



The Arbitration Process

General Information

- Texas REALTORS® Arbitration may only be used for certain types of disputes. Arbitration is available for contractual disputes concerning a real estate transaction between REALTORS®, such as a dispute over an offered commission. REALTOR® Arbitration may also be used for specific non-contractual disputes as listed in Standard of Practice 17-4 of the Code of Ethics.
 - Clients of REALTORS® may also arbitrate contractual disputes arising out of real estate transactions if the client agrees to be bound by the result.
- It is mandatory for REALTORS® to use Arbitration for certain types of disputes such as contractual disputes between REALTORS® in different firms. However, it is voluntary to use Arbitration for other types of disputes such as disputes between REALTORS® in the same firm or disputes between a sales agent and their sponsoring broker.

Before filing an Arbitration Request

- Texas REALTORS® strongly encourages parties involved in contractual disputes to speak with the other side to resolve the dispute informally. An open and constructive discussion often resolves questions or differences, eliminating the need for further action.
- Texas REALTORS® also offers informal dispute resolution such as ombudsman and mediation services. Parties are often more satisfied with informal dispute resolution, as they are quicker, less costly, and often help repair damaged relationships.
- Most arbitration hearings result in one side being awarded 100% of the money in dispute. Through informal dispute resolution, the parties have an opportunity to agree to other award sharing arrangements.

Filing and Replying to an Arbitration Request

- **Narrative Description** – Arbitration Requests and Replies should include a narrative description of the circumstances that show why a complainant or respondent believes they should be awarded the money in dispute.
- **Evidence and Document Submission** – Parties may submit evidence and documents to help prove their case. Please keep the following tips in mind regarding document submission:
 - **Be Relevant.** Only relevant evidence will be considered by the hearing panel. It is **NOT** necessary to include the entire transaction file as evidence. All evidence submitted should relate in some way to why you should be awarded the money in dispute. It will be harder to prove your case to the hearing panel if the panel has to read through hundreds of pages of irrelevant material.
 - **Be organized.** It will be easier for the hearing panel to follow along if your documentation is well organized. Combine various documents into one file, if possible. Consider labeling each item of evidence as “Exhibit” A, B, C, etc. Include a table of contents with page numbers so different items of evidence can easily be located within your document. Please note: If you submit multiple documents, Texas REALTORS® may combine them into one document before being given to the hearing panel. You will be notified if this occurs.
 - **Be ready.** The hearing panel may request to see documents during the hearing. If the document was not previously submitted, it can be emailed to the hearing officer during the hearing. Have additional documents ready to be emailed at the hearing.
- **Page Limit** – The narrative description is limited to ten (10) letter size pages. All other documents submitted with the request are limited to fifty (50) letter size pages. Texas REALTORS® will not remove any documentation from your submission. It is the responsibility of all parties to submit or resubmit documents that do not exceed these limits. Submission of documents that exceed these page limits may be permitted for more complex cases with the approval of Texas REALTORS® legal

counsel. Legal counsel may request parties provide an explanation on how each item of evidence or document is relevant to the case.

- **180 Day Rule** – All arbitration requests must be filed within 180 days after closing of the transaction or within 180 days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later. The filing deadline may be extended if the parties use an informal dispute resolution process (e.g. ombudsman).
- **Filing an Ethics and Arbitration Case** – If an ethics complaint and request for arbitration are filed regarding the same event/transaction, the arbitration request will be heard first. The ethics complaint will be held in abeyance until after the arbitration hearing has been conducted.

Grievance Tribunal Review

- After an Arbitration Request is submitted, the request will be reviewed by a Grievance Tribunal. Their job is to determine if the request is the type of case that Texas REALTORS® may arbitrate and whether it is mandatory or voluntary. The Tribunal does not decide which party should be awarded the money in dispute.
- The Grievance Tribunal may dismiss the request if they find the dispute is not the type of case the association may arbitrate. Information will be provided to the complainant regarding the procedures by which the Grievance Tribunal's decision may be appealed.
- If the Grievance Tribunal determines the dispute can be arbitrated, the request will be forwarded to a hearing.
- The Grievance Tribunal's decision will be based on the facts alleged in the Request to Arbitrate form and any documents attached to the request when the request is first submitted. Additional documents sent to Texas REALTORS® after initial submission of the request will not be considered by the Grievance Tribunal, however, they may still be used at a hearing, subject to the Hearing Officer's determination of relevancy.
- The respondent will be notified of the request and decision of the Grievance Tribunal. The respondent may submit a reply and documentation in their defense.

Before the hearing

- The parties will be given a list of potential hearing panel members prior to the hearing. Either party may file a written request for disqualification of any potential member of the hearing panel. Hearing panel members may be disqualified if the panel member is:
 - Related by blood or marriage to any party or REALTOR® counsel in the case,
 - A partner, employer, employee, or in any way associated in business with any party or REALTOR® counsel in the case,
 - A party to the hearing, or a party or witness in any pending case involving any party in the case, or
 - For any other reason that may prevent the member from rendering an impartial judgment (subject to a ruling by the Hearing Officer).
- The parties will be notified of the date, time, and place of the hearing at least twenty-one (21) days in advance. The notice will include a detailed outline of procedures that will be used during the hearing.
- Legal Counsel – The parties may be accompanied by legal counsel. The parties must send written notice of their intention to be accompanied by counsel to all other parties and to Texas REALTORS® at least fifteen (15) days before the hearing. Failure to provide timely notice may result in a continuance of the hearing. It is the responsibility of the parties to keep their counsel informed of all proceedings and documentation.
- Witnesses – It is the responsibility of each party to arrange for witnesses to be present at the hearing. Parties must send written notice of their intention to have witnesses to all other parties and to Texas REALTORS® at least fifteen (15) days before the hearing. Failure to provide timely notice may result in a waiver of the right to call the witness or a continuance of the hearing as determined by the Hearing Officer. The parties appearing at the hearing may be called as witnesses without advance notice.

- Parties are strongly encouraged to provide all documents and evidence they intend to introduce during the hearing to all other parties and to Texas REALTORS® prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly unnecessary continuances. We request the parties provide documents at least five (5) business days before the hearing date.

Preparing for the hearing

- The Parties will receive an outline of the procedures that will be followed during the hearing. The parties should familiarize themselves with the hearing procedures. The parties will want to know about challenging potential panel members, their right to counsel, calling witnesses, and the burdens and standards of proof that apply.
- Complainants have the ultimate responsibility (“burden”) of proving that they are entitled to the award. The standard of proof that must be met for arbitration is “a preponderance of the evidence”. Preponderance of the evidence is defined as “evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the facts sought to be proved are more probable than not.”
- The parties should ensure that their witnesses and counsel will be available on the day of the hearing. Continuances are a privilege.
- The parties should ensure they have all the documents and other evidence needed to present their case.
- Parties should think about their testimony and organize their documents before the hearing.

Procuring Cause

- Many disputes between REALTORS® arise from the listing broker’s offer to compensate a cooperating broker through a Multiple Listing Service. Entitlement to the MLS compensation is determined by the cooperating broker’s performance as procuring cause of the transaction.
- Procuring Cause is defined as **“the uninterrupted series of causal events which results in the successful transaction”**.
- Agency relationships do not determine who is entitled to an award; agency & entitlement are separate issues. The broker that is the procuring cause of the transaction is entitled to the MLS compensation.
- Whether a broker is or is not the procuring cause in any given transaction must be determined by looking at all the facts on a case-by-case basis. There is no “rule of thumb”. There is no one factor that determines procuring cause. Many factors should be considered, here are a few:
 - Who first introduced the buyer or tenant to the property, and how was the introduction made?
 - Was the series of events starting with the original introduction of the buyer or tenant to the property and ending with the sale or lease 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 action or inaction of the original broker cause the buyer or tenant to seek the services of a second broker?
 - Did the second broker unnecessarily intervene or intrude into an existing relationship between the buyer or tenant and the original broker?

At the hearing

- Appreciate that panel members are unpaid volunteers giving their time as an act of public service. Their objective is to be fair, unbiased, and impartial; to determine, based on the evidence and testimony presented to them, what actually occurred; and determine which party is entitled to receive the award based on the facts.
- Keep the presentation concise, factual, and to the point. Parties should be prepared to demonstrate what happened and how the facts support their entitlement to the award.
- Hearing panels base their decisions on the evidence and testimony presented during the hearing. Hearing panels do not conduct research on their own. If a party has information relevant to the issue(s) under consideration, it is their responsibility to bring up the information during their presentation.
- Recognize that different people can witness the same event and have differing recollections about what they saw. It is up to the hearing panel to determine, in their view, what happened.
- An arbitration hearing is an adversarial process and is, to some degree, unavoidably confrontational. It is imperative for all parties, witnesses, counsel, and panel members to maintain appropriate decorum.

After the hearing

- The parties will receive a copy of the hearing panel's decision, review it carefully.
- The decision will indicate which party has been awarded the money in dispute.
- A party may appeal the decision only if the party believes the procedures used to process the case were flawed to the extent they were denied a full and fair hearing. The fact that a party was not awarded any money is not appealable.
- The parties will be provided information regarding the procedures for appealing the decision after the hearing.