



Greater Albuquerque
Association of REALTORS®
Professional Standards Office
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Before you File an Ethics Complaint FAQs

Background

The Greater Albuquerque Association of REALTORS® (GAAR) is responsible for administratively enforcing the National Association of REALTORS® (NAR) 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 a REALTOR® member. In any instance where the Code of Ethics and the law conflict, the obligations of the law must take precedence. Please note that REALTOR® ethical obligations are different than New Mexico real estate license law or regulations.

Many difficulties between real estate professionals result from misunderstanding, miscommunication, or lack of adequate timely communication. If you have a problem with a REALTOR® you may want to speak with them or with their Qualifying broker (the managing/principal broker) in the firm. Open, constructive discussion often resolves a situation, eliminating the need for further action.

If, after discussing matters with your REALTOR® and/or their Qualifying Broker you are still not satisfied, you may want to consider one of the voluntary dispute resolution programs that GAAR offers (a complimentary informal Ombuds program and formal Mediation services which are available for a \$250 filing fee). Often parties have a more satisfactory resolution of the issues by utilizing a non-adversarial resolution process as it is quicker, less costly, and often helps repair damaged relationships.

If, after taking these steps, you still feel you have a grievance, you may want to consider filing an ethics complaint. Please keep in mind the following:

- Only REALTOR® Principals and REALTOR® Associates are subject to the Code of Ethics of the National Association of REALTORS®.
- If the real estate professional (or their Qualifying Broker) you are dealing with is not a REALTOR® member, your only recourse may be to file a complaint with the New Mexico Real Estate Commission (the state licensing authority) or the courts.
- The Association of REALTORS® can only 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.

If a REALTOR® member is found to have violated the Code of Ethics, the Association can discipline the member.

- Typical forms of discipline include attendance at relevant educational courses or seminars designed to increase a member's understanding of the ethical duties or other responsibilities of real estate professionals. Additional examples of authorized discipline are a letter of reprimand or warning and appropriate fines. For serious or repeated violations, the Board of Directors could suspend or terminate REALTOR® membership.
- The Association 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, suspension or termination of membership may be imposed for serious or repeated violations.

Filing an Ethics Complaint

GAAR or the appropriate REALTOR® Board or Association 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 within one hundred eighty (180) days from the time a complainant knew (or reasonably should have known) that potentially unethical conduct took place (unless the Association's dispute resolution processes are invoked, in which case the filing deadline will momentarily be suspended).
- The REALTORS® Code of Ethics consists of seventeen (17) Articles. The duties imposed by many of the Articles are explained and illustrated through the accompanying Standards of Practice or case interpretations.
<https://www.nar.realtor/about-nar/governing-documents/the-code-of-ethics>
- Your complaint must cite one or more of the seventeen (17) Articles of the Code of Ethics that 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.
- Your complaint should include a legible (printed/typed) narrative/summary description of the circumstances that lead you to believe the Code of Ethics may have been violated.
- Number the pages in the order you want your complaint documentation to be considered. Attach any evidence you believe supports the complaint (i.e. copies

of the listing/purchase/lease agreements, addendums, correspondence, photos, text messages, and/or other pertinent materials, etc.). The complaint form and documentation will need to be in a format that can easily be copied. Please do not use staples, index tabs, 2-sided copies or the like when preparing your complaint.

- The Association may provide a member of the Grievance Committee to provide technical assistance to a member of the public, to help them prepare a complaint in the proper form and with proper content.

Grievance Committee Role Pre-Hearing

- Based on the National Association of REALTORS® (NAR) Code of Ethics and Arbitration Manual (Sections 19 and 20), the GAAR Grievance Committee's 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 for a Professional Standards Hearing Panel to consider at an ethics hearing. Grievance may amend or dismiss a complaint.
- If the Grievance Committee dismisses your complaint, it does not mean they do not 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®.

Ethics Citation Program (*citations only available for select complaints*)

GAAR has implemented an **Ethics Citation Policy** that allows for the faster, streamlined processing of ethics complaints in a way that is consistent with the NAR Code of Ethics and Arbitration Manual which sets the standard for ethical behavior in real estate transactions.

Not all complaints will automatically be eligible for the citation program. Only complaints that meet specific criteria (as defined by the policy) will be processed through the citation program.

Citation Program Overview

1. Eligibility for a Citation: If Grievance finds that a complaint should move forward to an ethics hearing and is eligible for a citation, they will send the complaint to the GAAR **Citation Panel** to determine if the complaint allegation(s) would constitute a "citable offense."
2. Citation Process: The Citation Panel may issue a citation, or they may forward a complaint to be heard at an ethics hearing. The citation takes the place of a formal ethics hearing unless otherwise requested by the respondent. The complainant is notified that a citation has been issued and that the respondent will not be made aware of the complainant's identity.
3. Respondent's Right to a Hearing: Upon being issued a citation, the respondent has twenty (20) days from citation notification to reject the citation and request the complaint be heard at an ethics hearing.
4. Complainant's Preference for Anonymity: If the respondent chooses to move forward with a hearing, and the complainant does not want to advance their complaint at an ethics hearing they will have the right to remain anonymous and they will not be informed of the case outcome or any final decision that might be made in the matter.
5. Grievance Committee Options: If the complainant opts to remain anonymous, the Grievance Committee will review the complaint to see if there is enough evidence for a Hearing Panel to consider and has the option to appoint a Grievance Committee member to act as the complainant at a hearing or dismiss the case.

When filing a complaint, the identity of the complainant is not kept confidential if it is determined that the complaint does not qualify for the GAAR Ethics Citation Program.

Preparing for the Hearing

- Familiarize yourself with the hearing procedures that will be followed. You will be given the right to challenge potential hearing panel members, you have the right to counsel (REALTOR® or Legal), the right to call 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.
- 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 the hearing 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 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 did not), 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 does not mean they are not telling the truth as they recall events. It is up to the Hearing Panel, in their deliberations, to determine the findings of fact, which will be part of their decision.
- The Hearing Panel will pay careful attention to what you say in your testimony and how the information is conveyed. An implausible account does not become more believable through repetition or 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 the potential to be viewed as an attack on a respondent's integrity and professionalism. For the enforcement process to function properly, all parties, witnesses, and panel members must maintain appropriate decorum.

After the Hearing

- When you receive the Hearing Panel's decision, review it carefully.
- Findings of fact are the conclusions of the impartial panel members based on their reasoned assessment of all the evidence and testimony presented during the hearing. Findings of fact are not appealable.
- When the parties receive the Panel decision, they will also receive detailed information on the bases (reasons) and time limits for appealing decisions. 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 invoked.
 - Complainants may only appeal due to procedural deficiencies or failure of due process that may have prevented a full and fair hearing. The fact that the Hearing Panel found no violation is not appealable.

Conclusion

Many ethics complaints result from a misunderstanding or a failure in communication. Before filing an ethics complaint, make reasonable efforts to communicate with your real estate professional or the qualifying broker (managing/principal broker) in the firm.

GAAR offers non-adversarial conflict resolution options (Ombuds program or Ethics Mediation). Contact the GAAR Professional Standards office at 505-724-3485 for more information about these conflict resolution options or if you have any general questions.

Source material:

NAR Code of Ethics and Arbitration Manual (Appendix X to Part Four) and GAAR Policy Chapter 13: Professional Standards