

NAR FAQs on Ombuds

1. What is the difference between the ombuds process and mediation?

The ombuds process usually involves parties who have not filed an ethics complaint or arbitration request, but have experienced a breakdown in communication requiring informal resolution (although an ombuds may also be used where a complaint has been filed). Often the ombuds functions as an intermediary who communicates the concerns of one party to the other over the phone, so a positive relationship can be restored.

Mediation, on the other hand, normally involves monetary disputes (unless the association also offers ethics mediation) where an arbitration request may have been filed. Parties generally meet face-to-face at a prearranged time with their mediator, who encourages both parties to come to a mutually satisfactory resolution of their dispute.

Ombuds and Mediators often have the same skill set: impartiality, the ability to listen carefully, and the desire to identify and resolve misunderstandings.

2. Is the ombuds process just for consumers?

No. Boards and associations have considerable latitude in determining how and when the ombuds will be utilized. If the complaint is the type of case the association's ombuds process handles, ombuds services must be offered to members, clients, and consumers consistent with Professional Standards Policy Statement # 59, *Associations to Provide Ombuds Services, Code of Ethics and Arbitration Manual*.

The ombuds process can be beneficial for both consumers and REALTOR® members who need an immediate, informal resolution to common misunderstandings. For example, an ombuds can field and respond to a wide variety of inquiries and complaints, including general questions about real estate practice, transaction details, ethical practice, and enforcement issues. The ombuds can also 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.

3. Does the ombuds decide who is right or wrong?

No. Ombuds do not determine whether ethics violations have occurred, rather they anticipate, identify, and resolve misunderstandings and disagreements.

4. How long does the ombuds process take?

Disputes can often be resolved through the ombuds process in as little as a few hours or days, depending on the availability of the ombuds and the parties.

5. Do parties have to participate in the ombuds process?

Not at all. Parties should be notified that ombuds services are available to them, and may decline those services and opt to file a formal complaint instead.

6. What sort of documents or evidence do parties exchange during the ombuds process?

Exchanging documents or evidence during the ombuds process is typically unnecessary. Rather, the ombuds will work to resolve the dispute through a series of phone calls or an informal meeting with the parties.

7. If the parties do not resolve their dispute through the ombuds process, how long does the individual have to file an ethics complaint or arbitration request?

The filing date for purposes of determining whether an ethics complaint or arbitration request is timely filed will be the time the matter was originally brought to the board or association's attention. When the parties invoke informal dispute resolution processes such as ombuds, ethics mediation, or mediation of arbitrable disputes, filing deadlines are suspended.

8. What if the ombuds thinks the dispute may involve a potential violation of the public trust?

In the event the ombuds concludes at any time that a potential violation of the public trust may have occurred, the ombuds process shall be immediately terminated, and the parties should be advised of their right to file a formal ethics complaint, to file a complaint with any appropriate governmental or regulatory body, to pursue litigation, or to pursue any other available remedy. "Public trust" refers to misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm.

Written ethics complaints alleging violations of the public trust (as defined in Article IV, Section 2 of the NAR Bylaws) may not be referred to an ombuds.

9. Can an ombuds file an ethics complaint based on what he or she has learned from the parties through the ombuds process?

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

10. Is the ombuds process confidential?

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

11. Are ombuds covered by NAR Insurance Program?

Ombuds are covered through the NAR insurance program, as long as they are acting within the coverage limits described in the policy. Please refer to the ombuds policy on nar.realtor for more information.

12. Are associations of REALTORS® required to offer ombuds services?

Yes, starting January 1, 2016. Professional Standards Policy Statement #59, Associations to Provide Ombuds Services, in the current NAR *Code of Ethics and Arbitration Manual*, provides as follows:

Every local and state association of REALTORS® is required to offer, either directly or as part of a cooperative enforcement agreement (consistent with Professional Standards Statement #40, Cooperative Enforcement Agreements), ombudsman services to members, clients, and consumers on or before January 1, 2016.

13. Will the National Association offer ombuds training?

NAR has numerous resources available to association and potential ombuds wanting to know more about the process, including a series of instructional videos and information and sample materials from other associations. NAR also periodically offers sessions on ombuds programs at the REALTORS® Conference and Expo and the REALTORS® Legislative Meetings and Trade Expo.

While not specifically focused on the ombuds process, NAR's Mediator/Mediation Training offers invaluable dispute resolution skills and training that can greatly assist ombuds in identifying and resolving disputes and misunderstandings.

Request for Ombuds Service

Date: _____

Name of Complainant: _____

Firm (if any): _____

Address: _____

Preferred Phone for contact: _____

Best time to contact you: _____

Role in Transaction: _____

(buyer, seller, agent, broker)

Subject property (if any): _____

Name of Respondent: _____

Firm: _____

Address: _____

Phone #: _____

Role in Transaction: _____

(listing agent, selling agent, broker)

Return to: (local Board/Association), address, fax#, or email to: (name & email address of administrator)

*All information on this form is **confidential**. The local Board/Association of REALTORS® will destroy this form and any other documents and materials pertaining to this matter at the conclusion of the ombuds services.

NOTE: If NONE of the parties are members of the REALTOR® organization, please contact the Maryland Real Estate Commission (410-230-6230) for further assistance.

Administrative Use Only: _____

(Local Board/Association) address, phone #, fax #, website