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CALIFORNIA ASSOCIATION OF REALTORS®

# **California Code of Ethics and Arbitration Manual**

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## Introduction

The *California Code of Ethics and Arbitration Manual* (“Manual”) is designed and intended for use by Member Associations of the California Association of REALTORS® (“C.A.R.”) for administration of professional standards matters. The Manual is drafted to be in compliance with the applicable policies of the National Association of REALTORS® and California state law. If a Member Association desires to adopt a different set of rules for administration of professional standards or desires to change the model provisions contained herein, it is recommended that the Member Association have such rules and procedures reviewed by legal counsel and approved by NAR prior to actual use.

## Changes to this Manual

From time to time C.A.R. updates this Manual to comply with changes in NAR policies or California law. All substantive changes to the Manual from the last edition have been made and shown in red underlined typeface.

Some of the major changes to the Manual for 2020 are as follows:

1. To conform with NAR Policy, the following was added to Section 18(a): “Where an ethics hearing takes place in a respondent’s absence, the respondent is still entitled to be represented by counsel at the hearing.”
2. To conform with NAR policy, the following was added to Sections 20(b) and 56(b): “When a party utilizes the Association or C.A.R. ombudsman program, the filing deadline is suspended until the case is reported closed by the ombudsman.”
3. In order to prevent complainants from ignoring Association communications, the following has been added to Section 26(a) and 56(c): “Additionally, at any time after the disciplinary complaint has been submitted and acknowledged by the Association Executive, the complainant must respond to any communications from the Association Executive within ten (10) business days. If no response is received from the complainant after ten (10) business days, the Association may consider the complaint withdrawn.”
4. To conform with NAR policy, the following was added to Section 27(a): “Complaints cannot be amended to add, or substitute, other individuals as complainants except as mutually agreed to by the parties.”
5. Section 32 and 64 were revised to clarify situations in which a continuance fee may be assessed to a party.
6. Section 42(f) was added to specify claims that cannot be arbitrated at the Association pursuant to NAR policy.
7. Section 54(a) was revised to clarify that a broker may appoint a REALTOR® to attend an arbitration hearing on his or her behalf when the broker is unable to personally attend.
8. Pursuant to NAR policy, Section 56(h) was revised to indicate that the Association may elect to charge the respondent in an arbitration a filing fee of up to five hundred dollars (\$500).

## Questions

C.A.R. provides this Manual as a member service to Member Associations. In addition, the C.A.R. provides advice to Member Associations regarding the interpretation and application of the *Manual*. Any questions from Member Associations regarding this *Manual* can be directed to the C.A.R. Corporate Legal Department at (213) 739-8381.

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## **PART ONE – ASSOCIATION DISCIPLINARY PROCEEDINGS**

### **Section 1. Definitions**

As used herein,

(a) "Association" means the local Board or Association of REALTORS® and any other Association of REALTORS® to which the Member belongs, including California Association of REALTORS® ("C.A.R.").

(b) "Association Executive" means the chief staff executive of the Association or his or her designee, or the elected Secretary of any Association not having a chief staff executive.

(c) "Complainant" means the person who has a grievance against the respondent and who files a disciplinary complaint. In some cases the Association Grievance Committee is the complainant.

(d) "Designated REALTOR®" means the member designated in Association records to be responsible for the conduct of individuals affiliated with the office(s) and accountable to the Association for all duties and obligations of membership.

(e) "Directors" means the Board of Directors of the Association or appropriate body appointed by the Board of Directors when considering professional standards or MLS rules matters covered in this Manual.

(f) "Disciplinary hearing" refers to an ethics hearing or other membership obligation hearing relating to disciplinary matters or to an MLS rules violation hearing to determine whether a violation of the MLS rules occurred.

(g) "Expulsion from Membership" means expulsion from membership in the Association for a period of not less than one (1), but not more than three (3) years, with

reinstatement to membership only by application as a new member after the end of the period of expulsion, with the application considered on its merits.

(h) "Expulsion from MLS" means expulsion from all privileges and services of the MLS on terms and conditions expressly stated for a period of time not less than one (1) year, but not more than three (3) years. Expulsion from all privileges and services of the MLS shall include, but is not limited to, the ability to submit listings to the MLS, retain current listings in the MLS data base, use computer terminals, receive MLS Compilations or comparable materials. Reinstatement to MLS services as a full Participant or Subscriber shall be by application as a new MLS participant or Subscriber after the end of the period of expulsion, with the application considered on its merits.

(i) "Fine" means an appropriate and reasonable fine commensurate with the gravity of the determined violation of the N.A.R. Code of Ethics or any other membership duty, not to exceed \$15,000 per party, per hearing, for an ethics violation or REALTOR® membership duty, and not to exceed \$15,000 per party, per hearing, for violation of an MLS Rule or MLS membership duty, and in each case the fine is payable to the Association.

(j) "Member" means a REALTOR®, or REALTOR-ASSOCIATE® member of the Association, whether primary or secondary.

(k) "Panel" means the members of a Grievance Committee when serving in a given case, a hearing panel in a Disciplinary hearing as defined in subsection (f) above, or a review panel of the Directors as defined in subsection (e) above when considering professional standards or MLS rules matters covered in this Manual.

(l) "Participant" means any individual defined in the MLS rules and

regulations of the Association as a Participant.

(m) "Party" means the complainant(s) or respondent(s) to any disciplinary proceeding referred to in Part One of this Manual.

(n) "Public trust" violation means demonstrated misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm.

(o) "Remediable violations" means those violations that can be corrected by the member, such as failure to complete mandatory training, nonpayment of fees, or other curable violations.

(p) "Reprimand" means a "Letter of Reprimand," which is a letter from the Association to an Association member or MLS Participant or Subscriber, advising of a lack of professional conduct or a violation of MLS rules determined by a "due process" hearing by a hearing Panel, and advising that the letter is to be construed as an official reprimand.

(q) "Requirement for Ethics Training" means a letter from the Association President or Professional Standards Committee Chairperson to an Association Member, MLS Participant or Subscriber, advising of a lack of professional conduct or a violation of MLS rules determined by a "due process" hearing by a hearing Panel and directing the person to attend the applicable ethics portion of the Association indoctrination course or other appropriate ethics course, MLS orientation or seminar, or other appropriate course specified by the hearing Panel.

(r) "Respondent" means the REALTOR® or MLS member against whom a complaint is filed and who must defend themselves in a disciplinary hearing.

(s) "Responsible Broker" means the broker designated in the records of the Department of Real Estate to be responsible for the conduct of individuals affiliated with his or her office(s) or licensed or certified individuals who are sole proprietors, partners, officers, or shareholders of a corporation, or office managers acting on behalf of principals of a real estate firm who are authorized to bind the principals in arbitration.

(t) "Subscriber" means any individual defined in the MLS rules and regulations of the Association as a Subscriber.

(u) "Suspension of Membership" means suspension of all Association membership rights and privileges, and denial of Association services, on terms and conditions expressly stated for a period of time not less than thirty (30) calendar and not more than one (1) year, including, but not limited to, use of the terms REALTOR® and REALTOR-ASSOCIATE®, with reinstatement as a member in good standing automatically provided at the end of the specified period. In the event the suspension is for a remediable violation (as defined in Section 1(o)), the suspension is in effect for the period that the violation remains uncorrected, and the minimum and maximum time limits for suspension do not apply. Resignation prior to a member complying with sanctions imposed for violation of the Code of Ethics shall automatically be deemed a suspension.

(v) "Suspension of MLS" means suspension of all privileges and services of the MLS on terms and conditions expressly stated for a period of time not less than thirty (30) calendar days and not more than one (1) year. Suspension of all privileges and services of the MLS shall include, but is not limited to, the ability to submit listings to the MLS, retain current listings in the MLS data base, use computer terminals, receive MLS Compilations or comparable materials. Reinstatement as a full Participant or

Subscriber shall be automatic at the end of the specified period providing the Participant or Subscriber is current on all amounts owed the MLS and has kept all fees current during the period of suspension. In the event the suspension is for a remediable violation (as defined in Section 1(o)), the suspension is in effect for the period that the violation remains uncorrected, and the minimum and maximum time limits for suspension do not apply.

(w) "Warning" means a "Letter of Warning," which is a letter from the Association to an Association member or MLS Participant or Subscriber advising of a lack of professional conduct or a violation of MLS rules determined by a "due process" hearing by a hearing Panel and warning that future similar conduct could result in further and additional discipline as provided in this Manual.

## **Section 2. Duties of Membership**

Among the duties of membership are the following:

(a) To abide by the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS® (NAR).

(b) To abide by the bylaws of this Association and its rules and regulations including the provisions and procedures of this Manual.

(c) To submit to arbitration all controversies specified in Part Two of this Manual by the procedure there provided, and to abide by the arbitration award.

## **Section 3. Power to Take Disciplinary Action Against an Association Member**

After a hearing as provided below, the Directors may take disciplinary action against any member:

(a) **Membership Duty; Code of Ethics.** For violation by the member of any duty of membership including a violation of the NAR Code of Ethics while a member of any Association of REALTORS®.

(b) **Court or Regulatory Action.** On the member's being convicted, adjudged, or otherwise recorded as guilty by a final judgment of any court of competent jurisdiction of 1) a felony or 2) a crime involving moral turpitude, or 3) on a member's being determined by any court of competent jurisdiction, or official of the State of California authorized to make the determination, of having violated a provision of the California real estate law or a regulation of the Real Estate Commissioner.

(c) **Responsibility of Designated REALTOR®.** For any violation of subsection (a) by a member who is not a Designated REALTOR®, the Designated REALTOR® may be also found in violation provided he or she was the Designated REALTOR® for that member at the time the alleged violation occurred. In such instance, both may, but are not required to be joined as respondents in any proceeding. The finding of a hearing Panel with respect to any violation by the Designated REALTOR® and the member employed by or affiliated with him or her as an independent contractor may be the same or different; and in the event both are found in violation, the sanctions, if any, may be the same or different.

(d) **Responsibility for Non-member.** For any violation of subsection (a) by any person who is not a member, but is employed by or affiliated with a member and was providing real estate related services within the scope of the member's license. Lack of knowledge by the member of such person's conduct shall only go to mitigation of discipline imposed.

## **Section 4. Duties of MLS Participants and Subscribers**

The duties of an MLS Participant or Subscriber shall be to abide by the MLS rules and regulations of the MLS to which they belong and the procedures set forth in Part One of this Manual.

## **Section 5. Power to Take Disciplinary Action Against an MLS Participant or Subscriber**

After a hearing as provided below, the Directors may take disciplinary action against any MLS Participant or Subscriber:

(a) **MLS Rule.** For violation of any MLS rule.

(b) **Court or Regulatory Action.** On the Participant's or Subscriber's being convicted, adjudged, or otherwise recorded as guilty by a final judgment of any court of competent jurisdiction of (1) a felony, or (2) a crime involving moral turpitude, or (3) on a determination by any court of competent jurisdiction, or official of the State of California authorized to make the determination, that the Participant or Subscriber violated a provision of the California real estate law or a regulation of the Real Estate Commissioner.

(c) **Responsibility for Non-Subscriber.** For any violation of subsection (a) by any person who is not a Participant or Subscriber, but is employed by or affiliated with a Participant or Subscriber and was providing real estate related services within the scope of the Participant's or Subscriber's license. Lack of knowledge by the Participant or Subscriber of such person's conduct shall only go to mitigation of discipline imposed.

## **Section 6. Nature of Discipline Against an Association Member**

(a) **Types of Disciplinary Action.** Disciplinary action may consist of one or more of the following:

- (1) Placement of a Letter of Warning as defined in Section 1(w) in the member's file for a specified period of time lasting at least three (3) years;
- (2) Placement of a Letter of Reprimand as defined in Section 1(p) in the member's file for a specified period of time lasting at least three (3) years;
- (3) Imposition of a requirement for training as defined in Section 1(q);
- (4) Designation of an appropriate and reasonable fine as defined in Section 1(i) commensurate with the gravity of the determined violation not to exceed \$15,000 per party, per hearing;
- (5) Require Members to cease or refrain from continued conduct deemed to be in violation of the Code, or to take affirmative steps to ensure compliance with the Code, within a time period to be determined by the hearing panel. Where discipline is imposed pursuant to this subsection, the decision should also include additional discipline (e.g., suspension or termination of membership) that will be imposed for failure to comply by the date specified, and to continue to comply for a specified period not to exceed three (3) years from the date of required compliance.
- (6) Suspension of membership as defined in Section 1(u) for a stated period of time not less than thirty (30) days and not more than one (1) year, unless the suspension is for a remediable violation, as defined in Section 1(o), in which case the suspension shall be for the period that the violation remains uncorrected; or



(7) Expulsion from membership as defined in Section 1(g) for a stated period of one (1) to three (3) years, with reinstatement to membership only by application for membership as a new member after the specified period of expulsion, with the application considered on its merits;

(b) **Arbitration Requirement.** If the conduct for which suspension or expulsion is ordered consists of failure to submit a dispute to arbitration, the Directors may not permit the disciplined member to avoid suspension or expulsion without submitting to the arbitration unless in the meanwhile the controversy has been submitted to a court of law without any objection by any party that it should be arbitrated.

(c) **More than One Type of Discipline Permitted.** None of the foregoing shall preclude the hearing Panel from recommending and the Directors from imposing on any respondent one or more of the possible disciplinary actions, as determined by the gravity of the offense.

(d) **Alternative Discipline.** If the discipline imposed for violation of the Code of Ethics is payment of a fine or attendance and completion of education, the respondent's failure to complete the discipline in the time ordered shall automatically result in the respondent's suspension of membership until the discipline is fulfilled. Resignation by the respondent prior to fulfilling the discipline shall also result in the respondent's immediate suspension of membership.

(e) **Photo Requirement.** In the case of any discipline which is publishable under Section 39, the failure of a member to timely submit a photo and give authorization to publish the photo by signing and submitting a completed Form D-24 will result in suspension, and the discipline summary will still be published. If the member resigns prior to submitting the photo and Form D-24, the discipline summary will still be published,

and the member will be immediately suspended.

(f) **Administrative Processing Fee.** The Association may adopt a policy to assess members an administrative processing fee not to exceed five hundred (\$500) dollars if they are found in violation of the Code of Ethics or other membership duties. Any processing fee policy adopted by the Association and any subsequent processing fee assessed will be in addition to any discipline, including fines, and shall not be considered part of any disciplinary sanction imposed.

## **Section 7. Nature of Discipline Against an MLS Participant or Subscriber**

(a) **Types of Disciplinary Action.** Disciplinary action for violation of an MLS rule may consist of one or more of the following:

- (1) Placement of a Letter of Warning as defined in Section 1(w) in the individual's file for a specified period of time lasting at least three (3) years;
- (2) Placement of a Letter of Reprimand as defined in Section 1(p) in the individual's file for a specified period of time lasting at least three (3) years;
- (3) Imposition of a training requirement for as defined in Section 1(q);
- (4) Designation of an appropriate and reasonable fine as defined in Section 1(i) commensurate with the gravity of the determined violation not to exceed \$15,000 per party per hearing;
- (5) Require the MLS Participant or Subscriber to cease or refrain from continued conduct deemed to be in violation of the MLS Rules, or to take affirmative steps to ensure compliance with the MLS Rules, within a time period

to be determined by the hearing panel. Where discipline is imposed pursuant to this subsection, the decision should also include additional discipline (e.g., suspension or termination of MLS services) that will be imposed for failure to comply by the date specified, and to continue to comply for a specified period not to exceed three (3) years from the date of required compliance.

- (6) Suspension of MLS services as defined in Section 1(v) for a stated period of time not less than thirty (30) days and not more than one (1) year, unless the suspension is for a remediable violation, as defined in Section 1(p), in which case the suspension shall be for the period that the violation remains uncorrected; or
- (7) Expulsion from the MLS as defined in Section 1(h) for a stated period of one (1) to three (3) years, with reinstatement to MLS services by application as a new MLS Participant or Subscriber after the specified period of expulsion, with the application considered on its merits.

**(b) More than One Type of Discipline Permitted.** None of the foregoing shall preclude the hearing panel from recommending and the Directors from imposing on any respondent one or more of the possible disciplinary actions, as determined by the gravity of the offense.

**(c) Alternative Discipline.** If the discipline imposed for violation of an MLS rule is payment of a fine or attendance and completion of education, the respondent's failure to complete the discipline in the time ordered shall automatically result in the respondent's suspension of MLS until the discipline is fulfilled. Resignation by the respondent prior to fulfilling the discipline shall also result in the respondent's immediate suspension of MLS.

**(d) Administrative Processing Fee.** The Association may adopt a policy to assess Participants and Subscribers an

administrative processing fee not to exceed five hundred (\$500) dollars if they are found in violation of the MLS rules. Any processing fee policy adopted by the Association and any subsequent processing fee assessed will be in addition to any discipline, including fines, and shall not be considered part of any disciplinary sanction imposed.

## Section 8. Citations

**(a) For MLS Rules Violations.** The MLS Committee, subject to approval of the Board of Directors, may implement a schedule of fines for certain MLS rules violations and direct staff to issue citations for the specified MLS rules violations and implement a procedure whereby the Participants and/or Subscribers receiving the citation may either pay the amount specified on the citation or request a full hearing in accordance with the procedures set forth in Part One of this Manual.

**(b) For Code of Ethics Violations.** The Grievance Committee, subject to approval of the Board of Directors, may implement a schedule of fines for certain Code of Ethics violations and direct staff to issue citations for the specified Code of Ethics violations and implement a procedure whereby the REALTOR® receiving the citation may either (1) complete specified training (at the option of the Association); (2) pay the amount specified on the citation; or (3) request a full hearing in accordance with the procedures set forth in Part One of this Manual. Such Code of Ethics violations shall only be from those authorized in the C.A.R. Model Citation Schedule.

## Section 9. Grievance Committee

There shall be a standing committee, known as the Grievance Committee of at least five (5) Association members. Unless the Association's bylaws specify otherwise, at least a majority shall be REALTORS®. The members of the Committee shall be

appointed by the President, subject to confirmation by the Board of Directors, for staggered three (3) year terms, unless the term is otherwise specified by the Association's bylaws. One-third of the members of the first Committee so appointed shall be designated for one (1) year terms. The President shall annually designate the Chairperson and Vice Chairperson(s) of the Committee.

## **Section 10. Professional Standards Committee**

(a) **Membership; Terms.** There shall be a standing committee, known as the Professional Standards Committee, of at least nine (9) Association members. Unless the Association's bylaws specify otherwise, at least a majority shall be REALTORS®. The members of the Committee shall be appointed by the President, subject to confirmation by the Board of Directors, for staggered three (3) year terms, unless the term is otherwise specified by the Association bylaws. One-third of the members of the first Committee so appointed shall be designated for one (1) year terms. The President shall annually designate the Chairperson and Vice Chairperson(s) of the Committee.

(b) **Role of Committee Members.** Members of the Professional Standards Committee shall be selected to serve on hearing Panels as required to hear matters of alleged membership duty and ethical misconduct by Association members that may result in discipline. In addition, the Committee hears alleged violations of MLS rules by MLS Participants or Subscribers under the provisions of Part One of this Manual and provide arbitration as requested under the provisions of Part Two of this Manual.

## **Section 11. Multi-Association Professional Standards Hearings and Shared Panelists**

(a) **Multi-Association Program.** Notwithstanding any provision of this Manual, the Association may, by mutual resolution of the Boards of Directors of the affected Associations agree with other Associations to establish multi-Association professional standards programs, in which case the members of a Panel may include members from the participating Associations.

(b) **Sharing Panelists.** Notwithstanding any provision of this Manual, the Association may, by mutual resolution of the Boards of Directors of the affected Associations, agree with other Associations to share its Grievance Committee and Professional Standards Committee members and Board of Directors on reviews, in which case the members of a Panel may include members from the reciprocating Association's respective Grievance Committee, Professional Standards Committee and Board of Directors.

## **Section 12. Interpretation of Bylaws**

If the interpretation of any provision of the bylaws or rule or regulation relative to the procedure of a hearing Panel's handling of a matter is raised and submitted to the hearing Panel by one or more of the parties, the interpretation by that hearing Panel of the bylaw or rule or regulation, including any interpretation of this Manual, shall be set forth as a separate finding and shall be conclusive and final, except that the Directors on review of a hearing Panel's decision shall not be bound by that hearing Panel's interpretation of the bylaws or this Manual. Failure of a hearing Panel to set forth its interpretation as required by this Section shall not invalidate the decision of the hearing Panel.

## Section 13. Notices

(a) **Methods of Notice by Association.** Any notice required to be given or paper required to be served by the Association may be given or served by personally handing it to the party to be notified, by sending via first class mail, by any mail delivery service or by certified mail addressed to the mailing address on the records of the Association, or sent to the party by email. When possible, email is the preferred form of service for notices and documents sent by the Association pursuant to the procedures specified in this Manual. If mailed or delivered by the Association, notice shall be deemed given when placed in the mail or when given to the delivery service and deemed received within five (5) calendar days of such mailing or delivery, regardless if actually received or not.

(b) **Email Notices.** Notices sent by email shall include the Association's request that delivery be acknowledged by the intended recipient within twenty-four (24) hours by return email. If receipt of the notice has not been acknowledged by the intended recipient within twenty-four (24) hours, the recipient will be contacted by telephone to confirm receipt and the recipient's confirmation will be noted in the file. If receipt of notices sent by email cannot be confirmed, the notices will be resent via first class mail, by any mail delivery service or by certified mail.

(c) **Names of Hearing Panel Members.** Notice of any hearing shall include the names of the members of the hearing Panel at the time said notice is given.

(d) **Timing of Notices for Hearings.** Notice of any hearing, except for an adjourned or continued hearing, shall be given not less than twenty-one (21) calendar days beforehand, unless otherwise agreed by all the parties. An optional "fast track" process for notice, receipt, consideration and resolution of ethics complaints may be adopted by the Association. The timelines

for the "fast track" process are published in the supplement to this Manual.

## Section 14. Waiver; Copyright Representation and Indemnification Agreement for Photos

Each member, MLS Participant or Subscriber, by virtue of and in consideration of membership or MLS services, waives any right of personal redress against C.A.R., the Association, C.A.R. or Association employees, any member, including but not limited to, members of a Panel, or witnesses for anything done under these procedures. This includes, but is not limited to submitting a photo pursuant to Section 39, by which the member represents that the member is the copyright owner of the photo submitted to C.A.R. and the Association or has the right to license the photo to C.A.R. and the Association for publication according to the guidelines in this Manual. The member agrees to indemnify C.A.R., the Association, their affiliates, and their respective directors, officers, members, employees, agents, licensees, shareholders and subcontractors from and against any and all claims, losses, damages, liabilities and expenses, including reasonable attorneys' fees, court costs and other legal expenses, which it or they may suffer or incur in connection with any claim that the submitted photo infringes upon any third party's copyright or other intellectual property or proprietary right.

## Section 15. Communication and Clerical

Communications shall be directed to the Association Executive. The Association Executive shall render all necessary assistance to the parties, shall on application furnish required forms, shall receive and file all documents or other papers, and shall receive all fees and disburse all monies payable to the Association. In no event, however, shall the Association Executive provide substantive advice or interpretation

of this Manual, Association bylaws or other governing documents.

## **Section 16. Attempts to Influence Panel**

No party or party's attorney shall contact the hearing Panel members outside the hearing with regard to the hearing, and shall not attempt, directly or indirectly, to influence a member of a Panel in any matter before it, other than by giving evidence and argument in an open hearing.

## **Section 17. Confidentiality of Proceedings**

(a) **Confidentiality Obligations; Reporting to C.A.R.** All proceedings, including the allegations, findings, recommendations and decisions in disciplinary proceedings, are confidential and shall not be reported or published by the Association, any member of a Panel or any party, except all proceedings, including the allegations, findings, recommendations and decisions in disciplinary proceedings shall be reported to C.A.R. in accordance with policy adopted by the C.A.R. Directors, which requires that each Association submit such information to C.A.R. through a secure repository maintained by C.A.R. and as authorized in this Section and Section 39. Upon the conclusion of the proceedings, the Association, all Panel members and the parties shall have an obligation to maintain and protect this confidentiality except where disclosure is authorized in this Manual, including but not limited to, Section 39 regarding Publication by C.A.R. and Association Members, or as required by law.

(b) **C.A.R. Publication.** Except as provided below, if a member is found in violation of the Code of Ethics, C.A.R. shall publish the following information regarding the violation(s): (1) name and photo of the member found in violation (but not the name of the firm the member is, or was, affiliated with); (2) if the responsible broker is also

found in violation, the name of the responsible broker will also be published; (3) if a member's name is similar to another member's or MLS Participant's name, the member's real estate license number and/or office address may also be included; (4) the Article(s) of the Code of Ethics violated, (5) a brief factual synopsis of the matter with names redacted (except for the respondents found in violation); (6) discipline imposed; and (7) the effective date and duration of the discipline, if applicable; and (8) rationale in mitigation or aggravation for the discipline, if applicable. This information will be published on one or more of any authorized C.A.R. communications vehicles, such as the C.A.R. website or magazine. The information will be removed from the C.A.R. website three (3) years after initial publication.

All discipline will be published except letters of warning, cease and refrain orders, and/or education that does not include a letter of reprimand, fine, suspension or expulsion. However, if a suspension or fine is imposed because the member does not comply with the education requirement or cease and refrain order, the discipline will be published when the suspension or fine is imposed. Citations under the Ethics Citation or MLS Citation systems will not be published by C.A.R.

(c) **Local Association Publication.** The local Association's Board of Directors may, but is not required to, adopt a policy to publish discipline in its local Association communications vehicle(s) available to its members. The local Association may adopt a policy to publish discipline that uses the same criteria as C.A.R.'s publication policy as set forth in Section 39 and Section 17(b). The local Association may also adopt, in addition to or instead of the C.A.R. publication criteria, a policy to publish discipline when a member is found in violation of the Code of Ethics a second time within a (3) year time period. Any discipline published by a local Association shall include the member's name, the fact that the member has been found in violation of the Code of Ethics, the

Article(s) violated, and the discipline imposed. Published discipline shall not include the name of the firm the member is, or was, licensed or affiliated with. In cases where the member's name is similar to another Association member's or MLS Participant's or Subscriber's name, the member's real estate license number or office address (or both) may also be published.

(d) **Acceptable Disclosure.** The Panel members shall not discuss the proceedings, including the Panel's deliberations, with any person(s) other than the other members of the Panel, Association staff or legal counsel, the Board of Directors of the Association, or as may be required by this Manual, the MLS rules, the bylaw provisions of the Association or where disclosure is required by law. Members of the Grievance Committee acting pursuant to the provisions of Section 24 of Part One of this Manual shall not be precluded from discussion necessary to the preliminary review.

(e) **Obligations of the Parties.** The parties shall not report or publish the allegations, findings or decisions of any disciplinary proceeding to anyone except as may be required by law. Notwithstanding, the respondent in a disciplinary hearing is authorized to disclose the decision to vindicate that respondent's professional reputation. Any party to a disciplinary proceeding is authorized to disclose the decision where there is a civil proceeding involving the same facts and circumstances which gave rise to the proceeding before the Association.

(f) **Enforcement.** Actions inconsistent with this Section shall be deemed a membership or MLS duty violation. However, such actions shall not invalidate any decision made by a Panel.

## **Section 18. Right to Counsel/Other Representation**

(a) **Right to Counsel; Ethics Advocate.** Any party may be represented by legal counsel or by a REALTOR® (or both) at any ethics hearing, including reviews, even where the hearing will occur in the party's absence. If the Association has adopted the Ethics Advocate (EA) program, a sub-committee of the Professional Standards Committee of REALTORS® will be specially trained to represent parties during the disciplinary process. The role of legal counsel or EA may include preparation for hearing, including the preparation of forms and assembly of evidence, representation at the hearing, including the making of opening and closing statements on behalf of the party represented at the hearing, examining and cross examining witnesses, and introducing affidavits, documents and other relevant evidence, and representation at any review hearings, but does not include testifying as a witness. In the event the parties do not give fifteen (15) days' notice of their intention to have legal counsel or EA representation to the Association and all other parties, the hearing may be continued, and the party giving late notice may be assessed a continuance fee. An Association is not required to provide an EA for a party if the Association has not adopted the EA program. Where an ethics hearing takes place in a respondent's absence, the respondent is still entitled to be represented by counsel at the hearing.

(b) **Notice of Representation.** Notice of intention to have representation, including the representative's name, address, and phone number must be given by the party to all other parties and the hearing Panel at least fifteen (15) calendar days before the hearing. In the event of failure to comply with this notice requirement the hearing Panel may, at its discretion, take all steps, including continuance of the matter, if necessary, to guarantee the rights of all parties to representation by counsel.

(c) **Association Legal Counsel.** Any Panel and the Directors may consult with or have legal counsel present to advise them on issues of procedure and law.

## **Section 19. Qualification for Panel**

(a) **Business Limitation.** Only one person connected with any firm, business, partnership or corporation may serve on the same Panel.

(b) **Panel Limitation.** No individual may participate in the deliberation of more than one Panel on the same matter.

(c) **Automatic Disqualification.** A person shall automatically be disqualified to be a member of a Panel in any case in which he or she is 1) a party; 2) related by blood or marriage (to the fourth degree) to a party; or 3) an employer, employee, partner or other business associate of a party.

(d) **Certificate of Qualification.** Before sitting on any case, each member of a Panel shall sign a statement (Form D-7) that he or she is not disqualified for any of the reasons described in Section 19(c) and that he or she knows of no other reason that might prevent him or her from rendering an impartial decision.

(e) **Discussion Prior to Hearing.** Every member of a hearing Panel (except a member of the Grievance Committee acting pursuant to the provisions of Section 24 of Part One of this Manual) shall avoid, so far as possible, discussing the case with any person prior to the hearing. If he or she does engage in any such discussion prior to the hearing, he or she must disclose the fact to the parties and to the other members of the hearing Panel as soon as practicable but no later than at the beginning of the hearing. Upon such disclosure, any party may challenge a member of a hearing Panel and, if the hearing Panel agrees, at the option of the hearing Panel, that member of the hearing Panel shall be dismissed, and a new hearing Panel member shall be selected. A party waives

any objection under this Section by failure to object prior to the commencement of the hearing.

(f) **Request for Disqualification.** Any party may file with the Association Executive a written request for disqualification of a member of a hearing Panel stating the grounds alleged as the basis for disqualification (Form D-5). Challenges submitted by any party pursuant to this Section shall be decided by the Professional Standards Chairperson or his or her designee. A party shall be deemed to have waived any grounds of disqualification of which he or she then has knowledge unless he or she files the request within ten (10) calendar days after the prospective names are transmitted to the parties. However, any member of a hearing Panel may be disqualified at any time if a majority of the members of a hearing Panel find any automatic grounds of disqualification to be present under this Section, or find any other facts which, in their judgment, may prevent the member from rendering an impartial decision or appear to do so. However, none of the foregoing is to be construed as to allow a challenge to the qualifications of members of the Association's Grievance Committee.

(g) **Absent Panel Member.** If a hearing Panel member fails or is unable to participate in a hearing, the remaining hearing Panel members may, at their option, but only with the express consent of the parties, proceed with the hearing. Only the remaining hearing Panel members may participate in the hearing and the determination thereof. Should any hearing Panel member absent him or herself during the progress of the actual hearing, that individual shall likewise not participate in the deliberations or determinations thereof. If all the parties do not agree to proceeding without the full number of the Panel originally designated, the Presiding Officer or his or her designee of the hearing Panel will recess the hearing to a date on which all hearing Panel members can be present. If the Presiding Officer or his or her designee cannot at that



time schedule a new date, notice of a subsequent date shall be served on all parties herein provided.

## **Section 20. Filing a Complaint**

### **(a) Who May File; Where to File.**

Any person, whether a member or not, having reason to believe that a member, Participant or Subscriber is in violation of any conduct subject to disciplinary action under Sections 2 and 4 of Part One of this Manual may file a complaint in writing with the Association (Form D-1) where the respondent is a member or where the property at issue is located. In the event the complaint is filed at the Association where the property at issue is located, the Association where the complaint is filed shall obtain a cooperative enforcement agreement with the Association where the respondent is a primary member. The Association Executive may require the complainant to supply the necessary number of copies of the complaint.

**(b) Timing of Filing.** A complaint meeting all filing requirements must be filed within one hundred and eighty (180) calendar days after the facts constituting the matter complained of could have been known in the exercise of reasonable diligence or one hundred eighty (180) days after the conclusion of the transaction, or event, whichever is later. When a party utilizes the Association or C.A.R. ombudsman program, the filing deadline is suspended until the case is reported closed by the ombudsman.

**(c) Preliminary Review.** The Association Executive may conduct a preliminary review of the complaint to determine whether the complaint is subject to disciplinary action by the Association and otherwise complies with the filing requirements of this Manual. The Association Executive shall only conduct such preliminary review as is necessary to make this determination and any decision reached by the Association Executive shall not be considered a decision on the merits of the dispute. In the event there is a dispute as

to whether a complaint has been properly filed, the Association Executive shall refer such disputes to the hearing Panel for consideration. Directly before the hearing, both parties will be given the chance to argue before the hearing Panel as to whether the complaint was timely filed, and the hearing Panel will decide whether to proceed with the complaint or dismiss the complaint for not being timely filed.

**(d) Disciplinary and Arbitration Complaints Filed Together.** If both a disciplinary and an arbitration complaint are filed against the same Respondent and arising out of the same matter, the disciplinary complaint is processed through the Grievance Committee first. If the Grievance Committee recommends that the matter be forwarded for a hearing, the complaint should be held in abeyance pending the outcome of the arbitration. The disciplinary hearing is held after the arbitration has been completed and must be before a different hearing Panel.

**(e) Ethics Advocate.** If the Association has adopted the Ethics Advocate program, the complainant may request the assistance of an Ethics Advocate (“EA”), by submitting a Request for Ethics Advocate packet (Forms D-23, D-23A & D-23B) to the Association. The EA is authorized to help the complainant draft the Complaint (Form D-1) and other forms required for the disciplinary process. In addition, the EA may represent the complainant at the hearing, as set forth in Section 18(a).

## **Section 21. Designated REALTOR® as a Respondent in an Ethics Hearing**

**(a) Optional Addition to Complaint.** If anyone other than a Designated REALTOR® is named as the respondent in a complaint alleging ethical misconduct, that individual's Designated REALTOR® as defined by the Association bylaws, at the time of the acts giving rise to



the complaint may, but is not required to be, named as a respondent.

(b) **Notice to Designated REALTOR®; Right to Attend.** If a Designated REALTOR® is not named as a respondent, the Designated REALTOR® shall receive notice and a copy of the complaint and all subsequent information regarding the complaint including any decision of a hearing Panel and any final action taken by the Board of Directors. The Designated REALTOR® shall also have the right to attend and be present at any hearing or review regarding the complaint without any requirement to provide notice of attendance. The Designated REALTOR® may make opening and closing statements on behalf of the respondent, examine and cross-examine parties and witnesses, introduce affidavits, documents and other admissible relevant evidence, consult with or testify on behalf of the respondent, and respond directly to questions from the Panel.

## **Section 22. MLS Participant as a Respondent in an MLS Rules Hearing**

(a) **Optional Addition to Complaint.** If anyone other than an MLS Participant is named as the respondent in an MLS rules hearing, that individual's MLS Participant as defined by the MLS Rules, at the time of the acts giving rise to the complaint may, but is not required to be, named as a respondent.

(b) **Notice to MLS Participant; Right to Attend.** If a MLS Participant is not named as a respondent, the MLS Participant shall receive notice and a copy of the complaint and all subsequent information regarding the complaint including any decision of a hearing Panel and any final action taken by the Board of Directors. The MLS Participant shall also have the right to attend and be present at any hearing or review regarding the complaint.

## **Section 23. Joinder of Multiple Parties or Complaints**

Upon request of a party or upon its own motion, the Grievance Committee or the hearing Panel may join together multiple complaints arising out of the same set of circumstances or multiple parties involved in the same transaction to be heard at the same time. In addition, the Grievance Committee or the hearing Panel may join together complaints alleging an MLS rules violation and complaints alleging unethical misconduct involving the same parties and arising out of the same transaction to be heard at the same time.

## **Section 24. Action of the Grievance Committee**

(a) **Review of Complaint by Grievance Committee.** The Association Executive shall promptly refer any complaint submitted according to Section 20 of Part One of this Manual to the Chairperson of the Grievance Committee, who, no later than forty-five (45) calendar days after the Association's receipt of the complaint, shall arrange to have the complaint reviewed by the Grievance Committee or designate three or more members of the Grievance Committee to (1) designate the complaint for a citation as set forth in Section 8(b); (2) dismiss the complaint as unworthy of further consideration; (3) refer it back to the complainant as appropriate for arbitration prior to or instead of a disciplinary hearing; or (4) refer it back to the Association Executive for hearing.

(b) **Preliminary Nature of Review.** The Grievance Committee is to make only such preliminary review and evaluation of the complaint as required to determine whether the complaint warrants further consideration by a hearing Panel of the Professional Standards Committee. The Grievance Committee does not conduct hearings and does not determine if a violation

of the Code of Ethics, Association bylaws or MLS Rules has occurred.

(c) **Request for Hearing after Citation.** If, after receiving a citation for violation of the Code of Ethics as set forth the Section 8(b), the respondent requests a hearing under Part One of this Manual, the Grievance Committee shall reexamine the complaint and may amend it in accordance with this Section 24.

(d) **Grievance Committee as Complainant.** Upon its own motion, the Grievance Committee may, and upon instruction of the Directors must, investigate the actions of any member when there is reason to believe that the member's conduct may be subject to disciplinary action. If the evidence warrants a hearing, the Grievance Committee shall prepare a complaint, refer it to the Association and designate one or more of its members on behalf of the Grievance Committee as complainant to present the case at the subsequent hearing.

(e) **Presenting the Case on Complainant's Behalf.** If the Association does not have an Ethics Advocate to assist the complainant and if the complainant is someone other than the Grievance Committee, upon the complainant's request, the Grievance Committee may, but is not required to, designate one or more of its members to present the case at the subsequent hearing on the complainant's behalf. Another alternative is for the Association to borrow an Ethics Advocate from another association of REALTORS® in California.

(f) **Amending the Complaint.** If the Grievance Committee determines that the respondent's alleged conduct may be the basis for a violation but that an inappropriate membership or MLS duty has been cited, the Grievance Committee may amend the complaint by deleting or adding the appropriate duty based on the facts alleged in the complaint. If the Grievance Committee determines that a membership or MLS duty should be added to the complaint, and the

complainant will not agree to the addition, the Grievance Committee files its own complaint and both complaints will be heard simultaneously by the same hearing Panel.

(g) **Dismissing Allegations in a Complaint.** If the complaint asserts multiple allegations and the Grievance Committee determines that one or more of the allegations would not warrant a hearing, that portion of the complaint may be dismissed while the balance of the complaint is forwarded for a hearing before a hearing Panel of the Professional Standards Committee.

(h) **Joinder.** The Grievance Committee may join together multiple parties or complaints as provided in Section 23 of this Manual.

(i) **Anonymous Complaints.** An Association's Board of Directors may decide whether or not to accept anonymous complaints. If an Association does accept anonymous complaints, a Subcommittee of the Grievance Committee shall review and may investigate an anonymous complaint and 1) dismiss the complaint as unworthy of further consideration; 2) notify the respondent of the complaint and give an opportunity to correct; 3) refer the complaint to the Professional Standards Committee for hearing; or 4) issue an ethics citation. If the Subcommittee, on behalf of the Grievance Committee, refers the matter for hearing, the Grievance Committee shall be the complainant and one of the members of the Subcommittee shall represent the Grievance Committee at the hearing.

(j) **Disclosure of Decision.** Any decision by the Grievance Committee shall not be disclosed to any person except the Professional Standards chairperson, the hearing Panel, the complainant(s), respondent(s), Association staff and legal counsel, or a Panel of the Directors upon review.

## Section 25. Review of Grievance Committee Decision

(a) **Request for Review.** Within ten (10) calendar days from the date the Grievance Committee decision is sent to the complainant, the complainant may request in writing (Form G-4) a review by a Panel of the Directors of a decision to dismiss the complaint or to delete a membership duty or MLS rule from the complaint.

(b) **Directors' Review.** The President will select a Panel of the Directors (not less than three (3)) to conduct the review. When conducting the review, the Directors are subject to automatic disqualification under the grounds set out in Section 19 of Part One of this Manual. Each Director must sign a statement (Form D-7) that he or she is not disqualified for any of the above reasons, and he or she knows of no other reason that might prevent him from rendering an impartial decision. The review Panel will consider only the information and documentation considered by the Grievance Committee. The parties shall not be present during the review.

(c) **Decision of the Directors.** The decision of the Panel of Directors conducting the review shall be final. If the Directors affirm the decision to dismiss, the complainant shall be notified and the complaint dismissed. If the decision of the Directors is to send the full complaint, or portions of the complaint, forward to a hearing, the complainant shall be notified and the complaint processed in accordance with Section 28 of Part One of this Manual. If the review is based on the Grievance Committee's decision to delete a membership or MLS duty from the complaint, and the Panel of Directors affirm this decision, the complaint shall be processed in accordance with Section 28 of Part One of this Manual. If the Panel of Directors amends the complaint to add any or all of the deleted membership or MLS duties, the amended complaint shall be sent to the complainant for signature and then processed

in accordance with Section 28 of Part One of this Manual.

(d) **No Request for Review.** If there is no written request for review made within ten (10) calendar days after notice of the Grievance Committee decision is sent, the decision of the Grievance Committee shall be final.

## Section 26. Withdrawal of Complaint

(a) **Prior to the Hearing.** If after the Grievance Committee has recommended that a hearing be arranged, but before the hearing Panel is convened, a complainant requests withdrawal of the complaint, the Association Executive shall promptly refer the matter back to the Grievance Committee for a determination whether a potential violation of the public trust (as defined in Sections 1(n) and 39(i) of Part One of this Manual) may have occurred. Only where the Grievance Committee determines a potential violation of the public trust may have occurred may the Grievance Committee proceed as the complainant. However, see subsection (b) for the different rule if the complaint is sent back to the Grievance Committee after the hearing is convened. Additionally, at any time after the disciplinary complaint has been submitted and acknowledged by the Association Executive, the complainant must respond to any communications from the Association Executive within ten (10) business days. If no response is received from the complainant after ten (10) business days, the Association may consider the complaint withdrawn.

(b) **During the Hearing.** After a hearing Panel has been convened, a complaint may be withdrawn only with the Panel's approval. In such event, the Panel shall refer the complaint back to the Grievance Committee. If the Grievance Committee determines there is sufficient information to go forward with the hearing, even if the complaint does not involve a potential violation of public trust, the

complaint shall be amended to name the Grievance Committee as complainant and the hearing shall be continued to a new date. The respondent shall be provided with a copy of the amended complaint in such case. The Panel may also refuse to allow the complaint to be withdrawn and proceed with the hearing, or allow the complaint to be withdrawn with no further action. Such withdrawal under subsection (a) or (b) of this Section would not constitute a decision on the merits.

## **Section 27. Amendment of Complaint**

(a) **Prior to the Hearing.** At any time prior to the hearing on the complaint, the complainant may file an amended complaint (i.e. add or delete Articles and/or respondents) with the Association Executive. If an amended complaint is filed prior to the hearing being convened, the complaint shall be sent to the Grievance Committee for review in accordance with the provisions of Section 24 of Part One of this Manual. If the Grievance Committee refers the amended complaint for a hearing, the Association Executive shall follow those procedures set forth in Section 28 of Part One of this Manual. If the Grievance Committee does not refer the amendment for a hearing, the matter shall proceed on the original complaint. If the complainant submits additional documentation, the matter does not need to be reviewed again by the Grievance Committee. Complaints cannot be amended to add, or substitute, other individuals as complainants except as mutually agreed to by the parties.

(b) **During the Hearing.** At any time during the hearing, the complaint may be amended either by the complainant or upon motion of the hearing Panel. The hearing Panel may disallow the requested amendment and proceed to hear the original complaint. If the amended complaint is allowed, the amended complaint shall be filed in writing, signed by the complainant or by the Presiding

Officer, a copy given to the respondent, and a continuance granted if requested by a party.

(c) **Joinder.** The hearing Panel may join together parties or complaints as set out in Section 23 of Part One of this Manual. In such event, the procedures of subsection (b) of this Section shall be followed.

## **Section 28. Initiating a Disciplinary Hearing**

### **(a) Documents Sent to the Parties.**

After a complaint has been referred to the Association Executive by the Grievance Committee with instruction to arrange a hearing, the Association Executive shall transmit to each respondent: 1) a copy of the complaint; 2) the Notice to Respondent (Form D-2); 3) the Request for Ethics Advocate packet (Forms D-23, D-23A & D-23B), if the Association has adopted the Ethics Advocate program; and 4) the Response (D-3) with directions to return the Response and Request for Ethics Advocate packet within fifteen (15) calendar days from the date the request for the Response was transmitted to the respondent. The Association Executive may require the respondent to supply the necessary number of copies of the Response. The Association Executive shall concurrently at this time transmit both the complainant and respondent a list of names of members of the Professional Standards Committee from which the disciplinary hearing Panel will be selected, the Notice of Right to Challenge Panel Members and Availability for Hearing (Form D-4), and the Reasons for Challenge – Panel Member (Form D-5).

(b) **Respondent Request for Ethics Advocate.** If the Association has adopted the Ethics Advocate program, the respondent may request the assistance of an Ethics Advocate (“EA”), by submitting the Request for Ethics Advocate packet (Forms D-23, D-23A & D-23B) to the Association. The EA is authorized to help the respondent draft the Response (Form D-3) and other forms required for the disciplinary process. In

addition, the EA may represent the respondent at the hearing, as set forth in Section 18(a).

**(c) Response not Required; Late Filing.** The respondent may submit a response, but regardless of whether he or she does or not, the hearing may be scheduled and conducted in the absence of the respondent. A hearing Panel may accept late filing of the response at its discretion.

**(d) Notifying Complainant of Response.** Not later than fifteen (15) calendar days from the date of transmitting the complaint to the respondent, the Association Executive shall transmit copies of the response, if any, to the complainant or notify the complainant that no written response has been filed.

**(e) Selecting the Hearing Panel.** From the names of members of the Professional Standards Committee not challenged by either party within fifteen (15) calendar days from the date the names are transmitted to the parties, the Chairperson of the Professional Standards Committee or his or her designee shall then select from the Professional Standards Committee a hearing Panel as provided in subsection (f) of this Section and Section 19 of this Manual. It shall be a membership duty of anyone so appointed to serve on a hearing Panel unless disqualified.

**(f) Composition of Hearing Panel.** A hearing Panel must have an odd number of members (not less than three) except as provided in Section 19(g) of this Manual. If the Association's bylaws require a majority of real estate brokers on the Professional Standards Committee, a majority of each Panel shall be licensed real estate brokers. If the complainant or respondent is a salesperson (either a licensed salesperson or licensed real estate broker acting in the capacity of a salesperson), a hearing Panel member shall also be a salesperson.

**(g) Presiding Officer.** The Professional Standards Committee Chairperson or his or her designee shall select one (1) of the hearing Panel members to be the Presiding Officer. The Presiding Officer will be responsible for conducting the hearing and may prescribe any procedure for the hearing not inconsistent with the provisions of this Manual.

**(h) Alternate Panel Member.** The Professional Standards Committee Chairperson or his or her designee may select an alternate from the list of members of the Professional Standards Committee not challenged to attend the hearing. The alternate will not participate in any phase of the process unless the alternate is asked to substitute for one of the original hearing Panel members for any reason. The alternate has the same duties of confidentiality as the other hearing Panel members.

**(i) Notice of Date, Time, and Place of Hearing.** No later than twenty (20) calendar days after the Grievance Committee decision to forward a complaint for a hearing is final, the Association Executive shall designate the date, time and place of the hearing and shall notify the parties and hearing Panel in writing (Form D-6). Each party shall be given at least twenty-one (21) calendar days prior notice of the hearing but appearance at a hearing without objection by any party will constitute a waiver of such notice requirement.

**(j) Waiver of Objection to Panel Member; Appointing Replacement to Challenged Panel Member.** A party will be deemed to have waived all objections to any person whose name he or she does not challenge, as provided in Section 19 of Part One of this Manual. If a challenge to proposed members of the hearing Panel results in an insufficient number of members to constitute the Panel, the President may appoint other qualified Association members to serve as hearing Panel members.

(k) **Notification of Procedure.** The Association Executive shall provide to each party the outline of procedure prior to the hearing (Form D-8).

### **Section 29. Duty to Give Evidence**

When requested by a party to a hearing, giving not less than ten (10) calendar days' notice, or when summoned by any Panel to do so, members, MLS Participants and Subscribers shall appear at the hearing, produce any records or data pertinent to the case and designated by the hearing Panel, and to testify truthfully. It shall be a membership duty and an MLS rules requirement to comply with such requests. Once evidence has been submitted at a hearing by a party, the party does not have the right to ask the other party or the hearing Panel to return or destroy that evidence. All parties who appear (in-person and remotely) at a hearing are required to answer all questions by the Panel and by any other party and are not entitled to advance notice. Refusal of a party to appear at a disciplinary proceeding, to submit him or herself or his or her records to examination or to comply with a request of the hearing Panel for relevant information may be deemed an admission of the truth of the claim against him or her. The presiding officer of the hearing Panel may allow a party or witness to remotely testify or attend the hearing upon written request, as long as the Panel is satisfied that safeguards are in place to assure the identity of the person testifying or attending and the confidentiality of the hearing.

### **Section 30. Witnesses**

Every party must have his or her own witnesses present at the hearing, and the hearing Panel may summon its own witnesses. All witnesses, except the parties to the hearing, will be excused from the hearing room except while testifying. Upon written request, as long as the Panel is satisfied that safeguards are in place to assure the identity of the person testifying and the confidentiality of the hearing, the presiding

officer of the hearing Panel may allow a witness to testify remotely.

### **Section 31. Continuances**

Request for continuance of a hearing shall be in writing and state the reason for the request. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date or when the Professional Standards Chairperson, his or her designee, or the hearing panel chair determines that denying the request for continuance would deny the requesting party a fair hearing. Continuances requested after a hearing has convened shall be considered by the hearing Panel, and granted as necessary.

### **Section 32. Continuance Fees**

Each party shall be entitled to one continuance of a hearing, for good cause, without assessment of a continuance fee. For all subsequent requests for continuance, the Board of Directors may establish a schedule of fees. If a continuance is requested because of failure to adequately notify the Association and opposing party of representation by counsel or a REALTOR®/Ethics Advocate, or because counsel or a REALTOR®/Ethics Advocate is obtained to represent a party after the hearing date has been set but the counsel or REALTOR®/Ethics Advocate is unavailable on the date set for the hearing, the party responsible for the continuance may be assessed a continuance fee, not the party requesting the continuance.

### **Section 33. The Hearing**

(a) **Statements of Qualification; Acknowledgment of Receipt of Outline of Procedure.** The hearing Panel, prior to the hearing, must sign a statement certifying that they are unaware of any reason why they should be disqualified from serving on the hearing Panel (Form D-7). At the beginning of the hearing, each party shall sign a statement to the effect that he or she has

received and read the outline of procedure (Form D-9) and either 1) understands the procedure and has no objection or questions concerning it; or 2) specifies what objections or questions he or she has and what changes he or she desires. The hearing Panel shall act upon any such objection or request as it deems proper.

**(b) Conducting the Ethics Hearing.**

The parties to the dispute shall with diligence present to the hearing Panel in writing such statements and proofs as they desire. Proofs may be submitted in the form of affidavits or otherwise. The hearing Panel may require that statements be verified by affidavit or that the accuracy or authenticity of any documents or other papers submitted be verified by affidavit. The hearing Panel shall receive oral testimony if any party to the disciplinary hearing requests, or if in the hearing Panel's opinion, it is necessary or desirable. The hearing Panel may determine what personal appearances should be made by the parties and regulate the holding of hearings. The hearing Panel may receive and consider any evidence it deems material and proper.

**(c) Presentation of Evidence at the Hearing.**

At any hearing every party has the right to present any witnesses, to submit any evidence pertinent to the case, and to cross-examine witnesses of others. Witnesses giving oral testimony shall be sworn by the presiding officer. Before permitting testimony relating to the character or general reputation of anyone, the hearing Panel shall satisfy itself that the testimony has a direct bearing on the case at issue. If a party wishes to present visual, audio, or video evidence at the hearing, it is that party's responsibility to provide the equipment necessary to display or play the evidence for the hearing Panel.

**(d) Failure of Respondent to Appear at Hearing.** The hearing Panel may hear and determine the controversy upon the evidence produced at the hearing notwithstanding the failure of the respondent,

who has been duly notified, to appear, and who is not appearing remotely as set forth in Section 29. If only the complainant appears at the hearing, he or she may rest upon the evidence submitted with his complaint. The hearing Panel may not find against a respondent solely by reason of his or her failure to appear.

**(e) Failure of Complainant to Appear at Hearing.**

If the complainant fails to appear and has not been granted permission to appear remotely as set forth in Section 29, the complaint shall be dismissed or at the hearing Panel's discretion be referred back to the Grievance Committee for consideration under Section 26(b) of Part One of this Manual.

**(f) Recess and Postponement.**

The hearing Panel may recess the hearing from time to time as necessary and, on request of a party or upon the Panel's own motion, may postpone the hearing for not less than fifteen (15) calendar days nor more than thirty (30) calendar days, unless otherwise agreed to by the parties.

## **Section 34. Transcript/Right to Record**

**(a) Recording the Hearing.**

The Association shall either have a court reporter present at the hearing or record the proceedings. The Association's transcript or recording shall be considered the official record of the proceeding. A party may, at their own expense, have a court reporter present. A party may not record the proceedings unless the Association chooses to only have a court reporter, in which case, the party may record the proceedings. If a party has any transcript prepared, the party shall provide and pay for a copy for the Association.

**(b) Request for Copy of Recording.**

If the time period to request a Directors' review has not lapsed, any party to a hearing has a right to obtain a copy of the Association's official record of the

proceeding upon payment of the Association's fees for duplication. In the event one party to a hearing has requested a copy of the recording prior to the lapse of the time period for a Directors' review, any other party to the hearing may also request a copy of the recording prior to the Directors' review. Any duplication will be conducted under the supervision of the Association. Parties are authorized to use recordings or transcripts from hearings only for the purpose of a Directors' review of the case. Any unauthorized use of the recordings or transcripts shall be construed as a violation of Article 14 of the N.A.R. Code of Ethics and of these procedures.

(c) **Destruction of Transcript or Recording.** Any transcript or recording of a hearing shall be destroyed upon final action of the Directors.

### **Section 35. Interpreters and Translators**

(a) **Selection.** In the event a non-English speaking party in a disciplinary case requires an interpreter, or in the event a party requires an interpreter for a witness, the Association shall provide the party with the following options: 1) The party requesting the interpreter can bear the cost to provide a qualified interpreter that is certified or registered and in good standing with the Judicial Council of California; or 2) The Association can provide an interpreter who is a member of the Association if there is one available who speaks the language in question. Only one neutral interpreter will be allowed in the hearing and will assist all parties with translation needs.

(b) **Cost.** The party requesting the interpreter shall bear the cost to provide themselves with a qualified interpreter. In the event that both parties speak the same non-English language and require an interpreter or both call witnesses that speak the same non-English language and require an

interpreter, the cost of the interpreter shall be split evenly between the parties.

(c) **Notice.** The party intending to utilize an interpreter shall notify the Association and all other parties at least ten (10) days prior to the date of the hearing, and in such notice shall indicate the name of the party or witness requiring an interpreter and the language which will be used by the non-English speaking party/witness, as well as any dialect of such language, if applicable. Before the hearing begins, all parties will need to sign a "hold harmless" waiver stating that the Association will not be held liable for any actions or omissions of the interpreter.

(d) **Written Translations.** In the event any party intends to present a written document at a hearing that is in a language other than English, a translation by a qualified independent translator shall be presented along with the document at least ten (10) days prior to the date of the hearing. The party must provide proof that the document was translated by a translator who is certified or registered and in good standing with the Judicial Council of California.

### **Section 36. Decision of Hearing Panel**

(a) **Making and Reporting the Decision.** The decision shall be made as soon as practicable after the evidence is presented and the hearing Panel has finished deliberations, but in no event later than forty-eight (48) hours after the conclusion of the hearing. The decision of the hearing Panel shall be by a simple majority vote (with all Panel members including the Presiding Officer having an equal vote) and in writing containing findings of fact (Form D-11) and a statement of disciplinary action recommended (Form D-12), if any. Such decision shall be transmitted to the parties within five (5) calendar days after it has been filed with the Association, unless more time is necessary to obtain the review of Association's legal counsel. The decision



shall not be disclosed to any persons except the Directors, the complainant, the respondent, Association staff and legal counsel, as may be required by law, except all proceedings, including the allegations, findings, recommendations and decisions in disciplinary proceedings shall be reported to C.A.R. and may be posted on the C.A.R. website in accordance with policy adopted by the C.A.R. Directors and as authorized in this Manual pursuant to Section 17 and Section 39. However, failure to abide by these timing and disclosure requirements (including unauthorized disclosures) shall not invalidate the decision of the hearing Panel.

**(b) Consideration of Prior Code of Ethics and Membership Duty Violations.** In the event a member is found in violation of the Code of Ethics or a membership duty, the hearing Panel must consider, in determining discipline, all past records of previous determinations by the Board of Directors, of this Association and any other Association of REALTORS®, of Code of Ethics and membership duty violations and sanctions imposed, if any, in the member's records. Access to the member's records of prior violations is permitted only after deliberations and findings of a violation.

**(c) Consideration of Prior MLS Duty Violations.** In the event an MLS Participant or Subscriber is found in violation of an MLS rule or duty, the hearing Panel must consider, in determining discipline, all past records of previous determinations by the Board of Directors of this Association, this MLS or any other MLS, if available, of MLS duty violations and sanctions imposed, if any, in the Participant's or Subscriber's records. Access to the person's records of prior violations is permitted only after deliberations and findings of a violation.

**(d) Types of Discipline; Filing of Decision.** Disciplinary action recommended by the hearing Panel may include recommended options as described in Section 1 of this Manual. The decision (Forms D-11

and D-12) shall be filed with the Association Executive.

### **Section 37. Action of the Directors if No Request for Review**

**(a) Action of the Directors.** If no request for review is filed pursuant to Section 38, the Association Executive shall refer the hearing Panel's decision (Form D-11) and recommendations (Form D-12), if any, to a Panel of the Directors for review and final action no later than thirty (30) calendar days after the date the hearing Panel's decision is transmitted to the parties. The Directors must adopt the hearing Panel's decision and recommendations and issue an order accordingly, except that if the Directors, after reviewing the decision or recommendations are concerned with a deficiency on the face of the decision or the appropriateness of the recommended discipline they may 1) dismiss the matter if they conclude that the findings of fact do not support the hearing Panel's decision or recommendations; 2) impose alternative discipline that does not exceed that recommended by the hearing Panel; or 3) refer the decision back to the hearing Panel with recommended modifications. If the hearing Panel does modify its decision or recommended discipline, the parties shall be notified in writing of this change and given a new opportunity to request a review pursuant to Section 38. The Directors shall render their decision in writing (Form D-22).

**(b) Automatic Disqualification; Statement of Qualification.** When reviewing a hearing Panel's decision and recommendations pursuant to this Section, the Directors are subject to automatic disqualification under the grounds set out in Section 19 of Part One of this Manual. Each Director must also sign a statement (Form D-7) that he or she is not disqualified for any of the above reasons, and that he or she knows of no other reason that might prevent him or her from rendering an impartial decision. The parties shall have no right to submit challenges to the qualifications of the

Directors for reviews conducted pursuant to this Section.

**(c) Finality of Directors' Action.** Any decision of the Directors is final and each member by becoming and remaining a member agrees not to seek review in any court of law. Further, failure of the Association to abide by the timing requirements of this Manual shall not invalidate the decision of the Panel of Directors.

### **Section 38. Action of Directors if Request for Review**

**(a) Request for Review.** Within twenty (20) calendar days after the hearing Panel's decision has been transmitted to the parties, any party may file a request in writing for a review (Form D-17) of the hearing Panel's decision by the Board of Directors or appointed review Panel of the Board of Directors. The Association Executive may require the party requesting the review to supply the necessary number of copies of the request for review.

**(b) Deposit Requirement.** A request for review must be accompanied by a deposit with the Association in the amount provided in the Association's current schedule of fees.

**(c) Basis for Review.** The request for review must clearly indicate the basis on which the challenge is being made and contain facts and supporting evidence in reasonable detail to support the challenge. The basis for a review are: 1) mis-application or misinterpretation of a section imposing a membership or MLS duty; 2) procedural deficiency or any lack of procedural due process; 3) unwarranted discipline recommended by the hearing Panel.

**(d) Preliminary Review; Opportunity to Amend.** A request for review may be reviewed by the Association Executive within ten (10) calendar days after the request has been transmitted to the

Association to determine whether the request complies with the filing requirements of this Section. If the Association Executive determines that the review fails to meet the filing requirements of this Section, the request shall be returned to the party and the party shall be given ten (10) calendar days to amend the request to comply with the appropriate requirements. Any preliminary decision by the Association Executive is not a decision on the merits of the request for review but is to insure that the request complies with the filing requirements of this Section.

**(e) Notice of Request for Review.** Within one (1) calendar day after a request for review is determined appropriate for a review hearing by the Directors, the Association Executive shall transmit to all other parties: 1) a copy of the request; 2) the Notice to Request for Review (Form D-18); and 3) the Reply to Request for Review (D-19) with directions to return the Reply within fifteen (15) calendar days from the date of mailing to the party. The Association Executive may require the other parties to supply the necessary number of copies of the Reply. The Association Executive shall concurrently at this time transmit to all parties a list of names of members of the Board of Directors from which the review Panel of the Directors will be selected, the Notice of Right to Challenge Panel Members and Availability for Hearing (Form D-4), and the Reasons for Challenge – Panel Member (Form D-5).

**(f) Reply not Required; Late Filing.** The other parties may submit a written reply, but regardless of whether they do or do not, the review hearing may be scheduled and conducted in the absence of the other parties. The review Panel of the Directors may accept late filing of a Reply in its discretion.

**(g) Notice of Reply.** Not later than twenty-one (21) calendar days from the date of transmitting the request for review to the other parties, the Association Executive shall

deliver copies of the reply, if any, to the party requesting the review or notify the party that no written reply has been filed.

(h) **Selecting the Review Panel.** From the names of members of the Board of Directors not challenged by the parties within fifteen (15) calendar days from the date the names were transmitted to the parties under subsection (e) of this Section, the President or his or her designee shall select a review Panel as provided in subsection (j) of this Section.

(i) **Waiver of Objection to Director; Appointing Replacement to Challenged Director.** A party will be deemed to have waived all objections to any member of the Board of Directors whose name he or she does not challenge. If a challenge to proposed members of the review Panel results in an insufficient number of Board of Directors' members to constitute a review Panel, the President may appoint other qualified members to serve on the review Panel.

(j) **Composition of Panel.** A review Panel may consist of the remaining unchallenged and qualified members of the Board of Directors, a Panel of the Board of Directors, or a Panel appointed by the Board of Directors but in any event the review Panel must be not less than three (3) members, except as provided in Section 19(g).

(k) **Automatic Disqualification; Certificate of Qualification.** When hearing a request for review, the Directors are subject to automatic disqualification under the grounds set out in Section 19. Each Director must sign a statement (Form D-7) that he or she is not disqualified for any of the above reasons, and that he or she knows of no other reason that might prevent him from rendering an impartial decision.

(l) **Presiding Officer.** In the case where the review Panel is a Panel of the Board of Directors or a body appointed by the Board of Directors, the President shall designate one of the review Panel members

to be the Presiding Officer. Otherwise, the President shall be the Presiding Officer of the review Panel. The Presiding Officer will be responsible for conducting the review hearing and may prescribe any procedure for the review hearing not inconsistent with the provisions of this Manual.

(m) **Notice of Time and Place of Review Hearing.** The Association Executive shall designate the time and place of review hearing and shall notify the parties and review Panel in writing (Form D-20). The date of the review hearing shall be no later than thirty (30) calendar days after the date of the Association's receipt of the request for review. Each party shall be given at least twenty-one (21) calendar days' prior notice of the review hearing but appearance at a review hearing without objection by any party will constitute a waiver of such notice requirement.

(n) **Documents Provided to the Panel.** The Association Executive shall provide to the review Panel in advance of the hearing copies of the request for review, reply to the request, if any, and the hearing Panel's decision and findings of fact (Form D-11) and recommendations for discipline (Form D-12), if any.

(o) **Conducting the Review Hearing.** The review hearing is not recorded. At the review hearing, the Presiding Officer from the original hearing (or other member of the original hearing Panel) shall summarize the facts of the case and the procedures of the original hearing. Any party may be heard to correct the summary. The Presiding Officer may respond to the allegations and answer any questions the Directors may have relating to the allegations of the party requesting review. The recording of the hearing should be played only to prove or disprove the procedural deficiencies asserted by the party requesting review and only the pertinent portions shall be played. The playing of the recording is not intended to substitute for a transcript of the case, and if a transcript does

exist, then the pertinent portions of it should be read instead of playing the recording.

**(p) Permissible Evidence at Review Hearing.** All requests for review received by the Association must be considered by a review Panel of the Directors and only those basis and issues raised in the written request for review may be raised by the party requesting review in any hearing before the Panel of the Directors. Any party may present to the review Panel reasons as to whether or not the decision and recommendations of the hearing Panel should be followed or not, but no new evidence regarding the merits of the underlying case may be presented.

**(q) Failure of Requesting Party to Appear at Hearing.** In the event the party that requested the review fails to appear at a duly noticed review hearing without obtaining a continuance or adjournment thereof, the review Panel shall dismiss the other parties and review the hearing Panel's decision and recommendations pursuant to Section 37.

**(r) Failure of the Party Not Requesting Review to Appear at Hearing.** If any party not requesting the review fails to attend a duly noticed review hearing without obtaining a continuance or adjournment thereof, the review Panel may proceed with the review hearing in the party's absence and shall reach its decision based on the request for review and arguments presented at the review hearing.

**(s) Action of the Review Panel.** The review Panel must adopt the hearing Panel's findings and recommendations and issue a decision accordingly, except that if the review Panel is concerned with a deficiency of the decision or the appropriateness of the recommended discipline they may 1) dismiss the matter if they conclude that the findings of fact do not support the hearing Panel's recommendation; 2) impose alternative discipline that does not exceed that recommended by the hearing Panel; 3) refer

the decision back to the hearing Panel with recommended modifications; or 4) refer the matter back to the Professional Standards Committee for a new hearing with the same or different hearing Panel as deemed appropriate. The review Panel shall render their decision in writing (Form D-21) within five (5) calendar days after the review hearing.

**(t) Disposition of the Deposit.** If the review Panel adopts the recommendations of the hearing Panel, the money deposited by the party requesting the review shall pass into the general treasury of the Association. If the review Panel dismisses the complaint or refers it back to the Professional Standards Committee for a new hearing, the deposit shall be returned to the party making the request. If the recommendation is modified, the review Panel, at their discretion, may determine the appropriate disposition of the deposit.

**(u) Review Panel's Rationale.** If the recommendation of the hearing Panel is rejected (thereby dismissing the matter), modified, or referred back for a new hearing, the Panel of Directors may state the reasons in writing, but failure to do so shall not invalidate the decision of the Directors.

**(v) Finality of Review Panel Decision.** Any decision of the review Panel of Directors is final and each member by becoming and remaining a member agrees not to seek review in any court of law. Further, failure of the Association to abide by the timing requirements of this Manual shall not invalidate the decision of the Review Panel.

## **Section 39. Distribution and Publication after Discipline is Final.**

**(a) Notification of Directors' Action.** Upon final action by the Directors under either Section 37 or 38, the Association Executive shall notify the complainant,

respondent, the Professional Standards Committee Chairperson, the Hearing Panel and C.A.R. The notification to C.A.R. shall include the allegations, findings, recommendations and decisions in disciplinary proceedings, in accordance with policy adopted by the C.A.R. Directors and as authorized in Section 17 and this Section 39.

**(b) Notification of Suspension or Expulsion.** The President shall notify C.A.R. and the members of the Association or the Participants and Subscribers in the MLS of any decision of the Directors ordering suspension or expulsion.

**(c) Publication of Ethics Violators.** A final ethics decision finding a REALTOR® in violation of the Code of Ethics shall be published by C.A.R. in accordance with this Manual. The local Association's Board of Directors may, but is not required to, also adopt a policy to publish the names of ethics violators in its local communications vehicle, as described in Section 39(g).

**(d) C.A.R. Publication Policy for Ethics Violators.** Except as provided below, if a member is found in violation of the Code of Ethics, C.A.R. shall publish the following information regarding the violation(s): (1) name and photo of the member found in violation (but not the name of the firm the member is, or was, affiliated with); (2) if the responsible broker is also found in violation, the name of the responsible broker will also be published; (3) if a member's name is similar to another member's or MLS Participant's name, the member's real estate license number and/or office address may also be included; (4) the Article(s) of the Code of Ethics violated; (5) a brief factual synopsis of the matter with names redacted (except for the respondents found in violation); (6) discipline imposed; (7) the effective date and duration of the discipline, if applicable; and (8) rationale in mitigation or aggravation for the discipline, if applicable. This information will be published on one or more of any authorized

C.A.R. communications vehicles available to members, such as the C.A.R. website or magazine. The information will be removed from the C.A.R. website three (3) years after initial publication.

All discipline will be published except letters of warning, cease and refrain orders, and/or education requirements that do not also include a fine, letter of reprimand, suspension or expulsion. However, if a fine or suspension is imposed because the member does not comply with the education requirement or cease and refrain order, the discipline will be published when the fine or suspension is imposed. Citations under the Ethics Citation or MLS Citation systems will not be published by C.A.R.

**(e) Photograph; Authorization.** If a member is disciplined in a manner that requires C.A.R. publication, the member must provide to C.A.R. and the Association a current, accurate photo at least the size and quality of a passport photo within ten (10) calendar days after final adoption of the discipline by the Directors along with written authorization of the member to publish the photo (Form D-24). If the member fails to provide the photo and authorization by this deadline, the member will automatically be suspended from membership until the photo and authorization are provided, and the discipline summary will still be published. Such suspension will be forwarded to C.A.R. and will result in statewide review and possible statewide suspension as described in Section 39(h). If the member resigns prior to submitting the photo and Form D-24, the discipline summary will still be published, and the member will be immediately suspended, with such suspension subject to statewide review and possible statewide suspension as described in Section 39(h).

**(f) Ownership and Licensing of Photo.** By submission of the photo, on D-24, the member authorizes use of the photo for publication in accordance with the Manual and represents the member is the copyright owner of the photo or has the right to license

the photo to C.A.R. and the Association for publication according to the guidelines in this Manual. C.A.R. or the local Association may request that the member send a different photo if C.A.R. or the local Association, in its sole discretion, determines that the original photo submitted does not meet C.A.R.'s or the Local Association's requirements. The member grants to C.A.R. and the Association a perpetual, royalty-free license to reproduce and display any photo submitted to C.A.R. and the Association in any and all media for distribution to C.A.R. and the Association members in accordance with this Manual.

(g) **Local Publication Policy.** The local Association's Board of Directors may, but is not required to, adopt a policy to publish discipline in its local Association communications vehicle(s). The local Association may adopt a policy to publish discipline that uses the same criteria as C.A.R.'s publication policy, as described in subsections (d), (e), and (f) above. The local Association may adopt, in addition to or instead of the C.A.R. publication criteria, a policy to publish discipline when a member is found in violation of the Code of Ethics a second time within a three (3) year time period. Any discipline published by a local Association shall include the member's name, the fact that the member has been found in violation of the Code of Ethics, the Article(s) violated, and the discipline imposed. Published discipline shall not include the name of the firm the member is, or was, licensed or affiliated with. In cases where the member's name is similar to another Association member's or MLS Participant's or Subscriber's name, the member's real estate license number or office address (or both) may also be published.

(h) **Statewide Suspension.** If a respondent has membership in more than one local Association of REALTORS<sup>®</sup>, a final ethics decision by an Association holding the member in violation of the Code of Ethics and imposing a discipline of suspension or expulsion from membership shall be forwarded to the California Association of

REALTORS<sup>®</sup> (C.A.R.), for consideration by a panel of C.A.R. directors to determine whether the same discipline should be imposed statewide by all Associations in which the respondent holds membership. The discipline at the local Association shall be stayed until the C.A.R. hearing is concluded. The respondent may submit a written statement to show cause as to why the discipline should not be imposed statewide. The panel of directors may only determine whether or not to impose the same discipline statewide, which discipline would run concurrently with the suspension or expulsion imposed by the local Association. In making its determination, the panel shall consider only whether the type and nature of the violation, coupled with the form of original discipline justifies imposition of the same discipline on a statewide basis. The decision made by the directors at such hearing does not disturb the findings or recommended discipline of the local Association that initially imposed the discipline, but only determines whether or not there is statewide imposition of the same discipline. A decision to impose the suspension or expulsion shall be disseminated to all Associations in California and published pursuant to this Section 39.

(i) **DRE and Other Government Agency Referral.** The Association must disseminate the disciplinary decision to any governmental agency, including California Department of Real Estate, if the Board of Directors at its option so directs, and Association legal counsel approves. In addition, where there is reason to believe that the "public trust" may have been violated, all final ethics decisions holding members in violation of the Code of Ethics shall be forwarded by the Association to the California Department of Real Estate. A violation of "Public trust" as used in this subsection refers to demonstrated misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm.

## **Section 40. Preliminary Judicial Determination**

If the Board of Directors believes that the disciplined member, MLS Participant or Subscriber may resort to legal action, it may specify that the discipline shall become effective upon the final judgment of a court of competent jurisdiction in a suit by the Association for declaratory relief, declaring that the discipline violates no rights of the member, MLS Participant or Subscriber.

## **PART TWO – ARBITRATION OF DISPUTES**

### **Section 41. Definitions**

As used herein,

(a) "Association" means this organization (the local Board or Association of REALTORS®).

(b) "Association Executive" means the chief staff executive of any Association or his or her designee, or the elected Secretary of any Association not having a chief staff executive.

(c) "Complainant" means the person who files an arbitration complaint against a respondent, seeking money from that respondent.

(d) "Directors" means the Board of Directors of the Association or appropriate body appointed by the Directors to act when hearing reviews of arbitration awards.

(e) "Dispute" means a controversy arising out of the real estate business.

(f) "Hearing" refers to an arbitration hearing involving a controversy arising out of the real estate business.

(g) "Member" means a REALTOR®, or REALTOR-ASSOCIATE® member of

this Association, whether primary or secondary.

(h) "Panel" means a hearing panel in a hearing as defined in subsection (f) above who shall be deemed arbitrators within the meaning of Part 3, Title 9 of the California Code of Civil Procedure or a review panel of the Directors as defined in subsection (d) above when considering a review of an arbitration award.

(i) "Participant" means any individual defined in the MLS rules and regulations of the Association as a Participant.

(j) "Party" means the complainant(s) or respondent(s) to an arbitration proceeding referred to in Part Two of this Manual.

(k) "Respondent" means the REALTOR® or MLS member against whom an arbitration complaint seeking money is filed and who must defend themselves against that complaint.

(l) "Responsible Broker" means the broker designated in the records of the Department of Real Estate to be responsible for the conduct of individuals affiliated with his or her office(s) or licensed or certified individuals who are sole proprietors, partners, officers, or shareholders of a corporation, or office managers acting on behalf of principals of a real estate firm who are authorized to bind the principals in arbitration.

(m) "Subscriber" means any individual defined in the MLS rules and regulations of the Association as a Subscriber.

### **Section 42. Association Member's Duty and Privilege to Arbitrate**

(a) **Duty to Arbitrate; Disputes Subject to Arbitration.** By becoming and remaining a member of an Association and by signing or having signed the agreement to

abide by the Association bylaws, every member binds him or herself and the corporation or firm for which he or she acts, and agrees to submit to binding arbitration, at the local Association where all parties are members or C.A.R. as set forth in Section 45, all disputes as defined by Article 17 of the NAR Code of Ethics and as set forth in the provisions of this Section (subject to the conditions or exceptions listed in this Section and Section 43). Disputes subject to arbitration include: 1) disputes with other members arising out of the real estate business and their relationship as REALTORS® and 2) contractual disputes with a member's client arising out of an agency relationship between the member and client provided the client agrees to submit the dispute to binding arbitration using the Association's facilities and be bound by the arbitration award. The obligation under this Section shall be deemed an arbitration agreement within the meaning of Part 3, Title 9 of the California Code of Civil Procedure.

**(b) When the Duty to Arbitrate Arises.** For purposes of this Section, the duty to arbitrate arises and membership shall be determined when facts giving rise to the dispute occur. Termination of membership from the Association shall not relieve the arbitration duty under this Section for disputes that arose when the person was a member of the Association.

**(c) Disputes between Members of the Same Firm.** Members are not bound to arbitrate disputes between members of the same firm if the dispute arises when the members are affiliated with the same firm unless each such party agrees in writing to the arbitration of such dispute(s) under the Association's facilities.

**(d) Responsible Broker.** If a member files for arbitration of a dispute involving his or her responsible broker (but not between the member and the responsible broker), the responsible broker with whom the member was associated at the time the dispute arose must join in the complaint.

**(e) Agreement to Arbitrate Outside of the Association.**

Notwithstanding any other provision of this Manual, if any member enters into an agreement (either before or after a dispute arises) with nonmembers or other members to arbitrate a dispute utilizing non-Association facilities, such member is not bound to arbitrate the dispute utilizing Association facilities nor shall Association facilities be available for such arbitrations unless the Association agrees to provide arbitration.

**(f) Claims that Cannot be Arbitrated at the Association.** Pursuant to NAR policy, the following types of claims shall not be arbitrated at any REALTOR® Association: (i) tortious interference with business relationships; (ii) tortious interference with a contractual relationship; (iii) economic duress; (iv) intentional infliction of emotional distress; (v) other tort claims, such as libel/slander; (vi) employment claims, other than commission disputes; (vii) fraud/misrepresentation claims; (viii) property claims, both real and personal; (ix) Disputes between two listing brokers where no contract exists between the parties and the dispute is not as specified in Standard of Practice 17-4(4). In addition, NAR limits the award in an arbitration proceeding to the amount in dispute, and so an arbitration award will not include punitive damages or damages for pain and suffering.

**Section 43. MLS Participant's and Subscriber's Duty and Privilege to Arbitrate**

**(a) Duty to Arbitrate.** If a person is not subject to arbitration under Section 42 of this Manual, and the MLS to which the person is a Participant or Subscriber has a provision for binding arbitration under this



Manual, the arbitration shall be conducted in accordance with the provisions of this Manual.

**(b) Agreement to Arbitrate Outside of the Association.**

Notwithstanding any other provision of this Manual, if any MLS Participant or Subscriber enters into an agreement (either before or after a dispute arises) with another Participant or Subscriber to arbitrate a dispute utilizing non-Association facilities, such persons are not bound to arbitrate the dispute utilizing Association facilities nor shall Association facilities be available for such arbitrations unless the Association agrees to provide arbitration.

**Section 44. Association's Right to Decline Arbitration**

**(a) Hearing Panel Declining Arbitration.** If the hearing Panel determines that because of the magnitude of the amount involved or the legal complexity of the controversy the dispute should not be arbitrated, it shall so report its recommendation to the Board of Directors. If the Board of Directors concurs, the arbitration shall terminate and the parties shall be relieved of their obligation to arbitrate pursuant to the provisions of this Manual. If the Board of Directors does not concur, the matter shall be referred back to the Professional Standards Committee for hearing before a new hearing Panel (Form A-20).

**(b) Declining Arbitration Prior to Selection of Hearing Panel.** If a hearing Panel has not been convened, the Professional Standards Chairperson or his or her designee and legal counsel representing the Association, after reviewing the complaint and response, may jointly recommend to the Board of Directors that the dispute should not be arbitrated because of the magnitude of the amount involved or the legal complexity of the controversy. If the Board of Directors concurs, the arbitration shall terminate and the parties shall be

relieved of their obligation to arbitrate pursuant to the provisions of this Manual. If the Board of Directors does not concur, the matter shall be referred to the Professional Standards Committee for hearing.

**(c) Postponement for Litigation.** If an otherwise arbitrable matter is the subject of pending civil litigation, arbitration shall not take place unless the litigation is withdrawn or the matter is referred to the Association by the court for arbitration in accordance with these procedures.

**(d) Filing Fees.** In the event the Association declines arbitration pursuant to this Section, any filing fees paid by parties shall be returned to the parties.

**(e) Availability of Other Forums.** Notwithstanding any provisions of this Manual, in the event the Association declines arbitration under this Section or otherwise determines that the matter is not subject to arbitration through the Association for any reason, the parties are not precluded from resolving the dispute in another forum or from pursuing other legal remedies for the dispute.

**Section 45. Duty to Arbitrate Before C.A.R.**

**(a) Disputes Subject to Arbitration Before C.A.R.** By becoming or remaining a member, every member binds him and herself and the firm for which he or she acts and agrees to submit to binding arbitration, by the arbitration facilities of the CALIFORNIA ASSOCIATION OF REALTORS® ("C.A.R.") or a multi-Association or shared panel comprised according to Section 47, any dispute where the parties' Responsible Brokers share no local boards in common, provided: 1) the dispute is a dispute as defined in Section 42; 2) the bylaws of the other local Association incorporate this Manual or contain a provision similar to this; and 3) C.A.R. maintains arbitration facilities capable of

handling the dispute or a multi-Association or shared panel has been comprised according to Section 47 of Part Two of this Manual.

(b) **When the Duty to Arbitrate Before C.A.R. Arises.** For purposes of this Section, the duty to arbitrate arises and membership shall be determined when facts giving rise to the dispute occur. Termination of membership from the Association shall not relieve the arbitration duty under this Section for disputes that arose when the person was a member of the Association.

### **Section 46. Professional Standards Committee**

(a) **Membership; Terms.** There shall be a standing committee, known as the Professional Standards Committee of at least nine (9) members. Unless the Association's bylaws specify otherwise, at least a majority shall be REALTORS®. The members of the Committee shall be appointed by the President, subject to confirmation by the Board of Directors, for staggered three (3) year terms, unless the term is otherwise specified by the Association's bylaws. One-third of the members of the first Committee so appointed shall be designated for one (1) year terms. The President shall annually designate the Chairperson and Vice Chairperson(s) of the Committee.

(b) **Role of Committee Members.** Members of the Professional Standards Committee shall be selected to serve on hearing Panels as required to hear matters of alleged ethical misconduct by Association members and alleged violations of MLS rules by MLS Participants or Subscribers under the provisions of Part One of this Manual, or to provide arbitration as requested under Part Two of this Manual.

### **Section 47. Multi-Association Professional Standards Hearings and Shared Panelists**

(a) **Multi-Association Program.** Notwithstanding any provision of this Manual, the Association may, by mutual resolution of the Boards of Directors of the affected Associations, agree with other Associations to establish multi-Association professional standards programs, in which case the members of a Panel may include members from the participating Associations.

(b) **Sharing Panelists.** Notwithstanding any provision of this Manual, the Association may, by mutual resolution of the Boards of Directors of the affected Associations, agree with other Associations to share its Professional Standards Committee members and Board of Directors, in which case the members of a Panel may include members from the reciprocating Association's Professional Standards Committee and Board of Directors.

### **Section 48. Interpretation of Bylaws**

If the interpretation of any provision of the bylaws or rules or regulations relative to the procedure of a hearing Panel's handling of a matter is raised and submitted to the hearing Panel by one or more of the parties, the interpretation by that hearing Panel of the bylaws or rules or regulations, including any interpretation of this Manual, shall be set forth as a separate finding and shall be conclusive and final, except that the Directors on a procedural review of the arbitration hearing procedures shall not be bound by that hearing Panel's interpretation of the bylaws or this Manual. Failure of a hearing Panel to set forth its interpretation as required by this Section shall not invalidate the decision of the hearing Panel.

## **Section 49. Notices**

(a) **Methods of Notice by Association.** Any notice required to be given or paper required to be served by the Association may be given or served by personally handing it to the party to be notified, by first class mail, by any mail delivery service or by certified mail addressed to the mailing address on the records of the Association, or sent to the party by email. When possible, email is the preferred form of service for notices and documents sent by the Association pursuant to the procedures specified in this Manual. If mailed or delivered by the Association, notice shall be deemed given when placed in the mail or when given to the mail delivery service and deemed received within five (5) calendar days of such mailing or delivery, regardless if actually received or not.

(b) **Email Notices.** Notices sent by email shall include the Association's request that delivery be acknowledged by the intended recipient within twenty-four (24) hours by return email. If receipt of the notice has not been acknowledged by the intended recipient within twenty-four (24) hours, the recipient will be contacted by telephone to confirm receipt and the recipient's confirmation will be noted in the file. If receipt of notices sent by email cannot be confirmed, the notices will be resent via first class mail, by any mail delivery service or by certified mail.

(c) **Names of Hearing Panel Members.** Notice of any hearing shall include the names of the hearing Panel members at the time said notice is given.

(d) **Timing of Notices for Hearings.** Notice of any hearing, except for an adjourned hearing or continued hearing, shall be given not less than twenty-one (21) calendar days beforehand unless otherwise agreed by all the parties.

## **Section 50. Waiver**

Each member, MLS Participant or Subscriber, by virtue of and in consideration of membership or MLS services, waives any right of personal redress against the Association, Association employees or any member, including but not limited to, members of a Panel or witnesses for anything done under these procedures.

## **Section 51. Communication and Clerical**

Communications shall be directed to the Association Executive. The Association Executive shall render all necessary assistance to the parties, shall on application furnish required forms, shall receive and file all documents or other papers, and shall receive all fees and disburse all moneys payable to the Association. In no event, however, shall the Association Executive provide substantive advice or interpretation of this Manual, Association bylaws or other governing documents.

## **Section 52. Attempts to Influence Hearing Panel**

No party or party's attorney shall contact the hearing Panel members outside of the hearing with regard to the hearing, and shall not attempt, directly or indirectly, to influence a member of a Panel in any matter before it, other than by giving evidence and argument in an open hearing.

## **Section 53. Confidentiality of Proceedings**

(a) **Confidentiality Obligations; Reporting to C.A.R.** All proceedings, including the allegations, findings, recommendations and decisions in arbitration proceedings are confidential and shall not be reported or published by the Association, any member of a Panel or any party under any circumstances except Hearing Panel and C.A.R. The notification to C.A.R. shall

include the allegations, findings, recommendations and decisions in arbitrations and as authorized in this Section. Disclosure to C.A.R. is made in accordance with policy adopted by the C.A.R. Directors, which requires that each Association submit such information to C.A.R. through a secure repository maintained by C.A.R. Upon conclusion of the proceedings, the Association, all Panel members and the parties shall have an obligation to maintain and protect this confidentiality except where disclosure is authorized in this Section and Section 69 or required by law.

(b) **Acceptable Disclosure.** The hearing Panel members shall not discuss the proceedings, including the Panel's deliberations, with any person(s) other than the other members of the hearing Panel, Association staff or legal counsel, the Board of Directors of the Association, or as may be required by this Manual, the MLS rules, the bylaw provisions of the Association or where disclosure is required by law.

(c) **Obligations of the Parties.** The parties shall not report or publish the allegations, findings, recommendations or decisions of an arbitration proceeding to anyone except as may be required by law. Any party to an arbitration proceeding is authorized to disclose the decision where there is a civil proceeding involving the same facts and circumstances which gave rise to the proceeding before the Association.

(d) **Enforcement.** Actions inconsistent with this Section shall be deemed a membership or MLS duty violation. However, such actions shall not invalidate any decision made by a Panel.

## Section 54. Right to Counsel

(a) **Representation.** Every party may be represented by legal counsel, who is permitted to do so by the State Bar of California, at any hearing, including reviews, even where the hearing will occur in the party's absence. Additionally, a broker may

appoint a REALTOR® to attend an arbitration hearing on his or her behalf when the broker is unable to personally attend.

(b) **Notice of Intention to Have Representation.** Notice of intention to have representation, including the representative's name, address, and phone number must be given by the party to all other parties and the hearing Panel at least fifteen (15) calendar days before the hearing Panel. In the event of failure to comply with this notice requirement, the hearing Panel may, at its discretion, take all steps, including continuance of the matter, if necessary, to guarantee the rights of all parties to representation.

(c) **Association Legal Counsel.** Any Panel and the Directors may consult with or have counsel present to advise them on issues of procedure and law.

## Section 55. Qualification for Panel

(a) **Business Limitation.** Only one person connected with any firm, business, partnership or corporation may serve on the same Panel.

(b) **Panel Limitation.** No individual may participate in the deliberation of more than one Panel on the same matter;

(c) **Automatic Disqualification.** A person shall automatically be disqualified to be a member of a Panel in any case in which he or she is 1) a party; 2) related by blood or marriage (to the fourth degree) to a party; or 3) an employer, employee, partner or other business associate of a party.

(d) **Statement of Qualification.** Before sitting on any case, each member of a Panel shall sign a statement (Form A-7) that he or she is not disqualified for any of the foregoing reasons and that he or she knows of no other reason that might prevent him from rendering an impartial decision.

**(e) Discussion Prior to Hearing.** Every member of a hearing Panel shall avoid, so far as possible, discussing the case with any person prior to the hearing. If he or she does engage in any such discussion prior to the hearing, he or she must disclose the fact to the parties and to the other members of the hearing Panel as soon as practicable but no later than at the beginning of the hearing. Upon such disclosure, any party may challenge a member of a hearing Panel and, if the hearing Panel agrees, at the option of the hearing Panel, that member of the hearing Panel shall be dismissed, and a new hearing Panel member shall be selected. A party waives any objection under this Section by failure to object prior to the commencement of the hearing.

**(f) Request for Disqualification.** Any party may file with the Association Executive a written request for disqualification of a member of a hearing Panel stating the grounds alleged as the basis for disqualification (Form A-5). Challenges submitted by any party pursuant to this Section shall be decided by the Professional Standards Chairperson or his or her designee. A party shall be deemed to have waived any ground of disqualification of which he or she then has knowledge unless he or she files the request within fifteen (15) calendar days after the names of proposed neutral arbitrators under Section 56(g), and any disclosures required by law, are transmitted to the parties. However, any member of a hearing Panel may be disqualified at any time if a majority of the members of a hearing Panel find any automatic grounds of disqualification to be present under this Section, or find any other facts which, in their judgment, may prevent the member from rendering an impartial decision or appear to do so.

**(g) Request for Nonmember on Hearing Panel.** If a party to the dispute is an MLS Participant or Subscriber but is not a member of any Association of REALTORS® in California, the hearing Panel shall, if the nonmember so requests, include at least one

qualified person who is not a member of the Association. The nonmember must request the nonmember Panel member no later than the time the response is due under Section 56(h), or the right to make such a request is forfeited. The Association may maintain a pool of hearing Panel members who are not members of the Association from which it may select a hearing Panel member or it may select a hearing Panel member qualified by the American Arbitration Association. The party requesting the nonmember Panel member must pay any costs associated with such a request.

**(h) Absent Panel Member.** If a hearing Panel member fails or is unable to participate in a hearing, the remaining hearing Panel members may, at their option, but only with the express consent of the parties, proceed with the hearing. Only the remaining hearing Panel members may participate in the hearing and the determination thereof. Should any hearing Panel member absent him or herself during the progress of the actual hearing, that individual shall likewise not participate in the deliberations or determinations thereof. If all the parties do not agree to proceeding without the full number of the hearing Panel originally designated, the Presiding Officer will recess the hearing to a date on which all hearing Panel members can be present. If the Presiding Officer cannot at that time designate a new date, notice of a subsequent date shall be served on all parties as herein provided.

## **Section 56. Manner of Invoking Arbitration and Submission**

**(a) Submission of Dispute.** Submission of a dispute to arbitration by the Association shall consist of signing and delivering to the Association Executive either a complaint (Form PA-1 or A-1) or response form (Form A-3) provided by the Association or any other similar writing permitted by law.

(b) **Timing of Filing.** A complaint meeting all filing requirements must be filed within one hundred and eighty (180) calendar days after the closing of the transaction, if any, or after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later. Notwithstanding the foregoing, if a complainant submits a dispute to state or federal court that would be subject to arbitration at the Association if filed timely, the respondent may ask the court to remove the complaint to the Association for arbitration and the Association must accept such complaint, without regard for the time limit, even if it is received later than one hundred and eighty (180) days after the closing of the transaction, if any, or after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence. Additionally, when a party utilizes the Association or C.A.R. ombudsman program, the filing deadline is suspended until the case is reported closed by the ombudsman.

(c) **Arbitration Complaint.** Any person authorized by the provisions of Sections 42 or 43 desiring arbitration by the Association shall submit a completed and signed arbitration complaint with appropriate filing fees to the Association Executive. The complaint shall include a statement describing the controversy and the amount in dispute. The Association Executive may require the complainant to supply the necessary number of copies of the complaint. At any time after the arbitration complaint has been submitted and acknowledged by the Association Executive, the complainant must respond to any communications from the Association Executive within ten (10) business days. If no response is received from the complainant after ten (10) business days, the Association may consider the complaint withdrawn and shall have the right to permanently close the arbitration case. The complainant has the right to refile the arbitration complaint, provided the complainant pays the filing fee again and

resubmits the complaint in accordance with the filing deadline set forth in Section 56(b).

(d) **Preliminary Review.** The Association Executive shall conduct a preliminary review of the complaint to determine whether the complaint is subject to arbitration by the Association and otherwise complies with the filing requirements of this Manual. The Association Executive shall only conduct such preliminary review as is necessary to make this determination and any decision reached by the Association Executive shall not be considered a decision on the merits of the dispute. In the event there is a dispute as to whether a complaint has been properly filed, the Association Executive shall refer such disputes to the hearing Panel for consideration. Directly before the hearing, both parties will be given the chance to argue before the hearing Panel as to whether the complaint was timely filed, and the hearing Panel will decide whether to proceed with the complaint or dismiss the complaint for not being timely filed.

(e) **Disciplinary and Arbitration Complaints Filed Together.** If both a disciplinary and an arbitration complaint are filed against the same Respondent and arising out of the same matter, the disciplinary complaint is processed through the Grievance Committee first, and, then, held in abeyance pending the outcome of the arbitration. The disciplinary hearing is held after the arbitration has been completed and must be before a different hearing Panel.

(f) **Selecting the Proposed Arbitrators.** If the Association Executive finds the complaint properly filed with the Association, the Association Executive shall pre-screen the pool of potential hearing panel members to identify those least likely to be disqualified because of a conflict of interest, and from those not eliminated, choose a sufficient number to designate as proposed neutral arbitrators within the meaning of Part 3, Title 9, of the California Code of Civil Procedure, as provided in Section 54.

(g) **Arbitrator Disclosure Statements; Documents Sent to the Parties.** The Association Executive shall send a disclosure statement (Form A-21) to those identified as proposed neutral arbitrators, along with instructions for completion. Within ten (10) calendar days of notification to the proposed neutral arbitrators, each shall deliver to the Association Executive a signed disclosure statement. A proposed neutral arbitrator is automatically disqualified if he or she fails to return the disclosure statement. Upon expiration of the time limit for return of the disclosure statements, the Association Executive shall provide notice to each named respondent in the complaint: 1) a copy of the complaint; 2) the Notice to Respondent (Form A-2); and 3) the Response (Form A-3) with directions to return the written response within fifteen (15) calendar days from the date of transmission to the respondent. The Association Executive may require the respondent to supply the necessary number of copies of the response. The Association Executive shall concurrently provide to the complainant and the respondent a list of names of proposed neutral arbitrators, along with their completed disclosure statements (Form A-21), the Notice of Right to Challenge - Tribunal Member and Availability for Hearing (Form A-4), and the Reasons for Challenge - Tribunal Member (Form A-5).

(h) **Respondent Filing Fee; Response not Required; Late Filing. Pursuant to NAR policy, the Association may elect to charge the respondent a filing fee of up to five hundred dollars (\$500).** The respondent may submit a written response but, regardless of whether he or she does so, he or she is bound to arbitrate according to the rules as set forth in this Manual and the hearing may be scheduled and conducted in the absence of the respondent. A hearing Panel may accept late filing of the response in its discretion.

(i) **Notice of Response.** Not later than five (5) calendar days after

Association's receipt of the response and respondent's affirmative claim, if any, the Association Executive shall provide copies of the response and respondent's affirmative claim, if any, to the complainant or notify the complainant that no written response has been filed.

(j) **Selecting the Hearing Panel.** From the names of the proposed neutral arbitrators not disqualified by either party within fifteen (15) calendar days from the date the names are mailed to the parties under subsection (f) of this Section, the Chairperson of the Professional Standards Committee or his or her designee shall select a Hearing Panel within the meaning of Part 3, Title 9, of the California Code of Civil Procedure, as provided in subsection (j) and in Section 55 of this Manual. A party's right to disqualify a proposed neutral arbitrator under this subsection is waived if the party fails to deliver Form A-5 within the time limit specified.

(k) **Composition of Hearing Panel.** A hearing Panel shall have an odd number of members (not less than three (3) except as provided in Section 55(h) of Part Two of this Manual). If the Association's bylaws require a majority of real estate brokers on the Professional Standards Committee, a majority of each hearing Panel shall be licensed real estate brokers. If the complainant or respondent is a salesperson, (either a licensed salesperson or licensed real estate broker acting in the capacity of a salesperson) a hearing Panel member shall be a salesperson. It shall be a membership duty of anyone so appointed to serve as a panel member unless disqualified.

(l) **Presiding Officer.** The Professional Standards Committee Chairperson or his or her designee shall select one (1) of the hearing Panel members to be the Presiding Officer. The Presiding Officer will be responsible for conducting the hearing and may prescribe any procedure for the hearing not inconsistent with the provisions of this Manual.

(m) **Alternate Panel Member.** The Professional Standards Committee Chairperson or his or her designee may select an alternate from the list of proposed neutral arbitrators not disqualified to attend the hearing. The alternate will not participate in any phase of the process unless the alternate is asked to substitute for one of the original hearing Panel members for any reason. The alternate has the same duties of confidentiality as the other hearing Panel members.

(n) **Notice of Date, Time, and Place of Hearing.** The Association Executive shall designate the date, time, and place of the hearing and shall notify the parties and hearing Panel in writing (Form A-6). Each party shall be given at least twenty-one (21) calendar days' prior notice of the hearing but appearance at a hearing without objection by any party will constitute a waiver of such notice requirement.

(o) **Waiver of Objection to Panel Member; Appointing Replacement to Challenged Panel Member.** A party will be deemed to have waived all objections to any person whose name he or she does not challenge, as provided in Sections 55 and 56 of Part Two of this Manual. If a challenge to proposed neutral arbitrators for the hearing Panel results in an insufficient number of members to constitute the Panel, the President may appoint other qualified Association members as proposed neutral arbitrators.

(p) **Notification of Procedure.** The Association Executive shall provide to each party the outline of procedure prior to the hearing (Form A-8).

## **Section 57. Responsible Broker as Complainant**

If anyone other than a responsible broker files an arbitration complaint in a dispute involving the responsible broker but not between the member and the responsible

broker, the responsible broker for that individual at the time of the dispute must also join as a complainant.

## **Section 58. Joinder of Multiple Parties or Complaints**

Upon request of a party or on its own motion, the Professional Standards Committee Chairperson or the hearing Panel may, with the advice of legal counsel for the Association, join together multiple arbitration complaints arising out of the same set of facts and circumstances or multiple parties involved in the same transaction to be heard at the same time.

## **Section 59. Duty to Give Evidence**

When requested by subpoenas, or when summoned by the hearing Panel to do so, members, MLS Participants and Subscribers shall appear at the hearing, produce any records or data pertinent to the case and designated by the hearing Panel, and testify truthfully. It shall be a membership duty and an MLS rules requirement to comply with such requests. Once evidence has been submitted at a hearing by a party, the party does not have the right to ask the other party or the hearing Panel to return or destroy that evidence. All parties who appear (in-person and remotely) at a hearing are required to answer all questions by the Panel and by any other party and are not entitled to advance notice. Refusal of a party to appear at an arbitration hearing, to submit him or herself or his or her records to examination or to comply with a request of the hearing Panel for relevant information may be deemed an admission of the truth of the claim against him or her. The presiding officer of the hearing Panel may allow a party or witness to remotely testify or attend the hearing upon written request, provided the Panel is satisfied that safeguards are in place to assure the identity of the person testifying or attending and the confidentiality of the hearing,



## **Section 60. Subpoenas**

(a) **Availability of Subpoenas.** Subpoenas to require the attendance of witnesses or the production of books, records, documents and other evidence (Forms A-22 or A-23) at a hearing may be requested and issued to a party. However, subpoenas are not available for pre-hearing discovery.

(b) **Issuing and Serving Subpoenas.** Subpoenas shall be issued in blank to the party requesting them and signed by the Association Executive. The party requesting the subpoena shall complete the subpoena before service and is responsible for properly completing and serving the subpoena.

(c) **Notice for Requiring Attendance at Hearing.** Parties being served subpoenas by personal service must be given fifteen (15) calendar days' notice for appearance at a hearing. If service is by mail, five (5) calendar days must be added.

(d) **Enforcement.** Subpoenas issued under this Section shall be enforced by the party who served the subpoena pursuant to California Code of Civil Procedure Section 1985 et. seq.

## **Section 61. Witnesses**

(a) **Responsibility for Witnesses; Presence during Hearing.** Every party is responsible for arranging to have his or her own witnesses present at the hearing, and the Panel may summon its own witnesses. All witnesses, except the parties to the hearing and those with vested financial interests in the outcome of the matter as specified in subsection (b), will be excused from the hearing room except while testifying. Upon written request, as long as the Panel is satisfied that safeguards are in place to assure the identity of the person testifying and the confidentiality of the hearing, the presiding officer of the hearing Panel may allow a witness to testify remotely.

(b) **Witnesses Who May Be Present Throughout the Proceedings.** Any person who is associated with a named party and who has a vested financial interest in the outcome of the matter shall have the right to be present and participate at the hearing and all subsequent proceedings regarding the matter before the Association. Such persons shall not be considered named parties to the matter.

## **Section 62. Right to Demand Witness Lists**

If the amount in controversy exceeds \$50,000, California Code of Civil Procedure, Section 1282.2, provides that a party has the right to demand that the other party provide a list of witnesses it intends to call and documents it intends to produce at the hearing. This demand must be made within fifteen (15) calendar days of receipt of notice of hearing and must be in writing, served personally or by registered or certified mail. The demanding party must provide its own list at the time of the demand and must give a copy of its list to the hearing Panel.

## **Section 63. Continuances**

Request for continuance of a hearing shall be in writing and state the reason for the request. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date or when the Professional Standards Chairperson, his or her designee, or the hearing panel chair determines that denying the request for continuance would deny the requesting party a fair hearing. Continuances requested after a hearing has convened shall be considered by the hearing Panel, and granted as necessary.

## **Section 64. Continuance Fees**

Each party shall be entitled to one continuance of a hearing, for good cause, without assessment of a continuance fee. For all subsequent requests for continuance,

the Board of Directors may establish a schedule of fees. If a continuance is requested because of failure to adequately notify the Association and opposing party of representation by counsel, or because counsel is obtained to represent a party after the hearing date has been set but the counsel is unavailable on the date set for the hearing, the party responsible for the continuance may be assessed a continuance fee, not the party requesting the continuance.

## Section 65. Arbitration Hearing

(a) **Certificate of Qualification; Acknowledgement of Receipt of Outline of Procedure.** The hearing Panel, prior to the hearing, must sign a statement certifying that they are unaware of any reason why they should be disqualified to serve on the hearing Panel (Form A-7). At the beginning of the hearing, each party shall sign a statement to the effect that he or she has received and read the outline of procedure (Form A-8) and either 1) understands the procedure and has no objection or questions concerning it, or 2) specifies what objections or questions he or she has and what changes he or she desires (Form A-9). The hearing Panel shall act upon any such objection or request as they deem proper.

(b) **Conducting the Arbitration Hearing.** The parties to the dispute shall with diligence present to the hearing Panel in writing such statements and proofs as they desire. Proofs may be submitted in the form of affidavits or otherwise. The hearing Panel may require that statements be verified by affidavit or that the accuracy or authenticity of any documents or other papers submitted be verified by affidavit. The hearing Panel shall receive oral testimony if any party to the arbitration requests, or if in the hearing Panel's opinion, it is necessary or desirable. The hearing Panel may determine what personal appearance should be made by the parties and regulate the holding of hearings. The hearing Panel may receive and consider any evidence it deems material and proper,

including evidence from accountants and other experts, the expenses of such witnesses to be charged to the loser or charged to the parties in such ratio as determined by the hearing Panel members.

(c) **Presentation of Evidence at the Hearing.** At any hearing, every party has the right to present any witnesses, to submit any evidence pertinent to the case, and to cross-examine witnesses of others. Witnesses giving oral testimony shall be sworn by the presiding officer. Before permitting testimony relating to the character or general reputation of anyone, the hearing Panel shall satisfy itself that the testimony has a direct bearing on the case at issue. If a party wishes to present visual, audio, or video evidence at the hearing, it is that party's responsibility to provide the equipment necessary to display or play the evidence for the hearing Panel.

(d) **Failure of Respondent to Appear at the Hearing.** The hearing Panel may hear and determine the dispute upon the evidence produced at the hearing notwithstanding the failure of the respondent, who has been duly notified, to appear and who is not appearing remotely as set forth in Section 59. If only the complainant appears at the hearing, he or she may rest upon the evidence of the statement submitted with his or her complaint for arbitration unless the hearing Panel requires more. The hearing Panel may not find in favor of a complainant solely by reason of respondent's failure to appear.

(e) **Failure of Complainant to Appear at the Hearing.** If the complainant fails to appear and has not been granted permission to appear remotely as set forth in Section 58, the complaint shall be dismissed.

(f) **Recess and Postponement.** The hearing Panel may recess the hearing from time to time as necessary and, on request of a party or upon the Panel's own motion, may postpone the hearing for not less than fifteen (15) calendar days nor more than thirty (30)

calendar days, unless otherwise agreed to by the parties.

(g) **No Referral of Unethical Conduct to Grievance Committee.** To prevent the appearance of bias, at no time during or after a hearing may the hearing Panel refer concerns regarding potentially unethical conduct to the Grievance Committee.

(h) **Encouraging Settlement.** Parties are encouraged to settle the dispute at any time. At the outset of the hearing, the hearing panel chair should inform the parties that settlement is an option. At any time during the hearing, the parties can ask for a recess in an attempt to reach a settlement agreement. The parties, with the assistance of their respective counsel, if any, will determine the terms of their settlement agreement. The parties should be advised that the arbitration will continue to be processed until the arbitration complaint is formally withdrawn by the complainant.

## **Section 66. Transcript/Right to Record**

(a) **Recording the Hearing.** The Association shall either have a court reporter present at the hearing or record the proceedings. The Association's recording or transcription shall be considered the official record of the proceeding. A party may, at their own expense have a court reporter present. A party may not record the proceedings unless the Association chooses to only have a court reporter, in which case the party may record the proceedings. If a party has any transcript prepared, the party shall provide and pay for a copy for the Association.

(b) **Request for Copy of Recording.** If the time period to request a Directors' review has not lapsed, any party to a hearing has the right to obtain a copy of the Association's official record of the proceeding upon payment of the Association's fees for duplication. In the

event one party to a hearing has requested a copy of the official record prior to the lapse of the time period for a Directors' review, any other party to the hearing may also request a copy of the official record prior to the Directors' review. Any duplication will be conducted under supervision of the Association. Parties are authorized to use recordings or transcripts from arbitration hearings only for the purpose of a Directors' review of the case. Any unauthorized use of the recordings or transcripts shall be construed as a violation of Article 14 of the N.A.R. Code of Ethics and of these procedures.

(c) **Destruction of Transcript or Recording.** Any transcript or recording of a hearing shall be destroyed upon final action of the Directors.

## **Section 67. Interpreters and Translators**

(a) **Selection.** In the event a non-English speaking party in an arbitration case requires an interpreter, or in the event a party requires an interpreter for a witness, the party requesting the interpreter must bear the cost to provide a qualified interpreter that is certified or registered and in good standing with the Judicial Council of California. Only one neutral interpreter will be allowed in the hearing and will assist all parties with translation needs.

(b) **Cost.** The party requesting the interpreter shall bear the cost to provide themselves with a qualified interpreter. In the event that both parties speak the same non-English language and require an interpreter or both call witnesses that speak the same non-English language and require an interpreter, the cost of the interpreter shall be split evenly between the parties. If the prevailing party in the arbitration makes a written request for the cost of the interpreter or translator to be reimbursed using Form A-10, the arbitration hearing panel may reimburse the party for those costs.

(c) **Notice.** The party intending to utilize an interpreter shall notify the Association and all other parties at least ten (10) days prior to the date of the hearing, and in such notices shall indicate the name of the party or witness requiring an interpreter and the language which will be used by the non-English speaking party/witness, as well as any dialect of such language, if applicable. Before the hearing begins, all parties will need to sign a “hold harmless” waiver stating that the Association will not be held liable for any actions or omissions of the interpreter.

(d) **Written Translations.** In the event any party intends to present a written document at a hearing that is in a language other than English, a translation by a qualified independent translator shall be presented along with the document at least ten (10) days prior to the date of the hearing. The party must provide proof that the document was translated by a translator who is certified or registered and in good standing with the Judicial Council of California.

## **Section 68. Costs of Arbitration**

(a) **Prevailing Party’s Costs; Attorneys’ Fees; Statement of Costs.** The award may include costs of the prevailing party including an amount equal to the arbitration fee, witness fees, service of subpoenas, cost of interpreter/translator, and interest at the rate provided by law, unless another rate is specified by the award, and the award shall designate the date from which interest is to be computed. Where the dispute arises out of a contract which provides for attorneys’ fees, the award may include attorneys’ fees, otherwise, the award shall not include attorneys’ fees. Each party shall complete a statement of costs (Form A-10) prior to the hearing and present it to the hearing Panel members for consideration. Failure to submit a statement of costs before the hearing waives the party’s right to request such costs.

(b) **Costs of Continuance.** If a continuance of a hearing has been caused by an untimely request by a party to be represented by counsel as set forth in Section 53 of Part Two of this Manual or for other reasons, such costs occasioned by the continuance may be awarded against the party making the request, even though he or she may be the prevailing party.

## **Section 69. Settlement**

The parties to an arbitration proceeding may settle the issue between them by agreement at any time. In such event, the parties shall promptly notify the Association Executive and the arbitration proceedings shall be terminated.

## **Section 70. The Award**

(a) **Making and Reporting the Decision.** The arbitration award shall be made as soon as practicable after the evidence is presented, and the hearing Panel has finished its deliberations, but in no event later than forty-eight (48) hours following the conclusion of the hearing. The award shall be in writing (Form A-12) and signed by all members of the hearing Panel. The arbitration award shall be transmitted to the parties within five (5) days after the award is reduced to writing.

(b) **When the Award is Final and Binding.** If there is no request for a review, the award shall be final and binding after the period to request a review has lapsed. If there is a request for a review, the award shall be final and binding on the date the Directors ratify the award. Failure of the Association to abide by the timing requirements of this Manual shall not invalidate the Award. Once the award is final and binding, it shall not be subject to review or appeal except as required in Part 5, Title 9 of the California Code of Civil Procedure. Failure to abide by an arbitration award may subject a Member to sanctions by the Association, in accordance with the procedures set forth in Section 72.

(c) **Correction of the Award.** Notwithstanding anything in this Section to the contrary, the hearing Panel may, upon a written request by a party or on its own motion, correct the award based on the grounds stated in subsection (a) and (c) of California Code of Civil Procedure Section 1286.6 within thirty (30) calendar days after the award has been sent to the parties. In the event the hearing Panel makes such a correction, the Association Executive shall transmit the corrected award to all parties.

## **Section 71. Request for Procedural Review by the Directors**

(a) **Filing the Request for Review.** Any party may file a written request for procedural review (Form A-15) by the Directors within twenty (20) calendar days after the hearing Panel's award has been transmitted to the parties. The Association Executive may require the party requesting the review to supply the necessary number of copies of the request for review.

(b) **Required Deposit.** A request for review must be accompanied by a deposit with the Association in the amount provided in the Association's current schedule of fees.

(c) **Basis for Review.** The only basis for a review of an arbitration award is a lack of due process in the processing or hearing of the arbitration. The request for review must clearly indicate the alleged procedural deficiencies that occurred and contain in reasonable detail a summary of the facts and evidence supporting the challenge.

(d) **Permissible Evidence.** Only the issues raised by the party requesting review in the written request for review may be raised by the party requesting review in any hearing before the Directors.

(e) **Preliminary Review.** Within ten (10) days of receipt of the request for the

review, the request must be reviewed by the Association Executive to determine whether the request complies with the filing requirements of this Section. If the Association Executive determines that the review fails to meet the filing requirements of this Section, the request shall be returned to the party and the party shall be given ten (10) calendar days to amend the request to comply with the appropriate requirements. Any preliminary decision by the Association Executive is not a decision on the merits of the request but is to insure that the request complies with the filing requirements of this Section.

(f) **Conducting the Review Hearing.** If a request for review is filed, the procedures for the review shall be the same as those used for disciplinary hearing reviews as contained in Section 38 and subject to any exceptions contained in this Section. Where Section 38 references disciplinary forms, the corresponding arbitration forms shall be used. To the extent any procedures in Section 38 are applicable only to disciplinary hearing reviews, such procedures shall not be applicable.

(g) **Documents Provided to the Directors.** The Association Executive shall provide to the Directors, in advance of the review hearing, copies of the request for review, response to that request, and the award.

(h) **Delegation of Authority to Conduct the Review.** The Directors may delegate the authority to conduct the procedural review to Association legal counsel, provided Association legal counsel did not participate in the review of the complaint before the hearing, or at the hearing level of the dispute. If Association legal counsel conducts the review, the procedures shall be the same as for the Directors.

(i) **Action of the Directors.** The Directors shall render their decision promptly (Form A-19). Their decision may be to 1)

ratify the award of the hearing Panel, or 2) to remand the case for a new hearing before a new Panel.

(j) **Disposition of the Deposit.** If the Directors ratify the decision of the hearing Panel, the money deposited by the party requesting review shall pass into the general treasury of the Association. If a new hearing is ordered, the deposit shall be returned to the party requesting the review.

(k) **Finality of Directors' Decision.** The decision of the Directors to ratify the decision shall be final. Further, failure of the Association to abide by the timing requirements of this Manual shall not invalidate the decision of the Panel of Directors.

## **Section 72. Enforcement**

(a) **Judicial Confirmation; Costs and Fees.** The judgment of any competent court of record in California may be rendered upon the award. In the event it is necessary for any party to the arbitration to obtain judicial confirmation and enforcement of the arbitration award against any other party, the party failing to abide by the arbitration award shall pay to the party obtaining such confirmation the costs and reasonable attorneys' fees incurred in such actions as determined by the court.

The award is final as set forth in Section 70(b). Any payment plan or discipline to membership imposed by the Association pursuant to a "show cause" hearing, is for the violation of the membership duty to abide by the arbitration award and is not be a modification of the award. The prevailing parties retain the right to judicial confirmation of the entire final award in addition to the membership suspension process set forth in Section 72 (b)-(e). Sanctions and payments to avoid sanctions are independent of, and run concurrently with, the prevailing parties' rights to judicially enforce the award. Any such payment plan to avoid suspension,

including the decision not to suspend the member, is not a modification of the award.

(b) **"Show Cause" Hearing.** If the non-prevailing party in an arbitration has not paid the arbitration award to the prevailing party within fifteen (15) days after the deadline set forth in the Award of Arbitrators, the prevailing party may file a request with the Association that the non-prevailing party "show cause" before a Panel of three (3) Directors as to why he or she refuses to abide by the arbitration award. If a party requests a procedural review, the request for a "show cause" hearing may not be filed until at least fifteen (15) days after the payment of the award is due following the procedural review. The non-prevailing party shall be advised of the date, time, and place, of the "show cause" hearing and shall have an opportunity to explain why the arbitration award was not paid to the prevailing party. The sole purpose of the "show cause" hearing is to determine why the non-prevailing party failed to timely pay the arbitration award. If the non-prevailing party pays the full award amount, including any accrued interest, to the prevailing party at any time prior to the "show cause" hearing, the "show cause" hearing will be dismissed, and the case will be considered closed.

(c) **Conducting the "Show Cause" Hearing.** Both parties may attend the "show cause" hearing and may call witnesses, present evidence, and be represented by legal counsel. The procedures for the "show cause" hearing shall be the same as those used for a review hearing. To the extent any review hearing procedures are applicable only to a review hearing, such procedures shall not be applicable to a "show cause" hearing.

(d) **Action of the Directors after "Show Cause" Hearing.** The Directors shall render their decision promptly after the "show cause" hearing (Form A-28). Their decision may be to: 1) take no action; 2) impose suspension of the non-prevailing party's Association and/or MLS membership for thirty (30) days or until the arbitration

award plus interest is paid to the prevailing party, whichever is longer; or 3) set forth a schedule for the payment of the arbitration award plus interest to the prevailing party. Interest begins to accrue on the arbitration award starting from the due date of the award, at the statutory interest rate of ten percent (10%) per annum.

**(e) Failure to Make a Payment Pursuant to a Payment Plan.** The prevailing party may notify the association of any non-payment or partial payment by the non-prevailing party pursuant to any payment plan imposed by the Directors, and the association will send the non-prevailing party notice to provide evidence of the full amount of the payment within five (5) days. If the non-prevailing party doesn't provide evidence of the full amount of the payment by the deadline, the non-prevailing party's Association and/or MLS membership will be suspended until the full payment is made.

The prevailing party is not precluded from pursuing a court confirmation of the award notwithstanding the payment plan.

**(f) Requirements for Enforcement of Suspension.** Any suspension of membership imposed by the Directors following a "show cause" hearing shall not be enforced until: 1) the arbitration award is confirmed or modified by a court, but only if the award is not paid by the date ordered by the court (or within fifteen (15) days after the date the court order is made if the court order does not provide a due date); or 2) if no court action is filed, one hundred one (101) days after the award is finalized.

**(g) Publication.** A member who has been suspended for failure to timely pay an arbitration award will have his or her name and photo published in accordance with C.A.R.'s publication policy.

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