PRESIDING OFFICER'S STATEMENTS - DISCIPLINARY HEARING

PRESIDING OFFICER'S OPENING STATEMENT: Panel members and hearing participants, 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*).

(If the panel has an alternate present, read the following paragraph: The Alternate Panel Member is a trained member of the _____ Association of REALTORS® Professional Standards Committee and although they are attending the hearing they will not be acting as a participant in the hearing or the executive session nor vote on the decision unless one of the originally appointed Hearing Panel members is unable to serve on the Hearing Panel from the commencement of the hearing until the hearing concludes.)

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. If, for any reason, the recording fails or is inaudible, it will not be considered a violation of a party's due process rights.

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. Parties should only argue the charges addressed in the complaint and should not introduce irrelevant subjects. 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 their 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 their client if the hearing panel desires direct testimony. Counsel is present to advise and consult with their client, and to speak for them subject to appropriate rulings or determinations by the hearing panel. This hearing panel will not tolerate any effort by a party or their counsel to harass, intimidate, coerce, or confuse the hearing panel members, witnesses or any party to the proceedings.

c. I 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.

e. If the parties have participated in mediation prior to this hearing, you are reminded that any offers of settlement that were not accepted or any suggested resolution proposed by the Mediation

Officer that was not accepted cannot be introduced as evidence nor considered in any manner during this hearing. No aspect of the mediation conference shall be relied upon or introduced as evidence in this ethics hearing, including, but not limited to: views expressed or suggestions made by a party with respect to a possible settlement of the dispute; admissions made in the course of the mediation; proposals made or views expressed by the mediator or the response of any party thereto.

9. **AFFIRMATIONS:** At this time, I request that all persons present in the room that expect to testify at this hearing stand and make the appropriate affirmation.

   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 they wish to.

14. **COMPLAINANT'S PRESENTATION OF EVIDENCE**: The complainant will now state their case and present any witnesses that they may desire. Cross-examination of the complaint and/or the complainant's witnesses by the respondent or their representative will be allowed.

15. **RESPONDENT'S PRESENTATION OF EVIDENCE**: The respondent will now state their case and present any witnesses they may desire. Cross-examination of the respondent and/or the respondent's witnesses by the complainant or their representative will be allowed.

16. **COMPLAINANT'S CLOSING STATEMENT**: The complainant will now make their closing statement.

17. **RESPONDENT'S CLOSING STATEMENT**: The respondent will now make their closing statement.

18. **FAIR HEARING AND DUE PROCESS:** Panel members and hearing participants, 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**: Panel members and hearing participants 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.*