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
• 72(b) *Manual* – "Show Cause" Hearing • E.4 *Guidelines* – Enforcement of the Arbitration Award	**Request to File Request for "Show Cause" Hearing** ☐ 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. • ***Note:*** 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.
	Receipt of Request for "Show Cause" Hearing ☐ _____ (Date Filed) ☐ Date-stamp the request with its postmark date or, if no postmark date is given/applicable, with the date of receipt and record above.

• 71(e) *Manual* – Preliminary Review	**Preliminary Review of Request for "Show Cause" Hearing** ☐ 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: 1. Does the request come with the proper paperwork?; 2. Is the prevailing party requesting the "show cause" hearing because the non-prevailing party has not timely paid the Award?; 3. Is the Award set to be confirmed through the courts? ☐ If the Request does not meet the filing requirements, return the request to the Prevailing Party and give ten days to amend the Request. • ***Note:*** 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. ☐ ***ETHICS CHECK:*** 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.
• 38(e) *Manual* – Notice of Request for Review • 38(k) *Manual* – Automatic Disqualification; Certificate of Qualification	**Notice of Request for "Show Cause" Hearing** ☐ Send the **Receipt of Request for "Show Cause" Hearing Packet** to the Parties, including: 1. Cover Letter; 2. A-25 *Notice of Request for "Show Cause" Hearing;* 3. Copy of Request for "Show Cause" Hearing; 4. A-4 *Availability of the Parties;* 5. List of Board of Directors; 6. A-5 *Notice of Right to Challenge Panel Member & Reasons for Challenge;* 7. A-13 *Review and Enforcement of Arbitration Award;* 8. A-26 *Reply to Request for "Show Cause".*
• 38(f) *Manual* – Reply not Required; Late Filing	**Reply to Request for "Show Cause"** ☐ 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.
• 38(f) *Manual* – Reply not Required; Late Filing	**Reply to Parties** ☐ If a reply is submitted, send the following to the parties: 1. Cover Letter; 2. Copy of Reply. ☐ ***ETHICS CHECK:*** Upload Reply onto Ethics Check.
• 38(h) *Manual* – Selecting the Review Panel • 38(i) *Manual* – Waiver of Objection to Director; Appointing Replacement to Challenged Director • 38(j) *Manual* – Composition of Panel	**Schedule "Show Cause" Hearing** ☐ 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.

• 38(k) *Manual* – Automatic Disqualification; Certificate of Qualification • 38(l) *Manual* – Presiding Officer • 72(c) *Manual* – Conducting the "Show Cause" Hearing	
• 38(m) *Manual* – Notice of Time and Place of Review Hearing	**Official Notice of "Show Cause" Hearing** ☐ Once the hearing date, time and panel have been secured, send the parties the **Official Notice of Hearing Packet,** which includes: 1. Cover Letter; 2. Form A-27 *Notice of "Show Cause";* 3. Form A-30 *Notice of Additional Attendees for Hearing.* • ***Note:*** Notice of "Show Cause" Hearing must be given at least 21 calendar days in advance of the hearing.
• 71(g) *Manual* – Documents Provided to the Directors	**Materials to Panel** ☐ Prepare a case file for each panel member, including Form A-12 *Award of Arbitrators,* the Request and the Reply (if any); ☐ 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: 1. A-25 *Notice of "Show Cause" Hearing;* 2. A-7 *Certificate of Qualification;* 3. A-28 *Action Upon "Show Cause" Hearing;* 4. *Ability to Pay* Checklist; 5. Copy of the 2017 *CA Code of Ethics & Arbitration Manual.* • ***Note:*** 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.
• 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 • 67(c) *Manual* – Notice of Interpreters and Translators • D.2 *Guidelines* – Interpreters and Translators	**Important Pre-"Show Cause" Hearing Deadlines** At least: ☐ 21 days prior to hearing, Parties must be notified of the 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. ☐ 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.

• 38(q) *Manual* – Failure of Requesting Party to Appear at Hearing • 38(r) *Manual* – Failure of Party Not Requesting Review to Appear at Hearing • 72(c) *Manual* – Conducting the "Show Cause" Hearing	**"Show Cause" 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. • ***Note:*** "Show Cause" hearings are never recorded.
• 38(k) *Manual* – Automatic Disqualification; Certificate of Qualification	**Hearing Documents** ☐ The following forms should be completed and retained in the case file: 1. A-7 *Certificate of Qualification,* to be signed by all panel members prior to the start of the hearing; 2. A-28 *Action Upon "Show Cause" Hearing.*
• 72(d) *Manual* – Action of the Directors after "Show Cause" Hearing • E.4 *Guidelines* – Enforcement of the Arbitration Award	**Decision of Directors in "Show Cause" Hearing** The Directors sitting on a "Show Cause" Hearing Panel can take one of three decisions: ☐ **Take no action:** If the Directors take no action, payment will be due as detailed on the Award; ☐ **Impose suspension:** If the Directors impose suspension, check to make sure they have named each individual member whose membership they are suspending and whether they are suspending Association membership, MLS membership or both; ☐ **Impose a payment plan:** 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.
	Action Upon "Show Cause" Hearing to Parties ☐ 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. ☐ The Action of Directors Packet should include the following: 1. Cover Letter; 2. A-28 *Action Upon "Show Cause" Hearing;* • ***Note:*** 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. **Panel members must not discuss their decision** with anyone outside of Association staff and/or Association legal counsel, as necessary. ☐ ***ETHICS CHECK:*** Upload A-28 *Action Upon "Show Cause" Hearing* to Ethics Check
• 72(d) *Manual* – Action of the Directors after "Show Cause" Hearing • E.4 *Guidelines* – Enforcement of the Arbitration Award	**Suspension of Association and/or MLS Membership** ☐ In the event the Directors impose suspension of membership, suspension should be enacted: 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; 2. The date the court has ordered payment due, if the Non-Prevailing Party has still failed to pay the Award; or

	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.
• E.5 *Guidelines* – Record Retention • 70(b) *Manual* – When the Award is Final and Binding	**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 once the Award is final.