

## **Outline of Procedure for Ethics or Arbitration Hearing**

2/6/2009

Postponement of hearing: Postponement may be granted if there are extenuating circumstances. Requests for postponement must be made in writing. Permission can be given by the Chairperson. All parties shall be advised of the date of the rescheduled hearing.

Recording the hearing: The Board shall, and any party (may/may not), at the party's expense, have a court reporter present or may tape record the proceeding and, if transcribed, shall present the transcript 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.

Method and objective of procedure: The Hearing Panel shall not be bound by rules of evidence applicable in courts of law, but shall afford all parties a full opportunity to be heard, present witnesses, and offer evidence, subject to its judgment as to relevance.

Due process procedure: The hearing procedures will be:

1. Opening statement by Chairperson - Cite authority to hear case and explain reason for hearing.
2. The complaint will be read into the record or the parties may stipulate to its placement in the record. The members of the Hearing Panel in an arbitration hearing will be sworn by a Notary Public. (This is not necessary in an ethics hearing.)
3. The testimony of all parties and witnesses will be sworn or affirmed. The Chairman may excuse a witness from the hearing except while testifying, if requested to do so by a party.
4. The parties will be given an opportunity to present evidence and testimony on their behalf and they may call witnesses.
5. The parties and their legal counsel will be afforded an opportunity to examine and cross-examine all witnesses and parties.
6. The panel members may ask questions at any time during the proceedings.
7. The Chairperson may exclude any question ruled to be irrelevant or argumentative.
8. Each side may make a closing statement. The complainant will make the first closing statement and the respondent will make the final closing statement.
9. Adjournment of hearing.
10. The Hearing Panel will go into executive session to decide the case.

Award in arbitration hearing: The decision of the Hearing Panel in an arbitration proceeding shall be reduced in writing (setting for the only the amount of the award by the panel) and signed by the arbitrators or the majority of them, and a copy shall be furnished to each of the parties to the arbitration. A copy also shall be filed with the Secretary of the Board.

Findings in ethics hearing: The finding and recommendation for discipline, if any, shall be reduced to writing by the Hearing Panel and submitted to the Board of Directors in

accordance with the procedure of Part Four, Section 23 of the Code of Ethics & Arbitration Manual.

Use of legal counsel: A party may be represented in any hearing by legal counsel or by a REALTOR® of their choosing (or both). However, no party may refuse to directly respond to requests for information or questions addressed to him by members of the Panel except on grounds of self-incrimination, or on other grounds deemed by the Panel to be appropriate. In this connection, the Panel need not accept the statements of counsel as being the statements of his client if the Panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall not be tolerated by the panel. Counsel may be excluded on the ground of gross incompetence, physical incapacity or contumacious conduct. For purposes of this paragraph, "contumacious conduct" shall mean any willful act, omission, or statement which actually obstructs the proceedings by impairing the authority or impeding the functioning of the panel.

Parties are required to give written notice of intention to have counsel present fifteen (15) days before the hearing to the Board and the other party, including legal counsel's name, address and phone number. Failure to provide this notice will not invalidate the right to legal representation, however, upon the request of any other party, a continuance of the hearing may be granted if the Hearing Panel determines that the rights of any other party require representation by legal counsel.

Witnesses and Exhibits (evidence): The complainant must provide a list of witnesses he/she intends to call at the hearing and copies of exhibits to the Board/Association and to the other party not less than fifteen (15) days prior to the hearing.

The respondent must provide a list of witnesses he/she intends to call at the hearing and copies of exhibits to the Board/Association and to the other party not less than seven (7) days prior to the hearing.

Each party shall arrange for his/her witnesses to be present at the time and place designated for the hearing.

Failure to provide a list of witnesses and copies of exhibits within the time specified will constitute a waiver of the right to call those witnesses or use exhibits at the hearing, unless the Chairperson agrees to allow their testimony or use of exhibits.