PRESIDING OFFICER'S STATEMENTS - ARBITRATION HEARING

CHAIRMAN'S OPENING STATEMENT AND CONDUCT OF HEARING: Ladies and Gentlemen, I now call this hearing to order. The professional standards committee is charged with holding appropriate hearings for the Association of REALTORS® in accordance with the procedures set forth in the Association's Bylaws and the *California Code of Ethics and Arbitration Manual*. These procedures provide for an arbitration hearing to resolve a dispute arising out of the real estate business. The hearing panel meeting here today is an impartial panel of members of the professional standards committee that has been selected and called here today to ascertain the truth in the particular matter at hand, which is an arbitration hearing, and to render a decision on the testimony and evidence presented. It is to be noted that an arbitration proceeding is to be clearly distinguished from a disciplinary proceeding and should be treated as a completely separate matter.

At this time, I would like to introduce the members of this hearing panel:

1. My name is _____, and I am the presiding officer.

2. Starting on my far left is _____, a member of the hearing panel (*presiding officer proceeds to introduce all hearing panel members from left to right*).

3. I now ask that each of you introduce yourself starting from my left and indicate your role in today's hearing.

4. **OPTIONAL**: Seated to my (left, right) is _____, the Association's legal counsel. I wish to make it clear that Association legal counsel shall not make direct inquiry of any party or witness, and, of course, will not participate in any decision of the panel. Association legal counsel is present to respond to questions which may be brought by the panelists concerning procedure under the Association's Bylaws or the laws of the State of California and shall not be considered counsel to the parties.

5. **OPTIONAL**: Also seated is _____, the court reporter transcribing these proceedings.

6. **OFFICIAL RECORD OF HEARING:** I want to inform each of you that today's hearing is being recorded. Each of you, when speaking, should identify yourself and please only one person speak at a time. Parties may purchase a copy of the recording upon written request, you should contact Association staff for the form. No other recording may be made of this hearing.

7. **CONFIDENTIAL NATURE OF HEARING:** Before we continue with this hearing, all persons are advised that the proceedings, report and findings of this *panel* are considered CONFIDENTIAL. All participants in this matter are admonished that failure to keep these proceedings and the resulting decisions confidential is a violation of the N.A.R. Code of Ethics and the Association's rules and procedures used for arbitration. Our decision will be available only to the *panel* members, parties, legal counsel and staff as disseminated to the parties within the required time period after this hearing is adjourned.

8. **BASIS OF HEARING:** This hearing is to arbitrate a dispute arising out of the real estate business. This panel is not a court of law, and is not governed by the technical rules of evidence that may apply in court. This panel shall seek to determine all ascertainable and relevant facts pertaining to the matter

under consideration to arrive at a peer judgment and decision that is fair to all parties. The panel determines its own rules of evidence and its own procedures to be followed to achieve the objectives of equity and due process. The following has been generally accepted and ruled on by this panel as the procedures for this hearing:

a. All parties or their representatives to these proceedings will be allowed a full opportunity to be heard on matters relevant to the issues. The panel may rule at any time during this hearing on the relevance of testimony being given, or questions being directed to any party or his representative, or to witnesses providing testimony. All parties and witnesses will be asked to swear or to affirm that the testimony given is the truth to the best of their knowledge.

b. A party may be represented by legal counsel. However, no party may refuse to respond directly to requests for information or questions addressed to him by the panel members except on grounds of self-incrimination or other grounds which the panel deems appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of his client if the panel desires direct testimony. Counsel is present to advise and consult with his client, and to speak for him subject to appropriate rulings or determinations by the panel. This panel will not tolerate any effort by a party or his counsel to harass, intimidate, coerce, or confuse the panelists or any party to the proceedings.

c. The panel may rule at any time on the admissibility of evidence. As presiding officer, I will act as keeper of the evidence introduced at this hearing and mark each with an exhibit identification number and date. All exhibits included in the hearing record may be used in part or full by the hearing panel in their deliberations.

d. The panel members are individually authorized to ask questions as they deem pertinent and significant at any time during this hearing. To preserve order, I will rule on questions or testimony by the parties and their representatives, or by witnesses in these proceedings. If deemed necessary, I will consult with the panel members (and with legal counsel advising the Association) concerning such rulings.

e. The parties are encouraged to settle the dispute at any time. At any time during the hearing, parties can ask for a recess in an attempt to reach a settlement agreement. The parties, with the assistance of their respective counsel, can determine the terms of their settlement agreement. The arbitration will continue to be processed until formally withdrawn by the complainant.

9. **OATHS/AFFIRMATIONS:** At this time, I request that all persons present in the room that expect to testify at this hearing stand and be sworn or to make the appropriate affirmation in lieu of being sworn. Raise your right hand and following the question I will pose, answer in the affirmative if you do so swear or affirm ..."Do you swear or affirm that the statements you are about to make at this hearing are the truth, the whole truth, and nothing but the truth given freely and without reservation?"

10. **WITNESSES**: All witnesses, please leave the room at this time until called to testify. Will the rest of you please be seated.

11. **OUTLINE OF PROCEDURE FOR HEARING**: I now ask the parties if you have read and understand the Outline of Procedure for Hearing that was furnished to each of you? If there is any question that you have concerning the hearing, I shall be glad to answer such questions at this time. If there are no questions, we shall assume that your silence indicates your understanding of the Outline of Procedure; and we shall proceed with the hearing (Form A-9 is completed).

12. **COMPLAINANT'S OPENING STATEMENT:** Each side should make a *short* opening statement and should not immediately jump to presenting all of their evidence. The complainant will now have an opportunity to state his or her case in the form of an opening statement if he or she wishes to.

13. **RESPONDENT'S OPENING STATEMENT:** The respondent will now have an opportunity to respond in the form of an opening statement if he or she wishes.

14. **COMPLAINANT'S PRESENTATION OF EVIDENCE**: The complainant will now state his or her case and present any witnesses that he or she may desire. Cross-examination of the complainant's witnesses by the respondent or his or her representative will be allowed.

15. **RESPONDENT'S PRESENTATION OF EVIDENCE**: The respondent will now state his or her case and present any witnesses he or she may desire. Cross-examination of the respondent's witnesses by the complainant or his or her representative will be allowed.

16. **COMPLAINANT'S CLOSING STATEMENT**: The complainant will now make his or her closing statement.

17. **RESPONDENT'S CLOSING STATEMENT**: The respondent will now make his or her closing statement.

18. **FAIR HEARING AND DUE PROCESS:** Ladies and gentlemen, if there is any additional evidence you would like to present, now is the time to do so. (*If no further evidence presented*) Seeing no further evidence, I now ask that each party answer affirmatively to the following question. Do you feel the processing of this matter by the Association and today's hearing procedures were fair and afforded you every opportunity to present your case? (*Have each party answer "yes;" if "no" is answered, presiding officer should determine what objections the party has and handle accordingly*)

19. **ADJOURNMENT**: Ladies and gentlemen thank you for your evidence and testimony regarding this matter. We will next go into executive session and deliberate our decision. You will be notified by the Association of our decision. This hearing is officially adjourned and you are excused.

20. **EXECUTIVE SESSION**: (General Guidelines) *After adjournment, the panel will remain in executive session to deliberate and render its decision. The decision should be reduced to writing on the proper form. Association counsel may remain during deliberation at the option of the hearing panel. Parties and witnesses should not be present during deliberations.*