

## Appendix 14A: Overview of the Review Hearing Process

For Ethics Complaints:

All matters related to Ethical Discipline of a REALTOR® in the State of California are governed by the provisions of the California Code of Ethics and Arbitration Manual in effect at the time the alleged wrongful conduct occurred. The Manual is published by the California Association of REALTORS® and is available for review and/or downloading at [www.car.org](http://www.car.org).

A Request for Review can be submitted by a Party opposing the rulings following an Ethics Hearing. There are three possible bases for review and they are to be very strictly construed.

The first basis is an allegation of procedural deficiency or lack of due process. This might arise if the reviewing party can demonstrate their right to a fair hearing was denied because of a lack of prescribed process being followed such as lack of proper notice being given. The requesting party would need to demonstrate to the Review Panel that not only did a lack of due process occur but that their right to a fair hearing was thereby denied. If a party was only given nine days' notice when ten days is required but the party did not object at the time it is not likely that the decision would be overturned unless they can demonstrate how that denied their right to a fair hearing.

Lack of due process could also be alleged in a situation such as a party attempting to submit relevant evidence at the time of the hearing and that submission being denied. To be successful the requesting party would need to demonstrate that the evidence they were trying to submit was relevant and that it would likely have resulted in a different outcome. The Chair of the Hearing Panel will be present at the Review Hearing. If the Chair states that the Panel was aware of the evidence and that it would not have changed the outcome the Requesting Party will likely not prevail.

The second basis for review is the claim of misinterpretation or misapplication of the Code of Ethics. In this regard the only argument that can be made is that the Hearing Panel misunderstood or misapplied the requirements of the Article of the Code which was cited in the Complaint, possibly as amended. The Findings of Fact issued by the Hearing Panel are final and cannot be challenged or overturned. No evidence can be offered as to the merits of the case. The only argument that can be offered is that those Findings of Fact do not demonstrate a violation of the Article of the Code which was charged. The Board of Directors is the final authority on what the Code requires. If the Review Panel determines that the Findings of Fact demonstrate a violation of the Article of the Code cited the Decision of the Hearing Panel must be upheld.

The final basis for Review is unwarranted discipline. This does not mean that the Party believes the sanctions imposed were unfair. It means that the Requesting Party must demonstrate that the sanctions imposed were something other than authorized by the Manual or exceeded the maximum sanction allowed in the Manual.

At the Review Hearing the Presiding Officer of the original Hearing Panel will present a summary of the Hearing. The Findings of Fact from the original Hearing will be submitted. Parties can ask questions of the original Chair regarding any statements made in the summary but cannot challenge the Findings of Fact which were issued.

The Request for Review and any Response thereto will have been submitted to the Review Panel in advance for their consideration. If a Party has made a request in advance, selected portions of the Hearing transcript may be played for the Review Panel. This would not be excerpts related to the merits of the case but would be limited to portions in support of the basis for the Request for Review such as a portion showing a request during the original hearing for submission of relevant evidence and the Hearing Panel denying that request.

All named Parties are welcome to attend the Review Hearing but such attendance is not required. If a Party does not attend the Review Hearing the Review Panel will consider all relevant evidence provided in support or opposition to the Request and then the Review Panel will go into Closed Session to deliberate the evidence and make their ruling. The Review Panel can adopt the recommendations of the Hearing Panel, they can dismiss the matter if they determine the Findings of Fact do not demonstrate a violation of the Code, they can refer the matter back for a new hearing before the same or a different panel if they determine there was a lack of due process or if they find the discipline is unwarranted they can reduce the discipline to conform to that permitted by the Manual. The Review Panel cannot increase the discipline above that originally imposed. The ruling of the Review Panel is final.

Any interested parties are encouraged to review the provisions of the Manual in preparation for the Review Hearing. In particular, attention is directed to Section 38, pages 21-24 of the Manual and pages 31-32 of the Implementation Guidelines Disciplinary Action.

For Arbitration Complaints:

The above rules would apply in a similar nature to an Arbitration Complaint except the only basis for the Request for Review is an allegation of procedural deficiency or lack of due process. There are no findings of fact and the references to the Manual in the last paragraph would be to Section 71, pages 40-41 of the Manual and pages 21-22 of the Implementation Guidelines Arbitration.