

RECENT KEY PROFESSIONAL STANDARDS CHANGES

2013

Changes were made to permit a Hearing Panel to throw out a case for the same administrative reasons that a Grievance Committee can. (For example, Hearing Panel can decide, despite what the Grievance Committee determined, that the case was not timely filed.)

1. It is up to the Hearing Panel Chair to decide whether these questions will be reviewed at a pre-hearing meeting or at the actual hearing.
2. It is up to the Hearing Panel Chair to decide whether the parties may be present during this discussion and the extent to which they will be allowed to participate.
3. If the Hearing Panel dismisses an ethics or arbitration complaint pursuant to this authority, that dismissal may be appealed to the Board of Directors (the same as if the case had been dismissed by the Grievance Committee).

2014

Added discussion regarding ethics discipline: inadvertent violations should result in sanctions designed to educate whereas intentional violations (for example, in order to realize an economic gain) should result in more severe sanctions.

Cannot amend ethics complaints to add a complainant unless both parties agree. (Either complainant or Hearing Panel can amend to add a respondent.)

Associations may (but are not required to) provide mediation services for non-arbitrable disputes (*i.e.*, non-contractual matters – *e.g.*, tort claims, employment claims, fraud claims etc.).

Increased the potential fine for ethics code violations from \$5,000 to \$15,000.

2015

Added additional discipline option – members may be required to stop particular conduct deemed to be in violation of the Code – or may be required to do something to come into compliance with the Code.

Added a process for mediation of ethics complaints. Local boards may, but are not required to, offer to mediate ethics complaints.

1. If ethics mediation is offered by a local board, the parties are not required to participate.
2. Mediation can be offered even where no formal ethics complaint has been filed.

3. Where an ethics complaint has been filed, mediation, if it occurs, happens after the Grievance Committee reviews the complaint. If the Grievance Committee throws out the case, then no mediation will occur.
4. Mediation remedies are not linked to the discipline available under the Code. The parties could agree to pay disputed funds, make repairs, issue a formal written apology, etc.
5. If a respondent does not comply with an agreed-upon settlement in an ethics mediation, the complainant is allowed to refile the ethics complaint.
 - a. This is different than with a settlement of an arbitration matter. If a member fails to comply with a mediated arbitration settlement agreement, the other party must go to court to enforce that settlement agreement.

Eliminated the procedure whereby a party could request a rehearing if he/she discovered new evidence after the hearing and that evidence might have impacting the Hearing Panel's decision.

Eliminated requirement that there must be "extreme circumstances" in order for people to be able to participate in hearings remotely – only requirement now is that it be done "in the discretion of the Hearing Panel Chair." Added requirements that if a Hearing Panel Chair permits remote testimony, steps must be taken to verify the identity of the person testifying remotely and that there is no one else present during his/her testimony. (Typically, a person testifying remotely does so from the local association office in his/her area.)

Amended witness list requirements to provide that all parties appearing at the hearing may be called as witnesses without advance notice; only other witnesses need to be named in witness list.

Added an "Arbitration Worksheet." Parties and panel members must be sent a copy of both "Arbitration Guidelines" and "Arbitration Worksheet" prior to the hearing.

2016

Prior to 2016, the manual said it was up to Grievance Committee to decide whether it wanted to ask for a response from the respondent before the Grievance Committee made its decision (for both ethics complaints and arbitration complaints).

1. In 2016, the manual was amended to say that the Grievance Committee can only ask for a response from the respondent if it had previously asked the complainant and the complainant had not provided the requested information.
2. Also, at the same time, changes were made to make clear that the Grievance Committee can only ask for additional information if it needs that information to answer the specific questions it is charged with deciding. Grievance Committee cannot go on a fact finding mission and cannot throw out a case for lack of

evidence or because the Grievance Committee does not believe the complainant is telling the truth.

Added a requirement that the arbitration award must be paid to the respondent or deposited in escrow with the local board within 10 days.

1. This requirement was introduced as an option for local boards in 2013; two years later, it was made mandatory.
2. If the deposit is not timely made, the complainant still has the right to appeal, but may be subject to discipline for failing to deposit the funds by the local association's Board of Directors.

Added a citation policy whereby a local association can adopt a fast track alternative for certain types of ethics violations. If complaint survives the Grievance Committee, the respondent has the option of waiving a hearing and paying the stated fine. Only certain types of violations qualify for the citation policy – these tend to be violations that involve less of a judgment call and where the violation is not one of degrees. An association must establish in advance the penalty amounts to be applied in each instance.

1. A citation is appropriate, for example, where the listing broker failed to disclose his ownership interest in the listed property (Article 4).
2. A citation is not appropriate where, for example, the Realtor® failed to “competently manage the property of clients with due regard for the rights, safety and health of the tenants” (SOP 1-10).

2017

If a member drops all board membership after an ethics complaint is filed against the member but before the hearing, the hearing still takes place. It used to be that the case was held in abeyance. (Now it is the punishment that is held in abeyance.)

Manual now specifically states that if Board of Directors sends the case back to the Hearing Panel with a recommendation that the discipline be increased, the Hearing Panel is not required to increase the discipline.

Ethics decisions must contain a provision as to the consequences of noncompliance with discipline. If the Hearing Panel's recommendation does not contain such a provision, the Board of Directors must send the decision back to the Hearing Panel so that they can fix it.

Added an optional step whereby parties can be offered an opportunity to settle an arbitration matter after the hearing but before the Hearing Panel renders its decision. (Parties could already ask for a short recess to discuss settlement at any time during a hearing.)

2018

Eliminated the authority of a hearing panel member in an ethics case to file a written dissenting opinion for consideration by the Board of Directors. Decisions are still approved by a majority of the hearing panel members – but the members or members voting against the decision cannot file a written dissent.

Clarified existing option that local board already had – may elect a policy whereby the version of an ethics decision forwarded to the Board of Directors for ratification (*i.e.*, where no appeal has been filed) will not include the names of the parties.

Manual used to require that in order for there to be a voluntary arbitration between a client and a Realtor® there had to have been an agency relationship between that client and the Realtor®. Amendment also allows a voluntary arbitration if the relationship was as a transaction coordinator.

Added an Arbitration Settlement Agreement form:

1. Calls for judicial enforcement by the parties (no association involved).
2. Calls for release/waiver of liability on the part of the association.
3. Says should be completed by parties or their lawyers – not the association.

Form #A-17b

Board or State Association			
Address	City	State	Zip

Arbitration Settlement Agreement*

The undersigned, as Members of the ____ (Board or State Association)____ and pursuant to the arbitration guidelines incorporated into the ____ (Board or State Association)____’s professional standards procedures, have voluntarily participated in and agree to the following settlement of their pending arbitration:

The undersigned agree to be bound by the above resolution and waive any and all future rights to submit the dispute to arbitration before the Professional Standards Committee of the ____ (Board or State Association)____ or to litigate the matter. We further hold the ____ (Board or State Association)____ harmless, acknowledge that we were advised of our right to attorney representation at the arbitration and attorney review of the Settlement Agreement, and expressly waive any liability of ____ (Board or State Association)____, or any claim that we have against the ____ (Board or State Association)____ arising out of the manner in which the ____ (Board or State Association)____ conducted the arbitration or the resolution of the dispute reached as a result of the ____ (Board or State Association)____’s arbitration procedures.

Further, if the agreement is judicially enforced, the non-complying party agrees to reimburse the other party for court costs and reasonable attorney’s fees.

(Type/Print)	Signature	Date
(Type/Print)	Signature	Date

***Use of this form is at the discretion of the parties. It is strongly recommended that the parties commit to writing all elements of their settlement agreement, including any timeframes for completion of the parties’ obligations. To avoid the unauthorized practice of law, this settlement should only be drafted by the parties or their legal counsel.**

(Adopted 5/17)