



CCIAOR Arbitration Request Filing Packet REALTOR® Member

This packet is for REALTOR® members who wish to file an arbitration request against a member of the Cape Cod & Islands Association of REALTORS®.

Included in the packet are the following pages:

- *General Instructions and Information for Filing an Arbitration Request*, which is designed to guide you through the arbitration filing process
- *Request and Agreement to Arbitrate* (form #A-1)
- *Addendum* (Filing and Arbitration Request)
- Part 10, Section 44. Duty and Privilege to Arbitrate of the *National Association of REALTORS Code of Ethics and Arbitration Manual*, which discusses mandatory vs. voluntary arbitration
- Article 17 of the *Code of Ethics*, which discusses contractual and non-contractual disputes
- *Frequently Asked Questions (Arbitration)*

Please feel free to contact Professional Standards Administrator Karen Jaworski at 508-957-4313 or karen@cciaor.com if you have any questions.



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General Instructions for Filing an Arbitration Request (REALTOR® Member)

Please review the following information, which is designed to guide you through the arbitration request filing process.

The Cape Cod & Islands Association of REALTORS®, Inc. (CCIAOR) follows the policies of the National Association of REALTORS® (NAR) as outlined in its *Code of Ethics and Arbitration Manual*.

The NAR *Code of Ethics and Arbitration Manual* stipulates that arbitration requests “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 due diligence, whichever is later.”

Step 1 (Complainant’s responsibility)

1. If you decide to file an arbitration request, a *Request and Agreement to Arbitrate* (form #A-1) must be completed and signed by the **REALTOR® principal**. A **typewritten** or **legible hand printed** narrative stating a detailed account of the nature of dispute and the amount of dispute must be submitted along with the Arbitration Request form.
2. Please review and complete the attached **Addendum** (Filing an Arbitration Request-Member).
3. **Please submit the original plus twelve (12) copies of your arbitration request package to the Cape Cod & Islands Association of REALTORS®, Inc. office.**

Step 2 (Association’s responsibility)

4. The Grievance Committee, who acts as a “Grand Jury”, reviews an arbitration request and determines if the facts alleged in the request are taken as true on their face is the matter related to a real estate transaction and is it properly arbitrable. If an arbitrable matter exists, the Committee must also determine if participation by the parties’ is **mandatory** or **voluntary** (See attached Part 10, Section 44 of the NAR *Code of Ethics and Arbitration Manual*).

If a case is determined to be **mandatory**, the Association will serve a copy of the arbitration request on the respondent(s) and notify them that they **must** file a written response with the Association within fifteen (**15**) days. A copy of the response will be forwarded to the complainant.

If a case is determined to be **voluntary**, the Association will serve a copy of the arbitration request on the respondent(s) and notify them that they **may** file a written response with the Association within fifteen (**15**) days. However, if the respondent(s) does not wish to arbitrate, the Association may not proceed with the arbitration. If the respondent wishes to arbitrate, a copy of the response will be forwarded to the complainant.



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5. The CCIAOR requires Mediation **prior** to Arbitration. Mediation can be quicker, easier and more amicable than the formal arbitration process. If the mediation is successful, the case will be closed. If the mediation is not successful, the case will move forward in the arbitration process.
6. The parties will be served with a Notice of Right to Challenge Tribunal Members (Forms #A-6 and #A-7) and will be given the opportunity to challenge for cause the qualification of any member of the Professional Standards Committee prior to their appointment.
7. The parties will receive at least twenty-one (**21**) days' notice prior to the date of hearing. The *Official Notice of Arbitration Hearing* will include the individuals appointed to serve as hearing panel members as well as the date, time and place of the hearing. Please read the *Official Notice* carefully as it includes information regarding legal representation and witnesses. Along with the *Official Notice*, you will be provided with an *Outline of Procedure of an Arbitration Hearing and Arbitration Guidelines*.

Step 3 (Parties' responsibility)

8. The parties to an arbitration hearing are primarily responsible for the production of witnesses and evidence which they intend to present at the hearing. Any party who intends to call witnesses to a hearing must provide the Association and the other party the names of these witnesses at least fifteen (**15**) days prior to the hearing.
9. The standard of proof on which an arbitration hearing decision is based shall be a "preponderance of the evidence". Preponderance of the evidence shall be defined as evidence which is of greater weight or more convincing than the evidence which is offered in the opposition to it; that is, evidence which as a whole shows that the facts sought to be proved are more probable than not. The initial burden of proof rests with the party requesting arbitration.
10. The parties to an arbitration hearing may be represented by legal counsel and must provide the Association and the other party of the name, address and phone number of their counsel at least fifteen (**15**) days prior to the hearing. Each party is responsible for the expenses of their respective counsel.

Step 4 (Parties' and Association's responsibility)

11. The hearing will commence on the scheduled date and time. The NAR *Code of Ethics and Arbitration Manual* states, "the parties shall with diligence present to the panelists in writing such statements and proof which they deem necessary to support their positions. Proof may be submitted in the form of affidavits or otherwise. The Hearing Panel may require that statements be verified by affidavits or that accuracy or authenticity of any documents or other papers submitted be verified by affidavit. At the hearing, the panelists shall receive any further written statements, documents, or other papers, shall hear oral testimony and determine what personal appearances shall be made by the parties, and shall regulate the holding of hearings. The Hearing Panel may receive and consider any evidence it deems material and proper, including evidence of experts. Each party is



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responsible for the expenses of expert witnesses he calls. Parties to the ethics complaint shall be entitled to have counsel present at any hearing.” When the hearing adjourns, the parties will be excused, and the hearing panel will meet in executive session to determine the award. The award will then be mailed to the parties in a timely fashion.

12. After the Award has been served on each party, they have twenty **(20)** days to request a Procedural Review of the arbitration hearing procedure by the Board of Directors.

REQUEST AND AGREEMENT TO ARBITRATE

AGREEMENTS TO ARBITRATE ARE IRREVOCABLE EXCEPT AS OTHERWISE PROVIDED UNDER STATE LAW.

- 1) The undersigned, by becoming and remaining a member of the Cape Cod and Islands Association of REALTORS®, Inc., (or Participant in its MLS), has previously consented to arbitration through the Association under its Rules and Regulations.
- 2) I am informed that each person named below is a member in good standing of the Association (or Participant in its MLS), or was a member of said Association of REALTORS® at the time the dispute arose.
- 3) A dispute arising out of the real estate business as defined by Article 17 of the Code of Ethics exists between me (or my firm) and (list all persons you wish to name as respondents to this arbitration):

(Name _____, REALTOR® Principal (Company & Address) _____)

(Name _____, REALTOR® Principal (Company & Address) _____)

Firm

Address

- 4) There is due, unpaid and owing to me (or I retain) from the above-named persons the sum of \$ _____. My claim is predicated upon the statement attached, marked "Exhibit 1" and incorporated by reference into this application.
- 5) I request and consent to arbitration through the Association in accordance with its *Code of Ethics and Arbitration Manual*, and I agree to abide by the arbitration award and to comply with it promptly.

In the event I do not comply with the arbitration award and it is necessary for any party to this arbitration to obtain judicial confirmation and enforcement of the arbitration award against me, I agree to pay the party obtaining such confirmation the costs and reasonable attorney's fees incurred in obtaining such confirmation and enforcement.

- 6) I understand that I may be represented by counsel, and that I should give written notice no less than fifteen (15) days before the hearing of the name, address and phone number of my attorney to all parties and the Association. Failure to provide this notice may result in a continuance of the hearing, if the Hearing Panel determines that the rights of the other party(ies) require representation.

Each party must provide a list of the names of witnesses he intends to call at the hearing to the Association and to all other parties not less than fifteen (15) days prior to the hearing. Each party shall arrange for his witnesses to be present at the time and place designated for the hearing. **The following REALTOR® nonprincipal (or REALTOR-ASSOCIATE® nonprincipal) affiliated with my firm has a financial interest in the outcome of the proceeding and has the right to be present throughout the hearing:**

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- 7) I declare that this application and the allegations contained herein are true and correct to the best of my knowledge and belief and this request for arbitration is filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later.

- 8) If either party to an arbitration request believes that the Grievance Committee has incorrectly classified the issue presented in the request (i.e., mandatory or voluntary), the party has twenty (20) days from the date of receipt of the Grievance Committee's decision to file a written appeal of the decision. Only those materials that the Grievance Committee had at the time of its determination may be considered with the appeal by the Board of Directors.
- 9) Are the circumstances giving rise to this arbitration request the subject of civil litigation? _____Yes _____No
- 10) Important note related to arbitration conducted pursuant to Standard of Practice 17-4 (1) or (2): Where arbitration is conducted between two (or more) cooperating brokers pursuant to Standard of Practice 17-4 (1) or (2), the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker and any amount credited or paid to a party to the transaction at the direction of the respondent.

Dated: _____

COMPLAINANT(S):

Signature of REALTOR® **Principal**

Name (Type or Print)

Company

Address

City, State, Zip

Phone

Signature of REALTOR® **Principal**

Name (Type or Print)

Company

Address

City, State, Zip

Phone

**Name of Firm

Address

** In cases where arbitration is requested in the name of a firm comprised of REALTORS® (principals), the request must be signed by at least one of the REALTORS® of the firm as a co-complainant.



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Addendum
(Filing an Arbitration Request - REALTOR® Member)

Please answer the following questions and submit them with your narrative:

1. Are the circumstances giving rise to this arbitration complaint involved in civil or criminal litigation or in any proceeding before the state real estate licensing authority or any other state or federal regulatory or administrative agency?
2. What is the property address involved in this matter?
3. What was the closing date of the property involved in this matter?
4. On what date(s) did this matter occur?
5. Were you the listing agent, cooperating agent, buyer agent, facilitator, dual disclosed agent or rental agent in this matter?
6. Were any other agents involved in this matter, if so, what was their role?

- Please include the following documentation, if available, with your ethics complaint package as the Grievance Committee and Professional Standards Panel may request specific information (please mark all documents as Exhibits (Exhibit A, Exhibit B, etc.):

Disclosure form

Listing Agreement

Copy of Deposit Check

Offer to Purchase

Rental Agreement

Lease

Purchase and Sales Agreement

Buyer Representation Agreement

- Please do not submit original documents to the Association. Although parties are encouraged to bring original documents to a hearing for examination by the Hearing Panel, the Association will not accept liability for the safekeeping of original documents.

Please complete and include this Addendum with your arbitration request package.



Code of Ethics & Arbitration Manual

Home

Code of Ethics and Arbitration Manual

- a. By becoming and remaining a member and by signing or having signed the agreement to abide by the bylaws of the Board, every member, where consistent with applicable law, binds himself or herself and agrees to submit to arbitration (and to mediation if required) by the Board's facilities all disputes as defined by Article 17 of the Code of Ethics and, as set forth in the provisions of this Manual, 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's facilities. The duty to submit to arbitration continues in effect even after membership lapses or is terminated, provided that the dispute arose while the respondent was a REALTOR® or an MLS Participant. (Amended 11/11)

Mandatory types of arbitration

(1) 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 with that firm (or both), or nonmember broker/appraiser or their firm (or both) who is a Participant in the Board's MLS. (Amended 05/01)

(2) 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 or with their firm (or both), 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 or with their firm (or both). Arbitration in such cases shall be between the REALTOR® principals or their firms (or both). REALTOR® nonprincipals and REALTOR-ASSOCIATE@s who invoke arbitration in this manner, 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. (Amended 05/01)

(3) A client of a REALTOR® principal may invoke the arbitration facilities of the Board in a

business dispute with a REALTOR® principal or the REALTOR®'s firm (or both) arising out of an agency relationship or legally recognized non-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 **Part Ten**, Section 45. 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. (Amended 11/17)

Voluntary types of arbitration

(4) REALTORS® and REALTOR-ASSOCIATE®s 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 in accordance with the provisions of **Part Ten**, Section 45 of this Manual. 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. (Amended 11/95)

(5) A REALTOR® principal may invoke the arbitration facilities of his Board with a nonmember broker, provided each party agrees in writing to the arbitration and provided the Board finds the matter properly subject to arbitration in accordance with the provisions of **Part Ten**, Section 45 of this Manual. However, it shall be optional with the member as to whether he will submit to a claim to arbitration with a nonmember broker who is not an MLS Participant. A nonmember broker who is not an MLS Participant or nonmember salesperson may invoke the arbitration facilities of the Board of REALTORS® in cases where they believe they have an arbitrable dispute with a REALTOR®. Under these circumstances, REALTORS® are not required to agree to or participate in arbitration. (Amended 11/12)

(6) 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 a client and provided all parties to the dispute (i.e., the customer and the REALTOR®) agree in writing to arbitrate the dispute. (Amended 11/95)

- b. Where mandatory arbitration (and mediation if required by a Board) is consistent with applicable state law, the Code of Ethics, Article 17, requires only that disputes arising out of the real estate business between REALTORS® "... associated with different firms..." be arbitrated (or mediated if required by a Board). The various provisions of this Section represent the interpretations of the Professional Standards Committee with approval of the Board of Directors of the National Association as to appropriate policy of a Member Board in the matter of providing arbitration and mediation facilities by the Board. Thus, Member Boards must provide arbitration and mediation facilities for Board Members in the types of arbitration described in the preceding paragraphs (1),(2), and (3) and a Board may require REALTORS® (principals) to mediate otherwise arbitrable matters. Member Boards may provide arbitration and mediation facilities for the additional types of disputes described in the preceding paragraphs (4), (5), and (6). However, Member Boards shall not establish any mandatory requirement of its Board Members to arbitrate and/or mediate in the circumstances described in paragraphs (4), (5), and (6). No arbitration shall be initiated by the Board and no arbitration shall be undertaken by the Board unless it determines the dispute is properly arbitrable in accordance with the provisions of **Part Ten, Section 45** of this Manual. (*Revised 11/11*)

[Search Code of Ethics and Arbitration Manual](#)



National Association of REALTORS – Code of Ethics & Standards of Practice

Article 17 ([Case Interpretations for Article 17](#))

In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between REALTORS® (principals) associated with different firms, arising out of their relationship as REALTORS®, the REALTORS® shall mediate the dispute if the Board requires its members to mediate. If the dispute is not resolved through mediation, or if mediation is not required, REALTORS® shall submit the dispute to arbitration in accordance with the policies of their Board rather than litigate the matter.

In the event clients of REALTORS® wish to mediate or arbitrate contractual disputes arising out of real estate transactions, REALTORS® shall mediate or arbitrate those disputes in accordance with the policies of the Board, provided the clients agree to be bound by any resulting agreement or award.

The obligation to participate in mediation or arbitration contemplated by this Article includes the obligation of REALTORS® (principals) to cause their firms to mediate or arbitrate and be bound by any resulting agreement or award. *(Amended 1/12)* [\[listen\]](#)

- Standard of Practice 17-1

The filing of litigation and refusal to withdraw from it by REALTORS® in an arbitrable matter constitutes a refusal to arbitrate. *(Adopted 2/86)*

- Standard of Practice 17-2

Article 17 does not require REALTORS® to mediate in those circumstances when all parties to the dispute advise the Board in writing that they choose not to mediate through the Board's facilities. The fact that all parties decline to participate in mediation does not relieve REALTORS® of the duty to arbitrate.

Article 17 does not require REALTORS® to arbitrate in those circumstances when all parties to the dispute advise the Board in writing that they choose not to arbitrate before the Board. *(Amended 1/12)*

- Standard of Practice 17-3

REALTORS®, when acting solely as principals in a real estate transaction, are not obligated to arbitrate disputes with other REALTORS® absent a specific written agreement to the contrary. *(Adopted 1/96)*

- Standard of Practice 17-4

Specific non-contractual disputes that are subject to arbitration pursuant to Article 17 are:

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. 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. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker and any amount credited or paid to a party to the transaction at the direction of the respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. *(Adopted 1/97, Amended 1/07)*
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. 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. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the seller or landlord and any amount credited or paid to a party to the transaction at the direction of the respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. *(Adopted 1/97, Amended 1/07)*
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. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. *(Adopted 1/97)*

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. In cases where one of the listing brokers has been compensated by the seller or landlord, the other listing broker, as complainant, may name the first listing broker as respondent and arbitration may proceed between the brokers. *(Adopted 1/97)*
 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. In such cases arbitration shall be between the listing broker and the buyer or tenant representative and the amount in dispute is limited to the amount of the reduction of commission to which the listing broker agreed. *(Adopted 1/05)*
- Standard of Practice 17-5

The obligation to arbitrate established in Article 17 includes disputes between REALTORS® (principals) in different states in instances where, absent an established inter-association arbitration agreement, the REALTOR® (principal) requesting arbitration agrees to submit to the jurisdiction of, travel to, participate in, and be bound by any resulting award rendered in arbitration conducted by the respondent(s) REALTOR®'s association, in instances where the respondent(s) REALTOR®'s association determines that an arbitrable issue exists. *(Adopted 1/07)*



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Frequently Asked Questions

- Question:** How long is the arbitration request process?
Answer: The Association makes every effort to complete the process in as timely a manner as possible.
- Question:** Must a REALTOR® respondent be present at an arbitration hearing?
Answer: Yes, all parties must attend an arbitration hearing. Arbitration shall not proceed unless the signed Response and Agreement Form (#A-4) has been received from the respondent.
- Question:** What if a REALTOR® respondent refuses to submit to arbitration?
Answer: According to the NAR Code of Ethics and Arbitration Manual, "if a complainant alleges that a member has improperly refused to submit a dispute to arbitration the complaint shall be referred to the Board of Directors... The sole question of fact for the Directors to decide will be whether the respondent has failed to submit an arbitrable matter to arbitration in violation of Article 17."
- Question:** Who may attend an arbitration hearing?
Answer: According to the NAR *Code of Ethics and Arbitration Manual*, if an arbitration case is forwarded to a hearing by the Grievance Committee, attendance is limited to the parties named on the Arbitration Forms and the parties' respective counsel and/or witnesses (witnesses are excused except during their testimony), the Hearing Panel members (including alternates); and Association staff and/or counsel, as deemed necessary.
- Question:** What if a REALTOR® member refuses to comply with an award?
Answer: According to the NAR *Code of Ethics and Arbitration Manual*, if a member fails to comply with an award, the recipient to whom the award has been rendered by the arbitration panel shall be advised by the Association to seek judicial enforcement and to request reimbursement of legal fees incurred in seeking enforcement. At the discretion of the Board of Directors, the Association may support the request for judicial enforcement in the court, and at its further discretion, the Association may reimburse the individual for costs incurred in seeking such judicial enforcement if the court does not grant reimbursement of legal cost to the plaintiff.
- Question:** Who will be informed of the outcome of the arbitration?
Answer: According to the NAR *Code of Ethics and Arbitration Manual*, the award is considered confidential. It will be available only to members of the hearing panel, to the parties, to counsel and staff as required or as otherwise specified in the *Manual*. Upon final action by the Hearing Panel in an arbitration proceeding, the decision, when signed by the members of the Hearing Panel (or a majority of them), shall be served upon the parties to the dispute.