

2015 NAR CODE OF ETHICS AND ARBITRATION MANUAL CHANGES

A. Requires immediate attention – Changes in day-to-day procedures

Eliminated the requirement that notices be sent via registered or certified mail – now everything can be sent first class mail.

Changed the date for the start of the calculation of days for all purposes from “receipt” to “transmittal.”

Associations will need to update all of their forms. There have been slight changes to almost all ethics and arbitration forms.

Ethics decision form was changed substantively. Added a discussion of: (1) prior violations; (2) rationale for discipline; and (3) consequences for noncompliance with discipline.

Added “Arbitration Worksheet” and a requirement that this form be sent to parties and panel members along with the “Arbitration Guidelines.”

Added provision whereby a continuance can only be given when both parties agree as to subsequent specified date OR the chairperson determines that denying the request for continuance would deny the requestor a fair hearing.

Provided that an Association’s “primary” person responsible for the administration of professional standards processes must successfully complete training every 4 years on professional standards administration “meeting the learning objectives and minimum criteria established by the National Association of REALTORS® from time to time.”

B. Time deadline changes in ethics proceedings – Update checklists

Grievance Committee must review a complaint not later than 45 days after receipt of the complaint.

Time for respondent to waive hearing on ethics complaint has been reduced from 20 days to 10 days.

If a Grievance Committee refers a matter for hearing, a hearing date must be set within 20 days. The hearing will not occur within 20 days, but the future date for a hearing must be selected within 20 days.

Association used to be free to decide how many days to give parties to challenge potential Hearing Panel members; manual now dictates 10 days.

Hearing Panel members must be selected within 5 days after deadline for challenges.

Hearing Panel must make final decision in ethics matter within 48 hours following the hearing. Decision must be transmitted to the parties within 5 days after the final decision is rendered. "Reasonable delay shall not invalidate decision."

If no appeal of ethics decision is filed, the Board of Directors must review the decision of the Hearing Panel within 30 days after decision was transmitted to the parties (which is only 10 days after the deadline for filing the appeal).

If an appeal is filed, initial administrative decision as to the sufficiency of the appeal request must occur within 10 days. (Previously was no time deadline.)

If appeal is deemed proper, Administrator must send a copy of the appeal to other party within 1 day.

Appeals must be heard by the Board of Directors within 30 days of receipt of appeal request.

Previously, Directors were required to render their decisions "promptly;" now must render decision within 5 days of appeal hearing.

C. Miscellaneous substantive changes that may come up from time to time

If an Association uses a court reporter for hearings (rather than records them), then the Association must allow the parties to record the hearing. Otherwise, an Association can choose to allow or deny parties the right to record and/or have court reporter present. This is one of a number of decisions Associations are required to make with regard to how they handle professional standards matters.

Eliminated rehearing procedure. (Previously, a party could request a rehearing after decision was rendered if he/she had newly discovered material evidence which he/she reasonably could not have discovered prior to the hearing.) This option has been eliminated.

Added new form of discipline: a member may be required to do something to insure compliance with the Code (or not to do something deemed to be in violation of the Code). This choice of discipline requires additional discipline be imposed for failure to comply with the imposed rule.

Amended language wherein Board of Directors can conclude that "findings of fact do not support a violation of Code of Ethics" (previously said may conclude that findings of fact do not support a POSSIBLE violation of Code of Ethics).

Every Association must be set up to offer ombudsman services to members, clients and consumers on or before January 1, 2016 (either directly or as part of a cooperative enforcement agreement).

Added optional ethics mediation process. Optional for Association to offer. Even if Association offers, ethics mediation participation is voluntary.

D. Matters of clarification/minor procedural changes

Clarified that “probation” is not a form of discipline, but a decision to hold a particular form of discipline in abeyance for a stipulated period of time not to exceed 1 year. Clarified that a Hearing Panel may recommend that some discipline be suspended during a probationary period, but may also impose one or more other forms of discipline which will not be held in abeyance. (Obviously, in these situations it will be very important for a Hearing Panel to provide great clarity in describing which discipline is subject to probation and which discipline will be imposed immediately.)

The discussion of parties’ participation in hearings via remote testimony has been revised. Decision of whether to allow is still that of the hearing chairperson, but the requestor need no longer show “extreme circumstances.” Added discussion of the duty of Association to verify identity of “remote” participant, preclude unauthorized persons from being in the presence of the remote participant and ensure confidentiality of the proceedings.

Deleted sentence that stated that counsel may participate only in the physical presence of a Hearing Panel.

Added more information about the use of alternate panel members. Associations may or may not use; alternates can attend hearings and deliberations, but must sit apart from the panel and not participate unless called on to replace a member.

Provided that notices via email are preferred method of delivery. (Does not change procedure whereby Administrator first requests an email acknowledgment, then try to get telephone confirmation and then resend via mail.)

Amended prehearing procedures (for deciding administrative issues) to provide that the chairperson has the authority to decide whether parties can be present at the prehearing conference and the extent to which their participation will be allowed.

Clarified that if a Grievance Committee member is assigned to assist a non-member in filing a complaint, that Grievance Committee member may not act as the complainant’s advocate or representative.

Amended waiver of hearing provisions (ethics) to raise maximum fine from \$5,000 to \$15,000. (This section was inadvertently not increased when the maximum

fine that can be awarded after a hearing was raised from \$5,000 to \$15,000 in 2013.)

If a late named witness is allowed and parties do not agree to continue the hearing at that time, then adjournment can be not less than 5 days, nor more than 30 days from original hearing. (Hearings adjourned for other reasons must reconvene not less than 15 days, nor more than 30 days from original hearing.)

Any party who appears at the hearing may be called as a witness without advance notice.

Record retention recommendation has been changed. The National Association of REALTORS® previously recommended all ethics records retained 1 year after discipline satisfied or arbitration paid (unless there was litigation threatened or pending). Modified to say that the ethics decision should be maintained permanently in member's file.

Explicitly states that if complainant names a particular principal in an arbitration complaint, that individual must attend the hearing.

Amended enforcement section to provide for judicial enforcement not only of arbitration awards issued by Hearing Panels, but also mediation settlements.

Explicitly provides that panel of Grievance Committee or Hearing Panel can consist of 3 (or more) persons. (On appeals, panel Board of Directors must consist of 5 Directors, or a quorum, whichever is less.)