



Before You File an Ethics Complaint

Background

REALTORS® Associations are responsible for enforcing the REALTORS® Code of Ethics. The NAR 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 REALTORS®.

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 with a principal broker in the firm. Open, constructive discussion often resolves questions or differences, eliminating the need for further action.

If, after discussing matters with your real estate professional or a principal broker in that firm, you are still not satisfied, you may want to contact the local board or association of REALTORS®. Many Associations have informal dispute resolving processes available to consumers (e.g. ombudsmen, mediation, etc.).

If, after taking these steps, you still feel you have a grievance, you may want to consider filing a Code of Ethics complaint. See the below guidelines:

- Only REALTORS® and REALTOR-ASSOCIATE®s are subject to the Code of Ethics of the National Association of REALTORS®.
- If the real estate professional (or their broker) you are dealing with is not a REALTOR®, your only recourse may be the California Board of Real Estate licensing authority or the courts. REALTORS® Associations 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.
- REALTORS® Associations can discipline REALTORS® for violating the Code of Ethics. Typical forms of discipline include attendance at courses and seminars designed to increase REALTORS®' understanding of the ethical duties or other responsibilities of real estate professionals. REALTORS® may also be reprimanded, fined, their membership suspended, revoked, required to "cease and refrain" from continued conduct deemed to be in violation and photo and discipline published on the C.A.R. website for serious violations. REALTORS® 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.

Filing an ethics complaint

The local REALTORS® Associations 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 REALTORS® associations within one hundred eighty (180) days from the time a complainant knew (or reasonably should have known) that potentially unethical conduct took place.
- The REALTORS® Code of Ethics consists of seventeen (17) Articles. The duties imposed by many of the Articles are explained and illustrated through accompanying Standards of Practice or case interpretations.
- Your complaint should include a narrative description of the circumstances that lead you to believe the Code of Ethics may have been violated.
- Your complaint must cite one or more of the Articles of the Code of Ethics, which may have been violated. Hearing panels decide whether the Articles expressly cited in complaints were violated.
- You may request assistance for your complaint from a specially trained volunteer, an Ethics Advocate.

Preparing for the hearing

- Familiarize yourself with the hearing procedures that will be followed. In particular you will want to know about challenging potential panel members, your right to counsel, calling 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 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 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 didn't), 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 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, through 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 potential to be viewed as an attack on a respondent's integrity and professionalism. For the enforcement process to function properly, it is imperative for all parties, witnesses, and panel members to maintain appropriate decorum.

After the hearing

- 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 of the evidence and testimony presented during the hearing. 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. The fact that a hearing panel found no violation is not appealable.

- Refer to the procedures used by the local REALTORS® Association for detailed information on the bases and time limits for appealing decisions. Appeals brought by ethics respondents must be based on (a) a perceived misapplication or misinterpretation of one or more Articles of the Code of Ethics, (b) a procedural deficiency or failure of due process, or (c) the nature or gravity of the discipline proposed by the hearing panel. Appeals brought by ethics complainants are limited to procedural deficiencies or failures of due process that may have prevented a full and fair hearing.

Conclusion

- Make reasonable efforts to communicate with your real estate professional or a principal broker in the firm. If these efforts are not fruitful, the local REALTORS® Association can give you the procedures and forms necessary to file an ethics complaint.

DISCIPLINARY COMPLAINT PROCEDURES

1. Any person, whether or not a member, participant or subscriber, may file a complaint against a member alleging a violation of the current NAR Code of Ethics and Standards of Practice. The Association can only accept complaints that fall within the authority and jurisdiction of the Association.
2. The Complaint must be in writing, signed by the complainant and state the facts upon which the complaint is based. A complaint meeting all filing requirements must be legible and submitted on a Santa Cruz County Association of REALTORS® (SCCAR) Disciplinary Complaint Form (D-1) and 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. The disciplinary complaint must allege specific Article(s) from the current NAR Code of Ethics and Standards of Practice and must be accompanied by an attached statement, marked Exhibit 1, which states the facts supporting the allegations. Copies of contracts, agreements and other documents may be included. SCCAOR does not independently investigate complaints.
3. Complaints are referred to the Grievance Committee. The committee may: 1) designate the complaint for a Citation; 2) dismiss the complaint; 3) amend the complaint by deleting or adding Article(s) of the current NAR Code of Ethics and Standards of Practice or 4) refer the complaint to a Professional Standards disciplinary hearing as presented. The Grievance Committee initially considers allegations of unethical conduct. The Grievance Committee does not determine guilt or innocence. In the event the Grievance Committee dismisses the entire complaint or deletes Article(s); the Complainant may request a Directors review of the Grievance Committee's decision. When the Directors review the Grievance Committee's decision, the Complainant does not have the right to be present at the Directors Review.
5. If the complaint is referred to a disciplinary hearing, the Respondent(s) will be mailed a copy of the Complaint. A response is due within fifteen (15) calendar days of the date the complaint is mailed. Complainant(s) will be mailed a copy of the response. Complainant(s) and Respondent(s) are given a list of potential panelists and may challenge the qualification of any member for cause. Panel members may be excused for any of the following reasons: a) is related by blood or marriage (to the fourth degree) to either Complainant(s) or Respondent(s); b) is an employer, partner, employee or in any way associated in business with either party; or c) is a party; or d) knows of any reason which may prevent them from rendering an impartial decision.

6. Parties will be notified in writing at least twenty-one (21) calendar days in advance of the time, date and place of the hearing. The hearing will be tape-recorded and a copy will be available to any party, at cost. Parties may be represented by legal counsel and must give written notice of attendance at least fifteen (15) calendar days prior to the hearing. It is the responsibility of the parties to have their documents and witnesses with them on the day of the hearing.
7. The hearing will be conducted in the English language. Interpreters are allowed to assist any party at the hearing. Arrangements and cost for having an interpreter is the responsibility of the party requiring the service. The California Judicial Council maintains a list of certified and registered interpreters from which courts can make their selection. The Association uses this master list of certified and registered interpreters to find qualified, neutral interpreters and translators who would be able to assist parties and witnesses in professional standards hearings.
8. The hearing panelists do not have the authority to order payment of moneys, return of deposits, payment of damages, enforcement or cancellation of contracts, suspension or revocation of real estate licenses. The California Bureau of Real Estate, Complaint Intake Unit, 320 W. 4th St., Ste. 350, Los Angeles, CA 90013-1105, telephone: 510 622-2552 is the licensing agency for the State of California. Violations of real estate law should be referred to this agency.
9. Disciplinary recommendations are limited to: 1) letter of warning; 2) letter of reprimand; 3) fine commensurate with the gravity of the determined violation not to exceed \$15,000 payable to the Santa Cruz County Association of REALTORS®; 4) required training course or other educational course; 5) requirement for the respondent to "cease or refrain" from continued conduct deemed to be in violation of the current NAR Code of Ethics and Standards of Practice, within a time period to be determined by the hearing panel; 6) suspension or expulsion of Association membership for a stated period of time. More than one type of discipline is permitted, per party, per hearing. There is an administrative fee of \$300 for parties found in violation of the NAR Code of Ethics to be paid within 15 calendar days.
10. All discipline will be published on the C.A.R. website except warnings, desist and refrain order, or education that does not include a fine, letter of reprimand, suspension or expulsion. If the respondent is found in violation of the current NAR Code of Ethics and Standards of Practice, C.A.R. shall publish the following information on their website 1) name and photo of the member found in violation (but not the name of the firm the member is affiliated with; 2) if the responsible broker is also found in violation, the name of the responsible broker will also be published; 3) if a member's name is similar to another member's name, the member's real estate license number and/or office address may also be included; 4) the Article(s) violated; 5) a brief factual synopsis of the matter with names redacted except the respondent; 6) discipline imposed; 7) the effective date

and duration of the discipline. The information will be removed from the C.A.R. website three (3) years after initial publication.

The above procedures are extracts of the 2018 California Code of Ethics and Arbitration Manual. Please refer to this manual for complete and detailed procedures.

**PLEASE READ THIS BEFORE SUBMITTING
A DISCIPLINARY COMPLAINT**

1. All pages of the Disciplinary Complaint must be on 8 ½ inches by 11 inches paper. (Legal size contract must be reduced to 11 inches long.)
2. Page must be printed clearly. Submit the complaint package as an email attachment.
3. Your statement referenced by "Exhibit 1" should state clearly and concisely what specific actions you feel constitute a violation of the NAR Code of Ethics and Standards of Practice which is the basis of your dispute.
4. If you are filing a disciplinary complaint, you must cite a specific Article(s) of the NAR Code of Ethics and Standards of Practice.
5. Be sure your Disciplinary Complaint is dated and signed by all complainants.
6. Disciplinary complaints meeting all filing requirements must be received by the Association within one hundred eighty (180) calendar days after the facts constituting the matter complained of could have been known with in the exercise of due diligence or one hundred eighty (180) calendar days after the conclusion of the transaction, or event, whichever is later.



**DISCIPLINARY COMPLAINT
SANTA CLARA COUNTY ASSOCIATION OF REALTORS®**

For Association Use Only Case No. _____ Complaint Received: _____, 20____

1. I (we), the undersigned complainant(s), hereby allege that the following persons have engaged in conduct subject to disciplinary action by the Association:

RESPONDENT(S):

(1) _____
Signature

Name (Print) _____

Firm _____

DRE Number _____

Street Address

City, State, Zip

(2) _____
Signature

Name (Print) _____

Firm _____

DRE Number _____

Street Address

City, State, Zip

RESPONDENT(S):

(3) _____
Signature

Name of Manager (Print) _____

Firm _____

DRE Number _____

Street Address

City, State, Zip

(4) _____
Signature

Name (Print) _____

Firm _____

DRE Number _____

Street Address

City, State, Zip

2. The above named respondent (s) have violated the following:

Code of Ethics violations:

- Article 1: REALTORS® owe a fiduciary duty to their clients.
- Article 2: REALTORS® must avoid concealment of pertinent facts.
- Article 3: REALTORS® must cooperate with other brokers.
- Article 4: REALTORS® must disclose any interest they have in a property they are buying or selling.
- Article 5: REALTORS® must disclose any contemplated interest they have in property for which they are providing professional services.
- Article 6: REALTORS® cannot accept profit on expenditures made for their client or recommendations to their client without disclosure.
- Article 7: REALTORS® must disclose and obtain consent to accept compensation from more than one party.
- Article 8: REALTORS® must keep a trust account for clients' funds.
- Article 9: REALTORS® must ensure that all agreements are in writing and clear.
- Article 10: REALTORS® must not discriminate in their business on the basis of race, color, religion, sex, handicap, familial status or native origin.
- Article 11: REALTORS® must provide competent service.
- Article 12: REALTORS® must be honest in their real estate communications and present a true picture in advertising.
- Article 13: REALTORS® must not engage in the unauthorized practice of law.
- Article 14: REALTORS® must cooperate in professional standards proceedings.
- Article 15: REALTORS® must not knowingly or recklessly make false or misleading statements about competitors.
- Article 16: REALTORS® must not interfere with the exclusive representation agreements of other REALTORS®.
- Article 17; REALTORS® must arbitrate contractual disputes and certain non-contractual disputes arising out of the real estate business.
- Section(s) _____ of the MLS Rules and Regulations
- Other membership duty as set forth in the bylaws of the Association (specify):

3. The facts and circumstances supporting the above allegation(s) are detailed in the attached statement marked "Exhibit 1," which is hereby incorporated by reference and made part of this complaint.
4. I am informed that the named respondent(s) are current REALTOR® members of the Association and/or participants/subscribers in the MLS or that the property at issue is located within the jurisdiction of this Association.
5. Date of knowledge of alleged misconduct is _____. This complaint, meeting all filing requirements, must be filed within 180 calendar days after the facts constituting alleged misconduct 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.

- 6. Are the circumstances giving rise to this complaint, or the respondents in this case, involved in a civil or criminal proceeding or in any proceeding before a governmental agency?
YES _____ NO _____ If you answered yes, please attach a written statement of explanation.
- 7. Have you filed, or do you plan to file a similar or related complaint with another Association of REALTORS*?
YES _____ NO _____ If you answered yes, please attach a written statement of explanation.
- 8. I understand there will be a recording of any full disciplinary hearing. I understand that the recording is subject to the rules of confidentiality and is made solely for the purpose of a Review by the Association Board of Directors, if one is requested.
- 9. I will be represented by an attorney, whose name, address, telephone number, and email address are:

- 10. I agree to abide by the rules and procedures used by this Association to conduct disciplinary hearings. I understand that the proceedings regarding this matter will be kept confidential and that I have an obligation to maintain and protect this confidentiality.

Under the penalties of perjury, I declare that to the best of my knowledge and belief my allegations in this complaint are true and correct.

Dated: _____ at _____, California

COMPLAINANT(S):

(1) _____
Signature

Name (Print)

DRE Number (if applicable)

Firm (if applicable)

Street Address

City, State, Zip

Phone email

COMPLAINANT(S):

(3) _____
Signature

Name (Print)

DRE Number (if applicable)

Firm (if applicable)

Street Address

City, State, Zip

Phone email

