

PROCURING CAUSE

The Professional Standards Committee of our Association conforms to the following guidelines for all arbitration hearings and they are copied for your information.

NO PREDETERMINED RULE OR REGULATION

The Hearing Panel will avoid any assumption or presumption of entitlement to any award on the basis on any predetermined rule or regulation of the Association of REALTORS®, and shall make its determination in each case on the merits of all ascertainable and relevant facts.

Although the Panel should consider the ENTIRE COURSE OF EVENTS, the standard of proof in Association conducted arbitration is a preponderance of the evidence and the initial burden of proof rests with the party requesting arbitration. (see Professional Standards Policy Statement 26). This does not, however, preclude panel member from asking questions of the parties or witnesses to confirm their understanding of testimony presented or to ensure that panel members have a clear understating of the events that led to the transaction and to the request for arbitration. Since each transaction is unique, it is impossible to develop a comprehensive list of all issues or questions that panel members may want to consider in a particular hearing. Panel members are advised to consider the following, which are representative of the issues and questions frequently involved in arbitration hearings.

- What was the nature of the transaction giving to rise to the arbitration request?
- Was the property listed or subject to a management agreement?
- Who was the listing agent?
- What was the nature of the listing or other agreement: exclusive right to sell, exclusive agency, open, or some other form of agreement?
- Was the agreement in writing?
- Was it in effect at the time the dispute arose?
- Who was the cooperating broker or brokers?
- Are all appropriate parties to the matter joined?
- Is or was the matter the subject of litigation?
- Were any of the parties acting as subagents? As buyer brokers? In some other capacity?
- Did any of the cooperating brokers have an agreement, written or otherwise, to act as agent or in some other capacity on behalf of any of the parties?
- Were any of the brokers (including the listing broker) acting as a principal in the transaction?
- Were all disclosures mandated by law or the Code of Ethics complied with?

- ❑ Who first introduced the ultimate purchaser or tenant to the property?
- ❑ When was the first introduction made?
- ❑ How was the first introduction made?
- ❑ Did the original introduction of the purchaser or tenant to the property start an uninterrupted series of events leading to the sale (or to any other intended objective of the transaction) or was the series of events hindered or interrupted in any way?
- ❑ If there was an interruption or break in the original series of events, how was it caused, and by whom?
- ❑ Did the broker making the initial introduction to the property maintain contact with the purchaser or tenant or could the broker's inaction have reasonably been viewed by the buyer or tenant as the broker having withdrawn from the transaction?
- ❑ Did the broker making the initial introduction to the property engage in conduct, (or fail to take some action) which caused the purchaser or tenant to choose to utilize the services of another broker?
- ❑ Was there interference in the series of events from any outside or intervening cause or party?
- ❑ What were the broker's relationships with respect to the seller, the purchaser, the listing broker, and any other cooperating brokers involved in the transaction?
- ❑ What offers (if any) or cooperation and compensation were extended to cooperating brokers acting as subagents, buyer brokers, or to brokers acting in any other capacity?
- ❑ If an offer of cooperation and compensation was made, how was it communicated?
- ❑ If the cooperating broker(s) were subagents, was there a faithful exercise of agency on their part or was there any breach or failure to meet the duties owed to a principal?
- ❑ If the cooperating broker(s) were buyer agents or were acting in a non-agency capacity, were there actions in accordance with the terms and conditions of the listing broker's offer of cooperation and compensation (if any)?
- ❑ If more than one cooperating broker was involved, was either (or both) aware of the other's role in the transaction?
- ❑ If more than one cooperating broker was involved, how and when did the second cooperating broker enter the transaction?
- ❑ If more than one cooperating broker was involved, was the second cooperating broker aware of any prior introduction of the purchaser to the property by the listing broker or by another cooperating broker?

- ❑ Was the entry of any cooperating broker into the transaction an intrusion into an existing relationship between the purchaser and another broker, or was it a result of abandonment or estrangement of the purchaser, or at the request of the purchaser?
- ❑ Did the cooperating broker (or second cooperating broker) initiate a separate series of events, unrelated to and not dependent on any other broker's efforts, which led to the successful transaction?
- ❑ Is there any other information that would assist the Hearing Panel in having a full, clear understanding of the transaction-giving rise to the arbitration request or in reaching a fair and equitable resolution of the matter?