

Missouri Association of REALTORS®
Board Operations Manual
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Guidelines for Selection of Board/Association Counsel

A number of factors should be considered in the initial selection of counsel for a Board/Association. The following discussion elaborates on several of the key elements, which should be incorporated in the decision-making process, which will lead to the establishment of a solid foundation for the Board/Association's relationship with its counsel.

1. Combination of Legal Expertise and Practical Understanding: Counsel must be able to balance legal knowledge with common sense and sound judgment:

The lawyer should possess knowledge of the law as it applies to the real estate industry and trade associations. Specifically, he should have experience in, or at least a working knowledge of, corporate law, anti-trust, civil rights and municipal law. He should be familiar with state and federal law as it relates to the Board/Association. He should be capable of handling the myriad of developing legal trends relating to trade associations. Counsel, or his firm, should have the staff and facilities to represent and fully handle all legal needs of the Board/Association. This, of course, depends upon the Board/Association's size, current legal issues directly affecting the Board/Association, the Board/Association's goals, etc.

In addition to possessing the requisite legal expertise, the attorney must understand the Board/Association, both its structure and its operation. The attorney must possess a complete awareness of the various risks facing a Board/Association. He must be able to provide workable answers which are both compatible with the law and with the Board/Association's aims.

2. Open lines of Communication:

It is imperative that proper lines of communication be established between the Board/Association and its counsel. The attorney must be a person who can relate to the Board/Association and who is willing and able to communicate his advice to the Board/Association. Counsel must be able to communicate in terms with which his audience is most comfortable.

3. Commitment to the Board/Association:

The consideration relevant to the selection of Board/Association Counsel relates not only to the professional competence of the individual in the legal areas of concern to the Board/Association, but equally important are the subjective intangibles relating to that individual's commitment to working with and representing the Board/Association.

The Board/Association counsel should evidence a clear commitment to providing full service to the Board/Association including not only attendance to all meetings of the Board/Association where such attendance is necessary, but also by providing a continuing legal educational services to the Board/Association and its members.

Of the highest importance is the trust placed in the Board/Association attorney by the leadership and membership of the Board/Association. This trust is crucial to the open and frank discussions between the Board/Association and the attorney. Each party must recognize that all are working toward the common goal of having the Board/Association provide the best possible service to the members. Clearly, the attorney will at some time be forced to advise against some proposed action of the Board/Association, which action may be on that the membership or the leadership feels is highly desirable. This trust must exist so that the Board/Association understands that the attorney is recommending against the action because the risks he sees are to great to justify those benefits that the members envision.

4. Professionalism:

Since attorneys are usually the sole, representative in legal matters, their professionalism and demeanor reflect upon the organization they represent. Counsel for the Board/Association must possess and maintain high standards of integrity. Board/Association counsel should be a recognized figure, in the community so that he is given credibility not only by the members, but also by the community at large when he engages in his role as legal spokesman for the Board/Association.

5. Conflict:

The Board/Association should be aware of possible conflict of interest in its selection process. It is preferable if counsel selected is not a REALTOR® or a member of the Board/Association since this could impair the credibility and effectiveness of counsel.

6. Compensation:

Fees are important because the Board/Association must never feel restrained in calling on counsel because of the expense of doing so. The costs of not seeking professional legal advice when it is needed, in terms of risks to the Board/Association, far outweigh the financial costs of seeking such advice.

Board of Choice and Board of Choice Across State Lines

(Include this in your Indoctrination Course)

Background Information

During the 1994 Midwinter Meetings of the National Association, the Board of Directors and the Delegate Body approved amendments to the National Association's Constitution to implement Board of choice. Prior to this change in policy, a REALTOR® was required to join the Board/Association where his or her principal place of business was located, before becoming eligible to join any other Board/Association.

Simply stated, Board of choice gives a REALTOR® the freedom to join the Board/Association that provides him or her with the services and programs he or she finds most valuable. Board of choice became mandatory as of January 1, 1996.

The original Board of choice policies authorized a REALTOR® to join any Board/Association within the state where his or her office is located. Based on amendments approved by the Board of Directors and Delegate Body during the 1995 Annual Convention, the Board of choice policies were expanded to authorize REALTORS® to join a primary Board/Association across contiguous state lines. State association membership is in the state where primary Board/Association membership is held. Board of choice across state lines policies became mandatory as of July 1, 1996.

Board of Choice Key Implementation Concepts

NOTE: As used herein, the term "Board" refers to local Board and Associations. As used herein, the term "licensee" refers to individuals licensed or certified to engage in real estate practice, including but not limited to brokerage, appraisal, property management, counseling, etc.

Primary Membership

The primary Board/Association of affiliation elected by a REALTOR® must be in the state where the REALTOR® is licensed and maintains his or her principal place of business or in a state contiguous thereto. Licensees affiliated with a REALTOR® firm may choose as a "primary" Board/Association any Board/Association in the state where the firm maintains a "designated" REALTOR®.

Membership of All Principals

Each principal, partner, corporate officer, or branch office manager acting on behalf of a principal, who is actively engaged in the real estate business within the state, must be a REALTOR® if any other principal of such firm, partnership, or corporation is a REALTOR® member.

Discussion: Prior to Board of choice being in effect, each sole proprietor, corporate officer, or branch office manager acting on behalf of the firm's principal(s) within a particular Board/Association's jurisdiction, who was actively engaged in the real estate business in that Board/Association's jurisdiction, was required to be a REALTOR® or institute affiliate member of the Board/Association if any other principal in the firm was a REALTOR®. This was to ensure full commitment by all principals to the Code of Ethics and other membership duties.

The Board of choice policies expanded this requirement to a statewide basis. For example, if a real estate firm maintains branch offices, the designated REALTOR® of each branch office selects a primary Board/Association of affiliation, which may or may not be the same as the Board/Association selected by other principals in the firm. Similarly, if a REALTOR® (principal) establishes a second real estate firm within the state, he or she remains a REALTOR® in connection with both (all) firms.

A REALTOR® cannot divide himself or herself in the practice of real estate as a REALTOR® within a particular state. He or she either is or is not a REALTOR®. If that person chooses to be a REALTOR®, then he or she is accountable for all real estate firms within the state in which she is a principal.

Secondary Membership

Non-resident membership has been replaced by “secondary” membership.

Discussion: While the Board of choice concept eliminates the need to hold multiple memberships in Board/Associations to have access to Board/Association services, individuals may want to maintain membership in more than one Board/Association to network, to become politically involved, or for other reasons. Consequently, membership is available in a secondary Board/Association on terms and conditions no more stringent than the requirements established in that Board/Association’s bylaws for REALTOR® (and REALTOR-ASSOCIATE®, where applicable) membership.

Membership is granted to a non-principal licensee who holds REALTOR® or REALTOR-ASSOCIATE® membership in his or her primary Board/Association, without any requirement that the designated REALTOR® with whom that person is affiliated holds membership in the secondary Board/Association.

MLS services are available only to a secondary member if his or her designated REALTOR® participates in the MLS. Board/Association dues only are assessed for those members who join a secondary Board/Association on a voluntary basis. No national allocation is included because NAR dues are already paid through a member’s primary Board/Association. A state allocation is included only if a member’s primary Board/Association is located in a different state.

Board/Association Services and the MLS

A REALTOR® is entitled to purchase services from Board/Associations other than his or her primary Board/Association without the necessity of holding membership in those Board/Associations. Each individual Board/Association determines Service fees, except that fees for MLS services may not exceed those for members of the Board/Association. However, as a condition of MLS participation, a Board/Association may require a REALTOR® to be licensed in the state.

Discussion: Under Board/Association of choice, services from other Board/Associations are available, irrespective of where a REALTOR® seeking those services holds his or her primary membership. This is subject only to a REALTOR®’s agreement to abide by any related rules and regulations of the Board/Association from which a service is being sought, and to pay the necessary cost for the service.

The Code of Ethics

Complaints alleging violations of Code of Ethics and requests for Arbitration may be filed at any Board/Association in which a REALTOR® holds membership or participates in the Board/Association’s MLS.

Discussion: Traditionally, Code of Ethics enforcement was limited to the Board/Association where an individual held REALTOR® membership. However, the universal access to services element of Board of choice creates the potential for disputes between REALTORS® and the public in areas outside of a REALTOR®’s primary Board/Association of affiliation. Consequently, one of the conditions of access to a Board/Association’s MLS is a participant’s agreement to submit to ethics hearings and arbitration requests filed at a Board/Association from which the REALTOR® obtains MLS access but is not a member. Board/Associations may impose an administrative processing fee (not to exceed \$500), in addition to any discipline imposed (which may include fines), when such individuals are found in violation of the Code of Ethics.

Note: The Board of choice information above was published in the National Association of REALTORS® Membership Policy and Board/Association Jurisdiction Manual, 1996.

MEMBERSHIP QUALIFICATION CRITERIA OF THE NATIONAL ASSOCIATION (FOR APPLICANTS FOR REALTOR® MEMBERSHIP WHO ARE SOLE PROPRIETORS, PARTNERS, CORPORATE OFFICERS, OR BRANCH OFFICE MANAGERS IN A REAL ESTATE FIRM).

The following Membership Qualification Criteria are the most rigorous qualifications which may be required by a Board of REALTORS® in the consideration of an applicant for REALTOR® Membership who is a sole proprietor, partner, corporate officer or branch office manager in a real estate firm. They were developed by the Membership Committee, National Association, to provide "reasonable and nondiscriminatory written requirements for membership." Boards may elect to adopt all, some, or none of the criteria, but those, which are adopted, must be included in the Boards Bylaws. The Criteria and explanatory notes have the approval of legal counsel, National Association, and were approved by the Board of Directors of the NATIONAL ASSOCIATION OF REALTORS® February 5, 1974, and amended in 1982, 1985, 1987, 1990, 1991, and 1996.

Applicants for REALTOR® Membership who are sole proprietors, partners, corporate officers, or branch office managers in a real estate firm may be required to supply satisfactory evidence that they have:

1. A VALID REAL ESTATE LICENSE (AND ARE ACTIVELY ENGAGED IN THE REAL ESTATE BUSINESS AND ITS RECOGNIZED BRANCHES).

Explanation: "A valid real estate license" is intended to mean that applicants for REALTOR® Membership who are sole proprietors, partners, corporate officers, or branch office managers in a firm engaged in the real estate business must maintain a current, valid real estate broker's or salesperson's license or must be licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property.

The term "actively engaged" in business contemplates that the licensed or certified applicants will have an office for the conduct of real estate business and shall hold themselves out to the public as being actively engaged in the real estate business, and shall actively seek and service real estate business. It does not contemplate that applicants must devote all or even a majority of their time to the real estate business or derive any particular percentage of their income from such business. It does not contemplate that applicants shall have no other job or occupation.

Where question arises as to whether or not applicants are "actively engaged" in the real estate business, they shall be given the opportunity to present evidence concerning the actual and intended scope of their business activities. In the event any applicant for membership is rejected on the basis of failure to be "actively engaged," the Board should promptly seek a declaratory judgment from a court of competent jurisdiction affirming the propriety of such rejection.

2. A PLACE OF BUSINESS WITHIN THE STATE OR A STATE CONTIGUOUS THERETO.

3. NO RECORD OF OFFICIAL SANCTIONS INVOLVING UNPROFESSIONAL CONDUCT.

Qualification: "No record of official sanctions involving unprofessional conduct" is intended to mean that the Board may consider judgments against the applicant within the past three (3) years of violations of (1) civil rights laws; (2) real estate license laws; (3) or other laws prohibiting unprofessional conduct rendered by the courts or other lawful authorities.

4. MEMBERSHIP FILE.

Qualification: Associations may, at their discretion, also consider the following in determining an applicant's qualifications for membership:

1. All final findings of Code of Ethics violations and violations of other membership duties in any other association within the past three (3) years
2. Pending ethics complaints (or hearings)
3. Unsatisfied discipline pending
4. Pending arbitration requests (or hearings)
5. Unpaid arbitration awards or unpaid financial obligations to any other association or association

MLS

"Provisional" membership may be granted in instances where ethics complaints or arbitration requests (or hearings) are pending in other associations or where the applicant for membership has unsatisfied discipline pending in another association (provided all other qualifications for membership have been satisfied). Associations may reconsider the membership status of such individuals when all pending ethics and arbitration matters (and related discipline) have been resolved or within six months from the date that provisional membership is approved if such matters have not been resolved. Provisional members shall be considered REALTORS® and shall be subject to all of the same privileges and obligations of REALTOR® membership.

If a member resigns from another association with an ethics complaint or arbitration request pending, the association may condition membership on the applicant's certification that he/she will submit to the pending ethics or arbitration proceeding (in accordance with the established procedures of the association to which the applicant has made application) and will abide by the decision of the hearing panel.

5. NO RECENT OR PENDING BANKRUPTCY.

Qualification: No recent or pending bankruptcy is intended to mean that the applicant or any real estate firm in which the applicant is a sole proprietor, general partner, corporate officer or branch office manager is not involved in any pending bankruptcy or insolvency proceedings or has not been adjudged bankrupt in the past three (3) years. If a bankruptcy proceeding as described above exists, membership may not be rejected unless the Board establishes that its interests and those of its members and the public could not be adequately protected by requiring that the bankrupt applicant pay cash in advance for Board and MLS fees for up to one (1) year from the date that membership is approved or from the date that the applicant is discharged from bankruptcy (whichever is later). In the event that an existing member initiates bankruptcy proceedings, the member may be placed on a "cash basis" from the date that bankruptcy is initiated until one (1) year from the date that the member has been discharged from bankruptcy.

6. COMPLETED THE BOARD INDOCTRINATION COURSE.

Qualification: It is presumed that the Indoctrination Course to be completed as a prerequisite for membership is confined to the subjects of the Constitution, Bylaws, policies, rules and regulations of the local Board, State Association, and the National Association as well as the Code of Ethics of the National Association. It is not contemplated that completion of the Indoctrination Course covering topics included in the licensing examination will be required for qualification.

7. SIGNIFIED THEIR INTENTION TO ABIDE BY THE NATIONAL ASSOCIATION OF REALTORS® CODE OF ETHICS.

8. SIGNIFIED THEIR INTENTION TO ABIDE BY THE CONSTITUTION, BYLAWS, POLICY, AND RULES AND REGULATIONS OF THE LOCAL BOARD, STATE ASSOCIATION, AND THE NATIONAL ASSOCIATION OF REALTORS®.

Explanation: By such agreement in the application, applicants assume a continuing membership obligation.

IMPORTANT NOTE TO MEMBER BOARDS.

1. When a Board declines to accept an applicant on the basis of failure to satisfy Point 1. (actively engaged), Point 3. (no record of official sanctions involving unprofessional conduct), and/or Point 5. (no recent or pending bankruptcy), it is recommended that the Board seek a declaratory judgment in the civil courts, affirming its decision. Board Legal Counsel will advise as to the proper form and procedures in seeking a declaratory judgment. A sample form, which may be used for this purpose, is included in the Code of Ethics and Arbitration Manual. No petition should be prepared except by Board legal counsel.

***Supplies of Membership Application Forms May Be Obtained
By Contacting Chad Hrdina at MAR
(573/445-8400 or 800/403-0101, ext. 121)***



NON-MEMBER USE OF THE TERM REALTOR®

When the Board/Association becomes aware that a non-member is using the term REALTOR® there is a recommended procedure to follow in order to ask that non-member to cease using the term. The initial action and ultimate legal action, if required, must be taken and followed through by the Local Board/Association of REALTORS® because it is the Local Board/Association to whom the use of the term REALTOR® has been granted along with the responsibility of regulating the usage within the jurisdiction of the Local Board/Association.

It is important that the Local Board/Association keep in a file copies of all instances in which the offending individual has used the term or insignia without authorization (for example: newspaper ads, business cards, pictures of signs, etc.)

The procedural steps for the Local Board/Association are:

1. Check with the Membership Department of the Missouri Association of REALTORS® to confirm that the individual is not a member of any other Board/Association in the state.
2. Telephone call from the Board/Association President to the offending individual calling his attention in a friendly way to the unauthorized use of the term REALTOR® or the insignia which are registered service marks. The time and date of the telephone call should be recorded.
3. If the offending individual continues to use the term REALTOR® after the phone call, there should be a letter from the President of the local Board/Association to the offending individual asking him in a nice way to cease and desist from use of the term or insignia. One copy of the letter should be kept by the Board/Association President and one copy sent to the Executive Vice President of the Missouri Association of REALTORS®.
4. If, after a couple of weeks, the offender is still using the term, the Legal Counsel of the Local Board/Association of REALTORS® should send a letter on his stationery to the offender and advise that, if use of the term and/or insignia does not cease immediately, legal action will be undertaken by the Board/Association to obtain an injunction in the courts. If the Local Board/Association does not have Legal Counsel, the State Association will ask State Legal Counsel to draft this letter. Copies of this letter must be sent to the State Association and also the National Association of REALTORS®, 430 N. Michigan Ave., Chicago, IL 60611.
5. If the offender does not discontinue using the term REALTOR® and/or the insignia (in most cases, the offender will cease use by this time), the State Association should be notified. The State Association will contact the National Association concerning further action. If further action is necessary, the State Association and the National Association will assist and support the Local Board/Association.

Sample letter regarding unauthorized use of the Membership Marks by a non-member real estate agent may be found at the end of this Section. For sample letters regarding other kinds of misuse, refer to the Membership Marks Manual of the National Association of REALTORS®.

Sample letter for unauthorized use of the MARKS by a non-member real estate agent - to be typed on Member Board/Association Letterhead.

[Date]

[Non-Member's Address]

Re: Unauthorized Use of the Term REALTOR® [REALTORS®, REALTOR-ASSOCIATE®, or the REALTOR® Logo - *select which apply*]

Dear Sir/Madam:

As [President, Executive Officer] of the _____ Board/Association of REALTORS®, it has been brought to my attention that you are using the term REALTOR® [REALTORS®, REALTOR-ASSOCIATE®, the REALTOR® Logo] in connection with your real estate business despite the fact that, according to records of the Missouri Association of REALTORS®, you are not a Member of a Board/Association of REALTORS® in the State of Missouri or the NATIONAL ASSOCIATION OF REALTORS®.

The terms REALTOR®, REALTORS®, REALTOR-ASSOCIATE®, the REALTOR® Logo are federally registered collective membership marks owned exclusively by the National Association. These marks serve the singular function of identifying and distinguishing Members of the National Association from all other persons engaged in real estate activities. The mark is licensed for, exclusive use, by such Members as a means of indicating their membership.

Each Member Board/Association of the National Association has responsibility for controlling the use of the marks in its assigned jurisdiction. Since you are not a member and your office is located in this Board/Association's jurisdiction, it is our responsibility to advise you that you are not entitled to use the membership marks in connection with your real estate business and request that you immediately discontinue doing so.

If you wish to apply for membership in the _____ Board/Association of REALTORS®, whereby you would become authorized to use the marks, we would be most happy to provide you with information regarding application procedures. Unless such application is submitted and membership approved by our Board/Association of Directors, however, your use of the marks is unauthorized and must be discontinued.

Accordingly, we would appreciate your prompt written assurance that you will stop using the membership marks of the National Association until such time as you may become authorized to do so as a Member in good standing.

Thank you in advance for your cooperation and early response.

[Signature of Officer]

bcc: Trademark Protection Coordinator
NATIONAL ASSOCIATION OF REALTORS®

Executive Vice President
Missouri Association of REALTORS®

TAX EXEMPT FILING WITH I.R.S.

1. If you do not know whether your Board/Association has a tax-exempt determination or not, simply write the Internal Revenue Service, Kansas City, Missouri.
2. To file, submit Form 1024 (can be obtained through IRS office) to the IRS in Ogden, UT.
3. Be sure to keep decision letter in a permanent location.
4. Board/Associations must file, an annual information for 990 with the IRS in Ogden, UT, except if your gross receipts are under \$25,000 annually.

NOTE: If IRS sent a 990 package to your Board/Association, you must fill in part of the 990 and file it with IRS even if gross receipts are under \$25,000 annually. If your Board/Association has gross receipts under \$25,000 and your Board/Association does not receive a 990 package from IRS, no filing is needed at all.

STEPS IN PROCESSING AN APPLICATION FOR MEMBERSHIP IN A BOARD/ASSOCIATION OF REALTORS®

1. A perspective member indicates interest in Membership in the Board/Association.
2. The applicant is promptly provided the following:
 - a. Application form in the number required (it is desirable to provide an extra form for each applicant to use as a worksheet).
 - b. Administrative instructions for completing the application, if available and/or required.
 - c. Copies of all materials containing information for which the applicant is held responsible in accomplishing the Board/Association's Indoctrination Course, if required.
 - d. Administrative instruction or information as to the overall application process and the approximate timetable required for its completion.
3. Application of applicant is received by the office of the Board/Association of REALTORS® and a copy provided to the Chair of the Membership Committee, retaining a copy in the central Board/Association file. (If photocopy facilities permit, a copy of the application may also be provided to each member of the Membership Committee for information and study prior to the next meeting of the Committee.)
4. The Membership Committee, at its next meeting, determines if the applicant is applying for the proper category of membership, and if so, gives consideration as the Committee to the qualifications of the applicant.
 - a. Consideration of the Committee should be on the basis of the written application and other information supplied or obtained, subject to verification of any and all such information.
 - b. If an oral interview is, or becomes, part of the application process, approval or denial of membership should **not** be made on the basis of such an oral interview, because it can be suspect of "prejudice, bias, and subjective opinion." Such an oral interview should be restricted to discussion and to providing the applicant for membership an opportunity to refute any and all questions concerning his membership qualifications or alleged lack of qualification.
 - c. The Committee should provide the opportunity for the applicant for membership to take the Indoctrination course, if required. All materials should be provided to the applicant in adequate time for him to study and to prepare for the "reasonable and nondiscriminatory objective examination of such an Indoctrination course, if required."
 - d. The Membership Committee makes a determination as to the applicant's qualification for membership in the Board/Association, and, based on its determination, makes such recommendation to the Board/Association of Directors of the Board/Association for final action.
5. The Board/Association of Directors of the Board/Association of REALTORS® receives the recommendation of the Membership Committee and approves the recommendation as received, or tables the recommendation pending receipt of additional information, or rejects the recommendation and reverses the finding of the Membership Committee. The Minutes of the meeting of the Board/Association of Directors, especially if denial of membership occurs, should fully document the reasons there for, and should record and reflect the votes of the Board/Association of Directors in arriving at the decision, This is of critical importance in establishing the fact that the applicant for membership in the Board/Association has been accorded "due process".
6. If denial of membership to an applicant for membership in the Board/Association is contemplated by the Board/Association of Directors, the Directors should consult Legal Counsel of the Board/Association to determine if they have proceeded and are proceeding in a way that accords due process to the applicant, and to obtain Legal Counsel's opinion as to the validity and merit of their finding. If the final decision of the Board/Association of Directors is a denial of membership to the applicant, the Directors should consider, especially if there is any thought of the applicant contesting the decision, having Legal Counsel seek declaratory relief (process described elsewhere in this Manual) in the local civil courts.
7. Following the final determination as to the admission of the applicant into the Board/Association, the Executive Office or the Secretary of the Board/Association is directed to inform, in writing, the applicant of the decision of the Directors.

8. If accepted into the membership, a letter of welcome should be directed to the applicant over the signature of the President of the Board/Association on behalf of the Directors and the Membership. This letter of welcome should be as informative and instructive as possible as to the benefits, privileges, and services of the Board/Association that will be accorded to the applicant, and as to his personal responsibilities and obligations to the Board/Association. The letter should set forth the time and date and place of the meeting which he will be officially installed and will be expected to personally appear and to affirm his acceptance of the REALTOR® or REALTOR-ASSOCIATE® Pledge.
9. The Executive Officer of the Board/Association will have the staff in the Board/Association office accomplish all of those administrative items necessary to process him properly into the records of the Board/Association.
10. The Board/Association's Executive Officer or Secretary will also prepare a "Membership Kit" which will contain, but will not be limited to, the following:
 - a. Certificate of Membership
 - b. Membership pin
 - c. A Board/Association Manual, or such copies of the governing documents will be available *
 - d. A copy of the Code of Ethics and Standards of Practice, NATIONAL ASSOCIATION OF REALTORS®.
 - e. A copy of the Code of Equal Opportunity, if this has been adopted by the Board/Association. *
 - f. A copy of the Affirmative Marketing Agreement, if this has been adopted by the Board/Association. *
 - g. Any further letter of welcome deemed appropriate. *
 - h. Appropriate membership pamphlets in the inventory of the Board/Association of REALTORS®, which should include the following:
 - (1) REALTOR®-It Pays to Belong
 - (2) REALTOR®-It Pays to be a Specialist
 - (3) REALTOR®-Its Meaning and Use
11. Following the applicant's processing into the Board/Association it is desirable to visit the Board/Association office** (if the Board/Association has an office) to become acquainted with the staff, the layout of the Board/Association office, and to achieve some personal awareness of the many important operations carried on in the office of the Member Board/Association of REALTORS®. This is important so that the applicant can gain a sense of the many programs and activities that will provide benefits, privileges, and services to him as a Member. It is also important for the applicant and key staff people to become aware of the meticulous care, which must be exercised in order to meet the requirements of the Board/Association, especially with respect to all those cooperative programs and projects, which will require the applicant's full cooperation.
12. Each and every Member, once accepted into membership, should receive equal consideration and equal treatment by all Officers, Directors, Members and Staff. The new Member, in turn, should provide full cooperation in every respect and should freely give time and talent to the programs and activities of the Board/Association of REALTORS®.

**Copies of this will have been provided earlier if the Board/Association has an Indoctrination Course. If already furnished for the Indoctrination Course, this need not be duplicated.*

***It is realized many small Board/Associations will not have either an "office" or "staff." The elected Secretary should provide service as possible.*

PROCESSING A MEMBERSHIP APPLICATION Flow Chart

APPLICANT

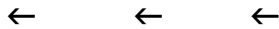
Submits application to . . .



**LOCAL
BOARD/ASSOCIATION
OFFICE**



Submits application to . . .



**Membership
Committee**



-verifies application

-gives applicant Indoctrination Course, where required

-qualifies or disqualifies membership



-submits application recommendation to . . .



→ → → → →



**BOARD/ASSOCIATION
OF
DIRECTORS**



makes final decision on membership application



THREE CHOICES FOR MEMBERSHIP APPLICATION



APPROVED

TABLED

DENIED



*...
pending
further
information.*

*submit
decision
to ...*



LEGAL COUNSEL



final decision reported to ...



**EXECUTIVE OFFICER/SECRETARY
OF BOARD/ASSOCIATION**



verifies decision to applicant in writing.



ACCEPTED APPLICANT



Receives letter of welcome from Local Board/Association along with full indoctrination as provided by that Board/Association and is officially installed in the Board/Association.

DENIAL, SUSPENSION, OR EXPULSION FROM MEMBERSHIP

The question of legal limitations on a real estate Board/Association in rejecting applications from prospective Members and expelling Members for disciplinary reasons is sometimes raised at gatherings of real estate Board/Association Officers. To help clarify the subject, the following explanation and guidelines are offered. It would be well for every Board/Association President to make this required reading and, in addition, provide copies to the Board/Association of Directors, the Membership Committee and Board/Association Officers.

A real estate Board/Association is a membership association or corporation. A real estate Board/Association is also a business or trade association. It is an association organized for the purpose of improving the business in which its Members engage through education, cooperation, exchange of information, and by the establishment and enforcement of ethical standards of practice for the benefit of the public.

In view of this, membership becomes a valuable right and can only be denied, revoked or modified for good cause and only under circumstances, which afford due process.

Applications for Membership

An association of business competitors generally should admit to membership all qualified applicants. Because the Members of real estate Board/Associations engage in the sale of services rather than commodities, and because a Member's business reputation can depend, to a measurable degree, upon the integrity of all Members, such associations should carefully determine the character of applicants before they are admitted. To guard against future embarrassment an applicant form should elicit whether the applicant has ever been sued or brought before any state regulatory agency for misfeasance as a broker; whether the applicant has ever been expelled from, or denied membership in a real estate Board/Association; whether the applicant has ever been convicted of a crime. Failure to do so has embarrassed some Board/Associations. However, when such information has been obtained, a careful judgment should be made with advice of Board/Association legal counsel as to whether such information would be a proper basis for denying membership. Such judgment should be made within the guidelines and context of the Membership Qualification Criteria.

If an applicant is excluded from membership, the grounds should be clear, and not speculative. No one should be excluded from membership because of a vigorously competitive manner of doing business. There can be no arbitrary restrictions on membership, not only because of Article 1, Section 2, of the National Association's Bylaws, but also for cogent legal reasons. Qualifications should be limited to those, which are directly relevant to the legitimate interest of the Board/Association. Permissible valid criteria for membership in a Board/Association of REALTORS® is set forth in the Membership Qualification Criteria for Applicants for REALTOR® and REALTOR-ASSOCIATE® Membership," which are presented in this Manual.

Whenever an application for membership is denied, the body acting upon the application should keep a full record of its proceedings, sufficiently detailed to demonstrate, should the occasion arise, the specific basis or bases of disqualification. *

**See note concerning use of a petition for declaratory relief at conclusion of section concerning the expulsion of members*

Expulsion of Members

A Member may be expelled because of original disqualification, especially where the application contains false statements regarding personal qualifications. A member may be expelled for violation of the Code of Ethics, or for violating any valid Bylaw or Rule or Regulation of the Board/Association.

To be valid, a Bylaw or Rule must be reasonable, and not contrary to law or to public policy. These generalities do not admit to interpretations so particular as to cover all individual instances.

-**"Reasonable"** is the antithesis of **"arbitrary."** To justify expulsion for its violation a **Bylaw** must have some logical connection with the desirability of continuing the status of membership, and it must operate equally upon all **Members**.

-A **Bylaw** is not **"contrary to law"** simply because it requires conduct not prescribed by the law. It is contrary to law only if it requires conduct prohibited, directly or by implication, by law.

-The **"public policy"** of each State is expressed by, the legislature and judiciary. It can vary and hence should be interpreted with advice of local counsel.

Because expulsion of a **Member** may be subject to judicial review, it is basic that the legal requirements of **"due process of law"** be followed in any such proceeding. The elements of due process are notice, hearing, and an opportunity to defend before an impartial body. Expulsion is as serious and perhaps more serious in its effect than simple denial of membership. The report of proceedings in any such instance should demonstrate full compliance with each of the elements of due process on law, and should include a written opinion detailing conduct involved, the evidence and testimony, and the reasoning processes resulting in the conclusion reached.*

**In those instances where a Board/Association contemplates denial of membership or expulsion of a Member, and has reason to believe the individual may resort to litigation, the Board/Association, with guidance of Board/Association's Legal Counsel, should consider seeking declaratory judgment in the appropriate court of the State in which it is located.*

Salesperson Audit Procedure

A complete match-up of the Missouri Real Estate Commission's record with State Association membership records will be provided to each Board/Association during or immediately after each annual Missouri Association of REALTORS® Board/Association Leadership Conference. Thereafter, the Board/Associations will be provided a bi-monthly update listing of new licensee and transfer activity according to the records of the Missouri Real Estate Commission. The listing is to be used to enforce the Designated REALTOR® (DR) dues formula and to provide your Board/Association with names of potential members. The State Association will be auditing these lists through the Board/Associations to comply with the DR dues formula as provided for in the Bylaws.

PROCEDURE:

1. Each REALTOR® that has salespersons listed who are not REALTOR-ASSOCIATE® members, should be contacted and advised of the DR dues formula and the salespersons' names listed. A salesperson audit form will be attached to the quarterly update list. If more forms are needed, contact Mary Milner.
2. The REALTOR® must advise the Board/Association, within 15 days, of the status of those salespersons.
 - a. Transferred (if so, to whom)
 - b. Application for REALTOR-ASSOCIATE® Membership
 - c. Remittance of amount of dues equal to REALTOR-ASSOCIATE® dues time the number of salespersons who are not REALTOR-ASSOCIATE® members.
3. Member Board/Association to forward copy of the form or advise State Association of the status of these salespersons within 30 days of receipt of the listing. (Printout may be returned with code by each name. Codes are referenced on the bottom of the Salesperson Audit Form).
4. If there is no notification to State Association within 30 days, the Board/Association will be billed for State and National Assessment for those salespersons.

Please contact Chad Hrdina at the State Association (573/445-8400 or 800/403-0101, ext. 121) with any questions or requests for additional SALESPERSON AUDIT FORMS.

SALESPERSON AUDIT FORM

BOARD OF REALTORS®

TO: REALTOR®

Name

License #

Firm

Address

City

State

Zip

Our current listing from the Missouri Association of REALTORS® and the Missouri Real Estate Commission indicates the following salespersons are listed with your individual or corporate Broker license number.

In accordance with the local, State and National Bylaws, salespersons who are not members of the Board and affiliated with a REALTOR® member of the Board must be accounted for in an increase to the REALTOR® member (an amount equal to REALTOR-ASSOCIATE® dues times the number of non-member salespersons).

Please review this list of salesperson licensees and indicate the status of each salesperson on this form and return to _____ within 15 days.

Thank you for your cooperation.

NAME	STATUS (see below)
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

STATUS

1. Additional REALTOR® dues enclosed - ARD.
2. Transferred (if so, date and where) - TR.
3. REALTOR-ASSOCIATE® Application and dues enclosed - RAD.
4. Other (explain).

	Name	Indicate R for REALTOR® or RA for REALTOR-ASSOCIATE®	Office Address
4.			<hr/> <hr/>
5.			<hr/> <hr/>
6.			<hr/> <hr/>
7.			<hr/> <hr/>
8.			<hr/> <hr/>
9.			<hr/> <hr/>
10.			<hr/> <hr/>
11.			<hr/> <hr/>

If additional pages are needed, please continue the above format on the additional sheets and staple to this form.