

ANN ARBOR AREA BOARD OF REALTORS®

Summary of 2007 Changes to NAR's Code of Ethics & Arbitration Manual (the "Manual")

Electronic Coverage

The Standards of Practice have been amended to expand the scope of the Code of Ethics to specifically include electronic activities.

Standard of Practice 1-2 specifies duties imposed by the Code include electronic real estate related activities and transactions.

Standard of Practice 9-2 requires a REALTOR to explain the nature and disclose the specific terms of contractual relationship the client or customer is establishing electronically.

Standard of Practice 12-5 prohibits REALTORS from advertising in an electronic medium without disclosing the name of the REALTOR's firm.

Standard of Practice 12-8 requires a REALTOR to present a true picture and representations to the public on REALTOR websites and requires REALTORS to use reasonable efforts to keep their websites current.

Standard of Practice 12-9 requires a REALTOR firm's website to disclose the firm's name and state of licensure.

Standard of Practice 12-10 provides that a REALTOR's obligation to present a true picture in their advertising and representations includes the URLs and domain names they use and prohibits deceptive or unauthorized framing, presenting content developed by others, deceptively using meta tags, keywords or other methods to divert internet traffic or to otherwise mislead consumers.

Standard of Practice 12-11 requires if REALTORS intend to share consumer information gathered through the internet to disclose that possibility in a reasonable and readily apparent manner.

Standard of Practice 15-2 extends the obligation to refrain from making false or misleading statements about competitors' businesses to include misleading statements about competitors' businesses and their business practices or the repeating of such statements by technological means, e.g., the internet.

Section 1(h) sets forth definitions of "electronically," "electronic means," "technology," "technological means" to include, essentially, all electronic methods of communication. The same definition occurs at section 26(h).

Case Studies #6-5, 6-6 and 12-19 appear to have been added to demonstrate how the expansion of the scope of the Code of Ethics specifically to internet activities can be applied based upon specific facts.

Limitation on Arbitration Awards

Standards of Practice 17-4(1) and (2) specify that where arbitration occurs between two cooperating brokers and the listing broker is not a party, the amount in dispute cannot exceed the amount paid to the respondent by the listing broker and any amount credited or paid to a third party for the transaction at the direction of the respondent. As an example, if Listing Broker paid Acme Realty \$6,000 as the procuring cause for the sale of 123 Elm Street, then when Ace Realty engages in an arbitration with Acme Realty claiming it is the procuring cause for this transaction, Ace Realty cannot be awarded an amount in excess of \$6,000, i.e., the amount originally paid by the Listing Broker to the respondent Acme Realty. This new limitation on damages is also set forth in changes to forms #A-1, #A-2 and #A-4.

Interstate Arbitrations

New Standard of Practice 17-5 establishes an obligation to arbitrate disputes between REALTORS located in different states, provided the REALTOR requesting arbitration agrees to submit to and travel to an arbitration held by the respondent REALTOR's association. The respondent REALTOR's association must determine that an arbitrable issue exists.

Disclosure of Arbitration Decisions

Section 2(e) has been amended by adding a third instance where disclosure by a party to an ethics or arbitration is authorized. This third situation is where a the decision of an arbitration hearing panel is provided to an association of REALTORS or to an MLS to enable that entity to correct records of sales or lease transactions or other historical records. This amendment is also set forth in section 27(e)(3).

Statute of Limitations

Section 19B(3) has been modified to indicate that a complaint must be filed within 180 days after conclusion of the transaction or within 180 days of the time that the alleged offense and facts relating to the offense could have been known by the complainant in the exercise of reasonable due diligence, whichever occurs later. This time limitation has also been added in Appendix V(3). The same change is made in section 20(a).

Appeal of Grievance Committee Dismissal

Section 19C, section 20(c), section 20(d), section 20(l) and Appendix V(11) have been added or amended. These provisions now indicate that 20 days from the date of receipt of a dismissal notice (new form #E-22), the complainant may appeal the dismissal to the board of directors. The complainant cannot modify the complaint or add any attachments. However, the complainant may explain in writing why the complainant disagrees with the grievance committee's conclusion that the complaint should be dismissed. A new form #E-5.1 has been added to set forth the new provision regarding an appeal from a grievance committee's dismissal of a complaint. Also, form #E-22 has provided for a complainant's appeal of the grievance committee's dismissal.

Newly Discovered Evidence

Form #E-11 and a sample "Findings of Fact and Conclusions" of the decision of ethics hearing panel of the professional standards committee on page 258 of the NAR 2007 manual set forth the terms under which a complainant or respondent may request a rehearing based solely on the grounds of newly discovered material evidence. The request is directed to the original hearing panel and must include a summary of new evidence and a statement of what the new evidence is intended to show and how it might affect the hearing panel's decision. The party requesting the rehearing will also have to demonstrate that even in the exercise of reasonable diligence, they could not have discovered and produced the evidence at the original hearing.

Costs of Arbitration

Section 46(2) provides that where arbitration is conducted by a state association or by an interboard arbitration, the costs which may be charged to the parties will not exceed \$500. Where the arbitration is conducted by the state association, any costs incurred that exceed the parties' filing fees may be recouped from the parties' local associations.

The fourth paragraph under Part 11 provides that interboard arbitration involving parties and boards "distant from each other" may involve costs including travel expenses of the arbitration panel and other expenses of the arbitration. It is not clear how far boards must be apart in order to be "distant from each other."

The fourth paragraph from the end of Part 11 has been amended to provide that in interboard arbitrations the expenses of the arbitrators and other expenses (including the use of legal counsel) will be borne by the boards involved "as agreed in advance of the hearing." Thus, in conducting interboard arbitrations, the boards need to agree in advance to make certain it is clear as to who is paying what costs of the arbitration.

Findings of Fact in Arbitration Awards

The question has been asked many times why arbitration awards do not contain a statement of facts explaining why and how the panel decided the case. NAR has added a new Appendix IV to Part Ten to provide a rationale for their being no findings of fact in arbitration awards. Presumably, this new appendix can now be provided in response to the question.