



Code ENFORCEMENT

An Inside Look
at the Professional
Standards Process

ALL REALTORS[®] KNOW THAT BY JOINING THE REALTOR[®] ORGANIZATION, THEY ARE AGREEING TO ABIDE BY THE NATIONAL ASSOCIATION OF REALTORS[®] (NAR) CODE OF ETHICS (“THE CODE”). BUT WHAT HAPPENS WHEN A CLIENT, CUSTOMER, OR ANOTHER AGENT FEELS AS THOUGH A REALTOR[®] HAS FAILED TO ABIDE BY THE CODE? THIS IS WHERE THE PROFESSIONAL STANDARDS PROCESS COMES INTO PLAY.

In Georgia, nearly all local boards/associations participate in the Statewide Professional Standards Program offered as a benefit by Georgia REALTORS® (“GAR”). This means that whenever someone files an Ethics Complaint against a REALTOR® in Georgia, it is likely that the complaint will be processed by GAR. This alleviates the stress of processing ethics complaints off of the local boards, and ensures that complaints are handled in a uniform manner across the state.

THE **PROCESS**

Every REALTOR® should understand the Professional Standards process prior to filing a complaint, or are on the receiving side of a complaint. The first step of this process is to reach out to the Professional Standards Administrator (“Administrator”). The Administrator is the main point of contact and helps the Complainant navigate through this process. One of the first things the Administrator will do is check to see if the agent whom you wish to file the ethics complaint against is a REALTOR®; this is important because not all real estate licensees in Georgia are REALTORS®. Those who are not REALTORS® cannot be subject to the Code or the Professional Standards process.

Once a licensee’s REALTOR® status is confirmed, a complaint can be filed with the Administrator against the REALTOR®. Anyone, including other licensees, can file an ethics complaint against a REALTOR®. Once a complaint is filed, it is reviewed by the Grievance Panel for a determination of whether the complaint should move forward for an ethics hearing. The Grievance Panel reviews only the complaint to determine whether it was filed in a timely manner and if so, if the facts alleged in the complaint were assumed to be true, is there a possibility that the REALTOR® in question has violated the Code? If the facts alleged do not demonstrate a possible violation of the Code, then the complaint is dismissed. If the facts alleged do demonstrate a possible violation of the Code, then the complaint is moved forward for an ethics hearing. It is important to note that by sending a complaint forward for a hearing, the Grievance Panel is not making a determination of whether or not the REALTOR® has violated the Code.

Once a complaint has been moved forward for an ethics hearing, the Administrator will send a copy of the complaint to the REALTOR® respondent and ask for a response. By virtue of being a REALTOR®, the Respondent must comply with the Professional Standards process. Once the Respondent has sent his or her response to the Administrator, the Administrator will send a copy to the Complainant—the party who filed the initial complaint. The Administrator

will always disburse all files to all parties involved; s/he never withholds files that have been provided as part of a complaint, response or rebuttal from any party.

Once a response has been filed, the Administrator will begin the process of scheduling the ethics hearing. Scheduling the hearing involves reserving GAR’s Boardroom or a boardroom of a local board in the area of the Respondent. The Administrator must also find other REALTORS® to serve on

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the Professional Standards Panel. All REALTORS® who serve on these Professional Standards Panels, as well as those who serve on the Grievance Panels, undergo Professional Standards Training at least once per three-year term. Professional Standards Panels are typically made up of three or five REALTORS®.

While the Professional Standards Hearing is not a legal process, some parties opt to bring legal counsel to the ethics hearing as well. The Code of Ethics and Arbitration Manual, which is updated each year by NAR, permits parties in an ethics hearing to be represented by REALTOR® counsel, a member of the REALTOR® organization that can provide assistance to parties during the ethics hearing.

Other parties who may attend the hearing are called REALTOR® principals. REALTOR® principals are defined by the Code of Ethics and Arbitration Manual as any “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 who subscribe to the Code as a condition of membership in a local Board, State Association, and the National Association of REALTORS®” and thereby have a right to be present during the entirety of the hearing.”

THE **HEARING**

The Professional Standards Hearing gives the opportunity for both the Complainant and Respondent to be heard. The Complainant is given the opportunity to tell the Professional

Standards Panel why s/he filed the complaint in the first place, and the Respondent is given the opportunity to explain why his/her actions do not amount to a violation of the Code. Each party is permitted to submit additional documentation and evidence to be presented during the hearing as well as bring any witnesses to testify on their behalf.

Once all parties have been given the opportunity to fully present their cases, the parties are dismissed and the Professional Standards Panel goes into Executive Session to discuss what was presented. Unlike the Grievance Panel who makes the determination if a possible violation could have occurred based on the facts presented, the Professional Standards Panel must make the determination if a violation did occur based on the entire set of facts. In order to find a respondent in violation of an Article(s) of the Code, there must be “clear, strong and convincing evidence” of such violation.

THE **OUTCOME**

If the Professional Standards Panel finds that there is no violation, the Respondent cannot be disciplined. If the Panel does find that the Respondent violated the Code, only the following forms of discipline can be recommended: **(1)** no discipline; **(2)** Letter of Warning; **(3)** Letter of Reprimand; **(4)** Continuing Education; **(5)** Fines (not to exceed \$15,000); **(6)** Suspension of REALTOR® membership; **(7)** Expulsion from the REALTOR® organization; or **(8)** a combination of the above. Regardless of whether or not a REALTOR® is found in violation of the Code of Ethics, the Professional Standards Hearing Panel must still submit a Decision with a Finding of Facts so that the parties know and understand why the Panel decided the way it did.

Once the Decision has been disseminated to the parties, either party is permitted to appeal the Decision on limited grounds. The Complainant may only appeal a Professional Standards Panel’s decision based procedural deficiencies or lack of due process. The Respondent may file an appeal based on **(1)** procedural deficiencies or lack of due process; **(2)** the Professional Standards Panel misapplying or misinterpreting an Article of the Code of Ethics; and **(3)** the discipline imposed by the Professional Standards Panel is too severe based on the nature of the violation.

Appeals of a Professional Standards Panel’s decision are heard by an Appeal Tribunal made up of three or five Professional Standards members who did not serve on either the Grievance Panel or Professional Standards Panel. An Appeal Hearing differs from the Professional Standards Panel in that it is a dispute between the appealing party and the Professional Standards Panel, represented by the Chairperson, for one of

the aforementioned reasons. The only determination that the Appeal Tribunal must make is whether or not to uphold the decision of the original Professional Standards Panel or to overturn the decision, thereby forcing a new ethics hearing with all new Professional Standards panelists. If the Appeal Tribunal upholds the decision of the original Professional Standards Panel, the decision becomes final at that time.

If no appeal has been filed by the parties, it will then be reviewed by five members of the GAR Executive Committee. This five-person group can approve the Decision including discipline, if any. It can also approve the Decision but modify the recommended discipline, understanding that modified discipline cannot be more severe than what was initially imposed on the Respondent by the Professional Standards Panel. If the Executive Committee does not want to modify the discipline since none of the members were part of the Professional Standards Panel that was presented with all the evidence, then the Executive Committee may remand the decision back to the Professional Standards Panel for further consideration of the discipline recommended.

If the Executive Committee perceives that there were any procedural deficiencies in the hearing, it can remand the entire case and Decision to a new Professional Standards Panel to rehear the case. Lastly, the Executive Committee can also reverse a finding of a violation of the Code and dismiss the case if it appears that the Finding of Facts do not support a possible violation of the Code.

This is a brief overview of a very elaborate process that the REALTOR® organization utilizes when any of its members are accused of violating the Code. This process allows Complainants to be heard when they feel that a REALTOR® has fallen short of his/her ethical obligation under the Code, and it also gives our members the opportunity to defend themselves against any allegations of unethical conduct.

PANELS ARE IMPARTIAL

Common concerns that an Administrator often hears from individuals who wish to file an ethics complaint is that a REALTOR® Professional Standards Panel is not going to find one of their own (the REALTOR® Respondent) in violation of the Code, and that REALTORS® will just side with each other. However, many Respondants feel just the opposite. They are embarking on a daunting process that most have never been a part of, and many feel that the Professional Standards Panel will side with the Complainant — particularly if it is a member of the public who is filing the complaint.

The chart featured in this article should put both parties’ concerns at ease. This chart shows the number of hearings

{HEARINGS} that took place DURING 2016

ARTICLES FORWARDED FOR HEARING	ARTICLES FOUND BY HEARING PANEL TO HAVE BEEN VIOLATED	DISCIPLINE IMPOSED
Articles 1 & 12 (2 respondents)	Article 1	No Discipline
Articles 1 & 2	None	N/A
Articles 1, 2, 9, 10 & 11	None	N/A
Article 9	None	N/A
Articles 1, 2, 11 & 16	Article 1	Letter of Warning
Articles 1, 2, 3 & 10	None	N/A
Article 1	None	N/A
Articles 1, 9, & 11	Article 9	Education Class
Articles 1 & 9	Article 9	Education Class
Articles 1, 2, 11 & 12	Articles 1 & 12	Letter of Warning & Education Class
Articles 1, 9 & 11	Articles 1 & 9	Letter of Reprimand, Education Classes & \$ 2,000 Fine
Articles 1, 2, 3, 4, 6, 7, 8, 9, 11, 12, 13, 15 & 16 (2 respondents)	None	N/A
Articles 1, 3, 9, 11 & 12	Article 9	Letter of Warning
Articles 2 & 15 (2 respondents)	None	N/A
Article 16	Article 16	Education Classes & \$500 Fine
Articles 1, 2 & 12	Articles 1, 2 & 12	Letter of Reprimand, Education Classes, \$1,000 Fine & Suspension (held in abeyance for probationary period)
Articles 1, 2, 9 & 12 (2 respondents)	Respondent 1—Article 1; Respondent 2—None	Respondent 1—Education Classes; Respondent 2—N/A
Articles 1, 2, 9, 10, 12, 14 & 17	None	N/A
Articles 1, 2, 3, 9, 11, 12, 14, 15 & 16	Articles 1 & 15	Letter of Warning & Education Class
Articles 12, 15 & 16	Articles 12, 15 & 16	Letter of Warning
Article 1	None	N/A
Article 12	Article 12	Letter of Reprimand, Education Classes, & \$1,000 Fine
Articles 15 & 16	Articles 15 & 16	Education Class
Articles 9, 11 & 16 (2 respondents)	Respondent 1—Articles 9, 11 & 16; Respondent 2—None	Respondent 1—Education Classes; Respondent 2—N/A
Article 2	Article 2	Letter of Reprimand, Education Classes, & \$1,000 Fine
Articles 3, 9 & 12 (2 respondents)	Respondent 1—Articles 3, 9 & 12; Respondent 2—Articles 9 & 12	Respondent 1—Letter of Warning & Education Class; Respondent 2—Letter of Warning
Articles 1, 3 & 16	Article 1	Education Class & \$250 Fine
Articles 3 & 16	None	N/A

that were held in 2016, the Articles that the Respondent was alleged to have violated, the Articles that the Professional Standards Panel found that the Respondent did violate (if any), and the discipline imposed (if any).

This chart illustrates that there are numerous cases where the REALTOR® is found in violation of the Code—indicating that the Professional Standards Panel does not automatically side with the Respondent because s/he is a REALTOR®. On the flip side, this chart also shows that there are several cases where the Respondent is not found in violation of the Code, thereby alleviating the concern of the Respondent that the Professional Standards Panel is just going to take the side of the Complainant.

COMMONLY CITED **ARTICLES**

As you can tell by reviewing the chart, Articles 1, 2, 9, 11, and 12, are among some of the most heavily cited Articles alleged to have been violated by Complainants. Article 1 refers to the REALTOR®'s obligation to protect and promote the interests of the client as well as to treat all parties to the transaction honestly. Article 2 requires the REALTOR® to avoid exaggerating, concealing or misrepresenting any pertinent facts to the property or transaction. Article 9 speaks to the REALTOR®'s duty to ensure that all agreements related

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to the transactions “are in writing in clear and understandable language” and that “[a] copy of each agreement shall be furnished to each party to such agreements upon their signing or initialing.” Article 11 requires REALTORS® to act within their field of competency. If a REALTOR® wants to engage in services outside his/her field of expertise, Article 11 requires that the REALTOR® engage a competent licensee to assist in the transaction or to fully disclose the REALTOR®'s lack of expertise to the client. Article 12 requires that REALTORS® are honest and truthful in real estate communications and that all real estate communications including marketing and advertising are accurate and presents a true picture of the circumstances.

The Articles that the Professional Standards Panels found to be most commonly violated are Articles 1, 9 and 12. So what can REALTORS® do to try to protect themselves from allegations of unethical conduct and ending up before our

Professional Standards Panel? First, REALTORS® must remember that they should always protect and promote the interests of the client. Although there can be countless bumps along the way, a REALTOR® remains obligated in his or her actions to put the clients' interests first and foremost. While the client's interests may be primary, the REALTOR® must still treat all parties honestly.

In order to avoid any potential violations of Article 9, REALTORS® must be diligent in the handling of their paperwork. Clients must be given copies of all agreements upon signing or initialing. Article 9 also requires REALTORS® to keep all documents up-to-date. The Code does not require that a REALTOR® intentionally act in a manner contrary to any of the Articles. Even though a REALTOR® unintentionally or accidentally forgot to send a fully executed agreement or amendment to the client, s/he could still be found in violation of Article 9. Therefore, it is imperative that REALTORS® act diligently and promptly in their real estate transactions.

REALTORS® can be found in violation of Article 12 when their real estate communications do not depict a truthful and honest picture. Common forms of violations of Article 12 include not updating your website when the information on it is no longer current or once the REALTOR® is made aware that the posted information is no longer accurate. REALTORS®, particularly listing agents, must remember to update the MLS listing, if applicable, whenever there are any changes or modifications to the listing agreement. Failure to update the MLS Listing could bring about an Article 12 violation if the non-updated MLS listing provides inaccurate information based on the amendments to the listing agreement.

KNOW THE CODE

Fully understanding the expectations that are required from REALTORS® under the Code will greatly reduce your chance of ending up in front of the Professional Standards Panel as a Respondent.

This article provides a brief look into the elaborate process of Professional Standards and commonly violated Articles of the Code of Ethics. While involvement in any Professional Standards proceedings whether as a complainant, respondent, REALTOR® principal or participant on either the Grievance Panel or Professional Standards Panel can be stressful or intimidating, this article should provide some reassurance to all parties involved that the process is handled in an impartial and professional manner.

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