ADMINISTRATIVE PROCESSING OVERVIEW

ARBITRATION COMPLAINT

Case No._____,

_____ _____

VS.

_____ _____

Complainants **Respondents**

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.

REFERENCES	ACTION
• C.1 *Guidelines* – Initiating an Arbitration • 43(a)(b) *Manual* – MLS Participant's and Subscriber's duty and Privilege to Arbitrate • A.3 *Guidelines* – MLS Participant's or Subscriber's Arbitration Agreement • A.4 *Guidelines* – Disputes Arising Out of the Real Estate Business • A.5 *Guidelines* – Disputes with the Public and Clients • 45 (a)(b) *Manual* – Duty to Arbitrate Before C.A.R.	**Request for Arbitration Complaint** ☐ Provide the Complainant with the **Arbitration Packet,** which includes: 1. Instructions on filing an arbitration complaint; 2. Form A-1 *Arbitration Complaint,* or, if the Complainant is a non-member, Form PA-1 *Arbitration Complaint – Member of the Public;* 3. Form M-1 *Request for Mediation;* 4. Copy of the current *CA Code of Ethics & Arbitration Manual;* 5. Copy of the Procuring Cause Guidelines (for commission disputes between real estate licensees). ☐ See Appendix C for a sample form letter to send along with the **Arbitration Complaint Packet.** • ***Note:*** 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.
• 56(b) *Manual* – Timing of Filing • A.6 *Guidelines* – Timing of Dispute	**Receipt of Complaint Date** ☐ _____ (Date Filed)

• C.5 *Guidelines* – Time Limit for Filing	☐ Date-stamp the complaint with its postmark date or, if no postmark date is given/applicable, with the date of receipt and record above.
• 56(d) *Manual* – Preliminary Review • 57 *Manual* – Responsible Broker as Complainant • 44(a) – (e) *Manual* – Association's Right to Decline Arbitration • B.2 *Guidelines* – Association's Right to Decline Arbitration • C.1 *Guidelines* – Initiating an Arbitration • 43(a)(b) *Manual* – MLS Participant's and Subscriber's duty and Privilege to Arbitrate • A.3 *Guidelines* – MLS Participant's or Subscriber's Arbitration Agreement • A.4 *Guidelines* – Disputes Arising Out of the Real Estate Business • A.5 *Guidelines* – Disputes with the Public and Clients • 45 (a)(b) *Manual* – Duty to Arbitrate Before C.A.R.	**Preliminary Review of Complaint** ☐ 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: 1. Were all named Respondents active REALTOR® members or MLS participants at the time the facts and circumstances giving rise to the dispute occurred?; 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 by the complainant in the exercise of reasonable diligence?; 3. Did the Complainant Party submit the proper forms?; 4. Did the Complainant Party submit the requisite filing fee?; 5. Has the complaint been filed at the correct Association?; 6. Does the complaint concern a monetary dispute arising out of real estate-licensed activities? ☐ If the complaint is improperly filed, the Complainant Party should be contacted and instructed to correct any deficiencies. ☐ 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. ☐ Create a case number and file for this complaint. ☐ ***ETHICS CHECK:*** Create a case file for this complaint in Ethics Check and upload Form A-1/PA-1 and Exhibit 1 *Statement of Facts*.
	Acknowledgement of Receipt of Complaint to Complainant Party ☐ 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.
• 56(g) *Manual* – Arbitrator Disclosure Statements; Documents Sent to the Parties	**Receipt of Complaint to Respondent Party & Arbitrators to Complainant Party** ☐ Send Respondent Party the **Receipt of Complaint Packet,** which includes: 1. Form A-2 *Notice to Respondent;* 2. Copy of Complaint; 3. Form A-3 *Arbitration Response;* 4. Form M-1 *Request for Mediation* (if Complainant Party has agreed to mediation); 5. Copy of the current *CA Code of Ethics & Arbitration Manual;* 6. Copy of the Procuring Cause Guidelines.

• 56(h) *Manual* – Response not Required; Late Filing • 56(i) *Manual* – Notice of Response • C.11 *Guidelines* – Exchange of Evidence Prior to Hearing	**Receipt of Response** ☐ Response is due within **15 calendar days** of the date the Notice to Respondent is sent. See Appendix C for sample form letters. ☐ No more than **five calendar days** 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. • ***Note:*** 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, 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. ☐ ***ETHICS CHECK:*** Upload Form A-3 and Exhibit 1 *Statement of Facts* onto Ethics Check.
• 55(a) – (c) *Manual* – Qualification for Panel • 56(f) *Manual* – Selecting the Proposed Arbitrators • 56(g) *Manual* – Arbitrator Disclosure Statements; Documents sent to the Parties	**A-21 *Arbitrator Disclosure Statement*** ☐ After the response has been received, or after the deadline to submit the response has passed, send Form A-21 *Arbitrator Disclosure Statement* 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. ☐ Form A-21 must be completed and returned to the Association no more than ten calendar days after it has been sent. ☐ Once the A-21 forms have been received, send the following to both parties: 1. List of names of potential arbitrators and all completed A-21 forms 2. Form A-4 *Availability for Hearing;* 3. Form A-5 *Notice of Right to Challenge Panel Member and Reasons for Challenge*
• C.9 *Guidelines* – Qualification for Panel • C.10 *Guidelines* – Selecting the Hearing Panel • 56(j) *Manual* – Selecting the Hearing Panel • 56(k) *Manual* – Composition of the Hearing Panel • 56(l) *Manual* – Presiding Officer • 56(m) *Manual* – Alternate Panel Member • 56(o) *Manual* – Waiver of Objection to Panel Member; Appointing Replacement to Challenged Panel Member	**Schedule Hearing** ☐ 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. • ***Note:*** A party's right to disqualify a proposed neutral arbitrator is waived if the party fails to deliver timely Form A-5.

• 56(n) *Manual* – Notice of Date, Time and Place of Hearing • 63 *Manual* – Continuances • 64 *Manual* – Continuance Fees • C.7 *Guidelines* – Continuances and Continuance Fees • D.7 *Guidelines* – Due Process Required	**Official Notice of Hearing** ☐ Once the hearing date, time and panel have been secured, send the parties the **Official Notice of Hearing Packet,** which includes: 1. Form A-6 *Official Notice of Hearing;* 2. Form A-8 *Outline of Procedure for Hearing;* 3. Form A-10 *Requested Arbitration Costs.* 4. Form A-30 *Notice of Additional Attendees* ☐ ***Note:*** 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. **Hearing Deadlines:** 21 days notice → Notified of hearing date, time, location and panel members 15 days prior to hearing → Notification to all parties of legal counsel and/or remote testimony requests 10 days → Notification of intent to utilize an interpreter and/or submit translated document 1 day → Reminder of hearing
• C.8 *Guidelines* – Amending the Complaint • 55(c) *Manual* – Discussion Prior to Hearing	**Materials to Panel** ☐ Prepare a case file for each arbitrator, including the complaint, response, and any relevant correspondence between the Association and the parties. ☐ Prepare a case file for the presiding officer, including the complaint, response, relevant correspondence between the Association and the parties, and the following forms: 1. A-6 *Official Notice of Hearing;* 2. A-7 *Certificate of Qualification;* 3. A-8 *Outline of Procedures for Hearing;* 4. A-9 *Acknowledgement of Receipt of Procedures;* 5. A-10 *Requested Arbitration Costs;* 6. A-11 *Other Action of Arbitrators;* 7. A-12 *Award of Arbitrators;* 8. A-20 *Release of Parties from Duty to Arbitrate;* 9. Presiding Officer's Statements.
• 49(c) *Manual* – Names of Hearing Panel • 49(d) *Manual* – Timing of Notices for Hearing • 54(b) Notice of Intention to Have Representation • D.3 *Guidelines* – Right to Counsel • 61(a)(b) *Manual* - Witnesses • D.10 *Guidelines* – Witnesses • 62 *Manual* – Right to Demand Witness Lists • D.11 *Guidelines* – Right to Demand Witness List • 59 *Manual* – Duty to Give Evidence • D.4 *Guidelines* – Failure of Parties to Appear	**Important Pre-Hearing Deadlines** At least: ☐ 21 days prior to hearing, Parties must be notified of the hearing date, time, location and panel members. ☐ 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. ☐ 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.

• 67(c) *Manual* – Notice of Interpreters and Translators • D.2 *Guidelines* – Interpreters and Translators	☐ 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.
• 65(d) *Manual* – Failure of Respondent • 65(e) *Manual* – Failure of Complainant to Appear • D.4 *Guidelines* – Failure of Parties to Appear • 55(h) *Manual* – Absent Panel Member • D.5 *Guidelines* – Conduct of the Panel Members • D.6 *Guidelines* – Conducting the Hearing • 66(a) – (c) *Manual* – Transcript/Right to Record • D.1 *Guidelines* – Transcript/Right to Record • 65(h) *Manual* – Encouraging Settlement • 65(c) *Manual* – Presentation of Evidence at the Hearing • D.12 *Guidelines* – Presentation of Evidence • D.14 *Guidelines* – Deliberation and the Decision	**Hearing** ☐ Prepare hearing room – include case files, copy of current C.A.R. Manual, scratch paper. ☐ 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. ☐ Set up recording device and remote testimony devices (if any). ☐ 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. ☐ 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.
• 65(a) *Manual* – Certificate of Qualification; Acknowledgement of Outline of Procedure • 65(b) *Manual* – Conducting the Arbitration Hearing • 68(a) *Manual* – Prevailing Party's Costs; Attorney's Fees; Statement of Costs • 70(a) – (c) *Manual* – The Award	**Hearing Documents** The following forms should be completed and retained in the case file: ☐ A-7 *Certificate of Qualification,* to be signed by all Panel members prior to the start of the hearing. ☐ A-9 *Acknowledgement of Receipt of Outline of Procedure,* to be signed by all Parties prior to the start of the hearing. ☐ A-29 *Agreement for Hearing by Two Panelists,* to be signed by all Parties prior to the start of the hearing (only if applicable). ☐ A-10 *Requested Arbitration Costs,* to be submitted by the Parties to the Hearing Panel before the hearing, for the Panel to consider during deliberations. ☐ Either A-11 *Other Action of the Hearing Panel* or A-12 *Award of Arbitrators,* depending on whether or not the hearing panel issues an award.
• 70(a) – (c) *Manual* – The Award • E.1 *Guidelines* – Distribution of the Award • 53(a) – (c) *Manual* – Confidentiality of Proceedings • B.5 *Guidelines* – Confidentiality of Proceedings	**Award of Arbitrators to Parties** ☐ 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. **Panel members must not discuss their decision** with anyone outside of Association staff and/or Association legal counsel, as necessary. ☐ The Award must be in writing and provided to the Parties within five (5) days after the written Award is handed over to staff. ☐ The Award of Arbitrators Packet should include the following: 1. Cover Letter; 2. A-11 *Other Action of the Hearing Panel* or A-12 *Award of Arbitrators;* 3. Completed A-7 *Certificate of Qualification;* 4. A-13 *Review and Enforcement of Arbitration Award;*

	5. A-14 *Request for Duplication of Recording;* 6. A-15 *Request for Review.* ☐ ***ETHICS CHECK:*** Upload Form A-12 *Award of Arbitrators* onto Ethics Check.
	Request for Review – please see Procedural Review Checklist
• 70(b) *Manual* – When the Award is Final and Binding	**Award Final, File Closed** ☐ 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. ☐ 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: 1. Cover letter; 2. Copy of the *Award;* 3. Copy of A-13 *Review and Enforcement of Arbitration Award;* 4. A-24 *Request for "Show Cause" Hearing.*
•	**Request for "Show Cause" Hearing –** please see Show Cause Hearing Checklist
• 66(c) *Manual* – Destruction of Transcript or Recording • E.5 *Guidelines* – Record Retention	**Record Retention** ☐ 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. ☐ Any recordings or transcripts of the actual hearing should be destroyed as soon as the Award is final.