

## Understanding Private Arbitration of Ethics Violations, Real Estate Commission Disputes, MLS, and other Disputes for California Realtors.

### California Realtor Arbitration General Overview

This article is written By *California Real Estate Lawyer Steve Vondran* (“Attorney Steve”). The article is general in nature and may not be accurate and should not be relied upon as legal advice. This is an advertisement and communication. Mr. Vondran can be reached at (877) 276-5084.

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We all know if you practice real estate long enough, you are bound to run into either a commission dispute with another real estate broker or salesperson (or a member of the public) or someone who wants to charge/threaten you with an ethics violation, or threaten your real estate license in some other fashion, for example threatening suspension or discipline.

So the question arises, what happens if you are a party to one of these disputes? For example, what if another broker wants to sue you over a commission dispute? Well, assuming you are a realtor, you would have agreed to the CODE OF ETHICS AND STANDARDS OF PRACTICE OF THE NATIONAL ASSOCIATION OF REALTORS which governs the activities of “*realtors*” and “*realtor-associates*.”

These code of ethics contain obligations that must be adhered to unless there is a conflict with the rule of law, in which case the rule of law controls. [Article 17 of the realtor Code of Ethics discusses the duty for Arbitration of Disputes](#). This section reads:

**Article 17** In the event of **contractual disputes** or **specific non-contractual disputes as defined in Standard of Practice 17-4** between REALTORS® (principals) associated with different firms, arising out of their relationship as REALTORS®, the REALTORS® shall mediate the dispute if the Board requires its members to mediate.

If the dispute is not resolved through mediation, or if mediation is not required, REALTORS® shall submit the dispute to arbitration in accordance with the policies of their Board rather than litigate the matter.

In the event **clients of REALTORS®** wish to mediate or arbitrate contractual disputes arising out of real estate transactions, REALTORS® **shall mediate or arbitrate those disputes** in accordance with the policies of the Board, **provided the clients agree to be bound by any resulting agreement or award**. The obligation to participate in mediation or arbitration contemplated by this Article includes the obligation of

REALTORS® (principals) to cause their firms to mediate or arbitrate and be bound by any resulting agreement or award. (Amended 1/12) .

#### **Standard of Practice 17-1**

The filing of litigation and refusal to withdraw from it by REALTORS® in an arbitrable matter constitutes a refusal to arbitrate. (Adopted 2/86)

#### **Standard of Practice 17-2**

Article 17 does not require REALTORS® to mediate in those circumstances **when all parties to the dispute advise the Board in writing that they choose not to mediate** through the Board's facilities. **The fact that all parties decline to participate in mediation does not relieve REALTORS® of the duty to arbitrate.**

Article 17 **does not require REALTORS® to arbitrate in those circumstances when all parties to the dispute advise the Board in writing that they choose not to arbitrate before the Board.** (Amended 1/12)

#### **Standard of Practice 17-3**

REALTORS®, when **acting solely as principals** in a real estate transaction, **are not** obligated to arbitrate disputes with other REALTORS® absent a specific written agreement to the contrary. (Adopted 1/96)

#### **Standard of Practice 17-4**

Specific non-contractual disputes that are subject to arbitration pursuant to Article 17 are:

Where a listing broker has compensated a cooperating broker and another cooperating broker subsequently claims to be the **procuring cause** of the sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker and any amount credited or paid to a party to the transaction at the direction of the respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. (Adopted 1/97, Amended 1/07).

Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result,

reduces the commission owed by the seller or landlord and, subsequent to such actions, another **cooperating broker claims to be the procuring cause of sale or lease**. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the seller or landlord and any amount credited or paid to a party to the transaction at the direction of the respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. (Adopted 1/97, Amended 1/07).

Where a buyer or tenant representative is compensated by the buyer or tenant and, as a result, the listing broker reduces the commission owed by the seller or landlord and, subsequent to such actions, **another cooperating broker claims to be the procuring cause of sale or lease**. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. (Adopted 1/97).

Where **two or more listing brokers claim entitlement to compensation pursuant to open listings** with a seller or landlord who agrees to participate in arbitration (or who requests arbitration) and who agrees to be bound by the decision. In cases where one of the listing brokers has been compensated by the seller or landlord, the other listing broker, as complainant, may name the first listing broker as respondent and arbitration may proceed between the brokers. (Adopted 1/97).

Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, **claims to be the procuring cause of sale or lease**. In such cases arbitration shall be between the listing broker and the buyer or tenant representative and the amount in dispute is limited to the amount of the reduction of commission to which the listing broker agreed. (Adopted 1/05).

### **Standard of Practice 17-5**

The obligation to arbitrate established in Article 17 **includes disputes between REALTORS® (principals) in different states** in instances where, absent an established inter-association arbitration agreement, the REALTOR® (principal) requesting arbitration agrees to submit to the jurisdiction of, travel to, participate in, and be bound by any resulting award rendered in arbitration conducted by the respondent(s) REALTOR®'s association, in instances where the respondent(s) REALTOR®'s association determines that an arbitrable issue exists. (Adopted 1/07)

As you can see, this creates many situations where the broker has a duty to seek to arbitrate their real estate dispute where contractual, or non-contractual disputes arise in California. If you are subject to one of these disputes, either as a complaining party, or a responding party, contact us to discuss your case (877) 276-5084.

### **TOP TEN FREQUENTLY ASKED QUESTIONS ABOUT THE REALTORS DUTY TO ARBITRATE:**

#### ***1. What is the Arbitration Process in California?***

- a. Basically the process starts with the complainant **filing a complaint** against the realtor for either an ethical violation, or Arbitration for damages (ex. a procuring cause dispute), or MLS violations.

Examples of **ethics violations** that can be charged against a California Realtor under the Realtor Code of Ethics:

- Article 1: REALTORS® owe a fiduciary duty to their clients.
- Article 2: REALTORS® must avoid concealment of pertinent facts.
- Article 3: REALTORS® must cooperate with other brokers.
- Article 4: REALTORS® must disclose any interest they have in a property they are buying or selling.
- Article 5: REALTORS® must disclose any contemplated interest they have in a property they are providing professional services.
- Article 6: REALTORS® cannot accept profit on expenditures made for their client or recommendations to their clients without disclosure.
- Article 7: REALTORS® must disclose and obtain consent to accept compensation from more than one party.
- Article 8: REALTORS® must keep a trust account for client funds.

- ☑ Article 9: REALTORS® must ensure that all agreements are in writing and clear.
- ☑ Article 10: REALTORS® must not discriminate in their business on the basis of race, color, religion, handicap, familial status or native origin.
- ☑ Article 11: REALTORS® must provide competent service.
- ☑ Article 12: REALTORS® must be honest in their real estate communications and present a true picture in advertising.
- ☑ Article 13: REALTORS® must not engage in the unauthorized practice of law.
- ☑ Article 14: REALTORS® must cooperate in professional standards proceedings
- ☑ Article 15: REALTORS® must not knowingly lie about competitors.
- ☑ Article 16: REALTORS® must not interfere with the exclusive representation agreements of other REALTORS®.
- ☑ Article 17: REALTORS® must arbitrate contractual disputes and certain non-contractual disputes (ex. procuring cause commission disputes) arising out of real estate transactions.

**NOTE:** as mentioned above, a complaining party may also complain of a MLS violation of the Rules and Regulations.

**TIME FRAME FOR FILING COMPLAINT:** The complaint must be brought within 180 calendar days of the facts constituting the alleged misconduct.

- b. Once the complaint is filed, the responding party will generally have 15 days to respond/answer the complaint and 14 days to make objections to the board panel that will hear the case (you will normally get a list of the other realtors at the board who are appointed by the director to hear your case). You have an opportunity to object to those persons that may be bias, and to seek to disqualify them. At this time you may have counter claims, or wish to file a countersuit against the complaining party.
- c. You should also be considering at this time which witnesses you will be calling for the Arbitration hearing and what evidence you will present. You have the right to subpoena witnesses and production of documents, but you cannot take a deposition or perform some of the other discovery you can do

in a normal litigation (ex. request for admissions, interrogatories, etc. are not permitted in a board arbitration hearing).

- d. When it comes time to have the case heard, it will be in front of a panel put together by the board. At the hearing, it will also be tape recorded, or you may want to have a court reporter (at your own cost).
- e. The arbitration proceeds like you see on television with opening statements, the complaining party presenting their evidence including witness and documents, your chance to cross examine their evidence, and then you get to put on your case while they have the right to cross examine your evidence. At the end, you give a closing statement and the case is submitted for decision.
- f. The decision is generally binding, although you do have a 20 day right to appeal to the Director of the Board, or, where there are procedural due process problems that were raised at the hearing, or other limited grounds, you can try to attack the proceeding in State Superior Court.
- g. If there is a fine awarded, that normally goes to the association. Failure to pay any monetary award following an arbitrator's ruling, may allow the other party to file to enforce the judgment in Superior Court, and seeking their costs and attorney fees (which are not recoverable in the arbitration action).
- h. The final decision is to be confidential.

**2. *Can I lose my real estate license at a board arbitration?***

No. Only a licensing agency, such as the California Department of Real Estate ("DRE"), has the power to revoke or suspend a real estate license.

**3. *What are the types of decisions that can be leveled against me in an arbitration?***

Here is what Orange County Association of Realtors website says – disciplinary action may include one or more of the following:

- A. Letter of Warning;
- B. Letter of Reprimand;
- C. Requirement for Ethics Training;
- D. Appropriate and Reasonable Fine;
- E. Probation;
- F. Suspension of Membership; or,
- G. Expulsion from Membership.

**4. Am I able to appeal a decision of the board following the arbitration decision?**

Yes, you have 20 days to appeal the decision to the Director of the board (this requires the paying of a fee), and you have the chance to have the decision reviewed.

**5. What is Interboard Arbitration?**

When the complaining and responding realtors both belong to the same association, the dispute should be heard with the board both belong to. Where the realtors or realtor associates are members of different boards, the arbitration is conducted at a neutral location called Interboard Arbitration. The same general procedure applies.

**6. Am I able to call witnesses and present evidence on my behalf?**

Yes. You are able to call witness (and subpoena witnesses and documents) to testify on your behalf.

**7. Is discovery allowed in an arbitration involving a real estate dispute?**

No. Discovery is one of the things that makes litigation so expensive, and time consuming. As such, this is not permitted in arbitration of real estate disputes before the realtor board.

**8. Are the parties to the dispute free to agree to mediate the real estate dispute?**

Yes. Mediation is where a neutral party (called a mediator) tries to point out the strengths and weaknesses of each party's case and tries to get the parties to resolve their dispute informally. Both parties need to agree to mediation and arbitration can still be pursued if mediation is not successful.

**9. Am I able to have an attorney represent me at a real estate arbitration in front of the board?**

Yes. You have the right to have a California Real Estate Attorney represent you in hearings before the board, whether arbitration, or mediation.

**10. Am I able to file a counterclaim in an arbitration of a realtor dispute?**

Yes. If you have a dispute you can file your own counterclaim and seek to have both matters heard before the board.

## **Helpful Real Estate Arbitration and Mediation Links**

[Procuring cause guidelines C.A.R.](#)

Here is an old blog we wrote on [Real Estate Procuring Cause in California](#)

[Here is a list of the California Association of Realtors](#) (local association websites each normally has their arbitration and dispute procedure outlined)

[California Association of Realtors Arbitration Manual](#)

[Find a California Realtor Lookup Tool](#)

[C.A.R. Interboard Arbitration Rules](#)