

Professional Enforcement of the Code

by

Bruce H. Aydt

***© Copyright, 2021 Bruce H. Aydt in part
and the National Association of REALTORS® in part
NAR Materials used with permission.***

Use of Information and Materials

By use and possession of these educational materials (“Materials”), the User of the Materials agrees, represents and warrants that the Materials will be used only for the personal, noncommercial use of the User and will not be copied, distributed or otherwise used except by the User him/herself. User expressly acknowledges that the Materials are owned and copyrighted by Bruce H. Aydt.

Any information in these Materials as well as statements, comments and oral information given by Bruce H. Aydt in this class/seminar, whether during the formal class time, before or after the class or during any break, is not legal advice to the recipient and does not create any attorney-client relationship with any person in the class/seminar. User/student/recipient is advised to seek their own legal advice and counsel as to any topic covered by these materials.

Per Policy Statement 22 of the *Code of Ethics and Arbitration Manual* of the National Association of REALTORS®, the contents of this document and any statements, comments and oral information given by Bruce H. Aydt related to the REALTOR® Code of Ethics reflect the understanding and opinions of Bruce H. Aydt and do not represent an official expression of policy by the National Association of REALTORS® or any association of REALTORS® that distributes this document.

Some of the materials used in this seminar are copyrighted by the National Association of REALTORS® and used with permission from the National Association of REALTORS®.

Please do not record audio, video or live stream without permission of Bruce H. Aydt.

Professional Enforcement of the Code

Bruce H. Aydt, DSA, ABR, CRB, GRN, SRS

Copyright, © 2021

And the National Association of REALTORS®

Icebreaker Exercise – True or False or Maybe?? And What Article/Standard??

In your Breakout Rooms group, you should:

1. Introduce yourselves to each other if you don't know each other and/or welcome anyone you don't know into your group.
2. Do the Icebreaker Exercise below as a group. Answer the statement/question/scenario as True, False or Maybe (M) and also identify the Article(s) or Standard(s) of Practice that may apply

T F M 1. REALTOR® Joe lists his own property for sale with his company. Joe is required to also include "owner-broker" or a similar phrase in all of his advertising.

Article(s)/SOP(s): _____

T F M 2. The Code's prohibition on solicitation of agency relationships applies to all agency relationships that a REALTOR® has with a client whether exclusive or non-exclusive.

Article(s)/SOP(s): _____

T F M 3. A REALTOR® may not sell property in areas outside of their MLS because they are not "competent" in the geographical area."

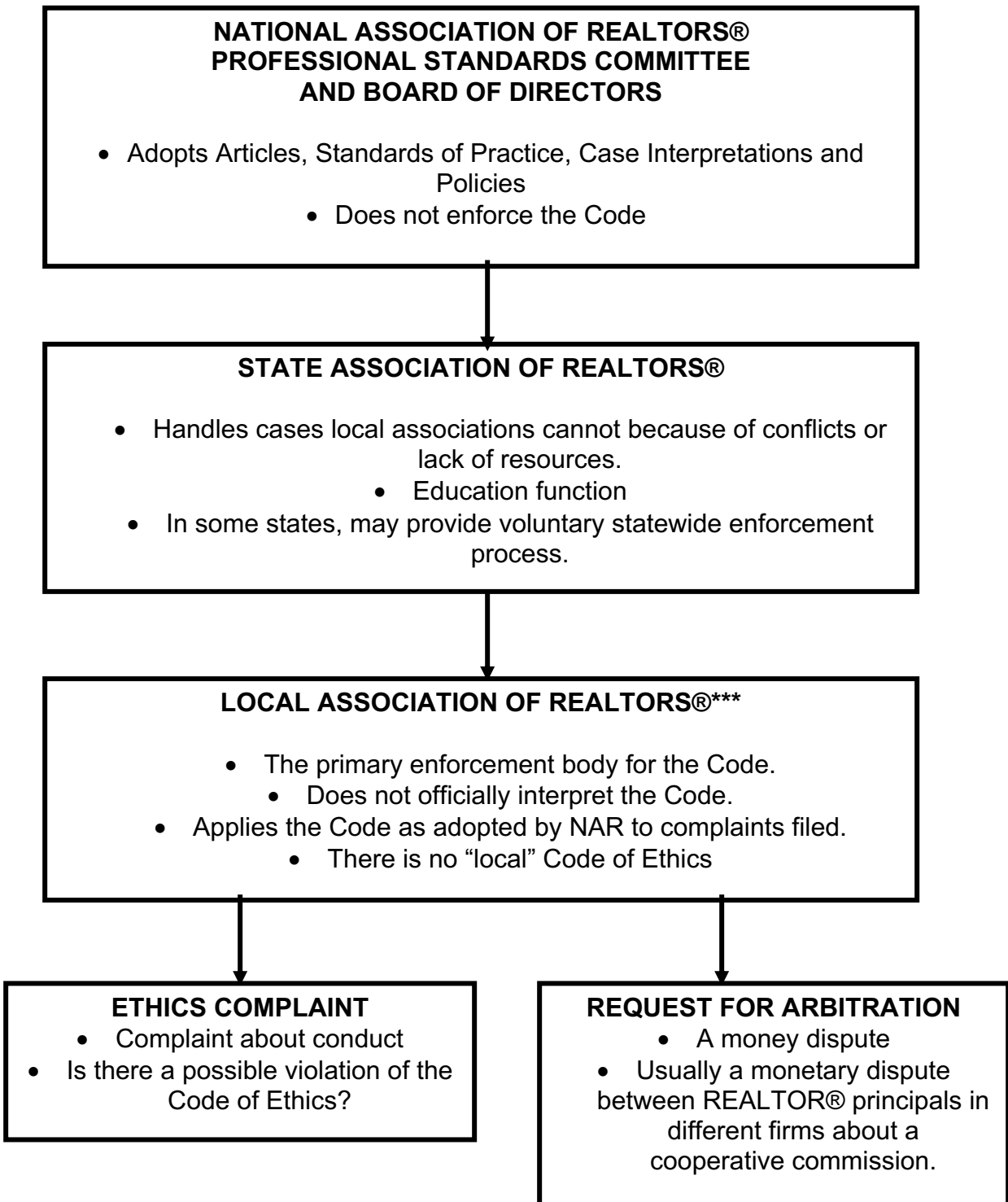
Article(s)/SOP(s): _____

T F M 4. A Team advertisement must include the name of the Team's firm in a readily and reasonably apparent manner.

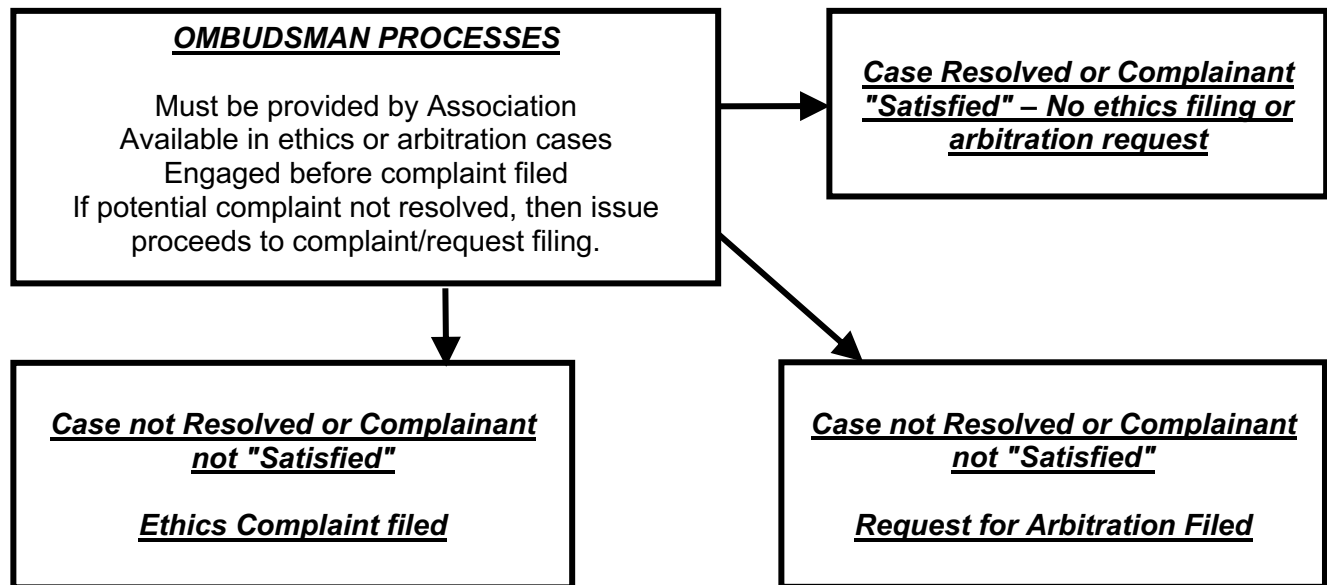
Article(s)/SOP(s): _____

- | | | | | |
|---|---|---|-----|---|
| T | F | M | 5. | REALTOR® Hazel has a commission schedule which has different rates for different price ranges of property. Hazel must disclose that she uses a dual or variable rate commission. Article(s)/SOP(s): _____ |
| T | F | M | 6. | A listing REALTOR® must protect his/her listing from reasonably foreseeable losses. Article(s)/SOP(s): _____ |
| T | F | M | 7. | The existence of an accepted offer must be disclosed to a broker seeking cooperation on that listing. Article(s)/SOP(s): _____ |
| T | F | M | 8. | A listing broker must give a written affirmation to a cooperating broker that an offer has been presented (or that the seller has refused to view the offer) if the cooperating broker makes a written request. Article(s)/SOP(s): _____ |
| T | F | M | 9. | A buyer broker must disclose to their buyer client that a seller or seller's agent may not treat the terms of the buyer's offer as confidential. Article(s)/SOP(s): _____ |
| T | F | M | 10. | The term "broker" in the Code of Ethics includes any real estate licensee whether a broker or sales associate. Article(s)/SOP(s): _____ |

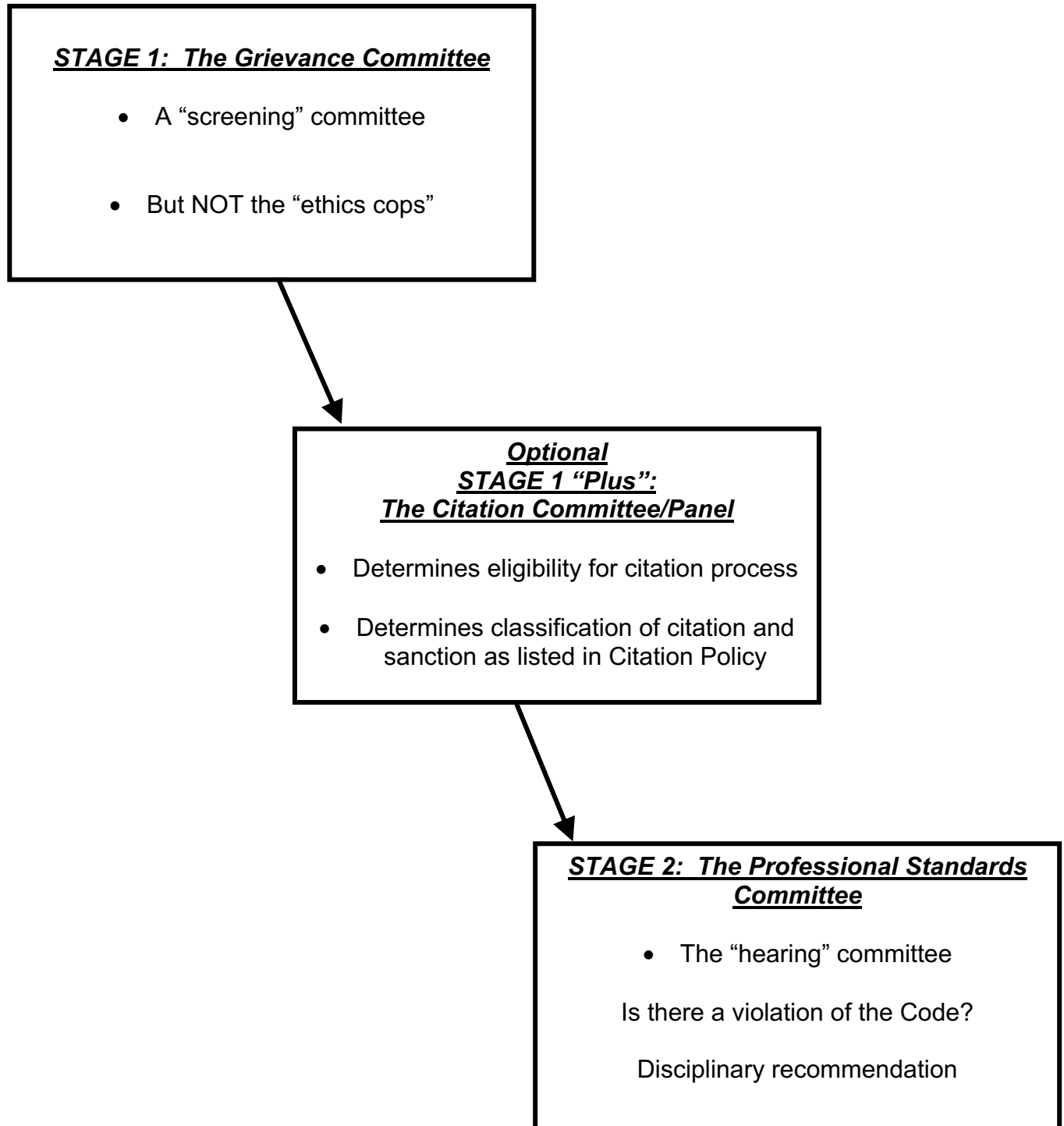
Overview of the Enforcement Process



Ombudsman Processes

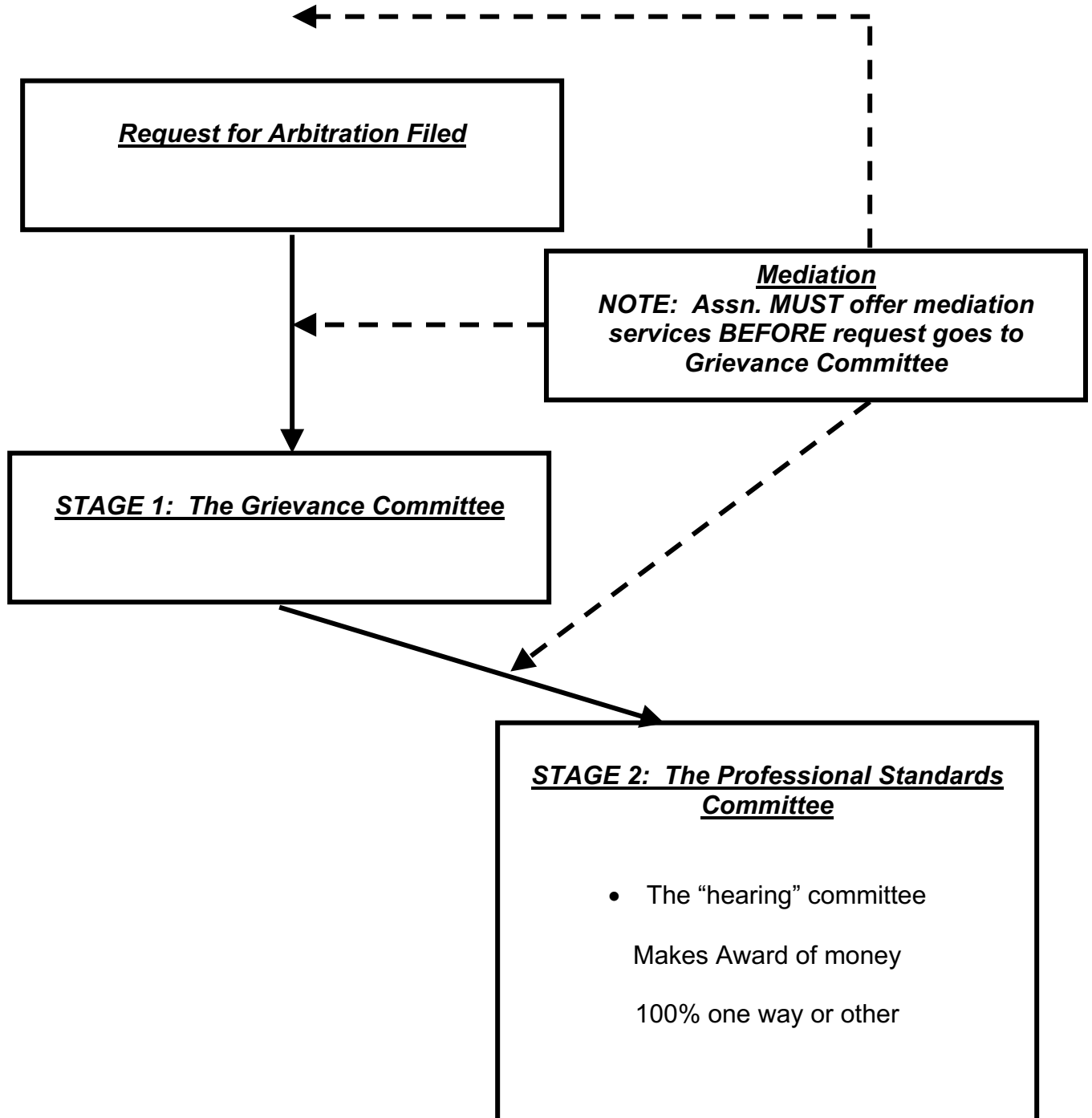


Ethics Complaints - The “Two ‘Plus’ Stage” Process



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: NO review by Directors unless Procedural Review 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.

"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. REALTORS® "identify and take steps, through enforcement of this Code of Ethics and by assisting appropriate regulatory bodies, to eliminate practices which may damage the public or which might discredit or bring dishonor to the real estate profession."

Structure of the Code and Standards of Practice

Articles

- Articles are the broad statements of ethical principles and standards.
- ONLY Articles can be used to discipline a member. (See below.)

Standards of Practice

- Standards of Practice support, clarify or amplify the Article under which they are located.
- You are NOT required to find a Standard of Practice that has been “violated” to find a violation of the Code.
- Violation of the Article of the Code is sufficient and, in fact, is how a violation is cited.
- You do NOT find a “violation” of a Standard of Practice. A violation of an Article may be “supported” by a Standard of Practice.
- Example violation that includes a Standard of Practice:

“We, the Hearing Panel, find the respondent in violation of Article 1 of the Code, as supported by Standard of Practice 1-16.”

In this example, the Findings of Fact would include information about how the respondent did not protect and promote the client’s interests because of unauthorized access to the property.

- *Example violation that does NOT include a Standard of Practice:*

“We, the Hearing Panel, find the respondent in violation of Article 1 of the Code.”

In this example, the Findings of Fact would include the conduct by which the respondent failed to protect and promote the interests of their client and/or how the respondent was not honest with all parties.

EITHER example is a correct citation of a violation of Article 1 of the Code.

Case Interpretations

Case Interpretations are hypothetical fact situations. They are NOT actual cases.

The NAR Professional Standards Committee writes a Case Interpretation to further detail how an Article may be violated.

The Case Interpretation may or may not reference a Standard of Practice and often does NOT reference a Standard of Practice because the purpose of the Case Interpretation is to explain how an Article ALONE is violated in the hypothetical case facts presented.

If a Hearing Panel finds a Case Interpretation that is “on point” (has the same facts as) with the case being presented to it, the Hearing Panel must follow the Case Interpretation. The Case Interpretation is NOT merely optional guidance, but intended to demonstrate how a case on the same facts is to be decided.

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 respondent's REALTOR® Principal (broker) always joined?
 - c. Is the **respondent's** REALTOR® Principal (broker) always entitled to be apprised of information regarding their licensee/respondent?
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 following case study and, acting as a grievance committee, answer the questions after the case study.

Green Mountain Association of REALTORS®
2500 Ridge Place
Anywhere, USA

November 15

RE: Complainants' Letter – REALTOR® Baldwin violated Article 16

I am writing this November 15 letter to report the unethical actions of REALTOR® James Baldwin. A fellow REALTOR® in my office told me that she found out Memorial Day weekend at a neighborhood block party that Mr. Baldwin did the same thing to her former clients last January, and she just let it go since their cash deal was closing the following week in January. How bold to call up another REALTOR®'s client right before closing in an attempt to refer them to an out-of-state broker. My co-worker's clients told her at the block party they never said anything to her about Mr. Baldwin calling them right after the first of the year because they didn't want to do anything to jeopardize the sale. When discussing the transaction at the Memorial Day party with my co-worker, though, her former clients shared that his call and request to refer them to an out-of-state broker was very off-putting. I'm not going to let this go because he recently did the same thing to me. If Mr. Baldwin thinks he can make money trying to refer other REALTORS®' clients to out-of-town brokers, he has another thing coming. Here is what happened.

Mr. Baldwin showed my listing at 220 Locust Street about a month ago when the sellers were home. When he called to schedule the appointment, Mr. Baldwin said the information in the MLS seemed to perfectly fit his client's needs. When showing the house, he asked my clients where they were moving to and they told him New York. He said he knew a lot of brokers in New York and asked if he could refer them to a broker there. My sellers told him no, and that they had already talked to me about referring them to someone in New York that could assist them in finding a new home. My sellers called me four days after the showing to relay what happened during the showing, telling me he called them again that day. These two instances prompted them to call to me. My sellers told me he asked them if they could be more specific about which area they preferred in New York. The sellers asked if I would please contact Mr. Baldwin and tell him to stop bugging them.

When I called Mr. Baldwin, I told him he should not be talking with my sellers in the first place, much less offering to refer them to someone. He said he was just engaging in "small talk." He said he wasn't doing anything wrong because he wasn't trying to list 220 Locust Street.

Instead, he was offering a different type of service to the sellers, which he said was specifically allowed. He obviously doesn't get it and, if my co-worker is correct, he has been operating under this misguided impression for a very long time.

The final straw was four days ago when another one of my seller clients called me and told me a very similar story. They are moving to Colorado when they sell their house. It just so happens that when showing their home Mr. Baldwin told them that he knows a lot of great real estate brokers in Colorado and would be happy to refer them. It is obvious to me that he is showing my listings he finds in the MLS to get access to sellers to try to create referrals. This is in violation of Article 16.

Respectfully submitted,

Trish Turner

Trish Turner, REALTOR®
Turner Realty

Case Study Questions

1. Is Trish's ethics complaint timely filed?
 - a. Yes.
 - b. No.
 - c. Cannot tell from the facts.

2. If Trish's co-worker filed an ethics complaint against Mr. Baldwin in August, would her complaint have been timely filed even though the transaction closed in January?
 - a. Yes.
 - b. No.
 - c. Cannot tell from the information provided.

3. Should the grievance committee refer Trish's complaint for hearing on Article 16?
 - a. Yes.
 - b. No.
 - c. Cannot tell from the information provided.

4. What Standard(s) of Practice are applicable to the facts portrayed in Trish's complaint?
 - a. Standard of Practice 16-3.
 - b. Standard of Practice 16-16.
 - c. Standard of Practice 16-18.
 - d. a. and c.

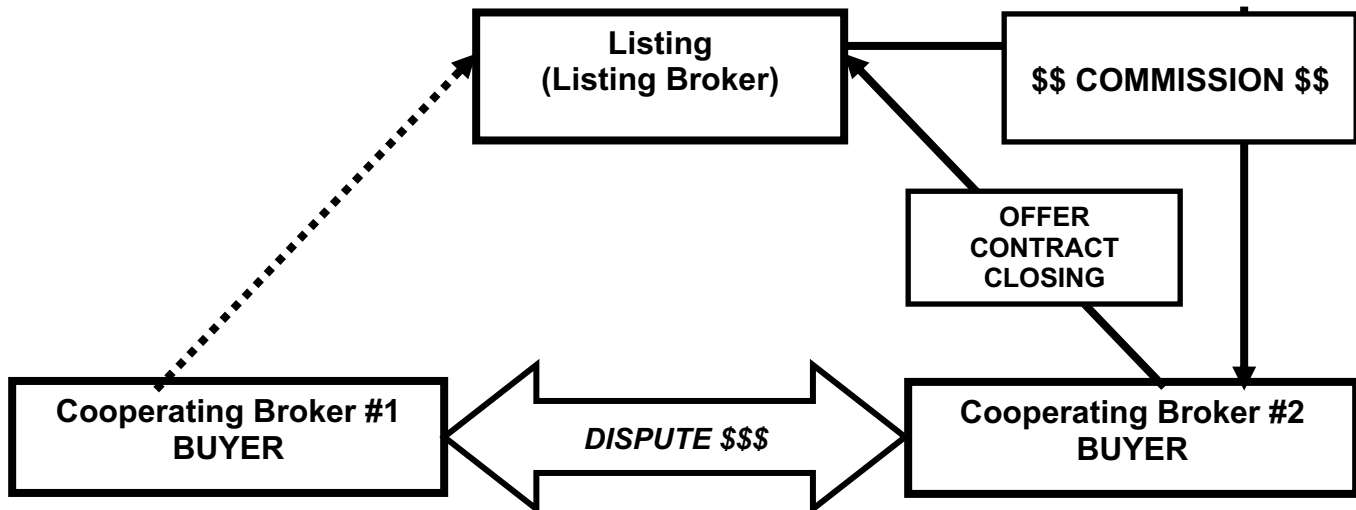
Request for Arbitration - Grievance Committee Role and Standards for Consideration

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."**

Conduct at Hearings by Panel Members

1. Standard for admission of evidence is relevance.
2. "Etiquette" at the Hearing – neutrality, lack of bias
 - a. Timeliness
 - b. Preparation
 - c. Attention
 - d. Body Language
 - e. Tone of voice
 - f. Use of first/last names
3. Questions by panel members
 - a. Type of questions
 1. Clarification
 2. Information
 3. NOT accusatory
 4. NOT leading
 5. NOT "helping" one party or the other
 - b. Timing of questions
 1. Any time, but
 2. Follow the lead of the chair.

Standards of Proof – Policy Statement 26

Arbitration Hearings

- A. "Preponderance of the evidence"
- B. Same standard used by courts and juries in a civil damages case.
- C. "Preponderance of the evidence shall be defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the facts sought to be proved are more probable than not."
- D. The 51% rule??

Ethics Hearings

- A. Standard of proof is "clear, strong and convincing" evidence.
- B. Compare to standard in criminal courts – "beyond a reasonable doubt"
- C. "Clear, strong, and convincing shall be defined as that measure or degree of proof which will produce a firm belief or conviction as to the allegations sought to be established."
- D. The 75% Rule??

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.

Sanctioning Guidelines – Appendix VII to Part Four, CEAM

Ethics Case Study

In your groups, decide whether you think REALTOR® Carla is in violation of the Code.

After a decades-long career at a university, Professor Munson decided to sell his home near the university campus in anticipation of his retirement to Arizona. Having lived in the home for over thirty years and realizing that the proceeds from its sale would constitute a significant part of his retirement funds, Professor Munson made appointments with several potential listing brokers, including Realtor® Patrick and Realtor® Carla. During each appointment, the Professor asked extensive questions hoping to get a clear idea of his property's market value and each broker's proposed marketing strategies.

Realtor® Carla was familiar with the Professor's home, having grown up on the same block and having gone to elementary and high school with the Professor's children. Consequently, Realtor® Carla was not surprised when she received a call asking for a meeting to discuss a possible listing of the Professor's home. The appointment had gone well and Realtor® Carla was confident she would get the listing. To her surprise, just three days later the property came onto the market listed with Realtor® Patrick. Realtor® Carla was taken aback and spent considerable time pondering what she had done or said – or failed to do or say – that had led Professor Munson to choose to list with Realtor® Patrick. Several times she was tempted to call the Professor and ask why she hadn't been chosen, but she never made that call.

Several weeks later Professor Munson's son and daughter-in-law hosted a retirement party for the Professor. Their friend Realtor® Carla was among the invited guests. At the party, Professor Munson approached Realtor® Carla and, after exchanging pleasantries, commented, "You're probably wondering why I didn't list my home with you." "The thought crossed my mind," admitted Realtor® Carla, "but you made a good choice with Realtor® Patrick. I'm certain he'll do a fine job and get a fair price for you." Then, since the Professor had raised the issue, Realtor® Carla asked, "I'm just curious, why didn't you give me the listing?" Professor Munson explained that while he thought highly of Realtor® Carla, he had been very impressed with Realtor® Patrick's marketing strategies, and his choice was a business decision and not one influenced by friendships.

Realtor® Carla accepted Professor Munson's explanation and their conversation turned to other topics. A month later, Realtor® Carla was surprised to receive notice from the local association of Realtors® advising she had been named in an ethics complaint alleging that her conversation with Professor Munson, after Professor Munson had listed his home with Realtor® Patrick, had violated Article 16 of the Code of Ethics.

At the hearing, Realtor® Carla had acknowledged she had been surprised – and disappointed – when Professor Munson listed his home with Realtor® Patrick instead of with her. She also acknowledged she discussed Professor Munson's choice of listing broker with him at the party. In her defense, she called Professor Munson as a witness. Professor Munson testified that he had in fact told Realtor® Patrick, his listing broker, about his conversation with Realtor® Carla,

adding that he had no idea that Realtor® Patrick would file an ethics complaint. He also noted he – and not Realtor® Carla – had raised the subject of why he had chosen to list with Realtor® Patrick. “Realtor® Carla is a longtime friend of my family and I felt I owed her an explanation about why I listed with Realtor® Patrick instead of with her.”

What does your group think? Is Carla in violation of the Code?

This case study is taken from Case Interpretations in the *Code of Ethics and Arbitration Manual* of the National Association of REALTORS®.

The Case Interpretations are copyrighted by the National Association of REALTORS®. Reproduced here with permission.

Arbitration and Procuring Cause

Procuring Cause

A. Legal Concept v. REALTOR® System

1. Listing broker v. owner
2. Broker v. Broker

B. 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.”

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

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 #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.

3. 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.

D. Summary of General Procuring Cause Concepts

1. Uninterrupted series of events - Unbroken “chain of events”

2. Abandonment

Abandonment is characterized by some lack of contact by the licensee 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 licensee for the period of time in the case before them constitutes abandonment.

3. Estrangement

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

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

E. Common Misconceptions about Procuring Cause

1. The Threshold Rule

2. The Contract Rule

3. The Agency Rule

F. How Many Procuring Causes are there??

See next page.

Arbitration and Procuring Cause Case Study

Chief Staff
Mayfield Association of REALTORS®
413 Buttercup Road
Redwood, USA 68746

July 16

RE: Complainant's Letter

Dear Association Executive:

I have worked with Joe on several projects over the past 20 years, most recently on the sale of his apartment building. This transaction was not simple in that Joe had two commercial tenants on the ground floor and 10 residential tenants on the second and third floors. I managed the commercial tenants and the sale of this building. Another REALTOR® in my firm handled the residential leases.

REALTOR® Samantha, a broker principal of another firm, approached me regarding a client she was working with who was interested in purchasing Joe's apartment building. I arranged for Samantha and her client, JoAnne, to view both commercial lease spaces and five of the residential units during a two-week window in March. Samantha transmitted to me a letter of intent from JoAnne to purchase the apartment building, and Joe agreed to sell the building to her in March. I thought we had a deal. It took us two months to work with all the tenants to make sure this sale could close May 30 without incident. Ten days prior to closing, REALTOR® Samantha called to inform me that her client was not able to close on the apartment building. Samantha explained that her client's mother had taken ill. Samantha explained that JoAnne's personal and business finances needed to be reallocated to provide for elder care, and she could not purchase the building. Samantha instead explained that JoAnne was interested in executing a lease for the larger commercial space on behalf of her company. That lease was executed the beginning of June, and JoAnne moved her business into the building June 30. It was at that time when I visited the property that I realized that JoAnne's business partner, a man named Jack, was working with **me** to lease that exact space in January. I didn't connect the dots that Jack and JoAnne were business partners because Jack was using their company's dba ("doing business as") when discussing renting the commercial space, whereas JoAnne executed the lease on behalf of the official, legal name of the company.

Samantha contacted me earlier this month, demanding to be compensated for finding the commercial tenant in an amount equal to the first month's rent. I'll concede that I offered to pay Samantha a definite dollar amount when she first contacted me with respect to the **sale** of the apartment building to JoAnne. I, at no time, however, agreed to pay Samantha any compensation for finding a tenant for this commercial space.

Bottom line, Samantha has threatened to sue me. I have not paid Samantha any monies, and I'm invoking arbitration now to ensure that I don't have to be embroiled with litigation. Both Samantha and I are members of your association. I'm asking the association to make a determination on her demand that I pay her \$10,000. I contend that I procured that lease given my dealings with Jack. The fact that Jack approached me using the dba as opposed to the official, legal name of the company is a difference without a distinction.

Mary Murphy, REALTOR®, Murphy Realty

Chief Staff
Mayfield Association of REALTORS®
413 Buttercup Road
Redwood, USA 68746

August 15

RE: Respondent's Letter, Samantha Maple

Dear Association Executive

I'll be happy to sit down with a mediator and discuss this situation, although it is my position that I am clearly entitled to an amount equal to the first month's rent which equates to \$10,000. I don't know why, this time, Mary has refused to pay me. I have worked with Mary on three other commercial leases, and in two instances the circumstances were the same as this. I found a tenant for property managed by Mary, and Mary paid me an amount equal to the first month's rent. The first instance there was a verbal agreement to pay me an amount equal to the first month's rent. The next two times I was successful in finding a tenant for commercial space managed by Mary, she paid me exactly as we had initially agreed. There was no additional agreement in either of those two subsequent instances, but her actions make it clear there was an implied contract. Given our prior dealings, I should be paid in this instance, as well.

My company has worked with Jack and JoAnne's company on a prior occasion five years ago when we were instrumental in finding the commercial space they were in prior to moving into this larger space managed by Mary. When JoAnne approached me in early March, she explained that their company had outgrown their space. She wanted me to secure commercial space to accommodate their expanding company's needs. She explained that her preference was to buy a building that the company could move into, but if a building was not currently available in the location she desired, she would consider renting commercial space instead.

Well, that is exactly what I did. I arranged to show JoAnne the building in question, working with Mary to see the purchase of the building through to conclusion. However, JoAnne ultimately could not close. She instead instructed me to secure the commercial space for the company in that same building. That is ultimately what happened. I brought about this successful transaction, defined in the *Code of Ethics and Arbitration Manual* as a "sale that closes or a lease that is executed."

I showed the property on several occasions, was instrumental in writing up the successful lease, which JoAnne signed, and the company has moved into the space. What more could I do. I am rightfully entitled to be paid an equivalent to the first month's rent (i.e., \$10,000). Besides, JoAnne made it clear she wanted to be represented. I was her best advocate. Mary couldn't do that as she represented Joe.

Thank you for your consideration. We look forward to an opportunity to advance our position at the arbitration hearing.

Samantha Maple, Maple Real Estate, LLC

In your groups, decide whether you think Mary is entitled to the \$10,000 she has requested.

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.