

ETHICS HEARING

Selection of Hearing Panel

- List with names of Professional Standards Committee members sent to parties. Parties have opportunity to challenge
- Four members chosen from unchallenged individuals
- Three are panel members, fourth is alternate
- Panel members are decision-makers
- Alternate cannot actively participate in hearing (no questions, comments or participation in deliberations)
- One panel member is Presiding Officer (“PO”)
- Due process concern
 - All must be objectively unbiased
 - Automatic disqualification: (1) related by blood or marriage to party, (2) financial interest in outcome of matter, (3) one of the parties or (4) employer, employee or business associate of party
 - Bend-over-backwards rule – if an objective 3rd party would think you have reason to be biased, excuse yourself – avoid the perception of impropriety

Response from Respondent

- Late filing of Response - OK
- Due process concern
 - Respondent has right to defend him/herself

Withdrawal of Complaint

- After hearing begins, complaint may be withdrawn only with panel’s approval

Amendment of Complaint

- Prior to hearing, complainant can amend any time
- Respondent must receive a copy of the amended complaint and have the opportunity to amend his response thereto
- During the hearing, complainant or hearing panel may amend complaint
- Amended complaint must be signed by complainant or PO of panel
- Respondent has choice
 - Reschedule hearing with new or same hearing panel
 - Give written waiver of right to reschedule and go forward with this hearing

- Due Process concern
 - Right to knowledge of charges against

Failure of Respondent to Appear at a Duly Noticed Hearing

- If valid reason, hearing should be continued
- If no valid reason, hearing can go forward without respondent
 - No default judgment (no automatic guilt)
 - Complainant must still prove case
- Due process concern
 - Right to defend him/herself

Failure of Panel Members to Attend

- Alternate sits on panel
- Only two panel members
 - Parties agree to two panel members
 - Continue hearing

Right to Counsel

- Party can be represented by attorney and/or REALTOR®
- Counsel has rights analogous to those in judicial proceedings
 - make opening and closing statements
 - examine and cross-examine witnesses
 - PO controls the hearing and must not permit counsel to badger witnesses or the panel
- Due process right to counsel

Who may be Present in Hearing Room throughout Hearing

- All parties
- Attorney for party and/or Association
- Broker of salesperson-party
- Anyone with financial stake in outcome

Continuance may be Granted

- Upon motion of panel
- Upon motion from a party
- At Panel discretion

Duty to Testify

- Every member has a duty to testify
- No subpoenas allowed

Formal Rules of Evidence Do Not Apply

Formal judicial procedures and rules of evidence are not applicable

See attached Summary of General Principles Regarding Evaluation of Evidence

Right to Present Evidence

- Documentary evidence
- Witness testimony
- Witnesses sworn by PO
- Witness only allowed in hearing room to be sworn and while testifying
- Accountants and other expert witnesses OK
- Due process concern
- Right to a full and fair hearing
 - Right to defend him/herself

Right to Cross-Examine

Parties and/or counsel can cross-examine witnesses Panel members may question parties and witnesses

Video/Tape Recordings

- All hearings are video or tape recorded
- Only purpose and permissible use of video or tape recording is Directors' Review.
- Video/tape recorder is frequently operated by alternate

Burden of Proof

Complainant has burden of proof

Outline of Procedure

- PO makes opening statement and swears in parties and witnesses
- Articulate the ground rules
- Speak in laymen's terms
- Witnesses leave room
- Complainant makes opening statement
- Respondent can make opening now or at end of complainant's evidence
- Complainant presents documentary evidence and calls witnesses
- Respondent presents documentary evidence and calls witnesses
- At conclusion of each witness's testimony, other party can cross examine
- Members of hearing panel can question witnesses and parties at any time
- Upon conclusion of all evidence and testimony, each party can make closing statement – usually complainant goes first

Deliberation and Decision of Hearing Panel

- At the completion of the hearing, all parties are dismissed
- The panel members may then refer to their notes and the tape recording of the hearing, discuss the issues and make a decision
- All members of panel have equal vote
- The decision of the hearing panel is a two-tier process and shall be by simple majority vote

- Was there a violation or not?
 - Draft findings of fact to support your decision – whether you find violation or not
 - See attached Issues Briefing Paper on Findings of Fact
- Determine discipline to be recommended, if any
 - View respondent's file for prior violations to determine appropriate discipline – discipline can be increased for repeat violators
 - See attached Sanctioning Guideline
 - Complete “Recommendations of Hearing Panel Disciplinary Action” form