



Greater Albuquerque
Association of REALTORS®
1635 University Blvd. NE
Albuquerque, NM 87102

The Greater Albuquerque Association of REALTORS® (GAAR) offers arbitration to resolve disputes over entitlement to a monetary transaction (e.g., a commission). A customer, client, or REALTOR® principal can request arbitration at the Greater Albuquerque Association of REALTORS®. To initiate an arbitration request, a Request and Agreement to Arbitrate (Form A-1 for REALTOR® members or Form A-2 for nonmembers) must be completed and submitted to the GAAR Professional Standards Office with details of the dispute, any documentation that may substantiate the party's position, and the required arbitration filing fee of \$250.

Requests for arbitration must be filed within one hundred eighty (180) days after the conclusion 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.

Upon receipt of an arbitration package, it will be referred to the Grievance Committee for their review and disposition. The Grievance Committee considers among other things whether the parties are entitled to invoke arbitration through the Board's facilities; whether the appropriate parties are named; whether the request was filed in a timely manner; whether the matter at issue is related to a real estate transaction; and whether there is some basis on which an award could be based. If the Committee determines it is an arbitrable matter, they classify the arbitration as either mandatory or voluntary and *move the matter forward to a professional standards hearing.

An arbitration matter is classified as mandatory when the dispute is between REALTORS® who are principal brokers in different firms or between clients and REALTOR® principals. An arbitration matter is classified as voluntary when the dispute is between members in the same firm; a REALTOR® principal and a non-member principal broker in another firm; or customers and REALTOR® principals.

*Please note that if the Grievance Committee classifies an Arbitration Request as mandatory, GAAR REALTORS® are required to participate in mediation (to allow parties to determine their own resolution) as part of their membership duties. If the mediation is not successful, parties may have an Arbitration Hearing Panel determine the outcome of the dispute.

The National Association of REALTORS® *Code of Ethics and Arbitration Manual* and the *Code of Ethics and Standards of Practice* are the source material and governing documents for GAAR's arbitration policies and procedures. Both documents can be accessed on GAAR's web site:

<http://www.gaar.com/code-of-ethics>

Voluntary mediation or the Ombudsman program is also available as a less costly and more informal and timely means of resolving arbitration matters. To obtain additional information regarding arbitration, mediation or the Ombudsman program, please contact the professional standards office of the Greater Albuquerque Association of REALTORS® at 505-724-3466.

505-842-1433
PHONE

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WEB



Greater Albuquerque
 Association of REALTORS®
 Professional Standards Office
 1635 University Blvd. NE
 Albuquerque, NM 87102
 505-724-3466

Form #A-1

REQUEST AND AGREEMENT TO ARBITRATE

1. The undersigned, by becoming and remaining a member of the Greater Albuquerque Association of REALTORS® (GAAR), has previously consented to arbitration through the Board under its Rules and Regulations.
2. I am informed that each person named below is a member in good standing of GAAR (or Participant in SWMLS) or was a member of GAAR 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 and/or firms you wish to name as respondents to this arbitration):*

| | | |
|----------------|----------------------|-----------|
| _____ | , REALTOR® Principal | _____ |
| (Printed Name) | | (Address) |
| _____ | , REALTOR® Principal | _____ |
| (Printed Name) | | (Address) |
| _____ | | _____ |
| (Firm Name) | | (Address) |

(NOTE: Arbitration is generally conducted between REALTOR® [principals] or between firms comprised of REALTOR® principals. Naming a REALTOR® [principal] as respondent enables the complainant to know who will participate in the hearing from the respondent's firm; naming a firm may increase the likelihood of collecting any resulting award.)

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 as Exhibit A, and incorporated by reference into this application. The disputed funds are currently held by _____.
5. I request and consent to arbitration through GAAR in accordance with the National Association of REALTORS® 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 enclose my check in the sum of **\$250.00** for the arbitration filing deposit.
7. I understand that I may be represented by legal 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 GAAR. 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.
8. Each party must provide a list of the names of witnesses he/she intends to call at the hearing to GAAR and to all other parties not less than fifteen (15) days prior to the hearing. Each party shall arrange for their 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:

_____.

All parties appearing at a hearing may be called as a witness without advance notice.

9. 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.
10. 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.
11. Are the circumstances giving rise to this Arbitration Request the subject of civil litigation? ____ Yes ____ No
12. 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, seller, or landlord and any amount credited or paid to a party to the transaction at the direction of the respondent.
13. Address of the property in the transaction giving rise to this arbitration request:

14. The sale/lease closed on:

15. Agreements to arbitrate are irrevocable except as otherwise provided under state law.

COMPLAINANT(s):**

| | | |
|----------------------|---|-----------|
| Name (Print or Type) | Signature of REALTOR [®] Principal | Date |
| Address | Email | Telephone |
| | | |
| Name (Print or Type) | Signature of REALTOR [®] Principal | Date |
| Address | Email | Telephone |
| | | |
| Name of Firm* | Address | |
| | | |
| Email | | Telephone |

* Complainants may name one or more REALTOR[®] principals or a firm comprised of REALTOR[®] principals as respondent(s). Or, complainants may name REALTOR[®] principals and firms as respondents.

** 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 REALTOR[®] principals of the firm as a co-complainant.

The Code Ethics and Arbitration Manual:

Part Ten - Arbitration of Disputes (Sections 43 and 44)

Section 43. Arbitrable Issues and Appropriate Parties

As used in Article 17 of the Code of Ethics and in Part Ten of this Manual, the terms “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, including entitlement to commissions and compensation in cooperative transactions, that arise out of the business relationships between REALTORS[®] and between REALTORS[®] and their clients and customers, as specified in Part Ten, Section 44, Duty and Privilege to Arbitrate. (Revised 11/96)

A Member Board should determine through advice of legal counsel:

- (1) Whether state law permits an agreement to binding arbitration in advance of a dispute or only after the dispute occurs, or
- (2) If binding arbitration is not recognized and is thus unenforceable by state law. The Board’s arbitration procedures must conform to applicable state law.

In 2001, Article 17 was amended by the addition of the following paragraph:

The obligation to participate in arbitration contemplated by this Article includes the obligation of REALTORS[®] (principals) to cause their firms to arbitrate and be bound by any award.

This expansion in the scope of Article 17 does not diminish the personal responsibility of REALTORS[®] to participate in arbitration. While Article 17 obligates REALTORS[®] to “. . . cause their firms to arbitrate and be bound by any award . . . ,” it does not confer REALTOR[®] membership status on real estate firms. Membership, and the duties membership imposes including adherence to the Code of Ethics, is still personal to every REALTOR[®].

The change to Article 17 enhances the dispute resolution process by increasing the availability of arbitration—and the likelihood that awards will be enforceable and paid. In many instances, the disputes giving rise to arbitration under Article 17 relate to contracts between REALTORS[®] firms or between REALTORS[®] acting on behalf of their respective firms. Even where disputes are actually between firms, Article 17 has required that arbitration complainants and respondents be individual REALTORS[®] (principals), and that awards be rendered in favor of and against individual REALTORS[®] (principals). In some instances this requirement has resulted in unfair results or rendered the arbitration process impotent because awards were uncollectible. Examples include REALTOR[®] (principal) respondents leaving the association’s jurisdiction, leaving the real estate business, relinquishing their status as a principal in the firm, or being insolvent or “judgment-proof.”

The expansion of Article 17 does not require substantive changes to the way associations of REALTORS[®] conduct arbitration. It does, however, give both arbitration complainants and respondents greater latitude in determining who the parties are and how any resulting award will be made.

For example, a REALTOR[®] seeking to invoke arbitration could name a REALTOR[®] (principal) in another firm as the sole respondent; could name multiple REALTORS[®] (principals) in the other firm as respondents; could name a firm (comprised of REALTOR[®] principals) as the respondent; or could name both individual REALTORS[®] (principals) and their firm as respondents. In this way, the likelihood of the arbitration process being thwarted because a named respondent is no longer subject to an association’s

jurisdiction before, during or after the arbitration process, or an award being uncollectible, is greatly reduced.

Similarly, individual REALTOR[®] respondents who want either additional REALTOR[®] principals or their firms (or both) to be parties to the dispute can file an arbitration request against the original complaints with additional REALTORS[®] (principals) or the firm (or both) named as complainants. In such cases both claims would be consolidated by the Grievance Committee and all claims would be resolved in a single hearing.

In 2012, Article 17 was further amended to provide Boards with discretionary authority to require Realtors[®] (principals) and their firms to mediate otherwise arbitratable disputes and be bound by any resulting agreement. Requiring Realtors[®] to mediate otherwise arbitratable disputes requires establishment of an affirmative obligation in the Board's governing documents. Enabling language can be found at realtor.org (see Model Bylaws). (*Adopted 11/11*)

Common questions include:

- (1) If only an individual REALTOR[®] (principal) is named as the respondent in an arbitration request, can a Hearing Panel make an award against the respondent's firm?

No. Awards can only be made against named parties in the arbitration request and agreement.

- (2) If only an individual REALTOR[®] (principal) is named as the complainant in an arbitration request, can a Hearing Panel make an award in favor of the complainant's firm?

No. Awards can only be made in favor of parties named in the arbitration request and agreement.

- (3) If an award is made against an individual REALTOR[®] (principal), is it enforceable against the respondent's firm?

Awards are generally enforceable against parties named in the award.

- (4) Can I name both a REALTOR[®] (principal) and his firm as respondents in an arbitration request?

Yes.

- (5) What is the advantage to naming both a REALTOR[®] (principal) and his firm as respondents in an arbitration request?

Naming a REALTOR[®] (principal) as respondent lets the complainant know who will appear at the hearing, and naming the firm as respondent increases the chances of collecting any resulting award.

- (6) If a REALTOR[®]'s firm is named as the respondent in an arbitration request and refuses to arbitrate, who can be named as respondent in a complaint alleging that Article 17 has been violated?

Any REALTOR[®] (principal) who holds membership locally or who enjoys MLS participatory rights through the association can be named as respondent.

- (7) If only a REALTOR[®]'s firm is named as respondent in an arbitration request, who is served with notices?

Any REALTOR[®] (principal) in the firm may be served with notices.

(*Revised 1/11*)

Section 44. Duty and Privilege to Arbitrate

- (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 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, 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 05/01)*

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 shall not be entitled to invoke the arbitration facilities of the Board of REALTORS®.

(Amended 11/95)

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 arbitratable 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*)