

***Professional Standards Seminar:
Professional Enforcement of the Code***

by

Bruce H. Aydt

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Icebreaker Exercise

The instructor will tell you how to form groups. In your group, you should:

1. Introduce yourselves if you do not already know each other.
2. As a group, answer the questions in the quiz below.

- | | | | |
|---|---|-----|---|
| T | F | 1. | At the time the Code of Ethics was adopted, there were no real estate licensing laws. |
| T | F | 2. | The Preamble to the Code is aspirational and contains ideals that REALTORS® strive to attain, but cannot be used as the basis for disciplinary action. |
| T | F | 3. | If an ethics complaint is received from a complainant and it cites no articles but does complain of a REALTOR®'s conduct, it can be forwarded by the Grievance Committee for a hearing before a Professional Standards hearing panel. |
| T | F | 4. | In an ethics hearing, witnesses can be compelled to testify by issuing a subpoena. |
| T | F | 5. | An arbitration award never includes findings of fact and states only the amount of the award. |
| T | F | 6. | An arbitration panel may not award more than the amount requested in the arbitration petition. |
| T | F | 7. | The Board of Directors can file an ethics complaint against a member with the Grievance Committee. |
| T | F | 8. | The Grievance Committee can file a complaint as the complainant on its own motion. |
| T | F | 9. | An appeal from a Grievance Committee decision is heard by a Hearing Panel comprised of members of the Professional Standards Committee. |
| T | F | 10. | In an appeal from a Grievance Committee decision, the parties appear at the appeal hearing and present their respective cases |

"Business Ethics"

- A. What are "business ethics?"
 - 1. Industry codes
 - 2. Company policies
 - 3. Individual moral values

- B. Business ethics and legal standards

- C. Business ethics and the REALTOR® Code of Ethics

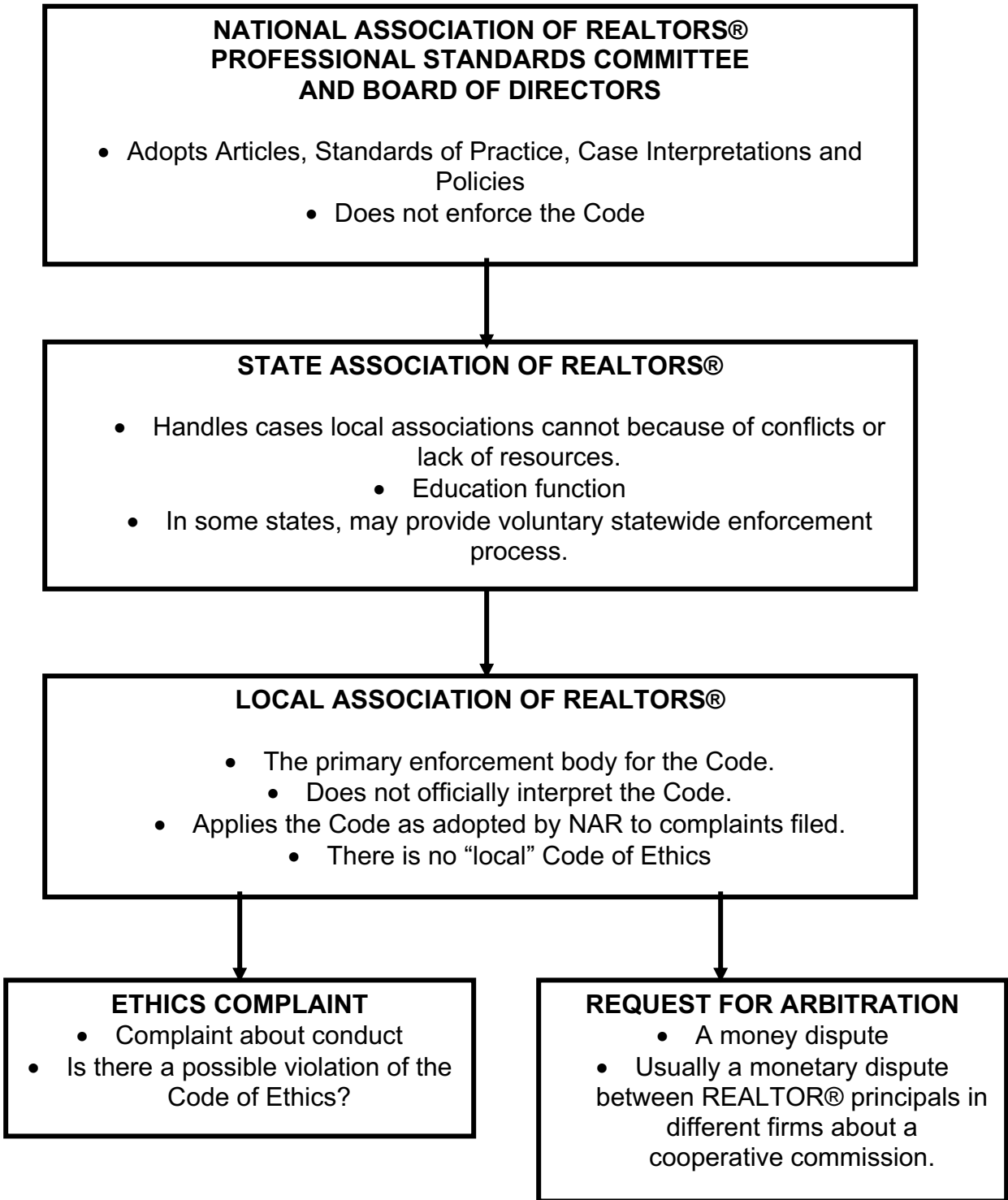
Concepts of the Preamble

- 1. "Widely allocated ownership" and "widest distribution of land ownership"

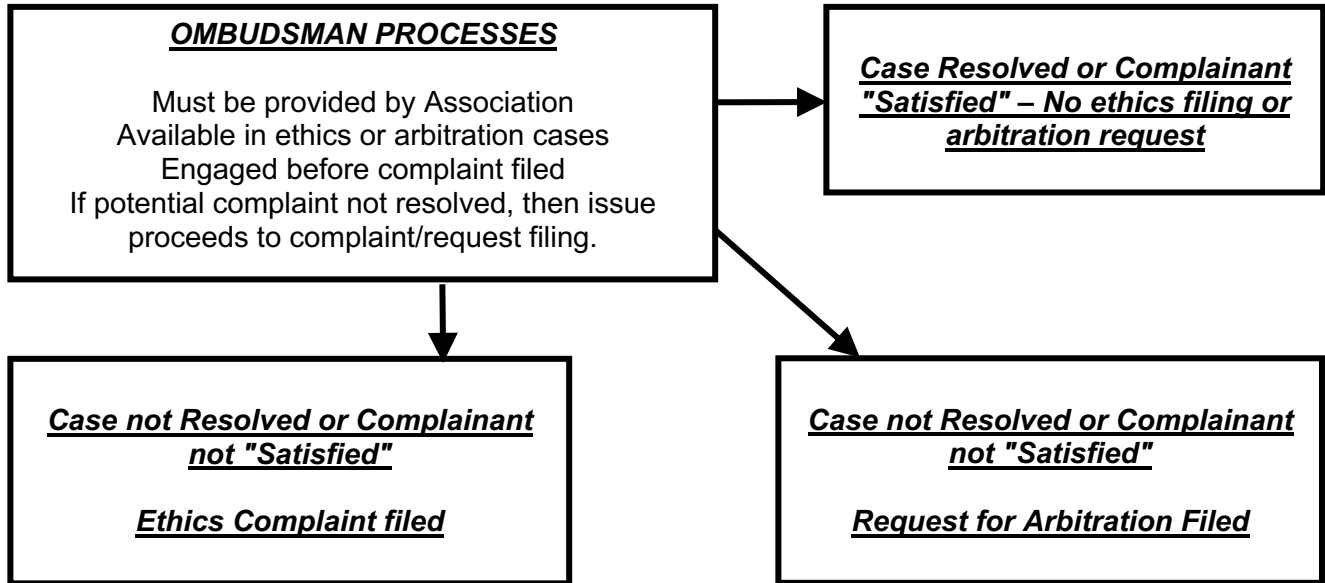
- 2. "No inducement of profit ..."

- 3. "... urge exclusive representation of clients."

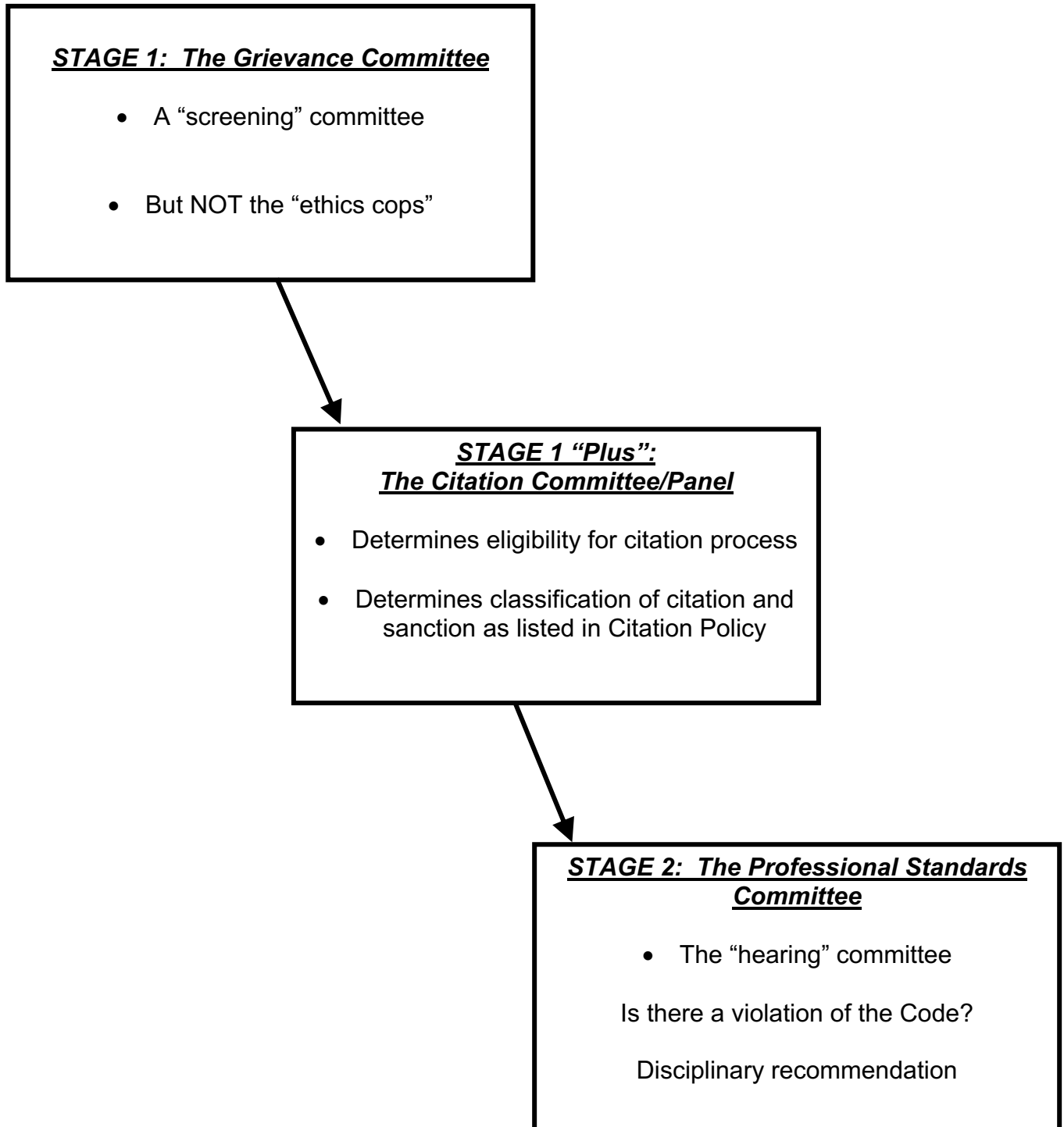
Overview of the Enforcement Process



Ombudsman Processes

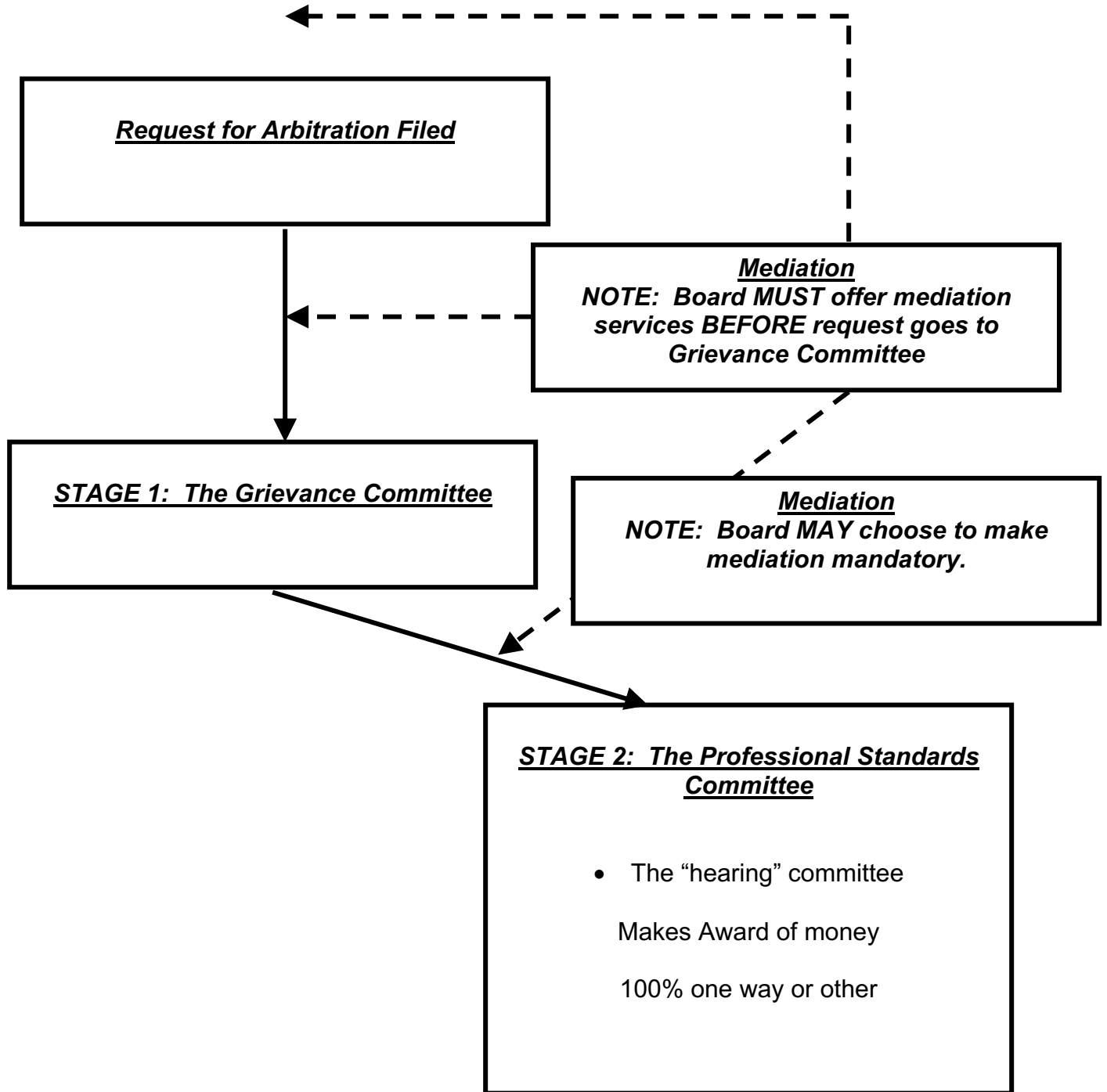


Ethics Complaints - The “Two ‘Plus’ Stage” Process



FINAL STAGE: Board of Directors reviews decision for confirmation. May dismiss if findings of fact do not support a violation of the Code.

Arbitration Cases - The “Three Stage” Process



FINAL STAGE: Board of Directors (does not review at all except when a Request for Procedural Review (“appeal”) is filed.)

Due Process: The Foundation of Code Enforcement

- A. Why do we need Due Process??
 - ▶ Board membership is a valuable property right.
 - ▶ Antitrust dangers.

- B. Concepts of Due Process
 - ▶ Fundamental idea of fairness

- C. Principles of Due Process - How to Provide It.
 1. Right to know nature of complaint/arbitration in advance.
 2. Opportunity to prepare an adequate defense.
 3. Right to call witnesses.
 4. Right to present evidence/testimony.
 5. Right to cross-examine witnesses called by other side.
 6. Right to have legal counsel present.
 7. Right to a hearing before an impartial peer panel.
 8. Right to an appeal.

An Ethics Complaint – Grievance Committee Role and Standards for Consideration

1. Is the complaint on the proper form?
2. Are all necessary parties named?
 - a. Who is necessary?
 - b. Is the broker always joined?
 - c. Is the broker always entitled to be apprised of information regarding the broker's sales associate?
3. Is the complaint timely filed?
 - ◆ What is the time?
 - ▶ 180 days from when the facts, in the exercise of reasonable diligence, could have been known by the complainant OR
 - ▶ 180 days after the conclusion of the transaction, whichever is later.
4. What about the Articles cited?
 - a. Are any Articles cited?
 - b. Are the appropriate Articles cited?
 - c. Should Articles be deleted?
 - d. Should Articles be added?
 - e. Should Standards of Practice be cited in support of Articles charged?
5. **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?**

Responses and the Role of a Response at the Grievance Committee Stage

1. Complainants are not required to provide “proof” of their case. Grievance Committees do not dismiss complaints for a lack of evidence.
2. Grievance Committees do not get responses unless it bears upon one of the specific bases in Section 19 of the CEAM. Examples include whether the complaint was timely filed, whether a respondent was a REALTOR® when the events occurred, and whether the proper parties are named.

Grievance Committees do not get responses as to the truth or falsity of the complainant’s allegations.

Grievance Committee Ethics Case Study

Instructions: Read the case study and then answer the questions at the end with your groups.

REALTOR® Carl listed Seller Harry's home for sale and put the property into the MLS. REALTOR® Ned saw the new listing in the MLS and felt that he had a buyer prospect for the home. Ned arranged a showing through the listing office and showed the property to his buyer prospect. Seller Harry happened to be at home during the showing and Ned's buyer and the seller struck up a conversation during the showing. The buyer asked Seller Harry where he was moving to and Harry volunteered that he had taken a new job in Cincinnati. He explained that it was a bit sudden, but that he was looking forward to getting settled in Cincinnati. Ned then chimed in and offered to refer Harry to a broker in Cincinnati that was a very good friend of Ned's and that Ned knew would take good care of Harry. Harry didn't say much about Ned's remark, so Ned reiterated that he could help and gave Harry one of his business cards, commenting that Harry should call anytime and Ned would touch base with him about the referral.

When Carl found out from Harry about the referral conversation with Ned and Ned's actions, Carl was very upset. When Carl tried to get Ned to back off and told Ned he was interfering with Carl's client, Ned replied that he wasn't interfering with Carl's listing but that he was offering a "different type of real estate service" to Harry than Carl. Ned said he was offering a referral service and that was different from Carl's listing services. Ned went on to say he had checked the Code of Ethics and that it was completely OK under the Code.

Carl was still very upset, didn't think Ned's actions were right and filed an ethics complaint against Ned.

As a group acting as a Grievance Committee, what Article(s) and/or Standard(s) of Practice do you think might apply to this situation?

What Article and/or Standard of Practice do you think Ned is referring to?

Assuming Article(s) are identified, should this case be forwarded for a hearing?

Request for Arbitration - Grievance Committee Role and Standards for Consideration

1. Are all necessary parties named?
 - a. Who is necessary?
 - b. REALTOR® Principals and/or their firms
 - Owner, officer or branch office manager

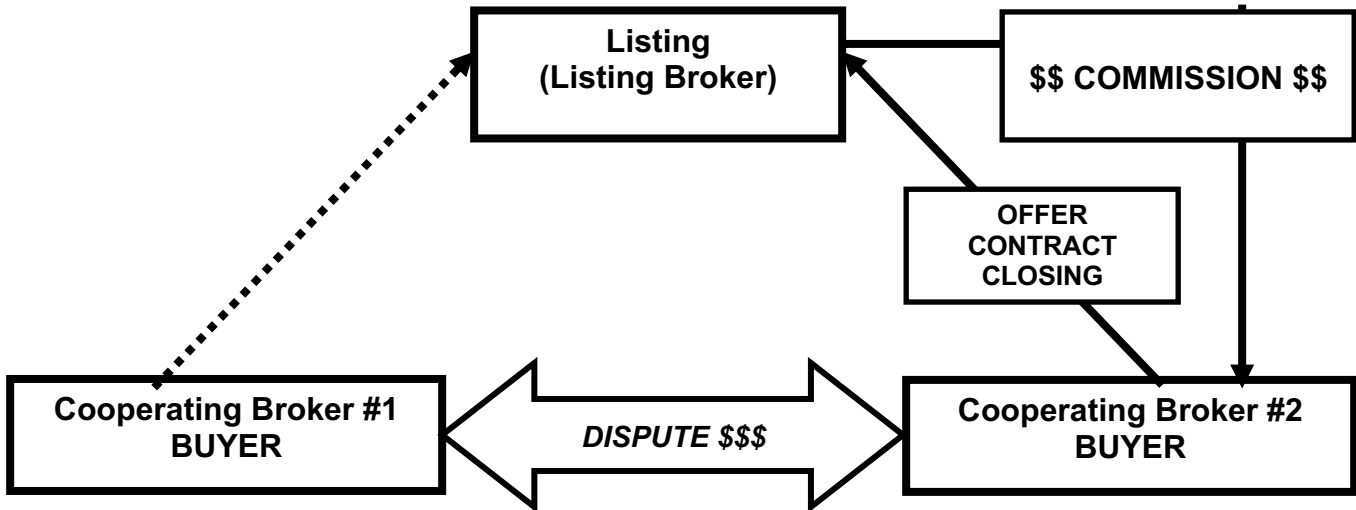
3. Is the complaint timely filed?
 - ◆ What is the time?
 - ▶ 180 days from when the facts, in the exercise of reasonable diligence, could have been known by the complainant OR
 - ▶ 180 days from the closing of the transaction, whichever is later.

4. **If the facts alleged in the request for arbitration were taken as true on their face, is the matter at issue related to a real estate transaction and is it properly arbitrable, i.e. is there some basis on which an award could be based?**
 - ◆ ***What is the basis of arbitration?? Article 17 (See below.)***

The Bases for Arbitration in the REALTOR® System

- A. Article 17 of the Code of Ethics
 - 1. Arbitration of disputes is limited to the conditions of Article 17.
 - 2. Conditions of Article 17
 - a. Contractual disputes and specific non-contractual disputes defined in Standard of Practice 17-4;
 - b. Between REALTORS® (principals) associated with different firms;
 - c. Arising out of their relationship as REALTORS® ...
 - 3. Contractual Disputes, e.g. cooperating broker v. listing broker
 - 4. Non-contractual Disputes: Standard of Practice 17-4
 - a. 17-4(1) – 17-4(3): Cooperating broker v. cooperating broker – no listing broker need be named in the arbitration request.

The Classic Procuring Cause Dispute



Arbitration Case Study for the Grievance Committee

Sam, a REALTOR®-principal of Hillside Real Estate, REALTORS®, filed a request for arbitration against Gordon, a branch office manager of Meadows, REALTORS®. Gordon held a broker-officer license with Meadows, REALTORS®. In the request, Sam stated that Sarah, one of Sam's agents, had represented a buyer in the sale of one of Gloria's listings at 7854 Treetop Drive. Gloria was a salesperson with Gordon's office of Meadows. Sam stated that Sarah learned that Treetop was for sale with Gloria through a mutual friend of Sarah and Gloria's. When Sarah called Gloria about it, Gloria explained that the property was not yet listed in MLS at the request of the seller, but that Gloria would ask the seller if Sarah could bring her buyer through. The seller agreed and Sarah showed the property to her buyer. The same day as the showing, Sarah wrote an offer for the buyer and that offer was accepted by the seller. Upon closing, Gordon refused to pay any cobrokerage fee to Hillside and Sam filed the request for arbitration.

As a Grievance Committee, based on this information, how would you process this case?

Confidentiality and the Professional Standards Enforcement Process

A. Policy 19

"The allegations, findings, and decisions rendered in ethics and arbitration hearings are confidential and should not be reported or published by the Board, any member of a tribunal, or any party under any circumstances except those established in the Code of Ethics and Arbitration Manual of the National Association as from time to time amended. (Revised 11/91)"

The Professional Standards Committee and the Hearing Process

A. Procedures at the Hearing

1. Order of Procedure – Key issue is due process. – Part Five, CEAM

a. "Due process procedure: The hearing will proceed as follows:

- (1) Opening statement by Chairperson—cite authority to hear case and explain reason for hearing.
- (2) The complaint will be read into the record.
- (3) The testimony of all parties and witnesses will be sworn or affirmed. All witnesses will be excused from the hearing except while testifying.
- (4) The parties will be given an opportunity to present evidence and testimony in their behalf and they may call witnesses.
- (5) The parties and their legal counsel will be afforded an opportunity to examine and cross-examine all witnesses and parties.
- (6) The panel members may ask questions at any time during the proceedings.
- (7) The Chairperson may exclude any questions which he or she deems irrelevant or argumentative.
- (8) Each side may make a closing statement. The complainant will make the first closing statement and the respondent will make the final closing statement
- (9) Adjournment of hearing.
- (10) The Hearing Panel will go into executive session to decide the case."

Panel Member Do's and Don'ts

DO's:

- ☑ **DO** Arrive on time for the hearing.
- ☑ **DO** Read any information given to you in advance and be prepared for the hearing.
- ☑ **DO** Make sure the surroundings are appropriate, neutral and confidential. (Make sure there is balance between the parties and panel in setting up the seating arrangements. Keep the door closed during the hearing. Allow only authorized persons in the room during the hearing.
- ☑ **DO** Dress in appropriate business attire for your area.
- ☑ **DO** Show appropriate courtesy and respect for the parties and your fellow panelists.
- ☑ **DO** Disclose any conflicts of interest that might arise before or during the hearing.
- ☑ **DO** Keep an open mind about the information you hear.
- ☑ **DO** Be a great listener.
- ☑ **DO** Give your full attention to the person talking.
- ☑ **DO** Be impartial and neutral until you are ready to decide the case in the executive session.
- ☑ **DO** Give each party every opportunity to be fully and fairly heard.
- ☑ **DO** Give each party their "day in court."
- ☑ **DO** Address the parties in the same way. Use surnames for both or first names for both. Do not use a surname for one party and a first name for the other.
- ☑ **DO** Maintain appropriate decorum. The hearing is like court. Don't eat, drink or smoke. Don't read newspapers, magazines or work on other documents or files. Give your full attention to the proceedings at hand.
- ☑ **DO** Make sure that witnesses are excused after being sworn in and that they are in the hearing room only during the time of their testimony.

Panel Member Do's and Don'ts

DON'Ts:

- ☑ ***DON'T*** Have any communication about the case with either party before or after the hearing.
- ☑ ***DON'T*** Have any communication about the case with any other panel member before the hearing.
- ☑ ***DON'T*** "Research" a case before the hearing by gathering any additional information other than what has been sent to you.
- ☑ ***DON'T*** Pre-judge a case when reading any materials sent to you before the hearing.
- ☑ ***DON'T*** Show bias or prejudice by your body language (such as nodding your head; giving approving or disapproving facial expressions.)
- ☑ ***DON'T*** Use leading questions to reach a conclusion.
- ☑ ***DON'T*** Assist a struggling party in making his/her point or his/her case by asking "helpful" questions.
- ☑ ***DON'T*** Go beyond the general inquiries of the parties in your asking questions. Remember, it is the job of the **complainant** to prove his/her case – **not you!!**
- ☑ ***DON'T*** Insert ethics issues into arbitration cases. Arbitration is about procuring cause and who is to receive the award. It's not about whether the Code was violated in the course of determining who gets the money.
- ☑ ***DON'T*** Wear any identifying pins or badges, including company name badges or designation pins, other than a REALTOR® pin.
- ☑ ***DON'T*** Badger parties or witnesses. Accept the answer given and move on to the next question.
- ☑ ***DON'T*** Ever belittle, demean or shame a party or witness. This can happen by your words or by your tone of voice. Always be careful to keep your words and tone of voice as neutral as possible.

Ethics Hearings

- A. Executive Session - The Decision
 - 1. Must be in writing
 - 2. Must have findings of fact.
 - 3. Must have a decision as to each Article charged.
 - 4. Should contain Hearing Panel's recommendation for discipline, if any.

- B. Authorized Discipline (and administrative processing fees)
 - 1. Letter of Warning
 - 2. Letter of Reprimand
 - 3. Education
 - 4. Fine not to exceed \$15,000
 - 5. "Enjoining" ongoing unethical conduct - "Cease and desist"
 - 6. Suspension for not less than 30 days nor more than one year
 - 7. Expulsion from membership for period of one to three years
 - 8. Suspension or termination of MLS privileges.

- C. Other Actions connected to Disciplinary Actions
 - 1. Probation for one year or less
 - 2. Administrative processing fee (if found in violation) not to exceed \$500 ("Court Costs") – **ONLY** as policy of Association - NOT case-by-case.

D. Disciplinary “Theory” 101

1. “Punishment should fit the crime.”
2. Discipline should be “progressive” over time and events.
3. Can we see the member’s file? If so, when?
 - The panel is **required** to review a member’s file **AFTER** the panel has found a violation of the Code. That review of the file will assist the panel in determining the “progressive” nature of discipline.
 - Hearing Panels are permitted to give rationale for why the disciplinary action is recommended including the fact that there were prior offenses.

Ethics Case Study

REALTOR® Ron searched the MLS database of current listings on behalf of his client, Dr. Holden, who had recently completed his residency and was returning home to take a position on the staff of the community hospital. REALTOR® Ron's search returned several listings that satisfied Dr. Holden's requirements, including a two-story residence listed with Realtor® Max that showed, in the "Remarks" section, "Pay your mortgage with rent from the apartment upstairs."

REALTOR® Ron sent the listings he'd identified in an e-mail to Dr. Holden. A day later, REALTOR® Ron received a call from Dr. Holden who told him there was something about REALTOR® Max's listing that struck him as odd. "That house is in the neighborhood I grew up in," said Dr. Holden. "I also remember our neighbors having a problem with the Building Department when they added a kitchen on the second floor so their grandmother could have her own apartment."

REALTOR® Ron assured Dr. Holden that he would make the necessary inquiries and get back to him promptly. His call to the Building Department confirmed Dr. Holden's suspicion that the home was zoned single family.

Feeling embarrassed and misled by REALTOR® Max's apparent misrepresentation, REALTOR® Ron filed a complaint with the local association of REALTORS® alleging misrepresentation on the part of REALTOR® Max for publishing inaccurate information in the MLS.

At the hearing convened to consider REALTOR® Ron's complaint, REALTOR® Max acknowledged the seller had told him that the conversion had been made to code but without the necessary permits, and the apartment had never been rented. "I assumed the new owners could get a variance from the Building Department," he said.

As the Hearing Panel, answer the following questions:

What Article or Articles of the Code do you think apply to this case?

Do you think Max is in violation of the Code?

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Arbitration Case Study – Procuring Cause

NOTE: Disclaimer: The percentages referenced in this case study strictly are provided as examples. They do not and it is not intended to suggest, recommend, or imply that there are or should be any established standard or “normal” commission rates, referral fees, or amounts. Commission rates and amounts charged to the public (such as clients and customers), as well as amounts, referral fees, and rates offered to brokers through the MLS or otherwise, are matters of independent determination by each broker and firm.

Executive Officer
Germania Board of REALTORS®
430 West Tulip Street
Somewhere, USA 66666

May 26

RE: Complainant’s Letter – REALTOR® John Owes Me the Cooperating Broker’s Portion of the Commission - - \$7,500

Dear Executive Officer:

I’m so frustrated with REALTOR® John. He is underhanded and unreliable. You can’t trust a thing he says. He told me he would compensate me for procuring the buyer on 444 Rose Street if Sue purchased the property six months ago and I just learned that Sue **did** purchase the property.

I am the broker principal of Harbor Hill Realty and a participant in the board’s MLS. REALTOR® John was the listing broker of 444 Rose Street and I initially submitted an offer to REALTOR® John on behalf of my buyer client, Sue.

The offer I helped Sue prepare was not accepted. She told me at the time her offer was rejected that she wanted to take a break from looking at houses and instead focus on her new baby and completing her dissertation. She said she was sleep deprived and frazzled, not having enough energy to complete her doctorate, take care of her newborn, and “house hunt,” all at the same time.

I respected her decision. We agreed that I would call her in six months. At that time, she said that she expected the baby to be sleeping better and she would have completed her Doctorate in Divinity.

You can imagine my surprise when I called Sue last month to check in with her after the six months and she told me that she wasn’t looking for a home any longer - - she had actually purchased 444 Rose Street!

I congratulated her for completing her Doctorate in Divinity, asked after the baby, and let her

know I was glad she found a home. I also asked if I had done anything during our relationship (or failed to do something during our relationship) that had caused her to write an offer through another cooperating broker.

That is when she told me that listing broker John called her two months after her November 20 offer was rejected to let her know that the seller had just lowered his asking price by \$10,000, from \$310,000 to \$300,000. Sue said that REALTOR® John asked if he could assist her in writing another offer and he did just that. Sue apologized for not calling me to write the second offer on her behalf but explained that she was distracted with everything she had going on at the time. She said that because her first offer of \$295,000 was only \$15,000 away from the seller's former asking price, she was hopeful that an offer of \$298,000 would be received differently given the seller price reduction. She told me that REALTOR® John seemed eager to present an offer on her behalf for \$298,000 to the seller. Sue also confirmed that the property closed March 26 for \$300,000.

I'm the procuring cause of that sale and as such I am entitled to \$7,500 which represents 2.5% of the gross sales price - - the amount REALTOR® John offered via the MLS.

Sincerely,

Tina

REALTOR® Tina
Harbor Hill Realty

Executive Officer
Germania Board of REALTORS®
430 West Tulip Street
Somewhere, USA 66666

July 25

RE: Respondent's Letter –Tina is NOT the Procuring Cause

Dear Executive Officer.

I am writing in response to REALTOR® Tina's request to be paid \$7,500. Her request is completely baseless **and** it is not timely filed. When she initially submitted an offer on Sue's behalf over six months ago, I agreed to compensate her if **her** offer resulted in the successful transaction. That offer was six months ago and that offer went nowhere. She should not be able to haul me into arbitration now.

I represented the sellers of property located at 444 Rose Street. You know how difficult it is to sell houses these days. Well, this house was no exception. It was on the market with me for over a year before I finally got it sold. We had three price reductions and only four separate buyers submitted offers on the home during that entire year. I helped the sellers get this property sold and I helped a buyer realize her dreams - - what is wrong with that?

Please allow me to explain. When the seller finally agreed to the final price reduction, the seller called the four buyers that previously submitted offers. I **did not** call Sue initially. I simply returned Sue's phone call **after** she learned about the final price reduction from the seller. I didn't even know what the seller was planning on doing until I received Sue's call.

When Sue called me she said she was still interested in the property and wanted to write an offer on the property. I asked if she was working with another broker and she told me she was not. I asked if she would like to see the property again, and she said that was not necessary, having just seen it two months prior.

I made it perfectly clear from the beginning that I represented only the seller in this transaction. Sue understood. Sue said she didn't need representation and asked me to submit an offer for \$298,000, that was \$3,000 more than her previous offer. I prepared another offer on Sue's behalf and submitted it to the seller. The property with the third price reduction was listed at \$300,000 and that is the price that the seller and Sue finally agreed upon.

I did nothing wrong here. I worked in my client's, the seller's, best interests. Thank you for considering my response.

Sincerely,



REALTOR® John
John Realty

Based on the information you have and assuming this is the testimony that came out in the hearing, for whom would you vote to award the commission?

Reference Material for Procuring Cause Issues

General Legal Definition: *Black's Law Dictionary, Fifth Edition:*

- “The proximate cause; the cause originating a series of events which, without a break in their continuity, result in the accomplishment of the prime object. The inducing cause; the direct or proximate cause. Substantially synonymous with “efficient cause.”
- Within this definition, the second phrase aptly summarizes the basic concept of procuring cause: “the cause originating a series of events which, without a break in their continuity, result in the accomplishment of the prime object.” In the REALTOR® system, the “prime object” is a sale or lease of property.

“Arbitration Guidelines (Suggested Factors for Consideration by a Hearing Panel in Arbitration)”, Appendix II to Part Ten of the CEAM

- The NAR CEAM (*Code of Ethics and Arbitration Manual*) covers procuring cause extensively in the Arbitration Guidelines.
- The Guidelines set out six “Factors” for panels to consider, as follows:
 1. Factor #1: No predetermined rule of entitlement

Associations may not have a predetermined rule of entitlement to commission in a procuring cause case, whether written, unwritten or simply “understood.”
 2. Factor #2: Arbitrability and appropriate parties

This factor discusses what disputes are appropriate for arbitration and the necessary parties. Since the Grievance Committee generally disposes of these issues, it is unlikely that issues about these matters will come up at a hearing.
 3. Factor #3: Relevance and admissibility

This factor confirms the standard for admission of evidence as previously discussed.
 4. Factor #4: Communication and contact – abandonment and estrangement

Abandonment and estrangement are two critical issues often brought up in procuring cause cases. They will be discussed in more detail below.

5. Factor #5: Conformity with state law

This factor deals with the basic nature of arbitration matters as relying on underlying state law, primarily the concepts of the Uniform Arbitration Act as adopted in various states.

6. Factor #6: Consideration of the entire course of events (“The Questions”)

This factor is related to Factor #1. Not only is there no predetermined rule of entitlement in a procuring cause case, the panel is directed to look at all of the facts and circumstances in the case and **NOT** decide the case on the basis of any one factor. To that end, the Arbitration Guidelines include a detailed series of questions that the panel can ask and consider in its disposition of the case.

Summary of General Procuring Cause Concepts

■ Uninterrupted series of events

- ✦ The concept of the “uninterrupted series of events” might be likened to an “unbroken chain of events.” A chain has links. Think of the basic nature of procuring cause as a chain in which no links have been broken.
- ✦ Links in the chain might be broken in a number of ways. If a link is broken, then the person starting the chain in which the link was broken will not be the procuring cause of the sale. Two of the important ways a link may be broken are abandonment and estrangement.

■ Abandonment

- ✦ Abandonment is characterized by some lack of contact by the agent with the buyer for some period of time. The panel decides whether the conduct constitutes abandonment. There is no set period of time of lack of contact that is considered abandonment. The panel decides whether the lack of contact by the agent for the period of time in the case before them constitutes abandonment.

■ Estrangement

- ✦ Estrangement has a very specific focus. If a buyer says only that he/she “prefers” to work with Agent A rather than Agent B, this statement of “preference,” is not automatically conclusive proof of estrangement. While a buyer may choose to work with any agent, the buyer’s choice of agent is not necessarily determinative of which person claiming the commission is to be paid.

- ✦ Estrangement focuses on the conduct or lack of conduct of Agent B that “caused the purchaser to terminate the relationship.” The key question is “what did Agent B do or fail to do that pushed the buyer to Agent A?”

Common Misconceptions about Procuring Cause

- Through the years, several misconceptions about procuring cause have developed and often continue to be cited as the “rule” in deciding these cases. Remember, no one rule determines the case. The following three misconceptions are sometimes cited by parties in an arbitration hearing as being the “trump card” for their position. They are **NOT** a “trump card!”

- The Threshold Rule

This “rule” might be loosely defined as bringing the buyer “across the threshold” of the property. It also might be known as the “first showing rule.” While showing is an important fact, whether a party did or did not show the property, and/or whether a party was first to show the property, are not the deciding facts in the case.

- The Contract Rule

This “rule” argues that the person who writes the successful offer to purchase automatically is entitled to the commission. Like the Threshold Rule, such is not the case.

- The Agency Rule

The “Agency Rule” is usually presented as the person who has an agency agreement (usually exclusive) with the buyer is entitled to the commission. While an important fact to be considered, the existence of an agency agreement with the buyer is one of many facts to be considered. It is possible that a buyer’s agent may not be entitled to the commission in dispute in the procuring cause arbitration and still be paid a commission under the terms of the agency agreement that has been entered into by the buyer.

“It should also be considered that questions of representation and entitlement to compensation are separate issues.”

“Agency relationships, in and of themselves, do not determine entitlement to compensation. The agency relationship with the client and entitlement to compensation are separate issues.”

- *Code of Ethics and Arbitration Manual, Appendix II to Part Ten, Arbitration Guidelines*

How Many Procuring Causes are there??

- The short answer to this question is “one.”
- The question and answer is intended to focus on the fact that arbitration hearing panels should not generally split awards between the parties. In general, the panel should award the commission on an “all or nothing” basis.
- The CEAM does permit a panel to split an award between the parties if the panel decides that the transaction would have occurred only because of the efforts of both parties.
- “While awards are generally for the full amount in question (which may be required by state law), in exceptional cases, awards may be split between the parties (again, except where prohibited by state law). Split awards are the exception rather than the rule and should be utilized only when Hearing Panels determine that the transaction would have resulted only through the combined efforts of both parties.” From *Appendix Two to Part Ten – Arbitration Guidelines* of the CEAM.

SUMMARY OF KEY CHANGES 11/13/2020 and 2021

Key Change to Article 10's Standards Related to Harassing Speech, Hate Speech, Epithets and Slur Based on the Protected Classes

#1. To add the following new Standard of Practice under Article 10:

Standard of Practice 10-5

REALTORS® must not use harassing speech, hate speech, epithets, or slurs based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity.

Rationale: This proposed Standard of Practice directly flows from the requirement to not deny equal professional services or be parties to a plan to discriminate. Specifically, bias against protected classes revealed through the public posting of hate speech could result in REALTORS® not taking clients from certain protected classes or not treating them equally, which would lead to violations of the Fair Housing Act due to overt discrimination or disparate impact.

NOTE: THIS MOTION WAS EFFECTIVE UPON ADOPTION, NOVEMBER 13, 2020

THIS MOTION IS NOT RETROACTIVE AND APPLIES ONLY TO CONDUCT OCCURRING AFTER NOVEMBER 13, 2020.

#2. To amend Appendix VII to Part Four, Sanctioning Guidelines, *Code of Ethics and Arbitration Manual*, to provide more specific guidance for hearing panels on determining discipline for violations of Article 10, Article 3 as interpreted by Standard of Practice 3-11, and violations of the public trust; and to adopt a new Appendix that would provide guidance on revised Policy Statement 29 and Standard of Practice 10-5.

Rationale: These revised or new appendices provide additional enhancement to existing policy in order to provide guidance on appropriate sanctions in ethics cases involving discrimination, and provide additional guidance on the application of revised Policy Statement 29 and Standard of Practice 10-5. The revised Appendices follow (underscoring indicates additions, strikeouts indicate deletions. Appendix XII to Part Four is an entirely new Appendix.).

See next page for Appendix XII to Part Four.

**Appendix XII to Part Four
Appropriate Interpretation of
Standard of Practice 10-5 and
Statement of Professional Standards Policy 29**

Standard of Practice 10-5 prohibits REALTORS® from using harassing speech, hate speech, epithets or slurs based on the protected classes of Article 10. Statement of Professional Standards Policy 29 provides that REALTORS® are subject to disciplinary action with respect to all of their activities.

To assist Hearing Panels in the appropriate interpretation and application of Standard of Practice 10-5 of the Code of Ethics and Statement of Professional Standards Policy 29, the Professional Standards Committee of the National Association provides the following for consideration by Hearing Panels when asked to determine whether a violation of Article 10 as supported by Standard of Practice 10-5 has occurred.

While the overall focus of Standard of Practice 10-5 is on what might be loosely termed “offensive” or “discriminatory” speech, Hearing Panels should be clear that the Standard of Practice is narrowly limited to conduct related to the requirements of equal professional service of Article 10. Hearing Panels should also be fully aware of the nature and scope of the Standards of Practice under Article 10 and their relationship to fair housing law as described in Appendix III to Part Four of the Code of Ethics and Arbitration Manual. As described in Appendix III, Article 10 and its Standards of Practice fully integrate the five basic fair housing obligations that were recognized by NAR’s Code of Fair Housing Practices before it was sunset.

Hearing Panels should note that while all of the Standards of Practice under Article 10 inform them as to the interpretation and application of Standard of Practice 10-5, Standard of Practice 10-3 is particularly analogous in its application to discriminatory speech in advertising based on the protected classes of Article 10.

Standard of Practice 10-5 is not focused on types of speech that might be subjectively deemed “offensive” or “discriminatory” by one person and not another. The Standard of Practice is based on very particular types of speech that are directly connected to the protected classes of race, color, religion, sex, handicap, familial status, national origin, sexual orientation or gender identity under Article 10. Only the use of harassing speech, hate speech, epithets and slurs **based on** the protected classes of Article 10 are prohibited. The terms “harassing speech,” “hate speech,” “epithets,” and “slurs” can be commonly understood by use of a dictionary as well as other easily available references.

For example, NAR’s Code of Conduct and Anti-Harassment Policy clearly defines “harassment” and “sexual harassment.”

“Harassment includes inappropriate conduct, comment, display, action, or gesture based on another person’s sex, color, race, religion, national origin, age, disability,

sexual orientation, gender identity, and any other protected characteristic.

Examples of harassment include, but are not limited to: epithets, slurs or negative stereotyping; threatening, intimidating or hostile acts; denigrating jokes; and the display or circulation of written or graphic material that denigrates or shows hostility toward an individual or group based on a protected characteristic.”

“Sexual Harassment” includes not only physical acts but also includes verbal and non-verbal/non- physical acts.

“Sexual harassment can be:

- Verbal: Sexual innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions, or threats.
- Non-Verbal: Sexually suggestive objects or pictures, graphic commentaries, suggestive or insulting sounds, leering, whistling, or obscene gestures. ... ”

Hearing Panels should look to this existing information on harassment to determine whether harassing speech has occurred and then look to determine whether the harassing speech was based on one of the protected classes.

In similar fashion, Merriam Webster’s Dictionary defines “hate speech,” “epithets,” and “slurs” as follows:

Hate Speech: “speech that is intended to insult, offend, or intimidate a person because of some trait (as race, religion, sexual orientation, national origin, or disability).”

Epithet: “**1a**: a characterizing word or phrase accompanying or occurring in place of the name of a person or thing; **b**: a disparaging or abusive word or phrase”

Slur: “**1a**: an insulting or disparaging remark or innuendo: ASPERSION; **b**: a shaming or degrading effect: STAIN, STIGMA”

Again, Hearing Panels must look to whether the hate speech, epithet or slur is based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation or gender identity and not on some other non-protected characteristic.

Under Statement of Professional Standards Policy #29, REALTORS® are subject to the Code of Ethics' standards in all of their activities. Thus, a violation of Article 10, as supported by Standard of Practice 10-5, can occur when a REALTOR® uses harassing speech, hate speech, epithets and slurs based on the protected classes in any media or context, regardless of whether related to their activities in the real estate business or their identification as a REALTOR®.

- #3. To amend Policy Statement 29, Code of Ethics and Arbitration Manual to expand applicability of the Code of Ethics to all of a REALTOR®'s activities.**

29. Applicability of the Code of Ethics to ~~non-real-estate-related activities~~

~~While REALTORS® are encouraged to follow the principles of the Code of Ethics in all of their activities, a REALTOR® shall be subject to disciplinary action under the Code of Ethics only with respect to real-estate-related all of their activities. and transactions involving the REALTOR®.~~

Rationale: At present, Policy Statement 29 limits the applicability of the Code to real estate-related activities and transactions involving REALTORS®. As such, members can engage in conduct and speech that is discriminatory and abhorrent, but unless it can be tied to a real estate-related activity or transaction, the Code of Ethics, specifically Article 10, does not apply. This revised policy expands applicability to all of a REALTOR®'s activities.

NOTE: THIS MOTION WAS EFFECTIVE UPON ADOPTION, NOVEMBER 13, 2020

- #4. To amend Appendix VII to Part Four, Sanctioning Guidelines, Code of Ethics and Arbitration Manual, to provide more specific guidance for hearing panels on determining discipline for violations of Article 10, Article 3 as interpreted by Standard of Practice 3-11, and violations of the public trust; and to adopt a new Appendix that would provide guidance on revised Policy Statement 29 and Standard of Practice 10-5.**

**Appendix VII to Part Four
Sanctioning Guidelines**

The Code of Ethics is designed to establish a public and professional consensus against which the practice and conduct of REALTORS® and REALTOR-ASSOCIATE®s may be judged. REALTORS® and REALTOR-ASSOCIATE®s in joining a Board signify their intention to abide by the Code and thereby enhance the public and professional image of themselves and all other REALTORS®. Adherence to the Code is the first great bond between REALTORS® and REALTOR-ASSOCIATE®s throughout the country, and is an obligation voluntarily accepted by them to ensure high standards of professional conduct to serve the interests of their clients and customers (from the Introduction to the Code of Ethics and Arbitration Manual, National Association of REALTORS®, 2018 edition).

Local ~~Boards~~ Associations 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 Associations 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 Associations 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 Associations 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.
- Conversely, cases in which there is reason to believe that violations of the public trust, including demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud have occurred should be considered particularly egregious violations of the Code of Ethics when 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~~ Three contrasting examples are provided to illustrate these points.

Example 1A: 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 \$1,000 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 \$5,000 fine. (Revised 11/13)

Example 2B: 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 \$5,000 fine and retaking the ethics orientation required for new members. (Revised 11/13)

Example C: In social media discussions, REALTOR® C posted several discriminatory and offensive comments which were deemed to be in violation of Article 10 as they discriminated against individuals on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. In determining appropriate discipline, the Hearing

Panel considered REALTOR® C's comments as hate speech and discrimination in violation of Article 10 and had reason to believe that a violation of the public trust occurred. Based on the offensiveness of REALTOR® C's comments and his total disregard for the Code of Ethics' obligation to not be a party to any plan to discriminate against members of the protected classes of Article 10, the Hearing Panel recommended a \$5,000 fine and mandatory completion of implicit bias training.

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.

Hearing Panels are cautioned of the due process concerns of considering a Respondent's history of Code violations, as considering too long of a history involving different types of violations can unreasonably affect the severity of the discipline. Typically, Associations might look back a minimum of three years, however, if there is consistency in the types of violations or if the violations are of the public trust, considering a longer history of violations could be appropriate in crafting meaningful discipline aimed at stopping the behavior.

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? Was the violation one of the public trust, including demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud?
- (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?
- (9) 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~~ Association.

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 \$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 \$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
- the violation was of Article 10 as interpreted by its Standards of Practice, or of Article 3 as interpreted by Standard of Practice 3-11, 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 \$10,000 or less
- attendance at relevant education session(s)
- suspension for ninety (90) days or less
- any combination of the above
- Termination of membership for up to three (3) years

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 \$2,000 or less (Revised 11/14)

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 \$10,000 or less
- suspension for three (3) months or less
- any combination of the above (Revised 11/14)

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

- violation considered very serious, or
- the violation was of Article 10 as interpreted by its Standards of Practice, or of Article 3 as interpreted by Standard of Practice 3-11, 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 \$15,000 or less
- suspension for six (6) months or less
- any combination of the above
- Termination of membership for up to three (3) years

In addition to imposing discipline, the Hearing Panel can also recommend to the Board of Directors that the disciplined member be put on probation. The fact that one or more forms of discipline will be held in abeyance during the probationary period does not bar imposition of other forms of discipline which will not be held in abeyance. Probation is not a form of discipline. When a member is put on probation the discipline recommended by the Hearing Panel is held in abeyance for a stipulated period of time not longer than one (1) year. Any subsequent finding of a violation of the Code of Ethics during the probationary period may, at the discretion of the Board of Directors, result in the imposition of the suspended discipline. Absent any subsequent findings of a violation during the probationary period, both the probationary status and the suspended discipline are considered fulfilled, and the member's

record will reflect the fulfillment. ~~The fact that one or more forms of discipline will be held in abeyance during the probationary period does not bar imposition of other forms of discipline which will not be held in abeyance.~~ (Revised 5/14)

More serious forms of discipline (including 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. Cases in which there is reason to believe that violations of the public trust, including demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud have occurred are considered particularly egregious. Associations are encouraged to critically examine these types of cases and recommend discipline consistent with the seriousness of these violations, their harm to consumers, and to the reputation of REALTORS® as committed to the highest level of professionalism. (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.

- #5. That the definition of “public trust” be expanded to include all discrimination against the protected classes under Article 10 of the Code of Ethics and all fraud, and to limit the reporting requirement to final ethics decisions involving real estate related activities and transactions.**

To amend Article IV Code of Ethics, Section 2 of the NAR Bylaws as follows (strikeouts indicate deletions, underscoring indicates additions):

Section 2. Any Member Board which shall neglect or refuse to maintain and enforce the Code of Ethics with respect to the business activities of its members may, after due notice and opportunity for hearing, be expelled by the Board of Directors from membership in the National Association. Enforcement of the Code of Ethics also requires Member Boards to share with the state real estate licensing authority final ethics decisions holding REALTORS® in violation of the Code of Ethics in instances involving real estate related activities and transactions where there is reason to believe the public trust may have been violated. The "public trust", as used in this context, refers to demonstrated misappropriation of client or customer funds or property, willful discrimination against the protected classes under the Code of Ethics, or fraud ~~resulting in substantial economic harm~~. Enforcement of the Code of Ethics also requires Member Boards to provide mediation and arbitration services to members and their clients so that the dispute resolution requirements of Article 17 of the Code of Ethics can be met.

Rationale: At present, the definition of “public trust” includes demonstrated misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm. This recommendation would expand the definition to include all discrimination against the protected classes under Article 10, and all fraud. As a result, associations would be required to share with the state real estate licensing authority final ethics decisions holding REALTORS® in violation of the Code of Ethics in instances where there is reason to believe the public trust, as expanded, may have been violated. This is recommended so the real estate licensing authority, and other governmental agencies as recommended by the Association, are made aware of any findings of a violation of the Code of Ethics involving discrimination, but only where the discrimination is related to real estate related activities and transactions. This leaves discrimination related to real estate actionable under the Code and license law, but addresses the concern that the regulatory agency is being asked to act on personal, ethical matters which may be beyond the scope of license law.

In addition, other portions of the *Code of Ethics and Arbitration Manual* would be revised as needed to be consistent with the aforementioned revisions.

NAR Resources Link:

<https://www.nar.realtor/national-leadership/committee-members-liaisons/code-of-ethics-professional-standards-policies#resources>

<https://www.nar.realtor/changes-to-the-code-of-ethics-overview-and-training-opportunities>

#6 Complainants are required to include facts upon which an amendment of a complaint are based.

To amend Sections 21(f)(1) and (2), Ethics Hearing, Code of Ethics and Arbitration Manual, (underscoring indicates additions):

- (f) *Amendment of complaint:*
- (1) *At any time prior to the hearing of the complaint, the complainant may file an amended complaint with the Professional Standards Administrator (excluding amendments pertaining to an Article previously dismissed by the Grievance Committee relating to previously charged respondents). If an amended complaint, including facts upon which the amendment is based, is filed prior to the hearing, the respondent shall be notified, given a copy, and provided the opportunity to file an amended response. 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 5/15)*
 - (2) *At any time during the hearing, the complaint may be amended either by the complainant or upon motion of the Hearing Panel to add previously uncited Articles or additional respondents, including facts upon which those amendments are based.*

Rationale: At present, NAR's professional standards policies do not require any explanation of the facts upon which an amended complaint is based if the complainant adds Articles after the complaint is reviewed by a grievance committee. This revised policy would require this rationale to be submitted with the amended complaint in order to provide the respondent with the full and fair opportunity to defend themselves against the new allegations without necessitating continuance of a hearing.