

Ethics and Arbitration

Filing Ethics Complaints and Arbitration Requests at the High Desert Association of Realtors®

The National Association of REALTORS® adopted the Code of Ethics in 1913. Since then, REALTORS® everywhere have agreed to meet the Code's high standards.

The professional standards process plays a very important role in an Association of REALTORS®. It helps to ensure honorable, faithful, and competent service to clients and other members of the public by enforcing the Code of Ethics.

The High Desert Association of REALTORS® has prepared this information to help you understand the process. The High Desert Association of REALTORS® serves as the Professional Standards administrator for High Desert REALTORS®.

Q: What if I have a complaint concerning a REALTOR®? I have a complaint concerning a REALTOR®?

A: Before processing a complaint with an Association of REALTORS®, you must first determine if the agent involved is a REALTOR®. Not all real estate agents are REALTORS®. Only those who belong to an Association of REALTORS® may use the term REALTOR®. Therefore, you must determine if the agent is a REALTOR® and if so to which local Association of REALTORS® an agent belongs.

When joining an Association, all members agree to abide by the Code of Ethics as a continuing condition of membership. It is because of a REALTORS® obligation to abide by the Code of Ethics that you may file a complaint at an Association of REALTORS®.

Q: Is my complaint Ethics or Arbitration?

A: You need to determine if your complaint concerns an ethics matter or if you are asking for arbitration of a business dispute.

An ethics complaint charges that a REALTOR® violated one or more Articles of the National Association of REALTORS® Code of Ethics.

Arbitration provides a means for resolution of a business contractual dispute involving payment of money related to the real estate transaction when the parties have been unable to resolve the difference among themselves.

If your situation concerns both ethics and arbitration, the Association will handle the arbitration portion separately. The Association will only consider the ethics complaint after the arbitration. The Association always processes arbitration first and there is no connection between the two matters; each is handled separately from the other.

Q: Who may file an ethics complaint?

A: Anyone. Any person, whether a member or not, may file a complaint against an Association REALTOR® member, alleging a violation of one or more of the Articles of the Code of Ethics. However, the complaint must:

1. Be in typed or printed format on a Ethics Complaint form;
2. Be signed by the Complainant;
3. State the facts surrounding the case and how they specifically relate to the articles being changed;

4. Be filed within 180 days after the facts could be known.

The Complainant may file a complaint from any location. However, the Complainant must file it with the local Association of REALTORS® where the individual REALTOR® (S) named in the complaint is a member.

Q: Who may file an arbitration request?

A: Only the following may request arbitration: REALTORS® who are principal brokers; REALTORS® who are not principals, provided the principal broker joins in the request; clients of a REALTOR®.

Similar to an ethics complaint, an arbitration request must:

1. Be in writing on a Request for Arbitration form;
2. Be signed by the Complainant;
3. Indicate the amount in the dispute;
4. Be filed within 180 days after the facts could be known.

The Association provides arbitration as a service to its members. Arbitration is not a disciplinary proceeding, nor may a participant be awarded damages in arbitration. By becoming and remaining a REALTOR®, each member promises to arbitrate certain disputes.

Not every situation may be arbitrated at the Association. Conditions and limitations exist which you must consider. The Association Staff will explain these conditions and limitations to you as the process continues.

NOTE: Disputes involving clients of REALTORS® require that they sign an agreement to arbitrate and be bound by the arbitration. The Association's Professional Standards Chairperson will determine whether or not the dispute is one that the Association can process.

Q: What recourse does the Association have?

A: An Association of REALTORS® possesses limited authority regarding its members. Note the following limitations:

1. The Association cannot charge a member with violations of the California real estate license law or any other law. Its jurisdiction covers only violations of membership duties. The California Real Estate Commissioner controls the real estate agent's license to sell real estate. If you think the person has violated the license law, you should contact this agency.
2. For the same reason, the Association cannot suspend or terminate the license of one of its members.
3. The Association can administer discipline to a REALTOR®. This would happen only in the case of a violation of the Code of Ethics as determined by an ethics-hearing panel. The Association can use one or more of the following ways to discipline a member,
 - a) A letter of warning or reprimand to the member;
 - b) Direct the member to attend an ethics class or other training appropriate to the violation;
 - c) Fine the member up to \$5,000 (This award is not awarded to the Complainant);
 - d) Place the member on Probation;
 - e) Suspend the membership of the member;
 - f) Expel the member from membership.
4. An ethics proceeding may not include money damages.
5. The Association can arbitrate certain money disputes and must in some situations. But a member of the public must agree in writing to arbitrate the dispute and to be bound by the decision.

6. An arbitration award may not be more than the amount in dispute. In no circumstances will the Association award "punitive" damages.

Q: How do I file an ethics complaint?

A: Procedure to file an ethics complaint:

1. Complete and sign the complaint form available from the Association of REALTORS® office. This form requests you to name the REALTOR® in question as the Respondent.
2. List the Articles of the Code of Ethics that you think the REALTOR® violated.
3. Attach an explanation of the situation surrounding the complaint. Be as specific as possible, referring at all times to the specific Articles of the Code. State what, when, where, why and how you think the REALTOR® violated each Article.
4. Attach copies of any and all pertinent documents such as listing agreements, purchase agreements, correspondence, etc. If you have notarized statements from witnesses, include those also.
5. Keep a copy for your records, and send the entire package (ATTN: Professional Standards Administrator) to the Association.

Q: How do I file an arbitration request?

A: Procedure to file an arbitration request:

1. Complete and sign the request for arbitration form available from the Association of REALTORS® office. Name the REALTOR® in question as the Respondent.
2. Indicate the amount in dispute.
3. Include an explanation of the circumstances surrounding the situation. State why you feel you are entitled to an award of some kind. Remember do not include allegations of unethical conduct in your request for arbitration. If you think the REALTOR® violated the Code of Ethics, the Association would handle this separately by means of an ethics complaint.
4. Attach copies of any pertinent documents such as listing agreements, purchase agreements, closing statements, etc. Also include any notarized statements from witnesses.
5. Include a \$500.00 deposit with your arbitration request.
6. The Association will ask you to sign an arbitration agreement. This indicates your commitment to abide by the Hearing Panel.
7. Send all items to the Association (ATTN: Professional Standards Administrator).

Remember, it is not unusual for an Association to receive an ethics complaint and an arbitration request regarding the same set of circumstances. If you think a REALTOR® violated the Code of Ethics and the situation also involve a monetary dispute, you must complete both forms: request for arbitration and ethics complaint.

Q: Once the Association receives an ethics complaint or arbitration request, how does it process the complaint/request?

A: Two committees of the Association handle complaints – first the Grievance Committee and then the Professional Standards Committee. Their functions are described below:

Grievance Committee Ethics Complaints: The Grievance Committee reviews complaints received by the Association. The Committee determines whether the complaint merits further consideration. The Committee considers the following:

1. Is the complaint in an acceptable form?
2. Are all necessary parties named in the complaint?
3. Is the respondent named in the complaint a member of the Association, and was the

- respondent a member of any Association at the time of the alleged offense?
4. Is litigation or any government agency investigation or other action pending related to this transaction?
 5. Was the complaint filed within 180 days of the time that the complainant in the exercise of reasonable diligence could have known the alleged offense and facts relating to it?
 6. Is there any reason to conclude that the Association would be unable to provide an impartial Hearing Panel?
 7. Are the specific Articles cited in the complaint appropriate? Should additional Articles be cited? Are any inappropriate Articles cited?
 8. If the facts alleged in the complaint were taken as true on their face, is it possible that a violation of the Code of Ethics occurred?

After reviewing the complaint, the committee will:

1. Forward the case for a hearing;
2. Dismiss it, if the complaint is determined to be frivolous, harassing, or unfounded; or
3. Postpone its decision to get more information from you. Also, the Committee may request a reply from the Respondent before they make their decision.

If the Committee dismisses your complaint, you have the right to appeal the dismissal to the Board of Directors of the Association. In an appeal, the Directors re-examine the materials submitted to the Grievance Committee. The Directors can then either uphold or overturn the Committee's decision.

If your complaint merits further consideration, it will be sent to the Professional Standards Committee for a hearing.

Arbitration is sometimes a duty, sometimes a privilege for REALTORS®. The Executive Officer must decide whether your situation fits into the "duty" or the "privilege" category.

To determine the category the Professional Standards Administrator considers these points:

1. Whether you are authorized, under the rules, to request arbitration.
2. Whether the controversy described is a matter to be arbitrated.
3. Whether the arbitration is mandatory or voluntary for the people involved. (This simply means whether or not the arbitration is compulsory.)
4. Whether the matter is currently the subject of litigation.

Such a review could result in releasing Association members from their obligation to arbitrate. This would free you to seek other recourse in order to resolve the dispute.

Professional Standards Committee

The function of this committee is to hold ethics and arbitration hearings. When the Committee schedules a hearing, you will be notified of the time, date, and place. These hearings provide an opportunity for the Complainant and Respondent to explain their side of the story by presenting testimony, evidence and witnesses.

Once all the facts have been presented, a Hearing Panel (consisting of members of the Professional Standards Committee of the Association, and chosen for their experience, temperament and objectivity) will determine whether the Code of Ethics has been violated, or in the case of arbitration, how the dispute should be settled.

The Association will inform you about each step of this process as it occurs. The Association will also provide you with instructions about the hearing procedure, well in advance of the hearing. The entire process usually takes about sixty days, but sometimes is longer, depending on individual circumstances.