
Subject: **Arbitration**

Part Number: - Policy Statements -

Part Title: Arbitration - Statements of Professional Standards Policy

Section/Form Number: - Policy Statements -

Section/Form Title: Statements of Professional Standards Policy - Arbitration Proceedings

Text:

Statements of Professional Standards Policy Applicable to Arbitration Proceedings

Approved by the Professional Standards Committee and the Board of Directors of the NATIONAL ASSOCIATION OF REALTORS®

1. Article 17, Code of Ethics

“In the event of contractual disputes or specific non-contractual dispute as defined in Standard of Practice 17-4 between Realtors® (principals) associated with different firms, arising out of their relationship as Realtors®, the Realtors® shall submit the dispute to arbitration in accordance with the regulations of their Board or Boards rather than litigate the matter.

In the event clients of Realtors® wish to arbitrate contractual disputes arising out of real estate transactions, Realtors® shall arbitrate those disputes in accordance with the regulations of their Board, provided the clients agree to be bound by the decision.

The obligation to participate in arbitration contemplated by this Article includes the obligation of Realtors® (principals) to cause their firms to arbitrate and be bound by any award.” (Amended 1/01)

2. Circumstances under which REALTORS® must submit to arbitration(*Refer to Part 10, Section 44 of this Manual)

(a) 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. (Revised 05/01)

(b) 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 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 05/01)

(c) A client of a REALTOR® principal may invoke the 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 Board's right to decline arbitration based on the amount involved or the legal complexity of the dispute. 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. (Revised 05/01)

3. Circumstances under which arbitration is contingent upon the REALTOR®'s voluntary participation (*Refer to Part 10, Section 44 of this Manual)

(a) REALTORS® and REALTOR-ASSOCIATE®s who are or were affiliated with the same firm shall have the 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. 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)

(b) A REALTOR® principal may invoke the arbitration facilities of the Board in a dispute arising out of the real estate business with a nonmember broker, provided each party agrees in writing to the arbitration and provided the Board finds the matter properly subject to arbitration. However, it shall be optional with the member as to whether he will submit to a claim to arbitration by a nonmember broker who is not an MLS Participant. A nonmember broker who is not an MLS Participant or nonmember salesperson shall not be entitled to invoke the arbitration facilities of the Board of REALTORS®. (Revised 11/95)

(c) 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)

4. Board's right to release parties from their obligation to arbitrate

If either the Grievance Committee or the arbitration panel determines that because of the amount involved or the legal complexity of the dispute the dispute should not be arbitrated, the arbitration shall automatically terminate unless either of the parties to the dispute appeals the decision to terminate the proceedings to the Board of Directors within twenty (20) days of the date of notice that the Grievance Committee or the arbitration panel declined to continue the proceeding. The Hearing Panel can also dismiss the arbitration request if the Hearing Panel concludes the matter is not arbitrable. In the event of such an appeal, the Grievance Committee or the arbitration panel shall report its conclusions to the Board of Directors and, if the Board of Directors concurs, the arbitration shall terminate and the parties shall be relieved of their obligation to arbitrate. In this event, or in the event of no appeal, any deposits made by the parties shall be returned to them. However, if the Board of Directors decides that the arbitration should proceed, the matter shall be remanded to the Grievance Committee or the arbitration panel for further proceedings. (Revised 11/95)

5. Failure to submit to arbitration

If the complaint against a REALTOR® principal is that he has improperly refused to submit a dispute to arbitration, the complaint shall not be referred to the Grievance Committee or a Hearing Panel but shall be brought before the Board of Directors at the next regular meeting or at a special meeting called by the

President for that purpose. The procedures for notices, time of notice, and hearing prescribed for matters before a Hearing Panel shall apply. The sole question of fact for the Directors to decide will be whether the respondent has failed to submit an arbitrable matter to arbitration. Upon determination that the member has refused to arbitrate a properly arbitrable matter, the Board of Directors may direct the implementation of appropriate sanction and should, if it has reason to believe that the imposition of sanction will become the basis of litigation and a claim for damages consequent to such sanction, delay the effective date of implementing the sanction to a date following receipt by the Board of a judicial decision in a petition for declaratory relief filed by the Board to confirm the propriety of its action. (Revised 11/95)

6. Failure to abide by an award rendered by a Hearing Panel

If the complaint against the REALTOR® principal is that, having properly submitted a dispute to arbitration, he has refused to abide by an award, such refusal should not be referred to the Grievance Committee as a violation of the Code of Ethics unless such refusal reflects an established pattern or practice of noncompliance with the commitment to arbitrate. A refusal to abide by an award in arbitration should be enforced in the manner set forth in Part Ten, Arbitration of Disputes, Section 56, Enforcement. (Revised 11/95)

7. No predetermination of any award in an arbitrable matter (Interpretation No. 31, Article I, Section 2, Bylaws, NATIONAL ASSOCIATION OF REALTORS®)

“A Board rule or a rule of a Multiple Listing Service owned by, operated by, or affiliated with a Board which establishes, limits, or restricts the REALTOR® in his relations with a potential purchaser, affecting recognition periods or purporting to predetermine entitlement to any award in arbitration, is an inequitable limitation on its membership.”

Explanation of Official Interpretation No. 31: “In essence, this is a specific Interpretation of the general rule established in Interpretation No. 6 that a Board may not have a rule which restricts or limits the REALTOR® in the conduct of his business unless it concerns ethical practice. Thus, a rule of a Board or Multiple Listing Service which would determine a protection period in reference to a prospective purchaser is an inequitable limitation. Further, the Board or its MLS may not establish a rule or regulation which purports to predetermine entitlement to any awards in a real estate transaction. If controversy arises as to entitlement to any awards, it shall be determined by a hearing in arbitration on the merits of all ascertainable facts in the context of the specific case of controversy.”*

(*In connection with this National Association policy, refer to Part Ten, Appendix II, Arbitration Guidelines, in this Manual.)

8. Holding of disputed funds by the Board of Directors

Member Boards shall not make a requirement that disputed funds be deposited with the Board by the respondent in an arbitration matter prior to an arbitration hearing, as it is beyond the legitimate authority of the Board or its Professional Standards Committee. However, this does not relieve REALTORS® of their responsibility to be prepared to abide by any determination made by the Board’s arbitration panel and to satisfy any award in a prompt manner. (Revised 11/87)

9. Arbitration under circumstances other than those described in Section 44

A Member Board may provide arbitration procedures only in those instances described in Part Ten, Section 44, Duty and Privilege to Arbitrate, in this Manual.

10. Arbitration when dispute is between REALTORS® affiliated with different firms and the REALTORS® are both members of the same two (or more) Boards

Absent an interboard arbitration agreement directing otherwise, the following factors determine the appropriate Board to conduct arbitration hearings in instances where parties hold membership in more than one Board or MLS:(Revised 11/02)

- Where all parties hold Realtor® membership or hold MLS participatory rights under the universal access to services component of Board of Choice in only one Board, that Board shall conduct arbitration.
- Where all parties hold Realtor® membership or hold MLS participatory rights under the universal access to services component of Board of Choice in the same two (or more) Boards, arbitration will be conducted by the Board in which the property giving rise to the dispute is located. If the property is not within the jurisdiction of those Boards, the Board in which the arbitration request is filed will conduct arbitration.
- Where all parties do not hold membership in the same Board, and do not have MLS participatory rights under the universal access to services component of Board of Choice through the same Board, complainants may, at their discretion, invoke interboard arbitration or, alternatively, file arbitration requests with any Board in which the respondent holds Realtor® membership or holds MLS participatory rights under the universal access to services component of Board of Choice. Pursuant to this provision, Boards must provide arbitration services in circumstances where it is determined by the Grievance Committee that an arbitrable dispute exists and the dispute is subject to mandatory arbitration.
(Revised 11/00)

12. Adoption of Code of Ethics or Standards of Practice by Member Boards and State Associations

A local Board or State Association shall not adopt any set of rules, regulations, policies, and practices which purport to be in lieu of, in addition to, or an extension of the Code of Ethics and Standards of Practice of the NATIONAL ASSOCIATION OF REALTORS®. (Amended 11/89)

13. Articles and publications on the Code of Ethics

The National Association reserves the exclusive right to interpret the Code, its applications, and its proper enforcement to Member Boards and Board Members.

The National Association does not endorse or recommend any article or publication concerning ethics which is not published by the National Association or its institutes, societies, and councils and authorized by the National Association.

15. Arbitration between Board Members who are or were affiliated with the same firm

No Member Board may require REALTORS® and REALTOR-ASSOCIATE®s affiliated with the same firm to arbitrate disputes between themselves unless both parties voluntarily agree to arbitration in writing, and provided the Board finds the matter properly subject to arbitration.

18. Local Member Board requests for the conduct of ethics and arbitration hearings by the State Association

A local Board, prior to referring an ethics complaint or arbitration request for review to the State Association, should exhaust all efforts to impanel an impartial panel to conduct either the original hearing or the appeal or

procedural review. These efforts may include the appointment of knowledgeable members of the Board on an ad hoc basis to serve either on a Hearing Panel or on behalf of the Board of Directors. If, after making all reasonable efforts, the Board still cannot impanel an impartial tribunal, the Board may refer the matter to the State Association, and the State Association may delegate to another Board or a regional enforcement facility the authority to hear the case on behalf of the State Association. No Board or regional enforcement facility, however, may be required to accept this delegation of authority. If no other entity is amenable to conducting the review, the State Association shall be responsible for conducting the hearing. State Associations may, at their discretion, require that the President or Association Executive of the Board referring an ethics complaint or arbitration request certify that all reasonable efforts to impanel an impartial panel had been made, and may further require that those efforts be documented. (Amended 11/03)

In instances where a local Member Board determines by resolution of its Board of Directors that it is incapable of providing an impartial panel for the conduct of an ethics or arbitration hearing (or appeal or procedural review hearing), the complaint or the request for arbitration (and the ethics appeal or procedural review request, if any) may be referred by the Board President to the State Association of REALTORS® for a hearing. With regard to requests for arbitration, in the event the State Association declines to conduct the arbitration or to delegate its authority to another Board or regional enforcement facility, the parties shall be relieved of their obligation to arbitrate as established in Article 17 of the Code of Ethics. With regard to alleged violations of the Code of Ethics, such allegations may be received and considered by the State Association and (1) dismissed as unworthy of further consideration, (2) heard by a Hearing Panel of the State Association's Professional Standards Committee, or (3) referred to another Board or regional enforcement facility. If referred for a hearing to the State Association's Professional Standards Committee or to another local Board or regional enforcement facility, a Hearing Panel will be appointed to conduct the hearing and forward the determination and sanction, if any, to the local Member Board. The Board of Directors of the local Member Board shall then implement the decision of the Hearing Panel in strict accordance with its terms and conditions. Any requests for appeal or procedural review should be considered by an appropriate body of the State Association or "deputized" local Board or regional enforcement facility in accordance with the relevant established professional standards procedures. (Amended 11/93)

19. Confidentiality of determinations rendered in ethics and arbitration hearings

The allegations, findings, and decisions rendered in ethics and arbitration hearings are confidential and should not be reported or published by the Board, any member of a tribunal, or any party under any circumstances except those established in the Code of Ethics and Arbitration Manual of the National Association as from time to time amended. (Revised 11/91)

20. Statement of policy related to Article 17 of the Code of Ethics

Article 17 is not to be construed as precluding a REALTOR® who is a defendant in litigation from joining a cooperating agent and/or subagent in the litigation.

21. Adoption of the Code of Ethics and Arbitration Manual by Member Boards

Member Boards and State Associations are not required to adopt the Code of Ethics and Arbitration Manual verbatim, but no Member Board may adopt or follow any procedures inconsistent with the precepts enunciated in the Code of Ethics and Arbitration Manual of the National Association as from time to time amended.

22. Board and State Association publications or audiovisual programs concerning the Code of Ethics and its enforcement

Any articles, audiovisual programs, or any type of publication related to the Code of Ethics, its interpretation, or its enforcement that have not been prepared by or approved by the Professional Standards Committee of the National Association must be prefaced by a statement indicating that the contents reflect the understanding and opinions of the author(s) and do not represent an official expression of policy by the National Association. To the extent that any article, audiovisual program, or publication prepared by any individual or organization other than the National Association varies in any degree from the Code of Ethics, its interpretation, or its enforcement procedures as approved by the Professional Standards Committee of the National Association, the policies of the National Association shall take precedence.

No article, audiovisual program, or other publication may be designated as an official expression of policy concerning the Code of Ethics, its interpretation, or its enforcement without the express written approval of the National Association.

Local Boards and State Associations are encouraged to consider preparation of such articles, audiovisual programs, or other publications and are requested to submit them to the Professional Standards Committee or its staff representatives for review and approval prior to publication.

23. Disputes arising out of circumstances occurring prior to the time a REALTOR is elected to board membership

While REALTORS® are encouraged to resolve all disputes through the arbitration facilities of their Board or Boards, the intent of Article 17 is that only disputes arising from facts occurring after each of the parties has become a REALTOR® are subject to mandatory arbitration under Article 17 of the Code of Ethics.

24. Formulation of Multi-Board or Regional Grievance or Professional Standards Committees for Code enforcement in areas where Boards have limited membership

Member Boards are authorized to enter into collective agreements by which the Boards would share the responsibility for enforcement of the Code of Ethics, including the conduct of arbitration hearings, on a joint basis.* (*A sample format agreement approved by the Professional Standards Committee to establish a collective agreement is included as Specimen Forms #E-19 in Part Six and #A-19 in Part Thirteen of this Manual.)

25. Expenses related to conduct of hearings by Multi-Board or Regional Grievance or Professional Standards Committees

Expenses related to the conduct of hearings by a multi-Board or regional Grievance Committee or Professional Standards Committee shall be as established by written agreement between the signatory Boards. The expenses of such hearings shall be borne by the signatory Boards and shall not be supported by fees charged to the members other than as otherwise authorized by the Code of Ethics and Arbitration Manual. (Revised 11/98)

26. Burdens and standards of proof in arbitration and ethics hearings

In any ethics hearing or other hearing convened to consider alleged violations of membership duties and in any arbitration hearing, the ultimate burden of proving that the Code of Ethics or other membership duty has been violated, or that an arbitration award should be issued to the requesting party, is at all times on complainants and parties requesting arbitration.

The standard of proof on which an arbitration hearing decision is based shall be a “preponderance of the evidence.” Preponderance of the evidence shall be defined as evidence which is of greater weight or more

convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the facts sought to be proved are more probable than not.

“Clear, strong, and convincing” shall be the standard of proof by which alleged violations of all membership duties, including violations of the Code of Ethics, are determined. Clear, strong, and convincing shall be defined as that measure or degree of proof which will produce a firm belief or conviction as to the allegations sought to be established. (Revised 2/92)

Appeals of ethics Hearing Panel decisions based on an alleged misapplication or misinterpretation of an Article(s) of the Code of Ethics shall be determined based on the correctness of the Hearing Panel’s decision.

Appeals of ethics Hearing Panel decisions based on an alleged procedural deficiency or failure of due process and procedural review of arbitration hearing procedures shall be determined based on whether the effect of the deficiency was to deny the appellant a fair hearing.

Appeal panels may modify discipline proposed by Hearing Panels only in instances where the discipline proposed is not authorized or where the appeal panel concludes that the Hearing Panel abused its discretion. (Adopted 11/99)

27. Consolidation of arbitration claims arising out of the same transaction

When reviewing requests for arbitration, Grievance Committees should try to ensure that all appropriate parties are named as complainants or respondents. If it appears that there may be related claims involving other parties arising out of the same facts, the Grievance Committee may suggest to either the complainant or respondent (or both) that they may wish to request arbitration with additional respondents or third-party respondents so that all related claims may be resolved through a single arbitration hearing. Upon motion by either the complainant or the respondent, an arbitration request may be amended to include any additional appropriate parties, or separate arbitration requests may be filed naming additional parties, so that all related claims arising out of the same transaction can be resolved at the same time. (Revised 11/92)

28. Participation in litigation rather than arbitration

In instances where a REALTOR® is a party to litigation involving an otherwise arbitrable matter and none of the parties invokes the Board’s arbitration facility prior to or during the course of litigation, any member involved in the litigation may not thereafter be charged with failing or refusing to arbitrate. (Revised 11/92)

30. Participation in voluntary arbitration

Article 17 is not to be construed as precluding a REALTOR® from instituting litigation or causing a dispute to be brought before an alternative dispute-resolving forum other than the Board of REALTORS® under those circumstances where submission of the dispute to the Board would be voluntary. (Adopted 5/88)

31. “Cooperation” defined

The obligation to cooperate, established in Article 3 of the Code of Ethics, relates to a REALTOR®’s obligation to share information on listed property and to make property available to other brokers for showing to prospective purchasers when it is in the best interest of the seller. An offer of cooperation does not necessarily include an offer to compensate a cooperating broker. Compensation in a cooperative transaction results from either a blanket offer of subagency made through MLS or otherwise, or offers to compensate buyer agents, or, alternatively, individual offers made to subagents or to buyer agents, or other arrangements as negotiated between listing and cooperating brokers prior to the time an offer to purchase is produced.

(Adopted 11/88)

33. Use of panels in place of the Board of Directors

Any matter brought before the Board of Directors may be considered by a panel of Directors appointed by the President for that purpose (or, alternatively, by the Board's Executive Committee). Five (5) Directors or a quorum of the Board of Directors, whichever is less, shall constitute such a panel, which shall act on behalf of the Board of Directors. The decision of the panel (or Executive Committee) shall be final and binding and shall not be subject to further review by the Board of Directors.

In appointing such a panel, the President should consider the following recommended criteria:

- number of years as a REALTOR®
 - number of years in the real estate business
 - primary and secondary fields of real estate endeavor/expertise
 - participation in postlicensing real estate education
 - training in the Code of Ethics
 - position in firm (principal, nonprincipal)
 - size of firm
 - common sense
 - open-mindedness
 - familiarity with state(s) laws and regulations
 - receptiveness to instruction/training
 - other relevant professional or procedural training
- Panel members should be mature, experienced, knowledgeable persons of judicial temperament. (Revised 11/95)

35. Separation of ethics complaint and arbitration request

When an ethics complaint and an arbitration request are filed at the same time arising out of the same facts and circumstances, the arbitration hearing shall be held first and the ethics hearing shall be conducted by a different Hearing Panel after the conclusion of the arbitration hearing. (Adopted 11/93)

38. Hearing Panels to be conversant with applicable state law under board of choice across state lines

Where membership is provided under board of choice across state lines, Hearing Panels must be conversant with and apply the relevant state's laws and regulations in determining how the Code of Ethics will be interpreted/applied in instances where the underlying transaction occurred out of state and involved a respondent licensed in that state. (Adopted 11/95)

39. Awards escrowed under board of choice across state lines

Where one or more parties to an arbitrable issue have obtained membership under board of choice across state lines, awards rendered shall be escrowed by the Board that conducted arbitration in a manner consistent with the procedures in Section 53 (c-f), The Award, Code of Ethics and Arbitration Manual. (Adopted 11/95)

40. Cooperative enforcement agreements

To ensure fair, impartial and knowledgeable enforcement of the Code of Ethics (including arbitration) there must be adequately large groups of knowledgeable, trained REALTORS® and REALTOR-ASSOCIATES® from which the necessary committees and tribunals can be appointed. To this end, Boards and Associations are required to enter into cooperative enforcement agreements to ensure Boards and/or Associations have an

aggregate total of at least three hundred fifty (350) primary REALTOR® and/or REALTOR-ASSOCIATE® members from which to compose Hearing Panels. It is recommended but not required that representation/participation in any multi-board regional cooperative enforcement agreement be on a pro-rata basis. This requirement does not apply in instances where, in the opinion of the state association, unique geographical considerations (e.g., islands, remote locale, etc.), logistical difficulties or other impediments make participation prohibitive. All Boards regardless of size (except Commercial Overlay Boards) must participate with at least one other Board (which may be the state association) in a cooperative enforcement agreement. (Revised 5/08)

41. Arbitration Guidelines to parties

Boards conducting arbitration are required to provide all parties and panel members with the Arbitration Guidelines prior to commencement of any arbitration hearing. (Adopted 11/96)

42. Previously dismissed ethics complaints/ arbitration requests

If an ethics complaint or arbitration request is received and reviewed by a Board's Grievance Committee or Board of Directors and is dismissed as not warranting a hearing, the respondent(s) shall not subsequently become subject to the same (or substantially similar) ethics complaint or arbitration request in the same or another Board. (Adopted 5/97)

Dismissal of an arbitration request by a Board of REALTORS® because the dispute is not arbitrable based on Article 17 or other grounds established in the Code of Ethics and Arbitration Manual, does not prohibit REALTORS® from exercising other remedies that may be available to them, including litigation. (Adopted 5/99)

43. Duty to arbitrate personal

The privilege to invoke arbitration and the duty to arbitrate is personal. Although any REALTOR® principal may invoke the arbitration facilities of a Board and be required to arbitrate, REALTOR® principals may not delegate this privilege or obligation. (Adopted 11/98)

44. Effective dates of the Code of Ethics and Standards of Practice and the Code of Ethics and Arbitration Manual.

All changes to the Code of Ethics and Standards of Practice carry an annual effective date of January 1 of the year following their approval by the Board of Directors of the National Association and, where necessary, by the Delegate Body. (Adopted 11/89)

To ensure consistent, uniform enforcement of the Code of Ethics nationwide, all changes in professional standards policy normally incorporated into the National Association's Code of Ethics and Arbitration Manual should become effective only upon publication in a new edition of the Code of Ethics and Arbitration Manual. (Adopted 11/89)

All new and amended Case Interpretations become effective upon approval by the National Association's Professional Standards Committee and publication on One Realtor Place®. (Adopted 5/98)

46. Duty to arbitrate after membership lapses or is terminated

The duty to submit to arbitration continues in effect after membership lapses or is terminated provided that the dispute arose prior to the time the respondent's membership lapsed or was terminated. (Adopted 5/99)

50. Separate subcommittees for ethics, arbitration, and mediation

Boards and Associations are strongly encouraged to meet their professional standards enforcement responsibility (ethics adjudication and dispute resolution) through subcommittees specifically delegated responsibility for arbitration, mediation, and for the conduct of hearings to resolve ethics complaints and alleged violations of other membership duties. (Adopted 11/99)

51. Mediators used by Boards

Mediators used by Boards and Associations to resolve contractual disputes and noncontractual disputes defined in Standard of Practice 17-4 may be REALTORS®, Board/ Association staff, or others whose services a Board/Association chooses to utilize. (Adopted 11/99)

52. Boards to provide mediation

Effective January 1, 2002, the duty of local Boards and Associations to provide mediation services established in Article IV, Section 2 of the Bylaws of the NATIONAL ASSOCIATION OF REALTORS® can be met through provision of mediation services by local Boards and Associations; through multi-Board/regional cooperative enforcement agreements; or through agreement/arrangement with the state association. (Adopted 11/99)

53. Dispute resolution fees not to exceed maximum arbitration fee

Effective January 1, 2002, the fees charged for Board/ Association dispute resolution services, i.e., mediation and arbitration, may not exceed the maximum arbitration filing fees authorized in the Code of Ethics and Arbitration Manual of the NATIONAL ASSOCIATION OF REALTORS®. Boards/Associations may, as a matter of local option, retain part or all of the filing fees paid, irrespective of whether disputes are resolved through mediation or arbitration. (Adopted 11/99)

54. Personal safety in professional standards proceedings

Boards and Associations should take reasonable steps to ensure the personal safety of parties, panelists, witnesses, staff, and others participating in professional standards proceedings. In instances where, in the opinion of the presiding committee or Hearing Panel Chair, there is an unacceptable risk posed to the safety of any participant, the proceedings will be recessed so the Chair can consult with staff, Board or Association elected leadership, or Board or Association counsel to identify and take steps to ensure the safety of all participants and to permit the proceedings to resume.

If after consulting with staff, Board or Association counsel, and any other appropriate party or agency (including law enforcement authorities), and after taking reasonable steps to attempt to resume the proceeding while ensuring the safety of all participants, the Board of Directors concludes it will be unduly difficult or impossible to ensure the safety of all participants, the proceedings will be postponed indefinitely and resumed only when the Board of Directors (or its successor) concludes that the proceedings can be safely resumed. Where proceedings are postponed indefinitely by action of the Board of Directors, a memorandum detailing the circumstances shall be appended to the case file and maintained on a permanent basis. The Board of Directors may, at their discretion, share any or all information including the complaint, response, or other documentation or information in their possession with appropriate law enforcement or other government agencies. (Adopted 5/00)

55. Transmitting devices

Cellular phones, two-way radios and other transmitting devices may not be operated during ethics hearings,

arbitration hearings, appeal hearings, and procedural review hearings absent specific, advance authorization from the panel chair. (Adopted 11/04)

56. “Remote” testimony

The policies and procedures established in the National Association’s Code of Ethics and Arbitration Manual contemplate that except in extreme circumstances parties and their witnesses will participate in ethics and arbitration hearings in the physical presence of Hearing Panels and the respective parties.

“Extreme circumstances” in which parties and witnesses to ethics and arbitration hearings may be permitted to participate in those hearings by teleconference or videoconference at the discretion of the Hearing Panel chair are defined as circumstances where (1) postponement or rescheduling of the hearing to permit their participation is not feasible and (2) failure to accept such testimony or permit such participation would deny a party a fair hearing.

The costs of “remote” testimony shall be the responsibility of the party requesting the opportunity to participate or offer testimony by teleconference or videoconference.

Counsel is permitted to participate in ethics or arbitration hearings only in the physical presence of Hearing Panels. (Adopted 11/04)

Copyright NATIONAL ASSOCIATION OF REALTORS®
Headquarters: 430 North Michigan Avenue, Chicago, IL. 60611-4087
DC Office: 500 New Jersey Avenue, NW, Washington, DC 20001-2020
1-800-874-6500