CALIFORNIA ASSOCIATION OF REALTORS®

Legal Q&A
C.A.R. Interboard Arbitration

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Introduction

The following questions and answers are intended to respond to the most commonly asked questions regarding the C.A.R. Interboard Arbitration process. The content provided in this document is not meant to substitute for the California Interboard Arbitration Rules and in the event any inconsistency appears to exist between the information provided in this document and the California Interboard Arbitration Rules, the latter shall control.

I. General

1. What is the basis for Arbitration?

Arbitration is a form of dispute resolution used by organized real estate to resolve disputes between its members.

When an individual joins a local board or association of REALTORS®, he or she signs a membership application, which contains an agreement to arbitrate disputes with other REALTORS® according to the board's or association's bylaws. This includes an agreement to use C.A.R.'s arbitration facilities to arbitrate disputes with REALTORS® who belong to another local board or association.

2. Why does C.A.R. process Interboard Arbitrations?

Most arbitrations between REALTORS® involve commission disputes and are conducted by local associations. Occasionally, disputes arise between REALTORS® who belong to different local associations. Such arbitrations are referred to as "Interboard Arbitration." To avoid creating an appearance of bias, C.A.R. processes Interboard Arbitrations as opposed to a local association where one of the REALTORS® holds membership.

3. Are the rules for C.A.R. Interboard Arbitration different than those for local association arbitration?

No. The rules used to conduct C.A.R. Interboard Arbitration are substantially the same as those used by local associations.

4. Who are the parties to an Interboard Arbitration?

The parties to C.A.R. Interboard Arbitration are members of C.A.R. who do not hold membership in a common local board or association.

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The “complainant” is the party who requests the arbitration; the “respondent” is the party who must answer the complaint.

II. Mediation as Alternative

5. Is mediation available as an alternative to C.A.R. Interboard Arbitration?

Yes, if all parties agree. Each member of the respondent and complainant parties will receive a form which contains a mediation option (form M-1). If all complainants and respondents agree to mediation, C.A.R. will schedule a mediation conference with a C.A.R. Interboard Arbitration mediator.

6. Does C.A.R. encourage mediation over arbitration? If so, why?

Yes. Mediation is a process whereby a mediator works with the parties to facilitate a mutually acceptable resolution of the dispute. In contrast, arbitration is a process whereby the parties submit their dispute to the arbitrator(s) who makes the decision for them. Since mediation allows the parties to better control the outcome of their dispute, C.A.R. encourages mediation prior to arbitration.

7. What happens if the dispute is settled through mediation?

If the parties reach settlement of their dispute through mediation, the parties will sign a stipulated arbitration award, thereby dismissing the arbitration complaint, and the complainant will receive $250 as a partial refund of the filing fee. In addition, the parties are released from any further obligation to arbitrate the dispute through C.A.R.

8. What happens if the dispute is withdrawn?

If the parties withdraw the complaint, C.A.R. will dismiss the arbitration complaint, releasing the parties from further obligation to arbitrate the dispute, and return $250 of the filing fee to the complainant.

9. What if the dispute is not settled through mediation?

Though mediation is highly successful, in the event the parties are unable to resolve their dispute through mediation, C.A.R. will continue processing the arbitration complaint and schedule a hearing.

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III. Filing the Complaint

10. What is the time frame to file a C.A.R. Interboard Arbitration complaint?

In order for C.A.R. to process an Interboard Arbitration complaint, the complaint must be filed with C.A.R. within 180 calendar days after the close of the transaction, if any, or after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later. A complaint is filed with C.A.R. on the date C.A.R. receives payment of the filing fee.

11. Is there a fee to file a C.A.R. Interboard Arbitration complaint?

Yes. The current filing fee is $500. C.A.R.will not process Interboard Arbitration complaints without receipt of the filing fee and filing the paperwork without payment of the fee does *not* extend the 180-day filing deadline.

12. Can I recover my filing fee if I prevail in the arbitration?

It depends. All parties to a C.A.R. Interboard Arbitration may request the hearing tribunal to award them certain costs related to the arbitration, including of the filing fee. However, whether a party will be awarded costs is at the discretion of the hearing tribunal.

13. Is the filing fee refundable if the complaint is later withdrawn?

Yes. If the complaint is withdrawn, C.A.R. will refund the filing fee less $250. After a hearing occurs, the entire filing fee is non-refundable.

14. Once I file my complaint, what happens next?

Once a complaint is properly filed with C.A.R., C.A.R. notifies the named respondent(s) by sending a copy of the complaint and all supporting documentation submitted with the complaint. The respondent(s) has fifteen (15) calendar days in which to submit a written response, if they so choose. If a written response is filed with C.A.R., C.A.R. will send a copy to the complainant(s).

Before a hearing is scheduled, all parties will be sent a list of potential arbitrators, a form to challenge any arbitrators from the list, and a form asking the parties for their availability for a hearing. If the parties have any challenges to potential arbitrators or are not available on any days during the time frame anticipated for scheduling the hearing, they must complete the appropriate forms and return them to C.A.R. Challenges to potential arbitrators must be for cause and the reasons for the challenge must be set forth in writing. After the time frame to submit challenges to arbitrators and to give notice of availability for hearing has lapsed, C.A.R. selects a panel of arbitrators, called the “hearing tribunal,” and schedules a hearing for the dispute.

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15. Can a respondent(s) claim I owe him or her money?

Yes, if the respondent's claim is based on the underlying facts and circumstances of the complaint. This action is called a counterclaim. If a counterclaim is filed, the complainant(s) has fifteen (15) days to respond to the counterclaim. The original complaint and counterclaim will be heard together by the same hearing tribunal.

IV. Named Parties

16. Who should be named as respondent(s)?

The California Interboard Arbitration Rules do not require the complainant to name any specific party or entity as respondent(s). Also, C.A.R. does not advise parties who should be named as respondent(s). Determining whom to name as respondent(s) is the responsibility of the complainant. If a complainant is unsure whom to name, he/she may want to consult an attorney.

17. Who should be named as a complainant? If I am a salesperson, can I file an Interboard Arbitration complaint without my responsible broker?

According to the California Interboard Arbitration Rules, the person acting as the complainant's responsible at the time of the dispute must also join (and sign) as complainant. This rule exists because most disputes in Interboard Arbitration are commission disputes and commissions flow through real estate brokers.

18. What if my responsible broker at the time the dispute occurred does not want to join me as a complainant?

Since the California Interboard Arbitration Rules require the responsible broker to join, C.A.R. cannot process the complaint if the responsible broker chooses not to join as a complainant.

19. What happens if my responsible broker will join as a complainant, but does not want to attend the hearing?

While the California Interboard Arbitration Rules require a responsible broker to join as a complainant, they do not require the responsible broker to attend the hearing. However, failure to attend may adversely affect the

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hearing tribunal's decision and any award rendered will still be binding on the responsible broker despite his/her failure to attend.

20. Will C.A.R. process my complaint if one or more of the brokers named as respondents share a common association membership with me?

Generally, no. C.A.R. only has jurisdiction to process arbitrations between broker members of different boards or associations. C.A.R. does not have jurisdiction to process an arbitration complaint with a named respondent broker who shares a common association membership with the complainant broker. The jurisdiction for this dispute would be the local association where they share the common association membership.

Having said the above, in some situations to avoid dual arbitration hearings over the same dispute, C.A.R. will process an arbitration complaint even where one of the named respondent brokers shares a common association membership with one of the complainant brokers. However, in order for C.A.R. to do this, all parties must agree to this arrangement.

21. What should I do if I feel I have been inappropriately named as a party in a C.A.R. Interboard Arbitration?

C.A.R. only processes Interboard Arbitration and does not make substantive decisions on who is a proper party. As long as the named party meets the basic jurisdictional requirement of Interboard Arbitration, i.e. he/she is a member of C.A.R., all decisions regarding whether the named party is "proper" are decided by the hearing tribunal.

V. The Hearing

22. How long does it take for a complaint to get to a hearing?

Usually complaints are heard within three to six months after they are filed with C.A.R. However, depending on a variety of factors, such as whether continuances are requested and granted, and the availability of the parties and arbitrators, it may take longer for a complaint to be heard.

23. Where is the arbitration hearing held?

C.A.R. Interboard Arbitration hearings are heard virtually.

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24. Who are the arbitrators that hear and decide the arbitration?

The arbitrators who hear and decide C.A.R. Interboard Arbitrations are REALTORS® who serve, or have served, as arbitrators at their local association and have qualified to serve as C.A.R. Interboard Arbitration Arbitrators.

25. How are the arbitrators selected?

Prior to the hearing, C.A.R. will send a list of potential arbitrators to the parties. The potential arbitrators have no common association membership with any of the parties. Each party may submit challenges to potential arbitrators on the list within fifteen (15) days from the date the list was sent. Challenges must be for cause, with the reasons set forth in writing. C.A.R. selects three or four unchallenged arbitrators from the list to serve on the hearing tribunal.

26. How is the hearing conducted?

The hearing process is similar to that of an arbitration hearing at a local association of REALTORS®. Each party first makes opening statements. After opening statements, first the complainant and then the respondent present their cases. Each party may call witnesses and the other parties have the right to cross-examine any witness called by the other party. After the conclusion of the parties' cases, each party makes a closing statement to the hearing tribunal. Then, the hearing panel dismisses the parties from the room, goes into deliberation and renders an award based on the evidence and testimony presented at the hearing and arguments made by the parties. The award is then sent by C.A.R. to the parties.

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VI. Continuance Requests

27. Can a party request a continuance of a scheduled hearing date?

Yes. A party may request a continuance, but such request must be in writing, for cause, and include the appropriate filing fee.

28. What does "for cause" mean?

Continuance requests are generally granted if the request is made "for cause." Usually, such occurrences as sudden illness, accident, death of a family member, improper notice of hearing, improper notice of other party having legal counsel at the hearing, and inability to review evidence submitted at the hearing are considered "for cause." However, excuses such as inconvenience, vacation, business meetings, or sporting events are usually not sufficient cause to grant a continuance request.

29. Who considers continuance requests?

If the continuance request is made more than five business days prior to the scheduled hearing date, C.A.R. considers the request. Otherwise, the hearing tribunal considers all continuance requests.

30. Can I request a continuance during the hearing?

Yes. All parties may request a continuance during the hearing. For example, situations where a party may wish to request a continuance are improper notice of other party having legal counsel at the hearing and inability to review evidence submitted at the hearing. The hearing tribunal will decide continuance requests made at the hearing.

31. Is there a fee to request a continuance?

A party's first continuance request is free, however, all additional continuance requests must be submitted with the appropriate fee. Currently, the continuance fee (second request) starts at $100 and escalates with each subsequent continuance granted.

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VII. Legal Representation

32. Can a party be represented by legal counsel at the hearing?

Yes. Fundamental to due process is the right to be represented by legal counsel. Any party to a C.A.R. Interboard Arbitration may be represented by legal counsel at any time during the arbitration process. If a party does retain legal counsel to represent them at the hearing, that party must provide written notification to C.A.R., all other parties and the hearing tribunal at least fifteen (15) calendar days prior to the hearing. If a party fails to comply with this notice requirement, the hearing tribunal may grant a continuance and the party will be responsible for the continuance fee and other costs associated with the continuance.

33. Can someone other than legal counsel represent a party at a hearing?

No. However, a party may authorize a nonlegal representative to be present at the hearing on his/her behalf, e.g., office manager, authorized agent, etc. Any purported authorization allowing a nonlegal representative to be present at the hearing on behalf of a party must be in writing, noticed to C.A.R., all parties and the hearing tribunal, and must indicate that the nonlegal representative has the authority to bind the party to the arbitration award rendered.

34. Can a family friend or relative attend the hearing with me?

No. Only named parties and their authorized representatives are allowed to be present during the hearing. Witnesses can also be present at the hearing, but only while testifying.

VIII. Subpoenas

35. Are subpoenas available for C.A.R. Interboard Arbitration?

Yes. However, subpoenas for C.A.R. Interboard Arbitration can only be used to require the attendance of witnesses or the production of books, records, documents and other evidence at the hearing. They are not available for prehearing discovery, such as depositions. C.A.R. provides the parties with subpoenas upon request. Each party is responsible for properly completing and serving the subpoena at his/her own expense.

IX. Legal Complexity and Magnitude of Amount Involved

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36. Can C.A.R. or the hearing tribunal dismiss my complaint?

Yes. C.A.R. or the hearing tribunal may dismiss a complaint if it is determined that the matter is too legally complex or the amount in controversy is too great for them to hear. If C.A.R. or the hearing tribunal makes this decision, the parties are released from their obligation to arbitrate and may seek any other remedies available to resolve their dispute.

X. Post Hearing Procedures

37. Can the decision of the hearing tribunal be appealed or reviewed by C.A.R.?

Yes, but only on very limited grounds. Under the California Interboard Arbitration Rules, any party may request a "Director's Review" of an award but the basis for such review is limited to allegations that a lack of due process occurred during the hearing process, e.g., a party was given improper notice of the hearing, not allowed to present all relevant evidence and testimony at the hearing, etc. The review is not a rehearing and should not be used in an attempt to have the merits of the dispute reconsidered.

38. Will the hearing tribunal provide the basis for their decision?

No. According to the Code of Ethics and Arbitration Manual provided by the National Association of REALTORS®, arbitration awards, unlike ethics decisions, do not include findings of fact or rationale.

"… While the question of whether arbitration decisions should include findings of fact has been discussed by the Professional Standards Committee on several occasions over the years, the Committee has consistently held that any possible educational benefits are far outweighed by the possibility that a proliferation of local association "arbitration case law" might quickly come into existence and that hearing panels would come to rely on these local determinations as the basis for subsequent arbitration awards instead of looking at each disputed transaction in its totality. It is for these reasons that the policies and procedures in the Code of Ethics and Arbitration Manual do not contemplate that written or oral explanations or rationale or "findings" will be part of arbitration awards rendered by hearing panels of associations of REALTORS®."

39. Is there a fee to request a Director's Review?

Yes. To file a request for review, the current filing fee is $500. The filing fee is refundable if a new hearing is ordered, but nonrefundable if the hearing tribunal's award is confirmed.

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40. Can new evidence be presented at the Director's Review?

No. As mentioned above, the grounds for a review are limited to allegations of lack of due process. A party should not attempt to submit new evidence in an attempt to have the merits of the arbitration award reconsidered.

41. Can I be represented by legal counsel at the Director's Review hearing?

Yes. If a party does elect to be represented by legal counsel at the Director's Review hearing, they are required to provide written notification to C.A.R., all other parties, and the Director's Review tribunal at least fifteen (15) calendar days prior to the review hearing.

42. How is the request for a Director's Review processed?

A request for a Director's Review is processed similarly to how the complaint was processed. Once the request is properly filed with C.A.R., the other parties are noticed and given an opportunity to respond. All parties are also given lists of potential review panelists, a form to challenge, for cause, such potential panelists, and a form to indicate their availability for a review hearing. Once the time frame for submitting these forms has lapsed, C.A.R. selects panelists not challenged to serve on the Director's Review tribunal and schedules a hearing. At the hearing, the non-prevailing party, the prevailing party and the original hearing's Presiding Officer or his or her designee make arguments to the Director's Review tribunal regarding whether or not there was a lack of due process.

43. Can continuances be requested prior to or during a Director's Review hearing?

Yes.

44. Can the Director's Review tribunal change or issue a different award?

No. The review panel has only two options in reviewing the hearing: (i) adopt the recommendation of the hearing tribunal; or (ii) remand for a new hearing. The review panel cannot modify or change the award.

45. If the review tribunal confirms the award, are there any other appeal or review rights outside of C.A.R.?

Yes, but they are also very limited. Under California law, a court may vacate an arbitration award on certain narrow grounds. If a party wishes to pursue a court action to vacate the decision of the hearing tribunal, he/she is advised to seek the advice of an attorney as to the appropriateness of such an action.

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XI. Enforcement of the Award

46. What should I do if the other party fails to abide by the award once it is considered final?

If the award has not been paid in total within fifteen (15) days of the date it is due, the prevailing party may choose to file a request for a "show cause" hearing in front of a panel of C.A.R. directors.
While C.A.R. does not have the legal authority to enforce an award, we can affect the membership of a non-prevailing party who does not cooperate with our arbitration process, including abiding by a finalized award. The purpose of a "show cause" hearing is to assess the non-prevailing party's financial ability to pay the award and whether or not some action should be taken against the non-prevailing party's membership for non-payment.

47. What are the possible outcomes of a "Show Cause" hearing?

Once final, C.A.R. does not have the power to modify an award. The "show cause" hearing panel may choose to: 1) take no action, 2) impose suspension of the non-prevailing party's association and/or MLS membership, or 3) set forth a payment plan, including interest on the award paid to the prevailing party. Any modifications to the payment schedule or interest added to the amount due does not constitute a modification of the award. Once an award is final, the prevailing party retains the right to have the award judicially confirmed. C.A.R. "show cause" proceedings are independent of and may run concurrently with judicial confirmation and enforcement of the award. Any suspension of membership imposed by the "show cause" hearing panel will not be enforced until judicial proceedings have concluded or, if no court action is filed, until one hundred one (101) days after the award is finalized.

48. What options do I have outside of C.A.R. to collect my award?

Under California law, a party seeking confirmation of an arbitration award has four years after the date of service of a signed copy of the award upon the respondent in which to petition a court to confirm the award. A party seeking confirmation of an arbitration award may recover his/her attorney's fees as part of the confirmation proceeding.

Once an arbitration award is confirmed, other legal procedures are available to collect or enforce the award. For example, the award can be reduced to a lien on the assets of the party refusing to pay the award and foreclosed upon. Since the legal procedures involved in enforcing an award are detailed, a party may wish to seek the advice and assistance of an attorney.

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XII. Where to Get Further Information

49. How can I get further information about C.A.R. Interboard Arbitration?

To get further information on C.A.R. Interboard Arbitration or to file an Interboard Arbitration complaint with C.A.R., please contact the C.A.R. Interboard Arbitration Administrators at (213) 739-8200.

The information contained herein is believed accurate as of June 19, 2019. It is intended to provide general answers to general questions and is not intended as a substitute for individual legal advice. Advice in specific situations may differ depending upon a wide variety of factors. Therefore, readers with specific legal questions should seek the advice of an attorney.
Revised by Brian Polinsky, Esq.

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