

# 1 **Procedures for Alleged Violations of NARCA Member**

## 2 **Code of Professional Conduct and Ethics<sup>1</sup>**

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4 **Preamble:** NARCA – The National Creditors Bar Association™ (hereafter “NARCA”) is a nationwide,  
5 not-for-profit trade association of attorneys who represent creditors. Members are guided by  
6 NARCA’s code of ethics, which imposes an obligation of self-discipline beyond the requirements of  
7 pertinent laws and regulations.

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### 9 **Section 1. Submitting a Complaint**

10 All complaints alleging a violation of the NARCA Code of Professional Conduct and Ethics must  
11 be filed in writing and signed by the Complainant or an authorized official of the Complainant. A  
12 complaint must be filed by a NARCA member (firm member or individual member), an existing  
13 or former client of a NARCA member firm or a current NARCA officer or director. The complaint  
14 shall identify the NARCA member (firm member or individual member) against whom the  
15 complaint is being made.

16 Upon receiving a complaint, if such complaint is found to be technically incomplete or  
17 insufficient, as determined by NARCA’s Executive Director, the Complainant will be informed in  
18 writing of the deficiency. In the event that the Executive Director determines that the  
19 Complainant is making an inquiry as to clarification of a policy or procedure, NARCA staff may  
20 provide guidance and resolve the issue.

21 Any complaint must conform to the Complaint Form attached hereto and incorporated herein,  
22 which may be amended from time to time by the NARCA Professional Standards and Grievance  
23 Committee (hereafter “the Committee”). The Complainant shall include a statement that grants  
24 a limited waiver of confidentiality for the sole purpose of allowing NARCA to fully investigate  
25 the complaint and shall contain a statement that the Complainant attests that the information  
26 contained therein is accurate to the best of their knowledge. If the complaint is deemed  
27 substantively deficient as determined by the sole discretion of the Chair(s) of the Committee,  
28 the complaint shall be returned to the Complainant by the Executive Director, with a letter  
29 informing the Complainant of the reason(s) the complaint was deemed deficient.

### 30 **Section 2. Acknowledgment and Response**

31 If the Chair(s) determine the complaint states a claim for a violation of the NARCA Code of  
32 Professional Conduct and Ethics, then NARCA’s Executive Director (or staff as applicable,  
33 collectively “NARCA”) will notify the NARCA Member (“Respondent”) of the complaint. The

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<sup>1</sup> Version 1.0 originally adopted October 22, 2012. Version 2.0 approved by Committee vote on April 30, 2015. Version 2.0 Board Approved Update – 10-11-17.

34 notification shall include a copy of the complaint and all documentation that was submitted by  
35 the Complainant. This notification will request that a principal of the Respondent respond in  
36 writing, within fifteen (15) calendar days of such notification. This time may be extended once  
37 by NARCA staff for an additional fifteen (15) calendar days upon written request. Additional  
38 requests for extensions shall be submitted in writing and may be granted at the discretion of  
39 the Executive Director in consultation with the Committee Chairs. NARCA shall inform the  
40 interested parties of approval or denial of all extension requests.

41 The Respondent shall respond in writing to the allegations in the complaint, and may include  
42 any data, information or documentation in support of its response. A description of any  
43 corrective measures taken or intended to be taken may be included and will be considered by  
44 the Committee as potentially mitigating factors. Failure by the Respondent to provide a timely  
45 written response shall result in the Respondent's waiver of: 1. its right to participate in any  
46 hearing that may be held and; 2. its right to appeal any final determination.

47 A written response by the Respondent requesting that it be removed from active membership  
48 in NARCA shall be sufficient to allow NARCA to take such action and the Grievance will be  
49 dismissed, without prejudice, along with the complaint, and the interested parties shall be so  
50 notified.

### 51 **Section 3. Adjudication of Complaint**

52 Once the Committee has received a written response and any documentation from the  
53 Respondent, the Committee may investigate, in the sole discretion of the Chair(s), anything  
54 contained in the response. Such investigation may include a request for additional  
55 documentation, information and/or clarification. The investigation may also be assigned to one  
56 or more members of the Committee, as determined by the Committee Chair(s). The Committee  
57 may, in its sole discretion, hold a hearing under the terms and conditions it deems appropriate  
58 and set a mutually agreeable hearing date and time with the Respondent. The hearing may take  
59 place telephonically and/or by video conference.

60 Within thirty (30) calendar days of receiving the response, or, if a hearing is held, within thirty  
61 (30) calendar days of the closing of the hearing, the Committee shall make a determination of  
62 the complaint. All eligible voting members of the Committee, except for those with a conflict of  
63 interest, shall have a vote. If the determination is made after a hearing, only those members  
64 present at the hearing shall have a vote. The determination of the Committee that a violation of  
65 the NARCA Code of Professional Conduct and Ethics has occurred can only be made upon a  
66 finding of clear and convincing evidence subject to a quorum. If the Committee determines that  
67 a violation of the NARCA Code of Professional Conduct and Ethics has occurred, the eligible  
68 voting members of the Committee will decide by majority vote as to the sanction and/or  
69 recommended sanction, if any, to be imposed pursuant to section 4 herein.

70 If the Committee recommends a sanction that does not include termination or suspension,  
71 notification of the Committee's determination and sanction, as applicable, shall be sent within

72 fifteen (15) calendar days to the Respondent, NARCA President, Executive Director and to the  
73 firm's principal as identified in NARCA's records. The notice shall be effective on the date of  
74 mailing. The notice shall indicate that the Respondent has fifteen (15) calendar days to submit  
75 an appeal to NARCA pursuant to Section 5 herein. If no written request for appeal is received  
76 within fifteen (15) calendar days as calculated from the date of mailing, the NARCA Professional  
77 Standards and Grievance Committee's determination shall become final.

78 If the NARCA Professional Standards and Grievance Committee recommends termination or  
79 suspension of the Respondent, such determination and recommendation shall be presented in  
80 writing to the NARCA Board of Directors and Executive Director.

81 After receipt by the Board of Directors of a recommendation of either termination or  
82 suspension, the President shall schedule a meeting of the Board of Directors. The meeting shall  
83 occur within sixty (60) calendar days of notification to the Board of such recommendation,  
84 unless good cause exists to extend such deadline. At the meeting, the Board of Directors may  
85 accept, reject or modify the Recommendation of the Grievance Committee only by a majority  
86 vote, subject to a quorum. The Board may also modify the sanctions imposed by the  
87 Committee, subject to the Appeal Process detailed in section 5 herein.

88 Should the Board of Directors vote to accept the Recommendation, wherein suspension or  
89 termination is imposed, NARCA shall send a notification of the Board's final determination to  
90 the Respondent within fifteen (15) calendar days of such determination. Such notification shall:

- 91 1. Be sent to the Respondent's last known address by via certified mail or overnight  
92 delivery. A copy shall also be sent by e-mail to the Principal of the Respondent and/or  
93 primary contact identified in the NARCA records. The notice shall be effective on the  
94 date of mailing.
- 95 2. State that the Respondent is allowed fifteen (15) calendar days within which to submit  
96 a written request for Appeal pursuant to Section 5 herein.

#### 97 **Section 4. Sanctions**

98 Once the Complaint has been fully adjudicated, one or more of the following actions, or such  
99 other action(s) as the Committee may deem appropriate, may be taken:

- 100 1. Require the Respondent's attorneys/staff to engage in remedial education and/or  
101 training related to the issue(s) before it;
- 102 2. Recommend suspension of the Respondent's NARCA Membership for an appropriate  
103 period of time;
- 104 3. Recommend termination of the Respondent's NARCA membership;
- 105 4. Require or prohibit Respondent's attorneys/staff from/to attendance at one or more  
106 NARCA Conferences, Workshops or Teleseminars;

107 5. Publication of public reprimand; and/or

108 6. Other sanctions as the Committee finds just and appropriate.

109 Notification of NARCA’s findings, disciplinary action and/or sanctions may be sent through  
110 NARCA publications and to other interested parties. Interested parties may include, but are not  
111 limited to, the appropriate state Supreme Court or attorney licensing authority for the  
112 Respondent under American Bar Association Model Rules of Professional Conduct or other  
113 applicable state conduct or disciplinary rules.

114 **Section 5. Appeal Process**

115 **Procedures for the Board of Directors Review will be as follows:**

116 The Appellate Proceeding before the NARCA Board of Directors shall be based on written  
117 submissions by the interested parties pursuant to the procedure set forth below.

118 To initiate an appeal, within fifteen (15) calendar days of receiving notification of a final  
119 determination by the Committee or the NARCA Board of Directors, the Respondent must file  
120 with NARCA’s Executive Director a notice of appeal along with a supporting statement  
121 specifically stating the grounds for appeal. Upon such filing, the Committee shall have thirty  
122 (30) calendar days to either:

123 1. submit the entire record of all information and proceedings before it to the NARCA Board of  
124 Directors or

125 2. to request additional time to review the appellate record and respond to the Appellant-  
126 Respondent if necessary.

127 In the case of #2 above, the appealing party shall then have an additional ten (10) calendar days  
128 to submit a reply statement to NARCA.

129 Upon conclusion of the Respondent’s 10-day reply period, the record shall be transmitted to  
130 the NARCA Board of Directors. The President shall schedule a special meeting of the NARCA  
131 Board of Directors, to be held within sixty (60) calendar days of the expiration of the  
132 Respondent's 10-day response period.

133 Any member of NARCA’s Executive Committee may preside over the appeal and may solicit  
134 further information from any party involved. All matters heard on appeal shall be based on the  
135 record from the original proceeding (including, but not limited to, any transcript of any oral  
136 hearing), statements and replies. The presiding member, in his/her sole discretion, shall have  
137 the authority to request oral presentations by the parties.

138 The NARCA Board of Directors shall issue a final written determination of its decision within  
139 sixty (60) calendar days following the meeting at which the appeal is addressed, subject to the  
140 following:

141           1. A two-thirds (2/3) majority vote of the NARCA Board of Directors' finding that the  
142 Committee's or Board of Directors' suspension or termination decision was clearly erroneous  
143 shall be necessary to overturn a final determination.

144           2. The sanctions imposed by the NARCA Professional Standards and Grievance  
145 Committee, if any, may be amended by majority vote of the Board of Directors. The decision of  
146 the NARCA Board of Directors on appeal shall be final.

147       Upon the Board's final determination, the President of NARCA shall notify the Complainant and  
148 the Respondent of the Board of Directors' determination on the appeal within two (2) calendar  
149 days of the final decision, via certified mail or overnight delivery, and by e-mail, at the  
150 addresses provided by the parties or to Respondent's last known physical and e-mail addresses  
151 as identified in NARCA's records.