

# Statements of Professional Standards Policy

*Approved by the Professional Standards Committee and the Board of Directors  
of the NATIONAL ASSOCIATION OF REALTORS®*

## 1. Article 17, Code of Ethics

*In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between REALTORS® (principals) associated with different firms, arising out of their relationship as REALTORS®, the REALTORS® shall mediate the dispute if the Board requires its members to mediate. If the dispute is not resolved through mediation, or if mediation is not required, REALTORS® shall submit the dispute to arbitration in accordance with the policies of the Board rather than litigate the matter.*

*In the event clients of REALTORS® wish to mediate or arbitrate contractual disputes arising out of real estate transactions, REALTORS® shall mediate or arbitrate those disputes in accordance with the policies of the Board, provided the clients agree to be bound by any resulting agreement or award.*

*The obligation to participate in mediation and arbitration contemplated by this Article includes the obligation of REALTORS® (principals) to cause their firms to mediate and arbitrate and be bound by any resulting agreement or award. (Amended 1/12)*

## 2. Circumstances under which REALTORS® must submit to arbitration\*

- (a) Every REALTOR® of the Board who is a REALTOR® principal, every REALTOR® principal who participates in a Board's MLS where they do not hold Board membership and every nonmember broker or licensed or certified appraiser who is a Participant in the Board's MLS shall have the right to invoke the Board's arbitration facilities in any dispute arising out of the real estate business with a REALTOR® principal in another real estate firm or with that firm (or both), or nonmember broker/appraiser or their firm or both who is a Participant in the Board's MLS. *(Amended 5/01)*
- (b) A REALTOR® other than a principal or a REALTOR-ASSOCIATE® shall have the right to invoke the arbitration facilities of the Board in a business dispute with a REALTOR® or REALTOR-ASSOCIATE® in another firm or with their firm (or both), whether in the same or a different Board, provided the REALTOR® principal with whom he is associated joins in the arbitration request, and requests arbitration with the REALTOR® principal of the other firm or with their firm (or both). Arbitration in such cases shall be between the REALTOR® principals or their firms (or both). REALTOR® nonprincipals and REALTOR-ASSOCIATE®S who invoke arbitration in this manner, or who are affiliated with a respondent and have a vested financial interest in the outcome, have the right to be

present throughout the proceedings and to participate but are not considered to be parties. *(Amended 5/01)*

- (c) A client of a REALTOR® principal may invoke the facilities of the Board in a business dispute with a REALTOR® principal or the REALTOR®'s firm (or both) arising out of an agency relationship, provided the client agrees to be bound by the arbitration. In the event of such request and agreement the Board will arbitrate the dispute subject to the Board's right to decline arbitration based on the amount involved or the legal complexity of the dispute. A REALTOR® principal may also invoke arbitration against his client but no arbitration may be held without the client's voluntary agreement to arbitrate and to be bound by the decision. *(Amended 05/01)*

## 3. Circumstances under which arbitration is contingent upon the REALTOR®'s voluntary participation\*

- (a) REALTORS® and REALTOR-ASSOCIATE®S who are or were affiliated with the same firm shall have the right to invoke the arbitration facilities of the Board, provided each party voluntarily agrees to the arbitration in writing and the Board finds the matter properly subject to arbitration. This privilege as stated applies to disputes arising when the parties are or were affiliated with the same firm, irrespective of the time request is made for such arbitration. *(Amended 11/95)*
- (b) A REALTOR® principal may invoke the arbitration facilities of the Board in a dispute arising out of the real estate business with a nonmember broker, provided each party agrees in writing to the arbitration and provided the Board finds the matter properly subject to arbitration. However, it shall be optional with the member as to whether he will submit to a claim to arbitration by a nonmember broker who is not an MLS Participant. A nonmember broker who is not an MLS Participant or nonmember salesperson may invoke the arbitration facilities of the Board of REALTORS® in cases where they believe they have an arbitrable dispute with a REALTOR®. Under these circumstances, REALTORS® are not required to agree to or participate in arbitration. *(Amended 11/12)*
- (c) Business disputes between a REALTOR® principal and a customer of the REALTOR® principal may be arbitrated by the Board if a written contractual relationship has been created by a REALTOR® principal between a customer and a client and provided all parties to the dispute (i.e., the customer and the REALTOR®) agree in writing to arbitrate the dispute. *(Amended 11/95)*

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\*Refer to **Part Ten**, Section 44 of this Manual.

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#### **4. Board's right to release parties from their obligation to arbitrate**

If either the Grievance Committee or the arbitration panel determines that because of the amount involved or the legal complexity of the dispute the dispute should not be arbitrated, the arbitration shall automatically terminate unless either of the parties to the dispute appeals the decision to terminate the proceedings to the Board of Directors within twenty (20) days of the date of notice that the Grievance Committee or the arbitration panel declined to continue the proceeding. The Hearing Panel can also dismiss the arbitration request if the Hearing Panel concludes the matter is not arbitrable. In the event of such an appeal, the Grievance Committee or the arbitration panel shall report its conclusions to the Board of Directors and, if the Board of Directors concurs, the arbitration shall terminate and the parties shall be relieved of their obligation to arbitrate. In this event, or in the event of no appeal, any deposits made by the parties shall be returned to them. However, if the Board of Directors decides that the arbitration should proceed, the matter shall be remanded to the Grievance Committee or the arbitration panel for further proceedings. *(Revised 11/95)*

#### **5. Failure to submit to arbitration**

If the complaint against a REALTOR® principal is that he has improperly refused to submit a dispute to arbitration (or to mediation if required by the Board), the complaint shall not be referred to the Grievance Committee or a Hearing Panel but shall be brought before the Board of Directors at the next regular meeting or at a special meeting called by the President for that purpose. The procedures for notices, time of notice, and hearing prescribed for matters before a Hearing Panel shall apply. The sole question of fact for the Directors to decide will be whether the respondent has failed to submit an arbitrable matter to arbitration or mediation. Upon determination that the member has refused to arbitrate or mediate a properly arbitrable matter, the Board of Directors may direct the implementation of appropriate sanction and should, if it has reason to believe that the imposition of sanction will become the basis of litigation and a claim for damages consequent to such sanction, delay the effective date of implementing the sanction to a date following receipt by the Board of a judicial decision in a petition for declaratory relief filed by the Board to confirm the propriety of its action. *(Revised 11/11)*

#### **6. Failure to abide by an award rendered by a Hearing Panel**

If the complaint against the REALTOR® principal is that, having properly submitted a dispute to arbitration, he has refused to abide by an award, such refusal should not be referred to the Grievance Committee as a violation of the Code of Ethics unless such refusal reflects an established pattern or practice of noncompliance with the commitment to arbitrate. A refusal to abide by an award in arbitration should be enforced in the manner set forth in **Part Ten**, Arbitration of Disputes, Section 56, Enforcement. *(Revised 11/95)*

#### **7. No predetermination of any award in an arbitrable matter (Interpretation No. 31, Article I, Section 2, Bylaws, National Association of REALTORS®)**

*A Board rule or a rule of a Multiple Listing Service owned by, operated by, or affiliated with a Board which establishes, limits, or restricts the REALTOR® in his relations with a potential purchaser, affecting recognition periods or purporting to predetermine entitlement to any award in arbitration, is an inequitable limitation on its membership.*

Explanation of Official Interpretation No. 31: *"In essence, this is a specific Interpretation of the general rule established in Interpretation No. 6 that a Board may not have a rule which restricts or limits the REALTOR® in the conduct of his business unless it concerns ethical practice. Thus, a rule of a Board or Multiple Listing Service which would determine a protection period in reference to a prospective purchaser is an inequitable limitation. Further, the Board or its MLS may not establish a rule or regulation which purports to predetermine entitlement to any awards in a real estate transaction. If controversy arises as to entitlement to any awards, it shall be determined by a hearing in arbitration on the merits of all ascertainable facts in the context of the specific case of controversy.\*"*

#### **8. Holding disputed funds by the Board of Directors**

Member Boards shall not make a requirement that disputed funds be deposited with the Board by the respondent in an arbitration matter prior to an arbitration hearing, as it is beyond the legitimate authority of the Board or its Professional Standards Committee. However, this does not relieve REALTORS® of their responsibility to be prepared to abide by any determination made by the Board's arbitration panel and to satisfy any award in a prompt manner. *(Revised 11/87)*

#### **9. Arbitration under circumstances other than those described in Section 44**

A Member Board may provide arbitration procedures only in those instances described in **Part Ten**, Section 44, Duty and Privilege to Arbitrate, in this Manual.

#### **10. Determining jurisdiction for the conduct of arbitration hearings**

Absent an interboard arbitration agreement directing otherwise, the following factors determine the appropriate Board to conduct arbitration hearings in instances where parties hold membership in more than one Board or MLS: *(Revised 11/02)*

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\*In connection with this National Association policy, refer to **Part Ten**, Appendix II, Arbitration Guidelines, in this Manual.

- Where all parties hold REALTOR® membership or hold MLS participatory rights under the universal access to services component of Board of Choice in only one Board, that Board shall conduct arbitration.
- Where all parties hold REALTOR® membership or hold MLS participatory rights under the universal access to services component of Board of Choice in the same two (or more) Boards, arbitration will be conducted by the Board in which the property giving rise to the dispute is located. If the property is not within the jurisdiction of those Boards, the Board in which the arbitration request is filed will conduct arbitration.
- Where all parties do not hold membership in the same Board, and do not have MLS participatory rights under the universal access to services component of Board of Choice through the same Board, complainants may, at their discretion, invoke interboard arbitration or, alternatively, file arbitration requests with any Board in which the respondent holds REALTOR® membership or holds MLS participatory rights under the universal access to services component of Board of Choice. Pursuant to this provision, Boards must provide arbitration services in circumstances where it is determined by the Grievance Committee that an arbitrable dispute exists and the dispute is subject to mandatory arbitration. *(Revised 11/00)*

**11. REALTOR® principal may be joined in any complaint filed against a REALTOR® nonprincipal or REALTOR-ASSOCIATE® licensed with the REALTOR® principal or his firm**

- (a) The REALTOR® principal with whom a REALTOR® nonprincipal or REALTOR-ASSOCIATE® is affiliated shall not be automatically joined in any ethics complaint against the REALTOR® nonprincipal or REALTOR-ASSOCIATE®. *(Revised 4/95)*

However, the REALTOR® principal may be joined as a respondent in the complaint by action of the complainant, by review of the Grievance Committee, or by determination of the Hearing Panel prior to the commencement of the hearing based on the facts of the complaint. If, however, the complaint is amended after the hearing has commenced, pursuant to Section 21(f)(2), the REALTOR® principal who has been added to the complaint has the right to have the hearing reheard from the beginning by the same Hearing Panel or may waive this right.

- (b) The REALTOR® principal joined in such complaint shall not be automatically found in violation of the Code of Ethics if the REALTOR® nonprincipal or REALTOR-ASSOCIATE® is judged in violation, but the finding should be based on the facts and merits of the case.
- (c) Discipline of the REALTOR® principal, if any, may vary from that imposed upon the REALTOR® nonprincipal or REALTOR-ASSOCIATE®.

**12. Adoption of Code of Ethics or Standards of Practice by Member Boards and State Associations**

A local Board or State Association shall not adopt any set of rules, regulations, policies, and practices which purport to be in lieu of, in addition to, or an extension of the Code of Ethics and Standards of Practice of the NATIONAL ASSOCIATION OF REALTORS®. *(Amended 11/89)*

**13. Articles and publications on the Code of Ethics**

The National Association reserves the exclusive right to interpret the Code, its applications, and its proper enforcement to Member Boards and Board Members.

The National Association does not endorse or recommend any article or publication concerning ethics which is not published by the National Association or its institutes, societies, and councils and authorized by the National Association.

**14. Statement of policy to State Associations and local Boards concerning the state real estate regulatory authority adopting and incorporating the Code of Ethics of the National Association into state law or regulations**

Historically, the Professional Standards Committee of the National Association has sought to promulgate the awareness and understanding of REALTORS® and REALTOR-ASSOCIATE®, as well as the general public, of the Code of Ethics of the National Association and its distinctive obligations accepted voluntarily by the members of the constituent Member Boards of the NATIONAL ASSOCIATION OF REALTORS®.

The Code and its interpretations are copyrighted, and the National Association seeks on a continuing basis to diligently guard and protect its rights and the rights of its Member Boards to preserve the distinctive wording of the Code and the unique application of its obligations to members of Boards of REALTORS®. This protection is based upon a completely voluntary acceptance of and adherence to the Code by such members, subject to the sole right of interpretation of the Code by the Professional Standards Committee of the National Association and the appropriate enforcement of the Code by Member Boards of REALTORS® in accordance with the provisions of Article IV, Sections 1 and 2, *Bylaws*, NATIONAL ASSOCIATION OF REALTORS®.

At the same time, the National Association has sought to persuade states and their regulatory agencies to strengthen the laws and regulations governing the industry in order to better protect the public.

As a result of the coincidence of the professionalization and consumer protection objectives of the National Association and of state authorities, in some instances, state authorities have

sought to adopt or incorporate the Code of Ethics of the National Association into the laws or regulations of the state, either expressly or by reference. Moreover, some State Associations and Member Boards have encouraged such action on the theory that what is good for clients of REALTORS® should be good for clients of every real estate licensee.

While the National Association desires to promote in every way the strengthening of the consumer protection afforded by the real estate license laws and regulations, the adoption or incorporation of the Code of Ethics should **not** be encouraged or endorsed for the following reasons:

- First, the Code of Ethics is copyrighted by the NATIONAL ASSOCIATION OF REALTORS®, and such action would destroy or seriously erode the right of the Association to limit the usage of the Code and references to it to REALTORS®, REALTOR-ASSOCIATE®s, and those authorized by the Association.
- Second, the Code of Ethics is subject to interpretation only by the Professional Standards Committee of the National Association. However, if enacted into law, the Code would be subject to interpretation by the regulatory authority or by the courts. Thus, there exists a serious risk that the same Code provision might be subject to differing interpretations in the same jurisdiction as well as differing interpretations in different jurisdictions, and the National Association would thereby be effectively preempted from control and administration of its own creation.
- Third, the enforcement of the Code of Ethics is a responsibility of the Board of REALTORS®. Should the Code be incorporated into law, enforcement responsibility would necessarily shift to governmental authorities. Not only would this constitute a fundamental preemption of a traditional Board function, but it would also hamper consistent comprehensive enforcement nationwide.
- Fourth, adoption of the Code of Ethics by states and their regulatory authority would obviate its aspirational objectives and character. Government cannot, by its nature, demand the highest standards of professional competence and performances without risking political attack on the ground that it has created a barrier to business entry. However, high standards may be adopted voluntarily by those engaged in the business who are prepared to accept the judgment of their peers and the highest measure of social responsibility. Hence, the private, voluntary Code can provide a direction for the development of professional responsibility which is rarely within the capacity of the Code if enacted into law.

#### **15. Arbitration between Board Members who are or were affiliated with the same firm**

No Member Board may require REALTORS® and REALTOR-ASSOCIATE®s affiliated with the same firm to arbitrate disputes between themselves unless both parties voluntarily agree to

arbitration in writing, and provided the Board finds the matter properly subject to arbitration.

#### **16. Filing fee to accompany requests for ethics hearings**

In the interest of effective and consistent enforcement of the Code of Ethics, no filing fee may be required to accompany a complaint alleging unethical conduct on the part of a Board Member.

#### **17. Applicability of Code of Ethics to Board Members**

REALTORS® are subject to the Code of Ethics of the National Association. Board Members holding other classifications of membership are encouraged to abide by the principles established in the Code, but are not subject to the disciplinary authority of the local Member Board with regard to conduct inconsistent with the Code of Ethics. (*Amended 2/94*)

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. (*Amended 4/96*)

#### **18. Local Member Board requests for the conduct of ethics and arbitration hearings by the State Association**

A local Board, prior to referring an ethics complaint or arbitration request for review to the State Association, should exhaust all efforts to impanel an impartial panel to conduct either the original hearing or the appeal or procedural review. These efforts may include the appointment of knowledgeable members of the Board on an ad hoc basis to serve either on a Hearing Panel or on behalf of the Board of Directors. If, after making all reasonable efforts, the Board still cannot impanel an impartial tribunal, the Board may refer the matter to the State Association, and the State Association may delegate to another Board or a regional enforcement facility the authority to hear the case on behalf of the State Association. No Board or regional enforcement facility, however, may be required to accept this delegation of authority. If no other entity is amenable to conducting the review, the State Association shall be responsible for conducting the hearing. State Associations may, at their discretion, require that the President or Association Executive of the Board referring an ethics complaint or arbitration request certify that all reasonable efforts to impanel an impartial panel had been made, and may further require that those efforts be documented. (*Amended 11/03*)

In instances where a local Member Board determines by resolution of its Board of Directors that it is incapable of providing an impartial panel for the conduct of an ethics or arbitration hearing (or appeal or procedural review hearing), the complaint or the request for arbitration (and the ethics appeal or procedural review request, if any) may be referred by the Board President to the State Association of REALTORS® for a hearing. With regard to requests for arbitration, in the event the State Association declines to conduct the arbitration or to delegate its authority to another Board or regional enforcement facility, the parties shall be relieved of their obligation to arbitrate as established in Article 17 of the Code of Ethics. With regard to alleged violations of the Code of Ethics, such allegations may be received and considered by the State Association and (1) dismissed as unworthy of further consideration, (2) heard by a Hearing Panel of the State Association’s Professional Standards Committee, or (3) referred to another Board or regional enforcement facility. If referred for a hearing to the State Association’s Professional Standards Committee or to another local Board or regional enforcement facility, a Hearing Panel will be appointed to conduct the hearing and forward the determination and sanction, if any, to the local Member Board. The Board of Directors of the local Member Board shall then implement the decision of the Hearing Panel in strict accordance with its terms and conditions. Any requests for appeal or procedural review should be considered by an appropriate body of the State Association or “deputized” local Board or regional enforcement facility in accordance with the relevant established professional standards procedures. *(Amended 11/93)*

**19. Confidentiality of determinations rendered in ethics and arbitration hearings**

The allegations, findings, and decisions rendered in ethics and arbitration hearings are confidential and should not be reported or published by the Board, any member of a tribunal, or any party under any circumstances except those established in the *Code of Ethics and Arbitration Manual* of the National Association as from time to time amended. *(Revised 11/91)*

**20. Statement of policy related to Article 17 of the Code of Ethics**

Article 17 is not to be construed as precluding a REALTOR® who is a defendant in litigation from joining a cooperating agent and/or subagent in the litigation.

**21. Adoption of the Code of Ethics and Arbitration Manual by Member Boards**

Member Boards and State Associations are not required to adopt the *Code of Ethics and Arbitration Manual* verbatim, but no Member Board may adopt or follow any procedures inconsistent with the precepts enunciated in the *Code of Ethics and Arbitration Manual* of the National Association as from time to time amended.

**22. Board and State Association publications or audiovisual programs concerning the Code of Ethics and its enforcement**

Any articles, audiovisual programs, or any type of publication related to the Code of Ethics, its interpretation, or its enforcement that has not been prepared by or approved by the Professional Standards Committee of the National Association must be prefaced by a statement indicating that the contents reflect the understanding and opinions of the author(s) and do not represent an official expression of policy by the National Association. To the extent that any article, audiovisual program, or publication prepared by any individual or organization other than the National Association varies in any degree from the Code of Ethics, its interpretation, or its enforcement procedures as approved by the Professional Standards Committee of the National Association, the policies of the National Association shall take precedence.

No article, audiovisual program, or other publication may be designated as an official expression of policy concerning the Code of Ethics, its interpretation, or its enforcement without the express written approval of the National Association.

Local Boards and State Associations are encouraged to consider preparation of such articles, audiovisual programs, or other publications and are requested to submit them to the Professional Standards Committee or its staff representatives for review and approval prior to publication.

**23. Disputes arising out of circumstances occurring prior to the time a REALTOR® is elected to board membership**

While REALTORS® are encouraged to resolve all disputes through the arbitration facilities of their Board or Boards, the intent of Article 17 is that only disputes arising from facts occurring after each of the parties has become a REALTOR® are subject to mandatory arbitration under Article 17 of the Code of Ethics.

**24. Formulation of Multi-Board or Regional Grievance or Professional Standards Committees for Code enforcement in areas where Boards have limited membership**

Member Boards are authorized to enter into collective agreements by which the Boards would share the responsibility for enforcement of the Code of Ethics, including the conduct of arbitration hearings, on a joint basis.\*

\*A sample format agreement approved by the Professional Standards Committee to establish a collective agreement is included as Specimen Forms #E-19 in **Part Six** and #A-19 in **Part Thirteen** of this Manual.

## **25. Expenses related to conduct of hearings by Multi-Board or regional Grievance or Professional Standards Committees**

Expenses related to the conduct of hearings by a multi-Board or regional Grievance Committee or Professional Standards Committee shall be as established by written agreement between the signatory Boards. The expenses of such hearings shall be borne by the signatory Boards and shall not be supported by fees charged to the members other than as otherwise authorized by the *Code of Ethics and Arbitration Manual*. (Revised 11/98)

## **26. Burdens and standards of proof in arbitration and ethics hearings**

In any ethics hearing or other hearing convened to consider alleged violations of membership duties and in any arbitration hearing, the ultimate burden of proving that the Code of Ethics or other membership duty has been violated, or that an arbitration award should be issued to the requesting party, is at all times on complainants and parties requesting arbitration.

The standard of proof on which an arbitration hearing decision is based shall be a “preponderance of the evidence.” Preponderance of the evidence shall be defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the facts sought to be proved are more probable than not.

“Clear, strong, and convincing” shall be the standard of proof by which alleged violations of all membership duties, including violations of the Code of Ethics, are determined. Clear, strong, and convincing shall be defined as that measure or degree of proof which will produce a firm belief or conviction as to the allegations sought to be established. (Revised 2/92)

Appeals of ethics Hearing Panel decisions based on an alleged misapplication or misinterpretation of an Article(s) of the Code of Ethics shall be determined based on the correctness of the Hearing Panel’s decision.

Appeals of ethics Hearing Panel decisions based on an alleged procedural deficiency or failure of due process, and procedural review of arbitration hearing procedures shall be determined based on whether the effect of the deficiency was to deny the appellant a fair hearing.

Appeal panels may modify discipline proposed by Hearing Panels only in instances where the discipline proposed is not authorized or where the appeal panel concludes that the Hearing Panel abused its discretion. (Adopted 11/99)

## **27. Consolidation of arbitration claims arising out of the same transaction**

When reviewing requests for arbitration, Grievance Committees should try to ensure that all appropriate parties are named as complainants or respondents. If it appears that there may be

related claims involving other parties arising out of the same facts, the Grievance Committee may suggest to either the complainant or respondent (or both) that they may wish to request arbitration with additional respondents or third-party respondents so that all related claims may be resolved through a single arbitration hearing. Upon motion by either the complainant or the respondent, an arbitration request may be amended to include any additional appropriate parties, or separate arbitration requests may be filed naming additional parties, so that all related claims arising out of the same transaction can be resolved at the same time. (Revised 11/92)

## **28. Participation in litigation rather than arbitration**

In instances where a REALTOR® is a party to litigation involving an otherwise arbitrable matter and none of the parties invokes the Board’s arbitration facility prior to or during the course of litigation, any member involved in the litigation may not thereafter be charged with failing or refusing to arbitrate. (Revised 11/92)

## **29. Applicability of the Code of Ethics to non-real estate-related activities**

While REALTORS® are encouraged to follow the principles of the Code of Ethics in all of their activities, a REALTOR® shall be subject to disciplinary action under the Code of Ethics only with respect to real estate-related activities and transactions involving the REALTOR®. (Adopted 2/88)

## **30. Participation in voluntary arbitration**

Article 17 is not to be construed as precluding a REALTOR® from instituting litigation or causing a dispute to be brought before an alternative dispute-resolving forum other than the Board of REALTORS® under those circumstances where submission of the dispute to the Board would be voluntary. (Adopted 5/88)

## **31. “Cooperation” defined**

The obligation to cooperate, established in Article 3 of the Code of Ethics, relates to a REALTOR®’s obligation to share information on listed property and to make property available to other brokers for showing to prospective purchasers when it is in the best interest of the seller. An offer of cooperation does not necessarily include an offer to compensate a cooperating broker. Compensation in a cooperative transaction results from either a blanket offer of subagency made through MLS or otherwise, or offers to compensate buyer agents, or, alternatively, individual offers made to subagents or to buyer agents, or other arrangements as negotiated between listing and cooperating brokers prior to the time an offer to purchase is submitted. (Revised 11/09)

## **32. “Expert witness” on the Code of Ethics**

The NATIONAL ASSOCIATION OF REALTORS® reserves to itself the exclusive right to interpret the Code of Ethics through consideration and action of the National Association’s

Professional Standards Committee. A member, if called upon to testify on the Code of Ethics or its interpretation in civil litigation, must clearly indicate that the information provided reflects the REALTOR®'s personal opinion and sense of ethics in light of his experience in the real estate business. *(Adopted 2/89)*

### **33. Use of panels in place of Committees and the Board of Directors**

Any matter brought before the Grievance Committee, Professional Standards Committee, or Board of Directors may be considered by a panel of members or Directors appointed by the President for that purpose (or, alternatively, by the Board's Executive Committee). Three (3) or more members shall constitute a panel of the Grievance and Professional Standards Committees that can act on behalf of those committees. Five (5) Directors or a quorum of the Board of Directors, whichever is less, shall constitute a panel of the Board of Directors, that can act on behalf of the Board of Directors. The decision of the panel (or Executive Committee) shall be final and binding and shall not be subject to further review by the full Committee or the full Board of Directors, except as otherwise provided in this Manual.

Panel members should be experienced, knowledgeable persons of judicial temperament.

In appointing such a panel, the President should consider the following recommended criteria:

- number of years as a REALTOR®
- number of years in the real estate business
- primary and secondary fields of real estate endeavor/expertise
- participation in post-licensing real estate education
- training in the Code of Ethics
- position in firm (principal, nonprincipal)
- size of firm
- common sense
- open-mindedness
- familiarity with state(s) laws and regulations
- receptiveness to instruction/training
- other relevant professional or procedural training

Associations are also authorized to adopt policies and procedures assigning Grievance Committee functions to a panel of the Professional Standards Committee. Where Grievance Committee functions are delegated to a panel of the Professional Standards Committee, all provisions of this Manual applicable to Grievance Committees will apply to a panel of the Professional Standards Committee acting in that capacity. Three (3) or more members shall constitute a panel of the Professional Standards Committee to assume the responsibilities of the Grievance Committee. *(Adopted 05/15)*

When possible, panels should be strongly encouraged to use conference calls or alternative communication technologies for meetings other than hearings and appeals/procedural reviews to expedite the decision-making process. Use of conference calls

or alternative communication technologies during the course of a hearing shall be governed by Professional Standards Policy Statement #56, "Remote" Testimony. *(Revised 11/14)*

### **34. Consolidation of ethics complaints arising out of the same transaction**

In the interest of maximizing the resources of Boards and Associations, Grievance Committees should use all reasonable efforts to ensure that all ethics complaints arising out of the same transaction or event are consolidated and scheduled for hearing in a single hearing. Respondents to ethics complaints do not have the right to a separate hearing unless they can demonstrate that consolidation of complaints would prevent them from receiving a fair hearing. *(Adopted 4/93)*

### **35. Separation of ethics complaint and arbitration request**

When an ethics complaint and an arbitration request are filed at the same time arising out of the same facts and circumstances, the arbitration hearing shall be held first and the ethics hearing shall be conducted by a different Hearing Panel after the conclusion of the arbitration hearing. *(Adopted 11/93)*

### **36. Translations of the Code of Ethics**

While Boards and Associations are encouraged to make information regarding the Code of Ethics and its appropriate enforcement available as widely as possible, translations (other than by the National Association) into languages other than English are not official and should carry a notice advising readers that they have been prepared for informational purposes only. *(Adopted 4/94)*

### **37. Discipline for prior violations of the Code of Ethics**

In instances where REALTORS® are found to have violated the Code of Ethics, the Hearing Panel will consider all records of previous violations and sanctions imposed, whether by the current or by any other Board or Association, in the member's file in determining discipline, and the rationale for the current disciplinary action can be provided to the parties and the Directors as part of the decision. The Hearing Panel's consideration will include whether prior disciplinary matters involve discipline that was held in abeyance and that will be triggered by a subsequent violation (including the matter currently under consideration by the Hearing Panel). *(Amended 11/13)*

### **38. Hearing Panels to be conversant with applicable state law under board of choice across state lines**

Where membership is provided under board of choice across state lines, Hearing Panels must be conversant with and apply the relevant state's laws and regulations in determining how the Code of Ethics will be interpreted/applied in instances

where the underlying transaction occurred out of state and involved a respondent licensed in that state. (Adopted 11/95)

### **39. Awards escrowed under board of choice across state lines**

Where one or more parties to an arbitrable issue have obtained membership under board of choice across state lines, awards rendered shall be escrowed by the Board that conducted arbitration in a manner consistent with the procedures in Section 53 (c-f), The Award, *Code of Ethics and Arbitration Manual*. (Adopted 11/95)

### **40. Cooperative enforcement agreements**

To ensure fair, impartial and knowledgeable enforcement of the Code of Ethics (including arbitration) there must be adequately large groups of knowledgeable, trained REALTORS® and REALTOR-ASSOCIATES® from which the necessary committees and tribunals can be appointed. To this end, Boards and Associations are required to enter into cooperative enforcement agreements to ensure Boards and/or Associations have an aggregate total of at least three hundred fifty (350) primary REALTOR® and/or REALTOR-ASSOCIATE® members from which to compose Hearing Panels. It is recommended but not required that representation/participation in any multi-board regional cooperative enforcement agreement be on a pro-rata basis. This requirement does not apply in instances where, in the opinion of the state association, unique geographical considerations (e.g., islands, remote locale, etc.), logistical difficulties or other impediments make participation prohibitive. All Boards regardless of size (except Commercial Overlay Boards) must participate with at least one other Board (which may be the state association) in a cooperative enforcement agreement. (Revised 5/08)

### **41. Arbitration Guidelines to parties**

Boards conducting arbitration are required to provide all parties and panel members with the Arbitration Guidelines prior to commencement of any arbitration hearing. (Adopted 11/96)

### **42. Previously dismissed ethics complaints/arbitration requests**

If an ethics complaint or arbitration request is received and reviewed by a Board's Grievance Committee or Board of Directors and is dismissed as not warranting a hearing, the respondent(s) shall not subsequently become subject to the same (or substantially similar) ethics complaint or arbitration request in the same or another Board. (Adopted 5/97)

Dismissal of an arbitration request by a Board of REALTORS® because the dispute is not arbitrable based on Article 17 or other grounds established in the *Code of Ethics and Arbitration Manual*, does not prohibit REALTORS® from exercising other remedies that may be available to them, including litigation. (Adopted 5/99)

### **43. Duty to arbitrate personal**

The privilege to invoke arbitration and the duty to arbitrate is personal. Although any REALTOR® principal may invoke the arbitration facilities of a Board and be required to arbitrate, REALTOR® principals may not delegate this privilege or obligation. (Adopted 11/98)

### **44. Effective Dates of the Code of Ethics and Standards of Practice and the Code of Ethics and Arbitration Manual**

All changes to the Code of Ethics and Standards of Practice carry an annual effective date of January 1 of the year following their approval by the Board of Directors of the National Association and, where necessary, by the Delegate Body. (Adopted 11/89)

To ensure consistent, uniform enforcement of the Code of Ethics nationwide, all changes in professional standards policy normally incorporated into the National Association's *Code of Ethics and Arbitration Manual* become effective on January 1 of the year following their approval by the Board of Directors of the National Association. Unless specifically provided otherwise by the Board of Directors, associations shall have sixty (60) days from their effective date to adopt them. (Revised 05/15)

All new and amended Case Interpretations become effective upon approval by the National Association's Professional Standards Committee and publication on REALTOR.org. (Adopted 5/98)

### **45. Publishing the names of Code of Ethics violators**

Boards and Associations may, as a matter of local discretion, adopt procedures authorizing the publication of the names of ethics violators, subject to the following qualifications:

- Publication can only occur after a second violation occurs within three (3) years.
- Publication can only be made in an official communication vehicle intended primarily for members of the Board (or Boards) in which the violator holds (held) membership. Where the official communication vehicle is electronic or Internet-based, access must be limited to Board members. (Amended 11/04)
- The name of the firm the violator is (or was) licensed with cannot be published.
- Publication must be consistent and uniform. This means that publication may not occur selectively but must be used in each instance where a second violation is determined within three (3) years.
- Other than the violator's name, the only additional information that may be published is the Article (or Articles) violated, and the discipline imposed, except that in cases where the violator's name is similar to another member's name, the violator's license number or office address (or both) may also be published. (Amended 11/99)

- At least one of the violations must be based on conduct which occurs after the adoption of these procedures. (*Adopted 2/99*)

#### **46. Duty to arbitrate after membership lapses or is terminated**

The duty to submit to arbitration continues in effect after membership lapses or is terminated provided that the dispute arose prior to the time the respondent's membership lapsed or was terminated. (*Adopted 5/99*)

#### **47. New member orientation program**

Effective January 1, 2001 applicants for REALTOR® membership shall complete an orientation program on the Code of Ethics of not less than two (2) hours and thirty (30) minutes of instructional time. This requirement can be satisfied through instruction provided by the local Board or by another Board and can include classroom instruction, home study, correspondence study, or Internet-based instruction. Any orientation program must meet the learning objectives and minimum criteria established by the NATIONAL ASSOCIATION OF REALTORS® from time to time. REALTORS® who having completed such orientation shall not be required to complete further Code of Ethics orientation upon application for membership in another Board provided that REALTOR® membership has been continuous or that any break in membership is for one (1) year or less. (*Adopted 11/99*)

#### **48. REALTORS® Code of Ethics training**

Effective January 1, 2001 through December 31, 2004, and for successive four (4) year periods thereafter, REALTORS® are required to complete quadrennial ethics training of not less than two (2) hours and thirty (30) minutes of instructional time. REALTORS® completing such training during any four (4) year cycle shall not be required to complete additional ethics training in respect of this requirement as a requirement of membership in any other Board or Association.

A REALTOR® completing the new member Code of Ethics orientation during any four (4) year cycle shall not be required to complete additional ethics training in respect of this requirement until a new four (4) year cycle commences.

Failure to complete the required periodic ethics training shall be considered a violation of a membership duty.

Failure to meet the requirements will result in suspension of membership for the first two months (January and February) of the year following the end of any four (4) year cycle or until the requirement is met, whichever occurs sooner. On March 1 of that year, the membership of a member who is still suspended as of that date will be automatically terminated.

Every Board and Association is required to provide access to necessary ethics training programs either locally, in conjunction with other Boards and Associations, or through other methods (including, but not limited to, home study, correspondence

courses, or Internet-based instruction). Any training offered pursuant to this requirement must meet the learning objectives and minimum criteria established by the NATIONAL ASSOCIATION OF REALTORS® from time to time. (*Amended 11/10*)

#### **49. Professional standards administration training**

Enforcement of the Code of Ethics is a privilege and responsibility of each Board and Association as established in Article IV of the Bylaws of the NATIONAL ASSOCIATION OF REALTORS®. Every Board and Association must designate a person or entity responsible for administration of professional standards processes. Persons primarily responsible for administration of professional standards processes must successfully complete training every four (4) years on professional standards administration meeting the learning objectives and minimum criteria established by the NATIONAL ASSOCIATION OF REALTORS® from time to time. (*Revised 11/14*)

#### **50. Separate subcommittees for ethics, arbitration, and mediation**

Boards and Associations can meet their professional standards enforcement responsibility through separate committees or subcommittees specifically delegated responsibility for arbitration, mediation, the conduct of hearings to resolve ethics complaints and alleged violations of other membership duties, and to conduct ombudsman programs. (*Revised 05/15*)

#### **51. Mediators used by Boards**

Mediators used by Boards and Associations to resolve contractual disputes and noncontractual disputes defined in Standard of Practice 17-4 may be REALTORS®, Board/Association staff, or others whose services a Board/Association chooses to utilize. (*Adopted 11/99*)

#### **52. Boards to provide mediation**

The duty of local Boards and Associations to provide mediation services established in Article IV, Section 2 of the Bylaws of the NATIONAL ASSOCIATION OF REALTORS® can be met through provision of mediation services by local Boards and Associations; through multi-Board/regional cooperative enforcement agreements; or through agreement/arrangement with the state association.

Upon receipt of an arbitration request, mediation services shall be offered to disputants prior to review of the arbitration request by the Grievance Committee except where any party requests the Grievance Committee's determination whether an arbitrable issue exists between the named parties and whether the parties would be required to arbitrate.

If the association requires its members to participate in mediation and the Grievance Committee determines that an arbitrable issue exists, the obligation to participate in mediation remains in effect.

Where any party initially declines to mediate pending the Grievance Committee's review of the arbitration request, the parties shall in all instances again be offered the opportunity to mediate following the Grievance Committee's review. (*Adopted 11/99, Amended 5/12*)

### **53. Dispute resolution fees not to exceed maximum arbitration fee**

Effective January 1, 2002, the fees charged for Board/Association dispute resolution services, i.e., mediation and arbitration, may not exceed the maximum arbitration filing fees authorized in the *Code of Ethics and Arbitration Manual* of the NATIONAL ASSOCIATION OF REALTORS®. Boards/Associations may, as a matter of local option, retain part or all of the filing fees paid, irrespective of whether disputes are resolved through mediation or arbitration. (*Adopted 11/99*)

### **54. Personal safety in professional standards proceedings**

Boards and Associations should take reasonable steps to ensure the personal safety of parties, panelists, witnesses, staff, and others participating in professional standards proceedings. In instances where, in the opinion of the presiding committee or Hearing Panel Chair, there is an unacceptable risk posed to the safety of any participant, the proceedings will be recessed so the Chair can consult with staff, Board or Association elected leadership, or Board or Association counsel to identify and take steps to ensure the safety of all participants and to permit the proceedings to resume.

If after consulting with staff, Board or Association counsel, and any other appropriate party or agency (including law enforcement authorities), and after taking reasonable steps to attempt to resume the proceeding while ensuring the safety of all participants, the Board of Directors concludes it will be unduly difficult or impossible to ensure the safety of all participants, the proceedings will be postponed indefinitely and resumed only when the Board of Directors (or its successor) concludes that the proceedings can be safely resumed. Where proceedings are postponed indefinitely by action of the Board of Directors, a memorandum detailing the circumstances shall be appended to the case file and maintained on a permanent basis. The Board of Directors may, at their discretion, share any or all information including the complaint, response, or other documentation or information in their possession with appropriate law enforcement or other government agencies. (*Adopted 5/00*)

### **55. Transmitting devices**

Cellular phones, two-way radios and other transmitting devices may not be operated during ethics hearings, arbitration hearings, appeal hearings, and procedural review hearings absent specific, advance authorization from the panel chair. (*Adopted 11/04*)

### **56. "Remote" testimony**

The policies and procedures established in the National Association's *Code of Ethics and Arbitration Manual* contemplate that parties and their witnesses will participate in ethics and arbitration hearings in the physical presence of Hearing Panels and the respective parties. Parties and their witnesses may request permission to participate in such proceedings via teleconference or video conference. (*Revised 11/14*)

Parties and witnesses to ethics and arbitration hearings may be permitted to participate in those hearings by teleconference or videoconference at the discretion of the hearing panel chair. Only those parties eligible to attend the entire hearing in person would be entitled to participate "remotely" for the entirety of the hearing. Witnesses may only participate remotely for their own testimony. (*Revised 11/14*)

Hearing panels, association staff, or association counsel should employ steps to verify the identity of "remote" participants, to preclude unauthorized individuals from being in the presence of the "remote" participant, and to employ appropriate safeguards to ensure confidentiality of the proceedings.

The costs of "remote" testimony shall be the responsibility of the party requesting the opportunity to participate or offer testimony by teleconference or videoconference. (*Adopted 11/04*)

### **57. Case Interpretations are official policy**

The Case Interpretations of the Code of Ethics approved by the National Association's Professional Standards Committee and published in *Interpretations of the Code of Ethics* illustrate and explain the principles articulated in the Articles and Standards of Practice. While a REALTOR® cannot be found in violation of a Standard of Practice or a Case Interpretation, both are official statements of National Association policy and are not merely advisory. Both can be cited by complainants in support of alleged violations of Articles and by hearing panels in support of decisions that an Article(s) has been violated. (*Adopted 11/10*)

### **58. Circumstances under which disputes may be mediated if REALTORS® voluntarily agree**

While mediation can only be mandated under the circumstances expressly established in Article 17 of the Code of Ethics, Boards and Associations may, at their discretion, offer mediation, and REALTORS® may voluntarily participate in mediation, where disputing parties voluntarily request mediation. The circumstances under which voluntary mediation may occur include:

- (1) disputes between REALTORS® associated with the different firms where no arbitration request has been filed
- (2) disputes between REALTORS® and their clients where no arbitration request has been filed

- (3) disputes between REALTORS® who are or were affiliated with the same firm when the dispute arose
- (4) disputes between REALTORS® and non-member brokers
- (5) disputes between REALTORS® and their customers

*(Adopted 5/11)*

### **59. Associations to provide ombudsman services**

Every local and state association of REALTORS® is required to offer, either directly or as part of a cooperative enforcement agreement (consistent with Professional Standards Policy Statement #40, Cooperative Enforcement Agreements), ombudsman services to members, clients, and consumers on or before January 1, 2016. *(Adopted 11/14)*

### **60. “Alternate” hearing panelists**

Associations may, but are not required to, convene hearing panels that include one or more alternate members. If alternates are present at hearings, they should be seated apart from the hearing panel, may not participate in any way unless called on to replace a panel member, and are bound by the same duties that are applicable to panel members.

If alternate panel members are not called on to replace a panel member and if the association’s policy allows them to be present at post-hearing executive session deliberations, alternates may not be involved in deliberating or deciding the matter before the hearing panel. *(Adopted 11/14)*

### **61. Arbitration procedures governing nonmembers**

Nonmembers arbitrating pursuant to an agreement to participate in a REALTOR® association owned and operated MLS shall be subject to all obligations under an association’s arbitration procedures, including, but not limited to, the obligation to pay an award promptly or deposit a like amount in the event of a challenge pursuant to Section 53, The Award, *Code of Ethics and Arbitration Manual*.

Failure to pay arbitration awards or deposit a like amount in these circumstances may be a violation of the MLS rules and subject to the nonmember to sanction. *(Adopted 11/15)*