



## **Introduction to the KAR Professional Standards Process**

### **FILING A REQUEST FOR ARBITRATION AS A REALTOR® MEMBER or A MEMBER OF THE PUBLIC**

The Kentucky Association of REALTORS® ensures the ethical behavior of its REALTOR® members through the professional standards process. KAR handles the administrative aspects of this process for many of the local associations in our state. A request can only be processed against someone who is a member of our association and his/her membership will need to be verified. Although the staff of KAR is not at liberty to offer any advice on the merits of your complaint, there are options to consider:

**Filing a Request for Arbitration**—A request for arbitration may be filed if a contractual relationship exists between two parties and involves a specific monetary amount, which will either be awarded to one of the parties involved or split between the two parties. **Note that parties subject to arbitration must agree to be bound by the award. Also the request must be filed within 180 days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later.**

Enclosed are the necessary forms to file a request for arbitration, if you wish to take that action. The Arbitration Hearing will be held in the Commonwealth of Kentucky. Please be reminded it is important to attach an explanation of the situation surrounding the request. Be as specific as possible. Provide any information that would assist the grievance committee in understanding the facts in the situation and making an informed decision. If you have any further questions, please contact the Director of Legal Affairs at 1-800-264-2185. If you have a question about Kentucky Real Estate Laws, please contact the Kentucky Real Estate Commission at (888) 373-3300 or (502) 429-7250.

## **Do you have a complaint concerning a REALTOR®?**

When joining a Board or Association, all members agree to abide by the Code of Ethics as a continuing condition of membership. It is because of the obligation to abide by the Code of Ethics that you can file a complaint.

Before filing a complaint with a Board or Association of REALTORS®, it must be determined if the real estate agent involved is a REALTOR®. Not all real estate agents are REALTORS®. Only those who belong to a Board of REALTORS® can legally use the term REALTOR®. Therefore, it must be determined if, and to which Board of REALTORS® an agent belongs.

## **Do you have an ethics complaint or an arbitration request?**

An ethics complaint charges that a REALTOR® violated an Article(s) of the Code of Ethics.

A request for arbitration may be filed if a contractual (or specific noncontractual—see Standards of Practice 17-4) relationship exists between two parties and involves a specific monetary amount. An arbitration request often involves one REALTOR® in disagreement with another REALTOR®, usually over a commission dispute. Sometimes, arbitration concerns a dispute between a member of the public and a REALTOR®.

Arbitration requests and ethics complaints must always be handled separately. If an arbitration request and an ethics complaint are filed at the same time and both are forwarded to a hearing, the arbitration hearing will be held first, followed by the ethics hearing consisting of a different hearing panel.

## **Who may file an ethics complaint?**

- Any person, whether a member or not, may file a complaint against a REALTOR® alleging a Code of Ethics violation for any of the Articles 1-17.

An ethics complaint must:

1. be in writing on an Ethics complaint form (Form #E-1);
2. be signed by the Complainant(s);
3. include a statement of the facts surrounding the case;
4. be filed within 180 days (NOT 6 MONTHS) of the time that the alleged offense and facts relating to it could have been known in the exercise of reasonable diligence, or within one hundred eighty (180) days after the conclusion of the transaction or event, whichever is later.

The Complainant must file a complaint either where the REALTOR® holds membership or participates in the MLS.

## **Who may file an arbitration request?**

- REALTORS® who are principal brokers;
- REALTOR® non-principals provided his or her principal broker joins in the request;  
*Note Arbitration in such cases shall be between the REALTOR® principals.*
- REALTOR® non-principals requesting arbitration with REALTOR® principals (or vice versa) who are or were affiliated with the same firm;
- Clients or customers of the REALTOR®; or
- REALTOR® principal requesting arbitration with a nonmember broker.

**Note: All parties submitting to arbitration must agree in writing to be bound by the decision.**

**The Arbitration Hearing will be held in the Commonwealth of Kentucky.**

### **An arbitration request must:**

1. Be in writing on a Request for Arbitration form (Form #A-1/member or #A-2/non-member);
2. Be signed by the Complainant(s);
3. Include a statement of facts surrounding the case;
4. Indicate the amount of money in dispute;
5. Be filed within 180 days (NOT 6 MONTHS) after the facts could have been known in the exercise of reasonable diligence, or the closing of the transaction, whichever is later.

The Association provides arbitration as a service to its members. Arbitration is not a disciplinary proceeding nor does it award damages. By becoming and remaining a member of a Board or Association of REALTORS<sup>®</sup>, each REALTOR<sup>®</sup> binds himself to arbitrate certain disputes. Not every request may be arbitrated at the Board. Conditions and limitations exist which must be considered. The Association will explain these conditions and limitations as the process continues.

***Note: Disputes involving clients or customers require that they sign an agreement to arbitrate and to be bound by the arbitration. A Grievance Committee determines whether the Complainant is a client or customer (whether arbitration is mandatory/ voluntary) and if the dispute can be processed by the Board.***

### **What can the Association do?**

A Board or Association of REALTORS<sup>®</sup> possesses limited authority regarding its members. Note the following limitations:

1. The Board or Association cannot try a member for the violations of the Kentucky real estate license law or any other alleged violation of the law. Its jurisdiction only covers violations of membership duties. The Kentucky Real Estate Commission solely controls the real estate agent's license to sell real estate. If you think a person has violated the law, you should contact this agency at (888) 373-3300 or (502) 429-7250.
2. For the same reason, the Board or Association cannot suspend or terminate the license of one of its members.
3. The Board or Association can administer discipline to the REALTOR<sup>®</sup>. This would happen only in the instance of an ethics violation or other breach of membership duties. The Board or Association can use one or more of the following ways to discipline a member:
  - 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 up to \$5,000 (this fine is not awarded to the Complainant).
  - Place the member on probation.
  - Suspend the Board membership of the member or issue a fine not to exceed \$5000 in lieu of suspension.
  - Expel the member from Board membership.
  - Suspend/expel the individual's MLS access and use.
4. An ethics proceeding may not include money damages.
5. The Board can arbitrate certain money disputes and must in some situations. But, the member of the public must agree in writing to arbitrate the dispute and to be bound by the decision.
6. An arbitration award may not be more than the amount in dispute. Under no circumstances will the Board award 'punitive' damages.
7. The Arbitration Hearing will be held in the Commonwealth of Kentucky.

### **How do you file an ethics complaint?**

1. Complete and sign the complaint form #E-1. This form requests you to name the REALTOR®(s) in question as the Respondent(s).
2. List the Article(s) of the Code of Ethics that you think the REALTOR®(s) violated (please refer to the enclosed copy of the 2013 Code of Ethics).
3. Attach an explanation of the situation surrounding the complaint. Be as specific as possible. State what, when, where, why and how you think the REALTOR®(s) violated each Article.
4. Attach copies of any and all pertinent documents such as listing agreements, addendum, etc. If you have notarized statements from witnesses, include those also.
5. Send the entire package, keeping a copy for your own records, to the Kentucky Association of REALTORS®, 161 Prosperous Place, Suite 100, Lexington, Kentucky 40509, to the attention of the Director of Legal Affairs. The Grievance Committee will then process your complaint.

### **How do you file an arbitration request?**

1. Complete and sign the request for arbitration form #A-1 or #A-2. Name the REALTOR®(s) principal(s) in question as the Respondent(s).
2. Indicate the amount in dispute.
3. Include an explanation of the situation. State why you feel you are entitled to an award of some kind. Remember, this is not an ethics complaint. If you think the REALTOR®(s) violated the Code of Ethics you may file a separate ethics complaint.
4. Attach copies of any and all pertinent documents such as listing agreements, purchase and sales agreements, closing statements, etc. Also include any notarized statements from witnesses.
5. Parties must include a **\$250 deposit** with their arbitration request. The prevailing party in arbitration will receive their deposit back from KAR.
6. The complainant(s) will be asked to sign an arbitration agreement. This indicates a commitment to abide by the decision of the Hearing Panel. The Arbitration Hearing will be held in the commonwealth of Kentucky.
7. Send the entire package, keeping a copy for your own records, to the Kentucky Association of REALTORS®, 161 Prosperous Place, Suite 100, Lexington, Kentucky 40509, to the attention of the Director of Legal Affairs. The Grievance Committee will then process the request.

**It is not unusual for an Association to receive an ethics complaint and an arbitration request surrounding the same set of circumstances.**

**If you think the REALTOR®(s) violated the Code of Ethics and you have a monetary dispute with the same REALTOR®, you must complete both forms.**

## **How does the Association process the complaint or request?**

Specially trained REALTOR® members of the Kentucky Association of REALTORS® are appointed by the local associations to serve on the Grievance Committee, Mediation Committee, Professional Standards Hearing Panel, and the Appeal Panel.

1. **GRIEVANCE COMMITTEE:** In general, the Grievance Committee functions somewhat like a grand jury.

**Ethics.** The Grievance Committee reviews complaints received by the Board. The committee determines whether the complaint sufficiently merits further consideration. It does not determine guilt or innocence.

After reviewing the complaint, the committee has the following options:

1. forward the complaint to a hearing;
2. dismiss the complaint--if it is determined to be frivolous, harassing, or unfounded;
3. amend the complaint to either add and/or delete individuals and/or Articles;
4. postpone its decision to get more information from the complainant. Also, before they reach a decision, the committee may request a reply from the Respondent(s) regarding the complaint.

If the committee dismisses the complaint, the reason is stated. The complainant has the right to appeal the dismissal to the Appeals Panel. In the case of an appeal, the panel members re-examine the materials submitted to the Grievance Committee. The Appeals Panel can then either uphold or overturn the committee's decision.

If the complaint merits further consideration, it will be sent to the Professional Standards Committee for a hearing.

**Arbitration.** The Grievance Committee's role in arbitration differs from its role in ethics complaints. Here, it functions only to make a preliminary review. The results of this review will determine whether the matter is subject to Board arbitration. The Grievance Committee must consider the six points outlined as follows:

1. whether the complainant is authorized to invoke arbitration;
2. whether the dispute described is an arbitrable matter;
3. whether the dispute is filed in a timely manner;
4. whether the arbitration is mandatory or voluntary to the people involved (whether arbitrating the dispute is compulsory, or not);
5. whether either the amount in dispute is too small or too large, or the matter is too legally complex for the Board to consider;
6. whether the matter is currently the subject of litigation.

Such a review could result in releasing members from their obligation to arbitrate. This would free the parties to seek other recourse in order to resolve the dispute.

In either ethics or arbitration cases, the parties will be informed promptly of the Grievance Committee's decision. If the Grievance Committee forwards the complaint or request for a hearing, it is assigned to the Professional Standards Committee.

As in ethics complaints, the complainant may also appeal a dismissal of an arbitration request to the Appeals Panel. The panel members review the materials submitted to the Grievance Committee and can uphold or overturn the committee's dismissal.

## **2. MEDIATION: A mediation conference is an alternative to arbitration.**

Mediation is a process in which disputing parties attempt to resolve their disagreements with the help of an impartial, trained third party—the mediator. The mediator does not offer opinions, pass judgment, or render legally binding decisions. The mediator's only function is to help parties identify their differences and reach an agreement on how to resolve them.

If the Grievance Committee has reviewed a request for arbitration and found it to be an arbitrable matter, a mediation conference will be scheduled at a time and location that is acceptable to both parties. Participation in this mediation conference is mandatory for REALTOR® members of the Kentucky Association of REALTORS®.

When the disputing parties have reached and agreed on a mutually acceptable solution, they sign a written agreement that outlines the terms of the settlement. Once the agreement is signed, parties are legally bound to abide by its terms.

If the parties cannot reach a settlement, the arbitration hearing will be scheduled for the arbitration hearing panel to determine the outcome of the dispute.

## **3. PROFESSIONAL STANDARDS COMMITTEE**

The function of this committee is to hold ethics and arbitration hearings. The Respondent is requested to reply to the complaint or request. A hearing will then be scheduled, and the parties will be given minimally 21 days notice of the hearing date, time, and place. KAR schedules the hearing at the local board office (if there is a private conference room available) or a neutral location in the city closest to the parties. These hearings provide an opportunity for the Complainant and the Respondent to explain "his or her side of the story" by presenting testimony and witnesses, if any.

Once all of the facts have been presented, a Hearing Panel, consisting of members of the Kentucky Association of REALTORS® chosen on the basis of their experience, temperament, and objectivity, will determine whether the Code of Ethics has been violated, or, in the case of arbitration, how the dispute should be settled.

The Association will inform the parties about each step of this process as it occurs. The Association will also provide the parties with instructions about the hearing procedures prior to the hearing.