant water damage to the interior ceilings and side walls. REALTOR® B had a roofing contractor inspect the roof. The roofing contractor advised REALTOR® B that the roof was defective and advised that only a new roof would prevent future water damage.

REALTOR® B then contacted REALTOR® A and requested that he pay for the new roof. REALTOR® A refused, stating that REALTOR® B had a full opportunity to look at it and inspect it. REALTOR® B then charged REALTOR® A with violation of Articles 1 and 2 of the Code of Ethics by not having disclosed that the roof had defects known to REALTOR® A prior to the time the purchase agreement was executed.

At the subsequent hearing, REALTOR® B outlined his complaint and told the Hearing Panel that at no time during the inspection of the property, or during the negotiations which followed, did REALTOR® A disclose any defect in the roof. REALTOR® B acknowledged that he had walked around the property and had looked at the roof. He had commented to REALTOR® A that the roof looked reasonably good, and REALTOR® A had made no comment. The roofing contractor, REALTOR® B had employed after the leak occurred, told him that there was a basic defect in the way the shingles were laid in the cap of the roof and in the manner in which the metal flashing on the roof had been installed. It was the roofing contractor's opinion that the home's former occupant could not have been unaware of the defective roof or the leakage that would occur during hard rains.

REALTOR® A told the panel that he was participating only to prove that he was not subject to the Code of Ethics while acting as a principal as compared with his acts as an agent on behalf of others. He pointed out that he owned the property and was a principal, and that REALTOR® B had purchased the property for himself as a principal. The panel concluded that the facts showed clearly that REALTOR® A, the seller, did have knowledge that the roof was defective, and had not disclosed it to REALTOR® B, the buyer. Even though a REALTOR® is the owner of a property, when he undertakes to sell that property he accepts the same obligation to properly represent its condition to members of the public, including REALTORS® who are purchasers in their own name, as he would have if he were acting as the agent of a seller.

The panel concluded that REALTOR® A was in violation of Articles 1 and 2 of the Code.

## Case #2-14: Time at Which Modification to Offer of Subagency is Communicated is a Determining Factor (Revised Case #9-26 May, 1988. Transferred to Article 2 November, 1994. Cross-reference Case #3-7.)

REALTOR® A listed Seller X's home and filed the listing with the MLS. The property data sheet indicated the compensation REALTOR® A was offering to the other Participants if they were successful in finding a buyer for Seller X's home.

During the next few weeks, REALTOR® A authorized several Participants of the Multiple Listing Service, including REALTOR® C, to show Seller X's home to potential buyers. Although several showings were made, no offers to purchase were forthcoming. REALTOR® A and Seller X, in discussing possible means of making the property more salable, agreed to reduce the listed price. REALTOR® A also agreed to lower his commission. REALTOR® A changed his compensation offer in the MLS and then called the MLS Participants who had shown Seller X's property to advise them that he was modifying his offer of compensation to cooperating brokers. Upon receiving the call, REALTOR® C responded that he was working with Prospect Z who appeared to be very interested in purchasing the property and who would probably make an offer to purchase in the next day or two. REALTOR® C indicated that he would expect to receive the compensation that had been published originally in the MLS and not the reduced amount now being offered to him, since he had already shown the property to Prospect Z and expected an offer to purchase would be made shortly. REALTOR® A responded that since Prospect Z had not signed an offer to purchase and no offer had been submitted the modified offer of compensation would be applicable.

The following day, REALTOR® C wrote an offer to purchase for Prospect Z. The offer was submitted to the Seller by REALTOR® A and was accepted. At the closing, REALTOR® A gave REALTOR® C a check for services in an amount reflecting the modified offer communicated to REALTOR® C by phone. REALTOR® C refused to accept the check indicating that he felt REALTOR® A's actions were in violation of the Code of Ethics. REALTOR® C filed a complaint with the Board's Grievance Committee alleging violation of Articles 2 and 3 on the part of REALTOR® A citing Standard of Practice 3-2 in support of the charge.

During the hearing, REALTOR® C stated that REALTOR® A's modification of the compensation constituted a misrepresentation through concealment of pertinent facts since he had not provided REALTOR® C with specific written notification of the modification prior to the time REALTOR® C began his efforts to interest the purchaser in the listed property. REALTOR® A defended his actions by indicating that timely notice of the modification of compensation offered had been provided to REALTOR® C by telephone prior to REALTOR® C submitting a signed offer to purchase. REALTOR® A also indicated that his modified offer of compensation had been bulletined to all Participants, including REALTOR® C, through the MLS in accordance with Standard of Practice 3-2 prior to the time that REALTOR® C had submitted the signed offer to purchase.

REALTOR® A also commented that had REALTOR® C submitted the signed offer to purchase prior to REALTOR® A communicating the modified offer, then REALTOR® A would have willingly paid the amount originally offered.

Based on the evidence presented to it, the Hearing Panel concluded that REALTOR® A had acted in accordance with the obligation expressed in Standard of Practice 3-2 based on changing the offer of cooperative compensation in the MLS alone, even without the courtesy phone calls, and consequently was not in violation of Articles 2 or 3.

## Case #2-15: Refusal to Divulge Source of Fraudulent Information

(Originally Case #3-1. Revised and transferred to Article 9 as Case #9-27 May, 1988. Transferred to Article 2 November, 1994.)

An official of the Federal Housing Administration (FHA) called on REALTOR® A to enlist his cooperation in solving a problem. As the official explained, FHA had reason to believe that there had been a number of "dual contract" transactions in the area involving FHA mortgage insurance. In a typical instance, a prospective buyer was induced by a broker to sign an offer to purchase a house at a figure several thousand dollars higher than the listed price of the house, so that the signed offer might be used as an evidence of value in obtaining a mortgage loan higher than would be available if the true selling price of the property was stated in the offer. In this procedure, the broker, after having thus fraudulently arranged for a mortgage loan, executed another contract, stating the true price offered, for presentation to the seller of the property.

The FHA official further explained that such conduct involved misrepresentation and law violations, and distorted FHA's market data. FHA lacked documentation, but believed that this type of procedure had been used by some brokers, builders, and to some extent had been condoned by persons approving mortgage loan applications.

He asked for REALTOR® A's assistance in documenting specific instances. REALTOR® A replied that persons in the real estate business had "common knowledge" that such practices were in use; that through business activities he knew of specific persons who had practiced it and had in his files legal evidence of fraudulent offers that were used to obtain mortgage loans in two instances. However, he took the position that much as he deplored such unethical conduct, he had no inclination to play the role of informer and did not believe he should be asked to. He refused to divulge information that he acknowledged he had in his possession.

It came to the attention of the Grievance Committee of REALTOR® A's Board that he had refused to cooperate with the FHA in bringing instances of alleged fraud and unethical conduct to light. The function of the Grievance Committee includes review of undocumented or hearsay reports of unethical conduct, and if definite evidence were found, making the evidence the subject of a complaint before the Board's Professional Standards Committee.

Fulfilling its duty, the Grievance Committee called in REALTOR® A and requested that he divulge the information in his possession to the Committee. REALTOR® A refused, and upon his refusal and statement of his position, the Grievance Committee referred the matter to the Professional Standards Committee of the Board for hearing charging REALTOR® A with having violated Article 2.

After hearing REALTOR® A restate his position, the Hearing Panel pointed out that Article 2 obligates a REALTOR® to "avoid misrepresentation or concealment of pertinent facts relating to a property or a transaction;" that his reluctance to avoid the role of informer was understandable, but that he could have discharged his obligation by divulging the factual information in his possession to the Board's Grievance Committee.

Because REALTOR® A had refused and continued in his refusal to divulge information to the Grievance Committee, a Hearing Panel of the Professional Standards Committee found him in violation of Article 2.

## Case #2-16: Falsification of Credit Information (Adopted as Case #9-29 May, 1988. Transferred to Article 2 November, 1994.)

REALTOR® A, a property manager had an agreement to manage Owner O's 24 unit apartment building. During the course of their negotiations, Owner O had repeatedly emphasized that Realtor A was expected to use great care in screening the financial backgrounds of potential tenants.

Several months later, REALTOR® A received an application for a lease from prospective Tenant T. Following his usual procedure, REALTOR® A obtained a credit report that indicated that Tenant T had a generally satisfactory credit history but a concluding paragraph noted that Tenant T was several months in arrears on accounts with local department stores. REALTOR® A, anxious to rent the vacant apartment but recognizing that his management agreement with Owner O precluded rentals to individuals with questionable credit histories, used correction fluid to eradicate the reference to the delinquent accounts. Tenant T made a security deposit equal to one month's rent, signed a one year lease, and moved into the apartment.

Early the following month, REALTOR® A noted that Tenant T had not mailed his rent check. A call to Tenant T's apartment revealed that his phone had been disconnected. REALTOR® A drove to the property, rang Tenant T's bell and, getting no response, let himself into Tenant T's apartment with a master key. It became quickly apparent that extensive damage had been done to the apartment since Tenant T had taken possession. Additional phone calls made it clear that Tenant T had moved out of state leaving no forwarding address and that Tenant T's security deposit would only cover a small part of the damage. Owner O, realizing that he would have to pay for most of the repairs, instructed his attorney to try to locate Tenant T. The attorney, in turn, asked REALTOR® A to provide all materials concerning Tenant T. REALTOR® A instructed his office manager to deliver the file on Tenant T to the attorney's office.

The attorney, in reviewing the documents, noted that an item had been eradicated from the credit report. Obtaining a duplicate copy from the local credit bureau, it became clear that the report in REALTOR® A's file had been altered. The attorney shared this information with his client, Owner O, who filed a complaint against REALTOR® A alleging that Article 2 had been violated.

At the hearing, REALTOR® A admitted that he had altered the credit report but defended his action on the basis that Tenant T's credit history had been generally satisfactory except for the delinquent department store accounts. Further, REALTOR® A indicated that in his opinion Owner O's insistence that any potential tenant have an unblemished credit history was unwarranted, made REALTOR® A's role in identifying potential tenants needlessly difficult, and could ultimately result in a large number of vacancies, a result not in Owner O's best interest.

The Hearing Panel concluded that REALTOR® A's defense was unfounded and that in altering the credit report he had knowingly misrepresented a pertinent fact in an attempt to circumvent specific instructions from his principal. REALTOR® A was found to have violated Article 2.

## Case #2-17: Obligations of REALTORS® in Referral (Adopted as Case #9-30 May, 1988. Transferred to Article 2 November, 1994. Deleted November, 2001.)

## Case #2-18: Honest Treatment of All Parties

(Revised Case #9-31 May, 1988. Transferred to Article 2 November, 1994. Cross-reference Case #1-2.)

As the exclusive agent of Client A, REALTOR® B offered Client A's house for sale, advertising it as being located near a bus stop. Prospect C, who explained that his daily schedule made it necessary for him to have a house near the bus stop, was shown Client A's property, liked it, and made a deposit. Two days later REALTOR® B read a notice that the bus line running near Client A's house was being discontinued. He informed Prospect C of this and Prospect C responded that he was no longer interested in Client C's house since the availability of bus transportation was essential to him. REALTOR® B informed Client A and recommended that Prospect C's deposit be returned.

Client A reluctantly complied with REALTOR® B's recommendation, but then complained to the Board of REALTORS® that REALTOR® B had not faithfully protected and promoted his interests; that after Prospect C had expressed his willingness to buy, REALTOR® B should not have made a disclosure that killed the sale since the point actually was not of major importance. The new bus route, he showed, would put a stop within six blocks of the property.

In a hearing before a Hearing Panel of the Board's Professional Standards Committee, REALTOR® B explained that in advertising Client A's property, the fact that a bus stop was less than a block from the property had been prominently featured. He also made the point that Prospect C, in consulting with him, had emphasized that Prospect C's physical disability necessitated a home near a bus stop. Thus, in his judgment the change in bus routing materially changed the characteristics of the property in the eyes of the prospective buyer, and he felt under his obligation to give honest treatment to all parties in the transaction, that he should inform Prospect C, and that in so doing he was not violating his obligation to his client.

The Hearing Panel concluded that REALTOR® B had not violated Article 1, but had acted properly under both the spirit and the letter of the Code of Ethics. The panel noted that the decision to refund Prospect C's deposit was made by the seller, Client A, even though the listing broker, REALTOR® B, had suggested that it was only fair due to the change in circumstances.

## Case #2-19: Deceptive Information in MLS Compilations (Adopted May, 2004.)

REALTOR® R searched the MLS compilation of current listings on behalf of his client, Dr. Z, who had recently completed his residency and was returning home to take a position on the staff of the community hospital. REALTOR® R's search returned several listings that satisfied Dr. Z's requirements, including a two-story residence listed with REALTOR® B that showed, in the "Remarks" section of the property data form "Pay your mortgage with rent from the apartment upstairs."

REALTOR® R attached the listings he'd identified to an e-mail message that he sent to Dr. Z. A day later, REALTOR® R received a call from Dr. Z who told him there was something about REALTOR® B's listing that struck him as odd. "That house is in the neighborhood I grew up in," said Dr. Z, "I also remember our neighbors having a problem with the Building Department when they added a kitchen on the second floor so their grandmother could have her own apartment."

REALTOR® R assured Dr. Z that he would make the necessary inquiries and get back to him promptly. His call to the Building Department confirmed Dr. Z's suspicion that the home was zoned single family.

Feeling embarrassed and misled by REALTOR® B's apparent misrepresentation, REALTOR® R filed a complaint with the local association of REALTORS® alleging misrepresentation on the part of REALTOR® B for publishing inaccurate information in the MLS.

At the hearing convened to consider REALTOR® R's complaint, REALTOR® B acknowledged the seller had told him that the conversion had been made to code but without the necessary permits, and the apartment had never been rented. "I assumed the new owners could get a variance from the Building Department," he said.

The Hearing Panel did not agree with REALTOR® B's defense or rationale and concluded that showing a single family home as having income-producing potential from an upstairs apartment which had never been rented was a misrepresentation that violated Article 2.

# CASE INTERPRETATIONS RELATED TO ARTICLE 3:

## Case #3-1: Rules of MLS May Not Circumvent Code

(Revised Case #22-1 May, 1988. Transferred to Article 3 November, 1994.)

REALTOR® A complained to his Board of REALTORS® that procedures in the Board's Multiple Listing Service permitted REALTORS® participating in the Service to evade their obligations under Article 3 of the Code of Ethics. His specific complaint was that, as exclusive agent of Client B, he had filed the client's property in the Multiple Listing Service. Other REALTORS® participating in the Multiple Listing Service had contacted Client B directly to make appointments to show the property and to transmit offers to purchase it, without his, REALTOR® A's, knowledge or consent. When he objected to this conduct, the officers of the Multiple Listing Service had cited the MLS rule that held that placing property in the Service had the effect of listing the property with the MLS, and authorized the MLS to refer it to other Participants as subagents, who were then free to transmit offers directly to the client. REALTOR® A's complaint emphasized that his objection was primarily to the rule of the Multiple Listing Service.

The complaint was referred to the Directors of the Board of REALTORS® which asked the Chairperson of the Board's Multiple Listing Committee to attend a special Directors' meeting on the subject. At the meeting, it was pointed out that the contested rule of the Multiple Listing Service, which had not been submitted to the Board of Directors for approval, was in conflict with Article 3 of the Code of Ethics, and with the nature and purpose of the MLS itself, since the MLS did not provide brokerage services and could not function as an agent of sellers. The Multiple Listing Service was directed to rescind all procedural rules that permitted the Service or any of its Participants to intrude upon the agency status of any REALTOR® holding an exclusive listing.

## Case #3-2: Assumed Consent for Direct Contact

(Reaffirmed Case #22-2 May, 1988. Transferred to Article 3 November, 1994. Transferred to Article 16 as Case #16-18, November, 2001.)

## Case #3-3: Arbitrary Refusal to Cooperate

(Revised Case #22-3 May, 1988. Transferred to Article 3 November, 1994. Deleted November, 2001.)

## Case #3-4: Cooperation Not Mandatory

(Reaffirmed Case #22-4 May, 1988. Transferred to Article 3 November, 1994.)

Client A called on REALTOR® B to list a small commercial property. In stipulating the price at which he wished to list the property, Client A explained that he was aware that it was a relatively low price, but he wanted a quick sale and, he added, a higher price could benefit very little at that time because of certain tax considerations. He told REALTOR® B that a number of prospective buyers had spoken to him about the property within the past year. He gave their names to REALTOR® B and said he felt sure that among them there would be a ready buyer at the price. He told REALTOR® B that he wanted the property submitted to them first.

The next day, REALTOR® C, who had unsuccessfully solicited the listing and learned that the property was listed exclusively with REALTOR® B, called REALTOR® B to ask that he be accepted as a cooperating broker. REALTOR® B told REALTOR® C that because of unusual circumstances the best service to his client did not require cooperation; that a prospective buyer was at that time seriously considering the property; and that under the circumstances he preferred not to invite cooperation.

REALTOR® C complained to the Board of REALTORS® charging REALTOR® B with a violation of Article 3 by refusing to cooperate. Pursuant to the complaint a hearing was scheduled before a Hearing Panel of the Board's Professional Standards Committee.

During the hearing, REALTOR® B outlined fully the circumstances under which the property had been listed by him, and maintained that the interest of Client A would not be advanced by acceptance of cooperation by REALTOR® C.

The panel concluded that REALTOR® B's reasons for not accepting cooperation in this instance were valid and that his action did not constitute a violation of Article 3.

## Case #3-5: Refusal to Extend Cooperation in Sale of New Homes (Reaffirmed Case #22-5 May, 1988. Transferred to Article 3 November, 1994. Revised November, 2001.)

REALTOR® A, who operated a brokerage business in many areas of the city, was also a home builder. For the homes he built, he maintained a separate sales force and consistently refused to permit other REALTORS® to show his new homes.

This practice came to the attention of an officer of the Board of REALTORS® who made a complaint which was referred to the Professional Standards Committee by the Grievance Committee.

At the hearing, the Hearing Panel asked REALTOR® A to answer charges that his policy violated Article 3 of the Code of Ethics.

REALTOR® A's defense was that Article 3 requires REALTORS® to cooperate with other brokers "except when cooperation is not in the client's best interest." He contended that in selling his own new homes there was no client; that he was not acting in the capacity of a broker, but as owner-seller; and that, under the circumstances, Article 3 did not apply to his marketing the houses he built.

The Hearing Panel concluded REALTOR® A's defense was valid; that he was a principal; that Article 3 permitted him, as the builder-owner, to decide what marketing procedure would be in his best interest; and that although other REALTORS® might disagree with his decision, he was not in violation of Article 3.

## Case #3-6: Arbitrary Refusal to Extend Cooperation (Reaffirmed Case #22-6 May, 1988. Transferred to Article 3 November, 1994. Deleted November, 2001.)

## Case #3-7: Time at Which Modification to Offer of Compensation is Communicated is a Determining Factor (Revised Case #22-7 May, 1988. Transferred to Article 3 November, 1994. Cross-reference Case #2-14. Revised November, 2001.)

REALTOR® A listed Seller X's home and filed the listing with the MLS. The property data sheet indicated the compensation REALTOR® A was offering to the other Participants if they were successful in finding a buyer for Seller X's home.

During the next few weeks, REALTOR® A authorized several Participants of the Multiple Listing Service, including REALTOR® C, to show Seller X's home to potential buyers. Although several showings were made, no offers to purchase were forthcoming. REALTOR® A and Seller X, in discussing possible means of making the property more salable, agreed to reduce the listed price. REALTOR® A also agreed to lower his commission. REALTOR® A changed his compensation offer in the MLS and then called the MLS Participants who had shown Seller X's property to advise them that he was modifying his offer of compensation to cooperating brokers. Upon receiving the call, REALTOR® C responded that he was working with Prospect Z who appeared to be very interested in purchasing the property and who would probably make an offer to purchase in the next day or two. REALTOR® C indicated that he would expect to receive the compensation that had been published originally in the MLS and not the reduced amount now being offered to him, since he had already shown the property to Prospect Z and expected an offer to purchase would be made shortly. REALTOR® A responded that since Prospect Z had not signed an offer to purchase and no offer had been submitted the modified offer of compensation would be applicable.

The following day, REALTOR® C wrote an offer to purchase for Prospect Z. The offer was submitted to the Seller by REALTOR® A and was accepted. At the closing, REALTOR® A gave REALTOR® C a check for services in an amount reflecting the modified offer communicated to REALTOR® C by phone. REALTOR® C refused to accept the check indicating that he felt REALTOR® A's actions were in violation of the Code of Ethics. REALTOR® C filed a complaint with the Board's Grievance Committee alleging violation of Articles 2 and 3 on the part of REALTOR® A citing Standard of Practice 3-2 in support of the charge.

During the hearing, REALTOR® C stated that REALTOR® A's modification of the compensation constituted a misrepresentation through concealment of pertinent facts since he had not provided REALTOR® C with specific written notification of the modification prior to the time REALTOR® C began his efforts to interest the purchaser in the listed property. REALTOR® A defended his actions by indicating that timely notice of the modification of compensation offered had been provided to REALTOR® C by telephone prior to REALTOR® C submitting a signed offer to purchase. REALTOR® A also indicated that his modified offer of compensation had been bulletined to all Participants, including REALTOR® C, through the MLS in accordance with Standard of Practice 3-2 prior to the time that REALTOR® C had submitted the signed offer to purchase.

REALTOR® A also commented that had REALTOR® C submitted the signed offer to purchase prior to REALTOR® A communicating the modified offer, then REALTOR® A would have willingly paid the amount originally offered.

Based on the evidence presented to it, the Hearing Panel concluded that REALTOR® A had acted in accordance with the obligation expressed in Standard of Practice 3-2 based on changing the offer of cooperative compensation in the MLS alone, even without the courtesy phone calls, and consequently was not in violation of Articles 2 or 3.

## Case #3-8: REALTOR®'s Obligation to Disclose Dual Commission Arrangements

(Deleted Case #9-25 May, 1988. Revised and reinstated November, 1988 and subsequently revised May, 1989. Reaffirmed April, 1991. Transferred to Article 3 November, 1994. Revised November, 2001.)

REALTORS® A and B were members of the same Board and Participants in the Multiple Listing Service. REALTOR® A, cooperating with REALTOR® B on REALTOR® B's listing, presented an offer to purchase signed by buyers offering the listed price, and a check for earnest money. The only contingency was a mortgage contingency, and REALTOR® A shared with REALTOR® B qualifying information about the buyers indicating there should be no problem securing a mortgage. The following day, REALTOR® B returned the offer to REALTOR® A with "REJECTED" written on it and initialed by the seller, and explained that the seller had accepted another offer secured by one of REALTOR® B's sales associates. REALTOR® A inquired about the seller's reason for rejecting the full price offer with only a mortgage contingency, and what had caused the seller to accept the other offer. REALTOR® B responded that he did not know, but with equal offers, he supposed the seller would favor the offer secured by the listing broker.

Later, REALTOR® A met the seller at a social event. The seller thanked him for his efforts in connection with the recent sale of the seller's home. The seller hoped REALTOR® A understood there was nothing personal in his decision, adding that the money he saved through his "special agreement" with REALTOR® B had been the deciding factor. When REALTOR® A asked about the "special agreement," the seller explained he had signed a listing agreement for the sale of his property which authorized the submission of the listing to the Multiple Listing Service and specified a certain amount of compensation. However, the seller stated that he had also signed an addendum to the listing agreement specifying that if REALTOR® B sold the listing through his own office, a percentage of the agreed compensation would be discounted to the seller's credit, resulting in a lower commission payable by the seller.

REALTOR® A filed a written complaint with the Board of REALTORS® against REALTOR® B, alleging a violation of Article 3. After its review of the complaint, the Grievance Committee requested that an ethics hearing be arranged.

REALTOR® A, in restating his complaint to the Hearing Panel, said that REALTOR® B's failure to disclose the actual terms and conditions of the compensation offered through the Board MLS resulted in concealment and misrepresentation of pertinent facts to REALTOR® A and to the prospective buyers served by REALTOR® A who had, in good faith, offered to purchase the property at the listed price with only a mortgage contingency. REALTOR® A told the Hearing Panel that if he had known the facts which were not disclosed by REALTOR® B, he could have fully and accurately informed the buyers who could have taken those facts into consideration when making their offer. As it was, said REALTOR® A, the buyers acting in good faith were deceived by facts unknown to them because they were unknown to REALTOR® A. Further, REALTOR® A said that REALTOR® B's failure to fully disclose the true terms and conditions relating to compensation made it impossible to have a responsible relationship with REALTOR® B and make proper value judgments as to accepting the offer of compensation.

REALTOR® B stated that it was his business what he charged and the Board or MLS could not regulate his charges for his services. If he wished to establish a dual commission charge by agreement with his client, that was his right, and there was no need or right of the Board or MLS to interfere.

The Hearing Panel agreed that it was REALTOR® B's right to establish his fees and charges as he saw fit, and that the Board or MLS could not and would not interfere. However, the Hearing Panel noted that his complete freedom to establish charges for his services did not relieve him of his obligation to fully disclose the real terms and conditions of the compensation offered to the other Participants of the Multiple Listing Service, and did not justify his failure to disclose the dual commission arrangement. In the case of a dual commission arrangement, the listing broker must disclose not only the existence of the "special arrangement" but also must disclose, in response to an inquiry from a potential cooperating broker, the differential that would result in the total commission in a cooperative transaction. The Hearing Panel concluded that by submitting a listing to the MLS indicating that he was offering a certain amount of compensation to cooperating brokers while other relevant terms and conditions were not disclosed to the other MLS Participants, he had concealed and misrepresented real facts and was in violation of Article 3 of the Code of Ethics.

## Case #3-9: REALTOR®'s Obligation to Disclose True Nature of Listing Agreement (Adopted as Case #9-32 April, 1992. Transferred to Article 3 November, 1994.)

REALTOR® A listed the home of Seller X and filed the listing with the Board's MLS categorizing it as an exclusive right to sell listing. REALTOR® A did not disclose that there was a dual rate commission arrangement on this listing, even though the listing contract provided that, should the seller be the procuring cause of sale, the listing broker would receive a commission of $500.00, an amount intended to compensate REALTOR® A for his marketing costs.

REALTOR® B, a cooperating broker, showed the property several times. Eventually, REALTOR® B brought a signed purchase agreement to REALTOR® A. REALTOR® A returned the purchase agreement the next day, informing REALTOR® B that the seller had rejected the offer. Several weeks later, REALTOR® B learned that the property had been sold, and that the buyer was Seller X's nephew.

Several months later, REALTOR® B met Seller X at a fund-raising event. Seller X thanked her for her efforts, and told her that, under "normal circumstances," he might have seriously considered the offer she had produced. When asked why the circumstances surrounding this transaction were "unusual," Seller X responded telling her of his agreement "with REALTOR® A to pay a $500.00 commission if Seller X found the buyer. And when my nephew decided to buy the house, I jumped at the chance to save some money."

When REALTOR® B learned of this arrangement, she filed a complaint with the Board of REALTORS® alleging that REALTOR® A had violated Article 3 of the Code of Ethics. The Professional Standards Administrator of the Board referred the complaint to the Grievance Committee, and, after its review, the Grievance Committee referred the complaint back to the Professional Standards Administrator indicating that an ethics hearing should be scheduled.

At the hearing, REALTOR® B, in stating her complaint to the Hearing Panel, said that REALTOR® A's failure to disclose the actual terms and conditions of his listing with Seller X was a misrepresentation. She explained that, had she been aware of this arrangement, she might have decided not to accept REALTOR® A's offer of cooperation, since it might put potential purchasers she would produce in a possibly unfair position.

REALTOR® A, speaking in his own defense, stated no commission differential would have resulted if the buyer had been procured by either the listing broker or a cooperating broker so whatever other arrangements he had with Seller X were personal and, as listing broker, it was his right to establish the terms and conditions of his relationship with his client.

After careful deliberation, the Hearing Panel concluded that while it was REALTOR® A's right to establish the terms and conditions of the listing contract, the existence of his "special" arrangement with Seller X should have been disclosed as a dual or variable rate commission, since without knowledge of it, cooperating brokers would be unable to make knowledgeable decisions regarding acceptance of the listing broker's offer to cooperate.

The Hearing Panel concluded that REALTOR A had in fact concealed and misrepresented the real facts of the transaction and was in violation of Article 3 of the Code of Ethics as interpreted by Standard of Practice 3-4.

## Case #3-10: Disclose Accepted Offers with Unresolved Contingencies (Adopted May, 2004.)

REALTOR® A listed Seller S's house and placed the listing in the local association's MLS. Within a matter of days, REALTOR® X procured a full price offer from Buyer B. The offer specified that Buyer B's offer was contingent on the sale of Buyer B's current home. Seller S, anxious to sell, accepted Buyer B's offer but instructed REALTOR® A to continue marketing the property in hope that an offer that was not contingent on the sale of an existing home would be made.

A week later, REALTOR® Q, another cooperating broker working with an out-of-state transferee on a company-paid visit, contacted REALTOR® A to arrange a showing of Seller S's house for Buyer T. REALTOR® A contacted Seller S to advise him of the showing and then called REALTOR® Q to confirm that he and Buyer T could visit the property that evening. REALTOR® A said nothing about the previously-accepted purchase offer.

REALTOR® Q showed the property to Buyer T that evening and Buyer T signed a purchase offer for the full listed price. REALTOR® Q left the purchase offer at REALTOR® A's office.

REALTOR® A informed Seller S about this second offer. At Seller S's instruction, Buyer B was informed of the second offer, and Buyer B waived the contingency in his purchase offer. REALTOR® A then informed REALTOR® Q that Seller S and Buyer B intended to close on their contract and the property was not available for purchase by Buyer T.

REALTOR® Q, believing that REALTOR® A's failure to disclose the existence of the accepted offer between Seller S and Buyer B at the time REALTOR® Q contacted REALTOR® A was in violation of Article 3 of the Code of Ethics, as interpreted by Standard of Practice 3-6, filed an ethics complaint with the association of REALTORS®.

At the hearing called to consider the complaint, REALTOR® A defended his actions noting that while Buyer B's offer had been accepted by Seller S, it had been contingent on the sale of Buyer B's current home. It was possible that Buyer B, if faced with a second offer, could have elected to withdraw from the contract. REALTOR® A argued that continuing to market the property and not making other brokers aware that the property was under contract promoted his client's best interests by continuing to attract potential buyers.

The Hearing Panel disagreed with REALTOR® A's justification, pointing to the specific wording of Standard of Practice 3-6 which requires disclosure of accepted offers, including those with unresolved contingencies. REALTOR® A was found in violation of Article 3.

# CASE INTERPRETATIONS RELATED TO ARTICLE 4:

## Case #4-1: Disclosure when Buying on Own Account (Reaffirmed Case #13-1 May, 1988. Transferred to Article 4 November, 1994.)

Client A consulted REALTOR® B about the value of a lot zoned for commercial use, saying that he would soon be leaving town and would probably want to sell it. REALTOR® B suggested an independent appraisal, which was arranged, and which resulted in a valuation of $130,000. The property was listed with REALTOR® B at that price. Shortly thereafter, REALTOR® B received an offer of $122,000 which he submitted to Client A, who rejected it. After the passage of four months, during which no further offers were received, Client A asked REALTOR® B if he would be willing to buy the lot himself. REALTOR® B on his own behalf, made an offer of $118,000, which the client accepted. Months later Client A, on a return visit to the city, discovered that REALTOR® B had sold the lot for $125,000 only three weeks after he had purchased it for $118,000.

Client A complained to the Board of REALTOR®s charging that REALTOR® B had taken advantage of him; that he had sought REALTOR® B's professional guidance and had depended on it; that he could not understand REALTOR® B's inability to obtain an offer of more than $122,000 during a period of four months, in view of his obvious ability to obtain one at $125,000 only three weeks after he became the owner of the lot; that possibly REALTOR® B had the $125,000 offer at the time he bought the lot himself at $118,000.

At the hearing, REALTOR® B introduced several letters from prospects that had been written while the property was listed with him, all expressing the opinion that the lot was overpriced. The buyer who purchased the lot for $125,000 appeared at the hearing as a witness and affirmed that he never met REALTOR® B or discussed the lot with him prior to the date of REALTOR® B's purchase of the lot from Client A. Questioning by members of the Hearing Panel established that REALTOR® B had made it clear that his offer of $118,000 in response to his client's proposal, was entirely on his own account.

The panel concluded that since REALTOR® B's own purchase was clearly understood by the client to be a purchase on his own account, and since the client's suspicions of duplicity were proven to be unfounded, REALTOR® B had not violated Article 4 of the Code of Ethics.

## Case #4-2: Indirect Interest in Buyer (Reaffirmed Case #13-3 May, 1988. Transferred to Article 4 November, 1994.)

REALTOR® A had taken two offers to buy a commercial property listed with him to the owner, Client B. Both offers had been considerably below the listed price, and on REALTOR® A's advice, Client B had rejected both. REALTOR® C came to REALTOR® A seeking a cooperative arrangement on REALTOR® A's listing, which was agreeable to REALTOR® A. REALTOR® C brought a contract to REALTOR® A from a prospective buyer, a bank, offering more than the previous proposals, but still 10 percent less than the listed price. REALTOR® A took the offer to Client B and again advised him not to accept an offer at less than the full listed price. Again, the client acted on REALTOR® A's advice. The bank revised its offer, proposing to pay the listed price. This offer was accepted by Client B, the owner.

About a month after the closing, the Board of REALTOR®s received a letter from a director of the bank that had purchased Client B's property, charging REALTOR® A and REALTOR® C with unethical conduct and duplicity which had resulted in the bank's paying an excessive price for the property. The complaint stated that REALTOR® C was a stockholder in a corporation, one of whose officers was a director of the bank; that REALTOR® C, in a transaction that was handled through REALTOR® A, had evidently used his connection with the bank to induce the bank to buy at a price higher than the market; and that neither of the two REALTOR®s had disclosed to the other officers of the bank the connection that existed between them and one officer of the bank.

At the hearing, REALTOR® A defended his actions by stating that he knew nothing of any business relationship between REALTOR® C, the cooperating broker and the buyer; that he had acted wholly in accordance with the best interests of his client, the seller. REALTOR® C demonstrated that he had negotiated solely with the president of the bank; that the director of the bank who happened to be an officer of a corporation in which he, REALTOR® C, held stock was at no time contacted during the negotiations; that the matter had never been discussed with that individual.

It was the conclusion of the Hearing Panel that the indirect relationship between REALTOR® C and the buyer was not of a nature to require a formal disclosure; that REALTOR® C could not be held to be in violation of Article 4. The panel pointed out, however, that in a borderline case where it could be reasonably inferred that a relationship did exist, the spirit of Article 4 would be better served if disclosure were made to avoid any possibility of unfortunate or unfounded suspicions.

## Case #4-3: Disclosure of Family Interest (Revised Case #13-4 May, 1988. Transferred to Article 4 November, 1994.)

REALTOR® A listed Client B's home and subsequently advised him to accept an offer from Buyer C at less than the listed price. Client B later filed a complaint against REALTOR® A with the Board stating that REALTOR® A had not disclosed that Buyer C was REALTOR® A's father-in-law; that REALTOR® A's strong urging had convinced Client B, the seller, to accept an offer below the listed price; and that REALTOR® A had acted more in the interests of the buyer than in the best interests of the seller.

At the hearing, REALTOR® A defended his actions stating that Article 4 of the Code requires disclosure when the purchaser is a member of the REALTOR®'s immediate family, and that his father-in-law was not a member of REALTOR® A's immediate family. REALTOR® A also demonstrated that he had presented two other offers to Client B, both lower than Buyer C's offer, and stated that, in his opinion, the price paid by Buyer C had been the fair market price.

REALTOR® A's defense was found by the Hearing Panel to be inadequate. The panel concluded that Article 4 forbids a REALTOR® to "acquire an interest in" property listed with him unless the interest is disclosed to the seller or the seller's agent; that the possibility, even remote, of REALTOR® A's acquiring an interest in the property from his father-in-law by inheritance gave the REALTOR® a potential interest in it; that REALTOR® A's conduct was clearly contrary to the intent of Article 4, since interest in property created through a family relationship can be closer and more tangible than through a corporate relationship which is cited in the Code as an interest requiring disclosure. REALTOR® A was found to have violated Article 4 for failing to disclose to Client B that the buyer was his father-in-law.

## Case #4-4: Responsibility for Subordinates (Revised Case #13-6 May, 1988. Transferred to Article 4 November, 1994. Revised November, 2001.)

REALTOR-ASSOCIATE® B, a sales associate in REALTOR® A's office, exclusively listed a suburban house and subsequently convinced the seller to accept $20,000 less than the listed price. Several weeks after the transfer of title, the seller filed a written complaint with the Board, charging REALTOR-ASSOCIATE® B with a violation of Article 4 in that REALTOR-ASSOCIATE B had sold the property to his mother without disclosing this relationship to his client, the seller, and that REALTOR-ASSOCIATE® B got the price reduced for his mother's benefit.

The complaint was reviewed by the Grievance Committee which, with the complainant's concurrence, named REALTOR® A as an additional respondent.

At the hearing, REALTOR-ASSOCIATE® B stated that he saw nothing wrong in selling the property to his mother and that the seller would have accepted the contract at the reduced price, even if the buyer had not been REALTOR-ASSOCIATE® B's mother. REALTOR® A stated that REALTOR-ASSOCIATE® B was an independent contractor licensed with him. REALTOR® A acknowledged that he was accountable under the Code for the actions of other REALTORS® and REALTOR-ASSOCIATES® associated with him but shared with the panel information on his firm's orientation program. He noted that he required each licensee joining his firm to complete board-sponsored Code training. In addition, he required everyone in his firm to read *Professionalism in Real Estate Practice*, and produced a form signed by REALTOR-ASSOCIATE® B stating that he had carefully read and understood his personal obligation under the Code of Ethics.

The panel found that REALTOR-ASSOCIATE® B should have made his relationship to the buyer, his mother, unmistakably clear to the seller. He should have disclosed in writing that the buyer was his mother so there would have been no misunderstanding.

The Hearing Panel found REALTOR-ASSOCIATE® B in violation of Article 4.

The Hearing Panel noted that REALTORS® are not presumed to be in violation of the Code of Ethics in cases where REALTORS® or REALTOR-ASSOCIATES® associated with them are found in violation. Rather, their culpability, if any, must be determined from the facts and circumstances of the case in question. It was the conclusion of the Hearing Panel that REALTOR® A had made reasonable efforts to ensure that REALTOR-ASSOCIATE® B was familiar with the Code and its obligations, and that it would have been unreasonable to expect REALTOR® A to have known the purchaser was REALTOR-ASSOCIATE® B's mother. Consequently, REALTOR® A was found not to have violated Article 4.

## Case #4-5: Fidelity to Client (Revised Case #13-7 May, 1988. Transferred to Article 4 November, 1994. Cross-reference Case #1-4.)

Client A contacted REALTOR® B to list a vacant lot. Client A said he had heard that similar lots in the vicinity had sold for about $50,000 and thought he should be able to get a similar price. REALTOR® B stressed some minor disadvantages in location and grade of the lot, and said that the market for vacant lots was sluggish. He suggested listing at a price of $32,500 and the client agreed.

In two weeks, REALTOR® B came to Client A with an offer at the listed price of $32,500. The client raised some questions about it, pointing out that the offer had come in just two weeks after the property had been placed on the market which could be an indication that the lot was worth closer to $50,000 than $32,500. REALTOR® B strongly urged him to accept the offer, stating that because of the sluggish market, another offer might not develop for months and that the offer in hand simply vindicated REALTOR® B's own judgment as to pricing the lot. Client A finally agreed and the sale was made to Buyer C.

Two months later, Client A discovered the lot was no longer owned by Buyer C, but had been purchased by Buyer D at $55,000. He investigated and found that Buyer C was a brother-in-law of REALTOR® B, and that Buyer C had acted on behalf of REALTOR® B in buying the property for $32,500.

Client A outlined the facts in a complaint to the Board of REALTORS®, charging REALTOR® B with collusion in betrayal of a client's confidence and interests, and with failing to disclose that he was buying the property on his own behalf.

At a hearing before a panel of the Board's Professional Standards Committee, REALTOR® B's defense was that in his observation of real estate transactions there can be two legitimate prices of property — the price that a seller is willing to take in order to liquidate his investment, and the price that a buyer is willing to pay to acquire a property in which he is particularly interested. His position was that he saw no harm in bringing about a transaction to his own advantage in which the seller received a price that he was willing to take and the buyer paid a price that he was willing to pay.

The Hearing Panel concluded that REALTOR® B had deceitfully used the guise of rendering professional service to a client in acting as a speculator; that he had been unfaithful to the most basic principles of agency and allegiance to his client's interest; and that he had violated Articles 1 and 4 of the Code of Ethics.

## Case 4-6: Disclosure of Secured Interest in Listed Property (Adopted May, 1999.)

Buyer X was interested in purchasing a home listed with REALTOR® B but lacked the down payment. REALTOR® B offered to lend Buyer X money for the down payment in return for Buyer X's promissory note secured by a mortgage on the property. The purchase transaction was subsequently completed, though REALTOR® B did not record the promissory note or the mortgage instrument.

Within months Buyer X returned to REALTOR® B to list the property because Buyer X was unexpectedly being transferred to another state. REALTOR® B listed the property, which was subsequently sold to Purchaser P. The title search conducted by Purchaser P's lender did not disclose the existence of the mortgage held by REALTOR® B since it had not been recorded, nor did REALTOR® B disclose the existence of the mortgage to Purchaser P. The proceeds of the sale enabled Buyer X to satisfy the first mortgage on the property, and he and REALTOR® B agreed that he would continue to repay REALTOR® B's loan.

Following the closing, REALTOR® B recorded both the promissory note and the mortgage instrument. When Purchaser P learned of this, he filed an ethics complaint alleging that REALTOR® B had violated Article 4 by selling property in which she had a secured interest without revealing that interest to the purchaser.

The Hearing Panel agreed with Purchaser P and concluded that REALTOR® B's interest in the property should have been disclosed to Purchaser P or Purchaser P's representative in writing.

# CASE INTERPRETATIONS RELATED TO ARTICLE 5:

## Case #5-1: Contemplated Interest in Property Appraised (Reaffirmed Case #12-2 May, 1988. Transferred to Article 5 November, 1994.)

Seller A and Buyer B were negotiating the sale of an apartment building, but couldn't agree on the price. Finally, they agreed that each would engage an appraiser and they would accept the average of the two appraisals as a fair price. Seller A engaged REALTOR® C as his appraiser, and Buyer B engaged REALTOR® D. Both REALTORS® were informed of the agreement of the principals. The two appraisal reports were submitted. The principals averaged the two valuations and made the transaction at the price determined.

Six months later, it came to the attention of Seller A that REALTOR® C was managing the building that he had appraised. Upon making further inquiries he learned that REALTOR® C for several years had managed five other buildings owned by Buyer B, and that he had been Buyer B's property manager at the time he accepted the appraisal assignment from Seller A.

At this point Seller A engaged REALTOR® E to make an appraisal of the building he had sold to Buyer B. REALTOR® E's valuation was approximately 30% higher than that arrived at six months earlier by REALTOR® C.

These facts were set out in a complaint against REALTOR® C made by Seller A to the local Board of REALTORS®. The complaint charged that since REALTOR® C was an agent of Buyer B; since he managed all of Buyer B's properties; since he had become manager of the property he had appraised for Seller A in connection with a sale to Buyer B; and since he had not disclosed his relationship to Buyer B, he had acted unethically, and in the interest of his major client had placed an excessively low valuation on the property he had appraised for Seller A.

At the hearing, Seller A also brought in a witness who stated that he had heard Buyer B say that he had made a good buy in purchasing Seller A's building because Seller A's appraiser was his (Buyer B's) property manager.

Buyer B, appearing as a witness for REALTOR® C, disputed this and protested that he had paid a fair price. He substantiated REALTOR® C's statement that management of the building formerly owned by Seller A was never discussed between them until after it had been purchased by Buyer B.

It was concluded by the Hearing Panel that whether or not management of the building was discussed between Buyer B and REALTOR® C prior to its purchase by Buyer B, REALTOR® C had a logically contemplated interest in it as a property manager in view of the fact that he had served as property manager for all other properties owned by Buyer B. In view of this contemplated interest, he was bound by the terms of Article 5 to disclose this interest to his appraisal client, Seller A. He had failed to do this, and so was found in violation of Article 5 of the Code of Ethics.

# CASE INTERPRETATIONS RELATED TO ARTICLE 6:

## Case #6-1: Profit on Supplies Used in Property Management (Reaffirmed Case #16-1 May, 1988. Transferred to Article 6 November, 1994.)

REALTOR® A, a property manager, bought at wholesale prices, janitorial supplies used in cleaning and maintenance of an office building which he managed for his client, Owner B. In his statements to Owner B, he billed these supplies at retail prices.

REALTOR® A's practice came to the attention of Owner B who filed a complaint with the local Board of REALTORS®, charging REALTOR® A with unethical conduct in violation of Article 6 of the Code of Ethics.

In questioning during the hearing called by the Board's Professional Standards Committee, REALTOR® A's defense was that the prices at which he billed these supplies to his client were no higher than the prices which Owner B had been paying prior to putting the property under REALTOR® A's management. It was clearly established that no disclosure of this profit or supplies used in property management had been made, and also that in proposing the management contract, REALTOR® A had held out to Owner B the inducement of attainable economies in operation.

REALTOR® A was found by the Hearing Panel to be in violation of Article 6.

## Case #6-2: Manager's Use of Client's Property for Vending Machines (Reaffirmed Case #16-2 May, 1988. Transferred to Article 6 November, 1994.)

REALTOR® A managed Client B's large apartment building, and made an arrangement under which coin operated vending machines were placed in the basement of the building.

Six months after the machines were installed, Client B noticed them and raised a question to the propriety of REALTOR® A's action in installing them, and deriving revenue from them, without Client B's knowledge and consent. REALTOR® A's response was that he had considered the machines a service to the tenants which in no way affected Client B's interests. He told Client B that he did derive a small amount of revenue from them, which had not been remitted to Client B because he felt that this revenue compensated him for his time and effort in arranging for installation of the machines and maintaining contact with the firm that operated them. He suggested that if Client B was unhappy he could seek a formal ruling by submitting the matter to the Professional Standards Committee of the Board of REALTORS®.

Accordingly, Client B did just that. At a hearing on the matter it was established that REALTOR® A had not consulted his client at the time he authorized installation of the machines; that revenue derived from operation of the machines had been retained by REALTOR® A; and that Client B had been furnished no information whatever in the matter until he observed the machines in his own periodic inspection of the building.

It was the conclusion of the Hearing Panel that, whether or not the presence of the machines was a service for the tenants, the giving of authority for their installation was in effect a rental of the space they occupied; and that, in the absence of any disclosure to the owner, REALTOR® A was in violation of Article 6 of the Code of Ethics.

## Case #6-3: Management Responsibility in Relation to Manager's Enterprises (Reaffirmed Case #16-3 May, 1988. Transferred to Article 6 November, 1994.)

REALTOR® A managed a large apartment building for his client, Owner B. After the building had been under his management for two years, REALTOR® A acquired a vacant site adjacent to the building and developed it as an automobile parking lot with monthly rates set at $50. REALTOR® A advised Owner B of this action, feeling that it would be advantageous to the building, and Owner B indicated that he, too, felt this development was favorable to him.

Six months after opening his parking lot, REALTOR® A raised the monthly rate to $100. When this came to the attention of Owner B, he filed a complaint against REALTOR® A with the Board of REALTORS charging that the parking rate increase represented an unethical attempt on the part of REALTOR® A to profit by Owner B's investment in the apartment building; that REALTOR® A should have raised rents in the building but had instead substituted the rent increase with an increased rate in his parking lot.

A hearing was called on the complaint before the Board's Professional Standards Committee. At the hearing, REALTOR® A presented data tabulating monthly parking rates in the general area of his enterprise, which showed that $100 was the average prevailing rate for similar facilities in the area. He also presented information which showed that the rent charged in Owner B's building was relatively high in comparison with similar apartments in the area.

After careful review of this data, the Hearing Panel concluded that REALTOR® A's parking lot enterprise had involved no expenditure of Owner B's funds; that his action in establishing this business had met with Owner B's approval at the outset; that REALTOR® A's exhibits demonstrated that there was no merit to Owner B's contention that a justified rent increase had been shunted into an increase in parking rates; that Owner B's interests had in no sense been betrayed; that the proximity of the parking area continued to be an asset to Owner B's building; and that REALTOR® A was not in violation of Article 6.

## Case #6-4: Acceptance of Rebates from Contractors (Revised Case #16-4 May, 1988. Transferred to Article 6 November, 1994.)

REALTOR® A, who managed a 30-year-old apartment building for Client B, proposed a complete modernization plan for the building, obtained Client B's approval, and carried out the work. Shortly after completion of the work, Client B filed a complaint with the Board of REALTORS® charging REALTOR® A with unethical conduct for receiving rebates or "kickbacks" from the contractors who did the work.

At the hearing, Client B presented written statements from the contractors to substantiate his charges.

REALTOR® A defended himself by stating that he had carried out all work involving the preparation of specifications, solicitation of bids, negotiations with the contractors, scheduling work, and supervising the improvement program; that he had presented all bids to the owner who had authorized acceptance of the most favorable bids; and that he and Client B had agreed on an appropriate fee for this service.

REALTOR® A also presented comparative data to show that Client B had received good value for his money.

After all of the contracts were signed and the work was under way, REALTOR® A found that his fee was inadequate for the time the work required; that he needed additional compensation but didn't want to add to his client's costs; and that when he explained his predicament to the contractors and asked for moderate rebates, they agreed.

Questioning by panel members revealed that the contractors felt that since they were being asked for rebates by the man who would supervise their work, they felt that they had no choice but to agree.

The Hearing Panel concluded that REALTOR® A was in violation of Article 6 of the Code of Ethics and that if he had miscalculated his fee with Client B, his only legitimate recourse would have been to renegotiate this fee with Client B.

## Case #6-5: Advertising Real Estate-Related Products and Services (Adopted November, 2006)

REALTOR® X, a principal broker in the firm XY&Z, prided himself on his state of the art website that he used both to publicize his firm and to serve the firm's clients and customers electronically. REALTOR® X maintained positive business relationships with providers of real estate-related products and services including financial institutions, title insurance companies, home inspectors, mortgage brokers, insurance agencies, appraisers, exterminators, decorators, landscapers, moving companies, and others. Given the volume of business REALTOR® X's firm handled, several of these companies advertised on the XY&Z home page and some of them, including the Third National Bank, included links to their own websites.

Buyer B, who had earlier entered into an exclusive buyer representation agreement with XY&Z, received frequent, automated reports from REALTOR® X about new properties coming onto the market. Hoping to purchase a home in the near future, he took advantage of REALTOR® X's rich website to familiarize himself with the real estate-related products and services advertised there. Hoping to expedite his purchase experience by pre-qualifying for a mortgage loan, Buyer B went to REALTOR® X's website and clicked on the Third National Bank's link. Once at the bank's website, he found a mortgage to his liking, completed the on-line application process, and learned in a matter of days that he was qualified for a mortgage loan.

In the meantime, Buyer B's property search, guided both by REALTOR® X personally and through periodic updates from REALTOR® X's website, proved fruitful. REALTOR® X and Buyer B visited a new listing on Hickory Street several times. Buyer B decided it met his needs and made an offer which was accepted by the seller.

A few weeks after the closing, Buyer B hosted a housewarming attended by his friend D, a website designer who had, coincidentally, been instrumental in developing REALTOR® X's website. Buyer B told D how helpful the information from REALTOR® X's website had been. "You know, don't you, that each time a visitor to REALTOR® X's website clicks on some of those links, REALTOR® X is paid a fee?", asked D. "I didn't know that," said Buyer B, "I thought the links were to products and services REALTOR® X was recommending."

Buyer B filed an ethics complaint against REALTOR® X alleging a violation of Article 6 for having recommended real estate products and services without disclosing the financial benefit or fee that REALTOR® X would receive for making the recommendation. At the hearing, REALTOR® X defended himself and his website, indicating that the advertisements for real estate-related products and services on his website were simply that, advertisements, and not recommendations or endorsements. He acknowledged that he collected a fee each time a visitor to his website clicked on certain links, regardless of whether the visitor chose to do business with the "linked to" entity or not. "In some instances I do recommend products and services to clients and to customers. In some instances I receive a financial benefit; in others I don't. But in any instance where I recommend a real estate-related product or service, I go out of my way to make it absolutely clear I am making a recommendation, and I spell out the basis for my recommendation. I also disclose, as required by the Code, the financial benefit or fee that I might receive. Those advertisements on my website are simply that, advertisements, no different than classified ads run in the local newspaper."

The hearing panel agreed with REALTOR® X's rationale, concluding that the mere presence of real estate-related advertisements on REALTOR® X's website did not constitute a "recommendation" or "endorsement" of those products or services, and that the "click through" fee that REALTOR® X earned when visitors to his website linked to certain advertisers' sites was not the type of financial benefit or fee that must be disclosed under Article 6.

## Case #6-6: Disclose Affiliated Business Relationships Prior to Recommending Real Estate-Related Products or Services (Adopted November, 2006)

REALTOR® Z, a broker and sole proprietor, had invested considerable time, money, and energy into developing her website. Seeking to recoup some of her costs, she approached virtually every provider of real estate-related products and services in her area, including financial institutions, title insurance companies, home inspectors, mortgage brokers, insurance agencies, appraisers, exterminators, decorators, landscapers, furniture and appliance dealers, rug and carpet dealers, moving companies, and others about advertising on her home page. As a condition of having a link to their own sites appear on her home page, REALTOR® Z required that a fee be paid to her each time a consumer "clicked through" from her site to an advertiser's.

Ads for providers of real estate-related products and services who agreed to REALTOR® Z's terms appeared on her home page under the heading "Preferred Providers." Immediately under that heading read: "These vendors provide quality goods and services. Please patronize them."

Buyer A frequented REALTOR® Z's website seeking information about available properties. Using that website, he became aware of a property on Elm Street that he made an offer on through REALTOR® Z, which was accepted by the seller. The sale closed shortly afterwards.

Buyer A was an avid remodeler and, using REALTOR® Z's website, linked to the Real Rug company website, among others. Interested by what he found there, he subsequently visited their showroom in person and purchased wall-to-wall carpeting and several expensive area rugs.

Given the size of Buyer A's order, one of the owners of Real Rug came to oversee the delivery and installation. In the course of conversation with Buyer A, he commented favorably on the amount of referral business received from REALTOR® Z's website. "And to think I only pay a small fee for each customer who's referred to me by REALTOR® Z," he added.

Buyer A was somewhat surprised that REALTOR® Z would receive money for referring clients and customers to providers of real estate-related products and services and contacted the local association of REALTORS®. The association provided him with a copy of the Code of Ethics. Reading it carefully, Buyer A concluded that REALTOR® Z's actions might have violated Article 6, and he filed an ethics complaint against REALTOR® Z.

At the hearing, REALTOR® Z defended herself and her website, stating that the advertisements for real estate-related products and services on her website were simply that, only advertisements and not recommendations or endorsements of the products and services found there. She acknowledged she collected a fee each time a visitor to her website clicked on the links found under "Preferred Providers" but claimed that simply referring to those advertisers as "preferred" did not constitute a recommendation or endorsement of the products and/or the services offered.

The hearing panel disagreed with REALTOR® Z's reasoning, pointing out that a reasonable consumer would certainly conclude that referring to a provider of real estate-related products or services as being "preferred" by a REALTOR® constituted a recommendation or endorsement. Further, since REALTOR® Z received a fee each time a consumer "clicked through" to one of REALTOR® Z's "Preferred Providers," REALTOR® Z received a referral fee, and disclosure of that fee was required under Article 6. REALTOR® Z was found in violation of Article 6.

# CASE INTERPRETATIONS RELATED TO ARTICLE 7:

## Case #7-1: Acceptance of Compensation from Buyer and Seller (Adopted as Case #8-3 May, 1988. Transferred to Article 7 November, 1994.)

Buyer A engaged REALTOR® B to locate a small commercial property. Buyer A explained his exact specifications indicating that he did not wish to compromise. They agreed that if REALTOR® B could locate such a property within Buyer A's price range, he — the buyer — would pay a finder's fee to REALTOR® B.

Two weeks later, REALTOR® B called Buyer A to advise that Seller C had just listed a property with him that met all of Buyer A's specifications except that the listed price was a bit higher than Buyer A wanted to pay. Buyer A inspected the property and liked it, but said he would adhere to his original price range. REALTOR® B called Buyer A three days later to say that Seller C had agreed to sell at Buyer A's price. The sale was made and REALTOR® B collected a commission from Seller C and a finder's fee from Buyer A which was not disclosed to Seller C, REALTOR® B's client.

Several weeks later, Seller C learned about the finder's fee that REALTOR® B had collected from Buyer A and filed a complaint with the Board of REALTORS® charging REALTOR® B with duplicity and unprofessional conduct. The complaint specified that when REALTOR® B had presented Buyer A's offer at less than the listed price, he, the seller, was reluctant to accept it, but REALTOR® B had convinced him that the offer was a fair one and not likely to be improved upon in the current market; and that REALTOR® B had dwelt at length on certain disadvantageous features of the property in an attempt to promote acceptance of the offer. The complaint charged that REALTOR® B had actually been the agent of the buyer while holding himself out as the agent of the seller. Further, Seller C asserted that REALTOR® B had never mentioned that he was representing the buyer or intended to be compensated by the buyer.

At the hearing, REALTOR® B's defense was that he had served both buyer and seller faithfully; that he had not accepted Seller C's listing until after he had agreed to assist Buyer A in locating a property; and that in his judgment the listed price was excessive and the price actually paid was a fair price.

A Hearing Panel of the Board's Professional Standards Committee, which heard the complaint, concluded that REALTOR® B had acted in violation of Article 7 of the Code of Ethics. His efforts to represent the buyer and the seller at the same time, and the fact that he intended to be compensated by both parties, should have been fully disclosed to all parties in advance.

# CASE INTERPRETATIONS RELATED TO ARTICLE 8:

## Case #8-1: Failure to Put Deposit in Separate Account (Revised Case #18-1 May, 1988. Transferred to Article 8 November, 1994. Revised November, 2001.)

REALTOR® A, a listing broker, obtained a signed offer to purchase, together with Buyer C's check for $5,000 as an earnest money deposit. Buyer C's offer was subject to the sale of his current residence. REALTOR® A presented the offer to Seller B who accepted it. REALTOR® A then inadvertently deposited the earnest money check in his personal checking account. Since Buyer C's offer was contingent on the sale of his current home, Seller B's house remained on the market. A week later, REALTOR® A received another offer to purchase Seller B's house from another broker and presented it to the seller as a back-up offer. Buyer C was informed about this new offer and reluctantly concluded that he would be unable to waive the sale contingency or proceed with the purchase of Seller B's house. He then asked REALTOR® A for his $5,000 check back. REALTOR® A explained that he had mistakenly deposited Buyer C's check in his personal bank account which had been attached since he received Buyer C's offer, and he was temporarily unable to refund the deposit to Buyer C.

Buyer C filed a complaint with the Board of REALTORS®, which was received by the Grievance Committee. The Grievance Committee concluded that the complaint warranted a hearing and referred it to the Professional Standards Committee. At hearing, REALTOR® A explained that his bank account had been unexpectedly attached following the loss of a civil suit which he was appealing; that his deposit of Buyer C's check in his personal account was a simple error in handling deposit slips; that he was arranging for the prompt release of his account; and that everything would be straightened out in three or four days, which should not be of great inconvenience to Buyer C.

It was the conclusion of the Hearing Panel that REALTOR® A was in violation of Article 8 of the Code of Ethics for having failed to put Buyer C's earnest money deposit in a special account separate from his personal funds.

## Case #8-2: Request for Investigation Filed by Board with the State Real Estate Commission (Originally Case #15-7. Revised and transferred to Article 18 as Case #18-4 May, 1988. Transferred to Article 8 November, 1994. Revised November, 2001.)

REALTOR® A listed Client B's residential property and sold it to Buyer C, who made a substantial deposit subject only to Buyer C's obtaining a mortgage on terms and conditions not exceeding a specified rate of interest within 60 days.

REALTOR® A assisted Buyer C by introducing him to officials of a lending institution, and after processing of his application for a mortgage, a written mortgage commitment was made by the lending institution which met the terms and conditions of the sales agreement. However, shortly after the mortgage commitment was received by Buyer C, REALTOR® A received a certified, return receipt requested letter from Buyer C, advising that Buyer C had changed his mind and would not go through with the sale. REALTOR® A discussed the matter by phone, but Buyer C said he would rather forfeit his deposit and definitely would not complete the sale, even at the risk of the seller suing for specific performance.

REALTOR® A then advised Client B of Buyer C's refusal to go through with the sale and Client B told REALTOR® A that he did not wish to sue Buyer C, but would just accept a portion of the forfeited deposit as specified in the listing agreement between Client B and REALTOR® A.

REALTOR® A then obtained a written release from the sale from Client B and Buyer C, and promised to send Client B a check for the portion of the forfeited deposit due to Client B as specified in the listing agreement. However, REALTOR® A failed to send Client B a check and Client B filed a complaint with the Professional Standards Administrator of the Board alleging a violation of Article 8 of the Code of Ethics.

At the hearing, Client B stated that he had no complaint about REALTOR® A's services to him except REALTOR® A's failure to provide Client B with the portion of the forfeited deposit due him, and that after several telephone calls and letters, REALTOR® A had told Client B that he would provide the forfeited monies due Client B "just as soon as he could." Client B said REALTOR® A told him he had some unexpected expenses and therefore Client B would have to wait until REALTOR® A obtained other funds which he expected to receive shortly.

REALTOR® A admitted the facts as related and further admitted that he had not placed the deposit received from Buyer C into an escrow account, but had placed it in his general funds. He said that unexpected expenditures had caused a deficit balance in these funds, and he would pay Client B as soon as he could.

The Hearing Panel concluded that REALTOR® A was in violation of Article 8 of the Code of Ethics and recommended that the decision, when final, be forwarded to the State Real Estate Commission as a possible violation of the public trust.

The Board of Directors affirmed the decision of the Hearing Panel; ordered implementation of the recommended sanction; and requested that the President forward, with advice of Board legal counsel, the final decision to the State Real Estate Commission as a possible violation of the public trust.

## CASE INTERPRETATIONS RELATED TO ARTICLE 9:

None currently existing.

# CASE INTERPRETATIONS RELATED TO ARTICLE 10:

## Case #10-1: Equal Professional Services by the REALTOR® (Reaffirmed May, 1988.)

A minority couple called on REALTOR® A and expressed interest in purchasing a home in the $130,000 to $145,000 price range with at least three bedrooms, a large lot, and located in the Cedar Ridge area of town. Being familiar with Cedar Ridge through handling of numerous listings in that area, REALTOR® A explained that houses in Cedar Ridge generally sold in the price range from $180,000 to $220,000. The couple thereafter indicated that they would then like to see "what was available" within their economic means. After further discussion with the couple concerning their financial circumstances and the maximum price range they could afford, REALTOR® A concluded that the couple could not afford more than $137,500 as an absolute maximum. The couple was then shown homes which met the criteria they had described to REALTOR® A. However, although REALTOR® A discussed with the couple the amenities and assets of each of the properties shown to them, they expressed no interest in any of the properties shown. A few days later, the minority couple filed charges with the Professional Standards Administrator of the Board, charging REALTOR® A with a violation of Article 10 of the Code Ethics, alleging that REALTOR® A had violated the Article by an alleged act of racial steering in his service to the minority couple.

The Professional Standards Administrator promptly referred the complaint to the Grievance Committee, which conducted a preliminary review and referred the complaint back to the Professional Standards Administrator, instructing that a hearing be arranged before a Hearing Panel of the Professional Standards Committee. REALTOR® A was duly noticed and provided with an opportunity to make his response to the complaint.

At the hearing, the minority couple elaborated upon their charge of the alleged racial steering by REALTOR® A, telling the Hearing Panel that they had specifically expressed an interest in purchasing a home in the Cedar Ridge area, but were not shown any homes in Cedar Ridge. REALTOR® A responded by producing written records documenting the housing preference of the couple as they had described it to him, including price range and demonstrating that he had shown them a number of listings that met the requirements as expressed by them, although admittedly none of the properties shown were located in Cedar Ridge. However, REALTOR® A explained that he had advised the minority couple that there were no listings available in Cedar Ridge falling within the price range expressed by them. Further, REALTOR® A produced listing and sales information concerning numerous homes in Cedar Ridge which confirmed an average sales price of $180,000 to $220,000. REALTOR® A told the Hearing Panel that he had, in fact, offered equal professional service to the minority couple by showing them properties which met the criteria they had presented to him. He pointed out to the Hearing Panel that the couple was charging him with "racial steering" which presumably they were relating to the denial of equal professional service. REALTOR® A stated, "If there were listings in Cedar Ridge in the $130,000 to $145,000 price range with at least three bedrooms and a large lot, and I had refused to show them such listings, then they might have a point in their charge. But there are no such listings available now, nor have there been at any time since the original development of the Cedar Ridge area five years ago. I could not show them what did not and does not exist."

The Hearing Panel concluded that REALTOR® A had properly met his obligation to offer equal professional service and was not in violation of Article 10.

## Case #10-2: Denial of Equal Professional Service (Revised May, 1988. Revised November, 2001.)

On a Saturday morning, REALTOR-ASSOCIATE® B, a salesperson affiliated with REALTOR® A, answered a call from Prospect C, a recent college graduate who was moving into the city to take his first teaching job at Northwest High School. Prospect C was married, had two young children, and was a veteran.

After qualifying Prospect C for a three-bedroom home in the $80,000 range, REALTOR-ASSOCIATE® B described available properties near Northwest High School and set up appointments to show houses to Prospect C. That afternoon, REALTOR-ASSOCIATE® B showed Prospect C and his wife three houses in neighborhoods near the high school.

On Monday, at a faculty meeting, Prospect C met Prospect D, who was also moving into the city to take a teaching position at the same high school and who was also in the market for a home. Prospect D was married with two young children and was also a veteran.

Prospect C told Prospect D of REALTOR-ASSOCIATE® B's knowledge of the market and VA financing and how helpful he had been. Prospect D called REALTOR® A's office that afternoon and asked for REALTOR-ASSOCIATE® B.

REALTOR-ASSOCIATE® B met Prospect D and determined Prospect D was also qualified for the $80,000 range. Prospect D told REALTOR-ASSOCIATE® B that he was also a new teacher at Northwest High School and had been referred by Prospect C. Prospect D was black.

REALTOR-ASSOCIATE® B showed Prospect D houses in several neighborhoods undergoing racial transition but did not show Prospect D homes in neighborhoods near the high school.

Prospect D asked about houses closer to Northwest High School. REALTOR-ASSOCIATE® B replied that he had no knowledge of any homes in that area for which Prospect D could qualify. The next day, Prospect D, while visiting Prospect C, related his problems in finding a home near the high school and learned that REALTOR-ASSOCIATE® B had shown Prospect C several homes near the high school. Prospect D filed a complaint with the Board of REALTORS® claiming that REALTOR-ASSOCIATE® B had discriminated against him and his family by not offering equal professional services.

The complaint was reviewed by the Grievance Committee. REALTOR-ASSOCIATE® B was charged with an alleged violation of Article 10, and the complaint was referred to a Hearing Panel of the Board's Professional Standards Committee for hearing.

At the hearing, REALTOR-ASSOCIATE® B admitted that he did not use the same efforts to show Prospect D properties in neighborhoods near the high school as he did with Prospect C because he felt Prospect D and his family would feel more comfortable living in a racially integrated neighborhood.

The Hearing Panel found REALTOR-ASSOCIATE® B in violation of Article 10 of the Code of Ethics.

## Case #10-3: Equal Professional Services by the REALTOR® (Revised November, 2001.)

REALTOR® A was contacted by Prospect C, a female head of household, concerning a home for sale which was advertised during the previous week in the newspaper's classified real estate section. When informed by REALTOR® A that the home in question had already been sold, Prospect C asked to be shown homes in the $80,000 to $90,000 price range with three bedrooms and located near schools and playgrounds. REALTOR® A proceeded to show Prospect C a number of homes which met her stated criteria for price range, size, and location, but Prospect C was interested in none of them.

Shortly thereafter, Prospect C filed a complaint with the Board of REALTORS® against REALTOR® A, complaining that he had violated Article 10 of the Code of Ethics by failing to offer equal professional service to her because she was a woman. Prospect C contended that she did not receive the same professional service from REALTOR® A that would have been afforded to a male head of household and home seeker with the same criteria for price range, size, and location.

The complaint was referred to the Grievance Committee and after its preliminary review and evaluation, the Grievance Committee referred it to the Professional Standards Administrator and directed that a hearing be arranged before a Hearing Panel of the Professional Standards Committee. The Professional Standards Administrator made the necessary arrangements and provided the proper notices and opportunity for response by REALTOR® A.

At the hearing, Prospect C expressed her complaint and concluded by saying, "It was obvious to me that REALTOR® A discriminated against me because I am a woman. In my opinion, he showed little interest in helping me to find a home."

REALTOR® A responded that he was sorry that Prospect C had that opinion, but that certainly he held no such attitude as charged. REALTOR® A advised the Hearing Panel that he routinely utilized a contact report for each prospect which includes identification information on the clients, provides data on the price range, type of house and location preferred by the prospect, and records the homes shown to the prospect with information on the price, type, and location of each home shown. REALTOR® A presented several such reports from his files including the report pertaining to Prospect C. Prospect C's report showed that several homes shown to her met the data as supplied by her.

The Hearing Panel concluded that REALTOR® A's documented evidence did, in fact, establish a clear position in which equal professional service had been offered and that no violation of Article 10 had occurred.

## Case #10-4: Use of "Choose Your Neighbor" Marketing Letters (Adopted November, 1987. Revised November, 2013.)

REALTOR® A listed a property in a new subdivision. At the instruction of his client, Seller X, REALTOR® A did not file information on the listing with his Board's MLS, did not place a "For Sale" sign on the property and did not advertise the property in the local newspaper. Seller X had told REALTOR® A that he wanted the sale handled quietly, with the new purchasers being people who would "fit into the neighborhood — people with the same socioeconomic background" as the other residents of the subdivision.

Based on his conversation with Seller X, REALTOR® A's only marketing effort was mailing a letter to the other residents of the subdivision, inviting them ". . . to play a part in the decision of who your next neighbor will be. If you know of someone who you would like to live in the neighborhood, please let them know of the availability of this home, or call me and I will be happy to contact them and arrange a private showing."

REALTOR® A's marketing strategy came to the attention of REALTOR® B, whose mother lived in the subdivision. REALTOR® B filed a complaint charging REALTOR® A with a violation of Article 10 of the Code of Ethics.

At the hearing, REALTOR® B told the Hearing Panel of receiving a copy of the marketing letter from his mother, who had recently moved to the subdivision. REALTOR® B advised the panel that he had checked the Board's MLS for information on the property, had driven past the house to look for a "For Sale" sign and had scanned the Sunday real estate section of the local newspaper for information on the property. Finding no mention of the property in either the MLS or the newspaper and noting the absence of a sign on the property, REALTOR® B concluded that REALTOR® A's marketing strategy was to limit access to the property to individuals preselected by the current residents. "In my mind," said REALTOR® B, "this could only mean one thing. REALTOR® A was deliberately discriminating against home seekers from other areas, or those with different backgrounds, who would never have the opportunity to learn about the house's availability. Obviously, REALTOR® A was directing all of his marketing energies into finding purchasers who would not disrupt the ethnic and economic character of the neighborhood."

REALTOR® A defended his actions by advising the panel that he was acting on Seller X's instructions. Seller X appeared as a witness for REALTOR® A and confirmed this fact, adding that he and the other residents of his block had an informal agreement that they would try to find "suitable" purchasers for their homes if they ever decided to sell. Seller X felt that by broadening the marketing campaign to include all residents of the subdivision he had increased the chances of finding such potential purchasers.

The Hearing Panel found REALTOR® A in violation of Article 10 of the Code of Ethics. In their decision, the panel advised REALTOR® A that no instruction from a client could absolve a REALTOR® from the obligation to market properties without regard to race, color, religion, sex, handicap, familial status, country of national origin, sexual orientation, or gender identity, as expressed in Article 10. There was no doubt, in the panel's opinion, that the exclusive use of "Choose Your Neighbor" letters to market the property was designed to circumvent the requirements of Article 10.

## Case #10-5: Use of "Choose Your Neighbor" Form Letters as Part of a Marketing Campaign

(Adopted November, 1987. Revised November, 2013.)

The ABC Board of REALTORS® received a complaint from a local fair housing group alleging that REALTOR® A was using discriminatory marketing techniques, in violation of Article 10 of the Code of Ethics, as the listing broker for a property in a new subdivision.

In support of their complaint, the fair housing group provided copies of "Choose Your Neighbor" form letters sent by REALTOR® A to current neighborhood residents. The letters announced that the property was on the market and invited neighborhood residents to contact REALTOR® A if they knew of anyone who they thought might be interested in purchasing the home.

At the hearing, REALTOR® A defended his use of "Choose Your Neighbor" form letters by demonstrating that they were just one element of his marketing campaign, and were not an attempt to restrict access to the property on the basis of race, color, religion, sex, handicap, familial status, country of national origin, sexual orientation, or gender identity, as prohibited by Article 10. REALTOR® A produced copies of advertisements run in several newspapers, "OPEN HOUSE" flyers distributed at supermarkets throughout the town, and a copy of the property data sheet submitted to the Board's MLS. REALTOR® A remarked, "In my experience, the current residents of a neighborhood often have friends or relatives who have said that they would love to live in the neighborhood. It just makes sense to me to include contacting these folks in any marketing campaign!"

The Hearing Panel found REALTOR® A not in violation of Article 10. In their "Findings of Fact and Conclusions," the panel noted that the use of "Choose Your Neighbor" letters is not a per se violation of Article 10, but cautioned that such letters could be used in a manner inconsistent with the intent of Article 10. If used in conjunction with other marketing techniques and not as a means of limiting or restricting access to property on the basis of race, color, sex, handicap, familial status, country of national origin, sexual orientation, or gender identity, "Choose Your Neighbor" letters were another method of announcing a property's availability and attracting potential purchasers.

# CASE INTERPRETATIONS RELATED TO ARTICLE 11:

## Case #11-1: Appraiser's Competence for Assignment (Revised May, 1988.)

REALTOR® A sold a light industrial property to Buyer B, a laundry operator. Several months later, Buyer B engaged REALTOR® A's services to appraise the property and to supply an appraisal report for use in possible merger with another laundry. REALTOR® A carried out this appraisal assignment and submitted his report. Buyer (now Client) B was dissatisfied with the report feeling that the valuation, in comparison with the market price that he had paid was excessively low. Client B then engaged an appraiser specializing in industrial property, and after receiving the second appraisal report, filed a complaint with the Board of REALTORS® charging REALTOR® A with incompetent and unprofessional service as an appraiser.

At the hearing, questioning established that REALTOR® A could cite no other industrial property appraisal he had made, and that his appraisal experience had been limited exclusively to residential property. The hearing also established that when the client proposed the appraisal, REALTOR® A had readily accepted the assignment and that he had at no time disclosed the extent and limitations of this appraisal experience with his client.

REALTOR® A was found by the Hearing Panel to be in violation of Article 11.

## Case #11-2: Obligation to Disclose Assistance in Appraisal (Revised November, 2001.)

REALTOR® A completed an appraisal of a large house for Client B and submitted an appraisal report. In connection with a mortgage loan application, the appraisal report came to the attention of three other REALTORS®. One of them, REALTOR® C, filed a complaint with the local Board of REALTORS®, charging REALTOR® A with violation of Article 11 of the Code of Ethics. The complaint stated that REALTOR® A, while engaged in appraising Client B's property had called REALTOR® C and asked for information concerning residential property values in the area where Client B's property was located; that REALTOR® C had answered the questions; and that REALTOR® A's appraisal report had failed to acknowledge this assistance provided by REALTOR® C.

At the hearing, REALTOR® A protested that REALTOR® C was misreading Article 11, which is concerned entirely with conditions that must be met when a REALTOR® undertakes an appraisal that is outside the field of his experience. REALTOR® A established the fact that he had many years of successful experience as an appraiser of residential property in the area; that he specialized in that category of appraisal; that he had called a number of REALTORS® and officers of mortgage lending institutions to ask general questions about current residential values in the particular neighborhood in keeping with his usual practice; that he did not consider the courtesy of responding to general questions of this kind as constituting formal assistance in making an appraisal that is required to be identified under the terms of Article 11.

The Hearing Panel concluded that REALTOR® A's defense was valid, and that his action did not violate Article 11.

## Case #11-3: Identification of Contributor to Appraisal (Revised November, 2001.)

REALTOR® A, who had made a number of residential and farm appraisals for Client B, a bank, was asked to appraise the real property of a corporation that operated two extensive industrial parks. REALTOR® A made his appraisal of open land belonging to the corporation for future development. With respect to specialized industrial structures included in the assignment, he engaged the XYZ firm of industrial engineers to make a study of obsolescence and of current reproduction costs leading to conclusions. The report on this study was incorporated into REALTOR A's appraisal report to Client B, without identifying the XYZ firm as a contributor to the report.

Sometime after the submission of the report, Engineer C, a member of the XYZ firm, was invited to speak on an appraisal panel arranged by the local Board of REALTORS®. During his talk he used as an illustration some of the industrial properties that had figured in REALTOR® A's appraisal report. Following the program, in informal conversation with Engineer C, REALTOR® B learned of REALTOR® A's action in incorporating the engineering firm's conclusions into his own appraisal without identification of the firm and its contributions to the assignment. REALTOR® B then filed a complaint against REALTOR® A alleging violation of Article 11 of the Code of Ethics. After examining the facts as set out above, the complaint was referred by the Grievance Committee for hearing before a panel of the Board's Professional Standards Committee.

At the hearing, REALTOR® A took the position that he had not violated Article 11 because the essence of the appraisal assignment had been to exercise his judgment as an appraiser, and that he had not engaged any other person to exercise judgment in connection with the assignment. He had simply employed the XYZ engineering firm, he said, to make certain conclusions as to the extent of obsolescence in properties and as to the current cost of reproducing them. Conceding that he had incorporated the XYZ firm's report into his own appraisal report, REALTOR® A contended that this material was only incidental, and that the essential appraisal function of arriving at a valuation was entirely his own work. He stated further that he had paid the XYZ firm for its services and felt that relieved him of any obligation to identify the firm in his appraisal report.

During the hearing it was established that REALTOR® A had no previous experience in appraisal of industrial property, and that he had not disclosed this to Client B at the time he accepted the assignment.

The Hearing Panel concluded that REALTOR® A's defense was insufficient; that the appraisal process includes the findings and calculations that support judgment; that the XYZ firm's conclusions had constituted a major element of the appraisal report; that under the requirements of Article 11, REALTOR® A should have identified the firm and its contribution.

REALTOR® A was found in violation of Article 11.

## Case #11-4: Disclosure of Limited Appraisal Experience (Reaffirmed May, 1988.)

REALTOR® A was asked by Client B, an officer of a bank, to appraise an office building. In discussing the matter, REALTOR® A pointed out that while he was an experienced appraiser, he had never appraised an office building. Client B expressed his confidence in REALTOR® A, based on years of satisfactory service in appraising residential property, and said that notwithstanding REALTOR® A's lack of previous experience in appraising an office building, the bank wanted his judgment and asked him to accept the assignment to appraise the office building.

Accordingly, REALTOR® A undertook the assignment, and completed his appraisal report. The report later came to the attention of REALTOR® C, who complained to the Board of REALTORS® that REALTOR® A had violated Article 11 of the Code of Ethics by taking an appraisal assignment outside the field of his experience without obtaining the assistance of an authority on office buildings.

At the hearing, Client B appeared as a witness for REALTOR® A and stated that the assignment had been given to REALTOR® A after he had disclosed his lack of previous experience in appraising office buildings, and that the client was entirely satisfied by the manner in which REALTOR® A had completed his assignment.

The Hearing Panel concluded that Client B's statement completely exonerated REALTOR® A of any violation of Article 11, since it was clear that he had disclosed his lack of previous experience in appraising the type of property in question, and that he had been given the assignment after this disclosure was made to the client.

## Case #11-5: Appraiser's Competence to Assignment (Revised November, 2001.)

Client A engaged REALTOR® B to appraise an apartment house, indicating that he planned to put the building on the market. When the appraisal was submitted, REALTOR® B solicited the listing of the building at the price shown as current market value in his appraisal. Client A asked for time to think it over. Surprised at what he felt to be a low valuation in REALTOR® B's appraisal, Client A went to REALTOR® C, recounted his business relations with REALTOR® B, and engaged REALTOR® C to make a second appraisal of the building. REALTOR® C submitted his appraisal which was 25% higher than REALTOR® B's valuation. Client A listed the property for sale with REALTOR® C at his appraised value and the building was shortly sold by REALTOR® C at that price.

REALTOR® C filed a complaint against REALTOR® B charging a violation of Article 11 in having undertaken an appraisal that was outside the field of his experience and competence.

At the hearing, at which a written statement by Client A was entered into the record, all the facts set out above were established.

Questioning revealed that REALTOR® B had engaged in very little appraisal work, and never before with respect to any kind of property except single family houses, that he had not obtained qualified assistance, and that he had not acquainted Client A with the limited extent of his experience.

It was the conclusion of the Hearing Panel that REALTOR® B was in violation of Article 11 because he had undertaken an appraisal for which he was not qualified, without obtaining competent assistance and without advising his client as to the facts respecting his limited experience as an appraiser.

## Case #11-6: Appraiser's Obligation to Consider All Factors of Value (Revised November, 2001.)

Client A owned a commercial property in the path of a proposed street construction project. He was approached by a representative of the city government to open negotiations for its purchase. Client A engaged REALTOR® B to make an appraisal of the property. When Client A received the appraisal report he felt that it was unrealistic and was reluctant to use it in negotiations with the city. He then engaged REALTOR® C to make another appraisal. REALTOR® C's appraisal resulted in a considerably higher value which seemed plausible to Client A, who used it in a satisfactory negotiation with the city, avoiding eminent domain procedures. Following completion of the transaction, Client A filed a complaint with the local Board of REALTORS® charging REALTOR® B with violating Article 11 of the Code of Ethics by not considering all factors affecting the value of property in his appraisal on behalf of Client A. The Grievance Committee reviewed the complaint and forwarded the matter to the professional Standards Committee for a hearing.

At the hearing, REALTOR® B defended himself by stating that he was primarily a residential broker; that he knew comparable market values in the areas by virtue of his activities as a broker; that he considered comparable sales to be the only significant indicator of market value; that the cost approach and the income approach of determining value were academic if the appraiser could produce a valuation in line with the price that a given property would bring at the time in the market; that his valuation had been made accordingly, and that he was willing to stand by it.

In reviewing REALTOR® C's appraisal, the Hearing Panel noted that he had considered Client A's property as an investment property, and had determined not only comparable market values as indicated by recent sales of similar property in similar locations, but also had fully taken into account the current reproduction cost of an investment property of similar nature; that he had capitalized the net investment return of Client A's property, and had arrived at his valuation by giving weight to all three of these basic methods of appraisal. The panel also noted that the appraisal had definitely been a factor in the city's agreement to purchase, although the city was empowered to use eminent domain action if it was judged that the owner's purchase price was excessive. Part of REALTOR® C's appraisal had commented upon relatively low current market values in the area because of adverse environmental circumstances, but balanced this with its analysis of the income return on the property to the investor.

It was concluded by the Hearing Panel that REALTOR® B had violated Article 11 of the Code of Ethics by not taking all pertinent factors affecting value into consideration in making his appraisal.

### Case #11-7: Appraisal Fee as Percentage of Valuation (Transferred to Article 1 November, 2001.)

### Case #11-8: REALTOR®'s Obligation to Comply with USPAP (Adopted November, 1995. Deleted November, 2000.)

### Case #11-9: REALTOR®'s Obligation to Comply with USPAP (Adopted November, 1995. Deleted November, 2000.)

### Case #11-10: REALTOR®'s Obligation to Disclose Present or Contemplated Interests (Adopted May, 1997. Revised November, 2000.)

Client A, an owner, needed to sell a property. She approached REALTOR® B to list the property. They agreed to the terms of the listing and the property was listed.

An offer was made and was accepted by Client A. After the prospective purchaser completed the loan application, REALTOR® B was contacted to appraise the property. When the lender was preparing the closing statement, the lender became aware that the listing broker was also the appraiser and filed a complaint with the Board of REALTORS® alleging that REALTOR® B had failed to disclose in the appraisal that he had an interest in the property, specifically seeing that the sale closed. The complaint was referred by the Grievance Committee for hearing before a panel of the Board's Professional Standards Committee.

At the hearing, REALTOR® B protested that the lender was misreading Article 11, as interpreted by Standard of Practice 11-1, claiming that "any present or contemplated interest" referred only to an ownership interest. REALTOR® B concluded that the listing commission had been earned when a ready, willing, and able purchaser contracted to purchase the property and that the appraisal process was separate and distinct from the brokerage process.

The Hearing Panel concluded that REALTOR® B's defense was specious and because he was the listing agent REALTOR® B was biased in favor of Client A since a successful transaction would benefit REALTOR® B in the form of a commission.

REALTOR® B was found in violation of Article 11.

### Case #11-11: REALTOR®'s Obligation to Disclose Present or Contemplated Interest (Adopted May, 1997. Revised November, 2000.)

Owner A was considering refinancing a property. Client B, a lender, ordered an appraisal from REALTOR® C. The appraisal report was completed and later Owner A decided to sell the property instead of refinancing it. Owner A contacted REALTOR® C who listed the property. An offer was made that was accepted by Owner A.

At the loan application, the prospective purchaser told the lender, Client B, that a recent appraisal on the property had been done for Client B. When the lender became aware that the listing broker was also the appraiser, the lender filed a complaint with the Board of REALTORS® alleging that REALTOR® C had not disclosed her "present or contemplated interest" in the property as required by Article 11, as interpreted by Standard of Practice 11-1. The complaint was referred by the Grievance Committee for hearing before a panel of the Board's Professional Standards Committee.

At the hearing, a written statement from Owner A containing all the facts above was entered into evidence. REALTOR® C stated that the appraisal had been completed in accordance with Standard of Practice 11-1 and it was only after Owner A decided to sell, rather than refinance, that there were any discussions about REALTOR® C representing the owner in the sale of the property.

REALTOR® C stated that the owner had been appreciative of the time that she had spent discussing the subject's neighborhood and existing market conditions, and that the owner had decided that he wanted someone really knowledgeable to represent him in the sale of his property.

Because REALTOR® C's disclosures regarding present and contemplated interests were true at the time they were made in connection with the appraisal, the Hearing Panel concluded that REALTOR® C was not in violation of Article 11.

# CASE INTERPRETATIONS RELATED TO ARTICLE 12:

## Case #12-1: Absence of Name on Sign (Reaffirmed Case #19-3 May, 1988. Transferred to Article 12 November, 1994. Revised November, 2001.)

Prospect A observed a sign on a vacant lot reading: "For Sale — Call 330-5215." Thinking he would be dealing with a For Sale by Owner, he called the number on the sign. He was surprised and offended that the lot was exclusively listed by REALTOR® A, and the telephone number on the sign was the home number of REALTOR-ASSOCIATE® B in REALTOR® A's office.

Prospect A filed a complaint against REALTOR® A and REALTOR-ASSOCIATE® B. REALTOR® A and REALTOR-ASSOCIATE® B alleging a violation of Article 12 of the Code of Ethics.

At the hearing, REALTOR® A stated that he permitted REALTOR-ASSOCIATE® B to put up the sign. REALTOR-ASSOCIATE® B's defense was that the sign was not a "formal" advertisement, such as a newspaper advertisement, business card, or billboard, to which he understood Article 12 to apply.

The Hearing Panel determined that the sign was an advertisement within the meaning of Article 12; that its use violated that Article of the Code; and that both REALTOR® A and REALTOR-ASSOCIATE® B were in violation of Article 12.

## Case #12-2: Exaggeration in Advertising

(Reaffirmed Case #19-4 May, 1988. Transferred to Article 12 November, 1994. Revised November, 2001.)

Prospect A noted REALTOR® B's classified advertisement describing a home with five acres "about 20 miles from the city" giving directions to the "modern 3-bedroom home, well maintained, and set in a charmingly landscaped site."

After visiting the property, Prospect A clipped out the ad and pasted it to a letter to the Board of REALTORS® complaining of the gross exaggeration it contained, which had induced him to waste time and money in inspecting the property. The property, he said, was actually 36 miles from the city limits. Its wood-lath support for plaster, which was visible in many large breaks in the walls, indicated it to be 40 years old or more. There was no evidence of painting in recent years. Several windows were broken, half of the back steps were missing. The house was located at the end of a crude dirt road in a small cleared area that had become densely overgrown in weeds — a picture of extreme neglect.

REALTOR® B was asked to respond to the charge of misleading advertising, and a hearing was called on the complaint by the Professional Standards Committee. REALTOR® B criticized the complainant for bringing the matter to the Board, pointing out that Prospect A had failed to mention that the property was priced at only $30,000; that at such a price it was an exceptionally good buy to anyone looking for a small place with a few acres; that to get attention to such properties it was necessary to do a bit of "puffing" to attract attention in advertising; that as a matter of fact the general lines of the house were similar to many of modern design; that the house had been well enough maintained to be salvageable by anyone who would do a reasonable amount of work on it; and that, in his opinion, the site was truly "charming" in its rugged simplicity.

The Hearing Panel concluded that REALTOR® B had used gross exaggeration in his advertisement and was found in violation of Article 12 of the Code of Ethics.

## Case #12-3: Exaggeration in Advertising

(Reaffirmed Case #19-5 May, 1988. Transferred to Article 12 November, 1994. Revised April, 1998.)

In his efforts to sell a furnished apartment building, REALTOR® A, the listing broker, used newspaper advertising describing the property, including such phrases as "modern furnishings . . . most units newly equipped with ranges and refrigerators . . . excellent earnings record." Buyer B saw the ad, called REALTOR® A, was shown the property, signed an offer to buy, and wrote a check for a deposit. A few days later, he made a more careful inspection of the property and its earnings statements, and filed a complaint against REALTOR® A with the Board of REALTORS® charging misleading and exaggerated advertising.

The complaint was referred to the Grievance Committee which, after its review and evaluation, referred it to the Professional Standards Administrator directing that a hearing be scheduled before a Hearing Panel of the Professional Standards Committee.

At the hearing, Buyer B stated that because of certain pressures on him at the time, prudently or not, he had acted hurriedly in his business with REALTOR® A; that if the principle of caveat emptor governed the situation, he recognized the weakness of his position; that he also understood that his legal recourse was questionable; but that from the standpoint of ethical conduct he felt he had a grievous complaint against REALTOR® A that should be addressed.

He explained that he had been looking for just such an investment property in the general location; that the price appealed to him; that he had only a very limited time available on the day he was shown the property; that the three apartments which he was shown were attractively furnished and obviously had nearly new equipment in excellent condition; and that he had thought it advisable to make an offer, feeling that he could place full reliance on REALTOR® A's representation of the property both in his oral statements and his newspaper advertising.

His second, and more thorough, inspection revealed that the three apartments shown to him were the only apartments in the building with modern furnishings; the other nine had unattractive, badly worn and outmoded furnishings, with kitchen ranges and refrigerators more than ten years old. Moreover, he said, the earnings record of the building, which by ordinary standards was satisfactory for the two years immediately preceding, had shown high vacancy and a loss in two of the ten years of the building's life, had shown a definitely low return in three years, and had never shown an earnings record that could be described as "excellent".

Upon questioning as to whether full records of income and expenses had been submitted to him before he signed the contract, Buyer B said he was shown only the statements for the two proceeding years by REALTOR® A, who said that the other statements could be obtained for him, as was later done.

Responding to Buyer B's specifics, REALTOR® A pointed out that the complaint did not charge him with misrepresenting anything in his oral statements to Buyer B; that the complaint, therefore, was based solely on his advertisement which he felt did not depart from accepted standards in advertising; that since the building was about ten years old, he felt free to say that all of its features, including the furnishings, were "modern"; that when he stated "most units newly equipped with ranges and refrigerators" he based that, too, on the fact that the building was about ten years old; and that, in his opinion, the earnings record of the building for its entire operating life, since it had shown a loss in only two of its ten years, could reasonably be described as "excellent".

Questioning of REALTOR® A revealed that the three apartments shown to Buyer B were, in fact, furnished with better and more modern furniture than the other nine apartments, and that these three were the only apartments in which the original ranges and refrigerators had been replaced. REALTOR® A's comment on this was, "Naturally, in showing the building, I directed attention to the most attractive features. This is just ordinary competence in selling."

It was the conclusion of the Hearing Panel that REALTOR® A's advertising used exaggeration and had not presented a true picture in his representations to the buyer. REALTOR® A was found in violation of Article 12.

## Case #12-4: True Picture in Advertising

(Reaffirmed Case #19-6 May, 1988. Transferred to Article 12 November, 1994.)

REALTOR® A was the exclusive marketing agent for a home building organization in Redtown, a suburban community within a metropolitan area that also contained the communities of Whitetown and Bluetown. As part of his sales effort, he ran the following newspaper advertisement:

Greenwood
In Redtown
STARTLING NEWS

On an identical house bought at "Greenwood" in Redtown, we have found that the difference in tax rates allows you to get $5,000 more house free than if you bought the same house in Whitetown or Bluetown. We have been doing some figuring, and here's what we came up with:

Plan A — built in Whitetown
Taxes approximately . . . $1,200

Plan B — built in Bluetown
Taxes approximately . . . $1,050

Plan C — built in Redtown
Taxes approximately . . . $650

This means that in Redtown your monthly payments for the same house would be approximately $46 less than in Whitetown, and $33 less than in Bluetown. Since principal and interest are the same, you get $5,000 or more house FREE when you buy in Greenwood.

REALTOR® B objected to the ad and sent it with a complaint to the Professional Standards Administrator of his Board, charging that the ad was misleading. The Professional Standards Administrator referred it to the Grievance Committee. The Grievance Committee, upon consideration, referred it back to the Professional Standards Administrator to schedule a hearing before a Hearing Panel of the Professional Standards Committee. The Hearing Panel considered the matter in a hearing attended by REALTORS® A and B.

It was the panel's opinion that it is not unethical to point out the current tax differentials of various municipal jurisdictions, but that the final paragraph of the advertisement in question constituted an attempt to capitalize on a tax differential that is not predictable. To offer $5,000 or more house "free" based upon indefinite continuation of a current tax situation, which is not certain, is misleading. Therefore, the Hearing Panel concluded, the ad violated Article 12 of the Code of Ethics in that it did not present a true picture that could be assured by REALTOR® A.

## Case #12-5: True Picture in Use of "Sold" Sign

(Revised Case #19-7 May, 1988. Transferred to Article 12 November, 1994.)

REALTOR® A, the listing broker, was charged by REALTOR® B with giving a false picture in his advertising by putting up a "sold" sign on property that had not been sold. REALTOR® A was notified of the complaint and of the date of a hearing on it scheduled before a Hearing Panel of his Board's Professional Standards Committee.

Undisputed testimony offered during the hearing revealed that REALTOR® A was an exclusive agent, offering Client C's home for sale. An offer to buy was obtained from Prospect D and a counter proposal by Client C was accepted. An earnest money deposit was made, and a date for settlement was agreed upon. At that point, REALTOR® A put up his "sold" sign. Several days later, Prospect D received an unexpected notice from his employer that he was to be transferred to another city. Prospect D immediately contacted REALTOR® A and Client C about his predicament. In an amicable discussion it was agreed that everyone had acted in good faith; that the property was readily marketable; that the earnest money deposit would be refunded; and that REALTOR® A would put the property on the market again. A week later, when REALTOR® B was showing a number of houses to a prospective buyer, they drove by Client C's property, and the prospect casually said that she didn't understand the "sold" sign, since she had been taken to see the house that morning by REALTOR® A.

REALTOR® B contended that a "sold" sign is a measure of a REALTOR®'s advertising, and that it cannot give a true picture if it is put up prior to the settlement and actual transfer of ownership.

The Hearing Panel's decision agreed with REALTOR® B's contention that the use of a "sold" sign constitutes advertising by a REALTOR® but did not agree that a "sold" sign could be put up only after the actual settlement and transfer of ownership. The decision indicated that after the client's acceptance of a bona fide offer, REALTOR® A could consider that he had brought about a sale and would not be in violation of the requirement to give a "true picture" by putting up a "sold" sign. However, once it was clear that the sale had fallen through, the "sold" sign should have been immediately removed since allowing the sign to remain in place no longer provided a "true picture."

REALTOR® A was found by the panel to have violated Article 12.

## Case #12-6: Misleading Advertising (Reaffirmed Case #19-8 May, 1988. Transferred to Article 12 November, 1994.)

REALTOR® A's business included real estate brokerage, property management, and home building. In one of his newspaper advertisements of his home building activities, in which he identified himself as a REALTOR®, there was prominently featured the words, "Buy Direct and Save." REALTOR® B sent a copy of the advertisement to the Board of REALTORS® as the basis of a complaint that REALTOR® A in his advertising was, through use of the quoted phrase, seeking to take unfair advantage of other REALTORS®.

At the hearing, it was brought out that REALTOR® A's properties had been listed with his real estate firm and processed through the MLS. He defended his advertising by asserting that it was no more than reasonable for him to seek the sale of houses in his subdivision through his own brokerage office to the greatest extent possible. He was not able to show the Hearing Panel any instances of reduced prices on direct sales even though several such sales had occurred.

It was the conclusion of the panel that REALTOR® A had violated Article 12. The panel's decision indicated that just because he engaged in home building he could not be exempted from the standards that apply to REALTORS® generally; and that the phrase "Buy Direct and Save" in his advertising was an attempt to convince prospective buyers that a lower price would be offered those purchasing direct rather than through cooperating brokers when, in fact, he had maintained the same prices and there was no saving by buying direct.

## Case #12-7: REALTOR® Advertising Free Market Analysis (Reaffirmed Case #19-9 May, 1988. Transferred to Article 12 November, 1994. Revised November, 2001.)

REALTOR® A advertised in the local newspaper as follows: "Free Market Analysis With No Obligation." REALTOR® A also distributed certificates reading, "This will entitle the bearer of this certificate to one (1) FREE Market Analysis with no obligation to bearer." The certificate included the name of REALTOR® A and his firm.

A property owner complained about "being the victim of a come-on scheme" to solicit the listing of his property which the Grievance Committee referred for a hearing before a Hearing Panel of the Professional Standards Committee.

At the hearing the property owner testified he had called REALTOR® A to have him prepare a market analysis of his residential property, ". . . with no obligation. . ." as claimed in REALTOR® A's ads. However, the property owner said that when REALTOR® A came to his home, he explained that he would be glad to provide the market analysis but said, "I presume you understand that when we provide this service, we also expect that if you list your property, you will permit us to serve you." The property owner testified that REALTOR® A did not press the matter at the time and did provide a market analysis. The property owner told the panel that for the next three weeks REALTOR® A or one of his representatives called "practically every single day" soliciting the listing of his home. The property owner testified that on several occasions, someone from REALTOR® A's office reminded him that REALTOR® A had provided a "valuable free service and we feel that you owe us the listing of the property."

REALTOR® A responded that he had provided the "free market analysis" as represented in his advertising, and had provided it ". . . with no obligation." He stated that he had neither asked for nor received a fee for the market analysis. He could not understand why he was required to appear before a Hearing Panel in connection with allegations of a violation of Article 12 of the Code of Ethics.

The Hearing Panel noted that offering premiums or prizes as inducements, or the advertising of anything described as "free" is not prohibited by the Code of Ethics nor can such advertising be prohibited by a Board of REALTORS® unless it presents other than a "true picture" as required by Article 12.

The Hearing Panel concluded that although REALTOR® A was free to advertise "free market analysis with no obligation," such a representation was not a "true picture" if all of the terms governing availability are not clearly disclosed in the ad or representation. The Hearing Panel noted that the statement by REALTOR® A when he provided the "free market analysis" that it was "presumed" the property owner would list with REALTOR® A if the property was offered for sale, and the subsequent "reminders" by sales representatives of REALTOR® A about the "expectation" made the representation less than a "true picture." The panel concluded that REALTOR® A was in violation of Article 12.

## Case #12-8: REALTOR® or REALTOR-ASSOCIATE® to Disclose Status as Real Estate Broker or Salesperson Even When Advertising Property Owned by the REALTOR® (Revised Case #19-11 May, 1988. Transferred to Article 12 November, 1994.)

REALTOR® A decided to sell a residential investment property he owned in the city. He did not list the property with his firm, but rather advertised it for sale under the heading "For Sale By Owner," giving only his name and home telephone number. Mr. X responded to the ad, purchased the property, and took occupancy.

Shortly after moving into the property, Mr. X filed a complaint with the Board, alleging that REALTOR® A had violated Article 12 of the Code of Ethics by not disclosing that he was a real estate broker in his advertising or in negotiations for the property.

The Grievance Committee determined that the matter should be heard and referred it to the Professional Standards Committee for hearing. After following the Board's prescribed professional standards procedures, including proper notice to parties, a Hearing Panel was convened to hear the matter.

Mr. X testified that he had purchased the property without knowledge that REALTOR® A was a real estate broker. If he had known this, said Mr. X, he might have decided not to purchase the property or might have decided to have an independent appraisal of the property made before agreeing to purchase. In any event, he said, REALTOR® A's special knowledge and expertise placed him at a disadvantage.

REALTOR® A testified that the obligations imposed by Article 12 relate only to listed properties, where the REALTOR® acts as agent for the seller. He told the panel that he believed he had complied with the "true picture" test of Article 12 by advertising the property as a "For Sale By Owner," because it had not been listed with his firm and there was no agency relationship to disclose.

"Besides," explained REALTOR® A, "there was no need to disclose my licensure status in the advertisement, because my name is well known in the community as a real estate broker."

The Hearing Panel disagreed with REALTOR® A's reasoning and indicated in its decision that Article 12 as interpreted by Standard of Practice 12-6, does establish a requirement to disclose both ownership interest and licensure status when the REALTOR® advertises his own unlisted property for sale. Merely indicating REALTOR® A's name in the advertisement and assuming that his prominence in the real estate business was well known was not enough. The panel concluded that REALTOR® A was obliged to disclose his licensure status in the advertisement, since this knowledge might well have affected Mr. X's negotiations on the property as well as his eventual decision to purchase.

REALTOR® A was found in violation of Article 12 of the Code of Ethics.

## Case #12-9: Unethical Advertising (Originally Case #9-2. Revised and transferred to Article 19 as Case #19-12 May, 1988. Transferred to Article 12 November, 1994.)

REALTOR® A inserted an ad in the local newspaper soliciting $5,000 investments in a "sure thing." The ad explained that he was seeking only ten investors at $5,000 each; that each investor would receive $6,000 for his investment in 30 days; or, if he chose to invest for a longer period, could receive $8,000 in 90 days. The ad stated that REALTOR® A personally guaranteed this investment experience to the first ten investors who responded to the ad.

The President of REALTOR® A's Board saw the ad and was concerned. He requested the Board's Grievance Committee review the matter and determine if a hearing was warranted. The Grievance Committee asked REALTOR® A to demonstrate that he had put liquid assets in escrow to back up his published guarantee. REALTOR® A was at first evasive, and then explained that there was no possibility of any one losing any money as a result of his ad because he had simply been using ingenuity to develop a list of prospects interested in small real estate investments.

The Grievance Committee referred the matter to the Professional Standards Committee of the Board for a hearing, charging a violation of Article 12 of the Code of Ethics. In the subsequent hearing, REALTOR® A explained that he had told those who inquired that the opportunity was no longer available, but that he would take their names and addresses for future investment opportunities that might arise. He explained that in this case any guarantee he would make in a tangible transaction would, of course, be fully protected by liquid assets put in escrow.

The Hearing Panel concluded that REALTOR® A had not provided a "true picture" in his advertisement, and was in violation of Article 12.

## Case #12-10: REALTOR® Advertising Free Market Analysis

(Originally Case #9-21. Revised and transferred to Article 19 as Case #19-13 May, 1988. Transferred to Article 12 November, 1994. Revised November, 2001.)

REALTOR® A advertised in the local newspaper as follows: "Free Market Analysis With No Obligation." REALTOR® A also had certificates printed reading: "This will entitle the bearer to one FREE Comparative Market Analysis with no obligation." The certificate carried the name of REALTOR® A and his firm. REALTOR® B presented a written complaint to the Professional Standards Administrator of the Board filing a charge against REALTOR® A of an alleged violation of Article 12 of the Code of Ethics.

The matter was referred to the Grievance Committee which concluded the matter should be considered by a panel of the Professional Standards Committee. A hearing was convened with both REALTOR® A and REALTOR® B present.

REALTOR® A advised the Hearing Panel that he had placed the advertisements and provided the certificates in good faith. He stated he felt his ads did present a "true picture," and were not unethical. When the panel asked if his offering of a "free market analysis" was contingent upon his obtaining a listing or commission, REALTOR® A answered in the negative. He pointed out that he charged no fee for the service and provided it as represented on the certificates.

In the absence of any evidence indicating that the advertising by REALTOR® A was misleading, the Hearing Panel concluded that such advertising by REALTOR® A is not prohibited by the Code of Ethics nor can such advertising be prohibited by a Board of REALTORS® unless it presents less than a "true picture." However, if a charge is filed against a REALTOR® alleging violation of Article 12 and there is a hearing before the Professional Standards Committee, determination may properly be made of the truth of any representations made.

The Hearing Panel concluded that REALTOR® A had demonstrated that his ads presented a "true picture" and that he was not in violation of Article 12.

## Case #12-11: Advertisements by Individuals Other Than the Listing Broker

(Adopted as Case #19-14 May, 1988. Transferred to Article 12 November, 1994. Revised November, 1995 and November, 1996.)

REALTOR® A placed a full page ad in the Sunday supplement of his local newspaper. In the body of the ad were pictures of several homes and their addresses. At the top of the page was the following: "We've sold these — we can sell yours, too."

The following week three complaints were received from other Board Members alleging that REALTOR® A's ad was in violation of Article 12. Each of the complaints noted that REALTOR® A had participated in the transaction as the successful cooperating broker who had located the eventual purchasers, but the complaints also claimed that REALTOR® A's claim to have "sold" these properties was false and misleading since none of the properties had been listed with him and, in one instance, the sale had yet to close.

Since all the complaints involved the same advertisement, they were consolidated to be heard at the same hearing before a Hearing Panel of the Professional Standards Committee.

At the hearing, REALTOR® A defended his actions on the basis that although the properties had been listed with other brokers, he had been the "selling" or "cooperating" broker and was entitled to advertise his role in the transactions.

The Hearing Panel agreed with REALTOR® A's reasoning in their decision, pointing out that Article 12 as interpreted by Standard of Practice 12-7, provides that cooperating brokers (selling brokers) may claim to have "sold" the property and that such claims may be made by either the listing broker or the cooperating broker or by both of them upon acceptance of a purchase offer by the seller. The panel also noted that REALTOR® A could have shown that he had "participated in" or had "cooperated in" these transactions and also met his ethical obligations.

The panel's decision also indicated that during the existence of any listing, the cooperating broker's rights to advertise and market flow from the listing broker. However, claims of this nature were not advertisements of the properties but rather were advertisements of the broker's services. The only limitation on the ability of a cooperating broker to claim or to represent that a property had been "sold" was that the listing broker's consent would be required before a "sold" sign could physically be placed on the seller's property prior to closing.

## Case #12-12: Advertising in the Guise of News (Adopted April, 1994. Revised November, 1995.)

Shortly after mailing his "Homeowners Neighborhood Newsletter" to local residents, several complaints were filed against REALTOR® B claiming that he had engaged in deceptive advertising in violation of Article 12's "true picture" directive. These complaints were reviewed by the Grievance Committee which determined that a hearing should be held and that all of the related complaints would be consolidated in a single hearing. The appropriate notices were sent and the hearing was convened.

REALTOR® A, one of the complainants, introduced REALTOR® B's "Homeowners Neighborhood Newsletter" into evidence pointing out that, on the first page, REALTOR® B had prominently shown pictures of, and addresses for, ten homes in an exclusive area of town labeling each as "Recently Sold." REALTOR® A, the listing broker for several of these properties, stated that, in his opinion, the average reader would readily conclude that REALTOR® B, by advertising this way, was claiming to have listed and sold the properties and that his claims violated Article 12, as interpreted by Standard of Practice 12-7. In response, REALTOR® B indicated that Article 12 was limited in scope to ". . . advertising and representations to the public" and that his "Homeowners Neighborhood Newsletter" was not, in fact, advertising but rather a well-intentioned effort to make homeowners aware of current market values. "Sale prices in our county become a matter of public record once a deed of sale is recorded," REALTOR® B argued, "and anyone who wants to find out about recent sales can get that information from the recorder's office." "All I am doing," he continued, "is reporting news — and saving residents the time and effort of retrieving this information on their own. If someone appreciates my efforts and later buys or sells through me, so much the better, but that is not the reason for my newsletter."

After hearing from the complainants and the respondent, and after reviewing the content of the newsletter, the Hearing Panel concluded that it did, in fact, violate Article 12 since, while the information regarding the properties themselves was accurate, its cumulative effect was to convey the impression that REALTOR® B had listed and/or sold the properties when he had not. The fact that he had been the cooperating broker in one of the transactions did not give him the right to claim, directly or indirectly, that he had "sold" any of the other properties because in no instance had he been the listing broker. The Hearing Panel did not accept REALTOR® B's claim that his newsletter was exempt from scrutiny under Article 12 in that he was disseminating news and not engaging in advertising. They noted that the name, address, and phone number of REALTOR® B's firm appeared prominently in several places; that a considerable portion of the newsletter was devoted to services available from REALTOR® B's firm and the advantages of doing business with REALTOR® B; and concluded that while the newsletter might, in fact, include an element of "news" a primary purpose of it was to advertise REALTOR® B and his firm and, consequently, that it was subject to scrutiny under Article 12.

## Case #12-13: Advertising Including Information Based on Other Brokers' Transactions (Adopted November, 1994. Revised November, 1997.)

Shortly after mailing his "Homeowners Neighborhood Newsletter" to local residents, a complaint was filed against REALTOR® B alleging he had engaged in deceptive advertising in violation of Article 12's "true picture" mandate. The complaint was reviewed by the Grievance Committee which determined that a hearing should be held. Appropriate notices were sent and a hearing was convened.

REALTOR® A, the complainant, provided panel members with copies of REALTOR® B's "Homeowners Neighborhood Newsletter" noting that REALTOR® B had compiled a list of 20 homes in an exclusive area of town, titling the list "Recently Sold." REALTOR® A, the listing broker for two of those properties, stated that he believed that readers could conclude that REALTOR® B, in advertising this way, had constructively claimed to have listed and sold all of the properties on the list and that such claims violated Article 12.

In his defense, REALTOR® B acknowledged that his "Homeowners Neighborhood Newsletter" was, in fact, primarily an advertising vehicle and that it did not have a regular publication schedule. While it included news and information, including tips on how to make residential property more readily saleable and information regarding products and services offered by REALTOR® B's firm, its primary purpose was to generate business for REALTOR® B's firm.

REALTOR® B defended inclusion of the "Recently Sold" list, pointing out that all of the properties on the list were the subject of recent sales transactions; that the period of time during which the transactions had closed was clearly stated; that the fact that the information was taken from the local MLS compilation of historical data had been duly noted; that a footnote at the bottom of the page clearly indicated that the properties on the list had been listed and sold by various Participants in the MLS; and that such use was consistent with the local MLS rules and regulations.

The Hearing Panel accepted REALTOR® B's defense, holding that reasonable readers would conclude that most newsletters were, in reality, promotional advertising pieces and, in any case, that REALTOR B's newsletter had included some items of "news". Moreover, they noted that if REALTOR® B had simply listed the 20 transactions, titling them as "recently sold" and had done nothing more, then a reasonable reader might have concluded that he was claiming to have listed and sold those properties. However, since REALTOR® B had included a footnote pointing out that the properties on the list had been listed and sold by various Participants in the MLS, the fact that REALTOR® B had not included the names of each listing broker could not be construed as REALTOR® B claiming to have been the listing broker in each instance or to have "sold" each of the properties.

## Case #12-14: Advertising Property as "Offered Exclusively" (Adopted November, 1995.)

REALTOR® B, an exclusive buyer agent, filed an ethics complaint against REALTOR® A claiming that her "for sale" signs violated Article 12's call for ". . . a true picture in advertising and . . . representations to the public."

At the hearing, REALTOR® B elaborated on the charge in her opening statement. "REALTOR® A's 'for sale' signs often include the words 'Offered Exclusively' on a rider attached to them," she said, "and buyers are misled into believing that they can only purchase these properties by dealing with REALTOR® A or one of her associates. Advertising like that is unfair to other brokers who are trying to cooperate in the sale of her listings."

REALTOR® A responded expressing her belief that while there might be a rare exception, most potential home purchasers were sufficiently sophisticated to realize that regardless of their wording, "for sale" signs were just that, announcements that property was on the market and that they could generally deal with any real estate broker that they chose. "Everybody realizes how MLS works and that we all cooperate with each other on almost all of our sales. My use of 'offered exclusively' or 'exclusively with' or 'exclusively by' or just plain 'exclusively' like other brokers use doesn't mislead anyone. And, as a practical matter, I do have an exclusive right to sell listing, and I am the seller's exclusive agent, each and every time I put one of those signs on listed property so I have to believe that I am meeting Article 12's 'true picture' test."

Agreeing with REALTOR® A's reasoning, the Hearing Panel concluded that she had not violated Article 12.

## Case #12-15: Links to other Internet Sites (Adopted April, 1998.)

Noting the increasing numbers of people using the Internet, REALTOR® A decided to have a website designed. She hired a consultant and proceeded to plan her site and its contents. Realizing that her website might be enhanced by providing a link to all the local listings on REALTOR.org, she decided to have her website designed to provide such a link.

A few months later, REALTOR® B, a competing broker in the same community, was surfing the web and happened upon REALTOR® A's new website. Upon exploring it, he discovered the link to REALTOR.org which included REALTOR® B's listings.

REALTOR® B immediately filed an ethics complaint with the local Board of REALTORS alleging that REALTOR® A had violated Article 12 of the Code of Ethics as interpreted by Standard of Practice 12-4. Following review by the Board's Grievance Committee, the complaint was scheduled for a hearing before a Hearing Panel of the Board's Professional Standards Committee.

At the hearing, REALTOR® B argued that by providing a link to the listings on REALTOR.org, REALTOR® A was advertising without authority all the listings in the local MLS on her Internet website.

REALTOR® A countered saying that in the culture of the Internet, it is well established that links are merely a method of "pointing" or "referring" to another site; that the information had not been altered nor had any information been deleted; and that people who view Internet websites understand that. She went on to analogize what she had done to distributing copies of the local homes magazine. Even though the magazine contained ads promoting other REALTORS®' listings, by delivering that information to prospective buyers, she was not advertising their listings.

After hearing all relevant testimony, the Hearing Panel went into executive session and concluded that by linking to an Internet website which contained the ads of other REALTORS® listings, REALTOR® A had not engaged in unauthorized advertising and had not violated Article 12.

## Case #12-16, Copying and Publishing other Brokers' Advertisements (Adopted April, 1998.)

Wanting to take advantage of the virtual explosion of the World Wide Web, REALTOR® A, who had a respectable level of expertise in computer technology, decided to purchase a website design software package and set out to design his own website.

Understanding that his site would be greatly enhanced by providing as much information as possible, he decided he would offer two pages of listings: his own and some choice listings of his competitors. Being careful not to present a misleading picture in his advertising, he was very careful to list the company name and phone number of the listing company with each ad of his competitors' listings.

When REALTOR® B found one of her listings on REALTOR® A's new website, she filed an ethics complaint with the local Association of REALTORS® complaining that REALTOR® A had "blatantly and without authorization of any kind whatsoever advertised my listing on his Internet website and in so doing was clearly in violation of Article 12 of the Code of Ethics as interpreted by Standard of Practice 12-4."

The matter was placed on the agenda of the Grievance Committee. At their next meeting, the Grievance Committee decided that the alleged conduct, if taken at face value, could possibly violate Article 12 and directed the Association's Professional Standards Administrator to schedule an ethics hearing before a Hearing Panel of the Association's Professional Standards Committee.

At the hearing, REALTOR® B produced a printed copy of the advertisement of her listing which had been placed on REALTOR® A's website. She produced a copy of her listing agreement and a photograph of the property, which matched the information in the ad. She testified that she had never been contacted by REALTOR® A for permission to advertise her listing.

When REALTOR® A presented his case, he showed the hearing panel several examples of REALTORS® providing links to sites with ads for other REALTORS®' listings. He said he saw no fundamental difference between providing such links and actually advertising other listings on his website, especially when he was very careful to also give the listing company's name and phone number. He went on to argue that REALTOR® B's clients would be hard pressed to understand REALTOR B's objection to giving their properties the additional exposure they received on REALTOR® A's website.

Upon the conclusion of all testimony and closing statements, the Hearing Panel met in executive session and decided that while providing a link to listings of other REALTORS® did not violate Article 12, by actually publishing REALTOR® B's listing on his website REALTOR® A was not linking, but instead was advertising (by copying, as opposed to simply providing a link) without authority. In their findings of fact, the Hearing Panel also noted that even if REALTOR® B's clients might not object to such advertising, the lack of objection could not be assumed and would not relieve REALTOR® A of the obligation to obtain REALTOR® B's specific authority and consent to advertise her listings.

The Hearing Panel found REALTOR® A in violation of Article 12 of the Code of Ethics.

## Case #12-17: Use of Deceptive Domain Name/ URL ("Uniform Resource Locator") (Adopted May, 2001.)

REALTOR® X, a principal broker in the firm XYZ, was technologically savvy and constantly looking for ways to use the Internet to promote his firm and drive additional traffic to his website.

Being an early adapter to the Internet, he had registered, but not used, domain names that incorporated or played on the names of many of his competitors and their firms, including ABC, REALTORS®.

REALTOR® X and his information technology staff concluded that one way to drive traffic to the firm's website would be to take advantage of the search engines commonly used by potential buyers and sellers. They realized that when potential buyers or sellers searched on key words like "real estate" or "REALTORS®" or on similar words, lists of domain names would appear, and that when consumers searched the Internet for ABC, REALTORS®, one of the domain names that might appear would be REALTOR® X's domain name, abcrealtors.com.

REALTOR® X decided to take advantage of the domain names that he had previously registered, and pointed several that used, in various ways, the names of his competitors, including "abcrealtors.com," to his site.

In a matter of days, REALTOR® X learned that he had been charged with a violation of Article 12 of the Code of Ethics by REALTOR® A, the owner of ABC, REALTORS® , alleging that his (REALTOR® X's) use of the domain name "abcrealtors.com" presented a false picture to potential buyers and sellers and others on the Internet.

At the hearing, REALTOR® X defended himself indicating that, in his opinion, use of a domain name was not advertising or a "representation" to the public but simply a convenient way for Internet users to find relevant websites. Moreover, "When web surfers reach my home page, there is no question that it is my site since I clearly show XYZ's name and our status as REALTORS®," he continued. "These complaints are just a lot of sour grapes from dinosaurs who aren't keeping up and who don't realize that on the Internet it's 'every man for himself.' "

The Hearing Panel disagreed with REALTOR® X's justification, indicating that while his use of a domain name that employed another firm's name might not be precluded by law or regulation, it did not comply with the Code's higher duty to present a "true picture."

REALTOR® X was found in violation of Article 12, presenting an untrue picture in his representation to the public.

## Case #12-18: Protecting Client's Interest in Auction Advertised as "Absolute" (Adopted May, 2005. Cross-referenced with Case #1-31.)

Seller T, a widowed elementary school teacher in the Midwest inherited a choice parcel of waterfront property on one of the Hawaiian islands from a distant relative. Having limited financial resources, and her children's' college educations to pay for, she concluded that she would likely never have the means to build on or otherwise enjoy the property. Consequently, she decided to sell it and use the proceeds to pay tuition and fund her retirement.

Seller T corresponded via the Internet with several real estate brokers, including REALTOR® Q whose website prominently featured his real estate auction services. An exchange of email followed. REALTOR® Q proposed an absolute auction as the best way of attracting qualified buyers and ensuring the highest possible price for Seller T. Seller T found the concept had certain appeal but she also had reservations. "How do I know the property will sell for a good price?" she e-mailed REALTOR® Q. REALTOR® Q responded "You have a choice piece of beachfront. They aren't making any more of that, you know. It will easily bring at least a million five hundred thousand dollars." Seller T acquiesced and REALTOR® Q sent her the necessary contracts which Seller T executed and returned.

Several days prior to the scheduled auction, Seller T decided to take her children to Hawaii on vacation. The trip would also afford her the chance to view the auction and see, firsthand, her future financial security being realized.

On the morning of the auction only a handful of people were present. Seller T chatted with them and, in casual conversation, learned that the only two potential bidders felt the property would likely sell for far less than the $1,500,000 REALTOR® Q had assured her it would bring. One potential buyer disclosed he planned to bid no more than $250,000. The other buyer wouldn't disclose an exact limit but said he was expecting a "fire sale."

Seller T panicked. She rushed to REALTOR® Q seeking reassurance that her property would sell for $1,500,000. REALTOR® Q responded, "This is an auction. The high bidder gets the property." Faced with this dire prospect, Seller T insisted that the auction be cancelled. REALTOR® Q reluctantly agreed and advised the sparse audience that the seller had cancelled the auction.

Within days, two ethics complaints were filed against REALTOR® Q. Seller T's complaint alleged that REALTOR® Q had misled her by repeatedly assuring her—essentially guaranteeing her—that her property would sell for at least $1,500,000. By convincing her she would realize that price— and by not clearly explaining that if the auction had proceeded the high bidder—at whatever price—would take the property, Seller T claimed her interests had not been adequately protected, and she had been lied to. This, Seller T concluded, violated Article 1.

The second complaint, from Buyer B, related to REALTOR® Q's pre-auction advertising. REALTOR® Q's ad specifically stated "Absolute Auction on July 1." Nowhere in the ad did it mention that the auction could be cancelled or the property sold beforehand. "I came to bid at an auction," wrote Buyer B, "and there was no auction nor any mention that it could be cancelled." This advertising, Buyer B's complaint concluded, violated Article 12's "true picture" requirement.

Both complaints were forwarded by the Grievance Committee for hearing. At the hearing, REALTOR® Q defended his actions by noting that comparable sales supported his conclusion that Seller T's property was worth $1,500,000. "That price was reasonable and realistic when we entered the auction contract, and it's still reasonable today. I never used the word 'guarantee;' rather I told her the chances of getting a bid of $1,500,000 or more were very good." "But everyone knows," he added, "that anything can happen at an auction." If Seller T was concerned about realizing a minimum net return from the sale, she could have asked that a reserve price be established.

Turning to Buyer B's claim of deceptive advertising, REALTOR® Q argued that his ad had been clear and accurate. There was, he stated, an auction scheduled for July 1 and it was intended to be an absolute auction. "The fact that it was advertised as 'absolute' doesn't mean the property can't be sold beforehand—or that the seller can choose not to sell and cancel the auction. Ads can't discuss every possibility. It might have rained that day. Should my ad have cautioned bidders to bring umbrellas?" he asked rhetorically.

The Hearing Panel concluded that while REALTOR® Q had not expressly guaranteed Seller T her property would sell for $1,500,000, his statements had led her to that conclusion and after realizing Seller T was under that impression, REALTOR® Q had done nothing to disabuse her of that misperception. Moreover, REALTOR® Q had taken no steps to explain the auction process to Seller T, including making her aware that at an absolute auction the high bidder—regardless of the bid— would take the property. REALTOR® Q's actions and statements had clearly not protected his client's interests and, in the opinion of the Hearing Panel, violated Article 1.

Turning to the ad, the Hearing Panel agreed with REALTOR® Q's position. There had been an absolute auction scheduled—as REALTOR® Q had advertised—and there was no question but that REALTOR® Q had no choice but to cancel the auction when he had been instructed to do so by his client. Consequently, the panel concluded REALTOR® Q had not violated Article 12.

## Case #12-19: Remove Information About Listings from Websites Once Authority to Advertise Ends (Adopted November, 2006)

REALTOR® A, a residential specialist in a major metropolitan area, spent several weeks each year in a cabin in the north woods he had inherited from a distant relative. Always on the lookout for investment opportunities, he paid careful attention to "for sale" signs, newspaper ads, and local brokerage websites in the area.

Returning from the golf course one afternoon, REALTOR® A spotted a dilapidated "for sale" sign on an otherwise-attractive wooded lot. Getting out of his car, he was able to discern REALTOR® Z's name. Returning to his cabin, he used the Internet to locate REALTOR® Z and REALTOR® Z's company website. Visiting REALTOR® Z's website, he found detailed information about the lot he'd seen that afternoon. Using REALTOR® Z's e-mail address function, he asked for information about the lot, including its dimensions and asking price. Several days later REALTOR® Z responded, advising simply, "That listing expired."

The following day REALTOR® A, hoping to learn whether the lot was still available, contacted REALTOR® X, another area real estate broker. "As it turns out, we have an exclusive listing on the property you're interested in," said REALTOR® X. In response to REALTOR® A's questions, REALTOR® X advised that he had had an exclusive listing on the property for almost six months. "That's funny," responded REALTOR® A, "REALTOR® Z has a 'for sale' sign on the property and information about it on her website. Looking at her website, I got the clear impression that she still had that property listed."

While the wooded lot proved to be out of REALTOR® A's price range, REALTOR® Z's "for sale" sign and website were still on his mind when he returned home. Ultimately, he contacted the local association of REALTORS® and filed an ethics complaint alleging that REALTOR® Z's "for sale" sign, coupled with her offering information on her website made it appear as if the wooded parcel was still listed with her firm, when that had not been the case for over six months. REALTOR® A noted that this conduct, in his opinion, violated Article 12 since REALTOR® Z was not presenting a "true picture" in her public representations and was, in fact, advertising without authority, a practice prohibited by Article 12, as interpreted by Standard of Practice 12-4.

At the hearing, REALTOR® Z claimed that failure to remove the "for sale" sign was simply an oversight, and if anyone was to blame, it was her personal assistant who was responsible for removing signs and lockboxes from expired and sold listings. "If you want to blame anyone, blame my assistant since he's supposed to bring back our 'for sale' and 'sold' signs." Turning to the stale listing information on her website, REALTOR® Z acknowledged that information about her former listing had continued to appear for more than six months after the listing had expired. REALTOR® Z analogized the continued presence of that information to an old newspaper advertisement. "It's possible someone might come across a six month old newspaper with my listings in it. Those ads were true when I ran them but how could I ever control when and where someone will come across them, possibly months or even years later?" she asked. "Besides," she added, "REALTORS® have better things to do than constantly inspect their websites to make sure everything is absolutely, positively up-to-the-minute." "If we did that, none of us would have time to list or sell," she concluded.

The hearing panel disagreed with REALTOR® Z's reasoning. While reasonable consumers can expect newspaper advertisements to be current and accurate on the date of publication, they also understand that information in months or even years old newspapers will be obsolete. Information on REALTORS®' websites is clearly different from newspaper ads since it can be updated on a regular basis, and corrected if mistakes occur. The panel concluded that the continued presence of information about REALTOR® Z's former listing six months after expiration on her website, coupled with the continued presence of her "for sale" sign on the wooded lot, did not present the true picture required by Article 12, and was inconsistent with the obligation to have authority to advertise contemplated by Article 12 as interpreted by Standard of Practice 12-4. REALTOR® Z was found in violation of Article 12.

## Case #12-20: Misleading Use of "MLS" in URL

(Adopted November, 2007. Revised May 2008.)

REALTOR® A, a residential broker in a major metropolitan city, spent several weeks each year in his cabin in the north woods where he planned to retire one day. Even while at home in the city, REALTOR® A stayed abreast of local news, events, and especially the local real estate market by subscribing to the print and on-line editions of the local newspaper. He also bookmarked a number of north woods brokers' websites to stay current with the market and to watch for potential investment opportunities.

One evening while surfing the Internet, he came across a URL he was unfamiliar with—northwoodsandlakesmls.com. REALTOR® A was pleased to see the MLS serving the area where he vacationed for so many years had created a publicly-accessible website. Clicking on the link, he was surprised to find that the website he was connected with was not an MLS's website but instead was REALTOR® Z's company website. Having had prior dealings with REALTOR® Z, REALTOR® A spent some time carefully scrutinizing the website. He noted, among other things, that the name of REALTOR® Z's firm did not include the letters MLS.

REALTOR® A sent an e-mail to the association's Professional Standards Administrator asking whether REALTOR® Z had been authorized by the association to use the URL northwoodsandlakesmls.com and whether the association felt it presented a true picture as required by Article 12 of the Code of Ethics. The association executive responded that their association did not assign, review, or approve URLs used by their members, but added that if REALTOR® A felt a possible violation of the Code of Ethics had occurred, the appropriate step was to file an ethics complaint. REALTOR® A did just that, alleging in his complaint that when he clicked on what appeared to be a real estate-related URL that included the letters "MLS" he expected to be connected with a website operated by a multiple listing service. He stated he felt that REALTOR® Z's URL was deceptive and did not meet Article 12's true picture test.

At the hearing, REALTOR® Z defended his URL on a number of grounds including the fact that he was a participant in good standing in the MLS and that he was authorized under the MLS's rules to display other participants' listings on his website. "If I used 'MLS' in the name of my firm, I could see how that might be perceived as something less than a true picture," he argued, "but by simply using MLS in my URL I am telling consumers that they can get MLS-provided information about properties in the north woods from me. What could be truer than that?"

The hearing panel disagreed with REALTOR® Z's reasoning. While REALTOR® Z's website included information about other participants' listings that the MLS had provided—and that REALTOR® Z was authorized to display—the fact remained that a real estate-related URL that includes the letters MLS will, in many cases, lead reasonable consumers to conclude that the website is an MLS's, and not a broker's website. That was the case with REALTOR® Z's URL and REALTOR® Z was found in violation of Article 12 as interpreted by Standard of Practice 12-10.

## Case #12-21: Registration of URL Similar to Name of Subsequently-Established Firm

(Adopted November, 2008.)

REALTOR® Z was the technology-savvy partner in the XYZ residential real estate firm in the north woods. She was also a former advertising executive who was constantly looking at new and innovative ways to position and market the XYZ firm. While her partners had consistently resisted her suggestions to change the firm's name to better reflect the locale they served, REALTOR® Z had, with their concurrence, registered a number of domain names based on firm names she had to date been unable to convince her partners to adopt. She felt this was a wise strategy since it was only a matter of time until she would convince her partners that a name change was beneficial. Among the domain names registered were northwoodsrealestate.com, woodsandlakesrealty.com, and upnorthrealestate.com. None of those names were, to the best of REALTOR® Z's knowledge, similar to the names of other area real estate brokerage companies.

Approximately a year later Sales Associate B received his broker's license, left the XYZ firm, and opened his own brokerage firm which he named Up North Real Estate. When he attempted to register the domain name upnorthrealestate.com he learned it had already been registered by REALTOR® Z. Upset with this turn of events, he filed an ethics complaints with the local association of REALTORS® charging REALTOR® Z and her partners with having violated Article 12 of the Code of Ethics, as interpreted by Standard of Practice 12-12.

At the hearing, REALTOR® Z defended her actions in registering the domain name upnorthrealestate.com on the grounds she had been actively lobbying her partners to change the firm's name to Up North Real Estate; that she had no intention of using the domain name upnorthrealestate.com until the firm's name was changed and that at the time she had registered the domain name no other firm that she was aware of had a similar, let alone identical, name. Moreover, she argued, a domain name does not have to mirror a firm's name, it merely has to present a "true picture." "The XYZ firm has listed and sold residential property in the north woods for many years. 'Up north' is traditionally used by residents and visitors to refer to our area," she continued. "While I hoped to convince my partners to change the name of our firm to 'Up North Real Estate' at some point, if the XYZ firm had used the domain name—which we haven't—it still would have satisfied Article 12's true picture requirement since it refers to a particular geographic locale, not to a competing real estate company."

The hearing panel agreed with REALTOR® Z's reasoning, concluding that at the time REALTOR® Z registered the domain name upnorthrealestate.com, it was not similar to the name of any other area real estate company. The panel also noted that if it had been used, the domain name would have satisfied Article 12's true picture requirement since it would have simply suggested to consumers that it was a source of property information in that geographic area.

## Case #12-22: Registration of Domain Names Based on Competitors' Firms' Names (Adopted November, 2008.)

REALTOR® X was the principal broker of a small but growing real estate brokerage firm. REALTOR® X was constantly on the lookout for new and innovative ways to distinguish her firm from the competition and to increase its market share. Rather than simply relying on tried and true methods, REALTOR® X sought and often followed the advice of education, marketing and technology consultants.

Based on the advice of her technology expert, REALTOR® X created and registered domain names for her firm, for the licensees affiliated with her, and for herself. A somewhat more troubling recommendation was that she register domain names mirroring the names of the real estate brokerage firms in her area with the largest market shares. When she questioned the consultant, he responded, "There's no reason why not. Everyone does it. It's just competition—and aggressive marketing."

When REALTOR® A tried to register a domain name for his firm ABC REALTORS®, he learned that domain name had already been registered by REALTOR® X. Doing further research, he learned the names of several other large companies in the area had also been registered as domain names by REALTOR® X. REALTOR® A filed an ethics complaint with the local association of REALTORS® charging REALTOR® X with violating Article 12 of the Code of Ethics as interpreted by Standard of Practice 12-12.

At the hearing, REALTOR® X defended her actions noting that Article 12 requires REALTORS® to "present a true picture in their advertising, marketing, and other representations." She pointed out that she had never used the registered domain name mirroring the name of REALTOR® A's firm, or those based on the names of other local firms. Since she had not used the domain names, she couldn't see how she had violated Article 12.

The hearing panel did not agree with REALTOR® X's reasoning. The panel based its decision that REALTOR® X had violated Article 12 on the wording of Standard of Practice 12-12 which bars REALTORS® from registering URLs or domain names which, if used, would present less than a true picture. The panel also noted that the very act of registering a URL or domain name which, if used, would present an untrue picture is all that is required to violate Article 12, as interpreted by Standard of Practice 12-12.

## Case #12-23: Intentionally Misspelled Domain Names Based on Names of Competitors' Firms.

(Adopted November, 2008.)

REALTOR® V was the sole proprietor of a property management firm. REALTOR® V hoped to expand into residential brokerage and concluded that attracting buyers and sellers to his website would enhance the growth of his firm's brokerage activity. REALTOR® V sought the advice of several website developers, each of whom had suggestions on how best to attract and hold visitors. One suggestion REALTOR® V found particularly interesting was to create domain names similar, but not identical, to the names of established brokerage firms in the area. REALTOR® V registered and began to use domain names that, while similar to the names of the five largest residential brokerage firms in the area, were each spelled slightly differently than those firms' actual names.

In short order, complaints were filed against REALTOR® V by REALTORS® from each of the five largest firms. The grievance committee concluded the complaints were related and consolidated them for consideration at one ethics hearing.

At the hearing, REALTOR® V acknowledged that Article 12 requires REALTORS® to be "honest and truthful in their real estate communications" and that REALTORS® must "present a true picture in their advertising, marketing, and other representations." "If I had used the actual names of any of these firms in my domain names, that would have been a misrepresentation," continued REALTOR® V, "but when I changed spellings, I constructively created meaningless domain names which aren't deceptive since they don't reflect the name of any actual real estate firm." The hearing panel did not agree with REALTOR® V's defense, finding that each of the "slightly misspelled" domain names were so similar to the names of REALTOR® V's competitors that reasonable consumers would readily conclude they would lead consumers to those firms' respective websites. As REALTOR® V's "misspelled" domain names would mislead reasonable consumers, REALTOR® V was found in violation of Article 12, as interpreted by Standard of Practice 12-12.

## Case #12-24: Registration of Domain Name Based on Sales Associate's Name When Sales Associate Subsequently Leaves the Firm

(Adopted November, 2008.)

REALTOR® P was the current broker-owner of the real estate brokerage firm founded by her grandmother. Always on the lookout for ways to attract top sales associates, REALTOR® P offered comprehensive training and benefits, including state of the art technology tools, individual websites, and personalized domain names for each sales associate.

Sales Associate Q had enjoyed a long and productive relationship with REALTOR® P's firm but, having gained considerable experience and a broad client base, decided the time had come to start his own firm. The parting was amicable except for one thing—Sales Associate Q's domain name which, under the terms of his independent contractor agreement, remained the property of the firm. Attempts to negotiate a release of the domain name proved unsuccessful and, with no alternative available, Sales Associate Q filed an ethics complaint against REALTOR® P, alleging violation of Article 12 as interpreted by Standard of Practice 12-12. Sales Associate Q's complaint noted that the domain name included Q's first and last names and that any future use by REALTOR® P, now that Q was no longer a member of her firm, would present something less than the true picture required by Article 12.

At the hearing, REALTOR® P defended refusal to release the domain name on the grounds that at the time she had registered it, Sales Associate Q had, in fact, been a member of her firm, and that use of the domain name by a member of her firm had presented a true picture. Circumstances change, she noted, adding that at the time she had registered the domain name on behalf of both her firm and Sales Associate Q, her actions had been consistent with Article 12 as interpreted by Standard of Practice 12-12. "The fact that Sales Associate Q decided to start his own firm shouldn't result in me being found in violation of the Code of Ethics," she concluded.

The hearing panel concluded that REALTOR® P was not in violation of Article 12 as interpreted by Standard of Practice 12-12 because her registration of a domain name that used Sales Associate Q's name occurred with the knowledge and consent of Sales Associate Q; at the time of registration, use by REALTOR® P's firm satisfied Article 12's true picture requirement; and that REALTOR® P had ceased any use of the domain name at the time Sales Associate Q left the firm. The decision also noted that while the Code of Ethics did not require REALTOR® P to transfer the domain name to Sales Associate Q, domain name registrations must be renewed periodically and that a future renewal of the domain name by REALTOR® P would be a violation of Article 12 if that domain name does not reflect a "true picture" of REALTOR® P's business at the time of the renewal.

## Case #12-25: Advertising Role in Sales After Changing Firm Affiliation (Adopted May, 2009)

REALTOR® Q was a non-principal broker licensed with ABC REALTORS®. REALTOR® Q specialized in buyer representation. A prominent feature on her website carried the headline, "I sold these—and I can help you buy or sell, too!" Under the headline was a list of over a hundred street addresses of properties for which REALTOR® Q had found buyers.

For personal and professional reasons, REALTOR® Q chose to leave the ABC firm to affiliate with XYZ, REALTORS®. As she transitioned to her new firm, REALTOR® Q was careful to disclose the name of her new firm in a readily apparent manner on her website. Her website also continued to display the list of properties she had found buyers for during her time with the ABC firm.

REALTOR® Q's parting with ABC had been amicable, so she was surprised to receive a complaint brought by her former principal broker, REALTOR® C, alleging a violation of Article 12, as interpreted by Standard of Practice 12-7, based on her website's display of sales made while REALTOR® Q had been affiliated with ABC.

At the hearing, REALTOR® C, the complainant, noted that Standard of Practice 12-7 provides, in part, "Only REALTORS® who participated in the transaction as the listing broker or cooperating broker (selling broker) may claim to have 'sold' the property. "It was ABC, REALTORS®," REALTOR® C added, "that was the selling broker in these transactions, not our former sales associate REALTOR® Q. Her advertising our sales under the umbrella of her new firm, XYZ, REALTORS®, is confusing at best, and potentially misleading to consumers who may get the impression the XYZ firm was involved in these transactions when that's not the case."

REALTOR® Q defended herself and her website, arguing that the fact that she had found the buyers for each of the properties listed on her website was still true, and that the only thing that had changed was her firm affiliation. "If it was true when I was licensed with ABC, then it's still true even though I'm now licensed with XYZ," she reasoned.

The hearing panel agreed that REALTOR® Q had, in fact, sold the properties, albeit while licensed with ABC. The ad, however, suggested that the sales were made while REALTOR® Q was licensed with XYZ, which was not the case. Consequently, REALTOR® Q was found in violation of Article 12.

## Case #12-26: Advertising Role in Sales After Changing Firm Affiliation (Adopted May, 2010)

REALTOR® P was a non-principal broker licensed with XYZ, REALTORS® whose forte was listing residential property. Noted prominently on REALTOR® P's website was the banner: "Sold by REALTOR® P!" Under that banner were addresses of nearly a hundred properties REALTOR® P had listed, and which had been sold either through REALTOR® P's efforts or through the efforts of cooperating brokers.

Seeking new opportunities, REALTOR® P ended his relationship with XYZ and affiliated with ABC, REALTORS®. REALTOR® P promptly revised the information on his website to prominently display the name of his new firm in a readily apparent manner. He also continued to display the lengthy list of properties that he had listed, and which had sold, while REALTOR® P was affiliated with XYZ.

His departure from XYZ had been on good terms, so REALTOR® P was taken aback to receive a complaint brought by his former principal broker, REALTOR® D, alleging that REALTOR® P's website display of sold listings violated Article 12, as interpreted by Standard of Practice 12-7.

At the hearing, the complainant noted that Standard of Practice 12-7 provides, in relevant part, "Only REALTORS® who participated in the transaction as a listing broker or cooperating broker (selling broker) may claim to have 'sold' the property." "It was XYZ, REALTORS®," REALTOR® D added, "that was the listing broker in these transactions, not our former sales associate, REALTOR® P. His advertising of our listings and sales under the banner of his new firm ABC, REALTORS®, is unauthorized and misleading to consumers who will get the impression that ABC was involved in these transactions when that is simply not true."

REALTOR® P defended himself and his website pointing out that he had listed each of the properties displayed on his website, and the only thing that had changed was his firm affiliation. He directed the hearing panel's attention to the disclaimer at the end of the list of properties that read, "Each of these properties was listed by REALTOR® P over the past seven years. For much of that time, I was affiliated with another firm."

The hearing panel agreed with REALTOR® P's defense, noting that consumers would understand that some of the sales had occurred while REALTOR® P was affiliated with a different firm. Consequently, REALTOR® P was found not in violation of Article 12.

# CASE INTERPRETATIONS RELATED TO ARTICLE 13:

## Case #13-1: Preparation of Instrument Unrelated to Real Estate Transaction (Reaffirmed Case #17-1 May, 1988. Transferred to Article 13 November, 1994. Revised November, 2001.)

Client A dropped in to see his friend, REALTOR® B, who had recently provided professional services to Client A's company. Client A said the company was sending him on business to the Far East; that the trip would involve a good deal of air travel in remote areas; and that he would like to leave a power of attorney with his wife while he was gone "just in case." He asked REALTOR® B if he would prepare a power of attorney for him and REALTOR® B said, "It's a simple document. I'll be glad to prepare one for you," and did.

This action came to the attention of the Grievance Committee of the Board of REALTORS®, which, after review, filed a complaint with the Board's Professional Standards Committee, charging REALTOR® B with a violation of Article 13 of the Code of Ethics.

REALTOR® B's defense was that he understood Client A's request to be essentially for a real estate service since from his general knowledge of Client A's personal affairs, he knew that Client A could have no reason for giving his wife a power of attorney except to put her in a position to act in real estate transactions. He contended that because his preparation of a legal document was directly related to real estate matters, he had rendered real estate, not legal, services to Client A.

It was the judgment of the Hearing Panel that REALTOR® B's defense was without merit; that by preparing the power of attorney, he had engaged in the practice of law in violation of Article 13 of the Code.

## Case #13-2: Use of Standard Purchase Contract Form (Reaffirmed Case #17-2 May, 1988. Transferred to Article 13 November, 1994.)

REALTOR® A, as the exclusive agent of Seller B, sold a small commercial property to Buyer C, filling in the blanks in a standard purchase contract form. At the time REALTOR® A presented the contract for Buyer C's signature, he explained that the contract was prepared by attorneys and was commonly used in the area. He suggested that Buyer C have his attorney review it. Buyer C said he would read it over carefully, and if he had any questions he would consult an attorney about it. He subsequently signed the contract, saying it was clear and satisfactory to him.

At the closing, Buyer C professed to have been under some misunderstanding as to language in the contract regarding the date of possession of the property, and following the closing Seller B complained to the Board of REALTORS® that he had been greatly embarrassed by this circumstance at the closing and felt that REALTOR® A was at fault in preparing a contract without having an attorney participate in the drafting.

At the hearing, REALTOR® A reiterated the points that had been made in his written response to the complaint: that the contract he had used was the standard form, prepared by an attorney; that in keeping with Article 13 he had recommended that the buyer have the contract reviewed by his own attorney; and that no other parties present at the closing had found any lack of clarity in the clause in question.

The Hearing Panel concluded that REALTOR® A had acted in conformance with the Code; that he had not undertaken to practice law; and that he was not in violation of Article 13.

## Case #13-3: REALTOR®'s Obligation to Recommend Counsel When Needed (Reaffirmed Case #17-3 May, 1988. Transferred to Article 13 November, 1994.)

REALTOR® A was the listing broker for 25 acres of land owned by Client B. Shortly after REALTOR® A's sign was placed upon the property, Customer C called REALTOR® A and expressed interest in purchasing the property. After inspecting the property, Customer C made a full price offer. Surprised, Client B prepared a counter-offer at a higher price. REALTOR® A realized that he might have a legal claim for commission from Client B, but not wishing to jeopardize their relationship, agreed that he would go back to Customer C and attempt to negotiate a higher price. Upon being informed of the property owner's change of mind and his requested higher price for the property, Customer C became upset and indicated his intent to consult his attorney to determine if he could force the seller to go through with the sales transaction at the price for which it had been originally offered. At this point REALTOR® A advised Customer C that, in his opinion, litigation would be lengthy and expensive and that in the final analysis the sale could not be enforced. On the basis of REALTOR® A's advice Customer C agreed to the higher price, and the transaction was consummated. Shortly after, Customer C complained to the Board of REALTORS® that REALTOR® A had provided bad advice to him. The Professional Standards Administrator referred the complaint to the Grievance Committee which determined that a hearing should be held and referred the matter back to the Professional Standards Administrator to arrange such a hearing.

At the hearing, Customer C outlined his complaint to the Hearing Panel of the Professional Standards Committee. He indicated that he had intended to consult his attorney, however, because of the persuasive personality of REALTOR® A and REALTOR® A's assurance that legal action would be an exercise in futility, he had not done so.

REALTOR® A advised the panel that he had told Customer C that he could consult his attorney, but that, in his opinion, it would be a waste of time. He defended what he had told Customer C stating that it was only his opinion, not intended as a conclusive statement of law, and, in fact, was a correct statement under the law of the state. The panel concluded that REALTOR® A, in pointing out the fact that legal action was likely to be time consuming and expensive, was stating a practical circumstance which Customer C should consider and was proper. The panel further concluded that the expression of an opinion as to the probable outcome of the case was not an "unauthorized practice of law" within the meaning of Article 13.

However, the panel noted that a REALTOR® is obligated to "recommend that legal counsel be obtained when the interest of any party to the transaction requires it."

In this case, REALTOR® A was aware that the interest of Customer C required a legal opinion as to whether Customer C could compel Client B to convey title to the property and did not intend his personal opinion to represent a "statement of law" upon which Customer C could rely. Accordingly, REALTOR® A was obligated to affirmatively recommend that Customer C consult his attorney to definitively establish the legal rights in question.

Having failed to make such a recommendation, REALTOR® A was in violation of Article 13.

# CASE INTERPRETATIONS RELATED TO ARTICLE 14:

## Case #14-1: Establishing Procedure to be Followed in Handling Complaints (Revised Case #15-1 May, 1988. Transferred to Article 14 November, 1994. Revised November, 1996. Revised November, 2001.)

A Board of REALTORS® received a complaint from REALTOR® A's client charging REALTOR® A with a violation of Article 1 of the Code of Ethics. The complaint was referred to the Chairperson of the Board's Grievance Committee, who sent a copy of it to REALTOR® A with a request that he respond and provide a specific document about the matter to the Grievance Committee for its preliminary review.

REALTOR® A responded with a denial of the charge, and a statement that he would appear at any hearing on the appointed date and would, at that time, present all pertinent facts. He went on to indicate that on the advice of legal counsel he was unwilling to place the requested document in the hands of the Grievance Committee in advance of any hearing.

The Grievance Committee then initiated its own complaint charging REALTOR® A with a violation of Article 14 for refusing to place the requested document before a proper tribunal.

A hearing of the Grievance Committee's complaint was held before a Hearing Panel of the Professional Standards Committee. At the hearing, REALTOR® A again stated that it was his intention to respond specifically and factually to the charge of violating Article 1 if the complaint came before an ethics Hearing Panel and at that time he would submit all pertinent facts, including the document in question.

It was the conclusion of the Hearing Panel that REALTOR® A's defense against the charge of violating Article 14 was not valid; and that the Grievance Committee could require advance submission of specific documents to the Grievance Committee based on the Board's professional standards procedures which authorized the Grievance Committee to request specific documents to enable the Grievance Committee to make determinations whether complaints warranted hearing. The panel found REALTOR® A in violation of Article 14 and directed him to give the requested documentation to the Grievance Committee in connection with its review of the charge of violating Article 1.

## Case #14-2: Refusal to Submit Pertinent Facts (Revised Case #15-2 May, 1988. Transferred to Article 14 November, 1994.)

When REALTOR® A was charged with a violation of the Code of Ethics, he was notified of the charge and directed to attend a hearing before a panel of the Professional Standards Committee of the Board.

At the hearing, the complainant formally presented the charge and a considerable body of evidence to support it. Members of the panel questioned REALTOR® A on specific points. To each question he responded that he was not guilty of the charge, but that specific answers to the questions put to him could conceivably do him an injustice, and that he felt that he should not be required to answer questions in a situation that was unfair to him.

Further attempts to question REALTOR® A met with similar responses. The Chairperson of the Hearing Panel advised REALTOR® A that, in light of his refusal to answer questions directed to him, the complaint was being amended to include a charge of a violation of Article 14. The Chairperson asked REALTOR® A if he wished to proceed with the hearing, or if he preferred to have the hearing postponed to a later date to provide him with an opportunity to prepare a defense against the additional charge. The Chairperson also reminded REALTOR® A that he was not before a court of law but a Committee of the Board in which his membership was based wholly upon his willingness to abide by it rules, which did not provide for a "Fifth Amendment" refuge from proper questions by members of the Hearing Panel.

REALTOR® A requested a continuance to prepare his defense against the amended complaint that now included an alleged violation of Article 14. The hearing was adjourned to a date certain to enable REALTOR® A to prepare his defense to the additional charge.

## Case #14-3: Submission of Pertinent Facts

(Revised Case #15-3 May, 1988. Transferred to Article 14 November, 1994.)

Buyer A filed a complaint against REALTOR® B, the listing broker, involving a property purchased earlier by Buyer A.

REALTOR® B was notified of the complaint, directed to be present at a hearing, and requested to present to a Hearing Panel of the Board's Professional Standards Committee all pertinent facts relating to the transaction. REALTOR® B's response was a statement that he would refuse to submit any information in the matter to a Hearing Panel and would not attend the scheduled hearing, on the grounds that the complaint itself was not justified.

Explaining his position, REALTOR® B stated that his participation in the transaction was exclusively as the agent of the seller; that he had not been representing the buyer; and hence, could not be subject to a complaint by the buyer for simply transmitting information on behalf of the seller.

All of his statements concerning the property, REALTOR® B said, were based on information supplied to him by his client, the seller. Any error in this information, he contended, might well provide the basis for a lawsuit between the buyer and seller. As the agent of the seller, he felt that he was not answerable to the buyer for having done no more than transmit information provided to him by the seller.

REALTOR® B was advised by the Board that his reasoning was incorrect; that he was obligated by Article 14 to submit pertinent facts to a Hearing Panel of the Board's Professional Standards Committee and to participate in the hearing. REALTOR® B agreed to comply, and a hearing on the complaint was held.

# CASE INTERPRETATIONS RELATED TO ARTICLE 15:

## Case #15-1: Knowing or Reckless False Statements About Competitors (Adopted Case #23-1 November, 1992. Transferred to Article 15 November, 1994.)

REALTOR® A operated a residential brokerage firm in a highly competitive market area. He frequently used information from the MLS as the basis for comparative ads and to keep close track of his listing and sales activity as well as his competition.

One day, while reviewing MLS data and comparing it to a competitor's ad, REALTOR® A noticed that REALTOR® Z had used a diagram to demonstrate his market share, contrasting it with those of several other firms. The ad showed that REALTOR® A had listed 10% of the properties in the MLS over the past three months.

REALTOR® A thought this was low. His analysis of MLS data showed his market share was 11%. REALTOR® A filed an ethics complaint against REALTOR® Z citing Article 15 of the Code of Ethics in that REALTOR® Z's "obviously understated market share claim" was a "misleading statement about competitors." REALTOR® A's complaint was considered by the Grievance Committee which determined that an ethics hearing should be held.

At the hearing, REALTOR® Z testified he had always been truthful in his advertising and that all claims were based in fact. He produced an affidavit from the Board's MLS administrator which indicated that a programming error had resulted in miscalculations and, after careful recomputation, REALTOR® A's market share over the past three months had been 10.9%. The administrator's statement noted that this was the first time that information related to REALTOR® A's listings or sales had been misstated on the system. "I relied on information from the MLS. It's always been accurate and I had no reason to even suspect it was wrong last month," said REALTOR® Z in his defense.

The Hearing Panel agreed with REALTOR® Z's logic, noting that a REALTOR® should be able to rely on generally accurate information from reliable sources. They reasoned that if, on the other hand, the MLS had shown REALTOR® A having, for example, 1% of the market, then REALTOR® Z's reliance on the information would have been "reckless" because REALTOR® A had generally had a 10–15% market share and a reasonable conclusion would have been that the information from the MLS was seriously flawed.

The Hearing Panel concluded that REALTOR® Z's comparison with his competitors, while slightly inaccurate, was based on usually accurate and reliable information and had been made in good faith and while technically "misleading," had not been "knowing" or "reckless". REALTOR® Z was found not to have violated Article 15.

## Case #15-2: Intentional Misrepresentation of a Competitor's Business Practices (Adopted Case #23-2 November, 1992. Transferred to Article 15 November, 1994. Revised November, 2001.)

Following a round of golf early one morning, Homeowner A approached REALTOR® X. "We've outgrown our home and I want to list it with you," said Homeowner A. "I'm sorry," said REALTOR® X, "but I represent buyers exclusively." "Then how about REALTOR® Z?," asked Homeowner A, "I've heard good things about him." "I don't know if I would do that," said REALTOR® X, "while he does represent sellers, he doesn't cooperate with buyer brokers and, as a result, sellers don't get adequate market exposure for their properties."

Later that day, Homeowner A repeated REALTOR® X's remarks to his wife who happened to be a close friend of REALTOR® Z's wife. Within hours, REALTOR® Z had been made aware of REALTOR® X's remarks to Homeowner A earlier in the day. REALTOR® Z filed a complaint against REALTOR® X charging him with making false and misleading statements. REALTOR® Z's complaint was considered by the Grievance Committee which determined that an ethics hearing should be held.

At the hearing REALTOR® Z stated, "I have no idea what REALTOR® X was thinking about when he made his comments to Homeowner A. I always cooperated with other REALTORS®." REALTOR® X replied, "That's not so. Last year you had a listing in the Multiple Listing Service and when I called to make an appointment to show the property to the buyer, you refused to agree to pay me." REALTOR® Z responded that he had made a formal offer of subagency through the MLS with respect to that property but had chosen not to offer compensation to buyer agents through the MLS. He noted, however, that the fact that he had not made a blanket offer of compensation to buyer agents should not be construed as a refusal to cooperate and that he had, in fact, cooperated with REALTOR® X in the sale of that very property.

In response to REALTOR® Z's questions, REALTOR® X acknowledged that he had shown his buyer-client REALTOR® Z's listing and that the buyer had purchased the property. Moreover, REALTOR® X said, upon questioning by the panel members, he had no personal knowledge of any instance in which REALTOR Z had refused to cooperate with any other broker but had simply assumed that REALTOR® Z's refusal to pay the compensation REALTOR® X had asked for was representative of a general practice on the part of REALTOR® Z.

The Hearing Panel, in its deliberations, noted that cooperation and compensation are not synonymous and though formal, blanket offers of cooperation and compensation can be communicated through Multiple Listing Services, even where they are not, cooperation remains the norm expected of REALTORS®. However, to characterize REALTOR® Z's refusal to pay requested compensation as a "refusal to cooperate" and to make the assumption and subsequent statement that REALTOR® Z "did not cooperate with buyer agents" was false, misleading, and not based on factual information. Consequently, REALTOR® X was found in violation of Article 15.

# CASE INTERPRETATIONS RELATED TO ARTICLE 16:

## Case #16-1: Confidentiality of Cooperating REALTOR®'s Participation (Revised Case #21-5 May, 1988. Transferred to Article 16 November, 1994.)

When Client A listed his home for sale with REALTOR® B, he explained that he wanted the sale handled without advertising and without attracting any more attention than was absolutely necessary. He said he understood that he would have to have some contacts with prospective buyers and possibly with other REALTORS®, but that he did not want the property filed with the MLS, advertised, or in any way publicly announced as being on the market. He asked REALTOR® B to impress the same restrictions on any other REALTORS® who might become involved in the transaction.

REALTOR® B, having reason to think that REALTOR® C was in touch with prospective buyers to whom the property would appeal, approached REALTOR® C to invite his cooperation, and explained fully the Client's instructions. REALTOR® B discussed the matter with no other REALTOR® and refrained from any kind of advertising of the property. But a few days later, REALTOR® B learned that REALTOR® D was discussing the property with prospective buyers, knew that REALTOR® C was working on it, knew the price at which the property had been listed, and other details about it. Questioning revealed that REALTOR® C had told REALTOR® D that he was working on the sale of the property.

On the basis of the information from REALTOR® D, REALTOR® B charged REALTOR® C with unethical conduct in a complaint to the Board of REALTORS® specifying that REALTOR® C's breach of confidence under the circumstances was a failure to respect his, REALTOR® B's, exclusive agency, and that this action had jeopardized his relationship with his client.

The complaint was referred to the Board's Professional Standards Committee, a hearing was scheduled, and REALTOR® C was directed to answer the charge of unethical conduct in violation of Article 16.

At the hearing, REALTOR® B detailed the instructions of the client and the manner in which he had conveyed them to REALTOR® C in inviting his cooperation. REALTOR® D told the Hearing Panel that REALTOR® C had discussed the listing with him. REALTOR® C defended himself against the charge of violating Article 16 by saying that while he had discussed the matter briefly with REALTOR® D, he had not expressly invited his cooperation, and, therefore, had not violated Article 16.

At the conclusion of the hearing, the panel held that REALTOR® B's complaint was valid; that proper respect for his exclusive agency and the circumstances under which it existed required REALTOR® C to observe the confidence entrusted to him and that REALTOR® C's discussion of the matter with REALTOR® D was in violation of Article 16.

## Case #16-2: Respect for Agency (Revised Case #21-6 May, 1988. Transferred to Article 16 November, 1994.)

Client A gave a 180-day exclusive right to sell listing of a commercial property to REALTOR® B, specifying that no "for sale" sign was to be placed on the property. REALTOR® B and his sales associates started an intensive sales effort which, after three months, had produced no offer to buy. But it had called attention to the fact that Client A's property was for sale. When REALTOR® C heard of it, he called on Client A, saying that he understood that his property was, or soon would be, for sale, and that if Client A would list the property with him exclusively he felt confident that he could provide prompt action. Client A said the property was exclusively listed with REALTOR® B under a contract that still had about 90 days to run.

"In that case," said REALTOR® C, "you are bound for the next 90 days to REALTOR® B. I have a really outstanding organization, constantly in touch with active buyers interested in this class of property. I am in a position to render you an exceptional service, and I will plan to call you again in 90 days or so."

The property remained unsold during the term of REALTOR® B's listing contract. REALTOR® C called again on Client A, and obtained his assurance that he would sign an exclusive listing of the property upon expiration of the listing contract.

When REALTOR® B called on Client A on the last day of the listing contract to seek its renewal, Client A told him of REALTOR® C's two visits. "I was impressed by REALTOR® C's assurance of superior service" Client A told REALTOR® B, "and in view of the fact that my listing with you produced no definite offer in the 180-day period, I have decided to give REALTOR® C a listing tomorrow."

REALTOR® B filed a complaint with the Grievance Committee of the Board, outlined the facts, and charged that REALTOR® C's conduct had been inconsistent with Article 16 of the Code of Ethics.

The Grievance Committee referred the matter to the Professional Standards Committee.

At the conclusion of the hearing, the panel found that REALTOR® C had violated Article 16 by failing to respect the exclusive agency of REALTOR® B. The panel's decision advised that REALTOR® C's original contact with Client A, made at a time when he had no knowledge of REALTOR® B's exclusive listing, was not in itself unethical, but that as soon as he learned of REALTOR® B's status as the client's exclusive agent, he should have taken an attitude of respect for the agency of another REALTOR®, and refrained from any effort to get the listing until after the expiration date of the original contract.

REALTOR® C's attitude of regarding the client's relationship with REALTOR® B as a kind of misfortune, of presenting his own service as superior to REALTOR® B's, and of suggesting to the client that, having a better capacity to serve him, he could wait until REALTOR® B's listing had expired, was, the panel said, contrary to the respect for another REALTOR®'s exclusive agency required by Article 16.

The Hearing Panel's decision further advised REALTOR® C that he would have conducted himself in accord with Article 16 if, upon learning of REALTOR® B's status as exclusive agent, he had expressed his willingness to cooperate with REALTOR® B in the sale of Client A's property.

## Case #16-3: Mass Media Solicitation Not a Violation of the Code (Revised Case #21-8 May, 1988. Transferred to Article 16 November, 1994.)

REALTOR® A, a residential broker, worked in a market area that included an attractive suburb of a large city. At the time REALTOR® A launched a new advertising program, there were a number of houses for sale in the neighborhood listed exclusively with other REALTORS®, each having the respective listing broker's sign on its front lawn.

Working with his advertising agency, REALTOR® A developed a special brochure describing the service of his offices and soliciting clients. The format of the brochure was designed so that it could be hung over a door knob, and a commercial distribution service was employed to hang one of these brochures on homes in REALTOR® A's market area.

In the course of distributing REALTOR® A's brochures, the commercial distribution service placed a brochure on the front door of every house in REALTOR® A's market area, including houses that had other REALTORS®' signs in the front yard. Several of the REALTORS® whose clients received REALTOR® A's brochures filed complaints with the Board against REALTOR® A. The Grievance Committee considered the complaints and referred them to the Professional Standards Administrator to schedule a hearing by a Hearing Panel of the Professional Standards Committee at which time all of the complaints would be considered. The complaints charged REALTOR® A with unethical conduct in failing to respect the exclusive agency of other REALTORS®.

At the hearing, REALTOR® A defended his action by saying that the distribution of his advertising brochures was widespread in nature; that it had been carried out by a commercial distribution service; and that it was of the same nature as radio or television advertising or a general mailing that might come to the attention of some clients having exclusive listing contracts with other REALTORS®.

The Hearing Panel's decision noted that REALTOR® A, in designing his advertising campaign, did not direct his brochures to property owners whose identity had come to REALTOR® A's attention through information disclosed by other REALTORS® consistent with their ethical obligation to cooperate with other brokers under Article 3 of the Code of Ethics; e.g., through a "for sale" sign or through information disseminated through a Multiple Listing Service. Rather, REALTOR® A's advertising campaign was directed in an indiscriminate manner to all property owners in a given geographical area. Furthermore, the medium REALTOR® A chose for his advertising campaign was a written brochure, which property owners could examine or discard as they saw fit. The panel determined that this form of communication does not harass a property owner, as would telephone calls or direct personal contacts. The Hearing Panel, therefore, held that REALTOR® A's advertising campaign did not violate Article 16 of the Code of Ethics.

## Case #16-4: Responsibilities of Cooperating Broker (Revised Case #21-10 May, 1988. Transferred to Article 16 November, 1994. Cross-reference Case #1-11. Deleted November, 2001.)

## Case #16-5: Solicitation of Expired Exclusive Listing

(Reaffirmed Case #21-11 May, 1988. Transferred to Article 16 November, 1994. Revised April, 1996.)

A property was exclusively listed with REALTOR® A who advertised it widely and invited cooperation from other REALTORS®. The property was not sold during the term of REALTOR® A's listing, although both REALTOR® A and REALTOR® B, a cooperating broker, had shown the property to prospects.

Sometime after the expiration of REALTOR® A's listing, newspaper advertisements appeared indicating that the property was exclusively listed with REALTOR® B. Shortly thereafter, the property was sold by REALTOR® B.

REALTOR® A confirmed that it was listed with REALTOR® B and then charged REALTOR® B in having failed to respect his exclusive agency status with the client by soliciting the listing. The Grievance Committee referred the complaint for hearing by a Hearing Panel of the Professional Standards Committee. Upon due notice to the parties, a hearing on the complaint was called with REALTORS® A and B present. REALTOR® A's specific charge was that REALTOR® B knew that the client had originally listed the property with him, REALTOR® A, because he had discussed the property with REALTOR® B during the term of the original listing contract; that during the term of REALTOR® A's listing, REALTOR® B had shown the property to the same individual who had now purchased the property through REALTOR® B; and that with this knowledge REALTOR® B's action in soliciting the listing, even after it had expired, was a violation of Article 16.

REALTOR® A told the Hearing Panel that when he had asked for an extension of the original exclusive listing, the client told him that because of a family problem he intended to take the property off the market for a few months, but would consider relisting at a later date.

REALTOR® B conceded that he had known of REALTOR® A's exclusive listing at the time the listing contract was current; that he had known the term of the listing contract and, hence, knew when it expired; and that he had shown the property to the individual who eventually purchased it. However, he explained, he had no continued contact with the prospect to whom he had originally shown the property. After the expiration date of REALTOR® A's listing, he was approached by the individual to whom he had originally shown the property and who was still actively interested in purchasing a home. In reviewing the purchaser's stated requirements and reviewing the market, the property in question seemed to correspond more closely than any other available properties. Knowing that the original listing with REALTOR® A had expired some time ago, REALTOR® B simply called the owner to ask if the property had been relisted with REALTOR® A. Upon learning that REALTOR® A's exclusive listing had not been extended, REALTOR® B told the owner of his prospective buyer, solicited the listing, and obtained it. REALTOR® B said he saw nothing unethical in having solicited the listing when it was no longer exclusively listed with another broker and felt that REALTOR® A was without grounds for complaint.

The panel concluded that it was not the intent of Article 16 to provide any extended or continuing claim to a client by a REALTOR® following the expiration of a listing agreement between the client and the REALTOR®. The panel concluded that REALTOR® A had not been successful in his efforts to sell the client's property and that neither the property owner nor other REALTORS® should be foreclosed from entering into a new listing agreement to sell the property.

The panel concluded that REALTOR® B was not in violation of Article 16 of the Code of Ethics.

## Case #16-6: Cooperating Broker's Compensation Specified on Deposit Receipt (Revised Case #21-12 May, 1988. Transferred to Article 16 November, 1994. Renumbered as Case #16-15 November, 2001.)

## Case #16-7: REALTOR®'s Refusal to Disclose Nature and Current Status of Listing to Another REALTOR® (Revised Case #21-13 May, 1988. Transferred to Article 16 November, 1994.)

Client X listed his home with REALTOR® A under an exclusive right to sell listing agreement negotiated for a period of 90 days. During the first 75 days, REALTOR® A attempted various marketing strategies, but none were successful. Client X expressed disappointment and told REALTOR® A that he might seek another agency when the listing expired.

That same day, Client X expressed to a friend his dissatisfaction with REALTOR® A's lack of results, and mentioned that he might employ another agent. The friend, in turn, related this information to his friend, REALTOR® B, and suggested that REALTOR® B contact Client X. Aware that the property was currently listed with REALTOR® A, REALTOR® B called REALTOR® A, explained the information passed on to him, and inquired about the nature and current status of Client X's listing with REALTOR® A. Specifically, REALTOR® B asked REALTOR® A when the listing would expire and whether the listing was an "exclusive right to sell" or "open" listing. REALTOR® A responded that the listing was his and refused to discuss the matter further.

REALTOR® B then contacted Client X and explained that their mutual friend had informed him that Client X might be seeking another agent to sell his property. REALTOR® B told Client X that he did not wish to interfere in any way with Client X's present agency agreement with REALTOR® A, but that if Client X intended to seek another agent when his present listing agreement with REALTOR® A terminated, he would like to discuss the possibility of listing Client X's property. Client X invited REALTOR® B to his home that evening, and there they discussed the terms and conditions under which REALTOR® B would list the property upon termination of REALTOR® A's listing. REALTOR® B and Client X did not enter into any written agreement at that time. However, Client X requested REALTOR® B to meet with him the day following the expiration of REALTOR® A's listing, and Client X said that at that time he would execute a new listing agreement with REALTOR® B. The property did not sell before REALTOR® A's listing expired, and on the day following the expiration of REALTOR® A's listing, Client X listed the property with REALTOR® B. Upon learning of REALTOR® B's listing, REALTOR® A filed a complaint with the Board alleging that REALTOR® B violated Article 16 of the Code of Ethics.

At an ethics hearing duly noticed and convened after all due process procedures of the Board were followed, REALTOR® A presented his complaint that REALTOR® B had contacted REALTOR® A's client during the unexpired term of the client's listing agreement with REALTOR® A and had, therefore, violated Article 16 of the Code of Ethics.

REALTOR® B defended his action by pointing out that when he was informed that Client X was seeking another broker, he sought to respect the agency of REALTOR® A by calling him to inquire about the type and expiration date of the listing. He said he told REALTOR® A he would respect REALTOR® A's agency agreement, but that he needed to know this information to determine when, and under what circumstances, Client X would be free to list the property with another broker. REALTOR® A refused to discuss the listing status, stating that "it was none of his business." REALTOR® B cited Standard of Practice 16-4 in defense of his direct contact with Client X.

The Hearing Panel concluded that REALTOR® B had adequately respected the agency of REALTOR® A as interpreted by Standard of Practice 16-4. The panel's decision indicated that a listing broker should recognize that his refusal to disclose the type and expiration date of a listing to an inquiring broker frees the inquiring broker to contact the seller directly. If the contact with the seller is made under the provisions of Standard of Practice 16-4, the REALTOR® is also able to discuss the terms of a future listing on the property or may enter into a listing to become effective upon the expiration of the current listing.

The panel found REALTOR® B not in violation of Article 16.

## Case #16-8: Unauthorized Use of Information Received from Listing Broker for the Purpose of Creating a Referral Prospect to a Third Broker or for Creating a Buyer Prospect (Reaffirmed Case #21-14 May, 1988. Transferred to Article 16 November, 1994.)

REALTOR® A filed a listing with the Board MLS which bulletined the information to all Participants. In the "Remarks" portion of the property data form, it was noted that the seller was moving out of state. Shortly thereafter, REALTOR® A received a call from REALTOR® B, requesting permission to show the property to a prospective purchaser. REALTOR® B's request was granted and the property was shown to the prospect. During the showing, REALTOR® B started a conversation with Seller X regarding his proposed move to another state. REALTOR® B told the seller that he was acquainted with a number of real estate brokers in the city to which Seller X was relocating and suggested that he be allowed to refer Seller X to one of these brokers. Seller X responded that REALTOR® A, the listing broker, had previously mentioned the possibility of a referral and that Seller X felt obligated to be referred by REALTOR® A, if by anyone.

Several days later, Seller X received a phone call from REALTOR® B who again asked permission to refer the seller to a broker in the city to which the seller was moving. The seller indicated that he was not interested in REALTOR® B's offer and that if he wished to be referred to another broker, he would do so through REALTOR® A. The seller then called REALTOR® A and asked if there was anything REALTOR® A could do to stop REALTOR® B from requesting that he be allowed to refer the seller to another broker. Upon learning of REALTOR® B's attempts to create a referral prospect, REALTOR® A filed a complaint with the Grievance Committee of the Board alleging a violation of Article 16 of the Code of Ethics and cited Standard of Practice 16-18 in support of the allegations.

In accordance with the Board's established procedures, the Grievance Committee reviewed the complaint and referred it to a panel of the Professional Standards Committee for hearing. The appropriate notices were sent to all parties and a hearing was scheduled.

At the hearing, REALTOR® A produced a written statement from Seller X in support of his testimony and concluded that REALTOR® B had violated Article 16 of the Code of Ethics in attempting to use confidential information received through the Board's MLS to attempt to create a referral prospect to a third broker.

REALTOR® B responded that, as a subagent of the listing broker, he was attempting to promote the seller's best interest by referring the seller to a reputable broker whom he knew personally in the city to which the seller was going to relocate. REALTOR® B indicated that the seller had not accepted his offer of referral and, based on such refusal, REALTOR® B had not, in fact, made any referral and, therefore, had not acted in a manner inconsistent with his obligations as expressed in Standard of Practice 16-18.

After giving careful consideration to all the evidence, the Hearing Panel determined REALTOR® B to be in violation of Article 16 by his attempt to utilize confidential MLS information to create a referral prospect to a third broker, contrary to the intent of Standard of Practice 16-18, even though his effort to obtain the seller's permission to do so had been unsuccessful. The Hearing Panel also commented that MLS information is confidential and to be utilized only in connection with the REALTOR®'s role as cooperating broker. The panel further commented that information received from a listing broker through the MLS should not be used to create a referral prospect to a third broker or to create a buyer prospect unless such use is authorized by the listing broker.

## Case #16-9: Mass Media Solicitation of Business Not a Violation of the Code (Reaffirmed Case #21-15 May, 1988. Transferred to Article 16 November, 1994.)

REALTOR® A designed an advertising campaign to promote his new marketing program. Part of REALTOR® A's campaign included a number of advertisements in the local newspaper, and billboards placed at various well-traveled intersections around the city.

The message that appeared in REALTOR® A's advertisements and on his billboards was: "Attention: All homeowners whose properties are for sale. Do you want results? If so, contact REALTOR® A. He has a new marketing program that gets results."

In response to his advertisements, REALTOR® A received a number of calls from homeowners whose properties were currently listed with other REALTORS®. Several of the REALTORS® whose clients contacted REALTOR® A filed complaints with the Board, charging REALTOR® A with unethical conduct for failing to respect the exclusive agency of other REALTORS®. The Grievance Committee considered the complaints and referred them to the Professional Standards Administrator to schedule a hearing by a Hearing Panel of the Professional Standards Committee.

At the hearing held by the Professional Standards Committee to consider the complaints, REALTOR® A defended his advertising campaign by saying that the campaign was undertaken through the mass media; that it was not directed toward any particular owner; that it was not an attempt to induce property owners to breach existing listing agreements; and, therefore, was not the type of solicitation prohibited by Article 16 of the Code of Ethics.

The Hearing Panel concurred with REALTOR® A on the grounds that REALTOR® A's solicitation was made through the mass media, and was not specifically directed toward property owners whose identity had come to REALTOR® A's attention through information disclosed by other REALTORS® consistent with their ethical obligation to cooperate with other brokers under Article 3 of the Code of Ethics. The panel, therefore, held that REALTOR® A's advertising campaign did not violate Article 16 of the Code of Ethics.

## Case #16-10: Refusal to Disclose Nature and Expiration Date of Listing (Originally Case #9-20. Revised and transferred to Article 21 as Case #21-16 May, 1988. Transferred to Article 16 November, 1994.)

REALTOR® A, on his way to his office, noticed the deteriorated condition of a "For Sale" sign posted on an unimproved site bearing the name of REALTOR® B. He remembered that REALTOR® B's "For Sale" sign had been on that site for a considerable period of time. REALTOR® A decided to call REALTOR® B to determine the status of the property. In response to several questions, one of which was, "Do you have an exclusive listing on that property?" REALTOR® B replied that he was not obligated to disclose the nature, status, or the type of listing. After considerable conversation, REALTOR® A stated his intention to contact the property owners for this information, citing Standard of Practice 16-4 as the basis for his action. REALTOR® B warned REALTOR® A not to "cross his sign" and refused to discuss the matter further. A few days later, REALTOR® B had a telephone conversation with the property owners and learned of their decision to list their property with REALTOR® A when their current listing with REALTOR® B expired the following week. REALTOR® B filed a complaint against REALTOR® A with the Board, stating that REALTOR® A's actions in contacting his client had been inconsistent with REALTOR® B's agency.

The Grievance Committee reviewed the complaint and the response to the complaint filed by REALTOR® B. The case was referred to the Professional Standards Administrator to schedule a hearing by a Hearing Panel of the Board's Professional Standards Committee.

During the hearing, REALTOR® B repeated his complaint and his conversation with REALTOR® A. He also advised the Hearing Panel of his telephone conversation with the property owners and of their decision, as a result of REALTOR® A's direct contact, not to relist the property with him, REALTOR® B. "Not only did REALTOR® A fail to respect my agency with the property owners by contacting them directly," said REALTOR® B, "but he violated Article 16 by taking the opportunity to relist the property away from me!"

REALTOR® A defended his actions by stating that he had requested information on the nature and status of the listing from REALTOR® B, as required by Article 16, and that REALTOR® B had refused to divulge the information; and that he had contacted the property owners only after this refusal, citing as his authority the principle established in Standard of Practice 16-4. "The sellers were happy to discuss listing their property with me, once I described the services my firm could offer," said REALTOR® A. "They said they hadn't had an interested customer since the first week of their listing with REALTOR® B."

After giving careful consideration to all of the evidence and testimony, the Hearing Panel concluded that REALTOR® A's actions had not been inconsistent with the agency of REALTOR® B. The panel advised that REALTOR® B's refusal to disclose the nature and status of his listing had freed REALTOR® A to contact the property owners.

The Hearing Panel's decision noted that Article 16 requires a REALTOR® to respect the agency of another REALTOR®. But, in order to respect the listing broker's agency, the REALTOR® must be able to determine if a listing really exists. If the listing broker refuses to disclose the existence, type, and duration of his listing, Standard of Practice 16-4 recognizes the REALTOR®'s right to contact the seller directly to get that information. Once the REALTOR® secures information on the type and duration of the listing, Standard of Practice 16-4 also permits him to discuss the terms of a future listing or to enter into a listing that becomes effective upon the expiration of the current listing. The panel's decision also indicated that REALTOR® B could have barred REALTOR® A's contact with the sellers by simply providing him with information on the nature and status of the listing.

The panel found REALTOR® A not in violation of Article 16 of the Code of Ethics.

## Case #16-11: Buyer Agent's Demand that Listing Agent Reduce Commission (Adopted as Case #21-17 April, 1990. Transferred to Article 16 November, 1994. Renumbered as Case #16-16 November, 2001.)

## Case #16-12: Buyer Conditions Purchase Offer on Seller's Agreement to Pay Buyer Agent's Fee (Adopted as Case #21-18 April, 1990. Transferred to Article 16 November, 1994. Renumbered as Case #16-17 November, 2001.)

## Case #16-13: Dealings Initiated by Another Broker's Client (Adopted May, 1999.)

REALTOR® A, a residential broker, had recently listed a home. REALTOR® A's marketing campaign included "open houses" on several consecutive weekends.

One Sunday afternoon Buyer B came to the open house. REALTOR® A introduced herself to Buyer B and asked whether Buyer B was working with another broker. Buyer B responded that he was, in fact, exclusively represented but went on to add that he was quite familiar with the property as it had been previously owned by a close personal friend. REALTOR® A told Buyer B that she would be happy to show Buyer B through the home but reminded Buyer B that she represented the seller and not Buyer B.

After viewing the home, Buyer B indicated that he had pressing business travel plans, was seriously interested in the property, and requested REALTOR® A's assistance in preparing a purchase offer. REALTOR® A assisted Buyer B in filling out a standard form purchase contract and later that day presented the offer to the seller who accepted it.

REALTOR® A was subsequently charged with violating Article 16 for dealing and negotiating with a party who had an exclusive relationship with another REALTOR®.

At the hearing, REALTOR® A defended her actions noting that she had told Buyer B that she was the seller's exclusive agent and, as such, would not and could not represent Buyer B's interests. She pointed out that it was only after Buyer B had insisted on writing a purchase offer without the assistance of his exclusive representative that REALTOR® A had agreed to do so. She concluded her defense noting that Standard of Practice 16-13 authorizes dealings with the client of another broker in cases where those dealings are initiated by the client.

The Hearing Panel agreed with REALTOR® A that she was the seller's exclusive representative and had not represented the buyer and concluded that her conduct had not violated Article 16, as interpreted by Standard of Practice 16-13.

## Case #16-14: Dealings Initiated by Another Broker's Client (Adopted May, 1999.)

REALTOR® X, a residential broker, had recently listed a home. REALTOR® X's marketing campaign included "open houses" on several consecutive weekends.

One Sunday afternoon Buyer B came to the open house. REALTOR® X introduced herself to Buyer B and asked whether Buyer B was working with another broker. Buyer B responded that he was, in fact, exclusively represented but went on to add that he was quite familiar with the property as it had been previously owned by a close personal friend. REALTOR® X told Buyer B that she would be happy to show Buyer B through the home and answer any questions he might have, but added that she represented the seller and not Buyer B.

After viewing the home, Buyer B indicated that he was seriously interested in the property and intended to discuss a possible purchase offer with his buyer representative. REALTOR® X responded that there were several other buyers interested in the property and that it would likely sell quickly. "I can't tell you what to do, but if it were me, I would make an offer today," REALTOR® X told Buyer B, "You can go back and discuss this with your broker if you like or I can help you write a purchase contract. It's your choice." With REALTOR® X's words in mind, Buyer B decided to make an offer. REALTOR® X assisted Buyer B in filling out a standard form purchase contract which was accepted by the seller later that day.

REALTOR® X was subsequently charged with violating Article 16 for dealing and negotiating with a party who had an exclusive relationship with another REALTOR®.

At the hearing, REALTOR® X defended her actions noting that she had told Buyer B that she was the seller's exclusive agent and, as such, would not and could not represent Buyer B's interests. She pointed out that Buyer B had asked for her help in writing a purchase offer and had not sought the counsel and assistance of his exclusive representative. She concluded her defense noting that Standard of Practice 16-13 authorizes dealings with the client of another broker when those dealings are initiated by the client.

The Hearing Panel disagreed with REALTOR® X's reasoning. They concluded that REALTOR® X's inducement of Buyer B by emphasizing that the property might sell quickly (which might well have been true), coupled with her offer to prepare a purchase contract on Buyer B's behalf, constituted an initiation of dealings on the property by REALTOR® X, not by Buyer B. As a result, REALTOR® X was found in violation of Article 16.

## Case #16-15: Cooperating Broker's Compensation Specified on Deposit Receipt (Revised Case #21-12 May, 1988. Transferred to Article 16 November, 1994 as Case #16-6. Renumbered November, 2001.)

REALTOR® A filed a written complaint against REALTOR® B, alleging violation of Article 16 of the Code of Ethics. It was referred to the Grievance Committee and after preliminary review, the Grievance Committee referred it to the Professional Standards Administrator with instructions to arrange a hearing before a Hearing Panel of the Professional Standards Committee. After following required procedures, including timely notices to all parties, a Hearing Panel was convened.

REALTOR® A stated to the Hearing Panel that he and REALTOR® B were both members of the Board MLS and that, as an MLS Participant, he was required to specify the amount of compensation he was offering on listings filed with the MLS. However, REALTOR® B had ignored this information as published by the MLS and had, on two separate occasions, brought REALTOR® A purchase agreements with copies of deposit receipts that provided for a different amount of subagency compensation to be payable to REALTOR® B. In following this practice, REALTOR® B was, in effect, presenting a demand for a subagency compensation greater than that which REALTOR® A, as the listing broker, had specified in the information filed with the Board's Multiple Listing Service.

REALTOR® A also complained that the language of the deposit receipt was so phrased as to make presentation of the offer conditioned upon REALTOR® A's agreement to pay a larger subagency commission than he had offered through the MLS. REALTOR® A said this practice by REALTOR® B created a dilemma for him as the listing broker of either not submitting the offer to the client or, alternatively, paying an amount of subagency compensation greater than he had offered through the MLS.

REALTOR® B responded that he had a right to negotiate with REALTOR® A as to the subagency compensation he would receive for his work, and the amount he had put on the deposit receipt was the compensation for which he was willing to work. REALTOR® B said that REALTOR® A would have to make his own decision as to whether he would present the offer or not.

The Hearing Panel's decision noted that REALTOR® B was indeed entitled to negotiate with REALTOR® A concerning subagency compensation but that such negotiation should be completed prior to the showing of the property by REALTOR® B. The decision indicated that REALTOR® B was entitled to show property listed by REALTOR® A on the basis of the subagency agreement between them. If there was no agreement on the essential terms and conditions of such subagency, including compensation, there was no authority for REALTOR B to show the property or to procure an offer to purchase.

The panel's decision further advised that it was improper for REALTOR® B to follow a procedure of inserting the amount of subagency compensation to be paid by the listing broker on any document provided to a buyer or a seller, because this is properly a matter to be decided by the listing and cooperating brokers at the time the offer of subagency is offered and accepted; and that preconditioning an offer to purchase on the listing broker's acceptance of a subagency commission greater than he had offered was a practice inconsistent with respect for the agency of the listing broker.

REALTOR® B was found in violation of Article 16.

## Case #16-16: Buyer Agent's Demand that Listing Agent Reduce Commission (Adopted as Case #21-17 April, 1990. Transferred to Article 16 November, 1994 as Case #16-11. Renumbered November, 2001.)

REALTOR® B contacted REALTOR® A, the listing broker, and notified her that he was a buyer's agent and was interested in showing one of her listings to his client, a prospective purchaser. REALTOR® A made an appointment for REALTOR® B and his client to view the property. Shortly thereafter, REALTOR® B presented REALTOR® A with a signed offer to purchase from his client which was contingent on REALTOR® A's willingness to reduce her commission by the amount she had offered through the MLS to subagents and on the seller's willingness to compensate the buyer for the commission the buyer owed to REALTOR® B, his agent. REALTOR® A presented the offer to her client, the seller, explaining that she would not agree to reduce the previously agreed commission as specified in their listing contract.

REALTOR® A then filed a complaint with the local Board charging REALTOR® B with violating Article 16 as interpreted by Standard of Practice 16-16. In her complaint, REALTOR® A stated that REALTOR® B had interfered in her agency relationship with the seller by encouraging the buyer to condition acceptance of his offer on the renegotiation of REALTOR® A's commission arrangement with her client, the seller.

REALTOR® B defended his action arguing that REALTOR® A's refusal to reduce her commission by an amount equal to what she had offered other brokers for subagency services would have placed the seller in the position of having to pay an excessive amount of commission if he had accepted the offer agreeing to contribute to the buyer broker's compensation. In addition, REALTOR® B felt that it was his duty to his client to get the best price for the property by encouraging the buyer to reduce the costs of sale wherever practical. The Hearing Panel concluded that REALTOR® B's actions to encourage his buyer-client to pressure the seller to try to modify the listing agreement with REALTOR® A was an unwarranted interference in their contractual relationship.

The Hearing Panel noted that Article 16, as interpreted by Standard of Practice 16-16, required REALTOR® B to determine, prior to presenting an offer to REALTOR® A and her seller-client, whether REALTOR® A was willing to contribute to REALTOR® B's commission, either directly or by reducing the commission as agreed to in the listing contract and, if so, the terms and amount of such contributions. It was the decision of the Hearing Panel that REALTOR® B had violated Article 16.

## Case #16-17: Buyer Conditions Purchase Offer on Seller's Agreement to Pay Buyer Agent's Fee (Adopted as Case #21-18 April, 1990. Transferred to Article 16 November, 1994 as Case #16-12. Renumbered November, 2001.)

REALTOR® A filed a listed property with his local MLS offering to pay a fee for subagency services. REALTOR® B called REALTOR® A, identified himself as a buyer's agent, and asked if REALTOR® A would arrange a showing of the property to his client and himself. REALTOR® A agreed. The following day, REALTOR® B presented REALTOR® A with an offer to purchase that was contingent on the seller's agreement to pay REALTOR® B's commission. The seller accepted the offer and the sale closed shortly afterward.

REALTOR® A then filed a complaint against REALTOR® B citing Article 16 of the Code of Ethics as interpreted by Standard of Practice 16-16. He stated that REALTOR® B had interfered in REALTOR® A's relationship with his seller-client by attempting to negotiate a separate commission agreement with the seller. REALTOR® B responded that since the request that the seller pay his commission was made by REALTOR® B's client, the buyer, directly of the seller and not of the listing broker, no violation of the Code of Ethics had occurred.

In their decision, the Hearing Panel noted that if REALTOR® B, or if his client at REALTOR® B's urging, had demanded that a portion of REALTOR® A's commission be paid to REALTOR® B, there would have been a valid basis for REALTOR® A's position. Since the request for payment of REALTOR® B's fee was made directly to the seller, REALTOR® B was not in violation of Article 16.

## Case #16-18: Assumed Consent for Direct Contact (Reaffirmed Case #22-2 May, 1988. Transferred to Article 3 November, 1994. Transferred to Article 16 November, 2001.)

REALTOR® A, who held an exclusive listing of Client B's property, invited REALTOR® C to cooperate with him. When REALTOR® C, shortly thereafter, received an offer to purchase the property and took it to REALTOR® A, the latter took REALTOR® C with him to present the offer to Client B, and negotiations for the sale were started. The next day, REALTOR® C called on Client B alone, recommended that he accept the offer which was at less than the listed price, and Client B agreed. The contract was signed and the sale was made.

These facts were detailed in a complaint by REALTOR® A to the Board of REALTORS® charging REALTOR® C with unethical conduct in violation of Article 16, having made his second contact with the client without his, REALTOR® A's, consent.

At the subsequent hearing, REALTOR® C defended his actions on the basis that since he had been invited to cooperate with REALTOR® A, and particularly since REALTOR® A had invited him to be present when his offer was presented to the seller, REALTOR® C had assumed that he had REALTOR® A's consent for subsequent direct contacts with Client B. He stated further that he had a good reason for going alone because in his first visit to the client, REALTOR® A had undertaken to present his, REALTOR® C's, offer without fully understanding it and had made an inept presentation. Questioning by members of the Hearing Panel revealed that there had been some important considerations that REALTOR® A had not understood or explained to the client.

The conclusion of the panel was that the consent of the listing broker required by Article 16, as interpreted by Standard of Practice 16-13, cannot be assumed, but must be expressed; and that REALTOR® C had violated Article 16 by negotiating directly with REALTOR® A's client without REALTOR® A's consent.

## Case #16-19: Continued Contact With Potential Seller Who Enters Into an Exclusive Listing With Another REALTOR® (Adopted November, 2011)

After a decades-long career as a noted researcher and teacher, Professor Y decided to sell his home near the university campus in anticipation of his retirement to the northwoods. Having lived in the home for over thirty years and realizing that the proceeds from its sale would constitute a significant part of his retirement funds, Professor Y made appointments with several potential listing brokers, including REALTOR® P and REALTOR® Q. During each appointment, Professor Y asked extensive questions hoping to get a clear idea of his property's market value and each broker's proposed marketing strategies.

REALTOR® Q was familiar with Professor Y's home, having grown up on the same block and having gone to elementary and high school with Professor Y's children. Consequently, REALTOR® Q was not surprised when she received a call asking for a meeting to discuss a possible listing of Professor Y's home. The appointment had gone well and REALTOR® Q was confident she would get the listing. To her surprise, just three days later the property came onto the market listed with REALTOR® P. REALTOR® Q was taken aback and spent considerable time pondering what she had done or said – or failed to do or say – that had led Professor Y to choose to list with REALTOR® P. Several times she was tempted to call Professor Y and ask why she hadn't been chosen, but she never made that call.

Several weeks later Professor Y's son and daughter-in-law hosted a retirement party for Professor Y. Their friend REALTOR® Q was among the invited guests. At the party, Professor Y approached REALTOR® Q and, after exchanging pleasantries, commented, "You're probably wondering why I didn't list my home with you." "The thought crossed my mind," admitted REALTOR® Q, "but you made a good choice with REALTOR® P. I'm certain he'll do a fine job and get a fair price for you." Then, since Professor Y had raised the issue, REALTOR® Q asked, "Why didn't you give me the listing?" Professor Y explained that while he thought highly of REALTOR®® Q, he had been very impressed with REALTOR® P's marketing strategies, and his choice was a business decision and not one influenced by friendships. REALTOR® Q accepted Professor Y's explanation and their conversation turned to other topics. A month later, REALTOR® Q was surprised to receive notice from the local association of REALTORS® advising she had been named in an ethics complaint alleging that her conversation with Professor Y, after Professor Y had listed his home with REALTOR® P, had violated Article 16 of the Code of Ethics.

At the hearing, REALTOR® Q had acknowledged she had been surprised – and disappointed – when Professor Y listed his home with REALTOR® P instead of with her. She also acknowledged she discussed Professor Y's choice of listing broker with him at the party. In her defense, she called Professor Y as a witness. Professor Y testified that he had in fact told REALTOR® P, his listing broker, about his conversation with REALTOR® Q, adding that he had no idea that REALTOR® P would file an ethics complaint. He also noted he – and not REALTOR® Q – had raised the subject of why he had chosen to list with REALTOR® P. "REALTOR® Q is a longtime friend of my family and I felt I owed her an explanation about why I listed with REALTOR® P instead of with her."

REALTOR® Q concluded her defense noting that while Standard of Practice 16-13 requires REALTORS® to conduct dealings related to exclusively listed property with the client's agent, there is an exception in cases where dealings are initiated by an exclusively-represented client. She pointed out that her conversation with Professor Y could fairly be characterized as a "dealing" related to Professor Y's exclusively listed home, and that her conversation with Professor Y, since it was initiated by Professor Y, did not violate Article 16 of the Code of Ethics.

The Hearing Panel concurred with REALTOR® Q's defense, and found no violation of Article 16.

## Case #16-20: Continued Contact With Potential Seller Who Enters Into an Exclusive Listing With Another REALTOR® (Adopted November, 2011)

At the conclusion of a detailed listing presentation, REALTOR® B asked the sellers whether they had any questions. "No," said Seller Z. "Your presentation was professional and complete and we very much appreciate your time. We have appointments with two other realty firms and after we talk to them we'll make our decision." REALTOR® B thanked the sellers and encouraged them to contact him with any questions they might have. "I really look forward to being your broker," he added.

Several days later, REALTOR® B noticed that Seller Z's property had come on the market, listed with REALTOR® A. REALTOR® B and REALTOR® A were friends, but were also quite competitive, both frequently pursuing the same potential seller-clients. "I wonder why Seller Z decided to list with REALTOR® A," mused REALTOR® B, "it won't matter if I just call and ask why they decided to list with my friend REALTOR® A instead of me." REALTOR® B called the sellers and left a message on their answering machine asking for a return call at their convenience.

That evening, Seller Z returned REALTOR® B's phone call. REALTOR® B started the conversation by thanking Seller Z and his wife for their time. "What I'd like to know is why you chose to give your listing to REALTOR® A instead of me?" he then asked. "Don't get me wrong, REALTOR® A is a good broker and will do a good job for you. I'm not suggesting you cancel your listing with REALTOR® A but if your listing expires and REALTOR® A hasn't sold it, I'd be pleased to talk to you about listing with me."

Seller Z did not follow up on REALTOR® B's offer and the following weekend at REALTOR® A's open house Seller Z and his wife recounted REALTOR® B's follow-up phone call. Over the next few days REALTOR® A debated filing an ethics complaint. He weighed his friendship with REALTOR® B against what he saw as his duty to bring potentially unethical conduct to the attention of the association of REALTORS®. Somewhat reluctantly, he filed an ethics complaint alleging a violation of Article 16, as interpreted by Standard of Practice 16-13.

At the hearing, REALTOR® A called Seller Z as a witness. Seller Z faithfully recounted the substance of REALTOR® B's conversation with Seller Z and his wife, commenting that while REALTOR® B had said he was only trying to understand why he hadn't been given the listing, it appeared to Seller Z that REALTOR® B wanted Seller Z to cancel his listing with REALTOR® A. Then REALTOR® B testified in his own defense. He acknowledged he had been aware that REALTOR® A had already exclusively listed the property when he contacted Seller Z and asked for a follow-up appointment. He defended his actions stating he was not trying to induce Seller Z to cancel the listing, he was simply trying to find out what he had said – or failed to say – that led Seller Z to list with REALTOR® A instead of with him, and wanted Seller Z and his wife to be fully aware of the services he would provide if their listing with REALTOR® A expired.

The Hearing Panel did not agree with REALTOR® B's defense, noting that REALTOR® B's curiosity or desire to enhance his listing presentation skills did not justify continued contact with a potential seller-client after that seller had entered into an exclusive representation agreement with another broker. REALTOR® B was found in violation of Article 16 as interpreted by Standard of Practice 16-13.

## Case #16-21: Continued Contact With Potential Seller Who Enters Into an Exclusive Listing With Another REALTOR® (Adopted November, 2011)

REALTOR® P and Ms. Q had been members of the church choir for several years and had become social friends. One evening after choir practice Ms. Q mentioned that now that her children were grown and out of the family home, she and her husband were seriously considering downsizing. "I'm sure I can help you with that," said REALTOR® P, "I'm going away for the weekend but I'll get in touch with you early next week."

The following Monday evening REALTOR® P called Ms. Q. After exchanging pleasantries, REALTOR® P turned the conversation toward business. "I've identified some comparable sales to show you and I'd like to come over and visit with you and your husband to discuss listing your home," she said. After a lengthy pause, Ms. Q shared with REALTOR® P that her husband had been very anxious to get started and over the weekend they had visited several local real estate brokerages and had listed their home with REALTOR® B. "I hope you understand," said Ms. Q, "my husband makes all of our business decisions and he was very impressed with REALTOR® B and his plans for selling our house." REALTOR® P responded positively telling Ms. Q, "I know REALTOR® B. He'll do a fine job for you. If there is ever anything I can do for you in the future, never hesitate to call me." On that note, REALTOR® P and Ms. Q ended their conversation.

The next afternoon REALTOR® B was at the Q's home placing his "For Sale" sign on their front lawn. Ms. Q invited REALTOR® B into the house for coffee. During their conversation, she mentioned her conversation the evening before with REALTOR® P, commenting, "I was so relieved that REALTOR® P wasn't upset that I didn't list with her. She was very gracious and even suggested that I should call her if she could be of assistance to us in the future." REALTOR® B said nothing about Ms. Q's remark, but after returning to his office filled out the paperwork necessary to file an ethics complaint against REALTOR® P, charging her with violating Article 16, as interpreted by Standard of Practice 16-13.

At the hearing convened to consider the complaint, REALTOR® B testified that REALTOR® P had directly contacted his exclusive client, Ms. Q, and after Ms. Q had shared with REALTOR® P the fact that the Q's home had been listed by REALTOR® B, had not immediately terminated their telephone conversation. "Even worse," said REALTOR® B, "REALTOR® P told Ms. Q that she should call her if there was ever anything she could do for her. REALTOR® P's offer to be of assistance 'at any time in the future' was simply a thinly-veiled attempt to convince the Q's to cancel their listing with me and to list with her.

REALTOR® P, testifying in her defense, noted that she did not know the Q's property had been listed by REALTOR® B when she called Ms. Q; that when Ms. Q informed her they had listed their property with REALTOR® B she had responded courteously, professionally, and positively, assuring Ms. Q that REALTOR® B would do a good job for the Qs; and that her offer was simply to be of assistance in future real estate transactions, possibly the purchase of a new home or condominium. "Once I learned that REALTOR® B had listed the Q's property, I ended our telephone conversation as quickly and as politely as I could," concluded REALTOR® P, "I certainly was not trying to interfere in REALTOR® B's exclusive contract with the Qs."

After giving careful consideration to the testimony of both parties, the Hearing Panel concluded that REALTOR® P had not violated Article 16 as interpreted by Standard of Practice 16-13, and that her offer to be of assistance in the future was simply a polite way to end the conversation.

# CASE INTERPRETATIONS RELATED TO ARTICLE 17:

## Case #17-1: Obligation to Submit to Arbitration (Revised Case #14-2 May, 1988. Transferred to Article 17 November, 1994. Revised November, 1995. Revised November, 2001.)

REALTOR® A and REALTOR® B had been engaged in a cooperative transaction that resulted in a dispute regarding entitlement to compensation. Rather than requesting arbitration before the Board of REALTORS®, REALTOR® A filed suit against REALTOR® B for payment of the compensation he felt REALTOR® B owed him. Upon receiving notification of the lawsuit, REALTOR® B filed a request for arbitration with the Board, which was reviewed by the Grievance Committee and found to be a mandatory arbitration situation. REALTOR® A was advised of the Grievance Committee's decision, but refused to withdraw from the lawsuit. Thereupon, REALTOR® B filed a complaint with the Board charging a violation of Article 17 as supported by Standard of Practice 17-1.

REALTOR® A was directed to be present at a hearing on the complaint before the Board of Directors. Evidence that REALTOR® B had sought REALTOR®R A's agreement to submit the dispute to arbitration was presented at the hearing. REALTOR® A defended his action in filing the suit and refusing to submit to arbitration by asserting that under laws of the state, the Board of REALTORS® had no authority to bar his access to the courts or to require him to arbitrate his dispute with REALTOR® B.

The Board of Directors concluded that REALTOR® A was correct as to his legal right and as to the Board's lack of any right to prevent him from filing a suit. It was pointed out to REALTOR® A, however, that the Board of REALTORS® is a voluntary organization, whose members accept certain specified obligations with respect to their relations with other REALTORS®, and that if he wished to continue as a member of the Board he would be obliged to adhere to the Board's requirements as to arbitration.

Because REALTOR® A would not withdraw the litigation, the Board of Directors concluded that REALTOR® A was in violation of Article 17 for refusing to arbitrate in a mandatory arbitration situation. However, it was noted that if REALTOR® A had filed litigation against REALTOR® B, and had REALTOR® B then requested arbitration with the Grievance Committee determining that an arbitrable issue of a mandatory nature existed, REALTOR® B might have successfully petitioned the court to remand the matter to the Board for arbitration, and there would have been no finding of a violation of Article 17 since the Board's arbitration process would have been ultimately complied with.

## Case #17-2: Dispute Between REALTORS® in Different Boards (Revised Case #14-6 May, 1988. Transferred to Article 17 November, 1994. Revised November, 1995.)

REALTOR® A cooperated in the sale of a commercial property with REALTOR® B, the listing broker. REALTOR® A is a member of the XYZ Board of REALTORS®, and his office is located in the XYZ Board. Both the property and REALTOR® B's office are located within the jurisdiction of the ABC Board of REALTORS® where REALTOR® B is a member. A dispute arose between REALTORS® A and B over the division of the commission.

REALTOR® A filed a request for arbitration with the Professional Standards Committee of his Board. The President of the Board, when advised of the contractual dispute, subsequent to the Grievance Committee finding the matter arbitrable and of a mandatory nature, notified the President of REALTOR® B's Board and requested interboard arbitration in accordance with Article 17 of the Code of Ethics. The arbitration request was brought before the Grievance Committee of REALTOR® B's Board which also determined that the dispute was arbitrable and of a mandatory nature.

One week before being notified of his Grievance Committee's decision, REALTOR® B filed suit against REALTOR® A. The Board of Directors of the ABC Board notified REALTOR® B to appear and answer to a charge of violation of Article 17 when REALTOR® B did not withdraw the suit subsequent to being informed that both Grievance Committees had found the issue arbitrable and mandatory.

REALTOR® B described his contractual dispute to the Directors and stated that he knew REALTOR® A had requested arbitration because he had received a copy of the request. REALTOR® B maintained that he had filed suit because REALTOR® A was in another Board's jurisdiction and he did not think anything would come of the request since he, REALTOR® B, was not a member of the XYZ Board.

REALTOR® B was advised that since both Grievance Committees had determined the matter was arbitrable and mandatory that interboard arbitration was being scheduled to hear the dispute. The Board of Directors concluded that his action in filing suit was not in itself in violation of Article 17 but advised REALTOR® B that if he failed to withdraw from the suit and participate in the interboard arbitration, he could be found in violation of Article 17.

## Case #17-3: Dispute Between REALTORS® of Different Boards (Reaffirmed Case #14-7 May, 1988. Transferred to Article 17 November, 1994.)

REALTOR® A, the listing broker and a member of the X Board of REALTORS®, and REALTOR® B, the cooperating broker and a member of the Y Board of REALTORS®, disagreed as to whether REALTOR® B should participate in a commission on a sale. The property was located within the jurisdiction of REALTOR® A's Board, and REALTOR® A proposed that the dispute be submitted for arbitration within his Board, the X Board of REALTORS®. REALTOR® B agreed, and appeared before an arbitration panel of the Professional Standards Committee of the X Board of REALTORS® to present evidence in support of his view that he was entitled to participate in the commission. The arbitration panel of the X Board of REALTORS® found in favor of REALTOR® A.

REALTOR® B then requested his Board, the Y Board of REALTORS®, to contact the X Board of REALTORS® for the purpose of arranging interboard arbitration as provided for in Article 17 of the Code of Ethics. The Y Board of REALTORS® refused, pointing out that REALTOR® B had voluntarily accepted the proposal to have the matter arbitrated by the X Board of REALTORS®; that he had agreed to be bound by the Hearing Panel's decision; had participated in the arbitration proceeding; and having done so, he was not, following an adverse decision, entitled to initiate another arbitration hearing.

## Case #17-4: Dispute Involving REALTOR® Holding Membership in Two Boards (Revised Case #14-8 May, 1988. Revised and transferred to Article 17 November, 1994.)

REALTORS® A and B, disputants in an arbitrable issue, both belonged to the X Board of REALTORS®, a large Board in the central city of a metropolitan area. REALTOR® B also maintained a branch office in a nearby suburb and was also a member of the Board having jurisdiction in that area, the Y Board of REALTORS®.

REALTOR® A filed a written request with the X Board of REALTORS® for arbitration. REALTOR® B was notified and advised of the date of the hearing.

REALTOR® B replied that because he considered himself primarily a member of the Y Board of REALTORS®, he would proceed through the Y Board of REALTORS® and would request interboard arbitration as provided for in Article 17 of the Code of Ethics.

Upon consideration by the Board of Directors of the X Board of REALTORS®, the request for interboard arbitration was refused. Regardless of which of the two Boards REALTOR® B considered to be his primary Board, he was a member of the X Board. Since both parties to the dispute were members of the X Board, there was no need for interboard arbitration and the matter was arbitrated by the X Board.

## Case #17-5: Time of Dispute a Determining Factor as to Arbitration (Revised Case #14-10 May, 1988. Transferred to Article 17 November, 1994.)

REALTOR® A belonged to an All-REALTOR® Board (one in which all nonprincipal brokers and salespersons as well as principals are eligible for REALTOR® membership). Salesperson B had been a REALTOR® for a number of years and had been associated as an independent contractor with REALTOR® A during that time. Salesman B showed a property to Prospect C, who subsequently purchased the property through Salesman D, who also was affiliated with REALTOR® A. Salesman D was also a REALTOR® Member of the Board.

There was considerable dispute over the facts of the situation, but REALTOR® A finally paid the sales commission to Salesman D but admitted that the written office policies did not precisely cover the circumstances. Salesman B demanded a share of the commission and, upon REALTOR® A's refusal to pay it to him, transferred his license to REALTOR® E's firm.

REALTOR® E and Salesman B joined in a request for arbitration of the dispute with REALTOR® A stating that Article 17 required the arbitration of disputes between REALTORS® associated with different firms.

REALTOR® A refused to arbitrate on the basis that the dispute had arisen while he and Salesman B were associated with the same firm and that it was an internal matter which he was not required to arbitrate.

The matter was referred to the Board of Directors, consistent with the Board's Code of Ethics and Arbitration Manual. After a hearing, the Board of Directors ruled that the deciding factor was the relationship between the REALTORS® at the time the dispute arose rather than at the time the demand for arbitration was made. Therefore, REALTOR® A was not required to arbitrate the matter and was not in violation of Article 17.

## Case #17-6: Request for Arbitration Expenses (Reaffirmed Case #14-11 May, 1988. Transferred to Article 17 November, 1994.)

REALTOR® A, the listing broker, and REALTOR® B, a cooperating broker, engaged in a heated dispute as to which REALTOR® was the procuring cause of a sale and, therefore, entitled to the commission. Finding that they could not resolve the matter themselves, they agreed to arbitrate in accordance with Article 17 of the Code of Ethics.

REALTOR® A initiated the request for arbitration with a letter to the Board; the letter was received and reviewed by the Grievance Committee which agreed that it was an arbitrable matter. The case was sent on to the Professional Standards Committee for a hearing.

The President of the Board, consistent with the Board's Code of Ethics and Arbitration Manual, appointed a five-member Hearing Panel to hear the case. The proper forms agreeing to the arbitration were sent to both REALTORS®, each signed his agreement and returned it to the Professional Standards Administrator. Prior to the date set for the hearing, REALTOR® A learned that REALTOR® B had practiced law before he entered the real estate business. REALTOR® A then decided that he would be at a disadvantage in presenting his case to the Hearing Panel without an attorney due to the legal background of REALTOR® B. REALTOR® A sent in an amended arbitration request in which he asked that he be awarded the commission and attorney's fees and any other administrative expenses that he might incur in the presentation of his case before the Hearing Panel. The Chairperson accepted the amended complaint as part of the case and mailed REALTOR® B a copy.

The case was set and a hearing was held at which REALTOR® A appeared with his attorney and a court reporter. REALTOR® B acted as his own attorney. The Hearing Panel had the Board's attorney and a Professional Standards Administrator with a tape recorder present. After giving both parties the opportunity to present their case, the Hearing Panel adjourned the hearing and went into executive session to reach a decision.

It was the opinion of the Hearing Panel that the arbitration process is provided to all REALTORS® and REALTOR-ASSOCIATE®S by the Board to avoid any unnecessary expenses. The hiring of an attorney was REALTOR® A's own decision, not required by Article 17 of the Code of Ethics, the Hearing Panel, the Code of Ethics and Arbitration Manual, or the Board of REALTORS®. The Hearing Panel decided the commission dispute based strictly on the merits of the case presented. The Hearing Panel disallowed the request by REALTOR® A that he be awarded attorney's fees or other administrative expenses.

## Case #17-7: REALTOR® Not Precluded from Filing Complaint with State Real Estate Regulatory Agency (Revised Case #14-12 May, 1988. Transferred to Article 17 November, 1994. Revised May, 2002.)

REALTOR® A, a cooperating broker, filed a request for arbitration with REALTOR® B, the listing broker, in a dispute concerning entitlement to cooperative compensation in a real estate transaction. The complaint was referred to the Grievance Committee which concluded that a properly arbitrable matter existed and referred it to an arbitration hearing panel.

Shortly afterward REALTOR® B was notified that he was under investigation by the State Real Estate Commission for an alleged violation of the real estate regulations, based on a complaint filed by REALTOR® A.

REALTOR® B immediately filed an ethics complaint alleging violation of Article 17 by REALTOR® A for filing the complaint against REALTOR® B with the Commission. The complaint was referred to the Grievance Committee which concluded that since the ethics complaint and the arbitration request, while arising out of the same transaction, were clearly distinguishable the arbitration hearing should proceed as scheduled; and the ethics complaint should be dismissed, noting that while Article 17 requires REALTORS® to arbitrate contractual and specified non-contractual disputes, alleged violations of the Code and violations of law or regulations do not fall within its scope.

## Case #17-8: Attempted Use of Corporate Veil to Avoid Obligation to Arbitrate (Revised Case #14-14 April, 1992. Transferred to Article 17 November, 1994. Revised November, 1995. Revised November, 2001.)

REALTORS® A and B, principals in different firms, were both members of the same Board. A disagreement arose between them concerning entitlement to a commission in a real estate transaction. After initial efforts to resolve the dispute proved fruitless, REALTOR® A filed a request for arbitration with the Board which was reviewed by the Grievance Committee which concluded that an arbitrable issue existed. Instead of agreeing to arbitration through the Board, REALTOR® B filed a lawsuit against REALTOR® A. Receiving notice of the suit, REALTOR® A filed a charge with the Board alleging REALTOR® B had violated Article 17 of the Code of Ethics.

REALTOR® B, in his presentation to the Board of Directors indicated that, in his opinion, he was not subject to any ethics charge, since it was his corporation, and not REALTOR® B individually, that had filed suit against the corporation of REALTOR® A, not against REALTOR® A himself.

REALTOR® A told the Board of Directors that immediately upon occurrence of the dispute, he had suggested to REALTOR® B that the matter be arbitrated by the Board, and REALTOR® B said he would think about it. REALTOR® A then proceeded to file his request for arbitration with the Board. However, REALTOR® B did not respond to the arbitration notice and, shortly thereafter, REALTOR® A received notice of the suit filed by REALTOR® B's corporation against the corporation of REALTOR® A. He said he then called REALTOR® B and again discussed the obligation of Article 17 with him. However, REALTOR® B advised him that his corporation was not subject to the requirements of the Code and stated his intent to pursue the litigation.

REALTOR® B acknowledged that the facts as related by REALTOR® A were correct and that his corporation had filed suit upon the advice of the corporation's legal counsel. REALTOR® B said that membership in a Board of REALTORS® is individual and that personal responsibility disappears when a matter of corporate business is involved. He pointed out that he was not the only principal or officer in his corporation and that the decision to file litigation was not made by him alone, but by all of the corporate officers.

The Board of Directors, in reaching its decision, did not agree with REALTOR® B's position. The Directors' noted that the membership requirement in a Board of REALTORS® has, as its purpose, the assurance of commitment by the principals in the firm to the Code of Ethics. This commitment addresses the conduct and activities of all persons affiliated with the REALTOR®'s firm whether a sole proprietorship, partnership, or corporation. Moreover, the Directors pointed out that Article 17 obligates REALTORS® to "... cause their firms to arbitrate and be bound by an award."

REALTOR® B was advised to withdraw the litigation and submit to arbitration by a date certain or his membership in the Board would be terminated. REALTOR® B accepted the decision, withdrew the suit against REALTOR® A, and submitted to arbitration.

## Case #17-9: REALTOR® Not to be Denied Arbitration (Adopted Case #14-15 May, 1988. Transferred to Article 17 November, 1994. Deleted November, 2001.)

## Case #17-10: Board's Use of State Association Arbitration Panel (Adopted Case #14-16 May, 1988. Transferred to Article 17 November, 1994.)

A dispute arose between REALTOR® A and REALTOR® B, two of the 15 members of the X Board of REALTORS®. Both members requested that the matter be arbitrated by the Board's Professional Standards Committee. The Grievance Committee concluded that an arbitrable matter existed but expressed reservations about the Board's ability to provide an objective and impartial hearing since most of the other Board Members were either employed by or affiliated with REALTOR® A or REALTOR® B, or were frequently involved in transactions with them.

At a specially called meeting of the Board of Directors, it was determined that the Board was incapable of providing an impartial panel for an arbitration hearing. The Board President was authorized to refer the request to the State Association for a hearing by a Hearing Panel of the State Association's Professional Standards Committee.

Pursuant to the Board's request, a Hearing Panel was convened by the State Association which rendered an award on behalf of REALTOR® A. REALTOR® B refused to abide by the decision on the grounds that the dispute had not been heard by a panel of his Board as required by Article 17.

Both the State Association and the local Board advised REALTOR® A to seek judicial enforcement of the award in a court of competent jurisdiction noting that REALTOR® B had participated in the arbitration; that the State Association is also charged with the responsibility for enforcing the Code of Ethics; that the Board was within its rights in referring the matter to the State Association, due to its inability to provide an impartial panel; and that representatives of the State Association and local Board would be available to appear in support of the request for judicial enforcement.

## Case #17-11: Appeal of Grievance Committee Decision (Adopted Case #14-17 May, 1988. Transferred to Article 17 November, 1994.)

REALTORS® A and B were partners in a building company. They both held membership in the XYZ Board of REALTORS® and were Participants in the Board's Multiple Listing Service. After many successful years, they decided to terminate their partnership with REALTOR® A continuing the building business and REALTOR® B forming a new residential brokerage company. As part of their termination agreement, REALTOR® B agreed not to build new homes in the XYZ Board's jurisdiction for a period of twelve months.

Six months later, REALTOR® A filed a written request for arbitration with the Professional Standards Administrator of the XYZ Board of REALTORS®. In his request, REALTOR® A outlined the terms of their partnership termination agreement pointing out that REALTOR® B had continued to build new homes in violation of their agreement. REALTOR® A demanded that the Board take action to enforce the agreement and compel REALTOR® B to refrain from any further construction.

The Professional Standards Administrator forwarded the arbitration request to the Grievance Committee for review. After review, the Grievance Committee found the matter not properly arbitrable.

REALTOR® A was upset with the Grievance Committee's decision and appealed to the Board of Directors. The Board of Directors noted that Article 17 of the Code of Ethics requires arbitration of disputes " . . . between REALTORS® associated with different firms arising out of their relationship as REALTORS®."

If REALTOR® A were requesting arbitration of a dispute arising out of a real estate transaction (such as a dispute concerning entitlement to commissions or subagency compensation), this would be a properly arbitrable matter. However, the Directors noted that the dispute in question related to the provisions of a partnership termination agreement which the Board had no authority to enforce. The Directors advised that while the Board's arbitration facilities were available to settle disputes between members, buyers, and sellers related to real estate transactions, the Board's authority did not extend to ordering performance of contracts since this was properly the privilege of the courts.

## Case 17-12: Arbitration when a REALTOR® acts Exclusively as a Principal in a Transaction

(Adopted November, 1995.)

REALTOR® A, a residential specialist in a major metropolitan area, inherited a cabin in the North woods from a distant relative. After spending a week of vacation there with her family, REALTOR® A decided that the fact that the cabin was over five hundred miles from her home made it likely that her use of the cabin would be infrequent, at best. Consequently, she decided to list and sell the cabin. REALTOR® A described her situation to REALTOR® B, who claimed to be experienced in the sale of vacation properties in the area and who told REALTOR® A that a quick sale should be "no problem." Based of the REALTOR® B's assurances, REALTOR® A signed a listing agreement with REALTOR® B.

REALTOR® B showed the property several times over the following months but to no avail. REALTORS® A and B spoke by long distance several times and ultimately concluded that a significant reduction in the listed price was called for.

A month later, REALTOR® B called REALTOR® A and advised that she had received an offer but disclosed that the offer was from REALTOR® B's daughter and son-in-law. REALTOR® A thanked REALTOR® B for disclosing her relationship to the purchasers but went on to indicate that, as she felt that REALTOR® B had been overly optimistic in recommending an asking price in the first place, and that even after a significant price reduction the only offer produced by REALTOR® B had been from a member of her family, and that it was an "in-house" sale, REALTOR® A thought it was only fair that REALTOR® B would reduce her commission. REALTOR® B disagreed and sent the purchase offer to REALTOR® A. REALTOR® A accepted the offer but at the closing, which was handled in escrow, REALTOR® B was surprised to learn that REALTOR® A had instructed the closing officer to disburse to REALTOR® B only half of the commission called for in the listing contract. REALTOR® B filed an interboard arbitration request against REALTOR® A claiming the balance of her commission. REALTOR® A refused to arbitrate on the grounds that she had been the seller in the transaction and had not acted within the scope of her real estate license and that there had been no "relationship as REALTORS®" between her and REALTOR® B as referenced in Article 17 of the Code of Ethics. REALTOR® A's refusal to arbitrate was referred to the Board of Directors of REALTOR® A's primary Board and, in response to questions put to her, she repeated her claim that she had acted exclusively as a principal in the transaction and not as a real estate professional. The Directors concurred with her reasoning noting that the operant words in Article 17 refer to contractual disputes between REALTORS® in different firms "arising out of their relationship as REALTORS®." They noted that if it had been the desire of REALTOR® A and B to bind themselves to resolve any contractual dispute that might arise out of their principal/agent relationship, that could have been accomplished through insertion of an appropriate arbitration clause in the listing agreement. Absent that, there was no obligation for REALTOR® A to arbitrate with REALTOR® B.

## Case 17-13: Arbitration Involving a REALTOR® Selling her Own Property (Adopted November, 1995.)

REALTOR® B was a real estate broker and property manager who, in addition to managing property for others, frequently bought and sold income property for her own account. Needing capital for another project, REALTOR® B decided to sell a three-flat building in which she had a strong equity position and which she thought would move quickly, given the current market conditions. To maximize market exposure, she listed the property with her firm and entered information regarding the listing into the MLS. She put a sign in front of the property indicating that it was for sale "by owner." Her ads in the local newspapers indicated that the seller was a "broker-owner."

REALTOR® A, who lived near the building, saw the "for sale" sign and called REALTOR® B. Introducing himself as a broker and as a REALTOR®, REALTOR® A asked what the asking price was and whether REALTOR® B was interested in listing her property. REALTOR® B did not indicate that she had listed her own property nor did she disclose that she was a broker or a REALTOR®. She did indicate that she would pay a commission to REALTOR® A if he procured a purchaser for the property but added that she preferred not to enter into an exclusive relationship with any broker and didn't want to put anything into writing.

REALTOR® A thought the property might interest Dr. X, REALTOR® A's chiropractor, and contacted him. Dr. X was in fact interested and, after several visits to the property, made an offer to purchase which was subsequently accepted by REALTOR® B.

At the closing, REALTOR® A learned several things, among them, that REALTOR® B, the seller, was also a REALTOR® and, more importantly, that REALTOR® B had instructed that only half of the previously agreed on commission was to be disbursed to REALTOR® A. When REALTOR® A protested the shortfall, REALTOR® B responded that her property was highly desirable, had "practically sold itself," and, in any event, REALTOR® A had expended minimal efforts in bringing about the quick sale. REALTOR® A disagreed with REALTOR® B's reasoning and, after appeals to REALTOR® B's sense of fairness went unheeded, filed an arbitration request with the Board of REALTORS®. Faced with the request to arbitrate, REALTOR® B declined, referring to Article 17 of the Code of Ethics and noting that it relates to disputes between REALTORS® "...arising out of their relationship as REALTORS®..." whereas she had been the seller.

REALTOR® B's refusal to arbitrate was referred to the Board of Directors for their consideration. REALTOR® B repeated her defense that, as the seller, she was not obligated to arbitrate a dispute with another REALTOR® who had been acting within the scope of his broker's license absent a specific arbitration agreement. REALTOR® B pointed out that the agreement between them was oral and, in response to REALTOR® B's question, REALTOR® A admitted that the question of arbitration had never even been discussed. REALTOR® A produced a copy of a recent MLS compilation and pointed out that information regarding the property appeared in it. REALTOR® B responded that inclusion of information in the MLS had been a "technicality" and that she had "listed with herself" merely to comply with MLS rules and that she had considered herself the seller, first and foremost. The Directors agreed with REALTOR® B that she obviously had been a principal in the sale of her own property but went on to conclude that by listing the property, albeit with herself, she no longer was exclusively a principal in the transaction but had also acted within the scope of her broker's license. As such, she had become embroiled in a contractual dispute with another REALTOR® "...arising out of their relationship as REALTORS®..." and had become obligated to arbitrate.

# Index—
# 2016 *Code of Ethics and Arbitration Manual*

**NOTE:** To find any word or topic, go to REALTOR.org and search the *Code of Ethics and Arbitration Manual* electronically for fast and comprehensive results.

## Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

June 10, 2019

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