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.

The changes to the Manual for 2025 are as follows:

1. Section 6(A)(5) was revised to clarify that respondents who receive a "cease and refrain" order as discipline are required to document their compliance with the order by the date specified by the hearing panel.
2. Sections 9 and 10(a) were revised to clarify that local Association policies related to the composition and term length for local Association Grievance and Professional Standards Committees may not necessarily be included in the bylaws but instead in the Association's policies and procedures manual.
3. Sections 26(a) and 26(b) were revised to clarify that both the complaint and the response should be provided to the Grievance Committee when they are reviewing a withdrawn complaint.
4. Section 28(h) was revised to indicate that members of the Grievance Committee can be observers at a professional standards hearing.
5. Section 38(m) was revised to comply with the new NAR policy that the deadline for scheduling a review hearing is forty-five (45) days after the receipt of the request for review.
6. Section 38(o) was revised to clarify that no recordings of review hearings are permitted by anyone, including through the use of stenographers and court reporters.

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.

C O N T E N T S

PART TWO – ARBITRATION OF DISPUTES 29
Section 41. Definitions 29
Section 42. Association Member's Duty and Privilege to Arbitrate 30
Section 43. MLS Participant's and Subscriber's Duty and Privilege to Arbitrate 31
Section 44. Association's Right to Decline Arbitration 31
Section 45. Duty to Arbitrate Before C.A.R. 32
Section 46. Professional Standards Committee 32
Section 47. Multi-Association Professional Standards Hearings and Shared Panelists 33
Section 48. Interpretation of Bylaws 33
Section 49. Notices 33
Section 50. Waiver 34
Section 51. The Association Executive's Function 34
Section 52. Attempts to Influence Hearing Panel 34
Section 53. Confidentiality of Proceedings 34
Section 54. Right to Counsel 35
Section 55. Qualification for Panel 35
Section 56. Manner of Invoking Arbitration and Submission 36
Section 57. Responsible Broker as Complainant 39
Section 58. Joinder of Multiple Parties or Complaints 39
Section 59. Duty to Give Evidence 39
Section 60. Subpoenas 40
Section 61. Witnesses 40
Section 62. Right to Demand Witness Lists 40
Section 63. Continuances 41
Section 64. Continuance Fees 41
Section 65. Arbitration Hearing 41
Section 66. Transcript/Right to Record 42
Section 67. Interpreters and Translators 43
Section 68. Costs of Arbitration 43
Section 69. Settlement 43
Section 70. The Award 44
Section 71. Request for Procedural Review by the Directors 44
Section 72. Enforcement 45

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. The Association Executive's Function

The Association Executive is the administrative channel through whom the Professional Standards Committee and the Board of Directors correspond and carry out their respective functions. The Association Executive does not make decisions or determinations concerning professional standards matters and must be careful to avoid making such determinations. Rather, the Association Executive advises as to the procedures that are appropriate and required, and coordinates all professional standards and arbitration matters from receipt to final determination by order of the Board of Directors. This coordination involves contacts and correspondence with the complainant, the respondent, the President, the Chairperson of the Professional Standards Committee or the Chairperson of the appointed Hearing Panel, witnesses, and the Board of Directors. Hearing arrangements and records are the Association Executive's responsibility on all related matters. The Association Executive has an exacting and detailed responsibility for each professional standards matter.

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® affiliated with the broker's firm 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 not have the right to request disqualification of a member of a hearing Panel solely on the basis of the panelist's race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. 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. In order to file for mediation, a complainant must also fill out and file the PA-1 or A-1 Form.

(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 by the complainant 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 by the complainant in the exercise of reasonable diligence. Additionally, when a party utilizes the Association or C.A.R. ombudsman program or an ethics mediation program, the filing deadline is suspended until the case is reported closed by the ombudsman or the ethics mediator.

(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. This decision is not subject to review by the Board of Directors.

(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 pay the filing fee and 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; Professional Standards Observer.** 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. If alternate panel members are not called on to replace a panel member and if the association's policy allows them to be present at post-hearing executive session deliberations, alternates may not be involved in deliberating or deciding the matter before the hearing panel. Additionally, an Association may allow members of their Professional Standards Committee and Board of Directors to attend a hearing as a silent observer for training purposes. Observers will be limited to one per hearing. Additionally, observers are allowed to attend the executive session of the hearing panel as a silent observer but is not allowed to participate in deliberations. Observers are required to comply with all confidentiality requirements expected of professional standards volunteers, and they will not make any unauthorized disclosure or dissemination of the allegations, findings or decision. Parties will be notified if the Association plans to have an observer attend the hearing, and the observer will only be allowed to attend if neither party objects to their attendance.

(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. Absent a compelling reason, the Association Executive may require that the hearing be conducted virtually using a virtual meeting platform such as Zoom or any other similar service.

(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 and/or Production of Books, Records, Documents and Other Evidence.** Parties being served subpoenas by personal service must be given fifteen (15) calendar days' notice for appearance at a hearing and/or production of books, records, documents, and other evidence. 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 Presiding Officer of 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 Presiding Officer of the hearing Panel's opinion, it is necessary or desirable. The Presiding Officer of 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 Presiding Officer of the hearing Panel shall determine if 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 and 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.

(l) **Role of C.A.R.** C.A.R. does not review and cannot overturn any decision of any review Panel of Directors pursuant to Section 71.

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.