

Part Four – The Ethics Hearing

Section 20. Initiating an Ethics Hearing

- (a) 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 in their own name with the Professional Standards Administrator, 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 or event, whichever is later. (*Revised 5/13*)

The procedures for processing complaints alleging violations of an Association's bylaws prohibiting harassment are available on-line at www.nar.realtor, and those procedures do not involve an Association's Grievance Committee, Professional Standards Committee, or Board of Directors. (*Adopted 11/11*)

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 filing deadline shall also be suspended during any period when the respondent does not hold REALTOR® or REALTOR-ASSOCIATE® membership. (*Amended 11/12*)

The Professional Standards Administrator 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 Professional Standards Administrator to schedule for hearing. This review process may include additional information from the complainant other than the written complaint itself only if necessary to determine whether a complaint will be referred for hearing. 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 only if the committee is in need of additional information pertaining to the questions in Section 19, Grievance Committee's Review of an Ethics Complaint, and the complainant cannot provide such information. (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). In such an

instance, 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. If the facts alleged in the complaint could constitute a violation of the Code of Ethics, if taken as true on their face, the Grievance Committee is obligated to make a referral for hearing if the complaint is otherwise in acceptable form. The Grievance Committee does not conduct hearings, does not determine if a violation of the Code of Ethics has occurred, and does not dismiss ethics complaints because of lack of evidence. A complainant is not required to prove their case upon submission of their ethics complaint. (*Revised 11/15*)

When Grievance Committees refer ethics complaints and arbitration requests for hearing, hearing panel chairs can determine if questions about

- (1) whether ethics complaints and arbitration requests are timely filed,
- (2) whether arbitrable issues exist,
- (3) whether arbitration requests are too legally complex to be fairly arbitrated, and
- (4) other administrative issues

will be addressed through a pre-hearing meeting of the hearing panel or at the outset of the hearing prior to testimony relating to the ethics complaint or arbitration request commencing. If these matters rise during a hearing, the hearing panel will address them at that time.

Dismissals of ethics complaints and arbitration requests by hearing panels can be appealed to the Board of Directors on the same bases as dismissals by the Grievance Committee.

Where such issues are considered at a pre-hearing meeting of the hearing panel, the chair will determine whether the parties may be present, and the extent to which their participation will be permitted. (*Revised 05/14*)

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 and are not and will not act as the complainant's advocate or representative. 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. *(Revised 11/14)*

- (b) Upon its own motion the Grievance Committee may, and upon instruction of the 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, and, if the evidence of unethical conduct warrants a hearing, shall prepare a complaint, refer it to the Professional Standards Administrator, and designate one of its members to present the case at the subsequent hearing on its behalf as complainant. However, no member of the Grievance Committee shall serve as a member of the Hearing Panel. *(Revised 4/94)*
- (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 transmittal of the dismissal notice using Form #E-22, Appeal of Grievance Committee Dismissal of Ethics Complaint. 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. 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. Appeals of dismissals shall be heard at the Directors' next regularly scheduled meeting or a special meeting designated for that purpose, but no later than ten (10) days after receipt of the appeal. The Directors' decision will be transmitted to the parties within five (5) days from the date of the decision. If the Directors determine that the complaint or portions of the complaint were improperly dismissed by the Grievance Committee, they shall refer the complaint or the appropriate portions of the complaint to the Professional Standards Committee for a hearing. If referred for hearing, the Professional Standards Administrator 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 11/15)*



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. 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 5/06)*

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. 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 5/06)*

- (e) If an ethics respondent resigns or otherwise causes membership in the Board to terminate after an ethics complaint is filed but before final action is taken by the Board of Directors, the Professional Standards Administrator shall cause the complaint to be forwarded 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 Professional Standards Administrator is unable to determine if the respondent holds membership in another Board, the complaint shall continue to be processed until the decision of the association with respect to disposition of the complaint is final consistent with Section 20, Initiating an Ethics Hearing, or Section 23, Action of the Board of Directors, *Code of Ethics and Arbitration Manual*.* If an ethics respondent resigns or otherwise causes membership in all Boards to terminate before an ethics complaint is filed alleging unethical conduct occurred while the respondent was a REALTOR®, the complaint, once filed, shall be processed until the decision of the association with respect to disposition of the complaint is final consistent with Section 20, Initiating an Ethics Hearing, or Section 23, Action of the Board of Directors, *Code of Ethics and Arbitration Manual*.* In any instance where an ethics hearing is held subsequent to an ethics respondent's resignation or membership termination, any discipline ratified by the Board of Directors shall be held in abeyance until such time as the respondent rejoins an

*Failure of the respondent to attend will not prevent a hearing from being held.

association of REALTORS®. In any instance where a complaint is transferred to another Board, the complainant shall be so advised. *(Revised 5/16)*



NOTE: Adoption of the following expedited ethics administration procedures (Sections 20 [f-q]), is at the option of each Member Board.

- (f) 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 Professional Standards Administrator, dated and signed by the complainant, stating the facts on which it is based (Form #1, Complaint, **Part Nine**); provided, however, that the complaint must be 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. *(Revised 11/97)*
- (g) Any complaint alleging a violation of the Code of Ethics by a Board Member or by any other person subject to the disciplinary authority of the Board, will be scheduled for review by the Grievance Committee (or by a panel thereof) at the next regular meeting. It will be a matter of local determination whether responses will be sought or accepted in instances where these optional enforcement procedures are utilized. *(Revised 11/04)*
- (h) If the Grievance Committee concludes that the complaint is vague, overly general, does not allege violations of specific Article(s), or is otherwise insufficient on its face, the complaint shall be referred back to the complainant accompanied by the Grievance Committee's initial conclusions. The complainant shall be free to refile an amended complaint.
- (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 (or Hearing Panel) Dismissal of Ethics Complaint. 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)*
- (j) If the Grievance Committee concludes that the complaint alleges conduct which, if taken as true, could support a possible violation of the Code of Ethics, then staff or counsel, or in the absence of staff or counsel, the Grievance Committee Chairperson will ascertain whether or not there were any prior violations of the Code of Ethics in the past three (3) years. The complaint will then be sent to the respondent together with a response form (Form #E-20, Notice to Respondent [Ethics] and Optional Waiver of Right to Hearing), which will advise the respondent of the complaint; which will ask the respondent to affirm that the respondent has not been found in violation of the Code of Ethics by any Board within the past three (3) years; which will give the respondent an opportunity to waive the right to a hearing by acknowledging the conduct alleged in the complaint and by agreeing to accept discipline which will not exceed a fine in excess of \$15,000 or suspension for a period of thirty (30) days should a violation of the Code ultimately be determined. Any response provided cannot contest the facts stated in the complaint but may offer information in mitigation of any discipline that might be imposed. *(Revised 05/14)*
- (k) Alternatively, the respondent has the right to a hearing pursuant to the procedures established in **Part Four** of this Manual.
- (l) If the respondent does not acknowledge the conduct alleged in the complaint or waive the right to a hearing, or does not respond within ten (10) days from transmittal of the complaint, a hearing shall be scheduled in the manner provided for in Section 21, Ethics Hearing, beginning with the five (5) day deadline for the Professional Standards Committee chair to select a hearing date. *(Revised 5/16)*
- (m) If the respondent waives the right to a hearing and acknowledges the conduct alleged in the complaint, such elections will be affirmatively indicated on the response form which shall be returned to the Grievance Committee Chairperson (or staff or counsel) within ten (10) days from transmittal of the complaint to the respondent. The Grievance Committee Chairperson (or staff or counsel) will verify the respondent's assertions as to prior violations in the past three (3) years. In the absence of any prior violation within the past three (3) year period, the complaint will be referred to a panel of the Professional Standards Committee for consideration within thirty (30) days. The panel shall be appointed pursuant to the procedures established elsewhere in this Manual. *(Revised 11/14)*
- (n) The panel of the Professional Standards Committee will meet in executive session. Neither the complainant nor the respondent will be present. Board staff and counsel will be present as deemed necessary by the Chairperson. The initial question to be determined by the panel will be whether the allegations in the complaint, as acknowledged and agreed to by the respondent, support a violation of one or more of the Articles of the Code of Ethics. The panel shall prepare a brief, concise decision which shall include findings of fact, conclusions, and a recommendation for discipline if a violation is found. Discipline that may be imposed, if a violation is determined, may only include one or more of the following: letter of warning or reprimand, mandatory attendance at a relevant educational program, suspension for thirty (30) days, or a fine not in excess of \$15,000. In addition to imposing discipline, the Hearing Panel can also recommend to the Board of Directors that the disciplined member be put on probation. Probation is not a form of discipline. *(Revised 11/14)*
- (o) The decision of the panel will be filed with the Professional Standards Administrator the day of the hearing, or no later

than forty-eight (48) hours following the hearing.* The procedures for dissemination of the decision shall be those in Section 22(b), Decision of a Hearing Panel. Appeals of decisions shall be pursuant to Section 23, Action of the Board of Directors, of this Manual. (*Revised 11/14*)

- (p) The expedited Code enforcement procedures established in the *Code of Ethics and Arbitration Manual* are available only to REALTORS® holding primary or secondary membership in the Board enforcing the Code or other membership duties and are not available to REALTORS® who become subject to the Code of Ethics or other membership duties pursuant to their participation in or access to MLS under board of choice. (*Adopted 11/96*)
- (q) Where an ethics complaint names more than one respondent, the expedited Code enforcement procedures are available only when all respondents are eligible and all respondents elect to utilize these procedures. (*Adopted 11/98*)

Section 21. Ethics Hearing

- (a) After a complaint alleging a violation of membership duty (duties) has been referred to the Professional Standards Administrator by the Grievance Committee with instruction to arrange a hearing, the Professional Standards Administrator shall serve a copy of the complaint on each party complained of (hereafter called the respondent) and notify the respondent that the respondent may file a written reply (Forms #E-2, Notice to Respondent [Ethics], and #E-3, Reply [Ethics], **Part Six**) with the Professional Standards Administrator within fifteen (15) days of the request for response being transmitted. A Hearing Panel may accept late filing of the reply at its discretion. The Professional Standards Administrator may require the complainant to supply the necessary number of copies of the complaint and the respondent to supply the necessary number of copies of the reply, except that such requirement shall not be made of a complainant who is not a Board Member. (*Revised 11/14*)

The Professional Standards Administrator will inform the Professional Standards Committee Chair of the referral and the Chair shall select a hearing date no later than five (5) days after the Grievance Committee's decision to forward for hearing is final. (*Revised 5/16*)

- (b) The Professional Standards Administrator shall provide a copy of the reply (if any) to the complainant within five (5) days from receipt of the response. The Professional Standards Administrator shall also provide copies of the complaint and reply (if any) to the Board President and Chairperson of the Professional Standards Committee, or notify each that no reply has been filed (unless the President and/or Professional Standards Chairperson indicate that they do not wish to receive copies or be so informed). (*Amended 5/16*)

- (c) The Professional Standards Administrator shall, concurrently with the notification that the ethics complaint has been referred for hearing, transmit to each of the parties a list of the names of members of the Professional Standards Committee (See **Part One**, Section 2, (a) through (f), Qualification for Tribunal, **Part Six**, Form #E-6, Notice of Right to Challenge Tribunal Members, and Form #E-7, Challenge to Qualification by Parties to Panel Members). If a party challenges one or more members, the challenge form must be returned to the Professional Standards Administrator no later than ten (10) days after the date the challenge forms were transmitted to the party. No later than five (5) days after the challenge forms are due, the Professional Standards Committee Chairperson shall appoint, from the names not successfully challenged by either party, three (3) or more members for a Hearing Panel, 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. If the complainant or respondent is a REALTOR-ASSOCIATE® or a REALTOR® other than a principal, at least one member of the Hearing Panel shall be a REALTOR-ASSOCIATE® or a REALTOR® other than a principal. It shall be a membership duty of anyone so appointed to serve on the Hearing Panel unless disqualified. A party will be deemed to have waived all objections to any person whose name is not challenged. If challenge to members of the Professional Standards Committee results in an insufficient number of members to constitute a panel, the President may appoint other qualified Board Members to serve as panel members. The Chairperson of the Professional Standards Committee (or the Hearing Panel itself) shall designate the time and place of the hearing, and the Professional Standards Administrator shall notify the complainant and the respondent (Form #E-8, Official Notice of Hearing, **Part Six**) minimally twenty-one (21) days before the hearing.* An appearance at a hearing without objection by a party will constitute a waiver of any defective notice of hearing. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the request for continuance would deny the requestor a fair hearing. (*Revised 11/14*)

- (d) The Chairperson of the panel shall prescribe any procedure for the hearing not inconsistent with these provisions.**
- (e) Complainants may withdraw their complaints at any time prior to adjournment of the ethics hearing. However, if complainant withdraws the complaint after transmission of the Grievance Committee's decision to forward the complaint to a hearing and prior to adjournment of the ethics hearing, the complainant may not resubmit the complaint on the same matter. If complainant withdraws the complaint before transmission of the Grievance Committee's decision to forward the complaint to a hearing, the complainant may resubmit the complaint

*The Hearing Panel's decision shall be considered final only when it is in writing and signed by members of the panel following their personal review and any review by legal counsel which may be required.

*Form #E-9, Outline of Procedure for Ethics Hearing, **Part Six**, should accompany the Official Notice of Hearing or be otherwise provided to the parties prior to the hearing.

See **Part Five, Conduct of an Ethics Hearing.

on the same matter so long as it is filed within the 180-day filing deadline as defined in this Manual. If a complaint is withdrawn by the complainant after the Grievance Committee determines the complaint requires a hearing, it will be referred back to the Grievance Committee to determine whether a potential violation of the public trust (as defined in Article IV, Section 2 of the National Association's Bylaws) may have occurred. Only where the Grievance Committee determines a potential violation of the public trust may have occurred may the Grievance Committee proceed as the complainant. *(Amended 5/16)*

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. *(Amended 4/91)*

(f) Amendment of complaint:

(1) At any time prior to the hearing of the complaint, the complainant may file an amended complaint with the Professional Standards Administrator (excluding amendments pertaining to an Article previously dismissed by the Grievance Committee relating to previously charged respondents). If an amended complaint is filed prior to the hearing, the respondent shall be notified, given a copy, and provided the opportunity to file an amended response. At any time prior to the hearing of the complaint, the Hearing Panel may name the REALTOR® principal as a respondent. Complaints cannot be amended to add, or substitute, other individuals as complainants except as mutually agreed to by the parties. *(Revised 5/15)*

(2) At any time during the hearing, the complaint may be amended either by the complainant or upon motion of the Hearing Panel to add previously uncited Articles or additional respondents. Neither the complainant or the Hearing Panel may bar the other from making such amendments. Amendments to include Articles previously dismissed by the Grievance Committee may be made only on the motion of the Hearing Panel. In such event, the hearing, with the concurrence of the respondent, may proceed uninterrupted or be reconvened on a date certain, not less than fifteen (15) or more than thirty (30) days from the hearing date unless a "late" witness is allowed and then not less than five (5) days from the hearing date. If the respondent knowingly waives his right to the adjournment, the record should reflect the fact that the respondent was aware of the right to an adjournment but chose to proceed with the hearing without interruption on the basis of the amended complaint. If the hearing is adjourned to be reconvened at a later time, the amended complaint shall be filed in writing, signed by the complainant or by the Chairperson of the Hearing Panel, and shall be promptly served on the respondent as in all other cases provided herein. However, in any instance where a Hearing Panel amends an ethics complaint pending before

it, the respondent(s) shall be given the choice of proceeding before the same Hearing Panel (either without interruption or when reconvened pursuant to the procedures established elsewhere in this Section) or having the complaint considered in a new hearing before a different Hearing Panel.

To prevent the appearance of bias, at no time during or after an ethics hearing may the Hearing Panel or any appellate body refer concerns regarding potentially unethical conduct to the Grievance Committee. This is based on the premise that the fundamental right and primary responsibility to bring potentially unethical conduct to the attention of the Grievance Committee rests with the parties and others with firsthand knowledge. This prohibition in no way limits or restricts the Hearing Panel from amending pending complaints as otherwise provided for in this section. *(Amended 11/16)*

- (3) In the event that the complaint scheduled for a hearing is from a member of the public who refuses or is unable to attend the hearing and who has not requested a continuance in writing or who has not been granted a continuance, 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., that there is 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 5/12)*

If the Grievance Committee determines that there is insufficient information for a Hearing Panel to consider, the complaint shall be dismissed.

In the event the complaint scheduled for hearing is from a REALTOR® or REALTOR-ASSOCIATE® who has not requested a continuance in writing or who has not been granted a continuance, and 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. *(Revised 5/12)*

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., that there is 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)*

- (g) In the event that the respondent fails to appear at a duly noticed hearing without first obtaining a continuance or adjournment thereof, the Hearing Panel may proceed with the hearing in the respondent's absence and shall reach its decision based on the evidence made available at the hearing. Thereafter, all other procedures shall follow as hereinafter provided.

Where an ethics hearing takes place in a respondent's absence, the respondent is still entitled to be represented by counsel. Counsel may make opening and closing statements, call witnesses, cross-examine witnesses called by other parties, and introduce affidavits, documents, and other admissible relevant evidence. Counsel may not testify to events and facts of which counsel has no first hand knowledge. Hearing Panels should be instructed by the Chair that counsel's arguments do not constitute testimony. (*Adopted 5/99*)

- (h) Upon notice by the Professional Standards Administrator, the parties shall with diligence present to the panelists in writing such statements and proof which they deem necessary to support their positions. Proof may be submitted in the form of affidavits or otherwise. The Hearing Panel may require that statements be verified by affidavits or that accuracy or authenticity of any documents or other papers submitted be verified by affidavit. At the hearing, the panelists shall receive any further written statements, documents, or other papers, shall hear oral testimony and determine what personal appearances shall be made by the parties, and shall regulate the holding of hearings.* The Hearing Panel may receive and consider any evidence it deems material and proper, including evidence of experts. Each party is responsible for the expenses of expert witnesses he calls. Parties to the ethics complaint shall be entitled to have counsel present at any hearing. Each party is responsible for the expenses of his respective counsel. (*Adopted 11/96*)

Section 22. Decision of Hearing Panel

- (a) The decision of the Hearing Panel shall be by a simple majority vote and in writing (Form #E-11, Decision [Ethics], **Part Six** and the Professional Standards Training Guide) and shall contain findings of fact and a statement of the disciplinary action recommended, if any. Under no circumstances can the Board award money "damages" in an ethics proceeding. The decision shall include a clear, concise, and objective recitation of the specific facts upon which the Hearing Panel based its conclusion. Such decision shall not be disclosed during the ethics proceeding, or any appeal, to any persons except the Directors, the complainant, the respondent, Board legal counsel, and the Professional Standards Administrator. However, failure of confidentiality shall not invalidate the decision. The decision shall be filed with the Professional Standards Administrator the day of the hearing, or no later than forty-eight (48) hours following the hearing.** (*Revised 11/14*)

*Such hearings should be conducted according to **Part Five**, Conduct of an Ethics Hearing.

**The Hearing Panel's decision shall be considered final only when it is in writing and signed by members of the panel following their personal review and any review by legal counsel which may be required.

Copies of the decisions disseminated pursuant to these procedures shall be complete and unedited unless an Association, by affirmative action of its Board of Directors, adopts procedures under which decisions presented to the Board of Directors for ratification will not include the names of the parties. In the event the respondent is found in violation, the Hearing Panel will consider all records of previous violations and sanctions imposed, whether by the current or by any other Board or Association, in the member's file in determining discipline, and the rationale for the current disciplinary action can be provided to the parties and the Directors as part of the decision. The Hearing Panel's consideration will include whether prior disciplinary matters involve discipline that was held in abeyance and that will be triggered by a subsequent violation (including the matter currently under consideration by the Hearing Panel). (*Amended 5/17*)

- (b) The Professional Standards Administrator shall transmit a copy of the decision to the complainant and respondent within five (5) days after the Professional Standards Administrator has received the Hearing Panel's decision in writing, except that reasonable delay shall not invalidate the Board's procedures nor the decision (e.g., when it is necessary to obtain association counsel's review). (*Revised 11/14*)
- (c) To avoid any appearance of bias, ethics Hearing Panels shall make no referrals of ethical concerns to the Grievance Committee. This is based on the premise that the fundamental right and primary responsibility to bring potentially unethical conduct to the attention of the Grievance Committee rests with the parties and others with firsthand knowledge. (*Adopted 11/96*)

Section 23. Action of the Board of Directors

- (a) Within twenty (20) days after the Hearing Panel's final decision has been transmitted, the complainant or the respondent may file an appeal with the President.*** (*Revised 11/14*)
- (b) If no appeal is filed, the Directors will adopt the Hearing Panel's recommendation and issue its order accordingly (at its next regularly scheduled meeting or a special meeting designated for that purpose, but no later than thirty [30] days after the date the Hearing Panel's decision was transmitted to the parties), unless: (*Revised 11/14*)
- (1) the Directors, if concerned with a possible procedural deficiency, refer the decision back to the Professional Standards Committee for a new hearing and recommendation by a different Hearing Panel; or
 - (2) the Directors are concerned with the appropriateness of the recommendation of sanction, in which case the Directors

***Appeal is provided only from decisions rendered in hearings of alleged unethical conduct, and not from the decision of an arbitration panel. However, the Board of Directors reserves the right to review procedures of any ethics or arbitration hearing to ensure compliance with the governing documents of the Board and to rule thereon; and in arbitration hearings, a limited form of appeal is provided only in respect of alleged irregularities related to the arbitration as are alleged to have deprived the party of due process.

may impose alternative discipline that does not exceed that recommended by the Hearing Panel, or may refer the decision back to the original Hearing Panel for further consideration and recommendation accompanied by the Directors' concerns regarding the proposed discipline (Hearing Panels are not required to accept the Directors' recommendation to increase discipline. In instances where the Hearing Panel increases discipline, the respondent(s) will have an additional twenty (20) days from the date the Hearing Panel's revised decision has been transmitted to appeal the revised discipline); or (*Revised 11/16*)

- (3) the consequences for noncompliance with discipline are not specified, in which case the Directors must refer the decision back to the original Hearing Panel for determination of the consequences for noncompliance (in such instances, the respondent(s) will have an additional twenty (20) days from the date the Hearing Panel's revised decision has been transmitted to appeal only the severity of the consequences for noncompliance); or (*Adopted 5/16*)
- (4) the Directors conclude the findings of fact do not support a violation of the Code of Ethics, in which case the complaint will be dismissed.

In such matters, advice of Board legal counsel should be requested and considered. (*Revised 11/14*)

- (c) All appeals must be in writing and must be accompanied by a deposit with the President in the sum of \$ _____ (not to exceed \$500). In cases where a single appeal is filed jointly by more than one party, only one filing fee may be assessed. The appeal should clearly indicate the bases on which the Hearing Panel's decision and/or recommendation for discipline is being challenged — (1) misapplication or misinterpretation of an Article(s) of the Code of Ethics; (2) procedural deficiency or any lack of procedural due process; (3) the discipline recommended by the Hearing Panel — and set forth in reasonable detail the facts and evidence to support the bases cited. The complainant may appeal based only on alleged procedural deficiencies or other lack of procedural due process that may have deprived him of the opportunity for a full and fair hearing. The written request for appeal shall be reviewed within ten (10) days after the appeal was transmitted to the Association 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. If determined to be insufficient, it shall be returned to the appellant accompanied by an explanation and a request for additional detail to be received by the Board within ten (10) days of notice. This initial administrative review is not a decision on the merits of the appeal request but is only intended to ensure compliance with the requirement that an appeal clearly set forth all bases that will be presented to the Board of Directors for their consideration. 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 11/14*)

- (d) When a request for appeal (as originally filed if in proper form, or as originally filed if no amendment is submitted, or as amended even if still deemed to be lacking) is received, the Professional Standards Administrator shall, within one (1) day, as originally filed or as amended, send a copy to the other party, notify all parties at least ten (10) days in advance of the time and place of hearing by the Directors (including challenge Forms #E-6 and #E-7, **Part Six** of this Manual), and bring the matter before the Directors for hearing at their next regular meeting or at a special meeting called by the Professional Standards Administrator for the purpose, but no later than thirty (30) days after the date of receipt of the appeal. The Professional Standards Administrator shall provide to the Directors in advance of the hearing, copies of the complaint, response, the Hearing Panel's findings of fact and recommendation of discipline, if any, the President's correspondence, if any, and the appeal request or amended appeal request, if any. The Directors shall be advised that the information is confidential and not to be discussed with others at any time. (*Revised 11/14*)

- (e) At the hearing before the Directors, the Chairperson of the Hearing Panel (or the Chairperson's designee) shall present a transcript of the case or, if there is no transcript, shall summarize the case. Either party shall be entitled to offer corrections to the summary. Either party may present to the Directors reasons why the Hearing Panel's recommendation should be followed or not, but no new evidence shall be received (except such new evidence as may bear upon a claim of deprivation of due process), and the appeal shall be determined on the transcript or summary. (*Amended 5/09*)

- (f) The Directors shall transmit their written decision within five (5) days of the appeal hearing. Their decision may be to adopt or modify the recommendation of the Hearing Panel, including the discipline proposed, or the Directors will dismiss the matter if they conclude the findings of fact do not support the Hearing Panel's conclusion as to unethical conduct. The Directors, if concerned with a substantial procedural deficiency, shall refer the decision back to the Professional Standards Committee for a new hearing and recommendation by a different Hearing Panel. If, however, the Directors are concerned with the appropriateness of the recommendation of sanction, they may impose alternative discipline that does not exceed that recommended by the Hearing Panel, or may refer the decision back to the original Hearing Panel for further consideration and recommendation accompanied by the Directors' concerns regarding the proposed discipline. In such matters, the advice of Board legal counsel should be requested and considered. (*Amended 05/15*)

- (g) If the recommendation of the Hearing Panel is adopted, the money deposited by the appellant shall pass into the general treasury of the Board. If the recommendation is rejected, the deposit shall be returned to the party who made the deposit. If the recommendation is modified, the Directors shall determine the disposition of the deposit.

- (h) If the recommendation of the Hearing Panel is modified, or if the charge is dismissed, the Directors shall state their reasons in writing, but failure to do so shall not invalidate the decision of the Directors. Under no circumstances may the discipline exceed that recommended by the Hearing Panel. *(Revised 5/17)*
- (i) The decision of the Directors is final, and each member, by becoming and remaining a member, agrees not to seek review in any court of law in the absence of willful or wanton misconduct.
- (j) Upon final action by the Directors, the President shall disseminate to the complainant, the respondent, the Chairperson and members of the Hearing Panel, Association legal counsel, the President of any other Association in which the respondent holds membership, and any governmental agency as directed by the Board of Directors such notice of the action as the President deems appropriate under the circumstances provided, however, that the nature, form, content, and extent of the notice shall be specifically approved by Association legal counsel prior to dissemination.

Association Members, other than those specified, shall not be notified except with respect to suspension or expulsion of membership of the Association Member, or unless one of the publication options in Professional Standards Policy Statement 45, Publishing the Names of Code of Ethics Violators, has been adopted, or unless notification is required to ensure compliance with the Association's bylaws (e.g., where a petition for removal of an officer or director must state the reason(s) an officer or director is deemed disqualified from further service). *(Revised 05/18)*

Final ethics decisions holding REALTORS® in violation of the Code of Ethics must be forwarded to the state real estate licensing authority in instances where there is reason to believe that the public trust may have been violated. The "public trust," as used in this context, refers to demonstrated misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm. *(Adopted 11/99)*

NOTE: Associations are encouraged to publish periodic Code Enforcement Activity Reports specifying the number of complaints filed for the given period, the Articles of the Code of Ethics charged, the number of complaints dismissed by the Grievance Committee, the number of violations of particular Articles, the number of cases resulting in violations or, conversely, no violations, the number of cases in which sanctions were imposed, the range of sanctions imposed, and other appropriate information. (See Form #E-17, Ethics Activity Report).

With respect to arbitration, such report could include the number of arbitration requests received, the number of arbitration requests dismissed without hearing, the number of mediations conducted, the number of arbitration hearings held, and other relevant information, provided that no Code

Enforcement Activity Report shall include the names of individuals or firms. *(Revised 11/00)*

- (k) Any discipline imposed 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 by the date specified. In the absence of such a provision, failure to comply with the discipline imposed should not be considered grounds for an additional ethics hearing, but rather should constitute the basis for consideration by the Board of Directors with regard to any additional action required to ensure compliance with the original discipline imposed. In the event that additional penalties are contemplated, the party failing to comply with the discipline originally imposed should have the opportunity to appear before the Board of Directors to explain the failure to comply. Absent an explanation acceptable to the Directors, additional discipline, including possible suspension or expulsion from membership, may be imposed in a manner consistent with the procedures established in the *Code of Ethics and Arbitration Manual* of the Board, and the notice of the Directors should include a date by which any proposed discipline will be imposed or by which implementation of sanction shall automatically occur.

- (l) If the respondent is currently on probation as the result of an earlier proceeding, the Directors, upon reviewing the findings of fact and recommendation for discipline resulting from the subsequent hearing, shall also determine whether to impose the discipline that was held in abeyance during the probationary period. The Directors shall consider whether the subsequent ethics violation occurring during the probationary period was minor, inadvertent, or otherwise unrelated to the original violation in making their determination. *(Adopted 5/87)*

- (m) Appeals to the Board of Directors may be heard by a panel of Directors appointed by the President for that purpose (or, alternatively, by the Board's Executive Committee). Five (5) Directors or a quorum of the Board of Directors, whichever is less, shall constitute such an appeal panel, which shall act on behalf of the Board of Directors. The decision of the appeal panel (or Executive Committee) shall be final and binding and shall not be subject to further review by the Board of Directors. *(Revised 11/91)*

Section 24. Initial Action by Directors

If the complainant alleges that a member has improperly refused to submit a dispute to arbitration (or mediation if required by the Board), the complaint shall not be referred to the Grievance Committee or a Hearing Panel, but shall be brought before the Board of Directors at the next regular meeting or at a special meeting called by the President for that purpose. The procedures for notices, time of notice, and hearing prescribed for matters before a Hearing Panel shall apply. The sole question of fact for the Directors to decide will be whether the respondent has failed to submit an arbitrable matter to arbitration or mediation in violation of Article 17. *(Revised 11/11)*

There can be no charge that there has been a refusal to arbitrate (or mediate if required by the Board) until the Grievance Committee determines the matter is arbitrable and of a mandatory nature and the respondent fails to submit to arbitration or mediation before the Board. *(Revised 11/11)*

 Upon determination that the member has refused to arbitrate or mediate a properly arbitrable matter, the Board of Directors may direct the implementation of appropriate sanction and should, if it has reason to believe that the imposition of sanction will become the basis of litigation and a claim for damages consequent to such sanction, delay the effective date of implementing the sanction to a date following receipt by the Board of a judicial decision in a petition for declaratory relief filed by the Board to confirm the propriety of its action. *(Revised 11/11)*

On the other hand, if the complaint against the member is that, having properly submitted a dispute to arbitration or mediation, the member has refused to abide by the award or the resulting agreement, such refusal should not be referred to the Grievance Committee as a violation of the Code of Ethics unless it reflects an established pattern or practice of noncompliance with the commitment to arbitrate or mediate. A refusal to abide by an award in arbitration or any resulting agreement in mediation should be enforced in the manner set forth in **Part Ten**, Section 56, Enforcement.* *(Revised 11/11)*

Section 25. Preliminary Judicial Determination Prior to Imposition of Discipline

If the Board of Directors has reason to believe that the imposition of a proposed sanction will become the basis of litigation and a claim for damages, it may specify that the discipline shall become effective upon entry of the final judgment of a court of competent jurisdiction in a suit by the Board for declaratory relief declaring that the discipline proposed violates no rights of the member.**

*Refer to Appendix III to **Part Ten** for the rationale for use of judicial enforcement of arbitration awards when a Board Member refuses to pay an award in arbitration.

Refer to Rationale of Declaratory Relief Procedure provided in Appendix IV to **Part Four.