

Dutchess County Association of REALTORS Citation Policy

Associations adopting this Citation Policy model must also adopt a “Citation Schedule” of potential violations covered, and must specify the fines that apply to those violations. Information about the Ethics Citation Program, including the Citation Schedule, will be provided as part of the information sent to potential complainants considering filing ethics complaints with the association.

Associations adopting this Citation Policy shall establish a Citation Panel, comprised of at least three (3) individuals, who will review complaints to determine eligibility for the citation program and the appropriate citations. It is recommended that the Citation Panel be a subset of the association’s Professional Standards Committee, and that the individuals on the Citation Panel have a high level of experience in hearing professional standards cases.

Complaints must be filed within one hundred eighty (180) days after the facts constituting the matter complained of could have been known in the exercise of reasonable diligence or within one hundred eighty (180) days after the conclusion of the transaction or event, whichever is later.

Any citation policy adopted by local or state associations after approval of this policy by the NAR Board of Directors cannot cite violations based on Articles or Standards of Practice other than those spelled out in this policy, cannot impose fines in excess of those in the policy, and cannot be utilized more frequently than provided for in this policy.

Initial Review by Grievance Panel

- I. When a Grievance Panel receives a written ethics complaint, it will review the complaint consistent with Sections 19 and 20 of the current NAR *Code of Ethics and Arbitration Manual*. The Grievance Panel may add or delete articles or respondents at this stage in the proceedings.
- II. The Grievance Panel will receive the complaint and determine if the articles listed in the complaint include allegations covered by the Associations Citation Schedule, i.e., if it is a “citable offense”. In the event that a complaint is determined to be a citable offense, the Grievance Panel shall also function as the Citation panel.
 - A. If the complaint does not include alleged violations included in the Citation Schedule, or it includes some covered by the Citation Schedule and some that are not, the complaint shall be referred to the Professional Standards Committee for hearing consistent with the policies and procedures set forth in the *Code of Ethics and Arbitration Manual* for ethics hearings.
 - B. If the complaint includes *only* allegations of violations included in the Citation Schedule, the Grievance/Citation Panel will issue a citation and impose discipline consistent with the association’s Citation Schedule. In the event the members of the Grievance/Citation Panel determine the conduct described in the complaint is sufficiently egregious to warrant a hearing rather than a citation, the complaint shall

be referred to the Professional Standards Committee for hearing consistent with the policies and procedures set forth in the *Code of Ethics and Arbitration Manual* for ethics hearings.

- C. When an ethics complaint and an arbitration request arising out of the same facts and circumstances are filed at the same time, the arbitration hearing shall be held first, and the citation(s) issued or ethics hearing held after the conclusion of the arbitration hearing consistent with Professional Standards Policy Statement #35, Separation of Ethics Complaint and Arbitration Request, *Code of Ethics and Arbitration Manual*.

Issuance of Citations

- I. Citations will be sent to respondents. A copy of the citation shall also be sent to the REALTOR[®] principal of respondents' office. If the respondent changes firms before or after the complaint is filed but before the citation is issued, both the former and current REALTOR[®] principal will receive a copy of the citation.
 - A. The citation panel will prepare a brief written summary of the complaint and the summary will be included with the citation to give the respondent sufficient information to understand the basis of the citation.
 - B. The complaint itself will be provided to the respondent, the identity of the complainant will be kept confidential and unavailable to the respondent. The complainant shall be advised when filing a complaint that their identity will not remain confidential should the respondent request a hearing.
- II. The respondent will have twenty (20) days from transmission of the citation to request a full due process hearing on the complaint.
 - A. If the respondent does not reply within ten (10) days of transmission of the citation, a notice shall be transmitted to the respondent reminding the respondent of the deadline for requesting a hearing.
 - B. If the respondent accepts the citation, or if the respondent does not request a hearing within twenty (20) days of transmission of the citation, this shall be deemed to be a final resolution of the complaint, which shall not be appealable or subject to any further review.
 - C. If the respondent accepts the citation, or if the respondent does not request a hearing within twenty (20) days of transmission of the citation, payment must be received by the association no later than **FIVE (5)** days (to be established by the association, but in any instance not more than five [5] days) after the date of acceptance or time period to request a hearing has elapsed.

1. The case will be deemed to be closed upon receipt of payment, and notice will be provided to the complainant that a citation has been issued and paid.
 2. Failure to pay the citation amount within **FIVE (5)** days (to be established by the association, but in any instance not more than five (5) days) after the date of acceptance or after the time period to request a hearing has expired will result in the automatic suspension of membership until the citation has been paid.
- D. If the respondent requests a hearing within the time specified, the complaint shall be referred for hearing. The complainant who initially filed the complaint shall be given the option to proceed as the complainant for the purposes of the hearing, and will be afforded all due process rights provided for in the *Code of Ethics and Arbitration Manual*. Should the complainant be a member of the public who refuses or is unable to participate in the hearing, or should the complainant be a REALTOR® member who refuses or is unable to participate in the hearing, the provisions of Section 21(f)(3) in the NAR *Code of Ethics and Arbitration Manual* shall apply.
- E. The complainant will be notified of the determination made by the citation panel once the citation has been paid by the respondent. A copy of the complaint will be provided to the respondent. The complainant will be notified if the respondent requests a hearing of the case.

Limitations

- I. Any REALTOR® is limited in the number and type of citations that he/she may receive, according to the following rules:
 - A. No more than two (2) citations will be issued to a member within a consecutive twelve (12) month period, starting on the date the first complaint was filed, at the same association.
 - B. No more than three (3) citations will be issued to a member within a consecutive thirty-six (36) month period, starting on the date the first complaint was filed, at the same association.
 - C. No additional citations are permitted where the cumulative fine for the citations issued would be more than **\$5,000 (five thousand)** (not to exceed \$5,000) in any three (3) year period at the same association.
 - D. Associations may, at their discretion, adopt an escalating fine schedule for repeat citations. If an escalating fine schedule is used, the citation panel may only consider the past citations for the particular conduct alleged in the complaint.
- II. The fact that a respondent has previously been issued a citation for any violation – whether or not it was paid – shall not be admissible in any ethics or arbitration hearing,

including a hearing to consider a complaint where the respondent rejected a citation and requested a hearing. A hearing panel may consider citations previously issued to the respondent for the purpose of determining appropriate discipline as provided in Subsection IV below.

- III. Citations will not be considered in any publication of violations should such rules be adopted by the association.
- IV. Where a hearing panel finds a violation of the Code of Ethics after a hearing, it may consider past citations in determining an appropriate sanction only if the citation was issued for the same violation at issue in the hearing. By way of example, if a citation was issued for failure to disclose a dual or variable rate commission under Standard of Practice 3-4, that citation could not be considered if a hearing panel later found a violation of Article 3 on some other grounds. Hearing panels will not be informed of past citations for other violations.
- V. Association staff will track the number of citations issued, the number of citations paid, and the violations for which citations were issued. This information may be provided in the aggregate to the Board of Directors, but will not include details about the complaints, nor identify the complainants or respondents.
- VI. The allegations, discussions and decisions made in the citation process are confidential and shall not be reported or published by the board, any member of a tribunal, or any party under any circumstances except those established in Limitations, Section V of this policy and the *Code of Ethics and Arbitration Manual* of the National Association as from time to time amended.

DCAR Citation Schedule of Fines

| | Applicable Article and Standard of Practice | Fine | Classroom Training in addition to LOW or fine for 1st, 2nd, 3rd offenses: |
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| Article 1 | | LOW = Letter of Warning | |
| Failure to fully disclose and obtain consent from both parties when representing both the seller/landlord and buyer/tenant in the same transaction | Article 1, supported by Standard of Practice 1-5 | 1 st Offense: LOW 2 nd Offense: \$100 3 rd Offense: \$300 | In class Agency education. Minimum of 3 hrs. Must complete class within 90 days. |
| Failure to submit offers and counter-offers objectively and as quickly as possible | Article 1, supported by Standard of Practice 1-6 | 1 st Offense: LOW 2 nd Offense: \$100 3 rd Offense: \$300 | In class Agency education. Minimum of 3 hrs. Must complete class within 90 days. |
| Failure to advise sellers/landlords of information specified in Standard of Practice 1-12 prior to entering into a listing contract | Article 1, supported by Standard of Practice 1-12 | 1 st Offense: LOW 2 nd Offense: \$100 3 rd Offense: \$300 | In class Agency education. Minimum of 3 hrs. Must complete class within 90 days. |
| Failure to advise buyers/tenants of information specified in Standard of Practice 1-13 prior to entering into a buyer/tenant agreement | Article 1, supported by Standard of Practice 1-13 | 1 st Offense: LOW 2 nd Offense: \$100 3 rd Offense: \$300 | In class Agency education. Minimum of 3 hrs. Must complete class within 90 days. |
| Accessing or using, or allowing others to access or use, a property managed or listed on terms other than those authorized by the owner or seller | Article 1, supported by Standard of Practice 1-16 | 1 st Offense: LOW 2 nd Offense: \$100 3 rd Offense: \$300 | In class Agency education. Minimum of 3 hrs. Must complete class within 90 days. |
| Article 3 | | | |
| Failure to communicate a change in compensation for cooperative services prior to the time that REALTOR® submits an offer to purchase/lease the property | Article 3, supported by Standard of Practice 3-2 | 1 st Offense: LOW 2 nd Offense: \$100 3 rd Offense: \$300 | In class Ethics education. Minimum of 3 hrs. Must complete class within 90 days. |
| As a listing broker, attempting to unilaterally modify the offered compensation with respect to a cooperative transaction after a REALTOR® has submitted an offer to purchase or lease that property | Article 3, supported by Standard of Practice 3-2 | 1 st Offense: LOW 2 nd Offense: \$100 3 rd Offense: \$300 | In class Ethics education. Minimum of 3 hrs. Must complete class within 90 days. |
| Failing to disclose existence of dual or variable rate commission arrangements | Article 3, supported by Standard of Practice 3-4 | Not applicable in NY | n/a |
| Failure to disclose to cooperating brokers differential that would result in dual or variable rate commission arrangement if sale/lease results through efforts of | Article 3, supported by Standard of Practice 3-4 | Not applicable in NY | n/a |

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| seller/landlord | | | |
| Failing to disclose existence of accepted offers, including offers with unresolved contingencies, to cooperating brokers | Article 3, supported by Standard of Practice 3-6 | 1 st Offense: LOW 2 nd Offense: \$100 3 rd Offense: \$300 | In class Ethics education. Minimum of 3 hrs. Must complete class within 90 days. |
| Misrepresenting the availability of access to show or inspect a listed property | Article 3, supported by Standard of Practice 3-8 | 1 st Offense: LOW 2 nd Offense: \$100 3 rd Offense: \$300 | In class Ethics education. Minimum of 3 hrs. Must complete class within 90 days. |
| Providing access to listed property on terms other than those established by the owner or the listing broker | Article 3, supported by Standard of Practice 3-9 | 1 st Offense: LOW 2 nd Offense: \$100 3 rd Offense: \$300 | In class Ethics education. Minimum of 3 hrs. Must complete class within 90 days. |
| Article 4 | | | |
| Failing to disclose REALTOR®'s ownership or other interest in writing to the purchaser or their representative | Article 4 (second sentence) | Not included at this time (tabled until next meeting) | N/A |
| Article 5 | | | |
| Providing professional services without disclosing REALTOR®'s present interest in property | Article 5 (limited to present interest, not contemplated) | Not included at this time (tabled until next meeting) | N/A |
| Article 6 | | | |
| Accepting any commission, rebate, or profit on expenditures without client's knowledge or consent | Article 6 (first paragraph) | 1 st Offense: LOW 2 nd Offense: \$100 3 rd Offense: \$300 | In class Ethics education. Minimum of 3 hrs. Must complete class within 90 days. |
| Failure to disclose to a client or customer REALTOR®'s financial benefits or fees received as a direct result of recommending real estate products or services | Article 6 (second paragraph) | 1 st Offense: LOW 2 nd Offense: \$100 3 rd Offense: \$300 | In class Ethics education. Minimum of 3 hrs. Must complete class within 90 days. |
| Failure to disclose REALTOR®'s direct interest in an organization or business entity when recommending to a client or customer that they use the services of that organization or business entity | Article 6, supported by Standard of Practice 6-1 | 1 st Offense: LOW 2 nd Offense: \$100 3 rd Offense: \$300 | In class Ethics education. Minimum of 3 hrs. Must complete class within 90 days. |
| Article 12 | | | |
| Failing to present a true picture in real estate communications and advertising | Article 12 | 1 st Offense: LOW 2 nd Offense: \$100 3 rd Offense: \$300 | In class education on Advertising. Minimum of 3 hrs. Must complete class within 90 days. |
| Failing to disclose status as real estate professional in advertising and other | Article 12 | 1 st Offense: LOW 2 nd Offense: \$100 3 rd Offense: \$300 | In class education on Advertising. Minimum of 3 hrs. Must complete |

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| representations | | | class within 90 days. |
| Failure to provide all terms governing availability of a “free” product or service in an advertisement or other representation | Article 12, supported by Standard of Practice 12-1 | 1 st Offense: LOW 2 nd Offense: \$100 3 rd Offense: \$300 | In class education on Advertising. Minimum of 3 hrs. Must complete class within 90 days. |
| Failure to disclose potential to obtain a benefit from third party when REALTOR® represents their services as “free” or without cost | Article 12, supported by Standard of Practice 12-2 | 1 st Offense: LOW 2 nd Offense: \$100 3 rd Offense: \$300 | In class education on Advertising. Minimum of 3 hrs. Must complete class within 90 days. |
| Failure to exercise care and candor when communicating the terms and conditions of premiums, prizes, merchandise discounts or other inducements to list, sell, purchase, or lease | Article 12, supported by Standard of Practice 12-3 | 1 st Offense: LOW 2 nd Offense: \$100 3 rd Offense: \$300 | In class education on Advertising. Minimum of 3 hrs. Must complete class within 90 days. |
| Advertising property for sale/lease without authority of owner or listing broker | Article 12, supported by Standard of Practice 12-4 | 1 st Offense: LOW 2 nd Offense: \$100 3 rd Offense: \$300 | In class education on Advertising. Minimum of 3 hrs. Must complete class within 90 days. |
| Failing to disclose name of firm in advertisement for listed property | Article 12, supported by Standard of Practice 12-5 | 1 st Offense: LOW 2 nd Offense: \$100 3 rd Offense: \$300 | In class education on Advertising. Minimum of 3 hrs. Must complete class within 90 days. |
| Failing to disclose status as both owner/landlord and REALTOR® or licensee when advertising property in which REALTOR® has ownership interest | Article 12, supported by Standard of Practice 12-6 | 1 st Offense: LOW 2 nd Offense: \$100 3 rd Offense: \$300 | In class education on Advertising. Minimum of 3 hrs. Must complete class within 90 days. |
| Falsely claiming to have “sold” property | Article 12, supported by Standard of Practice 12-7 | 1 st Offense: LOW 2 nd Offense: \$100 3 rd Offense: \$300 | In class education on Advertising. Minimum of 3 hrs. Must complete class within 90 days. |
| Failure to take corrective action when it becomes apparent that information on a REALTOR®’s website is no longer current or accurate | Article 12, supported by second sentence of Standard of Practice 12-8 | 1 st Offense: LOW 2 nd Offense: \$100 3 rd Offense: \$300 | In class education on Advertising. Minimum of 3 hrs. Must complete class within 90 days. |
| Failure to disclose firm name and state of licensure on REALTOR® firm website | Article 12, supported by Standard of Practice 12-9 | 1 st Offense: LOW 2 nd Offense: \$100 3 rd Offense: \$300 | In class education on Advertising. Minimum of 3 hrs. Must complete class within 90 days. |
| Misleading consumers through deceptive framing, manipulating content, deceptively diverting internet traffic, or presenting other’s content without attribution or permission | Article 12, supported by Standard of Practice 12-10 | 1 st Offense: LOW 2 nd Offense: \$100 3 rd Offense: \$300 | In class education on Advertising. Minimum of 3 hrs. Must complete class within 90 days. |
| Registering or using of deceptive URL or domain name | Article 12, supported by Standard of Practice 12-12 | 1 st Offense: LOW 2 nd Offense: \$100 3 rd Offense: \$300 | In class education on Advertising. Minimum of 3 hrs. Must complete class within 90 days. |
| Representing that the REALTOR® has a | Article 12, supported by | 1 st Offense: LOW 2 nd Offense: \$100 | In class education on Advertising. Minimum |

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| designation, certification, or other credential they are not entitled to use | Standard of Practice 12-13 | 3rd Offense: \$300 | of 3 hrs. Must complete class within 90 days. |
| Article 14 | | | |
| Failing to cooperate in a professional standards proceeding or investigation in circumstances when cooperation has been demanded by the association and association has advised REALTOR® failure to cooperate could result in an allegation of a violation of Article 14 | Article 14 | Not included in citation policy | N/A |
| Article 16 | | | |
| Conditioning submission of a buyer's offer on additional compensation from a listing broker | Article 16, supported by Standard of Practice 16-16 | Not applicable in NY | N/A |
| Placing for sale/lease sign on property without permission of seller/landlord | Article 16, supported by Standard of Practice 16-19 | 1st Offense: LOW 2nd Offense: \$100 3rd Offense: \$300 | In class Ethics education. Minimum of 3 hrs. Must complete class within 90 days. |

NOTE: Associations may adopt all or some of the above citations. No additional citations may be added. Fines for each citable offense, as well as any possible training requirements, must be established in advance and should be followed consistently.

Associations, at their discretion, may adopt an escalating fine schedule for repeat citations and also may impose a training requirement in addition to or as an alternative to payment of a fine for any of the citable offenses adopted. If an escalating fine schedule is adopted, it may only be used in circumstances where citations are issued by the same association.

The amount of fine for any citation is at the option of the association, but aggregated fines levied against any member may not exceed \$5,000 in any three (3) year period.