

PLEASE READ: Before you file an Ethics Complaint

The following document describes the ethics complaint process in detail and explains what you can expect once you have filed.

Before You File an Ethics Complaint

The Staten Island Board of REALTORS® is responsible for enforcing the REALTORS® Code of Ethics. The Code of Ethics imposes duties which apply only to real estate professionals who choose to become REALTORS®. These duties are above and in addition to those imposed by law or regulation.

Many difficulties result from misunderstanding, miscommunication, or lack of adequate communication. If you have a problem with a real estate professional (whether a Realtor or not), you are encouraged to speak with that person, or with the principal broker or office manager in their firm about your concerns. Open, constructive discussion often resolves questions or differences, eliminating the need for further action.

If, after discussing matters with your real estate professional or a principal broker in that firm, you are still not satisfied, you may want to contact the local board or association of REALTORS®. Often, parties are more satisfied with informal dispute resolution processes, as they are quicker, less costly, and often help repair damaged relationships.

If, after taking these steps, you still feel you have a grievance, you may want to consider filing an ethics complaint.

You will want to keep in mind that . . .

- Only REALTORS® and REALTOR-ASSOCIATE®s are subject to the Code of Ethics of the National Association of REALTORS®.
- If the real estate professional (or their broker) you are dealing with is not a REALTOR®, your only recourse may be the New York State real estate licensing authority (DOS) or the courts.
- The Staten Island Board of REALTORS® (through its complaint hearing process) can determine whether the “Code of Ethics” has been violated, not whether the law or real estate regulations have been broken. Those decisions can only be made by the licensing authorities or the courts.
- The Staten Island Board of REALTORS® can discipline REALTORS® for violating the Code of Ethics. Typical forms of discipline may include Educational sanctions via attendance at courses and seminars designed to increase REALTORS®' understanding of the ethical duties or other responsibilities of real estate professionals. Additional examples of authorized discipline are a Letter of Reprimand or Warning, and appropriate fines.
- For serious or repeated violations, a REALTOR®'s membership can be suspended or terminated.

- The Staten Island Board of REALTORS®
 - cannot require REALTORS® to pay money to parties filing ethics complaints;
 - cannot award "punitive damages" for violations of the Code of Ethics; and
 - cannot suspend or revoke a real estate professional's license.
- The primary emphasis of discipline for ethical lapses is educational, to create a heightened awareness of and appreciation for the duties the Code imposes. At the same time, more severe forms of discipline, including fines, suspension and termination of membership may be imposed for serious or repeated violations.

Filing an ethics complaint

The Staten Island Board of REALTORS® can provide you with information on the procedures for filing an ethics complaint. Here are some general principles to keep in mind:

- Ethics complaints must be filed with the Staten Island Board of REALTORS® within one hundred eighty (180) days from the time a complainant knew (or reasonably should have known) that potentially unethical conduct took place (unless the Board's informal dispute resolution processes are invoked in which case the filing deadline will momentarily be suspended).
- The REALTORS® Code of Ethics consists of seventeen (17) Articles. The duties imposed by many of the Articles are explained and illustrated through accompanying Standards of Practice or case interpretations.
- Your complaint should include a narrative description of the circumstances that lead you to believe the Code of Ethics may have been violated.
- Your complaint must cite one or more of the Articles of the Code of Ethics which may have been violated. Hearing panels decide whether the Articles expressly cited in complaints were violated.
- The Staten Island Board of REALTORS®' Grievance Committee may provide technical assistance in preparing a complaint in proper form and with proper content.

Before the hearing:

- Your complaint will be reviewed by the Staten Island Board of REALTORS®' Grievance Committee. Their job is to review complaints to determine if the allegations made, if taken as true, might support a violation of the Article(s) cited in the complaint.
- If the Grievance Committee dismisses your complaint, it does not mean they don't believe you. Rather, it means that your allegations would not support a hearing panel's conclusion that the Article(s) cited in your complaint had been violated. You may want to review your complaint to see if you cited an Article appropriate to your allegations.
- If the Grievance Committee forwards your complaint for hearing, that does not mean they have decided the Code of Ethics has been violated. Rather, it means that if what you allege in your

complaint is found to have occurred by the hearing panel, that panel may have reason to find that a violation of the Code of Ethics occurred.

- If your complaint is dismissed as not requiring a hearing, you can appeal that dismissal to the board of directors of the Staten Island Board of REALTORS®. Preparing for the hearing
- Familiarize yourself with the hearing procedures that will be followed. In particular you will want to know about challenging potential panel members, your right to counsel, calling witnesses, and the burdens and standards of proof that apply.
- Complainants have the ultimate responsibility ("burden") of proving that the Code of Ethics has been violated. The standard of proof that must be met is "clear, strong and convincing." Consistent with American jurisprudence, respondents are considered innocent unless proven to have violated the Code of Ethics.
- Be sure that your witnesses and counsel will be available on the day of the hearing. Continuances are a privilege - not a right.
- Be sure you have all the documents and other evidence you need to present your case.
- Organize your presentation in advance. Know what you are going to say and be prepared to demonstrate what happened and how you believe the Code of Ethics was violated.

At the hearing:

- Appreciate that panel members are unpaid volunteers giving their time as an act of public service. Their objective is to be fair, unbiased, and impartial; to determine, based on the evidence and testimony presented to them, what actually occurred; and then to determine whether the facts as they find them support a finding that the Article(s) charged have been violated.
- Hearing panels cannot conclude that an Article of the Code has been violated unless that Article(s) is specifically cited in the complaint.
- Keep your presentation concise, factual, and to the point. Your task is to demonstrate what happened (or what should have happened but didn't), and how the facts support a violation of the Article(s) charged in the complaint.
- Hearing panels base their decisions on the evidence and testimony presented during the hearing. If you have information relevant to the issue(s) under consideration, be sure to bring it up during your presentation.
- Recognize that different people can witness the same event and have differing recollections about what they saw. The fact that a respondent or their witness recalls things differently doesn't mean they aren't telling the truth as they recall events. It is up to the hearing panel, in the findings of fact that will be part of their decision, to determine what actually happened.
- The hearing panel will pay careful attention to what you say and how you say it. An implausible account doesn't become more believable through repetition or, through volume.

- You are involved in an adversarial process that is, to some degree, unavoidably confrontational. Many violations of the Code of Ethics result from misunderstanding or lack of awareness of ethical duties by otherwise well-meaning, responsible real estate professionals. An ethics complaint has potential to be viewed as an attack on a respondent's integrity and professionalism. For the enforcement process to function properly, it is imperative for all parties, witnesses, and panel members to maintain appropriate decorum.

After the hearing:

- When you receive the hearing panel's decision, review it carefully.
- Findings of fact are the conclusions of impartial panel members based on their reasoned assessment of all of the evidence and testimony presented during the hearing. Findings of fact are not appealable.
- If you believe the hearing process was seriously flawed to the extent you were denied a full and fair hearing, there are appellate procedures that can be involved. The fact that a hearing panel found no violation is not appealable.
- Refer to the procedures used by the Staten Island Board of REALTORS® for detailed information on the bases and time limits for appealing decisions. Appeals brought by ethics respondents must be based on (a) a perceived misapplication or misinterpretation of one or more Articles of the Code of Ethics, (b) a procedural deficiency or failure of due process, or (c) the nature or gravity of the discipline proposed by the hearing panel. Appeals brought by ethics complainants are limited to procedural deficiencies or failures of due process that may have prevented a full and fair hearing.

INSTRUCTIONS FOR FILING AN ETHICS COMPLAINT

COMPLETE the “Ethics Complaint” Form E-1 that follows. The directions provided are to assist in properly completing the E-1 Complaint Form and filing your complaint with the board. Note that a complaint **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.

Following these instructions may help avoid delays in processing. If at any time you have questions, please email Lynn Cieslik at ethics@sibor.com or call 718-928-3222.

(a) List all persons who wish to be considered Complainants. Only those people named as Complainants may be present during the entire hearing. Once the complaint is filed the participation by any additional participants to your complaint will be treated as Witnesses. Witnesses have limited access to the hearing room.

(b) Be sure to fill in the name(s) of the Respondent(s). The Respondent is the person or persons against whom you are filing this complaint. The Respondent(s) must be a member(s) of the Staten Island Board of REALTORS®. If you are not sure of the membership status of an individual, contact Lynn Cieslik for assistance.

(c) Complete the blank in the first paragraph, which tells the Association the articles you feel have been violated. Review the current year Code of Ethics to determine which articles to cite. You may cite standards of practice in support of the article. If there are multiple respondents, they do not necessarily have to be charged with a violation of the same articles. In such instances, it is preferable that you complete one form for each individual respondent.

(d) Answer yes or no if the matter is subject to any other proceeding. If yes, provide the name of the agency or court where the additional proceedings are being handled. Provide a case or docket number, when asked.

(e) Answer yes or no if an ethics complaint relating to the same circumstances has been filed or will be filed with another REALTOR Association.

(f) Be sure to type or print and sign your name in the space provided. Also include your address and daytime phone number. If **you do not** wish your address to be disclosed to the other party, please notify the Staten Island Board of REALTORS®’ office in writing. **TYPE: A detailed narrative of the events** leading you to file an ethics complaint. This is very important. The first step in the process is review by the Grievance Committee. You **will not be present for this review** so you must submit any and all pertinent information for the Committee to consider. Please be sure to include all pertinent dates in your narrative. The Grievance Committee must be able to accurately determine that a complaint was timely filed.

Include in your narrative a statement as to how/why you feel each article cited pertains.

ATTACH COPIES, not originals, of pertinent documents, if any, that support your claim. Be careful to include only pertinent documents rather than your entire transaction file. You want to point the Grievance Committee to the facts pertaining to your allegations and avoid having your point(s) be lost among unnecessary papers. **MAIL:** Your completed complaint form, narrative of events, and copies of any supporting documents to: Lynn Cieslik, Professional Standards Administrator, Staten Island Board of REALTORS®, **1150 South Avenue, Suite 303, Staten Island, NY 10314**. The filing of your written complaint must be done by mail or hand delivery. An Electronic submission may only be accepted pending receipt of the original filing by mail or hand delivery.