

**PART FIVE**  
**PROFESSIONAL STANDARDS PANEL ARBITRATION HEARING**

**Section 20. INITIATING AN ARBITRATION:**

- a. MEMBERS desiring Arbitration by the Association shall notify the Administrator in writing on Form A-20. It shall contain a concise statement of the matter in dispute, the amount MEMBER is requesting and be accompanied by a fee of \$250.00. However, escrow must have closed ("Close of transaction") prior to filing the Arbitration. If a member resigns or otherwise causes membership to terminate, the duty to submit to arbitration continues in effect even after membership lapses or is terminated provided that the dispute arose while the former member was a REALTOR member.
- b. All complaints in Arbitration involving a firm or any of its agents may be brought in the name of or against such firm by naming the designated Responsible REALTOR®/MLS Broker, and any award rendered against the Responsible REALTOR®/MLS Broker. This is not intended to relieve a Responsible REALTOR®/MLS Broker from liability for a transaction in which he/she was involved, nor to impose liability upon the firm for a purely personal transaction of the Responsible REALTOR®/MLS Broker.
- c. The Administrator shall promptly forward a copy of the request for Arbitration and Form A-20 to the Respondent, and require him/her within fifteen (15) days to furnish his/her response and a fee of \$100.00.
  - (1) If the Respondent does not submit to Arbitration within 15 days of Receipt of Notice of Arbitration, by returning the Agreement to Arbitrate (form A-20) and by paying the required fee, he/she shall be deemed delinquent. As soon as possible after the 15 days, a Notice of Default shall be sent by Registered Mail to said delinquent Respondent, advising him/her that they are in default and, if the Response is not received within 5 days of the Notice of Default, that Respondent shall be deemed in default, shall receive no further notices and shall not be entitled to appear and defend against the claim. Any response prepared by respondent or respondent's attorney must be signed by respondent.
  - (2) If at any time up to 30 days before the date of the hearing, if the defaulted Respondent can show in writing good cause for having failed to respond in a timely fashion, to be determined by the panel appointed to hear the case, the Panel may set aside the default and accept the late Response and fee. If there is any prejudice to the Complainant, the hearing may be continued by the Panel for such time as they deem necessary to protect the Complainant.

- (3) If a respondent has received a request for a response followed by a Notice of Default and has failed to respond and pay the \$100.00, the respondent has waived their right to request a Procedural Review by the Board of Directors after the hearing.
- d. ARBITRATION MEDIATION: A Mediator shall contact all parties to an Arbitration, and attempt to resolve the dispute, if possible. If the Mediator prefers, staff will contact parties to book mediations after the Mediator coordinates two or three dates for them to work with. A notice of assignment of Mediator form is to be sent out to the parties when a mediation is scheduled stating that the mediation must be completed within 30 days. All unsettled disputes shall be subject to the provisions of PART FIVE of these Rules. If the complaint also includes ethical violations, these shall be handled by the Grievance Committee Reviewer.

Qualifications of Mediator are:

- (1) Served two years on the Grievance Committee voting panel
- (2) Served one year on the Professional Standards Committee
- (3) Served on at least one arbitration panel.
- (4) Sit in on mediation with at least three different mediators.
- (5) First time they mediate a case a senior mediator must be present.
- (6) Must participate in any training that may be provided by NAR or CAR.

Parties will have the opportunity to challenge the mediator the same as the hearing panel members are challenged. Upon receipt of the response, a Mediator will set a date for a mandatory Mediation meeting between the parties. (It is strongly recommended that this hearing be held at the Association.)

- e. If the Mediator successfully mediates the case, the file is closed and one-half (1/2) of all fees collected from the Complainant and Respondent will be refunded upon notice of payment received by the Complainant. If the Mediator cannot mediate the case, the Administrator will schedule an Arbitration Hearing. An arbitration is successfully completed when a written settlement agreement is signed by both parties. The settlement shall be on a form produced by the Association, and shall provide for interest at the legal rate from and after the date when payment is due, and for attorneys' fees should either party bring action to enforce the terms of the settlement.

- f. By California law, all testimony, comments, or conversation during a mediation are confidential and may not be referred to during a subsequent arbitration, or any other later hearing.
- g. Any time after a response is received, the Complainant and Respondent may, by mutual agreement, on a form provided by the Association, elect to have their case arbitrated by a single arbitrator. Use of a single arbitrator will reduce the Arbitration filing fee to \$100.00 for the Complainant and \$50.00 for the Respondent. All other Rules pertaining to Arbitration shall remain in full force and effect, except that the parties may not be represented by legal counsel at the hearing.

If the parties elect this procedure, the complaint and response will not be further processed in accordance with the Professional Standards Rules, but will go directly to an Arbitration Hearing. All other rules pertaining to Arbitration shall apply, and the decision rendered shall be final. If a single arbitrator is not selected, then the provisions of Section 21 will be applicable.

This procedure shall also be available in complaints involving both arbitration and ethics. Where a single arbitrator is elected, then the Professional Standards Panel shall hear only the ethical aspects of the complaint.

- h. With regard to the term "party" in Arbitrations, the \$250.00 fee shall only be requested from the established Complainant and the \$100.00 fee from the Respondent named by the Grievance Committee, or a total of \$350.00 for each Arbitration.

**Section 21. THE ARBITRATORS:** The President or his/her designee shall appoint at least three (3) Panelists from the Professional Standards Panelist Policy Committee to act as Arbitrators. An Arbitration Hearing should not be held unless three (3) Panel members are present, but it may be held with two (2) Panelists, provided that a waiver is granted in writing or audibly on the hearing tape by all parties affected. At least two (2) shall have a broker's license, and in case a salesperson is a party to the Arbitration, one (1) must be a salesperson. This requirement may be waived in writing or audibly on the hearing tape by all parties affected.

The President or his/her designee shall select the Presiding Chairman who will promptly designate a place and time for the Arbitration and the Administrator will notify the Complainant and the Respondent by first-class mail on Form E-10, mailed not less than ten (10) days prior to Arbitration. Complainant's notice of Arbitration shall include a copy of Respondent's reply, if any, and Respondent's signed Arbitration Agreement Form (Form A-20). An appearance at the Arbitration without objection by a party will constitute a waiver of any defective notice of arbitration.

**Section 22. THE ARBITRATION PROCEDURE:** The parties may present to the Arbitration such statements and proofs as they desire. The Arbitrators may require that statements be verified by affidavit. The parties may waive their right to appear before the Arbitrators; however, the Arbitrators may receive oral testimony if, in their opinion, it is necessary or desirable, even though both parties waive appearance. The Arbitrators may receive and consider any evidence they deem material and proper.

**Section 23. TRANSCRIPT/RIGHT TO RECORD ARBITRATION HEARING:** The Association shall tape record the proceedings, and the Association's tape recording or transcription shall be considered the official record of the proceeding. A party may, at his/her own expense, have a court reporter present. A party may not tape record the proceedings. If a party has any transcript prepared, the party shall provide and pay for a copy for the Association.

Any party to a hearing has a right to obtain a copy of the Association's official tape recording upon payment of the Association's fees for duplication. Any duplication will be conducted under the supervision of the Association. Parties are authorized to use tape recordings or transcripts from disciplinary hearings only for the purpose of a review of the case. Any unauthorized use of the tape recordings or transcripts may be construed as a violation of Article 14 of the N.A.R. Code of Ethics and of these procedures. Any tape recording of an arbitration hearing shall be destroyed upon final action of the directors.

**Section 24. WITNESSES AND OTHER ATTENDEES:**

- a. Every party must have his/her own witnesses present at the Arbitration Hearing and the Tribunal may, on its own motion or on application of party, summon its own witnesses. All witnesses, except the parties to the Hearing, will be excused from the Hearing room except while testifying.
- b. No spectators are allowed at Hearings other than the President (or designee) and the Executive Vice President (or designee).

**Section 25. SETTLEMENT:** The parties to an Arbitration proceeding may settle the issue between them by agreement at any time and shall notify the Administrator in writing.

**Section 26. THE AWARD:** The award of the Arbitrators on Form A-20 shall be made as soon as practicable after the evidence is presented. The award shall be in writing and signed by at least a majority of the Arbitrators. The Panel may not award an amount greater than that requested by the Complainant. The award shall be final and binding after the period to request a procedural review has lapsed. If there is a request for procedural review, the award shall be final and binding on the date of the Board of Directors' action if the award is ratified. Once the award is final

and binding, it shall not be subject to review or appeal except as required in Part 3, Title 9 of the California Code of Civil Procedure.

Payment of the award shall be paid directly to the successful party within the time frame stipulated in the award or by the Board of Directors after a procedural review. When a request for interest accompanies the request for arbitration, the award shall designate the date from which interest is to be computed and, at the discretion of the panel, the award may include interest in the amount requested by complainant, but not to exceed the legal rate.

**Section 27. ENFORCEMENT:** The judgment of any State or Federal Court of record in California may be rendered upon the award. Moreover, failure of a MEMBER to comply with an award may be deemed a violation of a duty of membership.

**Section 28. COST OF ARBITRATION:** Neither party shall be entitled to any return of the Arbitration fee, the same being used to help defray the costs of Arbitration provided. However, the Panel may add to any award all or any part of the successful party's Arbitration fee, including as award against an unsuccessful claimant in favor of Respondent. The award shall provide for attorney's fees to the successful party should legal action be necessary to enforce the award or to compel Arbitration.

**Section 29. FAILURE TO SUBMIT OR ABIDE:** If a complaint against a MEMBER/MLS Subscriber is that he/she has refused to submit a controversy to Arbitration or to abide by the Award of the Arbitrators or a written Settlement Agreement as a result of Mediation, the complaint shall be brought before a Panel of three (3) for the purpose of enabling said MEMBER/MLS Subscriber to Show Cause why he/she refuses to submit or abide.

The sole question of fact for the Directors to decide will be whether or not the MEMBER/MLS Subscriber is justified in refusing to submit an arbitrable matter to Arbitration or in failing to abide by and comply with the Arbitration Award or Settlement Agreement.

Should legal action be instituted to compel arbitration or to enforce the arbitration Award/Settlement Agreement, the MEMBER/MLS Subscriber shall be suspended from all Association/MLS services for a minimum of three (3) months, following the resulting judgment against the MEMBER/MLS Subscriber becoming final. The MEMBER/MLS Subscriber will not be reinstated thereafter until he/she agrees to submit the matter to Arbitration, pays the judgment, including all costs and attorney's fees included in such judgment, or complies with the Settlement Agreement.

**Section 30. ASSOCIATION'S RIGHT TO REFUSE ARBITRATION:** The Association may decline to arbitrate a dispute, where the Board of Directors

determines that the issues are too complex or where the amount in controversy is too great. This right is discretionary with the Board of Directors.

**Section 31. CONFIDENTIALITY OF ARBITRATION HEARINGS:**

- a. The allegations and decisions in arbitration proceedings are confidential and should not be reported or published by the Association, any MEMBER of a Tribunal or any party under any circumstances except as authorized below.

All parties to an arbitration hearing and any MEMBER of a Tribunal shall have an obligation to maintain and protect the confidentiality of the hearing.

- b. The members of the Tribunal shall not discuss the proceedings and deliberations with any person other than the other MEMBERS of the Tribunal, Association staff or legal counsel for the Association except as required by the Board of Directors of the Association, the By-law provisions of the Association or as may be required by law.
- c. The parties shall not report or publish the allegations or decisions of an arbitration proceeding to anyone except as may be required by law. Any party to an arbitration proceeding is authorized to disclose the decision where there is a civil proceeding involving the same facts and circumstances which gave rise to the proceeding before the Association.

Actions inconsistent with this Section shall be a violation of any Article of the Code of Ethics, a membership or an MLS duty. However, failure of secrecy shall not invalidate any decision made by a Tribunal.

**Section 32. PROCEDURAL REVIEW BY THE BOARD OF DIRECTORS:**

- a. Within twenty (20) days from the date the letter is mailed informing the parties of the hearing panel's decision, either the Complainant or Respondent may file a written request for review by the Directors.
  - (1) This request must be based upon procedural deficiencies which the party believes may constitute a deprivation of due process and his or her right to a fair hearing. Parties should be aware that the request for review is not in the nature of a re-hearing or an appeal, but is a much more limited review designed to deal with claims in the nature of a lack of due process.
  - (2) Disagreements with the judgment of the panel, or claims that the panel did not understand the evidence, or failed to give due weight to the testimony or evidence of one or the other party, are not considered grounds for a review.

- (3) The request must clearly indicate the basis on which the challenge is being made, and the facts and supporting evidence in reasonable detail to support the challenge. All requests shall comply with these rules, and utilize the official request for review form.
- b. If no such request is filed, the award of the Hearing Panel shall be final when the time for filing a request for review has passed.
- c. A request for review must be accompanied by a deposit of \$475.00.
  - (1) If the cost of the preparation of the transcript of the hearing is less than \$475.00, the Association will refund the unused portion in excess of \$225.00. If the cost is more than \$475.00, the Association will absorb the excess cost.
  - (2) If the party seeking review believes that the transcript is not necessary for the review, he/she shall so state in the application. If the Board of Directors panel agrees that the transcript is not needed, the sum of \$225.00 will be refunded, and no transcript will be prepared. However, if no transcript is requested, and none prepared, the Directors will not consider any claims which deal with the oral testimony, or the manner in which the arbitration hearing was conducted, but will instead make their determination solely on the documentation or other circumstances set forth in the grounds for review.
  - (3) Following a review, if a file is sent back for further hearing, and the original decision is reversed in its entirety, the entire deposit of \$475 shall be refunded.
- d. The Request for Review shall be decided by a Panel selected from the Board of Directors by the President, or his or her designee, and shall consist of not less than three (3) nor more than five (5) Directors. When conducting a review, the Directors are subject to automatic disqualification under the grounds set out in PART SIX of these rules.

Each Director must sign a statement that he/she is not disqualified for any of the reasons, and that he/she knows of no other reason that might prevent him/her from rendering an impartial decision.

- e. **SCREENING COMMITTEE:** Each request for Review shall be first reviewed by a committee to (a) assure that it is in compliance with the rules and official form, and (b) that some reasonable basis exists to support the claim of a lack of due process or fair hearing.

- (1) The Committee shall consist of the Chairman and Vice Chairman of the Professional Standards Committee, together with the Director Liaison to the committee. Provided, however, that if any of said persons was one of the Professional Standards Panelists hearing the case, they shall be disqualified, and a substitute appointed in their place by the President.
  - (2) The screening Committee shall not adjudicate any Request for Review, but shall only reject those requests which, assuming all of the facts and claims are true, do not present any viable issue of due process or fair hearing.
- f. The only basis for a review is a lack of procedural due process. Only the issues raised by the party requesting review in the written request for review may be raised by the party requesting review in any hearing before the Directors.
  - g. If the request for review is filed, the Administrator shall immediately send a copy to the other party and notify him/her that he/she may file a written response within fifteen (15) days.
  - h. Not later than twenty-one (21) days from the date of mailing the request for review to the other party, the Administrator shall immediately send a copy to the other party, notify all parties of the time and place of the hearing and set the matter for hearing at a special meeting called for that purpose. The Administrator shall provide to the Directors, in advance of the hearing, copies of the request for review, response to that request, and the award.
  - i. At the hearing before the Directors, the party requesting review shall present to the Directors, his/her reasons why the award should not be upheld and the other party may be heard to state his/her reasons why the award should be upheld. The Hearing Panel Chairman or his/her designee may respond to the allegations and answer any questions the Directors may have relating to the allegations of the party requesting review.

The tape recording of the Hearing should be played only to prove or disprove the procedural deficiencies asserted by the party requesting review and only the pertinent portions shall be played. The playing of the tape recording is not intended to substitute for a transcript of the case, and if a transcript does exist, then the pertinent portions of it should be read instead of playing the tape recording. No new evidence regarding the merits of the underlying case shall be received and the Directors shall not consider the substantive merits of the case.
  - j. The Directors shall render their decision promptly. Their decision may be to:

- (1) Ratify the award of the original hearing panel or
  - (2) To remand the case for a new hearing before a new panel.
- k. If the recommendation of the Hearing Tribunal is adopted, the money deposited by the party requesting review shall pass into the general treasury of the Association. If a new hearing is ordered, the deposit shall be returned to the party requesting the review.
- l. The decision of the Directors shall be final.