



**REALTOR® Association of Pioneer Valley, Inc.**  
*The Western New England Center for Real Estate Services*  
221 Industry Avenue  
Springfield, Massachusetts 01104-3246

To Whom It May Concern:

Pursuant to your request, please find enclosed a Request and Agreement to Arbitrate, General Instructions and Information for Filing and Replying to Complaints, and an Outline of Procedure for Ethics or Arbitration Hearing.

If you wish to file for Arbitration, submit the Request for Arbitration and the Arbitration Agreement, to this office completely filled out, signed by the Designated REALTOR® and accompanied with the five hundred (\$500.00) dollar-filing fee.

As soon as we receive your official Request for Arbitration, it will be given appropriate attention.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Ben Scranton'.

Ben Scranton, RCE, e-PRO  
Chief Executive Officer

Enclosures



## **MEDIATION PROCEDURES**

**INTRODUCTION:** Mediation can be a useful tool in resolving the conflicts that arise involving Board Members, their clients, and customers. Mediation is available in instances where arbitration would be provided under Section 28 of the Ethics and Arbitration Manual. Mediation can resolve controversy, promote amicable resolutions, and reduce the number of cases requiring the more formal and complex arbitration procedures of the Board, thus reducing the time and effort required of Board Members and Members serving on the Professional Standards Committee. However, no party can be required to submit to mediation. Mediation cannot and is not intended to be a substitute for the arbitration procedures of the Board.

**BOARD MEDIATION OFFICERS:** The Board has three (3) Mediation Officers available to mediate business disputes between Members.

**MEDIATION NOT BINDING:** It must be understood by all parties that participation in mediation procedures is entirely voluntary. The parties should be offered the opportunity and encouraged to participate in the mediation process in good faith, and further, encouraged to abide by the determination. The parties to mediation should be aware that they may withdraw from the process at any point prior to reaching an agreement. Any offers of settlement that were not accepted or any suggested resolution proposed by the Mediation Officer that was not accepted will not be introduced as evidence nor considered in any manner should the matter require arbitration by the Board's Professional Standards Committee. However, if the parties agree to a settlement of the dispute, and the settlement has been reduced to writing and has been signed by all of the parties, the matter is deemed resolved and cannot be the subject of a subsequent arbitration hearing. In the event either of the parties later fails to abide by the terms of the settlement, the matter may not be arbitrated, but rather, the other party should be encouraged to have the settlement agreement judicially enforced by a court of competent jurisdiction.

**NEED FOR ADEQUATE NOTICE:** Although mediation is not binding upon the parties, the need for due process remains. Generally, there will be no need for the parties to be represented by legal counsel nor for the Board to have legal counsel present at a mediation proceeding. However, since mediation is an attempt to bring the disputing parties together in an informal setting to resolve their differences, every effort should be made to ensure that the parties are provided with adequate prior notice (at least ten (10) days) and that the time and location of the proceeding is mutually convenient to all involved. However, this requirement shall not preclude parties to a controversy waiving such notice and agreeing to mediate at any time agreed by all parties.

**INITIATION OF MEDIATION PROCEEDINGS:** The Secretary (or Executive Officer), upon receipt of a request for arbitration, will inquire of all parties whether they desire to participate in mediation prior to review of the arbitration request by the Grievance Committee. If the parties agree, the matter will be referred to the Mediation Officer who will arrange a mutually convenient time and location for mediation. If the mediation attempt is unsuccessful, or if either of the parties wishes to discontinue the mediation process, for any reason, then mediation will be terminated and the request for arbitration will be referred to the Grievance Committee for review.)

**CONDUCT OF MEDIATION PROCEDURES:** If, for any reason, any of the parties (or the Mediation Officer) is unable to participate on the date agreed, the procedure should be re-scheduled to the earliest mutually acceptable date. Mediation cannot be successfully conducted without all of the parties present. Witnesses, if any, should be kept to a minimum.

Realizing that a controversy already exists between the parties, the Mediation Officer should make every effort to encourage a conciliatory atmosphere while ensuring a full exposition of all pertinent facts. The complainant and respondent should be encouraged to appreciate each other's position in the matter and to effect a solution that will eliminate the need for arbitration by the Board's Professional Standards Committee. The parties can agree to a mutual resolution of the matter at any time during the mediation procedure. If, following a thorough discussion of all the pertinent facts, the parties are still unable to resolve the matter, the Mediation Officer will then make a suggested recommendation. The recommendation for resolution can be oral or in writing and will be provided to both parties at the conclusion of the mediation procedure. The parties can agree to the Mediation Officer's proposed resolution at that time. If neither of the parties desires to give additional consideration to the Mediation Officer's suggested resolution, both parties will be given a specified period of time, not to exceed 48 hours, to consider the suggested resolution and to advise the Mediation Officer of their acceptance or rejection of the resolution. If either of the parties rejects the proposed resolution, the mediation procedure will be deemed concluded and the matter will proceed to arbitration. Any party who does not respond to the Mediation Officer within 72 hours will be deemed to have rejected the suggested solution and arbitration will proceed.

# REALTOR® Association of Pioneer Valley, Inc.

221 Industry Avenue □ Springfield, Massachusetts 01104

## GENERAL INSTRUCTIONS AND INFORMATION FOR FILING AND REPLYING TO COMPLAINTS

- 1) Complaints and replies must be typewritten.
- 2) In completing the Complaint Form, specify the Member(s) name(s) and the Article(s) you feel the Member violated. When naming a Standard of Practice, the Article for that Standard of Practice must also be named.
- 3) Complaints will be referred to the Secretary/Professional Standards.
- 4) A copy of the complaint is sent to the Grievance Committee Chairman and caseworker for investigation. The Grievance Committee will review the complaint at their next meeting. If the Grievance Committee finds the matter to constitute a proper cause of action, it will be submitted to the Secretary to arrange a hearing; if not found to constitute a proper cause of action, it will be returned to the complainant with the decision of the Grievance Committee together with information advising the Complainant of the procedures by which the Grievance Committee's decision may be appealed to the Board of Directors.
- 5) Copies of the complaint will be sent to the respondent for a reply. Respondent will have 15 days after service of copy of complaint to make reply to it. Copy of the reply is then sent to the complainant.
- 6) If there is to be a hearing, the date for the hearing will be set and all parties will be notified of the date and place of the hearing at least 21 days in advance.
- 7) Every party may be represented by legal counsel. In the event a party does not give fifteen (15) days notice of the intention to have counsel, the panel shall take all steps, including continuance of the matter if necessary, to guarantee the rights of all parties to representation by counsel.
- 8) It is the responsibility of each party to arrange for their witnesses to be present at the hearing.
- 9) The notice of hearing will contain the names of members of the tribunal who will hear the case and should be accompanied by an "Outline of Procedure for Ethics or Arbitration Hearing". Either party may file with the Secretary, not less than 15 days prior to the date of the hearing, written request for disqualification from the hearing any member for any of the following reasons:
  - a) Is related by blood or marriage to either Complainant or Respondent.
  - b) Is an employer, partner, employee, or in any way associated in business with either Complainant or Respondent.
  - c) Is a party to the hearing, or a party or witness in another pending case involving the Complainant or Respondent?
  - d) Knows any reason acceptable to the Hearing Panel, which may prevent him from rendering an impartial decision.
- 10) The parties shall not discuss the case with any member of the Hearing Panel or the Board of Directors at any time prior to the announcement of a decision in the case.
- 11) Both parties should be present in person at the Hearing. Failure to appear can result in adverse decision by default.

## **OUTLINE OF PROCEDURE FOR ETHICS OR ARBITRATION HEARING (To be Mailed in Advance to Both Parties)**

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

**RECORDING THE HEARING:** The Association shall, and any party may, at the party's expense, have a court reporter present, or may tape record the proceeding, and if transcribed, shall present a transcript to the Secretary.

**METHOD & 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 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.
8. Each side may make a closing statement. The complainant will make the first closing statement and the respondent will make the final closing statement.
9. Adjournment of hearing.
10. The Hearing Panel will go into executive session to decide the case.

**FINDING IN ETHICS HEARING:** The finding and recommendation for discipline, if any, shall be reduced to writing by the Hearing Panel and submitted to the Board of Directors in accordance with the procedure of PART FOUR, Section 24 of the Ethics and Arbitration Manual of the Association.

**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 a copy shall be furnished to each of the parties to the arbitration. A copy shall be filed with the Secretary of the Association.

**USE OF LEGAL COUNSEL:** A party may be represented in any hearing by legal counsel or by a REALTOR® of their choosing (or both). However, 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.