

Filing Ethics Complaints and Arbitration Requests at Your Board of REALTORS[®]

Compliments of Hancock-Washington Board of REALTORS[®]
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PREFACE

The National Association of REALTORS[®] adopted the Code of Ethics in 1913. Since then, REALTORS[®] everywhere have agreed to meet the Code's high standards.

The professional standards process plays a very important role in a Board of REALTORS[®]. It helps to ensure honorable, faithful, and competent service to clients, customers, and other members of the public by enforcing the Code of Ethics.

The Hancock-Washington Board of REALTORS[®] prepared this document to help you understand the professional standards process.

Q. Do you have a complaint concerning a REALTOR[®]?

A. Before processing a complaint with a Board of REALTORS[®], you must first determine if the real estate agent involved is a REALTOR[®]. Not all real estate agents are REALTORS[®]. Only those who belong to a Board of REALTORS[®] can use the term REALTOR[®].

Q. Is your complaint Ethics or Arbitration?

A. You should determine whether your complaint concerns an ethics matter or an arbitration of a dispute.

An *ethics complaint* charges that a REALTOR[®] violated an Article(s) of the Code of Ethics. Arbitration provides a means for resolving a dispute about a real estate transaction that the parties have been unable to solve themselves.

An *arbitration complaint or request* often involves one member in disagreement with another member, usually over a commission dispute. Sometimes, an arbitration concerns a dispute between a member of the public and a Board member.

If your situation concerns both ethics and arbitration, the Board will handle the arbitration portion separately. The Board will consider the ethics complaint only after it has completed the arbitration. *The Board always holds arbitration first.*

Q. Who may file an ethics complaint?

A. Anyone. Any person, whether a member or not, may file a complaint against a Board member alleging a Code of Ethics violation for any of the Articles from 6 through 23. However, the complaint must:

- 1) be in writing
- 2) be signed by the complainant
- 3) state the facts surrounding the case
- 4) be filed within one year after the facts became known.

The Complainant may file a complaint from any location. However, the Complainant must file it with the Board having jurisdiction over the individual named in the complaint.

Q. Who may file an arbitration request?

A. REALTORS® or non-resident members who are not principals, provided his or her principal broker joins in the request.

*Clients or customers of the REALTOR®

Similar to an ethics complaint, an arbitration request must:

- 1) be in writing
- 2) be signed by the Complainant
- 3) indicate the amount in dispute
- 4) be filed within one year after the facts became known

The Board provides arbitration facilities as a service to its members. Arbitration is *not* a disciplinary proceeding, nor does it award damages. By becoming and remaining a member of a Board of REALTORS® each REALTOR® binds himself to arbitrate certain disputes.

Not every situation may be arbitrated at the Board. Conditions and limitations exist which you must consider. The Board will explain these conditions and limitation to you as the process continues.

*NOTE: Disputes involving clients or customers require that they sign an agreement to arbitrate and to be bound by the arbitration. The Board's Grievance Committee will determine whether the Complainant is a client or a customer and if the dispute is one that the Board can process.

Q. What can the Board do?

A. A Board of REALTORS® possesses limited authority regarding its member. Note the following limitations:

1) The Board cannot try a Board member for the violations of the Maine real estate license law or any other alleged violation of the law. Its jurisdiction only covers violations of membership duties. The Real Estate Commission solely controls the real estate agent's license to sell real estate. If you think a person has violated the law, you should contact another agency.

2) For the same reason, the Board cannot suspend or terminate the license of one of its members.

3) The Board can administer discipline to the REALTOR®. This would happen only in the case of an ethics violation being determined in a due process hearing procedure. The Board can use one or more of the following ways to discipline a member:

- a) send a letter of warning
- b) send a letter of reprimand to the member, with a copy to be placed in the member's file
- c) direct the member to attend an ethics class or other training appropriate to the violation
- d) appropriate and reasonable fine not to exceed \$2500 (this fine is not awarded to the Complainant)
- e) place the member on a period of probation not to exceed one (1) year
- f) suspend the membership of the REALTOR®, not less than thirty (30) days, nor more than one (1) year
- g) expel the member from membership with no reinstatement privilege for 1-3 years, then by application only
- h) suspension of MLS rights

4) An ethics proceeding may not include money damages.

5) The Board can arbitrate certain money disputes and *must* in some situations. But, the member of the public must agree in writing to arbitrate the dispute and to be bound by the decision.

6) An arbitration award may not be more than the amount in dispute. In no circumstances will the Board award 'punitive' damages.

Q. How do you file an ethics complaint?

A. 1) Complete and sign the complaint form (supplied by the Board of REALTORS®). This form requests you to name the REALTOR® (s) in question as the Respondent(s).

2) List the Article(s) of the Code of Ethics that you think the REALTOR® violated. (The Board will also supply you with a copy of the Code of Ethics).

3) Attach an explanation of the situation surrounding the complaint. Be as specific as possible. State what, when, where, why, and how you think the REALTOR® (s) violated each Article.

4) Attach copies of any and all pertinent documents such as listing agreements, addendums, etc. If you have notarized statements from witnesses, include those also.

5) Send the entire package, keeping a copy for yourself, to the Board of REALTORS® to the attention of the Executive Officer. The Grievance Committee will then process your complaint.

Q. How do you file an arbitration request?

A. 1) Complete and sign the request for arbitration form (supplied by the Board of REALTORS®). Name the REALTOR® (s) in question as the Respondent(s).

2) Indicate the amount in dispute.

3) Include an explanation of the situation. State why you feel you are entitled to an award of some kind.

Remember, don't include unethical allegations in your argument. If you think the REALTOR®(s) violated the Code of Ethics, the Board can handle this separately through an ethics complaint.

4) Attach copies of any and all pertinent documents such as listing agreements purchase and sales agreements, closing statements, etc. Also include any notarized statements you may have from witnesses.

5) You must include \$250 deposit with your arbitration request. The prevailing party in an arbitration will receive their \$250 back from the Board.

6) The Board will ask you to sign an arbitration agreement. This indicates your commitment to abide by the decision of the Hearing Panel. Sometimes, the Board won't request this signed agreement until after the Grievance Committee has reviewed your request.

7) Send all of these items to the Board to the attention of the Executive Officer. The Grievance Committee will then process your request.

Remember, it is not unusual for a Board to receive an ethics complaint *and* an arbitration request surrounding the same set of circumstances. If you think the REALTOR® (s) violated the Code of Ethics and you have a monetary dispute with him, you must complete both forms.

Q. How does the Board process the complaint?

A. Two committees of the Board handle the complaints--the Grievance Committee and the Professional Standards Committee. Their functions are described on the following pages.

Grievance Committee

In general, the Grievance Committee functions somewhat like a grand jury. However, it plays a different role in both an ethics complaint case and an arbitration case.

Ethics. The Grievance Committee reviews complaints received by the Board. The Committee determines whether the complaint sufficiently merits further consideration. It does *not* determine guilt or innocence.

After reviewing the complaint, the committee will either:

a) forward the case for a hearing

b) dismiss it, if the complaint is determined to be frivolous, harassing, or unfounded; or

c) postpone its decision to get more information from you or to determine that the case may be more appropriately considered for arbitration.

Also, before they reach a decision, the Committee may request a reply from the Respondent(s) regarding your complaint.

If the Committee dismisses your complaint, you have the right to appeal the dismissal to the Board of Directors. In the case of an appeal, the Directors re-examine the materials submitted to the Grievance Committee. No additional information may be added. The Directors can then either uphold or overturn the Committee's decision.

If your complaint merits further consideration, it will be sent to the Professional Standards Committee for a hearing.

Arbitration. The Grievance Committee's role in arbitration differs from its role in ethics complaints. Here, it functions only to make a preliminary investigation. The results of this investigation will determine whether the matter is subject to Board arbitration.

Arbitration is sometimes a duty and sometimes a privilege. The Grievance Committee must decide whether your situation fits into the "duty" or the "privilege" category.

To determine which category an arbitration fits into, the Grievance Committee must consider these points:

1) Is the request for arbitration acceptable in the *form* as received by the Committee?

2) Are all necessary parties named in the request *for* arbitration?

3) Was the request filed within 180 days after closing of transaction?

4) Is litigation pending on this matter?

5) Are the parties authorized, under the rules, to invoke arbitration?

6) Is the controversy described an arbitrable matter?

7) Is the arbitration mandatory or voluntary to the people involved? (this simply means whether arbitrating the dispute is compulsory, or not)

8) Is the amount in dispute too small or too large, or *is* the matter too legally complex *for* the Board to consider?

Such a review could result in releasing Board members from their obligation to arbitrate. This would free you to seek other recourse in order to resolve the dispute. If the Grievance Committee determines that a matter is arbitrable, it may also notify the parties that a mediation procedure is available as a preliminary, voluntary alternative to arbitration.

In either ethics or arbitration cases, you will be informed promptly of the Grievance Committee's decision. If the Grievance Committee forwards the complaint request for a hearing, it is assigned to the Professional Standards Committee.

Professional Standards Committee

The function of this committee is to hold ethics and arbitration hearings. If the Respondent(s) has not already been requested to reply to your complaint, he will be at this time. A hearing will then be scheduled and you will be notified of the hearing's date, time, and place. These hearings provide an opportunity for the Complainant and the Respondent to explain "his or her side of the story" by presenting testimony and witnesses, if any.

Once all the facts have been presented, a Hearing Panel, consisting of members of the Board chosen on the basis of their experience, temperament, and objectivity, will determine whether the Code of Ethics has been violated, or, in the case of an arbitration, how the dispute should be settled.

The Board will inform you about each step of this process as it occurs. The Board will also give you instructions about the hearing procedures prior to the hearing. The entire process will usually take a minimum of sixty (60) days, but may take longer.

If you have any questions relating to filing your complaint, please call the Executive Officer at 207/667-8668.

The terms REALTOR® and REALTORS® are registered collective membership marks. They may only be used by real estate professionals who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its strict Code of Ethics.

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