

The definition of Ombudsman for REALTORS®

The Ombudsman Program in its simplest definition is 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.

Introduction

REALTOR Associations are charged by the National Association of REALTORS® 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.

Complaints and concerns received by the Berkshire County Board of REALTORS come in many different forms. (phone, letter, e mail, fax) Some complaints do not allege a violation of specific provisions of the Code of Ethics nor relate specifically to conduct governed by the Code of Ethics. Some concerns or questions relate to transactional, real estate practices, technical or procedural matters that could easily be responded to.

Many ethics complaints might be averted with enhanced communications and initial problem-solving capacity at the local level. These ombudsman procedures are intended to provide that capacity.

Information about the program and a Request for Ombudsman Service form will be available on BerkshireREALTORS.net and AtHomeInTheBerkshires.com websites.

Goal of the Ombudsman Process

- Defuse the situation and emotions
- Clarify the issues
- Deal with the facts
- Deal with only the essential elements of the dispute
- Avoid irrelevant, inflammatory elements
- Resolve a dispute in such a manner that both parties are able to view the resolution as helpful

Role of Ombudsmen

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 matters ripen into disputes and possible charges of unethical conduct.

The responsibilities of the Ombudsman are to:

- Acknowledge receipt of the request from the association to serve as an Ombudsman in a complaint
- Notify the staff if you feel the complaint is based on a situation you are not comfortable discussing.
- Call the complainant within forty-eight (48) hours of receipt of the complaint
- Make two-three attempts to reach the parties prior to closing the file



- Email a completed Ombudsman Report to the Board Office within forty-eight (48) hours of closing the file
- After your Ombudsman Report has been received to the CEO, shred all materials or return them to the Board Office in a secure manner for proper disposal.

The Ombudsman Job Duties:

- Listen to the complainant's concerns
- Determine if complaint's concerns are within an Ombudsman's scope of service, as identified by this policy.
- Ascertain complainant's desired outcome (revocation of licenses, sanctions, apology, money, etc.)
- Respond to a wide variety of inquiries and complaints, including general questions about real estate practice, transaction details, ethical practice, and enforcement issues
- Explain possible avenues that might resolve the issue or reach the desired outcome
- Answer general questions and/or procedural questions and explains the formal ethics complaint process
- Arrange meetings of the parties, if needed, to assist in facilitating a mutually acceptable resolution.
- Contact the potential respondent to explain the complainant's concerns and desired outcome
- Seek to bring resolution
- Report back to the complainant
- Explain the complainant's rights and responsibilities after the completion of the ombudsman process.

Qualification and criteria for Ombudsmen

Ombudsmen are required to complete an application detailing their experience levels. Ombudsman shall have, at minimum, the follow qualifications:

- 10 or more years of real estate experience or 5 or more years of real estate experience including additional qualifications in dispute resolution
- Familiarity with the NAR Code of Ethics, Massachusetts real estate regulations, and current real estate practices in Berkshire County Massachusetts.
- Past service on the Mediation, Professional Standards Committee or Grievance Committee(s)
- Attendance at Ombudsman & Professional Standards Training on an bi-annual basis
- Execution of a confidentiality and procedural agreement for each appointed term of service.

Ombudsman Appointments:

- Ombudsmen are selected by the President in conjunction with the Chief Executive Officer
- There shall be a minimum of three (3) Ombudsmen for the Board
- There will be efforts made to appoint Ombudsmen from a variety of real estate specialties and regions.
- Ombudsman shall be appointed for two year terms, however, there is no maximum number of years the member can serve as an Ombudsman.
- Ombudsmen may meet annually as needed to discuss the program and determine if any policy changes are required. If so, the Ombudsmen will work with staff to identify those changes and they shall be forwarded to the Board of Directors for ratification.
- Ombudsmen do not receive compensation for their services.

Confidentiality Of Ombudsman Process

All communications made to the Ombudsman or the Berkshire County Board of REALTORS whether written or oral, shall be confidential and may not be disclosed (other than communicating information and results between staff and the Ombudsman) to any other person for any reason. The Ombudsman's opening statement shall confirm the parties understanding of such confidentiality.

The allegations, discussions and decisions shall not be reported to or published by the board, any member of a tribunal, or any party under any circumstances except those established in the Code of Ethics and Arbitration Manual of the National Association of REALTORS, as from time to time amended. Furthermore, 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 shall also be part of the opening statement to the parties.

The Ombudsman has an obligation to safeguard and then destroy all materials, notes and logs made throughout process at its conclusion to ensure confidentiality is maintained.

Right To Decline Ombudsman Services

The Professional Standards Administrator and/or CEO shall determine whether a complaint may be appropriate for the Ombudsman services. If so determined, the person filing a complaint, or inquiring about the process for filing an ethics complaint, 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 may have their complaint considered by the Grievance Committee, and at a formal ethics hearing when appropriate.

Resolution Of Complaints

If a matter is resolved to the mutual satisfaction of all parties through the efforts of an ombudsman, the formal ethics complaint brought initially (if any) will continue to be processed until withdrawn by the complainant. The Ombudsman shall notify the complainant of this procedure when explaining their rights and responsibilities after the completion of the process.

Failure To Comply With Agreed Upon Resolution

Failure or refusal of a member to comply with the terms of a mutually agreed upon 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 an ethics complaint. The time the matter was originally brought to Berkshire County Board of REALTORS attention will be considered the filing date for purposes of determining whether an ethics complaint is timely filed.

Violation Of The Public Trust

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 their right to pursue a formal ethics complaint; to pursue a complaint with any appropriate governmental or regulatory body; to pursue litigation; and/or to pursue any other available remedy. 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.”

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 Massachusetts Board of Registration of Brokers and Salespersons, or to any other regulatory body. The prohibition is intended to ensure 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.

Discrimination Issues

Ombudsman shall not engage in discussions of discrimination. The Ombudsman shall inform the complainant or respondent that discrimination is a serious problem and encourage the parties to report any discriminatory actions to the proper authorities.

The phone numbers for discrimination complaints are as follows:

Massachusetts Commission Against Discrimination	(617) 994-6000
MA Board of Registration of Brokers and Salespersons	(617) 727-2373
MA Department of Housing and Urban Development	(617) 994-8200
US Housing and Urban Development Office	(800) 347-3735

Ombudsman Scope of Service

The following types of cases can be handled through the Ombudsman Process:

- Uncomplicated
- Communication based
- Non or small monetary amount
- May be solved by providing simple education
- May be solved by providing basic knowledge

The following types of cases cannot be handled through the Ombudsman Process:

- Potential violations of public trust
- Apparent violations of law
- Fair housing or discrimination issues
- Issues already referred to legal counsel, a subject of a MA Board of Registration investigation, a REALTOR® vs. REALTOR® arbitration which shall be handled by the association’s mediator.
- Large monetary amounts
- Complex cases
- Cases involving more than two parties
- Blatantly unreasonable or uncooperative parties

The following are “red flag” scenarios the Ombudsman should keep an eye out for:

- Unreasonable parties
- Parties seeking sympathetic assistance
- “Fishing expeditions”
- Overly excited or irritable complainant
- Party is unclear about the facts and/or issues
- Party exaggerates or misrepresents
- Party threatens retribution or violence

The Administrative Process

The Staff’s responsibilities are as follows:

- The Professional Standards Administrator and/or CEO will screen complaints.
- Appropriate staff will obtain basic information about the issue to determine if it meets program guidelines.
- Appropriate staff will email an Ombudsman Worksheet including a neutral complaint summary (if a written request for Ombudsman Service is not submitted), and contact information for the parties, to the selected Ombudsman.

The Ombudsman’s responsibilities are as follows:

- Acknowledge that the complaint has been received, either by email or call to staff.
- Call the complainant within two business days of receiving the complaint. Two to three attempts to reach the parties should be made before closing the file.

A general script to use is as follows: “Hello, my name is _____. I’m an Ombudsman with the Berkshire County Board of Realtors®, and I understand that you have some concerns regarding one of our members. As an ombudsman, I can’t make a decision in your case, but I can provide you with some assistance. If you’d like to share your situation with me, I might be able to suggest some options that you may pursue to reach a resolution. Before we begin, please know that everything you tell me will be held in strictest of confidence, unless you authorize me to disclose details to the other side. Also, talking to me today doesn’t prevent you from pursuing an ethics complaint if we can’t come to a resolution, but I want you to know that I can’t be a party to any future complaint ... my goal today is simply to try to help resolve the situation before it comes to that. Would you like to talk to me about your issue?”

- Notify staff and email the Ombudsman Report within 2 days of closing the file
- Promptly destroy all materials as well as the Ombudsman Worksheet/Log (or return hard copy materials to the Board Office for secure shredding)

Berkshire County Board Of Realtors® Ombudsman Worksheet/Log

Name of Complainant: _____

Relationship to Transaction: _____
(i.e., buyer, seller, landlord, tenant, broker, agent)

Address: _____

Phone #: _____ Email: _____

Name of potential respondent: _____

Address: _____

Phone #: _____ Email: _____

Name of potential respondent's Broker:

Phone #: _____ Email: _____

Staff Summary of concerns that the complainant would like to address with the Ombudsman

A general script to use is as follows: "Hello, my name is _____. I'm an Ombudsman with the Berkshire County Board of Realtors®, and I understand that you have some concerns regarding one of our members. As an ombudsman, I can't make a decision in your case, but I can provide you with some assistance. If you'd like to share your situation with me, I might be able to suggest some options that you may pursue to reach a resolution. Before we begin, please know that everything you tell me will be held in strictest of confidence, unless you authorize me to disclose details to the other side. Also, talking to me today doesn't prevent you from pursuing an ethics complaint if we can't come to a resolution, but I want you to know that I can't be a party to any future complaint ... my goal today is simply to try to help resolve the situation before it comes to that. Would you like to talk to me about your issue?"

Violation Of The Public Trust Definition: 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."



Berkshire County Board Of Realtors® Ombudsman Worksheet/Log

Date Complainant Contacted: _____

Complainant's concerns:

Ascertain complainant's desired outcome (for example, is the complainant seeking revocation of license, sanctions, apology, money, etc.) and if they desire direct contact by the respondent.

- Complainant has given permission to have REALTOR® Respondent contact directly
- Complainant **DOES NOT** want REALTOR® Respondent to contact them directly.

Contact Notes:

Contacting a REALTOR® Respondent: Date contacted: _____

The Broker will be the first contact if the respondent is not a Principal Broker, in order to explain the nature of your call and to determine the best way to proceed. If REALTOR® respondent is called, explain who you are and communicate the complainant's concerns and desired outcome. Determine if REALTOR® respondent is willing to call complainant to try to resolve. If so, give them their name and phone number if Complainant has authorized release of that information.

- REALTOR® respondent **WILL** contact complainant.

If REALTOR® respondent is to contact complainant or other action is required by respondent, follow up with complainant in approximately one week to determine if matter has been resolved. Date contacted: _____

- REALTOR® respondent **WILL NOT** contact complainant.

Contact complainant to communicate REALTOR® respondent's response: Date contacted: _____

When Ombudsman Services are concluded, complete the Ombudsman Report and send to the Berkshire County Board of REALTORS, then destroy this worksheet/log



OMBUDSMAN REPORT

To be submitted to the Berkshire County Board of REALTORS
within 2 days via fax (413) 448-2852 or Sue@BerkshireRealtors.org

Name of Ombudsman: _____

Parties: Complainant: _____

Respondent: _____

- No resolution was reached through ombudsman services; please send complainant an ethics complaint packet.
- No resolution was reached and no further action is required.
- Complaint has been resolved to the complainant's satisfaction.

General category(s) complaint was about:

- ____ Repairs
- ____ Would not present contract
- ____ No copies of documents
- ____ Lack of communication
- ____ Advertising
- ____ Inspection reports
- ____ Affiliation disclosures
- ____ Earnest money
- ____ Property Condition
- ____ Contract
- ____ Agency
- ____ Procuring cause
- ____ Discrimination
- ____ Unauthorized practice of law
- ____ Inter-Office dispute

Other (please specify) _____

I certify that I have destroyed all records, including the Ombudsman Worksheet Log received from the Berkshire County Board of REALTORS and accompanying notes.

Signature of Ombudsman

Date ____/____/____



Date: _____

Ombudsman Request

Name of Complainant: _____

Relationship to Transaction: _____
(i.e., buyer, seller, landlord, tenant, broker, agent)

Address: _____

Phone #: _____ Email: _____

Best time / Method to Contact You: _____

Name of Respondent: _____

Address: _____

Phone #: _____ Email: _____

Name of potential respondent's Broker: _____

Phone #: _____ Email: _____

What issue would you like the Ombudsman to resolve? * (Attach additional form in necessary)

Return to: Berkshire County Board of REALTORS, Inc., 99 West Street, Suite 200, Pittsfield MA 01201, or Fax (413) 448-2852 or email: Sue@BerkshireRealtors.org

* All information on this form is confidential. Berkshire County Board of REALTORS, Inc. will destroy this form and any other documents and materials pertaining to this matter at the conclusion of the ombudsman services.



Ombudsman Evaluation

It is our goal to provide enhanced communications and initial problem solving to callers concerning REALTORS® and real estate related transactions through our Ombudsman Program. Your feedback is vital for our Program! Please take a few moments to complete the evaluation below so that we may continually strive to improve our services.

1. Upon your initial contact with the Association, did staff listen to your concerns and explain clearly to you about the voluntary Ombudsman services available to you by the Association?

Yes Somewhat No

Comments: _____

2. Did the Ombudsman contact you in a timely manner?

Yes No

Comments: _____

3. Did the Ombudsman explain the process and ask you to acknowledge your understanding of the process before beginning?

Yes Somewhat No

Comments: _____

4. Did the Ombudsman listen to your concerns, request permission to contact the potential respondent, and/or explain your rights after the completion of the process?

Yes Somewhat No

Comments: _____



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7. Did the Ombudsman service successfully resolve your initial concern?

Yes No

Comments: _____

9. Do you have any other suggestions on how we can improve our Ombudsman Program?

Your feedback is valuable. Please email your completed survey to Sandy@BerkshireRealtors.org

On behalf of the Berkshire County Board of REALTORS, thank you for completing this survey.