

## Frequently Asked Questions About Citation Policy - January 1, 2015

**Q 1. Why is a Citation Policy necessary when there are already procedures in place to deal with Code of Ethics violations?**

**A** In 2005, a C.A.R. Business Practices Task Force was created and given the mission to review the current state of professional and ethical business practices of REALTORS® and to recommend programs to address any concerns. The Task Force discovered, in a survey of C.A.R. members, that many REALTORS® do not file ethics complaints, even for identifiable unethical conduct, because they felt that the procedure is too cumbersome and time consuming. The Task Force made a recommendation to the C.A.R. Professional Standards Committee that the Committee formulate and institute a procedure to expedite the prosecution of Code of Ethics violations. The Citation Policy is a result of that recommendation.

**Q 2. What are some of the key advantages that the Citation Policy offers that current professional standards procedures do not?**

**A**

- Time for process: if a citation is issued and paid by the violator, the entire process is completed in thirty (30) days or less. By contrast, the process for a professional standards hearing can take from sixty (60) to ninety (90) days or more.
- Association facilities: if a citation is issued and paid by the violator, no association facilities are used. By contrast, the process for a professional standards hearing, generally, requires one (1) or more hearings, all of which necessitate the use of association meeting rooms.
- Volunteer time: if a citation is issued and paid by the violator, no volunteers from the professional standards committee or board of directors are involved. By contrast, the normal process for a professional standards hearing requires the participation of three (3) or four (4) members of the professional standards committee and, if there is a request for review, three (3) or four (4) directors.
- Staff time and association resources: if a citation is issued and paid by the violator, a minimal amount of staff time and association resources are used. By contrast, the normal process for a professional standards hearing requires a great deal of staff time and association resources to prepare paperwork, coordinate a hearing panel and set hearing dates – not to mention what is involved to actually hold hearings at the association.

**Q 3. If a citation is issued, can the member who receives the citation ask for a full professional standards hearing?**

**A** Yes. When the violation is sent to the member, the violator is advised that he/she has the right to request a full due process hearing, rather than pay the citation fine.

**Q 4. What happens if a violator ignores the citation?**

If a violator fails to respond to a citation, a full professional standards hearing is processed, and all the normal procedures for a disciplinary complaint that are in the *California Code of Ethics and Arbitration Manual* (“Manual”) are in effect.

**Q 5. If the matter goes to hearing, is the hearing panel limited in the discipline that they can recommend.**

**A** No. Any matter that goes to hearing is treated like a normal ethics complaint, the Grievance Committee may add additional violations and the hearing panel, if it finds a violation, can recommend any discipline it deems appropriate, in accordance with the Manual.

**Q 6. If the member who receives a citation is a salesperson, is that person's Designated Broker notified.**

**A** Yes.

**Q 7. Can a REALTOR® receive a Code of Ethics citation if he or she has received an MLS citation for the same event and conduct?**

**A** No. It is the responsibility of the person receiving the Code of Ethics citation to demonstrate to the association that he/she has already paid a fine to the MLS for the same event and conduct.

**Q 8. How does the association know what kinds of conduct are subject to a citation?**

**A** C.A.R. has published a Model Citation Schedule ("Model Schedule") that lists all the conduct that is subject to citation.

**Q 9. Is it mandatory for an association to adopt all the citations on the Model Schedule?**

**A** No. The association can adopt all or fewer than all the citations on the Model Schedule – it's strictly up to the individual association to decide which citations they wish to adopt.

**Q 10. Can the association adopt citations that are not on the Model Schedule?**

**A** No. The only citations that may be adopted are those on the Model Schedule.

**Q 11. How much is the fine for a citation?**

**A** The amount of the fine is a matter of local option. C.A.R. does not suggest any dollar figures.

**Q 12. Are there any alternatives to a fine for a citation?**

**A** The association can require attendance at ethics training, as an alternative to a fine. Again, any training requirement is a matter of local option.

**Q 13. Has the Citation Policy been approved by NAR?**

**A** Yes.

**Q 14. Is it mandatory for an association to adopt the Citation Policy?**

**A** No. The Local Association's Board of Directors has the option to adopt the Citation Policy – or not.

**Q 15. Does NAR's Professional Liability Insurance cover the Citation Policy?**

**A** Yes. The Citation Policy has been approved by NAR. Therefore, the association, its staff and volunteers are covered by NAR's insurance for any liability that may arise out of the Citation Policy.

## **C.A.R. Citation System for Code of Ethics Violations (Revised 2014)**

- I. Complaint alleging violation of the Code of Ethics is received by AOR and channeled through the Grievance Committee:
  - A. Decision whether conduct is subject to citation is made by Grievance Committee.
    1. Assuming the allegations on the face of the complaint are true, is there a potential violation of the Code of Ethics?
    2. Assuming there is a potential violation of the Code of Ethics, is the conduct the type that is prohibited by the Citation Schedule that has been adopted by the AOR, i.e. a citable offense?
      - a. If the violator has already received a citation for violation of an MLS rule, for the same event and conduct, it is not eligible for citation.
      - b. If a citable offense:
        - i. attached citation is sent to violator, with copy to DR.
        - ii. citations will be used for purpose of possibly increasing discipline at future ethics hearings.
      - c. If conduct is not eligible for citation, but possible violation of the Code of Ethics is alleged:
        - i. Grievance Committee has authority to amend complaint with additional alleged violations of Code of Ethics and/or MLS Rules.
        - ii. Matter will be sent forward for full ethics hearing.
        - iii. All hearings are held in accordance with the California Code of Ethics and Arbitration Manual (“Manual”).
        - iv. if violation is found by hearing panel, that information can be used to possibly increase discipline at future ethics hearings.
      - d. If no possible violation is alleged, complaint will be dismissed.
        - i. Complainant has right to request Directors’ Review.
    - B. If conduct is a citable offense, upon receipt of citation, violator has 10 days to elect one of the following options:
      1. Pay the fine (amount is local discretion).

2.Ethics Training (local option) – if this is chosen, violator will pay a fine (amount determined by local) and, at option of local, all or part will be refunded upon proof of completion.

3.Elect full Ethics hearing to contest citation.

- a. If hearing is elected, complaint is returned to Grievance Committee for further scrutiny and possible amendment with additional alleged violations of Code of Ethics and/or MLS Rules.
- b. All hearings are held in accordance with the Manual.
  - i. If anonymous complaint, Grievance Committee is complainant;
  - ii. If identified complainant, he/she has full due process rights afforded under the procedures approved by NAR for disciplinary hearings.
- c. Violator will have a full due process hearing where hearing panel, made up of members of the Professional Standards Committee, has the following options:
  - i. Dismiss the citation and complaint.
  - ii. Uphold the citation and corresponding fine.
  - iii. Amend complaint by adding additional violations, as supported by the evidence.
  - iv. Increase the discipline, including any allowable sanction.
- d. If violation is found by hearing panel, that information can be used to possibly increase discipline at future ethics hearings.
- e. The results of hearings can be appealed to the Board of Directors, as set forth in the Manual.

C. Failure to respond to citation within 10 days results in a warning letter (model attached) that the matter will be forwarded for full Ethics hearing if no response is received within 10 more days.

D. Failure to respond to citation within 20 days from date of citation automatically results in full Ethics hearing, which opens up the possibility of any allowable sanction(s) determined by the hearing panel, including greater fine and possible suspension or expulsion from membership.

E. If ethics training is elected, violation is kept in file only for purpose of keeping track of number of citations and the time frames in which they were given and the information is not used to possibly increase discipline at a future ethics hearing.

1.Ethics training can only be elected once in any three (3) year period.

2.Only three (3) citations may be issued to a violator within a three (3) year period.

- a. When number of citations limit is reached, no further citation can be issued to that violator - all alleged violations must go to full due process hearing.
- F. Where an actual complainant reports the citable behavior D as opposed to an anonymous complaint or citation initiated by the Grievance Committee D notification of the action taken by the Grievance Committee would be given to the complainant (model attached).
- G. C.A.R. has published the attached Model Citation Schedule.

1. Local options:

- a. Which citable offenses are adopted (local may adopt fewer than the entire list of citations, but may not add citable offenses).
- b. Amount of fine for citable offense.
  - i. Fines cannot exceed maximum allowable by N.A.R.
  - ii. Locals may adopt, at their option, accelerated fines for multiple violations (i.e. the fine for a second offense is greater than for the first offense).
- c. Whether ethics training can be taken by the violator as an alternative to paying the fine.
- d. Maximum limit of citations issued to a violator within a three (3) year period not to exceed C.A.R. limit of three.

### Model Citation Schedule (Revised 2018)

<input type="checkbox"/> <b>Article 3:</b> Attempt to change offer of compensation after being made aware of a signed offer	
<input type="checkbox"/> Failure to disclose existence of dual or variable rate commission.	\$
<input type="checkbox"/> Failure to disclose existence of accepted offers to cooperating brokers.	\$
<input type="checkbox"/> <b>Article 6:</b> Accepting any commission, rebate or profit on expenditures without client's knowledge or consent.	\$
<input type="checkbox"/> <b>Article 12:</b> Failure to present a true picture in real estate communications and advertising.	
<input type="checkbox"/> Failure to disclose professional status in advertising and other representations.	\$
<input type="checkbox"/> Failure to disclose compensation from 3 <sup>rd</sup> party for services provided free to a client.	\$
<input type="checkbox"/> Failure to make reasonable efforts to ensure that information on web sites is current and correct.	\$
<input type="checkbox"/> Failure to display name of firm and state of licensure in a reasonable and apparent manner.	\$
<input type="checkbox"/> Failure to present a true picture in advertising and representations to the public, including misleading images, internet content, URLs and domain names.	\$
<input type="checkbox"/> Failure to disclose intent to share or sell consumer information gathered via internet.	\$
<input type="checkbox"/> Using or registering domain name or URL that presents less than a true picture.	\$
<input type="checkbox"/> Using a professional designation, certification or other credential to which they are not legitimately entitled.	\$

<input type="checkbox"/> Failure to disclose status as both owner/landlord and REALTOR® or licensee when advertising property in which REALTOR® has ownership interest.	\$
<input type="checkbox"/> Falsely claiming to have “sold” property.	\$
<input type="checkbox"/> Registration or use of deceptive URL or domain name.	\$
<input type="checkbox"/> <b>Article 14:</b> Failure to cooperate in any professional standards proceeding or investigation.	\$
<input type="checkbox"/> <b>Article 16:</b> Use of terms of an offer to modify listing broker’s offer of compensation.	
<input type="checkbox"/> Placement of for sale/lease sign on property without permission of seller/landlord.	\$

**Note: The Association may adopt all or some of the above citations; however, no additional citations may be added.**

**The Association, at its option, may impose an escalating fine schedule for repeat citations and also may impose a training requirement as an alternative to payment of a fine for any of the citable offenses adopted.**

**The amount of fine for any citation is at the option of the Association, but may not exceed the maximum fine allowed by NAR for violation of the Code of Ethics.**