

Upset with a REALTOR®?

Before You File an Ethics Complaint:

Boards and Associations of REALTORS® are responsible for enforcing the REALTORS® Code of Ethics. The Code of Ethics imposes duties above and in addition to those imposed by law or regulation which apply only to real estate professionals who choose to become REALTORS®.

Many difficulties between real estate professionals (whether REALTORS® or not) result from misunderstanding, miscommunication, or lack of adequate communication. If you have a problem with a real estate professional, you may want to speak with them or with a principal broker in the firm. Open, constructive discussion often resolves questions or differences, eliminating the need for further action.

If, after discussing matters with your real estate professional or a principal broker in that firm, you are still not satisfied, you may want to contact the state association of REALTORS®. Many boards and associations have informal dispute resolving processes available to consumers (e.g. ombudsmen, mediation, etc.).

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

- Only REALTORS® and REALTOR-ASSOCIATE®s are subject to the Code of Ethics of the National Association of REALTORS®.
- If the real estate professional (or their broker) you are dealing with is not a REALTOR®, your only recourse may be the state real estate licensing authority or the

courts.

- Boards and associations of REALTORS® determine whether the Code of Ethics has been violated, not whether the law or real estate regulations have been broken. Those decisions can only be made by the licensing authorities or the courts.
- Boards of REALTORS® can discipline REALTORS® for violating the Code of Ethics. Typical forms of discipline include attendance at courses and seminars designed to increase REALTORS®' understanding of the ethical duties or other responsibilities of real estate professionals. REALTORS® may also be reprimanded, fined, or their membership can be suspended or terminated for serious or repeated violations. Boards and associations of REALTORS® cannot require REALTORS® to pay money to parties filing ethics complaints; cannot award "punitive damages" for violations of the Code of Ethics; and cannot suspend or revoke a real estate professional's license.
- The primary emphasis of discipline for ethical lapses is educational, to create a heightened awareness of and appreciation for the duties the Code imposes. At the same time, more severe forms of discipline, including fines and suspension and termination of membership may be imposed for serious or repeated violations.

Outline of steps

Before the hearing

- Your complaint will be reviewed by the Idaho REALTOR's Grievance Committee. Their job is to review complaints to determine if the allegations made, if taken as true, might support a violation of the Article(s) cited in the complaint.
- If the Grievance Committee dismisses your complaint, it does not mean they don't believe you. Rather, it means

that they do not feel that your allegations would support a hearing panel's conclusion that the Article(s) cited in your complaint had been violated. You may want to review your complaint to see if you cited an Article appropriate to your allegations.

- If the Grievance Committee forwards your complaint for hearing, that does not mean they have decided the Code of Ethics has been violated. Rather, it means they feel that if what you allege in your complaint is found to have occurred by the hearing panel, that panel may have reason to find that a violation of the Code of Ethics
- If your complaint is dismissed as not requiring a hearing, you can appeal that dismissal to the board of directors Idaho REALTORS®.

Preparing for the hearing

- Familiarize yourself with the hearing procedures that will be followed. In particular you will want to know about challenging potential panel members, your right to counsel, calling witnesses, and the burdens and standards of proof that apply.
- Complainants have the ultimate responsibility ("burden") of proving that the Code of Ethics has been violated. The standard of proof that must be met is "clear, strong and convincing," defined as, ". . . that measure or degree of proof which will produce a firm belief or conviction as to the allegations sought to be established." Consistent with American jurisprudence, respondents are considered innocent unless proven to have violated the Code of Ethics.
- Be sure that your witnesses and counsel will be available on the day of the hearing. Continuances are a privilege -not a right.
- Be sure you have all the documents and other evidence you need to present your case.
- Organize your presentation in advance. Know what you are

going to say and be prepared to demonstrate what happened and how you believe the Code of Ethics was violated.

At the hearing

- Appreciate that panel members are unpaid volunteers giving their time as an act of public service. Their objective is to be fair, unbiased, and impartial; to determine, based on the evidence and testimony presented to them, what actually occurred; and then to determine whether the facts as they find them support a finding that the Article(s) charged have been violated.
- Hearing panels cannot conclude that an Article of the Code has been violated unless that Article(s) is specifically cited in the complaint.
- Keep your presentation concise, factual, and to the point. Your task is to demonstrate what happened (or what should have happened but didn't), and how the facts support a violation of the Article(s) charged in the complaint.
- Hearing panels base their decisions on the evidence and testimony presented during the hearing. If you have information relevant to the issue(s) under consideration, be sure to bring it up during your presentation.
- Recognize that different people can witness the same event and have differing recollections about what they saw. The fact that a respondent or their witness recalls things differently doesn't mean they aren't telling the truth as they recall events. It is up to the hearing panel, in the findings of fact that will be part of their decision, to determine what actually happened.
- The hearing panel will pay careful attention to what you say and how you say it. An implausible account doesn't become more believable through repetition or, through volume.

- You are involved in an adversarial process that is, to some degree, unavoidably confrontational. Many violations of the Code of Ethics result from misunderstanding or lack of awareness of ethical duties by otherwise well-meaning, responsible real estate professionals. An ethics complaint has potential to be viewed as an attack on a respondent's integrity and professionalism. For the enforcement process to function properly, it is imperative for all parties, witnesses, and panel members to maintain appropriate decorum.

After the hearing

- When you receive the hearing panel's decision, review it carefully.
- Findings of fact are the conclusions of impartial panel members based on their reasoned assessment of all of the evidence and testimony presented during the hearing. Findings of fact are not appealable.
- If you believe the hearing process was seriously flawed to the extent you were denied a full and fair hearing, there are appellate procedures that can be involved. The fact that a hearing panel found no violation is not appealable.
- Refer to the procedures used by Idaho REALTORS® for detailed information on the bases and time limits for appealing decisions or requesting a rehearing. Rehearings are generally granted only when newly discovered evidence comes to light (a) which could not reasonably have been discovered and produced at the original hearing and (b) which might have had a bearing on the hearing panel's decision. Appeals brought by ethics respondents must be based on (a) a perceived misapplication or misinterpretation of one or more Articles of the Code of Ethics, (b) a procedural deficiency or failure of due process, or (c) the nature or gravity of the discipline proposed by the hearing

panel. Appeals brought by ethics complainants are limited to procedural deficiencies or failures of due process that may have prevented a full and fair hearing.

Conclusion

Many ethics complaints result from misunderstanding or a failure in communication. Before filing an ethics complaint, make reasonable efforts to communicate with your real estate professional or a principal broker in the firm. If these efforts are not fruitful, Idaho REALTORS® can give you the procedures and forms necessary to file an ethics complaint.

If you have any questions please Contact Idaho Realtors 1(800) 621-7553, visit www.idahorealtors.com , or directly contact call Melissa Grey at Idaho REALTORS® (208)342-3585.

To File A Complaint

Ethics Complaint:

Must be filed within 180 days after the facts constituting the matter complained of could have been known in the exercise of reasonable diligence or within 180 days after the conclusion of the transaction, whichever is later.

1) Complete and sign the complaint form supplied by the REALTOR® Board/Association (* in some cases this may be the State Association). This form requests you to name the REALTOR®(S) in question as the Respondent(s).

2) List the Article(s) and/or Standards of Practice of the Code of Ethics that you think the REALTOR® has violated. (Attached is an overview of each Article of the Code of Ethics, the Board/Association will supply you with a copy of the complete Code of Ethics and Standards of Practice).

3) Attach an explanation of the situation surrounding the

complaint. Be as specific as possible. State what, when, where, why and how you think each Article was violated.

4) Attach copies of any and all pertinent documents such as listing agreements, purchase and sales agreements, addendum, etc. If you have notarized statements from witnesses, include those also.

5) Send the entire package to the REALTOR® Board/Association to the attention of the Executive Officer or Elected Secretary but keep a copy for yourself. Your complaint will then be processed through the Grievance Committee.

How to File an Ethics Complaint

[Guidelines for Filing an Ethics Complaint](#)

[Ethics Form 1 and Requirements](#)

Arbitration Request:

Must be filed within 180 days after the closing of the transaction or within 180 days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later.

The process is very similar to filing an Ethics complaint. The Board/Association will supply a request for Arbitration form (* in some cases this may be the State Association).

1) Name the REALTOR®(S) in question as the Respondent(s) must include a principle broker of the firm.

2) Indicate the amount in dispute

3) Include an explanation of the situation. State why you feel you are entitled to an award of some kind. Remember don't include allegations of unethical conduct in your argument. If you think there have been unethical violations, they must be handled separately with an Ethics complaint.

4) Attach copies of any and all pertinent documents such as listing agreements, purchase and sales agreements, closing statements, etc. and any notarized statements from witnesses.

5) The Board/Associations require an Arbitration fee so check with the Board/Association for the exact amount.

6) You will probably be asked to sign an Arbitration agreement indicating your commitment to abide by the decision of the Hearing Panel.

7) Send the entire package to the REALTOR® Board/Association to the attention of the Executive Officer or Elected Secretary but keep a copy for yourself. Your request will then be processed through the Grievance Committee.

Remember that it is not unusual for a Board/Association to receive an Ethics complaint and an Arbitration request surrounding the same set of circumstances. If you think the REALTOR®(S) violated the Code of Ethics and you have a monetary dispute with him/her, you must complete BOTH forms.

NOTE: The Idaho Association of REALTORS® has a Mediation process and in 2012 the Board of Directors approved its mandatory use prior to Arbitration for those Boards that contract with the Idaho Association of these services.

How to File an Arbitration Request:

[REALTOR® to REALTOR®](#)

[Non-Member to REALTOR®](#)