

OMBUDSMAN PROCESS OVERVIEW

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.

Boards and associations of REALTORS® are charged by the National Association of REALTORS® with the responsibility of receiving and resolving ethics complaints. This obligation is carried out by local, regional and state Grievance Committees and Professional Standards Committees.

Complaints and concerns received by the Metro Centre Association of REALTORS® come in many different forms. (phone, letter, e mail, fax) Some complaints received by the association do not allege violation of specific provisions of the Code of Ethics nor relate specifically to conduct governed by the Code of Ethics. Some concerns or questions relate to transactional, real estate practices, technical or procedural matters that could easily be responded to.

It seems that many members of the public are reluctant to file a written ethics complaint for several reasons; the process is too cumbersome and the paperwork is too hard to understand. There is also the perception that since the hearing panel is made up of members of the association that the board is trying to protect its own. Many ethics complaints might be averted with enhanced communications and initial problem-solving capacity at the local level. These ombudsman procedures are intended to provide that capacity.

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; rather, they anticipate, identify, and resolve misunderstandings and disagreements before matters ripen into disputes and possible charges of unethical conduct.

The Ombudsman:

- Listens to the complainant's concerns
- Ascertains complainant's desired outcome (revocation of licenses, sanctions, apology, money, etc.)
- Can field and respond to a wide variety of inquiries and complaints, including general questions about real estate practice, transaction details, ethical practice, and enforcement issues
- Explains possible avenues that might resolve the issue or reach the desired outcome
- Answers general questions and/or procedural questions and explains the formal ethics complaint process
- 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 assist in facilitating a mutually acceptable resolution.
- Contacts the potential respondent to explain the complainant's concerns and desired outcome
- Tries to bring resolution

- Reports back to the complainant
- Explains the complainant's rights after the completion of the ombudsman process.
- Where a written ethics complaint in the appropriate form is received by MCAR, it can be initially referred to the Ombudsman who will attempt to resolve the matter, except that 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.
- 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 any appropriate governmental or regulatory body; to pursue litigation; and/or to pursue any other available remedy.

***For purposes of these policies, a potential violation of the public trust is “demonstrated misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in economic harm.”**

QUALIFICATIONS AND CRITERIA FOR OMBUDSMAN

- 10 or more years of real estate experience or 5 or more years of real estate experience including additional qualifications such as experience in dispute resolution
- Ombudsman must be familiar with the NAR Code of Ethics, state real estate regulations, and current real estate practice.
- Ombudsman must serve on the Professional Standards Committee
- Ombudsman are required to take Ombudsman & Professional Standards Training on an annual basis
- Ombudsman do not receive compensation for their services as Ombudsman
- Ombudsman are required to complete an application detailing their experience levels and are selected by the President in conjunction with the association's Executive Officer
- The Association will make every effort to incorporate Ombudsman from a variety of real estate specialties
- There shall be a minimum of three Ombudsman for the association
- Ombudsman are appointed for terms of one year however, there is no maximum number of years the member can serve as an Ombudsman
- Ombudsman will meet a minimum of once per calendar year to discuss the program and determine if any policy changes are required. If so, the Ombudsman will forward those changes to the Professional Standards Committee. Upon approval by the Professional Standards Committee, those changes shall be forwarded to the MCAR Board of Directors for ratification.

ERRORS & OMISSIONS COVERAGE

Ombudsman is 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.

CONFIDENTIALITY

All communications made to the Ombudsman or the Metro County Association of 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.

Furthermore, it is MCAAR's policy that Ombudsman cannot be called as a witness as part of any future ethics complaint by the complainant or respondent in the matter in which they attempted to resolve in their role as an Ombudsman. This fact shall also be made known to the parties during the Ombudsman's opening statement.

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 brought initially (if any) will be dismissed by MCAAR.

FAILURE TO COMPLY WITH AN 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, where a formal complaint in the appropriate form had not been filed, to file an ethics complaint. The time the matter was originally brought to MCAAR's attention will be tracked by the board's professional standards administrator and the 180 day filing deadline shall be suspended from the date of the complainant's (or potential complainant's) request for informal dispute resolution service or assistance and shall resume when the informal dispute resolution procedures are concluded or terminated. This information shall be provided to the Grievance Committee for purposes of determining whether an ethics complaint is timely filed.

OPTIONS AFTER AN UNSUCCESSFUL OMBUDSMAN PROCESS

- The complainant may file a formal ethics complaint
- The complainant may obtain legal advice
- The complainant may file a formal complaint with the New Jersey Real Estate Commission
- The complainant may be offered mediation after a Request and Agreement to Arbitrate is filed.
- The complainant may seek outside mediation services

* Please note, if a member serves as an Ombudsman and the issue is not resolved through the Ombudsman process, that member will be precluded from serving in any of the formal processes available through the association (i.e. ethics tribunal, mediation, etc.) with respect to that complaint.

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 New Jersey Real Estate Commission 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.