

## The Ethics Complaint Process

### General Information

- **Confidentiality.** The allegations, findings, and decisions rendered in ethics hearings are confidential and should not be disclosed by any party under any circumstances except as authorized by Texas REALTORS® policy.
- Only members of REALTOR® Associations are subject to the National Association of REALTORS® Code of Ethics.
- The ethics complaint process can only determine whether the Code of Ethics has been violated, not if TREC rules, or Texas or Federal laws have been broken.
- If an ethics violation is found, the primary emphasis of discipline is educational. Typical forms of discipline include mandatory attendance at educational courses and monetary fines. For more serious or repeat violations, REALTORS® can have their membership suspended or terminated.
- Texas REALTOR® cannot award monetary damages due to a violation of the Code of Ethics.

### Before filing an Ethics Complaint

- Before filing a complaint, we suggest speaking with the REALTOR® or with a principal broker in the brokerage firm. Many disputes result from misunderstandings or miscommunication. An open and constructive dialogue often resolves disputes, eliminating the need for further action.
- Texas REALTORS® offers two types of informal dispute resolution services (ombudsman and mediation). Parties are often more satisfied with these services because they provide a quicker and less costly resolution than going through the full ethics complaint process.

### Filing and Replying to an Ethics Complaint

- **CasePro.** Texas REALTORS® uses an online case management system called CasePro. To file an ethics complaint, you must first call and speak with one of our staff members at 800-873-9155. Our staff will discuss the complaint process and enter your information into the system. You will then receive an auto-generated email from the CasePro system to complete the complaint submission.
- The Code of Ethics consists of 17 Articles that express the ethical duties and obligations of a REALTOR®. The Code of Ethics also includes several Standards of Practice which serve to illustrate a REALTORS'® duty in specific situations.
- An ethics complaint must allege violations of one or more Articles of the Code of Ethics, not a Standard of Practice. Standards of Practice can be used to support an allegation.
- **Narrative Description.** When filing an ethics complaint or replying to a complaint filed against you, you should include a narrative description of the circumstances that led to the complaint. Complainants should include details on why they believe the respondent violated the Code of Ethics. The respondent should include details on why they believe there was no violation.
- **Evidence and Document Submission.** Parties may submit evidence and documents to help prove their case. Please keep the following tips in mind regarding document submission:
  - **Be Relevant.** Only relevant evidence will be considered by the hearing panel. It is **NOT** necessary to include the entire transaction file as evidence. All evidence submitted should relate in some way to one of the Articles cited in the complaint. It will be harder to prove your case to

the hearing panel if the panel has to read through hundreds of pages of material that is not relevant to the case.

- **Be organized.** It will be easier for the hearing panel to follow along if your documentation is well organized. Consider labeling each item of evidence as “Exhibit” A, B, C, etc. Include a table of contents with page numbers so different items of evidence can easily be located within your document. Combine various documents into one file, if possible.
- **Be ready.** The hearing panel may request to see documents during the hearing. If the document was not previously submitted, it can be emailed to the Hearing Officer during the hearing.
- **Page Limit.** The narrative description is limited to 10 letter size pages. All other documentation submitted with the complaint or reply is limited to 50 letter size pages. It is the responsibility of all parties to submit or resubmit documents that do not exceed these limits. Submission of documents that exceed these page limits may be permitted for more complex cases with the approval of Texas REALTORS® legal counsel. The parties may be required to provide an explanation on how each item of evidence or document is relevant to the case.
- For members of the public, a member of the Professional Standards Committee may be appointed to help in preparing a complaint in proper form and with proper content, if necessary.
- **180 Day Rule.** Ethics complaints must be filed within 180 days from the time a complainant knew (or reasonably should have known) that potentially unethical conduct took place or within 180 days after the conclusion of the transaction or event, whichever is later. The filing deadline may be extended if the parties use an informal dispute resolution process, such as the ombudsman service.
- **Citation Policy.** Texas REALTORS® has adopted a Citation Policy to handle certain complaints. The Citation Policy is an alternative to conducting full hearings. It includes a schedule of set fines and is only available with complaints that allege violations of Articles 3, 4, 5, 6, 12, 14, or 16. If a complaint qualifies, a Citation will be issued to the respondent in lieu of holding a hearing. If the respondent accepts the Citation and pays the fine, the matter will be closed. If the respondent does not accept the Citation, a hearing will be scheduled.
- **Anonymous Complaints.** Ethics complaints may be filed anonymously. With anonymous complaints, the complainant must identify themselves to Texas REALTORS® staff who will keep their identity strictly confidential from all other parties. Anonymous complaints are only processed using the Texas Citation Policy.
- **Filing an Ethics and Arbitration Case.** If an ethics complaint and request for arbitration are filed regarding the same event or transaction, the arbitration request will be heard first. The ethics complaint will be held in abeyance until after the arbitration case has been concluded.

### Grievance Tribunal review

- After an Ethics Complaint is submitted, the complaint will be reviewed by a Grievance Tribunal. Their job is to determine if the allegations support a possible violation of the Code of Ethics. The Grievance Tribunal does not decide if a violation occurred. They only decide if the complaint should proceed to the next step, which is an ethics hearing.
- The Grievance Tribunal may dismiss a complaint if they do not feel that the allegations support a possible violation of the Articles cited in the complaint. Complainants should review their complaint to ensure it cites an Article appropriate to the allegations. Complainants will be provided information regarding appealing the Grievance Tribunal’s dismissal.
- If the Grievance Tribunal feels the allegations support the possibility of a violation, they will forward the complaint for hearing.
- The Grievance Tribunal’s decision will be based on the allegations contained in the Ethics Complaint and any documents attached to the complaint when the complaint is first submitted.

Additional documents sent to Texas REALTORS® after initial submission of the complaint will not be considered by the Grievance Tribunal. However, additional documents may be used at a hearing, if the Hearing Officer determines the documents are relevant.

- The respondent will be notified of the ethics complaint and the decision of the Grievance Tribunal. The respondent should submit a reply and documentation to defend against the allegations.

### **Before the hearing**

- The parties will be given a list of potential hearing panel members prior to the hearing. Either party may file a written request for disqualification of any potential member of the hearing panel. Hearing panel members may be disqualified if the panel member is:
  - Related by blood or marriage to any party or REALTOR® or legal counsel in the case,
  - A partner, employer, employee, or in any way associated in business with any party or REALTOR® or legal counsel in the case,
  - A party to the hearing, or a party or witness in any pending case involving any party in the case, or
  - For any other reason that may prevent the member from rendering an impartial judgment, subject to a ruling by the Hearing Officer.
- The parties will be notified of the date, time, and place of the hearing at least 21 days in advance. The notice will include a detailed outline of procedures that will be used during the hearing.
- **Legal or REALTOR® Counsel.** The parties may be accompanied by legal counsel or a REALTOR® acting as counsel, or both. Parties must send written notice of their intention to have counsel present to all other parties and to Texas REALTORS® at least 15 days before the hearing. Failure to provide timely notice may result in a continuance of the hearing. It is the responsibility of the parties to keep their counsel informed of all proceedings and documentation.
- **Witnesses.** It is the responsibility of each party to arrange for witnesses to be present at the hearing. Parties must send written notice of their intention to have witnesses to all other parties and to Texas REALTORS® at least 15 days before the hearing. Failure to provide timely notice may result in a waiver of the right to call the witness or a continuance of the hearing as determined by the Hearing Officer. The parties appearing at the hearing may be called as witnesses without advance notice.
- **Documentation.** Parties are strongly encouraged to provide all documents and evidence they intend to introduce during the hearing to all other parties and to Texas REALTORS® prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly and unnecessary continuances. We request the parties provide documents at least 5 business days before the hearing date.

### **Preparing for the hearing**

- The Parties will receive an outline of the procedures that will be followed during the hearing. The parties should familiarize themselves with the hearing procedures. The parties will want to know about challenging potential panel members, their right to counsel, and calling witnesses.
- **Burden of Proof.** Complainants have the ultimate responsibility (“burden”) of proving that the Code of Ethics has been violated. Respondents are considered “innocent until proven guilty”.
- **Standard of Proof.** The standard of proof that must be met is “clear, strong and convincing evidence”. Clear, strong, and convincing evidence is defined as “...that measure or degree of proof which will produce a firm belief or conviction as to the allegations sought to be established.”
- Parties should ensure that their witnesses and counsel will be available on the day of the hearing. Continuances are a privilege, not a right.

- Parties should ensure they have all the documents and other evidence needed to present their case.
- Parties should think about and organize their testimony and evidence before the hearing.

### **At the hearing**

- A Hearing Officer will preside over the hearing to ensure proper procedures are followed. A panel of REALTORS® will listen to testimony and review evidence to determine if an ethical violation occurred. The hearing panel serves a similar function as a jury in a trial while the Hearing Officer would be the judge. Members of the hearing panel have received specialized training regarding the Code of Ethics and the procedures for ethics hearings.
- Please 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 determine whether the facts support a finding of a violation of the Code of Ethics.
- Hearing panels cannot conclude that an Article of the Code has been violated unless that Article is specifically cited in the complaint.
- Keep the presentation concise, factual, and to the point. Parties should demonstrate what happened and how the facts support their position.
- **Time Limit.** The parties do not have a time limit regarding their testimony. However, in the interest of fairness to all parties, the Hearing Officer may limit the time a party has to present their case if the Hearing Officer determines a party is unreasonably delaying the hearing, presenting evidence that is duplicative or not relevant to the matter, or other similar reasons. Parties are strongly encouraged to notify Texas REALTORS® as soon as possible if a party believes their presentation will take multiple days. Please keep in mind that if a hearing is continued, the continuance is subject to the availability of the hearing panel and other parties and witnesses. There is no guarantee that the hearing will continue on the following day.
- Hearing panels base their decisions on the evidence and testimony presented during the hearing. Hearing panels do not conduct research on their own. If a party has information relevant to the issues under consideration, it is their responsibility to present the information during the hearing.
- Recognize that different people can witness the same event and have differing recollections about what they saw. It is up to the hearing panel to determine, in their view, what happened.
- An ethics hearing is an adversarial process and is, to some degree, unavoidably confrontational. For the enforcement process to function properly, it is imperative all parties, witnesses, counsel, and panel members maintain appropriate decorum.

### **After the hearing**

- The parties will receive a copy of the hearing panel's decision. Review it carefully.
- The decision includes the Findings of Facts, which is a summary of the events that led to the complaint. The Findings of Facts are the hearing panel's conclusion of what happened, based on their reasoned assessment of all the evidence and testimony presented during the hearing. The Findings of Facts may differ from the testimony of a party, particularly if the parties offered conflicting testimony.
- A party may appeal the decision if a party believes the hearing process was flawed to the extent they were denied a full and fair hearing.
- The Findings of Fact are not appealable.
- The parties will be provided information regarding the procedures for appealing the decision after the hearing.

# Frequently Asked Questions

## General Questions

Q: Do I have to pay a fee to file an ethics complaint?

A: No. There is no charge.

Q: What happens after I file the complaint?

A: The ethics complaint will first be reviewed by a Grievance Tribunal. Their job is to perform an initial review to determine if the allegations made in the complaint support a possible violation of the Code of Ethics. The Grievance Tribunal may either dismiss the complaint or forward the complaint to the next step in the process, which is to conduct an ethics hearing.

Q: How long will it take before a hearing is held?

A: Texas REALTORS® works diligently to process ethics complaints as quickly as possible. However, because of the high volume of ethics complaints and arbitration requests processed by Texas REALTORS®, it may take several months before a hearing can be scheduled. Parties are strongly encouraged to consider using the ombudsman or mediation services to resolve disputes.

Q: Where will the hearing be held?

A: Hearings are conducted remotely using the Zoom platform. Everyone participating in the hearing (parties, witnesses, counsel) must have a device with audio, video, and internet capabilities.

Q: Do I have to attend the hearing?

A: The short answer is, yes. If a complainant does not attend the hearing, we will most likely be forced to dismiss the complaint. There are limited circumstances where a hearing will proceed without the complainant. If a respondent does not attend the hearing, the hearing may continue without the respondent, with the respondent losing the opportunity to present evidence in their defense.

Q: Should I have an attorney present?

A: Parties have a right to be represented by legal counsel. Each party must determine for themselves whether they wish to retain legal counsel.

Q: What happens during the hearing?

A: The hearing is where the parties get to tell their side of the story. The complainant may testify and present evidence and witnesses to try to prove a violation of the Code of Ethics occurred. The respondent may testify and present evidence and witnesses to show there was no violation. The parties will be given an outline of procedures that explains the step by step process of a hearing. The parties will also be invited to attend a pre-hearing conference with the Hearing Officer who will further explain the hearing process and answer any procedural questions.

Q: How long does the hearing take?

A: Every hearing is different. A typical hearing will start at 10:00 am (central) and conclude within 2 or 3 hours. More complex matters may take more time.

Q: Will Texas REALTORS® contact my witnesses and give them the meeting information?

A: No. Each party is responsible for ensuring their witnesses are available on the date of the hearing and have the necessary log in information for the hearing over the Zoom platform.

Q: If the REALTOR® is found in violation, can you take away their license?

A: No. The Texas Real Estate Commission (TREC) is the state agency responsible for licensing real estate brokers and sales agents. Only TREC can suspend or terminate a real estate license.

### Questions Regarding CasePro

Q: I have not received an email from CasePro regarding my case.

A: First, please check your spam folder for emails from CasePro. Second, make sure Texas REALTORS® has your correct email address.

Q: What browsers are compatible with filling out my ethics complaint or arbitration request using the CasePro link?

A: We recommend using Google Chrome or Microsoft Edge as your browser. CasePro will work with other browsers, but if you encounter difficulties or an error message, you should switch to Chrome or Edge.

Q: I have been trying to work with CasePro on my cell phone and keep getting an error message. What am I doing wrong?

A: Please use a PC or Mac. Using a cell phone, iPad, or other mobile device will result in an error message.

Q: What type of document files may I upload as my supporting documentation?

A: CasePro only accepts .pdf or .png file types for uploading.

Q: After I click the CasePro link, how long do I have to submit my complaint?

A: You have 15 minutes to complete each step of the submission process. If you have a lengthy narrative description of the circumstances concerning your case, we recommend you type "See attached PDF" in the description box. You may then upload a PDF of the summary in next step, "supporting documents". Please name the PDF file, "Article(s) \_\_ Summary".

Q: I have an audio/video file I want to submit; how do I do that?

A: Please email the file, or a link to the file, to [prostandards@texasrealtors.com](mailto:prostandards@texasrealtors.com). Please be aware that there are state and federal laws regarding audio and video recording of individuals. Any submitted audio/video file will be reviewed by Texas REALTORS® legal counsel for compliance.

Q: I keep trying to submit a PDF file and am unable to proceed to the next step. What am I doing wrong?

A: Check the size of your file. Each document uploaded may not exceed 50 mb. You may need to compress or split a larger file into multiple files.

Q: CasePro does not seem to be accepting a supporting document, what else could be wrong?

A: When uploading a document, you MUST wait for the upload progression bar and the percentage indicator to complete the process. It will display "100%" and the file name will turn green. You may then proceed to the next document or step.