

OMBUDSMAN PROCEDURES

The Association is charged with receiving and resolving ethics complaints. Many complaints do not expressly allege a violation of the Code or do not detail conduct related to the Code. Some complaints are transactional, technical or procedural questions. An ombudsman may provide enhanced communication and initial problem solving to potential complainants concerning REALTORS® and real estate related transactions before matters ripen into formal charges.

Criteria for selection of ombudsmen

At a minimum, ombudsmen should be thoroughly familiar with the Code of Ethics, state real estate regulations and current real estate practice. Ombudsmen may be REALTOR® volunteers or staff.

Involving the Ombudsman

Where a general letter of inquiry or phone call is received by the Association it may be referred to the ombudsman. Persons providing a general letter of inquiry or phone call will be advised of the availability of ombudsman services and also of their right to file a formal complaint.

Where a formal complaint is filed, the complaint shall be reviewed by the Grievance Committee and the parties will be advised of their right to mediation under the association's "Mediation of Potentially Unethical Conduct" procedures.

Where the matter involves a potential violation of the public trust, it may not be referred to the ombudsman. In this instance the parties will be advised of their right to file a formal complaint. 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."

Should the ombudsman have reason to believe that invoking the ombudsman process may result in the complainant losing their rights with respect to timely filing of an ethics complaint or request for arbitration, the Ombudsman shall advise the complainant to file the appropriate forms to preserve those rights. Complainants may then take advantage of the association's "Mediation of Potentially Unethical Conduct" procedures. Ultimately, it is the complainant's responsibility to ensure timely filing of an ethics complaint or request for arbitration.

Resolution of complaints

The ombudsman has considerable latitude to resolve complaints including but not limited to:

- answer questions concerning transactional, technical and procedural or practical matters
- answer questions pertaining to ethics or arbitration but shall be clear that such answer is based on the statements made by the parties and the experience of the ombudsman and is not to be construed as a decision on the merits. A decision on the merits can only be made before a full due process hearing of the Professional Standards Committee.
- make contact with the respondent on behalf of the complainant. This may be done anonymously should the complainant desire it and the circumstances support it.
- may suggest a face to face meeting of the parties and may offer that option to them. The ombudsman may also offer association facilities to bring the parties together. However, the ombudsman may not serve as mediator. If a mediator is necessary, the parties shall be referred to one using the "Mediation of Potentially Unethical Conduct" procedures.

Failure to resolve the complaint

Should the respondent fail to respond or take corrective action to the satisfaction of the complainant, the complainant has the option of filing a formal complaint with the association or other appropriate regulatory body.

The ombudsman does not have authority to compel a respondent to respond or take corrective action.

The ombudsman may not participate in any subsequent ethics or arbitration proceeding.