

# 2020 Annual Professional Standards Training

Christina Chow  
Director of Legal Affairs  
Professional Standards Administrator

Wednesday, January 8, 2020



## Purpose of this Training

- Offered every year
- Participants must take this training at least once per term (typically 3 year terms)
  - Frequent refreshers are always encouraged
- Go through the process of filing an ethics complaint or arbitration request from start to finish
- Understanding the roles of each person in the Professional Standards Process



## How did YOU get here?

- Enforcement of the Code of Ethics and Arbitration Manual is the responsibility and privilege of the local board
- Statewide Professional Standards – Local Board / Association benefit
- In return to for handling the cases for the local board, each local board must have a minimum of 1 Grievance Panel appointee and 2 Professional Standards Panel appointees



## Professional Standards Administrator's Role

- Answers the phone calls
- Sends the paperwork to be filled out
- Arranges the Grievance Panel Meetings
- Sends the paperwork between the parties
- Schedules and coordinates the hearing
- Sends out the decisions
- Ensure that participants are prepped and prepared



## What is YOUR role?

- To be prepared
- To understand your role within the process
- To understand the Code
- To ask questions when things are unclear
- To be fair and impartial
- To respect this process
- To understand that the Code of Ethics is what sets apart REALTORS® from licensees



## Code of Ethics Ice Breaker (an NAR Exercise)

Text Answers to  
(205) 583-6053



# How well do you know the Code of Ethics?

## National Association of REALTOR® Code of Ethics Exercise\*

1. REALTORS® must always compensate other brokers for their cooperation in transactions.  
☐ True or ☐ False  
Article Referenced:
2. REALTORS® protect and promote their clients' interests, while treating all parties honestly.  
☐ True or ☐ False  
Article Referenced:
3. REALTORS® are permitted to sell their own property, or property in which they have any interest, so long as they make the disclosure of such interest to the purchaser or his/her representative.  
☐ True or ☐ False  
Article Referenced:
4. REALTORS® agree to arbitrate financial disagreements with other brokers and their customers.  
☐ True or ☐ False  
Article Referenced:
5. A REALTOR® receives compensation from only one party, except when he/she makes full disclosure to all parties and receives informed consent from the client.  
☐ True or ☐ False  
Article Referenced:
6. A REALTOR® makes sure that contract details, written or oral, are clearly understood and, when he/she determines it to be appropriate, provides copies to parties.  
☐ True or ☐ False  
Article Referenced:
7. REALTORS® are knowledgeable and competent in the fields of practice in which they engage, or they obtain assistance from a knowledgeable professional, or they disclose to clients any lack of expertise.  
☐ True or ☐ False  
Article Referenced:
8. A REALTOR® may advertise in any way that helps him/her promote the sale of property.  
☐ True or ☐ False  
Article Referenced:
9. REALTORS® willing participate in ethics proceedings.  
☐ True or ☐ False  
Article Referenced:
10. REALTORS® may not provide information regarding an owner's preference to rent property to those without children.  
☐ True or ☐ False  
Article Referenced:
11. A REALTOR® cannot provide professional services when he/she has a present or contemplated interest in the property.  
☐ True or ☐ False  
Article Referenced:

12. REALTORS® shall not knowingly or recklessly make false or misleading statements about other real estate professionals, their businesses, or their business practices.  
☐ True or ☐ False  
Article Referenced:
13. REALTORS® refrain from exaggeration, misrepresentation, or concealment of pertinent facts related to properties and transactions.  
☐ True or ☐ False  
Article Referenced:
14. REALTORS® may not knowingly enter into a client relationship if that person is working with another brokerage as a customer.  
☐ True or ☐ False  
Article Referenced:
15. REALTORS® disclose any fees or financial benefits they might receive from recommending real estate-related products and services.  
☐ True or ☐ False  
Article Referenced:
16. REALTORS® are permitted to give legal advice as long as the advice relates to a real estate transaction.  
☐ True or ☐ False  
Article Referenced:
17. REALTORS® keep funds entrusted from clients and customers in a separate escrow account.  
☐ True or ☐ False  
Article Referenced:

\*Some of the questions have been modified or added for this training.

# Understanding Tricky Articles



## Unauthorized Access to Property

- Article 1, SOP 1-16 – REALTORS® shall not access or use, or permit or enable others to access or use, listed or managed property on terms or conditions other than those authorized by the owner or seller
- Article 3, SOP 3-9 – REALTORS® shall not provide access to listed property on terms other than those established by the owner or the listing broker.



## Unauthorized Access to Property (cont.)

- Article 1, SOP 1-16 applies to listing agents → Article 1 requires agents to protect their clients' interests
- Article 3, SOP 3-9 applies to cooperating agents → compliments 1-16; Article 3 governs behavior between co-op agents



## When does one allege a potential Article 14 violation?

- In order for there to be an Article 14 violation, there must have been an indication that the Respondent failed to cooperate with the Professional Standards process
- Grievance Panel: If this is the first ethics complaint filed against a Respondent, then Article 14 (if cited) should usually be dismissed





## The Code of Ethics & RESPA

- Several Articles require disclosure of any additional compensation or benefits a REALTOR® may receive in a real estate transaction
- Even with disclosure and consent from the parties, there could still be RESPA violations
- The federal government does not care that you followed the Code of Ethics



## What happens first?

- Phone Call or Email regarding filing an ethics complaint or arbitration request
- Ethics complaint – depending on the situation, an ombudsman may be offered
- Arbitration request – explain the mediation process





## When the Complaint or Request is Filed

- Check to ensure the E-1 Form or A-1 Form is filled out completely and accurately
  - E-1 should not list any Standards of Practices
    - Ensure that the Respondent is a REALTOR®
  - A-1 should only list only brokers and/or brokerages



## Scheduling Grievance Panel Meetings

- Regularly scheduled meetings
  - Usually every 2 – 4 weeks depending on the time of year
- Teleconference meetings
- Materials sent 3-4 days in advance
- 3-5 panelists per meeting



## During the Grievance Panel Meeting

- Provided a checklist
  - The Professional Standards Administrators do their best to check off the administrative items
    - Is the Respondent a REALTOR®?
    - Is the E-1 correctly filled out?
- Has the complaint been filed within 180 days



## Arbitration Analysis During the Grievance Panel Meeting

- Was the complaint filed within 180 days of closing or when the REALTOR® principal could have known about the closing with reasonable due diligence
- Main Question to be asked –

**If the facts alleged are assumed to be true is there an arbitrable issue that can be heard by the Georgia Association of REALTORS® Arbitration Hearing Panel?**



## Arbitration Analysis During the Grievance Panel Meeting (cont.)

- Other considerations for the Grievance Panel:
  - Is the amount in dispute too large or too small?
  - Is the issue too legally complex?
  - Can an impartial Hearing Panel be assembled?



## What are the 'Arbitrable Issues' that can be heard?

- Not all monetary disputes are arbitrable by GAR
- Arbitrable disputes are outlined by Article 17 of the Code of Ethics

Arbitrable Issues are limited to the following:

- 1) Contractual disputes between REALTOR® Principals of different firms
- 2) Specific non-contractual disputes as outlined by Standard of Practice 17-4



## 'Arbitrable Issues' (cont.)

- Standard of Practice 17-4 – Specific non-contractual disputes that can be arbitrated by GAR
  - 1) Where a listing broker has compensated a cooperating broker and another cooperating broker subsequently claims to be the procuring cause of the sale or lease
  - 2) Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating broker claims to be the procuring cause of sale or lease



## 'Arbitrable Issues' (cont.)

- 3) Where a buyer or tenant representative is compensated by the buyer or tenant and, as a result, the listing broker reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating broker claims to be the procuring cause of sale or lease
- 4) Where two or more listing brokers claim entitlement to compensation pursuant to open listings with a seller or landlord who agrees to participate in arbitration and who agrees to be bound by the decision



## 'Arbitrable Issues' (cont.)

- 5) Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, claims to be the procuring cause of sale or lease.



## What are disputes are not arbitrable by GAR?

- Disputes between an agent and his/her broker over commissions owed under an independent contractor agreement
- Disputes between two agents in the same brokerage
- Disputes between listing agents pursuant to an exclusive listing agreement
- Disputes regarding transactions that did not close





## Mediation

- If the Grievance Panel determines there is an arbitrable dispute, then the parties are required to attempt mediation prior to going before a Professional Standards Arbitration Hearing Panel
- Parties are not required to settle
- If the parties do settle, the mediation agreement is binding and enforceable by the courts



## Mediation (cont.)

- Mediation is confidential
- Mediation Officer cannot be called as a witness in any later proceedings including arbitration hearings and ethics hearings
- Broker with authority to bind must be in attendance



## Ethics Analysis During the Grievance Panel Meeting

- Was the complaint filed within 180 days after the facts constituting the matter complained of could have been known in the exercise of reasonable diligence or within 180 days after the conclusion of the transactions, whichever is later
- Ethics – **If the facts in the complaint are taken as true as given, then is there a potential violation of the Code of Ethics?**



## Ethics Analysis During the Grievance Panel Meeting (cont.)

- Other considerations for the Grievance Panel
  - Are the right Articles cited?
  - Should Articles be deleted? Added?
  - Are all the proper parties named?





## If there is a possible violation of the Code of Ethics

- Ethics complaints that allege a possible violation of the Code of Ethics will be reviewed to determine if the complaint is eligible to receive a citation



## Citation Policy

- If the complaint lists only non-citable offenses, then the complaint is forwarded for a hearing
- If the complaint lists both citable and non-citable offenses, then the complaint is forwarded for a hearing
- If the complaint lists only citable offenses, then the citation is sent to the respondent
  - Respondent has the right to respond and request a hearing OR
  - Accept the citation by paying the fine and fulfilling the required discipline (Code of Ethics course)



## Citable Offenses

- Accessing or using, or allowing others to access or use, a property managed or listed on terms other than those authorized by the owner or seller (Article 1, supported by SOP 1-16)
- Failure to communicate a change in compensation for cooperative services prior to the time that REALTOR® submits an offer to purchase/lease the property (Article 3, supported by SOP 3-2)
- As a listing broker, attempting to unilaterally modify the offered compensation with respect to a cooperative transaction after a REALTOR® has submitted an offer to purchase or lease that property (Article 3, supported by SOP 3-2)



## Citable Offenses (cont.)

- Failing to disclose existence of accepted offers, including offers with unresolved contingencies, to cooperating brokers (Article 3, supported by SOP 3-6)
- Providing access to listed property on terms other than those established by the owner or the listing broker (Article 3, supported by SOP 3-9)
- Failing to disclose status as real estate professional in advertising and other representations (Article 12)



## Citable Offenses (cont.)

- Advertising property for sale/lease without authority of owner or listing broker (Article 12, supported by SOP 12-4)
- Failing to disclose name of firm in advertisement for listed property (Article 12, supported by SOP 12-5)
- Failing to disclose status as both owner/landlord and REALTOR® or licensee when advertising property in which REALTOR® has ownership interest (Article 12, supported by SOP 12-6)



## Citable Offenses (cont.)

- Falsely claiming to have “sold” property (Article 12, supported by SOP 12-7)
- Misleading consumers through deceptive framing, manipulating content, deceptively diverting internet traffic, presenting other’s content without attribution or permission, or using misleading images (Article 12, supported by SOP 12-10)
- Registering or using of deceptive URL or domain name (Article 12, supported by SOP 12-12)



## Citable Offenses (cont.)

- Conditioning submission of a buyer's offer on additional compensation from a listing broker (Article 16, supported by SOP 16-16)
- Placing for sale/lease sign on property without permission of seller/landlord (Article 16, supported by SOP 16-19)



## Grievance Panel Dismissal

- If the Grievance Panel dismisses the ethics complaint or arbitration request, then the complainant has 20 days to file an appeal of the dismissal
- Reviewed by a different Grievance Panel



## Withdrawn Ethics Complaints

- All withdrawn complaints must be approved by the Grievance Panel
- Grievance Panel can only move the complaint forward when there is a potential violation of public trust as defined by NAR:
  - Misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm



## Withdrawn Complaints versus Complainants Refusal to Attend a Hearing

- When a complainant refuses to attend a hearing, the complaint is sent back to Grievance Panel
- In this instance, the Grievance Panel's may push the complaint forward:
  - If the Grievance Panel determines that there is sufficient information for a Hearing Panel to consider (i.e., that there is clear, strong, and convincing proof), then complaint shall be amended to name the Grievance Panel (represented by one of the Panelists) as complainant and the hearing shall be continued to a new date





## Scheduling a Hearing

- Typically done many weeks in advance in order to coordinate with all of the participants involved
  - Professional Standards Administrator availability
  - Hearing Chairperson and Panelist availability
  - Boardroom availability
  - Party availability
  - Counsel and witness availability, if applicable



## When a Respondent Waives His/Her Right to a Hearing

- Respondent has the right to a hearing in front of his/her peers
- Respondent may agree to the facts and thus forego the hearing
- Waiving one's right to a hearing does not automatically mean that one has violated the Code of Ethics
  - Merely agreeing to the facts as stipulated by the Complainant
  - Hearing Panel will still meet in Executive Session to determine if the Code was violated, and if so, what the appropriate discipline is



## Purpose of the Hearing

- To hear from all parties involved in the dispute
- Determine who is entitled to the commissions or fees in dispute or to determine whether there was a violation of the Code of Ethics by the respondent



## Things to Remember During the Hearing

- Complainant holds the burden of proving his/her case
- Cautious about asking leading questions
- Remember to ask relevant questions
- Watch demeanor during the hearing





## Arbitration Hearings Involving Procuring Cause

- Procuring Cause as defined by NAR
  - Initiation of the unbroken chain of causal events that results in a successful transaction, defined as a sale that closes or a lease that is executed
- No threshold rule
- A signed buyer brokerage agreement is many times irrelevant



## What is the burden of proof?

- Arbitrations – Preponderance of the Evidence
- Ethics – Clear, Strong, and Convincing



## Executive Session

- Arbitrations – no finding of facts
- Ethics – REALTORS® can only be found in violation of the Articles of the Code of Ethics
  - However, the Standards of Practices as well as the Case Interpretations can be used in support of a finding or not finding of a violation
  - Both Standards of Practices as well as Case Interpretations are official policies of NAR



## Executive Session (cont.)

- Was there a violation of the articles alleged to have been Code of Ethics?
- Violations of the Code of Ethics does not have to be intentional
- If the Code of Ethics was accidentally or mistakenly violated, then that should be reflected in the discipline imposed



## Disciplining a REALTOR® Respondent

- If during Executive session the Hearing Panel determines that a Respondent violated one or more Articles of the Code of Ethics, the Panel must determine the appropriate discipline, if any
  - Hearing Panel should consider previous violations and sanctions
  - Progressive discipline
  - Permitted to provide rationale for decision



## Potential Discipline of a REALTOR®

- No discipline
- Letter of Warning / Letter of Reprimand
- Continuing Education Classes
- Fine – not to exceed \$15,000
- Suspension of membership - between 30 days & 1 year
- Expulsion of REALTOR® membership
- Suspension or termination of MLS rights and privileges
- Cease or refrain from continued conduct deemed to be in violation of the Code



## Potential Discipline of a REALTOR® (cont.)

- Hearing Panel can recommend one or a combination
- Probation is not a form of discipline
  - Discipline recommended by the Hearing Panel is held in abeyance
    - If the member is not found in violation again within the probationary period, the discipline will be considered fulfilled
  - If discipline is multipart, the Hearing Panel can choose to require the member to complete one while holding the other in probation
  - Not longer than a year
- Decisions should include a stipulation for non-compliance with the discipline recommended



## Appealing a Decision

- Arbitration – cannot appeal because the parties disagrees with the outcome
  - Only basis for appeal: Procedural deficiencies with the hearing / other lack of due process
- Ethics
  - Complainant – can only appeal based on procedural deficiencies / lack of due process



## Appealing a Decision

- Ethics
  - Respondent:
    - Procedural deficiencies / lack of due process
    - Misapplication of the facts to the Article of the Code of Ethics
    - Discipline recommended by the Hearing Panel



## Appeal Hearings

- Not a re-hearing of the case on the merits
- Appeal Hearing Tribunal is tasked with determining whether or not appropriate procedures were followed during the initial hearing





## Standard of Proof for Appeal Hearings

- Appeal Hearings based on “misapplication or misinterpretation of an Article(s) of the Code of Ethics” → determined based on the correctness of the Hearing Panel’s decision
- Appeal Hearings based on alleged procedural deficiency or failure of due process [ethics], and procedural reviews [arbitration] → determined based on whether the effect of the deficiency was to deny the appellant a fair hearing



## Outcome of Arbitration Appeal Hearings

- Arbitration Hearings
  - Affirm the decision of the Hearing Panel
  - Determine that there was procedural deficiency and grant a new hearing
  - CANNOT change the award of the Hearing Panel



## Outcome of Ethics Appeal Hearings

- Ethics Hearings
  - Affirm the decision of the Hearing Panel
  - Modify the decision – including discipline which cannot exceed the original recommended discipline
  - Dismiss the complaint if the facts do not support a possible violation of the Code of Ethics
  - Refer the ethics complaint for a new hearing



## If no appeal is filed...

- Ethics Hearings – decisions must be approved by the a panel of the GAR Executive Committee
  - Approve the decision of the Hearing Panel
  - If concerned about procedural deficiencies, then the decision can be referred for a new hearing → different Hearing Panel
  - If the discipline seems too severe, then the Panel may impose a lesser discipline → cannot impose a higher discipline





## If no appeal is filed... (cont.)

- Arbitration Hearings
  - Decision becomes final after 20 days from transmittal of decision with no appeal filed
  - If the non-prevailing party does not pay the award, then the prevailing party can have the award enforced in court.



## QUESTIONS FROM YOU?



## Georgia REALTORS® Professional Standards Administrators

- Lillie McLean, JD
  - Legal Affairs Specialist
  - [lmclean@garealtor.com](mailto:lmclean@garealtor.com)
  - (678) 597-4114
- Christina Chow, JD
  - Director of Legal Affairs
  - [cchow@garealtor.com](mailto:cchow@garealtor.com)
  - (678) 597-4128



## THANK YOU

- Please don't forget to fill out and submit evaluations!

