



POLICY OF THE SOUTH CAROLINA REALTORS® GOVERNING STATE PROFESSIONAL STANDARDS PROCEDURES

The Bylaws of the South Carolina Association of REALTORS® (SCR) provide in Article XXII, Section 3 that the responsibility of the Association members relating to the enforcement of the Code of Ethics, the Bylaws and Rules of Operation REALTORS®, the disciplining of members and the arbitration of disputes, and the organization and procedures incident thereto, shall be governed by the Code of Ethics and Arbitration Manual of the NATIONAL ASSOCIATION OF REALTORS® (NAR), as from time to time amended, which by this reference is made part of these Bylaws, provided, however, that any provision deemed inconsistent with South Carolina Law shall be deleted or amended to comply with South Carolina Law.

The purpose of the policies listed hereunder is to address those discretionary areas not covered by the procedures of the NAR as well as those areas of the arbitration procedures which are inconsistent with the Uniform Arbitration Act, §15-48-10, *et seq.*, Code of Laws of South Carolina, 1976, as amended. The South Carolina Uniform Arbitration Act shall not apply to any agreement or provision to arbitrate in which it is stipulated that the Act shall not apply.

ENFORCEMENT OF THE CODE OF ETHICS

I. JURISDICTION OF SCR

State Professional Standards Complaints: Anyone involved in a real estate transaction money dispute or alleging a REALTOR® ethics violation in a real estate transaction should file their complaint with the Local Board/Association Executive Officer. All complaints should allege specific and detailed facts of the issues involved including violations of specific Articles of the Code of Ethics. Complaints that lack specificity and clarity should be referred back to Complainant by the Local Board/Association Grievance Committee for revision. A Local Board/Association, prior to referring an ethics complaint or arbitration request for review to the State Association, should exhaust all efforts to impanel an impartial panel to conduct either the original hearing or the appeal or procedural review. If because of notoriety, familiarity of the parties, etc., the Local Board/ Association cannot impanel an impartial tribunal, the Local Board may refer the matter to the State Association, and the State Grievance Committee may delegate to the SCR Professional Standards Committee the authority to hear the case on behalf of the State Association. Mediation is available as a voluntary settlement system for money disputes.

1. Allegations of unethical conduct and contractual disputes (and specific non-contractual disputes as defined in Standard of Practice 17-4) between REALTORS®, and between REALTORS® and their customers or clients may be submitted to an ethics or arbitration panel at the State Association level under the following circumstances:

- (a) Allegations of unethical conduct made against a REALTOR® who is directly a member of the State Association and not a member of any Local Board.

- (b) Allegations of unethical conduct made against a REALTOR® in the instance in which the local Board, because of size or other valid reason, determines that it cannot provide a due process hearing of the matter and petitions the State Association to conduct a hearing. In accordance with S.C.R Bylaws and Rules of Operation, a local Board/Association shall be required to enter into cooperative professional standards agreements with other local boards or the state association to maintain the enforcement of professional standards. In the event that the local or cooperative Grievance Committee determines there is a basis for an ethics hearing, or arbitration, but it is impossible to impanel an impartial hearing panel, the complaint can be forwarded to the State Association, which will refer the matter to the State Grievance Committee for review.
- (c) Contractual disputes (and specific non-contractual disputes as defined in Standard of Practice 17-4) between REALTORS® who are not members of the same Board where the matter has been referred to the State Association by both local Boards.
- (d) Contractual disputes (and specific non-contractual disputes as defined in Standard of Practice 17-4) between REALTORS® who are directly members of the State Association and are not members of any Board.*
- (e) Contractual disputes (and specific non-contractual disputes as defined in Standard of Practice 17-4) between a REALTOR® who does not hold membership in any Board, but is directly a member of the State Association, and a REALTOR® who is a member of a Board.* (*Reference is made to members of the State Association who are outside the jurisdiction of and are not members of any local Board within the state.)
- (f) Contractual disputes (and specific non-contractual disputes as defined in Standard of Practice 17-4) between REALTOR® Members of the same Board where the Board with good and sufficient reason is unable to arbitrate the dispute. (This provision is not designed to relieve the local Board of its primary responsibility to resolve differences arising between members of the same Board. The section recognizes that in some Boards with limited membership usual arbitration procedures may be impossible.)
- (g) Contractual disputes between a customer or a client and a REALTOR® where the Board with good and sufficient reason is unable to arbitrate the dispute or the REALTOR® is a direct member of the State Association.

II. S.C.R GRIEVANCE COMMITTEE

- A. Make-up of Committee: The Grievance Committee shall consist of a number of members to be determined yearly by the President, including the Chair and Vice-Chair. Members shall serve for one year only, but may be re-appointed the following years.
- B. Qualifications of Committee Members: Committee members shall have been a member in good standing of the Association or a REALTOR® Board/Association of REALTORS® with 2 years professional standards experience. Appointees shall sign an oath of confidentiality prior to serving on this committee. Appointees must attend annual training provided by the State Association.

- C. Handling of Complaints or Arbitration Requests: A copy of any complaint or arbitration request shall not be sent to the Respondent and the Respondent shall not be provided with an opportunity to reply before the Grievance Committee makes any determination as to the disposition of the complaint or arbitration request, unless the Respondent has already been given the opportunity to submit a response by the local association. In those situations, the Grievance Committee may be provided with the response.
- D. Grievance Committee Panel: A grievance committee panel shall consist of a minimum of three (3) members. A grievance committee panel may meet by audio or video conference call.

III S.C.R. PROFESSIONAL STANDARDS COMMITTEE

- A. Make-up of Committee: The committee shall consist of at least 30 members, with no more than 3 members per firm, including 20 Designated REALTORS® and 10 REALTOR® members. The committee shall include a Chair, a maximum of 8 Hearing Panel Chairs, with not more than one Hearing Panel Chair per firm, and members appointed by the President of the Association. Members shall serve for one year only, but may be re-appointed for the following years.
- B. Qualifications of Committee Members: Members of the Regional Professional Standards Committee must be REALTORS® in good standing who have served for two Consecutive years on the Professional Standards Committee of a Local Board/Association. Appointees shall sign an oath of confidentiality prior to serving on this Committee. Appointees must attend annual training provided by the State Association.
- C. Setting Up Hearings: The Chair of the Professional Standards Committee, shall be responsible for coordinating and setting up all Professional Standards Hearings with assistance from SCR staff. Chair sets the date, time and place of hearings and the selection of Panel Members.

IV. RECORDING OF HEARINGS

- A. All Professional Standards Panel hearings shall be recorded and the recording retained until after the prescribed date for any appeal or procedural review or ratification by the Executive Committee. Only SCR staff may record the proceedings.
- B. Recordings or transcripts from ethics or arbitration hearings may only be requested and used for the purpose of an appeal hearing, a rehearing, or procedural reviews, and may not be introduced into evidence for any other purpose. The recordings shall not be routinely transcribed. Copies of the recording can be made available to the parties for a fee of \$50.00 if ordered at least 7 days in advance of the date set for the appeal hearing or procedural review. Copies of the recording ordered less than 7 days in advance of the appeal hearing shall cost \$100.00. Payment for any recording shall be in advance of delivery.
- C. In the case of Professional Standards Committee Hearings, the recorder shall be operated by SCR staff.
- D. Recordings or transcripts from ethics or arbitration hearings are to be used only for the purpose of appeals, rehearing, or pursuant to any application to change award, application to

confirm award, application for vacate of award or application to modification award, pursuant to the Uniform arbitration Act, §§ 15-48-100, 15-48-120, 15-48-130, and 15-48-140, Code of Laws of South Carolina, 1976, as amended, and may not be introduced into evidence for any other purpose.

V. LEGAL COUNSEL

- A. Legal Counsel shall be present at any and all SCR Ethics, Arbitrations, Appeals, and Procedural Review Hearings unless determined otherwise by the SCR CEO or President.
- B. The presence of Legal Counsel at local Grievance Committees shall be determined by the SCR CEO in consultation with the Local Board/Association Executive Officer.
- C. Association Counsel, if present, shall prepare for review of the Panel Chairman and/or the President any statement of facts or a summary of the reasons supporting any decision made by the Panel. The decision is made by the Panel, not the Association Counsel.
- D. Every party may be represented by legal counsel. A waiver of counsel prior to the proceeding or hearing is ineffective.

VI. MATERIALS RELATED TO PROFESSIONAL STANDARDS HEARINGS

- A. All relevant materials related to Professional Standards Hearings, including the complaint or arbitration request, response and other evidentiary documentation, shall be provided to Ethics, Arbitration and Appeals or Procedural Review Panels at least 21 days prior to the date of the hearing.
- B. Any notice required to be given or paper required to be served may be given by personally handling it to the parties to be notified or by certified mail. Email will be used as supplemental notice.
- C. The Association shall maintain all materials on file for cases related to Professional Standards Hearings (including all materials on file for cases arising out of local Boards/Associations) until the appeal or procedural review period has expired, at which time all materials shall be destroyed. "All materials" include the complaint, response, other evidentiary documentation, recordings and/or transcripts, but does not include the award of the Arbitrators or the final decision of the Ethics Hearing Panel. In cases arising out of Local Boards/Associations, the State Association shall only return the award of the Arbitrators or the final decision of the Ethics Hearing Panel to the Local Board/Association related to that case, to be kept in the member's permanent membership file. All final decisions are to be retained for seven (7) years by the State Association.

VII. ETHICS COMPLAINTS

- A. The decision as to whether or not to join the Designated REALTOR® in any complaint filed against a REALTOR® in the Designated REALTOR®'s firm shall be treated on a case by case basis in the interests of due process and justice. Such decision shall be by action of the Complainant, upon review of the appropriate Grievance Committee or Hearing Panel.

- B. Copies of any final decision where a member has been found to have violated the Code of Ethics shall be part of the permanent record of any REALTOR® members' confidential file and provided to the Executive Officer of the Complainant's and Respondent's Board/Associations for their records. If the Complainant or the Respondent is a direct member of the State Association, the State Association will retain a copy of any final decision where a member has been found to have violated the Code of Ethics and shall be part of the permanent record of any REALTOR® members' confidential file.
- C. Any member found in violation of the Code of ethics or other membership duty will be assessed an administrative processing fee of \$500.00.

VIII. MEDIATION AND ARBITRATION

A. Mediation:

1. The Association shall provide Mediation as a preliminary, voluntary alternative to Arbitration. **Every effort shall be made to encourage all parties to a contractual dispute to settle the matter through mediation.**
2. Seven or more Mediation officers shall be appointed by the Association President each year. One Mediation Officer shall be appointed from each Region, if qualified candidates are available. Mediation Officers shall serve for one year only unless reappointed.
2. SCR or NAR trained Mediators will apply to be on the SCR Mediator List. Mediators on the list are required to attend annual professional standards training and submit a complete mediator application annually.
3. The Board/Association Grievance Committee Chairperson shall make any requested effort to assist the parties coordinate their own Mediation as quickly and efficiently as possible.

B. Arbitration:

1. The Association may provide arbitration procedures only in those instances described in the Code of Ethics and Arbitration Manual of the NATIONAL ASSOCIATION OF REALTORS® as amended. A client of a REALTOR® may invoke the arbitration facilities of the Association in a business dispute with a REALTOR® arising out of an agency relationship providing the client agrees in writing to be bound by the arbitration. In the event such request and willingness to enter into a written agreement by the client, the REALTOR® shall have an obligation to sign a written agreement to arbitrate the dispute and the Association shall arbitrate the dispute.
2. The Grievance Committee shall review all arbitration requests to determine if the matter is properly arbitrable, whether or not the appropriate parties are named, and whether or not a contractual relationship exists between the parties.

3. The arbitration fee shall be \$1,000.00. \$500.00 is to be paid by the Complainant and \$500.00 is to be paid by the Respondent.
4. Refusal to Arbitrate:
 - (a) If the respondent fails to pay the appropriate arbitration fee of \$500.00, but appears and takes part in the hearing, the hearing may still take place at the discretion of the Hearing Panel Chairman in consultation with Association Counsel.
 - (b) If the respondent does not pay the required arbitration fee of \$500.00, and does not appear to take part in the hearing, and the matter at hand is an arbitrable matter, the hearing may still take place at the discretion of the Hearing Panel Chairman in consultation with Association Counsel.
5. Refusal to Abide by an Award in Arbitration:
 - (a) If the respondent agrees to and submits to arbitration but then refuses to abide by the award, the Local Board/Association should **not**, in the first instance of such refusal by a member, initiate a disciplinary proceeding. Rather the Local Board/Association should encourage the award recipient to seek enforcement of the award in the courts, and suggest that a request be made for payment of legal costs incurred in seeking judicial enforcement. In such a first instance, the Local Board/Association shall not initiate any disciplinary action. If an individual **repeatedly** refuses to abide by awards in Arbitration for reasons which, in the reasonable judgment of the Local Board/Association reflect a willful purpose to frustrate the intent of Article 17 of the Code of Ethics rather than a purpose to ensure due process, the respondent's Local Board/Association may initiate disciplinary proceedings for violation of Article 17. The Local Board/Association Board of Directors may direct the implementation of such sanction resulting from the disciplinary proceedings, and should if it has reason to believe that the imposition of such sanction will become the basis of litigation and a claim for damages consequent to such sanction, delay the effective date of implementing the sanction to a date following receipt by the Local Board/Association of a judicial decision in a petition for Declaratory relief filed by the Local Board/Association to confirm the propriety of its action. Such proceedings will be in addition to and not in lieu of Local Board/Association support of judicial enforcement of the award by the award recipient.

IX. AWARDS

- A. If the dispute is settled before an award rendered, or at mediation, the Association shall return all filing fees to the complainant and respondent.
- B. The Association has no policy regarding the escrowing of arbitration awards in the event the non-prevailing party wishes to challenge the award.
- C. The Association shall consider offering financial assistance to any prevailing party who seeks to have an arbitration award judicially enforced or to defend an arbitration award in the event

the respondent has appealed the award through the courts. Such applications for financial assistance must be made through the Legal Action Committee of the Association.

- D. Any mediation award shall be in writing and shall be signed by the parties joining in the award. Once the award is signed, it shall be valid and binding and a copy shall be delivered to each party either personally or by certified mail. A mediation award that has been signed by all parties is enforceable in a court of law.
- E. The award of an Arbitration Panel shall be in writing and signed by a majority of the Panel Members. Once the award is signed, it shall be a valid and binding and a copy shall be delivered to each party either personally or by certified mail.
- F. A party to an arbitration proceeding may appeal to the Executive Committee only with respect to such alleged irregularities occurring in the conduct of the proceeding as may have deprived the party of fundamental "due process." Such action is known as a Procedural Review.

X. APPEALS

- A. Appeals of determinations by the Grievance Committee and/or Ethics or Arbitration Panels shall be heard by a panel of no less than 5 REALTORS® appointed by the President from the Executive Committee, the Board of Directors or the Professional Standards Committee. The President shall appoint the Chair of the Appeal or Procedural Review Panel. An individual who served as a member of a Grievance or Hearing Panel may not be appointed to an Appeals or Procedural Panel to hear an appeal or procedural review arising from the same cause of action.

The Appellant in an appeal hearing must file an appeal fee of \$500.00, payable in advance. There is no fee to file an ethics complaint. These same procedures and fees shall apply to the appointment of Procedural Review Panels where there is an allegation concerning the irregularity of the procedures. If the Appellant prevails in an appeal hearing and the Board of Directors reverses the Professional Standards Panel's decision, the appeal fee shall be returned to the Appellant. If the Board of Directors affirm the Professional Standards Panel's decision, the appeal fee shall be retained by the State Association.

- B. In the event of an appeal of a decision of an Ethics Panel or a Procedural Review of an Arbitration Panel, the Chair of the Professional Standards Panel, or in his or her absence, another member of the Professional Standards Panel shall summarize the case before the Appeal or Procedural Review Panel.
- C. It shall be the decision of the Chair of the Appeal or Procedural Review Panel to determine whether or not they wish to hear the original recording of the case or excerpts of the original recording. Any party to a dispute may have the original tape recording transcribed, at their expense. In such cases the State Association and any other parties to the dispute are to be provided with copies of the transcription, at no charge.

XI. AFFIRMATION OF ETHICS DECISION AND DISTRIBUTION OF FINES AND OR ARBITRATION/APPEAL FEES RETAINED

- A. Following any State Professional Standards Hearing, any decision which includes penalties associated with violations of the Code of Ethics, the SCR Board of Directors directs that the unedited decision shall be referred to the State Executive Committee for confidential affirmation in executive session, 20 days after the decision has been mailed to the parties.

NOTE: Only a Local Board/Association can enforce penalties involving the suspension or expulsion of a member, but it will be the prerogative of the State Association to determine whether it will assist legally and/or financially in the filing of any procedures for Declaratory Relief in matters involving suspension or expulsion of a member.

- B. The State Hearing Panels will disburse the \$500.00 deposit of the non-prevailing party to the State Association. The \$500.00 deposit of the prevailing party shall be returned to the prevailing party.

XII. ASSOCIATION STAFF INVOLVEMENT IN SCR PROFESSIONAL STANDARDS PROCEDURES

- A. The administration of the Professional Standards Procedures shall be a direct responsibility of the Professional Standards Administrator and the Vice President and General Counsel, in consultation with the Association CEO.
- B. The Professional Standards Administrator shall provide summaries, as needed, of Professional Standards complaints to the CEO and the Chair of the Professional Standards Committee.
- C. The Professional Standards Administrator shall be present at all Grievance Committee meetings, at the beginning of all Ethics and Arbitration Hearings and Procedural Review Hearings and shall remain at the discretion of the Hearing Panel Chairman.
- D. The CEO and Association Counsel shall be present during any Appeal or Procedural Review Hearings before the Executive Committee, but only Association Legal Counsel shall remain during the Executive Session.
- E. The Professional Standards Administrator and/or the Vice President and General Counsel shall be responsible for drafting any Hearing Panel decisions or decisions on Appeal of the Executive Committee.

XIII. CONFLICTS BETWEEN THE ARBITRATION PROCEDURES AND THE SC CODE

A. Failure to Submit to Arbitration

Nothing contained herein should be interpreted to preclude a member from making application to a court for an order directing the parties to proceed with arbitration or for an order to stay arbitration in accordance with the terms hereof as provided in § 15-48-20, Code of Laws of South Carolina, 1976, as amended.

B. Joinder of Parties

The Grievance Committee or the Hearing Panel may join any other person who has an interest in the arbitration in accordance with § 15-48-60, Uniform Arbitration Act, Code of Laws of South Carolina, 1976, as amended. The purpose of this provision is to allow the Grievance Committee or the Hearing Panel to consolidate like claims so that one hearing may be held at which one hearing panel will make a definitive decision with respect to all competing claims that have been filed by parties with standing.

Approved by the SCR Board of Directors, April 8, 2014