



NC REALTORS® OMBUDSMAN PROGRAM

INTRODUCTION

The definition of ombudsman for REALTORS® – The Ombudsman Program in its simplest definition is informal telephone mediation. In some cases it can address and solve minor complaints from the public. It can also solve inter-REALTOR® conflicts before they become serious problems. Like a mediator, an ombudsman helps parties find solutions. The ombudsman process does not replace mediation; rather, it is a more informal process that will take place earlier and that will, if successful, avoid the need for a more formal mediation process and potentially a formal ethics hearing or arbitration hearing.

Boards and associations of REALTORS® are charged with the responsibility of receiving and resolving ethics complaints and requests for arbitration. This obligation is carried out by local, regional and state grievance committees and professional standards committees. Many complaints received by boards and associations might be averted with enhanced communications and initial problem-solving capacity at the local level. These ombudsman procedures are intended to provide that capacity.

LOCAL ASSOCIATION PARTICIPATION

The North Carolina Association of REALTORS® has adopted this program in which a local association can choose to participate through approval by its board of directors. Participation in the program by a local association will satisfy the requirement of Statement of Professional Standards Policy #58 of the National Association of REALTORS (“NAR”) that all associations of REALTORS® offer, either directly or as a part of a cooperative enforcement agreement, ombudsman services to members, clients, and consumers.

All ombudsman requests received by a local association participating in NC REALTORS®’s ombudsman program should be forwarded to NC REALTORS®’s Ombudsman Program Administrator. If the request is determined to be eligible by the Administrator, it will be assigned to a geographically-neutral ombudsman for handling in accordance with the Program. Non-eligible requests will be returned to the referring local association with an explanation.

ROLE OF THE OMBUDSMAN

The Ombudsman’s role is primarily one of communication and conciliation, not adjudication. Ombudsmen do not determine whether ethics violations have occurred or whether a REALTOR®

may be entitled to a commission; rather, they anticipate, identify, and resolve misunderstandings and disagreements before matters ripen into disputes and possible charges of unethical conduct or formal requests for arbitration.

QUALIFICATIONS AND CRITERIA FOR OMBUDSMAN

- Ombudsmen are REALTOR® members acting on behalf of NC REALTORS® with 5 or more years of experience as a REALTOR®.
- Ombudsmen must be thoroughly familiar with the Code of Ethics, Professional Standards processes, North Carolina real estate regulations, and current real estate practice.
- Ombudsmen are required to complete an application detailing their experience levels and are selected by the Chair of the Professional Standards Committee.
- Ombudsmen are required to attend one of NC REALTORS®'s Ombudsman Trainings prior to responding to an NC REALTORS® Ombudsman Request.
- Ombudsmen are appointed for terms of two years however, there is no maximum number of years the member can serve as an ombudsman.
- Ombudsmen are not compensated for their service.

INSURANCE COVERAGE

Ombudsmen are covered through the NAR insurance program, as long as they are acting within the coverage limits described in the policy.

As provided in the Answers to Questions Most Frequently asked about the National Association of REALTORS® Professional Liability Insurance Program for Associations of REALTORS®, the policy defines an "ombudsman" (or "ombudsperson") as an individual designated by an association to be available for consultation about the association's ethics hearing, arbitration, and/or DRS processes. Only association staff or members may serve as an ombudsman; an attorney serving in this role will not be eligible for coverage. The policy excludes from coverage any claim that alleges or arises out of any action committed by ombudsman that does not involve an association's ethics hearing, arbitration or the DRS processes.

The following are examples of some situations in which an ombudsman would be covered and other situations when the ombudsman would not be covered:

A seller contacts the association because they feel their listing broker, who is a REALTOR®, is not responding to phone calls, and may have received offers that they haven't presented to the seller yet. If an ombudsman were appointed to assist the parties, the ombudsman's actions **would** be covered by the NAR insurance program.

A buyer contacts the association for help with a short sale transaction. If an ombudsman assisted the buyer, the ombudsman's actions **would not** be covered by the NAR insurance program.

REALTOR® A contacts the association because she has reason to believe REALTOR® B has been criticizing her business on Facebook after a difficult transaction. If an ombudsman were appointed to assist the parties, the ombudsman's actions **would** be covered under the NAR insurance program.

REALTOR® X contacts the association because he feels like he is entitled to the payment of a referral fee from REALTOR® Z for business he referred to REALTOR® Z. If an ombudsman were appointed to assist the parties, the ombudsman's actions **would** be covered under the NAR insurance program.

INVOLVING THE OMBUDSMAN

NC REALTORS® ombudsmen will be utilized to field and respond to a wide variety of inquiries and complaints. Ombudsmen can also receive and respond to questions and complaints about members from clients or customers or other members; can contact members to inform them that a client, customer or another member has raised a question or issue; and can contact members to obtain information necessary to provide an informed response.

In cases where an ombudsman believes that a failure of communication is the basis for a question or complaint, the ombudsman can arrange a meeting of the parties and to facilitate a mutually acceptable resolution.

Where a written ethics complaint or request for arbitration in the appropriate form is received, it can be initially referred to the ombudsman who will attempt to resolve the matter, except that ethics complaints alleging violations of the public trust (as defined in Article IV, Section 2 of the NAR Bylaws) may not be referred to an ombudsman. "Public trust" refers to misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm.

In the event the ombudsman concludes that a potential violation of the public trust may have occurred, the ombudsman process shall be immediately terminated, and the parties shall be advised of their right to pursue a formal ethics complaint; to pursue a complaint with the appropriate governmental or regulatory body; to pursue litigation; or to pursue any other available remedy.

CONFIDENTIALITY

All communications made to the ombudsman or NC REALTORS® whether written or oral, shall be confidential and may not be disclosed (other than communicating information and results between staff and the ombudsman) to any other person for any reason. The ombudsman's opening statement shall confirm the parties understanding of this prior to discussing the issue.

RIGHT TO DECLINE OMBUDSMAN SERVICES

Persons filing or inquiring about the process for filing ethics complaints or requests for arbitration, will be advised that ombudsman services are available to attempt to informally resolve their complaint or request. Such persons will also be advised that they may decline ombudsman services and can have their complaint or request referred to mediation (if available), or considered at a formal hearing.

RESOLUTION OF COMPLAINTS

If a matter complained of is resolved to the satisfaction of the complainant through the efforts of an Ombudsman, the formal ethics complaint or request for arbitration brought initially (if any) will continue to be processed until the complainant has officially withdrawn the complaint or request.

FAILURE TO COMPLY WITH AGREED UPON RESOLUTION

Failure or refusal of a member to comply with the terms of a mutually agreed on resolution shall entitle the complaining party to resubmit the original complaint or request for arbitration or, where a formal complaint or request in the appropriate form had not been filed, to file an ethics complaint or request for arbitration. The time the matter was originally brought to the board or association's attention will be considered the filing date for purposes of determining whether an ethics complaint or request for arbitration is timely filed.

REFERRALS TO THE GRIEVANCE COMMITTEE OR STATE REGULATORY BODIES

Ombudsmen cannot refer concerns they have regarding the conduct of any party utilizing their services to the Grievance Committee, to the state real estate licensing authority, or to any other regulatory body. The prohibition is intended to ensure impartiality and avoid the possible appearance of bias. Ombudsmen are, however, authorized to refer concerns that the public trust may have been violated to the Grievance Committee.



OMBUDSMAN GUIDELINES

The following types of cases can be handled through the Ombudsman Program:

- Uncomplicated
- Communication based
- Non or relatively small monetary amount
- May be solved by providing simple education
- May be solved by providing basic knowledge

The following types of cases cannot be handled through the Ombudsman Program:

- Apparent violations of law
- Fair housing or discrimination issues
- Large monetary amounts
- Complex cases
- Cases involving more than two parties
- Blatantly unreasonable or uncooperative parties

The following are “red flag” scenarios the ombudsman should keep an eye out for:

- Unreasonable parties
- Parties seeking sympathetic assistance
- “Fishing expeditions”
- Overly excited or irritable complainant
- Party is unclear about the facts and/or issues
- Party exaggerates or misrepresents
- Party threatens retribution or violence

The goal of the ombudsman process is as follows:

- Defuse the situation and emotions
- Clarify the issues
- Deal with the facts
- Deal with only the essential elements of the dispute
- Avoid irrelevant, inflammatory elements
- Resolve the dispute in such a manner that both parties are able to view the resolution as helpful.

An Ombudsman Request may be received by NC REALTORS® via phone, online request form or email. If the request meets the Ombudsman Guidelines, the Ombudsman Program Administrator

will forward the Ombudsman Request Form (if received), the Ombudsman Worksheet/Log, and the Ombudsman Report to the Ombudsman selected.

The Ombudsman's responsibilities are as follows:

1. Acknowledge that the complaint has been received, either by phone call or email to the Ombudsman Program Administrator.
2. Call the complainant within forty-eight (48) hours of receipt of the complaint.

A good script to use is as follows:

"I am an Ombudsman with the North Carolina Association of REALTORS® and I understand that you have concerns regarding a member of the Association.

Are you familiar with the Ombuds program? As an Ombudsman, I am here to listen to your issue, answer questions, and to offer my assistance helping you resolve the issue.

I am not an attorney and I cannot give legal advice. This process is completely confidential. If you would like to share your issue with me, I will use my best efforts to help you and the other party find a resolution. Would you like to share with me what has happened? (Get a yes or no in order to proceed.)

Before we proceed, please understand I cannot make "decisions" in your situation, but I may be able to offer some ideas to help resolve your issue.

It is not my place to refer the complaint back to NCR or the real estate commission. The only time this would happen is if a possible violation of the public trust appears to have occurred. Do you understand what a violation of the public trust is? (A violation of the public trust is defined as demonstrated misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in economic harm.)

Before we proceed, I need to make sure you understand that all communications that you make to me or Association staff are confidential.

Before I reach out to the REALTOR® you have contacted the Association about, I'll need your verbal approval to share our conversation with them. Would that be okay? Is there anything you don't want me to discuss with the other party?

When we are finished, I will be destroying my notes and any paperwork I have regarding this situation and I will be sharing with staff whether or not we have resolved the situation and the general category of the complaint.

While I certainly hope we are successful in resolving the issue, it is our Association's policy that that staff or I cannot be called as a witness for any future

ethics complaint or court proceeding by either party in this matter if we don't reach a resolution. Do you agree with this?" (Get a verbal yes or no to proceed.)

The Ombudsman can modify the script to work best with his/her own personality.

3. Make two-three attempts to reach the parties prior to closing the file.
4. Email the completed Ombudsman Report to the Ombudsman Program Administrator within forty-eight (48) hours of closing the file.
5. After the Ombudsman Report has been sent to NC REALTORS®, shred all materials.

SPECIALTY FIELDS

If you feel the complaint is centered on an area of real estate with which you are not familiar (i.e. Commercial), contact the association and have an Ombudsman appointed who can field that type of complaint.

VIOLATION OF THE PUBLIC TRUST

For purposes of these policies, the "public trust", refers to demonstrated misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm.

DISCRIMINATION ISSUES

As an ombudsman, be sure not to get into a discussion over areas of discrimination. Let the complainant or respondent know that discrimination is a serious problem and that it should be reported to the proper authorities.

Numbers for discrimination complaints:

U.S. HUD Office	(800) 669-9777
North Carolina HUD Office-Greensboro	(336) 547-4000
North Carolina Real Estate Commission	(919) 875-3700

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OMBUDSMAN REQUEST FORM

Date: _____

Name of complainant: _____

Firm (if any): _____

Address: _____

Preferred phone for contact: _____

Best time to contact you: _____

Role in transaction: _____
(i.e., buyer, seller, agent, broker)

Subject property (if any) _____

Name of respondent: _____

Firm: _____

Address: _____

Phone: _____

Role in transaction: _____
(i.e., listing agent, selling agent, broker)

What issue would you like the Ombudsman to resolve? (Attach additional form if necessary)

Return to: North Carolina Association of REALTORS®
Attn: Kay Bailey
4511 Weybridge Lane Greensboro, NC 27407
Phone: 336-808-4235 E-mail: kbailey@ncrealtors.org

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OMBUDSMAN WORKSHEET/LOG

Name of complainant: _____
Relationship to transaction: _____
(i.e., buyer, seller, landlord, tenant, broker, agent)
Address: _____
Phone: _____

Name of potential respondent: _____
Address: _____
Phone: _____

Name of potential respondent's Broker: _____
Name of potential respondent's Principal Broker (if applicable): _____
Phone: _____

Concerns that the complainant would like to address with the NC REALTORS® Ombudsman:

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Are you familiar with the Ombuds program? As an Ombudsman, I am here to listen to your issue, answer questions, and to offer my assistance helping you resolve the issue.

I am not an attorney and I cannot give legal advice. This process is completely confidential. If you would like to share your issue with me, I will use my best efforts to help you and the other party find a resolution. Would you like to share with me what has happened? (Get a yes or no in order to proceed.)

Before we proceed, please understand I cannot make “decisions” in your situation, but I may be able to offer some ideas to help resolve your issue. It is not my place to refer the complaint back to NCR or the real estate commission. The only time this would happen is if a possible violation of the public trust appears to have occurred. Do you understand what a violation of the public

trust is? (A violation of the public trust is defined as demonstrated misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in economic harm.)

Before we proceed, I need to make sure you understand that all communications that you make to me or Association staff are confidential.

Before I reach out to the REALTOR® you have contacted the Association about, I'll need your verbal approval to share our conversation with them. Would that be okay? Is there anything you don't want me to discuss with the other party?

When we are finished, I will be destroying my notes and any paperwork I have regarding this situation and I will be sharing with staff whether or not we have resolved the situation and the general category of the complaint.

While I certainly hope we are successful in resolving the issue, it is our Association's policy that that staff or I cannot be called as a witness for any future ethics complaint or court proceeding by either party in this matter if we don't reach a resolution. Do you agree with this?" (Get a verbal yes or no to proceed.)

Date complainant was contacted: _____

Complainant's concerns:

Ascertain complainant's desired outcome (for example, is the complainant seeking revocation of license, sanctions, apology, money, etc.) and if they desire direct contact by the respondent.

Contacting a REALTOR® respondent:

The Principal or Managing Broker will be the first contact if the respondent is not a Principal Broker, in order to explain the nature of your call and to determine the best way to proceed. If REALTOR® respondent is called, explain who you are and communicate the complainant's concerns and desired outcome. Determine if REALTOR® respondent is willing to call complainant to try to resolve. If so, give them their name and phone number if complainant has authorized release of that information.

Date contacted: _____

- Complainant has given permission to have REALTOR® respondent contact directly
- Complainant DOES NOT want REALTOR® respondent to contact them directly.
- REALTOR® respondent WILL contact complainant.
- REALTOR® respondent WILL NOT contact Complainant.

Contact complainant to communicate REALTOR® respondent's response.

Date contacted: _____

If REALTOR® respondent is to contact complainant or other action is required by respondent, follow up with complainant in approximately one week to determine if matter has been resolved.

Date contacted: _____

Complete the Ombudsman Report and send to Kay Bailey (kbailey@ncrealtors.org) within forty-eight (48) hours of closing the file. Please destroy this Ombudsman Worksheet/Log.

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OMBUDSMAN REPORT

Complete this Ombudsman Report and send to Kay Bailey (kbailey@ncrealtors.org) within forty-eight (48) hours of closing the file.

Name of Ombudsman: _____

Parties:

Complainant: _____

Respondent: _____

- No resolution was reached through ombudsman services; advised that complaint or request can be referred to mediation (if available), or considered at a formal hearing.

- Complaint has been resolved to the Complainant's satisfaction; advised that if a formal ethics complaint or request for arbitration was brought initially it will continue to be processed until the complainant has officially withdrawn the complaint or request.

General category(s) complaint was about:

- ___ Repairs
- ___ Would not present contract
- ___ No copies of documents
- ___ Lack of communication
- ___ Advertising
- ___ Inspection reports
- ___ Affiliation disclosures
- ___ Earnest money
- ___ Property Condition
- ___ Contract
- ___ Agency
- ___ Procuring cause
- ___ Discrimination
- ___ Unauthorized practice of law
- ___ Inter-Office dispute
- Other (please specify) _____

- ___ Complainant returned the Ombudsman Information Sheet
- ___ Respondent returned the Ombudsman Information Sheet

Please destroy all records including the Ombudsman Worksheet/Log. This action ensures that the parties are afforded confidentiality.