



Before You File an Ethics Complaint

Background

The Upstate Alliance of REALTORS® is responsible for enforcing the REALTORS® Code of Ethics as set forth by the National Association of REALTORS®. The Code of Ethics imposes duties on REALTORS® that go above and beyond the duties imposed by law or regulation. Established in 1913, the Code of Ethics is a living document that serves to measure professional conduct, define obligations to the public interest, and support the law. It applies only to real estate professionals who choose to become REALTORS®.

Difficulties can result from misunderstanding, miscommunication, or lack of communication during a real estate transaction. If you have a problem with a real estate professional, we recommend your first course of action be to speak with them or with a principal broker in their firm directly. Open, constructive discussion may resolve questions or differences, eliminating the need for further action.

If the direct approach doesn't work, however, we urge you to contact us. The Upstate Alliance of REALTORS® has a variety of dispute resolving processes that might include mediation, arbitration, or ethics hearings.

If you have a grievance you wish for us to help resolve, consider filing an ethics complaint. When filing an ethics complaint, you will want to keep in mind that . . .

- Only REALTORS® are subject to the Code of Ethics. If the real estate professional (or their broker) you are dealing with is not a REALTOR®, your only recourse may be the state real estate licensing authority or the courts.
- Our process determines whether the Code of Ethics has been violated, but not whether the law or real estate regulations have been broken. Those decisions can only be made by the licensing authorities or the courts.
- We can discipline REALTORS® for violating the Code of Ethics. Typical forms of discipline include attendance at educational courses and seminars (designed to enhance REALTORS®' understanding of the ethical duties or other responsibilities of real estate professionals), warnings, reprimands, fines, suspension or termination of membership. We cannot require REALTORS® to pay money to you, award "punitive damages", or suspend or revoke a real estate professional's license.
- The primary emphasis of discipline for ethical lapses is educational to create a heightened awareness of and appreciation for the duties the Code imposes. At the same time, more severe forms of discipline, including fines, suspension, and/or termination of membership may be imposed for serious or repeated violations.
- The outcome of the process is designed to ensure members of the public, as well as other real estate industry professionals, receive professional service from REALTORS®.

Filing an ethics complaint

We can provide you with information on the procedures for filing an ethics complaint and are available to assist you by providing technical assistance in preparing a complaint in proper form and with proper content.

Here are some general principles to keep in mind:

- Ethics complaints must be filed with our office within one hundred eighty (180) days from the time you first knew (or reasonably should have known) that potentially unethical conduct took place. (Deadlines may be suspended if informal dispute resolutions processes are used.)
- The REALTORS® Code of Ethics consists of seventeen (17) Articles. The duties imposed by many of the Articles are explained and illustrated through accompanying narratives called the Standards of Practice.
- Your complaint should include a narrative description of the circumstances that lead you to believe the Code of Ethics may have been violated. We recommend you include a timeline of events as well.
- Your complaint must cite one or more of the Articles of the Code of Ethics that you feel were violated.

Before the hearing

Your complaint will first be reviewed by the Grievance Committee. Their job is to review complaints to determine if the allegations made, if taken as true, might support a violation of the Article(s) cited in the complaint. The Grievance Committee may:

- Dismiss your complaint, which does not mean they don't believe you. Rather, it means that they do not feel that your allegations would support a hearing panel's conclusion that the Article(s) cited in your complaint had been violated. This is why your complaint should include clear points to support which Article(s) you feel were violated, and how. If your complaint is dismissed as not requiring a hearing, you can appeal that dismissal to the Board of Directors.
- Forward your complaint for hearing. Forwarding the complaint for a hearing does not mean they have decided the Code of Ethics has been violated. Rather, it means they feel that if what you allege in your complaint is found to have occurred by the hearing panel, that panel may have reason to find that a violation of the Code of Ethics occurred.

Preparing for the hearing

We will provide an outline of the hearing proceedings to you. Familiarize yourself with them prior to the hearing. In particular you will want to know about challenging potential panel members, your right to counsel, calling witnesses, and the burdens and standards of proof that apply. Additional considerations include:

- You have the ultimate responsibility ("burden") of proving that the Code of Ethics has been violated. The standard of proof that must be met is "clear, strong and convincing," defined as, ". . . that measure or degree of proof which will produce a firm belief or conviction as to the allegations sought to be established." Consistent with American jurisprudence, respondents are considered innocent unless proven to have violated the Code of Ethics.
- You are not required to have legal counsel or witnesses, however if you feel they can help support your position, you may. If you wish to call witnesses and have a legal representative present, make sure they will be available on the day of the hearing. Continuances are a privilege - not a right.
- Be sure you have all the documents and other evidence you need to present your case.

- Organize your presentation in advance. Know what you are going to say and be prepared to demonstrate what happened **and how you believe the Code of Ethics was violated**.

At the hearing

Hearing Panels are made up of unpaid volunteer members who give of their time as an act of public service. They have participated in special educational programs to become well-versed in the Code of Ethics and hearing procedures. Their objective is to be fair, unbiased, and impartial; to determine, based on the evidence and testimony presented to them, what actually occurred; and then to determine whether the facts as they find them support a finding that the Article(s) charged have been violated. As you prepare for the hearing, keep these points in mind:

- Keep your presentation concise, factual, and to the point. Your task is to demonstrate what happened (or what should have happened but didn't), and how the facts support a violation of the Article(s) charged in the complaint.
- Hearing panels base their decisions on the evidence and testimony presented during the hearing. If you have information relevant to the issue(s) under consideration, be sure to bring it up during your presentation.
- You are involved in an adversarial process that is, to some degree, unavoidably confrontational. For the enforcement process to function properly, it is imperative for all parties, witnesses, and panel members to maintain appropriate decorum.

After the hearing

- When you receive the hearing panel's decision, review it carefully.
- Findings of fact are the conclusions of impartial panel members based on their reasoned assessment of all of the evidence and testimony presented during the hearing. Findings of fact are not appealable.
- If you believe the hearing process was seriously flawed to the extent you were denied a full and fair hearing, you may appeal. The fact that a hearing panel found no violation is not appealable.
- Appeals are limited to procedural errors or failures of due process that may have prevented a full and fair hearing. Rehearings are generally granted only when newly discovered evidence comes to light (a) which could not reasonably have been discovered and produced at the original hearing and (b) which might have had a bearing on the hearing panel's decision. Appeals brought by ethics respondents must be based on (a) a perceived misapplication or misinterpretation of one or more Articles of the Code of Ethics, (b) a procedural error or failure of due process, or (c) the nature or gravity of the discipline proposed by the hearing panel.

Conclusion

Many ethics complaints result from misunderstanding or a failure in communication. Before filing an ethics complaint, make reasonable efforts to communicate with your real estate professional or a principal broker in the firm. If these efforts are not fruitful, we can give you the procedures and forms necessary to file an ethics complaint and help you prepare your complaint.