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PROFESSIONAL STANDARDS



“ REALTOR®... the best prepared real estate practitioner with the highest standards ”

PROFESSIONAL STANDARDS NEWSLETTER

December 2022

“Volunteerism is the voice of the people put into action. These actions shape and mold the present into a future of which we can all be proud.” – Helen Dyer

2022 THIRD QUARTER STATISTICS

- In the third quarter of 2022, there was a total of:
 - 47 ethics complaints filed, with 19 forwarded.
 - 4 arbitration requests filed, with 2 forwarded for mandatory mediation.
 - 6 ethics hearings and 4 arbitration hearings were held.
- Our Ombudsman Program Received:
 - 3 Requests, all 3 were in the scope of the program and were successfully resolved.
- Our Mediation Program received:
 - 11 mediation requests. 2 mediations were held, all of which were successful.

PROFESSIONAL STANDARDS

Upcoming Changes

The National Association of REALTORS® Board of Directors has approved the following Professional Standards Committee recommended changes to the *Code of Ethics and Arbitration Manual*. The changes go into effect in January 2023.

- **Limits on expedited enforcement.** The board added language to Section 20 of the manual, which describes an expedited ethics enforcement process. The new language enables Grievance Committees to refer a complaint to the Professional Standards Committee for a hearing—despite a respondent’s request for expedited enforcement—if the conduct described in the complaint is sufficiently egregious and/or a potential violation of public trust. Reason: The expedited process doesn’t allow associations sufficient latitude to deal with such complaints. Under the expedited ethics enforcement process, a member can’t be suspended for more than 30 days. The expedited process also takes expulsion off the table and doesn’t allow for suspension or expulsion from MLS participation. In addition, hearing panels have no mechanism to require respondents to cease or refrain from conduct deemed to be in violation of the Code or to take affirmative steps to ensure compliance with the Code.
- **Anonymous complaints.** The board also modified Section 20 to clarify that anonymous complaints, other than those allowed for in an association’s citation policy, are prohibited. If an association’s citation policy allows for anonymous complaints, any complaint referred for hearing must include a complainant (such as a member of the Grievance Committee) to shoulder the burden of proof.

* The Arizona REALTORS® does not accept anonymous complaints.

- **Definition of “real estate professional.”** Section 1 of the manual has been amended to define “Real Estate Professional” as an individual engaged in the disciplines of real estate specified under Article 11 of the Code of Ethics. Those disciplines include residential real estate brokerage, property management, commercial and industrial real estate brokerage, land brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate.

Note: This definition clarifies other “real estate professionals” as identified in Article 15.

- **Replace the term “handicap” with “disability”.** The Board of Directors voted to replace the term “handicap” with “disability” in Article 10 of the Code of Ethics, in the Standards of Practice, and in corresponding NAR references to protected classes under fair housing law. This change to the Code was subsequently approved by the NAR delegate Body.
- Approved changes to the Code of Ethics and Arbitration Manual to remove the board president from the process of disseminating ethics complaints, responses, and appeal decisions. These amendments strengthen the grievance process by removing any appearance of impropriety.

* This change does not affect the Arizona REALTORS® process.

- Amended Standard of Practice 3-9 of the Code of Ethics to replace “the listing broker” with “the seller” to clarify that it’s the seller, not the listing broker, who establishes terms relating to the marketing and sale of the property.

CHAIR TIPS

Cross Examination

To be consistent, members of the public should be given the same latitude as REALTORS® during the questioning phase of the hearing. Parties should be encouraged to pose open-ended questions to elicit a full and hopefully descriptive response in the respondent's own words. Samples of open-ended questions are:

1. To the Buyer's Agent: What happened after you submitted the BINSR?
2. To the Buyer: What was the condition of the property when you wrote the offer?
3. To the Listing Agent: What did the Seller say about the BINSR repairs the Buyer requested?
4. To the Seller: What was the condition of the property at the time of Buyer's final walkthrough?

Closed-ended, Yes/No, or single word responses can prove tricky. If the close-ended questions are not presented properly they can be considered badgering and antagonistic. Attorneys and savvy parties will know how to present closed-ended questions designed to elicit a specific piece of information they want the panel to consider. Samples of closed-ended questions that can productively elicit pointed responses include:

1. To the Buyer: When you attended the final walkthrough, did you check the pool equipment?
2. To the Listing Agent: Did you and the Respondent normally communicate by email or text messaging?
3. To the Seller: On what date did you move out of the property?

To avoid antagonistic questioning, the Hearing Panel Chair can effectively control close-ended questions and respond with a "thank you" when the question has been answered.

To assist a party struggling to formulate open-ended questions, the Chair can ask the party to summarize the question. Perhaps dividing a compound question into two parts will help both parties ensure that everyone understands exactly what is being asked, and which question is being answered.

HEARING PANEL TIPS

What if I'm Not an Expert?

A Hearing Panelist does not need to be an expert in the subject matter of the complaint. For example, if you practice residential real estate but the complaint revolves around property management, you are still qualified to serve as a panelist. Expertise of the subject matter is not necessary because the same process used to come to a decision should be universally applied.

In all instances, Ethics Hearing panelists must break down the issues to their simplest form and, depending on the case-specific facts and claims at issue, address the following questions:

1. Was Respondent truthful?
2. Did Respondent promote and protect their client's interests and treat all parties honestly?
3. Did Respondent mislead, conceal, or exaggerate?
4. Did Respondent cooperate with other Real Estate Professionals?
5. Did Respondent disclose their position or interest in the transaction?
6. Did Respondent disclose a contemplated interest in the property to all parties?
7. Did Respondent disclose compensation received from one party?
8. Did Respondent exercise financial responsibility?
9. Did Respondent assure that all transactional details were in writing when appropriate?
10. Did Respondent provide equal service to all clients/customers?
11. Was Respondent knowledgeable and competent in that particular area of practice?
12. Did Respondent present a true picture in advertising?
13. Did Respondent engage in the unauthorized practice of law?
14. Was Respondent unwilling to participate in Code enforcement procedures?
15. Did Respondent make certain that comments about other Real Estate Professionals were truthful and not misleading?

MEDIATOR TIPS

Dealing With Emotions in Mediation

Conflict and emotion go hand-in-hand. A mediator needs to deal with the emotions connected to the parties' dispute. A failure to recognize and address the emotional underpinning of a problem will often make a resolution in mediation impossible. On the other hand, when parties feel their emotions have been acknowledged they have less need to constantly repeat themselves and can move forward.

Acknowledging Emotions

Acknowledging emotions involves naming the emotion you perceive the person to be experiencing. Until emotions are given an appropriate place at the table, parties may need to act out or repeat themselves. These barriers to resolution in mediation may melt away once parties feel understood.

Acknowledging emotions does not include agreeing with or sympathizing with a party's emotions, judging a party's emotions, or taking action to "fix" a party's feelings. The mediator should place the emotion on the party and not take it on personally. Examples of acknowledgement of emotion include:

Do say "You seem really upset."

Do not say "I would be upset, too."

Do say "It sounds like you have been frustrated for years."

Do not say "I understand how frustrating it is."

Emotionally Difficult Situations

Intense Anger

- Stay calm – check your response
- Acknowledge the emotion
- Don't reciprocate (even if directed at you)
- Allow venting
- Draw the line at destructive anger

Intense Anguish

- Stay calm – check your response
- Acknowledge the emotion
- Normalize the emotion
- Offer comfort (tissue, pause, break if party desires)
- Do not lose neutrality

Neutralizing Language

Neutralizing involves going around the incendiary words to reach the feelings or interests behind them.

Example:

Party: “She is an untrustworthy liar and would take advantage of her own mother.”

Mediator: “You are concerned with being treated fairly and honestly.”

The mediator's neutralizing language allows the parties to move forward to a negotiable issue, such as how each party would like to be treated.

OMBUDSMAN TIPS

Ombudsmen are crucial in preventing the formal filing of ethics complaints but, what happens when a complaint has been filed and then referred to you for your expertise? Rest assured, staff has reviewed the complaint prior to your assignment to confirm you can assist. With that in mind, when contact is made with the complainant, you can remind them that while you cannot give them your opinion on whether the complaint constitutes an ethics violation, you may be able to assist with a more tangible outcome that resolves the dispute in its entirety. Communication is key in so many aspects of life. Ombudsmen have the power to not only settle an already filed ethics complaint but to achieve an outcome that benefits all parties!

GRIEVANCE TIPS

Last quarter we discussed the important role of reading your assigned cases, drafting your recommendations/case summaries and what your review should include. When you have completed your recommendations, those summaries need to be shared with Sam. Sam will compile the committees' reviews and include them in the agenda for everyone to have an opportunity to read your perspective on the case. It is important to ensure your submission is in a format that enables Sam to cut and paste your recommendations into the agenda as retyping individual recommendations may result in errors. Typing your recommendations within the body of an email or a word document works the best!

As you are reviewing cases, you may find yourself in need of clarification regarding member status, timeliness, or other procedural related questions. While you are encouraged to discuss cases with your co-reviewer, Sam is available to assist as well. Procedural clarification could open your eyes to a whole new perspective on an ethics complaint or arbitration request!

**2023 Professional Standards Workshop
Wednesday, February 22, 2023
8:15 AM to 3:00 PM**

**Desert Willow Conference Center
4340 E Cotton Center Blvd. Suite 100
Phoenix, AZ 85040**

Register [HERE](#)



Happy Holidays