

Summary of Key Professional Standards Changes for 2022

(underscoring indicates additions; strikeouts indicate deletions)

This summary highlights substantive issues and changes. To see the 2021 Professional Standards Committee Actions for the REALTORS® Legislative Meetings and the REALTORS® Conference and Expo, visit nar.realtor. Also, review the shaded portions of the 2022 *Code of Ethics and Arbitration Manual* which highlights all the changes. Note additional information of interest on the last page of this document.

Overview

- Revisions to Standards of Practice 1-8 and 12-1
- Enhancements to Appendix XII to Part Four, *Code of Ethics and Arbitration Manual*- Appropriate Interpretation of Standard of Practice 10-5 and Statement of Professional Standards Policy 29
- New Case Interpretations relating to Standard of Practice 10-5
 - ✓ Case Interpretation #10-6, Use of Hate Speech and Slurs on the Basis of Race
 - ✓ Case Interpretation # 10-7, Use of Harassing Speech on the Basis of Political Affiliation
 - ✓ Case Interpretation # 10-8, Use of Harassing Speech against Protestors
 - ✓ Case Interpretation # 10-9, Use of Speech or Ideas included in Religious Doctrine
 - ✓ Case Interpretation # 10-10, Use of Speech or Ideas included in Religious Doctrine
 - ✓ Case Interpretation #10-11, Display of Symbols
- Changes to Local and State Association Ombudsman Services Policy and Appendix XI, Ethics Mediation, relating to public trust
- Enhancements to the *Code of Ethics and Arbitration Manual* regarding virtual hearings including changes to Policy Statements #33 and #56, Sections 6 and 31, and Part 5 and Part 12, Outline of Procedure for Ethics Hearing and Outline of Procedure for Arbitration Hearing, respectively. The following guides are also available on-line: <https://www.nar.realtor/about-nar/policies/resources-for-professional-standards-administrators>
 - ✓ Sample Chairperson's Procedural Guide Conduct of a Virtual Arbitration Hearing
 - ✓ Sample Chairperson's Procedural Guide Conduct of a Virtual Ethics Hearing
 - ✓ Sample Chairperson's Procedural Guide Conduct of a Virtual Ethics Appeal
 - ✓ Sample Chairperson's Procedural Guide Conduct of a Virtual Procedural Review Hearing
 - ✓ Best Practices for Virtual Hearings

Changes to the Code of Ethics and Standards of Practice

Standard of Practice 1-8 was amended as follows:

REALTORS®, acting as agents or brokers of buyers/tenants, shall submit to buyers/tenants all offers and counter-offers until acceptance but have no obligation to continue to show properties to their clients after an offer has been accepted unless otherwise agreed in writing. Upon the written request of the listing broker who submits a counter-offer to the buyer's/tenant's broker, the buyer's/tenant's broker shall provide, as soon as practical, a written affirmation to the listing broker stating that the counter-offer has been submitted to the buyers/tenants, or a written notification that the buyers/tenants have waived the obligation to have the counter-offer presented.

REALTORS®, acting as agents or brokers of buyers/tenants, shall recommend that buyers/tenants obtain the advice of legal counsel if there is a question as to whether a pre-existing contract has been terminated.

Standard of Practice 12-1 was amended as follows:

~~Unless they are receiving no compensation from any source for their time and services, REALTORS® may use the term “free” and similar terms in their advertising and in other representations only if they clearly and conspicuously disclose:~~

- ~~1) by whom they are being, or expect to be, paid;~~
- ~~2) the amount of the payment or anticipated payment;~~
- ~~3) any conditions associated with the payment, offered product or service, and;~~
- ~~4) any other terms relating to their compensation. (Amended 1/20)~~

REALTORS® must not represent that their brokerage services to a client or customer are free or available at no cost to their clients, unless the REALTOR® will receive no financial compensation from any source for those services.

Changes to the *Code of Ethics and Arbitration Manual*

Revisions to Policy Statements #33 and #56

#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, virtual meetings, or alternative communication technologies for meetings ~~other than hearings and appeals/procedural reviews~~ to expedite the decision-making process. Use of conference calls, virtual meetings, or alternative communication technologies during the course of a hearing shall be governed by Professional Standards Policy Statement #56, “Remote” Testimony and virtual hearings.

#56. “Remote” testimony and virtual hearings

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 or, at the association’s sole discretion, in virtual hearings. If hearings are in person, ~~Parties and their witnesses may request permission to participate in such proceedings via teleconference or videoconference remotely.~~

Parties and witnesses to ethics and arbitration hearings may be permitted to participate remotely in these 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.

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 virtually. *(Adopted 11/04)*~~

Revisions to Section 6 and Section 31, Conduct of Hearing

At any ethics or arbitration hearing, every party has the right to present any witnesses, to submit any evidence pertinent to the case, and to cross-examine witnesses. Witnesses giving oral testimony shall be sworn in or affirmed by the Chairperson in accordance with the policy of the association. Before permitting testimony relating to the character or general reputation of anyone, the tribunal shall satisfy itself that the testimony has a direct bearing on the case at issue. Attendance at any hearing is limited to the parties and the parties' respective counsel and/or witnesses (witnesses are excused from the hearing except during their testimony); the Hearing Panel members (including alternates); Board staff and/or counsel, as deemed necessary; any court reporter, as requested; and, in any ethics proceeding, the respondent's REALTOR® principal, consistent with **Part Two**, Section 13(d) of this Manual.

The Board shall have a court reporter present at the hearing or shall record the proceeding. Any party may, at the Board's discretion, record the proceeding or utilize a court reporter at their own expense. If a party utilizes a court reporter and orders a transcript, a copy of the transcription shall be made at the party's expense and presented to the Professional Standards Administrator. If the Board utilizes a court reporter in lieu of recording, the parties may not be prohibited from making their own recording. (See Form #E-9, Outline of Procedure for Ethics Hearing, **Part Six**, and Conduct of an Ethics Hearing, **Part Five**.)

Videotaping of the proceedings shall not be permitted except by advance express consent of all parties and all members of the tribunal. Any and all recording should be conducted in accordance with state law.

Appeals or procedural review proceedings shall not be recorded by the Board or the parties.

The Board's recording or transcription shall be considered the official record of the proceeding. Copies of any recording or any transcript prepared from any recording of the hearing are to be used only for the purpose of appeals or procedural reviews, and may not be introduced into evidence at any subsequent hearing. Boards, at their discretion and upon the advice of counsel, may prohibit the parties from obtaining a copy of the recording or transcription if the request is received outside of the time frame allowed for appeals or procedural reviews. Any unauthorized use of the recordings or transcripts may be construed as a violation of Article 14, as interpreted by the applicable Standards of Practice, and as a violation of these procedures.

Any party to a hearing has the right to obtain a copy of the Board's official recording, subject to the aforementioned limitations, and subject to payment of the Board's duplication costs. Any duplication will be conducted

under the supervision of the Board. If the Board transcribes its official recording, any party to the hearing may obtain a copy of the transcript, subject to the aforementioned limitations and paying the Board's transcription costs. If more than one party requests copies of the transcript, the Board's costs will be apportioned between or among the parties. If a party purchases a copy of the Board's official recording and subsequently has it transcribed at his own expense, that party must provide a copy of the transcript to the Board at no cost. After the Board has received a copy of the transcript (made from the Board's official recording), the Board shall make copies of the transcript available to any other party subject to their payment of the Board's duplication costs.

It is recommended that recordings produced by the Board be maintained in the confidential professional standards files until a date when any sanction imposed by the Board has been completed.

Revisions to Part 5, Conduct of an Ethics Hearing

An ethics hearing must be conducted in a manner which is fair to all parties. This means that the parties must know their rights and responsibilities in advance so they may properly prepare and present their positions. Procedures are required to assure an orderly hearing. But procedures may and should be modified as interests of justice and truth dictate. However, in modifying established procedures, care must be taken to assure that the rights and interests of all parties are protected. For this reason, variation from prescribed procedures should be reviewed with Board counsel and counsel for the parties prior to implementation.

Following are four (4) outlines. The first and second are outlines of procedural information of interest and concern primarily to the parties involved. This information should be provided to them well in advance of any hearing (Form #E-9 or Form #E-9a, as appropriate, **Part Six**). The third outline is primarily of interest to Hearing Panels and particularly to the Chairpersons who preside over ethics hearings. The fourth outline is primarily of interest to tribunals and particularly to Chairpersons who preside over ethics appeals.

Outline of Procedure for Ethics Hearing

_____ **Board of**

REALTORS®, State of _____

(To be transmitted in advance to both parties.)

Remote Testimony: Hearings may be held in person, virtually, or a combination thereof. If the hearing is in person, ~~Although~~ testimony provided in ~~person before a~~ the physical presence of the Hearing Panel is preferred, ~~however~~ parties and witnesses to ethics hearings may be permitted to participate virtually in hearings ~~by teleconference or video conference~~ at the discretion of the Hearing Panel Chair. Associations may, at their sole discretion, hold hearings where all parties must participate virtually.

Postponement of hearing: Postponement may be granted if there are extenuating circumstances. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing. Permission can be given by the Chairperson. All parties shall be advised of the date of the rescheduled hearing.

Recording the hearing: The Board shall have a court reporter present at the hearing or shall record the proceeding. Any party may, at the Board's discretion, record the proceeding or utilize a court reporter at their own expense. If a party utilizes a court reporter and orders a transcript, a copy of the transcription shall be made at the party's expense and presented to the Professional Standards Administrator. If the Board utilizes a court reporter in lieu of recording, the parties may not be prohibited from making their own recording. Videotaping is not permitted except with the advance express consent of the parties and the panelists. Any and all recording should be conducted in accordance with state law. Copies of any recording or transcription are to be used only for the purpose of appeals or procedural reviews. Appeals and limited procedural reviews shall not be recorded by the Board or the parties.

Method and objective of procedure: The Hearing Panel shall not be bound by the rules of evidence applicable in courts of law, but shall afford all parties a full opportunity to be heard, present witnesses, and offer evidence, subject to its judgment as to relevance. Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the other party(ies) and to the association prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. Evidence submitted to the association but not provided to the other party(ies) will be provided to the other party(ies) by the association at the time of submission. Evidence submitted at the time of the hearing will be evaluated for admissibility by the hearing panel.

Due process procedure: (Chairperson's Procedural Guide of an Ethics Hearing is available in the *Code of Ethics and Arbitration Manual*)

The hearing will proceed as follows:

- (1) Chairperson cites authority to hear case and explains reason for hearing.
- (2) The complaint will be read into the record.
- (3) The testimony of all parties and witnesses will be sworn or affirmed. All witnesses will be excused from the hearing except while testifying.
- (4) Opening statements, first by complainant, then by respondent, briefly explaining the party's basic position.
- (5) The parties will be given an opportunity to present evidence and testimony in their behalf and they may call witnesses. All parties appearing at the hearing may be called as witnesses without advance notice.
- (6) The parties and their legal counsel will be afforded an opportunity to examine and cross-examine all witnesses and parties.
- (7) The panel members may ask questions at any time during the proceedings.
- (8) The Chairperson may exclude any questions which he or she deems irrelevant or argumentative.
- (9) Each side may make a closing statement. The complainant will make the first closing statement and the respondent will make the final closing statement.
- (10) Adjournment of hearing.
- (11) The Hearing Panel will go into executive session to decide the case.

Findings in ethics hearing: The finding and recommendation for discipline, if any, shall be reduced to writing by the Hearing Panel and submitted to the Board of Directors in accordance with the procedure of **Part Four**, Section 23 of this Manual.

Use of counsel: A party may be represented in any hearing by legal counsel or by a REALTOR® of their choosing (or both). However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is

viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be nonappealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from the date of adjournment to enable the party to obtain alternate counsel, provided, however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

Outline of Procedure for Ethics Hearing Involving a Complaint and a Counter-Complaint

_____ **Board of REALTORS®, State of**

(To be transmitted in advance to both parties.)

Remote Testimony: Hearings may be held in person, remotely or a combination thereof. If the hearing is in person, ~~Although~~ testimony provided in person before a ~~the physical presence of the~~ Hearing Panel is preferred, however parties and witnesses to ethics hearings may be permitted to participate remotely in hearings ~~by teleconference or video conference~~ at the discretion of the Hearing Panel Chair. Associations may, at their sole discretion, hold hearings where all parties must participate virtually.

Postponement of hearing: Postponement may be granted if there are extenuating circumstances. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing. Permission can be given by the Chairperson. If the request is approved by the chair, all parties shall be advised of the date of the rescheduled hearing.

Recording the hearing: The Board shall have a court reporter present at the hearing or shall record the proceeding. Any party may, at the Board's discretion, record the proceeding or utilize a court reporter at their own expense. If a party utilizes a court reporter and orders a transcript, a copy of the transcription shall be made at the party's expense and presented to the Professional Standards Administrator. If the Board utilizes a court reporter in lieu of recording, the parties may not be prohibited from making their own recording. Videotaping is not permitted except

with the advance express consent of the parties and the panelists. Any and all recording should be conducted in accordance with state law. Copies of any recording or transcription are to be used only for the purpose of appeals or procedural reviews. Appeals and limited procedural reviews shall not be recorded by the Board or the parties. *Revised 5/16)*

Method and objective of procedure: The Hearing Panel shall not be bound by the rules of evidence applicable in courts of law, but shall afford all parties a full opportunity to be heard, present witnesses, and offer evidence, subject to its judgment as to relevance. Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the other party(ies) and to the association prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. Evidence submitted to the association but not provided to the other party(ies) will be provided to the other party(ies) by the association at the time of submission. Evidence submitted at the time of the hearing will be evaluated for admissibility by the hearing panel.

Due process procedure: Chairperson's Procedural Guide Involving a Complaint and a Counter-Complaint is available on-line at nar.realtor.

The hearing will proceed as follows:

- (1) Chairperson cites authority to hear case and explains reason for hearing.
- (2) The complaint and counter-complaint will be read into the record.
- (3) The testimony of all parties and witness(es) will be sworn or affirmed. All witness(es) will be excused from the hearing except while testifying. All parties appearing at the hearing may be called as witnesses without advance notice.
- (4) Complainant/counter-respondent will present a brief opening statement uninterrupted, identifying the specific Article(s) of the Code of Ethics that he feels have been violated, explaining how the respondent/counter-complainant violated each Article and refuting the contention that he violated any provisions of the Code of Ethics.
- (5) Respondent/counter-complainant will present a brief opening statement uninterrupted, identifying the specific Article(s) of the Code of Ethics that she feels have been violated, explaining how the complainant/counter-respondent violated each Article and refuting the contention that she violated any provision of the Code of Ethics.

- (6) Complainant/counter-respondent presents his/her case and defenses by offering testimony and evidence from himself and/or his witness(es) to support the allegations of violations of the Code of Ethics by the respondent counter-complainant and refuting the allegations made by the counter-complainant.
 - (a) The respondent/counter-complainant may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.
 - (b) The Hearing Panel may question the complainant/ counter-respondent and/or his witness(es) immediately after each has testified.
- (7) Respondent/counter-complainant presents her case, offering testimony and evidence from herself and/or witness(es) to support the allegations of violations of the Code of Ethics by the complainant/counter-respondent and rebutting the complainant's contention that she violated the Code of Ethics.
 - (a)The complainant/counter-respondent may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.
 - (b)The Hearing Panel may question the respondent/ counter-complainant and/or her witness(es) immediately after each has testified.
- (8) The complainant/counter-respondent may present additional testimony and evidence from himself and/or his witness(es) to further support the allegations of violations of the Code of Ethics by the respondent/counter-complainant and/or refute the allegations made by the respondent/counter-complainant.
 - (a) The respondent/counter-complainant may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.
 - (b) The Hearing Panel may question the complainant/ counter-respondent and/or his witness(es) immediately after each has testified.
- (9) The respondent/counter-complainant may present additional testimony and evidence from herself and/or her witness(es) to further support the allegations of violations of the Code of Ethics by the complainant counter-respondent and/or refute the allegations made by the complainant/counter-respondent.
 - (a)The complainant/counter-respondent may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.
 - (b) The Hearing Panel may question the respondent/ counter-complainant and/or her witness(es) immediately after each has testified.

- (10) Cross-examination in which the parties are given a final opportunity to examine each other. The complainant/ counter-respondent may first ask any remaining questions of the respondent/counter-complainant and/or the respondent/ counter-complainant's witness(es). The respondent/counter-complainant may then ask any remaining questions of the complainant/counter-respondents and/or of the complainant/counter-respondent's witness(es).
- (11) The Hearing Panel may question either the complainant/ counter-respondent and/or the respondent/counter-complainant and/or their respective witness(es).
- (12) When the parties and Hearing Panel members have no further questions, the complainant/counter-respondent and respondent/counter-complainant (respectively) may present uninterrupted closing statements.
- (13) The Chair will then adjourn the hearing.
- (14) The Hearing Panel will go into executive session to decide the case.

Findings in ethics hearing: The findings and recommendation for discipline, if any, shall be reduced to writing by the Hearing Panel and submitted to the Board of Directors in accordance with the procedure of **Part Four**, Section 23 of the *Code of Ethics and Arbitration Manual*.

Testimony: Any testimony relating to the character or general reputation of either party shall not be permitted unless the Hearing Panel finds that such testimony has a direct bearing on the case. The Chairperson may exclude any question which he or she deems irrelevant or argumentative.

Use of counsel: A party may be represented in any hearing by legal counsel or by a REALTOR® of their choosing (or both). However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be nonappealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from the date of adjournment to enable the party to obtain alternate

counsel, provided, however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

Be advised all matters discussed are strictly confidential.

Part Twelve—Conduct of an Arbitration Hearing

An arbitration hearing must be conducted in a manner which is fair to all parties. This means that the parties must know their rights and responsibilities in advance so they may properly prepare and present their positions. Procedures are required to assure an orderly hearing. But procedures may and should be modified as interests of justice and truth dictate. However, in modifying established procedures, care must be taken to assure that the rights and interests of all parties are protected. For this reason, variation from prescribed procedures should be reviewed with Board counsel and counsel for the parties prior to implementation.

Following are six (6) outlines. The first and second are outlines of procedural information of interest and concern primarily to the parties involved. This information should be provided to them well in advance of any hearing (Form #A-10 and Form #A-10a, as appropriate, **Part Thirteen**). The third outline is primarily of interest to Hearing Panels and particularly to the Chairpersons who preside over arbitration hearings. The fourth outline is primarily of interest to Hearing Panels and particularly to the Chairpersons who preside over interboard arbitration hearings. The fifth and sixth outlines are primarily of interest to tribunals and particularly to Chairpersons who preside over procedural review requests and interboard procedural review requests, respectively.

Outline of Procedure for Arbitration Hearing

_____ **Board of**

REALTORS®, State of _____

(To be transmitted in advance to both parties.)

Remote Testimony: Hearings may be held in person, virtually, or a combination thereof. If the hearing is in person, Although testimony provided in person before a the physical presence of the Hearing Panel is preferred, however parties and witnesses to arbitration hearings may be permitted to participate virtually in hearings by teleconference or video conference at the discretion of the Hearing Panel Chair. Associations may, at their sole discretion, hold hearings where all parties must participate virtually.

Postponement of hearing: Postponement may be granted if there are extenuating circumstances. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing. Permission can be given by the Chairperson. All parties shall be advised of the date of the rescheduled hearing.

Recording the hearing: The Board shall have a court reporter present at the hearing or shall record the proceeding. Any party may, at the Board's discretion, record the proceeding or utilize a court reporter at their own expense. If a party utilizes a court reporter and orders a transcript, a copy of the transcription shall be made at the party's expense and presented to the Professional Standards Administrator. If the Board utilizes a court reporter in lieu of recording, the parties may not be prohibited from making their own recording. Videotaping is not permitted except with the advance express consent of the parties and the panelists. Any and all recording should be conducted in accordance with state law. Copies of any recording or transcription are to be used only for the purpose of appeals or procedural reviews. Appeals and limited procedural reviews shall not be recorded by the Board or the parties.

Method and objective of procedure: The Hearing Panel shall not be bound by the rules of evidence applicable in courts of law, but shall afford all parties a full opportunity to be heard, present witnesses, and offer evidence, subject to its judgment as to relevance. Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the other party(ies) and to the association prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. Evidence submitted to the association but not provided to the other party(ies) will be provided to the other party(ies) by the association at the time of submission. Evidence submitted at the time of the hearing will be evaluated for admissibility by the hearing panel.

Due process procedure: Chairperson's Procedural Guide for the Conduct of an Arbitration Hearing is available in the Code of Ethics and Arbitration Manual.

The hearing will proceed as follows:

- (1) Chairperson cites authority to hear case and explains reason for hearing.
- (2) The arbitration request will be read into the record.
- (3) The testimony of all parties and witnesses will be sworn or affirmed. All witnesses will be excused from the hearing except while testifying.
- (4) Opening statements first by complainant and then by respondent, briefly explaining the party's basic position.

- (5) The parties will be given an opportunity to present evidence and testimony in their behalf and they may call witnesses. All parties appearing at a hearing may be called as a witness without advance notice.
- (6) The parties and their legal counsel will be afforded an opportunity to examine and cross-examine all witnesses and parties.
- (7) The panel members may ask questions at any time during the proceedings.
- (8) The Chairperson may exclude any questions which he or she deems irrelevant or argumentative.
- (9) Each side may make a closing statement. The complainant will make the first closing statement and the respondent will make the final closing statement.
- (10) Adjournment of hearing.
- (11) The Hearing Panel will go into executive session to decide the case.

Settlement: Parties are encouraged to settle the dispute at any time. At the outset of the hearing, the Hearing Panel Chair should inform the parties that settlement is an option. At any time during the hearing, the parties can ask for a recess in an attempt to reach a settlement agreement. The parties, with the assistance of their respective counsel, if any, will determine the terms of their settlement agreement.

Award in arbitration hearing: The decision of the Hearing Panel in an arbitration proceeding shall be reduced to writing by the panel (setting forth only the amount of the award) and be signed by the Arbitrators or a majority of them, and a copy shall be furnished to each of the parties to the arbitration. A copy also shall be filed with the Professional Standards Administrator of the Board.

Use of legal counsel: A party may be represented in any hearing by legal counsel. However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be nonappealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than

thirty (30) days from the date of adjournment to enable the party to obtain alternate counsel, provided, however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

Outline of Procedure for an Arbitration Hearing Involving a Request and a Counter-Request

_____ Board of REALTORS®, State of _____

(To be transmitted in advance to both parties.)

Remote Testimony: Hearings may be held in person, virtually, or a combination thereof. If the hearing is in person, ~~Although~~ testimony provided in person before a the physical presence of the Hearing Panel is preferred, however parties and witnesses to arbitration hearings may be permitted to participate virtually in hearings by ~~teleconference or video conference~~ at the discretion of the Hearing Panel Chair. Associations may, at their sole discretion, hold hearings where all parties must participate virtually.

Postponement of hearing: Postponement may be granted if there are extenuating circumstances. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing. Requests are reviewed by the Hearing Panel Chair. If the request is approved by the Chair, all parties shall be advised of the rescheduled hearing date.

Recording of the hearing: The Board shall have a court reporter present at the hearing or shall record the proceeding. Any party may, at the Board's discretion, record the proceeding or utilize a court reporter at their own expense. If a party utilizes a court reporter and orders a transcript, a copy of the transcription shall be made at the party's expense and presented to the Professional Standards Administrator. If the Board utilizes a court reporter in lieu of recording, the parties may not be prohibited from making their own recording. Videotaping is not permitted except with the advance express consent of the parties and the panelists. Any and all recording should be conducted in accordance with state law. Copies of any recording or transcription are to be used only for the purpose of appeals or procedural reviews. Appeals and limited procedural reviews shall not be recorded by the Board or the parties.

Method and objective of procedure: The Hearing Panel shall not be bound by the rules of evidence applicable in courts of law, but shall afford all parties a full opportunity to be heard, present witnesses, and offer evidence, subject to its judgment as to relevance. Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the other party(ies) and to the association prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. Evidence submitted to the association but not provided to the other party(ies) will be provided to the other party(ies) by the association at the time of submission. Evidence submitted at the time of the hearing will be evaluated for admissibility by the hearing panel.

Due process procedure: Chairperson's Procedural Guide Involving an Arbitration Hearing and a Counter Arbitration Request is available on-line at nar.realtor.

The hearing will proceed as follows:

- (1) Chairperson cites authority to hear case and explains reason for hearing.
- (2) The arbitration request and counter-request will be read into the record.
- (3) The testimony of all parties and witness(es) will be sworn or affirmed. All witness(es) will be excused from the hearing except while testifying. All parties appearing at a hearing may be called as a witness without advance notice. *(Revised 11/14)*
- (4) Complainant/counter-respondent will present a brief opening statement uninterrupted, stating the amount to be arbitrated and an explanation of the source of the dispute (i.e., commission dispute, request for security deposit refund, etc. . . .) and refuting the contention that any monies are owed.
- (5) Respondent/counter-complainant will present a brief opening statement uninterrupted, stating the amount to be arbitrated and an explanation of the source of the dispute (i.e., commission dispute, request for security deposit refund, etc. . . .) and refuting the contention that any monies are owed.
- (6) Complainant/counter-respondent presents his case and defense by offering testimony and evidence from himself and/or his witness(es) to support the contention that monies are owed to the complainant by the respondent and refuting the contention that monies are owed to the counter-complainant.
 - (a) The respondent/counter-complainant may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.
 - (b) The Hearing Panel may question the complainant/ counter-respondent and/or his witness(es) immediately after each has testified.

- (7) Respondent/counter-complainant presents her case, offering testimony and evidence from herself and/or witness(es) to support the contention that monies are owed to her by the counter-respondent and refuting the contention that she owes monies to the complainant.
 - (a) The complainant/counter-respondent may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.
 - (b) The Hearing Panel may question the respondent/ counter-complainant and/or her witness(es) immediately after each has testified.
- (8) The complainant/counter-respondent may present additional testimony and evidence from himself and/or his witness(es) to further support his position as a complainant/counter-respondent.
 - (a) The respondent/counter-complainant may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.
 - (b) The Hearing Panel may question the complainant/ counter-respondent and/or his witness(es) immediately after each has testified.
- (9) The respondent/counter-complainant may present additional testimony and evidence from herself and/or her witness(es) to further support her position as respondent/ counter-complainant.
 - (a) The complainant/counter-respondent may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.
 - (b) The Hearing Panel may question the respondent/ counter-complainant and/or her witness(es) immediately after each has testified.
- (10) Cross-examination in which the parties are given a final opportunity to examine each other. The complainant/ counter-respondent may first ask any remaining questions of the respondent/counter-complainant and/or the respondent/counter-complainant's witness(es). The respondent/counter-complainant may then ask any remaining questions of the complainant/counter-respondent and/or of the complainant's/counter-respondent's witness(es).
- (11) The Hearing Panel may question either the complainant/ counter-respondent and/or the respondent/ counter-complainant and/or their respective witness(es).
- (12) When the parties and Hearing Panel members have no further questions, the complainant/counter-respondent and respondent/counter-complainant (respectively) may present uninterrupted closing statements.
- (13) The Chair will then adjourn the hearing.
- (14) The Hearing Panel will go into executive session to decide the case.

Settlement: Parties are encouraged to settle the dispute at any time. At the outset of the hearing, the Hearing Panel Chair should inform the parties that settlement is an option. At any time during the hearing, the parties can ask for a recess in an attempt to reach a settlement agreement. The parties, with the assistance of their respective counsel, if any, will determine the terms of their settlement agreement.

Award in arbitration hearing: The decision of the Hearing Panel in an arbitration proceeding shall be reduced to writing by the panel (setting forth only the amount of the award) and be signed by the arbitrators or a majority of them, and a copy shall be furnished to each of the parties to the arbitration. A copy also shall be filed with the Professional Standards Administrator of the Board.

Testimony: Any testimony relating to the character or general reputation of either party shall not be permitted unless the Hearing Panel finds that such testimony has a direct bearing on the case. The Chairperson may exclude any question which he or she deems irrelevant or argumentative.

Use of legal counsel: A party may be represented in any hearing by legal counsel. However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be nonappealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from the date of adjournment to enable the party to obtain alternate counsel, provided, however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

Be advised all matters discussed are strictly confidential.

Four New Definitions Added in Section One and Section 26 of the Manual:

Virtual: existing, seen, or happening online or on a computer screen, rather than in person or in the physical presence

In person: In one's physical presence

On-site: Physical presence at a particular location or site

Remote: from a distance without physical presence i.e., video or teleconference.

Four forms were revised given the changes to the Outlines of Procedure:

#E-9, Outline of Procedure for Ethics Hearing; #E-9a, Outline of Procedure for Ethics Hearing Involving a Complaint and Counter-Complaint;

#A-10, Outline of Procedure for Arbitration Hearing; and #A-10a, Outline of Procedure for Arbitration Hearing Involving a Request and a Counter-Request

Appendix XII to Part Four, Appropriate Interpretation of Standard of Practice 10-5 and Statement of Professional Standards Policy 29

Standard of Practice 10-5 prohibits REALTORS® from using harassing speech, hate speech, epithets or slurs based on the protected classes of Article 10. Statement of Professional Standards Policy 29 provides that REALTORS® are subject to disciplinary action with respect to all of their activities, except in those circumstances in which the Code of Ethics only applies to real estate-related activities by virtue of its Articles or Standards of Practice.

To assist Hearing Panels in the appropriate interpretation and application of Standard of Practice 10-5 of the Code of Ethics and Statement of Professional Standards Policy 29, the Professional Standards Committee of the National Association provides the following for consideration by Hearing Panels when asked to determine whether a violation of Article 10 as supported by Standard of Practice 10-5 has occurred.

While the overall focus of Standard of Practice 10-5 is on what might be loosely termed “offensive” or “discriminatory” speech, Hearing Panels should be clear that the Standard of Practice is narrowly limited to conduct related to the requirements of equal professional service and that a REALTOR® refrain from being a party to a plan or agreement to discriminate on the basis of the protected classes of Article 10. Hearing Panels should also be fully aware of the nature and scope of the Standards of Practice under Article 10 and their relationship to fair housing law as described in Appendix III to Part Four of the *Code of Ethics and Arbitration Manual*. As described in Appendix III, Article 10 and its Standards of Practice fully integrate the five basic fair housing obligations that were recognized by NAR’s Code of Fair Housing Practices before it was sunset.

Hearing Panels should note that while all of the Standards of Practice under Article 10 inform them as to the interpretation and application of Standard of Practice 10-5, Standard of Practice 10-3 is particularly analogous in its application to discriminatory speech in advertising based on the protected classes of Article 10.

Standard of Practice 10-5 is not focused on types of speech that might be subjectively deemed “offensive” or “discriminatory” by one person and not another. The Standard of Practice is based on very particular types of speech that are directly connected to the protected classes of race, color, religion, sex, handicap, familial status, national origin, sexual orientation or gender identity under Article 10. Only the use of harassing speech, hate speech, epithets and slurs **based on** the protected classes of Article 10 are prohibited. The terms “harassing speech,” “hate speech,” “epithets,” and “slurs” can be commonly understood by use of a dictionary as well as other easily available references.

For example, NAR’s Code of Conduct and Anti-Harassment Policy clearly defines “harassment” and “sexual harassment.”

“Harassment includes inappropriate conduct, comment, display, action, or gesture based on another person’s sex, color, race, religion, national origin, age, disability, sexual orientation, gender identity, and any other protected characteristic.

Examples of harassment include, but are not limited to: epithets, slurs or negative stereotyping; threatening, intimidating or hostile acts; denigrating jokes; and the display or circulation of written or graphic material that denigrates or shows hostility toward an individual or group based on a protected characteristic.”

“Sexual Harassment” includes not only physical acts but also includes verbal and non-verbal/non-physical acts.

“Sexual harassment can be:

- Verbal: Sexual innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions, or threats.
- Non-Verbal: Sexually suggestive objects or pictures, graphic commentaries, suggestive or insulting sounds, leering, whistling, or obscene gestures. ... ”

Harassing speech in Standard of Practice 10-5 is similar to the definition of harassment in NAR’s Code of Conduct and Anti-Harassment Policy, except that Standard of Practice 10-5 is limited to the protected classes under Article 10. Hearing Panels should look to this existing information on harassment to determine whether harassing speech has occurred and then look to determine whether the harassing speech was based on one of the protected classes.

In similar fashion, Merriam Webster's Dictionary defines "hate speech," "epithets," and "slurs" as follows:

Hate Speech: "speech that is intended to insult, offend, or intimidate a person because of some trait (as race, religion, sexual orientation, national origin, or disability)."

Epithet: "**1a:** a characterizing word or phrase accompanying or occurring in place of the name of a person or thing; **b:** a disparaging or abusive word or phrase"

Slur: "**1a:** an insulting or disparaging remark or innuendo; **ASPERSION;** **b:** a shaming or degrading effect; **STAIN, STIGMA**"

Standard of Practice 10-5 should be interpreted as applying equally to speech, images, and symbols.

Again, Hearing Panels must look to whether the hate speech, epithet or slur is based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation or gender identity and not on some other non-protected characteristic.

Under Statement of Professional Standards Policy #29, REALTORS® are subject to the Code of Ethics' standards in all of their activities. Thus, a violation of Article 10, as supported by Standard of Practice 10-5, can occur when a REALTOR® uses harassing speech, hate speech, epithets and slurs based on the protected classes in any media or context, regardless of whether related to their activities in the real estate business or their identification as a REALTOR®.

Appendix XI to Part Four, Ethics Mediation

Adoption of ethics mediation procedures

Ethics mediation is a process that may be adopted at the discretion of boards and associations. Ethics mediation will require adoption of these procedures (either verbatim or as amended locally) by action of the local board of directors (or as otherwise provided in the local bylaws).

Appointment of mediators

The chair of the Professional Standards Committee and/or the Board President will select one or more ethics mediators to act on behalf of the committee. Mediators should be thoroughly familiar with the Code of Ethics, state real estate regulations, and current real estate practice.

Complaints that may be mediated

Complaints brought by the public or by other REALTORS® may be mediated under these procedures. Complaints brought by the Grievance Committee ~~and complaints alleging a violation of the public trust (as defined in Article IV, Section 2 of the NAR Bylaws)~~ may not be mediated.

Initiation of ethics mediation procedures

The ethics mediation process can be initiated in two ways. First, through filing a written ethics complaint. Second, through a personal, telephone, or written inquiry or complaint generally alleging potentially unethical conduct but which (a) is not filed on the appropriate form or (b) is not specific as to which Article(s) may have been violated. Where a written ethics complaint in the appropriate form is received, it will be reviewed by the Grievance Committee so a determination can be made whether a possible violation may have occurred or, alternatively, whether the complaint should be dismissed as not requiring a hearing.

Where an informal inquiry or general letter of complaint ~~that does not allege a potential violation of the public trust~~ is received, it will not be reviewed by the Grievance Committee, but will be referred to an ethics mediator.

Participation in ethics mediation is voluntary

Persons inquiring about the process for filing ethics complaints will be advised that ethics mediation is available as an alternative to a formal ethics hearing provided that all parties agree to participate, and also be advised they may decline or withdraw from mediation and have their complaint considered at a formal ethics hearing. Similarly, REALTORS® complained about have the right to decline or withdraw from mediation and to have complaints against them considered at a formal ethics hearing.

Referral of complaints to the mediator

When either a written ethics complaint in the appropriate form is reviewed by the Grievance Committee and the Grievance Committee concludes that a hearing is warranted, or when a general letter of inquiry or complaint is received, and the matter(s) complained of do not involve a possible violation of the “public trust”, the materials received will be referred to the ethics mediator who will contact the parties to schedule a meeting at a mutually agreeable time. “Public trust” refers to misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud.

During the mediation session the mediator will encourage all parties to openly and candidly discuss all issues and concerns giving rise to the inquiry or complaint, and to develop a resolution acceptable to all of the parties. In the event the mediator concludes that a potential violation of the public trust may have occurred, the mediation process shall be immediately terminated, and the parties shall be advised of their right to pursue a formal ethics complaint, to pursue a complaint with any appropriate governmental or regulatory body, to pursue litigation, or to pursue any other available remedy.

Nature of the mediated resolution

The mediator and the parties have considerable latitude in fashioning a mutually acceptable resolution. Resolutions can include, but are not limited to, payment of disputed funds, repairs or restoration of property, written or oral apology, or acknowledgement of a violation of the Code of Ethics. In cases where a REALTOR® acknowledges that the Code has been violated, that admission may be sufficient to resolve the matter or, alternatively, the parties may agree that discipline should be imposed. The discipline may, at the agreement of all parties, include any of the forms of discipline established in the *Code of Ethics and Arbitration Manual* and may also include payment of monies to the complainant or to a third party. Also, the parties may agree that the complainant will withdraw a complaint or agree not to file a formal, written ethics complaint in return for the respondent’s action or acknowledgement. Again, any discipline imposed must be agreed to by all of the parties.

Referrals to the Grievance Committee or to state regulatory bodies

Ethics mediators cannot refer concerns they have regarding the conduct of any party to mediation to the Grievance Committee, to the state real estate licensing authority or to any other regulatory body. This prohibition is intended to ensure impartiality and avoid the possible appearance of bias. Mediators are, however, authorized to refer concerns that the public trust may have been violated to the Grievance Committee.

Refusal to comply with agreed upon discipline

Failure or refusal of a respondent to comply with the terms of any mutually agreed on resolution shall entitle the complaining party to resubmit the original complaint or, where a formal complaint in the appropriate form had not been filed, to file an ethics complaint. The time the matter was originally brought to the board or association's attention shall be considered the filing date for purposes of determining whether an ethics complaint is timely filed.

Associations will continue to process filed ethics complaints until withdrawn by the complainant.

Confidentiality of mediation process

The allegations, discussions, and decisions rendered in ethics mediation proceedings are confidential and shall 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.

Changes to NAR's Local and State Association Ombudsman Services Policy

Professional Standards Policy Statement #59, Associations to Provide Ombudsman Services, in the current NAR Code of Ethics and Arbitration Manual, provides as follows: 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 Statement #40, Cooperative Enforcement Agreements), ombudsman services to members, clients, and consumers on or before January 1, 2016.

An ombudsman is an individual appointed to receive and resolve disputes through constructive communication and advocating for consensus and understanding. Ombudsman procedures are intended to provide enhanced communications and initial problem-solving capacity at the local level. All associations must provide ombudsman services to their members and members' clients and customers consistent with Professional Standards Policy Statement #59, Associations to Provide Ombudsmen Services, Code of Ethics and Arbitration Manual.

Introduction

Boards and associations of REALTORS® are charged with the responsibility of receiving and resolving ethics complaints. This obligation is carried out by local, regional and state grievance committees and professional standards committees.

Many "complaints" received by boards and associations do not expressly allege violations of specific Articles of the Code of Ethics, and many do not detail conduct related to the Code. Some "complaints" are actually transactional, technical, or procedural questions readily responded to.

It is the belief of the National Association's Professional Standards Committee that many ethics complaints might be averted with enhanced communications and initial problem-solving capacity at the local level. These ombudsman procedures are intended to provide that capacity.

The ombudsman's role is primarily one of communication and conciliation, not adjudication. Ombudsmen do not determine whether ethics violations have occurred or who is entitled to what amount of money, rather they anticipate, identify, and resolve misunderstandings and disagreements before matters ripen into disputes and possible charges of unethical conduct.

Qualification and Criteria for Ombudsmen

Boards and associations have considerable latitude in developing criteria for service as ombudsmen.

At a minimum, ombudsmen should be thoroughly familiar with the Code of Ethics, state real estate regulations, and current real estate practice. Ombudsmen may be REALTORS®, staff members, or others acting on behalf of the local board/association.

Insurance Coverage

Ombudsmen are covered through the NAR insurance program, as long as they are acting within the coverage limits described in the policy.

As provided in the [FAQ](#) about the National Association of REALTORS® Professional Liability Insurance Program for Associations of REALTORS®, the policy defines an "ombudsman" (or "ombudsperson") as an individual designated by an association to be available for consultation about the association's ethics hearing, arbitration, and/or DRS processes. Only association staff or members may serve as an ombudsman. The policy excludes from coverage any claim that alleges or arises out of any action committed by ombudsman that does not involve an association's ethics hearing, arbitration or the DRS processes.

The following are examples of some situations in which an ombudsman would be covered and other situations when the ombudsman would not be covered:

- A seller contacts the association because they feel their listing broker, who is a REALTOR®, is not responding to phone calls, and may have received offers that they haven't presented to the seller yet. If an ombudsman were appointed to assist the parties, the ombudsman's actions would be covered by the NAR insurance program.
- A buyer contacts the association for help with a short sale transaction. If an ombudsman assisted the buyer, the ombudsman's actions would not be covered by the NAR insurance program.
- REALTOR® A contacts the association because she has reason to believe REALTOR® B has been criticizing her business on Facebook after a difficult transaction. If an ombudsman were appointed to assist the parties, the ombudsman's actions would be covered under the NAR insurance program.

Involving the Ombudsman

Boards and associations have considerable latitude in determining how and when ombudsmen will be utilized. For example, ombudsmen can field and respond to a wide variety of inquiries and complaints, including general questions about real estate practice, transaction details, ethical practice, and enforcement issues. Ombudsmen can also receive and respond to questions and complaints about members; can contact members to inform them that a client or customer has

raised a question or issue; and can contact members to obtain information necessary to provide an informed response.

In cases where an ombudsman believes that a failure of communication is the basis for a question or complaint, the ombudsman can arrange a meeting of the parties and to facilitate a mutually acceptable resolution.

Where a written ethics complaint in the appropriate form is received, it can be initially referred to the ombudsman who will attempt to resolve the matter, ~~except that complaints alleging violations of the public trust (as defined in Article IV, Section 2 of the NAR Bylaws) may not be referred to an ombudsman. "Public Trust" refers to demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud.~~

~~In the event the ombudsman concludes that a potential violation of the public trust may have occurred, the ombudsman process shall be immediately terminated, and the parties shall be advised of their right to pursue a formal ethics complaint; to pursue a complaint with any appropriate governmental or regulatory body; to pursue litigation; or to pursue any other available remedy.~~

Right to Decline Ombudsman Services

Persons filing complaints, or inquiring about the process for filing ethics complaints, will be advised that ombudsman services are available to attempt to informally resolve their complaint. Such persons will also be advised that they may decline ombudsman services and can have their complaint referred to ethics mediation (if available), or considered at a formal ethics hearing.

Resolution of Complaints

If a matter complained of is resolved to the mutual satisfaction of all parties through the efforts of an ombudsman, the formal ethics complaint brought initially (if any) will continue to be processed until withdrawn by the complainant.

Failure to Comply With Agreed Upon Resolution

Failure or refusal of a member to comply with the terms of a mutually agreed on resolution shall entitle the complaining party to resubmit the original complaint or, where a formal complaint in the appropriate form had not been filed, to file an ethics complaint. The time the matter was originally brought to the board or association's attention will be considered the filing date for purposes of determining whether an ethics complaint is timely filed.

Referrals to the Grievance Committee or to State Regulatory Bodies

Ombudsmen cannot refer concerns they have regarding the conduct of any party utilizing their services to the Grievance Committee, to the state real estate licensing authority, or to any other regulatory body. The prohibition is intended to ensure impartiality and avoid the possible appearance of bias. ~~Ombudsmen are, however, authorized to refer concerns that the public trust may have been violated to the Grievance Committee.~~

Confidentiality of Ombudsman Process

The allegations, discussions and decisions made in ombudsman proceedings are confidential and shall 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.

Six New Case Interpretations Relating to Standard of Practice 10-5:

<https://www.nar.realtor/code-of-ethics-and-arbitration-manual/case-interpretations-related-to-article-10>

Case #10-6: Use of Hate Speech and Slurs on the Basis of Race

In social media discussions, REALTOR® A made the following comments: “I think Black people bring out the worst in us”; “we always knew n----- were violent. They are not Christian”; and described Black protestors as “animals trying to reclaim their territory”. A consumer took screenshots of the comments, including REALTOR® A’s name, and filed an ethics complaint alleging a violation of Article 10, as interpreted by Standard of Practice 10-5, at the local Association of REALTORS®.

After comprehensive review, the Association’s Grievance Committee forwarded the complaint for a hearing. At the hearing, the panel reviewed the evidence presented by the complainant, including screenshots of the comments. REALTOR® A confirmed she had, in fact, posted the statements, but denied that making the statements interfered in her ability to provide equal professional services to anyone because of their race.

The Hearing Panel entered executive session and considered the intended application of Article 10, as interpreted by Standard of Practice 10-5, as noted in Appendix XII to Part Four of the Code of Ethics and Arbitration Manual. The Panel concluded that the comments REALTOR® A posted constituted the use of hate speech and slurs. In their decision, the Panel clarified that this public posting of hate speech and disparagement of individuals based on their race reflected discrimination. REALTOR® A’s defense was not accepted by the Hearing Panel, and she was found in violation of Article 10.

Case #10-7: Use of Harassing Speech on the Basis of Political Affiliation

REALTOR® A was a registered member of Political Party Y, and routinely engaged in political discussions on social media and in private conversations. REALTOR® A's conversations and social media posts often included insulting, intimidating, and hostile statements about members of Political Party Z, including aggressively insulting their intelligence, implying they were unpatriotic, and telling them that if they disagreed with him, they should leave the country.

REALTOR® B witnessed numerous instances where REALTOR® A harassed others on the basis of their membership in Political Party Z, and believed that REALTOR® A was using harassing speech. He filed an ethics complaint with the local Association of REALTORS®, alleging REALTOR® A violated Article 10 as interpreted by Standard of Practice 10-5.

The complaint was reviewed by the Association's Grievance Committee, who examined the allegations to determine whether, if taken as true, they would constitute a violation of the Code of Ethics. Ultimately the Grievance Committee dismissed the complaint, as the complainant's sole argument was that REALTOR® A had discriminated against individuals based on their political affiliation with Political Party Z. As political affiliation is not a protected class under Article 10, the allegations in the complaint, even if true, could not constitute a violation of the Code of Ethics.

Case #10-8: Use of Harassing Speech against Protestors

A group of protestors, supporting the equal treatment of women, gathered peacefully for a march in Washington, D.C. The group requested and was approved for the appropriate permits, and while local law enforcement was on site to provide assistance, no criminal activity was reported.

REALTOR® A, in response to the march, posted on social media, “These morons have nothing better to do than come all the way to Washington to gripe about a problem that doesn’t even exist. This is why women shouldn’t be allowed to leave the house. Get back in the kitchen where you belong.” REALTOR® B saw REALTOR® A’s comments, and filed a complaint with the local Association of REALTORS® alleging REALTOR® A’s comments against the protestors constituted harassing speech against members of a protected class, and as such were a violation of Article 10 as illustrated by Standard of Practice 10-5. The Association’s Grievance Committee forwarded the complaint for a hearing.

At the hearing, REALTOR® B argued that REALTOR® A’s comments constituted objectively harassing speech against individuals on the basis of sex. In response, REALTOR® A argued that his comments were directed at protestors, which are not a protected class, and that, in fact, the group was comprised of both men and women. In their decision, the panel noted that while REALTOR® A’s comments were addressed to a group of both men and women, they included disparaging, discriminatory comments about women such that the complainant had demonstrated with clear, strong, and convincing proof that REALTOR® A had used harassing speech under Standard of Practice 10-5 and thus was in violation of Article 10.

Case #10-9: Use of Speech or Ideas included in Religious Doctrine

REALTOR® A was a preacher in his local church, and stated before a group of congregants, "Lesbians and Homosexuals are murderers according to the scriptures!" One of the congregants filed an ethics complaint against REALTOR® A, alleging this statement violated Article 10 as interpreted by Standard of Practice 10-5. The complainant argued in his complaint that REALTOR® A's statement constituted hate speech. The local Association's Grievance Committee reviewed the complaint, and forwarded it for a hearing.

At the hearing, the complainant argued that REALTOR® A's statement constituted hate speech because the remarks were objectively insulting and offensive, and because the speech was based on sexual orientation, a protected class under the Code of Ethics. REALTOR® A testified that his statement was based on his interpretation of the Biblical scripture, and that his teachings were designed to help his congregants understand the true teachings of God. The Hearing Panel found REALTOR® A in violation of Article 10, noting that the complainant's testimony had provided clear, strong and convincing proof that REALTOR® A's statement was "intended to insult, offend or intimidate," and that it was "disparaging or abusive," as explained by Appendix XII to Part 4 of the *Code of Ethics and Arbitration Manual*. The complainant's testimony further provided clear, strong, and convincing proof that the alleged speech was based on one of the protected classes under Article 10, sexual orientation.

Case #10-10: Use of Speech or Ideas included in Religious Doctrine

REALTOR® A leads a weekly Bible study group in the evenings. During one such study group, REALTOR® A led the group in a discussion of Biblical passages concerning homosexuality, referencing several differing interpretations of said passages. At one point during the discussion, REALTOR® A stated, “some have said these verses clearly prohibit and condemn same-sex relationships”. An attendee of the group found this to be inappropriate and filed an ethics complaint alleging a violation of Article 10, as interpreted by Standard of Practice 10-5, at the local Association of REALTORS®.

After comprehensive review, the Association’s Grievance Committee forwarded the complaint for a hearing. The complainant argued that REALTOR® A’s statement represented his own personal beliefs about homosexuality. REALTOR® A confirmed that the complainant had quoted him correctly but argued that he presents all sides of Biblical interpretation for historical context, and that he is careful to leave any personal opinions out of the study group, as evidenced by his use of “some have said.”

The Hearing Panel entered executive session and considered the intended application of Article 10, as interpreted by Standard of Practice 10-5, as noted in Appendix XII to Part Four of the *Code of Ethics and Arbitration Manual*. The Panel concluded that REALTOR® A’s comments were not intended to convey a discriminatory opinion and did not constitute the use of hate speech and slurs. REALTOR® A was not found in violation of Article 10.

Case #10-11: Display of Symbols

When searching real estate listings on a brokerage website, a potential homebuyer noticed a listing with the Confederate flag prominently displayed in the property photos. She filed an ethics complaint against the listing broker alleging a violation of Article 10, as interpreted by Standard of Practice 10-3 and Standard of Practice 10-5, at the local Association of REALTORS®. The complainant argued in her complaint that the Confederate flag is a symbol of racial exclusion and that the listing broker's display of the photos conveyed a preference and discrimination based on race. The local Association's Grievance Committee reviewed the complaint and forwarded it for a hearing.

At the hearing, the complainant testified that she felt threatened by the display of the Confederate flag and took it to mean that she would not be welcome in the home or the neighborhood if she were to make an offer on the property. The listing broker testified that he should not be held responsible for what is displayed in a client's home and could not offer an explanation for his client's motives in displaying the Confederate flag.

The Hearing Panel concluded that the listing broker is indeed responsible for content he displays publicly when engaging in real estate brokerage. The Hearing Panel also discussed whether the display of the flag indicated an illegal preference or discrimination. Using the standard of whether a "reasonable person" would think display of the Confederate flag conveyed a discriminatory preference, The Hearing Panel determined that the listing broker's inclusion, intentional or not, of photos including the Confederate flag could be reasonably construed as indicating a racial preference or illegal discrimination based on a protected class, and therefore was a violation of Article 10, as interpreted by Standard of Practice 10-3 and Standard of Practice 10-5.

The following procedural guides are available for virtual hearings on [nar.realtor](https://www.nar.realtor/about-nar/policies/resources-for-professional-standards-administrators)
<https://www.nar.realtor/about-nar/policies/resources-for-professional-standards-administrators>

- ✓ Sample Chairperson's Procedural Guide Conduct of a Virtual Arbitration Hearing
- ✓ Sample Chairperson's Procedural Guide Conduct of a Virtual Ethics Hearing
- ✓ Sample Chairperson's Procedural Guide Conduct of a Virtual Ethics Appeal
- ✓ Sample Chairperson's Procedural Guide Conduct of a Virtual Procedural Review Hearing

Best practices for virtual hearings can also be found on-line at the link above

1. Set the virtual platform meeting duration for 8 hours to make sure your meeting doesn't end prior to the hearing adjournment.
2. Be sure to adjust the platform settings so that there is no ability for anyone to use the "chat".
3. Make sure to include the ability to manually assign parties and counsel, if any, into a private meeting space on the platform if available or have a plan to utilize some other method for a private conversation to take place should a recess be requested to discuss settlement of an arbitration during the hearing or post hearing.
4. Make sure all panelists, parties, witnesses, counsel are familiar with the virtual platform.
5. Confirm that the Professional Standards Administrator or staff have confirmed the identity of all parties, witnesses and counsel by requesting verification of at least one government-issued, photo ID card (e.g., driver's license, state ID card, or Passport) prior to being admitted to the hearing.
6. Everyone must be able to participate with their video on and be visible at all times.
7. No virtual backgrounds allowed.
8. Confirm that the panel is available for the entire day for the hearing.
9. Make sure you have set the meeting to allow the host to share documents from their computer via the chat function or be prepared to e mail all parties, panelists and board counsel.
10. Make a list of the parties', witnesses', panelists' and board counsel's cell phone numbers in advance of the hearing and have them on hand. Advise the panel to text the Administrator if they have any questions or need a break during the hearing.
11. Make sure everyone has the contact information for the Administrator prior to the hearing.
12. Have a plan to contact your board counsel if you need them.
13. Stop the hearing if someone loses connection.
14. Encourage parties to submit their evidence in advance and advise that attempting to introduce evidence at the hearing could result in a delay or postponement of the hearing.

15. Establish a system for documents submitted the day of the hearing. The administrator should be the communications channel, have the documents emailed to the administrator for distribution to the panel and parties. If submitted into evidence, the document can be distributed to the parties and panel via e mail from the administrator or through the chat feature by the host (administrator)
16. If sharing your screen, turn off or silence email notifications, phone apps etc. as you do not want to be distracted during the hearing.
17. Screen sharing can only be done with a document after it has been distributed and marked into the record.
18. Have a system so it is easy to display evidence should the chair wish to show a document. i.e., do not have a lot open on your computer when you share your screen. Have a separate folder with the hearing documents so it is streamlined and easy to pull up if needed.
19. Include the link on the "Official Notice of Hearing" in the space for "place of hearing" ... insert "Virtual Hearing through ((insert your virtual platform of choice and add link).
20. E mail the link again to all parties, panelists, counsel, etc. the morning of the hearing.
21. Include the remote verifications in correspondence prior to any virtual session so everyone is aware of the process for the day and what is expected of them, i.e., private location, etc.
22. Set expectations that the parties and their witnesses or counsel will be in the waiting room until ready to start the hearing and that witnesses will be placed back in the waiting room after being sworn in until the party is ready for the testimony.
23. Panel members should sign in 30 minutes in advance of the hearing.
24. Schedule a pre-hearing meeting with the panel and board counsel to go over procedure and answer any questions prior to the actual hearing.
25. Parties, witnesses and counsel should sign into the virtual platform 15 minutes in advance of the hearing.
26. When parties enter the hearing, be sure to change their names. It will be easier to identify each person if they have a title next to their name.

Examples:

John Smith, Complainant
 Mark J. Wallach, Esq., Complainant's Counsel,
 Mark Jones, Respondent
 Hearing Panel Chair, Joan Morris
 Jane Wong, Professional Standards Administrator

27. If the panel must go into executive session during the hearing, place everyone else in the waiting room until the executive session is concluded.

28. If at all possible, have two administrators or one administrator and one staff on the remote meeting. One who is the official Professional Standards Administrator and one to do the name changes, admit the witnesses, send messages to the waiting room and keep a general "eye" on all participants, i.e., that they are on camera, no one else is with them that hasn't been approved, etc.
29. Obtain consent from all participants prior to recording the hearing. Recording should be conducted in accordance with state law.
30. Certificate of qualification – transmit to the panel electronically prior to the hearing and obtain electronic signatures or scans of signed copies. Alternatively, put the language from the form directly into the record and have the panel verbally acknowledge agreement on the record.
31. When verifying that someone is in a private location, if staff can see that is not the case, you prompt the chair to take time to allow that person to move to a secure and confidential location.
32. Encourage parties to have their entire case file available. Any party to a hearing has the right to obtain a copy of the Board's official recording, subject to the aforementioned limitations, and subject to payment of the Board's duplication costs. Any duplication will be conducted under the supervision of the Board. If the Board transcribes its official recording, any party to the hearing may obtain a copy of the transcript, subject to the aforementioned limitations and paying the Board's transcription costs. If more than one party requests copies of the transcript, the Board's costs will be apportioned between or among the parties.

The following procedural guides for counter ethics complaints and counter-arbitration requests can be found at nar.realtor <https://www.nar.realtor/about-nar/policies/forms-models-templates-brochures-and-scripts>

- ✓ Chairperson's Procedural Guide Conduct of a Complaint and a Counter-Complaint
- ✓ Chairperson's Procedural Guide Conduct of an Arbitration Request and Counter-Arbitration Request

Additional Points of Interest

1. In 2019 the National Association's Leadership Team approved several recommendations of the Code of Ethics Presidential Advisory Group that did not require a Board of Directors vote. To view those changes, listen to a webinar explaining the changes, view a comprehensive implementation chart related to those changes, view the changes to the learning objectives for cycle 7, and see a list of frequently asked questions, go to:

<https://www.nar.realtor/about-nar/governing-documents/code-of-ethics/code-of-ethics-training-requirement-now-every-three-years>

2. Go to these links to review consequences for non-compliance for REALTORS® who have not completed Cycle 6 by December 31, 2021:

<https://www.nar.realtor/about-nar/policies/good-sense-governance/good-sense-governance-approval-of-courses-for-code-of-ethics-training-credit>

<https://www.nar.realtor/about-nar/governing-documents/code-of-ethics/code-of-ethics-training/consequences-for-failure-to-complete-code-of-ethics-training>

3. The 2022 National Association's Mediator/Mediation training is scheduled for September 7, 8, and 9 in Chicago. Registration details expected to open the end of January:

<https://www.nar.realtor/events/mediator/mediation-training>.

4. Staff is invited to join Diane Mosley, NAR's Director of Training and Policy Resources, on the last Tuesday of each month for an interactive discussion from 1 – 2 CT. For more information and to register for any currently scheduled session, please go to:

<https://www.nar.realtor/about-nar/policies/professional-standards-monthly-sessions>

5. The Citation Policy's Schedule of Fines will be revised in January to reflect the revision to Standard of Practice 12-1. Note: the change to Standard of Practice 1-8 may be added at a later time.

6. The complete listing of all Statements of Professional Standards Policy, in chronological order, is available on-line at nar.realtor. Policy Statements applicable to ethics and arbitration remain in the *Code of Ethics and Arbitration Manual* in their respective sections, but the complete list appears on-line:

<http://www.nar.realtor/policy/statements-of-professional-standards-policy>

7. The Professional Standards Training Guide, NAR Model Citation Policy, the Ombudsman Procedures, Ethics Mediation, and the Ethics Fast Track Supplement are found on-line:

<http://www.nar.realtor/policy/professional-standards-training-guide>

<https://www.nar.realtor/policy/nar-model-citation-policy-and-schedule-of-fines>

<https://www.nar.realtor/ae/manage-your-association/local-and-state-association-ombudsman-services>

<https://www.nar.realtor/code-of-ethics-and-arbitration-manual/ethics/part-4-appendix-xi-ethics-mediation>

<https://www.nar.realtor/about-nar/policies/fast-track-supplement-to-ceam>

Revised 12/30 dmn

A RESOLUTION OF THE PROFESSIONAL STANDARDS COMMITTEE
of the
NATIONAL ASSOCIATION OF REALTORS®
in recognition of
**THE 75TH ANNIVERSARY OF THE
PROFESSIONAL STANDARDS COMMITTEE**

November 2021

WHEREAS The National Association of REALTORS® was founded with the goal of uniting the real estate profession through high standards to protect buyers and sellers, and

WHEREAS more than 100 years after its adoption, the Code of Ethics continues to be what sets us apart as REALTORS®, and

WHEREAS the Professional Standards Committee was founded in May of 1946 to devote its attention to the raising of professional standards nationally in the transaction of business concerning real estate in all its branches, and

WHEREAS the Committee's founding reinforced the REALTOR® Code of Ethics as a living, dynamic credo guiding us in our daily professional lives, to be regularly revisited, reviewed and improved,

BE IT THEREFORE RESOLVED that the Professional Standards Committee of the National Association of REALTORS® recognize the contributions and devotion of time, energy, talent, and enthusiasm of past and present members on this, the 75th anniversary of the founding of the Professional Standards Committee, and

BE IT FURTHER RESOLVED that the Committee's leadership, passion and vision will continue to guide future generations of REALTOR® leaders in in keeping the REALTOR® Code of Ethics and professional standards significant and relevant in an ever-changing real estate industry.