

South Metro Denver REALTOR® Association General Instructions for Filing an Ethics Complaint or Arbitration Request

This information from the South Metro Denver REALTOR® Association is designed to help you understand the professional standards process. This summarizes portions of a more detail procedures manual that is updated annually by the National Association of REALTORS®. To the extent this information conflicts with that manual and any of its subsequent revisions, SMDRA must follow the requirements of the NAR Code of Ethics and Arbitration Manual. Please remember that we administer this program and can answer procedural questions, we do not give either side legal or other advice.

Is your complaint against a REALTOR®?

Not all real estate agents are REALTORS®. Only those who belong to their local board/association of REALTORS® and have agreed, as a continuing condition of membership, to abide by a strict, enforceable Code of Ethics may use the term REALTOR®. It is because of this obligation that you can file a complaint with a local board/association of REALTORS®. Please call to determine if the agent involved is a current, active REALTOR® or was a REALTOR® at the time of the alleged violation.

Does it concern ethics or arbitration?

You should determine whether this is an ethics matter, an arbitration of a business dispute, or both.

- **Ethics:** In an ethics complaint, you are alleging that a REALTOR® violated one or more Articles of the Code of Ethics.
- **Arbitration:** Arbitration is the process for resolving a contractual business dispute growing out of a real estate transaction that the parties have been unable to resolve themselves.

Please file Ethics and Arbitration separately. If your situation concerns both ethics and arbitration, SMDRA will administer the arbitration first. The ethics complaint will be administered after the conclusion of the arbitration. Both should be filed within the required timeframe.

ETHICS:

Who may file an ethics complaint?

Anyone can file an ethics complaint. However, the complaint must:

1. Allege a violation of a specific article(s) of the Code of Ethics;
2. Present the complaint form with the date and signature of the complainant;
3. Include a narrative of the facts surrounding the case;
4. Include all necessary supporting documentation, such as listing agreements, letters, purchase offers, copies of e-mail correspondence, etc..
5. Be filed within 180 days after the facts constituting the matter complained of could have been known in the exercise of reasonable diligence or within 180 days after the conclusion of the transaction, whichever is later.
6. Be filed with the association having jurisdiction over the individual named in the complaint. Please contact your local Board/Association of REALTORS® to verify membership prior to submitting an ethics complaint.
7. Oral complaints or those complaints which do not cite an Article of the Code of Ethics cannot be processed.
8. There is no filing fee for an ethics complaint.

How do you file an Ethics Complaint?

Follow these steps to file an ethics complaint:

1. Complete, sign and date the Ethics Complaint Form (E-1) which requires you to name the REALTOR® in question as the “respondent(s)”.

2. You will want to review the Code of Ethics. The Code is the standard by which the Grievance Committee of the Board reviews allegations of potential violations. The Articles in the Code of Ethics are the specific obligations that can subject the member to disciplinary action after a due process hearing. List the Article(s) of the Code of Ethics you believe the REALTOR® has violated. Standards of Practice may be cited in support of a charged Article(s) but may **not** be cited individually.
3. Attach a detailed, typed explanation of the circumstances and facts surrounding your complaint. Be as specific as possible. State what, when, where, why, and how you think an Article was violated and include the date you became aware there was a potential problem.
4. Attach legible copies of all pertinent document such as listing agreements, sale and purchase agreements, letters, contract addendums, etc. Please send a copy of this information and not originals and keep a copy for your own files. Please make sure that your documentation is pertinent, readable, and executed (if applicable).
5. Send the entire package (marked CONFIDENTIAL) to SMDRA's Certified Professional Standards Administrator.
6. If the Grievance Committee forwards your case to a formal Hearing, the South Metro Denver REALTOR® Association will not prosecute for you nor defend you. As Complainant, it is your responsibility to attend the Hearing and provide the necessary evidence and witnesses to support your claim.

What authority does SMDRA have in ethics?

SMDRA has limited authority regarding its members.

1. In ethics complaints, SMDRA cannot require members to pay complainants any monetary damages or punitive awards, nor can it require payment for repairs or replacement. *Complainants seeking monetary awards must seek action in civil court.*
2. SMDRA cannot try a member for violations of real estate law or regulations or for other alleged violations of the law. Its jurisdiction covers only violation of membership duties and the Code of Ethics.
3. The Association does not hear complaints regarding alleged violation of the real estate license law or any other alleged violation of law. You may contact the Colorado Real Estate Commission at 303-894-2166 if you feel there has been a violation of license law. SMDRA cannot suspend or terminate the real estate license of one of its members.
4. If criminal litigation is pending related to the same transaction, the Grievance Committee shall cease its considerations and the complaint will be on hold until such time as the criminal litigation is concluded.
5. If civil litigation is pending, the Board shall consult with Board counsel for review of the complaint to advise if the hearing should proceed or be held until the pending litigation or regulatory or administrative proceeding is concluded.
6. Please be advised that if a member of the REALTOR® Association is found in violation of an Article(s) of the Code of Ethics, one or more of the following sanctions may be imposed:
 - (a) Letter of Warning or Letter of Reprimand with copy to be placed in member's file;
 - (b) Requirement that member attend the ethics portion of the Board Indoctrination Course or other appropriate course or seminar specified by the Hearing Panel;
 - (c) Appropriate and reasonable fine not to exceed \$5,000; (Fines are not paid to the Complainant in any circumstance)
 - (d) Member placed on probation or suspended for a stated period of time;
 - (e) Expulsion of individual from membership from SMDRA;

A detailed list of sanctions and their provisions can be found in the NAR *Code of Ethics and Arbitration Manual*.

ARBITRATION:

Who may file a Request for Arbitration?

The following individuals may request arbitration:

1. REALTOR® members who are principal brokers.
2. REALTOR® members who are not the principal, provided their principal broker joins in the request.
3. Clients and customers of the REALTORS®.

How do you file a Request for Arbitration?

Follow these steps to file a Request for Arbitration:

1. Complete, sign and date the Request for Arbitration form (A-1) or (A-2 for non-REALTOR® members) which requires you to name the REALTOR® principal in question as the “respondent(s)”. The non-principal may also be named under the principal although they are not considered a party to the arbitration but has a vested financial interest in the outcome. If you are not a REALTOR®, this form contains your commitment to abide by the decision of the Hearing Panel.
2. State the specific dollar amount that is in dispute. To proceed with arbitration, there must be a dispute between the parties that arises out of a real estate transaction and a disagreement between the parties as to entitlement to a sum of money. There are no punitive damages or actual damages that can be included in this amount.
3. Filed within 180 days after the closing of the transaction, if any, or within 180 days after the facts could have been known.
4. Include a typed, detailed explanation of the situation. Clearly state why you believe you are entitled to some kind of award. Allegations of unethical conduct are not considered in arbitration. If you believe there may have been an alleged ethics violation, you must file this in a separate ethics complaint. Please include the date you became aware there was a potential problem.
5. Attach legible copies of any pertinent documents or information to support your claim such as listing agreements, sales and purchase contracts, closing statements, letters, phone and contact logs, or any other relevant information. Please make sure that your documentation is pertinent, readable, and executed (if applicable).
6. Include an arbitration filing fee of \$250. This filing fee will be returned to you if you are the prevailing party, if the dispute is resolved through mediation, or if the parties settle prior to the arbitration hearing.
7. Send the entire package (marked CONFIDENTIAL) to SMDRA’s Certified Professional Standards Administrator.
8. If the Grievance Committee forwards the arbitration to a hearing, both parties are offered mediation prior to setting a date for the hearing. Any mediation decision made is a mutual decision of the parties and only binding if signed by both parties. Many arbitration cases are settled at this stage.

What authority does SMDRA have in arbitration?

1. Arbitration may be voluntary or mandatory for REALTOR® members.
 - Mandatory
 - Principal Broker vs. Principal Broker
 - Client vs. Principal Broker
 - Non-principal vs. Non-principal – Principal Brokers enjoined
 - Voluntary
 - Customer vs. Broker
 - Broker vs. Broker – from the same office
 - Broker vs. non-REALTOR® Member Broker.
2. An arbitration award may not be more than the amount in dispute. No actual or punitive damages can be included.
3. If litigation is pending in connection with the same transaction, no arbitration can be provided unless the litigation is withdrawn with notice to the Board, or unless the court refers the matter to the Board for arbitration.

4. By becoming and remaining a member of SMDRA, each REALTOR® member binds themselves to arbitration certain types of disputes.

How are ethics and arbitration cases processed?

The Grievance Committee and the Professional Standards Committee handle these matters. It is the responsibility of the Complainant to provide the necessary information to prove their case, as the Board does not act as an investigative body.

The entire ethics or arbitration process usually takes a minimum of 70 – 90 days, but it may take longer. Please remember that the overriding principle governing either type of case is the assurance of due process to all parties.

Role of the Grievance Committee:

1. If an Ethics complaint is filed, the Grievance Committee will review the complaint to determine if the facts alleged were taken as true on their face, is it possible that a violation of the Code of Ethics occurred and if a hearing is to be warranted.
2. If Arbitration is filed, the Grievance Committee will review the complaint to determine if the matter is properly “arbitrable” as defined in Article 17 of the Code of Ethics and if a hearing is to be warranted.
3. The Grievance Committee makes only such preliminary evaluation as necessary to make these decisions. While the Grievance Committee has meetings, it does not hold hearings, and it does not decide whether members have violated the Code of Ethics or determine awards.
4. The function of the Grievance Committee is to be understood as similar to that of the grand jury. If a Grievance Committee forwards a complaint for hearing, a response is then received from the respondent and a hearing scheduled.
5. If denied by the Grievance Committee, the complainant has twenty days from the date of notice to appeal the decision to the Board of Director of SMDRA.

Role of the Professional Standards Committee:

1. The committee’s function is to hold ethics and arbitration hearings. Hearings provide an opportunity for the Complainant(s) and Respondent(s) to explain their sides of the story by presenting relevant testimony, evidence and witnesses, if any. Professional Standards Committee members are selected on the basis of their experience, temperament, impartiality, and objectivity and are required to take on-going professional standards training.
2. Once an ethics complaint is forwarded by the Grievance Committee to a hearing, a panel consisting of 5 members and 1 alternate of the Professional Standards Committee will determine whether the Code of Ethics has been violated.
3. For arbitration, after an unsuccessful mediation or if the parties choose not to try mediation, a panel of 5 members and 1 alternate of the Professional Standards Committee will determine the prevailing party and the award.

Role of the SMDRA Staff:

1. Throughout the ethics or arbitration process, SMDRA’s Certified Professional Standards Administrator is responsible for maintaining the confidential case files and ensuring that paperwork, notifications, correspondence, and other due process functions are prepared correctly.
2. The Certified Professional Standards Administrator is NOT a licensed real estate practitioner, nor is she allowed to give legal or other advice or counsel you on your case. Should you have questions regarding the process, she would be pleased to provide that procedural information.