

Chairperson's Procedural Guide: Conduct of an Ethics Hearing

Board of REALTORS®

State of North Carolina

(Ask the recording Professional Standards Administrator to make sure that the names of all parties present for the hearing have been added to this Guide and that all the appropriate blanks have been completed.)

(Ask all parties [including witnesses] to come into the hearing room.)

Display: Board banner and the American flag

Seating arrangements: See **Part Six**, Form #E-16 of this Manual for recommended seating arrangements.

Start promptly: Rap gavel to open meeting.

Chairperson's opening statement and conduct of hearing: Ladies and gentlemen, I now call this hearing to order. The Professional Standards Committee is charged with holding appropriate hearings for the _____ Board of REALTORS® in accordance with the procedures as set forth in the Board's bylaws in matters concerning alleged unethical conduct of a Board Member or Members, or in the arbitration of a business dispute arising out of the real estate business as defined in the bylaws of the Board. The body meeting here is an impartial panel of the Professional Standards Committee that has been selected and called here today to ascertain the truth in the particular matter at hand, which is an ethics proceeding, and to render a decision on the testimony and evidence presented. It is to be noted that an ethics proceeding is to be clearly distinguished from an arbitration proceeding and should be treated as a completely separate matter. The particular matter to be considered by this panel at this time is an ethics proceeding.

The Professional Standards Committee is a body duly constituted under the authority of the bylaws of the _____ Board of REALTORS® and has been duly appointed by the Board President and approved by the Board of Directors. At this time, I would like to introduce members of this panel.

(1) My name is _____, and I will serve as
Chairperson of this panel.

(2) The other members of this panel are:

_____,
_____,
_____, and
_____.

(3) Present at this hearing is

_____, the
complainant,

_____.

(If the complainant is accompanied by an attorney and/or witnesses, they should be introduced at this time.)

_____,
_____,
_____, and
_____.

(If the complainant is represented by counsel, and/or accompanied by witnesses, confirm that the respondent was notified in advance. If not, ask if there is an objection. If none, have the respondent sign a statement to that effect.)

(4) Also present at this hearing is _____, the respondent, and his/her REALTOR® principal, _____, consistent with Section 13 of the *Code of Ethics and Arbitration Manual* (if applicable).

(If the respondent is accompanied by counsel and/or witnesses, they should be introduced at this time.)

_____,
_____,
_____, and
_____.

(If the respondent is represented by counsel, and/or accompanied by witnesses, confirm that the complainant was notified in advance. If not, ask if there is an objection. If none, have complainant sign a statement to that effect.)

(5) Also present at this hearing is

_____, the
recording Professional Standards Administrator for the
_____ Board of REALTORS®, and (if
appropriate) _____, the court
reporter present to transcribe these proceedings.

(Or, alternatively: This hearing is being mechanically recorded.)

(If an attorney representing the Board is present, he/she should be introduced at this time.)

_____.

The parties are specifically advised that any recording or transcription that may be made of these proceedings can only be used for purposes of appeal, and any other use, including use in other ethics or arbitration hearings, is expressly prohibited.

Basis of hearing: This hearing has been established to consider the complaint of _____ against _____, alleging violation of Article(s) _____ of the Code of Ethics of the National Association of REALTORS®.

The complaint as filed by the complainant is as follows:

(Read the Article[s] the respondent has been charged with violating into the record.)

This panel is not dealing with questions of law, and it is not governed by the technical rules of evidence which may apply in courts. This panel will seek to determine all ascertainable and relevant facts pertaining to the matter under consideration to arrive at a peer judgment and decision by the panel that is fair to all of the parties. The panel is governed and directed by the bylaws of the _____ Board of REALTORS® and the Code of Ethics of the National Association of REALTORS®. The panel determines its own rules of evidence and its own procedures to be followed with objectives of equity and due process. The following has been generally accepted and ruled on by this panel as to the procedures to be followed during this hearing.

- (1) All parties or their representatives to these proceedings will be allowed a full opportunity to be heard on matters relevant to the issue. The panel may rule at any time during this hearing on the relevance of testimony being given or questions being directed to any party or his/her representative or to witnesses providing testimony. All parties and witnesses will be asked to swear or affirm that testimony given is the truth to the best of their knowledge.

(If no counsel is present, proceed to 3.)

- (2) A party may be represented by legal counsel or by a REALTOR® of their choosing (or both). However, no party may refuse to directly respond to requests for information or questions addressed to him/her by members of the panel except on grounds of self-incrimination or other grounds which the panel deems appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of his/her client if the panel desires direct testimony. Counsel is present to advise and consult with his/her client, and to speak for him/her subject to appropriate rulings or determinations by the panel. This panel will countenance no effort by any party or by counsel to any party to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings.
- (3) The panel may rule at any time on the admissibility of evidence. As Chairperson, I will act as keeper of the evidence introduced at this hearing and mark each with an exhibit identification number or letter and date.
- (4) The members of this panel are authorized, individually, to ask questions as they deem pertinent and significant at any time during this hearing. To preserve order, I will rule on questions or testimony by the parties or their representatives, or by witnesses in these proceedings. If deemed necessary, I will consult with the members of the panel and with Board counsel concerning such rulings.
- (5) At this time, I request that all persons present in the room who expect to testify at this hearing stand and be sworn or make appropriate affirmation in lieu of being sworn.

(The Chairperson should determine if any of the parties prefer affirmation in lieu of being sworn.)

Swearing: Raise your right hand and, following the question I will pose, answer in the affirmative if you do so swear . . . “Do you swear that the statements you are about to make at this hearing are the truth, the whole truth, and nothing but the truth so help you God?” Let the record show that all parties have answered in the affirmative.

(And/or if needed)

Affirmation: Raise your right hand and, following the question I will pose, answer in the affirmative if you do so affirm. “Do you affirm that the testimony you are about to give in this proceeding shall be the truth, the whole truth, and nothing but the truth?” Let the record show that _____ has/have answered in the affirmative.

(At this time, the Chairperson should excuse any witnesses and ask them to wait outside until called, and ask the remaining parties to be seated.)

Outline of procedure for hearing: Both the complainant and the respondent were mailed a copy of the Outline of Procedure for an Ethics Hearing (**Part Six**, Form #E-9 of this Manual). Did each of you receive the Outline?

(If yes) Let the record show that both the complainant and respondent have stated they did receive the Outline.

(If no, the party should be given a copy of the Outline and the Chairperson should determine whether that party has any objections to proceeding.)

Do you have any questions concerning that Outline of Procedure?

(If none) Let the record show that neither the complainant nor the respondent have any questions concerning the Outline of Procedure for an Ethics Hearing.

We shall now proceed with the hearing.

Opening statement by parties or counsel: Each party or the party's counsel shall be given an opportunity for an opening statement which shall briefly outline the basic premise of the party's position. You will have an opportunity to present your entire case at a later time during this hearing.

Opening statement by complainant

Opening statement by respondent

Presentation of full case by complainant: The complainant will now state his/her case and present any evidence or witnesses that he/she may desire.

Cross-examination by respondent

Questions from panel members

Presentation of full case by respondent: The respondent will now state his/her case and present any evidence or witnesses that he/she may desire.

Cross-examination by complainant

Questions from panel members

Closing statement by complainant: At this time, both the complainant and the respondent will be given an opportunity to make a summary or closing statement if they so desire. The complainant's closing statement will be heard first.

Closing statement by respondent

Closing statement by Panel Chairperson: Do each of you feel that this hearing has been conducted fairly?

(If yes) Let the record show that both the complainant and the respondent have indicated that they feel this hearing has been conducted fairly.

Have each of you had an adequate opportunity to testify, present evidence and witnesses, and conduct cross-examination?

(If yes) Let the record show that both the complainant and the respondent have indicated that they have had an adequate opportunity to testify, present evidence and witnesses, and conduct cross-examination.

(If any party answers “no,” ask him/her to state any concern and, if there’s any merit to the concern, take steps to remedy any possible deficiency.)

Confidential nature of hearing: Before we adjourn the hearing of this panel, all persons present are advised that the report and findings of this panel are considered confidential. It will be available only to members of this panel, to the parties, to counsel and staff as required, and to the Board of Directors of the _____ Board of REALTORS® as directed by provisions of **Part Four**, Sections 22 and 23 of this Manual or as otherwise specified in the Manual. Upon final action by the Directors, the findings or conclusions of this panel shall be disseminated to the parties by the Professional Standards Administrator, as directed by **Part Four**, Section 23 of this Manual. The parties will be notified of the decision within the required time after this hearing is adjourned. You are also reminded that any recording or transcription of these proceedings can only be used for purposes of appeal and that all other uses, including use in other ethics or arbitration hearings, is expressly prohibited.

Adjournment: There being no further business to be considered in this hearing, this portion of the hearing stands adjourned.

Proceeding following hearing—executive session: (After adjournment, the panel will remain in executive session and frame a report of finding and opinion to set forth the decision. The panel will follow explicitly the procedure set forth in the *Code of Ethics and Arbitration Manual* as to opportunity for an appeal if provided. Boards should consider having Board counsel review ethics decisions prior to any action of the panel becoming final or effective. This will serve to protect the Board by minimizing vulnerability to litigation.)

(Revised 11/22)