



## **REALTOR® Dispute Resolution Services of the Honolulu Board of REALTORS®**

### **Introduction**

Our office is a neutral party that provides a forum for resolving disputes. We cannot prosecute or defend a case and we cannot offer legal advice.

### **Contacting the Principal Broker**

If you are having difficulty with an agent, the first person to call is that agent's Principal Broker. A Principal Broker has responsibility for the agents in their firm. Many difficulties between real estate professionals result from misunderstanding, miscommunication, or lack of adequate communication. Open, constructive discussion often resolves questions or differences, eliminating the need for further action. If you need the name of the Principal Broker, please contact Lynn Murison at [Lynn.Murison@hcentral.com](mailto:Lynn.Murison@hcentral.com) or refer to HBR's office directory.

### **Types of Complaints & Requests**

Ethics Complaints involve a member's conduct. Ethics is personal; therefore you must name the person(s) who you believe is in violation of the National Association of REALTORS®'s Code of Ethics, not a company. Mediation and Arbitration Requests deal with a monetary dispute between the parties. You can file all three complaints and requests at the same time, but are not obligated to. To file one or more actions, contact Lynn Murison for more information and a complaints packet. In thinking about choosing a path in our process, you should consider what remedy you seek and whether there are other paths outside our process that may have concurrent jurisdiction and an appropriate remedy.

### **Ombuds Service**

Some problems can be solved by a few phone calls from a neutral party. Members of our Mediation Committee serve as that neutral party and are called "ombudspersons." If you have a breakdown in communication between you and your agent or between agents, a Committee member will be assigned to speak to you and the other party on the phone to try to resolve the problem quickly before it escalates.

### **Mediation**

Mediation is another way to solve disputes. Mediation is free to file and is an in-person, informal process. If all parties agree to mediate, a mediator will be assigned to assist the parties in coming to a mutually agreeable settlement. If agreement between the parties is reached, the settlement agreement is put in writing for all parties to sign and the agreement is enforceable in court. Download

the [Mediation Procedures](#) for more detailed information on the Board's mediation process. If Mediation is filed in addition to an Ethics Complaint and/or an Arbitration Request, the Mediation Request will be addressed first and the others deferred, pending the outcome of the Mediation.

### **Filing a Complaint Against a REALTOR® Member**

If you have a complaint about a real estate transaction that involves a REALTOR® member of the Honolulu Board of REALTORS® (HBR), you may file your complaint with our office. Anyone can file an ethics complaint and they can allege a violation of any of the Articles of the National Association of REALTORS®'s Code of Ethics. Please review the information below to assist you in filing your complaint. Underlined items are forms or documents that are included in the complaint packet. As the person filing the complaint, you are the **Complainant**. The person you are filing the complaint against is the **Respondent**. **Complainants** and **Respondents** are called "**parties**" to the dispute. **Parties** are the ones named in the complaint. There is no fee to file an Ethics Complaint.

### **Ethics Complaint**

To file an Ethics Complaint you should review the National Association of REALTORS® (NAR) Code of Ethics. The first 16 Articles in the Code of Ethics are the specific obligations that can subject the member to disciplinary action after a due process hearing. After carefully reading the Code, complete the [Ethics Complaint Filing Form](#) along with the [Narrative Summary Sheet](#) explaining why you feel a specific Article (or Articles) has been violated. This is your chance to tell your story. A complete filing cites the Articles alleged and has a date indicated that complies with the following filing period:

**Ethics complaints must be filed within one hundred eighty (180) days after the facts constituting the matter complained of could have been known in the exercise of reasonable diligence or one hundred eighty (180) days after the closing of the transaction or event, if any, whichever is later.**

Return your completed, signed Ethics Complaint form and statement, along with any supporting evidence to HBR. Your narrative should be *concise, complete, clear, and persuasive*. See the [Document Checklist](#) for a list of suggested documents that you may want to submit as supporting evidence. Use the [Timeline](#) to help you make clear what happened and when.

**All documentation should be single sided, unstapled, untabbed, and not highlighted, as HBR numbers and duplicates the submissions to build an official case file. Do not send originals.**

### **Arbitration**

To file an Arbitration Request to obtain a monetary award, please review Article 17 of the NAR Code of Ethics to see which specific types of arbitration can be heard by the Board. When filing, you must state the amount you are seeking and the date you first became aware of the subject of the dispute. You must also include a clearly written explanation of why you believe you are owed the money and a breakdown of

how you arrived at the amount. Be specific. In filing an Arbitration Request, it is necessary to name the Principal Broker of a firm because only the Principal Broker has the authority to disperse funds. If you wish, you can name the agent, the Principal Broker, and the Company as co-respondents. If you are unsure who the Principal Broker is, contact Lynn Murison. A \$250 filing fee is required to file an Arbitration Request. **An Arbitration Request is not deemed filed without the fee.** A complete filing pays the filing fee, discloses the dollar amount in controversy and has a date indicated that complies with the following filing period:

**Requests for arbitration must be filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitration matter could have been known in the exercise of reasonable diligence, whichever is later.**

Return your completed, signed Arbitration Request Form and statement, along with any supporting evidence you may have and the **\$250 filing fee** to: HBR. See the [Document Checklist](#) for a list of suggested documents that you may want to submit as supporting evidence. Use the [Timeline](#) to help you make clear what happened and when.

**All documentation should be single sided, unstapled, untabbed, not highlighted, as HBR numbers and duplicates the submissions to build an official case file. Do not send originals.**

### **Code of Ethics and Arbitration Manual (Rules)**

The procedures for all three types of complaints are guided by the NAR Code of Ethics and Arbitration Manual (Rules), to which the Honolulu Board of REALTORS® belongs. Throughout the process, when we refer to the various Rules or Sections that apply, we will include them in the mailing. The Rules cover such issues as notifying the Board if you plan to have legal counsel present, your rights in presenting documents and/or witnesses, and your appeal rights.

### **Complaint Process**

Once a complaint is received by the Board with the completed forms, statements, documents and fees if applicable, HBR notifies the Respondent and sends them a complete copy of the entire complaint that has been submitted by the Complainant. The full complaint is then submitted to the HBR Grievance Committee which reviews the matter to decide if the case meets the criteria for a hearing by the Professional Standards and Arbitration Committee. Please make every effort to submit the most complete complaint possible, since the process includes a provision for an Expedited Hearing (see below under "Hearings").

**Throughout the entire process, all correspondence received from the Complainant will be sent to the Respondent and vice versa. All correspondence will be sent to the parties via email. Parties are asked to confirm receipt within**

**24 hours. If you have no email, contact Professional Standards staff to arrange for first class mail delivery. Many parts of the process have specific deadlines that must be met; you need to open your email correspondence as soon as possible to avoid missing deadlines.**

### **Hearings**

If the Grievance Committee determines that either an Ethics or an Arbitration Hearing is warranted, the parties will be offered a chance to mediate the dispute to come to a mutually agreed upon resolution to the matter. If mediation is not used or is unsuccessful, the Respondent will be asked to supply a response to the allegations. Parties are given a minimum 21 days notice before the hearing date. Hearings are held at the HBR office Monday through Friday, and start at 9:00 a.m. All Hearings conducted at the Honolulu Board of REALTORS® are conducted in the spirit of Due Process. **Due Process** is defined as a full and fair hearing. All parties to a hearing will have the opportunity to present witness(es) and/or document(s) in support of their case as provided for in the Rules. Under limited circumstances, an Expedited Hearing may be requested if certain criteria are met. In an Expedited Hearing, only an executive session of a committee is held and there is no hearing and neither Complainant nor Respondent need appear. Respondent may submit a one-page narrative that may go to mitigation of a sanction.

The entire Ethics process *normally* takes between four and six months.

### **Confidentiality**

All information received is considered confidential and is not disseminated to anyone other than the parties involved, and those HBR staff and volunteer REALTORS® who are involved in the professional standards process.

### **Questions**

If you have questions about our dispute resolution services or filing a complaint with HBR, contact the following staff members:

Lynn P. Murison  
Professional Standards Senior Administrator

808.792.4945

Lynn.Mursion@hcentral.com

## **Glossary of Terms:**

**Complainant** – the party who brings the Ethics Complaint or Mediation & Arbitration Request. Each complainant signs the official filing forms. All complainants can attend the entire hearing and give testimony. At least one of the Complainants **must** appear at the Hearing.

**Respondent** – the party complained against or requested to mediate or arbitrate. Name each agent you feel violated the Code of Ethics. A company cannot be named as a Respondent.

**Named Parties** – Complainants and Respondents. They are the ones who have a right to attend the full hearing, if there is one.

**Due Process** – a full and fair hearing. We follow Rules set out by the National Association of REALTORS®.

**Standards of Proof** – Ethics: Complainant will prevail with clear, strong, and convincing evidence. Arbitration: Complainant will prevail with a preponderance of the evidence.

**The Rules** – the National Association of REALTORS®, Code of Ethics and Arbitration Manual is the rule book from which a party will get applicable sections supporting the actions of the Board.

**Fully Executed Contract** - the contract that has signatures of everyone who needs to sign it in order for the contract to be enforced.

**The Grievance Committee** - the body that decides if a case meets the criteria for a hearing. Members are volunteers and full-time REALTORS®.

**The Professional Standards & Arbitration Committee** - the body whose members become the hearing panel for ethics complaints and arbitration requests hearings. Members are volunteers and full-time REALTORS®.

**The Mediation Committee** - the body whose members become the mediators for requested mediations and serve as ombudspersons. Members are volunteers and full time REALTORS®.

**Appendix:**  
Key Points to Know  
Before Choosing While Process to File In:  
MAE (Mediation, Arbitration, Ethics)

**Fact 1:** There is no discovery in a Professional Standards and Arbitration Committee (PSAC) dispute resolution process comparable to what one finds in litigation. Just as in an executive branch administrative hearing in the government, a complainant must, in general, prove their case with the documentary and witness testimony they have. The PSAC process is not a “fishing expedition.” Think about how “proof” and “truth” may not always be exactly the same.

**Fact 2:** Ethics hearings and arbitration hearings do not yield the same remedy. The Ethics process may yield a sanction against a realtor. Arbitration may yield a compensatory monetary award related to a contract or procuring cause dispute. Arbitration does not involve ethics issues under the NAR Code of Ethics.

**Fact 3:** A complainant may simultaneously pursue an ethics complaint and an arbitration request and a mediation request. Regardless, filing within the 180-day deadline must be observed. However, the PSAC process will start with the mediation, then move to the arbitration hearing, then move to the ethics hearing, in that order.

**Fact 4:** The PSAC process is for use against a respondent who is a REALTOR® member of the Honolulu Board of REALTORS® (Board). The PSAC process is for real estate transactions. The PSAC process is generally not useful for disputes purely between Buyers and Sellers that do not involve alleged misconduct by a REALTOR®.

**Fact 5:** The Board is not the only possible entity with jurisdiction and the remedies available can differ. It may make sense to check with government agencies and a private lawyer to find all of your options.

**Fact 6:** A PSAC hearing panel is not a court and cannot rule on the same range of issues that a court could.

**Fact 7:** Going through an adversarial process is not only time consuming; it can be very stressful. Having someone that you can speak to who can help you to stay objective may be prudent.

**Fact 8:** Parties may settle at any time outside HBR’s process.