

Summary of Key Professional Standards Changes for 2024 (underscoring indicates additions; strikeouts indicate deletions)

This summary highlights substantive issues and changes. To see the 2023 Professional Standards Committee Actions for the REALTORS® Legislative Meetings and the NAR NXT, visit nar.realtor. Also, review the shaded portions of the 2024 *Code of Ethics and Arbitration Manual* which highlights all the changes to the Manual. There are no changes to the 2024 Code of Ethics and Standards of Practice.

Overview of Changes to the *Code of Ethics and Arbitration Manual*

- Comprehensive amendments to Pathways to Professionalism to modernize document
- Amendments to Professional Standards Policy Statement #54 to clarify that ombuds and mediators are included in safety considerations
- Amendments to Sections 5 and 30, Section 21 (h), Section 51 (c) confirming the Hearing Panel Chair determines questions of relevancy and obligations of witnesses
- Clarification of Section 10 relating to the Professional Standards Administrator's role as compared to grievance committees, hearing panels, or Board of Directors
- Amendments to Section 14, and all relevant NAR resources, clarifying the probationary period for disciplined members; directors can impose suspended discipline if the bad act occurs during the probationary period even if the decision is finalized after the probationary period has expired.
- Amendment to Section 20 (b) stating that members of the Board of Directors who refer a complaint to the Grievance Committee should not also serve on the tribunal that finalizes the decision
- Expansion of 10-day to 30-day time frame in which to hear appeals of Grievance Committee decisions: Section 19 (C), Section 20 (c), Section 42 (C), Section 45 (a) and (d), and Section 47 (c)
- Amendment to Section 20 (e) clarifying an applicant for membership cannot join an association with outstanding discipline pending resulting from a violation of the Code of Ethics
- Amendments to Section 23 (b) and (f) and Form E-12 to clarify that the Board of Directors has the ability to dismiss one or more Article from a decision without dismissing the complaint in its entirety.
- Amendments to Section 23 (j) clarifying policy on

distributing the final action by the Board of Directors after a professional standard hearing

- Amendment to Appendix VII to Part Four to clarify that hearing panels may consider prior violations beyond three years at their (and/or the association's) discretion
- Amendments to Professional Standards Policy Statement #2 and Section 44 (a) to make it clear that it is at the REALTOR® principal's discretion that their REALTOR® non-principal with a financial interest may be present and participate throughout an arbitration hearing
- Amendments to Professional Standards Policy Statement #52, Appendix VI to Part Ten, and Forms #A-1, #A-2, and #A-4 to allow for greater flexibility in offering mediation (prior to or after a grievance committee reviews an arbitration request) and highlight the benefits of mediation
- Clarifying the 180-day timeframe from when a complainant knew of the arbitrable dispute in Section 42 (B) (3); Section 47 (a); Appendix I to Part Ten, Arbitrable Issues; Appendix V to Part Ten, Arbitration Hearing Checklist; and Forms #A-1 and #A-2
- Amendments to allow the portions of Part Eleven titled "Selection of Panel" and "The Award" to be adaptable to local policy relating to how hearing panels and procedural review tribunals are composed
- Amendments to the Chairperson's Procedural Guides removing gendered language, adding verbiage from the virtual guides regarding mediation and hearing panel alternates for consistency, and deleting "swearing in" language; all Outlines of Procedure similarly revised (e.g., #E-9 and #E-9a and #A-10 and #A-10a). Note: associations have the ability to determine association's policy with respect to swearing and/or affirming testimony.
- Amendments to Form #E-20: Notice to Respondent (Ethics) and Optional Waiver of Right to Hearing, to reinforce that any response cannot contest the facts stated in the complaint and may only offer information in mitigation of any discipline that may be imposed
- Amendments to Forms #A-1, #A-2, and #A-4 to add a definition of "REALTOR® principal," and a line to list names of witnesses other than REALTOR® nonprincipals with a financial interest who are affiliated with a party, add a statement that parties "...understand any party may request mediation of a dispute..." and adjust the 180 day language so it is consistent with other areas of the Manual
- Adopted Case #1-32, Manipulation of Comparables for REALTOR®'s Personal Gain (found at nar.realtor in Interpretations of the Code of Ethics)

- Approved two new Code Comprehension documents clarifying Standards of Practice 1-16, 3-8, 3-9, and 3-10 (found at nar.realtor)

Revised Pathways to Professionalism

(Note: for legislative changes, go to nar.realtor)

The Code of Ethics and Standards of Practice of the National Association of REALTORS® establishes objective, enforceable ethical standards governing the professional conduct of REALTORS®. This list of suggested professional courtesies is meant to complement the Code of Ethics, may not be all-inclusive, and may be supplemented by local custom and practice.

These professional courtesies are intended to be used by REALTORS® on a voluntary basis and cannot form the basis for a professional standards complaint.

Respect for the Public

1. Follow the "Golden Rule": Do unto other as you would have them do unto you.
2. Respond promptly to inquiries and requests for information.
3. Schedule appointments and showings as far in advance as possible.
4. Communicate promptly if you are delayed or must cancel an appointment or showing. If a prospective buyer decides not to view an occupied home, promptly communicate the situation to the listing broker or the occupant.
5. When entering a property ensure that unexpected situations, such as pets, are handled appropriately.
6. Never criticize property in the presence of the occupant.
7. When showing an occupied home, always ring the doorbell or knock—and announce yourself loudly before entering. Knock and announce yourself loudly before entering any closed rooms.
8. Present a professional appearance.

9. If occupants are home during showings, ask their permission before using the bathroom.
10. Encourage the clients of other brokers to direct questions to their agent or representative.
11. Communicate clearly; ensure specialized language and real estate terminology is understood.
12. Be aware of and respect cultural differences. Show courtesy and respect to everyone.
13. Be aware of—and meet—all deadlines.
14. Promise only what you can deliver—and keep your promises.
15. Do not tell people what you think—tell them what you know.

Respect for Property

1. When showing a property, be responsible for your clients/customers and keep the group together.
2. Make reasonable and timely accommodations to provide access to listed properties.
3. Make reasonable and timely requests to access listed properties.
4. Leave the property as you found it (lights, heating, cooling, drapes, etc.) If you think something is amiss (e.g., vandalism), contact the listing broker immediately.
5. Be considerate of the seller's property. Do not allow anyone to eat, drink, smoke, dispose of trash, use bathing or sleeping facilities, or bring pets. When instructed or appropriate, remove footwear when entering property.
6. Obtain permission before photographing, videographing, or streaming the interiors or exteriors of properties, or allowing others to do so.

Respect for Peers

1. Respond to other real estate professionals' communications promptly and courteously.
2. Contact the listing broker if there appears to be a discrepancy in the listing information.
3. Inform anyone accessing the property about important information, (e.g., pets, security systems, video and audio recording equipment).
4. Inform if sellers or listing agent will be present during the showing.
5. Show courtesy, trust, and respect to other real estate professionals.
6. Avoid the inappropriate use of endearments or other denigrating language.
7. Do not prospect at other REALTORS®' open houses or similar events.
8. Secure property and lockbox and/or return keys promptly.
9. Real estate is a reputation business. What you do today may affect your reputation—and business—for years to come.

(Revised 5/23)

Statements of Professional Standards Policy Applicable to Ethics Proceedings

Professional Standards Policy Statement #54, Personal safety in professional standards proceedings

Boards and Associations should take reasonable steps to ensure the personal safety of parties, panelists, witnesses, staff, facilitators and others participating in professional standards proceedings. In instances where, ~~in the opinion of the presiding committee, or~~ Hearing Panel Chair, or facilitator deems there is an unacceptable risk posed to the safety of any participant, the proceedings will be recessed so*

the Chair or facilitator can consult with staff, ~~Board~~ or Association elected leadership, or ~~Board~~ or Association counsel to identify and take steps to ensure the safety of all participants and to permit the proceedings to resume.

If after consulting with staff, ~~Board~~ or Association counsel, and any other appropriate party or agency (including law enforcement authorities), and after taking reasonable steps to attempt to resume the proceeding while ensuring the safety of all participants, the Board of Directors concludes it will be unduly difficult or impossible to ensure the safety of all participants, the proceedings will be postponed indefinitely and resumed only when the Board of Directors (or its successor) concludes that the proceedings, can be safely resumed. Where proceedings are postponed indefinitely by action of the Board of Directors, a memorandum detailing the circumstances shall be appended to the case file and maintained on a permanent basis.

The Board of Directors may, at their discretion, share any or all information including the complaint, response, or other documentation or information in their possession with appropriate law enforcement or other government agencies.

**The reference to proceedings includes the association's informal dispute resolution processes (e.g., ombuds, mediation, etc.). (Revised 5/23)*

Hearing Panel Chairs have the authority to determine questions of relevancy and obligations of witnesses

Sections 5 and 30, Witnesses

In any case where all of the names of witnesses a party intends to call at the hearing have not been provided within the time specified, if the Hearing Panel Chair believes that the testimony of that witness(es) is essential to ensure due process, ~~his~~ the testimony may be permitted provided the other party has the right to request that the hearing be recessed and continued to a date certain not less than five (5) days later. (Revised 11/23)

Section 21 (h), Ethics Hearing

The Hearing Panel Chair may require that statements be verified by affidavits or that accuracy or authenticity of any documents or other papers submitted be verified by affidavit. At the hearing, the panelists shall receive any further written statements, documents, or other papers, shall hear oral testimony and determine what personal appearances shall be made by the parties, and shall regulate the holding of hearings. The Hearing Panel Chair may receive and consider any evidence ~~it~~ they deems material and proper, including evidence of experts.
(revised 11/23)

Section 51 (c), Arbitration Hearing

The Hearing Panel Chair ~~of arbitrators~~ may require that statements be verified by affidavits or that accuracy or authenticity of any documents or other papers submitted be verified by affidavit. At the hearing, the arbitrators shall receive any further written statements, documents, or other papers, shall hear oral testimony and determine what personal appearances shall be made by the parties, and shall regulate the holding of hearings. The Hearing Panel Chair may receive and consider any evidence they deem material and proper, including evidence of ~~accountants and other~~ experts.

Section 10. Communication and Clerical The Professional Standards Administrator's Function

The Professional Standards Administrator is the administrative channel through whom the Grievance Committee, the Professional Standards Committee and the Board of Directors correspond and carry out their respective functions. The Professional Standards Administrator does not make decisions or determinations concerning professional standards matters and must be careful to avoid making such determinations. Rather, the Professional Standards Administrator advises as to the procedures that are appropriate and required, and coordinates all professional standards and arbitration matters from receipt to final determination by order of the Board of Directors.

This coordination involves contacts and correspondence with the complainant, the respondent, the Grievance Committee, the President, the Chairperson of the Professional Standards Committee or the Chairperson of the appointed Hearing Panel, witnesses, and the Board of Directors. Hearing arrangements and records are the Professional Standards Administrator's responsibility on all related matters. The Professional Standards Administrator has an exacting and detailed responsibility for each professional standards matter.

Communications shall be directed to the Professional Standards Administrator. The Professional Standards Administrator shall render all necessary assistance to the parties, shall furnish required forms, shall receive and file all documents or other papers, and shall receive all fees and disburse all monies payable to the Board. (Revised 5/23)

Section 14 and all other references to probation

In addition to imposing discipline, the Hearing Panel can also recommend to the Board of Directors that the disciplined member be put on probation. Probation is not a form of discipline. When a member is put on probation the discipline recommended by the Hearing Panel is held in abeyance for a stipulated period of time not longer than one (1) year. Any ~~subsequent finding of a~~ violation of the Code of Ethics which occurs during the probationary period may, at the discretion of the Board of Directors, result in the imposition of the suspended discipline. Absent any ~~subsequent findings of a~~ violation during the probationary period, both the probationary status and the suspended discipline are considered fulfilled, and the member's record will reflect the fulfillment. The fact that one or more forms of discipline will be held in abeyance during the probationary period does not bar imposition of other forms of discipline which will not be held in abeyance. (revised 11/23)

Note: Section 1 (t), "Probation" defined, the third to last paragraph Appendix VII to Part Four, Sanctioning Guidelines, of the Disciplinary Guidelines section, and the Questions and Answers section of the Manual (35) revised accordingly.

Section 20 (b), Directors referring a matter to the Grievance Committee should not also serve on the tribunal that finalizes the decision

Upon its own motion the Grievance Committee may, and upon instruction of the Directors must, review the actions of any member when there is reason to believe that the member's conduct may be subject to disciplinary action, and, if the evidence of unethical conduct warrants a hearing, shall prepare a complaint, refer it to the Professional Standards Administrator, and designate one of its members to present the case at the subsequent hearing on its behalf as complainant. However, no member of the Grievance Committee shall serve as a member of the Hearing Panel. No member of the Board of Directors who requested that the Grievance Committee review the member's conduct can serve on the tribunal that finalizes the decision.
(Revised 11/23)

Expansion from 10-days to 30-days to hear appeals of Grievance Committee dismissals/classifications

Section 19 (C) and Section 20 (c), Grievance Committee's Review of an Ethics Complaint and Initiating an Ethics Hearing, respectively

Appeals of dismissals shall be heard at the Directors' next regularly scheduled meeting or a special meeting designated for that purpose, as soon as practical but no later than ~~ten (10)~~ thirty (30) days after receipt of the appeal. (Revised 5/23)

Section 42 (C), Grievance Committee's Review and Analysis of a Request for Arbitration

Appeals of dismissals/classifications shall be heard at the Directors' next regularly scheduled meeting or at a special meeting designated for that purpose, as soon as practical but no later than ~~ten (10)~~ thirty (30) days after the date of receipt of the appeal. (Revised 5/23)

Section 45 (a), Board's Right to Decline Arbitration

The written appeal and those materials and information which were available to the Grievance Committee or the arbitration Hearing Panel when the decision to discontinue arbitration was made will be presented to the Directors and considered with the appeal at the Directors' next regularly scheduled meeting or a special meeting designated for that purpose, as soon as practical but no later than ~~ten (10)~~ thirty (30) days after the date of receipt of the appeal. (Revised 5/23)

Section 45 (d), Board's Right to Decline Arbitration

Appeals of classifications shall be heard at the next regularly scheduled Directors' meeting or a special meeting designated for that purpose, as soon as practical but no later than ~~ten (10)~~ thirty (30) days after receipt of the appeal. (Revised 5/23)

Section 47 (c), Manner of Invoking Arbitration

The appeal shall be heard at the next regularly scheduled meeting designated for that purpose, as soon as practical but no later than ~~ten (10)~~ thirty (30) days after the date of the appeal. (Revised 5/23)

Section 20(e) relating to an ethics respondent resigning or otherwise causing their membership to terminate; they cannot join with outstanding discipline pending

...In any instance where an ethics hearing is held subsequent to an ethics respondent's resignation or membership termination, any discipline ratified by the Board of Directors shall be held in abeyance until such time as the respondent attempts to join / rejoins any association of REALTORS®. In any instance where a complaint is transferred to another Board, the complainant shall be so advised. (Revised 5/23)

Amendments to Section 23 and Form E-12 to clarify that the Board of Directors has the ability to dismiss one or more Articles from a decision without dismissing the complaint in its entirety

Section 23 (b) (4), Action of the Board of Directors

If the Directors conclude the findings of fact do not support a violation of one or more Articles of the Code of Ethics, in which case the complaint will be dismissed in part or total. (Revised 11/23)

Section 23 (f), Action of the Board of Directors

The Directors shall transmit their written decision within five (5) days of the appeal hearing. Their decision may be to adopt or modify the recommendation of the Hearing Panel, including the discipline proposed, or the Directors will dismiss the matter if they conclude the findings of fact do not support, in part or in total, the Hearing Panel's conclusion as to unethical conduct. (Revised 11/23)

Note #1. Appendix V to Part Four, Ethics Hearing Checklist, (30) revised accordingly.

Note #2: Form E-12 amended as found in the revised forms section of this summary (page 24).

Section 23 (j), Action of the Board of Directors

(j) Upon final action by the Directors, the Professional Standards Administrator shall disseminate to the complainant, the respondent, ~~the Chairperson and members of the Hearing Panel, Association legal counsel,~~ the Professional Standards Administrator of any other Association in which the respondent holds membership, and any governmental agency as directed by the Board of Directors such notice of the action as the President deems appropriate under the circumstances provided, however, that the nature, form, content, and extent of the notice shall be specifically approved by Association legal counsel prior to dissemination. The Professional Standards Administrator may disseminate the notice to the hearing panel. (Amended 5/23)

Note: Appendix V to Part Four, Ethics Hearing Checklist, (38) revised accordingly.

Appendix VII to Part Four, Sanctioning Guidelines, clarifies that hearing panels may consider prior violations beyond three years at their (and/or the association's) discretion when determining appropriate discipline

Hearing Panels are cautioned of the due process concerns of considering a respondent's history of Code violations, as considering too long of a history involving different types of violations can unreasonably affect the severity of the discipline. Typically, Associations might look back a minimum of three (3) years, however, if there is consistency in the types of violations or if the violations are of the public trust, considering a longer history of violations could be appropriate in crafting meaningful discipline aimed at stopping the behavior. (Adopted 11/20)

Arbitration

Amendment to Statement of Professional Standards Policy #2 and Section 44 (a) (1)

*...At the discretion of their REALTOR® principal, REALTOR® nonprincipals and REALTOR ASSOCIATE®s who are affiliated with either the complainant or the respondent and have a vested financial interest in the outcome may ~~have the right to~~ be present throughout the proceedings and to participate but are not considered to be parties.
(Revised 5/23)*

Amendments to Professional Standards Policy Statement #52, Boards to provide mediation, and amendments to Appendix VI to Part Ten, and relevant forms to allow for greater flexibility in offering mediation and to highlight the benefits of mediation.

Policy Statement #52

The duty of local Boards and Associations to provide mediation services established in Article IV, Section 2 of the Bylaws of the National Association of Realtors® can be met through provision of mediation services by local Boards and Associations; through multi-Board/regional cooperative enforcement agreements; or through agreement/arrangement with the state association. Upon receipt of an arbitration request, mediation services ~~shall~~ may be offered to disputants prior to review of the arbitration request by the Grievance Committee except where any party requests the Grievance Committee's determination whether an arbitrable issue exists between the named parties and whether the parties would be required to arbitrate. If the association requires its members to participate in mediation and the Grievance Committee determines that an arbitrable issue exists, the obligation to participate in mediation remains in effect. Where any party initially declines to mediate pending the Grievance Committee's review of the arbitration request, the parties shall in all instances again be offered the opportunity to mediate following the Grievance Committee's review. (Adopted 11/99, Amended 11/23)

Appendix VI to Part Ten, Mediation as a Service of Member Boards

*Although no party to an arbitrable matter can be required to submit to mediation (unless REALTORS® [principals] are required by their Board to mediate otherwise arbitrable disputes pursuant to Article 17) and mediation cannot and is not intended to be a substitute for the arbitration procedures described elsewhere in this Manual, mediation can be a useful tool in resolving the conflicts that arise involving Board Members and their clients and customers. Mediation must be available in instances where arbitration would be provided under **Part Ten**, Section 44 of this Manual and a Board can require REALTORS® (principals) to mediate otherwise arbitrable disputes pursuant to Article 17. Mediation can resolve disputes, promote amicable resolutions, and reduce the number of cases requiring the more formal and complex arbitration procedures of the Board, thus reducing the time and effort required of Board Members serving on the Professional Standards Committee. (Revised 11/11)*

Benefits of Mediation

Mediation is an attractive alternative to arbitration because mediation:

- *works; most disputes are successfully resolved*
- *there may be low or no cost when compared to arbitration*
- *can be scheduled in days as opposed to months and mediations are typically shorter than formal hearings*
- *is a flexible process allowing the parties to determine their solution and maintain control of the outcome as opposed to having arbitrators control the outcome*
- *provides parties with an opportunity to maintain, and in some instances improve, relationships*
- *improves communication and clarifies misunderstandings because parties come together and talk with a trained neutral mediator*
- *allows parties to discover and address their true interests*
- *moves beyond different views of fact and law*
- *allows for a maximum range of creative solutions beyond win/lose*
- *is as binding and enforceable as an arbitration award if a mediated resolution is reached (Adopted 11/23)*

Initiation of Mediation Proceedings:

The Professional Standards Administrator, upon receipt of a request for arbitration, will advise all parties of their mediation obligations and options to participate in mediation prior to or after review of the arbitration request by the Grievance Committee. (Revised 11/23)

Review of 180-day timeframe from when complainant could have known of arbitrable dispute

Section 42 (B) (3), Grievance Committee's Review and Analysis of a Request for Arbitration

Was the request for arbitration filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known by the complainant in the exercise of reasonable diligence, whichever is later? (Revised 5/23)

Section 47 (a), Manner of Invoking Arbitration

Requests for arbitration must be filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known by the complainant in the exercise of reasonable diligence, whichever is later. Boards may provide mediation even if arbitration has not been requested provided the mediation is requested within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known by the complainant in the exercise of reasonable diligence, whichever is later. (Revised 5/23)

Appendix I to Part Ten, Arbitrable Issues

Still another common question is whether a REALTOR® (often a cooperating broker with an arguably-arbitrable claim) can thwart the process by remaining silent for one hundred eighty (180) days and then bringing a lawsuit

against another REALTOR® (often the listing broker). As noted previously, arbitration requests must be filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known by the complainant in the exercise of reasonable diligence, whichever is later. REALTORS® cannot reasonably be expected to request arbitration in circumstances where they have no reason to know that a dispute with another broker or firm even exists. Under these circumstances, a listing broker with no prior knowledge of a dispute would have one hundred eighty (180) days from receipt of notice of a lawsuit to invoke arbitration with the other broker. (Amended 5/23)

Appendix V to Part Ten (1), Arbitration Hearing Checklist

Requests for arbitration must be filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known by the complainant in the exercise of reasonable diligence, whichever is later. Boards may provide mediation even if arbitration has not been requested provided the mediation is requested within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known by the complainant in the exercise of reasonable diligence, whichever is later.

Note: Forms #A-1 (11) and #A-2 (9) similarly revised.

Part Eleven, Interboard Arbitration Procedures, to be adaptable to local policy when composing hearing panels and procedural review tribunals:



Selection of panel: *Each Board participating in the interboard arbitration procedure shall select one member of the arbitration panel from its Professional Standards Committee. The Chair of each Board's Professional Standards Committee shall agree upon the third member of the panel. The panel shall select its Chairperson. The Professional Standards Administrator of the Board of which the Chairperson is a member shall serve as Professional Standards Administrator of the panel. (Revised 11/03)*



The award: *The award of the arbitrators (Form #A-12, **Part Thirteen** of this Manual) shall be made as soon as feasible after the evidence is presented. The award shall be in writing and signed by the arbitrators, or a majority of them, and when so signed and transmitted to each of the parties shall be final and binding, and shall not be subject to review or appeal except as required by other provisions of this Manual or by applicable state law. Any procedural review request (which must be limited to issues of due process) shall be filed with the panel Professional Standards Administrator for consideration by a special review panel comprising an equal number of Directors from each Board, chosen by the respective Board President, which shall select its own Chairperson who will preside but will not vote. (This ensures an odd number of panelists.) Dissemination of the award shall be limited to the parties involved, the Board of Directors of each Board of REALTORS®, and legal counsel and staff on a need-to-know basis. (Revised 11/14)*

Note #1: The following sentence is added to the Areas of the Code of Ethics and Arbitration Manual Requiring Board/Association Action:

Part Eleven, Selection of Panel and The Award, Determine composition of hearing panel and procedural review tribunal.

Also, update any relevant NAR resources in conjunction with the above recommendations as needed.

Note #2: Part Eleven is also adjusted to include 1) gender neutral pronouns, 2) substitute the word “Association” for “Board,” and 3) delete the reference to swearing for those who expect to testify.

Approved two new Code Comprehension documents clarifying Standards of Practice 1-16, 3-8, 3-9, and 3-10 as follows (available at nar.realtor)

Q: Standard of Practice 1-16 and Standard of Practice 3-9 are virtually identical. What is the difference?

A: The difference is who owes the ethical obligation, the listing agent or the cooperating agent. One important thing to remember about the Code of Ethics is that the Standards of Practice naturally flow from the Articles themselves. A violation of the Code must cite an Article that is being violated. It can also cite an Article as supported by

a Standard of Practice, but it does not need to in order for a violation to be found.

How does this apply to Standards of Practice 1-16 and 3-9? Article 1 states the following:

When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their client. This obligation to the client is primary, but it does not relieve REALTORS® of their obligation to treat all parties honestly. When serving a buyer, seller, landlord, tenant or other party in a non-agency capacity, REALTORS® remain obligated to treat all parties honestly. (Amended 1/01)

Article 1 addresses the primary ethical duty REALTORS® owe to protect and promote the interests of their client. Standard of Practice 1-16 states the following:

REALTORS® shall not access or use, or permit or enable others to access or use, listed or managed property on terms or conditions other than those authorized by the owner or seller. (Adopted 1/12)

In this light, Standard of Practice 1-16 speaks to a REALTOR® working with a seller or owner as a client. A violation of Article 1 as interpreted by Standard of Practice 1-16 would involve an agent of the seller or owner accessing or using (or allowing others to access or use) their client's property on terms other than those agreed upon by their client.

Compare that with Article 3:

REALTORS® shall cooperate with other brokers except when cooperation is not in the client's best interest. The obligation to cooperate does not include the obligation to share commissions, fees, or to otherwise compensate another broker. (Amended 1/95)

Article 3 addresses the ethical duties of REALTORS® when cooperating with other brokers. Standard of Practice 3-9 states the following:

REALTORS® shall not provide access to listed property on terms other than those established by the owner or the seller. (Adopted 1/10, Amended 1/23)

A violation of Article 3 as interpreted by Standard of Practice 3-9 would involve a cooperating REALTOR® accessing or allowing access

to a property on terms other than those agreed upon by the owner or seller and their listing agent.

Q: If a buyer's agent allows access to a listed property without permission of the owner or seller, it's a violation of Article 3 as supported by Standard of Practice 3-9. If that Same buyer's agent also falsely informs their client that they have been given permission is that also a violation of Article 3 as supported by Standard of Practice 3-8 or 3-10?

A: No – a cooperating broker misrepresenting that they've been given permission to access a listed property and subsequently providing access on unauthorized terms is covered specifically under Standard of Practice 3-9.

Standards of Practice 3-8 and 3-10 both address the ethical duty of listing brokers or agents to cooperate with other brokers and agents. As an example, if a listing agent were to advertise a client's property as not available for showings until a certain date (whether as a "delayed showing" or "coming soon" status in the local MLS, or otherwise) but then offer showings to a certain preferred broker or brokers, it could be a violation of Article 3, as supported by Standard of Practice 3-8. Similarly, if a listing agent falsely claimed that a property isn't available to be shown in an attempt to avoid a certain potential buyer or their agent / broker, this could also be a violation of Article 3, as supported by Standard of Practice 3-8.

Standard of Practice 3-10 addresses similar concepts of inequitable treatment by prohibiting listing brokers or agents from denying property access to, or withholding property information from, prospective buyers, tenants, or their agents in disregard of the best interests of the seller / landlord. While local associations or MLSs may govern who has access to properties via a lockbox system, it is still the duty of every REALTOR® to provide timely and equitable access to listed property to prospective buyers and their agent representatives whenever it is in the seller/landlord's best interests. In addition, MLS Policy Statement 7.31 provides that REALTOR® associations and MLSs should approve "any lockbox or other access device that provides reasonable, timely access to listed property" and states that local associations and MLSs, at their discretion, may allow a listing broker or agent to issue temporary codes or access to lockboxes and properties on terms and conditions agreed to by the seller/landlord. These provisions foster both a nimble system that allows for safe, reasonable, and timely property access for cooperating agents and

prospective buyers or tenants, as well as ensure REALTORS® can easily comply with the duties of Article 3.

Case #1-32: Manipulation of Comparables for REALTOR®'s Personal Gain
(available at nar.realtor)

The Respondent, REALTOR® A, was the listing agent for a property owned by the Complainant, Client A, located at 123 King Street (the “property”). Client A and REALTOR® A met on for an initial consultation and during that meeting, REALTOR® A provided Client A with real estate comparables in the \$500,000 to \$525,000 range. REALTOR® A suggested listing the Property at \$500,000. Client A entered into an exclusive listing agreement with REALTOR® A's brokerage and agreed to list the property at \$510,000.

Prior to the listing going live in the MLS, REALTOR® A contacted Client A and offered \$525,000 to purchase the property. After speaking with REALTOR® A, Client A found that two similar properties located in his neighborhood had sold earlier that month for \$583,000 and \$575,000 respectively. Neither of these properties were included in the real estate comparables that REALTOR® A had provided to Client A in their initial consultation. Client A terminated the listing agreement with REALTOR® A's brokerage and met with an alternate REALTOR® who suggested an initial listing price of \$570,000. The property sold for \$578,000 one week after it was listed.

At the hearing, REALTOR® A stated that he had reviewed the higher-priced comparables prior to his initial consultation with Client A, but because he believed the comparables he originally shared with Client A provided a more realistic expectation of a possible sales price for the property, he decided not to include them in his report.

The Hearing Panel found that the list price encouraged by REALTOR® A was well below market value, as evidenced by the final sales prices of both the property and the comparable properties discovered by Client A. The Hearing Panel found that REALTOR® A's actions showed a conflict of interest which prevented him from protecting and promoting the best

interests of Client A, as demonstrated by REALTOR® A's own offer to purchase the property at a price which was also significantly below the market value combined with his decision to not show Client A the higher- priced comparables.

REALTOR® A was found in violation of Article 1.

All Chairperson's Procedural Guides (ethics, arbitration, appeal and procedural review hearings, interboard arbitration, including virtual hearing procedural guides) and any corresponding materials are amended to remove the reference to swearing in those who will testify.

At this time, I request that all persons present in the room who expect to testify at this hearing stand 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.)~~

~~Swearing: 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?" Let the record show that all parties have answered in the affirmative.~~

~~(And/or if needed)~~

Affirmation: Raise your right hand and, following the question I will now pose, answer in the affirmative if you do so affirm. "Do you affirm that the testimony you are about to give in this proceeding shall be the truth, the whole truth, and nothing but the truth?" Let the record show that ____ has/have answered in the affirmative.

Amendments to all Chairperson’s Procedural Guides removing gendered language and adding verbiage from the virtual guides for consistency.

Replaced all references to “he/she”, “him/her”, and “his/her” with “they”, “them”, and “their”, respectively.

Replaced all references to “Ladies and Gentlemen” with “Panel members and hearing participants”.

Replaced all references to “board/boards” in regard to REALTOR® associations with “association/associations”.

Amend Chairperson’s Procedural Guides for Ethics and Arbitration Hearings to include following paragraphs relating to mediation and alternates:

Mediation

If the parties have participated in mediation, prior to this hearing, you are reminded that any offers of settlement that were not accepted or any suggested resolution proposed by the Mediation Officer that was not accepted cannot be introduced as evidence nor considered in any manner during this hearing. No aspect of the mediation conference shall be relied upon or introduced as evidence in this (ethics/arbitration) hearing, including, but not limited to: views expressed or suggestions made by a party with respect to a possible settlement of the dispute; admissions made in the course of the mediation; proposals made or views expressed by the mediator or the response of any party thereto.

Alternates

(If the panel has an alternate present, read the following paragraph)

The alternate panel member is a trained member of the _____ Association of REALTORS® Professional Standards Committee and although he is 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 originally appointed Hearing Panel members is unable to serve on the Hearing Panel from the commencement of the hearing until the hearing concludes.

FORM AMENDMENTS

Form #E-12

Board or State Association

Address

City

State

Zip

Action of the Board of Directors (Ethics Hearing)

For use by the Board of Directors if no appeal has been filed to the Hearing Panel's decision:

The decision of the Hearing Panel in the matter of _____ vs. _____
Complainant Respondent

dated _____, 20____ (copy attached), came before the Board of Directors on _____ 20____, and was considered by the Directors.

The decision of the Hearing Panel and its recommendation for disciplinary action, if any, in the above-referenced case is hereby (check one):

adopted verbatim adopted, but the recommendation for discipline is modified as follows:

remanded to the Hearing Panel for further consideration of the discipline recommended or if the consequences for noncompliance are not specified

Reasons for the Directors concerns with the appropriateness of the recommended sanction:

remanded to the Professional Standards Committee for a new hearing by a different Hearing Panel based on perceived procedural deficiency(ies)

Article(s) confirmed: _____ Article(s) dismissed: _____ because the findings of fact do not support a violation of one or more Articles of the Code of Ethics

~~reversed and the complaint is dismissed because the findings of fact do not support a possible violation of the Code of Ethics~~

Reason(s) for rejection/Directors' concerns with Hearing Panel's decision and/or recommendation(s):

The action of the Board of Directors was adopted on _____, 20____, by resolution.

For the Board of Directors:

Type/Print

Signature

_____, Professional Standards Administrator

For use by the Board of Directors if appeal is held:

The decision of the Hearing Panel in the matter of _____ vs. _____
Complainant Respondent
dated _____, 20____ (copy of the Hearing Panel’s decision attached), was appealed by _____
Appellant

and was considered by the Board of Directors on _____, 20____.

A copy of _____ ‘s appeal alleging _____ is attached.
Appellant Indicate Basis(es) for Appeal

The Hearing Panel’s decision and recommendation for disciplinary action, if any, in the above-referenced case is hereby (check one):

- adopted verbatim adopted, but the recommendation for discipline is modified as follows:

- remanded to the Hearing Panel for further consideration of the discipline recommended

Reasons for the Directors’ concerns with the appropriateness of the recommended sanction:

- remanded to the Professional Standards Committee for a new hearing by a different Hearing Panel based on perceived procedural deficiency(ies)

Article(s) confirmed: _____ Article(s) dismissed: _____ because the findings of fact do not support a violation of one or more Articles of the Code of Ethics

- ~~reversed and the complaint is dismissed~~

Reason(s) for modification/remand/rejection of the Hearing Panel’s decision:

Disposition of Appeal Deposit (if any):

- to be returned to Appellant
 to be retained by the Board

The action of the Board of Directors was adopted on _____, 20____, by resolution. For the Board of Directors:

_____, Professional Standards Administrator Type/Print
Signature

Form #E-20

Board or State Association

Address

City

State

Zip

**Notice to Respondent (Ethics) and
Optional Waiver of Right to
Hearing**

In the case of _____ vs. _____
Complainant Respondent

To _____, Respondent:

Attached is a copy of a complaint which names you as Respondent, as filed with this Board and referred to the Grievance Committee

for review as a matter of an alleged violation of Article(s) _____ of the Code of Ethics or other conduct subject to disciplinary action.

You have a right to a hearing on this matter as provided in the *Code of Ethics and Arbitration Manual*, if you desire.

You may, if certain conditions are met, waive your right to a hearing. If you wish to waive your right to a hearing, please complete and sign the reverse side of this form. If you do not acknowledge the conduct alleged in the complaint and do not waive the right to a hearing within ten (10) days of transmittal of the complaint, you will have the opportunity to reply to the complaint and a hearing will be scheduled in accordance with the *Code of Ethics and Arbitration Manual*.

Respectfully submitted,

_____, Professional Standards Administrator
Type/Print Signature

Board or State Association

Dated: _____, 20____

(Revised 11/14)

Waiver of Right to a Hearing

If you wish to waive your right to a hearing, you must affirm as follows:

yes _____ (1) I have not been found in violation of the Code of Ethics by any Board or Association of Realtors® in the preceding three (3) years.

Boards or Associations of REALTORS® where I hold or have held membership in the preceding three (3) years:

yes _____ (2) I acknowledge the conduct alleged in the complaint and understand that any response provided cannot contest the facts stated in the complaint but may offer information in mitigation of any discipline that might be imposed.

yes _____ (3) I agree to accept discipline which may include only one or more of the following: a letter of warning or reprimand, mandatory attendance at a relevant educational program, suspension for thirty (30) days, or a fine not in excess of \$15,000, should a violation of the Code of Ethics ultimately be determined. I acknowledge that I may also be placed on probation.*

yes _____ (4) I waive the right to a hearing.

If You Request A Waiver of a Hearing

Your response to question 1 will be verified by the Professional Standards Administrator Grievance Committee Chairperson. If no violation has been found in the last three (3) years, and you answer the above questions in the affirmative, the complaint will be referred to a professional standards Hearing Panel. The panel will meet in executive session; neither the complainant nor the respondent will be present. The panel will determine whether the allegations, as acknowledged by the respondent, support a violation of one or more Articles of the Code of Ethics. The panel will prepare a written decision including findings of fact, conclusions, and a recommendation for discipline if a violation is found. ~~Discipline may include only one or more of the following: a letter of warning or reprimand, mandatory attendance at a relevant educational program, suspension for thirty (30) days, or a fine not in excess of \$15,000.*~~

The decision of the panel will be filed with the Professional Standards Administrator of the Board and disseminated as provided in the *Code of Ethics and Arbitration Manual*. Any appeal of the decision will be in accordance with the *Code of Ethics and Arbitration Manual*.

*In addition to imposing discipline, the Hearing Panel can also recommend to the Board of Directors that the disciplined member be put on probation. Probation is not a form of discipline. When a member is put on probation the discipline recommended by the Hearing Panel is held in abeyance for a stipulated period of time not longer than one (1) year. Any ~~subsequent finding of a~~ violation of the Code of Ethics which occurs during the probationary period may, at the discretion of the Board of Directors, result in the imposition of the suspended discipline. Absent any ~~subsequent findings of a~~ violation during the probationary period, both the probationary status and the suspended discipline are considered fulfilled, and the member's record will reflect the fulfillment. The fact that one or more forms of discipline will be held in abeyance during the probationary period does not bar imposition of other forms of discipline which will not be held in abeyance.

_____, 20_____
Signature of Respondent Date

Board or State Association

Address

City

State

Zip

Request and Agreement to Arbitrate

- (1) The undersigned, by becoming and remaining a member of the _____ Board of REALTORS® (or Participant in its MLS), has previously consented to arbitration through the Board under its rules and regulations.
- (2) I am informed that each person named below is a member in good standing of the Board (or Participant in its MLS), or was a member of said Board of REALTORS® at the time the dispute arose.
- (3) A dispute arising out of the real estate business as defined by Article 17 of the Code of Ethics exists between me (or my firm) and (list all persons and/or firms you wish to name as respondents to this arbitration):*

_____, REALTOR® principal* _____
 Name Address

_____, REALTOR® principal* _____
 Name Address

 Firm Address

(NOTE: Arbitration is generally conducted between REALTOR® [principals] or between firms comprised of REALTOR® principals. Naming a REALTOR® [principal] as respondent enables the complainant to know who will participate in the hearing from the respondent's firm; naming a firm may increase the likelihood of collecting any resulting award.)

- (4) There is due, unpaid and owing to me (or I retain) from the above-named persons the sum of \$_____. My claim is predicated upon the statement attached, marked Exhibit I and incorporated by reference into this application. The

disputed funds are currently held by_____.

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.

- (5) I request and consent to arbitration through the Board in accordance with its *Code of Ethics and Arbitration Manual* (alternatively, "in accordance with the professional standards procedures set forth in the bylaws of the Board"). I agree to abide by the arbitration award and, if I am the non-prevailing party, to, within ten (10) days following transmittal of the award, either (1) pay the award to the party(ies) named in the award or (2) deposit the funds with the Professional Standards Administrator to be held in an escrow or trust account maintained for this purpose. Failure to satisfy the award or to deposit the funds in the escrow or trust account within this time period may be considered a violation of a membership duty and may subject the member to disciplinary action at the discretion of the Board of Directors consistent with Section 53, *The Award, Code of Ethics and Arbitration Manual*.

In the event I do not comply with the arbitration award and it is necessary for any party to this arbitration to obtain judicial confirmation and enforcement of the arbitration award against me, I agree to pay the party obtaining such confirmation the costs and reasonable attorney's fees incurred in obtaining such confirmation and enforcement.

(6) I understand any party may request mediation of a dispute by contacting the association's Professional Standards Administrator.

- (7) I enclose my check in the sum of \$_____ for the arbitration filing deposit.**

*Complainants may name one or more REALTOR® principals or a firm comprised of REALTOR® principals as respondent(s). Or, complainants may name REALTOR® principals and firms as respondents. "REALTOR® principal" includes licensed or certified individuals who are sole proprietors, partners in a partnership, officers or majority shareholders of a corporation, or office managers (including branch office managers) acting on behalf of principals of a real estate firm

**Not to exceed \$500.

(8) I understand that I may be represented by legal counsel, and that I should give written notice no less than fifteen (15) days before the hearing of the name, address, and phone number of my attorney to all parties and the Board. Failure to provide this notice may result in a continuance of the hearing, if the Hearing Panel determines that the rights of the other party(ies) require representation.

(9) Each party must provide a list of the names of witnesses he intends to call at the hearing to the Board and to all other parties not less than fifteen (15) days prior to the hearing. Each party shall arrange for his witnesses to be present at the time and place designated for the hearing. _____

(10) The following REALTOR® nonprincipal (or REALTOR-ASSOCIATE® nonprincipal) affiliated with my firm has a financial interest in the outcome of the proceeding and may be called as a witness, and ~~has the right to~~ may be present throughout the hearing at my discretion:

All parties appearing at a hearing may be called as a witness without advance notice.

(11) I declare that this application and the allegations contained herein are true and correct to the best of my knowledge and belief and this request for arbitration is filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known by the complainant in the exercise of reasonable diligence, whichever is later.

Date(s) alleged dispute took place _____

(12) If either party to an arbitration request believes that the Grievance Committee has incorrectly classified the issue presented in the request (i.e., mandatory or voluntary), the party has twenty (20) days from the date of transmittal of the Grievance Committee’s decision to file a written appeal of the decision. Only those materials that the Grievance Committee had at the time of its determination may be considered with the appeal by the Board of Directors.

(13) Are the circumstances giving rise to this arbitration request the subject of civil litigation? _____ Yes
_____ No

(14) Important note related to arbitration conducted pursuant to Standard of Practice 17-4 (1) or (2): Where arbitration is conducted between two (or more) cooperating brokers pursuant to Standard of Practice 17-4 (1) or (2), the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker, seller, or landlord and any amount credited or paid to a party to the transaction at the direction of the respondent.

(15) Address of the property in the transaction giving rise to this arbitration request:

(16) The sale/lease closed on:

(17) Agreements to arbitrate are irrevocable except as otherwise provided under state law.

Complainant(s):

Name (Type/Print)

Signature of REALTOR® Principal*

Date

Address

Telephone		Email
Name (Type/Print)	Signature of REALTOR® Principal*	Date
Address		
Name of Firm*	Address	
Telephone		Email

*In cases where arbitration is requested in the name of a firm comprised of REALTOR® (principals), the request must be signed by at least one of the REALTOR® principals of the firm as a co-complainant. “REALTOR® principal” includes licensed or certified individuals who are sole proprietors, partners in a partnership, officers or majority shareholders of a corporation, or office managers (including branch office managers) acting on behalf of principals of a real estate firm.

Note #1: Form #A-2, Request and Agreement to Arbitrate (Nonmember) and Form #A-4, Response and Agreement to Arbitrate, similarly updated.

Forms #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; Form #A-10a, Outline of Procedure for Arbitration Hearing Involving a Request and a Counter-Request also revised to 1) include gender neutral language, 2) substitute “Association” in for “Boards”, 3) make it clear that the Hearing Panel Chair makes determinations relative to relevancy of documentation and witness attendance, and 4) delete reference to those who testify being “sworn in.” Same changes made to online scripts and outlines and Part Eleven, Interboard Arbitration Procedures.

December 5, 2023 dmn