CALIFORNIA ASSOCIATION OF REALTORS®

APPENDICES
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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