

## **RULE 10: Ombudsman Procedures/availability**

### Basic Policy:

These Ombudsman procedures, which have been adopted by the Southland Regional Association of Realtors (SRAR), are intended to provide enhanced communications and initial problem solving for ethics complaints at the Association level.

The SRAR is charged with the responsibility of receiving and resolving ethics complaints. This obligation is carried out by the Association through its Grievance Committee and Professional Standards Committee. Many “complaints” received by the Association do not expressly allege violations of the specific Articles of the Code of Ethics, and many do not detail conduct related to the Code. Some “complaints” are actually transactional, technical or procedural questions readily responded to by Ombudsmen.

It is the belief of the SRAR that many ethics complaints might be averted with enhanced communications and initial problem solving capacity available in this program. These Ombudsman procedures, which have been adopted by the Association, are intended to provide that capacity.

### Role of the Ombudsman:

The Ombudsman’s role is primarily one of communication and conciliation, not adjudication. Ombudsmen do not determine whether ethics violations have occurred; rather they anticipate, identify and resolve misunderstandings and disagreements before they develop into disputes and possible charges of unethical conduct.

### Qualifications and Criteria for an Ombudsman:

The Association will require that before a Member can be designated as an “Ombudsman” that he or she must have certain minimum standards of experience in the Code of Ethics, Professional Standards procedures and will have knowledge of State real estate law and regulations, and the current standards of real estate practice.

### Scope of Ombudsman Services:

The Association has considerable latitude in determining how and when Ombudsmen will be utilized. For example, Ombudsmen 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. Ombudsmen 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. When a request for Ombudsman Service is made by agents within the same firm or between agents of different firms in regards to commission disputes, the Responsible Broker and/or designated office manager shall be notified and shall approve the use of an Ombudsman.

In cases where an Ombudsman believes that a failure of communication is the basis for a questions or complaint, the Ombudsman can arrange a meeting of the parties to facilitate a mutually acceptable resolution. Where a written ethics complaint in the

appropriate form is received, it can be initially referred to the Ombudsman who will attempt to resolve the matter, except that complaints alleging violations of the public trust (as defined in Article IV, Section 2 of the NAR Bylaws) may not be referred to an ombudsman.

In the event the Ombudsman concludes that a potential violation of the public trust may have occurred, the Ombudsman Process shall be immediately terminated, and the parties shall be advised of this right to pursue a formal complaint; to pursue a complaint with any appropriate governmental or regulatory body; to pursue litigation; or to pursue any other available remedy.

*Right to Decline Ombudsman Services:*

Persons filing complaints, or inquiring about the process for filing complaints, will be advised that Ombudsman services are available to attempt to informally resolve their complaint. Such persons will also be advised that they may decline Ombudsman services and can have their complaint considered at a formal hearing.

*Resolution of complaints:*

If a matter complained of is resolved to the mutual satisfaction of all parties through the efforts of an Ombudsman, the formal complaint brought initially (if any) will be dismissed.

*Failure to comply with agreed upon resolution:*

Failure or refusal of a member to comply with the terms of a mutually agreed on resolution shall entitle the complaining party to resubmit the original complaint, or, where a formal complaint in the appropriate form had not been filed, to file a complaint. The time the matter was originally brought to the Board or Association's attention will be considered the commencement date for purposes of determining whether a complaint is timely filed.

*Referrals to the Grievance Committee or to state regulatory bodies:*

Ombudsmen 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 full participation impartiality and avoid the possible appearance of bias. Ombudsmen are, however, authorized to refer concerns that the public trust may have been violated to the Grievance Committee.

*Confidentiality:*

The Ombudsman Process is a form of "mediation" under California law, and accordingly all comments, conversations and written documents prepared for the Ombudsman Process are deemed confidential, to the same extent as in an arbitration mediation, under Professional Standards rule 21(g) and California Evidence Code Section 1119. See CODE Section 20(a); ETHICS-MAN Section C(3)