

NAR's Local and State Association Ombudsman Services Policy

Professional Standards Policy Statement #59, Associations to Provide Ombudsman Services, in the current NAR Code of Ethics and Arbitration Manual, provides as follows:

Every local and state association of REALTORS® is required to offer, either directly or as part of a cooperative enforcement agreement (consistent with Professional Standards Statement #40, Cooperative Enforcement Agreements), ombudsman services to members, clients, and consumers on or before January 1, 2016.

An ombudsman is an individual appointed to receive and resolve disputes through constructive communication and advocating for consensus and understanding.

Ombudsman procedures are intended to provide enhanced communications and initial problem-solving capacity at the local level. All associations must provide ombudsman services to their members and members' clients and customers consistent with Professional Standards Policy Statement #59, Associations to Provide Ombudsmen Services, Code of Ethics and Arbitration Manual.

Introduction

Boards and associations of REALTORS® are charged with the responsibility of receiving and resolving ethics complaints. This obligation is carried out by local, regional and state grievance committees and professional standards committees.

Many "complaints" received by boards and associations do not expressly allege violations of specific Articles of the Code of Ethics, and many do not detail conduct related to the Code. Some "complaints" are actually transactional, technical, or procedural questions readily responded to.

It is the belief of the National Association's Professional Standards Committee that many ethics complaints might be averted with enhanced communications and initial problem-solving capacity at the local level. These ombudsman procedures are intended to provide that capacity.

The ombudsman's role is primarily one of communication and conciliation, not adjudication. Ombudsmen do not determine whether ethics violations have occurred or who is entitled to what amount of money, rather they anticipate, identify, and resolve misunderstandings and disagreements before matters ripen into disputes and possible charges of unethical conduct.

Qualification and Criteria for Ombudsmen

Boards and associations have considerable latitude in developing criteria for service as ombudsmen.

At a minimum, ombudsmen should be thoroughly familiar with the Code of Ethics, state real estate regulations, and current real estate practice. Ombudsmen may be REALTORS®, staff members, or others acting on behalf of the local board/association.

Insurance Coverage

Ombudsmen are covered through the NAR insurance program, as long as they are acting within the coverage limits described in the policy.

As provided in the [FAQ](#) about the National Association of REALTORS® Professional Liability Insurance Program for Associations of REALTORS®, the policy defines an "ombudsman" (or "ombudsperson") as an individual designated by an association to be available for consultation about the association's ethics hearing, arbitration, and/or DRS processes. Only association staff or members may serve as an ombudsman. The policy excludes from coverage any claim that alleges or arises out of any action committed by an ombudsman that does not involve an association's ethics hearing, arbitration or the DRS processes.

The following are examples of some situations in which an ombudsman would be covered and other situations when the ombudsman would not be covered:

- A seller contacts the association because they feel their listing broker, who is a REALTOR®, is not responding to phone calls, and may have received offers that they haven't presented to the seller yet. If an ombudsman were appointed to assist the parties, the ombudsman's actions would be covered by the NAR insurance program.
- A buyer contacts the association for help with a short sale transaction. If an ombudsman assisted the buyer, the ombudsman's actions would not be covered by the NAR insurance program.
- REALTOR® A contacts the association because she has reason to believe REALTOR® B has been criticizing her business on Facebook after a difficult transaction. If an ombudsman were appointed to assist the parties, the ombudsman's actions would be covered under the NAR insurance program.

Involving the Ombudsman

Boards and associations have considerable latitude in determining how and when ombudsmen will be utilized. For example, ombudsmen can field and respond to a wide variety of inquiries and complaints, including general questions about real estate practice, transaction details, ethical practice, and enforcement issues. Ombudsmen can also receive and respond to questions and complaints about members; can contact members to inform them that a client or customer has raised a question or issue; and can contact members to obtain information necessary to provide an informed response.

In cases where an ombudsman believes that a failure of communication is the basis for a question or complaint, the ombudsman can arrange a meeting of the parties and to facilitate a mutually acceptable resolution.

Where a written ethics complaint in the appropriate form is received, it can be initially referred to the ombudsman who will attempt to resolve the matter, ~~except that complaints alleging violations of the public trust (as defined in Article IV, Section 2 of the NAR Bylaws) may not be referred to an ombudsman. "Public Trust" refers to demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud.~~

~~In the event the ombudsman concludes that a potential violation of the public trust may have occurred, the ombudsman process shall be immediately terminated, and the parties shall be advised of their right to pursue a formal ethics complaint; to pursue a complaint with any appropriate governmental or regulatory body; to pursue litigation; or to pursue any other available remedy.~~

Right to Decline Ombudsman Services

Persons filing complaints, or inquiring about the process for filing ethics complaints, will be advised that ombudsman services are available to attempt to informally resolve their complaint. Such persons will also be advised that they may decline ombudsman services and can have their complaint referred to ethics mediation (if available), or considered at a formal ethics hearing.

Resolution of Complaints

If a matter complained of is resolved to the mutual satisfaction of all parties through the efforts of an ombudsman, the formal ethics complaint brought initially (if any) will continue to be processed until withdrawn by the complainant.

Failure to Comply With Agreed Upon Resolution

Failure or refusal of a member to comply with the terms of a mutually agreed on resolution shall entitle the complaining party to resubmit the original complaint or, where a formal complaint in the appropriate form had not been filed, to file an ethics complaint. The time the matter was originally brought to the board or association's attention will be considered the filing date for purposes of determining whether an ethics complaint is timely filed.

Referrals to the Grievance Committee or to State Regulatory Bodies

Ombudsmen cannot refer concerns they have regarding the conduct of any party utilizing their services to the Grievance Committee, to the state real estate licensing authority, or to any other regulatory body. The prohibition is intended to ensure impartiality and avoid the possible appearance of bias. ~~Ombudsmen are, however, authorized to refer concerns that the public trust may have been violated to the Grievance Committee.~~

Confidentiality of Ombudsman Process

The allegations, discussions and decisions made in ombudsman proceedings are confidential and shall not be reported or published by the board, any member of a

tribunal, or any party under any circumstances except those established in the Code of Ethics and Arbitration Manual of the National Association as from time to time amended.

Appendix XI to Part Four, Ethics Mediation

Adoption of ethics mediation procedures

Ethics mediation is a process that may be adopted at the discretion of boards and associations. Ethics mediation will require adoption of these procedures (either verbatim or as amended locally) by action of the local board of directors (or as otherwise provided in the local bylaws).

Appointment of mediators

The chair of the Professional Standards Committee and/or the Board President will select one or more ethics mediators to act on behalf of the committee. Mediators should be thoroughly familiar with the Code of Ethics, state real estate regulations, and current real estate practice.

Complaints that may be mediated

Complaints brought by the public or by other REALTORS® may be mediated under these procedures. Complaints brought by the Grievance Committee ~~and complaints alleging a violation of the public trust (as defined in Article IV, Section 2 of the NAR Bylaws)~~ may not be mediated.

Initiation of ethics mediation procedures

The ethics mediation process can be initiated in two ways. First, through filing a written ethics complaint. Second, through a personal, telephone, or written inquiry or complaint generally alleging potentially unethical conduct but which (a) is not filed on the appropriate form or (b) is not specific as to which Article(s) may have been violated.

Where a written ethics complaint in the appropriate form is received, it will be reviewed by the Grievance Committee so a determination can be made whether a possible violation may have occurred or, alternatively, whether the complaint should be dismissed as not requiring a hearing.

Where an informal inquiry or general letter of complaint ~~that does not allege a potential violation of the public trust~~ is received, it will not be reviewed by the Grievance Committee, but will be referred to an ethics mediator.

Participation in ethics mediation is voluntary

Persons inquiring about the process for filing ethics complaints will be advised that ethics mediation is available as an alternative to a formal ethics hearing provided that all parties agree to participate, and also be advised they may decline or withdraw from mediation and have their complaint considered at a formal ethics hearing. Similarly, REALTORS® complained about have the right to decline or withdraw from mediation and to have complaints against them considered at a formal ethics hearing.

Referral of complaints to the mediator

When either a written ethics complaint in the appropriate form is reviewed by the Grievance Committee and the Grievance Committee concludes that a hearing is warranted, or when a general letter of inquiry or complaint is received, ~~and the matter(s)~~

~~complained of do not involve a possible violation of the “public trust”, the materials received will be referred to the ethics mediator who will contact the parties to schedule a meeting at a mutually agreeable time. “Public trust” refers to misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud. (Revised 11/20)~~

During the mediation session the mediator will encourage all parties to openly and candidly discuss all issues and concerns giving rise to the inquiry or complaint, and to develop a resolution acceptable to all of the parties. ~~In the event the mediator concludes that a potential violation of the public trust may have occurred, the mediation process shall be immediately terminated, and the parties shall be advised of their right to pursue a formal ethics complaint, to pursue a complaint with any appropriate governmental or regulatory body, to pursue litigation, or to pursue any other available remedy.~~

Nature of the mediated resolution

The mediator and the parties have considerable latitude in fashioning a mutually acceptable resolution. Resolutions can include, but are not limited to, payment of disputed funds, repairs or restoration of property, written or oral apology, or acknowledgement of a violation of the Code of Ethics. In cases where a REALTOR® acknowledges that the Code has been violated, that admission may be sufficient to resolve the matter or, alternatively, the parties may agree that discipline should be imposed. The discipline may, at the agreement of all parties, include any of the forms of discipline established in the *Code of Ethics and Arbitration Manual* and may also include payment of monies to the complainant or to a third party. Also, the parties may agree that the complainant will withdraw a complaint or agree not to file a formal, written ethics complaint in return for the respondent’s action or acknowledgement. Again, any discipline imposed must be agreed to by all of the parties.

Referrals to the Grievance Committee or to state regulatory bodies

Ethics mediators cannot refer concerns they have regarding the conduct of any party to mediation to the Grievance Committee, to the state real estate licensing authority or to any other regulatory body. This prohibition is intended to ensure impartiality and avoid the possible appearance of bias. ~~Mediators are, however, authorized to refer concerns that the public trust may have been violated to the Grievance Committee.~~

Refusal to comply with agreed upon discipline

Failure or refusal of a respondent to comply with the terms of any mutually agreed on resolution shall entitle the complaining party to resubmit the original complaint or, where a formal complaint in the appropriate form had not been filed, to file an ethics complaint. The time the matter was originally brought to the board or association’s attention shall be considered the filing date for purposes of determining whether an ethics complaint is timely filed.

Associations will continue to process filed ethics complaints until withdrawn by the complainant. (Revised 05/15)

Confidentiality of mediation process

The allegations, discussions, and decisions rendered in ethics mediation proceedings are confidential and shall not be reported or published by the board, any member of a tribunal, or any party under any circumstances except those established in the *Code of Ethics and Arbitration Manual* of the National Association as from time to time amended.