##### Chairperson’s Procedural Guide: Conduct of a Virtual Arbitration Hearing

 **Association of REALTORS® State of**

(*Ask the recording Professional Standards Administrator to make sure that the names of all parties present for the hearing have been added to this Guide and that all appropriate blanks have been completed*) Confirm that the Professional Standards Administrator or staff have confirmed the identity of all parties, witnesses and counsel by requesting verification of at least one government-issued, photo ID card (e.g., driver's license, state ID card, or Passport) prior to being admitted to the hearing.

###### **Display:** Association banner and the American Flag (if available)

**Chair: (Start promptly)** Rap gavel to open meeting

*My name is , and I will serve as Chairperson of this panel.*

*Before we begin this hearing, I would like to ask that all persons present mute themselves at all times, except for when they intend to speak. All persons present will need to have their video on and remain on screen at all times. If a party or panelist loses their connection, the hearing will be paused until the participant is able to rejoin the hearing. Contact the Professional Standards Administrator and they will readmit you into the hearing. The person rejoining may be required to re-affirm the remote hearing verifications.*

*If you have questions about how to use this virtual platform, including how to mute or unmute yourself, please let us know so we can assist you.*

*All persons present are advised that this virtual hearing is being recorded and that the recording may include audio, video and any screen sharing from the hearing.*

**Opening Statement and Conduct of Hearing**

**Chair*:*** *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 as set forth in the Association's bylaws in matters concerning the arbitration of a business dispute arising out of the real estate business and as defined by the bylaws of the Association.*

*The body meeting here is an impartial panel 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 proceeding, and to render a decision on the testimony and evidence presented. It is to be noted that an ethics proceeding can clearly be distinguished from an arbitration proceeding and should be treated as a completely separate matter. The particular matter to be considered by this panel at this time is an arbitration proceeding.*

*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.*

*The Professional Standards Committee is a body duly constituted under the authority of the bylaws of the Association of REALTORS® and has been duly appointed by the Association President and approved by the Board of Directors. At this time, I would like the members of the panel to introduce themselves as I call your name as well as the Complainant and Respondent and any counsel and witnesses.*

1. *As you know, my name is , and I will serve as Chairperson of this panel. (Chair call on each panel member and alternate to introduce themselves*)

*(If the panel has an alternate present, read the following paragraph)*

1. *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.*
2. *Present at this hearing is the complainant, and their sales associate(s) – please introduce yourselves.*

*(If the complainant is accompanied by an attorney, and/or witnesses, ask the complainant to introduce them.)*

*(If the complainant is represented by counsel and/or accompanied by witnesses, confirm that the respondent was notified in advance. If not, ask if there is an objection. If there is an objection, ask the party to state the reason for their objection for the record. If the respondent objects to a witness, the hearing panel chair should determine if the testimony of the witness is relevant and essential for due process and render their decision.)*

1. *Also present at this hearing is , the respondent and his/her sales associate(s) Please introduce yourselves.*

*(If the respondent is accompanied by counsel and/or witnesses, ask the respondent to introduce them.)*

*(If the respondent is represented by counsel and/or accompanied by witnesses, confirm that the complainant was notified in advance. If not, ask if there is an objection. If there is an objection, ask the party to state the reason for their objection for the record. If the complainant objects to a witness, the hearing panel chair should determine if the testimony of the witness is relevant and essential for due process and render his/her decision.)*

1. *Also present at this hearing is , the Professional Standards Administrator for the Association of REALTORS®. They are recording this virtual hearing. And (if appropriate) \_\_\_, the court reporter present to transcribe these proceedings.*

*(If an attorney representing the Association is present, they should be introduced at this time.)*

**REMOTE HEARING VERIFICATIONS**

*All parties will be participating in this hearing remotely through a virtual platform.*

*The \_\_\_\_\_\_ Association of REALTORS® allows parties, witnesses, and panelists to appear remotely only if that person**is in a private location that provides the ability to keep the information presented at this hearing from being heard or overhead by any person who is not authorized to participate in the hearing. Those persons are also strictly prohibited from recording these proceedings or using any electronic or other communication devices during the hearing other than those required to participate in the hearing.*

*I will now ask that panelists and alternates (where applicable), staff, and all parties answer the following remote verification questions truthfully.*

(*Chair – after asking the questions below, call on each person for an answer. Do not accept a head nod but require a verbal answer*)

*I will need each of you to verify the following:*

1. *That you are in a private location that will protect the confidentiality of this hearing*
2. *That there are no other persons that can hear or listen in on this hearing*
3. *That you are not recording or allowing anyone else to record this hearing in any way*
4. *That you are not accessing electronic devices other than to the extent necessary to participate in this hearing remotely*
5. *That you will continue to take these measures to ensure the confidentiality of this hearing until the hearing is concluded?*

*As Chair, yes.*

(*Call on each person until they each say “yes”. If “no”, the chair will need to take appropriate action to ensure the confidentiality of the proceeding including postponement, if necessary)*

*In an effort to make the best possible recording of these proceedings, I would ask everyone in the room to take note of the following:*

* 1. *All responses must be verbal and audible. Shrugs of the shoulder, gestures, and nods of the head cannot be recorded.*
	2. *Only one speaker should speak at a time. I, as Chair of this panel, will call on each person to speak at the appropriate given time. Please wait for the speaker to finish their entire question or comment before responding.*

*The parties are specifically advised that any audio recording or transcription that may be made of these proceedings can only be used for purposes of appeal and any other use, including use in other ethics or arbitration hearings, is expressly prohibited.*

*At this time, I request that all persons present who expect to testify at this hearing stay seated and make appropriate affirmation in lieu.*

**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 give in this proceeding shall be the truth, the whole truth, and nothing but the truth”?*

*Let the record show that has/have answered in the affirmative.*

**BASIS OF HEARING**

**Chair:** *This hearing is to arbitrate a business dispute arising out of the real estate business in accordance with the request of that he/she be awarded a commission or part of a commission on the sale of The request for arbitration is as follows:*

*(Read the amount and nature of the dispute into the record.)*

*As a reminder, any prior offers of settlement or proposed resolutions of the case, during mediation or otherwise, will not be considered by the Hearing Panel.*

*However, the parties are encouraged to settle their dispute at any time during or after the hearing. If the parties wish to discuss settlement during the hearing, they may ask for a recess. The parties, with the assistance of their respective counsel, if any, will determine the terms of the settlement agreement.*

*(If the parties ask for a recess to discuss settlement, ask the Professional Standards Administrator to manually assign the parties and their respective counsel, if any, to a private meeting space on the platform or utilize some other method for a private conversation to take place.)*

*This panel is not governed by the technical rules of evidence which may apply in courts. This panel will seek to determine all ascertainable and relevant facts pertaining to the matter under consideration to arrive at a peer judgment and decision by the panel that is fair to all of the parties. The panel is governed and directed by the bylaws of the \_Association of REALTORS® and the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®. The panel determines its own rules of evidence and its own procedures to be followed with objectives of equity and due process. The following has been generally accepted and ruled on by this panel as to the procedures to be followed during this hearing.*

1. *All parties or their representatives to these proceedings will be allowed a full opportunity to be heard on matters relevant to the issue. 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 their representative or to witnesses providing testimony. All parties and witnesses have been asked to swear or affirm that testimony given is the truth to the best of their knowledge.*

*(If no counsel is present proceed to 3)*

1. *A party may be represented by legal counsel or by a REALTOR® of their choosing (or both). However, no party may refuse to directly respond to requests for information or questions addressed to them by members of the panel except on the 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 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 countenance no effort by any party or by counsel to any party to harass, intimidate, coerce, and or confuse the panel members or any party to the proceedings.*
2. *The panel may rule at any time on the admissibility of evidence based on its relevance. As Chairperson, I will act as keeper of the evidence introduced at this hearing and mark each with an exhibit identification number or letter and date.*
3. *As Chair, I will provide a time for panel members to ask questions of each party and witness. However, the members of this panel are authorized, individually, 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 or their representatives, or by witnesses in these proceedings. If deemed necessary, I will consult with the members of the panel and with Association counsel concerning such rulings.*

*(At this time, the Chairperson should ask the Professional Standards Administrator to excuse the witnesses by placing them back in the virtual waiting room.)*

**OUTLINE OF PROCEDURE FOR HEARING**

*Both the complainant and the respondent were mailed a copy of the Outline of Procedure for an Arbitration Hearing (Part Thirteen, Form #A-10 of this Manual). Did each of you receive the Outline?*

*(If yes) Let the record show that both the complainant and respondent have stated they did receive the Outline.*

*(If no, a copy of the outline should be transmitted electronically to the party and the Chairperson should determine whether that party has any objections to proceeding.) Do you have any questions concerning that Outline of Procedure?*

*(If none*) *Let the record show that neither the complainant nor the respondent has any questions concerning the Outline of Procedure for an Arbitration Hearing.*

*As noted in the Outline of Procedure, parties were strongly encouraged to provide any and all documents and evidence they intend to introduce prior to the hearing. If you find it necessary to submit evidence not previously provided, transmit it to the Professional Standards Administrator. The administrator will first provide the evidence to the other party and shall determine if there are any objections. The Chair will rule on any objections and determine the relevance of the evidence prior to providing it to the panel. In this virtual hearing, evidence will be transmitted electronically.*

*We shall now proceed with the hearing.*

**OPENING STATEMENT BY PARTIES OR COUNSEL:**

*Each party or the party’s attorney-at-law shall be given an opportunity for an opening statement which shall briefly outline the basic premise of the party’s position. You will have an opportunity to present your entire case at a later time during this hearing.*

**Opening statement by complainant Opening statement by respondent**

**PRESENTATION OF FULL CASE BY COMPLAINANT**

*The complainant will now state their case and present any evidence or witnesses that they may desire.*

(*Chair, allow cross examination of witnesses by the respondent and questions by panel before excusing a witness. Upon conclusion of witnesses’ testimony and cross examination, ask the Professional Standards Administrator to remove the witness from the virtual hearing)*

**CROSS-EXAMINATION BY RESPONDENT**

*At this point, I will allow cross examination of the complainant by the respondent.*

**QUESTIONS FROM PANEL MEMBERS**

*Are there any questions for the complainant from the panel?*

**PRESENTATION OF FULL CASE BY RESPONDENT**

*The respondent will now state their case and present any evidence or witnesses that they may desire.*

*(Chair, allow cross examination of witnesses by the complainant and questions by panel before excusing a witness. Upon conclusion of witnesses’ testimony and cross examination, ask the Professional Standards Administrator to remove the witness from the virtual hearing)*

**CROSS-EXAMINATION BY COMPLAINANT**

*At this point, I will allow cross examination of the respondent by the complainant.*

**QUESTIONS FROM PANEL MEMBERS**

*Are there any questions for the respondent from the panel?*

**CLOSING STATEMENT BY COMPLAINANT**

*At this time, both the complainant and the respondent will be given an opportunity to make a summary or closing statement if they so desire. The complainant’s closing statement will be heard first.*

**CLOSING STATEMENT BY RESPONDENT**

**CLOSING STATEMENT BY PANEL CHAIRPERSON**

*Do each of you feel that this hearing has been conducted fairly?*

*(If yes) Let the record show that both the complainant and the respondent have indicated that they feel this hearing has been conducted fairly.*

*Have each of you had an adequate opportunity to testify, present evidence and witnesses, and conduct cross-examination?*

*(If yes) Let the record show that both the complainant and the respondent have indicated that they have had an adequate opportunity to testify, present evidence and witnesses, and conduct cross-examination*.

*(If any party answers “no”, ask them to state any concern and, if there’s any merit to the concern, take steps to remedy any possible deficiency.)*

**CONFIDENTIAL NATURE OF HEARING**

*Before we adjourn the hearing of this panel, all person’s present are advised that the report and findings of this panel are considered confidential. It will be available only to members of this panel, to the parties, to counsel and staff as required, and to the Board of Directors of the\_\_\_\_\_\_\_\_\_\_\_\_ Associationof REALTORS®, as directed by provisions of Part Four, Sections 22 and 23 of this Manual or as otherwise specified in the Manual. Upon final action by the Hearing Panel in an arbitration proceeding, the decision, when signed by the members of the Hearing Panel (or a majority of them), shall be served upon the parties to the dispute. The parties will be notified of the decision within the required time after this hearing is adjourned. You are also reminded that any recording or transcription of these proceedings can only be used for the purpose of procedural review and that all other uses, including use in other ethics or arbitration hearings, is expressly prohibited.*

##### At this point, parties may be offered an additional opportunity to settle. Associations offering this opportunity may read the following:

*Before we adjourn the hearing of this panel, we would like to give both parties fifteen (15) minutes to discuss any settlement or resolution of their dispute that they would like to consider prior to the Hearing Panel entering into executive session. The parties (and their counsel, if any) will be provided a private space to meet and discuss any resolution. If settlement is reached, the parties will execute an agreement and the arbitration process will be terminated. If settlement is not reached, the panel will reconvene in executive session and determine the award.*

*(If the parties wish to discuss settlement, ask the professional standards administrator to manually assign the parties and their respective counsel, if any, to a private meeting space on the platform or utilize some other method for a private conversation to take place and advise if that any resulting settlement agreement can be electronically delivered to the principal brokers for execution before the panel adjourns)*

**ADJOURNMENT**

*There being no further business to be considered in this hearing, this portion of the hearing stands adjourned.*

**Proceeding following hearing – executive session:**

(*After adjournment, the panel will remain in executive session and determine the award. The Panel will follow explicitly the procedure set forth in the Code of Ethics and Arbitration Manual as to opportunity for procedural review. Associations should consider having Association counsel review awards prior to issuance. This will serve to protect the Board by minimizing vulnerability to litigation.)*