CODE OF ETHICS AND **STANDARDS OF PRACTICE**
OF THE NATIONAL ASSOCIATION OF REALTORS®

Effective January 1, 2026

Where the word REALTORS® is used in this Code and Preamble, it shall be deemed to include REALTOR ASSOCIATE®s.

While the Code of Ethics establishes obligations that may be higher than those mandated by law, in any instance where the Code of Ethics and the law conflict, the obligations of the law must take precedence.

Preamble

Under all is the land. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. REALTORS® should recognize that the interests of the nation and its citizens require the highest and best use of the land and the widest distribution of land ownership. They require the creation of adequate housing, the building of functioning cities, the development of productive industries and farms, and the preservation of a healthful environment.

Such interests impose obligations beyond those of ordinary commerce. They impose grave social responsibility and a patriotic duty to which REALTORS® should dedicate themselves, and for which they should be diligent in preparing themselves. REALTORS®, therefore, are zealous to maintain and improve the standards of their calling and share with their fellow REALTORS® a common responsibility for its integrity and honor.

In recognition and appreciation of their obligations to clients, customers, the public, and each other, REALTORS® continuously strive to become and remain informed on issues affecting real estate and, as knowledgeable professionals, they willingly share the fruit of their experience and study with others. They identify and take steps, through enforcement of this Code of Ethics and by assisting appropriate regulatory bodies, to eliminate practices which may damage the public or which might discredit or bring dishonor to the real estate profession. REALTORS® having direct personal knowledge of conduct that may violate the Code of Ethics involving misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm, bring such matters to the attention of the appropriate Board or Association of REALTORS®. (Amended 1/00)

Realizing that cooperation with other real estate professionals promotes the best interests of those who utilize their services, REALTORS® urge exclusive representation of clients; do not attempt to gain any unfair advantage over their competitors; and they refrain from making unsolicited comments about other practitioners. In instances where their opinion is sought, or where REALTORS® believe that comment is necessary, their opinion is offered in an objective, professional manner, uninfluenced by any personal motivation or potential advantage or gain.

The term REALTOR® has come to connote competency, fairness, and high integrity resulting from adherence to a lofty ideal of moral conduct in business relations. No inducement of profit and no instruction from clients ever can justify departure from this ideal.

In the interpretation of this obligation, REALTORS® can take no safer guide than that which has been handed down through the centuries, embodied in the Golden Rule, "Whatsoever ye would that others should do to you, do ye even so to them."

Accepting this standard as their own, REALTORS® pledge to observe its spirit in all of their activities whether conducted personally, through associates or others, or via technological means, and to conduct their business in accordance with the tenets set forth below. (Amended 1/07)

Duties to Clients and Customers

Article 1

When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their client. This obligation to the client is primary, but it does not relieve REALTORS® of their obligation to treat all parties honestly. When serving a buyer, seller, landlord, tenant or other party in a non-agency capacity, REALTORS® remain obligated to treat all parties honestly. (Amended 1/01)

NATIONAL ASSOCIATION OF REALTORS®

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- **Standard of Practice 1-1**
  REALTORS®, when acting as principals in a real estate transaction, remain obligated by the duties imposed by the Code of Ethics. (Amended 1/93)

- **Standard of Practice 1-2**
  The duties imposed by the Code of Ethics encompass all real estate-related activities and transactions whether conducted in person, electronically, or through any other means.

  The duties the Code of Ethics imposes are applicable whether REALTORS® are acting as agents or in legally recognized non-agency capacities except that any duty imposed exclusively on agents by law or regulation shall not be imposed by this Code of Ethics on REALTORS® acting in non-agency capacities.

  As used in this Code of Ethics, "client" means the person(s) or entity(ies) with whom a REALTOR® or a REALTOR®'s firm has an agency or legally recognized non-agency relationship; "customer" means a party to a real estate transaction who receives information, services, or benefits but has no contractual relationship with the REALTOR® or the REALTOR®'s firm; "prospect" means a purchaser, seller, tenant, or landlord who is not subject to a representation relationship with the REALTOR® or REALTOR®'s firm; "agent" means a real estate licensee (including brokers and sales associates) acting in an agency relationship as defined by state law or regulation; and "broker" means a real estate licensee (including brokers and sales associates) acting as an agent or in a legally recognized non-agency capacity. (Adopted 1/95, Amended 1/07)

- **Standard of Practice 1-3**
  REALTORS®, in attempting to secure a listing, shall not deliberately mislead the owner as to market value.

- **Standard of Practice 1-4**
  REALTORS®, when seeking to become a buyer/tenant representative, shall not mislead buyers or tenants as to savings or other benefits that might be realized through use of the REALTOR®'s services. (Amended 1/93)

- **Standard of Practice 1-5**
  REALTORS® may represent the seller/landlord and buyer/tenant in the same transaction only after full disclosure to and with informed consent of both parties. (Adopted 1/93)

- **Standard of Practice 1-6**
  REALTORS® shall submit offers and counter-offers objectively and as quickly as possible. (Adopted 1/93, Amended 1/95)

- **Standard of Practice 1-7**
  When acting as listing brokers, REALTORS® shall continue to submit to the seller/landlord all offers and counter-offers until closing or execution of a lease unless the seller/landlord has waived this obligation in writing. Upon the written request of a cooperating broker who submits an offer to the listing broker, the listing broker shall provide, as soon as practical, a written affirmation to the cooperating broker stating that the offer has been submitted to the seller/landlord, or a written notification that the seller/landlord has waived the obligation to have the offer presented. REALTORS® shall not be obligated to continue to market the property after an offer has been accepted by the seller/landlord. REALTORS® shall recommend that sellers/landlords obtain the advice of legal counsel prior to acceptance of a subsequent offer except where the acceptance is contingent on the termination of the pre-existing purchase contract or lease. (Amended 1/20)

- **Standard of Practice 1-8**
  REALTORS®, acting as agents or brokers of buyers/tenants, shall submit to buyers/tenants all offers and counter-offers until acceptance but have no obligation to continue to show properties to their clients after an offer has been accepted unless otherwise agreed in writing. Upon the written request of the listing broker who submits a counter-offer to the buyer's/tenant's broker, the buyer's/tenant's broker shall provide, as soon as practical, a written affirmation to the listing broker stating that the counter-offer has been submitted to the buyers/tenants, or a written notification that the buyers/tenants have waived the obligation to have the counter-offer presented. REALTORS®, acting as agents or brokers of buyers/tenants, shall recommend that buyers/tenants obtain the advice of legal counsel if there is a question as to whether a pre-existing contract has been terminated. (Adopted 1/93, Amended 1/22)

- **Standard of Practice 1-9**
  The obligation of REALTORS® to preserve confidential information (as defined by state law) provided by their clients in the course of any agency relationship or non-agency relationship recognized by law continues after termination of agency relationships or any non-agency relationships recognized by law. REALTORS® shall not knowingly, during or following the termination of professional relationships with their clients:

  1) reveal confidential information of clients; or

  2) use confidential information of clients to the disadvantage of clients; or

  3) use confidential information of clients for the REALTOR®'s advantage or the advantage of third parties unless:

     a) clients consent after full disclosure; or

     b) REALTORS® are required by court order; or

     c) it is the intention of a client to commit a crime and the information is necessary to prevent the crime; or

     d) it is necessary to defend a REALTOR® or the REALTOR®'s employees or associates against an accusation of wrongful conduct.

Information concerning latent material defects is not considered confidential information under this Code of Ethics. (Adopted 1/93, Amended 1/01)

- **Standard of Practice 1-10**
  REALTORS® shall, consistent with the terms and conditions of their real estate licensure and their property management agreement, competently manage the property of clients with due regard for the rights, safety and health of tenants and others lawfully on the premises. (Adopted 1/95, Amended 1/00)

- **Standard of Practice 1-11**
  REALTORS® who are employed to maintain or manage a client's property shall exercise due diligence and make reasonable efforts to protect it against reasonably foreseeable contingencies and losses. (Adopted 1/95)

- **Standard of Practice 1-12**
  When entering into listing contracts, REALTORS® must advise sellers/landlords of:

  1) the REALTOR®'s company policies regarding cooperation;
  2) the fact that broker compensation is not set by law and is fully negotiable;
  3) The options and amounts of compensation, if any, that may be offered to subagents, buyer/tenant agents, and/or brokers acting in legally recognized non-agency capacities;
  4) the fact that buyer/tenant agents or brokers, even if compensated by listing brokers, or by sellers/landlords may represent the interests of buyers/tenants; and
  5) any potential for listing brokers to act as disclosed dual agents, e.g., buyer/tenant agents. (Adopted 1/93, Renumbered 1/98, Amended 1/03, Amended and effective June 5, 2025)

- **Standard of Practice 1-13**
  When entering into buyer/tenant agreements, REALTORS® must advise potential clients of:

  1) the REALTOR®'s company policies regarding cooperation;
  2) the fact that broker compensation is not set by law and is fully negotiable;
  3) the amount of compensation to be paid by the client, if any;
  4) the potential for additional or offsetting compensation from other brokers, from the seller or landlord, or from other parties;
  5) any potential for the buyer/tenant representative to act as a disclosed dual agent, e.g., listing broker, subagent, landlord's agent, etc.; and
  6) the possibility that sellers or sellers' representatives may not treat the existence, terms, or conditions of offers as confidential unless confidentiality is required by law, regulation, or by any confidentiality agreement between the parties. (Adopted 1/93, Renumbered 1/98, Amended 1/06, Amended and effective June 5, 2025)

- **Standard of Practice 1-14**
  Fees for preparing appraisals or other valuations shall not be contingent upon the amount of the appraisal or valuation. (Adopted 1/02)

- **Standard of Practice 1-15**
  REALTORS®, in response to inquiries from buyers or cooperating brokers shall, with the sellers' approval, disclose the existence of offers on the property. Where disclosure is authorized, REALTORS® shall also disclose, if asked, whether offers were obtained by the listing licensee, another licensee in the listing firm, or by a cooperating broker. (Adopted 1/03, Amended 1/09)

- **Standard of Practice 1-16**
  When acting as a listing broker or property manager, REALTORS® shall not access or use, or permit or enable others to access or use property on terms or conditions other than those established by the owner or seller. (Adopted 1/12, Amended and effective June 5, 2025)

Article 2

REALTORS® shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction. REALTORS® shall not, however, be obligated to discover latent defects in the property, to advise on matters outside the scope of their real estate license, or to disclose facts which are confidential under the scope of agency or non-agency relationships as defined by state law. (Amended 1/00)

- **Standard of Practice 2-1**
  REALTORS® shall only be obligated to discover and disclose adverse factors reasonably apparent to someone with expertise in those areas required by their real estate licensing authority. Article 2 does not impose upon the REALTOR® the obligation of expertise in other professional or technical disciplines. (Amended 1/96)

- **Standard of Practice 2-2**
  (Renumbered as Standard of Practice 1-12 1/98)

- **Standard of Practice 2-3**
  (Renumbered as Standard of Practice 1-13 1/98)

- **Standard of Practice 2-4**
  REALTORS® shall not be parties to the naming of a false consideration in any document, unless it be the naming of an obviously nominal consideration.

- **Standard of Practice 2-5**
  Factors defined as "non-material" by law or regulation or which are expressly referenced in law or regulation

as not being subject to disclosure are considered not "pertinent" for purposes of Article 2. (Adopted 1/93)

Article 3

REALTORS® shall cooperate with other brokers except when cooperation is not in the client's best interest. The obligation to cooperate does not include the obligation to share commissions, fees, or to otherwise compensate another broker. (Amended 1/95)

- **Standard of Practice 3-1**
  When acting as exclusive agents or brokers of sellers/landlords, REALTORS® will work with sellers/landlords to establish the terms and conditions of offers to cooperate. Unless expressly indicated in offers to cooperate, cooperating brokers may not assume that the offer of cooperation includes an offer of compensation. (Amended 1/99, Amended and effective June 5, 2025)

- **Standard of Practice 3-2**
  If compensation is offered or advertised by the listing broker, any change in offered compensation must be communicated as soon as practical. After a REALTOR® has submitted an offer to purchase or lease property, the listing broker may not unilaterally modify the offered compensation. (Amended 1/14, Amended and effective June 5, 2025)

  REALTORS® are prohibited from delaying or withholding delivery of a buyer's/tenant's offer while attempting to negotiate compensation. These ethical obligations in no way restrict the REALTORS®' or clients' ability to negotiate compensation in the clients' best interest, including in offers to purchase or lease. (Adopted and effective June 5, 2025)

- **Standard of Practice 3-3**
  Standard of Practice 3-2 does not preclude the listing broker and cooperating broker from entering into an agreement to change cooperative compensation. (Adopted 1/94)

- **Standard of Practice 3-4**
  (Deleted 1/26)

- **Standard of Practice 3-5**
  It is the obligation of subagents to promptly disclose all pertinent facts to the principal's agent prior to as well as after a purchase or lease agreement is executed. (Amended 1/93)

- **Standard of Practice 3-6**
  REALTORS® shall disclose the existence of accepted offers, including offers with unresolved contingencies, to any broker seeking cooperation. (Adopted 5/86, Amended 1/04)

- **Standard of Practice 3-7**
  When seeking information from another REALTOR® concerning property under a management or listing agreement, REALTORS® shall disclose their REALTOR® status and whether their interest is personal or on behalf of a client and, if on behalf of a client, their relationship with the client. (Amended 1/11)

- **Standard of Practice 3-8**
  REALTORS® shall not misrepresent the availability of access to show or inspect a listed property. (Amended 11/87)

- **Standard of Practice 3-9**
  When acting as a cooperating broker, or in a capacity other than as a listing broker or property manager, REALTORS® shall not access or use, or permit or enable others to access or use, property on terms or conditions other than those established by the owner or the seller. (Adopted 1/10, Amended 1/23, Amended and effective June 5, 2025)

- **Standard of Practice 3-10**
  The duty to cooperate established in Article 3 relates to the obligation to share information on listed property, and to make property available to other brokers for showing to prospective purchasers/tenants when it is in the best interests of sellers/landlords. (Adopted 1/11)

- **Standard of Practice 3-11**
  REALTORS® may not refuse to cooperate on the basis of a broker's race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity. (Adopted 1/20, Amended 1/23)

Article 4

REALTORS® who have a present ownership interest in property for sale or lease, or contemplated interest to purchase or lease property, must disclose in writing the existence of such interest to all parties to the transaction prior to a party signing any agreement. (Amended 1/25)

- **Standard of Practice 4-1**
  The present ownership interest in property for sale or lease, or contemplated interest to purchase or lease property, includes transactions in which REALTORS®:

  1) represent themselves
  2) represent a member of their immediate family
  3) represent their firm or any broker or agent thereof
  4) represent an entity in which the REALTOR® or member of their immediate family has a legal interest. (Adopted 2/86, Amended 1/25)

- **Standard of Practice 4-2**
  REALTORS® are not required to disclose the identity of the client or customer, nor the specific nature of the interest referred to in Article 4, but must disclose that an interest exists. (Adopted 1/25)

Article 5

REALTORS® shall not undertake to provide professional services concerning a property or its value where they have a present or contemplated interest unless such interest is specifically disclosed to all affected parties.

Article 6

REALTORS® shall not accept any commission, rebate, or profit on expenditures made for their client, without the client's knowledge and consent.

When recommending real estate products or services (e.g., homeowner's insurance, warranty programs, mortgage financing, title insurance, etc.), REALTORS® shall disclose to the client or customer to whom the recommendation is made any financial benefits or fees, other than real estate referral fees, the REALTOR® or REALTOR®'s firm may receive as a direct result of such recommendation. (Amended 1/99)

- **Standard of Practice 6-1**
  REALTORS® shall not recommend or suggest to a client or a customer the use of services of another organization or business entity in which they have a direct interest without disclosing such interest at the time of the recommendation or suggestion. (Amended 5/88)

Article 7

In a transaction, REALTORS® shall not accept compensation from more than one party, even if permitted by law, without disclosure to, and the informed consent of, the REALTOR®'s client or clients. (Amended 1/93 and 1/26)

Article 8

REALTORS® shall keep in a special account in an appropriate financial institution, separated from their own funds, monies coming into their possession in trust for other persons, such as escrows, trust funds, clients' monies, and other like items.

Article 9

REALTORS®, for the protection of all parties, shall assure whenever possible that all agreements related to real estate transactions including, but not limited to, listing and representation agreements, purchase contracts, and leases are in writing in clear and understandable language expressing the specific terms, conditions, obligations and commitments of the parties. A copy of each agreement shall be furnished to each party to such agreements upon their signing or initialing. (Amended 1/04)

- **Standard of Practice 9-1**
  For the protection of all parties, REALTORS® shall use reasonable care to ensure that documents pertaining to the purchase, sale, or lease of real estate are kept current through the use of written extensions or amendments. (Amended 1/93)

- **Standard of Practice 9-2**
  When assisting or enabling a client or customer in establishing a contractual relationship (e.g., listing and representation agreements, purchase agreements, leases, etc.) in person, electronically, or through any other means, REALTORS® shall make reasonable efforts to explain the nature and disclose the specific terms of the contractual relationship being established prior to it being agreed to by a contracting party. (Adopted 1/07, Amended and effective June 5, 2025)

Duties to the Public

Article 10

REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity. (Amended 1/23)

REALTORS®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity. (Amended 1/23)

- **Standard of Practice 10-1**
  When involved in the sale or lease of a residence, REALTORS® shall not volunteer information regarding the racial, religious or ethnic composition of any neighborhood, however, REALTORS® may provide other demographic information. REALTORS® shall not engage in any activity which may result in panic selling or steering. (Adopted 1/94, Amended 1/06, Amended and effective June 5, 2025)

- **Standard of Practice 10-2**
  When not involved in the sale or lease of a residence, REALTORS® may provide demographic information related to a property, transaction or professional assignment to a party if such demographic information is (a) deemed by the REALTOR® to be needed to assist with or complete, in a manner consistent with Article 10, a real estate transaction or professional assignment and (b) is obtained or derived from a recognized, reliable, independent, and impartial source. The source of such information and any additions, deletions, modifications, interpretations, or other changes shall be disclosed in reasonable detail. (Adopted 1/05, Renumbered 1/06)

- **Standard of Practice 10-3**
  REALTORS® shall not print, display or circulate any statement or advertisement with respect to selling or renting of a property that indicates any preference, limitations or discrimination based on race, color, religion, sex, disability, familial status, national origin,

sexual orientation, or gender identity. (Adopted 1/94, Renumbered 1/05 and 1/06, Amended 1/23)

- **Standard of Practice 10-4**
  As used in Article 10 "real estate employment practices" relates to employees and independent contractors providing real estate-related services and the administrative and clerical staff directly supporting those individuals. (Adopted 1/00, Renumbered 1/05 and 1/06)

- **Standard of Practice 10-5**
  REALTORS®, in their capacity as real estate professionals, in association with their real estate businesses, or in their real estate-related activities, shall not harass any person or persons based on race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity.

  As used in this Code of Ethics, harassment is unwelcome behavior directed at an individual or group based on one or more of the above protected characteristics where the purpose or effect of the behavior is to create a hostile, abusive, or intimidating environment which adversely affects their ability to access equal professional services or employment opportunities. (Adopted and effective November 13, 2020, Amended 1/23, Amended and effective June 5, 2025)

Article 11

The services which REALTORS® provide to their clients and customers shall conform to the standards of practice and competence which are reasonably expected in the specific real estate disciplines in which they engage; specifically, residential real estate brokerage, real property management, commercial and industrial real estate brokerage, land brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate.

REALTORS® shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth. (Amended 1/10)

- **Standard of Practice 11-1**
  When REALTORS® prepare opinions of real property value or price they must:

  1) be knowledgeable about the type of property being valued,
  2) have access to the information and resources necessary to formulate an accurate opinion, and
  3) be familiar with the area where the subject property is located

  unless lack of any of these is disclosed to the party requesting the opinion in advance.

  When an opinion of value or price is prepared other than in pursuit of a listing or to assist a potential purchaser in formulating a purchase offer, the opinion shall include the following unless the party requesting the opinion requires a specific type of report or different data set:

  1) identification of the subject property
  2) date prepared
  3) defined value or price
  4) limiting conditions, including statements of purpose(s) and intended user(s)
  5) any present or contemplated interest, including the possibility of representing the seller/landlord or buyers/tenants
  6) basis for the opinion, including applicable market data
  7) if the opinion is not an appraisal, a statement to that effect
  8) disclosure of whether and when a physical inspection of the property's exterior was conducted
  9) disclosure of whether and when a physical inspection of the property's interior was conducted
  10) disclosure of whether the REALTOR® has any conflicts of interest (Amended 1/14)

- **Standard of Practice 11-2**
  The obligations of the Code of Ethics in respect of real estate disciplines other than appraisal shall be interpreted and applied in accordance with the standards of competence and practice which clients and the public reasonably require to protect their rights and interests considering the complexity of the transaction, the availability of expert assistance, and, where the REALTOR® is an agent or subagent, the obligations of a fiduciary or the applicable agency duties required by law. (Amended 1/25)

- **Standard of Practice 11-3**
  When REALTORS® provide consultive services to clients which involve advice or counsel for a fee (not a commission), such advice shall be rendered in an objective manner and the fee shall not be contingent on the substance of the advice or counsel given. If brokerage or transaction services are to be provided in addition to consultive services, a separate compensation may be paid with prior agreement between the client and REALTOR®. (Adopted 1/96)

- **Standard of Practice 11-4**
  The competency required by Article 11 relates to services contracted for between REALTORS® and their

clients or customers; the duties expressly imposed by the Code of Ethics; and the duties imposed by law or regulation. (Adopted 1/02)

Article 12

REALTORS® shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing, and other representations. REALTORS® shall ensure that their status as real estate professionals is readily apparent in their advertising, marketing, and other representations, and that the recipients of all real estate communications are, or have been, notified that those communications are from a real estate professional. (Amended 1/08)

- **Standard of Practice 12-1**
  REALTORS® must not represent that their brokerage services to a client or customer are free or available at no cost to their clients, unless the REALTOR® will receive no financial compensation from any source for those services. (Amended 1/22)

- **Standard of Practice 12-2**
  (Deleted 1/20)

- **Standard of Practice 12-3**
  The offering of premiums, prizes, merchandise discounts or other inducements to list, sell, purchase, or lease is not, in itself, unethical even if receipt of the benefit is contingent on listing, selling, purchasing, or leasing through the REALTOR® making the offer. However, REALTORS® must exercise care and candor in any such advertising or other public or private representations so that any party interested in receiving or otherwise benefiting from the REALTOR®'s offer will have clear, thorough, advance understanding of all the terms and conditions of the offer. The offering of any inducements to do business is subject to the limitations and restrictions of state law and the ethical obligations established by any applicable Standard of Practice. (Amended 1/95)

- **Standard of Practice 12-4**
  REALTORS® shall not offer for sale/lease or advertise property without authority. When acting as listing brokers or as subagents, REALTORS® shall not quote a price different from that agreed upon with the seller/landlord. (Amended 1/93)

- **Standard of Practice 12-5**
  REALTORS® shall not advertise nor permit any person employed by or affiliated with them to advertise real estate services or listed property in any medium (e.g., electronically, print, radio, television, etc.) without disclosing the name of that REALTOR®'s firm in a reasonable and readily apparent manner either in the advertisement or in electronic advertising via a link to a display with all required disclosures. (Adopted 11/86, Amended 1/16)

- **Standard of Practice 12-6**
  REALTORS®, when advertising unlisted real property for sale/lease in which they have an ownership interest, shall disclose their status as both owners/landlords and as REALTORS® or real estate licensees. (Amended 1/93)

- **Standard of Practice 12-7**
  Only REALTORS® who participated in the transaction as the listing broker or cooperating broker (selling broker) may claim to have "sold" the property. Prior to closing, a cooperating broker may post a "sold" sign only with the consent of the listing broker. (Amended 1/96)

- **Standard of Practice 12-8**
  The obligation to present a true picture in representations to the public includes information presented, provided, or displayed on REALTORS®' websites. REALTORS® shall use reasonable efforts to ensure that information on their websites is current. When it becomes apparent that information on a REALTOR®'s website is no longer current or accurate, REALTORS® shall promptly take corrective action. (Adopted 1/07)

- **Standard of Practice 12-9**
  REALTOR® firm websites shall disclose the firm's name and state(s) of licensure in a reasonable and readily apparent manner.

  Websites of REALTORS® and non-member licensees affiliated with a REALTOR® firm shall disclose the firm's name and that REALTOR®'s or non-member licensee's state(s) of licensure in a reasonable and readily apparent manner. (Adopted 1/07)

- **Standard of Practice 12-10**
  REALTORS®' obligation to present a true picture in their advertising and representations to the public includes Internet content, images, and the URLs and domain names they use, and prohibits REALTORS® from:

  1) engaging in deceptive or unauthorized framing of real estate brokerage websites;

  2) manipulating (e.g., presenting content developed by others) listing and other content in any way that produces a deceptive or misleading result;

  3) deceptively using metatags, keywords or other devices/methods to direct, drive, or divert Internet traffic; or

  4) presenting content developed by others without either attribution or without permission; or

  5) otherwise misleading consumers, including use of misleading images. (Adopted 1/07, Amended 1/18)

- **Standard of Practice 12-11**
  REALTORS® intending to share or sell consumer information gathered via the Internet shall disclose that possibility in a reasonable and readily apparent manner. (Adopted 1/07)

- **Standard of Practice 12-12**
  REALTORS® shall not:

  1) use URLs or domain names that present less than a true picture, or

  2) register URLs or domain names which, if used, would present less than a true picture. (Adopted 1/08)

- **Standard of Practice 12-13**
  The obligation to present a true picture in advertising, marketing, and representations allows REALTORS® to use and display only professional designations, certifications, and other credentials to which they are legitimately entitled. (Adopted 1/08)

Article 13

REALTORS® shall not engage in activities that constitute the unauthorized practice of law and shall recommend that legal counsel be obtained when the interest of any party to the transaction requires it.

Article 14

If charged with unethical practice or asked to present evidence or to cooperate in any other way, in any professional standards proceeding or investigation, REALTORS® shall place all pertinent facts before the proper tribunals of the Member Board or affiliated institute, society, or council in which membership is held and shall take no action to disrupt or obstruct such processes. (Amended 1/99)

- **Standard of Practice 14-1**
  REALTORS® shall not be subject to disciplinary proceedings in more than one Board of REALTORS® or affiliated institute, society, or council in which they hold membership with respect to alleged violations of the Code of Ethics relating to the same transaction or event. (Amended 1/95)

- **Standard of Practice 14-2**
  REALTORS® shall not make any unauthorized disclosure or dissemination of the allegations, findings, or decision developed in connection with an ethics hearing or appeal or in connection with an arbitration hearing or procedural review. (Amended 1/92)

- **Standard of Practice 14-3**
  REALTORS® shall not obstruct the Board's investigative or professional standards proceedings by instituting or threatening to institute actions for libel, slander, or defamation against any party to a professional standards proceeding or their witnesses based on the filing of an arbitration request, an ethics complaint, or testimony given before any tribunal. (Adopted 11/87, Amended 1/99)

- **Standard of Practice 14-4**
  REALTORS® shall not intentionally impede the Board's investigative or disciplinary proceedings by filing multiple ethics complaints based on the same event or transaction. (Adopted 11/88)

Duties to REALTORS®

Article 15

REALTORS® shall not knowingly or recklessly make false or misleading statements about other real estate professionals, their businesses, or their business practices. (Amended 1/12)

- **Standard of Practice 15-1**
  REALTORS® shall not knowingly or recklessly file false or unfounded ethics complaints. (Adopted 1/00)

- **Standard of Practice 15-2**
  The obligation to refrain from making false or misleading statements about other real estate professionals, their businesses, and their business practices includes the duty to not knowingly or recklessly publish, repeat, retransmit, or republish false or misleading statements made by others. This duty applies whether false or misleading statements are repeated in person, in writing, by technological means (e.g., the Internet), or by any other means. (Adopted 1/07, Amended 1/12)

- **Standard of Practice 15-3**
  The obligation to refrain from making false or misleading statements about other real estate professionals, their businesses, and their business practices includes the duty to publish a clarification about or to remove statements made by others on electronic media the REALTOR® controls once the REALTOR® knows the statement is false or misleading. (Adopted 1/10, Amended 1/12)

Article 16

REALTORS® shall not engage in any practice or take any action inconsistent with exclusive representation or exclusive brokerage relationship agreements that other REALTORS® have with clients. (Amended 1/04)

- **Standard of Practice 16-1**
  Article 16 is not intended to prohibit aggressive or innovative business practices which are otherwise ethical and does not prohibit disagreements with other REALTORS® involving commission, fees, compensation or other forms of payment or expenses. (Adopted 1/93, Amended 1/95)

- **Standard of Practice 16-2**
  Article 16 does not preclude REALTORS® from making general announcements to prospects describing their services and the terms of their availability even though some recipients may have entered into agency agreements or other exclusive relationships with another

REALTOR®. A general telephone canvass, general mailing or distribution addressed to all prospects in a given geographical area or in a given profession, business, club, or organization, or other classification or group is deemed "general" for purposes of this standard. (Amended 1/04)

Article 16 is intended to recognize as unethical two basic types of solicitations:

First, telephone or personal solicitations of property owners who have been identified by a real estate sign, multiple listing compilation, or other information service as having exclusively listed their property with another REALTOR® and

Second, mail or other forms of written solicitations of prospects whose properties are exclusively listed with another REALTOR® when such solicitations are not part of a general mailing but are directed specifically to property owners identified through compilations of current listings, "for sale" or "for rent" signs, or other sources of information required by Article 3 and Multiple Listing Service rules to be made available to other REALTORS® under offers of subagency or cooperation. (Amended 1/04)

- **Standard of Practice 16-3**
  Article 16 does not preclude REALTORS® from contacting the client of another broker for the purpose of offering to provide, or entering into a contract to provide, a different type of real estate service unrelated to the type of service currently being provided (e.g., property management as opposed to brokerage) or from offering the same type of service for property not subject to other brokers' exclusive agreements. However, information received through a Multiple Listing Service or any other offer of cooperation may not be used to target clients of other REALTORS® to whom such offers to provide services may be made. (Amended 1/04)

- **Standard of Practice 16-4**
  REALTORS® shall not solicit a listing which is currently listed exclusively with another broker. However, if the listing broker, when asked by the REALTOR®, refuses to disclose the expiration date and nature of such listing, i.e., an exclusive right to sell, an exclusive agency, open listing, or other form of contractual agreement between the listing broker and the client, the REALTOR® may contact the owner to secure such information and may discuss the terms upon which the REALTOR® might take a future listing or, alternatively, may take a listing to become effective upon expiration of any existing exclusive listing. (Amended 1/94)

- **Standard of Practice 16-5**
  REALTORS® shall not solicit buyer/tenant agreements from buyers/ tenants who are subject to exclusive buyer/ tenant agreements. However, if asked by a REALTOR®, the broker refuses to disclose the expiration date of the exclusive buyer/tenant agreement, the REALTOR® may contact the buyer/tenant to secure such information and may discuss the terms upon which the REALTOR® might enter into a future buyer/tenant agreement or, alternatively, may enter into a buyer/tenant agreement to become effective upon the expiration of any existing exclusive buyer/tenant agreement. (Adopted 1/94, Amended 1/98)

- **Standard of Practice 16-6**
  When REALTORS® are contacted by the client of another REALTOR® regarding the creation of an exclusive relationship to provide the same type of service, and REALTORS® have not directly or indirectly initiated such discussions, they may discuss the terms upon which they might enter into a future agreement or, alternatively, may enter into an agreement which becomes effective upon expiration of any existing exclusive agreement. (Amended 1/98)

- **Standard of Practice 16-7**
  The fact that a prospect has retained a REALTOR® as an exclusive representative or exclusive broker in one or more past transactions does not preclude other REALTORS® from seeking such prospect's future business. (Amended 1/04)

- **Standard of Practice 16-8**
  The fact that an exclusive agreement has been entered into with a REALTOR® shall not preclude or inhibit any other REALTOR® from entering into a similar agreement after the expiration of the prior agreement. (Amended 1/98)

- **Standard of Practice 16-9**
  REALTORS®, prior to entering into a representation agreement, have an affirmative obligation to make reasonable efforts to determine whether the prospect is subject to a current, valid exclusive agreement to provide the same type of real estate service. (Amended 1/04)

- **Standard of Practice 16-10**
  REALTORS®, acting as buyer or tenant representatives or brokers, shall disclose that relationship to the seller/ landlord's representative or broker at first contact and shall provide written confirmation of that disclosure to the seller/landlord's representative or broker not later than execution of a purchase agreement or lease. (Amended 1/04)

- **Standard of Practice 16-11**
  On unlisted property, REALTORS® acting as buyer/ tenant representatives or brokers shall disclose that relationship to the seller/landlord at first contact for that buyer/tenant and shall provide written confirmation of such disclosure to the seller/landlord not later than execution of any purchase or lease agreement. (Amended 1/04)

REALTORS® shall make any request for anticipated compensation from the seller/landlord at first contact. (Amended 1/98)

This ethical obligation in no way impacts REALTORS® or consumers' ability to negotiate compensation. (Adopted and effective June 5, 2025)

- **Standard of Practice 16-12**
  REALTORS®, acting as representatives or brokers of sellers/landlords or as subagents of listing brokers, shall disclose that relationship to buyers/tenants as soon as practicable and shall provide written confirmation of such disclosure to buyers/tenants not later than execution of any purchase or lease agreement. (Amended 1/04)

- **Standard of Practice 16-13**
  All dealings concerning property exclusively listed, or with buyer/tenants who are subject to an exclusive agreement shall be carried on with the client's representative or broker, and not with the client, except with the consent of the client's representative or broker or except where such dealings are initiated by the client.

  Before providing substantive services (such as writing a purchase offer or presenting a CMA) to prospects, REALTORS® shall ask prospects whether they are a party to any exclusive representation agreement. REALTORS® shall not knowingly provide substantive services concerning a prospective transaction to prospects who are parties to exclusive representation agreements, except with the consent of the prospects' exclusive representatives or at the direction of prospects. (Adopted 1/93, Amended 1/04)

- **Standard of Practice 16-14**
  REALTORS® are free to enter into contractual relationships or to negotiate with sellers/landlords, buyers/tenants or others who are not subject to an exclusive agreement but shall not knowingly obligate them to pay more than one commission except with their informed consent. (Amended 1/98)

- **Standard of Practice 16-15**
  In cooperative transactions REALTORS® shall compensate cooperating REALTORS® (principal brokers) and shall not compensate nor offer to compensate, directly or indirectly, any of the sales licensees employed by or affiliated with other REALTORS® without the prior express knowledge and consent of the cooperating broker.

- **Standard of Practice 16-16**
  (Deleted effective June 5, 2025)

- **Standard of Practice 16-17**
  REALTORS®, acting as subagents or as buyer/tenant representatives or brokers, shall not attempt to extend a listing broker's offer of cooperation and/or compensation to other brokers without the consent of the listing broker. (Amended 1/04)

- **Standard of Practice 16-18**
  REALTORS® shall not use information obtained from listing brokers through offers to cooperate made through multiple listing services or through other offers of cooperation to refer listing brokers' clients to other brokers or to create buyer/tenant relationships with listing brokers' clients, unless such use is authorized by listing brokers. (Amended 1/02)

- **Standard of Practice 16-19**
  Signs giving notice of property for sale, rent, lease, or exchange shall not be placed on property without consent of the seller/landlord. (Amended 1/93)

- **Standard of Practice 16-20**
  REALTORS®, prior to or after their relationship with their current firm is terminated, shall not induce clients of their current firm to cancel exclusive contractual agreements between the client and that firm. This does not preclude REALTORS® (principals) from establishing agreements with their associated licensees governing assignability of exclusive agreements. (Adopted 1/98, Amended 1/10)

Article 17

In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between REALTORS® (principals) associated with different firms, arising out of their relationship as REALTORS®, the REALTORS® shall mediate the dispute if the Board requires its members to mediate. If the dispute is not resolved through mediation, or if mediation is not required, REALTORS® shall submit the dispute to arbitration in accordance with the policies of the Board rather than litigate the matter.

In the event clients of REALTORS® wish to mediate or arbitrate contractual disputes arising out of real estate transactions, REALTORS® shall mediate or arbitrate those disputes in accordance with the policies of the Board, provided the clients agree to be bound by any resulting agreement or award.

The obligation to participate in mediation and arbitration contemplated by this Article includes the obligation of REALTORS® (principals) to cause their firms to mediate and arbitrate and be bound by any resulting agreement or award. (Amended 1/12)

- **Standard of Practice 17-1**
  The filing of litigation and refusal to withdraw from it by REALTORS® in an arbitrable matter constitutes a refusal to arbitrate. (Adopted 2/86)

- **Standard of Practice 17-2**
  Article 17 does not require REALTORS® to mediate in those circumstances when all parties to the dispute advise the Board in writing that they choose not to mediate through the Board's facilities. The fact that all parties decline to participate in mediation does not relieve REALTORS® of the duty to arbitrate.

Article 17 does not require REALTORS® to arbitrate in those circumstances when all parties to the dispute advise the Board in writing that they choose not to arbitrate before the Board. (Amended 1/12)

- **Standard of Practice 17-3**
  REALTORS®, when acting solely as principals in a real estate transaction, are not obligated to arbitrate disputes with other REALTORS® absent a specific written agreement to the contrary. (Adopted 1/96)

- **Standard of Practice 17-4**
  Specific non-contractual disputes that are subject to arbitration pursuant to Article 17 are:

  1) Where a listing broker has compensated a cooperating broker and another cooperating broker subsequently claims to be the procuring cause of the sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker, or the amount of compensation outlined within the terms of any valid buyer representation agreement between the buyer and the complainant, whichever is less, and any amount credited or paid to a party to the transaction at the direction of the respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. (Adopted 1/97, Amended 1/07 and 1/26)

  2) Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating broker claims to be the procuring cause of sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the seller or landlord, or the amount of compensation outlined within the terms of any valid buyer representation agreement between the buyer and the complainant, whichever is less, and any amount credited or paid to a party to the transaction at the direction of the respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. (Adopted 1/97, Amended 1/07 and 1/26)

  3) Where a buyer or tenant representative is compensated by the buyer or tenant and, as a result, the listing broker reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating broker claims to be the procuring cause of sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the buyer or tenant, or the amount of compensation outlined within the terms of any valid buyer representation agreement between the buyer and the complainant, whichever is less. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. (Adopted 1/97, Amended 1/26)

  4) Where two or more listing brokers claim entitlement to compensation pursuant to open listings with a seller or landlord who agrees to participate in arbitration (or who requests arbitration) and who agrees to be bound by the decision. In cases where one of the listing brokers has been compensated by the seller or landlord, the other listing broker, as complainant, may name the first listing broker as respondent and arbitration may proceed between the brokers. (Adopted 1/97)

  5) Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, claims to be the procuring cause of sale or lease. In such cases arbitration shall be between the listing broker

and the buyer or tenant representative and the amount in dispute is limited to the amount of the reduction of commission to which the listing broker agreed. (Adopted 1/05)

- **Standard of Practice 17-5**
  The obligation to arbitrate established in Article 17 includes disputes between REALTORS® (principals) in different states in instances where, absent an established inter-association arbitration agreement, the REALTOR® (principal) requesting arbitration agrees to submit to the jurisdiction of, travel to, participate in, and be bound by any resulting award rendered in arbitration conducted by the respondent(s) REALTOR®'s association, in instances where the respondent(s) REALTOR®'s association determines that an arbitrable issue exists. (Adopted 1/07)

Explanatory Notes

The reader should be aware of the following policies which have been approved by the Board of Directors of the National Association:

In filing a charge of an alleged violation of the Code of Ethics by a REALTOR®, the charge must read as an alleged violation of one or more Articles of the Code. Standards of Practice may be cited in support of the charge.

The Standards of Practice serve to clarify the ethical obligations imposed by the various Articles and supplement, and do not substitute for, the Case Interpretations in Interpretations of the Code of Ethics.

Modifications to existing Standards of Practice and additional new Standards of Practice are approved from time to time. Readers are cautioned to ensure that the most recent publications are utilized.

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CALIFORNIA ASSOCIATION OF REALTORS®

California Code of Ethics and Arbitration Manual

January 1, 2026

Prepared by the
CALIFORNIA ASSOCIATION OF REALTORS®
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Introduction

The *California Code of Ethics and Arbitration Manual* ("Manual") is designed and intended for use by Member Associations of the California Association of REALTORS® ("C.A.R.") for administration of professional standards matters. The Manual is drafted to be in compliance with the applicable policies of the National Association of REALTORS® and California state law. If a Member Association desires to adopt a different set of rules for administration of professional standards or desires to change the model provisions contained herein, it is recommended that the Member Association have such rules and procedures reviewed by legal counsel and approved by NAR prior to actual use.

Changes to this Manual

From time to time C.A.R. updates this Manual to comply with changes in NAR policies or California law. All substantive changes to the Manual from the last edition have been made and shown in red underlined typeface.

The changes to the Manual for 2026 are as follows:

1. Section 18(a) was revised to clarify that Ethics Advocates can be any professional standards volunteers and do not necessarily need to be members of the Professional Standards Committee.
2. Section 20(g) was added to explain how parallel proceedings should be handled for disciplinary cases. Additional information on parallel proceedings can be found in the Disciplinary Implementation Guidelines.

Questions

C.A.R. provides this Manual as a member service to Member Associations. In addition, the C.A.R. provides advice to Member Associations regarding the interpretation and application of the *Manual*. Any questions from Member Associations regarding this *Manual* can be directed to the C.A.R. Corporate Legal Department at (213) 739-8381.

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PART ONE – ASSOCIATION DISCIPLINARY PROCEEDINGS

Section 1. Definitions

As used herein,

(a) "Association" means the local Board or Association of REALTORS® and any other Association of REALTORS® to which the Member belongs, including California Association of REALTORS® ("C.A.R.").

(b) "Association Executive" means the chief staff executive of the Association or his or her designee, or the elected Secretary of any Association not having a chief staff executive.

(c) "Complainant" means the person who has a grievance against the respondent and who files a disciplinary complaint. In some cases the Association Grievance Committee is the complainant.

(d) "Designated REALTOR®" means the member designated in Association records to be responsible for the conduct of individuals affiliated with the office(s) and accountable to the Association for all duties and obligations of membership.

(e) "Directors" means the Board of Directors of the Association or appropriate body appointed by the Board of Directors when considering professional standards or MLS rules matters covered in this Manual.

(f) "Disciplinary hearing" refers to an ethics hearing or other membership obligation hearing relating to disciplinary matters or to an MLS rules violation hearing to determine whether a violation of the MLS rules occurred.

(g) "Expulsion from Membership" means expulsion from membership in the Association for a period of not less than one (1), but not more than three (3) years, with reinstatement to membership only by application as a new member after the end of the period of expulsion, with the application considered on its merits.

(h) "Expulsion from MLS" means expulsion from all privileges and services of the MLS on terms and conditions expressly stated for a period of time not less than one (1) year, but not more than three (3) years. Expulsion from all privileges and services of the MLS shall include, but is not limited to, the ability to submit listings to the MLS, retain current listings in the MLS data base, use computer terminals, receive MLS Compilations or comparable materials. Reinstatement to MLS services as a full Participant or Subscriber shall be by application as a new MLS participant or Subscriber after the end of the period of expulsion, with the application considered on its merits.

(i) "Fine" means an appropriate and reasonable fine commensurate with the gravity of the determined violation of the N.A.R. Code of Ethics or any other membership duty, not to exceed $15,000 per party, per hearing, for an ethics violation or REALTOR® membership duty, and not to exceed $15,000 per party, per hearing, for violation of an MLS Rule or MLS membership duty, and in each case the fine is payable to the Association.

(j) "Member" means a REALTOR®, or REALTOR-ASSOCIATE® member of the Association, whether primary or secondary.

(k) "Panel" means the members of a Grievance Committee when serving in a given case, a hearing panel in a Disciplinary hearing as defined in subsection (f) above, or a review panel of the Directors as defined in subsection (e) above when considering professional standards or MLS rules matters covered in this Manual.

(l) "Participant" means any individual defined in the MLS rules and

regulations of the Association as a Participant.

(m) "Party" means the complainant(s) or respondent(s) to any disciplinary proceeding referred to in Part One of this Manual.

(n) “Public trust” violation means demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud.

(o) “Remediable violations” means those violations that can be corrected by the member, such as failure to complete mandatory training, nonpayment of fees, or other curable violations.

(p) “Reprimand” means a "Letter of Reprimand," which is a letter from the Association to an Association member or MLS Participant or Subscriber, advising of a lack of professional conduct or a violation of MLS rules determined by a "due process" hearing by a hearing Panel, and advising that the letter is to be construed as an official reprimand.

(q) "Requirement for Ethics Training" means a letter from the Association President or Professional Standards Committee Chairperson to an Association Member, MLS Participant or Subscriber, advising of a lack of professional conduct or a violation of MLS rules determined by a "due process" hearing by a hearing Panel and directing the person to attend the applicable ethics portion of the Association indoctrination course or other appropriate ethics course, MLS orientation or seminar, or other appropriate course specified by the hearing Panel.

(r) “Respondent” means the REALTOR® or MLS member against whom a complaint is filed and who must defend themselves in a disciplinary hearing.

(s) "Responsible Broker" means the broker designated in the records of the Department of Real Estate to be responsible for the conduct of individuals affiliated with his or her office(s) or licensed or certified individuals who are sole proprietors, partners, officers, or shareholders of a corporation, or office managers acting on behalf of principals of a real estate firm who are authorized to bind the principals in arbitration.

(t) "Subscriber" means any individual defined in the MLS rules and regulations of the Association as a Subscriber.

(u) "Suspension of Membership" means suspension of all Association membership rights and privileges, and denial of Association services, on terms and conditions expressly stated for a period of time not less than thirty (30) calendar and not more than one (1) year, including, but not limited to, use of the terms REALTOR® and REALTOR-ASSOCIATE®, with reinstatement as a member in good standing automatically provided at the end of the specified period. In the event the suspension is for a remediable violation (as defined in Section 1(o)), the suspension is in effect for the period that the violation remains uncorrected, and the minimum and maximum time limits for suspension do not apply. Resignation prior to a member complying with sanctions imposed for violation of the Code of Ethics shall automatically be deemed a suspension.

(v) "Suspension of MLS" means suspension of all privileges and services of the MLS on terms and conditions expressly stated for a period of time not less than thirty (30) calendar days and not more than one (1) year. Suspension of all privileges and services of the MLS shall include, but is not limited to, the ability to submit listings to the MLS, retain current listings in the MLS data base, use computer terminals, receive MLS Compilations or comparable materials. Reinstatement as a full Participant or

Subscriber shall be automatic at the end of the specified period providing the Participant or Subscriber is current on all amounts owed the MLS and has kept all fees current during the period of suspension. In the event the suspension is for a remediable violation (as defined in Section 1(o)), the suspension is in effect for the period that the violation remains uncorrected, and the minimum and maximum time limits for suspension do not apply.

(w) "Warning" means a "Letter of Warning," which is a letter from the Association to an Association member or MLS Participant or Subscriber advising of a lack of professional conduct or a violation of MLS rules determined by a "due process" hearing by a hearing Panel and warning that future similar conduct could result in further and additional discipline as provided in this Manual.

Section 2. Duties of Membership

Among the duties of membership are the following:

(a) To abide by the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS® (NAR).

(b) To abide by the bylaws of this Association and its rules and regulations including the provisions and procedures of this Manual.

(c) To submit to arbitration all controversies specified in Part Two of this Manual by the procedure there provided, and to abide by the arbitration award.

Section 3. Power to Take Disciplinary Action Against an Association Member

After a hearing as provided below, the Directors may take disciplinary action against any member:

(a) **Membership Duty; Code of Ethics.** For violation by the member of any duty of membership including a violation of the NAR Code of Ethics while a member of any Association of REALTORS®.

(b) **Court or Regulatory Action.** On the member's being convicted, adjudged, or otherwise recorded as guilty by a final judgment of any court of competent jurisdiction of 1) a felony or 2) a crime involving moral turpitude, or 3) on a member's being determined by any court of competent jurisdiction, or official of the State of California authorized to make the determination, of having violated a provision of the California real estate law or a regulation of the Real Estate Commissioner.

(c) **Responsibility of Designated REALTOR®.** For any violation of subsection (a) by a member who is not a Designated REALTOR®, the Designated REALTOR® may be also found in violation provided he or she was the Designated REALTOR® for that member at the time the alleged violation occurred. In such instance, both may, but are not required to be joined as respondents in any proceeding. The finding of a hearing Panel with respect to any violation by the Designated REALTOR® and the member employed by or affiliated with him or her as an independent contractor may be the same or different; and in the event both are found in violation, the sanctions, if any, may be the same or different. Panels should refer to Form D-15 for guidance on when it is appropriate to discipline a Designated REALTOR® based on the actions of a member employed by or affiliated with the Designated REALTOR®.

(d) **Responsibility for Non-member.** For any violation of subsection (a) by any person who is not a member, but is employed by or affiliated with a member and was providing real estate related services within the scope of the member's license. Lack of knowledge by the member of such person's conduct shall only go to mitigation of discipline imposed.

Section 4. Duties of MLS Participants and Subscribers

The duties of an MLS Participant or Subscriber shall be to abide by the MLS rules and regulations of the MLS to which they belong and the procedures set forth in Part One of this Manual.

Section 5. Power to Take Disciplinary Action Against an MLS Participant or Subscriber

After a hearing as provided below, the Directors may take disciplinary action against any MLS Participant or Subscriber:

(a) **MLS Rule.** For violation of any MLS rule.

(b) **Court or Regulatory Action.** On the Participant's or Subscriber's being convicted, adjudged, or otherwise recorded as guilty by a final judgment of any court of competent jurisdiction of (1) a felony, or (2) a crime involving moral turpitude, or (3) on a determination by any court of competent jurisdiction, or official of the State of California authorized to make the determination, that the Participant or Subscriber violated a provision of the California real estate law or a regulation of the Real Estate Commissioner.

(c) **Responsibility for Non-Subscriber.** For any violation of subsection (a) by any person who is not a Participant or Subscriber, but is employed by or affiliated with a Participant or Subscriber and was providing real estate related services within the scope of the Participant's or Subscriber's license. Lack of knowledge by the Participant or Subscriber of such person's conduct shall only go to mitigation of discipline imposed.

Section 6. Nature of Discipline Against an Association Member

(a) **Types of Disciplinary Action.** Disciplinary action may consist of one or more of the following:

(1) Placement of a Letter of Warning as defined in Section 1(w) in the member's file for a specified period of time lasting at least three (3) years;

(2) Placement of a Letter of Reprimand as defined in Section 1(p) in the member's file for a specified period of time lasting at least three (3) years;

(3) Imposition of a requirement for training as defined in Section 1(q);

(4) Designation of an appropriate and reasonable fine as defined in Section 1(i) commensurate with the gravity of the determined violation not to exceed $15,000 per party, per hearing;

(5) Require Members to cease or refrain from continued conduct deemed to be in violation of the Code, or to take affirmative steps to ensure compliance with the Code, within a time period to be determined by the hearing panel. Where discipline is imposed pursuant to this subsection, the decision should also include additional discipline (e.g., suspension or termination of membership) that will be imposed for failure to document compliance by the date specified, and to continue to comply for a specified period not to exceed three (3) years from the date of required compliance.

(6) Suspension of membership as defined in Section 1(u) for a stated period of time not less than thirty (30) days and not more than one (1) year, unless the suspension is for a remediable violation, as defined in Section 1(o), in which case the suspension shall be for the period that the violation remains uncorrected; or

(7) Expulsion from membership as defined in Section 1(g) for a stated period of one (1) to three (3) years, with reinstatement to membership only by application for membership as a new member after the specified period of expulsion, with the application considered on its merits;

(b) **Arbitration Requirement.** If the conduct for which suspension or expulsion is ordered consists of failure to submit a dispute to arbitration, the Directors may not permit the disciplined member to avoid suspension or expulsion without submitting to the arbitration unless in the meanwhile the controversy has been submitted to a court of law without any objection by any party that it should be arbitrated.

(c) **More than One Type of Discipline Permitted.** None of the foregoing shall preclude the hearing Panel from recommending and the Directors from imposing on any respondent one or more of the possible disciplinary actions, as determined by the gravity of the offense.

(d) **Alternative Discipline.** If the discipline imposed for violation of the Code of Ethics is payment of a fine or attendance and completion of education, the respondent's failure to complete the discipline in the time ordered shall automatically result in the respondent's suspension of membership until the discipline is fulfilled. Resignation by the respondent prior to fulfilling the discipline shall also result in the respondent's immediate suspension of membership.

(e) **Photo Requirement.** In the case of any discipline which is publishable under Section 39, the failure of a member to timely submit a photo and give authorization to publish the photo by signing and submitting a completed Form D-24 will result in suspension, and the discipline summary will still be published. If the member resigns prior to submitting the photo and Form D-24, the discipline summary will still be published, and the member will be immediately suspended.

(f) **Administrative Processing Fee.** The Association may adopt a policy to assess members an administrative processing fee not to exceed five hundred ($500) dollars if they are found in violation of the Code of Ethics or other membership duties. Any processing fee policy adopted by the Association and any subsequent processing fee assessed will be in addition to any discipline, including fines, and shall not be considered part of any disciplinary sanction imposed.

Section 7. Nature of Discipline Against an MLS Participant or Subscriber

(a) **Types of Disciplinary Action.** Disciplinary action for violation of an MLS rule may consist of one or more of the following:

(1) Placement of a Letter of Warning as defined in Section 1(w) in the individual's file for a specified period of time lasting at least three (3) years;

(2) Placement of a Letter of Reprimand as defined in Section 1(p) in the individual's file for a specified period of time lasting at least three (3) years;

(3) Imposition of a training requirement for as defined in Section 1(q);

(4) Designation of an appropriate and reasonable fine as defined in Section 1(i) commensurate with the gravity of the determined violation not to exceed $15,000 per party per hearing;

(5) Require the MLS Participant or Subscriber to cease or refrain from continued conduct deemed to be in violation of the MLS Rules, or to take affirmative steps to ensure compliance with the MLS Rules, within a time period

to be determined by the hearing panel. Where discipline is imposed pursuant to this subsection, the decision should also include additional discipline (e.g., suspension or termination of MLS services) that will be imposed for failure to comply by the date specified, and to continue to comply for a specified period not to exceed three (3) years from the date of required compliance.

(6) Suspension of MLS services as defined in Section 1(v) for a stated period of time not less than thirty (30) days and not more than one (1) year, unless the suspension is for a remediable violation, as defined in Section 1(p), in which case the suspension shall be for the period that the violation remains uncorrected; or

(7) Expulsion from the MLS as defined in Section 1(h) for a stated period of one (1) to three (3) years, with reinstatement to MLS services by application as a new MLS Participant or Subscriber after the specified period of expulsion, with the application considered on its merits.

(b) **More than One Type of Discipline Permitted.** None of the foregoing shall preclude the hearing panel from recommending and the Directors from imposing on any respondent one or more of the possible disciplinary actions, as determined by the gravity of the offense.

(c) **Alternative Discipline.** If the discipline imposed for violation of an MLS rule is payment of a fine or attendance and completion of education, the respondent's failure to complete the discipline in the time ordered shall automatically result in the respondent's suspension of MLS until the discipline is fulfilled. Resignation by the respondent prior to fulfilling the discipline shall also result in the respondent's immediate suspension of MLS.

(d) **Administrative Processing Fee.** The Association may adopt a policy to assess Participants and Subscribers an administrative processing fee not to exceed five hundred ($500) dollars if they are found in violation of the MLS rules. Any processing fee policy adopted by the Association and any subsequent processing fee assessed will be in addition to any discipline, including fines, and shall not be considered part of any disciplinary sanction imposed.

Section 8. Citations

(a) **For MLS Rules Violations.** The MLS Committee, subject to approval of the Board of Directors, may implement a schedule of fines for certain MLS rules violations and direct staff to issue citations for the specified MLS rules violations and implement a procedure whereby the Participants and/or Subscribers receiving the citation may either pay the amount specified on the citation, request a citation reconsideration, or request a full hearing in accordance with the procedures set forth in Part One of this Manual.

(b) **Correction of Violation; No Formal Hearing.** The citation recipient must first correct the alleged violation of the MLS Rule prior to filing a request for citation reconsideration. No formal hearing is held and no appearance by the citation recipient or the MLS is allowed. All matters are conducted based on the written submissions.

(c) **Basis for Citation Reconsideration.** The request for citation reconsideration must clearly state the specific ground(s) for the request and include all facts, timelines and/or reasons for the request. The qualifying grounds for a request for citation reconsideration are one or more of the following: (i) factual dispute regarding the alleged violation(s), such as misapplication of the MLS Rule(s) cited or how the MLS Rule that was cited is not appropriate; or (ii) contention that there was a violation of procedural due process by the MLS.

(d) **Preliminary Review.** If the proper grounds for requesting a citation reconsideration are not met, the request for citation reconsideration will be returned to the citation recipient. The citation recipient will be given seven (7) calendar days to amend the request for citation reconsideration to meet the appropriate requirements. If the appropriate grounds still are not met, the request for citation reconsideration will be denied and the fine will be due to the MLS within seven calendar days from the date of the notice of denial.

(e) **Citation Reconsideration Panel.** A citation reconsideration will be conducted by a citation reconsideration Panel comprised of not less than three (3) nor more than five (5) REALTORS® from the Association's Professional Standards Committee or, at the option of the Association, not less than three (3) nor more than five (5) members of the Association's MLS Committee.

(f) **Decision of Citation Reconsideration Panel; Fine Limitation.** If the grounds set forth in the request for citation reconsideration are proper, the Panel will review the request and the documentation submitted by the MLS. There will be no additional sanctions, MLS Rules and/or Code of Ethics violations added, and the fine amount cannot be increased or decreased (unless it is dismissed in its entirety). If the citation reconsideration results in a finding that the citation recipient violated the MLS Rule, the fine is limited to the amount in the citation issued by the MLS plus an administrative processing fee that will be added to the fine amount. If the citation reconsideration Panel determines that no violation occurred, the citation and fine will be withdrawn and no administrative processing fee will be due. If the citation reconsideration Panel determines that there was a procedural due process violation by the MLS, the citation reconsideration Panel may dismiss the citation or may return the case to the MLS to correct the due process violation.

(g) **Notice of Decision of Citation Reconsideration Panel.** Written notice of decision on request for citation reconsideration by the citation reconsideration Panel will be sent to the citation recipient, the Responsible Broker, and to the MLS within fifteen (15) calendar days after the Panel renders its decision.

(h) **Payment After Determination of a Violation.** In the event that the citation reconsideration Panel determines there was a violation, the payment of the fine and the administrative processing fee will be due within seven (7) calendar days after the citation recipient and Responsible Broker are sent the notice of decision on request for citation reconsideration. Failure to pay both the fine and the administrative processing fee within seven (7) calendar days from the date of the Notice of Decision on Request for Citation Reconsideration will result in suspension of MLS services.

(i) **Finality of Citation Reconsideration Panel Decision.** The citation recipient and Responsible Broker agree that the decision of the citation reconsideration Panel is final and that that they will not be able to request a formal hearing and/or Director's Review based on the decision of the citation reconsideration Panel.

(j) **For Code of Ethics Violations.** The Grievance Committee, subject to approval of the Board of Directors, may implement a schedule of fines for certain Code of Ethics violations and direct staff to issue citations for the specified Code of Ethics violations and implement a procedure whereby the REALTOR® receiving the citation may either (1) complete specified training (at the option of the Association); (2) pay the amount specified on the citation; or (3) request a full hearing in accordance with the procedures set forth in Part One of this Manual. Such Code of Ethics violations shall only be from those authorized in the C.A.R. Model Citation Schedule.

Section 9. Grievance Committee

There shall be a standing committee, known as the Grievance Committee of at least five (5) Association members. Unless the Association's bylaws or policies specify otherwise, at least a majority shall be REALTORS®. The members of the Committee shall be appointed by the President, subject to confirmation by the Board of Directors, for staggered three (3) year terms, unless the term is otherwise specified by the Association's bylaws or policies. One-third of the members of the first Committee so appointed shall be designated for one (1) year terms. The President shall annually designate the Chairperson and Vice Chairperson(s) of the Committee.

Section 10. Professional Standards Committee

(a) **Membership; Terms.** There shall be a standing committee, known as the Professional Standards Committee, of at least nine (9) Association members. Unless the Association's bylaws or policies specify otherwise, at least a majority shall be REALTORS®. The members of the Committee shall be appointed by the President, subject to confirmation by the Board of Directors, for staggered three (3) year terms, unless the term is otherwise specified by the Association bylaws or policies. One-third of the members of the first Committee so appointed shall be designated for one (1) year terms. The President shall annually designate the Chairperson and Vice Chairperson(s) of the Committee.

(b) **Role of Committee Members.** Members of the Professional Standards Committee shall be selected to serve on hearing Panels as required to hear matters of alleged membership duty and ethical misconduct by Association members that may result in discipline. In addition, the Committee hears alleged violations of MLS rules by MLS Participants or Subscribers under the provisions of Part One of this Manual and provide arbitration as requested under the provisions of Part Two of this Manual.

Section 11. Multi-Association Professional Standards Hearings and Shared Panelists

(a) **Multi-Association Program.** Notwithstanding any provision of this Manual, the Association may, by mutual resolution of the Boards of Directors of the affected Associations agree with other Associations to establish multi-Association professional standards programs, in which case the members of a Panel may include members from the participating Associations.

(b) **Sharing Panelists.** Notwithstanding any provision of this Manual, the Association may, by mutual resolution of the Boards of Directors of the affected Associations, agree with other Associations to share its Grievance Committee and Professional Standards Committee members and Board of Directors on reviews, in which case the members of a Panel may include members from the reciprocating Association's respective Grievance Committee, Professional Standards Committee and Board of Directors.

Section 12. Interpretation of Bylaws

If the interpretation of any provision of the bylaws or rule or regulation relative to the procedure of a hearing Panel's handling of a matter is raised and submitted to the hearing Panel by one or more of the parties, the interpretation by that hearing Panel of the bylaw or rule or regulation, including any interpretation of this Manual, shall be set forth as a separate finding and shall be conclusive and final, except that the Directors on review of a hearing Panel's decision shall not be bound by that hearing Panel's

interpretation of the bylaws or this Manual. Failure of a hearing Panel to set forth its interpretation as required by this Section shall not invalidate the decision of the hearing Panel.

Section 13. Notices

(a) **Methods of Notice by Association.** Any notice required to be given or paper required to be served by the Association may be given or served by personally handing it to the party to be notified, by sending via first class mail, by any mail delivery service or by certified mail addressed to the mailing address on the records of the Association, or sent to the party by email. When possible, email is the preferred form of service for notices and documents sent by the Association pursuant to the procedures specified in this Manual. If mailed or delivered by the Association, notice shall be deemed given when placed in the mail or when given to the delivery service and deemed received within five (5) calendar days of such mailing or delivery, regardless if actually received or not.

(b) **Email Notices.** Notices sent by email shall include the Association's request that delivery be acknowledged by the intended recipient within twenty-four (24) hours by return email. If receipt of the notice has not been acknowledged by the intended recipient within twenty-four (24) hours, the recipient will be contacted by telephone to confirm receipt and the recipient's confirmation will be noted in the file. If receipt of notices sent by email cannot be confirmed, the notices will be resent via first class mail, by any mail delivery service or by certified mail.

(c) **Names of Hearing Panel Members.** Notice of any hearing shall include the names of the members of the hearing Panel at the time said notice is given.

(d) **Timing of Notices for Hearings.** Notice of any hearing, except for an adjourned or continued hearing, shall be given not less than twenty-one (21) calendar days beforehand, unless otherwise agreed by all the parties. An optional "fast track" process for notice, receipt, consideration and resolution of ethics complaints may be adopted by the Association. The timelines for the "fast track" process are published in the supplement to this Manual.

Section 14. Waiver; Copyright Representation and Indemnification Agreement for Photos

Each member, MLS Participant or Subscriber, by virtue of and in consideration of membership or MLS services, waives any right of personal redress against C.A.R., the Association, C.A.R. or Association employees, any member, including but not limited to, members of a Panel, or witnesses for anything done under these procedures. This includes, but is not limited to submitting a photo pursuant to Section 39, by which the member represents that the member is the copyright owner of the photo submitted to C.A.R. and the Association or has the right to license the photo to C.A.R. and the Association for publication according to the guidelines in this Manual. The member agrees to indemnify C.A.R., the Association, their affiliates, and their respective directors, officers, members, employees, agents, licensees, shareholders and subcontractors from and against any and all claims, losses, damages, liabilities and expenses, including reasonable attorneys' fees, court costs and other legal expenses, which it or they may suffer or incur in connection with any claim that the submitted photo infringes upon any third party's copyright or other intellectual property or proprietary right.

Section 15. The Association Executive's Function

The Association Executive is the administrative channel through whom the Grievance Committee, the Professional Standards Committee and the Board of

Directors correspond and carry out their respective functions. The Association Executive does not make decisions or determinations concerning professional standards matters and must be careful to avoid making such determinations. Rather, the Association Executive advises as to the procedures that are appropriate and required, and coordinates all professional standards and arbitration matters from receipt to final determination by order of the Board of Directors. This coordination involves contacts and correspondence with the complainant, the respondent, the Grievance Committee, the President, the Chairperson of the Professional Standards Committee or the Chairperson of the appointed Hearing Panel, witnesses, and the Board of Directors. Hearing arrangements and records are the Association Executive's responsibility on all related matters. The Association Executive has an exacting and detailed responsibility for each professional standards matter.

Communications shall be directed to the Association Executive. The Association Executive shall render all necessary assistance to the parties, shall on application furnish required forms, shall receive and file all documents or other papers, and shall receive all fees and disburse all monies payable to the Association. In no event, however, shall the Association Executive provide substantive advice or interpretation of this Manual, Association bylaws or other governing documents.

Section 16. Attempts to Influence Panel

No party or party's attorney shall contact the hearing Panel members outside the hearing with regard to the hearing, and shall not attempt, directly or indirectly, to influence a member of a Panel in any matter before it, other than by giving evidence and argument in an open hearing.

Section 17. Confidentiality of Proceedings

(a) **Confidentiality Obligations; Reporting to C.A.R.** All proceedings, including the allegations, findings, recommendations and decisions in disciplinary proceedings, are confidential and shall not be reported or published by the Association, any member of a Panel or any party, except all proceedings, including the allegations, findings, recommendations and decisions in disciplinary proceedings shall be reported to C.A.R. in accordance with policy adopted by the C.A.R. Directors, which requires that each Association submit such information to C.A.R. through a secure repository maintained by C.A.R. and as authorized in this Section and Section 39. Upon the conclusion of the proceedings, the Association, all Panel members and the parties shall have an obligation to maintain and protect this confidentiality except where disclosure is authorized in this Manual, including but not limited to, Section 39 regarding Publication by C.A.R. and Association Members, or as required by law.

(b) **C.A.R. Publication.** Except as provided below, if a member is found in violation of the Code of Ethics, C.A.R. shall publish the following information regarding the violation(s): (1) name and photo of the member found in violation (but not the name of the firm the member is, or was, affiliated with); (2) if the responsible broker is also found in violation, the name of the responsible broker will also be published; (3) if a member's name is similar to another member's or MLS Participant's name, the member's real estate license number and/or office address may also be included; (4) the Article(s) of the Code of Ethics violated, (5) a brief factual synopsis of the matter with names redacted (except for the respondents found in violation); (6) discipline imposed; and (7) the effective date and duration of the discipline, if applicable; and (8) rationale in mitigation or aggravation for the discipline, if applicable. This information will be published on one or more of any authorized C.A.R. communications vehicles, such as the C.A.R. website or magazine. The information

will be removed from the C.A.R. website three (3) years after initial publication.

All discipline will be published except letters of warning, cease and refrain orders, and/or education that does not include a letter of reprimand, fine, suspension or expulsion. However, if a suspension or fine is imposed because the member does not comply with the education requirement or cease and refrain order, the discipline will be published when the suspension or fine is imposed. Citations under the Ethics Citation or MLS Citation systems will not be published by C.A.R.

(c) **Local Association Publication.** The local Association's Board of Directors may, but is not required to, adopt a policy to publish discipline in its local Association communications vehicle(s) available to its members. The local Association may adopt a policy to publish discipline that uses the same criteria as C.A.R.'s publication policy as set forth in Section 39 and Section 17(b). The local Association may also adopt, in addition to or instead of the C.A.R. publication criteria, a policy to publish discipline when a member is found in violation of the Code of Ethics a second time within a (3) year time period. Any discipline published by a local Association shall include the member's name, the fact that the member has been found in violation of the Code of Ethics, the Article(s) violated, and the discipline imposed. Published discipline shall not include the name of the firm the member is, or was, licensed or affiliated with. In cases where the member's name is similar to another Association member's or MLS Participant's or Subscriber's name, the member's real estate license number or office address (or both) may also be published.

(d) **Acceptable Disclosure.** The Panel members shall not discuss the proceedings, including the Panel's deliberations, with any person(s) other than the other members of the Panel, Association staff or legal counsel, the Board of Directors of the Association, or as may be required by this Manual, the MLS rules, the bylaw provisions of the Association or where disclosure is required by law. Members of the Grievance Committee acting pursuant to the provisions of Section 24 of Part One of this Manual shall not be precluded from discussion necessary to the preliminary review.

(e) **Obligations of the Parties.** The parties shall not report or publish the allegations, findings or decisions of any disciplinary proceeding to anyone except as may be required by law. Notwithstanding, the respondent in a disciplinary hearing is authorized to disclose the decision to vindicate that respondent's professional reputation. Any party to a disciplinary proceeding is authorized to disclose the decision where there is a civil proceeding involving the same facts and circumstances which gave rise to the proceeding before the Association.

(f) **Enforcement.** Actions inconsistent with this Section shall be deemed a membership or MLS duty violation. However, such actions shall not invalidate any decision made by a Panel.

Section 18. Right to Counsel/Other Representation

(a) **Right to Counsel; Ethics Advocate.** Any party may be represented by legal counsel or by a REALTOR® (or both) at any ethics hearing, including review hearings, even where the hearing will occur in the party's absence. If the Association has adopted the Ethics Advocate (EA) program, ~~a sub-committee of the Professional Standards Committee of REALTORS®~~ professional standards volunteers will be specially trained to represent parties during the disciplinary process. The role of legal counsel or EA may include preparation for hearing, including the preparation of forms and assembly of evidence, representation at the hearing, including the making of opening and closing statements on behalf of the party

represented at the hearing, examining and cross examining witnesses, and introducing affidavits, documents and other relevant evidence, and representation at any review hearings, but does not include testifying as a witness. In the event the parties do not give fifteen (15) days' notice of their intention to have legal counsel or EA representation to the Association and all other parties, the hearing may be continued, and the party giving late notice may be assessed a continuance fee. An Association is not required to provide an EA for a party if the Association has not adopted the EA program. Where an ethics hearing takes place in a respondent's absence, the respondent is still entitled to be represented by counsel at the hearing.

(b) **Notice of Representation.** Notice of intention to have representation, including the representative's name, address, and phone number must be given by the party to all other parties and the hearing Panel at least fifteen (15) calendar days before the hearing. In the event of failure to comply with this notice requirement the hearing Panel may, at its discretion, take all steps, including continuance of the matter, if necessary, to guarantee the rights of all parties to representation by counsel.

(c) **Association Legal Counsel.** Any Panel and the Directors may consult with or have legal counsel present to advise them on issues of procedure and law.

Section 19. Qualification for Panel

(a) **Business Limitation.** Only one person connected with any firm, business, partnership or corporation may serve on the same Panel.

(b) **Panel Limitation.** No individual may participate in the deliberation of more than one Panel on the same matter.

(c) **Automatic Disqualification.** A person shall automatically be disqualified to be a member of a Panel in any case in which he or she is 1) a party; 2) related by blood or marriage (to the fourth degree) to a party; or 3) an employer, employee, partner or other business associate of a party.

(d) **Certificate of Qualification.** Before sitting on any case, each member of a Panel shall sign a statement (Form D-7) that he or she is not disqualified for any of the reasons described in Section 19(c) and that he or she knows of no other reason that might prevent him or her from rendering an impartial decision.

(e) **Discussion Prior to Hearing.** Every member of a hearing Panel (except a member of the Grievance Committee acting pursuant to the provisions of Section 24 of Part One of this Manual) shall avoid, so far as possible, discussing the case with any person prior to the hearing. If he or she does engage in any such discussion prior to the hearing, he or she must disclose the fact to the parties and to the other members of the hearing Panel as soon as practicable but no later than at the beginning of the hearing. Upon such disclosure, any party may challenge a member of a hearing Panel and, if the hearing Panel agrees, at the option of the hearing Panel, that member of the hearing Panel shall be dismissed, and a new hearing Panel member shall be selected. A party waives any objection under this Section by failure to object prior to the commencement of the hearing.

(f) **Request for Disqualification.** Any party may file with the Association Executive a written request for disqualification of a member of a hearing Panel stating the grounds alleged as the basis for disqualification (Form D-5). Challenges submitted by any party pursuant to this Section shall be decided by the Professional Standards Chairperson or his or her designee. A party shall not have the right to request disqualification of a member of a hearing Panel solely on the basis of the panelist's race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. A party shall be deemed to

have waived any grounds of disqualification of which he or she then has knowledge unless he or she files the request within ten (10) calendar days after the prospective names are transmitted to the parties. However, any member of a hearing Panel may be disqualified at any time if a majority of the members of a hearing Panel find any automatic grounds of disqualification to be present under this Section, or find any other facts which, in their judgment, may prevent the member from rendering an impartial decision or appear to do so. However, none of the foregoing is to be construed as to allow a challenge to the qualifications of members of the Association's Grievance Committee.

(g) **Absent Panel Member.** If a hearing Panel member fails or is unable to participate in a hearing, the remaining hearing Panel members may, at their option, but only with the express consent of the parties, proceed with the hearing. Only the remaining hearing Panel members may participate in the hearing and the determination thereof. Should any hearing Panel member absent him or herself during the progress of the actual hearing, that individual shall likewise not participate in the deliberations or determinations thereof. If all the parties do not agree to proceeding without the full number of the Panel originally designated, the Presiding Officer or his or her designee of the hearing Panel will recess the hearing to a date on which all hearing Panel members can be present. If the Presiding Officer or his or her designee cannot at that time schedule a new date, notice of a subsequent date shall be served on all parties herein provided.

Section 20. Filing a Complaint

(a) **Who May File; Where to File.** Any person, whether a member or not, having reason to believe that a member, Participant or Subscriber is in violation of any conduct subject to disciplinary action under Sections 2 and 4 of Part One of this Manual may file a complaint in writing with the Association (Form D-1) where the respondent is a member or where the property at issue is located. In the event the complaint is filed at the Association where the property at issue is located, the Association where the complaint is filed shall obtain a cooperative enforcement agreement with the Association where the respondent is a primary member. The Association Executive may require the complainant to supply the necessary number of copies of the complaint.

(b) **Timing of Filing.** A complaint meeting all filing requirements must be filed within one hundred and eighty (180) calendar days after the alleged offense and facts relating to it could have been known by the complainant in the exercise of reasonable diligence or one hundred eighty (180) days after the conclusion of the transaction, or event, whichever is later. When a party utilizes the Association or C.A.R. ombudsman program or an ethics mediation program, the filing deadline is suspended until the case is reported closed by the ombudsman or ethics mediator.

(c) **Preliminary Review.** The Association Executive may conduct a preliminary review of the complaint to determine whether the complaint is subject to disciplinary action by the Association and otherwise complies with the filing requirements of this Manual. The Association Executive shall only conduct such preliminary review as is necessary to make this determination and any decision reached by the Association Executive shall not be considered a decision on the merits of the dispute. In the event there is a dispute as to whether a complaint has been properly filed, the Association Executive shall refer such disputes to the hearing Panel for consideration. Directly before the hearing, both parties will be given the chance to argue before the hearing Panel as to whether the complaint was timely filed, and the hearing Panel will decide whether to proceed with the complaint or dismiss the complaint for not being timely filed. This decision is not subject to review by the Board of Directors.

(d) **Disciplinary and Arbitration Complaints Filed Together.** If both a disciplinary and an arbitration complaint are filed against the same Respondent and arising out of the same matter, the disciplinary complaint is processed through the Grievance Committee first. If the Grievance Committee recommends that the matter be forwarded for a hearing, the complaint should be held in abeyance pending the outcome of the arbitration. The disciplinary hearing is held after the arbitration has been completed and must be before a different hearing Panel.

(e) **Ethics Advocate.** If the Association has adopted the Ethics Advocate program, the complainant may request the assistance of an Ethics Advocate ("EA"), by submitting a Request for Ethics Advocate packet (Forms D-23, D-23A & D-23B) to the Association. The EA is authorized to help the complainant draft the Complaint (Form D-1) and other forms required for the disciplinary process. In addition, the EA may represent the complainant at the hearing, as set forth in Section 18(a).

(f) **Pre-hearing broker-to-broker meeting.** When a disciplinary complaint is received by the Association and the complainant is a REALTOR®, the complainant will be asked if they would like the Association to arrange a meeting between the complainant's broker and the respondent's broker before forwarding the complaint to the Grievance Committee. The meeting may be conducted virtually using a videoconferencing platform such as Zoom or by telephone. If the complainant does not agree that the brokers should meet, then the complaint will be forwarded to the Grievance Committee. If the complainant agrees to have the brokers meet, the Association Executive will schedule and coordinate a videoconferencing or telephone call with both brokers. Following the meeting, the complainant will notify the association as to whether they wish to withdraw the complaint or have the complaint sent forward to the Grievance Committee. If the Association does not receive a response from the complainant within 2 weeks after the association initiates the pre-hearing broker-to-broker process, then the complaint will be forwarded to the Grievance Committee.

(g) **Parallel Proceedings**. If a disciplinary complaint is filed at the same time or following the filing of a complaint with the DRE, the initiation of a lawsuit concerning the same matter, or criminal litigation, the Association may decide to hold the disciplinary complaint in abeyance until the conclusion of the parallel proceeding. Generally, a complaint will not be held in abeyance unless a determination is made by the Association Executive that processing the case would have an unfair advantage or impact on the litigation or governmental proceeding. The Association Executive's decision to hold a disciplinary complaint in abeyance cannot be challenged by the parties and is not subject to Board of Directors' review. A complaint will generally not be held in abeyance simply because the DRE has "opened a case" or is "conducting an investigation" regarding the matter in question. However, if the DRE has filed a formal accusation against the respondent, the Association should consider holding the disciplinary complaint in abeyance until the DRE has concluded its license enforcement process. In cases where a decision is made to hold the matter in abeyance, the Association should still accept the complaint as filed. Only the processing of the matter will be held in abeyance. This is to ensure that if the complainant still wishes to proceed with the complaint at the Association after the conclusion of the parallel proceeding, the complainant will be able to do so without being considered as not having timely filed the complaint.

Section 21. Role of Designated REALTOR® in an Ethics Hearing

(a) **Optional Addition to Complaint.** If anyone other than a Designated REALTOR® is named as the respondent in a complaint alleging ethical

misconduct, that individual's Designated REALTOR® as defined by the Association bylaws, at the time of the acts giving rise to the complaint may, but is not required to be, named as a respondent.

(b) **Notice to Designated REALTOR®; Right to Attend.** If a Designated REALTOR® is not named as a respondent, the Designated REALTOR® shall receive notice and a copy of the complaint and all subsequent information regarding the complaint including any decision of a hearing Panel and any final action taken by the Board of Directors. The Designated REALTOR® shall also have the right to attend and be present at any hearing or review regarding the complaint without any requirement to provide notice of attendance. The Designated REALTOR® may make opening and closing statements on behalf of the respondent, examine and cross-examine parties and witnesses, introduce affidavits, documents and other admissible relevant evidence, consult with or testify on behalf of the respondent, and respond directly to questions from the Panel.

(c) **Complainant's Designated REALTOR®.** In any proceeding where a Designated REALTOR® (or any other REALTOR® Principal affiliated with the complainant's firm) is not joined in the complaint as a co-complainant, the complainant may, at their sole discretion, allow their Designated REALTOR® or REALTOR® principal to receive documentation related to the complaint and participate in the hearing as a witness or as counsel.

Section 22. MLS Participant as a Respondent in an MLS Rules Hearing

(a) **Optional Addition to Complaint.** If anyone other than an MLS Participant is named as the respondent in an MLS rules hearing, that individual's MLS Participant as defined by the MLS Rules, at the time of the acts giving rise to the complaint may, but is not required to be, named as a respondent.

(b) **Notice to MLS Participant; Right to Attend.** If a MLS Participant is not named as a respondent, the MLS Participant shall receive notice and a copy of the complaint and all subsequent information regarding the complaint including any decision of a hearing Panel and any final action taken by the Board of Directors. The MLS Participant shall also have the right to attend and be present at any hearing or review regarding the complaint.

Section 23. Joinder of Multiple Parties or Complaints

Upon request of a party or upon its own motion, the Grievance Committee or the hearing Panel may join together multiple complaints arising out of the same set of circumstances or multiple parties involved in the same transaction to be heard at the same time. In addition, the Grievance Committee or the hearing Panel may join together complaints alleging an MLS rules violation and complaints alleging unethical misconduct involving the same parties and arising out of the same transaction to be heard at the same time.

Section 24. Action of the Grievance Committee

(a) **Review of Complaint by Grievance Committee.** The Association Executive shall promptly refer any complaint submitted according to Section 20 of Part One of this Manual to the Chairperson of the Grievance Committee, who, no later than forty-five (45) calendar days after the Association's receipt of the complaint, shall arrange to have the complaint reviewed by the Grievance Committee or designate three or more members of the Grievance Committee to (1) designate the complaint for a citation as set forth in Section 8(b); (2) dismiss the complaint as unworthy of further

consideration; (3) refer it back to the complainant as appropriate for arbitration prior to or instead of a disciplinary hearing; or (4) refer it back to the Association Executive for hearing.

(b) **Preliminary Nature of Review.** The Grievance Committee is to make only such preliminary review and evaluation of the complaint as required to determine whether the complaint warrants further consideration by a hearing Panel of the Professional Standards Committee. The Grievance Committee does not conduct hearings and does not determine if a violation of the Code of Ethics, Association bylaws or MLS Rules has occurred.

(c) **Request for Hearing after Citation.** If, after receiving a citation for violation of the Code of Ethics as set forth the Section 8(b), the respondent requests a hearing under Part One of this Manual, the Grievance Committee shall reexamine the complaint and may amend it in accordance with this Section 24.

(d) **Grievance Committee as Complainant.** Upon its own motion, the Grievance Committee may, and upon instruction of the Directors must, investigate the actions of any member when there is reason to believe that the member's conduct may be subject to disciplinary action. If the evidence warrants a hearing, the Grievance Committee shall prepare a complaint, refer it to the Association and designate one or more of its members on behalf of the Grievance Committee as complainant to present the case at the subsequent hearing. No member of the Board of Directors who requested that the Grievance Committee review the member's conduct can serve on the tribunal that finalizes the decision.

(e) **Presenting the Case on Complainant's Behalf.** If the Association does not have an Ethics Advocate to assist the complainant and if the complainant is someone other than the Grievance Committee, upon the complainant's request, the Grievance Committee may, but is not required to, designate one or more of its members to present the case at the subsequent hearing on the complainant's behalf. Another alternative is for the Association to borrow an Ethics Advocate from another association of REALTORS® in California.

(f) **Amending the Complaint.** If the Grievance Committee determines that the respondent's alleged conduct may be the basis for a violation but that an inappropriate membership or MLS duty has been cited or if the complainant has not cited any violations in the complaint, the Grievance Committee may amend the complaint by deleting or adding the appropriate duty based on the facts alleged in the complaint. If the Grievance Committee determines that a membership or MLS duty should be added to the complaint, the Grievance Committee must provide a description of the facts upon which the additional allegations are based. If the Grievance Committee determines that a membership or MLS duty should be added to the complaint, and the complainant will not agree to the addition, the Grievance Committee files its own complaint and both complaints will be heard simultaneously by the same hearing Panel.

(g) **Dismissing Allegations and Respondents in a Complaint.** If the complaint asserts multiple allegations and the Grievance Committee determines that one or more of the allegations would not warrant a hearing, that portion of the complaint may be dismissed while the balance of the complaint is forwarded for a hearing before a hearing Panel of the Professional Standards Committee. If the complaint asserts allegations against multiple respondents and the Grievance Committee determines that the allegations do not warrant a hearing against one or more of the respondents, the Grievance Committee may delete those respondents from the complaint while the balance of the complaint is forwarded for a hearing before a hearing Panel of the Professional Standards Committee.

(h) **Joinder.** The Grievance Committee may join together multiple parties or complaints as provided in Section 23 of this Manual.

(i) **Anonymous Complaints.** An Association's Board of Directors may decide whether or not to accept anonymous complaints. If an Association does accept anonymous complaints, a Subcommittee of the Grievance Committee shall review and may investigate an anonymous complaint and 1) dismiss the complaint as unworthy of further consideration; 2) notify the respondent of the complaint and give an opportunity to correct; 3) refer the complaint to the Professional Standards Committee for hearing; or 4) issue an ethics citation. If the Subcommittee, on behalf of the Grievance Committee, refers the matter for hearing, the Grievance Committee shall be the complainant and one of the members of the Subcommittee shall represent the Grievance Committee at the hearing. Anonymous complaints for any allegations except for those covered in the association's ethics citation policy are prohibited.

(j) **Disclosure of Decision.** Any decision by the Grievance Committee shall not be disclosed to any person except the Professional Standards chairperson, the hearing Panel, the complainant(s), respondent(s), Association staff and legal counsel, or a Panel of the Directors upon review.

Section 25. Review of Grievance Committee Decision

(a) **Request for Review.** Within ten (10) calendar days from the date the Grievance Committee decision is sent to the complainant, the complainant may request in writing (Form G-4) a review by a Panel of the Directors of a decision to dismiss the complaint or to delete a membership duty, MLS rule, or respondent from the complaint.

(b) **Directors' Review.** The President will select a Panel of the Directors (not less than three (3)) to conduct the review. When conducting the review, the Directors are subject to automatic disqualification under the grounds set out in Section 19 of Part One of this Manual. Each Director must sign a statement (Form D-7) that he or she is not disqualified for any of the above reasons, and he or she knows of no other reason that might prevent him from rendering an impartial decision. The review Panel will consider only the information and documentation considered by the Grievance Committee. The parties shall not be present during the review.

(c) **Decision of the Directors.** The decision of the Panel of Directors conducting the review shall be final. If the Directors affirm the decision to dismiss, the complainant shall be notified and the complaint dismissed. If the decision of the Directors is to send the full complaint, or portions of the complaint, forward to a hearing, the complainant shall be notified and the complaint processed in accordance with Section 28 of Part One of this Manual. If the review is based on the Grievance Committee's decision to delete a membership duty, MLS Rule, or respondent from the complaint, and the Panel of Directors affirm this decision, the complaint shall be processed in accordance with Section 28 of Part One of this Manual. If the Panel of Directors amends the complaint to add any or all of the deleted membership duties, MLS Rules, or respondents, the amended complaint shall be sent to the complainant for signature and then processed in accordance with Section 28 of Part One of this Manual.

(d) **No Request for Review.** If there is no written request for review made within ten (10) calendar days after notice of the Grievance Committee decision is sent, the decision of the Grievance Committee shall be final.

Section 26. Withdrawal of Complaint

(a) **Prior to the Hearing.** If after the Grievance Committee has recommended that a hearing be arranged, but before the hearing Panel is convened, a complainant requests withdrawal of the complaint, the Association Executive shall promptly refer the complaint and response back to the Grievance Committee for a determination whether a potential violation of the public trust (as defined in Sections 1(n) and 39(i) of Part One of this Manual) may have occurred. Only where the Grievance Committee determines a potential violation of the public trust may have occurred may the Grievance Committee proceed as the complainant. However, see subsection (b) for the different rule if the complaint is sent back to the Grievance Committee after the hearing is convened. Additionally, at any time after the disciplinary complaint has been submitted and acknowledged by the Association Executive, the complainant must respond to any communications from the Association Executive within ten (10) business days. If no response is received from the complainant after ten (10) business days, the Association may consider the complaint withdrawn.

(b) **During the Hearing.** After a hearing Panel has been convened, a complaint may be withdrawn only with the Panel's approval. In such event, the Panel shall refer the complaint and response back to the Grievance Committee. If the Grievance Committee determines there is sufficient information to go forward with the hearing, even if the complaint does not involve a potential violation of public trust, the complaint shall be amended to name the Grievance Committee as complainant and the hearing shall be continued to a new date. The respondent shall be provided with a copy of the amended complaint in such case. The Panel may also refuse to allow the complaint to be withdrawn and proceed with the hearing, or allow the complaint to be withdrawn with no further action. Such withdrawal under subsection (a) or (b) of this Section would not constitute a decision on the merits.

Section 27. Amendment of Complaint

(a) **Prior to the Hearing.** At any time prior to the hearing on the complaint, the complainant may file an amended complaint (i.e. add or delete Articles and/or respondents) with the Association Executive. If an amended complaint is filed prior to the hearing being convened, the complaint shall be sent to the Grievance Committee for review in accordance with the provisions of Section 24 of Part One of this Manual. If the Grievance Committee refers the amended complaint for a hearing, the Association Executive shall follow those procedures set forth in Section 28 of Part One of this Manual. If the Grievance Committee does not refer the amendment for a hearing, the matter shall proceed on the original complaint. If the complainant submits additional documentation, the matter does not need to be reviewed again by the Grievance Committee. Complaints cannot be amended to add, or substitute, other individuals as complainants except as mutually agreed to by the parties.

(b) **During the Hearing.** At any time during the hearing, the complaint may be amended either by the complainant or upon motion of the hearing Panel. The hearing Panel may disallow the requested amendment and proceed to hear the original complaint. If the amended complaint is allowed, the amended complaint shall be filed in writing, signed by the complainant or by the Presiding Officer, a copy given to the respondent, and a continuance granted if requested by a party.

(c) **Joinder.** The hearing Panel may join together parties or complaints as set out in Section 23 of Part One of this Manual. In such event, the procedures of subsection (b) of this Section shall be followed.

Section 28. Initiating a Disciplinary Hearing

(a) **Documents Sent to the Parties.** After a complaint has been referred to the Association Executive by the Grievance Committee with instruction to arrange a hearing, the Association Executive shall transmit to each respondent: 1) a copy of the complaint; 2) the Notice to Respondent (Form D-2); 3) the Request for Ethics Advocate packet (Forms D-23, D-23A & D-23B), if the Association has adopted the Ethics Advocate program; and 4) the Response (D-3) with directions to return the Response and Request for Ethics Advocate packet within fifteen (15) calendar days from the date the request for the Response was transmitted to the respondent. The Association Executive may require the respondent to supply the necessary number of copies of the Response. The Association Executive shall concurrently at this time transmit both the complainant and respondent a list of names of members of the Professional Standards Committee from which the disciplinary hearing Panel will be selected, the Notice of Right to Challenge Panel Members and Availability for Hearing (Form D-4), and the Reasons for Challenge – Panel Member (Form D-5).

(b) **Respondent Request for Ethics Advocate.** If the Association has adopted the Ethics Advocate program, the respondent may request the assistance of an Ethics Advocate ("EA"), by submitting the Request for Ethics Advocate packet (Forms D-23, D-23A & D-23B) to the Association. The EA is authorized to help the respondent draft the Response (Form D-3) and other forms required for the disciplinary process. In addition, the EA may represent the respondent at the hearing, as set forth in Section 18(a).

(c) **Response not Required; Late Filing.** The respondent may submit a response, but regardless of whether he or she does or not, the hearing may be scheduled and conducted in the absence of the respondent. A hearing Panel may accept late filing of the response at its discretion.

(d) **Notifying Complainant of Response.** Not later than fifteen (15) calendar days from the date of transmitting the complaint to the respondent, the Association Executive shall transmit copies of the response, if any, to the complainant or notify the complainant that no written response has been filed.

(e) **Selecting the Hearing Panel.** From the names of members of the Professional Standards Committee not challenged by either party within fifteen (15) calendar days from the date the names are transmitted to the parties, the Chairperson of the Professional Standards Committee or his or her designee shall then select from the Professional Standards Committee a hearing Panel as provided in subsection (f) of this Section and Section 19 of this Manual. It shall be a membership duty of anyone so appointed to serve on a hearing Panel unless disqualified.

(f) **Composition of Hearing Panel.** A hearing Panel must have an odd number of members (not less than three) except as provided in Section 19(g) of this Manual. If the Association's bylaws require a majority of real estate brokers on the Professional Standards Committee, a majority of each Panel shall be licensed real estate brokers. If the complainant or respondent is a salesperson (either a licensed salesperson or licensed real estate broker acting in the capacity of a salesperson), a hearing Panel member shall also be a salesperson.

(g) **Presiding Officer.** The Professional Standards Committee Chairperson or his or her designee shall select one (1) of the hearing Panel members to be the Presiding Officer. The Presiding Officer will be responsible for conducting the hearing and may prescribe any procedure for the hearing not inconsistent with the provisions of this Manual.

(h) **Alternate Panel Member; Professional Standards Observer.** The Professional Standards Committee Chairperson or his or her designee may select an alternate from the list of members of the Professional Standards Committee not challenged to attend the hearing. The alternate will not participate in any phase of the process unless the alternate is asked to substitute for one of the original hearing Panel members for any reason. The alternate has the same duties of confidentiality as the other hearing Panel members. If alternate panel members are not called on to replace a panel member and if the association's policy allows them to be present at post-hearing executive session deliberations, alternates may not be involved in deliberating or deciding the matter before the hearing panel. Additionally, an Association may allow members of their Grievance Committee, Professional Standards Committee, and Board of Directors to attend a hearing as a silent observer for training purposes. Observers will be limited to one per hearing. Additionally, observers are allowed to attend the executive session of the hearing panel as a silent observer but is not allowed to participate in deliberations. Observers are required to comply with all confidentiality requirements expected of professional standards volunteers, and they will not make any unauthorized disclosure or dissemination of the allegations, findings or decision. Parties will be notified if the Association plans to have an observer attend the hearing, and the observer will only be allowed to attend if neither party objects to their attendance.

(i) **Notice of Date, Time, and Place of Hearing.** No later than twenty (20) calendar days after the Grievance Committee decision to forward a complaint for a hearing is final, the Association Executive shall designate the date, time and place of the hearing and shall notify the parties and hearing Panel in writing (Form D-6). Each party shall be given at least twenty-one (21) calendar days prior notice of the hearing but appearance at a hearing without objection by any party will constitute a waiver of such notice requirement. Absent a compelling reason, the Association Executive may require that the hearing be conducted virtually using a virtual meeting platform such as Zoom or any other similar service.

(j) **Waiver of Objection to Panel Member; Appointing Replacement to Challenged Panel Member.** A party will be deemed to have waived all objections to any person whose name he or she does not challenge, as provided in Section 19 of Part One of this Manual. If a challenge to proposed members of the hearing Panel results in an insufficient number of members to constitute the Panel, the President may appoint other qualified Association members to serve as hearing Panel members.

(k) **Notification of Procedure.** The Association Executive shall provide to each party the outline of procedure prior to the hearing (Form D-8).

Section 29. Duty to Give Evidence

When requested by a party to a hearing, giving not less than ten (10) calendar days' notice, or when summoned by any Panel to do so, members, MLS Participants and Subscribers shall appear at the hearing, produce any records or data pertinent to the case and designated by the hearing Panel, and to testify truthfully. It shall be a membership duty and an MLS rules requirement to comply with such requests. Once evidence has been submitted at a hearing by a party, the party does not have the right to ask the other party or the hearing Panel to return or destroy that evidence. All parties who appear (in-person and remotely) at a hearing are required to answer all questions by the Panel and by any other party and are not entitled to advance notice. Refusal of a party to appear at a disciplinary proceeding, to submit him or herself or his or her records to examination or to comply with a request of the hearing Panel for relevant information may be deemed an admission of the truth of the claim against him or her. The presiding officer of the

hearing Panel may allow a party or witness to remotely testify or attend the hearing upon written request, as long as the Panel is satisfied that safeguards are in place to assure the identity of the person testifying or attending and the confidentiality of the hearing.

Section 30. Witnesses

Every party must have his or her own witnesses present at the hearing, and the hearing Panel may summon its own witnesses. All witnesses, except the parties to the hearing, will be excused from the hearing room except while testifying. Upon written request, as long as the Panel is satisfied that safeguards are in place to assure the identity of the person testifying and the confidentiality of the hearing, the presiding officer of the hearing Panel may allow a witness to testify remotely.

Section 31. Continuances

Request for continuance of a hearing shall be in writing and state the reason for the request. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date or when the Professional Standards Chairperson, his or her designee, or the hearing panel chair determines that denying the request for continuance would deny the requesting party a fair hearing. Continuances requested after a hearing has convened shall be considered by the hearing Panel, and granted as necessary.

Section 32. Continuance Fees

Each party shall be entitled to one continuance of a hearing, for good cause, without assessment of a continuance fee. For all subsequent requests for continuance, the Board of Directors may establish a schedule of fees. If a continuance is requested because of failure to adequately notify the Association and opposing party of representation by counsel or a REALTOR®/Ethics Advocate, or because counsel or a REALTOR®/Ethics Advocate is obtained to represent a party after the hearing date has been set but the counsel or REALTOR®/Ethics Advocate is unavailable on the date set for the hearing, the party responsible for the continuance may be assessed a continuance fee, not the party requesting the continuance.

Section 33. The Hearing

(a) **Statements of Qualification; Acknowledgment of Receipt of Outline of Procedure.** The hearing Panel, prior to the hearing, must sign a statement certifying that they are unaware of any reason why they should be disqualified from serving on the hearing Panel (Form D-7). At the beginning of the hearing, each party shall sign a statement to the effect that he or she has received and read the outline of procedure (Form D-9) and either 1) understands the procedure and has no objection or questions concerning it; or 2) specifies what objections or questions he or she has and what changes he or she desires. The hearing Panel shall act upon any such objection or request as it deems proper.

(b) **Conducting the Ethics Hearing.** The parties to the dispute shall with diligence present to the hearing Panel in writing such statements and proofs as they desire. Proofs may be submitted in the form of affidavits or otherwise. The Presiding Officer of the hearing Panel may require that statements be verified by affidavit or that the accuracy or authenticity of any documents or other papers submitted be verified by affidavit. The hearing Panel shall receive oral testimony if any party to the disciplinary hearing requests, or if in the Presiding Officer of the hearing Panel's opinion, it is necessary or desirable. The Presiding Officer of the hearing Panel may determine what personal appearances should be made by the parties and regulate the holding of hearings. The Presiding Officer of the hearing Panel may receive and consider any evidence they deem material and proper.

(c) **Presentation of Evidence at the Hearing.** At any hearing every party has the right to present any witnesses, to submit any evidence pertinent to the case, and to cross-examine witnesses of others. Witnesses giving oral testimony shall be sworn by the presiding officer. Before permitting testimony relating to the character or general reputation of anyone, the Presiding Officer of the hearing Panel shall determine if the testimony has a direct bearing on the case at issue. If a party wishes to present visual, audio, or video evidence at the hearing, it is that party's responsibility to provide the equipment necessary to display or play the evidence for the hearing Panel.

(d) **Failure of Respondent to Appear at Hearing.** The hearing Panel may hear and determine the controversy upon the evidence produced at the hearing notwithstanding the failure of the respondent, who has been duly notified, to appear, and who is not appearing remotely as set forth is Section 29. If only the complainant appears at the hearing, he or she may rest upon the evidence submitted with his complaint. The hearing Panel may not find against a respondent solely by reason of his or her failure to appear.

(e) **Failure of Complainant to Appear at Hearing.** If the complainant fails to appear and has not been granted permission to appear remotely as set forth is Section 29, the complaint shall be dismissed or at the hearing Panel's discretion be referred back to the Grievance Committee for consideration under Section 26(b) of Part One of this Manual.

(f) **Recess and Postponement.** The hearing Panel may recess the hearing from time to time as necessary and, on request of a party or upon the Panel's own motion, may postpone the hearing for not less than fifteen (15) calendar days nor more than thirty (30) calendar days, unless otherwise agreed to by the parties.

Section 34. Transcript/Right to Record

(a) **Recording the Hearing.** The Association shall either have a court reporter present at the hearing or record the proceedings. The Association's transcript or recording shall be considered the official record of the proceeding. A party may, at their own expense, have a court reporter present. A party may not record the proceedings unless the Association chooses to only have a court reporter, in which case, the party may record the proceedings. If a party has any transcript prepared, the party shall provide and pay for a copy for the Association.

(b) **Request for Copy of Recording.** If the time period to request a Directors' review has not lapsed, any party to a hearing has a right to obtain a copy of the Association's official record of the proceeding upon payment of the Association's fees for duplication. In the event one party to a hearing has requested a copy of the recording prior to the lapse of the time period for a Directors' review, any other party to the hearing may also request a copy of the recording prior to the Directors' review. Any duplication will be conducted under the supervision of the Association. Parties are authorized to use recordings or transcripts from hearings only for the purpose of a Directors' review of the case. Any unauthorized use of the recordings or transcripts shall be construed as a violation of Article 14 of the N.A.R. Code of Ethics and of these procedures.

(c) **Destruction of Transcript or Recording.** Any transcript or recording of a hearing shall be destroyed upon final action of the Directors.

Section 35. Interpreters and Translators

(a) **Selection.** In the event a non-English speaking party in a disciplinary case

requires an interpreter, or in the event a party requires and interpreter for a witness, the Association shall provide the party with the following options: 1) The party requesting the interpreter can bear the cost to provide a qualified interpreter that is certified or registered and in good standing with the Judicial Council of California; or 2) The Association can provide an interpreter who is a member of the Association if there is one available who speaks the language in question. Only one neutral interpreter will be allowed in the hearing and will assist all parties with translation needs.

(b) **Cost.** The party requesting the interpreter shall bear the cost to provide themselves with a qualified interpreter. In the event that both parties speak the same non-English language and require an interpreter or both call witnesses that speak the same non-English language and require an interpreter, the cost of the interpreter shall be split evenly between the parties.

(c) **Notice.** The party intending to utilize an interpreter shall notify the Association and all other parties at least ten (10) days prior to the date of the hearing, and in such notice shall indicate the name of the party or witness requiring an interpreter and the language which will be used by the non-English speaking party/witness, as well as any dialect of such language, if applicable. Before the hearing begins, all parties will need to sign a "hold harmless" waiver stating that the Association will not be held liable for any actions or omissions of the interpreter.

(d) **Written Translations.** In the event any party intends to present a written document at a hearing that is in a language other than English, a translation by a qualified independent translator shall be presented along with the document at least ten (10) days prior to the date of the hearing. The party must provide proof that the document was translated by a translator who is certified or registered and in good standing with the Judicial Council of California.

Section 36. Decision of Hearing Panel

(a) **Making and Reporting the Decision.** The decision shall be made as soon as practicable after the evidence is presented and the hearing Panel has finished deliberations, but in no event later than forty-eight (48) hours after the conclusion of the hearing. The decision of the hearing Panel shall be by a simple majority vote (with all Panel members including the Presiding Officer having an equal vote) and in writing containing findings of fact (Form D-11) and a statement of disciplinary action recommended (Form D-12), if any. Such decision shall be transmitted to the parties within five (5) calendar days after it has been filed with the Association, unless more time is necessary to obtain the review of Association's legal counsel. The decision shall not be disclosed to any persons except the Directors, the complainant, the respondent, Association staff and legal counsel, as may be required by law, except all proceedings, including the allegations, findings, recommendations and decisions in disciplinary proceedings shall be reported to C.A.R. and may be posted on the C.A.R. website in accordance with policy adopted by the C.A.R. Directors and as authorized in this Manual pursuant to Section 17 and Section 39. However, failure to abide by these timing and disclosure requirements (including unauthorized disclosures) shall not invalidate the decision of the hearing Panel.

(b) **Consideration of Prior Code of Ethics and Membership Duty Violations.** In the event a member is found in violation of the Code of Ethics or a membership duty, the hearing Panel must consider, in determining discipline, all past records of previous determinations by the Board of Directors, of this Association and any other Association of REALTORS®, of Code of Ethics and membership duty violations and sanctions imposed, if any, in the member's records. Access to the member's records of prior violations is permitted only after deliberations and findings of a violation.

(c) **Consideration of Prior MLS Duty Violations.** In the event an MLS Participant or Subscriber is found in violation of an MLS rule or duty, the hearing Panel must consider, in determining discipline, all past records of previous determinations by the Board of Directors of this Association, this MLS or any other MLS, if available, of MLS duty violations and sanctions imposed, if any, in the Participant's or Subscriber's records. Access to the person's records of prior violations is permitted only after deliberations and findings of a violation.

(d) **Types of Discipline; Filing of Decision.** Disciplinary action recommended by the hearing Panel may include recommended options as described in Section 1 of this Manual. The decision (Forms D-11 and D-12) shall be filed with the Association Executive.

Section 37. Action of the Directors if No Request for Review

(a) **Action of the Directors.** If no request for review is filed pursuant to Section 38, the Association Executive shall refer the hearing Panel's decision (Form D-11) and recommendations (Form D-12), if any, to a Panel of the Directors for review and final action no later than thirty (30) calendar days after the date the hearing Panel's decision is transmitted to the parties. The Directors must adopt the hearing Panel's decision and recommendations and issue an order accordingly, except that if the Directors, after reviewing the decision or recommendations are concerned with a deficiency on the face of the decision or the appropriateness of the recommended discipline they may 1) dismiss the entire matter or dismiss specific violations if they conclude that the findings of fact do not support, in part or total, the hearing Panel's decision or recommendations; 2) impose alternative discipline that does not exceed that recommended by the hearing Panel; or 3) refer the decision back to the hearing Panel with recommended modifications. If the hearing Panel does modify its decision or recommended discipline, the parties shall be notified in writing of this change and given a new opportunity to request a review pursuant to Section 38. The Directors shall render their decision in writing (Form D-22).

(b) **Automatic Disqualification; Statement of Qualification.** When reviewing a hearing Panel's decision and recommendations pursuant to this Section, the Directors are subject to automatic disqualification under the grounds set out in Section 19 of Part One of this Manual. Each Director must also sign a statement (Form D-7) that he or she is not disqualified for any of the above reasons, and that he or she knows of no other reason that might prevent him or her from rendering an impartial decision. The parties shall have no right to submit challenges to the qualifications of the Directors for reviews conducted pursuant to this Section.

(c) **Finality of Directors' Action.** Any decision of the Directors is final and each member by becoming and remaining a member agrees not to seek review in any court of law. Further, failure of the Association to abide by the timing requirements of this Manual shall not invalidate the decision of the Panel of Directors.

(d) **Role of C.A.R.** C.A.R. does not review and cannot overturn any decision of the Directors pursuant to Section 37.

Section 38. Action of Directors if Request for Review

(a) **Request for Review.** Within twenty (20) calendar days after the hearing Panel's decision has been transmitted to the parties, any party may file a request in writing for a review (Form D-17) of the hearing Panel's decision by the Board of Directors or appointed review Panel of the Board of Directors. The Association Executive may

require the party requesting the review to supply the necessary number of copies of the request for review.

(b) **Deposit Requirement.** A request for review must be accompanied by a deposit with the Association in the amount provided in the Association's current schedule of fees.

(c) **Basis for Review.** The request for review must clearly indicate the basis on which the challenge is being made and contain facts and supporting evidence in reasonable detail to support the challenge. The basis for a review are: 1) mis-application or misinterpretation of a section imposing a membership or MLS duty; 2) procedural deficiency or any lack of procedural due process; 3) unwarranted discipline recommended by the hearing Panel.

(d) **Preliminary Review; Opportunity to Amend.** A request for review may be reviewed by the Association Executive within ten (10) calendar days after the request has been transmitted to the Association to determine whether the request complies with the filing requirements of this Section. If the Association Executive determines that the review fails to meet the filing requirements of this Section, the request shall be returned to the party and the party shall be given ten (10) calendar days to amend the request to comply with the appropriate requirements. Any preliminary decision by the Association Executive is not a decision on the merits of the request for review but is to insure that the request complies with the filing requirements of this Section.

(e) **Notice of Request for Review.** Within one (1) calendar day after a request for review is determined appropriate for a review hearing by the Directors, the Association Executive shall transmit to all other parties: 1) a copy of the request; 2) the Notice to Request for Review (Form D-18); and 3) the Reply to Request for Review (D-19) with directions to return the Reply within fifteen (15) calendar days from the date of mailing to the party. The Association Executive may require the other parties to supply the necessary number of copies of the Reply. The Association Executive shall concurrently at this time transmit to all parties a list of names of members of the Board of Directors from which the review Panel of the Directors will be selected, the Notice of Right to Challenge Panel Members and Availability for Hearing (Form D-4), and the Reasons for Challenge – Panel Member (Form D-5).

(f) **Reply not Required; Late Filing.** The other parties may submit a written reply, but regardless of whether they do or do not, the review hearing may be scheduled and conducted in the absence of the other parties. The review Panel of the Directors may accept late filing of a Reply in its discretion.

(g) **Notice of Reply.** Not later than twenty-one (21) calendar days from the date of transmitting the request for review to the other parties, the Association Executive shall deliver copies of the reply, if any, to the party requesting the review or notify the party that no written reply has been filed.

(h) **Selecting the Review Panel.** From the names of members of the Board of Directors not challenged by the parties within fifteen (15) calendar days from the date the names were transmitted to the parties under subsection (e) of this Section, the President or his or her designee shall select a review Panel as provided in subsection (j) of this Section.

(i) **Waiver of Objection to Director; Appointing Replacement to Challenged Director.** A party will be deemed to have waived all objections to any member of the Board of Directors whose name he or she does not challenge. If a challenge to proposed members of the review Panel results in an insufficient number of Board of Directors' members to constitute a review Panel, the President may appoint other qualified members to serve on the review Panel.

(j) **Composition of Panel.** A review Panel may consist of the remaining unchallenged and qualified members of the Board of Directors, a Panel of the Board of Directors, or a Panel appointed by the Board of Directors but in any event the review Panel must be not less than three (3) members, except as provided in Section 19(g).

(k) **Automatic Disqualification; Certificate of Qualification.** When hearing a request for review, the Directors are subject to automatic disqualification under the grounds set out in Section 19. Each Director must sign a statement (Form D-7) that he or she is not disqualified for any of the above reasons, and that he or she knows of no other reason that might prevent him from rendering an impartial decision.

(l) **Presiding Officer.** In the case where the review Panel is a Panel of the Board of Directors or a body appointed by the Board of Directors, the President shall designate one of the review Panel members to be the Presiding Officer. Otherwise, the President shall be the Presiding Officer of the review Panel. The Presiding Officer will be responsible for conducting the review hearing and may prescribe any procedure for the review hearing not inconsistent with the provisions of this Manual.

(m) **Notice of Time and Place of Review Hearing.** The Association Executive shall designate the time and place of review hearing and shall notify the parties and review Panel in writing (Form D-20). The date of the review hearing shall be no later than forty-five (45) calendar days after the date of the Association's receipt of the request for review. Each party shall be given at least twenty-one (21) calendar days' prior notice of the review hearing but appearance at a review hearing without objection by any party will constitute a waiver of such notice requirement.

(n) **Documents Provided to the Panel.** The Association Executive shall provide to the review Panel in advance of the hearing copies of the request for review, reply to the request, if any, and the hearing Panel's decision and findings of fact (Form D-11) and recommendations for discipline (Form D-12), if any.

(o) **Conducting the Review Hearing.** The review hearing is not recorded in any manner, including but not limited to use of a stenographer or a court reporter. At the review hearing, the Presiding Officer from the original hearing (or other member of the original hearing Panel) shall summarize the facts of the case and the procedures of the original hearing. Any party may be heard to correct the summary. The Presiding Officer may respond to the allegations and answer any questions the Directors may have relating to the allegations of the party requesting review. The recording of the hearing should be played only to prove or disprove the procedural deficiencies asserted by the party requesting review and only the pertinent portions shall be played. The playing of the recording is not intended to substitute for a transcript of the case, and if a transcript does exist, then the pertinent portions of it should be read instead of playing the recording.

(p) **Permissible Evidence at Review Hearing.** All requests for review received by the Association must be considered by a review Panel of the Directors and only those basis and issues raised in the written request for review may be raised by the party requesting review in any hearing before the Panel of the Directors. Any party may present to the review Panel reasons as to whether or not the decision and recommendations of the hearing Panel should be followed or not, but no new evidence regarding the merits of the underlying case may be presented.

(q) **Failure of Requesting Party to Appear at Hearing.** In the event the party that requested the review fails to appear at a duly noticed review hearing without obtaining a continuance or adjournment thereof, the review Panel shall dismiss the

other parties and review the hearing Panel's decision and recommendations pursuant to Section 37.

(r) **Failure of the Party Not Requesting Review to Appear at Hearing.** If any party not requesting the review fails to attend a duly noticed review hearing without obtaining a continuance or adjournment thereof, the review Panel may proceed with the review hearing in the party's absence and shall reach its decision based on the request for review and arguments presented at the review hearing.

(s) **Action of the Review Panel.** The review Panel must adopt the hearing Panel's findings and recommendations and issue a decision accordingly, except that if the review Panel is concerned with a deficiency of the decision or the appropriateness of the recommended discipline they may 1) dismiss the matter if they conclude that the findings of fact do not support the hearing Panel's recommendation; 2) impose alternative discipline that does not exceed that recommended by the hearing Panel; 3) refer the decision back to the hearing Panel with recommended modifications; or 4) refer the matter back to the Professional Standards Committee for a new hearing with the same or different hearing Panel as deemed appropriate. The review Panel shall render their decision in writing (Form D-21) within five (5) calendar days after the review hearing.

(t) **Disposition of the Deposit.** If the review Panel adopts the recommendations of the hearing Panel, the money deposited by the party requesting the review shall pass into the general treasury of the Association. If the review Panel dismisses the complaint or refers it back to the Professional Standards Committee for a new hearing, the deposit shall be returned to the party making the request. If the recommendation is modified, the review Panel, at their discretion, may determine the appropriate disposition of the deposit.

(u) **Review Panel's Rationale.** If the recommendation of the hearing Panel is rejected (thereby dismissing the matter), modified, or referred back for a new hearing, the Panel of Directors may state the reasons in writing, but failure to do so shall not invalidate the decision of the Directors.

(v) **Finality of Review Panel Decision.** Any decision of the review Panel of Directors is final and each member by becoming and remaining a member agrees not to seek review in any court of law. Further, failure of the Association to abide by the timing requirements of this Manual shall not invalidate the decision of the Review Panel.

(w) **Role of C.A.R.** C.A.R. does not review and cannot overturn any decision of any review Panel of Directors pursuant to Section 38.

Section 39. Distribution and Publication after Discipline is Final.

(a) **Notification of Directors' Action.** Upon final action by the Directors under either Section 37 or 38, the Association Executive shall notify the complainant, respondent, the Professional Standards Committee Chairperson, the Hearing Panel and C.A.R. The notification to C.A.R. shall include the allegations, findings, recommendations and decisions in disciplinary proceedings, in accordance with policy adopted by the C.A.R. Directors and as authorized in Section 17 and this Section 39.

(b) **Notification of Suspension or Expulsion.** The Association Executive shall notify C.A.R. and the members of the Association or the Participants and Subscribers in the MLS of any decision of the Directors ordering suspension or expulsion.

(c) **Publication of Ethics Violators.** A final ethics decision finding a REALTOR®

in violation of the Code of Ethics shall be published by C.A.R. in accordance with this Manual. The local Association's Board of Directors may, but is not required to, also adopt a policy to publish the names of ethics violators in its local communications vehicle, as described in Section 39(g).

(d) **C.A.R. Publication Policy for Ethics Violators.** Except as provided below, if a member is found in violation of the Code of Ethics, C.A.R. shall publish the following information regarding the violation(s): (1) name and photo of the member found in violation (but not the name of the firm the member is, or was, affiliated with); (2) if the responsible broker is also found in violation, the name of the responsible broker will also be published; (3) if a member's name is similar to another member's or MLS Participant's name, the member's real estate license number and/or office address may also be included; (4) the Article(s) of the Code of Ethics violated; (5) a brief factual synopsis of the matter with names redacted (except for the respondents found in violation); (6) discipline imposed; (7) the effective date and duration of the discipline, if applicable; and (8) rationale in mitigation or aggravation for the discipline, if applicable. This information will be published on one or more of any authorized C.A.R. communications vehicles available to members, such as the C.A.R. website or magazine. The information will be removed from the C.A.R. website three (3) years after initial publication.

All discipline will be published except letters of warning, cease and refrain orders, and/or education requirements that do not also include a fine, letter of reprimand, suspension or expulsion. However, if a fine or suspension is imposed because the member does not comply with the education requirement or cease and refrain order, the discipline will be published when the fine or suspension is imposed. Citations under the Ethics Citation or MLS Citation systems will not be published by C.A.R.

(e) **Photograph; Authorization.** If a member is disciplined in a manner that requires C.A.R. publication, the member must provide to C.A.R. and the Association a current, accurate photo at least the size and quality of a passport photo within ten (10) calendar days after final adoption of the discipline by the Directors along with written authorization of the member to publish the photo (Form D-24). If the member fails to provide the photo and authorization by this deadline, the member will automatically be suspended from membership until the photo and authorization are provided, and the discipline summary will still be published. Such suspension will be forwarded to C.A.R. and will result in statewide review and possible statewide suspension as described in Section 39(h). If the member resigns prior to submitting the photo and Form D-24, the discipline summary will still be published, and the member will be immediately suspended, with such suspension subject to statewide review and possible statewide suspension as described in Section 39(h).

(f) **Ownership and Licensing of Photo.** By submission of the photo, on D-24, the member authorizes use of the photo for publication in accordance with the Manual and represents the member is the copyright owner of the photo or has the right to license the photo to C.A.R. and the Association for publication according to the guidelines in this Manual. C.A.R. or the local Association may request that the member send a different photo if C.A.R. or the local Association, in its sole discretion, determines that the original photo submitted does not meet C.A.R.'s or the Local Association's requirements. The member grants to C.A.R. and the Association a perpetual, royalty-free license to reproduce and display any photo submitted to C.A.R. and the Association in any and all media for distribution to C.A.R. and the Association members in accordance with this Manual.

(g) **Local Publication Policy.** The local Association's Board of Directors may, but is not required to, adopt a policy to publish discipline in its local Association

communications vehicle(s). The local Association may adopt a policy to publish discipline that uses the same criteria as C.A.R.'s publication policy, as described in subsections (d), (e), and (f) above. The local Association may adopt, in addition to or instead of the C.A.R. publication criteria, a policy to publish discipline when a member is found in violation of the Code of Ethics a second time within a three (3) year time period. Any discipline published by a local Association shall include the member's name, the fact that the member has been found in violation of the Code of Ethics, the Article(s) violated, and the discipline imposed. Published discipline shall not include the name of the firm the member is, or was, licensed or affiliated with. In cases where the member's name is similar to another Association member's or MLS Participant's or Subscriber's name, the member's real estate license number or office address (or both) may also be published.

(h) **Statewide Suspension.** If a respondent has membership in more than one local Association of REALTORS®, a final ethics decision by an Association holding the member in violation of the Code of Ethics and imposing a discipline of suspension or expulsion from membership shall be forwarded to the California Association of REALTORS® (C.A.R.), for consideration by a panel of C.A.R. directors to determine whether the same discipline should be imposed statewide by all Associations in which the respondent holds membership. The discipline at the local Association shall be stayed until the C.A.R. hearing is concluded. The respondent may submit a written statement to show cause as to why the discipline should not be imposed statewide. The panel of directors may only determine whether or not to impose the same discipline statewide, which discipline would run concurrently with the suspension or expulsion imposed by the local Association. In making its determination, the panel shall consider only whether the type and nature of the violation, coupled with the form of original discipline justifies imposition of the same discipline on a statewide basis. The decision made by the directors at such hearing does not disturb the findings or recommended discipline of the local Association that initially imposed the discipline, but only determines whether or not there is statewide imposition of the same discipline. A decision to impose the suspension or expulsion shall be disseminated to all Associations in California and published pursuant to this Section 39.

(i) **DRE and Other Government Agency Referral.** The Association must disseminate the disciplinary decision to any governmental agency, including California Department of Real Estate, if the Board of Directors at its option so directs, and Association legal counsel approves. In addition, where there is reason to believe that the "public trust" may have been violated, all final ethics decisions holding members in violation of the Code of Ethics shall be forwarded by the Association to the California Department of Real Estate. A violation of "Public trust" as used in this subsection refers to demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud resulting in substantial economic harm.

Section 40. Preliminary Judicial Determination

If the Board of Directors believes that the disciplined member, MLS Participant or Subscriber may resort to legal action, it may specify that the discipline shall become effective upon the final judgment of a court of competent jurisdiction in a suit by the Association for declaratory relief, declaring that the discipline violates no rights of the member, MLS Participant or Subscriber.

PART TWO – ARBITRATION OF DISPUTES

Section 41. Definitions

As used herein,

(a) "Association" means this organization (the local Board or Association of REALTORS®).

(b) "Association Executive" means the chief staff executive of any Association or his or her designee, or the elected Secretary of any Association not having a chief staff executive.

(c) “Complainant” means the person who files an arbitration complaint against a respondent, seeking money from that respondent.

(d) "Directors" means the Board of Directors of the Association or appropriate body appointed by the Directors to act when hearing reviews of arbitration awards.

(e) "Dispute" means a controversy arising out of the real estate business.

(f) "Hearing" refers to an arbitration hearing involving a controversy arising out of the real estate business.

(g) "Member" means a REALTOR®, or REALTOR-ASSOCIATE® member of this Association, whether primary or secondary.

(h) "Panel" means a hearing panel in a hearing as defined in subsection (f) above who shall be deemed arbitrators within the meaning of Part 3, Title 9 of the California Code of Civil Procedure or a review panel of the Directors as defined in subsection (d) above when considering a review of an arbitration award.

(i) "Participant" means any individual defined in the MLS rules and regulations of the Association as a Participant.

(j) "Party" means the complainant(s) or respondent(s) to an arbitration proceeding referred to in Part Two of this Manual.

(k) “Respondent” means the REALTOR® or MLS member against whom an arbitration complaint seeking money is filed and who must defend themselves against that complaint.

(l) "Responsible Broker" means the broker designated in the records of the Department of Real Estate to be responsible for the conduct of individuals affiliated with his or her office(s) or licensed or certified individuals who are sole proprietors, partners, officers, or shareholders of a corporation, or office managers acting on behalf of principals of a real estate firm who are authorized to bind the principals in arbitration.

(m) "Subscriber" means any individual defined in the MLS rules and regulations of the Association as a Subscriber.

Section 42. Association Member’s Duty and Privilege to Arbitrate

(a) **Duty to Arbitrate; Disputes Subject to Arbitration.** By becoming and remaining a member of an Association and by signing or having signed the agreement to abide by the Association bylaws, every member binds him or herself and the corporation or firm for which he or she acts, and agrees to submit to binding arbitration, at the local Association where all parties are members or C.A.R. as set forth in Section 45, all disputes as defined by Article 17 of the NAR Code of Ethics and as set forth in the provisions of this Section (subject to the conditions or exceptions listed in this Section and Section 43). Disputes subject to arbitration include: 1) disputes with other members arising out of the real estate business and their relationship as

REALTORS® and 2) contractual disputes with a member's client arising out of an agency relationship between the member and client provided the client agrees to submit the dispute to binding arbitration using the Association's facilities and be bound by the arbitration award. The obligation under this Section shall be deemed an arbitration agreement within the meaning of Part 3, Title 9 of the California Code of Civil Procedure.

(b) **When the Duty to Arbitrate Arises.** For purposes of this Section, the duty to arbitrate arises and membership shall be determined when facts giving rise to the dispute occur. Termination of membership from the Association shall not relieve the arbitration duty under this Section for disputes that arose when the person was a member of the Association.

(c) **Disputes between Members of the Same Firm.** Members are not bound to arbitrate disputes between members of the same firm if the dispute arises when the members are affiliated with the same firm unless each such party agrees in writing to the arbitration of such dispute(s) under the Association's facilities.

(d) **Responsible Broker.** If a member files for arbitration of a dispute involving his or her responsible broker (but not between the member and the responsible broker), the responsible broker with whom the member was associated at the time the dispute arose must join in the complaint.

(e) **Agreement to Arbitrate Outside of the Association.** Notwithstanding any other provision of this Manual, if any member enters into an agreement (either before or after a dispute arises) with nonmembers or other members to arbitrate a dispute utilizing non-Association facilities, such member is not bound to arbitrate the dispute utilizing Association facilities nor shall Association facilities be available for such arbitrations unless the Association agrees to provide arbitration.

(f) **Claims that Cannot be Arbitrated at the Association.** Pursuant to NAR policy, the following types of claims shall not be arbitrated at any REALTOR® Association: (i) tortious interference with business relationships; (ii) tortious interference with a contractual relationship; (iii) economic duress; (iv) intentional infliction of emotional distress; (v) other tort claims, such as libel/slander; (vi) employment claims, other than commission disputes; (vii) fraud/misrepresentation claims; (viii) property claims, both real and personal; (ix) Disputes between two listing brokers where no contract exists between the parties and the dispute is not as specified in Standard of Practice 17-4(4). In addition, NAR limits the award in an arbitration proceeding to the amount in dispute, and so an arbitration award will not include punitive damages or damages for pain and suffering.

Section 43. MLS Participant's and Subscriber's Duty and Privilege to Arbitrate

(a) **Duty to Arbitrate.** If a person is not subject to arbitration under Section 42 of this Manual, and the MLS to which the person is a Participant or Subscriber has a provision for binding arbitration under this Manual, the arbitration shall be conducted in accordance with the provisions of this Manual.

(b) **Agreement to Arbitrate Outside of the Association.** Notwithstanding any other provision of this Manual, if any MLS Participant or Subscriber enters into an agreement (either before or after a dispute arises) with another Participant or Subscriber to arbitrate a dispute utilizing non-Association facilities, such persons are not bound to arbitrate the dispute utilizing Association facilities nor shall Association facilities be available for

such arbitrations unless the Association agrees to provide arbitration.

Section 44. Association's Right to Decline Arbitration

(a) **Hearing Panel Declining Arbitration.** If the hearing Panel determines that because of the magnitude of the amount involved or the legal complexity of the controversy the dispute should not be arbitrated, it shall so report its recommendation to the Board of Directors. If the Board of Directors concurs, the arbitration shall terminate and the parties shall be relieved of their obligation to arbitrate pursuant to the provisions of this Manual. If the Board of Directors does not concur, the matter shall be referred back to the Professional Standards Committee for hearing before a new hearing Panel (Form A-20).

(b) **Declining Arbitration Prior to Selection of Hearing Panel.** If a hearing Panel has not been convened, the Professional Standards Chairperson or his or her designee and legal counsel representing the Association, after reviewing the complaint and response, may jointly recommend to the Board of Directors that the dispute should not be arbitrated because of the magnitude of the amount involved or the legal complexity of the controversy. If the Board of Directors concurs, the arbitration shall terminate and the parties shall be relieved of their obligation to arbitrate pursuant to the provisions of this Manual. If the Board of Directors does not concur, the matter shall be referred to the Professional Standards Committee for hearing.

(c) **Postponement for Litigation.** If an otherwise arbitrable matter is the subject of pending civil litigation, arbitration shall not take place unless the litigation is withdrawn or the matter is referred to the Association by the court for arbitration in accordance with these procedures.

(d) **Filing Fees.** In the event the Association declines arbitration pursuant to this Section, any filing fees paid by parties shall be returned to the parties.

(e) **Availability of Other Forums.** Notwithstanding any provisions of this Manual, in the event the Association declines arbitration under this Section or otherwise determines that the matter is not subject to arbitration through the Association for any reason, the parties are not precluded from resolving the dispute in another forum or from pursuing other legal remedies for the dispute.

Section 45. Duty to Arbitrate Before C.A.R.

(a) **Disputes Subject to Arbitration Before C.A.R.** By becoming or remaining a member, every member binds him and herself and the firm for which he or she acts and agrees to submit to binding arbitration, by the arbitration facilities of the CALIFORNIA ASSOCIATION OF REALTORS® ("C.A.R.") or a multi-Association or shared panel comprised according to Section 47, any dispute where the parties' Responsible Brokers share no local boards in common, provided: 1) the dispute is a dispute as defined in Section 42; 2) the bylaws of the other local Association incorporate this Manual or contain a provision similar to this; and 3) C.A.R. maintains arbitration facilities capable of handling the dispute or a multi-Association or shared panel has been comprised according to Section 47 of Part Two of this Manual.

(b) **When the Duty to Arbitrate Before C.A.R. Arises.** For purposes of this Section, the duty to arbitrate arises and membership shall be determined when facts giving rise to the dispute occur. Termination of membership from the Association shall not relieve the arbitration duty under this Section for disputes that arose when the person was a member of the Association.

Section 46. Professional Standards Committee

(a) **Membership; Terms.** There shall be a standing committee, known as the Professional Standards Committee of at least nine (9) members. Unless the Association's bylaws specify otherwise, at least a majority shall be REALTORS®. The members of the Committee shall be appointed by the President, subject to confirmation by the Board of Directors, for staggered three (3) year terms, unless the term is otherwise specified by the Association's bylaws. One-third of the members of the first Committee so appointed shall be designated for one (1) year terms. The President shall annually designate the Chairperson and Vice Chairperson(s) of the Committee.

(b) **Role of Committee Members.** Members of the Professional Standards Committee shall be selected to serve on hearing Panels as required to hear matters of alleged ethical misconduct by Association members and alleged violations of MLS rules by MLS Participants or Subscribers under the provisions of Part One of this Manual, or to provide arbitration as requested under Part Two of this Manual.

Section 47. Multi-Association Professional Standards Hearings and Shared Panelists

(a) **Multi-Association Program.** Notwithstanding any provision of this Manual, the Association may, by mutual resolution of the Boards of Directors of the affected Associations, agree with other Associations to establish multi-Association professional standards programs, in which case the members of a Panel may include members from the participating Associations.

(b) **Sharing Panelists.** Notwithstanding any provision of this Manual, the Association may, by mutual resolution of the Boards of Directors of the affected Associations, agree with other Associations to share its Professional Standards Committee members and Board of Directors, in which case the members of a Panel may include members from the reciprocating Association's Professional Standards Committee and Board of Directors.

Section 48. Interpretation of Bylaws

If the interpretation of any provision of the bylaws or rules or regulations relative to the procedure of a hearing Panel's handling of a matter is raised and submitted to the hearing Panel by one or more of the parties, the interpretation by that hearing Panel of the bylaws or rules or regulations, including any interpretation of this Manual, shall be set forth as a separate finding and shall be conclusive and final, except that the Directors on a procedural review of the arbitration hearing procedures shall not be bound by that hearing Panel's interpretation of the bylaws or this Manual. Failure of a hearing Panel to set forth its interpretation as required by this Section shall not invalidate the decision of the hearing Panel.

Section 49. Notices

(a) **Methods of Notice by Association.** Any notice required to be given or paper required to be served by the Association may be given or served by personally handing it to the party to be notified, by first class mail, by any mail delivery service or by certified mail addressed to the mailing address on the records of the Association, or sent to the party by email. When possible, email is the preferred form of service for notices and documents sent by the Association pursuant to the procedures specified in this Manual. If mailed or delivered by the Association, notice shall be deemed given when placed in the mail or when given to the mail delivery service and deemed received within five (5)

calendar days of such mailing or delivery, regardless if actually received or not.

(b) **Email Notices.** Notices sent by email shall include the Association's request that delivery be acknowledged by the intended recipient within twenty-four (24) hours by return email. If receipt of the notice has not been acknowledged by the intended recipient within twenty-four (24) hours, the recipient will be contacted by telephone to confirm receipt and the recipient's confirmation will be noted in the file. If receipt of notices sent by email cannot be confirmed, the notices will be resent via first class mail, by any mail delivery service or by certified mail.

(c) **Names of Hearing Panel Members.** Notice of any hearing shall include the names of the hearing Panel members at the time said notice is given.

(d) **Timing of Notices for Hearings.** Notice of any hearing, except for an adjourned hearing or continued hearing, shall be given not less than twenty-one (21) calendar days beforehand unless otherwise agreed by all the parties.

Section 50. Waiver

Each member, MLS Participant or Subscriber, by virtue of and in consideration of membership or MLS services, waives any right of personal redress against the Association, Association employees or any member, including but not limited to, members of a Panel or witnesses for anything done under these procedures.

Section 51. The Association Executive's Function

The Association Executive is the administrative channel through whom the Professional Standards Committee and the Board of Directors correspond and carry out their respective functions. The Association Executive does not make decisions or determinations concerning professional standards matters and must be careful to avoid making such determinations. Rather, the Association Executive advises as to the procedures that are appropriate and required, and coordinates all professional standards and arbitration matters from receipt to final determination by order of the Board of Directors. This coordination involves contacts and correspondence with the complainant, the respondent, the President, the Chairperson of the Professional Standards Committee or the Chairperson of the appointed Hearing Panel, witnesses, and the Board of Directors. Hearing arrangements and records are the Association Executive's responsibility on all related matters. The Association Executive has an exacting and detailed responsibility for each professional standards matter.

Communications shall be directed to the Association Executive. The Association Executive shall render all necessary assistance to the parties, shall on application furnish required forms, shall receive and file all documents or other papers, and shall receive all fees and disburse all moneys payable to the Association. In no event, however, shall the Association Executive provide substantive advice or interpretation of this Manual, Association bylaws or other governing documents.

Section 52. Attempts to Influence Hearing Panel

No party or party's attorney shall contact the hearing Panel members outside of the hearing with regard to the hearing, and shall not attempt, directly or indirectly, to influence a member of a Panel in any matter before it, other than by giving evidence and argument in an open hearing.

Section 53. Confidentiality of Proceedings

(a) **Confidentiality Obligations; Reporting to C.A.R.** All proceedings,

including the allegations, findings, recommendations and decisions in arbitration proceedings are confidential and shall not be reported or published by the Association, any member of a Panel or any party under any circumstances except Hearing Panel and C.A.R. The notification to C.A.R. shall include the allegations, findings, recommendations and decisions in arbitrations and as authorized in this Section. Disclosure to C.A.R. is made in accordance with policy adopted by the C.A.R. Directors, which requires that each Association submit such information to C.A.R. through a secure repository maintained by C.A.R. Upon conclusion of the proceedings, the Association, all Panel members and the parties shall have an obligation to maintain and protect this confidentiality except where disclosure is authorized in this Section and Section 69 or required by law.

(b) **Acceptable Disclosure.** The hearing Panel members shall not discuss the proceedings, including the Panel's deliberations, with any person(s) other than the other members of the hearing Panel, Association staff or legal counsel, the Board of Directors of the Association, or as may be required by this Manual, the MLS rules, the bylaw provisions of the Association or where disclosure is required by law.

(c) **Obligations of the Parties.** The parties shall not report or publish the allegations, findings, recommendations or decisions of an arbitration proceeding to anyone except as may be required by law. Any party to an arbitration proceeding is authorized to disclose the decision where there is a civil proceeding involving the same facts and circumstances which gave rise to the proceeding before the Association.

(d) **Enforcement.** Actions inconsistent with this Section shall be deemed a membership or MLS duty violation. However, such actions shall not invalidate any decision made by a Panel.

Section 54. Right to Counsel

(a) **Representation.** Every party may be represented by legal counsel, who is permitted to do so by the State Bar of California, at any hearing, including reviews, even where the hearing will occur in the party's absence. Additionally, a broker may appoint a REALTOR® affiliated with the broker's firm to attend an arbitration hearing on his or her behalf when the broker is unable to personally attend.

(b) **Notice of Intention to Have Representation.** Notice of intention to have representation, including the representative's name, address, and phone number must be given by the party to all other parties and the hearing Panel at least fifteen (15) calendar days before the hearing Panel. In the event of failure to comply with this notice requirement, the hearing Panel may, at its discretion, take all steps, including continuance of the matter, if necessary, to guarantee the rights of all parties to representation.

(c) **Association Legal Counsel.** Any Panel and the Directors may consult with or have counsel present to advise them on issues of procedure and law.

Section 55. Qualification for Panel

(a) **Business Limitation.** Only one person connected with any firm, business, partnership or corporation may serve on the same Panel.

(b) **Panel Limitation.** No individual may participate in the deliberation of more than one Panel on the same matter;

(c) **Automatic Disqualification.** A person shall automatically be disqualified to be a member of a Panel in any case in which he or she is 1) a party; 2) related by blood or marriage (to the fourth degree) to a party; or 3) an employer, employee, partner or other business associate of a party.

(d) **Statement of Qualification.** Before sitting on any case, each member of a Panel shall sign a statement (Form A-7) that he or she is not disqualified for any of the foregoing reasons and that he or she knows of no other reason that might prevent him from rendering an impartial decision.

(e) **Discussion Prior to Hearing.** Every member of a hearing Panel shall avoid, so far as possible, discussing the case with any person prior to the hearing. If he or she does engage in any such discussion prior to the hearing, he or she must disclose the fact to the parties and to the other members of the hearing Panel as soon as practicable but no later than at the beginning of the hearing. Upon such disclosure, any party may challenge a member of a hearing Panel and, if the hearing Panel agrees, at the option of the hearing Panel, that member of the hearing Panel shall be dismissed, and a new hearing Panel member shall be selected. A party waives any objection under this Section by failure to object prior to the commencement of the hearing.

(f) **Request for Disqualification.** Any party may file with the Association Executive a written request for disqualification of a member of a hearing Panel stating the grounds alleged as the basis for disqualification (Form A-5). Challenges submitted by any party pursuant to this Section shall be decided by the Professional Standards Chairperson or his or her designee. A party shall not have the right to request disqualification of a member of a hearing Panel solely on the basis of the panelist's race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. A party shall be deemed to have waived any ground of disqualification of which he or she then has knowledge unless he or she files the request within fifteen (15) calendar days after the names of proposed neutral arbitrators under Section 56(g), and any disclosures required by law, are transmitted to the parties. However, any member of a hearing Panel may be disqualified at any time if a majority of the members of a hearing Panel find any automatic grounds of disqualification to be present under this Section, or find any other facts which, in their judgment, may prevent the member from rendering an impartial decision or appear to do so.

(g) **Request for Nonmember on Hearing Panel.** If a party to the dispute is an MLS Participant or Subscriber but is not a member of any Association of REALTORS® in California, the hearing Panel shall, if the nonmember so requests, include at least one qualified person who is not a member of the Association. The nonmember must request the nonmember Panel member no later than the time the response is due under Section 56(h), or the right to make such a request is forfeited. The Association may maintain a pool of hearing Panel members who are not members of the Association from which it may select a hearing Panel member or it may select a hearing Panel member qualified by the American Arbitration Association. The party requesting the nonmember Panel member must pay any costs associated with such a request.

(h) **Absent Panel Member.** If a hearing Panel member fails or is unable to participate in a hearing, the remaining hearing Panel members may, at their option, but only with the express consent of the parties, proceed with the hearing. Only the remaining hearing Panel members may participate in the hearing and the determination thereof. Should any hearing Panel member absent him or herself during the progress of the actual hearing, that individual shall likewise not participate in the deliberations or determinations thereof. If all the parties do not agree to proceeding without the full number of the hearing Panel originally designated, the Presiding Officer will recess the hearing to a date on which all hearing Panel members can be present. If the Presiding Officer cannot at that time designate a new date, notice of a subsequent date shall be served on all parties as herein provided.

Section 56. Manner of Invoking Arbitration and Submission

(a) **Submission of Dispute.** Submission of a dispute to arbitration by the Association shall consist of signing and delivering to the Association Executive either a complaint (Form PA-1 or A-1) or response form (Form A-3) provided by the Association or any other similar writing permitted by law. In order to file for mediation, a complainant must also fill out and file the PA-1 or A-1 Form.

(b) **Timing of Filing.** A complaint meeting all filing requirements 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 by the complainant in the exercise of reasonable diligence, whichever is later. Notwithstanding the foregoing, if a complainant submits a dispute to state or federal court that would be subject to arbitration at the Association if filed timely, the respondent may ask the court to remove the complaint to the Association for arbitration and the Association must accept such complaint, without regard for the time limit, even if it is received later than one hundred and eighty (180) days after the closing of the transaction, if any, or after the facts constituting the arbitrable matter could have been known by the complainant in the exercise of reasonable diligence. Additionally, when a party utilizes the Association or C.A.R. ombudsman program or an ethics mediation program, the filing deadline is suspended until the case is reported closed by the ombudsman or the ethics mediator.

(c) **Arbitration Complaint.** Any person authorized by the provisions of Sections 42 or 43 desiring arbitration by the Association shall submit a completed and signed arbitration complaint with appropriate filing fees to the Association Executive. The complaint shall include a statement describing the controversy and the amount in dispute. The Association Executive may require the complainant to supply the necessary number of copies of the complaint. At any time after the arbitration complaint has been submitted and acknowledged by the Association Executive, the complainant must respond to any communications from the Association Executive within ten (10) business days. If no response is received from the complainant after ten (10) business days, the Association may consider the complaint withdrawn and shall have the right to permanently close the arbitration case. The complainant has the right to refile the arbitration complaint, provided the complainant pays the filing fee again and resubmits the complaint in accordance with the filing deadline set forth in Section 56(b).

(d) **Preliminary Review.** The Association Executive shall conduct a preliminary review of the complaint to determine whether the complaint is subject to arbitration by the Association and otherwise complies with the filing requirements of this Manual. The Association Executive shall only conduct such preliminary review as is necessary to make this determination and any decision reached by the Association Executive shall not be considered a decision on the merits of the dispute. In the event there is a dispute as to whether a complaint has been properly filed, the Association Executive shall refer such disputes to the hearing Panel for consideration. Directly before the hearing, both parties will be given the chance to argue before the hearing Panel as to whether the complaint was timely filed, and the hearing Panel will decide whether to proceed with the complaint or dismiss the complaint for not being timely filed. This decision is not subject to review by the Board of Directors.

(e) **Disciplinary and Arbitration Complaints Filed Together.** If both a disciplinary and an arbitration complaint are filed against the same Respondent and arising out of the same matter, the disciplinary

complaint is processed through the Grievance Committee first, and, then, held in abeyance pending the outcome of the arbitration. The disciplinary hearing is held after the arbitration has been completed and must be before a different hearing Panel.

(f) **Selecting the Proposed Arbitrators.** If the Association Executive finds the complaint properly filed with the Association, the Association Executive shall pre-screen the pool of potential hearing panel members to identify those least likely to be disqualified because of a conflict of interest, and from those not eliminated, choose a sufficient number to designate as proposed neutral arbitrators within the meaning of Part 3, Title 9, of the California Code of Civil Procedure, as provided in Section 54.

(g) **Arbitrator Disclosure Statements; Documents Sent to the Parties.** The Association Executive shall send a disclosure statement (Form A-21) to those identified as proposed neutral arbitrators, along with instructions for completion. Within ten (10) calendar days of notification to the proposed neutral arbitrators, each shall deliver to the Association Executive a signed disclosure statement. A proposed neutral arbitrator is automatically disqualified if he or she fails to return the disclosure statement. Upon expiration of the time limit for return of the disclosure statements, the Association Executive shall provide notice to each named respondent in the complaint: 1) a copy of the complaint; 2) the Notice to Respondent (Form A-2); and 3) the Response (Form A-3) with directions to return the written response within fifteen (15) calendar days from the date of transmission to the respondent. The Association Executive may require the respondent to supply the necessary number of copies of the response. The Association Executive shall concurrently provide to the complainant and the respondent a list of names of proposed neutral arbitrators, along with their completed disclosure statements (Form A-21), the Notice of Right to Challenge - Tribunal Member and Availability for Hearing (Form A-4), and the Reasons for Challenge - Tribunal Member (Form A-5).

(h) **Respondent Filing Fee; Response not Required; Late Filing.** Pursuant to NAR policy, the Association may elect to charge the respondent a filing fee of up to five hundred dollars ($500). The respondent may submit a written response but, regardless of whether he or she does so, he or she is bound to pay the filing fee and arbitrate according to the rules as set forth in this Manual, and the hearing may be scheduled and conducted in the absence of the respondent. A hearing Panel may accept late filing of the response in its discretion.

(i) **Notice of Response.** Not later than five (5) calendar days after Association's receipt of the response and respondent's affirmative claim, if any, the Association Executive shall provide copies of the response and respondent's affirmative claim, if any, to the complainant or notify the complainant that no written response has been filed.

(j) **Selecting the Hearing Panel.** From the names of the proposed neutral arbitrators not disqualified by either party within fifteen (15) calendar days from the date the names are mailed to the parties under subsection (f) of this Section, the Chairperson of the Professional Standards Committee or his or her designee shall select a Hearing Panel within the meaning of Part 3, Title 9, of the California Code of Civil Procedure, as provided in subsection (j) and in Section 55 of this Manual. A party's right to disqualify a proposed neutral arbitrator under this subsection is waived if the party fails to deliver Form A-5 within the time limit specified.

(k) **Composition of Hearing Panel.** A hearing Panel shall have an odd number of members (not less than three (3) except as provided in Section 55(h) of Part Two of this Manual). If the Association's bylaws require a majority of real estate brokers on the

Professional Standards Committee, a majority of each hearing Panel shall be licensed real estate brokers. If the complainant or respondent is a salesperson, (either a licensed salesperson or licensed real estate broker acting in the capacity of a salesperson) a hearing Panel member shall be a salesperson. It shall be a membership duty of anyone so appointed to serve as a panel member unless disqualified.

(l) **Presiding Officer.** The Professional Standards Committee Chairperson or his or her designee shall select one (1) of the hearing Panel members to be the Presiding Officer. The Presiding Officer will be responsible for conducting the hearing and may prescribe any procedure for the hearing not inconsistent with the provisions of this Manual.

(m) **Alternate Panel Member; Professional Standards Observer.** The Professional Standards Committee Chairperson or his or her designee may select an alternate from the list of proposed neutral arbitrators not disqualified to attend the hearing. The alternate will not participate in any phase of the process unless the alternate is asked to substitute for one of the original hearing Panel members for any reason. The alternate has the same duties of confidentiality as the other hearing Panel members. If alternate panel members are not called on to replace a panel member and if the association's policy allows them to be present at post-hearing executive session deliberations, alternates may not be involved in deliberating or deciding the matter before the hearing panel. Additionally, an Association may allow members of their Professional Standards Committee and Board of Directors to attend a hearing as a silent observer for training purposes. Observers will be limited to one per hearing. Additionally, observers are allowed to attend the executive session of the hearing panel as a silent observer but is not allowed to participate in deliberations. Observers are required to comply with all confidentiality requirements expected of professional standards volunteers, and they will not make any unauthorized disclosure or dissemination of the allegations, findings or decision. Parties will be notified if the Association plans to have an observer attend the hearing, and the observer will only be allowed to attend if neither party objects to their attendance.

(n) **Notice of Date, Time, and Place of Hearing.** The Association Executive shall designate the date, time, and place of the hearing and shall notify the parties and hearing Panel in writing (Form A-6). Each party shall be given at least twenty-one (21) calendar days' prior notice of the hearing but appearance at a hearing without objection by any party will constitute a waiver of such notice requirement. Absent a compelling reason, the Association Executive may require that the hearing be conducted virtually using a virtual meeting platform such as Zoom or any other similar service.

(o) **Waiver of Objection to Panel Member; Appointing Replacement to Challenged Panel Member.** A party will be deemed to have waived all objections to any person whose name he or she does not challenge, as provided in Sections 55 and 56 of Part Two of this Manual. If a challenge to proposed neutral arbitrators for the hearing Panel results in an insufficient number of members to constitute the Panel, the President may appoint other qualified Association members as proposed neutral arbitrators.

(p) **Notification of Procedure.** The Association Executive shall provide to each party the outline of procedure prior to the hearing (Form A-8).

Section 57. Responsible Broker as Complainant

If anyone other than a responsible broker files an arbitration complaint in a dispute involving the responsible broker but not between the member and the responsible broker, the responsible broker for that

individual at the time of the dispute must also join as a complainant.

Section 58. Joinder of Multiple Parties or Complaints

Upon request of a party or on its own motion, the Professional Standards Committee Chairperson or the hearing Panel may, with the advice of legal counsel for the Association, join together multiple arbitration complaints arising out of the same set of facts and circumstances or multiple parties involved in the same transaction to be heard at the same time.

Section 59. Duty to Give Evidence

When requested by subpoenas, or when summoned by the hearing Panel to do so, members, MLS Participants and Subscribers shall appear at the hearing, produce any records or data pertinent to the case and designated by the hearing Panel, and testify truthfully. It shall be a membership duty and an MLS rules requirement to comply with such requests. Once evidence has been submitted at a hearing by a party, the party does not have the right to ask the other party or the hearing Panel to return or destroy that evidence. All parties who appear (in-person and remotely) at a hearing are required to answer all questions by the Panel and by any other party and are not entitled to advance notice. Refusal of a party to appear at an arbitration hearing, to submit him or herself or his or her records to examination or to comply with a request of the hearing Panel for relevant information may be deemed an admission of the truth of the claim against him or her. The presiding officer of the hearing Panel may allow a party or witness to remotely testify or attend the hearing upon written request, provided the Panel is satisfied that safeguards are in place to assure the identity of the person testifying or attending and the confidentiality of the hearing,

Section 60. Subpoenas

(a) **Availability of Subpoenas.** Subpoenas to require the attendance of witnesses or the production of books, records, documents and other evidence (Forms A-22 or A-23) at a hearing may be requested and issued to a party. However, subpoenas are not available for pre-hearing discovery.

(b) **Issuing and Serving Subpoenas.** Subpoenas shall be issued in blank to the party requesting them and signed by the Association Executive. The party requesting the subpoena shall complete the subpoena before service and is responsible for properly completing and serving the subpoena.

(c) **Notice for Requiring Attendance at Hearing and/or Production of Books, Records, Documents and Other Evidence.** Parties being served subpoenas by personal service must be given fifteen (15) calendar days' notice for appearance at a hearing and/or production of books, records, documents, and other evidence. If service is by mail, five (5) calendar days must be added.

(d) **Enforcement.** Subpoenas issued under this Section shall be enforced by the party who served the subpoena pursuant to California Code of Civil Procedure Section 1985 et. seq.

Section 61. Witnesses

(a) **Responsibility for Witnesses; Presence during Hearing.** Every party is responsible for arranging to have his or her own witnesses present at the hearing, and the Panel may summon its own witnesses. All witnesses, except the parties to the hearing and those with vested financial interests in the outcome of the matter as specified in subsection (b), will be excused from the hearing room except while testifying. Upon written request, as long as the Panel is satisfied that safeguards are in place to assure the identity of the person testifying and the

confidentiality of the hearing, the presiding officer of the hearing Panel may allow a witness to testify remotely.

(b) **Witnesses Who May Be Present Throughout the Proceedings.** Any person who is associated with a named party and who has a vested financial interest in the outcome of the matter shall have the right to be present and participate at the hearing and all subsequent proceedings regarding the matter before the Association. Such persons shall not be considered named parties to the matter.

Section 62. Right to Demand Witness Lists

If the amount in controversy exceeds $50,000, California Code of Civil Procedure, Section 1282.2, provides that a party has the right to demand that the other party provide a list of witnesses it intends to call and documents it intends to produce at the hearing. This demand must be made within fifteen (15) calendar days of receipt of notice of hearing and must be in writing, served personally or by registered or certified mail. The demanding party must provide its own list at the time of the demand and must give a copy of its list to the hearing Panel.

Section 63. Continuances

Request for continuance of a hearing shall be in writing and state the reason for the request. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date or when the Professional Standards Chairperson, his or her designee, or the hearing panel chair determines that denying the request for continuance would deny the requesting party a fair hearing. Continuances requested after a hearing has convened shall be considered by the hearing Panel, and granted as necessary.

Section 64. Continuance Fees

Each party shall be entitled to one continuance of a hearing, for good cause, without assessment of a continuance fee. For all subsequent requests for continuance, the Board of Directors may establish a schedule of fees. If a continuance is requested because of failure to adequately notify the Association and opposing party of representation by counsel, or because counsel is obtained to represent a party after the hearing date has been set but the counsel is unavailable on the date set for the hearing, the party responsible for the continuance may be assessed a continuance fee, not the party requesting the continuance.

Section 65. Arbitration Hearing

(a) **Certificate of Qualification; Acknowledgement of Receipt of Outline of Procedure.** The hearing Panel, prior to the hearing, must sign a statement certifying that they are unaware of any reason why they should be disqualified to serve on the hearing Panel (Form A-7). At the beginning of the hearing, each party shall sign a statement to the effect that he or she has received and read the outline of procedure (Form A-8) and either 1) understands the procedure and has no objection or questions concerning it, or 2) specifies what objections or questions he or she has and what changes he or she desires (Form A-9). The hearing Panel shall act upon any such objection or request as they deem proper.

(b) **Conducting the Arbitration Hearing.** The parties to the dispute shall with diligence present to the hearing Panel in writing such statements and proofs as they desire. Proofs may be submitted in the form of affidavits or otherwise. The Presiding Officer of the hearing Panel may require that statements be verified by affidavit or that the accuracy or authenticity of any documents or other papers submitted be verified by affidavit. The hearing Panel shall receive oral testimony if any party to the arbitration

requests, or if in the Presiding Officer of the hearing Panel's opinion, it is necessary or desirable. The Presiding Officer of the hearing Panel may determine what personal appearance should be made by the parties and regulate the holding of hearings. The hearing Panel may receive and consider any evidence it deems material and proper, including evidence from accountants and other experts, the expenses of such witnesses to be charged to the loser or charged to the parties in such ratio as determined by the hearing Panel members.

(c) **Presentation of Evidence at the Hearing.** At any hearing, every party has the right to present any witnesses, to submit any evidence pertinent to the case, and to cross-examine witnesses of others. Witnesses giving oral testimony shall be sworn by the presiding officer. Before permitting testimony relating to the character or general reputation of anyone, the Presiding Officer of the hearing Panel shall determine if the testimony has a direct bearing on the case at issue. If a party wishes to present visual, audio, or video evidence at the hearing, it is that party's responsibility to provide the equipment necessary to display or play the evidence for the hearing Panel.

(d) **Failure of Respondent to Appear at the Hearing.** The hearing Panel may hear and determine the dispute upon the evidence produced at the hearing notwithstanding the failure of the respondent, who has been duly notified, to appear and who is not appearing remotely as set forth in Section 59. If only the complainant appears at the hearing, he or she may rest upon the evidence of the statement submitted with his or her complaint for arbitration unless the hearing Panel requires more. The hearing Panel may not find in favor of a complainant solely by reason of respondent's failure to appear.

(e) **Failure of Complainant to Appear at the Hearing.** If the complainant fails to appear and has not been granted permission to appear remotely as set forth in Section 58, the complaint shall be dismissed.

(f) **Recess and Postponement.** The hearing Panel may recess the hearing from time to time as necessary and, on request of a party or upon the Panel's own motion, may postpone the hearing for not less than fifteen (15) calendar days nor more than thirty (30) calendar days, unless otherwise agreed to by the parties.

(g) **No Referral of Unethical Conduct to Grievance Committee.** To prevent the appearance of bias, at no time during or after a hearing may the hearing Panel refer concerns regarding potentially unethical conduct to the Grievance Committee.

(h) **Encouraging Settlement.** Parties are encouraged to settle the dispute at any time. At the outset of the hearing, the hearing panel chair should inform the parties that settlement is an option. At any time during the hearing, the parties can ask for a recess in an attempt to reach a settlement agreement. The parties, with the assistance of their respective counsel, if any, will determine the terms of their settlement agreement. The parties should be advised that the arbitration will continue to be processed until the arbitration complaint is formally withdrawn by the complainant.

Section 66. Transcript/Right to Record

(a) **Recording the Hearing.** The Association shall either have a court reporter present at the hearing or record the proceedings. The Association's recording or transcription shall be considered the official record of the proceeding. A party may, at their own expense have a court reporter present. A party may not record the proceedings unless the Association chooses to only have a court reporter, in which case the party may record the proceedings. If a party has any transcript prepared, the party

shall provide and pay for a copy for the Association.

(b) **Request for Copy of Recording.** If the time period to request a Directors' review has not lapsed, any party to a hearing has the right to obtain a copy of the Association's official record of the proceeding upon payment of the Association's fees for duplication. In the event one party to a hearing has requested a copy of the official record prior to the lapse of the time period for a Directors' review, any other party to the hearing may also request a copy of the official record prior to the Directors' review. Any duplication will be conducted under supervision of the Association. Parties are authorized to use recordings or transcripts from arbitration hearings only for the purpose of a Directors' review of the case. Any unauthorized use of the recordings or transcripts shall be construed as a violation of Article 14 of the N.A.R. Code of Ethics and of these procedures.

(c) **Destruction of Transcript or Recording.** Any transcript or recording of a hearing shall be destroyed upon final action of the Directors.

Section 67. Interpreters and Translators

(a) **Selection.** In the event a non-English speaking party in an arbitration case requires an interpreter, or in the event a party requires and interpreter for a witness, the party requesting the interpreter must bear the cost to provide a qualified interpreter that is certified or registered and in good standing with the Judicial Council of California. Only one neutral interpreter will be allowed in the hearing and will assist all parties with translation needs.

(b) **Cost.** The party requesting the interpreter shall bear the cost to provide themselves with a qualified interpreter. In the event that both parties speak the same non-English language and require an interpreter or both call witnesses that speak the same non-English language and require an interpreter, the cost of the interpreter shall be split evenly between the parties. If the prevailing party in the arbitration makes a written request for the cost of the interpreter or translator to be reimbursed using Form A-10, the arbitration hearing panel may reimburse the party for those costs.

(c) **Notice.** The party intending to utilize an interpreter shall notify the Association and all other parties at least ten (10) days prior to the date of the hearing, and in such notices shall indicate the name of the party or witness requiring an interpreter and the language which will be used by the non-English speaking party/witness, as well as any dialect of such language, if applicable. Before the hearing begins, all parties will need to sign a "hold harmless" waiver stating that the Association will not be held liable for any actions or omissions of the interpreter.

(d) **Written Translations.** In the event any party intends to present a written document at a hearing that is in a language other than English, a translation by a qualified independent translator shall be presented along with the document at least ten (10) days prior to the date of the hearing. The party must provide proof that the document was translated by a translator who is certified or registered and in good standing with the Judicial Council of California.

Section 68. Costs of Arbitration

(a) **Prevailing Party's Costs; Attorneys' Fees; Statement of Costs.** The award may include costs of the prevailing party including an amount equal to the arbitration fee, witness fees, service of subpoenas, cost of interpreter/translator, and interest at the rate provided by law, unless another rate is specified by the award, and the award shall designate the date from which interest is to be computed. Where the dispute arises out of a contract which provides for attorneys' fees, the award may include

attorneys' fees, otherwise, the award shall not include attorneys' fees. Each party shall complete a statement of costs (Form A-10) prior to the hearing and present it to the hearing Panel members for consideration. Failure to submit a statement of costs before the hearing waives the party's right to request such costs.

(b) **Costs of Continuance.** If a continuance of a hearing has been caused by an untimely request by a party to be represented by counsel as set forth in Section 53 of Part Two of this Manual or for other reasons, such costs occasioned by the continuance may be awarded against the party making the request, even though he or she may be the prevailing party.

Section 69. Settlement

The parties to an arbitration proceeding may settle the issue between them by agreement at any time. In such event, the parties shall promptly notify the Association Executive and the arbitration proceedings shall be terminated.

Section 70. The Award

(a) **Making and Reporting the Decision.** The arbitration award shall be made as soon as practicable after the evidence is presented, and the hearing Panel has finished its deliberations, but in no event later than forty-eight (48) hours following the conclusion of the hearing. The award shall be in writing (Form A-12) and signed by all members of the hearing Panel. The arbitration award shall be transmitted to the parties within five (5) days after the award is reduced to writing.

(b) **When the Award is Final and Binding.** If there is no request for a review, the award shall be final and binding after the period to request a review has lapsed. If there is a request for a review, the award shall be final and binding on the date the Directors ratify the award. Failure of the Association to abide by the timing requirements of this Manual shall not invalidate the Award. Once the award is final and binding, it shall not be subject to review or appeal except as required in Part 5, Title 9 of the California Code of Civil Procedure. Failure to abide by an arbitration award may subject a Member to sanctions by the Association, in accordance with the procedures set forth in Section 72.

(c) **Correction of the Award.** Notwithstanding anything in this Section to the contrary, the hearing Panel may, upon a written request by a party or on its own motion, correct the award based on the grounds stated in subsection (a) and (c) of California Code of Civil Procedure Section 1286.6 within thirty (30) calendar days after the award has been sent to the parties. In the event the hearing Panel makes such a correction, the Association Executive shall transmit the corrected award to all parties.

Section 71. Request for Procedural Review by the Directors

(a) **Filing the Request for Review.** Any party may file a written request for procedural review (Form A-15) by the Directors within twenty (20) calendar days after the hearing Panel's award has been transmitted to the parties. The Association Executive may require the party requesting the review to supply the necessary number of copies of the request for review.

(b) **Required Deposit.** A request for review must be accompanied by a deposit with the Association in the amount provided in the Association's current schedule of fees.

(c) **Basis for Review.** The only basis for a review of an arbitration award is a lack of due process in the processing or hearing of the arbitration. The request for review must clearly indicate the alleged procedural deficiencies that occurred and contain in

reasonable detail a summary of the facts and evidence supporting the challenge.

(d) **Permissible Evidence.** Only the issues raised by the party requesting review in the written request for review may be raised by the party requesting review in any hearing before the Directors.

(e) **Preliminary Review.** Within ten (10) days of receipt of the request for the review, the request must be reviewed by the Association Executive to determine whether the request complies with the filing requirements of this Section. If the Association Executive determines that the review fails to meet the filing requirements of this Section, the request shall be returned to the party and the party shall be given ten (10) calendar days to amend the request to comply with the appropriate requirements. Any preliminary decision by the Association Executive is not a decision on the merits of the request but is to insure that the request complies with the filing requirements of this Section.

(f) **Conducting the Review Hearing.** If a request for review is filed, the procedures for the review shall be the same as those used for disciplinary hearing reviews as contained in Section 38 and subject to any exceptions contained in this Section. Where Section 38 references disciplinary forms, the corresponding arbitration forms shall be used. To the extent any procedures in Section 38 are applicable only to disciplinary hearing reviews, such procedures shall not be applicable.

(g) **Documents Provided to the Directors.** The Association Executive shall provide to the Directors, in advance of the review hearing, copies of the request for review, response to that request, and the award.

(h) **Delegation of Authority to Conduct the Review.** The Directors may delegate the authority to conduct the procedural review to Association legal counsel, provided Association legal counsel did not participate in the review of the complaint before the hearing, or at the hearing level of the dispute. If Association legal counsel conducts the review, the procedures shall be the same as for the Directors.

(i) **Action of the Directors.** The Directors shall render their decision promptly (Form A-19). Their decision may be to 1) ratify the award of the hearing Panel, or 2) to remand the case for a new hearing before a new Panel.

(j) **Disposition of the Deposit.** If the Directors ratify the decision of the hearing Panel, the money deposited by the party requesting review shall pass into the general treasury of the Association. If a new hearing is ordered, the deposit shall be returned to the party requesting the review.

(k) **Finality of Directors' Decision.** The decision of the Directors to ratify the decision shall be final. Further, failure of the Association to abide by the timing requirements of this Manual shall not invalidate the decision of the Panel of Directors.

(l) **Role of C.A.R.** C.A.R. does not review and cannot overturn any decision of any review Panel of Directors pursuant to Section 71.

Section 72. Enforcement

(a) **Judicial Confirmation; Costs and Fees.** The judgment of any competent court of record in California may be rendered upon the award. In the event it is necessary for any party to the arbitration to obtain judicial confirmation and enforcement of the arbitration award against any other party, the party failing to abide by the arbitration award shall pay to the party obtaining such confirmation the costs and reasonable attorneys' fees incurred in such actions as determined by the court.

The award is final as set forth in Section 70(b). Any payment plan or discipline to membership imposed by the Association pursuant to a "show cause" hearing, is for the violation of the membership duty to abide by the arbitration award and is not be a modification of the award. The prevailing parties retain the right to judicial confirmation of the entire final award in addition to the membership suspension process set forth in Section 72 (b)-(e). Sanctions and payments to avoid sanctions are independent of, and run concurrently with, the prevailing parties' rights to judicially enforce the award. Any such payment plan to avoid suspension, including the decision not to suspend the member, is not a modification of the award.

(b) "**Show Cause" Hearing.** If the non-prevailing party in an arbitration has not paid the arbitration award to the prevailing party within fifteen (15) days after the deadline set forth in the Award of Arbitrators, the prevailing party may file a request with the Association that the non-prevailing party "show cause" before a Panel of three (3) Directors as to why he or she refuses to abide by the arbitration award. If a party requests a procedural review, the request for a "show cause" hearing may not be filed until at least fifteen (15) days after the payment of the award is due following the procedural review. The non-prevailing party shall be advised of the date, time, and place, of the "show cause" hearing and shall have an opportunity to explain why the arbitration award was not paid to the prevailing party. The sole purpose of the "show cause" hearing is to determine why the non-prevailing party failed to timely pay the arbitration award. If the non-prevailing party pays the full award amount, including any accrued interest, to the prevailing party at any time prior to the "show cause" hearing, the "show cause" hearing will be dismissed, and the case will be considered closed.

(c) **Conducting the "Show Cause" Hearing.** Both parties may attend the "show cause" hearing and may call witnesses, present evidence, and be represented by legal counsel. The procedures for the "show cause" hearing shall be the same as those used for a review hearing. To the extent any review hearing procedures are applicable only to a review hearing, such procedures shall not be applicable to a "show cause" hearing.

(d) **Action of the Directors after "Show Cause" Hearing.** The Directors shall render their decision promptly after the "show cause" hearing (Form A-28). Their decision may be to: 1) take no action; 2) impose suspension of the non-prevailing party's Association and/or MLS membership for thirty (30) days or until the arbitration award plus interest is paid to the prevailing party, whichever is longer; or 3) set forth a schedule for the payment of the arbitration award plus interest to the prevailing party. Interest begins to accrue on the arbitration award starting from the due date of the award, at the statutory interest rate of ten percent (10%) per annum.

(e) **Failure to Make a Payment Pursuant to a Payment Plan.** The prevailing party may notify the association of any non-payment or partial payment by the non-prevailing party pursuant to any payment plan imposed by the Directors, and the association will send the non-prevailing party notice to provide evidence of the full amount of the payment within five (5) days. If the non-prevailing party doesn't provide evidence of the full amount of the payment by the deadline, the non-prevailing party's Association and/or MLS membership will be suspended until the full payment is made. The prevailing party is not precluded from pursuing a court confirmation of the award notwithstanding the payment plan.

(f) **Requirements for Enforcement of Suspension.** Any suspension of membership imposed by the Directors following a "show cause" hearing shall not be enforced until: 1) the arbitration award is confirmed or modified by a court, but only if the award is not paid by the date ordered by the court (or within fifteen (15) days after the

date the court order is made if the court order does not provide a due date); or 2) if no court action is filed, one hundred one (101) days after the award is finalized.

(g) **Publication.** A member who has been suspended for failure to timely pay an arbitration award will have his or her name and photo published in accordance with C.A.R.'s publication policy.

CALIFORNIA ASSOCIATION OF REALTORS®

IMPLEMENTATION GUIDELINES
DISCIPLINARY
2026

Prepared by the
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INTRODUCTION

The following guidelines are offered to help clarify and aid in the implementation of the *California Code of Ethics and Arbitration Manual* (the "*Manual*"). They are not intended to be a substitute for the *Manual* and should not be taken as such. They are to assist in specific circumstances and to provide rationale for the *Manual* provisions. To the extent these guidelines conflict with the provisions of the *Manual*, the *Manual* shall control. Language in red underlined font is new for 2026.

A. BASIS FOR DISCIPLINARY ACTION

1. Association's Obligation to Enforce the Code of Ethics

As part of its charter agreement with the National Association of REALTORS® ("N.A.R."), a Member Association agrees and is obligated to enforce the N.A.R. Code of Ethics. Local Associations, in enforcing the Code, must accept and process complaints regarding the Code in an objective and fair manner and according to the rules and procedures used by the Association for such complaints.

2. Duties of Membership

Association membership is voluntary. If a real estate licensee elects to join a local Association, his or her membership duties include the obligations to:

- abide by the Code of Ethics;
- abide by the Association's bylaws; and
- submit to arbitration with other members and clients and abide by the arbitration award.

3. Power to Take Disciplinary Action Against an Association Member

Disciplinary action can be taken against a member for the following:

- a violation of any of the above membership duties;
- a final judgment and conviction of a felony or a crime of moral turpitude;
- a violation and final conviction of California real estate law or the Real Estate Commissioner's regulations.
- for any action brought for conviction of a felony or real estate law, the appeal period must elapse before disciplinary case is processed.

The Association also has the power to take disciplinary action against the designated REALTOR® for the unethical conduct of real estate licensees affiliated with the designated REALTOR®'s office, whether or not the licensees are members of the Association. The rationale is that the designated REALTOR® is ultimately accountable to the Association for the membership obligations of the office. Panels should refer to the guidance on Form D-15 to determine when it is appropriate to discipline a designated REALTOR® based on the unethical conduct of a member affiliated with them.

Sometimes a complaint is filed against a member who was not a member of the Association at the time the facts giving rise to the complaint occurred. If the named respondent was not a REALTOR® member at that time, the Association may not process the complaint, as the respondent had no duty to abide by the membership obligations of REALTOR® members, such the Code of Ethics or bylaws of the Association. If, however, the respondent was a REALTOR® member of another Association, the current Association

should hold the hearing and impose any discipline. The basis for this is that a REALTOR® must abide by the Code of Ethics regardless of which Association he or she maintains membership.

Sometimes, the Association will receive a complaint against someone who was a member of the Association at the time the alleged violation occurred, but is no longer a member of any Association of REALTORS® at the time the complaint is filed. Additionally, sometimes a complaint is filed against a respondent who was a member at the time the complaint is filed, but the member resigns from all REALTOR® Associations before a full hearing can be held. In either of these circumstances, the Association should still process the complaint and conduct the hearing. However, any discipline imposed must be held in abeyance until the violator attempts to rejoin an Association of REALTORS®.

4. Duties of MLS Participants and Subscribers

By becoming and remaining a participant or subscriber in the MLS, a real estate licensee agrees to abide by the MLS rules and regulations. This is the MLS equivalent of an Association membership duty and is the basis for discipline of participants and subscribers.

5. Citations

(a) The MLS Committee, subject to approval of the Association's Board of Directors, may implement a schedule of fines or "citations" for MLS rules violations. Under a citation system, the Association or MLS staff issues citations for those violations brought to the attention of the Association or MLS that have been approved for citation under the system. Usually citation systems are developed for mechanical and routine MLS rules violations that staff can easily determine, such as failure to submit a listing or failure to change the status of a listing.

Any MLS participant or subscriber receiving a citation has the option to (1) pay the fine within a certain time frame; (2) request a citation reconsideration; or (3) request a formal hearing to contest the citation. If the participant or subscriber fails to pay the fine by the time frame specified and does not otherwise request a hearing or citation reconsideration, the Association or MLS may suspend participation privileges for nonpayment as long as the original citation notified them that they would be suspended for nonpayment.

In order to request a citation reconsideration, the citation recipient must first correct the alleged violation of the MLS Rule prior to filing a request for citation reconsideration. No formal hearing is held and no appearance by the citation recipient or the MLS is allowed. All matters are conducted based on the written submissions. The request for citation reconsideration must clearly state the specific ground(s) for the request and include all facts, timelines and/or reasons for the request. The qualifying grounds for a request for citation reconsideration are one or more of the following: (i) factual dispute regarding the alleged violation(s), such as misapplication of the MLS Rule(s) cited or how the MLS Rule that was cited is not appropriate; or (ii) contention that there was a violation of procedural due process by the MLS.

If the proper grounds for requesting a citation reconsideration are not met, the request for citation reconsideration will be returned to the citation recipient. The citation recipient will be given seven (7) calendar days to amend the request for citation reconsideration to meet the appropriate requirements. If the appropriate grounds still are not met, the request for citation reconsideration will be denied and the fine will be due to the MLS within seven calendar days from the date of the notice of denial.

A citation reconsideration will be conducted by a citation reconsideration Panel comprised of not less than three (3) nor more than five (5) REALTORS® from the Association's Professional Standards Committee or, at the option of the Association, not less than three (3) nor more than five (5) members of the Association's MLS Committee. If the grounds set forth in the request for citation reconsideration are proper, the Panel will review the request and the documentation submitted by the MLS. There will be no additional sanctions, MLS Rules and/or Code of Ethics violations added, and the fine amount cannot be increased or

decreased (unless it is dismissed in its entirety). If the citation reconsideration results in a finding that the citation recipient violated the MLS Rule, the fine is limited to the amount in the citation issued by the MLS plus an administrative processing fee that will be added to the fine amount. If the citation reconsideration Panel determines that no violation occurred, the citation and fine will be withdrawn and no administrative processing fee will be due. If the citation reconsideration Panel determines that there was a procedural due process violation by the MLS, the citation reconsideration Panel may dismiss the citation or may return the case to the MLS to correct the due process violation.

Written Notice of Decision on Request for Citation Reconsideration by the citation reconsideration panel will be sent to the citation recipient, the Responsible Broker, and to the MLS within fifteen (15) calendar days after the Panel renders its decision. In the event that the citation reconsideration Panel determines there was a violation, the payment of the fine and the administrative processing fee will be due within seven (7) calendar days after the citation recipient and Responsible Broker are sent the Notice of Decision on Request for Citation Reconsideration. Failure to pay both the fine and the administrative processing fee within seven (7) calendar days from the date of the Notice of Decision on Request for Citation Reconsideration will result in suspension of MLS services. The citation recipient and Responsible Broker agree that the decision of the citation reconsideration Panel is final and that that they will not be able to request a formal hearing and/or Director's Review based on the decision of the citation reconsideration Panel.

If the participant or subscriber requests a formal hearing to contest the citation, the citation is usually referred to the Grievance Committee who will then act as the complainant at the hearing. As the complainant, the Grievance Committee can conduct further investigation and gather all relevant evidence in order to present the citation at the hearing. However, the "evidence" is usually simply a written statement from the Association or MLS staff who issued the citation that indicates the specific facts that prompted the citation. For example, if the citation was for late reporting of sales, the statement would indicate the date the information was received (or inputted into the computer) and the date of close of escrow and a copy of the citation issued.

With respect to procedures, the procedure used for MLS citation hearings is the same as for any other complaint. For example, the parties have the right to challenge any potential hearing Panel members and the parties have the right to request a review of any decision reached.

Please note that even when a citation is issued and a hearing is subsequently requested, the Grievance Committee is not obligated to proceed as the complainant. For example, if upon further investigation the Grievance Committee determines that the citation was issued in error or the evidence indicates there was no infraction of the MLS rules, the Grievance Committee is not bound to proceed with the complaint and may dismiss the citation.

Once a hearing occurs, the hearing Panel will decide the discipline if it makes a finding of violation. The hearing Panel's recommended discipline should not exceed that of the fine indicated in the citation unless other allegations (such as Code of Ethics violations) have been added to the complaint. If a violation is found, the record of the violation goes into the person's file and is used for future consideration of discipline.

The overall purpose of a citation system is twofold. First, a citation system helps create better compliance with the MLS rules. Second, it provides an expeditious and convenient way for participants and subscribers who admit the infraction to pay a fine rather than being exposed to a full hearing. The purpose of a citation system IS NOT to replace the hearing process. The participants and subscribers must still be provided the right to a full hearing to assure they have been given due process.

As a final note, sometimes Associations and MLSs believe they have to create a separate process and procedures for citation hearings. However, introducing new and separate procedures is unnecessary and can further complicate the hearing process. Therefore, in most situations, Associations are advised to process citations hearings under the same procedures as those used for other disciplinary complaints.

(b) If the optional Code of Ethics Citation Policy is adopted by the Association's Board of Directors, the Grievance Committee may enforce a schedule of fines or "citations" for Code of Ethics violations. Under the Citation Policy, the Grievance Committee reviews a complaint (anonymous or with an identified complainant) and determines if the conduct alleged is a citable offense. A citable offense is conduct that is prohibited by the Citation Schedule adopted by the Association. If the conduct is a citable offense, Association staff issues a citation.

Code of Ethics violations under the Association Citation Policy shall only be from those authorized in the C.A.R. Model Citation Schedule.

Any REALTOR® receiving a citation may either (1) complete specified training (at the option of the Association); (2) pay the amount specified on the citation; or (3) request a full hearing to contest the citation, which would be handled in one of the following manners:

(1) If the REALTOR® requests a hearing to contest the citation, and the original complaint was received anonymously, the citation is referred to the Grievance Committee who will then act as the complainant at the hearing. As the complainant, the Grievance Committee can conduct further investigation and gather all relevant evidence in order to present the citation at the hearing.

Please note that even when a citation is issued and a hearing is subsequently requested, the Grievance Committee is not obligated to proceed as the complainant on an anonymous complaint. For example, if upon further investigation the Grievance Committee determines that the citation was issued in error or the evidence indicates there was no infraction of the Code of Ethics, the Grievance Committee is not bound to proceed with the complaint and may dismiss the citation.

(2) If the complaint was received from an identified complainant, it is returned to the Grievance Committee, which scrutinizes the complaint and amends it if necessary. The complaint is analyzed by the Grievance Committee as if no citation had been issued, by the process detailed in Section C, below.

With respect to hearing procedures, the procedure used for citation hearings is the same as for any other complaint. For example, the parties have the right to challenge any potential hearing Panel members and the parties have the right to request a review by the Directors of any decision reached.

Once a hearing occurs, the hearing Panel will decide the discipline if it makes a finding of violation. The hearing Panel's recommended discipline may include any sanction authorized by the *Manual* for Code of Ethics violations and is not limited to the amount of the fine for the original citation.

6. Power to Take Disciplinary Action Against an MLS Participant or Subscriber

Disciplinary action can be taken against an MLS participant or subscriber for the following:

- a violation of any MLS rule;
- a final judgment and conviction of a felony or a crime of moral turpitude (see glossary for definition);
- a violation and final conviction of California real estate law or the Real Estate Commissioner's regulations.

The Association also has the power to take disciplinary action against the MLS participant for the violation of MLS rules by real estate licensees affiliated with the MLS Participant's office, whether or not the licensees are subscribers in the MLS. The rationale is that the MLS participant is ultimately accountable to the Association for the MLS obligations of the office.

Sometimes a complaint is filed against a real estate licensee who was not a participant or subscriber in the MLS at the time the facts giving rise to the complaint occurred. If the named respondent was not a participant or subscriber, the Association may not process the complaint, as the respondent had no duty to abide by the MLS rules and regulations until he or she became a participant or subscriber.

7. Distinction Between a Disciplinary Complaint and Arbitration

A disciplinary complaint alleges that a member or MLS participant or subscriber has violated one or more of their membership or MLS obligations under the Code of Ethics, Association bylaws, or MLS rules. If such allegations are true, the response to the violation by the Association is imposing discipline. Only such discipline as provided for in the *California Code of Ethics and Arbitration Manual* may be recommended by a hearing Panel and imposed by the Board of Directors. For example, the Association cannot revoke a real estate license or award damages in response to a disciplinary complaint. Disciplinary complaints are accepted by the Association and referred to the Grievance Committee for review.

In contrast to disciplinary complaints, arbitration is a method to resolve monetary disputes. Arbitration is an alternative to litigation and the arbitration hearing Panel may award money to one or more of the parties. An arbitration hearing does not, however, impose discipline. Complaints requesting only arbitration are not processed through the Grievance Committee.

However, in a combined disciplinary and arbitration complaint, the disciplinary portion should be processed through the Grievance Committee. If the Grievance Committee recommends that the matter be forwarded for a hearing, it should be held in abeyance pending the outcome of the arbitration portion of the complaint. In such cases, the arbitration should be held first to avoid prejudice to the arbitration by reason of a finding of a violation of a membership duty or MLS rule. The disciplinary hearing is held after the arbitration has been completed and must be before a different hearing Panel.

Care should be taken not to give legal advice, however, explanation should be provided to any complainant as to the scope and limitation of the disciplinary and arbitration processes at the Association as follows:

a. the Association does not have legal authority to suspend or terminate a real estate license;

b. the Association does not have legal authority to consider or decide allegations involving a violation of the state real estate license laws or any other alleged violation of law unless a court or the Department of Real Estate (DRE) has made a final ruling that the law has been violated;

c. the Association can only process arbitrations of real estate related monetary disputes involving members of the Association or MLS or between members of the Association and their clients provided the client agrees to be bound by the arbitration award.

8. Joint Ethics and MLS Complaints

A hearing Panel may hear complaints alleging violations of both a duty of membership and an MLS rule violation by a respondent arising out of the same set of facts and circumstances. In such a case, however, the hearing Panel is limited to recommending the maximum of any one discipline per hearing, not per allegation. For example, the hearing Panel cannot impose a $5,000 fine for the Code of Ethics violation and a $15,000 fine for the MLS violation, but may only impose $15,000 total fine for all violations. The hearing Panel could impose a $2,500 fine for the Code of Ethics violation and a $12,500 fine for the MLS violation for a total of $15,000.

9. "Fast Track" Process for Ethics Complaints

The Association may choose to adopt the "fast track" hearing process described in this Section for ethics complaints. If the Association adopts the "fast track" process, it must be used for all ethics complaints received by the Association. The deadlines applicable for the "fast track" process are described below, but in all other respects the "fast track" process should be conducted in accordance with the procedures set forth in the *Manual*.

(1) The Grievance Committee shall review each complaint within ten (10) calendar days of receipt of the complaint by the Association.

(2) The Association Executive shall designate the date, time and place of the hearing and shall notify the parties and hearing Panel in writing (Form D-6) no later than five (5) calendar days after the Grievance Committee decision to forward the complaint for a hearing is final.

(3) The date of the hearing shall be no later than forty-five (45) calendar days after the Grievance Committee decision is final.

(4) The respondent shall submit a Response to the Association within ten (10) calendar days after the request for response has been transmitted to the respondent.

(5) A copy of the Response shall be provided to the complainant within five (5) calendar days after the Association receives the Response from the respondent.

(6) The parties must submit Form D-4 and Form D-5 no later than five (5) calendar days after the date these forms have been transmitted to the parties.

(7) The hearing Panel may recess the hearing from time to time as necessary and, on request of a party or upon the Panel's own motion, may postpone the hearing for not more than fifteen (15) calendar days, unless otherwise agreed to by the parties.

(8) Within ten (10) calendar days after the hearing Panel's decision has been transmitted to the parties, any party may file a request in writing for a review of the hearing Panel's decision by the Board of Directors or appointed review Panel of the Board of Directors.

(9) A request for review shall be reviewed by the Association Executive to determine whether the request complies with the filing requirements within five (5) calendar days after the request has been transmitted to the Association.

(10) If the Association Executive determines that the request for review fails to meet the filing requirements, the request shall be returned to the party and the party shall be given five (5) calendar days to amend the request to comply with the appropriate requirements.

(11) The Association Executive shall designate the date of the review hearing, which shall be no later than twenty (20) calendar days after the date of the Association's receipt of the request for review. Each party shall be given at least ten (10) calendar days' prior notice of the review hearing.

(12) If no request for review is filed, the Board of Directors shall take final action on the hearing Panel's recommendation no later than twenty (20) calendar days after the date the hearing Panel's decision is transmitted to the parties.

B. INITIATING THE COMPLAINT

1. Filing a Disciplinary Complaint

Any person, whether or not a member, participant or subscriber, may file a complaint against a member or a participant or subscriber alleging a violation of a membership or MLS duty. The complaint must be in writing, signed by the complainant and state the facts upon which the complaint is based. A complaint

meeting all filing requirements must be filed within one hundred and eighty (180) calendar days after the alleged offense and facts relating to it could have been known by the complainant in the exercise of reasonable diligence or one hundred eighty (180) days after the conclusion of the transaction, or event, whichever is later. When a party utilizes the Association or C.A.R. ombudsman program, the filing deadline is suspended until the case is reported closed by the ombudsman. For example, if the complainant were to contact the ombudsman hotline on February 1 and the ombudsman reports the case as closed on February 5, the filing deadline would be extended by 5 days.

The Association has neither jurisdiction nor authority to process many types of complaints. As such, the Association Executive and the Grievance Committee should only accept those complaints that fall within the authority and jurisdiction of the Association. For example, if the respondent was not a member or a participant or subscriber at the time the facts and circumstances giving rise to the complaint occurred, the Association may not have jurisdiction to process the complaint.

If the Association receives a telephone complaint, the Association Executive should explain the need for a written complaint in order for the Association to take any formal action in the matter. The Association Executive should also forward a complaint form and a copy of the Code of Ethics and Standards of Practice and/or the MLS rules to the individual if the individual wishes to proceed with a written complaint.

In reviewing a complaint filed with the Association, the Association Executive and Grievance Committee should make sure that the complaint contains a sufficiently detailed written statement of the facts which also shows how those facts support the alleged violations. This statement is referred to in the complaint form as "Exhibit 1." Frequently, complainants fail to include sufficient detail for the named respondents to fully understand what conduct they are being charged with that allegedly violated their membership or MLS duties.

Sometimes, a letter or anonymous note is sent to the Association alleging violations and requesting the Association to take action. If possible, the Association Executive should attempt to contact the person who sent the letter and request that a formal written complaint be filed by that person. However, if the person is unwilling to do so or the Association Executive cannot determine who sent the letter, the letter may be referred in its original form to the Subcommittee of the Grievance Committee, which has been formed for that purpose, for consideration. The Subcommittee shall review and may investigate the complaint and 1) dismiss the complaint as unworthy of further consideration; 2) notify the respondent of the complaint and give an opportunity to correct; or 3) refer the complaint to the Professional Standards Committee for hearing. If the Subcommittee, on behalf of the Grievance Committee, refers the matter for hearing, the Grievance Committee shall be the complainant and one of the members of the Subcommittee shall represent the Grievance Committee at the hearing.

When a disciplinary complaint is received by Association staff and the complainant is a REALTOR®, the complainant will be asked if they would like the Association to arrange a meeting between the complainant's broker and the respondent's broker before forwarding the complaint to the Grievance Committee. The meeting may be conducted virtually using a videoconferencing platform such as Zoom or by telephone. If the complainant does not agree that the brokers should meet, then the complaint will be forwarded to the Grievance Committee. If the complainant agrees to have the brokers meet, the Association Executive will schedule and coordinate a videoconferencing or telephone call with both brokers. Following the meeting, the complainant will notify the association as to whether they wish to withdraw the complaint or have the complaint sent forward to the Grievance Committee. If the Association does not receive a response from the complainant within 2 weeks after the association initiates the pre-hearing broker-to-broker process, then the complaint will be forwarded to the Grievance Committee.

2. Parallel Proceedings

Sometimes Association disciplinary complaints are filed at the same time or follow the filing of a complaint with the DRE, the initiation of a lawsuit concerning the same matter, or criminal litigation.

From a practical standpoint, waiting for civil or criminal litigation or DRE proceedings to be resolved may take several years. Therefore, the Association may desire to go forward with the case despite the other proceeding. However, there are situations where the Association may also wish to hold the processing of a case in abeyance pending the outcome of the proceeding.

First, if the sole basis of the disciplinary complaint is an alleged criminal law violation, the Association cannot proceed with the complaint until a final court judgment finds that such a violation did in fact occur.

Second, if a civil or criminal litigation or any proceeding before the DRE or any other state or federal regulatory or administrative agency arising out of the same facts and circumstances is pending, the association may process the complaint and proceed to hearing or it may be held in abeyance. To decide whether to proceed, Association or C.A.R. legal counsel should be consulted and the following factors:

a. **SIMILARITY:** The degree of similarity between the issues, facts and circumstances giving rise to the pending litigation, regulatory or administrative proceeding and the issues, facts and circumstances underlying the disciplinary complaint. The more similar, the more consideration is given to hold the matter in abeyance.

b. **UNNECESSARY WORK:** The degree to which resolution of the litigation or regulatory or administrative proceeding may make consideration of the complaint unnecessary. For example, a DRE proceeding which results in a license revocation makes the hearing unnecessary.

c. **DELAY:** The degree to which pending litigation or regulatory or administrative proceeding would delay prompt disposition of the complaint. The more delay, the more likely the matter should be heard.

d. **IMPACT:** The nature of the alleged violation and the extent to which it impacts on cooperation with other members or MLS participants and subscribers. If the alleged activity would place the Association or its members or the MLS or its participants and subscribers in legal jeopardy, the matter should be heard.

Generally, a complaint will not be held in abeyance without a determination that processing the case would have an unfair advantage or impact on the litigation or governmental proceeding. Additionally, a complaint will generally not be held in abeyance simply because the DRE has "opened a case" or is "conducting an investigation" regarding the matter in question. However, if the DRE has actually filed a formal accusation against the respondent, the Association should consider holding the disciplinary complaint in abeyance until the DRE has concluded its license enforcement process.

In cases where a decision is made to hold the matter in abeyance, the Association should still accept the complaint as filed. Only the processing of the matter will be held in abeyance. This is to insure that after the conclusion of the parallel proceeding if the person filing the complaint still wishes to proceed with the complaint at the Association, he or she will be able to do so without being considered as not having filed the complaint timely.

3. Designated REALTOR® and MLS Participant as Named Party

A designated REALTOR® does not have to be named as a complainant or respondent in a complaint. However, where a person has a complaint against a real estate licensee who is not a designated

REALTOR®, that party, or the Grievance Committee when reviewing the complaint, can also name the designated REALTOR® as a respondent. If the Grievance Committee decides to add the designated REALTOR® as a named respondent, it must do so with the approval of the person filing the complaint. If the person does not agree, the Grievance Committee must decide whether to become a co-complainant in the matter. Panels should refer to the guidance on Form D-15 to determine when it is appropriate to discipline a designated REALTOR® based on the unethical conduct of a member affiliated with them.

In any event, even if a designated REALTOR® is not formally named as a respondent in the complaint, the designated REALTOR® is still given notice of the complaint and all subsequent matters regarding the complaint, including the hearing date and any final action taken by the Board of Directors. Furthermore, the designated REALTOR® has the right to attend any hearing or review of the matter without any requirement to provide notice of attendance. The designated REALTOR® may make opening and closing statements on behalf of the respondent, examine and cross-examine parties and witnesses, introduce affidavits, documents and other admissible relevant evidence, consult with or testify on behalf of the respondent, and respond directly to questions from the Panel.

A designated REALTOR® may not be disciplined for acts of real estate licensees that occurred before that licensee was affiliated with the designated REALTOR®. In these cases, the designated REALTOR® at the time the acts occurred should be named if discipline is sought against the designated REALTOR®. However, where the real estate licensee changed offices, the Association should still notify the licensee's current designated REALTOR® of any pending complaints and discipline imposed upon the licensee. To avoid any problems, the Association should adopt a uniform policy to do this and not make the decision on a case by case basis.

Like a designated REALTOR®, the MLS participant for a subscriber does not have to be named as a complainant or respondent in a MLS rules violation complaint. However, where a person has a MLS rules violation complaint against a real estate licensee who is not the MLS participant, that person, or the Grievance Committee when reviewing the complaint, can also name the MLS participant as a respondent. If the Grievance Committee decides to add the MLS participant as a named respondent, it must do so with the approval of the person filing the complaint. If the person does not agree, the Grievance Committee must decide whether to become a co-complainant in the matter.

In any event, even if a MLS participant is not formally named as a respondent in the complaint, he or she is still given notice of the complaint and all subsequent matters regarding the complaint, including the hearing date and any final action taken by the Board of Directors. Furthermore, the MLS participant has the right to attend any hearing or review of the matter at the association.

A MLS participant may not be disciplined for acts of real estate licensees that occurred before that licensee was affiliated with the MLS participant. In these cases, the MLS participant at the time the acts occurred should be named if discipline is sought against the MLS participant. However, where the real estate licensee changed offices, the Association should still notify the licensee's current MLS participant of any pending complaints and discipline imposed upon the licensee. To avoid any problems, the Association should adopt a uniform policy to do this and not make the decision on a case by case basis.

4. Confidentiality of Proceedings

The Association, the Grievance Committee, hearing Panel members and the parties all have a duty to maintain the confidentiality of the proceedings and any resulting decisions. This duty of confidentiality also applies in situations where a party attempts to discuss the results of the hearing with a Panel member. However, there are some exceptions to this duty. They are:

- The Grievance Committee may engage in discussions regarding the matter so that they may perform their functions and preliminary review;

- The Association may publish that a member has been suspended or expelled from the Association, or that an MLS participant or subscriber has been suspended or expelled from the MLS;
- Disclosure of all proceedings, including the allegations, findings and decisions, shall be made by the local Association to C.A.R. in accordance with policy adopted by C.A.R. Directors which requires that each Association submit such information to C.A.R. through a secure repository maintained by C.A.R.;
- Disclosure of the proceedings, including the allegations, findings and decisions, may occur where disclosure is required by law (i.e. subpoena, deposition, testifying in court, etc.);
- The respondent in a disciplinary hearing may disclose the results in order to vindicate his or her professional reputation;
- Any party to a disciplinary or arbitration hearing may disclose the results in court where there is a civil case involving the same set of facts and circumstances.
- Except as provided below, if a member is found in violation of the Code of Ethics, C.A.R. shall publish the following information regarding the violation(s): (1) name and photo of the member found in violation (but not the name of the firm the member is, or was, affiliated with); (2) if the responsible broker is also found in violation, the name of the responsible broker will also be published; (3) if a member's name is similar to another member's or MLS Participant's name, the member's real estate license number and/or office address may also be included; (4) the Article(s) of the Code of Ethics violated, (5) a brief factual synopsis of the matter with names redacted (except for the respondents found in violation); (6) discipline imposed; and (7) the effective date and duration of the discipline, if applicable; and (8) rationale in mitigation or aggravation for the discipline, if applicable. This information will be published on one or more of any authorized C.A.R. communications vehicles, such as the C.A.R. website or magazine. All discipline will be published except warnings, or education that does not include a reprimand, suspension or expulsion. However, if a suspension is imposed because the member does not comply with the education, the discipline will be published when the suspension is imposed. Citations under the Ethics Citation or MLS Citation systems will not be published by C.A.R.

- The local Association's Board of Directors may adopt a policy to publish discipline in its local Association communications vehicle(s). The local Association may adopt a policy to publish discipline that uses the same criteria as C.A.R.'s publication policy, as described above. In addition to or instead of the C.A.R. publication policy, the local Association may adopt a policy to publish discipline when a member is found in violation of the Code of Ethics a second time within a (3) year time period. Any discipline published by a local Association shall include the member's name, the fact that the member has been found in violation of the Code of Ethics, the Article(s) violated, and the discipline imposed. Published discipline shall not include the name of the firm the member is, or was, licensed or affiliated with. In cases where the member's name is similar to another Association member's or MLS Participant's or Subscriber's name, the member's real estate license number or office address (or both) may also be published.

If a Grievance Committee member, hearing Panel member, or party violates the duty of confidentiality, he or she may be disciplined by the Association for violation of the Code of Ethics and the rules and procedures of the *Manual*.

It is improper for a party or party's attorney to attempt to contact a hearing Panel member and influence him or her outside the hearing. If a Panel member is drawn into a conversation with a party or a party's attorney prior to the hearing or during a break, he or she must disclose the facts of the conversation to all parties and the hearing Panel prior to the hearing going forward. All parties are then given the opportunity to respond to the incident by either raising additional arguments at the hearing or, in extreme cases, requesting disqualification of the Panel member.

5. Qualification for Panel

A person shall automatically be disqualified from serving on a hearing Panel in any case in which he or she is:

- a party;
- related by blood or marriage (to the fourth degree) to a party;
- an employer, employee, partner or other business associate of a party.

In addition to these basic disqualification rules, several other qualification rules apply. For example, if the person will be a witness in the proceeding, the person should not serve as a hearing Panel member. Also, only one person connected with any firm, business, partnership or corporation may serve on the same hearing Panel. With respect to this requirement, franchises are generally independently owned and operated and not considered "one" firm, even though the names are the same. However, to avoid the appearance of impropriety, C.A.R. recommends that the Association should attempt to avoid appointing more than one member of "same name" franchisees to any hearing Panel and should not appoint a hearing Panel member who is affiliated with a same name franchise as one or more of the parties.

When putting together the list of potential Panel members to send to the parties, the Association Executive should eliminate from the list the names of those members who are automatically disqualified.

Before hearing a matter, the members of the Grievance Committee, hearing Panel and Directors must certify that there is no reason they cannot hear the case. This is an important element of due process and each person should honestly assess his or her ability to sit on a particular case.

6. The Grievance Committee and Professional Standards Committee

The Grievance and Professional Standards Committees are two unique entities with separate and distinct functions. The Grievance Committee's function is to:

- review the complaint for a possible citation for violation of the Code of Ethics, if the association has adopted the Citation Policy detailed in Section A5, above;
- review the complaint to insure the proper articles and sections are cited based on the alleged facts;
- screen complaints in order to prevent abuse and harassment through frivolous or unwarranted complaints filed for harassment purposes.

The Grievance Committee initially considers allegations of unethical conduct or violations of the MLS rules. The Grievance Committee does not determine guilt or innocence.

A Subcommittee of the Grievance Committee may be established to review anonymous complaints. Members of the Subcommittee are appointed by the Grievance Chair, for a one-year term. Members of the Subcommittee must sign an agreement not to file any anonymous complaints for the year they are on the Subcommittee. (See Role of the Grievance Committee for details). As a general rule, Associations should appoint Grievance Committee or Professional Standards Committee members for three-year terms on a staggered basis to ensure continuity of experience and stability of the committee. In selecting members of the Grievance or Professional Standards Committees, the president should consider the following recommended criteria:

- number of years as a REALTOR®;
- number of years in the real estate business;
- primary and secondary fields of real estate endeavor/expertise;

- participation in post-licensing real estate education;
- training in the Code of Ethics;
- position in firm (principal, non-principal);
- size of firm;
- common sense;
- open-mindedness;
- receptive to instruction/training;
- other relevant professional or procedural training.

The Committee should have balanced representation of REALTORS®, REALTOR-ASSOCIATE®s, men and women, and include representatives of various racial and ethnic groups. Committee members should be mature, experienced, knowledgeable persons of a judicial temperament. They must be able to keep information confidential.

Grievance Committee members evaluate all disciplinary complaints and therefore may not sit as hearing Panel members or hear a matter on review. The Professional Standards Committee is charged with the responsibility of conducting disciplinary and arbitration hearings.

It is not recommended that Directors serve on the Grievance or Professional Standards Committees. However, if a Director does serve on these committees, he or she may serve as a member of a review Panel provided the Director did not participate in a matter at the Grievance or Professional Standards Committee levels. Therefore, it is important to consider whether that Director may better serve the Association by serving on a review hearing or serving on the Grievance or Professional Standards Committee.

7. Association Executive's Function

The Association Executive is the administrative channel through which the Grievance and Professional Standards Committees correspond and carry out their respective functions. The Association Executive does not make decisions or determinations concerning professional standards matters and must be careful to avoid making such determinations. Rather, the Association Executive advises the committees of the appropriate procedures and coordinates all professional standards matters from receipt of the complaint to final determination. The Association Executive is the intermediary between the complainant, respondent, Grievance Committee Chairperson, Professional Standards Committee chairperson, hearing Panel Presiding Officer and the Directors. The Association Executive is responsible for all hearing arrangements and record keeping. Whether the Association Executive attends hearings in an administrative capacity is a matter of local discretion. Some Boards and Associations have determined that it is beneficial to have the Association Executive present to provide technical assistance and expertise, while other Boards and Associations choose to have one of the panelists (or Board counsel) provide procedural guidance. This is a matter to be determined by each Board and Association depending on, for example, staff resources, staff experience in professional standards matters, hearing panelists' experience relative to procedures and enforcement of the Code of Ethics, the complexity of the issue, and whether or not Board counsel will be present.

8. Association Legal Counsel

Because effects on business reputations and membership restrictions can result from disciplinary proceedings, from time to time it is necessary to consult legal counsel during the professional standards process. This can include having legal counsel present at hearings for guidance on procedure and law to seeking legal guidance prior to decisions being communicated to the parties. Also, when contemplating

suspension or expulsion as discipline, the Association may be exposed to significant legal risks. Therefore, the Association should rely on the advice of legal counsel prior to such action.

Having said the above, the presence of legal counsel during a disciplinary hearing is a matter of Association discretion. Legal counsel is not a part of the hearing Panel, therefore may not participate in the conduct of the hearing. If counsel believes an action or procedure is inconsistent with the Association's established procedures or may result in potential liability to the Association, counsel's concerns should be communicated, at the time the action occurs, to the Presiding Officer who shall make the final decision.

9. Multi-Association Professional Standards Hearings and Shared Panel Members

If an Association is processing a case and for some reason needs to borrow Panel members or Grievance Committee members from another Association, the process for doing so is relatively simple. Each Board of Directors needs to adopt a resolution stating that their Association agrees to borrow/lend Panel members. This can be done on a case by case basis, or the resolution may be written to govern all cases as necessary. Usually, the Association making the request continues to process the case, and the borrowed Panelists act as agents of that Association for the purpose of hearing the matter. However, some Associations have agreements that one Association will not only lend Panel members, but will process the case as well. This is strictly at the discretion of the Associations entering the agreement.

When Associations enter into an agreement to share Panelists, whether or not it is in the form of a multi-Association agreement, a centralized administration agreement, or merely to borrow Panel members when the need arises, all of the protections and immunities exist for the shared Panel as would exist if the Panel were handling a case involving their own Association members or MLS participants and subscribers.

C. ROLE OF GRIEVANCE COMMITTEE

1. Action of the Grievance Committee

As previously stated, the Grievance Committee reviews complaints alleging a violation of a membership or MLS duty to determine whether or not the complaint should be forwarded to the Professional Standards Committee for hearing. It does not, however, determine a member's guilt or innocence or mediate between the parties. Its primary function is to determine whether or not a disciplinary complaint is appropriate for hearing.

When the Association Executive refers the complaint to the Grievance Committee, the Grievance Committee chairperson may schedule a hearing for the full Grievance Committee to hear the matter or the Chairperson may assign three or more members of the Grievance Committee to review and analyze the complaint. If the complaint is vague, overly general or does not allege violations of a specific Article or MLS section, the Grievance Committee can instruct the complainant to provide more details prior to processing the complaint. If necessary, in rare circumstances, the Grievance Committee can also appoint a Grievance Committee member to contact the complainant to make sure the complaint is submitted in decipherable form. If such clarification is sought, that Grievance Committee member does not participate in the Grievance Committee's evaluation of the complaint.

If the Association has adopted the Citation Policy for violations of the Code of Ethics, it reviews the complaint for a possible citation in accordance with the procedure detailed in Section A5(b) above.

2. Frivolous Complaints

The Grievance Committee prevents harassment of members by reviewing and dismissing unwarranted and frivolous complaints. An unwarranted or frivolous complaint is one which, taken as true, would not constitute unethical conduct on the part of the respondent. For example, if the seller of real property files a complaint alleging the member is unethical for using profanity, the Grievance Committee would not forward the complaint for hearing. Even if true, there is no specific prohibition against the use of profanity in the Code of Ethics or MLS rules. A frivolous complaint is not one which, after talking to the respondent to get his or her side of the story, appears to be without merit. Dismissing a complaint in this manner is basically deciding the case on its merits which the Grievance Committee cannot do.

3. Mediation of Ethics Complaints

N.A.R. policy allows associations to mediate disciplinary complaints. Therefore, if the association has adopted procedures for the mediation of a complaint, those procedures may be followed.

However, using the Grievance Committee as the mediator is usually inappropriate. In general, the role of the Grievance Committee is not to attempt to "settle" a disciplinary complaint by trying to get the parties to "work things out." While this may satisfy the parties involved, an alleged violation is a wrong against the Association and its members not just the person filing the complaint and a resolution of the problem between the parties does not automatically eliminate the wrong against the Association.

Even so, the Grievance Committee still plays an important role in public relations for the Association and can possibly open lines of communication between the complainant and respondent. For example, if the Grievance Committee dismissed the complaint, the Committee could assign a committee member to talk with the complainant. Sometimes a member of the public alleges acts that are simply not covered by the Code of Ethics no matter how "unethical" the acts may seem. If a member of the Grievance Committee takes the time to explain to the public why the complaint has been dismissed, the member of the public may be left with a better feeling towards the Association.

4. Analyzing the Complaint

If a complaint, together with Exhibit 1 and any other supporting evidence and documentation submitted by the complainant, taken as true on its face, would constitute a violation of a membership or MLS duty on the part of the respondent, then the Grievance Committee does not determine the truthfulness of the complaint but rather should refer the matter for hearing. In this case, there is no reason to "investigate" the matter or question the respondent. For example, a complaint states that a member failed to disclose that he or she was purchasing the listed property on his or her own account. It is not allowed for the Grievance Committee to check with the title company and retrieve escrow documents, etc. to prove the member actually purchased the property, that escrow closed and that title was taken in his or her name. It is up to the complainant to prove in the hearing that the facts are true. If the complaint did not provide any specifics regarding the facts, the complainant (not the respondent) would be contacted to get the facts supporting the allegation but not the evidence to prove it.

The Grievance Committee or members assigned to review the complaint should look only to those facts relevant to the complaint. The Grievance Committee’s decision to refer the matter for a hearing is a judgment call which should be made only after careful consideration of all the facts and circumstances in a particular case. The Association may be liable for invasions of privacy if the Grievance Committee exceeds its scope.

It may be advisable, in rare circumstances, for a member of the Grievance Committee to contact the complainant for clarification of the facts, especially if the complainant is a member of the public. This can serve as a useful public relations tool for the Association and puts the complainant on notice what

his/her burden of proof is in future hearings. If such clarification is sought, that Grievance Committee member does not participate in the Grievance Committee's evaluation of the complaint.

Often, the Grievance Committee perceives its role as gathering the necessary documentation and evidence for the hearing Panel to make its decision. To the contrary, the Grievance Committee should only engage in reviewing factual information that has been submitted by the complainant. It is not the obligation of the Grievance Committee to prove the facts or the complaint as this burden rests with the complainant. The Grievance Committee must assume that the facts alleged by the complainant are true. The Grievance Committee must not make an evaluation of the evidence to determine if the complaint has merit.

To summarize the process of the Grievance Committee when reviewing a complaint, the Grievance Committee should follow these steps:

- **assume the facts to be true as stated**;
- ask: do these facts support a violation(s) of the Code of Ethics Article(s), MLS rules section(s) or bylaw section(s) cited;
- have the correct parties been named; and
    - check for parallel proceedings.

5. Contacting Respondent Not Advised

The respondent should not be contacted by the association or the Grievance Committee during their review of the complaint. Instead, if the Grievance Committee feels that clarification is needed, they should contact the complainant. In fact, contacting the respondent in the review stage may prove detrimental to the process as the respondent will probably want to provide the Grievance Committee with his or her side of the story. However, the respondent will have the full opportunity after the Grievance Committee's decision to refer the matter for hearing to present his or her defense in his or her response to the complaint and at the hearing. Additionally, the respondent should never be provided with the names of the Grievance Committee members who reviewed the complaint.

6. Modifications to Complaint

The Grievance Committee has broad discretion to modify a disciplinary complaint. This is a key role of the Grievance Committee and should be strongly emphasized. Examples of situations when it is appropriate for the Committee to exercise this discretion are:

1. If the complaint alleges multiple violations and the Grievance Committee determines that one or more of the allegations are unworthy of further consideration, those allegations may be deleted while the balance of the complaint is forwarded for hearing.

2. If the Grievance Committee determines that the complaint cites an inappropriate Article of the Code of Ethics, bylaws section or MLS rule, the Grievance Committee may amend the complaint by deleting the inappropriate article or section rule and adding the appropriate one. Additionally, the Grievance Committee may select the appropriate allegations for the complaint if the complainant has chosen not to cite any specific Code of Ethics Articles, MLS Rules, or membership duties in the complaint. If the Grievance Committee determines that an Article of the Code of Ethics, bylaws section or MLS rule should be added to the complaint, the Grievance Committee must provide a description of the facts upon which the additional allegations are based. If the Grievance Committee adds an article or rule to the complaint and the complainant does not agree with the addition, the Grievance Committee may file its own complaint citing the Article or MLS section. Both complaints would be heard simultaneously by the same hearing Panel.

3. A complaint sometimes names a real estate licensee but not the licensee's designated REALTOR®. The Grievance Committee can amend the complaint and add the designated REALTOR® as a named respondent. However, if the complainant does not agree with the addition of the designated REALTOR®, the Grievance Committee must become a co-complainant in order for the matter to proceed to hearing against the designated REALTOR®. The Grievance Committee would present the complaint against the designated REALTOR® only.

4. Sometimes multiple complaints may be filed against the same respondent for the same acts, for example, the distribution of one advertisement. The Grievance Committee has the discretion to join these complaints together, and to act as the complainant if the original complainants won't agree with this decision. In a situation with many complainants, the Grievance Committee may choose to exercise its discretion to act as the complainant. Conducting many hearings on the same issue, or allowing many complainants in one hearing may be seen as harassing the respondent. The Grievance Committee should act to avoid this.

5. Similarly, sometimes separate complaints will be filed by the same complainant involving the same set of facts and circumstances. One complaint alleges a violation of the Code of Ethics and one alleges an MLS rules violation. The Grievance Committee has the discretion to join these together to be heard in one hearing and should, so that the respondent is not required to go through more than one hearing arising out of the same set of facts and circumstances.

6. Finally, the Grievance Committee has discretion to add or delete a party as a respondent to the complaint. The Grievance Committee may add the designated REALTOR® or any other respondent it deems appropriate. If the complainant refuses to agree to the addition of the designated REALTOR® or any other respondent, the Grievance Committee must join as a complainant.

7. Grievance Committee as Complainant

The Grievance Committee may, upon its own motion, and must, upon instruction of the Directors, investigate a member's actions when there is reason to believe the member's conduct may be subject to disciplinary action. If it finds enough facts to support the allegation, the Grievance Committee acts as the complainant and the matter is referred for hearing. In this instance, the Grievance Committee prepares the matter for hearing as would any other complainant, except that Association counsel cannot serve as counsel for the Grievance Committee complainant. The Grievance Committee may select one or more Committee members to represent the committee at the hearing. This person also signs the complaint and any forms at the hearing on behalf of the Grievance Committee.

8. Review of the Grievance Committee Decision

A complainant may request that the Directors review the Grievance Committee's decision to delete an alleged violation or respondent from the complaint or to dismiss the entire complaint. There is no review of any other type of Grievance Committee action.

To review the Grievance Committee's action, it is recommended that an appointed review Panel of the Directors be selected to conduct the review. This is important because a Director who serves on a review of the Grievance Committee's action may not serve on a review of the hearing Panel's decision and recommendations. Therefore, there must be Directors available to serve on any subsequent review of the hearing Panel's recommendations, if necessary.

When the Directors review the Grievance Committee's decision, the parties do not have the right to be present. Therefore, there is no time limit and notices are not required. The Directors only consider the documents and information which the Grievance Committee considered in making its recommendation. Generally, this would only be the complaint and supporting documentation submitted with it.

The Directors' decision will be to ratify the Grievance Committee's decision or to grant the complainant's request. For example, if the Grievance Committee dismissed the complaint but the Directors agree with the complainant that the matter should be forwarded to hearing, the Directors can order that the matter be sent for hearing. Likewise, if the Directors ratify the Grievance Committee's decision to dismiss the complaint, the complaint is dismissed and no further disciplinary proceeding may be taken by the Association regarding the complaint. The Directors also have the option of forwarding portions of the complaint if it determines that some Articles of the Code of Ethics, MLS Rules, membership duties, and/or respondents were improperly dismissed but that others were properly dismissed.

D. SUBCOMMITTEE FOR ANONYMOUS COMPLAINTS

An Association's Board of Directors can decide whether or not to accept anonymous complaints. Keep in mind that pursuant to NAR policy, anonymous complaints for any allegations except for those covered in the association's ethics citation policy are prohibited. Therefore, if an Association does not have an ethics citation policy, it cannot accept anonymous complaints. If the Association does decide to accept anonymous complaints, an Anonymous Complaints Subcommittee of the Grievance Committee should be created. Members of the Subcommittee are appointed by the Grievance Chair, for a one-year term. Members of the Subcommittee must sign an agreement not to file any anonymous complaints for the year they are on the Subcommittee. When an anonymous complaint is received, the Grievance Chair assigns it to three impartial members of the Subcommittee. These Subcommittee members have the ability to investigate a complaint before making their decision and are given authority to act for the Grievance Committee. In order to send a complaint to hearing "you must be able to touch it, hear it and see it."

Options for the Subcommittee are:

1) dismiss the complaint as unworthy of further consideration;

2) notify the respondent of the complaint and give an opportunity to correct;

3) refer the complaint to the Professional Standards Committee for hearing;

4) issue an ethics citation.

If the Subcommittee, on behalf of the Grievance Committee, refers the matter for hearing, the Grievance Committee shall be the complainant and one of the members of the Subcommittee shall represent the Grievance Committee at the hearing.

E. PROCESSING THE COMPLAINT

1. Getting the Response

When a complaint is forwarded from the Grievance Committee to the Professional Standards Committee for hearing, the Association Executive sends a copy of the complaint to the respondent along with the Notice to Respondent and a blank Response. The respondent has fifteen (15) calendar days to respond to file a written response. However, failure to file a response within this time frame is not fatal and the hearing Panel may accept late filings of responses. As a general rule, late filings should be accepted by the hearing Panel. If necessary, the hearing Panel may grant a recess or continuance to give the complainant time to review the late response.

2. Notice

When giving notice, it is not necessary to use certified mail. Regular first class mail or email is all that is required for giving notice. In fact, using certified mail sometimes causes problems because a respondent may refuse to accept it and therefore will not receive notice. Even so, many associations prefer using certified mail so that there is a record of receipt. If an association elects certified mail, C.A.R. recommends that regular first class mail be used as well. This will avoid the problem of the respondent refusing to accept the certified mail since first class mail is presumed to have been received. In addition, an association may elect to use a delivery service that also provides a record of delivery and avoids the problem of the respondent refusing acceptance.

When possible, email is the preferred form of service for notices and documents associated with the administration of an ethics complaint. Notices sent by email must include the association's request that delivery be acknowledged by the intended recipient within twenty-four (24) hours by return email. Automatic notification that an email has been opened is not sufficient for this purpose. The administrator must be certain the intended recipient has read the email. If receipt of the notice has not been acknowledged by the intended recipient within twenty-four (24) hours, the recipient will be contacted by telephone to confirm receipt and the recipient's confirmation will be noted in the file. If receipt of notices sent by email cannot be confirmed, the notices will be resent via first class mail, by any mail delivery service or my certified mail.

If a party informs the association that they will be represented by legal counsel, the Association Executive should send all communications and notices regarding the disciplinary matter to both the party and their attorney unless the party instructs otherwise.

3. Continuances and Continuance Fees

All requests for continuance of a hearing must be in writing and must state the reason for the request. Requests for continuance can only be granted when all parties mutually agree to a subsequent specified date or when the Professional Standards Chairperson, his or her designee, or the hearing panel chair determines that denying the request for continuance would deny the requesting party a fair hearing. Continuances requested after a hearing has convened shall be considered by the hearing Panel, and granted as necessary.

Generally, valid requests for continuances should be granted unless a pattern of abuse (i.e. delay tactics, avoidance, etc.) begins to surface. The following are some valid reasons for continuances:

- A party is unable to present pertinent material evidence because a key witness is unavailable due to sudden illness, accident, or death.
- A party needs additional time to obtain counsel, and they have not unreasonably delayed doing so.
- A party has just recently discovered new evidence and needs extra time to prepare to argue additional claims or defenses. The party's failure to discover this evidence earlier must have occurred due to no fault or negligence on its own part.
- A party received improper notice of the hearing or improper notice of the other party having legal counsel.

The aforementioned reasons for granting a continuance are non-exhaustive, and there may be other circumstances which constitute good cause sufficient to merit a continuance. However, most excuses for a party being unable to appear, such as vacations or business meetings, are generally not valid reasons for granting a continuance.

Depending on when the continuance request is made, the Professional Standards Committee Chairperson or his or her designee and the hearing Panel have the discretion to grant continuance requests. If the request is made prior to the hearing being convened, the Professional Standards Chairperson makes the

decision. If the request is made at the hearing, the hearing Panel makes the decision.

Each party is entitled to one continuance, for good cause, free of charge. However, continuance fees can be imposed for subsequent continuance requests, as a deterrent to those who abuse the availability of continuances and as reimbursement for additional administrative costs. The association may adopt a reasonable fee that can be charged for a continuance, except that each party may have one continuance at no charge. A late notice representation by counsel resulting in a continuance will subject the person giving notice to a continuance fee even if it is the only continuance given to the party.

In determining which party is assessed the fee, the association must look to the party who causes the necessity for the continuance. For example, if the complainant, prior to or at the hearing, amends his complaint and the respondent needs adequate time to prepare, the complainant should be assessed the continuance fee. Or, if a party fails to exchange evidence prior to the hearing and the opposing party needs time to prepare, the continuance fee should be charged to the party who failed to exchange the evidence.

All requests for continuances must be in writing and accompanied by the continuance fee, if appropriate. If the continuance is not granted, the fee will be returned to the party.

4. Withdrawal of an Association Disciplinary Complaint

If after the Grievance Committee has recommended that a hearing be arranged, but before the hearing Panel is convened, a complainant wishes to withdraw the complaint, the Association Executive shall promptly refer the complaint and response back to the Grievance Committee for a determination whether a potential violation of the public trust, as defined, may have occurred. Only where the Grievance Committee determines a potential violation of the public trust may have occurred may the Grievance Committee proceed as the complainant.

“Public trust” is defined as a demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud.

After a hearing begins, a complaint can be withdrawn only with the hearing Panel's approval. In such event, the hearing Panel may:

- refer the complaint and response to the Grievance Committee to consider whether the Grievance Committee should file a complaint (NOTE: in this case the Grievance Committee is not limited to only those instances where a potential violation of public trust is present, they may go forward on any complaint they think appropriate);
- refuse to allow the complaint to be withdrawn and proceed with the hearing in which case the burden of proof will be difficult unless the complainant is willing to be a witness; or
- allow the complaint to be withdrawn with no further action, which would not be a decision on the merits of the case. Presumably, a complaint could be brought again if the complainant changes his or her mind and re-files the complaint within the time limitation.

In general, it is recommended that the complaint be referred back to the Grievance Committee in order to avoid the problems that arise with the other two options as discussed.

5. Amendment of an Association Disciplinary Complaint

A complaint may be amended after the Grievance Committee's initial determination. If, prior to convening the hearing, the complainant wishes to amend the complaint by adding or deleting an Article of the Code of Ethics or alleging an additional violation of a membership duty, the written amended complaint is sent to the Grievance Committee for review and analysis. If the Grievance Committee

approves the amended complaint it supersedes the original complaint and is sent to the Association Executive for notice and hearing following normal procedures. If the Grievance Committee does not approve the amended complaint, the hearing will go forward on the original complaint unless the complainant withdraws it. Complaints cannot be amended to add, or substitute, other individuals as complainants except as mutually agreed to by the parties.

Once the hearing is convened, but before it is adjourned, the complaint can be amended by either the hearing Panel itself or the complainant with the consent of the hearing Panel. Generally, the only reason to amend a complaint at the hearing is to add articles or sections allegedly violated. This is usually done to conform the complaint to the evidence presented. If the amendment is granted, it must be filed in writing. The complaint may not be amended after the hearing is adjourned, as this would deprive the respondent of the due process right to defend against the charge,

If the complaint is amended, the respondent has an opportunity for a continuance to adequately prepare a defense to the new allegations. If the respondent waives a continuance, the waiver should be in writing.

If a continuance is granted, the respondent may request the hearing be held with the same or a different Panel, and the hearing must be set at least fifteen (15) calendar days but not more than thirty (30) calendar days in the future, unless the parties agree otherwise. It is best to set the date during the original hearing so that all involved are aware of the date. It is good practice for the Association Executive to send notice of the new hearing date to all parties and Panel members as a confirmation.

Like the Grievance Committee, the hearing Panel also has the discretion to join together complaints involving the same parties or arising out of the same set of facts and circumstances. This would normally be at the request of one of the parties, but the Panel has the power to do so on its own if appropriate. An example might be if during the hearing, the Panel is informed there are other complaints involving the same advertising. The Panel could decide to join all the cases together and make one decision regarding the advertisement.

6. Selecting the Hearing Panel

Concurrently when the complaint is sent to the respondent, the Association Executive is required to send to both the complainant and respondent a list of names of those on the Professional Standards Committee who will serve on the hearing Panel and a form on which parties can submit challenges to any potential hearing Panel members "for cause." “For cause” does not mean that the parties are free to challenge for any reason. It means that there are facts and circumstances that demonstrate the likelihood that the Panel member may be biased or partial in the matter and will be unable to render an impartial decision. For example, the potential Panel member may be a close personal friend of one of the named parties or may be a recent past business partner.

It is recommended that challenges be accepted whenever they are made known unless the Association feels certain they are being used strictly as a delay tactic. This avoids the appearance of impropriety and serves to prevent problems that may arise later. However, if the association is certain that the challenges are being used to delay the process, or if a party attempts to challenge the entire list of available Panel members, the Professional Standards Chairperson may deny the requests for challenge. Often, a party will challenge a Panel member but give an insufficient reason for the challenge, such as “political differences” or “past problems.” In such cases, the association is free to require the party to provide a more detailed reason or deny the request.

Many of the controversies surrounding challenges are eliminated by using multi-association professional standards committees. It is more difficult to use the challenge process as a "tactic" when the number of committee members is three or four times greater than just the association’s committee and there are members on the committee from other associations.

Each party has fifteen (15) days to make challenges and return the completed forms to the association. The Professional Standards Committee Chairperson and the Association Executive usually work together to select the hearing Panel from the names not stricken for cause or automatically disqualified.

Ultimately, the responsibility rests upon the hearing Panel members to disqualify them whenever it is appropriate to avoid any appearance of impropriety and doubts about the neutrality of the hearing Panel. This is true even if the Panel member is not challenged by either party.

Hearing Panels should have an odd number of members to avoid the possibility of a tie vote and the hearing Panel must consist of at least three (3) members. C.A.R. recommends that the hearing Panel is kept to a maximum of three because larger hearing Panels can make decision making and the scheduling process cumbersome.

Associations may find it beneficial to name an alternate hearing Panel member in the event that a selected hearing Panel member is unable to attend the hearing as the use of an alternate can avoid the need for a continuance. Like an alternate juror, the alternate Panel member attends the hearing so he or she may serve at a moment's notice. However, unless actually called upon to serve, the alternate does not participate in or observe the deliberations.

The alternate should be selected from the list of Panel members not challenged by the parties. If this is done, the parties may not object later at the use of the alternate as a hearing Panel member. If there is no alternate who has sat through the entire hearing and the hearing Panel only consisted of three members, the hearing must be postponed and a new hearing set unless all parties agree to go forward with only two hearing Panel members pursuant to Section 19(g) of the *Manual*.

If any party is a salesperson, at least one (1) hearing Panel member must be a salesperson. For purposes of hearing Panel selection, a salesperson is defined by office function, not license status. Therefore, if one party is functioning as a salesperson in an office, at least one of the hearing Panel members must be a licensed salesperson or broker associate. This does not mean that the remaining hearing Panel members must be principal brokers.

If the Association requires that the hearing Panel consist of a majority of brokers, the Association should determine who qualifies as a broker by looking at the license status of the individuals. Therefore, this requirement may be satisfied by a hearing Panel member who has a broker's license even if his or her office function is that of a salesperson. Other than the requirement of salesperson representation in the case of a salesperson complainant or respondent, the make-up of the hearing Panel is at the discretion of the Professional Standards Committee Chairperson. The primary reason for the salesperson requirement is to insure equal representation (similar to a jury of your peers).

The Professional Standards Committee Chairperson shall designate one of the hearing Panel members as the Presiding Officer who conducts the hearing. The Presiding Officer also maintains the proper decorum in the hearing and establishes hearing procedures consistent with the *Manual*. The person selected as Presiding Officer should have previous experience as a hearing Panel member.

If the Presiding Officer uses a standard format for the opening statement, the Association Executive may distribute this beforehand to the parties to ensure that they are aware of the procedures.

F. CONDUCTING THE HEARING

1. Transcript/Right to Record

The association must provide an official record of every hearing. The purpose of doing this is to create a record of the hearing procedures for any subsequent review. This requirement may be satisfied by hiring a court reporter, but, typically it is met by recording the hearing.

There are pros and cons to both methods. Recording is less costly, however, sometimes it is difficult to understand and be certain who the speaker is when listening to it. A court reporter is more expensive; however, the transcript is very easy to follow. In addition, a recording would not normally be admitted into court as evidence, but a court reporter's transcript will be. If a court reporter is used by the Association, there is no affirmative duty on the part of the Association to pay for a transcript for the parties, however, parties must be permitted to record the hearing. Any party who wants a copy may be required to pay the transcription costs as well as for a copy for the Association. If recording, the Association may want to consider giving the responsibility for operating the recorder to an alternate panelist as this will avoid burdening the hearing Panel members. It can also be helpful, when conducting virtual hearings using a videoconferencing application, to utilize the recording function that is included with the application. ~~The Association should avoid using staff to operate it as it is never recommended that staff sit in on hearings.~~

If, for some reason a recording is blank, incomplete, or so garbled that it is not understandable, the hearing panel's decision is not invalidated. The recording required by NAR policy is to assist the parties in a possible Directors' review and is for the benefit of the parties. It is not a due process right.

In the event one party to a hearing requests a copy of the recording prior to the lapse of the time period for a Directors' review, any other party to the hearing may also request a copy of the recording prior to the Directors' review, and the time limit is waived for that request.

Any transcript or recording of a hearing shall be destroyed upon final action of the Directors.

2. Interpreters and Translators

In the event a non-English speaking party in a disciplinary case requires an interpreter, or in the event a party requires an interpreter for a witness, the Association shall provide an interpreter who is a member of the Association, if there is one available who speaks the language.

Alternatively, the party requesting the interpreter can bear the cost to provide a qualified interpreter that is certified or registered and in good standing with the Judicial Council of California. The Association can provide the requesting party(ies) with a list of qualified interpreters located in the Association's county by conducting a search on the California Interpreters Program website at the following URL: https://www.courts.ca.gov/35273.htm. At the Association's option, Association staff can assist the party with contacting the interpreter and arranging for the interpreter's services.

In the event both parties speak the same non-English language and require an interpreter, or in the event both parties plan to call witnesses that speak the same non-English language and require an interpreter, the cost of the interpreter shall be split evenly between both parties. Only one neutral interpreter will be allowed in the hearing and will assist all parties with translation needs.

The party intending to utilize an interpreter shall notify the Association and all other parties at least ten (10) days prior to the date of the hearing, and in such notice shall indicate the name of the party or witness requiring an interpreter and the language which will be used by the non-English speaking party or witness, as well as any dialect of such language, if applicable.

Before the hearing begins, all parties will need to sign a "hold harmless" waiver stating that the Association will not be held liable for any actions or omissions of the interpreter.

In the event any party intends to present a written document at a disciplinary hearing that is in a language other than English, a translation by a qualified independent translator shall be presented along with the documents at least ten (10) days prior to the date of the hearing. The party must provide proof that the document was translated by a translator who is certified or registered and in good standing with the Judicial Council of California.

3. Right to Counsel/Other Representation

Every party has the right to legal counsel at any hearing. This is one of the most fundamental aspects of due process. We can enforce the rule that a party must provide notice of legal representation within a certain time frame by requiring that a party pay a continuance fee if necessary for not complying with the rule. However, the Association may not prohibit a party from having legal representation even if the notice requirement is not followed. The *Manual* requires that notice be given to the Association and all parties of the intention to have counsel using the specified form. Prudence dictates that the Association Executive should independently notify all parties as well to ensure that there is actual knowledge.

N.A.R. policy also allows for non-legal representation by a REALTOR® in ethics proceedings. If a party chooses to be represented by a REALTOR®, the same notice requirements for legal representation apply.

If the Association has adopted the Ethics Advocate Policy, that REALTOR® may be an Ethics Advocate ("EA"). ~~A sub-committee of the Professional Standards Committee~~ Professional Standards volunteers will be specially trained to assist and represent parties as EAs during the disciplinary process. The role of legal counsel or EA may include preparation for hearing, including the preparation of forms and assembly of evidence; representation at the hearing, including the making of opening and closing statements on behalf of the party represented at the hearing, examining and cross examining witnesses, and introducing affidavits, documents and other relevant evidence, and representation at any review hearings, but does not include testifying as a witness.

An Association should refer to the separate tab in this *Manual* titled "Ethics Advocate & Citation Policy" to help them with the EA procedure.

4. Appropriate Role of Legal Counsel in the Hearing

A party may be represented by legal counsel and/or a REALTOR®/EA ("counsel") in any hearing. However, no party may refuse to directly respond to requests for information or questions addressed to him by the Panel members except on grounds of self-incrimination (for criminal issues only), or on other appropriate grounds.

Each party shall be held responsible for the conduct of his counsel. Efforts by counsel to harass, intimidate, coerce or confuse the Panel members, parties or witnesses, or otherwise disrupt the proceedings can be grounds to exclude counsel. The decision to exclude counsel shall be by majority vote of the Panel. If counsel is excluded, a hearing may be continued to enable the party to obtain alternate counsel, however, the continuance may not be granted if it appears to be a delay tactic. A decision by the Panel to exclude counsel should be made only after careful consideration and preferably with the advice of Association legal counsel.

A party's counsel may seek to invoke courtroom procedures and technicalities not applicable to a disciplinary hearing. The Presiding Officer of the hearing Panel can minimize this tendency by explaining the purpose and procedures at the beginning of the hearing. The following points should be covered:

a. all relevant evidence will be admitted. The Presiding Officer will broadly construe the term "relevance";

b. no attorney may confuse, coerce, intimidate or harass the parties, Panel members or witnesses;

c. the Panel need not accept the statements of counsel as being the statements of his client if the Panel desires direct testimony;

d. the Presiding Officer of the hearing Panel will rule at any time on the admissibility of evidence, and technical rules of evidence do not apply; and

e. the Panel members will ask questions which they deem pertinent and significant of any party at any time during the hearing.

5. Failure of Parties to Appear

If the complainant refuses or is unable to appear at the hearing, the complaint must be referred back to the Grievance Committee. If the Grievance Committee believes it can prove the case without the testimony of the complainant and there is otherwise sufficient information for the matter to be considered by a hearing Panel, even though the complainant cannot or will not appear, the complaint can be amended to name the Grievance Committee as complainant. The respondent is then sent a copy of the amended complaint.

Sometimes the respondent fails to appear even though he or she has been properly notified and no continuance or adjournment has been obtained. In such event, the hearing Panel may proceed with the hearing in the respondent's absence and shall reach a decision based on the available evidence. However, the hearing Panel may not find against the respondent solely because he or she did not appear at the hearing.

To protect a party's rights, a telephone call should be made to determine the reason, if any, for the failure to appear. The hearing Panel should then decide whether to grant a continuance, if requested by the party failing to appear, dismiss the case or take any other appropriate action. If the party is reached and requests a continuance, it is recommended that the Panel grant the continuance unless certain that it is being used as a delay tactic.

Sometimes a respondent will request that he be allowed to respond only in writing particularly if it is a minor violation and he admits to his wrongdoing. Under this or similar circumstances, the complainant may also agree to have a hearing based only upon the written complaint and response. If all the parties agree, this is permissible and the Panel would make its decision based only on the written evidence submitted.

Upon written request, the presiding officer of the hearing Panel may allow a party or witness to remotely testify or attend the hearing. In that case, the parties' rights and obligations are the same as if the appearance was in person. Written request for remote testimony must be submitted at least fifteen (15) days from the date of the hearing.

6. Conducting the Hearing

The Professional Standards Committee chairperson shall designate one of the hearing Panel members as the Presiding Officer. The Presiding Officer is responsible for conducting the hearing and may prescribe any procedures for the hearing not inconsistent with the rules and procedures of the Association. The person selected as Presiding Officer generally should have previous experience as a hearing Panel member.

If the Presiding Officer uses a standard format for the opening statement, the Association Executive may distribute this beforehand to the parties to ensure that they are aware of the procedures.

Once the complaint and response (if any) are submitted, the hearing is set at least 21 calendar days in advance at a time all parties can attend. The Association Executive shall notify all parties and the Panel members of the hearing date.

Disciplinary hearings are relatively informal proceedings that are not designed to follow the strict and sometimes complicated rules of evidence that would be followed in court. Although the technical rules of evidence are not applicable, the Presiding Officer of the hearing Panel is empowered to rule on the admissibility of evidence. If, for example, a party is consuming a great deal of time on a subject that has no bearing on the case, the Presiding Officer of the hearing Panel may caution the party and eventually even disallow further submission of the evidence. Unless a party can show that evidence has a direct bearing and is linked to the facts of the case at hand, the evidence may be refused. However, the Presiding Officer of the hearing Panel should be extremely careful in rejecting evidence. Failure to accept relevant evidence is grounds for challenging a decision. If in doubt, the Presiding Officer of the hearing Panel is well advised to accept the evidence, and determine its value and credibility during deliberations. If a party has an attorney that consistently objects on technical rules of evidence, the Presiding Officer of the hearing Panel may wish to refer the party and his counsel to the Outline of Procedure.

On a rare occasion, the hearing may last longer than one day. If this happens, the hearing should be adjourned at the end of the day and reconvened as soon as possible, preferably the next day.
All Panel members should maintain a calm, objective and judicial atmosphere. The Panel members are not judge nor jury, but rather peers seeking all relevant information to render a decision based on the facts. Panel members should avoid being flip, frivolous, sarcastic or judgmental in their words or gestures. They should attempt to be professional in their approach, and they should carefully avoid any reflection of partisanship in their questioning or observations. For example, Panel members should avoid using leading questions of witnesses. They should not preach or teach, but should let their findings and recommendations serve to educate the parties.

Panel members should take special care to treat all parties in the same manner. For example, if one party is addressed by his first name, all parties should be addressed in that manner. This avoids giving the impression that the Panel members have different relationships with each party. <u>This is a particularly sensitive issue when the complainant is a member of the public.</u>

Whenever the Panel is concerned about a procedural matter, the Panel should feel free to call a recess to the hearing for a few minutes and consult legal counsel advising the Association. Getting legal advice before taking an action may prevent a lot of problems from occurring.

7. Due Process Required

A lack of due process may cause a decision to be invalidated. Therefore, a party to a hearing has the right to:

- adequate notice of a complaint and response;
- time to prepare a defense;
- representation by legal counsel;
- challenge of potential Panel members;
- necessary continuances for good cause;
- testify on his own behalf, call and cross-examine witnesses;
- notification of the decision rendered.

Due process does not, however, include an automatic right to a transcript of the proceeding. If a party wishes a transcript, he may pay for a copy of the Association's official record of the hearing or, at his own

expense, have a court reporter present. In this event, the party shall pay the court reporter and provide a copy of the transcript, at the party's expense, to the Association. Due process does not require recording of a hearing; N.A.R. policy, however, requires recording of a hearing as a service to the parties, not for legal reasons.

8. Witnesses

The *Manual* provides that the hearing Panel may summon its own witnesses; however, it is not recommended that the Panel actually exercise this power. The parties have a responsibility to present and prove their own case, and the hearing Panel should remain neutral. If, under those rare circumstances, a hearing Panel finds it necessary to bring in witnesses, legal counsel should first be consulted.

9. Decision of the Hearing Panel

When the hearing Panel has considered all written evidence and oral testimony, they should end the hearing and go into deliberations. After deliberating, the hearing Panel makes a decision by majority vote. Each Panel member has the right and obligation to fully participate in the deliberations and decision-making process.

The presence of Association legal counsel during deliberation(s) is a matter of local Association discretion. If the Association attorney does sit in on the deliberations, he or she should not participate in any discussion and should advise only on procedural, not substantive, issues.

In the deliberation process, the hearing Panel reviews the evidence presented by the parties and makes conclusions regarding the relevant facts of the matter. If conflicting evidence or testimony was presented regarding an alleged fact, the hearing Panel must weigh the credibility of the evidence or witnesses and determine the fact. If the hearing Panel is unable to determine a fact based on the evidence and testimony presented (or lack thereof), the hearing Panel must then assume the fact was not proved.

Once the relevant facts are determined by the hearing Panel, it decides whether or not those facts clearly demonstrate a violation(s) of a membership or MLS duty. For example, if it is found that the respondent failed to advertise his or her licensee or REALTOR® status, this is a violation of Article 12.

Regardless if the facts support a violation, the hearing Panel should determine the facts relevant to the case. This constitutes a "Findings of Fact." Findings of Fact should be carefully and clearly drafted so that anyone reading them will fully understand what facts constitute the matter. If the hearing Panel feels the Findings of Fact support a violation of alleged in the complaint, the Findings of Fact should also clearly state this as well.

If the hearing Panel determined a violation occurred, the hearing Panel should review the member's file for past violations. Review of the member's file is not relevant or appropriate for determining violations, only for recommending appropriate discipline. Upon review for any past violations, the hearing Panel would then make any recommendations for discipline.

The hearing Panel should be given a copy of the Sanctioning Guidelines in the appendix of the *Manual* to help them determine and recommend appropriate discipline.

10. Presentation of Evidence

The Code of Ethics and Association bylaws require members, if so requested, to appear and testify in a disciplinary hearing (see Article 14 of the Code of Ethics and the *California Code of Ethics and Arbitration Manual*). Subpoena powers are not available in disciplinary hearings. For the most part, non-members can be invited but not compelled to appear and testify.

All parties who appear (in-person and remotely) at a hearing are required to answer questions by the Panel and to submit to cross-examination by any other party.

The absence of certain witnesses (usually sellers or buyers) who are unwilling to appear imposes some limitation in ascertaining all pertinent facts. However, the hearing Panel should make use of all facts that can be ascertained. For example, a party may only have a written declaration from a witness. This should be accepted by the Panel, however, are not to be given as much weight as the testimony of a witness who is at the hearing. This is based on the Panel's inability to observe the witness making the statement and the fact that the other party is unable to cross examine the witness.

Witnesses should only be present when testifying and should not be allowed to listen to or be present for any other testimony. Parties, of course, are present during the entire proceeding even if they are also witnesses. Often, someone who is not a named party will request to be allowed to remain in the hearing. This is not permitted unless the person is representing a party who is not there (and there is written confirmation of this from the party) or the complaint is amended to make this person a party. If such amendment is made, a continuance should be granted if requested.

Parties should be encouraged to exchange evidence, including names of witnesses, prior to the hearing to avoid a continuance based on necessity to adequately prepare a case as subpoenas are not provided.

The Presiding Officer should set up procedures for the presentation of evidence in an orderly fashion. Generally, the hearing proceeds as follows:

a. COMPLAINANT'S OPENING STATEMENT - A brief summary of what the complainant intends to prove.

b. RESPONDENT'S OPENING STATEMENT - A brief summary of the respondent's side of the story and what he intends to offer as a defense. The respondent is not required to make an opening statement at this point and may defer it until after the complainant has presented his case (Step f).

c. COMPLAINANT'S PRESENTATION OF EVIDENCE - Witnesses and documentary evidence are presented by complainant.

d. CROSS-EXAMINATION OF COMPLAINANT'S WITNESSES - respondent has the opportunity to question each witness after the testimony. The complainant will probably be a witness for himself and be subject to cross-examination.

e. QUESTIONING BY PANEL MEMBERS - After the respondent has cross-examined a witness, the Panel members may question the witness if further clarification is needed. The Panel members should not engage in extensive cross-examination and "make the case" for either party. Questioning by Panel members is particularly useful to put the witnesses at ease in testifying and to clarify or focus the issues.

f. RESPONDENT'S OPENING STATEMENT - If the respondent has not yet made his opening statement, he presents a brief summary of his side of his story and his defense.

g. RESPONDENT'S PRESENTATION OF EVIDENCE - Witnesses and documentary evidence are presented by respondent.

h. CROSS-EXAMINATION OF RESPONDENT'S WITNESSES - complainant has the opportunity to question each witness after the testimony. The respondent will probably be a witness for himself and be subject to cross-examination.

i. QUESTIONING BY PANEL MEMBERS - After the complainant has cross-examined a witness, the Panel members may question the witness if further clarification is needed. The Panel members should not engage in extensive cross-examination and "make the case" for either party. Questioning by Panel members is particularly useful to put the witnesses at ease in testifying and to clarify or focus the issues.

j. CLOSING STATEMENTS - Each party, first the complainant, then the respondent, summarizes what he has proven and tells the Panel members why he should prevail.

The Presiding Officer should make any necessary concluding remarks which include:

- informing the parties of the remaining procedure;
- telling the parties when they will get a determination; and
- asking the parties if they have anything else to tell the Panel members.

The hearing is then concluded, the parties are excused and the Panel members deliberate.

11. Disciplinary Recommendations

Discipline may only consist of one or more of the following:

a. Letter of Warning in the member's/participant's file for a specified time period lasting at least three (3) years.

b. Letter of Reprimand in the member's/participant's file for a specified time period lasting at least three (3) years.

c. Fine commensurate with the gravity of the determined violation not to exceed $15,000 for violation of the Code of Ethics and for violation of an MLS Rule (alternative discipline must also be imposed). Failure to pay the fine or resignation from the association without paying the fine results in immediate suspension of membership.

d. Attendance at an ethics training course or other appropriate educational course (alternative discipline must also be imposed). Failure to attend and complete the training or resignation from the association without fulfilling the education requirement results in immediate suspension of membership.

e. Requirement that respondent “cease or refrain” from continued conduct deemed to be in violation of the Code of Ethics and/or MLS Rules, or take affirmative steps to ensure compliance with the Code of Ethics and/or MLS Rules, within a time period to be determined by the hearing panel. The decision should also include additional discipline (e.g. suspension) that will be imposed for failure to comply by the date specified, and to continue to comply for a specified period not to exceed three (3) years from the date of required compliance.

f. Suspension of Association membership and services/MLS services for a stated period of time not less than 30 calendar days nor more than one year with an automatic right of reinstatement without paying the Association initiation fees or attending the orientation program. The obligation to pay Association dues is not suspended.

g. Expulsion of Association membership and services/MLS services for a stated time period of 1-3 years with reinstatement only by application for membership after the specified time. The application will be considered on its merits and processed as if the individual were a new member, including payment of initiation fees and attendance at the Association orientation.

If the findings are that a party violated both a membership and an MLS duty, the discipline for all the violations is limited to that stated in the *Manual*.

More than one type of discipline is permitted, per party, per hearing. The hearing Panel may recommend and the Directors may impose one or more of the possible disciplinary actions as determined by the gravity of the offense.

The hearing Panel may only **recommend** discipline. It is up to the Directors to actually impose the discipline. The hearing Panel may recommend and the Board of Directors may impose any combination of disciplinary actions they feel appropriate to the violation. Therefore, it is crucial that the hearing Panel

craft their findings of fact so that the Directors will have enough information to make their final decision whether or not the decision is reviewed. The hearing Panel should refer to the Findings of Fact background paper and N.A.R. Sanctioning Guidelines contained in the Appendix to this *Manual* to help them with their decision.

If the discipline imposed for violation of the Code of Ethics is payment of a fine or attendance and completion of education, the respondent's failure to complete the discipline in the time ordered shall automatically result in the respondent's suspension of membership until the discipline is fulfilled. Resignation by the respondent prior to fulfilling the discipline shall also result in the respondent's immediate suspension of membership.

All proceedings, including the allegations, findings, recommendations and decisions in disciplinary proceedings shall be submitted to C.A.R. through a secure repository maintained by C.A.R. in accordance with Section 17 of the *Manual*, in addition to the local Directors, complainant, respondent, legal counsel and the Association Executive.

After a decision is final, Association members and C.A.R. must be notified and the DRE is automatically notified of suspension or expulsion of the disciplined member unless the decision provides otherwise. In addition, the DRE must be notified of any violation that is a breach of public trust.

G. POST HEARING PROCEDURES

1. Distributing the Decision

Once the hearing Panel has completed the findings of fact and its recommendations for discipline, they are given to the Association Executive. The Association Executive should review their decision to make sure it is consistent with the rules and procedures of the *Manual* (i.e. does not contain discipline not authorized, i.e. write apology letter, or that there is alternative discipline as appropriate). The Association Executive then sends the decision to the parties with the Notice of Review rights to the parties. The decision should be sent within a reasonable period of time after the hearing date. The Association Executive should date stamp the decision to reflect the date it is sent and should also mark that date off on the disciplinary processing checklist.

If, because it is Association policy or because of the severity of the recommended discipline, the decision is reviewed by Association legal counsel, the review takes place prior to notifying the parties of the decision. The Association Executive is considered to receive the decision after review by Association legal counsel. Association legal counsel should be encouraged to promptly review disciplinary findings and recommendations to avoid unreasonable delays.

Once the decision is sent, the parties can request a review or accept the decision as rendered. The findings and recommendations of the hearing Panel are only that--recommendations, and are not final until the Directors take final action on them.

2. Review by Directors

After the disciplinary hearing has been held and the decision rendered, either the complainant or the respondent may request that the decision be reviewed by the Directors or appointed review Panel.

Such a request must be filed within twenty (20) calendar days after transmission of the hearing Panel's recommendation to parties. The party requesting the review must file the Request for Review, which states specifically the bases for review and the supporting information.

A review can be based on:

- the misapplication or misinterpretation of membership or MLS duty;

- procedural deficiency or lack of due process; or
- unwarranted discipline recommended by the hearing Panel.

The Directors, when reviewing a decision, is a Panel as defined in the *Manual*. This means that they are subject to automatic disqualification rules and may be challenged by the parties.

The Panel members will only consider the information provided by:

- a transcript (if any) of the hearing, or a verbal summary by the Presiding Officer (or his designated representative);
- pertinent portions of a recording (if any) of the hearing;
- the request for review;
- the reply to that request (if any); and
- the findings of fact and recommendations of the hearing Panel.

The review Panel shall not re-hear all the facts or determine guilt or innocence, and shall only consider those issues raised by the parties in the Request for Review and reply to that request. No new evidence regarding the merits of the case is permitted (see Appendix B for Review Procedures and Presiding Officer's Statement). The parties have the right to be present at the review hearing with legal counsel if they choose and present their reasons for or against the recommendations of the hearing Panel. Such evidence is limited to the issue being reviewed. The facts of the case are to be presented through a verbal summary of the Presiding Officer or a transcript (if any). For example, if the party filing the request for review is of the opinion the hearing Panel misinterpreted a particular article of the Code of Ethics, the proper evidence would be evidence of the Standards of Practice and Case Interpretations provided as guidance. The facts giving rise to the violation itself are not relevant to the Panel's misinterpretation or misapplication of an article except to show that the facts are dissimilar to those intended to be covered by the article as demonstrated by the standards of practice and case interpretations.

If the hearing was recorded, under the procedures of the *Manual*, a party may play parts of the recording to illustrate the issues on appeal. HOWEVER, the recording should not be played in its entirety as a substitute for the transcript or the Presiding Officer's summary. The Directors should require that the party only play the relevant parts of the recording. Because of the many inherent problems with playing the recording, such as the difficulty of understanding the speakers and determining who the speakers are, the Directors must be very careful to only allow playing of the recording to supplement the party's position, and NOT to allow it to be used to reopen the substantive issues of the case.

Once the testimony is presented to the review Panel, the parties and their attorneys are dismissed and the review Panel decides what course of action to take.

The Directors, by a vote of the majority after deliberations, may:

- adopt the recommendation of the hearing Panel, including the recommended discipline;
- dismiss the case if they conclude the findings of fact do not support the recommendation;
- refer the decision back to the Professional Standards Committee for a new hearing with the same or different hearing Panel as appropriate. A different hearing Panel is preferable if the Directors are concerned with a possible procedural deficiency; or
- modify any portion of the recommendation, including the discipline. The Directors should not modify the discipline so that it is greater than that recommended by the hearing Panel. The Directors should only reduce it if necessary to protect the Association from liability for imposing excessive discipline, NOT substitute their judgment for that of the hearing Panel.

3. Action of the Directors if there is no Request for Review

The Directors, when taking final action on a disciplinary matter when there is no request for review, is a Panel as defined in the *Manual*. Even when no request for review has been filed, the Directors receive copies of the decision when taking final action on a disciplinary matter. The Directors must adopt the hearing Panel's decision unless it is deficient on its face. If the discipline is obviously excessive, or there is a clear lack of due process, the Directors may refer the decision back to the hearing Panel for appropriate action. For example, if a new member is expelled for failure to advertise his or her REALTOR® status, the discipline would be considered excessive and the decision referred back for more appropriate discipline. This exception is a limited one, the purpose of which is to protect the Association from potential liability. The parties still have the burden of requesting a review of any recommendation they feel is incorrect.

The Directors can choose to decrease the level of discipline recommended by the hearing panel. If the Directors feel that the decision must be modified to increase the level of discipline, it should be sent back to the hearing Panel with instructions on what changes they feel should be made. The Directors should not make the changes themselves to increase the level of discipline unless the hearing Panel refuses and the Association would be subject to liability if the changes aren't made.

Upon final action by the Directors, the Association Executive shall notify the complainant, respondent, Professional Standards Chairperson and the hearing Panel.

4. Publishing the Names of Ethics Violators

Except as provided herein, if a member is found in violation of the Code of Ethics, C.A.R. shall publish the following information regarding the violation(s): (1) name and photo of the member found in violation (but not the name of the firm the member is, or was, affiliated with); (2) if the responsible broker is also found in violation, the name of the responsible broker will also be published; (3) if a member's name is similar to another member's or MLS Participant's name, the member's real estate license number and/or office address may also be included; (4) the Article(s) of the Code of Ethics violated, (5) a brief factual synopsis of the matter with names redacted (except for the respondents found in violation); (6) discipline imposed; and (7) the effective date and duration of the discipline, if applicable; and (8) rationale in mitigation or aggravation for the discipline, if applicable. This information will be published on one or more of any authorized C.A.R. communications vehicles, such as the C.A.R. website or magazine. The information will be removed from the C.A.R. website three (3) years after initial publication. All discipline will be published except warnings, desist and refrain orders, or education that does not include a fine, letter of reprimand, suspension or expulsion. However, if a suspension is imposed because the member does not comply with the education requirement or the desist and refrain order, the discipline will be published when the suspension is imposed. Citations under the Ethics Citation or MLS Citation systems will not be published by C.A.R.

If a member is disciplined in a manner that requires C.A.R. publication, the member must provide to C.A.R. and authorize C.A.R. to publish a current, accurate photo at least the size and quality of a passport photo within ten (10) calendar days after final adoption of the discipline by the Directors. The photo must be submitted to C.A.R. in accordance with the instructions on the Submission of Photos for Discipline Publication form (Form D-24). If the member fails to provide the photo by the deadline, the member will automatically be suspended from membership until the photo is provided. Such suspension will be reported to C.A.R. and will result in statewide review. If the member resigns prior to submitting the photo and Form D-24, the discipline summary will still be published, and the member will be immediately suspended, with such suspension subject to statewide review. C.A.R. will publish discipline summaries without a member's photo if the photo has not been received by C.A.R. prior to C.A.R.'s publication deadline, and C.A.R. will include a note with the discipline summary stating that the member was suspended for refusal to provide a photo.

N.A.R. policy allows local associations to adopt a policy to publish the names of ethics violators under certain circumstances. The C.A.R. *Manual* incorporates these procedures under Section 17. However, in order for an association to use the procedures, the association's Board of Directors must first adopt a resolution to publish names pursuant to these procedures.

The local association may adopt a policy to publish discipline that uses the same criteria as C.A.R.'s publication policy, as described above. In addition to or instead of the C.A.R. policy, the local association may adopt a policy to publish discipline when a member is found in violation of the Code of Ethics a second time within a (3) year time period. Any discipline published by a local Association shall include the member's name, the fact that the member has been found in violation of the Code of Ethics, the Article(s) violated, and the discipline imposed. Published discipline shall not include the name of the firm the member is, or was, licensed or affiliated with. In cases where the member's name is similar to another Association member's or MLS Participant's or Subscriber's name, the member's real estate license number or office address (or both) may also be published.

Please see Sections 17 and 39 of the *Manual* for more details.

5. Reporting "Public Trust" Violations to the DRE

It is Association's obligation to refer final ethics decisions holding members in violation of the Code of Ethics to the California Department of Real Estate in instances where there is reason to believe that the "public trust" may have been violated. "Public trust" as used in this context refers to demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud.

To meet this obligation, the association's Board of Directors should review the disciplinary matter and make a determination that the "public trust" may have been violated. After making this finding, the findings of fact can then be forwarded to the DRE.

This obligation only exists for those violations that involve misappropriation of client or customer funds or property, willful discrimination or fraud resulting in substantial economic harm. This is a high standard and only serious violations should be forwarded to the DRE. The Board of Directors will have to determine on a case by case approach as to what violations meet this threshold. However, the Association must disseminate the decision to any governmental agency, as directed by the Board of Directors, after approval by Association legal counsel.

6. Reporting Suspensions and Expulsions to C.A.R.

When a respondent is a member of more than one local association of REALTORS® in California, a final ethics decision by an Association holding a member in violation of the Code of Ethics and imposing a discipline of suspension or expulsion from membership shall be forwarded to the California Association of REALTORS® (C.A.R.), for consideration by a panel of C.A.R. directors to determine whether the same discipline should be imposed statewide by the other associations in which the respondent holds membership. The discipline at the local Association shall be stayed until the C.A.R. hearing is concluded. The respondent may submit a written statement to show cause as to why the discipline should not be imposed statewide. The panel of directors may only determine whether or not to impose the same discipline statewide, which discipline would run concurrently with the suspension or expulsion imposed by the local association. In making its determination, the panel shall consider only whether the type and nature of the violation, coupled with the form of original discipline justifies imposition of the same discipline on a statewide basis. The decision made by the directors at such hearing does not disturb the findings or recommended discipline of the local Association who initially imposed the discipline, but only determines whether or not there is statewide imposition of the same discipline. A decision to impose the suspension or expulsion shall be disseminated to all associations in California.

7. Declaratory Relief

In most instances, the respondent accepts the imposed discipline. However, when the respondent disagrees with the decision in such matters, he may initiate litigation against the Association, its officers, Directors and committees. This possibility should not intimidate nor deter the proper exercise of the Association's responsibility. However, the Association should exercise diligence to minimize its exposure.

8. Record Retention

Once the decision is final with the association, the case file, including the decision, recommended discipline and all documents and correspondence regarding the matter, should be retained by the association in accordance with its record retention policy. C.A.R. recommends that disciplinary records be maintained for seven (7) years after the decision is final. However, any recordings of the hearing should be destroyed.

Sometimes, a disciplinary matter is filed with the association and during processing one or more of the named respondents resigns from membership. Under NAR policy, the association is required to suspend processing of the matter with respect to the resigned member and hold the matter in abeyance or refer the matter to another association where the resigned member may hold membership, assuming this is known. In situations where the matter cannot be referred to another association, a decision needs to be made to decide how long to retain the records of the matter held in abeyance. For example, it may be beneficial to hold the records indefinitely in case the resigned member later attempts to rejoin the association or MLS. This way, the association can require the member to complete the pending matter as a condition to receiving membership. However, it may be that the person will never rejoin the association. Therefore, the association may want to adopt a time frame for pending matters.



CALIFORNIA ASSOCIATION OF REALTORS®

DISCIPLINARY FORMS
2026

Prepared by the
CALIFORNIA ASSOCIATION OF REALTORS®
Corporate Legal Department
915 L Street, #1460
Sacramento, CA 95814

DISCIPLINARY FORMS
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GRIEVANCE COMMITTEE CHECKLIST

_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs._____
Complainant(s) Respondent(s)

_____ vs._____
Complainant(s) Respondent(s)

This checklist is designed to assist the Grievance Committee when reviewing disciplinary complaints filed with the Association. While this checklist covers many issues that commonly arise when reviewing complaints, it is not meant to be exhaustive of all the factors the Grievance Committee may need to consider when reviewing a complaint. Before any Grievance Committee member participates in the review of a complaint, the Chairperson should make sure that each member is qualified to participate in the review and that each member signs Form D-7, which certifies that there is no reason for his or her disqualification.

Note: The function of the Grievance Committee is to make a preliminary review and evaluation of the complaint to determine whether the complaint warrants a hearing for further consideration by the Professional Standards Committee. The Grievance Committee does not conduct outside investigations or hearings nor does it determine guilt or innocence. Instead, the Grievance Committee assumes the facts stated are true and screens out any complaints that are frivolous or that otherwise fail to support an alleged violation of an association and/or MLS duty.

Check List of Major Considerations

- ☐ Are the persons named in the complaint members of the Association and/or participants/subscribers of the Association's MLS? The Association does not have jurisdiction to process complaints against nonmembers.
- ☐ Is the complaint in proper form? Is it submitted on Form D-1? Does it include an exhibit which describes in sufficient detail the conduct that occurred and how that conduct violated the cited association and/or MLS duties? If not, the complaint should be returned to the complainant(s) with directions to resubmit it accordingly.
- ☐ Assuming the facts alleged are true, does the conduct violate the Code of Ethics, MLS rule(s), and or membership duties cited by the complainant? If not, the complaint should be dismissed. If so, the complaint should be forwarded for hearing before the Professional Standards Committee.
- ☐ Should any Articles, MLS rules, or membership duties be DELETED?
- ☐ Should any Articles, MLS rules, or membership duties be ADDED?
- ☐ Should additional respondents be named? Should the designated REALTOR® or the MLS participant be named, if not already? Note: If the Grievance Committee adds additional respondents and the complainant does not agree the Grievance Committee will have to join as a co-complainant and proceed against such respondents.
- ☐ Should any respondents be dismissed from the complaint?
- ☐ Are there any other complaints involving the same set of facts and circumstances with the Association? If so, should this complaint be combined with the other complaints?
- ☐ Does this complaint qualify for a Citation?

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GRIEVANCE COMMITTEE REPORT

_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs._____
Complainant(s) Respondent(s)

_____ vs._____
Complainant(s) Respondent(s)

The Grievance Committee met and considered the above-referenced matter on _____.
(insert date)

- ☐ The complaint was filed by the complainants named above.
- ☐ The complaint was initiated and filed by the Grievance Committee.
- ☐ The Board of Directors instructed the Grievance Committee to investigate the matter.
- ☐ The complaint was referred back to the Grievance Committee after being withdrawn by the complainant.

Disposition of Complaint

Upon review, the decision of the Grievance Committee is to:

- ☐ Refer the complaint as filed for a hearing before the Professional Standards Committee.
- ☐ Refer for the complaint for a hearing with the following amendments:
- ☐ Add Article(s): _____ MLS rule(s): _____ Membership Duty: _____

  NOTE: Grievance Committee must attach a description of the facts upon which any additional Code of Ethics Article, MLS Rule, or Membership Duty allegations are based.
- ☐ Delete Article(s): _____ MLS rules(s):_____ Membership Duty: _____
- ☐ ADD the following respondent(s): _____
- ☐ DELETE the following respondent(s): _____
- ☐ Dismiss the complaint.
- ☐ Refer the complaint for mediation and/or arbitration.

_____, Presiding Officer
Signature

_____
Type or Print Name

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NOTICE OF AVAILABILITY OF REVIEW OF GRIEVANCE COMMITTEE DECISION

_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs._____
Complainant(s) Respondent(s)

_____ vs._____
Complainant(s) Respondent(s)

You have the right to request a review of the Grievance Committee's decision by the Association's Board of Directors, or an appointed review Panel, if the Grievance Committee decided:

1) To dismiss the complaint;

2) To delete an alleged violation of an Article, MLS rule, or membership duty from the complaint; or

3) To delete a respondent from the complaint.

If you wish to exercise this right, you must file your request in writing with the Association within ten (10) calendar days from the date indicated below. Attached is Form G-4 for this purpose.

Please note that in considering a request for review of the Grievance Committee's decision, the Board of Directors or appointed review Panel, will consider the documentation submitted with the complaint to the Grievance Committee, along with any additional statement you may wish to submit that explains why you disagree with the Grievance Committee's decision. Also, no hearing will be scheduled for this limited review and you do not have the right to be present at the review.

Any decision by the Board of Directors to affirm to the Grievance Committee's decision shall be considered final.

Date:_____

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REQUEST FOR REVIEW OF
GRIEVANCE COMMITTEE'S DECISION

_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs._____
Complainant(s) Respondent(s)

_____ vs._____
Complainant(s) Respondent(s)

To the Board of Directors or appointed review Panel:

1. In the above referenced matter, the Grievance Committee decided to:

   ☐ Dismiss the complaint

   ☐ Delete Article(s) _____ of the Code of Ethics and/or Section(s) _____ of the MLS Rules and/or other membership duty (specify): _____
   _____

   ☐ Delete the following respondent(s) from the complaint:_____

2. I (we) feel the Grievance Committee erred in its decision as specified above. Accordingly, I request a review of the Grievance Committee's decision.

3. I understand that the Board of Directors or appointed review Panel will base their decision only on the documentation I submitted to the Grievance Committee with my complaint and any additional written statement I may wish to submit, explaining why I disagree with the Grievance Committee's decision. I also understand that I do not have the right to be present during the review. I further understand that a decision by the Board of Directors or review Panel to affirm the decision of the Grievance Committee is final.

Dated: _____ at _____, California.

_____	_____
Signature	Signature
_____	_____
Name (Type or Print)	Name (Type or Print)
_____	_____
Street Address	Street Address
_____	_____
City, State, Zip	City, State, Zip
_____	_____
Phone	Phone

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GRIEVANCE COMMITTEE'S DECISION

_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs._____
Complainant(s) Respondent(s)

_____ vs._____
Complainant(s) Respondent(s)

In response to a request by one or more of the complainants, the decision of the Grievance Committee in the above referenced disciplinary matter was considered by the Board of Directors or appointed review Panel on _____, 20____. Upon consideration:

☐ The decision of the Grievance Committee to dismiss the complaint is:

☐ Affirmed.

☐ Overturned. The complaint is forwarded for hearing.

☐ Overturned. The complaint is forwarded for hearing, except that the following shall be deleted:

Articles _____ of the Code of Ethics;
Sections _____ of the MLS rules; and/or
other membership duty: _____

☐ The decision of the Grievance Committee to delete:

Articles _____ of the Code of Ethics; and/or
Sections _____ of the MLS rules; and/or
other membership duty is (specify) _____; and/or
The following respondent:_____

☐ Affirmed. The complaint is forwarded for hearing as amended by the Grievance Committee

☐ Overturned. The complaint is forwarded for hearing.

Dated: _____

By: _____
Signature

_____, President or Presiding Officer
Type or Print Name and Title

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DISCIPLINARY COMPLAINT
_____ ASSOCIATION OF REALTORS®

For Association Use Only
Case No. _____
Complaint Received: _____, 20_____

1. I (we), the undersigned complainant(s), hereby allege that the following persons have engaged in conduct subject to disciplinary action by the Association:

RESPONDENT(S):

(1)_____
Name (Type or Print)_____

Firm _____

DRE Number _____

_____
Street Address

_____
City, State, Zip

(2)_____
Name (Type or Print)_____

Firm _____

DRE Number _____

_____
Street Address

_____
City, State, Zip

RESPONDENT(S):

(3)_____
Name of Manager (Type or Print)_____

Firm _____

DRE Number _____

_____
Street Address

_____
City, State, Zip

(4)_____
Name (Type or Print)_____

Firm _____

DRE Number _____

_____
Street Address

_____
City, State, Zip

2. The above named respondent (s) have violated the following: **(Note: You may also choose not to select any of the options below and instead allow the Grievance Committee to decide the proper allegations.)**
Code of Ethics violations:

- ☐ Article 1: REALTORS® owe a fiduciary duty to their clients.
- ☐ Article 2: REALTORS® must avoid concealment of pertinent facts.
- ☐ Article 3: REALTORS® must cooperate with other brokers.
- ☐ Article 4: REALTORS® must disclose any interest they have in a property they are buying or selling.
- ☐ Article 5: REALTORS® must disclose any contemplated interest they have in property for which they are providing professional services.
- ☐ Article 6: REALTORS® cannot accept profit on expenditures made for their client or recommendations to their client without disclosure.
- ☐ Article 7: REALTORS® must disclose and obtain consent to accept compensation from more than one party.
- ☐ Article 8: REALTORS® must keep a trust account for clients' funds.

☐ Article 9: REALTORS® must ensure that all agreements are in writing and clear.

☐ Article 10: REALTORS® must not discriminate in their business on the basis of race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity.

☐ Article 11: REALTORS® must provide competent service.

☐ Article 12: REALTORS® must be honest in their real estate communications and present a true picture in advertising.

☐ Article 13: REALTORS® must not engage in the unauthorized practice of law.

☐ Article 14: REALTORS® must cooperate in professional standards proceedings.

☐ Article 15: REALTORS® must not knowingly or recklessly make false or misleading statements about competitors.

☐ Article 16: REALTORS® must not interfere with the exclusive representation agreements of other REALTORS®.

☐ Article 17; REALTORS® must arbitrate contractual disputes and certain non-contractual disputes arising out of the real estate business.

☐ Section(s) _____ of the MLS Rules and Regulations

☐ Other membership duty as set forth in the bylaws of the Association (specify):

3. The facts and circumstances supporting the above allegation(s) are detailed in the attached statement marked "Exhibit 1," which is hereby incorporated by reference and made part of this complaint.

4. I am informed that the named respondent(s) are current REALTOR® members of the Association and/or participants/subscribers in the MLS or that the property at issue is located within the jurisdiction of this Association.

5. Date of knowledge of alleged misconduct is _____. Date of the closing or conclusion of the transaction, if applicable is _____. This complaint, meeting all filing requirements, must be filed within 180 calendar days after the alleged offense and facts relating to it could have been known by the complainant in the exercise of reasonable diligence or one hundred eighty (180) days after the conclusion of the transaction, or event, whichever is later.

6. Are the circumstances giving rise to this complaint, or the respondents in this case, involved in a civil or criminal proceeding or in any proceeding before a governmental agency?
YES_____ NO_____ If you answered yes, please attach a written statement of explanation.

7. Have you filed, or do you plan to file a similar or related complaint with another Association of REALTORS®?
YES_____ NO_____ If you answered yes, please attach a written statement of explanation.

8. I understand there will be a recording of any full disciplinary hearing. I understand that the recording is subject to the rules of confidentiality and is made solely for the purpose of a Review by the Association Board of Directors, if one is requested.

9. I will be represented by an attorney, whose name, address, telephone number, and email address are:

_____

_____

_____

10. I agree to abide by the rules and procedures used by this Association to conduct disciplinary hearings. I understand that the proceedings regarding this matter will be kept confidential and that I have an obligation to maintain and protect this confidentiality.

Under the penalties of perjury, I declare that to the best of my knowledge and belief my allegations in this complaint are true and correct.

Dated: _____ at _____, California

COMPLAINANT(S):

(1)_____
Signature

_____
Name (Type or Print)

_____
DRE Number (if applicable)

_____
Firm (if applicable)

_____
Street Address

_____
City, State, Zip

_____
Phone email

COMPLAINANT(S):

(3)_____
Signature

_____
Name (Type or Print)

_____
DRE Number (if applicable)

_____
Firm (if applicable)

_____
Street Address

_____
City, State, Zip

_____
Phone email

(2)_____
Signature

_____
Name (Type or Print)

_____
DRE Number (if applicable)

_____
Firm (if applicable)

_____
Street Address

_____
City, State, Zip

_____
Phone email

(4)_____
Signature

_____
Name (Type or Print)

_____
DRE Number (if applicable)

_____
Firm (if applicable)

_____
Street Address

_____
City, State, Zip

_____
Phone email

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NOTICE TO RESPONDENT
DISCIPLINARY HEARING

_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs._____
Complainant(s) Respondent(s)

_____ vs._____
Complainant(s) Respondent(s)

To:_____
Respondent(s)

Attached to this notice is a copy of a disciplinary complaint filed with this Association which names you as a respondent. The complaint alleges violations of the Code of Ethics, MLS rules or other membership and MLS duties. The complaint was reviewed by the Grievance Committee and referred for hearing before a panel of the Professional Standards Committee.

This matter will be processed by the Association in accordance with the rules and procedures of the Association. Please be advised that the proceedings regarding this matter must be kept confidential and that you have an obligation to maintain and protect this confidentiality. Under these rules, you have fifteen (15) calendar days from the date below in which to mail or file a written response to this complaint with the Association. Attached is a blank response Form D-3 for your use.

If you intend to file a written response, please include one (1) original and _____ copies for the other parties and the hearing Panel.

Dated: _____

_____
Signature
_____, Association Executive or Authorized Designee
Type or Print

Please mail or file response to:

_____ASSOCIATION OF REALTORS®

Attn: _____

Address _____

City, State, Zip_____

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NOTICE TO RESPONDENT
DISCIPLINARY HEARING (EA)
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs._____
Complainant(s) Respondent(s)

_____ vs._____
Complainant(s) Respondent(s)

To:_____
Respondent(s)

Attached to this notice is a copy of a disciplinary complaint filed with this Association which names you as a respondent. The complaint alleges violations of the Code of Ethics, MLS rules or other membership and MLS duties. The complaint was reviewed by the Grievance Committee and referred for hearing before a panel of the Professional Standards Committee.

If you desire assistance with completion of the Response Form (Form D-3), enclosed you will find the names of several Ethics Advocates ("EA") (Form D-23A). The EA will help you complete the disciplinary response and other required forms. In addition, at your option, the EA can represent you at any hearings that may be held in connection with this case and assist you through the hearing procedures. **There is no cost for the use of an EA.** If you wish the assistance of an EA, please complete and return:

Request for Ethics Advocate (Form D-23)
Ethics Advocate Acceptance (Form D-23A)
EA Communication Preference (Form D-23B)

Please Note: In order to use the services of an EA, you must agree to hold the Association harmless and waive any claim for liability against the Association or the EA for the conduct of the EA in assisting you. If you refuse to hold the Association harmless, no EA will be able to assist you. Additionally, if you use the services of an EA, you will still be required to attend any hearings that take place.

If you do not wish the assistance of an EA, there is no need to return Forms D-23, D-23A and D-23B.

The Complainant _____has _____ has not elected the assistance of an EA, at this time.

This matter will be processed by the Association in accordance with the rules and procedures of the Association. Please be advised that the proceedings regarding this matter must be kept confidential and that you have an obligation to maintain and protect this confidentiality. Under these rules, you have fifteen (15) calendar days from the date specified below in which to mail or file a written response to this complaint with the Association. Attached is a blank response Form D-3 for your use.

If you intend to file a written response, please include one (1) original and _____ copies for the other parties and the hearing Panel.

Dated: _____

_____
Signature
_____, Association Executive or Authorized Designee
(Type or Print)

Please mail or file response to:
ASSOCIATION OF REALTORS®
Attn: _____
Address _____
City, State, Zip_____

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D-2A

RESPONSE DISCIPLINARY HEARING

_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs._____
Complainant(s) Respondent(s)

_____ vs._____
Complainant(s) Respondent(s)

1. I (we), the undersigned respondent(s), respond to the complaint and substantiate my response as set forth in the attached statement marked "Exhibit A," which is hereby incorporated by reference and made part of this response.
2. I understand there will be a recording of the disciplinary hearing. I understand that I may purchase a copy of the recording solely for the purpose of requesting a review of the hearing decision by the Association's Board of Directors.
3. I understand that the proceedings regarding this matter will be kept confidential and that I have an obligation to maintain and protect this confidentiality. I understand that C.A.R. will publish my name, photo, and the decision rendered only if I am found in violation and I am disciplined with a Letter of Reprimand, Fine, Suspension, or Expulsion. If I receive such discipline for a violation, I understand that I am required to submit a photo and grant permission for its publication. I also understand that the Association may publish my name, photo, and the decision rendered pursuant to its publication policy.
4. I understand that I must abide by the rules and procedures used by the Association to conduct disciplinary hearings, a copy of which has been provided to me for my review and use.
5. I understand that if I am found in violation, in addition to any discipline that may be imposed, I may be subject to an administrative processing fee of _____.
6. I hereby affirm that the facts and circumstances and the parties in this matter are not related to any pending civil litigation matter or criminal investigation, including proceeding before a governmental regulatory agency. If I am unable to make this affirmation, I have attached a written statement describing the pending matter on a separate sheet of paper and have included it with this response.
7. I will be represented by an attorney, whose name, address, telephone number, and email address are:

   _____

   _____

   _____
8. Under the penalties of perjury, I declare that to the best of my knowledge and belief that my statements in this response are true and correct.

Dated: _____ at _____, California

RESPONDENT(S):

_____
Signature

_____
Name (Type or Print)

_____
Name of Firm

_____
Street Address

_____
City, State, Zip

_____
Phone email

RESPONDENT(S):

_____
Signature

_____
Name (Type or Print)

_____
Name of Firm

_____
Street Address

_____
City, State, Zip

_____
Phone email

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NOTICE OF RIGHT TO CHALLENGE PANEL MEMBER AND AVAILABILITY FOR HEARING DISCIPLINARY ACTION
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs._____
Complainant(s) Respondent(s)

_____ vs._____
Complainant(s) Respondent(s)

Right to Challenge Panel Members

All parties to this matter have the right to challenge any potential hearing Panel member for this matter. Challenges must be in writing, state the alleged basis for the challenge and be submitted within the time frame indicated below. The following persons listed below or on the attached list are eligible to serve as Panel members for the hearing and may be selected to serve on the Panel. Please check the appropriate box below.

_____

_____

_____

☐ I have no objection to the any of the above Panel members.

☐ I object to one or more Panel members and have included Form D-5 detailing the basis for the challenge.

Availability for Hearing

The hearing for the above referenced matter will be set between _____ and _____. Please indicate below the dates during this time period on which you would **NOT** be available for the hearing. The hearing will be set on a date that all parties have indicated is available. Once the hearing date is set, it will not be rescheduled unless a party requests a continuance, can demonstrate good cause for the continuance, and all parties can agree to a new hearing date. The Association will only consider continuance requests that are in writing and include the appropriate fees.

I WILL **NOT** BE AVAILABLE ON THE FOLLOWING DATES:

_____

Consent Deemed

If this form is not returned within ten (10) calendar days of the date it was mailed, it will be deemed that you consent to any of the named Panel members or any of the dates within the above mentioned time frame. Once the hearing date is set, it will not be rescheduled unless the person requesting a new date files a written request for a continuance and can demonstrate good cause for granting the continuance. The Association will not consider continuance requests for rescheduling if they are not in writing and set forth the reasons for the request.

Dated: _____

_____
Party's Signature

_____
Party's Name (Type or Print)

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REASONS FOR CHALLENGE
QUALIFICATION OF HEARING PANEL MEMBER DISCIPLINARY ACTION
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs._____
Complainant(s) Respondent(s)

_____ vs._____
Complainant(s) Respondent(s)

I (we), as party to the matter referenced above, hereby challenge the qualification of the following named individual(s) as a Panel member(s) for the following reason(s). I understand that all challenges must be for cause.

Panel Member Challenged: _____

Reason(s):_____

_____

_____

Panel Member Challenged: _____

Reason(s):_____

_____

_____

Panel Member Challenged: _____

Reason(s):_____

_____

_____

*Use additional pages as required to list additional challenges and/or reasons for the challenge.

Dated: _____

_____
Party's Signature

_____
Party's Name (Type or Print)

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NOTICE OF HEARING DISCIPLINARY ACTION
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs._____
Complainant(s) Respondent(s)

_____ vs._____
Complainant(s) Respondent(s)

All parties are hereby notified that the hearing for the above referenced matter has been scheduled for:

Date: _____

Time: _____

Location: _____

Address: _____

The appointed Panel members in this case are:

_____, PRESIDING OFFICER

_____, PANEL MEMBER

_____, PANEL MEMBER

_____, ALTERNATE PANEL MEMBER

Any party may be represented by legal counsel and/or a REALTOR® at the hearing. If a party intends to be represented, the party must give written notice to the other parties and the hearing Panel at least fifteen (15) calendar days before the hearing. The notice must include the name, address and phone number of the representative. Failure to provide notice as required does not invalidate a party's right to be represented, but may result in the hearing Panel granting a continuance to allow the other parties the ability to seek and obtain representation. If a continuance is granted due to a failure to give timely notice of representation, a continuance fee will be assessed to the party failing to give notice.

Each party shall be responsible for the attendance of his or her witnesses at the hearing.

Exchange of evidence prior to the hearing is not mandatory. However, parties are strongly encouraged to do so to avoid unnecessary continuances or delays.

The parties shall not discuss or attempt to discuss the case with any hearing Panel member except during the hearing.

Dated: _____

Signature_____,

_____, Association Executive or authorized designee
Type/Print Name

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CERTIFICATE OF QUALIFICATION DISCIPLINARY ACTION
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs._____
Complainant(s) Respondent(s)

_____ vs._____
Complainant(s) Respondent(s)

REASONS FOR DISQUALIFICATION:

A member of a Panel is automatically disqualified from serving on the hearing Panel for this case for any of the following reasons:

(A) there is more than one Panel member connected with the same firm, business, partnership or corporation;
(B) a Panel member is related by blood or marriage to any party;
(C) a Panel member is an employer, partner, employee, or in any way associated in business with any party; or
(D) a Panel member is a party to the hearing.

In addition, a member of a hearing Panel must disqualify his or herself if there are facts and circumstances which might create a reasonable impression that the member is biased or incapable of serving impartially on the matter.

We, the undersigned members of a hearing Panel, do hereby certify that (1) we are not disqualified from serving on the Panel for any of the reasons stated herein, and (2) we know of no other reason that a reasonable objective third-party would believe would prevent us from rendering an impartial decision in this matter.

Dated: _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

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OUTLINE OF PROCEDURE FOR HEARING FOR DISCIPLINARY ACTION
_____ ASSOCIATION OF REALTORS®

In accordance with the rules and procedures used by the Association for disciplinary hearings, a Presiding Officer has been selected for the hearing. The Presiding Officer is responsible for conducting the hearing and maintaining its proper decorum. The Presiding Officer can require any procedures for the hearing that are not inconsistent with the Association's rules and procedures for disciplinary matters. Although testimony provided in person before a Hearing Panel is preferred, parties and witnesses to disciplinary hearings may be permitted to participate in hearings by teleconference or videoconference at the discretion of the Hearing Panel Chair.

If the parties have objections or suggestions regarding the procedure to be used for the hearing, they should be made at the commencement of the hearing and the Presiding Officer will rule thereon. Otherwise, the general hearing procedures will be as follows:

1. Each party will be given the opportunity of making an opening statement. If the respondent wishes to wait until conclusion of the complainant's evidence, that will be permitted.
2. Prior to the giving of testimony, all parties and witnesses will be sworn by the Presiding Officer.
3. All parties may present any documents, evidence, or give such testimony they feel is relevant and applicable to the matter being heard. Any objections regarding relevance or appropriateness will be determined by the Presiding Officer. Parties are encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the other party(ies) and to the Association prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances.
4. No testimony will be allowed relating to the character or general reputation of anyone, unless such testimony has a direct bearing on the matter being heard.
5. At the conclusion of a party's witness testifying, the other parties will be given an opportunity to cross-examine the witness.
6. Witnesses may only be present during the hearing while testifying and will be excused from the hearing room after giving testimony.
7. Members of the hearing Panel may question the parties and their witnesses at any time during the hearing.
8. Upon completion of the presentation of evidence and testimony, each party will be given an opportunity to make a closing statement. Usually, the complainant will be first followed by the respondent.
9. The hearing will be recorded by the Association. Copies of the recording will be made available to the parties for purchase but only for the purpose of filing a review with the Association's Board of Directors. **Parties may not record the hearing.**
10. The hearing and decision is confidential. All parties to the hearing have an obligation to maintain and protect this confidentiality.
11. At any time during the hearing, the complaint may be amended either by the complainant or upon motion of the hearing Panel. The hearing Panel may disallow the requested amendment and proceed to hear the original complaint. If the amended complaint is allowed, the amended complaint shall be filed in writing, signed by the complainant or by the Presiding Officer, a copy given to the respondent, and a continuance granted if requested by a party.

The foregoing is not intended to prevent other procedures from being used for the hearing that are otherwise consistent with the Association's rules and procedures and acceptable to the hearing Panel. All parties and their attorneys are reminded that the hearing Panel is not bound by formal rules of evidence as may be applied in a court of law. As such, the hearing Panel has broad discretion regarding the evidence and testimony it will allow to be presented. The primary goal of the hearing Panel is to hear all relevant facts and circumstances regarding the matter in order to make a decision that is fair to all parties

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ACKNOWLEDGMENT OF RECEIPT OF OUTLINE OF PROCEDURE DISCIPLINARY ACTION
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs._____
Complainant(s) Respondent(s)

_____ vs._____
Complainant(s) Respondent(s)

I acknowledge having received a written statement containing the outline of procedures for the above referenced disciplinary matter.

☐ I have read the Outline of Procedure, understand it and have no objection to it.

☐ I have read the Outline of Procedure, understand it and object to it. I request the following changes or additions [please indicate if changes are requested by complainant(s) or respondent(s)]:

_____

_____

_____

_____

_____
(Use additional pages if necessary)

Dated: _____

COMPLAINANT(S):

_____
Signature

_____
Name (Type or Print)

_____
Signature

_____
Name (Type or Print)

IF APPLICABLE

_____
Representative for Complainant(s)

RESPONDENT(S):

_____
Signature

_____
Name (Type or Print)

_____
Signature

_____
Name (Type or Print)

_____
Representative for Respondent(s)

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OTHER ACTION OF HEARING PANEL DISCIPLINARY ACTION
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs._____
Complainant(s) Respondent(s)

_____ vs._____
Complainant(s) Respondent(s)

In the above referenced disciplinary matter, we, the hearing Panel:

- ☐ Dismiss the complaint due to the complainant's failure to appear.
- ☐ Dismiss the complaint due to finding that the complaint was not timely filed.
- ☐ Refer the complaint back to the Grievance Committee due to the complainant's failure to appear.
- ☐ Refer the complaint back to the Grievance Committee due to the complainant's decision to withdraw the complaint.
- ☐ Dismiss the complaint due to complainant's decision to withdraw the complaint.
- ☐ Grant a continuance of the hearing. The hearing will reconvene on _____, 20____, at _____, ___.m.

We have not made a determination on the merits of the above case.

Dated: _____

Signed: _____, PRESIDING OFFICER

_____, PANEL MEMBER

_____, PANEL MEMBER

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DECISION AND FINDINGS OF FACT DISCIPLINARY ACTION
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs._____
Complainant(s) Respondent

Please complete a separate form for each named Respondent

Decision

We, the hearing Panel, were duly appointed to hear and determine the disciplinary complaint in the above referenced matter.

On _____, _____, 20 _____, at_____
(day of the week) (date) (year) (time)

_____.
(place and address of hearing)

We convened a hearing and proceeded to hear the evidence, proofs, and arguments of the parties to this complaint. Having heard such evidence, proofs, and arguments, we hereby find that the named respondent: _____is:

- ☐ in violation of Article(s) _____ of the Code of Ethics;
- ☐ not in violation of Article(s) of the Code of Ethics.
- ☐ in violation of Section(s) _____ of the MLS Rules and Regulations;
- ☐ not in violation of Section(s) _____of the MLS Rules and Regulations.
- ☐ in violation of membership duty
  _____
- ☐ not in violation of membership duty
  _____

Findings of Fact

Our decision is based on the following Findings of Fact (or attached sheet):

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RECOMMENDATIONS OF HEARING PANEL DISCIPLINARY ACTION
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs._____
Complainant(s) Respondent

Please complete a separate form for each named Respondent

Based on the decision and findings of fact (Form D-11) rendered by the undersigned hearing Panel, which are attached hereto and incorporated by reference to these recommendations, we the hearing Panel make the following recommendations to the Board of Directors for discipline.

☐ **No discipline recommended**. (if decision was no violation(s)).

☐ **Warning**. Place a Letter of Warning in Member/Participant/Subscriber file for _____ (length of time – at least three (3) years).

☐ **Reprimand***. Place a Letter of Reprimand in member/participant/subscriber file for _____ (length of time - at least three (3) years).

☐ **Fine***. Fine in the amount of: $_____ (fine may not exceed $15,000 for Code of Ethics violations or for MLS Rules violation) payable to the Association or MLS within _____ calendar days. **Failure to pay fine within this time shall automatically result in the suspension of membership and/or MLS until the fine is paid. Resignation prior to paying fine shall result in immediate suspension.**

☐ **Education**. Require attendance and completion of an appropriate course(s) within _____ calendar days. The course(s) required is:

- ☐ C.A.R. Online Ethics Class: "Real Cases: Transactions and Violations" (1 hour Code of Ethics overview)
- ☐ C.A.R. Online Ethics Class: "REALTOR® Code of Ethics - Spotlight on Articles 1, 2, and 3" (approx. 2.5 hours)
- ☐ C.A.R. Online Ethics Class: "REALTOR® Code of Ethics - Spotlight on Articles 10, 11, and 12" (approx. 2.5 hours)
- ☐ Other (specify) _____.

Failure to attend or complete such course(s) within this time shall automatically result in the suspension of membership and/or MLS until the education is completed. Resignation prior to completing education shall result in immediate suspension.

☐ **Cease and Refrain.** Require respondent to cease and refrain from the following activities for _____ (length of time not to exceed three (3) years). (Note: A cease and refrain order can require the removal of already-existing content from an online source owned and/or controlled by the respondent.)
Activities:

_____

Failure to abide by the Cease and Refrain order shall automatically result in: _____ (select discipline to be applied).
(Note: Panel may include a separate attachment to fully explain the terms & conditions of the Cease and Refrain order.)

☐ **Suspension***. Suspend all ☐ Association membership ☐ MLS participation rights and privileges for _____. (Suspension must be for a minimum of 30 calendar days and may not exceed one (1) year)

☐ **Expulsion***. Expel member/participant/subscriber from the ☐ Association ☐ MLS for _____. (Expulsion must be for a minimum of one (1) year and may not exceed three (3) years)

☐ **Refer matter to the California Department of Real Estate or other government agency.** (specify):_____

***Discipline subject to publication if the respondent violated the Code of Ethics or Membership Duties. The Respondent's name, photograph, and a summary of the ethics violation(s) will be published by the California Association of REALTORS® ("C.A.R.") and may be published by the local Association pursuant to Section 38 of the *Manual*. If the Panel's recommendation is adopted by the Directors or modified so that it still includes this type of discipline, the Respondent must provide to C.A.R. and the Association and authorize C.A.R. and the Association to publish a current, accurate photo at least the size and quality of a passport photo within ten (10) calendar days after adoption. Failure to submit the photo and a completed Form D-24 within this time shall automatically result in the suspension of membership until the photo and a completed Form D-24 have been submitted, and the discipline summary will still be published. Resignation prior to submitting the photo and a completed Form D-24 shall result in immediate suspension, and the discipline summary will still be published. If the respondent's only violations were MLS Rule violations, the discipline is not subject to publication.**

Dated: _____

_____, PRESIDING OFFICER
Signature

_____, PANEL MEMBER
Signature

_____, PANEL MEMBER
Signature

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NOTICE OF AVAILABILITY OF REVIEW OF DISCIPLINARY ACTION

The parties to a disciplinary decision have the right to request a review of the hearing Panel's decision by the Board of Directors. This right is intended to protect parties and afford due process. This right is not intended to assist parties in delaying or avoiding discipline. As such, parties should only exercise this right when legitimate grounds exist for the request.

REQUEST FOR REVIEW

Within twenty (20) calendar days after the hearing Panel's decision has been sent to the parties, any party may file a request for a review of the hearing Panel's decision by the Board of Directors or appointed review Panel of the Board of Directors. **The only bases for review are: (1) misapplication or misinterpretation of a membership or MLS duty; (2) procedural deficiency or any lack of procedural due process; and (3) unwarranted discipline.** Below is an explanation of each basis for review:

- **Misapplication or misinterpretation of a membership or MLS duty:** The party requesting the review must explain why the hearing panel did not appropriately apply the Code of Ethics, MLS Rules, or membership duties to the facts stated in the Findings of Fact. The party requesting the review cannot challenge the underlying facts or attempt to reargue the case.
- **Procedural deficiency or lack of procedural due process:** The party requesting the review must explain why their due process rights were violated during the hearing process. Due process consists of: (1) the right to a full and fair hearing; (2) the right to an unbiased panel; (3) the right of a party to know the charges against them; (4) the right of a party to have the opportunity to defend themselves; and (5) the right of a party to have legal counsel during the hearing.
- **Unwarranted discipline:** The party requesting the review must explain why the discipline recommended by the hearing panel is unfair or unjust given the description of the violation in the Findings of Fact. The party requesting the review cannot challenge the underlying facts or attempt to reargue the case.

A request for review must be in writing (Form D-17) and must clearly indicate the bases on which the challenge is being made and contain facts and supporting evidence in reasonable detail to support the challenge. Upon receipt of a properly filed request for review, copies will be sent to the other parties and they will have an opportunity to respond to the request. The Association will then schedule a hearing before the Board of Directors to consider the request. All parties shall have the right to attend and be present at this hearing. The Presiding Officer from the original hearing Panel will also be present to give a summary of the case and answer any questions of the parties and the Directors. Each party will then be given an opportunity to present his or her reasons why the hearing Panel's decision and recommended discipline should or should not be followed. No new evidence regarding the merits of the case will be received.

The Board of Directors must adopt the decision of the hearing Panel unless the party requesting the review demonstrates one of the grounds for review exists. Depending on the grounds, the Board of Directors may (1) dismiss the matter; (2) impose alternative discipline that does not exceed that recommended by the hearing Panel; (3) refer the decision back to the hearing Panel with recommended modifications; or (4) refer the matter for a new hearing.

NO REQUEST FOR REVIEW

If no request for review is filed, the Board of Directors will adopt the hearing Panel's decision and recommendations, unless there is a patent deficiency on the face of the decision, in which case, the decision and recommended discipline may be modified. In the event this occurs, the parties will be duly notified of the change.

FINAL ACTION BY THE BOARD OF DIRECTORS

The decision and recommended discipline of the hearing Panel will be effective upon final action by the Board of Directors. If a request for review is filed but the review is denied by the Board of Directors, this constitutes final action.

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REQUEST FOR DUPLICATION OF RECORDING
DISCIPLINARY ACTION
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs._____
Complainant(s) Respondent(s)

_____ vs._____
Complainant(s) Respondent(s)

Hearing date: _____

1. As a named party and for the purpose of filing a request for review by the Board of Directors or appointed review Panel or a reply to a request for review, I request duplicate copies of the recording for the above referenced disciplinary hearing.

2. I understand that duplicate recordings will not be made available if the time period to request a review has lapsed. I further understand that the recordings are to be used solely for preparing a request for review or a reply to a request for review, and any other use of the recordings is a violation of the rules and procedures used by the Association and my agreement to abide by these rules. If the Association determines my request for duplicate recordings is for any purpose other than as agreed upon herein, I understand that the Association may refuse to provide duplicate recordings for me as requested.

3. Upon receiving notice of the review Panel's decision, I agree to destroy any duplicates of the recordings, and any copies made thereto, that I may receive as a result of this request. I also understand that the Association will destroy the recordings once this disciplinary matter becomes final with the Association.

4. A duplication fee of _____ is required with this request. I have enclosed payment for such duplication fee. I understand and agree that no duplicate recordings will be made or released by the Association without payment of the duplication fee herein.

Dated: _____

_____
Signature

_____
(Print or Type Name)

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GUIDANCE FOR DISCIPLINING DESIGNATED REALTORS® AND BROKERS

_____ ASSOCIATION OF REALTORS®

NOTE: This form should be provided to Grievance Committee panels and Professional Standards Committee Hearing panels in disciplinary cases.

According to Section 2725 of the California Regulations of the Real Estate Commissioner, a broker must exercise reasonable supervision over the activities of his or her salespersons. Reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage: (a) Transactions requiring a real estate license; (b) Documents which may have a material effect upon the rights or obligations of a party to the transaction; (c) Filing, storage and maintenance of such documents; (d) The handling of trust funds; (e) Advertising of any service for which a license is required; (f) Familiarizing salespersons with the requirements of federal and state laws relating to the prohibition of discrimination; and (g) Regular and consistent reports of licensed activities of salespersons.

A broker must establish a system for monitoring compliance with such policies, rules, procedures and systems. A broker may use the services of brokers and salespersons to assist in administering the provisions of this section so long as the broker does not relinquish overall responsibility for supervision of the acts of salespersons licensed to the broker.

Based on the requirements for broker supervision under California law, C.A.R. recommends that disciplinary hearing panels at local associations in California use similar criteria when determining whether a Designated REALTOR® ("DR") and/or broker should be found in violation of the Code of Ethics due to the actions of a salesperson licensed with the DR and/or broker.

A DR and/or broker **can** be found in violation of the Code of Ethics if:
- their salesperson's violation stems from the DR's and/or broker's failure to establish a system to adequately supervise agents and to monitor salespersons' compliance with the Code of Ethics; or
- a salesperson's potential violation of the Code of Ethics is brought to the attention of the broker and/or DR, but the broker and/or DR does not take reasonable steps to remediate the violation.

A DR and/or broker **should not** be found in violation of the Code of Ethics if:
- (1) the salesperson's actions were contrary to the broker's and/or DR's established policies; and
- (2) the salesperson's actions could not have been prevented by the broker's and/or DR's reasonable supervision of the agent.

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DISPOSITION OF CITATION RECONSIDERATION

_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs._____
Complainant(s) Respondent(s)

In response to a request by the respondent, the decision of the MLS to issue a citation in the above-referenced matter was reviewed by the citation reconsideration Panel on _____, 20____. Upon consideration:

- ☐ The decision of the MLS to issue the citation is upheld. Respondent must pay the original citation fine, plus an administrative processing fee in an amount determined by the Association, within seven (7) calendar days after the respondent is sent notice of this decision. **Failure to pay both the fine and the administrative processing fee by the deadline will result in suspension of the respondent's MLS services.**

- ☐ The Panel has determined that no violation of the MLS Rule(s) cited by the MLS has occurred. As a result, the citation fine is withdrawn, and no administrative processing fee will be due.

- ☐ The Panel has determined that the MLS committed a violation of procedural due process. As a result:

  - ☐ The citation fine is withdrawn, and no administrative processing fee will be due; **OR**

  - ☐ The case will be returned to the MLS to correct the due process violation, and no administrative processing fee will be due.

The decision of the citation reconsideration Panel is final, and the respondent will not be able to request a formal hearing and/or Director's Review based on the decision of the citation reconsideration Panel.

Dated: _____

By: _____
Signature

_____, Presiding Officer
Type or Print Name and Title

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REQUEST FOR REVIEW DISCIPLINARY ACTION
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs._____
Complainant(s) Respondent(s)

_____ vs._____
Complainant(s) Respondent(s)

Hearing date: _____

To the Board of Directors or appointed Director's Review Panel:

1. In the above referenced disciplinary matter, the hearing Panel made the attached decision and recommended discipline (attach D-11 and D-12). I (we) feel the decision and/or discipline recommended was in error and request a review.

2. I (we) understand that a request for review may be filed based solely on the following three grounds: (1) misapplication or misinterpretation of the Code of Ethics, MLS rule, or membership duty; (2) procedural deficiencies or lack of due process; or (3) unwarranted discipline recommended by the hearing Panel. I understand that no new evidence will be received by the Board of Directors or appointed Director's Review Panel. Accordingly, the basis for this request for review is/are (check all that are applicable):

   q Misapplication or misinterpretation of the Code of Ethics, MLS rule, or membership duty.

   q Procedural deficiencies or lack of due process.

   q Unwarranted discipline recommended by the hearing Panel.

3. I understand that I have a right to legal counsel and/or a REALTOR® representative at the review hearing.

4. The above request is supported by the attached statement, marked "Exhibit A," which is incorporated by reference and made part of this request.

5. In accordance with this Association's policies and procedures, I have enclosed the requisite $_____deposit.

6. Under the penalties of perjury, I declare to the best of my knowledge and belief that the statement contained in this request are true and correct.

Date _____ at _____, California

_____ _____
Signature Signature

_____ _____
Name (Type or Print) Name (Type or Print)

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NOTICE OF REQUEST FOR REVIEW DISCIPLINARY ACTION
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs._____
Complainant(s) Respondent(s)

_____ vs._____
Complainant(s) Respondent(s)

TO_____:

This is to inform you that _____ has filed a request for review of the above referenced disciplinary matter. Attached is a copy of the request.

Please be advised that you have fifteen (15) calendar days from the date specified below in which to mail or file your reply with the Association at the address below. Form D-19 is also enclosed for your use in replying.

Your reply must be in writing, with one (1) original and _____ copies.

Dated: _____

_____
Signature

_____, Association Executive or Authorized Designee
Type/Print Name

Mail or file response to:

_____ASSOCIATION OF REALTORS®

Attn:_____

Address _____

City, State, Zip_____

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REPLY TO REQUEST FOR REVIEW DISCIPLINARY ACTION
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs._____
Complainant(s) Respondent(s)

_____ vs._____
Complainant(s) Respondent(s)

To the Board of Directors or appointed Director's Review Panel:

1. I (we), the undersigned, reply to the request for review and substantiate such reply in the attached statement, marked "Exhibit A," which is incorporated by reference and made part of this reply.

2. Under the penalties of perjury, I declare that to the best of my knowledge and belief, the statements contained in this Reply are true and correct.

Dated: _____ at _____, California

_____ _____
Signature Signature

_____ _____
Name (Type or Print) Name (Type or Print)

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NOTICE OF REVIEW HEARING DISCIPLINARY ACTION
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs._____
Complainant(s) Respondent(s)

_____ vs._____
Complainant(s) Respondent(s)

All parties are hereby notified that the hearing for the above referenced matter has been scheduled for:

Date: _____

Time: _____

Location: _____

You are hereby notified to appear at the time and place so designated.

The appointed review Panel members in this case are:

_____ _____

_____ _____

_____ _____

Any party may be represented by legal counsel or a REALTOR® at the hearing. If a party intends to be represented, the party must give written notice to the other parties and the hearing Panel at least fifteen (15) calendar days before the hearing. The notice must include the name, address and phone number of the representative. Failure to provide notice as required does not invalidate a party's right to be represented, but may result in the hearing Panel granting a continuance to allow the other parties the ability to seek and obtain representation. If a continuance is granted due to a failure to give timely notice of representation, a continuance fee will be assessed to the party failing to give notice.

The parties shall not discuss or attempt to discuss the case with any hearing Panel member except during the hearing.

Dated:_____

_____
Signature

_____, Association Executive or Authorized Designee
Type/Print

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ACTION UPON REVIEW DISCIPLINARY HEARING
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs._____
Complainant(s) Respondent(s)

_____ vs._____
Complainant(s) Respondent(s)

The hearing Panel's decision, findings of fact, and recommended discipline as well as the request for review and replies thereto (if any) in the above referenced case came before the Board of Directors or appointed Directors' Review Panel on _____, 20____. After hearing the evidence, proofs, and arguments of the parties present, the review Panel makes the following decision:

☐ adopt the decision and recommendation of the hearing Panel. If the hearing Panel has recommended a Letter of Reprimand, Fine, Suspension, or Expulsion, the member must submit to C.A.R. and the Association a photo with a completed Form D-24 within ten (10) calendar days after the date the decision was adopted by the Directors. The photo must be current, accurate, and at least the size and quality of a passport photo. Failure to submit the photo and a completed Form D-24 within this time shall automatically result in the suspension of membership until the photo and a completed Form D-24 has been submitted, and the discipline summary will still be published.

☐ dismiss the matter because the findings of fact do not support the decision

☐ modify the recommended discipline as indicated below. If the modified discipline includes a Letter of Reprimand, Fine, Suspension, or Expulsion, the member must submit to C.A.R. and the Association a photo with a completed Form D-24 within ten (10) calendar days after the date the decision was adopted by the Directors. The photo must be current, accurate, and at least the size and quality of a passport photo. Failure to submit the photo and a completed Form D-24 within this time shall automatically result in the suspension of membership until the photo and a completed Form D-24 has been submitted, and the discipline summary will still be published.

☐ refer the matter back for a new hearing before the ☐ same ☐ different hearing Panel

☐ other as indicated below

Modifications:

_____

Reasons for modification:_____

Other: _____

Disposition of Deposit

☐ Not to be returned

☐ To be returned to party requesting review

Dated: _____

By: _____
Signature
_____, President or Presiding Officer
Type/Print Name and Title

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ACTION IF NO REQUEST FOR REVIEW DISCIPLINARY HEARING
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs._____
Complainant(s) Respondent(s)

_____ vs._____
Complainant(s) Respondent(s)

The hearing Panel's decision, findings of fact and recommended discipline in the above referenced disciplinary matter came before the Directors or appointed review Panel on _____, 20____, and was considered by the Panel. The recommendation of the hearing Panel is hereby:

☐ Adopted. If the hearing Panel has recommended a Letter of Reprimand, Fine, Suspension, or Expulsion, the member must submit to C.A.R. and the Association a photo with a completed Form D-24 within ten (10) calendar days after the date the decision was adopted by the Directors. The photo must be current, accurate, and at least the size and quality of a passport photo. Failure to submit the photo and a completed Form D-24 within this time shall automatically result in the suspension of membership until the photo and a completed Form-D24 has been submitted, and the discipline summary will still be published.

☐ Adopted, with the following modifications to dismiss the following violations and/or decrease the discipline recommended by the hearing panel:
_____
_____
_____

☐ Referred back to the hearing Panel for modification(s) to increase discipline as recommended below:_____
_____
_____

☐ Not adopted, and the entire matter is hereby dismissed.

The action of the review Panel was adopted by the Directors _____, 20 ____.

Dated: _____

By _____
Signature

_____, President or Presiding Officer
Type/Print Name

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REQUEST FOR ETHICS ADVOCATE

_____ ASSOCIATION OF REALTORS®

If you desire assistance with the disciplinary process, the Association can provide you with an Ethics Advocate ("EA"). The EA will help you complete the required forms, if you wish. In addition, at your option, the EA can represent you at any hearings that may be held in connection with your case and assist you through the hearing procedures. Please note: You will still be required to attend any hearings. If you wish to be assisted by an EA, please complete and submit this form. **If you do not wish to be contacted by an EA, there is no need to return this form.**

☐ I wish to be represented by an EA and have completed my Form D-23A "Ethics Advocate Acceptance."
I have also completed and enclosed Communication Preference (Form 23B).

Following is my full contact information:

Name

Address

City, State, Zip

Phone (____)

Email

Date: _____

_____
(Type/Print Your Name)

_____
(Signature)

Please return to:

_____ASSOCIATION OF REALTORS®

Attn:

Address

City, State, Zip

Phone (____)

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ETHICS ADVOCATE ACCEPTANCE
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs._____
Complainant(s) Respondent(s)

_____ vs._____
Complainant(s) Respondent(s)

Right to Challenge Ethics Advocates

You are requesting the assistance of an Ethics Advocate ("EA") for the above-referenced matter. You may challenge any potential EA. The EA chosen to assist you will be one of those listed below whom you do not challenge. Challenges must be in writing and submitted prior to the assignment of an EA to assist you. The following persons listed below or on the attached list are eligible to serve as EAs for the hearing and may be selected to serve as your EA. Please check the appropriate box below.

_____

_____

_____

☐ I have no objection to the any of the above EAs.

☐ I object to one or more EAs and have included a list setting forth the names of the EA(s) to whom I object.

Hold Harmless

I hereby release, discharge and hold harmless (Association of REALTORS®) and the EA from and against any and all claims, actions, damages, liabilities, losses, costs or expenses that I now have or may hereafter have arising out of the assistance of an EA in connection with the above-referenced Case. I further expressly agree that the foregoing release is intended to be as broad and inclusive as permitted by the laws of the state of California and that if any portion thereof is held invalid, it is agreed that the remainder of the release shall, notwithstanding, continue in full force and effect.

By signing below you warrant that you understand and agree to the above Hold Harmless Agreement.

Dated: _____

_____
Party's Signature

_____
Party's Name (Type or Print)

If you do not sign the Hold Harmless Agreement above, no EA will be assigned to assist you.

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ETHICS ADVOCATE
COMMUNICATION PREFERENCE
_____ASSOCIATION OF REALTORS®

(Please complete a separate form for each party)

Name: _____

Address: _____

_____

Home Phone: _____

Best hours to call: _____

Work Phone: _____

Do not contact work _____ Hours to call: _____

Fax: _____

Cell Phone: _____ Hours to call: _____

Email: _____

I request that written notifications be:

_____ Mailed to home address

_____ E-mailed

Signed Dated

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SUBMISSION OF PHOTO FOR DISCIPLINE PUBLICATION
_____ ASSOCIATION OF REALTORS®

You have been disciplined by your local Association in a manner that requires publication to other C.A.R. members by the California Association of REALTORS® ("C.A.R."). Such publication will include your name, your photograph, and a summary of your ethics violation(s). Pursuant to C.A.R.'s publication policy as set forth in Section 38 of the California Code of Ethics and Arbitration Manual, you must provide to C.A.R. and the Association a current, accurate photo at least the size and quality of a passport photo and authorization to publish within ten (10) calendar days after final adoption of the discipline by the Directors. **Failure to submit the photo along with a completed Form D-24 within this time shall automatically result in the suspension of your membership until the photo and a completed Form D-24 have been submitted, and the discipline summary will still be published. Resignation prior to submitting the photo and a completed Form D-24 shall result in immediate suspension and will still result in publication of the discipline summary.**

By signing below, you represent and warrant that the photo you are submitting is a current and accurate photo of yourself and that you are the copyright owner of the photo or have the right to license the photo to C.A.R. and the Association. You hereby agree to indemnify C.A.R., the Association, and their affiliates, and their respective directors, officers, members, employees, agents, licensees, shareholders and subcontractors from and against any and all claims, losses, damages, liabilities and expenses, including reasonable attorneys' fees, court costs and other legal expenses, which it or they may suffer or incur in connection with any claim that the submitted photo infringes upon any third party's copyright or other intellectual property or proprietary right. You acknowledge that the Association or C.A.R. may request that you send a different photo if the Association or C.A.R., in its sole discretion, determines that the original photo you have submitted does not meet C.A.R.'s requirements. You also hereby grant to C.A.R. and the Association a perpetual, royalty-free license to reproduce and display any photo you have submitted to C.A.R. and the Association in any and all media available to members.

Please submit your photo, along with a completed copy of this form, to:

(i) the _____ Association of REALTORS®, and
(ii) to C.A.R. at the following email address: **ethics@car.org** with a copy to the Association

Your photograph must be submitted by: _____.
(10 calendar days after adoption)

Name: _____

Address: _____

_____

Date: _____

_____
(Signature)

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AGREEMENT FOR HEARING BY TWO PANELISTS
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs._____
Complainant(s) Respondent(s)

_____ vs._____
Complainant(s) Respondent(s)

We, the undersigned parties, hereby agree that the disciplinary hearing on _____, 20____ will be conducted by only two (2) panelists.

COMPLAINANT(S):

_____
Signature

_____
Name (Type or Print)

_____
Signature

_____
Name (Type or Print)

RESPONDENT(S):

_____
Signature

_____
Name (Type or Print)

_____
Signature

_____
Name (Type or Print)

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NOTICE OF ADDITIONAL ATTENDEES FOR HEARING DISCIPLINE
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs. _____
Complainant(s) Respondent(s)

This notice is to inform the Association and all parties that the following additional attendees will appear at the hearing of the above-referenced case.

As per Association policies and procedures, this notice has been timely submitted to the Association no later than fifteen (15) days prior to the hearing, and the Association will forward it to all parties.

ETHICS ADVOCATE:

Name:

LEGAL COUNSEL:

Name:

Firm:

Address:

Email:

Phone Number:

WITNESS(ES):

Name:

Name:

INTERPRETER/TRANSLATOR:

Name:

Language:

Dated: _____

_____
Party's Signature

_____
Party's Name (Type/Print)

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ROLES OF PROFESSIONAL STANDARDS VOLUNTEERS

There are three groups that enforce professional standards for the local association of REALTORS®. This form explains the role of each of these groups.

THE GRIEVANCE COMMITTEE

The Grievance Committee's function is to:

- Review the complaint for a possible citation for violation of the Code of Ethics, if the association has adopted the Citation Policy;
- Review the complaint to insure the proper articles and sections are cited based on the alleged facts; and
- Screen complaints in order to prevent abuse and harassment through frivolous or unwarranted complaints filed for harassment purposes.

The Grievance Committee considers allegations of unethical conduct but does not determine guilt or innocence. If the Grievance Committee forwards a complaint for a hearing, it does not mean the volunteers on the committee believe the respondent is guilty. It only means that the complaint contains allegations that, if proven at a hearing, would be grounds for a violation.

THE PROFESSIONAL STANDARDS COMMITTEE

The members of the Professional Standards Committee serve as panel members for disciplinary hearings. They are supposed to ensure that the hearing is conducted according to the procedures outlined in the *Manual* and that both sides are given the opportunity to fully present all relevant evidence. After the hearing, the members of the hearing panel will determine: (i) whether the respondent has committed any violations that were alleged in the complaint; and (ii) if the respondent has committed violations, what disciplinary action will be recommended to the Board of Directors.

THE BOARD OF DIRECTORS

The Board of Directors serve as the review body for the association’s disciplinary process. Members of the Board of Directors:

- Upon the request of a complainant, review the decision of the Grievance Committee to dismiss a complaint or delete allegations from a complaint;
- Ratify the decision of the hearing panel if no party requests a review of the hearing; and
- Serve as panelists at a review hearing if a party requests a review of the hearing panel’s decision.

The Board of Directors does not conduct rehearings. Any review hearing is solely limited to a discussion of the permitted grounds for review that are outlined in the Request for Review. Once the Board of Directors makes a decision in a disciplinary case, it is considered final and binding. The California Association of REALTORS® has no authority to review or overturn the decisions of local association Boards of Directors.

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STANDARD OF PRACTICE 10-5 GUIDELINES

This is a guide for parties in disciplinary cases and professional standards volunteers who are applying Standard of Practice 10-5 of the Code of Ethics. Standard of Practice 10-5 was revised as of June 5, 2025 to state:

> REALTORS®, in their capacity as real estate professionals, in association with their real estate businesses, or in their real estate-related activities, shall not harass any person or persons based on race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity.
>
> As used in this Code of Ethics, harassment is unwelcome behavior directed at an individual or group based on one or more of the above protected characteristics where the purpose or effect of the behavior is to create a hostile, abusive, or intimidating environment which adversely affects their ability to access equal professional services or employment opportunities. (Adopted and effective November 13, 2020, Amended 1/23, Amended and effective June 5, 2025)

Please keep the following items in mind when evaluating a case involving Standard of Practice 10-5:

- Standard of Practice 10-5 only applies when REALTORS® are acting **in their capacity as real estate professionals, in association with their real estate businesses, or in their real estate-related activities.** Harassment that occurs outside of these parameters is not covered by the Code of Ethics.
    - Case Interpretation #10-6 holds that harassing statements made by a REALTOR® on a personal social media account can be considered as the REALTOR® "acting in their capacity as a real estate professional" if the REALTOR® "frequently posted comments using her personal account inviting users to contact her for real estate services, referencing her brokerage name and website link" and the REALTOR® "customarily cross-posted listings on the same social media account where the alleged harassing comments were made." This is true even if the harassing statements themselves were not real-estate related.
    - Case Interpretation #10-10 holds that a REALTOR® was *not* acting in their capacity as a real estate professional when they made statements during a religious study group and the REALTOR® ensured that their profession as a real estate agent was not apparent in any way while participating in the group.
- Standard of Practice 10-5 only applies when REALTORS® engage in harassment **based on the protected categories listed in Article 10**.
    - Case Interpretation #10-7 holds that harassing speech made on the basis of someone's political affiliation does not violate Article 10.
- Standard of Practice 10-5 defines harassment as "unwelcome behavior directed at an individual or group based on one or more of the above protected characteristics where the **purpose or effect of the behavior is to create a hostile, abusive, or intimidating environment** which adversely affects their ability to access equal professional services or employment opportunities."
    - Case Interpretation #10-11 holds that posting a listing photo that includes a Confederate flag can be considered harassment under the Standard of Practice 10-5 criteria.

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CALIFORNIA ASSOCIATION OF REALTORS®

IMPLEMENTATION GUIDELINES
ARBITRATION
2026

Prepared by the
CALIFORNIA ASSOCIATION OF REALTORS®
Corporate Legal Department
915 L Street, #1460
Sacramento, CA 95814

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INTRODUCTION

The following guidelines are offered to help clarify and aid in the implementation of the *California Code of Ethics and Arbitration Manual*. They are not intended to be a substitute for the Manual and should not be taken as such. They are to assist in specific circumstances and to provide rationale for the *Manual* provisions. To the extent these guidelines conflict with the provisions of the Manual, the Manual shall control. The 2026 Arbitration Implementation Guidelines are unchanged from the 2025 version.

A. BASIS FOR ARBITRATION

1. Duty and Privilege to Arbitrate

Arbitration is not unique to organized real estate. Several other groups of professionals as well as companies and individuals use arbitration to resolve their disputes. When a real estate licensee joins a local association, he or she is entitled to the rights and benefits of REALTOR® membership. However, he or she is also bound by the obligations of membership, such as agreeing to abide by the Code of Ethics. Article 17 of the Code of Ethics is one of the cornerstones of organized real estate and it contains the REALTOR® obligation to use arbitration to resolve disputes.

While only REALTORS® are bound to abide by the Code of Ethics, real estate licensees who participate in the MLS also agree to abide by the MLS rules and regulations. The California Model MLS Rules, which most MLSs in California use, require participants and subscribers to arbitrate disputes that arise from listings on the MLS. Therefore, even if a real estate licensee is not a member of the local association, he or she may nonetheless be obligated to arbitration by being a participant or subscriber in a MLS.

2. The Association Member's Arbitration Agreement

Arbitration by its nature is contractual. That is, parties to arbitration agreed through some type of contract to be obligated to arbitration. In addition, parties may agree to arbitrate disputes either before or after the dispute arises. In California, arbitration agreements must generally be in writing to be enforceable. A local association member's written agreement to arbitrate exists by virtue of:

- the signed membership application;
- the agreement to abide by the Association's bylaws; and
- the agreement to abide by the Code of Ethics, specifically, Article 17.

While the agreement to arbitrate exists when an individual joins the Association, this agreement is repeated on the arbitration complaint and response forms. **However, refusing to sign an arbitration complaint or response does not alter the existing arbitration agreement. If a member fails to sign either form, the obligation to arbitrate still exists.**

Members also agree to arbitrate disputes with their clients, provided the client agrees to binding arbitration using the Association. Because a member's client has not previously agreed to arbitrate, the client's agreement to arbitrate is contained in the client of member arbitration complaint form (Form PA-1). This form also binds the client to comply with the arbitration award. Therefore, unlike a member, a client must complete and sign Form PA-1 in order to be bound by arbitration using the Association facilities.

Although Association membership is individual, many firms operate their real estate business under a corporation or other business entity. Sometimes, members attempt to use the corporation as a shield to

avoid their arbitration responsibilities. However, the membership application provided by C.A.R. and Section 42(a) of the *California Code of Ethics and Arbitration Manual* states that the member binds him or herself and the corporation for which he or she acts to arbitration. Furthermore, the *California Model Bylaws* also contain a similar section making this clear. Even so, an association may find it helpful to request that a member submit a corporate resolution specifically authorizing the member to bind the corporation to arbitration. Preferably, this should be done at the time of the arbitration complaint or response is filed, but it may be done at any time prior to the arbitration.

Often, members enter into separate agreements (such as in the listing agreement or a buyers' broker agreement) to arbitrate a dispute somewhere other than at the Association. This is perfectly legal and ethical and the Association should treat this agreement as superseding any agreement the member may have to arbitrate the particular dispute at the association.

Sometimes a member will attempt to bypass the arbitration process by filing a civil lawsuit against another member. If a member does this, the respondent member can request the court to compel arbitration at the local association in accordance with the arbitration agreement. However, if the respondent member fails to request the court to compel arbitration and responds to the civil lawsuit, the parties are effectively waiving their right and obligation to arbitration at the local association. Furthermore, neither member is in violation of Article 17.

3. The MLS Participant's or Subscriber's Arbitration Agreement

Assuming the MLS rules include a rule requiring arbitration, a MLS participant's or subscriber's written agreement to arbitrate exists by virtue of:

- the signed MLS application;
- the agreement to abide by the MLS rules and regulations.

While the agreement to arbitrate exists when an individual joins the MLS, this agreement is repeated on the arbitration complaint and response forms**. However, refusing to sign an arbitration complaint or response does not alter the existing arbitration agreement. If a member fails to sign either form, the obligation to arbitrate still exists.**

A person who is not a member of any local association but who is a participant or subscriber in a MLS will have an obligation to arbitrate disputes regarding listings in the MLS with other participants or subscribers of that MLS. Therefore, even if the participant or subscriber is not a member of a local association, the person may nonetheless be obligated to arbitrate disputes regarding listings on the MLS with the members of the local association who participate in the MLS. And, likewise, members of the local association will also have an obligation to arbitrate with the participant or subscriber.

4. Disputes Arising Out of the Real Estate Business

Members are not required to arbitrate all disputes with other members, only those that "arise out of the real estate business." As a general guideline, the types of disputes that arise out of the real estate business are those that arise between members when acting in the capacity of their real estate licenses and that involve monetary disputes, such as a procuring cause dispute over a commission. If a member objects that the matter does not "arise out of the real estate business," the matter is still referred for a hearing and the arbitrators will make that determination. However, in some cases, a dispute may be submitted for arbitration that clearly did not arise out of the real estate business. In these situations, the association may consult with legal counsel and refuse to accept the arbitration complaint.
With respect to MLS participants and subscribers, they agree to arbitrate disputes that not only arise out of the real estate business but they must be in conjunction with a listing filed on the MLS.

5. Disputes with the Public and Clients

In general, members are not obligated to arbitrate disputes with the general public. However, members are obligated by Article 17 to arbitrate contractual disputes with their clients provided the client agrees to submit the dispute to the association and agrees to be bound by the arbitration award. With respect to MLS participants and subscribers, they are not obligated to arbitrate with the general public or their clients.

In order for the member to be obligated to arbitrate a dispute with his or her client, three elements must be met:

- the dispute must arise from an agency relationship between the client and member;
- the dispute must be a contractual dispute; and
- no superseding arbitration agreement exists between the member and the client (i.e. arbitration agreement in a listing or buyers' broker agreement that indicates arbitration will occur somewhere else).

To give some examples, a member who represented a seller exclusively in a real estate transaction is not obligated by their arbitration agreement under the association's rules and procedures to arbitrate a dispute with a buyer regarding the transaction. However, if the member was a dual agent in the transaction and represented both the buyer and seller, the member would be obligated to arbitrate the dispute with the buyer, provided the buyer agreed to submit the dispute to the association and be bound by the arbitration award. In both of these examples, a real estate licensee who is only a MLS participant and subscriber would not be obligated to arbitrate with the client.

Associations frequently receive requests from the public to arbitrate with the association's members and MLS participants and subscribers. Prior to processing a complaint, the association should make sure that the member is otherwise obligated to arbitrate the dispute. If not, the complaint should not be processed.

6. Timing of the Dispute

In general, as long as the facts and circumstances giving rise to the dispute occurred while the licensee was a member of the local association or a participant and subscriber in the MLS, the licensee will be obligated to arbitrate the dispute if it otherwise meets the requirements for arbitration. The obligation to arbitrate cannot be avoided by simply resigning from the local association or MLS.

Sometimes, a member may hold membership in several different local associations. In this situation, another member can file a complaint at any association where the other member holds membership or the association where both members hold common membership. Also, if both members belonged to the same association at the time the dispute arose, and then one member subsequently resigned and joined a different local association, the arbitration could be held at either local association.

7. Claims that Cannot be Arbitrated at the Association

Pursuant to NAR policy, the following types of claims shall not be arbitrated at any REALTOR® Association: (i) tortious interference with business relationships; (ii) tortious interference with a contractual relationship; (iii) economic duress; (iv) intentional infliction of emotional distress; (v) other tort claims, such as libel/slander; (vi) employment claims, other than commission disputes; (vii) fraud/misrepresentation claims; (viii) property claims, both real and personal; (ix) Disputes between two listing brokers where no contract exists between the parties and the dispute is not as specified in Standard of Practice 17-4(4). In addition, NAR limits the award in an arbitration proceeding to the amount in dispute, and so an arbitration award will not include punitive damages or damages for pain and suffering.

B. INITIATING THE ARBITRATION COMPLAINT

1. Invoking Arbitration

To invoke arbitration at a local association, a written arbitration complaint (Form PA-1 or A-1) must be filed with the local association. Once a complaint is filed, the association will need to process the complaint to make sure the person filing the complaint and the persons named as respondents in the complaint are required to arbitrate the dispute at the local association. The local association is only required to accept arbitration complaints involving mandatory arbitration situations and may reject complaints where the parties are not obligated to arbitrate through the association.
There are two exceptions to the general obligation of members to arbitrate disputes with other members.

a. If the members are or were affiliated with the same firm at the time the dispute arose (i.e. an interoffice dispute), the members are not obligated to arbitrate the dispute and the association is not required to provide arbitration unless all parties agree to the arbitration.

b. If the members have agreed to submit a dispute to another association forum (for example, the American Arbitration Association), with respect to that dispute, the association should treat this as an arbitration agreement that supersedes their previous arbitration agreement with the association. In these situations, the association may refuse to process an arbitration complaint because there is a separate agreement to arbitrate before another forum.

2. Association's Right to Decline Arbitration

Occasionally, a dispute submitted for arbitration may meet the basic filing requirements but the substance of the dispute will be legally complex and or involve a significant amount of money in dispute. In these situations, the association has the right to decline arbitration as too legally complex or because of the magnitude of the amount involved and release the parties from their obligation to arbitrate at the association.

Usually, a matter is considered too legally complex when the dispute involves a legal issue that is beyond the training of the arbitration hearing Panel. For example, a party may claim alleged illegal advertising practices by another member that have caused monetary damages to the member. Since most hearing Panels are not trained to address claims of illegal advertising, the matter could be dismissed as too legally complex.

With respect to the magnitude of the amount involved, there are no set rules for when an association can decline on this basis. However, the association should not be deterred from handling an otherwise standard dispute arbitrated by the association (i.e. a procuring cause commission dispute) simply because the amount in controversy happens to be larger than past disputes.

The procedures for declining an arbitration based on legal complexity or the magnitude of the amount involved are contained in Section 44 of the *California Code of Ethics and Arbitration Manual.* Under this Section, if the hearing Panel feels the dispute should not be arbitrated based on one of these grounds, it shall make a recommendation to the Board of Directors to this effect. Also, if a hearing Panel has not yet been convened, upon reviewing the complaint and response, the Professional Standards Committee Chairperson and legal counsel representing the association may jointly recommend to the Board of Directors that the matter not be arbitrated.

In either of the situations above, the Board of Directors reviews the recommendation. If the Board of Directors concurs, the matter is dismissed and all parties are relieved of their obligation to arbitrate. They may then pursue other remedies, such as filing a court action or arbitrating before another arbitration

forum. If, however, the Board of Directors disagrees with the recommendation, the matter will be referred back to the Professional Standards Committee for hearing before a new hearing Panel.

3. Duty to Arbitrate Before C.A.R.

In the event members from different local associations have a dispute, they are required to arbitrate the dispute through C.A.R. Interboard Arbitration. Also, if the complainant in the matter desires, he or she can file for arbitration at the association where the respondent holds membership. However, the purpose of C.A.R. Interboard Arbitration is to give members of different associations a neutral forum in which to have their dispute arbitrated. As such, the member may not want to file the complaint at the respondent's association for fear of having the hearing Panel biased in favor of the respondent.

For purposes of determining whether C.A.R. Interboard Arbitration is appropriate, membership is determined at the time the facts giving rise to the dispute occurred. If Associations have entered into a multi-association professional standards agreement, the dispute can also be heard by a multi-association Panel rather than C.A.R.

If it appears that the dispute is subject to C.A.R. Interboard Arbitration, the association should refer the member to the C.A.R. Interboard Administrator for further information and processing.

4. Proper Parties

a. Complainants

Under California real estate law, commissions must be paid to a broker and may not be paid directly to a salesperson. Section 57 of the *California Code of Ethics and Arbitration Manual* incorporates this concept and requires that if anyone other than a responsible broker files an arbitration complaint in a dispute that involves that member's responsible broker (except for disputes between the member and the responsible broker), the responsible broker at the time the facts and circumstance giving rise to the dispute occurred must also join the complaint as a co-complainant. For example, if the dispute is a commission dispute between two real estate offices and only the salesperson files the complaint, that salesperson's responsible broker must join the complaint as a complainant or the arbitration may not be processed.

b. Respondents

Unlike the complainant side of an arbitration complaint, the *California Code of Ethics and Arbitration Manual* does not specify what parties must be named as respondents. As such, it is the complainant's obligation to determine the necessary and appropriate respondent(s) depending on the facts and circumstances of the dispute. However, if asked by a complainant, an association can indicate that the responsible brokers in the matter are typically named as parties when the dispute involves a commission dispute. The reason is that commissions can only flow through real estate brokers. However, other than this, associations should avoid the trap of helping complainants name specific respondents for the complaint.

If a named respondent feels that he or she has been improperly named in an arbitration complaint, the association can convey this information to the complainants and ask if they wish to amend the complaint. If the complainants disagree and maintain that they have named the correct parties, the association should inform the respondent that he or she will need to argue the issue to the arbitration hearing Panel. The association and its staff do not have the authority to make this decision.

The Association or the hearing Panel once it has been convened has the discretion to join together multiple arbitration complaints involving the same parties and arising out of the same set of

circumstances. This can be at the request of a party or on the Association's own motion. It is recommended that Association counsel be consulted.

5. Confidentiality of Proceedings

Arbitration proceedings, including the allegations, findings and decisions reached, are treated as confidential under Section 53 of the *California Code of Ethics and Arbitration Manual*. Furthermore, this Section requires the association, the hearing Panel members (including the Directors who serve on a review Panel) and the parties to maintain and protect this confidentiality. If a hearing Panel member or party violates his or her duty of confidentiality, the Association can discipline him or her.
There are three exceptions where the duty of confidentiality does not apply. First, whenever disclosure is required by law (i.e. such as by a subpoena or in a deposition), disclosure may occur. Second, any party may disclose the results of the matter where the party is involved in a civil proceeding involving the same set of facts and circumstances. Third, disclosure to C.A.R. is made by the Association, in accordance with policy adopted by the C.A.R. Directors, which requires that each Association submit such information to C.A.R. through a secure repository maintained by C.A.R.

Sometimes after a hearing Panel has issued its award, a party attempts to contact one or more of the hearing Panel members to discuss the award. For several policy and legal reasons, C.A.R. recommends that the hearing Panel members firmly reject any such attempts and refuse to discuss the award. In most situations, the party probably disagrees with the award and will be confrontational with the hearing Panel member. Also, depending on what the hearing Panel member says, the party may try to use the hearing Panel member's statements to challenge the award to the Board of Directors or a court of law.

6. The Professional Standards Committee

The Professional Standards Committee is charged with the responsibility of conducting disciplinary and arbitration hearings. C.A.R. recommends that associations appoint Professional Standards Committee members for three-year terms on a staggered basis to ensure continuity of experience and stability of the Committee. Also, in selecting the Professional Standards Committee members, C.A.R. recommends that the President consider the following criteria:

- number of years as a REALTOR®;
- number of years in the real estate business;
- primary and secondary fields of real estate endeavor/expertise;
- participation in post-licensing real estate education;
- training in the Code of Ethics;
- position in firm (principal, non-principal);
- size of firm;
- common sense;
- open-mindedness;
- receptive to instruction/training;
- other relevant professional or procedural training.

The Committee should have balanced representation of REALTORS®, REALTOR-ASSOCIATE®s, men and women, and include representatives of various racial and ethnic groups. Committee members should be mature, experienced, knowledgeable and persons of a judicial temperament. They should know and understand the concepts of due process and be able to exercise judgment as hearing Panel members. They must also have the capability to keep information confidential.

It is not recommended that the Directors of the Association also serve on the Professional Standards Committee. However, if a Director does serve on the Committee, he or she can serve as a hearing Panel member. If a Director participated in a matter at the Professional Standards Committee level and it comes before the Directors for review, the Director is automatically disqualified. Therefore, it is important to consider whether that Director may better serve the association by serving on review hearings or serving on the Professional Standards Committee.

7. Role of the Association Executive

The Association Executive is basically that of a court clerk. That is, he or she is the administrative channel through which complaints are initially filed, processed and reach final determination. The Association Executive does not make decisions or determinations concerning professional standards matters and must be careful to avoid doing so. The Association Executive also performs other functions in the process. For example, the Association Executive provides information regarding the process and procedures and acts as the intermediary between the complainants, respondents, Grievance and Professional Standards Committee Chairpersons, the hearing Panel members and the Board of Directors. The Association Executive is also responsible for arranging the hearing room and record keeping. Whether the Association Executive attends hearings in an administrative capacity is a matter of local discretion. Some Boards and Associations have determined that it is beneficial to have the Association Executive present to provide technical assistance and expertise, while other Boards and Associations choose to have one of the panelists (or Board counsel) provide procedural guidance. This is a matter to be determined by each Board and Association depending on, for example, staff resources, staff experience in professional standards matters, hearing panelists' experience relative to procedures and enforcement of the Code of Ethics, the complexity of the issue, and whether or not Board counsel will be present.

With respect to arbitration complaints, the Association Executive has the role of determining whether the dispute is proper for association arbitration. This role is actually very limited in that the determination is made on procedural filing considerations and not on the substance of the dispute. For example, the Association Executive makes sure the named complainants and respondents are members of the association or MLS and bound to arbitrate the dispute. The Association Executive determines whether the time frame for filing the arbitration complaint has elapsed. Additionally, if the Association Executive makes sure that the complainant's responsible broker at the time of the facts giving rise to the dispute occurred is named, if appropriate. If there is a factual dispute regarding these procedural requirements (i.e. whether a complaint was filed timely), the Association Executive does not make this determination and instead refers the complaint for hearing. At that point, it will be the obligation of the parties to raise the procedural issue to the hearing Panel who will ultimately make the decision.

8. Role of the Association Legal Counsel

Association legal counsel can be of great assistance to the association when processing arbitrations, especially those that contain detailed procedural questions and issues. To avoid problems from occurring, the association is always free to contact and consult association legal counsel at any time. For example, it is advisable to seek the guidance of legal counsel when there are questions regarding whether the association has jurisdiction over the parties or if there is concern that the matter is too legally complex. Also, if there is pending civil litigation on the matter, association legal counsel should be consulted to determine whether the association should proceed with the arbitration or hold the matter in abeyance. While consulting legal counsel may cause the association to incur legal fees, this can save a lot of time and expense by solving problems before they occur.

Another role of association legal counsel is to be present during a hearing to advise the hearing Panel on issues of procedure. However, whether an association elects to have its legal counsel present at an arbitration hearing is a matter of local discretion. For example, some associations have legal counsel

present only if one or more of the parties will have legal counsel. Other associations have decided to have legal counsel present at all arbitration hearings.

Whatever the decision of the association, since association counsel is not part of the hearing Panel, he or she may not participate in the decisions of the hearing Panel. If legal counsel believes an action or procedure is inconsistent with the Association's established procedures or may result in potential liability to the Association, counsel's concerns may be communicated at the time the action occurs to the Presiding Officer who shall make the final decision.

If a party to an arbitration requests a review of the award, the Association may choose to have the Association attorney conduct the review. However, if the attorney has provided ANY legal advice to the Association regarding that case, then he (and anyone from his or her firm) is prohibited from conducting the review.

C. PROCESSING THE COMPLAINT

1. Initiating an Arbitration

An arbitration complaint consists of the written form (PA-1 or A-1), an exhibit (usually called "Exhibit 1"), and any other attachments and documents the complainant desires to include with the complaint. Once an arbitration complaint is received and processed, it should be sent to all respondents with a blank response form for completion and return to the Association. Sometimes, a respondent thinks that if he or she does not accept the complaint or fails to respond, the arbitration will somehow "go away." This, of course, is not true and a hearing can be scheduled and conducted whether or not a response is received and even if the respondent does not appear. However, certain steps should be taken to insure the arbitration hearing will be valid in the absence of the respondent which are discussed in more detail under the heading "The Hearing."

2. Counterclaim

The respondent has the right to counterclaim against the complainant if he or she feels that the complainant owes him or her money in addition to the money already disputed in the complaint. The respondent must affirmatively request the counterclaim. If a counterclaim is not filed, the respondent cannot receive money damages. For procedural purposes, a counterclaim, like a complaint, must be noticed to the complainant and requires an adjustment of all appropriate notice time frames. A counterclaim is not appropriate to request fees and costs.

3. Notice

When possible, email is the preferred form of service for notices and documents associated with the administration of an arbitration. Notices sent by email must include the association's request that delivery be acknowledged by the intended recipient within twenty-four (24) hours by return email. Automatic notification that an email has been opened is not sufficient for this purpose. The association must be certain the intended recipient has read the email. If receipt of the notice has not been acknowledged by the intended recipient within twenty-four (24) hours, the recipient will be contacted by telephone to confirm receipt and the recipient's confirmation will be noted in the file. If receipt of notices sent by email cannot be confirmed, the notices will be resent via first class mail, by any mail delivery service or by certified mail.

When giving notice by mail, it is not necessary to use certified mail. Regular first class mail, delivery by a mail delivery service or email is all that is required for giving notice. In fact, using certified mail sometimes causes problems because a respondent may refuse to accept it and therefore will not receive notice. Even so, many associations prefer using certified mail so that there is a record of receipt. If an association elects certified mail, C.A.R. recommends that regular first class mail be used as well. This

will avoid the problem of the respondent refusing to accept the certified mail since first class mail is presumed to have been received. In addition, an association may elect to use a delivery service that also provides a record of delivery and avoids the problem of the respondent refusing acceptance.

If a party informs the association that they are represented by legal counsel, the Association Executive should send all communications and notices regarding the arbitration to both the party and their attorney unless the party instructs otherwise.

4. Previous Court Order

If it is clear that the matter has been previously decided by a court, the Association should not process the arbitration. However, the Association Executive should consult with legal counsel to determine whether the previous judgment involved the same parties and issues to the extent that it will prevent an arbitration. A common situation where this may arise is probate commission disbursements. Some probate judges will specifically rule on the commission split between the brokers. Others judges will leave the split to the real estate brokers to determine on their own. In the second case, arbitration would be appropriate if the parties reach an impasse.

5. Time Limit for Filing

A complaint meeting all filing requirements 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 by the complainant in the exercise of reasonable diligence, whichever is later. In most cases, the parties are aware of the dispute prior to close of escrow on the underlying transaction and therefore the complaint must be filed with the association within one hundred and eighty (180) calendar days from the date the transaction closes. However, sometimes the transaction has not closed (and never will), or, if the party filing the complaint did not know of the dispute until after the close escrow. In these situations, the complaint must be filed within one hundred and eighty (180) calendar days from the time the facts giving rise to the dispute could have been known in the exercise of reasonable diligence by the complainant. Additionally, when a party utilizes the Association or C.A.R. ombudsman program, the filing deadline is suspended until the case is reported closed by the ombudsman. For example, if the complainant contacts the ombudsman hotline on February 1 and the ombudsman notifies the Association that the ombudsman case has been closed on February 5, the deadline to file the complaint will be extended by 5 days.

If there is a factual dispute as to whether a complaint has been filed timely, the association should process the complaint and let the parties raise the issue to the hearing Panel. However, if a respondent objects that the complaint is filed untimely prior to the hearing, the association should inform the respondent that they will need to raise and argue the issue to the hearing Panel as the hearing Panel has the ultimate authority to make this decision.

If a complainant waits until after the 180 day time limit has lapsed and submits a dispute that would otherwise be subject to arbitration at the Association to state or federal court, the respondent may ask the court to remove the complaint to the Association for arbitration and the Association must accept such complaint, without regard for the time limit, even if it is received later than one hundred and eighty (180) days after the closing of the transaction, if any, or after the facts constituting the arbitrable matter could have been known by the complainant in the exercise of reasonable diligence.

Regardless of the time limit, the parties can always agree to resolve their dispute using another forum, such as another arbitration service or litigation.

6. Professional Standards Hearings and Shared Panelists

Sometimes, an association will need to borrow hearing Panel members from another association. This usually happens when the association is unable to form a qualified hearing Panel based on disqualification and challenges to its Professional Standards Committee members. The processes for doing this is relatively simple. For example, each Board of Directors of the associations can adopt a general resolution stating that the associations agree to borrow and share hearing Panel members. Or, the associations can adopt this resolution on a case by case basis. Also, many associations have entered in shared professional standards enforcement agreements that more clearly detail the obligations of the associations to one another when borrowing or sharing panelists.

In cases where associations have entered into formal shared enforcement agreements, it is typical for the association making the request to borrow the panelists to continue processing the case. The borrowed panelists will then travel to the association and serve on the hearing Panel for that case. However, some associations have agreements that one association will not only lend hearing Panel members, but will process the case as well. In other words, the administration and processing of professional standards matter is "contracted out" to the other association. This is strictly at the discretion of the associations entering the agreement.

7. Continuances and Continuance Fees

All requests for continuance of a hearing must be in writing and must state the reason for the request. Requests for continuance can only be granted when all parties mutually agree to a subsequent specified date or when the Professional Standards Chairperson, his or her designee, or the hearing panel chair determines that denying the request for continuance would deny the requesting party a fair hearing. Continuances requested after a hearing has convened shall be considered by the hearing Panel, and granted as necessary.

Generally, valid requests for continuances should be granted unless a pattern of abuse (i.e. delay tactics, avoidance, etc.) begins to surface. The following are some valid reasons for continuances:

- A party is unable to present pertinent material evidence because a key witness is unavailable due to sudden illness, accident, or death.
- A party needs additional time to obtain counsel, and they have not unreasonably delayed doing so.
- A party has just recently discovered new evidence and needs extra time to prepare to argue additional claims or defenses. The party's failure to discover this evidence earlier must have occurred due to no fault or negligence on its own part.
- A party received improper notice of the hearing or improper notice of the other party having legal counsel.

The aforementioned reasons for granting a continuance are non-exhaustive, and there may be other circumstances which constitute good cause sufficient to merit a continuance. However, most excuses for a party being unable to appear, such as vacations or business meetings, are generally not valid reasons for granting a continuance.

Depending on when the continuance request is made, the Professional Standards Committee Chairperson or his or her designee and the hearing Panel chair or the hearing Panel as a whole have the discretion to grant continuance requests.

Each party is entitled to one continuance, for good cause, free of charge. However, continuance fees can be imposed for subsequent continuance requests, as a deterrent to those who abuse the availability of

continuances and as reimbursement for additional administrative costs. The association may adopt a reasonable fee that can be charged for a continuance. A late notice representation by counsel resulting in a continuance will subject the person giving notice to a continuance fee even if it is the only continuance given to the party.

In determining which party is assessed the fee, the association must look to the party who causes the necessity for the continuance. For example, if the complainant, prior to or at the hearing, amends his complaint and the respondent needs adequate time to prepare, the complainant should be assessed the continuance fee. Or, if a party fails to exchange evidence prior to the hearing and the opposing party needs time to prepare, the continuance fee should be charged to the party who failed to exchange the evidence.

All requests for continuances must be in writing and accompanied by the continuance fee, if appropriate. If the continuance is not granted, the fee will be returned to the party.

8. Amending the Complaint

If the complainant wishes to amend the complaint, proper notice must be given to all parties who are then given the opportunity to respond. An amended complaint is treated as a new complaint and supersedes the original complaint. As such, all notices, time frames and continuances must be adjusted accordingly. After a hearing commences, a complaint can only be amended with the hearing Panel's approval.

9. Qualification for Panel

A person shall automatically be disqualified from serving on a hearing Panel in any case in which he or she is:

- a party;
- related by blood or marriage (to the fourth degree) to a party;
- an employer, employee, partner or other business associate of a party.

In addition to these basic disqualification rules, several other qualification rules apply. For example, if the person will be a witness in the proceeding, the person should not serve as a hearing Panel member. Also, only one person connected with any firm, business, partnership or corporation may serve on the same hearing Panel. With respect to this requirement, franchises are generally independently owned and operated and not considered "one" firm, even though the names are the same. However, to avoid the appearance of impropriety, C.A.R. recommends that the association should attempt to avoid appointing more than one member of "same name" franchisees to any hearing Panel and should not appoint a hearing Panel member who is affiliated with a same name franchise as one or more of the parties.

The first step in putting together the list of potential Panel members ("proposed neutral arbitrators") , is the elimination of the names of those members who are automatically disqualified.

The second step is the elimination of the names of any members who have served, within the last five (5) years, as an arbitrator in an arbitration for any of the parties, lawyers for parties in this case and any other lawyer in the law firm of a lawyer in this case. The Association Executive should consult the Association Professional Standards records for this information. If this elimination process results in an insufficient number of candidates for this arbitration, their names may remain on the list and the Arbitration Disclosure Statement (Form A-21) forms completed (with the required information about the prior arbitrations), but steps should be taken to avoid doing so, if possible.

After the list has been narrowed as set forth above, the Association Executive must send to each of the proposed neutral arbitrators remaining on the list an Arbitration Disclosure Statement (Form A-21), which must be returned to the Association Executive within ten (10) calendar days. If a proposed neutral arbitrator does not return the completed Arbitration Disclosure Statement (Form A-21) to the Association Executive, his or her name may not be included on the list of names that is sent to the parties.

Proper execution of this phase of the process, requiring the completion of Arbitration Disclosure Statement (Form A-21) forms, is extremely important, since failure to provide the parties with the proper disclosures is ground for the court to vacate an arbitration award.

10. Selecting the Hearing Panel

Concurrently when the complaint is sent to the respondent, the Association Executive is required to send to both the complainant and respondent a list of names of those on the Professional Standards Committee who may serve on the hearing Panel ("proposed neutral arbitrators"), their completed Arbitration Disclosure Statements (Form A-21), and a form on which parties can submit challenges to any potential neutral arbitrators on the basis of information disclosed in an Arbitration Disclosure Statement (Form A-21) or "for cause." "For cause" does not mean that the parties are free to challenge for any reason. It means that there are facts and circumstances that demonstrate the likelihood that the Panel member may be biased or partial in the matter and will be unable to render an impartial decision. For example, the potential Panel member may be a close personal friend of one of the named parties or may be a recent past business partner.

It is recommended that challenges be accepted whenever they are made known unless the Association feels certain they are being used strictly as a delay tactic. This avoids the appearance of impropriety and serves to prevent problems that may arise later. However, if the association is certain that the challenges are being used to delay the process, or if a party attempts to challenge the entire list of available Panel members, the Professional Standards Chairperson may deny the requests for challenge. Often, a party will challenge a Panel member but give an insufficient reason for the challenge, such as "political differences" or "past problems." In such cases, the association is free to require the party to provide a more detailed reason or deny the request.

Many of the controversies surrounding challenges are eliminated by using multi-association professional standards committees. It is more difficult to use the challenge process as a "tactic" when the number of committee members is three or four times greater than just the association's committee and there are members on the committee from other associations.

Each party has fifteen (15) calendar days to make challenges and return the completed forms to the association. The Professional Standards Committee Chairperson and the Association Executive usually work together to select the hearing Panel from the names not stricken for cause or automatically disqualified.

Ultimately, the responsibility rests upon the hearing Panel members to disqualify themselves whenever it is appropriate to avoid any appearance of impropriety and there are doubts about the neutrality of the hearing Panel. This is true even if the Panel member is not challenged by either party.

Hearing Panels should have an odd number of members to avoid the possibility of a tie vote and the hearing Panel must consist of at least three (3) members. C.A.R. recommends that the hearing Panel be kept <u>at a maximum</u> of the three because larger hearing Panels can make the scheduling and hearing process cumbersome.

Associations may find it beneficial to name an alternate hearing Panel member in the event that a selected hearing Panel member is unable to attend the hearing as the use of an alternate can avoid the need for a

continuance. Like an alternate juror, the alternate Panel member attends the hearing so he or she may serve at a moment's notice. However, unless actually called upon to serve, the alternate does not participate in or observe the deliberations.

The alternate should be selected from the list of Panel members not challenged by the parties. If this is done, the parties may not object later at the use of the alternate as a hearing Panel member. If there is no alternate who has sat through the entire hearing and the hearing Panel only consisted of three members, the hearing must be postponed and a new hearing set unless all parties agree to go forward with only two hearing Panel members pursuant to Section 55(h) of the Manual.

If any party is a salesperson, at least one hearing Panel member must be a salesperson. For purposes of hearing Panel selection, a salesperson is defined by office function, not license status. Therefore, if one party is functioning as a salesperson in an office, at least one of the hearing Panel members must be a licensed salesperson or broker associate.

If the Association requires that the hearing Panel consist of a majority of brokers, the Association should determine who qualifies as a broker by looking at the license status of the individuals. Therefore, this requirement may be satisfied by a hearing Panel member who has a broker's license even if his or her office function is that of a salesperson. Other than the requirement of salesperson representation in the case of a salesperson complainant or respondent, the make-up of the hearing Panel is at the discretion of the Professional Standards Committee Chairperson. The primary reason for the salesperson requirement is to insure equal representation (similar to a jury of your peers).

The Professional Standards Committee Chairperson shall designate one of the hearing Panel members as the Presiding Officer who conducts the hearing. The Presiding Officer also maintains the proper decorum in the hearing and establishes hearing procedures consistent with the *Manual*. The person selected as Presiding Officer should have previous experience as a hearing Panel member.

If the Presiding Officer uses a standard format for the opening statement, the Association Executive may distribute this beforehand to the parties to ensure that they are aware of the procedures.

11. Exchange of Evidence Prior to Hearing

Although there is no specific requirement for pre-hearing discovery or exchange of evidence, the parties should be encouraged to do so. This includes exchange of names of witnesses. Due process requires that parties be entitled to know the evidence being used against them. If a party attempts to “surprise” the other party by concealing and presenting a large amount of evidence and documents at the hearing, the hearing Panel may grant a recess, or even a continuance, to give the party ample time and opportunity to review the evidence and documents and prepare a defense.

The only exception to this is the right of the parties to receive a witness list from the other party if the amount in dispute is over $50,000 as discussed later.

D. CONDUCTING THE HEARING

1. Transcript/Right to Record

The association must provide an official record of every hearing. The purpose of doing this is to create a record of the hearing procedures for any subsequent review. This requirement may be satisfied by hiring a court reporter, but, typically it is met by recording the hearing.

There are pros and cons to both methods. Recording is less costly, however, it is difficult to understand and be certain who the speaker is when listening to it. A court reporter is more expensive; however the transcript is very easy to follow. In addition, a recording would not normally be admitted into court as evidence, but a court reporter's transcript will be. If a court reporter is used by the Association, there is no affirmative duty on the part of the Association to pay for a transcript for the parties; however, parties must be permitted to record the hearing. Any party who wants a copy may be required to pay the transcription costs as well as for a copy for the Association. If recording, the Association may want to consider giving the responsibility for operating the recorder to an alternate panelist as this will avoid burdening the hearing Panel members.

If, for some reason a recording is blank, incomplete, or so garbled that it is not understandable, the arbitrators' decision is not invalidated. The recording required by NAR policy is to assist the parties in a possible Directors' review and is for the benefit of the parties. It is not a due process right.

In the event one party to a hearing requests a copy of the recording prior to the lapse of the time period for a Directors' review, any other party to the hearing may also request a copy of the recording prior to the Directors' review, and the time limit is waived for that request.

Any transcript or recording of a hearing shall be destroyed upon final action of the Directors or, if no request, when the time lapses to request a review.

2. Interpreters and Translators

In the event a non-English speaking party in an arbitration case requires an interpreter, or in the event a party requires an interpreter for a witness, the party requesting the interpreter must bear the cost to provide a qualified interpreter that is certified or registered and in good standing with the Judicial Council of California. The Association can provide the requesting party(ies) with a list of qualified interpreters located in the Association's county by conducting a search on the California Interpreters Program website at the following URL: https://www.courts.ca.gov/35273.htm. At the Association's option, Association staff can assist the party with contacting the interpreter and arranging for the interpreter's services.

In the event both parties speak the same non-English language and require an interpreter, or in the event both parties plan to call witnesses that speak the same non-English language and require an interpreter, the cost of the interpreter shall be split evenly between both parties. Only one neutral interpreter will be allowed in the hearing and will assist all parties with translation needs.

If the prevailing party in the arbitration makes a written request for the cost of the interpreter or translator to be reimbursed, the arbitration hearing panel may reimburse the party for those costs using Form A-10.

The party intending to utilize an interpreter shall notify the Association and all other parties at least ten (10) days prior to the date of the hearing, and in such notice shall indicate the name of the party or witness requiring an interpreter and the language which will be used by the non-English speaking party or witness, as well as any dialect of such language, if applicable.

Before the hearing begins, all parties will need to sign a "hold harmless" waiver stating that the Association will not be held liable for any actions or omissions of the interpreter.

In the event any party intends to present a written document at an arbitration hearing that is in a language other than English, a translation by a qualified independent translator shall be presented along with the documents at least ten (10) days prior to the date of the hearing. The party must provide proof that the document was translated by a translator who is certified or registered and in good standing with the Judicial Council of California.

3. Right to Counsel

Every party has the right to legal counsel at any hearing, including reviews, even if the party is unable to attend the hearing. This is one of the most fundamental aspects of due process.

A related situation frequently occurs in the arbitration hearing process. A party may request that the Association allow someone to be with them in the hearing who is not an attorney, but is there to support or advise other than in a legal capacity. The Association must not permit this. However, a broker may appoint a REALTOR® affiliated with the broker's firm to attend an arbitration hearing on his or her behalf when the broker is unable to personally attend, provided that the Association receives fifteen (15) days advance written notice from the broker.

4. Failure of Parties to Appear

If the complainant refuses or is unable to appear at the arbitration hearing after having been duly notified of the hearing, the Association should dismiss the complaint.

If the respondent fails to appear, the hearing can proceed. However, to protect the respondent's rights and to insure the enforceability of the arbitration award, the association should take affirmative steps to make sure the respondent's failure is not due to lack of notice or some unforeseen circumstance, such as a car accident or sudden major illness. For example, a telephone call should be made to the respondent's office to determine the reason for the failure to appear. Once these steps are taken, the hearing Panel should then decide whether to grant a continuance or go forward with the hearing. If the respondent was contacted and requested a continuance, it is recommended that the Panel grant the continuance unless certain that it is being used as a delay tactic.

Upon written request, the presiding officer of the hearing Panel may allow a party or witness to remotely testify or attend the hearing. In that case, the parties' rights and obligations are the same as if the appearance was in person. Written request for remote testimony must be submitted at least fifteen (15) days from the date of the hearing. Only those parties eligible to attend the entire hearing in person would be entitled to participate "remotely" for the entirety of the hearing. Witnesses may only participate remotely for their own testimony. Hearing panels, association staff, or association counsel should employ steps to verify the identity of "remote" participants, to preclude unauthorized individuals from being in the presence of the "remote" participant, and to employ appropriate safeguards to ensure confidentiality of the proceedings. The costs of "remote" testimony shall be the responsibility of the party requesting the opportunity to participate or offer testimony by teleconference or videoconference.

5. Conduct of the Panel Members

Hearing Panel members should avoid, so far as possible, from discussing the case with any person prior to the hearing. In addition, the hearing Panel members are bound by confidentiality regarding the hearing proceedings, except for disclosures on the Arbitration Disclosure Statement (Form A-21), which are required by law. Also, while it is improper for a party or a party's attorney to attempt to contact a Panel member and attempt to influence him or her outside the hearing, sometimes this does occur. If it does, the hearing Panel member must disclose the facts of the conversation to all parties and the hearing Panel no later than prior to the beginning of the hearing. All parties are then given the opportunity to respond to the incident by either raising additional arguments at the hearing or, in extreme cases, requesting disqualification of the hearing Panel member.

Fundamental to due process is that all parties have a right to know what evidence is being submitted and used against them. Therefore, hearing Panel members should not conduct independent investigations of the facts or issues before them and should base their decision only on the evidence and testimony submitted by the parties at the hearing.

Panel members should follow the law and apply it to the facts of the case to the best of their knowledge and understanding. If the Panel members wish, they may ask all parties to submit their legal arguments for consideration. That way, all sides can argue their points. Panel members should NOT make statements to the parties that they are not bound by the law and have no intention of following it. Such statements merely inflame the parties and provoke court challenges of the award.

6. Conducting the Hearing

Arbitrations are relatively informal proceedings and are not designed to follow the strict and sometimes complicated rules of procedure and evidence that would be followed in a court of law. Although the technical rules of evidence are not applicable, the Presiding Officer of the hearing Panel is empowered to rule on the admissibility of evidence. If, for example, a party is consuming a great deal of time on a subject that has no bearing on the case, the Presiding Officer of the hearing Panel may caution the party and eventually even disallow further submission of the evidence. Unless a party can show that evidence has a direct bearing and is linked to the facts of the case at hand, evidence can also be refused. However, the Presiding Officer of the hearing Panel should be extremely careful in rejecting evidence. Failure to accept material and relevant evidence is a basis for overturning an award. If in doubt, the Presiding Officer of the hearing Panel is well advised to accept the evidence, and the hearing Panel can determine its value and credibility during deliberations. If a party has an attorney that consistently objects on technical rules of evidence, the Presiding Officer of the hearing Panel may wish to refer the party and his or her legal counsel to the Outline of Procedure regarding the appropriateness of making such objections.

Parties are encouraged to settle the dispute at any time. At the outset of the hearing, the hearing panel chair should inform the parties that settlement is an option. At any time during the hearing, the 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 parties should be advised that the arbitration will continue to be processed until formally withdrawn by the complainant.

On a rare occasion, the hearing may last longer than one day. If this happens, the hearing should be adjourned at the end of the day and reconvened as soon as possible, preferably the next day.

All hearing Panel members should maintain a calm, objective and judicial atmosphere. The Panel members are not judge or jury, but rather peers seeking all relevant information to render a decision based on the facts. Panel members should avoid being flip, frivolous, sarcastic or judgmental in their words or gestures. They should attempt to be professional in their approach, and they should carefully avoid any reflection of partisanship in their questioning or observations. For example, hearing Panel members should avoid using leading questions with witnesses. They should not preach or teach, but should let their findings and recommendations serve to educate the parties.

Hearing panel members should take special care to treat all parties in the same manner. For example, if one party is addressed by his or her first name, all parties should be addressed in that manner. This avoids giving the impression that the hearing Panel members have different relationships with each party.

Whenever the hearing Panel is concerned about a procedural matter, the hearing Panel should feel free to call a recess to the hearing for a few minutes and consult legal counsel. Getting legal advice before taking an action can prevent problems from occurring.

7. Due Process Required

A lack of due process may cause a decision to be invalidated. Therefore, a party has the right to:

- adequate notice of a complaint and response;

- time to prepare a defense;
- representation by legal counsel;
- challenge of potential Panel members;
- necessary continuances for good cause;
- testify on his own behalf, call and cross-examine witnesses; and
- notification of the decision rendered.

Due process does not, however, include an automatic right to a transcript of the proceeding. If a party wishes a transcript, he may pay for a copy of the Association's official record of the hearing or, at his own expense, have a court reporter present. In this event, the party shall pay the court reporter and provide a copy of the transcript, if made, to the Association. NAR policy requires recording of a hearing as a service to the parties, not for legal reasons.

8. Appropriate Role of Legal Counsel in the Hearing

A party may be represented by legal counsel in any arbitration hearing. However, no party may refuse to directly respond to requests for information or questions addressed to him by Panel members except on grounds of self-incrimination (criminal issues only), or on other appropriate grounds.

Each party shall be held responsible for the conduct of his counsel. Efforts by counsel to harass, intimidate, coerce, confuse the Panel members, witnesses or parties, or otherwise disrupt the proceedings, shall be grounds for exclusion. The decision to exclude counsel shall be by majority vote of the Panel members. If counsel is excluded, a hearing may be postponed to enable the party to obtain alternate counsel. However, a continuance may not be granted if it appears to be a delay tactic. A decision by the Panel members to exclude counsel should be made only after careful consideration and preferably with the advice of Association counsel.

A party's counsel may understandably seek to invoke courtroom procedures and technicalities not applicable to an arbitration. The Presiding Officer of the hearing Panel can minimize this tendency by explaining the purpose and procedures at the beginning of the hearing. The following points should be covered:

a. all relevant evidence will be admitted. The Presiding Officer of the hearing Panel will broadly construe the term "relevant";

b. no attorney may confuse, coerce, intimidate or harass the parties, witnesses or Panel members;

c. the Panel members need not accept the statements of counsel as being the statements of his client if they desire direct testimony;

d. the Presiding Officer of the hearing Panel will rule on the admissibility of evidence. The technical rules of evidence do not apply; and

e. the Panel members will ask questions which they deem pertinent and significant of any parties at any time during this hearing.

9. Subpoena Power for Hearings

Civil subpoenas for the appearance of a witness or the production of documents are available for the arbitration hearing but not for pre-hearing discovery. A blank civil subpoena form is signed by the

Association Executive and issued to the requesting party. It is the party's responsibility to complete and serve the subpoena in accordance with California law.

In an arbitration, witnesses and documents may be subpoenaed. The prevailing party may recover reasonable fees and costs incurred in the production of witnesses and documents. The party requesting fees and costs should do so at the hearing. (Form A-10)

10. Witnesses

Any party may call and present witnesses at the hearing. Witness are sworn in by the Presiding Officer, usually at the beginning of the hearing with the parties, but no later than before the witness testifies. Witnesses, unless a named party or a person who has vested financial interest in the outcome of the matter, are not allowed to attend or be present during the hearing except while testifying.

11. Right to Demand Witness Lists

If the amount in controversy is over $50,000, a party has a right to demand a list of the witnesses he or she intends to call and the documents to be submitted as evidence from other parties. The requesting party must also provide a witness list to the other parties.

12. Presentation of Evidence

Affidavits or declarations submitted in lieu of a witness should be considered, but given less weight, because the witness submitting an affidavit or declaration is not subject to cross-examination.

All parties who appear (in-person and remotely) at a hearing are required to answer questions by the Panel and to submit to cross-examination by any other party.

Witnesses should only be present when testifying and should not be allowed to listen to or be present for any other testimony. Parties, of course, are present during the entire proceeding even if they are also witnesses. Often, someone who is not a named party will request that they be allowed to remain in the hearing. This is <u>not</u> permitted unless the person is representing a party who is not there (and there is written confirmation of this from the party) or the complaint is amended to make this person a party. If such amendment is made, a continuance should be granted if requested.

Parties should be encouraged to exchange evidence, including names of witnesses, prior to the hearing to avoid a continuance based on necessity to adequately prepare a case as subpoenas for prehearing discovery are not provided.

The Presiding Officer should set up a procedure for the presentation of evidence in an orderly fashion. Generally, the hearing proceeds as follows:

a. COMPLAINANT'S OPENING STATEMENT - A brief summary of what the complainant intends to prove.

b. RESPONDENT'S OPENING STATEMENT - A brief summary of the respondent's side of the story and what he intends to offer as a defense. The respondent is not required to make an opening statement at this point and may defer it until after the complainant has presented his case (Step f).

c. COMPLAINANT'S PRESENTATION OF EVIDENCE - Witnesses and documentary evidence are presented by complainant.

d. CROSS-EXAMINATION OF COMPLAINANT'S WITNESSES -respondent has the opportunity to question each witness after the testimony. The complainant will probably be a witness for himself or herself and be subject to cross-examination.

e. QUESTIONING BY HEARING PANEL MEMBERS - After the respondent has cross-examined a witness, the arbitrators may question the witnesses if further clarification is needed. The arbitration hearing Panel should not engage in extensive questions and "make the case" for either party. Questioning by the arbitration hearing Panel is primarily useful to put the witnesses at ease in testifying and to clarify or focus the issues.

f. RESPONDENT'S OPENING STATEMENT - If the respondent has not made his opening statement, he presents a brief summary of his side of the story and his defense.

g. RESPONDENT'S PRESENTATION OF EVIDENCE - Witnesses and documentary evidence are presented by respondent.

h. CROSS-EXAMINATION OF RESPONDENT'S WITNESSES - complainant has the opportunity to question each witness after the testimony. The respondent will probably be a witness for himself or herself and be subject to cross-examination.

i. QUESTIONING BY HEARING PANEL MEMBERS - After the complainant has cross-examined a witness, the arbitration hearing Panel may question the witness if further clarification is needed. The arbitration hearing Panel members should not engage in extensive questioning and "make the case" for either party. Questioning by the Panel is primarily useful to put the witnesses at ease in testifying and to clarify or focus the issues.

j. CLOSING STATEMENTS - Each party, first the complainant, then the respondent, summarize what they have proven and tell the Panel why they should prevail.

The Presiding Officer should make any necessary concluding remarks that include:

- informing the parties of the remaining procedure;
- telling the parties when they'll get a determination; and
- asking the parties if they have anything else to tell the Panel members.

The Presiding Officer may also offer the parties the opportunity to negotiate a settlement agreement at the conclusion of the hearing, if the parties wish to do so. The hearing is then concluded, the parties are excused and the Panel members deliberate.

14. Deliberation and the Decision

When the hearing Panel members have considered all written evidence and oral testimony, they should deliberate and reach a decision by majority vote. Each hearing Panel member has the same rights to participate in the discussion of evidence and the decision-making process. The decision is made by a majority vote of the hearing Panel. While a dissenting hearing Panel member is not required to sign the award, it is recommended that all hearing Panel members sign the award where possible. Refusing to sign the award will signal to the non-prevailing party that this hearing Panel member was "on his or her side" and may encourage that party to contact that hearing Panel member or even subpoena him or her if the party takes the award to court.

The hearing Panel is not restricted to an all or nothing award based on the amount requested in the complaint. They have the broad discretion to fashion an award that is equitable and that conforms to the evidence presented. The Panel does not have, however, the power to award more than the complainant

requests, except if the complainant request justifiable fees and costs which may be awarded in addition to the disputed amount, nor do they have the power to award money to the respondent unless the respondent filed a counterclaim. Whether the request is by the prevailing party or not, the Panel does have the power to award costs and fees if appropriate. For instance, the losing party may be granted costs incurred by a continuance requested by the prevailing party. Those costs offset the award to the prevailing party.

The hearing Panel cannot order punitive damages or injunctive-type rewards that require a party to take some kind of action.

E. POST HEARING PROCEDURES

1. Distribution of Award

The hearing Panel's award must be in writing and provided to the parties within five (5) days after the award is reduced to writing. The decision is binding on all parties. There are no findings of fact as they are not required by law. Many times parties ask the Panel members how they reached their final decision. It is important that the Panel members not discuss this matter with the parties. Conversations of this nature could prove damaging if the award is ever challenged as they could be introduced as evidence. In addition, this is a violation of the hearing Panel member's duty of confidentiality and the Association has the right to discipline a hearing Panel member for violating this duty.

2. Procedural Review by the Board of Directors

A party has the right to request that a procedural review of the arbitration award by the Board of Directors or an appointed review panel thereof. The request must be in writing and made within twenty (20) calendar days of the date the hearing Panel's award was sent to the parties. The Association Executive should date stamp the decision to reflect the date it is sent and should mark the date off on the arbitration processing checklist. The Association Executive should send the notice of the parties' right to this review along with the arbitration award.

The only basis for a procedural review is that there were alleged procedural deficiencies in the processing or hearing of the arbitration. The request must clearly indicate the alleged deficiencies and contain a reasonably detailed summary of the facts supporting the challenge. The Association Executive may review the request to make sure it properly states a basis for review. A procedural review is not to reconsider the substantive issues of the case.

In California, the courts have the final authority to determine the validity of an arbitration award. As such, any decision made by the Directors may still be taken to court for a final determination.

To avoid frivolous requests for review, the association may adopt a filing fee. This filing fee would be nonrefundable unless the Directors order a new hearing. The amount required by the Association should be high enough to discourage frivolous requests, yet not so high to prohibit those with legitimate claims from filing. NAR also establishes maximum filing fees that associations may charge for a review so the association should check NAR's current requirements.

The Directors, when conducting a review, is a hearing Panel and subject to automatic disqualification and challenges are described earlier. The Directors must complete Form A-7 before hearing the review.

The Directors will only consider the information provided by:

- a transcript (if any) of the hearing, or a verbal summary by the presiding officer (or his designated representative);
- pertinent portions of a recording (if any) of the hearing;

- the request for review;
- the reply to that request; and
- the arbitration award.

The Directors shall not re-hear all the facts or determine guilt or innocence, and shall only consider those issues raised by the parties in the request for review. No new evidence is permitted (see Appendix B for Review Procedures and President's Statement). The parties have the right to be present with legal counsel if they choose and present their reasons for or against the request for review to the Directors. Such evidence is limited to the issues of the review.

If the hearing was recorded, a party may play parts of the recording to illustrate the issues on review. HOWEVER, the recording should not be played in its entirety as a substitute for the transcript or the Presiding Officer's summary. The Directors should require that the party only play the relevant parts of the recording.

Because of the many inherent problems with playing the recording, such as the difficulty of understanding the speakers and determining who the speakers are, the Directors must be very careful to only allow playing of the recording to supplement the party's position and NOT allow it to be used to reopen the substantive issues of the case.

In the deciding the request for review, the Directors only have the power to confirm the award or send it back for a new hearing. The Directors may not modify the award.

3. Action of the Board of Directors if There is no Request for Review

If no request for procedural review is filed within the required time limit, the award of the hearing Panel is final. Unlike in a disciplinary case, the award does NOT go before the Directors for ratification.

4. Enforcement of the Arbitration Award

- **Association Procedures**

After the arbitration award is final (and any appeals to the association have been completed), the prevailing party may request a “show cause” hearing if the non-prevailing party has not paid the award within fifteen (15) days after the due date. The sole purpose of the “show cause” hearing is to determine why the non-prevailing party failed to timely pay the arbitration award and not to re-argue the merits or procedural deficiencies of the matter. The “show cause” hearing is before a panel of three Directors.
Both parties may attend the “show cause” hearing. The non-prevailing party will be asked to “show cause” as to why he or she did not timely pay the arbitration award. If the party pays the full award amount, including any accrued interest, to the prevailing party at any time prior to the “show cause” hearing, the “show cause” hearing will be dismissed, and the case will be considered closed.

Both parties may call witnesses, present evidence, and be represented by legal counsel. 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 nonpayment of the award. In order to help the Directors determine what evidence is relevant in the “show cause” hearing, the Directors should refer to the “Ability to Pay Checklist” (which can be found in the Appendices section of the *Professional Standards Reference Manual*).

Following the “show cause” hearing, the Directors may: (1) take no action; (2) suspend the non-prevailing party’s association membership; or (3) set a schedule for payment of the arbitration award to the prevailing party.

a. **Take no Action.** The Directors have sole discretion to determine whether the non-payment of the award is justified due to the party's financial circumstances. If the Directors take no action, it does not invalidate the award and the prevailing party may still pursue judicial enforcement of the award which could convert the award to an enforceable judgment which can be renewed and enforced against the non-prevailing party as they acquire resources or property. The prevailing party may not request more than one "show cause" hearing.

b. **Suspension of Membership.** The non-prevailing party's membership will be suspended for thirty (30) days or until the award plus interest is paid to the prevailing party, whichever is longer. Interest begins to accrue on the arbitration award starting from the due date on the award, at the statutory interest rate of ten percent (10%) per annum. The suspension may be held in abeyance as described below.

c. **Payment Plan.** The Directors may set up the timing or amounts of each payment under the payment plan, except that each payment must include at least the amount of interest accrued since the last payment (at ten percent (10%) per annum) plus a portion of the principal amount (i.e., the award). The non-prevailing party's membership will be suspended if the full amount of any payment is not timely received. The prevailing party may notify the association of any non-payment or partial payment, and the association will send the non-prevailing party notice, with a short turnaround time, to provide evidence of full payment. If the party doesn't provide evidence of full payment by the deadline, the association may suspend the non-prevailing party's membership until the full payment is made. The prevailing party is not precluded from pursuing a court confirmation notwithstanding the payment plan.

After the "show cause" hearing, the suspension will be enforced:

- after the award is confirmed or modified by a court, but only if it is not paid by the date ordered by the court (or within fifteen (15) days after the court order if the order does not provide a due date); or
- if no court action is filed, one hundred and one (101) days after the award is finalized.

Interest will accrue at the legal rate of ten percent (10%) until the award is paid, and the non-prevailing party may be liable for court costs and attorneys' fees if they lose a court action.

The arbitration enforcement policy does not preclude an association from funding court confirmations of arbitration awards administered through its facilities as the association sees fit.

A member who has been suspended for failure to timely pay an arbitration award will have his or her name and photo published in accordance with C.A.R.'s publication policy. Abiding by an arbitration award is a membership duty, and the suspension of membership for failure to timely pay the award is a form of discipline that subjects a member to publication under the current C.A.R. policy.

- **Judicial Procedures**

In addition to requesting a "show cause" hearing pursuant to the Association's arbitration enforcement policy, the award recipient can seek judicial enforcement of the award if the non-prevailing party has not timely paid the award. The court will generally confirm an award and order payment unless the Association failed to adhere to its procedures or the arbitrators failed to provide due process, in which case the court may order a new hearing. All legal costs, including attorney's fees incurred to enforce the award, should be requested in the petition for confirmation.

Whether or not a party requests a review by the Directors, each party has the right to petition the court to confirm or vacate the award. If either party wishes to do so, he must contact an attorney to ascertain the appropriateness of such an action. A petition to vacate an award is rarely granted. The grounds for vacating an award are narrow and the court gives great deference to the decision of the arbitrators.

The grounds for vacating an award are:

- the award was procured by corruption, fraud or other undue means;
- there was corruption of any of the arbitrators;
- the rights of a party were substantially prejudiced by misconduct of a neutral arbitrator;
- the arbitrators exceeded their powers affecting the merits of the case;
- the rights of a party were substantially prejudiced because the arbitrators failed to postpone a hearing upon sufficient cause shown, failed to hear all material evidence or failed to provide full due process to the parties; or
- an arbitrator failed to disqualify himself/herself, upon receipt of a timely request, if a judge would have been required to disqualify himself/herself if the matter had been heard in court.

If an award is confirmed, a judgment shall be entered as in a civil matter and may be enforced like any other judgment of the court. If an award is vacated, the matter will be reheard under these procedures unless otherwise ordered by the court.

A petition to vacate an award must be filed within 100 calendar days of the date of the service on the petitioner of a signed copy of the award.

A petition to confirm an award must be filed within four (4) years of service on the petitioner of a signed copy of the award.

5. Record Retention

Once the award is considered final with the association, the case file, including the award and all documents and correspondence regarding the matter, should be retained by the association in accordance with its record retention policy. However, any recordings or transcripts of the hearing should be destroyed. The main purpose of retaining this information is to assist the parties in the event judicial enforcement of the award becomes necessary. If the association does not have a record retention policy for this type of document, it is recommended that associations retain the case file for a period of five (5) years beginning on the date the award is final with the association.



CALIFORNIA ASSOCIATION OF REALTORS®

ARBITRATION FORMS
2026

Prepared by the
CALIFORNIA ASSOCIATION OF REALTORS®
Corporate Legal Department
915 L Street, #1460
Sacramento, CA 95814

ARBITRATION AND MEDIATION FORMS

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REQUEST FOR MEDIATION
_____ ASSOCIATION OF REALTORS®

As an alternative to arbitration, the Association has available mediation. Mediation is a dispute resolution process whereby a mediator works with you and the other parties to facilitate a mutually acceptable resolution of your dispute. In comparison to arbitration, mediation is usually less adversarial and less formal and the parties are more directly involved in the decision making process to resolve their dispute. As a general policy, the Association promotes mediation and strongly encourages you to consider using mediation.

While the Association promotes mediation, please be advised of the following. If you are the complainant in the dispute, you still need to file an arbitration complaint with the Association to preserve your right to arbitration. Also, mediation is a voluntary process and a mediation conference can only be scheduled for those parties that agree to mediation. If any party to your dispute does not agree to mediation, arbitration will be necessary to resolve the dispute as it pertains to you and those parties. Finally, if you are unable to reach a mutually acceptable resolution of the dispute through mediation, an arbitration hearing will have to be scheduled.

If you agree to use mediation, please provide the information requested below. If other parties agree to mediation, we will notify you and schedule a mediation conference as appropriate. Thank you.

❑ I agree to mediation in accordance with the Association's mediation guidelines and procedures with the following parties*:

1. _____ (Print/Type Name)
2. _____ (Print/Type Name)
3. _____ (Print/Type Name)
4. _____ (Print/TypeName)

*Use additional sheets if necessary.

I will not be available for a mediation conference on the following dates:
_____.

Date: _____

_____
(Type/Print Your Name)

_____
(Signature)

Please return to:
_____ASSOCIATION OF REALTORS®

Attn: _____

Address:_____

City, State, Zip:_____

Phone (____) _____

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NOTICE OF MEDIATION CONFERENCE
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs. _____
Complainant(s) Respondent(s)

TO ALL PARTIES:

Please be advised that the above referenced matter is scheduled for mediation on _____, 20___ at ____, _ m., at the _____Association of REALTORS® located at _____ in the City of _____ before _____, Mediator.

If any party fails to attend the above scheduled mediation conference or this dispute is not mutually resolved, an arbitration hearing will be scheduled in accordance with the rules and procedures used by the Association for arbitration.

If you have any questions regarding this matter, please contact _____ at the_____ Association of REALTORS®, _____, (___)_____
(address) (phone)

Date: _____

_____
(Signature)

_____, Association Executive or Authorized Designee
(Type/Print Name)

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MEDIATION CONFIDENTIALITY AGREEMENT
_____ ASSOCIATION OF REALTORS®

In order to preserve the confidentiality of this mediation, the parties agree that the provisions of the California Evidence Code sections 1119 and 1121 apply to this mediation. The text of these sections is reprinted as follows:

"Evidence Code Section 1119. Written or oral communications during mediation process; admissibility.
Except as otherwise provided in this chapter:

(a) No evidence of anything said or of any admission made for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation is admissible or subject to discovery, and disclosure of the evidence shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(b) No writing, as defined in Section 250, that is prepared for the purpose of, in the course of, or pursuant to a mediation or mediation consultation, is admissible in evidence or subject to discovery, and disclosure of the writing shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(c) All communications, negotiations, or settlement discussions by and between participants in the course of a mediation or mediation consultation shall remain confidential."

"Evidence Code Section 1121. Mediator's reports and findings.
Neither a mediator nor anyone else may submit to a court or other adjudicative body, and a court or other adjudicative body may not consider, any report, assessment, evaluation, recommendation, or finding of any kind by the mediator concerning a mediation conducted by the mediator, other than a report that is mandated by court rule or other law and that states only whether an agreement was reached, unless all parties to the mediation expressly agree otherwise in writing, or orally in accordance with Section 1118."

The parties also agree that the above provisions apply to any arbitration or ethics hearing before any association of REALTORS® or the California Association of REALTORS®.

Agreed to this _____ day of _____, 20 ____

_____	_____
Complainant – Print or Type Name	Respondent – Print or Type Name
_____	_____
Signature	Signature
_____	_____
Complainant – Print or Type Name	Respondent – Print or Type Name
_____	_____
Signature	Signature

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MEDIATION AGREEMENT AND STIPULATED ARBITRATION AWARD
_____ ASSOCIATION OF REALTORS®

This Agreement is entered into by and between the parties listed below with reference to the following facts:

A. The names and addresses of the parties to this Agreement are as follows (attach separate pages if necessary):

_____ Name (Type or Print)	_____ Name (Type or Print)
_____ Street Address	_____ Street Address
_____ City, State, Zip	_____ City, State, Zip
_____ Name (Type or Print)	_____ Name (Type or Print)
_____ Street Address	_____ Street Address
_____ City, State, Zip	_____ City, State, Zip

B. A dispute arose out of the real estate business between the above named parties.

C. On _____, 20____, the parties attended a mediation conference for the purpose of settling any and all claims regarding said dispute.

Now, therefore, in consideration of the mutual promises and conditions set forth herein and intending to be bound thereby, the parties agree as follows:

1. _____ agrees to pay _____ the total sum of _____ dollars ($_____) as full and final settlement of their dispute. Payment will be made according to the following schedule:_____ _____.

2. _____ agrees to accept the total sum indicated in paragraph 1 as the full and final settlement of any and all claims against _____. Upon receipt of full payment of this sum, _____agrees to withdraw and dismiss the Association arbitration case # _____ filed against _____ at the _____ Association of REALTORS®.

3. Other_____

_____

4. The parties agree that this Agreement is admissible and subject to disclosure in any court proceeding to enforce the full performance of this agreement. The parties also hereby stipulate that this Agreement is a binding agreement and is a stipulated arbitration award and shall be construed as a binding arbitration award under Part 3, Title 9 of the California Code of Civil Procedure.

5. In the event it is necessary for any party to obtain judicial confirmation and enforcement of the Agreement and award, the party obtaining such confirmation shall be entitled to recover costs and reasonable attorneys' fees incurred from any party not complying with this Agreement and award.

6. The parties acknowledge that this Agreement is intended to be a full and final settlement of a disputed claim, and is not an admission of liability.

Executed this _____ day of _____, 20 ____ at _____, California.

_____ _____
Complainant - Signature Respondent – Signature

_____ _____
Complainant - Signature Respondent – Signature

The undersigned, as Mediator of the _____ Association of REALTORS®, do attest that I was present during the mediation process and that the above resolution agreement was voluntarily entered into by the parties to the dispute.

Dated: _____

By: _____, MEDIATOR
Signature

_____
Type or Print Name

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NO SETTLEMENT AT MEDIATION
_____ASSOCIATION OF REALTORS®

Mediation Conference Date: _____

Case No. _____

_____ vs. _____
Complainant(s) Respondent(s)

The undersigned mediator, who was duly appointed to mediate all differences and controversies existing between (complainants), and (respondents) do hereby certify that on the _____ day of_____, at _____ m., in the city of _____, the undersigned proceeded to mediate said controversy.

The undersigned hereby attests that the parties were unable to reach an agreement during the mediation and have instead decided to move forward with the arbitration.

Dated: _____

_____
(Mediator Signature)

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ARBITRATION COMPLAINT CLIENT OF MEMBER _____ ASSOCIATION OF REALTORS®

1. A dispute arising from the real estate business has arisen between me (us) and the person(s) and/or entity(ies) named below (*Note: List all persons you wish to name as respondents. If you want to name a corporate entity as a respondent, you must indicate the corporation's legal name as a separately named respondent*):

RESPONDENT(S):

(1)_____
Name of Responsible Broker (Type or Print)

Name of Firm_____

DRE Number_____

_____
Street Address

_____
City, State, Zip

(2)_____
Name of Agent (Type or Print)

Name of Firm_____

DRE Number_____

_____
Street Address

_____
City, State, Zip

(3)_____
Name of Agent (Type or Print)

Name of Firm_____

DRE Number_____

_____
Street Address

_____
City, State, Zip

(4)_____
Name of Agent (Type or Print)

Name of Firm_____

DRE Number_____

_____
Street Address

_____
City, State, Zip

2. The named respondent(s) owe me the sum of $_____. My claim is predicated upon the statement attached, marked Exhibit "1" and hereby incorporated by reference into this complaint and agreement for arbitration.

3. At the time the facts giving rise to this dispute occurred, I am informed that each respondent was a REALTOR®/REALTOR-ASSOCIATE® member in good standing of the Association.

4. This dispute arises from an agency relationship wherein I was a client of the respondent(s). (*Note: The Association only has jurisdiction to process arbitration complaints involving real estate related disputes between REALTORS®/REALTOR-ASSOCIATES® and their clients. You are a "client" if you had a legal agency relationship with the person(s) you named as respondent(s). Disputes with real estate brokers and agents who did not represent you in a legal agency capacity are not subject to arbitration through the Association.)*

5. To resolve this dispute, I submit to and agree to be bound by binding arbitration through the Association in accordance with the rules and procedures used by the Association for arbitration. Furthermore, I agree to abide by the rules and procedures used by the Association for arbitration and to comply with the arbitration award promptly. By signing this complaint, I understand and agree that this will constitute an arbitration agreement within the meaning of Part 3 Title 9 of the California Code of Civil Procedure. **In the event I do not comply with the arbitration award and it is necessary for any party to this arbitration to obtain judicial confirmation and enforcement of the arbitration award against me, I agree to pay the party obtaining such confirmation the costs and reasonable attorney fees incurred in obtaining such confirmation and enforcement.**

6. I have filed this arbitration complaint, meeting all filing requirements, within one hundred and eighty (180) calendar days after the closing of the transaction, if any, or after the facts and circumstances constituting this arbitrable matter could have been known in the exercise of my reasonable diligence, whichever is later.

I understand there will be a mechanical tape recording of the arbitration hearing. I understand that I may purchase a copy of the tape recording solely for the purpose of requesting a procedural review of the arbitration procedures and hearing by the Association's Board of Directors or an appointed review Panel thereof.

I understand that I may be represented by legal counsel at any time, including at the hearing and any review by the Board of Directors. I further understand and agree that if I intend to have legal representation at a hearing or a review, I must give written notice of my legal representative's name, firm name, address and phone number to all parties and the hearing and/or review Panel at least fifteen (15) calendar days before the scheduled date of the hearing. I understand and agree that failure to comply with this notice requirement may result in a continuance being granted and a continuance fee assessed against me.

7. I understand that the nature of these proceedings is confidential and that I have an obligation to maintain and protect the confidentiality of these proceedings and any resulting decision. I hereby agree to do so unless disclosure is authorized by the Association's rules and procedures or required by law.

8. I hereby affirm that the facts and circumstances and the parties in this matter are not related to any contemplated or pending bankruptcy, civil litigation or criminal investigation, including a proceeding before a governmental regulatory agency. If I am unable to make this affirmation, I have attached a written statement describing the pending matter on a separate sheet of paper and have included it with this complaint.

9. I UNDERSTAND THAT BY SUBMITTING THIS DISPUTE TO THE ASSOCIATION FOR ARBITRATION AND AGREEING TO BINDING ARBITRATION THROUGH THE ASSOCIATION, I WAIVE ANY RIGHTS THAT I MAY HAVE TO HAVE THIS DISPUTE HEARD AND DECIDED IN A COURT OF LAW UNLESS THE ASSOCIATION OR ARBITRATORS DECLINE TO HEAR THE DISPUTE AS PROVIDED IN THE RULES AND PROCEDURES USED BY THE ASSOCIATION FOR ARBITRATION.

10. I enclose my check in the sum of $_____ for the arbitration filing fee.

11. I will be represented by an attorney, whose name, address, telephone number, and email address are:

    _____
    _____
    _____
    _____

12. Under the penalties of perjury, I declare that the statements contained herein are true and correct to the best of my knowledge and belief.

Dated:_____

COMPLAINANT(S):

(1)_____
Signature

_____
Name of Complainant (Type or Print)

_____
Street Address

_____
City, State, Zip

_____
Phone email

(2)_____
Signature

_____
Name of Complainant (Type or Print)

_____
Street Address

_____
City, State, Zip

_____
Phone email

Please mail or file response to:

_____ASSOCIATION OF REALTORS®
Attn: _____
Address:_____
City, State, Zip:_____

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CLIENT INFORMATION SHEET ARBITRATION _____ ASSOCIATION OF REALTORS®

Clients of REALTOR® and REALTOR-ASSOCIATE® members of the Association may elect to arbitrate real estate related disputes with these members through the Association arbitration process. However, in order to invoke Association arbitration, the person must be a "client." A "client" is defined as a person who had a legal agency relationship with the REALTOR® or REALTOR-ASSOCIATE® member. Typical situations where this relationship is created are between sellers and their listing broker and buyers and their agent representative.

If you are eligible for arbitration at the Association and elect to file an arbitration complaint with the Association, the arbitration will be processed and conducted according to the rules and procedures used by the Association for arbitration. However, please be advised of the following.

You may have a right to initiate a court action to resolve the dispute. If you elect to use the Association arbitration process, you may be waiving your rights to have this dispute heard and resolved in a court of law. As such, you may want to consult an attorney prior to filing an arbitration complaint with the Association.

If there is a written agreement between you and the REALTOR® or REALTOR-ASSOCIATE® member which contains an arbitration clause that references another arbitration service or provider, such as a listing agreement or buyer-broker agreement, the Association cannot process your arbitration complaint. Instead, you must initiate arbitration according to the terms of the written agreement.

It is strongly recommended that you review the Association's rules and procedures prior to filing an arbitration request. The Association's rules and procedures contain several differences from other arbitration service providers and civil court that should be carefully examined.

Association arbitration is only available to resolve disputes between REALTORS®/REALTOR-ASSOCIATES® members of the Association and their clients. If you have a dispute with a real estate broker or agent who is not a member of the Association or who did not represent you in a legal agency capacity, the Association does not have jurisdiction to process an arbitration complaint against or including such persons. In these situations, it is recommended you consult an attorney to determine the most appropriate course of action to resolve your dispute with that person.

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ARBITRATION COMPLAINT
_____ ASSOCIATION OF REALTORS®

1. A dispute arising from the real estate business has arisen between me (us) and the person(s) and/or entity(ies) named below (*Note: List all persons you wish to name as respondents. If you want to name a corporate entity as a respondent, you must indicate the corporation's legal name as a separately named respondent.*):

RESPONDENT(S):

(1)_____
Name of Responsible Broker (Type or Print)

_____
Name of Firm

_____
DRE Number

_____
Street Address

_____
City, State, Zip

(2)_____
Name of Agent (Type or Print)

_____
Name of Firm

_____
DRE Number

_____
Street Address

_____
City, State, Zip

(3)_____
Name of Agent (Type or Print)

_____
Name of Firm

_____
DRE Number

_____
Street Address

_____
City, State, Zip

(4)_____
Name of Agent (Type or Print)

_____
Name of Firm

_____
DRE Number

_____
Street Address

_____
City, State, Zip

2. The respondent(s) owes me the sum of $_____. My claim is based upon the statement attached to this complaint, marked Exhibit "1", which is hereby incorporated by reference and made part of this complaint.
3. At the time the facts and circumstances giving rise to this dispute occurred, I am informed that each respondent was a:
   REALTOR®/REALTOR-ASSOCIATE® Member of the Association; and/or
   Participant/subscriber of the Association's MLS
4. This dispute is proper for arbitration at the Association as this is a real estate related dispute that arises out of our relationship as REALTORS®/REALTOR-ASSOCIATES® and/or arises from a listing filed with the Association's MLS.
5. I, by becoming and remaining a:
   REALTOR®/REALTOR-ASSOCIATE® Member of the Association; and/or
   Participant/subscriber of the Association's MLS

   have previously agreed to resolve this dispute with the named respondents through binding arbitration using the Association's facilities and its rules and procedures for arbitration. Accordingly, I submit this dispute to arbitration and reaffirm my agreement to bind myself and any firm for which I am the designated broker of record to be bound by arbitration through the Association. Furthermore, I reaffirm my agreement to abide by the Association's rules and procedures for arbitration and to comply with the arbitration award. I understand and agree that this constitutes an arbitration agreement within the meaning of Part 3 Title 9 of the California Code of Civil Procedure.

In the event I or my firm does not comply with the arbitration award and it is necessary for any party to this arbitration to obtain judicial confirmation and enforcement of an arbitration award against me or my firm, I and my firm agree to pay the party obtaining such confirmation their costs and reasonable attorneys' fees incurred in obtaining such confirmation and enforcement. I also understand that if I do not comply with the arbitration award, I may be disciplined by the Association following a "show cause" hearing pursuant to the arbitration enforcement policy.

6. I have filed this arbitration complaint, meeting all filing requirements, within one hundred and eighty (180) calendar days after the closing of the transaction, if any, or after the facts and circumstances constituting this arbitrable matter could have been known in the exercise of my reasonable diligence, whichever is later.
7. I understand there will be a mechanical tape recording of the arbitration hearing. I understand that I may purchase a copy of the tape recording solely for the purpose of requesting a procedural review of the arbitration procedures and hearing by the Association's Board of Directors or an appointed review Panel thereof.
8. I understand that I may be represented by legal counsel at any time, including at the arbitration hearing and any procedural review. I further understand and agree that if I intend to have legal representation, I must give written notice of my legal representative's name, law firm name, address and phone number to all parties and the hearing and/or review Panel at least fifteen (15) calendar days before the scheduled date of the hearing. I understand and agree that failure to comply with this notice requirement may result in a continuance being granted and a continuance fee assessed against me.
9. I understand that the nature of these proceedings are confidential and that I have an obligation to maintain and protect the confidentiality of these proceedings and any resulting decision. I hereby agree to do so unless disclosure is authorized by the Association's rules and procedures or required by law.
10. Unless this dispute is between members of the same office, the responsible broker at the time the facts and circumstances giving rise to this dispute occurred must sign as a co-complainant and has signed this complaint.
11. I hereby affirm that the facts and circumstances and the parties in this matter are not related to any pending bankruptcy, civil litigation matter or criminal investigation, including a proceeding before a governmental regulatory agency. If I am unable to make this affirmation, I have attached a written statement describing the pending matter on a separate sheet of paper and have included it with this complaint.
12. I have enclosed my payment in the sum of $_____ for the arbitration filing fee with this complaint.
13. I will be represented by an attorney, whose name, address, telephone number, and email address are:
    _____
    _____
    _____
    _____
14. Under the penalties of perjury, I declare that this arbitration complaint and the statements contained herein are true and correct to the best of my knowledge and belief.

Dated: _____

COMPLAINANT(S):

(1)_____
Signature

Name of Responsible Broker (Type or Print)

DRE Number

Firm

Street Address

City, State, Zip

Phone email

(2)_____
Signature

Name of Agent (Type or Print)

DRE Number

Firm

Street Address

City, State, Zip

Phone email

(3)_____
Signature

Name of Agent (Type or Print)

DRE Number

Firm

Street Address

City, State, Zip

Phone email

(4)_____
Signature

Name of Agent (Type or Print)

DRE Number

Firm

Street Address

City, State, Zip

Phone email

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NOTICE TO RESPONDENT ARBITRATION
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs._____
Complainant(s) Respondent(s)

TO: _____

Attached to this notice is a copy of an arbitration complaint filed with this Association which names you and/or others as a respondent. Upon initial review of the complaint, the matter has been referred for hearing before the Professional Standards Committee because it appears the complaint involves a dispute arising out of the real estate business that is within the jurisdiction of the Association's arbitration process. This arbitration will be processed and conducted in accordance with the Association's facilities and according to the rules and procedures used by the Association for arbitration.

Please be advised that you have fifteen (15) calendar days from the date specified below in which to mail or file a response to the arbitration complaint with the Association at the address below. Enclosed is a blank response form (Form A-3) for your use.

Your response must be in writing, signed and dated, and include one (1) original and _____ copies.

Date: _____

_____
Signature
_____, Association Executive or authorized designee
Type/Print

Please mail or file response to:

_____ ASSOCIATION OF REALTORS®

Attn: _____

Street Address _____

City, State, Zip _____

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ARBITRATION RESPONSE
_____ ASSOCIATION OF REALTORS®

Case No. _____ _____ vs. _____
Complainant(s) Respondent(s)

1. At the time the facts and circumstances giving rise to this dispute occurred, I (we) was a:

   ☐ REALTOR®/REALTOR-ASSOCIATE® Member of the Association
   ☐ Participant/subscriber of the Association's MLS

   As such, I have previously agreed to resolve this dispute with the named complainants through binding arbitration using the Association's facilities and its rules and procedures for arbitration. Accordingly, I reaffirm my agreement to bind myself and any firm for which I am the designated broker of record to be bound by arbitration through the Association. Furthermore, I reaffirm my agreement to abide by the Association's rules and procedures for arbitration and to comply with the arbitration award. I understand and agree that this constitutes an arbitration agreement within the meaning of Part 3 Title 9 of the California Code of Civil Procedure. **In the event I or my firm does not comply with the arbitration award and it is necessary for any party to this arbitration to obtain judicial confirmation and enforcement of an arbitration award against me or my firm, I and my firm agree to pay the party obtaining such confirmation their costs and reasonable attorneys' fees incurred in obtaining such confirmation and enforcement. I also understand that if I do not comply with the arbitration award, I may be disciplined by the Association following a "show cause" hearing pursuant to the arbitration enforcement policy.**

2. I acknowledge the existence of a dispute arising out of the real estate business but deny any indebtedness to the complainants as alleged in their complaint. My denial is based upon the statement attached, marked "Exhibit A," which is hereby incorporated by reference and made part of this response. If I object to the Association's jurisdiction to process this matter, I have stated those objections in my Exhibit A and I understand that the hearing Panel for this matter will ultimately rule on such objections.

3. **COUNTERCLAIM (if applicable):** Furthermore, I assert a counterclaim against the following complainant(s):

   _____

   owes me the sum of $_____. My claim is based upon the statement attached, marked "Exhibit B," which is hereby incorporated by reference and made part of this response. I understand that if I claim a person(s) other than the complainant(s) owes me money related to this dispute, I must file a separate arbitration complaint with the Association naming that person(s), assuming such person(s) is subject to the jurisdiction of the Association's arbitration process.

4. I understand there will be a mechanical tape recording of the arbitration hearing. I understand that I may purchase a copy of the tape recording solely for the purpose of requesting a procedural review of the arbitration procedures and hearing by the Association's Board of Directors or an appointed review Panel thereof.

5. I understand that I may be represented by legal counsel at any time, including at the arbitration hearing and any procedural review. I further understand and agree that if I intend to have legal representation, I must give written notice of my legal representative's name, law firm name, address and phone number to all parties and the hearing and/or review Panel at least fifteen (15) calendar days before the scheduled date of the hearing. I understand and agree that failure to comply with this notice requirement may result in a continuance being granted and a continuance fee assessed against me.

   I understand that the nature of these proceedings are confidential and that I have an obligation to maintain and protect the confidentiality of these proceedings and any resulting decision. I hereby agree to do so unless disclosure is authorized by the Association's rules and procedures or required by law.

6. I hereby affirm that the facts and circumstances and the parties in this matter are not related to any pending bankruptcy, civil litigation matter or criminal investigation, including a proceeding before a governmental regulatory agency. If I am unable to make this affirmation, I have attached a written statement describing the pending matter on a separate sheet of paper and have included it with this complaint.

7. I will be represented by an attorney, whose name, address, telephone number, and email address are:
   _____
   _____
   _____
   _____

8. Under the penalties of perjury, I declare that this arbitration response and the statements contained herein are true and correct to the best of my knowledge and belief.

Dated: _____

RESPONDENT(S):

(1)_____
Signature of Authorized Person

_____
Name of Respondent Brokerage (Type or Print)

_____
Firm

_____
Street Address

_____
City, State, Zip

_____
Phone email

(2)_____
Name (Type or Print)

_____
Signature

_____
Street Address

_____
City, State, Zip

_____
Phone email

(3)_____
Signature

_____
Name of Responsible Broker (Type or Print)

_____
Firm

_____
Street Address

_____
City, State, Zip

_____
Phone email

(4)_____
Name (Type or Print)

_____
Signature

_____
Street Address

_____
City, State, Zip

_____
Phone email

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AVAILABILITY FOR HEARING ARBITRATION
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs. _____
Complainant(s) Respondent(s)

AVAILABILITY FOR HEARING

The hearing for this case will be scheduled between _____ (date) and _____ (date). Please indicate below the dates during this time period on which you will **NOT** be available for a hearing. The hearing will be set on a date which all parties have indicated is acceptable to them. Once the hearing date is scheduled, it will not be rescheduled unless a valid continuance request is submitted, which requires that the request be for cause. All continuance requests must be in writing, indicate the reason(s) for the request, and include the appropriate continuance fee.

I WILL **NOT** BE AVAILABLE ON THE FOLLOWING DATES:

_____

_____

_____

Consent Deemed

If this form is not returned within fifteen (15) calendar days of the date it was mailed, it will be deemed that you consent to any of the named Panel members or any of the dates within the above mentioned time frame. Once the hearing date is set, it will not be rescheduled unless the person requesting a new date files a written request for a continuance and can demonstrate good cause for granting the continuance. The Association will not consider continuance requests for rescheduling if they are not in writing and set forth the reasons for the request.

Dated: _____

_____
Party's Signature

_____
Party's Name (Type/Print)

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NOTICE OF RIGHT TO CHALLENGE PANEL MEMBER AND REASONS FOR CHALLENGE ARBITRATION _____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs._____
Complainant(s) Respondent(s)

This notice is to inform you that the persons on the enclosed lists are eligible to be appointed to serve as panel members on the hearing tribunal for the above-referenced arbitration hearing or review hearing. Please review the lists and determine which potential panel members, if any, you wish to challenge for cause.

☐ I have no objection to any of the potential panel members.

☐ I object to one or more potential panel members for cause and have enclosed on this form or a letter detailing the reasons for the challenge.

I, as a named party to the matter stated above, hereby challenge the qualification of the following person(s) to serve as a Panel member for the following reasons.

Panel Member Challenged:_____

Reason:_____
_____

_____

Panel Member Challenged:_____

Reason:_____
_____

_____

Panel Member Challenged:_____

Reason:_____
_____

_____

*Use additional pages as required to list additional challenges.

Dated:_____

_____
Party's Signature

_____
Party's Name (Type/Print)

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NOTICE OF HEARING ARBITRATION
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs. _____
Complainant(s) Respondent(s)

All parties are hereby notified that the hearing for the above referenced matter has been scheduled for:

Date: _____

Time: _____

Location: _____

_____

_____

_____

The appointed Panel members in this case are:

_____, PRESIDING OFFICER

_____, ARBITRATOR

_____, ARBITRATOR

_____, ALTERNATE

All parties may be represented by legal counsel at any time, including at the arbitration hearing and any procedural review. If a party intends to have legal representation, the party must give written notice of the legal representative's name, address and phone number to all parties and the hearing and/or review Panel at least fifteen (15) calendar days before the scheduled date of the hearing. Failure to comply with this notice requirement may result in a continuance being granted and a continuance fee assessed against the party.

Each party is responsible for the attendance of his or her witnesses at the hearing. This includes properly serving subpoenas (if used) and paying all witnesses related costs. Exchange of evidence prior to the hearing is not mandatory but recommended to avoid unnecessary continuances or delays.

The parties may not attempt to discuss the case with any hearing Panel member except during the official hearing.

Dated:_____

_____
Signature

_____, Association Executive or Authorized Designee
Type/Print

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CERTIFICATE OF QUALIFICATION ARBITRATION
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs. _____
Complainant(s) Respondent(s)

REASONS FOR DISQUALIFICATION:

A member of a Panel shall be disqualified from hearing this case for any of the following reasons:

(A) there is more than one Panel member connected with the same firm, business, partnership or corporation;
(B) a Panel member is related by blood or marriage to either complainant or respondent;
(C) a Panel member is an employer, partner, employee, or in any way associated in business with either complainant or respondent; or
(D) a Panel member is a party to the hearing.

In addition, a member of a hearing Panel should disqualify him or herself if there are facts and circumstances which create a reasonable impression of bias that the member will be in favor or disfavor of one or more of the named parties.

We the undersigned Panel members do hereby certify that (1) we are not disqualified by any reason stated herein from hearing the above case, and (2) we know of no other reason that would prevent us from rendering an impartial decision.

Dated: _____

_____, PRESIDING OFFICER

_____, ARBITRATOR

_____, ARBITRATOR

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OUTLINE OF PROCEDURE FOR HEARING ARBITRATION
_____ ASSOCIATION OF REALTORS®

In accordance with the rules and procedures used by the Association for arbitration, a Presiding Officer has been selected for the hearing. The Presiding Officer is responsible for conducting the hearing and maintaining its proper decorum. The Presiding Officer can proscribe any procedures for the hearing that are not inconsistent with the Association's rules and procedures for arbitration.

Although testimony provided in person before a Hearing Panel is preferred, parties and witnesses to arbitration hearings may be permitted to participate in hearings by teleconference or videoconference at the discretion of the Hearing Panel Chair.

If the parties have objections or suggestions regarding the procedure to be used for the hearing, they should be made at the commencement of the hearing and the Presiding Officer will rule thereon. Otherwise, the general hearing procedures will be as follows:

1. Each party will be given the opportunity of making an opening statement. If the respondent wishes to wait until conclusion of the complainant's evidence, that will be permitted.

2. Prior to the giving of testimony, all parties and witnesses will be sworn by the Presiding Officer.

3. All parties may present any documents, evidence, or give such testimony they feel is relevant and applicable to the matter being heard. Any objections regarding relevance or appropriateness will be determined by the Presiding Officer. Parties are encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the other party(ies) and to the Association prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. Individuals served subpoenas by personal service must be given fifteen (15) calendar days notice for appearance at the hearing and/or production of books, records documents and other evidence.

4. No testimony will be allowed relating to the character or general reputation of anyone, unless such testimony has a direct bearing on the matter being heard.

5. At the conclusion of a party's witness testifying, the other parties will be given an opportunity to cross-examine the witness.

6. Witnesses, except for those with a vested financial interest in the outcome of the matter, may only be present during the hearing while testifying and will be excused from the hearing room after giving testimony.

7. Members of the hearing Panel may question the parties and their witnesses at any time during the hearing.

8. Upon completion of the presentation of evidence and testimony, each party will be given an opportunity to make a closing statement. Usually, the complainant will be first followed by the respondent.

9. The hearing will be tape recorded by the Association, unless the parties have requested and paid for a court reporter. Copies of the tape(s) will be made available to the parties for purchase but only for the purpose of filing a review with the Association's Board of Directors. **Parties may not tape record the hearing.**

10. The hearing and decision is confidential. All parties to the hearing have an obligation to maintain and protect this confidentiality.

The foregoing is not intended to prevent other procedures being used for the hearing that are otherwise consistent with the Association's rules and procedures for arbitration and acceptable to the hearing Panel. All parties and their attorneys are reminded that the hearing Panel is not bound by formal rules of evidence as may be applied in a court of law. As such, the hearing Panel has broad discretion regarding the evidence and testimony it will allow to be presented. The primary goal of the hearing Panel is to hear all relevant facts and circumstances regarding the matter in order to make a decision that is fair to all parties.

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ACKNOWLEDGEMENT OF RECEIPT OF OUTLINE OF PROCEDURE ARBITRATION _____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs. _____
Complainant(s) Respondent(s)

I acknowledge having previously received a written statement (Form A-8) containing an outline of the procedures to be used for the above referenced hearing.

☐ I have read the Outline of Procedure, understand it and have no objection to it.

☐ I have read the Outline of Procedure, understand it and object to it. I request the following changes or additions [please specify whether changes are requested by complainant(s) or respondent(s)]:

_____

_____

_____

_____

_____

(Use additional pages if necessary)

Dated: _____

COMPLAINANT(S): **RESPONDENT(S):**

_____ _____
Signature Signature

_____ _____
Signature Signature

IF APPLICABLE:

_____ _____
Attorney for Complainant(s) Attorney for Respondent(s)

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REQUESTED ARBITRATION COSTS
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs. _____
Complainant(s) Respondent(s)

I request the following as costs in the above referenced arbitration be awarded to me:

WITNESS FEES:

Name	Fees	Mileage	Subtotal
_____	$_____	$_____	$_____
_____	$_____	$_____	$_____
_____	$_____	$_____	$_____

Total $_____

SERVICE OF SUBPOENAS

Name	Fees	Mileage	Subtotal
_____	$_____	$_____	$_____
_____	$_____	$_____	$_____
_____	$_____	$_____	$_____

Total $_____

ARBITRATION FILING FEES $_____

ATTORNEY FEES (Only if the contract of the parties or statute so provides) $_____

CONTINUANCE FEES $_____

COURT REPORTER COSTS (If applicable) $_____

INTERPRETER/TRANSLATOR COSTS (If applicable) $_____

INTEREST: _____% per annum on $_____ from _____ (Date) to _____ (Date) = $_____

TOTAL AMOUNT REQUESTED $_____

Dated:_____

_____
Signature

_____
Name (Type or Print)

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OTHER ACTION OF HEARING PANEL ARBITRATION _____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs. _____
Complainant(s) Respondent(s)

In the above arbitration, we, the hearing Panel:

☐ Dismiss the case due to complainant's failure to appear.

☐ Dismiss the case due to complainant's decision to withdraw the complaint.

☐ Dismiss the case due to the complaint not being timely filed.

☐ Grant a continuance of the hearing. All parties have agreed to reschedule the hearing for the following date:

_____, 20__, at ____,__.m.

☐ Grant a continuance of the hearing, because failure to do so would deprive a party of a due process. New hearing is to be rescheduled by Association staff.

☐ Recommend that this matter be dismissed because the legal complexity or magnitude involved.

☐ Other: _____.

We have not made a determination on the merits of the above case.

Dated: _____

Signed: _____, PRESIDING OFFICER

_____, ARBITRATOR

_____, ARBITRATOR

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AWARD OF ARBITRATORS
_____ ASSOCIATION OF REALTORS®

Case No. _____

Complainant(s): _____

vs.

Respondent(s):_____

We, the undersigned hearing Panel, were duly appointed to hear and determine the dispute in the above referenced matter.

On _____, _____, 20 ___, at _____,
(day of the week) (date) (place and address of hearing)

we convened a hearing and proceeded to hear the evidence, proofs, and arguments of the parties to this dispute.

Having heard such evidence, proofs, and arguments, we hereby find and adjudge that:

the Respondent(s) owe the sum of $ _____ to the Complainant(s), which shall be paid within _____ calendar days from the date this award is final.

(**NOTE**: The award will not be final until the period for Directors review has elapsed.)

(Check the applicable box):

☐ Based on a request submitted, costs in the amount of $_____ are awarded to

- ☐ Complainant(s).
- ☐ Respondent(s)

This shall be in addition to the amount awarded.

☐ Each party to bear its own costs.

Dated:_____

_____, PRESIDING OFFICER

_____, ARBITRATOR

_____, ARBITRATOR

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REVIEW AND ENFORCEMENT OF AN ARBITRATION AWARD

Association's Procedural Review

Any party to Association arbitration has the right to request a review of the arbitration award by the Association's Board of Directors or an appointed Director's Review Panel. Either party may file a request for review (Form A-15) within twenty (20) calendar days from the date the award is transmitted to the party. The request must be accompanied by the necessary deposit and filed with the Association. Once a request for review is filed, all other parties will be given notice of the request and provided an opportunity to respond to the request. The review hearing will be scheduled before the Board of Directors or an appointed Director's Review Panel. At the hearing, the Directors will be provided with copies of the request, any responses to the request by other parties, and the arbitration award. Each party may be present at the review hearing and put forth his or her reasons why a new hearing should or should not be ordered.

NOTE: A review by the Association's Board of Directors or appointed Director Review Panel may only be based on alleged procedural deficiencies that occurred in the processing or hearing of the matter that resulted in a lack of due process to the party. The purpose of a review is not to rehear the merits of the case if a party disagrees with the award of the hearing Panel. The Directors only have the power to: (a) affirm the award, or (b) vacate the award and refer it back for a new hearing.

If no request for review is filed or the arbitration award is confirmed by the Directors after a review hearing, the arbitration award is considered final with the Association. If a review hearing has been conducted, all parties will be notified upon final action of the Directors.

"Show Cause" Hearing

In the event the non-prevailing party in an arbitration has not paid the arbitration award to the prevailing party within fifteen (15) days after the deadline set forth in the Award of Arbitrators, the prevailing party may request a "show cause" hearing before the Board of Directors. If a party requests a procedural review, the request for a "show cause" hearing may not be filed until at least fifteen (15) days after the payment of the award is due. The sole purpose of the "show cause" hearing is to determine why the non-prevailing party failed to timely pay the arbitration award. The purpose of a "show cause" hearing is *not* to rehear the merits of the case if the non-prevailing party disagrees with the award of the hearing Panel.

Following the "show cause" hearing, the Directors may: (1) take no action; (2) suspend the non-prevailing party's Association and/or MLS membership until he or she pays the arbitration award to the prevailing party; or (3) set forth a schedule for the payment of the arbitration award to the prevailing party. The Directors may also recommend discipline if the non-prevailing party fails to follow the payment schedule set forth by the Directors. Any suspension of membership recommended by the Directors following a "show cause" hearing will not be imposed until: (1) after the award is confirmed or modified by a court, but only if the award is not paid by the date ordered by the court (or within fifteen (15) days after the court order if the order does not provide a due date); or (2) if no court action is filed, one hundred and one (101) days after the Arbitration Award is finalized.

Court Confirmation, Correction, and Vacation of Award

Any party to an arbitration may petition the court to correct, confirm or vacate the award pursuant to the provisions of the California Code of Civil Procedure section 1280 et seq.

CONFIRMATION OF AN AWARD: A petition for confirmation shall be served and filed not later than four (4) years after the date of service of a signed copy of the award on the party. The court shall confirm the award as made unless it corrects the award, vacates the award or dismisses the petition as provided by law. If an award is confirmed, a judgment shall be entered with all the force and effect of law relating to civil judgments.

CORRECTION OF AN AWARD: A petition to correct an award shall be served and filed not later than 100 days after the date of the service of a signed copy of the award on the petitioner. A court shall correct an award and confirm it as corrected if the court determines that (a) there was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award; (b) the arbitrators exceeded their powers but the award may be corrected without affecting the merits of the decision; or (c) the award is imperfect in a matter of form, not affecting the merits of the controversy.

VACATION OF AN AWARD: A petition for vacation of an award must be served and filed not later than 100 days after the date of service of a signed copy of the award on the party. The court shall vacate the award if it is determined that (a) the award was procured by corruption, fraud or other undue means; (b) there was corruption in any of the arbitrators; (c) the rights of such party were substantially prejudiced by misconduct of a neutral arbitrator; (d) the arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted; (e) the rights of such party were substantially prejudiced by the refusal of the arbitrators to postpone the hearing upon sufficient cause being shown therefor or by the refusal of the arbitrators to hear evidence material to the controversy or by other conduct of the arbitrators contrary to the provisions of the California Code of Civil Procedures section 1280 et seq.; or (f) an arbitrator failed to disqualify him/herself, upon receipt of a timely request, if a judge would have been required to disqualify him/herself if the matter had been heard in court.

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REQUEST FOR DUPLICATION OF RECORDING ARBITRATION
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs. _____
Complainant(s) Respondent(s)

Hearing date: _____

1. As a named party and for the purpose of filing a request for review by the Board of Directors or appointed review Panel or a reply to a request for review, I request duplicate copies of the recording for the above referenced arbitration.

2. I understand and agree that any recordings are to be used solely for preparing a request for review or a reply to a request for review, and any other use of the recordings is a violation of the Association's rules and procedures for arbitration and my agreement to abide by these rules. If the Association determines my request for duplicate recordings is for any purpose other than as agreed upon herein, I understand and agree that the Association may refuse to provide duplicate recordings to me as requested.

3. Upon receiving notice of the review Panel's decision, I agree to destroy any duplicates of the recordings, and any copies made thereto, that I may receive as a result of this request. I also understand that the Association will destroy the original recordings once the arbitration award becomes final with the Association.

4. A duplication fee of $ _____ is required with this request. I have enclosed payment for such duplication fee. I understand and agree that no duplicate recordings will be made or released by the Association without payment of the duplication fee herein.

Dated: _____

_____
Signature

_____
(Print or Type Name)

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REQUEST FOR REVIEW ARBITRATION
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs._____
Complainant(s) Respondent(s)

Hearing Date:_____

To the Board of Directors or Appointed Directors' Review Panel:

1. In the above referenced arbitration case, the hearing Panel determined that: _____ owed _____ the amount of _____. I (we) request a review of the hearing Panel's award based on procedural deficiencies that occurred in the processing or hearing of this matter that resulted in me being denied due process. This request is supported by the attached statement, marked Exhibit "A" which is hereby incorporated by reference and made part of this request. I understand that this request will not be processed by the Association without such a supporting written statement.

2. I understand that the sole grounds for requesting a review is limited to allegations of procedural deficiencies which resulted in a lack of due process. As such, I understand that no new evidence regarding the merits of this dispute may be submitted and only those arguments pertaining to allegations of lack of due process will be considered by the review Panel.

3. I understand that I have a right to legal counsel at the review hearing.

4. I understand that the Presiding Officer of the arbitration hearing will provide a verbal summary of the hearing procedures that occurred to the review Panel and that any party or the review Panel may question the Presiding Officer regarding his or her summary of those procedures.

5. I understand that the Board of Directors or appointed Directors' review Panel may only: (a) affirm the award; or (b) order a new hearing in front of a new arbitration hearing Panel.

6. This request is accompanied by a filing fee in the amount of $ _____ . I understand that if the arbitration award is affirmed, the filing fee is nonrefundable and will be retained by the Association.

7. Under the penalties of perjury, I (we) declare to the best of my (our) knowledge and belief that the statements contained in this request for review are true and correct.

Dated: _____

_____ _____
Signature Signature

_____ _____
Name (Type or Print) Name (Type or Print)

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NOTICE OF REQUEST FOR REVIEW ARBITRATION
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs. _____
Complainant(s) Respondent(s)

TO: _____

This is to inform you that _____ has filed a request for review of the above referenced arbitration award by the Association's Board of Directors or appointed Directors' Review Panel.

Please be advised that you have fifteen (15) calendar days from the date specified below in which to mail or file your response, if any, to the office of the Association at the address below. You also have the right to attend the review hearing. Enclosed is form A-17 for your use in filing a reply.

Your response must be in writing, signed and dated, and include one (1) original and _____ copies.

Dated:_____

_____
Signature
_____, Association Executive or authorized designee
Name (Type/Print)

Please mail or file response to:

_____ASSOCIATION OF REALTORS®

Attn:_____

Address:_____

City, State, Zip:_____

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REPLY TO REQUEST FOR REVIEW ARBITRATION
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs. _____
Complainant(s) Respondent(s)

To the Board of Directors or Appointed Directors' Review Panel:

1. I (we) reply to the request for review filed in this matter and substantiate such reply in the attached statement, marked "Exhibit A," which is hereby incorporated by reference and made part of this reply.
2. Under the penalties of perjury, I declare that to the best of my knowledge and belief, the statements contained in this reply are true and correct.

Dated: _____

_____
Signature

_____
Name (Type or Print)

_____
Signature

_____
Name (Type or Print)

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NOTICE OF REVIEW ARBITRATION
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs. _____
Complainant(s) Respondent(s)

All parties are hereby notified that the hearing for the above referenced matter has been scheduled for:

Date: _____

Time: _____

Location: _____

_____

_____

_____

The appointed review Panel members in this case are:

_____, PRESIDING OFFICER

_____, DIRECTOR

_____, DIRECTOR

All parties may be represented by legal counsel at any time, including at the review hearing. If a party intends to have legal representation, the party must give written notice of the legal representative's name, address and phone number to all parties and the hearing and/or review Panel at least fifteen (15) calendar days before the scheduled date of the hearing. Failure to comply with this notice requirement may result in a continuance being granted and a continuance fee assessed against the party.

The parties may not attempt to discuss the case with any review hearing Panel member except during the official hearing.

Dated:_____

_____
Signature

_____, Association Executive or Authorized Designee
Name (Type/Print)

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ACTION UPON REVIEW ARBITRATION
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs. _____
Complainant(s) Respondent(s)

The request for review of the arbitration award in the above referenced arbitration case came before the Board of Directors or appointed Directors' Review Panel on _____, 20____. Upon consideration of the request:

The award has been:

☐ Affirmed

☐ Referred for a new hearing.

The review filing fee shall be:

☐ Retained by the Association

☐ Returned to the party requesting the review

The above action was adopted by the Board of Directors or appointed Directors' Review Panel on _____, 20 ___.

Date: _____

By: _____
Signature
_____, President or Presiding Officer
Print or Type Name

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RELEASE OF PARTIES FROM DUTY TO ARBITRATE
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs. _____
Complainant(s) Respondent(s)

TO EACH OF THE PARTIES IN THE ABOVE REFERENCED ARBITRATION:

In accordance with the rules and procedures of the Association, the undersigned have determined that because of the magnitude of the amount involved, or the legal complexity of the controversy, or upon the advice of legal counsel, the above dispute should not be arbitrated through the Association.

Accordingly, it is ordered that any filing fees paid by the parties shall be returned to them, and they are relieved of their arbitration agreement, and may pursue any claims or rights as deemed necessary or appropriate to resolve this dispute.

Dated: _____

_____, PRESIDING OFFICER

_____, ARBITRATOR

_____, ARBITRATOR

or

Dated:_____

_____, PROFESSIONAL STANDARDS CHAIR

_____, ASSOCIATION LEGAL COUNSEL

ACTION BY THE BOARD OF DIRECTORS:

- ☐ Approved
- ☐ Disapproved and referred back for arbitration

Action Taken:_____, 20_____

_____
(Signature)
_____, ASSOCIATION PRESIDENT
(Type/Print)

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ARBITRATION DISCLOSURE STATEMENT

_____ ASSOCIATION OF REALTORS®

Case #	*[Complainant Party vs. Respondent Party]*

Complainant Legal Counsel:	**Respondent Legal Counsel:**

Disclosure of Proposed Neutral Arbitrator:

Please check the appropriate box

	Yes	No
a) Are you or a member of your extended family a party, a party's spouse or domestic partner, or an officer, director, or trustee of a party?	☐	☐
2. Are you or a member of your extended family, or your former spouse:		
a) A lawyer in the arbitration?	☐	☐
b) The spouse or domestic partner of a lawyer in the arbitration?	☐	☐
c) Currently associated in the private practice of law with a lawyer in the arbitration?	☐	☐
3. Have you or a member of your immediate family had a significant personal relationship with any party, lawyer for a party or any lawyer currently practicing law with an attorney for a party?	☐	☐
4. Are you serving or, within the preceding five (5) years, have you served as a neutral arbitrator in another arbitration involving a party to the current arbitration, a lawyer for a party or other lawyer currently practicing law with an attorney for a party?	☐	☐

*If **yes**, please attach a separate sheet disclosing the following for each such previous case: (1) identification of all parties to the case; (2) identification of all parties' attorneys; (3) identification of the prevailing party; (4) the amount of the award, if any and (5) the date of the arbitration award. It is sufficient to give the name of any party who is not a party to the pending arbitration as "complainant" or "respondent" if the party is an individual and not a business or corporate entity.*

5. Are you serving or, within the preceding five (5) years, have you served as a party-appointed arbitrator in another arbitration for either a party to the current arbitration, a lawyer for a party or other lawyer currently practicing law with an attorney for a party?	☐	☐

*If **yes**, please attach a separate sheet disclosing the following for each such previous case: (1) identification of all parties to the case; (2) identification of all parties' attorneys; (3) identification of the prevailing party; (4) the amount of the award, if any and (5) the date of the arbitration award. It is sufficient to give the name of any party who is not a party to the pending arbitration as "complainant" or "respondent" if the party is an individual and not a business or corporate entity.*

If the combined total of the cases disclosed under (4), and (5) is greater than five, you must provide a summary that states the total number of cases in which you served in each capacity and the number of cases in which the party to the current arbitration or the party represented by the lawyer for a party in the current arbitration was the prevailing party.

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Yes No

6. Are you serving or have you served as a (1) temporary judge under article VI, section 21 of the California Constitution, (2) referee under CCP Sec. 638-639, (3) neutral evaluator, (4) special master, (4) mediator, (5) settlement officer or (6) settlement facilitator in another pending or prior case involving a party or lawyer in the current arbitration or a lawyer who is currently associated in the private practice of law with a lawyer in the arbitration.? ☐ ☐

If you were or will be paid for serving in such a capacity, you must disclose on a separate sheet: (i) the number of pending and prior cases in which you were or will be paid for serving in each capacity for each party, lawyer in the arbitration, or other lawyer currently associated in the private practice of law with a lawyer in the arbitration; and (ii) in each such case in which you rendered a decision as a temporary judge or referee, the date of the decision, the prevailing party, the names of the parties' attorneys, and the amount of monetary damages awarded, if any.

If the total of the cases disclosed under this question is greater than five (5)*, you must also provide a summary that states the number of cases in which you rendered a decision as a temporary judge or referee in which the party to the current arbitration or the party represented by the lawyer in the current arbitration was the prevailing party. (An arbitrator will be deemed to have complied with this requirement with respect to any such services commenced prior to July 1, 2002, if the arbitrator declares in writing that he or she has requested the required information from any dispute resolution provider organization administering those prior services and has disclosed all required information pertaining to those services within his or her knowledge.)*

7. Do you now have or have you had any attorney-client relationship with a party, lawyer for a party or other lawyer currently practicing law with an attorney for a party? ☐ ☐

Attorney-client relationships include the following:

a) A party or an officer, a director, or a trustee of a party is or was your client in your private practice of law or a client of a lawyer with whom you are or were associated in the private practice of law;
b) A lawyer for a party is or was a your client in your private practice of law; and
c) In any other proceeding involving the same issues, you gave advice to a party or a lawyer in the arbitration concerning any matter involved in this arbitration.

8. Do you or a member of your immediate family have or have you had any other professional relationship with a party, lawyer for a party or other lawyer currently practicing law with an attorney for a party? ☐ ☐

Professional relationships include the following:

a) You or a member of your immediate family is or was an employee of or an expert witness or a consultant for a party;
b) You or a member of your immediate family is or was an employee of or an expert witness or a consultant for a lawyer in the arbitration; and
c) You are or were associated in the private practice of law with a lawyer in the arbitration.

9. Do you or a member of your immediate family have a financial interest in a party? ☐ ☐

10. Do you or a member of your immediate family have a financial interest in the subject matter of the arbitration? ☐ ☐

11. Do you or a member of your immediate family have an interest that could be substantially affected by the outcome of the arbitration? ☐ ☐

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	Yes	No
12. Do you or a member of your extended family have personal knowledge of disputed evidentiary facts relevant to the arbitration?	☐	☐

(A person who is likely to be a material witness in the proceeding is deemed to have personal knowledge of disputed evidentiary facts concerning the proceeding.)

13. Are you a member of any organization that practices invidious discrimination on the basis of race, sex, religion, national origin, or sexual orientation?	☐	☐

(Membership in a religious organization, an official military organization of the United States, or a nonprofit youth organization need not be disclosed unless it would interfere with your proper conduct of the proceeding or would cause a person aware of the fact to reasonably entertain a doubt concerning your ability to act impartially.)

14. Are you aware of any other matter that:		
a) Might cause a person aware of the facts to reasonably entertain a doubt that you would be able to be impartial?	☐	☐
b) Leads you to believe there is a substantial doubt as to your capacity to be impartial, including, but not limited to, bias or prejudice toward a party, lawyer, or law firm in the arbitration?	☐	☐
c) Otherwise leads you to believe that your disqualification will further the interests of justice?	☐	☐
15. Is there any reason you might not be able to properly perceive the evidence or properly conduct the proceedings because of a permanent or temporary physical impairment?	☐	☐
16. Do you know of any constraints on your availability that will interfere with your ability to commence or complete the arbitration in a timely manner?	☐	☐
17. Is there any other matter, which if disclosed, could cause a person aware of the facts to reasonably entertain a doubt that you would be able to be impartial?	☐	☐

*If **yes**, please attach a separate sheet disclosing the matter which provides any and all information regarding the matter to the full extent of your knowledge.*

You have ten (10) calendar days from the date at the top of this form to return this completed form and any attachments to _____Association of REALTORS®.

Dated: _____

_____ _____

Proposed Neutral Arbitrator Signature

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ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address)*:	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO.: ATTORNEY FOR *(Name)*:	
NAME OF COURT: STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/ PETITIONER: DEFENDANT/ RESPONDENT:	
CIVIL SUBPOENA **For Personal Appearance at Trial or Hearing**	CASE NUMBER:

THE PEOPLE OF THE STATE OF CALIFORNIA, TO *(name, address, and telephone number of witness, if known)*:

1. **YOU ARE ORDERED TO APPEAR AS A WITNESS in this action at the date, time, and place shown in the box below UNLESS you make an agreement with the person named in item 2:**

a. Date:	Time:	☐ Dept.:	☐ Div.:	☐ Room:
b. Address:				

2. **IF YOU HAVE ANY QUESTIONS ABOUT THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:**
   a. Name of subpoenaing party or attorney: b. Telephone number:

3. **Witness Fees:** You are entitled to witness fees and mileage actually traveled both ways, as provided by law, if you request them at the time of service. You may request them before your scheduled appearance from the person named in item 2.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued:

. . . . . .
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PERSON ISSUING SUBPOENA)

_____
(TITLE)

Requests for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before the date on which you are to appear. Contact the clerk's office or go to *www.courtinfo.ca.gov/forms* for *Request for Accommodations by Persons With Disabilities and Order* (form MC-410). (Civil Code, § 54.8.)



PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:

PROOF OF SERVICE OF CIVIL SUBPOENA FOR PERSONAL APPEARANCE AT TRIAL OR HEARING

1. I served this *Civil Subpoena for Personal Appearance at Trial or Hearing* by personally delivering a copy to the person served as follows:

   a. Person served *(name)*:

   b. Address where served:

   c. Date of delivery:

   d. Time of delivery:

   e. Witness fees *(check one)*:
      (1) ☐ were offered or demanded and paid. Amount: . . . . . $ _____
      (2) ☐ were not demanded or paid.

   f. Fee for service: . . . . . $ _____

2. I received this subpoena for service on *(date)*:

3. Person serving:
   a. ☐ Not a registered California process server.
   b. ☐ California sheriff or marshal.
   c. ☐ Registered California process server.
   d. ☐ Employee or independent contractor of a registered California process server.
   e. ☐ Exempt from registration under Business and Professions Code section 22350(b).
   f. ☐ Registered professional photocopier.
   g. ☐ Exempt from registration under Business and Professions Code section 22451.
   h. Name, address, telephone number, and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

▶ _____
(SIGNATURE)

(For California sheriff or marshal use only)
I certify that the foregoing is true and correct.

Date:

▶ _____
(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address)*:	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR *(Name)*:	
NAME OF COURT: STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/ PETITIONER: DEFENDANT/ RESPONDENT:	
CIVIL SUBPOENA (DUCES TECUM) for Personal Appearance and Production of Documents, Electronically Stored Information, and Things at Trial or Hearing and DECLARATION	CASE NUMBER:

THE PEOPLE OF THE STATE OF CALIFORNIA, TO *(name, address, and telephone number of witness, if known):*

1. **YOU ARE ORDERED TO APPEAR AS A WITNESS in this action at the date, time, and place shown in the box below UNLESS your appearance is excused as indicated in box 3b below or you make an agreement with the person named in item 4 below.**
   a. Date: Time: ☐ Dept.: ☐ Div.: ☐ Room:
   b. Address:
2. **IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, *AND* CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.**
3. **YOU ARE** *(item a or b must be checked)*:
   a. ☐ Ordered to appear in person and to produce the records described in the declaration on page two or the attached declaration or affidavit. The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena. The procedure authorized by Evidence Code sections 1560(b), 1561, and 1562 will not be deemed sufficient compliance with this subpoena.
   b. ☐ Not required to appear in person if you produce (i) the records described in the declaration on page two or the attached declaration or affidavit and (ii) a completed declaration of custodian of records in compliance with Evidence Code sections 1560, 1561, 1562, and 1271. (1) Place a copy of the records in an envelope (or other wrapper). Enclose the original declaration of the custodian with the records. Seal the envelope. (2) Attach a copy of this subpoena to the envelope or write on the envelope the case name and number; your name; and the date, time, and place from item 1 in the box above. (3) Place this first envelope in an outer envelope, seal it, and mail it to the clerk of the court at the address in item 1. (4) Mail a copy of your declaration to the attorney or party listed at the top of this form.
4. **IF YOU HAVE ANY QUESTIONS ABOUT THE TIME OR DATE YOU ARE TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:**
   a. Name of subpoenaing party or attorney: b. Telephone number:
5. **Witness Fees:** You are entitled to witness fees and mileage actually traveled both ways, as provided by law, if you request them at the time of service. You may request them before your scheduled appearance from the person named in item 4.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued:

(TYPE OR PRINT NAME) (SIGNATURE OF PERSON ISSUING SUBPOENA)

(TITLE)

(Declaration in support of subpoena on reverse)

Form Adopted for Mandatory Use
Judicial Council of California
SUBP-002 [Rev. January 1, 2012]

Code of Civil Procedure, § 1985 et seq.
www.courts.ca.gov

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:

The production of the documents, electronically stored information, or other things sought by the subpoena on page one is supported by *(check one):*

☐ the attached affidavit or ☐ the following declaration:

DECLARATION IN SUPPORT OF CIVIL SUBPOENA (DUCES TECUM) FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND THINGS AT TRIAL OR HEARING
(Code Civ. Proc., §§ 1985,1987.5)

1. I, the undersigned, declare I am the ☐ plaintiff ☐ defendant ☐ petitioner respondent
   ☐ attorney for *(specify):* ☐ other *(specify):*
   in the above-entitled action.

2. The witness has possession or control of the documents, electronically stored information, or other things listed below, and shall produce them at the time and place specified in the Civil Subpoena for Personal Appearance and Production of Records at Trial or Hearing on page one of this form *(specify the exact documents or other things to be produce; if electronically stored information is demanded, the form or forms in which each type of information is to be produced may be specified):*

   ☐ Continued on Attachment 2.

3. Good cause exists for the production of the documents, electronically stored information, or other things described in paragraph 2 for the following reasons:

   ☐ Continued on Attachment 3.

4. The documents, electronically stored information, or other things described in paragraph 2 are material to the issues involved in this case for the following reasons:

   ☐ Continued on Attachment 4.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME

(SIGNATURE OF ☐ SUBPOENAING PARTY ☐ ATTORNEY FOR SUBPOENAING PARTY)

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least *five* days before the date on which you are to appear. Contact the clerk's office or go to *www.courts.ca.gov/forms* for *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civil Code, § 54.8.)



(Proof of service on page 3)

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:

PROOF OF SERVICE OF CIVIL SUBPOENA (DUCES TECUM) for Personal Appearance and Production of Documents, Electronically Stored Information, and Things at Trial or Hearing and DECLARATION

1. I served this *Civil Subpoena (Duces Tecum) for Personal Appearance and Production of Documents, Electronically Stored Information, and Things at Trial or Hearing and Declaration* by personally delivering a copy to the person served as follows:
   a. Person served *(name):*
   b. Address where served:
   c. Date of delivery:
   d. Time of delivery:
   e. Witness fees *(check one):*
      (1) ☐ were offered or demanded and paid. Amount: . . . . . $ _____
      (2) ☐ were not demanded or paid.
   f. Fee for service: . . . . . $ _____
2. I received this subpoena for service on *(date):*
3. Person serving:
   a. ☐ Not a registered California process server.
   b. ☐ California sheriff or marshal.
   c. ☐ Registered California process server.
   d. ☐ Employee or independent contractor of a registered California process server.
   e. ☐ Exempt from registration under Business and Professions Code section 22350(b).
   f. ☐ Registered professional photocopier.
   g. ☐ Exempt from registration under Business and Professions Code section 22451.
   h. Name, address, telephone number, and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____
(SIGNATURE)

(For California sheriff or marshal use only)
I certify that the foregoing is true and correct.

Date:

_____
(SIGNATURE)

REQUEST FOR "SHOW CAUSE" HEARING ARBITRATION
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs._____
Complainant(s) Respondent(s)

Hearing Date:_____

To the Board of Directors:

1. In the above referenced arbitration case, the hearing Panel determined that: _____ owed _____ the amount of _____, which was to be paid on or before _____. I (we) request a "show cause" hearing because the non-prevailing party(s) failed to pay the arbitration award by the due date. This request is supported by the attached statement, marked Exhibit "A" which is hereby incorporated by reference and made part of this request. I understand that this request will not be processed by the Association without such a supporting written statement.

2. I understand that the Board of Directors may: (1) take no action; (2) suspend the non-prevailing party's Association and/or MLS membership until he or she pays the arbitration award to the prevailing party; or (3) set forth a schedule for the payment of the arbitration award to the prevailing party. The Directors may also impose discipline if the non-prevailing party fails to follow the payment schedule set forth by the Directors.

3. I understand that any suspension of membership by the Directors following the "show cause" hearing will not be imposed until: (1) after the award is confirmed or modified by a court, but only if the award is not paid by the date ordered by the court (or within fifteen (15) days after the court order if the order 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.

4. Under the penalties of perjury, I (we) declare to the best of my (our) knowledge and belief that the statements contained in this request for "show cause" hearing are true and correct.

Dated: _____

_____ _____
Signature Signature

_____ _____
Name (Type or Print) Name (Type or Print)

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NOTICE OF REQUEST FOR "SHOW CAUSE" HEARING ARBITRATION
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs. _____
Complainant(s) Respondent(s)

TO: _____

This is to inform you that _____ has filed a request for "show cause" hearing for the above referenced arbitration award by the Association's Board of Directors.

Please be advised that you have fifteen (15) calendar days from the date specified below in which to mail or file your response, if any, to the office of the Association at the address below. You also have the right to attend the hearing. Enclosed is form A-26 for your use in filing a reply. Please note that the sole purpose of the "show cause" hearing is to determine why you failed to timely pay the arbitration award. The only evidence you can present must relate to your financial ability to pay the award. **The purpose of a "show cause" hearing is not to rehear the merits of the case if you disagree with the award of the hearing Panel.**

Your response must be in writing, signed and dated, and include one (1) original and _____ copies.

Dated:_____

_____
Signature

_____, Association Executive or authorized designee
Name (Type/Print)

Please mail or file response to:

_____ASSOCIATION OF REALTORS®

Attn:_____

Address:_____

City, State, Zip:_____

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REPLY TO REQUEST FOR "SHOW CAUSE" HEARING ARBITRATION
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs. _____
Complainant(s) Respondent(s)

To the Board of Directors or Appointed Directors' Panel:

1. I (we) reply to the request for "show cause" hearing filed in this matter and substantiate such reply in the attached statement, marked "Exhibit A," which is hereby incorporated by reference and made part of this reply.
2. Under the penalties of perjury, I declare that to the best of my knowledge and belief, the statements contained in this reply are true and correct.

Dated: _____

_____
Signature

_____
Name (Type or Print)

_____
Signature

_____
Name (Type or Print)

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NOTICE OF "SHOW CAUSE" HEARING ARBITRATION
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs. _____
Complainant(s) Respondent(s)

All parties are hereby notified that the hearing for the above referenced matter has been scheduled for:

Date: _____

Time: _____

Location: _____

_____

_____

_____

The appointed Panel members in this case are:

_____, PRESIDING OFFICER

_____, DIRECTOR

_____, DIRECTOR

All parties may be represented by legal counsel at any time, including at the "show cause" hearing. If a party intends to have legal representation, the party must give written notice of the legal representative's name, address and phone number to all parties and the hearing and/or Panel at least fifteen (15) calendar days before the scheduled date of the hearing. Failure to comply with this notice requirement may result in a continuance being granted and a continuance fee assessed against the party.

The parties may not attempt to discuss the case with any hearing Panel member except during the official hearing.

Dated:_____

_____
Signature

_____ , Association Executive or Authorized Designee
Name (Type/Print)

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ACTION UPON "SHOW CAUSE HEARING" ARBITRATION
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs. _____
Complainant(s) Respondent(s)

A "show cause" hearing in the above referenced arbitration case came before the Board of Directors on _____, 20____. Upon consideration of the request:

- ❑ The Directors choose not to take any action.
- ❑ The Directors hereby suspend the q Association and/or q MLS membership of _____ until he or she pays the arbitration award to the prevailing party.
- ❑ The Directors require _____ to pay the arbitration award to the prevailing party according to the following schedule:

_____

_____

In the event _____ fails to make any payments by the deadlines set forth in this schedule, The Directors hereby order that the q Association and/or q MLS membership of _____ be suspended until he or she pays the arbitration award to the prevailing party.

NOTE: No suspension will be imposed by the Association until: (1) after the award is confirmed or modified by a court, but only if it is not paid by the date ordered by the court (or within fifteen (15) days after the court order if the order 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.

The above action was adopted by the Board of Directors on _____, 20 ____.

Date: _____

By: _____
Signature

_____
Name (Type/Print)
President or Presiding Office

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AGREEMENT FOR HEARING BY TWO PANELISTS
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____vs._____
Complainant(s) Respondent(s)

We, the undersigned parties, hereby agree that the arbitration hearing on _____, 20____ will be conducted by only two (2) panelists.

COMPLAINANT(S):

_____
Signature

_____
Name (Type or Print)

_____
Signature

_____
Name (Type or Print)

RESPONDENT(S):

_____
Signature

_____
Name (Type or Print)

_____
Signature

_____
Name (Type or Print)

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NOTICE OF ADDITIONAL ATTENDEES FOR HEARING ARBITRATION
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs. _____
Complainant(s) Respondent(s)

This notice is to inform the Association and all parties that the following additional attendees will appear at the hearing of the above-referenced case.

As per Association policies and procedures, this notice has been timely submitted to the Association no later than fifteen (15) days prior to the hearing, and the Association will forward it to all parties.

LEGAL COUNSEL:

Name:_____

Firm:_____

Address:_____

Email:_____ **Phone Number:**_____

BROKER REPRESENTATIVE: Name of the broker who will not be present: _____

Name of the Person Representing the Broker: _____

Firm:_____

Address: _____

Phone Number:_____ **Email: _____**

WITNESS(ES): (Note: The list of witnesses only needs to be provided to the other party when the amount in dispute is $50,000 or more. However, you may provide the list of witnesses as a courtesy to the other party even when the amount in dispute is less than $50,000.)

Name: _____ **Name: _____**

INTERPRETER/TRANSLATOR:

Name: _____

Language: _____

Date: _____

_____ _____
Party's Name (Type/Print) Party's Signature

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CALIFORNIA ASSOCIATION OF REALTORS®

APPENDICES
2026

Prepared by the
CALIFORNIA ASSOCIATION OF REALTORS®
Corporate Legal Department
915 L Street, #1460
Sacramento, CA 95814

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APPENDIX A - DISCIPLINARY

ADMINISTRATIVE PROCESSING OVERVIEW
DISCIPLINE COMPLAINT (NO ETHICS ADVOCATES)

Case No._____,

_____	VS.	_____
Complainants		**Respondents**

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**
☐ 3(a) – (d) *Manual* – Power to Take Disciplinary Action Against an Association Member ☐ A.3 *Guidelines* – Power to Take Action Against an Association Member ☐ 5(a) – (c) *Manual* – Power to Take Disciplinary Action Against an MLS Participant or Subscriber ☐ A.6 *Guidelines* – Power to Take Disciplinary Action Against an MLS Participant or Subscriber ☐ 8(a)(b) *Manual* – Citations ☐ A.5 *Guidelines* – Citations ☐ B.1 *Guidelines* – Filing a Disciplinary Complaint ☐ A.7 *Guidelines* – Distinction Between a Disciplinary Complaint and Arbitration	**Request to File a Discipline Complaint** ☐ Provide the Complainant with the **Discipline Complaint Packet,** which includes: 1. Instructions on filing a discipline complaint; 2. *Before You File a Complaint;* 3. Form D-27 *Roles of Professional Standards Volunteers*; 4. Form D-1 *Discipline Complaint;* 5.Copy of the current *CA Code of Ethics & Arbitration Manual;* ***Note:*** 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.
☐ 20(b) *Manual* – Timing of Filing	**Receipt of Complaint Date** ☐ _____ (Date Filed) ☐ Date-stamp the Complaint with its postmark date or, if no postmark date is given/applicable, with the date of receipt and record above.

☐ 20(a) *Manual* – Who May File; Where to File ☐ 20(b) *Manual* – Timing of Filing ☐ 20(c) *Manual* – Preliminary Review ☐ 20(d) *Manual* – Disciplinary and Arbitration Complaints Filed Together ☐ 21(a)(b) *Manual* – Designated REALTOR® as a Respondent in an Ethics Hearing 22(a)(b) *Manual* – MLS Participant as a Respondent in an MLS Rules Hearing	**Preliminary Review of Complaint** ☐ Conduct a preliminary review of the complaint to determine if it has been properly and timely filed. The preliminary review should only consider questions such 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 the time the alleged offense and facts relating to it could have been known by the complainant in the exercise of reasonable diligence or 180 days after the conclusion of the transaction, or event, whichever is later?; 3. Did the Complainant Party submit the proper forms?; 4. Did the Complainant Party cite Article(s) in the Code of Ethics? (This is now optional – the complainant may choose to have the Grievance Committee select the allegations); 5. Has the Disciplinary Complaint been filed in conjunction with an Arbitration Complaint?; 6. Has the complaint been filed at the correct Association? ☐ 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 Professional Standards Hearing Panel will ultimately decide the matter. ☐ Create a case number and file for this complaint. ☐ At the Association's option, send a hand-written acknowledgment and appreciation letter to the complainant by regular mail. A sample template letter can be found in Appendix C. ***ETHICS CHECK:*** Create a case file for this complaint in Ethics Check and upload Form D-1 and Exhibit 1 *Statement of Facts*.
☐ 20(f) *Manual* – Prehearing Broker-to-Broker meeting ☐ B.1 *Guidelines* – Filing a Disciplinary Complaint	**Prehearing Broker-to-Broker Meeting** ☐ If the complainant is a REALTOR®, ask the complainant if they would like the Association to arrange a meeting between the complainant's broker and the respondent's broker before forwarding the complaint to the Grievance Committee. The meeting may be conducted virtually using a videoconferencing platform such as Zoom or by telephone. ☐ If the complainant does not agree that the brokers should meet, then the complaint will be forwarded to the Grievance Committee. ☐ If the complainant agrees to have the brokers meet, schedule and coordinate a videoconferencing or telephone call with both brokers. ☐ Following the meeting, the complainant will notify the association as to whether they wish to withdraw the complaint or have the complaint sent forward to the Grievance Committee. ☐ If the Association does not receive a response from the complainant within 2 weeks after the association initiates the pre-hearing broker-to-broker process, then the complaint will be forwarded to the Grievance Committee.

☐ 24(f) *Manual* – Amending the Complaint ☐ 24(g) *Manual* – Dismissing Allegations in a Complaint ☐ C.6 *Guidelines* – Modifications to Complaint ☐ 24(d) *Manual* – Grievance Committee as Complainant ☐ C.7 *Guidelines* – Grievance Committee as Complainant ☐ C.8 *Guidelines* – Review of the Grievance Committee Decision	**Grievance Committee Decision to Dismiss or Amend** ☐ If the GC decides to delete an Article(s) or Respondent(s) from the Complaint or dismisses the Complaint entirely, send the Complainant Party: 1. Cover Letter; 2. G-2 *Grievance Committee Report;* 3. G-3 *Notice of Availability of Review of Grievance Committee's Decision;* 4. G-4 *Request for Review of Grievance Committee's Decision.* ☐ If the GC decides to add an Article(s) or Respondent(s), send the Complainant Party: 1. Cover Letter; 2. G-2 *Grievance Committee Report;* ☐ 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.
☐	**Review of Grievance Committee Decision** ☐ 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. ☐ _____ (Date Due) ☐ If a Request for Review is timely filed, send the Request and original Complaint to the GC Review Panel and schedule a Review. ☐ GC Review Panel documents: 1. D-7 *Certificate of Qualification* 2. G-5 *Action of Directors Upon Request of Review of Grievance Committee's Decision* ☐ Once the Review Panel has issued their decision, transmit to Complainant Party and proceed as the Review Panel has directed.
☐ F.1 *Guidelines* – Transcript/Right to Record ☐ F.2 *Guidelines* – Interpreters and Translators	**Grievance Committee Decision and Receipt of Complaint to Parties** • If the GC decides to forward the Complaint for hearing, send Respondent Party the **Receipt of Complaint Packet,** which includes: 1. Cover Letter; 2. Form D-2 *Notice to Respondent* 3. Form D-27 *Roles of Professional Standards Volunteers*; 4. Copy of Complaint; 5. G-2 *Grievance Committee Report;* 6. Form D-3 *Response;* 7. Copy of the current Code of Ethics; 8. List of potential Panel Members; 9. Form D-4 *Notice of Right to Challenge Panel Members and Availability for Hearing;* 10. Form D-5 *Reasons for Challenge.*

	• Send the Respondent Party's Designated REALTOR® a copy of the **Receipt of Complaint Packet.** • At the same time, send the Complainant Party the **List of Panel Members Packet,** which includes: • Cover Letter • List of potential Panel Members; • Form D-4 *Notice of Right to Challenge Panel Members and Availability for Hearing;* • Form D-5 *Reasons for Challenge.* • If the Designated REALTOR® is included as a respondent, send Form D-15 *Guidance for Disciplining Designated REALTORS® and Brokers* to all parties.
☐ 28(c) *Manual* – Response not Required; Late Filing 28(d) *Manual* – Notifying Complainant of Response	**Receipt of Response** ☐ Response is due within **15 calendar days** of the date the Notice to Respondent is sent. ☐ 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, 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. ☐ ***ETHICS CHECK:*** Upload Form D-3 and Exhibit A *Statement of Facts* onto Ethics Check.
☐ 28(e) *Manual* – Selecting the Hearing Panel ☐ E.6 *Guidelines* – Selecting the Hearing Panel ☐ 28(f) *Manual* – Composition of the Hearing Panel ☐ 28(g) *Manual* – Presiding Officer ☐ 28(h) *Manual* – Alternate Panel Member ☐ 28(j) *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 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. ***Note:*** 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.
☐ 28(i) *Manual* – Notice of Date, Time, and Place of Hearing ☐ 28(k) Notification of Procedures ☐ 31 *Manual* – Continuances ☐ 32 *Manual* – Continuance Fees ☐ E.3 *Guidelines* – Continuances and Continuance Fees ☐ 30 *Manual* - Witnesses	**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. Cover Letter; 2. Form D-6 *Official Notice of Hearing;* 3. Form D-8 *Outline of Procedure for Hearing;* 4. Form D-26 *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
☐	**Materials to Panel** ☐ Prepare a case file for each Panel Member, including the Complaint, Response, and any relevant correspondence between the Association and the Parties. If the Designated REALTOR® is a respondent, include Form D-15 *Guidance for Disciplining Designated REALTORS® and Brokers*. ☐ 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. G-2 *Grievance Committee Report;* 2. D-6 *Official Notice of Hearing;* 3. D-7 *Certificate of Qualification;* 4. D-8 *Outline of Procedures for Hearing;* 5. D-9 *Acknowledgement of Receipt of Procedures;* 6. D-10 *Other Action of Arbitrators;* 7. D-11 *Decision and Findings of Fact;* 8. D-12 *Recommendations of Hearing Panel;* 9.Presiding Officer's Statements.
☐ 30 *Manual* - Witnesses ☐ F.1 *Guidelines* – Transcript/Right to Record ☐ 34(c) *Manual* – Notice (of Interpreter/Translator) ☐ F.2 *Guidelines* – Interpreters and Translators ☐ 18(b) *Manual* – Notice of Representation	**Important Pre-Hearing Deadlines** ☐ 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 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 hearing reminder to the Parties and Panel, which includes a list of attendees and the date/time/location of the hearing.
☐ 26(a)(b) *Manual* – Withdrawal of Complaint ☐ E.4 *Guidelines* – Withdrawal of an Association Disciplinary Complaint ☐ G.6 *Guidelines* – Reporting "Public Trust" Violations to the BRE	**Withdrawal of Complaint** ☐ 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, the complaint and response should be sent back to the Grievance Committee to determine if the Respondent(s) has committed a violation of the public trust. ☐ 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. ☐ If the GC determines no violation of the public trust has occurred, the Complaint is dismissed and the file should be closed.

☐ 19(e) *Manual* – Discussion Prior to Hearing ☐ 33(a) – (f) *Manual* – The Hearing ☐ F.5 *Guidelines* – Failure of Parties to Appear ☐ F.6 *Guidelines* – Conducting the Hearing ☐ F.7 *Guidelines* – Due Process Required ☐ 34 (a) – (c) *Manual* – Transcript/Right to Record ☐ F.1 *Guidelines* – Transcript/Right to Record	**Discipline 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. ☐ 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. ☐ The Presiding Officer should remind all Parties, their Witnesses and the Hearing Panel of the confidential nature of the discipline process.
☐ 33(a) *Manual* – Statements of Qualification; Acknowledgement of Receipt of Outline of Procedure ☐ 19(g) *Manual* – Absent Panel Member ☐ 17(a) – (f) *Manual* – Confidentiality of Proceedings ☐ B.4 *Guidelines* – Confidentiality of Proceedings	**Hearing Documents** The following forms should be completed and retained in the case file: ☐ D-7 *Certificate of Qualification,* to be signed by all Panel members prior to the start of the hearing. ☐ D-9 *Acknowledgement of Receipt of Outline of Procedure,* to be signed by all Parties prior to the start of the hearing. ☐ D-25 *Agreement for Hearing by Two Panelists,* to be signed by all Parties prior to the start of the hearing (only if applicable). ☐ D-10 *Other Action of the Hearing Panel* (if applicable); or ☐ D-11 *Decision and Findings of Fact* and D -12 *Recommendations of Hearing Panel.*
☐ 36(a) *Manual* - Making and Reporting the Decision ☐ 36(b) *Manual* – Consideration of Prior Code of Ethics and Membership Duty Violations ☐ 36(c) *Manual* – Consideration of Prior MLS Duty Violations ☐ 6(a) – (f) *Manual* – Nature of Discipline Against an Association Member ☐ 7(a) – (d) *Manual* – Nature of Discipline Against an MLS Participant or Subscriber ☐ F.11 *Guidelines* – Disciplinary Recommendations ☐ G.1 *Guidelines* – Distributing the Decision ☐ 38(a) *Manual* – Request for Review	**Decision and Findings of Fact** ☐ 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. ☐ 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. ☐ The **Decision of Panel Members Packet** should include the following: 1. Cover Letter; 2. D-11 *Decision and Finding of Fact* and D-12 *Recommendations of Hearing Panel* (or D-10 *Other Action of Hearing Panel,* if applicable)*;* 3. Completed D-7 *Certificate of Qualification;* 4. D-13 *Notice of Availability of Rehearing and Review;* 5. D-14 *Request for Duplication of Recording;* 6. D-17 *Request for Review.* ☐ ***ETHICS CHECK:*** Upload Forms D-11 *Decision and Finding of Fact* and D-12 *Recommendations of Hearing Panel* (or D-10 *Other Action of Hearing Panel,* if applicable) onto Ethics Check.
	Request for Review – please see Disciplinary Review Hearing Checklist 20 days from Decision → Request for Discipline Review must be submitted.

☐ 37(a) – (c) *Manual* – Action of the Directors if No Request for Review ☐ G.3 *Guidelines* – Action of the Directors if there is no Request for Review	**Decision to Board of Directors for Ratification** ☐ 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: 1. D-11 *Decision and Finding of Fact* and D-12 *Recommendations of Hearing Panel* (or D-10 *Other Action of Hearing Panel,* if applicable)*;* 2. D-22 *Action if No Request for Review.* ☐ 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. ☐ The Hearing Panel Decision is final only once it has been ratified by the Board of Directors. • ***Note:*** 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.
☐ 39(c) *Manual* – Publication of Ethics Violators ☐ 39(d) *Manual* – C.A.R. Publication Policy for Ethics Violators ☐ G.4 *Guidelines* – Publishing the Names of Ethics Violators	**Publication** ☐ 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: 1. Letter of Reprimand 2. Fine; 3. Suspension; 4. Expulsion. ☐ If the Discipline is subject to publication, forward the following to C.A.R. Professional Standards staff: 1. Photo of Violator 2. Form D-24 *Submission of Photo for Discipline Publication;* 3. D-11 *Decision and Findings of Fact;* 4. D-12 *Recommendations of Hearing Panel.* • ***Note:*** 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. • ***Note:*** The published information will be removed from the C.A.R. website three years after initial publication.
☐ G.6 *Guidelines* – Reporting Suspensions and Expulsions to C.A.R.	**Sanctions Met, File Closed** ☐ 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.
☐ G.8 *Guidelines* – Record Retention ☐ 34(c) *Manual* – Destruction of Transcript or Recording	**Record Retention** ☐ 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. ☐ Any recordings or transcripts of the actual hearing should be destroyed as soon as the Decision is final.

ADMINISTRATIVE PROCESSING OVERVIEW
DISCIPLINE COMPLAINT - (WITH ETHICS ADVOCATES)

Case No._____,

_____ _____

VS.

_____ _____

Complainants **Respondents**

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.

☐ **REFERENCE**	**ACTION**
☐ 3(a) – (d) *Manual* – Power to Take Disciplinary Action Against an Association Member ☐ A.3 *Guidelines* – Power to Take Action Against an Association Member ☐ 5(a) – (c) *Manual* – Power to Take Disciplinary Action Against an MLS Participant or Subscriber ☐ A.6 *Guidelines* – Power to Take Disciplinary Action Against an MLS Participant or Subscriber ☐ 8(a)(b) *Manual* – Citations ☐ A.5 *Guidelines* – Citations ☐ B.1 *Guidelines* – Filing a Disciplinary Complaint ☐ A.7 *Guidelines* – Distinction Between a Disciplinary Complaint and Arbitration	**Request to File a Discipline Complaint** ☐ Provide the Complainant with the **Discipline Complaint Packet,** which includes: 1. Instructions on filing a discipline complaint; 2. *Before You File a Complaint;* 3. Form D-27 *Roles of Professional Standards Volunteers* 4. Form D-1 *Discipline Complaint;* 5. Copy of the current *CA Code of Ethics & Arbitration Manual;* 6. Ethics Advocate Program Information Sheet; 7. Form D-23 *Request for Ethics Advocate;* • ***Note:*** 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.
☐ 20(b) *Manual* – Timing of Filing	**Receipt of Complaint Date** ☐ _____ (Date Filed) ☐ Date-stamp the Complaint with its postmark date or, if no postmark date is given/applicable, with the date of receipt and record above.

☐ 20(a) *Manual* – Who May File; Where to File ☐ 20(b) *Manual* – Timing of Filing ☐ 20(c) *Manual* – Preliminary Review ☐ 20(d) *Manual* – Disciplinary and Arbitration Complaints Filed Together ☐ 20(e) *Manual* – Ethics Advocate ☐ 21(a)(b) *Manual* – Designated REALTOR® as a Respondent in an Ethics Hearing ☐ 22(a)(b) *Manual* – MLS Participant as a Respondent in an MLS Rules Hearing	**Preliminary Review of Complaint** ☐ Conduct a preliminary review of the complaint to determine if it has been properly and timely filed. The preliminary review should only consider questions such 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 the time the alleged offense and facts relating to it could have been known in the exercise of reasonable diligence or 180 days after the conclusion of the transaction, or event, whichever is later?; 3. Did the Complainant Party submit the proper forms?; 4. Did the Complainant Party cite Article(s) in the Code of Ethics?; (This is now optional – the complainant may choose to have the Grievance Committee select the allegations) 5. Has the Disciplinary Complaint been filed in conjunction with an Arbitration Complaint?; 6. Has the complaint been filed at the correct Association? ☐ 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 Professional Standards Hearing Panel will ultimately decide the matter. ☐ Create a case number and file for this complaint. ☐ At the Association's option, send a hand-written acknowledgment and appreciation letter to the complainant by regular mail. A sample template letter can be found in Appendix C. ☐ ***ETHICS CHECK:*** Create a case file for this complaint in Ethics Check and upload Form D-1 and Exhibit 1 *Statement of Facts*.
☐ 20(f) *Manual* – Prehearing Broker-to-Broker meeting ☐ B.1 *Guidelines* – Filing a Disciplinary Complaint	**Prehearing Broker-to-Broker Meeting** ☐ If the complainant is a REALTOR®, ask the complainant if they would like the Association to arrange a meeting between the complainant's broker and the respondent's broker before forwarding the complaint to the Grievance Committee. The meeting may be conducted virtually using a videoconferencing platform such as Zoom or by telephone. ☐ If the complainant does not agree that the brokers should meet, then the complaint will be forwarded to the Grievance Committee. ☐ If the complainant agrees to have the brokers meet, schedule and coordinate a videoconferencing or telephone call with both brokers. ☐ Following the meeting, the complainant will notify the association as to whether they wish to withdraw the complaint or have the complaint sent forward to the Grievance Committee. ☐ If the Association does not receive a response from the complainant within 2 weeks after the association initiates the pre-hearing broker-to-broker process, then the complaint will be forwarded to the Grievance Committee.

☐ 9 *Manual* – Grievance Committee ☐ 24 *Manual* – Action of the Grievance Committee ☐ 24(a) *Manual* – Review of Complaint by Grievance Committee ☐ 24(b) *Manual* – Preliminary Nature of Review ☐ C.1 *Guidelines* – Action of the Grievance Committee ☐ C.2 *Guidelines* – Frivolous Complaints ☐ C.4 *Guidelines* – Analyzing the Complaint ☐ 24(j) *Manual* – Disclosure of the Decision	**Grievance Committee Review** ☐ 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. ☐ Notify the GC Chair that a complaint has been filed and schedule (or have your GC Chair schedule) a date to review the Complaint. ☐ Prepare the GC Materials, which includes: 1. Copy of Complaint; 2. G-1 *Grievance Committee Review Checklist;* 3. G-2 *Grievance Committee Report;* 4. Current Code of Ethics and Standards of Practice; 5. D-7 *Certificate of Qualification* 6. D-15 *Guidance for Disciplining Designated REALTORS® and Brokers*. ☐ If the Grievance Committee determines that any Code of Ethics Articles, MLS Rules, and/or Membership Duties should be added to the complaint, make sure that the Grievance Committee has provided a description of the facts upon which the additional allegations are based.
☐ 24(f) *Manual* – Amending the Complaint ☐ 24(g) *Manual* – Dismissing Allegations in a Complaint ☐ C.6 *Guidelines* – Modifications to Complaint ☐ 24(d) *Manual* – Grievance Committee as Complainant ☐ C.7 *Guidelines* – Grievance Committee as Complainant ☐ C.8 *Guidelines* – Review of the Grievance Committee Decision	**Grievance Committee Decision to Dismiss or Amend** ☐ If the GC decides to delete an Article(s) or Respondent(s) from the Complaint or dismisses the Complaint entirely, send the Complainant Party: 1. Cover Letter; 2. G-2 *Grievance Committee Report;* 3. G-3 *Notice of Availability of Review of Grievance Committee's Decision;* 4. G-4 *Request for Review of Grievance Committee's Decision.* ☐ If the GC decides to add an Article(s) or Respondent(s), send the Complainant Party: 1. Cover Letter; 2. G-2 *Grievance Committee Report;* 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.
	Review of Grievance Committee Decision ☐ 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. ☐ _____ (Date Due) ☐ If a Request for Review is timely filed, send the Request and original Complaint to the GC Review Panel and schedule a Review. ☐ GC Review Panel documents: 1. D-7 *Certificate of Qualification* 2. G-5 *Action of Directors Upon Request of Review of Grievance Committee's Decision*

	☐ Once the Review Panel has issued their decision, transmit to Complainant Party and proceed as the Review Panel has directed.
☐ F.1 *Guidelines* – Transcript/Right to Record ☐ F.2 *Guidelines* – Interpreters and Translators	**Grievance Committee Decision and Receipt of Complaint to Parties** ☐ If the GC decides to forward the Complaint for hearing, send Respondent Party the **Receipt of Complaint Packet,** which includes: 1. Cover Letter; 2. Form D-2 *Notice to Respondent* or D-2A *Notice to Respondent (Ethics Advocate);* 3. Form D-27 *Roles of Professional Standards Volunteers* 4. Copy of Complaint; 5. G-2 *Grievance Committee Report;* 6. Form D-3 *Response;* 7. Copy of the current Code of Ethics; 8. D-23 *Request for Ethics Advocate;* 9. List of potential Panel Members; 10. Form D-4 *Notice of Right to Challenge Panel Members and Availability for Hearing;* 11. Form D-5 *Reasons for Challenge.* ☐ Send the Respondent Party's Designated REALTOR® a copy of the **Receipt of Complaint Packet.** ☐ At the same time, send the Complainant Party the **List of Panel Members Packet,** which includes: 1. Cover Letter 2. List of potential Panel Members; 3. Form D-4 *Notice of Right to Challenge Panel Members and Availability for Hearing;* 4. Form D-5 *Reasons for Challenge.* ☐ If the Designated REALTOR® is included as a respondent, send Form D-15 *Guidance for Disciplining Designated REALTORS® and Brokers* to all parties.
☐ 28(c) *Manual* – Response not Required; Late Filing ☐ 28(d) *Manual* – Notifying Complainant of Response	**Receipt of Response** ☐ Response is due within **15 calendar days** of the date the Notice to Respondent is sent. ☐ 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, 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.

	☐ ***ETHICS CHECK:*** Upload Form D-3 and Exhibit A *Statement of Facts* onto Ethics Check.
☐ 28(e) *Manual* – Selecting the Hearing Panel ☐ E.6 *Guidelines* – Selecting the Hearing Panel ☐ 28(f) *Manual* – Composition of the Hearing Panel ☐ 28(g) *Manual* – Presiding Officer ☐ 28(h) *Manual* – Alternate Panel Member ☐ 28(j) *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 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. • ***Note:*** 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.
☐ 28(i) *Manual* – Notice of Date, Time, and Place of Hearing ☐ 28(k) Notification of Procedures ☐ 31 *Manual* – Continuances ☐ 32 *Manual* – Continuance Fees ☐ E.3 *Guidelines* – Continuances and Continuance Fees ☐ 30 *Manual* - Witnesses	**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. Cover Letter; 2. Form D-6 *Official Notice of Hearing;* 3. Form D-8 *Outline of Procedure for Hearing;* 4. Form D-26 *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
☐	**Materials to Panel** ☐ Prepare a case file for each Panel Member, including the Complaint, Response, and any relevant correspondence between the Association and the Parties. If the Designated REALTOR® is a respondent, include Form D-15 *Guidance for Disciplining Designated REALTORS® and Brokers*. ☐ 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. G-2 *Grievance Committee Report;* 2. D-6 *Official Notice of Hearing;* 3. D-7 *Certificate of Qualification;* 4. D-8 *Outline of Procedures for Hearing;* 5. D-9 *Acknowledgement of Receipt of Procedures;* 6. D-10 *Other Action of Arbitrators;* 7. D-11 *Decision and Findings of Fact;* 8. D-12 *Recommendations of Hearing Panel;* 9. Presiding Officer's Statements.

☐ 30 *Manual* - Witnesses ☐ F.1 *Guidelines* – Transcript/Right to Record ☐ 34(c) *Manual* – Notice (of Interpreter/Translator) ☐ F.2 *Guidelines* – Interpreters and Translators ☐ 18(b) *Manual* – Notice of Representation	**Important Pre-Hearing Deadlines** ☐ 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 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 hearing reminder to the Parties and Panel, which includes a list of attendees and the date/time/location of the hearing.
☐ 26(a)(b) *Manual* – Withdrawal of Complaint ☐ E.4 *Guidelines* – Withdrawal of an Association Disciplinary Complaint ☐ G.6 *Guidelines* – Reporting "Public Trust" Violations to the BRE	**Withdrawal of Complaint** ☐ 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, the complaint and response should be sent back to the Grievance Committee to determine if the Respondent(s) has committed a violation of the public trust. ☐ 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. ☐ If the GC determines no violation of the public trust has occurred, the Complaint is dismissed and the file should be closed.
☐ 19(e) *Manual* – Discussion Prior to Hearing ☐ 33(a) – (f) *Manual* – The Hearing ☐ F.5 *Guidelines* – Failure of Parties to Appear ☐ F.6 *Guidelines* – Conducting the Hearing ☐ F.7 *Guidelines* – Due Process Required ☐ 34 (a) – (c) *Manual* – Transcript/Right to Record ☐ F.1 *Guidelines* – Transcript/Right to Record	**Discipline 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. ☐ 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. ☐ The Presiding Officer should remind all Parties, their Witnesses and the Hearing Panel of the confidential nature of the discipline process.
☐ 33(a) *Manual* – Statements of Qualification; Acknowledgement of Receipt of Outline of Procedure ☐ 19(g) *Manual* – Absent Panel Member ☐ 17(a) – (f) *Manual* – Confidentiality of Proceedings ☐ B.4 *Guidelines* – Confidentiality of Proceedings	**Hearing Documents** The following forms should be completed and retained in the case file: ☐ D-7 *Certificate of Qualification,* to be signed by all Panel members prior to the start of the hearing. ☐ D-9 *Acknowledgement of Receipt of Outline of Procedure,* to be signed by all Parties prior to the start of the hearing. ☐ D-25 *Agreement for Hearing by Two Panelists,* to be signed by all Parties prior to the start of the hearing (only if applicable). ☐ D-10 *Other Action of the Hearing Panel* (if applicable); or

	☐ D-11 *Decision and Findings of Fact* and D -12 *Recommendations of Hearing Panel.*
☐ 36(a) *Manual* - Making and Reporting the Decision ☐ 36(b) *Manual* – Consideration of Prior Code of Ethics and Membership Duty Violations ☐ 36(c) *Manual* – Consideration of Prior MLS Duty Violations ☐ 6(a) – (f) *Manual* – Nature of Discipline Against an Association Member ☐ 7(a) – (d) *Manual* – Nature of Discipline Against an MLS Participant or Subscriber ☐ F.11 *Guidelines* – Disciplinary Recommendations ☐ G.1 *Guidelines* – Distributing the Decision ☐ 38(a) *Manual* – Request for Review	**Decision and Findings of Fact** ☐ 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. ☐ 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. ☐ The **Decision of Panel Members Packet** should include the following: 1. Cover Letter; 2. D-11 *Decision and Finding of Fact* and D-12 *Recommendations of Hearing Panel* (or D-10 *Other Action of Hearing Panel,* if applicable)*;* 3. Completed D-7 *Certificate of Qualification;* 4. D-13 *Notice of Availability of Rehearing and Review;* 5. D-14 *Request for Duplication of Recording;* 6. D-17 *Request for Review.* • ***ETHICS CHECK:*** Upload Forms D-11 *Decision and Finding of Fact* and D-12 *Recommendations of Hearing Panel* (or D-10 *Other Action of Hearing Panel,* if applicable) onto Ethics Check.
	Request for Review – please see Disciplinary Review Hearing Checklist for more information 20 days from Decision → Request for Discipline Review must be submitted
☐ 37(a) – (c) *Manual* – Action of the Directors if No Request for Review ☐ G.3 *Guidelines* – Action of the Directors if there is no Request for Review	**Decision to Board of Directors for Ratification** ☐ 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: 1. D-11 *Decision and Finding of Fact* and D-12 *Recommendations of Hearing Panel* (or D-10 *Other Action of Hearing Panel,* if applicable)*;* 2. D-22 *Action if No Request for Review.* ☐ Each Director must sign a statement (Form D-7) that he or she is not disqualified from serving on the ratification panel. ☐ 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. ☐ The Hearing Panel Decision is final only once it has been ratified by the Board of Directors. • ***Note:*** 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.
☐ 39(c) *Manual* – Publication of Ethics Violators ☐ 39(d) *Manual* – C.A.R. Publication Policy for Ethics Violators	**Publication** ☐ 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: 1. Letter of Reprimand 2. Fine;

☐ G.4 *Guidelines* – Publishing the Names of Ethics Violators	3. Suspension; 4. Expulsion. ☐ If the Discipline is subject to publication, forward the following to C.A.R. Professional Standards staff: 1. Photo of Violator 2. Form D-24 *Submission of Photo for Discipline Publication;* 3. D-11 *Decision and Findings of Fact;* 4. D-12 *Recommendations of Hearing Panel.* • ***Note:*** 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. • ***Note:*** The published information will be removed from the C.A.R. website three years after initial publication.
☐ G.6 *Guidelines* – Reporting Suspensions and Expulsions to C.A.R.	**Sanctions Met, File Closed** ☐ 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.
☐ G.8 *Guidelines* – Record Retention ☐ 34(c) *Manual* – Destruction of Transcript or Recording	**Record Retention** ☐ 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. ☐ Any recordings or transcripts of the actual hearing should be destroyed as soon as the Decision is final.

ADMINISTRATIVE PROCESSING OVERVIEW - DISCIPLINE REVIEW

Case No._____,

_____ _____

VS.

_____ _____

Complainants **Respondents**

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.

☐ **REFERENCE**	**ACTION**
☐ 38(a) *Manual* – Request for Review ☐ G.1 *Guidelines* – Distributing the Decision	**Request to File Discipline Review** ☐ 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. ☐ Request for Discipline Review is due within twenty (20) days from the date the Decision was transmitted to the parties. ☐ _____ (Date Due)
☐ 38(a) *Manual* – Request for Review	**Receipt of Request for Review** ☐ _____ (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.
☐ 38(a) *Manual* – Request for Review ☐ 38(b) *Manual* – Deposit Requirement ☐ 38(c) *Manual* – Basis for Review ☐ 38(d) *Manual* – Preliminary Review; Opportunity to Amend ☐ G.2 *Guidelines* – Review by Directors	**Preliminary Review of Request** ☐ 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. Was the request submitted timely?; 2. Does the request come with the proper paperwork?; 3. Was the $_____ deposit submitted?;

	4. Does the request cite and clearly indicate alleged a) mis-application/misinterpretation of the Code, b) procedural deficiency or any lack of procedural due process and/or c) unwarranted discipline recommended by the hearing Panel? ☐ If the Request does not meet the filing requirements, return the Request to the Requesting 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 review, the Request should be processed and the Directors should rule on the disputed issue at the time of the hearing. ☐ If the Requesting Party has submitted form D-14 *Request for Duplication of Recording,* along with the $_____ duplication fee, transmit the recording to the requesting party.
☐ 38(e) *Manual* – Notice of Request for Review ☐ 38(k) *Manual – Automatic Disqualification; Certificate of Qualification*	**Notice of Request for Review** ☐ Send the **Notice of Review Packet** to the Parties and to the Original Presiding Officer, including: 1. Cover Letter; 2. D-18 *Notice of Request for Review;* 3. Copy of Request for Review; 4. D-4 *Notice of Right to Challenge Panel Members and Availability of the Parties;* 5. List of Board of Directors; 6. D-5 *Reasons for Challenge;* 7. D-13 *Notice of Availability of Rehearing and Review;* 8. D-14 *Request for Duplication of Recording;* 9. D-19 *Reply to Request for Review.* ☐ ***ETHICS CHECK:*** 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.
☐ 38(f) *Manual* – Reply not Required; Late Filing	**Reply to Request for Review** ☐ 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. ☐ 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.
☐ 38(g) *Manual* – Notice of Reply	**Reply to Parties** ☐ If a Reply is submitted, send the following to the parties and the Original Presiding Officer: 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;	**Schedule Review Hearing**

Appointing Replacement to Challenged Director ☐ 38(j) *Manual* – Composition of Panel ☐ 38(k) *Manual* – Automatic Disqualification; Certificate of Qualification ☐ 38(l) *Manual* – Presiding Officer	☐ 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. ☐ The Original Presiding Officer should be considered when applying automatic disqualifications to potential panel members. • ***Note:*** If the Original Presiding Officer is unable to attend the Review hearing, an arbitrator from the original Panel may attend instead.
☐ 38(m) *Manual* – Notice of Time and Place of Review Hearing	**Official Notice of Review Hearing** ☐ Once the hearing date, time and panel have been secured, send the Parties and the Original Presiding Officer the **Official Notice of Review Packet,** which includes: 1. Cover Letter; 2. D-20 *Notice of Review Hearing;* 3. D-26 *Notice of Additional Attendees for Hearing.* • ***Note:*** Notice of Review Hearing must be given at least 21 calendar days in advance of the review hearing. **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 review hearing
☐ 38(n) *Manual* – Documents Provided to the Panel	**Materials to Review Panel** ☐ 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; ☐ 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. Form D-20 *Notice of Review Hearing;* 2. D-7 *Certificate of Qualification;* 3. D-21 *Action Upon Review;* 4. Presiding Officer's Statements (Disciplinary Review Hearing); 5. Copy of the current *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 Request for Review.
☐ 30 *Manual* - Witnesses ☐ F.1 *Guidelines* – Transcript/Right to Record ☐ 34(c) *Manual* – Notice (of Interpreter/Translator) ☐ F.2 *Guidelines* – Interpreters and Translators ☐ 18(b) *Manual* – Notice of Representation	**Important Pre-Review Deadlines** At least: ☐ 21 days prior to review hearing, Parties must be notified of the date, time, location and panel members. ☐ 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. ☐ 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. ☐ 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.
• 38(q) *Manual* – Failure of Requesting Party to Appear at Hearing • 38(r) *Manual* – Failure of Party Not Requesting Review to Appear at Hearing ☐ 38(s) *Manual* – Action of the Review Panel ☐ G.2 *Guidelines* – Review by Directors	**Review 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. ☐ Make sure the recording/transcript of the Original Hearing is available for the Directors if they need to listen. ☐ 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: ☐ Dismiss the matter if they conclude the Findings do not support the recommendations; ☐ Impose alternative discipline that does not exceed the original recommendation; ☐ Refer the Decision back to the original Hearing Panel with recommended modifications; or ☐ Refer the matter for a new hearing with the same or different Hearing Panel, as deemed appropriate. • ***Note:*** Review hearings are never recorded. The original hearing recording should be destroyed after the review panel have issued their decision.
☐ 26(a)(b) *Manual* – Withdrawal of Complaint ☐ E.4 *Guidelines* – Withdrawal of an Association Disciplinary Complaint ☐ G.6 *Guidelines* – Reporting "Public Trust" Violations to the BRE	**Hearing Documents** ☐ The following forms should be completed and retained in the case file: 1. D-7 *Certificate of Qualification,* to be signed by all panel members prior to the start of the hearing. 2. D-21 *Action Upon Review.*
☐ 38(t) *Manual* – Disposition of the Deposit ☐ 38(u) *Manual* – Review Panel's Rationale ☐ 38(v) *Manual* – Finality of Review Panel Decision	**Action of Directors 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. ☐ If the Directors so rule, a new hearing or reconvening of the original Hearing Panel should be scheduled. ☐ If the Directors modify or adopt the original Decision, the Decision is considered ratified and final. ☐ If the Directors dismiss the Complaint, the file should be closed. ☐ The **Action of Directors Packet** should include the following: • Cover Letter; • D-21 *Action Upon Review;* [If Directors refer case for new hearing] • List of Potential Panel Members (excluding those who have already participated in this case); • D-4 *Availability for Hearing* and D-5 *Notice of Right to Challenge Panel Member & Reason for Challenge;*

	• Refund of Review Deposit (to Requesting Party Only); [If Decision is modified or adopted] • Copy of the modified or original D-11 *Decision and Findings of Fact* and D-12 *Recommendations of Hearing Panel*. • ***Note:*** 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. **Panel members must not discuss their decision** with anyone outside of Association staff and/or Association legal counsel, as necessary. • ***Note:*** The recording/transcript of the original Hearing should be destroyed after the Review Panel adjourns. ☐ ***ETHICS CHECK:*** Upload Form D-21 *Action Upon Review* onto Ethics Check. If the Decision is modified, replace the original Decision with the modified one.

ADMINISTRATIVE PROCESSING OVERVIEW – CITATION RECONSIDERATION

Case No._____,

_____	_____
VS.	
_____	_____
Complainants	**Respondents**

This checklist is intended for use in conjunction with processing a citation reconsideration under the rules and procedures of the *California Code of Ethics and Arbitration Manual*. The references for this checklist can be found in Section 8 of the *California Code of Ethics and Arbitration Manual.* This checklist may be reproduced and used to help process citation reconsiderations.

Notes:

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

ACTION
Request for a Citation Reconsideration ☐ Professional Standards Administrators will receive a request for a citation consideration from the MLS after the MLS has issued an MLS citation and the citation recipient is challenging the citation. ☐ From the MLS, the Administrator should receive: (i) the original citation from the MLS and supporting evidence; and (ii) the request for citation reconsideration from the respondent with an explanation for why reconsideration is being requested. ☐ The request for citation reconsideration must clearly state the specific ground(s) for the request and include all facts, timelines and/or reasons for the request. The qualifying grounds for a request for citation reconsideration are one or more of the following: (i) factual dispute regarding the alleged violation(s), such as misapplication of the MLS Rule(s) cited or how the MLS Rule that was cited is not appropriate; or (ii) contention that there was a violation of procedural due process by the MLS. ☐ If the proper grounds for requesting a citation reconsideration are not met, the request for citation reconsideration should be returned to the citation recipient. The citation recipient is then given seven (7) calendar days to amend the request for citation reconsideration to meet the appropriate requirements. ☐ If the appropriate grounds still are not met after seven (7) calendar days, the request for citation reconsideration will be denied and the fine will be due to the MLS within seven calendar days from the date of the notice of denial.
Citation Reconsideration Panel ☐ Select a citation reconsideration Panel comprised of not less than three (3) nor more than five (5) REALTORS® from the Association's Professional Standards Committee or MLS Committee (at the Association's option). ☐ Coordinate with the panel to schedule the citation reconsideration. **NOTE: Since this is not a hearing, the respondent is not invited and not notified.** ☐ Prepare a copy of the materials for each Panelist: (i) original MLS citation and supporting documentation; (ii) request for citation reconsideration from the respondent with a written explanation for the basis of the reconsideration; and (iii) the MLS Rules. ☐ Prepare Form D-16 *Disposition of Citation Reconsideration,* which will be filled out and signed by the Presiding Officer.

Notice of Final Decision

- ☐ After the citation reconsideration has taken place, obtain the completed D-16 Form from the Presiding Officer.
- ☐ Send the D-16 form along with a cover letter to the respondent within fifteen (15) days after the Panel has rendered its decision.
- ☐ If the decision is to uphold the citation, the cover letter should indicate that the fine and the administrative processing fee are due within seven (7) calendar days from the date the decision has been sent to the respondent. The cover letter **must indicate the dollar amount of the administrative processing fee**. (*Note: Each Association should determine the dollar amount of the administrative processing fee it wishes to charge for citation reconsiderations, which cannot exceed $500.)*
- ☐ The cover letter should also reiterate that the decision of the Panel is not subject to further review.
- ☐ A copy of the decision and cover letter should be forwarded to the MLS that issued the original citation.

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.*

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.

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?"

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: Panel members and hearing participants, 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®, 2018 edition).

Local Associations 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 Associations 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, Associations 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 Associations 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.

• Conversely, cases in which there is reason to believe that violations of the public trust, including demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud have occurred should be considered particularly egregious violations of the Code of Ethics when 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. Three contrasting examples are provided to illustrate these points.

Example A: 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 B: 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)

Example C: In social media discussions, REALTOR® C posted several discriminatory and offensive comments which were deemed to be in violation of Article 10 as they discriminated against individuals on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. In determining appropriate discipline, the Hearing Panel considered REALTOR® C's comments as hate speech and discrimination in violation of Article 10 and had reason to believe that a violation of the public trust occurred. Based on the offensiveness of REALTOR® C's comments and his total disregard for the Code of Ethics' obligation to not be a party to any plan to discriminate against members of the protected classes of Article 10, the Hearing Panel recommended a $5,000 fine and mandatory completion of implicit bias training.

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.

Hearing Panels are cautioned of the due process concerns of considering a Respondent's history of Code violations, as considering too long of a history involving different types of violations can unreasonably affect the severity of the discipline. Typically, Associations might look back a minimum of three years, however, if there is consistency in the types of violations or if the violations are of the public trust, considering a longer history of violations could be appropriate in crafting meaningful discipline aimed at stopping the behavior.

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? Was the violation one of the public trust, including demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud?
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 Association.

First violation example #1:
• 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:
• 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:
• violation considered very serious, or
• the violation was of Article 10 as interpreted by its Standards of Practice, or of Article 3 as interpreted by Standard of Practice 3-11, 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
• Termination of membership for up to three (3) years (Revised 11/20)

Repeat violations example #1:
• 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:
• 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:
• violation considered very serious, or
• the violation was of Article 10 as interpreted by its Standards of Practice, or of Article 3 as interpreted by Standard of Practice 3-11, 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
• Termination of membership for up to three (3) years (Revised 11/20)

In addition to imposing discipline, the Hearing Panel can also recommend to the Board of Directors that the disciplined member be put on probation. 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. 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. (Revised 11/20)

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. Cases in which there is reason to believe that violations of the public trust, including demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud have occurred are considered particularly egregious. Associations are encouraged to critically examine these types of cases and recommend discipline consistent with the seriousness of these violations, their harm to consumers, and to the reputation of REALTORS® as committed to the highest level of professionalism. (Revised 11/20)

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. Ombudsman 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.

_____ _____

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 • 67(c) *Manual* – Notice of Interpreters and Translators • D.2 *Guidelines* – Interpreters and Translators	**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. ☐ 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	**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).

• 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	☐ 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.

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.

ACTION
Parties Agree to Mediate ☐ Once all Parties have submitted their M-1 *Request for Mediation,* send notice to all Parties that a Mediation Conference will be scheduled and include: 1. A-4 *Availability for Hearing* 2. List of Potential Mediators 3. A-5 *Notice of Right to Challenge and Reasons for Challenge*
Schedule Mediation Conference ☐ 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. • ***Note:*** A party's right to disqualify a proposed neutral mediator is waived if the party fails to deliver timely Form A-5.
Official Notice of Mediation Conference ☐ Once the hearing date, time and panel have been secured, send the parties the **Official Notice of Mediation Packet,** which includes: 1. M-2 *Official Notice of Mediation Conference;* 2. M-3 *Mediation Confidentiality Agreement.*
Materials to Mediator ☐ Prepare a case file for the Mediator, including the complaint, response, relevant correspondence between the Association and the parties, and the following forms: 1. M-2 *Notice of Mediation Conference;* 2. M-3 *Mediation Confidentiality Agreement;* 3. M-4 *Mediation Agreement and Stipulated Arbitration Award;* 4. M-5 *No Settlement at Mediation.*
Important Pre-Mediation Deadlines

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.

ADMINISTRATIVE PROCESSING OVERVIEW –
PROCEDURAL REVIEW OF ARBITRATION AWARD

Case No._____,

_____ _____

VS.

_____ _____

Complainants **Respondents**

Date of Original Hearing:_____

Original Arbitration Panel

Presiding Officer:_____

Arbitrator:_____

Arbitrator:_____

Alternate:_____

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*.

Requesting Party is whichever Party requesting a Review of the Award by the Board of Directors, including all named complainants, their legal counsel, if any, and the broker's representative, if any.

Non-Requesting Party is whichever Party is not requesting the Review, including all named respondents, their legal counsel, if any, and the broker's representative, if any.

REFERENCE	ACTION
• 71(a) *Manual* – Filing the Request for Review • E.2 *Guidelines* – Procedural Review by the Board of Directors	**Request to File Request for Procedural Review** ☐ Request for Procedural Review paperwork should be sent to the parties, included with the Award of Arbitrators packet, within five (5) days from the date the Award is handed over to the Association. ☐ Request for Procedural Review is due within twenty (20) days from the date the Award was transmitted to the parties. ☐ _____ (Date Due)
• 71(a) *Manual* – Filing the Request for Review	**Receipt of Request for Review Date**

	☐ _____ (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(f) *Manual* – Conducting the Review Hearing • 71(a) *Manual* – Filing the Request for Review • 71(b) *Manual* – Deposit • 71(c) *Manual* – Basis for Review • 71 (d) *Manual* – Permissible Evidence • 71(e) *Manual* – Preliminary Review • E.2 *Guidelines* – Procedural Review by the Board of Directors • D.7 *Guidelines* – Due Process Required	**Preliminary Review of Request for Review** ☐ 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. Was the request submitted timely?; 2. Does the request come with the proper paperwork?; 3. Was the $_____ deposit submitted?; 4. Does the request cite and clearly indicate alleged *procedural deficiencies* and contain a reasonably detailed summary of the facts supporting the challenge? ☐ If the Request does not meet the filing requirements, return the Request to the Requesting 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 review, the Request should be processed and the Directors should rule on the disputed issue at the time of the hearing. ☐ If the Requesting Party has submitted form A-14 *Request for Duplication of Recording,* along with the $_____ duplication fee, transmit the recording to the requesting party.
• 38(e) *Manual* – Notice of Request for Review • E.2 *Guidelines* – Procedural Review by the Board of Directors • 38(k) *Manual* – Automatic Disqualification; Certificate of Qualification	**Notice of Request for Review** ☐ Send the **Notice of Review Packet** to the Parties and to the Original Presiding Officer, including: 1. Cover Letter; 2. A-16 *Notice of Request for Review;* 3. Copy of Request for Review; 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-14 *Request for Duplication of Recording;* 9. A-17 *Reply to Request for Review.* • ***Note:*** The Board of Directors do not need to complete Form A-21 *Arbitration Disclosure Statement* for the Review Hearing. Automatic Disqualifications should still be applied. ☐ ***ETHICS CHECK:*** 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.
• 38(f) *Manual* – Reply not Required; Late Filing	**Reply to Request for Review** ☐ 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. ☐ 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.
• 38(g) *Manual* – Notice of Reply	**Reply to Parties** ☐ If a Reply is submitted, send the following to the parties and the Original Presiding Officer: 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 • 38(k) *Manual* – Automatic Disqualification; Certificate of Qualification • 38(l) *Manual* – Presiding Officer • 38(o) *Manual* – Conducting the Review Hearing	**Schedule Review 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 review. ☐ The Original Presiding Officer should be considered when applying automatic disqualifications to potential panel members. • ***Note:*** If the Original Presiding Officer is unable to attend the Review hearing, an arbitrator from the original Panel may attend instead.
• 38(m) *Manual* – Notice of Time and Place of Review Hearing	**Official Notice of Review Hearing** ☐ Once the hearing date, time and panel have been secured, send the Parties and the Original Presiding Officer the **Official Notice of Review Packet,** which includes: 1. Cover Letter; 2. Form A-18 *Notice of Review;* 3. Form A-30 *Notice of Additional Attendees for Hearing.* • ***Note:*** that Notice of Review Hearing must be given **at least 21 calendar days in advance** of the review hearing. **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 review hearing
• 71(g) *Manual* – Documents Provided to the Directors	**Materials to Review Panel** ☐ Prepare a case file for each Panel member, including Form A-12 *Award of Arbitrators,* the Request, the Reply (if any) and any relevant documentation/correspondence; ☐ 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-18 *Notice of Review Hearing;* 2. A-7 *Certificate of Qualification;* 3. A-19 *Action of Directors;* 4. Presiding Officer's Statements (Arbitration Review Hearing); 5. Copy of the current *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 procedural issues cited in the Request for Review.
• 38(m) *Manual* – Notice of Time and Place of Review Hearing • 54(b) Notice of Intention to Have Representation • D.3 *Guidelines* – Right to Counsel • 59 *Manual* – Duty to Give Evidence (Remote Testimony) • D.4 *Guidelines* – Failure of Parties to Appear • 67(c) *Manual* – Notice of Interpreters and Translators • D.2 *Guidelines* – Interpreters and Translators	**Important Pre-Review Deadlines** At least: ☐ 21 days prior to review hearing, Parties must be notified of the date, time, location and panel members. ☐ 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. ☐ 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. ☐ 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.
• 38(q) *Manual* – Failure of Requesting Party to Appear at Hearing • 38(r) *Manual* – Failure of Party Not Requesting Review to Appear at Hearing • 71(i) *Manual* – Action of the Directors • E.2 *Guidelines* – Procedural Review by the Board of Directors	**Review 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:*** Review hearings are never recorded. The original hearing recording should be destroyed after the review panel have issued their decision.
• 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-19 *Action of Directors.*
• 71(j) *Manual* – Disposition of the Deposit • 71(k) *Manual* – Finality of Directors' Decision	**Action of Directors 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. ☐ 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. ☐ If the directors uphold the original Award, the Award is considered final. ☐ The **Action of Directors Packet** should include the following: • Cover Letter; • A-19 *Action of Directors;* [If Award is overturned] • List of Potential Panel Members (excluding those who have already participated in this case); • A-4 *Availability for Hearing* and A-5 *Notice of Right to Challenge Panel Member & Reason for Challenge;* • Refund of Review Deposit (to Requesting Party Only); [If Award is upheld] • Copy of original A-12 *Award of Arbitrators*.

	• ***Note:*** 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. **Panel members must not discuss their decision** with anyone outside of Association staff and/or Association legal counsel, as necessary. ☐ ***ETHICS CHECK:*** Upload Form A-19 *Action of Directors* onto Ethics Check.
• 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.

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 • 38(k) *Manual* – Automatic Disqualification; Certificate of Qualification • 38(l) *Manual* – Presiding Officer • 72(c) *Manual* – Conducting the "Show Cause" Hearing	**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(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.

PRESIDING OFFICER'S STATEMENTS - ARBITRATION HEARING

CHAIRMAN'S OPENING STATEMENT AND CONDUCT OF HEARING: Panel members and hearing participants, 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*).
   (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 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. 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:** 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. Parties should only argue the charges addressed in the complaint and should not introduce irrelevant subjects. 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 or her representative, or to witnesses providing testimony. All parties and witnesses will be asked 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 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 their client if the 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 panel. This panel will not tolerate any effort by a party or their counsel to harass, intimidate, coerce, or confuse the panelists 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 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.

   f. 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 arbitration 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. 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 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 their case and present any witnesses that they may desire. Cross-examination of the complainant 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 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**: 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. 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.

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. 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 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 their 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: Panel members and hearing participants, 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.

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. 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 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: Panel members and hearing participants, 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
Fax 213.480.7724
April 10, 2024 (Revised)

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This Q&A has not yet been revised in light of the NAR Settlement. Beginning mid-July 2024 the terms of the NAR Settlement will prohibit offers of compensation to be made through the MLS. Although, any broker may continue to make offers of compensation outside of the MLS.

Under previous MLS rules, the determination of which broker is entitled to be compensated turns on the question of which broker procured the buyer. Since offers of compensation are no longer posted on the MLS, then who is entitled to payment, if anyone, will not necessarily be based on who "procured" the buyer as the phrase is presently understood. This guideline chart is presently accurate and may be relied upon but will likely need to be revised if/when NAR changes its rules related to arbitrations in light of the NAR settlement.

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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 19-23 deal with contractual and other miscellaneous issues that are relevant to the ultimate decision.

The factors refer to C.A.R. Standard Form BRBC, Buyer Representation and Broker Compensation Agreement. The BRBC Form contains a default non-exclusive representation provision which provides for payment of compensation to the broker only if there was sufficient "Broker Involvement" with the property. "Broker Involvement" is defined as (i) the buyer physically entered and was shown the property by the broker; (ii) the broker showed the property to the buyer virtually; (iii) the broker submitted to the seller a signed, written offer from the buyer to acquire, lease, exchange or obtain an option on the property; and/or (iv) the property was introduced to the buyer by the broker or one from which the broker acted on the buyer's behalf. However, merely sending the buyer a list of properties is not deemed Broker Involvement without documented action on

the part of the broker analyzing property for the buyer or assisting the buyer in the potential acquisition of the property, or communicating with the seller or seller's agent regarding the buyer's potential acquisition of the property.

The BRBC Form also contains an exclusive representation option. If the broker and the buyer agree to exclusive representation, the broker is entitled to compensation if the buyer acquires property identified in the contract during the representation period. Broker Involvement with the property is not necessary for the broker to be entitled to compensation.

The Procuring Cause Factors Chart addresses both the non-exclusive and exclusive options in the BRBC, and the factors also apply if the parties use a different form for the same purpose creating either a non-exclusive or an exclusive agency relationship between the buyer and the broker.

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
Connection to the Transaction			
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.
Buyer's Choice			
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**	
Broker Conduct			
11. Closing Broker asked about buyer's relationship with another broker early in the process and determined there was no		**X**	

existing contractual or exclusive relationship between Intro Broker and the buyer.			
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**		
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**		
Other			
19. Intro Broker has a Buyer Representation and Broker Compensation Agreement (C.A.R. Form BRBC or another form used for the same purpose) with the "Exclusive Representation" option checked, that contains a description of property which includes the subject property, and that is dated before the Closing Broker meets with the buyer.	**X**		The BRBC with the "Exclusive" option creates a contractual right to compensation between Intro Broker and the buyer, and the contract establishes a close connection between them. The existence of an exclusive representation contract between the broker and the buyer should be given significant weight, although the level of the Intro Broker's involvement with the property and the conduct of Closing Broker and his or her behavior in determining the existence of the contract will also factor into the panel's decision.
20. Intro Broker has a Buyer Representation and Broker Compensation Agreement (C.A.R. Form BRBC or another form used for the same purpose) with the default "Non-exclusive Representation" option that predates the involvement of Closing Broker and that contains a description of property which includes the subject property.	**X**		The BRBC with the "Non-exclusive Representation" option creates a contractual right to compensation between Intro Broker and the buyer, if the broker had a sufficient level of involvement with the subject property. The existence of a non-exclusive representation contract between the broker and the buyer should be given significant weight, although the level of the Intro Broker's

			involvement with the property and the conduct of Closing Broker, and his or her behavior in determining the existence of the contract, will also factor into the panel's decision.
21. Closing Broker has a Buyer Representation and Broker Compensation Agreement (C.A.R. Form BRBC or another form used for the same purpose) with the "Exclusive Representation" option checked, that contains a description of property which includes the subject property.		**X**	Same as #19, except that this factor may be overcome if the Closing Broker's behavior was inappropriate in obtaining the contract. Even if the Closing Broker is not deemed to be the procuring cause, they may still have a contractual right to be compensated by the buyer.
22. Closing Broker has a Buyer Representation and Broker Compensation Agreement (C.A.R. Form BRBC or another form used for the same purpose) with the default "Non-exclusive Representation" option that contains a description of property which includes the subject property.		**X**	Same as #20 except that the contractual claim against the buyer would be different because the contract is not exclusive.
23. 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 C.A.R. Standard Form BRBC when working with a buyer. This will help memorialize the relationship between the buyer and the broker and help prompt the discussion about other relationships. Because 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 Representation and Broker Compensation Agreement (C.A.R. Standard Form BRBC) with the “Exclusive Representation” option checked 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

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 could find that Closing Broker is the procuring cause. Their ultimate conclusion depends on how the panel weighs the various factors, including the importance of the exclusive buyer’s agency contract between the Buyer and the Intro Broker. 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 1C

Same facts as 1B, 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 1D

Same facts as 1A, but Intro Broker has a Buyer Representation and Broker Compensation Agreement (C.A.R. Form BRBC or other form used for the same purpose) with the Buyer with the “Exclusive Representation” option

checked. 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 them. 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 they have seen the house before. Closing Broker determines that Buyer signed C.A.R.'s Buyer Representation and Broker Compensation Agreement (Form BRBC) with Intro Broker with the default "Non-exclusive Representation" option. 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. Even if the Intro Broker loses on the procuring cause question, they may have a contractual right to receive compensation from the buyer if the subject property is included in the description of property in the BRBC contract and they are able to prove a sufficient level of broker involvement.

Note: A question here is whether Closing Broker should have asked Buyer if they 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 Representation and Broker Compensation Agreement (C.A.R. Standard Form BRBC) with Intro Broker with the "Exclusive Representation" option checked. 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 compensation.

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 Representation and Broker Compensation Agreement (C.A.R. Standard Form BRBC) with Intro Broker with the "Exclusive Representation" option checked. 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 Representation and Broker Compensation Agreement (C.A.R. Standard Form BRBC) with Buyer with the "Exclusive Representation" option checked, 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 Representation and Broker Compensation Agreement (C.A.R. From BRBC) with the "Exclusive Representation" option checked need to go through arbitration?***

A Yes. Even though the existence of the exclusive representation agreement will weigh in the broker's favor, there are other factors, which taken together, can outweigh the contract in a procuring cause dispute.

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 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.

This legal article is just one of the many legal publications and services offered by C.A.R. to its members. The information contained herein is believed accurate as of the revision date above. 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. For a complete listing of C.A.R.'s legal products and services, please visit Member Legal Services.

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 visiting Legal Hotline on car.org.

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The information contained herein is believed accurate as of December 20, 2022. 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) Form D-27 explaining the roles of the professional standards volunteers
(3) The _____ (insert current year) National Association of REALTORS® Code of Ethics
(4) 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 alleged offense and facts relating to it could have been known by the complainant 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]. [*If complainant is a REALTOR®*: If you desire, the Association can arrange a meeting between your broker and the respondent's broker before the complaint is forwarded to the Grievance Committee. The meeting may be conducted virtually using a videoconferencing platform such as Zoom or by telephone. Please let us know as soon as possible if you would like us to arrange this meeting. If the meeting is scheduled, please let us know afterwards whether you would like to withdraw the complaint or have the complaint forwarded to the Grievance Committee.]

Your complaint will 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

(*Note: You may use the following language if you wish to include a handwritten acknowledgement and appreciation letter along with this notice:*

We truly appreciate that you have taken the time to file this disciplinary action. Participating in the disciplinary process helps to improve the professionalism of REALTORS® both locally and on a statewide basis. We know that you are busy, but your initiative in pursuing this matter really does make a difference. Thanks again for helping to make sure REALTORS® are being held to a high standard.

Sincerely,)

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 alleged offense and facts relating to it could have been known by the complainant 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, (2) deleted an alleged violation of an Article, MLS rule, and/or membership duty from the complaint, or (3) deleted a respondent 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 respondents 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:
_____
_____
_____

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 disciple 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 by the complainant 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 by the complainant 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:
_____
_____
_____

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

CALIFORNIA ASSOCIATION OF REALTORS®

GUIDE TO OPTIONAL PROFESSIONAL STANDARDS PROGRAMS 2026

Prepared by the
CALIFORNIA ASSOCIATION OF REALTORS®
Corporate Legal Department
915 L Street, #1460
Sacramento, CA 95814

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A. ETHICS CITATION PROGRAM

Pursuant to the motion passed by the C.A.R. Board of Directors in October 2021, an Ethics Citation program will now become a default program for local associations of REALTORS®. The citation schedule created by the local association does not need to include all of the violations listed on the C.A.R. Model Citation Schedule, but it must at least include Article 12 violations. Associations had until **December 31, 2022** to create an Ethics Citation program or have their Board of Directors pass a motion to opt out of the program.

With an Ethics Citation program, the Grievance Committee may implement a schedule of fines for certain Code of Ethics violations and direct staff to issue citations for the specified violations. The REALTOR® receiving the citation may either (1) complete specified training (at the option of the Association); (2) pay the amount specified on the citation; or (3) request a full hearing in accordance with the procedures set forth in Part One of this Manual. Such Code of Ethics violations shall only be from those authorized in the C.A.R. Model Citation Schedule. **Please refer to the "Ethics Citation" materials provided in this Section for more information.**

MOTION: That _____ Association of REALTORS® create an Ethics Citation program in accordance with C.A.R. policy.

Frequently Asked Questions About Ethics Citation Policy

Q 1. Why is a Citation Policy necessary when there are already procedures in place to deal with Code of Ethics violations?

A In 2005, a C.A.R. Business Practices Task Force was created and given the mission to review the current state of professional and ethical business practices of REALTORS® and to recommend programs to address any concerns. The Task Force discovered, in a survey of C.A.R. members, that many REALTORS® do not file ethics complaints, even for identifiable unethical conduct, because they felt that the procedure is too cumbersome and time consuming. The Task Force made a recommendation to the C.A.R. Professional Standards Committee that the Committee formulate and institute a procedure to expedite the prosecution of Code of Ethics violations. The Citation Policy is a result of that recommendation.

Q 2. What are some of the key advantages that the Citation Policy offers that current professional standards procedures do not?

A

- Time for process: if a citation is issued and paid by the violator, the entire process is completed in thirty (30) days or less. By contrast, the process for a professional standards hearing can take from sixty (60) to ninety (90) days or more.
- Association facilities: if a citation is issued and paid by the violator, no association facilities are used. By contrast, the process for a professional standards hearing, generally, requires one (1) or more hearings, all of which necessitate the use of association meeting rooms.
- Volunteer time: if a citation is issued and paid by the violator, no volunteers from the professional standards committee or board of directors are involved. By contrast, the normal process for a professional standards hearing requires the participation of three (3) or four (4) members of the professional standards committee and, if there is a request for review, three (3) or four (4) directors.
- Staff time and association resources: if a citation is issued and paid by the violator, a minimal amount of staff time and association resources are used. By contrast, the normal process for a professional standards hearing requires a great deal of staff time and association resources to prepare paperwork, coordinate a hearing panel and set hearing dates – not to mention what is involved to actually hold hearings at the association.

Q 3. If a citation is issued, can the member who receives the citation ask for a full professional standards hearing?

A Yes. When the violation is sent to the member, the violator is advised that he/she has the right to request a full due process hearing, rather than pay the citation fine.

Q 4. What happens if a violator ignores the citation?

If a violator fails to respond to a citation, a full professional standards hearing is processed, and all the normal procedures for a disciplinary complaint that are in the *California Code of Ethics and Arbitration Manual* ("Manual") are in effect.

Q 5. If the matter goes to hearing, is the hearing panel limited in the discipline that they can recommend.

A No. Any matter that goes to hearing is treated like a normal ethics complaint, the Grievance Committee may add additional violations and the hearing panel, if it finds a violation, can recommend any discipline it deems appropriate, in accordance with the Manual.

Q 6. If the member who receives a citation is a salesperson, is that person's Designated

Broker notified.

A Yes.

Q 7. Can a REALTOR® receive a Code of Ethics citation if he or she has received an MLS citation for the same event and conduct?

A No. It is the responsibility of the person receiving the Code of Ethics citation to demonstrate to the association that he/she has already paid a fine to the MLS for the same event and conduct.

Q 8. How does the association know what kinds of conduct are subject to a citation?

A C.A.R. has published a Model Citation Schedule ("Model Schedule") that lists all the conduct that is subject to citation.

Q 9. Is it mandatory for an association to adopt all the citations on the Model Schedule?

A No. The association can adopt all or fewer than all the citations on the Model Schedule – it's strictly up to the individual association to decide which citations they wish to adopt.

Q 10. Can the association adopt citations that are not on the Model Schedule?

A No. The only citations that may be adopted are those on the Model Schedule.

Q 11. How much is the fine for a citation?

A The amount of the fine is a matter of local option. C.A.R. does not suggest any dollar figures.

Q 12. Are there any alternatives to a fine for a citation?

A The association can require attendance at ethics training, as an alternative to a fine. Again, any training requirement is a matter of local option.

Q 13. Has the Citation Policy been approved by NAR?

A Yes.

Q 14. Is it mandatory for an association to adopt the Citation Policy?

A No. The Local Association's Board of Directors has the option to adopt the Citation Policy – or not. However, as of December 31, 2022, a local association must either adopt the Citation Policy or have its Board of Directors pass a motion opting out of the Citation Policy.

Q 15. Does NAR's Professional Liability Insurance cover the Citation Policy?

A Yes. The Citation Policy has been approved by NAR. Therefore, the association, its staff and volunteers are covered by NAR's insurance for any liability that may arise out of the Citation Policy.

C.A.R. Citation System for Code of Ethics Violations

I. Complaint alleging violation of the Code of Ethics is received by AOR and channeled through the Grievance Committee:

A. Decision whether conduct is subject to citation is made by Grievance Committee.

1. Assuming the allegations on the face of the complaint are true, is there a potential violation of the Code of Ethics?

2. Assuming there is a potential violation of the Code of Ethics, is the conduct the type that is prohibited by the Citation Schedule that has been adopted by the AOR, i.e. a citable offense?

a. If the violator has already received a citation for violation of an MLS rule, for the same event and conduct, it is not eligible for citation.

b. If a citable offense:

i. attached citation is sent to violator, with copy to DR.

ii. citations will be used for purpose of possibly increasing discipline at future ethics hearings.

c. If conduct is not eligible for citation, but possible violation of the Code of Ethics is alleged:

i. Grievance Committee has authority to amend complaint with additional alleged violations of Code of Ethics and/or MLS Rules.

ii. Matter will be sent forward for full ethics hearing.

iii. All hearings are held in accordance with the California Code of Ethics and Arbitration Manual ("Manual").

iv. if violation is found by hearing panel, that information can be used to possibly increase discipline at future ethics hearings.

d. If no possible violation is alleged, complaint will be dismissed.

i. Complainant has right to request Directors' Review.

B. If conduct is a citable offense, upon receipt of citation, violator has 10 days to elect one of the following options:

1. Pay the fine (amount is local discretion).

2. Ethics Training (local option) – if this is chosen, violator will pay a fine (amount determined by local) and, at option of local, all or part will be refunded upon proof of completion.

3. Elect full Ethics hearing to contest citation.

a. If hearing is elected, complaint is returned to Grievance Committee for further scrutiny and possible amendment with additional alleged violations of Code of Ethics and/or MLS Rules.

b. All hearings are held in accordance with the Manual.

i. If anonymous complaint, Grievance Committee is complainant;

ii. If identified complainant, he/she has full due process rights afforded under the procedures approved by NAR for disciplinary hearings.

c. Violator will have a full due process hearing where hearing panel, made up of members of the Professional Standards Committee, has the following options:

i. Dismiss the citation and complaint.

ii. Uphold the citation and corresponding fine.

iii. Amend complaint by adding additional violations, as supported by the evidence.

iv. Increase the discipline, including any allowable sanction.

d. If violation is found by hearing panel, that information can be used to possibly increase discipline at future ethics hearings.

e. The results of hearings can be appealed to the Board of Directors, as set forth in the Manual.

C. Failure to respond to citation within 10 days results in a warning letter (model attached) that the matter will be forwarded for full Ethics hearing if no response is received within 10 more days.

D. Failure to respond to citation within 20 days from date of citation automatically results in full Ethics hearing, which opens up the possibility of any allowable sanction(s) determined by the hearing panel, including greater fine and possible suspension or expulsion from membership.

E. If ethics training is elected, violation is kept in file only for purpose of keeping track of number of citations and the time frames in which they were given the information is not used to possibly increase discipline at a future ethics hearing.

1. Ethics training can only be elected once in any three (3) year period.

2. Only three (3) citations may be issued to a violator within a three (3) year period.

a. When number of citations limit is reached, no further citation can be issued to that violator - all alleged violations must go to full due process hearing.

F. Where an actual complainant reports the citable behavior (as opposed to an anonymous complaint or citation initiated by the Grievance Committee) notification of the action taken by the Grievance Committee would be given to the complainant (model attached).

G. C.A.R. has published the attached Model Citation Schedule.

1. Local options:

a. Which citable offenses are adopted (local may adopt fewer than the entire list of citations, but may not add citable offenses).

b. Amount of fine for citable offense.

i. Fines cannot exceed maximum allowable by N.A.R.

ii. Locals may adopt, at their option, accelerated fines f or multiple violations (i.e. the fine for a second offense is greater than for the first offense).

c. Whether ethics training can be taken by the violator as an alternative to paying the fine.

d. Maximum limit of citations issued to a violator within a three (3) year period not to exceed C.A.R. limit of three.

C.A.R. Model Citation Schedule

(Revised 2026)

☐ **Article 1**: Failure on the part of a listing broker to provide written affirmation that an offer was presented, or written notification that the seller/landlord has waived the obligation to have the offer presented, upon written request of a cooperating broker submitting an offer	$
☐ Failure on the party of the buyer's/tenant's broker to provide written affirmation that a counter-offer was presented, or written notification that the buyer/tenant has waived the obligation to have the counter-offer presented, upon written request of a listing broker submitting a counter-offer	$
☐ **Article 3**: Unilaterally modifying offered compensation after being made aware of a signed offer	$
☐ Delaying or withholding delivery of a buyer's/tenant's offer	$
☐ Failure to disclose existence of accepted offers to cooperating brokers.	$
☐ **Article 6**: Accepting any commission, rebate or profit on expenditures without client's knowledge or consent.	$
☐ **Article 12:** Failure to present a true picture in real estate communications and advertising.	
☐ Failure to disclose professional status in advertising and other representations.	$
☐ Failure to disclose compensation from 3rd party for services provided free to a client.	$
☐ Failure to make reasonable efforts to ensure that information on web sites is current and correct.	$
☐ Failure to display name of firm and state of licensure in a reasonable and apparent manner.	$

☐ Failure to present a true picture in advertising and representations to the public, including misleading images, internet content, URLs and domain names.	$
☐ Failure to disclose intent to share or sell consumer information gathered via internet.	$
☐ Using or registering domain name or URL that presents less than a true picture.	$
☐ Using a professional designation, certification or other credential to which they are not legitimately entitled.	$
☐ Failure to disclose status as both owner/landlord and REALTOR® or licensee when advertising property in which REALTOR® has ownership interest.	$
☐ Falsely claiming to have "sold" property.	$
☐ Registration or use of deceptive URL or domain name.	$
☐ **Article 14**: Failure to cooperate in any professional standards proceeding or investigation.	$
☐ **Article 16:** Placement of for sale/lease sign on property without permission of seller/landlord.	

Note: The Association may adopt all or some of the above citations; however, no additional citations may be added.

The Association, at its option, may impose an escalating fine schedule for repeat citations and also may impose a training requirement as an alternative to payment of a fine for any of the citable offenses adopted.

The amount of fine for any citation is at the option of the Association, but may not exceed the maximum fine allowed by NAR for violation of the Code of Ethics.

NOTICE TO RESPONDENT OF CITATION
_____ ASSOCIATION OF REALTORS®

_____ vs._____ Case No. _____
Complainant(s) Respondent

To:_____
Respondent

Attached to this notice is a copy of a citation schedule. On the citation list, you will find a box marked that indicates the violation of which you are accused and the amount of the fine. Also enclosed is a copy of the complaint that was filed in support of this citation. The complaint alleges violation of the Code of Ethics. The complaint was reviewed by the Grievance Committee or its Anonymous Complaint Subcommittee, which issued the citation. Notification of this citation is being sent to your Designated REALTOR®.

Please choose one of the following options by marking the appropriate box and return this form to the Association no later than ten (10) calendar days from the date specified below.

Failure to return this form within the allotted time could result in a full Ethics Hearing in accordance with the *California Code of Ethics and Arbitration Manual*.

- ☐ I agree to the citation and my check for $_____ is enclosed.
- ☐ I would like to attend an ethics training. My check for $ (to be determined by local) is enclosed. If I supply_____ Association of REALTORS® with proof of ethics training completion, $ (to be determined by local) will be refunded to me.
- ☐ I deny any wrongdoing and wish to have a full Ethics Hearing.

If you have chosen any option other than agreement to the citation, you will be notified of the appropriate next steps.

Dated: _____

_____
Signature
_____, Association Executive or Authorized Designee
Type or Print

Please return this completed form and any check (payable to the Association) to:

_____ASSOCIATION OF REALTORS®

Attn:_____

Address_____

City, State, Zip_____

Copyright© 2008 CALIFORNIA ASSOCIATION OF REALTORS®

Sample Letter: Disposition of Disciplinary Complaint (Citation)

ASSOCIATION LETTERHEAD

Complainant
Address
City, State Zip Code

Re: **Disposition of Disciplinary Complaint**

Dear :

This serves to notify you that the Grievance Committee has reviewed your complaint and issued a citation to the person(s) you named as respondent(s) for violation of the Code of Ethics. In addition, a copy of your complaint has also been forwarded to the respondent(s).

For your information, respondent(s) has options, which may include payment of a fine, ethics training or a full Ethics Hearing, in accordance with the *California Code of Ethics and Arbitration Manual,* where he or she may deny any wrongdoing. If an Ethics Hearing is requested by respondent(s), you will be notified, so that you may prepare for and present your case to the hearing panel.

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

Sample Letter: Notice of Possible Hearing (Citation)

ASSOCIATION LETTERHEAD

Date

Respondent
Address
City, State Zip Code

Re: **Notice of possible Ethics Hearing**
Re: (insert Case Name/No.)

Dear :

On (date)_____, we sent you the attached citation. The ten (10) day deadline for you to respond has lapsed.

If you do not respond to the enclosed citation by (date 10 days in future), this matter will be processed for a hearing in accordance with the *California Code of Ethics and Arbitration Manual*.

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

cc: DR Not Named as Respondent w/enclosures

B. ANONYMOUS COMPLAINTS PROGRAM

Pursuant to the motion passed by the C.A.R. Board of Directors in October 2021, an Anonymous Complaints program will now become a default program for local associations of REALTORS®. The Anonymous Complaints program must at least include all violations covered by the Association's Ethics Citation Program (if the Association has adopted an Ethics Citation Program). Associations had until **December 31, 2022** to create an Anonymous Complaints Program or have their Board of Directors pass a motion to opt out of the program.

Keep in mind that pursuant to NAR policy, anonymous complaints for any allegations except for those covered in the association's ethics citation policy are prohibited. Therefore, if an Association does not have an ethics citation policy, it cannot accept anonymous complaints. If an Association decides to accept anonymous complaints, a Subcommittee of the Grievance Committee shall review and may investigate an anonymous complaint and 1) dismiss the complaint as unworthy of further consideration; 2) notify the respondent of the complaint and give an opportunity to correct; or 3) refer the complaint to the Professional Standards Committee for hearing. If the Subcommittee, on behalf of the Grievance Committee, refers the matter for hearing, the Grievance Committee shall be the complainant and one of the members of the Subcommittee shall represent the Grievance Committee at the hearing. **More information about an Anonymous Complaints Subcommittee that has been excerpted from the Disciplinary Implementation Guidelines is provided on the next page.**

MOTION: That _____ Association of REALTORS® create an Anonymous Complaints Subcommittee of the Grievance Committee in accordance with C.A.R. policy.

SUBCOMMITTEE FOR ANONYMOUS COMPLAINTS

An Association's Board of Directors can decide whether or not to accept anonymous complaints. Keep in mind that pursuant to NAR policy, anonymous complaints for any allegations except for those covered in the association's ethics citation policy are prohibited. Therefore, if an Association does not have an ethics citation policy, it cannot accept anonymous complaints. If the Association does decide to accept anonymous complaints, an Anonymous Complaints Subcommittee of the Grievance Committee should be created. Members of the Subcommittee are appointed by the Grievance Chair, for a one-year term. Members of the Subcommittee must sign an agreement not to file any anonymous complaints for the year they are on the Subcommittee. When an anonymous complaint is received, the Grievance Chair assigns it to three impartial members of the Subcommittee. These Subcommittee members have the ability to investigate a complaint before making their decision and are given authority to act for the Grievance Committee. In order to send a complaint to hearing "you must be able to touch it, hear it and see it."

Options for the Subcommittee are:
1) dismiss the complaint as unworthy of further consideration;
2) notify the respondent of the complaint and give an opportunity to correct;
3) refer the complaint to the Professional Standards Committee for hearing;
4) issue an ethics citation.

If the Subcommittee, on behalf of the Grievance Committee, refers the matter for hearing, the Grievance Committee shall be the complainant and one of the members of the Subcommittee shall represent the Grievance Committee at the hearing.

C. ETHICS ADVOCATE PROGRAM

Pursuant to the motion passed by the C.A.R. Board of Directors in October 2021, an Ethics Advocate Program will now become a default program for local associations of REALTORS®. Associations had until **December 31, 2022** to create an Ethics Advocate Program or have their Board of Directors pass a motion to opt out of the program.

Statewide training for Ethics Advocates (EAs) is conducted by C.A.R. via Zoom webinar, usually around May/June of each year. C.A.R. has created a statewide list of EAs that are available to assist parties on a statewide basis. The list is available on the "AE Resources" page of the C.A.R. website. If your Association does create an EA program, C.A.R. recommends training at least some of your local volunteers to be EAs and only relying on the statewide list when local EAs do not have capacity to assist parties.

If the Association adopts an EA program, a subcommittee of the Professional Standards Committee, comprised of REALTORS®, will be specially trained to represent parties during the disciplinary process. The role of an EA may include preparation or hearing, including the preparation of forms and assembly of evidence; representation at the hearing, including the making of opening and closing statements on behalf of the party represented at the hearing, examining and cross-examining witnesses, and introducing affidavits, documents and other relevant evidence, and representation at any review hearings, but does not include testifying as a witness. There is no cost to a party for use of an EA. **Please refer to the "Ethics Advocate" materials provided in this Section for more information.**

MOTION: That _____ Association of REALTORS® create an Ethics Advocate Subcommittee of the Professional Standards Committee in accordance with C.A.R. policy.

ETHICS ADVOCATE BASIC INFORMATION

Any party may be represented by legal counsel or by a REALTOR® (or both) at any ethics hearing, including reviews, even where the hearing will occur in the party's absence. If the Association has adopted the Ethics Advocate (EA) program, professional standards volunteers will be specially trained to represent parties during the disciplinary process. The role of legal counsel or EA may include preparation for hearing, including the preparation of forms and assembly of evidence; representation at the hearing, including the making of opening and closing statements on behalf of the party represented at the hearing, examining and cross-examining witnesses, and introducing affidavits, documents and other relevant evidence, and representation at any review hearings, but does not include testifying as a witness. In the event the parties do not give fifteen (15) days notice of their intention to have legal counsel or EA representation to the Association and all other parties, the hearing may be continued, and the party giving late notice may be assessed a continuance fee.

THERE IS NO COST TO A PARTY FOR USE OF AN EA!

The complainant may request the assistance of an EA, by submitting a Request for Ethics Advocate packet (Forms D-23, D-23A & D-23B) to the Association. The EA is authorized to help the complainant draft the Complaint (Form D-1) and other forms required for the disciplinary process. In addition, the EA may represent the complainant at the hearing in a role similar to legal counsel, at the option of the complainant.

If the complainant returns the completed Request for Ethics Advocate (Form D-23), Ethics Advocate Acceptance (Form 23-A) and Ethics Advocate Communication Preference (Form D-23B), an EA is chosen from the those not challenged by the complainant, and the EA contacts the complainant before any further steps are taken. Thereafter, the complaint is processed in the normal manner.

The respondent may also request the assistance of an EA, by submitting the Request for Ethics Advocate packet (Forms D-23, D-23A & D-23B) to the Association. The EA is authorized to help the respondent draft the Response (Form D-3) and other forms required for the disciplinary process. In addition, the EA may represent the respondent at the hearing in a role similar to legal counsel, at the option of the respondent.

If the respondent returns the completed Request for Ethics Advocate (Form D-23), Ethics Advocate Acceptance (Form 23-A) and Ethics Advocate Communication Preference (Form D-23B), an EA is chosen from the those not challenged by the respondent, and the EA contacts the respondent before any further steps are taken. Thereafter, the complaint is processed in the normal manner.

PLEASE NOTE: EVEN THOUGH THE EA PERFORMS A ROLE SIMILAR TO LEGAL COUNSEL, THE EA IS NOT AN ATTORNEY AND IS NOT ALLOWED TO PRACTICE LAW.

REQUEST FOR ETHICS ADVOCATE
_____ ASSOCIATION OF REALTORS®

If you desire assistance with the disciplinary process, the Association can provide you with an Ethics Advocate ("EA"). The EA will help you complete the required forms, if you wish. In addition, at your option, the EA can represent you at any hearings that may be held in connection with your case and assist you through the hearing procedures. Please note: You will still be required to attend any hearings. If you wish to be assisted by an EA, please complete and submit this form. **If you do not wish to be contacted by an EA, there is no need to return this form.**

☐ I wish to be represented by an EA and have completed my Form D-23A "Ethics Advocate Acceptance."
I have also completed and enclosed Communication Preference (Form 23B).

Following is my full contact information:

Name

Address

City, State, Zip

Phone (____)

Email

Date: _____

_____
(Type/Print Your Name)

_____
(Signature)

Please return to:

_____ASSOCIATION OF REALTORS®

Attn:

Address

City, State, Zip

Phone (____)

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ETHICS ADVOCATE ACCEPTANCE
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs._____
Complainant(s) Respondent(s)

_____ vs._____
Complainant(s) Respondent(s)

Right to Challenge Ethics Advocates

You are requesting the assistance of an Ethics Advocate ("EA") for the above-referenced matter. You may challenge any potential EA. The EA chosen to assist you will be one of those listed below whom you do not challenge. Challenges must be in writing and submitted prior to the assignment of an EA to assist you. The following persons listed below or on the attached list are eligible to serve as EAs for the hearing and may be selected to serve as your EA. Please check the appropriate box below.

_____

_____

_____

☐ I have no objection to the any of the above EAs.

☐ I object to one or more EAs and have included a list setting forth the names of the EA(s) to whom I object.

Hold Harmless

I hereby release, discharge and hold harmless (Association of REALTORS®) and the EA from and against any and all claims, actions, damages, liabilities, losses, costs or expenses that I now have or may hereafter have arising out of the assistance of an EA in connection with the above-referenced Case. I further expressly agree that the foregoing release is intended to be as broad and inclusive as permitted by the laws of the state of California and that if any portion thereof is held invalid, it is agreed that the remainder of the release shall, notwithstanding, continue in full force and effect.

By signing below you warrant that you understand and agree to the above Hold Harmless Agreement.

Dated: _____

_____
Party's Signature

_____
Party's Name (Type or Print)

If you do not sign the Hold Harmless Agreement above, no EA will be assigned to assist you.

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D-23A

ETHICS ADVOCATE
COMMUNICATION PREFERENCE
_____ASSOCIATION OF REALTORS®

(Please complete a separate form for each party)

Name: _____

Address: _____

_____

Home Phone: _____

Best hours to call: _____

Work Phone: _____

Do not contact work _____ Hours to call: _____

Fax: _____

Cell Phone: _____ Hours to call: _____

Email: _____

I request that written notifications be:

_____ Mailed to home address

_____ E-mailed

Signed Dated

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D-23B

Sample Letter: Request for Disciplinary Complaint (EA)

ASSOCIATION LETTERHEAD

Date

Name
Address
City, State Zip Code

Re: **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) Complaint Form (Form D-1) and Instructions
(2) Request for Ethics Advocate (Form D-23)
(3) Ethics Advocate Acceptance (Form D-23A)
(4) EA Communication Preference (Form D-23B)
(5) The _____ (insert current year) National Association of REALTORS® Code of Ethics
(6) The Association's MLS Rules and Regulations
(7) A copy of the *California Code of Ethics and Arbitration Manual*

If you desire assistance with completion of the Complaint Form (Form D-1), enclosed you will find the names of several Ethics Advocates ("EA") (Form D-23A). The EA will help you complete the disciplinary complaint and other required forms. In addition, at your option, the EA can represent you at any hearings that may be held in connection with this case and assist you through the hearing procedures. **There is no cost for the use of an EA.** If you wish the assistance of an EA, please complete and return:

Request for Ethics Advocate (Form D-23)
Ethics Advocate Acceptance (Form D-23A)
EA Communication Preference (Form D-23B)

Please Note: In order to use the services of an EA, you must agree to hold the Association harmless and waive any claim for liability against the Association or the EA for the conduct of the EA in assisting you.

If you do not wish the assistance of an EA, there is no need to return Forms D-23, D-23A and D-23B.

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 facts constituting the alleged wrongful conduct occurred. **You must file within the time limit, even if you are assisted by an EA.** Also, you may want to become familiar with the *California Code of Ethics and Arbitration Manual* as this is the set of rules that is 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
Enclosures

NOTICE TO RESPONDENT
DISCIPLINARY HEARING (EA)
_____ ASSOCIATION OF REALTORS®

Case No. _____

_____ vs._____
Complainant(s) Respondent(s)

_____ vs._____
Complainant(s) Respondent(s)

To:_____
Respondent(s)

Attached to this notice is a copy of a disciplinary complaint filed with this Association which names you as a respondent. The complaint alleges violations of the Code of Ethics, MLS rules or other membership and MLS duties. The complaint was reviewed by the Grievance Committee and referred for hearing before a panel of the Professional Standards Committee.

If you desire assistance with completion of the Response Form (Form D-3), enclosed you will find the names of several Ethics Advocates ("EA") (Form D-23A). The EA will help you complete the disciplinary response and other required forms. In addition, at your option, the EA can represent you at any hearings that may be held in connection with this case and assist you through the hearing procedures. **There is no cost for the use of an EA.** If you wish the assistance of an EA, please complete and return:

Request for Ethics Advocate (Form D-23)
Ethics Advocate Acceptance (Form D-23A)
EA Communication Preference (Form D-23B)

Please Note: In order to use the services of an EA, you must agree to hold the Association harmless and waive any claim for liability against the Association or the EA for the conduct of the EA in assisting you. If you refuse to hold the Association harmless, no EA will be able to assist you. Additionally, if you use the services of an EA, you will still be required to attend any hearings that take place.

If you do not wish the assistance of an EA, there is no need to return Forms D-23, D-23A and D-23B.

The Complainant _____has _____ has not elected the assistance of an EA, at this time.

This matter will be processed by the Association in accordance with the rules and procedures of the Association. Please be advised that the proceedings regarding this matter must be kept confidential and that you have an obligation to maintain and protect this confidentiality. Under these rules, you have fifteen (15) calendar days from the date specified below in which to mail or file a written response to this complaint with the Association. Attached is a blank response Form D-3 for your use.

If you intend to file a written response, please include one (1) original and _____ copies for the other parties and the hearing Panel.

Dated: _____

_____
Signature
_____, Association Executive or Authorized Designee
(Type or Print)

Please mail or file response to:
ASSOCIATION OF REALTORS®
Attn: _____
Address _____
City, State, Zip_____

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D-2A

D. ETHICS MEDIATION PROGRAM

Ethics Mediation is a process designed to resolve disciplinary disputes without the need for a formal hearing. It is similar to other forms of mediation in that it is (a) voluntary for the parties; (b) involves a mediator conducting a mediation conference where the parties attempt to reach a settlement; and (c) if the parties sign a settlement agreement, no hearing is conducted.

Ethics Mediation is a process that may be adopted at the discretion of boards and associations. It will not become a default program in 2023.

If an Association decides to adopt an Ethics Mediation Program, it will be required to adopt all of the NAR procedures (either verbatim or as amended locally) by action of the local board of directors. **All NAR materials related to Ethics Mediation are provided in this Section.**

MOTION: That _____ Association of REALTORS® create an Ethics Mediation Program in accordance with NAR policy.

NAR CODE OF ETHICS AND ARBITRATION MANUAL
Part 4, Appendix XI — Ethics Mediation

Adoption of ethics mediation procedures

Ethics mediation is a process that may be adopted at the discretion of boards and associations. Ethics mediation will require adoption of these procedures (either verbatim or as amended locally) by action of the local board of directors (or as otherwise provided in the local bylaws).

Appointment of mediators

The chair of the Professional Standards Committee and/or the Board President will select one or more ethics mediators to act on behalf of the committee. Mediators should be thoroughly familiar with the Code of Ethics, state real estate regulations, and current real estate practice.

Complaints that may be mediated

Complaints brought by the public or by other REALTORS® may be mediated under these procedures. Complaints brought by the Grievance Committee and complaints alleging a violation of the public trust (as defined in Article IV, Section 2 of the NAR Bylaws) may not be mediated.

Initiation of ethics mediation procedures

The ethics mediation process can be initiated in two ways. First, through filing a written ethics complaint. Second, through a personal, telephone, or written inquiry or complaint generally alleging potentially unethical conduct but which (a) is not filed on the appropriate form or (b) is not specific as to which Article(s) may have been violated.

Where a written ethics complaint in the appropriate form is received, it will be reviewed by the Grievance Committee so a determination can be made whether a possible violation may have occurred or, alternatively, whether the complaint should be dismissed as not requiring a hearing. Where an informal inquiry or general letter of complaint that does not allege a potential violation of the public trust is received, it will not be reviewed by the Grievance Committee, but will be referred to an ethics mediator.

Participation in ethics mediation is voluntary

Persons inquiring about the process for filing ethics complaints will be advised that ethics mediation is available as an alternative to a formal ethics hearing provided that all parties agree to participate, and also be advised they may decline or withdraw from mediation and have their complaint considered at a formal ethics hearing. Similarly, REALTORS® complained about have the right to decline or withdraw from mediation and to have complaints against them considered at a formal ethics hearing.

Referral of complaints to the mediator

When either a written ethics complaint in the appropriate form is reviewed by the Grievance Committee and the Grievance Committee concludes that a hearing is warranted, or when a general letter of inquiry or complaint is received, and the matter(s) complained of do not involve a possible violation of the "public trust", the materials received will be referred to the ethics mediator who will contact the parties to schedule a meeting at a mutually agreeable time. "Public trust" refers to misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud. (Revised 11/20)

During the mediation session the mediator will encourage all parties to openly and candidly discuss all issues and concerns giving rise to the inquiry or complaint, and to develop a resolution acceptable to all of the parties. In the event the mediator concludes that a potential violation of the public trust

may have occurred, the mediation process shall be immediately terminated, and the parties shall be advised of their 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.

Nature of the mediated resolution

The mediator and the parties have considerable latitude in fashioning a mutually acceptable resolution. Resolutions can include, but are not limited to, payment of disputed funds, repairs or restoration of property, written or oral apology, or acknowledgement of a violation of the Code of Ethics. In cases where a REALTOR® acknowledges that the Code has been violated, that admission may be sufficient to resolve the matter or, alternatively, the parties may agree that discipline should be imposed. The discipline may, at the agreement of all parties, include any of the forms of discipline established in the Code of Ethics and Arbitration Manual and may also include payment of monies to the complainant or to a third party. Also, the parties may agree that the complainant will withdraw a complaint or agree not to file a formal, written ethics complaint in return for the respondent's action or acknowledgement. Again, any discipline imposed must be agreed to by all of the parties.

Referrals to the Grievance Committee or to state regulatory bodies

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

Refusal to comply with agreed upon discipline

Failure or refusal of a respondent to comply with the terms of any 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 shall be considered the filing date for purposes of determining whether an ethics complaint is timely filed.

Associations will continue to process filed ethics complaints until withdrawn by the complainant. (Revised 05/15)

Confidentiality of mediation process

The allegations, discussions, and decisions rendered in ethics mediation proceedings are confidential and shall not be reported or published by the board, any member of a tribunal, or any party under any circumstances except those established in the Code of Ethics and Arbitration Manual of the National Association as from time to time amended.

Agreement to Mediate (Ethics)

The undersigned agree to submit their dispute to mediation in accordance with the *California Code of Ethics and Arbitration Manual* and the policy and procedures of _____ (Board or Association of REALTORS®)

As a party to the mediation process, I understand and agree as follows:

The ethics complaint filed has been sent forward for a hearing by the Grievance Committee. Prior to the ethics hearing being held the parties may mediate their dispute.

Parties to mediation may withdraw from the process at any point prior to reaching an agreement. If the parties fail to reach an agreement, the matter will be forwarded to the Professional Standards Committee for an ethics hearing, as set forth in the *California Code of Ethics and Arbitration Manual*.

The parties acknowledge that the mediator is not providing legal representation, legal advice, or legal services, and that the parties are advised of their right to be represented by counsel at the mediation conference and also of their right to obtain independent legal advice before signing any final settlement agreement.

Any offers of settlement that were not accepted or any suggested resolution proposed by the Mediation Officer that was not accepted will not be introduced as evidence nor considered by the ethics hearing panel, should the matter proceed to a hearing. The parties, and/or their own attorneys, will reduce any settlement to writing and the settlement agreement must be signed by all the parties. The Respondent's failure or refusal to comply with the terms of any mutually agreed resolution shall entitle the Complainant to request that a formal ethics hearing be scheduled.

Views expressed or suggestions made by a party with respect to a possible settlement of the dispute, proposals made or views expressed by the Mediator, or the response of any party thereto shall not be introduced as evidence at any ethics hearing. Neither _____(Board or Association) nor the Mediation Officer shall be compelled to disclose or to testify in any proceeding as to information disclosed or representations made in the course of the mediation or communication to the Mediator in confidence. Neither the Mediation Officer, _____(Board or Association) nor the National Association of Realtors® nor any of its Member Boards shall be deemed "necessary parties" in any judicial proceedings relating to mediation under this Agreement. The parties acknowledge that the mediation proceedings will not be recorded and that weapons of any type are prohibited.

The undersigned understand that the allegations, discussions, and decisions rendered in the ethics mediation proceeding are confidential and shall not be reported by any party to the mediation under any circumstances, except as those established in the *California Code of Ethics and Arbitration Manual.*

The undersigned understand that if the complaint is withdrawn as part of any settlement agreement, the complaint and response will be referred back to the Grievance committee to determine whether a potential violation of the public trust (as defined in Article IV, Section 2 of the National Association's Bylaws) may have occurred. Only where the Grievance Committee determines a potential violation of the public trust may have occurred may the Grievance Committee proceed as the complainant.

Are the circumstances giving rise to this request for Mediation the subject of civil or criminal litigation or in any proceeding before the state real estate licensing authority or any other state or federal regulatory or administrative agency? Yes ___No ____

If yes, where else has a complaint been filed? _____

By my signature on this Agreement to Mediate, I acknowledge my rights and agree to the terms of the mediation procedures as stated above. I hereby affirm that I have the authority to enter into and sign a binding written agreement to settle this dispute.

Name (Type/Print)	Signature	Date
Name (Type/Print)	Signature	Date

Board or State Association

Address	City	State	Zip

Ethics Mediation Resolution Agreement

The undersigned, pursuant to the ethics mediation guidelines incorporated into the professional standards procedures, _____ Board or State Association have participated in and agree to the following resolution:

_____

_____

_____

_____

_____

_____

_____

The undersigned agree to be bound by the above resolution and waive any and all future rights to file an ethics complaint, litigate the matter, or pursue a complaint in any other forum. If an ethics complaint has been filed, the complainant agrees to withdraw that complaint and not to pursue a complaint in any other forum. We further hold the _____ (Board or State Association) harmless, acknowledge that we were advised of our right to attorney representation at the mediation and attorney review of the Resolution Agreement, and expressly waive any and all liability of the _____ (Board or State Association) or claim that we have against the _____ (Board or State Association) arising out of the manner in which the _____ (Board or State Association) conducted the ethics mediation, or the resolution of the dispute reached as a result of the _____'s (Board or State Association) ethics mediation procedures. Further, if this resolution agreement is judicially enforced, the non-complying party agrees to reimburse the other party for court costs and reasonable attorney's fees.

_____

Name (Type/Print) Signature Date

_____

Name (Type/Print) Signature Date

As Mediation Officer of the_____ (Board or State Association), I do attest that I was present during the ethics mediation process and that the above resolution agreement was voluntarily entered into by the parties to the dispute.

_____

Name (Type/Print) Signature Date

(*Adopted 5/16*)

E. MULTI-ASSOCIATION PROFESSIONAL STANDARDS PROGRAM AND SHARED PANELISTS

An Association may agree with other associations to establish multi-association professional standards programs, in which case the members of a Panel may include members from the participating associations. Additionally, an Association may agree with other associations to share its Grievance Committee and Professional Standards Committee members and Board of Directors on reviews, in which case the members of a Panel may include members from the reciprocating association's respective Grievance Committee, Professional Standards Committee, and Board of Directors.

C.A.R. is willing to assist Associations if they wish to set up one of these programs. Please contact us if you are interested in having us set up a conference call with other Associations in your region to discuss this.

MOTION: That _____ Association of REALTORS® create a multi-association professional standards program with _____ Association of REALTORS®, in accordance with C.A.R. policy.

OR

MOTION: That _____ Association of REALTORS® shall share its Grievance Committee members, Professional Standards Committee members, and Board of Directors members with _____ Association of REALTORS®, in accordance with C.A.R. policy.

F. MANDATORY MEDIATION

Article 17 of the Code of Ethics permits Associations to require their members to mediate disputes before submitting them to arbitration. If an Association adopts this policy, all REALTOR® vs. REALTOR® disputes which are required to be submitted to arbitration pursuant to Article 17 will need to be sent to mediation before the complaint is forwarding for an arbitration hearing.

If you are interested in a Mandatory Mediation program, please contact C.A.R. We can get you in touch with other local associations that have already adopted the program so that you can gather information regarding the program's effectiveness and implementation.

MOTION: That _____ Association of REALTORS® make mediation mandatory, for contractual and non-contractual disputes specified in Standard of Practice 17-4 of the Code of Ethics, between REALTORS® associated with different firms arising out of their relationship as REALTORS®.

G. "FAST TRACK" DISCIPLINE PROCESS

NAR has created an optional "fast track" process for the receipt, consideration and resolution of ethics complaints. If an association chooses to adopt the "fast track" process, it must be used for all ethics complaints received by the Association. **Please refer to the "Fast Track Procedure" materials in this Section for more information.**

MOTION: That _____ Association of REALTORS® adopt the Fast Track procedures for disciplinary hearings in accordance with C.A.R. policy

"FAST TRACK" ETHICS PROCEDURE

NAR has created an optional "fast track" process for the receipt, consideration and resolution of ethics complaints. Any local association may choose to adopt the "fast track" hearing process described in this document. If an association chooses to adopt the "fast track" process, **it must be used for all ethics complaints received by the association**. The deadlines applicable for the "fast track" process are described below, and in all other respects the "fast track" process shall be conducted in accordance with the procedures set forth in the *California Code of Ethics and Arbitration Manual*.

(1) The Grievance Committee shall review each complaint within ten (10) calendar days of receipt of the complaint by the Association.

(2) The Association Executive shall designate the date, time and place of the hearing and shall notify the parties and hearing Panel in writing (Form D-6) no later than five (5) calendar days after the Grievance Committee decision to forward the complaint for a hearing is final.

(3) The date of the hearing shall be no later than forty-five (45) calendar days after the Grievance Committee decision is final.

(4) The respondent shall submit a Response to the Association within ten (10) calendar days after the request for response has been transmitted to the respondent.

(5) A copy of the Response shall be provided to the complainant within five (5) calendar days after the Association receives the Response from the respondent.

(6) The parties must submit Form D-4 and Form D-5 no later than five (5) calendar days after the date these forms have been transmitted to the parties.

(7) The hearing Panel may recess the hearing from time to time as necessary and, on request of a party or upon the Panel's own motion, may postpone the hearing for not more than fifteen (15) calendar days, unless otherwise agreed to by the parties.

(8) Within ten (10) calendar days after the hearing Panel's decision has been transmitted to the parties, any party may file a request in writing for a review of the hearing Panel's decision by the Board of Directors or appointed review Panel of the Board of Directors.

(9) A request for review shall be reviewed by the Association Executive to determine whether the request complies with the filing requirements within five (5) calendar days after the request has been transmitted to the Association.

(10) If the Association Executive determines that the request for review fails to meet the filing requirements, the request shall be returned to the party and the party shall be given five (5) calendar days to amend the request to comply with the appropriate requirements.

(11) The Association Executive shall designate the date of the review hearing, which shall be no later than twenty (20) calendar days after the date of the Association's receipt of the request for review. Each party shall be given at least ten (10) calendar days prior notice of the review hearing.

(12) If no request for review is filed, the Board of Directors shall take final action on the hearing Panel's recommendation no later than twenty (20) calendar days after the date the hearing Panel's decision is transmitted to the parties.

H. BEST PRACTICES FOR GRIEVANCE COMMITTEES

Many C.A.R. members have expressed concerns about the quality of Grievance Committee decision-making based on a lack of preparation and training for some volunteers. Additionally, there is a belief among many members that the current disciplinary process sometimes leads to unsubstantiated and frivolous complaints being sent forward for a hearing by the Grievance Committee. In response to these concerns, at the January 2022 C.A.R. Professional Standards Committee meeting, a motion was passed to create a work group of Professional Standards Committee members to explore ideas and develop recommendations to present to the full committee at the fall Professional Standards Committee meeting.

Ultimately, the work group decided that the best course of action was to create a list of "best practices" that would be distributed to local associations and posted on the C.A.R. website. The work group's opinion was that encouraging adoption of the best practices would help improve the quality of Grievance Committee decision-making statewide and reduce frivolous cases from being sent to hearings, but that making these proposals best practices rather than mandates would help accommodate local differences. The list of best practices is included on the next page. **Please remember that this is a list of suggested practices and not mandates. Local Associations are free to make modifications to any of these suggested practices if they choose to do so.** Also, please note that as of January 1, 2023, the C.A.R. components of the last two items on the list have not yet been completed.

List of Best Practices for Grievance Committees

- Local associations are strongly encouraged to institute more stringent requirements for volunteers to become members of the Grievance Committee. This could include requiring volunteers to spend 1 year observing Grievance Committee meetings prior to the volunteer becoming a voting member of Grievance Committee. Additionally, local associations could institute more training requirements for Grievance Committee membership beyond the basic training for volunteers provided by C.A.R., including but not limited to Code of Ethics classes and webinars and NAR's Fairhaven Fair Housing Simulation.
- Local associations are strongly encouraged to create a program that provides mentors to new Grievance Committee members. These mentors might be more experienced Grievance Committee members, Professional Standards Committee members, volunteers from other associations, or C.A.R. Ethics Advocates. The length of the mentorship would be at the discretion of each local association, but around 1 year is recommended.
- Local associations are strongly encouraged to expose the Grievance Committee and the professional standards process to new members by including an explanation during mandatory orientation. Grievance Committee members, Professional Standards Ambassadors, or other volunteers should make time to give short presentations on the subject during orientations.
- Local associations are strongly encouraged to include education as a part of Grievance Committee meetings. Include time during meetings (after the Committee has finished reviewing cases) to focus on improving members' knowledge base regarding the Code of Ethics and the professional standards process.
- Professional Standards Administrators should strongly recommend that complainants speak with a volunteer (whether an ombudsman or an Ethics Advocate) before they file a formal complaint. Local associations could choose to make this an opt-out process whereby a volunteer is automatically assigned to speak to each complainant and would contact them unless the complainant refuses to speak with them.
- C.A.R. will create a template that directs complainants on how to complete the narrative of the accusation (i.e., Exhibit 1 to the D-1 form) that the Grievance Committee uses to review the complaint. This will also include a checklist identifying potential supporting documents or witnesses, along with the purpose for including each of these documents and/or witnesses with the complaint. Once these materials are complete and available on the C.A.R. website, local associations will be strongly encouraged to include them in the packet of materials provided to complainants before they file the complaint.
- Pursuant to the proposals passed by the C.A.R. Board of Directors in October 2021 based on the recommendations of the Disciplinary Complaint Filing Alternatives Work Group, C.A.R. will create new videos and written materials explaining the disciplinary process that can be provided to parties involved in disciplinary cases. Once these materials are available on the C.A.R. website, local association will be strongly encouraged to provide them to complainants and respondents at the beginning of the process.

I. COMPLAINT AND RESPONSE EXHIBIT TEMPLATES

The following templates were created by a team of experienced C.A.R. Professional Standards Committee members to assist Grievance Committees and Professional Standards Hearing Panels by promoting more organized submissions of evidence by complainants and respondents.

Inclusion of these Exhibit 1 templates with the D-1 or D-3 forms provided to the parties is **optional** for local associations in 2024. For any local associations that choose to include these templates, C.A.R. would appreciate feedback so that C.A.R. can determine whether to encourage wider adoption in 2025 and beyond.

COMPLAINANT: EXHIBIT 1, Template Overview

INTRODUCTION:

Clear and concise submissions aid both the Complainant, Respondent, and the Professional Standards members alike. This template package has been created with two goals in mind:

1) Ensure that the Complainant's allegations receive full attention and weight and are not potentially diluted or missed due to disorganized, complex, or voluminous submissions.
2) In a respect for their time, to help each of the potentially reviewing groups quickly identify the pertinent arguments and evidence as necessary to complete their part of the process:
    a. *Grievance Committee:* Reviews packet to ensure that alleged actions potentially violate the NAR Code of Ethics, MLS Rules, and Membership Duties so that resources are not spent on allegations that, even if true, would not result in discipline.
    b. *Professional Standards Hearing Panel:* Manages the actual hearing, weighs testimony and evidence, publishes Findings of Fact, and in the case of violations assigns discipline.
    c. *Appeals Panel:* If the Findings and Discipline are appealed, this group from the Board of Directors reviews for Misapplication or Misinterpretation of an Article or Rule, Lack of Procedural Due Process, or Unwarranted Discipline.

Additional benefits of this template include potentially serving as a roadmap for your hearing presentation and enabling the hearing panelists to come prepared with critical questions that may clarify the issues.

IMPLEMENTATION:

In the following pages, you will find the following 3 sections:

I) Overview of Events – Intended for the Complainant to tell the story of what happened from their perspective and the opportunity to provide context to the alleged violations.
II) Alleged Violating Actions – Focuses only on the specific alleged actions that would constitute potential violations of the NAR Code of Ethics, MLS Rules, and Membership Duties. These should be clear and specific.
III) Supporting Evidence – References the specific attached proof or future testimony that relates to the Alleged Violating Actions.

Please note that a sample submission has been included to help you complete your packet. If the organization or intent of this template is unclear, an Ombudsman or Ethics Advocate may be available from the local Board or Association to help you with your submission.

COMPLAINANT: EXHIBIT 1, Section I

OVERVIEW OF EVENTS (COMPLAINANT): In your own words, tell what happened. This is your opportunity to give context to the overall submission. Make sure to reference all parties involved (i.e. Agent, Broker, Team Members, etc.) and a timeline of events. If more space is needed, please use additional copies of this page. Alternatively, you may use any free-form write-up and label the top as "Exhibit 1, Section I".

COMPLAINANT: EXHIBIT 1, Section XXXVI

ALLEGED VIOLATING ACTIONS (COMPLAINANT): These are the specific actions alleged along with which Articles of the NAR Code of Ethics, MLS Rules, or Membership Duties those actions violate. Note that the Grievance Committee may make additions or deletions to this section during their review.

Item	Article, MLS Rule, or Membership Duty Violated	Specific Alleged Action that Violates the Code of Ethics Article, MLS Rule, or Membership Duty	Office Use (Leave Blank)
A			
B			
C			
D			
E			
F			
G			
H			
J			
K			
L			
M			
N			
P			
Q			
R			
S			
T			
U			

COMPLAINANT: EXHIBIT 1, Section XXXVII

SUPPORTING EVIDENCE (COMPLAINANT): This table is used to identify which specific evidence will be used in the hearing to support the Complainants ALLEGED VIOLATING ACTIONS in Section II. Enter the pre-printed "Item" from Section II to tie your supporting evidence to specific ALLEGED VIOLATING ACTIONS. Your "Reference" should specify exactly what and where in the supporting submitted evidence a reviewer will find the pertinent information. In the case of a witness who will give live testimony, reference "Witness testimony" and their name(s) under "How It Applies". Each ALLEGED VIOLATING ACTION should have at least one entry in the table below. In the case where a specific piece of evidence or testimony will support multiple ALLEGED VIOLATING ACTIONS, enter all reference "Items" from Section II in the first column as appropriate. If necessary for space, make multiple copies of this section.

Item(s)	Reference to Evidence	How It Applies

RESPONDENT: EXHIBIT A, Template Overview

INTRODUCTION:

Clear and concise submissions aid both the Complainant, Respondent, and the Professional Standards members alike. This template package has been created with two goals in mind:

1) Ensure that the Respondent's responses receive full attention and weight and are not potentially diluted or missed due to disorganized, complex, or voluminous submissions.
2) In a respect for their time, to help each of the potentially reviewing groups quickly identify the pertinent arguments and evidence as necessary to complete their part of the process:
    a. *Grievance Committee:* Reviews packet to ensure that alleged actions potentially violate the NAR Code of Ethics, MLS Rules, and Membership Duties so that resources are not spent on allegations that, even if true, would not result in discipline.
    b. *Professional Standards Hearing Panel:* Manages the actual hearing, weighs testimony and evidence, publishes Findings of Fact, and in the case of violations assigns discipline.
    c. *Appeals Panel:* If the Findings and Discipline are appealed, this group from the Board of Directors reviews for Misapplication or Misinterpretation of an Article or Rule, Lack of Procedural Due Process, or Unwarranted Discipline.

Additional benefits of this template include potentially serving as a roadmap for your hearing presentation and enabling the hearing panelists to come prepared with critical questions that may clarify the issues.

IMPLEMENTATION:

In the following pages, you will find the following 2 sections:

I) Overview of Events – Intended for the Respondent to tell the story of what happened from their perspective and the opportunity to provide context to the alleged violations.
II) Supporting Evidence – References the specific attached proof or future testimony that relates to the Alleged Violating Actions.

Please note that a sample submission has been included to help you complete your packet. If the organization or intent of this template is unclear, an Ombudsman or Ethics Advocate may be available from the local Board or Association to help you with your submission.

RESPONDENT: EXHIBIT 1, Section I

OVERVIEW OF EVENTS (RESPONDENT): In your own words, tell what happened. This is your opportunity to give context to the overall submission. Make sure to reference all parties involved (i.e. Agent, Broker, Team Members, etc.) and a timeline of events. If more space is needed, please use additional copies of this page. Alternatively, you may use any free-form write-up and label the top as "Exhibit A, Section I".

RESPONDENT: EXHIBIT A, Section II

SUPPORTING EVIDENCE (RESPONDENT): This table is used to identify which specific evidence will be used in the hearing to support responses to the ALLEGED VIOLATING ACTIONS. Enter the pre-printed "Item" from Complainant's Exhibit 1, Section II to tie your supporting evidence to specific ALLEGED VIOLATING ACTIONS. Your "Reference" should specify exactly what and where in the supporting submitted evidence a reviewer will find the pertinent information. In the case of a witness who will give live testimony, reference "Witness testimony" and their name(s) under "How It Applies". Each ALLEGED VIOLATING ACTION should have at least one entry in the table below. In the case where a specific piece of evidence or testimony will support responses to multiple ALLEGED VIOLATING ACTIONS, enter all reference "Items" from Section II in the first column as appropriate. If necessary for space, make multiple copies of this section.

Item(s)	Reference to Evidence	How It Applies