



SOUTHLAND REGIONAL
ASSOCIATION OF REALTORS®, INC.

Enclosed are the Arbitration Agreement and the Procuring Cause Guidelines. The Professional Standards Rules will explain the Association arbitration process. Arbitration is broker to broker with the agents as the second named party.

It is essential that we receive the following with your Arbitration request:

1. Completed Arbitration Agreement (A-1)
2. The signature of the Responsible REALTOR® of the company and the agent.
3. All supporting documents
4. **\$500.00** filing fee - make your check payable to the Southland Regional Association of REALTORS® or complete the credit card information below and return it to us.
5. Request for Mediation (M-2). Mediation is not mandatory, but the Association strongly encourages mediation prior to Arbitration.

Please be advised that the Statute of Limitations for requests for Arbitration is 180 days after the close of the transaction (escrow).

If you have any questions, please feel free to call me at (818) 947-2226.

Sincerely,

Debra Howard
Professional Standards Administration

Enclosures



When filing an Arbitration Request, it is essential that we receive the following information in order to process it in a timely manner:

1. Address of the Property
2. Date Escrow Closed
3. The amount of money you are requesting
4. The names of the Complainants
5. The names of the Respondents
6. Signature of the Responsible REALTOR®
7. **\$500.00** filing fee
8. Any documentation to substantiate your claim

PLEASE BE AWARE, THERE IS A STATUTE OF LIMITATIONS OF 180 DAYS AFTER THE CLOSE OF ESCROW. ARBITRATIONS FILED AFTER THE TIME LIMIT WILL BE RETURNED.

ARBITRATION COMPLAINT
ASSOCIATION OF REALTORS®

1. A dispute arising from the real estate business has arisen between me (us) and the person(s) and/or entity(ies) named below (*Note: List all persons you wish to name as respondents. If you want to name a corporate entity as a respondent, you must indicate the corporation's legal name as a separately named respondent.*):

RESPONDENT(S):

(1) _____ Name of Respondent Brokerage (Type or Print)	(2) _____ Name of Responsible Broker (Type or Print)
_____ Name of Firm	_____ Name of Firm
_____ Street Address	_____ Street Address
_____ City, State, Zip	_____ City, State, Zip
(3) _____ Name (Type or Print)	(4) _____ Name (Type or Print)
_____ Name of Firm	_____ Name of Firm
_____ Street Address	_____ Street Address
_____ City, State, Zip	_____ City, State, Zip

2. The respondent(s) owes me the sum of \$_____. My claim is based upon the statement attached to this complaint, marked Exhibit "1", which is hereby incorporated by reference and made part of this complaint.
3. At the time the facts and circumstances giving rise to this dispute occurred, I am informed that each respondent was a: REALTOR®/REALTOR-ASSOCIATE® Member of the Association; and/or Participant/subscriber of the Association's MLS
4. This dispute is proper for arbitration at the Association as this is a real estate related dispute that arises out of our relationship as REALTORS®/REALTOR-ASSOCIATES® and/or arises from a listing filed with the Association's MLS.
5. I, by becoming and remaining a:
REALTOR®/REALTOR-ASSOCIATE® Member of the Association
Participant/subscriber of the Association's MLS

have previously agreed to resolve this dispute with the named respondents through binding arbitration using the Association's facilities and its rules and procedures for arbitration. Accordingly, I submit this dispute to arbitration and reaffirm my agreement to bind myself and any firm for which I am the designated broker of record to be bound by arbitration through the Association. Furthermore, I reaffirm my agreement to abide by the Association's rules and procedures for arbitration and to comply with the arbitration award. I understand and agree that this constitutes an arbitration agreement within the meaning of Part 3 Title 9 of the California Code of Civil Procedure. **In the event I or my firm does not comply with the arbitration award and it is necessary for any party to this arbitration to obtain judicial confirmation and enforcement of an arbitration award against me or my firm, I and my firm agree to pay the party obtaining such confirmation their costs and reasonable attorneys' fees incurred in obtaining such confirmation and enforcement.**

6. I have filed this arbitration complaint within one hundred and eighty (180) calendar days after the closing of the transaction, if any, or after the facts and circumstances constituting this arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later.

7. I understand there will be a mechanical tape recording of the arbitration hearing. I understand that I may purchase a copy of the tape recording solely for the purpose of requesting a procedural review of the arbitration procedures and hearing by the Association's Board of Directors or an appointed review Panel thereof.
8. I understand that I may be represented by legal counsel at any time, including at the arbitration hearing and any procedural review. I further understand and agree that if I intend to have legal representation, I must give written notice of my legal representative's name, law firm name, address and phone number to all parties and the hearing and/or review Panel at least fifteen (15) calendar days before the scheduled date of the hearing. I understand and agree that failure to comply with this notice requirement may result in a continuance being granted and a continuance fee assessed against me.
9. I understand that the nature of these proceedings are confidential and that I have an obligation to maintain and protect the confidentiality of these proceedings and any resulting decision. I hereby agree to do so unless disclosure is authorized by the Association's rules and procedures or required by law.
10. Unless this dispute is between members of the same office, the responsible broker at the time the facts and circumstances giving rise to this dispute occurred must sign as a co-complainant and has signed this complaint.
11. I hereby affirm that the facts and circumstances and the parties in this matter are not related to any pending bankruptcy, civil litigation matter or criminal investigation, including a proceeding before a governmental regulatory agency. If I am unable to make this affirmation, I have attached a written statement describing the pending matter on a separate sheet of paper and have included it with this complaint.
12. I have enclosed my payment in the sum of \$_____ for the arbitration filing fee with this complaint.
13. I will be represented by an attorney, whose name address and telephone number are:

14. Under the penalties of perjury, I declare that this arbitration complaint and the statements contained herein are true and correct to the best of my knowledge and belief.

Dated: _____

COMPLAINANT(S):

(1) _____
 Signature of Authorized Person

(2) _____
 Signature

 Name of Complainant Brokerage (Type or Print)

 Name of Responsible Broker (Type or Print)

 Firm

 Firm

 Street Address

 Street Address

 City, State, Zip

 City, State, Zip

 Phone email

 Phone email

(3) _____
 Signature

(4) _____
 Signature

 Name (Type or Print)

 Name (Type or Print)

 Firm

 Firm

 Street Address

 Street Address

 City, State, Zip

 City, State, Zip

 Phone email

 Phone email

**REQUEST FOR MEDIATION
SOUTHLAND REGIONAL ASSOCIATION OF REALTORS®**

As an alternative to arbitration, the Association has available mediation. Mediation is a dispute resolution process whereby a mediator works with you and the other parties to facilitate a mutually acceptable resolution of your dispute. In comparison to arbitration, mediation is usually less adversarial and less formal and the parties are more directly involved in the decision making process to resolve their dispute. As a general policy, the Association promotes mediation and strongly encourages you to consider using mediation. We have enclosed a copy of the Association's mediation guidelines and procedures for your review.

While the Association promotes mediation, please be advised of the following. If you are the complainant in the dispute, you still need to file an arbitration complaint with the Association to preserve your right to arbitration. Also, mediation is a voluntary process and a mediation conference can only be scheduled for those parties that agree to mediation. If any party to your dispute does not agree to mediation, arbitration will be necessary to resolve the dispute as it pertains to you and those parties. Finally, if you are unable to reach a mutually acceptable resolution of the dispute through mediation, an arbitration hearing will have to be scheduled.

If you agree to use mediation, please provide the information requested below. If other parties agree to mediation, we will notify you and schedule a mediation conference as appropriate. Thank you.

I agree to mediation in accordance with the Association's mediation guidelines and procedures with the following parties: If necessary, please use additional sheets for additional parties

1. _____ Please Print or Type Name	2. _____ Please Print or Type Name
3. _____ Please Print or Type Name 3. Name	4. _____ Please Print or Type Name

I will not be available for a mediation conference on the following dates:

Date: _____

(Type/Print Your Name)

(Signature)

Please Return to: _____ Association Attn: _____ Address _____ City, State, Zip _____ Phone (____) _____



SOUTHLAND REGIONAL
ASSOCIATION OF REALTORS® INC.

REVISED FEBRUARY 25, 2010
PROCURING CAUSE GUIDELINES

(THESE ARE MERELY GUIDELINES, NOT RULES)

“Procuring Cause” for the purpose of this policy refers to the right to the selling portion of the commission when two or more offices claim to have been responsible for producing the buyer, but only one actually obtained the offer. It is not to be confused with the legal concept of “procuring a buyer ready, willing and able, etc.”, which would give rise to a claim for commission against a seller pursuant to a listing agreement.

I. BASIC GUIDELINE

A member who obtains an offer and deposit, and negotiates the close of a transaction is usually the sole procuring cause. However, the Professional Standards Panel sitting as arbitrators, after hearing all of the evidence, might be justified in apportioning the selling commission between the contending offices, according to their respective contributions toward achieving the sale of the property to a particular buyer. Therefore, if a transaction would not have resulted but for the efforts of another member, that member may be entitled to a share of the selling commission, even though another member concluded the transaction. Further, in some cases, the arbitrators may determine that the entire commission should be awarded to a member other than the member closing the transaction. However, as outlined below a member should ordinarily have done certain things to be entitled to all or a portion of the commission, despite the fact that the member was not the one who obtained the offer and deposit from the Buyer. Furthermore, under certain circumstances, rights may be lost, as explained below.

II. PREVENTIVE TIPS FOR PRACTITIONERS

- A. Upon first meeting a prospective buyer, always ask whether he or she is working with another broker.
- B. If you find out that a prospective buyer is working with another broker, explore whether the first broker has an exclusive contractual agreement.
- C. If you discover your client has been working with another broker on the same transaction, try to ascertain the reason why the client left the first broker and, if appropriate, make immediate contact with the broker and try to resolve the issue. Failing to address it early on may result in you working through a difficult escrow, closing the transaction and not getting paid.

- D. Give agency disclosures (C.A.R. Form AD-11) early in the transaction.
- E. Use buyer representation agreements (with or without the broker's compensations element). This will help memorialize the relationship and help prompt the discussion about other relationships. If the contract includes a buyer's commission obligation to the broker, it will also create an incentive for the buyer to come to you and terminate the contract prior to going to another broker.
- F. Never send your buyer client to other brokers with instructions to come back when the buyer is ready to write the offer.
- G. Try to accompany your clients to open houses, but if you can't, give your clients your cards and instruct them to tell the agent sitting the open house that they are already working with you and present them your card. By not accompanying them, you take the risk that this explanation may not occur.
- H. Stay in close contact with your client and be responsive during the transaction.
- I. If you are conducting an open house, keep a registry of all prospective buyers including a note of whether there was a broker with the buyer. Also, keep a record that the agent sitting the open house asked the buyer if they were working with an agent.
- J. If you have a listing where the property is being shown by brokers when you are not present, leave a sign-in sheet with buyers' names and brokers' names similar to those at a new home development. Include dates and times in the registry. This creates a record of who was shown the property and with which broker.

III. SUGGESTED PROCEDURES

Experience has shown that communication between members in procuring cause situations very often resolves problems. Therefore, the following procedures are recommended. While the failure to follow these procedures may not by itself deprive a member of commission, it may be considered by the Panel, along with all of the other evidence.

- A. Members should immediately make their Responsible Broker or Office Manager aware of any potential claim.
- B. When member "B" determines that member "A" had previously shown the subject property to the client, member "B" should then ask the client:
 1. When did you see the property?
 2. What is the reason you did not buy from member "A"?

- C. If the response from the buyer indicates any possibility of a claim by member "A", member "B" should contact "A" and discuss the situation.
- D. If member "A" is aware that he/she will be filing a claim against member "B's" office, member "A's" Responsible Broker or Office Manager should contact member "B's" Responsible Broker or Office Manager prior to the close of escrow, unless such contact could reasonably be expected to interfere with the transaction between the buyer and the seller.*
- E. Member "B," or his/her Responsible Broker or Office Manager, upon being informed of a potential claim, shall take no action, either individually or in concert with the buyer, to interfere with the close of escrow.
- F. Parties to a dispute should refer to Paragraph VIII B (Obligation Under Procuring Cause Guidelines) regarding the holding of funds.

IV. PRIOR TO FILING A COMPLAINT, CONSIDER THESE FACTORS

- A. Who first introduced the property to the buyer?
- B. Who showed the property?
- C. Who provided the details of the property?
- D. Who finally wrote the offer?
- E. Did negotiations ever fail?
- F. Why did the negotiations fail?
- G. Was a break in the negotiations due to interference from another agent, or due to the initial agent's inability to work with the parties and consummate the sale?
- H. Did the first agent abandon his agency?
- I. Would the transaction ever have occurred if the second agent had not assisted?
- J. Whose activities were the most predominate in bringing about the sale?

V. IT IS HELPFUL TO KNOW WHAT MAY NOT BE PROCURING CAUSE

- A. The agent who first introduces the property is not necessarily the procuring cause.
- B. It is not necessary that a broker physically show the property to be the procuring cause.
- C. The broker who writes the transaction or fills out the purchase agreement is not necessarily the procuring cause.

* The SRAR Board of Directors recommends that, to the extent possible, any agreement reached by the parties be reduced to writing.

VI. POSSIBLE LOSS OF COMMISSION

YOU MIGHT NOT RECEIVE A COMMISSION IF ALL OR ANY OF THE FOLLOWING SITUATIONS EXIST

- A. The member does not accompany a prospect to the property.
 - 1. The member refers a prospect to a property or open house with or without a business card.
 - 2. The member has not made arrangements in advance with the member at the property or open house.
 - 3. The office claiming the commission has never shown the property to the buyer.
- B. The office claiming a commission did not maintain any contact, or “follow-through” with the buyer for a period of 14 days or longer, barring extenuating circumstances.

VII. GENERAL GUIDELINES

- A. A member claiming any portion of the selling commission should establish that he has physically shown the property, diligently followed through, consistently communicated with the buyer, urged purchase of the specific property, and has offered affirmative service toward such purchase.
- B. The amount of time and effort expended for a particular buyer on various other properties does not necessarily entitle you to a commission.
- C. All of the foregoing factors are important but none alone determines the outcome.

VIII. OBLIGATION UNDER PROCURING CAUSE GUIDELINES

- A. The obligation of a member to recognize a claim of procuring cause does not terminate when a particular listing ends.
- B. Although the expressed wishes of a buyer must be respected, they cannot be the basis to divest a member of that member’s rights to a commission. The Association believes that through communication or arbitration, the rights of members can be resolved without harm to the principals, and immediate dialogue between members can avert a dispute. The interest of the Seller and Buyer must not be jeopardized by a procuring cause dispute. The disputed commission should be held in trust until the dispute is resolved.

- C. Procedures employed in the marketing of Investment Real Estate, out-of-area or unusual properties, may vary considerably from those procedures employed in the marketing of separate family residences. In disputes and/or situations where such properties, or any properties other than single family residences, are involved, these variables should be taken into consideration.

IX. CONCLUSION

- A. Procuring Cause disputes should, if at all possible, be resolved between the offices involved. It is not the purpose of these guidelines to reward members for unsuccessful efforts. Yet The Association has recognized that there are transactions made possible by members who, for reasons other than incompetence, did not “close the sale”. It is hoped that these guidelines will be helpful to those offices, but will also serve as a guideline to the office which "gets the check”, to the end that they will understand and, therefore, respect the rights of the other REALTOR®.
- B. If a member believes he or she has been subjected to illegal or unethical conduct, he/she may file a complaint with the Grievance Committee for arbitration and/or disciplinary action.

SAMPLE FACT SITUATION ANALYSIS

The following are revised excerpts from the National Association of REALTORS® Code of Ethics and Arbitration Manual, Appendix II to Part Ten:

Fact Situation #1

Listing Broker L placed a listing in the MLS and offered compensation to buyer agents. Broker Z, not a participant in any MLS, called to arrange an appointment to show the property to a prospective purchaser. There was no discussion of compensation. Broker Z presented Broker L with a signed purchase agreement, which was accepted by the seller. Subsequently, Broker Z requested arbitration with Broker L, claiming to be the procuring cause of sale.

Analysis: While Broker Z may have been the procuring cause of sale, Broker L's offer of compensation was made only to members of the MLS. Broker L never offered cooperation and compensation to Broker Z, nor did Broker Z request compensation at any time prior to instituting the arbitration request. There was no contractual relationship between them, and therefore no issue to arbitrate.

Fact Situation #2

Broker L placed a listing in the MLS and offered compensation to buyer agents. Broker S showed the property to Buyer #1 on Sunday and again on Tuesday. On Wednesday, Broker A wrote an offer to purchase on behalf of Buyer #1 which was presented to the seller by Broker L and which was accepted. At closing, compensation is paid to Broker A. Broker S subsequently filed an arbitration request against Broker A, claiming to be the procuring cause of sale.

Analysis: Broker S's claim could have been brought against Broker A (pursuant to Standard of Practice 17-4) or against Broker L (the listing broker), who had promised to compensate the procuring cause of sale, thus arguably creating a contractual relationship between Broker L and Broker S. (Amended 11/96)

Fact Situation #3

Listing Broker L placed a listing in the MLS and made an offer of compensation to buyer agents. Broker S showed the property to Buyer #1, who appeared uninterested. Broker S made no effort to further contact Buyer #1. Six weeks later, Broker B (a buyer broker) wrote an offer on the property on behalf of Buyer #1, presented it to Broker L, and it was accepted. Broker S subsequently filed for arbitration against Broker.

Analysis: The Hearing Panel will consider Broker S's initial introduction of the buyer to the property, the period of time between Broker S's last contact with the buyer and the time that Broker B wrote the offer, and the reason Buyer #1 did not ask Broker S to write the offer. Given the length of time between Broker S's last contact with the buyer, the fact that Broker S had made no subsequent effort to contact the buyer, and

the length of time that transpired before the offer was written, abandonment of the buyer may have occurred. If this is the case, the Hearing Panel may conclude that Broker B instituted a second, separate series of events that was directly responsible for the successful transaction.

Fact Situation #4

Same as #3, except that Broker S showed Buyer #1 the property several times, most recently two days before the successful offer to purchase was written by Broker B (a buyer broker). At the arbitration hearing, Buyer #1 testified she was not dissatisfied in any way with Broker S but simply decided that "I needed a buyer agent to be sure that I got the best deal."

Analysis: The Hearing Panel should consider Broker S's initial introduction of the buyer to the property; that Broker S had remained in contact with the buyer on an ongoing basis; and whether Broker S's efforts were primarily responsible for bringing about the successful transaction. Unless abandonment or estrangement can be demonstrated, resulting, for example, because of something Broker S said or did (or neglected to say or do but reasonably should have), Broker S will likely prevail. Agency relationships are not synonymous with nor determinative of procuring cause. Representation and entitlement to compensation are separate issues. (Amended 11/99)

Fact Situation #5

Listing Broker L placed a property on the market for sale or lease and offered compensation to brokers inquiring about the property. Broker A showed the property on two separate occasions to the vice president of manufacturing for ABC Corporation. Broker B showed the same property to the chairman of ABC Corporation, whom he had known for more than fifteen (15) years. The chairman liked the property and instructed Broker B to draft and present a lease on behalf of ABC Corporation to Broker L, which was accepted by the owner/landlord. Subsequent to the commencement of the lease, Broker A requested arbitration, claiming to be the procuring cause.

Analysis: This is an arbitrable matter as Broker L offered compensation to the procuring cause of the sale or lease. The Hearing Panel considered both brokers' introductions of the property to ABC Corporation. Should the Hearing Panel conclude that both brokers were acting independently and through separate series of events, the Hearing Panel may conclude that Broker B was directly responsible for the lease and should be entitled to the cooperating broker's portion of the commission. (Adopted 11/96)