

LANCASTER COUNTY ASSOCIATION OF REALTORS®

CODE OF ETHICS & ARBITRATION MANUAL

PART 1: GENERAL PROVISIONS

SECTION 1: DEFINITIONS

AS USED HEREIN:

- (a) **"Agent"** means a real estate licensee (including brokers and sales associates) acting in an agency relationship as defined by state law or regulation.
- (b) **"Association"** means the Lancaster County Association of Realtors®.
- (c) **"Client"** means the person or entity with whom a Realtor® or a Realtor's® firm has an agency or legally recognized non-agency relationship.
- (d) **"Counsel"** means an attorney at law.
- (e) **"Customer"** means a party to a real estate transaction, usually the purchaser, who receives services and benefits but has no contractual relationship with the agent and pays no fee to the agent.
- (f) **"Directors"** means the Board of Directors of the Association.
- (g) **"Electronically", "electronic means", "technology", "technological means",** and related terms include, but are not limited to, the Internet, Internet-based websites, all forms of Internet communication, e-mail, facsimile, correspondence, telephone, and all other forms of distance communication.
- (h) **"Expulsion from Membership"** means expulsion from membership in the Association for a period not less than one but not more than three years, with reinstatement to membership, by application, only as a new member after the end of the period of expulsion, and with the application considered on its merits.
- (i) **"Fine - Appropriate and Reasonable"** means a fine commensurate with the gravity of the determined offense against the Code and against the Association, and ranging in an amount not to exceed \$15,000 with respect to any single ethics hearing, irrespective of the number of Code violations determined.
- (j) **"Hearing"** may refer to either an ethics hearing relating to disciplinary matters, or to an arbitration hearing where the dispute involves entitlement to a commission or to compensation.
- (k) **"Immediate Family"** as used in the Code of Ethics includes, but is not limited to, the Realtor and the Realtor's® spouse and their siblings, parents, grandparents, children (by birth or adoption), grandchildren and other descendants.

- (l) **"Letter of Reprimand"** means a letter to an Association member, advising of a lack of professional conduct determined by a due process hearing of the Professional Standards Committee, advising that the letter is to be construed as an official reprimand.
- (m) **"Letter of Warning"** means a letter to an Association member advising of a lack of professional conduct determined by a due process hearing of the Professional Standards Committee, warning that future similar conduct could result in more severe sanction.
- (n) **"Member of Tribunal"** means a person serving on a Hearing Panel of the Professional Standards Committee in either an ethics or arbitration proceeding, or on a Board of Directors, or appropriate body appointed by a Board of Directors to act on its behalf. No individual may participate in the deliberation of more than one tribunal on the same matter.
- (o) **"Members"** means the Realtor® members of this Association and Realtors® who participate in the Association's MLS or otherwise access MLS information.
- (p) **"Party"** means either the complainant or respondent in a disciplinary proceeding referred to in Part 2 of this Manual, or in an arbitration referred to in Part 3 of this Manual.
- (q) **"Principal Broker"** means a principal, partner, corporate officer or branch manager standing in the shoes of the owner of a real estate firm.
- (r) **"Probation"** means that any discipline recommended by the hearing panel will be held in abeyance for a stipulated period of time, which may not exceed one 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 and, provided the member has abided by all terms and conditions of the probation, both the probationary status and the suspended discipline shall be considered fulfilled and the record shall reflect the fulfillment.
- (s) **"Public Trust"** refers to demonstrated misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm.
- (t) **"Secretary"** means the Executive Officer of the Association.
- (u) **"Suspension of Membership"** means suspension of membership rights and privileges and denial of Association services for a period not less than 30 days on terms and conditions expressly stated for an established period of time including, but not limited to, use of the terms Realtor® and Realtors® with reinstatement of all withdrawn membership rights and privileges and all withdrawn Association services automatically provided at the end of the specified period, not to exceed one year. Although membership rights, privileges and services are withdrawn as specified in the notice of suspension, membership, per se, continues and the suspended member remains obligated for payment of membership dues and to abide by the Code of Ethics during the period of suspension. The suspended member shall not be obligated for payment of any other fees or charges except for continued optional services of the Association. Any failure to abide by the terms and conditions of the suspension, or the finding of a violation of the Code of Ethics after a hearing as provided by the professional standards procedures of the Association Bylaws, shall be grounds for consideration as to possible extension of the suspension, or expulsion from membership in the Association.

(v) **"Training Requirement for Ethics or other Appropriate Training"** means a letter from the Board President or Professional Standards Chairperson to a Board Member advising of a lack of professional conduct determined by a due process hearing by the Professional Standards Committee, and directing the member to attend the ethics portion of the Board Orientation Course or other appropriate course or seminar specified by the Hearing Panel which the respondent could reasonably attend taking into consideration cost, location and duration.

(w) **"Unauthorized Disclosure"** means a report or publication under any circumstances not established in this Manual.

SECTION 2: QUALIFICATION FOR TRIBUNAL

- A. Only one person connected with any firm, business, partnership or corporation may serve on the same tribunal.
- B. A person shall automatically be disqualified as a member of a tribunal in any case in which the person is a (1) party (2) related by blood or marriage to the fourth degree of consanguinity to a party (3) an employer, employee, partner or other business associate of a party or (4) is objected to by a party as provided in Section 2F.
- C. Before sitting in any case, each member of a tribunal (except a member of the Grievance Committee acting pursuant to the provisions of Section 17 of Part 2 of this Manual) shall sign a statement that he is not disqualified for any of the foregoing reasons, and that he knows of no other reason that might prevent him from rendering an impartial decision.
- D. Every member of a tribunal (except a member of the Grievance Committee acting pursuant to the provisions of Section 17 of Part 2 of this Manual) shall avoid, so far as possible, discussing the case with any person before the hearing. If the member does engage in any such discussion before the hearing, he must disclose this fact to the parties and to the other members of the tribunal no later than at the beginning of the hearing.
- E. No member of a tribunal (except a member of the Grievance Committee acting pursuant to the provisions of Section 17 of Part 2 of this Manual) shall discuss the case with any person other than the other members of the tribunal after the hearing. To do so, shall be a violation of a membership duty, except:
 - 1. Where the dissemination of the decision to individuals who have some knowledge of the proceeding might vindicate a member's professional reputation.
 - 2. Where there is a civil proceeding (including proceedings before the state real estate licensing authority or any other state or federal regulatory or administrative agency) involving the same facts and circumstances that gave rise to the proceeding before the Association.
- F. Any party may file with the Secretary a written request for disqualification of a member of a tribunal stating the grounds assigned for disqualification. A party shall be deemed to have waived any grounds for disqualification of which he has knowledge, unless he files the request at least five calendar days before the hearing. If a majority of the members of the tribunal find any automatic ground for disqualification to be present, or find any other facts that, in their judgment, may prevent the member from rendering an impartial decision, or appear to do so, such member shall stand disqualified. However, none of the

foregoing is to be construed to allow a challenge to the qualifications of members of the Association's Grievance Committee.

- G. If a member of a tribunal fails, or is unable to participate in a hearing, the remaining members of the tribunal may, at their option, but only with the express consent of the parties, proceed with the hearing. Only the remaining members of the tribunal may participate in the hearing and the determination thereof. Should any member of the tribunal absent himself during the progress of the actual hearing, that individual shall likewise not participate in the deliberations or determinations thereof. If all the parties do not agree to proceed without the full number of the tribunal originally designated, the chairman of the tribunal will recess the hearing to a date on which all members of the tribunal can be present. If the chairman cannot, at the time, designate a new date, notice of subsequent date shall be served on all parties as herein provided.

SECTION 3: DUTY TO GIVE EVIDENCE

The parties to ethics and arbitration hearings are primarily responsible for producing witnesses and evidence they intend to present to the Hearing Panel. If a member, when called as a witness, refuses or is unable to appear at the scheduled hearing, the witness's failure to appear can be the basis for a charge that Article 14 has been violated, if it can be shown that the witness had information or evidence relevant to the issue before the Hearing Panel and that there were no extenuating circumstances that would have made the witness's appearance unduly burdensome. Questions regarding a member's obligation to appear as a witness, including questions of relevancy, shall be determined by the chairman of the Hearing Panel, either before the hearing commences, if possible, or at the time of the hearing. If a question of whether a witness is required to appear is raised at a hearing and the chairman rules that the witness must appear, the party seeking to compel the appearance of the witness may request that the hearing be recessed until such time as the witness can be advised of the witness's obligation to appear, and the hearing shall be rescheduled. The burden of demonstrating the relevance of the testimony or evidence rests with the party seeking to compel the witness's appearance. If, after being so advised, a witness refuses to appear, the chairman may, at his discretion, bring a charge against the witness for failure to comply with Article 14.

SECTION 4: RIGHT OF COUNSEL TO APPEAR

If any party to the hearing intends to be represented by counsel, such party must notify the opposing party and the tribunal, in writing, at least seven calendar days before the hearing. The tribunal may have counsel present to advise it on issues of procedure.

SECTION 5: WITNESSES

Any party presenting witnesses must notify the opposing party and the tribunal, in writing, at least seven calendar days before the hearing, of his intention to present these witnesses. Failure to provide this information within the time specified will constitute a waiver of the right to call these witnesses, unless the other party agrees to allow their testimony. In any case, where all of the names of witnesses a party intends to call have not been provided within the time specified, and the Hearing Panel believes that the testimony of such witness(es) is essential to ensure due process, their testimony may be permitted provided the other party has the right to request that the hearing be recessed and continued to a date certain, not less than five calendar days later.

SECTION 6: CONDUCT OF HEARING

At any hearing, every party has the right to present witnesses, to submit evidence pertinent to the case and to cross-examine the witnesses of others. The court reporter or a person permitted to administer oaths shall swear in witnesses giving oral testimony. Before permitting testimony relating to the character or general reputation of anyone, the tribunal shall satisfy itself that the testimony has a direct bearing on the case at issue. Ethics hearings shall entail no filing fee. Arbitration hearings shall entail a filing fee from each party. The award shall direct the deposit of the prevailing party to be returned; the deposit of the non-prevailing party shall be used by the Secretary to cover the costs of arbitration as may be required. Any portion, not used specifically to cover the costs of the arbitration, shall go into the general operating funds of the Association. In the event the award of the arbitrators is an amount other than that requested by any of the parties, the disposition of the deposits shall be as directed by the arbitrators. In the event of an appeal, the appellant shall pay all actual appeal costs including, but not limited to, Association counsel fees, costs of transcripts and stenographer's attendance fees.

SECTION 7: NOTICES

- A. Any notice required to be given, or paper required to be served, may be given or served by personally handing it to the party to be notified or by mail addressed to his last known address. If mailed, notice shall be deemed given when mailed.
- B. Notice of any hearing shall include the names of the members of the tribunal and except for a continued hearing, be given not less than ten calendar days beforehand.

SECTION 8: INTERPRETATION OF BYLAWS

If any provision of the Bylaws, or a rule or regulation relative to the procedure of a tribunal's handling of a matter, is involved, the interpretation by that tribunal of the Bylaws, rule or regulation shall be conclusive and final, except that the Directors, on appeal, shall not be bound by that panel's interpretation.

SECTION 9: WAIVER

Each member, by virtue of his membership, waives any right of a personal redress against the Association, any member, any member of a tribunal and counsel of the tribunal, for anything done under the professional standards procedures of the Association in the absence of willful or wanton misconduct. Further, as a condition of continued membership, every member expressly waives any cause of action for libel, slander or defamation that might arise from the filing or consideration of any ethics complaint or arbitration request.

SECTION 10: COMMUNICATION AND CLERICAL

Communications shall be directed to the Secretary. The Secretary shall render all necessary assistance to the parties, shall, on application, furnish forms and papers required, shall receive and file all documents or other papers and shall receive all fees and disburse all monies payable to the Association.

SECTION 11: ATTEMPT TO INFLUENCE TRIBUNAL

Any attempt, directly or indirectly, to influence a member of a tribunal in any matter before it, other than by giving evidence and argument in an open hearing or in writing submitted to the entire tribunal, is a breach of duty of membership.

PART 2: MEMBERSHIP DUTIES AND THEIR ENFORCEMENT

SECTION 12: DUTIES OF MEMBERSHIP

- A. To abide by the Code of Ethics of the National Association of Realtors®.
- B. To abide by the Bylaws and Rules & Regulations of this Association and of the Pennsylvania Association of Realtors®.
- C. To submit to arbitration all controversies specified in Part 3 of this Manual, in accordance with the procedures therein provided and to abide by the arbitrators' award.

SECTION 13: POWER TO TAKE DISCIPLINARY ACTION

After a hearing, as provided below, the ethics panel may take disciplinary action against any member:

- A. For violation, by the member, of any duty of membership.
- B. On the member being convicted, adjudged or otherwise recorded as guilty, by any court of competent jurisdiction, of a felony or crime involving moral turpitude; or on a member being determined by a court of competent jurisdiction, or official of the State of Pennsylvania authorized to make the determination, as having violated a provision of the Pennsylvania Real Estate Law or a regulation of the Pennsylvania Real Estate Commission.
- C. For any act of a person who is not himself a member, but is employed by or affiliated with a member as an independent contractor and who provides real estate-related services within the scope of his or another's license. No violation of the provisions of the Code of Ethics on the part of such person shall be grounds for a filing against a member unless; it shall appear that such employer had guilty knowledge of such violation. A course of dealing, shown to have been followed by such person, shall constitute prima facie evidence of such knowledge on the part of the employer.
- D. If after review of an ethics complaint by the Grievance Committee and referral of the complaint for hearing, it is subsequently discovered that civil litigation or regulatory or administrative proceedings related to the same transaction or event are pending, the Hearing Panel Chair, in consultation with Association legal counsel, will determine whether the hearing will proceed or, alternatively, whether the complaint will be held in abeyance pending resolution of the litigation or regulatory or administrative proceedings. If, after review of an ethics complaint by the Grievance Committee and referral of the complaint for hearing, it is discovered that criminal proceedings related to the same transaction or event are pending, the complaint will be held in abeyance pending conclusion of the criminal proceedings.

SECTION 14: NATURE OF DISCIPLINE

Disciplinary action may consist of one or more of the following:

- A. Letter of censure of the Association member with a copy to the member's permanent file.
- B. Requirement that the member attend the ethics portion of the Association's Orientation Course or other appropriate course or seminar specified by the Hearing Panel which the respondent could reasonably attend taking into consideration cost, location and duration.

- C. Fine, not to exceed \$15,000.
- D. Suspension of membership for a period of time specified by the hearing panel, not to exceed one year.
- E. Expulsion from membership.

In addition to any discipline imposed, the Association may, at its 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. The Association shall determine in advance when, and under what circumstances, administrative processing fees will be imposed so that imposition is a matter of administrative routine. Such fees, if any, will be communicated in writing to all parties.

SECTION 15: GRIEVANCE COMMITTEE

There shall be a standing committee, known as the Grievance Committee, comprised of at least 12 Realtor® members, of whom at least a majority shall be Brokers. The members of the committee shall be appointed by the President, subject to confirmation by the Board of Directors, for three year terms. One third of the members of the first committee so appointed being designated for one year terms, one third for two ~~(2)~~ year terms and one third for three year terms. The President shall annually designate the co-chairmen of the committee.

SECTION 16: PROFESSIONAL STANDARDS COMMITTEE

There shall be a Professional Standards Committee comprised of at least six Realtor® members, of whom at least a majority shall be Brokers, appointed by the President, subject to confirmation by the Board of Directors, to serve terms of three years and appointed annually, in such numbers and in such manner, as to ensure continuity of knowledge and experience by the committee. Members of the Professional Standards Committee shall be selected by the President to serve on hearing panels, to hear matters of alleged unethical conduct by Association members or to provide arbitration. Disciplinary proceedings shall be held separately from any hearing in arbitration. The President shall designate the chairmen of the panels.

SECTION 17: MANNER OF INITIATING A HEARING

- A. Any person, whether a member or not, who has reason to believe that such member is guilty of conduct subject to disciplinary action, shall have standing to file a dated, signed written complaint in his or her own name with the Secretary stating the facts on which it is based. An individual who is not involved in a transaction with a member, who files a complaint relative to the transaction, shall have standing to file a dated, signed written complaint if the complaint is joined in and supported by an affirmation signed and dated by the person or entity who is involved in the transaction with the member, affirming that the facts complained therein are true and correct to the best of his or her knowledge, information and belief. All complaints must be 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. The Secretary shall promptly refer any complaint to the Grievance Committee for preliminary investigation and evaluation by the committee to determine whether to (1) dismiss the complaint as unworthy of further consideration (2) refer it to the complainant as appropriate for arbitration rather than disciplinary action or (3) refer it to the Secretary to schedule a hearing. This review process may include additional information other than the written complaint itself, only if necessary, to determine whether a complaint will be referred for a hearing. The Grievance Committee shall send a copy of the complaint to the party complained of and require him to furnish his response before making its preliminary determination. The

Grievance Committee may, if necessary, gather additional information on the matters complained of if additional information is necessary to determine whether a complaint will be referred for a hearing. The function of the Grievance Committee is to make only such preliminary investigation and evaluation of the complaint as required to determine whether the validity and substance of the complaint warrants further consideration by a hearing panel. The Grievance Committee does not conduct "hearings", and does not determine if a violation of the Code of Ethics has occurred.

- B. Upon its own motion, the Grievance Committee may and, upon instruction from the Board of Directors, must, investigate the actions of any member when there is reason to believe that the member is guilty of conduct subject to disciplinary action; and if so satisfied, shall prepare a complaint, refer it to the Secretary and designate one of its members to present the case at the subsequent hearing on its behalf, as complainant. However, no member of the Grievance Committee shall serve as a member of the Hearing Panel.
- C. If the Grievance Committee feels that the respondent's alleged conduct may be the basis for a violation, but that an inappropriate Article has been cited, the Grievance Committee may amend the complaint by deleting any inappropriate Article and by adding any appropriate Article and/or individuals to the complaint.
- D. If an ethics respondent resigns, or otherwise causes his membership in the Association to terminate, after an ethics complaint is filed but before final action is taken, the hearing process shall suspend and the Secretary shall cause the complaint to be forwarded to any other Association in which the respondent continues to hold membership. If the respondent does not hold membership in another Association, or if the Secretary is unable to determine if the respondent holds membership in another Association, the complaint shall be held in abeyance until such time as the respondent rejoins the Association, or it can be determined that the respondent holds membership in another Association. In any instance where a complaint is transferred to another Association, the complainant shall be so advised.
- E. The procedures for processing complaints alleging violations of an Association's bylaws prohibiting harassment are available in Article VI Section 10 of the Association Bylaws, and those procedures do not involve an Association's Grievance Committee, Professional Standards Committee, or Board of Directors.

SECTION 18: HEARINGS

- A. After a complaint alleging a violation of membership duty has been referred to the Secretary by the Grievance Committee with instructions to arrange a hearing, the Secretary shall serve a copy of the complaint on each respondent. The President shall promptly select, from the Professional Standards Committee, a hearing panel of three members, of whom a majority shall be Brokers. The President shall designate one of the panel members as chairman, who shall designate the time and place of the hearing, which may be continued, and shall cause the Secretary to notify the complainant and the respondent. The Secretary shall require the complainant to supply the necessary number of copies of the complaint and the respondent to supply the necessary number of copies of the reply.
- B. The Secretary shall deliver copies of the reply (if any) to the complainant and the hearing panel.
- C. An appearance at the hearing without objection by a party will constitute waiver of any defective notice of the hearing.

- D. The chairman of the panel shall be the presiding officer and shall prescribe any procedure for the hearing not inconsistent with the provisions of this Manual.
- E. After a complaint has reached a hearing panel, it may be withdrawn, by the complainant, only with the panel's approval.
- F. Amendment of complaint:
 - 1. The complainant may file with the Secretary, a written amendment to the complaint, excluding amendments pertaining to an Article previously dismissed by the Grievance Committee relating to previously charged respondents, provided it is filed no later than seven calendar days prior to the hearing. The Secretary shall promptly refer the information in writing, to the Hearing Panel and to the respondent, who shall be 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.
 - 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. In such event, the hearing, with the concurrence of the respondent, may proceed uninterrupted or be reconvened on a date certain not less than 15 or more than 30 calendar days from adjournment. However, in any instance where a Hearing Panel amends an ethics complaint pending before it, the respondent shall be given the choice of proceeding before the same Hearing Panel (either without interruption or when reconvened pursuant to the procedures established elsewhere in this Section), or having the complaint considered in a new hearing before a different Hearing Panel. If the respondent knowingly waives his right to the adjournment, the record should reflect the fact that he was aware of the right to an adjournment but chose to proceed with the hearing, without interruption, on the basis of the amended complaint. If the hearing is adjourned to be a later time, the amended complaint shall be filed, in writing, signed by the complainant or by the chairman of the Hearing Panel, and shall be promptly served on the respondent as in all other cases provided herein. To prevent the appearance of bias, at no time during or after an ethics hearing may the Hearing Panel, or any appellate body, refer concerns regarding potentially unethical conduct to the Grievance Committee. This is based on the premise that the fundamental right and primary responsibility to bring potentially unethical conduct to the attention of the Grievance Committee rests with the parties and others with firsthand knowledge. This prohibition in no way limits or restricts the Hearing Panel from amending pending complaints as otherwise provided in this section.
 - 3. In the event that either party fails to appear at a duly noticed hearing without obtaining a continuance or adjournment, the hearing panel may proceed with the hearing in their absence, and shall reach a decision based on the evidence made available at the hearing. The panel may, at its discretion, fine the absent party for failure to attend the hearing. Thereafter, all other procedures shall follow as herein provided.
- G. Criminal or civil litigation or regulatory/administrative proceedings coming to light after an ethics complaint has been referred to an ethics Hearing Panel.
 - 1. If after review of an ethics complaint by the Grievance Committee and referral of the complaint for hearing, it is subsequently discovered that civil litigation or regulatory or administrative proceedings related to the same transaction or event are pending, the Hearing Panel Chair, in consultation with Association legal counsel, will determine whether the hearing will proceed or, alternatively, whether

the complaint will be held in abeyance pending resolution of the litigation or regulatory or administrative proceedings. If, after review of an ethics complaint by the Grievance Committee and referral of the complaint for hearing, it is discovered that criminal proceedings related to the same transaction or event are pending, the complaint will be held in abeyance pending conclusion of the criminal proceedings.

SECTION 19: DECISION OF HEARING PANEL

- A. The decision of the hearing panel shall be by a majority vote, in writing, and shall contain findings of fact and a statement of the disciplinary action, if any. Such decision shall not be disclosed except to the Directors as provided herein. However, failure of confidentiality shall not invalidate the decision. The decision shall be filed with the Secretary within seven calendar days of adjournment.
- B. The Secretary shall transmit a copy of the decision to the complainant and respondent within 14 calendar days of rendition.
- C. Within 20 calendar days after the decision has been received, any party may petition the Hearing Panel for a rehearing, solely on the ground of newly discovered material evidence, which the petitioner could not with reasonable diligence, have discovered and produced at the original hearing. The petition for rehearing must be in writing.
- D. A petition for rehearing not acted upon within 14 calendar days of its filing, shall automatically be deemed denied. When granted or denied, the Secretary shall immediately inform the respondent and the complainant. No more than one petition for rehearing from either party may be filed.
- E. If a fine has been levied by the Hearing Panel, it shall be due and payable within 30 calendar days after the decision has been received, unless a petition for a rehearing has been filed with the Hearing Panel on the grounds of newly discovered evidence, or an appeal has been filed with the Board of Directors. If such rehearing or appeal is denied, the fine shall be due and payable within seven calendar days after the denial of the petition. Failure to pay a fine within the allotted time shall subject the member to a "Show Cause" hearing at the next regular Directors' meeting.
- F. Upon the rendering of a decision by the Hearing Panel, if no petition for a rehearing has been filed with the Hearing Panel on the grounds of newly discovered evidence, or if no appeal has been filed with the Board of Directors; or upon disposition of the matter, if appeals have been heard or denied, the Secretary shall disseminate to the State Real Estate Commission any final decisions in those instances where the public trust has been violated, such as misappropriation of client or customer funds or property, willful discrimination, or fraud. The Board of Directors and the Association's legal counsel, prior to such dissemination, shall specifically approve the nature, form, content and extent of such notification.

SECTION 20: ACTION OF THE BOARD OF DIRECTORS

- A. Within 20 calendar days after the Hearing Panel's decision has been received by the parties, if no petition for rehearing has been filed, or within ten calendar days after denial of a petition for rehearing, either the respondent or the complainant may file an appeal to the Board of Directors.
- B. An appellant shall agree, in writing, to pay all actual appeal costs including but not limited to, Association counsel fees, cost of transcripts and stenographer's attendance fees.

- C. If an appeal is filed, the Secretary shall immediately send a copy to the President, the chairman of the appropriate panel and the opposing party, notifying all parties of the time and place of review by the Directors, who shall consider the appeal and render their written decision, specifying the reasons therefore, within 60 calendar days of receipt of the transcript referred to in Section 20 D. below.
- D. The appropriate panel, within seven calendar days after receiving notice of appeal, shall order a transcript and, upon receipt, transmit to the Board of Directors the charges and answers, documentary evidence, testimony of witnesses and the opinion and decision of the panel. The review upon appeal shall be limited to the record so transmitted by the panel. No new or additional evidence shall be considered and the appeal shall be determined on the transcript.
- E. The Directors shall render their decision promptly. Their decision may adopt, reject or modify the decision of the hearing panel.
- F. If a decision of the hearing panel is rejected or modified, the Directors shall state their reasons in writing; but failure to do so shall not invalidate the decision of the Directors.
- G. The decision of the Directors is final and each member, by becoming and remaining a member, agrees not to seek review in any court of law.
- H. Upon final action by the Directors, the Secretary shall disseminate to the complainant, the respondent, the Board of Directors, the chairman and members of the Hearing Panel, Association legal counsel, the President of any other Realtor® Association in which the respondent holds membership, and to any governmental agency as directed by the Board of Directors, such notice of the action they deem appropriate, under the circumstances, to effectuate the discipline prescribed; provided however, that the nature, form, content and extent of the notice, shall be specifically approved by Association legal counsel prior to dissemination. Association members, other than those specified, shall be notified only in response to suspension or expulsion of the member.
- I. If the complainant alleges that a member has improperly refused to submit a dispute to arbitration (or mediation if required by the Association), the complaint shall not be referred to the Grievance Committee or a Hearing Panel, but shall be brought before the Board of Directors at the next regular meeting or at a special meeting called by the President for that purpose. The procedures for notices, time of notice, and hearing prescribed for matters before a Hearing Panel shall apply. The sole question of fact for the Directors to decide will be whether the respondent has failed to submit an arbitrable matter to arbitration or mediation in violation of Article 17.

Upon determination that the member has refused to arbitrate or mediate a properly arbitrable matter, the Board of Directors may direct the implementation of appropriate sanction and should, if it has reason to believe that the imposition of sanction will become the basis of litigation and a claim for damages consequent to such sanction, delay the effective date of implementing the sanction to a date following receipt by the Association of a judicial decision in a petition for declaratory relief filed by the Board to confirm the propriety of its action.

On the other hand, if the complaint against the member is that, having properly submitted a dispute to arbitration or mediation, the member has refused to abide by the award or the resulting agreement, such refusal should not be referred to the Grievance Committee as a violation of the Code of Ethics unless it reflects an established pattern or practice of noncompliance with the commitment to arbitrate or mediate. A refusal to abide by an award in arbitration or any resulting agreement in mediation should be enforced in the manner set forth in **Part Three**, Section 30.

There can be no charge that there has been a refusal to arbitrate until the Grievance Committee determines the matter is arbitrable and of a mandatory nature and the respondent fails to submit to arbitration before the Board.

SECTION 21: PRELIMINARY JUDICIAL DETERMINATION

The Board of Directors may, at its option, submit any matter under Part 2 of this Manual to the Court of Common Pleas in accordance with the Act of June 18, 1923 P. L. 840, Section 6, 12 P.S. 836 as amended (Uniformed Declaratory Judgment Act).

PART 3: ARBITRATION OF DISPUTES

SECTION 22: DISPUTE

As used in Part 3 of this Manual, the term “dispute” means a monetary controversy between sole proprietors, partnerships or corporations involving the distribution of sales commission. All arbitrations shall be conducted in a manner consistent with state law. No arbitration may proceed without three arbitrators, not disqualified pursuant to the provisions of Section 2 of this Manual. In case of disqualification, the President shall fill the vacancy by appointing any other person qualified to serve.

SECTION 23: DUTY OR PRIVILEGE TO ARBITRATE

By becoming and remaining a member, and by signing or having signed the agreement to abide by the Bylaws of the Association, every member binds himself, and agrees to submit to arbitration by the Association’s facilities, all disputes as defined in Article 17 of the Code of Ethics and as set forth in the provisions of this Manual under the following conditions:

- A. Every Realtor® member of the Association, who is a principal broker of a real estate firm, shall have the right to invoke the Association’s arbitration facilities in any dispute arising out of the real estate business with a Realtor® who is a principal broker in another real estate firm.
- B. A Realtor®, other than a principal, shall have the right to invoke the arbitration facilities of the Association in a business dispute with a Realtor® in another firm provided their principal broker joins in the complaint and the principal broker of the respondent’s firm is joined.
- C. Monetary disputes between Realtor® members, and other members or non-members of the Association, which do not meet these conditions, may be accepted for arbitration at the discretion of the Board of Directors.
- D. Monetary disputes between Realtor® members of this Association and Realtor® or Realtor Associate® members of other Associations of Realtors®, will be accepted for inter-Association arbitration, provided their principal broker joins in the complaint and the principal broker of the respondent’s firm is joined according to the following:
 1. An arbitration panel consisting of one representative from the complainant’s Association, one representative from the respondent’s Association, and a chairman appointed from a neutral third party Association, will conduct the hearing.
 2. Procedures for the preliminary Grievance meeting, filing of documents, etc. will be in accordance with the regulations of the neutral Association.

3. In the absence of agreement to these procedures by either the complainant or respondent, Section 24 of this Code of Ethics and Arbitration Manual will prevail.

SECTION 24: DUTY TO ARBITRATE BEFORE STATE ASSOCIATION

By becoming and/or remaining a member of this Association, every member binds himself and agrees to submit to arbitration by the arbitration facilities of the Pennsylvania Association of Realtors®, any dispute with a member of any local Association of the Pennsylvania Association of Realtors® provided:

- A. The dispute is defined as one for which arbitration is required by Article 17 of the Code of Ethics.
- B. The Pennsylvania Association of Realtors® has established facilities for such arbitration.

This method may also be utilized for the conduct of arbitration between members of different Associations of different states, subject to the parties voluntary written agreement in advance, to accept the place, date and time established by the arbitration panel thus chosen for a hearing; to pay all costs of such arbitration as may be directed by the panel and further, subject to applicable state law of the respective states permitting such binding arbitration.

SECTION 25: MANNER OF INVOKING ARBITRATION AND SUBMISSION

- A. Arbitration hearings shall be initiated by the filing of a written statement that indicates the nature of the controversy, the amount in dispute and is accompanied by the required deposit. Requests for arbitration must be filed within 180 calendar days after the closing of the transaction, if any; or within 180 calendar days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later. Such statement shall be filed with the Secretary who will deliver the statement to the panel.

The panel shall examine the statement, transmit a copy to the respondent and fix a reasonable time for the respondent to file a written response. The Secretary shall transmit a copy of the response to the panel and to the complainant. The panel shall set a date for the hearing, which may be continued. No more than one continuance shall be granted except for reasons deemed imperative by the committee. The complainant may file, with the Secretary, a written amendment to the complaint provided it is filed no later than one week prior to the hearing. The Secretary shall promptly refer a copy to the panel and to the respondent. If any party to the hearing intends to be represented by counsel, such party must notify the opposing party and the tribunal, in writing, at least seven calendar days prior to the date set for the hearing. The tribunal may have counsel present to advise it on issues of procedure.

- B. Each party must sign an arbitration agreement and deposit a filing fee to cover court stenographer's attendance costs.

SECTION 26: THE ARBITRATORS

Upon submission of any dispute to arbitration, the President shall promptly select from the Professional Standards Committee a hearing panel of three or more members, of whom a majority shall be Brokers. The President shall designate one of the panel members as chairman, who shall set the time and place of the hearing.

SECTION 27: THE ARBITRATION PROCEDURE

The parties to the dispute shall, with diligence, present to the arbitrators, in writing, such statements and proof, as they desire. Proofs may be submitted in the form of affidavits or otherwise. The hearing panel of arbitrators may require that statements be verified by affidavit or that the accuracy or authenticity of any documents or other papers submitted be verified by affidavit. The hearing panel shall receive oral testimony if any party to the arbitration requests or if, in the hearing panel's opinion, it is necessary or desirable. The hearing panel shall determine what personal appearances the parties should make and regulate the holding of hearings.

SECTION 28: SETTLEMENT

The parties to an arbitration may settle the issue between them by agreement at any time prior to 24 hours before the scheduled hearing. In such event, upon written notification of such settlement to the Secretary, the arbitration proceeding shall be terminated.

SECTION 29: THE AWARD

The award of the arbitrators shall be made as soon as practicable after the evidence is presented. The award shall be by majority vote, in writing, and when served on each of the parties, shall be valid and binding.

- A. Within 20 calendar days after the decision has been received, any party may petition the Hearing Panel for a rehearing, solely on the ground of newly discovered material evidence which the petitioner could not, with reasonable diligence, have discovered and produced at the original hearing. The petition for rehearing must be in writing.
- B. A petition for rehearing not acted upon within 14 calendar days of its filing shall automatically be deemed denied. When granted or denied, the Secretary shall immediately inform the respondent and the complainant. No more than one petition for rehearing from either party may be filed.
- C. Within 20 calendar days after the Hearing Panel's decision has been received by the parties, if no petition for rehearing has been filed, or within ten calendar days after denial of a petition for rehearing, either the respondent or the complainant may file a written request to the Board of Directors for procedural review. The award is not final and binding until after the 20 day period or the procedural review is concluded, whichever is later.

SECTION 30: COMMON LAW

The arbitration procedure, enforcement of awards and the right of appeal shall be, except as modified in this Manual, as at Common Law.

PART 4: OUTLINE OF PROCEDURE FOR ETHICS OR ARBITRATION HEARING

SECTION 31: POSTPONEMENT OF HEARING

Postponement may be granted if there are extenuating circumstances. Requests for postponement must be made in writing. The chairman can give permission. Reasonable time shall be granted before another date is set.

SECTION 32: METHOD AND OBJECTIVE OF PROCEDURE

The Hearing Panels shall not be bound by the rules of evidence applicable in courts of law, but shall afford all parties a full opportunity to be heard, present witnesses and offer evidence subject to the committee's judgment as to relevance.

SECTION 33: DUE PROCESS PROCEDURE

- A. Opening statement by the chairman, citing the committee's authority to hear the case and explaining the reason for the hearing.
- B. Complaint read into the record (may be waived).
- C. Parties, or their counsel, afforded the opportunity to make opening statements.
- D. All parties and witnesses sworn or affirmed.
- E. Parties given an opportunity to present evidence and testimony on their behalf, and to present witnesses.
- F. Parties, or their counsel, afforded an opportunity to cross-examine all witnesses and principals.
- G. Committee members may ask questions at any time during the proceedings.
- H. To ensure relevance and maintain proper decorum, the chairman may exclude any question that he deems irrelevant or argumentative.
- I. Parties make closing statements.
- J. Adjournment of hearing.
- K. Committee goes into executive session to decide case.
- L. After an Ethics violation has been determined, but before the sanction phase, the committee may consider prior violations, not complaints, occurring within the past five years. If the Ethics Panel considers prior violations and sanctions in making its recommendation of discipline, the rationale for the current disciplinary recommendation can be provided to the parties as part of the decision.

SECTION 34: FINDING IN DISCIPLINARY HEARING

The finding and recommendation for penalty or discipline shall be rendered in writing by the Hearing Panel and submitted to the parties in accordance with the procedures of Section 19 of this Manual.

SECTION 35: FINDINGS IN ARBITRATION

The decision in an arbitration procedure shall be rendered in writing by the Hearing Panel and submitted to the parties in accordance with the procedures of Section 19 of this Manual.

SECTION 36: USE OF LEGAL COUNSEL

A party may be represented in any hearing by counsel. No party may refuse to directly respond to requests for information or questions by members of the panel. The panel need not accept the statements of counsel

as being the statements of his client, if the panel desires direct testimony. Each party shall be held responsible for the conduct of his counsel. Any effort by counsel to harass, intimidate, coerce or confuse panel members or any party to the proceedings, or any action by counsel which is otherwise viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be non-appealable. In the event counsel is excluded, the panel shall temporarily postpone the hearing and fix a date certain for a continuance, to enable new counsel to be obtained.

PENNSYLVANIA ASSOCIATION OF REALTORS®

PART 5: PROFESSIONAL STANDARDS COMMITTEE

SECTION 37: AUTHORITY AND REQUIREMENT

The obligation of the State Association regarding the Code of Ethics of the National Association of Realtors® is established by the following:

- A. Article IV Code of Ethics, Sections 1 and 2 of the Bylaws of the National Association of Realtors® which read:

SECTION 1

“Each member Association shall adopt the Code of Ethics of the National Association of Realtors® as part of its governing regulations, for violation of which, disciplinary action may be taken.”

SECTION 2

“Any member Association 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 of Realtors®.”

- B. Article XII Professional Standards Sections 1 and 2 which read:

SECTION 1

“Allegations of ethical violations and controversies between Realtors® may be submitted to an ethics or arbitration panel at the State Association level under the following circumstances:

1. Controversies between Realtors® who are not members of the same Association where the local Associations have referred the matter to the State Association.
2. Controversies between Realtors® who are not members of any Association.
3. Controversies between an individual Realtor® member and a Realtor® who is a member of an Association.
4. Controversies between Realtor® members of the same Association where the Association, with good and sufficient reason, is unable to arbitrate the controversy. (Explanation: This provision is not designed to relieve the local Association of its primary responsibility to resolve differences arising

between members of the same Association, but recognizes that in some Associations with a limited membership, usual arbitration procedures may be impossible).”

SECTION 2

“Professional Standards hearings and the organization and procedures incident thereto shall be governed by the Code of Ethics and Arbitration Manual of the Pennsylvania Association of Realtors® as from time to time amended.”

PART 6: MEDIATION SERVICES

SECTION 1: MEDIATION AS A SERVICE

Although no party to an arbitrable matter can be required to submit to mediation and mediation cannot and is not intended to be a substitute for the arbitration procedures described elsewhere in this Manual, mediation can be a useful tool in resolving the conflicts that arise involving Association Members and their clients and customers and in instances where arbitration would be provided under **Part Three** of this Manual. Mediation can resolve disputes, promote amicable resolution, and reduce the number of cases requiring the more formal and complex arbitration procedures of the Association.

While mediation can only be mandated under the circumstances expressly established in Article 17 of the Code of Ethics, boards and associations may, at their discretion, offer mediation, and Realtors® may voluntarily participate in mediation, where disputing parties voluntarily request mediation. The circumstances under which voluntary mediation may occur include:

1. Disputes between Realtors® associated with different firms where no arbitration request has been filed.
2. Disputes between Realtors® and their clients where no arbitration request has been filed.
3. Disputes between Realtors® who are or were affiliated with the same firm when the dispute arose.
4. Disputes between Realtors® and non-member brokers.
5. Disputes between Realtors® and their customers.

In mediation the need for due process remains. Since mediation is an attempt to bring the disputing parties together in an informal setting to resolve their differences, every effort should be made to ensure that the parties are provided with adequate prior notice (at least ten days) and that the time and location of the proceeding is mutually convenient to all involved. However, this requirement shall not preclude parties to a dispute waiving such notice and agreeing to mediate at any time agreed by all parties.

SECTION 2: PROCEDURES

- A. If an Arbitration request is received by the Association and the dispute is a properly arbitrable matter, the Secretary will advise all parties of their option to participate in mediation prior to review of the arbitration request and inquire of the complainant and respondent. If mediation is voluntary and the

parties agree, the matter will be referred to the Mediation officer, who will arrange a mutually convenient time and location for mediation. When mediation is voluntary and the mediation attempt is unsuccessful, if either of the parties wishes to discontinue the mediation process for any reason, then mediation will be terminated and the request for arbitration will be referred for review. Regardless of whether mediation is voluntary or mandatory, if either party requests that mediation be deferred until after the arbitration request can be reviewed, the arbitration request will be referred for determination whether (a) an arbitrable issue exists, and (b) whether arbitration would be voluntary or mandatory. Where any party initially declines to mediate pending the review of the arbitration request, the parties shall in all instances again be offered the opportunity to mediate following the review. If both the complainant and respondent wish to mediate the dispute, a Request for Mediation and an Agreement to Mediate form will be sent to the complainant.

- B. Upon receipt of a completed form from the complainant, a Notice of Request for Mediation form with attached copy of complainant's completed Request for Mediation and an Agreement to Mediate form will be sent to the respondent. In addition, Mediation Officer Selection forms will be sent to both the complainant and respondent.
- C. Upon receipt of all completed forms, the Association will assign any mediator, not challenged, to serve as the Mediation Officer.
- D. The Mediation Officer will contact the complainant and respondent directly to set a mutually acceptable time and location for the mediation conference.
- E. If the Mediation conference successfully resolves the dispute, an original signed Mediation Resolution Agreement form will be forwarded to the Association by the Mediation Officer. The Resolution Agreement will be kept in the file with all pertinent records pertaining to that case, and both the complainant and respondent will receive a copy of the Resolution Agreement.
- F. If the mediation conference does not successfully resolve the dispute, the Mediation Officer may make the determination that the parties have reached an impasse, or may recommend an equitable solution. The recommendation for resolution can be oral or in writing, and may be provided to both parties at the conclusion of the mediation procedure. Any party who does not respond to the Mediation Officer within seventy-two (72) hours will be considered to have rejected the suggested solution. The Mediation Officer will then advise the Association in writing that the Mediation Conference has been terminated without resolution of the dispute.

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