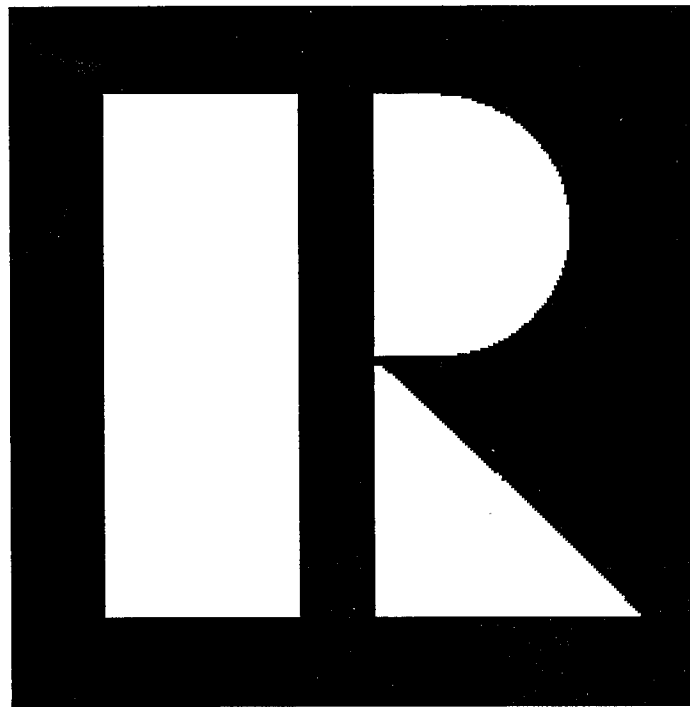


CODE OF ETHICS ENFORCEMENT

An Association Benefit

*It is just one of the many services offered by the
Greater Albuquerque Association of REALTORS®*



REALTOR®

**For more information on these and other services of the
Greater Albuquerque Association of REALTORS®**

Please call 842-1433

CODE OF ETHICS ENFORCEMENT

A Member Benefit

The single, most outstanding characteristic that sets REALTORS® apart from other real estate practitioners is the willingness to accept and abide by the *Code of Ethics* of the National Association of REALTORS®. The *Code of Ethics*, which was first adopted on July 29, 1913, is a living document, responsive in its content to changes in the law and industry. The Code has been revised several times through the years to reflect current developments in professional real estate practice. The term REALTOR® has come to represent competency, fairness, and high integrity. These qualities stem from voluntary adherence to an ideal of moral conduct in real estate business practices.

But even with the best of intentions, planning and preparation, occasional disagreements arise between REALTORS® and/or between REALTORS® and their clients or customers. As civil litigation becomes increasingly costly, time consuming, and burdensome, there has been a trend among private parties to settle disputes and conflicting claims through alternative means.

The Greater Albuquerque Association of REALTORS® offers its members and their clients and customers a vehicle to economically expedite ethics complaints and/or arbitration requests without going to court. If a monetary dispute arises from a real estate transaction or if you believe a REALTOR® may have acted in an unethical manner, seek a resolution through the Association. Ethics complaints that are brought before the Association give those parties involved an opportunity to become educated about the Code. In addition, REALTORS® are judged by their peers as opposed to other individuals who may be far less familiar with the practices and customs of the real estate industry.

BEFORE YOU FILE AN ETHICS COMPLAINT

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 the matter, eliminating the need for further action.

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 state real estate licensing authority 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 and associations of REALTORS® can discipline REALTORS® for violating the *Code of Ethics*. The primary emphasis of discipline for ethical lapses is education, to create a heightened awareness of and appreciation for the duties the Code imposes. 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.

Filing an ethics complaint

The local board or association of REALTORS® can provide you with information on the procedures for filing an ethics complaint. Here are some general principles to keep in mind.

- Ethics complaints must be filed with the local board or association of REALTORS® within one hundred eighty (180) days from the time a complainant knew (or reasonably should have known) that potentially unethical conduct took place.
- The REALTORS® *Code of Ethics* consists of seventeen (17) Articles. The duties imposed by many of the Articles are explained and illustrated through accompanying Standards of Practice or case interpretations.
- Your complaint should include a narrative description of the circumstances that lead you to believe the *Code of Ethics* may have been violated.
- Your complaint must cite one or more of the Articles of the *Code of Ethics*, which may have been violated. Hearing panels decide whether the Articles expressly cited in complaints were violated - not whether Standards of Practice or case interpretations were violated.

***Code of Ethics* Enforcement**
FREQUENTLY ASKED QUESTIONS

What is the difference between an ethics complaint and an arbitration request?

An ethics complaint charges that a REALTOR® has violated an Article(s) of the *Code of Ethics*. An arbitration request involves a dispute over entitlement to a monetary transaction (e.g. a commission).

Who can file an ethics complaint?

Any person, whether a member or not, having reason to believe that a member is in violation of any conduct subject to disciplinary action.

Who can file an arbitration request?

A customer, client or REALTOR® principal. A REALTOR® nonprincipal can also request arbitration with his or her current or former REALTOR® principal.

Is there a time limit?

Yes. Ethics complaints must be filed within 180-days of the time that the alleged offense and relating facts could have been known by the complainant in the exercise of reasonable diligence. Request for arbitration must be filed within 180-days after the closing of the transaction, if any, or within 180-days after the facts constituting the arbitrable matter could have been know in the exercise of reasonable diligence, whichever is later.

Who should I give the complaint or request to?

The Professional Standards Administrator of the Greater Albuquerque Association of REALTORS®.

What should be included with the ethics complaint or arbitration request?

Ethics – A formal ethics complaint form must be completed. In addition, a written statement of the facts (with appropriate documentation) on which the complaint is based must also be included, dated, and signed by the complainant. The appropriate Articles(s) (not standards of practice) as they pertain to the facts in the alleged violation must be cited in the complaint. Be sure to explain how each article was violated.

Arbitration – An arbitration request form must be completed, signed and submitted with details of the dispute and a \$250 deposit, which may be refundable if the requestor is found to be the prevailing party. In addition, include whatever documentation that may help to substantiate your position.

Are there certain Articles that can or cannot be cited?

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.

Can Standards of Practice be cited in an ethics complaint?

No. Standards of Practice may be cited only in support of the Article(s) that was allegedly violated.

Are there issues or complaints that should not be brought before the Greater Albuquerque Association of REALTORS®?

Yes. A charge of violating the law or State real estate regulations is not a matter that would be considered by the Greater Albuquerque Association of REALTORS®. Also, the Association is not a court of law where criminal or civil issues are resolved.

Is submitting to arbitration mandatory?

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 Greater Albuquerque Association of REALTORS®.

When is arbitration mandatory/voluntary?

Mandatory – When the dispute is between 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.

“Principal Broker” means..... A principal, partner, corporate officer, or branch office manager of a real estate firm.

**ETHICS COMPLAINT
ARBITRATION REQUEST
CHECKLIST**

- Contact the respondent's local board/association for the appropriate forms.
- Ethics** – Complete the ethics complaint form and provide a written explanation that includes the facts on which the alleged violation(s) is based, cite the appropriate Article(s) and include any other appropriate documentation.
- Arbitration** – Complete the arbitration request form, attach the details of the disputes, and enclose the \$250 deposit along with whatever documentation that may help to substantiate your position.
- The ethics complaint or arbitration request will then be sent to the Grievance Committee for review.
- The Grievance Committee, which functions much like a grand jury, will then review the ethics complaint and/or arbitration request.
- If the Grievance Committee refers the ethics complaint or arbitration request for a hearing, the parties will be advised of this decision. The respondent will then be requested to submit a written response.
- If the Grievance Committee determines that a hearing is **not warranted**, the parties will be advised that the matter has been dismissed and notified of the opportunity to appeal the Grievance Committee's dismissal to the Board of Directors.
- If the Grievance Committee determines that a hearing is **warranted**, the parties will be advised of the date, time and location of a **mandatory** pre-hearing where due process will be reviewed and a date and time for the formal hearing will be determined.
- During the hearing, the parties have an opportunity to present their positions. Parties may exercise their right to bring witnesses and/or attorneys to the hearing. The standard proof in an **ethics** complaint is clear, strong and convincing evidence. The standard of proof in an **arbitration** proceeding is a preponderance of the evidence (i.e., that evidence, when taken as a whole, is more convincing than the evidence offered in opposition).
- The Hearing Panel's ethics decision or arbitration award is transmitted to the parties. Either party may file an **ethics** appeal or rehearing request with the Professional Standards Administrator, but the complainant may only appeal on a **procedural** basis. The parties involved in arbitration may appeal **only** on the basis that there was a procedural irregularity that materially worked to their detriment, **NOT** on the merits of the award.

- The Board of Directors, either on an ethics appeal or after the ethics appeal period has expired, renders its final decision, which will in turn be transmitted to the parties. Arbitration awards are considered final and binding subsequent to the expiration of the procedural review period.

Before the hearing

- Your complaint will be reviewed by the local board or association's 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.
- If the Grievance Committee dismisses your complaint, it 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. You may want to review your complaint to see if you cited an Article appropriate to your allegations.
- If the Grievance Committee forwards your complaint for hearing, that 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.
- If your complaint is dismissed as not requiring a hearing, you can appeal that dismissal to the board of directors of the local board or association of REALTORS®.

Preparing for the hearing

- Familiarize yourself with the hearing procedures that will be followed. 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.
- Complainants 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*.
- Be sure that your witnesses and counsel 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. Bring your entire file concerning this complaint to the hearing itself in case one of the panelists request further documentation.
- 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

- 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.

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. 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 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.

The information contained in this brochure has been summarized and provided for your use as a quick reference. For more information on the *Code of Ethics* enforcement procedures, contact the Professional Standards Administrator at the Greater Albuquerque Association of REALTORS® at 842-1433.

DOCUMENT CHECKLIST

This is a list of SUGGESTIONS. If pertinent to substantiating your case and/or assisting in clearly outlining your position, attach this checklist and enclosed documentation to your written statement. Do not limit yourself to what you see noted below, but do make sure that what documentation you do submit is absolutely PERTINENT, READABLE and EXECUTED (if applicable).

REGARDING LISTING DISPUTES:

- Listing Agreement
- Property Condition Form
- Property Profile Sheet
- Loan Verification Letter
- Condominium Information Release Form
- Rental Agreements
- Termite Reports
- Survey Reports
- Soil Reports
- Structural Engineering Reports
- Electrical & Plumbing Reports
- Pool Inspection Report
- Roof Inspection Report
- Home Warranty Programs
- Tax Office Data
- Floor Plan
- Photos of Property
- MLS Camera Card (Copy)
- Buyer's Broker Agreement
- Appraisal
- Mortgage Documents
- Existing Home Warranties
- Chronological Logs
- Receipts (Documents &/or Expenses)
- Lead Base Paint Form
- Radon Inspection Form

REGARDING PROPERTY MANAGEMENT:

- House Rules
- Bylaws
- Property Management Agreement
- Rental Agreement with Addendums
- Inventory & Condition Forms
- Receipts (Documents &/or Expenses)
- Pertinent Accounting Records
- Chronological Logs
- Etc....

REGARDING SALES DISPUTES:

- Deposit Receipt, Offer & Acceptance submitted to escrow (DROA)
- Addendums to DROA
- Counter Offers
- Escrow Instructions
- Closing Statements
- Contingency Releases
- Electrical & Plumbing Reports
- Extension Letters
- Initial Deposit Check/Additional Deposit Checks
- Receipts (Documents and/or Expenses)
- Early Occupancy/Rental Agreements
- Mortgage Documents
- Inventory & Condition Form
- Appliance Check
- Pertinent Pages from Conveyance Documents
- Open House Sign-In Logs
- Lead Base Paint Form
- Radon Inspection Form

REGARDING COMMERCIAL DISPUTES:

(All documents on page apply plus:)

- Lease Documents
- Zoning (City) Documents
- Rent Rolls
- Letters of Intent
- Exclusive Leasing Agreement
- Etc.....

OTHER ATTACHED DOCUMENTS:

- _____
- _____
- _____
- _____
- _____
- _____