



GLAR Ombudsman Procedures

A Definition of Ombudsman for Realtors®

Introduction

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.

Many complaints received by associations do not expressly allege violations of specific Articles of the Realtor® Code of Ethics, and many do not detail conduct related to the Code. Some complaints are actually transactional, technical, or procedural questions that could be readily responded to.

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 Ombudsmen

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.

Involving the Ombudsman

There is considerable latitude in determining how and when Ombudsmen will be utilized. For example, Ombudsmen 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. Ombudsmen can also receive and respond to questions and complaints about members; can contact members to inform them that a client or customer has raised a question or issue; and can contact members to obtain information necessary to provide an informed response.

In cases where an Ombudsman believes that a failure of communication is the basis for a question or complaint, the Ombudsman can arrange a teleconference meeting of the parties and assist in facilitating a mutually acceptable resolution.

Where a written ethics complaint in the appropriate form is received by GLAR, it can be initially referred to the Ombudsman who will attempt to resolve the matter, except those 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.

Buyer/Seller disputes will not be settled through the Ombudsman process and will all be forwarded to the NAR Dispute Resolution Services and assigned to a Mediator.

Participation in the Ombudsman Program (“the Program”) is entirely voluntary. Your participation shall mean that you agree to the terms of the Program described below:

No liability of Ombudsman or GLAR; subpoenas and testimony

Neither the Ombudsmen or GLAR, shall be civilly liable in tort, contract, or otherwise, for any act or omission done or made while engaged in efforts to assist or facilitate a resolution under the Program.

Neither the Ombudsmen or GLAR shall be civilly liable for the disclosure of any confidential information or communication, whether written or oral, unless there is clear and convincing evidence that the disclosure was made in bad faith, with malicious intent, or in a manner exhibiting a willful, wanton disregard of the rights, safety or property of another.

The participants in the Program understand and agree that all documents of any nature submitted or otherwise developed during the Program will be permanently destroyed upon the conclusion of the matter in dispute. Notwithstanding the preceding, neither the Ombudsman or GLAR shall be required to submit to subpoena, deposition, or other judicial, administrative, or regulatory requirement to appear and give testimony or provide documents relating to any matters occurring during the Program.

The above limitations and immunities shall apply to the officers, directors, employees, agents, representatives, and attorneys of GLAR.

Confidentiality of written or oral communications

All communications made to the Ombudsman or GLAR under the Program, whether written or oral, shall be confidential and may not be disclosed to any other person for any reason.

Statements, memoranda, work product, documents and other materials, otherwise subject to discovery in any legal action, mediation, or arbitration, that was prepared for, or during participation in the Program, shall be absolutely confidential and may not be disclosed to any other person through subpoena, deposition, or other such judicial or quasi-judicial or administrative proceeding.

Admissibility and disclosure of communications and agreements in subsequent adjudicatory proceedings; exceptions

Written or oral communications that are confidential under the Program shall not be admissible as evidence in any adjudicatory proceeding, whether in court, arbitration, administrative and regulatory, including but not limited to any arbitration or ethics hearings administrated by GLAR or any licensing agency proceeding.

Nothing contained in these procedures shall be construed to prohibit the parties from jointly agreeing to the disclosure or admissibility of documents or information that is otherwise deemed confidential.

Additionally, any party, Realtor® or the company with which they are associated, the Ombudsman, or GLAR, may use confidential information in any adjudicatory proceeding, whether in court, arbitration, administrative and regulatory, including but not limited to any arbitration or ethics hearings administrated by GLAR or any licensing agency proceeding, in defending of any action or claim brought against them that relates to any of the services, functions, or other events arising during the Program, to the extent necessary to defend themselves.

Right to decline Ombudsman services

The Ombudsman and/or CEO shall determine whether a complaint may be appropriate for the Program. If so determined, the person filing a complaint, or inquiring about the process for filing an ethics complaint, will be advised that Ombudsman services are available to attempt to informally resolve their complaint. Such persons will also be advised that they may decline Ombudsman services and may have their complaint considered by the Grievance Committee, and at a formal ethics hearing when appropriate. Further, if a complaint has not been filed as an Ethics Complaint, the Ombudsman or CEO may offer Ombuds services. Either party may decline Ombuds services.

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 GLAR.

Failure to comply with 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 GLAR's attention will be considered the filing date for purposes of determining whether an ethics complaint is timely filed.

Referrals to the Grievance Committee or to state regulatory bodies

Ombudsmen cannot refer concerns they have regarding the conduct of any party utilizing their services to the Grievance Committee, to the Oregon Real Estate Agency, 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.

Based on NAR Ombudsman Resources

GLAR Ombudsman Oversight Committee Guidelines

Cases to be handled:

- Uncomplicated
- Communication based
- Non or small monetary amount
- May be solved by providing simple education
- May be solved by providing basic knowledge

Cases to be avoided:

- Apparent violations of law
- Those already referred to legal counsel, DLARA, the GLAR Dispute Resolution System, arbitration, etc.
- Large monetary amounts
- Complex cases
- Cases involving more than two parties
- Disputes between Buyer and Seller
- Blatantly unreasonable or uncooperative parties

Red Flags:

- Unreasonable parties
- Parties seeking sympathetic assistance
- “Fishing expeditions”
- Overly excited or irritable complainant
- Party is unclear about the facts and/or issues
- Party exaggerates or misrepresents
- Party threatens retribution or violence

Goal:

- Defuse situation and emotions
- Clarify the issues
- Deal with the facts
- Deal with only essential elements of the dispute
- Avoid irrelevant, inflammatory elements
- RESOLVE the dispute in such a manner that both parties are able to view the resolution as “helpful.”

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**GREATER LANSING ASSOCIATION OF REALTORS® OMBUDSMAN
WORKSHEET/LOG**

Name of Complainant: _____

Relationship to Transaction:

(i.e., buyer, seller, landlord, tenant, broker, agent)

Address: _____

Phone #: _____ Fax #: _____

Name of potential respondent: _____

Address: _____

Phone #: _____ Fax #: _____

Name of potential respondent's Broker: _____

Name of potential respondent's Principal Broker (if applicable): _____

Phone #: _____ Fax #: _____

I am an ombudsman for the Greater Lansing Association of REALTORS®. As an ombudsman I cannot make a decision in your case but I can provide you with some assistance.

I understand that you have concerns regarding one of our members. If you would like to share your concerns with me, I might be able to suggest some possible avenues or options you may pursue to reach a resolution for your situation. Everything you tell me will be held in strict confidence, unless you authorize me to disclose to the other side.

Date contacted: _____

Complainant's concerns: _____

Ascertain complainant's desired outcome (for example, is the complainant seeking revocation of license, sanctions, apology, money, etc.) and if they desire direct contact by the respondent.

Contacting a REALTOR® Respondent:

The Principal or Managing Broker will be the first contact if the respondent is not a Principal Broker, in order to explain the nature of your call and to determine the best way to proceed. If REALTOR® respondent is called, explain who you are and communicate the complainant's concerns and desired outcome. Determine if REALTOR® respondent is willing to call complainant to try to resolve. If so, give them their name and phone number.

Date contacted: _____

REALTOR® respondent WILL contact complainant.

REALTOR® respondent WILL NOT contact complainant.

Contact complainant to communicate REALTOR® respondent's response.

Date contacted: _____

If REALTOR® respondent is to contact complainant, follow up with complainant in approximately one week to determine if matter has been resolved.

Date contacted: _____



**GREATER LANSING ASSOCIATION OF REALTORS®
OMBUDSMAN REPORT**

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Parties:

Complainant: _____

Respondent: _____

- No resolution was reached through ombudsman services; please send complainant an ethics complaint packet.
- No resolution was reached and no further action is required.
- Complaint has been resolved to the complainant's satisfaction.

General category(s) complaint was about:

- ___ Repairs
- ___ Would not present contract
- ___ No copies of documents
- ___ Lack of communication
- ___ Advertising
- ___ Inspection reports
- ___ Affiliation disclosures
- ___ Earnest money
- ___ Property Condition
- ___ Contract
- ___ Agency
- ___ Procuring cause
- ___ Discrimination
- ___ Unauthorized practice of law
- ___ Inter-Office dispute
- ___ Other (please specify) _____

Please destroy all records including the ombudsman worksheet log received from GLAR. (This action ensures that the parties are afforded confidentiality.)