

Outer Banks Association of REALTORS®

Policy Manual, Section B: Professional Standards

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Outer Banks Association of REALTORS®

Policy Manual, Section B: Professional Standards

The purpose of this section of the Policy Manual is to supplement the National Association of REALTORS® *Code of Ethics and Arbitration Manual*. The Manual allows for the Outer Banks Association of REALTORS® (OBAR) to adapt specified provisions to conform to local policy and comply with state law. This section identifies those provisions and the options or policy adopted by the Board of Directors. All other provisions of the Manual will be followed as written.

1 General

1.1 General Provisions

- 1.1.1 “Association” means Outer Banks Association of REALTORS®. As used herein the term “association” refers to board and Association of REALTORS®. (07/2018)
- 1.1.2 The NAR Code of Ethics and Arbitration Manual is adopted verbatim, inclusive of the adoption of North Carolina Association of REALTORS® amendments.
- 1.1.3 Complete Arbitration files will be retained for three years after all allowances for Appeal are exhausted and/or the Award is paid.
- 1.1.4 Ethics decisions and files will be retained after all Appeal periods are past.
- 1.1.5 The Professional Standards Administrator for the Association shall be the Executive Officer, who shall be certified by the National Association of REALTORS® according to its requirements.
- 1.1.6 The names of individuals found in violation of the Code of Ethics or other membership duties shall not be published.
- 1.1.7 Copies of the Arbitration and Ethics panel decisions disseminated pursuant to these policies shall be complete and unedited, except that the names of the parties shall not be included. (4/2014)

1.2 Multi Association Hearings

- 1.2.1 Expenses related to the administration of a multi-Association Hearing shall be shared by the signatory Associations.
- 1.2.2 If another Association provides a Hearing Panel, court stenographers and/or Professional Standard Administrator for an OBAR case heard at the other Association site, the hosting Association shall be reimbursed for the stenographer fees.
- 1.2.3 Panelists from other Associations required to travel to OBAR to complete a Panel shall be reimbursed for mileage by OBAR.

1.3 Use of Panels in place of the Board of Directors.

- 1.3.1 Any matter brought before the Board of Directors may be considered by a panel of the members of the Board of Directors appointed by the President for that purpose. Five (5) members of the Board of Directors shall constitute such a panel, which shall act on behalf of the Board of Directors. The decision of the panel shall be final and binding and shall not be subject to further review by the Board of Directors. (9/2007)
- 1.3.2 In appointing panel members, the following recommended criteria will be considered:
 - number of years as a REALTOR®
 - number of years in the real estate business
 - primary and secondary fields of real estate endeavor/expertise
 - participation in post-licensing real estate education
 - training in the Code of Ethics
 - position in firm (principal, non-principal)
 - size of firm
 - common sense

- open-mindedness
- familiarity with state(s) laws and regulations
- receptiveness to instruction/training
- other relevant professional or procedural training

2 Part One—Ethics General Provisions

2.1 Qualifications for Tribunal (Section 2)

Promptly upon their selection, each member of a tribunal (except any member of the Grievance Committee) shall sign a statement (1) that the member is not disqualified for any of the foregoing reasons, and (2) that he/she shall disclose to the parties and the tribunal any other known facts that a reasonable person would consider likely to affect the impartiality of the tribunal member (Form #E-10, Certificate of Qualification, Part Six of the NAR Manual). A tribunal member has a continuing obligation to disclose to the parties and the tribunal any facts that he/she learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the tribunal member.

2.2 Conduct of Hearing (Section 6)

The Board instructs that Hearing Panels shall tape record ethics and arbitration hearings. The Board prohibits parties from recording hearings, appeals or limited procedural review proceedings. A party may not have a court reporter or recorder present at the hearing, and may not tape record the proceeding unless the Board utilizes a court reporter in lieu of tape recording, in which case a party may tape record the proceeding.

2.3 Cell Phones

Cell phones belonging to the claimant, the respondent, or witnesses will not be allowed in the hearing room during the conduct of the tribunal.

3 Part Two—Membership Duties and Their Enforcement

3.1 Nature of Discipline (Section 14)

In addition to any discipline imposed, the Board imposes an administrative processing fee of \$500 against respondents found in violation of the Code of Ethics or other membership duties.

3.2 Selection and Appointment of the Grievance Committee (Section 15)

There will be a standing Committee of at least twelve (12) OBAR Members, in good standing, all of whom shall be REALTOR® members. The members of the committee shall be appointed by the Committee Chair for staggered three (3) year terms. The President appoints the Chair and the President-Elect appoints the Vice-Chair. At the completion of a member's term or Chairship, the member may be appointed to the Professional Standards Committee for a term of three years, subject to completion of mandatory training provided by OBAR or NCAR. All Committee Members must attend annual local, NCAR or NAR Professional Standards Training each year by the end of the 2nd quarter of the year to be eligible to serve on the committee. Each year the Board reviews the membership of both the Grievance and Professional Standards Committee and may at its discretion remove members from the committees. Any certified Professional Standards trainer is exempt from this requirement. (9/2007, 4/2013)

3.2.1 The Grievance Committee will be divided into two panels of six (6) persons each. Each panel will have a Chair designated by the President. Each panel shall have a designated day each month on which to meet. Panels will be required to meet only when a complaint has been filed and all preliminary steps in the complaint process have been met.

3.2.2 All parties will be notified of Grievance Committee decisions within five working days of the decision. The notice shall include information regarding Appeal if the complaint was dismissed. Email notification is permitted to meet the five-day rule. The letter of notification will follow as soon thereafter as practicable.

3.3 Selection and Appointment of the Professional Standards Committee (Section 16)

There shall be a Professional Standards Committee of at least twenty one (21) OBAR Members, in good standing, of whom at least a majority shall be REALTORS® appointed by the Committee Chair. Members of the Professional Standards Committee shall be selected to serve on Hearing Panels as required to hear matters of alleged unethical conduct by OBAR Members or to provide arbitration as requested. The President shall annually appoint the Chair and the President-Elect shall annually appoint the Vice Chair of the committee. All Committee Members must attend annual local, NCAR or NAR Professional Standards Training each year by the end of the 2nd quarter of the year to be eligible to serve on a Committee. Any certified Professional Standards trainer is exempt from this requirement. (9/2007, 4/2013)

In selecting members of the Professional Standards Committee, the following recommended criteria will be considered:

- number of years as a REALTOR®
- number of years in the real estate business
- primary and secondary fields of real estate endeavor/expertise
- participation in post-licensing real estate education
- training in the Code of Ethics
- position in firm (principal, non-principal)
- size of firm
- common sense
- open-mindedness
- familiarity with state(s) laws and regulations
- receptiveness to instruction/training
- other relevant professional or procedural training

4 Part Three – The Grievance Committee in Ethics Proceedings

If the Grievance Committee dismisses the complaint, the complainant may appeal the dismissal to a panel of the Board of Directors within twenty (20) days from receipt of the dismissal notice using Form #E-22, Appeal of Grievance Committee Dismissal of Ethics Complaint; however, no additional information may be added or attached to the form. If the Grievance Committee deletes an Article or Articles from an ethics complaint, the complainant may also appeal to a panel of the Board of Directors using Form #E-22, Appeal of Grievance Committee Dismissal of Ethics Complaint; however, no additional information may be added or attached to the form. The panel shall consider only the information and documents considered by the Grievance Committee with the appeal and render its decision, which shall be final. The parties are not present at the meeting at which the appeal is considered.

5 Part Four—The Ethics Hearing

5.1 Initiating an Ethics Hearing (Section 20)

5.1.1 All complaints will be sent to the Grievance Committee as submitted by the complainant unless a complaint is deemed incomplete by the Chair in consultation with the Secretary. The respondent will not be notified prior to a complaint being reviewed by the Committee. If the Complainant indicates that civil litigation is pending or an investigation by an agency is underway, the Professional Standards Administrator will request verification of the proceedings, such as a docket or case number, to clarify whether a formal process has actually begun.

5.1.2 The President may appoint a panel of Directors acting on behalf of the Board of Directors to hear the appeal. Any appeal panel so appointed must be composed of at least five (5) members of the Board of Directors. The decision of the appeal panel is final and binding and is not subject to further review by the Board of Directors.

5.2 Ethics Hearing (Section 21)

- 5.2.1 The complaint shall be provided to Hearing panel members prior to the hearing. Such time period shall be five (5) calendar days and shall be adhered to for all hearings.
- 5.2.2 Alternates may serve with a Hearing Panel to step in should a Panel member be unable to complete his obligation to the Panel. The Alternate may be present for the entire hearing. The Alternate may be present for but not participate in the Executive Session.
- 5.2.3 The Broker-in-Charge/REALTOR® Principal of the firm of the Respondent shall be copied on all correspondence even if not named as a Respondent.
- 5.2.4 Requests for continuances or postponements of the Hearing must be made in writing to the Professional Standards Administrator and must include a reason for the request, unless urgent circumstances arise that justify a continuance or postponement and that could not have reasonably been placed in writing. The Administrator will treat all parties fairly and use good judgment in granting such requests. If challenged, the Administrator will confer with legal counsel for guidance.
- 5.2.5 Each Panel member will sign a Certificate of Qualification prior to the Hearing.
- 5.2.6 The Administrator has ten (10) days, after review by Association Legal Counsel, to mail Ethics decisions to both parties with the Request for Appeal Form, Form E-13.

5.3 Decision of Hearing Panel (Section 22)

- 5.3.1 Any member of the Hearing Panel not voting with the majority may dissent from all or any portion of the findings or decision and may file a dissent in writing with the Secretary for consideration by the Board at the same time the decision is considered. In the event the respondent is found in violation, the Hearing Panel may, at its discretion, consider all records of previous violations and sanctions imposed, whether by the current or by any other Board or Association, in the member's file in determining discipline. (4/2014)
- 5.3.2 Ethics sanctions (fines) shall be commensurate with the offense, not to exceed \$15,000.00. Non-payment of sanctions shall be considered a violation of membership duty. (12/2013)

5.4 Action of the Board of Directors (Section 23)

- 5.4.1 Within twenty (20) days after the Hearing Panel's final decision has been rendered, if no petition for rehearing has been filed, or within twenty (20) days after the Hearing Panel's final decision subsequent to the rehearing, or within ten (10) days after denial of a petition for rehearing, the complainant or the respondent may file an appeal with the Secretary. Appeal is provided only from decisions rendered in hearings of alleged unethical conduct, and not from the decision of an arbitration panel. If no such appeal is filed, the Board must adopt the Hearing Panel's recommendation and issue its order accordingly, except that the Board, if concerned with a possible procedural deficiency, may refer the decision back to the Professional Standards Committee for a new hearing and recommendation by a different Hearing Panel.
- 5.4.2 All appeals must be in writing and must be accompanied by a deposit with the Association the sum of \$500.00.
- 5.4.3 Appeals to the Board may be heard by a panel of the Board appointed by the President for that purpose. Five (5) Board members or a quorum of the Board, whichever is less, shall constitute such an appeal panel, which shall act on behalf of the Board. The decision of the appeal panel shall be final and binding and shall not be subject to further review by the Board.

6 Part Seven – Arbitration General Provision

6.1 Qualifications for Tribunal

- 6.1.1 Promptly upon their selection, each member of a tribunal (except any member of the Grievance Committee) shall sign a statement (1) that the member is not disqualified for any of the foregoing reasons, and (2) that he/she shall disclose to the parties and the tribunal any other known facts that a reasonable person would consider likely to affect the impartiality of the tribunal member (Form #A-11, Certificate of Qualification, Part Thirteen of this Manual). A tribunal member has a continuing obligation

to disclose to the parties and the tribunal any facts that he/she learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the tribunal member.

6.2 Conduct of Hearing (Section 31)

- 6.2.1 At any ethics or arbitration hearing, every party has the right to present any witnesses, to submit any evidence pertinent to the case, and to cross-examine witnesses. Witnesses giving oral testimony shall be sworn in by the Chair. Before permitting testimony relating to the character or general reputation of anyone, the tribunal shall satisfy itself that the testimony has a direct bearing on the case at issue. Tapes produced by a Hearing Panel shall be maintained in the confidential professional standards files until a date when any sanction imposed by the Board has been completed. Arbitration hearings must be recorded. A party may not have a court reporter or recorder present at the hearing, and may not tape record the proceeding unless the Board utilizes a court reporter in lieu of tape recording, in which case a party may tape record the proceeding.

7 Part Ten – Arbitration and Dispute

7.1 Duty and Privilege to Arbitrate (Section 44)

- 7.1.1 Where mandatory arbitration is consistent with applicable state law, the Code of Ethics, Article 17, requires only that disputes arising out of the real estate business between REALTORS® “. . . associated with different firms . . .” be arbitrated. In the event the respondent fails or refuses to sign the Response and Agreement Form (Part Thirteen, Form#A-4), fails or refuses to make the required deposit, or fails or refuses to take part in the arbitration hearing, the arbitration hearing may be scheduled and conducted in the absence of the respondent (Option #3) No arbitration shall be initiated by the Grievance Committee and no arbitration shall be undertaken by a Hearing Panel unless it determines the dispute is properly arbitrable in accordance with the provisions of Part Ten, Section 45 of this Manual.

7.2 Board’s Right to Decline Arbitration (Section 45)

- 7.2.1 The President may appoint a panel of Board members, acting on behalf of the Board, to hear the appeal. Any appeal panel so appointed must be composed of at least five (5) Board members The decision of the appeal panel is final and not subject to further review by the Board.

7.3 Manner of Invoking Arbitration (Section 47)

- 7.3.1 Any person authorized by the provisions of Part Ten, Section 44 of this Manual may request arbitration by the Board. A request for arbitration shall be in writing (Form #A-1 or #A-2, Request and Agreement to Arbitrate, Part Thirteen, or any other appropriate form permitted by law), must be signed by the complainant, must indicate the nature of the dispute and the amount in dispute, and must be accompanied by the required deposit of \$500.00. 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 arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later. Boards may provide mediation even if arbitration has not been requested provided the mediation is requested 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 arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later.
- 7.3.2 The Secretary shall promptly refer the request for arbitration to the Chair of the Grievance Committee for determination by the Committee within thirty (30) days as to whether the matter is subject to arbitration.
- 7.3.3 If the Grievance Committee finds the matter properly subject to arbitration, the Chair shall refer it back to the Secretary with instructions to arrange a hearing, notifying the parties of the Grievance Committee’s decision, informing the parties as to whether the arbitration is mandatory or voluntary and informing the parties of their ability to challenge the classification (see Section 45[d], Board’s Right to Decline Arbitration).
- 7.3.4 The Professional Standards Committee Chair shall select the Chair of the Hearing Panel, who shall possess the powers of the neutral arbitrator within the meaning of the North Carolina Uniform

Arbitration Act Revised arbitration statutes.

7.4 Submission to Arbitration (Section 48)

7.4.1 Submission of a dispute to arbitration by the Board shall consist of signing and delivering to the Secretary either a request or response form (Form #A-1 or #A-2, Request and Agreement to Arbitrate, or Form #A-4, Response and Agreement to Arbitrate) or any other similar writing permitted by law and making the appropriate deposit of \$500.00. Agreements to arbitrate are irrevocable except as otherwise provided under state law. Where a party (ies) from the same firm is involved in more than one related request for arbitration and the claims will be consolidated and resolved in a single hearing, no more than one deposit or filing fee may be required of that party (ies). When a REALTOR® requests arbitration to determine which of multiple respondents is entitled to disputed funds, or where a party makes no claim to the disputed funds, that party may not be assessed an arbitration filing fee.

7.4.2 Where the amount requested by the party initiating the arbitration has been awarded; and where the respondent has failed to make the specified deposit, it shall be the responsibility of the respondent to pay an amount equal to the deposit to the Board within ten (10) days of receipt of notice from the Board requesting payment. Where the respondent has not made the deposit and a partial award is made, the respondent shall pay to the Board an amount to be determined by the Hearing Panel that will not exceed the deposit originally made by the complainant. Failure to make such payment on a timely basis, upon receipt of a request from the Board, shall be treated in the manner specified in the Board's bylaws for failure to satisfy financial obligations to the Board.

7.5 Preliminary Judicial Determination Prior to Imposition of Discipline (Section 50)

7.5.1 If the Board has reason to believe that the imposition of a proposed sanction will become the basis of litigation and a claim for damages, it may specify that the discipline shall become effective upon entry of the final judgment of a court of competent jurisdiction in a suit by the Board for declaratory relief declaring that the discipline proposed violates no rights of the member.

7.6 Arbitration Hearing (Section 51)

The Secretary shall inform the parties of the date, time, and place of the hearing established by the arbitrators (or the Chair of the Professional Standards Committee) (Form #A-9, Official Notice of Hearing, Part Thirteen).*

(*Form #A-10, Outline of Procedure for Arbitration Hearing, Part Thirteen, should accompany the notice of the hearing or be otherwise provided to the parties prior to the hearing.)

The arbitration request and response, if any, shall be provided to Hearing Panel members prior to the hearing. Such time period shall be five (5) days and shall be adhered to for all hearings. Board's conducting arbitration must also provide all parties and panel members with the Arbitration Guidelines prior to commencement of any arbitration hearing. The parties shall be given at least twenty-one (21) days' prior notice of the hearing, but appearance at a hearing without objection by a party will constitute a waiver of any defective notice of the hearing. The arbitrators may recess the hearing from time to time as necessary and, on request of a party or upon the arbitrator's own motion, may postpone the hearing for not more than thirty (30) days, unless otherwise agreed to by the parties.

7.6.1 In case of an arbitration request involving issues related to areas of the real estate business such as commercial, investment, industrial, etc., where there is an insufficient number of qualified practitioners on the Board's Professional Standards Committee to provide a representative peer panel, the Board President shall appoint other Board Members qualified in that field to serve as panel members. If the Board President is unable to identify a sufficient number of qualified members to serve on a panel, the parties shall be released from their obligation to arbitrate.

7.7 The Award (Section 53)

7.7.1 If an award has been rendered, the nonprevailing party must, within ten (10) days following receipt of the award deposit the funds with the Secretary to be held in a special OBAR escrow account maintained for this purpose. Failure to satisfy the award or to deposit the funds with OBAR within this time period

may be considered a violation of a membership duty and may subject the member to disciplinary action at the discretion of the Board.

7.7.2 The nonprevailing party shall have 20 days following receipt of the Award, Form A-12, to request Procedural Review of the Arbitration Hearing or to notify the Secretary that a legal challenge to the validity of the Award has been initiated.

7.7.3 After the award has been served upon each of the parties, they shall have twenty (20) days to make a motion for the hearing panel to modify or correct the award on any of the following grounds:

7.7.3.1 There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;

7.7.3.2 The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted;

7.7.3.3 Because the arbitrator had not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

7.7.3.4 To clarify the award.

A party to the arbitration proceeding shall give notice of any objection to the motion within 10 days after receipt of the notice. The decision of the hearing panel with respect to any motion to modify or correct the award shall be final.

7.7.4 If the request for Procedural Review of the Arbitration is received within 20 days, the funds deposited with the Association shall be retained in the Association's escrow account until the review is completed. If the Award is confirmed by the Board, following the conduct of the limited Procedural Review, the nonprevailing party shall have an additional 15 days to institute an appropriate legal challenge to the validity of the Arbitration Award. In such case, the nonprevailing party shall cause legal counsel to advise the Association in writing that a suit challenging the validity of the Arbitration Award has been filed during this additional 15 day period. After 15 days, if written notice of a suit has not been received, the fund shall be released from escrow and paid to the prevailing party. If written notification is received during the 15 day period, the funds will remain in escrow pending determination of the matter by a court of competent jurisdiction.

7.8 Costs of Arbitration (Section 54)

7.8.1 If at any time prior to the making of an award by an arbitration hearing panel, the parties settle the issue between them in writing, the Secretary shall, upon receipt of a copy of such written settlement that has been signed by the parties, refund the deposit of the parties in full.

7.8.2 If an award is made by an arbitration hearing panel, the deposit of the prevailing party shall be refunded in full.

7.8.3 The deposits of the parties shall be used by the Secretary to cover the costs of arbitration as it may be required. Any portion not used specifically to cover the costs of the arbitration shall go into the general operating funds of OBAR.

7.9 Request for Procedural Review by the Board (Section 55)

7.9.1 A written request for procedural review of the arbitration hearing procedures must be filed with the Secretary within twenty (20) days after the award has been served on the parties and be accompanied by a deposit in the sum of \$500.00.

7.9.2 The request for procedural review may be heard by a panel of the Board appointed by the President for that purpose. Five (5) Board members shall constitute such panel, which shall act on behalf of the Board. The decision of the panel shall be final and binding and shall not be subject to further review by the Board.

7.9.3 After all procedural remedies provided for in the Board's procedures have been exhausted, a member is not precluded from asserting any legal rights to which he is entitled; provided this is not intended to limit any right a member may have under the Revised Uniform Arbitration Act ("RUAA") to make a motion to a court during the arbitration proceeding to the extent that such right has not been waived or

varied in accordance with the procedures set forth in this Manual. Assertion of such legal rights in the courts does not violate Article 17 of the Code of Ethics. The exercise of such legal rights by a member would result in judicial review similar to that set forth in Part Ten, Section 56 of this Manual. Section 56 recommends that, in instances where a member fails to comply with an award, the award recipient seek judicial enforcement, which results in judicial review and, absent any showing of deprivation of due process, the judicial review will generally affirm the award rendered through the arbitration process and will enable the recipient to have it enforced.

7.10 Enforcement (Section 56)

The judgment of any competent court of record in North Carolina, state or federal, may be rendered upon the award. If a member fails to comply with an award, the recipient to whom the award has been rendered by the arbitration panel shall be advised by the Board to seek judicial enforcement and to request reimbursement of legal fees incurred in seeking enforcement.

8 Initiation of Mediation Proceedings (Appendix V to Part Ten)

Each request for arbitration should be referred to the Board's Grievance Committee for consideration as to whether the matter is appropriate for arbitration. In the event the Grievance Committee determines that a matter is properly arbitrable, that information will be provided to the Professional Standards Administrator (Executive Officer), who will then notify both the complainant and respondent that the matter has been deemed arbitrable and that the Association's mediation procedures are required prior to entering arbitration. (10/2006, 4/2013)

9 Citation Policy (effective January 1, 2016)

9.1 General Provisions

- 9.1.1 Information about the Citation Program, including the Citation Schedule, will be provided as part of the information sent to potential complainants considering filing ethics complaints with the association.
- 9.1.2 Citation Panels comprised of three (3) individuals are appointed as needed by the Executive Officer to review complaints to determine eligibility for the citation program and the appropriate citations. The Citation Panel will be a subset of the association's Professional Standards Committee, and include individual with a high level of experience in hearing professional standards cases.
- 9.1.3 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 within one hundred eighty (180) days after the conclusion of the transaction or event, whichever is later.
- 9.1.4 This OBAR Citation Policy shall conform to the limitations and guidelines for Citation Policies as established by the NAR Board of Directors.

9.2 Initial Review by Grievance Committee and Citation Panel

- 9.2.1 When a Grievance Committee receives a written ethics complaint, it will review the complaint consistent with Sections 19 and 20 of the current NAR *Code of Ethics and Arbitration Manual*. The Grievance Committee may add or delete articles or respondents at this stage in the proceedings.
- 9.2.2 If the Grievance Committee determines that the complaint should be forwarded for a hearing, the Grievance Committee will first forward the complaint to the Association's Citation Panel to determine if it includes allegations covered by the Citation Schedule, i.e., if it is a "citable offense".
 - 9.2.2.1 If the complaint does not include alleged violations included in the Citation Schedule, or it includes some covered by the Citation Schedule and some that are not, the complaint shall be referred to the Professional Standards Committee for hearing consistent with the policies and procedures set forth in the Code of Ethics and Arbitration Manual for ethics hearings.

9.2.2.2 If the complaint includes only allegations of violations included in the Citation Schedule, the Citation Panel will issue a citation and impose discipline consistent with the association's Citation Schedule. In the event the members of the Citation Panel determine the conduct described in the complaint is sufficiently egregious to warrant a hearing rather than a citation, the complaint shall be referred to the Professional Standards Committee for hearing consistent with the policies and procedures set forth in the Code of Ethics and Arbitration Manual for ethics hearings.

9.3 Issuance of Citations

9.3.1 Citations will be sent to respondents. A copy of the citation shall also be sent to the REALTOR® principal of respondents' office. If the respondent changes firms before or after the complaint is filed but before the citation is issued, both the former and current REALTOR® principal will receive a copy of the citation.

9.3.1.1 Staff will prepare a written summary of the complaint and the summary will be included with the citation to give the respondent sufficient information to understand the basis of the citation.

9.3.2 The respondent will have twenty (20) days from receipt of the citation to request a full due process hearing on the complaint.

9.3.2.1 If the respondent does not reply within ten (10) days of receiving the citation, a notice shall be issued to the respondent reminding the respondent of the deadline for requesting a hearing.

9.3.2.2 If the respondent accepts the citation, or if the respondent does not request a hearing within twenty (20) days of receipt of the citation, this shall be deemed to be a final resolution of the complaint, which shall not be appealable or subject to any further review.

9.3.2.3 If the respondent accepts the citation, or if the respondent does not request a hearing within twenty (20) days of receipt of the citation, payment must be received by the association as a Financial Obligation in accordance with Board Bylaws and Policy.

9.3.2.4 The case will be deemed to be closed upon receipt of payment, and notice will be provided to the complainant that a citation has been issued and paid.

9.3.2.5 Failure to pay the citation as a financial obligation in accordance with bylaws will result in the automatic suspension of membership until the citation is paid.

9.3.3 If the respondent requests a hearing within the time specified, the complaint shall be referred for hearing. The complainant who initially filed the complaint shall be given the option to proceed as the complainant for the purposes of the hearing, and will be afforded all due process rights provided for in the *Code of Ethics and Arbitration Manual*. Should the complainant be a member of the public who refuses or is unable to participate in the hearing, or should the complainant be a REALTOR® member who refuses or is unable to participate in the hearing, the provisions of Section 21(f)(3) in the NAR *Code of Ethics and Arbitration Manual* shall apply.

9.4 Limitations

9.4.1 Any REALTOR® is limited in the number and type of citations that he/she may receive, according to the following rules:

9.4.1.1 No more than two (2) citations will be issued to a member within a consecutive twelve (12) month period, starting on the date the first complaint was filed, at the same association.

9.4.1.2 No more than three (3) citations will be issued to a member within a consecutive thirty-six (36) month period, starting on the date the first complaint was filed, at the same association.

9.4.1.3 No additional citations are permitted where the cumulative fine for the citations issued would be more than \$5,000 in any three (3) year period at the same association.

9.4.2 As OBAR uses an escalating fine schedule for repeat citations, the citation panel may only consider the past citations for the particular conduct alleged in the complaint.

9.4.3 The fact that a respondent has previously been issued a citation for any violation – whether or not it was paid – shall not be admissible in any ethics or arbitration hearing, including a hearing to consider a complaint where the respondent rejected a citation and requested a hearing. A hearing panel may consider citations previously issued to the respondent for the purpose of determining appropriate

discipline as provided below.

- 9.4.4 Citations will not be considered in any publication of violations should such rules be adopted by the association.
- 9.4.5 Where a hearing panel finds a violation of the Code of Ethics after a hearing, it may consider past citations in determining an appropriate sanction only if the citation was issued for the same violation at issue in the hearing. By way of example, if a citation was issued for failure to disclose a dual or variable rate commission under Standard of Practice 3-4, that citation could not be considered if a hearing panel later found a violation of Article 3 on some other grounds. Hearing panels will not be informed of past citations for other violations.
- 9.4.6 Association staff will track the number of citations issued, the number of citations paid, and the violations for which citations were issued. This information may be provided in the aggregate to the Board of Directors, but will not include details about the complaints, nor identify the complainants or respondents.

9.5 Escalating Fine Schedule

Level	1 st Offense	2 nd Offense	3 rd Offense
1	\$100 <u>OR</u> Ethics Training*	\$200	\$400
2	\$250	\$500	\$1,000
3	\$500 <u>AND</u> Ethics Training*	\$1,000	\$2,000

*Ethics Training includes completion of the NAR Online Ethics Course or other course as defined by OBAR. In the case of Level 1 1st Offense, the respondent may choose between the \$100 fine or Ethics Training.

Appendix: OBAR Citation Schedule of Fines

Article 1	Fine
Failure to fully disclose and obtain consent from both parties when representing both the seller/landlord and buyer/tenant in the same transaction (SoP 1-5)	2
Failure to submit offers and counter-offers objectively and as quickly as possible (SoP 1-6)	1
Accessing or using, or allowing others to access or use, a property managed or listed on terms other than those authorized by the owner or seller (SoP 1-16)	3
Article 3	
Failure to communicate a change in compensation for cooperative services prior to the time that REALTOR® submits an offer to purchase/lease the property (SoP 3-2)	1
As a listing broker, attempting to unilaterally modify the offered compensation with respect to a cooperative transaction after a REALTOR® has submitted an offer to purchase or lease that property (SoP 3-2)	3
Failing to disclose existence of dual or variable rate commission arrangements (SoP 3-4)	2
Failure to disclose to cooperating brokers differential that would result in dual or variable rate commission arrangement if sale/lease results through efforts of seller/landlord (SoP 3-4)	2
Failing to disclose existence of accepted offers, including offers with unresolved contingencies, to cooperating brokers (SoP 3-6)	3
Misrepresenting the availability of access to show or inspect a listed property (SoP 3-8)	1
Article 4 - Failing to disclose REALTOR®'s ownership or other interest in writing to the purchaser or their representative (second sentence)	1
Article 5 - Providing professional services without disclosing REALTOR®'s present interest in property (Article 5, limited to present interest, not contemplated)	2
Article 6 - Any violation of Article 6	2
Article 12	
Failing to present a true picture in real estate communications and advertising	1
Failing to disclose status as real estate professional in advertising and other representations	1
Failure to provide all terms governing availability of a "free" product or service in an advertisement or other representation (SoP 12-1)	1
Failure to disclose potential to obtain a benefit from third party when REALTOR® represents their services as "free" or without cost (SoP 12-2)	2
Falsely claiming to have "sold" property (SoP 12-7)	1
Failure to take corrective action when it becomes apparent that information on a REALTOR®'s website is no longer current or accurate (SoP 12-8)	1
Misleading consumers through deceptive framing, manipulating content, deceptively diverting internet traffic, or presenting other's content without attribution or permission (SoP 12-10)	3
Registering or using of deceptive URL or domain name (SoP 12-12)	3

Appendix: Agreement Between Outer Banks and Albemarle Area Boards of REALTORS® to Establish Multi-Board Professional Standards Enforcement Procedures

(1) Authority

The authority for the establishment and utilization of multi-Board (or regional) professional standards enforcement procedures shall be established by this Agreement approved by the Boards of Directors of Albemarle Area and Outer Banks Associations of REALTORS® and confirmed by approval of the general membership at a duly called meeting with notice as required by the Boards' bylaws.

(2) Geographic Area

The geographic area served by this Agreement shall be the area of the combined territorial jurisdiction assigned by the National Association of Realtors® to the Boards which are signatories to this Agreement.

(3) Purpose

The purpose of this Agreement is to create multi-Board (or regional) professional standards enforcement procedures providing for the appointment of Mediation Officers and the establishment of a joint Grievance Committee, Professional Standards Committee, and an Appeal Panel comprising members from each signatory Board for enforcement of the Code of Ethics, including the mediation of disputes and the conduct of arbitration hearings, involving members of the signatory Boards to ensure impartial and unbiased Hearing Panels for the conduct of hearings on a basis designed to provide this service and meet the responsibilities of the signatory Boards on an efficient and effective basis to better serve their members.

(4) Composition of Tribunals

(a) This Agreement authorizes the establishment of a multi-Board (or regional) Grievance Committee. The Grievance Committee shall be composed of at least one (1) member in good standing of each signatory Board.

Members of the Grievance Committee from each signatory Board shall be appointed by the Presidents of the respective Boards, subject to confirmation by the respective Boards of Directors, provided that the Presidents shall have the power to appoint, on a timely basis, and without necessity of confirmation by the Boards of Directors, a substitute member to the Committee for any member from their respective Boards who may be unable to serve for any reason. The Grievance Committee shall select its own Chairperson (or, alternatively, the Grievance Committee Chairperson shall be selected from members of the Grievance Committee by a majority vote of the Presidents of the Boards which are signatories to this Agreement).

NOTE: There must be at least three (3) individuals serving on the multi-Board Grievance Committee, and it is desirable that the number be greater to provide an adequate number of members to handle the anticipated case load without undue stress.

(b) This Agreement also authorizes the establishment of a multi-Board (or regional) Professional Standards Committee. The Professional Standards Committee shall be composed of at least two (2) members in good standing from each signatory Board.

The members of the Professional Standards Committee shall be appointed by the Presidents of the respective Boards, subject to confirmation by the respective Boards of Directors, provided that the Presidents shall have the power to appoint, on a timely basis, and without necessity of confirmation by the Boards of Directors, a substitute member to the Committee for any member from their respective Boards who may be disqualified for any valid reason from hearing a particular matter. The Professional Standards Committee shall select its own Chairperson (or, alternatively, the Chairperson shall be selected from members of the Professional Standards Committee by a majority vote of the Presidents of the Boards which are signatories to this Agreement).

NOTE: There shall be at least nine (9) members of the Professional Standards Committee, and more, if feasible, to handle the anticipated case load without undue stress.

(c) Members of the Grievance Committee and the Professional Standards Committee shall be appointed initially in terms of one (1), two (2), and three (3) years (one-third for each term). New appointments shall be made for three (3) year terms as each term expires. Members of the committees shall be eligible for reappointment.

(d) This Agreement also authorizes the appointment of a panel of Mediation Officers to include at least one (1) such Mediation Officer from each signatory Board. Although utilization of the service of mediation shall be voluntary, unless REALTORS® (principals) are required by the Board which is a signatory to this agreement to mediate otherwise arbitrable disputes pursuant to Article 17,* and although the process is not defined as a tribunal, all parties to any requested arbitration shall be provided the opportunity to mediate a dispute arising out of a real estate transaction and their relationship as REALTORS® prior to the arbitration of the dispute. (*Revised 11/11*)

(5) Operation

(a) Professional standards hearings and the organization and procedures incident thereto shall be governed by the Code of Ethics and Arbitration Manual of the National Association of REALTORS® as amended from time to time, and as adapted to conform to the provisions of applicable state law, and which is hereby agreed shall be considered as adopted and incorporated into the bylaws of each Board signatory to this Agreement.

NOTE: Any matters of local Board option should be considered and agreed on in advance as necessary and the signatory Boards should also clarify which Board will be responsible for administering the process. The following is an example of such clarification:

The respondent's local Board, or the Board through which the respondent gains access to and use of the MLS, will be responsible for administering the procedures and all optional provisions (see pages i and ii of the Code of Ethics and Arbitration Manual) of that Board will control.

- (b) Appeals of the Grievance Committee's dismissal of an ethics complaint or arbitration request (or challenges to the classification of arbitration requests) shall be heard by those members of the Committee who did not serve on the original tribunal. If panels of the Grievance Committee are not used, any appeal of the Grievance Committee's dismissal (or challenge to an arbitration request classification) shall be heard by a tribunal of five (5) members selected from the Boards of Directors of the signatory Boards to be appointed by the Boards' Presidents. (Adopted 11/96)

Appeal to an ethics determination rendered by the multi-Board (or regional) Professional Standards Committee shall be heard by those members of the Committee who did not constitute the original Hearing Panel. (For this reason, there should be an adequate number of members appointed to the Committee to provide an Appeal Panel of at least five [5] members.)

- (c) Appeal is not provided from the decision of an arbitration panel established under this Agreement, except with respect to a claim by a party alleging deprivation of due process. Such a claim shall be heard by an Appeal Panel as described in the second paragraph of (b) above.
- (d) In matters of alleged unethical conduct, any determination rendered by a Hearing Panel of the multi-Board (or regional) Professional Standards Committee that has not been appealed, or as finally determined if appealed, will be provided to the respondent's Board of original jurisdiction for ratification or implementation, as appropriate.
- (e) In matters involving arbitration, any determination rendered by a Hearing Panel of the multi-Board (or regional) Professional Standards Committee will be provided to each respective party's Board of original jurisdiction for informational purposes. In the event a party to an arbitration refuses to pay an award in arbitration, the Board in which the award recipient holds membership shall advise the award recipient to seek judicial enforcement as set forth in Section 56, **Part Ten**, and in Appendix III, **Part Ten**, of the Code of Ethics and Arbitration Manual.
- (f) In the event a complainant alleges that the respondent has improperly refused to submit a dispute to arbitration (or to mediation if the respondent's signatory Board requires REALTORS® [principals] who are parties to a dispute to mediate otherwise arbitrable matters pursuant to Article 17), the allegation shall be brought before (choose one: a tribunal of five [5] members selected from the multi-Board's Professional Standards Committee to be appointed by the Committee's Chairperson and chosen from the individuals who were not selected to serve on the original Arbitration Hearing Panel, or a tribunal of five [5] member selected from the Board of Directors of the signatory Boards to be appointed by the Board Presidents). The procedures for notices, time of notices, and hearing prescribed for matters before a Hearing Panel shall apply. The sole question of fact to decide will be whether the party has refused to submit an arbitrable matter to arbitration (or mediation if required) in violation of Article 17. Upon determination that the member has refused to arbitrate a properly arbitrable matter, the (specify body—name of tribunal) may direct implementation of appropriate sanction, including suspension or expulsion of the member from the local Board of REALTORS® and/or its MLS. The decision of the (specify body—name of tribunal) shall be final and binding and is not subject to further review by the State Association or any signatory Board. (Revised 11/11)

(6) Reservation of Rights

- (a) It is understood and agreed by the Boards signatory to this Agreement that each Board reserves to itself all authority, rights, and privileges as have been assigned to it by its Charter and agreement with the National Association of Realtors®, except as voluntarily modified by this Agreement.
- (b) It is further understood and agreed that any Board signatory to this Agreement may withdraw from the Agreement at any time provided the withdrawing Board shall provide notice to the other signatory Boards ninety (90) days in advance of the date of withdrawal.

IN WITNESS THEREOF, the parties have hereto set their hands and seals on this 1st day of August, 2000.

The effective date of this Agreement shall be January 1, 2001.

Attested by: Michael Davenport, President, Outer Banks Association of REALTORS®
Debra Perrot, Secretary, Outer Banks Association of REALTORS®
Louise Jordan, President, Albemarle Area Banks Association of REALTORS®
Debbie Sawyer, Secretary, Albemarle Area Banks Association of REALTORS®
Signatures on File