

## Arbitration Packet (Member)

### Attention

Please be aware that in Arbitration, the issue relates to commission disputes between brokers of different firms and/or between brokers and their client(s).

By virtue of your membership in the Greater Las Vegas Association of REALTORS® you agree to arbitrate, not litigate, per the rules and regulations of the National Association of REALTORS®.

In order to seek restitution through Mediation, you must file a request for Mediation. The Greater Las Vegas Association of REALTORS® participates in providing mediators.

**YOU MUST SUBMIT 1 COPY OF YOUR ENTIRE COMPLAINT, INCLUDING THE COMPLAINT FORM, SUMMARY AND SUPPORTING DOCUMENTS AT THE TIME OF SUBMISSION. PLEASE CAREFULLY READ AND ADHERE TO THE FOLLOWING REQUIREMENTS TO AVOID HAVING YOUR COMPLAINT AND ALL COPIES RETURNED TO YOU FOR CORRECTION.**

The following is a check list of some of the items that must be included:

- Requests must be filed using the attached forms
- Forms must be fully completed
- A typed or legibly written summary of your request.
- All complaint materials must be submitted on 8½ x 11 paper.
- Include documents necessary to support your claim.
- Documentation must be legible.

Failure to adhere to the above guidelines may result in the complaint package being returned to you.

If you should have any questions, please feel free to call the Greater Las Vegas Association of REALTORS® Professional Standards Department at (702) 784-5052.

Greater Las Vegas Association of REALTORS®  
1750 E. Sahara AV., Las Vegas, NV 89104  
(702) 784-5052

REQUEST AND AGREEMENT TO ARBITRATE (MEMBER)  
**PAGES 2, 3, 4 AND 5 MUST BE COMPLETED, SIGNED AND SUBMITTED  
WITH A SUMMARY AND SUPPORTING DOCUMENTS  
OR YOUR COMPLAINT WILL BE RETURNED TO YOU.**

DATE: \_\_\_\_\_

CASE NUMBER: \_\_\_\_\_ (assigned by GLVAR® staff)

1. The undersigned, by becoming and remaining a member of the Greater Las Vegas Association of REALTORS®, (or participate in its MLS), has previously consented to arbitration through the Association under its Rules and regulations.
2. Each person named below is a member in good standing of the Association or was a member at the time the dispute arose.
3. A dispute(s) arising out of the real estate business as defined by Article 17 of the Code of Ethics exists between me and **the following Respondents. (you MUST name involved broker)**

**PLEASE NAME RESPONDENTS:**

\_\_\_\_\_, Principal Broker of \_\_\_\_\_ Company

\_\_\_\_\_, Agent of \_\_\_\_\_ Company

**(Note: Arbitration is generally conducted between REALTORS® (principals) or between firms comprised of REALTOR® principals.)**

4. There is due, unpaid, and owing to me (or I retain) from the above named person(s) the sum of \$\_\_\_\_\_. My claim is predicated upon the statement attached, marked Exhibit "1", and supporting documents which are incorporated by reference into this application. **DO NOT STAPLE** your packet - turn in original complaint form and copies of supporting documents.

disputed funds are held by \_\_\_\_\_.

5. I request and consent to arbitration through the Association in accordance with the *Code of Ethics and Arbitration Manual*. I agree to abide by the arbitration award and to comply with the award promptly.

In the event I do not comply with the award and it is necessary for any party to obtain judicial confirmation and enforcement of the award against me, I agree to pay that party costs and reasonable attorney's fees incurred in obtaining such confirmation and enforcement.

6. I have enclosed my check in the sum of **\$500.00** for the arbitration filing deposit, which I understand is refundable to the prevailing party or if arbitration does not take place.
7. I understand that I may be represented by counsel and that I must provide written notice no less than **(15)** fifteen days before the hearing of the name, address and phone number of my attorney to all parties and the Association. Failure to provide this notice may result in a continuance of the hearing, if the Hearing Panel determines that the rights of the other party(ies) require representation.

Each party must provide a list of names of witnesses he intends to call at the hearing to the Association and to all other parties not less than fifteen (15) days prior to the hearing. Each party shall arrange for his witnesses to be present at the time and place designates for the hearing. The following REALTOR® nonprincipal (or REALTOR-ASSOCIATE® nonprincipal) affiliated with my firm has a financial interest in the outcome of the proceeding and has the right to be present throughout the hearing:

8. I declare this application and the allegations contained herein are true and correct to the best of my knowledge and belief and this request for arbitration is filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been in the exercise of reasonable diligence, whichever is later.
9. If either party to an arbitration request believes that the Grievance Committee has incorrectly classified the issue presented in the request (i.e., mandatory or voluntary), the party has twenty (20) days from the date of receipt of the Grievance Committee's decision to file a written appeal of the decision. Only those materials that the Grievance Committee had at the time of its determination may be considered with the appeal by the Board of Directors.
10. Are the circumstances giving rise to this arbitration request the subject of civil litigation? \_\_\_ Yes \_\_\_ No
11. Important note related to arbitration conducted pursuant to Standards of Practice 17-4 (1) or (2): Where arbitration is conducted between two (or more) cooperating brokers pursuant to Standards of Practice 17-4 (1) or (2), the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker, seller, or landlord and any amount credited or paid to a party to the transaction at the direction of the respondent.
12. Address of the property in the transaction given rise to this arbitration request \_\_\_\_\_.
13. The sale/lease closed on: \_\_\_\_\_.

By submission of this complaint and / or response, I consent to receive communications sent from the Greater Las Vegas Association of REALTORS® via U.S. Mail, e-mail telephone or facsimile at the numbers and locations noted by you on this form. This permission includes all future U.S. mailing address, e-mail, telephone or facsimile number which I might supply to the Greater Las Vegas Association of REALTORS®. Permission continues until / unless specifically revoked, in writing, to the Greater Las Vegas Association of REALTORS®.

Signature (Broker): _____	Signature (Agent): _____
Broker's Name (print): _____	Agent's Name (print): _____
Company: _____	Company: _____
Address: _____	Address: _____
Telephone: ( ) _____	Telephone: ( ) _____

NOTE: This Association offers voluntary mediation, binding only if parties reach a written, signed settlement.

Greater Las Vegas Association of REALTORS®  
1750 E. Sahara AV., Las Vegas, NV 89104  
Phone Number (702) 784-5052

**DESIGNATION OF LEGAL COUNSEL  
(ARBITRATION)**

DATE: \_\_\_\_\_

CASE NUMBER: \_\_\_\_\_

COMPLAINANT(S):

RESPONDENT(S):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ v. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I do not wish to designate counsel at this time

**OR**

I, \_\_\_\_\_, do hereby designate the following LEGAL counsel\* for representation in all aspects of these proceedings:

Attorney Name: \_\_\_\_\_

Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_ ( ) \_\_\_\_\_

The Greater Las Vegas Association of REALTORS® is requested to send copies of any and all notices and other documents pertaining to this case to the above attorney and the undersigned does hereby designate the attorney as his/her agent and spokesman in these proceedings.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Broker

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Company

*\*REALTOR® counsel (a fellow REALTOR® who may offer guidance or advice) may be used in ethics hearings only, not in arbitration hearings.*  
*Exhibit 12*



*I have no challenges:* \_\_\_\_\_

(Print Name)

\_\_\_\_\_  
(Signature)

## **OUTLINE OF PROCEDURE FOR HEARING (ARBITRATION)**

**POSTPONEMENT:** Postponement may be granted for extenuating circumstances. Requests must be in writing to the Association. Requests are reviewed by the Hearing Panel Chair. If the request is approved by the Chair, all parties shall be advised of the rescheduled hearing date.

**RECORDING:** The hearing will be electronically recorded. Any party may request a CD record of the proceeding at a cost of \$50.00. Any party may have the recording transcribed at their own cost; however, they must provide a copy of the transcription to the Association at the party's expense. Any party may provide their own court reporter at their own cost, but a copy of their recorded transcript must be furnished to GLVAR at the party's expense.

**METHOD AND OBJECTIVE:** The Hearing Panel is not bound by rules of evidence applicable in courts of law but shall afford all parties full opportunity to be heard, present witnesses, and offer evidence, subject to its judgment as to relevance.

**DUE PROCESS PROCEDURE:** The hearing will proceed as follows:

1. Opening Statement by Chairperson- cite authority to hear case and explain reason for hearing.
2. The arbitration request and counter-request will be read into the record.
3. The testimony of all parties and witnesses will be sworn or affirmed. all witnesses will be excused from the hearing except while testifying.
4. The parties will be given an opportunity to present evidence and testimony of their behalf and they may call witnesses.
5. Parties and their legal counsel will be afforded an opportunity to examine and cross examine all witnesses and parties.
6. Panel members may ask questions at any time during proceedings.
7. The Chairperson may exclude any question ruled to be irrelevant or argumentative.
8. Each side may make a closing statement. The complainant will make the first closing statement and the respondent will make the final closing statement.
9. Adjournment of Hearing.
10. The Hearing Panel will go into executive session to decide the case.

**AWARD IN ARBITRATION HEARING:** The decision of the Hearing Panel in an arbitration proceeding shall be reduced to writing (setting forth only the amount of the award by the panel) and signed by the arbitrators, or a majority of them, and a copy shall be furnished to each of the parties to the arbitration. A copy also shall be filed with the Professional Standards Department.

**USE OF LEGAL COUNSEL:** A party may be represented in any hearing by legal counsel. However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be non-appealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from date of adjournment to enable the party to obtain alternate counsel provided, however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

Be advised that all matters discussed are strictly confidential.

Documents, witnesses, and counsel to be considered by the Hearing Panel must be submitted at least **15 days prior to the date of hearing.**

## **Appendix IV to Part Ten Rationale for No Findings of Fact in Awards**

Arbitration awards, unlike ethics decisions, are not subject to appeal and do not include findings of fact or rationale. While arbitration awards may, at times, involve significant sums of money, they differ from the decisions rendered by ethics hearing panels in two significant ways. First, the fact that a party in arbitration does not prevail is in no way an indication that the non-prevailing party behaved in anything other than an ethical manner. It simply means that they were not entitled to a particular sum of money with respect to a particular transaction. Second, the determinations rendered through arbitration have no effect on a REALTOR®'s continued good standing in the association or in the real estate community generally, whereas an adverse decision in a matter involving ethics demonstrates that the respondent has, in some way, failed to live up to the standards expected of REALTORS® and may result in discipline being imposed, including the possibility of suspension or expulsion from membership.

Arbitration awards are based on the hearing panel's analysis of the entire course of conduct giving rise to a dispute as demonstrated by the evidence and testimony presented in the course of the arbitration hearing. There is generally not a single act (or in some cases failure to act), statement, or particular event, but rather the entire course of conduct or events related to a transaction that forms the basis for the hearing panel making its arbitration award. Reducing, to a comprehensive writing, the grounds on which an arbitration award was made, could frequently be far more complex—and difficult—than formulating the findings of fact (which may involve a single act or disclosure, or failure to act or disclose) which results in a determination that the Code of Ethics has been violated.

Consider that the obligations imposed by the Code of Ethics are, in most instances, clearly articulated in the Articles themselves, in the Standards of Practice, or in the official case interpretations. Thus, it is frequently readily apparent what a REALTOR® must do or say or, alternatively, must avoid saying or doing to ensure compliance with the Code. Arbitrable disputes, on the other hand, are very often (though not always) determined on the basis of procuring cause, a concept that cannot readily be reduced to a prescribed or proscribed action or event.

It is not uncommon for a non-prevailing party in arbitration to request an explanation or justification of a hearing panel's rationale for making an award. While this might be beneficial, at least in the sense that the non-prevailing party might understand, if not appreciate, the basis on which the award was based, there has been an on-going concern that, given the task of comprehensively and accurately articulating all of the acts and factors that are taken into account by an arbitration panel in rendering its award, there might be an understandable (and possibly unavoidable) tendency to oversimplify or generalize the basis on which an award was made, with the resulting explanation or rationale or "findings", whether written or oral, being relied on by the non-prevailing party (and likely by others) as "precedent" to be introduced and relied on at future arbitration hearings. The unintended consequence of providing explanations or rationale or "findings" is contrary to the policy embodied in Official Interpretation 31 of Article I, Section 2 of the National Association's bylaws which prohibits any rule or policy predetermining awards in arbitration. Arbitrable matters must be decided not on the basis of a single aspect of the total transaction, such as making the first showing, or writing the contract, but rather on careful, deliberate consideration of all relevant facts and circumstances.

While the question of whether arbitration decisions should include findings of fact has been discussed by the Professional Standards Committee on several occasions over the years, the Committee has consistently held that any possible educational benefits are far outweighed by the possibility that a proliferation of local association "arbitration case law" might quickly come into existence and that hearing panels would come to rely on these local determinations as the basis for subsequent arbitration awards instead of looking at each disputed transaction in its totality. It is for these reasons that the policies and procedures in the *Code of Ethics and Arbitration Manual* do not contemplate that written or oral explanations or rationale or "findings" will be part of arbitration awards rendered by hearing panels of associations of REALTORS®. (Adopted 11/06)

## WHAT IS ARBITRATION?

Arbitration is the resolution of a real estate business dispute by the decision of an arbitration hearing panel. It may take place between REALTOR® principals of different firms or between a REALTOR® principal and another party. Frequently, the dispute involves entitlement to compensation for real estate services. Arbitration may also involve REALTORS® other than principals or REALTOR-ASSOCIATES®, provided that the REALTOR® principals with whom they are affiliated join in the dispute.

Arbitration can take place between REALTORS® and REALTOR-ASSOCIATES® from the same firm if all parties voluntarily agree to be bound by the decision. Or, arbitration may take place between a REALTOR® principal and a customer, provided both voluntarily agree to it in writing. It may take place on a voluntary basis between a REALTOR® principal and non-member broker.

Boards/associations are not required to provide arbitration facilities in the last three circumstances, although many do.

## WHO IS ENTITLED TO ARBITRATION?

1. REALTORS® or non-resident member principals of different firms.
2. REALTORS® or non-resident members other than principals or REALTOR-ASSOCIATES® in different firms, provided the REALTOR® or non-resident principals with whom they are affiliated join in.
3. A client of a REALTOR® or non-resident member principal, provided the client agrees in writing to arbitrate the dispute arising out of their agency relationship and the matter is found to be properly arbitrable.

## WHO IS ENTITLED TO REQUEST VOLUNTARY ARBITRATION (IF PROVIDED BY THE BOARD/ASSOCIATION)?

1. REALTORS®, REALTOR-ASSOCIATES® and non-resident members who are or were affiliated with the same firm, if each party voluntarily agrees in writing and if the board/association finds the dispute properly arbitrable.

2. A REALTOR® or non-resident member principal may request arbitration with a non-member broker, providing that each party agrees in writing to arbitration and providing the board/association finds the matter properly arbitrable.
3. A REALTOR® or non-resident member principal and a customer provided that a written contractual relationship has been created between the customer and a client, the customer and the REALTOR® or nonresident member agrees in writing to arbitrate the dispute and the matter is found to be properly arbitrable.

## MUST THE BOARD/ASSOCIATION ARBITRATE ALL DISPUTES?

No, the board association may decline to arbitrate if its' Grievance Committee determines that (1) the dispute is not properly arbitrable, or (2) the amount involved is too small or too large, or (3) the legal complexity of the dispute is too great.

The filing of litigation and refusal to withdraw from it by the REALTORS® in a arbitrable matter constitutes a refusal to arbitrate. (Adopted 2/86) in accordance with Article 17, Standard of Practice 17-1 of the NAR Code of Ethics).

## ARBITRATION ALTERNATIVES

Sometimes a local board/association is unable to provide an impartial or unbiased arbitration or to provide a hearing by knowledgeable peers, as is the case of members engaged in special fields. In such cases, the association can request that the state association arbitrate the matter. If the state cannot, members are released from their obligation to arbitrate.

## HOW TO FILE AN ARBITRATION REQUEST

Detailed information can be found in section 47, Manner of Invoking Arbitration, of *the Code of Ethics and Arbitration Manual* of NAR, or in local board/association bylaw provisions that are the counterpart of Section 47 of the NAR Manual. You may read this at the association office, or the association may supply you with a copy of the appropriate section.

You can also obtain information on filing an arbitration request by calling the Professional Standards Staff of the Greater Las Vegas Association

of REALTORS®. Requests must always be filed in writing, signed, and accompanied by the required deposit within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later.

If the non-prevailing party does not promptly pay an award, the association will inform the party(s) that the NATIONAL ASSOCIATION OF REALTORS® also has a legal defense fund to which a REALTOR® may apply for assistance, with grants made on the merits of each such application.

### **ARBITRATION HEARING**

Parties to a hearing are entitled to all information provided to or received from any other party. A party to the hearing is entitled to challenge any potential panel member for cause. A party is entitled to legal counsel, to call witnesses, to advance notice of witnesses to be called by the other party, to testify and introduce evidence, to cross-examine opposing parties and their witnesses, and to receive an impartial hearing.

REALTORS® other than principals are entitled to at least one arbitrator from the membership classifications of REALTORS® other than principals or REALTOR® Real estate specialists are entitled to a hearing before a panel of members who are knowledgeable in the relevant field.

### **ARBITRATION AWARDS**

An arbitration award is made in writing, signed by as least a majority of arbitrators and states only the amount of the award, if any. A signed award is valid and binding, absent any appeal on the basis of an alleged deprivation of due process.

The Association, at its option, may call for either paying the award within ten (10) days or escrowing the award amount in a special association escrow account, if the non-prevailing party plans to initiate legal challenge of it. Failure to pay the award or make the required deposit may result in disciplinary action.

### **REQUEST FOR PROCEDURAL REVIEW BY DIRECTORS**

The arbitration award is not subject to review or appeal, except with respect to alleged irregularities that may have deprived the party of due process. If there is no request for procedural review, the award is final after a specified time.

### **JUDICIAL ENFORCEMENT OF ARBITRATION AWARDS**