

## **EXECUTIVE SESSION GUIDELINES FOR ETHICS HEARINGS BEFORE MAKING YOUR DECISION**

### **1. REVIEW EACH ARTICLE CHARGED.**

Determine and review the related Standards of Practice and Case Interpretations.

### **2. DETERMINE THE FACTS.**

What happened? What are the facts as determined by the EVIDENCE presented in testimony and written documents by CLEAR, STRONG AND CONVINCING PROOF, NOT BY WHAT YOU THINK MAY HAVE HAPPENED.

REMEMBER – the burden of proof is on the Complainant, not the Respondent and certainly not the Hearing Panel.

Standard of Proof – The standard of proof on which an ethics hearing is based shall be “clear, strong and convincing”. Clear, strong and convincing is defined as that measure of proof which will produce a firm belief or conviction as to the allegations sought to be established (NAR Professional Standards Manual Statement of Policy #26).

### **3. COMPARE THE FACTS TO THE CHARGE.**

Are the actions charged by the Complainant FACTUAL based on the evidence?

### **4. ANALYZE THE FACTS IN RELATIONSHIP TO THE CODE.**

If the actions charged by the Complainant are proven, are these specific actions related to the Article, any related Standard of Practice or any related Case Interpretation?

**If not there CAN NOT be a violation.**

REMEMBER, there is no standard answer to be applied universally or no precedent other than what is in the Code, Standards or Cases. Each case must be considered separately. Make no subjective opinions. Base your decision on the facts, not what you think MAY have happened. Be familiar with the related Articles, Standards and Case Interpretations.

## **WRITING THE DECISION**

### **Findings of Fact**

Make your findings of fact and basis for decision as clear and concise as possible to avoid confusion.

- State the background (Who’s Who).

- State what happened.
- Show clear, strong and convincing proof.
- State facts clearly and concisely.
- Put them in sequential order.
- Write them so they will make sense to an impartial uninvolved party.
- They should clearly lay out why you reached the stated conclusion.

### **Conclusions**

- Must be based on the findings of fact.
- Should state which Respondent(s) are in violation or not in violation of the Code of Ethics.
- Should state which Article(s) were violated.
- Should reiterate the actions shown by your findings which led to a violation.
- Should reiterate the basis of the Article(s) violated.

Example: Because REALTOR® A contacted the seller directly without first contacting the listing broker REALTOR® A violated Article 16 as supported by Standard of Practice 16-4.

### **RECOMMENDED DISCIPLINE**

Once determining whether Articles have been violated, determine the recommended disciplinary action, if any. At this point, and NOT BEFORE, you may look at the Respondent's membership file to determine whether he or she has previously violated the Code. This is done to help Hearing Panels decide how severe their discipline should be. Remember, the file should not be opened before the decision is made as to whether the Respondent is in violation or not. The past record should in no way affect that decision.

Possible recommendations for discipline in a Professional Standards Ethics Hearing (Discipline is limited to one or more of the following)

- Letter of Warning issued with a copy placed in Member's file for a designated period.
- Letter of Reprimand issued with a copy placed in Member's file for a designated period.
- Requirement that Member attend the ethics or other appropriate course related to the violation as specified by the Hearing Panel which Respondent could reasonable attend, taking into consideration cost, location and duration.
- Appropriate and reasonable fine not to exceed \$15,000.
- Member placed on probation for a stated period of time not to exceed one year.

- Member ship suspended for a stated period of time of not less that 30 days and not more that one year upon which time Membership will automatically be restored. Membership may also be imposed for an unspecified period of time if it is in response to Member’s failure to satisfy another discipline imposed. Upon satisfaction of the other discipline the Membership shall automatically be reinstated.
- Expulsion from Membership with no right to reinstatement for a period of not less that one and not more than three years. Reinstatement of Membership to be by application only after the specified period of expulsion has expired and based upon the merits of the application at the time received.
- Administrative fee of up to \$500 if they are found in violation of the Code (over and above any other fines and discipline) if the Board has adopted this policy.