

Appendix VII to Part Four

Sanctioning Guidelines

The Code of Ethics is designed to establish a public and professional consensus against which the practice and conduct of REALTORS® and REALTOR ASSOCIATE®s may be judged. REALTORS® and REALTOR ASSOCIATE®s in joining a Board signify their intention to abide by the Code and thereby enhance the public and professional image of themselves and all other REALTORS®. Adherence to the Code is the first great bond between REALTORS® and REALTOR ASSOCIATE®s throughout the country, and is an obligation voluntarily accepted by them to ensure high standards of professional conduct to serve the interests of their clients and customers (from the Introduction to the Code of Ethics and Arbitration Manual, NATIONAL ASSOCIATION OF REALTORS®, 2021 edition).

Local Associations of REALTORS®, supported by the state and National Associations, have the awesome responsibility of fostering awareness, understanding, and appreciation for the duties and obligations the Code imposes on those who accept it as their guide to professionalism. A corollary duty of Associations is to receive and resolve complaints alleging potentially unethical conduct by REALTORS®.

The REALTOR® organization is firmly committed to comprehensive education of REALTORS® and the public about the Code and the protections it affords, and also to vigorous, fair, and uniform enforcement when complaints are brought against members. The *Code of Ethics and Arbitration Manual* (Manual) details policies and procedures governing enforcement efforts.

Code enforcement achieves a number of goals. Where REALTORS® are wrongly or mistakenly charged with unethical conduct, the hearing process provides personal and professional vindication. Where violations are determined, the hearing process educates members about their professional obligations and serves as a meaningful deterrent to future violations. The Introduction goes on to point out that the ethics hearing process “. . . is educational in that it raises the consciousness of members to the meaning and significance of the Code” and that “many ethics violations occur inadvertently or through ignorance, and the hearing procedure serves as an effective educational tool.”

Allegations of unethical conduct are often understandably viewed by respondents as threats to their professional and personal reputations. This can result not only in the mounting of vigorous defenses but also, at times, to threats of legal challenge should a violation be determined and discipline imposed. Given that membership confers valuable rights, Associations need to strictly adhere to their established procedures when considering potential ethics violations. This caution ensures that the rights of the parties will be observed and that legal exposure of Associations will be minimized.

At the same time, well-founded caution should not be confused with reservation, reluctance, or hesitancy. The Code’s duties become aspirations at best, and potentially meaningless, if not enforced, and enforced with vigor and determination.

Fundamental to fair and consistent Code enforcement is reasonable and judicious use of discipline, as both an educational device and as punishment. The Manual authorizes a wide variety of sanctions that may be imposed for ethics violations and for violations of other membership duties. These range from simple letters of warning to expulsion from REALTOR® membership. Between these extremes are mandatory attendance at remedial educational sessions, fines, probation, and suspension. These sanctions, and the circumstances under which they may be imposed, are discussed in detail in the Manual.

The National Association does not recommend specific discipline for certain offenses, or for violations of particular Articles of the Code. This is in deference to the wisdom and autonomy of Hearing Panels privy to the details of complaints coming before them; in recognition of the fact that no two complaints are identical; and in view of the fact that the details of each hearing, including the experience of respondents, their history of prior violations, and mitigating or extenuating circumstances, may all come into play in determining an appropriate penalty. At the same time, there are key points to be considered with respect to discipline.

Discipline that can be imposed is strictly limited to those forms authorized in the Manual.

- Discipline should be commensurate with the offense. Unintentional or inadvertent violations should result in penalties designed to educate respondents as to the conduct expected of them as REALTORS®. Conversely, if a REALTOR® intentionally violates the Code, for example to realize an economic gain, a more severe sanction would be appropriate. Only authorized forms of discipline may be utilized. (*Revised 11/13*)
- Discipline should be progressive. The disciplinary emphasis on violations by new members or by longstanding members with no history of unethical conduct should be primarily educational. Repeated or subsequent violations should be addressed with more serious forms of discipline including substantial fines, suspension, and termination of membership. (See the section of this Appendix entitled “Progressive Discipline” for a more detailed discussion of progressive discipline).
- A “gray area” can exist with respect to “first time violations” that are clearly not the result of ignorance or mistake but rather demonstrate flagrant disregard for the Code’s obligations. While the educational aspect of Code enforcement cannot be disregarded, the fact that the Code exists to protect the public must also be seriously considered in determining commensurate discipline.

- Mitigating or extenuating circumstances should be considered in determining appropriate discipline. The fact that a respondent recognized or acknowledged inappropriate or unethical conduct, or took steps to remediate or minimize harm or injury that may have resulted from the respondent's conduct, should be considered in determining appropriate discipline.
- Conversely, cases in which there is reason to believe that violations of the public trust, including demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud have occurred should be considered particularly egregious violations of the Code of Ethics when determining appropriate discipline. *(Adopted 11/20)*
- Respondents' records of earlier violations (or, conversely, the fact that they have not violated the Code in the past) can be considered in determining appropriate discipline. Hearing Panels cannot consider past violations in deciding whether the conduct currently complained of violated the Code.

Crafting appropriate, meaningful discipline can challenge panels that have concluded that the Code has been violated. This discussion is offered as guidance, rather than as a hard and fast template, to assist panels in meeting their key role in ensuring the Code's viability and vitality through vigorous and evenhanded enforcement. Suggested guidelines that can be modified locally so long as the discipline proposed is consistent with the permissible forms authorized in the National Association's *Code of Ethics and Arbitration Manual*, can be found in the section of this Appendix entitled "Disciplinary Guidelines."

Progressive Discipline

Discipline imposed for violations of the Code of Ethics or for violations of other membership duties should be progressive, that is discipline should increase incrementally for subsequent violations. The disciplinary emphasis where first time violations occur should be primarily educational. Repeated or subsequent violations should result in more serious forms of discipline being utilized, including substantial fines, suspension, and termination of membership. At the same time, a gray area can exist where a first time violation is not attributable to ignorance or oversight but rather to blatant disregard for the Code and its obligations. While the educational emphasis of Code enforcement cannot be disregarded, the fact that the Code exists to protect the public must be carefully considered in determining appropriate discipline. Three (3) contrasting examples are provided to illustrate these points. *(Revised 11/20)*

Example A: REALTOR® A, who had recently earned her real estate license, was found to have violated Article 12 for advertising a listed property without disclosing her status as either a REALTOR® or as a real estate licensee. At the hearing, REALTOR® A acknowledged her oversight and it was clear to the Hearing Panel that the violation was inadvertent and unintentional. The panel concluded that a letter of reprimand and attendance at a three (3) hour Code of Ethics update session was appropriate.

Two months later, REALTOR® A was charged with a nearly identical violation. After concluding that she had, in fact, violated Article 12, the Hearing Panel was given access to REALTOR® A's files to see whether REALTOR® A had previously violated the Code so that appropriate discipline could be recommended. It was the conclusion of the Hearing Panel that a second violation of the same Article, occurring just months after the first violation, warranted more serious discipline. REALTOR® A was fined \$1,000 and required to attend a full day ethics education program. *(Revised 11/13)*

Three months later, REALTOR® A was again found to have violated Article 12. The Hearing Panel was then given access to REALTOR® A's file and, upon learning of the two (2) prior violations in less than a year, recommended a \$5,000 fine. *(Revised 11/13)*

Example B: REALTOR® B, who had recently received his real estate license, was found to have violated Article 4 for failing to disclose to his seller-client that the purchaser that REALTOR® B had procured was, in fact, REALTOR® B's wife. In determining appropriate discipline, the Hearing Panel considered REALTOR® B's limited experience in the real estate business and the fact that this was the first time that REALTOR® B had been found in violation of the Code. The Hearing Panel also considered that REALTOR® B's failure to disclose had not been inadvertent or unintentional and that REALTOR® B had knowingly concealed

from his client a key fact that might have influenced the client's decision to accept the offer from REALTOR® B's wife. Based on the seriousness of the violation and REALTOR® B's conscious disregard for his disclosure obligation, the Hearing Panel recommended a \$5,000 fine and retaking the ethics orientation required for new members. *(Revised 11/13)*

Example C: In social media discussions, REALTOR® C posted several discriminatory and offensive comments which were deemed to be in violation of Article 10 as they discriminated against individuals on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. In determining appropriate discipline, the Hearing Panel considered REALTOR® C's comments as hate speech and discrimination in violation of Article 10 and had reason to believe that a violation of the public trust occurred. Based on the offensiveness of REALTOR® C's comments and his total disregard for the Code of Ethics' obligation to not be a party to any plan to discriminate against members of the protected classes of Article 10, the Hearing Panel recommended a \$5,000 fine and mandatory completion of implicit bias training. *(Adopted 11/20)*

Disciplinary Guidelines

Code enforcement achieves a number of important goals. Where REALTORS® have been wrongly or mistakenly charged with unethical conduct, the hearing process provides personal and professional vindication. Where violations are determined, the hearing process and resulting discipline educates members about their professional obligations and serves as a meaningful deterrent to future violations.

Determining that a violation of one or more Articles has occurred is only a part of a Hearing Panel's job. Equally important is crafting discipline commensurate with the offense. Panels will want to consider that many violations occur due to lack of familiarity with the Code and its obligations, inexperience, oversight, or as unintentional mistakes. In such cases, the primary purpose of discipline should be educational to ensure that similar violations do not occur in the future. In other cases, violations can occur because of knowing disregard for the Code and its duties. In such cases, greater emphasis will be placed on the punitive nature of discipline.

Hearing Panels are cautioned of the due process concerns of considering a respondent's history of Code violations, as considering too long of a history involving different types of violations can unreasonably affect the severity of the discipline. Typically, Associations might look back a minimum of three (3) years, however, if there is consistency in the types of violations or if the violations are of the public trust, considering a longer history of violations could be appropriate in crafting meaningful discipline aimed at stopping the behavior. (*Adopted 11/20*)

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

- (1) The nature of the violation.
- (2) Harm caused by the violation. Was the violation a minor mistake causing little or no harm or, alternatively, was a client, customer, member of the public, or another REALTOR® harmed? Was the violation one of the public trust, including demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud? (*Revised 11/20*)
- (3) Was the violation inadvertent or unintentional or, conversely, was it the result of knowing disregard for the Code's obligations?
- (4) How much real estate experience did the violator have? Did he, or should he, have known better?
- (5) Has the violator been found in violation of the Code previously? How often? How recently? Is the current violation related or similar to earlier violations?

- (6) Are there mitigating or extenuating circumstances that should be considered in determining appropriate discipline?
- (7) Did the violator acknowledge the violation? Did the violator express remorse or contrition?
- (8) Are there other factors that ought to be considered?

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

First violation example #1

- violation considered relatively minor, or
- little or no harm or injury caused to others, or
- violation resulted from ignorance or misunderstanding

Possible discipline:

- letter of warning
- fine of \$500 or less
- attendance at relevant education session
- any combination of the above (*Revised 11/20*)

First violation example #2

- violation considered relatively serious, or
- some harm or injury caused to others, or
- violation resulted from disregard for the Code's obligations

Possible discipline:

- letter of reprimand
- fine of \$2,000 or less
- attendance at relevant education session(s)
- any combination of the above (*Revised 11/20*)

First violation example #3

- violation considered very serious, or
- the violation was of Article 10 as interpreted by its Standards of Practice, or of Article 3 as interpreted by Standard of Practice 3-11, or
- substantial harm or injury caused to others, or
- violation resulted from knowing disregard of the Code's obligations

Possible discipline:

- letter of reprimand
- fine of \$10,000 or less
- attendance at relevant education session(s)
- suspension for ninety (90) days or less
- any combination of the above
- termination of membership for up to three (3) years (*Revised 11/20*)

Repeat violations example #1

- current violation considered relatively minor, or
- little or no harm or injury caused to others, or
- violation resulted from ignorance or misunderstanding

Possible discipline:

- attendance at relevant education session(s) or course
- fine of \$2,000 or less (*Revised 11/20*)

Repeat violations example #2

- current violation considered relatively serious, or
- some harm or injury caused to others, or
- violation resulted from disregard for the Code's obligation

Possible discipline:

- attendance at relevant education session(s) or course
- fine of \$10,000 or less
- suspension for three (3) months or less
- any combination of the above (*Revised 11/20*)

Repeat violations example #3

- violation considered very serious, or
- the violation was of Article 10 as interpreted by its Standards of Practice, or of Article 3 as interpreted by Standard of Practice 3-11, or
- substantial harm or injury caused to others, or
- violation resulted from knowing disregard for the Code's obligations

Possible discipline:

- attendance at relevant education session(s) or course
- fine of \$15,000 or less
- suspension for six (6) months or less
- any combination of the above
- termination of membership for up to three (3) years (*Revised 11/20*)

In addition to imposing discipline, the Hearing Panel can also recommend to the Board of Directors that the disciplined member be put on probation. 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. 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. (*Revised 11/20*)

More serious forms of discipline (including possible termination of MLS privileges, suspension from membership for up to one [1] year, or termination of membership for up to three [3] years) may be appropriate in cases of very serious violations or in cases of repeated violations. Cases in which there is reason to believe that violations of the public trust, including demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud have occurred are considered particularly egregious. Associations are encouraged to critically examine these types of cases and recommend discipline consistent with the seriousness of these violations, their harm to consumers, and to the reputation of REALTORS® as committed to the highest level of professionalism. (*Revised 11/20*)

Important Note: These are not sentencing rules or requirements, but rather simply suggestions to guide Hearing Panels in determining appropriate discipline based both on the current violation and the violator's previous record of ethical conduct.