

Ethics Hearing Checklist

(1) **Complaint filed.** The Board Secretary (or Executive Officer) receives a complaint alleging unethical conduct on the part of a Board Member.

(2) **Complainant.** An ethics complaint may be filed by any person, whether a Board Member or not.

(3) **Time limitation.** An ethics complaint must be filed within one hundred eighty (180) days after the facts constituting the matter could have been known in the exercise of reasonable diligence. (Amended 11/97)

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. (Adopted 11/00)

(4) **Initial assistance.** Depending upon established administrative procedures of the local Member Board, the Secretary (Executive Officer) may provide additional information to the complainant concerning the required basis and form(s) for properly filing a written complaint. Only written complaints should be a basis for further consideration and action by the Board, except the Grievance Committee is not precluded at any time from investigating, at its discretion, any written or oral complaint against a member, or from reviewing any information which may come to its attention concerning a Board Member. (Amended 4/94)

(5) **Complaint to Grievance Committee.** When a written complaint is received, the Secretary (or Executive Officer) refers it to the Chairperson of the Grievance Committee for preliminary review by the Grievance Committee in order to determine proper disposition of the complaint—i.e., 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 to the Secretary to arrange a hearing by an ethics Hearing Panel of the Professional Standards Committee. (Amended 4/94)

If the complaint is from a client, customer, or a member of the general public, and the Grievance Committee determines that the complaint is not properly framed (or is ambiguous or otherwise insufficient), the Grievance Committee Chairperson may assign a member of the Grievance Committee to assist the complainant in preparing a proper complaint. In such instances, the Grievance Committee member so assigned does not become or act as an advocate for the complainant, but provides appropriate procedural information only. Further, the Grievance Committee member acting in this capacity shall

not participate in any consideration of the complaint by the Grievance Committee.

If the complaint asserts multiple allegations of unethical conduct and the Grievance Committee determines that one or more of the allegations are unworthy of further consideration, that portion of the complaint may be dismissed while the balance of the complaint is forwarded for a hearing. If the Grievance Committee determines that the complaint cites an inappropriate Article or Articles of the Code, the Grievance Committee may amend the complaint by deleting the inappropriate Article(s) and adding the appropriate Article(s) and/or individual(s). However, if an Article or Articles or an additional respondent(s) is added to the complaint by the Grievance Committee and the complainant does not agree with the addition, the Grievance Committee may file its own complaint citing those Article(s) and/or individual(s), and both complaints would be heard simultaneously by the same Hearing Panel. (Revised 11/91)

(6) Preliminary review by Grievance Committee. The Grievance Committee may render its determination on the basis of the complaint received, or it may, at its discretion, send a copy of the complaint to the party complained of and require him to furnish a response before making its determination as to the proper disposition of the complaint. Failure to respond to the Grievance Committee's request may result in the complaint being forwarded for a hearing and in a possible charge that the respondent has not complied with the obligations of Article 14 of the Code of Ethics.

(7) No Grievance Committee “hearings”. The Grievance Committee's function does not include the holding of any hearings. Rather, it makes a preliminary review to determine the proper disposition of the complaint. (Amended 4/94)

(8) No decisions on Code violations by Grievance Committee. The Grievance Committee does not render a determination purporting to find a violation, or the absence of a violation, of the Code of Ethics, nor does it purport to find a violation, or absence of a violation, of law.

(9) Action initiated by Grievance Committee. On its own motion, the Grievance Committee may—or, upon instruction from the Board of Directors, must review the actions of any member when there is reason to believe that the member's conduct may be subject to disciplinary action. (Amended 4/94)

(10) Grievance Committee as complainant. If review by the Grievance Committee, acting on its own motion or upon instruction from the Board of Directors, reveals evidence of potentially unethical conduct sufficient to warrant a hearing, the Grievance Committee prepares a complaint and refers it to the Secretary (or Executive Officer) to arrange an ethics hearing. The Chairperson of the Grievance Committee or a member of the Grievance Committee designated by the Chairperson will act as the complainant at the hearing before a Hearing Panel of the Professional Standards Committee (the Grievance Committee as complainant is acting on behalf of the Board of REALTORS®). (Amended 4/94)

(11) Dismissal of complaint by Grievance Committee subject to appeal. The dismissal of a complaint or any portion of a complaint by the Grievance Committee may be appealed by the complainant to the Board of Directors within the time -specified in the Board's procedures using Form #E-22, Appeal of Grievance Committee Dismissal of Ethics Complaint; however, no additional information may be added or attached to the form. In considering the appeal, the Directors should consider only the same information that was considered by the Grievance Committee in making its determination to dismiss the complaint, and the complainant and respondent do not have the right to appear at the hearing before the Directors. (Revised 5/97)

The appeal may be heard by a panel of Directors appointed by the President. Any appeal panel 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 Executive Committee) is final and binding and is not subject to further review by the Board of Directors. (Revised 11/91)

(12) Action if complaint is referred for hearing. If the complaint is referred for hearing, the Secretary (Executive Officer) serves a copy of the complaint to each party complained of, and notifies each party that he may file a written reply to the complaint within the time period specified in the Board's procedures.

(13) Late filing of reply. A Hearing Panel, at its discretion, may accept late filing of a reply to a complaint.

(14) Resignation/termination of membership. If the respondent resigns or otherwise terminates membership in the Board after an ethics complaint is filed but before final action is taken by the Board of Directors, the hearing process suspends and the Secretary (or Executive Officer) forwards the complaint to any other Board in which the respondent continues to hold membership. If the respondent does not hold membership in another Board, or if the Secretary is unable to determine if the respondent holds membership in another Board, the complaint is held in abeyance until such time as the respondent rejoins the Board or it can be determined that the respondent holds membership in another Board. In any instance where a complaint is transferred to another Board, the Board notifies the complainant. (Adopted 5/88)

(15) Request for additional copies from complainant and respondent. As a matter of local option, the Secretary (or Executive Officer) may request the complainant and respondent to supply a specified number of copies of the complaint and response, or other documentation, as needed for appropriate distribution, except a non-Board Member complainant should generally not be required to supply multiple copies. This could be construed as overly burdensome by the public.

(16) Distribution of complaint and reply. After fifteen (15) days, the Secretary (or Executive Officer) shall deliver copies of the complaint and the reply (if any) to (1) the complainant (response only), (2) the Board President, and (3) the Chairperson of the

Professional Standards Committee, or notify each that no reply has been filed.

(17) **Appointment of Ethics Hearing Panel.** At the same time, the Secretary (or Executive Officer) shall mail a list of names of the members of the Professional Standards Committee to the parties and provide them with an opportunity to challenge proposed panel members for cause. Any disqualification must be filed within ten (10) days from the date the list is mailed to the parties. From the names not successfully challenged by either party, the Professional Standards Committee Chairperson shall select, within fifteen (15) days from the date the list of names is mailed to the parties, a Hearing Panel of three (3) or more members, a majority of whom shall be REALTORS®. The Chairperson shall also select one of the panel members to serve as Chairperson of the Hearing Panel. Any Hearing Panel must have an odd number of members. A majority must be REALTORS®, and if a REALTOR-ASSOCIATE® or REALTOR® other than a principal is a party to the ethics proceeding, one (1) of the panelists shall be a REALTOR-ASSOCIATE® or REALTOR® other than a principal.

(Revised 11/92)

(18) **Time and place of hearing.** The Chairperson of the Professional Standards Committee, or the panel itself, or its Chairperson, shall designate a time and place for hearing the complaint. The complaint and response, if any, shall be provided to Hearing Panel members prior to the hearing. Such time period shall be _____ (as determined by the Board of Directors) and shall be adhered to for all hearings.

(Revised 4/91)

(19) **Proper notice of hearing.** It is important that the Secretary (or Executive Officer) properly and promptly notify the parties of the time and place of hearing. The notice of hearing should include a listing of the members of the Hearing Panel (tribunal) who have been selected from the names of members of the Professional Standards Committee not successfully challenged by either party. An outline of the hearing procedures should also accompany the notice of hearing. (Revised 11/98)

(20) **Withdrawal of complaint.** After the Grievance Committee concludes the complaint will require a hearing before a Hearing Panel, the complainant can withdraw the complaint only with approval of the panel. (Revised 11/91)

(21) **Amendment of complaint.** The complainant can amend the complaint at any time prior to hearing. However, the respondent must receive a copy of the amended complaint and have an opportunity to amend the response to the complaint.

(22) **Amendment during a hearing.** At any time during a hearing, the complainant or the Hearing Panel may amend the complaint. Amendments to include Articles previously dismissed by the Grievance Committee may be made only on the motion of the Hearing Panel. With the concurrence of the respondent, the hearing may proceed uninterrupted or may be continued to a date certain not less than fifteen (15) nor more than thirty (30) days from date of adjournment. If the hearing continues uninterrupted, the fact that the respondent waived his right to an adjournment should be read into the record, and the

hearing will proceed on the basis of the amended complaint.
(Amended 11/93)

(23) **Amended complaint in writing.** If the hearing is adjourned to a later date, the amended complaint must be filed in writing, signed by the complainant or Chairperson of the Hearing Panel, and promptly served on the respondent to allow opportunity for response to the amended complaint.

(24) **Failure to appear at duly noticed hearing.** If a respondent does not appear at a hearing without having obtained a continuance, the Hearing Panel may proceed with the hearing and reach a decision on the evidence available. The procedures to be followed shall be those specified in the Code of Ethics and Arbitration Manual. If a party does not appear, it is prudent to place a telephone call to determine if there is valid cause for the absence.

If a member of the public files an ethics complaint which is reviewed by the Grievance Committee and forwarded for a hearing before an ethics Hearing Panel, and the member of the public refuses or is unable to appear at the hearing, the complaint should be referred back to the Grievance Committee for amendment to name the Grievance Committee as complainant if the Grievance Committee determines that there is sufficient information for a Hearing Panel to consider (i.e., clear, strong, and convincing proof).
(Amended 11/98)

In the event the complaint scheduled for hearing is from a REALTOR® or REALTOR-ASSOCIATE® who refuses or is unable to attend the hearing, the complainant shall be advised that refusal to participate in the hearing, absent a satisfactory reason, may result in a charge that the complainant has violated Article 14's obligation to place all pertinent facts before an appropriate tribunal of the Board. (Amended 11/98)

If the REALTOR® or REALTOR-ASSOCIATE® complainant continues to refuse a duly noticed request to appear, or if the complainant is excused from appearing for reasons deemed valid by the Hearing Panel, the hearing shall not take place but rather the complaint shall be referred back to the Grievance Committee. If the Grievance Committee determines that there is sufficient information for a Hearing Panel to consider (i.e., clear, strong, and convincing proof), the complaint shall be amended to name the Grievance Committee as complainant and the hearing shall be continued to a new date. The respondent shall be provided with a copy of the amended complaint in such cases.
(Revised 11/98)

(25) **Decision by Hearing Panel.** The decision of the Hearing Panel shall be by simple majority vote, in writing, and contain findings of fact, a conclusion as to the alleged violation(s) of the Code of Ethics, and a statement of disciplinary action recommended, if any.

(26) **When Hearing Panel decision is final.** The Hearing Panel decision shall be considered final only when signed, reviewed by legal counsel, and filed with the

Secretary (or Executive Officer). The decision and recommendation of the sanction, if any, shall be a recommendation to the Board of Directors and shall be implemented only upon review and approval by the Board of Directors.

(27) **Dissenting opinion.** Any member of the Hearing Panel may file a written dissent with the Secretary (or Executive Officer) to be provided initially to the parties and ultimately to the Board of Directors with the decision and recommendation of the Hearing Panel. (Amended 11/98)

(28) **Recommendation of sanction.** In its recommendation of sanction, the Hearing Panel may, at its discretion, consider all records of previous violations and sanctions, if any, in the member's file.

(29) **Distribution of decision.** The Secretary (or Executive Officer) shall send a copy of the decision to the complainant and the respondent within the time specified in the Board's procedures after receipt from the Hearing Panel in its final form. However, reasonable delay will not invalidate the procedures of the Board.

(30) **Petition for rehearing.** Within the time period specified in the Board's procedures, the complainant or respondent may petition the Hearing Panel for a new hearing only on the basis of new evidence that could not have been discovered with reasonable diligence prior to the time of the original hearing. The petition must be in writing and include (1) a summary of the new evidence, (2) a statement of what the new evidence is intended to show and how it might affect the Hearing Panel's decision, and (3) an explanation of why the petitioner could not have discovered and/or produced the evidence at the time of the original hearing. (Amended 11/91)

(31) **Hearing Panel considers petition for rehearing.** The Hearing Panel will consider and can grant or deny a petition for rehearing. The parties will be informed of the decision of the Hearing Panel. If the Hearing Panel does not grant the petition for rehearing within two (2) weeks, the petition is deemed denied. Only one petition for rehearing is permitted to any party.

(32) **Right of appeal.** Either the complainant or the respondent in an ethics hearing may file an appeal with the President within twenty (20) days after the decision of the Hearing Panel is final if no petition for rehearing is received, or within twenty (20) days after the Hearing Panel's final decision subsequent to the rehearing, or within ten (10) days after the denial of a petition for rehearing. However, the complainant may appeal based only on alleged procedural deficiencies or other lack of procedural due process that may have deprived the complainant of a fair hearing. The appeal should state a valid cause for seeking the appeal and the consideration of the appeal shall relate only to the bases stated in the appeal petition. (Amended 11/98)

(33) **Prerogatives of Directors in respect of Hearing Panel recommendation.** If there is no appeal by any party to an ethics hearing, the Directors must adopt and direct implementation of sanction, except if the Directors have a concern for procedural

deficiency, in which case they may refer the decision back to the Professional Standards Committee for a new hearing and recommendation by a new Hearing Panel. If the Directors are concerned with the appropriateness of the recommended sanction, they may refer the decision back to the original Hearing Panel for further consideration and recommendation. The Directors may also accept the decision of the Hearing Panel and may reduce the discipline recommended but may not increase the discipline beyond that recommended by the Hearing Panel.

(34) **Appeal deposit.** Any appeal to the Board of Directors from the decision and recommendation of the ethics Hearing Panel shall be accompanied by a deposit that may not exceed \$250 and should include a statement of the basis for the appeal—i.e., misapplication or misinterpretation of the Article(s) of the Code, procedural deficiency or lack of due process, or the recommended discipline. (Revised 11/94)

(35) **Notice of appeal to Directors.** Any appeal to the Board of Directors shall be noticed properly to the parties and to the Directors. The written request for appeal shall be reviewed by the Board President or the President's designee only for the purpose of determining whether the appeal states any legitimate basis for consideration by the Board of Directors. All requests for appeals received by the Board must be considered by the Board of Directors, and only those bases and issues raised in the written request for appeal may be raised by the appellant in any hearing before the Board of Directors. (Amended 11/94)

The matter may be heard at the next regularly scheduled meeting of the Directors or at a special meeting called for the purpose of hearing the appeal.

The appeal may be heard by a panel of Directors appointed by the President. Any appeal panel 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 Executive Committee) is final and binding and is not subject to further review by the Board of Directors. (Revised 11/91)

(36) **Information provided to Directors.** The Directors shall be provided in advance with copies of the complaint, response, the findings of fact, conclusion of the Hearing Panel as to violation(s) of the Code of Ethics, recommendation of discipline, the appeal request or amended appeal request, and the President's correspondence, if any. All documents provided to the Board of Directors are confidential, and no Director shall discuss materials received except in an appeal meeting of the Board of Directors. However, a breach of confidentiality shall not invalidate the decision of the Board of Directors.

(37) **Information considered by Directors in an appeal proceeding.** An appeal to the Board of Directors shall be determined on the basis of the transcript, recording, or summary of the proceeding by the Hearing Panel Chairperson, and no new evidence shall be considered unless the basis of the appeal is the Hearing Panel's alleged refusal to

admit or receive evidence a party feels properly should have been allowed. The parties may appeal to the merits of the Hearing Panel's findings of fact, decision, and recommendation for sanction and may correct the summary, the transcript, or recording. Only the bases and facts raised in the written appeal may be raised by the appellant at the hearing before the Board of Directors.

(38) **Disposition of deposit money.** The deposit filed with the petition for appeal will accrue to the general treasury of the Board if the Directors confirm the Hearing Panel's decision and recommendation. The deposit will be returned to the appellant if the Board of Directors' decision is to dismiss the charge. If the Hearing Panel's decision and recommendation is modified, the Directors will determine the disposition of the deposit.

(39) **Directors' decision in writing.** The Directors' decision will be in writing, and any Director may file a dissenting opinion. As soon as the decision is in final form, it shall be promptly provided to the parties and the Hearing Panel, including the dissenting opinion. (Revised 11/98)

(40) **Directors' decision final.** The Directors' decision in respect of any professional standards ethics proceeding shall be final and binding upon the parties. No appeal procedure is provided by the State Association or the NATIONAL ASSOCIATION OF REALTORS®.

(41) **Notice of final action.** When the decision is final, a notice of the action shall be provided by the President to the following: (1) complainant, (2) respondent, (3) Board of Directors, (4) Hearing Panel, (5) Board legal counsel, (6) the President of any other Board in which the respondent holds membership, and (7) any government agency as may be directed by the Board of Directors, based on advice of legal counsel. (Revised 5/88)

Such notice shall be provided as the President deems appropriate under the circumstances to effectuate the discipline, provided the proposed notice has been reviewed and approved by Board legal counsel. Other Board Members shall be notified only of suspension or expulsion of a member.

(42) **Failure to comply with discipline imposed.** Any discipline that requires an action on the part of the disciplined member should also indicate any additional penalties that may be automatically invoked for failure to comply with the discipline by the date specified.

If the decision does not indicate that additional penalties may be automatically invoked for failure to comply with the discipline by the date specified, the member's failure to comply should not result in a new ethics hearing, but should be referred to the Board of Directors for their consideration. If additional penalties are contemplated, the member should have the opportunity to appear before the Board of Directors and explain the failure to comply. The Board of Directors, if not satisfied with the explanation, may impose additional sanctions (including suspension or expulsion) in a manner consistent

with the procedures in the Board's *Code of Ethics and Arbitration Manual*.

(43) **Declaratory judgment.** If the Directors believe a member may resort to litigation rather than abiding by the discipline imposed, the Directors should consider making the imposition of discipline contingent upon entry of a judgment by a court of competent jurisdiction asserting that the Board's action will not violate any of the member's rights.

(44) **Refusal to arbitrate.** If a member refuses to arbitrate, where arbitration is not precluded by law, the matter will not be referred to the Grievance Committee for a hearing by an ethics Hearing Panel, but shall be referred to the Board of Directors, and the Directors shall consider only the sole fact of whether a Board Member has refused to arbitrate a properly arbitrable matter. Upon an affirmative finding of refusal to arbitrate, the Directors may order sanction as deemed appropriate in accordance with the procedures of the Board.

(45) **Refusal to abide by an award in arbitration.** There should be no ethics hearing in the first instance of such a refusal by a Board Member, but the Board should recommend that the award recipient seek judicial enforcement of the award rendered by the arbitration panel. The award recipient should seek reimbursement of legal fees, and if these legal fees are not reimbursed by the court in its final decision, the Board of Directors may, at its discretion, reimburse the award recipient for legal fees incurred. If a member engages in a pattern of noncompliance, judicial enforcement should be utilized in each case for effective enforcement of the award, and the Board is not precluded from considering the action of the individual as an alleged violation of Article 17 of the Code of Ethics.