

ASSOCIATION OF REALTORS®

ETHICS HEARING FACT SHEET

IMPORTANT INFORMATION YOU NEED TO KNOW

Dear Complainants and Respondents:

Please find enclosed the following forms:

- 1) Notice of Hearing Disciplinary Action (Form D-6)
- 2) Outline of Procedure for Hearing for Disciplinary Action (D-8)
- 3) Acknowledgement of Receipt of Outline of Procedure (D-9)

Please complete and sign the Acknowledgement of Receipt of Outline of Procedure Form (D-9) and bring it with you to the hearing. The Chairperson will collect it at the beginning of the hearing.

The upcoming ethics hearing will be governed by procedures described in the California Association of REALTORS® Professional Standards Reference Manual (“Manual”). If you would like to review a copy of the California Code of Ethics and Arbitration Manual, contact our Professional Standards Department.

The hearings are relatively informal proceedings and are not designed to follow the strict rules of evidence that attorneys are generally familiar with in court proceedings. Although the technical rules of evidence are not applicable, the Hearing Panel Chairperson is empowered to rule on the admissibility of relevant evidence.

If, for example, a party is consuming a great deal of time on a subject that has no bearing on the case, the Hearing Panel members may caution the party and, eventually, even disallow further submission of evidence on that point. Character evidence, unless directly related to the issues, is not admissible. Therefore, relevant evidence is as important in a hearing of this type as it is in a court proceeding, but the latitude is generally broader.

Once the Hearing Panel reaches a decision, you will be notified by mail and advised of your appeal rights.

We have been asked to emphasize the following points:

MEMBERSHIP Members and MLS Participants and Subscribers have a duty to give evidence in accordance with the Code of Ethics and/or MLS Rules & Regulations & Bylaws.

BURDEN OF PROOF The Complainant has the burden to prove clearly that a Code of Ethics Article, MLS Rule or Bylaws Rule has been violated and should provide evidence on each alleged Code of Ethics Article, M.L.S. Rule or Bylaw Rules violation. The Code of Ethics Standards of Practice are guidelines to support the Code of Ethics.

AMENDMENTS If a Complainant chooses to amend the complaint, proper notice must be given to all parties who are then given the opportunity to respond. An amended complaint supersedes the original complaint and begins the ethics process anew.

LEGAL COUNSEL All parties may be represented by legal counsel. If a party intends to have legal representation, the party must give written notice of the legal representative's name, address and phone number to all parties and the undersigned at least fifteen (15) calendar days before the scheduled date of the hearing. Failure to comply with this notice requirement may result in a continuance being granted and a continuance fee assessed against the party. There are strict restrictions on who may represent a party.

The Association's counsel or representative may be present at the hearing. Association Counsel's primary functions will be to advise the Hearing Panel on procedural issues or legal questions that may come up during the hearing. If present, Association Counsel will not participate in the Hearing Panel's deliberation, other than to advise them of the procedures involved. Association Counsel will not engage in any questioning or participate in any other way except as an advisor to the Hearing Panel. The Hearing Panel or Hearing Panel Chair will make all decisions regarding evidence and outcome.

If you are represented by an attorney, that attorney may not confuse, coerce, intimidate, or harass the parties, witnesses or Hearing Panel members. Additionally, the Hearing Panel members need not accept the statements of the attorney as being the statements of his or her client if they desire direct testimony.

REMOTE TESTIOMNY: If remote testimony is required, strict guidelines must be followed. You should contact the undersigned at once of you believe remote

testimony may be necessary. Upon written request and only in extreme circumstances, the Presiding Officer of the hearing panel may allow remote testimony or attendance at the hearing.

CONTINUANCES ARE NOT FAVORED and, in the event there is a change in the status of any Party or, in the event that a continuance is required for any legitimate reason, you must notify the undersigned at the earliest possible opportunity. Failure to notify the Association of your unavailability at an early point will cause inconvenience to all other participants, including Hearing Panel members. If a continuance is requested, it may be granted for extenuating circumstances. Continuance fees are generally imposed as a deterrent if the Hearing Panel Chair believes it appropriate. Common valid reasons for continuances are sudden verifiable illness, accident, death of a family member, improper notice of the hearing, improper notice of another party having legal counsel, or unavoidable attorney-court conflicts. Vacations, business meetings, intervening appointments, and other similar circumstances are not deemed justification for continuances. Appointments, such as depositions or other attorney activities that are scheduled after the hearing date is cleared are not deemed unavoidable conflicts.

WITNESSES If you wish to have witnesses present, it is your responsibility to inform them of the date, time and place of the hearing. Witnesses are sworn in by the Presiding Officer, usually at the beginning of the hearing with the parties, but no later than before the witness testifies. Witnesses, unless a named party are not allowed to attend or be present during the hearing except while testifying. All witnesses, except parties, will be excused from the hearing room except while testifying.

EVIDENCE All relevant evidence will be admitted. The Hearing Panel Chairperson may broadly construe the term “relevant.” The Hearing Panel members or Chairperson will rule on the inadmissibility of evidence. The technical rules of evidence do not apply. The Complaint and all of the exhibits attached and the Response and all of the exhibits attached will be stamped as evidence at the hearing, unless objections are raised.

Although notarized declarations or affidavits may be considered, letters and other out-of-hearing statements are generally given little, if any, weight and may be rejected entirely. It is best, wherever possible to have witnesses present. They are excluded from the hearing until they testify.

You should make every effort, where possible, to file and exchange evidence and briefs, if any, prior to the hearing in order to avoid time delays to review late filed material. **IF YOU BRING ADDITIONAL EVIDENCE AND BRIEFS ON**

THE DAY OF THE HEARING, YOU MUST BRING AT LEAST SEVEN (7) ADDITIONAL COPIES WITH YOU. OTHERWISE, IF COPYING MUST BE DONE ON THE DAY OF THE HEARING, THERE MAY BE A SIGNIFICANT COPYING CHARGE. Unnecessary time delays caused by avoidable copying and reading of documents and briefs filed on the day of the hearing can be avoided by planning ahead and by filing and exchanging before the hearing. (Although not required, it is strongly suggested that you tab each document and create an index so that documents can be found quickly and to avoid confusion.)

Although not required, it is generally a good practice to bring the entire transaction file to the hearing.

OPENING STATEMENTS The Complainant will have an opportunity to make a short opening statement and give a brief outline of his or her case. You will have an opportunity to expand on this during your Presentation of Evidence and after the Respondent makes their short Opening Statement.

PRESENTATION OF EVIDENCE The Complainant will state his or her case and present any witnesses who are present. Cross examination of the complainant's witnesses by the respondent or his or her representatives will be allowed. The Respondent will then have the same opportunity to make his or her presentation of evidence.

CROSS-EXAMINATION Cross-examination of an opposing party is a time to ask questions, not make statements or accusations.

CLOSING STATEMENTS The complainant will now make his or her closing statement followed by the Respondent

TRANSLATOR If a translator is needed for any party or any witness, you should notify us immediately of the language or and if you intend to provide a translator. These are conditions that must be addressed before the hearing.

HEARING PANEL: We ask that you appreciate the fact that our Panelists are volunteers and respect their time. The Hearing Panel members may ask questions they deem pertinent and significant of any person at any time during the hearing.

The Association's goal is to give each party a fair and impartial hearing. The Hearing Panel was selected through the approved process and is both qualified and unbiased. A person is automatically disqualified as a member of the Hearing Panel if they are a party or if related by blood or marriage to the fourth degree to any party to the matter, or an employer, employee, partner or other business associate

of a party. Before the hearing commences, each Hearing Panel member will be asked to execute a document verifying that they are not disqualified. If you have any reason to believe any assigned member of the Hearing Panel should be disqualified, please notify the undersigned immediately.

Once the Hearing Panel reaches a decision, you will be notified by mail and advised of your review or appeal rights.

WITHDRAWAL A complaint may be withdrawn at any time prior to the hearing by the Complainant. Simply notify this office and the hearing will be canceled.

FAILURE TO APPEAR If a Complainant refuses or is unable to appear at the hearing, the complaint may be dismissed. If a Respondent fails to appear and no continuance or adjournment has been obtained, the Hearing Panel may go forward with the hearing and reach a decision based on the available evidence.

TRANSCRIPT/RIGHT TO RECORD All hearings are recorded. You may, for the purposes for filing a Request for Review, purchase a copy of the recording for the fee set by the Association. You may, at your expense, have a court reporter present; but you will not be allowed to independently record the hearing. If you have a transcript prepared, you must provide the Association a copy at your cost. The recording will generally be destroyed within a reasonable period after final action of the Directors.

We are hopeful you find this letter helpful in your preparation. If, after reviewing this letter, you require any additional information please notify our office and we will be pleased to cooperate. Any requested information by either side will be copied to the other. Assuming that you follow the simple rules that have been described herein, the hearing should go smoothly. It is rare that a hearing takes longer than one (1) day. If you believe that your hearing will take longer than one (1) day, please notify the undersigned.

Again, if you have any questions relative to this matter, please do not hesitate to contact the association or visit our website at _____ (For Directions)

ASSOCIATION OF REALTORS®
Professional Standards Department

04/25/11