

# Puzzled about filing an ethics complaint?

Anyone who believes a Realtor® has acted in an unethical manner may file a complaint against a member of the Pacific West Association of Realtors® (PWR). Our Association and members take the duty to adhere to and enforce the Code of Ethics very seriously. The National Association of Realtors® (NAR) has developed policies and procedures to ensure all parties are treated fairly and honestly. The following information is provided to give you an overview and better understanding of the process of filing an ethics complaint.

Because misunderstandings can create many of the problems leading to an ethics complaint, we encourage you to make an effort to communicate not only with your agent but also with the broker or sales manager of the company. If you cannot resolve the complaint, use the form on our website to file a formal complaint.

## When you file your complaint, you need to remember:

◆ Only Realtors® are subject to the Code of Ethics. If the real estate professional is not a Realtor®, you may need to file your complaint with the California Department of Real Estate. It's possible, also, that the person you're dealing with may have membership in another Association. We can help you determine if the person is a member of PWR or any other Association.

◆ Our Association reviews alleged violations of the Code of Ethics but cannot determine whether or not any licensing laws have been broken. The licensing authority for California, the Department of Regulation and Licensing, or the court system make those decisions.



## Filing an ethics complaint:

◆ A Complaint meeting all the filing requirements must be filed within one-hundred and eighty (180) calendar days after the facts constituting the wrongful conduct could have been known in the exercise of reasonable diligence or one-hundred eighty (180) days after the conclusion of the transaction, or event, whichever is later.

◆ Your complaint should include a narrative summary of the circumstances that lead you to believe the Code has been violated. You can cite one or more articles. Each page of your summary and exhibits must be numbered from #1 to the end of your summary including all exhibits.

## Initial Review:

◆ When your complaint is received, it will be reviewed by our Grievance Committee. Their job is to determine if the allegations made, if taken as true, would support a violation of the article(s) cited in the complaint. They must determine if the complaint warrants further investigation. Their role is similar to that of a grand jury.

◆ If the Grievance Committee dismisses your complaint, it does not mean they do not believe you. Rather, it means they do not feel your allegations would support a Hearing panel's conclusion that the article(s) cited in your complaint had been violated. A complaint may involve unprofessional conduct that does not necessarily violate the Code of Ethics. If your complaint is dismissed, you can appeal that dismissal to a Tribunal.

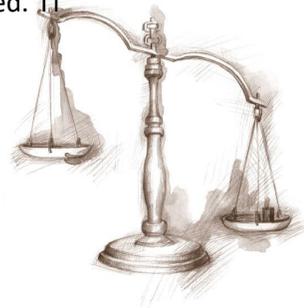
◆ If the Grievance Committee forwards your complaint for a hearing, it does not mean they have decided the Code has been violated. It means they feel if what you allege in your complaint is found to have occurred, there may be a violation and a hearing Panel should address the issue and take appropriate action.

## Preparing for the hearing:

- ◆ We'll provide an outline of the hearing process with information when you have a hearing date and time. **Take a few minutes to familiarize yourself with the hearing procedures.** We'll provide information about challenging panel members, your right to counsel, calling witnesses, submitting evidence and the burdens and standards of proof that apply.
- ◆ Complainants have the ultimate responsibility (burden) of proving that a violation has occurred. The standard of proof that must be met is "clear, strong and convincing" which is defined as "that measure or degree of proof which will produce a firm belief or conviction as to the allegations sought to be established."
- ◆ The official hearing notice will have information about the advance notice requirement for witnesses or counsel—please review those requirements. Be sure your witnesses and counsel (if any) will be available on the day of the hearing; continuances (postponements) are a privilege, not a right.
- ◆ Have all your documents and other evidence you need to present your case organized in advance. Plan your remarks and know what you are going to say. Be prepared to demonstrate what happened and how you believe those actions violated the Code of Ethics.

## At the hearing:

- ◆ Understand and appreciate panel members are unpaid volunteers giving their time. They have been trained in the interpretations of the Code of Ethics and the hearing process. Their objective is to be fair, unbiased, and impartial. They must determine, based on the evidence and testimony presented to them, what occurred and to decide whether the facts support a finding that the article cited has been violated. If they determine there has been a violation, they also make a recommendation to the Board of Directors for discipline.
- ◆ Hearing panels cannot find a violation of an article that has not been cited in the complaint, so be sure to cite all articles that may have been violated.
- ◆ Keep your presentation concise, factual and to the point with a timeline. Your task is to report what happened (or did not happen) and how those facts support a violation of the article cited. Present factual, verifiable information, not an emotional story with no evidence to support it.
- ◆ 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 different people can witness the same event and have different recollection about what they saw. The fact that a respondent or his witness recalls things differently than you does not mean they are not 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 does not become more believable through repetition or volume.
- ◆ The hearing process is to some degree, unavoidably confrontational. Many violations of the Code result from misunderstanding or lack of awareness of ethical duties by other 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 all parties, witnesses and panel members 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 members based on their reasoned assessment of all the evidence and testimony presented during the hearing.
- ◆ Refer to information that will be included with the hearing panel's decision on the basis and time limits for appealing decisions or requesting a rehearing. Rehearings are granted only when newly discovered information comes to light which could not reasonably have been discovered and produced at the original hearing and which might have had a bearing on the panel's decision.
- ◆ If you believe the process was seriously flawed to the extent you were denied a full and fair hearing, there are appellate procedures that can be invoked. The fact that a hearing panel found no violation is not appealable. Appeals brought **by the respondent** must be based on:
  - A perceived misapplication or misinterpretation of the Code of Ethics
  - A procedural deficiency or failure of due process, or
  - The nature of the discipline imposed by the hearing panel.
- ◆ Appeals brought **by the complainant** must be based on procedural deficiencies that prevented a fair, full hearing.

## Disciplinary action:

◆ If a Realtor® has been found in violation of the Code of Ethics, the panel imposes discipline, which must be appropriate for the violation and be progressive. Because the primary emphasis of discipline is to create a better awareness of the obligations and duties created by the Code of Ethics, discipline can include attendance at an educational offering to increase that understanding. Other disciplines include a letter or warning or reprimand, fines (upto \$15,000), or in very serious or repeat violations, membership can be suspended or terminated. The panel cannot award money to the complainant or suspend or revoke a member's real estate license.



◆ A member found in violation of the Code of Ethics may be assessed an administrative processing fee of \$500. The money is retained by the Association and is not awarded to any party of the complaint.

Enforcement of the Code of Ethics is one of the membership services offered by our Association, and we hope the information provided here will give you a better understanding of the process for filing an ethics complaint. 1-30-20



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