

# Arbitration Request

## Background

By virtue of becoming and remaining a member of an Association and having signed an agreement to abide by Association bylaws, every member agrees to bind themselves and the company for whom they act to submit disputes "arising out of a real estate transaction" to arbitration as defined in Article 17 of the National Association of REALTORS® Code of Ethics. Furthermore, membership termination from the Association will not absolve the member of arbitration duty for disputes arising when the person was a member of the Association.

Disputes subject to arbitration include disputes with other REALTOR® members arising out of real estate business and their relationship as REALTORS® (usually over the distribution of a commission) and in specified contractual disputes with a member's client arising out of an agency relationship between the member and client (provided the client agrees to submit the dispute to binding arbitration with the association and be bound by the arbitration award).

REALTOR® and REALTOR-ASSOCIATE® members filing for arbitration of a dispute involving the responsible broker at the time of the dispute (but not between the member and responsible broker) must have the responsible broker join in the dispute and filing of a complaint.

Members and the Association are not bound to arbitrate disputes between members of the same firm unless each party agrees in writing to the arbitration of such disputes under the Association's facilities or a copy of the Independent Contractor's Agreement specifying that the matter be considered at the Association is presented. Similarly, if members enter into separate agreements to arbitrate disputes outside of the Association (e.g. the American Arbitration Association); this separate agreement would supersede the obligation to arbitrate the dispute at the Association.

This would not include an attempt to bypass the arbitration process by filing a civil lawsuit against another member. In this case the respondent member can request the court to compel arbitration at the local association in accordance with the arbitration agreement; however, failure by the respondent to make this request of the court would waive the right of the parties to arbitrate at the local association.

Associations may also refuse arbitrations that clearly did not arise out of the real estate business, are clearly beyond the time frame for submission of an arbitration complaint, are legally too complex, or the amount involved in the dispute is considered too large or too small. If an arbitratable matter is involved in litigation at the time a complaint is filed, the arbitration will not be heard at the Association unless litigation is withdrawn or the courts refer the matter back to the Association.

If a member holds membership in several different associations, another member can file a complaint at any association where the other member holds membership or where both members have common membership.

If both an ethics complaint and a request for arbitration are received concerning the same event, the Association will wait until the arbitration has been concluded before proceeding with the ethics complaint. Also, if more than one arbitration complaint is received concerning the same event, the requests will be combined and considered in one arbitration hearing. And under no circumstances are punitive damages awarded or will an award exceed more than the amount specified in the dispute.

### **Filing an Arbitration**

*To file an arbitration complaint you must:*

- Complete, sign and date the Arbitration Request Form, which you may download and print from this website. Arbitration request forms should be typed or printed and indicate the amount in dispute and should be submitted with a legible narrative explaining why you feel you are entitled to an award, with any pertinent exhibits and attachments clearly marked. Eight (8) legible copies of all documents must accompany the arbitration request.
- The complaint must be filed within one hundred and eighty days (180) from the date the transaction closes or from the time the facts giving rise to the dispute occurred.
- Include an arbitration filing fee of \$250 made payable to the Sacramento Association of REALTORS®.
- Obtain the complaining broker's signature on all requests to arbitrate. Arbitration may not proceed with the salesperson as the sole complainant.
- Be sure to determine the necessary and appropriate respondent depending on the circumstances of the dispute—usually the responsible broker in a commission Dispute.

### **Before the Hearing**

· The EVP or appropriate staff may determine whether the complaint is properly filed and subject to arbitration by the Association. · If properly filed and determined to be arbitratable, each named respondent will be notified and mailed a copy of the complaint with directions to return the written response with the appropriate filing fee within 15 days of the date of mailing. · Parties will be offered the opportunity to mediate the dispute prior to an arbitration hearing. · All parties will be mailed a list of potential hearing panellists. Parties may challenge the qualifications of any potential member for cause which may include the following reasons: a) is related by blood or marriage to either Complainant(s) or Respondent(s); b) is an employer, partner, employee or in any way associated in business with either party; c) is a party; or d) knows of any reason which may prevent them from rendering an impartial decision. · Since California Law requires a disclosure statement on arbitrators regarding their previous decisions on arbitrations involving the same parties and REALTOR® Associations' hearing processes are confidential, the parties will receive a panellist arbitration waiver agreement to sign. In the

absence of a signed waiver agreement, the parties will receive disclosure statements from the panellists assigned to the hearing panel. · Complainant(s) and Respondent(s) will be notified in writing at least twenty-one (21) days in advance of the time, date, place of the hearing and any other relevant information necessary to the hearing. · All parties may be represented by legal counsel. The Association and the other parties must receive notice of intent to be represented by legal counsel at least fifteen (15) days prior to the hearing. Failure to give adequate notice may result in the continuance of the hearing and a continuance fee imposed against the party failing to give adequate notice. · It is the responsibility of each party to arrange for their witnesses to be present at the time and place designated for the hearing. Parties are responsible to bring with them all evidence and written documents pertinent to the arbitration. · Hearings will be conducted in the English language. Interpreters are allowed to assist any party or witness at the hearing. Arrangements for having an interpreter present is the responsibility of the party requiring such service and the cost for the same shall be paid by that party. · The hearing will be videotaped and a DVD copy of the hearing will available to the complainant(s) or respondent(s) only for the purposes of requesting a review at the cost of \$50 per DVD. · Once a hearing date is set, it will not be rescheduled unless the complainant or the respondent (parties to the disciplinary hearing) requesting a new date files a written request for a continuance and can demonstrate good cause for granting the continuance. The fee for the first request for continuance of a hearing is \$75 and the fee for a second continuance to the same party will be \$200 with the fee continuing to double hereafter of each request by the same party.

### **The Hearing**

- Each party will be given the opportunity of making an opening statement. If the respondent wishes to wait until the conclusion of the complainant's evidence, that will be permitted.
- All parties may present any documents, evidence, or give such testimony they feel is relevant and applicable to the matter being heard. Any objections regarding relevance or appropriateness will be determined by the Presiding Officer and/or Hearing Panel.
- No testimony will be allowed relating to the character or general reputation of anyone, unless such testimony has a direct bearing on the matter being heard.
- At the conclusion of a party's witness testifying, the other parties will be given an opportunity to cross-examine the witness.
- Witnesses, except for those with a vested financial interest in the outcome of the matter, may only be present during the hearing while testifying and will be excused from the hearing room after giving testimony.
- Members of the hearing Panel may question the parties and their witnesses at anytime during the hearing.
- Upon completion of the presentation of evidence and testimony, each party will be given an opportunity to make a closing statement. Usually, the complainant will be first followed by the respondent.
- The hearing will be videotaped by the Association. A DVD copy will be made available to the parties for purchase at a cost of \$50 per DVD, but only for the

purpose of filing a review with the Association's Board of Directors. Parties may not tape record the hearing

- The hearing and decision is confidential. All parties to the hearing have an obligation to maintain and protect this confidentiality. Only disclosure required by law and a party disclosing the results of the matter where the party is involved in a civil proceeding involving the same set of facts or circumstances are exceptions to this rule of confidentiality. The Hearing panel is not bound by formal rules of evidence as may be applied in a court of law. The Panel has broad discretion regarding the evidence and testimony to make a decision that is fair to all parties.

### **After the Hearing**

- All parties will be noticed of the hearing panel's award as soon as practicable. The decision is binding on all parties and there are no findings of fact. It is a breach of confidentiality to discuss the matter of how the award was fashioned with the panellists.

- A party has the right to request a procedural review of the arbitration award by the Board of Directors only on the basis that there were alleged procedural deficiencies in the processing or hearing of the arbitration. The parties may have legal counsel present at the review.

- The Directors at a review will only consider those issues raised by the parties in their request for review. They will not re-hear all the facts and no new evidence will be permitted. And the Directors only have to the power to confirm the award or send it back for a new hearing; they cannot modify the award.

- The Association cannot enforce an arbitration award. If a party refuses to abide by an award, the award recipient will need to seek judicial enforcement.

### **Role of Association Staff**

The Association's paid professional staff members are not licensed REALTORS® or lawyers. The Professional Standards Coordinator is responsible for ensuring that the professional standards process of paperwork administration, notifications, correspondence, and maintenance of the confidential case files is done in a timely and efficient manner according to the policies and procedures set forth in the California and National Association of REALTORS® Professional Standards manuals. The staff is not allowed to dispense legal advice or counsel you on your Case.

The entire arbitration complaint process usually takes a minimum of 75 days but may take longer. It is the ultimate duty of staff to ensure due process to all parties. You can assist staff by making sure that additional requests for information and any pertinent deadlines in the process are responded to in a timely manner.