



# Before You File an Ethics Complaint

Please review this information carefully

**Important: VITAR operates as a “virtual” association. This means that all correspondence, notifications and responses are handled solely by electronic means, either via e-mail (preferred) or fax when necessary. Please ensure you provide VITAR with a current, active e-mail address and notify us immediately of any changes.**

## Background

REALTOR® associations are charged with enforcing the REALTOR® Code of Ethics. The Code imposes duties above and beyond those imposed by law or regulation, but applies only to real estate professionals who hold REALTOR® membership in the National and Virgin Islands Territorial Associations of REALTORS® through membership in their local Board.

Many difficulties between real estate professionals (whether REALTORS® or not) result from misunderstanding, miscommunication, or lack of adequate communication. If you have a problem with a real estate professional, you may want to speak with them or the firm’s principal broker before filing a complaint. Open, constructive discussion often resolves problems without the need for further action.

If after these steps you still believe you have a grievance, you may want to file an ethics complaint.

## REALTOR® associations’ scope of authority

When considering filing an ethics complaint, you will want to keep in mind that . . .

- Only REALTORS® are subject to the REALTORS® Code of Ethics. If the person you are dealing with is not a REALTOR®, your only recourse may be the territorial licensing authority or the courts.
- REALTOR® Associations...
  - **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.**
  - Determine only 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 territorial licensing authorities or the courts.
  - Can discipline REALTORS® for violating the Code of Ethics. Typical forms of discipline include attending courses and seminars designed to increase REALTORS® understanding of the ethical duties or other responsibilities of real estate professionals. They may also be reprimanded, fined, or have their membership suspended or terminated for serious or repeated violations.
- The primary emphasis of discipline for ethical lapses is *educational*, that is, to create a heightened awareness of and appreciation for the duties the Code imposes.

## Filing an ethics complaint

Here are some general principles to keep in mind.

- Complaints must be filed within one hundred eighty (180) days from the time a complainant knew (or reasonably should have known) that the potentially unethical conduct took place (unless the Association’s

informal dispute resolution processes are invoked in which case the filing deadline is momentarily suspended).

- The Code has seventeen (17) Articles. The duties imposed by many of them are explained and illustrated through the National Association's use of Standards of Practice or case interpretations.
- Your complaint should include a narrative description of the circumstances that lead you to believe the Code may have been violated and *must* cite one or more Articles you believe may have been violated.
- Note: Hearing panels decide whether the Articles cited were violated, hence complaints should not allege violations of specific Standards of Practice.
- Hearing panels cannot conclude that an Article has been violated unless it is specifically cited in the complaint.
- The association's Grievance Committee may provide technical assistance in preparing your complaint in proper form and with proper content.

### **The first step: Grievance Committee review**

- Your complaint will be reviewed by the association's Grievance Committee. Their job is to determine whether, if taken as true, the allegations might support a violation of the Article(s) cited.
- *If the Grievance Committee dismisses your complaint*, it does not mean they don't believe you. Rather, they do not feel that your allegations would support a hearing panel's conclusion that the Article(s) you cited were violated. You may want to review your complaint to see if the Articles you cited were appropriate to your allegations.
- *If the Grievance Committee forwards your complaint for hearing* that does not mean they have decided the Code has been violated. Rather, like the role of a grand jury, it means they feel that if what you allege in your complaint is found to have occurred, a formal hearing panel may have reason to find that a violation of the Code occurred.
- *If your complaint is dismissed as not requiring a hearing*, you can appeal that dismissal to the association's Board of Directors.

### **Preparing yourself for a hearing**

- Familiarize yourself with the hearing procedures. Specifically, you should review your right to challenge potential panel members, the right to counsel, calling witnesses, and the applicable standards of proof.
- Complainants have the ultimate responsibility to prove that the Code has been violated. The standard of proof used by panels 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." Consistent with the principles of American jurisprudence, respondents are considered innocent unless proven to have committed a violation.
- Be sure your witnesses and counsel will be available. *Continuances are a privilege - not a right.*
- Have all the documents and other evidence you need to present your case. Provide them to the association and the other party in advance of the hearing.
- Organize your presentation. Know what you will say and be prepared to demonstrate what happened **and how you believe the Code was violated**.

### **At the Hearing**

- Appreciate that panel members are unpaid volunteers giving their time as an act of public service. Their objective is to be fair, unbiased and impartial; to determine, based on the evidence and testimony presented to them, what actually occurred; and then to determine whether the facts as they find them support a finding that the Article(s) charged were violated.
- Keep your presentation concise, factual and to the point. You must demonstrate that what happened (or what should have happened, but didn't), and how the facts support a violation of the Article(s) charged.
- Hearing panels base their decisions on the evidence and testimony presented during the hearing. If you have information relevant to the issue(s), be sure to bring it up during your presentation.
- Recognize that different people can witness the same event and have differing recollections about what they saw. The fact that a respondent or their witness recalls things differently doesn't mean they aren't

telling the truth as they recall events. It is up to the hearing panel, in the findings of fact that will be part of their decision, to determine what actually happened.

- The hearing panel will pay careful attention to what you say and how you say it. An implausible account doesn't become more believable through repetition or being stated with increased volume.
- You are involved in an adversarial process that is, to some degree, unavoidably confrontational. Many violations result from misunderstanding or lack of awareness of ethical duties by otherwise well-meaning, responsible real estate professionals.
- Remember that an ethics complaint represents essentially an attack on the respondent's integrity and professionalism. For the enforcement process to function properly, it is imperative that all parties, witnesses, and panel members maintain appropriate decorum.

## After the hearing

- Please understand and appreciate that the hearing panel and association staff are prohibited from releasing the results of a hearing prior to their receipt in writing by the parties.
- When you receive the hearing panel's decision, review it carefully.
- Findings of fact are the conclusions of impartial panel members based on their reasoned assessment of all the evidence and testimony presented. Findings of fact are not appealable.
- If you believe the hearing process was seriously flawed to the extent you were denied a full and fair hearing, there are appellate procedures that can be involved. NOTE: The fact that a hearing panel found no violation is not appealable. Appeals must be restricted to claims of lack of due process or improper procedures.
- Refer to the procedures used by the association for detailed information on the grounds and time limits for appealing decisions or requesting a rehearing.
- Rehearings are generally granted only when newly discovered evidence comes to light which...
  - could not reasonably have been discovered and produced at the original hearing, and
  - might have had a bearing on the panel's decision.
- Appeals brought by respondents must be based on...
  - a perceived misapplication or misinterpretation of one or more Articles of the Code of Ethics,
  - a procedural deficiency or failure of due process, or
  - the nature or gravity of the discipline proposed by the hearing panel.
- Appeals brought by complainants are limited to procedural deficiencies or failures of due process that may have prevented a full and fair hearing.

## Questions?

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*The Virgin Islands Territorial Association of REALTORS® is managed totally online by Enjender LLC, based in Orlando, Florida – the nation's leading REALTOR® association management company.*