

FLORIDA REALTORS

2022-2023 Professional
Standards Training for
Grievance and Professional
Standards Committee Members



HOUSE KEEPING



For VIRTUAL Trainings: Please mute microphone unless speaking



This session qualifies for both Ethics & Business Practices CE Credit and NAR Ethics Training



To receive CE credit

You must be present for 2 hours and 30 minutes

The board will monitor CE Credit and report



This session may be recorded at the Board's request



AGENDA

- Overview and History of the Code of Ethics
- A Look at What's New
- Articles of the Code of Ethics
- Association Enforcement
 - Grievance Committee
 - The Hearing
 - The Decision/Findings of Fact
- Procuring Cause
- Wrap Up



THE CODE OF ETHICS (COE)

**All Realtors are bound
by the Code of Ethics!**

**The Code ensures that
consumers are served
by requiring
REALTORS® to
cooperate with each
other while furthering
clients' best interests.**

HISTORY OF THE COE

Adopted in 1913 as commitment to professionalism.

Realtors agree to abide by the code.

A living document that evolves with the real estate industry.

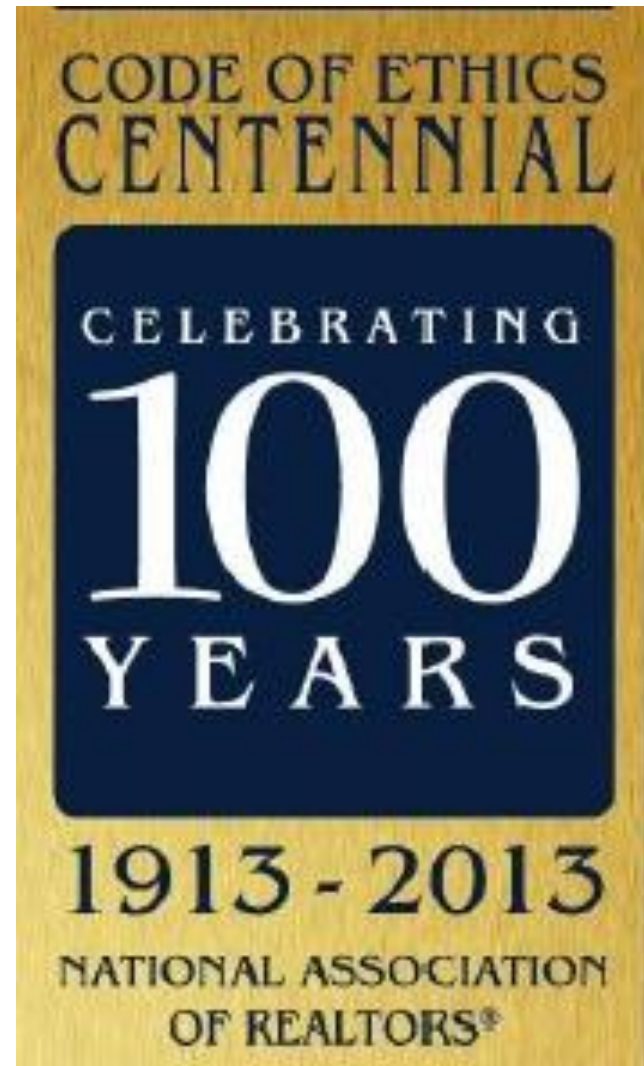
Timeless Concepts - honesty, obligations to clients and avoidance of self-dealing.

The “Golden Thread” that binds the REALTOR® family together.

Mandates the arbitration of money disputes since inception – culture of cooperation.

Recognized as the measure of high standards in real estate.

Precursor and model to state licensing laws.



THE PREAMBLE

While the Code of Ethics establishes obligations that may be higher than those mandated by law, in any instance where the Code of Ethics and the law conflict, the obligations of the law must take precedence.

Realtors® should recognize that the interests of the nation and its citizens require the highest and best use of the land and the widest distribution of land ownership.

Realtors® should dedicate themselves, and for which they should be diligent in preparing themselves. Realtors®, therefore, are zealous to maintain and improve the standards of their calling and share with their fellow Realtors® a common responsibility for its integrity and honor.



THE PREAMBLE CONTD.

Realtors® continuously strive to become and remain informed on issues affecting real estate and, as knowledgeable professionals, they willingly share the fruit of their experience and study with others.

Realtors® urge exclusive representation of clients; do not attempt to gain any unfair advantage over their competitors; and they refrain from making unsolicited comments about other practitioners. In instances where their opinion is sought, or where Realtors® believe that comment is necessary, their opinion is offered in an objective, professional manner, uninfluenced by any personal motivation or potential advantage or gain.

The term Realtor® has come to connote competency, fairness, and high integrity resulting from adherence to a lofty ideal of moral conduct in business relations.

Embodied in the Golden Rule, “Do unto others as you would have them do unto you.”



Preamble

Introduces the Code and its aspirational precepts
No discipline can be imposed on the Preamble

Articles

Broad statements of ethical principles
arising out of a real estate transaction or
business.

Only violations of the Articles may lead to
disciplinary action.

Duties to Clients
& Customers

Articles
1-9

Duties to the
Public

Articles
10-14

Duties to
REALTORS

Articles
15-17

STRUCTURE OF THE CODE OF ETHICS



Standards of Practice

Support, interpret, and amplify the
Articles under which they are stated.

Case Interpretations

Fact situations that team up with
specific Articles and/or Standards of
Practice of the Code.



LET'S TEST YOUR KNOWLEDGE

How Well Do You Know the Code?

IDENTIFY THE STANDARD OF PRACTICE THAT GOES WITH THE ARTICLE

1. Buyer's representative cannot hold the offer hostage to collect a higher commission.
2. Listing agent cannot access or use the property without seller's permission.
3. Realtors remain obligated by the duties of the Code when acting as principals in a real estate transaction.
4. If you sell property you own, you must disclose ownership to the buyer or buyer's representative in writing before signing any contract.
5. Include your firm's name in a readily apparent manner in any medium of advertising.
6. Listing broker cannot unilaterally modify the offered compensation with respect to a cooperative transaction after the offer has been submitted.
7. Cooperating brokers can arbitrate against each other if one is paid by the listing broker in a specific non-contractual dispute.
8. Realtors are not obligated to discover and disclose adverse factors that require expertise in other disciplines.
9. Cooperating agent can't access property without owner or **listing broker's** permission. (red=changes coming soon)



THE ANSWERS

1. **SOP 16-16** - Buyer's representative cannot hold the offer hostage to collect a higher commission.
2. **SOP 01-16** - Listing agent cannot access or use of property without seller's permission.
3. **SOP 01-01** - Realtors remain obligated by the duties of the Code when acting as principals in a real estate transaction.
4. **SOP 04-01** - Realtors must disclose their ownership interest in writing before signing any contract.
5. **SOP 12-05** - Realtors must include their firm's name in a readily apparent manner in all mediums of advertising.
6. **SOP 03-02** - Listing broker may not unilaterally modify the offered compensation with respect to a cooperative transaction after the offer has been submitted.
7. **SOP 17-04** - Cooperating brokers may arbitrate if one is paid by the listing broker in a specific non-contractual dispute.
8. **SOP 02-01** - Realtors are obligated to discover and disclose adverse factors reasonably apparent to real estate licensees.
9. **SOP 03-09** - Cooperating agent's access of property with owner or **listing agent's** permission. (red=changes coming soon)



COME SEE WHAT'S NEW! |

SEE WHAT'S NEW IN 2023



Replace “handicap” with “disability”

Replace the term “handicap” with “disability” in Article 10, the Standards of Practice, and in all corresponding references to the protected classes within NAR policy and resources.

RATIONALE

SEE WHAT'S NEW IN 2023



Rationale:

- “Handicap” is widely considered to be an antiquated, if not offensive, term.
- While the text of the federal Fair Housing Act still contains the word “handicap” due to the difficulties of amending legislation, federal agencies have been using “disability” in its place in their regulations, policies, and documents since 1992.
- This amendment updates Article 10 with the preferred terminology while keeping the substance and intent of the article intact.

SEE WHAT'S NEW IN 2023



Attn: Professional Standards Administrators

- Remove Board Prez from Ethics complaint dissemination process
- Amend Section 21, Ethics Hearing, Subsection (b) and Section 23, Action of the Board of Directors, Subsection (j) of the Code of Ethics and Arbitration Manual to remove the Board President from the process of disseminating the ethics complaint, response, and the appeal decision.

RATIONALE SEE WHAT'S NEW IN 2023



Rationale:

These amendments strengthen the grievance process by removing any appearance of impropriety due to the ability of a Board President to review a complaint and response at the beginning of the grievance process while also serving on the board that hears an appeal or ratifies a hearing panel's decision.

Attn: Professional Standards Administrators

SEE WHAT'S NEW IN 2023



Replace “the listing broker” with “the seller” in SOP 3-9

To amend Standard of Practice 3-9 to replace “the listing broker” with “the seller”.

RATIONALE SEE WHAT'S NEW IN 2023



Rationale:

This simply clarifies and reinforces the existing ethical obligation for the listing broker to follow the instructions of the owner or seller when establishing terms related to the marketing and sale of the property.

Standard of Practice 3-9 changes:

REALTORS® shall not provide access to listed property on terms other than those established by the owner or ~~the listing broker~~ the seller.

QUICK REVIEW-WHAT WAS NEW IN 2022

Revisions to Standards of Practice 1-8:

- To be consistent with SOP 1-7 language added to SOP 1-8:

Upon the written request of the listing broker who submits a counter-offer to the buyer's/tenant's broker, the buyer's/tenant's broker shall provide, as soon as practical, a written affirmation to the listing broker stating that the counter-offer has been submitted to the buyers/tenants, or a written notification that the buyers/tenants have waived the obligation to have the counter-offer presented.

QUICK REVIEW-WHAT WAS NEW IN 2022 CONT.

- Enhancements were made to Appendix XII to Part Four, *Code of Ethics and Arbitration Manual*- Appropriate Interpretation of Standard of Practice 10-5 and Statement of Professional Standards Policy 29 (see gray shaded areas in the manual)

Six New Case Interpretations Relating to Standard of Practice 10-5: <https://www.nar.realtor/code-of-ethics-and-arbitration-manual/case-interpretations-related-to-article-10>

1. Case Interpretation #10-6, Use of Hate Speech and Slurs on the Basis of Race
2. Case Interpretation # 10-7, Use of Harassing Speech on the Basis of Political Affiliation
3. Case Interpretation # 10-8, Use of Harassing Speech against Protestors
4. Case Interpretation # 10-9, Use of Speech or Ideas included in Religious Doctrine
5. Case Interpretation # 10-10, Use of Speech or Ideas included in Religious Doctrine
6. Case Interpretation #10-11, Display of Symbols

WHAT WAS NEW IN 2022 CONT.



- Definition of Public Trust – Expanded

- Public Trust, refers to demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud.

- Article 10 – Standard of Practice 10-5

1. REALTORS® must not use harassing speech, hate speech, epithets, or slurs based on race, color, religion, sex, **handicap**, familial status, national origin, sexual orientation, or gender identity. (**red**=changes coming soon)
 - Remember – SOP 3-11

- Article 12 – Standard of Practice 12-1

- Amended to clearly prohibit members from advertising their services as “free” unless the member will receive no compensation from any source for their services.

- Statement of Policy 29

- A Realtor® shall be subject to disciplinary action under the Code of Ethics with respect to all of their activities.

RATIONALE BEHIND WHAT WAS NEW IN 2022

- Definition of Public Trust – Expanded

- Broaden codes enforcement – dovetails with SOP 10-5

- Article 10 – Standard of Practice (SOP) 10-5

- This Standard of Practice flows from the requirement to not deny equal professional services or be parties to a plan to discriminate.
- Specifically, bias against protected classes which may cause realtors to not work with those individuals leading to potential fair housing issues.

- Article 12 – Standard of Practice (SOP) 12-1

- This standard of practice was updated to dovetail with the new MLS Policy statement that prohibits MLS participants and subscribers from advertising their services as free, unless they will receive no compensation.
- Also, aides in consumer transparency.

- Statement of Policy 29

- Was previously limited, now applies to all activities during work or not.
- Aims to increase professionalism of Realtors at all times.
- Most obligations under code are Real Estate related.

LET'S DEEP DIVE INTO STANDARD OF PRACTICE 10-5

REALTORS® must not use harassing speech, hate speech, epithets, or slurs based on race, color, religion, sex, **handicap**, familial status, national origin, sexual orientation, or gender identity.
(red=changes coming soon)

Is not about types of speech subjectively deemed “offensive” or “discriminatory” by one person and not another.

Based on [particular] types of speech directly connected to the protected classes of race, color, religion, sex, **handicap**, familial status, national origin, sexual orientation or gender identity.
(red=changes coming soon)

As defined in the dictionary, use of harassing speech, hate speech, epithets and slurs based on the protected classes is prohibited.



DEFINITIONS:

Hate Speech: “speech that is intended to insult, offend, or intimidate a person because of some trait (as race, religion, sexual orientation, national origin, or disability).”

Epithet: “1 a: a characterizing word or phrase accompanying or occurring in place of the name of a person or thing; b: a disparaging or abusive word or phrase”

Slur: “1 a: an insulting or disparaging remark or innuendo: ASPERSION; b: a shaming or degrading

Effect: STAIN, STIGMA”



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CHECK POINT — ARTICLE 10 VIOLATION?

NAR Case Interpretation # 10-7: **Use of Harassing Speech on the Basis of Political Affiliation**

REALTOR® A was a registered member of Political Party Y and routinely engaged in political discussion on social media and private conversations. They often included insulting, intimidating, and hostile statements about members of Political Party Z, including aggressively insulting their intelligence, etc. REALTOR® B witnessed numerous instances where REALTOR® A harassed others on the basis of their membership in Political Party Z and believed it was harassing speech.

- Grievance Committee Review
- Facts Taken as True at Face Value

Violation of Article 10 or not?

CHECK POINT — ARTICLE 10 VIOLATION?

NAR Case Interpretation # 10-7: **Use of Harassing Speech on the Basis of Political Affiliation**

The complaint was reviewed by the Association's Grievance Committee, who examined the allegations to determine whether, if taken as true, they would constitute a violation of the Code of Ethics.

Ultimately the Grievance Committee dismissed the complaint, as the complainant's sole argument was that REALTOR® A had discriminated against individuals based on their political affiliation with Political Party Z.

As political affiliation is not a protected class under Article 10, the allegations in the complaint, even if true, could not constitute a violation of the Code of Ethics.

CHECK POINT — WHICH ARTICLE FITS THE DESCRIPTION?

Make your “true position” known when presenting offers.

- Article 3
- Article 4
- Article 5
- None of the above

Which article fits the description?

CHECK POINT — WHICH ARTICLE FITS THE DESCRIPTION?

Paint a true picture in advertising.

- Article 11
- Article 13
- Article 12
- None of the above

Which article fits the description?

CHECK POINT — WHICH ARTICLE FITS THE DESCRIPTION?

Cooperate with other brokers.

- Article 3
- Article 1
- Article 4
- None of the above

Which article fits the description?

CHECK POINT — WHICH ARTICLE FITS THE DESCRIPTION?

Disclose pertinent facts.

- Article 3
- Article 2
- Article 4
- None of the above

Which article fits the description?

CHECK POINT – VIOLATION OF ARTICLE 16?

CASE INTERPRETATION #16-22

ASCERTAINING WHETHER A CONSUMER IS SUBJECT TO AN EXCLUSIVE REPRESENTATION AGREEMENT

REALTOR® A was holding an open house for their client's home, which had been on the market for several months, so REALTOR® A was thrilled to see Buyer C approach the home after two hours with no visitors. REALTOR® A gave her a tour of the space, but Buyer C indicated she was looking for more of a “fixer upper”, as she had almost singlehandedly completed some significant renovation projects in her previous homes and was looking for the perfect next project.

CHECK POINT – VIOLATION OF ARTICLE 16?

CASE INTERPRETATION #16-22 - THINK IT THROUGH VIDEO

**ASCERTAINING WHETHER A CONSUMER IS SUBJECT TO AN
EXCLUSIVE REPRESENTATION AGREEMENT**

WAIT . . .

WE HAVE A NEW **THINK IT THROUGH VIDEO**
ON BASED ON CASE INTERPETATION #16-22!

LET'S WATCH THE VIDEO AND THEN WE CAN
DISCUSS



NOTE . . .

The video slide is black because the video opens with a black screen.

If the presentation is printed out this slide will be black – this is not an error.

SKIP SLIDE - USE IN CASE VIDEO DOESN'T PLAY

CASE INTERPRETATION #16-22 ASCERTAINING WHETHER A CONSUMER IS SUBJECT TO AN EXCLUSIVE REPRESENTATION AGREEMENT

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REALTOR® A had another listing that she knew was perfect for Buyer C and hadn't been listed in the MLS yet as the client had just signed their agreement earlier that morning. REALTOR® A described the home to Buyer C and offered to show it to her. Buyer C replied, "Oh, thank you, I am actually working with someone. I should probably ask them about it." REALTOR® A responded, "that's fine, but to be honest, I'm not sure if your agent will even get a chance to see it. At the price at which it's listed, I'm confident it will sell before I can even get it in the MLS." Somewhat reluctantly, Buyer C agreed to let REALTOR® A show her the second home. REALTOR® A drafted an offer, which was accepted, and the parties completed a quick close.

Proud of a job well done for her client, REALTOR® A was shocked when she received notice of an ethics complaint filed against her by REALTOR® B, alleging a violation of Article 16 for interfering with his exclusive relationship with Buyer C. At the hearing, REALTOR® B provided the hearing panel with copies of this exclusive buyer agency agreement with Buyer C, and Buyer C testified that she did tell REALTOR® A she was working with someone but felt pressured to tour and submit an offer with REALTOR® A or risk losing the house.

REALTOR® A defended her actions, stating, "Listen, if I had known that Buyer C had an exclusive agreement with someone, I would have backed off. But she never said that she was working with someone exclusively; just that she was working with someone. It's not my responsibility to fill in the gaps on what she told me or hammer her with questions and drive away a potential buyer just to determine what sort of relationship she has. That doesn't serve my client well."

Case Interpretation #16-22

The Panel's Decision

The Hearing Panel decided that **REALTOR® A had violated Article 16**, as Standard of Practice 16-9 provides, "REALTORS®, prior to entering into a representation agreement, have an affirmative obligation to make reasonable efforts to determine whether the prospect is subject to a current, valid exclusive agreement to provide the same type of real estate service."

As REALTOR® A had made no affirmative effort to ascertain whether Buyer C's relationship with another agent was exclusive or not, the Hearing Panel concluded she had made no reasonable efforts to determine the nature of the relationship as required by Article 16.



CHECK POINT – VIOLATION OF ARTICLE 16?

CASE INTERPRETATION #16-22 - THINK IT THROUGH VIDEO

ASCERTAINING WHETHER A CONSUMER IS SUBJECT TO AN EXCLUSIVE REPRESENTATION AGREEMENT

LET'S DISCUSS . . .

- No Reasonable Effort
- Avoid Adding Language
- Key Word “Exclusive”

CHECK POINT – VIOLATION OF ARTICLE 16?

CASE INTERPRETATION #16-22 - THINK IT THROUGH VIDEO

ASCERTAINING WHETHER A CONSUMER IS SUBJECT TO AN EXCLUSIVE REPRESENTATION AGREEMENT

LET'S DISCUSS . . .

Notice the Articles of the Code don't say exactly what to do here.

However, Realtors® are not left without guidance

Pathways to Professionalism provide guidance

PATHWAYS TO PROFESSIONALISM

THESE PROFESSIONAL COURTESIES ARE INTENDED TO BE USED BY REALTORS® ON A VOLUNTARY BASIS, AND CANNOT FORM THE BASIS FOR A PROFESSIONAL STANDARDS COMPLAINT.

- ✓ Follow the “Golden Rule”—Do unto others as you would have them do unto you.
- ✓ Encourage the clients of other brokers to direct questions to their agent or representative.
- ✓ Show courtesy and respect to everyone.
- ✓ Show courtesy, trust, and respect to other real estate professionals.
- ✓ To be successful in the business, mutual respect is essential.
- ✓ Real estate is a reputation business. What you do today may affect your reputation—and business—for years to come.

THE DIFFERENCE IS:

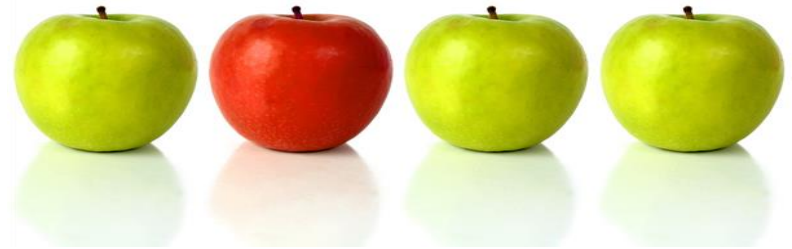
Code of Ethics

Duties to clients & customers

Duties to the public

Duties to Realtors

Violation of the COE may result in disciplinary action taken against the Realtor.



Pathways

Respect for the public

Respect for property

Respect for peers

*Professional courtesies used by the Realtor on a voluntary basis and **cannot be** the basis for an ethics complaint.*

THE SHIFT

The Good Old Days

Agents and buyers were patient and willing to wait for a response

Agents respected your relationship with customer

Plenty of business to go around

Buyers were loyal

No cell phones, only landlines

No internet

No Smart Phones

No Teams

Worked regular hours

Verbal communications



Today

Instant gratification – no time to wait

Buyers are open season

Low inventory – every agent for himself/herself

Consumers find the property, work with multiple agents

Consumer loyalty

Expect 24/7 service

Electronic forms/paperless MLS

Teams, Teams, and Teams

Internet – the world is at their fingertips

No verbal communications



good manners
will often take
people where
neither money
nor education
will take them

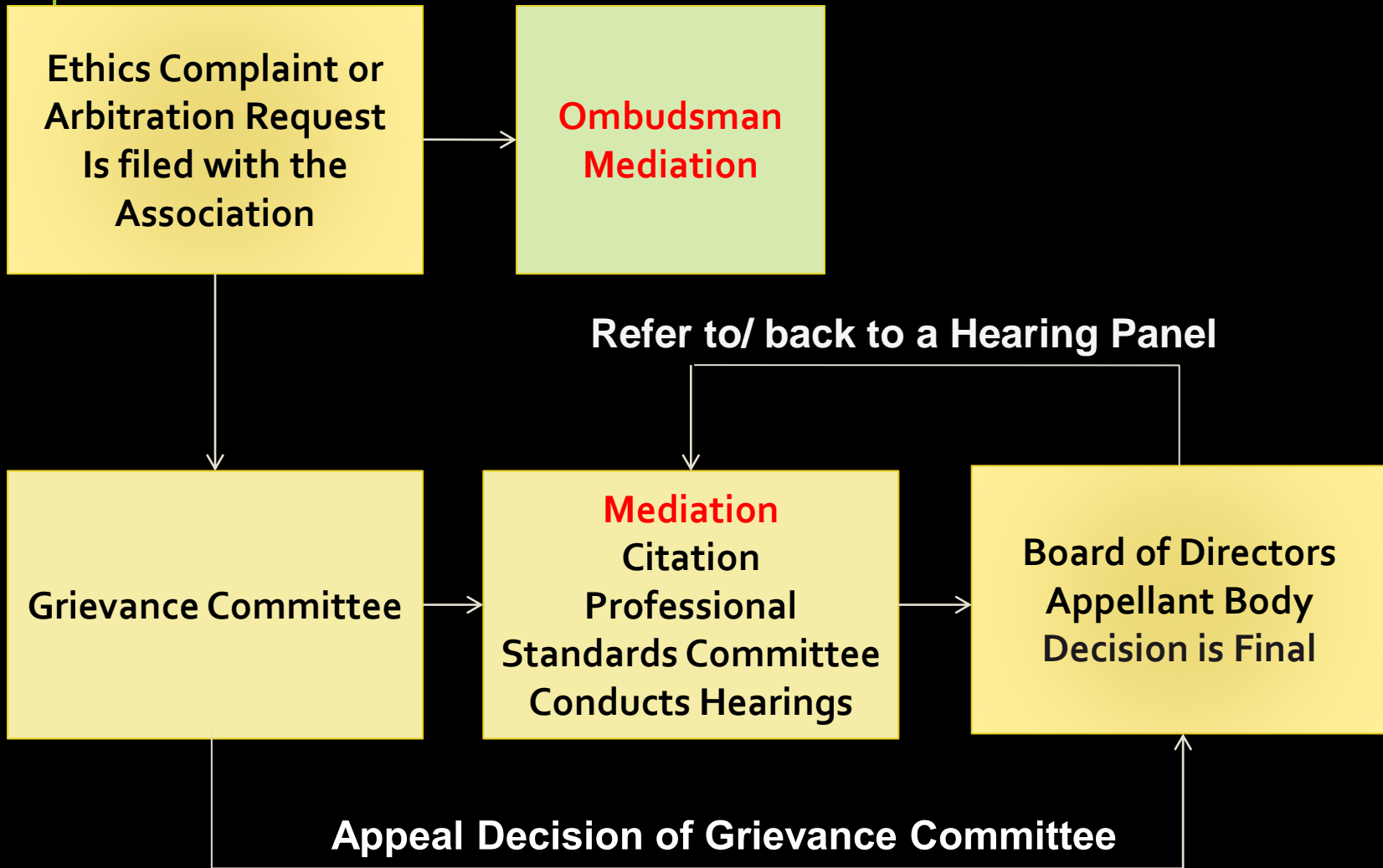
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ASSOCIATION ENFORCEMENT

**This is Where you Come
In and
Why We are Here Today**

THE PROFESSIONAL STANDARDS PROCESS



RESOLVING PROFESSIONAL CONFLICTS

Ombudsman

An Ombudsman has phone conversation with & helps parties find solutions and de-escalates the potential for a formal ethics complaint.

May address & solve minor complaints from the public or inter-realtor issue before they escalate

Facilitates Communication & Reconciliation

Attempts to resolve misunderstandings or disagreements

Does not determine if an ethics violation has occurred or testify at hearings

Mediation

Mediation A less formal dispute resolution

May be offered before an arbitration is filed

May be declined until after Grievance Reviews

- Mediator parties control & decide outcome
- Can leave anytime

Attorneys & Witnesses

- Presence is discouraged but may attend
- Notice of attendance required for attorneys
- Witnesses play a limited role and non-principals may attend

CHECK POINT – SUITABLE FOR OMBUDSMAN OR MEDIATOR?

An agent spoke bad about me at closing in front of the buyer and seller. She accused me of things I did not do, and her endless barrage of disparaging remarks trashed my good name.

I demand you to do something about this Realtor. For starters, an apology to me and a letter to the buyer and seller retracting her hateful comments. If you don't, I'm going to blast this on social media.

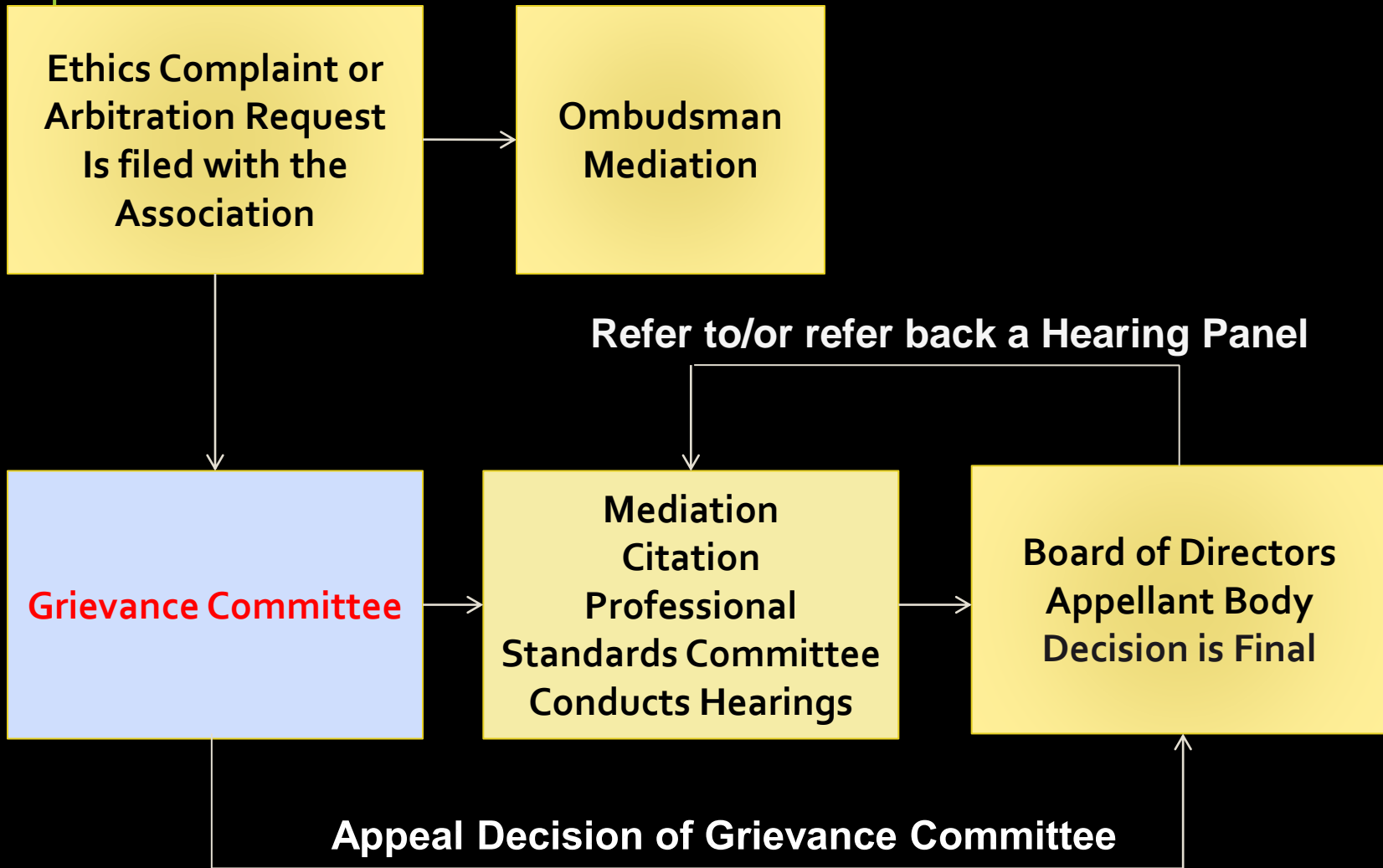
Would this scenario be suitable for an ombudsman or mediator to try to resolve?



Stay Inside the Box

THE ROLE OF GRIEVANCE

THE PROFESSIONAL STANDARDS PROCESS



GRIEVANCE COMMITTEE

Ethics

- Conduct preliminary review based on face of complaint
- Anyone can file a complaint
- Use NAR's relevant questions as a guide
 - May amend the complaint
- Determination to move forward with a hearing or dismiss

Arbitration

- Conduct preliminary review of the arbitration request
- Use NAR's relevant questions as a guide
- Determine if arbitrable matter
 - Determine if mandatory or voluntary
- Determination to move forward with a hearing or dismiss

THE ROLE OF THE GRIEVANCE COMMITTEE

- Schedule Grievance Committee Review not later than 45 Days After Receipt
- Need Minimum of 3 for Quorum
- Decision to Dismiss or Forward for Hearing – Based on Face of Complaint
- Conduct Review using Relevant Questions
 - Not a Hearing – No Witnesses.
 - No Investigations.
 - No Determination of Guilt or Commissions Entitlement.
 - No Responses.
 - No Dismissal Based on Lack of Evidence.
 - Not Required to Review All Evidence.
 - Not Triers of Fact.

ETHICS - RELEVANT QUESTIONS

OPEN YOUR TOOLKIT

Is it in acceptable format, written, and Signed?

Are the necessary parties named?

Is it timely filed?

Respondent a member of any board or MLS participant?

Subject of criminal litigation, civil litigation, or government agency investigation?

Can you field an impartial panel?

Are the articles named appropriate?

Do you need to add or delete articles?

If facts alleged in the complaint are true, could there have been a violation?

Remember, anyone can file an ethics complaint



ARBITRATION RELEVANT QUESTIONS OPEN YOUR TOOLKIT

Is the request in an acceptable format?

Are all necessary parties named? Who has the money?

Is it timely filed?

Are the members in good standing or members at time the dispute arose?

Is there pending litigation?

Can you field an impartial, knowledgeable panel?

Is the dispute related to a RE transaction?

Was an offer of compensation made?

Is it a non-arbitrable issue?

Is it mandatory arbitration or voluntary?

Is the amount too small or too large?

Is it too legally complex?



GRIEVANCE DECISION TIME

Ethics

Forward to PS (Citation)

Hold in Abeyance – Civil, FREC or Criminal Matter?

If about money, send back to complainant

Dismiss

- Not timely filed.
- Not possible violation of COE.
- Not member at the time of the alleged BAD act.

Arbitration

Forward to Arbitration

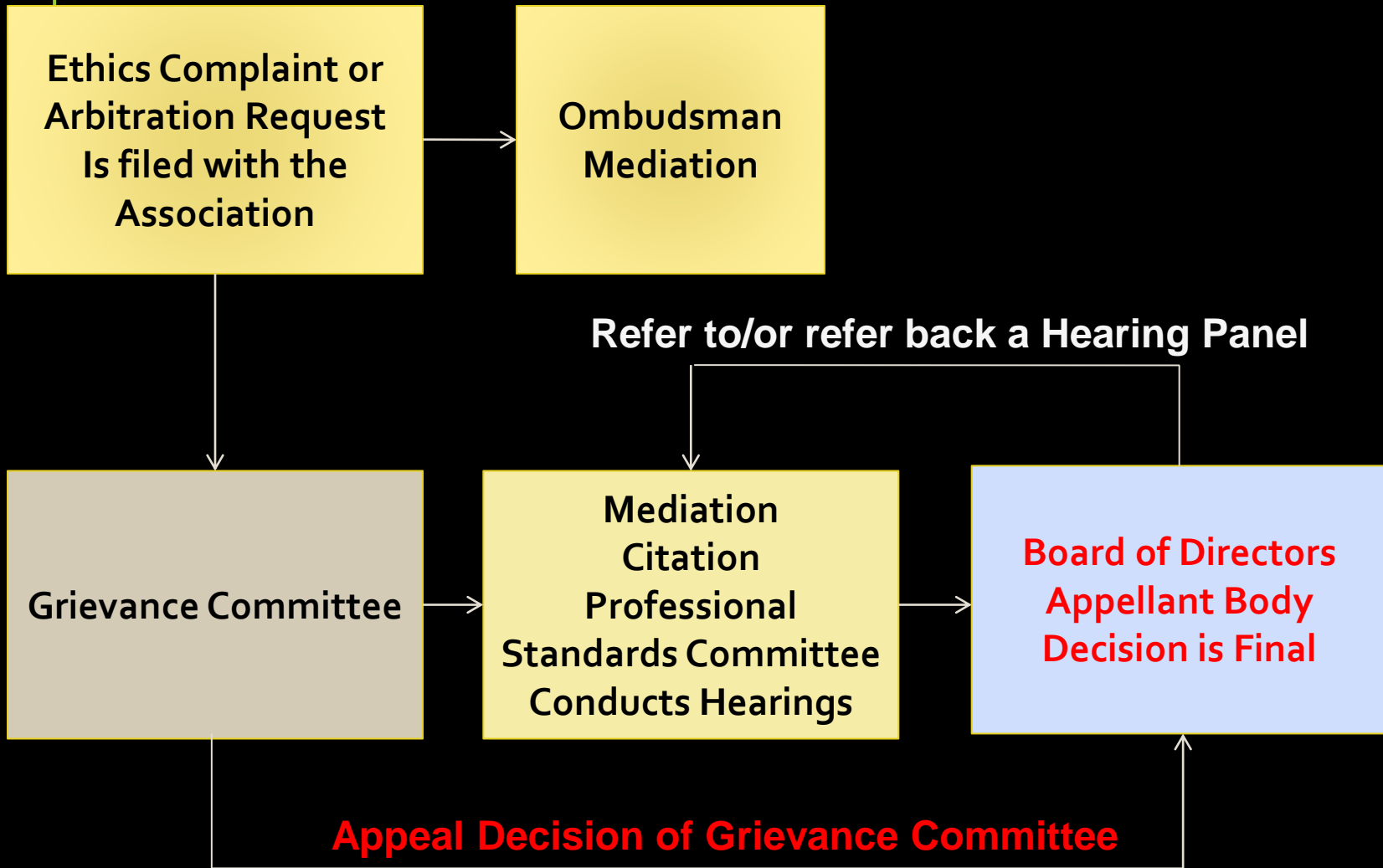
- Classify: Mandatory/Voluntary

Dismiss

- Brokers not named.
- Not timely filed.
- Not arbitrable – contractual basis.
- Legally complex.
- Amount too small or too high.
- Litigation pending.
- Not member at time dispute arose.

Ethics & Arbitration Combos – Must be separated and arbitration is held first.

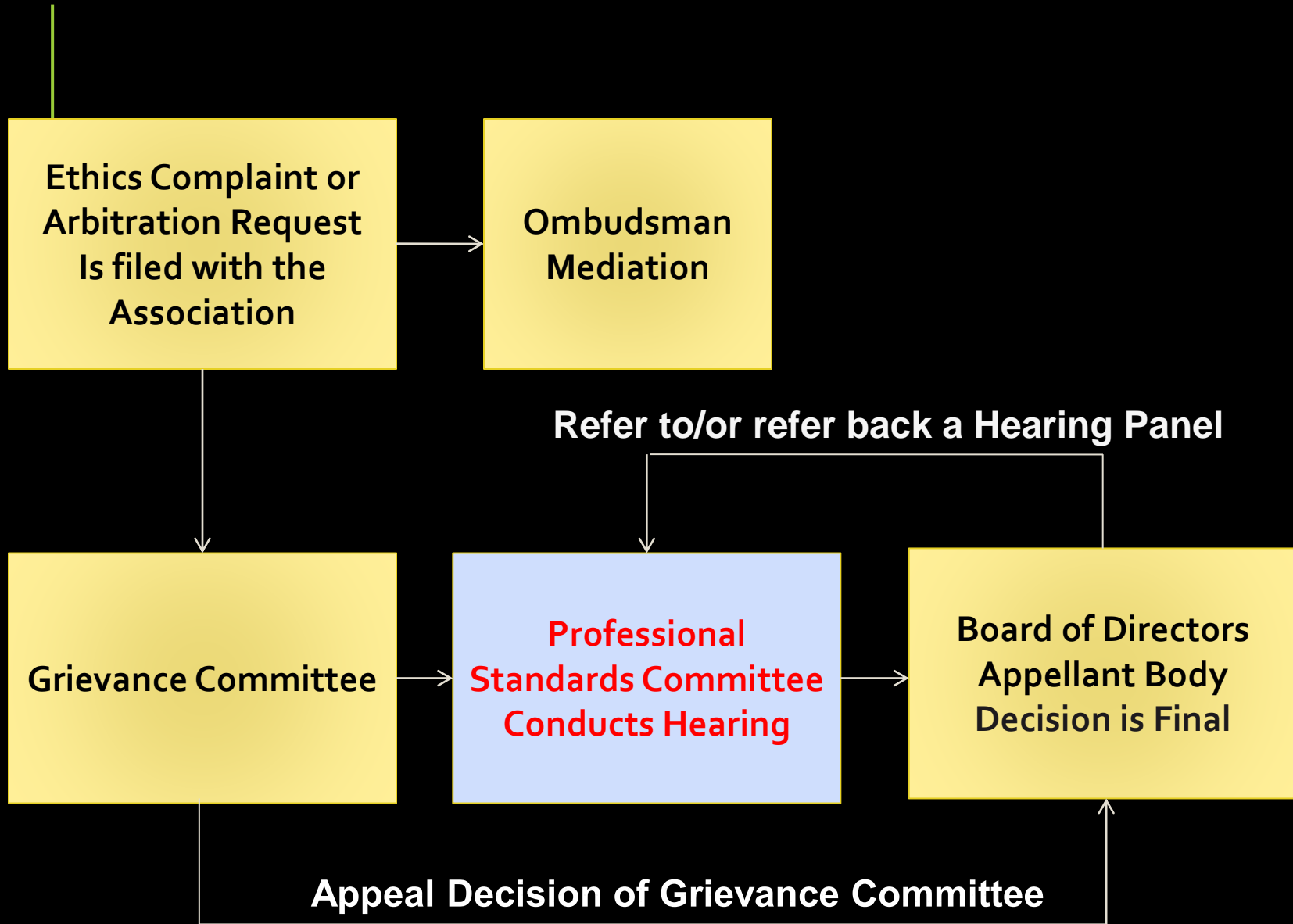
THE PROFESSIONAL STANDARDS PROCESS



After Grievance
But Before the
Hearing
Chairman's
Training 101

WHAT'S NEXT?

THE PROFESSIONAL STANDARDS PROCESS



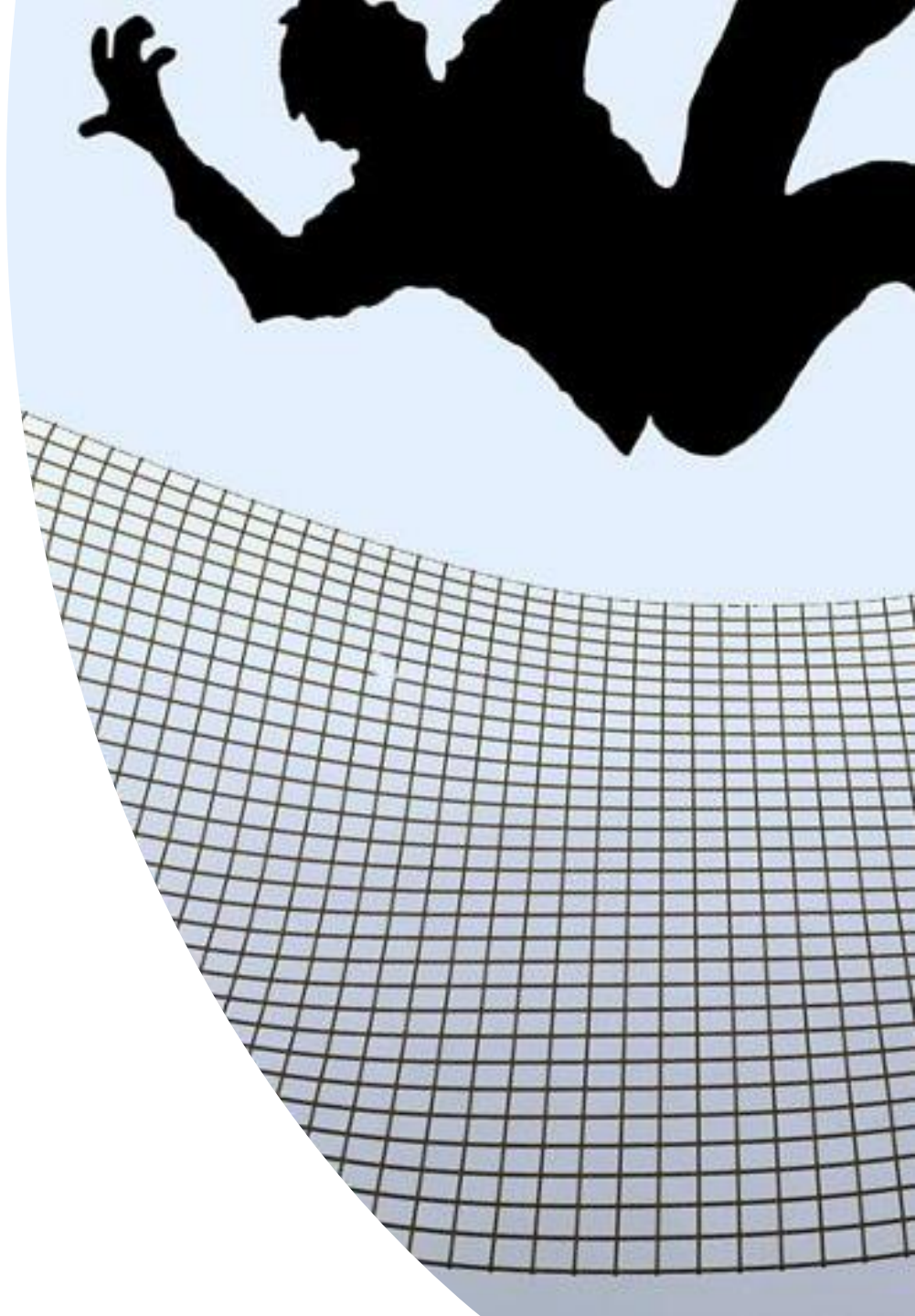


REVIEW OF THE CASE |

PRE-HEARINGS – SAFETY NET

When the GC refers an ethics complaint or arbitration requests for a hearing. The hearing panel chairs can confirm or correct issues:

- Timely filed?
- Arbitrable?
- Legally too complex to arbitrate?
- Other administrative issues?
 - Arbitration – proper parties





LET DUE PROCESS BE YOUR BFF

Protects Your Association
from Allegations of
Improper Conduct



DUE
PROCESS
WHAT
DOES IT
MEAN?

*From the Code of Ethics and
Arbitration (Paraphrased):*

- Due process requires a fair and diligent search for the truth
- An opportunity to gather all the facts;
- **All** views to be heard;
- **All** defenses to be raised and;
- **All** prejudice of bias to be expunged.



Due Process Red Flags

The following situations could be the basis of liability to the Association:

- Misapplication or misinterpretation of the COE.
- Inappropriate application of discipline.
- Failure to provide fundamental due process rights.
- Failure to exhibit fundamental fairness in a hearing.
- Failure to provide a uniformed process for all members of the association.
- Termination of membership without a succinct reason.

Due Process Allows:

- Parties to know the nature of the complaint/dispute in advance.
- Parties time to prepare an adequate defense (proper notice).
- Parties to call witnesses and the ability to cross-examine witnesses from the other side.
- Parties to present evidence/testimony.
- Legal representation (speak in their client's behalf-present their case).
- An impartial panel.
- Appeal.

IMPORTANT ITEMS — ETHICS & ARBITRATION

Ethics

Respondent's Broker
(and/or former
Broker) attends and
participates

Right to Realtor
Counsel

Alternates

Complainant No
Show

Respondent No
Show

Arbitration

Broker v Broker

Agents with a
financial interest in
the outcome may
participate but are
not parties

Alternates

Hearing Buddy

Broker/Agents are
hearing buddies

CONTINUANCE: IS NOT A DIRTY WORD

Request must be in writing.

Chair ultimately decides, not staff.

Must be extenuating circumstances.

Parties should mutually agree to a subsequent date, if they can't agree, the chair is the tiebreaker.



WITNESSES

- Parties/Tribunal Members may call witnesses.
- Witnesses are sworn or affirmed – leave room until called to testify.
- Complainant or respondent may be called as witnesses **without advance notice.**
- **Must give 15 Days** notice to Board and to other party.
- No notice may waive the right to a witness – the panel decides whether to allow or not – adjournment could be necessary.
- Refusal of tribunal's summons to appear – Article 14.
- FL Subpoena Power – only in Arbitration.



ATTORNEYS FOR PARTIES



- Failure to notify? Panel could grant continuance.
- Make opening and closing statements.
- Introduce affidavits, documents, and other admissible evidence.
- Examine and cross-examine witnesses.
- Cannot testify unless panel determines testimony ensures due process.
- May speak on behalf of client.
- If panel wants the party to answer directly, party must be permitted to consult with counsel before answering.
- Counsel may appear in Respondent's absence.

THE ROLE OF BOARD COUNSEL



- Provides legal counsel to the tribunal not the parties.
- May or may not be present at the hearing.
- It is recommended the Board Attorney reviews the findings of facts/ decision prior to it being disseminated to the parties.

REMOTE TESTIMONY STATEMENT OF POLICY #56 *HAS NEW MEANING TODAY*

Parties/witnesses “beam in” with permission of panel chair.

Witnesses only appear while testifying and swearing in.

Employ safeguards to ensure confidentiality.

May teleconference or video conference (ZOOM or other virtual platform).



CHAIR - KEEPER OF THE EVIDENCE

Reviews all evidence before to entering it into the record – states for the tape what evidence is being entered on behalf of which party.

Decides what is and what is not relevant – Real estate activity related? What about a video or something online?

Marks evidence as exhibit: *Complainant #* or *Respondent #*.

Allows parties to review exhibits and may postpone or recess to give party time to review.



THE TAPE

Only Ethics /Arbitration hearings are recorded.

Appeals/Procedural Reviews are not recorded.

The Board's recording/transcript is the official version.

Only be used for Ethics Appeals or Arbitration Procedural Reviews and cannot be used in subsequent hearings.

NAR recommends tape stays in files until date when sanction imposed by the Board is completed.



THE SCRIPT

Chair cites authority to hear the case – explains reason for hearing – introduces those in attendance

The Ethics complaint/Arbitration request is “read” into the record

Parties and Witnesses sworn in/affirmed

Witnesses excused, parties remain

Opening Statements by Complainant & Respondent

Presentation of Complaint (Produce evidence, witnesses, testimony)

Cross-Examination by respondent & Questions from panel

Process repeats beginning with respondent’s case presentation

In Arbitration, parties given the opportunity to settle – Must be BOD approved policy

Closing statements – Complainant is first, respondent is last

Parties asked if they received a fair hearing

Hearing adjourns



EXECUTIVE SESSION

Association board counsel/staff remain, or no?

No new information can be obtained from the parties

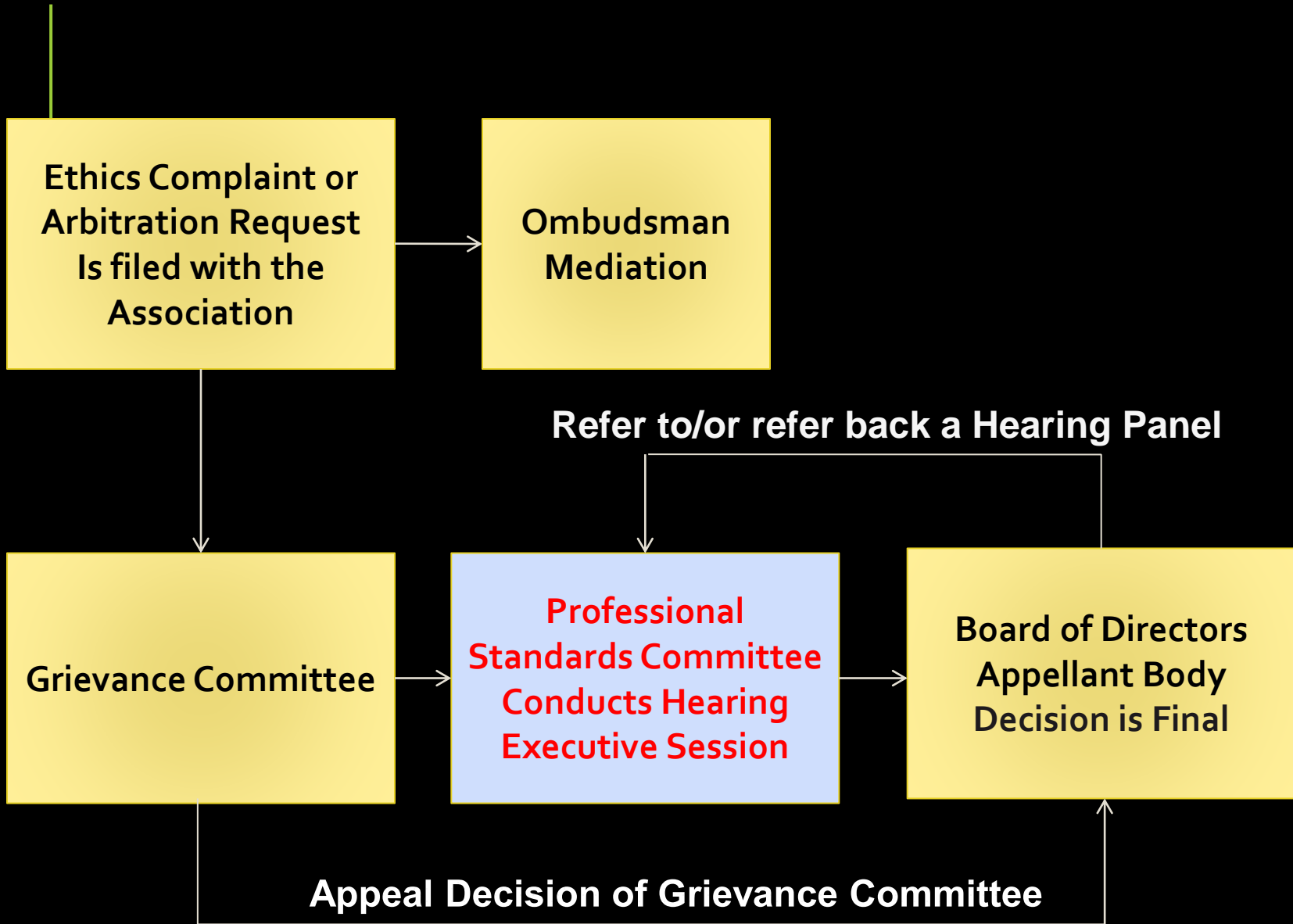
No witnesses recalled

Standard of proof

No ability to amend the complaint

Majority sign

THE PROFESSIONAL STANDARDS PROCESS



Ethics & Arbitration
Specifics

WHAT'S NEXT?



THE ETHICS DECISION

**Educate or
Vindicate?**

STANDARD OF PROOF - ETHICS

Clear, strong and convincing.

Defined as that measure or degree of proof which will produce a firm belief or conviction as to the allegations sought to be established.





FINDINGS OF FACT – NO VIOLATION

If a violation was not found, the “Findings of Fact” could read:

Realtor B was charged with Article 12. Evidence presented at the hearing shows that he ran an ad on October 4 to promote his listing at 123 Maple Street & did disclose the name of his brokerage. Consequently, the Hearing Panel finds him not in violation of Article 12 as interpreted by SOP 12-5.



FINDINGS OF FACT - VIOLATION

Purpose: To provide a **clear and concise statement** of the facts that led the panel to reach its conclusion. For example:

Realtor B was charged with Article 12. Evidence presented at the hearing and the respondent's own admission show that he ran an ad on October 4 to promote his listing at 123 Maple Street which did not disclose the name of his brokerage. Consequently, the Hearing Panel finds him in violation of Article 12 as interpreted by SOP 12-5.



CONCLUSION

Conclusions of the hearing panel: *We, the members of the Hearing Panel in the above-stated case, find Realtor® B in violation of Article 12 the Code of Ethics for having failed to put the name of his firm on the advertisement he ran on October 4 promote his listing located at 123 Maple Street.*

Prior violations, if any: *Not applicable*

CHECK POINT

Keep in mind words matter and how you draft findings of fact and conclusions matter.

The better they are drafted the less room you create for appeals.

In some instances, findings of fact that are not well written can lead to the adverse in what they were originally intended upon appeal.

Moreover, they should tell a story as those ratifying the decision or participating in an appeal are not privy to the entire hearing that took place or the thoughts behind the decision that was made.

DISCIPLINARY ACTION — STAY INSIDE THE BOX

- Letter of Warning or Letter of Reprimand*.
- Education — affordable — nearby — No GRI.
- **Reasonable and appropriate fine not to exceed \$15,000.**
- Probation (**This is not discipline**) - *Holding discipline in abeyance not longer than one year.*
-
- Suspension — from 30 days and not more than 1 year or pay \$5,000 fine instead (within a 3-year period).
- Cease & Refrain.
- Suspension and termination of MLS privileges.
- Expulsion for 1-3 years.



NEW LANGUAGE UNDER DISCIPLINARY GUIDELINES

Hearing Panels are cautioned of the due process concerns of considering a Respondent's history of Code violations, as considering too long of a history involving different types of violations can unreasonably affect the severity of the discipline.

Typically, Associations might look back a minimum of three years, however, if there is consistency in the types of violations or if the violations are of the public trust, considering a longer history of violations could be appropriate in crafting meaningful discipline aimed at stopping the behavior.



DISCIPLINARY GUIDELINES

First violation example #3 (~~or first violation within three [3] years~~):

- violation considered very serious, or
- the violation was of Article 10 as interpreted by its Standards of Practice, or of Article 3 as interpreted by Standard of Practice 3-11, or
- substantial harm or injury caused to others, or
- violation resulted from knowing disregard of the Code's obligations

Possible discipline:

- Letter of reprimand.
- Fine of \$10,000 or less.
- Attendance at relevant education session(s).

THE
**PRINCIPAL'S
OFFICE**

REPEAT
VIOLATIONS
EXAMPLE
#3 (~~WITHIN~~
~~THREE [3]~~
YEARS):

- violation considered very serious, or
- the violation was of Article 10 as interpreted by its Standards of Practice, or of Article 3 as interpreted by Standard of Practice 3-11, or
- substantial harm or injury caused to others, or
- violation resulted from knowing disregard for the Code's obligations

Possible discipline:

- attendance at relevant education session(s) or course
- fine of \$15,000 or less
- suspension for six (6) months or less
- any combination of the above
- Termination of membership for up to three (3) years

CHECK POINT – WHAT SHOULD THE RECOMMENDED DISCIPLINE BE?

Fairhaven: Fair Housing Simulation – Nov.18, 2020

In social media discussions, REALTOR® C posted several discriminatory and offensive comments which were deemed to be in violation of Article 10 as they discriminated against individuals on the basis of race, color, religion, sex, **handicap**, familial status, national origin, sexual orientation, or gender identity. (**red**=changes coming soon)

In determining appropriate discipline, the Hearing Panel considered REALTOR® C's comments as hate speech and discrimination in violation of Article 10 and had reason to believe that a violation of the public trust occurred. Based on the offensiveness of REALTOR® C's comments and his total disregard for the Code of Ethics' obligation to not be a party to any plan to discriminate against members of the protected classes of Article 10... what would you recommend the discipline be?

What would you recommend the discipline be?



CHECK POINT DISCIPLINARY ACTION – YOU FILL IN THE BLANKS

Recommendation for disciplinary action, if any, if violation found:

Rationale for discipline, if any, if violation found (e.g., previous violations – **hint this is the respondent's first offense – he expressed his remorse during the hearing):**

Consequences for noncompliance with discipline:



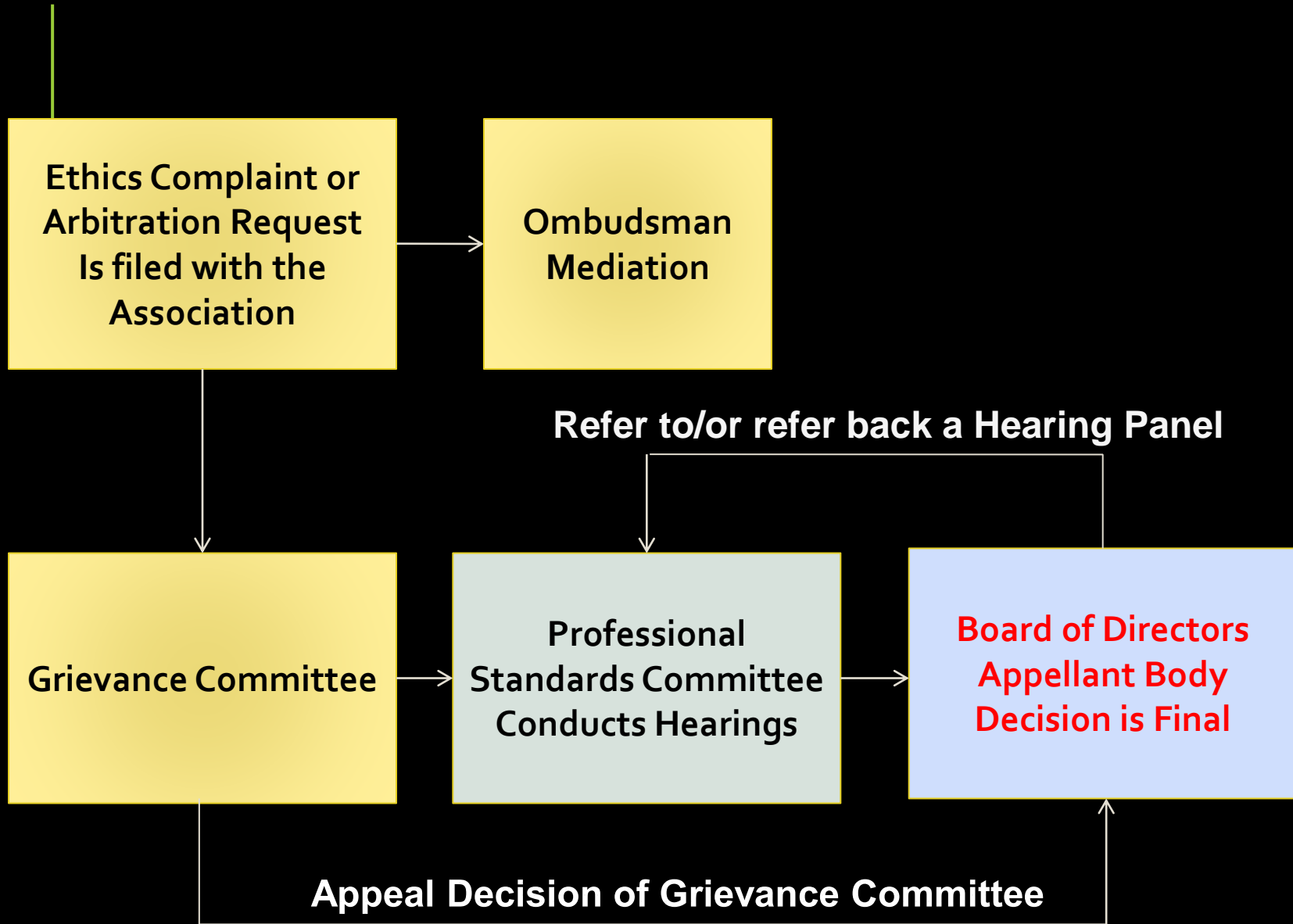
SAMPLE DISCIPLINARY ACTION

Recommendation for disciplinary action, if any, if violation found: *We recommend to the Board of Directors the following action: That Realtor® B receive a letter of warning to be placed in his file for a period of two years from the date of ratification of this decision and attend a Realtor Code of Ethics Course in person no later than July 31, 2023.*

Rationale for discipline, if any, if violation found: (e.g., previous violations): *Since this is Realtor B's first offense and given his expression of remorse, the hearing panel felt education and a letter of warning given the circumstances in this matter is appropriate.*

Consequences for noncompliance with discipline: *If the respondent fails to attend a Realtor Code of Ethics Course in person by the date specified, an additional fine of \$1,500 will be imposed. Failure to pay the fine within 30 days, will result in suspension of membership until the fine is paid and the Realtor Code of Ethics course is completed in person.*

THE PROFESSIONAL STANDARDS PROCESS





RATIFICATION— WHEN NO APPEAL IS FILED

BOD adopts recommendation.

If procedural deficiency concerns can be referred to new panel.

Appropriateness of sanction.

May return to the hearing panel suggesting increase in discipline. Panel retrains the right to refuse.

Consequences for non-compliance if disciplined must be included in decision or BOD must return to the panel – another 20 days on the appeal clock.

Findings of fact do not support violation-dismiss – Examples?



ARBITRATION

The Good

The Bad

The Ugly



49%

51%

STANDARD OF PROOF - ARBITRATION

Preponderance of the evidence

Defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition. Shows the facts sought to be proved more probable than not.

PROCURING CAUSE DEFINED

Procuring cause in broker-to-broker disputes can be readily understood as the uninterrupted series of events which results in the successful transaction. Or in other words, what “caused” the successful transaction to come about.

Interruptions:

- Abandonment of the buyer
- Perceived abandonment of the Agent
- Estrangement



EXAMPLES OF BUYER BREAKS



- Goes Rogue and attends open houses alone
- Works with multiple brokerages at the same time
- Spouse/partner working with another brokerage
- Friend/relative with RE License
- Needy – expects 24/7 service
- “Fires” you

EXAMPLES OF AGENT BREAKS



- Firing the buyer.
- Unavailable.
- Say or do something that turns the buyer off.
- Personality conflict.
- Failure to follow instructions or buyer needs.

ESTRANGEMENT



“Whether the broker engaged in conduct or alternatively failed to act, when necessary, which caused the purchaser to **terminate the relationship**...This can cause among other things, by words or actions or lack of words or actions when called for”

No Predetermined Rule of Entitlement

**A Board or its MLS
cannot make a rule
regarding entitlement to
the commission in a
real estate transaction**

*Interpretation 31, NAR
Bylaws*

*Interpretation 31, NAR
Bylaws*

Look at **all relevant facts and circumstances.**

No rules of thumb.

Prior decisions by other panels, “threshold,” “contract in hand,” and agency relationships by themselves do NOT determine entitlement.

The **agency relationship** with the client or lack of one does not determine procuring cause.

CODE OF ETHICS-DEEP DIVE

CASE #4-3 DISCLOSURE OF FAMILY INTEREST – THE SCENARIO . . .

REALTOR® Aaron listed Client Seller Brian's home and subsequently advised him to accept an offer from Buyer Clark at less than the listed price.

Client Seller Brian later filed a complaint against REALTOR® Aaron with the Board stating that REALTOR® Aaron had not disclosed that Buyer Clark was REALTOR® Aaron's father-in-law; that REALTOR® Aaron's strong urging had convinced Client Seller Brian, to accept an offer below the listed price; and that REALTOR® Aaron had acted more in the interests of the buyer than in the best interests of the seller.



CODE OF ETHICS-DEEP DIVE

CASE #4-3 DISCLOSURE OF FAMILY INTEREST – THE SCENARIO . . .CONT.

At the hearing, REALTOR® Aaron defended his actions stating that Article 4 of the Code requires disclosure when the purchaser is a member of the REALTOR®'s immediate family, and that his father-in-law was not a member of REALTOR® Aaron's immediate family.

REALTOR® Aaron also demonstrated that he had presented two other offers to Client Brian, both lower than Buyer Clark's offer, and stated that, in his opinion, the price paid by Buyer Clark had been the fair market price.



CODE OF ETHICS-DEEP DIVE

CASE #4-3 DISCLOSURE OF FAMILY INTEREST – THE RULE . . .

Article 4

Realtors® shall not acquire an interest in or buy or present offers from themselves, any member of their immediate families, their firms or any member thereof, or any entities in which they have any ownership interest, any real property without making their true position known to the owner or the owner's agent or broker. In selling property they own, or in which they have any interest, Realtors® shall reveal their ownership or interest in writing to the purchaser or the purchaser's representative *(Amended 1/00)*



CODE OF ETHICS-DEEP DIVE

CASE #4-3 DISCLOSURE OF FAMILY INTEREST – QUESTIONS/ANALYSIS

Does the possibility, even remote, of REALTOR® Aaron's acquiring an interest in the property from his father-in-law by inheritance give the REALTOR® a potential interest in it?

Yes____? Or No____?

Was REALTOR® Aaron's conduct contrary to the intent of Article 4?

Yes____? Or No____?



CODE OF ETHICS-DEEP DIVE

CASE #4-3 DISCLOSURE OF FAMILY INTEREST – QUESTIONS/ANALYSIS – CONT.

Since interest in property created through a family relationship can be closer and more tangible than through a corporate relationship which is cited in the Code as an interest requiring disclosure does Article 4 require disclosure to Client Seller Brian that the buyer was Realtor Aaron's father-in-law?

Yes____? Or No____?



CHECK POINT – ARBITRATION

UNINTERESTED BUYER

Listing Broker Lilly placed a listing in the MLS with an offer of compensation to buyer agents. Broker Sylvie showed the property to Buyer Juan, who appeared uninterested. Broker Sylvie made no effort to further contact Buyer Juan. Six weeks later, Broker Bobbie wrote an offer on the property on behalf of Buyer Juan, presented it to Broker Lilly, and it was accepted. Broker Sylvie subsequently filed for arbitration against Broker Lilly, claiming to be the procuring cause.

Who is procuring cause? Sylvie__ or Bobbie__?

Can Broker Lilly join Broker Bobbie in the request so that all competing claims can be resolved in one hearing? ___Yes or ___No?



CHECK POINT – ARBITRATION

THE LOVE BIRDS

Sally is contacted by the girlfriend of the prospective buyer who is currently out of the country. Sally spent several weeks showing property to the girlfriend who finally falls in love one of the properties Sally shows her. The boyfriend has a friend who is a lawyer/real estate licensee who is also a Realtor member. The friend writes the offer and collects the commission. Who is the procuring cause of the sale?

Sally _____?

Lawyer/Realtor _____?



CHECK POINT – ARBITRATION

FORMER LISTING BROKER

Broker Bob has a listing going into foreclosure. Buyer Todd's offer doesn't make it through the paperwork maze in time to beat the foreclosure clock. The property forecloses and the listing broker is replaced by another listing broker, Broker Jane who now represents the bank. Naturally, the buyer still wants to buy the house. As soon as the property goes back on the market, the buyer submits the offer, it's accepted and closes. Broker Bob watches all of this go down and because he was the listing broker when the buyer decided to make the purchase, he feels he is the procuring cause of the sale. He decides to file for arbitration.

Is this procuring cause or not?

Yes No



CHECK POINT – ARBITRATION

CHANGING FIRMS

Brad has been showing property to Buyer Pat who is a long-time friend of the family. Brad finds the perfect home for Pat; he shows the property and starts negotiating the deal. Everything was going smoothly. Brad's ability to provide Pat with top-notch service was not affected by his move to Realtor Russ's firm. The deal closes and Brad receives a call from his new broker telling him that Brad's former broker Sam filed a request for arbitration with their local association to collect the commission earned on the Pat's transaction.

It seems that Sam feels Brad procured the buyer while he was affiliated with his firm and that he is entitled to the broker's side of the commission instead of Russ.

But can Sam file? **Yes** **No**



CHECK POINT – ARBITRATION

A LARGE TYPO

Listing broker Lucy entered a hot listing into MLS and knew it would sell quickly. Lucy asked her assistant to enter the listing into MLS reflecting the terms of the listing agreement which had an offer of compensation in the amount of X% percent to the cooperating broker. Her assistant misread the listing agreement and entered the total commission into the MLS cooperating broker.

Lucy realized what happened and called Bobby the cooperating broker to explain after the offer had been submitted and accepted. Bobby rejected the explanation of a mistake and said if he did not receive the full amount in MLS he would file for arbitration. The deal closed and Bobby filed at the local association.

But can he file? _____ Yes _____ No



IN CLOSING



Remember the Goal of Code of Ethics



Professional Standards - Increase the Integrity of the Industry

THANK YOU FOR COMING!

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