CALIFORNIA ASSOCIATION OF REALTORS®

California Code of Ethics and Arbitration Manual

Effective January 1, 2012

Prepared by the
CALIFORNIA ASSOCIATION OF REALTORS®
Corporate Legal Department
525 South Virgil Avenue
Los Angeles, CA 90020

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 N.A.R. prior to actual use.

Changes to this Manual

From time to time, C.A.R. updates this Manual to comply with changes in N.A.R. policies or California law. All substantive changes to the Manual from the last edition have been made and shown in red typeface.

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) 739-8215.

C O N T E N T S

PART ONE – ASSOCIATION DISCIPLINARY PROCEEDINGS *1*
Section 1. Definitions *1*
Section 2. Duties of Membership *3*
Section 3. Power to Take Disciplinary Action Against an Association Member *3*
Section 4. Duties of MLS Participants and Subscribers *3*
Section 5. Power to Take Disciplinary Action Against an MLS Participant or Subscriber *4*
Section 6. Nature of Discipline Against an Association Member *4*
Section 7. Nature of Discipline Against an MLS Participant or Subscriber *5*
Section 8. Citations *6*
Section 9. Grievance Committee *6*
Section 10. Professional Standards Committee *6*
Section 11. Multi-Association Professional Standards Hearings and Shared Panelists *7*
Section 12. Interpretation of Bylaws *7*
Section 13. Notices *7*
Section 14. Waiver *7*
Section 15. Communication and Clerical *8*
Section 16. Attempts to Influence Panel *8*
Section 17. Confidentiality of Proceedings *8*
Section 18. Right to Counsel/Other Representation *9*
Section 19. Qualification for Panel *9*
Section 20. Filing a Complaint *10*
Section 21. Designated REALTOR® as a Respondent in an Ethics Hearing *11*
Section 22. MLS Participant as a Respondent in an MLS Rules Hearing *11*
Section 23. Joinder of Multiple Parties or Complaints *11*
Section 24. Action of the Grievance Committee *11*
Section 25. Review of Grievance Committee Decision *12*
Section 26. Withdrawal of Complaint *13*
Section 27. Amendment of Complaint *13*
Section 28. Initiating a Disciplinary Hearing *14*
Section 29. Duty to Give Evidence *15*
Section 30. Witnesses *15*
Section 31. Continuances *15*
Section 32. Continuance Fees *15*
Section 33. The Hearing *16*
Section 34. Transcript/Right to Record *16*
Section 35. Presentation of Evidence at the Hearing *17*
Section 36. Decision of Hearing Panel *17*
Section 37. Rehearing *17*
Section 38. Action of the Directors if No Request for Review *18*
Section 39. Action of Directors if Request for Review *18*
Section 40. Preliminary Judicial Determination *21*

PART TWO – ARBITRATION OF DISPUTES *22*
Section 41. Definitions *22*
Section 42. Association Member's Duty and Privilege to Arbitrate *22*
Section 43. MLS Participant's and Subscriber's Duty and Privilege to Arbitrate *23*
Section 44. Association's Right to Decline Arbitration *23*
Section 45. Duty to Arbitrate Before C.A.R. *24*
Section 46. Professional Standards Committee *24*
Section 47. Multi-Association Professional Standards Hearings and Shared Panelists *25*
Section 48. Interpretation of Bylaws *25*
Section 49. Notices *25*
Section 50. Waiver *25*
Section 51. Communication and Clerical *26*
Section 52. Attempts to Influence Hearing Panel *26*
Section 53. Confidentiality of Proceedings *26*
Section 54. Right to Counsel *26*
Section 55. Qualification for Panel *27*
Section 56. Manner of Invoking Arbitration and Submission *28*
Section 57. Responsible Broker as Complainant *30*
Section 58. Joinder of Multiple Parties or Complaints *30*
Section 59. Duty to Give Evidence *30*
Section 60. Subpoenas *30*
Section 61. Witnesses *30*
Section 62. Right to Demand Witness Lists *31*
Section 63. Continuances *31*
Section 64. Continuance Fees *31*
Section 65. Arbitration Hearing *31*
Section 66. Transcript/Right to Record *32*
Section 67. Presentation of Evidence at the Hearing *32*
Section 68. Costs of Arbitration *32*
Section 69. Settlement *33*
Section 70. The Award *33*
Section 71. Request for Procedural Review by the Directors *33*
Section 72. Enforcement *34*

PART ONE – ASSOCIATION DISCIPLINARY PROCEEDINGS

Section 1. Definitions

As used herein,

(a) "Association" means the local Board or Association of REALTORS® and any other Association of REALTORS® to which the Member belongs.

(b) "Member" means REALTOR®, and REALTOR-ASSOCIATE®, members of the Association, whether primary or secondary.

(c) "Directors" means the Board of Directors of the Association or appropriate body appointed by the Board of Directors when considering professional standards or MLS rules matters covered in this Manual.

(d) "Disciplinary hearing" refers to an ethics hearing or other membership obligation hearing relating to disciplinary matters or to an MLS rules violation hearing to determine whether a violation of the MLS rules occurred.

(e) "Panel" means the members of a Grievance Committee when serving in a given case, a hearing panel in a Disciplinary hearing as defined in subsection (d) above, or a review panel of the Directors as defined in subsection (c) above when considering professional standards or MLS rules matters covered in this Manual.

(f) "Party" means the complainant(s) or respondent(s) to any disciplinary proceeding referred to in Part One of this Manual.

(g) "Association Executive" means the chief staff executive of the Association or his or her designee, or the elected Secretary of any Association not having a chief staff executive.

(h) "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.

(i) "Designated REALTOR®" means the member designated in Association records to be responsible for the conduct of individuals affiliated with the office(s) and accountable to the Association for all duties and obligations of membership.

(j) "Participant" means any individual defined in the MLS rules and regulations of the Association as a Participant.

(k) "Subscriber" means any individual defined in the MLS rules and regulations of the Association as a Subscriber.

(l) "Letter of Warning" means a letter from the Association president to a Association member or MLS Participant or Subscriber advising of a lack of professional conduct or a violation of MLS rules determined by a "due process" hearing by a hearing Panel and warning that future similar conduct could result in further and additional discipline as provided in this Manual.

(m) "Letter of Reprimand" means a letter from the Association president to a Association member or MLS Participant or Subscriber, advising of a lack of professional conduct or a violation of MLS rules determined by a "due process" hearing by a hearing Panel, and advising that the letter is to be construed as an official reprimand.

(n) "Requirement for Ethics Training" means a letter from the Association President or Professional Standards Committee Chairperson to an Association Member, MLS Participant or Subscriber, advising of a lack of professional conduct or a violation of MLS rules determined by a "due process" hearing by a hearing Panel and directing the person to attend the applicable ethics portion of the Association indoctrination course or other appropriate ethics course, MLS orientation or seminar, or other appropriate course specified by the hearing Panel.

(o) "Appropriate and Reasonable Fine" means a fine commensurate with the gravity of the determined violation of the N.A.R. Code of Ethics or any other membership duty, not to exceed $5,000 per party, per hearing, for an ethics violation or REALTOR® membership duty, and not to exceed $15,000 per party, per hearing, for violation of an MLS Rule or MLS membership duty, and in each case the fine is payable to the Association.

(p) "Probation" means that the discipline recommended by the hearing Panel will be held in abeyance for a designated period of time not to exceed one (1) year. Any subsequent finding based on a violation of the same Article(s) of the Code of Ethics, membership duty or same MLS rule(s) which occurs during the probationary period may, at the discretion of the board of directors, result in the imposition of the suspended discipline.

(q) "Suspension of Membership" means suspension of membership rights and privileges and denial of Association services, on terms and conditions expressly stated for a period of time not less than thirty (30) calendar and not more than one (1) year, including, but not limited to, use of the terms REALTOR® and REALTOR-ASSOCIATE®, with reinstatement as a member in good standing automatically provided at the end of the specified period (see also Section 39 of Part One of this Manual). In the event the suspension is for a remediable violation, the suspension is in effect for the period that the violation remains uncorrected, and the minimum and maximum time limits for suspension do not apply. "Remediable violations" are those that can be corrected by the member, such as completion of mandatory training, nonpayment of fees, or other curable violation.

(r) "Expulsion from Membership" means expulsion from membership in the Association for a period of not less than one (1), but not more than three (3) years, with reinstatement to membership only by application as a new member after the end of the period of expulsion, with the application considered on its merits (see also Section 39 of Part One of this Manual).

(s) "Suspension of MLS" means suspension of all privileges and services of the MLS on terms and conditions expressly stated for a period of time not less than thirty (30) calendar days and not more than one (1) year. Suspension of all privileges and services of the MLS shall include, but is not limited to, the ability to submit listings to the MLS, retain current listings in the MLS data base, use computer terminals, receive MLS Compilations or comparable materials. Reinstatement as a full Participant or Subscriber shall be automatic at the end of the specified period providing the Participant or Subscriber is current on all amounts owed the MLS and has kept all fees current during the period of suspension (see also Section 39 of Part One of this Manual). In the event the suspension is for a remediable violation, the suspension is in effect for the period that the violation remains uncorrected, and the minimum and maximum time limits for suspension do not apply. "Remediable violations" are those that can be corrected by the member, such as completion of mandatory training, nonpayment of fees, or other curable violation.

(t) "Expulsion from MLS" means expulsion from all privileges and services of the MLS on terms and conditions expressly stated for a period of time not less than one (1) year, but not more that three (3) years. Expulsion from all privileges and services of the MLS shall include, but is not limited to, the ability to submit listings to the MLS, retain current listings in the MLS data base, use computer terminals, receive MLS Compilations or comparable materials. Reinstatement to MLS services as a full Participant or Subscriber shall be by application as a new MLS participant or Subscriber after the end of the period of expulsion, with the application considered on its merits (see also Section 39 of Part One of this Manual).

Section 2. Duties of Membership

Among the duties of membership are the following:

(a) To abide by the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS® (N.A.R.).

(b) To abide by the bylaws of this Association and its rules and regulations including the provisions and procedures of this Manual.

(c) To submit to arbitration all controversies specified in Part Two of this Manual by the procedure there provided, and to abide by the arbitration award.

Section 3. Power to Take Disciplinary Action Against an Association Member

After a hearing as provided below, the Directors may take disciplinary action against any member:

(a) For violation by the member of any duty of membership including a violation of the N.A.R. Code of Ethics while a member of any Association of REALTORS®.

(b) On the member's being convicted, adjudged, or otherwise recorded as guilty by a final judgment of any court of competent jurisdiction of 1) a felony or 2) a crime involving moral turpitude, or 3) on a member's being determined by any court of competent jurisdiction, or official of the State of California authorized to make the determination, of having violated a provision of the California real estate law or a regulation of the Real Estate Commissioner.

(c) For any violation of subsection (a) by another who is also a member, affiliated with the member, provided the member was the designated REALTOR® for that person at the time the alleged violation occurred. In such instance, both may, but are not required to be joined as respondents in any proceeding. The finding of a hearing Panel with respect to any violation by the designated REALTOR® and the member employed by or affiliated with him or her as an independent contractor may be the same or different; and in the event both are found in violation, the sanctions, if any, may be the same or different.

(d) For any violation of subsection (a) by any person who is not a member, but is employed by or affiliated with a member and was providing real estate related services within the scope of the member's license. Lack of knowledge by the member of such person's conduct shall only go to mitigation of discipline imposed.

Section 4. Duties of MLS Participants and Subscribers

The duties of an MLS Participant or Subscriber shall be to abide by the MLS rules and regulations of the MLS to which they belong and the procedures set forth in Part One of this Manual.

Section 5. Power to Take Disciplinary Action Against an MLS Participant or Subscriber

After a hearing as provided below, the Directors may take disciplinary action against any MLS Participant or Subscriber:

(a) For violation of any MLS rule.

(b) On the Participant's or Subscriber's being convicted, adjudged, or otherwise recorded as guilty by a final judgment of any court of competent jurisdiction of (1) a felony, or (2) a crime involving moral turpitude, or (3) on a determination by any court of competent jurisdiction, or official of the State of California authorized to make the determination, that the Participant or Subscriber violated a provision of the California real estate law or a regulation of the Real Estate Commissioner.

(c) For any violation of subsection (a) by a Subscriber or salesperson who is affiliated with the Participant and the Participant is the broker through which the Subscriber or salesperson is authorized to have access to the MLS as reflected by the records of the Association. Lack of knowledge by the Participant of such Subscriber's or salesperson's conduct shall only go to mitigation of discipline imposed.

(d) For any violation of subsection (a) by any person who is not a Participant or Subscriber, but is employed by or affiliated with a Participant or Subscriber and was providing real estate related services within the scope of the Participant's or Subscriber's license. Lack of knowledge by the Participant or Subscriber of such person's conduct shall only go to mitigation of discipline imposed.

Section 6. Nature of Discipline Against an Association Member

(a) Disciplinary action may consist of one or more of the following:

(1) Placement of a Letter of Warning as defined in Section 1(l) in the member's file for a specified period of time;

(2) Placement of a Letter of Reprimand as defined in Section 1(m) in the member's file for a specified period of time;

(3) Imposition of a requirement for training as defined in Section 1(n);

(4) Designation of an appropriate and reasonable fine as defined in Section 1(o) commensurate with the gravity of the determined violation not to exceed $5,000 per party, per hearing;

(5) Imposition of probation as defined in Section 1(p) for a stated period of time not to exceed one (1) year;

(6) Suspension of membership as defined in Section 1(q) for a stated period of time not less than thirty (30) days and not more than one (1) year, unless the suspension is for a <u>remediable</u> violation, as defined in Section 1(q), in which case the suspension shall be for the period that the violation remains uncorrected; or

(7) Expulsion from membership as defined in Section 1(r) for a stated period of one (1) to three (3) years, with reinstatement to membership only by application for membership as a new member after the specified period of expulsion, with the application considered on its merits.

(b) If the conduct for which suspension or expulsion is ordered consists of failure to submit a dispute to arbitration, the Directors may not permit the disciplined member to avoid suspension or expulsion without submitting to the arbitration unless in the meanwhile the controversy has been submitted to a court of law without any objection by any party that it should be arbitrated.

(c) None of the foregoing shall preclude the hearing Panel from recommending and the Directors from imposing one or more of the possible disciplinary actions as determined by the gravity of the offense.

(d) In the case of any discipline such as subsection (a)(3) and (4), where the disciplined member must take specific action, the hearing Panel must recommend and the Directors must impose alternative discipline to become effective if the member does not comply with the ordered discipline.

(e) The Association may adopt a policy to assess members an administrative processing fee not to exceed five hundred ($500) dollars if they are found in violation of the Code of Ethics or other membership duties. Any processing fee policy adopted by the Association and any subsequent processing fee assessed will be in addition to any discipline, including fines, and shall not be considered part of any disciplinary sanction imposed.

Section 7. Nature of Discipline Against an MLS Participant or Subscriber

(a) Disciplinary action for violation of an MLS rule may consist of one or more of the following:

(1) Placement of a Letter of Warning as defined in Section 1(l) in the individual's file for a specified period of time;

(2) Placement of a Letter of Reprimand as defined in Section 1(m) in the individual's file for a specified period of time;

(3) Imposition of a training requirement for as defined in Section 1(n);

(4) Designation of an appropriate and reasonable fine as defined in Section 1(o) commensurate with the gravity of the determined violation not to exceed $15,000 per party per hearing;

(5) Imposition of probation as defined in Section 1(p) for a stated period of time not to exceed one (1) year;

(6) Suspension of MLS services as defined in Section 1(s) for a stated period of time not less than thirty (30) days and not more than one (1) year, unless the suspension is for a remediable violation, as defined in Section 1(s), in which case the suspension shall be for the period that the violation remains uncorrected; or

(7) Expulsion from the MLS as defined in Section 1(t) for a stated period of one (1) to three (3) years, with reinstatement to MLS services by application as a new MLS Participant or Subscriber after the specified period of expulsion, with the application considered on its merits.

(b) None of the foregoing shall preclude the hearing panel from recommending and the Directors from imposing one or more of the possible disciplinary actions as determined by the gravity of the offense.

(c) In the case of any sanction or discipline such as subsection (a)(3) and (4), where the disciplined person must take specific action, the hearing Panel must

recommend and the Directors must impose alternative discipline to become effective if the Participant or Subscriber does not comply with the ordered discipline.

(d) The Association may adopt a policy to assess Participants and Subscribers an administrative processing fee not to exceed five hundred ($500) dollars if they are found in violation of the MLS rules. Any processing fee policy adopted by the Association and any subsequent processing fee assessed will be in addition to any discipline, including fines, and shall not be considered part of any disciplinary sanction imposed.

Section 8. Citations

(a) The MLS Committee, subject to approval of the Board of Directors, may implement a schedule of fines for certain MLS rules violations and direct staff to issue citations for the specified MLS rules violations and implement a procedure whereby the Participants and/or Subscribers receiving the citation may either pay the amount specified on the citation or request a full hearing in accordance with the procedures set forth in Part One of this Manual.

(b) The Grievance Committee, subject to approval of the Board of Directors, may implement a schedule of fines for certain Code of Ethics violations and direct staff to issue citations for the specified Code of Ethics violations and implement a procedure whereby the REALTOR® receiving the citation may either (1) complete specified training (at the option of the Association); (2) pay the amount specified on the citation; or (3) request a full hearing in accordance with the procedures set forth in Part One of this Manual. Such Code of Ethics violations shall only be from those authorized in the C.A.R. Model Citation Schedule.

Section 9. Grievance Committee

There shall be a standing committee, known as the Grievance Committee of at least five (5) Association members. Unless the Association's bylaws specify otherwise, at least a majority shall be licensed real estate brokers. 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 being designated for one (1) year terms. The President shall annually designate the Chairperson and Vice Chairperson(s) of the Committee.

Section 10. Professional Standards Committee

(a) There shall be a standing committee, known as the Professional Standards Committee of at least nine (9) Association members. Unless the Association's bylaws specify otherwise, at least a majority shall be licensed real estate brokers. 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 bylaws. One-third of the members of the first Committee so appointed being designated for one (1) year terms. The President shall annually designate the Chairperson and Vice Chairperson(s) of the Committee.

(b) 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 the provisions of Part Two of this Manual.

Section 11. Multi-Association Professional Standards Hearings and Shared Panelists

(a) 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) 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 Grievance Committee and Professional Standards Committee members and Board of Directors on reviews, in which case the members of a Panel may include members from the reciprocating association's respective Grievance Committee, Professional Standards Committee and Board of Directors.

Section 12. Interpretation of Bylaws

(a) If the interpretation of any provision of the bylaws or rule or regulation 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 bylaw or rule or regulation, 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 review of a hearing Panel's decision shall not be bound by that hearing Panel's interpretation of the bylaws or this Manual.

(b) Failure of a hearing Panel to set forth its interpretation as required by subsection (a) shall not invalidate the decision of the hearing Panel.

Section 13. Notices

(a) Any notice required to be given or paper required to be served may be given or served by personally handing it to the party to be notified, by first class or certified mail addressed to the mailing address on the records of the Association, by delivery to the mailing address on the records of the Association by a messenger service or sent to the party by email. If mailed or delivered, notice shall be deemed given when placed in the mail or when given to the messenger service and deemed received within five (5) calendar days of such mailing or delivery, regardless if actually received or not.

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 US mail.

(b) Notice of any hearing shall include the names of the members of the hearing Panel at the time said notice is given. Notice of any hearing, except for an adjourned or continued hearing, shall be given not less than twenty-one (21) calendar days beforehand, unless otherwise agreed by all the parties.

Section 14. 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, any member, including but not limited to, members of a Panel, or witnesses for anything done under these procedures.

Section 15. Communication and Clerical

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 monies 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 16. Attempts to Influence Panel

No party or party's attorney shall contact the hearing Panel members outside 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 17. Confidentiality of Proceedings

(a) All proceedings, including the allegations, findings, recommendations and decisions in disciplinary 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 as authorized in this Section and Sections 38 and 39. Upon the 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 or required by law.

(b) The Association may publish the names of the parties and the final decisions of any disciplinary hearing where the Directors have imposed suspension or expulsion as a discipline or the Association has adopted a policy to publish the names of ethics violators pursuant to the procedures provided in subsection (e) of this Section.
(c) The Panel members shall not discuss the proceedings, including the Panel's deliberations, with any person(s) other than the other members of the 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. Members of the Grievance Committee acting pursuant to the provisions of Section 24 of Part One of this Manual shall not be precluded from discussion necessary to the preliminary review.

(d) The parties shall not report or publish the allegations, findings or decisions of any disciplinary proceeding to anyone except as may be required by law. Notwithstanding, the respondent in a disciplinary hearing is authorized to disclose the decision to vindicate that respondent's professional reputation. Any party to a disciplinary 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.

(e) If a member is found in violation of the Code of Ethics a second time within a (3) year time period, the member's name, the fact that the member has been found in violation of the Code of Ethics, the Article(s) violated, and the discipline imposed shall be published in the official communication vehicle of the Association. Such publication shall not include the name of the firm the member is, or was, licensed or affiliated with. In cases where the member's name is similar to another Association member's or MLS Participant's or Subscriber's name, the member's real estate license number or office address (or both) may also be published. The procedures in this subsection (e) are optional unless the Association's Board of Directors

has adopted a policy to publish the names of ethics violators pursuant to this subsection.

(f) 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 18. Right to Counsel/Other Representation

(a) Any party may be represented by legal counsel or by a REALTOR® (or both) at any ethics hearing, including reviews, even where the hearing will occur in the party's absence. If the Association has adopted the Ethics Advocate (EA) program, a sub-committee of the Professional Standards Committee of REALTORS® will be specially trained to represent parties during the disciplinary process. The role of legal counsel or EA may include preparation for hearing, including the preparation of forms and assembly of evidence; representation at the hearing, including the making of opening and closing statements on behalf of the party represented at the hearing, examining and cross examining witnesses, and introducing affidavits, documents and other relevant evidence, and representation at any rehearings or review hearings, but does not include testifying as a witness. In the event the parties do not give fifteen (15) days notice of their intention to have legal counsel or EA representation to the Association and all other parties, the hearing may be continued, and the party giving late notice may be assessed a continuance fee.

(b) 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. 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 by counsel.

(c) Any Panel and the Directors may consult with or have Board legal counsel present to advise them on issues of procedure and law.

Section 19. Qualification for Panel

(a) Only one person connected with any firm, business, partnership or corporation may serve on the same Panel.

(b) No individual may participate in the deliberation of more than one Panel on the same matter.

(c) 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) Before sitting on any case, each member of a Panel shall sign a statement (Form D-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 or her from rendering an impartial decision.

(e) Every member of a hearing Panel (except a member of the Grievance Committee acting pursuant to the provisions of Section 24 of Part One of this Manual) 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) 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 D-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 be deemed to have waived any grounds of disqualification of which he or she then has knowledge unless he or she files the request within ten (10) calendar days after the prospective names are mailed 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. However, none of the foregoing is to be construed as to allow a challenge to the qualifications of members of the Association's Grievance Committee.

(g) 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 Panel originally designated, the Presiding Officer or his or her designee of the hearing Panel will recess the hearing to a date on which all hearing Panel members can be present. If the Presiding Officer or his or her designee cannot at that time schedule a new date, notice of a subsequent date shall be served on all parties herein provided.

Section 20. Filing a Complaint

(a) Any person, whether a member or not, having reason to believe that a member, Participant or Subscriber is guilty of any conduct subject to disciplinary action, under Sections 2 and 4 of Part One of this Manual may file a complaint in writing with the Association (Form D-1) where the respondent is a member or where the property at issue is located. The Association Executive may require the complainant to supply the necessary number of copies of the complaint.

(b) A complaint must be filed within one hundred and eighty (180) calendar days after the facts constituting the matter complained of could have been known in the exercise of reasonable diligence.

(c) The Association Executive may conduct a preliminary review of the complaint to determine whether the complaint is subject to disciplinary action 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.

(d) The complainant may request the assistance of an Ethics Advocate ("EA"), by submitting a Request for Ethics Advocate packet (Forms D-23, D-23A & D-23B) to the Association. The EA is authorized to help the complainant draft the Complaint (Form D-1) and other forms required for the disciplinary process. In addition, the EA may represent the complainant at the hearing, as set forth in Section 18(a).

Section 21. Designated REALTOR® as a Respondent in an Ethics Hearing

(a) If anyone other than a designated REALTOR® is named as the respondent in a complaint alleging ethical misconduct, that individual's designated REALTOR® as defined by the Association bylaws, at the time of the acts giving rise to the complaint may, but is not required to be, named as a respondent.

(b) If a designated REALTOR® is not named as a respondent, the designated REALTOR® shall receive notice and a copy of the complaint and all subsequent information regarding the complaint including any decision of a hearing Panel and any final action taken by the Board of Directors. The designated REALTOR® shall also have the right to attend and be present at any hearing or review regarding the complaint.

Section 22. MLS Participant as a Respondent in an MLS Rules Hearing

(a) If anyone other than an MLS Participant is named as the respondent in an MLS rules hearing, that individual's MLS Participant as defined by the MLS Rules, at the time of the acts giving rise to the complaint may, but is not required to be, named as a respondent.

(b) If a MLS Participant is not named as a respondent, the MLS Participant shall receive notice and a copy of the complaint and all subsequent information regarding the complaint including any decision of a hearing Panel and any final action taken by the Board of Directors. The MLS Participant shall also have the right to attend and be present at any hearing or review regarding the complaint.

Section 23. Joinder of Multiple Parties or Complaints

Upon request of a party or upon its own motion, the Grievance Committee or the hearing Panel may join together multiple complaints arising out of the same set of circumstances or multiple parties involved in the same transaction to be heard at the same time. In addition, the Grievance Committee or the hearing Panel may join together complaints alleging an MLS rules violation and complaints alleging unethical misconduct involving the same parties and arising out of the same transaction to be heard at the same time.

Section 24. Action of the Grievance Committee

(a) The Association Executive shall promptly refer any complaint submitted according to Section 20 of Part One of this Manual to the Chairperson of the Grievance Committee, who shall promptly arrange to have the complaint reviewed by the Grievance Committee or designate three or more members of the Grievance Committee to (1) designate the complaint for a citation as set forth in Section 8(b); (2) dismiss the complaint as unworthy of further consideration; (3) refer it back to the complainant as appropriate for arbitration prior to or instead of a disciplinary hearing; or (4) refer it back to the Association Executive for hearing.

(b) The Grievance Committee is to make only such preliminary review and evaluation of the complaint as required to determine whether the complaint warrants further consideration by a hearing Panel of the Professional Standards Committee. The Grievance Committee does not conduct hearings and does not determine if a violation of the Code of Ethics, Association bylaws or MLS Rules has occurred.

(c) If, after receiving a citation for violation of the Code of Ethics as set forth

the Section 8(b), the respondent requests a hearing under Part One of this Manual, the Grievance Committee shall reexamine the complaint and may amend it in accordance with this Section 22.

(d) Upon its own motion, the Grievance Committee may, and upon instruction of the Directors must, investigate the actions of any member when there is reason to believe that the member's conduct may be subject to disciplinary action. If the evidence warrants a hearing, the Grievance Committee shall prepare a complaint, refer it to the Association and designate one or more of its members on behalf of the Grievance Committee as complainant to present the case at the subsequent hearing.

(e) If the complainant is someone other than the Grievance Committee, upon the complainant's request, the Grievance Committee may, but is not required to, designate one or more of its members to present the case at the subsequent hearing on the complainant's behalf.

(f) If the Grievance Committee determines that the respondent's alleged conduct may be the basis for a violation but that an inappropriate membership or MLS duty has been cited, the Grievance Committee may amend the complaint by deleting or adding the appropriate duty based on the facts alleged in the complaint. If the Grievance Committee determines that a membership or MLS duty should be added to the complaint, and the complainant will not agree to the addition, the Grievance Committee files its own complaint and both complaints will be heard simultaneously by the same hearing Panel.

(g) If the complaint asserts multiple allegations and the Grievance Committee determines that one or more of the allegations would not warrant a hearing, that portion of the complaint may be dismissed while the balance of the complaint is forwarded for a hearing before a hearing Panel of the Professional Standards Committee.

(h) The Grievance Committee may join together multiple parties or complaints as provided in Section 23 of Part One of this Manual.

(i) If the complaint is submitted to the Association anonymously, a Subcommittee of the Grievance Committee shall review and may investigate the complaint and 1) dismiss the complaint as unworthy of further consideration; 2) notify the respondent of the complaint and give an opportunity to correct; or 3) refer the complaint to the Professional Standards Committee for hearing. If the Subcommittee, on behalf of the Grievance Committee, refers the matter for hearing, the Grievance Committee shall be the complainant and one of the members of the Subcommittee shall represent the Grievance Committee at the hearing.

(j) Any decision by the Grievance Committee shall not be disclosed to any person except the Professional Standards chairperson, the hearing Panel, the complainant(s), respondent(s), Association staff and counsel, or a Panel of the Directors upon review.

Section 25. Review of Grievance Committee Decision

(a) Within ten (10) calendar days from the date the Grievance Committee decision is sent to the complainant, the complainant may request in writing (Form G-4) a review by a Panel of the Directors of a decision to dismiss the complaint or to delete a membership duty or MLS rule from the complaint.

(b) The President will select a Panel of the Directors (not less than three (3)) to conduct the review. When conducting the review, the Directors are subject to automatic disqualification under the grounds set out in Section 19 of Part One of this Manual. Each Director must sign a

statement (Form D-7) that he or she is not disqualified for any of the above reasons, and he or she knows of no other reason that might prevent him from rendering an impartial decision. The review Panel will consider only the information and documentation considered by the Grievance Committee. The parties shall not be present during the review.

(c) The decision of the Panel of Directors conducting the review shall be final. If the Directors affirm the decision to dismiss, the complainant shall be notified and the complaint dismissed. If the decision of the Directors is to send the complaint forward to a hearing, the complainant shall be notified and the complaint processed in accordance with Section 28 of Part One of this Manual.

(d) If the review is based on the Grievance Committee's decision to delete a membership or MLS duty from the complaint, and the Panel of Directors affirm this decision, the complaint shall be processed in accordance with Section 28 of Part One of this Manual. If the Panel of Directors amend the complaint to add any or all of the deleted membership or MLS duties, the amended complaint shall be sent to the complainant for signature and then processed in accordance with Section 28 of Part One of this Manual.

(e) If there is no written request for review made within ten (10) calendar days after notice of the Grievance Committee decision is sent, the decision of the Grievance Committee shall be final.

Section 26. Withdrawal of Complaint

(a) If after the Grievance Committee has recommended that a hearing be arranged, but before the hearing Panel is convened, a complainant requests withdrawal of the complaint, the Association Executive shall promptly refer the matter back to the Grievance Committee for a determination whether a potential violation of the public trust (as defined in Section 38(e) of Part One of this Manual) may have occurred. Only where the Grievance Committee determines a potential violation of the public trust may have occurred may the Grievance Committee proceed as the complainant.

(b) After a hearing Panel has been convened, a complaint may be withdrawn only with the Panel's approval. In such event, the Panel may 1) refer the complaint to the Grievance Committee for consideration for processing under Section 24(d) of Part One of this Manual; 2) refuse to allow the complaint to be withdrawn and proceed with the hearing; or 3) allow the complaint to be withdrawn with no further action. Such withdrawal under subsection (a) or (b) of this Section would not constitute a decision on the merits.

Section 27. Amendment of Complaint

(a) At any time prior to the hearing on the complaint, the complainant may file an amended complaint with the Association Executive. If an amended complaint is filed prior to the hearing being convened, the complaint shall be sent to the Grievance Committee for review in accordance with the provisions of Section 24 of Part One of this Manual. If the Grievance Committee refers the amended complaint for a hearing, the Association Executive shall follow those procedures set forth in Section 28 of Part One of this Manual. If the Grievance Committee does not refer the amendment for a hearing, the matter shall proceed on the original complaint.

(b) At any time during the hearing, the complaint may be amended either by the complainant or upon motion of the hearing Panel. The hearing Panel may disallow the requested amendment and proceed to hear the original complaint. If the amended complaint is allowed, the amended complaint shall be filed in writing, signed by the complainant or by the Presiding Officer,

a copy given to the respondent, and a continuance granted if requested by a party.

(c) The hearing Panel may join together parties or complaints as set out in Section 23 of Part One of this Manual. In such event, the procedures of (b) of this Section shall be followed.

Section 28. Initiating a Disciplinary Hearing

(a) After a complaint has been referred to the Association Executive by the Grievance Committee with instruction to arrange a hearing, the Association Executive shall mail to each party complained of (hereafter called the "respondent"): 1) a copy of the complaint; 2) the Notice to Respondent (Form D-2); 3) the Request for Ethics Advocate packet (Forms D-23, D-23A & D-23B); and 4) the Response (D-3) with directions to return the Response and Request for Ethics Advocate packet within fifteen (15) calendar days from the date of mailing 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 at this time mail both the complainant and respondent a list of names of members of the Professional Standards Committee from which the disciplinary hearing Panel will be selected, the Notice of Right to Challenge Panel Members and Availability for Hearing (Form D-4), and the Reasons for Challenge – Panel Member (Form D-5).

(b) The respondent may request the assistance of an Ethics Advocate ("EA"), by submitting the Request for Ethics Advocate packet (Forms D-23, D-23A & D-23B) to the Association. The EA is authorized to help the respondent draft the Response (Form D-3) and other forms required for the disciplinary process. In addition, the EA may represent the respondent at the hearing, as set forth in Section 18(b).

(b) The respondent may submit a response, but regardless of whether he or she does or not, the hearing may be scheduled and conducted in the absence of the respondent. A hearing Panel may accept late filing of the response at its discretion.

(c) Not later than twenty-one (21) calendar days from the date of mailing the complaint to the respondent, the Association Executive shall mail copies of the response, if any, to the complainant or notify the complainant that no written response has been filed.

(d) From the names of members of the Professional Standards Committee not challenged by either party within fifteen (15) calendar days from the date the names are mailed to the parties, the Chairperson of the Professional Standards Committee or his or her designee shall then select from the Professional Standards Committee a hearing Panel as provided in (e) of this Section and Section 19 of this Manual. It shall be a membership duty of anyone so appointed to serve on a hearing Panel unless disqualified.

(e) A hearing Panel must have an odd number of members (not less than three (3) except as provided in Section 19(g) of Part One of this Manual.) If the Association's bylaws require a majority of real estate brokers on the Professional Standards Committee, a majority of each 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 also be a salesperson.

(f) 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.

(g) The Professional Standards Committee Chairperson or his or her designee may select an alternate from the list of members of the Professional Standards Committee not challenged to attend the hearing. The alternate will be allowed to observe the hearing process, but may not observe the deliberations. 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.

(h) The Association Executive shall designate the date, time and place of the hearing and shall notify the parties and hearing Panel in writing (Form D-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.

(i) A party will be deemed to have waived all objection to any person whose name he or she does not challenge, as provided in Section 19 of Part One of this Manual. If a challenge to proposed members of the hearing Panel results in an insufficient number of members to constitute the Panel, the President may appoint other qualified Association members to serve as hearing Panel members.

(j) The Association Executive shall provide to each party the outline of procedure prior to the hearing (Form D-8).

Section 29. Duty to Give Evidence

When requested by a party to a hearing, giving not less than ten (10) calendar days notice, or when summoned by any 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 to testify truthfully. It shall be a membership duty and an MLS rules requirement to comply with such requests. Refusal of a party to appear at a disciplinary proceeding, 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. Upon written request and only in extreme circumstances, the presiding officer of the hearing Panel may allow remote testimony or attendance at a hearing.

Section 30. Witnesses

Every party must have his or her own witnesses present at the hearing, and the hearing Panel may summon its own witnesses. All witnesses, except the parties to the hearing, will be excused from the hearing room except while testifying.

Section 31. Continuances

Continuances shall be in writing and state the reason for the request. Requested continuances shall be granted by the Professional Standards Chairperson or his or her designee, or after the hearing Panel has been convened, by the hearing Panel as necessary.

Section 32. Continuance Fees

Each party shall be entitled to one continuance of a hearing, for good cause, without assessment of a continuance fee. However, if a continuance is requested because of failure to adequately notify the Association and opposing party of representation by counsel or a REALTOR®/Ethics Advocate, the party giving the inadequate notice may be assessed a continuance fee, not the party requesting the continuance. The Board of Directors may establish a schedule of continuance fees.

Section 33. The Hearing

(a) The hearing Panel, prior to the hearing, must sign a statement certifying that they are unaware of any reason why they should be disqualified from serving on the hearing Panel (Form D-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 D-9) 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. The hearing Panel shall act upon any such objection or request as it deems proper.

(b) 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 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 disciplinary hearing requests, or if in the hearing Panel's opinion, it is necessary or desirable. The hearing Panel may determine what personal appearances 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.

(c) The hearing Panel may hear and determine the controversy upon the evidence produced at the hearing notwithstanding the failure of the respondent, who has been duly notified, to appear. If only the complainant appears at the hearing, he or she may rest upon the evidence submitted with his complaint. The hearing Panel may not find against a respondent solely by reason of his or her failure to appear.

(d) 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.

(e) If the complainant fails to appear, the complaint shall be dismissed or at the hearing Panel's discretion be referred back to the Grievance Committee for consideration under Section 24(d) of Part One of this Manual.

(f) 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.

Section 34. Transcript/Right to Record

(a) The Association shall either have a court reporter present at the hearing or tape record the proceedings. The Association's transcript or tape recording 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 tape record the proceedings unless the Association chooses to only have a court reporter, in which case, the party may tape record the proceedings. If a party has any transcript prepared, the party shall provide and pay for a copy for the Association.

(b) If the time period to request a Directors' review has not lapsed, any party to a hearing has a right to obtain a copy of the Association's official record of the proceeding upon payment of the Association's fees for duplication. Any duplication will be conducted under the supervision of the Association. Parties are authorized to use tape recordings or transcripts from hearings only for the purpose of a Directors' review of the case. Any unauthorized use of the tape 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) Any transcript tape recording of a hearing shall be destroyed upon final action of the Directors.

Section 35. 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 or his or her designee. Before permitting testimony relating to the character or general reputation of anyone, the hearing Panel shall satisfy itself that the testimony has a direct bearing on the case at issue.

Section 36. Decision of Hearing Panel

(a) The decision shall be made as soon as practicable after the evidence is presented and the hearing Panel has finished deliberations. The decision of the hearing Panel shall be by a simple majority vote (with all Panel members including the Presiding Officer having an equal vote) and in writing containing findings of fact (Form D-11) and a statement of disciplinary action recommended (Form D-12), if any. Such decision shall not be disclosed to any persons except the Directors, the complainant, the respondent, Association staff and legal counsel and as may be required by law. However, failure to abide by this disclosure requirement shall not invalidate the decision of the hearing Panel.

(b) In the event a member is found in violation of a membership duty, the hearing Panel may, at its discretion, consider in determining discipline all past records of previous determinations by the Board of Directors of membership duty violations and sanctions imposed, if any, in the member's records. Access to the member's records is permitted only after deliberations and findings of a violation.

(c) In the event an MLS Participant or Subscriber is found in violation of an MLS rule or duty, the hearing Panel may, in its discretion, consider in determining discipline all past records of previous determinations by the Board of Directors of MLS duty violations and sanctions imposed, if any, in the Participant's or Subscriber's records. Access to the person's records is permitted only after deliberations and findings of a violation.

(d) Disciplinary action recommended by the hearing Panel may include recommended options as described in Section 1 of Part One of this Manual. The decision (Forms D-11 and D-12) shall be filed with the Association Executive.

Section 37. Rehearing

(a) Within twenty (20) calendar days after the decision has been sent to the parties by the Association Executive, the complainant or respondent may petition the original hearing Panel for a rehearing, solely on the grounds of newly discovered material evidence which the petitioner could not, with reasonable diligence, have discovered and produced at the original hearing. The petition must be in writing (Form D-15) and include 1) a summary of the new evidence; 2) a statement of what the new evidence is intended to show and how it might affect the hearing Panel's decision; and 3) an explanation of why the petitioner could not have discovered and presented the evidence at the original hearing.

(b) A petition for rehearing not granted within fourteen (14) calendar days of its filing shall automatically be deemed denied. When granted or denied, the Association Executive shall immediately inform the respondent and the complainant. No more than one petition for rehearing may be filed in the case by each party.

(c) If a rehearing is granted, a rehearing is scheduled with the original hearing Panel and the parties. At the

rehearing, the only evidence that can be presented and discussed is the newly discovered evidence. The hearing Panel will then determine whether the new evidence changes their original decision.

Section 38. Action of the Directors if No Request for Review

(a) If no request for review is filed pursuant to Section 39, the Association Executive shall refer the hearing Panel's decision (Form D-11) and recommendations (Form D-12), if any, to a Panel of the Directors for review and final action. The Directors must adopt the hearing Panel's decision and recommendations and issue an order accordingly, except that if the Directors, after reviewing the decision or recommendations are concerned with a deficiency on the face of the decision or the appropriateness of the recommended discipline they may 1) dismiss the matter if they conclude that the findings of fact do not support the hearing Panel's decision or recommendations; 2) impose alternative discipline that does not exceed that recommended by the hearing Panel; or 3) refer the decision back to the hearing Panel with recommended modifications. If the hearing Panel does modify its decision or recommended discipline, the parties shall be notified in writing of this change and given a new opportunity to request a review pursuant to Section 39. The Directors shall render their decision in writing (Form D-22).

(b) When reviewing a hearing Panel's decision and recommendations pursuant to this Section, the Directors are subject to automatic disqualification under the grounds set out in Section 19 of Part One of this Manual. Each Director must also sign a statement (Form D-7) that he or she is not disqualified for any of the above reasons, and that he or she knows of no other reason that might prevent him or her from rendering an impartial decision. The parties shall have no right to submit challenges to the qualifications of the Directors for reviews conducted pursuant to this Section.

(c) Any decision of the Directors is final and each member by becoming and remaining a member agrees not to seek review in any court of law.

(d) Upon final action by the Directors, the Association Executive shall notify the complainant, respondent, the Professional Standards Committee Chairperson, the Hearing Panel and may notify the Association Executive of any other Association in which the respondent holds membership. Unless the decision provides otherwise, the President shall notify the members of the Association or the Participants and Subscribers in the MLS of any decision of the Directors ordering suspension or expulsion.

(e) Final ethics decisions holding members in violation of the Code of Ethics shall be forwarded by the Association to the California Department of Real Estate in instances where there is reason to believe that the "public trust" may have been violated. "Public trust" as used in this subsection refers to demonstrated misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm.

Section 39. Action of Directors if Request for Review

(a) Within twenty (20) calendar days after the hearing Panel's decision has been sent to the parties, if no petition for rehearing has been filed, or within ten (10) calendar days after denial of a petition for rehearing, any party may file a request in writing for a review (Form D-17) of the hearing Panel's decision by the Board of Directors or appointed review Panel of the Board of Directors. The Association Executive may require the party requesting the review to supply the necessary number of copies of the request for review.

(b) 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) The request for review must clearly indicate the bases on which the challenge is being made and contain facts and supporting evidence in reasonable detail to support the challenge. The bases for a review are: 1) misapplication or misinterpretation of a section imposing a membership or MLS duty; 2) procedural deficiency or any lack of procedural due process; 3) unwarranted discipline recommended by the hearing Panel.

(d) A request for review may 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 for review but is to insure that the request complies with the filing requirements of this Section.

(e) If a request for review is determined appropriate for a review hearing by the Directors, the Association Executive shall mail to all other parties: 1) a copy of the request; 2) the Notice to Request for Review (Form D-18); and 3) the Reply to Request for Review (D-19) with directions to return the Reply within fifteen (15) calendar days from the date of mailing to the party. The Association Executive may require the other parties to supply the necessary number of copies of the Reply. The Association Executive shall concurrently at this time mail all parties a list of names of members of the Board of Directors from which the review Panel of the Directors will be selected, the Notice of Right to Challenge Panel Members and Availability for Hearing (Form D-4), and the Reasons for Challenge – Panel Member (Form D-5).

(f) The other parties may submit a written reply, but regardless of whether they do or do not, the review hearing may be scheduled and conducted in the absence of the other parties. The review Panel of the Directors may accept late filing of a Reply in its discretion.

(g) Not later than twenty-one (21) calendar days from the date of mailing the request for review to the other parties, the Association Executive shall deliver copies of the reply, if any, to the party requesting the review or notify the party that no written reply has been filed.

(h) From the names of members of the Board of Directors not challenged by the parties within fifteen (15) calendar days from the date the names were mailed to the parties under subsection (e) of this Section, the President or his or her designee shall select a review Panel as provided in subsection (j) of this Section.

(i) A party will be deemed to have waived all objections to any member of the Board of Directors whose name he or she does not challenge. If a challenge to proposed members of the review Panel results in an insufficient number of Board of Directors' members to constitute a review Panel, the President may appoint other qualified members to serve on the review Panel.

(j) A review Panel may consist of the remaining unchallenged and qualified members of the Board of Directors, a Panel of the Board of Directors, or a Panel appointed by the Board of Directors but in any event the review Panel must be not less than three (3) members, except as provided in Section 19(g) of Part One of this Manual.

(k) When hearing a request for review, the Directors are subject to automatic disqualification under the grounds set out in Section 19 of Part One of this Manual. Each Director must sign a statement (Form D-7) that he or she is not disqualified for any of the above reasons, and that he or she knows of no other reason that might prevent him from rendering an impartial decision.

(l) In the case where the review Panel is a Panel of the Board of Directors or a body appointed by the Board of Directors, the President shall designate one of the review Panel members to be the Presiding Officer. Otherwise, the President shall be the Presiding Officer of the review Panel. The Presiding Officer will be responsible for conducting the review hearing and may prescribe any procedure for the review hearing not inconsistent with the provisions of this Manual.

(m) The Association Executive shall designate the time and place of review hearing and shall notify the parties and review Panel in writing (Form D-20). Each party shall be given at least twenty-one (21) calendar days prior notice of the review hearing but appearance at a review hearing without objection by any party will constitute a waiver of such notice requirement.

(n) The Association Executive shall provide to the review Panel in advance of the hearing copies of the request for review, reply to the request, if any, and the hearing Panel's decision and findings of fact (Form D-11) and recommendations for discipline (Form D-12), if any.

(o) At the review hearing, the Presiding Officer from the original hearing (or other member of the original hearing Panel) shall summarize the procedures of the original hearing. Any party may be heard to correct the summary. The Presiding Officer may respond to the allegations and answer any questions the Directors may have relating to the allegations of the party requesting review. The tape recording of the hearing should be played only to prove or disprove the procedural deficiencies asserted by the party requesting review and only the pertinent portions shall be played. The playing of the tape recording is not intended to substitute for a transcript of the case, and if a transcript does exist, then the pertinent portions of it should be read instead of playing the tape recording.

(p) All requests for review received by the Association must be considered by a review Panel of the Directors and only those bases and issues raised in the written request for review may be raised by the party requesting review in any hearing before the Panel of the Directors. Any party may present to the review Panel reasons as to whether or not the decision and recommendations of the hearing Panel should be followed or not, but no new evidence regarding the merits of the underlying case may be presented.

(q) In the event the party that requested the review fails to appear at a duly noticed review hearing without obtaining a continuance or adjournment thereof, the review Panel shall dismiss the other parties and review the hearing Panel's decision and recommendations pursuant to Section 38.

(r) If any party not requesting the review fails to attend a duly noticed review hearing without obtaining a continuance or adjournment thereof, the review Panel may proceed with the review hearing in the party's absence and shall reach its decision based on the request for review and arguments presented at the review hearing.

(s) The review Panel must adopt the hearing Panel's findings and recommendations and issue a decision accordingly, except that if the review Panel is concerned with a deficiency of the decision or the appropriateness of the recommended discipline they may 1) dismiss the matter if they conclude that the

findings of fact do not support the hearing Panel's recommendation; 2) impose alternative discipline that does not exceed that recommended by the hearing Panel; 3) refer the decision back to the hearing Panel with recommended modifications; or 4) refer the matter back to the Professional Standards Committee for a new hearing with the same or different hearing Panel as deemed appropriate. The review Panel shall render their decision in writing (Form D-21).

(t) If the review Panel adopts the recommendations of the hearing Panel, the money deposited by the party requesting the review shall pass into the general treasury of the Association. If the review Panel dismisses the complaint or refers it back to the Professional Standards Committee for a new hearing, the deposit shall be returned to the party making the request. If the recommendation is modified, the review Panel, at their discretion, may determine the appropriate disposition of the deposit.

(u) If the recommendation of the hearing Panel is rejected (thereby dismissing the matter), modified, or referred back for a new hearing, the Panel of Directors may state the reasons in writing, but failure to do so shall not invalidate the decision of the Directors.

(v) Any decision of the review Panel of Directors is final and each member by becoming and remaining a member agrees not to seek review in any court of law.

(w) Upon final action by the Directors, the Association Executive shall notify the complainant, respondent, Professional Standards Chairperson, the Hearing Panel and may notify the Association Executive of any other Association in which the respondent holds membership. Unless the decision provides otherwise, the members of the Association or the Participants and Subscribers in the MLS shall be notified of any final decision by the Directors ordering suspension or expulsion.

(x) Final ethics decisions holding members in violation of the Code of Ethics shall be forwarded by the Association to the California Department of Real Estate in instances where there is reason to believe that the "public trust" may have been violated. "Public trust" as used in this subsection refers to demonstrated misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm.

Section 40. Preliminary Judicial Determination

If the Board of Directors believes that the disciplined member, MLS Participant or Subscriber may resort to legal action, it may specify that the discipline shall become effective upon the final judgment of a court of competent jurisdiction in a suit by the Association for declaratory relief, declaring that the discipline violates no rights of the member, MLS Participant or Subscriber.

PART TWO – ARBITRATION OF DISPUTES

Section 41. Definitions

As used herein,

(a) "Dispute" means a controversy arising out of the real estate business.

(b) "Association" means this organization (the local Board or Association of REALTORS®).

(c) "Member" means REALTOR®, and REALTOR-ASSOCIATE®, members of this Association, whether primary or secondary.

(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) "Hearing" refers to an arbitration hearing involving a controversy arising out of the real estate business.

(f) "Panel" means a hearing panel in a hearing as defined in subsection (e) 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.

(g) "Party" means the complainant(s) or respondent(s) to an arbitration proceeding referred to in Part Two of this Manual.

(h) "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.

(i) "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.

(j) "Participant" means any individual defined in the MLS rules and regulations of the Association as a Participant.

(k) "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) 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 N.A.R. 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) 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) 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) If a broker and salesperson have previously agreed to arbitrate disputes between them by using a standard form with an agreement to arbitrate or other written agreement to arbitrate using the Association's facilities, they are bound to arbitrate under this Section.

(e) 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.

(f) 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.

Section 43. MLS Participant's and Subscriber's Duty and Privilege to Arbitrate

(a) If a person is not subject to arbitration under Sections 42 or 44 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) 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) 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) 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) 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) In the event the Association declines arbitration pursuant to this Section, any filing fees paid by parties shall be returned to the parties.

(e) 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) 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 of Part Two of this Manual, any dispute with a member of any different local association affiliated with C.A.R., 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) 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) 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 licensed real estate brokers. 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 being designated for one (1) year terms. The President shall annually designate the Chairperson and Vice Chairperson(s) of the Committee.

(b) 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) 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) 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

(a) 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.

(b) Failure of a hearing Panel to set forth its interpretation as required by subsection (a) shall not invalidate the decision of the hearing Panel.

Section 49. Notices

(a) Any notice required to be given or paper required to be served may be given or served by personally handing it to the party to be notified, by first class or certified mail addressed to the mailing address on the records of the Association, by delivery to the mailing address on the records of the Association by a messenger service or sent to the party by email. If mailed or delivered, notice shall be deemed given when placed in the mail or when given to the messenger service and deemed received within five (5) calendar days of such mailing or delivery, regardless if actually received or not. 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 US mail.

(b) Notice of any hearing shall include the names of the hearing Panel members at the time said notice is given. 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

(a) 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. Communication and Clerical

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) 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 as authorized in this Section and Section 56. 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 56 or required by law.

(b) 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) 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) 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) 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.

(b) 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) 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) Only one person connected with any firm, business, partnership or corporation may serve on the same Panel.

(b) No individual may participate in the deliberation of more than one Panel on the same matter;

(c) 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) 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) 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) 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 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, and any disclosures required by law, are mailed 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) 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) of Part Two of this Manual, 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) 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 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.

(b) A complaint 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 in the exercise of reasonable diligence, whichever is later.

(c) Any person authorized by the provisions of Sections 42 or 43 of Part Two of this Manual 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.

(d) 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.

(e) 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 55.

(f) 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 mailing 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).

(g) The respondent may submit a written response but, regardless of whether he or she does sot, he or she is bound to 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.

(h) Not later than twenty-one (21) calendar days from the date of mailing the complaint to the respondent, 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.

(i) 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 (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.

(j) 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.

(k) 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.

(l) 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 be allowed to observe the hearing process, but may not observe the deliberations. 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.

(m) 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.

(n) 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.

(o) 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. 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. Upon written request and only in extreme circumstances, the presiding officer of the hearing Panel may allow remote testimony or attendance at a hearing.

Section 60. Subpoenas

(a) 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) 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) Parties being served subpoenas by personal service must be given fifteen (15) calendar days notice for appearance at a hearing. If service is by mail, five (5) calendar days must be added.

(d) 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) 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.

(b) 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

Continuances shall be in writing and state the reason for the request. Requested continuances shall be granted by the Professional Standards Chairperson or his or her designee, or after the hearing Panel has been convened, by the hearing Panel as necessary.

Section 64. Continuance Fees

Each party shall be entitled to one continuance of a hearing without assessment of a continuance fee. However, if a continuance is requested because of failure to adequately notify the Association and opposing party of representation by counsel, the party giving the inadequate notice may be assessed a continuance fee, not the party requesting the continuance. The Board of Directors may establish a schedule of continuance fees.

Section 65. Arbitration Hearing

(a) 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) 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 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 hearing Panel's opinion, it is necessary or desirable. 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) 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. 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.

(d) 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.

(e) If the complainant fails to appear, the complaint shall be dismissed.

(f) 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.

Section 66. Transcript/Right to Record

(a) The Association shall either have a court reporter present at the hearing or tape record the proceedings. The Association's tape 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 tape record the proceedings unless the Association chooses to only have a court reporter, in which case the party may tape record the proceedings. If a party has any transcript prepared, the party shall provide and pay for a copy for the Association.

(b) 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. Any duplication will be conducted under supervision of the Association. Parties are authorized to use tape recordings or transcripts from arbitration hearings only for the purpose of a Directors' review of the case. Any unauthorized use of the tape 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) Any transcript or tape recording of a hearing shall be destroyed upon final action of the Directors.

Section 67. 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 hearing Panel shall satisfy itself that the testimony has a direct bearing on the case at issue.

Section 68. Costs of Arbitration

(a) The award may include costs of the prevailing party including an amount equal to the arbitration fee, witness fees, service of subpoenas, 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 may 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) 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 54 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) The arbitration award shall be made as soon as practicable after the evidence is presented and the hearing Panel has finished its deliberations. The award shall be in writing (Form A-12) and signed by all members of the hearing Panel.

(b) 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. 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.

(c) 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 mail the corrected award to all parties.

Section 71. Request for Procedural Review by the Directors

(a) 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 sent 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) 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) 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) 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) A request for review may 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) 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 39 and subject to any exceptions contained in this Section. Where Section 39 references disciplinary forms, the corresponding arbitration forms shall be used. To the extent any procedures in Section 39 are applicable only to disciplinary hearing reviews, such procedures shall not be applicable.

(g) 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) 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) 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) 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) The decision of the Directors to ratify the decision shall be final.

Section 72. Enforcement

The judgment of any competent court of record in California may be rendered upon the award. However, each member, MLS Participant or Subscriber, by virtue of and in consideration of membership or MLS services, waives the right to assert, in any forum that non-compliance with the California arbitrator disclosure rules set forth in Section 50(b), is a basis for challenging the validity of any arbitrator or of any arbitration award, whether asserted during the arbitration proceeding or after an arbitration award has been issued. 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.