

# Minnesota Association of REALTORS® (MNAR)

## Pre-Hearing Meeting of a Hearing Panel

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### **Section 1. Authority**

Part Four, Section 20 (a) of the NAR Code of Ethics and Arbitration Manual (COEAM) states, in part, that when the Grievance Committee refers ethics complaints and arbitration requests for hearing, the hearing panel may have a pre-hearing meeting, to determine questions on the following matters:

- (1) Whether ethics complaints and arbitration requests are timely filed,
- (2) Whether arbitrable issues exist,
- (3) Whether arbitration requests are too legally complex to be fairly arbitrated, and
- (4) Other administrative issues

### **Section 2. Initiating a Pre-Hearing Meeting**

When the Grievance Committee has moved the complaint forward to a hearing and respondent wishes to challenge the Grievance Committee's decision on any of the matters (1)-(4) listed above ("Pre-Hearing Matters"), the respondent may request a pre-hearing meeting by using the Form entitled *Request for Pre-Hearing Meeting*. Alternatively, a Pre-Hearing Meeting may be scheduled in the absence of such a request from the respondent, to review the same issues, should the Chair of the Hearing Panel deem it appropriate.

If the MNAR receives a *Request for Pre-Hearing Meeting*, the Director of Professional Standards, or other appropriate staff, shall appoint a Hearing Panel and schedule both a Pre-Hearing Meeting and a Hearing date. The Pre-Hearing Meeting shall be scheduled at least seven (7) days prior to the Hearing date but no sooner than ten (10) days from

the date the list of panel members has been sent to the parties.

The materials and information that were available to the Grievance Committee when they made their decision along with the respondent's reply, and any supporting documents, if any, will be presented to the Hearing Panel prior to the Pre-Hearing Meeting. Neither the complaint nor the reply can be revised, modified or supplemented.

The complainant and respondent may however, submit written statements regarding the contested Pre-Hearing Matter(s). Any such written statement should be submitted to the MNAR at least three (3) days prior to the scheduled Pre-Hearing Meeting. If such written statements are submitted after this deadline, they will be forwarded to the Hearing Panel. However, the Hearing Panel may not have the opportunity to give them the same level of review before the Pre-Hearing Meeting as had they been submitted in the timeline requested.

If Pre-Hearing Matters arise during a hearing, the Hearing Panel will address them within the course of the hearing and in conjunction with all other issues related to the complaint.

### **Section 3. Rights of Complainant and Respondent**

No complainant(s), respondent(s), their counsel, witnesses or brokers, may appear or testify at the Pre-Hearing Meeting.

The complainant and respondent have the right to challenge the qualifications of any individual who may be appointed to serve on an ethics proceeding or arbitration matter. The parties will be provided with a list of the individuals who will be appointed to sit on the Panel and may challenge the

qualifications of any panel member by completing Form #E-7 and returning it to the MNAR. Challenges submitted will be determined by the Chairperson of the Hearing Panel, or if the challenge to the Chairperson is made, by the Professional Standards Committee Chairperson.

A party shall be deemed to have waived any grounds of disqualification of which the party has knowledge unless the party files the request within ten (10) days from the date a list of names of the appointed panel members has been mailed to the party. However, any member of the tribunal may be disqualified at any time if a majority of the members of the tribunal are made aware of any grounds of automatic disqualification of a member or find any new or previously undiscovered facts which in their judgment may prevent, or appear to prevent, a member of a panel from rendering an impartial decision.

The Pre-Hearing Meeting will not be recorded, and no party will be permitted to have a court reporter or recording device present at the Pre-Hearing Meeting.

#### **Section 4. Panel Decision**

At the Pre-Hearing Meeting, the Hearing Panel will determine whether or not the complaint shall proceed to a hearing, depending upon their determination of any of the Pre-Hearing Matters identified. The decision of the Hearing Panel will be determined by a majority vote of the panel members.

If the Hearing Panel's determination at a Pre-Hearing Meeting does not preclude proceeding with the Hearing as scheduled, the matter will proceed to the scheduled hearing.

In such case, the Hearing shall be held on the scheduled date and both the complainant and

respondent have the right to raise all substantive and procedural issues at the hearing (including those issues reviewed within a Pre-Hearing Meeting).

If the conclusion of the Hearing Panel in its Pre-Hearing Meeting is that the matter should *not* proceed to a hearing, the Hearing Panel shall dismiss the complaint and the complainant shall have the right to appeal the decision of the Hearing Panel to an Appeal Tribunal of the MNAR in accordance with the procedures in Part Four, Section 20 (c) of the COEAM.

The MNAR shall mail the written decision of the Hearing Panel on these Pre-Hearing Matters to the parties no later than three days after the Hearing Panel makes their decision.

#### **Section 5. Confidentiality**

The allegations, findings, and decisions rendered in the Pre-Hearing Meeting are confidential and will not be reported or published by the MNAR, any member of the Panel, or any party under any circumstances except those established in the Code of Ethics and Arbitration Manual of the National Association of REALTORS® (NAR) as from time to time amended.