



DAAR RESOLUTION SERVICES

(Ombudsman Program)

OMBUDSMAN OVERVIEW

I. Introduction

Boards and associations of Realtors® are charged 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 boards and associations do not expressly allege violations of specific Articles of the Code of Ethics, and many do not detail conduct related to the Code. Some “complaints” are actually transactional, technical, or procedural questions readily responded to.

With this in mind, we believe that 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.

II. Definition of an Ombudsman

An ombudsman is an individual appointed to receive and resolve disputes through constructive communication and advocating for consensus and understanding. In its simplest form, the Ombudsman Program will serve as a telephonic alternative dispute resolution program between members of the public and Realtors® or between two Realtors®.

The ombudsman’s role is primarily one of communication and conciliation, not adjudication. Ombudsmen do not determine whether ethics violations have occurred; they anticipate, identify, and resolve misunderstandings and disagreements before matters ripen into open disputes and possible charges of unethical conduct.

III. Requirements to Serve as an Ombudsman

Any staff member or Realtor® member who has been a member of a local association for more than five years with experience on either the Grievance Committee or Professional Standards Committee is eligible to serve as an ombudsman. These members are familiar with the NAR Code of Ethics, state real estate regulations, and current real estate practice. Ombudsmen are required to complete an application detailing their relevant experience. Selected applicants will be required to attend Professional Standards training at their respective association, NVAR, or the VAR Roadshow each year. Additionally, Ombudsmen will be required to attend specialized Ombudsman training through the Regional Cooperative or VAR annually.

There will be a minimum of five Ombudsmen as part of the Regional Cooperative at any given time.

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

IV. Limitations of the Ombudsman Program

The following types of disputes may be handled through the Ombudsman Program:

- Uncomplicated
- Communication-based
- Modest monetary amount, not greater than \$500.00
- May be solved by providing simple education
- May be solved by providing basic knowledge

The following types of disputes will not be handled through the Ombudsman Program:

- Apparent violations of the law (local ordinances, state or national)
- Fair Housing or discrimination claims
- Complaints alleging a violation of Public Trust, defined as:
 - Demonstrated misappropriation of client or customer funds or property;
 - Willful discrimination; or
 - Fraud resulting in substantial economic harm
- Those already referred to legal counsel, forwarded to the Department of Occupational and Professional Regulation for investigation, and/or the subject of an arbitration to be handled by an association mediator.
- Large monetary amount, in excess of \$500.00
- Significantly complex
- Cases involving more than two parties
- Unreasonable or uncooperative parties

V. Involving an Ombudsman

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.

VI. Role of the Ombudsman

Should a Complainant voluntarily agree to utilize the Association's Ombudsman Program, the Professional Standards Manager, or other staff designated by the Association, will triage the complaint, assigning it to an appropriately qualified Ombudsman.

The designated Ombudsman may then:

- Listen to the Complainant's concerns
- Ascertain Complainant's desired outcome (revocation of licenses, sanctions, apology, money, etc.)
- 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
- Explain potential avenues that might resolve the issue or reach the desired outcome
- Answer general questions and/or procedural questions and explain 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.
- Contact the potential respondent to explain the Complainant's concerns and desired outcome
- Try to bring resolution

- Report back to the Complainant
- Explain the Complainant's rights after the completion of the Ombudsman process.
- Where a written ethics complaint in the appropriate form is received by an association, it can be initially referred to the Ombudsman who will attempt to resolve the matter, with the exception of complaints that allege violations of the public trust (as defined in Article IV, Section 2 of the NAR Bylaws). These types of complaints may not be referred to an Ombudsman.
- If an issue is resolved to the mutual satisfaction of all parties through the efforts of an ombudsman, the formal ethics complaint brought initially (if any) will continue to be processed until withdrawn in writing by the Complainant.
- In the event the Ombudsman concludes that a potential violation of the public trust, as defined by the Code of Ethics and Arbitration Manual, may have occurred, the Ombudsman process shall be immediately terminated. The parties shall then 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.

VII. 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 Department of Professional and Occupational Regulation, the Virginia Real Estate Board, or to any other regulatory body. This prohibition is intended to ensure impartiality and avoid the possible appearance of bias. This provision does not preclude Ombudsmen from referring concerns that the public trust may have been violated to the Grievance Committee.

VIII. Right to Decline Ombudsman Services

Persons filing complaints, or inquiring about the process for filing ethics complaints, 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 can have their complaint follow the traditional Grievance process.

IX. Failure to Comply With Agreed Upon Resolution

Failure or refusal of a member to comply with the terms of a mutually agreed upon resolution shall entitle the complaining party to resubmit the original complaint or, where a formal complaint in the appropriate form has not been filed, to file an ethics complaint. The date that the matter was originally brought to the board or association's attention will be considered the filing date for purposes of determining whether an ethics complaint is timely filed. The period utilized during the Ombudsmen process will not count against the normal ethics complaint filing timeline requirements.

X. 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 DPOR
- The Complainant may seek outside mediation services

XI. Insurance Coverage

Ombudsmen are 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.