

## **Before Your File or Respond To an Arbitration Request**

**\*This document should ALWAYS accompany the Arbitration Request Form (A-1) provided to the REALTOR® requesting arbitration.**

ARTICLE 17 of the REALTOR® Code of Ethics – when disputes over commissions arise -  
In the event of contractual disputes or certain non-contractual disputes defined in Standards of Practice 17-4, between REALTOR® principals associated with different forms, arising out of their relationship as REALTORS®, the REALTORS® shall submit the dispute to arbitration in accordance with the regulations of their Board rather than litigate.

In lieu of arbitration a member may request *mediation* services from the Board which is voluntary and, when successful, renders a win-win scenario for both parties. When both parties agree to mediate, a meeting is scheduled with a mediator who assists the two parties in reaching a solution to which they both agree. In arbitration, a hearing panel makes the decision of which one of the two parties was procuring cause of the sale. Mediation is quicker, less stressful, is not required to follow rules of procuring cause, is often cheaper, and results in both parties “winning.”

***If you wish to file an arbitration request, contact your local Board of REALTOR'S® Professional Standards Administrator to request the appropriate forms to complete and to determine the appropriate filing fee, in any, required by your Board.***

### **Prior to completing the Official Request for Arbitration:**

1. **Review** the following sections in the Code of Ethics and Arbitration Manual: Appendix I to Part 10 (Arbitrable Issues), Appendix II to Part 10 (Arbitration Guidelines, Suggested Factors for Consideration by an Arbitration Hearing Panel).
2. **Review** the items listed below that the Grievance Committee will use to determine whether or not to forward the complaint to the Professional Standards Committee for a hearing.
  - Is the matter arbitrable? Did the complainant clearly articulate the facts that demonstrate a contractual relationship between the complainant and the respondent or the specific non-contractual relationships outlined in Standard of Practice 17-4?
  - Are both the complainant and the respondent members of a Board of REALTORS®?
  - Have the proper parties have been named? Only REALTOR® principals can arbitrate. Sales associates can participate in the hearing but are not named as parties.
  - Is the request in its proper form? Is Form A-1 complete and in typed format (or Form A-4, if respondent)
  - Is the narrative and supporting documentation typed and signed?
  - Has the appropriate arbitration filing fee established by the Board been deposited?
  - Is the amount of money in dispute indicated on the Form?
  - Is the matter an arbitration request rather than an ethics complaint? (Ethics and arbitration matters must be totally separate).
  - Has the matter been litigated?

- Is the arbitration mandatory (between REALTOR® principals from different firms) or voluntary (between REALTORS® who are or were in the same firm)?
  - Was the matter filed within 180 after the closing of the transaction?
  - If the complainant or respondent is an out-of-state broker not licensed in Mississippi, has the appropriate Cooperating Agreement for Out of State Principal Brokers been filed with MREC creating the eligibility for commission to be paid by a Mississippi broker to a principal broker in another state. A copy should be included with your narrative.
3. **Suggestions** for complainant or respondent in preparing the narrative:
- Review Part 10 of the **Code of Ethics and Arbitration Manual, *Arbitration Disputes***, paying close attention to the section entitled **Procuring Cause** and the *Factors for Consideration by Hearing Panels*.
  - **Creating your narrative.** (*Complainant: #4 on Form A-1, Exhibit 1 or Respondent: #4 on Form A-4, Exhibit 1*). Your narrative should be typed and signed including any documentation supporting your position as being *procuring cause* of the sale (as defined in the Manual, Appendix II to Part 10) and, therefore, entitled to the commission...the broker who *started the uninterrupted series of events that lead to the successful (closed) transaction..*
  - If your narrative contains statements from witnesses require that they be typed and signed and consider having them notarized for added credibility. For additional credibility, consider asking the witnesses to attend the hearing to testify regarding their statement. The hearing panel will determine the weight, if any, a statement from a witness carries. A witness's testimony at the hearing carries more weight than a statement in their absence, since their statement cannot be cross-examined.
  - If you are including a time line include precise times and complete dates of events
  - Be careful to identify all people referred to in your narrative (listing agent, selling agent, buyer, seller, etc.). When you complete your written narrative, read it as if you were a hearing panel member reading it. Is it completely clear and concise? Does it demonstrate procuring cause based on the definition provided in the Manual.
  - The complainant has the "burden of proof" to provide sufficient evidence supporting his/her case as being procuring of the sale. The "standard of poof" in an arbitration case is "the perponderance of the evidence"...more evidence was produced to support one side than the other.
4. The outline of the procedures that will be followed at a hearing are will be sent to both parties in advance of the hearing.