



CAPE COD & ISLANDS
ASSOCIATION of REALTORS®, INC.

CCIAOR Ethics Complaint Filing Packet Consumer

This packet is for consumers or members of the public who wish to file an ethics complaint against a member of the Cape Cod & Islands Association of REALTORS®.

Included in the packet are the following pages:

- *General Instructions and Information for Filing an Ethics Complaint*
- *Ethics Complaint* (form #E-1)
- *Addendum* (Filing an Ethics Complaint)
- National Association of REALTORS® (NAR) *Code of Ethics and Standards of Practice*
- *Frequently Asked Questions*
- *Before You File an Ethics Complaint*

Please feel free to contact us at 508-957-4300 or standards@cciaor.com if you have any questions.



General Instructions and Information for Filing an Ethics Complaint-Consumer

Please review the following information, which is designed to guide you through the ethics complaint filing process.

The Cape Cod & Islands Association of REALTORS® , Inc. (CCIAOR) follows the policies of the National Association of REALTORS® (NAR) as outlined in its *Code of Ethics and Arbitration Manual*.

The NAR *Code of Ethics and Arbitration Manual* stipulates that Ethics Complaints “must be filed within one-hundred and eighty (**180**) days after the facts constituting the matter complained of could have been known in the exercise of reasonable due diligence or within one hundred eight (180) days after the conclusion of the transaction, whichever is later.” Ethics Complaints must be filed against an individual(s) and may only charge a REALTOR(S)® member with an alleged violation(s) of the REALTOR® *Code of Ethics*.

Only REALTORS® are subject to the *Code of Ethics* of the National Association of REALTORS® . If the real estate professional (or their broker) you are dealing with is not a REALTOR®, your only recourse may be the state real estate licensing authority or the courts.

Step 1 (Complainant’s responsibility)

1. If you decide to file a formal complaint, an Ethics Complaint (form #E-1) must be completed and signed. Please fill in the Article Number(s) you feel have been violated by using the copy of the *Code of Ethics*. Please be sure to read the **Explanatory Notes** at the end of the *Code of Ethics* regarding Standards of Practice.
2. A **typewritten** or **legible hand printed** narrative stating the facts on which a complaint is based must be submitted along with the Ethic Complaint form. This narrative should include what article violation(s) have been alleged and why.
3. Please review and complete the attached **Addendum** (Filing an Ethics Complaint-Consumer).
4. Please submit your original ethics complaint package via email to: standards@cciaor.com or mail to: CCIAOR, Attention: Professional Standards, 22 Mid Tech Drive, West Yarmouth, MA 02673.

Step 2 (Association’s responsibility)

5. The Grievance Committee, who acts as a “Grand Jury”, reviews ethics complaints and determines if taken true on their face, a hearing is warranted. If a case is forwarded to a hearing, the Association will serve a copy of the complaint on the respondent(s) and notify them that they may file a written reply with the Association within fifteen (**15**) days. A copy of the reply will be forwarded to you, the



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complainant. If a case is dismissed by the Grievance Committee, the complainant may appeal the dismissal to the Board of Directors within twenty (20) day from receipt of the dismissal notice.

6. If a case is forwarded to a hearing the parties will be served with a Notice of Right to Challenge Tribunal Members (Forms #E-6 and #E-7) and will be given the opportunity to challenge for cause the qualification of any member of the Professional Standards Committee prior to their appointment.
7. The parties will receive at least twenty-one (21) days' notice prior to the date of hearing. The *Official Notice of Hearing* will include the individuals appointed to serve as hearing panel members as well as the date, time and place of hearing. Please read the Official Notice carefully as it includes information regarding legal representation and witnesses. An *Outline of Procedure of an Ethics Hearing* will be provided along with the *Official Notice*.

Step 3 (Parties' responsibility)

8. The parties to an ethics hearing are primarily responsible for the production of witnesses and evidence which they intend to present at the hearing. Any party who intends to call witnesses to a hearing must provided the Association and the other party the names of these witnesses at least fifteen (15) days prior to the hearing.
9. Complainants have the ultimate responsibility ("burden") of proving that the *Code of Ethics* has been violated. The standard of proof that must be met is "**clear, strong and convincing**," defined as, ". . . that measure or degree of proof which will produce a firm belief or conviction as to the allegations sought to be established." Consistent with American jurisprudence, respondents are considered innocent unless proven to have violated the *Code of Ethics*.
10. The parties to an ethics hearing may be represented by legal and/or REALTOR® counsel and must provide the Association and the other party of the name, address and phone number of their counsel at least fifteen (15) days prior to the hearing. Each party is responsible for the expenses of their respective counsel.

Step 4 (Parties & Association's responsibility)

11. The hearing will commence on the scheduled date and time. The NAR *Code of Ethics and Arbitration Manual* states, "the parties shall with diligence present to the panelists in writing such statements and proof which they deem necessary to support their positions. Proof may be submitted in the form of affidavits or otherwise. The Hearing Panel may require that statements be verified by affidavits or that accuracy or authenticity of any documents or other papers submitted be verified by affidavit. At the hearing, the panelists shall receive any further written statements, documents, or other papers, shall hear oral testimony and determine what personal appearances shall be made by the parties, and shall regulate the holding of hearings. The Hearing Panel may receive and



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consider any evidence it deems material and proper, including evidence of experts. Each party is responsible for the expenses of expert witnesses he calls. Parties to the ethics complaint shall be entitled to have counsel present at any hearing.” When the hearing adjourns, the parties will be excused, and the hearing panel will meet in executive session to frame a report of finding and opinion to set forth the decision. The decision will then be mailed to the parties in a timely fashion.

Step 5 (Parties’ responsibility)

12. After the Decision has been served on each party, they have twenty **(20)** days to petition the hearing panel for a rehearing, based solely on the grounds of newly discovered material evidence which the petitioner could not, with reasonable diligence, have discovered and produced at the original hearing.
13. After the Decision has been served on each party, if no petition for rehearing has been filed, or within twenty **(20)** days after the hearing panel’s final decision subsequent to the rehearing, or within ten **(10)** days after denial of a petition for rehearing, the parties may file an ethics appeal with the Board of Directors.



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Addendum
(Filing an Ethics Complaint-Consumer)

Please answer the following questions and submit them with your narrative:

1. Are the circumstances giving rise to this ethics complaint involved in civil or criminal litigation or in any proceeding before the state real estate licensing authority or any other state or federal regulatory or administrative agency?
 2. On what date(s) did this matter occur?
 3. Were you the listing agent, cooperating agent, buyer agent, facilitator, dual disclosed agent or rental agent in this matter?
 4. Were any other agents involved in this matter, if so, what was their role?
- Please include the following documentation, if available, with your ethics complaint package as the Grievance Committee and Professional Standards Panel may request specific information (please mark all documents as Exhibits (Exhibit A, Exhibit B, etc.):

Disclosure form	Offer to Purchase	Purchase and Sales Agreement
Listing Agreement	Rental Agreement	Buyer Representation Agreement
Copy of Deposit Check	Lease	
 - Please do not submit original documents to the Association. Although parties are encouraged to bring original documents to a hearing for examination by the Hearing Panel, the Association will not accept liability for the safekeeping of original documents.

Please complete and include this Addendum with your ethics complaint package.



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Frequently Asked Questions

1. **Question:** How long is the ethics complaint process?
Answer: The Association makes every effort to complete the process in as timely a manner as possible.

2. **Question:** Must a respondent be present at an ethics hearing?
Answer: A respondent may not be required to attend an ethics hearing. If a respondent fails to appear at a duly noticed hearing, without obtaining a postponement, the hearing may proceed and a decision will be made based on the evidence available at the hearing. Also, the refusal to appear by a REALTOR® member may result in a charge that the REALTOR® has violated Article 14, obligation to place all pertinent facts before an appropriate tribunal of the Association.

3. **Question:** Who may attend an ethics hearing?
Answer: According to the NAR *Code of Ethics and Arbitration Manual*, if an ethics case is forwarded to a hearing by the Grievance Committee, “attendance is limited to the parties named on the Ethics Forms and the parties’ respective counsel and/or witnesses (witnesses are excused except during their testimony), the respondent’s REALTOR® principal; the Hearing Panel members (including alternates); and Association staff and/or counsel, as deemed necessary”.

4. **Question:** What disciplines may be imposed on a REALTOR® member who is found in violation of the *Code of Ethics*?
Answer: The Association can, in the case of an ethics violation being determined in a due process hearing procedure, administer discipline to the REALTOR® in one or more of the following ways:
 - send a letter of warning or reprimand to the member;
 - direct the member to attend an ethics class or other training appropriate to the violation;
 - fine the member in accordance with the National Association of REALTORS® Code of Ethics and Arbitration Manual (this fine is not awarded to the complainant);
 - place the member on probation;
 - suspend the member;
 - expel the member;
 - suspend or terminate MLS rights and privileges.

5. **Question:** Who will be informed of the outcome of the complaint?
6. **Answer:** According to the NAR *Code of Ethics and Arbitration Manual*, the report and findings of the complaint are considered confidential. It will be available only to members of the hearing panel, to the parties, to counsel and staff as required, and to the Board of Directors of the CCAIOR. CCAIOR can publish (only to members of the Association, not publicly) the names of respondents who have violated the Code of Ethics twice within three years in accordance with NAR *Code of Ethics and Arbitration Manual*.



Before You File an Ethics Complaint

Background

Boards and associations of REALTORS® are responsible for enforcing the REALTORS® Code of Ethics. The Code of Ethics imposes duties above and in addition to those imposed by law or regulation which apply only to real estate professionals who choose to become REALTORS®.

Many difficulties between real estate professionals (whether REALTORS® or not) result from misunderstanding, miscommunication, or lack of adequate communication. If you have a problem with a real estate professional, you may want to speak with them or with a principal broker in the firm. Open, constructive discussion often resolves questions or differences, eliminating the need for further action.

If, after discussing matters with your real estate professional or a principal broker in that firm, you are still not satisfied, you may want to contact the local board or association of REALTORS®. In addition to processing formal ethics complaints against its REALTOR® members, many boards and associations offer informal dispute resolving processes (e.g. ombudsmen, mediation, etc.). Often, parties are more satisfied with informal dispute resolution processes, as they are quicker, less costly, and often help repair damaged relationships.

If, after taking these steps, you still feel you have a grievance, you may want to consider filing an ethics complaint. You will want to keep in mind that . . .

- Only REALTORS® and REALTOR-ASSOCIATE®s are subject to the Code of Ethics of the National Association of REALTORS®.
- If the real estate professional (or their broker) you are dealing with is not a REALTOR®, your only recourse may be the state real state licensing authority or the courts.
- Boards and associations of REALTORS® determine whether the Code of Ethics has been violated, not whether the law or real estate regulations have been broken. Those decisions can only be made by the licensing authorities or the courts.
- Boards of REALTORS® can discipline REALTORS® for violating the Code of Ethics. Typical forms of discipline include attendance at courses and seminars designed to increase REALTORS®' understanding of the ethical duties or other responsibilities of real estate professionals. Additional examples of authorized discipline are a letter of reprimand and appropriate fines. For serious or repeated violations, a REALTOR®'s membership can be suspended or terminated. Boards and associations of REALTORS® cannot require REALTORS® to pay money to parties filing ethics complaints; cannot award "punitive damages" for violations of the Code of Ethics; and cannot suspend or revoke a real estate professional's license.



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- The primary emphasis of discipline for ethical lapses is educational, to create a heightened awareness of and appreciation for the duties the Code imposes. At the same time, more severe forms of discipline, including fines and suspension and termination of membership may be imposed for serious or repeated violations.

Filing an ethics complaint

The local board or association of REALTORS® can provide you with information on the procedures for filing an ethics complaint. Here are some general principles to keep in mind.

- Ethics complaints must be filed with the local board or association of REALTORS® within one hundred eighty (180) days from the time a complainant knew (or reasonably should have known) that potentially unethical conduct took place (unless the Board's informal dispute resolution processes are invoked in which case the filing deadline will momentarily be suspended).
- The REALTORS® Code of Ethics consists of seventeen (17) Articles. The duties imposed by many of the Articles are explained and illustrated through accompanying Standards of Practice or case interpretations.
- Your complaint should include a narrative description of the circumstances that lead you to believe the Code of Ethics may have been violated.
- Your complaint must cite one or more of the Articles of the Code of Ethics which may have been violated. Hearing panels decide whether the Articles expressly cited in complaints were violated - not whether Standards of Practice or case interpretations were violated.
- The local board or association of REALTORS®' Grievance Committee may provide technical assistance in preparing a complaint in proper form and with proper content.

Before the hearing

- Your complaint will be reviewed by the local board or association's Grievance Committee. Their job is to review complaints to determine if the allegations made, if taken as true, might support a violation of the Article(s) cited in the complaint.
- If the Grievance Committee dismisses your complaint, it does not mean they don't believe you. Rather, it means that they do not feel that your allegations would support a hearing panel's conclusion that the Article(s) cited in your complaint had been violated. You may want to review your complaint to see if you cited an Article appropriate to your allegations.
- If the Grievance Committee forwards your complaint for hearing, that does not mean they have decided the Code of Ethics has been violated. Rather, it means they feel that if what you allege in your complaint is found to have occurred by the hearing panel, that panel may have reason to find that a violation of the Code of Ethics occurred.
- If your complaint is dismissed as not requiring a hearing, you can appeal that dismissal to the board of directors of the local board or association of REALTORS®.



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Preparing for the hearing

- Familiarize yourself with the hearing procedures that will be followed. In particular you will want to know about challenging potential panel members, your right to counsel, calling witnesses, and the burdens and standards of proof that apply.
- Complainants have the ultimate responsibility ("burden") of proving that the Code of Ethics has been violated. The standard of proof that must be met is "clear, strong and convincing," defined as, ". . . that measure or degree of proof which will produce a firm belief or conviction as to the allegations sought to be established." Consistent with American jurisprudence, respondents are considered innocent unless proven to have violated the Code of Ethics.
- Be sure that your witnesses and counsel will be available on the day of the hearing. Continuances are a privilege - not a right.
- Be sure you have all the documents and other evidence you need to present your case.
- Organize your presentation in advance. Know what you are going to say and be prepared to demonstrate what happened **and how you believe the Code of Ethics was violated.**

At the hearing

- Appreciate that panel members are unpaid volunteers giving their time as an act of public service. Their objective is to be fair, unbiased, and impartial; to determine, based on the evidence and testimony presented to them, what actually occurred; and then to determine whether the facts as they find them support a finding that the Article(s) charged have been violated.
- Hearing panels cannot conclude that an Article of the Code has been violated unless that Article(s) is specifically cited in the complaint.
- Keep your presentation concise, factual, and to the point. Your task is to demonstrate what happened (or what should have happened but didn't), and how the facts support a violation of the Article(s) charged in the complaint.
- Hearing panels base their decisions on the evidence and testimony presented during the hearing. If you have information relevant to the issue(s) under consideration, be sure to bring it up during your presentation.
- Recognize that different people can witness the same event and have differing recollections about what they saw. The fact that a respondent or their witness recalls things differently doesn't mean they aren't telling the truth as they recall events. It is up to the hearing panel, in the findings of fact that will be part of their decision, to determine what actually happened.
- The hearing panel will pay careful attention to what you say and how you say it. An implausible account doesn't become more believable through repetition or, through volume.
- You are involved in an adversarial process that is, to some degree, unavoidably confrontational. Many violations of the Code of Ethics result from misunderstanding or lack of awareness of ethical duties by otherwise well-meaning, responsible real estate professionals. An ethics complaint has potential to be viewed as an attack on a respondent's integrity and professionalism. For the enforcement process to function properly, it is imperative for all parties, witnesses, and panel members to maintain appropriate decorum.



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After the hearing

- When you receive the hearing panel's decision, review it carefully.
- Findings of fact are the conclusions of impartial panel members based on their reasoned assessment of all of the evidence and testimony presented during the hearing. Findings of fact are not appealable.
- If you believe the hearing process was seriously flawed to the extent you were denied a full and fair hearing, there are appellate procedures that can be involved. The fact that a hearing panel found no violation is not appealable.
- Refer to the procedures used by the local board or association of REALTORS® for detailed information on the bases and time limits for appealing decisions. Appeals brought by ethics respondents must be based on (a) a perceived misapplication or misinterpretation of one or more Articles of the Code of Ethics, (b) a procedural deficiency or failure of due process, or (c) the nature or gravity of the discipline proposed by the hearing panel. Appeals brought by ethics complainants are limited to procedural deficiencies or failures of due process that may have prevented a full and fair hearing.

Conclusion

- Many ethics complaints result from misunderstanding or a failure in communication. Before filing an ethics complaint, make reasonable efforts to communicate with your real estate professional or a principal broker in the firm. If these efforts are not fruitful, the local board or association of REALTORS® can share options for dispute resolution, including the procedures and forms necessary to file an ethics complaint.

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