


# Part Seven—Arbitration General Provisions

## Section 26. Definitions Relating to Arbitration

As used herein,

- (a) “Agent” means a real estate licensee (including brokers and sales associates) acting in an agency relationship as defined by state law or regulation. *(Revised 4/98)*
-  (b) “Board” means this organization, either the \_\_\_\_\_ (local) Board/ Association of REALTORS® or the \_\_\_\_\_ (state) Association of REALTORS®.
- (c) “Broker” means a real estate licensee (including brokers and sales associates) acting as an agent or in a legally recognized non-agency capacity. *(Adopted 4/98)*
- (d) “Client” means the person(s) or entity(ies) with whom a REALTORS® or a REALTOR®’s firm has an agency or legally recognized non-agency relationship. *(Revised 11/97)*
- (e) “Counsel” means an attorney at law. *(Adopted 4/91)*
- (f) “Customer” means a party to a real estate transaction who receives information, services, or benefits but has no contractual relationship with the REALTORS® or the REALTOR®’s firm. *(Revised 11/97)*
- (g) “Directors” means the Board of Directors of the Board (State Association) as interpreted by Policy Statement #33. *(Revised 11/91)*
- (h) “Hearing” may refer either to an ethics hearing relating to disciplinary matters or to an arbitration hearing in which the dispute generally involves entitlement to a commission or to compensation. *(Revised 11/93)*
- (i) “Member” means REALTOR® and REALTOR-ASSOCIATE® members of this Board (State Association). REALTORS® who participate in MLS or otherwise access MLS information through any Board in which they do not hold membership are subject to the Code of Ethics in that Board. *(Amended 11/95)*
- (j) “Party” (Parties) means the complainant(s) or respondent(s) in disciplinary proceedings and in arbitration hearings referred to in **Part Four** and **Part Ten** of this Manual. *(Revised 11/91)*
- (k) “REALTOR® principal” includes licensed or certified individuals who are sole proprietors, partners in a partnership, officers or majority shareholders of a corporation, or office managers (including branch office managers) acting on behalf of principals of a real estate firm who subscribe to the Code of Ethics as a condition of membership in a local Board, State Association, and the NATIONAL ASSOCIATION OF REALTORS®. The phrase REALTOR® principal includes those REALTORS® who participate in a Multiple Listing Service through any Board or Association in which they do not hold membership. *(Revised 5/97)*
- (l) “Secretary” means the Executive Officer of any Board. *(Revised 11/98)*
- (m) “Tribunal” means those persons serving in a given case on a Grievance Committee or a Hearing Panel of the Professional Standards Committee in either an ethics or arbitration proceeding, or a Board of Directors or appropriate body appointed by a Board of Directors to act in its behalf. No individual may participate in the deliberation of more than one tribunal on the same matter. *(Revised 5/88)*
- (n) “Unauthorized disclosure” means a report or publication under any circumstances not established in this Manual. *(Adopted 11/91)*

## Section 27. Qualification for Tribunal

- (a) No more than one person licensed with any firm, partnership, or corporation may serve on the same tribunal. *(Revised 4/98)*
- (b) A person shall automatically be disqualified as a member of a tribunal in any case in which the person is (1) related by blood or marriage to either complainant or respondent; (2) an employer, partner, employee, or in any way associated in business with either complainant or respondent; (3) a party to the hearing, or a party or a witness in any other pending case involving a party to this hearing; or (4) is objected to by a party as provided in **Part Seven**, Section 27(f).
- (c) Before sitting in any case, each member of a tribunal (except any member of the Grievance Committee) shall sign a statement (1) that the member is not disqualified for any of the foregoing reasons, and (2) that the member knows of no other reason that might prevent him from rendering an impartial decision. (Form #A-11, Certificate of Qualification, **Part Thirteen** of this Manual.)
- (d) Every member of a tribunal (except a member of the Grievance Committee acting pursuant to the provisions of **Part Ten**, Section 47 of this Manual) shall also avoid, as far as possible, discussing the case with any person other than a member of the tribunal prior to commencement of the hearing. If the member does engage in any such discussion before the hearing, the member must disclose the fact to the parties and to the other members of the tribunal no later than at the beginning of the hearing.

- (e) All members of a tribunal shall have an obligation to maintain and protect the confidentiality of the proceedings and deliberations of the tribunal before, during, and after its determinations and recommendations. The tribunal member shall not discuss the tribunal proceedings and deliberations with any person(s) except as required by the Board of Directors or the bylaw provisions of the Board, or by law as may be required, except that a member of the Grievance Committee acting pursuant to the provisions of **Part Ten**, Section 47 of this Manual shall not be precluded from discussion necessary to the preliminary review.

Unauthorized disclosure includes any report or publication under any circumstances not established in this Manual. The following are circumstances where disclosure by a party to an ethics and/or arbitration proceeding is authorized:

- (1) Where the dissemination of the decision to individuals who have some knowledge of the proceeding might vindicate a member's professional reputation.
  - (2) Where there is a civil proceeding (including proceedings before the state real estate licensing authority or any other state or federal regulatory or administrative agency) involving the same facts and circumstances which gave rise to the proceeding before the Board. *(Revised 11/95)*
- (f) Any party may file with the Secretary a written request for disqualification of a member of a tribunal (Hearing Panel or Board of Directors), stating the grounds alleged as basis for disqualification (i.e., factors which would prevent a tribunal member from rendering an impartial, unbiased, and knowledgeable decision). Challenges submitted pursuant to this Section for ethics and arbitration hearings will be determined by the Professional Standards Committee Chairperson, or, if challenge to the Chairperson is made, by the Professional Standards Committee Vice Chairperson, or, if challenge to both the Chairperson and Vice Chairperson is made, by the Board President. Challenges submitted pursuant to this Section for matters to be considered by the Board of Directors will be determined by the Board President or, if the challenge is to the Board President's qualifications, the next ranking Board officer. A party shall be deemed to have waived any grounds of disqualification of which he then has knowledge unless he files the request within ten (10) days from the date a list of names of members of the Professional Standards Committee or Board of Directors has been mailed to the party (see **Part Ten**, Section 51(a), Arbitration Hearing). However, any member of the tribunal may be disqualified at any time if a majority of the members of the tribunal are made aware of any grounds of automatic disqualification of a member or find any new or previously undiscovered facts which in their judgment may prevent, or appear to prevent, a member of a tribunal from rendering an impartial decision. *(Revised 11/91)*

However, none of the foregoing is to be construed to allow a challenge to the qualifications of members of a Board's or State Association's Grievance Committee, or Board of Directors (or panel of Directors or Executive Committee) convened to review any action taken by a Grievance Committee. *(Revised 11/98)*

- (g) If a member of a tribunal fails or is unable to participate in a hearing, the remaining members of the tribunal may, at their option, but only with the express consent of the parties, proceed with the hearing. Only the remaining members of the tribunal may participate in the hearing and the determination thereof. Should any member of the tribunal absent himself during the progress of the actual hearing, that individual shall likewise not participate in the deliberations nor determinations thereof. If all the parties do not agree to proceeding without the full number of the tribunal originally designated, the Chairperson of the tribunal will recess the hearing to a date on which all members of the tribunal can be present. If the Chairperson cannot at that time designate a new date, notice of a subsequent date shall be served on all parties as herein provided.

## Section 28. Duty to Give Evidence

The parties to ethics and arbitration hearings are primarily responsible for production of witnesses and evidence they intend to present to the Hearing Panel. If a member, when called as a witness, refuses or is unable to appear at a scheduled hearing, the witness's failure to appear can be the basis for a charge that Article 14 has been violated if it can be shown that the witness had information or evidence relevant to the issue or issues before the Hearing Panel and that there were no extenuating circumstances that would have made the witness's appearance unduly burdensome. Questions regarding a member's obligation to appear as a witness, including questions of relevancy, shall be determined by the Chair of the Hearing Panel either before the hearing commences, if possible, or at the time of the hearing. If a question of whether a witness is required to appear is raised at a hearing and the Chair rules that the witness must appear, the party seeking to compel the appearance of the witness may request that the hearing be recessed until such time as the witness can be advised of the witness's obligation to appear, and the hearing shall be rescheduled. The burden of demonstrating the relevance of the testimony or evidence rests with the party seeking to compel the witness's appearance. *(Revised 11/93)*

If, after being so advised, a witness refuses to appear, the Chair may, at its discretion, bring a charge against the witness for failure to comply with Article 14. *(Revised 11/93)*

## Section 29. Right of Counsel to Appear

Every party may be represented by legal counsel but such counsel may not testify as a witness unless the panel determines such testimony is essential to ensure due process. In the event parties do not give fifteen (15) days' notice of their intention to

have counsel to the Board and all other parties, including counsel's name, address, and phone number, the panel shall take all steps, including continuance of the matter, if necessary, to guarantee the rights of all parties to representation by counsel. The tribunal may have counsel present to advise it on issues of procedure and law. The presence of Board legal counsel during executive session is a matter of local Board discretion. The role of Board counsel during a hearing is to provide procedural and legal guidance as requested by the Chairperson or by panel members. Board counsel is not a part of the Hearing Panel and may not take an active role in the conduct of the hearing, including examination or cross-examination of the parties or their witnesses. If Board counsel believes an action or procedure is inconsistent with the Board's established procedures or may result in potential liability to the Board, counsel's concerns should be communicated to the Chairperson of the Hearing Panel and the Chairperson shall make the final decision. *(Revised 11/97)*

### Section 30. Witnesses

Every party may have witnesses present at the hearing, and the tribunal may summon its own witnesses. All witnesses will be excused from the hearing after completion of their testimony and cross-examination.

Any party who intends to call witnesses at the hearing must provide the Board and all other parties with the names of these witnesses at least fifteen (15) days prior to the hearing. Failure to provide this information within the time specified will constitute a waiver of the right to call those witnesses at the hearing, unless the other party agrees to allow their testimony. *(Revised 11/88)*

In any case where all of the names of witnesses a party intends to call at the hearing have not been provided within the time specified, if the Hearing Panel believes that the testimony of that witness(es) is essential to ensure due process, his testimony may be permitted provided the other party has the right to request that the hearing be recessed and continued to a date certain not less than five (5) days later. *(Revised 11/88)*

Questions as to whether a member who has been called as a witness but who refuses to appear, or asserts that his appearance will result in an unreasonable hardship, shall be determined by the Hearing Panel Chair as soon as practical. Refusal to appear, after the Chair has determined that the member's appearance is required, may result, at the Chair's discretion, in charges that Article 14 has been violated being filed against the member. *(Adopted 11/93)*

### Section 31. Conduct of Hearing

At any ethics or arbitration hearing, every party has the right to present any witnesses, to submit any evidence pertinent to the case, and to cross-examine witnesses. Witnesses giving oral testimony shall be sworn in by the Chairperson. Before permitting testimony relating to the character or general reputation of anyone, the tribunal shall satisfy itself that the

testimony has a direct bearing on the case at issue. The Board shall, and any party (may/may not), at his own expense, have a court reporter or recorder present at the hearing, or may tape record\* the proceeding, and, if transcribed, shall present a copy to the Secretary.\*\* If the Board utilizes a court reporter in lieu of tape recording, the parties may not be prohibited from making their own tape recording. (See Form #A-10, Outline of Procedure for Arbitration Hearing, **Part Thirteen**, and Conduct of an Arbitration Hearing, **Part Twelve**.) Ethics and arbitration hearings must be recorded, not appeals or limited procedural review proceedings. Boards shall prohibit parties from recording appeals or limited procedural review proceedings. *(Revised 11/92)*

The Board's tape recording or transcription shall be considered the official record of the proceeding. Copies of any tape recording or any transcript prepared from any tape recording of the hearing are to be used only for the purpose of procedural reviews.\*\*\* Any party to a hearing has the right to obtain a copy of the Board's official tape recording subject to payment of the Board's duplication costs, and any duplication will be conducted under the supervision of the Board. If the Board transcribes its official tape recording, any party to the hearing may obtain a copy of the transcript subject to paying the Board's transcription costs. If more than one party requests copies of the transcript, the Board's costs will be apportioned between or among the parties. *(Revised 11/98)*

If a party purchases a copy of the Board's official tape recording and subsequently has it transcribed at his own expense, that party must provide a copy of the transcript to the Board at no cost. After the Board has received a copy of the transcript (made from the Board's official tape recording), the Board shall make copies of the transcript available to any other party subject to their payment of the Board's duplication costs.

Attendance at any hearing is limited to the parties and the parties' respective counsel and/or witnesses (witnesses are excused from the hearing except during their testimony[except those witnesses with a vested financial interest consistent with **Part Ten**, Section 44(a)(2), Duty and Privilege to Arbitrate]); the Hearing Panel members (including alternates); Board staff and/or counsel, as deemed necessary; and any court reporter, as requested. *(Revised 11/98)*

\*It is recommended that tapes produced by the Board be maintained in the confidential professional standards files until a date when any sanction imposed by the Board has been completed.

\*\*Videotaping of the proceedings shall not be permitted except by advance express consent of all parties and all members of the tribunal.

\*\*\*Tape recordings or transcripts from arbitration hearings may be used only by the parties for the purpose of procedural review requests, and may not be introduced into evidence at any subsequent hearing. Any other unauthorized use of the tape recordings or transcripts may be construed as a violation of Article 14, as interpreted by the applicable Standards of Practice, and as a violation of these procedures. *(Revised 11/98)*

## **Section 32. Notices**

- (a) Any notice required to be given or paper required to be served or filed may be personally handed to the party to be notified or sent by registered or certified mail addressed to the party's last known mailing address. If mailed, any notice required to be given or paper required to be served or filed shall be deemed given, served, or filed when mailed unless otherwise specified in this Manual. *(Revised 11/91)*
- (b) Notice of hearing shall include the names of the members of the tribunal and be given not less than twenty-one (21) days beforehand. Twenty-one (21) days' notice is not required for postponed hearings (scheduled but extension granted before hearing commences) or for hearings that have commenced and been adjourned (recessed). Notice of rehearings shall be given not less than twenty-one (21) days before the rehearing. *(Revised 11/95)*

## **Section 33. Interpretation of Bylaws**

If any provision of the bylaws or a rule or regulation relative to the procedure of a tribunal's handling of a matter is involved, the interpretation by that tribunal of the bylaws or of a rule or regulation shall be set forth as a separate finding, and the Directors, on appeal from a decision of a Hearing Panel, shall not be bound by the panel's interpretation.

## **Section 34. Waiver**

Every member, for and in consideration of his right to invoke arbitration proceedings and to initiate complaints under the Code of Ethics as a member of the NATIONAL ASSOCIATION OF REALTORS®, hereby waives any right of action against the Board, any Board Member, or any member of a Hearing Panel or tribunal arising out of any decisions, determinations, or other action taken or rendered under these procedures in the absence of willful or wanton misconduct. Further, as a condition of continued membership, every member expressly waives any cause of action for libel, slander, or defamation that might arise from the filing or consideration of any ethics complaint or arbitration request. *(Revised 11/87)*

## **Section 35. Communication and Clerical**

Communications shall be directed to the Secretary. The Secretary shall render all necessary assistance to the parties, shall furnish required forms, shall receive and file all documents or other papers, and shall receive all fees and disburse all monies payable to the Board.

## **Section 36. Attempt to Influence Tribunal**

Any attempt, directly or indirectly, to influence a member of a tribunal in any matter before it, other than by giving evidence and argument in an open hearing or in writing submitted to the entire tribunal, is a breach of a duty of membership.