

Procedures for Disciplinary Hearing

The following is just a brief summary of the procedures for a Disciplinary Hearing. For a complete copy of our procedures, please contact the Professional Standards Department at 703-207-3214 or e-mail spetcher@nvar.com. These are the procedures that apply to the actual Disciplinary Hearing once the case has been classified and forwarded by the Grievance Committee for a formal hearing.

Responsibilities of the Parties

The Complainant and the Respondent are responsible for preparing their cases. The Complainant and Respondent must gather all relevant information and present it to the association prior to the hearing. The Complainant and Respondent should review the case file that is mailed to all parties and panel members with the Official Notice of Hearing form. If either party believes that previously submitted documents are missing or that additional documents need to be presented they should immediately contact NVAR to make arrangements for submitting these additional documents in advance of the hearing. In the event that additional written information is presented on the day of the hearing, the hearing will be delayed until the panel members and the parties have had the time needed to review the material. The hearing will then reconvene on the same day unless any of the parties wish for more time to review the new material. In a case when the parties request more time, a continuance will be granted and the hearing date will be rescheduled. In order to avoid unnecessary delays the Professional Standards Hearing Panel strongly recommends that the parties submit additional written information to NVAR at least 5 days in advance of the hearing.

The Complainant and Respondent are responsible for obtaining any witnesses, if applicable, and notifying the Association and the other parties, in writing, of the names of the witnesses at least 15 days before the hearing. The Association does not have subpoena powers over members of the public, but does have the authority to require any REALTOR®, when requested, to place any information before the Hearing Panel or attend the hearing to testify.

Every party may be represented by legal counsel or by a REALTOR® of their choosing (or both). The role of counsel (whether legal or otherwise) includes presenting the case on behalf of the party represented, examining and cross-examining witnesses, and making a closing statement. REALTORS® providing such representation are cautioned to avoid the unauthorized practice of law. Notice of representation by counsel must be provided in writing to the Association and the other party at least 15 days before the hearing date including counsel's name, address, and phone number.

Scheduling a Hearing

The parties have thirty (30) days to reach a mutually acceptable agreement regarding the scheduling of the hearing with the assistance of NVAR staff. This is a courtesy that NVAR voluntarily extends to the parties in an attempt to be flexible in the scheduling of a hearing. However, this is only a courtesy and NVAR has the right to determine a date and time for the hearing if one or more parties is unwilling or unable to commit to scheduling the hearing. If the parties are unable or unwilling to reach a mutual agreement on this issue within thirty days, the Chair of the Professional Standards Committee (or the Chairman of the Board for appeals or hearings held by the Board of Directors) will select a date and time for the hearing.

Challenging the Qualifications of the Panel Members

Either party may file a written request to challenge the qualifications of any individual who may be appointed to serve on an Arbitration Hearing Panel. Any challenges must be filed with NVAR within 10 days of receiving this notice. Hearing Panel members will also be automatically disqualified for any of the following reasons.

Is related by blood or marriage to either complainant or respondent.

Is an employer, partner, or employee or in any way associated in business with either complainant or respondent.

Is a party to the hearing, or a party or witness in any other pending case involving any party to this Hearing.

Knows of any reason that may prevent him from rendering an impartial judgement.

The panel members will also recuse themselves from assignment to this hearing panel if they are aware of any reason that would prevent them from rendering an impartial decision in this matter.

Postponement of Hearing

Postponement may be granted if there are extenuating circumstances. The request must be in writing, and permission can be given by the Chair of the Hearing Panel. All parties shall be advised of the date of the rescheduled hearing.

Recording the Hearing

The Association shall, and any party may, at his own expense, have a court reporter present, or may tape record the proceeding, and if transcribed, shall present a transcript to the Professional Services Department.

Method and Objective of Procedure

The Hearing Panel shall not be bound by the rules of evidence applicable in courts of law, but shall afford all parties a full opportunity to be heard, present witnesses and offer evidence, subject to its judgement as to relevance.

Prior to the Hearing

The Northern Virginia Association of REALTORS® will provide the parties and the panel members with:

- A copy of the complaint and the response
- All documentation/material that has been submitted by the parties
- A copy of the "Outline of the Procedures"
- A copy of the ethics chair's script (usually available on the day of the hearing - prior to convening)
- A list of the sanctions
- A copy of the "Notice of a Ethics Hearing" with the date time, and place of the hearing (giving at least 21 days notice) and the names of the members of the Hearing Panel

Due Process Procedure

The Hearing procedures will be:

Opening statement by Chair - cite authority to hear case and explain reason for hearing.

The complaint will be read into the record.

The testimony of all parties and witnesses will be sworn or affirmed. All witnesses will be excused from the hearing except while testifying.

The parties will be given an opportunity to present evidence and testimony on their behalf and they may call witnesses.

The parties and their counsel (if applicable) will be afforded an opportunity to examine and cross-examine all witnesses and parties.

The Panel Members may ask questions at any time during the proceedings.

The Chair may exclude any questions which he deems irrelevant or argumentative.

Each side may make a closing statement. The complainant will make the first closing statement and the respondent will make the final closing statement.

Adjournment of hearing.

The Hearing Panel will go into executive session to decide the case.

Standard of Proof

The Standard of Proof is “strong, clear, and convincing” which is a lesser standard than “beyond a reasonable doubt.” A decision is made on the evidence and testimony that is available at the time of the hearing; therefore, it is the responsibility of the complainant and the respondent to prepare and present the best case possible.

Finding in a Hearing

The findings of fact and recommendation for discipline, if any, shall be reduced to writing by the Hearing Panel in accordance with the procedure of Part Four, Sections 22 and 23 of the Code of Ethics and Arbitration Manual.

Use of Counsel

A party may be represented in any hearing by legal counsel or by a REALTOR® of his choosing (or both). However, no party may refuse to directly respond to requests for information or questions addressed to him by members of the panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as giving the statements of his client if the panel desires direct testimony. Each party shall be held responsible for the conduct of his counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings or any action by counsel which is viewed by the panel as disruptive of proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the fore-going reasons shall be the result of a majority vote of the members of the panel and shall not be subject to appeal. In the event counsel is excluded, the hearing shall be

postponed to a date certain not less than five (5) nor more than thirty (30) days from date of adjournment to enable the party to obtain alternate counsel provided however that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

Amending a Complaint

At any time prior to a hearing, the Complainant may file an amended complaint (excluding amendments pertaining to an Article previously dismissed by the Grievance Committee relating to previously dismissed respondents.) The Hearing Panel may disallow an amended complaint at their discretion. NVAR procedures require complaints, including those amended by the complainant (and excluding those amended by the Grievance Committee) to be filed within 180 days from the date the facts giving rise to the complaint could have been known in the exercise of reasonable diligence.

Hearings in the Absence of a Party

In the event that the Complainant is unwilling or unable to attend the hearing, the complaint shall be referred back to the Grievance Committee. If the Grievance Committee determines there is sufficient information for the Hearing Panel to consider (i.e. that there is clear, strong and convincing proof), the Complaint shall be amended to name the Grievance Committee as complainant and the hearing shall be continued to a new date. In the event that the Respondent fails to appear at a duly noticed hearing without first obtaining a continuance or adjournment thereof, the Hearing Panel may proceed with the hearing in the Respondents absence and shall reach its decision based on the evidence made available at the hearing.

Pilot Training Program

In order to improve the training of our Professional Standards Committee and properly prepare our committee members for their responsibilities as a member of a Hearing Panel, the Professional Standards Committee has approved a Pilot Training Program. This program allows each new member of the committee to observe a hearing as an alternate panel member. In this manner they are able to learn about the process first hand and obtain some valuable on the job training before serving as a full panel member.

An Alternate Panel Member will receive a full copy of the case file prior to the hearing. While the Alternate Panel Member does not directly participate in the hearing, he or she will sit with staff to observe the hearing in order to familiarize themselves with our procedures and the conduct of a hearing panel. The Alternate Panel Member does not participate in any votes by the panel or in the Executive Session. Furthermore the Alternate Panel Member is not privy to the Decision and Recommendation of the Hearing Panel. However, the Alternate Panel Member has the same duties and obligations of confidentiality as a full panel member and will be prohibited from discussing this case with anyone after the hearing is concluded.

Any party to a hearing may object if he or she does not wish to allow an Alternate Panel Member to attend the hearing and observe the process in action. These procedures have been developed to ensure due process for all parties while increasing the training opportunities available to our committee members.

Right to a Rehearing

Within 20 days of receiving the Decision of the Professional Standards Hearing Panel, the Complainant or Respondent may request a rehearing by the original Hearing Panel. This request shall be directed to the Hearing Panel and the Hearing Panel shall consider the request. The granting of this request for rehearing will be based only upon the Complainant or Respondent (depending on who files the request) obtaining new evidence which could not have been discovered with reasonable diligence and produced at the original hearing.

Right to an Appeal

A Complainant or Respondent may appeal the decision within 20 days of receiving the Decision of the Professional Standards Hearing Panel. The Complainant or Respondent may file a written request for an appeal with the Chairman of the Board. If a rehearing petition is requested in timely fashion and denied, the Complainant or Respondent may, within 10 days after such denial, file an appeal with the Chairman of the Board for a hearing before the Directors. The Complainant may appeal the Decision of the Professional Standards Hearing Panel based only upon an allegation of procedural deficiencies or other lack of procedural due process that may have deprived the complainant of a fair hearing. The Respondent may appeal based on a misinterpretation or misapplication of the Code of Ethics, upon an allegation of procedural deficiencies or other lack of procedural due process that may have deprived the complainant of a fair hearing, and/or the severity of the discipline sanctions. An appeal request must be in writing and must be accompanied by a deposit in the sum of \$250.

A copy of the Code of Ethics and Arbitration Manual and any NVAR supplements are available for purchase from the REALTOR® Store. Furthermore a reference copy is available for review in room #216 or an electronic copy can be emailed upon request.