

Summary of Key Professional Standards Changes

** effective January 1, 2019 **

1. Amend Section 13(d) of CEAM as follows: (midyear)

(d)...In any proceeding where the Realtor® principal is not joined in the complaint as a respondent, the respondent's Realtor® principal ~~nonetheless retains~~ has the right to be present during the proceeding without providing notice or may be required by the Hearing Panel to attend the hearing. ~~At the request of the respondent, t~~The Realtor® principal may make opening and closing statements on behalf of the respondent, examine and cross-examine parties and witnesses, introduce affidavits, documents, and other admissible relevant evidence, consult with or testify on behalf of the respondent, and respond directly to questions from the Hearing Panel. In all instances, the respondent's Realtor® principal shall receive copies of the complaint and response, be provided with notice of the hearing, may be called by the parties or the Hearing Panel as a witness, and shall receive copies of the Hearing Panel's decision and recommendation for sanction, if any. If an appeal is required, the respondent's Realtor® principal shall receive copies of the request(s), be provided with notice of the hearing, have the opportunity to be present, and receive a copy of the final action by the Directors. Such rights shall accrue to both the former Realtor® principal and the current Realtor® principal if the respondent Realtor® or Realtor-Associate® changes his firm affiliation either before or after a complaint is filed but before the Hearing Panel reaches its decision. (Revised 11/14)

In any proceeding where a Realtor® principal is not joined in the complaint as a co-complainant, the complainant may, at their sole discretion, allow their Realtor® principal to receive documentation related to the complaint and participate in the hearing as a witness or as counsel (consistent with Part One, Section 4 of this Manual).

Rationale: The current version of this section references only the rights of a respondent's Realtor® principal, and makes participation rights contingent upon the respondent. That is, the respondent's broker has the right to attend, but can only participate "at the request of the respondent." These amendments clarify that the right to attend and participate rests with the Realtor® principal and not with the respondent. So under these amendments, a Realtor® principal may attend, testify, present evidence, etc., whether the respondent requests it or not. The change also adds language clarifying that participation by a complainant's broker is at the sole discretion of the complainant.

**** NOTE:** This is likely to create certain administrative confusions, so staff and panel chairs should be fully conversant with the change in order to address due process questions. For example, it is possible that a respondent's Realtor® principal may seek to participate even though the respondent objects. In addition, this rule essentially says that the Realtor® principal may act as a witness and/or counsel (the list of options is the same list as for counsel), but explicitly states that notice is not required.

2. Amend Policy Statement 45 regarding publication of violations (including related amendments to section 23(j) and deletion of section 23(n): (midyear)

Publication Option #1:

- Publication can only occur after a second violation occurs within three (3) years.
- Ethics citation discipline is not included in the violation count unless the association has affirmatively authorized publication within their citation policy.
- Publication can only be made in an official communication vehicle intended primarily for members of the ~~Board Association~~ (or Boards) in which the violator holds (held) membership. Where the official communication vehicle is electronic or Internet-based, access must be limited to ~~Board Association~~ members. (Amended 11/04)
- The name of the firm the violator is (or was) licensed with cannot be published.
- Publication must be consistent and uniform. This means that publication may not occur selectively but must be used in each instance where a second violation is determined within three (3) years.

· Other than the violator's name, the only additional information that may be published is the Article(~~or Articles~~) violated, and the discipline imposed, except that in cases where the violator's name is similar to another member's name, the violator's license number or office address (or both) may also be published. (Amended 11/99)

· At least one of the violations must be based on conduct which occurs after the adoption of ~~these~~ the Association's publication procedures. (Adopted 2/99)

Associations may adopt Publication Option #1 and may increase the timeframe with which publication occurs for certain discipline, the content of the publication to include photos or a description of the violation(s), or any combination thereof, only to the extent that is permissible under Publication Option #2. Any program that exceeds the scope of Publication Option #1, as defined above, must include local or state association legal counsel review of the decision, discipline, and information to be published.

Publication Option #2:

· Publication can occur in all instances in which violators are disciplined with a letter of reprimand, a fine (ethics citation fines are not included in publications unless the association has affirmatively adopted policy to include them), a suspension, and/or an expulsion.

· Prior to publication, local or state association legal counsel must review the decision, discipline, and information to be published.

· Publication can only be made in an official communication vehicle intended primarily for members of the Association(s) in which the violator holds (held) membership. Where the official communication vehicle is electronic or internet-based, access must be limited to Association members.

· The name of the firm the violator is (or was) licensed with cannot be published.

· Publication must be consistent and uniform. This means that publication may not occur selectively but must be used in each instance where the discipline imposed meets the Association's publication criteria.

· Other than the violator's name and a photo of the violator, the only additional information that may be published is the Article(s) violated, a description of the violation(s) with all names redacted except for the name of the violator, and the discipline imposed, except that in cases where the violator's name is similar to another member's name, the violator's license number or office address (or both) may also be published.

· Publication must be based on conduct which occurs after the adoption of the Association's publication procedures.

Rationale: For the past 4 years the California Association of Realtors® has been publishing the names of violators under a pilot program that is similar to Option #2, above. These changes now offer associations two different options for publication. Option #1 is similar to the current optional program, which allows publication after a second violation in a 3-year period. Changes here are mostly terminology. Option #2 would allow publication for a broad range of violations after just the first violation. The primary due process check on Option #2 is that local or state legal counsel must review all decisions before publication.

**** NOTE:** As is currently the case, adoption of a publication policy is still optional. An association could elect to not publish at all, but if it wants to publish there are now two alternatives. Note as well that an association could essentially blend #1 and #2 in various ways, so long as the counsel review step is included. PAR has no position on whether an association should or should not publish the names of violators. Our current policies for the Cooperative does not include a publication option.

3. Amend Standard of Practice 1-7 as follows: (midyear)

When acting as listing brokers, REALTORS® shall continue to submit to the seller/landlord all offers and counter-offers until closing or execution of a lease unless the seller/landlord has waived this obligation in writing. Upon the written request of a cooperating broker who submits an offer to the listing broker, the listing broker shall provide a written affirmation to the cooperating broker stating that the offer has been submitted to the seller/landlord, or a written notification that the seller/landlord has waived the obligation to have the offer presented. REALTORS® shall not be obligated to continue to market the property after an offer has been accepted by the seller/landlord. REALTORS® shall recommend that sellers/landlords obtain the advice of legal counsel prior to acceptance of a subsequent offer except where the acceptance is contingent on the termination of the pre-existing purchase contract or lease.

Rationale: In all markets - but particularly in a hot market with low inventory - it is not unusual for buyer brokers to question whether a client's offer has, in fact, been submitted to the seller for review. This is one of the more common issues raised by members when speaking with staff about a possible ethics complaint. The amendment adds a new affirmative duty that listing brokers must, upon written request by a buyer broker, provide a written affirmation to the buyer broker stating either that the offer was submitted or that the seller has waived his/her right to submission.

**** NOTE:** In response to this change, PAR released the Broker's Request for Affirmation (Form BRFA) for 2019. This form serves as both the cooperating broker's written request and the listing broker's written response. The form is available through all forms vendors; members can download the Guidelines for Preparation and Use from the PAR website.

PAR had already produced the Seller's Reply to Purchase Offer (Form SRP), which allows a seller to verify that an offer has been reviewed and rejected/accepted. While buyers or buyer brokers may submit this form with an offer there is no legal or ethical duty for a seller to fill it out and respond.

**** NOTE:** NAR has updated its model citation policy to include this specific provision of Standard of Practice 1-7. See below for additional information

4. Amend NAR Model Citation Policy (Convention)

With the changes to Standard of Practice 1-7 (regarding an affirmation that offers have been presented), the committee added the following reference to Model Citation Policy Schedule of Fines:

"Failure on the part of a listing broker to provide written affirmation that an offer was presented, or written notification that the seller/landlord has waived the obligation to have the offer presented, upon written request of a cooperating broker submitting an offer."

Rationale: The citation policy is meant to include potential violations that can essentially be 'self-provable' without a full hearing being necessary. Since this amended Standard of Practice involves behavior in which an objective determination of a likely violation can be made, it is a logical inclusion. Associations that have adopted a citation policy may choose whether to add this to their own policy.

**** NOTE:** This does not incorporate the entire Standard of Practice 1-7 (or any other portion of Article 1); only the language related to the written affirmation is citable if this language is adopted.

5. Amend Section 13(d), 19(B)(5) & 19(D) of CEAM (Convention)

Through 2018, the CEAM instructed associations that where an ethics respondent is also involved in criminal litigation arising out of the same facts and circumstances, the complaint must be held in abeyance until the pending criminal proceedings have been concluded. Where respondents were involved in civil litigation or administrative proceedings, the association was to consult with counsel and decide whether to proceed or hold the case in abeyance.

Changes to these sections now eliminate the requirement to hold ethics in abeyance during criminal proceedings, and instead make those cases subject to the same consultative process that is used for civil cases.

Rationale: The requirement to hold cases in abeyance during criminal litigation risked damage to the Realtor® brand and reduced consumer trust in associations. In short, there is a concern that it doesn't look good when a member under criminal charges can't be sanctioned until that case has run its course. Though there may be valid reasons to hold any particular case in abeyance - including the fact that many respondents/defendants may be willing to appear and testify in a proceeding that might be used against the later - this should be balanced against the consumer protection interest of the Realtor® organization.

6. Review and Referral of items from the "Second Century of the Code of Ethics" report (midyear)

At its Winter 2018 meeting, the PAR Professional Standards Committee reviewed and considered a few items from a member-driven report on the Code of Ethics that had been presented to NAR. At the May meeting, NAR's committee referred several of those items to other committees within the association for review and comment. In addition, it was reported that the Interpretations and Procedures Advisory Board continues to review many of those items as potential future action items. None have yet been proposed for action, but have been noted as being within the scope of the committee (or the referral committees) should NAR decide that action is warranted. This will continue to develop over the next few years.

**** NOTE:** There was no further action on this item at the November meeting. At least one committee that received referral items (Commitment to Excellence) also took no action.

7. Referral of proposed amendments to Standard of Practice 1-12 (midyear)

Standard of Practice 1-12 currently requires Realtors® to advise sellers of their "company policies regarding cooperation and the amount(s) of any compensation that will be offered" to cooperating brokers. Most brokers interpret this to mean that the listing contract (or other relevant documents) need to state the general offer of compensation to be made in the MLS, but that any special compensation offered to individual brokers - whether higher or lower - do not necessarily need to be included. For example, if Broker X offers a \$5000 cooperating fee to most brokers but only \$10 to a certain broker, that exception would likely not be written into the listing.

A proposed amendment would make the language much more explicit that a listing broker must disclose all cooperation arrangements to a seller, not just the primary MLS offer of compensation. If one or more brokers were offered different amounts, or if the broker is in multiple MLSs and offers different compensation in each, that sort of thing would have to be disclosed to a seller. The suggestion had not yet been reviewed by the Interpretations and Procedures Advisory Board, so it was referred for further discussion there.

**** NOTE:** There was no further action on this item at the November meeting.