



Dear Party:

You recently contacted us regarding an issue with a REALTOR[®]. We offer two separate services to resolve issues with REALTORS[®]: ethics and arbitration. An ethics complaint is the procedure by which a complainant may seek disciplinary action for a violation of the Code of Ethics. Arbitration is the procedure by which a complainant may file a monetary dispute (generally commission disputes).

We also offer an Ombudsman program that could possibly assist you with your ethical concerns or monetary dispute. The Ombudsman will attempt to informally resolve your concerns through phone communication. The Ombudsman's role is primarily one of communication and conciliation, not adjudication. Ombudsmen do not determine whether ethics violations have occurred or who is owed money; rather they anticipate, identify, and attempt to resolve misunderstandings and disagreements before matters ripen into possible charges of unethical conduct or arbitration (generally commission) disputes. If you wish to take advantage of this free service, please call us at 800/873-9155.

If you haven't already done so, we recommend that you first contact the broker to see if you can resolve your issue. If you are unsatisfied with the results of that call, you may seek ethics or arbitration services with our association. Please read the enclosed "Before You File a Complaint" and review our Code of Ethics and follow the steps outlined below.

If you wish to file an Ethics Complaint (seek disciplinary action), you must submit the following:

- the attached ethics complaint form (E-01) citing the specific article(s) of the Code of Ethics (enclosed) you believe the REALTOR[®] violated, then sign and date it; and
- a written summary of the facts; and
- any supporting documentation.

If you wish to file an Arbitration Request (seek a monetary award), you must submit the following:

- the attached arbitration request form (A-1 for REALTOR[®] Members and A-2 for non-members), signed and dated; and
- a written summary of the facts; and
- any supporting documentation; and
- non-refundable filing fee of \$300 made payable to the Texas Association of REALTORS[®].

If you are a REALTOR[®], the arbitration request must be filed by the Designated REALTOR[®] of your firm and, if your claim is against another REALTOR[®], the Designated REALTOR[®] of the respondent's firm must be named as respondent.

It is possible to file an arbitration request and an ethics complaint with regard to the same circumstances. If you decide to file both an arbitration request and an ethics complaint, the arbitration request will be considered first. Also, if you submit both an arbitration request and an ethics complaint, you must attach any and all supporting documentation to both of the forms, not just one. Separate tribunals consider ethics complaints and arbitration requests. Both an ethics complaint and an arbitration request must be filed within 180 days after the facts constituting the matter could have been known in the exercise of reasonable diligence. Note that the filing of an ethics complaint or arbitration request does not stop the clock for the filing of the other procedure. Therefore, it is recommended that if you are pursuing both procedures, you submit both forms at the same time.

Once we receive your complaint, it will be forwarded to a grievance tribunal for a preliminary review. The tribunal may decide any of the following:

- the charges do not concern a possible violation of the Code of Ethics or was not filed in a timely manner; therefore, the case will be dismissed;
- the charges do concern a possible violation of the Code of Ethics and the case will be forwarded to the State's Professional Standards Committee for a hearing; or
- the charges qualifies under the Citation Program; whereby, a citation will be issued to the REALTOR® who can pay a fine or request a full hearing; or,
- more information is needed before a determination can be made.

If this matter is determined appropriate for a hearing, you will be responsible for presenting your case to the hearing panel. This means that you will be responsible for presenting testimony, documentation, and any witnesses necessary to support your case. Note that an ethics complaint must be proven by clear, strong, and convincing evidence, while an arbitration request must be proven by a preponderance of the evidence.

If the ethics complaint you file with the Texas Association of REALTORS® is involved in civil or criminal litigation or proceedings before the Texas Real Estate Commission or any other state or federal regulatory or administrative agency, it is our procedure to hold the evaluation of your ethics complaint in abeyance until such proceedings have been resolved. Therefore, it is your responsibility to inform us of any pending litigation and the final disposition of the litigation.

Should you have any questions, please do not hesitate to contact us at 800/873-9155.

Enclosures

General Instructions and Information for Filing and Replying to Ethics Complaints

1. Ethics complaints must be typewritten and submitted with **the original and 10 copies**. If you are a member of the public, you need only submit the original.
2. The Secretary will forward the complaint to a grievance tribunal. The grievance tribunal reviews the form of the complaint and other administrative matters. If the grievance tribunal finds, assuming all the facts stated in the complainant are true, that the matter could possibly constitute a violation of the Code of Ethics, the grievance tribunal will direct the Secretary to schedule a hearing before a hearing panel. If the grievance tribunal finds the complaint is lacking in form or does not, as alleged, indicate a possible violation of the Code of Ethics, the grievance tribunal will direct the Secretary to return the complaint to you with information regarding the procedures by which you may appeal the grievance tribunal's decision.
3. If the grievance tribunal forwards the complaint to a hearing, the respondent will have fifteen (15) days after receiving a copy of the complaint to reply. A copy of any reply will be sent to you and the hearing panel.
4. The secretary will notify the parties of the date and place of the hearing at least twenty-one (21) days in advance. The notice will include an outline of procedure for the hearing.
5. The parties may be accompanied by legal counsel or a REALTOR® acting as counsel. You must send notice of your intention to be accompanied by counsel to all other parties and to the Secretary at least fifteen (15) days before the hearing. Failure to provide timely notice may result in a continuance of the hearing. It is the responsibility of the parties to keep their counsel informed of all proceedings and documentation.
6. It is the responsibility of each party to arrange for witnesses to be present at the hearing. You must send notice of your intention to have witnesses to all other parties and to the Secretary at least fifteen (15) days before the hearing. Failure to provide timely notice may result in a waiver of the right to call the witness or a continuance of the hearing as determined by the Hearing Officer.
7. The Secretary will provide the parties with a list of potential hearing panel members prior to the hearing. Within ten (10) days from the date the list is mailed to the parties, either party may file with the Secretary a written request for disqualification of any potential member of the hearing panel if the potential member:
 - a. is related by blood or marriage to a party or a REALTOR® acting as counsel;
 - b. is an employer, partner, or employee, or in any way associated in business with a party or a REALTOR® acting as counsel;
 - c. is a party to the hearing, or a party or a witness in another pending case involving complainant or respondent; or
 - d. may not be able to render an impartial decision, as determined by the Hearing Officer.
8. The parties may not discuss the case with any member of the hearing panel, an appeal panel, or the board of directors outside the proceedings. Ethics decisions remain confidential after the ethics procedure is complete, except as required by the Code of Ethics and Arbitration Manual.
9. An ethics hearing may not proceed in the absence of a complainant, but may proceed in the absence of a respondent.

The following is an excerpt from NAR's Code of Ethics and Arbitration Manual explaining the possible sanctions in an ethics matter.

Section 14. Nature of Discipline

Disciplinary action may consist only of one or more of the following:

- (a) Letter of Warning with copy to be placed in member's file;
- (b) Letter of Reprimand with copy to be placed in member's file;
- (c) Requirement that member attend the ethics portion of the Board Indoctrination Course or other appropriate course or seminar specified by the Hearing Panel which the respondent could reasonably attend taking into consideration cost, location, and duration;
- (d) Appropriate and reasonable fine not to exceed \$5,000 (amended 5/02);
- (e) Member placed on probation for a stated period of time not less than thirty (30) days nor more than one (1) year;
- (f) Membership of individual suspended for a stated period not less than thirty (30) days nor more than one (1) year, with automatic reinstatement of membership in good standing at the end of the specified period of suspension. The thirty (30) day minimum and one (1) year maximum do not apply where suspension is imposed for a remediable violation of a membership duty (e.g., failure to pay dues or fees or failure to complete educational requirements. The Directors may order suspension unconditionally, or they may, at their discretion, give the disciplined member the option of paying to the Board, within such time as the Directors shall designate, an assessment in an amount fixed by the Directors, which may not exceed \$5,000 and which can be utilized only once in any three (3) year period, in lieu of accepting suspension. But, if the conduct for which suspension is ordered consists of failure to submit a dispute to arbitration, the Directors may not permit the disciplined member to avoid suspension without submitting to the arbitration in addition to paying the assessment, unless in the meanwhile the dispute has been submitted to a court of law without any objection by any party that it should be arbitrated; * ** (Amended 5/04)
- (g) Expulsion of individual from membership with no reinstatement privilege for a specified period of one (1) to three (3) years, with reinstatement of membership to be by application only after the specified period of expulsion, on the merits of the application at the time received (decision should be written clearly articulating all intended consequences, including denial of MLS participatory or access privileges); (Revised 4/96)
- (h) Suspension or termination of MLS rights and privileges may also be utilized. Suspension of MLS services may be no less than thirty (30) days nor more than one (1) year; termination of MLS services shall be for a stated period of one (1) to three (3) years; (Revised 5/02)
- (i) REALTORS® who participate in MLS or otherwise access MLS information through any Board or Association in which they do not hold membership are subject to the Code of Ethics in that Board or Association on the same terms and conditions as Board members. Discipline that may be imposed may be the same as but shall not exceed the discipline that may be imposed on members. Boards entering into regional or reciprocal MLS agreements are encouraged to include provisions requiring signatory Boards to respect, to the extent feasible, decisions rendered by other Boards involving suspension or expulsion from membership or from MLS. (Revised 4/96)

In addition to any discipline imposed, Boards and Associations may, at their discretion, impose administrative processing fees not to exceed \$500 against respondents found in violation of the Code of Ethics or other membership duties. Any administrative processing fee will be in addition to, and not part of, any disciplinary sanction imposed. Boards and Associations are encouraged to determine in advance when, and under what circumstances, administrative processing fees will be imposed so that imposition is a matter of administrative routine. (Revised 11/98)



Texas Citation System for Code of Ethics Violations

1. Complaint alleging violation of the Code of Ethics is received by TAR and channeled through a Grievance Tribunal:

- A. Decision whether conduct is subject to citation is made by the Grievance Tribunal.
 1. Consider whether the allegations of the complaint are true and support a potential violation of the Code of Ethic.
 2. Consider whether the conduct is prohibited by the Citation Schedule that has been adopted by TAR as a citable offense.
 - a. If the respondent has already received a citation for violation of an MLS rule, for the same event and/or conduct, then the action is not eligible for further citation.
 - b. If a citable offense:
 - i. Citation letter is sent to respondent, with copy to Designated REALTOR®.
 - ii. Citations can be used in consideration for determining discipline at future ethics hearings.
 - c. If Conduct is not eligible for citation but possible violation of the Code of Ethics is alleged, the complaint will be processed in accordance with the *National Code of Ethics an Arbitration Manual*.
- B. If conduct is a citable offense, upon receipt of citation, the respondent has 15 days to elect one of the following options:
 1. Pay the fine and complete required education, if applicable, in accordance with the sanctions as defined in the citation letter.
 2. Elect full Ethics hearing to contest the citation and the hearing will be held in accordance with the *National Code of Ethics and Arbitration Manual*.
 - a. If hearing is elected, complaint is returned to Grievance Tribunal for further scrutiny and possible amendment with additional alleged violation of the Code of Ethic and/or MLS rules.
 - i. If anonymous complaint- the Grievance Tribunal becomes the complainant.
 - ii. If identified complainant- he/she has full due process rights afforded under the procedures approved by NAR for disciplinary hearing.
 - c. Respondent will have a full due process hearing where hearing panel, made up of members of the Professional Standards Committee, has the following options:
 - i. Dismiss the citation and complaint
 - ii. Uphold the citation and corresponding fine
 - iii. Amend the complaint by adding additional articles, as supported by the evidence
 - iv. Increase or decrease the discipline as allowed in the *NAR Code of Ethics and Arbitration Manual*.

- d. The results of the hearings can be appealed to the TAR Professional Standards Committee, as set forth in the Manual.
- C. Failure to respond to the citation within 15 days from receipt of citation automatically results in a full Ethics Hearing; which opens up the possibility of an allowable sanction(s) determined by the hearing panel, including greater fine and possible suspension or expulsion from membership.
- D. A respondent may be issued only three (3) citations within a thirty-six (36) month period. After 3 citations have been issued and another complaint is filed within a thirty-six (36) month period, and forwarded to a hearing by the Grievance Tribunal the complaint will automatically go to a hearing and will not be eligible for the Citation Program. Citations will remain in the respondent's file indefinitely and will be available to hearing panels at any future hearings and can be used in the citation program for use in progressive sanctions guidelines.
- E. If the complaint is not anonymous notification of the Grievance Tribunal's action will be given to the complainant.
- F. T.A.R. has published a model citation fine schedule that does not exceed maximum allowable by NAR.

Model Citation Schedule

- Article 3:** Failure to disclose existence of dual or variable rate commission
- Failure to disclose existence of accepted offers to any brokers seeking cooperation.
- Article 4:** Failure to disclose REALTOR® interest in property being bought or sold.
- Article 5:** Providing professional service without disclosing interest in property.
- Article 6:** Accepting any commission, rebate or profit on expenditures without client's knowledge or consent
- Article 12:** Failure to present a true picture in real estate communications and advertising.
- Failure to disclose professional status in advertising and other representations.
- Failure to disclose compensation from 3rd party for services provided free to a client.
- Advertisement offering to sell/lease property without authority of owner or listing broker.
- Failure to disclose name of firm in advertisement for listed property.
- Failure to disclose status as both owner/landlord and REALTOR® or licensee when advertising property in which REALTOR® has ownership interest.
- Falsely claiming to have "sold" property.
- Registration or use of deceptive URL or domain name.
- Article 14:** Failure to cooperate in any professional standards proceeding or investigation.
- Article 16:** Use of terms of an offer to modify listing broker's offer of compensation.
- Placement of for sale/lease sign on property without permission of seller/ landlord.

Sanctions under the Citation Program are as follows:

First Offense – Fine of \$300.00* to be paid within 60 days of citation date, and completion of the NAR Online Quadrennial Ethics Training or other course as defined by TAR, within 60 days of the citation date.

Second Offense – Fine of \$600.00* to be paid within 60 days of citation date.

Third Offense – Fine of \$900.00* to be paid within 60 days of citation date.

***The fine will be same whether one article has been cited or several Articles (under the citation program) have been cited on the complaint (i.e., there will be no increase in fine because more than one Article has been cited).**

The fines for the citations may not exceed the maximum fine allowed by NAR for violations of the Code of Ethics.