**Chairperson’s Procedural Guide: Conduct of a Virtual Appeal Hearing (Ethics)**

 **Board of REALTORS® State of**

*(Ask the Secretary to make sure that the names of all parties present for the hearing have been added to this Guide and that all the appropriate blanks have been completed. Also note that ethics appeals are not to be recorded.)*

(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.)

*(Ask the Professional Standards Administrator to admit all parties from the virtual waiting room)*

**Display:** Board banner and the American Flag (Professional Standards Administrator should have this displayed behind them and visible to all) if available

**Seating arrangements:** See **Part Six**, *for ease of identification*, staff will make sure all participants names and titles are visible on the virtual platform

**Start promptly:** Rap gavel to open meeting.

**Chairperson’s opening statement:** Ladies and gentlemen, I now call this appeal hearing to order. The professional standards procedures of the Board of REALTORS® provide for the right to appeal the decisions rendered by ethics Hearing Panels. The complainant in the original ethics hearing may appeal based only on alleged procedural deficiencies that

may have deprived the complainant of the opportunity for a full and fair hearing or other lack of procedural due process. The respondent in the original ethics hearing may appeal the decision and/or recommendation for discipline on the basis of (1) misapplication or misinterpretation of an Article(s) of the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®, (2) alleged procedural deficiency or any lack of procedural due process, or (3) the discipline recommended by the

Hearing Panel. This particular appeal will be heard by (the Board of Directors) (or) (a panel of Directors appointed by the President) (or) (the Board’s Executive Committee), hereinafter referred to as the Appeal Hearing Tribunal.

**Basis of this hearing:** The particular matter to be considered by this Appeal Hearing Tribunal is an appeal of the decision of the ethics Hearing Panel composed of:

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 , , and chaired by

 , at an ethics hearing conducted on , 20 . The basis of the

original ethics hearing was a complaint brought by ,

 , and , the complainant(s), against , , and

 , the respondent(s), alleging violation of Article(s) of the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®. The decision was as follows.

*(Read the decision of the ethics Hearing Panel of the Professional Standards Committee [Part Six, Form #E-11 of this Manual].) (Let’s clarify this)*

Prior to the original ethics hearing, the complaint was reviewed by (the Board’s Grievance Committee) (or) (a panel of the Board’s Grievance Committee members) and referred to the Board’s Professional Standards Committee for a hearing.

**Authority:** The Appeal Hearing Tribunal present here today is a body duly constituted under the authority of the bylaws of the Board of REALTORS®.

**Introduction of the Appeal Hearing Tribunal:** At this time, I would like to introduce the members of this Appeal Hearing Tribunal. My name is

 , and I will serve as Chairperson. The other members of this Appeal Hearing Tribunal are ,

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 , , and

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(If an alternate is present)

We also have an Alternate Panel member attending the hearing today. The Alternate Panel Member is a trained member of

 Board of Directors and although they are attending the hearing they will not be acting as a participant in the hearing or the executive session nor vote on the decision unless one of the five originally appointed Hearing Panel members are unable to serve on the Hearing Panel from the commencement of the hearing.

**Disqualification:** Anyone who was a party to the original ethics hearing, a member of the Grievance Committee present during the meeting when the complaint was reviewed, a member of the original ethics Hearing Panel, or who was otherwise involved in this matter prior to the appeal is disqualified from serving on this Appeal Hearing Tribunal. Furthermore, anyone who is related by blood or marriage to any party to the hearing or anyone related by blood or marriage to a REALTOR® acting as counsel for either the complainant or

respondent, or anyone who is an employer, partner, employee, or is associated in business with any of the parties or a REALTOR® acting as counsel is also disqualified. I will now ask the members of the Appeal Hearing Tribunal if they know of any reason why they should be disqualified.

*(If none)* The members of the Appeal Hearing Tribunal have not indicated any reason why they are not qualified to serve. Although the parties have been previously notified of their right to challenge members of this Appeal Hearing Tribunal, I will now ask the parties if they are aware of any reason why any member of this Appeal Hearing Tribunal is not qualified to serve.

*(If none)* The parties have not indicated any reason why any member of this Appeal Hearing Tribunal is not qualified to serve.

Additional introductions: Also present at this appeal hearing is

 , , and , the complainant(s) in the original ethics hearing; ,

 , and , the respondent(s) in the original ethics hearing; , the original ethics Hearing Panel Chairperson; and

 , the Professional Standards Administrator of the Board of REALTORS®.

*(If any attorneys are present, they should be introduced at this time.)*

 , , , and

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**REMOTE HEARING VERIFICATIONS:**

All Parties will be participating in this hearing remotely through a virtual platform.

 Board of REALTORS® allows essential parties and witnesses, panelists, counsel and staff to appear remotely only if that person is in a private location that provides the ability to keep the information presented at this hearing from being heard or overheard by any person who is not authorized to participate in the hearing. Those persons are also strictly prohibited from recording these proceedings or using any electronic or other communication devices during the hearing other than those required to participate in the hearing.

(Chair the questions below and call on each person for an answer, don’t accept a head nod but require a verbal answer.)

*I will need all parties, counsel, panel members and staff to verify the following:*

1. that you are in a private location that will protect the confidentiality of this hearing?
2. *That there are no other persons that can hear or listen in on this hearing*
3. *That you are not recording or allowing anyone else to record this hearing in any way*
4. *That you are not accessing electronic devices other than to the extent necessary to participate in this hearing remotely*
5. *And that you will continue to take these measures to ensure the confidentiality of this hearing until the hearing is concluded?*

*All person’s present have answered in the affirmative*

*Although this hearing is not being recorded, please take note of the following:*

* 1. *All responses must be verbal and audible. Shrugs of the shoulder, gestures, and nods of the head cannot be understood.*
	2. *Only one speaker should speak at a time. I, as Chairman of this panel, will call on each person to speak at the appropriate given time. Please wait for the speaker to finish his/her entire question or comment before responding.*

Appeal limitations: In this appeal hearing we will consider the arguments of

 , hereinafter referred to as the appellant, who filed the Request for Appeal. The appeal is further limited to the basis (bases) set forth in writing in the Request for Appeal, which is as follows.

*(Read the Request for Appeal, [****Part Six****, Form #E-13 of this Manual].)*

**Outline of procedure:** At this time, I would like to explain the procedure for this appeal hearing. First, the original ethics Hearing Panel Chairperson (or a representative from the original panel) will summarize the case (or provide copies of transcripts). Then, the appellant will have an opportunity to offer any corrections or modifications to the summary (or transcripts), to introduce supporting evidence and/or the statements of any other parties to the original ethics hearing, and to explain the basis (bases) for the appeal. Next, the original Hearing Panel Chairperson and/or other parties to the original ethics hearing will have an opportunity to explain why the original ethics Hearing Panel’s decision should be upheld. At any time during this proceeding, members of the Appeal Hearing Tribunal may ask questions; however, parties have no right of cross-examination. Finally, following the appeal hearing, the Appeal Hearing Tribunal will go into executive session to render a decision. Do any of the parties have any questions regarding the outline of procedure?

*(If none)* None of the parties has any questions regarding the outline of procedure.

**Guidelines:** This Appeal Hearing Tribunal is not dealing with questions of law and is not governed by the technical rules of evidence which may apply in courts. This Appeal Hearing Tribunal will seek to determine all ascertainable and relevant facts pertaining to the matter under consideration to arrive at a peer judgment and decision by the Appeal Hearing Tribunal that is fair to all of the parties. After the Appeal Hearing Tribunal has heard all of the evidence and testimony, we will go into executive session to render our decision. The decision will be based solely upon the arguments, evidence, and testimony offered during this appeal hearing. All parties or their representatives to these proceedings will be allowed a full opportunity to be heard on matters relevant to the issue. This Appeal Hearing Tribunal may rule at any time during this Appeal Hearing on the relevance of testimony being given. All parties giving testimony will be asked to swear or affirm that testimony given is the truth to the best of their knowledge. A party may be represented by counsel. This Appeal Hearing Tribunal need not accept the statements of counsel as being the statements of their clients if it desires direct testimony. Counsel is present to advise and consult with their clients, and to speak for them subject to appropriate rulings or determinations by this Appeal Hearing Tribunal. This Appeal Hearing Tribunal will countenance no effort by any party or by counsel to any party to harass, intimidate, coerce, or confuse the Appeal Hearing Tribunal or any party to the proceedings.

**Swearing:** At this time, I will request that all persons present in the room who expect to testify at this appeal hearing stay seated and be sworn or make appropriate affirmation in lieu of being sworn. (The Chairperson should determine if any of the parties prefer affirmation in lieu of being sworn.) Please remain seated, raise your right hand and, following the question I pose, answer in the affirmative if you do so swear. “Do you swear that the statements you are about to make at this hearing are the truth, the whole truth, and nothing but the truth so help you God?”

*(If yes)* All parties have answered in the affirmative.

*(And/or if needed)*

**Affirmation:** Please remain seated, raise your right hand and, following the question I pose, answer in the affirmative if you do so affirm. “Do you affirm that the statements you are about to make at this hearing are the truth, the whole truth, and nothing but the truth?”

*(If yes)* All parties have answered in the affirmative.

**The appeal hearing:** We shall now proceed with the appeal hearing.

**Presentation by the original ethics Hearing Panel Chairperson:** At this time the original ethics Hearing Panel Chairperson will summarize the case (or provide copies of transcripts), unless the sole basis for appeal is a deprivation of due process (in which case the Chairperson will address that basis of appeal only).

**Presentation by the appellant:** At this time, the appellant may offer any corrections or modifications to the original ethics Hearing Panel Chairperson’s summary (or) (the transcript), introduce supporting evidence and/or the statements of any other parties to the original ethics hearing, and explain the basis (bases) for the appeal.

**Rebuttal by the original ethics Hearing Panel Chairperson:** At this time the original ethics Hearing Panel Chairperson will have an opportunity to explain why the original ethics Hearing Panel’s decision should be upheld by this Appeal Hearing Tribunal.

**Testimony of other parties to the original ethics hearing:** At this time, any other parties to the original ethics hearing will have an opportunity to explain why the decision of the ethics Hearing Panel should be upheld by the Appeal Hearing Tribunal. Any party testifying must restrict his/her discussion to the issues raised in the appeal.

**Questions from panel members:** The members of this panel are authorized to ask questions at any time during this appeal.

**Confirmation of fairness/opportunity to testify:** Do each of you feel that this appeal hearing has been conducted fairly?

*(If yes)* All parties to this appeal hearing have indicated that they feel this appeal hearing has been conducted fairly.

Have each of you had an adequate opportunity to state why you believe that the decision of the original ethics Hearing Panel should or should not be upheld by this Appeal Hearing Tribunal?

*(If yes)* The parties have indicated that they have had an adequate opportunity to state why they believe the decision of the original ethics Hearing Panel should or should not be upheld by this Appeal Hearing Tribunal.

**Closing statements:** The decision of this Appeal Hearing Tribunal is final. Before we adjourn this appeal hearing, all persons present are advised that the report and findings of this Appeal Hearing Tribunal are considered confidential. Upon final action by this Appeal Hearing Tribunal, the sident shall disseminate to the complainant and the respondent in the original ethics hearing, the Board of Directors, the Chairperson and members of the original ethics Hearing Panel, Board legal counsel, the President of any other Board of REALTORS® in which the respondent holds membership, and any governmental agency, as directed by the Board of Directors, such notice of the action as the Board President deems appropriate under the circumstances to effectuate the discipline prescribed, provided, however, that the nature, form, content, and extent of the notice shall be specifically approved by Board legal counsel prior to dissemination.

**Adjournment:** There being no further business to be considered in this appeal hearing, this portion of the appeal hearing stands adjourned.

(Ask the Professional Standards Administrator to remove all parties, witnesses and counsel from the meeting prior to going into executive session

**Executive session:** The Appeal Hearing Tribunal will now go into executive session.

**Procedural note:** *(The Appeal Hearing Tribunal goes into executive session to deliberate the issues raised on appeal. The Appeal Hearing Tribunal may adopt or modify the recommendation of the original Hearing Panel, including the discipline imposed; or, alternatively, the Appeal Hearing Tribunal may dismiss the complaint if it concludes that the findings of fact do not support the original Hearing Panel’s conclusion as to unethical conduct. If the Appeal Hearing Tribunal is concerned with a possible procedural deficiency, it may refer the case back to the Professional Standards Committee for a new hearing before a different ethics Hearing Panel. If the Appeal Hearing Tribunal is concerned with the appropriateness of the recommendation for discipline, it may impose an alternative discipline that does not exceed that discipline recommended by the original ethics Hearing Panel or, alternatively, the Appeal Hearing Tribunal may refer the decision back to the original ethics Hearing Panel for further consideration. If the matter is referred back to the original ethics Hearing Panel for further consideration, it should be accompanied by the Appeal Hearing Tribunal’s concerns regarding the proposed discipline. However, while the Appeal Hearing Tribunal may recommend that the discipline be increased, the original ethics Hearing Panel is not required to increase the discipline beyond that originally recommended.)*

Declaratory relief: *(If the Appeal Hearing Tribunal has reason to believe the decision will not be accepted and litigation may ensue, it should consider making disciplinary action effective only after a favorable decision in a suit for declaratory relief filed by the Board confirming the propriety of its action. This will minimize any legal vulnerability to the Board.)*