

MEDIATION OF POTENTIALLY UNETHICAL CONDUCT

The Association is charged with receiving and resolving ethics complaints. Historically, a majority of complaints are the result of a misunderstanding of the Code or a misunderstanding between the parties. These complaints could be handled with the help of a neutral third party (mediator). A mediator can serve as a bridge to communication between the parties.

Complaints that may be mediated

Most complaints brought by the public or other REALTORS® may be mediated under these procedures. Complaints alleging a violation of the public trust may not be mediated. A violation of the public trust is defined by NAR as “a demonstrated misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm.”

Participation in mediation is voluntary

Mediation is available as an alternative to a formal ethics hearing provided that all parties agree to participate. Complainants may decline or withdraw from mediation and have their complaint considered at a formal ethics hearing. Similarly, REALTORS® complained about (respondents) have the right to decline or withdraw from mediation and to have complaints against them considered at a formal ethics hearing. Participation in mediation may not be done anonymously.

Format of a mediation conference

During the mediation session the mediator will encourage all parties to openly and candidly discuss all issues and concerns giving rise to the inquiry or complaint, and to develop a resolution acceptable to all of the parties.

Nature of the mediated resolution

The mediator and the parties have considerable latitude in fashioning a mutually acceptable resolution. Resolutions can include, but are not limited to, payment of disputed funds, repairs or restoration of property, written or oral apology, or acknowledgment of a violation of the Code of Ethics. In cases where a REALTOR® acknowledges that the Code had been violated, that admission may be sufficient to resolve the matter or, alternatively, the parties may agree that discipline may be imposed. The discipline may, at the agreement of all parties, include any of the forms of discipline established in the Code of Ethics and Arbitration Manual and may also include payment of monies to the complainant or to a third party. Also, the parties may agree that the complainant will withdraw a complaint or agree not to file a formal, written ethics complaint – pertaining to the same set of circumstances – in return for the respondent’s action or acknowledgement. Any resolution must be agreed to by all parties.

Confidential nature of mediation conference

Discovery made in a mediation conference shall not be relied on or introduced as evidence in any ethics or judicial proceeding. Neither the mediation officer nor the Association shall be compelled to disclose or to testify at any subsequent REALTOR or judicial proceeding.

Refusal to comply with agreed upon discipline

Failure or refusal of a respondent to comply with the terms of any mutually agreed upon resolution shall entitle the complaining party to resubmit the original complaint or, where a formal complaint in the appropriate form had not been filed, to file an ethics complaint. The time the matter was originally brought to the association’s attention shall be considered the filing date for purposes of determining whether an ethics complaint is timely filed.