

PART TWO – ARBITRATION OF DISPUTES

Section 41. Definitions

As used herein,

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

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

(c) "Member" means REALTOR®, and REALTOR-ASSOCIATE®, members of this Association, whether primary or secondary.

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

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

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

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

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

(i) "Responsible Broker" means the broker designated in the records of the

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

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

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

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

(a) By becoming and remaining a member of an Association and by signing or having signed the agreement to abide by the Association bylaws, every member binds him or herself and the corporation or firm for which he or she acts, and agrees to submit to binding arbitration all disputes as defined by Article 17 of the N.A.R. Code of Ethics and as set forth in the provisions of this Section (subject to the conditions or exceptions listed in this Section and Section 43). Disputes subject to arbitration include: 1) disputes with other members arising out of the real estate business and their relationship as REALTORS® and 2) contractual disputes with a member's client arising out of an agency relationship between the member and client provided the client agrees to submit the dispute to binding arbitration using the Association's facilities and be bound by the arbitration award. The obligation under this Section shall be deemed an arbitration agreement within the meaning of Part 3, Title 9 of the California Code of Civil Procedure.

(b) For purposes of this Section, the duty to arbitrate arises and membership shall

be determined when facts giving rise to the dispute occur. Termination of membership from the Association shall not relieve the arbitration duty under this Section for disputes that arose when the person was a member of the Association.

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

(d) If a broker and salesperson have previously agreed to arbitrate disputes between them by using a standard form with an agreement to arbitrate or other written agreement to arbitrate using the Association's facilities, they are bound to arbitrate under this Section.

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

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

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

(a) If a person is not subject to arbitration under Sections 41 or 44 of this Manual, and the MLS to which the person is

a Participant or Subscriber has a provision for binding arbitration under this Manual, the arbitration shall be conducted in accordance with the provisions of this Manual.

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

Section 44. Association's Right to Decline Arbitration

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

(b) If a hearing Panel has not been convened, the Professional Standards Chairperson or his or her designee and legal counsel representing the Association, after reviewing the complaint and response, may jointly recommend to the Board of Directors that the dispute should not be arbitrated because of the magnitude of the amount involved or the legal complexity of the controversy. If the Board of Directors concurs, the arbitration shall terminate and the parties shall be relieved of their obligation to arbitrate pursuant to the

provisions of this Manual. If the Board of Directors does not concur, the matter shall be referred to the Professional Standards Committee for hearing.

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

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

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

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

(a) By becoming or remaining a member, every member binds him and herself and the firm for which he or she acts and agrees to submit to binding arbitration, by the arbitration facilities of the CALIFORNIA ASSOCIATION OF REALTORS® (“C.A.R.”) or a multi-Association or shared panel comprised according to Section 47 of Part Two of this Manual, any dispute with a member of any other local association affiliated with C.A.R., provided: 1) the dispute is a dispute as defined in Section 42; 2) the bylaws of the other local association incorporate this Manual or contain a provision similar to this; and 3) C.A.R. maintains arbitration facilities capable of handling the dispute or a multi-Association or shared panel has been comprised according to Section 47 of Part Two of this Manual.

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

Section 46. Professional Standards Committee

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

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

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

(a) Notwithstanding any provision of this Manual, the Association may, by mutual resolution of the Boards of Directors of the affected associations, agree with other associations to establish multi-Association professional standards programs, in which

case the members of a Panel may include members from the participating associations.

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

Section 48. Interpretation of Bylaws

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

(b) Failure of a hearing Panel to set forth its interpretation as required by subsection (a) shall not invalidate the decision of the hearing Panel.

Section 49. Notices

(a) Any notice required to be given or paper required to be served may be given or served by personally handing it to the party to be notified, by first class or certified mail addressed to the mailing address on the records of the Association or by delivery to the mailing address on the records of the Association by a messenger service. If mailed or delivered, notice shall be deemed given when placed in the mail or when given

to the messenger service and deemed received within five (5) calendar days of such mailing or delivery, regardless if actually received or not.

(b) Notice of any hearing shall include the names of the hearing Panel members at the time said notice is given. Notice of any hearing, except for an adjourned hearing or continued hearing, shall be given not less than twenty-one (21) calendar days beforehand unless otherwise agreed by all the parties.

Section 50. Waiver

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

(b) Each member, MLS Participant or Subscriber, by virtue of and in consideration of membership or MLS services, waives the arbitrator disclosure requirements of the provisions of the California Ethics Standards for Neutral Arbitrators in Contractual Arbitration in California and California Code of Civil Procedure Sections 1281.9(a)(2),(3),(4) and (b) and 1281.85, which require disclosure by a REALTOR® arbitrator of information about prior arbitrations that is confidential under Section 53.

Section 51. Communication and Clerical

Communications shall be directed to the Association Executive. The Association Executive shall render all necessary assistance to the parties, shall on application furnish required forms, shall receive and file all documents or other papers, and shall receive all fees and disburse all moneys

payable to the Association. In no event, however, shall the Association Executive provide substantive advice or interpretation of this Manual, Association bylaws or other governing documents.

Section 52. Attempts to Influence Hearing Panel

No individual shall attempt, directly or indirectly, to influence a member of a Panel in any matter before it, other than by giving evidence and argument in an open hearing or by writing submitted to the entire Panel.

Section 53. Confidentiality of Proceedings

(a) All proceedings, including the allegations, findings, recommendations and decisions in arbitration proceedings are confidential and shall not be reported or published by the Association, any member of a Panel or any party under any circumstances except as authorized in this Section and Section 56. Upon conclusion of the proceedings, the Association, all Panel members and the parties shall have an obligation to maintain and protect this confidentiality except where disclosure is authorized in this Section and Section 56 or required by law.

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

(c) The parties shall not report or publish the allegations, findings, recommendations or decisions of an arbitration proceeding to anyone except as may be required by law. Any party to an arbitration proceeding is authorized to

disclose the decision where there is a civil proceeding involving the same facts and circumstances which gave rise to the proceeding before the Association.

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

Section 54. Right to Counsel

(a) Every party may be represented by legal counsel at any hearing, including reviews, even where the hearing will occur in the party's absence.

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

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

Section 55. Qualification for Panel

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

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

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

employee, partner or other business associate of a party.

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

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

(f) Any party may file with the Association Executive a written request for disqualification of a member of a hearing Panel stating the grounds alleged as the basis for disqualification (Form A-5). Challenges submitted by any party pursuant to this Section shall be decided by the Professional Standards Chairperson or his or her designee. A party shall be deemed to have waived any ground of disqualification of which he or she then has knowledge unless he or she files the request within fifteen (15) calendar days after the names of proposed neutral arbitrators under Section 56 are mailed to the parties. However, any member of a hearing Panel may be disqualified at any time if a majority of the members of a hearing Panel find any automatic grounds of disqualification to be present under this Section, or find any other facts which, in their judgment, may prevent

the member from rendering an impartial decision or appear to do so.

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

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

Section 56. Manner of Invoking Arbitration and Submission

(a) Submission of a dispute to arbitration by the Association shall consist of signing and delivering to the Association Executive either a complaint (Form PA-1 or A-1) or response form (Form A-3) provided by the Association or any other similar writing permitted by law.

(b) A 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 in the exercise of reasonable diligence, whichever is later.

(c) Any person authorized by the provisions of Sections 42 or 43 of Part Two of this Manual desiring arbitration by the Association shall submit a completed and signed arbitration complaint with appropriate filing fees to the Association Executive. The complaint shall include a statement describing the controversy and the amount in dispute. The Association Executive may require the complainant to supply the necessary number of copies of the complaint.

(d) The Association Executive shall conduct a preliminary review of the complaint to determine whether the complaint is subject to arbitration by the Association and otherwise complies with the filing requirements of this Manual. The Association Executive shall only conduct such preliminary review as is necessary to make this determination and any decision reached by the Association Executive shall not be considered a decision on the merits of the dispute. In the event there is a dispute as to whether a complaint has been properly filed, the Association Executive shall refer such disputes to the hearing Panel for consideration.

(e) If the Association Executive finds the complaint properly filed with the Association, the Association Executive shall ask each party to sign a Waiver Agreement, Form A-24. If all parties sign Form A-24, the provisions of Section 56(h) shall not apply.

(f) The Association Executive shall pre-screen the pool of potential hearing panel members to identify those least likely to be disqualified, and from those not eliminated, choose a sufficient number to designate as proposed neutral arbitrators within the meaning of Part 3, Title 9, of the California Code of Civil Procedure, as provided in Section 55.

(g) If all parties sign the Waiver Agreement, Form A-24, the Association Executive shall mail to each named respondent in the Complaint: 1) a copy of the Complaint; 2) the Notice to Respondent (Form A-2); 3) the Response (Form A-3) with directions to return the written response within fifteen (15) calendar days from the date of mailing to the respondent. The Association Executive may require the respondent to supply the necessary number of copies of the response.

(h) If any of the parties refuse to sign the Waiver Agreement, Form A-24, the procedure is as follows: within ten (10) calendar days of notification to the proposed neutral arbitrators, each shall deliver to the Association Executive a signed disclosure statement (Form A-21). A proposed neutral arbitrator is automatically disqualified if he or she fails to return the disclosure statement. Upon expiration of the time limit for return of the disclosure statements, the Association Executive shall mail to each named respondent in the complaint: 1) a copy of the complaint; 2) the Notice to Respondent (Form A-2); 3) the Response (Form A-3) with directions to return the written response within fifteen (15) calendar days from the date of mailing to the respondent. The Association Executive may require the respondent to supply the necessary number of copies of the response. The Association Executive shall concurrently at this time

mail to the party refusing to sign Form A-24 a list of names of proposed neutral arbitrators, along with their completed disclosure statements (Form A-21), the Notice of Right to Challenge - Tribunal Member and Availability for Hearing (Form A-4), and the Reasons for Challenge - Tribunal Member (Form A-5).

(i) The respondent may submit a written response but, regardless of whether he or she does so or not, he or she is bound to arbitrate according to the rules as set forth in this Manual and the hearing may be scheduled and conducted in the absence of the respondent. A hearing Panel may accept late filing of the response in its discretion.

(j) Not later than twenty-one (21) calendar days from the date of mailing the complaint to the respondent, the Association Executive shall mail copies of response and respondent's affirmative claim, if any, to the complainant or notify the complainant that no written response has been filed.

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

(l) A hearing Panel shall have an odd number of members (not less than three (3) except as provided in Section 55 (h) of Part Two of this Manual. If the Association's bylaws require a majority of real estate brokers on the Professional Standards Committee, a majority of each hearing Panel shall be licensed real estate brokers. If the complainant or respondent is

a salesperson, (either a licensed salesperson or licensed real estate broker acting in the capacity of a salesperson) a hearing Panel member shall be a salesperson. It shall be a membership duty of anyone so appointed to serve as a panel member unless disqualified.

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

(n) The Professional Standards Committee Chairperson or his or her designee may select an alternate from the list of proposed neutral arbitrators not disqualified to attend the hearing. The alternate will be allowed to observe the hearing process, but may not observe the deliberations. The alternate will not participate in any phase of the process unless the alternate is asked to substitute for one of the original hearing Panel members for any reason. The alternate has the same duties of confidentiality as the other hearing Panel members.

(o) The Association Executive shall designate the date, time, and place of the hearing and shall notify the parties and hearing Panel in writing (Form A-6). Each party shall be given at least twenty-one (21) calendar days prior notice of the hearing but appearance at a hearing without objection by any party will constitute a waiver of such notice requirement.

(p) A party will be deemed to have waived all objections to any person whose name he or she does not challenge, as provided in Sections 55 and 56 of Part Two of this Manual. If a challenge to proposed neutral arbitrators for the hearing Panel results in an insufficient number of members to constitute the Panel, the President may

appoint other qualified Association members as proposed neutral arbitrators.

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

Section 57. Responsible Broker as Complainant

If anyone other than a responsible broker files an arbitration complaint in a dispute involving the responsible broker but not between the member and the responsible broker, the responsible broker for that individual at the time of the dispute must also join as a complainant.

Section 58. Joinder of Multiple Parties or Complaints

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

Section 59. Duty to Give Evidence

When requested by subpoenas, or when summoned by the hearing Panel to do so, members, MLS Participants and Subscribers shall appear at the hearing, produce any records or data pertinent to the case and designated by the hearing Panel, and to testify truthfully. It shall be a membership duty and an MLS rules requirement to comply with such requests. Refusal of a party to appear at an arbitration hearing, to submit him or herself or his or her records to examination or to comply with a request of the hearing Panel for relevant information may be deemed an admission of the truth of the claim against him or her.

Section 60. Subpoenas

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

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

(c) Parties being served subpoenas by personal service must be given fifteen (15) calendar days notice for appearance at a hearing. If service is by mail, five (5) calendar days must be added.

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

Section 61. Witnesses

(a) Every party is responsible for arranging to have his or her own witnesses present at the hearing, and the Panel may summon its own witnesses. All witnesses, except the parties to the hearing and those with vested financial interests in the outcome of the matter as specified in subsection (b), will be excused from the hearing room except while testifying.

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

Section 62. Right to Demand Witness Lists

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

Section 63. Continuances

Continuances shall be in writing and state the reason for the request. Requested continuances shall be granted by the Professional Standards Chairperson or his or her designee, or after the hearing Panel has been convened, by the hearing Panel as necessary.

Section 64. Continuance Fees

Each party shall be entitled to one continuance of a hearing without assessment of a continuance fee. However, if a continuance is requested because of failure to adequately notify the Association and opposing party of representation by counsel, the party giving the inadequate notice may be assessed a continuance fee, not the party requesting the continuance. The Board of Directors may establish a schedule of continuance fees.

Section 65. Arbitration Hearing

(a) The hearing Panel, prior to the hearing, must sign a statement certifying that they are unaware of any reason why they should be disqualified to serve on the hearing Panel (Form A-7). At the beginning of the hearing, each party shall sign a

statement to the effect that he or she has received and read the outline of procedure (Form A-8) and either 1) understands the procedure and has no objection or questions concerning it, or 2) specifies what objections or questions he or she has and what changes he or she desires (Form A-9). The hearing Panel shall act upon any such objection or request as they deem proper.

(b) The parties to the dispute shall with diligence present to the hearing Panel in writing such statements and proofs as they desire. Proofs may be submitted in the form of affidavits or otherwise. The hearing Panel may require that statements be verified by affidavit or that the accuracy or authenticity of any documents or other papers submitted be verified by affidavit. The hearing Panel shall receive oral testimony if any party to the arbitration requests, or if in the hearing Panel's opinion, it is necessary or desirable. The hearing Panel may determine what personal appearance should be made by the parties and regulate the holding of hearings. The hearing Panel may receive and consider any evidence it deems material and proper, including evidence from accountants and other experts, the expenses of such witnesses to be charged to the loser or charged to the parties in such ratio as determined by the hearing Panel members.

(c) The hearing Panel may hear and determine the dispute upon the evidence produced at the hearing notwithstanding the failure of the respondent, who has been duly notified, to appear. If only the complainant appears at the hearing, he or she may rest upon the evidence of the statement submitted with his or her complaint for arbitration unless the hearing Panel requires more. The hearing Panel may not find in favor of a complainant solely by reason of respondent's failure to appear.

(d) The hearing Panel may recess the hearing from time to time as necessary and, on request of a party or upon the Panel's own motion, may postpone the

hearing for not less than fifteen (15) calendar days nor more than thirty (30) calendar days, unless otherwise agreed to by the parties.

(e) If the complainant fails to appear, the complaint shall be dismissed.

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

Section 66. Transcript/Right to Record

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

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

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

Section 67. Presentation of Evidence at the Hearing

At any hearing every party has the right to present any witnesses, to submit any evidence pertinent to the case, and to cross-examine witnesses of others. Witnesses giving oral testimony shall be sworn by the presiding officer. Before permitting testimony relating to the character or general reputation of anyone, the hearing Panel shall satisfy itself that the testimony has a direct bearing on the case at issue.

Section 68. Costs of Arbitration

(a) The award may include costs of the prevailing party including an amount equal to the arbitration fee, witness fees, service of subpoenas, and interest at the rate provided by law, unless another rate is specified by the award, and the award shall designate the date from which interest is to be computed. Where the dispute arises out of a contract which provides for attorneys' fees, the award may include attorneys' fees, otherwise, the award may not include attorneys' fees. Each party shall complete a statement of costs (Form A-10) prior to the hearing and present it to the hearing Panel members for consideration. Failure to submit a statement of costs before the hearing waives the party's right to request such costs.

(b) If a continuance of a hearing has been caused by an untimely request by a party to be represented by counsel as set forth in Section 54 of Part Two of this Manual or for other reasons, such costs occasioned by the continuance may be awarded against the party making the request, even though he or she may be the prevailing party.

Section 69. Settlement

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

Section 70. The Award

(a) The arbitration award shall be made as soon as practicable after the evidence is presented and the hearing Panel has finished its deliberations. The award shall be in writing (Form A-12) and signed by all members of the hearing Panel.

(b) If there is no request for a review, the award shall be final and binding after the period to request a review has lapsed. If there is a request for a review, the award shall be final and binding on the date the Directors ratify the award. Once the award is final and binding, it shall not be subject to review or appeal except as required in Part 5, Title 9 of the California Code of Civil Procedure.

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

Section 71. Request for Procedural Review by the Directors

(a) Any party may file a written request for procedural review (Form A-15) by the Directors within twenty (20) calendar

days after the hearing Panel's award has been sent to the parties. The Association Executive may require the party requesting the review to supply the necessary number of copies of the request for review.

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

(c) The only basis for a review of an arbitration award is a lack of due process in the processing or hearing of the arbitration. The request for review must clearly indicate the alleged procedural deficiencies that occurred and contain in reasonable detail a summary of the facts and evidence supporting the challenge.

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

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

(f) If a request for review is filed, the procedures for the review shall be the same as those used for disciplinary hearing reviews as contained in Section 39 and subject to any exceptions contained in this Section. Where Section 39 references disciplinary forms, the corresponding arbitration forms shall be used. To the

extent any procedures in Section 39 are applicable only to disciplinary hearing reviews, such procedures shall not be applicable.

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

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

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

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

(k) The decision of the Directors to ratify the decision shall be final.

challenging the validity of any arbitrator or of any arbitration award, whether asserted during the arbitration proceeding or after an arbitration award has been issued. In the event it is necessary for any party to the arbitration to obtain judicial confirmation and enforcement of the arbitration award against any other party, the party failing to abide by the arbitration award shall pay to the party obtaining such confirmation the costs and reasonable attorneys' fees incurred in such actions as determined by the court.

Section 72. Enforcement

The judgment of any competent court of record in California may be rendered upon the award. However, each member, MLS Participant or Subscriber, by virtue of and in consideration of membership or MLS services, waives the right to assert, in any forum that non-compliance with the California arbitrator disclosure rules set forth in Section 50(b), is a basis for