

ARBITRATION – INFORMATION YOU NEED TO KNOW

Useful information you need to know when filing for an arbitration.

- A request for arbitration **MUST be filed within 180 DAYS** after the closing of the transaction, if any, or within 180 days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later. (NOTE: you must count the days – 180 days is not 6 months).
- The property must already be settled. Arbitration Guidelines provide that an arbitrable issue involving procuring cause requires that there have been a “successful transaction”. **A “successful transaction” is defined as “a sale that closes or a lease that is executed.”**
- If there is litigation pending regarding the same transaction, arbitration cannot be provided unless the litigation is withdrawn with notice to the Board or unless the court refers the matter to the Board for arbitration.
- Reasons a request for arbitration can be dismissed: not filed within the 180 day time limit; amount in dispute is too small or too large for the Board to arbitrate; or the matter is too legally complex, involving issues that the arbitrators may not be able to address in a knowledgeable way.
- All Parties must be GBBR members in good standing.
- There is a \$500 filing fee by BOTH parties. If there is no due process review, prevailing party will have their \$500 filing fee returned. **MINIMUM CLAIM IS \$500.**
- If, after filing for arbitration, the parties resolve the matter on their own, the filing fees will be returned to the parties.
- Consider utilizing voluntary mediation – this could be a win-win situation for both parties.
- The term “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 of the Code of Ethics, including entitlement to commissions and compensation in cooperative transactions, that arise out of the business relationship between REALTORS® and between REALTORS® and their clients and customers.
- By becoming & remaining a member & by signing or having signed the agreement to abide by the bylaws of the Board, every member, binds himself or herself and agrees to submit to arbitration by the Board’s facilities all disputes as defined by Article 17 of the Code of Ethics, all disputes with any other member, as defined under the following conditions. In addition, REALTOR® principals who participate in a Board’s MLS where they do not hold Board membership, or nonmember

brokers and nonmember licensed or certified appraisers who participate in the Board's MLS, having signed the agreement to abide by the Board's Multiple Listing Service rules and regulations binds himself or herself and agrees to submit to arbitration by the Board facilities.

BOARDS MUST PROVIDE ARBITRATION FOR FOLLOWING:

- Every Realtor® of the Board who is a Realtor® principal, every Realtor® principal who participates in a Board's MLS where they do not hold Board membership and every nonmember broker or licensed or certified appraiser who is a Participant in the Board's MLS shall have the right to invoke the Board's arbitration facilities in any dispute arising out of the real estate business with a Realtor® principal in another real estate firm, or nonmember broker/appraiser who is a Participant in the Board's MLS.
- A Realtor® other than a principal or a Realtor-Associate® shall have the right to invoke the arbitration facilities of the Board in a business dispute with a Realtor® or Realtor-Associate®, in another firm, whether in the same or a different Board, 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. Arbitration in such cases shall be between the Realtor® principals. Realtor® nonprincipals and Realtor-Associate®s who invoke arbitration in this matter, 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 Board in a business dispute with a Realtor® principal 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 Board will arbitrate the dispute subject to the provisions of the Board's right to decline arbitration. 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.

BOARDS MAY PROVIDE ARBITRATION FOR THE FOLLOWING:

- Realtors® and Realtor-Associates® who are or were affiliated with the same firm shall have the same right to invoke the arbitration facilities of the Board, provided each party voluntarily agrees to the arbitration in writing and the Board finds the matter properly subject to arbitration. 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 the Board in a dispute arising out of the real estate business with a nonmember broker, provided each party agrees in writing to the arbitration and provided each

party agrees in writing to the arbitration and provided the Board finds the matter properly subject to arbitration. However, it shall be optional with the member as to whether he will submit to a claim to arbitration by 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 Board.

- Business disputes between a Realtor® principal and a customer of the Realtor® principal may be arbitrated by the Board if a written contractual relationship has been created by a Realtor® principal between a customer and client and provided all parties to the dispute (i.e., the customer and the Realtor®) agree in writing to arbitrate the dispute.
- There is also an alternative avenue of arbitration available to Realtors® involved in disputes arising out of cooperative real estate transactions. Standard of Practice 17-4 of the Code recognizes that in some situations where a cooperating broker claims entitlement to compensation arising out of a cooperative transaction, a listing broker will already have compensated another cooperating broker or may have reduced the commission payable under a listing contract because a cooperating broker has expressly sought and/or chosen to accept compensation from another source, e.g., the seller, the purchaser, etc. Under the circumstances specified in Standard of Practice 17-4, the cooperating brokers may arbitrate between themselves without naming the listing broker as a party. If this is done, all claims between the parties, and claims they might otherwise have against the listing broker, are extinguished by the award of the arbitrators.
- Another question that frequently arises with respect to arbitration requests is whether the fact that the listing broker was paid out of the proceeds of the closing is determinative of whether a dispute will be considered by a Hearing Panel. It should be noted that an arbitrable issue involving procuring cause requires that there have been a “successful transaction.” A “successful transaction” is defined as “a sale that closes or a lease that is executed.” Some argue that if the listing broker is not paid or if the listing broker waives entitlement to the commission established in the listing contract, then there is nothing to pay to the cooperating broker, and thus, no issue that can be arbitrated. This is an improper analysis of the issue. While the listing broker needs the consent of the seller/client to appoint subagents and to compensate subagents, buyer agents, or brokers acting in some other recognized agency or non-agency capacity, the offer to compensate such individuals, whether made through the multiple listing service or otherwise, results in a separate contractual relationship accepted through performance by the cooperating broker. Thus, if the cooperating broker performs on the terms and conditions established by the listing broker, the fact that the listing broker finds it difficult to be paid, or alternatively, waives the right to be paid, has no bearing on whether the matter can be arbitrated by may have a direct impact on the outcome.