

2008 Summary of Key Professional Standards Changes

This summary highlights substantive issues and changes, but is **not** all-inclusive. For complete information review the shaded portions of the *2008 Code of Ethics and Arbitration Manual* which highlights all changes.

Changes to the Code of Ethics and Standards of Practice

(underscoring indicates additions, strikeouts indicate deletions)

- Article 12 revised

~~REALTORS[®] shall be careful at all times to present a true picture in their advertising and representations to the public. REALTORS[®] shall also ensure that their professional status (e.g., broker, appraiser, property manager, etc.) or status as REALTORS[®] is clearly identifiable in any such advertising. (Amended 1/93)~~

REALTORS[®] shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing, and other representations. REALTORS[®] shall ensure that their status as real estate professionals is readily apparent in their advertising, marketing, and other representations, and that the recipients of all real estate communications are, or have been, notified that those communications are from a real estate professional. (Amended 1/08)

- New Standard of Practice 12-12

REALTORS[®] shall not:

- 1) use URLs or domain names that present less than a true picture, or
- 2) register URLs or domain names which, if used, would present less than a true picture. (Adopted 1/08)

- New Standard of Practice 12-13

The obligation to present a true picture in advertising, marketing, and representations allows REALTORS[®] to use and display only professional designations, certifications, and other credentials to which they are legitimately entitled. (Adopted 1/08)

Changes to the *Code of Ethics and Arbitration Manual*

- Amendments to Section 42(c), Grievance Committee's Review and Analysis of a Request for Arbitration and Sections 45(a) and (d), Board's Right to Decline Arbitration are amended as follows:

Section 42. Grievance Committee's Review and Analysis of a Request for Arbitration

- C. Appeals from the decision of the Grievance Committee related to a request for arbitration

If the Grievance Committee determines that a matter should not be arbitrated by the Board (because of the amount involved or the legal complexity, or for any other valid reason specified in the Grievance Committee decision and written report), ~~either of the parties~~ the reason(s) for dismissing the request will be stated in the notice of dismissal. Any party may appeal the decision to the Board of Directors within twenty (20) days of the date of notice of the committee decision using Form #A-20, Appeal of Grievance Committee Dismissal or Classification of Arbitration Request; ~~however, no additional information may be added or attached to the form.~~ The request for arbitration and any attachments cannot be revised, modified or supplemented. The party appealing the dismissal may, however, explain in writing why they disagree with the Grievance Committee's conclusion that the request for arbitration should be dismissed. The Hearing Panel can also dismiss the arbitration request if the Hearing Panel concludes the matter is not arbitrable. (Amended 5/97 07)

~~Only those~~ The materials which were presented to the Grievance Committee when the Grievance Committee made its decision will be presented to the Board of Directors and considered with the appeal; together with any party's rationale challenging the Grievance Committee's dismissal. The parties to the arbitration (complainant and respondent) do not have the right to appear at the appeal hearing before the Directors. In the event a request for arbitration is dismissed, any deposit submitted by the complainant shall be returned to the complainant. (Revised 11/91 5/07)

Section 45. Board's Right to Decline Arbitration

- (a) If either the Grievance Committee or the arbitration panel selected in the manner hereinafter provided determine that because of the amount involved or the legal complexity of the dispute the dispute should not be arbitrated, the arbitration shall automatically terminate unless either of the parties to the dispute appeals the decision to terminate the proceedings to the Board of Directors in writing within twenty (20) days of the date of notice that the Grievance Committee or the arbitration panel declined to continue the proceeding using Form #A-20, Appeal of Grievance Committee Dismissal or Classification of Arbitration Request; ~~however, no additional information may be added or attached to the form.~~ The request for arbitration and any attachments cannot be revised, modified or supplemented. The party appealing the dismissal may, however, explain in writing why they disagree with the Grievance Committee's conclusion that the request for arbitration should be dismissed. The Hearing Panel can also dismiss the arbitration request if the Hearing Panel concludes the matter is not arbitrable. The written appeal and those materials and information which were available to the Grievance Committee or the arbitration

Hearing Panel when the decision to discontinue arbitration was made will be presented to the Directors and considered with the appeal. The complainant and respondent do not have the right to appear at the hearing before the Directors. In the event of such an appeal, the Grievance Committee or the arbitration panel shall report its conclusions in writing to the Directors and, if the Directors concur, the arbitration shall terminate and the parties shall be relieved of their obligation to arbitrate. In this event, or in the case of no appeal, any deposits made by the parties shall be returned to them. However, if the Board of Directors decides that the arbitration should proceed, the matter shall be remanded to the Grievance Committee or the arbitration panel for further proceedings. (Amended 5/97 07)

- (d) If either party to an arbitration request believes that the Grievance Committee has incorrectly classified the issue presented by the request (“mandatory” or “voluntary” arbitration situation), the party has twenty (20) days from the date of receipt of the Grievance Committee’s decision to file a written appeal of the Grievance Committee’s determination using Form #A-20, Appeal of Grievance Committee Dismissal or Classification of Arbitration Request; ~~however, no additional information may be added or attached to the form. Only those~~ The materials and information which were available to the Grievance Committee when the Committee made its determination will be presented to the Directors and considered with the appeal, together with any party’s rationale challenging the Grievance Committee’s classification of the request. The complainant and respondent do not have the right to appear at the hearing before the Directors. In the event of such an appeal, the Grievance Committee must report its written conclusions to the Board of Directors. If the Directors determine that the arbitration request was incorrectly classified, they shall reclassify the request as either “mandatory” or “voluntary” arbitration and refer it to the Secretary for appropriate processing. (Amended 5/97 07)

Note: Form #A-20, Appeal of Grievance Committee Dismissal or Classification (or Hearing Panel Dismissal of Arbitration Request, was also revised to reflect the changes above).

- Amendments to Sections 15 and 38, Selection and Appointment of the Grievance Committee and Sections 18 and 41, Function as follows:

Section 15. Selection and Appointment of the Grievance Committee

There will be a standing committee, known as the Grievance Committee, of at least _____ Board Members, in good standing, of whom at least a majority shall be REALTORS®. The members of the committee shall be appointed by the President, subject to confirmation by the Board of Directors, for staggered three (3) year terms. The committee shall annually select its own Chairperson and Vice Chairperson (or, alternatively, the President shall annually designate the Chairperson and Vice Chairperson of the committee). The Grievance Committee will hold regularly-scheduled meetings or, alternatively, will meet often enough to ensure timely review of ethics complaints and arbitration requests. (Amended 5/07)

In selecting members of the Grievance Committee, the President should consider the following recommended criteria:

- number of years as a REALTOR®
- number of years in the real estate business
- primary and secondary fields of real estate endeavor/ expertise
- participation in post-licensing real estate education
- training in the Code of Ethics position in firm (principal, nonprincipal)
- size of firm
- common sense
- open-mindedness
- familiarity with state(s) law and regulations
- receptiveness to instruction/training
- other relevant professional or procedural training

The committee should have balanced representation of REALTORS®, REALTOR-ASSOCIATE®, men, and women, and should include representatives of various racial and ethnic groups. Committee members should be mature, experienced, knowledgeable persons of a judicial temperament. It is suggested that, to the extent practical, members of the Grievance Committee not serve simultaneously on the Professional Standards Committee or on the Board of Directors to avoid conflict with the prohibition on serving on more than one (1) tribunal in the same matter. (Revised 11/96)

Section 18. Function

The function of the Grievance Committee is clearly distinguishable from the function of the Professional Standards Committee. The Professional Standards Committee is similar to a court. The court adjudicates matters that come before it. The Professional Standards Committee makes decisions on matters involving ethics or arbitration.

If the function of the Professional Standards Committee is understood as similar to a court, the function of the Grievance Committee can then be understood as similar to that of the grand jury. A grand jury evaluates potentially criminal conduct to determine whether the evidence and testimony presented warrants indictment and trial.

In a similar manner, the Grievance Committee receives ethics complaints and arbitration requests to determine if, taken as true on their face, a hearing is to be warranted. The Grievance Committee makes only such preliminary evaluation as is necessary to make these decisions. While the Grievance Committee has meetings, it does not hold hearings, and it does not decide whether members have violated the Code of Ethics. The Grievance Committee does not mediate or arbitrate business disputes. Grievance Committees are encouraged to hold regularly-scheduled meetings. Meetings should be called often enough to ensure timely review of ethics complaints and arbitration requests. (Amended 5/07)

In evaluating ethics complaints, the Grievance Committee may require a written response from the respondent(s). In such instances the respondent(s) should be provided with a copy of the ethics complaint and advised that failure to respond may be the basis for a charge of having violated Article 14 of the Code of Ethics. (See Form #E-4, Grievance Committee Request for Information [Ethics Complaint] and Form #E-5, Response to Grievance Committee Request for Information, Part Six of this Manual). In evaluating arbitration requests, the Grievance Committee may request a written response to the arbitration request from the respondent(s). (See Form #A-5, Grievance Committee

Request for Information [Arbitration Request] and Form #A-6, Response to Grievance Committee Request for Information, Part Thirteen of this Manual.) If no response is filed within the time allotted, the Grievance Committee shall make its determination as to whether an arbitration hearing should be scheduled based upon the information set forth in the arbitration request.

Section 38. Selection and Appointment of the Grievance Committee

There will be a standing committee, known as the Grievance Committee, of at least _____ Board Members, in good standing, of whom at least a majority shall be REALTORS®. The members of the committee shall be appointed by the President, subject to confirmation by the Board of Directors, for staggered three (3) year terms. The committee shall annually select its own Chairperson and Vice Chairperson (or, alternatively, the President shall annually designate the Chairperson and Vice Chairperson of the committee). The Grievance Committee will hold regularly-scheduled meetings or, alternatively, will meet often enough to ensure timely review of ethics complaints and arbitration requests. (Amended 5/07)

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- primary and secondary fields of real estate endeavor/ expertise
- participation in post-licensing real estate education
- training in the Code of Ethics
- position in firm (principal, nonprincipal)
- size of firm
- common sense
- open-mindedness
- familiarity with state(s) laws and regulations
- receptiveness to instruction/training
- other relevant professional or procedural training

The committee should have balanced representation of REALTORS®, REALTOR-ASSOCIATE®, men, and women, and should include representatives of various racial and ethnic groups. Committee members should be mature, experienced, knowledgeable persons of a judicial temperament. It is suggested that, to the extent practical, members of the Grievance Committee not serve simultaneously on the Professional Standards Committee or on the Board of Directors to avoid conflict with the prohibition on serving on more than one (1) tribunal in the same matter. (Revised 11/96)

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- Sample Form #A-1, Request and Agreement to Arbitrate, was amended to 1) clarify that arbitration is generally conducted between REALTORS[®] (principals) or firms comprised of REALTOR[®] (principals), and 2) specify where the disputed funds are being held, the address of the property giving rise to the arbitration request, and the closing date of the sale/lease.
- Sample Form #E-12, Action of the Board of Directors (Ethics Hearing), was amended to clarify that one of the options available to the Board of Directors on an ethics appeal is to reverse the hearing panel's decision and dismiss the complaint because the findings of fact do not support a possible violation of the Code of Ethics.

Changes to the *Interpretations of the Code of Ethics*

- The following new case interpretation related to Article 12 was adopted illustrating Standard of Practice 12-10's prohibition on use of deceptive metatags, key words, and other devices intended to direct/drive Internet traffic to REALTORS[®], websites.

REALTOR[®] A, a residential broker in a major metropolitan city, spent several weeks each year in his cabin in the north woods where he planned to retire one day. Even while at home in the city, REALTOR[®] A stayed abreast of local news, events, and especially the local real estate market by subscribing to the print and on-line editions of the local

newspaper. He also bookmarked a number of north woods brokers' websites to stay current with the market and to watch for potential investment opportunities.

One evening while surfing the Internet, REALTOR[®] A came across a URL he was unfamiliar with – northwoodsandlakesmls.com. REALTOR[®] A was pleased to see the MLS serving the area where he vacationed for so many years had created a publicly-accessible website. Clicking on the link, he was surprised to find that the website he was connected with was not an MLS's website but instead was REALTOR[®] Z's company website. Having had prior dealings with REALTOR[®] Z, REALTOR[®] A spent some time carefully scrutinizing the website. He noted, among other things, that the name of REALTOR[®] Z's firm did not include the letters MLS.

REALTOR[®] A sent an e-mail to the association's executive officer asking whether REALTOR[®] Z had been authorized by the association to use the URL northwoodsandlakesmls.com and whether the association felt it presented a true picture as required by Article 12 of the Code of Ethics. The association executive responded that their association did not assign, review, or approve URLs used by their members, but added that if REALTOR[®] A felt a possible violation of the Code of Ethics had occurred, the appropriate step was to file an ethics complaint. REALTOR[®] A did just that, alleging in his complaint that when he clicked on what appeared to be a real estate-related URL that included the letters "MLS" he expected to be connected with a website operated by a multiple listing service. He stated he felt that REALTOR[®] Z's URL was deceptive and did not meet Article 12's true picture test.

At the hearing, REALTOR[®] Z defended his URL on a number of grounds including the fact that he was a participant in good standing in the MLS and that he was authorized under the MLS's rules to display other participants' listings on his website. "If I used 'MLS' in the name of my firm, I could see how that might be perceived as something less than a true picture," he argued, "but by simply using MLS in my URL I am telling consumers that they can get MLS-provided information about properties in the north woods from me. What could be truer than that?"

The hearing panel disagreed with REALTOR[®] Z's reasoning. While REALTOR[®] Z's website included information about other participants' listings that the MLS had provided – and that REALTOR[®] Z was authorized to display – the fact remained that a real estate-related URL that included the letters MLS would lead reasonable consumers to conclude that the website would be an MLS's, and not a broker's website. REALTOR[®] Z was found in violation of Article 12 as interpreted by Standard of Practice 12-10.