

## **INTERBOARD ARBITRATION PROCEDURES**

7/2011

**INTRODUCTION:** By becoming and remaining a member of the National Association of REALTORS®, each Member Board\* is required to provide and participate in interboard arbitration when arbitrable issues arise between a Board Member and a member of another Board within Ohio, as defined in Article 17 of the Code of Ethics and Sections 43 and 44 of The National Association of REALTORS® Code of Ethics and Arbitration Manual. The arbitration should be arranged by joint effort of the two (2) Boards having members involved in an arbitrable controversy. Interboard arbitration shall be invoked only when the parties involved are members of different boards and do not hold membership in the same board.

**INITIATION OF PROCEDURES:** A REALTOR® can initiate interboard arbitration by written request to the Executive Officer or Secretary of the Board of which the REALTOR® is a member, stating the nature of the controversy and the monetary amount of the dispute. Where a written interboard arbitration agreement exists between two or more Boards, the determination as to whether an arbitrable matter exists shall be made pursuant to those procedures. Where no agreement exists between Boards, interboard arbitration may take place provided that the Grievance Committee of each Board determines that a properly arbitrable matter exists. Appeals of arbitration requests dismissed by the Grievance Committee and alleged misclassification of an issue as being subject to either voluntary or mandatory arbitration shall be considered pursuant to the existing procedures of the appellant's Board.

In the absence of a written agreement, the Executive Officer/Secretary of the Complainant's Board shall refer the request for interboard arbitration to its Grievance Committee Chairman for determination by the Committee as to whether the matter is arbitrable and subject to interboard arbitration. If the Grievance Committee so determines, the Executive Officer/Secretary shall refer the request for interboard arbitration to the Executive Officer/Secretary of the Respondent's Board for consideration by the Grievance Committee of that Board. If the Grievance Committee of the Respondent's Board concurs that the matter is arbitrable and subject to interboard arbitration, the interboard arbitration shall proceed in accordance with the procedures herein.

**TIME LIMITATION:** All requests for arbitration must be filed within the time frame established in the National Association of REALTORS® Code of Ethics and Arbitration Manual.

**FEE DEPOSIT:** The request for interboard arbitration shall be accompanied by a deposit of \$350, which shall go toward the costs of the arbitration as determined by the Panel, and by a signed arbitration agreement which may be in the form of Specimen Form #A-1, Part Thirteen of NAR's Code of Ethics and Arbitration Manual, or in any other form provided or permitted by law.

**SELECTION OF PANEL:** The Professional Standards Chairman of each Board/Association participating in the interboard arbitration procedure shall appoint one member from its Professional Standards Committee to the Arbitration Panel. The members so selected shall agree upon the third member of the Panel, who shall be from a neutral Board where neither party is a member. The three Arbitrators shall

immediately select from among themselves a Chairman of the Panel. The Executive Officer/Secretary of the Board in which the Panel Chairman is a member shall serve as Administrative Secretary to the Panel.

In the event the two appointed Panel members cannot agree as to the third (neutral) Board, then The Ohio Association of REALTORS' President shall have the authority and duty to select the third Board. The Chairman of the Professional Standards Committee of the third Board shall then select a member of his/her committee to be the third Arbitrator.

**CHALLENGES TO PANEL MEMBERS:** All parties have the right to challenge the qualifications of any Arbitrator so selected upon showing sufficient cause why the Arbitrator should not serve.

Any party may file with the Chairman a written request for disqualification of any member of a Panel. The party must state the grounds assigned for disqualification. A party shall be deemed to have waived any grounds of disqualification of which he then has knowledge unless he filed the request at least 10 days prior to the hearing. If a majority of the members of the Panel find any automatic ground of disqualification to be present or find any other facts which in their judgment may prevent the member from rendering an impartial decision, or appear to do so, he shall stand disqualified.

**NOTICE:** All notices required in this procedure will be made by personal service or certified mail, return receipt requested.

**REPLY:** Within 7 days after the appointment of the Arbitration Panel and the selection of a Chairman, the Chairman, in concert with the Administrative Secretary, shall send a copy of the complaint to each member of the Panel. The Chairman shall notify the respondent that he must file a written reply and furnish 8 copies in response to the charge within 21 days of the date of notification of the complaint and the request for arbitration with the Chairman. Within 5 days after receipt of the reply, the Chairman shall send copies to the Panel members and the complainant. Further, such answer by the respondent must be accompanied by a fee deposit of \$350 which can be used toward the costs of such arbitration.

**RIGHT OF INTERBOARD ARBITRATION PANEL TO RELEASE MEMBERS FROM OBLIGATION TO ARBITRATE:** If the arbitration panel determines that because of the amount involved, or the legal complexity of the controversy, the dispute should not be arbitrated, they shall advise the parties; the arbitration shall terminate and the parties shall be relieved of their obligation to arbitrate. In this event, any deposits made by the parties shall be returned to the parties.

Further, if the panel determines that an arbitrable matter exists but it is not subject to mandatory arbitration, neither party may be compelled to arbitrate, and the arbitration shall terminate unless all parties voluntarily agree to take part and abide by the decision.

**DATE, TIME AND PLACE OF HEARING:** Once it has been determined by the Arbitration Panel that the controversy is to be arbitrated in accord with these rules and regulations, the Panel Chairman shall set a date, time and place for the hearing. Each party shall be given at least 21 days prior notice of the hearing, but appearance at the hearing waives the right to such notice. At the request of either party,

for cause deemed acceptable by the Panel, the hearing may be postponed to a date mutually agreed to by the parties and Panel.

**CONDUCT OF HEARING:** The Chairman shall preside at the hearing, which shall not be bound by the strict rules of evidence applicable to judicial tribunals, but instead by the Outline of Procedure for Ethics or Arbitration Hearings and by the Chairman's Procedural Guide for Conduct of an Ethics or Arbitration Proceeding found in Part Twelve of The National Association of REALTORS' Code of Ethics and Arbitration Manual. The Outline of Procedure For Ethics or Arbitration Hearings (Part Thirteen, Form #A-10 in NAR's Professional Standards Manual) should be made available to the parties involved in advance of the Hearing.

**TESTIMONY AND DOCUMENTARY EVIDENCE:** Parties to the controversy may testify on their own behalf and present testimony of witnesses, and/or documentary evidence. All parties may examine and cross-examine witnesses, and at the request of any party or on its own motion, the panel, at its discretion, may exclude witnesses or evidence. It shall be the responsibility of the Parties to summon and have their witnesses present at the hearing.

**LEGAL COUNSEL:** Parties, at their own expense, may have legal counsel present during the hearing. If a party intends to have legal counsel present at the hearing, the party must provide written notice to the Panel Chairman and the other party, no later than 14 days before the hearing date. Failure to provide this notice will not invalidate a party's right to legal representation. In the event the parties do not provide advance notice of their intention to have counsel, the panel shall take all steps, including continuance of the matter, if necessary, to guarantee the rights of all parties to representation by counsel. The panel may have its own legal counsel present at the discretion of the Chairman, and the Chairman shall select the attorney to be used.

**RECORDS/TRANSCRIPTION:** Any party may, at their own expense, have a court reporter present or may tape record the proceeding and, if transcribed, shall present a transcript to the Panel. The Panel shall record the hearing and, on its own motion, may have the recording transcribed.

The Panel's tape recording shall be considered the official record of the proceeding. Copies of any tape recording or any transcript prepared from any tape recording of the hearing are to be used only for the purpose of a request for procedural review. Any party to a hearing has the right to obtain a copy of the Panel's official tape recording subject to payment of the Panel's duplication cost and any duplication will be conducted under the supervision of the Secretary to the Panel. If more than one party requests copies of the transcript, the Panel's costs will be apportioned between or among the parties.

If a party purchases a copy of the Panel's official tape recording, and subsequently has it transcribed at his own expense, that party must provide a copy of the transcript to the Administrative Secretary at no cost. After the Secretary has received a copy of the transcript, the Secretary shall advise the other party that copies are available subject to their payment of the panel's duplication cost.

**RECESS/CONTINUANCE:** The Panel may recess or call for a continuance of the hearing from time to time as necessary or as convenience dictates.

**SETTLEMENT:** The parties to an arbitration may settle the issue between them by agreement at any time. In such event, upon written notification to the Administrative Secretary or, in the event the hearing is in progress, to the panel chairman, signed and dated by the parties, the arbitration proceedings shall be terminated.

A portion, or all, of each party's deposit may be retained by the Panel to cover the costs incurred by the Panel up to the point of the settlement of the dispute.

**AWARD:** The award of the arbitrators (Form #A-12, Part Thirteen of NAR's Manual) shall be made as soon as feasible after the evidence is presented and a copy of the decision will be delivered within 21 days after the hearing is concluded to each of the parties and the Secretaries of the Boards to which the parties belong. The Panel's decision shall be in writing and signed by a majority of its members. Dissemination of the award shall be limited to the parties involved, their respective Board's Executive Officer or Secretary and, on a need to know basis, legal counsel and staff.

**REQUEST FOR PROCEDURAL REVIEW:** Any request for procedural review (which must be limited to issues of due process) must be filed within 20 days after the award has been served upon each of the parties. The request must be filed with the Panel Secretary and will be given consideration by a Special Review Panel comprised of an equal number of Directors from the complainant's, respondent's and neutral Boards chosen by the respective Board Presidents. The Panel shall select its own Chairman, who will preside but will not vote. (This ensures an odd number of panelists.) If no request is filed, the award becomes final and binding, following the 20-day period.

**ENFORCEMENT:** If a member fails to comply with an award, the recipient to whom the award has been rendered by the Arbitration Panel shall be advised by the Hearing Panel to seek judicial enforcement and request reimbursement of all legal costs incurred in seeking judicial enforcement. At the discretion of the Board of Directors of the Board of which the recipient is a member, the Board may support the request for judicial enforcement in the court and, at the further discretion of the Board of Directors, reimburse the award recipient for costs incurred in seeking judicial enforcement if the courts do not award reimbursement of such costs.

**COSTS OF ARBITRATION:** Interboard Arbitration may require travel and necessary out-of-pocket expenses on the part of the Arbitrators. The Arbitrators shall receive reimbursement of these expenses in connection with their service as Arbitrators. The fee deposits shall be applied to these costs at the discretion of the Panel.

Each party should be aware that they may be responsible for further payment of all or part of the expenses of the arbitration panel and other expenses of the arbitration should the fee deposits be insufficient to cover these costs.