

2014 Summary of Key Professional Standards Changes

This summary highlights substantive issues and changes, but is not all-inclusive. For complete information detailing all changes see the 2013 Professional Standards Committee Actions for Midyear and the Annual Convention on the Board Policy and Programs website (<http://realtor.org/mempolweb.nsf/comnameweb>; search on "Professional Standards Committee Actions"). Also review the shaded portions of the 2014 *Code of Ethics and Arbitration Manual* which highlights all changes.

Changes to the Code of Ethics and Standards of Practice

(underscoring indicates additions, strikeouts indicate deletions)

- Standard of Practice 3-2 revised

~~To be effective, a~~Any change in compensation offered for cooperative services must be communicated to the other REALTOR® prior to the time that REALTOR® submits an offer to purchase/lease the property. After a REALTOR® has submitted an offer to purchase or lease property, the listing broker may not attempt to unilaterally modify the offered compensation with respect to that cooperative transaction. (Amended 1/14)

- Article 10 revised

REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, ~~or sexual orientation, or gender identity.~~ REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, ~~or sexual orientation, or gender identity.~~ (Amended 1/14)

REALTORS®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, ~~or sexual orientation, or gender identity.~~ (Amended 1/14)

- Standard of Practice 10-3 revised

REALTORS® shall not print, display or circulate any statement or advertisement with respect to selling or renting of a property that indicates any preference, limitations or discrimination based on race, color, religion, sex, handicap, familial status, national origin, ~~or sexual orientation, or gender identity.~~ (Amended 1/14)

- Standard of Practice 11-1 revised

When REALTORS® prepare opinions of real property value or price, they must:

- 1) be knowledgeable about the type of property being valued,*
- 2) have access to the information and resources necessary to formulate an accurate opinion, and*
- 3) be familiar with the area where the subject property is located*

unless lack of any of these is disclosed to the party requesting the opinion in advance.

When an opinion of value or price is prepared other than in pursuit of a listing or to assist a potential purchaser in formulating a purchase offer, ~~such~~ the opinions shall include the following unless the party requesting the opinion requires a specific type of report or different data set:

- 1) identification of the subject property*
- 2) date prepared*
- 3) defined value or price*
- 4) limiting conditions, including statements of purpose(s) and intended user(s)*
- 5) any present or contemplated interest, including the possibility of representing the seller/landlord or buyers/tenants*
- 6) basis for the opinion, including applicable market data*
- 7) if the opinion is not an appraisal, a statement to that effect*
- 8) disclosure of whether and when a physical inspection of the property's exterior was conducted*
- 9) disclosure of whether and when a physical inspection of the property's interior was conducted*
- 10) disclosure of whether the REALTOR® has any conflicts of interest*
(Amended 1/14)

Changes to the Code of Ethics and Arbitration Manual

(underscoring indicates additions, strikeouts indicate deletions)

- Section 1 (j), Definitions Relating to Ethics, and Section 14, Nature of Discipline, were amended to increase the maximum fine from \$5,000 to \$15,000.

Note: Although changes to policy typically go into effect upon the publication of a new edition of the *Code of Ethics and Arbitration Manual*, no fine greater than \$5,000 may be assessed if the alleged bad act occurred prior to January 1, 2014. A fine between \$5,001 and \$15,000 may only be assessed if the bad act occurs **after** December 31, 2013.

- Section 20 (n), Initiating an Ethics Hearing, was revised to allow a hearing panel following the expedited ethics administration procedures to assess a maximum fine up to \$15,000 as opposed to the previous maximum of \$5,000.

Note that Form #E-20, Notice of Respondent (Ethics) and Optional Waiver of Right to Hearing, was also adjusted to reflect \$15,000 as the maximum fine.

- Section 14 (f) was amended to increase the amount the Directors may assess a member in lieu of being suspended from \$5,000 to \$15,000. It should be noted that allowing a member to pay an assessment in lieu of suspension is available only at the discretion of the association, and is only available to a member once in any three (3) year period.
- The last paragraph of Section 14 was amended as follows:

In addition to any discipline imposed, Boards and Associations may, at their discretion, impose administrative processing fees not to exceed \$500 against each respondent found in violation of the Code of Ethics or other membership duties. Any administrative processing fee will be in addition to, and not part of, any disciplinary sanction imposed. Boards and Associations ~~are encouraged to~~ shall determine in advance when, and under what circumstances, administrative processing fees will be imposed so that imposition is a matter of administrative routine.

- Section 19 A., Grievance Committee's Review of an Ethics Complaint, was amended as follows:

Upon receipt of an ethics complaint from the Board Secretary, the Chairperson of the Grievance Committee shall review the complaint. ~~and a~~ Any evidence and documentation attached will be considered only to the extent necessary to determine whether a complaint will be referred for hearing. The Chairperson may assign one or more members of the Grievance Committee to review the complaint and to make any necessary evaluation. The member(s) may, if necessary, gather additional information on the matters complained of if additional information appears is necessary to make a knowledgeable disposition of the complaint determine whether a complaint will be referred for hearing. The complaint shall be provided to the assigned members by the Board Secretary upon instruction from the Chairperson. (Amended 5/13)

The reviewer(s), if appointed, shall complete the assignment promptly and prepare a report and recommendation for the Grievance Committee. After reviewing the report, the Chairperson shall schedule a meeting of the Grievance Committee and may instruct the Secretary to provide members of the Grievance Committee with copies of the case file including the reviewer's report, if any. At the option of the Board, such file may be sent to the Grievance Committee members prior to the meeting or may be distributed at the meeting. (Amended 4/94)

Note: Similar revisions were made to Appendix V to Part Four, Ethics Hearing Checklist, paragraph #6.

- Appendix VII to Part Four, Sanctioning Guidelines, was amended as follows:

Local Boards of REALTORS[®], supported by the state and National Associations, have the awesome responsibility of fostering awareness, understanding, and appreciation for the duties and obligations the Code imposes on those who accept it as their guide to professionalism. A corollary duty of Boards is to receive and resolve complaints alleging potentially unethical conduct by REALTORS[®].

The REALTOR[®] organization is firmly committed to comprehensive education of REALTORS[®] and the public about the Code and the protections it affords, and also to vigorous, fair, and uniform enforcement when complaints are brought against members. The Code of Ethics and Arbitration Manual (Manual) details policies and procedures governing enforcement efforts.

Code enforcement achieves a number of goals. Where REALTORS[®] are wrongly or mistakenly charged with unethical conduct, the hearing process provides personal and professional vindication. Where violations are determined, the hearing process educates members about their professional obligations and serves as a meaningful deterrent to future violations. The Introduction goes on to point out that the ethics hearing process “. . . is educational in that it raises the consciousness of members to the meaning and significance of the Code” and that “many ethics violations occur inadvertently or through ignorance, and the hearing procedure serves as an effective educational tool.”

Allegations of unethical conduct are often understandably viewed by respondents as threats to their professional and personal reputations. This can result not only in the mounting of vigorous defenses but also, at times, to threats of legal challenge should a violation be determined and discipline imposed. Given that membership confers valuable rights, Boards need to strictly adhere to their established procedures when considering potential ethics violations. This caution ensures that the rights of the parties will be observed and that legal exposure of Boards will be minimized.

At the same time, well-founded caution should not be confused with reservation, reluctance, or hesitancy. The Code’s duties become aspirations at best, and potentially meaningless, if not enforced, and enforced with vigor and determination.

Fundamental to fair and consistent Code enforcement is reasonable and judicious use of discipline, as both an educational device and as punishment. The Manual authorizes a wide variety of sanctions that may be imposed for ethics violations and for violations of other membership duties. These range from simple letters of warning to expulsion from REALTOR[®] membership. Between these extremes are mandatory attendance at remedial educational sessions, fines, probation, and suspension. These sanctions, and the circumstances under which they may be imposed, are discussed in detail in the Manual.

The National Association does not recommend specific discipline for certain offenses, or for violations of particular Articles of the Code. This is in deference to the wisdom and autonomy of Hearing Panels privy to the details of complaints coming before them; in recognition of the fact that no two complaints are identical; and in view of the fact that the details of each hearing, including the experience of respondents, their history of prior violations, and mitigating or extenuating circumstances, may all come into play in determining an appropriate penalty. At the same time, there are key points to be considered with respect to discipline.

- *Discipline that can be imposed is strictly limited to those forms authorized in the Manual.*
- *Discipline should be commensurate with the offense. Unintentional or inadvertent violations should result in penalties designed to educate respondents as to the conduct expected of them as REALTORS®. Conversely, if a REALTOR® intentionally violates the Code, for example to realize an economic gain, a more severe sanction would be appropriate. Only authorized forms of discipline may be utilized. (Revised 11/13)*
- *Discipline should be progressive. The disciplinary emphasis on violations by new members or by longstanding members with no history of unethical conduct should be primarily educational. Repeated or subsequent violations should be addressed with more serious forms of discipline including substantial fines, suspension, and termination of membership. (See the section of this Appendix entitled “Progressive Discipline” for a more detailed discussion of progressive discipline).*
- *A “gray area” can exist with respect to “first time violations” that are clearly not the result of ignorance or mistake but rather demonstrate flagrant disregard for the Code’s obligations. While the educational aspect of Code enforcement cannot be disregarded, the fact that the Code exists to protect the public must also be seriously considered in determining commensurate discipline.*
- *Mitigating or extenuating circumstances should be considered in determining appropriate discipline. The fact that a respondent recognized or acknowledged inappropriate or unethical conduct, or took steps to remediate or minimize harm or injury that may have resulted from the respondent’s conduct, should be considered in determining appropriate discipline.*
- *Respondents’ records of earlier violations (or, conversely, the fact that they have not violated the Code in the past) can be considered in determining appropriate discipline. Hearing Panels cannot consider past violations in deciding whether the conduct currently complained of violated the Code.*

Crafting appropriate, meaningful discipline can challenge panels that have concluded that the Code has been violated. This discussion is offered as guidance, rather than as a hard and fast template, to assist panels in meeting their key role in ensuring the Code’s viability and vitality through vigorous and

evenhanded enforcement. Suggested guidelines that can be modified locally so long as the discipline proposed is consistent with the permissible forms authorized in the National Association's Code of Ethics and Arbitration Manual, can be found in the section of this Appendix entitled "Disciplinary Guidelines."

Progressive Discipline

Discipline imposed for violations of the Code of Ethics or for violations of other membership duties should be progressive, that is discipline should increase incrementally for subsequent violations. The disciplinary emphasis where first time violations occur should be primarily educational. Repeated or subsequent violations should result in more serious forms of discipline being utilized, including substantial fines, suspension, and termination of membership. At the same time, a gray area can exist where a first time violation is not attributable to ignorance or oversight but rather to blatant disregard for the Code and its obligations. While the educational emphasis of Code enforcement cannot be disregarded, the fact that the Code exists to protect the public must be carefully considered in determining appropriate discipline. Two contrasting examples are provided to illustrate these points.

Example 1: REALTOR® A, who had recently earned her real estate license, was found to have violated Article 12 for advertising a listed property without disclosing her status as either a REALTOR® or as a real estate licensee. At the hearing, REALTOR® A acknowledged her oversight and it was clear to the Hearing Panel that the violation was inadvertent and unintentional. The panel concluded that a letter of reprimand and attendance at a three (3) hour Code of Ethics update session was appropriate.

Two months later, REALTOR® A was charged with a nearly identical violation. After concluding that she had, in fact, violated Article 12, the Hearing Panel was given access to REALTOR® A's files to see whether REALTOR® A had previously violated the Code so that appropriate discipline could be recommended. It was the conclusion of the Hearing Panel that a second violation of the same Article, occurring just months after the first violation, warranted more serious discipline. REALTOR® A was fined \$2501,000 and required to attend a full day ethics education program. (Revised 11/13)

Three months later, REALTOR® A was again found to have violated Article 12. The Hearing Panel was then given access to REALTOR® A's file and, upon learning of the two (2) prior violations in less than a year, recommended a \$1,0005,000 fine. (Revised 11/13)

Example 2: REALTOR® B, who had recently received his real estate license, was found to have violated Article 4 for failing to disclose to his seller-client that the purchaser that REALTOR® B had procured was, in fact, REALTOR® B's wife. In determining appropriate discipline, the Hearing Panel considered REALTOR® B's limited experience in the real estate business and the fact that this was the first time that REALTOR® B had been found in violation of the Code. The Hearing Panel also considered that REALTOR® B's failure to disclose had not been inadvertent or unintentional and that REALTOR® B had knowingly concealed from his client a key fact that might have influenced the client's

decision to accept the offer from REALTOR® B's wife. Based on the seriousness of the violation and REALTOR® B's conscious disregard for his disclosure obligation, the Hearing Panel recommended a ~~\$2,500~~ \$5,000 fine and retaking the ethics orientation required for new members. (Revised 11/13)

Disciplinary Guidelines

Code enforcement achieves a number of important goals. Where REALTORS® have been wrongly or mistakenly charged with unethical conduct, the hearing process provides personal and professional vindication. Where violations are determined, the hearing process and resulting discipline educates members about their professional obligations and serves as a meaningful deterrent to future violations.

Determining that a violation of one or more Articles has occurred is only a part of a Hearing Panel's job. Equally important is crafting discipline commensurate with the offense. Panels will want to consider that many violations occur due to lack of familiarity with the Code and its obligations, inexperience, oversight, or as unintentional mistakes. In such cases, the primary purpose of discipline should be educational to ensure that similar violations do not occur in the future. In other cases, violations can occur because of knowing disregard for the Code and its duties. In such cases, greater emphasis will be placed on the punitive nature of discipline.

Factors Hearing Panels should consider in determining appropriate discipline include, but are not necessarily limited to:

- 1. The nature of the violation.*
- 2. Harm caused by the violation. Was the violation a minor mistake causing little or no harm or, alternatively, was a client, customer, member of the public, or another REALTOR® harmed?*
- 3. Was the violation inadvertent or unintentional or, conversely, was it the result of knowing disregard for the Code's obligations?*
- 4. How much real estate experience did the violator have? Did he, or should he, have known better?*
- 5. Has the violator been found in violation of the Code previously? How often? How recently? Is the current violation related or similar to earlier violations?*
- 6. Are there mitigating or extenuating circumstances that should be considered in determining appropriate discipline?*
- 7. Did the violator acknowledge the violation? Did the violator express remorse or contrition?*
- 8. Are there other factors that ought to be considered?*

With these questions in mind, panels can be guided by (but are not bound by) the following guidelines which may be modified locally at the discretion of each local Board.

First violation example #1 (or first violation within three [3] years):

- violation considered relatively minor, or
- little or no harm or injury caused to others, or
- violation resulted from ignorance or misunderstanding

Possible discipline:

- letter of warning
- fine of ~~\$200~~500 or less
- attendance at relevant education session
- any combination of the above (Revised 11/13)

First violation example #2 (or first violation within three [3] years):

- violation considered relatively serious, or
- some harm or injury caused to others, or
- violation resulted from disregard for the Code's obligations

Possible discipline:

- letter of reprimand
- fine of ~~\$1,000~~2,000 or less
- attendance at relevant education session(s)
- any combination of the above (Revised 11/13)

First violation example #3 (or first violation within three [3] years):

- violation considered very serious, or
- substantial harm or injury caused to others, or
- violation resulted from knowing disregard of the Code's obligations

Possible discipline:

- letter of reprimand
- fine of ~~\$2,000~~10,000 or less
- attendance at relevant education session(s)
- probation*
- suspension for ninety (90) days or less
- any combination of the above (Revised 11/13)

Repeat violations example #1 (within three [3] years):

- current violation considered relatively minor, or
- little or no harm or injury caused to others, or
- violation resulted from ignorance or misunderstanding

Possible discipline:

- attendance at relevant education session(s) or course
- fine of ~~\$1,000~~2,000 or less
- probation for three (3) months or less* (Revised 11/13)

Repeat violations example #2 (within three [3] years):

- current violation considered relatively serious, or
- some harm or injury caused to others, or
- violation resulted from disregard for the Code's obligation

Possible discipline:

- attendance at relevant education session(s) or course
- fine of ~~\$2,000~~10,000 or less
- probation for six (6) months or less*
- suspension for three (3) months or less
- any combination of the above (Revised 11/13)

Repeat violations example #3 (within three [3] years):

- violation considered very serious, or
- substantial harm or injury caused to others, or
- violation resulted from knowing disregard for the Code's obligations

Possible discipline:

- attendance at relevant education session(s) or course
- fine of ~~\$3,500~~15,000 or less
- ~~probation for one (1) year or less*~~
- suspension for six (6) months or less
- any combination of the above (Revised 11/13)

More serious forms of discipline (including ~~fining of up to \$5,000~~, possible termination of MLS privileges, suspension from membership for up to one [1] year, or termination of membership for up to three [3] years) may be appropriate in cases of very serious violations or in cases of repeated violations. (Revised 11/13)

Important Note: *These are not sentencing rules or requirements, but rather simply suggestions to guide Hearing Panels in determining appropriate discipline based both on the current violation and the violator's previous record of ethical conduct.*

- Section 1 (q), Definitions Relating to Ethics, and Section 26 (l), Definitions Relating to Arbitration, were amended to add the following definition:

"Person" means a natural person.

- The first and fourth paragraphs of Section 20 (a), Action of the Board of Directors, was amended as follows:

Any person, whether a member or not, having reason to believe that a member is guilty of any conduct subject to disciplinary action, may file a complaint in writing, in their own name, with the Secretary, dated and signed by complainant, stating the facts on which it is based (Form #E-1, Complaint, Part Six), provided that the complaint is filed within one hundred eighty (180) days after the facts constituting

the matter complained of could have been known in the exercise of reasonable diligence or within one hundred eighty (180) days after the conclusion of the transaction or event, whichever is later. (Revised 5/13)

The procedures for processing complaints alleging violations of an Association's bylaws prohibiting harassment are available on-line at REALTOR.org, and those procedures do not involve an Association's Grievance Committee, Professional Standards Committee, or Board of Directors. (Adopted 11/11)

Suspension of filing deadlines: If the Board's informal dispute resolution processes (e.g., ombudsman, mediation, etc.) are invoked or initiated by a complainant (or potential complainant) with respect to conduct that becomes the subject of a subsequent ethics complaint, the one hundred eighty (180) day filing deadline shall be suspended beginning with the date of the complainant's (or potential complainant's) request for informal dispute resolution service or assistance and shall resume when the informal dispute resolution procedures are concluded or terminated. Questions about when informal dispute resolution began or ended will be determined by the Board President or the President's designee. The filing deadline shall also be suspended during any period when the respondent does not hold REALTOR® or REALTOR-ASSOCIATE® membership. (Amended 11/12)

*The Secretary shall promptly refer any complaint to the Chairperson of the Grievance Committee, who may designate one or more members of the Grievance Committee to review the complaint and report their findings to the Grievance Committee for its determination as to whether to (1) dismiss the complaint as unworthy of further consideration, (2) refer it back to the complainant as appropriate for arbitration rather than disciplinary action, or (3) refer it back to the Secretary to schedule for hearing. This review process may include, if necessary, ~~information on the matters complained of~~ if additional information appears other than the written complaint itself only if necessary to make a knowledgeable disposition of the complaint determine whether a complaint will be referred for hearing. The Grievance Committee may, if it thinks it appropriate, send a copy of the complaint to the party complained of and require the respondent to furnish it with a response before making its determination. (See Form #E-4, Grievance Committee Request for Information [Ethics Complaint] and Form #E-5, Response to Grievance Committee Request for Information, **Part Six** of this Manual). The party complained of shall be advised that failure to respond to the Grievance Committee's request may result in the complaint being forwarded for a hearing and may subject the respondent to a charge of having violated Article 14 for failing to submit pertinent facts to an appropriate tribunal. The function of the Grievance Committee is to make only such preliminary review and evaluation of the complaint as are required to determine whether the complaint warrants further consideration by a Hearing Panel of the Professional Standards Committee. The Grievance Committee does not conduct hearings and does not determine if a violation of the Code of Ethics has occurred. (Revised 5/13)*

- Section 21 (f) (1), Ethics Hearing, was amended as follows:

(f) Amendment of complaint:

(1) At any time prior to the hearing of the complaint, the complainant may file an amended complaint with the Secretary (excluding amendments pertaining to an Article previously dismissed by the Grievance Committee relating to previously charged respondents). If an amended complaint is filed prior to the hearing, the respondent shall be notified, given a copy, and provided the opportunity to file an amended response. The Hearing Panel may disallow the amended complaint. At any time prior to the hearing of the complaint, the Hearing Panel may name the REALTOR® principal as a respondent. Complaints cannot be amended to add or substitute other individuals as complainants except as mutually agreed to by the parties. (Revised 5/13)

Note: A similar change was made to Appendix V to Part Four, paragraph 21, Ethics Hearing Checklist.

- Section 22 (a), Decision of Hearing Panel, was amended as follows:

*(a) The decision of the Hearing Panel shall be by a simple majority vote and in writing (Form #E-11, Decision [Ethics], **Part Six** and the Professional Standards Training Guide) and shall contain findings of fact and a statement of the disciplinary action recommended, if any. Under no circumstances can the Board award money “damages” in an ethics proceeding. The decision shall include a clear, concise, and objective recitation of the specific facts upon which the Hearing Panel based its conclusion. Such decision shall not be disclosed during the ethics proceeding, or any appeal or rehearing, to any persons except the Directors, the complainant, the respondent, Board legal counsel, and the Secretary. However, failure of confidentiality shall not invalidate the decision. The decision shall be filed with the Secretary within ten (10) days after the Hearing Panel’s decision is final.***

Any member of the Hearing Panel not voting with the majority may dissent from all or any portion of the findings or decision and may file a dissent in writing with the Secretary for consideration by the Directors at the same time the decision is considered. Copies of the decisions disseminated pursuant to these procedures shall be complete and unedited unless an Association, by affirmative action of its Board of Directors, adopts procedures under which decisions presented to the Board of Directors for ratification will not include the names of the parties. The dissenting opinion should also be provided to the parties. In the event the respondent is found in violation, the Hearing Panel ~~may, at its discretion,~~ will consider all records of previous violations and sanctions imposed, whether by the current or by any other Board or Association, in the member’s file in determining discipline, and ~~if the Hearing Panel considers prior violations and sanctions in making its recommendation of discipline~~ the rationale for the current disciplinary action can be provided to the parties and the Directors as part of the decision. The Hearing Panel’s consideration will include whether prior disciplinary matters involve discipline

that was held in abeyance and that will be triggered by a subsequent violation (including the matter currently under consideration by the Hearing Panel.)
(Revised 11/13)

***The Hearing Panel's decision shall be considered final only when it is in writing and signed by members of the panel following their personal review and any review by legal counsel which may be required.*

Note: A similar change was made to Appendix V to Part IV, paragraph #25, Ethics Hearing Checklist, and to Form #E-11, Decision of Ethics Hearing Panel of the Professional Standards Committee.

- Administrative Time Frames – Ethics Proceedings was amended to clarify that when a hearing is adjourned it should be reconvened not less than 15 days nor more than 30 days from the hearing unless a “late” witness is called and then the hearing should be reconvened not less than five days from the hearing pursuant to Section 5 of the Code of Ethics and Arbitration Manual.
- Appendix I to Part Ten, Arbitrable Issues, was amended as follows:

Another question that frequently arises with respect to arbitration requests is whether the fact that the listing broker was paid out of the proceeds of the closing is determinative of whether a dispute will be considered by a Hearing Panel. Initially, it should be noted that the Arbitration Guidelines (Appendix II to Part Ten) provide that an arbitrable issue involving procuring cause requires that there have been a “successful transaction.” A “successful transaction” is defined as “a sale that closes or a lease that is executed.” Some argue that if the listing broker is not paid, or if the listing broker waives entitlement to the commission established in the listing contract, then there is nothing to pay to the cooperating broker and, thus, no issue that can be arbitrated. This is an improper analysis of the issue. While the listing broker needs the consent of the seller/client to appoint subagents and to compensate subagents, buyer agents, or brokers acting in some other recognized agency or non-agency capacity, the offer to compensate such individuals, whether made through the multiple listing service or otherwise, results in a separate contractual relationship accepted through performance by the cooperating broker. Thus, if the cooperating broker performs on the terms and conditions established by the listing broker, the fact that the listing broker finds it difficult to be paid or, alternatively, waives the right to be paid, has no bearing on whether the matter can be arbitrated but may have a direct impact on the outcome. Many cooperative relationships are established through MLS and the definition of the MLS provides, in part: (Revised 11/97)

While offers of compensation made by listing brokers to cooperating brokers through MLS are unconditional, a listing broker's obligation to compensate a cooperating broker who was the procuring cause of sale (or lease) may be excused if it is determined through arbitration that, through no fault of the listing broker and in the exercise of good faith and reasonable care, it was impossible or financially unfeasible for the listing broker to collect a commission pursuant to the listing agreement. In such instances, entitlement to cooperative compensation*

offered through MLS would be a question to be determined by an arbitration Hearing Panel based on all relevant facts and circumstances including, but not limited to, why it was impossible or financially unfeasible for the listing broker to collect some or all of the commission established in the listing agreement; at what point in the transaction did the listing broker know (or should have known) that some or all of the commission established in the listing agreement might not be paid; and how promptly had the listing broker communicated to cooperating brokers that the commission established in the listing agreement might not be paid. (Amended 11/98)

Still another common question is whether a REALTOR® (often a cooperating broker with an arguably-arbitrable claim) can thwart the process by remaining silent for one hundred eighty (180) days and then bringing a lawsuit against another REALTOR® (often the listing broker). As noted previously, arbitration requests must be filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later. REALTORS® cannot reasonably be expected to request arbitration in circumstances where they have no reason to know that a dispute with another broker or firm even exists. Under these circumstances, a listing broker with no prior knowledge of a dispute would have one hundred eighty (180) days from receipt of notice of a lawsuit to invoke arbitration with the other broker. (Adopted 11/13)

The foregoing are by no means all-inclusive of the consideration that must be taken into account by a Grievance Committee in determining whether a matter will be arbitrated. However, they are some of the common questions raised with respect to arbitrable issues, and this discussion is provided to assist Grievance Committees in their important role in evaluating arbitration requests. (Adopted 4/91)

Non-Arbitrable Issues that Can be Mediated as a Matter of Local Determination

As stated above, an arbitrable issue includes a contractual question arising out of a transaction between parties to a contract, in addition to certain specified non-contractual issues set forth in Standard of Practice 17-4. Arbitration proceedings should be limited to these issues, and Boards of REALTORS® should not arbitrate other types of claims. Examples of non-arbitrable issues include:

- *tortious interference with business relationships*
- *tortious interference with a contractual relationship*
- *economic duress*
- *intentional infliction of emotional distress*
- *other tort claims, such as libel/slander*
- *employment claims, other than commission disputes*
- *fraud/misrepresentation claims*
- *property claims, both real and personal*

In addition, Section 53 of the Code of Ethics and Arbitration Manual limits the award in an arbitration proceeding to the amount in dispute and so an arbitration

award will not include punitive damages, attorney's fees, or interest, unless the agreement between the parties specifically provides for such damages and the award is permitted by state law.

Associations may, but are not required to, provide mediation services for disputes of the type listed above. (Revised 5/13)

- Case Interpretation #10-4 and #10-5, Use of “Choose Your Neighbor” Marketing Letters, were both revised to expand the protected classes reflected in Article 10 to include sexual orientation and gender identity.
- Pathways to Professionalism was amended as follows:

These professional courtesies are intended to be used by REALTORS® on a voluntary basis, and cannot form the basis for a professional standards complaint.

Respect for the Public

1. *Follow the “Golden Rule” — Do unto others as you would have them do unto you.*
2. *Respond promptly to inquiries and requests for information.*
3. *Schedule appointments and showings as far in advance as possible.*
4. *Call if you are delayed or must cancel an appointment or showing.*
5. *If a prospective buyer decides not to view an occupied home, promptly explain the situation to the listing broker or the occupant.*
6. *Communicate with all parties in a timely fashion.*
7. *When entering a property, ensure that unexpected situations, such as pets, are handled appropriately.*
8. *Leave your business card if not prohibited by local rules.*
9. *Never criticize property in the presence of the occupant.*
10. *Inform occupants that you are leaving after showings.*
11. *When showing an occupied home, always ring the doorbell or knock—and announce yourself loudly—before entering. Knock and announce yourself loudly before entering any closed room.*
12. *Present a professional appearance at all times; dress appropriately and drive a clean car.*
13. *If occupants are home during showings, ask their permission before using the telephone or bathroom.*
14. *Encourage the clients of other brokers to direct questions to their agent or representative.*
15. *Communicate clearly; don't use jargon or slang that may not be readily understood.*
16. *Be aware of and respect cultural differences.*
17. *Show courtesy and respect to everyone.*
18. *Be aware of—and meet—all deadlines.*
19. *Promise only what you can deliver—and keep your promises.*

20. *Identify your REALTOR® and your professional status in contacts with the public.*
21. *Do not tell people what you think—tell them what you know.*

Respect for Property

1. *Be responsible for everyone you allow to enter listed property.*
2. *Never allow buyers to enter listed property unaccompanied.*
3. *When showing property, keep all members of the group together.*
4. *Never allow unaccompanied access to property without permission.*
5. *Enter property only with permission even if you have a lockbox key or combination.*
6. *When the occupant is absent, leave the property as you found it (lights, heating, cooling, drapes, etc.). If you think something is amiss (e.g., vandalism) contact the listing broker immediately.*
7. *Be considerate of the seller's property. Do not allow anyone to eat, drink, smoke, dispose of trash, use bathing or sleeping facilities, or bring pets. Leave the house as you found it unless instructed otherwise.*
8. *Use sidewalks; if weather is bad, take off shoes and boots inside property.*
9. *Respect sellers' instructions about photographing or videographing their properties' interiors or exteriors.*

Respect for Peers

1. *Identify your REALTOR® and professional status in all contacts with other REALTORS®.*
2. *Respond to other agents' calls, faxes, and e-mails promptly and courteously.*
3. *Be aware that large electronic files with attachments or lengthy faxes may be a burden on recipients.*
4. *Notify the listing broker if there appears to be inaccurate information on the listing.*
5. *Share important information about a property, including the presence of pets, security systems, and whether sellers will be present during the showing.*
6. *Show courtesy, trust, and respect to other real estate professionals.*
7. *Avoid the inappropriate use of endearments or other denigrating language.*
8. *Do not prospect at other REALTORS®' open houses or similar events.*
9. *Return keys promptly.*
10. *Carefully replace keys in the lockbox after showings.*
11. *To be successful in the business, mutual respect is essential.*
12. *Real estate is a reputation business. What you do today may affect your reputation—and business—for years to come.*

Additional Points of Interest

1. The National Association's Professional Standards Education Seminar will be held in Chicago August 21 and 22, 2014. For more information, in January, please go to: <http://www.realtor.org/events/mediation-training>.
2. The National Association's Mediation Training Seminar will be held in Chicago July 16, 17, and 18, 2014. For more information, in January, please go to: <http://www.realtor.org/events/professional-standards-education-seminar>.