

## Summary of Key Professional Standards Changes for 2007

This summary highlights substantive issues and changes, but is **not** all-inclusive. For complete information detailing all changes see the 2006 Professional Standards Committee Actions for Midyear and the Annual Convention on the Board Policy and Programs website (<http://realtor.org/mempolweb.nsf/comnameweb>; search on "Professional Standards Committee Actions"). Also review the shaded portions of the *2007 Code of Ethics and Arbitration Manual* which highlights all changes.

### Changes to the Code of Ethics and Standards of Practice

(underscoring indicates additions, strikeouts indicate deletions)

- Preamble Revised

Under all is the land. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. REALTORS® should recognize that the interests of the nation and its citizens require the highest and best use of the land and the widest distribution of land ownership. They require the creation of adequate housing, the building of functioning cities, the development of productive industries and farms, and the preservation of a healthful environment.

Such interests impose obligations beyond those of ordinary commerce. They impose grave social responsibility and a patriotic duty to which REALTORS® should dedicate themselves, and for which they should be diligent in preparing themselves. REALTORS®, therefore, are zealous to maintain and improve the standards of their calling and share with their fellow REALTORS® a common responsibility for its integrity and honor.

In recognition and appreciation of their obligations to clients, customers, the public, and each other, REALTORS® continuously strive to become and remain informed on issues affecting real estate and, as knowledgeable professionals, they willingly share the fruit of their experience and study with others. They identify and take steps, through enforcement of this Code of Ethics and by assisting appropriate regulatory bodies, to eliminate practices which may damage the public or which might discredit or bring dishonor to the real estate profession. REALTORS® having direct personal knowledge of conduct that may violate the Code of Ethics involving misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm, bring such matters to the attention of the appropriate Board or Association of REALTORS®. (Amended 1/00)

Realizing that cooperation with other real estate professionals promotes the best interests of those who utilize their services, REALTORS® urge exclusive representation of clients; do not attempt to gain any unfair advantage over their competitors; and they refrain from making unsolicited comments about other practitioners. In instances where their opinion is sought, or where REALTORS® believe that comment is necessary, their opinion is offered in an objective,

professional manner, uninfluenced by any personal motivation or potential advantage or gain.

The term REALTOR® has come to connote competency, fairness, and high integrity resulting from adherence to a lofty ideal of moral conduct in business relations. No inducement of profit and no instruction from clients ever can justify departure from this ideal.

In the interpretation of this obligation, REALTORS® can take no safer guide than that which has been handed down through the centuries, embodied in the Golden Rule, "Whatsoever ye would that others should do to you, do ye even so to them."

Accepting this standard as their own, REALTORS® pledge to observe its spirit in all of their activities whether conducted personally, through associates or others, or via technological means, and to conduct their business in accordance with the tenets set forth below. (Amended 1/07)

- Revised Standard of Practice 1-2

The duties imposed by the Code of Ethics encompass all real estate-related activities and transactions whether conducted in person, electronically, or through any other means.

The duties the Code of Ethics imposes are applicable whether REALTORS® are acting as agents or in legally recognized non-agency capacities except that any duty imposed exclusively on agents by law or regulation shall not be imposed by this Code of Ethics on REALTORS® acting in non-agency capacities.

As used in this Code of Ethics, "client" means the person(s) or entity(ies) with whom a REALTOR® or a REALTOR®'s firm has an agency or legally recognized non-agency relationship; "customer" means a party to a real estate transaction who receives information, services, or benefits but has no contractual relationship with the REALTOR® or the REALTOR®'s firm; "prospect" means a purchaser, seller, tenant, or landlord who is not subject to a representation relationship with the REALTOR® or REALTOR®'s firm; "agent" means a real estate licensee (including brokers and sales associates) acting in an agency relationship as defined by state law or regulation; and "broker" means a real estate licensee (including brokers and sales associates) acting as an agent or in a legally recognized non-agency capacity. (Adopted 1/95, Amended 4/04 1/07)

- New Standard of Practice 9-2

When assisting or enabling a client or customer in establishing a contractual relationship (e.g., listing and representation agreements, purchase agreements, leases, etc.) electronically, REALTORS® shall make reasonable efforts to explain the nature and disclose the specific terms of the contractual relationship being established prior to it being agreed to by a contracting party. (Adopted 1/07)

- Revised Standard of Practice 12-5

REALTORS® shall not advertise nor permit any person employed by or affiliated with them to advertise listed property in any medium (e.g., electronically, print, radio, television, etc.) without disclosing the name of the that REALTOR®'s firm in a reasonable and readily apparent manner. (Adopted 11/86, Amended 1/07)

- New Standard of Practice 12-8

The obligation to present a true picture in representations to the public includes information presented, provided, or displayed on REALTORS®' websites. REALTORS® shall use reasonable efforts to ensure that information on their websites is current. When it becomes apparent that information on a REALTOR®'s website is no longer current or accurate, REALTORS® shall promptly take corrective action. (Adopted 1/07)

- New Standard of Practice 12-9

REALTOR® firm websites shall disclose the firm's name and state(s) of licensure in a reasonable and readily apparent manner.

Websites of REALTORS® and non-member licensees affiliated with a REALTOR® firm shall disclose the firm's name and that REALTOR®'s or non-member licensee's state(s) of licensure in a reasonable and readily apparent manner. (Adopted 1/07)

- New Standard of Practice 12-10

REALTORS®' obligation to present a true picture in their advertising and representations to the public includes the URLs and domain names they use, and prohibits REALTORS® from:

- 1) engaging in deceptive or unauthorized framing of real estate brokerage websites;
  - 2) manipulating (e.g., presenting content developed by others) listing content in any way that produces a deceptive or misleading result; or
  - 3) deceptively using metatags, keywords or other devices/methods to direct, drive, or divert Internet traffic, or to otherwise mislead consumers.
- (Adopted 1/07)

- New Standard of Practice 12-11

REALTORS® intending to share or sell consumer information gathered via the Internet shall disclose that possibility in a reasonable and readily apparent manner. (Adopted 1/07)

- New Standard of Practice 15-2

The obligation to refrain from making false or misleading statements about competitors' businesses and competitors' business practices includes the duty to not knowingly or recklessly repeat, retransmit, or republish false or misleading statements made by others. This duty applies whether false or misleading statements are repeated in person, in writing, by technological means (e.g., the Internet), or by any other means. (Adopted 1/07)

- Revised Standard of Practice 17-4

- 1) Where a listing broker has compensated a cooperating broker and another cooperating broker subsequently claims to be the procuring cause of the sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, 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 and any amount credited or paid to a party to the transaction at the direction of the respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. (Adopted 1/97, Amended 1/07)
- 2) Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating broker claims to be the procuring cause of sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, 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 and any amount credited or paid to a party to the transaction at the direction of the respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. (Adopted 1/97, Amended 1/07)
- 3) Where a buyer or tenant representative is compensated by the buyer or tenant and, as a result, the listing broker reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating broker claims to be the procuring cause of sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a

respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. (Adopted 1/97)

- 4) Where two or more listing brokers claim entitlement to compensation pursuant to open listings with a seller or landlord who agrees to participate in arbitration (or who requests arbitration) and who agrees to be bound by the decision. In cases where one of the listing brokers has been compensated by the seller or landlord, the other listing broker, as complainant, may name the first listing broker as respondent and arbitration may proceed between the brokers. (Adopted 1/97)
- 5) Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, claims to be the procuring cause of sale or lease. In such cases arbitration shall be between the listing broker and the buyer or tenant representative and the amount in dispute is limited to the amount of the reduction of commission to which the listing broker agreed. (Adopted 1/05)

- **New Standard of Practice 17-5**

The obligation to arbitrate established in Article 17 includes disputes between REALTORS<sup>®</sup> (principals) in different states in instances where, absent an established inter-association arbitration agreement, the REALTOR<sup>®</sup> (principal) requesting arbitration agrees to submit to the jurisdiction of, travel to, participate in, and be bound by any resulting award rendered in arbitration conducted by the respondent(s) REALTOR<sup>®</sup>'s association, in instances where the respondent(s) REALTOR<sup>®</sup>'s association determines that an arbitrable issue exists. (Adopted 1/07)

### **Changes to the *Code of Ethics and Arbitration Manual***

- New Section 1 (h), Definitions Relating to Ethics, and Section 26 (h), Definitions Relating to Arbitration

“Electronically”, “electronic means”, “technology”, and “technological means” and related terms include, but are not limited to, the Internet, Internet-based websites, all forms of Internet communication, e-mail, facsimile correspondence, telephony, and all other forms of distance communication.

- Section 2 (e) and 27 (e), Qualification of Tribunal, were amended as follows:

All members of a tribunal shall have an obligation to maintain and protect the confidentiality of the proceedings and deliberations of the tribunal before, during, and after its determinations and recommendations. The tribunal member shall

not discuss the tribunal proceedings and deliberations with any person(s) except as required by the Board of Directors, the bylaw provisions of the Board, or by law as may be required, except that a member of the Grievance Committee acting pursuant to the provisions of Section 20 of Part Four of this Manual shall not be precluded from discussion necessary to the preliminary review. Unauthorized disclosure relates to tribunal members and to parties and includes any report or publication under any circumstances not established in this Manual. (Amended 11/06)

The following are circumstances where disclosure by a party to an ethics and/or arbitration proceeding is authorized:

- (1) Where the dissemination of the decision to individuals who have some knowledge of the proceeding might vindicate a member's professional reputation.
  - (2) Where there is a civil proceeding (including proceedings before the state real estate licensing authority or any other state or federal regulatory or administrative agency) involving the same facts and circumstances which gave rise to the proceeding before the Board.
  - (3) Where providing the decision of an arbitration hearing panel to an association of REALTORS® or to an MLS will enable that entity to correct records of sales or lease transactions or other historical records. (Adopted 11/06)
- Section 19 (C), Grievance Committee's Review of an Ethics Complaint and Sections 20 (c), (d), and (i), Initiating an Ethics Hearing, were amended as follows. Form #E-22, Appeal of Grievance Committee Dismissal of Ethics Complaint, was also amended.

Section 19 (C): Appeal from the decision of the Grievance Committee related to an ethics complaint

If the Grievance Committee dismisses the complaint, the notice of dismissal shall specify the reason(s) for dismissing and the complainant may appeal the dismissal to the Board of Directors within twenty (20) days from receipt of the dismissal notice using Form #E-22, Appeal of Grievance Committee Dismissal of Ethics Complaint; ~~however, no additional information may be added or attached to the form.~~ The complaint and any attachments to the complaint cannot be revised, modified, or supplemented. The complainant, may, however, explain in writing why the complainant disagrees with the Grievance Committee's conclusion that the complaint should be dismissed. If the Grievance Committee deletes an Article or Articles from an ethics complaint, the complainant may also appeal to the Board of Directors using Form #E-22, Appeal of Grievance Committee Dismissal of Ethics Complaint; ~~however, no additional information may be added or attached to the form.~~ The Directors (or a panel of Directors or the Executive Committee) shall consider only the information and documents considered by the Grievance Committee, together with the complainant's rationale for challenging the dismissal, ~~with the appeal~~ and render its decision,

which shall be final. The parties are not present at the meeting at which the appeal is considered. (Revised 5/97 06)

Section 20 (c-d):

(c) Any action by the Grievance Committee dismissing the complaint as unworthy of further consideration may be appealed to the Board of Directors within twenty (20) days from receipt of the dismissal notice using Form #E-22, Appeal of Grievance Committee Dismissal of Ethics Complaint; ~~however, no additional information may be added or attached to the form. Only those~~ The materials and information which were available to the Grievance Committee when the committee made its decision will be presented to the Directors and considered with the appeal. ~~and the~~ The complainant and respondent do not have the right to appear at the hearing before the Directors. The complaint and any attachments to the complaint may not be revised, modified or supplemented. The complainant may, however, explain in writing why the complainant disagrees with the Grievance Committee's conclusion that the complaint should be dismissed. If the Directors determine that the complaint was improperly dismissed by the Grievance Committee, they shall refer it to the Professional Standards Committee for a hearing. If referred for hearing, the Secretary shall at that time provide a copy of the response to the complainant if one had been submitted for review by the Grievance Committee. (Revised 11/98 5/06)

The President may appoint a panel of Directors, acting on behalf of the Board of Directors, to hear the appeal. Any appeal panel so appointed must be composed of at least five (5) Directors or a quorum of the Board of Directors, whichever is less. (Alternatively, the appeal may be heard by the Board's Executive Committee.) The decision of the appeal panel (or the Executive Committee) is final and binding and is not subject to further review by the Board of Directors. (Revised 11/91)

(d) If the complaint asserts multiple allegations of unethical conduct and the Grievance Committee determines that one or more of the allegations would not, under any circumstances, constitute a violation, that portion of the complaint may be dismissed while the balance of the complaint is forwarded for a hearing before a Hearing Panel of the Professional Standards Committee. However, the complainant has the right to appeal the dismissal to the Board of Directors using Form #E-22, Appeal of Grievance Committee Dismissal of Ethics Complaint; ~~however, no additional information may be added or attached to the form. The complaint and any attachments to the complaint cannot be revised, modified, or supplemented. The complainant may, however, explain in writing why the complainant disagrees with the Grievance Committee's dismissal.~~ (Revised 5/97 06)

If the Grievance Committee feels that the respondent's alleged conduct may be the basis for a violation but that an inappropriate Article(s) has been cited, the Grievance Committee may amend the complaint by deleting any inappropriate Article(s) and by adding any appropriate Article(s) and/or individuals to the complaint. If the complainant disagrees with the deletion of an Article(s) from the complaint, the complainant may appeal to the Board of Directors requesting that the original complaint be forwarded to a Hearing Panel as filed using Form #E-

22, Appeal of Grievance Committee Dismissal of Ethics Complaint; ~~however, no additional information may be added or attached to the form.~~ The complaint and any attachments to the complaint cannot be revised, modified, or supplemented. The complainant may, however, explain in writing why the complainant disagrees with the Grievance Committee's dismissal. If the Grievance Committee determines that an Article(s) or an additional respondent(s) should be added to the complaint and the complainant will not agree to the addition, the Grievance Committee may file its own complaint and both complaints will be heard simultaneously by the same Hearing Panel. (Revised 5/97)

Section 20 (i):

If the Grievance Committee concludes that the allegations in the complaint, if taken as true, could not support a finding that the Code of Ethics had been violated, then the complaint shall be dismissed and the complainant advised of the dismissal and of their right to appeal the dismissal to the Board of Directors using Form #E-22, Appeal of Grievance Committee Dismissal of Ethics Complaint; ~~however, no additional information may be added or attached to the form.~~ The complaint and any attachments to the complaint cannot be revised, modified, or supplemented. The complainant may, however, explain in writing why the complainant disagrees with the Grievance Committee's conclusion that the complaint should be dismissed. (Revised 5/06)

- Section 20 (a), Initiating an Ethics Hearing, and similar amendments to other affected areas of the *Code of Ethics and Arbitration Manual* were made as follows:

Any person, whether a member or not, having reason to believe that a member is guilty of any conduct subject to disciplinary action, may file a complaint in writing with the Secretary, dated and signed by complainant, stating the facts on which it is based (Form #E-1, Complaint, Part Six), provided that the complaint 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. (Revised 11/97 5/06)

Suspension of filing deadlines: If the Board's informal dispute resolution processes (e.g., ombudsman, mediation, etc.) are invoked or initiated by a complainant (or potential complainant) with respect to conduct that becomes the subject of a subsequent ethics complaint, the one hundred eighty (180) day filing deadline shall be suspended beginning with the date of the complainant's (or potential complainant's) request for informal dispute resolution service or assistance and shall resume when the informal dispute resolution procedures are concluded or terminated. Questions about when informal dispute resolution began or ended will be determined by the Board President or the President's designee.

The Secretary shall promptly refer any complaint to the Chairperson of the Grievance Committee, who may designate one or more members of the Grievance Committee to review the complaint and report their findings to the Grievance Committee for its determination as to whether to (1) dismiss the

complaint as unworthy of further consideration, (2) refer it back to the complainant as appropriate for arbitration rather than disciplinary action, or (3) refer it back to the Secretary to schedule for hearing. This review process may include, if necessary, information on the matters complained of if additional information appears necessary to make a knowledgeable disposition of the complaint. The Grievance Committee may, if it thinks it appropriate, send a copy of the complaint to the party complained of and require the respondent to furnish it with a response before making its determination. (See Form #E-4, Grievance Committee Request for Information [Ethics Complaint] and Form #E-5, Response to Grievance Committee Request for Information, Part Six of this Manual). The party complained of shall be advised that failure to respond to the Grievance Committee's request may result in the complaint being forwarded for a hearing and may subject the respondent to a charge of having violated Article 14 for failing to submit pertinent facts to an appropriate tribunal. The function of the Grievance Committee is to make only such preliminary review and evaluation of the complaint as are required to determine whether the complaint warrants further consideration by a Hearing Panel of the Professional Standards Committee. The Grievance Committee does not conduct hearings and does not determine if a violation of the Code of Ethics has occurred.

In the event the complaint is from a client, customer, or a member of the general public, and the Grievance Committee determines that the complaint is vague, overly general, does not allege violations of specific Articles, or is otherwise insufficient on its face, a member of the Grievance Committee may be assigned by the Chairperson of the Grievance Committee to assist the complainant in preparing the complaint in proper form. The member providing such assistance shall not participate in any consideration or deliberations of the Grievance Committee with respect to the matter. In such cases, the respondent shall receive the revised complaint with the original complaint and all other supporting documentation provided by the complainant incorporated as an appendix.

- Section 46, Duty to Arbitrate Before State Association, was amended as follows:

By becoming and/or remaining members of this Board, all members bind themselves and agree to submit to arbitration by the arbitration facilities of the \_\_\_\_\_ (state) Association of REALTORS® any dispute with a member of any other local Board or \_\_\_\_\_ (state) Association of REALTORS®, provided:

- (1) The dispute is a dispute as defined and for which arbitration is required by Article 17 of the Code of Ethics, and
- (2) The \_\_\_\_\_ (state) Association of REALTORS® has established facilities for such arbitration.\*

Disputes as defined in Article 17 of the Code of Ethics requiring arbitration between members having no commonality of Board membership or MLS participation may be submitted and conducted under the procedure established in **Part Eleven** of this Manual, subject to such modification as may be required by applicable state law. Whether arbitration is conducted by the state

association or by an interboard arbitration panel pursuant to Part Eleven, the costs charged to parties, including filing fees, may not exceed \$500. Where arbitration is conducted by the state association, any costs incurred that exceed the parties' filing fees may be recouped from the parties' local association(s).  
(Amended 5/06)

The method set forth in **Part Eleven** may also be utilized for the conduct of arbitration between Board Members of different Boards of different states, subject to the parties' voluntary agreement in advance to accept the place, date, and time established by the arbitration panel thus chosen for a hearing, and to pay all costs of such arbitration as may be directed by the panel, and further subject to applicable state law of the respective states permitting such binding arbitration.

\*The State Association as a Member Board of the National Association has the obligation to establish arbitration procedures and facilities consistent with applicable state law, as required by the Constitution, National Association, Article IV, and by Article 17, Code of Ethics of the National Association, for individual members of the State Association.

- Part Eleven, Interboard Arbitration Procedures, was amended as follows:

**Introduction:** By becoming and remaining a member of the National Association, each Member Board is required to provide and participate in interboard arbitration when arbitrable issues arise between a Board Member and a member of another Board within the state, as defined in Article 17 of the Code of Ethics and Sections 43 and 44 of this Manual. **However, the complainant should be advised that should he voluntarily agree to travel to the Board having jurisdiction over the respondent and submit to arbitration conducted by that Board, that Board shall provide arbitration as requested subject to the provisions of this Manual.** In instances where the State Association does not provide procedures for conducting interboard arbitration, the arbitration should be arranged by joint effort of the two (2) Boards having members involved in an arbitrable issue, and the following procedures shall apply. (Revised 11/96)

**Initiation of procedures:** Interboard arbitration is initiated by the written request of a REALTOR® to the Secretary of the Board of which the REALTOR® is a member, who shall, in turn, arrange interboard arbitration with the other Board. Where a written interboard arbitration agreement exists between two (2) or more Boards, the determination as to whether an arbitrable matter exists shall be made pursuant to those procedures. Where no agreement exists between Boards, interboard arbitration may take place provided that the Grievance Committees of each Board determine that a properly arbitrable matter exists. Appeals of arbitration requests dismissed by the Grievance Committee and alleged misclassification of an issue as being subject to either voluntary or mandatory arbitration shall be considered by the Board of Directors of the Board whose Grievance Committee's decision is being challenged pursuant to the existing procedures of that Board. (Revised 11/98)

**Fee deposit and arbitration agreement:** The request for interboard arbitration shall be accompanied by a deposit not to exceed \$500, which shall go toward the costs of arbitration as determined by the panel, and by a signed arbitration agreement, which may be in the form of Specimen Form #A-1, **Part Thirteen** of this Manual, or in any other appropriate form provided or permitted by law. (Revised 11/96)

~~Each party should be aware that in~~ Interboard arbitration involving parties in Boards distant from each other, ~~the parties to the arbitration may be responsible for further payment of all or part of the~~ may involve costs including travel expenses of the arbitration panel and other expenses of the arbitration. (Revised 5/06)

Boards should establish a filing fee for interboard arbitration that may be the same as or different from filing fees for arbitration not conducted pursuant to **Part Eleven** provided that total cost that may be charged any party, including any filing fee, may not exceed \$500. Boards administering arbitration pursuant to **Part Eleven** should agree prior to any hearing which Board will retain the respective parties' filing fees. (Adopted 11/98, Revised 5/06)

**Selection of panel:** Each Board participating in the interboard arbitration procedure shall select one member of the arbitration panel from its Professional Standards Committee. The Chair of each Board's Professional Standards Committee shall agree upon the third member of the panel. The panel shall select its Chairperson. The Executive Officer or Secretary of the Board of which the Chairperson is a member shall serve as Secretary of the panel. (Revised 11/03)

All parties have the right to challenge the qualifications of any arbitrator so selected upon showing good and sufficient cause why the arbitrator should not serve. Questions concerning the qualification of any arbitrator shall be determined by the President of the Board from which the arbitrator was selected.

Hearings and the organization and procedures incident thereto shall be governed by the Code of Ethics and Arbitration Manual of the National Association as adapted to conform to the provisions of applicable state law and the optional provisions adopted by the Secretary and Chairperson of the panel's Board. (Adopted 11/98)

**Arbitration request and response:** The Secretaries of the Boards involved with the interboard arbitration shall ensure that the panel Secretary receives all documents related to the arbitration request. The panel Secretary may require the complainant to submit sufficient copies of the arbitration request and related documents for each member of the panel and the respondent or respondents. Within \_\_\_\_\_ days after the interboard arbitration panel has been formed, the panel Secretary shall send a copy of the arbitration request to the respondent, informing the respondent that he may file a written response with the panel Secretary (if the respondent has not already received a copy of the arbitration request and had an opportunity to submit a response) within twenty-one (21) days from the date of the letter in which the request for arbitration was mailed to him, including sufficient copies for each Hearing Panel member and the

complainant. If the arbitration request has already been provided to the respondent and a response solicited, the panel Secretary shall obtain the response from the Board which requested it and ensure that the complainant receives a copy. The panel Secretary may require the respondent to submit sufficient copies of the response for each member of the panel and the complainant or complainants. Any response shall be accompanied by a signed arbitration agreement, which may be in the form of Specimen Form #A-4, **Part Thirteen** of this Manual, or in any other appropriate form provided or permitted by law, and a deposit not to exceed \$500, which shall go toward costs of such arbitration if so determined by the arbitration panel, or shall be returned as determined by the panel. (Revised 11/96)

The panel Secretary shall then schedule a hearing consistent with the procedures established in the Code of Ethics and Arbitration Manual of the NATIONAL ASSOCIATION OF REALTORS®. Interboard arbitration shall not proceed unless signed arbitration agreements and deposits have been received from the complainant and respondent. (Revised 11/95)

Right of interboard arbitration panel to release members from obligation to arbitrate: If the arbitration panel determines that, because of the amount involved or the legal complexity of the dispute, the dispute should not be arbitrated, it shall advise the parties, the arbitration shall terminate, and the parties shall be relieved of their obligation to arbitrate. The Hearing Panel can also dismiss the arbitration request if the Hearing Panel concludes the matter is not arbitrable, and the parties shall be relieved of their obligation to arbitrate. If no interboard hearing on the merits is held, any deposits made by the parties shall be returned to them. (Revised 11/98)

Further, if the panel determines that an arbitrable matter exists but it is not subject to mandatory arbitration, neither party may be compelled to arbitrate, and the arbitration shall terminate unless all parties voluntarily agree to take part and abide by the decision.

Either party has twenty (20) days to appeal from the date of notice that the panel declined to continue the proceeding. The written appeal and only those materials and information available to the panel when it made its decision to discontinue arbitration will be presented to the appeal panel comprised of a minimum of five (5) members (who did not previously sit in review of the arbitration request) from the parties' Boards to be appointed by the Boards' Presidents. The parties do not have the right to appear at the hearing before the appeal panel. (Adopted 11/98)

**Place, date, and time of hearing:** The panel Chairperson shall designate the date, time, and place of the hearing. Each party shall be given at least twenty-one (21) days' prior notice of the hearing, but appearance at the hearing waives the right to such notice. The arbitrators may recess the hearing from time to time as necessary and, on request of a party or upon the arbitrators' own motion, may postpone the hearing for not more than thirty (30) days, unless otherwise agreed to by the parties.

**Conduct of hearing:** The Chairperson shall preside at the hearing, which shall not be bound by the strict rules of evidence applicable to judicial tribunals, but by the Outline of Procedure for Arbitration Hearing found in **Part Twelve** of this Manual, and by the Chairperson's Procedural Guide: Conduct of an Interboard Arbitration Hearing, also in **Part Twelve** of this Manual.

**Testimony and documentary evidence:** Parties to disputes may testify on their own behalf and may present testimony of witnesses and introduce documentary evidence. Any party may examine and cross-examine witnesses, and at the request of any party or on its own motion, the panel, at its discretion, may exclude witnesses or evidence.

**Legal counsel:** Parties may, at their own expense, have legal counsel present during the hearing, provided they notify the panel and the other party, in writing, of their intention to do so at least fifteen (15) days prior to the date fixed for the hearing, including counsel's name, address, and phone number. The panel may have legal counsel present. (Revised 11/97)

**The Arbitration Hearing:** The following procedure is to be followed in conducting the hearing:\*

- (a) Prior to the giving of any testimony, all witnesses shall be sworn or affirmed by the panel Chairperson.
- (b) Each party or his attorney shall be given the opportunity of making an opening statement.
- (c) Witnesses shall be present only as necessary to present their testimony.
- (d) The complainant may present evidence and give testimony as deemed applicable to the arbitration by the Hearing Panel. No testimony may be admitted related to the character or general business reputation of any party unless such testimony has a direct bearing on the matter being heard.
- (e) The parties to the dispute shall present to the arbitrators, in writing, such statements and proof as they deem necessary or desirable, or as the arbitrators request. Proof may be submitted in the form of affidavits or in any other acceptable form. The arbitration panel may require that statements be verified by affidavit or that the accuracy or authenticity of any documents or other papers submitted be verified by affidavit. The panel shall receive and consider any evidence it deems material and proper, including evidence of accountants and other experts. Each party is responsible for the expenses of expert witnesses he calls.
- (f) At the conclusion of direct examination, the opposing party or his counsel may cross-examine the witness.
- (g) When both parties have concluded their examination or cross-examination of a witness, the arbitrators may examine the witness.

(h) Upon completion of all testimony, each party or his attorney may summarize the proceedings to the arbitration panel. The complainant will open the summation and the respondent will close the summation.

(i) Thereafter, the parties shall be excused and the matter will stand submitted.

\*Such hearing shall be conducted according to the Chairperson's Procedural Guide: Conduct of an Interboard Arbitration Hearing, in **Part Twelve** of this Manual.

**Recordation:** Any party (may/may not), at his own expense, have a court reporter present, or may tape record the proceeding, and, if transcribed, shall furnish a transcript to the panel. The panel may also cause the hearing to be transcribed or recorded on its own motion.

**Adjournment:** The panel may adjourn the hearing from time to time as necessity or convenience dictates.

**Settlement:** The parties to the arbitration may settle the dispute by agreement at any time. In such event, the arbitration proceedings shall be terminated.

**The award:** The award of the arbitrators (Form #A-12, **Part Thirteen** of this Manual) shall be made as soon as feasible after the evidence is presented. The award shall be in writing and signed by the arbitrators, or a majority of them, and when so signed and served on each of the parties shall be final and binding, and shall not be subject to review or appeal except as required by other provisions of this Manual or by applicable state law. Any procedural review request (which must be limited to issues of due process) shall be filed with the panel Secretary for consideration by a special review panel comprising an equal number of Directors from each Board, chosen by the respective Board President, which shall select its own Chairperson who will preside but will not vote. (This ensures an odd number of panelists.) Dissemination of the award shall be limited to the parties involved, the Board of Directors of each Board of REALTORS®, and legal counsel and staff on a need-to-know basis.

**Costs of arbitration:** Interboard arbitration may involve travel and necessary out-of-pocket expenses by the arbitrators. The arbitrators shall receive reimbursement of travel and out-of-pocket expenses incurred in connection with their service as arbitrators. Expenses of the arbitrators and all other expenses, including the panel's use of legal counsel and recordation or transcription of the hearing, shall be borne by the Boards involved as agreed in advance of the hearing, ~~or by the parties to the arbitration as directed by the arbitrators.~~  
(Revised 5/06)

**Refusal to Arbitrate:** In the event a complainant alleges that the respondent has improperly refused to submit a dispute to arbitration, the allegation shall be brought before a tribunal of five (5) members selected by the Board President from members of the respondent's Board of Directors. The procedures for notices, time of notices, and hearing prescribed for matters before a Hearing Panel shall apply. The sole question of fact will be to decide whether the party has refused to submit an arbitrable matter to arbitration in violation of Article 17.

Upon determination that the member has refused to arbitrate a properly arbitrable matter, the tribunal may direct implementation of appropriate sanction, including suspension or expulsion of the member from the local Board of REALTORS®. The decision of the tribunal shall be final and binding and is not subject to further review by the State Association or any local Board. (Adopted 11/96)

**Enforcement:** If a member fails to comply with an award, the recipient to whom the award has been rendered by the arbitration panel shall be advised by the panel to seek judicial enforcement and request reimbursement of all legal costs incurred in seeking such enforcement. At the discretion of the Board of Directors of the Board of which the award recipient is a member, the Board may support the request for judicial enforcement in the court and, at the further discretion of the Board of Directors, reimburse the award recipient for costs incurred in seeking such enforcement if the courts do not award reimbursement of such costs.

**Special Note Concerning Interstate Arbitration:** The interboard arbitration method may also be utilized for the conduct of arbitration between Board Members of different Boards in different states, subject to the parties' voluntary agreement in advance to accept the place, date, and time established by the arbitration panel chosen and to pay all costs of such arbitration as may be directed by the panel, provided that the state in which each of the parties to the arbitration resides, and the state in which the arbitration is held, permits binding arbitration. Or, alternatively, if a Board Member voluntarily agrees to travel to the Board having jurisdiction of the other Board Member in another state and to submit to arbitration by that Board, the Board shall provide arbitration as requested if it deems the dispute an arbitrable matter and further subject to the provisions of **Part Ten**, Section 45 of this Manual, which sets forth the right of the Board to decline to arbitrate a dispute.

- New appendix to be added to the *Code of Ethics and Arbitration Manual* and published on Realtor.org discussing the rationale for no findings of fact in arbitration awards.
- New Form #E-5.1, Grievance Committee Report Form, was added to assist Grievance Committees report their findings.
- Form #E-11, Decision of Ethics Hearing Panel of the Professional Standards Committee, was amended to clarify time frames and the bases to request a rehearing.
- Form #A-1, Request and Agreement to Arbitrate; Form #A-2, Request and Agreement to Arbitrate (Nonmember); and Form #A-4, Response and Agreement to Arbitrate were updated to reference the limitations on recovery when an arbitration requestor invokes arbitration pursuant to Standard of Practice 17-4 (1) or (2). The forms are amended to reflect that respondents indicate the amount received from the listing broker or the seller.

## **Changes to the *Interpretations of the Code of Ethics***

You can view the new case interpretations described below Jan 1, 2007 in the 2007 *Code of Ethics and Arbitration Manual* available at [www.realtor.org/2007ceam.nsf](http://www.realtor.org/2007ceam.nsf).

- Two new case interpretations related to Article 6 were added to discuss the need to disclose affiliated business relationships and any potential benefit that may accrue to REALTORS® prior to recommending real estate products or services.
- One new case interpretation related to Article 12/Standard of Practice 12-4 (advertising without authority) was added to illustrate the duty to promptly remove information about listings from websites once authority to advertise no longer exists.

## **Additional Points of Interest**

1. The National Association's Professional Standards Education Seminar will be held August 23 and 24, 2007. For information go to: [www.realtor.org/mempolweb.nsf/pages/2007PSSeminar](http://www.realtor.org/mempolweb.nsf/pages/2007PSSeminar).
2. The National Association's Mediation Training Seminars will be held April 18-20, 2007 and December 12-14, 2007 in Chicago. For information please go to: [www.realtor.org/mempolweb.nsf/pages/2007mediationtraining](http://www.realtor.org/mempolweb.nsf/pages/2007mediationtraining).