



General Instructions and Information for Filing an Ethics Complaint or Response

Background

Boards and associations of REALTORS® are responsible for enforcing the REALTORS® Code of Ethics. The Code of Ethics imposes duties above and in addition to those imposed by law or regulation which apply only to real estate professionals who choose to become REALTORS®. Many difficulties between real estate professionals (whether REALTORS® or not) result from misunderstanding, miscommunication, or lack of adequate communication. If you have a problem with a real estate professional, you may want to speak with them or with a principal broker in the firm. Open, constructive discussion often resolves questions or differences, eliminating the need for further action. If, after discussing matters with your real estate professional or a principal broker in that firm, you are still not satisfied, you may want to contact the local board or association of REALTORS®. Many boards and associations have informal dispute resolving processes available to consumers (e.g. mediation). If, after taking these steps, you still feel you have a grievance, you may want to consider filing an ethics complaint. You will want to keep in mind that . . .

- Only REALTORS® and REALTOR®-Associates are subject to the Code of Ethics of the National Association of REALTORS®.
- If the real estate professional (or their broker) you are dealing with is not a REALTOR®, your only recourse may be the Department of Real Estate or the courts.
- Boards and associations of REALTORS® determine whether the Code of Ethics has been violated, not whether the law or real estate regulations have been broken. Those decisions can only be made by the licensing authorities or the courts.
- Boards of REALTORS® can discipline REALTORS® for violating the Code of Ethics. Typical forms of discipline include attendance at courses and seminars designed to increase REALTORS®' understanding of the ethical duties or other responsibilities of real estate professionals. REALTORS® may also be reprimanded, fined, or their membership can be suspended or terminated for serious or repeated violations. Boards and associations of REALTORS® cannot require REALTORS® to pay money to parties filing ethics complaints; cannot award "punitive damages" for violations of the Code of Ethics; and cannot suspend or revoke a real estate professional's license.
- The primary emphasis of discipline for ethical lapses is educational; to create a heightened awareness of and appreciation for the duties the Code imposes. At the same time, more severe forms of discipline, including fines and suspension and termination of membership may be imposed for serious or repeated violations.

Filing an Ethics Complaint

- An Ethics Complaint must be filed with the South Bay Association of REALTORS® within 180 days of the occurrence of the alleged unethical conduct by the REALTOR® Member(s), or within 180 days from which the facts complained of could have been known in the exercise of reasonable diligence.
- Your complaint **MUST** include a written narrative description of the circumstances that lead you to believe the Code of Ethics may have been violated. **(If this is not included we cannot process your complaint)** Your narrative must make specific allegations as to which Articles of the Code of Ethics you feel were violated. The burden of proof in ethics hearings is at all times on the complainants.
- **To File Your Complaint:** Fill out the Ethics Complaint Form (D-1) in its entirety and include your written description and all supplemental materials that will assist us in understanding what occurred. This could



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include, but is not limited to, contracts, MLS printouts, email correspondence, letters, etc. Please do not submit originals to the SBAOR. Although Parties are encouraged to bring original documents to a Hearing for examination by the Hearing Panel, the Board will not accept liability for the safekeeping of any original documents. There is no fee for filing an Ethics Complaint.

- You may **email your complaint package to Nikki Vasquez and nikki@southbayaor.com**, fax it to 310-326-5579, or mail it to the SBAOR at 22833 Arlington Avenue, Torrance, CA 90501. If you need assistance in filing your complaint, contact Nikki Vasquez at 310-326-3010.

Before the Hearing

- Upon receipt, the Complaint will be forwarded to the Grievance Committee of the South Bay Association of REALTORS® and reviewed to determine whether the Complaint should move forward to a Professional Standards Hearing.
- The Grievance Committee functions much like a grand jury, to determine which cases should move forward to a Hearing and also whether the Complaint is in the proper format or if additional information is needed and whether the correct Articles of the Code of Ethics are cited. The Grievance Committee may add or delete Articles where appropriate. Dismissal of a particular Article or of the Complaint may be appealed to a panel of the Board of Directors requesting that the original complaint be forwarded to a Hearing Panel as filed. This must be done within 10 days of notice of the decision.
- If the Grievance Committee determines that the Complaint has stated facts that as alleged, if true, could constitute a violation of one or more Articles of the Code of Ethics, then the Committee will recommend that Complaint should move forward to a Hearing.
- The South Bay Association of REALTORS® will serve the Respondent with a copy of the Ethics Complaint along with official Notice that they have been named as a Respondent in an Ethics Complaint.
- Upon Receipt of Notice of an Ethics Complaint, the Respondent will have 15 (fifteen) days from their receipt of the Notice to make a written reply. A copy of the Reply will be forwarded to the Complainant and the parties will be given at least 21 days notice as to the time and place of the Ethics Hearing.
- If no reply is received from the Respondent within fifteen days from service of Notice of Complaint, a Hearing will still be scheduled with notice to both parties. The Hearing Panel may accept a late filing in their discretion, however there is no obligation to accept any late filings. If the Respondent additionally fails or refuses to attend the Hearing, all charges may be taken as true, by default and the Panel may sanction the Member in their discretion.
- Both the Complainant and Respondent will be served with a Notice of Right to Challenge Tribunal Members (Forms D-4 and D-5) and will be given the opportunity to challenge or object to appointment of Members of the Professional Standards Committee prior to their appointment.
- The Complainant and Respondent will each be served with an Official Notice of Hearing indicating the names of the Panel Members appointed to serve on the Ethics Hearing Panel and the date, time and place of the Hearing.
- The Parties will be given at least 21 days notice prior to the Hearing. The Hearings are scheduled on Tuesdays, Wednesdays or Thursdays at 9:30am and will be scheduled by the Professional Standards Administrator.



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- Either party to the action may be represented by legal counsel. The party must give written notice no less than 15 days before the hearing of the name, address and phone number of their attorney to all parties and the Board. Failure to provide this notice may result in a continuance of the hearing, if the Hearing Panel determines that the rights of the other party(ies) require representation.
- It is the responsibility of each party to arrange for witnesses to be present at the time and place designated for hearing. Each party must provide a list of the names of witnesses he intends to call at the hearing to the Professional Standards Administrator not less than 15 days prior to the hearing. Witnesses are permitted to testify and be cross-examined; however they are only allowed to be present for their testimony and may not sit through the entire Hearing.
- The parties shall not discuss the case with any member of the hearing panel or the Board of Directors at any time.
- Both parties should be present in person at the hearing. Failure to appear may result in adverse decision by default.
- In the case of a REALTOR® Member, the refusal to appear may also result in the filing of an Ethics Complaint by the SBAOR for failure to comply with Article 14 of the NAR Code of Ethics.

At the hearing

- Appreciate that panel members are unpaid volunteers giving their time as an act of public service. Their objective is to be fair, unbiased, and impartial; to determine, based on the evidence and testimony presented to them, what actually occurred; and then to determine whether the facts as they find them support a finding that the Article(s) charged have been violated.
- Hearing panels cannot conclude that an Article of the Code has been violated unless that Article(s) is specifically cited in the complaint.
- 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.
- Recognize that different people can witness the same event and have differing recollections about what they saw. The fact that a respondent or their witness recalls things differently doesn't mean they aren't telling the truth as they recall events. It is up to the hearing panel, in the findings of fact that will be part of their decision, to determine what actually happened.
- The hearing panel will pay careful attention to what you say and how you say it. An implausible account doesn't become more believable through repetition or, through volume.
- You are involved in an adversarial process that is, to some degree, unavoidably confrontational. Many violations of the Code of Ethics result from misunderstanding or lack of awareness of ethical duties by otherwise well-meaning, responsible real estate professionals. An ethics complaint has potential to be viewed as an attack on a respondent's integrity and professionalism. For the enforcement process to function properly, it is imperative for all parties, witnesses, and panel members to maintain appropriate decorum.



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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, there are appellate procedures that can be involved. The fact that a hearing panel found no violation is not appealable.
- Refer to the procedures used by the local board or association of REALTORS® for detailed information on the bases and time limits for appealing decisions or requesting a rehearing. Re-hearings are generally granted only when newly discovered evidence comes to light (a) which could not reasonably have been discovered and produced at the original hearing and (b) which might have had a bearing on the hearing panel's decision. Appeals brought by ethics respondents must be based on (a) a perceived misapplication or misinterpretation of one or more Articles of the Code of Ethics, (b) a procedural deficiency or failure of due process, or (c) the nature or gravity of the discipline proposed by the hearing panel. Appeals brought by ethics complainants are limited to procedural deficiencies or failures of due process that may have prevented a full and fair hearing.

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, the local board or association of REALTORS® can give you the procedures and forms necessary to file an ethics complaint or you may want to consider mediation...

Mediation

- Do you have an unresolved dispute, regarding a monetary issue? It may be time to take the next step and consider mediation. Although the majority of real estate transactions close without incident, there is a possibility that a problem or dispute could occur. When that happens, it can be successfully resolved by the parties through normal communication and negotiation. In the past, when negotiations failed, parties took their cases to court. Today, they are taking their disputes to mediation and in most cases can save thousands of dollars in court costs and lawyer fees. Most cases can be successfully mediated if all parties are willing to make a good faith effort to resolve the dispute.
- The South Bay Association of REALTORS® has a Mediation Program available. Our mediators are highly trained and experienced licensed REALTORS®. Contact us today if you are interested in more information about this program.

If you have any questions regarding the Ethics Complaint or Mediation process, please contact Nikki Vasquez at 310-326-3010 or nikki@SouthBayAOR.com.