

2019 Annual Professional Standards Training

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Purpose of this Training

- Offered every year
- Participants must take this once per term (typically 3 year terms)
- 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



What's to Come...

- New Policies starting April 1, 2019
 - Mediation becomes mandatory
 - Citation Policy



Professional Standards Administrator

- 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



Code of Ethics Ice Breaker (an NAR Exercise)

- Text Answers to (201) 439-8760



NAR Code of Ethics Ice Breaker Exercise

		True	False	Article
1.	REALTORS® must always compensate other brokers for their cooperation in transactions.	T	F	
2.	REALTORS® protect and promote their clients' interests, while treating all parties honestly.	T	F	
3.	REALTORS® agree to arbitrate financial disagreements with other brokers and their customers.	T	F	
4.	A REALTOR® cannot provide professional services when he/she has a present or contemplated interest in the property.	T	F	
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.	T	F	
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.	T	F	
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.	T	F	
8.	A REALTOR® may advertise in any way that helps him/her promote the sale of property.	T	F	
9.	REALTORS® willingly participate in ethics proceedings.	T	F	
10.	REALTORS® give equal professional service to all clients and customers.	T	F	
11.	REALTORS® make only truthful, objective comments about other real estate professionals.	T	F	
12.	REALTORS® respect all relationships that other REALTORS® have with their customers.	T	F	
13.	REALTORS® refrain from exaggeration, misrepresentation, or concealment of pertinent facts related to properties and transactions.	T	F	
14.	REALTORS® disclose any fees or financial benefits they might receive from recommending real estate-related products and services.	T	F	
15.	REALTORS® keep funds entrusted from clients and customers in a separate escrow account.	T	F	

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
 - When an arbitration request is received, mediation is offered
 - At this point mediation is optional



Scheduling Grievance Panel Meetings

- Regularly scheduled meetings
 - Usually every 2 – 4 weeks depending on the time of year
- Teleconference meetings
- Materials sent 48-72 hours in advance
- 3-5 panelists per meeting



During the Grievance Panel Meeting

- Provided a checklist
 - I will do my best to check off the administrative items
- 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?



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



Required Mediation (04/01/2019)

- Currently: option mediation is offered upon receipt of the filed arbitration request. Typically offered again after the Grievance Panel review – still optional
- Starting April 1 – 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



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?**



If there is a possible violation of the Code of Ethics

- Currently, the complaint is pushed forward for to the Professional Standards Panel for a hearing
- Starting April 1, 2019
 - Ethics complaints that allege a possible violation of the Code of Ethics will be reviewed to determined if the complaint is eligible to receive a citation



Citation Policy (04/01/2019)

- 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



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



Scheduling a Hearing

- Typically done 4 to 8 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



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 disagree 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 BOD
 - Approve the decision of the Hearing Panel
 - If concerned about procedural deficiencies, then the decision can be referred back to the Professional Standards Committee for a new hearing
 - If the discipline seems too severe, then the Board of Directors 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?



THANK YOU

- Contact information
 - Email: cchow@gareltor.com
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