

# SOUTHERN ADIRONDACK REALTORS®, INC.

## OMBUDSMAN PROGRAM

[WARREN COUNTY ASSOCIATION OF REALTORS BOARD OF DIRECTORS/SOUTHERN ADIRONDACK REALTORS, APPROVED-NOVEMBER 2015]

### PROGRAM OVERVIEW

#### *Purpose*

The Ombudsman program has been developed and mandated for implementation by January 1, 2016 by the National Association of REALTORS®. Boards and associations of Realtors® are charged with the responsibility of receiving and resolving ethics complaints. This obligation is carried out by local, regional and state grievance committees and professional standards committees. Many ethics complaints might be averted with enhanced communications and initial problem-solving capacity at the local level. Implementing the ombudsman procedures outlined in this program would provide that capacity.

The Ombudsman Program in its simplest definition is an informal telephone mediation. In some cases, it can address and solve minor complaints from the public. It can also solve inter-Realtor® conflicts before they become serious problems. Like a mediator, an Ombudsman helps parties find solutions, but does not impose solutions. An ombudsman is an appointed member who receives and resolves disputes through constructive communication. They defuse the situation and emotions and clarify the facts to resolve the dispute in such a manner that both parties are able to view the resolution as helpful. They do not determine whether ethics violations have occurred, rather they anticipate, identify and resolve misunderstandings and disagreements before matters ripen into disputes and possible charges of unethical conduct.

#### *Qualifications of the Ombudsman*

The Ombudsman should be thoroughly familiar with the Code of Ethics, state real estate regulations and current real estate practices. They should be an active and experienced primary board member in good standing with a minimum of 5 years cumulative experience on the Grievance Committee and Professional Standards Committee actively hearing and reviewing complaints. They must have completed professional standards and mediation or ombudsman training and agree to maintain ongoing education and training requirements as deemed appropriate.

#### *General Responsibilities*

It is the ombudsman's responsibility to keep all information confidential and to perform their services in a timely, efficient manner. They must be impartial and cannot take sides or determine who is right or wrong. They will field and respond to any general real estate questions including but not limited to: general questions relating to real estate practice, transaction process details, ethical practices, options for filing complaints and questions of compliance with governing documents.

1. The Ombudsman will listen to the complainant's concerns, ascertain complainant's desired outcome and get permission to repeat the information to the respondent.
2. They will then contact the potential respondent to explain the complainant's concerns and desired outcome.

3. Upon hearing the respondent's side, the Ombudsman can assist both parties with exploring possible avenues that might resolve the issue, provide education or clarification regarding accepted real estate practices, or reach the desired outcome.
4. After getting their permission to communicate the respondent's response to the complaint, they then report back to the complainant and explain the complainant's rights after the completion of the Ombudsman process.

The Ombudsman must also:

- 1) Acknowledge receipt of the request from the board to serve as Ombudsman in a complaint.
- 2) Call the complainant within 48 hours of receipt of the complaint.
- 3) Make 3 attempts to reach the parties prior to closing the file.
- 4) Email completed Ombudsman log to the Association Executive within 48 hours of closing the file.
- 5) Shred all materials and properly dispose of anything relating to the complaint.
- 6) If the Ombudsman feels they are not competent to handle the complaint, or have a conflict of interest, they must contact the Association Executive and have another Ombudsman appointed who can field that type of complaint.

### ***Limitations***

The Ombudsman may not refer concerns they have regarding the conduct of any party using their services to the Grievance Committee, Board of Realtors® or any other regulatory body except those that concern the violation of public trust. These must be referred to the Grievance Committee. (For purposes of these policies, a potential violation of the public trust is "demonstrated misappropriation of client or customer funds or property, willful discrimination or fraud resulting in economic harm.")

The Ombudsman will adhere to Article 11 of the Code of Ethics and make appropriate referrals when the issues are outside their area of expertise. They do not give legal advice. They do not determine who is right or wrong. They do not put anything in writing.

If a member serves as an Ombudsman and the issue is not resolved through the Ombudsman process, that member will be precluded from serving in any of the formal processes available through the association (i.e. ethics tribunal, mediation, etc.) with respect to that complaint.

### ***Selection and Term***

Ombudsman will be appointed by the Professional Standards Committee Chair and ratified by the Board of Directors. Appointment will be for a one-year term and may be renewed at the option of the Professional Standards Committee Chair and ratified by the Board of Directors. The SOUTHERN ADIRONDACK REALTORS will maintain a pool of at least 2 Ombudsman to be available at all times. Attorneys are not eligible to serve as Ombudsman due to insurance reasons. Ombudsman are covered under the Association's NAR Insurance Policy.

## **OMBUDSMAN PROCESS**

The Ombudsman may be contacted directly or referred by SAR staff or members. When contacted, SAR staff will offer the services of an Ombudsman as an alternative to or in conjunction with submitting a formal complaint. If a complaint is received by SAR and the complainant agrees, the Ombudsman may attempt to resolve the matter before proceeding to the Grievance Committee. If resolution is not reached, the complainant may continue with the complaint procedure as outlined in the Code of Ethics and Arbitration manual.

In carrying out the assigned duties, the Ombudsman may contact the members by phone who are named to obtain information to provide an informed response or if mutually agreed upon arrange a meeting of the parties to facilitate a mutually acceptable resolution. However, the Ombudsman may not serve as a mediator.

Once the Ombudsman service commences as to a particular matter, the 180 day filing deadline set forth in the Code of Ethics and Arbitration manual for the filing of ethics complaints or arbitration requests is suspended until the Ombudsman service has concluded.

The Ombudsman on call will receive an email with the Ombudsman Log which will be completed by SAR staff. This will include the name of the Complainant, the Complainant's relationship to the transaction, mailing address, email address, phone and fax numbers, name of potential Respondent, Respondent's Broker, Respondent & Brokers mailing address, email address, phone and fax numbers. The Ombudsman shall acknowledge receipt of the log by email to the Association Executive. The Ombudsman calls the Complainant within 48 hours of receipt of the log. Three attempts are to be made to reach the parties prior to closing the file. If a resolution is agreed to, the Ombudsman shall call the Complainant back within one week of final call to make sure that the matter was resolved. The Ombudsman will then email the completed Ombudsman Log to the Association Executive within 48 hours of closing the file. All materials related to the matter shall be shredded and property disposed of by the Ombudsman.

If the Ombudsman process is unsuccessful, or if the Respondent fails or refuses to comply with the terms of a mutually agreed upon resolution the Complainant is entitled 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 SAR's attention will be tracked by the Association Executive/CEO and the 180 day filing deadline shall be suspended from the date of the Complainant's request for informal dispute resolution or assistance and shall resume when the informal dispute resolution procedures are concluded or terminated. This information will be provided to the Grievance Committee for the purposes of determining whether an ethics complaint is timely filed. At this point, the complainant has several options.

1. They may file a formal complaint with SAR.
2. The Complainant may obtain legal advice.
3. The Complainant may file a formal complaint with the Department of State.
4. The Complainant may be offered mediation after a Request and Agreement to Arbitrate is filed and forwarded to the Professional Standards Committee for a hearing.
5. The Complainant may seek outside mediation services.

At no time shall the Ombudsman steer the Complainant away from a formal hearing if one is requested. Accordingly, all written complaint forms received must be forwarded to the Grievance Committee and all written or verbal requests specifically for complaint forms will be responded to with a package of forms with no further intervention from the Ombudsman. Once a Complaint is filed or the Complainant/caller indicates positively that they wish to file a complaint, the Ombudsman process must stop and the necessary forms forwarded to the Complainant.

The contact between any Complainant and Respondent and the Ombudsman shall be confidential at all times, specifically with respect to an eventual ethics hearing. The Ombudsman shall avoid comment or assistance that could be construed as agreement or confirmation of one party's position over another. All complaints, which indicate violation of public trust, will immediately be referred to the Grievance Committee.

It is SAR policy that Ombudsman cannot be called as a witness as part of any future ethics complaint by the Complainant or Respondent in the matter in which they attempted to resolve in their role as an Ombudsman. This fact shall also be made known to the parties during the Ombudsman's opening statement.

## **GUIDELINES**

Types of cases that can be handled through the Ombudsman Process

1. Uncomplicated
2. Communication based
3. Non or small monetary amounts (Small monetary amounts are defined as those not to exceed \$500)
4. May be solved by providing simple education
5. May be solved by providing basic knowledge

Types of cases that cannot be handled through the Ombudsman Process

1. Apparent violations of law
2. Fair housing or discrimination issues
3. Those already referred to legal counsel, a subject of a Dept of State investigation, or a Realtor® vs. Realtor® arbitration which shall be handled by the associations mediator.
4. Large monetary amounts
5. Complex cases
6. Cases involving more than two parties
7. Blatantly unreasonable or uncooperative parties

Red Flag scenarios the Ombudsman should keep an eye out for

1. Unreasonable parties
2. Parties seeking sympathetic assistance
3. "Fishing expeditions"
4. Overly excited or irritable complainant
5. Party is unclear about the facts and/or issues
6. Party exaggerates or misrepresents
7. Party threatens retribution or violence