



BEFORE YOU FILE AN ETHICS COMPLAINT

Background

Local 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 REALTORS® and/or consumers result from misunderstanding, miscommunication, or lack of adequate communication. If you have a problem with a REALTOR®, we encourage you to speak with them about your concern(s). If you are unable to reach them or feel uncomfortable speaking with them, please consider contacting their office manager or broker. Open, constructive discussion often resolves questions or differences, eliminating the need for further action.

If, after discussing matters with your REALTOR®, or their office manager/broker, you are still not satisfied, you may want to contact the Greater Rochester Association of Realtors® (GRAR). In addition to processing formal ethics complaints against its REALTOR® members, GRAR offers informal dispute resolving processes (e.g. ombudsmen, mediation, etc.). Often, parties are more satisfied with informal dispute resolution processes, as they are quicker, less costly, and often help repair damaged relationships.

If, after taking these steps, you are unable to reach a resolution, you may want to consider filing an ethics complaint. There are a few points to keep in mind:

- Only REALTORS® are subject to the Code of Ethics of the National Association of REALTORS®.
- If the real estate professional you are dealing with is not a REALTOR®, your only recourse may be contacting the New York State Department of State or initiating a legal proceeding.
- The local association will 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.
- Local associations can discipline REALTORS® for violating the Code of Ethics. Typical forms of discipline include:
 - Required education designed to increase their understanding of the ethical duties and other responsibilities of real estate professionals.
 - Monetary fines
 - Letters of reprimand.
 - For serious or repeated violations, a REALTOR®'S® membership can be suspended or terminated.
 - Note: Local associations 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.

Filing an ethics complaint

GRAR can provide you with detailed information on the procedures for [filing an ethics complaint](#). Here are some general principles:

- Ethics complaints must be filed with the GRAR within one hundred eighty (180) days from the time a complainant knew (or reasonably should have known) that potentially unethical conduct took place.
- 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. ([sample narrative descriptions](#))
- Your complaint must cite one or more of the **Articles of the Code of Ethics** which may have been violated. A hearing panel will decide whether the Articles expressly cited in complaints were violated - not whether Standards of Practice or case interpretations were violated.

Before the Hearing

- Your complaint will be reviewed by GRAR'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 don't believe you. Rather, it means that they do not feel that your allegations would support a hearing panel's conclusion that the Article(s) cited in your complaint had been violated. You may want to review your complaint to see if you cited an Article appropriate to your allegations.
- If 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 **GRAR Board of Directors**.

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 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 witness(es) and counsel (if needed) 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 are presented support a finding that the Article(s) charged have been violated.
- Hearing panels cannot conclude that an Article of the Code has been violated unless that Article(s) is specifically cited in the complaint.
- Keep your presentation concise, factual, and to the point. Your task is to demonstrate what happened (or what should have happened but didn't), and how the facts support a violation of the Article(s) charged in the complaint.
- Hearing panels base their decisions on the evidence and testimony presented during the hearing. If you have information relevant to the issue(s) under consideration, be sure to bring it up during your presentation.
- You are involved in an adversarial process that may be, in some cases, unavoidably confrontational. Many violations of the Code of Ethics result from misunderstanding or lack of awareness of ethical duties by otherwise well-meaning, responsible 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, you may **file an appeal**. The fact that a hearing panel found no violation is not subject to appeal.
- The **National Association of REALTORS® Professional Standards Policy** provides detailed information on the basis and time limits for appealing decisions. 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 failures of due process that may have prevented a full and fair hearing.

Conclusion

- Many ethics complaints result from misunderstanding or a failure in communication. Before filing an ethics complaint, please make reasonable efforts to communicate with your REALTOR®, their office manager or their broker. If these efforts are not fruitful, GRAR can share options for dispute resolution, including the procedures and forms necessary to file an ethics complaint.

Copyright © 2015 National Association of REALTORS®.