

Greater Boston Association of REALTORS® Ombudsman Program

Introduction

Boards and associations of REALTORS® are charged by the National Association of Realtors® with the responsibility of receiving and resolving complaints against their members. Local, regional and state grievance committees and professional standards committees (“Committees”) carry out this obligation for complaints involving ethics violations and arbitrable matters.

Because there was no other avenue for reporting concerns or asking questions, the broker hotline – staffed by Association Council as a service for Designated Brokers – has become a resource for members to utilize when the need arises. Similarly, a Grievance Committee may receive “complaints” that comprise transactional, technical or procedural questions that could be addressed via a less formal and more time-sensitive process. These are not technically “complaints” of alleged violations of Articles of the Realtor® Code of Ethics, and often do not detail conduct related to the Code.

Many of these “non-complaint” issues can be handled informally and efficiently at the local level. The Greater Boston Association of REALTORS® Ombudsman Program has been designed to provide that service to members of the public and fellow REALTORS®.

Mission Statement: The GBAR Ombudsman program is a FREE voluntary REALTOR® member benefit. This program provides a confidential way for GBAR members, their clients and members of the public to:

- **seek answers to general real estate-related questions; and**
- **express concerns about an issue with a REALTOR®**

before selecting a more formal process such as mediation or filing a grievance complaint.

1. Role and Responsibilities of the Ombudsman

The Ombudsman’s role is one of communication and conciliation, not adjudication. Ombudsmen do not determine whether a complaint should be filed or ethics violations have occurred. Rather, they discuss misunderstandings and disagreements with the parties involved in an effort to identify key issues, offer conciliation and to do so in a timely manner. As a result, an Ombudsman’s goal is to facilitate efficient resolution of concerns before they ripen into disputes or charges of unethical conduct.

There shall be a communication vehicle through which parties may discover new insights, establish clarity, provide information and foster mutual understandings designed to avoid taking further action, if possible.

Functionally, the Ombudsman should:

- suggest or explore options, approaches and utilize available resources to resolve disputes;
- assist in addressing problems/concerns in a manner that meets the needs of both the REALTOR member and the consumer or other party;
- offer suggestions or recommendations – invite sales managers or designated brokers of the agents to participate - or otherwise facilitate issues before they escalate and become a problem with more serious implications;
- ensure that all parties understand the agreed-upon resolution and applicable time frame, if any.

If asked, an Ombudsman may:

1. respond to questions about ethical matters;
2. look into the facts underlying concerns and disputes, report findings and mediate fair settlements between parties;
3. listen, discuss, answer questions, provide information, identify options and strategies for conflict resolution; or
4. serve as a dispute resolution advocate.

Ombudsmen do not advocate for either party nor will they be deciding who is “right” or “wrong.” Instead, they function to assist the parties to obtain clarity on the rules or issues and recommend possible options to resolve the problem without a more formal complaint or investigation.

2. Qualification and criteria for Ombudsmen

At a minimum, Ombudsmen should be thoroughly familiar with the Realtor® Code of Ethics and professional standards processes at GBAR as well as other local associations, state real estate regulations, current real estate practice, and other avenues for resolving concerns. Ombudsmen may be REALTORS® or GBAR professional standards staff members who have been trained in International Ombudsman Association’s principles and standards of practice.

There shall be a pool of no fewer than six Ombudsmen appointed for non-concurrent three-year terms. This means that that every third year, two new Ombudsmen are appointed for the following three-year term. The minimum qualifications to serve as an Ombudsman are:

- member in good standing of the Association for a period of no less than five (5) previous years;
- currently serves, or has served on the Grievance or Professional Standards Committees; and
- completed training identified by the Association within the three (3) years prior to the beginning of the three-year Ombudsman term.

Members who have prior mediation or ombudsman experience from another industry may also be qualified to serve as a GBAR Ombudsman on a case by case basis as determined by the President.

3. Appointment/Selection

Eligible individuals will be appointed by the President and confirmed by the Board of Directors one year or less prior to the commencement of the three-year Ombudsman term. There shall be no maximum number of terms which may be served.

Ombudsmen do not receive compensation for their services and may not be reimbursed for out of pocket-expenditures related to performing their duties, without written approval in advance by the President or his appointed delegate.

4. Involving the Ombudsman

Ombudsmen can assist GBAR, its members and the public in a variety of ways. For example, Ombudsmen can field and respond to inquiries and complaints, including general questions about real estate practice, transaction details, ethical practice, and enforcement issues. Ombudsmen also can receive and respond to questions and complaints about members; can contact members to inform them that a client or customer has raised a question or issue; and can contact members to obtain information necessary to provide an informed response. Ultimately, the goal of the Ombudsman program is to perform appropriate duties to provide a respectful and confidential forum for individuals to discuss problems by offering a “hands on” approach to facilitate resolution.

In cases where an Ombudsman believes that a failure of communication is the basis for a question or complaint, the Ombudsman can arrange a meeting or teleconference meeting of the parties and assist in facilitating a mutually-acceptable resolution.

Where a written ethics complaint in the appropriate form is received, it can be initially referred to the Ombudsman who will attempt to resolve the matter. The Ombudsman can discuss

alternatives to a formal complaint and hearing, but must not steer complainants away from a formal hearing if one is requested.

Complaints alleging violations of the public trust (as defined in Article IV, Section 2 of the NAR Bylaws) may not be referred to an Ombudsman. In the event the Ombudsman concludes that a potential violation of the public trust may have occurred, the Ombudsman shall immediately terminate the process and advise the parties of their right to pursue a formal ethics complaint; pursue a complaint with any appropriate governmental or regulatory body; pursue litigation; and/or pursue any other available remedy.

Persons filing complaints, or inquiring about the process for filing ethics complaints, will be advised that ombudsman services are available to attempt to informally resolve their complaint. Such persons will also be advised that they may decline ombudsman services and can have their complaint referred to ethics mediation (if available), or considered at a formal ethics hearing.

5. No liability of Ombudsman or NAR; subpoenas and testimony

Ombudsmen are covered through the NAR insurance program, as long as they are acting within the coverage limits described in the policy.

Some of the definitions and limitations provided in the policy are covered in the *Answers to Questions Most Frequently asked about the National Association of REALTORS® Professional Liability Insurance Program for Associations of REALTORS®*. For example, the policy defines an "ombudsman" is an individual designated by an Association to be available for consultation about the Association's ethics hearing, arbitration, and/or dispute resolution processes. In addition, only Association staff or members serving as Ombudsmen are covered under the policy; an attorney serving in this role is not eligible for coverage. The policy excludes from coverage any claim that alleges or arises out of any action committed by an Ombudsman that does not involve an Association's ethics hearing, arbitration or dispute resolution processes.

6. Confidentiality of written or oral communications

Allegations, discussions, and decisions made in ombudsman proceedings are confidential and may not be reported or published by the board, any member of a tribunal (including the Ombudsman), or any party under any circumstances except those established in the *Code of Ethics and Arbitration Manual*.

7. Admissibility and disclosure of communications and agreements in subsequent adjudicatory proceedings; exceptions

Written or oral communications that are confidential under the Program shall not be admissible as evidence in any adjudicatory proceeding, whether in court, arbitration, administrative or regulatory agency, including but not limited to any arbitration or ethics hearings administrated by GBAR or any Massachusetts Board of Professional Licensure proceeding.

Nothing contained in these procedures shall be construed to prohibit the parties from jointly agreeing to the disclosure or admissibility of documents or information that is otherwise deemed confidential. Additionally, any party, REALTOR® or the company with which they are associated, the Ombudsman, or GBAR, may use confidential information in any adjudicatory proceeding, whether in court, arbitration, administrative or regulatory agency, including but not limited to any arbitration or ethics hearings administered by GBAR or any state regulatory proceeding, in defending any action or claim brought against them that relates to any of the services, functions, or other events arising during the Program, to the extent necessary to defend themselves.

8. Resolution of complaints

If a matter is resolved to the satisfaction of the parties through the efforts of an Ombudsman, any formal ethics complaint that may have been raised on that matter will be dismissed. Appropriate documentation will instruct the Professional Standards Administrative Staff Member to forward the appropriate paperwork to the Complainant in such cases.

9. Failure to comply with agreed-upon resolution

Failure or refusal of a member to comply with the terms of a mutually agreed on resolution within the agreed-upon time frame, if any, shall entitle the complaining party to resubmit the original complaint or, where a formal complaint in the appropriate form had not been filed, to file an ethics complaint. The time the matter was originally brought to GBAR's attention, whether via the Ombudsman program or a formal complaint or charge, will be considered the "filing date" for purposes of determining whether an ethics complaint is timely filed.

10. Referrals to the Grievance Committee or to state regulatory bodies

Ombudsmen cannot refer concerns they have regarding the conduct of any party utilizing their services to the Grievance Committee, to the state licensing agency, or to any other regulatory body. The prohibition is intended to ensure impartiality and avoid the possible appearance of bias. Ombudsmen are however, authorized to refer concerns that the public trust may have been violated to the Grievance Committee, see section 4 above.

11. Changes to program

Ombudsman will meet a minimum of once per calendar year to discuss the program and determine if any policy changes are required. If so, the Ombudsman will forward those changes to the Chairman of the Professional Standards Committee. Upon approval by the Professional Standards Committee Chair, those changes shall be forwarded to the GBAR Board of Directors for ratification.

Contact Information

If you have a dispute with a fellow REALTOR® Member and would like to utilize the Boards Ombudsman Program please feel free to contact **Damian Kuliunas, Professional Standards**

& Programs Assistant at Dkuliunas@gbreb.com or 617-399-7865, or William Mullen III, Esq., Legal Counsel & Director of Risk Management at Wmullen@gbreb.com or 617-399-7842.