



FILING ETHICS COMPLAINTS AND ARBITRATION REQUESTS AT THE Greater Harrisburg Association of REALTORS®

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 an Association of REALTORS®. It helps to ensure honorable, faithful, and competent service to clients and other members of the public by enforcing the Code of Ethics.

Local 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.

The Greater Harrisburg Association of REALTORS® has prepared this information to help you understand the process. For more information call (717) 364-3200 or e-mail Kim Tauriello, Director of Professional Development at kim@ghar.info.

QUESTIONS AND ANSWERS

Q: What if I have a complaint concerning a REALTOR®?

A: Before processing a complaint with an Association of REALTORS®, you must first determine if the agent involved is a REALTOR®. Not all real estate agents are REALTORS®. Only those who belong to an Association of REALTORS® may use the term REALTOR®. Therefore, you must determine if the agent is a REALTOR® and if so to which local Association of REALTORS® an agent belongs. You may do this by calling the Association office at (717) 364-3200.

When joining an Association, all members agree to abide by the Code of Ethics as a continuing condition of membership. It is because of a REALTORS®' obligation to abide by the Code of Ethics that you may file a complaint at an Association of REALTORS®.

Q: Is my complaint Ethics or Arbitration?

A: You need to determine if your complaint concerns an ethics matter or if you are asking for arbitration of a business dispute.

An *ethics* complaint charges that a REALTOR[®] violated one or more Articles of the National Association of REALTORS[®] Code of Ethics.

Arbitration provides a means for resolution of a business contractual dispute involving payment of money related to the real estate transaction when the parties have been unable to resolve the difference among themselves. NOTE: Disputes involving clients of REALTORS[®] require that they sign an agreement to arbitrate and be bound by the arbitration. The Association's Grievance Committee will determine whether or not the dispute is one that the Association can process.

If your situation concerns both ethics and arbitration, the Association will handle the arbitration portion separately. The Association will only consider the ethics complaint after the arbitration matter has been settled. The Association always processes arbitration first and there is no connection between the two matters; each are handled separately from each other.

There is an entirely separate procedure for resolution of disputes between buyers and sellers. This procedure is known as Mediation or Dispute Resolution System. The Association provides this service and can give you information on it, should you require it.

Q: Who may file an ethics complaint?

A: Anyone. Any person, whether a member or not, may file a complaint against an Association REALTOR[®] member, alleging a violation of one or more of the Articles of the Code of Ethics. However, the complaint must:

- 1) Be in typed or printed format on an Ethics Complaint form;
- 2) Be signed by the Complainant;
- 3) State the facts surrounding the case and how they specifically relate to the articles being charged;
- 4) Be filed within 180 days after the facts could be known; and
- 5) Have copies of any supporting documents including any agency agreements.

The Complainant may file a complaint from any location. However, the Complainant must file it with the local Association of REALTORS[®] where the individual REALTOR[®](S) named in the complaint is a member.

Be specific against whom you are bringing charges. In an Ethics Complaint, it is your decision whether or not to also name the Broker in any complaint against a sales agent. In a Request for Arbitration, your dispute is with the Broker, so charges must be filed against him/her.

Q: Who may file an arbitration request?

A: Only the following may request arbitration: REALTORS[®] who are principal brokers; REALTORS[®] who are not principals, provided the principal broker joins in the request; clients of a REALTOR[®].

Similar to an ethics complaint, an arbitration request must:

- 1) Be in writing on a Request for Arbitration form;
- 2) Be signed by the Complainant;
- 3) Indicate the amount in dispute;
- 4) Be filed within 180 days after the facts could all be known.

The Association provides arbitration as a service to its members. Arbitration is **not a** disciplinary proceeding, nor may a participant be awarded damages in arbitration. By becoming and remaining a REALTOR[®], each member promises to arbitrate certain disputes.

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

Q: Is submitting to arbitration mandatory?

A: It depends on the circumstances. A REALTOR[®] may be obligated to arbitrate, or he/she may have a choice as to whether or not to voluntarily participate in an arbitration proceeding conducted by the Association of REALTORS[®].

Q: When is arbitration mandatory/voluntary?

A: Mandatory—When the dispute is:

1. REALTORS[®] who are principal brokers in different firms
2. Clients and REALTOR[®] principals

Voluntary—When the dispute is between:

1. Members in the same firm
2. A REALTOR[®], who is a principal broker, and a non-member principal broker in another firm
3. Customers and REALTOR[®] principals.

NOTE: Principal Broker is a sole proprietor, partner, corporate officer, majority shareholder, or branch office manager of a real estate firm.

Q: What recourse does the Association have?

A: An Association of REALTORS[®] possesses limited authority regarding its members. Note the following limitations:

- 1) The Association cannot charge a member with violations of the Pennsylvania real estate license law or any other law. Its jurisdiction covers only violations of membership duties. The Pennsylvania Real Estate Commission controls the real estate agent's license to sell real estate. If you think a person has violated the license law, you should contact this agency. The number is **(717) 783-3658**.
- 2) For the same reason, the Association cannot suspend or terminate the license of one of its members.
- 3) 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.
- 4) Associations 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.
- 5) 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.
- 6) 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.

- 7) An ethics proceeding may not include money damages.
- 8) The Association can arbitrate certain money disputes and must in some situations. But a member of the public must agree in writing to arbitrate the dispute and to be bound by the decision.
- 9) An arbitration award may not be more than the amount in dispute. In no circumstances will the Association award “punitive” damages.

Q: How do I file an ethics complaint?

- A:**
- 1) Complete and sign the complaint form available from the Association of REALTORS® office. This form requests you to name the REALTOR® in question as the Respondent.
 - 2) List the Articles of the Code of Ethics that you think the REALTOR® violated. Standards of Practice cannot be violated. Use the Article number only.
 - 3) Attach an explanation of the situation surrounding the complaint. Be as specific as possible, referring at all times to the specific Articles of the Code. State what, when, where, why and how you think the REALTOR® violated each Article.
 - 4) **Attach copies of any and all pertinent documents such as listing agreements, purchase agreements, correspondence, etc. If you have notarized statements from witnesses, include those also.**
 - 5) Keep a copy for your records, and send the entire package (Attn: Director of Professional Development) to the Association. The Grievance Committee will then review your complaint.

Q: Are there certain Articles that can or can't be cited?

- A:** Only Articles 1 through 17 may be the basis of a complaint. The Preamble is aspirational and establishes ideals that a REALTOR® should strive to attain. Because of its subjective nature, the Preamble may not be used as a basis for charges of alleged unethical conduct or as the basis for disciplinary action.

Q: How do I file an arbitration request?

- A:**
- 1) Complete and sign the request for arbitration form available from the Association of REALTORS® office. Name the REALTOR® in question as the Respondent.
 - 2) Indicate the amount in dispute.
 - 3) Include an explanation of the circumstances surrounding the situation. State why you feel you are entitled to an award of some kind. Remember, do not include allegations of unethical conduct in your request for arbitration. If you think the REALTOR® violated the Code of Ethics, the Association would handle this separately by means of an ethics complaint.
 - 4) Attach copies of any pertinent documents such as listing agreements, purchase agreements, closing statements, etc. Also include any notarized statements from witnesses.
 - 5) Include a \$250 deposit with your arbitration request.
 - 6) The Association will ask you to sign an arbitration agreement. This indicates your commitment to abide by the decision of the Hearing Panel.
 - 7) Send all items to the Association (Attn: Director of Professional Development). The Grievance Committee will then review your request.

Remember, it is not unusual for an Association to receive an ethics complaint and an arbitration request regarding the same set of circumstances. If you think a REALTOR® violated the Code of Ethics and the situation also involves a monetary dispute, you must complete both forms: request for arbitration and ethics complaint.

Q: Once an ethics complaint or arbitration request is received by the Association, how does it process the complaint/request?

A: Two committees of the Association handle complaints - first the Grievance Committee and then the Professional Standards Committee. Their functions are described below:

GRIEVANCE COMMITTEE

Ethics Complaints The Grievance Committee reviews complaints received by the Association. The Committee determines whether the complaint merits further consideration. It does not determine guilt or innocence. The Committee considers the following:

- 1) Is the complaint in an acceptable form?
- 2) Are all necessary parties named in the complaint?
- 3) Is the respondent named in the complaint a member of the Association, and was the respondent a member of any Association at the time of the alleged offense?
- 4) Is litigation or any government agency investigation or other action pending related to the same transaction?
- 5) Was the complaint filed within 180 days of the time that the alleged offense and facts relating to it could have been known by the complainant in the exercise of reasonable diligence?
- 6) Is there any reason to conclude that the Association would be unable to provide an impartial Hearing Panel?
- 7) Are the specific Articles cited in the complaint appropriate? Should additional Articles be cited? Are any inappropriate Articles cited?
- 8) If the facts alleged in the complaint were taken as true on their face, is it possible that a violation of the Code of Ethics occurred?

After reviewing the complaint, the committee will:

- 1) Forward the case for a hearing;
- 2) Dismiss it, if the complaint is determined to be frivolous, harassing, or unfounded; or
- 3) Postpone its decision to get more information from you. Also, the Committee may request a reply from the respondent before they make their decision.

If the Committee dismisses your complaint, you have the right to appeal the dismissal to the Board of Directors of the Association. In an appeal, the Directors, or a panel made up of the Board of Directors, re-examine the materials submitted to the Grievance Committee. 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 Requests The Grievance Committee's role in arbitration differs from its role in ethics complaints. Here, it functions only as a preliminary investigative body. The results of this investigation determine whether or not the matter is subject to Association arbitration.

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

To determine the category, the Grievance Committee considers these five points:

- 1) Whether you are authorized, under the rules, to request arbitration.
- 2) Whether the controversy described is an arbitrable matter.

- 3) Whether the arbitration is mandatory or voluntary for the people involved. (This simply means whether or not the arbitration is compulsory.)
- 4) Whether the amount in dispute is either too small or too large, or the matter too legally complex for the Association to consider.
- 5) Whether the matter is currently the subject of litigation.

Such a review could result in releasing Association 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 subject to arbitration, it will notify the parties that Mediation is available as a preliminary, voluntary, alternative to arbitration.

As in ethics complaints, you may also appeal a dismissal of an arbitration request to the Board of Directors. The Directors review the materials submitted to the Grievance Committee and can uphold or overturn the Committee's dismissal.

PROFESSIONAL STANDARDS COMMITTEE

The function of this Committee is to hold ethics and arbitration hearings. When the Committee schedules a hearing, you will be notified of the time, date, and place. These hearings provide an opportunity for the complainant and respondent to explain their side of the story by presenting testimony, evidence, and witnesses.

Once all of the facts have been presented, a Hearing Panel (consisting of members of the Professional Standards Committee of the Association, and chosen for their experience, temperament, and objectivity) will determine whether the Code of Ethics has been violated, or in the case of arbitration, how the dispute should be settled.

The Association will inform you about each step of this process as it occurs. The Association will also provide you with instructions about the hearing procedure, well in advance of the hearing. **The entire process usually takes about ninety days, but sometimes is longer, depending on individual circumstances.**

If you have any questions about filing a complaint or request for Arbitration or need the forms to do so, please call the Greater Harrisburg Association of REALTORS® at (717) 364-3200 or send an e-mail to kim@ghar.info.

The term REALTOR® is a registered collective membership mark, and may be used only 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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