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CALIFORNIA ASSOCIATION OF REALTORS®

# **APPENDICES 2020**

**Prepared by the  
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# APPENDIX A - DISCIPLINARY

## ADMINISTRATIVE PROCESSING OVERVIEW DISCIPLINE COMPLAINT (NO ETHICS ADVOCATES)

Case No. \_\_\_\_\_,

|                     |     |                    |
|---------------------|-----|--------------------|
|                     | VS. |                    |
| <b>Complainants</b> |     | <b>Respondents</b> |

This checklist is intended for use in conjunction with processing a disciplinary complaint under the rules and procedures of the *California Code of Ethics and Arbitration Manual*. “References” are taken from the *CA Code of Ethics and Arbitration Manual (Manual)* and the *Implementation Guidelines – Discipline (Guidelines)*. This checklist may be reproduced and used to help process disciplinary complaints.

**Notes:**

**The preferred method for serving notices in the disciplinary procedure is email, as set forth in Section 13 of the Manual.**

**Complainant Party includes all named complainants, their legal counsel, if any, and the broker’s representative, if any.**

**Respondent Party includes all named respondents, their legal counsel, if any, and the broker’s representative, if any.**

| • REFERENCE  | ACTION   |
|--|--|
| <ul style="list-style-type: none"> <li>• 3(a) – (d) <i>Manual</i> – Power to Take Disciplinary Action Against an Association Member</li> <li>• A.3 <i>Guidelines</i> – Power to Take Action Against an Association Member</li> <li>• 5(a) – (c) <i>Manual</i> – Power to Take Disciplinary Action Against an MLS Participant or Subscriber</li> <li>• A.6 <i>Guidelines</i> – Power to Take Disciplinary Action Against an MLS Participant or Subscriber</li> <li>• 8(a)(b) <i>Manual</i> – Citations</li> <li>• A.5 <i>Guidelines</i> – Citations</li> <li>• B.1 <i>Guidelines</i> – Filing a Disciplinary Complaint</li> <li>• A.7 <i>Guidelines</i> – Distinction Between a Disciplinary Complaint and Arbitration</li> </ul> | <p><b>Request to File a Discipline Complaint</b></p> <p><input type="checkbox"/> Provide the Complainant with the <b>Discipline Complaint Packet</b>, which includes:</p> <ol style="list-style-type: none"> <li>1. Instructions on filing a discipline complaint;</li> <li>2. <i>Before You File a Complaint</i>;</li> <li>3. Form D-1 <i>Discipline Complaint</i>;</li> <li>4. Copy of the current <i>CA Code of Ethics &amp; Arbitration Manual</i>;</li> </ol> <p><b>Note:</b> Before sending the Complaint Packet, verify the Respondent’s membership. If the Respondent is a member of a different local board, refer the Complainant to that board.</p> |
| <ul style="list-style-type: none"> <li>• 20(b) <i>Manual</i> – Timing of Filing</li> </ul>   | <p><b>Receipt of Complaint Date</b></p> <p><input type="checkbox"/> _____ (Date Filed)</p> <p><input type="checkbox"/> Date-stamp the Complaint with its postmark date or, if no postmark date is given/applicable, with the date of receipt and record above.</p>   |

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| <ul style="list-style-type: none"> <li>• 20(a) <i>Manual</i> – Who May File; Where to File</li> <li>• 20(b) <i>Manual</i> – Timing of Filing</li> <li>• 20(c) <i>Manual</i> – Preliminary Review</li> <li>• 20(d) <i>Manual</i> – Disciplinary and Arbitration Complaints Filed Together</li> <li>• 21(a)(b) <i>Manual</i> – Designated REALTOR® as a Respondent in an Ethics Hearing</li> <li>• 22(a)(b) <i>Manual</i> – MLS Participant as a Respondent in an MLS Rules Hearing</li> </ul>  | <p><b>Preliminary Review of Complaint</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Conduct a preliminary review of the arbitration complaint to determine if it has been properly and timely filed. The preliminary review should only consider questions such as: <ol style="list-style-type: none"> <li>1. Were all named Respondents active REALTOR® members or MLS participants at the time the facts and circumstances giving rise to the dispute occurred?;</li> <li>2. Was the complaint filed within 180 calendar days from the time the facts giving rise to the dispute could have been known in the exercise of reasonable diligence or 180 days after the conclusion of the transaction, or event, whichever is later?;</li> <li>3. Did the Complainant Party submit the proper forms?;</li> <li>4. Did the Complainant Party cite Article(s) in the Code of Ethics?;</li> <li>5. Has the Disciplinary Complaint been filed in conjunction with an Arbitration Complaint?;</li> <li>6. Has the complaint been filed at the correct Association?</li> </ol> </li> <li><input type="checkbox"/> If the complaint is improperly filed, the Complainant Party should be contacted and instructed to correct any deficiencies.</li> <li><input type="checkbox"/> If there is a factual dispute as to whether the complaint has been timely filed, the Complaint should be forwarded. The Professional Standards Hearing Panel will ultimately decide the matter.</li> <li><input type="checkbox"/> Create a case number and file for this complaint.</li> <li><input type="checkbox"/> <b>ETHICS CHECK:</b> Create a case file for this complaint in Ethics Check and upload Form D-1 and Exhibit 1 <i>Statement of Facts</i>.</li> </ul> |
| <ul style="list-style-type: none"> <li>• 9 <i>Manual</i> – Grievance Committee</li> <li>• 24 <i>Manual</i> – Action of the Grievance Committee</li> <li>• 24(a) <i>Manual</i> – Review of Complaint by Grievance Committee</li> <li>• 24(b) <i>Manual</i> – Preliminary Nature of Review</li> <li>• C.1 <i>Guidelines</i> – Action of the Grievance Committee</li> <li>• C.2 <i>Guidelines</i> – Frivolous Complaints</li> <li>• C.4 <i>Guidelines</i> – Analyzing the Complaint</li> <li>• 24(j) <i>Manual</i> – Disclosure of the Decision</li> </ul> | <p><b>Grievance Committee Review</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> If no corrections need to be made to the complaint, send notice to the Complainant Party that their complaint has been received and is considered filed. If a date has been chosen for the Grievance Review, include that in the notice.</li> <li><input type="checkbox"/> Notify the GC Chair that a complaint has been filed and schedule (or have your GC Chair schedule) a date to review the Complaint.</li> <li><input type="checkbox"/> Prepare the GC Materials, which includes: <ol style="list-style-type: none"> <li>1. Copy of Complaint;</li> <li>2. G-1 <i>Grievance Committee Review Checklist</i>;</li> <li>3. G-2 <i>Grievance Committee Report</i>;</li> <li>4. Current Code of Ethics and Standards of Practice;</li> <li>5. D-7 <i>Certificate of Qualification</i></li> </ol> </li> </ul>   |
| <ul style="list-style-type: none"> <li>• 24(f) <i>Manual</i> – Amending the Complaint</li> <li>• 24(g) <i>Manual</i> – Dismissing Allegations in a Complaint</li> <li>• C.6 <i>Guidelines</i> – Modifications to Complaint</li> <li>• 24(d) <i>Manual</i> – Grievance Committee as Complainant</li> <li>• C.7 <i>Guidelines</i> – Grievance Committee as Complainant</li> <li>• C.8 <i>Guidelines</i> – Review of the Grievance Committee Decision</li> </ul>   | <p><b>Grievance Committee Decision to Dismiss or Amend</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> If the GC decides to delete an Article(s) or Respondent(s) from the Complaint or dismisses the Complaint entirely, send the Complainant Party: <ol style="list-style-type: none"> <li>1. Cover Letter;</li> <li>2. G-2 <i>Grievance Committee Report</i>;</li> <li>3. G-3 <i>Notice of Availability of Review of Grievance Committee’s Decision</i>;</li> <li>4. G-4 <i>Request for Review of Grievance Committee’s Decision</i>.</li> </ol> </li> <li><input type="checkbox"/> If the GC decides to add an Article(s) or Respondent(s), send the Complainant Party: <ol style="list-style-type: none"> <li>1. Cover Letter;</li> <li>2. G-2 <i>Grievance Committee Report</i>;</li> </ol> </li> </ul>   |

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|   | <p>And have the Complainant Party indicate in writing their acceptance of the changes. If the Complainant Party does not agree to the changes, the GC can either dismiss the changes or be added as Complainants to argue their changes to the Hearing Panel.</p>   |
|   | <p><b>Review of Grievance Committee Decision</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The Complainant Party may request a Review of the GC Decision to dismiss a part of or the entire Complaint. Request for Review is due within 10 days from the date the Decision is transmitted to the Complainants.</li> <li><input type="checkbox"/> _____ (Date Due)</li> <li><input type="checkbox"/> If a Request for Review is timely filed, send the Request and original Complaint to the GC Review Panel and schedule a Review.</li> <li><input type="checkbox"/> GC Review Panel documents:       <ol style="list-style-type: none"> <li>1. D-7 <i>Certificate of Qualification</i></li> <li>2. G-5 <i>Action of Directors Upon Request of Review of Grievance Committee's Decision</i></li> </ol> </li> <li><input type="checkbox"/> Once the Review Panel has issued their decision, transmit to Complainant Party and proceed as the Review Panel has directed.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• F.1 <i>Guidelines</i> – Transcript/Right to Record</li> <li>• F.2 <i>Guidelines</i> – Interpreters and Translators</li> </ul>          | <p><b>Grievance Committee Decision and Receipt of Complaint to Parties</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> If the GC decides to forward the Complaint for hearing, send Respondent Party the <b>Receipt of Complaint Packet</b>, which includes:       <ol style="list-style-type: none"> <li>1. Cover Letter;</li> <li>2. Form D-2 <i>Notice to Respondent</i></li> <li>3. Copy of Complaint;</li> <li>4. G-2 <i>Grievance Committee Report</i>;</li> <li>5. Form D-3 <i>Response</i>;</li> <li>6. Copy of the current Code of Ethics;</li> <li>7. List of potential Panel Members;</li> <li>8. Form D-4 <i>Notice of Right to Challenge Panel Members and Availability for Hearing</i>;</li> <li>9. Form D-5 <i>Reasons for Challenge</i>.</li> </ol> </li> <li><input type="checkbox"/> Send the Respondent Party's Designated REALTOR® a copy of the <b>Receipt of Complaint Packet</b>.</li> <li><input type="checkbox"/> At the same time, send the Complainant Party the <b>List of Panel Members Packet</b>, which includes:       <ol style="list-style-type: none"> <li>1. Cover Letter</li> <li>2. List of potential Panel Members;</li> <li>3. Form D-4 <i>Notice of Right to Challenge Panel Members and Availability for Hearing</i>;</li> <li>4. Form D-5 <i>Reasons for Challenge</i>.</li> </ol> </li> </ul> |
| <ul style="list-style-type: none"> <li>• 28(c) <i>Manual</i> – Response not Required; Late Filing</li> <li>• 28(d) <i>Manual</i> – Notifying Complainant of Response</li> </ul> | <p><b>Receipt of Response</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Response is due within <b>15 calendar days</b> of the date the Notice to Respondent is sent.</li> <li><input type="checkbox"/> No more than <b>five calendar days</b> after the Response is received, forward a copy of the Response to the Complainant Party and copy the Respondent Party on that correspondence to acknowledge receipt.</li> <li>• <b>Note:</b> The Respondent Party is not required to submit a Response. However, to ensure the due process rights of the Respondents, any Response submitted should be accepted,</li> </ul>   |

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|   | <p>regardless of the timing of submission, forwarded to the Complainant Party, and given to the Hearing Panel when they are provided with all written materials in advance of the hearing. Similarly, the Complainant Party is entitled to review and respond to the response; therefore, a possible consequence of receipt of a late response may be rescheduling a hearing if the Complainant Party requests a continuance to review the response.</p> <p><input type="checkbox"/> <b>ETHICS CHECK:</b> Upload Form D-3 and Exhibit A <i>Statement of Facts</i> onto Ethics Check.</p>   |
| <ul style="list-style-type: none"> <li>• 28(e) <i>Manual</i> – Selecting the Hearing Panel</li> <li>• E.6 <i>Guidelines</i> – Selecting the Hearing Panel</li> <li>• 28(f) <i>Manual</i> – Composition of the Hearing Panel</li> <li>• 28(g) <i>Manual</i> – Presiding Officer</li> <li>• 28(h) <i>Manual</i> – Alternate Panel Member</li> <li>• 28(j) <i>Manual</i> – Waiver of Objection to Panel Member; Appointing Replacement to Challenged Panel Member</li> </ul> | <p><b>Schedule Hearing</b></p> <p><input type="checkbox"/> After the timeframe for the parties to submit their challenges to proposed Panel Members and availability for hearing has expired, select (or have your Professional Standards Committee Chairperson select) your Presiding Officer and Panel Members from the final list of proposed panel members and schedule the hearing date and time based on the availability of the parties and panel.</p> <ul style="list-style-type: none"> <li>• <b>Note:</b> A party's right to disqualify a proposed neutral arbitrator is waived if the party fails to deliver timely Forms D-4 and D-5.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• 28(i) <i>Manual</i> – Notice of Date, Time, and Place of Hearing</li> <li>• 28(k) Notification of Procedures</li> <li>• 31 <i>Manual</i> – Continuances</li> <li>• 32 <i>Manual</i> – Continuance Fees</li> <li>• E.3 <i>Guidelines</i> – Continuances and Continuance Fees</li> <li>• 30 <i>Manual</i> - Witnesses</li> </ul>   | <p><b>Official Notice of Hearing</b></p> <p><input type="checkbox"/> Once the hearing date, time and panel have been secured, send the parties the <b>Official Notice of Hearing Packet</b>, which includes:</p> <ol style="list-style-type: none"> <li>1. Cover Letter;</li> <li>2. Form D-6 <i>Official Notice of Hearing</i>;</li> <li>3. Form D-8 <i>Outline of Procedure for Hearing</i>;</li> <li>4. Form D-26 <i>Notice of Additional Attendees</i></li> </ol> <ul style="list-style-type: none"> <li>• <b>Note:</b> Notice of Hearing must be given at least 21 calendar days in advance. Once the Official Notice of Hearing is sent, Parties must submit a written request for continuance if they wish to reschedule.</li> </ul> <p><b>Hearing Deadlines:</b></p> <p>21 days notice → Notified of hearing date, time, location and panel members</p> <p>15 days prior to hearing → Notification to all parties of legal counsel and/or remote testimony requests</p> <p>10 days → Notification of intent to utilize an interpreter and/or submit translated document</p> <p>1 day → Reminder of hearing</p> |
| <ul style="list-style-type: none"> <li>•</li> </ul>   | <p><b>Materials to Panel</b></p> <p><input type="checkbox"/> Prepare a case file for each Panel Member, including the Complaint, Response, and any relevant correspondence between the Association and the Parties.</p> <p><input type="checkbox"/> Prepare a case file for the Presiding Officer, including the complaint, response, relevant correspondence between the Association and the Parties, and the following forms:</p> <ol style="list-style-type: none"> <li>1. G-2 <i>Grievance Committee Report</i>;</li> <li>2. D-6 <i>Official Notice of Hearing</i>;</li> <li>3. D-7 <i>Certificate of Qualification</i>;</li> <li>4. D-8 <i>Outline of Procedures for Hearing</i>;</li> <li>5. D-9 <i>Acknowledgement of Receipt of Procedures</i>;</li> <li>6. D-10 <i>Other Action of Arbitrators</i>;</li> <li>7. D-11 <i>Decision and Findings of Fact</i>;</li> </ol>   |



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|  | 8. D-12 <i>Recommendations of Hearing Panel</i> ;<br>9. Presiding Officer’s Statements. |
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| <ul style="list-style-type: none"> <li>• 30 <i>Manual</i> - Witnesses</li> <li>• F.1 <i>Guidelines</i> – Transcript/Right to Record</li> <li>• 34(c) <i>Manual</i> – Notice (of Interpreter/Translator)</li> <li>• F.2 <i>Guidelines</i> – Interpreters and Translators</li> <li>• 18(b) <i>Manual</i> – Notice of Representation</li> </ul>  | <p><b>Important Pre-Hearing Deadlines</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> 21 days prior to hearing, Parties must be notified of the hearing date, time, location and panel members.</li> <li><input type="checkbox"/> 15 days prior to the hearing, Parties must notify all other Parties and Association staff of their intent to be represented by legal counsel and/or submit to staff their request for remote testimony.</li> <li><input type="checkbox"/> 10 days prior to the hearing, Parties must notify all other Parties and Association staff of their intent to utilize an interpreter and/or must submit any translated documents they intend to present at the hearing.</li> <li><input type="checkbox"/> 1 day prior to the hearing, staff should send a hearing reminder to the Parties and Panel, which includes a list of attendees and the date/time/location of the hearing.</li> </ul>  |
| <ul style="list-style-type: none"> <li>• 26(a)(b) <i>Manual</i> – Withdrawal of Complaint</li> <li>• E.4 <i>Guidelines</i> – Withdrawal of an Association Disciplinary Complaint</li> <li>• G.6 <i>Guidelines</i> – Reporting “Public Trust” Violations to the BRE</li> </ul>   | <p><b>Withdrawal of Complaint</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> At any time up until the Hearing Panel adjourns to make their decision, the Complainant Party may withdraw their Complaint. If the Complaint is withdrawn, it should be sent back to the Grievance Committee to determine if the Respondent(s) has committed a violation of the public trust.</li> <li><input type="checkbox"/> If the GC determines there has been a violation of the public trust, the GC must step forward as the Complainant and take the Complaint to hearing.</li> <li><input type="checkbox"/> If the GC determines no violation of the public trust has occurred, the Complaint is dismissed and the file should be closed.</li> </ul>  |
| <ul style="list-style-type: none"> <li>• 19(e) <i>Manual</i> – Discussion Prior to Hearing</li> <li>• 33(a) – (f) <i>Manual</i> – The Hearing</li> <li>• F.5 <i>Guidelines</i> – Failure of Parties to Appear</li> <li>• F.6 <i>Guidelines</i> – Conducting the Hearing</li> <li>• F.7 <i>Guidelines</i> – Due Process Required</li> <li>• 34 (a) – (c) <i>Manual</i> – Transcript/Right to Record</li> <li>• F.1 <i>Guidelines</i> – Transcript/Right to Record</li> </ul> | <p><b>Discipline Hearing</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Prepare hearing room – include case files, copy of current C.A.R. Manual, scratch paper.</li> <li><input type="checkbox"/> Prepare a waiting area for the Parties and their Witnesses (if any) and secure a location for any Witnesses to wait until they are allowed in the hearing room for their testimony.</li> <li><input type="checkbox"/> Set up recording device and remote testimony devices (if any).</li> <li><input type="checkbox"/> The Panel may recess the hearing as necessary and, on request of a Party or upon the Panel’s own motion, may postpone the hearing.</li> <li><input type="checkbox"/> In the event the Complainant Party fails to appear at the Hearing, the Complaint should be sent back to the Grievance Committee to determine if the GC wishes to step forward as the Complainant.</li> <li><input type="checkbox"/> The Presiding Officer should remind all Parties, their Witnesses and the Hearing Panel of the confidential nature of the discipline process.</li> </ul> |
| <ul style="list-style-type: none"> <li>• 33(a) <i>Manual</i> – Statements of Qualification; Acknowledgement of Receipt of Outline of Procedure</li> <li>• 19(g) <i>Manual</i> – Absent Panel Member</li> <li>• 17(a) – (f) <i>Manual</i> – Confidentiality of Proceedings</li> <li>• B.4 <i>Guidelines</i> – Confidentiality of Proceedings</li> </ul>  | <p><b>Hearing Documents</b></p> <p>The following forms should be completed and retained in the case file:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> D-7 <i>Certificate of Qualification</i>, to be signed by all Panel members prior to the start of the hearing.</li> <li><input type="checkbox"/> D-9 <i>Acknowledgement of Receipt of Outline of Procedure</i>, to be signed by all Parties prior to the start of the hearing.</li> <li><input type="checkbox"/> D-25 <i>Agreement for Hearing by Two Panelists</i>, to be signed by all Parties prior to the start of the hearing (only if applicable).</li> <li><input type="checkbox"/> D-10 <i>Other Action of the Hearing Panel</i> (if applicable); or</li> </ul>  |

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|  | <input type="checkbox"/> D-11 <i>Decision and Findings of Fact</i> and D -12 <i>Recommendations of Hearing Panel</i> .   |
| <ul style="list-style-type: none"> <li>• 36(a) <i>Manual</i> - Making and Reporting the Decision</li> <li>• 36(b) <i>Manual</i> – Consideration of Prior Code of Ethics and Membership Duty Violations</li> <li>• 36(c) <i>Manual</i> – Consideration of Prior MLS Duty Violations</li> <li>• 6(a) – (f) <i>Manual</i> – Nature of Discipline Against an Association Member</li> <li>• 7(a) – (d) <i>Manual</i> – Nature of Discipline Against an MLS Participant or Subscriber</li> <li>• F.11 <i>Guidelines</i> – Disciplinary Recommendations</li> <li>• G.1 <i>Guidelines</i> – Distributing the Decision</li> <li>• 38(a) <i>Manual</i> – Request for Review</li> </ul> | <p><b>Decision and Findings of Fact</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Panel Members may consider a Respondent’s prior violations in assessing discipline and should have access to Respondents’ member files. Access to the member files is permitted only after deliberations and finding of violations.</li> <li><input type="checkbox"/> The Decision must be in writing and provided to the Parties and to the Respondent Party’s Designated REALTOR® within five (5) days after the written Decision is handed over to staff.</li> <li><input type="checkbox"/> The <b>Decision of Panel Members Packet</b> should include the following: <ol style="list-style-type: none"> <li>1. Cover Letter;</li> <li>2. D-11 <i>Decision and Finding of Fact</i> and D-12 <i>Recommendations of Hearing Panel</i> (or D-10 <i>Other Action of Hearing Panel</i>, if applicable);</li> <li>3. Completed D-7 <i>Certificate of Qualification</i>;</li> <li>4. D-13 <i>Notice of Availability of Rehearing and Review</i>;</li> <li>5. D-14 <i>Request for Duplication of Recording</i>;</li> <li>6. D-17 <i>Request for Review</i>.</li> </ol> </li> <li><input type="checkbox"/> <b>ETHICS CHECK:</b> Upload Forms D-11 <i>Decision and Finding of Fact</i> and D-12 <i>Recommendations of Hearing Panel</i> (or D-10 <i>Other Action of Hearing Panel</i>, if applicable) onto Ethics Check.</li> </ul> |
|  | <p><b>Request for Review</b> – please see Disciplinary Review Hearing Checklist<br/> 20 days from Decision → Request for Discipline Review must be submitted</p>   |
| <ul style="list-style-type: none"> <li>• 37(a) – (c) <i>Manual</i> – Action of the Directors if No Request for Review</li> <li>• G.3 <i>Guidelines</i> – Action of the Directors if there is no Request for Review</li> </ul>  | <p><b>Decision to Board of Directors for Ratification</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Once the timeframe for filing a Request for Review has expired, provided no Request has been filed, send the Decision to the Board of Directors for Ratification, including: <ol style="list-style-type: none"> <li>1. D-11 <i>Decision and Finding of Fact</i> and D-12 <i>Recommendations of Hearing Panel</i> (or D-10 <i>Other Action of Hearing Panel</i>, if applicable);</li> <li>2. D-22 <i>Action if No Request for Review</i>.</li> </ol> </li> <li><input type="checkbox"/> If the Board of Directors feels the Decision needs to be modified in some way, they should send the Decision back to the Original Hearing Panel with specific instructions for what to reconsider.</li> <li><input type="checkbox"/> The Hearing Panel Decision is final only once it has been ratified by the Board of Directors.</li> <li>• <b>Note:</b> The Directors must adopt the Panel’s Decision unless it is deficient on its face and may expose the Association to potential liability. The Directors should not change the Decision themselves, but should send the Decision back to the Hearing Panel if they believe it should be changed.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• 39(c) <i>Manual</i> – Publication of Ethics Violators</li> <li>• 39(d) <i>Manual</i> – C.A.R. Publication Policy for Ethics Violators</li> <li>• G.4 <i>Guidelines</i> – Publishing the Names of Ethics Violators</li> </ul>  | <p><b>Publication</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Summaries of Code of Ethics violations will be published on the C.A.R. website when a violator is disciplined with at least one of the following: <ol style="list-style-type: none"> <li>1. Letter of Reprimand</li> <li>2. Fine;</li> <li>3. Suspension;</li> <li>4. Expulsion.</li> </ol> </li> </ul>  |

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|  | <ul style="list-style-type: none"> <li><input type="checkbox"/> If the Discipline is subject to publication, forward the following to C.A.R. Professional Standards staff:             <ol style="list-style-type: none"> <li>1. Photo of Violator</li> <li>2. Form D-24 <i>Submission of Photo for Discipline Publication</i>;</li> <li>3. D-11 <i>Decision and Findings of Fact</i>;</li> <li>4. D-12 <i>Recommendations of Hearing Panel</i>.</li> </ol> </li> <li>• <b>Note:</b> When a violator must be published by C.A.R. according to the C.A.R. publication criteria, you must suspend the violator’s Association membership if he or she does not submit a photo within 10 days of receipt of the final decision.</li> <li>• <b>Note:</b> The published information will be removed from the C.A.R. website three years after initial publication.</li> </ul> |
| <ul style="list-style-type: none"> <li>• G.6 <i>Guidelines</i> – Reporting Suspensions and Expulsions to C.A.R.</li> </ul>   | <p><b>Sanctions Met, File Closed</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Once the Respondent has submitted proof that the Hearing Panel’s recommended sanctions have been satisfied, send the Parties a letter letting them know sanctions have been met and the file has been closed.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• G.8 <i>Guidelines</i> – Record Retention</li> <li>• 34(c) <i>Manual</i> – Destruction of Transcript or Recording</li> </ul> | <p><b>Record Retention</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Once the file is closed, the case file should be retained according to the Association’s record retention policy. If the Association does not have a record retention policy, it is recommended that an Association retain a case file for a period of seven (7) years from the date the decision is final.</li> <li><input type="checkbox"/> Any recordings or transcripts of the actual hearing should be destroyed as soon as the Decision is final.</li> </ul>   |



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| <ul style="list-style-type: none"> <li>• 20(a) <i>Manual</i> – Who May File; Where to File</li> <li>• 20(b) <i>Manual</i> – Timing of Filing</li> <li>• 20(c) <i>Manual</i> – Preliminary Review</li> <li>• 20(d) <i>Manual</i> – Disciplinary and Arbitration Complaints Filed Together</li> <li>• 20(e) <i>Manual</i> – Ethics Advocate</li> <li>• 21(a)(b) <i>Manual</i> – Designated REALTOR® as a Respondent in an Ethics Hearing</li> <li>• 22(a)(b) <i>Manual</i> – MLS Participant as a Respondent in an MLS Rules Hearing</li> </ul>           | <p><b>Preliminary Review of Complaint</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Conduct a preliminary review of the arbitration complaint to determine if it has been properly and timely filed. The preliminary review should only consider questions such as: <ol style="list-style-type: none"> <li>1. Were all named Respondents active REALTOR® members or MLS participants at the time the facts and circumstances giving rise to the dispute occurred?;</li> <li>2. Was the complaint filed within 180 calendar days from the time the facts giving rise to the dispute could have been known in the exercise of reasonable diligence or 180 days after the conclusion of the transaction, or event, whichever is later?;</li> <li>3. Did the Complainant Party submit the proper forms?;</li> <li>4. Did the Complainant Party cite Article(s) in the Code of Ethics?;</li> <li>5. Has the Disciplinary Complaint been filed in conjunction with an Arbitration Complaint?;</li> <li>6. Has the complaint been filed at the correct Association?</li> </ol> </li> <li><input type="checkbox"/> If the complaint is improperly filed, the Complainant Party should be contacted and instructed to correct any deficiencies.</li> <li><input type="checkbox"/> If there is a factual dispute as to whether the complaint has been timely filed, the Complaint should be forwarded. The Professional Standards Hearing Panel will ultimately decide the matter.</li> <li><input type="checkbox"/> Create a case number and file for this complaint.</li> <li><input type="checkbox"/> <b>ETHICS CHECK:</b> Create a case file for this complaint in Ethics Check and upload Form D-1 and Exhibit 1 <i>Statement of Facts</i>.</li> </ul> |
| <ul style="list-style-type: none"> <li>• 9 <i>Manual</i> – Grievance Committee</li> <li>• 24 <i>Manual</i> – Action of the Grievance Committee</li> <li>• 24(a) <i>Manual</i> – Review of Complaint by Grievance Committee</li> <li>• 24(b) <i>Manual</i> – Preliminary Nature of Review</li> <li>• C.1 <i>Guidelines</i> – Action of the Grievance Committee</li> <li>• C.2 <i>Guidelines</i> – Frivolous Complaints</li> <li>• C.4 <i>Guidelines</i> – Analyzing the Complaint</li> <li>• 24(j) <i>Manual</i> – Disclosure of the Decision</li> </ul> | <p><b>Grievance Committee Review</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> If no corrections need to be made to the complaint, send notice to the Complainant Party that their complaint has been received and is considered filed. If a date has been chosen for the Grievance Review, include that in the notice.</li> <li><input type="checkbox"/> Notify the GC Chair that a complaint has been filed and schedule (or have your GC Chair schedule) a date to review the Complaint.</li> <li><input type="checkbox"/> Prepare the GC Materials, which includes: <ol style="list-style-type: none"> <li>1. Copy of Complaint;</li> <li>2. G-1 <i>Grievance Committee Review Checklist</i>;</li> <li>3. G-2 <i>Grievance Committee Report</i>;</li> <li>4. Current Code of Ethics and Standards of Practice;</li> <li>5. D-7 <i>Certificate of Qualification</i></li> </ol> </li> </ul>   |
| <ul style="list-style-type: none"> <li>• 24(f) <i>Manual</i> – Amending the Complaint</li> <li>• 24(g) <i>Manual</i> – Dismissing Allegations in a Complaint</li> <li>• C.6 <i>Guidelines</i> – Modifications to Complaint</li> <li>• 24(d) <i>Manual</i> – Grievance Committee as Complainant</li> <li>• C.7 <i>Guidelines</i> – Grievance Committee as Complainant</li> <li>• C.8 <i>Guidelines</i> – Review of the Grievance Committee Decision</li> </ul>   | <p><b>Grievance Committee Decision to Dismiss or Amend</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> If the GC decides to delete an Article(s) or Respondent(s) from the Complaint or dismisses the Complaint entirely, send the Complainant Party: <ol style="list-style-type: none"> <li>1. Cover Letter;</li> <li>2. G-2 <i>Grievance Committee Report</i>;</li> <li>3. G-3 <i>Notice of Availability of Review of Grievance Committee’s Decision</i>;</li> <li>4. G-4 <i>Request for Review of Grievance Committee’s Decision</i>.</li> </ol> </li> <li><input type="checkbox"/> If the GC decides to add an Article(s) or Respondent(s), send the Complainant Party: <ol style="list-style-type: none"> <li>1. Cover Letter;</li> <li>2. G-2 <i>Grievance Committee Report</i>;</li> </ol> </li> </ul>   |

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|   | <p>And have the Complainant Party indicate in writing their acceptance of the changes. If the Complainant Party does not agree to the changes, the GC can either dismiss the changes or be added as Complainants to argue their changes to the Hearing Panel.</p>  |
|   | <p><b>Review of Grievance Committee Decision</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The Complainant Party may request a Review of the GC Decision to dismiss a part of or the entire Complaint. Request for Review is due within 10 days from the date the Decision is transmitted to the Complainants.</li> <li><input type="checkbox"/> _____ (Date Due)</li> <li><input type="checkbox"/> If a Request for Review is timely filed, send the Request and original Complaint to the GC Review Panel and schedule a Review.</li> <li><input type="checkbox"/> GC Review Panel documents: <ul style="list-style-type: none"> <li>1. D-7 <i>Certificate of Qualification</i></li> <li>2. G-5 <i>Action of Directors Upon Request of Review of Grievance Committee's Decision</i></li> </ul> </li> <li><input type="checkbox"/> Once the Review Panel has issued their decision, transmit to Complainant Party and proceed as the Review Panel has directed.</li> </ul>  |
| <ul style="list-style-type: none"> <li>• F.1 <i>Guidelines – Transcript/Right to Record</i></li> <li>• F.2 <i>Guidelines – Interpreters and Translators</i></li> </ul>          | <p><b>Grievance Committee Decision and Receipt of Complaint to Parties</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> If the GC decides to forward the Complaint for hearing, send Respondent Party the <b>Receipt of Complaint Packet</b>, which includes: <ul style="list-style-type: none"> <li>1. Cover Letter;</li> <li>2. Form D-2 <i>Notice to Respondent</i> or D-2A <i>Notice to Respondent (Ethics Advocate)</i>;</li> <li>3. Copy of Complaint;</li> <li>4. G-2 <i>Grievance Committee Report</i>;</li> <li>5. Form D-3 <i>Response</i>;</li> <li>6. Copy of the current Code of Ethics;</li> <li>7. D-23 <i>Request for Ethics Advocate</i>;</li> <li>8. List of potential Panel Members;</li> <li>9. Form D-4 <i>Notice of Right to Challenge Panel Members and Availability for Hearing</i>;</li> <li>10. Form D-5 <i>Reasons for Challenge</i>.</li> </ul> </li> <li><input type="checkbox"/> Send the Respondent Party's Designated REALTOR® a copy of the <b>Receipt of Complaint Packet</b>.</li> <li><input type="checkbox"/> At the same time, send the Complainant Party the <b>List of Panel Members Packet</b>, which includes: <ul style="list-style-type: none"> <li>1. Cover Letter</li> <li>2. List of potential Panel Members;</li> <li>3. Form D-4 <i>Notice of Right to Challenge Panel Members and Availability for Hearing</i>;</li> <li>4. Form D-5 <i>Reasons for Challenge</i>.</li> </ul> </li> </ul> |
| <ul style="list-style-type: none"> <li>• 28(c) <i>Manual – Response not Required; Late Filing</i></li> <li>• 28(d) <i>Manual – Notifying Complainant of Response</i></li> </ul> | <p><b>Receipt of Response</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Response is due within <b>15 calendar days</b> of the date the Notice to Respondent is sent.</li> <li><input type="checkbox"/> No more than <b>five calendar days</b> after the Response is received, forward a copy of the Response to the Complainant Party and copy the Respondent Party on that correspondence to acknowledge receipt.</li> </ul>  |

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|   | <ul style="list-style-type: none"> <li>• <b>Note:</b> The Respondent Party is not required to submit a Response. However, to ensure the due process rights of the Respondents, any Response submitted should be accepted, regardless of the timing of submission, forwarded to the Complainant Party, and given to the Hearing Panel when they are provided with all written materials in advance of the hearing. Similarly, the Complainant Party is entitled to review and respond to the response; therefore, a possible consequence of receipt of a late response may be rescheduling a hearing if the Complainant Party requests a continuance to review the response.</li> <li>☐ <b>ETHICS CHECK:</b> Upload Form D-3 and Exhibit A <i>Statement of Facts</i> onto Ethics Check.</li> </ul>  |
| <ul style="list-style-type: none"> <li>• 28(e) <i>Manual</i> – Selecting the Hearing Panel</li> <li>• E.6 <i>Guidelines</i> – Selecting the Hearing Panel</li> <li>• 28(f) <i>Manual</i> – Composition of the Hearing Panel</li> <li>• 28(g) <i>Manual</i> – Presiding Officer</li> <li>• 28(h) <i>Manual</i> – Alternate Panel Member</li> <li>• 28(j) <i>Manual</i> – Waiver of Objection to Panel Member; Appointing Replacement to Challenged Panel Member</li> </ul> | <p><b>Schedule Hearing</b></p> <ul style="list-style-type: none"> <li>☐ After the timeframe for the parties to submit their challenges to proposed Panel Members and availability for hearing has expired, select (or have your Professional Standards Committee Chairperson select) your Presiding Officer and Panel Members from the final list of proposed panel members and schedule the hearing date and time based on the availability of the parties and panel.</li> <li>• <b>Note:</b> A party’s right to disqualify a proposed neutral arbitrator is waived if the party fails to deliver timely Forms D-4 and D-5.</li> </ul>  |
| <ul style="list-style-type: none"> <li>• 28(i) <i>Manual</i> – Notice of Date, Time, and Place of Hearing</li> <li>• 28(k) Notification of Procedures</li> <li>• 31 <i>Manual</i> – Continuances</li> <li>• 32 <i>Manual</i> – Continuance Fees</li> <li>• E.3 <i>Guidelines</i> – Continuances and Continuance Fees</li> <li>• 30 <i>Manual</i> - Witnesses</li> </ul>   | <p><b>Official Notice of Hearing</b></p> <ul style="list-style-type: none"> <li>☐ Once the hearing date, time and panel have been secured, send the parties the <b>Official Notice of Hearing Packet</b>, which includes: <ol style="list-style-type: none"> <li>1. Cover Letter;</li> <li>2. Form D-6 <i>Official Notice of Hearing</i>;</li> <li>3. Form D-8 <i>Outline of Procedure for Hearing</i>;</li> <li>4. Form D-26 <i>Notice of Additional Attendees</i></li> </ol> </li> <li>• <b>Note:</b> Notice of Hearing must be given at least 21 calendar days in advance. Once the Official Notice of Hearing is sent, Parties must submit a written request for continuance if they wish to reschedule.</li> </ul> <p><b>Hearing Deadlines:</b></p> <p>21 days notice → Notified of hearing date, time, location and panel members</p> <p>15 days prior to hearing → Notification to all parties of legal counsel and/or remote testimony requests</p> <p>10 days → Notification of intent to utilize an interpreter and/or submit translated document</p> <p>1 day → Reminder of hearing</p> |
| <ul style="list-style-type: none"> <li>•</li> </ul>   | <p><b>Materials to Panel</b></p> <ul style="list-style-type: none"> <li>☐ Prepare a case file for each Panel Member, including the Complaint, Response, and any relevant correspondence between the Association and the Parties.</li> <li>☐ Prepare a case file for the Presiding Officer, including the complaint, response, relevant correspondence between the Association and the Parties, and the following forms: <ol style="list-style-type: none"> <li>1. G-2 <i>Grievance Committee Report</i>;</li> <li>2. D-6 <i>Official Notice of Hearing</i>;</li> <li>3. D-7 <i>Certificate of Qualification</i>;</li> </ol> </li> </ul>  |

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|   | <p>4. D-8 <i>Outline of Procedures for Hearing</i>;<br/> 5. D-9 <i>Acknowledgement of Receipt of Procedures</i>;<br/> 6. D-10 <i>Other Action of Arbitrators</i>;<br/> 7. D-11 <i>Decision and Findings of Fact</i>;<br/> 8. D-12 <i>Recommendations of Hearing Panel</i>;<br/> 9. Presiding Officer's Statements.</p>  |
| <ul style="list-style-type: none"> <li>• 30 <i>Manual - Witnesses</i></li> <li>• F.1 <i>Guidelines – Transcript/Right to Record</i></li> <li>• 34(c) <i>Manual – Notice (of Interpreter/Translator)</i></li> <li>• F.2 <i>Guidelines – Interpreters and Translators</i></li> <li>• 18(b) <i>Manual – Notice of Representation</i></li> </ul>  | <p><b>Important Pre-Hearing Deadlines</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> 21 days prior to hearing, Parties must be notified of the hearing date, time, location and panel members.</li> <li><input type="checkbox"/> 15 days prior to the hearing, Parties must notify all other Parties and Association staff of their intent to be represented by legal counsel and/or submit to staff their request for remote testimony.</li> <li><input type="checkbox"/> 10 days prior to the hearing, Parties must notify all other Parties and Association staff of their intent to utilize an interpreter and/or must submit any translated documents they intend to present at the hearing.</li> <li><input type="checkbox"/> 1 day prior to the hearing, staff should send a hearing reminder to the Parties and Panel, which includes a list of attendees and the date/time/location of the hearing.</li> </ul>  |
| <ul style="list-style-type: none"> <li>• 26(a)(b) <i>Manual – Withdrawal of Complaint</i></li> <li>• E.4 <i>Guidelines – Withdrawal of an Association Disciplinary Complaint</i></li> <li>• G.6 <i>Guidelines – Reporting “Public Trust” Violations to the BRE</i></li> </ul>   | <p><b>Withdrawal of Complaint</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> At any time up until the Hearing Panel adjourns to make their decision, the Complainant Party may withdraw their Complaint. If the Complaint is withdrawn, it should be sent back to the Grievance Committee to determine if the Respondent(s) has committed a violation of the public trust.</li> <li><input type="checkbox"/> If the GC determines there has been a violation of the public trust, the GC must step forward as the Complainant and take the Complaint to hearing.</li> <li><input type="checkbox"/> If the GC determines no violation of the public trust has occurred, the Complaint is dismissed and the file should be closed.</li> </ul>  |
| <ul style="list-style-type: none"> <li>• 19(e) <i>Manual – Discussion Prior to Hearing</i></li> <li>• 33(a) – (f) <i>Manual – The Hearing</i></li> <li>• F.5 <i>Guidelines – Failure of Parties to Appear</i></li> <li>• F.6 <i>Guidelines – Conducting the Hearing</i></li> <li>• F.7 <i>Guidelines – Due Process Required</i></li> <li>• 34 (a) – (c) <i>Manual – Transcript/Right to Record</i></li> <li>• F.1 <i>Guidelines – Transcript/Right to Record</i></li> </ul> | <p><b>Discipline Hearing</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Prepare hearing room – include case files, copy of current C.A.R. Manual, scratch paper.</li> <li><input type="checkbox"/> Prepare a waiting area for the Parties and their Witnesses (if any) and secure a location for any Witnesses to wait until they are allowed in the hearing room for their testimony.</li> <li><input type="checkbox"/> Set up recording device and remote testimony devices (if any).</li> <li><input type="checkbox"/> The Panel may recess the hearing as necessary and, on request of a Party or upon the Panel's own motion, may postpone the hearing.</li> <li><input type="checkbox"/> In the event the Complainant Party fails to appear at the Hearing, the Complaint should be sent back to the Grievance Committee to determine if the GC wishes to step forward as the Complainant.</li> <li><input type="checkbox"/> The Presiding Officer should remind all Parties, their Witnesses and the Hearing Panel of the confidential nature of the discipline process.</li> </ul> |
| <ul style="list-style-type: none"> <li>• 33(a) <i>Manual – Statements of Qualification; Acknowledgement of Receipt of Outline of Procedure</i></li> <li>• 19(g) <i>Manual – Absent Panel Member</i></li> <li>• 17(a) – (f) <i>Manual – Confidentiality of Proceedings</i></li> </ul>  | <p><b>Hearing Documents</b></p> <p>The following forms should be completed and retained in the case file:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> D-7 <i>Certificate of Qualification</i>, to be signed by all Panel members prior to the start of the hearing.</li> <li><input type="checkbox"/> D-9 <i>Acknowledgement of Receipt of Outline of Procedure</i>, to be signed by all Parties prior to the start of the hearing.</li> </ul>  |



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| <ul style="list-style-type: none"> <li>• B.4 <i>Guidelines</i> – Confidentiality of Proceedings</li> </ul>   | <ul style="list-style-type: none"> <li><input type="checkbox"/> D-25 <i>Agreement for Hearing by Two Panelists</i>, to be signed by all Parties prior to the start of the hearing (only if applicable).</li> <li><input type="checkbox"/> D-10 <i>Other Action of the Hearing Panel</i> (if applicable); or</li> <li><input type="checkbox"/> D-11 <i>Decision and Findings of Fact</i> and D -12 <i>Recommendations of Hearing Panel</i>.</li> </ul>  |
| <ul style="list-style-type: none"> <li>• 36(a) <i>Manual</i> - Making and Reporting the Decision</li> <li>• 36(b) <i>Manual</i> – Consideration of Prior Code of Ethics and Membership Duty Violations</li> <li>• 36(c) <i>Manual</i> – Consideration of Prior MLS Duty Violations</li> <li>• 6(a) – (f) <i>Manual</i> – Nature of Discipline Against an Association Member</li> <li>• 7(a) – (d) <i>Manual</i> – Nature of Discipline Against an MLS Participant or Subscriber</li> <li>• F.11 <i>Guidelines</i> – Disciplinary Recommendations</li> <li>• G.1 <i>Guidelines</i> – Distributing the Decision</li> <li>• 38(a) <i>Manual</i> – Request for Review</li> </ul> | <p><b>Decision and Findings of Fact</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Panel Members may consider a Respondent’s prior violations in assessing discipline and should have access to Respondents’ member files. Access to the member files is permitted only after deliberations and finding of violations.</li> <li><input type="checkbox"/> The Decision must be in writing and provided to the Parties and the Respondent Party’s Designated REALTOR® within five (5) days after the written Decision is handed over to staff.</li> <li><input type="checkbox"/> The <b>Decision of Panel Members Packet</b> should include the following: <ul style="list-style-type: none"> <li>1. Cover Letter;</li> <li>2. D-11 <i>Decision and Finding of Fact</i> and D-12 <i>Recommendations of Hearing Panel</i> (or D-10 <i>Other Action of Hearing Panel</i>, if applicable);</li> <li>3. Completed D-7 <i>Certificate of Qualification</i>;</li> <li>4. D-13 <i>Notice of Availability of Rehearing and Review</i>;</li> <li>5. D-14 <i>Request for Duplication of Recording</i>;</li> <li>6. D-17 <i>Request for Review</i>.</li> </ul> </li> <li>• <b>ETHICS CHECK:</b> Upload Forms D-11 <i>Decision and Finding of Fact</i> and D-12 <i>Recommendations of Hearing Panel</i> (or D-10 <i>Other Action of Hearing Panel</i>, if applicable) onto Ethics Check.</li> </ul>                                       |
|  | <p><b>Request for Review</b> – please see Disciplinary Review Hearing Checklist for more information<br/>20 days from Decision → Request for Discipline Review must be submitted</p>   |
| <ul style="list-style-type: none"> <li>• 37(a) – (c) <i>Manual</i> – Action of the Directors if No Request for Review</li> <li>• G.3 <i>Guidelines</i> – Action of the Directors if there is no Request for Review</li> </ul>  | <p><b>Decision to Board of Directors for Ratification</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Once the timeframe for filing a Request for Review has expired, provided no Request has been filed, send the Decision to the Board of Directors for Ratification, including: <ul style="list-style-type: none"> <li>1. D-11 <i>Decision and Finding of Fact</i> and D-12 <i>Recommendations of Hearing Panel</i> (or D-10 <i>Other Action of Hearing Panel</i>, if applicable);</li> <li>2. D-22 <i>Action if No Request for Review</i>.</li> </ul> </li> <li><input type="checkbox"/> Each Director must sign a statement (Form D-7) that he or she is not disqualified from serving on the ratification panel.</li> <li><input type="checkbox"/> If the Board of Directors feels the Decision needs to be modified in some way, they should send the Decision back to the Original Hearing Panel with specific instructions for what to reconsider.</li> <li><input type="checkbox"/> The Hearing Panel Decision is final only once it has been ratified by the Board of Directors.</li> <li>• <b>Note:</b> The Directors must adopt the Panel’s Decision unless it is deficient on its face and may expose the Association to potential liability. The Directors should not change the Decision themselves, but should send the Decision back to the Hearing Panel if they believe it should be changed.</li> </ul> |
| <ul style="list-style-type: none"> <li>• 39(c) <i>Manual</i> – Publication of Ethics Violators</li> <li>• 39(d) <i>Manual</i> – C.A.R. Publication Policy for Ethics Violators</li> </ul>  | <p><b>Publication</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Summaries of Code of Ethics violations will be published on the C.A.R. website when a violator is disciplined with at least one of the following: <ul style="list-style-type: none"> <li>1. Letter of Reprimand</li> </ul> </li> </ul>   |

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| <ul style="list-style-type: none"> <li>G.4 <i>Guidelines</i> – Publishing the Names of Ethics Violators</li> </ul>   | <ol style="list-style-type: none"> <li>2. Fine;</li> <li>3. Suspension;</li> <li>4. Expulsion.</li> </ol> <p><input type="checkbox"/> If the Discipline is subject to publication, forward the following to C.A.R. Professional Standards staff:</p> <ol style="list-style-type: none"> <li>1. Photo of Violator</li> <li>2. Form D-24 <i>Submission of Photo for Discipline Publication</i>;</li> <li>3. D-11 <i>Decision and Findings of Fact</i>;</li> <li>4. D-12 <i>Recommendations of Hearing Panel</i>.</li> </ol> <ul style="list-style-type: none"> <li>• <b>Note:</b> When a violator must be published by C.A.R. according to the C.A.R. publication criteria, you must suspend the violator’s Association membership if he or she does not submit a photo within 10 days of receipt of the final decision.</li> <li>• <b>Note:</b> The published information will be removed from the C.A.R. website three years after initial publication.</li> </ul> |
| <ul style="list-style-type: none"> <li>G.6 <i>Guidelines</i> – Reporting Suspensions and Expulsions to C.A.R.</li> </ul>   | <p><b>Sanctions Met, File Closed</b></p> <p><input type="checkbox"/> Once the Respondent has submitted proof that the Hearing Panel’s recommended sanctions have been satisfied, send the Parties a letter letting them know sanctions have been met and the file has been closed.</p>   |
| <ul style="list-style-type: none"> <li>G.8 <i>Guidelines</i> – Record Retention</li> <li>34(c) <i>Manual</i> – Destruction of Transcript or Recording</li> </ul> | <p><b>Record Retention</b></p> <p><input type="checkbox"/> Once the file is closed, the case file should be retained according to the Association’s record retention policy. If the Association does not have a record retention policy, it is recommended that an Association retain a case file for a period of seven (7) years from the date the decision is final.</p> <p><input type="checkbox"/> Any recordings or transcripts of the actual hearing should be destroyed as soon as the Decision is final.</p>   |

## ADMINISTRATIVE PROCESSING OVERVIEW - DISCIPLINE REVIEW

Case No. \_\_\_\_\_,

|                     |     |                    |
|---------------------|-----|--------------------|
|                     | VS. |                    |
| <b>Complainants</b> |     | <b>Respondents</b> |

This checklist is intended for use in conjunction with processing a disciplinary complaint under the rules and procedures of the *California Code of Ethics and Arbitration Manual*. “References” are taken from the *CA Code of Ethics and Arbitration Manual (Manual)* and the *Implementation Guidelines – Discipline (Guidelines)*. This checklist may be reproduced and used to help process disciplinary complaints.

**Notes:**

**The preferred method for serving notices in the disciplinary procedure is email, as set forth in Section 13 of the Manual.**

**Complainant Party includes all named complainants, their legal counsel, if any, Ethics Advocate, if any and the broker’s representative, if any.**

**Respondent Party includes all named respondents, their legal counsel, if any, Ethics Advocate, if any and the broker’s representative, if any.**

| <b>• REFERENCE</b>   | <b>ACTION</b>  |
|--|--|
| <ul style="list-style-type: none"> <li>• 38(a) <i>Manual</i> – Request for Review</li> <li>• G.1 <i>Guidelines</i> – Distributing the Decision</li> </ul>  | <p><b>Request to File Discipline Review</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Request for Discipline Review paperwork should be sent to the parties, included with the Decision of the Hearing Panel packet, within five (5) days from the date the Decision is handed over to the Association.</li> <li><input type="checkbox"/> Request for Discipline Review is due within twenty (20) days from the date the Decision was transmitted to the parties.</li> <li><input type="checkbox"/> _____ (Date Due)</li> </ul>  |
| <ul style="list-style-type: none"> <li>• 38(a) <i>Manual</i> – Request for Review</li> </ul>   | <p><b>Receipt of Request for Review</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> _____ (Date Filed)</li> <li><input type="checkbox"/> Date-stamp the Request with its postmark date or, if no postmark date is given/applicable, with the date of receipt and record above.</li> </ul>  |
| <ul style="list-style-type: none"> <li>• 38(a) <i>Manual</i> – Request for Review</li> <li>• 38(b) <i>Manual</i> – Deposit Requirement</li> <li>• 38(c) <i>Manual</i> – Basis for Review</li> <li>• 38(d) <i>Manual</i> – Preliminary Review; Opportunity to Amend</li> <li>• G.2 <i>Guidelines</i> – Review by Directors</li> </ul> | <p><b>Preliminary Review of Request</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Within ten days, conduct a preliminary review of the Request to determine if it has been properly and timely filed. The preliminary review should be limited to the following considerations:               <ol style="list-style-type: none"> <li>1. Was the request submitted timely?;</li> <li>2. Does the request come with the proper paperwork?;</li> <li>3. Was the \$_____ deposit submitted?;</li> <li>4. Does the request cite and clearly indicate alleged a) mis-application/misinterpretation of the Code, b) procedural</li> </ol> </li> </ul> |

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|  | <p>deficiency or any lack of procedural due process and/or<br/>c) unwarranted discipline recommended by the hearing Panel?</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> If the Request does not meet the filing requirements, return the Request to the Requesting Party and give ten days to amend the request.</li> <li>• <b>Note:</b> Any preliminary review conducted by staff is not a decision on the merits of the Request and is only intended to make sure the basic filing requirements have been met. In the event of a dispute as to whether the Request states a proper basis for review, the Request should be processed and the Directors should rule on the disputed issue at the time of the hearing.</li> <li><input type="checkbox"/> If the Requesting Party has submitted form D-14 <i>Request for Duplication of Recording</i>, along with the \$_____ duplication fee, transmit the recording to the requesting party.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• 38(e) <i>Manual</i> – Notice of Request for Review</li> <li>• 38(k) <i>Manual</i> – <i>Automatic Disqualification; Certificate of Qualification</i></li> </ul>  | <p><b>Notice of Request for Review</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Send the <b>Notice of Review Packet</b> to the Parties and to the Original Presiding Officer, including: <ol style="list-style-type: none"> <li>1. Cover Letter;</li> <li>2. D-18 <i>Notice of Request for Review</i>;</li> <li>3. Copy of Request for Review;</li> <li>4. D-4 <i>Notice of Right to Challenge Panel Members and Availability of the Parties</i>;</li> <li>5. List of Board of Directors;</li> <li>6. D-5 <i>Reasons for Challenge</i>;</li> <li>7. D-13 <i>Notice of Availability of Rehearing and Review</i>;</li> <li>8. D-14 <i>Request for Duplication of Recording</i>;</li> <li>9. D-19 <i>Reply to Request for Review</i>.</li> </ol> </li> <li><input type="checkbox"/> <b>ETHICS CHECK:</b> Upload the entire Request for Review onto Ethics Check under the same file as the Discipline Complaint – you do not need to create a new file in Ethics Check for the Review.</li> </ul> |
| <ul style="list-style-type: none"> <li>• 38(f) <i>Manual</i> – Reply not Required; Late Filing</li> </ul>  | <p><b>Reply to Request for Review</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Reply is due within fifteen (15) days from transmittal of notice of receipt of review. The Non-Requesting Party does not have to submit a response or attend the review hearing, but is entitled to both.</li> <li><input type="checkbox"/> The Original Presiding Officer should not submit a written response, but should be provided with any and all documentation submitted by the parties and all relevant correspondence/documentation.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• 38(g) <i>Manual</i> – Notice of Reply</li> </ul>  | <p><b>Reply to Parties</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> If a Reply is submitted, send the following to the parties and the Original Presiding Officer: <ol style="list-style-type: none"> <li>1. Cover Letter;</li> <li>2. Copy of Reply.</li> </ol> </li> <li><input type="checkbox"/> <b>ETHICS CHECK:</b> Upload Reply onto Ethics Check.</li> </ul>  |
| <ul style="list-style-type: none"> <li>• 38(h) <i>Manual</i> – Selecting the Review Panel</li> <li>• 38(i) <i>Manual</i> – Waiver of Objection to Director; Appointing Replacement to Challenged Director</li> <li>• 38(j) <i>Manual</i> – Composition of Panel</li> </ul> | <p><b>Schedule Review Hearing</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> After the timeframe for the Parties to submit their challenges and availability for hearing has expired, select (or have your Association President select) a panel from your Board of Directors to conduct the review.</li> <li><input type="checkbox"/> The Original Presiding Officer should be considered when applying automatic disqualifications to potential panel members.</li> </ul>  |

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| <ul style="list-style-type: none"> <li>• 38(k) <i>Manual</i> – Automatic Disqualification; Certificate of Qualification</li> <li>• 38(l) <i>Manual</i> – Presiding Officer</li> </ul>  | <ul style="list-style-type: none"> <li>• <b>Note:</b> If the Original Presiding Officer is unable to attend the Review hearing, an arbitrator from the original Panel may attend instead.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• 38(m) <i>Manual</i> – Notice of Time and Place of Review Hearing</li> </ul>   | <p><b>Official Notice of Review Hearing</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Once the hearing date, time and panel have been secured, send the Parties and the Original Presiding Officer the <b>Official Notice of Review Packet</b>, which includes: <ol style="list-style-type: none"> <li>1. Cover Letter;</li> <li>2. D-20 <i>Notice of Review Hearing</i>;</li> <li>3. D-26 <i>Notice of Additional Attendees for Hearing</i>.</li> </ol> </li> <li>• <b>Note:</b> Notice of Review Hearing must be given at least 21 calendar days in advance of the review hearing.</li> </ul> <p><b>Hearing Deadlines:</b></p> <p>21 days notice → Notified of hearing date, time, location and panel members</p> <p>15 days prior to hearing → Notification to all parties of legal counsel and/or remote testimony requests</p> <p>10 days → Notification of intent to utilize an interpreter and/or submit translated document</p> <p>1 day → Reminder of review hearing</p>                                  |
| <ul style="list-style-type: none"> <li>• 38(n) <i>Manual</i> – Documents Provided to the Panel</li> </ul>  | <p><b>Materials to Review Panel</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Prepare a case file for each Panel member, including Form D-11, D-12, the Request, the Reply (if any) and any relevant documentation/correspondence;</li> <li><input type="checkbox"/> Prepare a case file for the Review Hearing Presiding Officer, including the Request, the Reply (if any), any relevant documentation/correspondence, and the following forms: <ol style="list-style-type: none"> <li>1. Form D-20 <i>Notice of Review Hearing</i>;</li> <li>2. D-7 <i>Certificate of Qualification</i>;</li> <li>3. D-21 <i>Action Upon Review</i>;</li> <li>4. Presiding Officer’s Statements (Disciplinary Review Hearing);</li> <li>5. Copy of the current <i>CA Code of Ethics &amp; Arbitration Manual</i>.</li> </ol> </li> <li>• <b>Note:</b> The Review Panel should not receive copies of the original complaint/response as they are only allowed to consider the issues cited in the Request for Review.</li> </ul> |
| <ul style="list-style-type: none"> <li>• 30 <i>Manual</i> - Witnesses</li> <li>• F.1 <i>Guidelines</i> – Transcript/Right to Record</li> <li>• 34(c) <i>Manual</i> – Notice (of Interpreter/Translator)</li> <li>• F.2 <i>Guidelines</i> – Interpreters and Translators</li> <li>• 18(b) <i>Manual</i> – Notice of Representation</li> </ul> | <p><b>Important Pre-Review Deadlines</b></p> <p>At least:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> 21 days prior to review hearing, Parties must be notified of the date, time, location and panel members.</li> <li><input type="checkbox"/> 15 days prior to the review, Parties must notify all other parties and Association staff of their intent to be represented by legal counsel and/or submit to staff their request for remote testimony.</li> <li><input type="checkbox"/> 10 days prior to the review, Parties must notify all other Parties and Association staff of their intent to utilize an interpreter and/or must submit any translated documents they intend to present at the hearing.</li> <li><input type="checkbox"/> 1 day prior to the review, staff should send a reminder to the Parties, Original Presiding Officer and Panel, which includes a list of attendees and the date/time/location of the hearing.</li> </ul>   |

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| <ul style="list-style-type: none"> <li>• 38(q) <i>Manual</i> – Failure of Requesting Party to Appear at Hearing</li> <li>• 38(r) <i>Manual</i> – Failure of Party Not Requesting Review to Appear at Hearing</li> <li>• 38(s) <i>Manual</i> – Action of the Review Panel</li> <li>• G.2 <i>Guidelines</i> – Review by Directors</li> </ul> | <p><b>Review Hearing</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Prepare hearing room – include case files, copy of current C.A.R. Manual, scratch paper.</li> <li><input type="checkbox"/> Prepare a waiting area for the parties and their witnesses (if any) and secure a location for any witnesses to wait until they are allowed in the hearing room for their testimony.</li> <li><input type="checkbox"/> Make sure the recording/transcript of the Original Hearing is available for the Directors if they need to listen.</li> <li><input type="checkbox"/> In general, the Review Panel should adopt the decision and recommendation of the original Panel. However, if the Review Panel are concerned with deficiency in the decision or the appropriateness of the discipline, they can take the following actions: <ul style="list-style-type: none"> <li><input type="checkbox"/> Dismiss the matter if they conclude the Findings do not support the recommendations;</li> <li><input type="checkbox"/> Impose alternative discipline that does not exceed the original recommendation;</li> <li><input type="checkbox"/> Refer the Decision back to the original Hearing Panel with recommended modifications; or</li> <li><input type="checkbox"/> Refer the matter for a new hearing with the same or different Hearing Panel, as deemed appropriate.</li> </ul> </li> <li>• <b>Note:</b> Review hearings are never recorded. The original hearing recording should be destroyed after the review panel have issued their decision.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• 26(a)(b) <i>Manual</i> – Withdrawal of Complaint</li> <li>• E.4 <i>Guidelines</i> – Withdrawal of an Association Disciplinary Complaint</li> <li>• G.6 <i>Guidelines</i> – Reporting “Public Trust” Violations to the BRE</li> </ul>  | <p><b>Hearing Documents</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The following forms should be completed and retained in the case file: <ol style="list-style-type: none"> <li>1. D-7 <i>Certificate of Qualification</i>, to be signed by all panel members prior to the start of the hearing.</li> <li>2. D-21 <i>Action Upon Review</i>.</li> </ol> </li> </ul>   |
| <ul style="list-style-type: none"> <li>• 38(t) <i>Manual</i> – Disposition of the Deposit</li> <li>• 38(u) <i>Manual</i> – Review Panel’s Rationale</li> <li>• 38(v) <i>Manual</i> – Finality of Review Panel Decision</li> </ul>  | <p><b>Action of Directors to Parties</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The Directors’ decision must be in writing and provided to the Parties within five (5) days after the written award is handed over to staff.</li> <li><input type="checkbox"/> If the Directors so rule, a new hearing or reconvening of the original Hearing Panel should be scheduled.</li> <li><input type="checkbox"/> If the Directors modify or adopt the original Decision, the Decision is considered ratified and final.</li> <li><input type="checkbox"/> If the Directors dismiss the Complaint, the file should be closed.</li> <li><input type="checkbox"/> The <b>Action of Directors Packet</b> should include the following: <ul style="list-style-type: none"> <li>• Cover Letter;</li> <li>• D-21 <i>Action Upon Review</i>;<br/>[If Directors refer case for new hearing]</li> <li>• List of Potential Panel Members (excluding those who have already participated in this case);</li> <li>• D-4 <i>Availability for Hearing</i> and D-5 <i>Notice of Right to Challenge Panel Member &amp; Reason for Challenge</i>;</li> <li>• Refund of Review Deposit (to Requesting Party Only);<br/>[If Decision is modified or adopted]</li> <li>• Copy of the modified or original D-11 <i>Decision and Findings of Fact</i> and D-12 <i>Recommendations of Hearing Panel</i>.</li> </ul> </li> <li>• <b>Note:</b> The decision of the directors at the review is final – there is no review process for their decision. There is no findings of fact or explanation of how the directors came to their decision.</li> </ul> |

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|  | <p><b>Panel members must not discuss their decision</b> with anyone outside of Association staff and/or Association legal counsel, as necessary.</p> <ul style="list-style-type: none"><li>• <b>Note:</b> The recording/transcript of the original Hearing should be destroyed after the Review Panel adjourns.</li><li><input type="checkbox"/> <b>ETHICS CHECK:</b> Upload Form D-21 <i>Action Upon Review</i> onto Ethics Check. If the Decision is modified, replace the original Decision with the modified one.</li></ul> |
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## PRESIDING OFFICER'S STATEMENTS - DISCIPLINARY HEARING

**PRESIDING OFFICER'S OPENING STATEMENT:** Ladies and gentlemen, I now call this disciplinary hearing to order. The Professional Standards Committee is charged with holding appropriate hearings for the \_\_\_\_\_ (insert name of Association) in accordance with the procedures set forth in the Association's Bylaws for matters concerning alleged unethical conduct or other violations of a membership or MLS duty. The hearing panel meeting here today is a panel of Professional Standards Committee members that has been selected to ascertain the truth in this disciplinary hearing and to render a decision on the testimony and evidence presented.

It should be reminded that this is a disciplinary hearing, not an arbitration, and this hearing panel cannot award money damages regardless of the outcome of this hearing.

At this time, I would like to introduce the members of this hearing panel:

1. My name is \_\_\_\_\_, and I am the Presiding officer.
2. Starting on my far left is \_\_\_\_\_, a member of the hearing panel (*presiding officer proceeds to introduce all panel members from left to right*).
3. I now ask that each person introduce yourself starting from my left and indicate your role in today's hearing.
4. **IF APPLICABLE:** Seated to my (left, right) is \_\_\_\_\_, the Association's legal counsel. I want to make it clear that the Association's legal counsel is not here to make direct inquiries of the parties and their witnesses and will not participate in any decision of the hearing panel. However, Association legal counsel is present to advise the hearing panel on questions that may be raised concerning the procedures used for this hearing or the laws of the State of California. In no event will the Association's legal counsel be considered counsel to the parties.
5. **IF APPLICABLE:** Also seated is \_\_\_\_\_, the court reporter transcribing these proceedings.
6. **OFFICIAL RECORD OF HEARING:** Now that introductions have been made, I want to inform each of you that today's hearing is being recorded. Therefore, prior to speaking, I kindly request that each of you identify yourself so that the recording reflects who is speaking. Also, it is important that only one person speak at a time. The purpose of recording this hearing is to preserve a record of this hearing in case a party wishes to request a review by the Association's Board of Directors. If after receiving our decision a party determines it would like to file a review, the party may purchase a copy of the recording upon written request. Please contact Association staff for the form. No other use of the recording is permitted.
7. **CONFIDENTIAL NATURE OF HEARING:** All persons present are advised that the proceedings, decisions and recommendations of this hearing panel are considered CONFIDENTIAL. All participants in this hearing are advised that failure to keep these proceedings and the resulting decisions confidential is a violation of your agreement to abide by the Association's rules and procedures for this hearing. Our decision and recommendations will only be distributed to the parties, the Association staff as required to continue processing this matter, and the Association's Board of Directors for final action.
8. **BASIS OF HEARING:** This hearing has been convened to consider the complaint of \_\_\_\_\_ (read names of the complainants) against \_\_\_\_\_ (read names of the respondents), which alleges a violation of \_\_\_\_\_ (read the Article(s) and/or MLS rules or other membership duty cited in the complaint).

Before we proceed further, this proceeding is not a court of law and is not governed by the technical rules of evidence that may apply in court. This hearing panel shall seek to determine all ascertainable and relevant facts pertaining to the matter under consideration to arrive at a peer judgment and decision that is fair to all



parties. The hearing panel has discretion to determine its own rules of evidence and its own procedures to be followed to achieve the objectives of equity and due process. The following has been generally accepted and ruled on by this hearing panel as the procedures for this hearing:

- a. All parties or their representatives to these proceedings will be allowed a full opportunity to be heard on matters relevant to the issues. The hearing panel may rule at any time during this hearing on the relevance of testimony being given, or questions being directed to any party or his or her representative, or to witnesses providing testimony. All parties and witnesses will be asked to swear or to affirm that the testimony given is the truth to the best of their knowledge.
- b. A party may be represented by legal counsel. However, no party may refuse to respond directly to requests for information or questions addressed to him or her by the hearing panel members except on grounds of self-incrimination or other grounds which the hearing panel deems appropriate. In this connection, the hearing panel need not accept the statements of counsel as being the statements of his or her client if the hearing panel desires direct testimony. Counsel is present to advise and consult with his or her client, and to speak for him or her subject to appropriate rulings or determinations by the hearing panel. This hearing panel will not tolerate any effort by a party or his or her counsel to harass, intimidate, coerce, or confuse the hearing panel members, witnesses or any party to the proceedings.
- c. The hearing panel may rule at any time on the admissibility of evidence. As presiding officer, I will act as keeper of the evidence introduced at this hearing and mark each with an exhibit identification number and date. All exhibits included in the hearing record may be used in part or full by the hearing panel in their deliberations.
- d. The hearing panel members are individually authorized to ask questions as they deem pertinent and significant at any time during this hearing. To preserve order, I will rule on questions or testimony by the parties and their representatives, or by witnesses in these proceedings. If deemed necessary, I will order a recess to consult with the hearing panel members (or with legal counsel advising the Association) concerning such rulings.

9. **SWEARING/AFFIRMATIONS:** At this time, I request that all persons present in the room that expect to testify at this hearing stand and be sworn or to make the appropriate affirmation in lieu of being sworn. (*The Presiding Officer should now ascertain whether any party or witness prefer affirmation in lieu of being sworn*).

**Swearing:** Raise your right hand and, following the question I will pose, answer in the affirmative if you do so swear:..."Do you swear that the statements you are about to make at this hearing are the truth, the whole truth, and nothing but the truth so help you God?"

**Affirmation:** Raise your right hand and, following the question I will pose, answer in the affirmative if you do so affirm: Do you affirm that the testimony you are about to give in this proceeding shall be the truth, the whole truth, and nothing but the truth and given freely and without reservation?"

10. **WITNESSES:** At this time, all witnesses are excused from the room until called to testify. The rest of you please be seated.

11. **OUTLINE OF PROCEDURE FOR HEARING:** All parties should have been mailed or provided a copy of the Outline of Procedure for this hearing. Do any of you have any questions regarding the Outline of Procedure for this hearing? If there are questions, I shall be glad to answer such questions at this time. (*Assuming there were no questions*) Let the record reflect that neither party or their representatives have questions regarding the Outline of Procedure for this hearing. We shall now proceed with the hearing.

12. **COMPLAINANT'S OPENING STATEMENT:** Each side should make a *short* opening statement and should not immediately jump to presenting all of their evidence. The complainant will now have an opportunity make an opening statement to state his or her case if desired.
13. **RESPONDENT'S OPENING STATEMENT:** The respondent will now have an opportunity to respond in the form of an opening statement if he or she wishes to.
14. **COMPLAINANT'S PRESENTATION OF EVIDENCE:** The complainant will now state his or her case and present any witnesses that he or she may desire. Cross-examination of the complainant's witnesses by the respondent or his or her representative will be allowed.
15. **RESPONDENT'S PRESENTATION OF EVIDENCE:** The respondent will now state his or her case and present any witnesses he or she may desire. Cross-examination of the respondent's witnesses by the complainant or his or her representative will be allowed.
16. **COMPLAINANT'S CLOSING STATEMENT:** The complainant will now make his or her closing statement.
17. **RESPONDENT'S CLOSING STATEMENT:** The respondent will now make his or her closing statement.
18. **FAIR HEARING AND DUE PROCESS:** Ladies and gentlemen, if there is any additional testimony or evidence you would like to present, now is the time to do so. *(If no further testimony or evidence is presented)* Seeing no further testimony or evidence, I now ask that each party answer affirmatively to the following question. Do you feel the processing of this matter by the Association and today's hearing procedures were fair and afforded you every opportunity to present your case? *(Have each party answer "yes;" if "no" is answered, the presiding officer should determine what objections the party has and handle accordingly)*
19. **ADJOURNMENT:** Ladies and gentlemen thank you for your evidence and testimony regarding this matter. We will next go into executive session and deliberate our decision. You will be notified by the Association of our decision. This hearing is officially adjourned and you are excused.
20. **EXECUTIVE SESSION:** *(General Guidelines) After adjournment, the panel will remain in executive session to deliberate and render its decision and findings of fact. The decision and findings of fact should be reduced to writing on the proper forms. Association counsel may remain during deliberation at the option of the hearing panel. Parties and witnesses should not be present during deliberations.*

## PRESIDING OFFICER'S STATEMENTS - DISCIPLINARY REVIEW HEARING

**PRESIDENT'S OPENING STATEMENT:** This review hearing is called to order. The purpose of this review hearing is to determine if there is a legitimate basis to modify or dismiss the decision and recommendation of the hearing panel for this disciplinary matter. In particular, this review hearing panel will consider the arguments of (name of party requesting review \_\_\_\_\_) who filed this request for review. It should be reminded that this review hearing is not an opportunity to reargue the merits of the dispute and the requesting party's statements should be limited to those bases set forth in their written request for review. Issues and questions that were not raised in the request for review will not be considered during this review hearing.

**INTRODUCTIONS:** At this time, I would like to introduce the members of this review panel: My name is \_\_\_\_\_, and I am the Presiding officer. Starting on my far left is \_\_\_\_\_, a member of the review panel (*presiding officer proceeds to introduce all panel members from left to right*). I now ask that each person introduce yourself starting from my left and indicate your role in today's hearing. (**IF APPLICABLE:** Seated to my (left, right) is \_\_\_\_\_, the Association's legal counsel. I want to make it clear that the Association's legal counsel is not here to make direct inquiries of the parties and their witnesses and will not participate in any decision of the review panel. However, Association legal counsel is present to advise the review panel on questions that may be raised concerning the procedures used for this hearing or the laws of the State of California. In no event will the Association's legal counsel be considered counsel to the parties.)

**CONFIDENTIAL NATURE OF HEARING:** Before we continue with this hearing, all persons present are advised that the proceedings and final decisions of this review hearing panel are considered CONFIDENTIAL. All participants in this hearing are admonished that failure to keep these proceedings and the resulting decisions confidential is a violation of your agreement with the Association rules and procedures and the Code of Ethics. Our decision will be made available only to the original hearing Panel members, the parties and their representatives, and the Association's legal counsel and staff as required.

**SWEARING/AFFIRMATIONS:** At this time, I request that all persons present in the room that expect to testify at this hearing stand and be sworn or to make the appropriate affirmation in lieu of being sworn. (*The Presiding Officer should now ascertain whether any party or witness prefer affirmation in lieu of being sworn*).

**Swearing:** Raise your right hand and, following the question I will pose, answer in the affirmative if you do so swear:..."Do you swear that the statements you are about to make at this hearing are the truth, the whole truth, and nothing but the truth so help you God?"

**Affirmation:** Raise your right hand and, following the question I will pose, answer in the affirmative if you do so affirm: Do you affirm that the testimony you are about to give in this proceeding shall be the truth, the whole truth, and nothing but the truth and given freely and without reservation?"

**HEARING PANEL'S PRESIDING OFFICER SUMMARY OF THE CASE:** The original hearing panel's presiding officer, or his or her designee, will now summarize the relevant facts of the case and procedures used at the hearing.

**QUESTIONS OF HEARING PANEL'S PRESIDING OFFICER:** At this time the parties will be given an opportunity to ask the presiding officer questions and offer any corrections or modifications to the presiding officer's summary. This review panel may also have questions for the presiding officer as well. However, I must again remind the parties that they should not attempt to reargue the factual issues as determined by the hearing panel. Also, no new evidence regarding the merits of the case may be presented.

The \_\_\_\_\_ (name of party requesting review) may now ask questions or offer corrections and modifications.

The \_\_\_\_\_ (name of other party(ies)) may now ask questions or offer corrections and modifications.

**PARTY REQUESTING REVIEW PRESENTATION:** The party requesting the review now has the opportunity to argue the stated bases for the review in his or her written request. Only those bases included in the written request for review may be raised at this hearing. If you feel any portion of the recording of the original hearing is relevant to prove your request, please play only that portion that is appropriate.

**RESPONSES:** Any other party will have an opportunity to explain why the hearing panel's decision and recommendations should be followed. If you feel any portion of the recording of the original hearing is relevant to prove your request, please play only that portion that is appropriate.

**ADJOURNMENT:** Ladies and gentlemen, if there is any further information you think this review panel should consider, this is your last opportunity to bring it to our attention. If you have nothing more to add, this review hearing is adjourned.

**EXECUTIVE SESSION:** (General Guidelines) *After adjournment, the review panel goes into executive session to deliberate the issues raised in the review. Association counsel may remain to advise on procedural issues. The review panel may adopt or modify the recommendation of the hearing panel, including the discipline proposed; or, alternatively, they may dismiss the complaint if they conclude that the findings of fact do not support the hearing panel's conclusion as to violation of an Article of the Code of Ethics, MLS rule or membership duty.*

*If the review panel is concerned with a possible procedural deficiency, they may refer the case back to the professional standards committee for a new hearing before the same or a different hearing panel.*

## SAMPLE LETTER OF WARNING / REPRIMAND

Association Letterhead

Respondent's Name

Address

Re: Letter of Reprimand/Warning (*select one*)  
Disciplinary Case Number [*insert case number*]

Dear Mr./Ms. [*Insert Respondent's Last Name*]:

The Board of Directors met on \_\_\_\_\_ to consider the above referenced case. It was the decision of the Board of Directors to affirm the findings and recommended discipline of the hearing panel.

Pursuant to the discipline imposed, this letter is (*use appropriate language below depending on type of letter*)

an Official Letter of Reprimand advising of a lack of professional conduct as determined by a due process hearing conducted by the Professional Standards hearing and affirmed by the Board of Directors.

an Official Letter of Warning advising of a lack of professional conduct as determined by a due process hearing conducted by the Professional Standards hearing and affirmed by the Board of Directors. Future conduct of this nature could result in more severe discipline or sanction.

This letter will remain in your membership file for (insert length of time) \_\_\_\_\_.

Sincerely,

Name of Association President

cc: Complainants

## Appendix VII to Part Four

### Sanctioning Guidelines

*The Code of Ethics is designed to establish a public and professional consensus against which the practice and conduct of Realtors® and Realtor-Associate®s may be judged. Realtors® and Realtor-Associate®s in joining a Board signify their intention to abide by the Code and thereby enhance the public and professional image of themselves and all other Realtors®. Adherence to the Code is the first great bond between Realtors® and Realtor-Associate®s throughout the country, and is an obligation voluntarily accepted by them to ensure high standards of professional conduct to serve the interests of their clients and customers (from the Introduction to the Code of Ethics and Arbitration Manual, National Association of Realtors®, 2015 edition).*

Local Boards of Realtors®, supported by the state and National Associations, have the awesome responsibility of fostering awareness, understanding, and appreciation for the duties and obligations the Code imposes on those who accept it as their guide to professionalism. A corollary duty of Boards is to receive and resolve complaints alleging potentially unethical conduct by Realtors®.

The Realtor® organization is firmly committed to comprehensive education of Realtors® and the public about the Code and the protections it affords, and also to vigorous, fair, and uniform enforcement when complaints are brought against members. The *Code of Ethics and Arbitration Manual* (Manual) details policies and procedures governing enforcement efforts.

Code enforcement achieves a number of goals. Where Realtors® are wrongly or mistakenly charged with unethical conduct, the hearing process provides personal and professional vindication. Where violations are determined, the hearing process educates members about their professional obligations and serves as a meaningful deterrent to future violations. The Introduction goes on to point out that the ethics hearing process “. . . is educational in that it raises the consciousness of members to the meaning and significance of the Code” and that “many ethics violations occur inadvertently or through ignorance, and the hearing procedure serves as an effective educational tool.”

Allegations of unethical conduct are often understandably viewed by respondents as threats to their professional and personal reputations. This can result not only in the mounting of vigorous defenses but also, at times, to threats of legal challenge should a violation be determined and discipline imposed. Given that membership confers valuable rights, Boards need to strictly adhere to their established procedures when considering potential ethics violations. This caution ensures that the rights of the parties will be observed and that legal exposure of Boards will be minimized.

At the same time, well-founded caution should not be confused with reservation, reluctance, or hesitancy. The Code’s duties become aspirations at best, and potentially meaningless, if not enforced, and enforced with vigor and determination.

Fundamental to fair and consistent Code enforcement is reasonable and judicious use of discipline, as both an educational device and as punishment. The Manual authorizes a wide variety of sanctions that may be imposed for ethics violations and for violations of other membership duties. These range from simple letters of warning to expulsion from Realtor® membership. Between these extremes are mandatory attendance at remedial educational sessions, fines, probation, and suspension. These sanctions, and the circumstances under which they may be imposed, are discussed in detail in the Manual.

The National Association does not recommend specific discipline for certain offenses, or for violations of particular Articles of the Code. This is in deference to the wisdom and autonomy of Hearing Panels privy to the details of complaints coming before them; in recognition of the fact that no two complaints

are identical; and in view of the fact that the details of each hearing, including the experience of respondents, their history of prior violations, and mitigating or extenuating circumstances, may all come into play in determining an appropriate penalty. At the same time, there are key points to be considered with respect to discipline.

- Discipline that can be imposed is strictly limited to those forms authorized in the Manual.
- Discipline should be commensurate with the offense. Unintentional or inadvertent violations should result in penalties designed to educate respondents as to the conduct expected of them as Realtors®. Conversely, if a Realtor® intentionally violates the Code, for example to realize an economic gain, a more severe sanction would be appropriate. Only authorized forms of discipline may be utilized. *(Revised 11/13)*
- Discipline should be progressive. The disciplinary emphasis on violations by new members or by longstanding members with no history of unethical conduct should be primarily educational. Repeated or subsequent violations should be addressed with more serious forms of discipline including substantial fines, suspension, and termination of membership. (See the section of this Appendix entitled “Progressive Discipline” for a more detailed discussion of progressive discipline).
- A “gray area” can exist with respect to “first time violations” that are clearly not the result of ignorance or mistake but rather demonstrate flagrant disregard for the Code’s obligations. While the educational aspect of Code enforcement cannot be disregarded, the fact that the Code exists to protect the public must also be seriously considered in determining commensurate discipline.
- Mitigating or extenuating circumstances should be considered in determining appropriate discipline. The fact that a respondent recognized or acknowledged inappropriate or unethical conduct, or took steps to remediate or minimize harm or injury that may have resulted from the respondent’s conduct, should be considered in determining appropriate discipline.
- Respondents’ records of earlier violations (or, conversely, the fact that they have not violated the Code in the past) can be considered in determining appropriate discipline. Hearing Panels cannot consider past violations in deciding whether the conduct currently complained of violated the Code.

Crafting appropriate, meaningful discipline can challenge panels that have concluded that the Code has been violated. This discussion is offered as guidance, rather than as a hard and fast template, to assist panels in meeting their key role in ensuring the Code’s viability and vitality through vigorous and evenhanded enforcement. Suggested guidelines that can be modified locally so long as the discipline proposed is consistent with the permissible forms authorized in the National Association’s *Code of Ethics and Arbitration Manual*, can be found in the section of this Appendix entitled “Disciplinary Guidelines.”

## Progressive Discipline

Discipline imposed for violations of the Code of Ethics or for violations of other membership duties should be progressive, that is discipline should increase incrementally for subsequent violations. The disciplinary emphasis where first time violations occur should be primarily educational. Repeated or subsequent violations should result in more serious forms of discipline being utilized, including substantial fines, suspension, and termination of membership. At the same time, a gray area can exist where a first time violation is not attributable to ignorance or oversight but rather to blatant disregard for the Code and its obligations. While the educational emphasis of Code enforcement cannot be disregarded, the fact that the Code exists to protect the public must be carefully considered in determining appropriate discipline. Two contrasting examples are provided to illustrate these points.

**Example 1:** Realtor® A, who had recently earned her real estate license, was found to have violated Article 12 for advertising a listed property without disclosing her status as either a Realtor® or as a real estate licensee. At the hearing, Realtor® A acknowledged her oversight and it was clear to the Hearing Panel that the violation was inadvertent and unintentional. The panel concluded that a letter of reprimand and attendance at a three (3) hour Code of Ethics update session was appropriate.

Two months later, Realtor® A was charged with a nearly identical violation. After concluding that she had, in fact, violated Article 12, the Hearing Panel was given access to Realtor® A's files to see whether Realtor® A had previously violated the Code so that appropriate discipline could be recommended. It was the conclusion of the Hearing Panel that a second violation of the same Article, occurring just months after the first violation, warranted more serious discipline. Realtor® A was fined \$1,000 and required to attend a full day ethics education program. (*Revised 11/13*)

Three months later, Realtor® A was again found to have violated Article 12. The Hearing Panel was then given access to Realtor® A's file and, upon learning of the two (2) prior violations in less than a year, recommended a \$5,000 fine. (*Revised 11/13*)

**Example 2:** Realtor® B, who had recently received his real estate license, was found to have violated Article 4 for failing to disclose to his seller-client that the purchaser that Realtor® B had procured was, in fact, Realtor® B's wife. In determining appropriate discipline, the Hearing Panel considered Realtor® B's limited experience in the real estate business and the fact that this was the first time that Realtor® B had been found in violation of the Code. The Hearing Panel also considered that Realtor® B's failure to disclose had not been inadvertent or unintentional and that Realtor® B had knowingly concealed from his client a key fact that might have influenced the client's decision to accept the offer from Realtor® B's wife. Based on the seriousness of the violation and Realtor® B's conscious disregard for his disclosure obligation, the Hearing Panel recommended a \$5,000 fine and retaking the ethics orientation required for new members. (*Revised 11/13*)

## Disciplinary Guidelines

Code enforcement achieves a number of important goals. Where Realtors® have been wrongly or mistakenly charged with unethical conduct, the hearing process provides personal and professional vindication. Where violations are determined, the hearing process and resulting discipline educates members about their professional obligations and serves as a meaningful deterrent to future violations. Determining that a violation of one or more Articles has occurred is only a part of a Hearing Panel's job. Equally important is crafting discipline commensurate with the offense. Panels will want to consider that many violations occur due to lack of familiarity with the Code and its obligations, inexperience, oversight, or as unintentional mistakes. In such cases, the primary purpose of discipline should be educational to ensure that similar violations do not occur in the future. In other cases, violations can



occur because of knowing disregard for the Code and its duties. In such cases, greater emphasis will be placed on the punitive nature of discipline.

Factors Hearing Panels should consider in determining appropriate discipline include, but are not necessarily limited to:

- (1) The nature of the violation.
- (2) Harm caused by the violation. Was the violation a minor mistake causing little or no harm or, alternatively, was a client, customer, member of the public, or another Realtor® harmed?
- (3) Was the violation inadvertent or unintentional or, conversely, was it the result of knowing disregard for the Code's obligations?
- (4) How much real estate experience did the violator have? Did he, or should he, have known better?
- (5) Has the violator been found in violation of the Code previously? How often? How recently? Is the current violation related or similar to earlier violations?
- (6) Are there mitigating or extenuating circumstances that should be considered in determining appropriate discipline?
- (7) Did the violator acknowledge the violation? Did the violator express remorse or contrition?
- (8) Are there other factors that ought to be considered?

With these questions in mind, panels can be guided by (but are not bound by) the following guidelines which may be modified locally at the discretion of each local Board.

***First violation example #1*** (or first violation within three [3] years):

- violation considered relatively minor, or
- little or no harm or injury caused to others, or
- violation resulted from ignorance or misunderstanding

*Possible discipline:*

- letter of warning
- fine of \$500 or less
- attendance at relevant education session
- any combination of the above (*Revised 11/13*)

***First violation example #2*** (or first violation within three [3] years):

- violation considered relatively serious, or
- some harm or injury caused to others, or
- violation resulted from disregard for the Code's obligations

*Possible discipline:*

- letter of reprimand
- fine of \$2,000 or less
- attendance at relevant education session(s)
- any combination of the above (*Revised 11/13*)

***First violation example #3*** (or first violation within three [3] years):

- violation considered very serious, or
- substantial harm or injury caused to others, or
- violation resulted from knowing disregard of the Code's obligations

*Possible discipline:*

- letter of reprimand
- fine of \$10,000 or less

- attendance at relevant education session(s)
- suspension for ninety (90) days or less
- any combination of the above (*Revised 11/14*)

**Repeat violations example #1** (within three [3] years):

- current violation considered relatively minor, or
- little or no harm or injury caused to others, or
- violation resulted from ignorance or misunderstanding

*Possible discipline:*

- attendance at relevant education session(s) or course
- fine of \$2,000 or less (*Revised 11/14*)

**Repeat violations example #2** (within three [3] years):

- current violation considered relatively serious, or
- some harm or injury caused to others, or
- violation resulted from disregard for the Code's obligation

*Possible discipline:*

- attendance at relevant education session(s) or course
- fine of \$10,000 or less
- suspension for three (3) months or less
- any combination of the above (*Revised 11/14*)

**Repeat violations example #3** (within three [3] years):

- violation considered very serious, or
- substantial harm or injury caused to others, or
- violation resulted from knowing disregard for the Code's obligations

*Possible discipline:*

- attendance at relevant education session(s) or course
- fine of \$15,000 or less
- suspension for six (6) months or less
- any combination of the above (*Revised 11/13*)

In addition to imposing discipline, the Hearing Panel can also recommend to the Board of Directors that the disciplined member be put on probation. Probation is not a form of discipline. When a member is put on probation the discipline recommended by the Hearing Panel is held in abeyance for a stipulated period of time not longer than one (1) year. Any subsequent finding of a violation of the Code of Ethics during the probationary period may, at the discretion of the Board of Directors, result in the imposition of the suspended discipline. Absent any subsequent findings of a violation during the probationary period, both the probationary status and the suspended discipline are considered fulfilled, and the member's record will reflect the fulfillment. The fact that one or more forms of discipline will be held in abeyance during the probationary period does not bar imposition of other forms of discipline which will not be held in abeyance. (*Revised 5/14*)

More serious forms of discipline (including possible termination of MLS privileges, suspension from membership for up to one [1] year, or termination of membership for up to three [3] years) may be appropriate in cases of very serious violations or in cases of repeated violations. (*Revised 11/13*)

**Important Note:** These are not sentencing rules or requirements, but rather simply suggestions to guide Hearing Panels in determining appropriate discipline based both on the current violation and the violator's previous record of ethical conduct.

## **OMBUDSMAN PROCEDURE**

These ombudsman procedures, which may be adopted and utilized at the discretion of boards and associations, are intended to provide enhanced communications and initial problem-solving for ethics complaints, at the local level.

### **Introduction**

Boards and associations of REALTORS® are charged with the responsibility of receiving and resolving ethics complaints. This obligation is carried out by local, regional and state grievance committees and professional standards committees.

Many “complaints” received by boards and associations do not expressly allege violations of specific Articles of the Code of Ethics, and many do not detail conduct related to the Code. Some “complaints” are actually transactional, technical, or procedural questions readily responded to.

It is the belief of the National Association’s Professional Standards Committee that many ethics complaints might be averted with enhanced communications and initial problem-solving capacity at the local level. These ombudsman procedures, which may be adopted and utilized at the discretion of boards and associations, are intended to provide that capacity.

### **Role of ombudsmen**

The ombudsman’s role is primarily one of communication and conciliation, not adjudication. Ombudsmen do not determine whether ethics violations have occurred, rather they anticipate, identify, and resolve misunderstandings and disagreements before matters ripen into disputes and possible charges of unethical conduct.

### **Qualification and criteria for ombudsmen**

Boards and associations have considerable latitude in developing criteria for service as ombudsmen.

At a minimum, ombudsmen should be thoroughly familiar with the Code of Ethics, state real estate regulations, and current real estate practice. Ombudsmen may be REALTORS®, staff members, or others acting on behalf of the local board/association.

### **Involving the ombudsman**

Boards and associations have considerable latitude in determining how and when ombudsmen will be utilized. For example, ombudsmen can field and respond to a wide variety of inquiries and complaints, including general questions about real estate practice, transaction details, ethical practice, and enforcement issues. Ombudsmen can also receive and respond to questions and complaints about members; can contact members to inform them that a client or customer has raised a question or issue; and can contact members to obtain information necessary to provide an informed response.

In cases where an ombudsman believes that a failure of communication is the basis for a question or complaint, the ombudsman can arrange a meeting of the parties and to facilitate a mutually acceptable resolution.

Where a written ethics complaint in the appropriate form is received, it can be initially referred to the ombudsman who will attempt to resolve the matter, except that complaints alleging violations of the public trust (as defined in Article IV, Section 2 of the NAR Bylaws) may not be referred to an ombudsman.

In the event the ombudsman concludes that a potential violation of the public trust may have occurred, the ombudsman process shall be immediately terminated, and the parties shall be advised of this right to pursue a formal ethics complaint; to pursue a complaint with any appropriate governmental or regulatory body; to pursue litigation; or to pursue any other available remedy.

**Right to decline ombudsman services**

Persons filing complaints, or inquiring about the process for filing ethics complaints, will be advised that ombudsman services are available to attempt to informally resolve their complaint. Such persons will also be advised that they may decline ombudsman services and can have their complaint referred to ethics mediation (if available), or considered at a formal ethics hearing.

**Resolution of complaints**

If a matter complained of is resolved to the mutual satisfaction of all parties through the efforts of an ombudsman, the formal ethics complaint brought initially (if any) will be dismissed.

**Failure to comply with agreed upon resolution**

Failure or refusal of a member to comply with the terms of a mutually agreed on resolution shall entitle the complaining party to resubmit the original complaint or, where a formal complaint in the appropriate form had not been filed, to file an ethics complaint. The time the matter was originally brought to the board or association's attention will be considered the filing date for purposes of determining whether an ethics complaint is timely filed.

**Referrals to the Grievance Committee or to state regulatory bodies**

Ombudsmen cannot refer concerns they have regarding the conduct of any party utilizing their services to the Grievance Committee, to the state real estate licensing authority, or to any other regulatory body. The prohibition is intended to ensure impartiality and avoid the possible appearance of bias. Ombudsmen are, however, authorized to refer concerns that the public trust may have been violated to the Grievance Committee.

## **ETHICS COMPLAINT GUIDANCE**

The following guide, published by NAR and entitled "Before You File an Ethics Complaint," may be just the help you need when a member of the public calls to express their dissatisfaction with one of your Members. The guide walks consumers through the complaint process and explains to them what to expect once a complaint is filed. It stresses the gravity of the situation and the requirement for the complainant to articulate exactly what was done wrong and what ethics section was violated. Giving this information to a potential complainant may stem some of the vague "I am unhappy" complaints that are filed, making it easier for you, your staff and the parties involved. If you wish to have copies on hand for distribution, the guide, approved by the NAR Professional Standards Committee, is the next document in this Manual.

## BEFORE YOU FILE AN ETHICS COMPLAINT

### Background

Boards and associations of REALTORS® are responsible for enforcing the REALTORS® Code of Ethics. The Code of Ethics imposes duties above and in addition to those imposed by law or regulation which apply only to real estate professionals who choose to become REALTORS®.

Many difficulties between real estate professionals (whether REALTORS® or not) result from misunderstanding, miscommunication, or lack of adequate communication. If you have a problem with a real estate professional, you may want to speak with them or with a principal broker in the firm. Open, constructive discussion often resolves questions or differences, eliminating the need for further action.

If, after discussing matters with your real estate professional or a principal broker in that firm, you are still not satisfied, you may want to contact the local board or association of REALTORS®. Many boards and associations have informal dispute resolving processes available to consumers (e.g. ombudsmen, mediation, etc.).

If, after taking these steps, you still feel you have a grievance, you may want to consider filing an ethics complaint. You will want to keep in mind that...

- Only REALTORS® and REALTOR-ASSOCIATE®s are subject to the Code of Ethics of the National Association of REALTORS®.
- If the real estate professional (or their broker) you are dealing with is not a REALTOR®, your only recourse may be the state real state licensing authority or the courts.
- Boards and associations of REALTORS® determine whether the Code of Ethics has been violated, not whether the law or real estate regulations have been broken. Those decisions can only be made by the licensing authorities or the courts.
- Boards of REALTORS® can discipline REALTORS® for violating the Code of Ethics. Typical forms of discipline include attendance at courses and seminars designed to increase REALTORS®' understanding of the ethical duties or other responsibilities of real estate professionals. REALTORS® may also be reprimanded, fined, or their membership can be suspended or terminated for serious or repeated violations. Boards and associations of REALTORS® cannot require REALTORS® to pay money to parties filing ethics complaints; cannot award "punitive damages" for violations of the Code of Ethics; and cannot suspend or revoke a real estate professional's license.
- The primary emphasis of discipline for ethical lapses is educational, to create a heightened awareness of and appreciation for the duties the Code imposes. At the same time, more severe forms of discipline, including fines and suspension and termination of membership may be imposed for serious or repeated violations.

### Filing An Ethics Complaint

The local board or association of REALTORS® can provide you with information on the procedures for filing an ethics complaint. Here are some general principles to keep in mind.

- Ethics complaints must be filed with the local board or association of REALTORS® within one hundred eighty (180) days from the time a complainant knew (or reasonably should have known) that potentially unethical conduct took place.
- The REALTORS® Code of Ethics consists of seventeen (17) Articles. The duties imposed by many of the Articles are explained and illustrated through accompanying Standards of Practice or case interpretations.

- Your complaint should include a narrative description of the circumstances that lead you to believe the Code of Ethics may have been violated.
- Your complaint must cite one or more of the Articles of the Code of Ethics which may have been violated. Hearing panels decide whether the Articles expressly cited in complaints were violated - not whether Standards of Practice or case interpretations were violated.
- The local board or association of REALTORS®' Grievance Committee may provide technical assistance in preparing a complaint in proper form and with proper content.

### **Before the Hearing**

- Your complaint will be reviewed by the local board or association's Grievance Committee. Their job is to review complaints to determine if the allegations made, if taken as true, might support a violation of the Article(s) cited in the complaint.
- If the Grievance Committee dismisses your complaint, it does not mean they don't believe you. Rather, it means that they do not feel that your allegations would support a hearing panel's conclusion that the Article(s) cited in your complaint had been violated. You may want to review your complaint to see if you cited an Article appropriate to your allegations.
- If the Grievance Committee forwards your complaint for hearing, that does not mean they have decided the Code of Ethics has been violated. Rather, it means they feel that if what you allege in your complaint is found to have occurred by the hearing panel, that panel may have reason to find that a violation of the Code of Ethics occurred.
- If your complaint is dismissed as not requiring a hearing, you can appeal that dismissal to the board of directors of the local board or association of REALTORS®.

### **Preparing for the Hearing**

- Familiarize yourself with the hearing procedures that will be followed. In particular, you will want to know about challenging potential panel members, your right to counsel, calling witnesses, and the burdens and standards of proof that apply.
- Complainants have the ultimate responsibility ("burden") of proving that the Code of Ethics has been violated. The standard of proof that must be met is "clear, strong and convincing," defined as, ". . . that measure or degree of proof which will produce a firm belief or conviction as to the allegations sought to be established." Consistent with American jurisprudence, respondents are considered innocent unless proven to have violated the Code of Ethics.
- Be sure that your witnesses and counsel will be available on the day of the hearing. Continuances are a privilege - not a right.
- Be sure you have all the documents and other evidence you need to present your case.
- Organize your presentation in advance. Know what you are going to say and be prepared to demonstrate what happened **and how you believe the Code of Ethics was violated.**

### **At the Hearing**

- Appreciate that panel members are unpaid volunteers giving their time as an act of public service. Their objective is to be fair, unbiased, and impartial; to determine, based on the evidence and testimony presented to them, what actually occurred; and then to determine whether the facts as they find them support a finding that the Article(s) charged have been violated.
- Hearing panels cannot conclude that an Article of the Code has been violated unless that Article(s) is specifically cited in the complaint.

- Keep your presentation concise, factual, and to the point. Your task is to demonstrate what happened (or what should have happened but didn't), and how the facts support a violation of the Article(s) charged in the complaint.
- Hearing panels base their decisions on the evidence and testimony presented during the hearing. If you have information relevant to the issue(s) under consideration, be sure to bring it up during your presentation.
- Recognize that different people can witness the same event and have differing recollections about what they saw. The fact that a respondent or their witness recalls things differently doesn't mean they aren't telling the truth as they recall events. It is up to the hearing panel, in the findings of fact that will be part of their decision, to determine what actually happened.
- The hearing panel will pay careful attention to what you say and how you say it. An implausible account doesn't become more believable through repetition or, through volume.
- You are involved in an adversarial process that is, to some degree, unavoidably confrontational. Many violations of the Code of Ethics result from misunderstanding or lack of awareness of ethical duties by otherwise well-meaning, responsible real estate professionals. An ethics complaint has potential to be viewed as an attack on a respondent's integrity and professionalism. For the enforcement process to function properly, it is imperative for all parties, witnesses, and panel members to maintain appropriate decorum.

### **After the Hearing**

- When you receive the hearing panel's decision, review it carefully.
- Findings of fact are the conclusions of impartial panel members based on their reasoned assessment of all of the evidence and testimony presented during the hearing. Findings of fact are not appealable.
- If you believe the hearing process was seriously flawed to the extent you were denied a full and fair hearing, there are appellate procedures that can be involved. The fact that a hearing panel found no violation is not appealable.
- Refer to the procedures used by the local board or association of REALTORS® for detailed information on the bases and time limits for appealing decisions. Appeals brought by ethics respondents must be based on (a) a perceived misapplication or misinterpretation of one or more Articles of the Code of Ethics, (b) a procedural deficiency or failure of due process, or (c) the nature or gravity of the discipline proposed by the hearing panel. Appeals brought by ethics complainants are limited to procedural deficiencies or failures of due process that may have prevented a full and fair hearing.

### **Conclusion**

- Many ethics complaints result from misunderstanding or a failure in communication. Before filing an ethics complaint, make reasonable efforts to communicate with your real estate professional or a principal broker in the firm. If these efforts are not fruitful, the local board or association of REALTORS® can give you the procedures and forms necessary to file an ethics complaint.



## **APPENDIX B - ARBITRATION**

**ADMINISTRATIVE PROCESSING OVERVIEW  
ARBITRATION COMPLAINT**

Case No. \_\_\_\_\_,

|                     |     |                    |
|---------------------|-----|--------------------|
|                     | VS. |                    |
| <b>Complainants</b> |     | <b>Respondents</b> |

This checklist is intended for use in conjunction with processing an arbitration complaint under the rules and procedures of the *California Code of Ethics and Arbitration Manual*. “References” are taken from the *CA Code of Ethics and Arbitration Manual (Manual)* and the *Implementation Guidelines – Arbitration (Guidelines)*. This checklist may be reproduced and used to help process arbitration complaints.

**Notes:**

**The preferred method for serving notices in the arbitration procedure is email, as set forth in Section 48 of the Manual.**

**Complainant Party includes all named complainants, their legal counsel, if any, and the broker’s representative, if any.**

**Respondent Party includes all named respondents, their legal counsel, if any, and the broker’s representative, if any.**

| <b>REFERENCES</b>  | <b>ACTION</b>  |
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| <ul style="list-style-type: none"> <li>• C.1 <i>Guidelines</i> – Initiating an Arbitration</li> <li>• 43(a)(b) <i>Manual</i> – MLS Participant’s and Subscriber’s duty and Privilege to Arbitrate</li> <li>• A.3 <i>Guidelines</i> – MLS Participant’s or Subscriber’s Arbitration Agreement</li> <li>• A.4 <i>Guidelines</i> – Disputes Arising Out of the Real Estate Business</li> <li>• A.5 <i>Guidelines</i> – Disputes with the Public and Clients</li> <li>• 45 (a)(b) <i>Manual</i> – Duty to Arbitrate Before C.A.R.</li> </ul> | <p><b>Request for Arbitration Complaint</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Provide the Complainant with the <b>Arbitration Packet</b>, which includes:               <ol style="list-style-type: none"> <li>1. Instructions on filing an arbitration complaint;</li> <li>2. Form A-1 <i>Arbitration Complaint</i>, or, if the Complainant is a non-member, Form PA-1 <i>Arbitration Complaint – Member of the Public</i>;</li> <li>3. Form M-1 <i>Request for Mediation</i>;</li> <li>4. Copy of the current <i>CA Code of Ethics &amp; Arbitration Manual</i>;</li> <li>5. Copy of the Procuring Cause Guidelines (for commission disputes between real estate licensees).</li> </ol> </li> <li><input type="checkbox"/> See Appendix C for a sample form letter to send along with the <b>Arbitration Complaint Packet</b>.</li> <li>• <b>Note:</b> If the Complainant Broker and Respondent Broker share no primary or secondary boards in common, refer the Complainant to the California Association of REALTORS® for information about Interboard Arbitration.</li> </ul> |
| <ul style="list-style-type: none"> <li>• 56(b) <i>Manual</i> – Timing of Filing</li> <li>• A.6 <i>Guidelines</i> – Timing of Dispute</li> <li>• C.5 <i>Guidelines</i> – Time Limit for Filing</li> </ul>   | <p><b>Receipt of Complaint Date</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> _____ (Date Filed)</li> </ul>  |

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|  | <input type="checkbox"/> Date-stamp the complaint with its postmark date or, if no postmark date is given/applicable, with the date of receipt and record above.   |
| <ul style="list-style-type: none"> <li>• 56(d) <i>Manual</i> – Preliminary Review</li> <li>• 57 <i>Manual</i> – Responsible Broker as Complainant</li> <li>• 44(a) – (e) <i>Manual</i> – Association’s Right to Decline Arbitration</li> <li>• B.2 <i>Guidelines</i> – Association’s Right to Decline Arbitration</li> <li>• C.1 <i>Guidelines</i> – Initiating an Arbitration</li> <li>• 43(a)(b) <i>Manual</i> – MLS Participant’s and Subscriber’s duty and Privilege to Arbitrate</li> <li>• A.3 <i>Guidelines</i> – MLS Participant’s or Subscriber’s Arbitration Agreement</li> <li>• A.4 <i>Guidelines</i> – Disputes Arising Out of the Real Estate Business</li> <li>• A.5 <i>Guidelines</i> – Disputes with the Public and Clients</li> <li>• 45 (a)(b) <i>Manual</i> – Duty to Arbitrate Before C.A.R.</li> </ul> | <p><b>Preliminary Review of Complaint</b></p> <input type="checkbox"/> Conduct a preliminary review of the arbitration complaint to determine if it has been properly and timely filed. The preliminary review should only consider such procedural questions as: <ol style="list-style-type: none"> <li>1. Were all named Respondents active REALTOR® members or MLS participants at the time the facts and circumstances giving rise to the dispute occurred?;</li> <li>2. Was the complaint filed within 180 calendar days from close of escrow or from the time the facts giving rise to the dispute could have been known in the exercise of reasonable diligence?;</li> <li>3. Did the Complainant Party submit the proper forms?;</li> <li>4. Did the Complainant Party submit the requisite filing fee?;</li> <li>5. Has the complaint been filed at the correct Association?;</li> <li>6. Does the complaint concern a monetary dispute arising out of real estate-licensed activities?</li> </ol> <input type="checkbox"/> If the complaint is improperly filed, the Complainant Party should be contacted and instructed to correct any deficiencies.<br><input type="checkbox"/> If there is a factual dispute as to whether the complaint has been timely filed, the complaint should be forwarded. The Parties can raise the issue of timing at the hearing for the Hearing Panel to decide.<br><input type="checkbox"/> Create a case number and file for this complaint.<br><input type="checkbox"/> <b>ETHICS CHECK:</b> Create a case file for this complaint in Ethics Check and upload Form A-1/PA-1 and Exhibit 1 <i>Statement of Facts</i> . |
|  | <p><b>Acknowledgement of Receipt of Complaint to Complainant Party</b></p> <input type="checkbox"/> If no corrections need to be made to the complaint, send notice to the Complainant Party that their complaint has been received and is considered filed.   |
| <ul style="list-style-type: none"> <li>• 56(g) <i>Manual</i> – Arbitrator Disclosure Statements; Documents Sent to the Parties</li> </ul>  | <p><b>Receipt of Complaint to Respondent Party &amp; Arbitrators to Complainant Party</b></p> <input type="checkbox"/> Send Respondent Party the <b>Receipt of Complaint Packet</b> , which includes: <ol style="list-style-type: none"> <li>1. Form A-2 <i>Notice to Respondent</i>;</li> <li>2. Copy of Complaint;</li> <li>3. Form A-3 <i>Arbitration Response</i>;</li> <li>4. Form M-1 <i>Request for Mediation</i> (if Complainant Party has agreed to mediation);</li> <li>5. Copy of the current <i>CA Code of Ethics &amp; Arbitration Manual</i>;</li> <li>6. Copy of the Procuring Cause Guidelines.</li> </ol>   |
| <ul style="list-style-type: none"> <li>• 56(h) <i>Manual</i> – Response not Required; Late Filing</li> <li>• 56(i) <i>Manual</i> – Notice of Response</li> <li>• C.11 <i>Guidelines</i> – Exchange of Evidence Prior to Hearing</li> </ul>   | <p><b>Receipt of Response</b></p> <input type="checkbox"/> Response is due within <b>15 calendar days</b> of the date the Notice to Respondent is sent. See Appendix C for sample form letters.<br><input type="checkbox"/> No more than <b>five calendar days</b> after the response is received, forward a copy of the response to the Complainant Party and copy the Respondent Party on that correspondence to acknowledge receipt.<br><ul style="list-style-type: none"> <li>• <b>Note:</b> The Respondent Party is not required to submit a response. However, to ensure the due process rights of the</li> </ul>  |

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|   | <p>Respondents, any response submitted should be accepted, regardless of the timing of submission, and forwarded to the Complainant Party and Hearing Panel. Similarly, the Complainant Party is entitled to review and respond to the response; therefore, a possible consequence of receipt of a late response may be rescheduling a hearing if the Complainant Party requests a continuance to review the response.</p> <p><input type="checkbox"/> <b>ETHICS CHECK:</b> Upload Form A-3 and Exhibit 1 <i>Statement of Facts</i> onto Ethics Check.</p>  |
| <ul style="list-style-type: none"> <li>• 55(a) – (c) <i>Manual</i> – Qualification for Panel</li> <li>• 56(f) <i>Manual</i> – Selecting the Proposed Arbitrators</li> <li>• 56(g) <i>Manual</i> – Arbitrator Disclosure Statements; Documents sent to the Parties</li> </ul>  | <p><b>A-21 Arbitrator Disclosure Statement</b></p> <p><input type="checkbox"/> After the response has been received, or after the deadline to submit the response has passed, send Form A-21 <i>Arbitrator Disclosure Statement</i> to each member of your Professional Standards Committee who is not automatically disqualified and, if possible, has not served within the past five years as a mediator, arbitrator or review panel member on a case involving any of the named Parties or their Legal Counsel.</p> <p><input type="checkbox"/> Form A-21 must be completed and returned to the Association no more than ten calendar days after it has been sent.</p> <p><input type="checkbox"/> Once the A-21 forms have been received, send the following to both parties:</p> <ol style="list-style-type: none"> <li>1. List of names of potential arbitrators and all completed A-21 forms</li> <li>2. Form A-4 <i>Availability for Hearing</i>;</li> <li>3. Form A-5 <i>Notice of Right to Challenge Panel Member and Reasons for Challenge</i></li> </ol> |
| <ul style="list-style-type: none"> <li>• C.9 <i>Guidelines</i> – Qualification for Panel</li> <li>• C.10 <i>Guidelines</i> – Selecting the Hearing Panel</li> <li>• 56(j) <i>Manual</i> – Selecting the Hearing Panel</li> <li>• 56(k) <i>Manual</i> – Composition of the Hearing Panel</li> <li>• 56(l) <i>Manual</i> – Presiding Officer</li> <li>• 56(m) <i>Manual</i> – Alternate Panel Member</li> <li>• 56(o) <i>Manual</i> – Waiver of Objection to Panel Member; Appointing Replacement to Challenged Panel Member</li> </ul> | <p><b>Schedule Hearing</b></p> <p><input type="checkbox"/> After the timeframe for the parties to submit their challenges to proposed arbitrators and availability for hearing has expired, select (or have your Professional Standards Committee Chairperson select) your Presiding Officer and Arbitrators from the final list of proposed arbitrators and schedule the hearing date and time based on the availability of the parties and panel.</p> <ul style="list-style-type: none"> <li>• <b>Note:</b> A party’s right to disqualify a proposed neutral arbitrator is waived if the party fails to deliver timely Form A-5.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• 56(n) <i>Manual</i> – Notice of Date, Time and Place of Hearing</li> <li>• 63 <i>Manual</i> – Continuances</li> <li>• 64 <i>Manual</i> – Continuance Fees</li> <li>• C.7 <i>Guidelines</i> – Continuances and Continuance Fees</li> <li>• D.7 <i>Guidelines</i> – Due Process Required</li> </ul>  | <p><b>Official Notice of Hearing</b></p> <p><input type="checkbox"/> Once the hearing date, time and panel have been secured, send the parties the <b>Official Notice of Hearing Packet</b>, which includes:</p> <ol style="list-style-type: none"> <li>1. Form A-6 <i>Official Notice of Hearing</i>;</li> <li>2. Form A-8 <i>Outline of Procedure for Hearing</i>;</li> <li>3. Form A-10 <i>Requested Arbitration Costs</i>.</li> <li>4. Form A-30 <i>Notice of Additional Attendees</i></li> </ol> <p><input type="checkbox"/> <b>Note:</b> Notice of Hearing must be given <b>at least 21 calendar days in advance</b>.</p> <p><input type="checkbox"/> Once the Official Notice of Hearing is sent, Parties must submit a written request for continuance if they wish to reschedule.</p> <p><b>Hearing Deadlines:</b><br/>21 days notice → Notified of hearing date, time, location and panel members</p>   |

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|  | <p>15 days prior to hearing → Notification to all parties of legal counsel and/or remote testimony requests</p> <p>10 days → Notification of intent to utilize an interpreter and/or submit translated document</p> <p>1 day → Reminder of hearing</p>   |
| <ul style="list-style-type: none"> <li>• C.8 <i>Guidelines</i> – Amending the Complaint</li> <li>• 55(c) <i>Manual</i> – Discussion Prior to Hearing</li> </ul>  | <p><b>Materials to Panel</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Prepare a case file for each arbitrator, including the complaint, response, and any relevant correspondence between the Association and the parties.</li> <li><input type="checkbox"/> Prepare a case file for the presiding officer, including the complaint, response, relevant correspondence between the Association and the parties, and the following forms: <ol style="list-style-type: none"> <li>1. A-6 <i>Official Notice of Hearing</i>;</li> <li>2. A-7 <i>Certificate of Qualification</i>;</li> <li>3. A-8 <i>Outline of Procedures for Hearing</i>;</li> <li>4. A-9 <i>Acknowledgement of Receipt of Procedures</i>;</li> <li>5. A-10 <i>Requested Arbitration Costs</i>;</li> <li>6. A-11 <i>Other Action of Arbitrators</i>;</li> <li>7. A-12 <i>Award of Arbitrators</i>;</li> <li>8. A-20 <i>Release of Parties from Duty to Arbitrate</i>;</li> <li>9. Presiding Officer’s Statements.</li> </ol> </li> </ul> |
| <ul style="list-style-type: none"> <li>• 49(c) <i>Manual</i> – Names of Hearing Panel</li> <li>• 49(d) <i>Manual</i> – Timing of Notices for Hearing</li> <li>• 54(b) Notice of Intention to Have Representation</li> <li>• D.3 <i>Guidelines</i> – Right to Counsel</li> <li>• 61(a)(b) <i>Manual</i> - Witnesses</li> <li>• D.10 <i>Guidelines</i> – Witnesses</li> <li>• 62 <i>Manual</i> – Right to Demand Witness Lists</li> <li>• D.11 <i>Guidelines</i> – Right to Demand Witness List</li> <li>• 59 <i>Manual</i> – Duty to Give Evidence</li> <li>• D.4 <i>Guidelines</i> – Failure of Parties to Appear</li> <li>• 67(c) <i>Manual</i> – Notice of Interpreters and Translators</li> <li>• D.2 <i>Guidelines</i> – Interpreters and Translators</li> </ul> | <p><b>Important Pre-Hearing Deadlines</b></p> <p>At least:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> 21 days prior to hearing, Parties must be notified of the hearing date, time, location and panel members.</li> <li><input type="checkbox"/> 15 days prior to the hearing, Parties must notify all other Parties and Association staff of their intent to be represented by legal counsel, submit their demand for a witness list, and/or submit to staff their request for remote testimony.</li> <li><input type="checkbox"/> 10 days prior to the hearing, Parties must notify all other Parties and Association staff of their intent to utilize an interpreter and/or must submit any translated documents they intend to present at the hearing.</li> <li><input type="checkbox"/> 1 day prior to the hearing, staff should send a hearing reminder to the Parties and Panel, which includes a list of attendees and the date/time/location of the hearing.</li> </ul>                         |
| <ul style="list-style-type: none"> <li>• 65(d) <i>Manual</i> – Failure of Respondent</li> <li>• 65(e) <i>Manual</i> – Failure of Complainant to Appear</li> <li>• D.4 <i>Guidelines</i> – Failure of Parties to Appear</li> <li>• 55(h) <i>Manual</i> – Absent Panel Member</li> <li>• D.5 <i>Guidelines</i> – Conduct of the Panel Members</li> <li>• D.6 <i>Guidelines</i> – Conducting the Hearing</li> <li>• 66(a) – (c) <i>Manual</i> – Transcript/Right to Record</li> <li>• D.1 <i>Guidelines</i> – Transcript/Right to Record</li> <li>• 65(h) <i>Manual</i> – Encouraging Settlement</li> </ul>   | <p><b>Hearing</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Prepare hearing room – include case files, copy of current C.A.R. Manual, scratch paper.</li> <li><input type="checkbox"/> Prepare a waiting area for the Parties and their Witnesses (if any) and secure a location for any Witnesses to wait until they are allowed in the hearing room for their testimony.</li> <li><input type="checkbox"/> Set up recording device and remote testimony devices (if any).</li> <li><input type="checkbox"/> The Panel may recess the hearing as necessary and, on request of a Party or upon the Panel’s own motion, may postpone the hearing.</li> <li><input type="checkbox"/> The Parties are encouraged to settle their dispute between themselves at any time throughout the Arbitration process, including during the hearing. At the outset of the hearing, the Presiding Officer should remind the Parties of this policy.</li> </ul>  |

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| <ul style="list-style-type: none"> <li>• 65(c) <i>Manual</i> – Presentation of Evidence at the Hearing</li> <li>• D.12 <i>Guidelines</i> – Presentation of Evidence</li> <li>• D.14 <i>Guidelines</i> – Deliberation and the Decision</li> </ul>  |  |
| <ul style="list-style-type: none"> <li>• 65(a) <i>Manual</i> – Certificate of Qualification; Acknowledgement of Outline of Procedure</li> <li>• 65(b) <i>Manual</i> – Conducting the Arbitration Hearing</li> <li>• 68(a) <i>Manual</i> – Prevailing Party’s Costs; Attorney’s Fees; Statement of Costs</li> <li>• 70(a) – (c) <i>Manual</i> – The Award</li> </ul> | <p><b>Hearing Documents</b><br/>The following forms should be completed and retained in the case file:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> A-7 <i>Certificate of Qualification</i>, to be signed by all Panel members prior to the start of the hearing.</li> <li><input type="checkbox"/> A-9 <i>Acknowledgement of Receipt of Outline of Procedure</i>, to be signed by all Parties prior to the start of the hearing.</li> <li><input type="checkbox"/> A-29 <i>Agreement for Hearing by Two Panelists</i>, to be signed by all Parties prior to the start of the hearing (only if applicable).</li> <li><input type="checkbox"/> A-10 <i>Requested Arbitration Costs</i>, to be submitted by the Parties to the Hearing Panel before the hearing, for the Panel to consider during deliberations.</li> <li><input type="checkbox"/> Either A-11 <i>Other Action of the Hearing Panel</i> or A-12 <i>Award of Arbitrators</i>, depending on whether or not the hearing panel issues an award.</li> </ul>  |
| <ul style="list-style-type: none"> <li>• 70(a) – (c) <i>Manual</i> – The Award</li> <li>• E.1 <i>Guidelines</i> – Distribution of the Award</li> <li>• 53(a) – (c) <i>Manual</i> – Confidentiality of Proceedings</li> <li>• B.5 <i>Guidelines</i> – Confidentiality of Proceedings</li> </ul>  | <p><b>Award of Arbitrators to Parties</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The Award of Arbitrators is binding on all parties. There is no findings of fact or explanation of how the Arbitrators came to their decision. <b>Panel members must not discuss their decision</b> with anyone outside of Association staff and/or Association legal counsel, as necessary.</li> <li><input type="checkbox"/> The Award must be in writing and provided to the Parties within five (5) days after the written Award is handed over to staff.</li> <li><input type="checkbox"/> The Award of Arbitrators Packet should include the following: <ul style="list-style-type: none"> <li>1. Cover Letter;</li> <li>2. A-11 <i>Other Action of the Hearing Panel</i> or A-12 <i>Award of Arbitrators</i>;</li> <li>3. Completed A-7 <i>Certificate of Qualification</i>;</li> <li>4. A-13 <i>Review and Enforcement of Arbitration Award</i>;</li> <li>5. A-14 <i>Request for Duplication of Recording</i>;</li> <li>6. A-15 <i>Request for Review</i>.</li> </ul> </li> <li><input type="checkbox"/> <b>ETHICS CHECK:</b> Upload Form A-12 <i>Award of Arbitrators</i> onto Ethics Check.</li> </ul> |
|   | <p><b>Request for Review</b> – please see Procedural Review Checklist</p>  |
| <ul style="list-style-type: none"> <li>• 70(b) <i>Manual</i> – When the Award is Final and Binding</li> </ul>   | <p><b>Award Final, File Closed</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Parties must file their Request for Review within twenty (20) days from the date the Award is transmitted to them. If no Request is filed, the Award is final and the file is closed.</li> <li><input type="checkbox"/> After the timeframe for filing a Request for Review has expired, provided no Request has been filed, send the parties the Award Final packet, which includes: <ul style="list-style-type: none"> <li>1. Cover letter;</li> <li>2. Copy of the <i>Award</i>;</li> <li>3. Copy of A-13 <i>Review and Enforcement of Arbitration Award</i>;</li> <li>4. A-24 <i>Request for “Show Cause” Hearing</i>.</li> </ul> </li> </ul>   |
| <ul style="list-style-type: none"> <li>•</li> </ul>   | <p><b>Request for “Show Cause” Hearing</b> – please see Show Cause Hearing Checklist</p>   |
| <ul style="list-style-type: none"> <li>• 66(c) <i>Manual</i> – Destruction of Transcript or Recording</li> <li>• E.5 <i>Guidelines</i> – Record Retention</li> </ul>  | <p><b>Record Retention</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Once the Award is final, the case file, including the Award and all documents and correspondence, should be retained</li> </ul>   |

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|  | <p>according to the Association's record retention policy. If the Association does not have a record retention policy, it is recommended that associations retain the case file for a period of five (5) years from the date the Award is final.</p> <ul style="list-style-type: none"><li><input type="checkbox"/> Any recordings or transcripts of the actual hearing should be destroyed as soon as the Award is final.</li></ul> |
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## ADMINISTRATIVE PROCESSING OVERVIEW

### MEDIATION

Case No. \_\_\_\_\_,

\_\_\_\_\_  
VS.  
\_\_\_\_\_

**Complainants** **Respondents**

**Notes:**

**The preferred method for serving notices in the arbitration procedure is email, as set forth in Section 48 of the *Manual*.**

**Complainant Party includes all named complainants, their legal counsel, if any, and the broker’s representative, if any.**

**Respondent Party includes all named respondents, their legal counsel, if any, and the broker’s representative, if any.**

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| <b>ACTION</b>   |
| <b>Parties Agree to Mediate</b><br><input type="checkbox"/> Once all Parties have submitted their M-1 <i>Request for Mediation</i> , send notice to all Parties that a Mediation Conference will be scheduled and include:<br><ol style="list-style-type: none"><li>1. <i>A-4 Availability for Hearing</i></li><li>2. List of Potential Mediators</li><li>3. <i>A-5 Notice of Right to Challenge and Reasons for Challenge</i></li></ol>  |
| <b>Schedule Mediation Conference</b><br><input type="checkbox"/> After the timeframe for the parties to submit their challenges to the proposed mediators and availability for hearing has expired, select (or have your Professional Standards Committee Chairperson select) your Mediator from the final list of proposed mediators and schedule the mediation date and time based on the availability of the parties and panel.<br><ul style="list-style-type: none"><li>• <b>Note:</b> A party’s right to disqualify a proposed neutral mediator is waived if the party fails to deliver timely Form A-5.</li></ul> |
| <b>Official Notice of Mediation Conference</b><br><input type="checkbox"/> Once the hearing date, time and panel have been secured, send the parties the <b>Official Notice of Mediation Packet</b> , which includes:<br><ol style="list-style-type: none"><li>1. <i>M-2 Official Notice of Mediation Conference</i>;</li><li>2. <i>M-3 Mediation Confidentiality Agreement</i>.</li></ol>  |
| <b>Materials to Mediator</b><br><input type="checkbox"/> Prepare a case file for the Mediator, including the complaint, response, relevant correspondence between the Association and the parties, and the following forms:<br><ol style="list-style-type: none"><li>1. <i>M-2 Notice of Mediation Conference</i>;</li><li>2. <i>M-3 Mediation Confidentiality Agreement</i>;</li><li>3. <i>M-4 Mediation Agreement and Stipulated Arbitration Award</i>;</li><li>4. <i>M-5 No Settlement at Mediation</i>.</li></ol>   |
| <b>Important Pre-Mediation Deadlines</b><br>At least:   |



- 21 days prior to the Mediation, Parties must be notified of the Mediation date, time, location and panel members.
- 15 days prior to the Mediation, Parties must notify all other Parties and Association staff of their intent to be represented by legal counsel.
- 10 days prior to the Mediation, Parties must notify all other Parties and Association staff of their intent to utilize an interpreter and/or must submit any translated documents they intend to present at the Mediation.
- 1 day prior to the Mediation, staff should send a hearing reminder to the Parties and Mediator, which includes a list of attendees and the date/time/location of the Mediation.

**Mediation**

- Prepare mediation room – include case files, copy of current C.A.R. Manual, scratch paper. If necessary, the Parties may stay in separate rooms during the Mediation, with the Mediator going between throughout.
- If necessary, prepare separate waiting areas for the Parties.
- The Mediation Settlement is entirely up to the Parties to decide. If all Parties do not agree to terms, a Settlement cannot be reached.

**Mediation Documents**

The following forms should be completed and retained in the case file:

- A-7 *Certificate of Qualification*, to be signed by the Mediator prior to the start of the Mediation;
- M-3 *Mediation Confidentiality Agreement*, to be signed by all Parties prior to the start of the Mediation;
- M-4 *Mediation Agreement and Stipulated Award*, if a Settlement Agreement is reached; or
- M-5 *No Settlement at Mediation*, if no Settlement Agreement is reached.

**Post Mediation**

- If no Settlement is reached at Mediation, send copies of the signed Mediation Documents to the Parties and forward the matter to an Arbitration Hearing.
- If a Settlement is reached, send copies of the signed Mediation Documents to the Parties and close the file.
- **Note:** A Mediation Settlement Agreement is final and binding. Parties may take the Agreement to court for enforcement.
- ETHICS CHECK:** Upload Form M-4 *Mediation Settlement Agreement* or M-5 *No Settlement at Mediation* onto Ethics Check.



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| <ul style="list-style-type: none"> <li>• 71(a) <i>Manual</i> – Filing the Request for Review</li> </ul>   | <p><b>Receipt of Request for Review Date</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> _____ (Date Filed)</li> <li><input type="checkbox"/> Date-stamp the Request with its postmark date or, if no postmark date is given/applicable, with the date of receipt and record above.</li> </ul>  |
| <ul style="list-style-type: none"> <li>• 71(f) <i>Manual</i> – Conducting the Review Hearing</li> <li>• 71(a) <i>Manual</i> – Filing the Request for Review</li> <li>• 71(b) <i>Manual</i> – Deposit</li> <li>• 71(c) <i>Manual</i> – Basis for Review</li> <li>• 71 (d) <i>Manual</i> – Permissible Evidence</li> <li>• 71(e) <i>Manual</i> – Preliminary Review</li> <li>• E.2 <i>Guidelines</i> – Procedural Review by the Board of Directors</li> <li>• D.7 <i>Guidelines</i> – Due Process Required</li> </ul> | <p><b>Preliminary Review of Request for Review</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Within ten days, conduct a preliminary review of the Request to determine if it has been properly and timely filed. The preliminary review should be limited to the following considerations: <ol style="list-style-type: none"> <li>1. Was the request submitted timely?;</li> <li>2. Does the request come with the proper paperwork?;</li> <li>3. Was the \$_____ deposit submitted?;</li> <li>4. Does the request cite and clearly indicate alleged <i>procedural deficiencies</i> and contain a reasonably detailed summary of the facts supporting the challenge?</li> </ol> </li> <li><input type="checkbox"/> If the Request does not meet the filing requirements, return the Request to the Requesting Party and give ten days to amend the request.</li> <li>• <b>Note:</b> Any preliminary review conducted by staff is not a decision on the merits of the Request and is only intended to make sure the basic filing requirements have been met. In the event of a dispute as to whether the Request states a proper basis for review, the Request should be processed and the Directors should rule on the disputed issue at the time of the hearing.</li> <li><input type="checkbox"/> If the Requesting Party has submitted form A-14 <i>Request for Duplication of Recording</i>, along with the \$_____ duplication fee, transmit the recording to the requesting party.</li> </ul> |
| <ul style="list-style-type: none"> <li>• 38(e) <i>Manual</i> – Notice of Request for Review</li> <li>• E.2 <i>Guidelines</i> – Procedural Review by the Board of Directors</li> <li>• 38(k) <i>Manual</i> – Automatic Disqualification; Certificate of Qualification</li> </ul>   | <p><b>Notice of Request for Review</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Send the <b>Notice of Review Packet</b> to the Parties and to the Original Presiding Officer, including: <ol style="list-style-type: none"> <li>1. Cover Letter;</li> <li>2. A-16 <i>Notice of Request for Review</i>;</li> <li>3. Copy of Request for Review;</li> <li>4. A-4 <i>Availability of the Parties</i>;</li> <li>5. List of Board of Directors;</li> <li>6. A-5 <i>Notice of Right to Challenge Panel Member &amp; Reasons for Challenge</i>;</li> <li>7. A-13 <i>Review and Enforcement of Arbitration Award</i>;</li> <li>8. A-14 <i>Request for Duplication of Recording</i>;</li> <li>9. A-17 <i>Reply to Request for Review</i>.</li> </ol> </li> <li>• <b>Note:</b> The Board of Directors do not need to complete Form A-21 <i>Arbitration Disclosure Statement</i> for the Review Hearing. Automatic Disqualifications should still be applied.</li> <li><input type="checkbox"/> <b>ETHICS CHECK:</b> Upload the entire Request for Review onto Ethics Check under the same file as the Arbitration – you do not need to create a new file in Ethics Check for the Review.</li> </ul>  |
| <ul style="list-style-type: none"> <li>• 38(f) <i>Manual</i> – Reply not Required; Late Filing</li> </ul>   | <p><b>Reply to Request for Review</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Reply is due within fifteen (15) days from transmittal of notice of receipt of review. The Non-Requesting Party does not have to submit a response or attend the review hearing, but is entitled to both.</li> <li><input type="checkbox"/> The Original Presiding Officer should not submit a written response, but should be provided with any and all</li> </ul>   |

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|  | documentation submitted by the parties and all relevant correspondence/documentation.  |
| <ul style="list-style-type: none"> <li>38(g) <i>Manual</i> – Notice of Reply</li> </ul>  | <p><b>Reply to Parties</b></p> <p><input type="checkbox"/> If a Reply is submitted, send the following to the parties and the Original Presiding Officer:</p> <ol style="list-style-type: none"> <li>Cover Letter;</li> <li>Copy of Reply.</li> </ol> <p><input type="checkbox"/> <b>ETHICS CHECK:</b> Upload Reply onto Ethics Check.</p>   |
| <ul style="list-style-type: none"> <li>38(h) <i>Manual</i> – Selecting the Review Panel</li> <li>38(i) <i>Manual</i> – Waiver of Objection to Director; Appointing Replacement to Challenged Director</li> <li>38(j) <i>Manual</i> – Composition of Panel</li> <li>38(k) <i>Manual</i> – Automatic Disqualification; Certificate of Qualification</li> <li>38(l) <i>Manual</i> – Presiding Officer</li> <li>38(o) <i>Manual</i> – Conducting the Review Hearing</li> </ul> | <p><b>Schedule Review Hearing</b></p> <p><input type="checkbox"/> After the timeframe for the Parties to submit their challenges and availability for hearing has expired, select (or have your Association President select) a panel from your Board of Directors to conduct the review.</p> <p><input type="checkbox"/> The Original Presiding Officer should be considered when applying automatic disqualifications to potential panel members.</p> <ul style="list-style-type: none"> <li><b>Note:</b> If the Original Presiding Officer is unable to attend the Review hearing, an arbitrator from the original Panel may attend instead.</li> </ul>   |
| <ul style="list-style-type: none"> <li>38(m) <i>Manual</i> – Notice of Time and Place of Review Hearing</li> </ul>   | <p><b>Official Notice of Review Hearing</b></p> <p><input type="checkbox"/> Once the hearing date, time and panel have been secured, send the Parties and the Original Presiding Officer the <b>Official Notice of Review Packet</b>, which includes:</p> <ol style="list-style-type: none"> <li>Cover Letter;</li> <li>Form A-18 <i>Notice of Review</i>;</li> <li>Form A-30 <i>Notice of Additional Attendees for Hearing</i>.</li> </ol> <ul style="list-style-type: none"> <li><b>Note:</b> that Notice of Review Hearing must be given <b>at least 21 calendar days in advance</b> of the review hearing.</li> </ul> <p><b>Hearing Deadlines:</b></p> <p>21 days notice → Notified of hearing date, time, location and panel members</p> <p>15 days prior to hearing → Notification to all parties of legal counsel and/or remote testimony requests</p> <p>10 days → Notification of intent to utilize an interpreter and/or submit translated document</p> <p>1 day → Reminder of review hearing</p>  |
| <ul style="list-style-type: none"> <li>71(g) <i>Manual</i> – Documents Provided to the Directors</li> </ul>  | <p><b>Materials to Review Panel</b></p> <p><input type="checkbox"/> Prepare a case file for each Panel member, including Form A-12 <i>Award of Arbitrators</i>, the Request, the Reply (if any) and any relevant documentation/correspondence;</p> <p><input type="checkbox"/> Prepare a case file for the Review Hearing Presiding Officer, including the Request, the Reply (if any), any relevant documentation/correspondence, and the following forms:</p> <ol style="list-style-type: none"> <li>A-18 <i>Notice of Review Hearing</i>;</li> <li>A-7 <i>Certificate of Qualification</i>;</li> <li>A-19 <i>Action of Directors</i>;</li> <li>Presiding Officer’s Statements (Arbitration Review Hearing);</li> <li>Copy of the current <i>CA Code of Ethics &amp; Arbitration Manual</i>.</li> </ol> <ul style="list-style-type: none"> <li><b>Note:</b> The Review Panel should not receive copies of the original complaint/response as they are only allowed to consider the procedural issues cited in the Request for Review.</li> </ul> |

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| <ul style="list-style-type: none"> <li>• 38(m) <i>Manual</i> – Notice of Time and Place of Review Hearing</li> <li>• 54(b) Notice of Intention to Have Representation</li> <li>• D.3 <i>Guidelines</i> – Right to Counsel</li> <li>• 59 <i>Manual</i> – Duty to Give Evidence (Remote Testimony)</li> <li>• D.4 <i>Guidelines</i> – Failure of Parties to Appear</li> <li>• 67(c) <i>Manual</i> – Notice of Interpreters and Translators</li> <li>• D.2 <i>Guidelines</i> – Interpreters and Translators</li> </ul> | <p><b>Important Pre-Review Deadlines</b></p> <p>At least:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> 21 days prior to review hearing, Parties must be notified of the date, time, location and panel members.</li> <li><input type="checkbox"/> 15 days prior to the review, Parties must notify all other parties and Association staff of their intent to be represented by legal counsel and/or submit to staff their request for remote testimony.</li> <li><input type="checkbox"/> 10 days prior to the review, Parties must notify all other Parties and Association staff of their intent to utilize an interpreter and/or must submit any translated documents they intend to present at the hearing.</li> <li><input type="checkbox"/> 1 day prior to the review, staff should send a reminder to the Parties, Original Presiding Officer and Panel, which includes a list of attendees and the date/time/location of the hearing.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• 38(q) <i>Manual</i> – Failure of Requesting Party to Appear at Hearing</li> <li>• 38(r) <i>Manual</i> – Failure of Party Not Requesting Review to Appear at Hearing</li> <li>• 71(i) <i>Manual</i> – Action of the Directors</li> <li>• E.2 <i>Guidelines</i> – Procedural Review by the Board of Directors</li> </ul>   | <p><b>Review Hearing</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Prepare hearing room – include case files, copy of current C.A.R. Manual, scratch paper.</li> <li><input type="checkbox"/> Prepare a waiting area for the parties and their witnesses (if any) and secure a location for any witnesses to wait until they are allowed in the hearing room for their testimony.</li> <li>• <b>Note:</b> Review hearings are never recorded. The original hearing recording should be destroyed after the review panel have issued their decision.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• 38(k) <i>Manual</i> – Automatic Disqualification; Certificate of Qualification</li> </ul>  | <p><b>Hearing Documents</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The following forms should be completed and retained in the case file: <ol style="list-style-type: none"> <li>1. A-7 <i>Certificate of Qualification</i>, to be signed by all panel members prior to the start of the hearing.</li> <li>2. A-19 <i>Action of Directors</i>.</li> </ol> </li> </ul>   |
| <ul style="list-style-type: none"> <li>• 71(j) <i>Manual</i> – Disposition of the Deposit</li> <li>• 71(k) <i>Manual</i> – Finality of Directors' Decision</li> </ul>   | <p><b>Action of Directors to Parties</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The Directors' decision must be in writing and provided to the Parties within five (5) days after the written award is handed over to staff.</li> <li><input type="checkbox"/> If the directors overturn the original Award, a new hearing should be scheduled, using none of the original panel members or review panel members who previously heard the case.</li> <li><input type="checkbox"/> If the directors uphold the original Award, the Award is considered final.</li> <li><input type="checkbox"/> The <b>Action of Directors Packet</b> should include the following: <ul style="list-style-type: none"> <li>• Cover Letter;</li> <li>• A-19 <i>Action of Directors</i>;<br/>[If Award is overturned]</li> <li>• List of Potential Panel Members (excluding those who have already participated in this case);</li> <li>• A-4 <i>Availability for Hearing</i> and A-5 <i>Notice of Right to Challenge Panel Member &amp; Reason for Challenge</i>;</li> <li>• Refund of Review Deposit (to Requesting Party Only);<br/>[If Award is upheld]</li> <li>• Copy of original A-12 <i>Award of Arbitrators</i>.</li> </ul> </li> <li>• <b>Note:</b> The decision of the directors at the review is final – there is no review process for their decision. There is no findings of fact or explanation of how the directors came to their decision.<br/><b>Panel members must not discuss their decision</b> with anyone</li> </ul> |

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|   | <p>outside of Association staff and/or Association legal counsel, as necessary.</p> <p><input type="checkbox"/> <b>ETHICS CHECK:</b> Upload Form A-19 <i>Action of Directors</i> onto Ethics Check.</p>  |
| <ul style="list-style-type: none"> <li>• E.5 <i>Guidelines</i> – Record Retention</li> <li>• 70(b) <i>Manual</i> – When the Award is Final and Binding</li> </ul> | <p><b>Record Retention</b></p> <p><input type="checkbox"/> Once the Award is final, the case file, including the Award and all documents and correspondence, should be retained according to the Association’s record retention policy. If the association does not have a record retention policy, it is recommended that associations retain the case file for a period of five (5) years from the date the award is final.</p> <p><input type="checkbox"/> Any recordings or transcripts of the actual hearing should be destroyed once the award is final.</p> |

**ADMINISTRATIVE PROCESSING OVERVIEW**  
**“SHOW CAUSE” HEARING**

Case No. \_\_\_\_\_,

\_\_\_\_\_  
 \_\_\_\_\_ VS. \_\_\_\_\_  
 \_\_\_\_\_  
**Complainants** **Respondents**

**Date of Original Hearing:** \_\_\_\_\_

This checklist is intended for use in conjunction with processing an arbitration complaint under the rules and procedures of the *California Code of Ethics and Arbitration Manual*. “References” are taken from the *CA Code of Ethics and Arbitration Manual (Manual)* and the *Implementation Guidelines – Arbitration (Guidelines)*. This checklist may be reproduced and used to help process arbitration complaints.

**Notes:**

**The preferred method for serving notices is email, as set forth in Section 48 of the *Manual*.**

**The Prevailing Party is the Party to whom the Award is due, and correspondence should include all those named, their legal counsel, if any, and the broker’s representative, if any.**

**The Non-Prevailing Party is the Party who owes the Award, and correspondence should include all those named, their legal counsel, if any, and the broker’s representative, if any.**

| REFERENCE  | ACTION  |
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| <ul style="list-style-type: none"> <li>• 72(b) <i>Manual</i> – “Show Cause” Hearing</li> <li>• E.4 <i>Guidelines</i> – Enforcement of the Arbitration Award</li> </ul> | <p><b>Request to File Request for “Show Cause” Hearing</b></p> <p><input type="checkbox"/> Request for “Show Cause” Hearing (Form A-24) can be filed if the Non-Prevailing Party has failed to pay the Award within 15 days after the deadline set forth in the Award of Arbitrators.</p> <ul style="list-style-type: none"> <li>• <b>Note:</b> The procedures for the “Show Cause” hearing will be the same as those used for a review hearing to the extent they are applicable to the sole issue of financial ability to pay the Award.</li> </ul>   |
|  | <p><b>Receipt of Request for “Show Cause” Hearing</b></p> <p><input type="checkbox"/> _____ (Date Filed)</p> <p><input type="checkbox"/> Date-stamp the request with its postmark date or, if no postmark date is given/applicable, with the date of receipt and record above.</p>  |
| <ul style="list-style-type: none"> <li>• 71(e) <i>Manual</i> – Preliminary Review</li> </ul>   | <p><b>Preliminary Review of Request for “Show Cause” Hearing</b></p> <p><input type="checkbox"/> Within ten days, conduct a preliminary review of the Request to determine if it has been properly and timely filed. The preliminary review should be limited to the following considerations:</p> <ol style="list-style-type: none"> <li>1. Does the request come with the proper paperwork?;</li> <li>2. Is the prevailing party requesting the “show cause” hearing because the non-prevailing party has not timely paid the Award?;</li> <li>3. Is the Award set to be confirmed through the courts?</li> </ol> |

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|  | <ul style="list-style-type: none"> <li><input type="checkbox"/> If the Request does not meet the filing requirements, return the request to the Prevailing Party and give ten days to amend the Request.</li> <li>• <b>Note:</b> Any preliminary review conducted by staff is not a decision on the merits of the Request and is only intended to make sure the basic filing requirements have been met. In the event of a dispute as to whether the Request states a proper basis for a “Show Cause” hearing, the request should be processed and the Directors should rule on the disputed issue at the time of the hearing.</li> <li><input type="checkbox"/> <b>ETHICS CHECK:</b> Upload the entire Request for “Show Cause” Hearing onto Ethics Check under the same file as the Arbitration – you do not need to create a new file in Ethics Check for the Request.</li> </ul> |
| <ul style="list-style-type: none"> <li>• 38(e) <i>Manual</i> – Notice of Request for Review</li> <li>• 38(k) <i>Manual</i> – Automatic Disqualification; Certificate of Qualification</li> </ul>   | <p><b>Notice of Request for “Show Cause” Hearing</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Send the <b>Receipt of Request for “Show Cause” Hearing Packet</b> to the Parties, including: <ol style="list-style-type: none"> <li>1. Cover Letter;</li> <li>2. A-25 <i>Notice of Request for “Show Cause” Hearing</i>;</li> <li>3. Copy of Request for “Show Cause” Hearing;</li> <li>4. A-4 <i>Availability of the Parties</i>;</li> <li>5. List of Board of Directors;</li> <li>6. A-5 <i>Notice of Right to Challenge Panel Member &amp; Reasons for Challenge</i>;</li> <li>7. A-13 <i>Review and Enforcement of Arbitration Award</i>;</li> <li>8. A-26 <i>Reply to Request for “Show Cause”</i>.</li> </ol> </li> </ul>  |
| <ul style="list-style-type: none"> <li>• 38(f) <i>Manual</i> – Reply not Required; Late Filing</li> </ul>  | <p><b>Reply to Request for “Show Cause”</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Reply is due within fifteen (15) days from transmittal of Notice of Receipt. The Non-Prevailing party does not have to submit a Reply or attend the “Show Cause” hearing, but is entitled to both.</li> </ul>  |
| <ul style="list-style-type: none"> <li>• 38(f) <i>Manual</i> – Reply not Required; Late Filing</li> </ul>  | <p><b>Reply to Parties</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> If a reply is submitted, send the following to the parties: <ol style="list-style-type: none"> <li>1. Cover Letter;</li> <li>2. Copy of Reply.</li> </ol> </li> <li><input type="checkbox"/> <b>ETHICS CHECK:</b> Upload Reply onto Ethics Check.</li> </ul>  |
| <ul style="list-style-type: none"> <li>• 38(h) <i>Manual</i> – Selecting the Review Panel</li> <li>• 38(i) <i>Manual</i> – Waiver of Objection to Director; Appointing Replacement to Challenged Director</li> <li>• 38(j) <i>Manual</i> – Composition of Panel</li> <li>• 38(k) <i>Manual</i> – Automatic Disqualification; Certificate of Qualification</li> <li>• 38(l) <i>Manual</i> – Presiding Officer</li> <li>• 72(c) <i>Manual</i> – Conducting the “Show Cause” Hearing</li> </ul> | <p><b>Schedule “Show Cause” Hearing</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> After the timeframe for the Parties to submit their challenges and availability for hearing has expired, select (or have your Association President select) a panel from your Board of Directors to conduct the “Show Cause” hearing.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• 38(m) <i>Manual</i> – Notice of Time and Place of Review Hearing</li> </ul>   | <p><b>Official Notice of “Show Cause” Hearing</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Once the hearing date, time and panel have been secured, send the parties the <b>Official Notice of Hearing Packet</b>, which includes: <ol style="list-style-type: none"> <li>1. Cover Letter;</li> <li>2. Form A-27 <i>Notice of “Show Cause”</i>;</li> <li>3. Form A-30 <i>Notice of Additional Attendees for Hearing</i>.</li> </ol> </li> </ul>   |



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|  | <ul style="list-style-type: none"> <li>• <b>Note:</b> Notice of “Show Cause” Hearing must be given at least 21 calendar days in advance of the hearing.</li> </ul>  |
| <ul style="list-style-type: none"> <li>• 71(g) <i>Manual</i> – Documents Provided to the Directors</li> </ul>  | <p><b>Materials to Panel</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Prepare a case file for each panel member, including Form A-12 <i>Award of Arbitrators</i>, the Request and the Reply (if any);</li> <li><input type="checkbox"/> Prepare a case file for the Review Hearing Presiding Officer, including the Request, the Reply (if any), any relevant documentation/correspondence, and the following forms: <ol style="list-style-type: none"> <li>1. A-25 <i>Notice of “Show Cause” Hearing</i>;</li> <li>2. A-7 <i>Certificate of Qualification</i>;</li> <li>3. A-28 <i>Action Upon “Show Cause” Hearing</i>;</li> <li>4. <i>Ability to Pay Checklist</i>;</li> <li>5. Copy of the 2017 <i>CA Code of Ethics &amp; Arbitration Manual</i>.</li> </ol> </li> </ul> <ul style="list-style-type: none"> <li>• <b>Note:</b> The review panel should not receive copies of the original complaint/response as they are only allowed to consider the issues cited in the prevailing party’s request and non-prevailing party’s reply.</li> </ul> |
| <ul style="list-style-type: none"> <li>• 49(c) <i>Manual</i> – Names of Hearing Panel</li> <li>• 49(d) <i>Manual</i> – Timing of Notices for Hearing</li> <li>• 54(b) Notice of Intention to Have Representation</li> <li>• D.3 <i>Guidelines</i> – Right to Counsel</li> <li>• 61(a)(b) <i>Manual</i> - Witnesses</li> <li>• D.10 <i>Guidelines</i> – Witnesses</li> <li>• 62 <i>Manual</i> – Right to Demand Witness Lists</li> <li>• D.11 <i>Guidelines</i> – Right to Demand Witness List</li> <li>• 59 <i>Manual</i> – Duty to Give Evidence</li> <li>• D.4 <i>Guidelines</i> – Failure of Parties to Appear</li> <li>• 67(c) <i>Manual</i> – Notice of Interpreters and Translators</li> <li>• D.2 <i>Guidelines</i> – Interpreters and Translators</li> </ul> | <p><b>Important Pre-“Show Cause” Hearing Deadlines</b></p> <p>At least:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> 21 days prior to hearing, Parties must be notified of the date, time, location and panel members.</li> <li><input type="checkbox"/> 15 days prior to the hearing, Parties must notify all other Parties and Association staff of their intent to be represented by legal counsel, submit their demand for a witness list, and/or submit to staff their request for remote testimony.</li> <li><input type="checkbox"/> 10 days prior to the hearing, Parties must notify all other Parties and Association staff of their intent to utilize an interpreter and/or must submit any translated documents they intend to present at the hearing.</li> <li><input type="checkbox"/> 1 day prior to the hearing, staff should send a reminder to the Parties and Panel, which includes a list of attendees and the date/time/location of the hearing.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• 38(q) <i>Manual</i> – Failure of Requesting Party to Appear at Hearing</li> <li>• 38(r) <i>Manual</i> – Failure of Party Not Requesting Review to Appear at Hearing</li> <li>• 72(c) <i>Manual</i> – Conducting the “Show Cause” Hearing</li> </ul>   | <p><b>“Show Cause” Hearing</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Prepare hearing room – include case files, copy of current C.A.R. Manual, scratch paper.</li> <li><input type="checkbox"/> Prepare a waiting area for the parties and their witnesses (if any) and secure a location for any witnesses to wait until they are allowed in the hearing room for their testimony.</li> </ul> <ul style="list-style-type: none"> <li>• <b>Note:</b> “Show Cause” hearings are never recorded.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• 38(k) <i>Manual</i> – Automatic Disqualification; Certificate of Qualification</li> </ul>   | <p><b>Hearing Documents</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The following forms should be completed and retained in the case file: <ol style="list-style-type: none"> <li>1. A-7 <i>Certificate of Qualification</i>, to be signed by all panel members prior to the start of the hearing;</li> <li>2. A-28 <i>Action Upon “Show Cause” Hearing</i>.</li> </ol> </li> </ul>   |
| <ul style="list-style-type: none"> <li>• 72(d) <i>Manual</i> – Action of the Directors after “Show Cause” Hearing</li> <li>• E.4 <i>Guidelines</i> – Enforcement of the Arbitration Award</li> </ul>   | <p><b>Decision of Directors in “Show Cause” Hearing</b></p> <p>The Directors sitting on a “Show Cause” Hearing Panel can take one of three decisions:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> <b>Take no action:</b> If the Directors take no action, payment will be due as detailed on the Award;</li> <li><input type="checkbox"/> <b>Impose suspension:</b> If the Directors impose suspension, check to make sure they have named each individual member whose</li> </ul>  |

|  |  |
|--|--|
|  | <p>membership they are suspending and whether they are suspending Association membership, MLS membership or both;</p> <p><input type="checkbox"/> <b>Impose a payment plan:</b> If the Directors impose a payment plan, check to make sure they have named the Non-Prevailing Party exactly as captioned on the Award and that they are as specific as possible about when each payment is due.</p>  |
|  | <p><b>Action Upon “Show Cause” Hearing to Parties</b></p> <p><input type="checkbox"/> The Directors’ decision must be in writing and provided to the parties within five (5) days after the written award is handed over to staff.</p> <p><input type="checkbox"/> The Action of Directors Packet should include the following:</p> <ol style="list-style-type: none"> <li>1. Cover Letter;</li> <li>2. A-28 <i>Action Upon “Show Cause” Hearing</i>;</li> </ol> <p>• <b>Note:</b> The decision of the Directors at the “Show Cause” hearing is final – there is no review process for their decision. There is no findings of fact or explanation of how the Directors came to their decision. <b>Panel members must not discuss their decision</b> with anyone outside of Association staff and/or Association legal counsel, as necessary.</p> <p><input type="checkbox"/> <b>ETHICS CHECK:</b> Upload A-28 <i>Action Upon “Show Cause” Hearing</i> to Ethics Check</p> |
| <ul style="list-style-type: none"> <li>• 72(d) <i>Manual</i> – Action of the Directors after “Show Cause” Hearing</li> <li>• E.4 <i>Guidelines</i> – Enforcement of the Arbitration Award</li> </ul> | <p><b>Suspension of Association and/or MLS Membership</b></p> <p><input type="checkbox"/> In the event the Directors impose suspension of membership, suspension should be enacted:</p> <ol style="list-style-type: none"> <li>1. 101 days after the Award is finalized, if no court action has been filed and the Non-Prevailing Party has still failed to pay the Award;</li> <li>2. The date the court has ordered payment due, if the Non-Prevailing Party has still failed to pay the Award; or</li> <li>3. 15 days after the court order, if the court did not issue a due date and the Non-Prevailing Party has still failed to pay the Award.</li> </ol>   |
| <ul style="list-style-type: none"> <li>• E.5 <i>Guidelines</i> – Record Retention</li> <li>• 70(b) <i>Manual</i> – When the Award is Final and Binding</li> </ul>                                    | <p><b>Record Retention</b></p> <p><input type="checkbox"/> Once the Award is final, the case file, including the Award and all documents and correspondence, should be retained according to the Association’s record retention policy. If the Association does not have a record retention policy, it is recommended that associations retain the case file for a period of five (5) years from the date the award is final.</p> <p><input type="checkbox"/> Any recordings or transcripts of the actual hearing should be destroyed once the Award is final.</p>   |

## PRESIDING OFFICER'S STATEMENTS - ARBITRATION HEARING

**CHAIRMAN'S OPENING STATEMENT AND CONDUCT OF HEARING:** Ladies and Gentlemen, I now call this hearing to order. The professional standards committee is charged with holding appropriate hearings for the Association of REALTORS® in accordance with the procedures set forth in the Association's Bylaws and the *California Code of Ethics and Arbitration Manual*. These procedures provide for an arbitration hearing to resolve a dispute arising out of the real estate business. The hearing panel meeting here today is an impartial panel of members of the professional standards committee that has been selected and called here today to ascertain the truth in the particular matter at hand, which is an arbitration hearing, and to render a decision on the testimony and evidence presented. It is to be noted that an arbitration proceeding is to be clearly distinguished from a disciplinary proceeding and should be treated as a completely separate matter.

At this time, I would like to introduce the members of this hearing panel:

1. My name is \_\_\_\_\_, and I am the presiding officer.
2. Starting on my far left is \_\_\_\_\_, a member of the hearing panel (*presiding officer proceeds to introduce all hearing panel members from left to right*).
3. I now ask that each of you introduce yourself starting from my left and indicate your role in today's hearing.
4. **OPTIONAL:** Seated to my (left, right) is \_\_\_\_\_, the Association's legal counsel. I wish to make it clear that Association legal counsel shall not make direct inquiry of any party or witness, and, of course, will not participate in any decision of the panel. Association legal counsel is present to respond to questions which may be brought by the panelists concerning procedure under the Association's Bylaws or the laws of the State of California and shall not be considered counsel to the parties.
5. **OPTIONAL:** Also seated is \_\_\_\_\_, the court reporter transcribing these proceedings.
6. **OFFICIAL RECORD OF HEARING:** I want to inform each of you that today's hearing is being recorded. Each of you, when speaking, should identify yourself and please only one person speak at a time. Parties may purchase a copy of the recording upon written request, you should contact Association staff for the form. No other recording may be made of this hearing.
7. **CONFIDENTIAL NATURE OF HEARING:** Before we continue with this hearing, all persons are advised that the proceedings, report and findings of this *panel* are considered CONFIDENTIAL. All participants in this matter are admonished that failure to keep these proceedings and the resulting decisions confidential is a violation of the N.A.R. Code of Ethics and the Association's rules and procedures used for arbitration. Our decision will be available only to the *panel* members, parties, legal counsel and staff as disseminated to the parties within the required time period after this hearing is adjourned.
8. **BASIS OF HEARING:** This hearing is to arbitrate a dispute arising out of the real estate business. This panel is not a court of law, and is not governed by the technical rules of evidence that may apply in court. This panel shall seek to determine all ascertainable and relevant facts pertaining to the matter under consideration to arrive at a peer judgment and decision that is fair to all parties. The panel determines its own rules of evidence and its own procedures to be followed to achieve the objectives of equity and due process. The following has been generally accepted and ruled on by this panel as the procedures for this hearing:
  - a. All parties or their representatives to these proceedings will be allowed a full opportunity to be heard on matters relevant to the issues. The panel may rule at any time during this hearing on the relevance of

testimony being given, or questions being directed to any party or his representative, or to witnesses providing testimony. All parties and witnesses will be asked to swear or to affirm that the testimony given is the truth to the best of their knowledge.

- b. A party may be represented by legal counsel. However, no party may refuse to respond directly to requests for information or questions addressed to him by the panel members except on grounds of self-incrimination or other grounds which the panel deems appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of his client if the panel desires direct testimony. Counsel is present to advise and consult with his client, and to speak for him subject to appropriate rulings or determinations by the panel. This panel will not tolerate any effort by a party or his counsel to harass, intimidate, coerce, or confuse the panelists or any party to the proceedings.
  - c. The panel may rule at any time on the admissibility of evidence. As presiding officer, I will act as keeper of the evidence introduced at this hearing and mark each with an exhibit identification number and date. All exhibits included in the hearing record may be used in part or full by the hearing panel in their deliberations.
  - d. The panel members are individually authorized to ask questions as they deem pertinent and significant at any time during this hearing. To preserve order, I will rule on questions or testimony by the parties and their representatives, or by witnesses in these proceedings. If deemed necessary, I will consult with the panel members (and with legal counsel advising the Association) concerning such rulings.
  - e. The parties are encouraged to settle the dispute at any time. At any time during the hearing, parties can ask for a recess in an attempt to reach a settlement agreement. The parties, with the assistance of their respective counsel, can determine the terms of their settlement agreement. The arbitration will continue to be processed until formally withdrawn by the complainant.
9. **OATHS/AFFIRMATIONS:** At this time, I request that all persons present in the room that expect to testify at this hearing stand and be sworn or to make the appropriate affirmation in lieu of being sworn. Raise your right hand and following the question I will pose, answer in the affirmative if you do so swear or affirm ..."Do you swear or affirm that the statements you are about to make at this hearing are the truth, the whole truth, and nothing but the truth given freely and without reservation?"
10. **WITNESSES:** All witnesses, please leave the room at this time until called to testify. Will the rest of you please be seated.
11. **OUTLINE OF PROCEDURE FOR HEARING:** I now ask the parties if you have read and understand the Outline of Procedure for Hearing that was furnished to each of you? If there is any question that you have concerning the hearing, I shall be glad to answer such questions at this time. If there are no questions, we shall assume that your silence indicates your understanding of the Outline of Procedure; and we shall proceed with the hearing (Form A-9 is completed).
12. **COMPLAINANT'S OPENING STATEMENT:** Each side should make a *short* opening statement and should not immediately jump to presenting all of their evidence. The complainant will now have an opportunity to state his or her case in the form of an opening statement if he or she wishes to.
13. **RESPONDENT'S OPENING STATEMENT:** The respondent will now have an opportunity to respond in the form of an opening statement if he or she wishes.
14. **COMPLAINANT'S PRESENTATION OF EVIDENCE:** The complainant will now state his or her case and present any witnesses that he or she may desire. Cross-examination of the complainant's witnesses by the respondent or his or her representative will be allowed.
15. **RESPONDENT'S PRESENTATION OF EVIDENCE:** The respondent will now state his or her case and present any witnesses he or she may desire. Cross-examination of the respondent's witnesses by the complainant or his or her representative will be allowed.

16. **COMPLAINANT'S CLOSING STATEMENT:** The complainant will now make his or her closing statement.
17. **RESPONDENT'S CLOSING STATEMENT:** The respondent will now make his or her closing statement.
18. **FAIR HEARING AND DUE PROCESS:** Ladies and gentlemen, if there is any additional evidence you would like to present, now is the time to do so. *(If no further evidence presented)* Seeing no further evidence, I now ask that each party answer affirmatively to the following question. Do you feel the processing of this matter by the Association and today's hearing procedures were fair and afforded you every opportunity to present your case? *(Have each party answer "yes;" if "no" is answered, presiding officer should determine what objections the party has and handle accordingly)*
19. **ADJOURNMENT:** Ladies and gentlemen thank you for your evidence and testimony regarding this matter. We will next go into executive session and deliberate our decision. You will be notified by the Association of our decision. This hearing is officially adjourned and you are excused.
20. **EXECUTIVE SESSION:** (General Guidelines) *After adjournment, the panel will remain in executive session to deliberate and render its decision. The decision should be reduced to writing on the proper form. Association counsel may remain during deliberation at the option of the hearing panel. Parties and witnesses should not be present during deliberations.*

## PRESIDING OFFICER'S STATEMENTS - ARBITRATION REVIEW HEARING

**PRESIDENT'S OPENING STATEMENT:** This review hearing is called to order. In the matter of an arbitration hearing, the parties have the right to request a procedural review by the Association's Board of Directors. In this review hearing we will consider the arguments of the party who filed this request for review. The parties should remember that the statements are limited to those bases set forth in writing in the request for review. This is not an opportunity for the parties to reargue the merits of their dispute and issues and questions that were not raised in the request for review will not be considered during this review hearing.

**INTRODUCTIONS:** At this time, I would like to introduce the members of this review panel: My name is \_\_\_\_\_, and I am the Presiding officer. Starting on my far left is \_\_\_\_\_, a member of the review panel (*presiding officer proceeds to introduce all panel members from left to right*). I now ask that each person introduce yourself starting from my left and indicate your role in today's hearing. **(IF APPLICABLE:** Seated to my (left, right) is \_\_\_\_\_, the Association's legal counsel. I want to make it clear that the Association's legal counsel is not here to make direct inquiries of the parties and their witnesses and will not participate in any decision of the review panel. However, Association legal counsel is present to advise the review panel on questions that may be raised concerning the procedures used for this hearing or the laws of the State of California. In no event will the Association's legal counsel be considered counsel to the parties.)

**CONFIDENTIAL NATURE OF HEARING:** Before we continue with this review hearing, all persons present are advised that the proceedings and decisions of this review panel are considered CONFIDENTIAL. All participants in this hearing are admonished that failure to keep these proceedings and the resulting decisions confidential is a violation of your agreement to abide by the Association's rules and procedures and the Code of Ethics. Our decision will be available only to the hearing Panel, the parties and Association legal counsel and staff as required.

**OATHS/AFFIRMATIONS:** At this time, I request that all persons present in the room that expect to testify at this hearing stand and be sworn or to make the appropriate affirmation in lieu of being sworn. Raise your right hand and following the question I will pose, answer in the affirmative if you do so swear or affirm ..."Do you swear or affirm that the statements you are about to make at this hearing are the truth, the whole truth, and nothing but the truth given freely and without reservation?"

**HEARING PANEL'S PRESIDING OFFICER SUMMARY OF THE CASE:** The original hearing panel's presiding officer, or his or her designee, will now summarize the procedures used at the hearing for this case.

**QUESTIONS OF HEARING PANEL'S PRESIDING OFFICER:** At this time the parties will be given an opportunity to ask the presiding officer questions and offer any corrections or modifications to the presiding officer's summary. This review panel may also have questions for the presiding officer as well. However, I must again remind the parties that they should not attempt to reargue the merits of the dispute as determined by the hearing panel. Also, no new evidence regarding the merits of the case may be presented.

The \_\_\_\_\_ (name of party requesting review) may now ask questions or offer corrections and modifications.

The \_\_\_\_\_ (name of other party(ies)) may now ask questions or offer corrections and modifications.

**PARTY REQUESTING REVIEW PRESENTATION:** The party requesting the review now has the opportunity to argue the stated bases for the review in his or her written request. Only those bases included in the written request for review may be raised at this hearing. If you feel any portion of the recording of the original hearing is relevant to prove your request, please play only that portion that is appropriate.

**RESPONSES:** Any other party will have an opportunity to explain why the hearing panel's decision and recommendations should be followed. If you feel any portion of the recording of the original hearing is relevant to prove your request, please play only that portion that is appropriate.

**ADJOURNMENT:** Ladies and gentlemen, if there is any further information you think this review panel should consider, this is your last opportunity to bring it to our attention. If you have nothing more to add, this review hearing is adjourned.

**EXECUTIVE SESSION:** (General Guidelines) *After adjournment, the review panel goes into executive session to deliberate the issues raised in the review. Association counsel may remain to advise on procedural issues. The review panel may only (1) affirm the award; or (2) refer back for a new hearing due to a lack of due process in the processing or hearing of the matter. The review panel cannot change the amount of the award or issue a new award.*

## PRESIDING OFFICER'S STATEMENTS – "SHOW CAUSE" HEARING

**PRESIDENT'S OPENING STATEMENT:** This "show cause" hearing is called to order. In the matter of an arbitration hearing, a prevailing party has the right to request a "show cause" hearing before the Association's Board of Directors. In this "show cause" hearing we will only consider evidence and testimony regarding why the non-prevailing party has failed to timely pay the arbitration award. This is not an opportunity for the parties to reargue the merits of their dispute and issues and questions that were not raised in the request for "show cause" hearing will not be considered during this hearing.

**Note: No suspension will be imposed by the Association until: (1) after the award is confirmed or modified by a court if it is not paid by the date ordered by the court (or within fifteen (15) days after the court order if it does not provide a due date); or (2) if no court action is filed, one hundred and one (101) days after the Arbitration Award was finalized.**

**INTRODUCTIONS:** At this time, I would like to introduce the members of this "show cause" hearing panel: My name is \_\_\_\_\_, and I am the Presiding officer. Starting on my far left is \_\_\_\_\_, a member of the panel (*presiding officer proceeds to introduce all panel members from left to right*). I now ask that each person introduce yourself starting from my left and indicate your role in today's hearing. (**IF APPLICABLE:** Seated to my (left, right) is \_\_\_\_\_, the Association's legal counsel. I want to make it clear that the Association's legal counsel is not here to make direct inquiries of the parties and their witnesses and will not participate in any decision of the "show cause" hearing panel. However, Association legal counsel is present to advise the "show cause" hearing panel on questions that may be raised concerning the procedures used for this hearing or the laws of the State of California. In no event will the Association's legal counsel be considered counsel to the parties.)

**CONFIDENTIAL NATURE OF HEARING:** Before we continue with this "show cause" hearing, all persons present are advised that the proceedings and decisions of this panel are considered CONFIDENTIAL. All participants in this hearing are admonished that failure to keep these proceedings and the resulting decisions confidential is a violation of your agreement to abide by the Association's rules and procedures and the Code of Ethics. Our decision will be available only to the hearing Panel, the parties and Association legal counsel and staff as required.

**OATHS/AFFIRMATIONS:** At this time, I request that all persons present in the room that expect to testify at this hearing stand and be sworn or to make the appropriate affirmation in lieu of being sworn. Raise your right hand and following the question I will pose, answer in the affirmative if you do so swear or affirm ..."Do you swear or affirm that the statements you are about to make at this hearing are the truth, the whole truth, and nothing but the truth given freely and without reservation?"

**NON-PREVAILING PARTY PRESENTATION:** The non-prevailing party who failed to pay the arbitration award will have the opportunity to explain why the award was not timely paid. The non-prevailing party may present evidence regarding the non-prevailing party's financial ability to pay the award. The types of evidence that may be presented and considered by the panel are described in the "Ability to Pay Checklist."

**PARTY REQUESTING "SHOW CAUSE" HEARING PRESENTATION:** The prevailing party requesting the "show cause" hearing has the opportunity to present arguments regarding the non-prevailing party's financial ability to pay the arbitration award. The types of evidence that may be presented and considered by the panel are described in the "Ability to Pay Checklist."

**ADJOURNMENT:** Ladies and gentlemen, if there is any further information you think this "show cause" hearing panel should consider, this is your last opportunity to bring it to our attention. If you have nothing more to add, this hearing is adjourned.

**EXECUTIVE SESSION:** (General Guidelines) *After adjournment, the panel goes into executive session to deliberate the issues raised in the "show cause" hearing. Association counsel may remain to advise on procedural issues. The panel may only (1) take no action; (2) suspend the non-prevailing party's Association and/or MLS*



*membership until the arbitration award is paid; or (3) impose a payment plan on the non-prevailing party. The panel cannot change the amount of the award or issue a new award.*

# Procuring Cause Guidelines



CALIFORNIA ASSOCIATION OF REALTORS®

## PROCURING CAUSE GUIDELINES

Member Legal Services  
Tel 213.739.8282  
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January 30, 2011

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The following Procuring Cause Guidelines were approved by the C.A.R. Board of Directors and NAR. These Guidelines are intended to assist arbitration panelists in deciding which of multiple brokers is the procuring cause of a given transaction. Use of the Guidelines by any particular local association is strictly voluntary.

### I. Introduction

The offer of compensation from a listing broker to a cooperating/selling broker almost always has its source in the MLS rules. The California Model MLS rules provide that “In filing a property with the MLS, the broker participant makes a blanket unilateral contractual offer of compensation to the other MLS broker participants for their services in selling the property...” Rule 7.12. “This broker participant’s contractual offer (with or without sub agency) is accepted by the participant/selling broker by procuring a buyer which ultimately results in the creation of a sales or lease contract. ...” Rule 7.13. Therefore, the listing broker’s contractual offer is accepted by the cooperating broker “procuring” the buyer. The term, “procuring cause” has taken on a life of its own, however, and many lists and memos have been developed to try to predict the outcome of a given dispute. There are a few key concepts that serve as a baseline, however.

- Procuring Cause is a factors test that doesn’t necessarily have one triggering event that will give a sure result.
- NAR policy prohibits local associations from adopting a rule that “predetermines” outcomes in commission disputes.
- While a number of definitions of “procuring cause” exist, NAR defines procuring cause as the uninterrupted series of causal events, which results in the successful transaction.

The purpose of these Guidelines is to provide a framework with specific illustrations and guidance so that brokers can train their agents in a manner to minimize disputes and so that panelists hearing those disputes can be more consistent with similar fact patterns.

## II. Burden of Proof

The broker who files the arbitration complaint carries the burden of proof to demonstrate, by a preponderance of the evidence, why he or she is the procuring cause of the transaction and is, thus, entitled to the commission (because only brokers can offer and accept compensation under the MLS Rules, the term “broker” will be used throughout this paper to refer to both brokers and their agent salespeople in the proper context). Generally, the broker filing the complaint is the one who does not have the commission. Therefore, in most situations, the broker who does not have the commission in-pocket will have to prove that he or she is entitled to it. In the case in which the complainant did write the contract, however, and arbitration is needed to release funds from escrow, he or she, as the complainant, would have the burden of proof to show why he or she is entitled to the commission.

A number of relevant factors, including the behavior of the involved brokers and the reason the buyer left the first broker, would be used by the panel to decide who gets the commission.

## III. Factors Chart

The Factors Chart is a compilation of “facts” that are considered by an arbitration panel to help determine whether the broker closing the transaction is, indeed, entitled to the commission as the procuring cause of the transaction. The factors chart contains factors gathered from many sources that have been used by arbitration panelists for years. It includes factors from NAR materials, C.A.R. materials and case law, as well as general recurring patterns in transactions. The chart should NOT be used as a numerical system to give points to one side or the other. In given circumstances, some factors will not be present; others should be given more weight. Accordingly, the chart should serve as a guide to raise and consider relevant issues. For purposes of the chart, Intro Broker is the one who did not ultimately write the contract, and Closing Broker is the one who wrote the contract that was ultimately accepted and performed services through escrow to close the transaction. The chart is divided as follows:

- A. Connection to the Transaction.** Factors 1-7 include the relationship of both brokers to the buyer in this particular transaction. Since a broker must be the procuring cause as it relates to the property and transaction in question, this series of factors focuses on the involvement of the broker.
- B. Buyer’s Choice.** Factors 8-10 focus on why the buyer left the Intro Broker. Relevant factors here are examined to determine if the reason was so justified as to defeat the Intro Broker’s procuring cause claim.
- C. Broker Conduct.** Factors 11-18 focus on the conduct of the Closing Broker. Did the Closing Broker conduct him or herself in such a way that could have prevented the problem? Did the Closing Broker engage in inappropriate conduct that contributed to the “break” in the chain of events started by the Intro Broker that otherwise would not have occurred?
- D. Other.** Factors 19-24 deal with contractual and other miscellaneous issues that are relevant to the ultimate decision

The factors refer to three buyer representation contracts:

C.A.R. Standard Form BBE, Buyer Broker Agreement-Exclusive (Right to Represent) or other form used by brokers for the same purpose are similar to exclusive right to sell listings except that they describe the property needs of a buyer and give the broker the authority to locate property for the buyer. These contracts provide for payment even if the broker does not locate the property ultimately purchased.

C.A.R. Standard Form BBNE, Buyer Broker Agreement - Non Exclusive (Right to Represent) or other form used by brokers for the same purpose define the agency relationship and provide for payment to the broker only if the broker introduces the successful buyer to the seller and the transaction is closed.

C.A.R. Standard Form BBNN, Buyer Broker Agreement (Non-Exclusive/Not for Compensation) or other form used by brokers for the same purpose define the agency relationship only and do not provide for any commission rights.

**THIS CHART IS NOT A CHECKLIST. FACTORS ARE NOT ADDITIVES -- SOME ARE ENTITLED TO MORE WEIGHT THAN OTHERS.**

|  | Favors Intro Broker | Favors Closing Broker | Comments   |
|--|---------------------|-----------------------|--|
| <b>Connection to the Transaction</b>   |                     |                       |  |
| 1. Buyer is first introduced to the property by Intro Broker.  | X                   |                       |  |
| 2. Closing Broker never showed the property.   | X                   |                       |  |
| 3. Intro Broker wrote and presented an offer on the property on behalf of the buyer but the transaction was not consummated.   | X                   |                       |  |
| 4. Closing Broker wrote and presented an offer on the property on behalf of the buyer that was substantially similar to an offer written by Intro Broker within a short period of time.  | X                   |                       | If the two offers are not close in substance or time, this would move to neutral.  |
| 5. A significant amount of time elapsed between the time Intro Broker last showed a property and Closing Broker wrote an offer on the same property.   |                     | X                     |  |
| 6. Intro Broker provided significant information about the specific property, its neighborhood, value of the property, financing and other issues over a period of time.   | X                   |                       | Although the amount of time spent is not the test, a great amount of activity on this specific property could mean Intro Broker significantly contributed to the buyer's interest in the property. |
| 7. Closing Broker wrote and negotiated the offer and performed all the services during escrow.   |                     | X                     | Consideration should be given to how Closing Broker entered the transaction.   |
| <b>Buyer's Choice</b>  |                     |                       |  |
| 8. Intro Broker does not keep in touch with buyer after a period of time.  |                     | X                     | Consideration should be given as to whether the broker attempted to make contact but the buyer would not respond.  |
| 9. Intro Broker is the listing broker. As a result of Intro Broker providing agency disclosure, the buyer elects to have separate representation.  |                     | X                     |  |
| 10. Buyer is dissatisfied with Intro Broker due to the broker's professional abilities or conduct. Examples could include misrepresentations or failure to disclose, lack of knowledge with an area or type of property, being non-responsive to the client/buyer by failing to be timely or return calls, disclosures of conflicts of interest, self-dealing or negotiating skills. |                     | X                     |  |
| <b>Broker Conduct</b>  |                     |                       |  |
| 11. Closing Broker asked about buyer's relationship with another broker early in the process and determined there was no existing contractual or exclusive relationship between Intro Broker and the buyer.  |                     | X                     |  |
| 12. Closing Broker asked about buyer's relationship with other brokers late in the process.  | X                   |                       | Brokers have an affirmative duty to inquire about existing relationships.  |
| 13. Closing Broker instructed a buyer to go to open houses, or made appointments for the buyer, or was aware that the buyer would be going to open houses, and instructed the buyer to inform open house brokers of the buyer's relationship with Closing Broker.  |                     | X                     |  |

|  |                     |                       |  |
|--|---------------------|-----------------------|--|
| 14. Intro Broker was aware that the buyer would be going to open houses, and told the buyer to inform other brokers of the buyer's relationship with Intro Broker.   | X                   |                       |  |
|  | Favors Intro Broker | Favors Closing Broker | Comments   |
| <b>Broker Conduct (cont.)</b>  |                     |                       |  |
| 15. Closing Broker instructed the buyer to go and shop with other brokers in the area and return to Closing Broker once the buyer is ready to make an offer on the property  | X                   |                       |  |
| 16. Closing Broker does not belong to the MLS in which the property is listed, or any MLS in a reciprocal arrangement with the MLS, and has not made independent arrangements with the listing broker for a commission.  | X                   |                       | This assumes that Intro Broker does have such an offer through the MLS. However, if the commission has been paid, it might be assumed that the listing broker somehow agreed to compensate Closing Broker.   |
| 17. Closing Broker is the listing broker.  |                     |                       | Neutral. Although the listing broker will get compensation for the listing side, this should not independently determine the outcome without reference to the other factors.   |
| 18. Closing Broker is the listing broker and offered financial incentive to the buyer if the buyer came directly to him, after the listing broker knew of the involvement of the other broker.   | X                   |                       |  |
| <b>Other</b>   |                     |                       |  |
| 19. Intro Broker has a Buyer Broker Agreement - Exclusive Right to Represent (such as C.A.R. Form BBE or other form used for the same purpose) that contains a description of property, which includes the subject property and is dated before Closing Broker meets with the buyer. | X                   |                       | There is a contractual right between Intro Broker and the <i>buyer</i> . Even though it establishes a close connection between Intro Broker and the buyer, the conduct of Closing Broker, and his or her behavior in determining the existence of the contract, will have more weight than the contract itself in a dispute between the <i>brokers</i> .   |
| 20. Intro Broker has a Buyer Broker Agreement - Non Exclusive Right to Represent (C.A.R. Form BBNE or other form used for the same purpose) that predates the involvement of Closing Broker.   | X                   |                       | There is a contractual right between Intro Broker and the <i>buyer</i> , if the broker introduced the buyer to a specific property and worked on the buyer's behalf. Even though it establishes a close connection between Intro Broker and the buyer, the conduct of Closing Broker, and his or her behavior in determining the existence of the contract, will have more weight than the contract itself in a dispute between the <i>brokers</i> . |
| 21. Intro Broker has a Buyer Broker Agreement (Non-Exclusive/Not for Compensation) (C.A.R. Form BBNN or other form used for the same purpose).   | X                   |                       | This contract does not establish a commission right between the buyer and the broker but does help determine the timeframe of the agency relationship.   |
| 22. Closing Broker has a Buyer Broker Agreement Exclusive (Right to Represent) an exclusive buyer broker compensation contract (C.A.R. Form BBE or other form used for the same purpose).  |                     | X                     | Same as #19, except that this factor may be overcome, in a dispute between <i>brokers</i> , if the Closing Broker's behavior was inappropriate in obtaining the contract. There may  |

|  |                     |                       |  |
|--|---------------------|-----------------------|--|
|  |                     |                       | be a contractual right to be compensated by the buyer.   |
| 23. Closing Broker has a Buyer Broker Agreement - Non Exclusive (Right to Represent) (C.A.R. Form BBNE or other form used for the same purpose). |                     | X                     | Same as #22 except that the contractual claim against the buyer would be different because the contract is not exclusive.    |
|  | Favors Intro Broker | Favors Closing Broker | Comments   |
| <b>Other (cont.)</b>   |                     |                       |  |
| 24. Closing Broker has a Buyer Broker Agreement (Non-Exclusive/Not for Compensation) (C.A.R. Form BBNN or other form used for the same purpose). |                     |                       | Neutral. Although this demonstrates a commitment to Closing Broker, so does writing up the contract with her.                |
| 25. Intro Broker failed to give an Agency Disclosure Statement.  |                     | X                     | Any agent who has more than a causal relationship with a buyer should present the buyer with an Agency Disclosure Statement. |

#### IV. Preventive Tips for Practitioners

1. Always ask a prospective buyer whether he or she is working with another broker.
2. If you find out that a prospective buyer is working with another broker, explore whether the first broker has an exclusive contractual agreement.
3. If you discover your client has been working with another broker on the same transaction, try to ascertain the reason why the client left the first broker and if appropriate, make immediate contact with the broker and try to resolve the issue. Failing to address it early on may result in you working through a difficult escrow, closing the transaction and not getting paid.
4. Give agency disclosures (C.A.R. Standard Form AD) early in the transaction.
5. Use buyer representation agreements (with or without the brokers compensation element). This will help memorialize the relationship and help prompt the discussion about other relationships. If the contract includes a buyer's commission obligation to the broker, it will also create an incentive for the buyer to come to you and terminate the contract prior to going to another broker.
6. Never send your buyer client to other brokers with instructions to come back when the buyer is ready to write the offer.
7. Try to accompany your clients to open houses, but if you can't, give your clients your cards and instruct them to tell the agent sitting the open house that they are already working with you and present them your card. By not accompanying them, you take the risk that this explanation may not occur.
8. Stay in close contact with your client and be responsive during the transaction.
9. If you are conducting an open house, keep a registry of all prospective buyers including a note of whether there was a broker with the buyer. Also, keep a record that the agent sitting the open house asked the buyer if they were working with an agent.
10. If you have a listing where the property is being shown by brokers when you are not present, leave a sign-in sheet with buyers' names and brokers' names similar to those at a new home development. Include dates and times in the registry. This creates a record of who was shown the property and with which broker.

#### V. Fact Patterns

The following fact patterns are NOT to be construed as definitive outcomes for similar real-life situations. In truth, very few real-life fact patterns would exactly match the ones below, because real-life cases would have nuances and facts that are not and cannot be addressed in this paper. All of the facts of a particular case must be considered by a panel to determine procuring cause. The fact situations here are merely a guide for panelists, to demonstrate how the factors are used to determine which broker is the procuring cause.

"Intro Broker" refers to the one who did not ultimately write the offer.

“Closing Broker” refers to the one who wrote the offer that was ultimately accepted and performed services through escrow to close the transaction. Closing Broker also received the commission.

“Exclusive Buyer’s Agency Contract” refers to any contract that creates an exclusive agency between the buyer and the agent, such as the Buyer Broker Agreement - Exclusive (Right to Represent) (C.A.R. Standard Form BBE) or other form used by brokers for the same purpose. The contract does not have to grant a commission to be exclusive.

## **FACT SITUATION 1 -- WRITTEN AGREEMENT**

### **FACT SITUATION 1A**

Buyer is working with several agents and is shown the property by Intro Broker, but has no written agreement with him or her. Three days later Buyer is shown the same property by Closing Broker, who, after ascertaining that Buyer has no prior buyer’s agreement, writes a successful offer and receives the commission.

In the absence of other material facts favoring Intro Broker, the factors favor Closing Broker as the procuring cause. Showing the property first is only one factor. According to the fact pattern, Intro Broker did not write an offer and, since Buyer was working with several agents, may not have spent a significant amount of time with Buyer. Further, the absence of any agency agreement with Intro Broker is a factor that weighs against him. Given the fact that Closing Broker inquired about a prior buyer’s agreement, a panel would likely conclude that Intro Broker has not carried the burden of proof and that Closing Broker is the procuring cause and entitled to the commission.

### **FACT SITUATION 1B**

Same as 1A, and in addition, Intro Broker had Buyer sign a Buyer Broker Agreement (Non-Exclusive/Not for Compensation) (C.A.R. Standard Form BBNN) or other form used for the same purpose.

This case differs from 1A, in that Intro broker now has an agreement that weighs in his favor. The signed buyer’s representation agreement, by itself, however, does not resolve the issue. A panel would need to inquire whether Closing Broker asked Buyer about an agreement with another agent or engaged in other conduct that might create additional factors in Intro Broker’s favor. Assuming, however, that there are no additional factors in Intro Broker’s favor, a panel could find that Closing Broker is the procuring cause.

### **FACT SITUATION 1C**

Intro Broker had Buyer sign an exclusive buyer’s agency contract. Intro Broker showed some properties to Buyer, but not the one that Buyer ultimately purchased. Closing Broker asked Buyer before showing any property to Buyer whether Buyer had signed any buyer’s agency contracts or forms other than the agency disclosure form. Buyer replied, “Yes, I signed an exclusive buyer’s agency contract, but don’t worry about it, show me some property.” Closing Broker then obtained Intro Broker’s agreement from Buyer and reviewed it. Closing Broker discussed the situation with Buyer: Closing Broker told Buyer the importance of the written agency agreement with Intro Broker and that Buyer was exposed to paying a commission to Intro Broker. Buyer nonetheless insisted on proceeding with Closing Broker and said, “I’ll take care of Intro Broker, don’t worry.” Closing Broker showed Buyer properties. Buyer liked one of the homes shown by the Closing Broker and asked Closing Broker to write an offer. So Closing Broker wrote the offer, which was accepted.

Intro Broker files an arbitration for the commission, claiming Closing Broker interfered with his contract with Buyer. If the panel’s inquiry reveals that Closing Broker did everything necessary to protect both Intro Broker and Buyer, and there are no additional facts showing that Closing Broker lured Buyer away from Intro Broker or otherwise engaged in behavior that would create factors favoring Intro Broker, the panel would probably find that Closing Broker is the procuring cause. Their ultimate conclusion depends on how the panel weights the various factors. It appears that Buyer may be the culprit here, and if Intro Broker loses the procuring cause question with Closing Broker, Intro Broker still has a contract right to bring an action against Buyer for a commission.

### **FACT SITUATION 1D**

Same facts as 1C, but also the property purchased was one that Intro Broker had previously shown Buyer.

This scenario is much more difficult because the factors are more evenly divided between the brokers. The outcome here, however, depends not on the number of factors in a broker’s favor, but, instead, on how much weight the panel gives each factor. Having shown the same house helps Intro Broker. Depending on that factor’s weight with the panel, it may well be sufficient to carry the burden of proof for Intro Broker.

### **FACT SITUATION 1E**



Same facts as 1A, but Intro Broker has a Buyer Broker Agreement-Exclusive (Right to Represent) (C.A.R. Standard Form BBE) or other form used for the same purpose with Buyer. Also, Closing Broker fails to ask Buyer if any agency form or buyer broker agreement had been signed with a prior broker, and Buyer doesn't volunteer the information.

In California today, a buyer's broker should always inquire if Buyer has signed any agreement with a prior agent, and if the answer is "yes," find out what that agreement is. In this case, the conduct of Closing Broker, and his failure to determine the existence of a contract, could tip the procuring cause decision in favor of Intro Broker.

## **FACT SITUATION 2 -- OPEN HOUSES**

### **FACT SITUATION 2A**

Buyer has been shown property by Intro Broker, but Intro Broker has no agency agreement with Buyer. Buyer goes alone to Closing Broker's open house, which was previously shown by Intro Broker. Buyer asks Closing Broker to write an offer for Buyer. Closing Broker successfully does so, without inquiring about any prior agency relationship with other agents.

In the absence of other material facts favoring Intro Broker, it appears that the factors favor Closing Broker as the procuring cause. Showing the property first is only one factor. According to the fact pattern, Intro Broker did not write an offer. Further, the absence of any agency agreement with Intro Broker is a factor that weighs against him. Given the facts in this scenario, a panel could conclude that Closing Broker is the procuring cause and entitled to the commission.

### **FACT SITUATION 2B**

Same facts as 2A, but Closing Broker does inquire if Buyer has been working with another agent, and Buyer says "yes," but never mentions that she has seen the house before. Closing Broker determines that Buyer signed C.A.R.'s Buyer Broker Agreement (Non-Exclusive/Not for Compensation) (C.A.R. Standard Form BBNN) with Intro Broker. Buyer asks Closing Broker to write an offer on the property, and Closing Broker successfully does so.

Closing Broker has determined that there is no exclusive agency with Intro Broker and does not know Buyer has seen the property before. Absent other material facts favoring Intro Broker, Closing Broker probably prevails. Of course, the ultimate outcome depends on any other factors present and the weight given to them by the panel.

Note, a question here is whether Closing Broker should have asked Buyer if she had seen the property before. While Closing Broker's knowledge that Buyer had seen the property with Intro Broker is a factor in favor of Intro Broker, the panel will have to decide if it outweighs the other factors in favor of Closing Broker. In the limited facts of this scenario, it probably would not. Closing Broker has determined that Buyer had no exclusive agency with Intro Broker, and showing the property first is only one factor to consider.

### **FACT SITUATION 2C**

Buyer has worked only with Intro Broker and has signed a Buyer Broker Agreement-Exclusive (Right to Represent) (C.A.R. Standard Form BBE) or other form used for the same purpose with Intro Broker. Buyer goes alone to Closing Broker's open house, which Buyer had previously seen with Intro Broker. Closing Broker never inquires if Buyer has a prior agency relationship with another agent. Buyer makes an offer on the same property through Closing Broker.

A buyer's broker should always inquire if Buyer has signed any agreement with a prior agent, and if the answer is "yes," find out what that agreement is. While the fact that Closing Broker closed the deal is a factor in his favor, the conduct of Closing Broker, and his behavior in determining the existence of the contract, particularly since Intro Broker had shown the same property, could tip the procuring cause decision in favor of Intro Broker.

### **FACT SITUATION 2D**

Same as 2C, but Closing Broker inquires and Buyer tells Closing Broker that he/she has not signed any exclusive agency agreement.

Intro Broker files an arbitration for the commission, claiming Closing Broker interfered with his contract with Buyer. If the panel's inquiry reveals that Closing Broker did everything necessary to protect both Intro Broker and Buyer, and there are no additional material facts favoring Intro Broker, the panel would probably find that Closing Broker is the procuring cause. It appears that Buyer has lied intentionally to Closing Broker, which could favor Closing Broker. If Intro Broker loses the procuring cause question with Closing Broker, Intro Broker still has the right to bring an action against Buyer for a commission.

## **FACT SITUATION 3 -- CLOSING BROKER INDUCES BUYER TO LEAVE INTRO BROKER**

### **FACT SITUATION 3A**

Buyer is working with Intro Broker and is very interested in a house shown by Intro Broker. Buyer discusses the home with a friend, Closing Broker, who happens to be licensed. Closing Broker says he can get Buyer a better deal, by rebating 1% of his commission to Buyer. Closing Broker shows the property again, and then writes the offer. Closing Broker has no written agency agreement with Buyer.

Absent other material facts favoring Closing Broker, it appears that Intro Broker is entitled to the commission. Closing Broker intentionally interfered with Intro Broker's agency relationship, which is a heavy factor in favor of Intro Broker. Such intentional interference probably overcomes any factors in favor of Closing Broker, and carries the burden of proof for Intro Broker. Whether Closing Broker shows the property again is not a material fact in and of itself.

### **FACT SITUATION 3B**

Buyer has been working with Intro Broker, who has shown numerous houses over a period of several weeks. However, Buyer is dissatisfied with Intro Broker's efforts, and feels it is Intro Broker's fault he hasn't found a property to purchase. While looking at open houses, Buyer meets Closing Broker. Closing Broker inquires of Buyer whether Buyer is working with any other agents. Buyer says yes, and also says, "but I'm not really happy with Intro Broker," and goes on to state why. Buyer is uncertain whether Buyer can in good conscience abandon Intro Broker, but Closing Broker convinces Buyer that it's OK. Closing Broker shows Buyer several homes, but none are appealing, so Buyer asks to see a home previously shown by Intro Broker. Closing Broker successfully writes an offer on that home for Buyer.

Intro Broker has no exclusive agency agreement. However, the reason for Buyer's dissatisfaction with Intro Broker is a material fact in this case, particularly, since it appears Closing Broker may have taken advantage of the situation to sway Buyer's opinion against Intro Broker. If there are no additional material facts favoring Closing Broker, the panel could find that Intro Broker is the procuring cause.

### **FACT SITUATION 3C**

Same facts as 3B, but there is a Buyer Broker Agreement - Exclusive (Right to Represent) (C.A.R. Standard Form BBE) or other form used for the same purpose with Intro Broker. When Buyer expresses dissatisfaction with Intro Broker's efforts, Closing Broker cautioned Buyer that Buyer may have pre-existing contractual obligations to Intro Broker.

While Intro Broker had an exclusive buyer's agency agreement, Closing Broker made the proper inquiry and counseled Buyer as to Buyer's obligations under the agreement. If the panel's inquiry reveals that Closing Broker did everything necessary to protect both Intro Broker and Buyer, and there are no additional material facts favoring Intro Broker, the panel would probably find that Closing Broker is the procuring cause. If Intro Broker loses the question of procuring cause to Closing Broker, he or she still may have a contractual right to compensation from Buyer.

### **FACT SITUATION 4 -- INTRO BROKER'S PRIOR OFFER FAILED**

#### **FACT SITUATION 4A**

Intro Broker has written an offer for Buyer, but it failed and all negotiations on the property were terminated, because Buyer thought the seller's counteroffer was too high. A few days later, Buyer consults with Closing Broker, who convinces Buyer that the seller was not asking too much in light of current market conditions. Closing Broker rewrites the same offer, and when seller counters at a price Closing Broker believes is good, Closing Broker convinces Buyer it is a fair price and successfully writes a counteroffer.

Intro Broker has no exclusive agency agreement. However, showing the property and writing an offer first is a factor here. If the panel's inquiry reveals that Closing Broker wrote substantially the same offer as Intro Broker, and there are no additional facts favoring Closing Broker, the panel would likely find that Intro Broker is the procuring cause.

#### **FACT SITUATION 4B**

Same as 4A and, in addition, Intro Broker had a Buyer Broker Agreement - Exclusive (Right to Represent) (C.A.R. Standard Form BBE) or other form used for the same purpose with Buyer, which had not expired at the time of Closing Broker's writing the offer for Buyer. Buyer did not volunteer that he had an agency agreement with Intro Broker, and Closing Broker did not ask.

Intro Broker did have an exclusive buyer's agency agreement, and Closing Broker failed to make the proper inquiry. In addition, Intro Broker's prior offer on the property is a factor in his or her favor. If there are no additional material facts favoring Closing Broker, the panel could find that Intro Broker is the procuring cause. If Intro Broker loses the question of procuring cause to Closing Broker, he or she still may have a contractual right to compensation from Buyer.

## VI. Frequently Asked Questions

**Q 1. Does the arbitration always result in an “all or nothing” award or may arbitrators split the award between the two disputing brokers?**

**A** In most cases, sound analysis will lead arbitrators to conclude that only one broker was the procuring cause, and that broker should get the entire commission. Further, arbitrators should not avoid the “all or nothing” decision, just because it is a hard one to make. Nonetheless, after all factors have been weighed, under some fact patterns, arbitrators may decide to split the commission.

**Q 2. Must a listing broker be named as a party to an arbitration complaint when he or she has contractually offered the commission to other brokers through the MLS?**

**A** Although the listing broker offered the compensation, generally, only the disputing cooperating brokers are necessary parties to the arbitration. A listing broker can be named, however, and it is up to the complainant to determine the proper parties to the complaint.

**Q 3. Must the respective responsible brokers for the agents in a commission dispute be named in the arbitration complaint?**

**A** California Code of Ethics and Arbitration Manual require that the responsible broker be named as a complainant to an arbitration complaint. There is no similar requirement for the respondent, but it is advisable to have the responsible brokers on both sides of the dispute.

**Q 4. Does a broker with a Buyer Broker Agreement - Exclusive (Right to Represent) (C.A.R. Standard Form BBE) or other form used for the same purpose with the buyer need to go through arbitration?**

**A** Yes. There are factors, which taken together, can outweigh the exclusive buyer broker contract.

**Q 5. Are these guidelines a “predetermination of entitlement” to a commission, which is prohibited under NAR policy?**

**A** No. The guidelines are merely factors to be considered in light of the specific facts of the case.

**Q 6. Where can additional information regarding the topics discussed in this memorandum be obtained?**

**A** This memorandum is just one of the many legal publications and services offered by C.A.R. to its members. For a complete listing of C.A.R.’s legal products and services, please visit C.A.R. *Online* at [www.car.org](http://www.car.org).

Readers who require specific advice should consult an attorney. C.A.R. members requiring legal assistance may contact C.A.R.’s Member Legal Hotline at 213.739.8282, Monday through Friday, 9:00 a.m. to 6:00 p.m. C.A.R. members who are broker-owners, office managers or Designated REALTORS® may contact the Member Legal Hotline at 213.739.8350 to receive expedited service. Members may also fax or e-mail inquiries to the Member Legal Hotline at 213.480.7724 or [legal\\_hotline@car.org](mailto:legal_hotline@car.org). Written correspondence should be addressed to:

California Association of REALTORS®  
Member Legal Services  
525 South Virgil Avenue  
Los Angeles, California 90020

Local associations requiring assistance with these Guidelines may contact the Corporate Legal Department at 213.739.8308. Written correspondence should be addressed to:

California Association of REALTORS®  
Corporate Legal Services  
525 South Virgil Avenue  
Los Angeles, California 90020

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The information contained herein is believed accurate as of January 30, 2011. It is intended to provide general answers to general questions and is not intended as a substitute for individual legal advice. Advice in specific situations may differ depending upon a wide variety of factors. Therefore, readers with specific legal questions should seek the advice of an attorney.

## ABILITY TO PAY CHECKLIST FOR “SHOW CAUSE” HEARINGS

- Confirm the total amount of the arbitration award that is due.
- Determine the non-prevailing party’s reason(s) for non-payment. **Disagreeing with the decision of the hearing panel is not a valid reason for non-payment.**
- What is the ability of the non-prevailing party to pay the award today?
  - How much can the non-prevailing party pay today?
  - How much time is needed to pay the remainder of the award, if the non-prevailing party is unable to pay the full amount today?
- Is the non-prevailing party still an active real estate agent?
  - If not, what is the non-prevailing party’s current employment?
  - If no employment, what is interfering with the non-prevailing party’s ability to work?
- What is the non-prevailing party’s average monthly income?
- What are the non-prevailing party’s average monthly expenses?
- Does the non-prevailing party have any additional outstanding debts that need to be paid?
- Does the non-prevailing party have other financial resources that could assist with payments?
- Are there any other special circumstances that may have an impact on the non-prevailing party’s ability to pay?
  - Sick child?
  - Caring for an elderly parent?

## **APPENDIX C - SAMPLE FORM LETTERS**

**DISCIPLINARY SAMPLE FORM LETTERS**  
*(Ethics and MLS Rules Violations)*

ASSOCIATION LETTERHEAD

Name  
Address  
City, State Zip Code

**Request for Disciplinary Complaint**

Dear:

As you requested, please find enclosed the following information to assist you in filing a disciplinary complaint with the *[insert name of association]*:

- (1) A blank Complaint Form (Form D-1) and Instructions
- (2) The \_\_\_\_\_ (insert current year) National Association of REALTORS® Code of Ethics
- (3) A copy of the *California Code of Ethics and Arbitration Manual*

Please be advised that in order for a complaint to be considered filed timely with the Association, the complaint must be filed within 180 calendar days from the time the facts giving rise to the dispute could have been known in the exercise of reasonable diligence or 180 calendar days after the conclusion of the transaction, or event, whichever is later. Also, you may want to become familiar with the *California Code of Ethics and Arbitration Manual* as this is the set of rules that are used to process complaints filed with the Association. Finally, please note that since the Association is not a governmental entity, it does not have authority to take action regarding the licensing status of its members. If you have filed a complaint with the court or a governmental entity (such as the Department of Real Estate), you still need to file your complaint with this association within the time limit. However, your complaint may be held in abeyance until the other investigation or proceeding is concluded.

If you have any questions regarding the filing of your complaint or the information enclosed, please feel free to call me at *[insert phone number]*.

Sincerely,

Association Executive/Association Staff Member

Enclosures

ASSOCIATION LETTERHEAD

Name of Potential Complainant  
Address  
City, State Zip Code

**Acknowledgement of Receipt of Disciplinary Complaint**

Dear:

This letter serves to acknowledge receipt of disciplinary complaint. It is considered filed as of \_\_\_\_\_ [*insert filing date*]. Your complaint will now be forwarded to the Association's Grievance Committee for review on \_\_\_\_\_ [*insert date of meeting, if known*]/at their next duly scheduled meeting, which is anticipated to be on \_\_\_\_\_ [*insert approximate date of next meeting*]. Once the Grievance Committee has reviewed your complaint, you will be notified of their decision.

Please be advised that the purpose of the Grievance Committee's review is to determine whether the alleged violation(s) in your complaint merit consideration in a full due process hearing before a panel of the Association's Professional Standards Committee. The Grievance Committee does not decide whether a violation(s) has in fact occurred.

If you have any questions about the procedures being used to process your complaint, please refer to the *California Code of Ethics and Arbitration Manual* or feel free to call me at (insert phone number).

Sincerely,

Association Executive/Association Staff



ASSOCIATION LETTERHEAD

Name  
Address  
City, State Zip Code

**Incomplete Complaint and Request for Further Information**

Dear:

This serves to acknowledge receipt of your disciplinary complaint. The following has been determined:

[ ] The following named respondents are not members of the *[insert name of association/MLS]*:

\_\_\_\_\_  
As such, you will need to file your complaint against these members at a local association of REALTORS® where they hold membership, if any.

[ ] Exhibit 1 was not submitted with the complaint. Please prepare a statement describing the facts and circumstances supporting your allegations and label it “Exhibit 1.”

[ ] Exhibit 1 is insufficient. In order to assist the Grievance Committee in reviewing your complaint, please redraft your Exhibit 1 and provide more details about the alleged conduct that you feel implicates the Articles and/or MLS Rules cited.

[ ] The complaint was not filed timely and is therefore dismissed. Pursuant to Section 20 of the *California Code of Ethics and Arbitration Manual*, disciplinary complaints must be filed within one hundred and eighty (180) calendar days after the facts constituting the matter could have been known in the exercise of reasonable diligence.

[ ] Other:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If you have been requested to provide additional information, please provide such information within ten (10) business days. Otherwise, your complaint will be considered dismissed.

Sincerely,

Association Executive/Association Staff

## ASSOCIATION LETTERHEAD

Name  
Address  
City, State Zip Code

### **Forwarding of Disciplinary Complaint**

Dear:

This serves to notify you that the Grievance Committee has reviewed your complaint and referred it to the Professional Standards Committee for a full due process hearing. A copy of your complaint has also been forwarded to the persons you named as respondents.

For your information, the named respondents have the right to file a written response to your complaint. If a written response is filed, a copy will be forwarded to you for your review. In addition, the written response will be kept on file for the hearing panel to review in advance of the hearing.

Enclosed are Forms D-4 and D-5 which allow you to challenge members of the Professional Standards Committee who may serve on the hearing panel for this matter. Form D-4 also allows you to indicate your availability for a hearing. Please complete these forms and return them to my attention by the time indicated. Once the time frame to file these forms has lapsed, you will be notified of the selected hearing panel and the hearing location, date and time.

If you have any further questions about the procedures being used to process your complaint, please refer to the *California Code of Ethics and Arbitration Manual* or feel free to call me at (insert phone number).

Sincerely,

Association Executive/Association Staff

ASSOCIATION LETTERHEAD

Name  
Address  
City, State Zip Code

**Grievance Committee Decision\***

Dear:

This serves to notify you that the Grievance Committee has reviewed your complaint and either (1) dismissed the complaint or (2) deleted an alleged violation of an Article, MLS rule, or membership duty from the complaint. A copy of the Grievance Committee's decision is enclosed (*enclose Form G-2*).

Please be advised that you have the right to request a review of the Grievance Committee's decision by the Association's Board of Directors. Enclosed is Form G-3 which explains this right in more detail. Also, if you decide to request a review, enclosed is Form G-4 to use for your request.

Please note, if you do not file a request for review of the Grievance Committee's decision within the time frame specified on Form G-3, the Grievance Committee's decision will be considered final and the complaint will be considered dismissed or processed with the deletions.

If you have any further questions about the procedures being used to process your complaint, please refer to the *California Code of Ethics and Arbitration Manual* or feel free to call me at (insert phone number).

Sincerely,

Association Executive/Association Staff

*\* Use this letter when the Grievance Committee has dismissed the complaint or deleted Articles/MLS Rules or other membership duties from the complaint*

ASSOCIATION LETTERHEAD

Name  
Address  
City, State Zip Code

**Notice to Designated REALTOR® or MLS Participant Not Named as Respondent**

Dear:

This serves to notify you that a disciplinary complaint alleging a violation of a membership or MLS duty was filed with the \_\_\_\_\_ (insert name of association) naming \_\_\_\_\_ (insert name(s) of respondent). A copy of the complaint is enclosed for your review. Also enclosed is a copy of the *California Code of Ethics and Arbitration Manual*, which is the set of rules that are being used to process this complaint. At this point, the complaint has been reviewed by the Association's Grievance Committee and forwarded for a full due process hearing before a panel of the Association's Professional Standards Committee.

According to the Association's records, you are the designated REALTOR® and/or MLS participant for one or more the named respondents in this complaint. However, you were not personally named in the complaint. Even so, you have the right to receive all notices regarding this complaint and you have the right to attend and participate at the hearing. Therefore, from time to time, you will be receiving copies of the notices and correspondence that are sent to the named parties in this matter. You will also receive copies of any written responses filed by the named respondents.

If you have any further questions about the procedures being used to process this complaint, please refer to the *California Code of Ethics and Arbitration Manual* or feel free to call me at (insert phone number).

Sincerely,

Association Executive/Association Staff

ASSOCIATION LETTERHEAD

All Parties  
Address  
City, State Zip Code

**Notice of Hearing**

**Re: (insert Case Name/No.)**

Dear:

This serves to notify you that a hearing for the above referenced case has been scheduled. Enclosed is Form D-6, which states the members of the selected hearing panel and the location, date and time of the hearing. This form also provides important information about your rights at the hearing.

Also enclosed is Form D-8. This form is an outline of the general procedure that will be used at the hearing.

If you have any further questions about the procedures being used to process your complaint, please refer to the *California Code of Ethics and Arbitration Manual* or feel free to call me at (insert phone number).

Sincerely,

Association Executive/Association Staff

cc: DR or MLS Participant Not Named as Respondent w/enclosures

ASSOCIATION LETTERHEAD

All Parties  
Address  
City, State Zip Code

**Notice of Decision**

**Re: (insert Case Name/No.)**

Dear:

This serves to notify you that a decision in the above referenced case has been made. Enclosed are Forms D-11 and D-12, which state the hearing panel's decision and recommendations.

Please note, you have the right to request a review of the hearing panel's decision and recommendations by the Association's Board of Directors. Enclosed is Form D-13 (Notice of Availability of Review) which explains these rights in more detail. Also, if you intend to file for this right, enclosed is Form D-17 (Request for Review).

Please be advised that you must file for the rights above within the time frames mentioned on the enclosed forms. If these requests are not made within these time frames, your rights will be waived and the Association's Board of Directors will perform a final review of the hearing panel's decision and recommendation. However, only if there are obvious deficiencies on the face of the decision or recommendations will the Board of Directors modify the hearing panel's decision.

If you have any further questions about the procedures being used to process your complaint, please refer to the *California Code of Ethics and Arbitration Manual* or feel free to call me at (insert phone number).

Sincerely,

Association Executive/Association Staff

cc: DR or MLS Participant Not Named as Respondent w/enclosures

ASSOCIATION LETTERHEAD

Name  
Address  
City, State Zip Code

**Acknowledgement and Disposition of Petition for Request for Review**

Dear:

This letter serves to acknowledge receipt of Request for Review. It is considered filed as of \_\_\_\_\_ [*insert filing date*].

In reviewing your request, the following has been determined:

- Exhibit A was not submitted with the request. Please prepare a statement describing the facts and circumstances supporting your request and label it "Exhibit A."
- The request does not state a basis upon which the request may be filed. Please review Form D-13 and grounds for filing a request for review. You have ten (10) calendar days from the date of this letter to resubmit your request to meet the filing requirements.
- The request was not filed timely and is therefore dismissed.
- The request is considered as being filed properly and will be processed accordingly. If a request for review, copies of the request have been sent to the other parties and will be made available to the Board of Directors review panel. Also, enclosed are Forms D-4 and D-5 on which you may challenge members of the Board of Directors and indicate your availability for a review hearing.

Other:

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If you have any questions about the procedures being used to process your request, please refer to the *California Code of Ethics and Arbitration Manual* or feel free to call me at (insert phone number).

Sincerely,

Association Executive/Association Staff

cc: DR or MLS Participant Not Named as Respondent

ASSOCIATION LETTERHEAD

All Parties  
Address  
City, State Zip Code

**Notice of Final Action**

**Re: (insert Case Name/No.)**

Dear:

This serves to notify you that the Board of Directors has taken final action in the above referenced matter. Upon final review, the Board has decided to affirm the decision and recommendation of the hearing panel. Accordingly, the recommended discipline, if any, must now be complied with according to the decision's requirements.

Sincerely,

Association Executive/Association Staff

cc: DR or MLS Participant Not Named as Respondent w/enclosures



ASSOCIATION LETTERHEAD

Respondent's Name  
Address  
City, State Zip Code

**Letter of Reprimand/Warning (*select one*)**  
**Re: (insert Case Name/No.)**

Dear Mr./Ms. {*Insert Respondent's Last Name*}:

The Board of Directors met on \_\_\_\_\_ to consider the above reference case. It was the decision of the Directors to affirm the findings and recommended discipline of the hearing panel.

Pursuant to the discipline imposed, this letter is (*use appropriate language below depending on type of letter*)

an Official Letter of Reprimand advising of a lack of professional conduct as determined by a due process hearing conducted by the Professional Standards hearing Panel and affirmed by the Board of Directors.

an Official Letter of Warning advising of a lack of professional conduct as determined by a due process hearing conducted by the Professional Standards hearing Panel and affirmed by the Board of Directors. Future conduct of this nature could result in more severe discipline or sanction.

This letter will remain in your membership file for \_\_\_\_\_ (*insert length of time*).

Sincerely,

Association Executive/Association Staff

cc: DR or MLS Participant Not Named as Respondent w/enclosures

ARBITRATION SAMPLE FORM LETTERS  
(Monetary Disputes)

ASSOCIATION LETTERHEAD

Name  
Address  
City, State Zip Code

**Request for Arbitration Complaint**

Dear:

As you requested, please find enclosed the following information to assist you in filing an arbitration complaint with the *[insert name of association]*:

- (1) A blank Complaint Form (Form A-1/PA-1) and Instructions (*include PA-2 if member of the public is requesting a complaint form*)
- (2) A copy of the Procuring Cause Guidelines (*if this is a commission dispute between real estate licensees*)
- (3) A copy of the *California Code of Ethics and Arbitration Manual*

Please be advised that in order for a complaint to be considered filed timely with the Association, the complaint must be filed within one hundred and eighty (180) calendar days after the closing of the transaction, if any, or after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later. Also, you may want to become familiar with the *California Code of Ethics and Arbitration Manual* as this is the set of rules that are used to process complaints filed with the Association. Finally, since the Association is not a governmental entity, it does not have authority to take action regarding the licensing status of its members.

If you have any questions regarding the filing of your complaint or the information enclosed, please feel free to call me at *[insert phone number]*.

Sincerely,

Association Executive/Association Staff Member

ASSOCIATION LETTERHEAD

Name  
Address  
City, State Zip Code

**Incomplete Complaint and Request for Further Information**

Dear:

This serves to acknowledge receipt of your arbitration complaint. Upon review, the following has been determined:

[ ] The following named respondents are not members of the *[insert name of association/MLS]*:

\_\_\_\_\_  
As such, the Association does not have jurisdiction over these persons. You will need to file your complaint at the local association where these persons hold membership or re-file your complaint only naming real estate licensees who are members of this Association or its MLS.

[ ] Exhibit 1 was not submitted with the complaint. Please prepare a statement describing the facts and circumstances supporting your claim and label it "Exhibit 1."

[ ] The close of escrow date was not provided. The close of escrow date for the underlying transaction in this matter was not provided. Please provide this information.

[ ] The complaint was not filed timely and is therefore dismissed. Pursuant to Section 56(b) of the *California Code of Ethics and Arbitration Manual*, arbitration complaints must be filed within one hundred and eighty (180) calendar days after the closing of the transaction, if any, or after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later.

[ ] Other:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If you have been requested to provide additional information, please provide such information within ten (10) business days. Otherwise, your complaint will be considered dismissed.

Sincerely,

Association Executive/Staff

ASSOCIATION LETTERHEAD

Name  
Address  
City, State Zip Code

**Acknowledgement of Receipt and Forwarding of Arbitration Complaint**

Dear:

This letter serves to acknowledge receipt of arbitration complaint. It is considered filed as of \_\_\_\_\_ [*insert filing date*].

Upon initial review of your complaint, it has been determined that your complaint is appropriate for a full due process hearing before a panel of the Association's Professional Standards Committee. Accordingly, a copy of your complaint has been forwarded to the persons you named as respondents.

For your information, the named respondents have the right to file a written response to your complaint. If a written response is filed, a copy will be forwarded to you for your review. In addition, the written response will be kept on file for the hearing panel to review in advance of the hearing.

If you have any questions about the procedures being used to process your complaint, please refer to the *California Code of Ethics and Arbitration Manual* or feel free to call me at (insert phone number).

Sincerely,

Association Executive/Association Staff

ASSOCIATION LETTERHEAD

Name  
Address  
City, State Zip Code

**Arbitration Complaint Declined**

Dear:

This letter serves to notify you that your arbitration complaint has been declined by the Association pursuant to Section 44 of the *California Code of Ethics and Arbitration Manual* because [*the dispute is too legally complex / the amount in controversy is too large*].

The arbitration is hereby terminated, and the parties are relieved of their obligation to arbitrate pursuant to the provisions of the *California Code of Ethics and Arbitration Manual*. The parties are free to pursue resolution of their dispute in another venue.

If you have any questions, please refer to the *California Code of Ethics and Arbitration Manual* or feel free to call me at (insert phone number).

Sincerely,

Association Executive/Association Staff

ASSOCIATION LETTERHEAD

All Parties  
Address  
City, State Zip Code

**Notice of Hearing**

**Re: (insert Case Name/No.)**

Dear:

This serves to notify you that a hearing for the above referenced case has been scheduled. Enclosed is Form A-6, which states the members of the selected hearing panel and the location, date and time of the hearing. This form also provides important information about your rights at the hearing.

Also enclosed is Form A-8. This form is an outline of the general procedure that will be used at the hearing.

If you have any further questions about the procedures being used to process this matter, please refer to the *California Code of Ethics and Arbitration Manual* or feel free to call me at (insert phone number).

Sincerely,

Association Executive/Association Staff

ASSOCIATION LETTERHEAD

All Parties  
Address  
City, State Zip Code

**Notice of Award**

**Re: (insert Case Name/No.)**

Dear:

This serves to notify you that an award in the above referenced case has been made. Enclosed is Form A-12, which states the hearing panel's award.

Please note, you have the right to request a procedural review of the award by the Association's Board of Directors. Enclosed is Form A-13 (Review and Enforcement of an Arbitration Award) which describes this right as well as other legal rights to have the award reviewed and enforced by a court of law. If you intend to file a procedural review by the Association's Board of Directors, enclosed is Form A-15 (Request for Review). Please be advised that you must file for the rights above within the time frames mentioned on the enclosed forms. If these requests are not made within these time frames, your rights will be waived.

With respect to the right to file a procedural review by the Association's Board of Directors, the award will be considered final with the Association upon the lapse of the time frame to file for this review.

If you have any further questions about the procedures being used to process this matter, please refer to the *California Code of Ethics and Arbitration Manual* or feel free to call me at (insert phone number).

Sincerely,

Association Executive/Association Staff



ASSOCIATION LETTERHEAD

Name  
Address  
City, State Zip Code

**Acknowledgement and Disposition of Request for Review**

Dear:

This letter serves to acknowledge receipt of your Request for Review. It is considered filed as of \_\_\_\_\_  
[insert filing date]. In reviewing your request, the following has been determined:

- [ ] Exhibit A was not submitted with the request. Please prepare a statement describing the facts and circumstances supporting your request and label it "Exhibit A."
- [ ] The request does not state a basis upon which the request may be filed. The only grounds for a procedural review are alleged procedural deficiencies that occurred in the administration or hearing that resulted in a lack of due process to the party requesting the review. You have ten (10) calendar days from the date of this letter to resubmit your request to meet this filing requirement.
- [ ] The request was not filed timely and is therefore dismissed.
- [ ] The request is considered as being filed properly and will be processed accordingly. Copies of the request have been sent to the other parties and will be made available to the Board of Directors review panel. Also, enclosed are Forms A-4 and A-5 on which you may challenge members of the Board of Directors and indicate your availability for a review hearing.
- [ ] Other:

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If you have any questions about the procedures being used to process your request, please refer to the *California Code of Ethics and Arbitration Manual* or feel free to call me at (insert phone number).

Sincerely,

Association Executive/Association Staff

ASSOCIATION LETTERHEAD

All Parties  
Address  
City, State Zip Code

**Notice of Final Action**

**Re: (insert Case Name/No.)**

Dear:

This serves to notify you that the arbitration award in the above matter is considered final with the Association. Accordingly, the parties must comply with the award or seek judicial confirmation and enforcement. The prevailing party may also request a “show cause” hearing before a panel of the Board of Directors if the non-prevailing party does not timely pay the award.

Sincerely,

Association Executive/Association Staff

## APPENDIX D - MISCELLANEOUS



CALIFORNIA ASSOCIATION OF REALTORS®

## Designated REALTOR®/MLS Participant as a Respondent in an Ethics/MLS Rules Violation Complaint

Corporate Legal Services  
Tel 213.739.8200  
Fax 213.480.7724  
June 16, 2011 (revised)

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### Introduction

Under NAR policy, the designated REALTOR® for a real estate firm is responsible to the local association for the ethical conduct of the agents employed by or affiliated with the firm. In addition, the California Model MLS Rules obligate the MLS participant to be responsible to the MLS for alleged rules violations by subscribers affiliated with the MLS participant. The following questions and answers are intended to address some of the main questions that arise as a result of these rules.

**Q 1. Does the designated REALTOR® have to be named as a respondent in an ethics complaint?**

**A** No. While a designated REALTOR® may be named as a respondent in an ethics complaint involving one or more agents of the firm, no rule requires the designated REALTOR® to be "automatically" named as a respondent in an ethics complaint.

**Q 2. Who determines whether the designated REALTOR® is named as a respondent in an ethics complaint?**

**A** The complainant, or the Grievance Committee on its own motion, have the option to name the designated REALTOR® as a respondent in an ethics complaint.

**Q 3. Why does the Grievance Committee have the option to name the designated REALTOR® as a respondent in an ethics complaint?**

**A** The role of the Grievance Committee in reviewing ethics complaints is to determine whether the alleged facts, if accepted as true, implicate the Code of Ethics. This includes making sure that all parties involved in the matter are properly named in the complaint. Therefore, if upon review of an ethics complaint, the Grievance Committee feels the alleged facts implicate the designated REALTOR® and the designated REALTOR® was not named in the complaint, the Grievance Committee can amend the complaint and add the designated REALTOR® as a named respondent. However, the complainant must accept the amendment, otherwise, the Grievance Committee will have to join as a co-complainant.

**Q 4. If a designated REALTOR® is not named as a respondent, is he or she still notified of the complaint, the response, the hearing date, etc.?**

**A** Yes. If a complaint is filed against a member but the member's designated REALTOR® is not named as a respondent, the designated REALTOR® is still entitled to receive all pertinent information related to the complaint, including a copy of the complaint, the response, notice of the hearing date, any decision rendered by the professional standards panel, and any final action taken by the association's Board of Directors.

**Q 5. If a designated REALTOR® is not named as a respondent, can he or she still consult or advise their agent, attend the hearing, and give evidence or testimony at the hearing?**

**A** Yes. Even if the designated REALTOR® is not formally named as a respondent, he or she still has the right to consult or advise the agents named as respondents and may attend the entire hearing and present evidence or testimony in their defense.

**Q 6. If a respondent changes firms after the complaint is filed, does the new designated REALTOR® have a right to be notified of the complaint, the response, the hearing date, etc.?**

**A** Yes. The new designated REALTOR® is entitled to receive all information regarding the complaint.

**Q 7. If a respondent changes designated REALTORS® after the complaint is filed, does the former designated REALTOR® still have a right to be notified of the progress of the complaint?**

**A** Yes. If the former designated REALTOR® wishes to be kept informed regarding the progress of the complaint, he or she has the right to receive all future information regarding the complaint. However, if the former designated REALTOR® no longer desires such information, he or she can request the association to stop sending the information.

**Q 8. As far as MLS rules violation complaints are concerned, are the rules the same for MLS participants?**

**A** Yes. The procedures used to process MLS rules violation complaints are the same as those used for ethics complaints. Therefore, the issues surrounding whether the MLS participant is named in the complaint and the participant's right to be notified of the complaint, advise their subscriber, attend the hearing, etc., are handled in the same manner.

**Q 9. Where can readers get more information?**

**A** This memorandum is just one of the many legal publications and services offered by C.A.R. to its members. For a complete listing of C.A.R.'s legal products and services, please visit *C.A.R. Online* at [www.car.org](http://www.car.org).

Readers who require specific advice should consult an attorney. C.A.R. members requiring legal assistance may contact C.A.R.'s Member Legal Hotline at 213.739.8282, Monday through Friday, 9:00 A.M. to 6:00 P.M. C.A.R. members who are broker-owners, office managers or Designated REALTORS® may contact the Member Legal Hotline at 213.739.8350 to receive expedited service. Members may also fax or e-mail inquiries to the Member Legal Hotline at 213.480.7724 or [legal\\_hotline@car.org](mailto:legal_hotline@car.org). Written correspondence should be addressed to:

California Association of REALTORS®  
Member Legal Services  
525 South Virgil Avenue  
Los Angeles, California 90020

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The information contained herein is believed accurate as of June 16, 2011. It is intended to provide general answers to general questions and is not intended as a substitute for individual legal advice. Advice in specific situations may differ depending upon a wide variety of factors. Therefore, readers with specific legal questions should seek the advice of an attorney.



CALIFORNIA ASSOCIATION OF REALTORS®

## MLS Offers of Compensation on Short Sales

Member Legal Services  
Tel 213.739.8282  
Fax 213.480.7724  
October 31, 2012

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### Introduction

Short pay transactions or "short sales" are transactions where the seller owes more on his or her home than the home is worth (i.e. where title transfers, where the sale price is insufficient to pay the total of all liens and costs of sale and where the seller does not bring sufficient liquid assets to the closing to cure all deficiencies). The distinct nature of these listings enable a third-party lender to intervene in the terms of sale and ask a listing broker to reduce the gross commission offered on the property. As such, NAR policy gives local MLSs the choice to allow listing brokers to condition their offers of compensation on lender approval for these types of transactions. They, along with probate listings subject to court approval, are the only allowable exceptions to NAR's policy prohibiting conditional offers of compensation in the MLS.

Up until C.A.R.'s October 2012 Business Meetings, the C.A.R. Model MLS Rules incorporated this short sale exception into its rules. However, at its October 2012 Business Meetings, C.A.R. decided to remove the short sale compensation exemption to the unilateral compensation rule and instead replace it with a mandatory disclosure of short sale status.

This legal article addresses C.A.R.'s decision to remove the short sale compensation exemption and the implications for MLSs and their participants in removing or maintaining the exemption in their rules.

### **Q 1. *May a lender request that the brokers reduce their compensation as a condition of approval of a short sale transaction?***

**A** Yes. Just like any principal in a transaction may request that the brokers reduce their compensation, a lender can also request the brokers to reduce their compensation in a short pay transaction. However, since the lender is not a party to the listing agreement between the seller and the listing broker, the listing broker is not obligated to reduce or modify his or her commission agreement with the seller. Even so, since the lender's approval is typically required in a short sale for the transaction to be successful, the brokers have a business decision to make as to whether or not to reduce or modify their compensation in order to close the transaction.

### **Q 2. *If a listing broker wants to make the compensation offered to the cooperating broker through the MLS contingent on a lender's approval, can he or she do so?***

**A** It depends on whether your local MLS allows conditional offers of compensation for short sales. NAR policy gives local MLSs the choice of allowing listing brokers to condition their offers of compensation in the case of short sales on lender approval.

Up until October, 2012, the C.A.R. Model MLS Rules had adopted such an exception for short sales, and most MLSs in California had adopted that exception into its local MLS rules. However, in light of increasing instances of abuse of the short sale compensation exemption in ways not intended by the rule, a Work Group of the C.A.R. MLS Committee recommended removing the exception. (To get an appreciation for the background on and implications of this change and why an MLS Committee Work Group recommended removal of the short sale compensation exemption to the unilateral compensation rule, please see the Issues Briefing Paper re C.A.R. MLS Policy Committee Short Sale Compensation – Work Group Report and Recommendations). C.A.R.'s MLS Committee and then the C.A.R. Board of Directors agreed and decided to remove the exception from the C.A.R. Model MLS Rules.

Now that the short sale compensation exception has been removed from the C.A.R. Model MLS Rules, Effective October 2012, it will be up to local MLSs to decide whether follow suit by (a) adopting the current version of the Model MLS Rules

which has removed the exception, or (b) maintaining the previous version of the short sale rule which contained the exception. You should consult your local MLS prior to submitting a short sale listing to determine which standard is in place.

**Q 3. Under the new C.A.R. Model MLS Rules, Effective October 2012, what is the new Model Short Sale Rule?**

**A** The new short sale rule is set forth in C.A.R. Model MLS Rule 7.28 and provides as follows:

7.28 Short Sale (Lender Approval) Listings. Participants must disclose potential short sales (defined as a transaction where title transfers, where the sale price is insufficient to pay the total of all liens and costs of sale and where the seller does not bring sufficient liquid assets to the closing to cure all deficiencies) when reasonably known to the listing broker. This section does not allow Participants with short sale listings to place any reduction conditions on compensation offered through the MLS for items such as lender reductions of the gross commission, short sale negotiator fees or other administrative costs of the transaction. Any reductions from the commission for such items, if any, should be factored in as a reduced amount the listing broker initially offers to a cooperating broker and may not be made a condition of the offer.

**Q 4. What are the implications of the new Model Short Sale Rule and how does it work?**

**A** Under this standard, the ability to offer a conditional offer has been eliminated. With the short sale compensation exception removed, listing brokers will have to stand behind what they offer on the MLS. The listing broker will be obligated to pay the compensation offered, even if a request is made by a lender to reduce the gross commission. If the bank reduces the gross commission, listing broker has to absorb the loss or renegotiate with the cooperating broker (as in any traditional seller-request of a reduction, there are some ways to do it but the cooperating broker can always say no). If the cooperating broker refuses to work with the listing broker in reducing his or her part of the compensation, the matter is similar to any other sale where the principals cannot agree on price, and they ask the brokers to reduce their commissions. The listing broker then has a business decision to make as to whether or not to take the entire cut in commission or whether to refuse to take the cut, thereby making it unlikely the sale will go through.

Removal of the short sale compensation exception requires listing brokers to better project the likely commission that will be received and go ahead and make a judgment on the amount to offer the cooperating side. To that end, any considerations of the potential of a lender reduction or the use of a short sale negotiator, etc. would have to be factored in up front by listing agent in his determination of the amount of compensation to offer potential cooperating agents.

Also, instead of being alerted to the existence of a short sale listing by a listing broker's indication that he is offering conditional compensation subject to lender approval (as was allowed under the old rule), the new Short Sale Rule requires an affirmative disclosure on the MLS of potential short sale status when reasonably known to the listing broker.

**Q 5. Since removing the lender reduction conditional offer exemption could be harmful to listing brokers, what is the rationale for taking it out?**

**A** While removal potentially could be harmful to listing agents, manipulation of it has been harmful to cooperating agents. In these instances, listing agents have used it to make their offers of compensation appear more generous on the MLS than they actually intended to honor. These listing agents have "spiked" up commissions in the listing agreement to a rate beyond the range market forces would typically bear so as to trigger lender reduction when they know (1) the seller will not be paying the commission as it is a short sale and (2) the lender will reduce it to a market rate and (3) cooperating agent (who was advised on the MLS of what appeared to be an "equitable" split of any lender reduction) will actually bear the weight of the reduction. In these instances, a cooperating agent may be unpleasantly surprised to get a lesser commission than reasonably anticipated from the MLS listing.

At this stage in the market, REALTORS® seem to report that commission ranges lenders will approve are fairly predictable and that short sale listing agents are generally in a reasonable position to anticipate what to expect, thus reducing the need to maintain the compensation exception. With this climate as a backdrop, and in light of increasing instances of abuses along the line referenced above, on balance C.A.R. decided that maintaining the short sale compensation rule was more hurtful than helpful to members.

**Q 6. If my MLS wants to maintain the short sale compensation exception, what should it do? What information is the listing broker required to communicate to potential cooperating brokers in order to condition an offer of compensation on lender approval?**

**A** Under the N.A.R. policy statement, compensation payable to a cooperating broker may be reduced upon the request of a lender or court if the following information is disclosed by the listing broker through the MLS prior to presentation of an offer by the cooperating broker:

- the fact that gross commission is subject to court or lender approval (e.g. "short sale-subject to lender approval"; and
- the potential reduction in compensation payable to the cooperating office (e.g., "potential reduction of 1%"), or the method by which any reduction in compensation will be allocated between the listing and cooperating brokers (e.g., "any reduction to be absorbed by cooperating broker").

An MLS maintaining the short sale compensation exemption may wish to use, or will likely be using, the now deleted language from the former version of the C.A.R. Model MLS Rules as follows:

7.15.2 Lender Approval Listings. Compensation offered through the MLS to cooperating brokers on listings which require lender approval (commonly referred to as "short sale" listings) is for the amount published therein unless the listing broker indicates on the MLS the following: (a) the fact that the sale and gross commission are subject to lender approval; and (b) the amount or method by which the compensation offered through the MLS will be reduced if the lender reduces the gross commission. This section does not allow an additional reduction from the commission offered for items such as a short sale negotiator fee or other administrative costs of the transaction. Any reductions from the commission offered for such items should be factored in as a reduced amount the listing broker initially offers to a cooperating broker and may not be made a condition of the offer.

**Q 7. My MLS maintains the short sale compensation exception language. When listing a short sale, is there any specific language I need to use, and where should information regarding conditional compensation be displayed in the MLS?**

**A** As long as the nature of the conditional offer is communicated clearly, the specific language and display will largely be determined by the MLS and local practice.

It is likely the required information will appear either in the "remarks" section or in a dedicated field created by the MLS. For example, the remarks may contain language such as "Short Sale. Compensation subject to lender approval. Any reduction split 50/50." The MLS may also choose to create a separate field which allows a listing broker to note that a particular listing is a short sale; compensation is subject to lender approval; and the allocation of any requested reduction. This could be accomplished by text or some form of code (e.g., "SS-75/25" means the listing broker will absorb 75% of the reduction). Keep in mind the allocation of any requested reduction is at the sole discretion of the listing broker. However, the cooperating broker must always be given notice of any conditions on the offer of compensation.

**Q 8. If my MLS has maintained the short sale compensation exemption, what can a cooperating broker do to protect against getting a minimal amount of compensation?**

**A** The most viable option is for the cooperating broker to enter into a buyer/broker compensation agreement. This will assure that the compensation will come from either the buyer or what is offered through the MLS, or a combination of both.

**Q 9. How can brokers resolve their disputes if it is unclear whether the brokers agreed to modify their commission agreement in a short sale transaction?**

**A** Such disputes can be submitted to local association mediation or arbitration in accordance with local rules.

**Q 10. Where can I obtain additional information?**

**A** This legal article is just one of the many legal publications and services offered by C.A.R. to its members. For a complete listing of C.A.R.'s legal products and services, please visit [car.org](http://car.org).

Readers who require specific advice should consult an attorney. C.A.R. members requiring legal assistance may contact C.A.R.'s Member Legal Hotline at (213) 739-8282, Monday through Friday, 9 a.m. to 6 p.m. and Saturday, 10 a.m. to 2 p.m. C.A.R. members who are broker-owners, office managers, or Designated REALTORS® may contact the Member Legal Hotline at (213) 739-8350 to receive expedited service. Members may also submit online requests to speak with an attorney on the Member Legal Hotline by going to <http://www.car.org/legal/legal-hotline-access/>. Written correspondence should be addressed to:

California Association of REALTORS®  
Member Legal Services  
525 South Virgil Avenue  
Los Angeles, California 90020

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The information contained herein is believed accurate as of Oct 31, 2012. It is intended to provide general answers to general questions and is not intended as a substitute for individual legal advice. Advice in specific situations may differ depending upon a wide variety of factors. Therefore, readers with specific legal questions should seek the advice of an attorney.





CALIFORNIA ASSOCIATION OF REALTORS®

## Internet Data Exchange ("IDX")

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Feb. 12, 2016 (revised)

### **Q 1. What is Internet Data Exchange ("IDX")?**

A Internet Data Exchange ("IDX") is a National Association of REALTORS® ("NAR") mandated Internet policy (also known as "Broker Reciprocity") which allows MLS Participants to electronically display certain MLS listings on websites and using mobile applications that those Participants "control." Through IDX, brokers exchange consent to display each other's listings on the Internet. Consent for such display is presumed unless a listing broker affirmatively notifies the MLS that the listing broker refuses to permit display (either on a blanket or on a listing-by-listing basis). If a broker refuses on a blanket basis to permit the display of its listings, then that broker may not download or frame the aggregated MLS data of other brokers.

### **Q 2. What is meant by electronic display of listings on "websites and using mobile applications which Participants 'control'"?**

A Under IDX, "control" means participants must have the ability to add, delete, modify and update information as required by this policy. All displays of IDX listings must also be under the "actual and apparent control" of the participant, and must be presented to the public as being the participant's display.

"Actual control" requires that the participant has developed the display, or caused the display to be developed for the participant pursuant to an agreement giving the participant authority to determine what listings will be displayed, and how those listings will be displayed.

"Apparent control" requires that a reasonable consumer viewing the participant's display will understand the display is the participant's, and that the display is controlled by the participant.

### **Q 3. What types of electronic display meet the "control" test?**

A Participants' and Subscribers' websites and Participant displays on franchisors' websites would meet the "control" test. IDX policy is not intended to cast open the gate to "social media," but some data displays on 3rd party "social media" sites – subject to the overall requirements of IDX, of course - may fall within the policy. If electronic display can meet the actual and apparent "control" test, it qualifies for display under IDX.

Generally speaking, inclusion of listings of others on a "classified" 3rd party site or other 3rd party data aggregation site will likely not meet the control standard because participant does not control the overall listing display on the site. While participant submits a listing, the listing is simply part of a larger display controlled by the 3rd party site and not the participant. However, if the 3rd party site were one where an agent could essentially customize a page and display the IDX rules-compliant listings there such that participant controlled the overall display, the control test theoretically could be met.

### **Q 4. What happens if my use cannot satisfy the IDX "control" test?**

A It would not be permitted under IDX and would require a separate permission from the listing agent outside the MLS (i.e. the built-in consent of IDX disappears).

### **Q 5. Is there any other way I would be permitted to electronically display data not meeting the "control" test through the MLS?**

A Separate and apart from the IDX display policy, NAR policy would allow an MLS – in its discretion – to develop a "Non IDX/VOW Electronic Display" policy which could permit data uses outside IDX display. Should an MLS choose to design such a policy, it would have its own display rules outside of IDX and operate by separate consents from IDX along the line of listing syndication in that it would be up to brokers to opt in. [Note: The C.A.R. Model MLS Rules have NOT addressed nor recommended such a move at this time.

### **Q 6. Has C.A.R. incorporated NAR's IDX policy into its C.A.R. Model MLS Rules?**

A Yes. To assist local associations in California, C.A.R. has incorporated NAR's IDX policy in the C.A.R. Model MLS Rules, Section 12.16.

### **Q 7. How do the C.A.R. Model MLS Rules function?**

A The C.A.R. Model MLS Rules that C.A.R. produces are just that -- models or templates that are based on NAR's models and policies yet also incorporate governing laws specific to California and the policy directives of the C.A.R. MLS Committee and the CAR Board of Directors. Adoption of the C.A.R. Model MLS Rules by a local association is not mandatory but is a simple and trouble-free way for an MLS to establish a set of rules. By adopting C.A.R. model documents, an MLS can rest assured that the model documents are in accordance with California law and have received approval by NAR.

**Q 8. How do the C.A.R. Model MLS Rules differ from NAR's mandated IDX policy?**

A The C.A.R. Model MLS Rules have adopted all NAR mandated provisions of IDX policy. Additionally, the C.A.R. Model MLS Rules have adopted many of the discretionary portions of the policy such as requiring that the listings identify the name of the listing broker and agent, that the sites state that the information being provided is for consumers' personal, non-commercial use and may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing, that the sites contain a required disclaimer for liability protection of Participants and the MLS and that displays of any confidential information fields, modification of the information displayed and any sharing of the MLS compilation with any third parties not authorized by the MLS are prohibited. These and other significant provisions are further referenced elsewhere in this paper.

**Q 9. Do the C.A.R. Model MLS Rules address all of the IDX issues that will arise for an MLS?**

A While the C.A.R. Model MLS Rules have sought to address most key issues, they are not exhaustive, and local associations may have developed more specific regulations and policies, or even altered certain discretionary provisions, in order to suit their needs and work within their local computer systems and markets.

**Q 10. Does IDX conflict with the real estate licensing law or the NAR Code of Ethics?**

A Implementation of IDX is not inconsistent with state law. NAR's IDX policy statement is consistent with the Code of Ethics since no display of other Participants' listings can occur without their consent, and consent is assumed unless affirmatively withheld by the listing Participant.

**Q 11. To be in compliance with IDX, must an MLS provide both a data download feed and a frameable Web site capability or just one or the other?**

A MLSs must, if requested by a Participant or Subscriber, promptly provide a basic "downloading" of listing information. In accordance with NAR, for the purposes of the IDX policy, "downloading" means electronic transmission of data from MLS servers to Participants' servers. An MLS can also offer display options including framing the MLS' public access Web site, if such site exists, or framing other publicly accessible Web sites displaying the Participants' listings with the permission of the framed site. However, the IDX policy does not require an MLS to establish a publicly accessible Web site displaying Participants' listings.

**Q 12. Can MLSs charge a fee for downloading listing information to Participants and Subscribers?**

A Yes. NAR's IDX policy does not affect the right of associations and MLSs to assess fees and charges for services provided to Participants and Subscribers. Assessment of such costs should reasonably relate to the actual costs incurred by the MLS. This remains a matter of local determination.

**Q 13. Can all MLS Participants and Subscribers participate in IDX?**

A An MLS has discretion to decide. The C.A.R. Model MLS Rules authorize Broker Participants (brokers) and R.E. Subscribers (agents). Appraiser Participants and Subscribers are not included.

**Q 14. Do I have to allow other Participants and Subscribers to electronically display my listings?**

A No. You are free to withhold authority for such display either on a blanket or on a listing-by-listing basis.

**Q 15. What happens if I won't allow other Participants and Subscribers to electronically display my listings?**

A If you prohibit the display of your listings by other Participants and Subscribers, you may not display their listings pursuant to the IDX program. Other Participants may give you permission to display their listings but that permission would have to be sought and obtained separately from each Participant.

**Q 16. What happens if a Participant does not prohibit IDX display of her listings on a blanket basis but instead indicates, each time she submits a new listing to the MLS, that her authorization to display that listing is being withheld. Since she is, in effect, incrementally establishing a blanket opt out, is she entitled to display other Participant's listings?**

A No. A Participant cannot do indirectly what she cannot do directly. Since any Participant can opt out of IDX on a blanket basis, it can be presumed that those Participants who don't opt out are willing to allow other Participants to display their listings, except in what should be those infrequent instances where a seller specifically prohibits the listing broker from allowing the listing to be displayed by other Participants and Subscribers.

**Q 17. A Participant in our MLS has not opted out of IDX display on a blanket basis, but over half of his new listings cannot be displayed by other Participants and Subscribers. Can the MLS make a rule that a Participant cannot display other Participants' listings pursuant to the IDX program unless that Participant authorizes display of, say, 80% or 90% of their own listings?**

A No. If a Participant doesn't opt out of IDX (by issuing a blanket prohibition of display by other Participants) he is presumed to be authorizing display of his listings by other Participants except in those instances where a seller specifically prohibits such display. If an inordinate number of listings cannot be displayed by other Participants and Subscribers, an MLS could establish a rule requiring listing brokers to certify that the benefits of having their property electronically displayed by other Participants and Subscribers has been explained to the seller but that the seller refuses to permit such display.

**Q 18. If a Participant has completely opted out of IDX display on a blanket basis, can the MLS require her to certify that she has explained the benefits of display by other Participants and Subscribers and the seller had nonetheless refused to allow such display?**

A No. If a Participant elects not to take advantage of IDX display, then she cannot be required to explain its advantages to her clients. The type of discretionary rule referenced in the above answer would apply only to Participants who otherwise participate in the program.

**Q 19. If I want to authorize other Participants and Subscribers to display my listings under IDX, how do I do it?**

A You don't need to take any affirmative action. The consent of each Participant to permit display of their listings is assumed. If you choose not to permit display of your listings by other Participants and Subscribers, you are required to notify your MLS that your consent is being withheld.

**Q 20. Can I authorize some, but not all, Participants to display my listings on the Internet?**

A If you consent to the display of your listings by other Participants and Subscribers under the IDX program, then all of the other Participants and Subscribers in the MLS may display your listings. If you choose to authorize some, but not all, Participants and Subscribers to display your listings, you can do so but not under the IDX "all or nothing" program. Separate consents would have to be granted to each Participant and Subscriber authorized to display your listings.

**Q 21. Can the MLS refuse to accept my listings if I do not permit other Participants to display them on their Web sites?**

A No. Participants cannot be required to consent to display of their listings on other Participants' Web sites as a condition of participation in the MLS.

**Q 22. Can sellers "opt-out" of IDX display of their property listings?**

A Sellers may "opt out" of having their property listing displayed on the Internet, or alternatively, sellers can "opt out" of having their property address displayed on the Internet. This means that if a seller opts out of having his listing or property address displayed on the Internet, the listing (or property address) cannot be displayed through IDX, VOWs, third-party aggregator's sites or elsewhere on the Internet. C.A.R.'s Seller Instruction to Exclude Listing from Internet (SELI) is the standard form used in this instance.

**Q 23. Can a seller require that any IDX display of his property not show an automated valuation (AVM) of the property in connection with the listing? What about blogging -- that is, showing third-party comments about the property in connection with the IDX display of the property listing?**

A Sellers can direct that automated valuation and/or blogging features on all websites or mobile applications controlled by Participants be disabled or discontinued with respect to their properties.

**Q 24. May a seller prohibit display of her property address, AVMs, and blogging related to her property on IDX displays while permitting those functionalities on non-IDX Internet advertising?**

A With respect to display of the seller's property address, the IDX rules bar display of the seller's property or property address (or both) where sellers have directed their listing brokers to withhold their listing or property address from display on the Internet. "Display on the Internet" includes IDX sites, VOWs and third-party aggregator sites.

With respect to AVMs and blogging features, the IDX rules deal with sellers who have "elected to have one or both of these features disabled or discontinued on all displays controlled by Participants' websites." While not as broad as the "on the Internet" prohibition referenced above, it applies to all Internet displays controlled by Participants and Subscribers, including their IDX and VOW displays.

**Q 25. If a seller wants an IDX display to turn off automated valuation or blogging of their property, how does she do that?**

A Sellers who wish to have automated valuation and/or blogging features of IDX sites disabled or discontinued with respect to their properties should communicate that request to their listing broker, who will in turn transmit that request to the MLS. C.A.R. standard form Residential Listing Agreement (RLA) and Seller Instruction to Exclude Listing from Internet (SELI) come into play. The MLS paragraph in the RLA references Internet opt-out options contained in the SELI. The SELI contains a

section allowing a seller who has submitted her listing into the MLS to advise the MLS that she does not want Participant IDX displays to enable AVMs or blogging with regard to seller's property. (Keep in mind that such an instruction can be enforced only regarding IDX displays of MLS Participants and Subscribers, as neither brokers nor the MLS will have the ability to block such features on other Internet sites they do not control).

**Q 26. Can the listing data input process include "yes/no" "checkboxes" regarding the seller's right to withhold consent for automated valuation or blogging on his listing shown on an IDX site (e.g. "AVM - yes/no", "Blogging - yes/no")?**

A Yes, but it should be understood that absent a seller's specific direction that AVM and/or blogging functions be disabled or discontinued, these functions are permitted.

**Q 27. Can MLSs adopt rules to ensure seller requests that automated valuation features or blogging on IDX sites be turned off are met on a timely basis?**

A Yes.

**Q 28. What listing statuses are included in IDX?**

A Under NAR policy, and as set forth in the C.A.R. Model MLS Rules, all active, non-confidential pending sale and sold listings are authorized in IDX. The MLS has discretion to decide whether to add additional statuses such as withdrawn, cancelled, expired, etc.

**Q 29. How much sold data can I expect to receive from my MLS?**

A NAR policy requires MLSs to provide a minimum of the last 3 years of publically accessible sold information maintained in its participant IDX sold data feed. "Publicly accessible" sold information as used in IDX policy and rules, means data that is available electronically or in hard copy to the public from city, county, state and other government records.

**Q 30. What if I only want to display active or active and pending listings but not sold?**

A Even though entitled to display "sold" listings, brokerages are not required to display them if they do not choose to do so. In effect, MLSs will have to offer different types of IDX feeds – ex: one just with "actives" and another with "actives" "pendings" and "solds". The broker has discretion to choose which type of data feed fits best for her marketing goals.

**Q 31. Do I have to display all of the listings available through IDX or can I select a sub-set?**

A Not all listings from the MLS must be displayed as long as any exclusions from display on one's IDX site are based on objective criteria (e.g., type of property, listed price or geographic location).

**Q 32. Does IDX mean that confidential information will now be available to the public?**

A No. As is currently set forth in the C.A.R. Model MLS Rules, display of confidential information (by either downloading or by framing) intended exclusively for other real estate professionals and not for consumers is prohibited. However, as this requirement is not an NAR mandate, local MLSs have discretion to change or remove this requirement.

**Q 33. Must the listing firm and listing agent be identified when I display other Participants' listings?**

A As currently set forth in the C.A. R. Model MLS Rules, it is required that the listings identify the name of the listing broker and agent in a manner designed to easily identify such listing firm or agent. Such identification shall be in a reasonably prominent location and in a readily visible color and typeface not smaller than the median used in the display of listing data. Displays of minimum information (e.g. a one-line or thumbnail search result, text messages, "tweets", etc of two hundred (200) characters or less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures.

**Q 34. Must the MLS be listed as the source of the data and how often must the data be updated?**

A Yes. As currently set forth in the C.A. R. Model MLS Rules, IDX displays must indicate the MLS as the source of the information being displayed and the most recent date updated. All MLS downloads and IDX displays automatically fed by those downloads must be refreshed at least once every 12 hours; Displays of minimum information (e.g. a one-line or thumbnail search result, text messages, "tweets", etc of two hundred (200) characters or less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures.

**Q 35. Does IDX require display of usage limitations?**

A Yes. As currently set forth in the C.A. R. Model MLS Rules, IDX displays must indicate that the information being provided is for consumers' personal, non-commercial use and may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing. Displays of minimum information (e.g. a one-line or thumbnail search result, text messages, "tweets", etc of two hundred (200) characters or less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures.

**Q 36. Does IDX require a data display disclaimer?**

**A** Yes. As currently set forth in the C.A.R. Model MLS Rules, a data display disclaimer is required. The purpose is to provide liability protection for Participants and the MLS, as well as the display host. The disclaimer should be set forth in a manner readily visible to consumers but not less than 7pt type, and provide the following, or substantially similar, notice:

“Based on information from the \_\_\_\_\_/Association of REALTORS® (alternatively, from the \_\_\_\_\_ MLS) as of \_\_\_\_\_ (date the AOR/MLS data was obtained). All data, including all measurements and calculations of area, is obtained from various sources and has not been, and will not be, verified by broker or MLS. All information should be independently reviewed and verified for accuracy. Properties may or may not be listed by the office/agent presenting the information.”

Displays of minimum information (e.g. a one-line or thumbnail search result, text messages, “tweets”, etc. of two hundred (200) characters or less) are exempt from this requirement but only when linked directly to a display that includes the required disclosure.

**Q 37. Can listing information be modified when it is displayed by other Participants?**

**A** As currently set forth in the C.A.R. Model MLS Rules, modification of any of the information displayed is prohibited. (This is not a limitation on site design but refers to changes to actual listing data.) MLS participants may, however, augment their IDX display of MLS data with applicable property information from other sources as long as these other sources are clearly separated from the data supplied by the MLS. The source(s) of the information must be clearly identified in the immediate proximity to such data.

**Q 38. Won't buyers (or individuals posing as buyers) be able to extract the entire MLS database and do whatever they want with it?**

**A** MLSs can, as a matter of local determination, establish reasonable limits on the amount of data and/or the number of listings consumers can retrieve in a particular query of Participants' or Subscribers' Web sites, but no fewer than one hundred (100) or 5% of the listings available for IDX display, whichever is less. The limit currently set forth in the C.A.R. Model MLS Rules is no more than 500.

**Q 39. I am a participant in several MLSs. Can I aggregate/"co-mingle" IDX listing information from all of them on my IDX site? Can my whole regional office?**

**A** Brokers and agents are allowed to co-mingle IDX data from multiple MLSs, provided all such displays are consistent with IDX rules, and the MLS Participant (or MLS subscriber) holds participatory rights in those MLSs. Co-mingling creates the ability for a website visitor to execute a single property search which taps into multiple IDX feeds resulting in the display of IDX.

**Q 40. Why should we let our listings be displayed by our competitors?**

**A** Letting other Participants display listings on the Internet is a business decision each Participant must make, taking into account their duty to promote the best interests of their clients; to cooperate with other REALTORS; and the opportunity to use the Internet to better serve their clients and customers.

**Q 41. Where can I obtain additional information on this subject?**

**A** This legal article is just one of the many legal publications and services offered by C.A.R. to its members. For a complete listing of C.A.R.'s legal products and services, please visit [car.org](http://www.car.org).

Readers who require specific advice should consult an attorney. C.A.R. members requiring legal assistance may contact C.A.R.'s Member Legal Hotline at (213) 739-8282, Monday through Friday, 9 a.m. to 6 p.m. and Saturday, 10 a.m. to 2 p.m. C.A.R. members who are broker-owners, office managers, or Designated REALTORS® may contact the Member Legal Hotline at (213) 739-8350 to receive expedited service. Members may also submit online requests to speak with an attorney on the Member Legal Hotline by going to <http://www.car.org/legal/legal-hotline-access/>. Written correspondence should be addressed to:

CALIFORNIA ASSOCIATION OF REALTORS®  
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525 South Virgil Avenue  
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The information contained herein is believed accurate as of February 12, 2016. It is intended to provide general answers to general questions and is not intended as a substitute for individual legal advice. Advice in specific situations may differ depending upon a wide variety of factors. Therefore, readers with specific legal questions should seek the advice of an attorney. Revised by Elizabeth Miller-Bougdanos, Esq.

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CALIFORNIA ASSOCIATION OF REALTORS®

## Virtual Office Websites (“VOWs”)


Member Legal Services  
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Feb. 12, 2016 (revised)

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### Background

On May 27, 2008, NAR and the U.S. Department of Justice (“DOJ”) reached a settlement regarding NAR’s MLS policy as it pertained to the display of listings from the MLS on brokers’ Virtual Office Websites, or VOWs. As a result, all MLSs are required to adopt and implement NAR’s official VOW rules and policies. C.A.R. has adopted the VOW rules and policy into its C.A.R. Model MLS Rules, which are the suggested rules and regulations for an MLS operated as a committee of a local Association of REALTORS® in California.

In addition to adopting all mandatory VOW provisions into its Model MLS Rules, C.A.R. adopted all parity and non-parity optional rules allowed under the VOW policy. To assist your MLS in assessing whether to mirror the C.A.R. Model MLS Rules in including all optional parity and non-parity VOW rules in your local MLS rules, please refer to the [Overview of MLS Considerations Regarding Adoption of VOW Discretionary Areas](#) .

NAR has posted important VOW related documents on its website. The DOJ-NAR Final Settlement and other supporting VOW materials can be found at the following link <http://www.realtor.org/topics/nar-doj-settlement/virtual-office-website-vow-policy-nar-doj-settlement-details>

Read on to learn about the many facets of NAR’s VOW policy, VOW information specific to California, and useful information for practitioners interested in operating a VOW and/or understanding how their listing data will be displayed on a VOW.

### I. Big Picture

#### Q 1. *What is a Virtual Office Website (“VOW”)?*

A Virtual Office Websites (“VOWs”) are Internet sites operated by MLS Participants (or Subscribers of the MLS, with the consent of their Participant) through which Participants conduct online brokerage, enabling them to establish relationships and work with clients and customers in cyberspace in ways similar to real estate professionals interacting with clients and customers in a “brick and mortar” environment. Consumers accessing VOWs can search and view MLS listing information after registering and providing their name and email address. A VOW can be a website or a page on a website.

#### Q 2. *What are MLS “Participants” and “Subscribers”?*

A MLS Participants are brokers or brokerage firms which meet the MLS’s participation requirements (see Section VIII of this Q&A for discussion of the new “Participant” definition) and participate in an MLS. MLS Subscribers are the agent MLS members. Subscribers must be working under an MLS Participant to be eligible to participate in the MLS.

#### Q 3. *How is “listing information” defined?*

A As defined in the Final Judgment, “Listing Information’ means all records of residential properties (and any information related to those properties) stored or maintained by a multiple listing service”.

**Q 4. What's the difference between a VOW site and an IDX display?**

A VOWs are MLS Participant Internet websites satisfying all the various requirements adopted by an MLS in implementing the VOW policy. Internet Data Exchange (“IDX”) displays are other Internet websites or mobile applications controlled by MLS Participants and Subscribers that can be accessed by any member of the public (even if a password is required) where MLS data can be accessed, searched and viewed. There is significant overlap between IDX and VOWs, but key differences do exist.

An IDX display is considered advertising – and listing brokers’ consent is required before another broker may advertise his or her listings. A VOW is considered on-line brokerage. Listing brokers’ consent is not required to display on a VOW any listing otherwise available to MLS Participants and Subscribers for Internet display. Under both policies, sellers retain the ability to withhold their properties from Internet display or to withhold the display of their property’s address from Internet display. However, a website or mobile application that offers online MLS listing searching capability that does not comply with the detailed requirements of the VOW policy is, by definition, an IDX display.

Consumers must register on a VOW, must disclose certain information about themselves, and must agree to Terms of Use before a VOW enables them to view property data on the VOW. These features are not required on IDX sites and mobile applications in order for the Participant to display or the consumer to view the listing data displayed.

Also, the level of data provided through a VOW or IDX can differ. For instance, sold data can be offered to a consumer through a VOW but, depending on the rules of the MLS, may or may not be allowable for display on through IDX.

Features referenced in this response will be explained in greater detail in other parts of the paper.

**Q 5. Are VOWs brokerage – or advertising?**

A In California, VOWs would be both online brokerage activity and advertising; the two are not mutually exclusive. NAR’s VOW policy is based on the premise that real estate brokerage can be conducted online, but even if VOWs are also considered to be advertising by the DRE for state regulatory purposes, in order to be in compliance with NAR policy, VOWs in California must still comply with the VOW policy and VOW-related MLS rules.

**II. Basic VOW Operational Requirements**

**Q 6. What is entailed in the VOW registration process before a consumer can access listing information on a Participant’s VOW?**

A Prior to providing listing data to a consumer who has entered into a “lawful consumer-broker relationship” with the VOW broker, the consumer has to register (become a “Registrant”), provide a valid email to the site and agree to a Terms of Use. The VOW operator has to verify the validity of the email address, confirm receipt of and agreement to a Terms of Use and supply the Registrant with a unique user name and password of fixed duration before the consumer can access the listing information.

**Q 7. Is a “lawful consumer-broker relationship” the same thing as an agency relationship?**

A Not necessarily, although it could lead to the parties deciding to enter into one or exist in conjunction with one which has already been established. See Question 11 below for further discussion of representational agreements.

**Q 8. What are “Terms of Use”?**

A “Terms of Use” are the requirements to which Registrants must agree in order to obtain the right to view and/or download MLS information.

**Q 9. Why must VOW operators establish Terms of Use?**

A VOW operators are required to establish Terms of Use agreements with Registrants to ensure that Registrants use MLS information only as provided for in the VOW policy and under VOW-related MLS rules and regulations.

**Q 10. What are the key elements to be addressed in VOW Terms of Use agreements?**

A Terms of Use agreements must establish, at a minimum, that Registrants: (a) acknowledge entering into a lawful consumer-broker relationship with the participant; (b) agree that all data obtained from the VOW is for Registrants’ personal, non-commercial use; (c) have a bona fide interest in purchase, sale, or lease of real estate of the type offered through the VOW; (d) will not copy, redistribute or retransmit any data or information provided; (e) acknowledge the MLS’s ownership of and the validity of the MLS’s copyright in the MLS database; (f) authorize the MLS and the other MLS Participants to access the VOW for the purpose of monitoring the site’s compliance with the applicable MLS rules and policies.

**Q 11. Do Terms of Use agreements establish representational relationships or financial obligations between VOW operators and consumers?**

A No The VOW policy expressly prohibits either representational relationships or financial obligations being established in the context of Terms of Use agreements. Participants can enter into such relationships or agreements via their VOW through an agreement separate from the Terms of Use agreement. It should be noted, though, that agreements creating representational relationships or financial obligations can NOT be accepted by registrants solely through a "mouse click".

**Q 12. What are other significant operational requirements?**

A A VOW site must contain a privacy policy, be refreshed at least every 3 days, be open to monitoring by the MLS, maintain a means (ex: email address or telephone number) to receive comments by a listing broker about the accuracy of any supplemental VOW added information pertaining to his listing and correct or remove such false information with 48 hours and erect certain safeguards against scraping. The VOW must also prominently display a mode of communication (ex: email address, telephone number, live chat, etc.) by which a consumer can contact the Participant to ask questions or get more information about a property displayed on the VOW, and that Participant or one of his Subscribers must be able to respond knowledgeably about any property displayed on that VOW. A VOW operator must notify the MLS of its intent to operate a VOW and may be required by the MLS to enter into a license agreement. Data provided by the MLS may be used only to establish and operate a VOW on behalf of the Participant and not for any other purpose.

**III. Participants and Subscribers - Rights and Obligations**

**Q 13. Can MLS Participants “opt-out” of having their listings shown on the VOW sites of other Participants?**

A No. The policy does not provide for broker opt-outs.

**Q 14. Can sales-associates and non-principal brokers have their own VOWs?**

A Yes, subject to the Participant’s consent, supervision and accountability.

**Q 15. Can the MLS limit the right to operate VOWs to MLS Participants only (and not permit Subscribers to have their own VOWs)?**

A No. Whether or not Subscribers (sales-associates and non-principal brokers) may have their own VOWs is left to the sole discretion of their principal broker.

**Q 16. Our MLS participates in a reciprocal data-sharing agreement with other MLSs. Under the agreement, Participants in the other MLSs receive the same information our Participants receive, and the offers of cooperation and compensation are extended to all Participants of all of the MLSs. Can we limit the right to use the listing information our MLS generates to the VOWs of our Participants and Subscribers? Must we include listings from the other MLSs in the VOW feed we provide to Participants and Subscribers to our MLS?**

A Participants and Subscribers are entitled to display on their VOWs all of the listings they are eligible to receive pursuant to their participation in the MLS, including any listings that are available to them as a result of a reciprocal data-sharing agreement with another MLS.

**Q 17. I belong to a large regional MLS. I am not familiar with, and don’t market or sell in some areas the MLS services. Can I exclude listings in those areas from display on my VOW? Can I exclude everything but beachfront property?**

A Yes. A VOW operator can choose to exclude listings from display based on objective criteria including, but not limited to, geography, list price, type of property, cooperative compensation offered by the listing broker, or whether the listing broker is a REALTOR®.

**Q 18. While I’m a California broker, a Participant in an MLS in Nevada gave me permission to display her Nevada listings on my website. Can I do this under the VOW policy?**

A If you are a Participant in the Nevada MLS, you have the same right to display listings in the Nevada MLS as any other Participant. If you are not a Participant in the Nevada MLS, then the VOW policy doesn’t apply to your use of listings from that MLS because you are not entitled to use those listings in any event. The Nevada broker may authorize you to display her listings on your VOW, but she must supply them to you directly and you cannot simply take those listings from the Nevada MLS unless that MLS expressly permits you to do that.

**Q 19. If a seller withholds consent for the listing of her property to be published in the MLS and the Participant takes an “office exclusive” listing, can the Participant display information about the seller’s property on the Participant’s VOW?**

A Yes.

**Q 20. I have retained a tech provider to be my Affiliated VOW Partner (“AVP”) to provide me with technical support to operate my VOW, and in exchange for this service, I would like to advertise the tech provider’s name on my VOW site. Is this allowed?**



A Yes. A Participant may display advertising and the identification of other entities (“co-branding”) on any VOW the Participant operates or that is operated by an AVP on his or her behalf. See further discussion of AVPs in Section VII.

**Q 21. *The VOW rule set forth in Section 12.19.21 of the C.A.R. Model MLS Rules provides, in part: A Participant may display advertising and the identification of other entities (“co-branding”) on any VOW the Participant operates or that is operated on his or her behalf”. If an MLS does not adopt Section 12.19.21 into its rules, does that mean VOW operators may not advertise or “co-brand” on their VOWs?***

A No. The VOW Policy precludes an MLS from prohibiting or regulating advertising on a VOW except to prohibit deceptive or misleading advertising or co-branding. The first sentence of Section 12.19.21 simply restates this right of a Participant operating a VOW to display advertising or co-branding, but NAR’s VOW Policy gives Participants that right even absent this language. The balance of the text of Section 12.19.21 is the heart of this rule. It establishes the MLS’s authority to discipline a Participant who advertises or co-brands in a deceptive or misleading manner, and provides a presumption “standard” for Participants to follow to insure that their advertising or co-branding will not be deemed deceptive or misleading.

#### **IV. Sellers’ Rights**

**Q 22. *Can sellers “opt-out” of display of their property listings on VOWs?***

A Sellers may “opt-out” of having their property listing displayed on all Internet sites or, alternatively sellers can “opt-out” of having their property address displayed on all Internet sites. Sellers may not opt out of having their listings shown on some, but not all, VOW sites. This means that if a seller opts out of having his listing or property address displayed on VOWs, the listing (or property address) cannot be displayed through IDX or on third-party aggregators’ sites or elsewhere on the Internet.

**Q 23. *Can sellers direct that their listings appear on third-party aggregators’ websites (e.g. Realtor.com) but not on other Participants’ VOWs?***

A No. As noted in above, if sellers withhold consent for display of their property or display of their property address on the Internet, display through IDX or on VOW or third-party aggregators’ sites is likewise precluded.

**Q 24. *Can a seller require that any VOW displaying their property not show an automated valuation of the property in connection with the listing? What about blogging, that is, showing comments of third parties about the property in connection with the display of the property listing on VOW?***

A Sellers can direct that automated valuation and/or blogging features of VOWs be disabled or discontinued with respect to their properties.

**Q 25. *If a seller wants a VOW to turn off automated valuation or blogging of their property, how do they make the VOW do that?***

A Sellers who wish to have automated valuation and/or blogging features of VOWs disabled or discontinued with respect to their properties should communicate that request to their listing broker, who will in turn transmit that request to the MLS.

**Q 26. *Does C.A.R. offer standard forms for listing brokers to provide to a seller who wants to exclude his listing or some features associated with his listing from the Internet?***

A Yes. C.A.R. standard form Residential Listing Agreement (RLA) and Seller Instruction to Exclude from the MLS (SEL) come into play. The MLS paragraph in the RLA references Internet opt-out options contained in the SEL. The SEL contains a section allowing a seller who has submitted her listing into the MLS to request that the property or property address be excluded from Internet display or to advise the MLS that she does not want Participant Internet displays to enable AVMs or blogging with regard to seller’s property. (Keep in mind that such an instruction can be enforced only regarding Internet displays of MLS Participants and Subscribers, as neither brokers nor the MLS will have the ability to block such features on other Internet sites they do not control).

**Q 27. *Can the listing input process include “yes/no” “checkboxes” regarding the seller’s right to withhold consent for automated valuation or blogging on his listing shown on a VOW (e.g. “AV - yes/no”, “Blogging - yes/no”)?***

A Yes. Also see Question 77 detailing the RETS Advisory Board’s recommendations regarding implementation.

**Q 28. *Can MLSs adopt rules to ensure sellers’ requests that automated valuation features or blogging on VOWs be turned off are met on a timely basis?***

A Yes.

**Q 29. *Can sellers require that false information about their property be deleted from VOWs? How?***

A If a seller believes that information appearing on a VOW about his property is false, he should share that concern with the listing broker who, in turn, will bring the false information to the attention of the VOW operator, with an explanation as to why the information is false. The VOW operator will then have an obligation to remove any false information.

**Q 30. If a seller won't permit information about his property to be displayed on other Participants' VOWs but wants it marketed on the listing firm's website, can a Participant accept the listing? Can it be submitted for inclusion in the MLS? Can it still be displayed on the listing firm's website?**

A If a seller withholds consent for Internet display on all sites except the listing broker's, the listing broker may take the listing but it would not be eligible for inclusion in MLS. However, if the listing is submitted to the MLS with the seller withholding consent for Internet display, then the listing would also be prohibited from display on the listing firm's website.

**Q 31. May a seller prohibit display of her property or property address, automated valuation and blogging related to her property on VOWs while permitting those functionalities on non-VOW Internet advertising?**

A With respect to display of the seller's property or property address, the VOW rule set forth in Section 12.19.6 of the C.A.R. Model MLS Rules bars display of the seller's property or property address (or both) where the seller has "affirmatively directed the listing broker to withhold the listing or property address from display on the Internet". "Display on the Internet" would include VOWs and "non-VOW Internet advertising," such as IDX display and third-party aggregator sites.

With respect to automated valuation and blogging features, Section 12.19.7 (b) of the C.A.R. Model MLS Rules deals with sellers who have "elected to have one or both of these features disabled or discontinued on Participants' websites". While not as broad as the internet prohibition established in Section 12.19.6, it applies to all Internet displays of Participants including VOW and IDX but would not extend to other third-party sites. Neither brokers nor MLSs may have the ability to control or block such features on third-party sites, and the VOW rules do not extend the reach of these opt-outs beyond Participants' Internet displays.

## V. Sold Information

**Q 32. How is "sold information" defined?**

A The VOW policy defines "sold information" as "listing information relating to properties that have sold."

**Q 33. Is sold information synonymous with "property history" or "listing history"?**

A No.

**Q 34. Can MLSs limit Participants' display or use of sold information on VOWs?**

A Under the VOW policy, MLSs may prohibit display of sold information on VOWs only if the actual sale prices of completed transactions are not accessible from public records. In locations where sales prices are not publically accessible, an MLS may prohibit sold information from display on a VOW, but if it does, under the VOW policy's "parity" requirement, it is also required to prohibit sold information from being given by Participants to consumers in other non-VOW mediums, such as the Participant's physical office. (Please note, however, that as discussed in Question 35 below, sales prices are accessible in California.)

**Q 35. In California, sale prices are not specifically matters of public record, but the amount of the transfer tax assessed by the county is noted on the property deed. Based on this number, however, the sold price can be readily computed. Would this be considered publicly accessible sold information under the VOW policy and rules?**

A Since the deeds are publicly accessible, and a calculation using the transfer tax reflects the actual sales price of a completed transaction, then the information described above could be fairly characterized as "sold information". Therefore, in California, an MLS may not prohibit sold information from display on VOWs.

**Q 36. Do the rules regarding distribution of "sold" information apply to data acquired by the MLS from third-party sources (other than Participants)?**

A No. If the MLS licenses data from third parties for access only by Participants and Subscribers, Participants would not be permitted to provide access to those third-party databases to consumers registering on their VOWs. Participants may independently secure from such third parties their own licenses to display the information on their VOW.

## VI. Parity and Other Options

**Q 37. Why are certain restrictions that an MLS can adopt subject to the "parity" principle?**

A The concept underlying the VOW policy is that operation of a VOW is a method by which Participants use MLS listing data in connection with offering online brokerage services to established clients and customers. Because such services involve the use of MLS listing data, it is appropriate for the MLS to establish various requirements on the use and display of that data. The "parity" principle governs certain specific areas of the VOW policy where it has been decided that Participants must have equivalent rights, responsibilities and obligations with respect to both their "physical" and their "virtual" offices. In this regard, if an MLS adopts certain restrictions on VOW operators, it must impose equivalent restrictions to brokers in the non-VOW context.

**Q 38. Does an MLS have to choose to adopt either all or none of the optional "parity" rules? For example, can an MLS choose to adopt certain subsections within a rule (e.g. Section 12.19.15 which has 6 subsections)?**

A An MLS can choose to adopt some, none or all of the optional “parity” provisions of the VOW rules (see Sections 12.19.15-12.19.19 of the C.A.R. Model MLS Rules), including selective adoption of the individual items listed (i.e. expired, or withdrawn) in the subsection set forth in Section 12.19.15. In addition, because these rules are optional, they may be omitted upon initial adoption of the VOW rules and adopted at a later time or, once adopted, may subsequently be deleted. However, if adopted, equivalent requirements must be adopted related to delivery of MLS Listing Information in providing brokerage services using other delivery mechanisms (e.g. in participants’ physical offices, by email, by fax. etc.).

**Q 39. Our MLS allows Participants and Subscribers in their offices and by email to give potential buyers hard copy lists of street addresses (“thumbnails”) of properties in MLS. Names of listing firms do not appear on these lists. Can our Participants and Subscribers still provide these lists if we require that the names of listing firms be shown in connection with listings displayed on VOWs?**

A No. If the MLS chooses to require that the names of listing firms be displayed on VOWs, the same requirement must be imposed on Participants providing brokerage services via all other delivery mechanisms.

**Q 40. May we adopt Section 12.19.18 of the VOW rules but delete the words “listing broker or agent” so that all that’s required is display of the name of the listing firm?**

A Yes.

**Q 41. If an MLS has opted to prohibit expired or withdrawn listing data from being displayed on VOWs and in the “bricks and mortar” context, does that mean that a broker may not use and disclose these listings in connection with CMAs or other advice to a client or customer – either in their offices or via their VOWs?**

A If the MLS chooses to prohibit display of expired or withdrawn listing data on the VOW, Participants may still provide clients and customers with a limited number of such listings in connection with providing brokerage services, including CMAs. This is permissible both on a VOW and “in the office.”

The distinction between display of such data and permitted uses is based on whether the expired or withdrawn listing data provided to the consumer are chosen by the consumer (or selected pursuant to criteria chosen by the consumer), or are selected by the broker in the course of providing brokerage services to the consumer. For example, where the MLS prohibits display of expired or withdrawn listing data on VOWs, the MLS must also prohibit brokers from offering consumers the opportunity to freely review or search such listing data in the office. A broker may, however, develop a CMA for a client or customer and provide the underlying comparable expired or withdrawn listing data on which that CMA is based, so long as the broker, rather than the consumer, chose a reasonable number of listings to provide in connection with developing, explaining, and justifying the CMA. Conversely, where the MLS prohibits expired or withdrawn listing data display on VOWs, a broker may not provide a client or customer an unrestricted opportunity to review the expired or withdrawn listing data related to homes in a geographic area (such as a neighborhood or zip code) selected by the seller, unrelated to the broker’s efforts in marketing the property.

**Q 42. Can an MLS set limits to the number of “expired” or “withdrawn” listings that can be viewed, retrieved or downloaded in response to an inquiry?**

A Yes. However the number should be reasonable and any limits established will require an equivalent limit on participants’ delivery of that information “through all other delivery mechanisms.”

**Q 43. Can MLS listing information be changed or supplemented?**

A As long as equivalent rules are in place for VOWs and non-VOWs, an MLS may prohibit making any changes to MLS data but permit MLS data to be supplemented with additional information, provided that the source of the supplemental information is identified.

**Q 44. Should there be an “accuracy disclaimer” on VOWs?**

A As long as equivalent rules are in place for VOWs and non-VOWs, an MLS may require the Participant to provide a disclaimer. As currently set forth in the C.A.R. Model MLS Rules, a data display disclaimer is required. The purpose is to provide liability protection for Participants and the MLS, as well as the display host. The disclaimer should be set forth in a manner readily visible to consumers but not less than 7pt type, and provide the following, or substantially similar, notice:

“Based on information from the \_\_\_\_\_ /Association of REALTORS® (alternatively, from the \_\_\_\_\_ MLS) as of \_\_\_\_\_ (date the AOR/MLS data was obtained). All data, including all measurements and calculations of area, is obtained from various sources and has not been, and will not be, verified by broker or MLS. All information should be independently reviewed and verified for accuracy. Properties may or may not be listed by the office/agent presenting the information.”

**Q 45. Our MLS licenses databases such as public records, mortgage information and neighborhood information at considerable cost, for access only by Participants and Subscribers. The license agreement does not give the MLS authority to permit access to those databases to consumers on brokers’ websites. Is the MLS required to re-negotiate these license agreements to allow for consumer access via brokers’ VOWs?**

A If the MLS licenses databases from third parties for access only by Participants and Subscribers, the MLS has no obligation to re-negotiate those license agreements and can prohibit Participants and Subscribers from providing unauthorized access to those databases by third-parties.

**Q 46. What are the optional rules that an MLS can impose solely on VOWs?**

A An MLS is permitted to adopt VOW-only regulations governing (a) the length of time Registrants' passwords have to be reconfirmed, (b) misleading advertising and co-branding, (c) identification and/or separate searching of non-MLS sources, (d) execution of a license agreement with the MLS and (e) providing a copy of a Seller's Opt Out to the MLS (see Section IV for discussion on seller opt outs).

**VII. Affiliated VOW Partners ("AVPs")**

**Q 47. What is an Affiliated Vow Partner ("AVP")?**

A An Affiliated Vow Partner ("AVP") is a vendor or other service provider that operates a VOW on behalf of a Participant, subject to the Participant's supervision, accountability and the terms of the VOW policy.

**Q 48. Must an MLS provide a VOW feed to an AVP?**

A Yes. An MLS must, at the request of a Participant, provide a direct data feed to the Participant's AVP, and may not require that MLS Information be retransmitted by the Participant to their AVP.

**Q 49. Can the fees charged AVPs be higher than the fees charged Participants and subscribers?**

A AVPs can be charged fees higher than those charged to Participants only if the MLS incurs greater cost in providing service to an AVP. In any instance, the costs charged must reasonably relate to the actual costs incurred in providing the service to Participants or to AVPs.

**Q 50. Does the VOW policy impose a cap on the fees for VOW data feeds?**

A No, except that fees charged may not exceed the reasonably estimated costs incurred in adding or enhancing its downloading capacity to enable Participants, Subscribers or AVPs to operate VOWs.

**Q 51. If an AVP operates VOWs on behalf of several Participants, can we charge the AVP fees based on the number of VOWs it operates?**

A If the MLS charges a single fee to all VOWs that combines both the fixed costs of supporting VOWS and the variable costs associated with delivery of a data feed, and the variable costs of providing the feed are insubstantial, then the MLS may charge the AVP a fee based on the number of VOWs they operate. If the MLS charges a separate fee for providing the data feed, and an AVP only receives one feed, it may only be charged one fee.

**Q 52. If an AVP operates several VOWs for different Participants and misuses MLS information with respect to one of the VOWs, can we terminate the data feed?**

A Yes, although the MLS should be sure to give the Participants and the AVP notice and an opportunity to correct the problem so that the use of the feed to service the VOWs of the other Participants is not unnecessarily interrupted.

**VIII. Definition of MLS "Participation"**

**Q 53. What is changed by the revised MLS "membership" rule?**

A The revised membership rule is similar to the longstanding definition of MLS "Participation" except that it requires that Participants "offer or accept cooperation and compensation to and from other Participants". This differs from the earlier policy that merely required that Participants be "capable of offering and accepting cooperation and compensation". The official definition of MLS "Participant" can be found in NAR's Multiple Listing Policy Statement 7.9, Definition of MLS "Participant" and includes further explanatory language as follows:

"Mere possession of a broker's license is not sufficient to qualify for MLS participation. Rather, the requirement that an individual or firm 'offers or accepts cooperation and compensation' means that the Participant actively endeavors during the operation of its real estate business to list real property of the type listed on the MLS and/or to accept offers of cooperation and compensation made by listing brokers or agents in the MLS. "Actively" means on a continual and on-going basis during the operation of the Participant's real estate business. The "actively" requirement is not intended to preclude MLS participation by a Participant or potential Participant that operates a real estate business on a part time, seasonal, or similarly time-limited basis or that has its business interrupted by periods of relative inactivity occasioned by market conditions. Similarly, the requirement is not intended to deny MLS participation to a Participant or potential Participant who has not achieved a minimum number of transactions despite good faith efforts. Nor is it intended to permit an MLS to deny participation based on the level of service provided by the Participant or potential Participant as long as the level of service satisfies state law.

The key is that the Participant or potential Participant actively endeavors to make or accept offers of cooperation and compensation with respect to properties of the type that are listed on the MLS in which participation is sought. This  
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requirement does not permit an MLS to deny participation to a Participant or potential Participant that operates a Virtual Office Website ("VOW") (including a VOW that the Participant uses to refer customers to other Participants) if the Participant or potential Participant actively endeavors to make or accept offers of cooperation and compensation. An MLS may evaluate whether a Participant or potential Participant "actively endeavors during the operation of its real estate business" to "offer or accept cooperation and compensation" only if the MLS has a reasonable basis to believe that the Participant or potential Participant is in fact not doing so.

The membership requirement shall be applied on a nondiscriminatory manner to all Participants and potential Participants."

**Q 54. Must an MLS adopt the revised definition of MLS Participation?**

A Yes.

**Q 55. How does the revised definition affect Participants who do not meet its requirements? Must an MLS terminate their participatory rights? What about new applicants?**

A If there is any question as to whether a Participant meets the requirement, he or she should be given an opportunity to demonstrate compliance. If he or she is found not to be in compliance under the revised rule, the MLS is to terminate their participation in the Service. Applicants for MLS participation must meet the revised definition as a condition of admission.

**Q 56. Will NAR defend a local MLS if it terminates a Participant who doesn't meet the new criteria?**

A A lawsuit against an MLS filed by a Participant terminated for failure to satisfy the new membership requirements would be generally covered under the NAR-provided professional liability insurance policy. Coverage for such a claim under that policy would be available on the same terms and conditions as it is in any other case, and in particular, would apply only if the rules and policies of the MLS were in compliance with those imposed by NAR.

**Q 57. Can an MLS require that Participants engage in listing and selling?**

A No. The fact that a broker engages in either listing or selling satisfies the requirement.

**Q 58. How does an MLS determine the intent of prospective Participants seeking admission to the MLS to list or sell property?**

A The MLS may include a provision in the application for participatory rights by which the applicant would be required to affirmatively state his or her intent to list and/or sell real property. To assist local AORs/MLSs, C.A.R. has revised its model C.A.R. REALTOR® and/or MLS Membership Application to expressly reference the new Participant definition. The applicant is asked to certify by a yes or no checkbox that she "actively endeavors" to list and/or sell real property. The revised Application has been posted for use by Association Executives in their portion of C.A.R.'s website.

**Q 59. How does an MLS determine whether a Participant (or potential Participant) is able to "respond knowledgeably" to questions about property displayed on the Participant's VOW?**

A It should be assumed that individuals who qualify for MLS participatory rights will be able to respond knowledgeably until such time as an issue arises that calls this ability into question.

**Q 60. Is the requirement that Participants "actively endeavor" to list property or accept offers of cooperation and compensation merely a requirement to gain participatory rights in MLS, or is it an ongoing obligation?**

A Actively endeavoring to list real property and/or to accept offers of cooperation and compensation from other Participants is an ongoing requirement of MLS participation.

**Q 61. Can MLSs conduct periodic audits or evaluations to ensure Participants are continuously engaged in actively listing or selling property?**

A Yes, as long as the audits are performed uniformly and consistently.

**Q 62. Some of our Participants are part-time or "seasonal" (e.g., they list and sell property only during the summer and early fall). Are they eligible for ongoing MLS participatory rights under the revised membership rule?**

A Yes. Such individuals are entitled to participation so long as they are engaged in the business "on a continual and ongoing basis during the operation of (their) real estate business."

**Q 63. How does the revised membership rule apply to MLS Participants who spend all their time running real estate companies (e.g., hiring, training, marketing, etc.) and where the firm's non-principal brokers and sales associates do the listing and selling?**

A The fact that the real estate brokerage company is actively engaged on an ongoing basis in listing or selling satisfies the requirement.

**Q 64. What are the consequences if an MLS determines a Participant is not actively listing or selling property?**

A If it is established that a Participant is no longer engaged in either listing or selling real property, he is not eligible for participatory rights.

**Q 65. Does the requirement to actively endeavor to list or sell property also apply to Subscribers?**

A No.

**Q 66. Can MLSs require applicants to demonstrate a history, e.g., 6 months or a year, of actively endeavoring to list or sell?**

A No. The fact that an applicant can show he or she is currently and intends to continue to be engaged in listing or selling real property is sufficient.

**Q 67. What effect does the membership rule have on appraisers – both those currently participating in our MLS and those who apply in the future?**

A The requirement that a Participant be engaged in listing or selling does not apply to appraisers, who are granted participatory rights on the basis of their appraisal activities.

**Q 68. Can an MLS participation application require applicants to confirm that they are (or will be) actively endeavoring to list real property or accept (or will accept) offers of cooperation and compensation from other Participants in the MLS?**

A Yes. And, as stated in Question 58 above, to assist AORs/MLSs in that regard, C.A.R. has revised its model C.A.R. REALTOR® and/or MLS Membership Application to ask the applicant to certify by a yes or no checkbox that she “actively endeavors” to list and/or sell real property.

**Q 69. Is an exclusive buyer’s broker who rejects the offer of compensation offered by listing brokers and is compensated only by the buyer still eligible for MLS participation?**

A Yes.

## **IX. IDX**

**Q 70. What’s the difference between a VOW and an IDX site?**

A VOWs are Internet websites satisfying all the various requirements adopted by an MLS in implementing the VOW policy. Internet Data Exchange (“IDX”) is Internet display by Participants and Subscribers on websites and using mobile applications that those Participants and Subscribers “control” and that can be accessed by any member of the public (even if a password is required) where MLS data can be accessed, searched and viewed. There is significant overlap between IDX and VOWs, but key differences do exist.

An IDX display is considered advertising – and listing brokers’ consent is required before another broker may advertise his or her listings. A VOW is considered on-line brokerage. Listing brokers’ consent is not required to display on a VOW any listing otherwise available to MLS Participants and Subscribers for Internet display. Under both policies, sellers retain the ability to withhold their properties from Internet display or to withhold the display of their property’s address from Internet display. However, a display that offers online MLS listing searching capability that does not comply with the detailed requirements of the VOW policy is, by definition, an IDX display.

Consumers must register on a VOW, must disclose certain information about themselves, and must agree to Terms of Use before a VOW enables them to view property data on the VOW. These features are not required through IDX in order for the Participant to display or the consumer to view the listing data displayed.

Also, the level of data provided through a VOW or IDX can differ. For instance, sold data can be offered to a consumer through a VOW but, depending on the rules of the MLS, may or may not be allowable for display through IDX.

**Q 71. Does the VOW settlement agreement affect the IDX policy?**

A No.

**Q 72. Can an MLS “graft” elements of the new VOW policy onto its existing IDX rules?**

A Not at this time. It is possible that the IDX policy may be amended by NAR to incorporate certain elements of the VOW policy.

**Q 73. If MLSs limit the number of listings that can be viewed, retrieved or downloaded in response to a Registrant’s inquiry on a VOW (per Section 12.19.19 of the C.A.R. Model MLS Rules), must they establish a similar requirement for display in Participants’ physical offices? Does the limit MLSs establish apply to Participants’ IDX displays as well?**

A A limit on the number of listings that may be viewed, retrieved or downloaded in response to a Registrant’s inquiry on a VOW requires a similar limit to Participants’ use of MLS Listing Information in providing brokerage services through all other

delivery mechanisms. Display through IDX is considered advertising rather than brokerage and the limits on the number of listings that may be displayed in response to a consumer's search through IDX may be different.

## **X. The Settlement Agreement**

### **Q 74. Can the VOW policy be changed?**

**A** It is possible, although unlikely, that NAR may at some future time propose changes to the VOW policy. Any changes would require approval by the Department of Justice. Once MLSs adopt the VOW policy and VOW rules they may not make changes to them unless those changes are permitted by the current VOW policy.

### **Q 75. Does the settlement agreement have implications for Commercial Information Exchanges?**

**A** No.

### **Q 76. How long do MLS participants have to make sure their VOW sites are in compliance with the VOW rules?**

**A** Participants have up to 180 days from the time their MLS adopted and implemented its VOW rules to cause their VOW to come into compliance. (This generally was completed in 2009).

## **XI. Real Estate Transaction Standards ("RETS")**

### **Q 77. Does the RETS Advisory Board have any recommendations for implementing the VOW policy and rules?**

**A** The Advisory Board suggests:

"When implementing the policy, the addition of several data points to the representation of a listing are obvious and that those data points should have the following names:

- Visible Long Name System/Standard Name
- VOWEntireListingDisplay VOWList
- VOWAddressDisplay VOWAddr
- VOWAutomatedValuationDisplay VOWAVM
- VOWConsumerComment VOWComm

The data type of each point is boolean with '0' (zero) representing false and '1' (one) representing true.

Specifically, the listing input form should have check-box selections for the selling party to explicitly Opt Out of each of displaying a listing; displaying the address of the listing; displaying an automated valuation; displaying consumer comments. In the interests of having consistent representations of these data points and the intent of the RETS Schema workgroup to add these data points to the Listings schema model, the group decided on these representations.

The interpretation of the data points are that the seller has opted in to each of the actions of displaying the listing, address, automated valuation and consumer comment when the value is true."

### **Q 78. Where can I get more information?**

**A** This legal article is just one of the many legal publications and services offered by C.A.R. to its members. For a complete listing of C.A.R.'s legal products and services, please visit [car.org/legal](http://www.car.org/legal). Readers who require specific advice should consult an attorney. C.A.R. members requiring legal assistance may contact C.A.R.'s Member Legal Hotline at (213) 739-8282, Monday through Friday, 9 a.m. to 6 p.m. and Saturday, 10 a.m. to 2 p.m. C.A.R. members who are broker-owners, office managers, or Designated REALTORS® may contact the Member Legal Hotline at (213) 739-8350 to receive expedited service. Members may also submit online requests to speak with an attorney on the Member Legal Hotline by going to <http://www.car.org/legal/legal-hotline-access/>. Written correspondence should be addressed to:

CALIFORNIA ASSOCIATION OF REALTORS®  
Member Legal Services  
525 South Virgil Avenue  
Los Angeles, CA 90020

The information contained herein is believed accurate as of February 12, 2016. It is intended to provide general answers to general questions and is not intended as a substitute for individual legal advice. Advice in specific situations may differ depending upon a wide variety of factors. Therefore, readers with specific legal questions should seek the advice of an attorney. Revised by Elizabeth Miller-Bougdanos, Esq.

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CALIFORNIA ASSOCIATION OF REALTORS®

## The Duty to Arbitrate When REALTORS® Are Acting Solely as Principals in a Real Estate Transaction

Member Legal Services  
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July 29, 2016

### Introduction

Article 17 of the 2016 [NAR Code of Ethics](#) obligates REALTORS® to arbitrate disputes with other REALTORS® and their own clients under certain circumstances. The following Standard of Practice to the NAR Code of Ethics states the rule when a REALTOR® is acting solely as a principal in a real estate transaction:

### Standard of Practice 17-3

The purpose of this legal article is to explain this Standard of Practice and its application.

#### **Q 1. How does Standard of Practice 17-3 clarify a REALTOR®'s duty to arbitrate under Article 17?**

**A** In the past, it was unclear whether a REALTOR® acting solely as a principal in a real estate transaction still had a duty to arbitrate with other REALTORS® involved in the transaction. Standard of Practice 17-3 makes it clear that Article 17 does not obligate REALTORS® to arbitrate disputes with other REALTORS® if the REALTOR® acted solely as a principal in the transaction.

#### **Q2. What does "acting solely as principals in a real estate transaction" mean?**

**A** NAR adopted two Case Interpretations to illustrate what "acting solely as principals in a real estate transaction" means. These Case Interpretations seem to suggest that if the REALTOR® does not perform acts within the scope of his or her license in relation to the property, he or she is acting solely as a principal and is not obligated to arbitrate disputes with other REALTORS® involved in the transaction. However, if the REALTOR® provides services within the scope of his or her license, for example, listing the property on the MLS under his or her license, the REALTOR® is no longer acting solely as a principal and will be obligated to arbitrate disputes with other REALTORS® in the transaction.

#### **Q 3. Where can I find the Article 17 Case Interpretations?**

**A** As mentioned in the answer to Question 2, NAR has provided two Case Interpretations on this issue. Specifically, these are Case Interpretations 17-12 and 17-13. To obtain copies, you may contact NAR or your local association. They are also available on [www.realtor.org](http://www.realtor.org), the NAR website, by clicking on: [Article 17 Case Interpretations](#).

#### **Q 4. What if it is unclear whether a REALTOR® acted solely as a principal in the transaction?**

**A** While Case Interpretations 17-12 and 17-13 are intended to make clear the situations where a REALTOR® will be obligated to arbitrate even though acting as a principal in the transaction, there may be factual situations where interpretation will be needed.

Therefore, if there is a dispute as to whether a REALTOR® acted solely as a principal in a transaction, the matter will need to be decided through the local association's professional standards process.

#### **Q 5. Where can I obtain additional information?**

**A** This legal article is just one of the many legal publications and services offered by C.A.R. to its members. For a complete listing of C.A.R.'s legal products and services, please visit [car.org/legal](http://car.org/legal). Readers who require specific advice should consult an attorney. C.A.R. members requiring legal assistance may contact C.A.R.'s Member Legal Hotline at (213) 739-8282, Monday through Friday, 9 a.m. to 6 p.m. and Saturday, 10 a.m. to 2 p.m. C.A.R. members who are broker-owners, office managers, or Designated REALTORS® may contact the Member Legal Hotline at (213) 739-8350 to receive expedited service. Members may also submit online requests to speak with an attorney on the Member Legal Hotline by going to <http://www.car.org/legal/legal-hotline-access/>. Written correspondence should be addressed to:



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CALIFORNIA ASSOCIATION OF REALTORS®

## Variable Dues Formula

Corporate Legal Services  
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Jan. 26, 2016 (revised)

### Introduction

At the 1972 Annual Convention, the National Association of REALTORS® Delegate Body approved what is now commonly referred to as the “NAR Variable Dues Formula” for Designated REALTORS®. The formula was crafted to ensure fairness, by basing member dues on the number of individuals licensed with REALTOR® principals (known as “Designated REALTORS®” or “DRs”). The premise is that every licensee in the firm benefits from the DR’s membership in the Association of REALTORS®, and, therefore, the DR’s dues should reflect all licensees in the firm – even those who are not REALTORS®.

This Legal Q&A addresses the questions that are frequently asked by DRs when they receive their annual dues billing from their local association.

#### **Q 1. Who is included in the dues formula?**

**A** All individuals licensed directly or indirectly with a DR are included in the computation. An offsetting credit is given to the DR based on the number of non-principal licensees who hold REALTOR®, REALTOR-ASSOCIATE®, or Institute Affiliate membership in their own right.

#### **Q 2. Who is licensed with a DR for dues purposes**

**A** A licensee is deemed “licensed with” a DR, if the license of the individual is held by the DR or by any broker who is licensed with the DR or by any entity in which the DR has a direct or indirect ownership interest. An example of an indirect ownership interest in an entity would be where the DR is working under a corporate license, but the licensees’ licenses are actually held by the corporate entity.

#### **Q 3. Who pays the dues under the NAR variable dues formula?**

**A** The DR is the person responsible for paying the dues to the local association.

#### **Q 4. Is there an exception to the NAR Variable Dues Formula?**

**A** Yes. There are two (2) exceptions to the formula: (1) for non-REALTOR® licensees working in a referral company (“LFRO”) and (2) for non-REALTOR® licensees who are engaged, only, in providing services for which a mortgage loan originator (“MLO”) endorsement is required and who have an MLO endorsement on their license.

#### **Q 5. What are the requirements for the LFRO exception to apply?**

**A** In order for the LFRO exception to apply, the DR must certify, in a written statement, that the LFRO agents are (1) working for a separate entity and (2) are engaged in referrals only. If a DR certifies that agents are working for a LFRO, then those agents are not included in the dues formula calculation.

#### **Q 6. What kind of “separate entity” must a broker have in order to have a LFRO?**

**A** In California, it is sufficient for a broker to set up a DBA for the LFRO. Of course, if the broker wishes to use a separate corporation for the LFRO agents, that is acceptable, as well, but not necessary

#### **Q 7. What are the requirements for the MLO exception to apply?**

**A** In order for the MLO exception to apply, the DR must certify, in a written statement, that the MLO agents are (1) working for an entity in which the DR has an ownership interest; (2) are engaged, only, in providing services for which an MLO endorsement is required; and (3) are not participants or subscribers in any MLS. If the DR certifies that agents are MLOs and meet the requirements for the MLO exception, then those agents are not included in the dues formula calculation.

**Q 8. Is a “separate entity” required in order to qualify for the MLO exception?**

**A** No. Unlike the LFRO exception, a separate entity is not required for the MLO exception. MLO agents can work side-by-side with non-MLO agents, in the same entity.

**Q 9. Can a LFRO or MLO belong to an MLS and still retain their exempt status?**

If the individual is a participant or subscriber in an MLS, they automatically lose their exempt status. However, if they are a clerical user, as defined by the MLS, they retain their exempt status. In short, a LFRO or MLO can be a clerical user, but can not be a participant or subscriber.

**Q 10. Are property managers exempt from the formula?**

**A** No. Only LFROs and MLOs are exempt from the formula.

**Q 11. Are licensed assistants who work for the DR exempt from the formula?**

**A** No. The only exceptions to the variable dues formula are for agents who are LFROs and qualified MLOs. Therefore, a non-REALTOR® licensee who acts as an assistant in the DR’s firm is counted for purposes of the formula.

**Q 12. Are licensed assistants who work for a broker-associate in the DR’s firm exempt from the formula?**

**A** No. The only exceptions to the NAR Variable Dues Formula are for agents who are LFROs and qualified MLOs. Therefore, a non-REALTOR® licensee who is an assistant to a broker-associate in the DR’s firm is counted for purposes of the dues formula.

**Q 13. What if the DR or the Broker for whom the DR works has two or more separate corporations, does the dues formula apply to the licensees in all corporations?**

**A** If a REALTOR® is a “principal” in more than one corporation or firm, the REALTOR® principal is responsible for all licensees, in all entities, under the dues formula.

**Q 14. What if the DR is working under their own individual license, but he or she is a principal in a corporation under which the non-REALTOR® licensees hang their licenses?**

**A** If a REALTOR® is a “principal” in the corporation, the REALTOR® principal is responsible for all licensees in all entities, under the dues formula.

**Q 15. What is the definition of a “principal?”**

**A** Under NAR policy, “principals” include sole proprietors, partners in partnerships, officers and majority shareholders in corporations, and office and branch managers acting on behalf of a principal(s).

**Q 16. When a DR pays for non-REALTOR® licensees under the NAR Variable Dues Formula, do those licensees become members of the local AOR, i.e. REALTORS®?**

**A** No. The DR is not paying “dues” for the licensees. Rather, the DR pays his/her own dues as computed on the number of individuals licensed with him/her, but who are not REALTORS®.

**Q 17. Can an Association require licensees to become REALTORS®?**

**A** No. If a broker wishes to require his or her licensees to become REALTORS®, that is a business decision for the broker, but no Association of REALTORS® can force a licensee to become a REALTOR®. In addition, the AOR cannot require the DR to force his or her licensees to become REALTORS®.

**Q 18. What happens if a DR refuses to pay dues according to the NAR Variable Dues Formula?**

**A** Full payment of dues owed is required for membership in a local AOR. Even partial payment does not satisfy the dues obligation. If a DR refuses to pay his or her full dues using the NAR Variable Dues Formula, the DR along with his or her entire office will be suspended from the local AOR membership, which, also, cuts off C.A.R. and NAR membership.

**Q 18. If a DR is not happy with the dues invoice from my local AOR, can he/she join another AOR and avoid the dues formula?**

**A** No. All Associations of REALTORS® in California enforce the dues formula equally.

**Q 20. Where can I obtain additional information?**

**A** C.A.R. members requiring specific advice should consult their local AOR. The C.A.R. Legal Hotline attorneys will not advise members on the NAR Variable Dues Formula in a manner that may conflict with the position of the local AOR.

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