

Roanoke Valley Association of REALTORS®
4358 Starkey Rd., Roanoke VA 24018

OVERVIEW: Filing a Request for Arbitration

Background

Generally, arbitration is used to settle disputes between REALTOR® principals of two different real estate firms concerning entitlement to a commission or to cooperating brokers' compensation. Entitlement is determined on the basis of determining "procuring cause". In most instances, the decision will award the dispute amount to one party or the other. In certain cases, the disputed amount may be divided between the parties if the arbitrators determine that both parties contributed, without interruption, to the successful transaction.

Code of Ethics: Article 17

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.

Mandatory vs. Voluntary Arbitration

The *Code of Ethics and Arbitration Manual* of the National Association of REALTORS® specifies three circumstances under which REALTORS® **must submit to arbitration**.

- (1) Arbitration of a dispute between REALTOR® principals of different firms.
- (2) Arbitration between REALTORS® (other than principals) provided the REALTOR® principals join in the arbitration.

(3) Arbitration between REALTOR® principals and their clients when the client or REALTOR® invokes the arbitration and the client agrees to be bound by the decisions.

The Manual also specifies three circumstances under which the REALTOR®'s participation in arbitration is **voluntary**.

(1) Arbitration between REALTOR® principals and REALTORS® (non-principals) who are or were affiliated with the same firm, provided each party voluntarily agrees to the arbitration in writing. This applies to disputes arising when the parties are, or were, affiliated with the same firm, irrespective of the time the request is made for arbitration.

(2) Arbitration between a REALTOR® principal with a non-member broker, provided each party agrees in writing to be bound by the decision. However, it is the member's choice whether the member will submit to arbitration with a non-member broker who is not an MLS Participant. A non-member broker who is not an MLS Participant may invoke the arbitration facilities of a Board of REALTORS®. However, REALTORS® (principals) are not required to agree to or participate in arbitration.

(3) Arbitration between a REALTOR® principal and a customer if a written contractual relationship has been created by the REALTOR® principal between a customer and a client, and provided all parties to the dispute (i.e., the customer and the REALTOR®) agree in writing to arbitrate the dispute.

Filing a Request for Arbitration

- Arbitration requests must be filed with the Roanoke Valley Association of REALTORS® 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.
- Complete the official "Request and Agreement to Arbitrate" form, which is posted on the Association's website, www.RVAR.com. To the form, attach:
 - A statement summarizing the circumstances that led to the arbitration request, including your role in the transaction (i.e., listing agent, buyer agent etc.)
 - A check, made payable to the Roanoke Valley Association of REALTORS®, in the sum of \$250 for the arbitration filing deposit.
 - NOTE: Should an arbitration hearing be held, the deposit of the prevailing party will be refunded; the deposit of the non-prevailing party will be used to partly underwrite the cost of the hearing.

- Submit the completed form to:
Laura Benjamin, CEO
Roanoke Valley Association of REALTORS®
4358 Starkey Rd.
Roanoke VA 24018

Reviewing Arbitration Request

The Association's Grievance Committee will review the Arbitration Request to consider the following:

- Is the request for arbitration acceptable in the form as received by the Committee?
- Are all necessary parties named in the request for arbitration?
- Was the request filed within the required time frame?
- Are the parties members in good standing or otherwise entitled to invoke arbitration through the Association?
- Is litigation concerning an otherwise arbitrable matter pending in connection with the same transaction? NOTE: No arbitration shall be provided on a matter pending litigation unless the litigation is withdrawn with notice to the Association, or unless the court refers the matter to the Association for arbitration.
- Is there any reason to conclude that the Association would be unable to provide an impartial Hearing Panel?
- 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?
- If an arbitrable issue exists, are the parties required to arbitrate or is their participation voluntary?
- Is the amount in dispute too small or too large for the Association to arbitrate?
- Is the matter too legally complex, involving issues that the arbitrators may not be able to address in a knowledgeable way?
- Is there a sufficient number of knowledgeable arbitrators available?

The Grievance Committee may determine that (1) the matter is properly arbitrable by the Association or (2) the matter should not be arbitrated by the Association (because of the amount involved or the legal complexity, or for any other valid reason specified by the Grievance Committee.) The Grievance Committee's decision to dismiss the arbitration request may be appealed by either party to the Association's Board of Directors.

Mediation

If the Arbitration Request is determined properly arbitrable by the Grievance Committee, the Association will automatically offer the Association's mediation services to all parties. Mediation is a less formal means of resolving differences in a neutral setting with a trained mediator.

Participation in mediation is entirely voluntary. If either firm declines to mediate, then the Association will proceed to schedule a formal arbitration hearing. On the other hand, if both firms agree to mediate, the Association will arrange a convenient time for all parties to meet with one of RVAR's trained mediators. If all parties are able to come to a mutual agreement, then a legally binding resolution is signed. The parties would also receive a refund of their \$250 arbitration deposits. If an agreement is not reached during the mediation session, then a formal arbitration proceeding will be scheduled.

NOTE: If mediation is held but is not successful, any offers of settlement raised during the mediation may not be considered in the subsequent arbitration hearing.

Preparing for the hearing

- RVAR will provide you with a copy of the hearing procedures and Arbitration Guidelines prior to the hearing. Familiarize yourself with the hearing procedures to be followed. In particular, you will want to know about challenging potential panel members, your right to counsel, calling witnesses, and the burdens and standards of proof that apply.
- RVAR is required to give a minimum of twenty-one (21) days' notice of the date/time of the hearing.
- The standard of proof on which an arbitration hearing decision is based shall be a 'preponderance of the evidence'. Preponderance of the evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the facts sought to be proved are more probable than not.
- If you plan to bring witnesses and/or counsel to the hearing, be sure that your witnesses and counsel will be available on the day of the hearing. Continuances are a privilege -- not a right.
- Be sure you have all the documents and evidence you need to present your case.
- Organize your presentation in advance.

Settlement

The parties to an arbitration may settle the issue between them by agreement at any time. In such event, upon notification to the Association, the arbitration

proceedings shall be terminated. A portion of each party's deposit may be retained by the Association to cover the costs incurred by the Association up to the point of settlement of the dispute.

At the hearing

- Appreciate that panel members are unpaid, trained REALTOR® volunteers giving their time as an act of public service. Their objective is to be fair, unbiased and impartial; and to determine, based on the evidence and testimony presented to them, who was the procuring cause of the transaction and should be awarded the disputed amount.
- Keep your presentation concise, factual and to the point.
- Hearing panels base their decisions on the evidence and testimony presented during the hearing. The hearing panel will pay careful attention to what you say and how you say it. If you have information relevant to the issue under consideration, be sure to bring it up during your presentation.

After the hearing

- The decision of the hearing panel will be sent to you within one or two days following the hearing.
- When you receive the hearing panel's decision, review it carefully.
- If the non-prevailing party believes that the hearing process was seriously flawed to the extent that due process was denied, then a request for procedural review may be filed with RVAR's Board of Directors.