



To Whom it May Concern:

The information contained in this packet refers to the *Arbitration Process at the Association*. Please review the *Request and Agreement to Arbitrate Form* included in this packet. If you decide to move forward with the Arbitration Process, complete the forms in this packet, include any or all the documentations items listed below and **submit with the \$200 filing fee**, to the Association offices.

- Duties Owed
- Exclusive Right to Sell
- Offer & Acceptance Agreement
- Commission Instructions
- Texts
- Amendments
- Inspections
- Closing Disclosure
- Addendums
- Phone Logs
- Buyer-Brokerage Agreement
- Appraisal
- Counteroffer
- Emails
- Cancel Instructions

Include any other documents that are related to events that brought about the dispute that you would like reviewed in the determination process.

Once staff receives your packet, it will be forwarded to the Grievance Committee for review and recommendation, as to whether the dispute is arbitrable under the Code of Ethics and Arbitration Manual guidelines. If the committee, based on these guidelines, determines the dispute meets the criteria, a hearing will be scheduled, and you will be asked to attend. **Included in this packet is a copy of the Code of Ethics and Arbitration Manual section pertaining to the procedures and conduct of an arbitration hearing.** All findings by an arbitration hearing panel are binding and enforceable on all parties.

If you have any questions about the process, the forms, or materials included in this packet, please contact me at your convenience. Your efforts to bring this matter to the attention of the Association are appreciated.

Sincerely,

Katie Fletcher AHWD, C2EX  
Vice-President of Operations

**Sierra Nevada REALTORS®**  
5650 Riggins Ct. Reno, NV 89502  
300 S. Curry St. #3 Carson City, NV 90703  
775-823-4028 katie@snr.realtor

**Arbitration Request**

General Information and Filing Instructions

1. Arbitration requests must be typewritten or printed clearly and filed within one hundred eighty (180) days after closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later.
2. Arbitration requests that are submitted are referred to the Grievance Committee for review. The Grievance Committee will determine if the cases are arbitrable.
  - a. The matter constitutes a mandatory arbitration.
  - b. The matter constitutes a voluntary arbitration.
  - c. The matter is not arbitrable by the Association.
    - i. If the Grievance Committee dismisses your request for arbitration, an appeal may be filed with the Board of Directors within twenty (20) days from receipt of the dismissal notice.
3. If the Grievance Committee determines the matter is arbitrable, mediation will be offered as a first step in resolving the matter. If all parties agree to mediation, the Association will appoint a Mediator to the case.
  - a. The mediator will attempt to help the parties come to a resolution of their own free will.
    - i. If the parties come to a mutual resolution and sign a resolution agreement, the case will be considered resolved and closed.
  - b. If the parties do not come to a mutual resolution, then the mediator will make a resolution recommendation to both parties.
    - i. If all parties accept the recommendation and a resolution agreement is signed, the case will be considered resolved and closed.
    - ii. If the parties do not agree to the recommended resolution, mediation will be concluded and the matter will proceed to arbitration.

4. In the event that mediation does not work, in order to move forward with the Arbitration at the Association, each party must sign an Arbitration Agreement and submit with a check payable to SNR in the amount of \$200.00.
5. If there is to be an Arbitration Hearing, the Respondent will have 15 days after the service of the request to Arbitrate to submit a reply. If the Respondent submits a reply the Complainant will receive a copy of the reply.
6. The date of the Arbitration Hearing will be set by the Association and all parties will be notified at least 21 days prior with the date and location for the hearing.
7. Either party to the Arbitration Hearing maybe represented by legal counsel provided that notification to have legal counsel is submitted in writing to the Association no later than 15 days prior to the date of the hearing.
8. Either party, to the Arbitration Hearing may have witnesses present at the Hearing. Notice of witnesses must be transmitted in writing to the Association no later than 10 days prior to the Hearing. The Association will notify each party of their witnesses list, once submitted to the Association.
9. The notice of hearing will contain the names of members of the tribunal per the Outline of Procedure for Arbitration Hearing and Arbitration Guidelines.
10. Any party may file with the Professional Standards Administrator a written request for disqualification of a member of a tribunal, for any of the following reasons:
  - a. Related by blood or marriage to either the Complainant or the Respondent.
  - b. Employer, Partner, Employee, Business Associate with the Complainant, or the Respondent
  - c. Party to the hearing or party or witness in any other pending case involving any party to this hearing.
  - d. Has knowledge of any reason that may cause a member of the tribunal unable to render a fair and impartial decision on the case.
11. No hearing will be held in the absence of a Complainant. An arbitration hearing may proceed in the absence of the Respondent.
12. The parties shall not discuss the case with any member of the Hearing Panel or the Board of Directors at any time prior to final action by the Board of Directors.

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300 S. Curry St. #3 Carson City, NV 89703

**Request and Agreement to Arbitrate Forms**

Please complete the form by checking all boxes, initialing, signing and submitting with other forms back to the Association along with the fees.

\_\_\_\_\_(Initials) **Yes, I am a member of the Sierra Nevada REALTORS®.** I request and consent to arbitration through the Association in accordance with the Professional Standards procedures set forth in the bylaws of the Association. I agree to abide by the arbitration decision and award.

If I am the non-prevailing party, within ten (10) days following transmittal of the decision to either (1) pay the award to the party(ies) named in the decision or (2) deposit the funds with the Professional Standards Administrator to be held in an escrow or a trust account maintained for this purpose.

Failure to satisfy the decision and pay the award or to deposit the funds in the escrow or trust account within this time period maybe considered a violation of a membership duty and may subject the member to disciplinary action at the discretion of the Board of Directors consistent with Section 53, The Award, *Code of Ethics and Arbitration Manual*.

In the event I do not comply with the arbitration award and it is necessary for any party to this arbitration to obtain judicial confirmation and enforcement of the arbitration award against me, I agree to pay the party obtaining such confirmation the costs and reasonable attorney's fees incurred in obtaining such confirmation and enforcement.

\_\_\_\_\_(Initials) **No, I am not a member of the Sierra Nevada REALTORS®.** I agree and want to submit to arbitration before a Hearing Panel of the Sierra Nevada REALTORS® with the understanding that the arbitration will be conducted in accordance with the Professional Standards procedures set forth in the Association's bylaws. I acknowledge having had the opportunity to review the Association's procedures and/or have been provided with a copy of the Association's procedures.

If I am the non-prevailing party, within ten (10) days following transmittal of the decision to either (1) pay the award to the party(ies) named in the decision or (2) deposit the funds with the Professional Standards Administrator to be held in an escrow or a trust account maintained for this purpose.

In the event I do not comply with the arbitration award and it is necessary for any party to this arbitration to obtain judicial confirmation and enforcement of the arbitration award against me, I agree to pay the party obtaining such confirmation the costs and reasonable attorney's fees incurred in obtaining such confirmation and enforcement.

1. I/We, complainant(s), are informed that each person named below is a member in good standing of the Reno/Sparks Association (or Participant in its MLS), or was a member of said Association of REALTORS® at the time the dispute arose. A dispute arising out of the real estate business as defined by Article 17 of the Code of Ethics exists between me (or my firm) and the following Respondent(s)-list all persons you wish to name as Respondent(s) to this arbitration:

Broker Name	Brokerage Company Name
Agent	Agent
Adress, City, State, Zip	
Phone	Email

2. There is due, un-paid and owing to me/we (or I/We retain) from the Respondent(s) named in this document the sum of \$\_\_\_\_\_. My claim is predicated upon the statement attached, marked "Exhibit I: Narrative Summary" and incorporated by reference into this application. The disputed funds are currently held by\_\_\_\_\_
3. I/We understand that I/We may be represented by legal counsel, and that I/We should give written notice no less than fifteen (15) days before the Arbitration Hearing to the Association and all parties. Failure to provide this notice may result in a continuance of the Arbitration Hearing if the Hearing Panel determines that the rights of the party(ies) require representation.
4. I/We must provide a list of all witnesses, I/We intend to call at the Arbitration Hearing no less than fifteen (15) days prior to the hearing, to the Association and to all parties. Each party shall arrange for their witnesses to be present at the time and place designated for the Arbitration Hearing.
5. **REALTOR® Members Only:** The following REALTOR® non-principal or REALTOR® Associate non-principal affiliated with my firm has a financial interest in the outcome of the proceeding and may be called as a witness and has the right to be present through the Arbitration Hearing:  
\_\_\_\_\_
6. Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the Arbitration Hearing to the Association prior to the day of the Arbitration Hearing. Providing documents and evidence in advance can expedite the Arbitration Hearing process and prevent costly, unnecessary continuances.
7. I/We declare that this application and the allegations contained herein are true and correct to the best of my/our knowledge and belief and this request for arbitration is filed with one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts consisting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later. **Date(s) alleged dispute took place:**\_\_\_\_\_
8. If either party to an arbitration request believes that the Grievance Committee has incorrectly classified the issue presented in the request as mandatory or voluntary, the party has twenty (20) days from the date of the receipt of the Grievance Committee's decision to file a written appeal of the decision. Only those materials that the Grievance Committee had at the time of its determination may be considered with the appeal by the Board of Directors.
9. Are the circumstances giving rise to this arbitration the subject of civil litigation?  Yes  No
10. Important note related to arbitration conducted pursuant to Standard of Practice 17-4 (1) or (2): Where arbitration is conducted between two (or more) cooperating brokers pursuant to Standard of Practice 17-4 (1) or (2), the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the Respondent by the listing broker, seller, or landlord and any amount credited or paid to a party to the transaction at the direction of the Respondent.

11. Address of the property in the transaction giving rise to this Arbitration Request:

12. Date sale/lease closed:

13. Agreements to arbitrate are irrevocable except as otherwise provided under state law.

Complainant(s):

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Broker Name

Brokerage Company Name

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Broker Signature

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Agent

Agent

---

Agent Signature

Agent Signature

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Address, City, State, Zip

---

Phone

Email

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**Exhibit I: Narrative Summary Form**

Arbitration Statement

\*Please attach as many pages as needed and include all supporting documents with this form

**Complainant(s):**

**Respondent(s):**

**Relationship to Transaction:**

- Buyer    Seller    Tenant    Owner  
 Listing Agent    Selling Agent    Property Mgr.

**Relationship to Transactions:**

- Buyer    Seller    Tenant    Owner  
 Listing Agent    Selling Agent    Property Mgr.

Please describe in detail the transaction that led to the necessity of filing an Arbitration request. I/We believe that there is due, un-paid, and/or owing to I/We or I/We retain from the Respondent(s) the sum of \$\_\_\_\_\_ based on the Arbitration Statement. Please include names, dates, times, location, and any other details necessary to support the Arbitration Request. Please use additional pages, if necessary.

Complainant(s):

Name

Signature

Date

Name:

Signature:

Date:

Address, City, State, Zip

Phone/Email

*\*The Hearing Panel will not make an award of money on any matter. These matters are the subject(s) of Arbitration Hearings.*

# Appendix I to Part Ten

## Arbitrable Issues

Article 17 of the Code of Ethics provides:

*In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between REALTORS® (principals) associated with different firms, arising out of their relationship as REALTORS®, the REALTORS® shall mediate the dispute if the Board requires its members to mediate. If the dispute is not resolved through mediation, or if mediation is not required, REALTORS® shall submit the dispute to arbitration in accordance with the policies of the Board rather than litigate the matter.*

*In the event clients of REALTORS® wish to mediate or arbitrate contractual disputes arising out of real estate transactions, REALTORS® shall mediate or arbitrate those disputes in accordance with the policies of the Board, provided the clients agree to be bound by any resulting agreement or award.*

*The obligation to participate in mediation and arbitration contemplated by this Article includes the obligation of REALTORS® (principals) to cause their firms to mediate and arbitrate and be bound by any resulting agreement or award. (Amended 1/12)*

**Part Ten**, Section 43, Arbitrable Issues, in this Manual provides in part:

*As used in Article 17 of the Code of Ethics and in **Part Ten** of this Manual, the terms “dispute” and “arbitrable matter” refer to contractual issues and questions, and certain specific non-contractual issues and questions outlined in Standard of Practice 17-4, including entitlement to commissions and compensation in cooperative transactions, that arise out of the business relationships between REALTORS®, and between REALTORS® and their clients and customers, as specified in **Part Ten**, Section 44, Duty and Privilege to Arbitrate. (Revised 11/96)*

**Part Nine**, Section 42, Grievance Committee’s Review and Analysis of a Request for Arbitration, provides, in part, in subsection (b):

*If the facts alleged in the request for arbitration were taken as true on their face, is the matter at issue related to a real estate transaction and is it properly arbitrable – i.e., is there some basis on which an award could be based?*

Despite the guidance provided in the above-referenced sections of the *Code of Ethics and Arbitration Manual*, questions continue to arise as to what constitutes an arbitrable issue, who are the appropriate parties to arbitration requests, etc. To provide guidance to Board Grievance Committees in their review of arbitration requests, the Professional Standards Committee of the National Association provides the following information.

Arbitration by Boards of REALTORS® is a process authorized by law in virtually every state. Arbitration is an economical, efficient, and expeditious alternative to civil litigation. Jurists, including the former U.S. Supreme Court Chief Justice Warren Burger, have endorsed arbitration as a method of reducing the litigation backlog in the civil courts.

To conduct arbitration hearings, Boards of REALTORS®, acting through their Grievance Committees and Professional Standards Committees, must have a clear understanding of what constitutes an arbitrable issue. An arbitrable issue includes a contractual question arising out of a transaction between parties to a contract in addition to certain specified non-contractual issues set forth in Standard of Practice 17-4. Many arbitrations conducted by Boards of REALTORS® involve entitlement to compensation offered by listing brokers through a multiple listing service or otherwise to cooperating brokers acting as subagents, as agents of purchasers, or in some other recognized agency or non-agency capacity. Frequently, at closing, the listing broker will be paid out of the proceeds of the sale and will direct that a disbursement be made to the cooperating broker who the listing broker believes was the procuring cause of the sale. Subsequently, another broker who may have been previously involved in the transaction will file an arbitration request claiming to have been the procuring cause of sale, and the question arises as to who is the proper respondent. *(Revised 11/96)*

In our example, assume that the listing broker is Broker A, the cooperating broker who was paid is Broker B, and the cooperating broker who was not paid, but who claims to be the procuring cause of sale, is Broker C. It is not unusual for arbitration requests filed by one cooperating broker to name another cooperating broker as the respondent. This is based on the assumption that the monies the listing broker paid to Broker B are unique and that the listing broker’s obligation to compensate any other broker is extinguished by the payment to Broker B, irrespective of whether Broker B was the procuring cause of sale or not. However, the mere fact that the listing broker paid Broker B in error does not diminish or extinguish the listing broker’s obligation to compensate Broker C if a Hearing Panel determines that Broker C was, in fact, the procuring cause of sale. *(Revised 11/96)*

Does this mean that a listing broker is always potentially obligated to pay multiple commissions if a property was shown by more than one cooperating broker? Not necessarily. When faced with Broker C’s arbitration request, the listing broker could have initiated arbitration against Broker B, requesting that the Hearing Panel consider and resolve all of the competing claims arising from the transaction at the same time. Professional Standards Policy Statement 27, Consolidation of arbitration claims arising out of the same transaction, provides:

*When reviewing requests for arbitration, Grievance Committees should try to ensure that all appropriate parties are named as complainants or respondents. If it appears that there may*



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

A listing broker may realize, prior to the closing of a transaction, that there may be more than one cooperating broker claiming compensation as the procuring cause of sale. In such instances, to avoid potential liability for multiple compensation claims, the listing broker, after the transaction has closed, can initiate an arbitration request naming all of the potential claimants (cooperating brokers) as respondents. In this way, all of the potential competing claims that might arise can be resolved through a single arbitration hearing. *(Revised 11/96)*

There is also an alternative avenue of arbitration available to REALTORS® involved in disputes arising out of cooperative real estate transactions. Standard of Practice 17-4 recognizes that in some situations where a cooperating broker claims entitlement to compensation arising out of a cooperative transaction, a listing broker will already have compensated another cooperating broker or may have reduced the commission payable under a listing contract because a cooperating broker has expressly sought and/or chosen to accept compensation from another source, e.g., the seller, the purchaser, etc. Under the circumstances specified in Standard of Practice 17-4, the cooperating brokers may arbitrate between themselves without naming the listing broker as a party. If this is done, all claims between the parties, and claims they might otherwise have against the listing broker, are extinguished by the award of the arbitrators. Similarly, Standard of Practice 17-4 also provides for arbitration between brokers in cases where two (or more) brokers each have open listings and each claims to have procured the purchaser. Since the determiner of entitlement to a commission under an open listing is generally production of the purchaser, arbitration between the two (or more) “open” listing brokers resolves their claims against the seller. This open listing scenario is to be distinguished from the situation in which two (or more) listing brokers each have exclusive listings and each claim entitlement to a commission pursuant to their respective listing agreements. Because exclusive listing agreements generally provide for payment of a commission if the listed property is sold—whether through the listing broker’s efforts or not—each listing broker could have a legitimate, enforceable right to a commission from their client. Thus, Standard of Practice 17-4 does not obligate listing brokers to arbitrate between themselves when both (or all) have independent claims to commissions based on their respective exclusive listing agreements. *(Amended 5/02)*

In reviewing requests for arbitration, it is important that Grievance Committees not take actions that could be construed as rendering

decisions on the merits. For example, a Grievance Committee should not dismiss an otherwise arbitrable claim simply because Grievance Committee members believe the respondent would undoubtedly prevail in a hearing. On the other hand, an arbitration request that cites no factual basis on which a Hearing Panel could conceivably base an award should not be referred for hearing. A party requesting arbitration must clearly articulate, in the request for arbitration, facts that demonstrate a contractual relationship between the complainant and the respondent, or a relationship described in Standard of Practice 17-4, and an issue that could be the basis on which an arbitration award could be founded. *(Revised 11/96)*

Another question that frequently arises with respect to arbitration requests is whether the fact that the listing broker was paid out of the proceeds of the closing is determinative of whether a dispute will be considered by a Hearing Panel. Initially, it should be noted that the Arbitration Guidelines (Appendix II to **Part Ten**) provide that an arbitrable issue involving procuring cause requires that there have been a “successful transaction.” A “successful transaction” is defined as “a sale that closes or a lease that is executed.” Some argue that if the listing broker is not paid, or if the listing broker waives entitlement to the commission established in the listing contract, then there is nothing to pay to the cooperating broker and, thus, no issue that can be arbitrated. This is an improper analysis of the issue. While the listing broker needs the consent of the seller/client to appoint subagents and to compensate subagents, buyer agents, or brokers acting in some other recognized agency or non-agency capacity, the offer to compensate such individuals, whether made through the multiple listing service or otherwise, results in a separate contractual relationship accepted through performance by the cooperating broker. Thus, if the cooperating broker performs on the terms and conditions established by the listing broker, the fact that the listing broker finds it difficult to be paid or, alternatively, waives the right to be paid, has no bearing on whether the matter can be arbitrated but may have a direct impact on the outcome. Many cooperative relationships are established through MLS and the definition of the MLS provides, in part: *(Revised 11/97)*

*While offers of compensation made by listing brokers to cooperating brokers through MLS are unconditional,\* a listing broker’s obligation to compensate a cooperating broker who was the procuring cause of sale (or lease) may be excused if it is determined through arbitration that, through no fault of the listing broker and in the exercise of good faith and reasonable care, it was impossible or financially unfeasible for the listing broker to collect a commission pursuant to the listing agreement. In such*

\*Compensation is unconditional except where local MLS rules permit listing brokers to reserve the right to reduce compensation offers to cooperating brokers in the event that the commission established in a listing contract is reduced by court action or by actions of a lender. Refer to **Part One**, G. Commission/Cooperative Compensation Offers, Section 1, Information Specifying the Compensation on Each Listing Filed with a Multiple Listing Service of a Board of REALTORS®, *Handbook on Multiple Listing Policy*. *(Adopted 11/98)*

*instances, entitlement to cooperative compensation offered through MLS would be a question to be determined by an arbitration Hearing Panel based on all relevant facts and circumstances including, but not limited to, why it was impossible or financially unfeasible for the listing broker to collect some or all of the commission established in the listing agreement; at what point in the transaction did the listing broker know (or should have known) that some or all of the commission established in the listing agreement might not be paid; and how promptly had the listing broker communicated to cooperating brokers that the commission established in the listing agreement might not be paid.* (Amended 11/98)

Still another common question is whether a REALTOR® (often a cooperating broker with an arguably-arbitrable claim) can thwart the process by remaining silent for one hundred eighty (180) days and then bringing a lawsuit against another REALTOR® (often the listing broker). As noted previously, arbitration requests must be filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later. REALTORS® cannot reasonably be expected to request arbitration in circumstances where they have no reason to know that a dispute with another broker or firm even exists. Under these circumstances, a listing broker with no prior knowledge of a dispute would have one hundred eighty (180) days from receipt of notice of a lawsuit to invoke arbitration with the other broker. *(Adopted 11/13)*


The foregoing are by no means all-inclusive of the consideration that must be taken into account by a Grievance Committee in determining whether a matter will be arbitrated. However, they are some of the common questions raised with respect to arbitrable issues, and this discussion is provided to assist Grievance Committees in their important role in evaluating arbitration requests. *(Adopted 4/91)*

## **Non-Arbitrable Issues that Can be Mediated as a Matter of Local Determination**

As stated above, an arbitrable issue includes a contractual question arising out of a transaction between parties to a contract, in addition to certain specified non-contractual issues set forth in Standard of Practice 17-4. Arbitration proceedings should be limited to these issues, and Boards of REALTORS® should not arbitrate other types of claims. Examples of non-arbitrable issues include:

- tortious interference with business relationships
- tortious interference with a contractual relationship
- economic duress
- intentional infliction of emotional distress
- other tort claims, such as libel/slander
- employment claims, other than commission disputes
- fraud/misrepresentation claims
- property claims, both real and personal
- 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, Section 53 of the *Code of Ethics and Arbitration Manual* limits the award in an arbitration proceeding to the amount in dispute and so an arbitration award will not include punitive damages, attorney's fees, or interest, unless the agreement between the parties specifically provides for such damages and the award is permitted by state law.

Associations may, but are not required to, provide mediation  services for disputes of the type listed above. *(Revised 11/16)*