



**REALTOR® ASSOCIATION**  
of Sarasota and Manatee

# A GUIDE TO ETHICS AND ARBITRATION

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## QUESTIONS AND ANSWERS

### Ethics Complaints & Arbitration Requests

**Q. Do you have a complaint concerning a REALTOR®?**

**A.** The first thing that must be determined in processing a complaint with the REALTOR® Association of Sarasota and Manatee (RASM) is whether the real estate agent involved is a REALTOR® and a member of RASM, or receives MLS through RASM. Not all real estate agents are REALTORS®. Only those who belong to an Association of REALTORS® can use the term REALTOR®. When joining an Association, all members agree to abide by the Code of Ethics as a continuing condition of membership. It is because of this obligation to abide by the Code of Ethics that you can file complaints at an Association of REALTORS®.

**Q. Is there any immediate assistance RASM can offer if there is a dispute?**

**A.** Yes. RASM may offer an ombudsman service. Ombuds is an informal mediation conducted by a trained volunteer REALTOR® appointed to resolve disputes through constructive communication and advocating for consensus and understanding.

**Q. Is your complaint Ethics or Arbitration?**

**A.** You may have to consider whether your complaint concerns an ethics matter or an arbitration of a monetary dispute. An ethics complaint charges that a REALTOR® has violated an Article(s) of the Code of Ethics.

Arbitration is a means of resolving a monetary dispute arising out of a real estate transaction that the parties have been unable to solve themselves. An arbitration request is a simple notice by a member of a disagreement with another member, usually a commission dispute. Sometimes arbitration concerns a dispute between a member of the public and an Association member. Arbitration does not award damages.

If your situation concerns both ethics and arbitration, RASM will handle the requests separately. You may file both at the same time, however, arbitration is always held first. Only when arbitration is complete will the ethics complaint be considered.

**Q. Who may file an ethics complaint?**

**A.** Anyone. Any person, whether a member of RASM or not, may file a complaint against a RASM member alleging a violation of the Code of Ethics, providing the complaint:

1. Is in writing.
2. Is signed by the complainant.
3. States the facts surrounding the case.
4. Is filed within 180 days when the facts could have become known by the complainant or within 180 days after the conclusion of the transaction or event, whichever is later.

The Complainant may file a complaint from any location provided it is filed with the Association having jurisdiction over the individual named in the complaint.

**Q. Who may file an arbitration request?**

**A.**

- REALTORS®, primary or secondary members, who are principal brokers.
- REALTORS®, primary or secondary members, who are not principals, provided his or her principal broker joins in the request

- Clients or customers of the REALTOR® (see note below).
- The request also must:
  1. Be in writing;
  2. Be signed by the Complainant;
  3. Indicate the amount in dispute;
  4. Be filed within 180 days of either closing of the transaction or after the facts could have become known, whichever is later.

Arbitration facilities are provided by RASM as a service to its members. Arbitration is not a disciplinary proceeding, nor does it award damages. By becoming and remaining a member of RASM, REALTORS® bind themselves to arbitrate certain disputes.

In all arbitrable matters, mediation is offered prior to a formal hearing.

Be aware that not every situation may be arbitrated at RASM. There are conditions and limitations to be considered, which will be explained to you by RASM's Professional Standards Administrator as the process continues.

**Note:** Disputes involving clients or customers require that the client or customer sign an agreement to arbitrate and to be bound by the arbitration. Whether the complainant is a client or a customer and whether the dispute is one that can be processed by RASM's Grievance Committee is determined by RASM's Grievance Committee.

**Q. What can RASM do?**

**A.** RASM has limitations to its authority regarding its members. Below is a list of those limitations:

1. RASM cannot hold an administrative hearing for violations of the Florida real estate license law or any other alleged violation of the law. It has jurisdiction only over violations of membership duties. The Florida Real Estate Commission has sole control of the real estate agent's license to sell real estate. If you think a person has violated the law, you should be contacting another agency.
2. For the same reason, RASM **cannot** suspend or terminate the real estate **license** of one of its members.
3. RASM **can** in the case of an ethics violation being determined in a due process hearing procedure, administer discipline to the REALTOR® in one or more of the following ways:
  - Send a letter of warning or reprimand to the member.
  - Direct the member to attend an ethics class or other training appropriate to the violation.
  - Assess an appropriate and reasonable fine not to exceed \$15,000 (this fine is not awarded to the complainant).
  - Place the member on probation for a stated period of time not less than thirty (30) days or more than one (1) year.
  - Suspend the membership of the individual for a stated period of time not less than thirty (30) days or more than one (1) year.
  - Expel the member from membership with no reinstatement privilege for a specified period of one (1) to three (3) years.
  - MLS suspension (30 days to 1 year) or MLS termination of 1 to 3 years.
  - If Respondent is found in violation of the Code of Ethics, and administrative processing fee of \$500 will be assessed.

4. Monetary damages cannot be a part of an ethics proceeding.
5. RASM can arbitrate certain money disputes and **must** in some situations, but the member of the public must agree in writing to arbitrate the dispute and to be bound by the decision.
6. The award in arbitration cannot be greater than the amount in dispute, may not include "punitive" damages and may not include attorney's fees unless expressly provided for in the agreement giving rise to the dispute.

**Q. How do you file?**

**A.** Now that you know the ground rules, if you wish to file a complaint, here's how you do it.

### **Ethics Complaints**

If you want to file an ethics complaint, you need to follow these steps:

1. Contact RASM's Professional Standards Administrator (941-952-3402) to request an ethics complaint package.
2. Complete and sign the complaint form (#E-1). This form requests you to name the REALTOR®(s) in question as the Respondent(s).
3. List the Article(s) of the Code of Ethics that you think the REALTOR® has violated. A copy of the Code of Ethics is included in this packet.
4. Attach an explanation of the situation surrounding the complaint. Be as specific as possible. State the details, including what, when, where, why and how you think each Article was violated. A chronological summary is very helpful to understanding your case.
5. Attach the original plus seven (7) copies of Form #E-1 and all pertinent documents that prove your points such as listing agreement, purchase and sales agreements, emails, correspondence and addenda. If you have notarized statements from witnesses, include those also. Email a complete digital version of your complaint to the Professional Standards Administrator.
6. Send the Original plus the seven (7) copies along with a digital version, keeping a copy for yourself, to RASM, attention of the Professional Standards Administrator. Your complaint then will be forwarded to our Grievance Committee to determine if a hearing is warranted.

### **Arbitration Requests**

The process is very similar to filing an ethics complaint. Steps to follow are:

1. Contact RASM's Professional Standards Administrator (941-952- 3402) for an arbitration request package.
2. Complete the form by naming the Designated REALTOR® and REALTOR®(s) involved (Respondents). The Designated REALTOR® with a firm must be named in addition to the REALTOR®(s) involved.
3. Indicate the exact amount in dispute.
4. Include an explanation of the situation. State why you feel you are entitled to an award of some kind. Remember, don't include allegations of unethical conduct in your argument. If you think there have been ethical violations, they must be handled separately with an ethics complaint.
5. Attach copies of all pertinent documents such as listing agreements, purchase and sales agreements, and closing statements, plus any notarized statements from witnesses. A chronological summary is very helpful to understanding your case.
6. RASM requires an arbitration deposit of \$500 and it must be included with your filing. Details are included in the arbitration packet you receive.
7. Sign the arbitration agreement (Form #A-1, Member or Form #A-2, Nonmember) indicating your commitment to abide by the decision of the Hearing Panel.

8. Mail and email a complete digital version the original plus seven (7) copies and email a complete digital version of these items to RASM to the attention of the Professional Standards Administrator. Remember, it is not unusual for RASM to receive an ethics complaint and an arbitration request surrounding the same set of circumstances. If you think the REALTOR®(s) violated the Code of Ethics and you have a monetary dispute you must complete both forms.

**Q. How does RASM process the complaint?**

- A** RASM will offer Mediation Services to the complainant and if agreed, we will then contact the respondent to ascertain their willingness to mediate the issue. If mediation is not desirable, the complaint is reviewed at the next regularly scheduled Grievance Committee meeting. If deemed arbitrable, mediation will once again be offered to both parties.

NOTE: Both parties must agree to mediate. If mediation is not desirable, the Respondent will then be sent a copy of the Arbitration complaint and will have 15 days to respond.

## FUNCTION OF THE GRIEVANCE COMMITTEE

**Ethics Complaints:** The Grievance Committee reviews complaints when received by RASM. The Committee determines whether the complaint has sufficient merit for further consideration, somewhat like a "grand jury". It does not determine guilt or innocence. The Committee will do one of three things:

1. Forward the case for a Professional Standards Hearing; or
2. Dismiss it if the complaint is determined to not be based upon a code of ethics violation.
3. Postpone its decision based on obtaining more information from the complainant.

If your complaint is dismissed by the Committee, you have the right to appeal the dismissal to the Board of Directors. In the case of an appeal, the Directors re-examine the materials submitted to the Grievance Committee and can either uphold or overturn the Grievance Committee's decision. Complainants and Respondents are not present for the appeal.

If the complaint is to be given further consideration, it will be sent to the Professional Standards Committee for a hearing.

**Arbitration Requests:** The Grievance Committee's role in arbitration is different from ethics complaints. Its only function is to make such preliminary determination that the matter is subject to arbitration by RASM. Arbitration sometimes is a duty and sometimes a privilege. The Committee must decide whether your situation fits into the "Duty" or the "Privilege" category. It does this by determining:

1. Where you are authorized, under the rules, to invoke arbitration.
2. Whether the controversy described is an arbitrable matter.
3. Whether the arbitration is mandatory or voluntary to the people involved (this simply means whether arbitrating the dispute is compulsory or not).
4. Whether the amount in dispute is too small or too large, or the matter is too legally complicated for RASM to consider.
5. Whether or not the request is filed within the time frame (180 days).

Such a review could result in the release of RASM members from the obligation to arbitrate, and thus free you to seek other recourse to resolve the dispute.

If the Grievance Committee determines that a matter is arbitrable, the parties will be notified that a Mediation procedure is available as a preliminary, voluntary alternative to arbitration. If the Committee determines that the matter is not arbitrable, the case will be dismissed, and deposit will be refunded.

You may appeal a dismissal of an arbitration request to RASM's Board of Directors. The Board of Directors will review the complaint submitted and can uphold or overturn the Grievance Committee's dismissal. Complainant and Respondent are not present for the appeal.

In either ethics or arbitration cases, you will be informed promptly of the Grievance Committee's decision. If the Grievance Committee forwards the complaint or request to a hearing, it is assigned to RASM's Professional Standards Committee.

## FUNCTION OF PROFESSIONAL STANDARDS COMMITTEE

The function of this Committee is to hold ethics and arbitration hearings.

The Professional Standards Committee will provide a Hearing Panel, consisting of five members of the Professional Standards Committee of RASM.

A hearing will be scheduled, and both the Complainant and Respondent will be notified of the hearing date, time and place. These hearings provide an opportunity for the Complainant and the Respondent to explain their side of the story by presenting testimony and witnesses, if any.

Once all the facts have been presented to the appointed Hearing Panel, the Panel will go into executive session to determine whether the Code of Ethics has been violated, or, in the case of arbitration, how the dispute should be settled. The Complainant and Respondent will be notified of the Panel's decision.

You will be informed by RASM about each step of this process as it occurs. Complainant and Respondent also will be given instructions about the hearing procedures prior to the hearing. The entire process usually will take a minimum of 60 days, but may take longer. In arbitration cases, only the prevailing party's deposit will be refunded.

If you have any questions relating to filing your complaint, please call RASM's Professional Standards Administrator at 941-952-3402.

## **SEND ALL CORRESPONDENCE TO:**

**Michelle D'Aiuto**

*Professional Standards Administrator*

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