

# Guide to Filing Ethics Complaints *and* Arbitration Requests



**HAMPTON ROADS REALTORS® ASSOCIATION**

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## INTRODUCTION

The National Association of REALTORS® adopted its Code of Ethics in 1913. Since then, REALTORS® everywhere have pledged to meet the Code's high professional standards upon becoming members of the Association.

The professional standards process plays a very important role in our local association. It helps ensure honorable, faithful, and competent service to our members', their clients, customers, and other members of the public through the enforcement and disciplinary procedures that accompany the Code.

The Hampton Roads REALTORS® Association prepared this document to help you understand the professional standards process. This pamphlet summarizes portions of a more detailed procedural manual. To the extent this pamphlet conflicts with that manual and any of its subsequent revisions, the Association must follow the requirements of the manual.

### IS YOUR COMPLAINT AGAINST A REALTOR®?

Not all real estate agents are REALTORS®; only those who belong to their local Association of REALTORS® and have agreed, as a continuing condition of membership, to abide by a strict, enforceable Code of Ethics. It is because of this personal obligation they have made that you can file a complaint with the Association. So, the first thing you must determine is whether the agent involved is a REALTOR®. The Hampton Roads REALTORS® Association can answer this question for you.

### DOES YOUR COMPLAINT CONCERN ETHICS OR ARBITRATION?

You should determine whether this is an ethics matter or an arbitration of a business dispute. In an ethics complaint, you are alleging that a REALTOR® violated one or more Articles of the Code of Ethics. Arbitration is the process for resolving a business dispute about a real estate transaction that the parties have been unable to solve themselves.

An arbitration request usually involves one member in disagreement with another member over distribution of a commission. In certain circumstances, however, it can be used to resolve a dispute between a member of the public and an Association member.

If your situation concerns both ethics and arbitration, the Association will handle the arbitration first. The ethics complaint, if filed, is considered after final judgment is rendered in the arbitration.

### WHAT POWERS OR AUTHORITY DOES THE ASSOCIATION HAVE?

An Association of REALTORS® has limited authority regarding its members. Please note carefully the following limitations:

1. The Association cannot try a member for violations of the Virginia real estate license law or any other alleged violation of the law. Its jurisdiction covers only violations of membership duties and the Code of Ethics.

The Real Estate Board of Virginia alone controls the agent's license to sell real estate. If you think the person has violated the law, you should contact that agency at 9960 Mayland Drive, Suite 400, Richmond VA 23233-1463, 1-804-367-8500, for their complaint procedures.

2. For the same reason, the Association cannot suspend or terminate the real estate license of one of its members.
3. Ethics proceedings cannot require members to pay complainants monetary damages or punitive awards such as for "pain and suffering," "mental anguish," or payment for repairs or replacement.
4. The Association can administer discipline to the REALTOR®. This happens only in an ethics violation and only after a thorough investigation and a due process ethics hearing. The Association can use one or more of the following methods to discipline a member:
  - a. Issue a letter of warning or reprimand;
  - b. Require attendance at an ethics refresher course or other training as appropriate;
  - c. Fine the member up to \$5,000. *NOTE: Fines are not awarded to the complainant under any circumstances;*
  - d. Place the member on probation or membership suspension; or
  - e. Expel the member from membership.
5. The Association may arbitrate certain money disputes and must arbitrate in certain situations. However, a member of the public must agree in writing to arbitrate and to be bound by the decision of the hearing panel.
6. An arbitration award may not be more than the amount in dispute. Again, in no circumstances does the Association award punitive damages.
7. If the complainant is also seeking civil remedies in the courts, the Association will usually await the outcome of those proceedings before moving ahead with an ethics complaint.

### **WHO MAY FILE AN ETHICS COMPLAINT?**

Anyone, whether a member or not. However, the complaint must:

1. Allege violations of specific Article(s);
2. Be in writing, dated, and signed by the complainant;
3. State the facts surrounding the case;
4. Include any necessary supporting documentation; and
5. Be filed within 180 days after the facts became known (or reasonably should have become known).

You may file a complaint from anywhere; however, it must be filed with the Association having jurisdiction over the individual named in the complaint. The Hampton Roads REALTORS® Association's jurisdiction covers the cities of Norfolk, Virginia Beach, Portsmouth, Suffolk, and Chesapeake.

## HOW DO YOU FILE AN ETHICS COMPLAINT?

Just follow these simple steps:

1. Complete, sign, and date the Ethics Complaint form which requires you to name the REALTOR®(s) in question as the Respondent(s).
2. On the “Specific Allegations by Complainant” form, list the Article(s) of the Code of Ethics you believe the REALTOR® has violated. State the specific action/reason that supports the article charged. *NOTE: Most articles are supported by Standards of Practice that support the article, but a standard of practice may be cited only as support for the Article being charged. Standards are not an integral part of the code but rather are used to clarify the ethical obligations imposed by the Articles.*
3. Attach an explanation of the circumstances and facts surrounding the complaint. Be as specific as possible. State what, when, where, why, and how you think an Article was violated.
4. Attach copies of all pertinent documents such as listing agreements, purchase and sales agreements, letters, addenda, etc. If you have notarized statements from witnesses, include those also. Make yourself a copy also.
5. Send the entire package to the Director of Member Services of the Association. In accordance with the Association's due process procedures, your complaint will be forwarded to the person complained about for their written response. The complaint is reviewed by the Grievance Committee as explained later in this pamphlet.

## WHO MAY FILE AN ARBITRATION REQUEST?

REALTORS® and Non-Resident REALTOR® members who are principal brokers.

REALTORS® or Non-Resident REALTOR® members who are not the principal, provided his or her principal broker joins in the request and the other party is from another firm.

REALTORS®, REALTOR-ASSOCIATES®, and Non-Resident members who are affiliated with the same firm, provided each party agrees to be bound by the arbitration decision.

Clients or customers of the REALTOR®.

Similar to an ethics complaint, an arbitration request must:

1. Be in writing, dated, and signed by the Complainant;
2. Indicate the amount in dispute; and
3. Be filed within 180 days after the facts became known.

The Association provides arbitration facilities as a service to its members. Arbitration is not a disciplinary proceeding, nor does it award punitive damages. By becoming and remaining a member of the Association, each REALTOR® binds himself to arbitrate certain types of disputes.

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

*NOTE: Disputes involving clients or customers require that they sign an agreement to arbitrate and to be bound by the arbitration. Virginia's court system recognizes the REALTOR® arbitration process as being both fair and affording due process. Therefore, the courts generally agree that it is binding upon those who agree to it, and will enforce an arbitration award.*

## HOW DO YOU REQUEST AN ARBITRATION?

The process is very similar to filing an ethics complaint. A Request for Arbitration form will be supplied by the Association. Steps to follow are:

1. List the REALTOR®(s) involved as Respondent(s) on the form.
2. Indicate the amount in dispute.
3. Include an explanation of the situation. State why you believe you are entitled to an award of some kind. Remember, don't include allegations of unethical conduct in your argument. If you believe there may have been ethics violations, you must file these separately in an ethics complaint.
4. Attach copies of any and all pertinent documents which support your claim, such as listing agreements, purchase and sales contracts, closing statements, letters, phone and contact logs, working papers, and any notarized statements from witnesses.
5. An arbitration deposit of \$500 is required.
6. If you are not a REALTOR®, you will be asked to sign an arbitration agreement indicating your commitment to abide by the decision of the Hearing Panel.
7. Send all of these items to the attention of the Director of Member Services at the Association. Make yourself a copy of the package. Your request will then be reviewed by the Grievance Committee to determine if it meets the Association's criteria for an "arbitrable matter" as outlined later in this pamphlet.

## HOW DOES THE ASSOCIATION PROCESS ETHICS COMPLAINTS AND ARBITRATION REQUESTS?

There are two Association committees that handle these matters: the Grievance Committee and the Professional Standards Committee. Their functions are described below.

### Role of the Grievance Committee

**Ethics:** The committee reviews the written complaints when they are received and requests a reply from the Respondent. The committee then conducts its investigation and determines whether the complaint has sufficient merit for further consideration, somewhat like a grand jury.

It does not determine guilt or innocence. The committee will either:

1. Forward the case for a hearing by the Professional Standards Committee;
2. Dismiss the case if it's determined to be unfounded, frivolous, harassing, or not applicable under the REALTOR® Code of Ethics;

3. Postpone its decision to await more information from you; or
4. Determine that the case may be more appropriate as an arbitration.

If your complaint is dismissed, you have the right to appeal the dismissal to the Board of Directors. In an appeal, the Directors examine the materials submitted to the Grievance Committee and can either uphold or overturn the Committee's decision. The Association will explain further details should it be necessary.

If the complaint is worthy of further consideration, it will be forwarded to the Professional Standards Committee for a hearing.

**Arbitrations:** The committee's role in arbitration is different from ethics complaints. Its only duty is to determine if the matter is subject to arbitration by the Association, i.e., an "arbitrable matter." Depending on the circumstances, arbitration is sometimes a duty and sometimes a privilege for REALTORS®. The committee must determine whether your situation fits into the duty or privilege category. It does this by determining:

1. Whether you are allowed, under the rules, to invoke arbitration;
2. Whether the controversy you describe may properly be resolved by arbitration;
3. Whether the arbitration is mandatory or voluntary to the people involved; or
4. Whether the amount in dispute is too small or too large, or the matter is too legally complex for the Association to properly handle.

Such a review could result in the release of Association members from the obligation to arbitrate, and thus free you to seek other avenues in resolving your dispute.

If the Grievance Committee determines that a matter is arbitrable, it may also notify the parties that an informal mediation procedure is available as a preliminary, voluntary alternative to arbitration. Mediation is a means of helping people to negotiate a settlement of a dispute, and no binding decision or award is made other than by the agreement of the parties. Many arbitration cases are settled at this stage.

In either ethics or arbitration cases, you will be informed promptly of the Grievance Committee's decision. As with ethics complaints, you may also appeal a dismissal of an arbitration request to the Association's Board of Directors. The Directors review the material submitted to the committee and can uphold or overturn the Grievance Committee's dismissal. Check with the Association for details on this procedure.

### **Role of the Professional Standards Committee**

This committee's function is to hold ethics and arbitration hearings. Hearings provide an opportunity for the Complainant and Respondent to explain their sides of the story by presenting testimony, evidence, and witnesses, if any. Notification of hearings (date, time, and place) is mailed out to the principal parties 21 days prior to the scheduled date. **PLEASE NOTE: WHEN A COMPLAINT IS FILED AGAINST AN AGENT/SALESPERSON THEIR BROKER HAS A RIGHT TO BE PRESENT AT THE HEARING.**

Once all the facts have been presented, the Hearing Panel, composed of trained and seasoned members of the Association who have been chosen on the basis of their experience, temperament, and objectivity, will determine whether the Code of Ethics has been violated or, in the case of an arbitration, how the dispute should be resolved.

Naturally, you will be informed about each step of the process as it occurs. You will also be given instructions about the hearing procedures prior to the hearing.

### **Role of the Association Staff**

Throughout the ethics or arbitration process, the Association's paid professional staff is responsible for maintaining the confidential case files and ensuring that the paperwork, notifications, correspondence, and other administrative work flows smoothly. They are not, however, licensed real estate practitioners, nor are they allowed to dispense legal advice or otherwise advise or counsel you on your case. Therefore, we ask that you not attempt to discuss the allegations, facts, and particulars of your case with them.

### **A FINAL WORD**

The entire ethics or arbitration process usually takes a minimum of 75 days, but may take longer. Please remember that the overriding principal governing either type of case is the assurance of due process to all parties.

In an ethics complaint, a REALTOR®'s personal and professional reputation can be at stake. Our Grievance Committee members are specially trained to ensure that a complete, impartial investigation is conducted so that all the relevant facts are revealed before their decision is reached to dismiss or forward the case. This can sometimes take several days or weeks of phone calls, interviews, and correspondence.

Likewise, in an arbitration proceeding, the investigators and hearing panels are very aware that the ultimate decision may cause one of the parties to pay a sizable amount to the other.

Remember, too, that the individuals conducting the investigations and hearings are dedicated volunteers with active real estate careers.

You can assist in the speedy resolution of your case by making sure that any requests for additional information are answered promptly, by meeting the deadline dates given for all steps in the process, and by committing the time necessary should a hearing be required.

If you have any procedural questions regarding filing your complaint, please call the Hampton Roads REALTORS® Association at 757-473-9700.