

# Filing Ethics Complaints

at the  
Arizona Association of REALTORS®

Serving Local Member Signatory Associations:

Bullhead City / Mohave Valley \* Central Arizona \* Douglas \* Graham / Greenlee \* Green Valley \* Kingman / Golden Valley  
Lake Havasu \* La Paz \* Northern Arizona \* Phoenix \* Prescott Area \* Santa Cruz \* Sedona / Verde Valley \* Southeast Arizona  
Scottsdale Area \* Tucson \* West Maricopa County Regional Western Pinal \* White Mountain \* Yuma

*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, contact AAR to give you the procedures and forms necessary to file an ethics complaint. The entire process will often take between 90 and 120 days.*

## ETHICS COMPLAINT PROCESS

The Code of Ethics was adopted by the NATIONAL ASSOCIATION OF REALTORS® in 1913. The Arizona Association of REALTORS® (AAR) is responsible for enforcing the REALTORS® Code of Ethics throughout most of Arizona. 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®. The professional standards process is a very important part of a REALTOR® association and helps to ensure honorable, faithful, and competent service to clients, customers, and other members of the public. This information is to help you understand the process.

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 or manager 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 AAR to consider our other dispute resolution services: Ombudsmen, Mediation, and Buyer/Seller Mediation.

If, after taking these steps, you still feel you have a complaint, you may want to consider filing a formal 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 the broker) you are dealing with is not a REALTOR®, your only recourse may be the state real estate licensing authority or the courts.

The AAR determines 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.

AAR 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. AAR 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.

## OMBUDSMEN

\* Prior to filing a formal complaint, a REALTOR® ombudsman can reassure consumers, in response to questions and complaints, that they're being treated fairly and according to normal business practices and inform them about those practices. REALTOR® ombudsmen can also help practitioners avoid disputes by sharing with them information about the Code, the enforcement process, and procuring cause.

## MEDIATION

\* Mediation is offered as an alternative resolution procedure to AAR's ethics complaint process and can be attempted before filing a complaint or after the Grievance Committee forwards the complaint for a hearing.

\* As a voluntary procedure, no party can be forced into mediation.

\* Mediation is a structured negotiation facilitated by a neutral third person called a "mediation officer." The focused, impartial mediation officer assists the parties in a dispute to help clarify issues, find common ground, and to help arrive at any mutually agreeable resolution, many of which would not be available at a formal hearing.

\* If mediation is attempted and is unsuccessful, the matter can move forward to a hearing. The details and results of the mediation are not shared with the hearing panel and its details and results are confidential.

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## FILING AN ETHICS COMPLAINT

AAR can provide you with information on the procedures for filing an ethics complaint. Here are some general principles to keep in mind.

\* Ethics complaints must be filed within one hundred eighty (180) days from the time a complainant knew (or reasonably should have known) that potentially unethical conduct took place (unless the AAR's informal dispute resolution processes are invoked in which case the filing deadline will momentarily be suspended).

\* [The REALTORS® Code of Ethics](#) consists of seventeen (17) Articles. The duties imposed by many of the Articles are explained and illustrated through related Standards of Practice or Case Interpretations.

\* Your complaint should include a narrative description of the circumstances that lead you to believe the Code of Ethics may have been violated.

\* Your complaint must cite one or more of the Articles of the Code of Ethics which may have been violated. Hearing panels decide whether the Articles expressly cited in complaints were violated - not whether Standards of Practice or Case Interpretations were violated.

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## BEFORE A HEARING

\* Your complaint will be reviewed by the AAR'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 violation of the Code of Ethics.

\* If the Grievance Committee forwards your complaint for a hearing, that does not mean they have decided the Code of Ethics has been violated. Rather, it means they feel that if what you allege in your complaint is found to have occurred by the hearing panel, that panel may have reason to find that a violation of the Code of Ethics occurred.

If your complaint is dismissed as not requiring a hearing, you can appeal that dismissal to an appeal panel of the Arizona Association of REALTORS®.

## THE RESPONSE

If the Grievance Committee (GVC) refers the complaint to the Professional Standards Committee for a hearing, the complaint will be sent to the Respondent together with a Response Form that will:

- \* Again advise the Respondent of the complaint (the AAR generally forwards a copy to the Respondent before the complaint is reviewed by the GVC).
- \* Ask the Respondent to affirm that the respondent has not been found in violation of the Code of Ethics within the past three (3) years, and
- \* Give the Respondent an opportunity to waive the hearing by acknowledging the conduct alleged in the complaint and by agreeing to accept discipline.

If the Respondent does not waive the right to a hearing, the Respondent must respond within twenty (20) days from receipt of the complaint. *Code of Ethics and Arbitration Manual, Part Four, Section 21(a)*. AAR's Notice to Respondent and Reply form asks the Respondent to admit or deny each of the allegations in the complaint. The reply form is similar to the complaint form in that it prompts the Respondent to provide a narrative of events in the order in which they happened including: all important dates, references to any relevant support documents, and identify any witnesses.

The REALTOR principal(s) of the parties also receive copies of the complaint and the response, whether names as a party or not.

## PREPARING FOR THE HEARING

\* If your complaint is forwarded for a hearing, your attendance at the hearing is required to present your allegations of unethical behavior. 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 and that their presence is [noticed to AAR and to all parties fifteen \(15\) days prior to the scheduled 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.

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## 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. (If you believe, once at the hearing, that the right Article (s) or all the allegations have not yet been cited, you may amend 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 or, better, provide supporting documentation.
- \* 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

- \* You will receive the hearing panel's decision in the mail. 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 appeal procedures that are available. The fact that a hearing panel found no violation is not appealable.
- \* Refer to the procedures used by the AAR 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.



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The terms REALTOR®, REALTORS®, and REALTOR-ASSOCIATE® are registered collective membership marks which may only be used by real estate professionals who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its strict Code of Ethics.

AAR 09/08


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## Monetary Disputes


with a


REALTOR®


 **Arbitration facilities** are provided by the REALTOR® association as a service to its members. Arbitration is not a disciplinary proceeding nor does it award damages. There are certain disputes that REALTORS® are obligated to arbitrate as a part of their membership duties.

 Be aware that not every situation may be arbitrated at a REALTOR® association. Most disputes with clients or customers do not fall under the association's jurisdiction and must be handled through the civil courts. Also, disputes involving clients or customers require that the client or customer sign an agreement to arbitrate and to be bound by the arbitration, which means further legal action would most likely be precluded.

 **Types of disputes that cannot be arbitrated** at a REALTOR® association include disputes involving damages that could result from a REALTOR®'s error, misrepresentation or other inappropriate action. This type of monetary claim would usually need to be handled through other processes, such as the courts or through informal settlement. A real estate attorney may need to be consulted. For more information on how to find a real estate attorney, you can refer to the Arizona Bar Association's website, [www.azbar.org](http://www.azbar.org).

 **Types of disputes that may be arbitrated** at a REALTOR® association must be those in which the REALTOR® *promised to pay* something, which means you and the REALTOR® must have agreed on some type of a specific obligation that if not met, the REALTOR® would be obligated to pay something. For instance, if your buyer's agent agreed to purchase a lighting fixture for the house you are buying if the sellers took it with them, that would be a contractual matter and could be arbitrated.

 Whether the dispute is one that can be processed by the association is determined by the Association's Grievance Committee.

 The Arizona Association of REALTORS® has informal dispute-resolving processes available to consumers (e.g., ombudsmen, mediation, etc.) that can be utilized prior to filing a formal complaint. Contact AAR at 602/248-7787 or 800/426-7274 for more