

# ETHICS MANUAL

## ARTICLE 1 - DEFINITIONS

**Section 1 BOARD:** All references to “Board” in this manual means the CINCINNATI AREA BOARD OF REALTORS®.

**Section 2 COMPLAINANT:** All references to “Complainant” in this manual means the individual(s) who files a complaint against another in an effort to settle a matter in dispute.

**Section 3 RESPONDENT:** All references to “Respondent” in this manual means the individual(s) against whom a complaint is filed.

**Section 4 EXECUTIVE VICE PRESIDENT:** All references to “Executive Vice President” in this manual collectively means any staff designee appointed by the Executive Vice President to handle administrative procedures.

**Section 5 DAYS:** All references to “days” in this manual means calendar days.

**Section 6 FILED:** All referenced to "filed" in this manual means received at the Board office.

## ARTICLE 2 - PROFESSIONAL STANDARDS COMMITTEE

**Section 1 ESTABLISHMENT OF PROFESSIONAL STANDARDS COMMITTEE:** There shall be a Professional Standards Committee of at least twenty (20) REALTOR® Members appointed annually by the President in such manner as to create staggered terms of the Members to ensure continuity of knowledge, ability and experience by the Professional Standards Committee. Members of the Professional Standards Committee shall be selected to serve on Hearing Panels as required to hear matters of alleged ethical misconduct by Board Members. The President shall annually designate the Chair and Vice Chair. The Chair or the Chair’s designee shall appoint from the ranks of the Professional Standards Committee separate Hearing Panels of a minimum of five (5) Members each and two (2) alternate Members, and shall designate one (1) Member of each panel as Hearing Panel Chair. The Professional Standards Committee Chair shall appoint substitutes to the Hearing Panels as needed. The Professional Standards Committee Liaison Director, if appointed, may serve as a panel Member with voting rights provided advance notice is sent to each party. If an appeal to the Board of Directors should arise, the Liaison Director shall be disqualified from voting on the final decision of the Directors.

**Section 2 JURISDICTION OF PROFESSIONAL STANDARDS COMMITTEE:** The Professional Standards Committee shall have the duty to provide for hearings on all matters involving a charge properly made of unethical conduct on the part of a REALTOR® Member of the Board, and shall have the power to hear disputes arising out of such charges. The Hearing Panel, after a hearing which follows the procedure established herein, is empowered to decide the case and provide the penalties, including a recommendation for suspension or expulsion. The Hearing Panel’s decisions, except for recommended suspension or expulsion, shall be final and obligatory upon Members (per Article 6); subject only to an appeal to the Board of Directors as herein provided.

**Section 3 REALTOR® (PRINCIPAL) JOINED IN COMPLAINT:** The REALTOR® (principal) with whom a REALTOR® (non-principal) is affiliated need not be automatically joined in any ethics complaint against the non-principal. However, the principal may be joined in the complaint by action of the Complainant, or by determination of the Hearing Panel prior to the commencement of the hearing based on the facts of the complaint. The principal joined in the complaint shall not be automatically found in violation of the Code of Ethics if the non-principal is in violation, but the finding should be based on the facts and merits of the case. Discipline of the principal, if any, may vary from that imposed upon the non-principal.

**Section 4 DEFINITION OF UNETHICAL CONDUCT:** “Unethical Conduct” means (1) any violation of law (per Article 2, Section 5 b); (2) any violation of the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®; or (3) any violation of any provision of the Constitution of the CINCINNATI AREA BOARD OF REALTORS®.

**Section 5 POWER TO TAKE DISCIPLINARY ACTION:** After a hearing as provided herein, the Hearing Panel may take disciplinary action against any Member, including the REALTOR® (principal) and/or office managers as named in the complaint:

- (a) For a violation of the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®.
- (b) On that Member's being convicted, adjudged or otherwise recorded as guilty by any court of competent jurisdiction of a felony or a crime involving moral turpitude, or on a Member's being determined by a court of competent jurisdiction, or official of the Ohio Division of Real Estate and Professional Licensing authorized to make the determination of having violated a provision of the Ohio Real Estate Law or a regulation of the Ohio Division of Real Estate.
- (c) For any act of another who is also a Member, but is employed by or affiliated with the Member as an independent contractor.
- (d) For any act of a nonmember who is employed by, an agent of, or affiliated with a Member as an independent contractor. Lack of knowledge by the REALTOR® (principal) of such salesperson's conduct may be taken into account when the discipline is imposed.
- (e) For a violation of any provision of the Constitution of the CINCINNATI AREA BOARD OF REALTORS®.

**Section 6 NATURE OF DISCIPLINE:** Disciplinary action may consist only of one or more of the following:

- (a) A Letter of Warning with a copy to be placed in the Member's file;
- (b) A Letter of Reprimand with a copy to be placed in the Member's file;
- (c) A requirement that the Member attend the ethics portion of the Board Orientation Course or other Ethics Courses and/or Seminars specified by the Hearing Panel which the Respondent could reasonably attend taking into consideration cost, location and duration;
- (d) A fine imposed on the Member not to exceed \$5,000 irrespective of the number of Code of Ethics violations;
- (e) That the Member be placed on probation for a stated period of time not less than thirty (30) day and not to exceed one (1) year. Probation may be mutually exclusive or in addition to any other disciplinary measures.
- (f) A recommendation to Board of Directors that the Member be suspended from the Board for a stated period not less than thirty (30) days and not to exceed one (1) year, with automatic reinstatement of membership in good standing at the end of the specified period of suspension. Suspension means relinquishing all membership rights and privileges and denial of Board services, including, but not limited to, use of the term REALTOR®. Although membership rights, privileges and services are withdrawn as specified in the notice of suspension, membership continues, and the suspended Member remains obligated for payment of membership dues, and to abide by the Code of Ethics during the period of suspension. Any failure to abide by the terms of suspension, or subsequent violation of the Code of Ethics, after a hearing as provided in this manual, shall be grounds for consideration as to possible extension of the suspension or expulsion from the Board;
- (g) A recommendation to the Board of Directors that the Member be expelled from the Board, with no automatic reinstatement privilege, for a specified period of one (1) to three (3) years, with reinstatement of membership to be by application only after the end of the specified period of expulsion, with the application considered on its merits.

**6.1** The Board of Directors may order suspension or expulsion unconditionally, or they may, at their discretion, give the disciplined Member the option of paying to the Board within such time as the Board of Directors shall designate an assessment in an amount fixed by the Board of Directors, not to exceed \$5,000 . Such option may only be granted to a Member by the Board of Directors once in any three-year period in lieu of accepting suspension or expulsion. But if the conduct for which suspension or expulsion is ordered consists of failure to submit a dispute to a hearing, the Board of Directors may not permit the disciplined Member to avoid suspension or expulsion without submitting to a hearing in addition to paying the assessment, unless in the meanwhile the controversy has been submitted to a court of law without any objection by any party that it should be heard.

6.2 In addition, an administrative processing fee not to exceed \$500 may be assessed against respondents found in violation of the Code of Ethics or other membership duties which may be in addition to, and not part of, any sanction that may be imposed.

**Section 7 PRELIMINARY JUDICIAL DETERMINATION:** The Board of Directors may specify that in the event the disciplined Member resorts to legal action because of the suspension or expulsion, the suspension or expulsion shall become effective upon entry of the final judgment of a court of competent jurisdiction in a suit by the Board for declaratory relief declaring that the suspension or expulsion violates no rights of the Member. If the Member goes to court and obtains a stay, preliminary or temporary injunctive relief, suspension is effective upon entry of the final judgment of a court of competent jurisdiction.

### **ARTICLE 3 - ORGANIZATION**

**Section 1 ESTABLISHMENT OF GRIEVANCE ADVISORY COMMITTEE:** There shall be a Grievance Advisory Committee of REALTOR® Members appointed annually by the President in such manner to create staggered terms of Members to ensure continuity of knowledge, ability and experience by the Grievance Advisory Committee.

**Section 2 FUNCTION OF THE GRIEVANCE ADVISORY COMMITTEE:** The Grievance Advisory Committee shall provide counsel to the Executive Vice President, upon request, regarding initial consideration to allegations of unethical conduct. The Grievance Advisory Committee should not determine the truthfulness of the complaint, but rather will provide counsel in determining whether to refer a matter to a hearing before a Hearing Panel of the Professional Standards Committee or to dismiss unsubstantial complaints and those that are frivolous or harassing. In the event the Committee finds the information within a complaint insufficient to substantiate its claim, the Committee may make any preliminary investigations deemed necessary in order to determine the proper disposition of the complaint.

**2.1** If a Professional Standards complaint is dismissed as being unworthy of further consideration, the Complainant may request a review of the dismissal by the Board of Directors. The request for review must be made in writing within twenty (20) days from receipt or date of attempted delivery of the dismissal notice. In the event of such a review, neither party has the right to appear and the Board of Directors will receive and consider only those materials that were available when the complaint was originally reviewed.

**Section 3 QUALIFICATION OF PANEL MEMBERS:** Only one person connected with any firm, business, partnership or corporation may serve on the same Hearing Panel. A person shall automatically be disqualified to be a Member of a Hearing Panel in any case in which the Member is (1) a party, (2) related by blood or marriage to a party, (3) an employer, employee, partner or other business associate of a party, or (4) objected to by a party as provided in "Parties Right to Challenge Panel Members."

**Section 4 HEARING PANEL'S STATEMENT OF QUALIFICATION:** Before sitting in any case, each Member of a Hearing Panel shall sign a statement (1) that the Member is not disqualified for any of the foregoing reasons stated, and (2) that the Member knows of no other reason that might prevent the Member from rendering an impartial decision.

**Section 5 COMMERCIAL/INVESTMENT HEARING PANELS:** In the case of a Professional Standards complaint involving issues related to areas of the real estate business such as commercial, investment, industrial, etc., a Hearing Panel will be appointed to consist of Members who are practitioners in such fields.

**Section 6 ADDITIONAL PROFESSIONAL STANDARDS COMMITTEE MEMBERS:** The President shall have the authority to appoint additional Professional Standards Committee Members as the need arises. Such person(s) may serve as Hearing Panel Members.

**Section 7 RESPONSIBILITY OF PANEL MEMBERS:** Every Member of a Hearing Panel shall avoid, so far as possible, discussing the case with any person before the hearing. If the Member does engage in any such discussion before the hearing, the Member must disclose the fact to the parties and to the other Members of the Hearing Panel no later than the beginning of the hearing. After the hearing and before the decision, no Member of a Hearing Panel shall discuss the case with any person, other than Members of the Hearing Panel, the Professional Standards Committee, the Executive Vice President or Board Counsel; to do so shall be a violation of a membership duty.

**Section 8 PARTIES' RIGHT TO CHALLENGE PANEL MEMBERS:** Any party may file with the Executive Vice President a written notice of disqualification of a Member of a Hearing Panel, stating which of the grounds provided herein apply. A party shall be deemed to have waived any ground of disqualification of which the party then has knowledge unless the party files the request at least seven (7) days after the list of panel Members is received by the parties. Further, if a majority of the Members of the Hearing Panel find any automatic ground of disqualification to be present or find any other facts which in their judgment may prevent the Member from rendering an impartial decision, or appear to do so, the Member shall stand disqualified and be replaced.

**Section 9 FURTHER RULES:** The Professional Standards Committee may, from time to time, make reasonable rules for the conduct of hearings and for the conduct of business not inconsistent with these rules. Any such rules made by the Professional Standards Committee shall be printed and furnished to each Complainant and Respondent along with the notice of hearing.

**Section 10 FORMS:** The Professional Standards Committee may adopt such forms it deems necessary for the proper handling of cases, and such forms shall be printed and made available at the Board office.

#### **ARTICLE 4 - ADMINISTRATION**

**Section 1 COMMUNICATIONS AND CLERICAL MATTERS:** Communications shall be directed to the Executive Vice President. The Executive Vice President shall render all necessary assistance to the parties, shall on application furnish forms and papers required, shall receive and file all documents or other papers, and shall receive all fees and disburse all monies payable to the Board.

**Section 2 MAILING OF NOTICES:** All notices and other communications shall be in writing and shall be mailed by Certified or Registered mail, postage prepaid, return receipt requested. Time of delivery shall be as shown on the return receipt. A party to a complaint shall keep the Executive Vice President informed of the party's address at all times. Any notice required to be given or paper required to be served or filed shall be deemed given, served or filed when mailed to the address of record unless otherwise specified in this Manual. CABR shall not attempt to locate a party to a complaint who has not provided a current mailing address and may elect to dispose of a case without the participation of a party who fails to provide such information.

**Section 3 FILING COMPLAINT OF UNETHICAL CONDUCT:** All hearings on charges of unethical conduct against Members shall be initiated by filing with the Executive Vice President a completed "Complaint" form, together with all other documentary evidence which the Complainant with reasonable diligence can obtain; provided, however, that the complaint must be filed within six (6) months after the facts constituting the matter complained of could have been known in the exercise of reasonable diligence.

**Section 4 INFLUENCE OF LITIGATION:** If litigation relating to the issues that are the subject of the complaint are pending between the Complainant and the Respondent when a complaint is filed, the Professional Standards Committee may elect not to proceed until litigation has been concluded. In the event the Professional Standards Committee elects not to proceed until litigation has been concluded, it shall be the responsibility of the Complainant to notify the Professional Standards Committee within 30 days of the final adjudication or settlement of the litigation of their desire to proceed with the Complaint. Failure to so notify will result in the matter being sent to the Grievance Advisory Committee for consideration and possible dismissal.

**Section 5 NOTICE TO RESPONDENT:** A copy of a complaint shall be mailed by the Executive Vice President to the Respondent and the Respondent's REALTOR® (principal), no later than twenty-one (21) days after receipt of a complaint by the Executive Vice President.

**Section 6 ANSWERS:** It shall be each Member's duty to file a completed "Answer to Complaint" form, together with all other pertinent documentary evidence which with reasonable diligence can be obtained. The Respondent's answer shall be mailed to the Executive Vice President no later than fifteen (15) days after receipt of the complaint. The Hearing Panel Chair or the Executive Vice President shall have the authority to grant extensions of time for filing an answer in case of illness, or for other good and sufficient reasons. The Executive Vice President shall make a record of all extensions granted and the reason therefore. The Executive Vice President shall mail a copy of the answer to the Complainant. If the Respondent fails to answer within the allotted time, the charges may be taken as true by default. A Hearing Panel may accept late filing of the Answer at its discretion.

**Section 7 WITHDRAWAL OF COMPLAINTS:** After a complaint of unethical conduct has been sent to a Hearing Panel, it may be withdrawn by the Complainant only with the Hearing Panel's approval. The request for withdrawal must be in writing stating the circumstances causing the withdrawal.

**7.1** In the event that the complaint scheduled for a hearing is from a Member of the public who refuses, or is unable, to attend the hearing, the complaint shall be referred back to the Grievance Advisory Committee. If the Grievance Advisory Committee determines that there is sufficient information for a Hearing Panel to consider, the complaint shall be amended to name the Grievance Advisory Committee as complainant and the hearing shall be continued to a new date. The Respondent shall be provided with a copy of the amended Complaint in such cases.

**7.2** If the Grievance Advisory Committee determines that there is insufficient information for a Hearing Panel to consider, the complaint shall be dismissed.

**7.3** In the event the complaint scheduled for hearing is from a REALTOR® (principal) or REALTOR® (non-principal) of the Board who refuses, or is unable to attend the hearing, the Complainant shall be advised that refusal to participate in the hearing, absent a satisfactory reason as determined by the Hearing Panel, may result in a charge that the complainant has violated Article 15's obligation to place all pertinent facts before an appropriate tribunal of the Board.

**Section 8 RESIGNATION OF A RESPONDENT:** If a Respondent resigns or otherwise causes membership in the Board to terminate after an ethics complaint is filed but before final action is taken by the Professional Standards Committee, the hearing process shall suspend and the complaint shall be forwarded to any Board in which the Respondent continues to hold membership. If the Respondent does not hold membership in another Board, or if the Board is unable to determine if the Respondent holds membership in another Board, the complaint shall be held in abeyance until such time as the Respondent rejoins the Board or it can be determined that the Respondent holds membership in another Board. In any instance where a complaint is transferred to another Board, the Complainant shall be so advised.

**Section 9 AMENDMENT OF COMPLAINT:** No later than five (5) days prior to the date of the hearing of a complaint, the Complainant may file an amended complaint, other than the addition of witnesses, with the Executive Vice President. The Hearing Panel may disallow the amended complaint, in which case the Executive Vice President shall set a date for hearing on the original complaint. If the amended complaint is allowed, it

shall relate back to the date of the original complaint, but the Executive Vice President shall otherwise treat the amended complaint as a new complaint hereunder and shall be subject to the procedures outlined herein.

**9.1** At any time during the hearing a complaint may be amended, subject to approval of the Hearing Panel, either by the Complainant or upon motion of the Hearing Panel. In such event the hearing may be continued to a date certain (recessed hearing), not less than fifteen (15) days or more than thirty (30) days from adjournment. The amended complaint shall be filed in writing, signed by the Complainant or by the Chair of the Hearing Panel, and shall be promptly served on the Respondent and the Respondent shall have the opportunity to respond as in all other cases provided herein.

**Section 10 NOTICE OF HEARING:** Written notice of hearing shall be mailed or served to the parties not less than twenty-one (21) days prior to the date of hearing by Certified or Registered mail, postage prepaid, return receipt requested, or by personal delivery for which receipt shall be given. Any notice required to be mailed or served shall be deemed as such when mailed or delivered to the parties' usual place of business. The notice of any hearing except for a recessed hearing shall include the names of the Members of the Hearing Panel, the date, time and place thereof. The address of the Respondent shall be the Respondent's usual place of business on the records at the Board unless the Respondent shall notify the Board, in writing, of a different address.

## **ARTICLE 5 - RIGHTS & RESPONSIBILITIES OF PARTIES TO HEARING**

**Section 1 MEMBER'S RIGHT TO HEARING:** No decision shall be rendered by a Hearing Panel unless the Respondent has first been given a written notice of hearing and an opportunity to be heard. Both parties should be present in person at the hearing. Failure to appear can result in adverse decision by default.

**Section 2 MEMBER'S DUTY TO GIVE EVIDENCE:** When summoned by the Hearing Panel to provide evidence giving not less than ten (10) days notice, it shall be a duty of each Member to appear at the hearing, produce any records or data pertinent to the case and designated by the Hearing Panel or Professional Standards Committee, and to testify truthfully. Refusal of a Member to submit personally, refusal of a Member to submit requested records for examination, or failure to comply with a request of the Hearing Panel or Professional Standards Committee for relevant information may be deemed an admission of truth of the claim against the Member.

**Section 3 WAIVER AND HOLD HARMLESS:** Each Member, by virtue of membership, holds harmless and waives any right of recourse against the Board, its staff, Members, and any Member of a Hearing Panel, Grievance Advisory Committee, Professional Standards Committee or Board of Directors, for anything done under these rules and the Board Constitution.

**Section 4 ATTENDANCE OF PARTIES AT HEARING:** In the event that the Respondent(s) and/or the Complainant(s) fail to appear at a duly noticed hearing without obtaining a continuance or adjournment thereof, the Hearing Panel may proceed with the hearing in the absence of either or both of the parties and shall reach its decision based on the evidence available at the time of the hearing or it may elect to postpone the hearing until all parties can be present. Thereafter, all procedures set forth herein shall be followed.

### **Section 5 WITNESSES:**

**5.1** Each party is responsible for having their witnesses present at the hearing, and the Hearing Panel may summon its own witnesses, provided all parties are notified in writing at least ten (10) days prior to the hearing. Each party shall notify the Executive Vice President who will, in turn, notify the Hearing Panel and the other party in writing at least ten (10) days in advance of hearing of the names of the witnesses the party intends to have present and shall outline the area of expected testimony of each witness. Failure to provide this information within the time specified will constitute a waiver of the right to call those witnesses to the hearing, unless the other party agrees to allow their testimony. In any case, where all of the names of witnesses a party intends to call to the hearing have not been provided within the time period specified, and if the Hearing Panel believes that the testimony of that witness(es) or any other witness is essential to ensure due process, their testimony may be permitted provided the other party has the right to request that the hearing be recessed and continued to a date certain, not less than five (5) days later.

**5.2** Questions as to whether a Member who has been called as a witness but who refuses to appear or asserts that their appearance will result in an unreasonable hardship, shall be determined by the Hearing Panel Chair as soon as practical. Refusal to appear, after the Chair has determined that the Member's appearance is required, may result at the Chair's discretion in a charge that Article 15 of the Code of Ethics has been violated and may be filed against the Member by the Hearing Panel Chair.

**Section 6 RIGHT OF COUNSEL TO APPEAR:** Each party may be represented by legal counsel if said party notifies the Executive Vice President who, in turn, will notify the other party and the Hearing Panel in writing at least ten (10) days before the hearing of a party's intention to have counsel. The Hearing Panel may have counsel present without prior notice to the parties to advise it on matters of concern. Please be aware that counsel to any party who becomes disruptive to the proceedings may be excused by the Hearing Panel Chair and the hearing rescheduled for another date.

**Section 7 CONTINUANCE:** Once a hearing date has been set, the parties may request in writing that the Chair of the Hearing Panel grant a continuance. The Hearing Panel Chair, at the Chair's discretion and for sound reasons, may continue the hearing. The Hearing Panel Chair may not grant more than two (2) continuances to any party to the dispute.

**Section 8 ATTEMPT TO INFLUENCE HEARING PANEL**

**8.1** Any attempt, directly or indirectly, to influence a Member of a Hearing Panel or Professional Standards Committee in any matter before it, other than by giving evidence and argument in an open hearing or by writing submitted to the Hearing Panel or Professional Standards Committee, is a violation of a membership duty and will subject the violator to disciplinary proceedings.

**8.2** Attempts by a nonmember to influence a Member of the Hearing Panel or Professional Standards Committee, if done on behalf of a party to the complaint who is also a nonmember, shall be cause for rejecting the complaint or answer.

**Section 9 CONDUCT OF HEARING:** At any hearing each party has the right to present any witnesses, the names and expected testimony of which has been submitted in advance as herein provided, to submit any evidence pertinent to the case, and to cross examine witnesses of others. Witnesses giving oral testimony shall be sworn by a Notary Public. Before permitting testimony relating to the character or general reputation of anyone, the Hearing Panel shall satisfy itself that the testimony has a direct bearing on the case at issue. The Hearing Panel, at its discretion, may order that the witnesses be separated.

**Section 10 RECORD OF HEARING:** The Professional Standards Committee may keep such records of hearings and its proceedings as the Professional Standards Committee may deem necessary in each case. In addition, either party, at the party's own expense, may make such record as the party desires.

The Board's tape recording shall be considered the official record of the proceeding. Copies of any tape recording or any transcript prepared from any tape recording of the hearing are to be used only for the purpose of appeals and rehearings. Any party to a hearing has a right to obtain a copy of the Board's official tape recording subject to payment of the Board's duplication costs. The request must be made within the time frame for filing an appeal or petition for rehearing as specified under Article 8, Section 1, Appeals. And any duplication will be conducted under the supervision of the Board. If the Board transcribes its official tape recording, any party to the hearing may obtain a copy of the transcript subject to paying the Board's transcription costs. If more than one party requests a copy of the transcript, the Board's costs will be apportioned between or among the parties.

If a party purchases a copy of the Board's official tape recording, and subsequently has it transcribed at the party's own expense, that party must provide a copy of the transcript to the Board at no cost. After the Board has received a copy of the transcript, the Board shall make copies of the transcript available to any other party subject to their payment of the Board's duplication costs.

**Section 11 INTERPRETATION OF CONSTITUTION:** If any provision of the Board Constitution or rule or regulation relative to procedure is involved, the interpretation by the Hearing Panel of the Constitution, rule, or regulation shall be conclusive and final, except that the Board of Directors shall not be bound by that interpretation on an appeal from a decision of the Hearing Panel .

## **ARTICLE 6 - FINAL ACTION**

### **Section 1 DECISION OF HEARING PANEL ON UNETHICAL CONDUCT**

**1.1** The decision of the Hearing Panel on unethical conduct shall be by a majority vote, containing findings of fact and statement of disciplinary action, if any. The standard of proof on which an ethics hearing decision is based shall be “clear, strong and convincing.” 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. The Hearing Panel’s decision shall be filed with the Executive Vice President and it shall constitute a motion to the Professional Standards Committee. If no petition for a rehearing or appeal is filed by either party within the filing periods specified in Article 7 (Rehearings) and Article 8 (Appeals), the Committee must adopt the Hearing Panel’s decision except that if the Committee is concerned with a possible procedural deficiency, the Committee may refer the decision back for a new hearing and recommendation by a different Hearing Panel. If the Committee is concerned with the appropriateness of the recommendation of sanction, the Committee may impose alternative discipline that does not exceed that recommended by the Hearing Panel, or may refer the decision back to the original Hearing Panel for further consideration and recommendation accompanied by the Committee’s concerns regarding the proposed discipline.

**1.2** In the event the Respondent is found in violation of unethical conduct, the Hearing Panel may, at its discretion, consider all records of previous violations in the Member’s file in determining discipline.

**Section 2 REPORT OF FINDINGS:** The Executive Vice President shall transmit a copy of the Report of Findings of the Professional Standards Committee to the Complainant(s), Respondent(s) and the Respondent’s REALTOR® (principal) within ten (10) days of rendition. The Report of Findings shall become final and binding on the parties thirty (30) days from the date the Report of Findings was received by the parties or date of attempted delivery, except when the Hearing Panel recommends suspension or expulsion to the Board of Directors, in which case the action taken by the Board of Directors at the next or future meeting shall apply, and provided no newly discovered evidence has been filed that warrants a rehearing and/or provided no appeal has been filed as provided herein.

2.1 Any discipline imposed that requires an action on the part of the disciplined Member should also indicate any additional penalties that may automatically be invoked for failure to comply by the date specified. In the absence of such a provision, failure to comply with the discipline imposed should not be considered grounds for an additional ethics hearing, but rather should constitute the basis for consideration by the Board of Directors.

**Section 3 COMPLETION OF PUNITIVE MEASURES:** A Member who fails to complete the punitive measures designated in the Report of Findings within the specified time period shall be reported to the Board of Directors for proper disciplinary action. The Directors shall review the situation in regard to any additional action required to ensure compliance with the original discipline imposed.

In the event the additional penalties are contemplated, the party failing to comply with the discipline should have the opportunity to appear before the Board of Directors to explain the failure to comply. Absent an explanation acceptable to the Directors, additional discipline, including possible suspension or expulsion from membership, may be imposed in a manner consistent with the procedures established by the Board and the notice from the Directors to the party should include a date by which any proposed discipline will be imposed or by which implementation of sanction shall automatically occur.

**Section 4 PRELIMINARY JUDICIAL DETERMINATION PRIOR TO IMPOSITION OF DISCIPLINE:** If the Board of Directors has reason to believe that the imposition of a proposed sanction will become the basis of litigation and a claim for damages, it may specify that the discipline shall become effective upon entry of the

final judgment of a court of competent jurisdiction in a suit by the Board for declaratory relief declaring that the discipline proposed violates no rights of the Member.

## **ARTICLE 7 - REHEARING - NEW EVIDENCE**

**Section 1 REHEARING FINDINGS OF UNETHICAL CONDUCT:** Within twenty (20) days from the date the Report of Findings was received by the Respondent(s) or Complainant(s), or date of attempted delivery, the Respondent(s) or the Complainant(s) may petition the Professional Standards Committee for a rehearing, solely on the ground of newly discovered material evidence.

**Section 2 DEFINITION OF NEWLY DISCOVERED EVIDENCE:** Evidence which the petitioner could not, with reasonable diligence, have discovered and produced for consideration at the original hearing.

**Section 3 PETITION FOR REHEARING:** A petition for a rehearing must be in writing setting forth the new evidence and the reason it was not discovered earlier. On a petition for rehearing, the Professional Standards Committee shall meet within ten (10) days of its filing and determine whether the new evidence warrants a rehearing. If the Professional Standards Committee does not grant the petition for rehearing within two (2) weeks after the Professional Standards Committee meeting, the petition shall be deemed denied. Only one petition for rehearing is permitted to any party.

**Section 4 RESPONSE ON PETITIONS:** The Executive Vice President shall immediately inform the Complainant(s) and Respondent(s) of the action taken on petitions for rehearing of findings of the Professional Standards Committee.

## **ARTICLE 8 - APPEAL PROCEDURE**

### **Section 1 PROFESSIONAL STANDARDS**

**1.1** Either party shall have the right to appeal the decision on the findings of unethical conduct. An appeal must be based on one (1) or more of the following grounds:

- (1) that the decision of the Hearing Panel contains a misapplication or misinterpretation of an Article(s) of the Code of Ethics;
- (2) that the decision of the Hearing Panel contains procedural deficiencies or a lack of procedural due process;  
or
- (3) that the discipline recommended by the Hearing Panel is inappropriate.

**1.2** Either party, within twenty (20) days from the date the party received the Report of Findings or date of attempted delivery or ten (10) days after the denial of a petition for rehearing, may file with the Executive Vice President a written Notice of Appeal on the form prescribed by the Board of Directors together with an appeal fee of twenty-five (25) dollars. Such written Notice of Appeal shall be filed personally or by Certified or Registered mail, postage prepaid, with return receipt requested.

**1.3** Upon receipt of the Notice of Appeal and the appeal fee of twenty-five (25) dollars, at the option of the appellant, the Board will have either:

- (1) A verbatim transcript of the hearing prepared at the expense of the appellant. A request for transcript must be accompanied by a deposit of \$250, which shall be applied to the total cost of the transcript. Any overpayment shall be refunded to the appellant along with delivery of the transcript. Any additional monies due for payment of the transcript shall be payable as indicated in Section 1.4 below. The person preparing the transcript shall sign an affidavit to the effect that the transcription is true and accurate and that the transcriber is not subject to influence by either party in the dispute,

OR

- (2) A summary of events prepared by the Chair of the Hearing Panel who heard the case.

**1.4** Upon completion of either the transcript or summary of events, the party who filed the Notice of Intent to Appeal shall be mailed a copy of such transcript or summary of events and an appeal form as prescribed by the Board of Directors and, in the case of a transcript, a statement for the actual cost shall be included. The party shall have ten (10) days from date of delivery or date of attempted delivery to file the completed appeal form together with the balance of the payment for the transcript if applicable. The completed appeal form shall be filed personally at the Board, or by U.S. Certified or Registered Mail with Return Receipt Requested. Failure to file the appeal form and/or to pay the balance of the cost of the transcript within the time allotted shall void the appeal and the findings of the Hearing Panel shall stand. Further, the obligation to pay the balance of the transcription fee shall stand.

NOTE: On an appeal no new evidence may be submitted. See Article 7 herein pertaining to a rehearing on newly discovered evidence.

**1.5** Upon receipt of the completed appeal form, the appeal shall be processed, and copies of the appeal and the transcript or summary of events shall be mailed within ten (10) days to all other parties to the case.

## **Section 2 BOARD OF DIRECTORS' ACTION ON APPEAL**

**2.1** If an appeal is filed, the Executive Vice President shall bring the matter before the Board of Directors for consideration at a future meeting after the summary of events or transcript and appeal form have been completed, or at a special meeting called by the President for that purpose. The Board of Directors shall be supplied with copies of the written appeal, the written case file and transcript or summary of events of the hearing.

**2.2** On an appeal, the decision of the Board of Directors shall be based on the written materials submitted. The Board of Directors may, if they deem it appropriate, call both parties to an appeal hearing to hear the basis of the appeal, but no new evidence shall be received.

**2.3** A representative(s) of the Hearing Panel or the Hearing Panel itself, which heard the case being appealed, shall be present at the Board of Directors meeting when the appeal is being considered in order to give input to the Board of Directors regarding the case.

**2.4** The Directors shall render their decision promptly. If the Report of Findings of the Hearing Panel is adopted by the Board of Directors, the money deposited by the appellant shall pass into the general treasury of the Board. If the Report of Findings is rejected, the deposit shall be returned to the party who made the deposit. If the Report of Findings is modified, the Board of Directors shall determine the disposition of the deposit.

**2.5** The Directors, if concerned with a possible procedural deficiency, may refer the decision back to the Professional Standards Committee for a new hearing and recommendation by a different Hearing Panel. If the Directors are concerned with the appropriateness of the recommendation of sanction, the Directors may impose alternative discipline that does not exceed that recommended by the Hearing Panel, or may refer the decision back to the original Hearing Panel for further consideration and recommendation accompanied by the Directors' concerns regarding the proposed discipline.

## **ARTICLE 9 - FURTHER ACTION**

**Section 1 NOTIFICATION OF FINDINGS:** The Board of Directors may notify any Members of the Board of REALTORS®, other Board of REALTORS® in which the party is a Member and the appropriate state Real Estate Commission(s) of any decision of the Board of Directors ordering suspension or expulsion. In addition, the Professional Standards Committee or Board of Directors may notify the appropriate state Real Estate Commission(s) of potential violations of license law.

**NOTE: The CINCINNATI AREA BOARD OF REALTORS® *Ethics Manual* is designed as a general procedures manual. Any areas not inclusive in this manual may be supplemented by the NAR *Professional Standards Manual*.**

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