

# THE GIARDINELLI

LAW GROUP, APC

JOHN V. GIARDINELLI

SYLVIA J. SIMMONS  
J NISWONGER  
KELLY A. NEAVEL  
RYAN D. MILLER

Please reply to the Riverside County Office

February 14, 2011

Please find enclosed the following forms:

1. Notice of Hearing;
2. Outline of Procedure for Hearing;
3. Acknowledgment of Receipt of Outline of Procedure;
4. Requested Arbitration Costs; and,
5. Notice of Attending Witness Form.

Please complete and sign the Acknowledgment of Procedure form and bring it with you to the hearing. The Chairperson will collect it at the beginning of the hearing.

All parties may be represented by legal counsel. If a party intends to have legal representation, the party must give written notice of the attorney's name, address and phone number to all parties and the undersigned at least fifteen (15) calendar days before the scheduled date of the hearing. Failure to comply with this notice requirement may result in a continuance being granted and a continuance fee assessed against the party who fails to provide notice. Only attorneys may represent parties at an arbitration.

The hearing will be governed by procedures described in the California Association of REALTORS® Professional Standards Reference Manual ("Manual"). If you have a concern or question regarding the procedures, please contact the undersigned immediately.

**Continuances are not favored** and, in the event there is a change in the status of either Party or, in the event that a continuance is required for any legitimate reason, you must notify the undersigned at the earliest possible opportunity. Failure to notify us of your unavailability at an early point will cause inconvenience to all other participants, including Hearing Panel members. If a continuance is requested, it may be granted for extenuating circumstances. Continuance fees are generally imposed as a deterrent if the Chairperson believes it appropriate. Common valid reasons for continuances are sudden verifiable illness, accident, death of a family member, improper notice of the hearing, improper notice of another party having legal counsel, or unavoidable attorney-court conflicts. Vacations,

business meetings, and other similar circumstances are not deemed justification for continuances. Appointments, such as depositions or other attorney activities that are scheduled after the hearing date is cleared are not deemed unavoidable conflicts.

The hearings are relatively informal proceedings and are not designed to follow the strict rules of evidence that attorneys are generally familiar with in court proceedings. Although the technical rules of evidence are not applicable, the Hearing Panel Chairperson is empowered to rule on the admissibility of relevant evidence. If, for example, a party is consuming a great deal of time on a subject that has no bearing on the case, the Hearing Panel members may caution the party and, eventually, even disallow further submission of evidence on that point. Character evidence, unless directly related to the issues, is not admissible. Therefore, relevant evidence is as important in a hearing of this type as it is in a Court proceeding, but the latitude is generally broader.

Once the Hearing Panel reaches a decision, you will be notified by mail and advised of your appeal rights.

We have been asked to emphasize the following points:

1. Members and MLS Participants and Subscribers have a duty to give evidence in accordance with the Code of Ethics and/or MLS Rules.
2. If you wish to have witnesses present, please complete the enclosed Notice of Attending Witness form and return it to our office at least fifteen (15) days prior to the hearing. It is your responsibility to inform witnesses of the date, time and place of the hearing. If necessary, subpoenas are available and can be issued by the Professional Standards Administrator.
3. All witnesses, except parties, will be excused from the hearing room except while testifying.
4. All relevant evidence will be admitted. The Hearing Panel Chairperson may broadly construe the term "relevant." The Hearing Panel members or Chairperson will rule on the inadmissibility of evidence. The technical rules of evidence do not apply. The Complaint and all of the exhibits attached and the Response and all of the exhibits attached will be stamped as evidence at the hearing, unless objections are raised.
5. If a translator is needed for any party or any witness, you should notify us immediately of the language and if you intend to provide a translator. These are conditions that must be addressed before the hearing.
6. If you are represented by an attorney, that attorney may not confuse, coerce, intimidate, or harass the parties, witnesses or Hearing Panel members. Additionally,

the Hearing Panel members need not accept the statements of the attorney as being the statements of his or her client if they desire direct testimony.

7. The Hearing Panel members may ask questions they deem pertinent and significant of any person at any time during the hearing.
8. Although notarized declarations or affidavits may be considered, letters and other out-of-hearing statements are generally given little, if any, weight and may be rejected entirely. It is best, wherever possible to have witnesses present. They are excluded from the hearing until they testify.
9. If remote testimony is required, strict guidelines must be followed. You should contact the undersigned at once if you believe remote witness testimony may be necessary, and the Policy approved by the Association will be provided to you and the opposing side. The Policy must be followed.
10. All hearings are routinely recorded. You can purchase a copy of the recording for the fee set by the Association. You may, at your expense, have a court reporter present. However, you will not be allowed to record the hearing. If you have a transcript prepared, you must provide the Association a copy at your cost. The recording will generally be destroyed upon final action of the Directors, if any.
11. You should make every effort, whenever possible, to file and exchange evidence and briefs, if any, prior to the hearing in order to avoid time delays to review late filed materials. **IF YOU BRING ADDITIONAL EVIDENCE AND BRIEFS ON THE DAY OF THE HEARING, YOU MUST BRING THE ORIGINAL(S) AND AT LEAST TEN (10) ADDITIONAL COPIES WITH YOU. THE HEARING MAY NOT BEGIN WITHOUT THE APPROPRIATE NUMBER OF COPIES. IF COPYING MUST BE DONE ON THE DAY OF THE HEARING, THERE MAY BE A SIGNIFICANT COPYING CHARGE. ADDITIONALLY, IF YOU ARE SUBMITTING ADDITIONAL EVIDENCE CONSISTING OF MORE THAN TWENTY-FIVE (25) PAGES, YOU MUST ALSO INCLUDE A TABLE OF CONTENTS, LISTING THE DOCUMENTS YOU ARE SUBMITTING.** Unnecessary time delays caused by avoidable copying and reading of documents can be avoided by planning ahead and by filing and exchanging before the hearing.
12. Although not required by the rules, it is generally a good practice to bring the entire transaction file to the hearing.
13. If a Complainant chooses to amend the complaint, proper notice must be given to all parties who are then given the opportunity to respond. An amended complaint supersedes the original complaint and begins the arbitration process anew. After a

hearing commences, a complaint can only be amended with the approval of the Hearing Panel.

14. A dispute may be settled or withdrawn at any time prior to the hearing. Simply notify this office and the hearing will be canceled. Mediation services through the Association are encouraged and qualified, trained mediators are available.
15. If a Complainant refuses or is unable to appear at the hearing, the complaint may be dismissed. If a Respondent fails to appear and no continuance or adjournment has been obtained, the Hearing Panel may go forward with the hearing and reach a decision based on the available evidence.
16. The prevailing party may recover reasonable fees and costs incurred in the production of witnesses and documents. The party requesting the fees and costs should submit Requested Arbitration Costs (Form A-10) to the Hearing Panel at the **beginning** of the hearing.
17. In limited circumstances, the prevailing party may recover reasonable attorney's fees. The requesting party must establish a contractual or statutory right to fees and must produce evidence and/or invoices establishing the fees request prior to the conclusion of the hearing.
18. The Code of Ethics (Article 17) require REALTORS® and their firms to arbitrate certain claims. Hearings are held in accordance with the rules promulgated by the National and California Associations of REALTORS®. These proceedings, unlike court proceedings, are deemed confidential.
19. Opening statements are summaries of the case, not the time for presentation of your entire case.
20. Cross-examination of an opposing party is a time to ask questions, not make statements or accusations.

Hopefully, you find this letter helpful in your preparation. If, after reviewing this letter, you require any additional information please notify our office, and we will be pleased to cooperate. Any requested information by either side will be copied to the other. Assuming that you follow the simple rules that have been described herein, the hearing should go smoothly. It is rare that a hearing takes longer than one (1) day. If you believe that your hearing will take longer than one (1) day, please notify the undersigned.

Again, if you have any questions relative to this matter, please do not hesitate to contact the undersigned.