

**Note Regarding Litigation:** In the event that the circumstances surrounding an otherwise arbitrable matter (as determined by the Grievance Committee) are being litigated, the Arbitration proceedings must be put on hold until such time as the litigation is concluded.

The Grievance Committee should not request a Response to the Complaint in instances where litigation is pending. All parties must be notified of the Grievance Committee's decision, as well as the suspension of proceeding to Hearing. No disputes can proceed to the Hearing when there is litigation pending. The Administrator should monitor the status of the litigation.

When the Association/Board has been formally notified that litigation has concluded, the Administrator will resume the process from the point where it was interrupted.



**TIP:** If the Complainant indicates that litigation is pending on the Request to Arbitrate form, ask for verification of the legal proceedings (for example, request the docket number of the case). This will help clarify whether the Complainant has formally initiated proceedings or whether the Complainant has just contemplated doing so.

### The Meeting

Local Associations/Boards typically schedule Grievance Committee meetings in one of two ways: as needed or on an automatic, pre-scheduled basis.

If employing the latter method, PAR suggests that the meetings be scheduled no further than 30 days apart.

The full Committee can be called for each meeting, or Tribunals of the Committee can be used (typically rotated from meeting to meeting), depending on local Association/Board policy. If Tribunals are used, they function as the Grievance Committee for the case(s) to which they are assigned.

Committee members from the same firm as any party involved in the request to Arbitrate, or Committee members with a knowledge of or an interest in the facts of the case, should be excused from any of the activities related to the request. Committee members who were recently associated in business with a party to the Complaint, or who hold a special relationship with a party to the Complaint, should consider recusing themselves from activities related to the Complaint in order to avoid the appearance of any impropriety. If using a Tribunal, it is not permissible to have two members of the same firm serving on the Tribunal.

## Scheduling the Hearing

The date chosen for the Hearing must be at least 21 days away from the date that the Hearing Notices are mailed.



**TIP:** There are two general approaches to scheduling a Hearing. The first approach is to contact the potential Panelists (by phone, fax, or e-mail) with a series of dates, and have them indicate besides each one of their level of availability to attend. Schedule the meeting accordingly. The second approach is to set a Hearing date and inform the potential Panelists of it, asking for a confirmation of their ability to attend. If a Panelist cannot make the chosen date, select another Panelist who can.

The Hearing Notice to the Parties and the Panel members must include:

- Form A-9: Official Notice of Hearing (Arbitration), filling in the blanks as follows:
  - Enter the names of the Complainant and Respondent, which should be REALTOR® principals and/or the names of the firms.
  - In #1, fill out the date/time/place of the Hearing.
  - In #3, provide the names of Panel Members, identifying the Chairman, Panelists, and alternate, if applicable.
  - In #4, fill in the number of days before the Hearing that parties must give notice to all parties of having counsel appear. (PAR recommends not less than 15 days.)
  - In #5, fill in the number of days before the Hearing that parties must give notice to all parties of having witnesses appear. (PAR recommends not less than 15 days.)
- Form A-10: Outline of Procedure for Arbitration Hearing
- Appendix II to Part Ten – Arbitration Guidelines (NAR's *CEAM*)



**TIP:** Include a cover letter with your mailing.

Letter to Parties should:

- Include a list of enclosures
- Highlight the date of the Hearing
- Highlight the dates for notice of witnesses and counsel
- Request that any additional documentation furnished after this date be brought to the Hearing by the parties, with the appropriate number of copies.
- Note that use of transmitting devices (cell phones, etc.) will not be permitted in the Hearing

Letter to Panel should:

- Include a list of enclosures
- Highlight the date of the Hearing and the individual's role (e.g., Panelist, chairman, or alternate)
- Advise members of when and where they will receive Hearing materials (request, Response, supporting documents, if not enclosed).
- Ask members to note the parties involved and advise if they cannot objectively arbitrate the request.

A sample cover letter is included in the Resource section of this manual.

### **Remote Testimony**

The procedures established in this Manual and the NAR *CEAM* anticipate that parties to a hearing and their witnesses will participate in the physical presence of the hearing panel. In “extreme circumstances,” the hearing panel Chairman may permit a party or a witness to provide live “remote” testimony via teleconference or video conference. “Extreme circumstances” are defined in the NAR *CEAM* as those where postponement or rescheduling of the hearing to permit in-person testimony is not feasible, but failure to obtain the testimony in question would deny the party a fair hearing.

Note that while the testimony would be provided from another site, this provision does not permit pre-recorded testimony. All rules regarding cross examination would still apply.

The party making the request should be informed by the Chairman that they will bear all costs of providing the testimony in this manner, including any costs necessary for equipment and any transmission costs (phone bills, etc.) If the Chairman permits remote testimony, the Administrator should be in contact with the party providing the testimony to be sure that any necessary equipment is at the hearing.

### **Continuances/Postponements**

Continuances and postponements of the Hearing are made at the discretion of the Panel Chairman or the Administrator, depending on Association/Board policy. *All requests for postponement must be in writing and include a reason for the request, unless urgent circumstances arise that justify a continuance or postponement and that could not have reasonably been placed in writing.* NAR rules say postponements can be granted if there are “extenuating circumstances” (see the NAR *CEAM*, Part Twelve). Due process guidelines recommend treating all parties fairly and using “good judgment.”

If a postponement is granted, the Hearing should be rescheduled as soon as possible. It is not necessary to provide a 21-day notice for a rescheduled Hearing.

If changes to the Hearing Panel are necessary due to postponement or to avoid postponement, advise all parties as soon as possible. Changes in the Hearing Panel should be made using the same guidelines and rules as the original selection.



For local associations that have adopted the PA Amendments to the NAR *CEAM* as recommended by PAR, see the amendments made to Arbitration, Part XII – Conduct of an Arbitration Hearing (page 8 of amendments) for the procedures to be followed when a party is requesting a postponement or continuance.

## Preparing for the Hearing

### Notices

Any responses that are received from the Respondent should be mailed immediately to the Complainant.



**TIP:** On the appointed day for notification of witnesses and counsel, send a letter to both parties that:

- Confirms the date/time/place of the Hearing
- Identifies the counsel and witnesses for each party
- Names the REALTOR® Principal for each party
- Identifies any sales associate who has a vested interest in the outcome of the proceedings for each party. Remind all parties that these sales associates may attend the entire Hearing.
- States the procedures for witnesses in a Hearing
- Reminds the parties that they are responsible for the appearance of their witnesses and counsel.
- Reminds the parties to bring a sufficient number of copies of any new materials to be presented at the Hearing.

### Preparing Documents for the Hearing

Where and when the members of the Panel receive the documents for the Hearing is determined by Association/Board policy.

All Panelists, including the alternate, if any, should receive a packet that includes:

- Request for Arbitration Form.
- Narrative of the Complaint.
- Supporting documents to the Complaint.
- Response and Agreement forms.
- Narrative of the Response.
- Supporting documents to the Response
- Appendix II to Part Ten, Arbitration Guidelines



**TIP:** Also consider including:

- Cover sheet, with the name of the Panel member, their position on the Panel, the date, time, and place of the Hearing, the Hearing reference number, and the names of the parties.
- Itemized table of contents, including number of pages for each item.
- Grievance Committee review of decision.

## Hearing Day

### Equipment and Sundries for Hearing Room

Information on room set-ups for the Hearing is available in the NAR *CEAM*. Additionally, you should make sure the following items are in the room in advance of the Hearing:

- Tape recorder, if not using a stenographer – check batteries and connections. Make a test statement by walking around the room, to make sure sounds from all positions are properly recorded.

PAR recommends investigating the use of a court stenographer for recording the testimony.

- Minimum of two tapes – tested and rewound to starting point.
- Gavel for the Chairman.
- American Flag
- Association/Board Banner
- Form A-11, Certificate of Qualification, which Panelists must sign before Hearing
- Form A-12, Award, ready for Panel to complete in Executive Session



TIP: You may also want to include:

- Name plates (names only) for the Panelists
- Identification plates for the Complainant and Respondent
- Identification plates for other attendees (e.g., Association/Board counsel, if present; Administrator, if present; alternate).
- Paper and pens for Panelists and all parties
- Water
- Any equipment necessary for remote testimony (if permitted by the Chairman)

## Before the Hearing Starts



**TIP:** It is important to keep all the parties separated from each other and from the Panelists until the Hearing begins. Some Administrators choose to keep the Panelists in the Hearing room and the parties in separate locations. The parties are then brought into the Hearing room together.

Have each member of the Panel sign the Certificate of Qualification (Form A-11). This is not optional.

Prepare each party for the conduct of the Hearing.

- At your option, give each party the packet of materials that was prepared in advance. Advise them that these are the documents presented by both parties to date, and let them know when the Panel received them.
- Ask if there are any additional documents that they intend to introduce to the Panel at the Hearing. If yes, and the party has not brought copies as requested, make copies for each Panel member, for the opposite party, for any one else involved in the Hearing (e.g., counsel, alternate, Administrator) and for the Association/Board file. Return original to the appropriate party and distribute the copies.  
Note: this can be done during the Hearing, but streamlines the Hearing process if done before the proceedings begin.
- Advise the parties of any unannounced changes to the Panel members. Make sure there are no objections. If a new Panelist is challenged, the Hearing is postponed. If not, the Hearing proceeds. Challenges or the lack of challenges should both be noted for the record.
- Advise the parties of any unscheduled attendees; without proper notice, an attendee may only remain at the Hearing if consent of the opposing party is obtained on the record.
- Call the parties' attention to the additional copy of the Outline of Procedure (included in their Hearing Packet). Remind them that they originally received this with the notification of the Hearing and explain that the Chairman will ask them as part of the Opening Statements whether they have read it and if they have any questions.
- Review the difference between testimony (statement) and cross-examination (question).
- Remind them that the Chairman controls the Hearing.
- Remind the parties that the Hearing is their only opportunity to present evidence. Appeals to the Arbitration process are on procedural matters only.
- Remind the parties that the issues raised at a Hearing are often emotional and may be confrontational. Ask everyone to conduct themselves with respect and courtesy.
- Provide any instructions necessary for proper operation of any equipment necessary for remote testimony (if permitted by the Chairman).

## Request for Procedural Review

**Note:** In Arbitration, there is no appeal of the award based on the merits of the case. The only appeals permitted are those that allege that procedural errors were made and resulted in the denial of due process.

### Processing the Request

When a Request for Procedural Review is received, the Administrator must ensure that:

- The Request is received within 20 days of when the Award was mailed.
- The Request appears on the proper form (Form A-13).
- The Request is accompanied by the appropriate deposit, as specified by Association/Board policy.

**Note:** Fee cannot exceed \$500.

If satisfied that the request is in proper order, the Administrator will forward the request to the Association/Board President, or the President's designee, to determine if the request cites a legitimate basis for consideration. *The request must allege procedural difficulties or other irregularities that deprived the appellant of due process.* No other matters are grounds for a review.

The NAR *CEAM* does not specify a time frame for this initial review. PAR recommends that the review be completed within 10 days of the receipt of the Request for Procedural Review.

If the review finds that the request raises a legitimate issue, the Administrator will proceed to notifying the parties. If the Request is found to be lacking or insufficient, the Administrator will return the request to the appellant with an explanation and a request for more information.

PAR recommends that the Response to the requestor contain a cover letter that outlines the following:

- A recap of the review process that has occurred.
- An explanation that the review was solely to determine that the Request for Procedural Review stated a legitimate basis for review.
- A request that the appellant amend the Request for Procedural Review and return it to the Association/Board office within 10 days.



**TIP:** Use a specific date for the return of the amendments, rather than a reference to the number of days.

- An explanation that the Request will be scheduled for a Procedural Review Hearing whether or not amendments are received in order; however, the Directors/Appeal Panel will review only the information set forth in the written request. No new information will be permitted.

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**Section 48. Submission to Arbitration**

(a) Determine the administrative processing fee to be charged the Complainant and the Respondent (not to exceed \$500).

**Section 50. Preliminary Judicial Determination Prior to Imposition of Discipline**

Establish a policy either withholding the imposition of proposed sanction or not withholding the imposition of proposed sanction when the Board of Directors has reason to believe the proposed sanction would become the basis of litigation and a claim for damages.

**Section 51. Arbitration Hearing**

Specify time period in which the Complaint and Response documents will be supplied to the Hearing Panel.

**Section 53. The Award**

(c) – (f) 2002 Pennsylvania Amendments stipulate that local Associations/Boards adopt this section.

**Section 54. Cost of Arbitration**

The general rule is that deposits are used to cover costs of Arbitration; any funds not used are retained in the general funds of the Association/Board. Policies for alternate disposition of deposits can be adopted.

**Section 55. Request for Review by Directors**

- (a) Determine the deposit sum to be charged for procedural review of the Arbitration Hearing procedures (not to exceed \$500)
- (c) Establish the composition of Hearing Panels for procedural reviews. The three options are: (1) Board of Directors; (2) Panel of Directors; (3) Executive Committee.

PAR suggests the formulation of policy relative to these additional issues as they relate to the Arbitration Hearing:

- Determine whether the Panel appointments are made by the Professional Standards Chairman or the Administrator
- Determine whether a separate pool of Panelists and Chairmen will be maintained or whether the Chairman of each Hearing will be named from one of the appointed panelists.
- Specify whether the Panel Chairman or the Administrator determines continuances/postponements and under what circumstances.
- Stipulate where, when, and what documents are provided to Hearing Panelists.
- Specify whether or not the Administrator, Association/Board counsel, and/or Alternate Panelists may be present during the Executive Session.

# ARBITRATION FEES

FEE CLASSIFICATION	WHAT is the amount of the fee	WHO is responsible for payment of the fee	WHEN is the fee assessed/collected	HOW are the monies disbursed	COMMENTS
<b>Filing Fee</b>	Local Association policy discretion. Total fees may not exceed \$500 per party.	At the initial filing of the Request for Arbitration, the Complainant submits payment with the official Request for Arbitration form. IF the case is forwarded for a Hearing, the Respondent is then assessed the fee and submits payment with the Official Response and Agreement to Arbitrate form.	The fee is assessed at the time the Request for Arbitration is filed and collected in conjunction with the executed Request for Arbitration Form.	Deposits are used to cover the costs of Arbitration and/or Mediation (as applicable) as it may be required. Local Associations have the option to adopt procedures providing for any alternative disposition, which can include returning the deposit to any prevailing party or returning a portion of the deposit to each party should the award rendered be an amount other than that requested. In any instance where return of part or all of any party's deposit is involved, the disposition shall be determined by the arbitrators.	1) When a REALTOR requests Arbitration to determine which of multiple Respondents is entitled to disputed funds, or where a party makes no claim to the disputed funds, that party may <b>not</b> be assessed an Arbitration filing fee. 2) If the dispute is resolved through mediation, disposition of the filing fee will be determined by local Association/Board policy. [Rev. 03-04]
<b>Appeal of the Grievance Committee Decision</b>	0	N/A	N/A	N/A	No charge is permitted for filing an Appeal of the Grievance Committee's determination.
<b>Request for Procedural Review</b>	Local Association policy discretion. May not exceed <u>\$500</u> .	The individual submitting the Request for Procedural Review is assessed the fee and is responsible for payment in conjunction with the proper filing of the Request.	The fee is assessed at the time the request is filed and submitted with the executed Request for Procedural Review form.	Funds are used to cover the cost of Arbitration and deposited into the General Treasury of the Association. Any refund of deposits shall be as determined by the Board of Directors.	A party to an Arbitration proceeding may appeal to the Board of Directors only with respect to such alleged irregularities occurring in the conduct of the proceeding as may have deprived the party of fundamental "due process".
<b>OTHER RELATED FEES</b>	As applicable, pursuant to Association policy.	Pursuant to Local Association Policy.	Communicated through the Outline of Procedures.	NOTE: As expressed in the disbursement of the Filing Fee, fees collected at the point of the submission of the Request for Arbitration shall be allocated so as to include any additional cost related to the administration of mediation procedures should the parties elect to mediate.	Fees for Court Reporter and/or Transcription of Hearing Tapes may be charged as promulgated by Local Association Policy. In addition, in cases of Arbitration not mandated by the Association, and in which the Association provides Arbitration as a service to the parties voluntarily seeking Arbitration, the Association may recover its legal fees as it deems appropriate, if the parties have been advised and have agreed at the outset.
<b>Awards</b>	Any award rendered may not be greater than the amount in dispute, may not include punitive damages, may not include attorney's fees unless expressly provided for in the agreement giving rise to the dispute, and may not include interest unless called for in the arbitration agreement and permitted by <b>state law</b> .	The non-prevailing party as determined by the Arbitrators is responsible for payment.	Communicated to the parties through the issuance of the "Award of Arbitrators" which is made as soon as possible after the evidence is presented.	Payment is made either directly to the prevailing party or through the Association - dependant upon local Association policy adoption.	N/A
<b>Sanctions (Fines)</b>	NO fines may be imposed in an arbitration proceeding.	N/A	N/A	N/A	N/A