



MONMOUTH OCEAN  
REGIONAL REALTORS™

## 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®. Many Boards and Associations have informal dispute resolving processes available to consumers (e.g., ombudsmen, mediation, etc.).

If, after taking these steps, you still feel you have a grievance, you may want to consider filing an ethics complaint. You will want to keep in mind that . . .

- Only Realtors® and Realtor-Associates® are subject to the Code of Ethics of the National Association of Realtors®.
- If the real estate professional (or their broker) you are dealing with is not a Realtor®, your only recourse may be the state real estate licensing authority or the courts.
- 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. Realtors® may also be reprimanded, fined, or their membership can be suspended or terminated for serious or repeated violations. Boards and Associations of Realtors® cannot require Realtors® to pay money to parties filing ethics complaints; can-not award "punitive damages" for violations of the Code of Ethics; and cannot suspend or revoke a real estate professional's license.
- The primary emphasis of discipline for ethical lapses is educational, to create a heightened awareness of and appreciation for the duties the Code imposes. At the same time, more severe forms of discipline, including fines and suspension and termination of membership may be imposed for serious or repeated violations.

### Filing an Ethics Complaint

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

- Ethics complaints must be filed with the local Board or Association of Realtors® within one hundred eighty (180) days from the time a complainant knew (or reasonably should have known) that potentially unethical

conduct took place (unless the Board's informal dispute resolution processes are invoked in which case the filing deadline will 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 or requesting a rehearing. Rehearings are generally granted only when newly discovered evidence comes to light
  - (a) which could not reasonably have been discovered and produced at the original hearing and
  - (b) which might have had a bearing on the Hearing Panel's decision.

Appeals brought by ethics respondents must be based on

- (a) a perceived misapplication or misinterpretation of one or more Articles of the Code 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 give you the procedures and forms necessary to file an ethics complaint.



# CODE OF ETHICS ENFORCEMENT

## A MEMBER BENEFIT

The single, most outstanding characteristic that sets REALTORS® apart from other real estate practitioners is the willingness to accept and abide by the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®. The Code of Ethics, which was first adopted on July 29, 1913, is a living document, responsive in its content to changes in the law and industry. The Code has been revised many times through the years to reflect current developments in professional real estate practice. The term REALTOR® has come to represent competency, honesty, and high integrity. These qualities stem from voluntary adherence to an ideal of moral conduct in real estate business practices.

But even with the best of intentions, planning and preparation, occasional disagreements arise between REALTORS® and/or between REALTORS® and their clients or customers. As civil litigation becomes increasingly costly, time consuming, and burdensome, there has been a trend among private parties to settle disputes and conflicting claims through alternative means.

Your local board of REALTORS® offers its members and their clients and customers a vehicle to economically expedite ethics complaints and/or arbitration requests without going to court. If a monetary dispute arises from a real estate transaction or if you believe a REALTOR® may have acted in an unethical manner, seek a resolution through your local board of REALTORS®. Ethics complaints that are brought before the board give those parties involved an opportunity to be educated about the Code. In addition, REALTORS® are judged by their peers as opposed to other individuals who may be far less familiar with the practices and customs of the real estate industry.

# Code of Ethics Enforcement Frequently Asked Questions

## *What's the difference between an ethics complaint and arbitration request?*

An ethics complaint charges that a REALTOR® or REALTOR-ASSOCIATE® has violated an Article(s) of the Code of Ethics. An arbitration request involves a dispute over entitlement to a monetary transaction (e.g., a commission).

## *Who can file an ethics complaint?*

Any person, whether a member or not, having reason to believe that a member is in violation of any conduct subject to disciplinary action.

## *Who can file an arbitration request?*

A customer, client, or REALTOR® principal. A REALTOR® nonprincipal can also request arbitration with his current or former REALTOR® principal.

## *Is there a time limit?*

Yes, Ethics complaints must be filed within one hundred eighty (180) days of the time that the alleged offense and relating facts 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, whichever is later. Request 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.\*

## *Who should I give the complaint or request to?*

The Executive Officer/Secretary of the board/association of REALTORS®.

## *What should be included with the ethics complaint or arbitration request?*

**Ethics** — An ethics complaint form must be completed and filed. In addition, a written statement of the facts (with appropriate documentation, if any) on which the complaint is based must also be included, dated, and signed by the complainant. The appropriate Article(s) as they pertain to the facts in the alleged violation must be cited in the complaint.

**Arbitration** — An arbitration request form must be completed and submitted with details of the dispute and the deposit as set by the board (not to exceed \$500, which may be refundable if the requestor is found to be the prevailing party). In addition, include whatever documentation that may help to substantiate your position.

## *Are there certain Articles that can or can't be cited?*

Only Articles 1 through 17 may be the basis of a complaint. The Preamble is aspirational and establishes ideals that a REALTOR® should strive to attain. Because of its subjective nature, the Preamble may not be used as a basis for charges of alleged unethical conduct or as the basis for disciplinary action.

## *Can Standards of Practice be cited in an ethics complaint?*

No. Standards of Practice may be cited only in support of the Article(s) that was allegedly violated.

## *Are there issues or complaints that should not be brought before a board/association of REALTORS®?*

Yes. A charge of violating the law or State real estate regulations is not a matter that would be considered by the board/association of REALTORS®. Also, the board/association is not a court of law where criminal or civil issues are resolved.

## *Is submitting to arbitration mandatory?*

It depends on the circumstances. A REALTOR® may be obligated to arbitrate, or he/she may have a choice as to whether or not to voluntarily participate in an arbitration proceeding conducted by the board/association of REALTORS®.

## *When is arbitration mandatory/voluntary?*

**Mandatory** — When the dispute is between: 1) REALTORS® who are principal brokers\*\* in different firms; 2) clients and REALTOR® principals; **Voluntary** — When the dispute is between: 1) Members in the same firm; 2) a REALTOR®, who is a principal broker, and a non-member principal broker in another firm; 3) customers and REALTOR® principals.

\* If the board's informal dispute resolution processes (e.g., mediation) are invoked, the 180 day filing deadline is suspended.

\*\* "Principal Broker" means... A sole proprietor, partner, corporate officer, majority shareholder, or branch office manager of a real estate firm.



## Ethics Complaint/Arbitration Request Checklist

- Contact the respondent's local board/association for the appropriate forms.
- Ethics** — Complete the ethics complaint form and provide a written explanation that includes the facts on which the alleged violation(s) is based, cite the appropriate Article(s) and include any other appropriate documentation.
- Arbitration** — Complete the arbitration request form, attach the details of the dispute, and enclose the appropriate deposit along with whatever documentation that may help to substantiate your position.
- The ethics complaint or arbitration request will then be sent to the Grievance Committee for review.
- The Grievance Committee may, if deemed appropriate, send a copy of the ethics complaint and/or arbitration request to the respondent for a written response.
- The Grievance Committee, which functions much like a grand jury, will then review the ethics complaint and/or arbitration request (and response, if any).
- If the Grievance Committee refers the ethics complaint or arbitration request for a hearing, the parties will be advised of the referral. The respondent will be requested to submit a written response if one has not already been filed.
- If the Grievance Committee determines that a hearing is **not warranted**, the parties will be advised that the matter has been dismissed and notified of the opportunity to appeal the Grievance Committee's dismissal to the Board of Directors.
- If the Grievance Committee determines that a hearing is **warranted**, the parties will be advised of the date, time, and place of the hearing subsequent to having an opportunity to challenge any of the hearing panelists for cause.
- During the hearing, the parties have an opportunity to present their positions. Parties may exercise their right to bring witnesses and/or attorneys to the hearing. The standard of proof in an **ethics** complaint is clear, strong, and convincing evidence. The standard of proof that must be observed to prevail in an **arbitration** proceeding is a preponderance of the evidence (i.e., that evidence, when taken as a whole, is more convincing than the evidence offered in opposition).
- The Hearing Panel's ethics decision or arbitration award is transmitted to the parties. Either party may file an **ethics** appeal or rehearing request with the President, but the complainant may only appeal on a procedural basis. The parties involved in an **arbitration** may appeal only on the basis that there was a procedural irregularity that materially worked to their detriment.
- The Board of Directors, either on an ethics appeal or after the ethics appeal period has expired, renders its final decision, which will in turn be transmitted to the parties. Arbitration awards are considered final and binding subsequent to the expiration of the procedural review period.
- The information contained in this brochure has been summarized and provided for your use as a quick reference. For more information on Code of Ethics enforcement procedures or to review the complete *Code of Ethics and Arbitration Manual*, contact your local board staff.

# REALTORS®<sup>®</sup>

## Pledge of Performance and Service

The NATIONAL ASSOCIATION OF REALTORS® adopted the *Code of Ethics* in 1913, following the professions of medicine, law, and engineering.

REALTORS® are real estate professionals who have chosen to join the National Association and abide by its strict *Code of Ethics*.

What does this mean to you? It means that any REALTOR® with whom you work has voluntarily agreed to abide by a *Code of Ethics*, based on professionalism and protection of the public.

REALTORS® are subject to disciplinary action and sanctions if they violate the duties imposed by the *Code of Ethics*.

The *Code of Ethics* is a detailed document that spells out the professional responsibilities of every REALTOR®.

Do not hesitate to ask a REALTOR® for a copy of the *Code*, including the Standards of Practice. The *Code* is your assurance of dealing with a professional who has your best interests in mind.

The *Code of Ethics* consists of seventeen Articles and related Standards of Practice. The basic principles of the *Code* are summarized here.

Please note that the following is not a substitute for the *Code*, but simply a general overview of the *Code*'s key principles. For additional information about the *Code of Ethics* and its enforcement, speak with a REALTOR® or contact the local association of REALTORS® nearest you.

### Duties to Clients and Customers

**Article 1**  
REALTORS® protect and promote their clients' interests while treating all parties honestly.

**Article 2**  
REALTORS® refrain from exaggeration, misrepresentation, or concealment of pertinent facts related to property or transactions.

**Article 3**  
REALTORS® cooperate with other real estate professionals to advance their clients' best interests.

**Article 4**  
When buying or selling on their own account or for their families or firms, REALTORS® make their true position or interest known.

**Article 5**  
REALTORS® do not provide professional services where they have any present or contemplated interest in property without disclosing that interest to all affected parties.

**Article 6**  
REALTORS® disclose any fee or financial benefit they may receive from recommending related real estate products or services.

**Article 7**  
REALTORS® accept compensation from only one party, except where they make full disclosure to all parties and receive informed consent from their client.

**Article 8**  
REALTORS® keep the funds of clients and customers in a separate escrow account.

**Article 9**  
REALTORS® make sure that details of agreements are spelled out in writing whenever possible and that parties receive copies.

### Duties to the Public

**Article 10**  
REALTORS® give equal professional service to all clients and customer irrespective of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. REALTORS® do not discriminate in their employment practices.

**Article 11**  
REALTORS® are knowledgeable and competent in the fields of practice in which they engage or they get assistance from a knowledgeable professional, or disclose any lack of expertise to their client.

**Article 12**  
REALTORS® are honest and truthful in their communications and present a true picture in their advertising, marketing, and in other public representations.

**Article 13**  
REALTORS® do not engage in the unauthorized practice of law.

**Article 14**  
REALTORS® willingly participate in ethics investigations and enforcement actions.

### Duties to REALTORS®

**Article 15**  
REALTORS® make only truthful, not misleading, comments about other real estate professionals.

**Article 16**  
REALTORS® respect the exclusive representation or exclusive brokerage relationship agreements that other REALTORS® have with their clients.

**Article 17**  
REALTORS® arbitrate and mediate financial disagreements with other REALTORS® and with their clients.

**Form #E-1**

**Monmouth Ocean Regional REALTORS®**

Board or State Association

One Hovchild Plz, 4000 Rt. 66, Tinton Falls, New Jersey 07753

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)