

Course Title: Professional Standards Case Studies Examination

Course Description:

Participants will hear and make determinations on actual NAR-approved case studies, beginning with the Grievance Committee review (similar to a Grand Jury's review to determine if a case should be heard), through the Professional Standards hearing process and a decision (similar to a court hearing where cases are adjudicated), and finally onto appeal hearings or ratifications by the Board of Directors. There will be brief reviews of the functional responsibilities of Grievance Committee members, hearing panelists, and Board of Directors in the processing of ethics and arbitration cases. Bulk of time will be spent in small groups reviewing case documents and making determinations on case outcomes. Course has been primarily developed for committee members and Directors who hear such matters; however, course would be educational and enlightening for other REALTOR® members wishing to improve their understanding of the Code of Ethics and its enforcement. The learning objectives are similar to Course #21120291, Applied Professional Standards Training, i.e., to provide supported practice in performing the complex tasks of reviewing/hearing ethics complaints and arbitration requests. This course differs in that the focus will be on working in small groups, building group consensus, and presenting findings to the class. All case studies are new and more challenging than previous cases.

Learning Objectives (See attachment on Bloom's Taxonomy and Learning Levels)

Learning Level	Learning Objective
Remember	Increased knowledge of the articles and standards of practice of the NAR Code of Ethics.
Understand	Improved understanding and interpretation of the various articles and standards of practice, and better reasoning of how REALTOR® members inadvertently may violate the Code.
Apply	Applied experience in enforcing the Code of Ethics through the due-process hearing procedures, i.e., reviewing cases as Grievance Committee members, hearing panelists, or members of the Board.
Analyze	Considered review of evidence presented regarding an alleged violation of the Code or pertaining to a commission dispute. Participants must distinguish between a violation or a variation in business practices that they may feel is unethical but may not cross the threshold of a violation of the Code. In a procuring cause matter, they must consider the entire course of events and compare the roles both parties played to determine which broker produced a willing and able buyer in the purchase/lease of a property at the owner's terms.
Evaluate	Participants will have to develop findings of fact based on the evidence presented and defend their conclusions as to whether there was a violation or as to who was the prevailing party in a commission dispute.
Create	Participants will generate findings of facts and conclusions and will develop recommendations on appropriate disciplinary action. Discipline should be corrective in nature but progressive, taking into account any previous violations. In the Board's review of appeals or ratifications, members must ensure fair and consistent application of the Code of Ethics in terms of final decisions, disciplinary action, and commission awards.

The following will be the means used in assessing whether the Learning Objectives have been met (Pre and post test, Q&A etc.):

Q&As and outbriefings after each phase of the decision-making process; i.e., in an ethics matter, there may be three decision points: (1) Grievance Committee reviews case to determine whether it should move forward to a hearing and what articles of the Code should be considered by the hearing panel; (2) a hearing panel makes a decision on what articles were violated and what the disciplinary action should be; and (3) Board of Directors makes the ultimate decision on the violations and the disciplinary action, either through an appeal or through ratification.

Timed Outline: Describe in detail the components of the course by breaking it down into subject matter areas of no greater than 15 minutes. What will be the method of instruction or teaching technique used for each area (lecture, slides, group activities, videotape etc.)

Length in Time	Teaching Technique	Subject Matter Segment and Description
10 mins.	Group Activity	Introductions / Ice Breaker
15 mins.	Lecture/PowerPoint	Overview of Grievance Committee Functional Responsibilities
15 mins.	Cooperative / Small Group Analyses	Review of case materials (each small group of 4-5 participants gets a different case) (5E; 1A)
15 mins.	Cooperative / Small Group Presentations	Outbriefings of cases by small groups who defend their decisions to other participants
15 mins.	Facilitated Discussions w/Large Group	Large group discussions on decisions; sharing how cases were determined by Association; Questions & Answers
10 mins.		BREAK
15 mins.	Lecture/PowerPoint	Overview of Hearing Panelists Functional Responsibilities
15 mins.	Cooperative / Small Group Analyses	Review of case materials (each small group of 4-5 participants gets a different case – not reviewed by their group in previous processes) (5E;1A)
15 mins.	Cooperative / Small Group Presentations	Outbriefings of cases by small groups who defend their decisions to other participants
15 mins.	Facilitated Discussions w/Large Group	Large group discussions on decisions; sharing how cases were determined by Association; Questions & Answers
10 mins.		BREAK
15 mins.	Lecture/PowerPoint	Overview of Board of Director's Functional Responsibilities
15 mins.	Cooperative / Small Group Analyses	Review of case materials (each small group of 4-5 participants gets a different case – not reviewed by their group in previous processes) (2G/A; 1E/A; 3R)
15 mins.	Cooperative / Small Group Presentations	Outbriefings of cases by small groups who defend their decisions to other participants
15 mins.	Facilitated Discussions w/Large Group	Large group discussions on decisions; sharing how cases were determined by Association; Questions & Answers
10 mins.		BREAK
10 mins.	Lecture/PowerPoint	2019 Changes to NAR Code of Ethics and CEAM
10 mins.	Group Activity	Wrap-up / Final Questions & Answers

2019 PROFESSIONAL STANDARDS CASE STUDIES EXAMINATION HANDOUTS

FOR EACH TABLE SETTING:

1. NAR Code of Ethics and Standards of Practice
2. 2019 Professional Standards Case Studies Examination PowerPoint Presentation
3. Grievance Committee Members
 - a. Quick Reference Sheet
 - b. Review Cases
4. Professional Standards Hearing Panelists
 - a. Quick Reference Sheet
 - b. Hearings
5. Board of Directors
 - a. Quick Reference Sheet
 - b. Appeals / Ratifications

TO BE HANDED OUT AT END OF TRAINING:

1. 2019 NAR *Code of Ethics and Arbitration Manual*
2. 2019 Professional Standards Guide
3. 2019 Guidance for Grievance Committee Members
4. 2019 Guidance for Professional Standards Panelists

PRO STANDARDS CASE STUDIES EXAMINATION

MARCH - APRIL 2019

NAR Professional Standards

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Grievance Committee Function

- Makes preliminary evaluations on ethics complaints and arbitration requests to determine if, **taken as true on their face**, a hearing is warranted
- "Limited but important role"
 - Does not hold hearings
 - Does not decide the merits of a complaint or the entitlement to an award
 - Does not dismiss a complaint for lack of evidence

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Grievance Review: Arbitration

- Types of arbitration disputes (Article 17)
 - Contractual issues and questions
 - Specific non-contractual issues and questions (SoP 17-4)
 - Disputes arising out of business relationships between REALTORS® OR REALTORS® and their clients/customers
- Procuring cause
 - The cause originating a series of events, without a break in their continuity, resulting in the accomplishment of the prime objective (closed sale or executed lease)

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Grievance Review: Arbitration

3

- ☐ Is request on proper form? timely filed?
- ☐ Are necessary parties named (QBs)?
- ☐ Were parties members at time of transaction?
- ☐ Is litigation pending? administrative review?
- ☐ Is amount too big or too small? too legally complex?
- ☐ Is Association able to provide an impartial panel?
- ☐ Are there sufficient and knowledgeable arbitrators?
- ☐ If taken as true, is there some basis for an award?

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Grievance Review: Arbitration

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- ☐ Mandatory
 - ☐ REALTOR® Principal vs. REALTOR® Principal (2 firms)
 - ☐ REALTOR® Broker vs. REALTOR® Broker if QBs join (2 firms)
 - ☐ REALTOR® Principal vs. Client (agency relationship or legally recognized non-agency relationship)
- ☐ Voluntary
 - ☐ REALTOR® Broker vs. REALTOR® Broker in same firm
 - ☐ REALTOR® Principal vs. nonmember Broker (2 firms)
 - ☐ REALTOR® Principal vs. Customer (no contractual relationship)

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Grievance Decision: Arbitration

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- ☐ Forward to Professional Standards for hearing AND
- ☐ Classify as mandatory or voluntary OR
- ☐ Dismiss case OR
- ☐ Place in abeyance
- ☐ Either party may appeal decision to dismiss case or may appeal classification
- ☐ Panel of the Board of Directors hears appeal and makes its decision

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Grievance Review: Ethics

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- ☐ Anyone may file an Ethics Complaint
- ☐ No filing fee
- ☐ Must cite one or more articles of the Code of Ethics that the Complainant feels may have been violated
- ☐ Should include narrative description of the circumstances related to the alleged violation(s)
- ☐ Grievance should not dismiss an ethics complaint because of lack of evidence

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Grievance Review: Ethics

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- ☐ Is complaint on proper form?
- ☐ Are necessary parties named?
- ☐ Timely filed?
- ☐ Is Respondent a member?
- ☐ Is litigation/investigation pending?
- ☐ Is Association able to provide an impartial panel?
- ☐ Are appropriate articles named?
- ☐ Does complaint need to be amended to add article(s)/respondent(s)?
- ☐ If taken as true, is it possible a violation occurred?

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Grievance Decision: Ethics

8

- ☐ Forward for hearing as is OR
- ☐ Forward for hearing as amended OR
- ☐ Dismiss case OR
- ☐ Place in abeyance
- ☐ Complainant may appeal decision to dismiss case or certain articles
- ☐ Panel of the Board of Directors hears appeal, and either upholds decision or modifies

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Mock Grievance Committee Meetings

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- ☐ Break into six groups
- ☐ Review assigned case
- ☐ Discuss case within your group and answer questions
- ☐ Present your determination on the case to the full group

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Professional Standards Function

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- ☐ Professional Standards Panel Members attend hearings and decide on
 - ☐ Alleged violations of the Code of Ethics and appropriate disciplinary action
 - ☐ Entitlement to awards in arbitration matters
- ☐ Similar to a court that adjudicates matters that come before it

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PS Hearing: Arbitration

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- ☐ No predetermined rule of entitlement – procuring cause shall be the primary determining factor in entitlement to compensation
- ☐ Arbitrability and appropriate parties
- ☐ Relevance and admissibility – anything that is relevant and assists in reaching a fair, equitable, knowledgeable decision
- ☐ Communication and contact – abandonment and estrangement
- ☐ Conformity with state law
- ☐ Consideration of the entire course of events

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PS Hearing: Arbitration

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- Standard of Proof
 - Preponderance of the evidence
 - Panel is slightly more certain than not as to who should receive award
 - Panel must weigh all facts introduced at hearing rather than focus on just one fact or a particular issue
- Burden of Proof
 - Initially rests with requesting party

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PS Decision: Arbitration

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- Award shall be in writing and signed by all or majority of panel
- Decision final
- Parties may request a limited review based on procedural deficiency or lack of due process
- Panel of Board of Directors hears review and will affirm or overturn award if substantial procedural errors are found (new hearing or release parties)

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PS Hearing: Ethics

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- Standard of Proof: Clear, strong, and convincing evidence
- Burden of Proof: Complainant
- Panel determines whether or not violation occurred
- Reviews member's file and determines appropriate progressive disciplinary action

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PS Decision: Ethics

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- ☐ Decision states essential facts found to be true, panel's conclusion on violation, and recommended discipline – findings of fact should be succinct but must be comprehensive in telling the story (must stand alone)
- ☐ Panel's decision is signed by all or majority of panel

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PS Discipline: Ethics Violation

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- ☐ Letter of warning with copy in member's file
- ☐ Letter of reprimand with copy in member's file
- ☐ Educational coursework
- ☐ Fine not to exceed \$15,000
- ☐ Suspension of membership (30 days – 1 year) with automatic reinstatement
- ☐ Expulsion from membership (1-3 years) with no reinstatement privilege (must reapply)

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PS Discipline: Ethics Violation

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- ☐ Member may be required to cease or refrain from continued conduct within a given time period
- ☐ Probation for period of time (30 days – 1 year)
 - ☐ Probation not a form of discipline
 - ☐ One or more forms of discipline may be held in abeyance while member is on probation
 - ☐ Subsequent violation during probation result in imposition of suspended discipline

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PS Discipline: Ethics Violation

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- Discipline should be commensurate with offense
 - Unintentional violations should result in discipline designed to educate
 - Intentional, willful violations should result in more severe sanctions that serve as a meaningful deterrent
- Discipline should be progressive taking into account previous violations
- Gray area – first-time violations that demonstrate flagrant disregard for Code's obligation
- Consideration of mitigating or extenuating circumstances (remediation of harm, acknowledgement)

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PS Decision: Appeal

19

- Appeal request (Complainant or Respondent)
 - Procedural deficiency/lack of due process (either)
 - Misapplication/misinterpretation of Article (Respondent only)
 - Recommended discipline (Respondent only)
- Panel of Board of Directors hears appeal

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Mock PS Hearings: Ethics

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- Break into six groups
- Review assigned case
- Discuss case within your group and answer questions
- Present your determination on the case to the full group

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Board of Directors' Function

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- ☐ Hears appeals of Grievance Committee decisions
- ☐ Conducts Procedural Reviews of Arbitration hearings
- ☐ Hears appeals of Ethics decisions
- ☐ Ratifies Ethics decisions (absent an appeal)
- ☐ All Board of Directors' decisions are final

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BoD: Appeals of Grievance Decisions

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- ☐ Ethics Complaint and Arbitration Requests with any supporting documentation cannot be revised or supplemented
- ☐ Appellant may detail in writing why decision to dismiss an ethics complaint and/or certain articles OR to dismiss arbitration request and/or the classification of arbitration request is inappropriate
- ☐ Parties are not present at appeal hearing
- ☐ Directors decide whether to uphold or reverse the decision

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BoD: Procedural Reviews (Arbitration)

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- ☐ Request for Procedural Review contains requester's concern with a procedural deficiency or lack of due process
- ☐ Hearing Panel Chair is present to respond to allegations; parties may provide reasons why award should or should not be overturned
- ☐ Directors can affirm award or overturn it based on substantial procedural error; matter would be referred for new hearing or parties would be released from their duty to arbitrate

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BoD: Appeals of Ethics Decisions

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- ☐ Board reviews appeal request as well as case documentation, findings of facts, conclusions and recommendation for discipline
- ☐ Hearing Panel Chair is present to summarize case and defend conclusions; parties may provide reasons why decision should or should not be upheld
- ☐ Directors may adopt decision verbatim; adopt but lessen discipline; remand to Panel for further consideration of discipline; remand to PS for new hearing; or reverse and dismiss Ethics Complaint

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BoD: Ratifications of Ethics Decisions

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- ☐ Ratified by full Board
- ☐ Board members see only Panel's findings of facts, conclusions and recommendations for discipline
- ☐ Directors may adopt decision verbatim; adopt but lessen discipline; remand to Panel for further consideration of discipline; remand to PS for new hearing; or reverse and dismiss Ethics Complaint

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Mock Directors' Decisions

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- ☐ Break into six groups
- ☐ Review assigned case
- ☐ Discuss case within your group and answer questions
- ☐ Present your determination on the case to the full group

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GRIEVANCE COMMITTEE

REVIEW CASES

QUICK REFERENCE SHEET FOR GRIEVANCE COMMITTEE

Review of Arbitration Request (CEAM pgs. 141-142)

- Request for Arbitration
 - Arbitration Filing Fee Deposit: Not to exceed \$500 per party
 - Request must be filed within 180 days from closing or knowledge of facts constituting the arbitrable matter, whichever is later
 - Types of disputes that can be arbitrated (Conditions of Article 17)
 - Contractual issues/questions (such as between a cooperating broker and the listing broker)
 - Specific non-contractual issues and questions (Standard of Practice 17-4)
 - In the three most common, cooperating brokers can arbitrate without listing brokers
 - In the fourth, two or more "open" listing brokers may arbitrate between (among) themselves
 - In the fifth, listing broker may arbitrate with cooperating broker when listing broker reduces seller's commission and cooperating broker paid the seller
 - Must arise out of the business relationships between REALTORS® or between REALTORS® and their clients/customers
 - Procuring cause – the uninterrupted series of causal events that result in a successful transaction, i.e., a sale that closes or a lease that is executed (CEAM p. 158). Broker's efforts in the successful transaction
 - Began a series of events
 - With no break in continuity
 - Produced a ready, willing, able buyer
- Grievance Committee members answer the following questions and then vote on a decision:
 - Is request on proper form?
 - Are necessary parties named and are they QBs?
 - Was request timely filed?
 - Were parties members at time of transaction and entitled to invoke arbitration?
 - Is litigation pending related to same transaction? (No arbitration shall proceed unless litigation is withdrawn or unless courts refers matter back to Association for arbitration.)
 - Is Board able to provide an impartial panel?
 - Is amount too big or too small for the Board to arbitrate? (Too small if less than joint filing fee)
 - Is the matter too legally complex?
 - Are there a sufficient number of knowledgeable arbitrators?
 - If taken as true, is matter related to a successful transaction and is there some basis on which an award could be based? i.e., is it arbitrable?
 - Is it mandatory or voluntary arbitration?
 - Mandatory: QB/QB (2 firms); B+QB/B+QB (2 firms); Client/QB (agency relationship or legally recognized non-agency relationship)
 - Voluntary: B/B same firm (must involve QB); QB/nonmember B; Customer/QB
- Grievance Decision
 - Forward to PS AND
 - Classify as mandatory or voluntary OR
 - Dismiss OR
 - Place in abeyance

- Appeal of Grievance Decision
 - Reason for dismissal is provided to parties
 - Either party may appeal decision to dismiss case or the classification of the arbitration (mandatory vs. voluntary)
 - Panel of the Board of Directors hears appeal of Grievance decision

Review of Ethics Complaint (CEAM pgs. 39-41)

- Ethics Complaint must be filed within 180 days from knowledge of alleged violation or conclusion of transaction, whichever is later
- Grievance Committee members answer the following questions and then vote on a decision:
 - Is complaint on proper form?
 - Are necessary parties named?
 - Was complaint timely filed?
 - Is Respondent a member? Does Association retain jurisdiction?
 - If active at time of alleged unethical conduct but no longer an active member, case can be forwarded to any other Board in which the Respondent holds a membership
 - If not affiliated with another Board, case will be processed through to ratification
 - Any discipline would be held until the Respondent joins any Association
 - Is criminal or civil litigation/investigation pending? Has matter also been submitted for arbitration?
 - If criminal or civil litigation or other administrative/licensing review is pending, Board Counsel reviews and advises GC, and GC makes decision whether to place in abeyance
 - If an Arbitration Request has been filed on same transaction, arbitration proceeds first
 - Is Board able to provide an impartial panel?
 - Are appropriate articles named?
 - Does complaint need to be amended to add article(s)/respondent(s)?
 - If taken as true, is it possible a violation occurred?
- Grievance Decision
 - Forward to PS as is *OR*
 - Forward to PS as amended *OR*
 - Dismiss *OR*
 - Place in abeyance
- Appeal of Grievance Decision (Complainant only)
 - Reason for dismissal is provided to Complainant
 - Complainant appeals decision to dismiss complaint and/or certain article(s) within complaint
 - Panel of the Board of Directors hears appeal Grievance decision

Case #1: Ethics Complaint

Complainant: Betsy Ross, Owner/Seller vs.

Respondent: George Washington, REALTOR® Broker, Cherry Tree Realty

Alleged violation of Article(s): 1, 11

Supporting Statement by Complainant:

I, Betsy Ross, contacted George Washington to request an appraisal of an apartment building located in a proposed public redevelopment area. I explained to Washington that I had recently inherited the property and acknowledged it was in a neglected condition. I wanted the appraisal performed so that I would know the fair value of the property before discussing its possible sale with the negotiators for the redevelopment project. Washington and I entered into a contractual relationship in which he promised to perform the appraisal of my property. At Washington's suggestion, I agreed to compensate him for his appraisal services based on a percentage of the amount of the appraised value, yet undetermined.

I am filing this ethics complaint on Washington because he overcharged me for the appraisal, which was based on a percentage of the valuation shown in the appraisal report. My attempts to negotiate with the redevelopment agency on the basis of Washington's appraisal were strained and eventually they completely broke down. The redevelopment agency went into court, under eminent domain proceedings, and the award made by the court was approximately one-fourth of the appraisal amount of my property. Washington made his valuation unrealistically high so that he could obtain a higher fee. This whole experience was embarrassing as it had not been my intent to seek an unreasonably high price from the redevelopment agency.

I have filed an Ethics Complaint alleging a violation of Article 1 for Washington's failure to protect and promote my interests as his client and for his lack of honesty, and a violation of Article 11 for Washington's complete lack of competence in appraising properties.

Within your group, answer only the following questions:

1. Are the necessary parties named; i.e., should any other member be named as a Respondent?
2. Should any articles be deleted or added to the complaint?
3. If taken as true on its face, is it possible a violation occurred; i.e., should it be forwarded for a hearing?

Case #2: Ethics Complaint

Complainant: Alex Hamilton, Owner

vs.

Respondent: Tom Jefferson, REALTOR® Principal/Property Manager, Monticello Realty

Alleged violation of Article(s): 1, 2, 12

Supporting Statement by Complainant:

Mr. Jefferson was the property manager for my 24-unit apartment building. When we negotiated our management agreement, I repeatedly emphasized that I expected Jefferson to use great care in screening the financial backgrounds of potential tenants. Several months after we entered into that agreement, Jefferson received an application for a lease from a prospective tenant, Aaron Burr. Following the mandatory procedure, Jefferson obtained a credit report that indicated Burr had a generally satisfactory credit history. Burr made a security deposit of one month's rent, signed a one-year lease, and moved into the apartment. Early the following month Jefferson did not receive Burr's rent check. Jefferson called Burr's apartment number and found the phone had been disconnected. Jefferson drove to the property, rang Burr's bell, and getting no response, let himself into Burr's apartment with a master key. Extensive damage had been done to the apartment since Burr had taken possession. After doing further checking, it became clear that Burr had moved out of state, leaving no forwarding address. The security deposit would cover only a small part of the damage.

As owner, I had to pay for most of the repairs, but I instructed my attorney to try to locate Burr. My attorney asked Jefferson to provide all materials concerning Burr, and Jefferson had his office manager deliver the file to my attorney. In reviewing the documents, my attorney noted that the credit report appeared to have been edited. My attorney ran Burr's credit online, and it confirmed that the report in Jefferson's file had been altered. My attorney shared this information with me, and I am filing this complaint against Jefferson, alleging violation of Article 1, 2, and 12.

Within your group, answer only the following questions:

1. Are the necessary parties named; i.e., should any other member be named as a Respondent?
2. Should any articles be deleted or added to the complaint?
3. If taken as true on its face, is it possible a violation occurred; i.e., should it be forwarded for a hearing?

Case #3: Ethics Complaint

Complainant: James Monroe, Owner

vs.

Respondent: Andrew Jackson, REALTOR® Broker, Hermitage Realty

Alleged violation of Article(s): 1, 4

Supporting Statement by Complainant:

I, James Monroe, own a vacant lot, and I contacted Andrew Jackson about listing the property. I told him that I had heard that similar lots in the vicinity had sold for about \$150,000 and thought he should be able to get a similar price. Jackson stressed some minor disadvantages in location and grade of the lot and said that the market for vacant lots was sluggish. He suggested listing the lot at a price of \$97,500, and I finally agreed. In two weeks, Jackson notified me of an offer at the listed price of \$97,500. I raised some questions about it, pointing out that the offer had come in quite quickly after the property was placed on the market, which might indicate that the lot was worth closer to the \$150,000 I had been told. Jackson strongly urged me to accept the offer, stating that because of the sluggish market, another offer might not develop for months and that the offer in hand simply vindicated his judgment that the pricing was right. I again hesitantly by finally agreed and the sale was made to the buyer, John Calhoun.

Two months later, I found out the lot had been sold again to John Adams at the price of \$165,000. I investigated and found that the initial buyer, John Calhoun was a brother-in-law of Jackson, and that Calhoun had acted on behalf of Jackson in buying the property for \$97,500. I am filing this complaint to charge Jackson with collusion in betrayal of a client's confidence and interests, and with failing to disclose that he was buying the property on his own behalf.

Within your group, answer only the following questions:

1. Are the necessary parties named; i.e., should any other member be named as a Respondent?
2. Should any articles be deleted or added to the complaint?
3. If taken as true on its face, is it possible a violation occurred; i.e., should it be forwarded for a hearing?

Case #4: Arbitration Request dated January 31

Requestor: Lucille Ball, REALTOR® Principal, Desilu Realty

vs.

Respondent: Carol Burnett, REALTOR® Principal, Bloopers Realty

Disputed Amount: \$10,000

Supporting Statement by Requestor:

Listing broker Lucille Ball, a REALTOR® Principal at Desilu Realty, had a motel exclusively listed for \$2,000,000. On March 15, Carol Burnett, a REALTOR® principal at Bloopers Realty, called Ball to arrange a showing. Burnett submitted three letters of intent shortly thereafter: the first on March 31 for \$1,500,000, which was rejected by the seller; the second on April 20 for \$1,650,000, which was rejected by the seller; and the third on May 31 for \$1,750,000, which was accepted by the seller. Ball verbally agreed to pay Burnett \$30,000 if the transaction closed. For several weeks, inspections were worked out, and the buyer pursued financing. Burnett, however, advised Ball at the end of July that the buyer could not obtain financing. After talking with his seller, Ball asked if the buyer would like to close in November or December to give the buyer more time to obtain financing. Burnett told Ball on August 5 that the buyer declined. The deal was dead. Ball's listing expired August 31.

On September 15, Burnett approached the sellers directly stating that the buyer's mother (the same buyer who had previously submitted the letters of intent) recently died, and the buyer expected to inherit money in November. Burnett asked the sellers if they would consider closing in December if her buyers submitted another offer for \$1,730,000. The sellers agreed to sell the property for \$1,730,000 and pay Burnett a \$40,000 commission when the property closed. The property was scheduled to close November 27.

Ball contacted the owners of the hotel at the end of September in an attempt to relist the motel. The owners informed Ball that they entered into a contract with the previous buyer in mid-September, and the motel was currently under contract with a sales price of \$1,730,000. Ball believed Burnett circumvented her listing. If she was the successful listing broker, she would have collected a total of \$60,000; \$30,000 she would have retained and \$30,000 she would have paid to the successful cooperating broker.

Ball hired an attorney immediately. That counsel filed a lis pendens, which state law allowed for. Burnett is first contacted by that attorney on November 24. Counsel negotiated a contractual agreement between Burnett and Ball where Burnett agreed to pay Ball \$20,000, which represented two-thirds of Ball's original listing commission if Ball would remove the lis pendens that Ball filed after she learned the property was under contract. Ball discharged her lis pendens on January 20, and Burnett paid her \$20,000 on January 21. The property closed on January 25. On January 31, Ball filed an arbitration request against Burnett for an additional \$10,000 arguing that but for Burnett's interference she would have retained \$30,000 as the original listing broker.

Case #5: Arbitration Request dated February 12

Requestor: Carol Burnett, REALTOR® Principal, Bloopers Realty

vs.

Respondent: Lucille Ball, REALTOR® Principal, Desilu Realty

Disputed Amount: \$20,000

Upon receipt of Ball's arbitration request, Burnett filed a counter arbitration request for \$20,000, the amount she initially paid Ball. Burnett argued that the cloud on the title had nothing to do with legal rights to the title or ownership and that Ball's initial misconduct (filing a frivolous lawsuit in an attempt to extract money from her) should not be rewarded especially because she was now being "greedy," attempting to collect another \$10,000. She noted in her arbitration request that the only reason she initially paid Ball \$20,000 was so that the lis pendens would be removed and the property could close.

Within your group, answer only the following questions:

1. Are all necessary parties named in the requests?
2. Are the arbitration requests filed in a timely manner?
3. Is the matter too legally complex?
4. Should it be forwarded for a hearing as mandatory or voluntary?

Case #6: Ethics Complaint

Complainant: Alice Ramirez, Seller

vs.

Respondent: Ken Smith, REALTOR® Principal, Smith Realty

Alleged violation of Article(s): 1, 7

Supporting Statement by Complainant:

I, Alice Ramirez, contacted Ken Smith to list a commercial property with him. We agreed on a commission upon the successful sale of the property. Smith contacted me shortly thereafter and informed me he had an interested buyer, but the offer was for less than the listed price. I finally agreed to the offer price, and the sale was made, and I paid Smith his commission.

Several weeks later, I learned that Smith also collected a finder's fee from the buyer, James Johnson. Before I had contacted Smith to list my property, Johnson had engaged Ken Smith to locate a small commercial property. Johnson had been very specific about what he wanted and at what price, and he agreed to pay a finder's fee to Smith if he could locate such a property. My property was exactly what Johnson wanted except for the price, which I eventually reduced to make the sale.

I am filing this ethics complaint against Smith for unprofessional conduct. When Smith presented Johnson's offer to me at less than the listed price, I didn't want to accept it; however, Smith dwelt at length on certain disadvantageous features of the property in an attempt to promote my acceptance of the offer. It appears he was really serving as the agent for Johnson, the buyer, while I was under the belief he was my agent. Smith never told me he was representing the buyer or that he would be compensated by the buyer.

Within your group, answer only the following questions:

1. Are the necessary parties named; i.e., should any other member be named as a Respondent?
2. Should any articles be deleted or added to the complaint?
3. If taken as true on its face, is it possible a violation occurred; i.e., should it be forwarded for a hearing?

Case #7: Ethics Complaint

Complainant: Jacob Jacobson, REALTOR® Principal, Jacobson Realty
vs.

Respondent: Henry Wilson, REALTOR® Principal, Wilson Realty

Alleged violation of Article(s): 16

Supporting Statement by Complainant:

I, Jacob Jacobson, received a call from Henry Wilson asking me the status of one of my listed properties. He asked several questions, one of which was, "Do you have an exclusive listing on that property?" I replied that I was not obligated to disclose the nature, status, or type of listing. After a lengthy and tiresome conversation, Wilson told me that he would be contacting the property owners for this information. I warned Wilson not to contact my sellers directly and brought the conversation to a close. A few days later, I called the property owners, and they told me of their decision to list their property with Wilson when their current listing with me expired the following week. I immediately filed a complaint against Wilson because Wilson's actions in contacting my clients had been inconsistent with my exclusive agreement with the sellers.

Within your group, answer only the following questions:

1. Are the necessary parties named; i.e., should any other member be named as a Respondent?
2. Should any articles be deleted or added to the complaint?
3. If taken as true on its face, is it possible a violation occurred; i.e., should it be forwarded for a hearing?

PROFESSIONAL STANDARDS

HEARINGS

QUICK REFERENCE SHEET FOR PROFESSIONAL STANDARDS PANELISTS – ARBITRATION

Arbitration Hearing & Award (CEAM pgs. 149-151)

- Request for Arbitration
 - Types of disputes that can be arbitrated (Conditions of Article 17)
 - Contractual issues/questions (such as between a cooperating broker and the listing broker)
 - Specific non-contractual issues and questions (Standard of Practice 17-4)
 - In the three most common, cooperating brokers can arbitrate without listing brokers
 - In the fourth, two or more “open” listing brokers may arbitrate between (among) themselves
 - In the fifth, listing broker may arbitrate with cooperating broker when listing broker reduces seller’s commission and cooperating broker paid the seller
 - Must arise out of the business relationships between REALTORS® or between REALTORS® and their clients/customers
 - Procuring cause – the uninterrupted series of causal events that result in a successful transaction, i.e., a sale that closes or a lease that is executed (CEAM p. 158-159). Broker’s efforts in the successful transaction
 - Began a series of events
 - With no break in continuity
 - Produced a ready, willing, able buyer
- Factors for consideration by Arbitration Panel (CEAM p. 159-162); also see Arbitration Worksheet (CEAM pgs. 165-168)
 - No predetermined rule of entitlement – procuring cause shall be the primary determining factor in entitlement to compensation
 - Arbitrability and appropriate parties
 - Relevance and admissibility – anything that assists in reaching a fair, equitable, knowledgeable decision
 - Communication and contact – abandonment and estrangement
 - Conformity with state law
 - Consideration of the entire course of events
- Matters such as the first property showing, writing a successful offer, or an established agency relationship with the buyer are not, in themselves, exclusive determiners of procuring cause/entitlement to the award
- Standard of Proof:
 - Preponderance of the evidence
 - Panel is slightly more certain than not as to who should receive award
 - Panel must weigh all facts introduced at hearing rather than focus on just one fact or a particular issue
- Burden of Proof: Initially rests with requesting party
- Award shall be in writing and signed by all or a majority of the panel
- Form of Award – Decision final
- Procedural Review Request
 - Based only on alleged procedural deficiencies or lack of due process – not on merits of award
 - Heard by a panel of the Board of Directors

QUICK REFERENCE SHEET FOR PROFESSIONAL STANDARDS PANELISTS – ETHICS

Ethics Hearing and Decision (CEAM pgs. 46-48)

- Standard of Proof: Clear, strong and convincing evidence
- Burden of Proof: Complainant
- Panel determines whether or not violation(s) occurred
- If a violation is found, Panel reviews Respondent's member file to see if previous violations exist
- Develops Findings of Facts (basis of decision) outlining the essential facts found to be true, and why the Panel concluded there was/was not a violation
- Panel's decision and recommendation for discipline is signed by all or a majority of the Panel
- Appeal Request
 - Respondent may appeal on procedural deficiency or lack of due process; misapplication/misinterpretation of an Article of the Code of Ethics; or the recommended discipline
 - Complainant may only appeal on procedural deficiency or lack of due process
 - Request must set forth in reasonable detail the facts/evidence that support the bases cited
 - Heard by a panel of the Board of Directors
- If there is no appeal, full Board reviews Panel's Decision for ratification
- Members found in violation of the Code may be charged an administrative processing fee (not to exceed \$500), which is separate from any discipline imposed

Nature of Discipline (CEAM pgs. 36-37)

- Letter of Warning (copy in Member's file)
- Letter of Reprimand (copy in Member's file)
- Educational coursework
- Fine not to exceed \$15,000
- Suspension of membership for period of time (not less than 30 days or more than one year); automatic reinstatement of membership in good standing at end of period
- Expulsion from membership with no reinstatement privilege for a period of one to three years (reinstatement by reapplication only)
- Suspension (30 days to one year) or termination (1-3 years) of MLS rights and privileges
- Member may be required to cease or refrain from continued conduct deemed to be in violation of the Code or to take affirmative steps to ensure compliance with the Code
- Probation for a period of time (not less than 30 days or more than one year)
 - Probation is not a form of discipline
 - One or more forms of recommended discipline may be held in abeyance
 - One or more forms of recommended discipline may go forward when decision final
 - Any subsequent violation during probationary period may result in imposition of suspended discipline
 - Absent any violations during period, probationary status and any suspended discipline shall be considered fulfilled

Sanctioning & Disciplinary Guidelines (CEAM pgs. 65-69)

- Discipline should be commensurate with the offense (unintentional violations should result in discipline designed to educate whereas intentional violations should result in more severe sanctions that serve as a meaningful deterrent)
- Discipline should be progressive, taking into account any previous violations
- Gray area exists with respect to "first-time violations" that are clearly not the result of ignorance but demonstrate a flagrant disregard for Code's obligations

- Mitigating or extenuating circumstances should be considered (recognition of inappropriate conduct and/or remediation of harm or injury)
- Record of earlier violations or record of no violations (panels must review member's file after the decision of a violation has been made)

Case #1: Ethics Complaint

Complainant: Betsy Ross, Owner/Seller vs.

Respondent: George Washington, REALTOR® Broker, Cherry Tree Realty

Alleged violation of Article(s): 1, 11

Supporting Statement by Complainant:

I, Betsy Ross, contacted George Washington to request an appraisal of an apartment building located in a proposed public redevelopment area. I explained to Washington that I had recently inherited the property and acknowledged it was in a neglected condition. I wanted the appraisal performed so that I would know the fair value of the property before discussing its possible sale with the negotiators for the redevelopment project. Washington and I entered into a contractual relationship in which he promised to perform the appraisal of my property. At Washington's suggestion, I agreed to compensate him for his appraisal services based on a percentage of the amount of the appraised value, yet undetermined.

I am filing this ethics complaint on Washington because he overcharged me for the appraisal, which was based on a percentage of the valuation shown in the appraisal report. My attempts to negotiate with the redevelopment agency on the basis of Washington's appraisal were strained and eventually they completely broke down. The redevelopment agency went into court, under eminent domain proceedings, and the award made by the court was approximately one-fourth of the appraisal amount of my property. Washington made his valuation unrealistically high so that he could obtain a higher fee. This whole experience was embarrassing as it had not been my intent to seek an unreasonably high price from the redevelopment agency.

I have filed an Ethics Complaint alleging a violation of Article 1 for Washington's failure to protect and promote my interests as his client and for his lack of honesty, and a violation of Article 11 for Washington's complete lack of competence in appraising properties.

Grievance Committee Review:

The Grievance Committee reviewed this case and forwarded it for hearing as amended, adding QB as a Respondent and deleting Article 11.

Hearing Statements:

Complainant repeated her original statement and summarized her case by stating she was professionally embarrassed that negotiations went so poorly, and personally out of pocket attorney and court costs. She said she would have fared better if she had an honest appraisal with a fair price from which to negotiate. She felt she likely would have done better than what the court had awarded for the apartment building. She said she also paid an inflated price for a worthless appraisal.

The Respondent defended his actions stating that he was unaware of any prohibition in the Code of Ethics prohibiting a REALTOR® from charging a percentage of the valuation of a property as an appraisal fee. He stated that Ross had freely agreed to the arrangement, and he felt the appraisal was a fair one despite the award made by the court, which he felt was unreasonably low.

Within your group, answer only the following questions:

1. Do you find Washington in violation of named Article(s)?

2. Do you find his QB in violation of named Article(s)?
3. If Washington is found in violation of one or more Articles (and considering he had two previous violations of Article 1 and one violation of Article 2), what discipline would you recommend?

Case #2: Ethics Complaint

Complainant: Alex Hamilton, Owner

vs.

Respondent: Tom Jefferson, REALTOR® Principal/Property Manager, Monticello Realty

Alleged violation of Article(s): 1, 2, 12

Supporting Statement by Complainant:

Mr. Jefferson was the property manager for my 24-unit apartment building. When we negotiated our management agreement, I repeatedly emphasized that I expected Jefferson to use great care in screening the financial backgrounds of potential tenants. Several months after we entered into that agreement, Jefferson received an application for a lease from a prospective tenant, Aaron Burr. Following the mandatory procedure, Jefferson obtained a credit report that indicated Burr had a generally satisfactory credit history. Burr made a security deposit of one month's rent, signed a one-year lease, and moved into the apartment. Early the following month Jefferson did not receive Burr's rent check. Jefferson called Burr's apartment number and found the phone had been disconnected. Jefferson drove to the property, rang Burr's bell, and getting no response, let himself into Burr's apartment with a master key. Extensive damage had been done to the apartment since Burr had taken possession. After doing further checking, it became clear that Burr had moved out of state, leaving no forwarding address. The security deposit would cover only a small part of the damage.

As owner, I had to pay for most of the repairs, but I instructed my attorney to try to locate Burr. My attorney asked Jefferson to provide all materials concerning Burr, and Jefferson had his office manager deliver the file to my attorney. In reviewing the documents, my attorney noted that the credit report appeared to have been edited. My attorney ran Burr's credit online, and it confirmed that the report in Jefferson's file had been altered. My attorney shared this information with me, and I am filing this complaint against Jefferson, alleging violation of Article 1, 2, and 12.

Grievance Committee Review:

The Grievance Committee reviewed this case and forwarded it for hearing as amended, deleting Article 1 and 12.

Hearing Statements:

Complainant repeated his original statement, emphasizing that Jefferson's lack of due diligence in screening out this unqualified candidate has cost him considerable money.

The Respondent admitted that he altered the credit report. He said there were several derogatory marks indicating that Burr was months in arrears on various store credit accounts. Jefferson defended his action on the basis that Burr's credit history had been generally satisfactory except for the delinquent store credit accounts. Further, Jefferson indicated that in his opinion Hamilton's insistence that any potential tenant have an unblemished credit history was unwarranted. It made Jefferson's role in identifying potential tenants needlessly difficult and could ultimately result in a large number of vacancies, which would not be in Hamilton's best interest.

Within your group, answer only the following questions:

1. Do you find Jefferson in violation of named Article(s)?

2. If Jefferson is found in violation of one or more Articles (and considering he has no previous violations), what discipline would you recommend?

Case #3: Ethics Complaint

Complainant: James Monroe, Owner

vs.

Respondent: Andrew Jackson, REALTOR® Broker, Hermitage Realty

Alleged violation of Article(s): 1, 4

Supporting Statement by Complainant:

I, James Monroe, own a vacant lot, and I contacted Andrew Jackson about listing the property. I told him that I had heard that similar lots in the vicinity had sold for about \$150,000 and thought he should be able to get a similar price. Jackson stressed some minor disadvantages in location and grade of the lot and said that the market for vacant lots was sluggish. He suggested listing the lot at a price of \$97,500, and I finally agreed. In two weeks, Jackson notified me of an offer at the listed price of \$97,500. I raised some questions about it, pointing out that the offer had come in quite quickly after the property was placed on the market, which might indicate that the lot was worth closer to the \$150,000 I had been told. Jackson strongly urged me to accept the offer, stating that because of the sluggish market, another offer might not develop for months and that the offer in hand simply vindicated his judgment that the pricing was right. I again hesitantly by finally agreed and the sale was made to the buyer, John Calhoun.

Two months later, I found out the lot had been sold again to John Adams at the price of \$165,000. I investigated and found that the initial buyer, Rebekah Donelson was a sister-in-law of Jackson, and that Donelson had acted on behalf of Jackson in buying the property for \$97,500. I am filing this complaint to charge Jackson with collusion in betrayal of a client's confidence and interests, and with failing to disclose that he was buying the property on his own behalf.

Grievance Committee Review:

The Grievance Committee reviewed this case and forwarded it for hearing as amended, adding the QB as a second Respondent.

Hearing Statements:

Complainant restated her case details, and said she felt the Respondent conducted himself in a very unethical manner and should be charged with violations of the Code of Ethics.

The Respondent's defense was that in his observation of real estate transactions, there can be two legitimate prices of property – the price that a seller is willing to take in order to liquidate his investment, and the price that a buyer is willing to pay to acquire a property in which he is particularly interested. His position was that he saw no harm in bringing about a transaction to his own advantage in which the seller received a price that he was willing to accept and the buyer paid a price that he was willing to pay.

Within your group, answer only the following questions:

1. Do you find Jackson in violation of named Article(s)?
2. Do you find Jackson's QB in violation of named Article(s)?
3. If Jefferson is found in violation of one or more Articles (and considering he has one previous violation of Article 1 and one violation of Article 16), what discipline would you recommend?

Case #4: Arbitration Request dated January 31

Requestor: Lucille Ball, REALTOR® Principal, Desilu Realty
vs.

Respondent: Carol Burnett, REALTOR® Principal, Bloopers Realty

Disputed Amount: \$10,000

Supporting Statement by Requestor:

Listing broker Lucille Ball, a REALTOR® Principal at Desilu Realty, had a motel exclusively listed for \$2,000,000. On March 15, Carol Burnett, a REALTOR® principal at Bloopers Realty, called Ball to arrange a showing. Burnett submitted three letters of intent shortly thereafter: the first on March 31 for \$1,500,000, which was rejected by the seller; the second on April 20 for \$1,650,000, which was rejected by the seller; and the third on May 31 for \$1,750,000, which was accepted by the seller. Ball verbally agreed to pay Burnett \$30,000 if the transaction closed. For several weeks, inspections were worked out, and the buyer pursued financing. Burnett, however, advised Ball at the end of July that the buyer could not obtain financing. After talking with his seller, Ball asked if the buyer would like to close in November or December to give the buyer more time to obtain financing. Burnett told Ball on August 5 that the buyer declined. The deal was dead. Ball's listing expired August 31.

On September 15, Burnett approached the sellers directly stating that the buyer's mother (the same buyer who had previously submitted the letters of intent) recently died, and the buyer expected to inherit money in November. Burnett asked the sellers if they would consider closing in December if her buyers submitted another offer for \$1,730,000. The sellers agreed to sell the property for \$1,730,000 and pay Burnett a \$40,000 commission when the property closed. The property was scheduled to close November 27.

Ball contacted the owners of the hotel at the end of September in an attempt to relist the motel. The owners informed Ball that they entered into a contract with the previous buyer in mid-September, and the motel was currently under contract with a sales price of \$1,730,000. Ball believed Burnett circumvented her listing. If she was the successful listing broker, she would have collected a total of \$60,000; \$30,000 she would have retained and \$30,000 she would have paid to the successful cooperating broker.

Ball hired an attorney immediately. That counsel filed a lis pendens, which state law allowed for. Burnett is first contacted by that attorney on November 24. Counsel negotiated a contractual agreement between Burnett and Ball where Burnett agreed to pay Ball \$20,000, which represented two-thirds of Ball's original listing commission if Ball would remove the lis pendens that Ball filed after she learned the property was under contract. Ball discharged her lis pendens on January 20, and Burnett paid her \$20,000 on January 21. The property closed on January 25. On January 31, Ball filed an arbitration request against Burnett for an additional \$10,000 arguing that but for Burnett's interference she would have retained \$30,000 as the original listing broker.

Case #5: Arbitration Request dated February 12

Requestor: Carol Burnett, REALTOR® Principal, Bloopers Realty
vs.

Respondent: Lucille Ball, REALTOR® Principal, Desilu Realty

Disputed Amount: \$20,000

Upon receipt of Ball's arbitration request, Burnett filed a counter arbitration request for \$20,000, the amount she initially paid Ball. Burnett argued that the cloud on the title had nothing to do with legal rights to the title or ownership and that Ball's initial misconduct (filing a frivolous lawsuit in an attempt to extract money from her) should not be rewarded especially because she was now being "greedy," attempting to collect another \$10,000. She noted in her arbitration request that the only reason she initially paid Ball \$20,000 was so that the lis pendens would be removed and the property could close.

Grievance Committee's Decision:

The disputes are between two REALTOR® Principals affiliated with two different firms; no other parties need to be named. Both arbitration requests were timely filed. The matter does not appear to be too legally complex and both matters should move forward as mandatory arbitration.

The Hearing Panel called for a pre-hearing to further discuss these cases. Within your group, answer the following questions:

1. If taken as true, are the matters at issue related to a real estate transaction and are they properly arbitrable, i.e., is there some basis on which an award could be based?
2. If the arbitration requests are determined to be arbitrable and mandatory, should they be consolidated into one hearing?

Additional questions:

1. Was Burnett in violation of the Code of Ethics for trying to represent the seller and buyer in the same transaction?
2. Do you think Burnett respected the exclusive representation that Ball had with her client or did Burnett violate Article 16?

Case #6: Ethics Complaint

Complainant: Alice Ramirez, Seller

vs.

Respondent: Ken Smith, REALTOR® Principal, Smith Realty

Alleged violation of Article(s): 1, 7

Supporting Statement by Complainant:

I, Alice Ramirez, contacted Ken Smith to list a commercial property with him. We agreed on a commission upon the successful sale of the property. Smith contacted me shortly thereafter and informed me he had an interested buyer, but the offer was for less than the listed price. I finally agreed to the offer price, and the sale was made, and I paid Smith his commission.

Several weeks later, I learned that Smith also collected a finder's fee from the buyer, James Johnson. Before I had contacted Smith to list my property, Johnson had engaged Ken Smith to locate a small commercial property. Johnson had been very specific about what he wanted and at what price, and he agreed to pay a finder's fee to Smith if he could locate such a property. My property was exactly what Johnson wanted except for the price, which I eventually reduced to make the sale.

I am filing this ethics complaint against Smith for unprofessional conduct. When Smith presented Johnson's offer to me at less than the listed price, I didn't want to accept it; however, Smith dwelt at length on certain disadvantageous features of the property in an attempt to promote my acceptance of the offer. It appears he was really serving as the agent for Johnson, the buyer, while I was under the belief he was my agent. Smith never told me he was representing the buyer or that he would be compensated by the buyer.

Grievance Committee Review:

The Grievance Committee reviewed this case and forwarded it for hearing as is.

Hearing Statements:

Ramirez restated the details of the real estate transaction. She stated that she was very disappointed in Smith's complete lack of professionalism and in his very unethical conduct.

Smith claimed he had served both buyer and seller faithfully. He said he had not accepted Ramirez's listing until after he had agreed to assist Johnson in locating a property. In his judgment, the listed price for the property was rather excessive, and the price actually paid was a fair price.

Within your group, answer only the following questions:

1. Do you find Smith in violation of named Article(s)?
2. If Smith is found in violation of one or more Articles (and considering he has one previous violation of Article 12), what discipline would you recommend?

Case #7: Ethics Complaint

Complainant: Jacob Jacobson, REALTOR® Principal, Jacobson Realty
vs.

Respondent: Henry Wilson, REALTOR® Principal, Wilson Realty

Alleged violation of Article(s): 16

Supporting Statement by Complainant:

I, Jacob Jacobson, received a call from Henry Wilson asking me the status of one of my listed properties. He asked several questions, one of which was, "Do you have an exclusive listing on that property?" I replied that I was not obligated to disclose the nature, status, or type of listing. After a lengthy and tiresome conversation, Wilson told me that he would be contacting the property owners for this information. I warned Wilson not to contact my sellers directly and brought the conversation to a close. A few days later, I called the property owners, and they told me of their decision to list their property with Wilson when their current listing with me expired the following week. I immediately filed a complaint against Wilson because Wilson's actions in contacting my clients had been inconsistent with my exclusive agreement with the sellers.

Grievance Committee Review:

The Grievance Committee reviewed this case and forwarded it for hearing as is.

Hearing Statements:

The Complainant, Jacobson provided a brief summary and emphasized his concerns regarding Wilson's complete lack of respect for his exclusive agency with his client. He reiterated that because of Wilson's direct contact with his clients, they decided not to relist the property with him. Wilson violated Article 16 by contacting them directly and taking the opportunity to relist the property away from Jacobson.

The Respondent, Wilson said he was driving to his office one day when he noticed the deteriorated condition of the "For Sale" sign posted on an unimproved site bearing the name Jacob Jacobson, Jacobson Realty. He recalled this "For Sale" sign had been on that site for a considerable period of time. Wilson called Jacobson to determine the status of the property. Wilson asked Jacobson some questions, including whether Jacobson had an exclusive listing on the property. When Jacobson failed to discuss or disclose the type of listing, Wilson told him that he would be contacting the property owners for this information. Wilson cited Standard of Practice 16-4 as the basis for his action. Jacobson warned Wilson not to contact his sellers and refused to discuss the matter further.

Wilson defended his actions by stating he had requested information on the nature and status of the listing from Jacobson, and that Jacobson had refused to divulge the information. Wilson then contacted the property owners only after this refusal. He shared "The sellers were happy to discuss listing their property with me, once I described the services my firm could offer. They said they hadn't had an interested customer since the first week of their listing with Jacobson."

Within your group, answer only the following questions:

1. Do you find Smith in violation of named Article(s)?
2. If Smith is found in violation of one or more Articles (and considering he has one previous violation of Article 12), what discipline would you recommend?

BOARD OF DIRECTORS

APPEALS/RATIFICATIONS

QUICK REFERENCE SHEET FOR BOARD OF DIRECTORS

Appeal of Grievance Committee Decision (Full Executive Board) (CEAM pgs. 40-41, 142)

- Directors will review
 - Appeal Request explaining Appellant's disagreement with the dismissal of an ethics complaint or certain articles within the complaint **OR** the dismissal or classification (mandatory or voluntary) of an arbitration request
 - The Ethics Complaint or the Arbitration Request along with any supporting documentation
 - The Grievance Committee Decision
- Parties are not present at the appeal
- Directors will decide whether to uphold the Grievance Committee's Decision or to modify or reverse the decision

Procedural Review of Arbitration Hearing (Panel of Board; Board Counsel Present) (CEAM p. 151-152)

- Directors will review
 - Review Request providing reasons why Requester believes there was a procedural deficiency or lack of due process in the arbitration hearing
 - Transcripts of hearing
 - Note: Complaints on merits of the award will not be considered
- Hearing Panel Chair attends procedural review to respond to allegations
- Parties may be present to give testimony on why award should of should not be overturned
- Directors can affirm award or overturn it based on substantial procedural error; matter would then go back for a new hearing/new panel or parties would be released from their duty to arbitrate

Appeal of Ethics Hearing Panel's Decision (Panel of Board; Board Counsel Present) (CEAM p. 49-50)

- Directors will review
 - Appeal Request providing reasons why Appellant believes there was a procedural deficiency or lack of due process, a misapplication or misinterpretation of an Article, or the recommended discipline was too severe
 - Original Ethics Complaint, Response, Transcripts of hearing, and the Panel's Decision to include findings of fact, conclusions and recommendation for discipline
- Hearing Panel Chair attends appeal to review Panel's findings of facts and conclusions
- Parties may be present to give testimony on why decision should of should not be upheld
- Directors decide among the following:
 - Adopt panel's decision verbatim;
 - Adopt but modify discipline (may impose alternative discipline that **does not exceed** that recommended by panel);
 - Remand to Hearing Panel for further consideration of recommended discipline (if there are concerns that discipline is not adequate);
 - Remand to PS for a new hearing by a different hearing panel (if there are concerns of procedural deficiencies);
 - Reverse and dismiss Ethics Complaint (if findings of fact do not support a violation of the Code of Ethics).

Ratification of Ethics Hearing Panel's Decision – No Appeal (Full Executive Board) (CEAM p. 48-49)

- Directors will review
 - Hearing Panel's Decision to include the findings of facts, the Panel's conclusions and recommendations for discipline (Decision must stand alone)
 - Professional Standards Administrator present if there are questions
- Parties are not present at the ratification
- Directors decide among the following:
 - Adopt panel's decision verbatim;
 - Adopt but modify discipline (may impose alternative discipline that **does not exceed** that recommended by panel);
 - Remand to Hearing Panel for further consideration of recommended discipline (if there are concerns that discipline is not adequate);
 - Remand to PS for a new hearing by a different hearing panel (if there are concerns of procedural deficiencies);
 - Reverse and dismiss Ethics Complaint (if findings of fact do not support a violation of the Code of Ethics).

Nature of Discipline (CEAM pgs. 36-37)

- Letter of Warning (copy in Member's file)
- Letter of Reprimand (copy in Member's file)
- Educational coursework
- Fine not to exceed \$15,000
- Suspension of membership for period of time (not less than 30 days or more than one year); automatic reinstatement of membership in good standing at end of period
- Expulsion from membership with no reinstatement privilege for a period of one to three years (reinstatement by reapplication only)
- Suspension (30 days to one year) or termination (1-3 years) of MLS rights and privileges
- Member may be required to cease or refrain from continued conduct deemed to be in violation of the Code or to take affirmative steps to ensure compliance with the Code
- Probation for a period of time (not less than 30 days or more than one year)
 - Probation is not a form of discipline
 - One or more forms of recommended discipline may be held in abeyance
 - One or more forms of recommended discipline may go forward when decision final
 - Any subsequent violation during probationary period may result in imposition of suspended discipline
 - Absent any violations during period, probationary status and any suspended discipline shall be considered fulfilled

Sanctioning & Disciplinary Guidelines (CEAM pgs. 65-69)

- Discipline should be commensurate with the offense (unintentional violations should result in discipline designed to educate whereas intentional violations should result in more severe sanctions that serve as a meaningful deterrent)
- Discipline should be progressive, taking into account any previous violations
- Gray area exists with respect to "first-time violations" that are clearly not the result of ignorance but demonstrate a flagrant disregard for Code's obligations
- Mitigating or extenuating circumstances should be considered (recognition of inappropriate conduct and/or remediation of harm or injury)
- Record of earlier violations or record of no violations (panels must review member's file after the decision of a violation has been made)

Case #8: Appeal of Grievance Committee Decision – Ethics

Complainant: Larry Connors, REALTOR® Principal, Connors Realty
vs.

Respondent: Alice Franklin, REALTOR® Principal, Franklin Realty

Alleged violation of Article(s): 3

Supporting Statement by Complainant:

I, Larry Connors, had tried for many months to solicit the listing for a small commercial property owned by Jerry Jones. A month ago, I found out it was listed exclusively with Alice Franklin. I called Franklin to ask if I could be accepted as a cooperating broker. Franklin told me that because of unusual circumstances the best service to her client did not require cooperation; that a prospective buyer was seriously considering the property at the time; and that under the circumstances she preferred not to invite cooperation. I had never before heard of such nonsense. I am filing this ethics complaint because Franklin is clearly in violation of Article 3 by refusing to cooperate.

Grievance Committee's Decision:

Dismissed the article/case because allegations do not demonstrate a possible violation of the Code.

Appeal of Grievance Committee's Decision:

Connors appealed the Grievance Committee's decision to dismiss the matter.

Within your group, answer the following question:

Should the Board of Directors uphold the Grievance Committee's decision, or should the Board modify or reverse the decision?

Case #9: Appeal of Grievance Committee Decision – Arbitration

Requestor: Kate Martin, REALTOR® Principal, Martin Realty
vs.

Respondent: Tom Knight, REALTOR® Principal, Knight Realty

Supporting Statement by Requestor of Arbitration:

I, Kate Martin, and Tom Knight were partners in a building company. We both held membership in the local association. After many successful years, we decided to terminate our partnership. Knight remained with the old brokerage firm and continued in the building business, and I formed a new brokerage firm. As part of our termination agreement, Knight agreed not to build new properties in my Association's jurisdiction for a period of twelve months. Six months later, I learned that Knight had continued to build new homes in violation of our termination agreement. I am filing arbitration to demand the Board take action to enforce the agreement and compel Knight to refrain from any further construction.

Grievance Committee's Review:

Grievance Committee found the matter not properly arbitrable and dismissed the case.

Respondent's Appeal of Grievance Committee's Decision:

Martin appealed the Grievance Committee's decision.

Within your group, answer the following question:

Should the Board of Directors uphold the Grievance Committee's decision, or should the Board modify or reverse the decision?

Case #10: Appeal of Hearing Panel's Decision – Ethics

Complainant: Nancy Brown, REALTOR® Principal, Brown Realty

vs.

Respondent: Sharon Martinez, REALTOR® Principal, Martinez Realty

Alleged violation of Article(s): 11

Supporting Statement by Complainant:

I, Nancy Brown, am the REALTOR® Principal for a commercial brokerage. I recently was talking to an officer at a local bank who informed me that they used a residential broker, Sharon Martinez, to appraise an office building. Martinez has no experience in appraising office buildings and had previously only appraised residential properties. I believe Martinez violated Article 11 of the Code of Ethics by taking an appraisal assignment outside the field of her experience without obtaining the assistance of an authority on office buildings.

Hearing Panel's Findings of Fact:

1. Sharon Martinez was asked by Janet Clark, an officer at the local bank, to appraise an office building.
2. Martinez told the hearing panel that she had disclosed her lack of experience in commercial appraisals but felt confident she could do it based on her many years' experience appraising residential properties.
3. At hearing, Clark said Martinez had fully disclosed her lack of previous experience in appraising office buildings, but that Clark had expressed confidence in Martinez to do the work based on years of satisfactory service in Martinez' appraisal of residential properties. Clark added that notwithstanding Martinez' lack of previous experience in appraising an office building, the bank wanted Martinez' judgment and encouraged her to accept the assignment.
4. Martinez undertook the assignment and completed her appraisal report.
5. Clark was entirely satisfied by the manner in which Martinez completed the appraisal.

Hearing Panel's Conclusions:

The Hearing Panel finds the Respondent Sharon Martinez in violation of Articles 11 of the *Code of Ethics*. Martinez was not knowledgeable about this type of property and didn't have access to information and the resources necessary to provide an accurate opinion.

Prior Violations:

None

Hearing Panel's Recommendation for Disciplinary Action to Board of Directors:

Written warning and \$1000 fine.

Rationale for Discipline: Martinez needs to get a strong message that she must advise clients firmly that she cannot perform work outside her expertise area.

Appeal of Ethics Decision:

Martinez appealed the decision based on misapplication or misinterpretation of an Article.

Within your group, determine whether the Board should:

- Adopt the Hearing Panel's decision verbatim;
- Adopt but modify the discipline (lessen or propose equivalent);

- Remand to Hearing Panel to reconsider discipline (if Board believes it was inadequate);
- Remand to Professional Standards for a new hearing with a different hearing panel (if there are concerns with procedural deficiencies);
- Reverse and dismiss Ethics Complaint (if findings of fact do not support a violation).

Case #11: Ratification of Ethics Complaint

Complainant: Susan Smith, Seller

vs.

Respondent: Jessica Jones, REALTOR® Principal, Jones Realty

Alleged violation of Article(s): 13

Hearing Panel's Findings of Fact:

1. Jessica Jones was the exclusive agent of Susan Smith, the owner/seller of a small commercial property. Jones sold Smith's property to Adam Andrews and filled in the blanks in a standard purchase contract form.
2. Jones claimed that when she presented the contract for Andrews' signature, she explained that the contract was prepared by attorneys and was commonly used in the area. Jones suggested that Andrews have his attorney review it. Andrews told Jones he would read it over carefully, and if he had questions, he would consult an attorney about it. Andrews signed the contract, stating to Jones that it was clear and satisfactory to him.
3. At the closing, Andrews professed to having been under some misunderstanding as to language in the contract regarding the date of possession of the property.
4. Susan Smith complained to the Association that she had been greatly embarrassed by this circumstance at the closing and felt that Jones was at fault in preparing a contract without having an attorney participate in the drafting.
5. Jones repeated at hearing that the contract she used was the standard form, prepared by an attorney, and that she had recommended that Andrews have the contract reviewed by his attorney. Jones said that no other parties present at the closing found any lack of clarity in the clause in question.

Hearing Panel's Conclusions:

The Hearing Panel found the Respondent Jessica Jones in violation of Articles 13 of the *Code of Ethics*. The Hearing Panel concludes that Jones should have had an attorney present to ensure full understanding of all contractual language.

Prior Violations:

None

Hearing Panel's Recommendation for Disciplinary Action to Board of Directors:

Must attend the four-hour course entitled "Contracts from A to Z."

Rationale for Discipline: Jones needs to understand contract basics.

Issues to consider/resolve:

- Do findings of fact have enough detail to tell the story?
- Are the Panel's conclusions on the violations supported in the findings of facts and are they defensible?
- Is the discipline commensurate with the offense?

Within your group, determine whether the Board should:

- Adopt the Hearing Panel's decision verbatim;
- Adopt but modify the discipline (lessen or propose equivalent);
- Remand to Hearing Panel to reconsider discipline (if Board believes it was inadequate);

- Remand to Professional Standards for a new hearing with a different hearing panel (if there are concerns with procedural deficiencies);
- Reverse and dismiss Ethics Complaint (if findings of fact do not support a violation).

Case #12: Ratification of Ethics Complaint

Complainant: Randy Soules, FHA Official

vs.

Respondent: Tim Brown, REALTOR® Principal, Brown Realty

Alleged violation of Article(s): 2, [14]

Hearing Panel's Findings of Fact:

1. At the hearing and in written documentation, Soules said he spoke to Brown to enlist his cooperation in solving a problem involving a number of "dual contract" transactions in the area involving FHA mortgage insurance. He said that prospective buyers were being induced into signing offers to purchase houses at a figure several tens of thousands of dollars higher than the listed price so that the signed offer might be used as an evidence of value in obtaining a mortgage loan higher than would be available if the true selling price was stated in the offer. After arranging for a mortgage loan, the broker then executed another contract, stating the true price offered, for presentation to the seller of the property. Soules explained to Brown that such conduct involved misrepresentation and law violations and distorted FHA's market data. Soules asked Brown for his assistance in documenting specific instances.
2. Brown told Soules that real estate personnel had "common knowledge" that such practices were in use, and that he knew of specific persons who had practiced it and had evidence in his files of two instances. Brown said he deplored such unethical conduct but that he did not want to play the role of informer. He refused to divulge information that he had in his possession. Soules brought an ethics complaint charging Brown with a violation of Article 2.
3. When hearing panel members questioned Brown on specific points, Brown responded that he was not guilty of Article 2 personally, but that specific answers to the questions put to him could conceivably do him an injustice, and that he felt that he should not be required to answer questions in a situation that was unfair to him.
4. The Chair reminded Brown that he was not before a court of law but a Board Committee in which his membership was based wholly upon his willingness to abide by its rules. The Chair directed Brown to respond to the hearing panel's questions, and Brown refused.
5. The Chair amended the complaint to include a charge of a violation of Article 14, and the Chair gave Brown the option to request a continuance to prepare his defense on the new article and to decide whether he wanted to continue with this Hearing Panel or have a new one. Brown requested a continuance but said he would go forward with current Hearing Panel.
6. One day prior to the rescheduled hearing, Brown notified the Board that he would not be attending the hearing because he objected to the nature of the Hearing Panel's questions and the fact that he was required to respond.
7. The hearing was held without Brown, and he was found in violation of Article 2 and 14.

Hearing Panel's Conclusions:

The Hearing Panel finds the Respondent Tim Brown in violation of Articles 2 and 14 of the *Code of Ethics*. The Hearing Panel concluded that Article 2 obligated Brown to "avoid misrepresentation or concealment of pertinent facts relating to a property or a transaction." Panel members agreed that respondents in ethics cases were not required to attend hearings, defend themselves, and answer questions absent a specific and direct request to do so in order to remain compliant with Article 14. In this instance, Brown had received a specific and direct request from the Panel to attend the new hearing date and answer questions, and his failure to do so constituted a violation of Article 14.

Prior Violations: None

Hearing Panel's Recommendation for Disciplinary Action to Board of Directors:

Written reprimand, \$3000 fine, and suspension membership in Board for ninety (90) day period.

Rationale for Discipline:

Mr. Brown has made a poor decision in concealing pertinent facts related to a property or a transaction. He further exacerbated the situation by his failure to cooperate with a Professional Standard proceeding.

Issues to consider/resolve:

- Do findings of fact have enough detail to tell the story?
- Are the Panel's conclusions on the violations supported in the findings of facts and are they defensible?
- Is the discipline commensurate with the offense? Is discipline progressive considering prior violations?

Within your group, determine whether the Board should:

- Adopt the Hearing Panel's decision verbatim;
- Adopt but modify the discipline (lessen or propose equivalent);
- Remand to Hearing Panel to reconsider discipline (if Board believes it was inadequate);
- Remand to Professional Standards for a new hearing with a different hearing panel (if there are concerns with procedural deficiencies);
- Reverse and dismiss Ethics Complaint (if findings of fact do not support a violation).

Case #13: Ratification of Ethics Complaint

Complainant: Susan Scott, REALTOR® Broker; Susan Scott, REALTORS®
vs.

Respondent: Molly Dugan, REALTOR® Broker, Dugan Realty

Alleged violation of Article(s): 12

Hearing Panel's Findings of Fact:

1. Susan Scott charged Molly Dugan with a violation of Article 12, stating that Dugan's use of the domain name "scottrealtors.com" presented a false picture to potential buyers and sellers and to others on the Internet.
2. Dugan acknowledged she looked for ways to promote her firm and drive additional traffic to her website. She had registered domain names that incorporated or played on the names of some of her competitors to take advantage of the search engines commonly used by potential buyers and sellers.
3. Dugan indicated that her use of a domain name was not advertising or a "representation" to the public but simply a convenient way for Internet users to find relevant websites. She stated that when consumers reached her home page, there was no question that it is her site since she clearly displayed Dugan Realty and the firm's status as REALTORS®.

Hearing Panel's Conclusions: The Hearing Panel found Molly Dugan not in violation of Article 12.

Issues to consider/resolve:

- Do findings of fact have enough detail to tell the story?
- Are the Panel's conclusions on no violation supported in the findings of facts and are they defensible?

Within your group, determine whether the Board should:

- Adopt the Hearing Panel's decision verbatim;
- Remand to Professional Standards for a new hearing with a different hearing panel (if there are concerns with procedural deficiencies).