

The Arbitration Process

General Information

- **Confidentiality.** The allegations, findings, and decisions rendered in arbitration hearings are confidential and should not be disclosed by any party under any circumstances except as authorized by Texas REALTORS® policy.

Before filing an Arbitration Request

- Texas REALTORS® strongly encourages parties involved in disputes to speak with the other side to resolve the dispute informally. An open and constructive dialogue often resolves questions or differences, eliminating the need for further action.
- Texas REALTORS® offers two types of informal dispute resolution services (ombudsman and mediation). Parties are often more satisfied with these services, as they are quicker, less costly, and often help repair damaged relationships.
- Arbitration hearings often result in one side being awarded 100% of the money in dispute. Through informal dispute resolution, the parties have an opportunity to share or split a disputed commission in a manner that is agreeable to both sides.

Filing and Replying to an Arbitration Request

- **CasePro.** Texas REALTORS® uses an online case management system called CasePro. To file for arbitration, you must first call and speak with one of our staff members at 800-873-9155. Our staff will discuss the arbitration process and enter your contact information into the system. You will then receive an auto-generated email from the CasePro system to complete the arbitration submission.
- **Narrative Description.** When filing a request for arbitration or replying to a request for arbitration, you should include a narrative description of the circumstances that led to the dispute. Each side should include details on why they believe they are entitled to 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 material that is not relevant to the case.
 - **Be organized.** It will be easier for the hearing panel to follow along if your documentation is well organized. 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. Combine various documents into one file, if possible. 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.

- **Page Limit.** The narrative description of the circumstances of the case is limited to 10 letter size pages. All other documentation submitted with the request for arbitration or reply is limited to 50 letter size pages. It is the responsibility of all parties to submit or resubmit documents that do not exceed these limits. Texas REALTORS® will not remove any documentation from your submission. 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, such as the ombudsman service.
- **Filing an Ethics and Arbitration Case.** If an ethics complaint and request for arbitration are filed regarding the same event or transaction, the arbitration request will be heard first. The ethics complaint will be held in abeyance until after the arbitration case has been concluded.

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. For more details about the types of disputes Texas REALTORS® may arbitrate, please see the Arbitration Policy Guide beginning on page 7.
- The Grievance Tribunal does not decide which party should be awarded the money in dispute. They only decide if the request should proceed to the next step, which is an arbitration hearing.
- The Grievance Tribunal may dismiss the request if they find the dispute is not the type of case the association may arbitrate. Complainants will be provided information regarding appealing the Grievance Tribunal's dismissal.
- 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 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, additional documents may be used at a hearing, if the Hearing Officer determines the documents are relevant.
- The respondent will be notified of the request to arbitrate and the decision of the Grievance Tribunal. The respondent should 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® or legal counsel in the case,
 - A partner, employer, employee, or in any way associated in business with any party or REALTOR® or legal 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 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 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 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.
- **Documentation.** 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 and unnecessary continuances. We request the parties provide documents at least 5 business days before the hearing date.

Preparing for the hearing

- 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, and calling witnesses.
- **Burden of Proof.** Complainants have the ultimate responsibility (“burden”) of proving that they are entitled to the money in dispute.
- **Standard of Proof.** 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.”
- Parties should ensure that their witnesses and counsel will be available on the day of the hearing. Continuances are a privilege, not a right.
- Parties should ensure they have all the documents and other evidence needed to present their case.
- Parties should think about and organize their testimony and evidence before the hearing.

At the hearing

- A Hearing Officer will preside over the hearing to ensure proper procedures are followed. A panel of REALTORS® will listen to testimony and review evidence to determine which party is entitled to the money in dispute. The hearing panel serves a similar function as a jury in a trial while the Hearing Officer would be the judge. Members of the hearing panel have received specialized training regarding procuring cause and the procedures for arbitrating disputes.
- Please 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 money in dispute 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.
- **Time Limit.** The parties do not have a time limit regarding their testimony. However, in the interest

of fairness to all parties, the Hearing Officer may limit the time a party has to present their case if the Hearing Officer determines a party is unreasonably delaying the hearing, presenting evidence that is duplicative or not relevant to the matter, or other similar reasons. Parties are strongly encouraged to notify Texas REALTORS® as soon as practical if a party believes their presentation will take multiple days. Please keep in mind that if a hearing is continued, the continuance is subject to the availability of the hearing panel and other parties and witnesses. There is no guarantee that the hearing will continue on the following day.

- 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 issues under consideration, it is their responsibility to present the information during the hearing.
- 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.
- The decision will indicate which party has been awarded the money in dispute.
- An award in an arbitration proceeding is limited to the amount in dispute and will not include punitive damages, attorney's fees, or interest, unless the agreement between the parties specifically provides for such damages and the award is permitted by Texas law. MLS rules regarding offers of compensation do not provide for such damages.
- 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 parties will be provided information regarding the procedures for appealing the decision after the hearing.

Frequently Asked Questions

General Questions

Q: Is there a fee to use Texas REALTORS® arbitration?

A: Yes. Both parties are required to pay a filing fee of \$400. Texas REALTORS® will provide a link to pay the filing fee online or parties can mail a check.

Q: If I win, will I get my filing fee back?

A: No. The filing fee covers the administrative costs of conducting an arbitration.

Q: What happens after I file for arbitration?

A: The request to arbitrate will first be reviewed by a Grievance Tribunal. They perform an initial review to determine if the matter is the type of case that Texas REALTORS® may arbitrate and whether it is mandatory or voluntary. The case may be dismissed or forwarded to a hearing.

Q: My broker won't pay me; can I file for arbitration?

A: Disputes between a sales agent and their sponsoring broker can only be arbitrated by Texas REALTORS® on a voluntary basis. Your sponsoring broker would have to agree to the arbitration.

Q: How long will it take before a hearing is held?

A: Texas REALTORS® works diligently to process arbitration requests as quickly as possible. However, because of the high volume of ethics complaints and arbitration requests processed by Texas REALTORS®, it may take several months before a hearing can be scheduled. Parties are strongly encouraged to consider using the ombudsman or mediation services to resolve disputes.

Q: Where will the hearing be held?

A: Hearings are conducted remotely using the Zoom platform. Everyone participating in the hearing (parties, witnesses, counsel) must have a device with audio, video, and internet capabilities.

Q: Do I have to attend the hearing?

A: Yes. If a complainant (the party requesting arbitration) refuses to attend the hearing, we will be forced to dismiss the case. If a respondent does not attend the hearing, the hearing may move forward in their absence, with the respondent losing the opportunity to present evidence in their favor.

Q: Should I have an attorney present?

A: Parties have a right to be represented by legal counsel. Each party must determine for themselves whether they wish to retain legal counsel.

Q: What happens during the hearing?

A: The hearing is where the parties get to tell their side of the story. The complainant and respondent may testify and present evidence and witnesses to try to prove they are entitled to the money in dispute. The parties will be given an outline of procedures that explains the step by step process of a hearing. The parties will also be invited to attend a pre-hearing conference with the Hearing Officer who will further explain the hearing process and answer any procedural questions.

Q: How long does the hearing take?

A: Every hearing is different. A typical hearing will start at 10:00 am (central) and conclude within 2 or 3 hours. More complex matters may take more time.

Q: Will Texas REALTORS® contact my witnesses and give them the meeting information?

A: No. Each party is responsible for ensuring their witnesses are available on the date of the hearing and have the necessary log in information for the hearing over the Zoom platform.

Questions Regarding CasePro

Q: I have not received an email from CasePro regarding my case.

A: First, please check your spam folder for emails from CasePro. Second, make sure Texas REALTORS® has your correct email address.

Q: What browsers are compatible with filling out my ethics complaint or arbitration request using the CasePro link?

A: We recommend using Google Chrome or Microsoft Edge as your browser. CasePro will work with other browsers, but if you encounter difficulties or an error message, you should switch to Chrome or Edge.

Q: I have been trying to work with CasePro on my cell phone and keep getting an error message. What am I doing wrong?

A: Please use a PC or Mac. Using a cell phone, iPad, or other mobile device will result in an error message.

Q: What type of document files may I upload as my supporting documentation?

A: CasePro only accepts .pdf or .png file types for uploading.

Q: After I click the CasePro link, how long do I have to submit my request to arbitrate?

A: You have 15 minutes to complete each step of the submission process. If you have a lengthy narrative description of the circumstances concerning your case, we recommend you type "See attached PDF" in the description box. You may then upload a PDF of the summary in next step, "supporting documents". Please name the PDF file, "Narrative Description".

Q: I have an audio/video file I want to submit; how do I do that?

A: Please email the file, or a link to the file, to prostandards@texasrealtors.com. Please be aware that there are state and federal laws regarding audio and video recording of individuals. Any submitted audio/video file will be reviewed by Texas REALTORS® legal counsel for compliance.

Q: I keep trying to submit a PDF file and am unable to proceed to the next step. What am I doing wrong?

A: Check the size of your file. Each document uploaded may not exceed 50 mb. You may need to compress or split a larger file into multiple files.

Q: CasePro does not seem to be accepting a supporting document, what else could be wrong?

A: When uploading a document, you MUST wait for the upload progression bar and the percentage indicator to complete the process. It will display "100%" and the file name will turn green. You may then proceed to the next document or step.



Arbitration Policy Guide

In an effort to improve transparency and understanding regarding the Texas REALTORS® arbitration process, we are providing this brief policy guide.

Contractual Disputes and Non-Contractual Disputes

Texas REALTORS® may arbitrate disputes between REALTORS® arising out of their relationship as REALTORS®. We may also arbitrate disputes between a REALTOR® and their client if the client agrees to be bound by the results. **There are two types of disputes arbitrable through Texas REALTORS®:**

Contractual Disputes. A dispute that arose from a contract between the parties requesting arbitration. The most common contractual dispute arbitrated by Texas REALTORS® is a dispute based on a listing broker's offer of compensation included in an MLS listing.

Non-Contractual Disputes. Texas REALTORS® may also arbitrate disputes between REALTORS® that do not have a direct contractual relationship with each other. **There are only five types of non-contractual disputes arbitrable by Texas REALTORS®.** The five types are listed under Standard of Practice 17-4 of the Code of Ethics (see below). The most common non-contractual dispute involves two cooperating brokers that both claim to be "procuring cause". **Note:** Each type of non-contractual dispute has specific policies and limitations which apply only to that type of dispute. The policies and limitations listed under 17-4 do **NOT** apply to "contractual disputes".

Specific non-contractual disputes (Standard of Practice 17-4)

1. Where a listing broker has compensated a cooperating broker and another cooperating broker subsequently claims to be the procuring cause of the sale or lease.
2. Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating broker claims to be the procuring cause of sale or lease.
3. Where a buyer or tenant representative is compensated by the buyer or tenant and, as a result, the listing broker reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating broker claims to be the procuring cause of sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent.
4. Where two or more listing brokers claim entitlement to compensation pursuant to open listings with a seller or landlord who agrees to participate in arbitration (or who requests arbitration) and who agrees to be bound by the decision.
5. Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, claims to be the procuring cause of sale or lease.

MLS Compensation Disputes

Contractual Agreement. As stated above, disputes over MLS compensation are the most common types of disputes arbitrated by Texas REALTORS®. Disputes over MLS compensation fall under the “contractual” category. When a listing broker includes compensation with an MLS listing, including bonuses, they are making an unconditional, unilateral offer to compensate the cooperating broker. The MLS rules and regulations create the contractual agreement. REALTORS® do not need a separate written contract to have a “contractual” dispute when the dispute is based on MLS compensation.

Procuring Cause. For the MLS offer of compensation to be binding on the listing broker and the cooperating broker to be entitled to the compensation, the cooperating broker must be the “procuring cause” of the transaction. Procuring cause is defined as the uninterrupted series of causal events which results in the successful transaction. Or, in other words, who “caused” the successful transaction to come about. See “Procuring Cause” below for more details.

Note: It is essential for parties to an arbitration to establish who is the procuring cause of the transaction for disputes over an MLS compensation. If the dispute is based on an agreement outside of MLS compensation, the terms of the agreement will determine who is entitled to the compensation.

Broker to Broker. The offer of compensation in the MLS is offered from the listing broker to a cooperation broker. It is not the commission the seller or owner will pay. If a cooperating broker is the procuring cause of the transaction, the listing broker, not the seller, is responsible for paying the listed commission, including bonuses.

Procuring Cause

Whether a REALTOR® 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”. For example, some REALTORS® mistakenly believe that the agent that first showed the property is automatically the procuring cause. Showing the property is certainly a factor in determining procuring cause, but it is not the only factor. Here are a few of the many factors that should be considered:

- 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?

“But I have a buyer’s rep!”. Agency relationships and “procuring cause” are separate issues. Having a buyer’s representation agreement with the buyer does not automatically entitle a broker to the MLS compensation. The listing broker’s offer of compensation in the MLS is made to the cooperating broker that is the procuring cause of the transaction. The listing broker is only obligated to pay the broker that is determined to be the procuring cause.

Mandatory v. Voluntary

In accordance with Article 17 of the Code of Ethics and the procedures expressed in the *Code of Ethics and Arbitration Manual*, REALTORS® are required to use the association’s arbitration services for certain types of disputes, such as contractual disputes between REALTORS® in different firms. However, it is voluntary to use the arbitration services for other types of disputes, such as disputes between REALTORS® in the same firm or disputes between a sales agent and their sponsoring broker. If a dispute is classified as voluntary, all parties must agree to submit the matter to Texas REALTORS®.

| Mandatory | Voluntary |
|---|---|
| Broker v. Broker (different firms) | Sales Agent v. Sponsoring Broker |
| Sales agent v. Broker (different firms) *Only if principal broker files for arbitration. | Sales Agent v. Previous Sponsoring Broker |
| Client v. Broker *Only if Client agrees to be bound by decision. | Broker (REALTOR®) v. Broker (non-member) |
| | Customer v. Broker |

Grievance Tribunal. All requests for arbitration are first reviewed by a Grievance Tribunal to determine if the dispute is properly arbitrable (contractual or specific non-contractual disputes) and whether the arbitration is mandatory or voluntary.

Who can file for Arbitration

- Only REALTOR® principals who participate in an MLS have the right to invoke the arbitration services of Texas REALTOR®.
- REALTOR® nonprincipals (sales agents and broker associates) who have a vested financial interest in the outcome, have the right to be present and participate throughout the arbitration proceedings, but they cannot file for arbitration and are not considered to be parties.
- A client of a REALTOR® principal may file for arbitration in a business dispute arising out of an agency relationship, provided the client agrees to be bound by the arbitration.

Note: The NAR *Code of Ethics and Arbitration Manual*, along with specific policies adopted by Texas REALTORS®, contain the policies and procedures followed for processing ethics and arbitration cases. The current version of the *Manual* can be downloaded at no cost on the NAR website at <https://www.nar.realtor/code-of-ethics-and-arbitration-manual>. Additional details regarding the following topics can be found in the *Manual*:

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| • Mandatory and Voluntary Types of Arbitration | Pages 146 to 147 |
| • Contractual and Non-contractual Disputes | Pages 155 to 157 |
| • Procuring Cause | Pages 160 to 166 |