

Practices and Procedures of the Ethics Advisory Committee

December 2014 | Revised April 2015 | Revised August 2017

The AAPL Ethics Committee is charged as follows by the American Association of Private Lenders:

The Association shall establish an Ethics Committee that shall (1) formulate, publish, and, from time to time, amend a Code of Ethics (hereinafter the “Code”) containing the professional responsibilities by which members and certificate holders shall be bound; (2) develop educational programs and materials on ethics for distribution to members and certificate holders, academic programs; and (3) adjudicate complaints alleging violations of the Code. Members of the Ethics Advisory Committee shall be appointed by AAPL management. The Ethics Advisory Committee shall review all proposed amendments to the Code and forward recommendations regarding the proposed revisions to AAPL management. The Code and all amendments shall be subject to approval by AAPL management after consultation with the Ethics Advisory Committee. The Ethics Advisory Committee shall formulate and publish procedures that shall be used for the processing of alleged violations of the Code, including a reasonable opportunity to be heard through counsel of one’s own choosing. The Ethics Advisory Committee shall determine sanctions for violations in its discretion as it deems appropriate, including revoking membership and/or certification. Revocation of membership and/or certification requires a two-thirds vote of the Ethics Advisory Committee. Any appeal from an Ethics Advisory Committee action shall be decided by AAPL management, whose decisions shall be final.

A fundamental principle that guides the Ethics Advisory Committee in the discharge of its responsibility is that an effective Code of Ethics requires an orderly and fair administration and enforcement of its terms and requires full compliance by all members of the Association and all holders of Certificates. The Ethics Advisory Committee recognizes that each case must be judged on an individual basis and that no two cases are likely to be identical. Thus, the Ethics Advisory Committee has the responsibility to exercise its judgment based on the merits of each case and on its interpretation of the Code.

Composition of Committee

The Advisory Committee shall consist of five (5) current members of AAPL. The total Committee membership should always be an odd number.

The usual term of membership on the Committee is two (2) years. However, should a member’s AAPL membership expire they automatically resign from the Committee. Another applicant will be appointed at AAPL management’s discretion to fill the remainder of the term.

AAPL members may be re-appointed for one additional one-year term.

In no instance shall a committee member serve for more than three (3) consecutive years on the same Committee.

Quorum

The quorum for the Ethics Advisory Committee shall be at least three of the non-vacant seats on the committee.

Committee members are required to be present for 75% of all hearings during each one-year term. Attendance will affect future appointments.

Terminology

Address for Ethics Committee: 7509 NW Tiffany Springs Pkwy, Ste 200, Kansas City, MO 64153

Answer: A timely, written submission to the Ethics Committee by the Respondent in a complaint

Appeal: A timely, written request from the Respondent to the Ethics Committee alleging error in the Ethics Committee Decision and asking that it be reversed, in whole or in part, by the Management of AAPL

Association: American Association of Private Lenders (AAPL)

Cease and Desist Order: An order to stop engaging in a particular course of unethical conduct

Code: Code of Ethics of the Association

Complainant(s): The person(s) alleging that a violation occurred

Further Consideration: Further consideration by the Ethics Committee of its Initial Determination Decisions after Further Consideration require a quorum of the Ethics Committee and, except as otherwise noted, a majority vote.

Initial Determination: Initial decision of the Ethics Committee, subject to Further Consideration and appeal, of the (a) finding, (b) proposed sanction, and (c) extent of disclosure as to whether or not a violation of the Code of Ethics occurred

Initial Determinations require a quorum of the Ethics Committee and, except as otherwise noted a majority vote.

Petition for Reinstatement from the Ethics Committee: The Respondent must request reinstatement before applying for reinstatement of membership and/or certification after serving a sanction of Revocation of Membership and/or Certification for any period of time.

Quorum: A majority of voting members of the Ethics Committee

Respondent: The individual alleged to have violated the Code of Ethics

Sanction(s): Penalties imposed by the Ethics Committee

Statute of Limitations: set a maximum time after an event when actions may be initiated. When the period of time specified in a statute of limitations passes, a claim can no longer be filed.

Super Vote: (Also known as Supermajority) A decision requiring 2/3 of the Committee to approve.

Reprimand: A formal rebuke or condemnation with limited disclosure

Censure: A public Reprimand with broad disclosure

Suspension of Membership and/or Certification: A sanction that temporarily interrupts the Respondent's membership in and/or certification by the Association for the period of time imposed

Suspension of Membership and/or Certification requires a super vote of the Ethics Committee. The Respondent need not request reinstatement to regain membership and/or certification at the end of the suspension period.

Revocation of Membership and/or Certification: A sanction that terminates the Respondent's membership in and certification by the Association for the period of time specified. Revocation requires a two-thirds vote of those Board members present and voting. The Respondent must request reinstatement in order to have the opportunity to regain membership and/or certification.

Withholding of Membership and/or Certification: This sanction, which applies only in situations in which the Respondent is in the certification or membership application process when a violation is found, prohibits future Association membership and/or certification for the period of time imposed.

Withholding of Membership and/or Certification requires a majority vote of the Ethics Committee. When the sanction period of time has expired, the Respondent is not required to apply to the Ethics Committee; application is made directly to the Association.

Complaint Adjudication

Case Review Procedures

Alleged violations shall be reviewed by the Ethics Advisory Committee in such manner as the Ethics Advisory Committee may, in its discretion, deem necessary and proper.

Jurisdiction: Every individual who is (a) a member of the American Association of Private Lenders, whether certified or not, (b) an applicant for certification.

The Ethics Advisory Committee does not accept a single complaint against more than one Respondent. Complainants must file separate complaints for each individual who is the subject of a complaint. Each complaint must stand on its own merits. The statute of limitations for a complaint is 12 months.

Four (4) days for mailing shall be added to the deadline for all submissions to the Ethics Committee (i.e., a Respondent's request for Further Consideration must be received by the Ethics Committee no later than 30 days plus 4 additional days for mailing after the date the notice of Initial Determination was mailed to the Respondent).

In cases where the Ethics Committee issues a sanction of Censure or the Withholding, Suspension, or Revocation of Membership and/or Certificate(s), the waiver shall also consent to allow the Ethics Committee to send its Final Decision and any relevant case information provided by the Complainant(s)

- a) to any other professional organization that enforces a code of ethics or a code of professional conduct of which the Respondent is a member or is an applicant for membership;
- b) as required by law.

Upon receipt of the signed waiver (and nondisclosure agreement if applicable), a copy of the complaint shall be sent to the Respondent, and the Respondent's answer to the allegation shall be in writing and must be received by the Ethics Committee no later than 45 days after the date the Ethics Committee notice is mailed to the Respondent.

When a Respondent is initially contacted regarding a complaint filed against him/her, the Respondent shall be advised that in cases where the Ethics Committee issues a sanction of either Censure or the Withholding, Suspension, or Revocation of Membership and/or Certificate(s), any Final Decision of the Ethics Committee and any relevant information provided by the Complainant(s) and/or the Respondent may be provided

- a) to any state agency providing a license to the Respondent, or to which the Respondent has applied for license or other credential, or to any state agency located in the state where the Respondent resides;
- b) to any other professional organization that enforces a code of ethics or a code of professional conduct of which the Respondent is a member or is an applicant for membership;
- c) as required by law.

The Ethics Committee shall consider all information provided by the Complainant(s), Respondent, or any other relevant source and shall base its Initial Determination on that information in light of the version(s) of the Code of Ethics in effect at the time of the alleged violation. Ethics Committee determinations shall be based on facts established by a preponderance of the evidence/information submitted to the Ethics Committee. The Ethics Committee does not have subpoena powers.

Upon review of all information provided by the Complainant(s), Respondent, and any other relevant source, the Ethics Committee shall make an Initial Determination, which may be a finding that there is insufficient evidence to support a finding of a violation or a finding that a violation occurred. In this regard, the final

decision of any state, federal, regulatory, or judicial body may be considered sufficient evidence that the Code was violated.

For Initial Determinations in which the finding is that a violation occurred, the Initial Determination will include the Code of Ethics principle(s) and rule(s) violated, the proposed sanction, the proposed extent of disclosure, and, if deemed necessary, a Cease and Desist Order.

The Ethics Committee shall give the Respondent notice of its Initial Determination. The notice shall also advise the Respondent of the right to request Further Consideration by the Ethics Committee and of the right, after Further Consideration, to request an appeal to the AAPL Management.

In cases where the Initial Determination of the Ethics Committee is that there is insufficient evidence to support a finding of a violation, the Ethics Committee shall give the Respondent and Complainant notice of its Initial Determination and advise both that the matter is considered closed.

Notices and Answers

All notices shall be in writing and are effective on the date sent to the Respondent—via mail with return receipt requested—to the address then listed in the AAPL membership and certification records or, if this method is not available, by any other method reasonably calculated to send the notice to that address. All answers shall be in writing and are effective when received by the Ethics Committee.

Respondents are required to provide an acknowledgment of a complaint and are encouraged to submit a written answer to the Ethics Committee. A knowing failure to file a timely answer or acknowledgment will not preclude adjudication of a complaint.

Sanctions

Sanctions shall consist of one or more of the following:

- Reprimand;
- Censure;
- Withholding,
- Suspension, or
- Revocation of Membership and/or the Certificate(s).

At its discretion, the Ethics Committee may add terms and conditions. If the Respondent holds or is pursuing membership and certification, a decision to revoke, suspend, or withhold shall include both membership and certification. A decision to withhold either membership or certification occurs when the Respondent holds, or is pursuing, only one. A Cease and Desist Order may become part of any sanction.

Publication and Release of Information

The Ethics Committee Decision, upon becoming final, shall be published in an AAPL publication distributed to all of the membership and shall be provided to any person or entity requesting a copy of the Decision, if the sanction is Censure or the Withholding, Suspension, or Revocation of Membership and/or Certificate(s). In the case of Reprimand, the Ethics Committee Decision shall be disclosed only to Respondent, Complainant(s), and to AAPLs' staff and counsel, each of whom shall be advised that the decision is strictly confidential and that any breach of that confidentiality by any party who is a member and/or certificate holder of the Association is, itself, a violation of the Code.

In cases where the sanction is Censure or the Withholding, Suspension, or Revocation of Membership and/or Certificate(s) of Clinical Competence, the Ethics Committee may provide its Final Decision and relevant case information

- a) to any state agency providing a license to the Respondent, or to which the Respondent has applied for license or other credential, or to any state agency located in the state where the Respondent resides;
- b) to any other professional organization that enforces a code of ethics or a code of professional conduct of which the Respondent is a member or is an applicant for membership;
- c) as required by law.

Further Consideration by the Ethics Committee of the Initial Determination

When the notice of Initial Determination from the Ethics Committee states that the Respondent has violated the Code and announces a proposed sanction and extent of disclosure, the Respondent may request that the Ethics Committee give Further Consideration to the Initial Determination.

The Respondent's request for Further Consideration shall be in writing and must be received by the Ethics Committee no later than 30 days after the date the notice of Initial Determination was mailed to the Respondent. In the absence of a timely request for Further Consideration, the Initial Determination shall be the Ethics Committee Decision, which decision shall be final and there shall be no further right of appeal to the Management.

If the Respondent submits a timely request for Further Consideration by the Ethics Committee, the Ethics Committee shall schedule a hearing and notify the Respondent. The Respondent shall be entitled to submit a written defense or brief, which must be received at least 30 days prior to the hearing. The Complainant(s) is permitted to provide additional relevant or material documentation at any time during the pendency of the complaint adjudication.

The proceedings shall be informal; strict adherence to the rules of evidence shall not be observed, but all evidence shall be accorded such weight as it deserves. The Ethics Committee shall afford, as an alternative to Respondent's appearing in person at the hearing, the opportunity to make a presentation to the Ethics Committee and to respond to questions from the Ethics Committee via a conference telephone call placed

to the Respondent by the Ethics Committee. All personal costs incurred in connection with the Further Consideration incurred by the Respondent and Respondent's counsel and witnesses and counsel and other fees, shall be the Respondent's sole responsibility.

After the Further Consideration Hearing, the Ethics Committee shall render its decision and notify the Respondent. Based on the evidence presented at the hearing, the Ethics Committee has the following options for affirming or modifying the findings and sanction that were announced to the Respondent in the notice of Initial Determination:

1. Affirm the Code provisions violated and/or the sanction cited in the Initial Determination.
2. Modify the findings by removing Code provisions cited in the Initial Determination.
3. Modify the findings by adding Code provisions cited in the Initial Determination. If new evidence is disclosed at the Further Consideration Hearing that (a) was not available to the board at the Initial Determination Hearing and (b) if known at that time, would have resulted in the Board's finding the Respondent in violation of one or more additional Code provisions, the Board may modify its Initial Determination findings by adding those provisions. In that situation, the Board must make available to the Respondent the opportunity to continue the Further Consideration Hearing based on the added violation(s).
4. Increase or decrease the severity of the sanction.
5. Modify the extent of disclosure of the Board's findings.

This decision shall be the Ethics Committee Decision after Further Consideration, and, in the absence of a timely appeal to the Management, the Ethics Committee Decision after Further Consideration shall become the Board's Final Decision.

Appeal of the Ethics Committee Decision to AAPL Management

The Respondent may appeal the Ethics Committee Further Consideration Decision to the Executive Director of AAPL. The request for appeal shall be in writing and must be received by the Ethics Committee no later than 30 days after the date the notice of the Ethics Committee Decision after Further Consideration was mailed to the Respondent. If the Respondent appeals the Ethics Committee Further Consideration Decision to AAPL Management, a copy of the further consideration hearing transcript shall be made available to the Respondent at the Respondent's expense. The Respondent may appeal a Decision after Further Consideration only if the claim is based on a showing that the Ethics Committee did not adhere to procedural requirements and/or that the decision of the Ethics Committee was arbitrary and erratic and without any evidentiary basis. AAPL's Executive Director or other management may not receive or consider any evidentiary matters not included in the official record of the Further Consideration Decision.

Reinstatement

Persons whose membership or certification has been revoked may petition the Ethics Committee for approval to seek reinstatement at the completion of the revocation period. A petition for reinstatement [PDF] will be reviewed by the Ethics Committee as petitions are received.

In all cases, the individual bears the burden of demonstrating with appropriate documentation that conditions that led to revocation have been rectified and that, if reinstated, the individual will abide by the Code. The Ethics Committee' deliberation will be guided by the premise that reinstatement must be in the best interests of the Association, the professions, and persons served professionally. The Management may inquire as applicable about restitution, rehabilitation, continuing education, remediation, employment, lifestyle, and acknowledgment.

Approval to Seek Reinstatement of AAPL Certification requires a two-thirds vote of those Ethics Committee members present and voting. In approving a request to seek reinstatement, the Management may set any conditions or requirements it deems necessary for the protection and benefit of the public and the professions.

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