

THE KNOXVILLE AREA ASSOCIATION OF REALTORS®

2007 CODE OF ETHICS AND ARBITRATION MANUAL

A Manual for use by Knoxville Area Association of REALTORS® to ensure due process in the conduct of Professional Standards Hearings to enforce the Code of Ethics and in the Arbitration of business disputes arising out of the real estate business of the members of the Association. The Association's Professional Standards Procedures reflect substantively the approved due process policies and procedures of the National Association of REALTORS®.

Table of Contents	Page
Introduction to the Code of Ethics and Arbitration Manual	1
Objectives of the Manual	3
Part One — General Provisions Relating to Ethics	4
Section 1 — Definitions Relating to Ethics	4
Section 2 — Qualification for Tribunal	6
Section 3 — Duty to Give Evidence	7
Section 4 — Right of Counsel to Appear	7
Section 5 — Witnesses	8
Section 6 — Conduct of Hearing	8
Section 7 — Notices	9
Section 8 — Interpretations of Bylaws	9
Section 9 — Waiver	9
Section 10 — Communication and Clerical	9
Section 11 — Attempt to Influence Tribunal	9
Part Two — Membership Duties and Their Enforcement	10
Section 12 — Duties of Membership	10
Section 13 — Power to Take Disciplinary Action	10
Section 14 — Nature of Discipline	12
Section 15 — Appointment of the Grievance Committee	12
Section 16 — Appointment of the Professional Standards Committee	12
Part Three — The Grievance Committee	13
Section 17 — Authority	13
Section 18 — Function	13
Section 19 — Review of Ethics Complaint	13
Part Four — The Ethics Hearing	15
Section 20 — Initiating an Ethics Hearing	15
Section 21 — Ethics Hearing	17
Section 22 — Decision of Hearing Panel	19
Section 23 — Action of the Board of Directors	20
Section 24 — Initial Action by Directors	22
Section 25 — Preliminary Judicial Determination Prior to Imposition of Discipline	22
Part Five - Outline of Procedure for Conduct of an Ethics Hearing	23
Part Six — Ethics Complaint Form	24

Part Seven — General Provisions Relating to Arbitration	25
Section 26 — Definitions Relating to Arbitration	25
Section 27 — Qualification for Tribunal	27
Section 28 — Duty to Give Evidence	27
Section 29 — Right of Counsel to Appear	27
Section 30 — Witnesses	27
Section 31 — Conduct of Hearing	27
Section 32 — Notices	28
Section 33 — Interpretations of Bylaws	28
Section 34 — Waiver	29
Section 35 — Communication and Clerical	29
Section 36 — Attempt to Influence Tribunal	29
Part Eight — Membership Duties and Enforcement	29
Section 37 — Duties of Membership	29
Section 38 — Appointment of the Grievance Committee	29
Section 39 — Appointment of the Professional Standards Committee	29
Part Nine — The Grievance Committee	30
Section 40 — Authority	30
Section 41 — Function	30
Section 42 — Review of a Request for Arbitration	
Part Ten — Arbitration of Disputes	32
Section 43 — Arbitrable Issues	32
Section 44 — Duty and Privilege to Arbitrate	32
Section 45 — Board's Right to Decline Arbitration	33
Section 46 — Duty to Arbitrate Before State Association	34
Section 47 — Manner of Invoking Arbitration	34
Section 48 — Submission to Arbitration	36
Section 49 — Initial Action by Directors	36
Section 50 — Preliminary Judicial Determination Prior to Imposition of Discipline	37
Section 51 — The Arbitration Hearing	37
Section 52 — Settlement	37
Section 53 — The Award	37
Section 55 — Request for Procedural Review	39
Section 56 — Enforcement	39
Part Eleven — Outline of Procedure of an Arbitration Hearing	40
Part Twelve — Request and Agreement to Arbitrate	41

Code of Ethics and Arbitration Manual

Introduction

The Code of Ethics is designed to establish a public and professional consensus against which the practice and conduct of REALTORS® may be judged. REALTORS® in joining the Knoxville Area Association of REALTORS® signify their intention to abide by the Code and thereby enhance the public and professional image of themselves and all other REALTORS®. Adherence to the Code is the first great bond between REALTORS® throughout the country, and is an obligation voluntarily accepted by them to ensure high standards of professional conduct to serve the interests of their clients and customers.

The Association is responsible for enforcing the Code of Ethics pursuant to the Bylaws of the National Association. This duty must be discharged conscientiously and responsibly. Conscientious enforcement is essential if REALTORS® are to be recognized as professionals subscribing to standards of business and ethical conduct higher than those required by law. This duty must be discharged responsibly because of the importance to REALTORS® of their reputation and the esteem of their peers.

Membership in the Knoxville Area Association of REALTORS® has been recognized by the courts as a valuable property right. Therefore, any action by the Association limiting or denying the rights and privileges of a member must be justified, not only substantively but also procedurally. Due process, the right to a full and fair Hearing before an impartial tribunal with a full and complete knowledge of the charges made and with adequate opportunity to prepare a defense, will be accorded to every REALTOR® accused of a violation of the Code of Ethics.

In exercising its responsibility for the enforcement of the Code of Ethics, it is particularly important for the Association to distinguish between controversies which are properly the subject of Arbitration and controversies involving the Code of Ethics. The Code of Ethics must not be used as a club or lever to settle business disputes between REALTORS®. For this reason, in Ethics Complaints involving both charges of unethical conduct and request for Arbitration, the dual Ethics Complaint must be severed and Arbitration heard prior to Hearing any ethics charges.

A violation of the Code of Ethics involves an offense against the Association and its members generally, as distinguished from an Arbitration Hearing which involves a dispute among two or more members individually, arising from some common transaction involving the rendering of real estate services. For this reason, it is never appropriate for the Association, in an Ethics proceeding, to award money damages to another REALTOR®.

An Ethics proceeding has two essential purposes: education and vindication. It is educational in that it raises the consciousness of members to the meaning and significance of the Code. Many Ethics violations occur inadvertently or through ignorance, and the Hearing proceeding serves as an effective educational tool.

In filing a charge of an alleged violation of the Code of Ethics by a REALTOR®, the charge shall read as an alleged violation of one or more Articles of the Code. A Standard of Practice may be cited only in support of the charge. The Preamble is aspirational. Articles 1 through 17 establish specific obligations for which REALTORS® may be disciplined.

The Association has wide latitude in the sanctions which may be applied for violations of the Code of Ethics. It must, however, act responsibly in the application of these sanctions, attempting always to make the punishment commensurate with the offense. Recommendations of Ethics Hearing Panels may range from a mild Letter of Warning to termination of membership as follows in order of severity, provided that such actions are specifically authorized in the Professional Standards Procedures of the Association's bylaws:

- (a) Letter of Warning with copy to be placed in member's file;
- (b) Letter of Reprimand with copy to be placed in member's file;
- (c) Requirement that member attend the ethics portion of the Board Indoctrination Course or other appropriate course or seminar specified by the Hearing Panel which the Respondent could reasonably attend, taking into consideration cost, location, and duration;
- (d) Appropriate and reasonable fine not to exceed \$5,000;
- (e) Member placed on probation for a stated period of time not less than thirty (30) days nor more than one (1) year;
- (f) Membership of individual suspended for a stated period of time not less than thirty (30) days nor more than one (1) year, with automatic reinstatement of membership in good standing at the end of the specified period of suspension (Decision should be written clearly articulating all intended consequences, including denial of MLS participatory or access privileges). The Directors may order suspension unconditionally, or they may, at their discretion, give the disciplined member the option of paying to the Association, within such time as the Board of Directors shall designate, an assessment in an amount fixed by the Board of Directors, which may not exceed \$5,000 and which can be utilized only once in any three (3) year period, in lieu of accepting suspension. But, if the conduct for which suspension is ordered consists of failure to submit a dispute to Arbitration, the Board of Directors may not permit the disciplined member to avoid suspension without submitting to the Arbitration in addition to paying the assessment, unless in the meanwhile the dispute has been submitted to a court of law without any objection by any party that it should be arbitrated;
- (g) Expulsion of individual from membership with no reinstatement privilege for a specified period of one (1) to three (3) years, with reinstatement of membership to be by application only after the specified period of expulsion on the merits of the application at the time received (Decision should be written clearly articulating all intended consequences, including denial of Multiple Listing Service participatory or access privileges);
- (h) Suspension or termination of Multiple Listing Service rights and privileges may also be utilized. Suspension of Multiple Listing Service services may be no less than thirty (30) days nor more than one (1) year; termination of Multiple Listing Service shall be for a stated period of one (1) to three (3) years;
- (i) REALTORS® who are not members of the Association from which they purchase the Multiple Listing Service and their users and subscribers remain obligated under the Code of Ethics on the same terms and conditions as REALTORS® members of that Association. Discipline that may be imposed may be the same as but shall not exceed the discipline that may be imposed on that Association's members.

The Objectives of This Manual

The courts have held that membership in the Association is a valuable property right. It cannot be taken away without justifiable cause. The right to use the term “REALTOR®” or to retain membership in the Association may not be withdrawn without the members being given reasonable opportunities to defend themselves.

This Manual has been prepared and adopted as a guide to the Association as to the procedures to be followed in bringing disciplinary action against members or hearing business disputes submitted to Arbitration.

- (1) Provide a procedure which will be upheld by the courts.
- (2) Clearly define to members the types of conduct which may result in disciplinary action being taken.
- (3) Sufficiently outline the procedures so that officers of the Association from year to year can readily learn how to proceed in accordance with the Bylaws and general state law.
- (4) Eliminate haphazard methods which may result in confusion and dissatisfaction.
- (5) Clothe the disciplinary body with dignity which will demand respect by those brought before it.
- (6) Give the disciplinary body stability so that it may not be subject to personal pressure.
- (7) Create a method of settling business disputes which will command public respect and confidence of members.
- (8) Better protect the Association against legal actions, whether substantive or of the “nuisance” nature.
- (9) Require members to arbitrate those contractual and specific non-contractual disputes defined by this Manual within the framework of the Association rather than a court of law.
- (10) Give members reasonable assurance that:
 - (a) The Code of Ethics will be enforced,
 - (b) The procedure will protect them against unfair and unsubstantiated charges,
 - (c) Only respected and qualified persons will sit in peer judgment,
 - (d) Protection is given against the necessity of expensive and unjustified legal actions.

Part One - Ethics General Provisions

Section 1. Definitions Relating to Ethics

As used herein,

- (a) "Agent" means a real estate licensee (including brokers and sales associates) acting in an agency relationship as defined by state law or regulation.
- (a) "Association" means this organization, either the Knoxville Area Association of REALTORS® or the Tennessee Association of REALTORS®.
- (b) "Broker" means a real estate licensee (including brokers and sales associates) acting as an agent or in a legally recognized non-agency capacity.
- (c) "Client" means the person(s) or entity(ies) with whom a REALTOR® or a REALTOR'S® firm has an agency or legally recognized non-agency relationship.
- (e) "Counsel" means an attorney at law or a REALTOR® whether in the same or in another firm.
- (d) "Customer" means a party to a real estate transaction who receives information, services, or benefits but has no contractual relationship with the REALTOR® or the REALTOR'S® firm.
- (g) "Directors" means the Board of Directors of the Association.
- (h) "Electronically," "electronic Means," "Technology," "Technological Means," and related terms include, but are not limited to, the Internet, Internet-based websites, all forms of Internet communication, e-mail, facsimile correspondence, telephone, and all other forms of distance communication.
- (i) "Expulsion from Membership" means expulsion from membership in the Association for a period not less than one (1) but not more than three (3) years, with reinstatement to membership by application only as a new member after the end of the period of expulsion, with the application considered on its merits.
- (j) "Fine - Appropriate and Reasonable" means a fine commensurate with the gravity of the determined offense against the Code and against the Association, and ranging in any amount determined, but not to exceed \$5,000, to any Association Member with respect to any single ethics Hearing, irrespective of the number of Code violations determined.
- (k) "Hearing " may refer either to an ethics Hearing relating to disciplinary matters or to an Arbitration Hearing in which the dispute generally involves entitlement to a commission or to compensation.
- (l) "Immediate Family" as used in the Code of Ethics includes, but is not limited to, the REALTOR® and the REALTOR'S® spouse and their siblings, parents, grandparents, children (by birth or adoption), grandchildren, and other descendants.
- (m) "Letter of Reprimand" means a letter to a Board Member advising of a lack of professional conduct determined by a due process Hearing of the Professional Standards Committee and affirmed by the Board of Directors, and advising that the letter is to be construed as an official reprimand.
- (n) "Letter of Warning" means a letter to an Association Member advising of a lack of professional conduct determined by a due process Hearing of the Professional Standards Committee and affirmed by the Board of Directors, and warning that future similar conduct could result in more severe sanction.
- (o) "Member" means REALTOR® members of this Association. REALTORS® who participate in MLS or otherwise access MLS information through any Association in which they do not hold membership are subject to the Code of Ethics in that Association.

- (p) "Party" (Parties) means the Complainant(s) or Respondent(s) in disciplinary proceedings and in Arbitration Hearings referred to in Part Four and Part Ten of this Manual.
- (q) "Probation" means that another form of discipline recommended by the Hearing Panel will be held in abeyance for a stipulated period of time which may not exceed one (1) year. Any subsequent finding of a violation of the Code of Ethics during the probationary period may, at the discretion of the Board of Directors, result in the imposition of the suspended discipline. Absent any subsequent findings of a violation during the probationary period, both the probationary status and the suspended discipline shall be considered fulfilled, and the record shall reflect the fulfillment.
- (r) "REALTOR® principal" includes licensed or certified individuals who are sole proprietors, partners in a partnership, officers or majority shareholders of a corporation, or office managers (including branch office managers) acting on behalf of principals of a real estate firm who subscribe to the Code of Ethics as a condition of membership in the Association, Tennessee Association, and the NATIONAL ASSOCIATION OF REALTORS®. The phrase REALTOR® Principal includes those REALTORS® who participate in a Multiple Listing Service through any Association in which they do not hold membership.
- (s) "Secretary" means the Professional Standards Professional Standards Secretary.
- (t) "Suspension of Membership" means suspension of membership rights and privileges and denial of Board services, for a period not less than thirty (30) days, on terms and conditions expressly stated for an established period of time, including, but not limited to, use of the terms REALTOR® with reinstatement of all withdrawn membership rights and privileges and all withdrawn Association services automatically provided at the end of the specified period not to exceed one (1) year. Although membership rights, privileges, and services are withdrawn as specified in the notice of suspension, membership, per se, continues, and the suspended member remains obligated for payment of membership dues and to abide by the Code of Ethics during the period of suspension. The suspended member shall not be obligated for payment of any fees or charges except for continued optional services of the Association. Any failure to abide by the terms and conditions of the suspension, or the finding of a violation of the Code of Ethics after a Hearing as provided by the professional standards procedures of the Association Bylaws, shall be grounds for consideration as to possible extension of the suspension or expulsion from membership in the Association.
- (u) "Training Requirement for Ethics or other Appropriate Training" means a letter from the Association President or Professional Standards Chairman to an Association Member advising of a lack of professional conduct determined by a due process Hearing by the Professional Standards Committee, and directing the member to attend the Ethics portion of the Association Indoctrination Course or other appropriate course or seminar specified by the Hearing Panel which the Respondent could reasonably attend taking into consideration cost, location, and duration.
- (v) "Tribunal" means those persons serving in a given case on a Grievance Committee or a Hearing Panel of the Professional Standards Committee in either an ethics or Arbitration proceeding, or a Board of Directors or appropriate body appointed by a Board of Directors to act in its behalf. No individual may participate in the deliberation of more than one tribunal on the same matter.
- (w) "Unauthorized disclosure" means a report or publication under any circumstances not established in this Manual.

Section 2. Qualification for Tribunal

- (a) No more than one person licensed with any firm, partnership, or corporation may serve on the same tribunal.
 - (b) A person shall automatically be disqualified as a member of a tribunal in any case in which the person is :
 - (1) related by blood or marriage to the Complainant, Respondent, or a REALTOR® acting as counsel for either the Complainant or Respondent;
 - (2) an employer, partner, employee, or in any way associated in business with the Complainant, Respondent, or a REALTOR® acting as counsel for the Complainant or Respondent;
 - (3) a party to the Hearing, or a party or a witness in any other pending case involving a party to this Hearing; or
 - (4) objected to by a party as provided in Part One, Section 2(f).
 - (c) Before sitting in any case, each member of a tribunal (except any member of the Grievance Committee shall sign a statement:
 - (1) that the member is not disqualified for any of the foregoing reasons, and
 - (2) that the member knows of no other reason that might prevent him from rendering an impartial Decision.
 - (d) Every member of a tribunal (except a member of the Grievance Committee acting pursuant to the provisions of Section 20 of Part Four of this Manual) shall also avoid, as far as possible, discussing the case with any person other than a member of the tribunal prior to commencement of the Hearing . If the member does engage in any such discussion before the Hearing, the member must disclose the fact to the parties and to the other members of the tribunal no later than at the beginning of the Hearing.
 - (e) All members of a tribunal shall have an obligation to maintain and protect the confidentiality of the proceedings and deliberations of the tribunal before, during, and after its determinations and recommendations. The tribunal member shall not discuss the tribunal proceedings and deliberations with any person(s) except as required by the Board of Directors, the bylaw provisions of the Association, or by law as may be required, except that a member of the Grievance Committee acting pursuant to the provisions of Section 20 of Part Four of this Manual shall not be precluded from discussion necessary to the preliminary review.
- Unauthorized disclosure includes any report or publication under any circumstances not established in this Manual. The following are circumstances where disclosure by a party to an Ethics and/or Arbitration proceeding is authorized:
- (1) Where the dissemination of the Decision to individuals who have some knowledge of the proceeding might vindicate a member's professional reputation.
 - (2) Where there is a civil proceeding (including proceedings before the state real estate licensing authority or any other state or federal regulatory or administrative agency) involving the same facts and circumstances which gave rise to the proceeding before the Association.
- (f) Any party may file with the Professional Standards Professional Standards Secretary a written request for disqualification of a member of a tribunal (Hearing Panel or Board of Directors), stating the grounds alleged as basis for disqualification (i.e., factors which would prevent a tribunal member from rendering an impartial, unbiased, and knowledgeable Decision). Challenges submitted pursuant to this Section for ethics and Arbitration Hearings will be determined by the Professional Standards Committee Chairman, or, if challenge to the Chairman is made, by the Professional Standards Committee Vice Chairman, or, if challenge to both the Chairman and Vice Chairman is made, by the Association President. Challenges submitted pursuant to this Section for matters to be considered by the Board of Directors will be determined by the Association President or, if the challenge is to the Association President's qualifications, the next ranking Association officer.

A party shall be deemed to have waived any grounds of disqualification of which he then has knowledge unless he files the request within ten (10) days from the date a list of names of members of the Professional Standards Committee or Board of Directors has been mailed to the party (see Part Four, Section 21(c), Ethics Hearing). However, any member of the tribunal may be disqualified at any time if a majority of the members of the tribunal are made aware of any grounds of automatic disqualification of a member or find any new or previously undiscovered facts which in their judgment may prevent, or appear to prevent, a member of a tribunal from rendering an impartial Decision. However, none of the foregoing is to be construed to allow a challenge to the qualifications of members of an Association's or Tennessee Association's Grievance Committee or Board of Directors or Panel of Directors convened to review any action taken by a Grievance Committee.

- (g) If a member of a tribunal fails or is unable to participate in a Hearing, the remaining members of the tribunal may, at their option, but only with the express consent of the parties, proceed with the Hearing. Only the remaining members of the tribunal may participate in the Hearing and the determination thereof. Should any member of the tribunal absent himself during the progress of the actual Hearing, that individual shall likewise not participate in the deliberations nor determinations thereof. If all the parties do not agree to proceeding without the full number of the tribunal originally designated, the Chairman of the tribunal will recess the Hearing to a date on which all members of the tribunal can be present. If the Chairman cannot at that time designate a new date, notice of a subsequent date shall be served on all parties as herein provided.

Section 3. Duty to Give Evidence

The parties to ethics and Arbitration Hearings are primarily responsible for production of witnesses and evidence they intend to present to the Hearing Panel. If a member, when called as a witness, refuses or is unable to appear at a scheduled Hearing, the witness's failure to appear can be the basis for a charge that Article 14 has been violated if it can be shown that the witness had information or evidence relevant to the issue or issues before the Hearing Panel and that there were no extenuating circumstances that would have made the witness's appearance unduly burdensome. Questions regarding a member's obligation to appear as a witness, including questions of relevancy, shall be determined by the Chairman of the Hearing Panel either before the Hearing commences, if possible, or at the time of the Hearing. If a question of whether a witness is required to appear is raised at a Hearing and the Chairman rules that the witness must appear, the party seeking to compel the appearance of the witness may request that the Hearing be recessed until such time as the witness can be advised of the witness's obligation to appear, and the Hearing shall be rescheduled. The burden of demonstrating the relevance of the testimony or evidence rests with the party seeking to compel the witness's appearance. If, after being so advised, a witness refuses to appear, the Chairman may, at its discretion, bring a charge against the witness for failure to comply with Article 14.

Section 4. Right of Counsel to Appear

Every party may be represented by legal counsel or by a REALTOR® of their choosing (or both). The role of counsel (whether legal or otherwise) includes the making of opening and closing statements on behalf of the party represented, examining and cross-examining witnesses, and introducing affidavits, documents, and other admissible relevant evidence, but does not include testifying as a witness unless the Panel determines such testimony is essential to ensure due process. REALTORS® providing such representation are cautioned to avoid the unauthorized practice of law. In the event parties do not give fifteen (15) days' notice of their intention to have counsel to the Association and all other parties, including counsel's name, address, and phone number, the Panel shall take all steps, including continuance of the matter, if necessary, to guarantee the rights of all parties to representation by counsel. Where an ethics Hearing takes place in a Respondent's absence, the Respondent is still entitled to be represented by counsel. The tribunal may have legal counsel present to advise it on issues of procedure and law. The role of the Executive Vice President during a Hearing is to provide procedural guidance as requested by the Chairman or by Panel members. The Executive Vice President is not a part of the Hearing Panel and may not take an active role in the conduct of the Hearing, including examination or cross-examination of the parties or their witnesses. If the Executive Vice President believes an action or procedure is inconsistent with the Association's established procedures or may result in potential liability to the Association, the concerns of the Executive Vice President will be communicated to the Chairman of the Hearing Panel and the Chairman shall make the final Decision.

Section 5. Witnesses

Every party may have witnesses present at the Hearing, and the tribunal may summon its own witnesses. All witnesses will be excused from the Hearing after completion of their testimony and cross-examination.

Any party who intends to call witnesses at the Hearing must provide the Association and all other parties with the names of these witnesses at least fifteen (15) days prior to the Hearing. Failure to provide this information within the time specified will constitute a waiver of the right to call those witnesses at the Hearing, unless the other party agrees to allow their testimony.

In any case where all of the names of witnesses a party intends to call at the Hearing have not been provided within the time specified, if the Hearing Panel believes that the testimony of that witness(es) is essential to ensure due process, his testimony may be permitted provided the other party has the right to request that the Hearing be recessed and continued to a date certain not less than five (5) days later.

Questions as to whether a member who has been called as a witness but who refuses to appear, or asserts that his appearance will result in an unreasonable hardship, shall be determined by the Hearing Panel Chairman as soon as practical. Refusal to appear, after the Chairman has determined that the member's appearance is required, may result, at the Chairman's discretion, in charges that Article 14 has been violated being filed against the member.

Section 6. Conduct of Hearing

At any Ethics or Arbitration Hearing, every party has the right to present any witnesses, to submit any evidence pertinent to the case, and to cross-examine witnesses. The Chairman shall swear in witnesses giving oral testimony. Before permitting testimony relating to the character or general reputation of anyone, the tribunal shall satisfy itself that the testimony has a direct bearing on the case at issue. The Association shall tape record the proceeding. Any party may, at his own expense, have a court reporter or recorder present at the Hearing, or may tape record the proceeding, and, if transcribed, shall present a copy to the Professional Standards Professional Standards Secretary. The Association is required to record Ethics and Arbitration Hearings, not Appeals or limited procedural review proceedings. The Association shall prohibit parties from recording Appeals or limited procedural review proceedings. Videotaping of the proceedings are not permitted.

Tape recordings or transcripts from Ethics Hearings may be used only by the parties for the purpose of an Appeal and/or Rehearing, and may not be introduced into evidence at any subsequent Hearing. Any other unauthorized use of the tape recordings or transcripts may be construed as a violation of Article 14, as interpreted by the applicable Standards of Practice, and as a violation of these procedures.

The Association's tape recording shall be considered the official record of the proceeding. Copies of any tape recording or any transcript prepared from any tape recording of the Hearing are to be used only for the purpose of an Appeal and/or a Rehearing. Any party to a Hearing has the right to obtain a copy of the Association's official tape recording subject to payment of the Association's duplication costs, and any duplication will be conducted under the supervision of the Association. If the Association transcribes its official tape recording, any party to the Hearing may obtain a copy of the transcript subject to paying the Association's transcription costs. If more than one party requests copies of the transcript, the Association's costs will be apportioned between or among the parties.

If a party purchases a copy of the Association's official tape recording and subsequently has it transcribed at his own expense, that party must provide a copy of the transcript to the Association at no cost. After the Association has received a copy of the transcript (made from the Association's official tape recording), the Association shall make copies of the transcript available to any other party subject to their payment of the Association's duplication costs.

Attendance at any Hearing is limited to the parties and the parties' respective counsel and/or witnesses (witnesses are excused from the Hearing except during their testimony); the Hearing Panel Members, the Executive Vice President; any court reporter, as requested; and, in any Ethics proceeding, the REALTOR® Principal, consistent with Part Two, Section 13(d) of this Manual.

Section 7. Notices

(a) Any notice required to be given or paper required to be served or filed may be personally handed to the party to be notified or sent by registered or certified mail addressed to the party's last known mailing address. If mailed, any notice required to be given or paper required to be served or filed shall be deemed given, served, or filed when mailed unless otherwise specified in this Manual.

(b) Notice of Hearing shall include the names of the members of the tribunal and be given not less than twenty-one (21) days beforehand. Twenty-one (21) days' notice is not required for postponed Hearings (scheduled but extension granted before Hearing commences) or for Hearings that have commenced and been adjourned (recessed). Notice of a Rehearing shall be given not less than twenty-one (21) days before the Rehearing.

Section 8. Interpretation of Bylaws

If any provision of the Bylaws or a rule or regulation relative to the procedure of a tribunal's handling of a matter is involved, the interpretation by that tribunal of the Bylaws or of a rule or regulation shall be set forth as a separate finding, and the Board of Directors, on Appeal from a Decision of a Hearing Panel, shall not be bound by the Panel's interpretation.

Section 9. Waiver

Every member, for and in consideration of his right to invoke Arbitration proceedings and to initiate Ethics Complaints under the Code of Ethics as a member of the National Association of REALTORS® hereby waives any right of action against the Association, any Association Member, or any member of a Hearing Panel or Tribunal arising out of any Decisions, determinations, or other action taken or rendered under these procedures in the absence of willful or wanton misconduct. Further, as a condition of continued membership, every member expressly waives any cause of action for libel, slander, or defamation that might arise from the filing or consideration of any Ethics Complaint or Arbitration Request.

Section 10. Communication and Clerical

Communications shall be directed to the Professional Standards Professional Standards Secretary. The Professional Standards Professional Standards Secretary shall render all necessary assistance to the parties, shall 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.

Section 11. Attempt to Influence Tribunal

Any attempt, directly or indirectly, to influence a member of a tribunal in any matter before it, other than by giving evidence and argument in an open Hearing or in writing submitted to the entire tribunal, is a breach of a duty of membership.

Part Two - Membership Duties and Their Enforcement

Section 12. Duties of Membership

The duties of membership include the following:

- (a) to abide by the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS® ;
- (b) to abide by the Bylaws of this Association and its Rules and Regulations;
- (c) to submit to Arbitration all disputes specified in Part Ten of this Manual by the procedure therein provided, and to abide by the Arbitrators' Award.

Subject to any preliminary consideration by any administrative body of the Association or its MLS, any allegations or charges that a member has violated any membership duty shall be referred to the Professional Standards Committee for review in conformity with the procedures established in the Code of Ethics and Arbitration Manual of the National Association as from time to time amended.

Section 13. Power to Take Disciplinary Action

After a Hearing before the Professional Standards Committee as provided hereinafter, the Board of Directors may take disciplinary action against any member:

- (a) For violation by the member of any duty of membership.
- (b) On a member being convicted, adjudged, or otherwise recorded as guilty by a final judgment of any court of competent jurisdiction of a felony or a crime involving moral turpitude; on a member being determined by a court of competent jurisdiction, or official of the State of Tennessee authorized to make the determination, as having violated a provision of the Tennessee Real Estate Law or a regulation of the Tennessee real Estate Commission; or on a final judgment or determination by a court of competent jurisdiction or by an authorized federal, state, or local official that a member has violated the federal, state, or local fair housing law.
- (c) For any act of any persons who are not themselves REALTORS® but are employed by or affiliated with a REALTORS®, and who provide real estate-related services within the scope of their or another's license. Lack of knowledge by the REALTOR® of such person's conduct shall go only to mitigation of discipline imposed.
- (d) For any act of another who is also a member, but is employed by or affiliated with the member as an independent contractor. In such an instance, the REALTOR® Principal may be joined as a Respondent by action of the Complainant, by review of the Grievance Committee, or by determination of the Hearing Panel prior to commencement of the Hearing based upon the facts of the Ethics Complaint. If, however, the Ethics Complaint is amended after the Hearing has commenced, pursuant to Part Four, Section 21(f)(2), the REALTOR® Principal who has been added to the Ethics Complaint has the right to have the Hearing reheard from the beginning by the same Hearing Panel or may waive this right. The finding of the Hearing Panel with respect to any violation of the REALTOR® Principal and the other member employed by or affiliated with the REALTOR® Principal 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.

In any proceeding where the REALTOR® Principal is not joined in the Ethics Complaint as a Respondent, the REALTOR® Principal nonetheless retains the right to be present during the proceeding or may be required by the Hearing Panel to attend the Hearing. At the request of the Respondent, the REALTOR® Principal may consult with or testify on behalf of the Respondent. In all instances, the REALTOR® Principal shall receive copies of the Ethics Complaint and response, be

provided with notice of the Hearing, may be called by the parties or the Hearing Panel as a witness, and shall receive copies of the Hearing Panel's Decision and recommendation for sanction, if any. If a Rehearing or an Appeal is required, the REALTOR® Principal shall receive copies of the request(s), be provided with notice of the Hearing, have the opportunity to be present, and receive a copy of the final action by the Board of Directors. Such rights shall accrue to both the former REALTOR® Principal and the current REALTOR® Principal if the Respondent REALTOR® changes his firm affiliation either before or after an Ethics Complaint is filed but before the Hearing Panel reaches its Decision.

The REALTOR® Principal is not automatically joined as a Respondent in any Ethics Complaint filed against another REALTOR® Nonprincipal licensed with the REALTOR® Principal.

- (e) In the event the Respondent named in any Ethics Complaint alleging a violation of the Code of Ethics is involved in any criminal litigation arising out of the same facts and circumstances giving rise to the Ethics Complaint alleging unethical conduct, the Ethics Complaint shall not proceed to a Hearing before the Professional Standards Committee but rather shall be held in abeyance until the pending criminal proceedings have been concluded.

In the event the Respondent named in any Ethics Complaint alleging a violation of the Code of Ethics is involved in civil litigation or in any proceeding before the state real estate licensing authority or any other state or federal regulatory or administrative agency in a matter arising out of the same facts and circumstances giving rise to the Ethics Complaint alleging unethical conduct, the Ethics Complaint may, at the discretion of the Grievance Committee, or on Appeal, at the discretion of the Board of Directors, proceed to a Hearing before a Hearing Panel of the Association's Professional Standards Committee. Legal counsel should be consulted and the following factors should be taken into consideration in determining whether the matter should proceed to a Hearing or should be held in abeyance pending the conclusion of civil litigation or a proceeding before the state real estate licensing authority or any other state or federal regulatory or administrative agency:

- (1) The degree of similarity of factors giving rise to the pending litigation or regulatory or administrative proceeding and the Ethics Complaint;
- (2) The degree to which resolution of the civil litigation or regulatory or administrative proceeding may make consideration of the Ethics Complaint unnecessary;
- (3) The degree to which pending civil litigation or regulatory or administrative proceeding would delay prompt disposition of the Ethics Complaint;
- (4) The nature of the alleged violation and the extent to which it impacts on cooperation with other Association Members;
- (5) The assurance of legal counsel that consideration of the Ethics Complaint will not deprive Respondent of essential due process.

Section 14. Nature of Discipline

Disciplinary action may consist only of one or more of the following. Refer to Appendix VII to Part Four of this Manual for sanctioning guidelines.

- (a) Letter of Warning with copy to be placed in member's file;
- (b) Letter of Reprimand with copy to be placed in member's file;
- (c) Requirement that member attend the ethics portion of the Association Indoctrination Course or other appropriate course or seminar specified by the Hearing Panel which the Respondent could reasonably attend taking into consideration cost, location, and duration;
- (d) Appropriate and reasonable fine not to exceed \$5,000;
- (e) Member placed on probation for a stated period of time not less than thirty (30) days nor more than one (1) year;
- (f) Membership of individual suspended for a stated period not less than thirty (30) days nor more than one (1) year, with automatic reinstatement of membership in good standing at the end of the specified period of suspension (Decision should be written clearly articulating all intended consequences, including denial of MLS participatory or access privileges). The Board of Directors may order suspension unconditionally, or they may, at their discretion, give the disciplined member the option of paying to the Association, within such time as the Board of Directors shall designate, an assessment in an amount fixed by the Board of Directors, which may not exceed \$5,000 and which can be utilized only once in any three (3) year period, in lieu of accepting suspension. But, if the conduct for which suspension is ordered consists of failure to submit a dispute to Arbitration, the Board of Directors may not permit the disciplined member to avoid suspension without submitting to the Arbitration in addition to paying the assessment, unless in the meanwhile the dispute has been submitted to a court of law without any objection by any party that it should be arbitrated;
- (g) Expulsion of individual from membership with no reinstatement privilege for a specified period of one (1) to three (3) years, with reinstatement of membership to be by application only after the specified period of expulsion, on the merits of the application at the time received (Decision should be written clearly articulating all intended consequences, including denial of MLS participatory or access privileges);
- (h) Suspension or termination of MLS rights and privileges may also be utilized. Suspension of MLS services may be no less than thirty (30) days nor more than one (1) year; termination of MLS services shall be for a stated period of one (1) to three (3) years;
- (i) REALTORS® who participate in MLS or otherwise access MLS information through any Association in which they do not hold membership are subject to the Code of Ethics in that Association on the same terms and conditions as Association members. Discipline that may be imposed may be the same as but shall not exceed the discipline that may be imposed on members.

Section 15. Appointment of the Grievance Committee

There will be a standing committee, known as the Grievance Committee, of at least nine (9) Association Members, in good standing, of whom at least a majority shall be REALTORS®. The President shall appoint the members of the committee and the Chairman and Vice Chairman, subject to confirmation by the Board of Directors, for three (3) year terms. Committee members will annually complete a training program on the role and function of the Grievance Committee.

Section 16. Appointment of the Professional Standards Committee

There will be a Professional Standards Committee of at least eleven (11) Association Members, in good standing, of whom at least a majority shall be REALTORS®, appointed by the President, subject to confirmation by the Board of Directors. Members of the Professional Standards Committee shall be selected to serve terms of three (3) years on Hearing Panels as required to hear matters of alleged unethical conduct by Association Members or to provide Arbitration as requested. Committee members will annually complete a training program on the role and function of the Professional Standards Committee. The President shall appoint a Chairman and Vice Chairman subject to confirmation by the Board of Directors.

Part Three - The Grievance Committee in Ethics Proceedings

Section 17. Authority

The Grievance Committee is established in Part Two, Section 15 and Part Eight, Section 38 of this Manual, which provide in part:

There will be a standing committee, known as the Grievance Committee, of at least nine (9) Association Members in good standing, of whom at least a majority shall be REALTORS®. The President shall appoint Members of the committee and the Chairman and Vice Chairman, subject to confirmation by the Board of Directors, for three (3) year terms.

Section 18. Function

The function of the Grievance Committee is clearly distinguishable from the function of the Professional Standards Committee. The Professional Standards Committee is similar to a court. The court adjudicates matters that come before it. The Professional Standards Committee makes Decisions on matters involving ethics or Arbitration.

If the function of the Professional Standards Committee is understood as similar to a court, the function of the Grievance Committee can then be understood as similar to that of the grand jury. A grand jury evaluates potentially criminal conduct to determine whether the evidence and testimony presented warrants indictment and trial.

In a similar manner, the Grievance Committee receives Ethics Complaints and Arbitration requests to determine if, taken as true on their face, a Hearing is to be warranted. The Grievance Committee makes only such preliminary evaluation as is necessary to make these Decisions. While the Grievance Committee has meetings, it does not hold Hearings, and it does not decide whether members have violated the Code of Ethics. The Grievance Committee does not mediate or arbitrate business disputes.

In evaluating Ethics Complaints, the Grievance Committee shall require a written response from the Respondent. The Respondent will be provided with a copy of the Ethics Complaint and advised that failure to respond may be the basis for a charge of having violated Article 14 of the Code of Ethics.

In evaluating Arbitration Requests, the Grievance Committee shall require a written response to the Arbitration Request from the Respondent. If no response is filed within the time allotted, the Grievance Committee shall make its determination as to whether an Arbitration Hearing should be scheduled based upon the information set forth in the Arbitration Request.

Section 19. Grievance Committee's Review of an Ethics Complaint

A. Initial action upon receipt of an Ethics Complaint

Upon receipt of an Ethics Complaint from the Professional Standards Professional Standards Secretary, the Chairman of the Grievance Committee shall review the Ethics Complaint and any evidence and documentation attached. The Chairman may assign one or more members of the Grievance Committee to review the Ethics Complaint and to make any necessary evaluation. The member(s) may, if necessary, gather additional information on the matters complained of if additional information appears necessary to make a knowledgeable disposition of the Ethics Complaint. The Ethics Complaint shall be provided to the assigned members by the Professional Standards Professional Standards Secretary upon instruction from the Chairman. The reviewer(s), if appointed, shall complete the assignment promptly and prepare a report and recommendation for the Grievance Committee. After reviewing the report, the Chairman shall schedule a meeting of the Grievance Committee and may instruct the Professional Standards Professional Standards Secretary to provide members of the Grievance Committee with copies of the case file including the reviewer's report, if any.

B. Consideration of an Ethics Complaint by the Grievance Committee

In reviewing an Ethics Complaint, the Grievance Committee shall consider the following:

- (1) Is the Ethics Complaint acceptable in form as received by the Committee? If not in proper form, the Chairman may request that the Professional Standards Professional Standards Secretary contact the Complainant to advise that the Ethics Complaint must be submitted in proper form.
- (2) Are all necessary parties named in the Ethics Complaint?
- (3) Was the Ethics Complaint filed within one hundred eighty (180) days of the time that the alleged offense and facts relating to it could have been known by the Complainant in the exercise of reasonable diligence?
- (4) Is the Respondent named in the Ethics Complaint a member of the Association, and was the Respondent a member of any Association at the time of the alleged offense?
- (3) Is litigation or any government agency investigation or other action pending related to the same transaction?
 - (a) If criminal litigation is pending related to the same transaction, the Grievance Committee shall cease its considerations and instruct the Professional Standards Professional Standards Secretary to hold the file pending until such time as the criminal litigation is concluded. A report shall be made to the Association President.
 - (b) If civil litigation is pending related to the same transaction, the Grievance Committee shall instruct the Professional Standards Professional Standards Secretary to have legal counsel review the Ethics Complaint filed and advise if any Hearing should proceed (presuming the matter would otherwise warrant a Hearing), with counsel considering the following:
 - (1) Similarity of factors giving rise to pending litigation or regular administrative proceeding and the Ethics Complaint;
 - (2) Degree to which resolution of the pending civil litigation or regulatory or administrative proceeding could make consideration of the Ethics Complaint unnecessary;
 - (3) Degree to which pending litigation or regulatory or administrative proceeding would delay prompt disposition of the Ethics Complaint;
 - (4) The nature of the alleged violation and the extent to which it could impact on cooperation with other Association Members;
 - (5) The assurance of legal counsel that consideration of an Ethics Complaint would not deprive the Respondent of due process.
 - (6) Is there any reason to conclude that the Association would be unable to provide an impartial Hearing Panel ?
 - (7) Are the specific Articles cited in the Ethics Complaint appropriate in light of the facts provided? Should additional Articles be cited? Should certain Standards of Practice be cited in support of the Articles charged? Are any inappropriate Articles cited?
 - (8) If the facts alleged in the Ethics Complaint were taken as true on their face, is it possible that a violation of the Code of Ethics occurred?

If all relevant questions have been answered to the satisfaction of the Grievance Committee, and the facts given appear to indicate a possible violation of the Code of Ethics, the Grievance Committee shall refer the Ethics Complaint to the Professional Standards Committee for a Hearing by an Ethics Hearing Panel.

C. Appeal from the Decision of the Grievance Committee related to an Ethics Complaint

If the Grievance Committee dismisses the Ethics Complaint, the Complainant may Appeal the dismissal to the Board of Directors within twenty (20) days from receipt of the dismissal notice using the Appeal of Grievance Committee's Dismissal of an Ethics Complaint Form; however, no additional information may be added or attached to the form. If the Grievance Committee deletes an Article or Articles from an Ethics Complaint, the Complainant may also Appeal to the Board of Directors using the Appeal of Grievance Committee's Dismissal of an Ethics Complaint Form; however, no additional information may be added or attached to the form. The Board of Directors (or a Panel of Directors) shall consider only the information and documents considered by the Grievance Committee with the Appeal and render its Decision, which shall be final. The parties are not present at the meeting at which the Appeal is considered.

Part Four - The Ethics Hearing

Section 20. Initiating an Ethics Hearing

- (a) Any person, whether a member or not, having reason to believe that a member is guilty of any conduct subject to disciplinary action, may file a Ethics Complaint in writing with the Professional Standards Professional Standards Secretary, dated and signed by Complainant stating the facts on which it is based the Ethics Complaint Form, provided that the Ethics Complaint is filed within one hundred eighty (180) days after the facts constituting the matter complained of could have been known in the exercise of reasonable diligence.

Suspension of filing deadlines: If the Association's informal dispute resolution processes of mediation is invoked or initiated by a Complainant (or potential Complainant) with respect to conduct that becomes the subject of a subsequent Ethics Complaint, the one hundred eighty (180) day filing deadline shall be suspended beginning with the date of the Complainant's (or potential Complainant's) request for informal dispute resolution service or assistance and shall resume when the informal dispute resolution procedures are concluded or terminated. The Association's President will determine questions about when informal dispute resolution began or ended.

The Professional Standards Secretary shall promptly refer any Ethics Complaint to the Respondent with notification that the Respondent must file a written reply with the Professional Standards Secretary within ten (10) days. using the Response to the Grievance Committee Request for Information for an Ethics Complaint Form. The party complained of shall be advised that failure to respond to the Grievance Committee's request may result in the Ethics Complaint being forwarded for a Hearing and may subject the Respondent to a charge of having violated Article 14 for failing to submit pertinent facts to an appropriate tribunal.

The Professional Standards Secretary shall promptly refer any Ethics Complaint and Respondent Reply to the Chairman of the Grievance Committee, who may designate one or more members of the Grievance Committee to review the Ethics Complaint and report their findings to the Grievance Committee for its determination as to whether to:

- (1) Dismiss the Ethics Complaint as unworthy of further consideration;
- (2) Refer it back to the Complainant as appropriate for Arbitration rather than disciplinary action;
or
- (3) Refer it back to the Professional Standards Secretary to schedule for Hearing.

This review process may include, if necessary, information on the matters complained of if additional information appears necessary to make a knowledgeable disposition of the Ethics Complaint.

The function of the Grievance Committee is to make only such preliminary review and evaluation of the Ethics Complaint as are required to determine whether the Ethics 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 has occurred.

the event the Ethics Complaint is from a client, customer, or a member of the general public, and the Grievance Committee determines that the Ethics Complaint is vague, overly general, does not allege violations of specific Articles, or is otherwise insufficient on its face, a member of the Grievance Committee may be assigned by the Chairman of the Grievance Committee to assist the Complainant in preparing the Ethics Complaint in proper form. The member providing such assistance shall not participate in any consideration or deliberations of the Grievance Committee with respect to the matter. In such cases, the Respondent shall receive the revised Ethics Complaint with the original Ethics Complaint and all other supporting documentation provided by the Complainant incorporated as an appendix.

Upon its own motion the Grievance Committee may, and upon instruction of the Board of Directors must, review the actions of any member when there is reason to believe that the member's conduct may be subject to disciplinary action, and, if the evidence of unethical conduct warrants a Hearing, shall prepare an Ethics Complaint, refer it to the Professional Standards Secretary, and designate one of its members to present the case at the subsequent Hearing on its behalf as Complainant. However, no member of the Grievance Committee shall serve as a member of the Hearing Panel.

- (c) Any action by the Grievance Committee dismissing the Ethics Complaint as unworthy of further consideration may be Appealed to the Board of Directors within twenty (20) days from receipt of the dismissal notice using the Appeal of Grievance Committee Dismissal of an Ethics Complaint Form; however, no additional information may be added or attached to the form. Only those materials and information which were available to the Grievance Committee when the committee made its Decision will be presented to the Board of Directors and considered with the Appeal, and the Complainant and Respondent do not have the right to appear at the Hearing before the Board of Directors. If the Board of Directors determines that the Grievance Committee improperly dismissed the Ethics Complaint, they shall refer it to the Professional Standards Committee for a Hearing. If referred for Hearing, the Professional Standards Secretary shall at that time provide a copy of the response to the Complainant if one had been submitted for review by the Grievance Committee.

The President may appoint a Panel of Directors, acting on behalf of the Board of Directors, to hear the Appeal. Any Appeal Panel so appointed must be composed of at least five (5) Directors or a quorum of the Board of Directors, whichever is less. The Decision of the Appeal Panel is final and binding and is not subject to further review by the Board of Directors.

- (d) If the Ethics Complaint asserts multiple allegations of unethical conduct and the Grievance Committee determines that one or more of the allegations would not, under any circumstances, constitute a violation, that portion of the Ethics Complaint may be dismissed while the balance of the Ethics Complaint is forwarded for a Hearing before a Hearing Panel of the Professional Standards Committee. However, the Complainant has the right to Appeal the dismissal to the Board of Directors using the Appeal of Grievance Committee's Dismissal of an Ethics Complaint Form; however, no additional information may be added or attached to the form.

If the Grievance Committee feels that the Respondent's alleged conduct may be the basis for a violation but that an inappropriate Article(s) has been cited, the Grievance Committee may amend the Ethics Complaint by deleting any inappropriate Article(s) and by adding any appropriate Article(s) and/or individuals to the Ethics Complaint. If the Complainant disagrees with the deletion of an Article(s) from the Ethics Complaint, the Complainant may Appeal to the Board of Directors requesting that the original Ethics Complaint be forwarded to a Hearing Panel as filed using the Appeal of Grievance Committee's Dismissal of an Ethics Complaint Form; however, no additional information may be added or attached to the form. If the Grievance Committee determines that an Article(s) or an additional Respondent(s) should be added to the Ethics Complaint and the Complainant will not agree to the addition, the Grievance Committee may file its own Ethics Complaint and both Ethics Complaints will be heard simultaneously by the same Hearing Panel.

- (x) If an Ethics Respondent resigns or otherwise causes membership in the Association to terminate after an Ethics Complaint is filed but before final action is taken by the Board of Directors, the Hearing process shall suspend and the Professional Standards Secretary shall cause the Ethics Complaint to be forwarded to any other Association in which the Respondent continues to hold membership.

If the Respondent does not hold membership in another Association, or if the Professional Standards Secretary is unable to determine if the Respondent holds membership in another Association, the Ethics Complaint shall be held in abeyance until such time as the Respondent rejoins the Association or it can be determined that the Respondent holds membership in another Association. In any instance where an Ethics Complaint is transferred to another Association, the Complainant shall be so advised.

Section 21. Ethics Hearing

- (a) After an Ethics Complaint alleging a violation of membership duty (duties) has been referred to the Professional Standards Secretary by the Grievance Committee with instruction to arrange a Hearing, the Professional Standards Secretary shall serve a copy of the Ethics Complaint on each party complained of (hereafter called the Respondent) and notify the Respondent that the Respondent may file a written reply with the Professional Standards Secretary within fifteen (15) days. A Hearing Panel may accept late filing of the reply at its discretion. The Professional Standards Secretary may require the Complainant to supply the necessary number of copies of the Ethics Complaint and the Respondent to supply the necessary number of copies of the reply, except that such requirement shall not be made of a Complainant who is not a Board Member.
- (b) After fifteen (15) days, the Professional Standards Secretary shall provide a copy of the reply (if any) to the Complainant. The Professional Standards Secretary shall also provide copies of the Ethics Complaint and reply (if any) to the Board President and Chairman of the Professional Standards Committee, or notify each that no reply has been filed (unless the President and/or Professional Standards Chairman indicate that they do not wish to receive copies or be so informed).
- (c) The Professional Standards Secretary shall, concurrently with the notification that the Ethics Complaint has been referred for Hearing, mail to each of the parties a list of the names of members of the Professional Standards. Within fifteen (15) days from the date the names are mailed to the parties, the Professional Standards Secretary shall appoint, from the names not successfully challenged by either party, three (3) or more members for a Hearing Panel, a majority of whom shall be REALTORS®. The Professional Standards Secretary shall also select one of the Panel Members to serve as Chairman of the Hearing Panel. Any Hearing Panel must have an odd number of members. If the Complainant or Respondent is a REALTOR® other than a REALTOR® Principal, at least one member of the Hearing Panel shall be a REALTOR® nonprincipal. It shall be a membership duty of anyone so appointed to serve on the Hearing Panel unless disqualified. A party will be deemed to have waived all objections to any person whose name is not challenged. If a challenge to members of the Professional Standards Committee results in an insufficient number of members to constitute a Panel, the President may appoint other qualified Association Members to serve as Panel members. The Professional Standards Secretary shall designate the time and place of the Hearing and shall notify the Complainant and the Respondent. An appearance at a Hearing without objection by a party will constitute a waiver of any defective notice of Hearing.
- (d) The Panel Chairman shall prescribe any procedure for the Hearing not inconsistent with these provisions.
- (e) After the Grievance Committee concludes that an Ethics Complaint will require a Hearing before a Hearing Panel, the Ethics Complaint may be withdrawn by the Complainant only with the Panel's approval. An Ethics Complaint so withdrawn shall not be deemed a final determination on the merits. The Ethics Complaint, and Response, if any, shall be provided to the Hearing Panel members on the day of the Hearing prior to the starting time of the Hearing.
- (f) Amendment of Ethics Complaint:
 - (1) At any time prior to the Hearing of the Ethics Complaint, the Complainant may file an amended Ethics Complaint with the Professional Standards Secretary (excluding amendments pertaining to an Article previously dismissed by the Grievance Committee relating to previously charged Respondents). If an amended Ethics Complaint is filed prior to the Hearing, the Respondent shall be notified, given a copy, and provided the opportunity to file an amended response. The Hearing Panel may disallow the amended Ethics Complaint. At any time prior to the Hearing of the Ethics Complaint, the Hearing Panel may name the REALTOR® Principal as a Respondent.

- (2) At any time during the Hearing, the Ethics Complaint may be amended either by the Complainant or upon motion of the Hearing Panel to add previously uncited Articles or additional Respondents. Amendments to include Articles previously dismissed by the Grievance Committee may be made only on the motion of the Hearing Panel. In such event, the Hearing, with the concurrence of the Respondent, may proceed uninterrupted or be reconvened on a date certain, not less than fifteen (15) or more than thirty (30) days from adjournment. If the Respondent knowingly waives his right to the adjournment, the record should reflect the fact that the Respondent was aware of the right to an adjournment but chose to proceed with the Hearing without interruption on the basis of the amended Ethics Complaint. If the Hearing is adjourned to be reconvened at a later time, the amended Ethics Complaint shall be filed in writing, signed by the Complainant or by the Chairman of the Hearing Panel, and shall be promptly served on the Respondent as in all other cases provided herein. To prevent the appearance of bias, at no time during or after an Ethics Hearing may the Hearing Panel or any appellate body refer concerns regarding potentially unethical conduct to the Grievance Committee. This is based on the premise that the fundamental right and primary responsibility to bring potentially unethical conduct to the attention of the Grievance Committee rests with the parties and others with firsthand knowledge. This prohibition in no way limits or restricts the Hearing Panel from amending pending Ethics Complaints as otherwise provided for in this section. However, in any instance where a Hearing Panel amends an Ethics Complaint pending before it, the Respondent(s) shall be given the choice of proceeding before the same Hearing Panel (either without interruption or when reconvened pursuant to the procedures established elsewhere in this Section) or having the Complaint considered in a new hearing before a different Hearing Panel.
- (3) In the event that the Ethics Complaint scheduled for a Hearing is from a member of the public who refuses or is unable to attend the Hearing, the Ethics Complaint shall be referred back to the Grievance Committee. If the Grievance Committee determines that there is sufficient information for a Hearing Panel to consider (i.e., that there is clear, strong, and convincing proof), the Ethics Complaint shall be amended to name the Grievance Committee as Complainant and the Hearing shall be continued to a new date. The Respondent shall be provided with a copy of the amended Ethics Complaint in such cases.

If the Grievance Committee determines that there is insufficient information for a Hearing Panel to consider, the Ethics Complaint shall be dismissed.

In the event the Ethics Complaint scheduled for Hearing is from a REALTOR® of the Association who refuses or is unable to attend the Hearing, the Complainant shall be advised that refusal to participate in the Hearing, absent a satisfactory reason, may result in a charge that the Complainant has violated Article 14's obligation to place all pertinent facts before an appropriate tribunal of the Association.

If the REALTOR® Complainant continues to refuse a duly noticed request to appear, or if the Complainant is excused from appearing for reasons deemed valid by the Hearing Panel, the Hearing shall not take place, but rather the Ethics Complaint shall be referred back to the Grievance Committee. If the Grievance Committee determines that there is sufficient information for a Hearing Panel to consider (i.e., that there is clear, strong, and convincing proof), the Ethics Complaint shall be amended to name the Grievance Committee as Complainant and the Hearing shall be continued to a new date. The Respondent shall be provided with a copy of the amended Ethics Complaint in such cases.

In the event that the Respondent fails to appear at a duly noticed Hearing without first obtaining a continuance or adjournment thereof, the Hearing Panel may proceed with the Hearing in the Respondent's absence and shall reach its Decision based on the evidence made available at the Hearing. Thereafter, all other procedures shall follow as hereinafter provided.

Where an ethics Hearing takes place in a Respondent's absence, the Respondent is still entitled to be represented by counsel. Counsel may make opening and closing statements; call witnesses; cross-examine witnesses called by other parties; and introduce affidavits, documents, and other admissible relevant evidence. Counsel may not testify to events and facts of which counsel has no first hand knowledge. Hearing Panels will be instructed by the Chairman that counsel's arguments do not constitute testimony.

Upon notice by the Professional Standards Secretary, the parties shall with diligence present to the Panelists in writing such statements and proof which they deem necessary to support their positions. Proof may be submitted in the form of affidavits or otherwise. The Hearing Panel may require that statements be verified by affidavits or that accuracy or authenticity of any documents or other papers submitted be verified by affidavit. At the Hearing, the Panelists shall receive any further written statements, documents, or other papers, shall hear oral testimony and determine what personal appearances shall be made by the parties, and shall regulate the holding of Hearings. The Hearing Panel may receive and consider any evidence it deems material and proper, including evidence of experts. Each party is responsible for the expenses of expert witnesses he calls. Parties to the Ethics Complaint shall be entitled to have counsel present at any Hearing. Each party is responsible for the expenses of his respective counsel.

Section 22. Decision of Hearing Panel

- (a) The Decision of the Hearing Panel shall be by a simple majority vote and in writing and shall contain findings of fact and a statement of the disciplinary action recommended, if any. Under no circumstances can the Association award money "damages" in an Ethics proceeding. The Decision shall include a clear, concise, and objective recitation of the specific facts upon which the Hearing Panel based its conclusion. Such Decision shall not be disclosed during the Ethics proceeding, or any Appeal or Rehearing, to any persons except the Board of Directors, the Complainant, the Respondent, Legal Counsel, and the Professional Standards Secretary

However, failure of confidentiality shall not invalidate the Decision. The Hearing Panel Chairman shall file the Decision with the Professional Standards Secretary after the Hearing Panel concludes its Executive Session. Any member of the Hearing Panel not voting with the majority may dissent from all or any portion of the findings or Decision and may file a dissent in writing with the Professional Standards Secretary for consideration by the Board of Directors at the same time the Decision is considered. The dissenting opinion should also be provided to the parties. In the event the Respondent is found in violation, the Hearing Panel may, at its discretion, consider all records of previous violations and sanctions imposed, whether by the current or by any other Board or Association, in the member's file in determining discipline.

- (b) The Hearing Panel 's Decision shall be considered Final upon review by the Board of Directors and shall be transmitted to the Complainant and Respondent by the Professional Standards Secretary within five (5) business days after the Board of Director's review. A reasonable delay shall not invalidate the Association's procedures nor the Decision.
- (c) Within twenty (20) days after the Decision has been transmitted to the Respondent by the Professional Standards Secretary, the Complainant or the Respondent may petition the 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 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; or
 - (3) An explanation of why the petitioner could not have discovered and/or produced the evidence at the time of the original Hearing.

- (d) A petition for Rehearing not granted by the Hearing Panel within two (2) weeks of its filing shall automatically be deemed denied. When granted or denied the Professional Standards Secretary shall immediately inform the Respondent and the Complainant. Each party in the case may file no more than one petition for a Rehearing. Notice of a Rehearing shall be given not less than twenty-one (21) days before the Rehearing.
- (e) Immediately upon the Decision becoming final, the Professional Standards Secretary shall transmit it to the President, or, if no Decision is made within two (2) weeks, the Professional Standards Secretary shall advise the petitioner that the request for Rehearing is deemed denied.
- (f) To avoid any appearance of bias, ethics Hearing Panel s shall make no referrals of ethical concerns to the Grievance Committee. This is based on the premise that the fundamental right and primary responsibility to bring potentially unethical conduct to the attention of the Grievance Committee rests with the parties and others with firsthand knowledge.

Section 23. Action of the Board of Directors

- (a) Within twenty (20) days after the Final Decision of an Ethics Hearing has been rendered if no petition for Rehearing has been filed, or within twenty (20) days after the Final Decision of an Ethics Hearing subsequent to the Rehearing, or within ten (10) days after denial of a petition for a Rehearing, the Complainant or the Respondent may file an Appeal of the Ethics Proceedings with the President.
- (b) If no such Appeal is filed, the Decision of the Ethics Hearing Panel reviewed and adopted by the Board of Directors is considered Final.

If in their review of the Ethics Hearing Panel's Decision and recommended sanctions, the Board of Directors is concerned with a possible procedural deficiency, they may refer the Panel's Decision back to the Professional Standards Committee for a new Hearing by a different Hearing Panel. If, however, the Directors are concerned with the appropriateness of the recommended sanctions, the Directors may impose alternative discipline that does not exceed that recommended by the Hearing Panel, or may refer the Decision back to the original Hearing Panel for further consideration and recommendation accompanied by the Directors' concerns regarding the proposed discipline. In such matters, advice of Legal Counsel may be requested and considered.

- (c) All Appeals must be in writing. The Appeal should clearly indicate the bases on which the Hearing Panel's Decision and/or recommendation for discipline is being challenged—
 - (1) misapplication or misinterpretation of an Article(s) of the Code of Ethics;
 - (2) procedural deficiency or any lack of procedural due process;
 - (3) the discipline recommended by the Hearing Panel - and set forth in reasonable detail the facts and evidence to support the bases cited.

The Complainant may Appeal based only on alleged procedural deficiencies or other lack of Procedural Due Process that may have deprived him of the opportunity for a full and fair Hearing. The Board President shall review written requests for Appeals only for the purpose of determining whether the Appeal states any legitimate basis for consideration by the Board of Directors. If determined to be insufficient, it shall be returned to the Appellant accompanied by an explanation and a request for additional detail to be received by the Association within ten (10) days. This initial administrative review is not a Decision on the merits of the Appeal Request but is only intended to ensure compliance with the requirement that an Appeal clearly set forth all bases that will be presented to the Board of Directors for their consideration. All requests for Appeals received by the Board must be considered by the Board of Directors, and only those bases and issues raised in the written request for Appeal may be raised by the Appellant in any Hearing before the Board of Directors.

- (d) When a request for Appeal (as originally filed if in proper form, or as originally filed if no amendment is submitted, or as amended even if still deemed to be lacking) is received, the Professional Standards Secretary shall immediately send a copy to the other party, notify all parties at least ten (10) days in advance of the time and place of Hearing by the Directors and bring the matter before the Directors for Hearing at their next regular meeting or at a special meeting called by the Professional Standards Secretary for the purpose. The Professional Standards Secretary shall provide to the Directors in advance of the Hearing copies of the Ethics Complaint, response, the Hearing Panel's findings of fact and recommendation of discipline, if any, the President's correspondence, if any, and the Appeal Request or amended Appeal Request, if any. The Directors shall be advised that the information is confidential and not to be discussed with others at any time.
- (e) At the Hearing before the Directors, the Chairman of the Hearing Panel shall present a transcript of the case or, if there is no transcript, shall summarize the case. Either party shall be entitled to offer corrections to the summary. Either party may present to the Directors reasons why the Hearing Panel's recommendation should be followed or not, but no new evidence shall be received (except such new evidence as may bear upon a claim of deprivation of due process), and the Appeal shall be determined on the transcript or summary.
- (f) The Directors shall render their Decision promptly. Their Decision may be to adopt or modify the recommendation of the Hearing Panel, including the discipline proposed, or the Directors may dismiss the matter if they conclude the findings of fact do not support the Hearing Panel's conclusion as to unethical conduct. The Directors, if concerned with a substantial procedural deficiency, may refer the Decision back to the Professional Standards Committee for a new Hearing and recommendation by a different Hearing Panel. If, however, the Directors are concerned with the appropriateness of the recommendation of sanction, they may impose alternative discipline that does not exceed that recommended by the Hearing Panel, or may refer the Decision back to the original Hearing Panel for further consideration and recommendation accompanied by the Directors' concerns regarding the proposed discipline. In such matters, the advice of Legal Counsel may be requested and considered.
- (g) If the recommendation of the Hearing Panel is modified, or if the charge is dismissed, the Directors shall state their reasons in writing, but failure to do so shall not invalidate the Decision of the Directors. Any Director not concurring with the Decision of the other Directors shall be entitled to file a dissenting opinion which will be provided to the parties and to the Hearing Panel. Under no circumstances may the discipline exceed that recommended by the Hearing Panel.
- (h) The 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 in the absence of willful or wanton misconduct.
- (i) Upon final action by the Directors, the President shall disseminate to the Complainant, the Respondent, the Board of Directors, the Chairman and members of the Hearing Panel, the President of any other Association in which the Respondent holds membership, and any governmental agency as directed by the Board of Directors such notice of the action as the President deems appropriate under the circumstances to effectuate the discipline prescribed.

Final Ethics Decisions holding REALTORS® in violation of the Code of Ethics must be forwarded to the Tennessee Real Estate Commission in instances where there is reason to believe that the public trust may have been violated. The "public trust," as used in this context, refers to demonstrated misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm.

- (j) Any discipline imposed that requires an action on the part of the disciplined member should also indicate any additional penalties that may be automatically invoked for failure to comply by the date specified. In the absence of such a provision, failure to comply with the discipline imposed should not be considered grounds for an additional ethics Hearing, but rather should constitute the basis for consideration by the Board of Directors with regard to any additional action required to ensure compliance with the original discipline imposed. In the event that additional penalties are contemplated, the party failing to comply with the discipline originally imposed should have the opportunity to appear before the Board of Directors to explain the failure to comply.

Absent an explanation acceptable to the Directors, additional discipline, including possible suspension or expulsion from membership, may be imposed in a manner consistent with the procedures established in the Code of Ethics and Arbitration Manual of the Association, and the notice of the Directors should include a date by which any proposed discipline will be imposed or by which implementation of sanction shall automatically occur.

- (k) If the Respondent is currently on probation as the result of an earlier proceeding, the Directors, upon reviewing the findings of fact and recommendation for discipline resulting from the subsequent Hearing, shall also determine whether to impose the discipline that was held in abeyance during the probationary period. The Directors shall consider whether the subsequent ethics violation occurring during the probationary period minor, inadvertent, or otherwise was unrelated to the original violation in making their determination.
- (l) Appeals to the Board of Directors may be heard by a Panel of Directors appointed by the President for that purpose. Five (5) Directors or a quorum of the Board of Directors, whichever is less, shall constitute such an Appeal Panel, which shall act on behalf of the Board of Directors. The Decision of the Appeal Panel shall be final and binding and shall not be subject to further review by the Board of Directors.
- (m) If the Respondent is found in violation of the Code of Ethics a second time within three (3) years, the Respondent's name, the fact that the Respondent has been found in violation of the Code of Ethics, the Article(s) violated, and the discipline imposed will be published in the official communication vehicle of the Association. Such publication shall not include the name of the firm the Respondent is (or was) licensed or affiliated with. In cases where the violator's name is similar to another member's name, the violator's license number or office address (or both) may also be published.

Section 24. Initial Action by the Board of Directors

If the Complainant alleges that a member has improperly refused to submit a dispute to Arbitration, the Ethics Complaint shall not be referred to the Grievance Committee or a Hearing Panel, but shall be brought before the Board of Directors at the next regular meeting or at a special meeting called by the President for that purpose. The procedures for notices, time of notice, and Hearing prescribed for matters before a Hearing Panel shall apply. The sole question of fact for the Directors to decide will be whether the Respondent has failed to submit an arbitrable matter to Arbitration in violation of Article 17.

There can be no charge that there has been a refusal to arbitrate until the Grievance Committee determines the matter is arbitrable and of a mandatory nature and the Respondent fails to submit to Arbitration before the Association.

Upon determination that the member has refused to arbitrate a properly arbitrable matter, the Board of Directors may direct the implementation of appropriate sanction and should, if it has reason to believe that the imposition of sanction will become the basis of litigation and a claim for damages consequent to such sanction, delay the effective date of implementing the sanction to a date following receipt by the Association of a Judicial Decision in a Petition for Declaratory Relief filed by the Association to confirm the propriety of its action.

On the other hand, if the Ethics Complaint against the member is that, having properly submitted a dispute to Arbitration, the member has refused to abide by the award, such refusal should not be referred to the Grievance Committee as a violation of the Code of Ethics unless it reflects an established pattern or practice of noncompliance with the commitment to arbitrate. A refusal to abide by an award in Arbitration should be enforced in the manner set forth in the Manual of the Association.

Section 25. Preliminary Judicial Determination Prior to Imposition of Discipline

If the Board of Directors has reason to believe that the imposition of a proposed sanction will become the basis of litigation and a claim for damages, it may specify that the discipline shall become effective upon entry of the final judgment of a court of competent jurisdiction in a suit by the Association for Declaratory Relief declaring that the discipline proposed violates no rights of the member.

Part Five – Outline of Procedure for Ethics Hearing

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

Recording the hearing: The Association shall tape record the proceeding, and any party may, at the party's expense, have a court reporter or recorder present or may tape record the proceeding, and, if transcribed, shall present a transcript to the Professional Standards Secretary.

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

Due process procedure: The hearing procedures will be:

- (1) Opening statement by Chairman--cite authority to hear case and explain reason for hearing.
- (2) The complaint will be read into the record.
- (3) The testimony of all parties and witnesses will be sworn or affirmed. All witnesses will be excused from the hearing except while testifying.
- (4) The parties will be given an opportunity to present evidence and testimony on their behalf and they may call witnesses.
- (5) The parties and their counsel will be afforded an opportunity to examine and cross-examine all witnesses and parties.
- (6) The panel members may ask questions at any time during the proceedings.
- (7) The Chairman may exclude any question ruled to be irrelevant or argumentative.
- (8) Each side may make a closing statement. The complainant will make the first closing statement and the respondent will make the final closing statement.
- (9) Adjournment of hearing. (The Hearing Panel will go into executive session to decide the case.)

Findings in ethics hearing: The findings and recommendation for discipline, if any, shall be reduced to writing by the Hearing Panel and submitted to the Board of Directors in accordance with the procedures of Part Four, Sections 22 and 23 of the *Code of Ethics and Arbitration Manual*.

Use of counsel: A party may be represented in any ethics hearing by legal counsel or by a REALTOR® of their choosing (or both). However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be nonappealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from date of adjournment to enable the party to obtain alternate counsel provided, however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

Be advised that all matters discussed are strictly confidential.

Part Six – Ethics Complaint Form

To The Grievance Committee:

A. Complainant (Person filing complaint)

1. Name _____
(Last) (First) (Middle)

2. Residence _____
(Street /Apt.No./ Suite No.) (City / Zip Code)

3. Business Address _____
(Street/Suite No.) (City / Zip Code)

4. Business Phone # _____ 5. Home Phone # _____ 6. Fax Phone # _____

B. Respondent(s) [Party or Parties Complained Against]

1. Name of Respondent(s)

a. _____
(Last) (First) (Middle)

b. _____
(Last) (First) (Middle)

c. _____
(Last) (First) (Middle)

Business Address of Respondents

a. _____
(Firm Name) (Address / Zip)

b. _____
(Firm Name) (Address / Zip)

C. Complaint Charges: An alleged Violation of Article(s) _____
of the Code of Ethics or other membership duty as set forth in the By-Laws of the Association in Article(s) _____
Section(s) _____, and alleges that the above charges are supported by the attached typewritten statement,
which is signed and dated by the complainant(s). [State the chronological order of events as they happened, action
desired by the Association, include all pertinent documents, contracts, etc.]

This complaint is true and correct to the best knowledge and belief of the undersigned and is filed within one hundred eighty (180) days after the facts constituting the matter complained of could have been known in the exercise of reasonable diligence.

I (we) declare that to the best of my (our) knowledge and belief, my (our) allegations in this complaint are true.

Are the circumstances giving rise to this Ethics Complaint involved in Civil or Criminal Litigation or in any proceeding before the Tennessee Real Estate Commission or any other State or Federal regulatory or administrative agency?
Yes _____ No _____

I understand that should the Grievance Committee dismiss this ethics complaint in part or in total, that I have twenty (20) days from my receipt of the dismissal notice to appeal the dismissal to the Board of Directors.

Filed _____ Signed _____
(Month & Day & Year) (Complainant)

Part Seven - Arbitration General Provisions

Section 26. Definitions Relating to Arbitration

As used herein,

- (a) "Agent" means a real estate licensee (including brokers and sales associates) acting in an agency relationship as defined by state law or regulation
- (b) "Association" means the Knoxville Area Association of REALTORS®
- (c) "Broker" means a real estate licensee (including brokers and sales associates) acting as an agent or in a legally recognized non-agency capacity.
- (d) "Client" means the person(s) or entity(ies) with whom a REALTOR® or REALTOR®'s firm has an agency or legally recognized non-agency relationship.
- (e) "Counsel" means an attorney at law.
- (f) "Customer" means a party to a real estate transaction who receives information, services, or benefits but has no contractual relationship with the REALTORS® or REALTOR®'s firm.
- (g) "Directors" means the Board of Directors of the Association.
- (h) "Hearing" may refer either to an Ethics Hearing relating to disciplinary matters or to an Arbitration Hearing in which the dispute generally involves entitlement to a commission or to compensation.
- (i) "Member" means REALTOR® members of this Association. REALTORS® who participate in the Multiple Listing Service or otherwise access MLS information through any Association in which they do not hold membership are subject to the Code of Ethics in that Association.
- (j) "Party" (Parties) means the Complainant (s) or Respondent(s) in disciplinary proceedings and in Arbitration Hearings referred to in Part Four and Part Ten of this Manual. "REALTOR® Principal includes licensed or certified individuals who are sole proprietors, partners in a partnership, officers or majority shareholders of a corporation, or office managers (including branch office managers) acting on behalf of Principals of a real estate firm who subscribe to the Code of Ethics as a condition of membership in the Association and the National Association of REALTORS®. The phrase REALTOR® Principal includes those REALTORS® who participate in a Multiple Listing Service through any Association in which they do not hold membership.
- (l) "Secretary" means the Professional Standards Secretary of the Association.
- (m) "Tribunal" means those persons serving in a given case on a Grievance Committee or a Hearing Panel of the Professional Standards Committee in either an Ethics or Arbitration proceeding, or a Board of Directors or appropriate body appointed by a Board of Directors to act in its behalf. No individual may participate in the deliberation of more than one Tribunal on the same matter.
- (n) "Unauthorized disclosure" means a report or publication under any circumstances not established in this Manual.

Section 27. Qualification for Tribunal

- (a) No more than one person licensed with any firm, partnership, or corporation may serve on the same Tribunal.
- (b) A person shall automatically be disqualified as a member of a Tribunal in any case in which the person is:
 - (1) Related by blood or marriage to either Complainant or Respondent;
 - (2) An employer, partner, employee, or in any way associated in business with either Complainant or Respondent;
 - (3) A party to the Hearing, or a party or a witness in any other pending case involving a party to this Hearing; or
 - (4) Is objected to by a party as provided in Part Seven, Section 27(f) of this manual.
- (c) Before sitting in any case, each member of a Tribunal (except any member of the Grievance Committee) shall sign a statement:
 - (1) That the member is not disqualified for any of the foregoing reasons, and
 - (2) That the member knows of no other reason that might prevent him from rendering an impartial Decision.

- (d) Every member of a Tribunal (except a member of the Grievance Committee acting pursuant to the provisions of Part Ten, Section 47 of this Manual) shall also avoid, as far as possible, discussing the case with any person other than a member of the Tribunal prior to commencement of the Hearing. If the member does engage in any such discussion before the Hearing, the member must disclose the fact to the parties and to the other members of the Tribunal no later than at the beginning of the Hearing.
- (e) All members of a Tribunal shall have an obligation to maintain and protect the confidentiality of the proceedings and deliberations of the Tribunal before, during, and after its determinations and recommendations. The Tribunal member shall not discuss the Tribunal proceedings and deliberations with any person(s) except as required by the Board of Directors or the bylaw provisions of the Association or by law as may be required, except that a member of the Grievance Committee acting pursuant to the provisions of Part Ten, Section 47 of this Manual shall not be precluded from discussion necessary to the preliminary review.

Unauthorized disclosure includes any report or publication under any circumstances not established in this Manual. The following are circumstances where disclosure by a party to an Ethics and/or Arbitration proceeding is authorized:

- (1) Where the dissemination of the Decision to individuals who have some knowledge of the proceeding might vindicate a member's professional reputation.
- (2) Where there is a civil proceeding (including proceedings before the state real estate licensing authority or any other state or federal regulatory or administrative agency) involving the same facts and circumstances which gave rise to the proceeding before the Association.
- (f) Any party may file with the Professional Standards Secretary a written Request for disqualification of a member of a Tribunal (Hearing Panel or Board of Directors), stating the grounds alleged as basis for disqualification (i.e., factors which would prevent a Tribunal member from rendering an impartial, unbiased, and knowledgeable Decision). Challenges submitted pursuant to this Section for Ethics and Arbitration Hearings will be determined by the Professional Standards Committee Chairman, or, if challenge to the Chairman is made, by the Professional Standards Committee Vice Chairman, or, if challenge to both the Chairman and Vice Chairman is made, by the Board President. Challenges submitted pursuant to this Section for matters to be considered by the Board of Directors will be determined by the Board President or, if the challenge is to the Association President's qualifications, the next ranking Association Officer.

A party shall be deemed to have waived any grounds of disqualification of which he then has knowledge unless he files the Request within ten (10) days from the date a list of names of members of the Professional Standards Committee or Board of Directors has been mailed to the party (see Part Ten, Section 51(a), Arbitration Hearing). However, any member of the Tribunal may be disqualified at any time if a majority of the members of the Tribunal are made aware of any grounds of automatic disqualification of a member or find any new or previously undiscovered facts which in their judgment may prevent, or appear to prevent, a member of a Tribunal from rendering an impartial Decision.

However, none of the foregoing is to be construed to allow a challenge to the qualifications of members of a Association's Grievance Committee, or Board of Directors (or Panel of Directors) convened to review any action taken by a Grievance Committee.

- (g) If a member of a Tribunal fails or is unable to participate in a Hearing, the remaining members of the Tribunal may, at their option, but only with the express consent of the parties, proceed with the Hearing. Only the remaining members of the Tribunal may participate in the Hearing and the determination thereof. Should any member of the Tribunal absent himself during the progress of the actual Hearing, that individual shall likewise not participate in the deliberations nor determinations thereof. If all the parties do not agree to proceeding without the full number of the Tribunal originally designated, the Chairman of the Tribunal will recess the Hearing to a date on which all members of the Tribunal can be present. If the Chairman cannot at that time designate a new date, notice of a subsequent date shall be served on all parties as herein provided.

Section 28. Duty to Give Evidence

The parties to Ethics and Arbitration Hearings are primarily responsible for production of witnesses and evidence they intend to present to the Hearing Panel. If a member, when called as a witness, refuses or is unable to appear at a scheduled Hearing, the witness's failure to appear can be the basis for a charge that Article 14 has been violated if it can be shown that the witness had information or evidence relevant to the issue or issues before the Hearing Panel and that there were no extenuating circumstances that would have made the witness's appearance unduly burdensome. Questions regarding a member's obligation to appear as a witness, including questions of relevancy, shall be determined by the Chair of the Hearing Panel either before the Hearing commences, if possible, or at the time of the Hearing. If a question of whether a witness is required to appear is raised at a Hearing and the Chair rules that the witness must appear, the party seeking to compel the appearance of the witness may Request that the Hearing be recessed until such time as the witness can be advised of the witness's obligation to appear, and the Hearing shall be rescheduled. The burden of demonstrating the relevance of the testimony or evidence rests with the party seeking to compel the witness's appearance.

If, after being so advised, a witness refuses to appear, the Chairman may, at its discretion, bring a charge against the witness for failure to comply with Article 14.

Section 29. Right of Counsel to Appear

Every party may be represented by Legal Counsel but such Counsel may not testify as a witness unless the Panel determines such testimony is essential to ensure due process. In the event parties do not give fifteen (15) days' notice of their intention to have Counsel to the Professional Standards Secretary and all other parties, including Counsel's name, address, and phone number, the Panel shall take all steps, including continuance of the matter, if necessary, to guarantee the rights of all parties to representation by Counsel. The Tribunal will have the Executive Vice President present to advise it on issues of procedure and may also have Counsel present to advise it on issues of law. The role of Executive Vice President during a Hearing is to provide procedural guidance as Requested by the Chairman or by Panel members. The role of Legal Counsel during a Hearing is to provide legal guidance as Requested by the Chairman or by Panel members. The Executive Vice President and Association Counsel are not a part of the Hearing Panel and may not take an active role in the conduct of the Hearing, including examination or cross-examination of the parties or their witnesses. If the Executive vice president believes an action or procedure is inconsistent with the Association's established procedures or may result in potential liability to the Association, his concerns will be communicated to the Chairman of the Hearing Panel and the Chairman shall make the final Decision.

Section 30. Witnesses

Every party may have Witnesses present at the Hearing, and the Tribunal may summon its own Witnesses. All Witnesses will be excused from the Hearing after completion of their testimony and cross-examination.

Any party who intends to call Witnesses at the Hearing must provide the Professional Standards Secretary and all other parties with the names of these Witnesses at least fifteen (15) days prior to the Hearing. Failure to provide this information within the time specified will constitute a waiver of the right to call those Witnesses at the Hearing, unless the other party agrees to allow their testimony.

In any case where all of the names of Witnesses a party intends to call at the Hearing have not been provided within the time specified, if the Hearing Panel believes that the testimony of that Witness(es) is essential to ensure due process, his testimony may be permitted provided the other party has the right to Request that the Hearing be recessed and continued to a date certain not less than five (5) days later.

Questions as to whether a member who has been called as a Witness but who refuses to appear, or asserts that his appearance will result in an unreasonable hardship, shall be determined by the Hearing Panel Chairman as soon as practical. Refusal to appear, after the Chairman has determined that the member's appearance is required, may result, at the Chairman's discretion, in charges that Article 14 has been violated being filed against the member.

Section 31. Conduct of Hearing

At any Ethics or Arbitration Hearing, every party has the right to present any Witnesses, to submit any evidence pertinent to the case, and to cross-examine Witnesses. The Chairman shall swear in all witnesses giving oral testimony. Before permitting testimony relating to the character or general reputation of anyone, the Tribunal shall satisfy itself that the testimony has a direct bearing on the case at issue. The Association is required to tape record all Ethics and Arbitration Hearings. Any party may, at his own expense, have a court reporter or recorder present at the Hearing, or may tape record the proceeding, and, if transcribed, shall present a copy to the Professional Standards Secretary. The recording of an Appeal or limited Procedural Review proceeding is prohibited.

Videotaping of any Professional Standards Proceedings is prohibited.

The Association's tape recording or transcription shall be considered the official record of the proceeding. Copies of any tape recording or any transcript prepared from any tape recording of the Hearing are to be used only for the purpose of procedural reviews. Any party to a Hearing has the right to obtain a copy of the Association's official tape recording subject to payment of the Association's duplication costs, and any duplication will be conducted under the supervision of the Association. If the Association transcribes its official tape recording, any party to the Hearing may obtain a copy of the transcript subject to paying the transcription costs. If more than one party requests copies of the transcript, the Association's costs will be apportioned between or among the parties.

If a party purchases a copy of the Association's official tape recording and subsequently has it transcribed at his own expense, that party must provide a copy of the transcript to the Association at no cost. After the has received a copy of the transcript (made from the Association's official tape recording), the Association shall make copies of the transcript available to any other party subject to their payment of the Association's duplication costs.

Tape recordings or transcripts from Arbitration Hearings may be used only by the parties for the purpose of procedural review Requests, and may not be introduced into evidence at any subsequent Hearing. Any other unauthorized use of the tape recordings or transcripts may be construed as a violation of Article 14, as interpreted by the applicable Standards of Practice, and as a violation of these procedures.

Attendance at any Hearing is limited to the parties and the parties' respective Counsel and/or Witnesses (Witnesses will be excused from the Hearing except during their testimony [except those witnesses with a vested financial interest consistent with Part Ten, Section 44(a)(2), Duty and Privilege to Arbitrate]); the Hearing Panel members; the Executive Vice President and/or Counsel, as deemed necessary; and any court reporter, as Requested.

Section 32. Notices

(a) Any notice required to be given or paper required to be served or filed may be personally handed to the party to be notified or sent by registered or certified mail addressed to the party's last known mailing address. If mailed, any notice required to be given or paper required to be served or filed shall be deemed given, served, or filed when mailed unless otherwise specified in this Manual.

(b) Notice of a Hearing will include the names of the members of the Tribunal and be given not less than twenty-one (21) days beforehand. Twenty-one (21) days' notice is not required for postponed Hearings (scheduled but extension granted before Hearing commences) or for Hearings that have commenced and been adjourned (recessed). Notice of a Rehearing will be given not less than twenty-one (21) days before the Rehearing.

Section 33. Interpretation of Bylaws

If any provision of the Bylaws or a Rule or Regulation relative to the procedure of a Tribunal's handling of a matter is involved, the interpretation by that Tribunal of the Bylaws or of a Rule or Regulation shall be set forth as a separate finding, and the Directors, on Appeal from a Decision of a Hearing Panel, shall not be bound by the Panel's interpretation.

Section 34. Waiver

Every member, for and in consideration of his right to invoke Arbitration proceedings and to initiate Ethics Complaints under the Code of Ethics as a member of the National Association of REALTORS®, hereby waives any right of action against the Association, any Association Member, or any member of a Hearing Panel or Tribunal arising out of any Decisions, determinations, or other action taken or rendered under these procedures in the absence of willful or wanton misconduct. Further, as a condition of continued membership, every member expressly waives any cause of action for libel, slander, or defamation that might arise from the filing or consideration of any Ethics Complaint or Arbitration Request.

Section 35. Communication and Clerical

Communications shall be directed to the Professional Standards Secretary. The Professional Standards Secretary shall render all necessary assistance to the parties, shall 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.

Section 36. Attempt to Influence Tribunal

Any attempt, directly or indirectly, to influence a member of a Tribunal in any matter before it, other than by giving evidence and argument in an open Hearing or in writing submitted to the entire Tribunal, is a breach of a duty of membership.

Part Eight - Membership Duties and Their Enforcement

Section 37. Duties of Membership

The duties of membership include the following:

- (a) To abide by the Code of Ethics of the National Association of REALTORS®.
- (b) To abide by the bylaws of this Association and its Rules and Regulations
- (c) To submit to Arbitration all disputes specified in Part Ten of this Manual by the procedure therein provided, and to abide by the arbitrators' Award.

Subject to any preliminary consideration by any administrative body of the Board or its subsidiary MLS, any allegations or charges that a member has violated any membership duty shall be referred to the Professional Standards Committee for review in conformity with the procedures established in this Manual as from time to time amended.

Section 38. Appointment of the Grievance Committee

There will be a standing committee, known as the Grievance Committee, of at least nine (9) Association Members, in good standing, of whom at least a majority shall be REALTORS®. The President will appoint the members of the committee and the Chairman and Vice Chairman, subject to confirmation by the Board of Directors, for three (3) year terms.

Section 39. Appointment of the Professional Standards Committee

There will be a Professional Standards Committee of at least eleven (11) Association Members, in good standing, of whom at least a majority shall be REALTORS® appointed by the President, subject to confirmation by the Board of Directors. Members of the Professional Standards Committee will be selected for three (3) year terms to serve on Hearing Panels as required to hear matters of alleged unethical conduct by Association Members or to provide Arbitration as Requested. The President shall appoint the Chairman and Vice Chairman of the committee.

Part Nine - The Grievance Committee in Arbitration Proceedings

Section 40. Authority

The Grievance Committee is established in Part Two, Section 15 and Part Eight, Section 38 of this Manual, which provide in part:

There will be a standing committee, known as the Grievance Committee, of at least nine (9) Association Members, in good standing, of whom at least a majority shall be REALTORS®. The President shall appoint the members of the committee and the Chairman and Vice Chairman, subject to confirmation by the Board of Directors, for three (3) year terms.

Section 41. Function

The function of the Grievance Committee is clearly distinguishable from the function of the Professional Standards Committee. The Professional Standards Committee is similar to a court. The court adjudicates matters that come before it. The Professional Standards Committee makes Decisions on matters involving Ethics or Arbitration.

If the function of the Professional Standards Committee is understood as similar to a court, the function of the Grievance Committee can then be understood as similar to that of the grand jury. A grand jury evaluates potentially criminal conduct to determine whether the evidence and testimony presented warrants indictment and trial.

In a similar manner, the Grievance Committee receives Ethics Complaints and Arbitration Requests to determine if, taken as true on their face, a Hearing is to be warranted. The Grievance Committee makes only such preliminary evaluation as is necessary to make these Decisions. While the Grievance Committee has meetings, it does not hold Hearings, and it does not decide whether members have violated the Code of Ethics. The Grievance Committee does not mediate or arbitrate business disputes.

In evaluating Arbitration Requests, the Grievance Committee may Request a written response to the Arbitration Request from the Respondent(s). If no response is filed within the time allotted, the Grievance Committee shall make its determination as to whether an Arbitration Hearing should be scheduled based upon the information set forth in the Arbitration Request.

Section 42. Grievance Committee's Review of an Request Arbitration

A. Initial action upon receipt of a Request for Arbitration

Upon receipt of a Request for Arbitration, the Professional Standards Secretary shall refer the Arbitration Request to the Chairman of the Grievance Committee. The Chairman shall review the Arbitration Request and any evidence and documentation attached. The Chairman may assign one or more members of the Grievance Committee to review the Request and to make any necessary evaluation. The member(s) may, if necessary, gather additional information on the matters complained of if additional information appears necessary to make a knowledgeable disposition of the Arbitration Request. Upon instruction from the Grievance Committee Chairman, the Professional Standards Secretary will be provided the Request to the reviewers.

The reviewer(s) shall complete their assignment promptly and prepare a report and recommendation for the Grievance Committee. After reviewing the report, the Chairman shall schedule a meeting of the Grievance Committee and may instruct the Professional Standards Secretary to provide members of the Grievance Committee with copies of the case file including the reviewer's report, if any.

B. Consideration by the Grievance Committee of a Request for Arbitration

In reviewing a Request for Arbitration, the Grievance Committee shall consider the following:

- (1) Is the Request for Arbitration acceptable in the form as received by the committee? If not in proper form, the Chairman may request that the Professional Standards Secretary contact the Claimant to advise that the Request must be submitted in proper form.
- (2) Are all necessary parties named in the Request for Arbitration? The duty to arbitrate is an obligation of REALTOR® Principals. REALTOR® Principals include sole proprietors, partners in a partnership, officers or majority shareholders of a corporation, or office or branch office managers acting on behalf of principals of a real estate firm.
- (3) Was the Request for Arbitration filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later?
- (4) Are the parties members in good standing or otherwise entitled to invoke Arbitration through the Association's facilities? Were the parties members at the time the facts giving rise to the dispute occurred?
- (5) Is litigation pending in connection with the same transaction? Arbitration will not be provided on a matter pending litigation unless the litigation is withdrawn with notice to the Association and a Request for Arbitration, or unless the court refers the matter to the Association for Arbitration.
- (6) Is there any reason to conclude that the Association would be unable to provide an impartial Hearing Panel?
- (7) If the facts alleged in the Request for Arbitration were taken as true on their face, is the matter at issue related to a real estate transaction and is it properly arbitrable, i.e., is there some basis on which an Award could be based?
- (8) If an arbitrable issue exists, are the parties required to arbitrate or is their participation voluntary?
- (9) Is the amount in dispute too small or too large for the Association to arbitrate?
- (10) Is the matter too legally complex, involving issues that the arbitrators may not be able to address in a knowledgeable way?
- (11) Is there a sufficient number of knowledgeable arbitrators available?

If all of the relevant questions have been considered, and a majority of the Grievance Committee concludes that the matter is properly arbitrable by the Association, the Grievance Committee shall send the Request for Arbitration to the Professional Standards Secretary to schedule Arbitration by an Arbitration Hearing Panel.

C. Appeals from the Decision of the Grievance Committee related to a Request for Arbitration

If the Grievance Committee determines that a matter should not be arbitrated by the Board because of the amount involved or the legal complexity, or for any other valid reason specified in the Grievance Committee Decision and written report, either of the parties may Appeal the Decision to the Board of Directors within twenty (20) days of the date of notice of the committee Decision using the **Appeal of Grievance Committee Dismissal of an Arbitration Request Form**; however, no additional information may be added or attached to the form. The Hearing Panel can also dismiss the Arbitration Request if the Hearing Panel concludes the matter is not arbitrable.

Only those materials which were presented to the Grievance Committee when the Grievance Committee made its Decision will be presented to the Board of Directors and considered with the Appeal. The parties to the Arbitration (Claimant and Respondent) do not have the right to appear at the Appeal Hearing before the Directors. In the event a Request for Arbitration is dismissed, any deposit submitted by the Claimant shall be returned to the Claimant.

Part Ten - Arbitration of Disputes

Section 43. Arbitrable Issues and Appropriate Parties

As used in Article 17 of the Code of Ethics and in Part Ten of this Manual, the terms “dispute” and “arbitrable matter” are defined as those contractual issues and questions, and specific non-contractual issues and questions defined in Standard of Practice 17-4, including entitlement to commissions and compensation in cooperative transactions, that arise out of the business relationships between REALTORS® and between REALTORS® and their clients and customers, as specified in Part Ten, Section 44, Duty and Privilege to Arbitrate.

The obligation to participate in Arbitration contemplated by Article 17 includes the obligation of REALTORS® Principals to cause their Real Estate Firms to arbitrate and be bound by any Award.

Arbitration Awards:

- (1) Can only be made against named parties in the Arbitration Request and Agreement;
- (2) Can only be made in favor of parties named in the Arbitration Request and Agreement;
- (3) Are generally enforceable against all parties named in the Award
- (4) Naming the REALTOR® Principal's Firm increases the chances of collection.

Section 44. Duty and Privilege to Arbitrate

- (a) By becoming and remaining a member and by signing or having signed the agreement to abide by the Bylaws of the Association, every member, where consistent with applicable law, binds himself or herself and agrees to submit to Arbitration by the Association's facilities all disputes as defined by Article 17 of the Code of Ethics and, as set forth in the provisions of this Manual, all disputes with any other member, as defined, under the following conditions. In addition, REALTOR® Principals who participate in a Association's Multiple Listing Service where they do not hold Association membership, or nonmember brokers and nonmember licensed or certified appraisers who participate in the Association's Multiple Listing Service, having signed the agreement to abide by the Association's Multiple Listing Service Rules and Regulations binds himself or herself and agrees to submit to Arbitration by Association's facilities. The duty to submit to Arbitration continues in effect even after membership lapses or is terminated, provided that the dispute arose while the Respondent was a REALTOR® or an MLS Participant.

Every REALTOR® of the Association who is a REALTOR® Principal, every REALTOR® Principal who participates in a Association's MLS where they do not hold Association membership and every nonmember broker or licensed or certified appraiser who is a Participant in the Association's MLS shall have the right to invoke the Association's Arbitration facilities in any dispute arising out of the real estate business with a REALTOR® Principal in another real estate firm or with that firm (or both), or nonmember broker/appraiser or their firm (or both) who is a Participant in the Association's MLS.

A REALTOR® other than a Principal shall have the right to invoke the Arbitration facilities of the Association in a business dispute with a REALTOR® in another firm or with their firm (or both), whether in the same or a different Association, provided the REALTOR® Principal with whom he is associated joins in the Arbitration Request, and Requests the Arbitration with the REALTOR® Principal of the other firm or with their firm (or both). Arbitration in such cases shall be between the REALTOR® Principals or their firms (or both). REALTOR® nonprincipals who invoke Arbitration in this manner, or who are affiliated with a Respondent and have a vested financial interest in the outcome, have the right to be present throughout the proceedings and to participate but are not considered to be parties.

A Client of a REALTOR® Principal may invoke the Arbitration facilities of the Association in a business dispute with a REALTOR® Principal or the REALTOR®'s firm (or both) arising out of an agency relationship, provided the Client agrees to be bound by the Arbitration. In the event of such Request and Agreement the REALTOR® will arbitrate the dispute subject to the provisions of Part Ten, Section 45. A REALTOR® Principal may also invoke Arbitration against his Client but no Arbitration may be held without the Client's voluntary agreement to arbitrate and to be bound by the Decision.

REALTORS® who are or were affiliated with the same firm shall have the same right to invoke the Arbitration facilities of the Association, provided each party voluntarily agrees to the Arbitration in writing and the Association finds the matter properly subject to Arbitration in accordance with the provisions of Part Ten, Section 45 of this Manual. This privilege as stated applies to disputes arising when the parties are or were affiliated with the same firm, irrespective of the time Request is made for such Arbitration.

A REALTOR® Principal may invoke the Arbitration facilities of his Association with a nonmember broker, provided each party agrees in writing to the Arbitration and provided the Association finds the matter properly subject to Arbitration in accordance with the provisions of Part Ten, Section 45 of this Manual. However, it shall be optional with the member as to whether he will submit to a claim to Arbitration with a nonmember broker who is not an MLS Participant. A nonmember broker who is not an MLS Participant or nonmember salesperson shall not be entitled to invoke the Arbitration facilities of the Association of REALTORS®.

Business disputes between a REALTOR® Principal and a Customer of the REALTOR® Principal may be arbitrated by the Association if a written contractual relationship has been created by a REALTOR® Principal between a customer and a client and provided all parties to the dispute (i.e., the customer and the REALTOR®) agree in writing to arbitrate the dispute.

Section 45. Board's Right to Decline Arbitration

- (a) If either the Grievance Committee or the Arbitration Panel selected in the manner hereinafter provided determine that because of the amount involved or the legal complexity of the dispute the dispute should not be arbitrated, the Arbitration shall automatically terminate unless either of the parties to the dispute Appeals the Decision to terminate the proceedings to the Board of Directors in writing within twenty (20) days of the date of notice that the Grievance Committee or the Arbitration Panel declined to continue the proceeding using the **Appeal of Grievance Committee Dismissal of an Arbitration From**; however, no additional information may be added or attached to the form.

The Hearing Panel can also dismiss the Arbitration Request if the Hearing Panel concludes the matter is not arbitrable. The written Appeal and those materials and information which were available to the Grievance Committee or the Arbitration Hearing Panel when the Decision to discontinue Arbitration was made will be presented to the Directors and considered with the Appeal. The Claimant and Respondent do not have the right to appear at the Hearing before the Directors.

In the event of such an Appeal, the Grievance Committee or the Arbitration Panel shall report its conclusions in writing to the Directors and, if the Directors concur, the Arbitration shall terminate and the parties shall be relieved of their obligation to arbitrate. However, if the Board of Directors decides that the Arbitration should proceed, the matter shall be remanded to the Grievance Committee or the Arbitration Panel for further proceedings.

- (b) The President may appoint a Panel of Directors, acting on behalf of the Board of Directors, to hear the Appeal. Any Appeal Panel so appointed must be composed of at least five (5) Directors or a quorum of the Board of Directors, whichever is less. The Decision of the Appeal Panel is final and not subject to further review by the Board of Directors.

- (c) If an otherwise arbitrable matter is the subject of civil litigation, Arbitration will not take place unless the litigation is withdrawn or referred to the Board of Directors by the court for Arbitration in accordance with Article 17. In instances where the Arbitration is mandatory (as defined in Part Ten, Section 44 of this Manual), the failure to arbitrate may result in a charge alleging violation of Article 17.
- (d) If either party to an Arbitration Request believes that the Grievance Committee has incorrectly classified the issue presented by the Request (“mandatory” or “voluntary” Arbitration situation), the party has twenty (20) days from the date of receipt of the Grievance Committee’s Decision to file a written Appeal of the Grievance Committee’s determination using the **Appeal of Grievance Committee Dismissal of an Arbitration Request Form**; however, no additional information may be added or attached to the form. Only those materials and information which were available to the Grievance Committee when the Committee made its determination will be presented to the Directors and considered with the Appeal. The Claimant and Respondent do not have the right to appear at the Hearing before the Directors. In the event of such an Appeal, the Grievance Committee must report its written conclusions to the Board of Directors. If the Directors determine that the Arbitration Request was incorrectly classified, they shall reclassify the Request as either “mandatory” or “voluntary” Arbitration and refer it to the Professional Standards Secretary for appropriate processing.

Section 46. Duty to Arbitrate Before Tennessee Association

By becoming and/or remaining members of the Knoxville Area Association of REALTORS®, all members bind themselves and agree to submit to Arbitration by the Arbitration facilities of the Tennessee Association of REALTORS® any dispute with a member of any other local Association or Tennessee Association of REALTORS®, provided:

- The dispute is a dispute as defined and for which Arbitration is required by Article 17 of the Code of Ethics, and
- (2) The Tennessee Association of REALTORS® has established facilities for such Arbitration.

Disputes as defined in Article 17 of the Code of Ethics requiring Arbitration between members having no commonality of Board membership or MLS participation may be submitted and conducted under the procedure established in Part Eleven of this Manual, subject to such modification as may be required by applicable state law. Whether arbitration is conducted by the State Association or by an interboard arbitration panel pursuant to Part Eleven, the costs charged to parties, including filing fees, may not exceed \$500. Where arbitration is conducted by the State Association, any costs incurred that exceed the parties’ filing fees may be recouped from the parties’ local associations.

The method set forth in Part Eleven may also be utilized for the conduct of Arbitration between Association Members of different Associations of different states, subject to the parties’ voluntary agreement in advance to accept the place, date, and time established by the Arbitration Panel thus chosen for a Hearing, and to pay all costs of such Arbitration as may be directed by the Panel and further subject to applicable state law of the respective states permitting such binding Arbitration.

Section 47. Manner of Invoking Arbitration

- (a) Any person authorized by the provisions of Part Ten, Section 44 of this Manual may Request Arbitration by the Association. A Request for Arbitration must be in writing signed by the Claimant on the official **Request and Agreement to Arbitrate Form**. The Request must indicate the nature of the dispute and the amount in dispute. Requests for Arbitration must be filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later. The Association may provide Mediation even if Arbitration has not been requested, provided the Mediation is requested within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later.

Suspension of filing deadlines: If the Association's informal dispute resolution processes - Mediation - is invoked or initiated by a Claimant (or potential Claimant) with respect to an otherwise potentially arbitrable matter that becomes the subject of a subsequent Arbitration Request, the one hundred eighty (180) day filing deadline shall be suspended beginning with the date of the Claimant's (or potential Claimant's) Request for Mediation and shall resume when the informal dispute resolution procedures are concluded or terminated. Questions about when the informal dispute resolution began or ended will be determined by the Association President.

- (b) The Professional Standards Secretary shall promptly refer the Request for Arbitration to the Chairman of the Grievance Committee for determination by the Committee within ten (10) days as to whether the matter is subject to Arbitration.

The function of the Grievance Committee is to make only such preliminary review and evaluation of the Request for Arbitration as is required to determine:

- (1) Whether the matter is properly arbitrable;
- (2) Whether Arbitration is mandatory or voluntary based upon the requirements of Part Ten, Section 44 of this Manual; and
- (3) Whether the proper parties are named in the Request for Arbitration.

The Grievance Committee does not hold Hearings and does not determine entitlement to Awards.

The Grievance Committee may request the party(ies) named as Respondent (s) in the Request for Arbitration to provide the Grievance Committee with a written Response to the Request for Arbitration within ten (10) days. If no Response is filed within the time allotted, the Grievance Committee shall make its determination as to whether an Arbitration Hearing should be scheduled based upon the information set forth in the Request for Arbitration.

- (c) If the Grievance Committee finds the matter properly subject to Arbitration, the Chairman will refer it back to the Professional Standards Secretary with instructions to arrange a Hearing, notifying the parties of the Grievance Committee's Decision, informing the parties as to whether the Arbitration is mandatory or voluntary (and, if voluntary, of the date certain by which the Respondent is Requested to inform the Association of his Decision) and informing the parties of their ability to challenge the classification. The Professional Standards Secretary will notify the Respondent within five (5) days of receipt of the Grievance Committee's instructions by mailing a copy of the Request for Arbitration, the Notice to Respondent for Arbitration, and the **Response and Agreement to Arbitrate Form**, with directions to complete and return the written Response within fifteen (15) days from the date of mailing to Respondent. The Professional Standards Secretary will concurrently mail to each of the parties a list of names of members of the Professional Standards Committee, with a **Notice of Right to Challenge Tribunal Members Form**, and the **Challenge to Qualifications by Parties to Panel Members Form**. Within fifteen (15) days from the date the names are mailed to the parties, the Professional Standards Secretary will appoint from the names not successfully challenged by either party three (3) or more arbitrators who will hear the dispute. The Secretary will select one of the Panel Members to serve as Chairman of the Hearing Panel. Hearing Panels must have an odd number of members. A party will be deemed to have waived all objections to any person whose name he does not challenge.

If the Grievance Committee dismisses the Request as being unworthy of further consideration, the Decision may be Appealed to the Board of Directors within twenty (20) days from the date of the Association's notification of the Grievance Committee's Decision using the **Appeal of Grievance Committee Dismissal of an Arbitration Request Form**; however, no additional information may be added or attached to the form. Only those materials which were presented to the Grievance Committee when the committee made its Decision will be presented to the Board of Directors and considered with the Appeal, and the Claimant and Respondent do not have the right to appear at the Hearing before the Directors. If the Directors determine that the Arbitration Request was improperly dismissed they shall refer it to the Professional Standards Committee for Hearing. If the Directors determine that the Request was improperly classified, they shall reclassify it appropriately. Upon determination of the Directors that the Arbitration Request should be referred for Hearing, the Professional Standards Secretary shall at that time provide a copy of the response to the Claimant if one had been submitted for review by the Grievance Committee.

- (d) Mediation is offered by the Association to the parties prior to review of an Arbitration Request by the Grievance Committee as a preliminary, voluntary alternative to Arbitration. If one or more of the parties declines or the Mediation attempt is unsuccessful, Mediation will again be made available to the parties after the Grievance Committee determines that an arbitrable issue exists.
- (e) Dismissal of an Arbitration Request by the Association does not prohibit REALTORS® from exercising other remedies, including litigation that may be available to them.

Section 48. Submission to Arbitration

- (a) Submission of a dispute to Arbitration by the Association consists of signing and delivering to the Professional Standards Secretary either a **Request and Agreement to Arbitrate Form** or **Response and Agreement to Arbitrate Form** provided the Association. Agreements to arbitrate are irrevocable except as otherwise provided under Tennessee Law.

In the event the Respondent fails or refuses to sign the Response and Agreement or fails or refuses to take part in the Arbitration Hearing, the Arbitration Hearing may be scheduled and conducted in the absence of the Respondent.

Where Arbitration takes place in a Respondent's absence, the Respondent is still entitled to be represented by legal counsel. Counsel may make opening and closing statements; call witnesses; cross-examine witnesses called by other parties; and introduce affidavits, documents, and other admissible relevant evidence. Counsel may not testify to events and facts of which counsel has no firsthand knowledge. Counsel's arguments do not constitute testimony.

Section 49. Initial Action by Directors

If the Claimant alleges that a member has improperly refused to submit a dispute to Arbitration, the Ethics Complaint will not be referred to the Grievance Committee or a Hearing Panel, but will be brought before the Board of Directors at their next regular meeting or at a special meeting called by the President for that purpose. The procedures for notices, time of notice, and Hearing prescribed for matters before a Hearing Panel shall apply. The sole question of fact for the Directors to decide will be whether the Respondent has failed to submit an arbitrable matter to Arbitration in violation of Article 17.

There can be no charge of a refusal to arbitrate until the Grievance Committee determines the matter is arbitrable and of a mandatory nature and the Respondent fails to submit to Arbitration before the Association.

Upon determination that the member has refused to arbitrate a properly arbitrable matter, the Board of Directors may direct the implementation of appropriate sanction and should, if it has reason to believe that the imposition of sanction will become the basis of litigation and a claim for damages consequent to such sanction, delay the effective date of implementing the sanction to a date following receipt by the Association of a Judicial Decision in a petition for Declaratory Relief filed by the Association to confirm the propriety of its action.

On the other hand, if the Ethics Complaint against the member is that, having properly submitted a dispute to Arbitration, the member has refused to abide by the Award, such refusal should not be referred to the Grievance Committee as a violation of the Code of Ethics unless it reflects an established pattern or practice of noncompliance with the commitment to arbitrate. A refusal to abide by an Award in Arbitration will be enforced in the manner set forth in Part Ten, Section 56, Arbitration of Disputes.

Section 50. Preliminary Judicial Determination Prior to Imposition of Discipline

If the Board of Directors has reason to believe that the imposition of a proposed sanction will become the basis of litigation and a claim for damages, it may specify that the discipline shall become effective upon entry of the final judgment of a court of competent jurisdiction in a suit by the Association for Declaratory Relief declaring that the discipline proposed violates no rights of the member.

Section 51. The Arbitration Hearing

- (a) Not sooner than fifteen (15) days nor later than twenty-one (21) days after mailing notice to the Respondent of the Request for Arbitration, the Professional Standards Secretary will mail to the Claimant a copy of the response and Respondent's affirmative claim, if any.

In the case of an Arbitration Request involving issues related to areas of the real estate business such as commercial, investment, industrial, etc., the Association will provide a representative peer Panel of qualified Association members to serve on the Hearing Panel.

- (b) The Professional Standards Secretary shall inform the parties of the date, time, and place of the Hearing established by the Arbitrators by the **Official Notice of Hearing Form**. The Arbitration Request and response, if any, shall be provided to the Hearing Panel members on the day of the Hearing at a set time prior to the commencement of the Hearing. All parties to the Hearing and Panel members will be provided with the Arbitration Guidelines prior to commencement of an Arbitration Hearing. The parties shall be given at least twenty-one (21) days' prior notice of the Hearing, but appearance at a Hearing without objection by a party will constitute a waiver of any defective notice of the Hearing. The Arbitrators may recess the Hearing from time to time as necessary and, on request of a party or upon the Arbitrator's own motion, may postpone the Hearing for not more than thirty (30) days, unless otherwise agreed to by the parties.
- (c) Upon notice by the Professional Standards Secretary, the parties to the dispute shall with diligence present to the Arbitrators in writing such statements and proof which they deem necessary to support their claims. Proof may be submitted in the form of affidavits or otherwise. The Hearing Panel of Arbitrators may require that statements be verified by affidavits or that accuracy or authenticity of any documents or other papers submitted be verified by affidavit. At the Hearing, the Arbitrators shall receive any further written statements, documents, or other papers, shall hear oral testimony and determine what personal appearances shall be made by the parties, and shall regulate the holding of Hearings. The Hearing Panel may receive and consider any evidence they deem material and proper, including evidence of accountants and other experts. Each party is responsible for the expenses of expert witnesses he calls. Parties to Arbitration shall be entitled to have legal counsel present at any Hearing. Each party is responsible for the expenses of his respective Counsel.

Section 52. Settlement

The parties to Arbitration may settle the issue between them by agreement at any time. In such event, upon notification to the Professional Standards Secretary, the Arbitration proceedings will be terminated and the termination will be recorded in the file.

Section 53. The Award

- (a) The Award of the Arbitrators will be made on the **Award of the Arbitrators Form** as soon as possible after the evidence is presented. The Award shall be in writing and signed by the Arbitrators or a majority of them, shall state only the amount of the Award, and, when so signed and served on each of the parties, shall be valid and binding and shall not be subject to review or Appeal. Any Award rendered may not be greater than the amount in dispute, may not include punitive damages, may not include attorney's fees unless expressly provided for in the agreement giving rise to the dispute.

Notwithstanding the foregoing, a party to an Arbitration proceeding may Appeal to the Board of Directors only with respect to such alleged irregularities occurring in the conduct of the proceeding as may have deprived the party of fundamental "due process."

- (b) After the Award has been served upon each of the parties, they have twenty (20) days to Request Procedural Review of the Arbitration Hearing procedure by the Board of Directors. If no such Review is requested, the Award becomes final and binding following the twenty (20) day period. However, if Procedural Review is Requested, the Award is not considered final and binding until after the Board of Directors has concluded that the Hearing was conducted in a manner consistent with the Association's procedures and the parties had been afforded due process.
- (c) If an Award has been rendered, the nonprevailing party must, within ten (10) days following receipt of the Award, either:
 - (a) Pay the Award to the party(ies) named in the Award, or
 - (b) Deposit the funds with the Association's Professional Standards Secretary to be held in the Association's Arbitration Award Escrow Account.

Failure to satisfy the Award or to deposit the funds with the Association within the ten (10) day time period may be considered a violation of a membership duty and may subject the member to disciplinary action at the discretion of the Board of Directors.

The nonprevailing party shall have twenty (20) days following receipt of the Award to request Procedural Review of the Arbitration Hearing procedure or to have Legal Counsel notify the Association's Professional Standards Secretary that a legal challenge to the validity of the Award has been initiated.

- (d) If a Request for Limited Procedural Review of the Arbitration procedure is received within twenty (20) days, the funds deposited with the Association shall be retained in the Association's Arbitration Award Escrow Account until the Review is completed. If the Arbitration Award is confirmed by the Board of Directors following the conduct of the Limited Procedural Review, the nonprevailing party shall have an additional fifteen (15) days to institute an appropriate legal challenge to the validity of the Arbitration Award. In such case, the nonprevailing party shall also cause Legal Counsel to advise the Association in writing that a suit challenging the validity of the Arbitration Award has been filed during this additional fifteen (15) day period. After fifteen (15) days, if written notice of a suit challenging the validity of the Arbitration Award has not been received by the Association, the funds shall be released from escrow and paid to the prevailing party. If written notification is received during the fifteen (15) day period, the funds will be held in escrow pending the determination of the matter by a court of competent jurisdiction.

If the nonprevailing party does not Request the Board to conduct a Procedural Review of the Arbitration Hearing process during the twenty (20) day period following service of the Award, then written notification that a legal challenge has been instituted must be received within the twenty (20) days following service of the Award. Failure to provide written notification that a suit challenging the validity of the Award has been filed within twenty (20) days following service of the Award will result in the Award being paid from the Association's escrow to the prevailing party.

- (d) Any failure to make the necessary deposits with the Association shall be referred to the Board of Directors for action at their next meeting or at a special meeting called for that purpose. The party failing to make the deposit on a timely basis shall be advised of the date, time, and place of the meeting and shall have an opportunity to explain why the required deposits were not made on a timely basis. The Board of Directors may, at its discretion, impose discipline or may give the party an additional period to make the required deposits. The Directors may also stipulate appropriate discipline to be automatically imposed if the party fails to make the deposit within the time established by the Directors.
- (f) Any interest accrued on the escrowed funds shall become the property of the party to whom the funds are ultimately released by the Association.

Section 54. Request for Procedural Review by Directors

- (a) A written Request for Procedural Review of the Arbitration Hearing procedures must be filed with the Association President within twenty (20) days after the Award has been served on the parties. The Request for Procedural Review should cite the alleged procedural deficiencies or other irregularities the party believes constitute a deprivation of due process (e.g., fraud, coercion, bias, prejudice, evident partiality, etc.) on the part of Hearing Panel members or others acting on behalf of the Association. The Request for Procedural Review will be reviewed by the Association President only for the purpose of determining whether the Request states any legitimate basis for consideration by the Board of Directors. If determined to be insufficient, it shall be returned to the requester accompanied by an explanation and a request for additional detail to be received by the Association within ten (10) days of notice. This initial administrative review is not a decision on the merits of the Request for Procedural Review but is intended only to ensure compliance with the requirement that the Request cite the alleged procedural deficiency or irregularity on which the Request is based and which will be presented to the Board of Directors for its consideration. All Requests for Procedural Review received by the Association must be considered by the Board of Directors, and only the bases raised in the written Request for Procedural Review may be raised during the review before the Directors.
- (b) When a Request for Procedural Review (as originally filed if in proper form, or as originally filed if no amendment is submitted, or as amended even if still deemed to be lacking) is received, the Professional Standards Secretary will immediately send a copy to the other party, notify all parties of the time and place of the review by the Directors at least ten (10) days in advance including the proper challenge forms and bring the matter before the Directors for review at their next regular meeting or at a special meeting called by the Professional Standards Secretary for that purpose. The Professional Standards Secretary shall provide to the Directors, in advance, a copy of the Request for Procedural Review or the amended Request for Procedural Review, if any, and the President's correspondence, if any. The Directors shall be advised that the information provided is confidential and not to be discussed with others at any time.
- (c) The Request for Procedural Review may be heard by a Panel of Directors appointed by the Association President for that purpose. Five (5) Directors or a quorum of the Board of Directors, whichever is less, will constitute such Panel, which shall act on behalf of the Board of Directors. The Decision of the Panel shall be final and binding and shall not be subject to further review by the Board of Directors.
- (d) At the Procedural Review Hearing, the party filing the Request will have an opportunity to explain the bases on which the party is requesting that the Award of the Arbitrators be overturned. The Chairman of the Arbitration Panel will have an opportunity to respond to the allegations. The other party shall have the opportunity to present to the Directors reasons why the Arbitration Hearing Panel's Award should not be overturned.
- (f) The Board of Directors will not hear an Appeal with respect to the merits of an Arbitration Award, and will not, on Appeal, review such evidence offered with respect to the merits of that Award, except as such evidence may bear upon a claim of deprivation of due process. The Directors will render their Decision promptly. This Decision may be to adopt the Award of the Arbitrators or to overturn the Award based on a substantial procedural error in the Arbitration Hearing process that resulted in a denial of due process or on a determination that the member was otherwise deprived of due process.
- (g) If the Directors determine that a substantial procedural error occurred or a member was otherwise deprived of due process, the Directors shall invalidate the original Arbitration Award and direct that the matter be referred to the Professional Standards Secretary for a new Hearing on the merits before a different Hearing Panel.
- (h) After all procedural remedies provided for in the Association's procedures have been exhausted, a member is not precluded from asserting any legal rights to which he is entitled. Assertion of such legal rights in the courts does not violate Article 17 of the Code of Ethics. The exercise of such legal rights by a member would result in judicial review similar to that set forth in Part Ten, Section 56 of this Manual.

Section 55. Enforcement

The judgment of any competent court of record in Tennessee or federal court may be rendered upon the Award. If a member fails to comply with an Award, the recipient to whom the Award has been rendered by the Arbitration Panel shall be advised that the Association will upon the recipient's request, seek judicial enforcement of the Award.

Part Eleven - Outline of Procedure for an Arbitration Hearing

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

Recording the hearing: The Association shall tape record the proceeding, and any party may at the party's expense, have a court reporter or recorder present or may tape record the proceeding and, if transcribed, shall present a transcript to the Professional Standards Secretary.

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

Due process procedure: The hearing procedures will be:

- (1) Opening statement by Chairman -cite authority to hear case and explain reason for hearing.
- (2) The arbitration request will be read into the record.
- (3) The testimony of all parties and witnesses will be sworn or affirmed. All witnesses will be excused from the hearing except while testifying.
- (4) The parties will be given an opportunity to present evidence and testimony on their behalf and they may call witnesses.
- (5) The parties and their legal counsel will be afforded an opportunity to examine and cross-examine all witnesses and parties.
- (6) The panel members may ask questions at any time during the proceedings.
- (7) The Chairman may exclude any question ruled to be irrelevant or argumentative. Each side may make a closing statement. The complainant will make the first closing statement and the respondent will make the final closing statement.
- (9) Adjournment of hearing.
- (10) The Hearing Panel will go into executive session to decide the case.

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

Use of legal counsel: A party may be represented in any hearing by legal counsel. However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be nonappealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from date of adjournment to enable the party to obtain alternate counsel provided, however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

Be advised that all matters discussed are strictly confidential.

Part Eleven - Request and Agreement to Arbitrate Form

The undersigned, by becoming and remaining a member of the Knoxville Area Association of REALTORS® (or Participant in its MLS), has previously consented to arbitration through the Association under its Rules and Regulations.

I am informed that each person named below is a member in good standing of the Association (or Participant in its MLS), or was a member of Knoxville Area Association of REALTORS® at the time the dispute arose.

A dispute arising out of the real estate business as defined by Article 17 of the Code of Ethics exists between me and (list all persons you wish to name as respondents to this arbitration):

Name of REALTOR® Principal _____

Address of REALTOR® Principal _____

Name of REALTOR® Principal _____

Address of REALTOR® Principal _____

There is due, unpaid and owing to me (or I retain) from the above-named persons the sum of \$_____. My claim is predicated upon the statement attached, marked Exhibit 1 and incorporated by reference into this application.

I request and consent to arbitration through the Association in accordance with its *Code of Ethics and Arbitration Manual*, and I agree to abide by the arbitration award and to comply with it promptly. In the event I do not comply with the arbitration award and it is necessary for any party to this arbitration to obtain judicial confirmation and enforcement of the arbitration award against me, I agree to pay the party obtaining such confirmation the costs and reasonable attorney's fees incurred in obtaining such confirmation and enforcement.

I understand that I may be represented by legal counsel, and that I should give written notice no less than fifteen (15) days before the hearing of the name, address, and phone number of my attorney to all parties and the Association. Failure to provide this notice may result in a continuance of the hearing, if the Hearing Panel determines that the rights of the other party(ies) require representation.

Each party must provide a list of the names of witnesses he intends to call at the hearing to the Association and to all other parties not less than fifteen (15) days prior to the hearing. Each party shall arrange for his witnesses to be present at the time and place designated for the hearing. The following REALTOR® nonprincipal affiliated with my firm has a financial interest in the outcome of the proceeding and has the right to be present throughout the hearing:

Name of nonprincipal REALTOR® _____.

I declare that this application and the allegations contained herein are true and correct to the best of my knowledge and belief and this request for arbitration is filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later.

If either party to an arbitration request believes that the Grievance Committee has incorrectly classified the issue presented in the request (i.e., mandatory or voluntary), the party has twenty (20) days from the date of receipt of the Grievance Committee's decision to file a written appeal of the decision. Only those materials that the Grievance Committee had at the time of its determination may be considered with the appeal by the Board of Directors.

Are the circumstances giving rise to this arbitration request the subject of civil litigation? ___ Yes ___ No

Signature of REALTOR® Principal _____

Type/Print Name of REALTOR® Principal _____

Signature of REALTOR® nonprincipal _____

Type/Print Name of REALTOR® nonprincipal _____