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Board or State Association

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Address

City

State

Zip

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## **Outline of Procedure for Arbitration Hearing Involving a Request and a Counter-Request**

**(To be Transmitted in Advance to Both Parties with Arbitration Guidelines and Worksheet)**

**Remote testimony:** Hearings may be held in person, virtually, or a combination thereof. If the hearing is in person, testimony provided in the physical presence of the Hearing Panel is preferred, however, parties and witnesses to arbitration hearings may be permitted to participate virtually in hearings at the discretion of the Hearing Panel Chair. Associations may, at their sole discretion, hold hearings where all parties must participate virtually.

**Postponement of hearing:** Postponement may be granted if there are extenuating circumstances. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing. Requests are reviewed by the Hearing Panel Chair. If the request is approved by the Chair, all parties shall be advised of the rescheduled hearing date.

**Recording of the hearing:** The Association shall have a court reporter present at the hearing or shall record the proceeding. Any party may, at the Association's discretion, record the proceeding or utilize a court reporter at their own expense. If a party utilizes a court reporter and orders a transcript, a copy of the transcription shall be made at the party's expense and presented to the Professional Standards Administrator. If the Association utilizes a court reporter in lieu of recording, the parties may not be prohibited from making their own recording. Videotaping is not permitted except with the advance express consent of the parties and the panelists. Any and all recording shall be conducted in accordance with state law. Copies of any recording or transcription are to be used only for the purpose of appeals or procedural reviews. Appeals and limited procedural reviews shall not be recorded by the Association or the parties. (*Revised 11/21*).

**Method and objective of procedure:** The Hearing Panel shall not be bound by the rules of evidence applicable in courts of law, but shall afford all parties a full opportunity to be heard, present witnesses, and offer evidence, subject to its judgment as to relevance.

Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the other party(ies) and to the association prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. Evidence submitted to the association but not provided to the other party(ies) will be provided to the other party(ies) by the association at the time of submission. Evidence submitted at the time of the hearing will be evaluated for admissibility by the hearing panel chair.

**Due process procedure:** (Chairperson's Procedural Guide of an Arbitration Hearing and Counter-Arbitration Request is available on-line at [nar.realtor.org](http://nar.realtor.org).)

The hearing will proceed as follows:

- (1) Chairperson cites authority to hear case and explains reason for hearing.
- (2) The arbitration request and counter-request will be read into the record.
- (3) The testimony of all parties and witness(es) will be affirmed. All witness(es) will be excused from the hearing except while testifying. All parties appearing at the hearing may be called as witnesses without advance notice.
- (4) Complainant/counter-respondent will present a brief opening statement uninterrupted, stating the amount to be arbitrated and an explanation of the source of the dispute (i.e., commission dispute, request for security deposit refund, etc. . .) and refuting the contention that any monies are owed.
- (5) Respondent/counter-complainant will present a brief opening statement uninterrupted, stating the amount to be arbitrated and an explanation of the source of the dispute (i.e., commission dispute, request for security deposit refund, etc. . .) and refuting the contention that any monies are owed.
- (6) Complainant/counter-respondent presents their case and defense by offering testimony and evidence from themselves and/or their witness(es) to support the contention that monies are owed to the complainant by the respondent and refuting the contention that monies are owed to the counter-complainant.
  - (a) The respondent/counter-complainant may question the complainant/counter-respondent and/or their witness(es) immediately after each has testified.
  - (b) The Hearing Panel may question the complainant/counter-respondent and/or their witness(es) immediately after each has testified.
- (7) Respondent/counter-complainant presents her case, offering testimony and evidence from themselves and/or witness(es) to

support the contention that monies are owed to them by the counter-respondent and refuting the contention that they owe monies to the complainant.

- (a) The complainant/counter-respondent may question the respondent/counter-complainant and/or their witness(es) immediately after each has testified.
- (b) The Hearing Panel may question the respondent/counter-complainant and/or their witness(es) immediately after each has testified.
- (8) The complainant/counter-respondent may present additional testimony and evidence from himself and/or his witness(es) to further support his position as a complainant/counter-respondent.
  - (a) The respondent/counter-complainant may question the complainant/counter-respondent and/or their witness(es) immediately after each has testified.
  - (b) The Hearing Panel may question the complainant/counter-respondent and/or their witness(es) immediately after each has testified.
- (9) The respondent/counter-complainant may present additional testimony and evidence from herself and/or their witness(es) to further support her position as respondent/counter-complainant.
  - (a) The complainant/counter-respondent may question the respondent/counter-complainant and/or their witness(es) immediately after each has testified.
  - (b) The Hearing Panel may question the respondent/counter-complainant and/or their witness(es) immediately after each has testified.
- (10) Cross-examination in which the parties are given a final opportunity to examine each other. The complainant/counter-respondent may first ask any remaining questions of the respondent/counter-complainant and/or the respondent/ counter-complainant's witness(es). The respondent/counter-complainant may then ask any remaining questions of the complainant/counter-respondent and/or of the complainant/counter-respondent's witness(es).
- (11) The Hearing Panel may question either the complainant/counter-respondent and/or the respondent/counter-complainant and/or their respective witness(es).
- (12) When the parties and Hearing Panel have no further questions, the complainant/counter-respondent and respondent/counter-complainant (respectively) may present uninterrupted closing statements.
- (13) The Chair will then adjourn the hearing.
- (14) The Hearing Panel will go into executive session to decide the case.

**Settlement:** The 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.

**Award in arbitration hearing:** The decision of the Hearing Panel in an arbitration proceeding shall be reduced to writing by the panel (setting forth only the amount of the award) and be signed by the arbitrators or a majority of them, and a copy shall be furnished to each of the parties to the arbitration. A copy also shall be filed with the Professional Standards Administrator of the Association.

**Testimony:** Any testimony relating to the character or general reputation of either party shall not be permitted unless the Hearing Panel finds that such testimony has a direct bearing on the case. The Chairperson may exclude any question which he or she deems irrelevant or argumentative.

**Use of legal counsel:** A party may be represented in any hearing by legal counsel. However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be nonappealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from the date of adjournment to enable the party to obtain alternate counsel, provided, however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

Be advised all matters discussed are strictly confidential.