**Chairperson’s Procedural Guide:**

**Conduct of an Arbitration Request and a**

**Counter-Arbitration Request**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Board of REALTORS®**

**State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

*(Ask the recording Professional Standards Administrator to make sure that the names of all parties present for the hearing have been added to this Guide and that all the appropriate blanks have been completed.)*

*(Ask all parties [including witnesses] to come into the hearing room.)*

**Display:** Board Banner and the American Flag

**Seating arrangements:** See Part Thirteen, Form #A-16 of this Manual for recommended seating arrangements.

**Start promptly:** Rap gavel to open meeting.

**Chairperson’s opening statement and conduct of hearing:** Ladies and gentlemen, I now call this hearing to order. The Professional Standards Committee is charged with holding appropriate hearings for the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Board of REALTORS® in accordance with the procedures set forth in the Board's bylaws in the arbitration of a business dispute arising out of the real estate business, or in matters concerning alleged unethical conduct of a Board member or members. The body meeting here is an impartial panel of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Board of REALTORS® Professional Standards Committee that has been selected and called here today to ascertain the truth in the particular matter at hand, which is an arbitration proceeding, and to render a decision on the testimony and evidence presented. It is to be noted that an arbitration proceeding is to be clearly distinguished from an ethics proceeding and should be treated as a completely separate matter. The particular matter to be considered by this panel at this time is an arbitration proceeding.

The Professional Standards Committee is a body duly constituted under the authority of the bylaws of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Board of REALTORS® and has been duly appointed by the Board President and approved by the Board of Directors. At this time, I would like to introduce the members of this panel.

(1) My name is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and I will serve as Chairperson of this panel.

(2) The other members of this panel are: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(3) Present at this hearing is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the complainant(s) and counter-respondent(s)/sales associate(s).

(*If the complainant is accompanied by an attorney and/or witnesses, they should be introduced at this time.)*

**Counsel: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, for complainant(s)**

**Witness(es): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

(*If the complainant is represented by counsel and/or accompanied by witnesses, confirm that the respondent was notified in advance. If not, ask if there is an objection. If none, have the respondent sign a statement to that effect. If there is an objection, determine what the basis of the objection is and act accordingly. If the objection is simply that proper notification was not given, the chair will likely overrule the objection and the hearing will proceed. If the objection is based on the other individual’s request to call a witness to refute the witness’ testimony or arrange for counsel, the chair may recess the hearing to ensure due process is afforded.)*

(4) Also present at this hearing is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the respondent(s) and counter-complainant(s)/sale associates.

(*If the respondent is accompanied by an attorney and/or witnesses, they should be introduced at this time.)*

**Counsel\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for respondent(s)**, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**Witness(es): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

(*If the respondent is represented by counsel and/or accompanied by witnesses, confirm that the complainant was notified in advance. If not, ask if there is an objection. If none, have complainant sign a statement to that effect. If there is an objection, determine what the basis of the objection is and act accordingly. If the objection is simply that proper notification was not given, the chair will likely overrule the objection and the hearing will proceed. If the objection is based on the other individual’s request to call a witness to refute the witness’ testimony or arrange for counsel, the chair may recess the hearing to ensure due process is afforded.)*

(5) Also present at this hearing is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the recording Professional Standards Administrator for the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Board of REALTORS®, and (*if appropriate*) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the court reporter present to transcribe these proceedings, if necessary.

(*Or, alternatively: This hearing is being mechanically recorded.*)

(*If an attorney representing the Board is present, he/she should be introduced at this time.*)

**Board’s Attorney:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The parties are specifically advised that any recording or transcription that may be made of these proceedings can only be used for purposes of appeal, and any other use, including use in other ethics or arbitration hearings, is expressly prohibited.

**Basis of hearing:** This hearing is to arbitrate a business dispute arising out of the real estate business in accordance with the request of the complainant \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, that he/she will be awarded a commission or part of a commission on the sale of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Additionally, this hearing is to arbitrate a business dispute arising out of the real estate business as requested by the counter-respondent \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ that he/she will be awarded a commission or part of a commission on the sale of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

*(Read the amount and nature of the dispute into the record.)*

*(Confirm that all parties have received the arbitration request and counter-arbitration request and all supporting documents.)*

Any prior offers of settlement or proposed resolutions of the case, during mediation or otherwise, will not be considered by the Hearing Panel.

However, the parties are encouraged to settle their dispute at any time during or after the hearing. If the parties wish to discuss settlement during the hearing, they may ask for a recess. The parties with the assistance of their respective counsel, if any, will determine the terms of the settlement agreement. The parties are advised that the arbitration will continue to be processed until formally withdrawn by the complainant.

This panel is not dealing with questions of law, and it is not governed by the technical rules of evidence which may apply in courts. This panel will seek to determine all ascertainable and relevant facts pertaining to the matter under consideration to arrive at a peer judgment and decision by the panel that is fair to all of the parties. The panel is governed and directed by the bylaws of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Board of REALTORS® and the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®. The panel determines its own rules of evidence and its own procedures to be followed with objectives of equity and due process. The following has been generally accepted and ruled on by this panel as to the procedures to be followed during this hearing.

(1) All parties or their representatives to these proceedings will be allowed a full opportunity to be heard on matters relevant to the issue. The panel may rule at any time during this hearing on the relevance of testimony being given or questions being directed to any party or his/her representative or to witnesses providing testimony. All parties and witnesses will be asked to swear or affirm that testimony given is the truth to the best of their knowledge.

*(If no counsel is present, proceed to 3.)*

(2) A party may be represented by legal counsel. However, no party may refuse to directly respond to requests for information or questions addressed to him/her by members of the panel except on grounds of self-incrimination or other grounds which the panel deems appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of his/her client if the panel desires direct testimony. Counsel is present to advise and consult with his/her client, and to speak for him/her subject to appropriate rulings or determinations by the panel. This panel will not tolerate any effort by any party or by counsel to any party to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings.

(3) The panel may rule at any time on the admissibility of evidence. As Chairperson, I will act as keeper of the evidence introduced at this hearing and mark each with an exhibit identification number or letter and date.

(4) The members of this panel are authorized, individually, to ask questions as they deem pertinent and significant at any time during this hearing. To preserve order, I will rule on questions or testimony by the parties or their representatives, or by witnesses in these proceedings. If deemed necessary, I will consult with the members of the panel and with Board counsel concerning such rulings.

(5) At this time, I request that all persons present in the room who expect to testify at this hearing stand and be sworn or make appropriate affirmation in lieu of being sworn.

*(The Chairperson should determine if any of the parties prefer affirmation in lieu of being sworn.)*

**Swearing:** Raise your right hand and, following the question I pose, answer in the affirmative if you do so swear . . . “Do you swear that the statements you are about to make at this hearing are the truth, the whole truth, and nothing but the truth so help you God?” Let the record show that all parties have answered in the affirmative.

*(And/or if needed)*

**Affirmation:** Raise your right hand and, following the question I will now pose, answer in the affirmative if you do so affirm. “Do you affirm that the testimony you are about to give in this proceeding shall be the truth, the whole truth, and nothing but the truth?” Let the record show that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ has/have answered in the affirmative.

*(At this time, the Chairperson should excuse any witnesses and ask them to wait outside until called, and ask the parties to be seated.)*

**Outline of procedure for hearing:** Both the complainant and the respondent were mailed a copy of the Outline of Procedure for an Arbitration Hearing Involving a Complaint and Counter Complaint. Did each of you receive that outline?

*(If yes)* Let the record show that both the complainant/counter-respondent and respondent/counter-complainant have stated they did receive the Outline.

*(If no, the party should be given a copy of the Outline and the Chairperson should determine whether that party has any objections to proceeding.)*

Do you have any questions concerning that Outline of Procedure?

*(If none)* Let the record show that neither the party has any questions concerning the Outline of Procedure for this arbitration hearing.

We shall now proceed with the hearing.

1. **Opening statement by parties or counsel:** Each party or the party’s counsel shall be given an opportunity for an opening statement which shall briefly outline the basic premise of the party’s position. You will have an opportunity to present your entire case at a later time during this hearing.

**First I will ask** complainant/counter-respondent \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_to present a **brief** opening statement uninterrupted, identifying why he or she believes they are entitled to compensation from the respondent and refuting the contention that you owe the counter-complainant money.

**Then** the respondent/counter-complainant \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ will present a brief opening statement uninterrupted, identifying why he or she believes they are entitled to compensation from the complainant and refuting the contention that you owe the complainant money.

1. **Presentation by complainant/counter-respondent:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_will present his or her case and defenses by offering testimony and evidence from himself or herself and/or witness(es) to support the belief of entitlement to compensation from the respondent/counter-complainant and rebutting the counter-complainant’s contention that the counter-complainant is owed money from the complainant.
	1. **Cross examination by respondent/counter-complainant:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ may cross examine the testimony of the complainant/counter-respondent \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and/or their witness(es) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ immediately after each has testified.
	2. **Questions from panel members**: The Hearing Panel may question the complainant/counter-respondent \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and/or his witness(es) immediately after each has testified.
2. **Presentation by respondent/counter-complainant:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ will present their case, offering testimony and evidence from themselves and/or witness(es) to support the belief of entitlement to compensation from the complainant/counter-respondent and rebutting the complainant’s contention that the complainant is owed money from the respondent.
	1. **Cross-examination by complainant/counter-respondent:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ may cross examine the testimony of the respondent/counter-complainant and or their witness(es) immediately after each has testified.
	2. **Questions from panel members:** The Hearing Panel may question the respondent/counter-complainant and/or their witness(es) immediately after each has testified.
3. **Opportunity to present additional testimony by the complainant/counter-respondent:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is now given an additional opportunity to present additional testimony and evidence from themselves and/or their witness(es) to further support belief of entitlement to compensation from the respondent/counter-complainant and/or rebut the counter-complainant’s contention that the counter-complainant is owed money from the complainant.
	1. **Cross examination by respondent/counter-complainant:** \_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ may cross examine the testimony of the complainant/counter-respondent \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_and/or their witness(es) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ immediately after each has testified.
	2. **Questions from panel** may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.
4. **Opportunity to present additional testimony by the respondent/counter-complainant** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_is now given an opportunity to present additional testimony and evidence from themselves and/or her witness(es) to further support the belief of entitlement to compensation from the complainant/counter-respondent and/or rebut the complainant’s contention that the complainant is owed money from the respondent.
	1. **Cross-examination by complainant/counter-respondent:** \_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_may cross examine the testimony of the respondent/counter-complainant and or their witness(es) immediately after each has testified.
	2. **Questions from panel members:** The Hearing Panel may question the respondent/counter-complainant and/or their witness(es) immediately after each has testified.
5. **Final cross-examination** **by both parties**: At this time, both parties will be given a final opportunity to ask questions of 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-respondents and/or of the complainant/counter-respondent’s witness(es).
	1. **Questions from panel** may question either the complainant/counter-respondent and/or the respondent/counter-complainant and/or their respective witness(es).
6. **Closing statements:** At this time both parties will be given an opportunity to make an uninterrupted summary or closing statement.
	* + 1. **Closing statement by the complainant/counter-respondent will be heard first.**
			2. **Closing statement by the respondent/counter-complainant second**
7. **Closing statement by panel chairperson:** Do each of you feel that this hearing has been conducted fairly?

*(If yes)* Let the record show that both the complainant/counter-respondent and the respondent/counter-complainant have indicated that they feel this hearing has been conducted fairly.

Have each of you had an adequate opportunity to testify, present evidence and witnesses, and conduct cross-examination?

*(If yes)* Let the record show that both the complainant and the respondent have indicated that they have had an adequate opportunity to testify, present evidence and witnesses, and conduct cross-examination.

*(If any party answers “no,” ask him/her to state any concern and, if there’s any merit to the concern, take steps to remedy any possible deficiency.)*

**Confidential nature of hearing:** Before we adjourn the hearing of this panel, all persons present are advised that the report and findings of this panel are considered confidential. It will be available only to members of this panel, to the parties, to counsel and staff as required, or as otherwise specified in the *Code of Ethics and Arbitration Manual*. Upon final action by the Hearing Panel in an arbitration proceeding, the decision, when signed by the members of the Hearing Panel (or a majority of them, shall be served upon the parties to the disputes. The parties will be notified of the decision within the required time after this hearing is adjourned. You are also reminded that any recording or transcription of these proceedings can only be used for purposes of appeal and that all other uses, including use in other ethics or arbitration hearings, is expressly prohibited.

**Adjournment:** There being no further business to be considered in this hearing, this portion of the hearing stands adjourned.

**Proceeding following hearing—executive session:** *(After adjournment, the panel will remain in executive session and determine the award. The panel will follow explicitly the procedure set forth in the* Code of Ethics and Arbitration Manual *as to opportunity for procedural review. Boards should consider having Board counsel review awards prior to issuance. This will serve to protect the Board by minimizing vulnerability to litigation.)
(April 2016)*