

RESPECT FOR THE PUBLIC • RESPECT FOR PROPERTY • RESPECT FOR PEERS

PROFESSIONAL STANDARDS



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

PROFESSIONAL STANDARDS NEWSLETTER

September 2024

“REALTORS® have elected to be their own judge. But, in making that election, they have committed their judgments to be judged. The enforcement of the Code of Ethics is an awesome responsibility. To vindicate the Code of Ethics, it is first necessary to vindicate the integrity of the process that is the due of every REALTOR®.” - William D. North

2024 SECOND QUARTER STATISTICS

In the second quarter of 2024:

- 63 ethics complaints were filed, with 24 forwarded for a hearing.
- 5 arbitration requests filed, with 4 forwarded for mandatory mediation.
- 17 ethics hearings and 2 arbitration hearings were held.
- Our Ombudsman Program Received:
 - 5 requests, however all 5 requests were out of the scope of the program.
- Our Mediation Program received:
 - 10 mediation requests, 3 of which were refused by a party. 2 mediations were held, with 1 resulting in a successful resolution.



Last month, Holly Eslinger passed away. Holly was a dedicated member of the Professional Standards Committee with nearly 20 years of service and was the recipient of the 2022 Mary Lee Greason Excellence in Professional Standards Award. Holly had over 42 years of experience in the real estate industry and was the broker/owner of Exclusive Homes and Land in Scottsdale. Her accomplishments included serving as 2010 President of the Arizona Association of REALTORS®, 2022 President of the Scottsdale Association of REALTORS®, Chair of both the National Association and Arizona Association of REALTORS® Risk Management Committees, and REALTOR® of the Year on both a state and local level, just to name a few.

Holly was a shining example of what it means to be a REALTOR®. Her selfless dedication has left an enduring mark on the entire real estate community in Arizona as an advocate for the highest ethical standards, education, and professionalism. Having served as a friend and mentor to many current industry leaders, her legacy will live on, and Holly's memory will forever be cherished in our hearts.

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REMINDER: If you would like to serve on Hearing Panels in October-December 2024 and have not yet signed up to serve, please do so [HERE](#). This is simply to let staff know your availability.

Due Process

The Code of Ethics and Arbitration Manual states, no Code of Ethics can long survive its misuse or misapplication. This is why the REALTOR® Code of Ethics must be applied with continuing and conscientious concern for procedural due process. Procedural due process is both an explicit and implied requirement of the Code. It is required explicitly by Article 14, which requires a “proper tribunal” and implicitly by the Preamble’s reliance on the Golden Rule. The due process requirement, after all, requires nothing more than a fair and diligent search for the truth with an opportunity for all facts to be gathered, all views to be heard, all defenses to be raised, and all prejudice or bias to be expunged. But while due process requires nothing more than a fair and diligent search for the truth, so the Code may be properly applied, due process permits “nothing less.” There is no acceptable level of unfairness, no permissible slight of the search.

What are the Five Elements of “Due Process”

- **Equality.** The system must not discriminate procedurally between parties. If one party is entitled to counsel, then all are entitled. If notice is provided to one, it must be provided to all. The essential requirement for Equality is that the system provides a “level playing field” for the disputants. Discrimination in appearance or fact is an anathema to the Equality required to satisfy due process.
- **Economy.** The cost of access to the system must not be a barrier to its use or operate to the disadvantage of one or the other party. This means that grievance and arbitration proceedings should not be made a Board profit center and, in fact, may have to become subsidized to assure open access.
- **Expedition.** As “justice delayed is frequently justice denied,” there is an affirmative obligation on the part of the system to expedite ethics and arbitration proceedings. This does not foreclose orderly procedure with adequate time to ensure notice, time to prepare, opportunity to identify and gather witnesses, and otherwise develop facts and arguments. It does, however, foreclose dilatory tactics, unreasonable extension of time, and protraction of hearings.
- **Evidence.** The system must be designed and function to elicit evidence, not assumptions, proof, not presumptions. While strict rules of evidence in the judicial sense do not apply, there must be control of what is admitted as relevant and judgment as to what is mere speculation and hearsay designed to prejudice rather than inform.
- **Equity.** The system must produce decisions that reflect a sense and substance of “rightness” and “reasonableness.” In matters involving unethical conduct, the punishment should fit the offense. The judgment should reflect consideration of extenuating circumstances and a balancing of competing values and objectives. Moreover, the predictability, consistency, and uniformity of the system’s performance is an important measure of Equity.

CHAIR TIPS

Pre-hearing Meetings: Their importance and what can be discussed

The pre-hearing meeting allows you as the Chair to discuss important topics with the Panelists and ensure all questions and possible concerns are addressed prior to starting the hearing. This is also the time to address any administrative issues you may have. Below are a few examples of important topics that should be discussed in the pre-hearing meeting when applicable.

After the Grievance Committee forwards an ethics complaint or arbitration request for a hearing, Hearing Panel Chairs can determine whether ethics complaints and arbitration requests are timely filed. Parties may submit additional information after the Grievance Committee reviewed the complaint that shows the complaint is out of time and therefore should be dismissed. This is an issue that will be addressed at the pre-hearing meeting or at the outset of the hearing prior to testimony related to the ethics or arbitration hearing commencing.

You may also determine after reviewing the complaint that it is of the utmost importance that the complaint should be amended by adding previously uncited Article(s) or additional respondent(s). This will be discussed and determined by the Panel as a whole. If it is determined that it is critical that the complaint be amended, the parties will be notified and the respondent will be provided with an opportunity to prepare, which may include postponement of the hearing.

Hearing Panelists have opportunities to ask parties questions during the hearing. As the Chair, it is suggested that you review any questions that a Panelist would like to ask to ensure the questions do not assist or support either party's case. Therefore, during the pre-hearing meeting, discuss with the Panel any questions they may have based on the evidence provided.

HEARING PANEL TIPS

From time to time, you will participate in a hearing for a complaint that is complex, with many details provided in evidence and testimony, and several Article violations alleged. With cases like this, it may be more difficult to separate the facts provided that relate to each Article alleged to determine if a violation did occur. To simplify the process, use the findings of fact sheet included with the case materials in ShareFile. The findings of fact sheet asks specific thought-provoking questions that force you to focus on what the Article alleged relates to, streamlining the process of sorting through the information provided by the parties.

The findings of fact sheet is also a great tool when the case itself is not necessarily complex, but the actions of the respondent just don't feel right. This may cause you to struggle with determining if the respondent was simply being rude, which isn't a violation of the Code of Ethics, or if they violated the Code of Ethics. The findings of fact sheet eliminates emotion and focuses on facts alone, simplifying the process of determining whether a violation occurred.

MEDIATOR TIPS

Reminders

- **Honor the self-determination of the parties to reach their own conclusions:** Assist parties in moving forward if they stall and suggest possible options if the parties are not able to articulate any. But do not go so far as to make a case for one side or another. Empower the parties to reach a conclusion through a discussion of possibilities.
- **Be competent and remain impartial:** Brush up on mediation techniques prior to a meeting, if necessary. Remember, both sides are evaluating your language and demeanor. Do not come across as if you do not understand the process or that you are favoring one party over the other.
- **Abide by confidentiality:** Never discuss any aspect of a mediation with anyone that is not a party to the mediation, including other Professional Standards members. If you have questions

about the case and would like to discuss it, please contact the Professional Standards Administrator.

- **Maintain the quality and integrity of the process:** Take control of and keep control of the mediation discussions. Do not allow a party to take over or “hijack” the meeting.

OMBUDSMAN TIPS

Tips on listening without creating an angry caller.

1. Pay attention. Listening is not just waiting for your turn to speak. It is being actively involved and absorbing both the obvious and the subtle information being offered.

2: Don't interrupt or derail the caller. Some people, out of showing interest, will interrupt and derail the caller's train of thought. Hold your questions and comments until the caller is finished.

3. Politely dealing with a rambler. If you have lost the thread of a story entirely, then it is permissible to interrupt with something like, "Let me see if I understand what you're saying. Your REALTOR® wouldn't present your offer because it was too low?" For politeness' sake, interrupting should be for the purpose of clarification only and then allow the caller to proceed with their story.

4. Reflect what you heard. Do not defend. Do not attack. Neutralize the caller's negative statement and adjust their attitude. If a caller feels attacked in any way, they will either defend themselves or fall into the idea that REALTORS® protect their own and you have now unleashed the possibility of an angry caller and/or a possible complaint.

Ombudsmen are fair, credible, and most importantly impartial. Being a good listener will help maintain the Ombudsman's credibility.

GRIEVANCE TIPS

While we know complainants may file a complaint against a REALTOR® they believe acted unethically, another factor that is considered by the Grievance Committee is the complainant's due diligence.

Due diligence, by definition, is the care that a reasonable person exercises to avoid harm to other persons or their property. Due diligence is a key term to consider when determining the timeliness of a complaint or an arbitration.

For example, a buyer can indicate in their complaint that the close of escrow was February 14, 2020, alleging that the REALTOR® did not disclose that their home property was near an airport. The buyer claims that they “discovered” the lack of disclosure recently, August 1, 2024.

The **Code of Ethics and Arbitration Manuals** reads: *Was the complaint filed within one hundred eighty (180) days of the time that the alleged offense and facts relating to it could have been known by the complainant in the exercise of reasonable diligence or within one hundred eighty (180) days after the conclusion of the transaction or event, whichever is later?*

The above question can be tough to answer, considering the conclusion of the transaction, February 14, 2020 exceeds 180 days while the discovery date, August 1, 2024 does not. Although the manual states “whichever is later”, this does not automatically mean the discovery date necessarily supersedes the February 14, 2024 date. Due diligence becomes a deciding factor. Does it take four years to know if your home is near an airport? Can this only be discovered four (4) years after the purchase?

In this instance, the complaint should be dismissed for untimely filing. It is important to consider all factors *and* parties to a complaint because, in theory, complainants can use any “timely” discovery date although it may not necessarily be accurate.

Reminder

**Annual Mediator/Ombudsman Training:
Thursday, October 10, 2024 at 8:45 a.m.
255 East Osborn Road, Meeting Room 1
Phoenix, AZ 85012**

*Email invitation have been sent to Mediators
and Ombudsman.*

Save the Date

**2025 Professional Standards Workshop
Wednesday, February 12, 2025

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