

GENERAL INSTRUCTIONS AND INFORMATION FOR FILING AND REPLYING TO REQUESTS FOR MEDIATION OR ARBITRATION

(1) The North Shore-Barrington Association of REALTORS® has adopted a policy that allows members to proceed to mediation without first filing a Request for Arbitration.

Mediation is a process in which disputing parties attempt to resolve their disagreements with the help of an impartial, trained third party, the mediator. The mediator does not offer opinions, pass judgment, or render legally binding decisions. The mediator's only function is to help the parties identify their differences and reach agreement on how to resolve these differences.

If the parties cannot reach a mutually agreeable settlement, they are free to arbitrate their dispute.

In addition to being easier, faster and less expensive, mediation is non-adversarial. In mediation, there are no losing parties because the parties have been part of the process and together have agreed on the terms of the settlement.

(2) All Requests for Arbitration will be referred to the Grievance Committee. If the Grievance Committee finds the matter constitutes an arbitrable matter, it will be referred back to the Professional Standards Administrator to arrange a hearing. If the Grievance Committee determines it is not an arbitrable matter, the request will be returned to the Complainant with the decision of the Grievance Committee, together with information advising the Complainant of the procedures by which the Grievance Committee's decision may be appealed to the Board of Directors.

(3) If there is to be a hearing, the Respondent will have fifteen (15) days after transmittal of the Request for Arbitration to submit a reply. A copy of the reply will be sent to the Complainant. The date of hearing will be set and all parties will be notified of the date and place of hearing at least twenty-one (21) days in advance. All parties and the panel members will receive a copy of the Request for Arbitration, the response, and hearing information.

(4) Legal counsel may represent any party to an arbitration, provided that notice of intention of representation is transmitted to all other parties and the Professional Standards Administrator at least fifteen (15) days prior to the hearing. Failure to provide timely notice may result in a continuance.

(5) It is the responsibility of each party to arrange for their witnesses (if any) to be present at the hearing. A notice of intention to have witnesses present is also required

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to be transmitted to all parties and the Professional Standards Administrator at least fifteen (15) days prior to the hearing date.

(6) All parties will be provided a copy of the “Outline of Procedure for an Arbitration Hearing”.

(7) The notice of hearing will contain the names of those members serving on the hearing tribunal.

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.
- The party requesting arbitration has the ultimate responsibility (“burden”) of proving that an arbitration award should be issued to the requesting party. The standard of proof in an arbitration hearing decision shall be based on a “preponderance of the evidence”. “Preponderance of the evidence” shall be defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the facts sought to be proved are more probable than not.
- 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 you are procuring cause.

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 and to make a determination, based on the evidence and testimony presented to them.
- Keep your presentation concise, factual and to the point. Your task is to demonstrate what happened in the transaction.
- 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.

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- It is imperative for all parties, witnesses, and panel members to maintain appropriate decorum.

REQUEST FOR MEDIATION

In the matter of _____ (Complainant)

vs _____ (Respondent)

I am requesting mediation with the above-name disputant. There is due, unpaid, and owing to me from the above-named person the sum of \$_____. My claim is predicated upon the statement attached and incorporated by reference into this application. I have not, as of this date, requested arbitration of this dispute before this or any other Association of REALTORS®.

(Signature of REALTOR® principal)

Date

(Type/Print name)

Telephone

(Firm name)

(Address) (City) (State) (Zip)

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Agreement to Mediate

The undersigned agree that they are involved in a contractual dispute defined by Article 17 of the Code or in a specific noncontractual dispute as outlined in Standard of Practice 17-4.

The undersigned agree to submit this dispute to mediation in accordance with the mediation guidelines, as set forth in the *Code of Ethics and Arbitration Manual*.

As a party to the mediation process I understand and agree as follows:

Parties to mediation may withdraw from the process at any point prior to reaching an agreement. Parties to mediation that do not reach an agreement shall be free to pursue arbitration of the dispute in accordance with the guidelines set forth in the *Code of Ethics and Arbitration Manual* of the NATIONAL ASSOCIATION OF REALTORS®. The parties acknowledge that the mediator is not providing legal representation, legal advice, or legal services, and that the parties are advised of their right to be represented by counsel at the mediation and also of their right to obtain independent legal advice (if counsel are not at the mediation) before signing any final settlement agreement.

Any offers of settlement that were not accepted or any suggested resolution proposed by the Mediation Officer that was not accepted will not be introduced as evidence nor considered in any manner should the matter require arbitration by the Association's Professional Standards Committee. However, if the parties agree to a settlement of the dispute, and the settlement is reduced to writing and has been signed by all of the parties, the matter shall be considered resolved, and shall not be the subject of a subsequent arbitration hearing. In the event that either of the parties fails to abide by the terms of the settlement, the matter may not be arbitrated; instead, the other party should be encouraged to have the settlement agreement judicially enforced by a court of competent jurisdiction.

No aspect of this mediation conference shall be relied upon or introduced as evidence in any ethics, arbitration, judicial, or other proceeding, 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. No privilege shall be affected by disclosures made in the course of mediation. Disclosure of any records, reports, or other documents received or prepared by the Association or Mediation Officer shall not be compelled. Neither the Association nor the Mediation Officer shall be compelled to disclose or to testify in any proceeding as to information disclosed or representations made in the course of the mediation or communication to the Mediator in confidence. Neither the Mediation Officer, the Illinois REALTORS® nor the NATIONAL ASSOCIATION OF REALTORS® or any of its Member Boards shall be deemed

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“necessary parties” in any judicial proceedings relating to mediation under this Agreement. The parties acknowledge that the mediation proceedings will not be recorded and that weapons of any type are prohibited.

Are the circumstances giving rise to this request for Mediation the subject of civil or criminal litigation or in any proceeding before the state real estate licensing authority or any other state or federal regulatory or administrative agency? ___ Yes ___ No

By my signature on this Agreement to Mediate, I acknowledge my rights and agree to the terms of the mediation procedures as stated above. I hereby affirm that I have the authority to enter into and sign a binding written agreement to settle this dispute.

Complainant(s):

Respondent(s):

Print Name

Print Name

Signature

Signature

Firm Name

Firm Name

Address

Address

Print Name

Print Name

Signature

Signature

Firm Name

Firm Name

Address

Address

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Request and Agreement to Arbitrate

(1) The undersigned, by becoming and remaining a member of the _____ Board of Realtors® (or Participant in its MLS), has previously consented to arbitration through the Board under its rules and regulations.

(2) I am informed that each person named below is a member in good standing of the Board (or Participant in its MLS), or was a member of said Board of Realtors® at the time the dispute arose.

(3) A dispute arising out of the real estate business as defined by Article 17 of the Code of Ethics exists between me (or my firm) and (list all persons and/or firms you wish to name as respondents to this arbitration):

_____, Realtor® principal _____
Name Address

_____, Realtor® principal _____
Name Address

Firm Address

(Note: Arbitration is generally conducted between Realtors® principals or between firms comprised of Realtor® principals. Naming a Realtor® principal as respondent enables the complainant to know who will participate in the hearing from the respondent's firm; naming a firm may increase the likelihood of collecting any resulting award.)

(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 I and incorporated by reference into this application. The disputed funds are currently being held by _____.

Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the other party(ies) and to the association prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances.

(5) I request and consent to arbitration through the Association in accordance with the *Code of Ethics and Arbitration Manual*, and I agree to abide by the arbitration award and, if I am the non-prevailing party to, within ten (10) days following transmittal of the award, either (1) pay the award to the party(ies) named in the award, or (2) deposit the funds with the Director of Ethics and Professional Standards of the Illinois Realtors® to be held in escrow or trust account maintained for this purpose. Failure to satisfy the award or deposit the funds in the escrow or trust account within this time period may be considered a violation of a membership duty and

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may subject the member to disciplinary action at the discretion of the Board of Directors consistent with Section 53, The Award, *Code of Ethics and Arbitration Manual*.

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

(6) I enclose my check in the sum of \$250, payable to the Illinois Realtors®, for the arbitration filing deposit.

(7) I understand that I may be represented by legal counsel, and that I should give written notice no less than fifteen (15) 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 the 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 designated 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) All parties appearing at a hearing may be called as a witness without advance notice.

(9) I declare that 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 known in the exercise of reasonable diligence, whichever is later.

Date(s) alleged dispute took place: _____

(10) If either party to an arbitration 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.

(11) Are the circumstances giving rise to this arbitration request the subject of civil litigation?
_____ yes _____ no

(12) Important note related to arbitration conducted pursuant to Standard of Practice 17-4 (1) or (2); Where arbitration is conducted between two (or more) cooperating brokers pursuant to

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Standard 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.

(13) Address of the property in the transaction giving rise to this arbitration request:

(14) The sale/lease closed on: _____

(15) Agreements to arbitrate are irrevocable except as otherwise provided under state law.

Complainant(s)

Name (type/print) Signature of Realtor® principal Date

Address Telephone

Name (type/print) Signature of Realtor® principal Date

Address Telephone

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