



**SAN FRANCISCO**  
**ASSOCIATION *of* REALTORS®**

# **GRIEVANCE, ARBITRATION AND MEDIATION PROCEDURAL GUIDE**

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# INTRODUCTION TO GRIEVANCE, ARBITRATION AND MEDIATION PROCEDURES

When a Real Estate Licensee joins the San Francisco Association of REALTORS® (SFAR), they agree to adhere to rules governing the Multiple Listing Service (MLS) and the REALTOR® Code of Ethics. SFAR provides a process to address alleged violations of the REALTOR® Code of Ethics and/or SFARMLS Rules by its members. That process is known as the disciplinary complaint or grievance process.

When a real estate licensee joins SFAR or the SFARMLS, they agree to resolve disputes arising out of the real estate business by mediation or arbitration. SFAR provides mediation and arbitration services to assist members in resolving some types of monetary disputes with other members if those disputes arise out of their relationship as REALTOR®, or if the dispute pertains to a property listed in the SFARMLS. This process is known as the arbitration complaint process.

The initial step is to define and determine the type of complaint that should be filed. There are 2 types of complaints:

1. A grievance is a disciplinary complaint which alleges that an Association member or MLS participant or subscriber to the MLS has violated one or more of their membership or MLS obligations under the Code of Ethics or MLS rules. Anyone can initiate a disciplinary complaint. Please refer to the **GRIEVANCE SECTION**.
2. An arbitration complaint is a method to resolve monetary disputes. An arbitration hearing does not, however, impose disciplinary action. SFAR members and SFAR member clients can file for arbitration. Please refer to the **ARBITRATION SECTION**.

It is possible to file a disciplinary complaint alleging violations of MLS Rules and/or REALTOR® Code of Ethics by a member simultaneously with an arbitration complaint alleging money is owed by that same member. The arbitration matter will be processed before the disciplinary matter, and the disciplinary complaint would be held in abeyance until after the arbitration has been completed.

The staff at SFAR is here to serve its members and the public. Please contact SFAR Professional Standards Administrator Carrie Kozubal at (707) 571-2610 or [Prostandardsemail@gmail.com](mailto:Prostandardsemail@gmail.com) with questions regarding the grievance or arbitration processes.

# GRIEVANCE GUIDELINES

## Definition

A grievance is a disciplinary complaint that alleges that a SFAR member or a SFARMLS participant or subscriber has violated one or more of their membership or MLS obligations under the Code of Ethics or MLS rules.

## Who Can File a Disciplinary Complaint with SFAR?

Any person having reason to believe that a member of SFAR or participant or subscriber of SFARMLS has violated certain membership duties can file a disciplinary complaint against that member at SFAR.

## Filing Fee

There is no filing fee.

## Outcome

If a violation is found to have been committed, the response to the violation by the Association is imposing discipline. Only such discipline as provided for in the *California Code of Ethics and Arbitration Manual* may be recommended by a Professional Standards Hearing Panel and imposed by the Board of Directors. For example, the Association cannot revoke a real estate license or award damages in response to a disciplinary complaint.

The Association has the power to take disciplinary action against its members for the following:

1. A violation of membership duties, including
  - a) Failing to abide by the Code of Ethics
  - b) Failing to abide by the Association's bylaws
  - c) Refusing to submit to arbitration with other members and clients
  - d) Refusing to abide by the arbitration award
2. A final judgment and conviction of a felony or a crime of moral turpitude.
3. A violation and final conviction of California real estate law or the Real Estate Commissioner's regulations.
4. Any action brought for conviction of a felony or real estate law (the appeal period must elapse before disciplinary case is processed).

The Association also has the power to take disciplinary action against the Designated REALTOR® (AKA the Broker managing the licensee) for the unethical conduct of real estate licensees affiliated with the Designated REALTOR®'s office, whether or not the licensees are members of the Association. The rationale is that the Designated REALTOR® is ultimately accountable to the Association for the membership obligations of the office.

**Timeline (All references to “days” is based on calendar days)**

1. The disciplinary complaint must be filed within 180 days after the facts constituting alleged misconduct could have been known in the exercise of reasonable diligence.
2. When a completed complaint is received, it is date-stamped.
3. The Administrative Staff conducts a preliminary review to determine whether the complaint is subject to disciplinary action by the Association and otherwise complies with the filing requirements in the *Professional Standards Reference Manual*.
4. Administrative Staff will send the Complainant an acknowledgment letter that the complaint has been received.
5. Administrative Staff will promptly notify the Grievance Committee Chair(s) to schedule a review by the Grievance Committee.
6. If the Grievance Committee dismisses a complaint or deletes an alleged violation from the complaint, Administrative Staff will send the Complainant a *Notice of Availability of Review* form and a *Request for Review of the Grievance Committee’s Decision* form.
  - a) The deadline to file a *Request for Review of the Grievance Committee’s Decision* form must be filed within 10 calendar days from the date it is sent to the Complainant.
  - b) If the *Request for Review of Grievance Committee’s Decision* form was sent and filed timely by the Complainant, the Administrative Staff will contact the Association President and arrange for the complaint to be reviewed by a panel of the Board of Directors.
  - c) In consultation with the Association President, the Administrative Staff will select the Director Review Panel and schedule a review hearing date as soon as practicable. This review is not a noticed hearing and the Parties do not have the right to attend.
  - d) The Administrative Staff will prepare a case file for each Director Review Panel member. It will include copies of the *Request for Review of Grievance Committee’s Decision* form and the entire file as reviewed by the Grievance Committee.
  - e) The Administrative Staff will prepare the *Certification of Qualification* form and *Action Upon Review of Grievance Committee Decision* form for the Presiding Officer’s case file.
  - f) After the review, the Presiding Officer will complete and sign the *Action Upon Review of Grievance Committee Decision* form.
7. If the Grievance Committee recommends the complaint be forwarded to the Professional Standards Committee for hearing, the Administrative Staff will prepare the appropriate paperwork and will promptly send the complaint and the prepared forms to all named Respondents and Complainants.
  - a) The Respondent may file their response within 15 calendar days from the date the complaint was mailed or emailed to the Respondent, and challenges must be filed within 10 calendar days. When a response is filed, the Administrative Staff will send a copy to the Complainant.
  - b) The Administrative Staff will contact the Professional Standards Committee Chair to select the Hearing Panel and its Presiding Officer.
  - c) A hearing date will be scheduled. A notice of the hearing will be given to the Complainant, Respondent and the Panel Members at least 21 calendar days in advance of the hearing. Both Complainant and Respondent have the right to be represented by legal counsel at

their choice and expense. Written notice of legal counsel is disclosed to the opposing party no fewer than 15 days from the hearing date. Any party intending to utilize an interpreter or provide a translated document at hearing shall notify the Association and all other parties at least ten 10 days prior to the date of the hearing. Witnesses are also allowed to testify under oath on behalf of either party.

- d) The hearing will be held with all parties present and where all relevant information has been discussed. After the hearing, the hearing panel will deliberate and will complete decisions, findings of facts and recommendations of Hearing Panel even if no violations are found.
- e) Once the *Notice of Availability of Disciplinary Action*, *Requests for Duplication of Recording* and *Request for Review* forms are completed and accepted by the Hearing Panel, the Administrative Staff will mail or email the forms to the Complainant and Respondent within 5 days after the hearing.
- f) The Complainant and/or Respondent will have 20 calendar days from the date the Hearing Panel's decision was mailed or emailed to file a *Request for Director Review* form.
- g) If a *Request for Director Review* form is filed by either Party and complies with the filing requirements in the *Professional Standards Reference Manual*, the Administrative Staff will contact all Parties with further instructions.
- h) If a Request for Director Review is NOT filed by either Party, the Administrative Staff will schedule the matter for review and final action by a Panel of Board of Directors whose decision will result in one of four outcomes:
  - (a) Affirm the decision and recommendations of the Hearing Panel.
  - (b) Refer the decision to the Hearing Panel with recommended modifications;
  - (c) Impose an alternative discipline that does not exceed that recommended by the Hearing Panel; or
  - (d) Dismiss the matter if they conclude that the findings of facts do not support the Hearing Panel's recommendations.

## **Forms**

Please contact the Professional Standards Administrator at SFAR to access current professional standards materials, including disciplinary complaint forms.

# ARBITRATION GUIDELINES

## Definition

An arbitration complaint is a method to resolve monetary disputes. An arbitration hearing does not impose discipline.

## Who Can File an Arbitration Complaint with SFAR?

SFAR members may file arbitration complaints against other SFAR members. Clients of SFAR members may file complaints against their own agent and broker. If the member filing the complaint is not the complainant's responsible broker, the complainant's responsible broker must also join the complaint as a co-complainant.

## Filing Fee

There is a \$250 arbitration filing fee. The filing fee is fully refundable if the matter is resolved in mediation prior to an arbitration hearing. The filing fee may be recoverable by a prevailing complainant if requested at hearing as a "cost" on form A-10.

## Outcome

Arbitration is an alternative to litigation and the Professional Standards Panel may award money to one or more of the parties. The Panel may not impose discipline.

## Timeline (All references to "days" is based on calendar days)

1. The arbitration complaint must be filed within 180 days after the close of escrow or after the circumstances constituting the matter could have been known in the exercise of reasonable diligence.
2. When a request to file an arbitration complaint is received, the Administrative Staff will provide the Complainant with a blank *Request for Mediation* form, a blank *Arbitration Complaint* form and instructions, a copy of the *Procuring Cause Guidelines*, and a copy of the *California Code of Ethics and Arbitration Manual*.
3. When a completed arbitration complaint and filing fee are received, the form is date-stamped.
4. The Administrative Staff conducts a preliminary review to determine whether the complaint is subject to arbitration by the Association and otherwise complies with the filing requirements in the *Professional Standards Reference Manual*.
5. Administrative Staff will send the Complainant an acknowledgment letter that the complaint has been received, is considered filed, and will be scheduled for a hearing.
6. Administrative Staff will send the *Arbitration Disclosure Statement* form to each member of the Association's Professional Standards Committee who is not automatically disqualified and who has not served as an Arbitrator within 5 years for any of the Parties or lawyers in this

arbitration. The Arbitration Disclosure Statement form must be returned Administrative Staff within 10 calendar days.

7. After 10 days, Administrative Staff will send a copy of the complaint and the prepared forms and, if Complainant requested mediation, the completed *Request for Mediation* form, to all named Respondents in addition to the completed *Arbitration Disclosure Statements* and a list of potential arbitrators. Administrative Staff will also send the *Notice of Right to Challenge Panel Member and Availability for Hearing* form, the *Reasons for Challenge Qualification of Panel Member Arbitration* form and the completed *Arbitration Disclosure Statements* and list of potential arbitrators to the named Complainants.
8. Within 15 days of the date the forms were sent to the Respondent, a written Arbitration Response and Counterclaim form should be filed with the Association. The Complainant and the Respondent have 15 calendar days in which to file a *Notice of Right to Challenge Panel Member and Availability for Hearing* form.
9. If an *arbitration response* is filed, Administrative Staff will send a copy of the response to the Complainant.
10. Administrative Staff will contact the Professional Standards Committee Chair to select a hearing panel and its Presiding Officer, and a hearing date will be scheduled. All Parties will be notified at least 21 calendar days in advance of a hearing date.
11. Administrative Staff will send the required forms to all Parties at least 21 calendar days in advance of a hearing date.
12. Both Complainant and Respondent have the right to be represented by legal counsel at their choice and expense. Written notice of such election to legal counsel should be disclosed to the Association and opposing party at least 15 days prior to the hearing date. Any party intending to utilize an interpreter or provide a translated document at hearing shall notify the Association and all other parties at least 10 days prior to the date of the hearing. Witnesses are also allowed to testify under oath on behalf of either party.
13. The hearing will be held with all parties present and where all relevant information will be discussed. When the hearing concludes, the Hearing Panel will deliberate and complete the *Action of Hearing Panel Arbitration* form and the *Award of Arbitrators* form. The parties will be notified of the decision within 5 days.
14. The parties will have 20 calendar days from the date they are notified of the Hearing Panel's decision to file a request for review.
15. If a *Request for Review* is filed, Administrative Staff will contact all Parties with further instructions.
16. If no *Request for Review* is filed, the award is considered final upon expiration of time to request review and no further action is required by the Board of Directors.
17. After the arbitration award is final, the prevailing party may request a "show cause" hearing before a panel of three Directors if the non-prevailing party has not paid the award within 15 calendar days after the due date. The purpose of the "show cause" hearing is to determine why the non-prevailing party has failed to timely pay the arbitration award. Following the



hearing, the Directors may 1) take no action; 2) suspend the non-paying party's association membership; or 3) set a schedule for payment of the arbitration award to the prevailing party.

## **Forms**

Please contact the Professional Standards Administrator at SFAR to access current professional standards materials, including arbitration forms.

# MEDIATION GUIDELINES

## **Definition**

An alternative to arbitration, mediation is a dispute resolution process whereby a mediator works with the Complainant(s) and Respondent(s) to facilitate a mutually acceptable and binding resolution of a monetary dispute. Mediation is a voluntary process and a mediation conference can only be scheduled if all parties agree to mediation. If any party to a dispute does not agree to participate in mediation, the matter will proceed to arbitration.

In comparison with arbitration, mediation is less adversarial and less formal and the parties are more directly involved in the decision-making process to resolve their dispute. The mediation process allows the participants to resolve the issue informally and the Complainant and Respondent directly affect the outcome. If a mutually agreeable settlement is not reached at mediation the matter will proceed to arbitration.

## **Who Can File a Mediation with SFAR?**

SFAR members and SFAR member clients who have filed an arbitration complaint will be able to file for mediation.

## **Filing Fee**

There is no separate filing fee for mediation, as it is included in the arbitration filing fee.

## **Outcome**

The parties agree to a mutually acceptable resolution of the dispute. If a mutually acceptable resolution is not reached, an arbitration hearing will be scheduled.

## **Timeline (All references to “days” is based on calendar days)**

1. The Complainant will file a *Request for Mediation* form at the same time that an *Arbitration Complaint* form is filed.
2. If both a Complainant and a Respondent agree to mediation, the Administrative Staff will schedule a mediation conference with both parties and a qualified Mediator. Mediators are required to have no personal interest in the outcome of the mediation and must disclose any conflicts of interest that may exist.
3. If a settlement is reached during mediation, it becomes binding when the settlement agreement is signed by all the Parties. Once the Parties have signed a written settlement agreement, they are legally bound to abide by its terms. If a settlement is reached during mediation, the arbitration filing fee will be returned to the party who paid the filing fee.
4. If mediation is unsuccessful, the matter will be scheduled for an arbitration hearing.

## **Forms**

Please contact the Professional Standards Administrator at SFAR to access current professional standards materials, including mediation forms.