

Arbitration

Duty & Privilege

Mandatory versus Voluntary

Some of the Questions for Determining Entitlement to Disputed Funds

Filing Fees

The fee to accompany an arbitration request shall be \$100. The fee is nonrefundable, with the exception of requests that are withdrawn in writing or resolved through mediation prior to the Grievance Committee's meeting to review the request. Following the Grievance Committee's determination that a matter is properly arbitrable, consideration for refunding the fee shall be given to a request that is withdrawn due to extreme circumstances that prevent the Complainant(s) from pursuing the request. The Respondent to the arbitration request is not charged a fee.

Mediation

Mediation of arbitrable matters will be provided by MAAR upon mutual agreement of the parties. Parties will be notified of this member service upon MAAR's receipt of an arbitration request and again after the Grievance Committee determines the matter is an arbitrable one.

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Subject Arbitration

Part Number: Part 10

Part Title: Arbitration of Disputes

Section / Form Numbers: Section 44

Section/ Form Titles: Duty and Privilege to Arbitrate

Text:

Part Ten
Section 44. Duty and Privilege to Arbitrate

- (a) By becoming and remaining a member and by signing or having signed the agreement to abide by the bylaws of the Board, every member, where consistent with applicable law, binds himself or herself and agrees to submit to arbitration (and to mediation if required) by the Board's facilities all disputes as defined by Article 17 of the Code of Ethics and, as set forth in the provisions of this Manual, all disputes with any other member, as defined, under the following conditions. In addition, Realtor® principals who participate in a Board's MLS where they do not hold Board membership, or nonmember brokers and nonmember licensed or certified appraisers who participate in the Board's MLS, having signed the agreement to abide by the Board's Multiple Listing Service rules and regulations binds himself or herself and agrees to submit to arbitration by the Board's facilities. The duty to submit to arbitration continues in effect even after membership lapses or is terminated, provided that the dispute arose while the respondent was a Realtor® or an MLS Participant. (Amended 11/11)

Mandatory types of arbitration

(1) Every Realtor® of the Board who is a Realtor® principal, every Realtor® principal who participates in a Board's MLS where they do not hold Board membership and every nonmember broker or licensed or certified appraiser who is a Participant in the Board's MLS shall have the right to invoke the Board's arbitration facilities in any dispute arising out of the real estate business with a Realtor® principal in another real estate firm or with that firm (or both), or nonmember broker/appraiser or their firm (or both) who is a Participant in the Board's MLS. (Amended 5/01)

(2) A Realtor® other than a principal or a Realtor-Associate® shall have the right to invoke the arbitration facilities of the Board in a business dispute with a Realtor® or Realtor-Associate® in another firm or with their firm (or both), whether in the same or a different Board, provided the Realtor® principal with whom he is associated joins in the arbitration request, and requests the arbitration with the Realtor® principal of the other firm or with their firm (or both). Arbitration in such cases shall be between the Realtor® principals or their firms (or both). Realtor® nonprincipals and Realtor-Associate®s who invoke arbitration in this manner, or who are affiliated with a respondent and have a vested financial interest in the outcome, have the right to be present throughout the proceedings and to participate but are not considered to be parties. (Amended 5/01)

(3) A client of a Realtor® principal may invoke the arbitration facilities of the Board in a business dispute with a Realtor® principal or the Realtor®'s firm (or both) arising out of an agency relationship,

provided the client agrees to be bound by the arbitration. In the event of such request and agreement the Board will arbitrate the dispute subject to the provisions of Part Ten, Section 45. A Realtor® principal may also invoke arbitration against his client but no arbitration may be held without the client's voluntary agreement to arbitrate and to be bound by the decision. (Amended 5/01)

Voluntary types of arbitration

(4) Realtors® and Realtor-Associates® who are or were affiliated with the same firm shall have the same right to invoke the arbitration facilities of the Board, provided each party voluntarily agrees to the arbitration in writing and the Board finds the matter properly subject to arbitration in accordance with the provisions of Part Ten, Section 45 of this Manual. This privilege as stated applies to disputes arising when the parties are or were affiliated with the same firm, irrespective of the time request is made for such arbitration. (Amended 11/95)

(5) A Realtor® principal may invoke the arbitration facilities of his Board with a nonmember broker, provided each party agrees in writing to the arbitration and provided the Board finds the matter properly subject to arbitration in accordance with the provisions of Part Ten, Section 45 of this Manual. However, it shall be optional with the member as to whether he will submit to a claim to arbitration with a nonmember broker who is not an MLS Participant. A nonmember broker who is not an MLS Participant or nonmember salesperson may invoke the arbitration facilities of the Board of Realtors® in cases where they believe they have an arbitrable dispute with a Realtor®. Under these circumstances, Realtors® are not required to agree to or participate in arbitration. (Amended 11/12) Code of Ethics and Arbitration Manual 142 Arbitration

(6) Business disputes between a Realtor® principal and a customer of the Realtor® principal may be arbitrated by the Board if a written contractual relationship has been created by a Realtor® principal between a customer and a client and provided all parties to the dispute (i.e., the customer and the Realtor®) agree in writing to arbitrate the dispute. (Amended 11/95)

(b) Where mandatory arbitration (and mediation if required by a Board) is consistent with applicable state law, the Code of Ethics, Article 17, requires only that disputes arising out of the real estate business between Realtors® “. . . associated with different firms . . .” be arbitrated (or mediated if required by a Board). The various provisions of this Section represent the interpretations of the Professional Standards Committee with approval of the Board of Directors of the National Association as to appropriate policy of a Member Board in the matter of providing arbitration and mediation facilities by the Board. Thus, Member Boards must provide arbitration and mediation facilities for Board Members in the types of arbitration described in the preceding paragraphs (1), (2), and (3) and a Board may require Realtors® (principals) to mediate otherwise arbitrable matters. Member Boards may provide arbitration and mediation facilities for the additional types of disputes described in the preceding paragraphs (4), (5), and (6). However, Member Boards shall not establish any mandatory requirement of its Board Members to arbitrate and/or mediate in the circumstances described in paragraphs (4), (5), and (6). No arbitration shall be initiated by the Board and no arbitration shall be undertaken by the Board unless it determines the dispute is properly arbitrable in accordance with the provisions of Part Ten, Section 45 of this Manual. (Revised 11/11)

Arbitration Worksheet

NOTE: Transmit to all parties. This worksheet is intended to assist Hearing Panels in identifying relevant issues and facts in determining questions of entitlement to disputed funds. It is intended to supplement—and not replace—the comprehensive list of questions found in Factor #6 in the Arbitration Guidelines. These questions are not listed in order of priority and are not weighted equally.

Question	Answer	Favors Complainant	Favors Respondent	Favors Neither	Other
1. Was an offer of compensation made through the MLS or otherwise?					
2. Is the claimant a party to whom the listing broker's offer of compensation was extended?					
3. What was the nature of any buyer representation agreement(s)? Was the agreement(s) exclusive or non-exclusive? What capacity(ies) was the cooperating broker(s) functioning in, e.g., agent, legally-recognized non-agent, other?					
4. Were any of the brokers acting as subagents? As buyer brokers? In another legally recognized capacity?					
5. How was the first introduction to the property that was sold/leased made?					
(a) Did the buyer/tenant find that property on their own?					
(b) Who first introduced the purchaser or tenant to that property?					
(c) Was the introduction made to a different representative of the buyer/tenant?					
(d) Was the "introduction" merely a mention that the property was listed?					
(e) Was the property introduced as an open house?					
(f) What subsequent efforts were made by the broker after the open house?					
(g) What property was first introduced?					
6. When was the first introduction to the property that was sold/leased made?					

Arbitration Worksheet
(continued)

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Question	Answer	Favors Complainant	Favors Respondent	Favors Neither	Other
(a) Was the introduction made when the buyer/tenant had a specific need for that type of property?					
(b) Was the introduction instrumental in creating the desire to purchase/lease?					
(c) Did the buyer know about the property before the broker contacted him? Did he know it was for sale/lease?					
(d) Were there previous dealings between the buyer and the seller?					
7. What efforts subsequent to the first introduction to the property were made by the broker introducing the property that was sold or leased?					
8. If more than one cooperating broker was involved, how and when did the second cooperating broker enter the transaction?					
9. Did the broker who made the initial introduction to the property engage in conduct (or fail to take some action) which caused the purchaser or tenant to utilize the services of another broker (estrangement)?					
(a) Were agency disclosures made? When?					
(b) Was the potential for dual agency disclosed? When?					
10. Did the broker who made the initial introduction to the property maintain contact with the purchaser or tenant, or could the brokers inaction have reasonably been viewed by the buyer or tenant as a withdrawal from the transaction (abandonment)?					

Arbitration Worksheet
(continued)

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Question	Answer	Favors Complainant	Favors Respondent	Favors Neither	Other
11. Was the entry of any cooperating broker into the transaction an intrusion into an existing relationship between the purchaser and another broker, or was it the result of abandonment or estrangement of the purchaser?					
12. Did the buyer make the decision to buy independent of the broker's efforts/information?					
13. Did the seller act in bad faith to deprive the broker of his commission?					
(a) Was there bad faith evident from the fact that the difference between the original bid submitted and the final sales price equaled the broker's commission?					
(b) Was there bad faith evident from the fact that a sale to a third party was a straw transaction (one in which a non-involved party posed as the buyer) which was designed to avoid paying commission?					
(c) Did the seller freeze out the broker to avoid a commission dispute or to avoid paying a commission at all?					
14. Did the buyer seek to freeze out the broker?					
(a) Did the buyer seek another broker in order to get a lower price?					
(b) Did the buyer express the desire not to deal with the broker and refuse to negotiate through him?					
(c) Did the contract provide that no brokers or certain brokers had been involved?					

Arbitration Worksheet
(continued)

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Question	Answer	Favors Complainant	Favors Respondent	Favors Neither	Other
15. Did the original introduction of the purchaser or tenant to the property start an uninterrupted series of events leading to the sale or lease, or was the series of events hindered or interrupted in any way?					
16. If there was an interruption or break in the original series of events, how was it caused, and by whom?					
(a) Did the seller change the listing agreement from an open listing to an exclusive listing agreement with another broker?					
(b) Did the buyer terminate the relationship with the broker? Why?					
(c) Was there interference in the series of events from any outside or intervening cause or party?					
(d) Was there abandonment or estrangement?					
17. Did the cooperating broker (or second cooperating broker) initiate a separate series of events, unrelated to and not dependent on any other broker's efforts, which led to the successful transaction—that is, did the broker perform services which assisted the buyer in making his decision to purchase?					
(a) Did the broker make preparations to show the property to the buyer?					
(b) Did the broker make continued efforts after showing the property?					
(c) Did the broker remove an impediment to the sale?					
(d) Did the broker make a proposal upon which the final transaction was based?					
(e) Did the broker motivate the buyer to purchase?					<i>(Adopted 11/03)</i>