



***Professional Standards
Training
2021***

Welcome to the 2021 Virginia REALTORS® Professional Standards Training !

2020 was an unprecedented year, and we are facing many of the same challenges as we enter in to 2021 with regard to the Coronavirus pandemic. In response to these challenges, we have updated our Professional Standards Training to include three parts:

1. **Intro to Professional Standards:** An optional 30-minute pre-recorded webinar that introduces and reviews basic concepts about professional standards.
2. **Professional Standards Pre- Training:** A self-paced guide that provides detailed information about professional standards and concludes with 15 multiple choice questions about the professional standards process.
3. **Professional Standards Training Seminar:** A live 3-hour interactive course where we will discuss in depth the changes to the Code of Ethics and engage in Grievance and Hearing Panel Simulations.

The NAR Code of Ethics is being used only as a teaching tool and the NAR Code provisions that are outside of the Virginia Real Estate Board's laws and regulations are not applicable to Real Estate Board licensees.

Please note that there is a great deal of information included in this Manual that has been included for your reference and can be used as a reference guide when you serve on a Grievance, Professional Standards, or Board of Directors panel.

Professional Standards Training Seminar Information

Your presence demonstrates your commitment to improving the real estate profession. However, we are a group of competitors and must be very sensitive to antitrust laws.

Any commission percentages, prices, or practices discussed during the Professional Standards Training Seminar are for educational purposes only. In no way should it be construed to encourage price fixing, uniform business, or customer strategies.

Those attending the Professional Standards Training Seminar shall not discuss with any competitor individual company policies relating to competitive policies, pricing or related types of sensitive information, including, but not limited to: (a) commission levels, fees, business expenses or other business information or policies that would allow or encourage price fixing or maintenance; (b) a firm's competitive business decisions, including its policies regarding dealing with those firms offering different business models; (c) policies regarding the duration or types of listing agreements the firm will enter into or the form of compensation the firm will accept or negotiate; (d) the compensation offered or paid to a firm's agents or employees; (e) any other actions that might be construed as concerted attempts to restrain competition, including joint attempts to control or affect prices, market conditions, marketing practices, customer choice, or the like.

Virtual Education Basics

- Keep video on
- Participate
- Contact "Proctor" or "Help Desk" for assistance
- Use the Chat feature
- Use Speaker View
- Break out rooms

<p><u>Course Outline</u></p> <p>Intros, Objectives Due Process COE Changes The Ethics Complaint Process Work Case Study (groups) - Grievance Committee</p> <p><i>Break</i></p> <p>Hearing Panel and Waived Hearing Work Case Study (groups) –Ethics Hearing Panel Hearing Panel Debrief The Arbitration Complaint Process Procuring Cause Work Case Study (groups) - Arbitration Wrap up/Q&As Closing</p>	<p>Purpose:</p> <p>To provide members interested in Professional Standards or who serve on a Grievance Panel, Professional Standards Committee, or a Board of Directors, advanced training in the Code of Ethics and enforcement procedures necessary to carry out the duties of the committees and to understand the skills and experience required to serve on a tribunal.</p> <p>Prerequisite</p> <p>This course is designed for students with at least three years practical experience and who have attended basic ethics training courses.</p> <p>COURSE OBJECTIVES:</p> <ul style="list-style-type: none"> • Review professional standards and grievance procedures under rules of due process. • Review Code and/or procedural changes. • Learn the role of Grievance Panel. • Work through case studies in groups. • Review ethics procedures. • Review arbitration procedures.
---	---

PROCEDURAL DUE PROCESS

Procedural Due Process is the cornerstone upon which the REALTOR® Professional Standards Process is built. They are the procedures by which parties' rights are protected and those procedures ensure a fair and impartial process.

1. Because the REALTOR® Code of Ethics is both a guide to professional practice and a form of governance which allows for the imposition of discipline, it must be applied with continuing and conscientious concern for procedural due process.

2. Due Process to Code enforcement:

- a. Is critical to the ability to self-police, and
- b. Guards against antitrust liability.

3. Procedural due process is explicitly mandated by Article 14, which requires a “proper” tribunal, allowing for:

- a. an opportunity for all pertinent facts to be gathered;
- b. an opportunity for all pertinent views to be heard;
- c. an opportunity for all pertinent defenses to be raised;
- d. an opportunity to expunge all prejudice or bias.

The requirement of pertinent facts is important with regard to witnesses. Respondents often want character witnesses, but they are not pertinent to the allegations.

4. Procedural due process is implicitly required by reliance on the Preamble of the Code and the guidance of the Golden Rule – “Do unto others, as you would have them do unto you.”

5. Due process requires a fair and diligent search for truth.

6. Step-by-step approach ensuring procedural due process includes three separate administrative forums:

- a. The Grievance Committee:
 - (1) reviews complaints of alleged violations against the Code of Ethics or requests for awards.
 - (2) determines what matters will be forwarded for a hearing or will be dismissed.
- b. The Professional Standards Committee Hearing Panel:
 - (1) makes decisions on matters involving ethics or arbitration.
 - (2) conducts hearings according to rules of due process.

- (3) elicits and assesses facts from complainant or requestor and respondent.
- (4) determines whether there was a violation of the Code of Ethics in ethics hearings.
- (5) determines the award in arbitration hearings.

c. The Association Board of Directors:

- (1) enforces the Code of Ethics.
- (2) ratifies recommendations of Hearing Panels in ethics cases.
- (3) ensures due process by managing members' rights to appeal.

7. Elements of Due Process:

- a. Notice of specific charges alleged.
- b. Adequate time to prepare a defense.
- c. Opportunity to hear testimony and cross-examine those testifying against you.
- d. Opportunity to present your side of the story.
- e. Right to [legal] counsel.
 - (1) Legal counsel in arbitration cases.
 - (2) Legal and/or REALTOR® counsel in ethics cases.
- f. Right to have matter decided by an impartial body.
- g. Appropriate, authorized sanctions.
- h. Availability of appeal.

CODE OF ETHICS CHANGES

These are more recent changes to the Code of Ethics with a focus on those going into effect on January 1, 2020, November 13, 2020, and January 1, 2021.

1. January 1, 2020 Changes

NEW Article 3, Standard of Practice 3-11	<u>REALTORS® may not refuse to cooperate on the basis of a broker’s race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity.</u>
Article 12, Standard of Practice 12-1	<u>Unless they are receiving no compensation from any source for their time or services, 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. only if they clearly and conspicuously disclose (a) by whom they are being, or expect to be, paid; (b) the amount of the payment or anticipated payment; (c) any conditions associated with the payment, and (d) any other terms relating to their compensation.</u>
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.

2. 2021 Procedural Changes

(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 Committee relating to previously charged respondents). If an amended complaint, including facts upon which the amendment is based, 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.

(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, including facts upon which those amendments are based. Neither the complainant nor 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. 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. 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.

3. November 13, 2020 Code of Ethics Changes

Resources:

- <https://virginiarealtors.org/code-of-ethics-resources/>
- <https://www.nar.realtor/national-leadership/committee-members-liaisons/code-of-ethics-professional-standards-policies>

Policy Statement 29

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 all of their activities and transactions involving the REALTOR®.

NEW Article 10, Standard of Practice 10-5	<u>REALTORS® must not use harassing speech, hate speech, epithets, or slurs based on race, color religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity.</u>
---	---

Definitions:

- **Harassment:**
 - Inappropriate conduct, comment, display, action, or gesture based on another person’s sex, color, race, religion, national origin, age, disability, sexual orientation, gender identity, and any other protected characteristic.
- **Hate Speech:**
 - Speech that is intended to insult, offend, or intimidate a person because of some trait (as race, religion, sexual orientation, national origin, or disability).
- **Epithet:**
 - A characterizing word or phrase accompanying or occurring in a place of the name of a person or thing; a disparaging or abusive word or phrase.

- **Slur:**
 - An insulting or disparaging remark or innuendo.
 - A shaming or degrading effect.

A Two-Part Analysis

1. Is the speech harassing speech, hate speech, epithets, or slurs?
 - If no, no violation.
 - If yes, look to step 2.
2. If so, is the speech based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity?
 - If no, not a violation.
 - If yes, violation.
 -

4. January 1, 2021 Expanded Definition of Public Trust

The “public trust”, as used in this context, refers to demonstrated misappropriation of client or customer funds or property, willful discrimination against the protected classes under the Code of Ethics, or fraud ~~resulting in substantial economic harm.~~

ALTERNATIVE DISPUTE RESOLUTION

NAR mandates that associations provide some additional alternative dispute resolution services in the form of the Ombudsman Process and Mediation.

OMBUDSMAN PROCEDURES

Many local associations have their own ombudsmen programs. If you are interested in more information, but are not sure who to contact, email prostandards@virginiarealtors.org and Virginia REALTORS® will connect you with the correct individual.

An Overview

Beginning in 2016 every local and state association of REALTORS® had to offer, either directly or as part of a cooperative enforcement agreement, ombudsman services to members, clients, and consumers.

The ombudsman procedures that associations adopt are intended to provide enhanced communications and initial problem-solving capacity. Many ethics complaints might be prevented with enhanced communications and initial problem-solving capacity.

4. Types of Complaints.

Many “complaints” received by boards and associations do not expressly allege violations of specific Articles of the Code of Ethics, and many do not detail conduct related to the Code. Some “complaints” are transactional, technical, or procedural questions readily responded to.

The ombudsman process can be used before or after a complaint is filed, but it must be used before the case goes before a hearing panel.

5. What is an ombudsman?

An ombudsman is an individual appointed to receive and resolve disputes through constructive communication and advocating for consensus and understanding.

6. What is an ombudsman’s role?

The ombudsman’s role is primarily one of communication and conciliation, not adjudication. Ombudsmen do not determine whether ethics violations have occurred, rather they anticipate, identify, and resolve misunderstandings and disagreements before matters ripen into disputes and possible charges of unethical conduct.

7. Qualifications and criteria for an ombudsman?

An ombudsman should be thoroughly familiar with the Code of Ethics, state real estate regulations, and current real estate practice.

In the Virginia REALTORS®' Ombudsman Program only REALTORS® with a minimum of three years of experience are selected to serve. Local associations may adopt a program that allows for staff members, or others acting on behalf of the local association, to serve.

8. Resolution of complaints.

If a matter complained of is resolved to the mutual satisfaction of all parties through the efforts of an ombudsman, the formal ethics complaint brought initially (if any) will continue to be processed until withdrawn by the complainant. The ombudsman needs to remind a complainant to withdraw the formal complaint if they are satisfied with the resolution.

9. Referrals to the Grievance Committee or to state regulatory bodies.

Ombudsmen are only authorized to refer concerns that the public trust may have been violated to the Grievance Committee.

10. Confidentiality of ombudsman process.

The allegations, discussions, and decisions made in ombudsman proceedings are confidential and shall not be reported except in situations of possible violations of the public trust.

MEDIATION

1. What is mediation?

- a. Voluntary process (unless mandated by association).
Must provide mediation prior to arbitration; may offer prior to an ethics hearing.
- b. Private process where a neutral party helps people resolve disputes.
- c. Getting two or more parties together to talk to each other and decide the outcome.
- d. Helps disputants define issues, develop options, and achieve mutual resolution.
- e. Parties do not forfeit their legal rights or remedies.

2. When is mediation offered?

- a. Associations can adopt a policy to offer mediation before a complainant files a formal ethics complaint.
- b. Associations must offer mediation upon the filing of an arbitration request prior to the request being reviewed by Grievance.

If mediation is declined, and the request is recommended for hearing by the Grievance Committee, mediation is offered to the parties again.

3. Key features of the mediation process:

- a. Voluntary (unless association policy mandates mediation).
- b. Either party can end the mediation process at any time.
- c. Parties decide the outcome of the dispute.
- d. Confidential – none of the parties (including the mediator) can disclose communication or conduct of the mediation unless all parties agree.

4. How to encourage parties to mediate:

- a. Explain the process at their level.
- b. Find out what the concern is and address that concern.
- c. Explain options if dispute does not settle.
- d. If available, offer data about successes and satisfaction.
- e. Give a hesitant party some time.
- f. Let them decide.

THE ROLE OF THE GRIEVANCE COMMITTEE

Upon filing a complaint, the complaint is referred to the Grievance Committee for review. Grievance Committee is tasked with the initial review of the complaint. For Virginia REALTORS® we set up a panel of five impartial individuals, but local associations may set a different number. This section explores the role and composition of the Grievance Committee.

1. Purpose

- a. Initially reviews and screens ethics complaints and arbitration requests.
- b. Does not conduct hearings.
- c. Does not determine if a violation has occurred or if monies are owed.
- d. Does not mediate or arbitrate business disputes.

2. Composition

The Code of Ethics and Arbitration Manual (“CEAM”) recommends that it should be appointed by the president, subject to confirmation by the Board of Directors, to staggered, three-year terms.

NAR suggests that when selecting members of a Grievance Committee, the president should consider the following recommended criteria:

- a. Number of years as a REALTOR®;
- b. Number of years in the real estate business;
- c. Primary and second fields or real estate endeavor / expertise;
- d. Participation in post licensing real estate education;
- e. Trained on Code of Ethics;
- f. Position in firm (principal, non-principal);
- g. Size of firm;
- h. Common sense;
- i. Open-mindedness;
- j. Receptive of instruction/training;
- k. Other relevant professional or procedural training.

Committee should have a balanced representation of:

- a. REALTORS® and REALTOR-ASSOCIATES®;
- b. Men and women; and
- c. Various racial and ethnic groups.

Committee members should be mature, experienced, knowledgeable persons of judicial temperament.

GRIEVANCE COMMITTEE'S CONSIDERATIONS IN AN ETHICS COMPLAINT

After a complaint is filed, the Grievance Committee will review the complaint to determine whether it should be forwarded to an ethics hearing. In reviewing the complaint, it will evaluate the following questions:

1. Is the ethics complaint acceptable in form as received by the Committee?

- a. Complaints from the public might be vague, overly general, or in improper form.
- b. The Grievance Chair may assign a Grievance Committee member to assist the complainant put the complaint in proper form. Such Grievance member cannot participate in the review of the complaint or become an "advocate" for the complainant.
- c. Often, staff will have administratively addressed this with the complainant, providing them with the necessary forms.
- d. Complaint must be submitted by a person, but do not have to be a REALTOR® member. Virginia REALTORS® does not accept anonymous complaints.

2. Are all necessary parties named in the complaint?

Associations cannot adopt a policy whereby the broker is automatically joined as a respondent in an ethics case. *See* CEAM Section 13(d).

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 5/06)

- a. The Ethics Complaint Form (#E-1) requires the Complainant to sign a statement that says, "This complaint is true and correct to the best knowledge and belief of the undersigned and is filed within one hundred eighty (180) days after the facts constituting the matter complained of could have been known in the exercise of reasonable diligence or within one hundred eighty (180) days after the conclusion of the transaction, whichever is later." In the absence of any facts that would contradict this statement, the Grievance Committee can, and should, rely on this statement, taking all facts alleged in the complaint as true. The respondent will have the opportunity to argue that the complaint is outside 180 days before the Professional Standards Hearing Panel. Further, the E-1 form has a space on it that requires the complainant to state the date of the alleged bad behavior & the date they became aware of the bad behavior.

- b. Engaging in Ombudsman process or Mediation suspends the filing deadline, but litigation does not suspend the filing deadline.

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?

- a. The respondent must be a member of the Board that is tasked with handling the complaint for the Board to have authority to process the complaint.
- b. This will be determined by staff – members of the panel should not look up this information themselves. If they have questions or concerns, those should be directed to staff and/or the chair of Grievance (or the panel).
- c. If the respondent was a member at the time of the alleged offense, but is no longer a member of any association prior to the filing of the complaint, the association may proceed with processing the complaint. Any discipline ratified by the Board of Directors will be held in abeyance until the respondent rejoins an association of REALTORS®. CEAM Part 4 – The Ethics Hearing, Section 20(e), which was new in 2017.
- d. If the respondent was not a member of the Board at the time of the alleged offense, the Grievance Committee must dismiss the complaint for lack of jurisdiction.

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

- a. If criminal or civil litigation is pending related to the facts and circumstances giving rise to the complaint alleging unethical conduct, 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:
 - (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 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. (Revised 11/18)

6. Is there any reason to conclude that the Board would be unable to provide an impartial Hearing Panel?

- a. This question is to determine whether there could be an impartial Professional Standards Hearing Panel – not the Grievance Committee panel meeting to discuss the case. The determination that there is an impartial Grievance Committee panel will be made before it meets and should never convene if the Grievance Committee panel is not impartial. Staff will have input on this question, if necessary.
- b. Every association is required to have a cooperative agreement with another association, allowing them to pull panel members from the other association if necessary. Additionally, if necessary, the case can be sent to Virginia REALTORS® if there cannot be an impartial panel from the two or more local associations. Examples would include the president of the Board of Directors filing an ethics complaint against someone else.

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?

- a. This is the bulk of the Grievance Committee’s work. Remember, if it is not forwarded as part of the Complaint by the Grievance Committee, then the Hearing Panel cannot consider it.
- b. This is where the Grievance Committee would add or remove articles or references to the Standards of Practice.
- c. The complaint must allege a violation of at least one Article to the Code of Ethics – and it can be any article. It cannot only be an alleged violation of a Standard of Practice.

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 complaint 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.

- a. 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.

- b. The Grievance Committee may gather additional information on the matters complained of only if the complaint is too vague to make a determination and additional information is necessary to determine whether the case will be forwarded for hearing.

GRIEVANCE COMMITTEE'S OPTIONS FOR ACTION

1. Forward the complaint as submitted by Complainant for a hearing.
2. Amend the complaint and forward to hearing.
3. Dismiss the complaint in part or in total:

The Grievance Committee can dismiss certain articles cited in the complaint and move remaining articles forward for hearing.

4. Issue Citation, if applicable.
 - a. State and local associations can adopt a model Citation Policy as part of their Professional Standards procedures.
 - b. The Citation Policy expedites the ethics complaint process and functions similarly to a speeding ticket. The respondent can opt to pay the fine or proceed to a hearing if he or she does not agree with the allegation.
 - c. See page 14 of the Resources Section for the Virginia REALTORS® Citation Policy.
 - d. Local associations may have adopted their own policies.
 - e. Limited to minor violations that can generally be proven without testimony.
 - f. Restricted to the sanctions laid out in the Citation Policy – cannot increase, decrease, or substitute sanctions.

APPEALING THE GRIEVANCE COMMITTEE'S DECISION

1. Reason for dismissal is to be provided to the parties.
2. A complainant may appeal the dismissal of an article within 20 days from the transmittal of the dismissal notice of the committee's decision.
3. A complainant may appeal the dismissal of a complaint within 20 days from the transmittal of the dismissal notice of the committee's decision.
4. Parties do not have the right to attend the hearing.
5. During the hearing, the Board of Directors only considers the materials presented to the Grievance Committee and the complainant's rationale challenging the dismissal.

HEARING PANEL PROCEDURES

Once Forwarded to a Hearing:

- a. The Professional Standards Chair has 20 days from the date of the Grievance Committee decision to set the hearing date.
- b. Also, a panel must be selected no later than five days after the challenge forms are due.

2. Composition of the Panel:

- a. Minimum of three members, preferably five (odd numbers).
- b. Have one or two alternates, if possible.

Alternate panel position is great training for newer panel members. The alternate panel members should be seated separately from the Hearing Panel, do not participate unless called to replace a member, and may sit in on executive session, but may not participate in decision or deliberation.

- c. Mixed composition: men, women, principals, and non-principals.

3. Optional Pre-hearing Meeting of the Hearing Panel:

- a. When Grievance Committees refer ethics complaints and arbitration requests for hearing, Hearing Panel Chairs can determine whether certain issues will be addressed through a pre-hearing meeting or at the onset of the hearing prior to the commencement of testimony relating to the ethics complaint or arbitration request. Those issues are:

- (1) whether ethics complaints and arbitration request are timely filed;
- (2) whether arbitrable issues exist;
- (3) whether arbitration request is too legally complex to be fairly arbitrated; and
- (4) other administrative issues.

The Chair determines whether the parties may be present at the pre-hearing and the extent in which they participate. If these matters arise during a hearing, the Hearing Panel will address them at that time. One benefit to having a pre-hearing meeting is that these decisions will be made in advance so there is no interruption of the hearing to address these issues, and it can help the hearing move along in an expedient manner.

- b. Dismissals of ethics complaints and arbitration request by Hearing Panels in pre-hearing meetings can be appealed to the Board of Directors on the same basis as dismissals by the Grievance Committee.

- c. Any proceeding convened to resolve such issues must include all the procedural due process safeguards required for ethics and arbitration hearings.

4. At the Hearing, the Hearing Panel:

- a. Should review procedures, issues, and questions prior to convening the hearing – only the panel, staff, and association counsel may be in the room.
- b. May review complaint (or arbitration request) and response in advance of hearing. Panel should receive these documents in advance of hearing.
- c. Should write questions in advance.
Make sure you ask both sides substantive questions.
- d. Must be impartial or will be disqualified!
- e. May not discuss the merits of case! If they do, they must advise the parties prior to the hearing.

5. Hearing Practices:

- a. All hearings must be recorded.
Tape or digital, Court reporter, etc. The association will retain the recording. Do not give the original recording out to the parties – association should prepare all copies.
- b. Transcript is used for appeal purposes only.
- c. Videotaping is not permitted.
- d. Cell phones, two-way radios, and any other transmitting devices should be barred from hearings absent any advance authorization from the Chair.
- e. Keep the door to the hearing room closed at all times.

5. Waived or Expedited Hearing

- a. No live testimony.
 - (1) Respondent waives right to an in-person hearing.
 - (2) Respondent acknowledges the conduct.
 - (3) Respondent may offer other information to mitigate.
 - (4) Hearing panel goes straight into executive session and determines outcome based on the documentation submitted by the parties.
- c. Respondent must not have had violations in the past three years.
- d. If multiple respondents, all must agree to this process.

6. Virtual Hearings or Remote Participation

Due to the Coronavirus pandemic, many associations held virtual hearings in lieu of in person hearings to comply with local, state, and national recommendations regarding social distancing and the avoidance of in-person gatherings. The CEAM has procedures addressing teleconference or videoconference testimony.

- a. Association may require parties to participate in virtual hearings.
- b. Unless an association's policy states otherwise, the association is not required to obtain all parties' consent to move forward with a virtual hearing.
- c. Parties eligible to participate for the entire hearing are entitled to participate remotely for the entirety of the hearing. Witnesses may participate remotely for their own testimony only.
- d. Hearing Panels, staff, or association counsel should employ steps to verify the identity of the "remote" participants to prevent unauthorized individuals from being in the presence of the participant and to ensure confidentiality of the proceedings.
- e. The counsel may participate remotely as well.
- f. If the Hearing is being held in person, but certain participants wish to participate via teleconference or video conference, those participants may request permission from the Hearing Panel Chair to participate in proceedings remotely.

7. Chairperson's Role:

- a. Stick to the script! Doing so ensures procedural consistency and proper due process to all parties.

Virginia REALTORS® offers training for Chairpersons.

- b. Reviews all evidence prior to entering it into the record.
- c. Decides what is and what is not relevant.

8. Witnesses:

- a. All parties appearing at the hearing may be called as a witness without notice.
- b. All other witnesses called to testify must be noticed at least 15 days before the hearing.
- c. All parties, including witnesses, are sworn in or affirmed.
- d. Witnesses leave the hearing room until called upon for their testimony.
- e. In ethics, complainant's principal **may not** be present unless a witness. Respondent's principal **may** be present.
- f. Character evidence has no bearing, including parties' actions in other transactions – the bottom line is whether there is a violation of the Code.

9. Hearing Panel:

- a. Watch Body Language! Nodding in agreement, shaking heads in disbelief, facial expressions, rolling eyes, etc.
- b. Do not make statements or express opinions.
- c. Do not show up late.
- d. Do not visit with parties or be familiar.
- e. Should not wear company badge or logo.
- f. Do not appear to be bored or tired.
- g. Do not chit-chat.
- h. Do not appear biased.
- i. Do not pass notes to each other.

It is okay to pass notes to Chair; do not pass notes to each other!

10. Executive Session / Deliberation

- a. Wait until everyone has left the hearing area.
- b. Turn off recording!
- c. Chair should review procedures and burden of proof.
Burden of Proof is “clear, strong, and convincing” for ethics cases. “Clear, strong, and convincing” is defined as that measure or degree of proof which will produce a firm belief or conviction as to the allegations sought to be established.
- d. Chair should remind panel that each case must be considered separately, and decision must be based on fact – not what you think may have happened!
- e. Allow all panel members to speak. Chair should speak last.
- f. There is no ability to amend the complaint if the hearing has concluded.
Can amend in an executive session during the hearing, but once the hearing has concluded the Hearing Panel cannot alter the complaint.
- g. Findings of the Hearing Panel are to be determined and written.
- h. A majority of the Hearing Panel is to sign the decision.
- i. Dissenting opinions, if any, along with the decision, are to be transmitted to parties and the Board of Directors.

FINDINGS OF FACT

The Hearing Panel must reach a decision on the outcome of the Hearing. Regardless of whether it found the respondent in violation of the Code of Ethics or not, it must draft a document to inform the parties of its decision. The Decision of the Hearing Panel is often referred to as the Findings of Fact, based upon the first part of the document whether the Hearing Panel states the facts upon which it based its conclusion regarding the alleged violation of the Code of Ethics. See E-11 Form – page 21 of the Resources Section.

1. Findings of Fact should:

- a. Be comprehensive.
- b. Be succinct.
- c. Provide a clear rationale for the conclusion.
- d. Provide a reader who knows nothing about the case with the rationale for the decision by linking the facts (or lack thereof) from evidence or testimony to the violation.
- e. Be written even if no violation of the Code is found.

2. Potential conclusions reached by a Hearing Panel include:

- a. No violation of specific Article(s).
- b. Violation of specific Article(s).
- c. Remember when determining discipline:
 - (1) Panel will consider all previous violations and sanctions – even from other boards or associations.
Staff member will provide this information.
 - (2) The panel should include a rationale for its recommended discipline for the Board of Directors' consideration as part of the decision.
 - (3) Consequences for not completing discipline.
 - (4) Time frames for complying with discipline.

3. Types of discipline include:

See Sanctioning Guidelines on page 23, and Disciplinary Guidelines on page 26 of the Resources Section.

- a. None.
- b. Letter of warning or reprimand.

- c. Education.
- d. Appropriate and reasonable fines, not to exceed \$15,000.
- e. Suspension of board membership and/or MLS access not less than 30 days nor more than one year.
- f. Termination of board membership and/or MLS access not less than one year nor more than three years.
- g. Probation.

Probation is not a form of discipline. When a member is put on probation the discipline recommended is held in abeyance for a stipulated period of time not longer than one 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.

4. Additional concerns about discipline include:

- a. Stating specific discipline (such as Ethics 101 class to be taken at the association within ____ days of transmittal of Board of Directors' final decision).

Make sure the discipline is available within that specified timeline.

- b. Defining specific time frame for the individual to comply with discipline (such as "\$250 fine to be paid within ten days of transmittal of Board of Directors' final decision").

Again, make sure the discipline is available within that specified timeline. It is prudent to base off the transmittal of the final decision and not a specific date because the Hearing Panel will not know when the Board of Directors will ratify their decision. For example, an appeal could delay ratification by two to three months.

- c. Defining a specific time frame for the suspension/expulsion; when it begins/ends.
- d. Including additional discipline to automatically be imposed if the original discipline is not fulfilled.
- e. If suspension or expulsion for noncompliance with other discipline has been imposed, then state whether the individual must first comply with outstanding discipline BEFORE he/she may be reinstated or readmitted to membership.

ETHICS APPEAL

1. Appeal of decision:

- a. Parties have 20 days from transmittal of decision to appeal decision.
- b. Some associations require a deposit (not to exceed \$500).
- c. Must be in writing and clearly state the basis for challenge.
- d. Bases for appeal are limited to:

- (1) Misapplication or misinterpretation of the Code;
- (2) Procedural deficiency or lack of procedural due process;

This is the complainant's only appeal right.

- (3) The discipline recommended by Hearing Panel.

2. Appeal is reviewed by the Board of Directors, a panel of the Board of Directors, or the executive committee (per your association's policy).

- a. Secretary or designee must review the appeal within 10 days from receipt.
- b. Secretary or designee must send out the original appeal or as amended to all parties within one day.
- c. Directors shall hear the appeal at their next regular meeting or at a special meeting called by the Secretary for the purpose, but no later than 30 days after the date of receipt of the appeal.

3. During the appeal hearing:

- a. The petitioner is limited to only the bases set forth in the written request for appeal.
- b. The Hearing Panel chair (or a representative of the panel designated by the chair) presents the transcript or summarizes the case.
- c. Each party may offer corrections to the transcript or summary.
- d. Each party may present arguments about why the Hearing Panel's decision should or should not be followed.
- e. No new evidence is allowed, except that which bears the claim of deprivation of due process.

For example, if the complainant wanted to introduce a document and was not allowed to do so.

f. Arguments are limited to the issues raised in the written appeal request.

4. Board of Directors:

- a. May adopt the Hearing Panel's conclusion and recommendation for discipline.
- b. May modify the Hearing Panel's conclusion and/or lower the recommendation for discipline.

May not increase discipline. Adding timelines for completion of discipline is considered increasing sanctions per NAR.

- c. May dismiss the matter, if concluded that the findings of fact, even if accurate, do not support a conclusion that unethical conduct occurred.
- d. If the Board of Directors is concerned with a procedural error, must refer the matter back to the Professional Standards Committee for a new hearing before a different Hearing Panel.
- e. Under no circumstances may the discipline imposed by a Board of Directors exceed the originally recommended discipline or include discipline not authorized in the Code of Ethics and Arbitration Manual.
- f. If a recommendation of a Hearing Panel has been modified or if the charge of unethical conduct has been dismissed, then the directors should state in writing why they dismissed or modified the decision; however, failure to state a reason(s) in writing does not invalidate the directors' decision.
- g. The BOD must forward final ethics decisions holding REALTORS® in violation of the Code of Ethics to the state real estate licensing authority in instances involving real estate related activities and transactions where there is reason to believe the public trust may have been violated.

"Public Trust" refers to the demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud.

BOARD OF DIRECTORS

1. Executive Session When No Appeal Filed:

- a. Board of Directors should review the findings of fact only after the decision has been sent to the parties and the appeal period has expired.
- b. Board of Directors must consider the decision at its next meeting or at a special meeting called for this purpose, but no later than 30 days after the decision has been transmitted to the parties.
- c. Association procedures dictate whether board counsel/staff remain.
- d. The Board of Directors reviews the findings of fact only, although Panel may now include rationale for discipline as part of the decision.
- e. No new information may be solicited or received from parties.
- f. No witnesses are called or recalled.
Including the Hearing Panel Chair
- g. The recording of the hearing is not to be replayed.
- h. Standard of proof must be “clear, strong and convincing” (Ethics).
- i. There is no ability to amend the complaint.

2. Actions by the Board of Directors:

- a. Adopt the decision.
- b. Adopt the decision, but decrease the discipline.
Discipline may not be increased!
- c. Remand to the Hearing Panel for further consideration about the discipline recommended.
- d. Remand to the Professional Standards Committee for a new hearing by a different Hearing Panel based upon perceived procedural deficiencies.
- e. Reverse and dismiss the complaint because the findings of fact do not support a possible violation of the Code.
- f. The BOD must forward final ethics decisions holding REALTORS® in violation of the Code of Ethics to the state real estate licensing authority in instances involving real estate related activities and transactions where there is reason to believe the public trust may have been violated.

“Public Trust” refers to the demonstrated misappropriation of client or customer funds

or property, discrimination against the protected classes under the Code of Ethics, or fraud.

THE LIFE OF AN ETHICS CASE

Look at page 36 of your Resources to see the Ethics flowchart which provides a comprehensive view of the life of an Ethics case.

ARBITRATION

Under the Code of Ethics, arbitration involves contractual, and specific non-contractual, disputes regarding an amount of money.

1. Arbitration of disputes is limited to the conditions of Article 17:

- a. Contractual disputes such as:
 - (1) Cooperating Broker vs. Listing Broker.
 - (2) Agent A of ABC Firm vs. Agent B of ABC Firm
Requires broker consent and would be classified as voluntary arbitration. This is rarely seen because most firms have an internal dispute resolution system.
 - (3) Listing Broker vs. Seller (voluntary).
 - (4) Consumer (Client) vs. Broker.
- b. Specific non-contractual disputes as defined in SOP 17-4.
 - (1) In SOP 17-4 (1) – (3), the most common non-contractual disputes covered by these paragraphs are cooperating broker vs. cooperating broker – no listing broker needs to be named in the arbitration request when listing broker has paid one of the cooperating brokers.
 - (2) In SOP 17-4 (4), two or more “open” listing brokers may arbitrate between themselves.
 - (3) In SOP 17-4 (5), the listing broker believes subsequently he is the procuring cause, then the listing broker may arbitrate with the cooperating broker when the listing broker reduces the seller’s commission and the cooperating broker is paid by the seller.
- c. Disputes between REALTORS® associated with different firms, arising out of their relations as REALTORS®.

2. Mandatory vs. Voluntary Arbitration:

- a. Mandatory arbitration involves:
 - (1) REALTOR® principal of Company #1 vs. REALTOR® principal of Company #2.
 - (2) REALTOR-ASSOCIATE® or REALTOR® non-principal of company #1 vs. REALTOR-ASSOCIATE® or REALTOR® non-principal of company #2 if the principals of the respective firms join the request.

Salespeople may not invoke arbitration or be a respondent; arbitration is between principal brokers. However, this situation does allow agents to be involved if the broker also signs the paperwork.

- (3) Client vs. REALTOR® principal – (when the client files he or she has then consented to arbitration).

A REALTOR® Principal may not force a client to arbitrate, however, if the principal and client agree in their brokerage agreement it would be mandatory.

b. Voluntary arbitration involves:

- (1) REALTORS® or REALTOR-ASSOCIATES® in the same firm (“in-house” disputes).
- (2) REALTOR® principal and non-REALTOR® broker principal.
- (3) REALTOR® principal and customer.
- (4) REALTOR® principal filing a request for arbitration where the respondent is not a member nor MLS participant and there is not an inter-board cooperative agreement.

3. Non-arbitrable matters:

There is generally a conspicuous absence of a specified sum of money in dispute between the parties in non-arbitrable matters. These matters might be suitable and acceptable for mediation, but do not fit the requirements for an arbitrable dispute. Associations may (but are not required to) offer ombudsman services or mediation for non-arbitrable matters.

a. Tortious interference with business relationships.

Tortious Interference – a third party’s intentional inducement of a contracting party to break a contract causing damage to the relationship between the contracting parties.

b. Tortious interference with a contractual relationship.

One example might be when an agent leaves a firm and induces clients of that brokerage firm to leave.

c. Economic duress.

d. Intentional infliction of emotional distress.

e. Other tort claims, such as libel/slander.

f. Employment claims, other than commission disputes.

g. Fraud/misrepresentation claims.

h. Property claims, both real and personal.

- i. Disputes between two listing brokers where no contract exists between the parties and the dispute is not as specified in Standard of Practice 17-4(4) (added 1/1/17).
- 4. Virginia law allows the Board of Directors to adopt Part 10, Section 48, Option #3 of the CEAM to allow for an arbitration to move forward in the event that the Respondent refuses or fails to appear at a hearing. Additionally, you can split arbitration awards in Virginia.

NAR discourages the splitting of arbitration awards unless the transaction could not have occurred without the actions of both parties.

PROCURING CAUSE

Most co-op broker disputes hinge on "procuring cause" claims, but many other arbitration "entitlement claims" are those that stem from a referral agreement, whether written or oral, regarding buyer or seller referrals from one agent to another. This section will go into additional information about procuring cause. However, it is important to note that written referrals can and should be treated as contractual obligations.

Panels have possibly heard cases where the requestor has demonstrated by correspondence, and the testimony of a referred party, that a referral was in fact made, accepted, and productive of funds, even though no initial referral agreement was ever signed and returned by the party to whom the referral was made.

1. Definition

- a. The uninterrupted series of casual events which results in the successful transaction.
- b. 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."
- c. 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.

2. Factors

- a. No predetermined rule of entitlement
- b. Communication & Contact
 - (1) Abandonment
 - (a) Broker lost interest or disengaged from the transaction.
 - (b) Broker's perceived inactivity has caused the purchaser to reasonably conclude that he or she had lost interest or disengaged from the transaction.
 - (2) Estrangement
 - (a) Broker's conduct or failure to act when necessary caused purchaser to terminate relationship.

- c. Entire course of events

3. Course of Events

- a. Nature & status of the transaction
- b. Nature, status & terms of the listing agreement
- c. Nature, status & terms of buyer representation agreement
- d. Nature, status & terms of the offer to compensate
- e. Roles & relationships of the parties
- f. Initial contact with purchaser
- g. Conduct of brokers
- h. Continuity & breaks in continuity
- i. Conduct of buyer
- j. Conduct of seller

4. The Threshold Rule

- a. The threshold rule is a concept where the agent who took the home buyer across the threshold of a home for sale is entitled to the commission should the buyer purchase that home.
- b. NOT a determining factor in procuring cause.
- c. First person to introduce or show the property to the buyer is NOT necessarily procuring cause.

5. Misconceptions about Procuring Cause

REALTORS® often place too much value on these aspects, but they are not determinative for identifying the procuring cause for a transaction:

- a. Who showed/never showing property.
- b. Who wrote the contract.
- c. Who had a brokerage agreement.

GRIEVANCE COMMITTEE REVIEW QUESTIONS FOR ARBITRATION REQUESTS

(REQUESTOR (*Complainant*) v. RESPONDENT)

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?

- a. Is Form A-1 or A-2 completed with all the necessary information/all the blanks filled in?

A-1 is used when both parties are members of the same Board.

A-2 is used when the requestor is not a REALTOR® member or is not a REALTOR® member of the same local Board as the Respondent.

- b. If not, the Professional Standards Administrator or staff would go back to the complainant and ask for her to amend the form. Often this is handled well before the Grievance Committee sees it. The grievance process may not be able to continue until the amendment is received.

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. Is the complaint timely filed?

Was the request for arbitration filed within 180 days after the closing of the transaction, if any, or within 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 entitled to invoke arbitration?

Staff will give the panel the member class and will tell you whether they were a REALTOR® at the time of the transaction. DO NOT DO YOUR OWN RESEARCH. When in doubt ask staff to research any necessary information.

- a. Are the parties members in good standing or otherwise entitled to invoke arbitration through the Board's facilities?
- b. Were the parties members at the time the facts giving rise to the dispute occurred? If the respondent ceases to be a member of an association, the arbitration proceedings continue as long as the dispute arose prior to the time the membership lapsed or was terminated (Arbitration Statement 46 of CEAM). This is the case in ethics cases, as well (Part Four, Section 20(e) of CEAM).

- c. Does the local association have jurisdiction over the complaint?

The local association will have jurisdiction if the respondent is a member of the local association and was at the time the facts giving rise to the dispute occurred, and the complainant either has submitted to the jurisdiction of the local board, or is also a member of that local association.

5. Is litigation concerning an otherwise arbitrable matter pending in connection with the same transaction?

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.

What happens if it is? The Grievance Committee will make the ultimate determination, but your association's counsel needs to be consulted as to whether or not the case should be held in abeyance pending the outcome of the litigation or if it is a non-issue. DO NOT DO ANY OF YOUR OWN OUTSIDE RESEARCH.

6. Is there any reason to conclude that the Board would be unable to provide an impartial Hearing Panel?

If you are in a small association and the party(ies) are well known, the association's Professional Standards Administrator/staff could ask a cooperating association to assist with filling a panel, or the case may be sent to Virginia REALTORS®.

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?

This is asking is the dispute is based in Article 17 to the Code of Ethics.

8. If an arbitrable issue exists, are the parties required to arbitrate or is their participation voluntary?

We just reviewed mandatory vs. voluntary arbitration.

9. Is the amount in dispute too small or too large for the Board to arbitrate?

Clearly an amount less than the filing fee is too small. An amount could be too large for your association if it exceeds the association's E&O coverage. Staff can help provide information if you are unsure.

10. Is the matter too legally complex, involving issues that the arbitrators may not be able to address in a knowledgeable way?

Some examples of matters too legally complex may be:

- a. Issues where one party alleges there is evidence of a conspiracy among the other parties
- b. Allegations of fraud
- c. Allegations of intentional interference with prospective economic advantage

These all involve legal principles that may be complex to those who have not received formal legal training.

11. Is there a sufficient number of knowledgeable arbitrators available?

This is another question that staff will likely provide you information on. If you are in a small association and your Professional Standards Committee is not experienced with arbitration matters or the specific type of dispute, the association's Professional Standards Administrator could ask a cooperating association to assist. A panel always needs to be an odd number of members, and the preferred number is five.

GRIEVANCE COMMITTEE'S OPTIONS FOR ACTION

1. Forward the complaint as submitted by the Requestor for a hearing.

The complaint must indicate whether it is mandatory or voluntary arbitration.

If all of the relevant questions have been considered, and a majority of the Grievance Committee votes in favor that the matter is properly arbitrable by the Board, the Grievance Committee signs off on the Report Form (Form E-5.1, see page 13 of the Resources Section) and the Request for Arbitration is sent to the Chairperson of the Professional Standards Committee for arbitration by an Arbitration Hearing Panel.

2. Dismiss the complaint.

If dismissed, the reason must be included. For example, not timely filed, too small, etc.

APPEALING THE GRIEVANCE COMMITTEE'S DECISION

1. Complainant may appeal the dismissal to the Board of Directors within 20 days from the date that staff transmits the dismissal notice.
2. Parties do not have the right to attend the hearing.
3. During the hearing, the Board of Directors considers only the materials presented to the Grievance Committee and the complainant's rationale for challenging the dismissal.

ARBITRATION HEARING PANEL

1. Pre-hearing meeting.

Same as in an ethics hearing.

1. Six Factors considered by Arbitration Panels:

See Arbitration Worksheet on page 36 of the Resources Section.

- a. No predetermined rule of entitlement,
- b. An arbitrable matter with appropriate parties,
- c. Relevance and admissible evidence,
- d. Communication and contact,
- e. 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 applicable state law.

2. Executive Session

- a. Get full and clear understanding of transaction giving rise to request to arbitrate.
- b. Carefully and impartially weigh and analyze whole course of conduct of parties.
- c. Render reasoned peer judgment with respect to the issues presented.
- d. Standard of Proof is “preponderance of the evidence”. “Preponderance of the evidence” is 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.
- e. Reach a fair and equitable resolution.

(1) Written decision must specify which party is entitled to the award. The party must pay within 10 days or escrow the funds with the association.

There is no findings of fact or written explanation as to why the Hearing Panel reached its decision. This is very different from an ethics case.

(2) Must appeal within 20 days of transmittal of the arbitrators’ decision.

(3) If there is no appeal and the prevailing party does not receive the award, then the prevailing party may bring the final decision to Court for enforcement of the arbitration award.

See Form A-12, Award of Arbitrators, on page 40 of the Resources Section.

ARBITRATION PROCEDURAL REVIEW

1. Ethics “Appeal” Versus “Limited Procedural Review”

- a. In arbitration, there is no right to appeal the award itself; parties may not complain, “I don’t like the award,” or “I disagree with the arbitrators’ decision.”
- b. Parties **do** have a right to limited procedural review, based solely on assuring that due process rights have been observed.
- c. This process provides a “safety valve” to remedy substantial procedural deficiencies or other irregularities that a party believes constitute a deprivation of due process.

A procedural deficiency that does not deprive someone of due process may not be enough. For example, someone having 20 days’ notice of the hearing, rather than 21, may not rise to the level of depriving them of due process. On the other hand, someone only having 1 or 2 days’ notice of the hearing likely would deprive them of due process – so, you see, you can have a procedural deficiency that may or may not rise to the level of a deprivation of due process.

2. Request for Procedural Review.

- a. Limited right of review, based solely on:
 - (1) Deprivation of due process, or
 - (2) Failure of the association to substantially follow its established arbitration procedures.
- b. If no procedural review request is filed within 20 days from transmittal of the award, it becomes final, and the Board of Directors does not review, approve, or otherwise look at the arbitration request or award. This is different than an ethics matter where the Board of Directors always reviews the decision.
- c. If a procedural review request has been filed, it is reviewed by the entire Board of Directors or a panel of the Board of Directors, as determined by policy established by the Board of Directors.

3. A request should clearly set forth all bases for challenge.

- a. Form #A-13 - Request for Procedural Review – should be completed.
- b. No new evidence is allowed, except as such may bear upon a claim of deprivation of due process – for example, a claim that the party was not allowed to submit a particular document.
- c. A proper request for procedural review may not simply state, “I appeal” to be accepted as proper.

- 4. During the initial administrative review, the president or delegate reviews the request and determines whether it states legitimate bases for review. If not, the problem is explained to the party and additional detail is requested.**

All procedural review requests are heard, and there is no ability for them to be “vetoed”.

- 5. During a procedural review hearing:**

- a. Arguments are limited to issues raised in the written request for review.
- b. At the start, the chair should make it clear that the merits of the arbitration are not being reviewed or reconsidered.
- c. Challenges to the directors for cause are allowed, as with Hearing Panel members.
- d. The appellant explains the basis for challenge.
- e. The chair of the original Arbitration Hearing Panel (or his designee) may respond to allegations raised by the appellant.
- f. Any other party has an opportunity to address why the award should be upheld.

- 6. During the Board of Directors’ executive session:**

- a. The Directors’ decision is final and binding, from the Association’s perspective.
- b. The Directors limit their deliberations to bases in the written statement that allege a deprivation of due process.
- c. The Directors vote and the outcome will be either:
 - (1) The Directors may adopt the award.
 - (2) If a substantial procedural deficiency resulting in the denial of due process is found, or if it is determined that the non-prevailing party was otherwise deprived of due process, then the award is invalidated and the arbitration request is referred for a new hearing by a different Hearing Panel, **or** if the association is unable to impanel an impartial, well-qualified Hearing Panel the matter may be referred to the state association, **or** the parties may be released from their obligation to arbitrate.



***Professional Standards
Training
CASE STUDIES
2021***

GRIEVANCE COMMITTEE ETHICS CASE STUDY

Instructions: Read the following case studies and, acting as a Grievance Committee, review the ethics complaints and determine whether these cases should be moved forward for a hearing.

Staff of the association has confirmed that the respondents are members of Virginia REALTORS®, and were at the time of the alleged conduct. In addition, there are plenty of panel members for an impartial Hearing Panel.

Form #E-1

VIRGINIA REALTORS®
10231 Telegraph Road
Glen Allen, VA 23059

Ethics Complaint

To the **Grievance Committee** of the Virginia REALTORS®. Filed _____, 20____

Complainant(s) Respondent(s)

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 _____ (Bylaws Article & Section) and alleges that the above charges(s) (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) I 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 If yes, where? _____

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

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

John Jones, Executive Officer
Virginia REALTORS®
10231 Telegraph Road
Glen Allen, VA 23059

February 14, 2021

RE: Complaint against REALTOR® Everett Childers

Dear John:

I believe that Everett Childers violated Standard of Practice 10-5 of the Code of Ethics. I have known Everett for many years because we grew up together, and so we are friends on Facebook.

On January 7, 2021, I logged in to Facebook and read the vilest message that he had posted. It seemed completely unhinged, and I was shocked that he would have posted such a hateful message about women.

He posted that he was sick and tired of “pregnant women getting all this special treatment” and that he knew that “he lost out on a purchase because the seller went with a buyer who was pregnant – just because the seller felt sorry for her!” Everett even went so far as to say that he did not believe that pregnant woman should be allowed to make any type of business decisions! He typed something along the lines of all women should get back into the kitchen, and that they were too hormonal to make rational decisions about money.

Quite frankly, it seems like he is too hormonal because he was the one ranting on Facebook about this transaction. How unprofessional!

As a professional woman, I felt this antiquated view to be really disgusting, and completely inappropriate. I contacted his broker immediately, and also thought the REALTOR® organization should know that he holds these inappropriate views. How can he be expected to work with his female colleagues or clients when he holds these opinions?

He included additional offensive language, but I feel uncomfortable even writing it in my note. I will be happy to provide it to you if it will help your investigation.

Sincerely,

Norah Malone

Form #E-1

VIRGINIA REALTORS®
10231 Telegraph Road
Glen Allen, VA 23059

Ethics Complaint

To the Grievance Committee of the Virginia REALTORS®. Filed January 5, 2021

Julia Suarez
Complainant(s)

Willow James
Respondent(s)

Complainant(s)

Respondent(s)

Complainant(s) charge(s):

An alleged violation of Article(s) 1 (SOP 1-7), 10 (SOP 10-5) of the Code of Ethics and/or other membership duty as set forth in the bylaws of the Board in (Bylaws Article & Section) and alleges that the above charges(s) (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: October 15, 2020 and October 17, 2020

Date(s) I became aware of the facts on which the alleged violation(s) (is/are) based: October 15, 2020 and October 17, 2020

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 [X] No If yes, where? _____

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

[] Yes [X] 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):

Julia Suarez
Type/Print Name

Julia Suarez
Signature

Type/Print Name

Signature

9823 Anywhere Street, Anywhere, VA

Address

303-294-2582

jsuarez@email.com

Phone

Email

John Jones, Executive Officer
Virginia REALTORS®
10231 Telegraph Road
Glen Allen, VA 23059

January 5, 2021

RE: Complaint against REALTOR® Willow James

Dear John:

I believe that REALTOR® Willow James violated Articles 1 and 10 of the Code of Ethics. I had been working with my client, Eric, for a few months trying to find his perfect home. On October 13, 2020, I sent him, and he asked me to schedule a showing.

We toured the house on October 15, 2020. When we were there, the listing agent, Willow James, was waiting outside the property to help ensure that the COVID protocols were followed. To be honest, she seemed very unwelcoming and judgmental about Eric. I was not sure why.

She made a comment that Eric better take his shoes off when he went inside, and that he absolutely was forbidden from touching anything. Eric said he felt really uncomfortable with her behavior and weird comments directed at him, but he decided that he wanted to put in an offer anyway. She didn't make the same comments to me.

We knew there were multiple showings that day, and properties move pretty quickly in this area. After some discussion, Eric decided to make his offer as attractive as possible by offering \$13,000 over list price, with a home inspection contingency, but no financing contingency. I submitted his generous offer at 3 p.m. on October 15, 2020, with an automatic expiration of October 18, 2020.

The next morning, I called Willow to make sure that she had seen the offer. She said that she had received it and would show it to the owners. She didn't seem that excited, but I thought her clients would like Eric's offer, so I didn't think too much about it.

The following day, I still had not heard back from Willow about my client's offer. I called her and left a voicemail to ask if the owners had seen Eric's offer. I was very frustrated when she did not call me back.

On October 18, 2020, my client's offer expired and we had never even heard a response from the sellers. He was so frustrated because he really loved the house. Eric definitely thought that Willow said something to the sellers about him. It seemed like she had it in personally against him. Also, she never responded to my voicemail asking if she had shown her client Eric's offer.

Sincerely,
Julia Suarez

Hearing Panel Case Study

Norah Malone vs. Everett Childers

1. Go into executive session in your breakout room.
2. Choose a chairperson.
3. Talk about the case.
4. Determine an appropriate sanction (see page 31 of your Resources).
5. There is not one correct outcome. Work together to reach a conclusion like a real Hearing Panel.

Form #E-1

VIRGINIA REALTORS®
10231 Telegraph Road
Glen Allen, VA 23059

Ethics Complaint

To the **Grievance Committee** of the Virginia REALTORS®. Filed _____, 20____

Complainant(s) Respondent(s)

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 _____ (Bylaws Article & Section) and alleges that the above charges(s) (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) I 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 If yes, where? _____

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

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

John Jones, Executive Officer
Virginia REALTORS®
10231 Telegraph Road
Glen Allen, VA 23059

February 14, 2021

RE: Complaint against REALTOR® Everett Childers

Dear John:

I believe that Everett Childers violated Standard of Practice 10-5 of the Code of Ethics. I have known Everett for many years because we grew up together, and so we are friends on Facebook.

On January 7, 2021, I logged in to Facebook and read the vilest message that he had posted. It seemed completely unhinged, and I was shocked that he would have posted such a hateful message about women.

He posted that he was sick and tired of “pregnant women getting all this special treatment” and that he knew that “he lost out on a purchase because the seller went with a buyer who was pregnant – just because the seller felt sorry for her!” Everett even went so far as to say that he did not believe that pregnant woman should be allowed to make any type of business decisions! He typed something along the lines of all women should get back into the kitchen, and that they were too hormonal to make rational decisions about money.

Quite frankly, it seems like he is too hormonal because he was the one ranting on Facebook about this transaction. How unprofessional!

As a professional woman, I felt this antiquated view to be really disgusting, and completely inappropriate. I contacted his broker immediately, and also thought the REALTOR® organization should know that he holds these inappropriate views. How can he be expected to work with his female colleagues or clients when he holds these opinions?

He included additional offensive language, but I feel uncomfortable even writing it in my note. I will be happy to provide it to you if it will help your investigation.

Sincerely,

Norah Malone

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,

Type/Print  _____, Professional Standards Administrator
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.

Boards or Associations of REALTORS® where I hold or have held membership 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.



Signature of Respondent

_____, 20_____
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 11/16)

Virginia REALTORS®
10231 Telegraph Road
Glen Allen, VA 23059

March 3, 2021

RE: Respondent's Letter

Dear Executive Officer:

This is truly embarrassing. I am sorry for the words that I wrote, but I did not violate the Code of Ethics.

First of all, I am deeply embarrassed by those words. They really weren't meant to be posted in a public Facebook post. It was late at night and I meant to send a private message to my friend, but I accidentally posted them to my public page. I did not realize this until the next morning. I have deleted the post and shared an explanation to my friends, but I do not think that Norah saw that.

Second of all, I do not think that blowing off steam about this situation is a violation of the Code of Ethics. It wasn't even related to a real estate transaction! I was venting with my friend, Judy, about how her husband, Derek, had lost out on the opportunity to purchase a minivan for their family at a great price. The seller ultimately picked a different buyer over him.

I understand the words of my message were a bit harsh, but they were out of context. I was helping Judy to vent and using a lot of sarcasm in my phrasing, which Judy absolutely knows and understands.

I work with women every day and respect them greatly. I hope I can put this embarrassing situation behind me.

Best Regards,
Everett Childers

GRIEVANCE COMMITTEE ARBITRATION CASE STUDY

Instructions: Read the following case study and, acting as a Grievance Committee, review the complaint and determine whether this case should be moved forward to an arbitration Hearing Panel.

Staff of the associations have confirmed both Damian and Elizabeth are members of Virginia REALTORS® and were at the time of the alleged conduct. In addition, there are plenty of panel members at both associations for impartial arbitration Hearing Panels.

- (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.
- (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. 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:

1421 Main Street, Lexington, VA

- (14) The sale/lease closed on: May 1, 2021

- (15) Agreements to arbitrate are irrevocable except as otherwise provided under state law.

Complainant(s):

REALTOR® Damian Roux	<i>Damian Roux</i>	March 10, 2021
Name (Type/Print)	Signature of REALTOR® Principal	Date
541 Main Street, VA		
Address		
231-987-5555	rouxforyou@realty.com	
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 complainant.

John Jones, Executive Officer
Virginia REALTORS®
10231 Telegraph Road
Glen Allen, VA 23059

March 10, 2021

RE: Arbitration Request against REALTOR® Elizabeth Huang

Dear John:

I am a principal broker at Roux for You Realty, Inc. I believe that I am owed the commission from a transaction that recently closed because my clients purchased the house. However, the listing agent instead paid a different agent, Elizabeth Huang.

I was working with my clients, Otis and Rebecca Drew, to find them a new home in the Lexington area. Rebecca called me one day saying that she drove by a house that was for sale that I had not sent them. The property was located at 1421 Main Street. I immediately forwarded them the MLS listing and pointed out that it was out of their specified price range, but offered to book a showing. Rebecca said that Otis would see it with me because she was too busy with work that day and she'd come back with me if he liked it. I immediately scheduled a showing. The house was listed on January 3, 2021, and Otis and I saw it on January 18, 2021.

He said he really liked it, but wanted to bring his family by and wanted some questions answered. I sent him some comps of other houses in the area, and reached out to the listing agent with his questions. The listing agent, Emilio Franks, answered the questions and I emailed Otis with his answers and offered to set up a second showing.

I did not hear back from Otis for two days, but noticed that the house went under contract on January 21, 2021. On January 21, 2021, I called Rebecca to say that the house had gone under contract, but that I'd gladly take them to some other houses.

Rebecca seemed a bit uncomfortable on the phone and said they did not need to see any homes at the moment. That evening, I got a call from Elizabeth Huang saying that I was not to reach out to her clients, and that they were under contract for 1421 Main Street.

I was floored! The Drews were my clients, and had been for at least a month. We had a buyer brokerage agreement signed! I contacted the listing agent, but he said that Elizabeth presented the offer to him, and the house was set to close on March 1, 2021.

The transaction closed, and Elizabeth was paid the cooperating compensation that should have been mine. She owes me \$8,400.

Sincerely,
REALTOR® Damian Roux