

Guidelines for those filing an Ethics Complaint, Request for Arbitration or Mediation

The National Association of REALTORS® in 1913 adopted the Code of Ethics. Since then, REALTORS® everywhere have agreed to meet its high standards. This process is a very important part of a REALTOR® Board or Association, and helps to ensure honorable, faithful and competent service to clients, customers and other members of the public by enforcing the Code of Ethics. These guidelines were prepared to help you understand the process.

NOTE: The Term REALTOR® or REALTORS® are registered trademarks of the National Association of REALTORS®. To use the mark you must be a real estate professional who is a member of the National Association and who subscribes to a strict Code of Ethics.

Q. Do you have a complaint concerning a REALTOR®?

A. The first thing that must be determined in processing a complaint with a REALTOR® Board/Association is whether the real estate agent involved is a REALTOR®. Not all real estate agents are REALTORS®. Only those who belong to a Board/Association can use the term REALTOR®. By joining a Board/Association, all members agree to abide by the Code of Ethics as a continuing condition of membership. It is because of their obligation to abide by the Code of Ethics that you can file a complaint at a REALTOR® Board or Association.

Q. Is your complaint Ethics or Arbitration related?

A. You may have to consider whether your complaint concerns an ethical matter or an arbitration of a dispute.

*An ethics complaint charges that a REALTOR® has violated an Article(s) of the Code of Ethics.

*Arbitration is a means of resolving a dispute arising out of a real estate transaction (monetary) that the parties have been unable to solve themselves.

Q. Who may file an Ethics complaint?

A. Any person, whether a member or not, may file a complaint against a REALTOR® alleging a violation of the Code of Ethics, providing the complaint:

- 1) is in writing
- 2) is signed by the complainant
- 3) states the facts surrounding the case
- 4) is filed within 180 days after the facts became known

The complainant may file a complaint from any location providing it is filed with a Board/Association having jurisdiction over the individual named in the complaint.

Q. Who may file an Arbitration request?

A. *REALTORS® and secondary members who are principal brokers;

* REALTORS® or secondary members who are not principals, provided their principal broker joins in the request;

* Clients or customers of the REALTORS®, their request must also:

- 1) be in writing
- 2) be signed by the complainant
- 3) indicate the amount in dispute
- 4) be filed within 180 days after the facts became known

The Board/Association as a service provides arbitration facilities to its members. Arbitration is not a disciplinary proceeding nor does it award damages. By becoming and remaining a member of a REALTOR® Board/Association, each REALTOR® binds himself/herself to arbitrate certain disputes.

BE AWARE THAT NOT EVERY SITUATION MAY BE ARBITRATED AT THE BOARD/ASSOCIATION. There are conditions and limitations to be considered, which will be explained to you by the Board/Association as the process continues.

Q. What is Mediation?

A. Involves the skillful intervention of a third-party professional to help resolve disputes that arise between two or more parties.

All Board/Associations provide mediation as an alternative to arbitration (contact the Board/Association for a list of trained Mediators)..

Mediation can be a useful tool in resolving the conflicts that arise involving Board Members and their clients and customers. Mediation can resolve controversy, promote amicable resolutions, and reduce the number of cases requiring the more formal and complex arbitration procedures of the Board.

However, no party to an arbitrable matter can be required to submit to, or be bound by, any determination reached through mediation. Mediation cannot and is not intended to be a substitute for the arbitration process.

Q. What can the Board /Association do?

A. A Board/Associations has limitations to its authority regarding its members. Below is a list of those limitations:

- 1) The Board/Association cannot try a member for violations of the Idaho real estate license law or any other alleged violation of the law. It has jurisdiction only over violations of membership duties. The Idaho Real Estate Commission has sole control of the real estate agent's license to sell real estate. If you think a person has violated the law, you should be contacting that agency.
- 2) For the same reason, the Board/Association **cannot** suspend or terminate the license of one of its members.
- 3) The Board/Association can, in the case of an ethics violation being determined a due process hearing procedure, administer discipline to the REALTOR® in one or more of the following ways:
 - *send a letter of warning or reprimand
 - *direct the REALTOR® to attend an Ethics class or other training appropriate to the violation
 - *place the REALTOR® on probation
 - *suspend the REALTOR®'s membership
 - *expel the REALTOR® from membership
- 4) Money damages may not be part of an Ethics proceeding.
- 5) The Board/Association can Arbitrate certain money disputes and must in some situations, but the member of the public must agree in writing to Arbitrate the dispute and be bound by the decision.
- 6) The award in an Arbitration may not be more than the amount in dispute and under no circumstances can "punitive" damages be awarded.

Q. How do you file?

A. Now that you know the ground rules, if you wish to file a complaint, here is how you do it.

Q. How does the Board/Association process the complaint?

A. There are two committees of the Board/Association that handle complaints, the Grievance Committee and the Professional Standards Committee. Their functions are described below.

ETHICS COMPLAINTS

If you want to file an Ethics complaint, you need to follow these steps:

- 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, **keeping a copy for yourself**, to the REALTOR® Board/Association to the attention of the Executive Officer or Elected Secretary. Your complaint will then be processed through the Grievance Committee.

ARBITRATION REQUESTS

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). Steps to follow are:

- 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, **keeping a copy for yourself**, to the REALTOR® Board/Association to the attention of the Executive Officer or Elected Secretary. 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.

MEDIATION REQUESTS

The process is very similar to filing an Arbitration request. The Board/Association will supply a request for Mediation form (* in some cases this may be the State Association). As a reminder this is voluntary on the part of all parties. Steps to follow are:

- 1) Name the REALTOR®(S) in question.
- 2) Indicate the amount in dispute
- 3) The Board/Associations require a Mediation fee so check with the Board/Association for the exact amount.
- 4) Send the Form, **keeping a copy for yourself**, to the REALTOR® Board/Association to the attention of the Executive Officer or Elected Secretary who will contact the other party about Mediation. You will receive a list of Mediation Officers to contact if both parties wish to Mediate, if not then a request for Arbitration should be filed with the Board/Association.

GRIEVANCE COMMITTEE

Ethics: This committee reviews complaints when they are received at the Board/Association. The committee determines whether the complaint has sufficient merit for further consideration, somewhat like a "Grand Jury". It does not determine guilt or innocence. The committee will either:

- 1) forward the case for a hearing
- 2) dismiss it, if the complaint is determined to be frivolous, harassing or unfounded, or
- 3) postpone its decision based on getting more information from you or determining that the case may be more appropriately considered for Arbitration.

Also, before they reach a decision, the Committee may request a reply from the Respondent regarding your complaint.

If the committee dismisses your complaint, you have the right to appeal the dismissal to the Board of Directors. In the case of an appeal, the Directors re-examine the materials submitted to the Grievance Committee and can either uphold or overturn the Grievance Committee's decision. Your local Board/Association can explain further details.

If the complaint is to be given further consideration, it will be sent to the Professional Standards Committee for a Hearing.

Arbitration: The Grievance Committee's role in an Arbitration is different from Ethics complaints. Its function is only to make such preliminary investigation to determine whether the matter is subject to Arbitration by the Board/Association. Arbitration is sometimes a duty and sometimes a privilege. The Committee must decide whether your situation fits into the "**duty**" or the "**privilege**" category. It does this by determining:

- 1) whether you are authorized, under the rules, to invoke Arbitration
- 2) whether the controversy described is an Arbitration matter
- 3) whether the Arbitration is mandatory or voluntary to the people involved (this simply means whether Arbitrating the dispute is compulsory, or not)
- 4) whether either the amount in dispute is too small or too large, or the matter is too legally complicated for the Board/Association to consider

Such a review could result in the release of Board/Association members from the obligation to Arbitrate, and thus free you to seek another recourse in order to resolve the dispute.

If the Grievance Committee determines that a matter is Arbitrable, it may also notify the parties that a mediation procedure is available as a preliminary, voluntary alternative to Arbitration. (This procedure is not available in all Board/Associations or the state Association.)

In either Ethics or Arbitration cases, you will be informed promptly of the Grievance Committee's decision. If the Grievance Committee forwards the complaint or request for a hearing, it is assigned to the Professional Standards Committee.

PROFESSIONAL STANDARDS COMMITTEE

The function of this committee is to hold Ethics and Arbitration Hearings. If the Respondent(s) has not already been requested to reply to your complaint, he/she will be at this time. A hearing will then be scheduled and you will be notified of the hearing's date, time and place. These hearings provide an opportunity for the Complainant and Respondent to explain "his or her side of the story" by presenting testimony and witnesses, if any.

Once all the facts have been presented, a Hearing Panel, consisting of Members of the Board chosen on the basis of their experience, temperament and objectivity, will determine whether the Code of Ethics has been violated, or, in the case of Arbitration, how the dispute should be settled.

The Board/Association will inform you about each step of this process as it occurs. You will also be given instructions about the hearing procedures prior to the hearing. The entire process will usually take a minimum of 90 days, but may take longer.

If you have any questions relating to filing your complaint or request, please call your local Board/Association of REALTORS®.

* In some situations you will be directed to the State Association for filing a complaint or request for arbitration. This is known as the Regional process. Some of our Local Boards and Associations that are located in small communities utilize the regionalized process to ensure impartial and unbiased hearing panels in both requests for Arbitration and Ethics complaints. The procedures for filing remain the same.

Produced by:
The Idaho Association of REALTORS®, Inc.
10116 West Overland Rd. - Boise, ID 83709
(208) 342-3585 or 1-800-621-7553
Fax (208) 336-7958
Website: www.idahorealtors.com