

NATIONAL ASSOCIATION OF REALTORS®
Code of Ethics Video Series

From *Professionalism in Real Estate Practice* – Article 17

(A narrative explanation of Article 17 with synthesis of related Standards of Practice and Case Interpretations)

Article 17

In the event of contractual disputes or specific noncontractual 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 submit the dispute to arbitration in accordance with the regulations of their Board or Boards rather than litigate the matter.

In the event clients of REALTORS® wish to arbitrate contractual disputes arising out of real estate transactions, REALTORS® shall arbitrate those disputes in accordance with the regulations of their Board, provided the clients agree to be bound by the decision.

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.

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Generally, arbitration is used to settle disputes between REALTOR® principals of two different real estate firms concerning entitlement to a commission or to cooperating brokers' compensation. Entitlement is determined on the basis of determining the "procuring cause." In most instances, the decision awards the disputed amount to one party or the other. In certain cases, and if not precluded by state law, the disputed amount may be divided between the parties if the arbitrators determine that both parties contributed, without interruption, to the successful transaction.

Article 17 also requires a REALTOR® to arbitrate disputes with clients, if the client requests the arbitration and agrees to be bound by the decision.

The Code of Ethics and Arbitration Manual advises Boards and State Associations to determine whether (1) state law authorizes prior agreements to arbitrate future disputes in advance of a dispute or only after the dispute occurs or (2) if state law does not recognize binding arbitration at all. In the latter case, Boards can only offer arbitration and cannot require REALTORS® and REALTOR-ASSOCIATE®s to participate in it.

The Code of Ethics and Arbitration Manual also specifies three circumstances under which REALTORS® must submit to arbitration.

- (1) Arbitration of a dispute between REALTOR® principals of different firms.

(2) Arbitration between REALTORS[®] (other than principals) or REALTOR-ASSOCIATE[®]s in different firms, provided the REALTOR[®] principals join in the arbitration.

(3) Arbitration between REALTOR[®] principals and their clients when the client or REALTOR[®] invokes the arbitration and the client agrees to be bound by the decision.

The Manual also specifies three circumstances under which the REALTOR[®]'s participation in arbitration is voluntary:

(1) Arbitration between REALTOR[®] principals and REALTORS[®] and REALTOR-ASSOCIATE[®]s (nonprincipals) who are or were affiliated with the same firm, provided each party voluntarily agrees to the arbitration in writing. This applies to disputes arising when the parties are, or were, affiliated with the same firm, irrespective of the time the request is made for such arbitration.

(2) Arbitration between a REALTOR[®] principal with a nonmember broker, provided each party agrees in writing to be bound by the decision. However, it is the member's choice whether the member will submit to arbitration with a nonmember broker who is not an MLS Participant. A nonmember broker who is not an MLS Participant is not entitled to invoke the arbitration facilities of a Board of REALTORS[®].

(3) Arbitration between a REALTOR[®] principal and a customer if a written contractual relationship has been created by the 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.

REALTORS[®] and REALTOR-ASSOCIATE[®]s who participate in the Board's MLS or otherwise access MLS information through any Board in which they do not hold membership have the same rights and responsibilities as any Board member relative to the Code of Ethics.

For more detailed information on arbitration procedures, refer to the Code of Ethics and Arbitration Manual which includes Case Interpretations.

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Remember that Article 17 requires REALTORS[®] to arbitrate their disputes. If you file suit against a REALTOR[®] when a properly arbitrable matter exists and refuse to withdraw the suit and participate in arbitration when requested, you may be subject to disciplinary action. (Refer to Standard of Practice 17-1 and Case Interpretation #17-1)

Parties to an otherwise arbitrable matter may agree not to use the Board's arbitration facility without becoming subject to a charge of violating Article 17 provided they advise the Board in writing of their decision. (Refer to Standard of Practice 17-2)

Under certain circumstances, REALTORS® are obligated to participate in interboard arbitration or in arbitration conducted by the State Association. (Refer to Case Interpretations #17-2 and #17-10)

Once a matter has been arbitrated by a Board of REALTORS®, neither party may initiate a second arbitration before a different Board based on the same issue. (Refer to Case Interpretation #17-3)

Have a clear understanding of your rights and obligations, related to arbitration, as established by Article 17 and your Board's procedures. (Refer to Case Interpretations #17-4, #17-5, #17-6, and #17-11)

REALTORS® are free to bring alleged violations of law or regulations to the attention of appropriate enforcement bodies without fear of retaliation. (Refer to Case Interpretation #17-7)

REALTORS® cannot disclaim their personal obligations under Article 17 by asserting that the transaction was consummated through their corporation. (Refer to Case Interpretation #17-8)

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. (Refer to Standard of Practice 17-3 and Case Interpretations #17-12 and #17-13)

There are five specific non-contractual disputes that are subject to arbitration pursuant to Article 17. (Refer to Standard of Practice 17-4)

Remember you are bound to arbitrate even if the complainant is out of state if the complainant agrees to travel to your Board and submit to arbitration conducted by your Board. (Refer to Standard of Practice 17-5)