

IN THE SUPREME COURT OF THE STATE OF NEVADA

NO. 82208

BETTY CHAN; and ASIAN AMERICAN REALTY & PROPERTY
MANAGEMENT,

Electronically Filed
May 26, 2021 05:24 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appellants,

vs.

WAYNE WU; JUDITH SULLIVAN; NEVADA REAL ESTATE CORP.; and
JERRIN CHIU,

Respondents.

**APPELLANTS' APPENDIX
(Volume 2)**

Appeal from

the Eighth Judicial District Court sitting in Clark County, Nevada

District Court Case No.: A-16-744109-C

District Court Judge: Hon. Eric Johnson

R. DUANE FRIZELL, ESQ.

Nevada Bar No. 9807

FRIZELL LAW FIRM, PLLC

400 N. Stephanie St., Suite 265

Henderson, Nevada 89014

Telephone (702) 657-6000

Facsimile (702) 657-0065

DFrizell@FrizellLaw.com

Attorney for Appellants

CERTIFICATE OF SERVICE

I hereby certify pursuant to NRAP 25(c), that on May 26, 2021, I served a true and correct copy of the forgoing ***APPELLANTS' APPENDIX (Volume 2)***, together with any and all exhibits and attachments, via the Supreme Court's

Electronic Filing System:

MICHAEL A. OLSEN, ESQ.
Nevada State Bar No. 6076
THOMAS R. GROVER, ESQ.
Nevada State Bar No. 12387
KEITH D. ROUTSONG, ESQ.
Nevada State Bar No. 14944
BLACKROCK LEGAL, LLC
10155 W. Twain Ave., Suite 100
Las Vegas, Nevada 89147
Telephone (702) 855-5658
Attorneys for Respondents

/s/ Ai Qin Ni
AIQIN NIU
An employee of
FRIZELL LAW FIRM, PLLC

Chan, et al. v. Wu, et al.
Nevada Supreme Court Case No. 82208 (8th Jud. Dist. Ct. Case No. A-16-744109-C)
Appendix (Chronological Index)

VOL	DATE	DOCKET TEXT/DESCRIPTION	BATES NOS
		Volume No. 1	
1	9/27/2016	Complaint	Appx000001- Appx000010
1	11/15/2016	Amended Complaint	Appx000011- Appx000018
1	11/21/2016	Affidavit of Service	Appx000019- Appx000022
1	11/21/2016	Affidavit of Service	Appx000023- Appx000026
1	11/21/2016	Affidavit of Service	Appx000027- Appx000030
1	11/21/2016	Affidavit of Service	Appx000031- Appx000034
1	12/1/2016	Affidavit of Service	Appx000035- Appx000038
1	12/6/2016	Answer and Counterclaim	Appx000039- Appx000053
1	12/7/2016	Certificate of Service	Appx000054 - Appx000055
1	12/19/2016	Reply to Counterclaim	Appx000056- Appx000060
1	1/13/2017	Motion for Stay Pending Arbitration	Appx000061 - Appx000065
1	2/2/2017	Opposition to Motion to Stay Pending Arbitration and Countermotion to Dismiss with Prejudice or in the Alternative for Summary Judgment	Appx000066- Appx000077
1		Exhibit 1 - City-Data.com Forum	Appx000078- Appx000079
1		Exhibit 2 - Forms Associated with Purchase Agreement	Appx000080- Appx000107
1		Exhibit 3 - Addendum to Purchase Agreement and Escrow Instructions Sales Summary	Appx000108- Appx000110
1		Exhibit 4 - Hall letter to First American Title	Appx000111- Appx000113
1		Exhibit 5 - Code of Ethics and Standards of Practice of the National Association of Realtors	Appx000114- Appx000117
1		Exhibit 6 - The Code of Ethics - Our Promise of Professionalism	Appx000118- Appx000121
1	2/6/2017	Certificate of Service	Appx000122- Appx000123

Chan, et al. v. Wu, et al.
Nevada Supreme Court Case No. 82208 (8th Jud. Dist. Ct. Case No. A-16-744109-C)
Appendix (Chronological Index)

VOL	DATE	DOCKET TEXT/DESCRIPTION	BATES NOS
1	2/7/2017	Certificate of Service	Appx000124- Appx000125
1	2/7/2017	Supplement to Opposition to Motion to Stay Pending Arbitration and Countermotion to Dismiss with Prejudice or in the Alternative for Summary Judgment	Appx000126- Appx000127
1		Exhibit 1 - Affidavit of Jerrin Chiu	Appx000128- Appx000131
1	2/10/2017	Amended Reply to Counterclaim	Appx000132- Appx000136
1	2/14/2017	Plaintiff/Counterdefendants Reply to Opposition to Motion to Stay Pending Arbitration and Opposition to Defendants/Counterclaimants Countermotion to Dismiss with Prejudice or in the Alternative for Summary Judgment	Appx000137- Appx000146
1		Exhibit - Declaration of Betty Chan in Support of Reply to Opposition to Motion to Stay Pending Arbitration and Opposition to Countermotion to Dismiss with Prejudice or in the Alternative for Summary Judgment	Appx000147- Appx000150
1	2/27/2017	Minutes of 02/27/2017 hearing, Plaintiffs' Motion for Stay Pending Arbitration--Defendants' and Counterclaimants' Opposition to Motion to Stay Pending Arbitration and Countermotion to Dismiss with Prejudice or in the Alternative for Summary Judgment	Appx000151- Appx000152
1	3/30/2017	Order Granting Motion to Stay and Denying Motion to Dismiss and Motion for Summary Judgment	Appx000153- Appx000154
1	4/3/2017	Notice of Entry of Order Granting Motion to Stay and Denying Motion for summary Judgment	Appx000155- Appx000159
1	7/18/2018	Motion to Vacate or Modify Arbitration Award	Appx000160- Appx000175
1		Exhibit 1 - Code of Ethics and Standards of Practice of the National Association of Realtors Effective January 1, 2015	Appx000176- Appx000182
1		Exhibit 2 - Request and Agreement to Arbitrate (P00001 - P0044)	Appx000183- Appx000227
		Volume No. 2	
2		Exhibit 2 Continued- Request and Agreement to Arbitrate (P0045 - P0105)	Appx000228- Appx000288
2		Exhibit 3 - Response and Agreement to Arbitrate (D0001 - D0100)	Appx000289- Appx000389
2		Exhibit 4 - 04/20/2018 GLVAR letter to Nevada Real Estate Corporation	Appx000390- Appx000393

Chan, et al. v. Wu, et al.
Nevada Supreme Court Case No. 82208 (8th Jud. Dist. Ct. Case No. A-16-744109-C)
Appendix (Chronological Index)

VOL	DATE	DOCKET TEXT/DESCRIPTION	BATES NOS
2		Exhibit 5 - 04/27/2018 GLVAR letter to Nevada Real Estate Corp.	Appx000394- Appx000397
2		Exhibit 6 - Code of Ethics and Arbitration Manual	Appx000398- Appx000459
		Volume No. 3	
3		Exhibit 7 - 5/17/2018 Asian American Realty (Chan) letter to GLVAR	Appx000460- Appx000464
3	8/6/2018	Opposition to Motion to Vacate or Modify Arbitration Award and Countermotion to Recognize Wu as the Procuring Cause, for Summary Judgment, and for Attorney Fees	Appx000465- Appx000492
3		Exhibit A - Gmail email 11/2/15	Appx000493- Appx000494
3		Exhibit B - Gmail email 11/2/15	Appx000495- Appx000496
3		Exhibit C - Affidavit of Jerrin Chiu	Appx000497- Appx000500
3		Exhibit D - City-Data.com Forum	Appx000501- Appx000502
3		Exhibit E - Forms Associated with Purchase Agreement	Appx000503- Appx000530
3		Exhibit F - Addendum to Purchase Agreement and Escrow Instructions	Appx000532 - Appx000533
3		Exhibit G - Gmail - 1/27/2016 Chan Email to Chiu	Appx000534- Appx000535
3		Exhibit H - 3/24/2016 Hall Letter to First American Title	Appx000536- Appx000538
3		Exhibit I - 2/5/16 Chan email to "aaroffer".	Appx000539- Appx000540
3		Exhibit J - 7/19/17 Myers email to Harper	Appx000541 - Appx000545
3		Exhibit K - 7/19/2017 Myers email to Harper	Appx000546- Appx000548
3		Exhibit L - 9/27/2016 Complaint	Appx000549- Appx000558
3		Exhibit M - 11/15/2016 Amended Complaint	Appx000559- Appx000367
3		Exhibit N - Duties Owed by a Nevada Real Estate Licensee	Appx000568- Appx000570
3		Exhibit O - 11/30/15 Chan email to Chiu	Appx000571- Appx000572

Chan, et al. v. Wu, et al.
Nevada Supreme Court Case No. 82208 (8th Jud. Dist. Ct. Case No. A-16-744109-C)
Appendix (Chronological Index)

VOL	DATE	DOCKET TEXT/DESCRIPTION	BATES NOS
3		Exhibit P - 1/25/2016 Cham email to Chiu	Appx000573- Appx000574
3		Exhibit Q - Request and Agreement to Arbitrate (P0001 - P0005)	Appx000575- Appx000580
3		Exhibit R - 4/27/2018 GLVAR letter to Nevada Real Estate Corp.	Appx000581- Appx000584
3		Exhibit S - 5/17/2018 Chan letter to GLVAR	Appx000585- Appx000589
3		Exhibit T - Code of Ethics and Arbitration Manual	Appx000590- Appx000591
3	8/15/2018	Reply in Support of Motion to Vacate or Modify Arbitration Award and Opposition/Motion to Strike Improper Countermotion	Appx000592- Appx000608
3		Exhibit 8 - Supplemental Declaration of Betty Chan	Appx000609- Appx000615
3	8/22/2018	Minutes of 8/22/2018 Hearing as to Plaintiff's Reply in Support of Motion to Vacate or Modify Arbitration and Opposition/Motion to Strike Improper Countermotion	Appx000616- Appx000617
3	8/22/2018	Transcript of Hearing: All Pending Motions	Appx000618- Appx000648
3	9/5/2018	First Supplement to Countermotion to Recognize Wu as the Procuring Cause, for Summary Judgment, and for Attorneys fees	Appx000649- Appx000661
3		Exhibit A - 05/01/2017 Minutes	Appx000662- Appx000664
3		Exhibit B - Request and Agreement to Arbitrate (P0001 - P0005)	Appx000665- Appx000670
3		Exhibit C - 2/5/2016 Chan email to "aaroffer"	Appx000671- Appx000672
3		Exhibit D - face page only, exhibit missing	Appx000673
3	9/12/2018	Supplement to First Supplement to Countermotion to Recognize Wu as the Procuring Cause, for Summary Judgment, and for Attorney Fees	Appx000674- Appx000675
3		Exhibit D - Affidavit of Michael A. Olsen, Esq.	Appx000676- Appx000690
3	9/18/2018	Order Denying Motion to Vacate or Modify Arbitration Award	Appx000691- Appx000694
		Volume No. 4	
4	9/18/2018	Notice of Entry of Order	Appx000695- Appx000701

Chan, et al. v. Wu, et al.
Nevada Supreme Court Case No. 82208 (8th Jud. Dist. Ct. Case No. A-16-744109-C)
Appendix (Chronological Index)

VOL	DATE	DOCKET TEXT/DESCRIPTION	BATES NOS
4	9/21/2018	Certificate of Service	Appx000702- Appx000703
4	10/17/2018	Transcript of Hearing: Plaintiffs' Motion to Extend Briefing on Order Shortening Time and continue Hearing Date	Appx000704- Appx000707
4	10/25/2018	Plaintiffs/Counterdefendants Betty Chan and Asia American Realty & Property Management's Supplement to Plaintiffs Opposition Defendants/Counterclaimants Wayne Wu, Judicith Sullivan, Nevada Real Estate Corp., Jerrin Chiu, KB Home Sales-Nevada, Inc.'s: (1) First Supplement to Countermotion to Recognize Wu as the Procuring Cause, for summary Judgment, and for Attorney Fees (Filed 09/05/18) and (2) Supplement to First Supplement to Countermotion to Recognize Wu as the Procuring Cause fo Summary Judgment, and for Attorneys fees (Filed 09/12/18)	Appx000708- Appx000727
4		Exhibit 1 - Declaration of Betty Chan	Appx000728- Appx000736
4		Exhibit 2 - Declaration of Betty Chan in Support of Reply to Opposition to Motion to Stay Pending Arbitration and Opposition to Countermotion to Dismiss with Prejudice or in the alternative for Summary Judgment	Appx000737- Appx000741
4		Exhibit 3 - Supplemental Declaration of Betty Chan	Appx000742- Appx000745
4		Exhibit 4 - 11/2/2015 Chiu email to Chan	Appx000746- Appx000748
4		Exhibit 5 - 12/30 text string	Appx000749- Appx000750
4		Exhibit 6 - 1/15 text string	Appx000751- Appx000754
4	10/29/2018	Reply to Plaintiff/Counterdefendants Supplement to Plaintiffs Opposition to Defendants/Counterclaimants 91) First supplement to Countermotion to Recognize Wu as the Procuring Cause, for Summary Judgment, and for Attorneys Fees and (2) Supplement to First Supplement to Countermotion to Recognize Wu as the Procuring Cause for Summary Judgment, and for Attorney Fees	Appx000755- Appx000761
4	10/30/2018	Certificate of Service	Appx000762- Appx000763
4	10/31/2018	Memorandum of Costs and Disbursements	Appx000764
4		Exhibit 1 - Goodsell & Olsen Invoices	Appx000765- Appx000779

Chan, et al. v. Wu, et al.
Nevada Supreme Court Case No. 82208 (8th Jud. Dist. Ct. Case No. A-16-744109-C)
Appendix (Chronological Index)

VOL	DATE	DOCKET TEXT/DESCRIPTION	BATES NOS
4	10/31/2018	Transcript of Hearing: Defendants and Counterclaimants Wayne Wu, Judith Sullivan, Nevada Real Estate Corp. and Jerrin Chiu's Opposition to Motion to Vacate or Modify Arbitration Award and countermotion to Recognize Wu as the Procuring Cause, for Summary Judgment and for Attorney Fees	Appx000780- Appx000815
4	3/22/2019	Order Granting Defendants Countermotion for Summary Judgment and Attorney Fees and Costs	Appx000816- Appx000822
4	3/22/2019	Notice of Entry of Order	Appx000823- Appx000831
4	3/25/2019	Certificate of Service	Appx000832- Appx000833
4	4/17/2019	Transcript of Hearing: Defendants' Motion for Writ of Execution	Appx000834- Appx000859
4	4/22/2019	Notice of Appeal	Appx000860
4	4/24/2019	Notice of Appearance	Appx000861- Appx000862
4	5/1/2019	Minutes re Motion to Stay Execution on OST, Partial Opposition to Plaintiff's Motion to Stay Execution Pending Appeal (on an Ex Parte Application for an Order Shortening Time) and Demand for Supersedeas Bond and Countermotion to Amend Order)	Appx000863- Appx000864
4	5/1/2019	Transcript of Hearing: Motion to Stay Execution on OST, Partial Opposition to Plaintiff's Motion to Stay Execution Pending Appeal (on an Ex Parte Application for an Order Shortening Time) and Demand for Supersedeas Bond and Countermotion to Amend Order)	Appx000865- Appx000880
4	5/1/2019	Order on Plaintiffs' Motion to Stay Execution Pending Appeal	Appx000881- Appx000882
4	5/1/2019	Notice of Entry of Order on Plaintiff's Motion to Stay Execution Pending Appeal	Appx000883- Appx000886
4	5/7/2019	Plaintiffs' Notice of Posting Supersedeas Bond	Appx000887- Appx000891
4	1/7/2020	Plaintiffs' Motion to Formally Resolve Motion for Reconsideration and to Certify Judgment as Final (on an Application for an Order Shortening Time)	Appx000892- Appx000899
4		Exhibit 1 - Order Granting Defendants Countermotion for Summary Judgment and Attorney Fees and Costs	Appx000900- Appx000907

Chan, et al. v. Wu, et al.
Nevada Supreme Court Case No. 82208 (8th Jud. Dist. Ct. Case No. A-16-744109-C)
Appendix (Chronological Index)

VOL	DATE	DOCKET TEXT/DESCRIPTION	BATES NOS
4		Exhibit 2 - Motion to Vacate entry of Order or Motion for extension of time to file reconsideration to the entry of Order Granting Defendants Counter Motion for Summary Judgment and Attorney Fees and Costs	Appx000908- Appx000912
4		Exhibit 3 - Register of Actions	Appx000913- Appx000920
4		Exhibit 4 - 4/1/2019 Minutes re Plaintiff's Motion for Reconsideration	Appx000921- Appx000923
4		Exhibit 5 - 4/22/2019 Notice of Appeal	Appx000924- Appx000925
4		Exhibit 6 - 5/1/2019 Order on Plaintiffs' Motion to stay Execution Pending Appeal	Appx000926- Appx000928
		Volume No. 5	
5		Exhibit 7 - Plaintiffs' Notice of Posting Supersedeas Bond	Appx000929- Appx000934
5		Exhibit 8 - 11/14/2019 Order to Show Cause	Appx000935- Appx000937
5		Exhibit 9 - Plaintiffs-Appellants' Response to Order to Show Cause	Appx000938- Appx000947
5		Exhibit 10 - 12/16/19 Frizell email to Olsen	Appx000948- Appx000952
5	1/16/2020	Opposition to Plaintiffs' Motion to Formally Resolve Motion for Reconsideration and to Certify Judgment as Final (on an Application for an Order shortening Time) and Countermotion for Summary Judgment on Abuse of Process Claim	Appx000953- Appx000967
5		Exhibit 1 - 4/27/18 GLVAR letter to Nevada Real Estate Corp.	Appx000968- Appx000974
5		Exhibit 2 - 9/18/18 Order Denying Motion to Vacate or Modify Arbitration Award	Appx000975- Appx000979
5		Exhibit 3 - Request and Agreement to Arbitrate (P001 - P003)	Appx000980- Appx000983
5		Exhibit 4 - Order Granting Defendants Countermotion for Summary Judgment and Attorney Fees and Costs	Appx000984- Appx000991
5		Exhibit 5 - 3/24/2016 Hall letter to First American Title	Appx000992- Appx000994
5		Exhibit 6 - Amended Complaint	Appx000995- Appx001003
5		Exhibit 7 - 2/5/2016 Chan email to "aaroffer"	Appx001004- Appx001005

Chan, et al. v. Wu, et al.
Nevada Supreme Court Case No. 82208 (8th Jud. Dist. Ct. Case No. A-16-744109-C)
Appendix (Chronological Index)

VOL	DATE	DOCKET TEXT/DESCRIPTION	BATES NOS
5	1/22/2020	Minutes re Plaintiffs' Motion to Formally Resolve Motion for Reconsideration and to Certify Judgment as Final (on an Application for an Order Shortening Time) . . . Opposition to Plaintiff's Motion to Formally Resolve Motion for Reconsideration and to Certify Judgment as Final (on an Application for an Order Shortening Time) and Countermotion for Summary Judgment on Abuse of Process Claim	Appx001006- Appx001007
5	1/22/2020	Transcript of Hearing: All Pending Motions	Appx001008- Appx001017
5	3/10/2020	Order on Plaintiffs' Motion to formally Resolve Motion for Reconsideration and to Certify Judgment as Final and Countermotion for Summary Judgment on Abuse of Process Claim	Appx001018- Appx001022
5	3/10/2020	Notice of Entry of Order on Plaintiffs' Motion to formally Resolve Motion for Reconsideration and to Certify Judgment as Final and Countermotion for Summary Judgment on Abuse of Process Claim	Appx001023- Appx001030
5	4/6/2020	Plaintiff's Amended Notice of Appeal	Appx001031- Appx001033
5	6/4/2020	Motion for Summary Judgment, or in the alternative, for Contractual Award of Attorney's Fees, for Writ of Execution on Plaintiff's Commissions Awarded by GLVAR Arbitration Panel and Release of bond Deposited on Appeal	Appx001034- Appx001050
5		Exhibit 1 - 4/27/18 GLVAR letter to Nevada Real Estate Corp.	Appx001051- Appx001057
5		Exhibit 2 - 9/18/18 Order Denying Motion to Vacate or Modify Arbitration Award	Appx001058- Appx001062
5		Exhibit 3 - Order Granting Defendants Countermotion for Summary Judgment and Attorney Fees and Costs	Appx001063- Appx001070
5		Exhibit 4 - Request and Agreement to Arbitrate (P0001 - P0003)	Appx001071- Appx001074
5		Exhibit 5 - 3/24/2016 Hall letter to First American Title	Appx001075- Appx001077
5		Exhibit 6 - 2/5/2016 Chan email to "aaroffer"	Appx001078- Appx001079
5		Exhibit 7 - 5/14/2020 Order Dismissing Appeal	Appx001080- Appx001084
5	6/9/2020	Supreme Court Clerk's Certificate, Judgment Dismissing Appeal	Appx001085- Appx001089
5	6/9/2020	Remittitur	Appx001090

Chan, et al. v. Wu, et al.
Nevada Supreme Court Case No. 82208 (8th Jud. Dist. Ct. Case No. A-16-744109-C)
Appendix (Chronological Index)

VOL	DATE	DOCKET TEXT/DESCRIPTION	BATES NOS
5	6/30/2020	Transcript of Hearing: Plaintiff's Motion to Strike or in the Alternative to Extend Briefing and Continue the Hearing On Defendant's Motion for Summary Judgment	Appx001091- Appx001096
5	7/8/2020	Plaintiff's Opposition to Defendant's Motion for summary Judgment, or in the Alternative, for Contractual Award of Attorney's Fees, for Writ of Execution on Plaintiff's Commissions Awarded by GLVAR Arbitration Panel and Release of Bond Deposited on Appeal and Countermotion for Summary Judgment on Defendants' Abuse of Process Counterclaim	Appx001097- Appx001120
5		Exhibit 1 - Order Granting Defendants Countermotion for Summary Judgment and Attorney Fees and Costs (filed Mar. 22, 2019)	Appx001121- Appx001128
5		Exhibit 2 - Motion to Vacate Entry of Order or Motion for Extension of Time to File	Appx001129- Appx001133
5		Exhibit 3 - Register of Actions (dated Jan. 7, 2020)	Appx001134- Appx001141
5		Exhibit 4 - Minute Order (dated Apr. 1, 2019)	Appx001142- Appx001144
5		Exhibit 5 - Notice of Appeal (dated Apr. 22, 2019)	Appx001145- Appx001146
5		Exhibit 6 - Order on Plaintiff's Motion to Stay Execution Pending Appeal (filed May 1, 2019)	Appx001147- Appx001149
5		Exhibit 7 - Plaintiffs' Notice of Posting Supersedeas Bond (filed May 7, 2019)	Appx001150- Appx001155
5		Exhibit 8 - Supreme Court's Order to Show Cause (filed Nov. 14, 2019)	Appx001156- Appx001158
		Volume No. 6	
6		Exhibit 9 - Plaintiffs-Appellants' Response to Order to Show Cause (filed in Supreme Court Dec. 16, 2019)	Appx001159- Appx001168
6		Exhibit 10 - Emails between counsel (Nov. 20, 2019 to Dec. 16, 2019)	Appx001169- Appx001173
6		Exhibit 11 - Opposition to Motion to Vacate or Modify Arbitration Award and Countermotion to Recognize Wu as the Procuring Cause, for Summary Judgment, and for Attorney Fees (filed Aug. 6, 2018) [excerpts]	Appx001174- Appx001177
6		Exhibit 12 - Transcript (Oct. 31, 2018) [excerpts]	Appx001178- Appx001188

Chan, et al. v. Wu, et al.
Nevada Supreme Court Case No. 82208 (8th Jud. Dist. Ct. Case No. A-16-744109-C)
Appendix (Chronological Index)

VOL	DATE	DOCKET TEXT/DESCRIPTION	BATES NOS
6		Exhibit 13 - Declaration of Betty Chan in Support of Reply to Opposition to Motion to Stay	Appx001189-Appx001193
6		Exhibit 14 - Supplemental Declaration of Betty Chan (dated Aug. 15, 2018)	Appx001194-Appx001197
6		Exhibit 15 - Declaration of Betty Chan (dated Jan. 21, 2020)	Appx001198-Appx001205
6		Exhibit 16 - Text messages between Chan and Jana, an agent at KB Homes	Appx001206-Appx001207
6		Exhibit 17 - Order Dismissing Appeal (entered May 14, 2020)	Appx001208-Appx001212
6		Exhibit 18 - Defendants' Reply to Plaintiffs-Appellants Response to Order to Show Cause	Appx001213-Appx001229
6		Exhibit 19 - Email from Betty Chan to GLVAR giving notice of intent to appeal arbitration	Appx001230-Appx001231
6		Exhibit 20 - Email from Betty Chan to GLVAR requesting arbitration (dated June 11, 2016).	Appx001232-Appx001233
6		Exhibit 21 - Defendant Wayne Wu's agreement with KB Home Las Vegas Inc. (dated Jan. 8, 2016).	Appx001234-Appx001235
6	7/13/2020	Reply in Support of Motion for Summary Judgment, or in the alternative, for Contractual Award of Attorney's Fees, for Writ of Execution on Plaintiff's Commissions Awarded by GLVAR Arbitration Panel and Release of Bond Deposited on Appeal and Opposition to Countermotion for Summary Judgment on Defendant's Abuse of Process Counterclaim	Appx001236-Appx001249
6		Exhibit 1 - 2/5/2016 Chan email to "aaroffer"	Appx001250-Appx001252
6		Exhibit 2 - Request and Agreement to Arbitrate	Appx001253-Appx001255
6		Exhibit 3 - 5/14/2020 Order Dismissing Appeal	Appx001256-Appx001260
6		Exhibit 4 - 5/1/19 Order on Plaintiffs' Motion to Stay Execution Pending Appeal	Appx001261-Appx001263
6		Exhibit 5 - Code of Ethics and Standards of Practice	Appx001264-Appx001267
6		Exhibit 6 - the Code of Ethics - Our Promise of Professionalism	Appx001268-Appx001271
6		Exhibit 7 - Blackrock Legal Invoices	Appx001272-Appx001332
6	7/15/2020	Certificate of Service	Appx001333-Appx001334
6	7/21/2020	Minutes, All Pending Motions	Appx001335-Appx001336

Chan, et al. v. Wu, et al.
Nevada Supreme Court Case No. 82208 (8th Jud. Dist. Ct. Case No. A-16-744109-C)
Appendix (Chronological Index)

VOL	DATE	DOCKET TEXT/DESCRIPTION	BATES NOS
6	7/21/2020	Transcript of Hearing: All Pending Motions	Appx001337- Appx001354
6	8/11/2020	Memorandum for Production of Invoices for Attorney's Fees and Costs	Appx001355- Appx001363
6		Exhibit 1 - Submitted in camera	Appx001364
6	8/12/2020	Certificate of Service	Appx001365- Appx001366
6	8/12/2020	Notice of Production of Documents for In Camera Review	Appx001367- Appx001368
		Volume No. 7	
7		Exhibit 1 - Blackrock Invoices	Appx001369- Appx001401
7	8/13/2020	Certificate of Service	Appx001402- Appx001403
7	9/9/2020	Plaintiffs' Opposition to Defendants' Memorandum for Production of Invoices for Attorney's Fees and Costs and Countermotion to have Defendants' Invoices Filed and made Part of the Public Record	Appx001404- Appx001414
7	9/20/2020	Reply in Support of Memorandum for Production of Invoices for Attorney's Fees and Costs	Appx001415- Appx001425
7	9/11/2020	Certificate of Service	Appx001426- Appx001427
7	9/30/2020	Minute Order - all Pending Motions	Appx001428- Appx001429
7	9/30/2020	Transcript of Hearing: Plaintiff's Opposition to Defendant's Memorandum for Production of Invoices for Attorney's Fees and Costs and Countermotion to Have Defendant's Invoices Filed and made part of the Public Record.	Appx001430- Appx001452
7	11/18/2020	Transcript of Hearing: Order/Case Status	Appx001453- Appx001455
7	11/23/2020	Order Granting in Part Defendant's Motion for Summary Judgment, or in the Alternative, for Contractual Award of Attorney's Fees, for Writ of Execution on Plaintiff's Commissions Awarded by GLVAR Arbitration Panel, and Release of Bond Deposited on Appeal and Order Granting Plaintiffs' Countermotion for Summary Judgment	Appx001456- Appx001464
7	11/23/2020	Notice of Entry of Order	Appx001465- Appx001475

Chan, et al. v. Wu, et al.
Nevada Supreme Court Case No. 82208 (8th Jud. Dist. Ct. Case No. A-16-744109-C)
Appendix (Chronological Index)

VOL	DATE	DOCKET TEXT/DESCRIPTION	BATES NOS
7	11/24/2020	Certificate of Service	Appx001476- Appx001477
7	12/8/2020	Plaintiff's Notice of Appeal	Appx001478- Appx001480
7	12/8/2020	Plaintiff's Amended Notice of Appeal	Appx001481- Appx001483
7	12/9/2020	Court Minutes, Motion to Stay	Appx001484- Appx001485
7	12/9/2020	Transcript of Hearing: Plaintiffs' Motion to Stay Execution Pending Appeal (on an Ex Parte Application for an Order Shortening Time)	Appx001486- Appx001502
7	12/22/2020	Notice of Cross Appeal	Appx001503- Appx001504
7	12/22/2020	Certificate of Service	Appx001505- Appx001506
7	1/14/2021	Order on Plaintiffs' Motion to Stay Execution Pending Appeal	Appx001507- Appx001515
7	2/1/2021	Plaintiffs' Notice of Posting Supersedeas Bond	Appx001516- Appx001519
7	2/1/2021	Notice of Entry of Order on Plaintiff's Motion to Stay Execution Pending Appeal	Appx001520- Appx001530
7	5/26/2021	Register of Actions	Appx001531- Appx001539

Chan, et al. v. Wu, et al.
Nevada Supreme Court Case No. 82208 (8th Jud. Dist. Ct. Case No. A-16-744109-C)
Appendix (Alphabetical Index)

VOL	DATE	DOCKET TEXT/DESCRIPTION	BATES NOS
1	11/21/2016	Affidavit of Service	Appx000019- Appx000022
1	11/21/2016	Affidavit of Service	Appx000023- Appx000026
1	11/21/2016	Affidavit of Service	Appx000027- Appx000030
1	11/21/2016	Affidavit of Service	Appx000031- Appx000034
1	12/1/2016	Affidavit of Service	Appx000035- Appx000038
1	11/15/2016	Amended Complaint	Appx000011- Appx000018
1	2/10/2017	Amended Reply to Counterclaim	Appx000132- Appx000136
1	12/6/2016	Answer and Counterclaim	Appx000039- Appx000053
1	12/7/2016	Certificate of Service	Appx000054 - Appx000055
1	2/6/2017	Certificate of Service	Appx000122- Appx000123
1	2/7/2017	Certificate of Service	Appx000124- Appx000125
4	9/21/2018	Certificate of Service	Appx000702- Appx000703
4	10/30/2018	Certificate of Service	Appx000762- Appx000763
4	3/25/2019	Certificate of Service	Appx000832- Appx000833
6	7/15/2020	Certificate of Service	Appx001333- Appx001334
6	8/12/2020	Certificate of Service	Appx001365- Appx001366
7	8/13/2020	Certificate of Service	Appx001402- Appx001403

Chan, et al. v. Wu, et al.
Nevada Supreme Court Case No. 82208 (8th Jud. Dist. Ct. Case No. A-16-744109-C)
Appendix (Alphabetical Index)

VOL	DATE	DOCKET TEXT/DESCRIPTION	BATES NOS
7	9/11/2020	Certificate of Service	Appx001426- Appx001427
7	11/24/2020	Certificate of Service	Appx001476- Appx001477
7	12/22/2020	Certificate of Service	Appx001505- Appx001506
1	9/27/2016	Complaint	Appx000001- Appx000010
7	12/9/2020	Court Minutes, Motion to Stay	Appx001484- Appx001485
3	9/5/2018	First Supplement to Countermotion to Recognize Wu as the Procuring Cause, for Summary Judgment, and for Attorneys fees	Appx000649- Appx000673
6	8/11/2020	Memorandum for Production of Invoices for Attorney's Fees and Costs	Appx001355- Appx001364
4	10/31/2018	Memorandum of Costs and Disbursements	Appx000764- Appx000779
7	9/30/2020	Minute Order - all Pending Motions	Appx001428- Appx001429
1	2/27/2017	Minutes of 02/27/2017 hearing, Plaintiffs' Motion for Stay Pending Arbitration--Defendants' and Counterclaimants' Opposition to Motion to Stay Pending Arbitration and	Appx000151- Appx000152
3	8/22/2018	Minutes of 8/22/2018 Hearing as to Plaintiff's Reply in Support of Motion to Vacate or Modify Arbitration and Opposition/Motion	Appx000616- Appx000617
4	5/1/2019	Minutes re Motion to Stay Execution on OST, Partial Opposition to Plaintiff's Motion to Stay Execution Pending Appeal (on an Ex	Appx000863- Appx000864
5	1/22/2020	Minutes re Plaintiffs' Motion to Formally Resolve Motion for Reconsideration and to Certify Judgment as Final (on an	Appx001006- Appx001007
6	7/21/2020	Minutes, All Pending Motions	Appx001335- Appx001336

Chan, et al. v. Wu, et al.
Nevada Supreme Court Case No. 82208 (8th Jud. Dist. Ct. Case No. A-16-744109-C)
Appendix (Alphabetical Index)

VOL	DATE	DOCKET TEXT/DESCRIPTION	BATES NOS
1	1/13/2017	Motion for Stay Pending Arbitration	Appx000061 - Appx000065
5	6/4/2020	Motion for Summary Judgment, or in the alternative, for Contractual Award of Attorney's Fees, for Writ of Execution on Plaintiff's Commissions Awarded by GLVAR Arbitration Panel and Release of bond Deposited on Appeal	Appx001034- Appx001084
1	7/18/2018	Motion to Vacate or Modify Arbitration Award	Appx000160- Appx000464
4	4/22/2019	Notice of Appeal	Appx000860
4	4/24/2019	Notice of Appearance	Appx000861- Appx000862
7	12/22/2020	Notice of Cross Appeal	Appx001503- Appx001504
4	9/18/2018	Notice of Entry of Order	Appx000695- Appx000701
4	3/22/2019	Notice of Entry of Order	Appx000823- Appx000831
7	11/23/2020	Notice of Entry of Order	Appx001465- Appx001475
1	4/3/2017	Notice of Entry of Order Granting Motion to Stay and Denying Motion for summary Judgment	Appx000155- Appx000159
5	3/10/2020	Notice of Entry of Order on Plaintiffs' Motion to formally Resolve Motion for Reconsideration and to Certify Judgment as Final	Appx001023- Appx001030

Chan, et al. v. Wu, et al.
Nevada Supreme Court Case No. 82208 (8th Jud. Dist. Ct. Case No. A-16-744109-C)
Appendix (Alphabetical Index)

VOL	DATE	DOCKET TEXT/DESCRIPTION	BATES NOS
4	5/1/2019	Notice of Entry of Order on Plaintiff's Motion to Stay Execution Pending Appeal	Appx000883- Appx000886
7	2/1/2021	Notice of Entry of Order on Plaintiff's Motion to Stay Execution Pending Appeal	Appx001520- Appx001530
6	8/12/2020	Notice of Production of Documents for In Camera Review	Appx001367- Appx001401
1	2/2/2017	Opposition to Motion to Stay Pending Arbitration and Countermotion to Dismiss with Prejudice or in the Alternative for	Appx000066- Appx000121
3	8/6/2018	Opposition to Motion to Vacate or Modify Arbitration Award and Countermotion to Recognize Wu as the Procuring Cause, for	Appx000465- Appx000591
5	1/16/2020	Opposition to Plaintiffs' Motion to Formally Resolve Motion for Reconsideration and to Certify Judgment as Final (on an Application for an Order shortening Time) and Countermotion	Appx000953- Appx001005
3	9/18/2018	Order Denying Motion to Vacate or Modify Arbitration Award	Appx000691- Appx000694
4	3/22/2019	Order Granting Defendants Countermotion for Summary Judgment and Attorney Fees and Costs	Appx000816- Appx000822
7	11/23/2020	Order Granting in Part Defendant's Motion for Summary Judgment, or in the Alternative, for Contractual Award of	Appx001456- Appx001464
1	3/30/2017	Order Granting Motion to Stay and Denying Motion to Dismiss and Motion for Summary Judgment	Appx000153- Appx000154
5	3/10/2020	Order on Plaintiffs' Motion to formally Resolve Motion for Reconsideration and to Certify Judgment as Final and Countermotion for Summary Judgment on Abuse of Process Claim	Appx001018- Appx001022

Chan, et al. v. Wu, et al.
Nevada Supreme Court Case No. 82208 (8th Jud. Dist. Ct. Case No. A-16-744109-C)
Appendix (Alphabetical Index)

VOL	DATE	DOCKET TEXT/DESCRIPTION	BATES NOS
4	5/1/2019	Order on Plaintiffs' Motion to Stay Execution Pending Appeal	Appx000881- Appx000882
7	1/14/2021	Order on Plaintiffs' Motion to Stay Execution Pending Appeal	Appx001507- Appx001515
1	2/14/2017	Plaintiff/Counterdefendants Reply to Opposition to Motion to Stay Pending Arbitration and Opposition to	Appx000137- Appx000150
5	4/6/2020	Plaintiff's Amended Notice of Appeal	Appx001031-
7	12/8/2020	Plaintiff's Amended Notice of Appeal	Appx001481- Appx001483
4	1/7/2020	Plaintiffs' Motion to Formally Resolve Motion for Reconsideration and to Certify Judgment as Final (on an Application for an Order Shortening Time)	Appx000892- Appx000952
7	12/8/2020	Plaintiff's Notice of Appeal	Appx001478- Appx001480
4	5/7/2019	Plaintiffs' Notice of Posting Supersedeas Bond	Appx000887- Appx000891
7	2/1/2021	Plaintiffs' Notice of Posting Supersedeas Bond	Appx001516- Appx001519
7	9/9/2020	Plaintiffs' Opposition to Defendants' Memorandum for Production of Invoices for Attorney's Fees and Costs and	Appx001404- Appx001414
5	7/8/2020	Plaintiff's Opposition to Defendant's Motion for summary Judgment, or in the Alternative, for Contractual Award of	Appx001097- Appx001235
4	10/25/2018	Plaintiffs/Counterdefendants Betty Chan and Asia American Realty & Property Management's Supplement to Plaintiffs	Appx000708- Appx000754
7	5/26/2021	Register of Actions	Appx001531- Appx001539
5	6/9/2020	Remittitur	Appx001090

Chan, et al. v. Wu, et al.
Nevada Supreme Court Case No. 82208 (8th Jud. Dist. Ct. Case No. A-16-744109-C)
Appendix (Alphabetical Index)

VOL	DATE	DOCKET TEXT/DESCRIPTION	BATES NOS
7	9/20/2020	Reply in Support of Memorandum for Production of Invoices for Attorney's Fees and Costs	Appx001415- Appx001425
6	7/13/2020	Reply in Support of Motion for Summary Judgment, or in the alternative, for Contractual Award of Attorney's Fees, for Writ of	Appx001236- Appx001332
3	8/15/2018	Reply in Support of Motion to Vacate or Modify Arbitration Award and Opposition/Motion to Strike Improper Countermotion	Appx000592- Appx000615
1	12/19/2016	Reply to Counterclaim	Appx000056- Appx000060
4	10/29/2018	Reply to Plaintiff/Counterdefendants Supplement to Plaintiffs Opposition to Defendants/Counterclaimants 91) First supplement to Countermotion to Recognize Wu as the Procuring Cause, for Summary Judgment, and for Attorneys Fees and (2) Supplement to First Supplement to Countermotion	Appx000755- Appx000761
3	9/12/2018	Supplement to First Supplement to Countermotion to Recognize Wu as the Procuring Cause, for Summary Judgment, and for	Appx000674- Appx000690
1	2/7/2017	Supplement to Opposition to Motion to Stay Pending Arbitration and Countermotion to Dismiss with Prejudice or in the Alternative for Summary Judgment	Appx000126- Appx000131
5	6/9/2020	Supreme Court Clerk's Certificate, Judgment Dismissing Appeal	Appx001085- Appx001089
3	8/22/2018	Transcript of Hearing: All Pending Motions	Appx000618- Appx000648
5	1/22/2020	Transcript of Hearing: All Pending Motions	Appx001008- Appx001017
6	7/21/2020	Transcript of Hearing: All Pending Motions	Appx001337- Appx001354
4	10/31/2018	Transcript of Hearing: Defendants and Counterclaimants Wayne Wu, Judith Sullivan, Nevada Real Estate Corp. and Jerrin Chiu's	Appx000780- Appx000815
4	4/17/2019	Transcript of Hearing: Defendants' Motion for Writ of Execution	Appx000834- Appx000859
4	5/1/2019	Transcript of Hearing: Motion to Stay Execution on OST, Partial Opposition to Plaintiff's Motion to Stay Execution Pending	Appx000865- Appx000880
7	11/18/2020	Transcript of Hearing: Order/Case Status	Appx001453- Appx001455
4	10/17/2018	Transcript of Hearing: Plaintiffs' Motion to Extend Briefing on Order Shortening Time and continue Hearing Date	Appx000704- Appx000707

Chan, et al. v. Wu, et al.
Nevada Supreme Court Case No. 82208 (8th Jud. Dist. Ct. Case No. A-16-744109-C)
Appendix (Alphabetical Index)

VOL	DATE	DOCKET TEXT/DESCRIPTION	BATES NOS
7	12/9/2020	Transcript of Hearing: Plaintiffs' Motion to Stay Execution Pending Appeal (on an Ex Parte Application for an Order	Appx001486- Appx001502
5	6/30/2020	Transcript of Hearing: Plaintiff's Motion to Strike or in the Alternative to Extend Briefing and Continue the Hearing On	Appx001091- Appx001096
7	9/30/2020	Transcript of Hearing: Plaintiff's Opposition to Defendant's Memorandum for Production of Invoices for Attorney's Fees and	Appx001430- Appx001452

Exhibit 5 (13 pages)

11/2/2015- 1/8/2016- Details of Buyer Jerrin Chiu's subject disputed purchase.

11/2/2015- Highlight on my agency relationship with Jerrin Chiu in writing

12/30/2015 Showing to Jerrin Chiu and family including KB Home

12/30/2015 Follow up email to Jerrin Chiu after showing

1/5/2016 Follow up email to Jerrin Chiu checking status

(1/8/2016 Buyer Jerrin Chiu already signed the KB purchase contract with Agent Wayne Wu)

1/15/2016 Follow up email to Jerrin Chiu checking status

(1/15/2016 also text Jerrin in the evening and his response in text saying he was busy and not buying any more see Exhibit 9)

1/25/2016-1/27/2016 reasoning with Buyer Jerrin Chiu about his unethical behavior.



Betty Chan <aalender@gmail.com>

Looking for new house!

Jerrin Chiu <jchiuey@gmail.com>

Mon, Nov 2, 2015 at 3:07 PM

To: Betty Chan <aalender@gmail.com>

Hello Betty,

How have you been? Hope all is well. So I am going to be looking for a new house! I think you spoke with my dad last month. So they are coming to visit again at the end of this year. We were hoping that you can show us some houses around new years time? We are free Dec 30 morning/afternoon, and all day Dec 31 and Jan 1st. I know that is holidays so you may be busy with family. But if you are free, maybe you can show us some houses? I will be looking for around \$250-\$400k house around boca park, preferably 5 miles within my work. Thanks Betty! Hope to talk to you soon.

Jerrin



Betty Chan <aalender@gmail.com>

Looking for new house!

Betty Chan <aalender@gmail.com>
To: Jerrin Chiu <jchiuey@gmail.com>

Mon, Nov 2, 2015 at 4:29 PM

Sure. Thank you for using my service again.

Betty

[Quoted text hidden]



Betty Chan <aalender@gmail.com>

Looking for new house!

Jerrin Chiu <jchiuey@gmail.com>
To: Betty Chan <aalender@gmail.com>

Sat, Nov 28, 2015 at 4:26 PM

Hey Betty,

So I am going to be looking for some new houses to check out around boca park. I was looking at inside Canyon Gate Country Club and there's one house I was interested in already. 9012 Echo Ridge Drive. Are you still able to show us some houses Dec 30 or 31st? Thanks Betty, and happy thanksgiving!

[Quoted text hidden]

13
28



Betty Chan <aalender@gmail.com>

Looking for new house!

Betty Chan <aalender@gmail.com>
To: Jerrin Chiu <jchiuey@gmail.com>

Sun, Nov 29, 2015 at 1:40 AM

Jerrin

Yes. I will.

Not sure whether the house will still be there though.

You know that canyon gate assn fee is \$300 or more?

I m in China right now, will be back Dec 6.

Betty

[Quoted text hidden]



Betty Chan <aalender@gmail.com>

Looking for new house!

Jerrin Chiu <jchiuey@gmail.com>

To: Betty Chan <aalender@gmail.com>

Sun, Nov 29, 2015 at 12:55 PM

Hmm, that HOA is a little steep for me. Ok, have fun in China! I'll talk to you when you get back.

[Quoted text hidden]



Betty Chan <702aar@gmail.com>

3 properties we saw today

BETTY CHAN <emailnotification@interealty.net>
Reply-To: BETTY CHAN <702aar@gmail.com>
To: BETTY CHAN <702aar@gmail.com>

Wed, Dec 30, 2015 at 7:54 PM

This email was sent to: Jerin Chiu <jchiuey@gmail.com>

Listings: 1594880, 1594035, 1592526

Click here to view these listings if you are the email sender.

NOTE: The above link is specifically for the email sender and helps prevent alteration of Client Gateway settings or listing hit counts. Links contained in the email message below are intended for the email recipient and track each time they are accessed. For your convenience, the link above will display the listings in your default Full View report, regardless of which report(s) you emailed. Also, you will receive only a single copy of this email even if you sent the listings to multiple clients, each of whom will receive a distinctly separate email.

Hi Jerry

Here are the 3 properties that you are interested.

Please let me know if you have any questions.

[04-SFR Brochure \(Medium\) View](#)

[Mobile-Friendly View](#)

Betty Chan, CCIM, CPM, CRS
Broker
Asian American Realty & Property Management
4651 Spring Mountain Road, LV, NV 89102
phone 702-222-0078
fax 702-222-1772
email 702aar@gmail.com
"The Happiest Realtor in Las Vegas"
fax 702-222-1772

5-61



Betty Chan <aalender@gmail.com>

Looking for new house!

Betty Chan <aalender@gmail.com>
To: Jerrin Chiu <jchiuey@gmail.com>

Tue, Jan 5, 2016 at 11:56 AM

Jerrin

Have you decided anything yet?

Betty

[Quoted text hidden]



Betty Chan <aaroffer@gmail.com>

Summerlin KB home purchase

Betty Chan <aaroffer@gmail.com>

Mon, Jan 25, 2016 at 8:08 AM

To: Jemin Chiu <Jchiuey@gmail.com>

Cc: simp043@gmail.com, jmcneff@kbhome.com

Hello Jemin,

Further to our conversation last week, I simply could not believe you dare do such an unethical thing to me. A professional doctor is expected to hold a higher standard of ethic and professionalism. You did go back and buy at Tevere KB home that I show you and you signed the registration on site on December 30 2015, but using another Realtor that you do not even know to write up the contract, simply because you want his kickback of 1% based on your Dad's disrespect of your life. Guess what, now this has become such a big mess for you! It could have been a happy celebration for the hard work that you have achieved, now it is going to turn into a big mess for your reputation and possibly a court case for both you and the Realtor. Just think about the attorney fees, will 1% kickabck be enough to cover??

Think about this for a second, when I first met you, I consider you as part of my team being my daughter's co-worker. I admired you to be very independent of yourself and I would like to help young people like you to build up your wealth and your credit. A year ago, Instead of going along with your intended purchase of the condo on Charleston area for 80K which stay about the same price today, I offered you my expertise to make a different choice and using my skill to negotiate a better than the list price to get you this townhouse that you live in. Today the value of your townhouse at least has gone up 20K in only a little over one year. I also saved you at least 3000 on the loan fees. In other words, using me as your Realtor, I already helped you build up at least 23K equity plus the possible future appreciation of this KB home. Can you imagine what you have lost over a \$3000 kickback from a Realtor who has nothing to prove but discounting himself!

The rule of our real estate industry to determine who should get paid is based on procuring clause, The builders make it very clear that they only pay to the Realtor who first brought in the client. I know for a fact that I am the first and only one that brought you to that KB home. So even though you have another Realtor write up the contract, he would not get paid plus you would make him a lot of troubles on his license, and stupid Realtor, didn't he realize that? You really need such a Realtor who could risk himself to only make few thousands more? Can you imagine what else he will not do to you?!

You have the right to ask him to sell you any houses except those that I first show you. Honestly why you even bother to make an appointment with me since few months ago to look at houses on that day, not only that, you already gave me all the financial to start a loan to do this purchase since 2 months ago. Dont forget you and I have been looking for your next house few times since last year. You use my expertise but use someone else to write up the contract just to benefit yourself, that is the definition of unethical and immoral.

I have changed my life perspective since I have received a kidney from a generous and gracious donor. I would like to settle thing rather than making things complicated for myself because I can better use my time to help people rather than struggling over some nonsense on people who will never understand how fortunate that they have been taken care of.

I am offering you a chance to clear this up with KB homes so that I can get the commission that I worked for. So, please call KB home today to do the right thing.

I did a good job for your past purchase and sure I know how to do an equal if not a better job for myself.

If I did not hear from you, then I have no choice but to initiate whatever action deemed appropriate to protect myself from being treated so ridiculously unfair. Whatever that outcome would be, you really do not need to have any trace of " unethical behavior" on your resume for the rest of your career.

Betty Chan, CCIM, CPM, CRS
Broker
Asian American Realty & Property Management
Office 702-222-0078
P0053

2 Appx 000236



Betty Chan <aaroffer@gmail.com>

Summerlin KB home purchase

Jerrin Chiu <jchiuey@gmail.com>

To: Betty Chan <aaroffer@gmail.com>

Tue, Jan 26, 2016 at 10:13 AM

Hello Betty,

I'm sorry you feel this way. But actually we are upset with you as well. We tried calling you, but you never replied to any of our calls and voicemails until several days later. You knew very well my parents were only here in town for a few more days so we had limited time. This only reminded us of how hard it was to get a hold of you 2 years ago about my condo. We found another agent who was readily available who could answer our questions. I'm sorry it ended this way and I hope you don't take this personally.

Jerrin

24



Betty Chan <aaroffer@gmail.com>

Summerlin KB home purchase

Betty Chan <aaroffer@gmail.com>
To: Jerrin Chiu <jchiuey@gmail.com>
Bcc: aaroffer@gmail.com

Tue, Jan 26, 2016 at 10:49 AM

Jerrin, i dont believe you wrote this email, and i dont believe you will lie, i tried to be nice and still care about you, but if you wants to go with those people that only wants to ruin your life then i am speechless.
It really does not matter what you lied about, i have proof of the whole thing, every email that you sent me, bottom line i was the first and only agent that show you the house regardless of what you tried to make up, it will not stop KB pay me instead of your agent who only taught you how to lie.
I am sorry that you do not value yourself.
Betty

On Jan 26, 2016, at 10:13 AM, Jerrin Chiu <jchiuey@gmail.com> wrote:

Hello Betty,

I'm sorry you feel this way. But actually we are upset with you as well. We tried calling you, but you never replied to any of our calls andce voicemails until several days later. You knew very well my parents were only here in town for a few more days so we had limited time. This only reminded us of how hard it was to get a hold of you 2 years ago about my condo. We found another agent who was readily available who could answer our questions. I'm sorry it ended this way and I hope you don't take this personally.

Jerrin



Betty Chan <aaroffer@gmail.com>

Summerlin KB home purchase

Betty Chan <aaroffer@gmail.com>

Wed, Jan 27, 2016 at 9:26 AM

To: Jemin Chiu <Jchiuey@gmail.com>

Cc: simpo43@gmail.com

Bcc: jmcneff@kbhome.com, cmcnair@kbhome.com

Dear Jemin,

I still want to give you one last chance to fix your wrongdoings before I take you to court. Do not think I am bluffing, your Dad has always said he likes my honesty.

I want you to take a step back and think about what you have been doing. .

To say I will not respond to your phone calls and emails are jokes of the century. Two years ago, if I could answer every one of your Dad's 35 phone calls a day, and I still have proof for that, do you think the jury will believe you cannot find me or I do not respond after spending so much time to find you a house and before you put a deposit down? If you said after you put your deposit down, then I disappear will be more convincing

I talked to your Dad on the day he left, he asked me if I could kick back 1% because other agent did, I told him I never kicked back because I think I make my clients money more than 1%, it was a proven record in your case.

However I do not want him to be unhappy as he had been regularly checking on me when I was very sick, so I agreed to do a 1/2 % and if I did the loan, then I will agree to give 3/4%, and he said OK. So there is nothing like what you accused that I did not communicate. So your agent created that allegation will not work. I still have your Dad's messages and log on my phone, I followed up with you twice following the showings. Actually it was you that did not respond. I texted you again after and we did talk. All on records. So there was no loss of contact since I show you the house on 30th Dec. I will safekeep all this evidence for the Court.

I bet you the other Realtor did not tell you the consequence before you signed the contract. He put you in a very messy situation just to make the commission, so he made you an unethical person, Further he taught you how to lie with all those untrue accusation so now he makes you even worse, a LIAR. What does he has to lose, you become the target of the lawsuit, and he just stands on the side folding his arms possibly enjoying his dream of his commission come true.

Can you see who that agent really is?! or is that you who really are?

If you lose in the lawsuit, and I promise you that you will. It was straight forward and simple, KB home only pays to the agent that first brought in the client and that is me. Your unhappiness or your unsatisfaction of your agent has no effects on their policy. Dont forget if you lost the case, you will have to pay my attorney fees too.

Once lawsuit starts then it will become a public record. Everyone knows that you are an unethical person and a liar and ask for kickback, I honestly do not believe there will not be even a slightly effect on your professional image or career. So who or what will you protect, your \$3000 or more kickback, or your agent commission or your reputation? NONE of them!

If that was still your decision to move forward, I will not feel bad to play along, what do I have to lose? .

Afterall buying a house should be happy and not miserable and you do not want to carry that lawsuit nightmare for the rest of your time living in that house.

This is not yet the end of it and I do take this personally because I really do not want to take you to court. I do not believe it is your decision to use another Realtor. I do not believe you are a person that you will lie to make up story so that you can get a kickback That is why I write this email one last time. This is my last piece of advice to make you money by saving you unnecessary attorney fees, time and reputation. I never have pointed you to a wrong direction. So think and choose wisely before it is too late!

I still encourage you to talk to KB and let them handle rather than you all by yourself!! If not, the next thing you hear from me will be Summary of Complaint. You break my heart to have to take you to court!

P0056

2 Appx 000239

Exhibit 6 (9 pages)

December 30 2016 –Showing day

Showing Route and properties information
Including the subject disputed purchase

6

ML# 1582066 Offc CASH PubID 202300 Status ER Area 404 L/Price \$ 399,000
 Address 11524 /CANNON FALLS AV Unit StatusUpdate LP/SqFt \$178
 Building # Bldr/Manf Model CondoConv Zip 89138
 County CLARK Parcel# 137-26-317-012 Zoning SINGLE Studio YrBuilt 2004 /RE
 Community SMMRLIN Subdiv VILLAGE 20 SUMMERLIN PARCEL T City/Town Las Vegas AgeRestric N State NV
 Assoc/Comm Feat Desc CCRS /JOGGING /PLAYGRD Gated N
 Elem K-2 GIVE Elem 3-5 GIVE YrRound N Junior SIGR Highsch PALV Subdiv# CensTrct 58.24 MetroMap 41 -C4
 Bldg Desc 1STORY Prop Desc Type DETACHED Unit Desc #Bedrms 3 #Den/Oth 1 #Loft 0
 Roof TILE/PITCHED Garage 3 /ATTACHD /AUTODR /ENTRYHS Conv N Carport 0 Parking Desc
 AppxLivArea 2,238 Lot SqFt 6,098 #Acres +/- 0.140 Lot Desc 1/4LESS
 ApprxAddLivArea ApprxTotalLivArea 2,238 Manuf Length Width ConvertRealProp MH-YrBlt
 PvSpa Y /OUTDOOR /ABOVEGR PvPool N PoolSize +/-
 Dir FROM FAR HILLS & 215. WEST ON FAR HILLS, LEFT ON CARRIAGE HILL, RIGHT AT TOWER ON VISTA RUN, R ON KENTWOOD, R ON CAMEO, L ON ALERION, R ON CANNON FALLS

Public Welcome home! Gorgeous, hard to find 1 story in the heart of Summerlin under \$400K! 3 car garage! 3 large bedrooms and an
 Rem office/den that can easily be the 4th BR! Spacious, open floorplan w/ bamboo flooring throughout, gourmet kitchen w/ upgraded
 cabinets, island w/ slab Caesarstone counter tops, surround sound pre wire, covered patio, above ground spa, putting green, way too
 much to list. Buyer/Agent to verify all.
 Ag/Ag For showing, Call or text agent first. No showings after 6pm. For financed offers, please contact Gina Baker at Alderus Funding 702-
 Rem 255-5783 x106. Seller prefers Kim Anadon, Old Republic Title. Send offers/Inquires to Scott@LVIcon.com. Thank you for showing.
 Buyer/Agent to verify all information to satisfaction.

LoftDim1st Floor LoftDim2nd Floor Loft Desc
 Liv Rm 12x14 FORMAL 2ndBd 10x11
 Fam Rm 16x17 SEPFAM 3rdBd 10x11
 Grt Rm Grt Rm N 4thBd
 Din Rm 10x15 FORMAL 5thBd
 Kitchen RECESS /ISLAND /NOOK /HRDWOD Bed Dn Y Ba Dn Y Ba Dn Desc. F
 MBR 14x17 WICLOS /CEILFN MBR Down? Y Den Dim 10x13 Loft Dim:
 MB Bath SEPSHW /DBLSNK FurnishedDesc NOFURN
 Refrg Y Dispos Y Dishw Y Washer Inc Y Dryer Inc Y Constrctn FRMSTUC
 OthApplnces NONE DryerUtil G Location ROOM
 Interior SHUTTRS OvnDesc STOVEG
 Firepl 1/GAS FP Loc MASTER/LIVING Floor BAMBOO
 Fence BF /BLOCK Equest NONE
 House Face South House Views
 Exterior CVPATIO /BYARDAC /PATIO
 Landscap DESERT
 Heat Sys CENTRAL HtFuel GAS
 Cool Sys CENTRAL CLFuel ELEC Miscel NONE
 Utility Info UNDGRND Energy NONE Grd Mounted Y Water PUBLIC
 Assoc Fee Y AssocName Summerlin West Assoc Fee 2 Sewer PUBLIC
 AssocFee1 \$ 0 / N AssessmentAmt Sol Elec None
 Assoc Fee Includes MGMT SID/LID? Y SID/LID Bal \$4,808 SID/LID Ann \$1,001
 EarnDep \$ 7,500 Ann Tax \$3,083 Court App N Short Sale N Foreclo N Repo/REO N Litig/Typ U
 FinanceConsid CASH /CONV /VA FIRPTA? N NOD Rent Poss COE
 Lockbox E LockboxLocation gas meter TempOffMktStatus T Status Date LeaseEnd
 L/Agent Scott Pharris L/A Ph 702-326-0119 REALTOR Y PhotExcluded Bonus SO
 Office Icon Realty OffcPh 702-326-0119 CoOp 3.000% Flat Fee Vt N Ex N
 Off Add 500 N Rainbow Blvd #110, Las Vegas 89107 BrokerName Scott Pharris VirtTour Y OwnLic N
 Agt Fax # Email Scott@LVIcon.com ListDt 10/19/15
 Resident Owner ResPh 702-326-0119 Occup VAC Power ON AuctTyp AuctDt ExpDt
 Showing KEYCLA GateCode WD OrigListPrice \$399,000 Active DOM 71
 ContDesc CombolB GateCode2

Presented by: Office Name: Asian American Realty

Agent: Betty Chan

ML#	1594880	Offc	KWRS	PubID	205111	Status	ER	Area	404	L/Price	\$ 420,000
Address	89 / ESCONDIDO CANYON ST			Unit		StatusUpdate				LP/SqFt	\$207
Building #		Bldr/Manf		Model						Zip	89138
County	CLARK	Parcel#	137-26-315-026	Zoning	SINGLE	CondoConv		Studio		YrBuilt	2003 /RE
Community	SMMRLIN	Subdiv	VILLAGE 20-SUMMERLIN PARCEL T	City/Town	Las Vegas	AgeRestrict	N	State	NV	Gated	Y
Assoc/Comm Feat Desc	PLAYGRD										
Elem K-2	GIVE	Elem 3-5	GIVE	YrRound	N	Junior	SIGR	Highsch	PALV	Subdiv#	
										CensTrct	58.24 MetroMap 41-C4
Bldg Desc	1STORY			Prop Desc							
Roof	TILE			Type	DETACHED	Unit Desc					
Garage	2 / ATTACHD / ENTRYHS			Conv	N	Carport	0	Parking Desc		#Bedrms	3
AppxLivArea	2,033	Lot SqFt	10,454	#Acres +/-	0.240	Lot Desc	1/4LESS / CORNER			#Den/Oth	0
ApprxAddLivArea		ApprxTotalLivArea	2,033	Manuf		Length		Width		ConvertRealProp	MH-YrBlt
PvSpa	N			PvPool	N					PoolSize +/-	
Dir	I-215W to Far Hills, left to Vistas, right to rndabout, rt onto Vista Run, up hill to first right which is Kentwood, right on Cameo, left on S Escondido Canyon, corner h										

Public Rem Immaculate single story Summerlin home in The Vistas w/ lovely courtyard entry! Popular William Lyon floor plan features a spacious and open layout with large great room and Gourmet kitchen with a huge island and granite counters. Master suite has a luxurious master bath and walk in closet. Tile throughout except carpet in the bedrooms. Large corner lot. Highly desirable neighborhood.

Ag/Ag Rem Pre-Approval or POF Required with all offer submissions Easy to show! Please call or text Sheila Francis at 702-577-1224 to arrange showing, include PID and company. Please open lockbox when you show if owner is home. New water heater, reflective insulation, ceiling fans in every room. Home has been very well maintained. Seller requires Proof of Funds or Prequal Letter. Chicago Title, Kerrie Kissane preferred. Buyer and agent to verify all information. Thanks for showing!

LoftDim1st Floor	LoftDim2nd Floor	Loft Descr	
Liv Rm	NONE		2ndBd 14x11
Fam Rm	NONE		3rdBd 13x14
Grt Rm	24x30	Grt Rm Y / NONE	4thBd
Din Rm	14x12	FORMAL	5thBd
Kitchen	GRNCTP / TILE / PANTRY / RECESS / BRKBAR / ISLAND		Bed Dn Y Ba Dn Y Ba Dn Desc. F
MBR	21x14	SEPRAT	Den Dim Loft Dim:
MB Bath	SEPSHW / SEPTUB / DBLSNK		FurnishedDesc NOFURN
Refrg Y	Dispos Y	Dishw Y Washer Inc Y Dryer Inc Y	Constrctn BLOCK
OthApplnces	NONE		DryerUtil G Location ROOM
Interior	CEILFN		OvnDesc STOVEG
Firepl	1/GAS		Floor CERAMIC
Fence	BF / BLOCK		
House Face	East	House Views	Equest NONE
Exterior	CVPATIO / BYARDAC / PRIVYRD		
Landscap	LAWNRR / MATURE / SHRUBS / LAWNFR / BUBDRIP		Miscel NONE
Heat Sys	CENTRAL		Water PUBLIC
Cool Sys	CENTRAL		Sewer PUBLIC
Utility Info	UNDGRND		Sol Elec None
			Grd Mounted
Assoc Fee	Y	AssocName Summerlin West	Internet Y Public Address Y
AssocFee1	\$ 41 / M	Assoc Fee 2	AVM Y Commentary N
Assoc Fee Includes	COMTAX		Assoc Ph 702-791-4600 Mast Plan Fee \$ 0 / None
EarnDep	\$ 10,000	Ann Tax \$2,874 Court App N	Assessmt N AssessmentAmt
FinanceConsid	CASH / CONV / VA		SID/LID? Y SID/LID Bal \$4,808 SID/LID Ann \$ 1,001
Lockbox	E	LockboxLocation gas meter	Foreclo N Repo/REO N Litig/Typ U
L/Agent	David Golden		FIRPTA? N NOD
Office	Keller Williams Realty Southwest		TempOffMktStatus
Off Add	6180 Brent Thurman Way #100, Las Vegas 89148		T Status Date
Ag Fax #			PhotExcluded
Resident	Jon	ResPh 000-000-0000	Lease
Showing	KEYCLA	Occup OWN	
ContDesc		GateCode	
		GateCode2	
		Power ON	
		WD	
		OrigListPrice \$420,000	

Presented by: Office Name: Asian American Realty

Agent: Betty Char

ML# 1594035 Offc REISO2 PubID 000241 Status ER Area 404 L/Price \$483,000
Address 11313 /ASILO BIANCO AV Unit StatusUpdate LP/SqFt \$185
Building # Bldr/Manf Model CondoConv Zip 89138
County CLARK Parcel# 137-35-321-051 Zoning SINGLE Studio YrBuilt 2005 /RE
Community WSMRLIN Subdiv MIRAMONTE AT SUMMERLIN City/Town Las Vegas AgeRestrict N State NV
Assoc/Comm Feat Desc CCRS /JOGGING /PLAYGRD CensTrct 58.22 MetroMap 41-C6
Elem K-2 GIVE Elem 3-5 GIVE YrRound N Junior SIGR Highsch PALV Subdiv# Gated N
Bldg Desc 1STORY Prop Desc
Roof TILE Type DETACHED Unit Desc 3 0 0 3
Garage 3 /ATTACHD /AUTODR /ENTRYHS Conv N Carport 0 #Bedrms 4 #Den/Oth 0 #Loft 0
AppxLivArea 2,607 Lot SqFt 10,454 #Acres +/- 0.240 Lot Desc 1/4LESS Parking Desc
ApprxAddLivArea ApprxTotalLivArea 2,607 Manuf Length Width ConvertRealProp MH-YrBlt
PvSpa N PvPool N PoolSize +/-
Dir 215 & CHARLESTON TO VISTA CENTRE NORHT TO PARK VISTA*E @ BEND TO SPRINGBURN*LEFT TO 1ST LEFT TO ASILO BIANCO

Public GORGEOUS UPGRD ONE STORY SUMMERLIN**KITCHEN FEATURES GRANITE COUNTERS, STAINLESS APPLI, BUILTIN DINING BR,
Rem DESK, DOUBLE OVENS & MORE**SEP FAM, DIN & LIV RM W/FRPLC**CUSTOM PAINT THROUGHOUT**ALL ROOMS ARE LARGE
INCLD BDRMS & 3 HAVE OWN BATHS**4TH BDRM HAS NO CLOSET**CEILING FANS**TILE, WOOD AND CARPET
Ag/Ag PATIO*CRTRYD ENTRY*
Rem TRADITIONAL SALE****BEAUTIFUL UPGRADED ONE STORY***ESCROW WITH NEVADA TITLE-KATHY DEICHLER***PLEASE USE 12
PAGE 08A***VERY UPGRADED CUSTOM COLORS**4TH BEDROOM HAS DOOR BUT NO CLOSET**CAN BE BDRM WITH
ARMOIRE**JUST UNDER QUARTER ACRE AT .24**POOL SIZE AND MORE**THIS WILL GO FAST**

LoftDim1st Floor LoftDim2nd Floor Loft Descr
Liv Rm 18X15 FORMAL /ENTFOY
Fam Rm 15X21 DNSTRS /SEPFAM
Grt Rm Grt Rm N
Din Rm 14X15 FORMAL
Kitchen GRNCTP /ISLAND /TILE /TRACK /PANTRY /NOOK

2ndBd 11X12 W/BATH /DNSTRS
3rdBd 11X13 W/BATH /DNSTRS
4thBd 12X13 DNSTRS
5thBd

MBR 16X19 SEPRAT /MBRDWN /CEILFN /WICLOS MBR Down? Y
MB Bath DBLSNK /SEPSHW /SEPTUB
Refrg Y Dispos Y Dishw Y Washer Inc Y Dryer Inc Y
OthApplnces MICROWV
Interior BLINDS /CEILFN

Bed Dn Y Ba Dn Y Ba Dn Desc F
Den Dim Loft Dim:
FurnishedDesc NOFURN
Constrctn FRMSTUC
DryerUtil G Location ROOM / 1STFLR
OvnDesc DBLOVNE/STOVEG
Floor CERAMIC/CARPET/HRDWOOD

Firepl 1/GAS FP Loc LIVING
Fence BF /BLOCK

Equest NONE

House Face North House Views
Exterior CVPATIO /PRIVYRD
Landscap MATURE /DESERT
Heat Sys CENTRAL/2UNITS+
Cool Sys 2UNITS+/CENTRAL/REFRIG
Utility Info CABLAVL

HtFuel GAS
CLFuel ELEC
Energy DUALPNE

Miscel NONE
Water PUBLIC
Sewer PUBLIC
Sol Elec None

Assoc Fee Y AssocName SUMMERLIN WEST
AssocFee1 \$0 / N Assoc Fee 2
Assoc Fee Includes MGMT /REC
EarnDep \$5,000 Ann Tax \$3,450 Court App N
FinanceConsid CASH /CONV

Internet Y Public Address N AVM N Commentary Y
Assoc Ph 702-791-4600 Mast Plan Fee \$41 /Monthly
Assessmt N AssessmentAmt
SID/LID? Y SID/LID Bal \$5,217 SID/LID Ann \$1,087
Short Sale N Foreclo N Repo/REO N Litig/Typ N
FIRPTA? N NOD Rent

Lockbox E LockboxLocation FRONT DOOR

TempOffMktStatus

L/Agent Calla Mynuk
Office Relss Properties

L/A Ph 702-595-9151
OffcPh 702-454-9153

REALTOR Y T Status Date
CoOp 3.000% Flat Fee

Off Add 7040 Laredo St Suite D, Las Vegas 89117
Agt Fax # 702-454-9149

BrokerName

Resident MR VACANT

Email calla@lvpropertymanagement.com

Showing KEYANY

ResPh 702-595-9151

Occup VAC

Power ON

AuctTyp

ContDesc

ComboLB

GateCode

WD

AuctDt

GateCode2

OrigListPrice \$483,000

Presented by: Office Name: Asian American Realty

Agent: Betty Chan

ML# 1592526 Offc AMEG21 PubID 222389 Status ER Area 503 L/Price \$ 429,999
Address 10518 /DOVE MEADOW WY Unit StatusUpdate LP/SqFt \$174
Building # Bldr/Manf Model CondoConv Zip 89135
County CLARK Parcel# 164-36-515-013 Zoning SINGLE Studio YrBuilt 2015 /RE
Community SMMRLIN Subdiv CIELO City/Town Las Vegas AgeRestric N State NV
Assoc/Comm Feat Desc GATED /CCRS /PLAYGRD Subdiv# CensTrct 58.40 MetroMap
Elem K-2 BATT Elem 3-5 BATT YrRound N Junior FERT Highsch DURA Gated Y
Bldg Desc 1STORY/2STORY Prop Desc
Roof PITCHED Type DETACHED Unit Desc 2 0 1 3
Garage 3 /ATTACHD /AUTODR Conv N Carport 0 #Bedrms 3 #Den/Oth 0 #Loft 0
AppxLivArea 2,466 Lot SqFt 5,663 #Acres +/- 0.130 Lot Desc 1/4LESS Parking Desc
ApprxAddLivArea ApprxTotalLivArea 2,466 Manuf Length Width ConvertRealProp MH-YrBlt
PvSpa N PvPool N PoolSize +/-
Dir West on Russell from the 215, (South) Left on Mesa Park. Right on Bright Cloud, Right on Glory Heights, Right on Dove Meadow.

Public Office downstairs can be converted to a bedroom glass doors13x10
Rem

Ag/Ag Sellers request to use Equity Title Cindy Koenig..Solar System is in place on the house.. TV and Water softner will be included at coe..
Rem Buyer and Buyers agent to verify all measurements. Garage floor is done in epoxy.. Surround sound will stay with the property..

LoftDim1st Floor LoftDim2nd Floor Loft Desc
Liv Rm 17x13 ENTCTR /FRONT
Fam Rm NONE
Grt Rm Grt Rm N
Din Rm 10x10 LIVDIM
Kitchen GRNCTP
MBR 17x15 CEILFN /WICLOS MBR Down?
MB Bath DBLSNK /SEPTUB /SEPSHW
Refrg Y Dispos Y Dishw Y Washer Inc N Dryer Inc N
OthApplnces MICROWV
Interior BLINDS
Firepl 0
Fence BF /BLOCK FP Loc
House Face South House Views
Exterior COURTYD
Landscap LAWNFR /LAWNRR
Heat Sys CENTRAL
Cool Sys CENTRAL
Utility Info CABLAVL
2ndBd 14x11
3rdBd 15x12
4thBd
5thBd
Bed Dn N Ba Dn Y Ba Dn Desc F
Den Dim Loft Dim: 15x11
FurnishedDesc NOFURN
Constrctn FRMSTUC
DryerUtil G Location ROOM
OvnDesc DBLOVNE
Floor CERAMIC/CARPET
Equest NONE

HtFuel GAS Miscel NONE
CLFuel ELEC Water PUBLIC
Grd Mounted Sewer PUBLIC
Sol Elec None
Energy NONE
Internet Y Public Address Y AVM Y Commentary Y
Assoc Ph 702-531-3382 Mast Plan Fee \$ 43 /Monthly
Assessmt N AssessmentAmt
SID/LID? Y SID/LID Bal \$6,200 SID/LID Ann \$ 843
Short Sale N Foreclo N Repo/REO N Litig/Typ N
FIRPTA? N NOD Rent Poss COE
TempOffMktStatus T Status Date
L/A Ph 702-339-0137 REALTOR Y PhotExdu
OffcPh 702-734-5555 CoOp 3.000% Flat Fee
BrokerName Forrest Barbee
Email SmithAlice22@gmail.com
Resident Alice Smith ResPh 702-339-0137 Occup VAC Power ON AuctTy
Showing KEYANY GateCode keykey WD AuctDt
ContDesc CombolB GateCode2 OrigListPrice \$429,999

Presented by: Office Name: Asian American Realty

Agent: Betty

ML# 1581424 Offc INRE PubID 211470 Status ER Area 503 L/Price \$425,000
 Address 9994 /WONDERFUL DAY DR Unit Model StatusUpdate LP/SqFt \$154
 Building # Bldr/Manf CondoConv Zip 89148
 County CLARK Parcel# 163-31-213-080 Zoning SINGLE Studio YrBuilt 2003 /RE
 Community NONE Subdiv RUSSELL FORT APACHE-UNIT 8 City/Town Las Vegas AgeRestrict N State NV
 Assoc/Comm Feat Desc CCRS /COCLUB /EXERCISM /GATED /POOL /SPA /PLAYGRD Gated Y
 Elem K-2 BATT Elem 3-5 BATT YrRound N Junior FAIS Highsch SIER Subdiv# CensTrct 58.52 MetroMap 62-A5
 Bldg Desc 1STORY Prop Desc Type DETACHED Unit Desc 1LEV1FL #Bedrms 4 #Den/Oth 0 #Loft 0
 Roof TILE Garage 3 /ATTACHD /AUTODR /FINISHD /ENTRYHS Conv N Carport 0 Parking Desc
 AppxLivArea 2,768 Lot SqFt 8,276 #Acres +/- 0.190 Lot Desc 1/4LESS
 ApprxAddLivArea ApprxTotalLivArea 2,768 Manuf Length Width ConvertRealProp MH-YrBlt
 PvSpa N PvPool N PoolSize +/-
 Dir From Grand Canyon & Patrick, West on Patrick, Right on Master Scene, Left on Wonderful Day

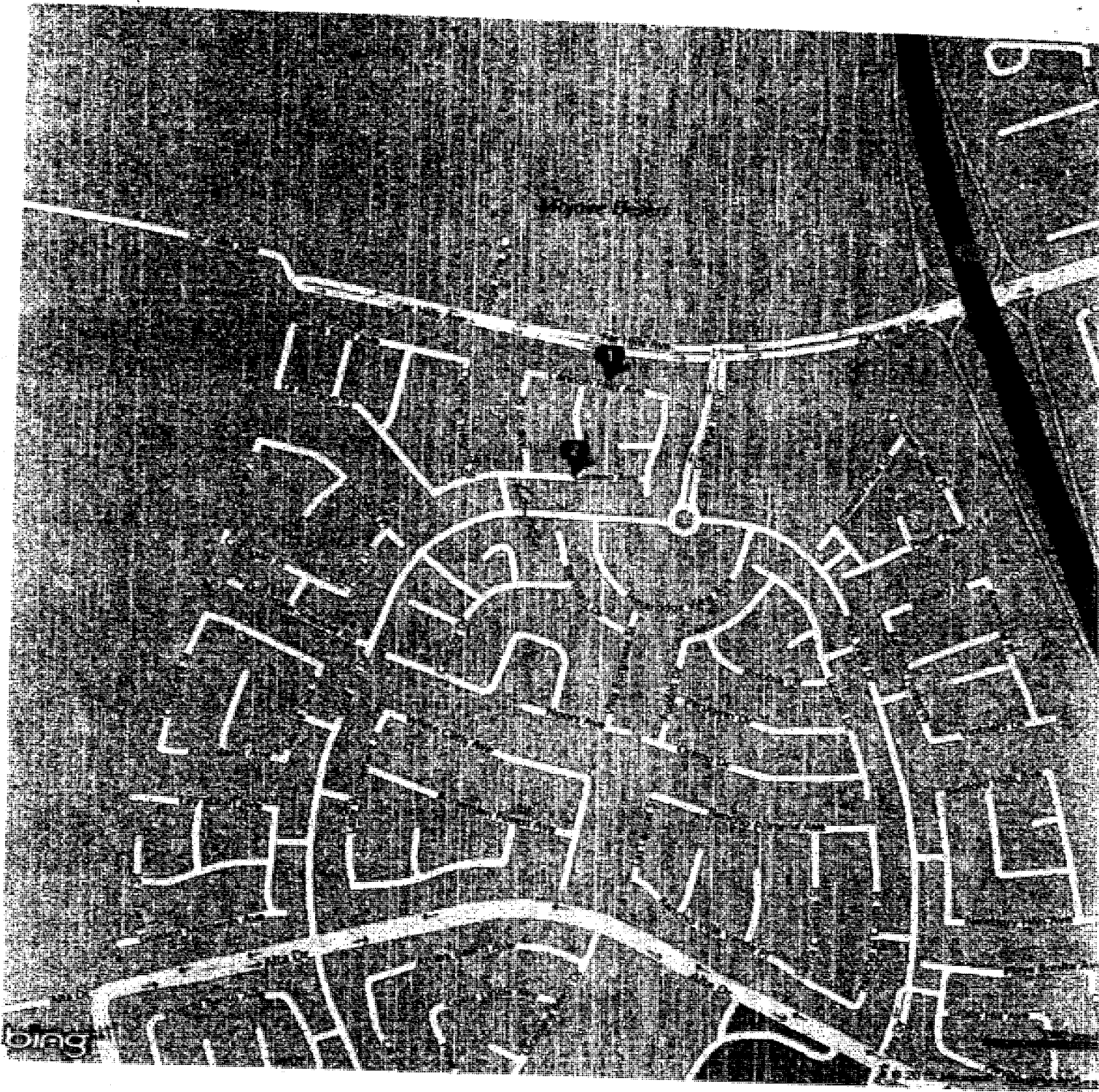
Public Absolutely gorgeous single story home in gated Southern Terrace. Incredible amount of upgrades incl Amtico flooring, crystal
 Rem chandeliers, crown moulding throughout, added custom island in kitchen. The furniture in the house is negotiable as owner is an
 interior decorator and this home is perfect. Spacious rooms everywhere with ceiling fans galore. Master B/R has his & hers walking
 closets. Separate 3rd car garage.
 Ag/Ag Lock box on the front door beginning 10/16/15. Call owner, DeMar or Janet (208) 412-1259, as a courtesy before coming over.
 Rem This home is incredibly gorgeous and immaculate. Call Kelly at cell (702) 531-4430 with questions about this traditional sale with a
 very quick closing available. All furniture is negotiable in sale.

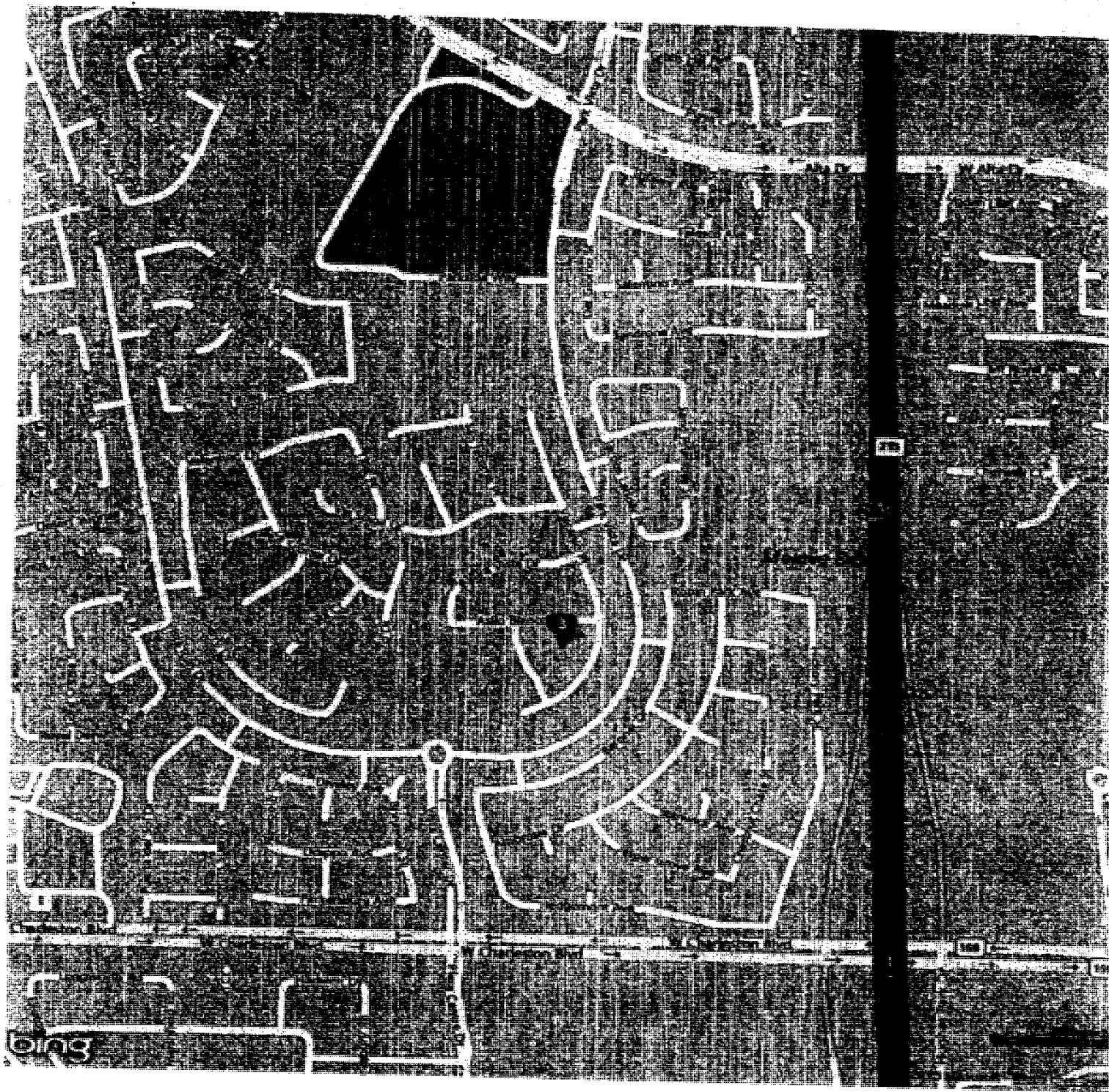
LoftDim1st Floor LoftDim2nd Floor Loft Descr
 Liv Rm 15x13 FRONT 2ndBd 11x11 CEILFN
 Fam Rm 17x16 SEPFAM 3rdBd 11x11 CEILFN
 Grt Rm Grt Rm N 4thBd 11x11 CEILFN
 Din Rm 14x9 LIVDIN /FORMAL 5thBd
 Kitchen GRNCTP /ISLAND /CUSCAB /MMW/L /BRKBAR /PANTRY Bed Dn Y Ba Dn Y Ba Dn Desc. F
 MBR 17x16 CEILFN /SEPRAT /WICLOS MBR Down? Y Den Dim Loft Dim:
 MB Bath DBLSNK /SEPSHW /SEPTUB FurnishedDesc NOFURN
 Refrg Y Dispos Y Dishw Y Washer Inc N Dryer Inc N Constrctn FRMSTUC
 OthApplnces MICROWV /WTCND/O DryerUtil G Location 1STFLR / ROOM
 Interior BLINDS /CEILFN OvnDesc COKTOPG /DBLOVNE / CONVOVN
 Firepl 1/GAS Floor CARPET/MMW/L
 Fence BF /BLOCK FP Loc FAMILY
 House Face South House Views NONE Equest NONE
 Exterior CVPATIO /BYARDAC
 Landscap MATURE /SHRUBS /DESERT
 Heat Sys CENTRAL/2UNITS+ HtFuel GAS
 Cool Sys CENTRAL/2UNITS+ CLFuel ELEC
 Utility Info UNDGRND /CABLAVL Energy DUALPNE /LOWEWIN Miscel HPP

Assoc Fee Y AssocName Southern Terrace HOA Water PUBLIC
 AssocFee1 \$77 / M Assoc Fee 2 Sewer PUBLIC
 Assoc Fee Includes MGMT /REC /RESERV Sol Elec None
 EarnDep \$5,000 Ann Tax \$2,680 Court App N Short Sale N Foreclo N Repo/REO N Litig/Typ N
 FinanceConsid CASH /CONV /FHA /VA FIRPTA? N NOD Rent Poss COE
 Lockbox E LockboxLocation front door TempOffMktStatus T Status Date LeaseEnd
 L/Agent Kelly Kuntz L/A Ph 702-531-4430 REALTOR Y PhotExcluded
 Office Help U Sell Integrity RE OffcPh 702-432-7355 CoOp 2.000% Flat Fee Bonus SO
 Off Add 5550 Painted Mirage Rd #320, Las Vegas 89149 BrokerName Kelly Kuntz Vr N Ex N
 Agt Fax # Email kellywkuntzhelppusell@gmail.com VirtTour Y OwnLic N
 Resident DeMar & Janet ResPh 208-412-1259 Occup OWN Power ON AuctTyp
 Showing KEYCALL GateCode kk6778 WD AuctDt
 ContDesc CombolB GateCode2 OrigListPrice \$425,000 ExpDt
 Active DOM 75

Presented by: Office Name: Asian American Realty

Agent: Betty Chan





KB

TEVARE

SQUARE FEET PLAN	DESCRIPTION	ELEVATION	PRICED FROM
Prices below are base price only and do not include location premiums ranging from \$20,000 and up.			
1849 GN(135.1849)	One Story, 3-4 bedrooms, 2-3 baths, 2-car garage MODEL 1	Spanish Colonial Spanish Eclectic Spanish	\$334,990 \$337,290 \$335,990
2346 JL(235.2346)	Two Story, 3-5 bedrooms, 2.5-3 baths, 2-car garage	Spanish Colonial Spanish Eclectic Spanish	\$351,990 \$351,190 \$349,990
2438 JJ(235.2438)	Two Story, 3-4 bedrooms, 2.5 baths, 2-car garage	Spanish Colonial Spanish Eclectic Spanish	\$362,090 \$363,190 \$359,990
2568 GJ(235.2568)	Two Story, 3-5 bedrooms, 2.5-3.5 baths, 2-car garage MODEL 3	Spanish Colonial Spanish Eclectic Spanish	\$369,990 \$372,990 \$371,390
2625 JN(235.2625)	Two Story, 3-5 bedrooms, 2.5-3 baths, 2-car garage MODEL 2	Spanish Colonial Spanish Eclectic Spanish	\$379,990 \$383,890 \$381,790

Contacts: Jana McNeff and Cheryl McNair
702.586.0918



Broker Cooperation Welcome. ©2016 KB Home (KBH). Plans, pricing, financing, terms, availability and specifications subject to change/prior sale without notice and may vary by neighborhood, lot location and home series. Buyer responsible for all taxes, insurance and other fees. Sq. footage is approximate. See sales counselor for details. CORP-01455



KBhome.com
 (888)KB-HOMES

P0066

2 Appx 000249

16

Exhibit 7 (2 pages)

Duties owed -1/24/2014

Duties owed- 4/10/2015

DUTIES OWED BY A NEVADA REAL ESTATE LICENSEE

This form does not constitute a contract for services nor an agreement to pay compensation.

In Nevada, a real estate licensee is required to provide a form setting forth the duties owed by the licensee to:

- Each party for whom the licensee is acting as an agent in the real estate transaction, and
- Each unrepresented party to the real estate transaction, if any.

Licensee: The licensee in the real estate transaction is <u>Betty Chan</u> whose license number is <u>25444</u> . The licensee is acting for [client's name(s)] <u>Terin Chin</u>	
Broker: The broker is <u>Betty Chan</u> who is/are the <input type="checkbox"/> Seller/Landlord; <input checked="" type="checkbox"/> Buyer/Tenant.	
company is <u>Asian American Realty & Property Management</u> , whose	

Licensee's Duties Owed to All Parties:

A Nevada real estate licensee shall:

- Not deal with any party to a real estate transaction in a manner which is deceitful, fraudulent or dishonest.
- Exercise reasonable skill and care with respect to all parties to the real estate transaction.
- Disclose to each party to the real estate transaction as soon as practicable:
 - Any material and relevant facts, data or information which licensee knows, or with reasonable care and diligence the licensee should know, about the property.
 - Each source from which licensee will receive compensation.
- Abide by all other duties, responsibilities and obligations required of the licensee in law or regulations.

Licensee's Duties Owed to the Client:

A Nevada real estate licensee shall:

- Exercise reasonable skill and care to carry out the terms of the brokerage agreement and the licensee's duties in the brokerage agreement;
- Not disclose, except to the licensee's broker, confidential information relating to a client for 1 year after the revocation or termination of the brokerage agreement, unless licensee is required to do so by court order or the client gives written permission;
- Seek a sale, purchase, option, rental or lease of real property at the price and terms stated in the brokerage agreement or at a price acceptable to the client;
- Present all offers made to, or by the client as soon as practicable, unless the client chooses to waive the duty of the licensee to present all offers and signs a waiver of the duty on a form prescribed by the Division;
- Disclose to the client material facts of which the licensee has knowledge concerning the real estate transaction;
- Advise the client to obtain advice from an expert relating to matters which are beyond the expertise of the licensee; and
- Account to the client for all money and property the licensee receives in which the client may have an interest.

Duties Owed By a broker who assigns different licensees affiliated with the brokerage to separate parties.

Each licensee shall not disclose, except to the real estate broker, confidential information relating to client.

Licensee Acting for Both Parties: You understand that the licensee Terin Chin may or may not, in the future, act for two or more parties who have interests adverse to each other. In acting for these parties, the licensee has a conflict of interest. Before a licensee may act for two or more parties, the licensee must give you a "Consent to Act" form to sign.

I/We acknowledge receipt of a copy of this list of licensee duties, and have read and understand this disclosure.					
Seller/Landlord	Date	Time	Buyer/Tenant	Date	Time
			<u>Terin Chin</u>	<u>01/24/2014</u>	
Seller/Landlord	Date	Time	Buyer/Tenant	Date	Time

Approved Nevada Real Estate Division
Replaces all previous versions

Page 1 of 1

525
Revised 10/23/07

Asian American Realty 6651 Spring Mountain Rd Las Vegas, NV 89102
Phone: (702)222-0078 Fax: (702)222-1772 Betty Chan

Produced with ZipForm® by ZipLogic 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.ziplogic.com

Terin Chin

DUTIES OWED BY A NEVADA REAL ESTATE LICENSEE

This form does not constitute a contract for services nor an agreement to pay compensation.

In Nevada, a real estate licensee is required to provide a form setting forth the duties owed by the licensee to:

- a) Each party for whom the licensee is acting as an agent in the real estate transaction. and
- b) Each unrepresented party to the real estate transaction, if any.

Licensee: The licensee in the real estate transaction is <u>Betty Chan</u>	
whose license number is <u>25444</u>	The licensee is acting for [client's name(s)] <u>Jerrin Chiu</u>
who is/are the <input type="checkbox"/> Seller/Landlord: <input checked="" type="checkbox"/> Buyer/Tenant.	
Broker: The broker is <u>Betty Chan</u> , whose	
company is <u>Asian American Realty</u>	

Licensee's Duties Owed to All Parties:

A Nevada real estate licensee shall:

1. Not deal with any party to a real estate transaction in a manner which is deceitful, fraudulent or dishonest.
2. Exercise reasonable skill and care with respect to all parties to the real estate transaction.
3. Disclose to each party to the real estate transaction as soon as practicable:
 - a. Any material and relevant facts, data or information which licensee knows, or with reasonable care and diligence the licensee should know, about the property.
 - b. Each source from which licensee will receive compensation.
4. Abide by all other duties, responsibilities and obligations required of the licensee in law or regulations.

Licensee's Duties Owed to the Client:

A Nevada real estate licensee shall:

1. Exercise reasonable skill and care to carry out the terms of the brokerage agreement and the licensee's duties in the brokerage agreement;
2. Not disclose, except to the licensee's broker, confidential information relating to a client for 1 year after the revocation or termination of the brokerage agreement, unless licensee is required to do so by court order or the client gives written permission;
3. Seek a sale, purchase, option, rental or lease of real property at the price and terms stated in the brokerage agreement or at a price acceptable to the client;
4. Present all offers made to, or by the client as soon as practicable, unless the client chooses to waive the duty of the licensee to present all offers and signs a waiver of the duty on a form prescribed by the Division;
5. Disclose to the client material facts of which the licensee has knowledge concerning the real estate transaction;
6. Advise the client to obtain advice from an expert relating to matters which are beyond the expertise of the licensee; and
7. Account to the client for all money and property the licensee receives in which the client may have an interest.

Duties Owed By a broker who assigns different licensees affiliated with the brokerage to separate parties.

Each licensee shall not disclose, except to the real estate broker, confidential information relating to client.

Licensee Acting for Both Parties: You understand that the licensee (Client Init) may or X (Client Init) may not, in the future act for two or more parties who have interests adverse to each other. In acting for these parties, the licensee has a conflict of interest. Before a licensee may act for two or more parties, the licensee must give you a "Consent to Act" form to sign.

I/We acknowledge receipt of a copy of this list of licensee duties, and have read and understand this disclosure.					
<u>Seller/Landlord</u> Date Time	 Buyer/Tenant Date Time	<u>04/10/2015</u> Date Time	<u>11 am</u> Date Time		
<u>Seller/Landlord</u> Date Time	<u>Buyer/Tenant</u> Date Time	<u> </u> Date Time	<u> </u> Date Time		

Approved Nevada Real Estate Division
Replaces all previous versions

Page 1 of 1

This form presented by Betty Chan | Asian American Realty | 702-222-0078 | aar@asianamericanrealty.com

525
Revised 10/25/07

**Instant
Forms**

Exhibit 8 (18 pages)

Conversation/Text messages with Buyer Jerrin Chiu
Regarding subject disputed purchase

Highlights on text messages on 1/15/2016 when he responded that he was not looking for any purchases but in fact he already signed a KB home purchase contract on 1/8/2016 with another agent

Highlights on commission kick back to Buyer Jerrin Chiu from the other agent and Jerrin admitted that he was using another agent to make the purchase.

Highlights on Jerrin Chiu turned silence as soon as when I mentioned that he could not use the other agent to buy the house that I had shown him

Hey Betty, can we meet at the house around 530 today?

Ok thanks!

**So meet you there around 530?
I'm done with work**

We r going to leave now



Jerrin ck another listing i just email you. Go Go Go !!!

Haha just saw it. It's ok, I think some areas look a little cramped though? And kitchen looks kinda dirty, not bad tho.

I know I can clean the kitchen up but not sure if I like the layout. I'd have to see it

The view is priceless. When?

We need to submit the other offer this weekend the latest.

R u available Friday? I would like to see the new one and the current one again if possible

I think I'll offer \$375k. Let me know what I have to do

I will write it up.

Fri morning? What time

10, 11?

Sure 11 is good

**I can meet u at the new one at
11**

Ok

**actually 10 would be better if
that's ok**

Ok

Apr 10, 2015, 9:35 AM

**Leaving now to 2505 seascape
drive**

We r here, there's a gate

2 Appx 000256

2-3M
^



Apr 10, 2015, 9:35 AM

Leaving now to 2505 seascape drive

We r here, there's a gate

Betty are you coming here?

Apr 10, 2015, 11:47 AM

Hey Betty let's just leave it at 375k

I like the house but I think I'll only buy it if I can get it cheap

My condo still nice and I may need to buy a new car soon too

My suggestion is the only way you can get a reasonable market price on this house. If

My suggestion is the only way you can get a reasonable market price on this house. If someone goes \$500 higher than you, then you lose the chance. Even you paid 10 or 20 k higher today, 5 years from now it is nothing. Do whatever you feel comfortable, ok?

Haha this is hard decision. Let's just do subject to appraisal then. That means I'll have to pay \$500 up front no matter what. And then he still may decline if the appraisal is low?

Actually sorry for changing so often. But I think my final answer and most comfortable is just offer 375k. Leave it how it is.

**If I don't get it then I don't get it.
I don't want to risk losing**

8-11-11

I don't want to risk losing appraisal fee because the seller could still decline

And I don't really need a new house right now

If he reject your offer, then you dont even have a chance to lose the \$500. If he accepts your offer, then chances are you either get the house at market value at 425 or whatever less. This is not a bad house and you probably will not get a one story with that kind of lot again. Think carefully on the appreciated value what you can afford and not over 500.

Oh I won't lose the \$500 if he rejects the offer?

Don't I have to pay the appraiser

9-17-76

need to order to lose it

That is for your loan

One thing though if the appraisal really comes back at 425. Are you willing to accept? That is the point.

Yes but I'm scared it comes back higher. What r the chances it comes back higher?

Oh wait it doesn't matter cus I'll be paying whatever is lower

So if the appraisal is lower, the seller can still decline or is he already locked in? If he does decline then I would lose out on the appraisal fee? Is there a way we can get the seller to pay half of the appraisal fee or something?

17

is locked into either appraisal or purchase price whichever is lower. Same to you. Listing agent just call me. They have 5 offers.

Ah ok perfect

See what i meant.

Ok as long as he cannot decline once he accepts this offer then let's keep it like this

But yes I am willing to pay 425k

Apr 10, 2015, 3:46 PM

When can you return the offer?

Later tonight. I am out right now and will be back around 5pm and then I'll work on it and send back u

2-12-28

we add refrigerator on #4? Also for 2c on the appraisal, it says they can renegotiate if we both don't agree? I thought they are locked in if they accept.

I'm just worried they can decline if the appraisal is lower than listing price.

I'm just worried they can decline if the appraisal is lower than listing price.

If seller will declined it will be now and not later. Like i said i think the property should be around 390k range. If he is not accepting your offer he will reject or counter. You still have time to think. You drill on it too much.

What is to worry about. You got a good house in the end of the

a good house in the end of the day and since you said you will accept 425.

Yea I just want to make sure he can't decline later if he accepts now. Cus i cant find where it states that anywhere on the offer page.

Is it under 2C?

It is on last page : other term

Of course he can change his mind and so do you. Then will end up in court either one of you.

lol ok. Ill try to get u the papers signed in few hours

Is \$500 that important than not buying the house, then you should not make the offer

Which one do I initial on top of page 8?

Nm I initialed first option. Ok I'm gonna send it in 10 min

Apr 10, 2015, 8:55 PM

Email me a ck in the amount of \$5000 to fidelity national title

Ok, this only gets cashed if he accepts the offer correct?

Ok sent

Yes

Apr 19, 2015, 4:56 PM

How are you doing? Are you ok?

Hey Betty, yea i'm ok. Some

Hey Betty, yea i'm ok. Some
shoulder pain tho

Need new car now tho

U need chiropractor. My client
is pretty good

I hired an attorney. He sent me
to a pretty good physical
therapist. I'll show u a picture
of the accident



that???? You should post on facebook. You are so damned lucky. You must have done a lot of good deeds. I m going to forward this to sandi.

Hahah

Someone hit me passenger door and made me fly

I shouldnt laugh but i am laughing so hard right now.

Lol. I had to climb out through the window because I was trapped

You just really lucky. Let go buy some lottery.

Sat, Jul 18, 7:22 AM

Hi Jerrin, how are you? You

Hi Jerrin, how are you? You should feel better now. How is your new car?

Sat, Jul 18, 10:30 AM

Good. My shoulder actually has a ligament tear. I may have to do surgery. Other than that good lol. New car is nice. How r u?

I dont believe surgery, chiro couldnt help?

Nah, been going for 2 months, it still hurts. I got MRI done and Dr said only thing that can help is surgery

Sat, Jul 18, 3:55 PM

You and your Dad both are doctors so you must know what

nice! I've always wanted to play golf. But now I can't cus of my shoulder lol. Glad to hear ur doing well

And if I decide to stay next year, I'll probably be looking for a house I'll let u know

Wed, Dec 30, 7:34 AM

Good morning, your Dad asked me to show him houses today at 10 am, so i will be there. We have 5 resale houses to see but i like to show some new houses in Summerlin area. Prices has gone up quite a bit, around 400k. See you.

Wed, Dec 30, 8:35 AM

Ok thanks! See you soon

P0085

2 Appx 000268

185

Getting gas, will be there in 6
sorry

Ok no problem

Gate code #1352

Fri, Jan 15, 7:22 PM

Jerrin, i did not hear back from
you? Are you still buying that
new 1 story house ?

Fri, Jan 15, 8:57 PM

Ah nah, been kinda busy lately.

Sat, Jan 16, 9:49 AM

If your Dad wanted you to go
with another agent that will
offer kick back, it would be fine
with me. Everyone has the
freedom of choice what kind of

If your Dad wanted you to go with another agent that will offer kick back, it would be fine with me. Everyone has the freedom of choice what kind of agent they like to work with. Just let me know then will release my burden taking care of you. No hard feeling, ok?

Hey Betty, I feel terrible but my dad indeed did find someone. But he is actually a good family friend. His mother was actually the nurse that helped deliver me. We were actually looking for him right when I moved to vegas but didn't know where to find him;

Thanks for everything tho and we'll keep in touch for sure. Sorry didn't let you know sooner.

me. We were actually looking for him right when I moved to vegas but didn't know where to find him;

Thanks for everything tho and we'll keep in touch for sure. Sorry didn't let you know sooner.

No problem. However you cannot buy with him in the KB home with Summerlin as i have already registered you. So you need to buy with another place.

And all other places that i have shown you before. The builder only pays the realtor that first shown that buyer.

If your realtor knowingly try to play tricks in getting you the same house that i show you before, he will get troubles from

Exhibit 9 (8 pages)

Conversation/Text messages with KB agents
regarding the subject disputed purchase

6/29/2016

Gmail - (no subject)



Betty Chan <aaroffer@gmail.com>

(no subject)

7025951268@mms.att.net <7025951268@mms.att.net>

Fri, Feb 5, 2016 at 6:03 PM

To: aaroffer@gmail.com

Jana, i suddenly think about i could have used the form for regular client and not the one realtor used. I think i just picked the one outside on the table since none of you was there. Gosh!!

6/29/2016

Gmail - Jana, sorry to text you



Betty Chan <aaroffer@gmail.com>

Jana, sorry to text you

7025951268@mms.att.net <7025951268@mms.att.net>
To: aaroffer@gmail.com

Fri, Feb 5, 2016 at 6:03 PM

My daughter just reminded me, i pray this can help. 1) can you pl also check the box that holds all the registration form to see was in there? 2) does KB has surveillance camera in all those models? Will there be any recording?

6/29/2016

Gmail - (no subject)



Betty Chan <aaroffer@gmail.com>

(no subject)

7025951268@mms.att.net <7025951268@mms.att.net>

Fri, Feb 5, 2016 at 6:04 PM

To: aaroffer@gmail.com

Jana, got your message. I think the other lady must have the registration. I remembered more now, when we came in, she had 2 clients sat at her desk, left side. one client looked like a Chinese lady. She did not pay attention to us at all, i was fussing in my mind how rude was she, did not even say hi. When we returned from the models and her clients was leaving then she said to me she was not working that day and she just came in for a contract. If she did not have it, then KB need to find a better way to protect my loyalty to KB homes and take better care of our registration.

9-3

6/29/2016

Gmail - (no subject)



Betty Chan <aaroffer@gmail.com>

(no subject)

7025951268@mms.att.net <7025951268@mms.att.net>

To: aaroffer@gmail.com

Fri, Feb 5, 2016 at 6:02 PM

Jana, now is 2:30 pm and i have been waiting all day. i have been keeping my promise to you not to do anything or call anyone. It does not seem i m going anywhere. I want to make my stand clear, my target is not KB, i consider both Kb and I are victims, i knew what i did and i knew what i deserve. I believe justice is always served. Now if you are not able to get me anywhere, pl give me the mgt phone no. I dont want to by pass you as i know you need to protect your job. I need a mutual understanding with KB to decide my direction. Can you pl give me the phone no asap. Thank you

6/29/2016

Gmail - (no subject)



Betty Chan <aaroffer@gmail.com>

(no subject)

7025951268@mms.att.net <7025951268@mms.att.net>

Fri, Feb 5, 2016 at 6:00 PM

To: aaroffer@gmail.com

Hi Betty it's Jana at Tevare. I spoke with Lara and she is still in discussion with a few people. She will have more info for you in a day or two. Thank you.

6/29/2016

Gmail - (no subject)



Betty Chan <aaroffer@gmail.com>

(no subject)

7025951268@mms.att.net <7025951268@mms.att.net>
To: aaroffer@gmail.com

Fri, Feb 5, 2016 at 6:00 PM

Jana, thank you for Lara keeping up her words to give me a response on Wed. I have asked her please also arrange me to meet with the broker or admin as i need to make this a formal meeting. Thank you.

6/29/2016

Gmail - (no subject)



Betty Chan <aaroffer@gmail.com>

(no subject)

7025951268@mms.att.net <7025951268@mms.att.net>

Fri, Feb 5, 2016 at 6:01 PM

To: aaroffer@gmail.com

Jana , is her name Lauren? She just called . We talked. 44 min. She will do more investigation, and i ask her to arrange me to meet the broker together. She said she will get back to me wed the latest to see what the admin say. If you cannot find anything. I dont know how she can.

6/29/2016

Gmail - (no subject)



Betty Chan <aaroffer@gmail.com>

(no subject)

7025951268@mms.att.net <7025951268@mms.att.net>

To: aaroffer@gmail.com

Fri, Feb 5, 2016 at 6:01 PM

Honestly from day one i met you my focus is not on the commission, i felt insulted and humiliated, another agent dared challenge me and he really do not know who I am. I have been really sad more than i am angry. Last night i read many court cases. Even though my card was disappeared, it wont hurt me winning. I liked to teach them a lesson. Life is not about money. So happen i do have few hundred thousand in hand that i can use. If they are willing to go along with me to spend equal amount of money, then i will be very happy to play their game. I got my direction last nite, so i felt peaceful now. All i need KB to understand I dont hate KB for this, and i need them to work with me on my plan. Jana, i dont blame you either and take care of yourself.

Exhibit 10 (7pages)

Attorney letters

- My Attorney Jeffrey Hall's letter to Title
- My letter to KB filing a formal complaint
- KB Counsel's response
- My response to KB Counsel



PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NEVADA 89145
702.385.2500
FAX 702.385.2086
HUTCHLEGAL.COM

JEFFREY R. HALL
PARTNER
JHALL@HUTCHLEGAL.COM
FILE NO. 6495-001

March 24, 2016

First American Title
Karen Patton
8311 W. Sunset Road, #150
Las Vegas, NV 89113
kapatton@firstam.com

Re: ESCROW NO. 112-249-8656

This firm represents Betty Chan with respect to the payment of a commission from the sale of the property located at 477 Cabral Peak Street, Las Vegas, Nevada 89138. Ms. Chan was the procuring cause of the sale of the home to Jerrin Chiu. She showed the property to Mr. Chiu on December 31, 2015. Mr. Chiu signed a broker registration identifying Ms. Chan as his agent on the same day. Subsequently, Mr. Chiu used a different broker, Wayne Wu, to close the transaction despite Ms. Chan showing Mr. Chiu the property. Ms. Chan disputes any commission payment to Mr. Wu since she was the procuring cause of the sale on the buyer's side of the transaction.

As you are aware, the broker who is the procuring cause of the sale is entitled to the commission for the sale. *See Schneider v. Biglieri*, 94 Nev. 426, 427, 581 P.2d 8, 9 (1978); *Bartsas Realty, Inc. v. Leverton*, 82 Nev. 6, 409 P.2d 627 (1966). The broker's presence at the sale is not required for that broker to earn his or her commission. *See Horton v. Colbron*, 60 Wyo. 263, 150 P.2d 315, 319 (1944). Ms. Chan became the procuring cause of the sale when she showed the property to Mr. Chiu as Mr. Chiu's broker.

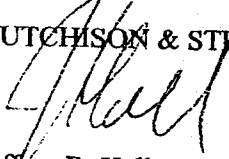
By this correspondence, you have been made aware of Ms. Chan's claim to the buyer's commission from the sale of at 477 Cabral Peak Street, Las Vegas, Nevada 89138 to Mr. Chiu. In the event that buyer's commission's paid to anyone other than Ms. Chan as a result of this transaction, we will pursue the recovery of that commission from the payee. Ms. Chan reserves all rights against any party that pays or receives a buyer's commission for this transaction to anyone other than her.

First American Title
Karen Patton
Page 2

Please contact me if you have any questions regarding this matter.

Sincerely yours,

HUTCHISON & STEFFEN


Jeffrey R. Hall
For the Firm

cc: *Wayne Wu*
Anthony C. Gordon
Jerrin Chiu
Betty Chan

Asian American Realty & Property Management

4651 Spring Mountain Road, Las Vegas NV 89102

Office : 702-222-0078, Fax : 702-222-1772 email: 702aar@gmail.com

Original via Certified Mail

February 29 2016

Ms. Lara McLaughlin
KB homes
5795 W Badura Ave #180
Las Vegas NV 89118

Dear Ms. McLaughlin,

Re: Dispute of my procuring cause commission-Tevare at Summerlin
Client: Jerrin Chiu, SS#.....6265 DOB.....1983

I have conversation with your sales office agent Ms. Jana McNeff since Jan 18 2016 regarding our mutual client Jerrin Chiu who purchased a KB home at Tevare after I showed him the property on 12/31/2015 between 12:30 to 1:15 pm. Unfortunately he signed the purchase contract with KB through another Realtor right after my showing due to the other Realtor offered him a commission split.

I also have telephone communication with you on February 1 2016 for about 44 minutes regarding the same subject and you promised me that you would look into it. Again you have left me message through Jana and another one in my voice mail on 2/16/2016 assuring me the matter is in progress.

The purpose of this letter is first I do appreciate that you have kept your promise look into the matter, and secondly I would like to register my dispute formally as I have learned painfully KB is not reliable to keep agent registration, so not sure about the same would happen to my verbal complaint. Since I lodged the complaint, it has been always just private conversation. Not that I do not trust you, but if you do not work in KB tomorrow, then I have nothing to substantiate my claim.

Thirdly, I would like to ask KB cease and desist paying the commission to the other Realtor until our dispute is resolved, so please also instruct escrow to do the same.

I have full intention to pursue this matter to receive my earned commission from KB at any cost.

Thank you
Sincerely

Betty Chan
Broker

Dear Lara,

Personal note, pl do not feel offended as I am under advisement that I have to make this formal.

It is not my character not to trust people, even at 64 years old, I still got bitten because I simply trust good deeds will never get punished.

Thank you

Betty



112 - 249 - 8656 - Kaen



March 7, 2016

Ms. Betty Chan
Broker
Asian American Realty & Property Management
4651 Spring Mountain Road
Las Vegas, NV 89102

via email at 702aar@gmail.com
and regular mail

RE: KB Home – Jerrin Chiu purchase and sale transaction
477 Cabral Peak Street, Las Vegas NV 89138 (Tevare 415/28)
Broker's commission

Dear Ms. Chan:

This letter is in response to your letter dated February 29, 2016 to Lara McLaughlin relating Jerrin Chiu and the above-referenced purchase and sale transaction.

It is my understanding you visited the KB HOME site with Mr. Chiu or other parties, allegedly as agent for Mr. Chiu, prior to January 8, 2016 (the date when Mr. Chiu visited the site with agent Wayne Wu, signed a purchase and sale agreement, and signed a broker registration and commission agreement identifying Wayne Wu as Buyer's agent).

KB HOME is supportive of the brokerage community and proud to work with and pay commission to participating brokers. However, we will not be subject to multiple claims for the same transaction. Our records reflect Buyer Jerrin Chiu identifying Wayne Wu as Buyer's broker of record at the time of Mr. Chiu signed his purchase agreement. Should you have an arrangement with Mr. Chiu to act as his agent, we suggest you discuss matters directly with him.

Sincerely,


Anthony (Tony) C. Gordon
Senior Regional Counsel

cc: Jerrin Chiu via email and regular mail
2101 Jade Creek Street,
Las Vegas, NV 89117
jchiuey@gmail.com

Michele King via email
Lara McLaughlin via email
John McLaury via email

10 - 5
1-103

Asian American Realty & Property Management

4651 Spring Mountain Road, Las Vegas NV 89102

Office : 702-222-0078, Fax : 702-222-1772 email: 702aar@gmail.com

Original via US Certified Mail

March 8, 2016

Anthony C Gordon Esq.
Senior Regional Counsel/KB Home
5795 Badura Ave, Suite 180
Las Vegas NV 89118

Dear Mr. Gordon,

Re: Dispute re: Broker's commission
KB Home- Jerrin Chiu
477 Cabral Peak Street, Las Vegas, NV 89138 (Tevare 415/28)

Thank you for your response dated March 7 2016 concerning the above referenced matter.

Regrettably, you failed to mention that Buyer Jerrin Chiu confirmed to KB's on site agents that I was the agent that first brought him into that subject community. Mr. Chiu also does not deny that he had signed a broker registration with me on December 31 2015 at the Tevare sale office. The onsite agent after she handed the floor plans to us was nowhere to be found. She claimed that she was off that day and not supposed to work in the office, but she was the only one in the office during my 15-20 minutes showing.

I followed the protocol set by KB and it was unfortunate that KB is not following through its practice/promise.

As Seller KB's legal counsel, I am sure you understand better than anyone else the meaning of Procuring Cause. I trust that the whole intent of Seller- KB to pay sales commission to agents is to reward those hard working, ethical and professional agents that are honestly spending the time to bring a qualified client who is able and willing to purchase a KB home. There is no reason for you as Seller' representative to permit the other unscrupulous agent to violate Seller KB's intent by rewarding him for his unethical and unprofessional behavior. The agent in question stole my client after my showing and registration by offering a kickback to Buyer Chiu.

There could have been a better way to resolve this matter without resorting to legal action. However, it appears that I have no choice but to pursue a lawsuit at this point.

1 of 2

104

You are hereby put on notice that I am filing a lawsuit to dispute the broker commission in this sale transaction. Please instruct KB and First American Title to cease and desist paying commission to the other agent pending the outcome of the lawsuit. Please deposit the commission in an interest bearing suspense/dispute account until this matter is resolved.

My attorney will further communicate with you on this subject matter.

Thank you for your cooperation.

Sincerely,


Betty Chan, ECIM, CPM, CRS
Broker

Copied via US Certified letter to First American Title
Escrow #112-249-8656 Buyer Jerrin Chiu

EXHIBIT 3

Form #A-4

Greater Las Vegas Association of REALTORS®
1750 E. Sahara Ave., Las Vegas, NV 89104
702-784-5052

Case# 16201A

Response Due 7/25/17

Response and Agreement to Arbitrate

Complainant(s):

Respondent(s):

Betty Chan, Broker

Judith Sullivan, Broker

Asian American Realty Property & Management

Wayne Wu, Agent

Nevada Real Estate Corp

Complainant(s)

Respondent(s)

The following Realtor non-principal affiliated with my firm has a financial interest in the outcome of the proceeding and has the right to be present throughout the hearing.

Name

- (1) The undersigned, by becoming and remaining a member of the Association of REALTORS® (or Participant in its MLS), has previously consented to arbitration through the Association under its rules and regulations.
- (2) I am a member of the Greater Las Vegas Association of REALTORS® or Participant in its MLS (or was a member of the Association at the time the dispute arose).
- (3) I acknowledge the existence of a dispute arising out of the real estate business as defined by Article 17 of the Code of Ethics but deny any indebtedness as claimed.
- (4) My denial is predicated upon the statement attached marked ~~Exhibit A~~, which is hereby incorporated by reference into this response.
*Response to Betty Chan's Statement
Requesting Arbitration*
- (5) (Complete if applicable) Affirmatively, I claim that a monetary dispute arising out of the real estate business exists between the parties wherein there is due to me the sum of \$13,795.32. My claim is predicated upon the statement attached, marked ~~Exhibit B~~, which is hereby incorporated by reference into this response.
F
- (6) I consent to arbitration through the Association in accordance with its Code of Ethics and Arbitration Manual (alternatively, "in accordance with the professional standards procedures set forth in the bylaws of the Board"), and I agree to abide by the arbitration award and to comply with it promptly.
- In the event I do not comply with the arbitration award and it is necessary for any party to this arbitration to obtain judicial confirmation and enforcement of the arbitration award against me, I agree to pay the party obtaining such confirmation the costs and reasonable attorney's fees incurred in obtaining such confirmation and enforcement.
- (7) I enclose my check in the sum of \$500.00 for the arbitration filing fee deposit.
- (8) I understand that I may be represented by legal counsel, and that I should give written notice no less than fifteen (15) days before the hearing of the name, address and phone number of my attorney to all parties and the Association. Failure to provide this notice may result in a continuance of the hearing, if the Hearing Panel determines that the rights of the other party(ies) require representation.

*7/25/17
A*

Each party must provide a list of the names of witnesses he intends to call at the hearing to the Association and to all other parties not less than fifteen (15) days prior to the hearing. Each party shall arrange for his witnesses to be present at the time and place designated for the hearing.

- (9) I declare that the information provided with this response is true and correct to the best of my knowledge and belief.
- (10) If either party to an arbitration request believes that the Grievance Committee has incorrectly classified the issue presented in the request (i.e., mandatory or voluntary), the party has twenty (20) days from the date of receipt of the Grievance Committee's decision to file a written appeal of the decision. Only those materials that the Grievance Committee had at the time of its determination may be considered with the appeal by the Board of Directors. I understand that should I contend this matter is not arbitrable, I have an opportunity to petition the arbitration Hearing Panel to dismiss the arbitration request.
- (11) Important note related to arbitration conducted pursuant to Standard of Practice 17-4 (1) or (2): Where arbitrations is conducted between two (or more) cooperating brokers pursuant to Stand of Practice 17-4 (1) or (2), the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker and any amount credited or paid to a party to the transaction at the direction of the respondent.
- (12) To be completed where arbitration is between two (or more) cooperating brokers pursuant to Standard of Practice 17-4 (1) or (2): The compensation paid to me or to my firm by the listing broker, seller, or landlord, and any amount credited or paid to any party to the transaction at my direction is \$ _____ (amount of compensation paid to me or my firm by the listing broker, seller, or landlord(and \$ _____ (paid or credited to any party at my direction).

Respondent(s):		
<u>WAYNE Wu</u> Name (Type/Print)	<u>Wayne Wu</u> Signature of REALTOR® Principal	<u>7-25-2017</u> Date
<u>c/o 10155 W. Twain Ave, Ste 100, Las Vegas, NV 89147</u> Address		<u>(702) 869-6261</u> Telephone
<u>JUDITH Sullivan</u> Name (Type/Print)	<u>J2</u> Signature of REALTOR® Principal	<u>7/25/2017</u> Date
<u>c/o 10155 W. Twain Ave, Ste 100, Las Vegas, NV 89147</u> Address		<u>(702) 869-6261</u> Telephone

- In case where arbitration is requested in the name of a firm comprised of REALTORS® (principals), the request must be signed by at least one of the REALTORS® principals of the firm as a complainant.

FX 2

Greater Las Vegas Association of REALTORS®
1750 E. Sahara AV., Las Vegas, NV 89104
Phone Number (702) 784-5052

DESIGNATION OF LEGAL COUNSEL
(ARBITRATION)

DATE: 07/25/2017

CASE NUMBER: 16201A

COMPLAINANT(S):

Betty Chan, Broker

Asian American Realty Property & Management

RESPONDENT(S):

Judith Sullivan, Broker

Wayne Wu, Agent

Nevada Real Estate Corp.

☐ I do not wish to designate counsel at this time

OR

☐ I, _____, do hereby designate the following LEGAL counsel* for representation in all aspects of these proceedings:

Attorney Name: Michael A. Olsen, Esq.

Firm Name: Goodsell & Olsen, LLP

Address: 10155 W. Twain Avenue, Suite 100

Las Vegas, NV 89147

Phone: (702) 869-6261

The Greater Las Vegas Association of REALTORS® is requested to send copies of any and all notices and other documents pertaining to this case to the above attorney and the undersigned does hereby designate the attorney as his/her agent and spokesman in these proceedings.

Date: 7/25/2017

Judith Sullivan
Signature of Broker

JUDITH SULLIVAN
Name (please print)

NEVADA REAL ESTATE CORP.
Company

*REALTOR® counsel (a fellow REALTOR® who may offer guidance or advice) may be used in ethics hearings only, not in arbitration hearings.

A-3

RESP
MICHAEL A. OLSEN, ESQ.
Nevada Bar No. 6076
THOMAS R. GROVER, ESQ.
Nevada Bar No. 12387
Goodsell & Olsen, LLP
10155 W. Twain Ave., Suite 100
Las Vegas, Nevada 89147
Tel: (702) 869-6261
Fax: (702) 869-8243
Attorneys for Respondents
Wayne Wu, Judith Sullivan, and
Nevada Real Estate Corp.

ARBITRATION BOARD
GREATER LAS VEGAS ASSOCIATION OF REALTORS®

)	Case No: 16201-A
BETTY CHAN, an individual,)	
Complainant,)	<u>RESPONSE TO BETTY CHAN'S</u>
v.)	<u>STATEMENT REQUESTING</u>
WAYNE WU, an individual, and)	<u>ARBITRATION</u>
JUDITH SULLIVAN, an individual)	
Respondents.)	

COME NOW, Respondents, WAYNE WU ("Wu") and JUDITH SULLIVAN ("Sullivan"), by and through their attorney, Michael A. Olsen, Esq. of the law firm Goodsell & Olsen, LLP, submit their "*Response to Betty Chan's Statement Requesting Arbitration*" and in support thereof state as follows:

BACKGROUND

This dispute arose when Betty Chan failed to meet the expectations of a potential client, who decided to hire another agent to help him find a house and purchase the same. The commission associated with that purchase should rightfully be paid to Wayne Wu, the agent that guided the buyer through the decision-making process and ultimately helped him obtain his home.

Ar 4

I. JERRIN CHIU ATTEMPTS TO USE BETTY CHAN TO PURCHASE A HOUSE DURING A SHORT WINDOW AROUND THE NEW YEAR

On November 2, 2015, Dr. Jerrin Chiu emailed BETTY CHAN ("Chan"), officer and registered agent of ASIAN AMERICAN REALTY & PROPERTY MANAGEMENT, a corporation ("AAPM"), expressing interest in searching for a home to purchase while Dr. Chiu's parents were in town to visit in late December. In the November 2, 2015 email, Dr. Chiu provided Chan with a relative price range, desired location, and expressed that he and his parents would be available to look at homes from December 30, 2015 to January 1, 2016. He noted that this might infringe on family time over the holidays.¹ Chan, with no objection to the days indicated by Dr. Chiu, agreed to show him and his parents some options.²

A few weeks later, Dr. Chiu contacted Chan again, confirming that she would accompany Dr. Chiu and his parents as they looked for a house. Chan confirmed the appointment. Dr. Chiu and Dr. Chiu's father, Dr. Kwang Chiu ("Kwang") sought out Chan because she spoke Mandarin Chinese, making it easier to communicate with Dr. Chiu's parents. Dr. Chiu was also familiar with Chan because Dr. Chiu had used Chan as a real estate agent before in 2013 when he purchased a condo.

Chan admits that she did nothing to actually prepare for Dr. Chiu's home search until the day before he was supposed to begin viewing properties.³ Nonetheless, on December 30, 2015 Chan began to show Dr. Chiu and his parents some potential options to meet Dr. Chiu's conditions. Neither Dr. Chiu nor his parents ever entered into any form of written agreement with Chan. Chan showed them several previously-owned homes. Chan tried to persuade Dr. Chiu

¹ Exhibit "A".

² Exhibit "B".

³ Betty Chan Statement, at pg. 3, "The Preparation."

1 to purchase one of the previously-owned homes, but Dr. Chiu and his parents were not
2 interested.⁴

3 As the day progressed, Chan began to rush through showings. "We then went to Toll
4 Brothers. . . . We did not finish all the models. We were already very late for the 4th resale
5 appointment and also late for KB"

6 Unsurprising, this rush continued as Chan took Dr. Chiu and his parents to Tevare at
7 Summerlin, a housing development by KB Home Sales - Nevada, Inc. ("KB Home
8 Development"). There, Chan showed Dr. Chiu and his parents three model home floor plans:
9 Model 1 (a single-story home); Model 2 (a two-story home); and Model 3 (another two-story
10 home) During this visit to the KB Home Development, Chan also showed Dr. Chiu a few empty
11 lots where the model home floor plans could be erected.

12 During the December 30th visit to KB Home Development, Chan pressured Dr. Chiu to
13 purchase Lot 37 and to choose the Model 3 floorplan. Chan preferred Lot 37, claiming it would
14 give Dr. Chiu a better view of the Vegas Strip. However, Dr. Chiu was not interested in having a
15 view of the Vegas Strip, preferring to have a view of the mountains. He was also uninterested in
16 the KB Home options because the development was outside the area he wanted to live,
17 something he told Chan before the visit.

18 Additionally, Dr. Chiu disliked the Model 3 floorplan and expressed his distaste for the
19 layout. Dr. Chiu initially held some mild interest in the Model 2 floorplan, however Chan's
20 persistent pitch to sell Dr. Chiu a previously-built home or her preferred combination of Lot 37
21 with the Model 3 floorplan, left Chiu, at the end of the day, uninterested and confused.

22
23 ⁴ Chan has attached documents to show a proposed route. The proposed route covered several
24 homes, none of which ultimately appealed to Chiu as demonstrated by his failure to purchase the
25 same. Thus, the options Chan unsuccessfully proposed to sell to Dr. Chiu included property at
Cannon Falls Avenue, Escondido Canyon Street, Asilo Blanco Avenue, Dove Meadow Way, and
Wonderful Day Drive

⁵ Betty Chan Statement, at pg. 3, "The Showing."

Moreover, Chan was unwilling to let Dr. Chiu's interests govern the schedule. "I told Buyer Jerrin that we had [an] appointment with another property at 1:30 pm and [were] already late so we needed to hurry."⁶ Thus, Chan whisked Dr. Chiu and his parents away from the KB Home Development.

II. CHAN BECOMES NON-RESPONSIVE AFTER THE RUSHED AND INCOMPLETE SHOWINGS OF DECEMBER 30, 2015

Despite Dr. Chiu's expressed desire to finalize his home selection within a tight timeframe, Chan became unresponsive after the initial rushed day of showings. This occurred despite Dr. Chiu's attempts to reach Chan. According to Chan, her non-responsive attitude during the exact time frame Dr. Chiu needed to make his decision was due to her pursuit of personal affairs, including going to see "fireworks," working, and business related to a property owned by Chan.⁷

Thus, on December 31, 2015, Dr. Chiu and his parents returned to the KB Home Development, this time without the unavailable Chan. They called Chan at approximately 10:50 a.m., to express their desire to look at more options before Dr. Chiu's parents left town. Chan did not answer.

While waiting for Chan to return their call, Dr. Chiu and his parents, without the assistance of any broker, met with a KB Home representative and were informed that if they did not make a deposit towards a lot before the end of the day, they would be subject to the development-wide price increase of \$3,000.00.

Even though he had not yet decided to purchase a KB Home, Dr. Chiu—unable to contact Chan—decided to make an earnest deposit of \$10,000.00 with KB Home to avoid the price increase on the KB Home lots. The deposit was made because it was refundable for

⁶ Betty Chan Statement, at pg. 4, "KB Home."

⁷ Betty Chan Statement, at pg. 5-6, "Follow up."

1 fourteen (14) days. Therefore Dr. Chui, made the deposit with KB Homes based on the
2 representation that the refund could be returned for fourteen days should he opt not to purchase
3 from KB Homes.⁸

4 Notwithstanding the refundable deposit, Chiu was concerned with the KB Development's
5 poor reputation and several poor online reviews regarding homes built by KB Homes. Thus, on
6 January 1, 2016 and due to Chan's non-responsive behavior, Dr. Chiu posted a question on the
7 city-data.com website forum inquiring about the integrity of homes built by KB Homes.⁹

8 On January 2, 2016, Kwang called Chan several times without answer and left a message.
9 Chan had previously been made aware that time was of the essence for the Dr. Chiu and she
10 knew that Kwang and his wife had to return to California in two days and needed an agent to
11 help them explore housing options and find a home to purchase.

12 On January 3, 2016, Kwang called Chan again and left another message. Dr. Chiu's
13 parents had to leave, yet he still had not identified a house to purchase. Chan did not respond.
14 Despite the urgency Dr. Chiu had expressed in identifying a house to purchase, Chan admits that
15 she had no contact with Dr. Chiu from December 30, 2015 to January 5, 2016, the very days Dr.
16 Chiu had indicated they needed help locating a home.¹⁰

17 **III. DR. CHIU SEARCHES FOR SOMEONE TO ANSWER HIS QUESTIONS SO HE**
18 **CAN PURCHASE A HOUSE**

19 Frustrated that Chan failed and refused to respond to their calls and messages and running
20 out of time to consider options together, Dr. Chiu and his parents began searching for other real
21 estate agents that could guide them through a purchase. Kwang started the search by calling a
22 few different agents, but none answered. Kwang remembered a former acquaintance who worked

23 _____
24 ⁸ Affidavit of Jerrin Chiu, **Exhibit "C"**.

25 ⁹ A true and correct copy of the January 1, 2016 post is attached hereto as **Exhibit "D"**.

¹⁰ See Betty Chan Statement, at pg. 5, "Follow up."

1 in the Vegas area as a broker, Wayne Wu ("Wu"). Kwang located Wu's number in a local
2 newspaper and called Wu at approximately 1:40 p.m. on January 3, 2016.

3 Kwang recommended Wu to Chiu because of his expertise in architecture, ability to
4 speak Mandarin, and his knowledge of the Chinese tradition of feng shui. Moreover, Wu was
5 responsive to concerns and willing to accommodate his schedule to Dr. Chiu's short timeline.

6 On January 7, 2016, Dr. Chiu met with Wu at the KB Home Development. Dr. Chiu
7 expressed his frustrations in dealing with Chan, her forceful nature in trying to convince him to
8 buy a previously owned home, her pushing him (in the alternative) to purchase the KB Homes
9 Model 3 floorplan, a plan Dr. Chiu was not impressed with, and her lack of responsiveness to
10 phone calls and voice messages.

11 Wu listened to Dr. Chiu's criteria and began to identify properties that could potentially
12 satisfy Dr. Chiu's objectives. Thus, he suggested Lot 43 and the Model 2 floorplan. Wu
13 explained the implications of building the Model 2 floorplan on Lot 43, including how the
14 combination would be effective at bringing in natural light with an impressive view of the
15 mountains in conformity with principles of feng shui.

16 Dr Chiu found Wu's analysis convincing; Wu was also able to satisfy his concerns about
17 KB Homes. Based on Wu's recommendation, Chiu purchased Lot 43 with the Model 2 floorplan
18 on January 8, 2016.¹¹ Wu is the broker that procured the sale and the ONLY listed Broker on the
19 purchase agreement¹² and the addendum.¹³ There is no mention of Chan in any of the closing
20 documents.

21 ///

22 _____
23 ¹¹ Exhibit "C".

24 ¹² A true and correct copy of the purchase agreement is attached hereto as Exhibit "E".

25 ¹³ A true and correct copy of the addendum to the purchase agreement is attached hereto as Exhibit "F".

IV. CHAN USES THREATS AND DECEPTION TO ATTEMPT TO OBTAIN WU'S COMMISSION

Chan recognizes that she knew at least by January 15, 2015 that Dr. Chiu had been forced to find another real estate agent to meet his needs.¹⁴ After waiting another week, Chan decided to go to KB Homes and attempt to unilaterally obtain the Commission for herself by claiming that Dr. Chiu had signed a registration card appointing her as agent.¹⁵ Ms. Chan could not produce the card and KB Homes was unable to locate such a document, which did not deter Chan from trying to obtain Wu's Commission by threatening Dr. Chiu.

Dear Jerrin,

I still want to give you one last chance to fix your wrongdoings before I take you to court. Do not think I am bluffing, your Dad has always said he likes my honesty.

...

If you lose in the lawsuit, and I promise you that you will. It was straight forward and simple, KB home only pays to the agent that first brought in the client and that is me. **Your unhappiness or your unsatisfaction of your agent has no effects on their policy.** Don't forget if you lost the case, you will have to pay my attorney fees too.

Once lawsuit starts then it will become a public record. Everyone knows that you are an unethical person and a liar and ask for kickback, I honestly do not believe there will not be even a slightly effect on your professional image or career. So who or what will you protect, your \$3000 or more kickback, or your agent commission or your reputation? NONE of them!

If that was still your decision to move forward, **I will not feel bad to play along, what do I have to lose?**

Afterall buying a house should be happy and not miserable and you do not want to carry that lawsuit nightmare for the rest of your time living in that house.

This is not yet the end of it and I do take this personally because I really do not want to take you to court. . . . This is my last piece of advice to make you money by saving you unnecessary attorney fees, time and reputation. . . .¹⁶

¹⁴ Betty Chan Statement, at pg. 6, "The Other Agent's Intrusion."

¹⁵ See Betty Chan Statement, at pg. 7, "Registration Card."

¹⁶ **Exhibit "G"**.

A-10

1 Dr. Chiu ignored Chan's inappropriate and baseless threats, and by January 30, 2016, Chan
2 began pointing the finger of blame at everyone but herself.¹⁷

3 Chan next hired Jeffrey R. Hall, Esq. of Hutchison & Steffen to send a demand letter to
4 First American Title on March 24, 2016. Chan demanded she be paid Wu's Commission and
5 claimed that "Mr. Chiu signed a broker registration identifying Ms. Chan as his agent on
6 [December 31, 2015]."¹⁸

7 Wu, through counsel, requested a copy of the purported registration card from Chan's
8 attorney on June 17, 2016. This request was renewed on June 21, 2016. Counsel for Chan
9 responded: "I asked my client for the document referred to. She's been out of town and advised
10 that she'd need a week to get back and go through her files." Chan never had the registration
11 card, which she knew. Apparently, her counsel figured out the same. After the week Chan
12 purportedly needed to get home and find the document, Wu suddenly received notice that her
13 counsel "no longer represent[ed] Betty Chan in this matter."¹⁹ Mr. Hall had withdrawn as
14 counsel.

15 Pursuant to Mr. Hall's confirmation that Chan was unrepresented, Chan was contacted
16 directly requesting the purported registration card on June 29, 2016. Chan's response was to
17 inform that she had retained counsel that was currently out of town, but would follow up after
18 having a chance to review the file.²⁰

19 ///

20 _____
21 ¹⁷ See Betty Chan Statement, at pg. 8, "KB lost my Registration Card."

22 ¹⁸ Exhibit "H"; compare Exhibit "I" (showing Chan knew she did not have a registration card
23 on February 5, 2016).

24 ¹⁹ Email Chain between Laura Meyers, Michael A. Olsen, Esq., and Jeffrey Hall, Esq, attached
25 hereto as Exhibit "J".

²⁰ Email Chain between Laura Meyers, paralegal and Betty Chan, attached hereto as Exhibit
"K".

V. Chan Uses the District Court, GLVAR, and Two Additional Law Firms to Challenge Payment of Wu's Commission

On September 27, 2016, Chan—now represented by Avece M. Higbee, Esq. of Marquis Aurbach Coffing—committed an ethical violation of the GLVAR rules by filing a “*Complaint*” in the Eighth Judicial District Court, prior to submitting the matter to GLVAR for mediation and possible arbitration as required by rule. Ms. Chan has caused Dr. Chiu and Wu to incur thousands of dollars in attorney’s fees and costs by initiating Chan v. Wu, Case No. A-16-744109-C. The claims listed in the complaint (declaratory relief, breach of contract, and unjust enrichment) certainly were intended to extort payment of the Commission to Chan.²¹

Chan did not simply sue Wu. She also sued Nevada Real Estate Corp. (the real estate company where Wu works), Judith Sullivan (designated Realtor® and officer of Nevada Real Estate Corp.), Dr. Chiu (the buyer), and KB Homes (the property developer/seller).

On November 15, 2016, Chan submitted her “*Amended Complaint*,” alleging, without any evidence, that Dr. Chiu sought out Wu in order to exclude Chan from the transaction because Wu offered a “commission kick-back.” Chan further alleged that because Chan was the first to introduce Dr. Chiu to the KB Home Development, Wu was not entitled to the subsequent commission received.²²

On December 6, 2016, Wu and Sullivan submitted their “*Answer and Counterclaim*” and asserted that Dr. Chiu and Chan never entered a written agreement and that there was never a meeting of the minds regarding the core terms of her representation. Dr. Chiu also asserted that there was never any written or verbal agreement setting forth the terms of any agreement between the parties. Wu and Sullivan further asserted that Chan fraudulently represented to Dr. Chiu and to First American Title Company that she possessed a broker registration card

²¹ See Complaint, ¶¶ 54–55; 64; 74, Exhibit “L”.

²² See Chan’s Amended Complaint, Exhibit “M”.

A-12

1 identifying her as Dr. Chiu's agent without being able to produce any such document upon
2 challenge.²³ Wu and Sullivan also noted that Chan had failed to bring this matter before the
3 GLVAR as is required of Realtors®.

4 On January 13, 2017, Chan, through counsel, filed her "*Motion for Stay Pending*
5 *Arbitration*" stating that Chan "submitted a claim for arbitration with the Greater Las Vegas
6 Association of Realtors® pursuant to the Code of Ethics and Arbitration Manual for the National
7 Association of Realtors®. In the event of disputes between Realtors®, Realtors® must submit
8 the dispute to arbitration in accordance with the policies of GLVAR."²⁴ However, Chan only
9 remembered the arbitration policy over a year after Dr. Chiu entered a contract to purchase his
10 home and months after having filed her lawsuit.

11 Ten days after the Motion for Stay, Chan's second counsel, Avece Higbee, Esq.,
12 submitted her "*Motion to Withdraw as Counsel of Record for Plaintiffs Betty Chan and Asian*
13 *American Realty & Property Management*." The motion requested that Avece Higbee, Esq. be
14 permitted to withdraw because of "differences with Plaintiffs concerning action to be taken"
15 going forward in the matter.

16 Wu and Sullivan opposed the motion and requested the Complaint be dismissed or
17 summary judgment be granted. Notwithstanding, Chan represented to the District Court that
18 there were claims and parties that might remain unaffected by the potential arbitration.
19 Accordingly, the District Court decided to stay the A-Case pending the outcome of arbitration to
20 evaluate whether there were any claims against any parties that should still be adjudicated after
21 arbitration is complete.

22
23
24 ²³ See Exhibit "M"; Exhibit "H".

25 ²⁴ See Chan's Motion for Stay Pending Arbitration, p.3.

On May 1, 2017, the District Court held a status check due to Chan's failure to provide any evidence that she had filed for arbitration. Because the named plaintiffs in the A-Case included a corporation, representation by counsel was required.²⁵ Chan retained Todd E. Kennedy, of Black & Lobello, her third law firm to handle the status check.

On July 10, 2017, Respondents were finally made aware of Chan's filing with the Arbitration Board. Once again it now appears that Chan's third counsel of record, Mr. Kennedy, has also withdrawn as counsel because Ms. Chan's filing with GLVAR indicates that Ms. Higbee is Chan's counsel when in fact Ms. Higbee has long since withdrawn from this matter and confirmed as much in an email to the undersigned just over two weeks ago.

LEGAL ARGUMENT

I. CHAN VIOLATED GLVAR'S RULES OF ETHICS REQUIRING MANDATORY, BINDING ARBITRATION

Chan has attempted to pursue binding arbitration pursuant to the ethical rules she has consented to abide when it is convenient, while at the same time reserving the right to go back to the District Court if she is unhappy with the result. The National Association of Realtors'® ("NAR") Code of Ethics and Standards of Practice, Article 17 mandates that disputes between realtors, "if mediation is not required, Realtors shall submit the dispute to arbitration in accordance with the policies of the Board rather than litigate the matter."²⁶ The NAR's Code of Ethics further "includes the obligation of Realtors (principals) to cause their firms to . . . arbitrate and be bound by any resulting . . . award."²⁷

²⁵ EDCR 7.42(b) ("A corporation may not appear in proper person.").

²⁶ National Association of Realtors, Code of Ethics and Standards of Practice, Article 17 (January 1, 2017) (emphasis added).

²⁷ Id. (emphasis added).

A-14

1 The GLVAR's code of ethics mandates that any and all legitimate disputes regarding
2 commissions between Realtors® are subject to arbitration before the GLVAR.²⁸

3 Chan is a member of the GLVAR, subjected to the requirement that her dispute with Wu
4 be submitted to mandatory, binding arbitration. Because GLVAR requires arbitration for the
5 dispute in this matter, Chan was required to "submit the dispute to arbitration in accordance with
6 the policies of the [GLVAR] rather than litigate the matter." Not only was Chan required to
7 submit to arbitration rather than litigate this matter before the District Court, such arbitration is
8 binding. Thus, the ethical codes of conduct, voluntarily accepted by Chan, proscribe the
9 possibility of litigating this matter before the District Court.

10 By filing her Complaint with the District Court, Chan deliberately violated Local, State,
11 and National codes of ethics. Chan ignored the mandate to arbitrate the matter before the
12 GLVAR. Chan wasted the District Court's resources and time and filed the Complaint
13 intentionally to harass and unnecessarily drive up litigation costs for all the parties she has
14 targeted with her baseless claims, just as she threatened to do on January 27, 2016.

15 **II. CHAN FAILED TO BRING HER CLAIM BEFORE THE GLVAR**
16 **WITHIN 180 DAYS AS REQUIRED**

17 Even though Chan knew since at least January 15, 2016 that Dr. Chiu obtained an agent
18 and since January 22, 2016 that he purchased a home using that agent, she failed to even attempt
19 to notify the GLVAR until November 2016. Pursuant to established policy, "The Greater Las
20 Vegas Association of REALTORS® will not hear any case that is greater than 180 days from the
21 time that the issue could have reasonably been known."²⁹ "The time the complaint was originally
22 filed with the Association shall be considered the filing date for purposes of the 180-day filing
23

24 ²⁸ GLVAR, The Code of Ethics – Our Promise of Professionalism, p. 31, referring to the
25 Standard of Practice, Article 17.

²⁹ Policy 400-4.

15
X

rule.”³⁰ However, it is also necessary to pay a deposit when the complaint is filed. “If no deposit is received the case doesn’t move forward nor does the timing stop as far as the 180 day rule.”³¹

Chan’s claim to Wu’s Commission fails because she did not file for arbitration in a timely manner for arbitration before the GLVAR. Chan has known that Dr. Chiu obtained a real estate agent that could fill his needs since at least January 15, 2016. She has known that Wu helped Dr. Chiu identify and purchase a home since at least January 22, 2016.

Pursuant to GLVAR’s policy requiring a complaint be filed within “180 days from the time that the issue could have reasonably been known,” Chan’s attempt to subject payment of the Commission to arbitration is woefully late. At most, Chan had until July 20, 2016 to file a request for arbitration with GLVAR. But Chan had done nothing to notify GLVAR that she disputed payment of Wu’s Commission by July 20, 2016. Indeed, Chan waited until months after the deadline to even file her District Court Complaint. Almost a year after Dr. Chiu entered the contract to purchase his house Chan finally attempted feigned compliance with the GLVAR policy. However, even then Chan prevented the case from proceeding in arbitration, preferring instead to continue litigating the matter before the District Court. Chan’s dilatory filing and pursuit of her claim for arbitration should be denied as untimely.

III. CHAN WAS NOT THE PROCURING CAUSE FOR DR. CHIU’S PURCHASE

In is undisputed that Wu is the only broker listed in the purchase agreement; Chan’s name does not appear on any escrow documents; Chiu did NOT purchase the pre-owned property or KB Homes models he was encouraged to purchase by Chan, nor did he make any offer on any properties while viewing homes with Chan; and Chan—excuses aside—was non-

³⁰ Policy 400-9.

³¹ Policy 400-5.

19-16

1 responsive to Chiu's calls and messages during the timeframe he hoped to find and purchase a
2 house.

3 Chan initially claimed she had a registration card that would somehow entitle her to the
4 Commission, but after that lie was unveiled has resorted to blaming non-existence of the card on
5 KB Home.

6 To determine whether a broker is entitled to commission, the Nevada Supreme Court has
7 held that "a court must decide which [broker] was the procuring or inducing cause of the sale."³²

8 To be the procuring cause of a sale, the broker's conduct must be more than mere trifling.³³

9 "Merely introducing the eventual purchaser is not necessarily enough."³⁴ A broker cannot be the
10 procuring cause when it is shown that they have "abandoned efforts or been helplessly
11 ineffective."³⁵ Courts have also held that merely introducing or alerting a prospective buyer that
12 a property is available is usually insufficient to constitute a procuring cause.³⁶ Several
13 jurisdictions have held that the broker's efforts must be the predominating cause of the sale.³⁷

14 Chan was not the procuring cause of the sale because Chan merely rushed Dr. Chiu
15 through several pre-owned houses and the KB Homes development before presenting him yet
16 another pre-owned house. Indeed, Chan actively discouraged Dr. Chiu from purchasing Lot 43 or
17

18 ³² Bartsas Realty, Inc. v. Leverton, 82 Nev. 6, 9, 409 P.2d 627 (1966) (citations omitted).

19 ³³ Id. at 10.

20 ³⁴ Id.

21 ³⁵ Id.; see also, Levy Wolf Real Estate Brokerage, Inc. v. Lizza Industries, Inc., 500 N.Y.S.2d 37,
22 118 A.D.2d 688 (1986).

23 ³⁶ See United Farm Agency of Alabama, Inc. v. Green, 466 So. 2d 118 (Ala. 1988); Greene v. Hellman, 433 N.Y.S.2d 75, 51 N.Y.2d 197 (1980).

24 ³⁷ See Carmichael v. Agur Realty Co., Inc., 574 So. 2d 603 (Miss. 1990); Ham v. Morris, 711
25 S.W.2d 187 (Mo. 1986); A N Associates, Inc. v. Quotron Systems, Inc., 605 N.Y.S. 2d 178, 159
Misc. 2d 515 (1993); Vincent v. Weber, 13 Ohio Misc. 280, 42 Ohio Op. 2d 347, 232 N.E. 2d
671 (Mun. Ct. 1965).

1 the Model 2 floorplan before putting all her efforts into selling her preferences. Chan was
2 determined to have Chiu purchase either a previously-owned house or Lot 37 with the Model 3
3 floorplan. Dr. Chiu was not interested in either option. Dr. Chiu never participated in any
4 negotiation nor did he make any offer on any of the options Chan presented.

5 On the other hand, Wu's efforts resulted in Dr. Chiu identifying and purchasing a floor
6 plan and lot that suited his interests. Wu not only convinced Dr. Chiu that the previously-owned
7 homes and Lot 37 with the Model 3 floorplan were inferior choices, but Wu also settled Dr.
8 Chiu's serious concerns about the developer's reputation. Indeed, the combination that Wu
9 envisioned and convinced Dr. Chiu to purchase consisted of a floor plan and lot that Chan
10 disparaged as unappealing.

11 Additionally, Chan cannot be the procuring cause of the sale because she abandoned her
12 efforts as broker. Chan ceased answering the phone and failed to respond to messages for five
13 days. From the afternoon of December 31, 2015 until January 5, 2016, Chan did not return any
14 of the phone calls or voice messages placed by the Chius. What is more, Chan knew beforehand
15 that Dr. Chiu's parents were leaving on January 4, 2016 and that Dr. Chiu wanted to make a
16 decision before his parents returned to California. Notwithstanding her prior knowledge that time
17 was of the essence, Chan abandoned her efforts to help Dr. Chiu and his parents. Chan preferred
18 to make Dr. Chiu guide himself through the house purchasing process.

19 When Chan finally sent a response—an email asking if Dr. Chiu had made a decision—it
20 was January 5, 2016, the day after Dr. Chiu's parents returned to California. Dr. Chiu sought out
21 Wu after days without a contact from Chan because his parents were leaving town.

22 Not only had Chan abandoned her efforts to provide Dr. Chiu with the time-sensitive
23 service he required, but her efforts to sell Dr. Chiu the previously-owned homes and the Model 3
24 floorplan were "helplessly ineffective." After focusing efforts on December 30, 2015 on these
25 options, Chan failed to generate any interest in them. Not only did Chan's sales pitch fail to

PA 16

1 persuade Dr. Chiu to purchase Chan's preferences, her efforts confused Dr. Chiu in the
2 purchasing process, leaving him unprepared to make his decision. Chan was not the procuring
3 cause of the sale because her efforts were "helplessly ineffective" in identifying Dr. Chiu's
4 interests and needs and using that information to convince him to purchase a specific property.

5 Wu was the procuring cause of Dr. Chiu's purchase. Chan abandoned her deficient
6 efforts to help Dr. Chiu by refusing to respond to phone calls and voice messages for five (5)
7 days. Chan manifested ambivalence to Dr. Chiu's urgency despite knowing that Dr. Chiu
8 contacted her to find a house within a brief window of time while his parents were in Las Vegas.
9 Dr. Chiu and his parents were given no other choice than to seek out a broker actually willing to
10 help them find a house. With no response from Chan, who had abandoned her efforts to help Dr.
11 Chiu find a home, they had no way of knowing if or when Chan would respond to their time-
12 sensitive needs.

13 Additionally, Chan and Dr. Chiu never entered any written agreement showing that Dr.
14 Chiu intended to purchase any of the options Chan presented. Dr. Chiu never made an offer or
15 negotiated anything resembling terms of an agreement regarding Lot 43 or the Model 2
16 floorplan. The purchase agreement, which notably does not list Chan, was the product of Wu's
17 success in identifying Dr. Chiu's interests and matching those interests with a house. Wu, as
18 shown by the purchase agreement, was the only broker that accomplished anything for Dr. Chiu.

19 **IV. OLD DOCUMENTS PRESENTED BY CHAN HIGHLIGHT HER**
20 **FAILURE TO ACT AS PROCURING CAUSE FOR THE JANUARY 2016**
21 **PURCHASE**

22 Chan has attached dozens of pages of old texts, emails, and other documents to her
23 request for arbitration. She claims that these documents somehow show she should receive Wu's
24 Commission, when in reality they only accentuate her failure to provide any significant
25 assistance to Dr. Chiu.

A-19

1 The documents stem from two different transactions: Dr. Chiu's purchase of a condo, and
2 a failed attempt to get Dr. Chiu to purchase a home. Despite failing to actually close the second
3 transaction, Chan had Dr. Chiu sign a form titled "*Duties Owed by a Nevada Real Estate*
4 *Licensee*" on both prior interactions with Dr. Chiu.³⁸ Moreover, the documentation shows that
5 Chan and Dr. Chiu discussed specific property and offers, whereas on December 30, 2015 Chan
6 rushed Dr. Chiu through some potential options and then failed to respond to any of his requests
7 for follow up information.

8 CONCLUSION

9 Chan violated both National and Local ethical codes governing Realtors® and brokers by
10 filing her Complaint before the District Court rather than submitting only a request for
11 arbitration. Moreover, she failed to bring her arbitration request within the required time limit.
12 By any means, Chan abandoned her limited and ineffectual efforts to sell Dr. Chiu previously-
13 owned houses and Lot 37 with the Model 3 floorplan. Wayne Wu was the procuring cause of Dr.
14 Chiu's purchase. Wu convinced Chiu to purchase Lot 43 and the Model 2 floorplan. Wu is listed
15 as the broker on the purchase agreement and the addendum. Therefore, Chan's request for Wu's
16 Commission should be denied.

17 PRAYER FOR RELIEF

18 Wherefore, Respondents pray as follows:

- 19 1. That Chan's failure to abide by the arbitration policy of the GLVAR be
20 noted on the record and that Chan be sanctioned and punished by the GLVAR for
21 violation of its ethical rules;
- 22 2. That Chan's request for arbitration be denied as untimely;

23
24
25 ³⁸ Exhibit "N" ("This form does not constitute a contract for services nor an agreement to pay compensation.").

- 1 3. That Chan's request for Wu's Commission be denied because Wu was Dr.
2 Chiu's real estate agent and the procuring cause of the purchase; and/or
3 4. That Chan be ordered to pay all of Chiu and Wu's attorney's fees and
4 costs incurred in this matter and the District Court Case; and
5 5. For such other and further relief that is deemed just and proper.
6
7

8 DATED this 25 day of JULY 2017.
9

10 Ron-Hay Bar 14374
11 MICHAEL A. OLSEN, ESQ.
12 Nevada Bar No. 6076
13 THOMAS R. GROVER, ESQ.
14 Nevada Bar No. 12387
15 **GOODSELL & OLSEN, LLP**
16 10155 W. Twain Ave., Suite 100
17 Las Vegas, Nevada 89147
18 Attorneys for Respondents
19
20
21
22
23
24
25

EXHIBIT "A"

D0022

2 Appx 000311

A-22



Betty Chan <aalender@gmail.com>

Looking for new house!

Jerrin Chiu <jchiuey@gmail.com>
To: Betty Chan <aalender@gmail.com>

Mon, Nov 2, 2015 at 3:07 PM

Hello Betty,

How have you been? Hope all is well. So I am going to be looking for a new house! I think you spoke with my dad last month. So they are coming to visit again at the end of this year. We were hoping that you can show us some houses around new years time? We are free Dec 30 morning/afternoon, and all day Dec 31 and Jan 1st. I know that is holidays so you may be busy with family. But if you are free, maybe you can show us some houses? I will be looking for around \$250-\$400k house around boca park, preferably 5 miles within my work. Thanks Betty! Hope to talk to you soon.

Jerrin

5-A-23

EXHIBIT "B"

D0024

2 Appx 000313

A-24



Betty Chan <aalender@gmail.com>

Looking for new house!

Betty Chan <aalender@gmail.com>
To: Jerrin Chiu <jchiuey@gmail.com>

Mon, Nov 2, 2015 at 4:29 PM

Sure. Thank you for using my service again.

Betty

[Quoted text hidden]

EXHIBIT "C"

D0026

2 Appx 000315

A-2k

AFFIDAVIT OF JERRIN CHIU

State of Nevada)
County of Clark) ss:

JERRIN CHIU, being first duly sworn, deposes and says that I am over the age of 18 years, have personal knowledge of and am competent to testify to the following facts.

1. I have never been convicted of a felony.
2. I currently live at 477 Cabrial Peak, Las Vegas, Nevada 89138.
3. I have personal knowledge of the facts stated in the *Opposition to Motion to Stay Pending Arbitration and Countermotion to Dismiss with Prejudice or in the Alternative for Summary Judgment* and believe them to be accurate.
4. I emailed Betty Chan on November 2, 2015 requesting her assistance in looking for real estate.
5. On December 30, 2015, Betty Chan picked up my parents and me and showed us three previously-owned homes and three model homes at the Tevare KB Home Development in Summerlin.
6. I felt pressured to purchase Betty Chan's preferred selection of Lot 37 and the Model 3 floorplan. I did not like that option and declined moving forward with the purchase of a home, or even making an offer on that date.
7. Initially, I lacked interest in the KB Home Development options because the Development was located outside of the parameters I gave to Betty Chan previously.
8. Despite being uncertain about buying a KB home, I submitted a refundable \$10,000.00 deposit to KB Home on December 31, 2015 because I was informed that I would face a \$3,000.00 price increase on the lots if I did not submit the deposit before the New Year. I

1 would not have made the deposit but for being informed that it was refundable for 14 days if I
2 decided not to move forward with purchasing a home. Betty Chan was not taking our calls and
3 did not represent me in making the deposit with KB Homes on December 31, 2015.
4

5 9. My father, Kwang Chiu, called Betty Chan the morning of December 31, 2015
6 seeking further assistance from her. She did not respond to the call.

7 10. My father called Betty Chan several times and left a voice message on January 2,
8 2016. Again, Chan did not answer the January 2, 2016 calls.

9 11. My father called Betty Chan on January 3, 2016 and left a voice message. Betty
10 Chan did not answer.
11

12 12. I was frustrated with Betty Chan because she did not answer several phone calls
13 and voice messages from my father despite knowing that my parents were leaving town and time
14 was of the essence. It was due to her non-responsiveness that my parents and I determined to
15 seek assistance from another agent.
16

17 13. After calling a couple of other possible agents, my father recommended Wayne
18 Wu as a replacement real estate agent and called Wayne on my behalf.

19 14. I met with Wayne Wu on January 7, 2016 at the KB Home Development and
20 Wayne convinced me to purchase Lot 43 with the Model 2 floorplan.

21 ///

22 ///

23 ///

24 ///

25 ///

26

27

28

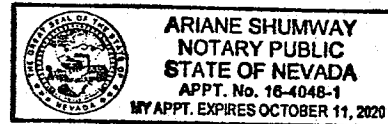
1 15. In addition to being the agent that actually presented me with a home/lot
2 combination that I was comfortable with, Mr. Wu was the only agent that actually performed any
3 work on negotiating a purchase contract, opening escrow and ultimately closing the purchase.
4
5 FURTHER YOUR AFFIANT SAYETH NAUGHT.

6
7 DATED this 7 day of FEBRUARY 2017.

8
9
10 SIGNED AND SWORN to before me
11 this 7 day of FEBRUARY 2017.

12 *Ariane Shumway*
13 NOTARY PUBLIC in and for said
14 County and State.

Jerrin Chiu
JERRIN CHIU



A-29

EXHIBIT "D"

D0030

2 Appx 000319

A-30



City-Data Forum > U.S. Forums > Nevada > Las Vegas

KB homes anyone? (to buy, living in, homeowner)

User Name User Name

☒ Remember Me

Password

Please register to participate in our discussions with 2 million other members - it's free and quick! Some forums can only be seen by registered members. After you create your account, you'll be able to customize options and access all our 15,000 new posts/day with fewer ads.

View detailed profile (Advanced) or search site with

Search Forums (Advanced)

01-01-2015, 01:49 AM

chiuey

44 posts, read 28,609 times
Reputation: 17

Advertisements

Had a previous post about living in Tevare/Paseo village but didn't have many replies. I guess my follow up question is the home I am looking for is made by KB homes which have gotten many bad reviews in the previous years. Can anyone give any insight whether they are okay to buy now? or should I still stay clear from them? Thanks.

Similar Threa

- Anyone renti homes" to ve
- Ryan Homes Delaware, 8 r
- Does anyone Homes/First 1

See also detai

01-01-2015, 04:05 AM

jet757f

Location: Orange County
978 posts, read 1,283,645 times
Reputation: 766

I bought a new one in Ca and thought it was fine. No problems,

Recently visit

- Las Vegas

01-01-2015, 11:02 AM

Everdeen

3,475 posts, read 3,532,424 times
Reputation: 4531

Knock on the doors of the other homeowners in the development and ask them.

City-Data**Recent article**

- The National Feb 2
- Innovation in
- Top furniture
- Men exercise
- Fed Policy and

01-01-2015, 12:05 PM

yellowbelle

1,495 posts, read 1,758,070 times
Reputation: 3509

One of the reasons you may not have received many replies is because per the TOS:

Quote:

This is not the right place for consumer complaints. Such posts present defamation issues and they don't give the other side the opportunity to present their side of the argument.

If anyone would like to chime in, please do so via direct message.

My posts as a Moderator are in RED.

Helpful links: [FAQ](#) ~ [Forum Rules](#) ~ [TOS](#) ~ [Infractions and Thread Deletion FAQs](#)

Full Mod List

~ If you're not kind on the internet, then you're not kind. ~

Please register to post and access all features of our very popular forum. It is free and quick. Over \$68,000 in prizes has already been given out to active posters on our forum. Additional giveaways are planned.

Detailed information about all U.S. cities, counties, and zip codes on our site: [City-data.com](#).

D0031

2 Appx 000320

EXHIBIT "E"

D0032

2 Appx 000321

A-32

Below is a list of forms that are associated with the Purchase Agreement.

PACKET #1:

- (11) BUYER'S DEPOSIT(S) (Earnest Money and Options Deposit)
- (12) THIRD-PARTY DEPOSIT ACKNOWLEDGMENT (if applicable)
- (13) RECONCILIATION OF SALES PRICE (if applicable)
- (14) SALES TRANSACTION CHECKLIST
- (15) MAIL-OUT COVER LETTER (if applicable)
- (16) SALES COMMISSIONS PAYROLL FORM
- (17) PURCHASE AGREEMENT
- (18) ADDITIONAL CO-BUYERS ADDENDUM (if applicable)
- (19) Affiliated Lender AND AUTHORIZATION TO SHARE FINANCIAL INFORMATION
- (110) NON-REFUNDABLE DEPOSIT ACKNOWLEDGEMENT (if applicable)
- (111) AVAILABILITY OF DESIRED MODEL AND/OR ELEVATION
- (112) EXISTING HOME ADDENDUM
- (113) THIRD-PARTY HOME INSPECTION
- (114) SELECTED OPTIONS
- (115) AVAILABLE OPTIONS WITH CUTOFF CODE "A"
- (116) GENERAL CONDITIONS OF ESCROW
- (117) REGIONAL GAMING DISTRICT OVERLAYS MAP DISCLOSURE
- (118) BROKER REGISTRATION AND COMMISSION AGREEMENT (if applicable)
- (119) COMMISSION CREDIT DISCLOSURE (if applicable)
- (120) DUTIES OWED BY A NEVADA REAL ESTATE LICENSEE (AGENCY DISCLOSURE)
- (121) LENDER DISCLOSURE
- (122) ACKNOWLEDGEMENT OF RECEIPT OF RESIDENTIAL DISCLOSURE GUIDE
- (123) AFFILIATED BUSINESS ARRANGEMENT DISCLOSURE

PACKET #2:

- (24) KB HOME NEW HOME LIMITED WARRANTY AGREEMENT, VOLUME I
- (25) TENTATIVE LAND USE AND ZONING DISCLOSURE MAP (site plan)
- (26) RECEIPT FOR DOCUMENTS
- (27) CONSTRUCTION SITE VISIT/BUYER'S ASSUMPTION OF RISK
- (28) STANDARD DISCLOSURES TO BE SIGNED WITH CONTRACT
- (29) KB HOME STUDIO DISCLOSURE
- (30) SUBSEQUENT DISCLOSURES
- (31) EPG DISCLOSURE
- (32) FOR YOUR PROTECTION! GET A HOME INSPECTION (FHA Buyers Only)
- (33) PLOT PLAN (if available)
- (34) LONG FORM DISCLOSURE
- (35) PUBLIC OFFERING STATEMENT (if applicable)

PACKET #3:

TO MARKETING:

- (36) EXTERIOR COLOR DISCLOSURE

TO HOUSECALLS:

- (37) HOMEBUYER SURVEY

TRACT/PHASE TEVARE - 415 / 28 LOT/BLOCK 43 / 1

SALESPERSON Jana McNeff

BUYER Jerrin Chiu

BUYER

DATE 1/8/2016

Below are important items of which every Buyer should be aware. Please explain each item.

CONSTRUCTION OF THE HOME / PRE-DRYWALL ORIENTATION

FEATURES may differ from models. Seller may substitute other materials, fixtures, or methods of construction, if, in Seller's judgment, substitutions become necessary or desirable.

PRE-DRYWALL ORIENTATION - If the home you are purchasing is not past the framing stage of construction, Salesperson will schedule an appointment for you to walk the home with Seller's representative. Please review all options at that time.

EXTERIOR COLOR OF HOME - Of great importance to Seller and to our homebuyers is the overall appearance of the community. Because of this, Seller selects, coordinates, and finalizes all exterior paint colors/schemes of the homes.

LANDSCAPING/SIDEWALKS - Installed on production basis; no choice of trees or shrubs (if applicable). In some communities, sidewalks may only be installed on one side of the street. Check with Salesperson for information.

OUTSIDE WORK DONE ON THE HOME - NEVER permitted at any time until after escrow closes (title recorded) - VOIDS WARRANTIES

THE LOAN

YOUR LOAN - Loan application is required within 3 days from date of Purchase Agreement. Loan approval is required within 30 days from date of Purchase Agreement.

LENDER PROCEDURE - Complete cooperation; information provided may require further clarification and more documents.

KB HOME STUDIO OPTIONS

FLOORING SELECTIONS - Must be selected and paid for as per the terms of the Purchase Agreement. Flooring selections are final at time of selection.

PRE-SELECTED ITEMS OR PREVIOUSLY INSTALLED ITEMS - Must be sold with the house. Buyer acknowledges all previously installed options by signing a Selected Options Addendum.

OPTIONAL ITEMS - Items must be selected, and paid for, per the terms of the Purchase Agreement and the KB Home Studio Disclosure. Optional items are final at time of selection.

REFUNDS ON OPTIONAL ITEMS - Monies for optional items and/or carpet will become non-refundable as per the terms of the KB Home Studio Disclosure.

PROCESSING FEES FOR OPTIONAL ITEMS - A fee of \$150 per item is charged for any reselection of optional items, per the terms of the KB Home Studio Disclosure.

LOCK IN YOUR RATE

COMPLETION OF HOME - All dates given are tentative and NEVER guaranteed. Choosing to lock in a rate does not affect the completion date of the home.

PREPARE TO MOVE IN

FIRE INSURANCE - Lenders will require evidence of fire insurance coverage in escrow. Lenders will NOT accept binders. Fire insurance coverage is highly recommended for cash buyers also.

KB HOME Insurance Agency Inc. - Phone number: 800-446-3371

NEW HOME ORIENTATION

NEW HOME ORIENTATION - The Salesperson will schedule a New Home Orientation for you. At this time, you will inspect the home with a KB HOME representative. The representative will provide you with a Homeowner's Manual.

NEW HOME ORIENTATION ITEMS - Seller will have up to 3 business days to complete most items noted during the New Home Orientation following the initial Orientation. Seller may take up to 30 days to complete some items.

CLOSING TIME

CLOSING ESCROW - Close of escrow takes place upon the recording of your loan and/or title transfer.

CLOSING FUNDS - Must be provided in the form of a wire transfer of readily available funds. (Amount determined by Escrow.)

PICK UP YOUR KEYS

KEY RELEASE - Released only after you complete your New Home Orientation and loan is recorded.

UTILITIES - Buyer's responsibility to turn on/transfer utilities in own name. If utilities are on in Seller's name, they will automatically be disconnected 48 hours after move-in or close of escrow, whichever occurs first.

CANCELLATION POLICY - Buyer may cancel at any time prior to the Non-Refundable Deposit Date (as defined in the Purchase Agreement) and obtain a refund of the Earnest Money and Options Deposit fewer costs incurred. Buyer's Deposit is non-refundable after the Non-Refundable Deposit Date as defined in the Purchase Agreement and KB HOME Studio Disclosure.

CUSTOMER SERVICE POLICY

WARRANTY VS. MAINTENANCE ITEMS - Read any and all applicable limited warranty agreement(s), the Limited Warranty Performance Standards, and maintenance documents carefully to determine if Seller or Buyer is responsible for correcting any problem that arises during any applicable warranty period.

CUSTOMER SERVICE POLICY - Use Customer Service forms to request Customer Service work. Written Customer Service requests help expedite scheduling and follow-up. Subcontractors' telephone numbers are provided in walk-through manual for the Homeowner to contact directly. Call the main office for emergencies ONLY.

BUYER UNDERSTANDS AND ACCEPTS THE ABOVE AND ACKNOWLEDGES RECEIPT OF THIS CHECKLIST BY SIGNING BELOW.

Buyer Signature

Date

Buyer Signature

D0033

2 Appx 000322

14-33

**PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS
TRANSACTION SUMMARY**

- ☒ Original
☐ Rewrite
☐ No Existing Home
☒ Existing Home

Buyer Jerrin Chiu
 Salesperson Jana McNeff
 (Print)
 Community Tevare
 Seller KB Home Las Vegas, Inc.
 (Print)

Owner Occupied?: ☒ Yes ☐ No
 Broker?: ☒ Yes ☐ No

1. Property:

Community Tevare Project 415 Lot/Block 43 / 1 Plan Type/Elevation JN / C
 Street Address 477 CABRAL PEAK STREET Las Vegas NV 89138
 Street Address City State Zip

2. Buyer:

Buyer: Jerrin First Initial Last Chiu
 Present Address 2101 Jade Creek Street, Unit 206 Las Vegas NV 89117
 Street Address City State Zip
 Home Telephone Business Telephone Cell Phone (510) 932-3057
 E-mail Address jchiuev@gmail.com
 Co-Buyer: First Initial Last
 Present Address
 Street Address City State Zip
 Home Telephone Business Telephone
 E-mail Address Cell Phone

3. Buyer's Choice of Escrow Services, Title Insurance Company, and Lender ("Service Providers"):

- Buyer may select any Service Providers of Buyer's choice.
- Buyer is NOT required to use any of the Service Providers recommended by Seller listed below.
- Buyer must choose one of the two options in each below section 4, 5, and 6 by checking either: (a) the first checkbox with Seller's recommended Service Provider in each section or (b) the second checkbox with Buyer filling in the applicable name and address of Buyer's choices for Service Providers in each section

4. Escrow Holder:

Buyer selects:
☒ Seller's recommended Escrow Company:
 EATCO, Address: 8311 W. Sunset Rd. Ste. 150 Las Vegas NV 89113
☐ A different Escrow Company chosen by Buyer (print name and address below)
 Escrow Company Name: Address:

5. Title Insurance Company:

Buyer selects:
☒ Seller's recommended Title Insurance Company:
 EATCO, Address: 8311 W. Sunset Rd. Ste. 150 Las Vegas NV 89113
☐ A different Title Insurance Company chosen by Buyer (print name and address below)
 Title Insurance Company Name: Address:

6. Financing:

☒ Conventional Loan ☐ VA Loan ☐ FHA Loan ☐ CASH
 Lender: Home Community Mortgage
 Lender Address: 8345 W. Sunset #100, Las Vegas, 89113

7. Purchase Price:

Base Purchase Price (including Elevation Premium)	\$376,790.00
Lot Premium	\$25,000.00
Options:	\$2,975.00
Other (see paragraph 10 for details):	\$0.00
	\$0.00
*Total Purchase Price:	\$404,765.00

8. Buyer's Deposit(s):

Earnest Money Deposit (Check one)	\$10,000.00
<input checked="" type="checkbox"/> Received with this Purchase Agreement (Ck. No. 1097 payable to Seller)	
<input type="checkbox"/> Previously received	
<input type="checkbox"/> Transferred from	
"A" Options Deposit (Ck. No. payable to Seller) <u>X JC #1099</u>	50.00 297.00
Total Deposit: <u>X JC</u>	510,000.00 10,297.01

*The Total Purchase Price does not include any of the following costs or expenses: Buyer's closing and escrow fees and charges, Buyer's lender fees, swimming pool or related options, any additional options set forth in an Options Contract signed by Buyer, flooring, or any incentives set forth except as expressly stated otherwise therein, in paragraph 11 of this Transaction Summary of the Purchase Agreement and Escrow Instructions.

9. Significant Dates/Deadlines:

Original Sale Date: 1/8/2016 Rewrite Date: Estimated Closing Date: To Be Determined
 Date Total Deposit (Earnest Money Deposit and "A" Options Deposit) Becomes Non-Refundable: (Buyer to initial the applicable selection(s), and write N/A where not applicable.)
nta 5 days after Original Sale Date, see attached Non-Refundable Deposit Addendum
nta 5 days after Original Sale Date, if Estimated Closing Date is within 45 days from Original Sale Date or Model Home Purchase or if Buyer is paying cash

Loan Application Deadline: 3 days from Original Sale Date Loan Approval Deadline: 30 days from Original Sale Date
 KB HOME Studio Browse Appointment Date: 1/21 KB HOME Studio Final Appointment Date: 1/28
 Buyer's Down Payment Into Escrow: As required per Loan Approval or upon signing closing documents
 Buyer's Rate Lock: 30 days prior to estimated COE Loan Does into Escrow: within 48 hours before Buyer's New Home Orientation Date
 Close of Escrow: Within 3 business days after Buyer is notified the Property is substantially complete

BUYER(S) INITIALS: (JC)

D0034

2 Appx 000323

A-34

11. Additional Terms and Conditions:

Provided that Buyer complies with all the terms of the Purchase Agreement, Seller agrees to accept \$10,000.00 as Buyer's deposit collected at the time of purchase/reservation, as the Earnest Money Deposit for this transaction, instead of the amount that is 10% of the Purchase Price required by the Existing Home Addendum. This shall supersede the Addendum to Purchase Agreement, Existing Home.

12. Estimated Closing Date:

Many unforeseen factors can affect the actual completion of the home, and any anticipated final completion date for the home to be constructed on the Property is only a target date. Seller will endeavor to keep Buyer informed should any change to the completion schedule occur, but cannot guarantee it.

BUYER(S) INITIALS: JC

Tract/Project TEVARE - 415 / 415

Lot/Block 43 / 1

THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY.

A-35

CHASE AGREEMENT AND ESCROW INSTRUCTIONS

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES AND SHOULD BE READ AND UNDERSTOOD PRIOR TO SIGNING. THIS IS A BINDING CONTRACT BY WHICH YOU AGREE TO PURCHASE AN INTEREST IN REAL PROPERTY. YOU SHOULD EXAMINE YOUR RIGHTS OF REVOCATION CONTAINED ELSEWHERE IN THIS CONTRACT.

This Purchase Agreement and Escrow Instructions ("Agreement") is entered into between Seller and Buyer for the sale and purchase of certain real property and improvements thereon ("Property") as more particularly described in the foregoing Transaction Summary attached hereto and incorporated herein by this reference. Seller agrees to sell the Property to Buyer and Buyer agrees to purchase the Property from Seller subject to the terms and conditions which are set forth herein. Seller and Buyer shall sometimes be referred to herein as the "Parties." The Parties agree as follows:

1. **Property Description.** The description of the Property is set forth in the attached Transaction Summary. Seller has constructed or will construct the residence within the Property substantially in accordance with Seller's plans and specifications (and any amendments thereto) pertaining to the residence which are on file with the building department of the City or County in which the Property is located. The residence is not being constructed specifically for Buyer nor to the precise specifications or design of any model home displayed by Seller. This Agreement is an agreement to purchase a completed residence. Seller is not acting as Buyer's contractor.
2. **Purchase Price and Deposit.** Concurrently with the execution of the Agreement, Buyer has delivered to Seller an earnest money deposit and an "A" options deposit in the amount set forth in Paragraph 8 of the foregoing Transaction Summary (collectively, the "Deposit"), by check made payable to Seller, as set forth in the Transaction Summary. The Purchase Price of the Property may be increased and Buyer may be required to deposit additional amounts as set forth in any addenda attached hereto and made a part of this Agreement pursuant to Paragraph 22 below and pursuant to the terms of any option/upgrade work orders/contracts provided by Seller and signed by Buyer concurrently herewith or after the date of this Agreement for optional and upgrade improvements to the Property. As a result of Seller maintaining the Deposit, Seller may receive certain financial benefits such as an array of bank services, accommodations, loans or other business transactions ("Collateral Benefits"). All Collateral Benefits shall accrue to the sole benefit of Seller, and Seller shall have no obligation to account to the Buyer for the value of any such Collateral Benefits.
 - 2.1. The Deposit shall become non-refundable to Buyer and shall be deemed fully earned by Seller, regardless of whether Buyer's Loan (defined below) is approved or disapproved, on the "Date Earnest Money Deposit Becomes Non-Refundable," as set forth in Paragraph 9 of the foregoing Transaction Summary ("Non-Refundable Deposit Date"). At any time prior to the Non-Refundable Deposit Date, Buyer may cancel this Agreement, and the Deposit, less any costs incurred, shall be returned to Buyer.
3. **Financing.**
 - 3.1. **Cash Transactions.** If Buyer will be paying cash to complete the purchase of the Property:
 - (i) Within five (5) calendar days of executing this Agreement, Buyer agrees to provide Seller with evidence satisfactory to Seller that sufficient cash is available to complete this purchase;
 - (ii) Buyer agrees to execute any written forms reasonably necessary for Seller to make such verification;
 - (iii) during the term of escrow, Buyer agrees to maintain said source of cash at a balance equal to or greater than the Total Purchase Price and associated closing costs; and
 - (iv) the balance of the Total Purchase Price shall be deposited with the Escrow Company referred to in the Transaction Summary ("Escrow Holder"), in the form of a cashier's check or via a wire transfer of readily available funds not later than one business day prior to the scheduled Close of Escrow (defined below).

Seller reserves the right to re-verify the cash amount any time during the term of Escrow, and if necessary funds are not maintained during the period, Buyer shall be deemed in default of this Agreement. Seller may, at its sole option, terminate this Agreement, in which event Seller may exercise any or all of its rights set forth in Paragraph 9 below and Seller shall have no further obligation to Buyer with respect to this Agreement or the Property.
 - 3.2. **Loan Application.** Buyer shall apply for a home loan ("Loan") through either Seller's Affiliated Lender, Home Community Mortgage, LLC ("Home Community Mortgage") or any other institutional lender selected by Buyer (whichever is chosen by Buyer being referred to as "Lender") within three (3) days after Buyer signs this Agreement. Buyer acknowledges that he/she has been afforded the opportunity to obtain the Loan from a Lender of Buyer's choosing, and, if Affiliated Lender has been selected as the Lender, that Buyer freely selected Affiliated Lender by his/her own choice. Buyer further acknowledges that Buyer shall be responsible for all costs and fees charged by a Lender through which Buyer has requested financing. Buyer shall provide Seller with a copy of the completed loan application immediately upon submittal thereof to Lender. Buyer agrees in good faith to take all steps and provide all information and supporting documentation required by the Lender for processing the loan application, including, without limitation, providing statements of identity, employment verifications, tax returns, pay stubs, notes, trust deeds, credit reports, loan escrow instructions, etc. Buyer shall promptly deliver to Lender any additional information or documentation required by the Lender and execute all documents required by Lender. In addition, even if Buyer is paying cash for the Property and does not intend to obtain third party financing, Buyer(s) agree, to fully complete and provide the Seller the additional documentation described above, at the time of purchase.
 - 3.3. **Loan Approval/Disapproval.** Buyer shall, in good faith, apply for a Loan and diligently pursue Loan approval. Buyer acknowledges that Buyer's obligation to purchase the Property is not contingent upon Buyer obtaining Loan approval and that Buyer's Deposit shall become non-refundable to Buyer on the Non-Refundable Deposit Date, irrespective of whether the Loan is approved. Additionally, if Buyer fails to obtain written notification from Lender of unconditional Loan approval within thirty (30) days after the "Original Sale Date" as set forth in Paragraph 9 of the Transaction Summary, or any other time period as agreed to by Buyer and Seller, in writing, then Buyer or Seller may, by written notice to the other and to Escrow Holder, cancel this Agreement. In the event of such cancellation (a) Buyer shall have no right to purchase the Property and shall have no claim or interest in or to the Property, and (b) if such cancellation occurs before the Non-Refundable Deposit Date, all funds previously deposited by Buyer, less any escrow costs, credit report and loan charges incurred, shall be returned to Buyer, unless Seller is entitled to retain any such amounts pursuant to any option/upgrade work orders/contracts. If such cancellation occurs after the Non-Refundable Deposit Date, Seller shall retain Buyer's Deposit and all other funds previously deposited by Buyer to which Seller may be entitled pursuant to any option/upgrade work orders/contracts, all remaining funds shall be returned to Buyer and neither party shall have any further obligation, right, or liability whatsoever.
 - 3.4. **Buyer's Loan Default.** Buyer shall be in material default of this Agreement as a result of any of the following:
 - (i) any failure by Buyer to timely apply for a Loan as provided herein;
 - (ii) any voluntary act of Buyer undertaken for the purpose of preventing Lender from approving the Loan;
 - (iii) any request by Buyer that Lender not approve the Loan;
 - (iv) a failure by Buyer to furnish all documents and information required by the Lender within the time limits specified herein;
 - (v) any material misrepresentation or other default resulting in Lender's disapproval of the Loan;
 - (vi) any failure to properly sign all documents and take any and all actions required by Lender to approve or timely fund the Loan;
 - (vii) if purchasing with cash, failure to provide to Seller in a timely manner evidence of availability of cash as provided herein; or
 - (viii) any failure by Buyer to furnish all Loan documents to Escrow Holder on or before three (3) days prior to the Close of Escrow.

Notwithstanding anything to the contrary, in the event of such default, Seller may, at its option, exercise any or all of its rights set forth in Paragraph 9 below.

BUYER(S) INITIALS: X

Tract/Project TEVARE - 415/415
D0036

Lot/Block 18/1

A-36

- 3.5. **Rate Locks.** Buyer has been advised that Seller's construction completion dates are tentative and subject to change at any time. Therefore, Buyer understands and agrees that Seller is not involved in and is not responsible for interest rate lock agreements made between Buyer and Buyer's lender, even if the lender is Affiliated Lender. Further, Buyer understands and agrees that should Buyer lock in a particular interest rate with its lender and should said lock expire prior to the completion of Seller's Property, neither Seller nor Buyer's lender, including but not limited to Affiliated Lender, is responsible for any change in Buyer's interest rate and neither Seller nor Buyer's lender, including but not limited to Affiliated Lender, will contribute to any costs involved in extending or re-locking Buyer's lock agreement.
- 3.6. **Loan Terms.** THE TERMS AND CONDITIONS OF THE LOAN ARE A MATTER OF CONCERN SOLELY BETWEEN BUYER AND LENDER AND SHALL NOT IN ANY WAY AFFECT THE RIGHTS OR OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT. BUYER ACKNOWLEDGES THAT SELLER MAKES NO REPRESENTATION THAT THE INTEREST RATE PREVAILING AT THE CLOSE OF ESCROW WILL BE THE RATE QUOTED BY THE LENDER TO THE BUYER AT THE TIME OF LOAN APPROVAL. BUYER ACKNOWLEDGES THAT THE SALE AND PURCHASE OF THE PROPERTY IS NOT CONTINGENT UPON BUYER'S ABILITY TO RETAIN THE INTEREST RATE QUOTED AT THE TIME OF LOAN APPROVAL AND THAT BUYER WILL BE REQUIRED TO PAY THE INTEREST RATE CHARGED BY THE LENDER AT THE CLOSE OF ESCROW. BUYER AGREES TO MAKE SUCH IMPOUND PAYMENTS FOR REAL PROPERTY TAXES AND ASSESSMENTS, HOMEOWNERS' ASSOCIATION ASSESSMENTS (WHEN APPLICABLE), AND FIRE AND OTHER HAZARD INSURANCE PREMIUMS AS MAY BE REQUIRED BY OR AS MAY BE NEGOTIATED WITH THE LENDER.
- 3.7. **No Obligation to Use Home Community Mortgage.** Buyer acknowledges that there is no obligation on the part of Buyer whatsoever to use the lending services of Home Community Mortgage. Buyer may select any lending institution of his/her choice for the purpose of securing mortgage financing and is not limited to Home Community Mortgage.
- 3.8. **Not a Loan Application or Commitment.** By signing this Agreement, Buyer acknowledges that this Agreement does not constitute either a loan application to, or loan approval or commitment by, any Lender. Buyer shall be solely responsible for obtaining the Loan.
- 3.9. **Affiliated Lender.** Seller's Affiliated Lender is Home Community Mortgage, LLC ("Home Community Mortgage" or "Affiliated Lender"). Buyer is NOT required to use Affiliated Lender as Buyer's lender. Buyer may select any lending institution of his or her choice for the purpose of securing mortgage financing and is NOT in any way whatsoever limited to obtaining financing from Affiliated Lender. Seller and Affiliated Lender are independently responsible for the products and services each company offers. Although Buyer is not required to use the services of Affiliated Lender prior to entering into a Purchase Agreement to purchase a Home from Seller, Buyer may be required to be prequalified for financing in order to establish Buyer's ability to complete the Home purchase. If so, Buyer may be required to provide to Affiliated Lender the basic information required on Affiliated Lender's loan application form and to permit credit reports to be obtained by Seller and Affiliated Lender in order to permit Affiliated Lender to prequalify Buyer as a qualified prospective Buyer. Prequalification involves no out of pocket costs to Buyer. In addition, Buyer is hereby notified that one of Seller's affiliates (KB Home) has entered into an arrangement with Affiliated Lender pursuant to which KB Home provides marketing services on behalf of Affiliated Lender. KB Home receives compensation from Affiliated Lender from providing these services.
- 3.10. **Lender Information Release.** By executing this Agreement, Buyer authorizes Lender to release to Seller or its representatives any and all information concerning the status of Buyer's Loan, including, but not limited to, the Loan application, Loan submittal, conditions to Loan approval, written Loan approval, written denial of Loan approval and reasons therefore, status of Loan documents, and funding conditions and requirements.
- 3.11. **Buyer's Credit Information.** Buyer hereby authorizes Seller or Affiliated Lender, to conduct a credit check on Buyer and Buyer agrees to execute such further written authorizations reasonably necessary to enable Seller and/or, Affiliated Lender, to conduct such a credit check.
4. **Escrow.**
- 4.1. **Escrow Instructions: Opening of Escrow.** Seller shall deposit an executed copy of this Agreement with Escrow Holder which shall thereafter constitute the escrow instructions of the Parties. The terms and provisions hereof may be modified from time to time during the pendency of Escrow only by mutual written agreement of the Parties. Any attempt to modify the Agreement without the written consent of both parties shall be void and without legal effect. Promptly after Seller executes this Agreement, the Parties shall open the Escrow by delivering a fully executed copy of this Agreement to Escrow Holder. Escrow Holder's General Provisions are set forth in the General Conditions of Escrow addendum attached to this Agreement. Seller and Buyer agree that, as between Buyer and Seller, in the event of any conflict between the General Conditions of Escrow addendum and this Agreement, this Agreement shall be controlling. Buyer and Seller shall execute and deposit with Escrow Holder such further funds, instructions, documents and forms consistent with the terms of this Agreement and necessary to consummate the sale and purchase of the Property in accordance with the terms of this Agreement as may be required by Escrow Holder or Seller. Buyer is NOT required to use any escrow service provider or title insurance provider recommended by Seller. Buyer may select any escrow service provider and title insurance company of his or her choice.
- 4.2. **Close of Escrow.** Unless the Escrow is earlier terminated as provided herein, Escrow shall close (the "close of escrow") within three (3) business days after notification to Buyer that the Property is substantially completed. At least one business day prior to the Close of Escrow, Buyer shall (a) deposit or cause to be deposited with Escrow the balance of the Purchase Price and all closing costs and fees to be paid by Buyer and all documents necessary to close Escrow. This amount must be provided in the form of a wire transfer of readily available funds, or a cashier's check made payable to the escrow company referred to in the Transaction Summary; Personal Checks and out-of-state cashier's checks will not be accepted; (b) Seller shall likewise deliver to Escrow all funds and documents necessary to close Escrow, including a fully executed and notarized Grant, Bargain and Sale Deed for the conveyance of title to the Property to Buyer, and (c) Buyer shall perform a New Home Orientation and inspect the completed residence as provided in Paragraph 12 below. Seller shall have up to thirty (30) days after the New Home Orientation to enable Seller to complete some or all of the corrective work identified at the New Home Orientation inspection. If, after notice and tender of its required performance by Seller, Buyer does not schedule or attend a New Home Orientation of the Property or is not ready to close Escrow within the time set forth herein, Buyer shall be in material default of its obligations under this Agreement. IF REQUESTED BY BUYER, SELLER MAY, AT SELLER'S SOLE OPTION, EXTEND THE TIME FOR CLOSING OF ESCROW, PROVIDED BUYER PAYS SELLER A NONREFUNDABLE FEE ("HOLDING FEE") IN THE AMOUNT OF \$100.00 PER DAY ON THE PROPERTY. THE HOLDING FEE SHALL NOT BE APPLICABLE TO THE PURCHASE PRICE OF THE PROPERTY.

If Buyer is using FHA or VA financing, Buyer understands that Close of Escrow may be delayed beyond date of completion of house construction if subdivision improvements are not completed. In such cases, Buyer may agree to pay the Holding Fee and take possession of the house after the date Notice of Completion of the house is recorded, with Seller's approval. Buyer understands that notwithstanding the payment of the Holding Fee, the Property shall still belong to Seller and Buyer shall have no interest in the Property until the Close of Escrow. For the purposes of this Agreement, the Close of Escrow shall be the date the Deed is recorded in the Official Records of the County in which the Property is located.

THE ACTUAL CLOSING DATE MAY VARY FROM THE ESTIMATED CLOSING DATE SET FORTH IN THE TRANSACTION SUMMARY. BUYER HEREBY ACCEPTS THE UNCERTAINTY OF THE DATE ESTIMATED FOR THE CLOSE OF ESCROW. SELLER WILL NOT BE RESPONSIBLE FOR INCONVENIENCE, LOSS, OR EXPENSE TO BUYER RESULTING FROM DELAYS IN CONSTRUCTION COMPLETION AND CLOSE OF ESCROW.

BUYER(S) INITIALS: (X) () Tract/Project TEVARE - 415/415 Lot/Block 43/1

A-37

- 4.3. Appraisals
- (i) Appraised Value. Buyer acknowledges that the purchase of the Home is not contingent upon Buyer obtaining an appraisal equal to the purchase price of the Home. Buyer also acknowledges that should the appraised value of the Home be less than the purchase price of the Home, Buyer will be required to pay the difference, in cash, at the close of escrow.
 - (ii) Appraisal Comps. Buyer acknowledges that the details of their purchase price, including options and flooring, may be provided to appraisers by Seller during escrow or after the close of escrow for the sole purpose of obtaining appraisal values for future KB HOME properties.
- 4.4. Authorized Disbursements to Third Parties. Provided that the Property is not located within a Common Interest Community, as defined by Nevada Revised Statutes 116.110323, Buyer's Deposit may be used to cover the costs, fees, and charges for credit reports, escrow services, contract coordination services, preliminary title reports, appraisals, and loan origination and processing. Buyer understands that from the amount so deposited, the Seller may make disbursements to third parties immediately upon receipt of billing. Buyer further understands that disbursements made to third parties pursuant to this paragraph are not refundable and that neither Seller, Broker nor Escrow Holder shall be liable therefore. Any portion of said funds which has not been disbursed to third parties by the Close of Escrow or by the earlier termination of this Agreement shall be refunded to Buyer, unless Seller is entitled to retain such amounts pursuant to Paragraph 9 below. If the actual amount of impounds and/or closing costs, including the fees listed above, exceeds the Deposit, then Buyer shall immediately upon receipt of notification of this amount, deposit with Escrow Holder the additional amount due. Notwithstanding the above, if Buyer obtains a loan guaranteed by VA, the amount deposited by Buyer pursuant to this Agreement shall not exceed the amounts permitted by applicable VA regulations.
- 4.5. Closing Costs. Buyer shall pay all lender closing costs escrow costs, contract coordination costs and one half (1/2) of the Real Property Transfer Tax amount. The cost of title insurance shall be allocated between Buyer and Seller in accordance with the usual custom in the County in which the Property is located, unless otherwise indicated in this Agreement. The total Purchase Price of the Property is based on the assumption that title insurance will be provided by the company selected by Seller. Buyer may request that such service be provided by another; however, in such case Seller shall not pay title costs in excess of the rate for escrow and title costs that would be charged by Seller's recommended title company in the County where the Property is located. Buyer shall pay or reimburse Seller through Escrow for any excess costs over what Seller would have normally paid.
- 4.6. Taxes/Prorations. All taxes, bonds and assessments, homeowners association assessments, if any, and other charges applicable to the Property shall be prorated as of the Close of Escrow based upon a thirty (30) day month and the most current available bills, statements and other information. In the event the estimate for the current fiscal year differs from the most current available bill or statement, the Buyer and Seller agree to refund to the other, as appropriate, any excess proration. Buyer acknowledges that the County Tax Assessor may not yet have separately assessed the lots/units in the project in which case the foregoing proration shall be based upon Buyer's pro rata share of the unsegregated tax bill for the total number of unsegregated lots/units in the Project. Buyer further acknowledges and understands that the Tax Assessor has the authority to re-assess newly constructed homes after Buyer acquires title to the home and that upon such re-assessment, the Tax Assessor may then issue a supplemental tax bill to Buyer for the tax difference resulting from any re-assessment. Buyer acknowledges and understands that Seller has no control over the Assessment, nor the timing or the amount of any supplemental bill resulting from the re-assessment and Seller accepts no responsibility for adjusted taxes.
- 4.7. Insurance Coverage. To prevent a delay in closing of escrow, no later than five (5) calendar days prior to Close of Escrow Buyer shall provide Escrow Holder with evidence of insurance coverage acceptable to Buyer's Lender. If Buyer does not provide evidence that insurance coverage has been arranged, then Buyer agrees that Escrow Holder may purchase and Buyer shall accept and pay for such insurance coverage as is required by Buyer's Lender from an insurance company to be selected by Seller.
5. Title to the Property
- 5.1. Vesting. Title to the Property shall vest as specified by Buyer to Escrow Holder prior to the Close of Escrow.
- NOTE: The manner of vesting title is at the sole discretion of the Buyer. The manner of taking title to the Property can have significant legal and tax consequences. Buyer is advised to give this matter serious consideration and consult with an attorney or tax consultant for advice.
- 5.2. Exceptions to Title. Title to the Property shall be given to Buyer subject to taxes for the current fiscal year and covenants, conditions, restrictions, reservations, easements, and rights of way, of record or to be recorded by the Seller, any loans placed on said Property by Buyer in financing this purchase, and reservations of water, oil, gas, mineral and hydrocarbon substances rights. A preliminary title report from the title insurance company showing matters of record will be provided to Buyer by the Escrow Company.
6. Compliance with Building Codes and Regulations. Buyer understands and agrees that the various steps of construction shall be deemed to have been satisfactorily performed in compliance with all existing and prevailing regulations at time of construction, when approved by the appropriate governmental authorities. Buyer understands and agrees that Seller shall only be responsible for compliance with building codes and other such regulations in effect at the time of construction of the house, and not for changes in codes, regulations, or technology occurring after building plan approval by applicable governmental agencies.
7. Construction Delays. In the event of flood, fire, earthquake, acts of God, shortages, priorities, allocations or rationing by any governmental authority, public or private utility, subcontractor or supplier, or other cause beyond Seller's reasonable control which affects the availability or promptness of delivery of labor, materials, energy or utility sources, connections or services required by Seller or its contractor to perform this Agreement, or in the event of civil riot, insurrection, war or foreign military commitments resulting in a material economic disruption of the ordinary prices or practices of the building industry, then Seller's time for performance shall be extended for the period of delay caused by such event.
8. Buyer's Right of Cancellation. Seller is acting as a "speculative builder" in this transaction and as such is constructing the house to its own standards to be offered for sale as constructed when completed. Seller is not acting as contractor for the Buyer and is not obligated or agreeing to construct the house to Buyer's standards, satisfaction, or schedule. Buyer shall inspect the house and lot upon completion and on the basis of Buyer's independent inspection shall, if satisfied with the house and lot when and as completed, so indicate by completing this purchase. If Buyer is not satisfied with the house and lot as completed, if construction is not completed when desired, or if substitutions are not satisfactory to Buyer, Buyer may cancel this agreement by notifying Seller. In this event, if cancellation occurs prior to the Non-Refundable Deposit Date, all funds previously deposited by Buyer, less any escrow costs, credit report and loan charges, and less any amounts which Seller is entitled to retain pursuant to any option/upgrade work orders/contracts, shall be returned to Buyer and neither party shall have any further obligation, right or liability whatsoever. If such cancellation occurs after the Non-Refundable Deposit Date, Seller shall retain Buyer's Deposit and all other funds previously deposited by Buyer to which Seller may be entitled pursuant to any option/upgrade work orders/contracts, all remaining funds shall be returned to Buyer and neither party shall have any further obligation, right, or liability whatsoever. Notwithstanding the foregoing, Seller shall endeavor to complete the construction of the dwelling on the Property within twelve (12) months after the date of execution of this Agreement or such earlier time as may be required by the VA or FHA if Buyer obtains a VA or FHA loan. If, through no fault of Buyer, Escrow is not closed within this twelve (12) month time period or such extended time period mutually agreed to in writing by Seller and Buyer, or if the house or other improvements of the Property are destroyed or materially damaged prior to the Close of Escrow; or with regard to Buyers with VA loans who are unable to obtain VA financing, if the house as constructed, or changes and substitutions made to the house are not in substantial conformity with plans, specifications, and change orders on file with the Veterans Administration, then Buyer shall have the following options:

BUYER(S) INITIALS: SC Tract/Project TEVARE-415/415 Lot/Block 43/1

D0038

A-38

EXCEPT AS PROVIDED IN THE PRECEDING PARAGRAPH OF THIS SECTION 10, ANY AND ALL CLAIMS, CONTROVERSIES, BREACHES, OR DISPUTES (EACH A "DISPUTE") BY OR BETWEEN THE PARTIES HERETO, EXCEPT FOR DISPUTES CONTROLLED BY THE DISPUTE RESOLUTION

PROVISIONS IN THE KB HOME LIMITED WARRANTY (AS SUCH TERM IS DEFINED BELOW), ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE SALE OF THE PROPERTY BY SELLER, OR ANY TRANSACTION RELATED HERETO, WHETHER SUCH DISPUTE IS BASED ON CONTRACT, TORT, STATUTE, OR EQUITY, INCLUDING, WITHOUT LIMITATION, ANY DISPUTE OVER (1) THE DISPOSITION OF ANY DEPOSITS HEREUNDER, (2) BREACH OF CONTRACT, (3) NEGLIGENT OR INTENTIONAL MISREPRESENTATION OR FRAUD, (4) NONDISCLOSURE, (5) BREACH OF ANY ALLEGED DUTY OF GOOD FAITH AND FAIR DEALING, (6) ANY CLAIM RELATED TO CONSTRUCTION OR INSTALLATION OF ANY IMPROVEMENTS ON THE PROPERTY OR PROJECT, THE GRADING OF THE PROPERTY OR PROJECT, OR ANY WORK OR SERVICES PERFORMED BY OR ON BEHALF OF SELLER ON OR IN CONNECTION WITH THE PROPERTY OR PROJECT, INCLUDING, WITHOUT LIMITATION, CLAIMS OF ANY ALLEGED DEFECT (INCLUDING, WITHOUT LIMITATION, DISPUTES SUBJECT TO THE PROVISIONS OF NRS 40.600 TO 40.695; OR (7) ANY OTHER MATTER ARISING OUT OF OR RELATED TO THE INTERPRETATION OF ANY TERM OR PROVISION OF THIS AGREEMENT, OR ANY DEFENSE GOING TO THE FORMATION OR VALIDITY OF THIS AGREEMENT, OR ANY PROVISION OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ALLEGATIONS OF UNCONSCIONABILITY, FRAUD IN THE INDUCEMENT, OR FRAUD IN THE EXECUTION, WHETHER SUCH DISPUTE ARISES BEFORE OR AFTER THE CLOSE OF ESCROW, SHALL BE ARBITRATED PURSUANT TO THE FEDERAL ARBITRATION ACT AND SUBJECT TO THE PROCEDURES SET FORTH IN THIS PARAGRAPH.

THIS ARBITRATION AGREEMENT SHALL BE DEEMED TO BE A SELF-EXECUTING ARBITRATION AGREEMENT. ANY DISPUTE CONCERNING THE INTERPRETATION OR THE ENFORCEABILITY OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ITS REVOCABILITY OR VOIDABILITY FOR ANY CAUSE, ANY CHALLENGES TO THE ENFORCEMENT OR THE VALIDITY OF THIS AGREEMENT, OR THIS PARAGRAPH, OR THE SCOPE OF ARBITRABLE ISSUES UNDER THIS PARAGRAPH, AND ANY DEFENSE RELATING TO THE ENFORCEMENT OF THIS PARAGRAPH, INCLUDING, WITHOUT LIMITATION, WAIVER, ESTOPPEL, OR LACHES, SHALL BE DECIDED BY AN ARBITRATOR IN ACCORDANCE WITH THIS PARAGRAPH AND NOT BY A COURT OF LAW.

ANY AND ALL SUCH DISPUTES SHALL BE SUBMITTED TO BINDING ARBITRATION BY AND PURSUANT TO THE RULES OF AMERICAN ARBITRATION ASSOCIATION, 6795 N. PALM AVENUE, FLOOR 2, FRESNO, CA 93704, (877) 528-0880 (HEREINAFTER, "AAA") IN EFFECT AT THE TIME OF THE INITIATION OF THE ARBITRATION. IN THE EVENT AAA IS FOR ANY REASON UNWILLING OR UNABLE TO SERVE AS THE ARBITRATION SERVICE, THE PARTIES SHALL SELECT ANOTHER REPUTABLE ARBITRATION SERVICE. IF THE PARTIES ARE UNABLE TO AGREE ON AN ALTERNATIVE SERVICE, THEN EITHER PARTY MAY PETITION ANY COURT OF COMPETENT JURISDICTION IN THE COUNTY IN WHICH THE PROPERTY IS LOCATED TO APPOINT SUCH AN ALTERNATIVE SERVICE, WHICH SHALL BE BINDING ON THE PARTIES. THE RULES AND PROCEDURES OF SUCH ALTERNATIVE ARBITRATION SERVICE IN EFFECT AT THE TIME OF THE INITIATION OF THE ARBITRATION SHALL BE FOLLOWED.

10.1 GENERAL ARBITRATION PROVISIONS.

- (i) Buyer and Seller expressly agree and acknowledge that this Agreement involves and concerns interstate commerce and is governed by the provisions of the Federal Arbitration Act (9 U.S.C. §1, et seq.) now in effect and as the same may from time to time be amended, to the exclusion of any different or inconsistent state or local law, ordinance, regulation, or judicial rule. Accordingly, any and all disputes shall be arbitrated - which arbitration shall be mandatory and binding - pursuant to the Federal Arbitration Act.
- (ii) To the extent that any state or local law, ordinance, regulation, or judicial rule shall be inconsistent with any provision of the rules of the arbitration service under which the arbitration proceeding shall be conducted, the latter rules shall govern the conduct of the proceeding.
- (iii) This paragraph shall inure to the benefit of, and be enforceable by, Seller's subcontractors, agents, vendors, suppliers, design professionals, insurers and any other person whom buyer contends is responsible for all or any portion of a Dispute.
- (iv) In the event any Dispute is submitted to arbitration, each party shall bear its own attorneys' fees and costs (including expert costs) for the arbitration.
- (v) The arbitrator shall be authorized to provide all recognized remedies available in law or in equity for any cause of action that is the basis of the arbitration. The decision of the arbitrator shall be final and binding. Buyer and Seller expressly agree that an application to confirm, vacate, modify, or correct an award rendered by the arbitrator shall be filed in any court of competent jurisdiction in the county in which the property is located.
- (vi) The participation by any party in any judicial or other proceeding relating to any matter arbitral hereunder shall not be asserted or accepted as a reason to delay or to refuse to participate in arbitration hereunder, or to refuse to enforce this paragraph.
- (vii) The fees to initiate the arbitration shall be advanced by Seller. Subsequent fees and costs of the arbitration and/or the arbitrator shall be borne equally by the parties to the arbitration; provided, however, that the fees and costs of the arbitration and/or the arbitrator ultimately shall be borne as determined by the arbitrator.
- (viii) The arbitrator appointed to serve shall be a neutral and impartial individual.
- (ix) The venue of the arbitration shall be in the County where the property is located unless the parties agree in writing to another location.
- (x) If any provision of this paragraph shall be determined to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms.

NOTICE: BUYER AND SELLER AGREE TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS PARAGRAPH ENTITLED "ARBITRATION OF DISPUTES" DECIDED BY NEUTRAL, BINDING ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND NEVADA ARBITRATION LAW, TO THE EXTENT NEVADA LAW IS NOT INCONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND BUYER AND SELLER ARE GIVING UP ANY RIGHTS BUYER AND SELLER MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW BUYER AND SELLER ARE GIVING UP THEIR RESPECTIVE JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS PARAGRAPH ENTITLED

BUYER(S) INITIALS: SC

Tract/Project TEVARE - 415/415

Lot/Block 43 / 1

A-39

SELLER DOES NOT ASSUME AN OBLIGATION TO SERVICE OR REPAIR SUCH CONSUMER PRODUCTS OR GOODS. THEY ARE INCLUDED ON AN "AS IS" BASIS WITH BUYER ASSUMING THE ENTIRE COST OF ALL NECESSARY SERVICE, REPAIR, OR REPLACEMENT IN THE EVENT OF DEFECT IN QUALITY OR PERFORMANCE.

NOTWITHSTANDING ANY OTHER PROVISION HEREIN, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE DISCLAIMED AND EXCLUDED BY SELLER TO THE MAXIMUM EXTENT PERMITTED BY LAW, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, HABITABILITY AND WORKMANSHIP. I (WE), THE BUYER, HAVE READ AND UNDERSTAND THE ABOVE PARAGRAPH AND ACKNOWLEDGE RECEIPT OF A COPY OF THE ABOVE-REFERENCED KB HOME LIMITED WARRANTY AND DISCLAIMER OF IMPLIED WARRANTIES.

JC
Buyer's Initials

16. Obligation to Provide Documents to Subsequent Buyers. Obligation to Provide Information to Seller. As to any documents provided pursuant hereto, or in conjunction herewith, including, without limitation, the KB Home Limited Warranty, the Warranty Performance Standards and Seller's Homeowner Manual, Buyer hereby acknowledges that Buyer is obligated to, and hereby agrees to, provide copies of such documents to any subsequent purchasers of the Property from Buyer. Buyer further hereby acknowledges that Buyer is obligated to, and hereby agrees to, provide Seller promptly at the time of the sale with the names of any subsequent purchasers of the Property from Buyer.
17. Recordation of Documents. Buyer acknowledges and hereby agrees that Seller may, at Seller's election, but shall not be obligated to, record against title to the Property (or record notice of the existence of) the KB Home Limited Warranty, the Warranty Performance Standards and/or all or portions of Seller's Homeowner Manual, and such other documents as may be reasonably necessary to effectuate the intent and purposes of said documents.
18. Lot and Off-site Improvements. Lot and street improvement work will be provided by Seller in accordance with plans filed with the appropriate governmental agency. Seller shall make all reasonable efforts to install streets and off-site improvements prior to Close of Escrow, but if all other requirements hereunder have been met and Seller is unable, for reasons beyond its control, to install said improvements prior to Close of Escrow, Buyer agrees that Escrow may close without installation of said improvements, provided the dwelling is habitable, accessible and suitable for occupancy. Buyer further agrees to execute all documents necessary to close Escrow, and Seller agrees to install and complete such improvements within a reasonable time, without additional cost to Buyer. In such event, Buyer agrees to grant Seller an easement to enter upon the Property to perform the work necessary to complete such improvements. Buyer shall be responsible for any damages resulting from any changes made by Buyer to the established drainage pattern or lot grading.
19. FHA and VA Loans. With regard to FHA and VA Loans, it is expressly agreed that notwithstanding any other provisions of this Agreement, the Buyer shall not incur any penalty for forfeiture of the Deposit or be obligated to complete the purchase of the Property if the purchase price of the Property exceeds the appraised value of the Property for mortgage insurance purposes by FHA or the Reasonable Value established by VA. The Buyer shall, however, have the privilege and option of proceeding with the consummation of this contract without regard to the amount of the FHA appraisal or VA Reasonable Value. A spot appraisal will be required and will be ordered by the lender from FHA or the VA.
20. General Provisions.
 - 20.1. Entire Agreement. Except for the KB HOME Limited Warranty applicable to the Property, this Agreement is intended by Buyer and Seller as the final expression and complete and exclusive statement of their agreement with respect to the provisions of this Agreement, and any prior or contemporaneous oral or written agreements or understandings which may contradict, explain or supplement these terms shall not be admissible or effective for any purpose. No salesperson, agent or employee of Seller has the authority to make any representations which contradict or alter any terms of this Agreement. There are no collateral understandings, representations or agreements between the parties with respect to the transaction contemplated herein, other than those contained in this Agreement and any written amendments or addenda hereto or written disclosures provided to Buyer in connection with this Agreement.
 - 20.2. Amendment. From time to time following acceptance of the Agreement by Seller, Buyer and Seller may amend this Agreement by completing and signing a Terms and Conditions Addendum. Any such Addendum that refers to Buyer and the Property, once signed by Buyer and accepted by Seller, shall constitute an amendment to the Transaction Summary attached to this Agreement. This Agreement may not be otherwise altered except in writing signed by Buyer and Seller expressly stating that it amends this Agreement.
 - 20.3. No Assignment. This Agreement and Escrow may not be assigned or otherwise transferred, voluntarily or by operation of law, by Buyer without the written consent of Seller, which consent may be withheld by Seller at its sole discretion, and any attempt to do so shall be void and shall constitute a default by Buyer.
 - 20.4. Severability. If any provision of the Agreement or its application to any party or circumstance is declared invalid or unenforceable by an appropriate court, then the remaining provisions (and the affected provision to the extent it is not so declared) shall remain valid and enforceable and in full force and effect.
 - 20.5. No Waivers. The waiver by Seller of any provision of this Agreement or any default by Buyer is effective only if it is in writing and shall not be considered as a waiver of any other provision of default. The waiver by the Seller of a breach of any provision of this agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach, whether of the same or another provision of this Agreement.
 - 20.6. Joint Obligations. If Buyer is comprised of more than one person or entity, then each party comprising Buyer shall be jointly and severally responsible for the performance of Buyer's obligations under this Agreement.
 - 20.7. Interpretation. Headings in this Agreement are included for reference purposes only and shall not affect the meaning of any provisions of this Agreement.
 - 20.8. Notices. All notices to Buyer and Seller shall be personally delivered, including by telephonic telegram, courier or messenger service, or by ordinary or certified mail to the address of Buyer and Seller set forth in this Agreement. Delivery of a notice shall be deemed made on the date of actual delivery if it is personally delivered or sent by certified mail or two (2) business days after it is deposited in the mail if it is sent by ordinary mail. Notices to Seller shall be addressed as follows: Attn: Division President, KB Home Las Vegas, Inc., 5795 Badura Ave., Suite 180, Las Vegas, NV 89118.
 - 20.9. Cooperation. Buyer and Seller agree to execute all instruments and documents and to take all actions as may be required herein and by Escrow Holder and Lender, if any, to consummate the sale and purchase herein contemplated.
 - 20.10. No Tax Withholding. Section 1445 of the Internal Revenue Code provides that a transferee of a United States real property interest must withhold tax if the transferor (i.e., Seller) is a foreign person. To inform Buyer that withholding of tax is not required in connection with this transaction, Seller certifies that Seller is not a foreign corporation, foreign partnership, foreign trust or foreign estate.
 - 20.11. Buyer's Acknowledgments. Buyer has read and understands all of the terms of this Agreement and all Addenda referred to below which are checked as being applicable and which are attached hereto. This Agreement does not create a fiduciary relationship between Seller or Seller's sales representative(s) on the one hand and Buyer on the other hand.

BUYER(S) INITIALS: JC ()

Tract/Project TEVARE - 415/415
D0040

Lot/Block 43 / 1

1A-40

- 20.12. Time is of the Essence. Buyer acknowledges that (i) time is of the very essence in the performance of Buyer's obligations under this Agreement, and (ii) any delay in Buyer's performance under this Agreement will prejudice Seller.
- 20.13. Offer and Acceptance. Buyer acknowledges and understands that Buyer's signing this document constitutes only an offer to purchase the Property from Seller. The signature of a representative of KB Home Sales - Nevada Inc., as set forth in the Receipt of Deposit section below, shall NOT constitute the acceptance of Seller. Only a written acceptance by Seller's authorized agent, in the space indicated below, shall constitute Seller's ratification of this Agreement.
- 20.14. Choice of Law. This contract is to be construed according to the laws of the State of Nevada and specifically Chapter 119 of NRS.
21. Residential Construction Recovery Fund. Pursuant to NRS 624.520, Buyer is hereby notified that payment may be available from the Residential Construction Recovery Fund (the "Fund") if Buyer is damaged financially by work performed on the Property pursuant to a contract, including construction, remodeling, repair or other improvements, and the damage resulted from certain specified violations of Nevada law by a contractor licensed in Nevada. To obtain information relating to the Fund and filing a claim for recovery from the Fund, you may contact the State Contractor's Board, which is located at 2310 Corporate Circle, Suite 200, Henderson, Nevada 89074, (702) 436-1100.
22. Addenda. The following addenda are attached to and incorporated into this Agreement without the necessity of being executed on behalf of Seller (unless any modification to the printed form is made, in which case Seller's signature shall be required in order for such modification to be effective), provided that the box adjacent to such addenda has been checked and Buyer has separately signed such addenda. [Check all that apply]:

- | | |
|-------------------------------------|--|
| <input type="checkbox"/> | Additional Co-Buyer(s) Addendum |
| <input checked="" type="checkbox"/> | Affiliated Lender and Authorization to Share Financial Information |
| <input type="checkbox"/> | Model Home Sale |
| <input checked="" type="checkbox"/> | Non-Refundable Deposit Acknowledgement |
| <input checked="" type="checkbox"/> | Availability of Desired Model and/or Elevation Addendum |
| <input checked="" type="checkbox"/> | Existing Home Addendum |
| <input checked="" type="checkbox"/> | Third Party Home Inspection Contractors Addendum |
| <input checked="" type="checkbox"/> | Selected Options Addendum |
| <input checked="" type="checkbox"/> | Available Options with Cutoff Code "A" Addendum |
| <input checked="" type="checkbox"/> | General Conditions of Escrow |
| <input checked="" type="checkbox"/> | Broker Registration and Commission Agreement |
| <input checked="" type="checkbox"/> | Duties Owed by A Nevada Real Estate Licensee |
| <input checked="" type="checkbox"/> | Lender Disclosure |

23. Other Terms.

I HAVE FULLY READ AND UNDERSTAND THIS AGREEMENT. I OFFER TO PURCHASE THE PROPERTY SUBJECT TO THE TERMS AND CONDITIONS CONTAINED HEREIN. I UNDERSTAND THIS OFFER IS NOT A BINDING CONTRACT AND SELLER HAS NO OBLIGATION UNTIL THIS CONTRACT IS ACCEPTED BY THE SELLER. THE SALESPERSON IS NOT THE SELLER AND IS NOT AUTHORIZED TO ACCEPT THIS OFFER.

The purchaser of any subdivision or any lot, parcel, unit or interest in any subdivision not exempted pursuant to the provisions of NRS 119.120 or 119.122 may cancel the contract of sale, by written notice, until midnight of the fifth calendar day following the date of execution of the contract, unless the contract prescribes a longer period for cancellation. The right of cancellation may not be waived. Any attempt by the developer to obtain such a waiver results in a contract which is voidable by the purchaser. The notice of cancellation must be delivered personally to the developer or sent by certified mail or telegraph to the business address of the developer. The developer shall, within 15 days after receipt of the notice of cancellation, return all payments made by purchaser.

[Signature] 1/8/16
Buyer Date

Jerrin Chin
(Print Name)

Co-Buyer Date

(Print Name)

RECEIPT OF THE DEPOSIT SPECIFIED ABOVE IS HEREBY ACKNOWLEDGED AND PRESENTATION OF THIS OFFER TO SELLER IS BEING MADE BY:

KB Home Sales - Nevada Inc.
Broker
By Jana McNeel
Salesperson

This offer is accepted and the undersigned Seller agrees to sell the Property subject to the terms and conditions contained in this Agreement, including Section 10, entitled Arbitration of Disputes, and including those addenda attached hereto and referred to in Paragraph 22 above, next to which there is a check mark.

KB Home Las Vegas, Inc.
Seller

Authorized Agent Date

Tract/Project TEVARE - 415/415 Lot/Block 43 / 1

D0041

A-41

**Affiliated Lender AND AUTHORIZATION TO SHARE FINANCIAL INFORMATION
ADDENDUM TO THE PURCHASE AGREEMENT AND LONG FORM DISCLOSURES**

Community: Tevare Date of Agreement: 1/8/2016
Buyer: Jerrin Chiu
Buyer: _____
Property: Lot 43 Block 1 Section/Phase _____ / 28
Address: 477 CABRAL PEAK STREET, Las Vegas, NV 89138

This Affiliated Lender and Authorization to Share Financial Information Addendum to the Purchase Agreement and Long Form Disclosures ("Addendum") is attached to and made a part of that certain Purchase Agreement (the "Agreement") between the Buyer(s) described above and the Seller described below, and that certain long form disclosure statement provided to the Buyer(s) described above in connection with the Agreement, covering the real property as described above ("Property"). If any provision of this Addendum conflicts with any provision of the Agreement, the provisions of this Addendum shall prevail. All terms used in this Addendum shall have the same meaning as in the Agreement.

1. Seller recommends that Buyer obtain financing from Seller's Affiliated Lender, Home Community Mortgage, LLC ("Home Community Mortgage"). Home Community Mortgage is an affiliate of Seller and Seller's parent company KB Home owns 49.9% of Home Community Mortgage.

2. All references in the Agreement and Seller's long form disclosures to Seller's Affiliated Lender or preferred lender shall be deemed to refer to Home Community Mortgage. Buyer is not required to use Home Community Mortgage as their lender and is NOT in any way whatsoever limited to obtaining financing from Home Community Mortgage. Buyer has the absolute right to decline any Seller offers or incentives that are contingent upon financing with Home Community Mortgage and Buyer is free to use any qualified lender of their choosing.

3. Although Buyer is not required to use the services of Home Community Mortgage prior to entering into a Purchase Agreement to purchase the Property from Seller, Buyer may be required to verify Buyer's ability to obtain financing in order to establish Buyer's ability to complete the purchase of the Property. If so, Buyer may, at Seller's discretion, be required to complete and sign Home Community Mortgage's standard form of authorization to obtain a credit report and to use and disclose consumer credit information ("Credit Authorization"), which Home Community Mortgage may use to evaluate Buyer's financial wherewithal to purchase the Property and to evaluate Buyer as a qualified prospective Buyer.

Buyer understands that the Credit Authorization, if required, is not and does not in any way constitute an application for a mortgage loan and that Buyer must separately obtain, complete and submit a mortgage application with, and meet the underwriting standards of either: (a) Home Community Mortgage if Buyer chooses to use Home Community Mortgage as Buyer's lender, or (b) any other qualified lender selected by Buyer.

4. Buyer authorizes Seller to discuss and share Buyer's customer and financial information (related to the Buyer's purchase transaction of the Property from Seller) with Home Community Mortgage and/or any other qualified lender selected by Buyer, for the purposes of assisting Seller in evaluating, facilitating, processing, and coordinating Buyer's purchase of the Property.

This Addendum shall not be binding on Seller until accepted by an authorized representative of Seller in the space provided below. Seller's Sales Agent is not an authorized representative of Seller for these purposes.

Seller's Sales Agent:

KB Home Sales - Nevada Inc.

[Signature]
Buyer

1/8/16
Date

By: [Signature] 1.8.16
Sales Agent Date

Buyer

Date

Accepted by Seller:
KB Home Las Vegas, Inc.

By: _____
Authorized Representative of Seller Date

A-42

AVAILABILITY OF DESIRED FLOORPLAN AND/OR ELEVATION

DATE OF PURCHASE AGREEMENT: 1/8/2016

BUYER(S): Jerrin Chiu

COMMUNITY: Tevare

TRACT/ PHASE: TEVARE - 415 / 28

LOT/ BLOCK: 43 / 1

"PROPERTY" ADDRESS: 477 CABRAL PEAK STREET

Las Vegas

DESIRED FLOORPLAN: JN

NV

89138

DESIRED ELEVATION: C

ARCHITECTURAL PLAN: 235.2625

GARAGE: R

This Addendum to Purchase Agreement ("Addendum") is attached to and made a part of that certain Purchase Agreement (the "Agreement") between Buyer(s) and Seller, covering the real property as described above. If any portion of this Addendum conflicts with any portion of the Agreement, the provisions of this Addendum shall prevail. All terms used in this Addendum shall have the same meaning as in the Agreement.

SALESPERSON TO CHECK ONE OF THE FOLLOWING

NA The above-referenced floorplan and elevation have been previously selected by Seller for this property. Buyer hereby acknowledges and understands that Seller may or may not have already received approval from the applicable building department or other municipal agency to construct a home on this property with the previously-selected floorplan and/or elevation. Should Seller receive notification from the applicable entity that the previously-selected floorplan and/or elevation has not been approved for construction on this property, Seller will advise Buyer of such within ten (10) days after receiving said notification. Should that occur, Buyer may elect one of the options as stated in Paragraphs (a) and (b) below, not later than ten (10) days after notification to Buyer. Buyer acknowledges that these are the sole options in this event. If Buyer fails to elect one of the specified options within the ten-day period, Buyer shall be deemed to have elected to terminate the Purchase Agreement as provided in Paragraph 2 below.

SC Seller will provide Buyer with a copy of the plot plan within four (4) to six (6) weeks from the date of the Agreement for the floorplan selected by Buyer and approved by Seller and for which a construction permit was obtained. If a start date has not been set on Buyer's contracted home at the time of entering into a Purchase Agreement, Buyer will, depending upon the available lot inventory in the Community, generally be able to select the floorplan (the "Desired Floorplan") and the elevation (the "Desired Elevation") that Buyer desires to be constructed on the lot he/she has selected. Approval of the Desired Floorplan and/or the Desired Elevation is subject to the restrictions set forth below and to the Community's "Lot Fit" analysis, which identifies the types of floorplans and elevations that Seller believes to be suitable for each particular lot then for sale in the Community.

Buyer should understand, however, that in certain situations (a) Seller may not have received, as of the date of Buyer's execution of the contract, all necessary approvals from the applicable building department or other municipal agency to build the Desired Floorplan and/or the Desired Elevation on the contracted lot and/or (b) it is possible that Seller will not be able to obtain a permit, or it will otherwise be impractical, to construct the Buyer's Desired Floorplan or Desired Elevation on the contracted lot despite the Lot Fit. In either of such events, Seller shall promptly notify the Buyer and, not later than ten (10) days after Buyer's receipt of such notice, Buyer will be able to elect one of the following options, which will be Buyer's sole options:

- Select a different Floorplan and/or Elevation that would be possible and practical to construct on Buyer's lot and enter into a new contract or contract addendum outlining the revised terms of agreement.
- Elect to have the Desired Floorplan and Desired Elevation constructed on a different Lot within the community on which it is possible and practical to construct Buyer's Desired Floorplan and Desired Elevation and enter into a new contract or contract addendum outlining the revised terms of agreement.

If option (b) is selected, the purchase price may be adjusted to account for differences between the prices of the floorplans or to account for lot location. The price adjustment would be consistent with Seller's general pricing structure within the Community. Buyer shall not be entitled to any other adjustment in price as a penalty against Seller or as compensation to Buyer. If, within three (3) days after Seller receives notice from Buyer that Buyer elects an option in this Paragraph 1, Buyer and Seller are unable to agree on the pricing for Buyer's selected different Floorplan and/or Elevation or Lot, then Seller shall have the option to terminate the Agreement at any time thereafter and the provisions of Paragraph 2, below, shall apply. Seller will provide Buyer with a copy of the plot plan within four (4) to six (6) weeks from the date of the Agreement for the floorplan selected by Buyer and approved by Seller and for which a construction permit was obtained. Buyer acknowledges that the construction schedule for the home shall be extended to account for this change.

If Buyer fails to elect one of the above within the ten (10)-day period, Buyer shall be deemed to have elected to terminate the Purchase Agreement, in which case (i) all funds previously deposited shall be returned to Buyer less any authorized disbursements as provided in the Purchase Agreement and (ii) neither party shall have any further obligation to each other under the Purchase Agreement.

APPROVED AND AGREED TO:

[Signature]
Buyer

Buyer
1/8/16

Date

ACCEPTED AND AGREED TO:

Brokerage: KB Home Sales - Nevada Inc.

By: [Signature]
Salesperson

Seller: KB Home Las Vegas, Inc.

By: _____
Authorized Agent

Date

A-44

**ADDENDUM TO PURCHASE AGREEMENT
EXISTING HOME**

BUYER(S): Jerrin Chiu
COMMUNITY: TEVARE - 415 / 28 LOT/BLOCK: 43 / 1
PROPERTY ADDRESS: 477 CABRAL PEAK STREET, Las Vegas, NV 89138
DATE: 1/8/2016

This Addendum to Purchase Agreement ("Addendum") is attached to and made a part of that certain Purchase Agreement (the "Agreement") between the Buyer(s) described above and the Seller described below, covering the real property as described above (the "Property"). If any provision of this Addendum conflicts with any provision of the Agreement, the provisions of this Addendum shall prevail. All terms used in this Addendum shall have the same meaning as in the Agreement.

(Buyer(s) must initial ONE of the following)

MC
(Initials)

Buyer hereby represents to Seller that Buyer does not currently own a home and will not close on the purchase of another home prior to the closing on the Property to be purchased from Seller. In the event Buyer has selected this paragraph as being applicable and Seller subsequently discovers that Buyer does currently own a home, or prior to closing on the Property acquires a home, Seller, in Seller's sole discretion, shall be entitled to treat Buyer as being in default under the Agreement which shall entitle Seller, in Seller's sole discretion, to immediately terminate the Agreement and retain all deposits held under the Agreement as liquidated damages pursuant to the terms of the Agreement and thereafter all further rights, duties and obligations under the Agreement shall be null and void and of no further force and effect.

-OR-

JC
(Initials)

Buyer is the owner of an "Existing Home" located at: 2101 Jade Creek Street, Unit 206, Las Vegas, NV 89117. At the time of execution of this Addendum, Buyer shall make a Deposit equal to 10% of the Purchase Price. Seller shall not commence construction of the home on the Property until Buyer has obtained unconditional Loan approval, as required under Section 3.3 of the Agreement. Notwithstanding the foregoing, Buyer shall be required to visit the Studio and select its options, as required under the Agreement. Nothing herein shall be construed as providing that the purchase of the Property is contingent upon Buyer's sale of the Existing Home.

All other terms and conditions of the Purchase Agreement remain unchanged. This Addendum shall not be binding on Seller until accepted and signed by Seller below.

ACCEPTED AND AGREED TO:

[Signature]
Buyer

1/8/16
Date

ACCEPTED AND AGREED TO:

SELLER: KB Home Las Vegas, Inc.

Buyer

Date

Authorized Agent

Date

A45

THIRD PARTY HOME INSPECTION CONTRACTORS

This addendum, when duly executed by both parties, will constitute a part of the Purchase Agreement dated 1/8/2016 between Jerrin Chiu as "Buyer" and KB Home Las Vegas, Inc. as "Seller," covering Lot/Block 43 / 1 of Tract/Phase TEVARE - 415 / 28.

Occasionally, homebuyers choose to hire at their own cost, a third party home inspection contractor ("Home Inspection Contractor") to inspect the home that they are purchasing. Seller neither encourages nor discourages the use of Home Inspection Contractors by homebuyers. In the event that Buyer chooses to hire a Home Inspection Contractor to inspect the home Buyer is purchasing and the inspection occurs prior to or after the close of escrow, Buyer agrees to protect, defend, indemnify and hold Seller harmless from and against any and all liens against the lot and home that Buyer is purchasing that may arise out of the home inspection. Buyer also agrees that as a condition precedent to the Home Inspection Contractor entering onto the lot on which the home is located or any area within the tract or phase in which the home is located, including but not limited to adjacent streets, Buyer shall provide to Seller the following documents:

1. A photocopy of the Home Inspection Contractor's license/certification from the State of Nevada;
2. Certificates of insurance evidencing the Home Inspection Contractor's coverage under (i) an automobile insurance policy and a comprehensive general liability insurance policy, each with policy limits of at least Five Hundred Thousand Dollars (\$500,000) and with a deductible/self-insured retention of not more than Twenty-five Thousand Dollars (\$25,000), (ii) worker's compensation insurance as required by law, and (iii) errors and omissions insurance in an amount of not less than One Hundred Thousand Dollars (\$100,000), all issued by insurance companies acceptable to Seller in its absolute discretion.
3. An endorsement to the Home Inspection Contractor's general liability insurance policy naming KB Home Las Vegas, Inc. and its parent corporation, KB HOME, as additional insureds as to the comprehensive general liability coverage. The endorsement shall indicate that the Home Inspection Contractor's insurance shall be primary coverage and Seller's insurance shall be excess and non-contributory with regard to claims in connection with the Home Inspection Contractor's activities in, on or about the home and the lot, tract or phase in which the home being inspected is located and shall provide that thirty (30) days prior notice shall be given Seller in the event of the cancellation or reduction in Home Inspection Contractor's coverage.
4. A written covenant executed by the Home Inspection Contractor which acknowledges the provisions herein and which provides as follows:

"In consideration of KB Home Las Vegas, Inc. ("Seller") allowing access to Seller's construction project for the purposes of conducting a home inspection on behalf of a Seller homebuyer, the undersigned Home Inspection Contractor agrees to protect, indemnify, defend, and hold harmless Seller, its officers, directors, shareholders, employees, agents, subcontractors, consultants and affiliated entities or persons, including but not limited to KB HOME (collectively, Seller) from and against any and all claims, demands, liabilities, damages, costs or expenses, including attorneys' fees and court costs, incurred by or made against Seller and caused by or resulting from any act or omission of Home Inspection Contractor in connection with Home Inspection Contractor's inspection of the home located at 477 CABRAL PEAK STREET, Las Vegas, NV 89138. This indemnity shall not extend to any claims, demands, or liabilities arising out of the sole negligence or willful misconduct by Seller. In addition, the undersigned Home Inspection Contractor hereby releases, waives and forever discharges Seller of and from any and all claims, damages, injuries, debts, liens, liabilities, demands, obligations, costs, expenses, actions and causes of action, of every nature, character and description which Home Inspection Contractor may incur during the course of any activities in, on or about the home being inspected or the lot, tract or phase in which the home is located, including without limitation, any accident, casualty and bodily injury, unless caused by the willful misconduct of Seller."

5. Any inspection shall occur at least three (3) business days prior to the scheduled walk-through date for Buyer's home and Buyer shall give Seller at least three (3) business days advance written notice of the date and time of any inspection addressed as follows:

Attn: Escrow Coordinator / Escrow Dept.
KB HOME
5795 Badura Avenue, Suite 180
Las Vegas, NV 89118

In addition, Seller's representatives shall be entitled to accompany the Home Inspection Contractor throughout entirety of the home inspection.

If, for any reason, a home inspection is authorized and performed after the walk-through date, any items questioned by the Home Inspection Contractor will be noted by Seller's representative on a Customer Service Request form. Seller's Customer Service department will address the noted items after close of escrow has occurred. Buyer understands and agrees that a home inspection occurring after the walk-through date shall not delay the close of escrow for any reason.

All other terms and conditions of the Purchase Agreement remain unchanged.

BUYER:

Buyer

Buyer

Date

SELLER:

KB Home Las Vegas, Inc.

Authorized Agent

Date

A-46

ADDENDUM TO PURCHASE AGREEMENT

SELECTED OPTIONS

BUYER(S): Jerrin Chiu
 TRACT/PHASE: TEVARE - 415 / 28 LOT/BLOCK: 43 / 1
 ADDRESS: 477 CABRAL PEAK STREET, Las Vegas, NV 89138

This Addendum to the Purchase Agreement ("Addendum") is attached to and made a part of the certain Purchase Agreement and Escrow Instructions ("Agreement") between Buyer(s) and Seller, covering the real property as described above. If any portion of this Addendum conflicts with any portion of the Agreement, the provisions of this Addendum shall prevail. All terms used in this Addendum shall have the same meaning as in the Agreement.

The following options are included in the purchase of the referenced property. Buyer acknowledges that if FHA or VA financing is obtained, Buyer might not be allowed to include these options in the loan amount.

OPTION SELECTIONS	UNIT PRICE	QTY	TOTAL
Covered Balcony - Per Plan *	Included	1	Included
Covered Patio - Per Plan *	Included	1	Included
Den and Powder Room to Bedroom with Bath *	2,840.00	1	2,840.00
Water Heater - 50 Gallon *	135.00	1	135.00

Total Price Selected Options: \$2,975.00

* DENOTES OPTIONS SELECTED AT SALES OFFICE.

[Signature]
 Buyer

SELLER: KB Home Las Vegas, Inc.

Buyer

By: _____
 Authorized Agent

11/8/16
 Date

 Date

A-47

ADDENDUM TO PURCHASE AGREEMENT

AVAILABLE OPTIONS WITH CUTOFF CODE "A"

Buyer(s): Jerrin Chiu

Tract/Phase: TEVARE - 415 / 28

Lot/Block: 43 / 1

Address: 477 CABRAL PEAK STREET, Las Vegas, NV 89138

This Addendum to the Purchase Agreement ("Addendum") is attached to and made a part of the certain Purchase Agreement and Escrow Instructions ("Agreement") dated between Buyer(s) and Seller, covering the real property as described above. If any portion of this Addendum conflicts with any portion of the Agreement, the provisions of this Addendum shall prevail. All terms used in this Addendum shall have the same meaning as in the Agreement.

Please note that the following options are available for selection **ONLY** at the Sales Office, at the time of contract. By signing below, Buyer acknowledges that some or all of the options listed may be unavailable for selection depending on the stage of construction of the above-referenced property.

Option Selections	Unit Price	Buyer Initial on Selected Options
Covered Balcony - Per Plan Model: Mirador	Included	<u>SC</u>
Covered Patio - Per Plan Model: Loggia	Included	<u>SC</u>
Den and Powder Room to Bedroom with Bath Model: Bedroom 5 with Bath 4	\$2,840.00	<u>SC</u>
Loft to Bedroom 4	\$2,000.00	<u>n/a</u>
Tankless Hot Water Heater - #1 - Rinnai Model: Model: TBD	\$1,390.00	<u>n/a</u>
Water Heater - 40 Gallon	Included	<u>n/a</u>
Water Heater - 50 Gallon	\$135.00	<u>SC</u>

Buyer

SELLER: KB Home Las Vegas, Inc.

Buyer

By:

Authorized Agent

Date

Date

A-48

GENERAL CONDITIONS OF ESCROW

TO: <u>FIRST AMERICAN TITLE COMPANY</u>	DATE: <u>1/8/2016</u>	TOTAL SALES PRICE: <u>\$404,765.00</u> <input type="checkbox"/> CASH <input checked="" type="checkbox"/> CONV <input type="checkbox"/> FHA <input type="checkbox"/> VA
---	-----------------------	---

The Purchase Agreement (also known as the "Agreement") and all addenda/disclosures entered into on 1/8/2016 between KB Home Las Vegas, Inc. as SELLER and Jerrin Chiu as BUYER(S) shall serve as the Escrow Instructions to this transaction, and these General Conditions of Escrow shall become an additional addendum to the Agreement, to serve as additional Escrow Instructions, for the purchase of property which is described as follows:

LOT 43__ IN BLOCK 1 OF TEVARE - 415 / 28__ as shown by map thereof on file in Book ____ of Plats, Page ____ in the office of the County Recorder of Clark County, Nevada.

(See Exhibit "A," attached hereto and made a part hereof by this reference, for the complete legal description.)

More commonly known as 477 CABRAL PEAK STREET, Las Vegas, NV 89138.

Escrow Agent will obtain a grant, bargain and sale deed conveying said property to the above-named Buyer(s) to be used only when Buyer(s) has/have deposited with First American Title Company (also known as Escrow/Title Company) the deed of trust and note shown as item 3 below, together with all other forms and information required by lender and/or FHA and/or Veterans Administration and any funds required from Buyer(s) for completion of this transaction.

Seller and Buyer(s) authorize Escrow Agent to deliver Seller's instrument of conveyance to the above-named party upon payment to Escrow/Title Company for Seller's account the full consideration and upon condition that Escrow/Title Company issues the usual form of CLTA Standard Owner's policy with liability limited to the total sales price, and ALTA Lender's policy for any lenders with the liability limited to the amount of the first deed of trust.

SUBJECT ONLY TO:

- (1) Taxes for the current tax year, INCLUDING PERSONAL PROPERTY TAXES, IF ANY, except as otherwise specifically required in the Agreement.
- (2) RESTRICTIONS, CONDITIONS, RESERVATIONS, RIGHTS, RIGHTS OF WAY, AND EASEMENTS NOW OF RECORD, if any, affecting the use and occupancy of said property as the same may now appear of record.
- (3) Deed of trust executed by the above-named Buyer(s), securing payment of a note in the amount of the first deed of trust in favor of Home Community Mortgage.

AND RESERVING:

All water rights, permits and certificates of Grantor of whatever kind or nature for ground water and surface water, and any and all other decrees, orders or judgments affecting, adjudicating, or decreeing water rights, to the end that this deed shall not confer, grant, or transfer to Grantee any water rights whatsoever, or any claim to water or water rights.

And further all mineral, oil, gas, petroleum, other hydrocarbon substances, and all geothermal energy sources in, under, or which may be produced from the within-described land, which lie below a plane parallel to and 500 feet below the surface of the within-described land, for the purpose of prospecting, exploration, development, production, or extraction of said substances by means or mines, well, or derricks, or other equipment, provided, however, that the owner of said substances shall have no right to enter upon the surface of the within-described land, nor to use said land above said plane parallel to and 500 feet below the surface of such land.

Said deed of trust and note to be in the forms and terms required by the lender and/or the administration named above.

ESCROW/TITLE COMPANY HAS NO RESPONSIBILITY FOR INVESTIGATING OR GUARANTEEING THE STATUS OF ANY GARBAGE FEE, POWER, WATER, TELEPHONE, GAS, AND/OR OTHER UTILITY OF USE BILL, EXCEPT AS OTHERWISE SPECIFICALLY REQUIRED.

PRORATIONS: Property taxes, Homeowner's Association fees, Landscape Maintenance Association Fees, Special Improvement District (SID) fees, and any existing encumbrances that shall be assumed by Buyer(s) shall be prorated and computed on the basis of a thirty-day month. The term "close of escrow" shall be deemed to mean the date upon which all necessary documents are filed for record with the appropriate county recorder's office. Escrow Agent is directed to mail the respective policy(ies) of title insurance to the holder of any new encumbrance called and to the Buyer(s).

Co-op commission, if applicable, shall be payable to the following real estate broker/firm(s): Nevada Real Estate Corp. and Escrow Agent is directed to disburse same to the extent that the proceeds of this escrow available therefore become disburseable from Seller's account.

Escrow/Title Company assumes no liability for, and is hereby relieved of any liability in connection with any PERSONAL PROPERTY which may be a part of this escrow.

Escrow Agent is directed to file the necessary Deeds, Trust Deeds, and other instruments and pay any encumbrance which a title search reveals against the subject property, except as set forth. Escrow/Title Company is authorized and directed to pay said encumbrances as directed by the lienholder thereof, acting solely upon the written direction of such lienholder, and it is expressly understood and agreed that Escrow/Title Company assumes no liability for the accuracy of any such statement or direction.

A-49

Escrow Agent is further directed to insert the names of the Grantees in the necessary conveyance and/or encumbering documents prior to recordation of same, based upon the written direction tendered by Grantee or in compliance with instructions set forth by the beneficiary under any new loan documents. Escrow Agent is expressly authorized to charge to the account of the party obligated to pay same, any charge or expense incurred in connection with this transaction or the terms thereof. Escrow Agent is further directed and authorized to reimburse itself for any charges which it may incur during this escrow by charging such amount to the party obligated to pay same. All disbursements made under this transaction shall be made in the form of a check by Escrow/Title Company.

Any deposits made by Buyer(s) into this escrow shall be in the form of certified funds or cashier's check (no personal checks or out-of-state cashier's checks will be accepted). Any check presented for deposit into this escrow by either party shall be subject to clearance thereof and Escrow Agent shall not be obligated to act upon nor disburse against any such funds until notified by the bank upon which check is drawn that said check has cleared its account.

In the event a legal proceeding is brought by any party(ies) to this escrow to which the Escrow Holder is named as a party and which results in a judgment in favor of the Escrow Holder and/or against party or principal of any party hereunder, the principal or principal's agent(s) agree to pay said Escrow Holder all costs, expenses, and reasonable attorney fees which it pays or incurs in said proceeding, the amount thereof to be fixed and judgment to be rendered by the trier of fact in said proceeding.

Time is of the essence of this agreement and requires that the Buyer(s) execute these instructions within the time requirements specified in the Agreement. If said closing date falls on a Saturday, Sunday or holiday, the time limit set out is extended through the next business day and provided further that Escrow Holder is authorized to take any administrative steps necessary to implement the closing of this escrow subsequent to said closing date unless otherwise instructed in writing by Buyer(s) and Seller.

Pursuant to Section 4.2 of the Agreement, Buyer(s) may be responsible for rent from the date of occupancy (upon approval from Seller) or a holding fee three (3) days after a valid notice of completion of construction is recorded, and will pay said rent/holding fee in accordance with the information to be furnished by Seller's local sales office. Escrow Agent shall be notified in writing of such information prior to the close of escrow for the purpose of computing charges against Buyer(s) account.

If escrow is not closed as scheduled, or if this agreement is in any way breached, then on instruction from Buyer(s) and/or Seller escrow shall be cancelled. In such an event, the provisions of Paragraphs 8 and/or 9 of the Agreement shall be applicable and neither party shall have any further obligation, right, or liability whatsoever. The Escrow Holder is hereby released and held completely harmless from Seller and Buyer(s) from any and all liability and/or responsibility in connection with the cancellation of this escrow. In the event of a cancellation of this escrow, adjustment if any, of funds paid outside of this escrow is to be made outside of this escrow.

It is expressly understood and agreed that the Escrow Agent, without any obligation to exercise such right, retains the right to resign its duties as Escrow Agent under this transaction, at any time and at its sole discretion and/or to refrain from taking any act in furtherance of the subject transaction at the sole discretion of Escrow Agent if deemed advisable. NO liability shall accrue to said Escrow Agent for any such act or forbearance.

With regard to FHA/VA loans, it is expressly agreed that notwithstanding any other provisions of this agreement, the Buyer(s) shall not incur any penalty by forfeiture of Deposit or be obligated to complete the purchase of the property if the purchase price of the property exceeds the appraised value of the property for mortgage insurance by FHA or the reasonable value established by VA. Buyer(s) shall, however, have the privilege and option of proceeding with the consummation of this purchase without regard to the amount of the FHA appraisal or VA reasonable value.

With regard to VA loans only: If Buyer(s) is/are unable to obtain GI financing or if construction of the house is not completed within one (1) year from the date of the Agreement, or if the house as constructed or changes or substitutions made to the house are not in substantial conformity with plans, specifications, and change orders on file with the Veterans Administration, then Buyer(s) may cancel the purchase and have any Deposit refunded less any credit report and loan charges incurred (however, these charges shall not exceed \$100.00).

These General Conditions of Escrow in all parts apply to, inure to the benefit of and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns, and whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural.

These General Conditions of Escrow may be executed in any number of counterparts, each of which shall be considered an original and be effective as such, and all of which, when aggregated, shall constitute one fully executed original.

Buyer(s) and Seller shall notify Escrow Agent in writing of any change in address during the course of this escrow and authorize Escrow Agent, unless Escrow Agent is in receipt of written indication to the contrary, to mail any notices filed by either party to or against the other, to the address set forth.

Seller is hereby made aware that there is a law which became effective January 1, 1987, which requires all escrow holders to complete a modified 1099 form, based upon specific information between Seller and the Escrow/Title Company. You are authorized and instructed to provide this information to the Internal Revenue Service after the close of escrow in the manner prescribed by law, or it is understood that this transaction shall not close with Escrow/Title Company.

To the extent that the terms and conditions of said Agreement, and any modification thereto, shall conflict with these General Conditions of Escrow, the obligations of Escrow/Title Company shall be governed exclusively by these General Conditions of Escrow and Escrow Instructions contained herein. Anything to the contrary herein notwithstanding, Escrow Agent is hereby unconditionally relieved from any liability or responsibility whatsoever involving compliance with or adherence to "Consumer Credit Protection Act (Truth In Lending)" or similar law.

Buyer(s) authorize(s) Escrow Agent to furnish Seller with a copy of Buyer's closing statement. Seller and Buyer(s) authorize(s) Escrow Agent to furnish copies of closing statement and escrow instructions to the lender involved.

In the event a post-closing or post-disbursement adjustment is necessary by an entity involved with this escrow transaction, the undersigned authorizes Escrow/Title Company, if immediate action be necessary, advance funds on their behalf to effect an accurate closing statement. The undersigned, upon notification, and the opportunity to investigate such advances, agrees to fully cooperate and pay to Escrow/Title Company any and all funds so advanced on their behalf, providing that said adjustments are not due to errors on the part of Escrow/Title Company.

COMMUNITY / PROJECT: Tevere / 415

LOT / 43 / 1
BLOCK:

D0050

2 Appx 000339

A-50

BUYER(S)

The Buyer(s) and Seller to this escrow have entered into agreements which do not concern the Escrow Agent; however, they desire to memorialize their agreements within the records of the Escrow Agent. In this connection and with the understanding that the Escrow Agent has no control over these agreements and further that the Escrow Agent assumes no liability and/or responsibility in connection with them.

Buyer(s) will receive a copy of the preliminary title report after the title company receives their copy of the accepted Purchase Agreement from Seller.

The Federal Gramm-Rudman Hollings bill will require a reduction of expenditures in most federal government agencies. In an effort to meet the budgetary limitation of Gramm-Rudman Hollings, the Federal Housing Administration and/or Veterans Administration may run out of funds with which to insure loans. Should FHA or VA reach its legal limit on insuring authority, and the limit is not increased within two (2) weeks after reaching its limit, Seller may cancel the Agreement. Buyer(s) shall have the right to submit a conventional financing offer to purchase within five (5) days after being cancelled. That offer will be considered by Seller prior to acceptance of any other offer.

Buyer(s) acknowledge(s) that Seller has no control over FHA/VA policies and action. Buyer(s) holds Seller harmless from any problems or liability in obtaining an FHA/VA guaranteed loan.

BUYER TAKE NOTICE:

SUPPLEMENTAL TAX BILLS

BUYER(S) IS/ARE BEING MADE AWARE THAT DUE TO NEVADA LEGISLATION, (NRS 361.260), THERE IS A POSSIBILITY THAT A SUPPLEMENTAL TAX BILLING MAY BE ISSUED AFTER THE CLOSE OF ESCROW. THIS BILLING WOULD PLACE REAL PROPERTY WHOSE EXISTENCE IS ASCERTAINED AFTER JULY 1, IN EACH ASSESSMENT YEAR ON THE UNSECURED TAX ROLLS. IT IS POSSIBLE THAT YOU MAY BE ISSUED A TAX BILL FOR THE VALUE OF CONSTRUCTION WORK PERFORMED AFTER THE END OF THE NORMAL ASSESSMENT PERIOD. IN THE EVENT THAT SUCH A BILL IS DUE AND PAYABLE AT THE CLOSE OF ESCROW, THE ESCROW HOLDER IS DIRECTED TO PRO RATE BASED ON A THIRTY (30) DAY MONTH AND THE LATEST TAX FIGURES AVAILABLE, AT CLOSING. IF A SUPPLEMENTAL TAX BILL IS NOT ISSUED UNTIL AFTER THE CLOSE OF ESCROW, NO PRO-RATION SHALL BE MADE AND PAYMENT OF THE ENTIRE BILLING SHALL BE THE SOLE RESPONSIBILITY OF THE BUYER(S).

I/We have read the foregoing General Conditions of Escrow and Escrow Instructions and am/are buying the property described on the terms and conditions set forth, and will within the time limit either hand Escrow Agent or cause to be handed Escrow Agent, the consideration as specified in the Agreement. I/We agree to pay the following escrow charges unless otherwise stated in the Agreement, and/or not allowed by VA/FHA regulations: ALTA Premium, one half (1/2) of the Real Property Transfer Tax amount, Loan Fee (as required by Lender), Escrow Fee, Contract Coordination Fee, Recording Fee, HOA Transfer Fee, Appraisal Fee ordered by lender, and Incidental Expenses as may be incurred with any new loan(s).

SELLER

Seller agrees to pay the following escrow charges: CLTA/PLP Policy of Title Insurance, Recording Fee, Reconveyance Fee, one half (1/2) of the Real Property Transfer Tax amount, any fees as specified in the Agreement, and Incidental Expenses necessary to convey insurable title as described, provided, however, Seller shall have no obligation to pay any amount in excess of what Seller would have paid through Seller's preferred title company.

Seller has furnished to Escrow Holder a true and complete copy of a bond payable to the State of Nevada in an amount satisfactory to the Nevada Division of Real Estate in accordance with Nevada Revised Statutes Section 116.411. The bond is on file with the State of Nevada. In consideration thereof, Seller has elected to exercise its option to have Buyer's Deposit paid directly to Seller (which is KB Home Las Vegas, Inc. for all communities, General Account #CCCPPP0090.2361) prior to the Close of Escrow. THIS SHALL NOT AFFECT BUYER'S RIGHT TO THE RETURN OF ITS ENTIRE DEPOSIT (LESS AUTHORIZED DISBURSEMENTS, IF APPLICABLE) IN THE EVENT THAT BUYER IS ENTITLED TO SUCH RETURN OF ITS DEPOSIT IN ACCORDANCE WITH THE AGREEMENT. Buyer and Seller agree that Seller, and not Escrow Holder or Broker, shall be solely responsible to return to Buyer the Deposit or portion thereof held by Seller in the event required under the Agreement and Buyer hereby releases Escrow Holder and Broker from any and all responsibility and liability in connection therewith.

Buyer

SELLER: KB Home Las Vegas, Inc.

Buyer

Authorized Agent

Date

Date

COMMUNITY / PROJECT: Tevere / 415

LOT / 43 / 1
BLOCK:

A-5

REGIONAL GAMING DISTRICT OVERLAYS MAP
LAS VEGAS VALLEY

DISCLOSURE AND WAIVER OF 24-HOUR NOTICE PERIOD

BUYER(S): Jerrin Chiu

COMMUNITY: Tevare

LOT/BLOCK: 43 / 1

In 1997, the Nevada State Legislature amended Nevada Revised Statutes 113.080 requiring, in Clark County, the disclosure of the location of the gaming enterprise district nearest to the residence being purchased by the Buyer. Additionally, Seller must provide a copy of the most recent gaming enterprise district map available from the city, town or county in which the residence is located. Seller may not sign a Purchase Agreement until at least twenty-four (24) hours after such disclosure.

Buyer is advised that:

- Attached hereto is a copy of a Regional Gaming District Overlays Map ("Map") dated 11/2015 that is based upon the most recent gaming enterprise district maps that have been made available for public inspection by Clark County and the Cities of Las Vegas, Henderson, and North Las Vegas.
- The Salesperson for the community in which Buyer is purchasing will mark the attached Map with a highlighter to indicate where the community is located. Based on a review of the Map as so marked, Buyer can make a personal determination of which gaming enterprise district is located nearest to the above-referenced property.
- Gaming enterprise districts are subject to change and not under Seller's control.
- To obtain more current information, Buyer may contact:

City of Las Vegas
Department of Planning & Development
731 S. Fourth Street
Las Vegas, NV 89101
(702) 299-6301

Clark County
Comprehensive Planning Department
500 S. Grand Central Parkway
Las Vegas, NV 89155-1744
(702) 455-4314

City of Henderson
Planning Department
240 Water Street
Henderson, NV 89015
(702) 565-2474

City of North Las Vegas
2266 Civic Center Drive
North Las Vegas, NV 89036
(702) 633-1515

Buyer hereby ☒ waives ☐ does not waive the requirement of Nevada state law that Seller provide Buyer with the above at least 24 hours before the time an authorized agent of Seller signs acceptance of Buyer's Purchase Agreement for the above-referenced property.

BUYER UNDERSTANDS THE PROXIMITY OF THE GAMING ENTERPRISE DISTRICT TO THE PROPERTY BEING PURCHASED, HAS REVIEWED THE HIGHLIGHTED AREA OF THE ATTACHED MAP, AND ACKNOWLEDGES RECEIPT OF THIS DISCLOSURE AND WAIVER BY SIGNING BELOW.

At
Buyer

11/8/16
Date

Buyer

Date

A-52

**GAMING ENTERPRISE
DISTRICTS and
LOCATIONS APPROVED for
NON-RESTRICTED GAMING**
Las Vegas Valley
Clark County, Nevada



- Existing Non-Restricted Gaming Locations (ELV)
- Gaming Enterprise Districts
- Las Vegas Blvd Corridor
- Master Planned for Resort Hotels
- Black Mountain
- Station Boundaries
- Freeways
- Major Streets
- Railroads

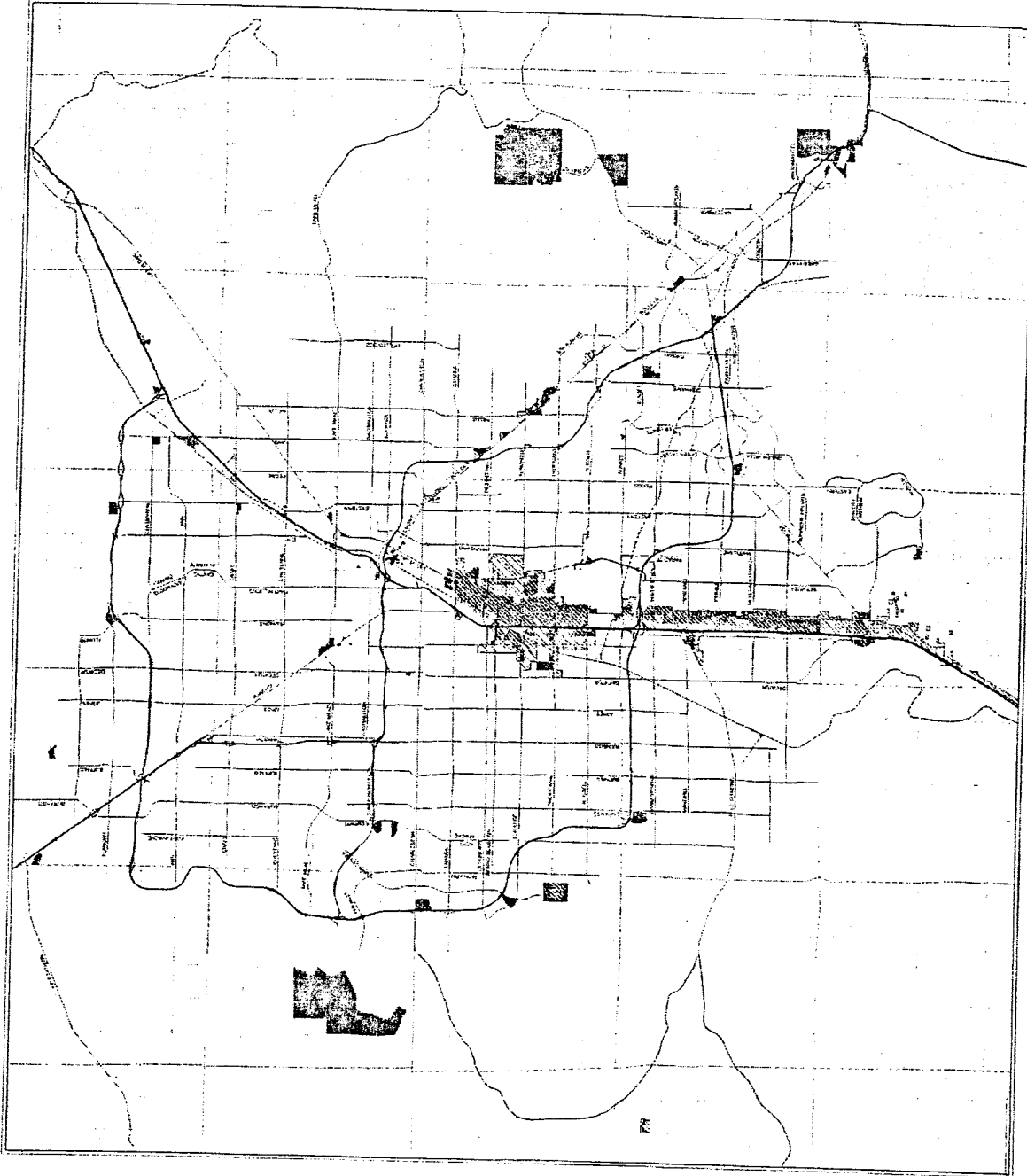
1" = 4000' 4000' 12,000' 16,000'

Map Created: November 2015

This information is for display purposes only.
No liability is assumed as to the accuracy of this data disseminated hereon.



Source: Clark County Planning Department, Clark County, Nevada



A-53

TRACT / PHASE: TEVARE - 415 / 28

PROPERTY ADDRESS: 477 CABRAL PEAK . . . REET

Las Vegas

LOT / BLOCK: 43 / 1

NV

89138

SALESPERSON: Jana McNeff

DATE: 1/8/2016

The following constitutes the entire agreement (the "Agreement") by and between KB Home Las Vegas, Inc. ("Seller") and the "Broker" listed below regarding a potential referral sales commission described in Paragraph 1 below with respect to the Buyer(s) and the Property described above. No other representations or acknowledgements shall be binding upon either party unless agreed to in writing by both parties. The parties agree as follows:

1. Seller shall pay to Broker a commission equal to three percent (3%) of the total net sales price of the above-referenced home, including: (A) base price, (B) elevation premium, (C) lot premium, (D) decor items, options and upgrades selected by Buyer at the KB HOME Sales Office and at the KB HOME Studio or previously installed by Seller, and excluding (E) the value of any incentive provided by Seller, (the "Commission") at the close of escrow provided (i) a contract is signed by Buyer and accepted by Seller within thirty (30) days after the date of this Agreement, and (ii) such close of escrow occurs within three hundred sixty-five (365) days after the date of this Agreement.
2. No commission shall be paid if a contract is signed more than thirty (30) days after the date of this Agreement unless Broker has re-registered the Buyer, and the contract is signed within thirty (30) days of such re-registration. This Agreement serves as escrow instructions to govern payment of the Commission to Broker only. Seller does not pay commissions to any entities or individuals other than Broker.
3. It is an absolute condition for the payment of any Commission that Broker accompanies and registers Buyer at the Community at the time of Buyer's first visit as a prospective purchaser to the Community. Broker shall not be entitled to any Commission if Buyer or any relative of Buyer or any other person designated by Buyer has visited the Community without Broker prior to the date of this Agreement.
4. The registration of the Broker shall be established only for the particular Buyer for the Property but shall be established only by: (a) complete execution and acceptance of this Agreement and (b) Buyer's completion of Seller's Broker/Client Registration form at the Community acknowledging the portion of the form which evidences that Broker referred Buyer to the Property. Upon request, a copy of the Agreement will be given to Broker. Any attempt by Broker to effectuate a broker relationship with Seller without Broker's actual presence at Buyer's first visit shall be null and void.
5. Buyers of Seller's homes are NOT required to use Home Community Mortgage, LLC ("Home Community Mortgage") for their financing as a condition of purchase. Buyer may obtain financing from any qualified lending institution. Broker has been made aware of this and acknowledges its obligation to inform Buyer thereof. Buyer and Buyer's Broker authorize Seller's agent or an agent on behalf of Home Community Mortgage to contact Buyer directly to discuss any aspect of Buyer's purchase of the home, including the selection of options and upgrades and Buyer's financing of its purchase, including the use of Home Community Mortgage as its lender.
6. Broker understands and agrees that any fees Buyer has agreed to pay to Broker are Buyer's entire responsibility and any issue arising out of the payment of such fees to Broker by Buyer shall not delay close of escrow between Buyer and Seller.
7. If Broker wishes the Commission to be reduced and a portion to be paid to Buyer, Seller will require Buyer to execute Seller's Commission Credit Disclosure.
8. Broker represents that it is licensed as a real estate broker or salesperson in the state in which the Property is located. To the extent required by law, Broker must provide an executed form of disclosure of its agency relationship with Buyer (executed by Broker and Buyer) indicating that Broker is the agent of Buyer exclusively prior to Buyer's execution of a sales contract. Broker represents and warrants that its license number as set forth below accurately represents its current, active license number.
9. Seller's on-site agent shall be primarily responsible for coordinating loan processing; however, Broker acknowledges that, if requested by Seller, Broker shall be obligated to assist Seller in obtaining documentation or other information from Buyer with respect to its loan approval, loan closing or the title or escrow documentation for the closing of the transaction. Broker's failure to cooperate as required in the preceding sentence shall cause Broker to forfeit its Commission.
10. In the event that Buyer elects to purchase a property from Seller other than a property in this Community, Seller shall have no obligation to pay Broker a commission therewith unless a separate Agreement is established between Seller and Broker in writing, using the form hereof and Broker meets the obligations set forth therein.
11. Broker agrees to indemnify and hold harmless Seller, Seller's parent, subsidiary and affiliate companies and Seller's employees, officers and directors (collectively, the "Affiliates") from and against any and all claims, charges, costs, fees, obligations, damages, liabilities, expenses and attorneys' fees incurred by Seller or the Affiliates by virtue of Broker's actions or errors with respect to or in connection with this Agreement or the potential transaction between Seller and Buyer referred herein (the "Sale Transaction").
12. Broker has no independent authority to bind Buyer or Seller. Only Seller's Purchase Agreement will be used. Broker may not advertise any of Seller's homes in any printed form.
13. If a real estate salesperson or broker other than Broker attempts to register as Buyer's broker within thirty (30) days after the date hereof, Seller shall only be obligated to pay a single Commission to the Broker which first registered Buyer at the Community in which Buyer purchased a home from Seller (assuming a sale contract is signed within such thirty (30) day period and all other criteria of this Agreement have been met).
14. This Agreement is only in effect for the Buyer described above and may be rescinded and terminated in Buyer's sole discretion upon written notice to Seller and Broker.
15. Broker is not authorized to and shall not make any warranties, representations, or covenants regarding the above-referenced home or on behalf of Seller.
16. In accordance with NRS 645.635, Broker hereby acknowledges and agrees that Seller may contact and communicate directly with Buyer in connection with Buyer's interest in Seller's communities and its purchase of a property from Seller. Seller shall have no obligation to notify Broker of any communication with Buyer. For the purposes of this Agreement, "Buyer" shall mean the Buyer(s) shown on the executed Purchase Agreement or as Prospective Buyer(s) prior to the execution of the Purchase Agreement.

This Agreement shall not be effective unless it has been executed by an authorized officer of Seller. On-site sales representatives are not authorized representatives of Seller for such purposes.

ALL CHECKS WILL BE ISSUED AS DIRECTED ONLY TO THE BROKER LISTED BELOW.

BROKERAGE: Please Print or Type

Broker's Agent (Licensee)	Wayne Wu	Company Name	Nevada Real Estate Corp
Broker Name	Judith Sullivan	Broker License #	21094
Broker Address	8360 W. Sahara Avenue, Suite 210	Broker Tax I.D. #	88-0340457
City	Las Vegas	State	NV
Telephone	(702) 319-7288	Zip	89117
Cell Phone:	(702) 338-1822	Fax:	(702) 368-6883
		E-Mail:	waynew5988@aol.com

Agreed to by:

KB Home Las Vegas, Inc. - Authorized Signature

REPRERAL AGENT OR BROKER - Authorized Signature

Broker's representation of Buyer and Broker's rights under this Referral Broker Commission Agreement are acknowledged by Buyer(s) as of the same date of Broker's signature above. Buyer acknowledges that Broker is not authorized to make any warranties, representations, or covenants regarding the above-referenced home or on behalf of Seller.

Buyer's Signature

Date

Jerrin Chiu

Buyer's Printed Name

Buyer's Signature

Date

Buyer's Printed Name

D0054

2 Appx 000343

A-54

BUYER(S): Jerrin Chiu
COMMUNITY: Tevare LOT/BLOCK: 43 / 1
LENDER: Home Community Mortgage
LENDER'S COMPLETE MAILING ADDRESS: 8345 W. Sunser, #100, Las Vegas, 89113
LOAN OFFICER: Mosi Gatling
TELEPHONE NUMBER: (702) 439-1174 FAX NUMBER: 702 549 2587 EMAIL: MOSI.gatling@HCMLoans.COM

Lender Fees, Processing Requirements, Closing Procedures:

We, the above-referenced Buyer(s), have elected to use the lender referenced above at no costs or fees to Seller. Buyer understands that Buyer's

DUTIES OWED BY A NEVADA REAL ESTATE LICENSEE

This form does not constitute a contract for services nor an agreement to pay compensation.

In Nevada, a real estate licensee is required to provide a form setting forth the duties owed by the licensee to:
a) Each party for whom the licensee is acting as an agent in the real estate transaction, and
b) Each unrepresented party to the real estate transaction, if any.

LICENSEE: The licensee in the real estate transaction is <u>Jana McNeff</u> whose license number is <u>BS.0144239</u> . The Licensee is acting for [client's name(s)]	
KB Home Las Vegas, Inc.	who is/are the <input checked="" type="checkbox"/> Seller/Landlord; <input type="checkbox"/> Buyer/Tenant.
BROKER: The broker is <u>Sherry E. Scanlan</u> ("Broker"), whose company is KB Home Sales - Nevada Inc.	

Licensee's Duties Owed to All Parties:

A Nevada real estate licensee shall:

1. Not deal with any party to a real estate transaction in a manner which is deceitful, fraudulent or dishonest.
2. Exercise reasonable skill and care with respect to all parties to the real estate transaction.
3. Disclose to each party to the real estate transaction as soon as practicable:
 - a. Any material and relevant facts, data or information which licensee knows, or with reasonable care and diligence the licensee should know, about the property.
 - b. Each source from which licensee will receive compensation.
4. Abide by all other duties, responsibilities and obligations required of the licensee in law or regulations.

Licensee's Duties Owed to the Client:

A Nevada real estate licensee shall:

1. Exercise reasonable skill and care to carry out the terms of the brokerage agreement and the licensee's duties in the brokerage agreement;
2. Not disclose, except to the licensee's broker, confidential information relating to a client for 1 year after the revocation or termination of the brokerage agreement, unless licensee is required to do so by court order or the client gives written permission;
3. Seek a sale, purchase, option, rental or lease of real property at the price and terms stated in the brokerage agreement or at a price acceptable to the client;
4. Present all offers made to, or by the client as soon as practicable, unless the client chooses to waive the duty of the licensee to present all offers and signs a waiver of the duty on a form prescribed by the Division;
5. Disclose to the client material facts of which the licensee has knowledge concerning the real estate transaction;
6. Advise the client to obtain advice from an expert relating to matters which are beyond the expertise of the licensee; and
7. Account to the client for all money and property the licensee receives in which the client may have an interest;

Duties Owed By a broker who assigns different licensees affiliated with the brokerage to separate parties. Each licensee shall not disclose, except to the real estate broker, confidential information relating to client.

Licensee Acting for Both Parties: You understand that the licensee N/A may or X may not, in the future act for two or more parties who have interests adverse to each other. In acting for these parties, the licensee has a conflict of interest. Before a licensee may act for two or more parties, the licensee must give you a "Consent to Act" form to sign.

I/We acknowledge receipt of a copy of this list of licensee duties, and have read and understand this disclosure.					
Seller/Landlord	Date	Time	Buyer: Agent	Date	Time
				1/8/16	11:40am
Seller/Landlord	Date	Time	Buyer: Tenant	Date	Time

1A-55



**AFFILIATED BUSINESS ARRANGEMENT DISCLOSURE STATEMENT
NOTICE**

To: BUYER(S): Jerrin Chiu
TRACT/PHASE: TEVARE - 415 / 28 LOT/BLOCK: 43 / 1
PROPERTY ADDRESS: 477 CABRAL PEAK STREET, Las Vegas, NV 89138
DATE: 1/8/2016

From: KB Home Las Vegas, Inc.

This is to give you notice that KB Home Las Vegas, Inc. and KB Home Sales - Nevada Inc. have a business relationship with one another and with KB HOME Insurance Agency Inc. (which companies are collectively referred to herein as the "Affiliated Companies"), and Home Community Mortgage, LLC ("Home Community Mortgage"). Specifically, KB HOME, directly or indirectly, owns 100% of the Affiliated Companies, and 49.9% of Home Community Mortgage. Because of these relationships, referrals to Home Community Mortgage for mortgage services and KB HOME Insurance Agency Inc. for insurance products may provide KB Home Las Vegas, Inc. and KB HOME a financial or other benefit.

Set forth below are the estimated charges or range of charges by Home Community Mortgage and KB HOME Insurance Agency Inc. for the following settlement services. You are **NOT** required to use any particular company as a condition for the purchase of the subject property. **THERE ARE FREQUENTLY OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.**

Home Community Mortgage provides mortgage lending and related services. The company's estimated charges or range of charges are as follows:

Conventional Loans

Loan Origination Fee	0-1% of loan amount
Appraisal Fee	\$400-\$505 (for SFR -varies by state)
Credit Report Fee	\$20
Tax Service	\$85
Flood Certification	\$10
Lender Fees	\$375 - Underwriting \$375 - Processing

FHA, VA and USDA Loans

Loan Origination Fee	0-1% of loan amount
Appraisal Fee	\$400-\$625 (for SFR-varies by state)
Credit Report Fee	\$20
Tax Service	\$85-(N/A on FHA & VA loans)
Flood Certification	\$10
Lender Fees	\$375 - Underwriting \$375 - Processing

KB HOME Insurance Agency Inc. provides hazard insurance and related products. The company's estimated charges or range of charges are as follows:

Premiums vary according to product(s) and coverage(s) purchased and also vary depending on the price and location of the home and numerous other factors. By way of example, the annual premium for a homeowner's fire and extended coverage policy in the amount of \$242,000, with a \$1,000 deductible and \$169,500 contents coverage, new construction, will range from \$257 to \$315. On request, a representative of KB HOME Insurance Agency Inc. will provide further information and/or a quote regarding specific insurance products and premiums for the home you are considering purchasing.

You may be referred to First American Title Insurance Company and its subsidiaries and affiliates, Fidelity National Title, or another title insurance company for title insurance and escrow services. You are **NOT** required to use any of these referred companies as a condition for the purchase of the subject property.

The estimate of charges or range of charges listed above for Home Community Mortgage and KB HOME Insurance Agency Inc. are current as of the date hereof, but are subject to change.

ACKNOWLEDGMENT

I/We have read this disclosure form, and understand that KB Home Las Vegas, Inc. is referring me/us to purchase the above-described settlement services from Home Community Mortgage and KB HOME Insurance Agency Inc., and that they, and/or their parent companies, including KB HOME may receive a financial or other benefit as the result of these referrals.

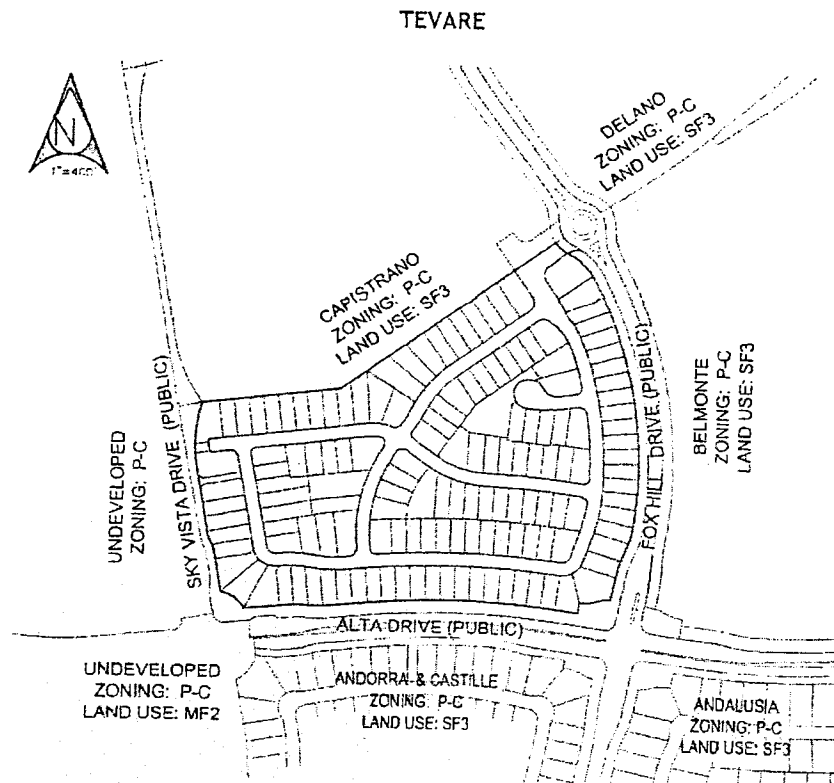
You are not required to purchase products or services from any person or entity suggested or recommended by any of the Affiliated Companies or the lender. However, the lender hereby reserves the right to approve the entity selected by the borrower, which approval may not be unreasonably withheld.

Buyer 

Date 1/8/16

Buyer _____

Date _____



TENTATIVE LAND USE AND ZONING DISCLOSURE MAP

In accordance with Senate Bill 61 affecting Chapter 113 of the Nevada Revised Statutes, prior to signing a "Sales Agreement," the Seller is required to inform you of the current zoning designations of adjoining parcels of land to your new home. This zoning disclosure must be updated not less than once every six months if the information is available from the local government.

Before the initial purchaser of a residence signs a sales agreement or opens escrow, whichever occurs earlier, the Seller shall, by separate written document, disclose to the initial purchaser the zoning classifications and the designations in the master plan regarding land use adopted pursuant to Chapter 278 of the NRS, and the general land uses described therein, for the adjoining parcels of land. Zoning classifications describe land uses currently permitted on a parcel of land. Designations in the master plan regarding land use describe the land uses that the governing city or county proposes for a parcel of land. Zoning classifications and designations in the master plan regarding land use are established and defined by local ordinances. If the zoning classification for a parcel of land is inconsistent with the designation in the master plan regarding land use for the parcel, the possibility exists that the zoning classification may be changed to be consistent with the designation in the master plan regarding land use for the parcel. Additionally, the local ordinances that establish and define the various zoning classifications and designations in the master plan regarding land use are also subject to change.

The master plan is for the general, comprehensive and long-term development of land in the area and that the designations in the master plan regarding land use provide the most probable indication of future development which may occur on the surrounding properties. The master plan and zoning ordinances and regulations are subject to change.

The above plat is intended to give Buyer a general idea of what is proposed for development in the area surrounding Buyer's new home. It is based on information available as of January, 2016, and represents only one concept of possible development. This information is tentative and may be changed at any time. Seller makes no representation that development will follow the above plat and assumes no responsibility for errors or omissions in the information provided. Some of the property shown on this plat is not owned by Seller and, therefore, Seller has no control over its development. As to property which Seller owns, Seller reserves the right to make changes in the proposed land use, street pattern, type, style, price of buildings to be constructed, or to sell the property to others. For more current information, Seller suggests Buyer contact the County Planning and Zoning Department at (702) 455-4314.

ZONING DESIGNATION		LAND USE	
P-C	Planned Community	MF2	Multi Family, Max 21 dwelling units/acre
		SF3	Single Family, Max 10 dwelling units/acre

Please sign below to acknowledge you have received a copy of the Zoning Disclosure surrounding your new home.

SELLER: KB HOME LAS VEGAS, INC.

COMMUNITY: TEVARE (853/415)

LOT/BLOCK: 42/1

[Signature]
Buyer
1/8/16
Date

A-57

RECEIPT FOR DOCUMENTS PERTAINING TO SALE
INCLUDING NEVADA REVISED STATUTES (NRS) DOCUMENTS

TEVARE

BUYER(S):

Chiu

PROJECT:

415

LOT/BLOCK:

43/1

Buyer is to initial in the blank in front of the document applicable to each sale. If a document is not applicable, "N/A" is to be inserted. NONE of the blanks are to be left empty.

1. JC Public Offering Statement
2. JC Tevare Homeowners Association's documents, which include the following:
 - JC CC&Rs
 - JC Amended and Restated Supplemental Declaration of Annexation and of CC&Rs
 - JC Articles of Incorporation
 - JC Association Bylaws
 - JC Budget
 - JC Subsidy Agreement
3. JC Summerlin West Master Homeowners Association's documents, which include the following:
 - JC Article of Incorporation
 - JC Audit 2012
 - JC Balance Sheet, January 2014
 - JC Bylaws
 - JC Supplemental CC&Rs
 - JC CC&Rs
 - JC Fees and Charges Statement
 - JC Legal Disclosure
 - JC Operating Budget
 - JC Policies
 - JC Summerlin Homebuyer's Notice
4. JC Summerlin Council documents, which include the following:
 - JC Article of Incorporation
 - JC Budget
 - JC Bylaws
5. JC City of Las Vegas Special Improvement District Nos. 808 and 810 Information Form
6. JC Copies of Nevada Revised Statutes 11.202 to 11.206, and NRS 40.600 to 40.695, as amended by Assembly Bill No. 125 (also enclosed)
7. JC Nevada Real Estate Division Residential Disclosure Guide
8. JC Warranty Documents, which include the following:
 - JC KB HOME New Home Limited Warranty (with signed Agreement and Acceptance form)
 - JC KB HOME New Home Limited Warranty Performance Standards
9. JC KB HOME Homeowner's Manual

THE UNDERSIGNED ACKNOWLEDGES RECEIPT OF ALL OF THE DOCUMENTS MARKED ABOVE IN PARAGRAPHS 1 THROUGH 9 BY MEANS OF ☒ ELECTRONIC USB DRIVE, OR ☐ PAPER DOCUMENTS. IF THE FIRST BOX IS CHECKED, BUYER ACKNOWLEDGES THAT HE/SHE HAS THE MEANS TO ACCESS AND READ THESE DOCUMENTS.

10. JC Soils Report – Buyer acknowledges that a copy of the soils report(s) for the community in which the property is located is available for review in the sales office by Buyer and, if Buyer so requests, Seller shall provide to Buyer a copy of the soils report(s). Buyer's Initials: JC

Buyer is aware that, pursuant to NRS Chapter 113, Buyer may, not later than 20 days after Buyer's receipt of all applicable soils reports, rescind its Purchase Agreement for the Property.

Please indicate your choice by checking the applicable box:

- ☐ Buyer hereby declines a copy of the soils report(s) to review and waives the right to rescind the Purchase Agreement as provided for by NRS Chapter 113.
- ☒ Buyer hereby requests a copy of the soils report(s) to review and does not waive the right to rescind the Purchase Agreement as provided for by NRS Chapter 113.

The undersigned hereby acknowledges receiving the documents marked above pertaining to the purchase of the above-referenced property:

SELLER STRONGLY RECOMMENDS THAT BUYER READ ALL OF THE ABOVE DOCUMENTS AS SOON AFTER PURCHASING AS POSSIBLE.

APPROVED AND AGREED TO:

Buyer: [Signature]

Date: 1/8/16

Buyer

Date

56

DISCLOSURE

BUYER(S) Jerrin Chiu

TRACT / PHASE: TEVARE - 415 / 28

LOT / BLOCK: 43 / 1

Buyers are certainly welcome to visit the Community or their prospective home site after contracting for a home and before moving in. Indeed, Buyers are urged to familiarize themselves with the Community and surrounding neighborhood before contracting to purchase their home in order to assess potential impacts of noise, traffic, available commercial and recreational amenities and the buyers' personal sensitivities to such concerns.

During visits to the Community, Buyer must be aware that Buyer's lot is located within a construction area of the Community and that such construction sites are potentially dangerous. Seller will permit Buyer to enter his/her lot and the construction area surrounding the lot provided Buyer is fully aware of and accepts the risks of such entry.

BUYER ACKNOWLEDGES BEING INFORMED BY SELLER THAT:

1. Seller discourages Buyer from entering upon the lot and home being purchased while construction is in progress (the "Construction Site"), particularly when workers are present;
2. Construction Sites, including homes under construction, may be hazardous and dangerous places to visit;
3. Certain hazards and dangers of Construction Sites, including homes under construction, are not obvious or readily apparent; and
4. Visitors to Construction Sites, including homes under construction, may suffer personal injury, property damage, and/or special, indirect and/or consequential damages.

IN VIEW OF THE FOREGOING, BUYER AGREES WITH SELLER AS FOLLOWS:

- A. Seller strongly recommends that Buyer be accompanied by a Salesperson or another representative on any and all visits to the home, and Seller further requests that such visits be limited to non-construction hours but during Sales Office hours.
- B. Buyer acknowledges that Seller has warned Buyer that such entry is DANGEROUS and POTENTIALLY HAZARDOUS. There are numerous risks of injury to person and property associated with visiting a home or the construction site during construction because of conditions including, without limitation, open trenches, construction traffic, potential falling debris, exposed nails and electrical wiring, incomplete construction and certain other potential hazards. Buyer will neither invite nor allow anyone else to accompany Buyer onto the Construction Site.
- C. Buyer agrees to use due care, including without limitation, the wearing of hard hats and protective footwear.
- D. If Buyer enters upon the Construction Site, then, without exception:
 - 1) Buyer agrees that during any site visit he/she shall proceed at his/her own risk, and releases and waives any claims against Seller and all of its affiliates, parent and subsidiary companies, officers, directors, employees, attorneys, assigns and any and all other persons or entities that could be potentially liable to Buyer as a result of any injury that may occur during Purchaser's visit to the lot or to any portion of the Community. Buyer assumes all risks of injury and damage to person and/or property, and all risks of special, indirect and/or consequential damages; and
 - 2) Buyer, on behalf of him/herself and/or Buyer's minor child(ren), if any:
 - a. Voluntarily and knowingly dismisses with prejudice, forever releases and discharges, and agrees to indemnify, defend, and hold harmless Seller and Broker together with their respective representatives, employees, directors, officers, agents, insurers, attorneys, predecessors, successors, assigns, both past and present, and all firms, persons, associations, venturers, co-venturers, partners, co-partners, contractors, engineers, subcontractors, subsidiaries, parents, affiliates or corporations connected therewith, and each of them (collectively "Seller"), from any and all claims, debts, liabilities, demands, obligations, costs, expenses, contractual, that Buyer and/or Buyer's minor child(ren), if any, have held, now hold, or may hold in the future, whether known or unknown, against Seller, directly or indirectly arising out of any entry upon the Construction Site and/or activities engaged in during any entry upon the Construction Site;
 - b. Agrees to forever refrain and forbear from commencing, instituting or participating in, either as named or unnamed party, any action, lawsuit or other proceedings against Seller, whether brought by Buyer or another on behalf of Buyer and/or Buyer's minor child(ren), if any, based on or arising out of any entry upon the Construction Site and/or activities engaged in during any entry upon the Construction Site;
 - c. Acknowledges that a general release may not ordinarily extend to claims which the person giving the release does not know or suspect to exist in his/her favor at the time of executing the release, which, if known by him or her, must have materially affected his/her settlement with Seller, and nonetheless elects to and does assume all risk for claims heretofore or hereafter arising, known or unknown, out of the herein-stated matters, and waives the provisions of this principle of law; and
 - d. Agrees that this Disclosure shall be binding upon the heirs, executors, representatives, predecessors, successors and assigns of Buyer and/or Buyer's minor child(ren), if any, and all those subrogated to the rights of Buyer and/or Buyer's minor child(ren), if any.

APPROVED AND AGREED TO:

Buyer 

Buyer 1/8/16

Date

A-59

EXHIBIT "F"

D0060

2 Appx 000349

A-60

ADDENDUM TO PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS

SALES SUMMARY

SELLER:	KB Home Las Vegas, Inc.		
BUYER(S):	Chiu, Jerrin		
TRACT/PHASE:	Tevare	LOT/BLOCK:	43/1

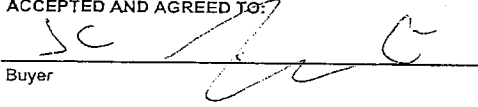
This Addendum to Purchase Agreement and Escrow Instructions (this "Addendum") is attached to and made part of that certain Purchase Agreement and Escrow Instructions between Buyer(s) and Seller, dated January 08, 2016, (the "Purchase Agreement"). Unless otherwise specified, all initially capitalized terms used in this Addendum shall have the meanings set forth in the Purchase Agreement. The Purchase Agreement is hereby amended as follows:

Base purchase price of property		\$376,790.00
Lot Premium	\$25,000.00	
Options	\$44,105.00	
Window Treatments	\$0.00	
Flooring	\$13,949.00	
Total to be paid to Seller		\$459,844.00
Earnest Money Deposit	\$10,297.00	
Option Deposit(s)	\$7,295.00	

Changes are being made due to Buyer adding options and / or flooring to total sales price.

Except as expressly modified herein, all other terms and conditions of the Purchase Agreement along with all sales supporting documents previously signed remain unchanged. This Addendum, together with the Purchase Agreement and previously executed sales supporting documents constitute the entire Agreement between the parties and Buyer and Seller acknowledge that no statements, representations or promises made by Buyer, Seller or by the Salesperson shall be binding unless in writing by both Buyer and Seller. In the event of a conflict between the provisions of this Addendum and the Purchase Agreement, this Addendum shall control.

ACCEPTED AND AGREED TO:

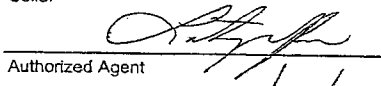

 Buyer

 Buyer

5/27/16
 Date

APPROVED AND AGREED TO:

KB Home Las Vegas, Inc.
 Seller


 Authorized Agent

3/16/2016
 Date

Prepared By: Johnson, LaToya

Date Prepared: 03/16/16 15:51:24

A-61

KB HOME
KB Home Las Vegas Inc.(853)
Sales Summary

Contract Date	01/08/2015	Project No.	00853 415
Community Name	Tevare	Bldg Type/#	1
Buyer Names	Chiu, Jerrn	Lot/Tract	43/1
Property Address	477 CABRAL PEAK STREET	Plan/Elevation	JN/C
	Las Vegas , NV 89138		
Lender	Chase Bank	Mortgage Type	OSL
Sales Price Breakdown:			
Gross Sales Price		Gross	Adjustments
		Ties to HUD	Accounting Net
			(Internal use only)
Base Price	(.4012)	\$376,790.00	\$0.00
Lot Premium	(.4014)	\$25,000.00	\$0.00
Flooring Upgrades	(.4050)	\$13,949.00	
Window Treatments	(.4061)	\$0.00	
Option Upgrades - Sales Office	(.4070-50001)	\$2,975.00	
Option Upgrades - KB Home Studio	(.4070-50002)	\$41,130.00	
Total Gross Sales Price		\$459,844.00	\$0.00
Allowances			
Sales Allowances - Base Price	(.4090)	\$0.00	\$0.00
Sales Allowances - Flooring Upgrades	(.4092)	\$0.00	\$0.00
Sales Allowances - Option Upgrades	(.4094)	\$0.00	\$0.00
Total Allowances		\$0.00	\$0.00
Gross Sales Price		\$459,844.00	\$0.00
		(Total on HUD)	(Internal use only)
Seller Closing Costs	(.5129)	\$0.00	
Mortgage Discounts	(.5126)	\$0.00	
NRCC	(.5123)	\$0.00	
Referral Fee	(.5123-1099)	\$0.00	
Comments	OSL - BROKER - NO INCENTIVES:: PRICE PARTICIPATION TO HOWARD HUGHES \$18,807.56 TRANSFER TAX SPLIT		
Hold Back	Program	Amount	\$0.00
Pool Participation Program	Pool Company	Participation Fee	\$0.00
Mortgage Commitment	Program	Amount	\$0.00
Buyer Deposits	Earnest	\$10,297.00	
	Upgrades	\$7,295.00	
	*POC	\$0.00	
		Total Deposits	\$17,592.00
Broker Commission			
Broker Name	WAYNE WU	Realty Company	Nevada Real Estate Corp.
Percentage	3.00 %	Bonus	\$0.00
Gross Broker Commission Earned	\$13,795.32		
Gross Receipts Tax	\$0.00	0.00 %	
Less Amount Prepaid	\$0.00		
Broker Commission To Be Paid At Closing	\$13,795.32		
KB Sales Commission Basis	\$459,844.00		
Notes			
<p>*POC amount is NOT to be credited @COE.</p> <p>Prepared By: Johnson, LaToya SSR Reason: CLOSE 03/16/16 15:51:24</p>			

A-62

EXHIBIT "G"

D0063

2 Appx 000352

Pr 63



Betty Chan <aaroffer@gmail.com>

Summerlin KB home purchase

Betty Chan <aaroffer@gmail.com>
To: Jerrin Chiu <Jchiuey@gmail.com>
Cc: slmpo43@gmail.com
Bcc: jmcneff@kbhome.com, cmcnafr@kbhome.com

Wed, Jan 27, 2016 at 9:26 AM

Dear Jerrin,

I still want to give you one last chance to fix your wrongdoings before I take you to court. Do not think I am bluffing, your Dad has always said he likes my honesty.

I want you to take a step back and think about what you have been doing.

To say I will not respond to your phone calls and emails are jokes of the century. Two years ago, if I could answer every one of your Dad's 35 phone calls a day, and I still have proof for that, do you think the jury will believe you cannot find me or I do not respond after spending so much time to find you a house and before you put a deposit down? If you said after you put your deposit down, then I disappear will be more convincing.

I talked to your Dad on the day he left, he asked me if I could kick back 1% because other agent did, I told him I never kicked back because I think I make my clients money more than 1%, it was a proven record in your case.

However I do not want him to be unhappy as he had been regularly checking on me when I was very sick, so I agreed to do a 1/2 % and if I did the loan, then I will agree to give 3/4%, and he said OK. So there is nothing like what you accused that I did not communicate. So your agent created that allegation will not work. I still have your Dad's messages and log on my phone, I followed up with you twice following the showings. Actually it was you that did not respond. I texted you again after and we did talk. All on records. So there was no loss of contact since I show you the house on 30th Dec. I will safekeep all this evidence for the Court.

I bet you the other Realtor did not tell you the consequence before you signed the contract. He put you in a very messy situation just to make the commission, so he made you an unethical person. Further he taught you how to lie with all those untrue accusation so now he makes you even worse, a LIAR. What does he have to lose, you become the target of the lawsuit, and he just stands on the side folding his arms possibly enjoying his dream of his commission come true.

Can you see who that agent really is?! or is that you who really are?

If you lose in the lawsuit, and I promise you that you will. It was straight forward and simple, KB home only pays to the agent that first brought in the client and that is me. Your unhappiness or your dissatisfaction of your agent has no effects on their policy. Don't forget if you lost the case, you will have to pay my attorney fees too.

Once lawsuit starts then it will become a public record. Everyone knows that you are an unethical person and a liar and ask for kickback, I honestly do not believe there will not be even a slightly effect on your professional image or career. So who or what will you protect, your \$3000 or more kickback, or your agent commission or your reputation? NONE of them!

If that was still your decision to move forward, I will not feel bad to play along, what do I have to lose?.

Afterall buying a house should be happy and not miserable and you do not want to carry that lawsuit nightmare for the rest of your time living in that house.

This is not yet the end of it and I do take this personally because I really do not want to take you to court. I do not believe it is your decision to use another Realtor. I do not believe you are a person that you will lie to make up story so that you can get a kickback. That is why I write this email one last time. This is my last piece of advice to make you money by saving you unnecessary attorney fees, time and reputation. I never have pointed you to a wrong direction. So think and choose wisely before it is too late!

I still encourage you to talk to KB and let them handle rather than you all by yourself!! If not, the next thing you hear from me will be Summary of Complaint. You break my heart to have to take you to court!

EXHIBIT "H"

D0065

2 Appx 000354

17-63



PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NEVADA 89145
702.385.2500
FAX 702.385.2086
HUTCHLEGAL.COM

JEFFREY R. HALL
PARTNER
JHALL@HUTCHLEGAL.COM
FILE NO. 6495-001

March 24, 2016

First American Title
Karen Patton
8311 W. Sunset Road, #150
Las Vegas, NV 89113
kapatton@firstam.com

Re: **ESCROW NO. 112-249-8656**

This firm represents Betty Chan with respect to the payment of a commission from the sale of the property located at 477 Cabral Peak Street, Las Vegas, Nevada 89138. Ms. Chan was the procuring cause of the sale of the home to Jerrin Chiu. She showed the property to Mr. Chiu on December 31, 2015. Mr. Chiu signed a broker registration identifying Ms. Chan as his agent on the same day. Subsequently, Mr. Chiu used a different broker, Wayne Wu, to close the transaction despite Ms. Chan showing Mr. Chiu the property. Ms. Chan disputes any commission payment to Mr. Wu since she was the procuring cause of the sale on the buyer's side of the transaction.

As you are aware, the broker who is the procuring cause of the sale is entitled to the commission for the sale. *See Schneider v. Biglieri*, 94 Nev. 426, 427, 581 P.2d 8, 9 (1978); *Bartsas Realty, Inc. v. Leverton*, 82 Nev. 6, 409 P.2d 627 (1966). The broker's presence at the sale is not required for that broker to earn his or her commission. *See Horton v. Colbron*, 60 Wyo. 263, 150 P.2d 315, 319 (1944). Ms. Chan became the procuring cause of the sale when she showed the property to Mr. Chiu as Mr. Chiu's broker.

By this correspondence, you have been made aware of Ms. Chan's claim to the buyer's commission from the sale of at 477 Cabral Peak Street, Las Vegas, Nevada 89138 to Mr. Chiu. In the event that buyer's commission's paid to anyone other than Ms. Chan as a result of this transaction, we will pursue the recovery of that commission from the payee. Ms. Chan reserves all rights against any party that pays or receives a buyer's commission for this transaction to anyone other than her.

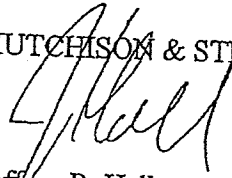
A-66

First American Title
Karen Patton
Page 2

Please contact me if you have any questions regarding this matter.

Sincerely yours,

HUTCHISON & STEFFEN


Jeffrey R. Hall
For the Firm

cc: Wayne Wu
Anthony C. Gordon
Jerrin Chiu
Betty Chan

EXHIBIT "I"

D0068

2 Appx 000357 *A-68*

6/29/2016

Gmail - (no subject)



Betty Chan <aaroffer@gmail.com>

(no subject)

7025951268@mms.att.net <7025951268@mms.att.net>

To: aaroffer@gmail.com

Fri, Feb 5, 2016 at 6:01 PM

Honestly from day one i met you my focus is not on the commission, i felt insulted and humiliated, another agent dared challenge me and he really do not know who i am. I have been really sad more than i am angry. Last night i read many court cases. Even though my card was disappeared, it wont hurt me winning. I liked to teach them a lesson. Life is not about money. So happen i do have few hundred thousand in hand that i can use. If they are willing to go along with me to spend equal amount of money, then i will be very happy to play their game. I got my direction last nite, so i felt peaceful now. All i need KB to understand i dont hate KB for this, and i need them to work with me on my plan. Jana, i dont blame you either and take care of yourself.

9-10
1/1

EXHIBIT "J"

D0070

2 Appx 000359

A-71

From: Laura Myers
To: Roman Harper
Subject: FW: Betty Chan/Wayne Wu (Escrow No. 112-249-8656)
Date: Wednesday, July 19, 2017 12:57:40 PM

Laura Myers
Paralegal to
Michael A. Olsen, Esq.

GOODSELL & OLSEN
ATTORNEYS AT LAW

10155 W. Twain Ave., Suite 100
Las Vegas, NV 89147
Tel: (702) 869-6261
Fax: (702) 869-8243
Email: laura@goodsellolsen.com

From: Jeffrey Hall [<mailto:JHall@hutchlegal.com>]
Sent: Tuesday, June 28, 2016 4:14 PM
To: Mike Olsen <Mike@goodsellolsen.com>; Laura Myers <Laura@goodsellolsen.com>
Cc: Patton, Karen L. <KaPatton@firstam.com>
Subject: RE: Betty Chan/Wayne Wu (Escrow No. 112-249-8656)

Mr. Olsen, I no longer represent Betty Chan in this matter. You may contact her directly regarding this matter at the following email address.

Betty Chan 702aar@gmail.com

From: Mike Olsen [<mailto:Mike@goodsellolsen.com>]
Sent: Wednesday, June 22, 2016 10:02 AM
To: Jeffrey Hall <JHall@hutchlegal.com>; Laura Myers <Laura@goodsellolsen.com>
Subject: RE: Betty Chan/Wayne Wu (Escrow No. 112-249-8656)

Mr. Hall:

I have to say I am more than a little disappointed that you would represent to the title company that your client has a document proving that she was the agent of record on the above referenced transaction when, in fact, you have never seen such a document. Since Mr. Wu was the agent that procured the actual sale of the property we are in the process of pursuing the commission rightfully due to him. In the event your client finds the alleged missing document, feel free to send it to us.

A-72

Thanks

Michael A. Olsen, Esq.

GOODSELL & OLSEN
ATTORNEYS AT LAW

10155 W. Twain Ave., Suite 100
Las Vegas, NV 89147
Tel: (702) 869-6261
Fax: (702) 869-8243
Email: mike@goodsellolsen.com

This message and any file(s) or attachment(s) transmitted herewith are confidential, intended for the named recipient only, and may contain information that is a trade secret, proprietary, protected by attorney work product doctrine, subject to attorney-client privilege, or is otherwise protected against unauthorized use or disclosure. This message and any file(s) or attachment(s) transmitted herewith are based on a reasonable expectation of privacy consistent with ABA Formal Opinion No. 99-413. Any disclosure, distribution, copying, or use of this information by anyone other than the intended recipient, regardless of address or routing, is strictly prohibited. If you receive this message in error, please advise the sender by immediate reply and delete the original message. Thank you. Goodsell & Olsen – Attorneys at law

From: Jeffrey Hall [<mailto:JHall@hutchlegal.com>]
Sent: Tuesday, June 21, 2016 6:03 PM
To: Laura Myers
Cc: Mike Olsen
Subject: RE: Betty Chan/Wayne Wu (Escrow No. 112-249-8656)

I asked my client for the document referred to. She's been out of town and advised that she'd need a week to get back and go through her files.

From: Laura Myers [<mailto:Laura@goodsellolsen.com>]
Sent: Tuesday, June 21, 2016 5:07 PM
To: Jeffrey Hall <JHall@hutchlegal.com>
Cc: Mike Olsen <Mike@goodsellolsen.com>
Subject: RE: Betty Chan/Wayne Wu (Escrow No. 112-249-8656)

Mr. Hall,

I am following up on our request below. Please advise. Thanks.

Laura Myers
Paralegal to
Michael A. Olsen, Esq.

GOODSELL & OLSEN
ATTORNEYS AT LAW

10155 W. Twain Ave., Suite 100
Las Vegas, NV 89147
Tel: (702) 869-6261
Fax: (702) 869-8243
Email: laura@goodsellolsen.com

From: Laura Myers
Sent: Friday, June 17, 2016 9:25 AM
To: 'JHall@hutchlegal.com' <JHall@hutchlegal.com>
Cc: Mike Olsen <Mike@goodsellolsen.com>
Subject: Betty Chan/Wayne Wu (Escrow No. 112-249-8656)

Mr. Hall,

Our firm has been retained by Wayne Wu in connection with the above referenced matter and we have reviewed your March 24, 2016 correspondence to First American Title. Would you mind providing us with the broker registration signed by Jerrin Chiu that you reference in your correspondence? Thanks.

Laura Myers
Paralegal to
Michael A. Olsen, Esq.

GOODSELL & OLSEN
ATTORNEYS AT LAW

10155 W. Twain Ave., Suite 100
Las Vegas, NV 89147
Tel: (702) 869-6261
Fax: (702) 869-8243
Email: laura@goodsellolsen.com

Jeffrey Hall
Partner

HUTCHISON & STEFFEN, LLC
(702) 385-2500
hutchlegal.com

A-74

Notice of Confidentiality: The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking any action in reliance upon, this information by anyone other than the intended recipient is not authorized.

Jeffrey Hall
Partner



HUTCHISON & STEFFEN, LLC
(702) 385-2500
hutchlegal.com

Notice of Confidentiality: The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking any action in reliance upon, this information by anyone other than the intended recipient is not authorized.

EXHIBIT “K”

D0075

2 Appx 000364

A-76

From: Laura Myers
To: Roman Harper
Subject: FW: Betty Chan/Wayne Wu (Escrow No. 112-249-8656)
Date: Wednesday, July 19, 2017 12:58:25 PM

Laura Myers
Paralegal to
Michael A. Olsen, Esq.

GOODSELL & OLSEN
ATTORNEYS AT LAW

10155 W. Twain Ave., Suite 100
Las Vegas, NV 89147
Tel: (702) 869-6261
Fax: (702) 869-8243
Email: laura@goodsellolsen.com

From: Betty Chan [mailto:702aar@gmail.com]
Sent: Wednesday, June 29, 2016 12:21 PM
To: Laura Myers <Laura@goodsellolsen.com>
Subject: Re: Betty Chan/Wayne Wu (Escrow No. 112-249-8656)

Dear Laura,

Thank you for your notice.

I have retained Attorney Avece Higbee of Marquis Aurbach Coffing to represent me in this litigation. She is currently out of town and will be back end of week.

She will be in contact with your firm once she settles down and get familiar with this litigation.

Thank you

Betty Chan, CCIM, CPM, CRS
Broker
Asian American Realty & Property Management

On Wed, Jun 29, 2016 at 9:41 AM, Laura Myers <Laura@goodsellolsen.com> wrote:

Ms. Chan,

Our firm has been retained by Wayne Wu in connection with the above referenced matter

and we have reviewed the March 24, 2016 correspondence that Jeffrey Hall, Esq. sent on your behalf to First American Title.

Mr. Hall has advised us that he no longer represents you in this matter and that we may contact you directly. Would you mind providing us with the broker registration signed by Jerrin Chiu that is referenced in Mr. Hall's correspondence? Thanks.

Laura Myers
Paralegal to
Michael A. Olsen, Esq.

GOODSELL & OLSEN
ATTORNEYS AT LAW

10155 W. Twain Ave., Suite 100
Las Vegas, NV 89147
Tel: (702) 869-6261
Fax: (702) 869-8243
Email: laura@goodsellolsen.com

--

Betty Chan CCIM, CPM, CRS
Broker
Asian American Realty & Property Management
Office 702 222 0078
Fax 702 222 1772
"The Happiest Realtor in Las Vegas"

EXHIBIT "L"

D0078

2 Appx 000367

14-79

DISTRICT COURT CIVIL COVER SHEET

Clark County, Nevada

Case No. _____
(Assigned by Clerk's Office)**I. Party Information** (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

BETTY CHAN and ASIAN AMERICAN REALTY & PROPERTY
MANAGEMENTy

Attorney (name/address/phone):

Avece M. Higbee, Esq. (NV Bar No. 3739)
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, NV 89145
(702) 382-0711

Defendant(s) (name/address/phone):

WAYNE WU, JUDITH SULLIVAN, NEVADA REAL
ESTATE CORP., JERRIN CHIU, KB HOME SALES -
NEVADA INC., DOES I through X, and ROES I
through X

Attorney (name/address/phone):

II. Nature of Controversy (Please select the one most applicable filing type below)**Civil Case Filing Types**

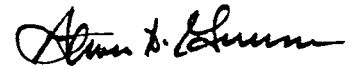
Real Property	Torts	
Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input checked="" type="checkbox"/> Other Tort
Probate	Construction Defect & Contract	Judicial Review/Appeal
Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input checked="" type="checkbox"/> Other Contract P. m. w	Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ		Other Civil Filing
Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

9/26/16
Date

Signature of initiating party or representative

A-75



CLERK OF THE COURT

1 **Marquis Aurbach Coffing**
 2 Avece M. Higbee, Esq.
 3 Nevada Bar No. 3739
 4 10001 Park Run Drive
 5 Las Vegas, Nevada 89145
 Telephone: (702) 382-0711
 Facsimile: (702) 382-5816
 ahigbee@maclaw.com
 Attorneys for Plaintiff

DISTRICT COURT**CLARK COUNTY, NEVADA**

8 **BETTY CHAN and ASIAN AMERICAN**
 9 **REALTY & PROPERTY MANAGEMENT,**

10 Plaintiff,

11 vs.

12 **WAYNE WU, JUDITH SULLIVAN, NEVADA**
 13 **REAL ESTATE CORP., JERRIN CHIU, KB**
 14 **HOME SALES – NEVADA INC., DOES I**
 through X, and ROES I through X,

15 Defendants.

Case No.: **A- 16- 744109- C**
 Dept. No.: **XII**

COMPLAINT
EXEMPT FROM ARBITRATION:
REQUESTS INJUNCTIVE RELIEF

COMPLAINT

16 Plaintiffs, Betty Chan and Asian American Realty and Property Management
 17 (“Plaintiffs”) by and through the law firm of Marquis Aurbach Coffing, hereby allege and
 18 complain against Defendants Wayne Wu, Judith Sullivan, Nevada Real Estate Corp. and Jerrin
 19 Chiu (“Defendants”) as follows:

JURISDICTIONAL ALLEGATIONS

21 1. Plaintiff Betty Chan is a resident of the State of Nevada is and was doing business
 22 as a licensed real estate broker for her company Asian American Realty & Property
 23 Management.

24 2. Defendant Wayne Wu is a resident of the State of Nevada, is and was doing
 25 business in the County of Clark as a real estate agent with Nevada Real Estate Corp.

26 3. Defendant Judith Sullivan is a resident of the state of Nevada and is the licensed
 27 real estate broker for Nevada Real Estate Corp.
 28

1 16. On or about November 28, 2015, Defendant Chiu emailed Plaintiff Chan
2 concerning the location of a particular house he wanted to see.

3 17. On or about November 29, 2015, Plaintiff Chan responded concerning the
4 viewing of the particular house.

5 18. On or about December 29, 2015, Plaintiff Chan prepared for the showing of
6 homes to the Chiu family by pulling listings around Boca Park area.

7 19. Five resale homes were targeted to fit Defendant Chiu's criteria and Plaintiff
8 Chan contacted the listing agents for the resales to set appointments.

9 20. Plaintiff Chan included the model homes in both a Toll Brothers development and
10 a KB Home development previously viewed by Plaintiff Chan.

11 21. Plaintiff Chan checked the status of the listings, printed the information and
12 arranged a route for the efficient showing of the properties.

13 22. On or about December 30, 2015, Plaintiff Chan picked up the Chiu family and
14 showed the resale homes, the Toll Brother models and the KB Homes models.

15 23. KB Homes offered to compensate brokers for bringing buyers to KB Home
16 Developments at Buyer's first visit.

17 24. At the front office of KB Homes, Plaintiff Chan spoke to Cheryl and picked up a
18 price sheet.

19 25. Plaintiff Chan then showed the model homes to the Chiu family and Defendant
20 Chiu liked the first and second model homes.

21 26. Back at the KB Homes model home office, Plaintiff Chan requested a floor plan
22 and explained the buying process for a new home including the standards, elevations, prices,
23 location of the site, etc. to the Chiu family.

24 27. Plaintiff Chan located a buyer registration card and Defendant Chiu filled in the
25 buyer portion and Plaintiff Chan filled in the realtor portion.

26 28. No KB Homes representative was to be found so Plaintiff Chan left the
27 registration card on the table in the KB Home front office to hurry to get the Chiu family to the
28 next appointment.

1 41. Defendant Wayne Wu and Defendant Judith Sullivan on behalf of Defendant
2 Nevada Real Estate Corp claim to be entitled to the commission on the purchase and sale of the
3 Property.

4 42. Upon information and belief, the commission is held with First American Title
5 Company.

6 43. Plaintiffs were not paid any commission for the sale of the Property.

7 **FIRST CAUSE OF ACTION**

8 **(Declaratory Relief)**

9 44. Plaintiffs repeat and reallege the forgoing paragraphs as though fully stated
10 herein.

11 45. A genuine controversy exists in this matter.

12 46. Plaintiffs and Defendants Wu, Sullivan and Nevada Real Estate Corp. claim
13 adverse interests in the commission for the sale of the Property.

14 47. Defendant Chiu sought the assistance of Defendant Wu due to Wu's 1%
15 commission kickback effectively circumventing Plaintiff Chan from the transaction and from the
16 commission.

17 48. KB Homes offered the payment of a commission to brokers that brought buyers to
18 KB Home Developments to Buyers first visit.

19 49. Plaintiff Chan brought Defendant Chiu to the KB Homes Development and
20 showed him the model homes to decide which floor plan to purchase.

21 50. Defendant Chiu utilized another agent, Defendant Wayne Wu to write a contract
22 for the purchase of the Property located in the same KB Homes Development.

23 51. Plaintiff Chan was the procuring cause of the sale of the Property but did not
24 receive the commission.

25 52. Plaintiffs request a declaration from the Court that Plaintiffs are entitled to the
26 commission on the sale of the Property.

27 53. Plaintiffs request a declaration from the court that Defendants Wu, Sullivan and
28 Nevada Real Estate Corp. are not entitled to the commission on the sale of the Property.

11-83

1 29. Plaintiff Chan emailed Dr. Kwang Chiu the four resale listings that were viewed.

2 30. On or about December 31, 2015, Dr. Kwang Chiu called Plaintiff Chan and asked
3 if she could "kick back 1% of the commission" like the other agent offered him.

4 31. On or about January 5, 2016, Plaintiff Chan followed up with Defendant Chiu
5 about the KB Home properties.

6 32. Defendant Chiu did not respond.

7 33. On or about January 15, 2016, Defendant Chiu admitted that he was using another
8 agent.

9 34. On or about January 22, 2016, Plaintiff Chan went to the KB Homes office and
10 learned that Defendant Chiu had indeed signed a contract on the property shown by Plaintiff
11 Chan with another agent on January 8, 2016.

12 35. On or about January 30, 2016, Plaintiff Chan went to the KB Homes office to
13 address the commission; both KB Homes representatives, Cheryl and Jana, stated that Defendant
14 Chiu told them Plaintiff Chan introduced him to KB Homes but that he determined to use
15 another agent.

16 36. On or about February 1, 2016, KB Homes Sales Manager, Lara McLaughlin,
17 contacted Plaintiff Chan on two occasions indicating she was looking into the commission
18 dispute.

19 37. Plaintiff Chan made efforts to resolve the dispute concerning her involvement in
20 the transaction and the entitlement to the commission to no avail.

21 38. On or about May 27, 2016, Defendant Chiu closed on the purchase of a home in
22 the KB Home community known as 477 Cabral Peak, Las Vegas, Nevada ("Property").

23 39. Upon information and belief, before paying a commission to an agent for the sale
24 of a KB home, KB Homes requires that that agent sign a registration upon the first visit with the
25 buyer to the property.

26 40. Upon information and belief, Defendant Wayne Wu signed a registration card at
27 KB Homes knowing that Defendant Jerrin Chiu had first visited the Property with Plaintiff Chan.
28

THIRD CAUSE OF ACTION**(Unjust Enrichment)**

67. Plaintiffs repeat, reallege, and incorporate each and every paragraph contained above as though fully set forth herein.

68. Plaintiff Chan was the procuring cause for the purchase of the Property by Defendant Chiu.

69. Defendant Wu interfered with the change of events set in motion by Plaintiff Chan by offering to kickback 1% of the commission to Defendant Chiu.

70. Defendant Chiu circumvented Plaintiff Chan's ability to complete the transaction when Defendant Chiu agreed to use Defendant Wu.

71. Upon information and belief, Defendant Wu and Defendant Chiu made misrepresentations to KB Homes concerning the initial showing of the Property.

72. Plaintiff Chan did not receive a commission despite being the procuring cause of the sale of the Property to Defendant Chiu.

73. Defendant Wu's receipt of any commission would be unjust.

74. Plaintiff Chan is entitled to the payment of the commission.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. For damages in excess of \$10,000, plus interest.
2. For prejudgment and post judgment interest;
3. For a declaration that KB Homes breached the contract;
4. For a declaration that Plaintiffs are entitled to the commission on the sale of the Property;

///

///

///

55
X

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1
2 5. For a declaration that Defendants Wu, Sullivan and Nevada Real Estate Corp. are
3 not entitled to the commission on the sale of the Property;

4 6. For attorney's fees and costs; and

5 7. For any and other such relief as the Court deems just and proper.

6 Dated this 20th day of September, 2016.

7
8 MARQUIS AURBACH COFFING

9
10 By 

Avice M. Higbee, Esq.
Nevada Bar No. 3739
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Plaintiff

Handwritten initials/signature in the bottom right corner.

1 **Marquis Aurbach Coffing**
 2 Avece M. Higbee, Esq.
 3 Nevada Bar No. 3739
 4 10001 Park Run Drive
 5 Las Vegas, Nevada 89145
 6 Telephone: (702) 382-0711
 7 Facsimile: (702) 382-5816
 8 ahigbee@maclaw.com
 9 Attorneys for Plaintiff

6 **DISTRICT COURT**
 7 **CLARK COUNTY, NEVADA**

8 BETTY CHAN and ASIAN AMERICAN
 9 REALTY & PROPERTY MANAGEMENT,

10 Plaintiff,

Case No.:
Dept. No.:

11 vs.

12 WAYNE WU, JUDITH SULLIVAN, NEVADA
 13 REAL ESTATE CORP., JERRIN CHIU, KB
 14 HOME SALES - NEVADA INC., DOES I
 through X, and ROES I through X,

15 Defendants.

16 **INITIAL APPEARANCE FEE DISCLOSURE**

17 Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for
 18 parties appearing in the above-entitled action as indicated below:

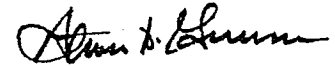
19 Betty Chan	\$270.00
20 Asian American Realty & Property Management	\$30.00
21 TOTAL REMITTED	\$300.00

22 Dated this 26th day of September, 2016.

23 MARQUIS AURBACH COFFING

24 By 

25 Avece M. Higbee, Esq.
 26 Nevada Bar No. 3739
 27 10001 Park Run Drive
 28 Las Vegas, Nevada 89145
 Attorney for Plaintiff



CLERK OF THE COURT

1 **Marquis Aurbach Coffing**
2 Avece M. Higbee, Esq.
3 Nevada Bar No. 3739
4 10001 Park Run Drive
5 Las Vegas, Nevada 89145
6 Telephone: (702) 382-0711
7 Facsimile: (702) 382-5816
8 ahigbee@maclaw.com
9 Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

8 BETTY CHAN and ASIAN AMERICAN
9 REALTY & PROPERTY MANAGEMENT,

Plaintiff,

Case No.: A-16-744109-C
Dept. No.: XII

vs.

11 WAYNE WU, JUDITH SULLIVAN, NEVADA
12 REAL ESTATE CORP., JERRIN CHIU, KB
13 HOME SALES - NEVADA INC., DOES I
14 through X, and ROES I through X,

Defendants.

AMENDED COMPLAINT
EXEMPT FROM ARBITRATION:
REQUESTS DECLARATORY RELIEF

COMPLAINT

16 Plaintiffs, Betty Chan and Asian American Realty and Property Management
17 ("Plaintiffs") by and through the law firm of Marquis Aurbach Coffing, hereby allege and
18 complain against Defendants Wayne Wu, Judith Sullivan, Nevada Real Estate Corp. and Jerrin
19 Chiu ("Defendants") as follows:

JURISDICTIONAL ALLEGATIONS

21 1. Plaintiff Betty Chan is a resident of the State of Nevada is and was doing business
22 as a licensed real estate broker for her company Asian American Realty & Property
23 Management.

24 2. Defendant Wayne Wu is a resident of the State of Nevada, is and was doing
25 business in the County of Clark as a real estate agent with Nevada Real Estate Corp.

26 3. Defendant Judith Sullivan is a resident of the state of Nevada and is the licensed
27 real estate broker for Nevada Real Estate Corp.

A-39

EXHIBIT "M"

D0090

2 Appx 000379

ASS

1 16. On or about November 28, 2015, Defendant Chiu emailed Plaintiff Chan
2 concerning the location of a particular house he wanted to see.

3 17. On or about November 29, 2015, Plaintiff Chan responded concerning the
4 viewing of the particular house.

5 18. On or about December 29, 2015, Plaintiff Chan prepared for the showing of
6 homes to the Chiu family by pulling listings around Boca Park area.

7 19. Five resale homes were targeted to fit Defendant Chiu's criteria and Plaintiff
8 Chan contacted the listing agents for the resales to set appointments.

9 20. Plaintiff Chan included the model homes in both a Toll Brothers development and
10 a KB Home development previously viewed by Plaintiff Chan.

11 21. Plaintiff Chan checked the status of the listings, printed the information and
12 arranged a route for the efficient showing of the properties.

13 22. On or about December 30, 2015, Plaintiff Chan picked up the Chiu family and
14 showed the resale homes, the Toll Brother models and the KB Homes models.

15 23. KB Homes offered to compensate brokers for bringing buyers to KB Home
16 Developments at Buyer's first visit.

17 24. At the front office of KB Homes, Plaintiff Chan spoke to Cheryl and picked up a
18 price sheet.

19 25. Plaintiff Chan then showed the model homes to the Chiu family and Defendant
20 Chiu liked the first and second model homes.

21 26. Back at the KB Homes model home office, Plaintiff Chan requested a floor plan
22 and explained the buying process for a new home including the standards, elevations, prices,
23 location of the site, etc. to the Chiu family.

24 27. Plaintiff Chan located a buyer registration card and Defendant Chiu filled in the
25 buyer portion and Plaintiff Chan filled in the realtor portion.

26 28. No KB Homes representative was to be found so Plaintiff Chan left the
27 registration card on the table in the KB Home front office to hurry to get the Chiu family to the
28 next appointment.

17-91

- 1 29. Plaintiff Chan emailed Dr. Kwang Chiu the four resale listings that were viewed.
- 2 30. On or about December 31, 2015, Dr. Kwang Chiu called Plaintiff Chan and asked
- 3 if she could "kick back 1% of the commission" like the other agent offered him.
- 4 31. On or about January 5, 2016, Plaintiff Chan followed up with Defendant Chiu
- 5 about the KB Home properties.
- 6 32. Defendant Chiu did not respond.
- 7 33. On or about January 15, 2016, Defendant Chiu admitted that he was using another
- 8 agent.
- 9 34. On or about January 22, 2016, Plaintiff Chan went to the KB Homes office and
- 10 learned that Defendant Chiu had indeed signed a contract on the property shown by Plaintiff
- 11 Chan with another agent on January 8, 2016.
- 12 35. On or about January 30, 2016, Plaintiff Chan went to the KB Homes office to
- 13 address the commission; both KB Homes representatives, Cheryl and Jana, stated that Defendant
- 14 Chiu told them Plaintiff Chan introduced him to KB Homes but that he determined to use
- 15 another agent.
- 16 36. On or about February 1, 2016, KB Homes Sales Manager, Lara McLaughlin,
- 17 contacted Plaintiff Chan on two occasions indicating she was looking into the commission
- 18 dispute.
- 19 37. Plaintiff Chan made efforts to resolve the dispute concerning her involvement in
- 20 the transaction and the entitlement to the commission to no avail.
- 21 38. On or about May 27, 2016, Defendant Chiu closed on the purchase of a home in
- 22 the KB Home community known as 477 Cabral Peak, Las Vegas, Nevada ("Property").
- 23 39. Upon information and belief, before paying a commission to an agent for the sale
- 24 of a KB home, KB Homes requires that that agent sign a registration upon the first visit with the
- 25 buyer to the property.
- 26 40. Upon information and belief, Defendant Wayne Wu signed a registration card at
- 27 KB Homes knowing that Defendant Jerrin Chiu had first visited the Property with Plaintiff Chan.
- 28

K-92

41. Defendant Wayne Wu and Defendant Judith Sullivan on behalf of Defendant Nevada Real Estate Corp claim to be entitled to the commission on the purchase and sale of the Property.

42. Upon information and belief, the commission is held with First American Title Company.

43. Plaintiffs were not paid any commission for the sale of the Property.

FIRST CAUSE OF ACTION

(Declaratory Relief)

44. Plaintiffs repeat and reallege the forgoing paragraphs as though fully stated herein.

45. A genuine controversy exists in this matter.

46. Plaintiffs and Defendants Wu, Sullivan and Nevada Real Estate Corp. claim adverse interests in the commission for the sale of the Property.

47. Defendant Chiu sought the assistance of Defendant Wu due to Wu's 1% commission kickback effectively circumventing Plaintiff Chan from the transaction and from the commission.

48. KB Homes offered the payment of a commission to brokers that brought buyers to KB Home Developments to Buyers first visit.

49. Plaintiff Chan brought Defendant Chiu to the KB Homes Development and showed him the model homes to decide which floor plan to purchase.

50. Defendant Chiu utilized another agent, Defendant Wayne Wu to write a contract for the purchase of the Property located in the same KB Homes Development.

51. Plaintiff Chan was the procuring cause of the sale of the Property but did not receive the commission.

52. Plaintiffs request a declaration from the Court that Plaintiffs are entitled to the commission on the sale of the Property.

53. Plaintiffs request a declaration from the court that Defendants Wu, Sullivan and Nevada Real Estate Corp. are not entitled to the commission on the sale of the Property.

93
X

54. Plaintiffs request a declaration from the court that Defendant KB Homes breached its obligation to pay the commission to Plaintiffs.

55. Plaintiffs request a declaration from the court that the commission be released from the title company to Plaintiffs and any shortfall be paid by Defendants.

56. As a result of Defendants' actions, Plaintiffs have been forced to retain the services of an attorney to prosecute the instant action and therefore is entitled to reasonable attorneys fees and costs.

SECOND CAUSE OF ACTION

(Breach of Contract)

57. Plaintiff Chan repeats, realleges, and incorporates each and every paragraph contained above as though fully set forth herein.

58. KB Homes offered to compensate brokers for selling KB Homes to their buyers upon their first visit.

59. Plaintiff Chan brought Defendant Chiu to the KB Homes community and showed the model homes to Defendant Chiu to decide which floor plan to purchase.

60. Plaintiff Chan and Defendant Chiu filled out a registration card providing their information to KB Homes.

61. Plaintiff Chan was the procuring cause of the sale of the Property to Defendant Chiu.

62. Defendant purchased the Property which is located in the same KB Homes community.

63. KB Homes failed to pay Plaintiffs the commission for the sale of the Property.

64. KB Homes breached its obligation to pay a commission to Plaintiffs.

65. As a result of KB Homes' action, Plaintiff Chan has been damaged in excess of \$10,000.

66. It has been necessary for Plaintiff Chan to retain the services of an attorney and to incur attorney's fees and costs to prosecute this action, and therefore, Plaintiff is entitled to reimbursement for those attorney's fees and costs incurred herein.

494

(Unjust Enrichment)

74. Plaintiff Chan is entitled to the payment of the commission.

///

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1
2 5. For a declaration that Defendants Wu, Sullivan and Nevada Real Estate Corp. are
3 not entitled to the commission on the sale of the Property;

4 6. For attorney's fees and costs; and

5 7. For any and other such relief as the Court deems just and proper.

6 Dated this 15^m day of November, 2016.

MARQUIS AURBACH COFFING

By 

Avece M. Higbee, Esq.
Nevada Bar No. 3739
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Plaintiff

A-96

EXHIBIT "N"

D0098

2 Appx 000387

154

DUTIES OWED BY A NEVADA REAL ESTATE LICENSEE

This form does not constitute a contract for services nor an agreement to pay compensation.

In Nevada, a real estate licensee is required to provide a form setting forth the duties owed by the licensee to:

- Each party for whom the licensee is acting as an agent in the real estate transaction, and
- Each unrepresented party to the real estate transaction, if any.

Licensee: The licensee in the real estate transaction is <u>Betty Chan</u> whose license number is <u>25444</u> . The licensee is acting for (client's name(s)) <u>Jackie Chiu</u>	
Broker: The broker is <u>Betty Chan</u> who is/are the <input type="checkbox"/> Seller/Landlord; <input checked="" type="checkbox"/> Buyer/Tenant. company is <u>Asian American Realty</u> , whose	

Licensee's Duties Owed to All Parties:

A Nevada real estate licensee shall:

- Not deal with any party to a real estate transaction in a manner which is deceitful, fraudulent or dishonest.
- Exercise reasonable skill and care with respect to all parties to the real estate transaction.
- Disclose to each party to the real estate transaction as soon as practicable:
 - Any material and relevant facts, data or information which licensee knows, or with reasonable care and diligence the licensee should know, about the property.
 - Each source from which licensee will receive compensation.
- Abide by all other duties, responsibilities and obligations required of the licensee in law or regulations.

Licensee's Duties Owed to the Client:

A Nevada real estate licensee shall:

- Exercise reasonable skill and care to carry out the terms of the brokerage agreement and the licensee's duties in the brokerage agreement;
- Not disclose, except to the licensee's broker, confidential information relating to a client for 1 year after the revocation or termination of the brokerage agreement, unless licensee is required to do so by court order or the client gives written permission;
- Seek a sale, purchase, option, rental or lease of real property at the price and terms stated in the brokerage agreement or at a price acceptable to the client;
- Present all offers made to, or by the client as soon as practicable, unless the client chooses to waive the duty of the licensee to present all offers and signs a waiver of the duty on a form prescribed by the Division;
- Disclose to the client material facts of which the licensee has knowledge concerning the real estate transaction;
- Advise the client to obtain advice from an expert relating to matters which are beyond the expertise of the licensee; and
- Account to the client for all money and property the licensee receives in which the client may have an interest.

Duties Owed By a broker who assigns different licensees affiliated with the brokerage to separate parties.
 Each licensee shall not disclose, except to the real estate broker, confidential information relating to client.

Licensee Acting for Both Parties: You understand that the licensee (Client In) may or (Client In) may not, in the future act for two or more parties who have interests adverse to each other. In acting for these parties, the licensee has a conflict of interest. Before a licensee may act for two or more parties, the licensee must give you a "Consent to Act" form to sign.

I/We acknowledge receipt of a copy of this list of licensee duties, and have read and understand this disclosure.			
Seller/Landlord _____ Date _____ Time _____	Buyer/Tenant <u>[Signature]</u> <u>04/10/2015</u> <u>11 am</u> Date Time		
Seller/Landlord _____ Date _____ Time _____	Buyer/Tenant _____ Date _____ Time _____		

Approved Nevada Real Estate Division
 Replaces all previous versions

Page 1 of 1

This form presented by Betty Chan | Asian American Realty | 702-222-0078 | aar@asianamericanrealty.com

525
 Revised 10/25/07
**Instant
 Forms**

DUTIES OWED BY A NEVADA REAL ESTATE LICENSEE

This form does not constitute a contract for services nor an agreement to pay compensation.

In Nevada, a real estate licensee is required to provide a form setting forth the duties owed by the licensee to:

- a) Each party for whom the licensee is acting as an agent in the real estate transaction, and
- b) Each unrepresented party to the real estate transaction, if any.

Licensor: The licensee in the real estate transaction is <u>Betty Chan</u>	
whose license number is <u>25444</u>	The licensee is acting for (client's name(s)) <u>Jerrin Chiu</u>
who is/are the <input type="checkbox"/> Seller/Landlord; <input checked="" type="checkbox"/> Buyer/Tenant.	
Broker: This broker is <u>Betty Chan</u> , whose company is <u>Asian American Realty & Property Management</u>	

Licensor's Duties Owed to All Parties:

A Nevada real estate licensee shall:

1. Not deal with any party to a real estate transaction in a manner which is deceitful, fraudulent or dishonest.
2. Exercise reasonable skill and care with respect to all parties to the real estate transaction.
3. Disclose to each party to the real estate transaction as soon as practicable:
 - a. Any material and relevant facts, data or information which licensee knows, or with reasonable care and diligence the licensee should know, about the property.
 - b. Each source from which licensee will receive compensation.
4. Abide by all other duties, responsibilities and obligations required of the licensee in law or regulations.

Licensor's Duties Owed to the Client:

A Nevada real estate licensee shall:

1. Exercise reasonable skill and care to carry out the terms of the brokerage agreement and the licensee's duties in the brokerage agreement;
2. Not disclose, except to the licensee's broker, confidential information relating to a client for 1 year after the revocation or termination of the brokerage agreement, unless licensee is required to do so by court order or the client gives written permission;
3. Seek a sale, purchase, option, rental or lease of real property at the price and terms stated in the brokerage agreement or at a price acceptable to the client;
4. Present all offers made to, or by the client as soon as practicable, unless the client chooses to waive the duty of the licensee to present all offers and signs a waiver of the duty on a form prescribed by the Division;
5. Disclose to the client material facts of which the licensee has knowledge concerning the real estate transaction;
6. Advise the client to obtain advice from an expert relating to matters which are beyond the expertise of the licensee; and
7. Account to the client for all money and property the licensee receives in which the client may have an interest.

Duties Owed By a Broker who assigns different licensees affiliated with the brokerage to separate parties.

Each licensee shall not disclose, except to the real estate broker, confidential information relating to client.

Licensor Acting for Both Parties: You understand that the licensee (Client's) may or (Client's) may not, in the future act for two or more parties who have interests adverse to each other. In acting for these parties, the licensee has a conflict of interest. Before a licensee may act for two or more parties, the licensee must give you a "Consent to Act" form to sign.

If we acknowledge receipt of a copy of this list of licensee duties, and have read and understand this disclosure:					
Seller/Landlord	Date	Time	Buyer/Tenant <u>Jerrin Chiu</u>	Date	Time
Seller/Landlord	Date	Time	Buyer/Tenant	Date	Time

Approved Nevada Real Estate Division
Replaces all previous versions

Page 1 of 1

325
Revised 10/25/07

Asian American Realty 1681 Spring Mountain Rd Las Vegas, NV 89102
Phone: (702) 222-0078 Fax: (702) 222-1772 Betty Chan

Printed with ZipForm by ZipLoft 18070 Fifteen Mile Road, Fremont, Michigan 48026 www.ziploft.com

EXHIBIT 4



April 20, 2018

VIA E-MAIL AND U.S. MAIL

Nevada Real Estate Corp.
Mr. Wayne Wu (Agent) and
Judith Sullivan (Broker)
3512 Wynn Road
Las Vegas, NV 89103

RE: Arbitration Case #16201A

Dear Mr. Wayne Wu,

Enclosed is a copy of the Award of Arbitrators decision for the above -referenced case. The Complainant, Betty Chan, Asian American Realty was awarded the commission by the Hearing Panel.

The award must be paid no later than 5:00 p.m. on April 30, 2018, either directly to the Respondent or to the Greater Las Vegas Association of REALTORS®. The funds will be deposited in a GLVAR escrow account and are held by GLVAR pending the outcome of a procedural review and/or legal challenge. A request for procedural review must be filed within twenty (20) days of the award. Alternatively, a notice of legal challenge must be received within that same twenty (20) day period.

If no appeal or legal challenge is filed, the Association will disperse the award and return to the prevailing party(s) the \$500.00 arbitration deposit. **The appeal period runs until 5:00 p.m. on May 10, 2018.** If no appeal is received by that date at the offices of the Greater Las Vegas Association of REALTORS®, 6360 S Rainbow Blvd., Las Vegas, NV 89118, a letter will be sent to all named parties and the file will be closed.

Please note our office will be closed today Friday, April 20, 2018., we will be moving to our new location at 6360 S. Rainbow Boulevard, Las Vegas, NV 89118. We will open on Wednesday, April 25, 2018 should you have any questions.



GREATER LAS VEGAS ASSOCIATION OF REALTORS®

The Voice for Real Estate in Southern Nevada

1750 E. Sahara Avenue • Las Vegas, Nevada • 89104 • (702)784-5000 • FAX (702)784-5001

www.LasVegasRealtor.com





Thank you for participating in the Arbitration process.

Sincerely,

A handwritten signature in black ink, appearing to read "Ingrid Trillo". The signature is fluid and cursive, written over the word "Sincerely,".

Ingrid Trillo, Director
GLVAR Professional Standards

Enclosures:

Form A12

Form A13

Form A7

Cc: Todd Kennedy, Esq., Black & Lobello
Michael Olsen, Esq., GoodsellOlsen
Judith Sullivan, Esq., Nevada Real Estate Corp
Betty Chan



GREATER LAS VEGAS ASSOCIATION OF REALTORS®

The Voice for Real Estate in Southern Nevada

1750 E. Sahara Avenue • Las Vegas, Nevada • 89104 • (702) 784-5000 • FAX (702) 784-5002

www.LasVegasRealtor.com



Form #A-12

Greater Las Vegas Association of REALTORS®
1750 E Sahara Ave
Las Vegas, NV 89109
702-784-5000

Case #16201A

Award of Arbitrators

The undersigned, duly appointed as the Hearing Panel to hear and determine an arbitrable dispute between

Betty Chan, Asian American Realty and Wayne Wu and Judith Sullivan, Nevada Real Estate Corp

Complainant

Respondent

certify that on April 17th, 20 18, we heard the evidence of the parties and having heard all the evidence and arguments

of the parties, a majority of the panel finds there is due and owing \$ 3,448.83 to be paid by Respondent to


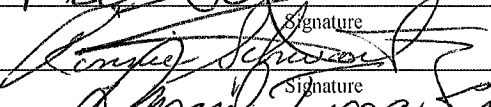
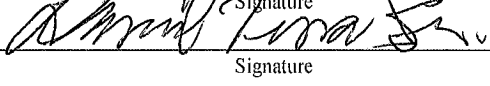
Complainant and the remaining \$10,346.49 be paid to Respondent from title company.
The non-prevailing party must, within ten (10) days following transmittal of the award, either (1) pay the award to the party(ies) named in the award or (2) deposit the funds with the Professional Standards Administrator to be held in an escrow or trust account maintained for this purpose. Failure to satisfy the award or to deposit the funds in the escrow or trust account within this time period may be considered a violation of a membership duty and may subject the member to disciplinary action at the discretion of the Board of Directors.

The deposits of the parties shall be used to cover the costs of arbitration or shall go into the general operating funds of the Association of REALTORS®. In the event the award of the arbitrators is in an amount other than that requested by any of the parties, the disposition of the deposits shall be directed by the arbitrators.

Requests for procedural review of the arbitration hearing procedures must be filed in writing with the President within twenty (20) days after the award has been transmitted to the parties* and must be accompanied by a deposit of \$ 250.00. **The request for procedural review must cite the alleged procedural deficiencies or other irregularities the party believes constitute a deprivation of due process. If no procedural review is filed within twenty (20) days following transmittal of the award and the non-prevailing party does not notify the Professional Standards Administrator that a legal challenge to the validity of the award has been initiated during that time, the award will be paid from the escrow or trust account. If a procedural review request is timely filed and the award is confirmed by the directors following the procedural review, the award will be paid from the escrow or trust unless the non-prevailing party advises the association in writing within fifteen (15) days from the transmittal of the directors' confirmation that a suit challenging the validity of the award has been filed. If the directors invalidate the award, the funds shall be returned to the individual who made the deposit.

Dated: April 17th, 2018

Arbitrators:

<u>Keith Lynam (Chair)</u>		Chairperson
Type/Print	Signature	
<u>Ronnie Schwartz</u>		Panel Member
Type/Print	Signature	
<u>David Tina Sr.</u>		Panel Member
Type/Print	Signature	
		Panel Member
Type/Print	Signature	
		Panel Member
Type/Print	Signature	

Many arbitration hearings are convened to determine questions of procuring cause. For purposes of arbitration conducted by Boards and Associations of REALTORS®, procuring cause is considered to be the initiation of the unbroken chain of causal events that results in a successful transaction, defined as a sale that closes or a lease that is executed.

(Revised 05/15)

*Award becomes final twenty (20) days from the date the award is transmitted absent a procedural review request being filed.

**Appeal deposits Can Not exceed \$500.

2 Appx 000393

EXHIBIT 5



April 27, 2018

Nevada Real Estate Corp.
Mr. Wayne Wu (Agent) and
Judith Sullivan (Broker)
3512 Wynn Road
Las Vegas, NV 89103

VIA EMAIL and CERTIFIED MAIL

RE: Arbitration Case #16201A

Dear Mr. Wayne Wu,

Enclosed is a amended letter referencing the actual Award of Arbitrators decision for the above-referenced case. Please reference the "Award of Arbitrators" that actually states that \$3,448.83 to be paid by Respondent to Complainant, and the remaining \$10,346.49 be paid to Respondent from the title company.

The award must be paid no later than 5:00 p.m. on May 7, 2018, either directly to the Respondent or to the Greater Las Vegas Association of REALTORS®. The funds will be deposited in a GLVAR escrow account and are held by GLVAR pending the outcome of a procedural review and/or legal challenge. A request for procedural review must be filed within twenty (20) days of the award. Alternatively, a notice of legal challenge must be received within that same twenty (20) day period.

The appeal period runs until 5:00 p.m. on May 17, 2018. If no appeal is received by that date at the offices of the Greater Las Vegas Association of REALTORS®, 6360 S Rainbow Blvd., Las Vegas, NV 89118, a letter will be sent to all named parties and the file will be closed.

Please note our new location at 6360 S. Rainbow Boulevard, Las Vegas, NV 89118. If you should have any questions, please feel free to contact me.



GREATER LAS VEGAS ASSOCIATION OF REALTORS®

The Voice for Real Estate in Southern Nevada

1750 E. Sahara Avenue • Las Vegas, Nevada • 89104 • (702) 784-5000 • FAX (702) 784-5060



www.LasVegasRealtor.com



Thank you for participating in the Arbitration process.

Sincerely,

A handwritten signature in black ink, appearing to read "Ingrid Trillo", is written over the word "Sincerely,".

Ingrid Trillo, Director
GLVAR Professional Standards

Enclosures:

- A12 Award of Arbitrators
- A13 (Appeal) Request for Procedural Review (Arbitration)
- A7 Notice of Right to Challenge Tribunal Members
Designation of Counsel

Cc: Todd Kennedy, Esq., Black & Lobello
Michael Olsen, Esq., GoodsellOlsen
Judith Sullivan, Esq., Nevada Real Estate Corp
Betty Chan-Broker, Asian American Realty

GREATER LAS VEGAS ASSOCIATION OF REALTORS®

The Voice for Real Estate in Southern Nevada

1750 E. Sahara Avenue • Las Vegas, Nevada • 89104 • (702) 784-5000 • FAX: (702) 784-5000



www.LasVegasRealtor.com

Form #A-12

Greater Las Vegas Association of REALTORS®
1750 E Sahara Ave
Las Vegas, NV 89109
702-784-5000

Case #16201A

Award of Arbitrators

The undersigned, duly appointed as the Hearing Panel to hear and determine an arbitrable dispute between

Betty Chan, Asian American Realty and Wayne Wu and Judith Sullivan, Nevada Real Estate Corp

Complainant

Respondent

certify that on April 17th, 2018, we heard the evidence of the parties and having heard all the evidence and arguments

of the parties, a majority of the panel finds there is due and owing \$3,448.83 to be paid by Respondent to

Complainant. The non-prevailing party must, within ten (10) days following transmittal of the award, either (1)

pay the award to the party(ies) named in the award or (2) deposit the funds with the Professional Standards Administrator to be held in

an escrow or trust account maintained for this purpose. Failure to satisfy the award or to deposit the funds in the escrow or trust account

within this time period may be considered a violation of a membership duty and may subject the member to disciplinary action at the

discretion of the Board of Directors.

The deposits of the parties shall be used to cover the costs of arbitration or shall go into the general operating funds of the Association of REALTORS®. In the event the award of the arbitrators is in an amount other than that requested by any of the parties, the disposition of the deposits shall be directed by the arbitrators.

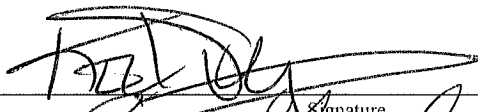
Requests for procedural review of the arbitration hearing procedures must be filed in writing with the President within twenty (20) days after the award has been transmitted to the parties* and must be accompanied by a deposit of \$ 250.00. **The request for procedural review must cite the alleged procedural deficiencies or other irregularities the party believes constitute a deprivation of due process. If no procedural review is filed within twenty (20) days following transmittal of the award and the non-prevailing party does not notify the Professional Standards Administrator that a legal challenge to the validity of the award has been initiated during that time, the award will be paid from the escrow or trust account. If a procedural review request is timely filed and the award is confirmed by the directors following the procedural review, the award will be paid from the escrow or trust unless the non-prevailing party advises the association in writing within fifteen (15) days from the transmittal of the directors' confirmation that a suit challenging the validity of the award has been filed. If the directors invalidate the award, the funds shall be returned to the individual who made the deposit.

Dated: April 17th, 2018

Arbitrators:

Keith Lynam (Chair)

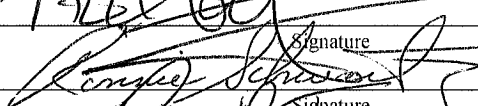
Type/Print



Chairperson

Ronnie Schwartz

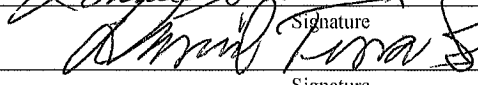
Type/Print



Panel Member

David Tina Sr.

Type/Print



Panel Member

Type/Print

Signature

Panel Member

Type/Print

Signature

Panel Member

Many arbitration hearings are convened to determine questions of procuring cause. For purposes of arbitration conducted by Boards and Associations of REALTORS®, procuring cause is considered to be the initiation of the unbroken chain of causal events that results in a successful transaction, defined as a sale that closes or a lease that is executed.

(Revised 05/15)

*Award becomes final twenty (20) days from the date the award is transmitted absent a procedural review request being filed.

**Appeal deposits Can Not exceed \$500.

2 Appx 000397

EXHIBIT 6

Code of Ethics and Arbitration Manual

2018



NATIONAL
ASSOCIATION of
REALTORS®

2 Appx 000399

Code of Ethics and Arbitration Manual

A Manual for use by Member Boards of the National Association to ensure due process in the conduct of hearings to enforce the Code of Ethics and in the arbitration of business disputes arising out of the real estate business. Professional standards procedures of Member Boards must reflect substantively the approved due process policies and procedures of this Manual in order to ensure Board entitlement to coverage by the Professional Liability Insurance Policy of the National Association in litigation involving the Board in connection with Board enforcement of the Code of Ethics, provided that such policies and procedures are consistent with applicable state law.

For ease of reference, all amended provisions where content has changed are shaded to highlight additions.

NOTE: All new and amended Case Interpretations become effective upon approval by the National Association's Professional Standards Committee and publication on www.nar.realtor. Case Interpretations approved by the Professional Standards Committee through 2017 are expected to be published on nar.realtor during the first quarter of 2018.

NATIONAL ASSOCIATION OF REALTORS®
430 North Michigan Avenue
Chicago, Illinois 60611-4087

REALTOR® is a registered collective membership mark which may be used only by real estate professionals who are members of the NATIONAL ASSOCIATION OF REALTORS® and subscribe to its strict Code of Ethics.

© 2018 NATIONAL ASSOCIATION OF REALTORS®

All Rights Reserved

2 Appx 000401

This Manual is dedicated to the memory of

Chesley J. (“Chet”) Smith

(1921–2001)

Chet Smith served America in war and peace for nearly four decades in the Army Air Corps and the U.S. Air Force, and he served REALTORS® for nearly a quarter century at the local, state, and national levels. His dedication to the REALTOR® organization was exceeded only by his dedication to his family, his faith in God, and his commitment to the Code of Ethics.

Table of Contents—

Code of Ethics and Arbitration Manual

Areas of the Manual Requiring Board/Association Action	i
The REALTOR®'s Code of Ethics—A Gift of Vision	v
Pathways to Professionalism	vii
Preface.....	1
Code of Ethics and Standards of Practice.....	5
Introduction.....	15
ETHICS	19
Statements of Professional Standards Policy	
Applicable to Ethics Proceedings.....	21
Part One — General Provisions Relating to Ethics	29
Section 1 — Definitions Relating to Ethics.....	29
Section 2 — Qualification for Tribunal.....	30
Section 3 — Duty to Give Evidence	31
Section 4 — Right of Counsel to Appear	31
Section 5 — Witnesses	32
Section 6 — Conduct of Hearing.....	32
Section 7 — Notices.....	32
Section 8 — Interpretations of Bylaws	33
Section 9 — Waiver.....	33
Section 10 — Communication and Clerical.....	33
Section 11 — Attempt to Influence Tribunal	33
Part Two — Membership Duties and Their Enforcement.....	35
Section 12 — Duties of Membership.....	35
Section 13 — Power to Take Disciplinary Action	35
Section 14 — Nature of Discipline.....	36
Section 15 — Selection and Appointment of the Grievance Committee	37
Section 16 — Selection and Appointment of the Professional Standards Committee	38
Part Three — The Grievance Committee	39
Section 17 — Authority.....	39
Section 18 — Function	39
Section 19 — Review of Ethics Complaint	39
Part Four — The Ethics Hearing	43
Section 20 — Initiating an Ethics Hearing.....	43
Section 21 — Ethics Hearing	46
Section 22 — Decision of Hearing Panel.....	48
Section 23 — Action of the Board of Directors.....	48
Section 24 — Initial Action by Directors	51
Section 25 — Preliminary Judicial Determination Prior to Imposition of Discipline.....	51
Appendix I to Part Four — Role of the Board of Directors in Reviewing and Ratifying Ethics Hearing Panel Decisions.....	52
Appendix II to Part Four — Appropriate Interpretation of “Pertinent Facts” as Used in Article 2 of the Code of Ethics	53
Appendix III to Part Four — Responsibility of Member Boards with Respect to Article 10 of the Code of Ethics	54

Appendix IV to Part Four — Rationale of Declaratory Relief Procedure	56
Appendix V to Part Four — Ethics Hearing Checklist with Administrative Time Frames	57
Appendix VI to Part Four — Cooperative Enforcement of the Code of Ethics	63
Appendix VII to Part Four—Sanctioning Guidelines.....	65
Appendix VIII to Part Four—Procedures for Consideration of Alleged Violations of Article IV, Section 2, Bylaws, NATIONAL ASSOCIATION OF REALTORS®.....	70
Appendix IX to Part Four—Presenting and Negotiating Multiple Offers	71
Appendix X to Part Four—Before You File an Ethics Complaint.....	73
Appendix XI to Part Four—Ethics Mediation	76
Ethics Mediation Resolution Agreement.....	78
Part Five — Conduct of an Ethics Hearing	79
Outline of Procedure for Conduct of an Ethics Hearing	79
Outline of Procedure for an Ethics Hearing Involving a Complaint and Counter-Complaint	81
Chairperson's Procedural Guide: Conduct of an Ethics Hearing	83
Chairperson's Procedural Guide: Conduct of an Appeal Hearing (Ethics)	86
Part Six — Specimen Forms for Ethics.....	89
Form #E-1 — Ethics Complaint	90
Form #E-2 — Notice to Respondent	91
Form #E-3 — Reply.....	92
Form #E-4 — Grievance Committee Request for Information (Ethics Complaint).....	93
Form #E-5 — Response to Grievance Committee Request for Information	94
Form #E-5.1 — Grievance Committee Report Form.....	95
Form #E-6 — Notice of Right to Challenge Tribunal Members	96
Form #E-7 — Challenge to Qualification by Parties to Ethics Proceeding.....	97
Form #E-8 — Official Notice of Hearing.....	98
Form #E-9 — Outline of Procedure for Ethics Hearing	99
Form #E-9a — Outline of Procedure for Ethics Hearing with Complaint and Counter-Complaint	100
Form #E-10 — Certificate of Qualification	102
Form #E-11 — Decision of Ethics Hearing Panel	103
Form #E-11a — Sample Findings of Fact.....	105
Form #E-12 — Action of the Board of Directors	106
Form #E-13 — Request for Appeal	108
Form #E-14 — Official Notice of Appeal Hearing.....	109
Form #E-15 — Checklist of Professional Standards Concerns.....	111
Form #E-16 — Seating Arrangements for Hearings.....	113
Form #E-17 — Ethics Activity Report	114
Form #E-18 — Outline of Content of Petition for Declaratory Relief	115
Form #E-19 — Sample Agreement to Establish Multi-Board (or Regional) Professional Standards Enforcement Procedures	116
Form #E-20 — Notice to Respondent (Ethics) and Optional Waiver of Right to Hearing	119
Form #E-21 — Sample Letter of Reprimand/Warning.....	121
Form #E-22 — Appeal of Grievance Committee Dismissal of Ethics Complaint	122

Form #E-23 — Action of the Appeal Hearing Tribunal (Ethics Complaint).....	123
ARBITRATION.....	125
Statements of Professional Standards Policy Applicable to Arbitration Proceedings.....	127
Part Seven — General Provisions Relating to Arbitration.....	135
Section 26 — Definitions Relating to Arbitration	135
Section 27 — Qualification for Tribunal.....	135
Section 28 — Duty to Give Evidence	136
Section 29 — Right of Counsel to Appear	137
Section 30 — Witnesses	137
Section 31 — Conduct of Hearing.....	137
Section 32 — Notices.....	138
Section 33 — Interpretations of Bylaws	138
Section 34 — Waiver.....	138
Section 35 — Communication and Clerical	138
Section 36 — Attempt to Influence Tribunal.....	138
Part Eight — Membership Duties and Enforcement	139
Section 37 — Duties of Membership.....	139
Section 38 — Selection and Appointment of the Grievance Committee	139
Section 39 — Selection and Appointment of the Professional Standards Committee.....	139
Part Nine — The Grievance Committee	141
Section 40 — Authority	141
Section 41 — Function	141
Section 42 — Grievance Committee's Review and Analysis of a Request for Arbitration.....	141
Part Ten — Arbitration of Disputes	143
Section 43 — Arbitrable Issues.....	143
Section 44 — Duty and Privilege to Arbitrate.....	144
Section 45 — Board's Right to Decline Arbitration	145
Section 46 — Duty to Arbitrate Before State Association	146
Section 47 — Manner of Invoking Arbitration.....	146
Section 48 — Submission to Arbitration	148
Section 49 — Initial Action by Directors	149
Section 50 — Preliminary Judicial Determination Prior to Imposition of Discipline	149
Section 51 — Arbitration Hearing.....	149
Section 52 — Settlement	150
Section 53 — The Award	150
Section 54 — Costs of Arbitration.....	151
Section 55 — Request for Procedural Review.....	151
Section 56 — Enforcement	152
Appendix I to Part Ten — Arbitrable Issues	153
Appendix II to Part Ten — Arbitration Guidelines.....	157
Arbitration Worksheet	165
Appendix III to Part Ten — Rationale of Declaratory Relief and of Judicial Enforcement in Matters of Arbitration.....	169
Appendix IV to Part Ten — Rationale for No Findings of Fact in Awards	170
Appendix V to Part Ten — Arbitration Hearing Checklist with Administrative Time Frames	171
Appendix VI to Part Ten — Mediation as a Service of Member Boards.....	176

Part Eleven — Interboard Arbitration Procedures.....	187
Part Twelve — Conduct of an Arbitration Hearing.....	191
Outline of Procedure for Conduct of an Arbitration Hearing	191
Outline of Procedure for an Arbitration Hearing Involving a Request and a Counter-Request.....	193
Chairperson's Procedural Guide: Conduct of an Arbitration Hearing	195
Chairperson's Procedural Guide: Conduct of an Interboard Arbitration Hearing.....	198
Chairperson's Procedural Guide: Conduct of a Procedural Review Hearing (Arbitration).....	201
Chairperson's Procedural Guide: Conduct of a Procedural Review Hearing (Interboard Arbitration)	204
Part Thirteen — Specimen Forms for Arbitration.....	207
Form #A-1 — Request and Agreement to Arbitrate	208
Form #A-2 — Request and Agreement to Arbitrate (Nonmember)	210
Form #A-3 — Notice to Respondent	212
Form #A-4 — Response and Agreement to Arbitrate	213
Form #A-5 — Grievance Committee Request for Information	215
Form #A-6 — Response to Grievance Committee Request for Information	216
Form #A-7 — Notice of Right to Challenge Tribunal Members	217
Form #A-8 — Challenge to Qualifications by Parties to Arbitration Proceeding.....	218
Form #A-9 — Official Notice of Hearing	219
Form #A-10 — Outline of Procedure for Arbitration Hearing.....	220
Form #A-10a — Outline of Procedure for Arbitration Hearing Involving a Request and a Counter-Request.....	221
Form #A-11 — Certificate of Qualification	223
Form #A-12 — Award of Arbitrators.....	224
Form #A-13 — Request for Procedural Review	225
Form #A-14 — Official Notice of Procedural Review.....	226
Form #A-14a — Decision of the Procedural Review Hearing Tribunal	227
Form #A-15 — Checklist of Professional Standards Concerns.....	228
Form #A-16 — Seating Arrangements for Hearings.....	230
Form #A-17 — Mediation Resolution Agreement.....	231
Form #A-17a — Notice of Settlement, Withdrawal of Arbitration Request ..	232
Form #A-17b — Arbitration Settlement Agreement.....	233
Form #A-18 — Arbitration Activity Report	234
Form #A-19 — Sample Agreement to Establish Multi-Board (or Regional) Professional Standards Enforcement Procedures.....	235
Form #A-20 — Appeal of Grievance Committee Dismissal or Classification of Arbitration Request.....	238
Form #A-21 — Action of the Appeal Hearing Tribunal (Arbitration Request).....	239
Part Fourteen — State Association Professional Standards Committee.....	241
Questions and Answers.....	245
Statements of Professional Standards Policy (Complete listing available online at www.nar.realtor)	
Professional Standards Training Guide (Available online at www.nar.realtor)	

Index and Case Interpretations 254

NOTE: To find any word or topic, go to www.nar.realtor and search the *Code of Ethics and Arbitration Manual* electronically for fast and comprehensive results.

NOTE: All new and amended Case Interpretations become effective upon approval by the National Association's Professional Standards Committee and publication on www.nar.realtor. Case Interpretations approved by the Professional Standards Committee through 2017 are expected to be published on nar.realtor during the first quarter of 2018.

ARBITRATION


Statements of Professional Standards Policy	
Applicable to Arbitration Proceedings.....	127
Part Seven — General Provisions Relating to Arbitration.....	135
Section 26 — Definitions Relating to Arbitration.....	135
Section 27 — Qualification for Tribunal.....	135
Section 28 — Duty to Give Evidence	136
Section 29 — Right of Counsel to Appear.....	137
Section 30 — Witnesses	137
Section 31 — Conduct of Hearing	137
Section 32 — Notices.....	138
Section 33 — Interpretations of Bylaws.....	138
Section 34 — Waiver.....	138
Section 35 — Communication and Clerical.....	138
Section 36 — Attempt to Influence Tribunal	138
Part Eight — Membership Duties and Enforcement.....	139
Section 37 — Duties of Membership.....	139
Section 38 — Selection and Appointment of the Grievance Committee	139
Section 39 — Selection and Appointment of the Professional Standards Committee	139
Part Nine — The Grievance Committee	141
Section 40 — Authority.....	141
Section 41 — Function	141
Section 42 — Grievance Committee's Review and Analysis of a Request for Arbitration	141
Part Ten — Arbitration of Disputes	143
Section 43 — Arbitrable Issues	143
Section 44 — Duty and Privilege to Arbitrate	144
Section 45 — Board's Right to Decline Arbitration	145
Section 46 — Duty to Arbitrate Before State Association.....	146
Section 47 — Manner of Invoking Arbitration	146
Section 48 — Submission to Arbitration	148
Section 49 — Initial Action by Directors	149
Section 50 — Preliminary Judicial Determination Prior to Imposition of Discipline.....	149
Section 51 — Arbitration Hearing	149
Section 52 — Settlement.....	150
Section 53 — The Award.....	150
Section 54 — Costs of Arbitration	151
Section 55 — Request for Procedural Review	151
Section 56 — Enforcement.....	152
Appendix I to Part Ten — Arbitrable Issues.....	153
Appendix II to Part Ten — Arbitration Guidelines.....	157
Arbitration Worksheet	165
Appendix III to Part Ten — Rationale of Declaratory Relief and of Judicial Enforcement in Matters of Arbitration	169
Appendix IV to Part Ten — Rationale for No Findings of Fact in Awards	170
Appendix V to Part Ten — Arbitration Hearing Checklist with Administrative Time Frames	171
Appendix VI to Part Ten — Mediation as a Service of Member Boards	176

Part Eleven — Interboard Arbitration Procedures.....	187
Part Twelve — Conduct of an Arbitration Hearing	191
Outline of Procedure for Conduct of an Arbitration Hearing	191
Outline of Procedure for an Arbitration Hearing Involving a Request and a Counter-Request	193
Chairperson's Procedural Guide: Conduct of an Arbitration Hearing	195
Chairperson's Procedural Guide: Conduct of an Interboard Arbitration Hearing	198
Chairperson's Procedural Guide: Conduct of a Procedural Review Hearing (Arbitration)	201
Chairperson's Procedural Guide: Conduct of a Procedural Review Hearing (Interboard Arbitration).....	204
Part Thirteen — Specimen Forms for Arbitration	207
Form #A-1 — Request and Agreement to Arbitrate	208
Form #A-2 — Request and Agreement to Arbitrate (Nonmember)	210
Form #A-3 — Notice to Respondent	212
Form #A-4 — Response and Agreement to Arbitrate.....	213
Form #A-5 — Grievance Committee Request for Information.....	215
Form #A-6 — Response to Grievance Committee Request for Information	216
Form #A-7 — Notice of Right to Challenge Tribunal Members	217
Form #A-8 — Challenge to Qualifications by Parties to Arbitration Proceeding	218
Form #A-9 — Official Notice of Hearing	219
Form #A-10 — Outline of Procedure for Arbitration Hearing.....	220
Form #A-10a — Outline of Procedure for Arbitration Hearing Involving a Request and a Counter-Request	221
Form #A-11 — Certificate of Qualification	223
Form #A-12 — Award of Arbitrators	224
Form #A-13 — Request for Procedural Review	225
Form #A-14 — Official Notice of Procedural Review.....	226
Form #A-14a — Decision of the Procedural Review Hearing Tribunal	227
Form #A-15 — Checklist of Professional Standards Concerns.....	228
Form #A-16 — Seating Arrangements for Hearings.....	230
Form #A-17 — Mediation Resolution Agreement.....	231
Form #A-17a — Notice of Settlement, Withdrawal of Arbitration Request ...	232
Form #A-17b — Arbitration Settlement Agreement.....	233
Form #A-18 — Arbitration Activity Report	234
Form #A-19 — Sample Agreement to Establish Multi-Board (or Regional) Professional Standards Enforcement Procedures	235
Form #A-20 — Appeal of Grievance Committee Dismissal or Classification of Arbitration Request	238
Form #A-21 — Action of the Appeal Hearing Tribunal (Arbitration Request).....	239

Statements of Professional Standards Policy Applicable to Arbitration Proceedings

*Approved by the Professional Standards Committee and the Board of Directors
of the NATIONAL ASSOCIATION OF REALTORS®*

1. Article 17, Code of Ethics

 *In the event of contractual disputes or specific non-contractual 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 mediate the dispute if the Board requires its members to mediate. If the dispute is not resolved through mediation, or if mediation is not required, REALTORS® shall submit the dispute to arbitration in accordance with the policies of the Board rather than litigate the matter.*

In the event clients of REALTORS® wish to mediate or arbitrate contractual disputes arising out of real estate transactions, REALTORS® shall mediate or arbitrate those disputes in accordance with the policies of the Board, provided the clients agree to be bound by any resulting agreement or award.

The obligation to participate in mediation and arbitration contemplated by this Article includes the obligation of REALTORS® (principals) to cause their firms to mediate and arbitrate and be bound by any resulting agreement or award. (Amended 1/12)

2. Circumstances under which REALTORS® must submit to arbitration*

- (a) Every REALTOR® of the Board who is a REALTOR® principal, every REALTOR® principal who participates in a Board's MLS where they do not hold Board membership and every nonmember broker or licensed or certified appraiser who is a Participant in the Board's MLS shall have the right to invoke the Board's arbitration facilities in any dispute arising out of the real estate business with a REALTOR® principal in another real estate firm or with that firm (or both), or nonmember broker/appraiser or their firm (or both) who is a Participant in the Board's MLS. (Revised 5/01)
- (b) A REALTOR® other than a principal or a REALTOR-ASSOCIATE® shall have the right to invoke the arbitration facilities of the Board in a business dispute with a REALTOR® or REALTOR-ASSOCIATE® in another firm or with their firm (or both), whether in the same or a different Board, provided the REALTOR® principal with whom he is associated joins in the arbitration request, and requests arbitration with the REALTOR® principal of the other firm or with their firm (or both). Arbitration in such cases shall be between the REALTOR® principals or their firms (or both). REALTOR® nonprincipals and REALTOR-ASSOCIATE®s who invoke arbitration in this

manner, or who are affiliated with a respondent and have a vested financial interest in the outcome, have the right to be present throughout the proceedings and to participate but are not considered to be parties. (Amended 5/01)

- (c) A client of a REALTOR® principal may invoke the facilities of the Board in a business dispute with a REALTOR® principal or the REALTOR®'s firm (or both) arising out of an agency relationship, provided the client agrees to be bound by the arbitration. In the event of such request and agreement the Board will arbitrate the dispute subject to the Board's right to decline arbitration based on the amount involved or the legal complexity of the dispute. A REALTOR® principal may also invoke arbitration against his client but no arbitration may be held without the client's voluntary agreement to arbitrate and to be bound by the decision. (Revised 5/01)

3. Circumstances under which arbitration is contingent upon the REALTOR®'s voluntary participation*

- (a) REALTORS® and REALTOR-ASSOCIATE®s who are or were affiliated with the same firm shall have the right to invoke the arbitration facilities of the Board, provided each party voluntarily agrees to the arbitration in writing and the Board finds the matter properly subject to arbitration. This privilege as stated applies to disputes arising when the parties are or were affiliated with the same firm, irrespective of the time request is made for such arbitration. (Amended 11/95)
- (b) A REALTOR® principal may invoke the arbitration facilities of the Board in a dispute arising out of the real estate business with a nonmember broker, provided each party agrees in writing to the arbitration and provided the Board finds the matter properly subject to arbitration. However, it shall be optional with the member as to whether he will submit to a claim to arbitration by a nonmember broker who is not an MLS Participant. A nonmember broker who is not an MLS Participant or nonmember salesperson may invoke the arbitration facilities of the Board of REALTORS® in cases where they believe they have an arbitrable dispute with a REALTOR®. Under these circumstances, REALTORS® are not required to agree to or participate in arbitration. (Revised 11/12)

*Refer to **Part Ten**, Section 44 of this Manual.

*Refer to **Part Ten**, Section 44 of this Manual.

- (c) Business disputes between a REALTOR® principal and a customer of the REALTOR® principal may be arbitrated by the Board if a written contractual relationship has been created by a 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. (Amended 11/95)

4. Board's right to release parties from their obligation to arbitrate

If either the Grievance Committee or the arbitration panel determines that because of the amount involved or the legal complexity of the dispute the dispute should not be arbitrated, the arbitration shall automatically terminate unless either of the parties to the dispute appeals the decision to terminate the proceedings to the Board of Directors within twenty (20) days of the date of notice that the Grievance Committee or the arbitration panel declined to continue the proceeding. The Hearing Panel can also dismiss the arbitration request if the Hearing Panel concludes the matter is not arbitrable. In the event of such an appeal, the Grievance Committee or the arbitration panel shall report its conclusions to the Board of Directors and, if the Board of Directors concurs, the arbitration shall terminate and the parties shall be relieved of their obligation to arbitrate. In this event, or in the event of no appeal, any deposits made by the parties shall be returned to them. However, if the Board of Directors decides that the arbitration should proceed, the matter shall be remanded to the Grievance Committee or the arbitration panel for further proceedings. (Revised 11/95)

5. Failure to submit to arbitration

If the complaint against a REALTOR® principal is that he has improperly refused to submit a dispute to arbitration (or to mediation if required by the Board), the complaint shall not be referred to the Grievance Committee or a Hearing Panel but shall be brought before the Board of Directors at the next regular meeting or at a special meeting called by the President for that purpose. The procedures for notices, time of notice, and hearing prescribed for matters before a Hearing Panel shall apply. The sole question of fact for the Directors to decide will be whether the respondent has failed to submit an arbitrable matter to arbitration or mediation. Upon determination that the member has refused to arbitrate or mediate a properly arbitrable matter, the Board of Directors may direct the implementation of appropriate sanction and should, if it has reason to believe that the imposition of sanction will become the basis of litigation and a claim for damages consequent to such sanction, delay the effective date of implementing the sanction to a date following receipt by the Board of a judicial decision in a petition for declaratory relief filed by the Board to confirm the propriety of its action. (Revised 11/11)

6. Failure to abide by an award rendered by a Hearing Panel

If the complaint against the REALTOR® principal is that, having properly submitted a dispute to arbitration, he has refused to abide by an award, such refusal should not be referred to the Grievance

Committee as a violation of the Code of Ethics unless such refusal reflects an established pattern or practice of noncompliance with the commitment to arbitrate. A refusal to abide by an award in arbitration should be enforced in the manner set forth in **Part Ten, Arbitration of Disputes, Section 56, Enforcement.** (Revised 11/95)

7. No predetermination of any award in an arbitrable matter (Interpretation No. 31, Article I, Section 2, Bylaws, NATIONAL ASSOCIATION OF REALTORS®)

A Board rule or a rule of a Multiple Listing Service owned by, operated by, or affiliated with a Board which establishes, limits, or restricts the REALTOR® in his relations with a potential purchaser, affecting recognition periods or purporting to predetermine entitlement to any award in arbitration, is an inequitable limitation on its membership.

Explanation of Official Interpretation No. 31: *In essence, this is a specific Interpretation of the general rule established in Interpretation No. 6 that a Board may not have a rule which restricts or limits the REALTOR® in the conduct of his business unless it concerns ethical practice. Thus, a rule of a Board or Multiple Listing Service which would determine a protection period in reference to a prospective purchaser is an inequitable limitation. Further, the Board or its MLS may not establish a rule or regulation which purports to predetermine entitlement to any awards in a real estate transaction. If controversy arises as to entitlement to any awards, it shall be determined by a hearing in arbitration on the merits of all ascertainable facts in the context of the specific case of controversy.**

8. Holding of disputed funds by the Board of Directors

Member Boards shall not make a requirement that disputed funds be deposited with the Board by the respondent in an arbitration matter prior to an arbitration hearing, as it is beyond the legitimate authority of the Board or its Professional Standards Committee. However, this does not relieve REALTORS® of their responsibility to be prepared to abide by any determination made by the Board's arbitration panel and to satisfy any award consistent with Section 53 of the *Code of Ethics and Arbitration Manual.* (Revised 11/16)

9. Arbitration under circumstances other than those described in Section 44

A Member Board may provide arbitration procedures only in those instances described in **Part Ten, Section 44, Duty and Privilege to Arbitrate,** in this Manual.

*In connection with this National Association policy, refer to **Part Ten, Appendix II, Arbitration Guidelines,** in this Manual.

10. Determining jurisdiction for the conduct of arbitration hearings

Absent an interboard arbitration agreement directing otherwise, the following factors determine the appropriate Board to conduct arbitration hearings in instances where parties hold membership in more than one Board or MLS: *(Revised 11/02)*

- Where all parties hold REALTOR® membership or hold MLS participatory rights under the universal access to services component of Board of Choice in only one Board, that Board shall conduct arbitration.
- Where all parties hold REALTOR® membership or hold MLS participatory rights under the universal access to services component of Board of Choice in the same two (or more) Boards, arbitration will be conducted by the Board in which the property giving rise to the dispute is located. If the property is not within the jurisdiction of those Boards, the Board in which the arbitration request is filed will conduct arbitration.
- Where all parties do not hold membership in the same Board, and do not have MLS participatory rights under the universal access to services component of Board of Choice through the same Board, complainants may, at their discretion, invoke interboard arbitration or, alternatively, file arbitration requests with any Board in which the respondent holds REALTOR® membership or holds MLS participatory rights under the universal access to services component of Board of Choice. Pursuant to this provision, Boards must provide arbitration services in circumstances where it is determined by the Grievance Committee that an arbitrable dispute exists and the dispute is subject to mandatory arbitration. *(Revised 11/00)*

12. Adoption of Code of Ethics or Standards of Practice by Member Boards and State Associations

A local Board or State Association shall not adopt any set of rules, regulations, policies, and practices which purport to be in lieu of, in addition to, or an extension of the Code of Ethics and Standards of Practice of the NATIONAL ASSOCIATION OF REALTORS®. *(Amended 11/89)*

13. Articles and publications on the Code of Ethics

The National Association reserves the exclusive right to interpret the Code, its applications, and its proper enforcement to Member Boards and Board Members.

The National Association does not endorse or recommend any article or publication concerning ethics which is not published by the National Association or its institutes, societies, and councils and authorized by the National Association.

15. Arbitration between Board Members who are or were affiliated with the same firm

No Member Board may require REALTORS® and REALTOR-ASSOCIATE®s affiliated with the same firm to arbitrate disputes between themselves unless both parties voluntarily agree to arbitration in writing, and provided the Board finds the matter properly subject to arbitration.

18. Local Member Board requests for the conduct of ethics and arbitration hearings by the State Association

A local Board, prior to referring an ethics complaint or arbitration request for review to the State Association, should exhaust all efforts to impanel an impartial panel to conduct either the original hearing or the appeal or procedural review. These efforts may include the appointment of knowledgeable members of the Board on an ad hoc basis to serve either on a Hearing Panel or on behalf of the Board of Directors. If, after making all reasonable efforts, the Board still cannot impanel an impartial tribunal, the Board may refer the matter to the State Association, and the State Association may delegate to another Board or a regional enforcement facility the authority to hear the case on behalf of the State Association. No Board or regional enforcement facility, however, may be required to accept this delegation of authority. If no other entity is amenable to conducting the review, the State Association shall be responsible for conducting the hearing. State Associations may, at their discretion, require that the President or Association Executive of the Board referring an ethics complaint or arbitration request certify that all reasonable efforts to impanel an impartial panel had been made, and may further require that those efforts be documented. *(Amended 11/03)*

In instances where a local Member Board determines by resolution of its Board of Directors that it is incapable of providing an impartial panel for the conduct of an ethics or arbitration hearing (or appeal or procedural review hearing), the complaint or the request for arbitration (and the ethics appeal or procedural review request, if any) may be referred by the Board President to the State Association of REALTORS® for a hearing. With regard to requests for arbitration, in the event the State Association declines to conduct the arbitration or to delegate its authority to another Board or regional enforcement facility, the parties shall be relieved of their obligation to arbitrate as established in Article 17 of the Code of Ethics. With regard to alleged violations of the Code of Ethics, such allegations may be received and considered by the State Association and (1) dismissed as unworthy of further consideration, (2) heard by a Hearing Panel of the State Association's Professional Standards Committee, or (3) referred to another Board or regional enforcement facility. If referred for a hearing to the State Association's Professional Standards Committee or to another local Board or regional enforcement facility, a Hearing Panel will be appointed to conduct the hearing and forward the determination and sanction, if any, to the local Member Board. The Board of Directors of the local Member Board shall then

implement the decision of the Hearing Panel in strict accordance with its terms and conditions. Any requests for appeal or procedural review should be considered by an appropriate body of the State Association or “deputized” local Board or regional enforcement facility in accordance with the relevant established professional standards procedures. *(Amended 11/93)*

19. Confidentiality of determinations rendered in ethics and arbitration hearings

The allegations, findings, and decisions rendered in ethics and arbitration hearings are confidential and should not be reported or published by the Board, any member of a tribunal, or any party under any circumstances except those established in the *Code of Ethics and Arbitration Manual* of the National Association as from time to time amended. *(Revised 11/91)*

20. Statement of policy related to Article 17 of the Code of Ethics

Article 17 is not to be construed as precluding a REALTOR® who is a defendant in litigation from joining a cooperating agent and/or subagent in the litigation.

21. Adoption of the Code of Ethics and Arbitration Manual by Member Boards

Member Boards and State Associations are not required to adopt the *Code of Ethics and Arbitration Manual* verbatim, but no Member Board may adopt or follow any procedures inconsistent with the precepts enunciated in the *Code of Ethics and Arbitration Manual* of the National Association as from time to time amended.

22. Board and State Association publications or audiovisual programs concerning the Code of Ethics and its enforcement

Any articles, audiovisual programs, or any type of publication related to the Code of Ethics, its interpretation, or its enforcement that have not been prepared by or approved by the Professional Standards Committee of the National Association must be prefaced by a statement indicating that the contents reflect the understanding and opinions of the author(s) and do not represent an official expression of policy by the National Association. To the extent that any article, audiovisual program, or publication prepared by any individual or organization other than the National Association varies in any degree from the Code of Ethics, its interpretation, or its enforcement procedures as approved by the Professional Standards Committee of the National Association, the policies of the National Association shall take precedence.

No article, audiovisual program, or other publication may be designated as an official expression of policy concerning the Code of Ethics, its interpretation, or its enforcement without the express written approval of the National Association.

Local Boards and State Associations are encouraged to consider preparation of such articles, audiovisual programs, or other

publications and are requested to submit them to the Professional Standards Committee or its staff representatives for review and approval prior to publication.

23. Disputes arising out of circumstances occurring prior to the time a REALTOR® is elected to board membership

While REALTORS® are encouraged to resolve all disputes through the arbitration facilities of their Board or Boards, the intent of Article 17 is that only disputes arising from facts occurring after each of the parties has become a REALTOR® are subject to mandatory arbitration under Article 17 of the Code of Ethics.

24. Formulation of Multi-Board or Regional Grievance or Professional Standards Committees for Code enforcement in areas where Boards have limited membership

Member Boards are authorized to enter into collective agreements by which the Boards would share the responsibility for enforcement of the Code of Ethics, including the conduct of arbitration hearings, on a joint basis.*

25. Expenses related to conduct of hearings by Multi-Board or regional Grievance or Professional Standards Committees

Expenses related to the conduct of hearings by a multi-Board or regional Grievance Committee or Professional Standards Committee shall be as established by written agreement between the signatory Boards. The expenses of such hearings shall be borne by the signatory Boards and shall not be supported by fees charged to the members other than as otherwise authorized by the *Code of Ethics and Arbitration Manual*. *(Revised 11/98)*

26. Burdens and standards of proof in arbitration and ethics hearings

In any ethics hearing or other hearing convened to consider alleged violations of membership duties and in any arbitration hearing, the ultimate burden of proving that the Code of Ethics or other membership duty has been violated, or that an arbitration award should be issued to the requesting party, is at all times on complainants and parties requesting arbitration.

The standard of proof on which an arbitration hearing decision is based shall be a “preponderance of the evidence.” Preponderance of the evidence shall be defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the facts sought to be proved are more probable than not.

*A sample format agreement approved by the Professional Standards Committee to establish a collective agreement is included as Specimen Forms #E-19 in **Part Six** and #A-19 in **Part Thirteen** of this Manual.

“Clear, strong, and convincing” shall be the standard of proof by which alleged violations of all membership duties, including violations of the Code of Ethics, are determined. Clear, strong, and convincing shall be defined as that measure or degree of proof which will produce a firm belief or conviction as to the allegations sought to be established. *(Revised 2/92)*

Appeals of ethics Hearing Panel decisions based on an alleged misapplication or misinterpretation of an Article(s) of the Code of Ethics shall be determined based on the correctness of the Hearing Panel’s decision.

Appeals of ethics Hearing Panel decisions based on an alleged procedural deficiency or failure of due process, and procedural review of arbitration hearing procedures shall be determined based on whether the effect of the deficiency was to deny the appellant a fair hearing.

Appeal panels may modify discipline proposed by Hearing Panels only in instances where the discipline proposed is not authorized or where the appeal panel concludes that the Hearing Panel abused its discretion. *(Adopted 11/99)*

27. Consolidation of arbitration claims arising out of the same transaction

When reviewing requests for arbitration, Grievance Committees should try to ensure that all appropriate parties are named as complainants or respondents. If it appears that there may be related claims involving other parties arising out of the same facts, the Grievance Committee may suggest to either the complainant or respondent (or both) that they may wish to request arbitration with additional respondents or third-party respondents so that all related claims may be resolved through a single arbitration hearing. Upon motion by either the complainant or the respondent, an arbitration request may be amended to include any additional appropriate parties, or separate arbitration requests may be filed naming additional parties, so that all related claims arising out of the same transaction can be resolved at the same time. *(Revised 11/92)*

28. Participation in litigation rather than arbitration

In instances where a REALTOR® is a party to litigation involving an otherwise arbitrable matter and none of the parties invokes the Board’s arbitration facility prior to or during the course of litigation, any member involved in the litigation may not thereafter be charged with failing or refusing to arbitrate. *(Revised 11/92)*

30. Participation in voluntary arbitration

Article 17 is not to be construed as precluding a REALTOR® from instituting litigation or causing a dispute to be brought before an alternative dispute-resolving forum other than the Board of REALTORS® under those circumstances where submission of the dispute to the Board would be voluntary. *(Adopted 5/88)*

31. “Cooperation” defined

The obligation to cooperate, established in Article 3 of the Code of Ethics, relates to a REALTOR®’s obligation to share information on listed property and to make property available to other brokers for showing to prospective purchasers when it is in the best interest of the seller. An offer of cooperation does not necessarily include an offer to compensate a cooperating broker. Compensation in a cooperative transaction results from either a blanket offer of subagency made through MLS or otherwise, or offers to compensate buyer agents, or, alternatively, individual offers made to subagents or to buyer agents, or other arrangements as negotiated between listing and cooperating brokers prior to the time an offer to purchase is submitted. *(Revised 11/09)*

33. Use of panels in place of Committees and the Board of Directors

Any matter brought before the Grievance Committee, Professional Standards Committee, or Board of Directors may be considered by a panel of members or Directors appointed by the President for that purpose (or, alternatively, by the Board’s Executive Committee). Three (3) or more members shall constitute a panel of the Grievance and Professional Standards Committees that can act on behalf of those committees. Five (5) Directors or a quorum of the Board of Directors, whichever is less, shall constitute a panel of the Board of Directors, that can act on behalf of the Board of Directors. The decision of the panel (or Executive Committee) shall be final and binding and shall not be subject to further review by the full Committee or the full Board of Directors, except as otherwise provided in this Manual.

Panel members should be experienced, knowledgeable persons of judicial temperament.

In appointing such a panel, the President should consider the following recommended criteria:

- number of years as a REALTOR®
- number of years in the real estate business
- primary and secondary fields of real estate endeavor/expertise
- participation in post-licensing real estate education
- training in the Code of Ethics
- position in firm (principal, nonprincipal)
- size of firm
- common sense
- open-mindedness
- familiarity with state(s) laws and regulations
- receptiveness to instruction/training
- other relevant professional or procedural training

Associations are also authorized to adopt policies and procedures assigning Grievance Committee functions to a panel of the Professional Standards Committee. Where Grievance Committee functions are delegated to a panel of the Professional Standards Committee, all provisions of this Manual applicable to Grievance Committees will apply to a panel of the Professional Standards

Committee acting in that capacity. Three (3) or more members shall constitute a panel of the Professional Standards Committee to assume the responsibilities of the Grievance Committee. *(Adopted 05/15)*

When possible, panels should be strongly encouraged to use conference calls or alternative communication technologies for meetings other than hearings and appeals/procedural reviews to expedite the decision-making process. Use of conference calls or alternative communication technologies during the course of a hearing shall be governed by Professional Standards Policy Statement #56, "Remote" Testimony. *(Revised 11/14)*

35. Separation of ethics complaint and arbitration request

When an ethics complaint and an arbitration request are filed at the same time arising out of the same facts and circumstances, the arbitration hearing shall be held first and the ethics hearing shall be conducted by a different Hearing Panel after the conclusion of the arbitration hearing. *(Adopted 11/93)*

38. Hearing Panels to be conversant with applicable state law under board of choice across state lines

Where membership is provided under board of choice across state lines, Hearing Panels must be conversant with and apply the relevant state's laws and regulations in determining how the Code of Ethics will be interpreted/ applied in instances where the underlying transaction occurred out of state and involved a respondent licensed in that state. *(Adopted 11/95)*

39. Awards escrowed under board of choice across state lines

Where one or more parties to an arbitrable issue have obtained membership under board of choice across state lines, awards rendered shall be escrowed by the Board that conducted arbitration in a manner consistent with the procedures in Section 53, The Award, *Code of Ethics and Arbitration Manual*. *(Adopted 11/95)*

40. Cooperative enforcement agreements

To ensure fair, impartial and knowledgeable enforcement of the Code of Ethics (including arbitration) there must be adequately large groups of knowledgeable, trained REALTORS® and REALTOR-ASSOCIATES® from which the necessary committees and tribunals can be appointed. To this end, Boards and Associations are required to enter into cooperative enforcement agreements to ensure Boards and/or Associations have an aggregate total of at least three hundred fifty (350) primary REALTOR® and/or REALTOR-ASSOCIATE® members from which to compose Hearing Panels. It is recommended but not required that representation/participation in any multi-board regional cooperative enforcement agreement be on a pro-rata basis. This requirement does not apply in

instances where, in the opinion of the state association, unique geographical considerations (e.g., islands, remote locale, etc.), logistical difficulties or other impediments make participation prohibitive. All Boards regardless of size (except Commercial Overlay Boards) must participate with at least one other Board (which may be the state association) in a cooperative enforcement agreement. *(Revised 5/08)*

41. Arbitration Guidelines to parties

Boards conducting arbitration are required to provide all parties and panel members with the Arbitration Guidelines and Arbitration Worksheet prior to commencement of any arbitration hearing. *(Revised 11/16)*

42. Previously dismissed ethics complaints/ arbitration requests

If an ethics complaint or arbitration request is received and reviewed by a Board's Grievance Committee or Board of Directors and is dismissed as not warranting a hearing, the respondent(s) shall not subsequently become subject to the same (or substantially similar) ethics complaint or arbitration request in the same or another Board. *(Adopted 5/97)*

Dismissal of an arbitration request by a Board of REALTORS® because the dispute is not arbitrable based on Article 17 or other grounds established in the *Code of Ethics and Arbitration Manual*, does not prohibit REALTORS® from exercising other remedies that may be available to them, including litigation. *(Adopted 5/99)*

43. Duty to arbitrate personal

The privilege to invoke arbitration and the duty to arbitrate is personal. Although any REALTOR® principal may invoke the arbitration facilities of a Board and be required to arbitrate, REALTOR® principals may not delegate this privilege or obligation. *(Adopted 11/98)*

44. Effective dates of the Code of Ethics and Standards of Practice and the Code of Ethics and Arbitration Manual.

All changes to the Code of Ethics and Standards of Practice carry an annual effective date of January 1 of the year following their approval by the Board of Directors of the National Association and, where necessary, by the Delegate Body. *(Adopted 11/89)*

To ensure consistent, uniform enforcement of the Code of Ethics nationwide, all changes in professional standards policy normally incorporated into the National Association's *Code of Ethics and Arbitration Manual* become effective on January 1 of the year following their approval by the Board of Directors of the National Association. Unless specifically provided otherwise by the Board of Directors, associations shall have sixty (60) days from their effective date to adopt them. *(Revised 05/15)*

All new and amended Case Interpretations become effective upon approval by the National Association's Professional Standards Committee and publication on www.nar.realtor. (*Adopted 5/98*)

46. Duty to arbitrate after membership lapses or is terminated

The duty to submit to arbitration continues in effect after membership lapses or is terminated provided that the dispute arose prior to the time the respondent's membership lapsed or was terminated. (*Adopted 5/99*)

49. Professional standards administration training

Enforcement of the Code of Ethics is a privilege and responsibility of each Board and Association as established in Article IV of the *Bylaws* of the NATIONAL ASSOCIATION OF REALTORS®. Every Board and Association must designate a person or entity responsible for administration of professional standards processes. Persons primarily responsible for administration of professional standards processes must successfully complete training every four (4) years on professional standards administration meeting the learning objectives and minimum criteria established by the NATIONAL ASSOCIATION OF REALTORS® from time to time. (*Revised 11/14*)

50. Separate subcommittees for ethics, arbitration, and mediation

Boards and Associations can meet their professional standards enforcement responsibility through separate committees or subcommittees specifically delegated responsibility for arbitration, mediation, the conduct of hearings to resolve ethics complaints and alleged violations of other membership duties and to conduct ombudsman programs. (*Revised 05/15*)

51. Mediators used by Boards

Mediators used by Boards and Associations to resolve contractual disputes and noncontractual disputes defined in Standard of Practice 17-4 may be REALTORS®, Board/Association staff, or others whose services a Board/Association chooses to utilize. (*Adopted 11/99*)

52. Boards to provide mediation

The duty of local Boards and Associations to provide mediation services established in Article IV, Section 2 of the *Bylaws* of the NATIONAL ASSOCIATION OF REALTORS® can be met through provision of mediation services by local Boards and Associations; through multi-Board/regional cooperative enforcement agreements; or through agreement/arrangement with the state association.

Upon receipt of an arbitration request, mediation services shall be offered to disputants prior to review of the arbitration request by the Grievance Committee except where any party requests

the Grievance Committee's determination whether an arbitrable issue exists between the named parties and whether the parties would be required to arbitrate.

If the association requires its members to participate in mediation and the Grievance Committee determines that an arbitrable issue exists, the obligation to participate in mediation remains in effect.

Where any party initially declines to mediate pending the Grievance Committee's review of the arbitration request, the parties shall in all instances again be offered the opportunity to mediate following the Grievance Committee's review. (*Adopted 11/99, Amended 5/12*)

53. Dispute resolution fees not to exceed maximum arbitration fee

Effective January 1, 2002, the fees charged for Board/Association dispute resolution services, i.e., mediation and arbitration, may not exceed the maximum arbitration filing fees authorized in the *Code of Ethics and Arbitration Manual* of the NATIONAL ASSOCIATION OF REALTORS®. Boards/Associations may, as a matter of local option, retain part or all of the filing fees paid, irrespective of whether disputes are resolved through mediation or arbitration. (*Adopted 11/99*)

54. Personal safety in professional standards proceedings

Boards and Associations should take reasonable steps to ensure the personal safety of parties, panelists, witnesses, staff, and others participating in professional standards proceedings. In instances where, in the opinion of the presiding committee or Hearing Panel Chair, there is an unacceptable risk posed to the safety of any participant, the proceedings will be recessed so the Chair can consult with staff, Board or Association elected leadership, or Board or Association counsel to identify and take steps to ensure the safety of all participants and to permit the proceedings to resume.

If after consulting with staff, Board or Association counsel, and any other appropriate party or agency (including law enforcement authorities), and after taking reasonable steps to attempt to resume the proceeding while ensuring the safety of all participants, the Board of Directors concludes it will be unduly difficult or impossible to ensure the safety of all participants, the proceedings will be postponed indefinitely and resumed only when the Board of Directors (or its successor) concludes that the proceedings can be safely resumed. Where proceedings are postponed indefinitely by action of the Board of Directors, a memorandum detailing the circumstances shall be appended to the case file and maintained on a permanent basis. The Board of Directors may, at their discretion, share any or all information including the complaint, response, or other documentation or information in their possession with appropriate law enforcement or other government agencies. (*Adopted 5/00*)

55. Transmitting devices

Cellular phones, two-way radios and other transmitting devices may not be operated during ethics hearings, arbitration hearings, appeal hearings, and procedural review hearings absent specific, advance authorization from the panel chair. (*Adopted 11/04*)

56. “Remote” testimony

The policies and procedures established in the National Association’s *Code of Ethics and Arbitration Manual* contemplate that parties and their witnesses will participate in ethics and arbitration hearings in the physical presence of hearing panels and the respective parties. Parties and their witnesses may request permission to participate in such proceedings via teleconference or videoconference. (*Revised 11/14*)

Parties and witnesses to ethics and arbitration hearings may be permitted to participate in those hearings by teleconference or videoconference at the discretion of the hearing panel chair. Only those parties eligible to attend the entire hearing in person would be entitled to participate “remotely” for the entirety of the hearing. Witnesses may only participate remotely for their own testimony. (*Revised 11/14*)

Hearing panels, association staff, or association counsel should employ steps to verify the identity of “remote” participants, to preclude unauthorized individuals from being in the presence of the “remote” participant, and to employ appropriate safeguards to ensure confidentiality of the proceedings. (*Adopted 11/14*)

The costs of “remote” testimony shall be the responsibility of the party requesting the opportunity to participate or offer testimony by teleconference or videoconference. (*Adopted 11/04*)

58. Circumstances under which disputes may be mediated if REALTORS® voluntarily agree

While mediation can only be mandated under the circumstances expressly established in Article 17 of the Code of Ethics, Boards and Association may, at their discretion, offer mediation, and REALTORS® may voluntarily participate in mediation, where disputing parties voluntarily request mediation. The circumstances under which voluntary mediation may occur include:

- (1) disputes between REALTORS® associated with different firms where no arbitration request has been filed
- (2) disputes between REALTORS® and their clients where no arbitration request has been filed
- (3) disputes between REALTORS® who are or were affiliated with the same firm when the dispute arose
- (4) disputes between REALTORS® and non-member brokers
- (5) disputes between REALTORS® and their customers

(*Adopted 5/11*)

59. Associations to provide ombudsman services

Every local and state association of REALTORS® is required to offer, either directly or as part of a cooperative enforcement agreement (consistent with Professional Standards Policy Statement #40, Cooperative Enforcement Agreements), ombudsman services to members, clients, and consumers on or before January 1, 2016. (*Adopted 11/14*)

60. “Alternate” hearing panelists

Associations may, but are not required to, convene hearing panels that include one or more alternate members. If alternates are present at hearings, they should be seated apart from the hearing panel, may not participate in any way unless called on to replace a panel member, and are bound by the same duties that are applicable to panel members.

If alternate panel members are not called on to replace a panel member and if the association’s policy allows them to be present at post-hearing executive session deliberations, alternates may not be involved in deliberating or deciding the matter before the hearing panel. (*Adopted 11/14*)

61. Arbitration procedures governing nonmembers


Nonmembers arbitrating pursuant to an agreement to participate in a REALTOR® association owned and operated MLS shall be subject to all obligations under an association’s arbitration procedures, including, but not limited to, the obligation to pay an award promptly or deposit a like amount in the event of a challenge pursuant to Section 53, The Award, *Code of Ethics and Arbitration Manual*.

Failure to pay arbitration awards or deposit a like amount in these circumstances may be a violation of the MLS rules and subject the nonmember to sanction. (*Adopted 11/15*)

Part Seven—Arbitration General Provisions

Section 26. Definitions Relating to Arbitration

As used herein,

- (a) “Agent” means a real estate licensee (including brokers and sales associates) acting in an agency relationship as defined by state law or regulation. *(Revised 4/98)*
-  (b) “Association” means this organization, either the _____ (local) Association of REALTORS® or the _____ (state) Association of REALTORS®. As used herein, the term “association(s)” refers to board(s) and association(s) of REALTORS®. *(Revised 11/17)*
- (c) “Broker” means a real estate licensee (including brokers and sales associates) acting as an agent or in a legally recognized non-agency capacity. *(Adopted 4/98)*
- (d) “Client” means the person(s) or entity(ies) with whom a REALTOR® or a REALTOR®’s firm has an agency or legally recognized non-agency relationship. *(Revised 11/97)*
- (e) “Counsel” means an attorney at law. *(Adopted 4/91)*
- (f) “Customer” means a party to a real estate transaction who receives information, services, or benefits but has no contractual relationship with the REALTORS® or the REALTOR®’s firm. *(Revised 11/97)*
- (g) “Directors” means the Board of Directors of the Board (State Association) as interpreted by Policy Statement #33. *(Revised 11/91)*
- (h) “Electronically,” “electronic means,” “technology,” “technological means,” and related terms include, but are not limited to, the Internet, Internet-based websites, all forms of Internet communication, e-mail, facsimile correspondence, telephone, and all other forms of distance communication. *(Adopted 5/06)*
- (i) “Hearing” may refer either to an ethics hearing relating to disciplinary matters or to an arbitration hearing in which the dispute generally involves entitlement to a commission or to compensation. *(Revised 11/93)*
- (j) “Member” means REALTOR® and REALTOR-ASSOCIATE® members of this Board (State Association). REALTORS® who participate in MLS or otherwise access MLS information through any Board in which they do not hold membership are subject to the Code of Ethics in that Board. *(Amended 11/95)*
- (k) “Party” (Parties) means the complainant(s) or respondent(s) in disciplinary proceedings and in arbitration hearings referred to in **Part Four** and **Part Ten** of this Manual. *(Revised 11/91)*
- (l) “Person” means a natural person. *(Adopted 11/13)*
- (m) “Professional Standards Administrator” is the Board staff person primarily responsible for the administration of all professional standards processes. *(Adopted 11/15)*
- (n) “REALTOR® principal” includes licensed or certified individuals who are sole proprietors, partners in a partnership, officers or majority shareholders of a corporation, or office managers (including branch office managers) acting on behalf of principals of a real estate firm who subscribe to the Code of Ethics as a condition of membership in a local Board, State Association, and the NATIONAL ASSOCIATION OF REALTORS®. The phrase REALTOR® principal includes those REALTORS® who participate in a Multiple Listing Service through any Board or Association in which they do not hold membership. *(Revised 5/97)*
- (o) “Tribunal” means those persons serving in a given case on a Grievance Committee or a Hearing Panel of the Professional Standards Committee in either an ethics or arbitration proceeding, or a Board of Directors or appropriate body appointed by a Board of Directors to act in its behalf. No individual may participate in the deliberation of more than one tribunal on the same matter. *(Revised 5/88)*
- (p) “Unauthorized disclosure” means a report or publication under any circumstances not established in this Manual. *(Adopted 11/91)*

Section 27. Qualification for Tribunal

- (a) No more than one person licensed with any firm, partnership, or corporation may serve on the same tribunal. This limitation does not preclude two or more individuals from the same franchise from serving if the franchises are independently owned and operated. *(Revised 11/09)*
- (b) A person shall automatically be disqualified as a member of a tribunal in any case in which the person is (1) related by blood or marriage to either complainant or respondent; (2) an employer, partner, employee, or in any way associated in business with either complainant or respondent; (3) a party to the hearing, or a party or a witness in any other pending case involving a party to this hearing; or (4) is objected to by a party as provided in **Part Seven**, Section 27(f).
- (c) Before sitting in any case, each member of a tribunal (except any member of the Grievance Committee) shall sign a statement (1) that the member is not disqualified for any of the foregoing reasons, and (2) that the member knows of no other reason that might prevent him from rendering an impartial decision. (Form #A-11, Certificate of Qualification, **Part Thirteen** of this Manual.)
- (d) Every member of a tribunal (except a member of the Grievance Committee acting pursuant to the provisions of **Part Ten**, Section 47 of this Manual) shall also avoid, as far as possible,

discussing the case with any person other than a member of the tribunal prior to commencement of the hearing. If the member does engage in any such discussion before the hearing, the member must disclose the fact to the parties and to the other members of the tribunal no later than at the beginning of the hearing.

- (e) All members of a tribunal shall have an obligation to maintain and protect the confidentiality of the proceedings and deliberations of the tribunal before, during, and after its determinations and recommendations. The tribunal member shall not discuss the tribunal proceedings and deliberations with any person(s) except as required by the Board of Directors or the bylaw provisions of the Board, or by law as may be required, except that a member of the Grievance Committee acting pursuant to the provisions of **Part Ten**, Section 47 of this Manual shall not be precluded from discussion necessary to the preliminary review.

Unauthorized disclosure relates to tribunal members and parties and includes any report or publication under any circumstances not established in this Manual. The following are circumstances where disclosure by a party to an ethics and/or arbitration proceeding is authorized:

- (1) Where the dissemination of the decision to individuals who have some knowledge of the proceeding might vindicate a member's professional reputation.
- (2) Where there is a civil proceeding (including proceedings before the state real estate licensing authority or any other state or federal regulatory or administrative agency) involving the same facts and circumstances which gave rise to the proceeding before the Board. *(Revised 11/95)*
- (3) Where providing the decision of an arbitration hearing panel to an association of REALTORS® or to an MLS will enable that entity to correct records of sales or lease transactions or other historical records. *(Revised 11/06)*
- (f) Any party may file with the Professional Standards Administrator a written request for disqualification of a member of a tribunal (Hearing Panel or Board of Directors), stating the grounds alleged as basis for disqualification (i.e., factors which would prevent a tribunal member from rendering an impartial, unbiased, and knowledgeable decision). Challenges submitted pursuant to this Section for ethics and arbitration hearings will be determined by the Professional Standards Committee Chairperson, or, if challenge to the Chairperson is made, by the Professional Standards Committee Vice Chairperson, or, if challenge to both the Chairperson and Vice Chairperson is made, by the Board President. Challenges submitted pursuant to this Section for matters to be considered by the Board of Directors will be determined by the Board President or, if the challenge is to the Board President's qualifications, the next ranking Board officer. A party shall be deemed to have waived any grounds of disqualification of which he then has knowledge unless he files the request within

ten (10) days from the date a list of names of members of the Professional Standards Committee or Board of Directors has been transmitted to the party (see **Part Ten**, Section 51(a), Arbitration Hearing). 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 tribunal from rendering an impartial decision. *(Revised 11/14)*

However, none of the foregoing is to be construed to allow a challenge to the qualifications of members of a Board's or State Association's Grievance Committee, or Board of Directors (or panel of Directors or Executive Committee) convened to review any action taken by a Grievance Committee. *(Revised 11/98)*

- (g) If a member of a tribunal fails or is unable to participate in a hearing, the remaining members of the tribunal may, at their option, but only with the express consent of the parties, proceed with the hearing. Only the remaining members of the tribunal may participate in the hearing and the determination thereof. Should any member of the tribunal absent himself during the progress of the actual hearing, that individual shall likewise not participate in the deliberations nor determinations thereof. If all the parties do not agree to proceeding without the full number of the tribunal originally designated, the Chairperson of the tribunal will recess the hearing to a date on which all members of the tribunal can be present. If the Chairperson cannot at that time designate a new date, notice of a subsequent date shall be served on all parties as herein provided.

Section 28. Duty to Give Evidence

The parties to ethics and arbitration hearings are primarily responsible for production of witnesses and evidence they intend to present to the Hearing Panel. If a member, when called as a witness, refuses or is unable to appear at a scheduled hearing, the witness's failure to appear can be the basis for a charge that Article 14 has been violated if it can be shown that the witness had information or evidence relevant to the issue or issues before the Hearing Panel and that there were no extenuating circumstances that would have made the witness's appearance unduly burdensome. Questions regarding a member's obligation to appear as a witness, including questions of relevancy, shall be determined by the Chair of the Hearing Panel either before the hearing commences, if possible, or at the time of the hearing. If a question of whether a witness is required to appear is raised at a hearing and the Chair rules that the witness must appear, the party seeking to compel the appearance of the witness may request that the hearing be recessed until such time as the witness can be advised of the witness's obligation to appear, and the hearing shall be rescheduled. The burden of demonstrating the relevance of the testimony or evidence rests with the party seeking to compel the witness's appearance. *(Revised 11/93)*

If, after being so advised, a witness refuses to appear, the Chair may, at its discretion, bring a charge against the witness for failure to comply with Article 14. *(Revised 11/93)*

Section 29. Right of Counsel to Appear

Every party may be represented by legal counsel but such counsel may not testify as a witness unless the panel determines such testimony is essential to ensure due process. In the event parties do not give fifteen (15) days' notice prior to the hearing of their intention to have counsel to the Board and all other parties, including counsel's name, address, and phone number, the panel shall take all steps, including continuance of the matter, if necessary, to guarantee the rights of all parties to representation by counsel. The tribunal may have counsel present to advise it on issues of procedure and law. The presence of Board legal counsel during executive session is a matter of local Board discretion. The role of Board counsel during a hearing is to provide procedural and legal guidance as requested by the Chairperson or by panel members. Board counsel is not a part of the Hearing Panel and may not take an active role in the conduct of the hearing, including examination or cross-examination of the parties or their witnesses. If Board counsel believes an action or procedure is inconsistent with the Board's established procedures or may result in potential liability to the Board, counsel's concerns should be communicated to the Chairperson of the Hearing Panel and the Chairperson shall make the final decision. *(Revised 11/97)*

Section 30. Witnesses

Every party may have witnesses present at the hearing, and the tribunal may summon its own witnesses. All witnesses, except those who are also parties, will be excused from the hearing after completion of their testimony and cross-examination, unless otherwise provided for in the *Code of Ethics and Arbitration Manual* *(Revised 11/14)*

All parties appearing at the hearing may be called as witnesses without advance notice. Any party who intends to call additional witnesses at the hearing must provide the Board and all other parties with the names of these witnesses at least fifteen (15) days prior to the hearing. Failure to provide this information within the time specified will constitute a waiver of the right to call those witnesses at the hearing, unless the other party agrees to allow their testimony. *(Revised 11/14)*

In any case where all of the names of witnesses a party intends to call at the hearing have not been provided within the time specified, if the Hearing Panel believes that the testimony of that witness(es) is essential to ensure due process, his testimony may be permitted provided the other party has the right to request that the hearing be recessed and continued to a date certain not less than five (5) days later. *(Revised 11/88)*

Questions as to whether a member who has been called as a witness but who refuses to appear, or asserts that his appearance will result in an unreasonable hardship, shall be determined by the Hearing Panel Chair as soon as practical. Refusal to appear, after the Chair has determined that the member's appearance is required, may result, at the Chair's discretion, in charges that Article 14 has been violated being filed against the member. *(Adopted 11/93)*

Section 31. Conduct of Hearing

At any ethics or arbitration hearing, every party has the right to present any witnesses, to submit any evidence pertinent to the case, and to cross-examine witnesses. Witnesses giving oral testimony shall be sworn in by the Chairperson. Before permitting testimony relating to the character or general reputation of anyone, the tribunal shall satisfy itself that the testimony has a direct bearing on the case at issue. *(Revised 5/16)*

Attendance at any hearing is limited to the parties and the parties' respective counsel and/or witnesses (witnesses are excused from the hearing except during their testimony [except those witnesses with a vested financial interest consistent with **Part Ten**, Section 44(a)(2), Duty and Privilege to Arbitrate]); the Hearing Panel members (including alternates); Board staff and/or counsel, as deemed necessary; and any court reporter, as requested. *(Revised 5/16)*

The Board shall have a court reporter present at the hearing or shall record the hearing. Parties may, at the Board's discretion, record the hearing or utilize a court reporter at their own expense. If a party utilizes a court reporter and orders a transcript, a copy of the transcription shall be made at the party's expense and presented to the Professional Standards Administrator. If the Board utilizes a court reporter in lieu of recording, the parties may not be prohibited from making their own recording (See Form #A-10, Outline of Procedure for Arbitration Hearing, Part Thirteen, and Conduct of an Arbitration Hearing, Part Twelve). *(Revised 5/16)*

Videotaping of the proceedings shall not be permitted except by advance express consent of all parties and all members of the tribunal. *(Revised 5/16)*

Appeals or procedural review proceedings shall not be recorded by the Board or the parties. *(Revised 5/16)*

The Board's recording or transcription shall be considered the official record of the proceeding. Copies of any recording or any transcript prepared from any recording of the hearing are to be used only for the purpose of appeals or limited procedural reviews, and may not be introduced into evidence at any subsequent hearing. Boards, at their discretion and upon the advice of counsel, may prohibit the parties from obtaining a copy of the recording or transcription if the request is received outside of the time frame allowed for appeals or procedural reviews. Any unauthorized use of the recordings or transcripts may be construed as a violation of Article 14, as interpreted by the applicable Standards of Practice, and as a violation of these procedures. *(Revised 5/16)*

Any party to a hearing has the right to obtain a copy of the Board's official recording, subject to the aforementioned limitations, and subject to payment of the Board's duplication costs. Any duplication will be conducted under the supervision of the Board. If the Board transcribes its official recording, any party to the hearing may obtain a copy of the transcript, subject to the aforementioned limitations and paying the Board's transcription costs. If more

than one party requests copies of the transcript, the Board's costs will be apportioned between or among the parties. *(Revised 5/16)*

If a party purchases a copy of the Board's official recording and subsequently has it transcribed at his own expense, that party must provide a copy of the transcript to the Board at no cost. After the Board has received a copy of the transcript (made from the Board's official recording), the Board shall make copies of the transcript available to any other party subject to their payment of the Board's duplication costs. *(Revised 11/10)*

It is recommended that recordings produced by the Board be maintained in the confidential professional standards files until a date when any sanction imposed by the Board has been completed. *(Revised 5/16)*

Section 32. Notices

- (a) Any notice required to be given or paper required to be served or filed may be personally handed to the party to be notified, sent by first class mail addressed to the party's last known mailing address, or sent to the party by email. When possible, email is the preferred form of service for notices and documents pursuant the procedures specified in this Manual. Any notice required to be given or paper required to be served or filed shall be deemed given, served, or filed when handed to the party, mailed to the party, or sent to the party by email, unless otherwise specified in this Manual. Notices sent by email shall include the association's request that delivery be acknowledged by the intended recipient within twenty-four (24) hours by return email. If receipt of the notice has not been acknowledged by the intended recipient within twenty-four (24) hours, the recipient will be contacted by telephone to confirm receipt and the recipient's confirmation will be noted in the file. If receipt of notices sent by email cannot be confirmed, the notices will be resent via first class mail. *(Revised 11/14)*
- (b) Notice of hearing shall include the names of the members of the tribunal and be given not less than twenty-one (21) days beforehand. Twenty-one (21) days' notice is not required for postponed hearings (scheduled but extension granted before hearing commences) or for hearings that have commenced and been adjourned (recessed). *(Revised 11/14)*

Section 33. Interpretation of Bylaws

If any provision of the bylaws or a rule or regulation relative to the procedure of a tribunal's handling of a matter is involved, the interpretation by that tribunal of the bylaws or of a rule or regulation shall be set forth as a separate finding, and the Directors, on appeal from a decision of a Hearing Panel, shall not be bound by the panel's interpretation.

Section 34. Waiver

Every member, for and in consideration of his right to invoke arbitration proceedings and to initiate complaints under the

Code of Ethics as a member of the NATIONAL ASSOCIATION OF REALTORS®, hereby waives any right of action against the Board, any Board Member, or any member of a Hearing Panel or tribunal arising out of any decisions, determinations, or other action taken or rendered under these procedures in the absence of willful or wanton misconduct. Further, as a condition of continued membership, every member expressly waives any cause of action for libel, slander, or defamation that might arise from the filing or consideration of any ethics complaint or arbitration request. *(Revised 11/87)*

Section 35. Communication and Clerical

Communications shall be directed to the Professional Standards Administrator. The Professional Standards Administrator shall render all necessary assistance to the parties, shall furnish required forms, shall receive and file all documents or other papers, and shall receive all fees and disburse all monies payable to the Board.

Section 36. Attempt to Influence Tribunal

Any attempt, directly or indirectly, to influence a member of a tribunal in any matter before it, other than by giving evidence and argument in an open hearing or in writing submitted to the entire tribunal, is a breach of a duty of membership.

Part Eight— Membership Duties and Their Enforcement


Section 37. Duties of Membership

The duties of membership include the following:

- (a) to abide by the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®
- (b) to abide by the bylaws of this Board and its rules and regulations
- (c) to submit to arbitration all disputes specified in **Part Ten** of this Manual by the procedure therein provided, and to abide by the arbitrators' award* (*Revised 11/96*)

Subject to any preliminary consideration by any administrative body of the Board or its subsidiary MLS, allegations or charges that a member has violated any membership duty shall be referred to the Professional Standards Committee for review in conformity with the procedures established in the *Code of Ethics and Arbitration Manual* of the National Association as from time to time amended. Notwithstanding the foregoing, multiple listing services operated as committees of associations of REALTORS® or as subsidiary corporations wholly-owned by associations of REALTORS® may establish procedures for enforcement of their rules and regulations pursuant to the grant of authority and to the limitations established in Multiple Listing Policy Statement 7.21, *Appropriate Procedures for Rules Enforcement, Handbook on Multiple Listing Policy*. (*Revised 11/14*)

Section 38. Selection and Appointment of the Grievance Committee

 There will be a standing committee, known as the Grievance Committee, of at least ____ Board Members, in good standing, of whom at least a majority shall be REALTORS®. The members of the committee shall be appointed by the President, subject to confirmation by the Board of Directors, for staggered three (3) year terms. The committee shall annually select its own Chairperson and Vice Chairperson (or, alternatively, the President shall annually designate the Chairperson and Vice Chairperson of the committee). The Grievance Committee will hold regularly-scheduled meetings and/or review complaints/arbitration requests not later than forty-five (45) days after receipt of the complaint/arbitration request. (*Revised 05/15*)


In selecting members of the Grievance Committee, the President should consider the following recommended criteria:

*While most states recognize the enforceability of a prior agreement to arbitrate disputes, a few states prohibit an agreement to arbitrate until after the dispute has arisen and in a few instance such arbitration is not recognized at all (or at least is unenforceable by the court). Where such prohibition exists, Board (state) legal counsel should be consulted and the Manual modified accordingly. Arbitration conducted by Member Boards shall in all respects conform to the requirements of state law applicable to arbitration. If a member refuses to abide by an award in arbitration, enforcement of the award shall be accomplished only in the manner set forth in **Part Four**, Section 24 and **Part Ten**, Section 56 of this Manual.

- number of years as a REALTOR®
- number of years in the real estate business
- primary and secondary fields of real estate endeavor/expertise
- participation in post-licensing real estate education
- training in the Code of Ethics
- position in firm (principal, nonprincipal)
- size of firm
- common sense
- open-mindedness
- familiarity with state(s) laws and regulations
- receptiveness to instruction/training
- other relevant professional or procedural training

The committee should have balanced representation of REALTORS®, REALTOR-ASSOCIATE®s, men, and women, and should include representatives of various racial and ethnic groups. Committee members should be mature, experienced, knowledgeable persons of a judicial temperament. It is suggested that, to the extent practical, members of the Grievance Committee not serve simultaneously on the Professional Standards Committee or on the Board of Directors to avoid conflict with the prohibition on serving on more than one (1) tribunal in the same matter. (*Revised 11/96*)

Section 39. Selection and Appointment of the Professional Standards Committee

There shall be a Professional Standards Committee of at least ____ Board Members, in good standing, of whom at least  a majority shall be REALTORS®, appointed by the President, subject to confirmation by the Board of Directors. Members of the Professional Standards Committee shall be selected to serve on Hearing Panels as required to hear matters of alleged unethical conduct by Board Members or to provide arbitration as requested. The committee shall annually select its own Chairperson and Vice Chairperson (or, alternatively, the President shall annually designate the Chairperson and Vice Chairperson of the committee).*

In selecting members of the Professional Standards Committee, the President should consider the following recommended criteria:

- number of years as a REALTOR®
- number of years in the real estate business
- primary and secondary fields of real estate endeavor/expertise
- participation in post-licensing real estate education
- training in the Code of Ethics
- position in firm (principal, nonprincipal)
- size of firm

*In Boards with larger memberships, it is desirable for a larger committee to be named to avoid an overload of work upon any individual which could result from the greater number of hearings in these Boards. In such Boards, an uneven number of members from the Professional Standards Committee may be appointed to constitute a Hearing Panel for each case to be heard. (*Revised 11/92*)

- common sense
- open-mindedness
- familiarity with state(s) laws and regulations
- receptiveness to instruction/training
- other relevant professional or procedural training

The committee should have balanced representation of REALTORS®, REALTOR-ASSOCIATE®, men, and women, and should include representatives of various racial and ethnic groups. Committee members should be mature, experienced, knowledgeable persons of a judicial temperament. It is suggested that, to the extent practical, members of the Professional Standards Committee not serve simultaneously on the Grievance Committee or on the Board of Directors to avoid conflict with the prohibition on serving on more than one (1) tribunal in the same matter. (*Revised 11/96*)

Part Nine—The Grievance Committee in Arbitration Proceedings

Section 40. Authority

The Grievance Committee is established in **Part Two**, Section 15 and **Part Eight**, Section 38 of this Manual, which provide in part:



There will be a standing committee, known as the Grievance Committee, of at least _____ Board Members in good standing, of whom at least a majority shall be REALTORS®. The members of the committee shall be appointed by the President, subject to confirmation by the Board of Directors, for staggered three (3) year terms. The committee shall annually select its own Chairperson and Vice Chairperson (or, alternatively, the President shall annually designate the Chairperson and Vice Chairperson of the committee).

Section 41. Function

The function of the Grievance Committee is clearly distinguishable from the function of the Professional Standards Committee. The Professional Standards Committee makes decisions on matters involving ethics or arbitration (*Revised 05/15*)

The Grievance Committee receives ethics complaints and arbitration requests to determine if, taken as true on their face, a hearing is to be warranted. The Grievance Committee makes only such preliminary evaluation as is necessary to make these decisions. While the Grievance Committee has meetings, it does not hold hearings, does not decide whether members have violated the Code of Ethics, and does not dismiss ethics complaints because of a lack of evidence. Complainants are not required to prove their case upon submission of their ethics complaint or arbitration request. The Grievance Committee does not mediate or arbitrate business disputes. The Grievance Committee will hold regularly-scheduled meetings and/or review arbitration requests not later than forty-five (45) days after receipt of the request. (*Revised 05/15*)

In evaluating ethics complaints, the Grievance Committee may require a written response from the respondent(s) only if the committee is in need of additional information pertaining to the questions in Section 19, Grievance Committee's Review of an Ethics Complaint, and the complainant cannot provide such information. In such instances the respondent(s) should be provided with a copy of the ethics complaint and advised that failure to respond may be the basis for a change of having violated Article 14 of the Code of Ethics. (See Form #E-4) Grievance Committee Request for Information [Ethics Complaint] and Form #E-5, Response to Grievance Committee Request for Information, **Part Six** of this Manual). In evaluating arbitration requests, the Grievance Committee may request a written response to the arbitration request from the respondent(s) only if the committee is in need of additional information pertaining to the questions in Section 42, Grievance Committee's Review and Analysis of a Request for Arbitration, and the complainant cannot provide such information. (See Form #A-5, Grievance Committee Request for

Information [Arbitration Request] and Form #A-6, Response to Grievance Committee Request for Information, **Part Thirteen** of this Manual.) If no response is filed within the time allotted, the Grievance Committee shall make its determination as to whether an arbitration hearing should be scheduled based upon the information set forth in the arbitration request. (*Revised 11/15*)

When Grievance Committees refer ethics complaints and arbitration requests for hearing, hearing panel chairs can determine if questions about

- (1) whether ethics complaints and arbitration request 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

will be addressed through a pre-hearing meeting of the hearing panel or at the outset of the hearing prior to testimony relating to the ethics complaint or arbitration requests commencing. If these matters rise during a hearing, the hearing panel will address them at that time.

Dismissals of ethics complaints and arbitration request by hearing panels can be appealed to the Board of Directors on the same bases as dismissals by the Grievance Committee.

Where such issues are considered at a pre-hearing meeting of the hearing panel, the chair will determine whether the parties may be present, and the extent to which their participation will be permitted. (*Revised 05/14*)

Section 42. Grievance Committee's Review and Analysis of a Request for Arbitration

A. Initial action upon receipt of a request for arbitration

Upon receipt of a request for arbitration, the Professional Standards Administrator shall refer the arbitration request to the Chairperson of the Grievance Committee. The Chairperson shall review the arbitration request and any evidence and documentation attached. The Chairperson may assign one or more members of the Grievance Committee to review the request and to make any necessary evaluation. The member(s) may, if necessary, gather additional information on the matters complained of from the complainant if additional information appears necessary to make a knowledgeable disposition of the arbitration request. The request shall be provided to the assigned members by the Professional Standards Administrator upon instruction from the Chairperson. (*Amended 11/15*)

The reviewer(s), if appointed, shall complete the assignment promptly and prepare a report and recommendation for the

Grievance Committee. After reviewing the report, the Chairperson shall schedule a meeting of the Grievance Committee and may instruct the Professional Standards Administrator to provide members of the Grievance Committee with copies of the case file including the review's report, if any. At the option of the Board, such file may be sent to the Grievance Committee members prior to the meeting or may be distributed at the meeting. (*Amended 4/94*)

B. Consideration by the Grievance Committee of a request for arbitration

In reviewing a request for arbitration, the Grievance Committee shall consider the following:

- (1) Is the request for arbitration acceptable in the form as received by the committee? If not in proper form, the Chairperson may request that the Professional Standards Administrator contact the complainant to advise that the request must be submitted in proper form. (*Revised 11/15*)

NOTE: if deemed appropriate by the Chairperson, a member of the Grievance Committee may be assigned to contact the complainant and to provide procedural assistance to amend the request or resubmit a new request in proper form and with proper content. The Grievance Committee member providing such assistance shall ensure that only procedural assistance is provided to the complainant, and that the complainant understands that the member is not representing the complainant or advocating on behalf of the complainant. (*Revised 11/15*)

- (2) Are all necessary parties named in the request for arbitration? The duty to arbitrate is an obligation of REALTOR® principals. REALTOR® principals include sole proprietors, partners in a partnership, officers or majority shareholders of a corporation, or office managers (including branch office managers) acting on behalf of principals of a real estate firm.
- (3) Was the request for arbitration filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later?
- (4) Are the parties members in good standing or otherwise entitled to invoke arbitration through the Board's facilities? Were the parties members at the time the facts giving rise to the dispute occurred?
- (5) Is litigation concerning an otherwise arbitrable matter pending in connection with the same transaction?

NOTE: No arbitration shall be provided on a matter pending litigation unless the litigation is withdrawn with notice to the Board and request for arbitration, or unless the court refers the matter to the Board for arbitration.

- (6) Is there any reason to conclude that the Board would be unable to provide an impartial Hearing Panel?
- (7) If the facts alleged in the request for arbitration were taken as true on their face, is the matter at issue related to a real estate transaction and is it properly arbitrable, i.e., is there some basis on which an award could be based?

- (8) If an arbitrable issue exists, are the parties required to arbitrate or is their participation voluntary?
- (9) Is the amount in dispute too small or too large for the Board to arbitrate?
- (10) Is the matter too legally complex, involving issues that the arbitrators may not be able to address in a knowledgeable way?
- (11) Is there a sufficient number of knowledgeable arbitrators available?

If all of the relevant questions have been considered, and a majority of the Grievance Committee conclude that the matter is properly arbitrable by the Board, the Grievance Committee shall send the request for arbitration to the Chairperson of the Professional Standards Committee for arbitration by an arbitration Hearing Panel. Complainants are not required to prove their case when initially filing an arbitration request. An arbitration request may not be dismissed for lack of evidence if the arbitration request is otherwise arbitrable, timely filed, and the arbitration is one of the circumstances described in Section 44, Duty and Privilege to Arbitrate. (*Revised 11/15*)

C. Appeals from the decision of the Grievance Committee related to a request for arbitration

If the Grievance Committee determines that a matter should not be arbitrated by the Board (because of the amount involved or the legal complexity, or for any other valid reason specified in the Grievance Committee decision and written report), the reason(s) for dismissing the request will be stated in the notice of the dismissal. Any party may appeal the decision to the Board of Directors within twenty (20) days from transmittal of notice of the committee decision using Form #A-20, Appeal of Grievance Committee (or Hearing Panel) Dismissal or Appeal of Classification of Arbitration Request. The request for arbitration and any attachments cannot be revised, modified, or supplemented. The party appealing the dismissal may, however, explain in writing why they disagree with the Grievance Committee's conclusion that the request for arbitration should be dismissed. The Hearing Panel can also dismiss the arbitration request if the Hearing Panel concludes the matter is not arbitrable. Appeals of dismissals/classifications shall be heard at the Directors' next regularly scheduled meeting or at a special meeting designated for that purpose, but no later than ten (10) days after the date of receipt of the appeal. The Directors' decision shall be transmitted to the parties within five (5) days from the date of the decision. (*Amended 11/15*)

The materials which were presented to the Grievance Committee when the Grievance Committee made its decision will be presented to the Board of Directors and considered with the appeal, together with any party's rationale challenging the Grievance Committee's dismissal. The parties to the arbitration (complainant and respondent) do not have the right to appear at the appeal hearing before the Directors. In the event a request for arbitration is dismissed, any deposit submitted by the complainant shall be returned to the complainant. (*Revised 11/12*)

Part Ten—Arbitration of Disputes

Section 43. Arbitrable Issues and Appropriate Parties

As used in Article 17 of the Code of Ethics and in **Part Ten** of this Manual, the terms “dispute” and “arbitrable matter” are defined as those contractual issues and questions, and specific non-contractual issues and questions defined in Standard of Practice 17-4, including entitlement to commissions and compensation in cooperative transactions, that arise out of the business relationships between REALTORS® and between REALTORS® and their clients and customers, as specified in **Part Ten**, Section 44, Duty and Privilege to Arbitrate. (Revised 11/96)

A Member Board should determine through advice of legal counsel:

- (1) Whether state law permits an agreement to binding arbitration in advance of a dispute or only after the dispute occurs, or
- (2) If binding arbitration is not recognized and is thus unenforceable by state law. The Board’s arbitration procedures must conform to applicable state law.

In 2001, Article 17 was amended by the addition of the following paragraph:

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.

This expansion in the scope of Article 17 does not diminish the personal responsibility of REALTORS® to participate in arbitration. While Article 17 obligates REALTORS® to “. . . cause their firms to arbitrate and be bound by any award . . .,” it does not confer REALTOR® membership status on real estate firms. Membership, and the duties membership imposes including adherence to the Code of Ethics, is still personal to every REALTOR®.

The change to Article 17 enhances the dispute resolution process by increasing the availability of arbitration—and the likelihood that awards will be enforceable and paid. In many instances, the disputes giving rise to arbitration under Article 17 relate to contracts between REALTORS®’ firms or between REALTORS® acting on behalf of their respective firms. Even where disputes are actually between firms, Article 17 has required that arbitration complainants and respondents be individual REALTORS® (principals), and that awards be rendered in favor of and against individual REALTORS® (principals). In some instances this requirement has resulted in unfair results or rendered the arbitration process impotent because awards were uncollectible. Examples include REALTOR® (principal) respondents leaving the association’s jurisdiction, leaving the real estate business, relinquishing their status as a principal in the firm, or being insolvent or “judgment-proof.”

The expansion of Article 17 does not require substantive changes to the way associations of REALTORS® conduct arbitration. It does,

however, give both arbitration complainants and respondents greater latitude in determining who the parties are and how any resulting award will be made.

For example, a REALTOR® seeking to invoke arbitration could name a REALTOR® (principal) in another firm as the sole respondent; could name multiple REALTORS® (principals) in the other firm as respondents; could name a firm (comprised of REALTOR® principals) as the respondent; or could name both individual REALTORS® (principals) and their firm as respondents. In this way, the likelihood of the arbitration process being thwarted because a named respondent is no longer subject to an association’s jurisdiction before, during or after the arbitration process, or an award being uncollectible, is greatly reduced.

Similarly, individual REALTOR® respondents who want either additional REALTOR® principals or their firms (or both) to be parties to the dispute can file an arbitration request against the original complainants with additional REALTORS® (principals) or the firm (or both) named as complainants. In such cases both claims would be consolidated by the Grievance Committee and all claims would be resolved in a single hearing.

In 2012, Article 17 was further amended to provide Boards with discretionary authority to require REALTORS® (principals) and their firms to mediate otherwise arbitrable disputes and be bound by any resulting agreement. Requiring REALTORS® to mediate otherwise arbitrable disputes requires establishment of an affirmative obligation in the Board’s governing documents. Enabling language can be found at www.nar.realtor (see Model Bylaws). (Adopted 11/11)

Common questions include:

- (1) If only an individual REALTOR® (principal) is named as the respondent in an arbitration request, can a Hearing Panel make an award against the respondent’s firm?

No. Awards can only be made against named parties in the arbitration request and agreement.

- (2) If only an individual REALTOR® (principal) is named as the complainant in an arbitration request, can a Hearing Panel make an award in favor of the complainant’s firm?

No. Awards can only be made in favor of parties named in the arbitration request and agreement.

- (3) If an award is made against an individual REALTOR® (principal), is it enforceable against the respondent’s firm?

Awards are generally enforceable against parties named in the award.

- (4) Can I name both a REALTOR® (principal) and his firm as respondents in an arbitration request?

Yes.

- (5) What is the advantage to naming both a REALTOR® (principal) and his firm as respondents in an arbitration request?

Naming a REALTOR® (principal) as respondent lets the complainant know who will appear at the hearing, and naming the firm as respondent increases the chances of collecting any resulting award.

- (6) If a REALTOR®'s firm is named as the respondent in an arbitration request and refuses to arbitrate, who can be named as respondent in a complaint alleging that Article 17 has been violated?

Any REALTOR® (principal) who holds membership locally or who enjoys MLS participatory rights through the association can be named as respondent.

- (7) If only a REALTOR®'s firm is named as respondent in an arbitration request, who is served with notices?

Any REALTOR® (principal) in the firm may be served with notices.

(Revised 11/11)

Section 44. Duty and Privilege to Arbitrate

- (a) By becoming and remaining a member and by signing or having signed the agreement to abide by the bylaws of the Board, every member, where consistent with applicable law, binds himself or herself and agrees to submit to arbitration (and to mediation if required) by the Board's facilities all disputes as defined by Article 17 of the Code of Ethics and, as set forth in the provisions of this Manual, all disputes with any other member, as defined, under the following conditions. In addition, REALTOR® principals who participate in a Board's MLS where they do not hold Board membership, or nonmember brokers and nonmember licensed or certified appraisers who participate in the Board's MLS, having signed the agreement to abide by the Board's Multiple Listing Service rules and regulations binds himself or herself and agrees to submit to arbitration by the Board's facilities. The duty to submit to arbitration continues in effect even after membership lapses or is terminated, provided that the dispute arose while the respondent was a REALTOR® or an MLS Participant. *(Amended 11/11)*

Mandatory types of arbitration

- (1) Every REALTOR® of the Board who is a REALTOR® principal, every REALTOR® principal who participates in a Board's MLS where they do not hold Board membership and every nonmember broker or licensed or certified appraiser who is a Participant in the Board's MLS shall have the right to invoke the Board's arbitration facilities in any dispute arising out of the real estate business with a REALTOR® principal in another real estate firm or with that firm (or both), or nonmember broker/appraiser or their firm (or both) who is a Participant in the Board's MLS. *(Amended 5/01)*

- (2) A REALTOR® other than a principal or a REALTOR-ASSOCIATE® shall have the right to invoke the arbitration facilities of the Board in a business dispute with a REALTOR® or REALTOR-ASSOCIATE® in another firm or with their firm (or both), whether in the same or a different Board, provided the REALTOR® principal with whom he is associated joins in the arbitration request, and requests the arbitration with the REALTOR® principal of the other firm or with their firm (or both). Arbitration in such cases shall be between the REALTOR® principals or their firms (or both). REALTOR® nonprincipals and REALTOR-ASSOCIATE®s who invoke arbitration in this manner, or who are affiliated with a respondent and have a vested financial interest in the outcome, have the right to be present throughout the proceedings and to participate but are not considered to be parties. *(Amended 5/01)*

- (3) A client of a REALTOR® principal may invoke the arbitration facilities of the Board in a business dispute with a REALTOR® principal or the REALTOR®'s firm (or both) arising out of an agency relationship or legally recognized non-agency relationship, provided the client agrees to be bound by the arbitration. In the event of such request and agreement the Board will arbitrate the dispute subject to the provisions of **Part Ten**, Section 45. A REALTOR® principal may also invoke arbitration against his client but no arbitration may be held without the client's voluntary agreement to arbitrate and to be bound by the decision. *(Amended 11/17)*

Voluntary types of arbitration

- (4) REALTORS® and REALTOR-ASSOCIATE®s who are or were affiliated with the same firm shall have the same right to invoke the arbitration facilities of the Board, provided each party voluntarily agrees to the arbitration in writing and the Board finds the matter properly subject to arbitration in accordance with the provisions of **Part Ten**, Section 45 of this Manual. This privilege as stated applies to disputes arising when the parties are or were affiliated with the same firm, irrespective of the time request is made for such arbitration. *(Amended 11/95)*
- (5) A REALTOR® principal may invoke the arbitration facilities of his Board with a nonmember broker, provided each party agrees in writing to the arbitration and provided the Board finds the matter properly subject to arbitration in accordance with the provisions of **Part Ten**, Section 45 of this Manual. However, it shall be optional with the member as to whether he will submit to a claim to arbitration with a nonmember broker who is not an MLS Participant. A nonmember broker who is not an MLS Participant or nonmember salesperson may invoke the arbitration facilities of the Board of REALTORS® in cases where they believe they have an arbitrable dispute with a REALTOR®. Under these circumstances, REALTORS® are not required to agree to or participate in arbitration. *(Amended 11/12)*

(6) Business disputes between a REALTOR® principal and a customer of the REALTOR® principal may be arbitrated by the Board if a written contractual relationship has been created by a 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. (*Amended 11/95*)

(b) Where mandatory arbitration (and mediation if required by a Board) is consistent with applicable state law, the Code of Ethics, Article 17, requires only that disputes arising out of the real estate business between REALTORS® “. . . associated with different firms . . .” be arbitrated (or mediated if required by a Board). The various provisions of this Section represent the interpretations of the Professional Standards Committee with approval of the Board of Directors of the National Association as to appropriate policy of a Member Board in the matter of providing arbitration and mediation facilities by the Board. Thus, Member Boards must provide arbitration and mediation facilities for Board Members in the types of arbitration described in the preceding paragraphs (1), (2), and (3) and a Board may require REALTORS® (principals) to mediate otherwise arbitrable matters. Member Boards may provide arbitration and mediation facilities for the additional types of disputes described in the preceding paragraphs (4), (5), and (6). However, Member Boards shall not establish any mandatory requirement of its Board Members to arbitrate and/or mediate in the circumstances described in paragraphs (4), (5), and (6). No arbitration shall be initiated by the Board and no arbitration shall be undertaken by the Board unless it determines the dispute is properly arbitrable in accordance with the provisions of **Part Ten**, Section 45 of this Manual. (*Revised 11/11*)

Section 45. Board's Right to Decline Arbitration

(a) If either the Grievance Committee or the arbitration panel selected in the manner hereinafter provided determine that because of the amount involved or the legal complexity of the dispute the dispute should not be arbitrated, the arbitration shall automatically terminate unless either of the parties to the dispute appeals the decision to terminate the proceedings to the Board of Directors in writing within twenty (20) days of the date of notice that the Grievance Committee or the arbitration panel declined to continue the proceeding using Form #A-20, Appeal of Grievance Committee (or Hearing Panel) Dismissal or Appeal of Classification of Arbitration Request. The request for arbitration and any attachments cannot be revised, modified, or supplemented. The party appealing the dismissal may, however, explain in writing why they disagree with the Grievance Committee's conclusion that the request for arbitration should be dismissed. The Hearing Panel can also dismiss the arbitration request if the Hearing Panel concludes the matter is not arbitrable. The written appeal

and those materials and information which were available to the Grievance Committee or the arbitration Hearing Panel when the decision to discontinue arbitration was made will be presented to the Directors and considered with the appeal at the Directors' next regularly scheduled meeting or a special meeting designated for that purpose, but no later than ten (10) days after the date of receipt of the appeal. The Directors' decision shall be transmitted to the parties within five (5) days from the date of the decision. The complainant and respondent do not have the right to appear at the hearing before the Directors. In the event of such an appeal, the Grievance Committee or the arbitration panel shall report its conclusions in writing to the Directors and, if the Directors concur, the arbitration shall terminate and the parties shall be relieved of their obligation to arbitrate. In this event, or in the case of no appeal, any deposits made by the parties shall be returned to them. However, if the Board of Directors decides that the arbitration should proceed, the matter shall be remanded to the Grievance Committee or the arbitration panel for further proceedings. (*Revised 5/15*)

(b) The President may appoint a panel of Directors, acting on behalf of the Board of Directors, to hear the appeal. Any appeal panel so appointed must be composed of at least five (5) Directors or a quorum of the Board of Directors, whichever is less. (Alternatively, the appeal may be heard by the Board's Executive Committee.) The decision of the appeal panel (or Executive Committee) is final and not subject to further review by the Board of Directors. (*Revised 11/91*)

(c) If an otherwise arbitrable matter is the subject of civil litigation, arbitration shall not take place unless the litigation is withdrawn or referred to the Board of Directors by the court for arbitration in accordance with Article 17. In instances where the arbitration is mandatory (as defined in **Part Ten**, Section 44 of this Manual), the failure to arbitrate may result in a charge alleging violation of Article 17.

(d) If either party to an arbitration request believes that the Grievance Committee has incorrectly classified the issue presented by the request (“mandatory” or “voluntary” arbitration situation), the party has twenty (20) days from the transmittal of the Grievance Committee's decision to file a written appeal of the Grievance Committee's determination using Form #A-20, Appeal of Grievance Committee (or Hearing Panel) Dismissal or Appeal of Classification of Arbitration Request. The materials and information which were available to the Grievance Committee when the Committee made its determination will be presented to the Directors and considered with the appeal, together with any party's rationale challenging the Grievance Committee's classification of the request. Appeals of classifications shall be heard at the next regularly scheduled Directors' meeting or a special meeting designated for that purpose, but no later than ten (10) days after receipt of the appeal. The Directors' decision shall be

transmitted to the parties within (5) days from the date of the decision. The complainant and respondent do not have the right to appear at the hearing before the Directors. In the event of such an appeal, the Grievance Committee must report its written conclusions to the Board of Directors. If the Directors determine that the arbitration request was incorrectly classified, they shall reclassify the request as either “mandatory” or “voluntary” arbitration and refer it to the Professional Standards Administrator for appropriate processing. *(Revised 05/15)*

Section 46. Duty to Arbitrate Before State Association

By becoming and/or remaining members of this Board, all members bind themselves and agree to submit to arbitration by the arbitration facilities of the _____ (state) Association of REALTORS® any dispute with a member of any other local Board or _____ (state) Association of REALTORS®, provided:

(1) The dispute is a dispute as defined and for which arbitration is required by Article 17 of the Code of Ethics, and

(2) The _____ (state) Association of REALTORS® has established facilities for such arbitration.*

Disputes as defined in Article 17 of the Code of Ethics requiring arbitration between members having no commonality of Board membership or MLS participation may be submitted and conducted under the procedure established in **Part Eleven** of this Manual, subject to such modification as may be required by applicable state law. Whether arbitration is conducted by the state association or by an interboard arbitration panel pursuant to **Part Eleven**, the costs charged to parties, including filing fees, may not exceed \$500. Where arbitration is conducted by the state association, any costs incurred that exceed the parties' filing fees may be recouped from the parties' local association(s). *(Revised 5/06)*

The method set forth in **Part Eleven** may also be utilized for the conduct of arbitration between Board Members of different Boards of different states, subject to the parties' voluntary agreement in advance to accept the place, date, and time established by the arbitration panel thus chosen for a hearing, and to pay all costs of such arbitration as may be directed by the panel, and further subject to applicable state law of the respective states permitting such binding arbitration.

Section 47. Manner of Invoking Arbitration

(a) Any person authorized by the provisions of **Part Ten**, Section 44 of this Manual may request arbitration by the Board. A request for arbitration shall be in writing (Form

*The State Association as a Member Board of the National Association has the obligation to establish arbitration procedures and facilities consistent with applicable state law, as required by the Constitution, National Association, Article IV, and by Article 17, Code of Ethics of the National Association, for individual members of the State Association.

#A-1 or #A-2, Request and Agreement to Arbitrate, **Part Thirteen**, or any other appropriate form permitted by law), must be signed by the complainant, must indicate the nature of the dispute and the amount in dispute, and must be accompanied by the required deposit of \$_____.** Requests for arbitration must be filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later. Boards may provide mediation even if arbitration has not been requested provided the mediation is requested within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later. *(Revised 11/00)*

Suspension of filing deadlines: If the Board's informal dispute resolution processes (e.g., ombudsmen, mediation, etc.) are invoked or initiated by a complainant (or potential complainant) with respect to an otherwise potentially arbitrable matter that becomes the subject of a subsequent arbitration request, the one hundred eighty (180) day filing deadline shall be suspended beginning with the date of the complainant's (or potential complainant's) request for informal dispute resolution service or assistance and shall resume when the informal dispute resolution procedures are concluded or terminated. Questions about when informal dispute resolution began or ended will be determined by the Board President or the President's designee. *(Adopted 11/00)*

(b) The Professional Standards Administrator shall promptly refer the request for arbitration to the Chairperson of the Grievance Committee for determination by the Committee within _____ days as to whether the matter is subject to arbitration. *(Revised 11/98)*

The function of the Grievance Committee is to make only such preliminary review and evaluation of the request for arbitration as is required to determine (1) whether the matter is properly arbitrable; (2) whether arbitration is mandatory or voluntary based upon the requirements of **Part Ten**, Section 44 of this Manual; and (3) whether the proper parties are named in the request for arbitration. The Grievance Committee does not hold hearings, does not determine entitlement to awards, and does not dismiss arbitration requests because of a lack of evidence. A complainant is not required to prove their case upon submission of their arbitration request. *(Revised 11/15)*

The Grievance Committee may request the party(ies) named as respondent(s) in the request for arbitration to provide the

**This fee should not be so high as to deter parties from arbitration. This amount shall not exceed \$500. Where a party(ies) from the same firm is involved in more than one related request for arbitration, and the claims will be consolidated and resolved in a single hearing, no more than one deposit or filing fee may be required of that party(ies). When a REALTOR® requests arbitration to determine which of multiple respondents is entitled to disputed funds, or where a party makes no claim to the disputed funds, that party may not be assessed an arbitration filing fee. *(Revised 11/96)*

Grievance Committee with a written response to the request for arbitration within _____ days only if the committee is in need of additional information pertaining to the questions in Section 42, Grievance Committee's Review and Analysis of a Request for Arbitration, and the complainant cannot provide such information. (See Form #A-5, Grievance Committee Request for Information [Arbitration Request] and Form #A-6, Response to Grievance Committee Request for Information, **Part Thirteen** of this Manual.) If no response is filed within fifteen (15) days from transmittal of the request for the response, the Grievance Committee shall make its determination as to whether an arbitration hearing should be scheduled based upon the information set forth in the request for arbitration. (Revised 11/15)

- (c) If the Grievance Committee finds the matter properly subject to arbitration, the Chairperson shall refer it back to the Professional Standards Administrator with instructions to arrange a hearing, notifying the parties of the Grievance Committee's decision, informing the parties as to whether the arbitration is mandatory or voluntary (and, if voluntary, of the date certain by which the respondent is requested to inform the Board of his decision) and informing the parties of their ability to challenge the classification (see Section 45[d], Board's Right to Decline Arbitration). The Professional Standards Administrator or Chairperson shall select a hearing date which will be transmitted to the parties within five (5) days of transmittal of the Grievance Committee's decision. The Professional Standards Administrator shall also notify the respondent within five (5) days of receipt of the Grievance Committee's instructions by transmitting a copy of the request for arbitration, the Notice to Respondent (Arbitration) (Form #A-3), and two (2) forms for response (Form #A-4, Response and Agreement to Arbitrate, **Part Thirteen**), with directions to complete and return the written response and deposit amount of \$_____ * within fifteen (15) days from the date of transmittal of the request for response to the respondent. The Professional Standards Administrator shall within five (5) days of transmittal of the Grievance Committee's decision transmit to each of the parties a list of names of members of the Professional Standards Committee (see **Part Seven**, Section 27, (a) through (f), Qualification for Tribunal; **Part Thirteen**, Form #A-7, Notice of Right to Challenge Tribunal Members; and Form #A-8, Challenge to Qualifications by Parties to Panel Members). The respondent's response and affirmative claim shall be transmitted to the complainant not later than five (5) days after receipt. Within five (5) days from the date the challenge forms are due (forms due within ten [10] days from the date the list of names was transmitted), the Professional Standards Committee Chairperson shall appoint from the names not successfully challenged by either party three (3) or more

arbitrators who will hear the dispute. The Chairperson shall also select one of the panel members to serve as Chairperson of the Hearing Panel. Any Hearing Panel must have an odd number of members. At least two (2) shall be REALTORS®, and in the event a REALTOR-ASSOCIATE® or REALTOR® other than a principal has invoked the arbitration through the REALTOR® principal, or is affiliated with the respondent, and has a vested interest in the outcome of the proceeding, one (1) of the arbitrators must be a REALTOR-ASSOCIATE® or REALTOR® other than a principal. It shall be a membership duty of anyone so appointed to serve as an arbitrator unless disqualified. The Professional Standards Committee Chairperson shall select the Chairperson of the Hearing Panel, who shall possess the powers of the neutral arbitrator within the meaning of the _____ arbitration statutes.** A party will be deemed to have waived all objections to any person whose name he does not challenge. If challenge to members of the Professional Standards Committee results in an insufficient number of members to constitute a panel, the President may appoint other qualified Board Members to serve as panel members. No arbitration may proceed without three (3) or more arbitrators not disqualified pursuant to **Part Seven**, Section 27, Qualification for Tribunal. (Revised 05/15)

When Grievance Committees refer ethics complaints and arbitration requests for hearing, hearing panel chairs can determine if questions about

- (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

will be addressed through a pre-hearing meeting of the hearing panel or at the outset of the hearing prior to testimony relating to the ethics complaint or arbitration request commencing. If these matters rise during a hearing, the hearing panel will address them at that time.

Dismissals of ethics complaints and arbitration requests by hearing panels can be appealed to the Board of Directors on the same bases as dismissals by the Grievance Committee.

Where such issues are considered at a pre-hearing meeting of the hearing panel, the chair will determine whether the parties may be present, and the extent to which their participation will be permitted. (Revised 05/14)

If the Grievance Committee dismisses the request as being unworthy of further consideration, the decision may be appealed to the Board of Directors within twenty (20) days from transmittal of the Grievance Committee's decision using

*This fee should not be so high as to deter parties from arbitration. This amount shall not exceed \$500. Where a party(ies) from the same firm is involved in more than one related request for arbitration, and the claims will be consolidated and resolved in a single hearing, no more than one deposit or filing fee may be required of that party(ies). When a REALTOR® requests arbitration to determine which of multiple respondents is entitled to disputed funds, or where a party makes no claim to the disputed funds, that party may not be assessed an arbitration filing fee. (Revised 11/96)

**As an alternative, the Board may, as a matter of Board procedure, elect to have the Board President appoint the Chairperson of each Hearing Panel.

Form #A-20, Appeal of Grievance Committee Dismissal or Classification of Arbitration Request; however, no additional information may be added or attached to the form.* Only those materials which were presented to the Grievance Committee when the committee made its decision will be presented to the Board of Directors and considered with the appeal, and the complainant and respondent do not have the right to appear at the hearing before the Directors. The appeal shall be heard at the next regularly scheduled meeting or a special meeting designated for that purpose, but no later than ten (10) days after the date of receipt of the appeal. The Directors' decision shall be transmitted to the parties within five (5) days of the date of the decision. In the case of a dismissed arbitration request, the deposit shall be returned to the complainant. If the Directors determine that the arbitration request was improperly dismissed they shall refer it to the Professional Standards Committee for hearing. If the Directors determine that the request was improperly classified, they shall reclassify it appropriately. Upon determination of the Directors that the arbitration request should be referred for hearing, the Professional Standards Administrator shall at that time provide a copy of the response to the complainant if one had been submitted for review by the Grievance Committee. In any event, the Directors' decision shall be transmitted to the parties within five (5) days of the date of the decision. *(Revised 05/15)*

- (d) Boards are required to offer mediation as a preliminary, voluntary alternative to arbitration. Where mediation is offered prior to review of an arbitration request by the Grievance Committee and one or more of the parties declines or the mediation attempt is unsuccessful, the parties will not again be offered mediation. If a party requests a second opportunity to mediate, a second mediation can be scheduled at the discretion of the Association. (See Appendix V to **Part Ten**, Mediation as a Service of Member Boards.) *(Revised 11/03)*
- (e) Dismissal of an arbitration request by a Board of REALTORS® does not prohibit REALTORS® from exercising other remedies, including litigation, that may be available to them. *(Adopted 5/99)*

Section 48. Submission to Arbitration

- (a) Submission of a dispute to arbitration by the Board shall consist of signing and delivering to the Professional Standards Administrator either a request or response form provided by the Board (Form #A-1 or #A-2, Request and Agreement to Arbitrate, or Form #A-4, Response and Agreement to Arbitrate) or any similar writing permitted by law and making the appropriate deposit of \$_____ (not

to exceed \$500).** Agreements to arbitrate are irrevocable except as otherwise provided under state law. *(Revised 5/01)*

NOTE: The circumstances under which Member Boards may conduct arbitration will vary based upon state arbitration other statutes and case law. Member Boards should consult with Board or State Association legal counsel and select the appropriate procedure from those listed below as Options #1, #2, and #3. No arbitration hearing may be held in the absence of the complainant, and no award may be rendered without a hearing on the merits. *(Revised 11/91)*

In any instance where arbitration has been conducted and an award rendered under Option #2 or #3 of this Section; where the amount requested by the party initiating the arbitration has been awarded; and where the respondent has failed to make the specified deposit, it shall be the responsibility of the respondent to pay an amount equal to the deposit to the Board within ten (10) days of receipt of notice from the Board requesting payment. Where the respondent has not made the deposit and a partial award is made, the respondent shall pay to the Board an amount to be determined by the Hearing Panel that will not exceed the deposit originally made by the complainant. Failure to make such payment on a timely basis, upon receipt of a request from the Board, shall be treated in the manner specified in the Board's bylaws for failure to satisfy financial obligations to the Board. *(Adopted 5/88)*

Option #1

- (b) Arbitration shall not proceed unless the signed Response and Agreement Form (**Part Thirteen**, Form #A-4) and deposit amount have been received from the respondent and the respondent appears and takes part in the hearing *(Revised 11/05)*.

Option #2

- (b) In the event the respondent fails to sign and return the Response and Agreement Form (**Part Thirteen**, Form #A-4), or fails or refuses to make the required deposit, arbitration may proceed, and a valid award may be rendered if the respondent appears and takes part in the hearing.

NOTE: This option may be adopted only where state law permits arbitration to proceed in the absence of signed arbitration agreements. The advice of legal counsel should be obtained to determine whether Board membership creates an enforceable obligation to arbitrate under the circumstances established in **Part Ten**, Section 44 of this Manual.

**Where a party(ies) from the same firm is involved in more than one related request for arbitration, and the claims will be consolidated and resolved in a single hearing, no more than one deposit or filing fee may be required of that party(ies). When a REALTOR® requests arbitration to determine which of multiple respondents is entitled to disputed funds, or where a party makes no claim to the disputed funds, that party may not be assessed an arbitration filing fee. *(Revised 11/93)*

*Any member of a Grievance Committee who is a member of the Board of Directors shall not sit as a Director during any appeal from a decision of the Grievance Committee, nor shall such individual participate in any vote of the Directors with respect to such matters.

Option #3

- (b) In the event the respondent fails or refuses to sign the Response and Agreement Form (**Part Thirteen**, Form #A-4), fails or refuses to make the required deposit, or fails or refuses to take part in the arbitration hearing, the arbitration hearing may be scheduled and conducted in the absence of the respondent.

NOTE: Arbitration in the absence of a respondent may take place only where permitted by state statute or case law. In such instances, the Board should ensure that all preliminary procedural steps, including the provision of adequate prior notice, are complied with. In the event a respondent fails to appear, it is strongly recommended that an attempt be made to determine whether the failure to appear is because of the respondent's refusal to arbitrate or due to unforeseen circumstances. *(Revised 11/91)*


Where arbitration takes place in a respondent's absence, the respondent is still entitled to be represented by legal counsel. Counsel may make opening and closing statements; call witnesses; cross-examine witnesses called by other parties; and introduce affidavits, documents, and other admissible relevant evidence. Counsel may not testify to events and facts of which counsel has no firsthand knowledge. Hearing Panels should be instructed by the Chair that counsel's arguments do not constitute testimony. *(Adopted 11/98)*

Associations are encouraged, but not required, to refund part or all of the parties' deposits in cases where disputes are resolved through mediation. Associations are also encouraged to adopt and follow a consistent policy regarding the disposition of arbitration deposits. *(Adopted 5/10)*

Section 49. Initial Action by Directors

If the complainant alleges that a member has improperly refused to submit a dispute to arbitration (or mediation if required by the Board), the complaint shall not be referred to the Grievance Committee or a Hearing Panel, but shall be brought before the Board of Directors at the next regular meeting or at a special meeting called by the President for that purpose. The procedures for notices, time of notice, and hearing prescribed for matters before a Hearing Panel shall apply. The sole question of fact for the Directors to decide will be whether the respondent has failed to submit an arbitrable matter to arbitration or mediation in violation of Article 17. *(Revised 11/11)*


There can be no charge that there has been a refusal to arbitrate (or mediate if required by the Board) until the Grievance Committee determines the matter is arbitrable and of a mandatory nature and the respondent fails to submit to arbitration or mediation before the Board. *(Revised 11/11)*

-  Upon determination that the member has refused to arbitrate or mediate a properly arbitrable matter, the Board of Directors may direct the implementation of appropriate sanction and should, if it has reason to believe that the imposition of

sanction will become the basis of litigation and a claim for damages consequent to such sanction, delay the effective date of implementing the sanction to a date following receipt by the Board of a judicial decision in a petition for declaratory relief filed by the Board to confirm the propriety of its action. *(Revised 11/11)*

On the other hand, if the complaint against the member is that, having properly submitted a dispute to arbitration or mediation, the member has refused to abide by the award or the resulting agreement, such refusal should not be referred to the Grievance Committee as a violation of the Code of Ethics unless it reflects an established pattern or practice of noncompliance with the commitment to arbitrate or mediate. A refusal to abide by an award in arbitration or any resulting agreement in mediation should be enforced in the manner set forth in **Part Ten**, Section 56, Enforcement.* *(Revised 11/11)*

Section 50. Preliminary Judicial Determination Prior to Imposition of Discipline

If the Board of Directors has reason to believe that the imposition of a proposed sanction will become the basis of litigation and a claim for damages, it may specify that the discipline shall become effective upon entry of the final judgment of a court of competent jurisdiction in a suit by the Board for declaratory relief declaring that the discipline proposed violates no rights of the member.** 

Section 51. Arbitration Hearing

- (a) Not later than five (5) days after receipt of the response and affirmative claim, the Professional Standards Administrator shall transmit to the complainant a copy of the response and respondent's affirmative claim, if any. *(Revised 11/15)*

In the case of an arbitration request involving issues related to areas of the real estate business such as commercial, investment, industrial, etc., where there is an insufficient number of qualified practitioners on the Board's Professional Standards Committee to provide a representative peer panel, the Board President shall appoint other Board Members qualified in that field to serve as panel members. If the Board President is unable to identify a sufficient number of qualified members to serve on a panel, the President shall report that fact to the Directors at their next regularly scheduled meeting. If the Board of Directors concurs, the request shall be referred to the State Association pursuant to **Part Fourteen** of this Manual. If the State Association is unable to provide a representative peer panel, the parties shall be released from their obligation to arbitrate. *(Revised 11/98)*

- (b) The Professional Standards Administrator shall inform the parties of the date, time, and place of the hearing established by

*Refer to Appendix III to **Part Ten** for the rationale for use of judicial enforcement of arbitration awards when a Board Member refuses to pay an award in arbitration.

Refer to Rationale of Declaratory Relief Procedure provided in Appendix IV to **Part Four.



the arbitrators (or the Chairperson of the Professional Standards Committee) (Form #A-9, Official Notice of Hearing, **Part Thirteen**).* The arbitration request and response, if any, shall be provided to Hearing Panel members prior to the hearing. Such time period shall be _____ (as determined by the Board of Directors) and shall be adhered to for all hearings. Board's conducting arbitration must also provide all parties and panel members with the Arbitration Guidelines prior to commencement of any arbitration hearing (including the Arbitration Work Sheet). The parties shall be given at least twenty-one (21) days' prior notice of the hearing, but appearance at a hearing without objection by a party will constitute a waiver of any defective notice of the hearing. The arbitrators may recess the hearing from time to time as necessary. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the request for continuance would deny the requestor a fair hearing. (Revised 11/14)

- (c) Upon notice by the Professional Standards Administrator, the parties to the dispute shall with diligence present to the arbitrators in writing such statements and proof which they deem necessary to support their claims. Proof may be submitted in the form of affidavits or otherwise. The Hearing Panel of arbitrators may require that statements be verified by affidavits or that accuracy or authenticity of any documents or other papers submitted be verified by affidavit. At the hearing, the arbitrators shall receive any further written statements, documents, or other papers, shall hear oral testimony and determine what personal appearances shall be made by the parties, and shall regulate the holding of hearings.** The Hearing Panel may receive and consider any evidence they deem material and proper, including evidence of accountants and other experts. Each party is responsible for the expenses of expert witnesses he calls. Parties to arbitration shall be entitled to have legal counsel present at any hearing. Each party is responsible for the expenses of his respective counsel.

Section 52. Settlement

The parties to an arbitration may settle the issue between them by agreement at any time. In such event, upon notification to the Professional Standards Administrator, the arbitration proceedings shall be terminated and the termination shall be recorded in the file.

A portion of each party's deposit may be retained by the Board to cover the costs incurred by the Board up to the point of settlement of the dispute.

Section 53. The Award

- (a) The award of the arbitrators (Form #A-12, Award of Arbitrators, **Part Thirteen**) shall be made the day of the hearing, or no later than forty eight (48) hours following the conclusion of

*Form #A-10, Outline of Procedure for Arbitration Hearing, **Part Thirteen**, should accompany the notice of the hearing or be otherwise provided to the parties prior to the hearing.

Such hearings should be conducted according to **Part Twelve, Conduct of an Arbitration Hearing.

the hearing. The award shall be in writing and signed by the arbitrators or a majority of them, shall state only the amount of the award, and, when so signed and transmitted to each of the parties, shall be valid and binding and shall not be subject to review or appeal. The award shall be transmitted to the parties within five (5) days after the award is reduced to writing. Any award rendered may not be greater than the amount in dispute, may not include punitive damages, may not include attorney's fees unless expressly provided for in the agreement giving rise to the dispute, and may not include interest unless called for in the arbitration agreement and permitted by state law. Notwithstanding the foregoing, a party to an arbitration proceeding may appeal to the Board of Directors only with respect to such alleged irregularities occurring in the conduct of the proceeding as may have deprived the party of fundamental "due process." (Revised 05/15)

- (b) If an award has been rendered, the non-prevailing party must, within ten (10) days following transmittal of the award, either (1) pay the award to the party(ies) named in the award or (2) deposit the funds with the Professional Standards Administrator to be held in an escrow or trust account maintained for this purpose. Failure to satisfy the award or to deposit the funds in the escrow or trust account within this time period may be considered a violation of a membership duty and may subject the member to disciplinary action at the discretion of the Board of Directors. (Revised 05/15)
- (c) After the award has been transmitted to each of the parties, they have twenty (20) days to request procedural review of the arbitration hearing procedure by the Board of Directors. The non-prevailing party shall also have the same twenty (20) days following transmittal of the award to notify the Professional Standards Administrator that a legal challenge to the validity of the award has been initiated. (Revised 05/15)

If no such procedural review is requested, the award becomes final and binding following the twenty (20) day period. However, if procedural review is requested, the award is not considered final and binding until after the Board of Directors has concluded that the hearing was conducted in a manner consistent with the Board's procedures and the parties had been afforded due process. (Revised 05/15)

- (d) If a request for procedural review of the arbitration procedure is received within twenty (20) days, the funds deposited shall be retained in the escrow or trust account until the review is completed. If the arbitration award is confirmed by the Board of Directors following the conduct of the limited procedural review, the nonprevailing party shall have an additional fifteen (15) days from the transmittal of the Directors' decision to institute an appropriate legal challenge to the validity of the arbitration award. In such case, the nonprevailing party shall also cause legal counsel to advise the Board in writing that a suit challenging the validity of the arbitration award has been filed during this additional fifteen (15) day period. After fifteen (15) days from the transmittal of the Directors' decision, if written notice of a suit challenging the validity of the arbitration award has not been received by the

Board, the funds shall be released from the escrow or trust account and paid to the prevailing party. If written notification is received during the fifteen (15) day period, the funds will be held in the escrow or trust account pending the determination of the matter by a court of competent jurisdiction. *(Revised 05/15)*

If the nonprevailing party does not request the Board to conduct a procedural review of the arbitration hearing process during the twenty (20) day period following transmittal of the award, then written notification that a legal challenge has been instituted must be received within the twenty (20) days following transmittal of the award. Failure to provide written notification that a suit challenging the validity of the award has been filed within twenty (20) days following transmittal of the award will result in the award being paid from the escrow or trust account to the prevailing party. *(Revised 05/15)*

- (e) Any failure to make the necessary deposits shall be referred to the Board of Directors for action at their next meeting or at a special meeting called for that purpose. The party failing to make the deposit on a timely basis shall be advised of the date, time, and place of the meeting and shall have an opportunity to explain why the required deposits were not made on a timely basis. The Board of Directors may, at its discretion, impose discipline or may give the party an additional period to make the required deposits. The Directors may also stipulate appropriate discipline to be automatically imposed if the party fails to make the deposit within the time established by the Directors. *(Revised 05/15)*
- (f) Any interest accrued on the escrowed funds shall become the property of the party to whom the funds are ultimately released. *(Revised 05/15)*

NOTE: Escrowing of arbitration awards to secure timely payment as addressed in Section 53 (b-c) is not required in states where escrowing awards by associations is prohibitively expensive, and where the state association recommends alternative aggressive and cost-effective enforcement procedures that maximize enforcement/payment under state law, and local associations adopt those procedures, provided that nothing in those procedures is prohibited by National Association policy. *(Adopted 05/15)*

Section 54. Costs of Arbitration

The deposits of the parties shall be used by the Professional Standards Administrator to cover the costs of arbitration as it may be required. Any portion not used specifically to cover the costs of the arbitration shall go into the general operating funds of the Board of REALTORS®.* When a REALTOR® requests arbitration to determine which of multiple respondents is entitled to disputed funds, or where a party makes no claim to the disputed funds, that party may not be assessed an arbitration filing fee. *(Revised 11/95)*

*In cases of arbitration not mandated by the Board, and in which the Board provides arbitration as a service to the parties voluntarily seeking arbitration, the Board may recover its legal fees as it deems appropriate.

NOTE: At the option of each Member Board procedures providing for alternative disposition of arbitration deposits may be adopted. These can include returning the deposit to any prevailing party or returning a portion of the deposit to each party should the award rendered be an amount other than that requested by any of the parties. In any instance where return of part or all of any party's deposit is involved, disposition of such deposits shall be determined by the arbitrators. *(Adopted 11/95)*

NOTE: Associations are strongly encouraged to refund all or part of parties' filing deposits where disputes are resolved through mediation. If an association elects to adopt this optional procedure, the following should be incorporated as part of the association's dispute resolution procedures:

"Where parties successfully mediate an otherwise arbitrable dispute, their arbitration filing fees will be refunded," or "Where parties successfully mediate an otherwise arbitrable dispute _____ % (or \$ _____) of their filing fee will be refunded." *(Adopted 5/10)*


If parties settle the dispute after the hearing begins but before the executive session begins, determine the disposition of the arbitration deposit. *(Adopted 11/16)*

Section 55. Request for Procedural Review by Directors

- (a) A written request for procedural review of the arbitration hearing procedures must be filed with the President within twenty (20) days after the award has been transmitted to the parties and be accompanied by a deposit in the sum of \$_____ (not to exceed \$500). The request for procedural review should cite the alleged procedural deficiencies or other irregularities the party believes constitute a deprivation of due process (e.g., fraud, coercion, bias, prejudice, evident partiality, etc.) on the part of Hearing Panel members or others acting on behalf of the Board. The request for procedural review shall be reviewed within ten (10) days of receipt of the request by the Board President or the President's designee only for the purpose of determining whether the request states any legitimate basis for consideration by the Board of Directors. If determined to be insufficient, it shall be returned to the requester accompanied by an explanation and a request for additional detail to be received by the Board within ten (10) days of notice. This initial administrative review is not a decision on the merits of the request for procedural review but is intended only to ensure compliance with the requirement that the request cite the alleged procedural deficiency or irregularity on which the request is based and which will be presented to the Board of Directors for its consideration. All requests for procedural review received by the Board must be considered by the Board of Directors, and only the bases raised in the written request for procedural review may be raised during the review before the Directors. *(Amended 11/15)*

- (b) When a request for procedural review (as originally filed if in proper form, or as originally filed if no amendment is

submitted, or as amended even if still deemed to be lacking) is received, the Professional Standards Administrator shall within one (1) day of receipt of the request or within one (1) day of receipt of additional detail, if provided or the date that the period to provide additional detail has elapsed, send a copy to the other party, notify all parties of the time and place of the review hearing by the Directors at least ten (10) days in advance (including challenge Forms #A-7 and #A-8, **Part Thirteen** of this Manual), and bring the matter before the Directors for review at their next regular meeting or at a special meeting called by the Professional Standards Administrator for that purpose, but not later than thirty (30) days after the date of receipt of the procedural review. The Professional Standards Administrator shall provide to the Directors, in advance, a copy of the request for procedural review or the amended request for procedural review, if any, and the President's correspondence, if any. The Directors shall be advised that the information provided is confidential and not to be discussed with others at any time. *(Revised 05/15)*

 (c) The request for procedural review may be heard by a panel of Directors appointed by the President for that purpose (or, alternatively, by the Board's Executive Committee). Five (5) Directors or a quorum of the Board of Directors, whichever is less, shall constitute such panel, which shall act on behalf of the Board of Directors. The decision of the panel (or Executive Committee) shall be final and binding and shall not be subject to further review by the Board of Directors. *(Revised 11/91)*

(d) At the procedural review hearing, the party filing the request will have an opportunity to explain the bases on which the party is requesting that the award of the arbitrators be overturned. The Chairperson of the arbitration panel (or the Chairperson's designee) will have an opportunity to respond to the allegations. The other party shall have the opportunity to present to the Directors reasons why the arbitration Hearing Panel's award should not be overturned. *(Revised 5/09)*


(e) The Board of Directors shall not hear an appeal with respect to the merits of an arbitration award, and shall not, on appeal, review such evidence offered with respect to the merits of that award, except as such evidence may bear upon a claim of deprivation of due process. The Directors shall transmit their decision within five (5) days from the date of the procedural review hearing. This decision may be to adopt the award of the arbitrators or to overturn the award based on a substantial procedural error in the arbitration hearing process that resulted in a denial of due process or on a determination that the member was otherwise deprived of due process. *(Revised 05/15)*

(f) If the Directors determine that a substantial procedural error occurred or a member was otherwise deprived of due process, the Directors shall invalidate the original arbitration award and direct that the matter be referred to the Professional Standards Committee for a hearing on the

merits before a different Hearing Panel, or, alternatively, the Directors may release the parties from their obligation to arbitrate if the Directors conclude that the Board will be unable to impanel an impartial Hearing Panel.

(g) After all procedural remedies provided for in the Board's procedures have been exhausted, a member is not precluded from asserting any legal rights to which he is entitled. Assertion of such legal rights in the courts does not violate Article 17 of the Code of Ethics. The exercise of such legal rights by a member would result in judicial review similar to that set forth in **Part Ten**, Section 56 of this Manual. Section 56 recommends that, in instances where a member fails to comply with an award, the award recipient seek judicial enforcement, which results in judicial review, and, absent any showing of deprivation of due process, the judicial review will generally affirm the award rendered through the arbitration process and will enable the recipient to have it enforced. *(Revised 11/88)*

Section 56. Enforcement

The judgment of any competent court of record in _____  (state), state or federal, may be rendered upon the award. If a member fails to comply with an award or the terms of a mediated settlement agreement, the recipient to whom the award has been rendered by the arbitration panel or the beneficiary of a settlement agreement reached by the parties in mediation shall be advised by the Board to seek judicial enforcement and to request reimbursement of legal fees incurred in seeking enforcement. At the discretion of the Board of Directors, the Board may support the request for judicial enforcement in the court, and at its further discretion, the Board may reimburse the individual for costs incurred in seeking such judicial enforcement if the court does not grant reimbursement of legal costs to the plaintiff. *(Revised 11/14)*

Appendix I to Part Ten

Arbitrable Issues

Article 17 of the Code of Ethics provides:

In the event of contractual disputes or specific non-contractual 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 mediate the dispute if the Board requires its members to mediate. If the dispute is not resolved through mediation, or if mediation is not required, REALTORS® shall submit the dispute to arbitration in accordance with the policies of the Board rather than litigate the matter.

In the event clients of REALTORS® wish to mediate or arbitrate contractual disputes arising out of real estate transactions, REALTORS® shall mediate or arbitrate those disputes in accordance with the policies of the Board, provided the clients agree to be bound by any resulting agreement or award.

The obligation to participate in mediation and arbitration contemplated by this Article includes the obligation of REALTORS® (principals) to cause their firms to mediate and arbitrate and be bound by any resulting agreement or award. (Amended 1/12)

Part Ten, Section 43, Arbitrable Issues, in this Manual provides in part:

*As used in Article 17 of the Code of Ethics and in **Part Ten** of this Manual, the terms “dispute” and “arbitrable matter” refer to contractual issues and questions, and certain specific non-contractual issues and questions outlined in Standard of Practice 17-4, including entitlement to commissions and compensation in cooperative transactions, that arise out of the business relationships between REALTORS®, and between REALTORS® and their clients and customers, as specified in **Part Ten**, Section 44, Duty and Privilege to Arbitrate. (Revised 11/96)*

Part Nine, Section 42, Grievance Committee’s Review and Analysis of a Request for Arbitration, provides, in part, in subsection (b):

If the facts alleged in the request for arbitration were taken as true on their face, is the matter at issue related to a real estate transaction and is it properly arbitrable — i.e., is there some basis on which an award could be based?

Despite the guidance provided in the above-referenced sections of the *Code of Ethics and Arbitration Manual*, questions continue to arise as to what constitutes an arbitrable issue, who are the appropriate parties to arbitration requests, etc. To provide guidance to Board Grievance Committees in their review of arbitration requests, the Professional Standards Committee of the National Association provides the following information.

Arbitration by Boards of REALTORS® is a process authorized by law in virtually every state. Arbitration is an economical, efficient, and expeditious alternative to civil litigation. Jurists, including the former U.S. Supreme Court Chief Justice Warren Burger, have endorsed arbitration as a method of reducing the litigation backlog in the civil courts.

To conduct arbitration hearings, Boards of REALTORS®, acting through their Grievance Committees and Professional Standards Committees, must have a clear understanding of what constitutes an arbitrable issue. An arbitrable issue includes a contractual question arising out of a transaction between parties to a contract in addition to certain specified non-contractual issues set forth in Standard of Practice 17-4. Many arbitrations conducted by Boards of REALTORS® involve entitlement to compensation offered by listing brokers through a multiple listing service or otherwise to cooperating brokers acting as subagents, as agents of purchasers, or in some other recognized agency or non-agency capacity. Frequently, at closing, the listing broker will be paid out of the proceeds of the sale and will direct that a disbursement be made to the cooperating broker who the listing broker believes was the procuring cause of the sale. Subsequently, another broker who may have been previously involved in the transaction will file an arbitration request claiming to have been the procuring cause of sale, and the question arises as to who is the proper respondent. *(Revised 11/96)*

In our example, assume that the listing broker is Broker A, the cooperating broker who was paid is Broker B, and the cooperating broker who was not paid, but who claims to be the procuring cause of sale, is Broker C. It is not unusual for arbitration requests filed by one cooperating broker to name another cooperating broker as the respondent. This is based on the assumption that the monies the listing broker paid to Broker B are unique and that the listing broker’s obligation to compensate any other broker is extinguished by the payment to Broker B, irrespective of whether Broker B was the procuring cause of sale or not. However, the mere fact that the listing broker paid Broker B in error does not diminish or extinguish the listing broker’s obligation to compensate Broker C if a Hearing Panel determines that Broker C was, in fact, the procuring cause of sale. *(Revised 11/96)*

Does this mean that a listing broker is always potentially obligated to pay multiple commissions if a property was shown by more than one cooperating broker? Not necessarily. When faced with Broker C’s arbitration request, the listing broker could have initiated arbitration against Broker B, requesting that the Hearing Panel consider and resolve all of the competing claims arising from the transaction at the same time. Professional Standards Policy Statement 27, Consolidation of arbitration claims arising out of the same transaction, provides:

When reviewing requests for arbitration, Grievance Committees should try to ensure that all appropriate parties are named as complainants or respondents. If it appears that there may be

related claims involving other parties arising out of the same facts, the Grievance Committee may suggest to either the complainant or respondent (or both) that they may wish to request arbitration with additional respondents or third-party respondents so that all related claims may be resolved through a single arbitration hearing. Upon motion by either the complainant or the respondent, an arbitration request may be amended to include any additional appropriate parties, or separate arbitration requests may be filed naming additional parties, so that all related claims arising out of the same transaction can be resolved at the same time. (Revised 11/92)

A listing broker may realize, prior to the closing of a transaction, that there may be more than one cooperating broker claiming compensation as the procuring cause of sale. In such instances, to avoid potential liability for multiple compensation claims, the listing broker, after the transaction has closed, can initiate an arbitration request naming all of the potential claimants (cooperating brokers) as respondents. In this way, all of the potential competing claims that might arise can be resolved through a single arbitration hearing. *(Revised 11/96)*

There is also an alternative avenue of arbitration available to REALTORS® involved in disputes arising out of cooperative real estate transactions. Standard of Practice 17-4 recognizes that in some situations where a cooperating broker claims entitlement to compensation arising out of a cooperative transaction, a listing broker will already have compensated another cooperating broker or may have reduced the commission payable under a listing contract because a cooperating broker has expressly sought and/or chosen to accept compensation from another source, e.g., the seller, the purchaser, etc. Under the circumstances specified in Standard of Practice 17-4, the cooperating brokers may arbitrate between themselves without naming the listing broker as a party. If this is done, all claims between the parties, and claims they might otherwise have against the listing broker, are extinguished by the award of the arbitrators. Similarly, Standard of Practice 17-4 also provides for arbitration between brokers in cases where two (or more) brokers each have open listings and each claims to have procured the purchaser. Since the determiner of entitlement to a commission under an open listing is generally production of the purchaser, arbitration between the two (or more) “open” listing brokers resolves their claims against the seller. This open listing scenario is to be distinguished from the situation in which two (or more) listing brokers each have exclusive listings and each claim entitlement to a commission pursuant to their respective listing agreements. Because exclusive listing agreements generally provide for payment of a commission if the listed property is sold—whether through the listing broker’s efforts or not—each listing broker could have a legitimate, enforceable right to a commission from their client. Thus, Standard of Practice 17-4 does not obligate listing brokers to arbitrate between themselves when both (or all) have independent claims to commissions based on their respective exclusive listing agreements. *(Amended 5/02)*

In reviewing requests for arbitration, it is important that Grievance Committees not take actions that could be construed as rendering

decisions on the merits. For example, a Grievance Committee should not dismiss an otherwise arbitrable claim simply because Grievance Committee members believe the respondent would undoubtedly prevail in a hearing. On the other hand, an arbitration request that cites no factual basis on which a Hearing Panel could conceivably base an award should not be referred for hearing. A party requesting arbitration must clearly articulate, in the request for arbitration, facts that demonstrate a contractual relationship between the complainant and the respondent, or a relationship described in Standard of Practice 17-4, and an issue that could be the basis on which an arbitration award could be founded. *(Revised 11/96)*

Another question that frequently arises with respect to arbitration requests is whether the fact that the listing broker was paid out of the proceeds of the closing is determinative of whether a dispute will be considered by a Hearing Panel. Initially, it should be noted that the Arbitration Guidelines (Appendix II to **Part Ten**) provide that an arbitrable issue involving procuring cause requires that there have been a “successful transaction.” A “successful transaction” is defined as “a sale that closes or a lease that is executed.” Some argue that if the listing broker is not paid, or if the listing broker waives entitlement to the commission established in the listing contract, then there is nothing to pay to the cooperating broker and, thus, no issue that can be arbitrated. This is an improper analysis of the issue. While the listing broker needs the consent of the seller/client to appoint subagents and to compensate subagents, buyer agents, or brokers acting in some other recognized agency or non-agency capacity, the offer to compensate such individuals, whether made through the multiple listing service or otherwise, results in a separate contractual relationship accepted through performance by the cooperating broker. Thus, if the cooperating broker performs on the terms and conditions established by the listing broker, the fact that the listing broker finds it difficult to be paid or, alternatively, waives the right to be paid, has no bearing on whether the matter can be arbitrated but may have a direct impact on the outcome. Many cooperative relationships are established through MLS and the definition of the MLS provides, in part: *(Revised 11/97)*

While offers of compensation made by listing brokers to cooperating brokers through MLS are unconditional, a listing broker’s obligation to compensate a cooperating broker who was the procuring cause of sale (or lease) may be excused if it is determined through arbitration that, through no fault of the listing broker and in the exercise of good faith and reasonable care, it was impossible or financially unfeasible for the listing broker to collect a commission pursuant to the listing agreement. In such*

*Compensation is unconditional except where local MLS rules permit listing brokers to reserve the right to reduce compensation offers to cooperating brokers in the event that the commission established in a listing contract is reduced by court action or by actions of a lender. Refer to **Part One**, G. Commission/Cooperative Compensation Offers, Section 1, Information Specifying the Compensation on Each Listing Filed with a Multiple Listing Service of a Board of REALTORS®, *Handbook on Multiple Listing Policy*. *(Adopted 11/98)*

instances, entitlement to cooperative compensation offered through MLS would be a question to be determined by an arbitration Hearing Panel based on all relevant facts and circumstances including, but not limited to, why it was impossible or financially unfeasible for the listing broker to collect some or all of the commission established in the listing agreement; at what point in the transaction did the listing broker know (or should have known) that some or all of the commission established in the listing agreement might not be paid; and how promptly had the listing broker communicated to cooperating brokers that the commission established in the listing agreement might not be paid. (Amended 11/98)

Still another common question is whether a REALTOR® (often a cooperating broker with an arguably-arbitrable claim) can thwart the process by remaining silent for one hundred eighty (180) days and then bringing a lawsuit against another REALTOR® (often the listing broker). As noted previously, arbitration requests must be filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later. REALTORS® cannot reasonably be expected to request arbitration in circumstances where they have no reason to know that a dispute with another broker or firm even exists. Under these circumstances, a listing broker with no prior knowledge of a dispute would have one hundred eighty (180) days from receipt of notice of a lawsuit to invoke arbitration with the other broker. *(Adopted 11/13)*


The foregoing are by no means all-inclusive of the consideration that must be taken into account by a Grievance Committee in determining whether a matter will be arbitrated. However, they are some of the common questions raised with respect to arbitrable issues, and this discussion is provided to assist Grievance Committees in their important role in evaluating arbitration requests. *(Adopted 4/91)*

Non-Arbitrable Issues that Can be Mediated as a Matter of Local Determination

As stated above, an arbitrable issue includes a contractual question arising out of a transaction between parties to a contract, in addition to certain specified non-contractual issues set forth in Standard of Practice 17-4. Arbitration proceedings should be limited to these issues, and Boards of REALTORS® should not arbitrate other types of claims. Examples of non-arbitrable issues include:

- tortious interference with business relationships
- tortious interference with a contractual relationship
- economic duress
- intentional infliction of emotional distress
- other tort claims, such as libel/slander
- employment claims, other than commission disputes
- fraud/misrepresentation claims
- property claims, both real and personal
- Disputes between two listing brokers where no contract exists between the parties and the dispute is not as specified in Standard of Practice 17-4(4)

In addition, Section 53 of the *Code of Ethics and Arbitration Manual* limits the award in an arbitration proceeding to the amount in dispute and so an arbitration award will not include punitive damages, attorney's fees, or interest, unless the agreement between the parties specifically provides for such damages and the award is permitted by state law.

Associations may, but are not required to, provide mediation  services for disputes of the type listed above. *(Revised 11/16)*

Appendix II to Part Ten

Arbitration Guidelines

(Suggested Factors for Consideration by a Hearing Panel in Arbitration)

A key element in the practice of real estate is the contract. Experienced practitioners quickly become conversant with the elements of contract formation. Inquiry, invitation, offer, counteroffer, contingency, waiver, acceptance, rejection, execution, breach, rescission, reformation, and other words of art become integral parts of the broker's vocabulary.

Given the significant degree to which Article 3's mandate for cooperation—coupled with everyday practicality, feasibility, and expediency—make cooperative transactions facts of life, it quickly becomes apparent that in virtually every real estate transaction there are actually several contracts which come into play. Setting aside ancillary but still important contracts for things such as mortgages, appraisals, inspections, title insurance, etc., in a typical residential transaction (and the same will be true in many commercial transactions as well) there are at least three (and often four) contracts involved, and each, while established independently of the others, soon appears to be inextricably intertwined with the others.

First, there is the listing contract between the seller and the listing broker. This contract creates the relationship between these parties, establishes the duties of each and the terms under which the listing broker will be deemed to have earned a commission, and frequently will authorize the listing broker to cooperate with or compensate (or both) cooperating brokers who may be subagents, buyer agents, or acting in some other capacity.

Second, there is the contract between the listing broker and cooperating brokers. While this may be created through an offer published through a multiple listing service or through some other method of formalized cooperative effort, it need not be. Unlike the bilateral listing contract (where generally the seller agrees to pay a commission in return for the listing broker's production of a ready, willing, and able purchaser), the contract between the listing broker and the cooperating broker is unilateral in nature. This simply means that the listing broker determines the terms and conditions of the offer to potential cooperating brokers (and this offer may vary as to different potential cooperating brokers or as to cooperating brokers in different categories). This type of contract differs from a bilateral contract also in that there is no contract formed between the listing broker and the potential cooperating brokers upon receipt of the listing broker's offer. The contract is formed only when accepted by the cooperating broker, and acceptance occurs only through performance as the procuring cause of the successful transaction. (*Revised 11/97*)

Third, there is the purchase contract—sometimes referred to as the purchase and sale agreement. This bilateral contract between the seller and the buyer establishes their respective promises and obligations to each other, which may also impact on third parties. The fact that someone other than the seller or buyer is referenced in the purchase contract does not make him/her a

party to that contract, though it may create rights or entitlements which may be enforceable against a party (the buyer or seller).

Fourth, there may be a buyer-broker agreement in effect between the purchaser and a broker. Similar in many ways to the listing contract, this bilateral contract establishes the duties of the purchaser and the broker as well as the terms and conditions of the broker's compensation.

These contracts are similar in that they are created through offer and acceptance. They vary in that acceptance of a bilateral contract is through a reciprocal promise (e.g., the purchaser's promise to pay the agreed price in return for the seller's promise to convey good title), while acceptance of a unilateral contract is through performance (e.g., in producing or procuring a ready, willing, and able purchaser).

Each of these contracts is subject to similar hazards in formation and afterward. The maker's (offeror's) offer in any of these scenarios may be accepted or rejected. The intended recipient of the offer (or offeree) may counteroffer. There may be questions as to whether a contract was formed—e.g., was there an offer, was it accepted, was the acceptance on the terms and conditions specified by the maker of the offer—or was the "acceptance" actually a counteroffer (which, by definition, rejects the first offer). A contract, once formed, may be breached. These and other questions of contract formation arise on a daily basis. There are several methods by which contractual questions (or "issues" or "disputes") are resolved. These include civil lawsuits, arbitration, and mediation.

Another key contract is the one entered into when a real estate professional joins a local Board of REALTORS® and becomes a REALTOR®. In return for the many benefits of membership, a REALTOR® promises to abide by the duties of membership including strict adherence to the Code of Ethics. Among the Code's duties is the obligation to arbitrate, established in Article 17. Article 17 is interpreted through five Standards of Practice among which is Standard of Practice 17-4 which enumerates four situations under which REALTORS® agree to arbitrate specified non-contractual disputes. (*Adopted 11/96*)

Boards and Associations of REALTORS® provide arbitration to resolve contractual issues and questions and specific non-contractual issues and questions that arise between members, between members and their clients, and, in some cases, between parties to a transaction brought about through the efforts of REALTORS®. Disputes arising out of any of the five above-referenced contractual relationships may be arbitrated, and the rules and procedures of Boards and Associations of REALTORS® require that certain types of disputes must be arbitrated if either party so requests. (Information on "mandatory" and "voluntary" arbitration is found elsewhere in the *Code of Ethics and Arbitration Manual*.) (*Revised 11/96*)

While issues between REALTORS® and their clients—e.g., listing broker/seller (or landlord) or buyer broker/buyer (or tenant)—are subject to mandatory arbitration (subject to the client’s agreement to arbitrate), and issues between sellers and buyers may be arbitrated at their mutual agreement, in many cases such issues are resolved in the courts or in other alternative dispute resolution forums (which may also be administered by Boards or Associations of REALTORS®). The majority of arbitration hearings conducted by Boards and Associations involve questions of contracts between REALTORS®, most frequently between listing and cooperating brokers, or between two or more cooperating brokers. These generally involve questions of procuring cause, where the panel is called on to determine which of the contesting parties is entitled to the funds in dispute. While awards are generally for the full amount in question (which may be required by state law), in exceptional cases, awards may be split between the parties (again, except where prohibited by state law). Split awards are the exception rather than the rule and should be utilized only when Hearing Panels determine that the transaction would have resulted only through the combined efforts of both parties. It should also be considered that questions of representation and entitlement to compensation are separate issues. (*Revised 11/98*)

In the mid-1970s, the NATIONAL ASSOCIATION OF REALTORS® established the Arbitration Guidelines to assist Boards and Associations in reaching fair and equitable decisions in arbitration; to prevent the establishment of any one, single rule or standard by which arbitrable issues would be decided; and to ensure that arbitrable questions would be decided by knowledgeable panels taking into careful consideration all relevant facts and circumstances.

The Arbitration Guidelines have served the industry well for nearly two decades. But, as broker-to-broker cooperation has increasingly involved contracts between listing brokers and buyer brokers and between listing brokers and brokers acting in nonagency capacities, the time came to update the Guidelines so they remained relevant and useful. It is to this end that the following is intended.

Procuring Cause

As discussed earlier, one type of contract frequently entered into by REALTORS® is the listing contract between sellers and listing brokers. Procuring cause disputes between sellers and listing brokers are often decided in court. The reasoning relied on by the courts in resolving such claims is articulated in *Black’s Law Dictionary*, Fifth Edition, definition of procuring cause:

The proximate cause; the cause originating a series of events which, without break in their continuity, result in the accomplishment of the prime object. The inducing cause; the direct or proximate cause. Substantially synonymous with “efficient cause.”

A broker will be regarded as the “procuring cause” of a sale, so as to be entitled to commission, if his efforts are the foundation on which the negotiations resulting in a sale are begun. A cause originating a series of events which, without break in

their continuity, result in accomplishment of prime objective of the employment of the broker who is producing a purchaser ready, willing, and able to buy real estate on the owner’s terms. Mohamed v. Robbins, 23 Ariz. App. 195, 531 p.2d 928, 930.

See also Producing cause; Proximate cause.

Disputes concerning the contracts between listing brokers and cooperating brokers, however, are addressed by the National Association’s Arbitration Guidelines promulgated pursuant to Article 17 of the Code of Ethics. While guidance can be taken from judicial determinations of disputes between sellers and listing brokers, procuring cause disputes between listing and cooperating brokers, or between two cooperating brokers, can be resolved based on similar though not identical principles. While a number of definitions of procuring cause exist, and a myriad of factors may ultimately enter into any determination of procuring cause, for purposes of arbitration conducted by Boards and Associations of REALTORS®, procuring cause in broker to broker disputes can be readily understood as the uninterrupted series of causal events which results in the successful transaction. Or, in other words, what “caused” the successful transaction to come about. “Successful transaction,” as used in these Arbitration Guidelines, is defined as “a sale that closes or a lease that is executed.” Many REALTORS®, Professional Standards Administrators, lawyers, and others have tried, albeit unsuccessfully, to develop a single, comprehensive template that could be used in all procuring cause disputes to determine entitlement to the sought-after award without the need for a comprehensive analysis of all relevant details of the underlying transaction. Such efforts, while well-intentioned, were doomed to failure in view of the fact that there is no “typical” real estate transaction any more than there is “typical” real estate or a “typical” REALTOR®. In light of the unique nature of real property and real estate transactions, and acknowledging that fair and equitable decisions could be reached only with a comprehensive understanding of the events that led to the transaction, the National Association’s Board of Directors, in 1973, adopted Official Interpretation 31 of Article I, Section 2 of the Bylaws. Subsequently amended in 1977, Interpretation 31 establishes that:

A Board rule or a rule of a Multiple Listing Service owned by, operated by, or affiliated with a Board, which establishes, limits or restricts the REALTOR® in his relations with a potential purchaser, affecting recognition periods or purporting to predetermine entitlement to any award in arbitration, is an inequitable limitation on its membership.

The explanation of Interpretation 31 goes on to provide, in part:

. . . [T]he Board or its MLS may not establish a rule or regulation which purports to predetermine entitlement to any awards in a real estate transaction. If controversy arises as to entitlement to any awards, it shall be determined by a hearing in arbitration on the merits of all ascertainable facts in the context of the specific case of controversy.

It is not uncommon for procuring cause disputes to arise out of offers by listing brokers to compensate cooperating brokers made through a multiple listing service. A multiple listing service is defined as a facility for the orderly correlation and dissemination of listing information among Participants so that they may better serve their clients and customers and the public; is a means by which authorized Participants make blanket unilateral offers of compensation to other Participants (acting as subagents, buyer agents, or in other agency or nonagency capacities defined by law); is a means by which information is accumulated and disseminated to enable authorized Participants to prepare appraisals and other valuations of real property; and is a means by which Participants engaging in real estate appraisal contribute to common databases. Entitlement to compensation is determined by the cooperating broker's performance as procuring cause of the sale (or lease). While offers of compensation made by listing brokers to cooperating brokers through MLS are unconditional,* the definition of MLS and the offers of compensation made through the MLS provide that a listing broker's obligation to compensate a cooperating broker who was the procuring cause of sale (or lease) may be excused if it is determined through arbitration that, through no fault of the listing broker and in the exercise of good faith and reasonable care, it was impossible or financially unfeasible for the listing broker to collect a commission pursuant to the listing agreement. In such instances, entitlement to cooperative compensation offered through MLS would be a question to be determined by an arbitration Hearing Panel based on all relevant facts and circumstances including, but not limited to, why it was impossible or financially unfeasible for the listing broker to collect some or all of the commission established in the listing agreement; at what point in the transaction did the listing broker know (or should have known) that some or all of the commission established in the listing agreement might not be paid; and how promptly had the listing broker communicated to cooperating brokers that the commission established in the listing agreement might not be paid. *(Revised 11/98)*

Factors for Consideration by Arbitration Hearing Panels

The following factors are recommended for consideration by Hearing Panels convened to arbitrate disputes between brokers, or between brokers and their clients or their customers. This list is not all-inclusive nor can it be. Not every factor will be applicable in every instance. The purpose is to guide panels as to facts, issues, and relevant questions that may aid them in reaching fair, equitable, and reasoned decisions.

*Compensation is unconditional except where local MLS rules permit listing brokers to reserve the right to reduce compensation offers to cooperating brokers in the event that the commission established in a listing contract is reduced by court action or by actions of a lender. Refer to **Part One**, G. Commission/Cooperative Compensation Offers, Section 1, Information Specifying the Compensation on Each Listing Filed with a Multiple Listing Service of a Board of REALTORS®, *Handbook on Multiple Listing Policy*. *(Adopted 11/98)*

Factor #1. No predetermined rule of entitlement

Every arbitration hearing is considered in light of all of the relevant facts and circumstances as presented by the parties and their witnesses. "Rules of thumb," prior decisions by other panels in other matters, and other predeterminants are to be disregarded.

Procuring cause shall be the primary determining factor in entitlement to compensation. Agency relationships, in and of themselves, do not determine entitlement to compensation. The agency relationship with the client and entitlement to compensation are separate issues. A relationship with the client, or lack of one, should only be considered in accordance with the guidelines established to assist panel members in determining procuring cause. *(Adopted 4/95)*

Factor #2. Arbitrability and appropriate parties

While primarily the responsibility of the Grievance Committee, arbitration Hearing Panels may consider questions of whether an arbitrable issue actually exists and whether the parties named are appropriate to arbitration. A detailed discussion of these questions can be found in Appendix I to **Part Ten**, Arbitrable Issues.

Factor #3. Relevance and admissibility

Frequently, Hearing Panels are asked to rule on questions of admissibility and relevancy. While state law, if applicable, controls, the general rule is that anything the Hearing Panel believes may assist it in reaching a fair, equitable, and knowledgeable decision is admissible.

Arbitration Hearing Panels are called on to resolve contractual questions, not to determine whether the law or the Code of Ethics has been violated. An otherwise substantiated award cannot be withheld solely on the basis that the Hearing Panel looks with disfavor on the potential recipient's manner of doing business or even that the panel believes that unethical conduct may have occurred. To prevent any appearance of bias, arbitration Hearing Panels and procedural review panels shall make no referrals of ethical concerns to the Grievance Committee. This is based on the premise that the fundamental right and primary responsibility to bring potentially unethical conduct to the attention of the Grievance Committee rests with the parties and others with firsthand knowledge. At the same time, evidence or testimony is not inadmissible simply because it relates to potentially unethical conduct. While an award (or failure to make a deserved award) cannot be used to "punish" a perceived "wrongdoer", it is equally true that Hearing Panels are entitled to (and fairness requires that they) consider all relevant evidence and testimony so that they will have a clear understanding of what transpired before determining entitlement to any award. *(Amended 11/96)*

Factor #4. Communication and contact—abandonment and estrangement

Many arbitrable disputes will turn on the relationship (or lack thereof) between a broker (often a cooperating broker) and a prospective purchaser. Panels will consider whether, under the circumstances and in accord with local custom and practice, the broker made reasonable efforts to develop and maintain an ongoing relationship with the purchaser. Panels will want

to determine, in cases where two cooperating brokers have competing claims against a listing broker, whether the first cooperating broker actively maintained ongoing contact with the purchaser or, alternatively, whether the broker's inactivity, or perceived inactivity, may have caused the purchaser to reasonably conclude that the broker had lost interest or disengaged from the transaction (abandonment). In other instances, a purchaser, despite reasonable efforts by the broker to maintain ongoing contact, may seek assistance from another broker. The panel will want to consider why the purchaser was estranged from the first broker. In still other instances, there may be no question that there was an ongoing relationship between the broker and purchaser; the issue then becomes whether the broker's conduct or, alternatively, the broker's failure to act when necessary, caused the purchaser to terminate the relationship (estrangement). This can be caused, among other things, by words or actions or lack of words or actions when called for. Panels will want to consider whether such conduct, or lack thereof, caused a break in the series of events leading to the transaction and whether the successful transaction was actually brought about through the initiation of a separate, subsequent series of events by the second cooperating broker. (*Revised 11/99*)

Factor #5. Conformity with state law

The procedures by which arbitration requests are received, hearings are conducted, and awards are made must be in strict conformity with the law. In such matters, the advice of Board legal counsel should be followed.

Factor #6. Consideration of the entire course of events

The standard of proof in Board-conducted arbitration is a preponderance of the evidence, and the initial burden of proof rests with the party requesting arbitration (see Professional Standards Policy Statement 26). This does not, however, preclude panel members from asking questions of the parties or witnesses to confirm their understanding of testimony presented or to ensure that panel members have a clear understanding of the events that led to the transaction and to the request for arbitration. Since each transaction is unique, it is impossible to develop a comprehensive list of all issues or questions that panel members may want to consider in a particular hearing. Panel members are advised to consider the following, which are representative of the issues and questions frequently involved in arbitration hearings.

Nature and status of the transaction

- (1) What was the nature of the transaction? Was there a residential or commercial sale/lease?
- (2) Is or was the matter the subject of litigation involving the same parties and issues as the arbitration?

Nature, status, and terms of the listing agreement

- (1) What was the nature of the listing or other agreement: exclusive right to sell, exclusive agency, open, or some other form of agreement?
- (2) Was the listing agreement in writing? If not, is the listing agreement enforceable?
- (3) Was the listing agreement in effect at the time the sales contract was executed?

- (4) Was the property listed subject to a management agreement?
- (5) Were the broker's actions in accordance with the terms and conditions of the listing agreement?
 - (a) Were all conditions of the listing agreement met?
 - (b) Did the final terms of the sale meet those specified in the listing agreement?
 - (c) Did the transaction close? (Refer to Appendix I to **Part Ten**, Arbitrable Issues)
 - (d) Did the listing broker receive a commission? If not, why not? (Refer to Appendix I to **Part Ten**, Arbitrable Issues)

Nature, status, and terms of buyer representation agreements

- (1) What was the nature of any buyer representation agreement(s)? Was the agreement(s) exclusive or non-exclusive? What capacity(ies) was the cooperating broker(s) functioning in, e.g., agent, legally-recognized non-agent, other?
- (2) Was the buyer representation agreement(s) in writing? Is it enforceable?
- (3) What were the terms of compensation established in the buyer representation agreement(s)?
- (4) Was the buyer representative(s) a broker or firm to which an offer of compensation was made by the listing broker?
- (5) Was the buyer representative(s) actions in accordance with the terms and conditions of the buyer representation agreement(s)?
- (6) At what point in the buying process was the buyer representation relationship established? (*Revised 5/03*)

Nature, status, and terms of the offer to compensate

- (1) Was an offer of cooperation and compensation made in writing? If not, how was it communicated?
- (2) Is the claimant a party to whom the listing broker's offer of compensation was extended?
- (3) Were the broker's actions in accordance with the terms and conditions of the offer of cooperation and compensation (if any)? Were all conditions of the agreement met?

Roles and relationships of the parties

- (1) Who was the listing broker?
- (2) Who was the cooperating broker or brokers?
- (3) Were any of the brokers acting as subagents? As buyer brokers? In another legally recognized capacity?
- (4) Did the cooperating broker(s) have an agreement, written or otherwise, to act as agent or in another legally recognized capacity on behalf of any of the parties?
- (5) Were any of the brokers (including the listing broker) acting as a principal in the transaction?
- (6) What were the brokers' relationships with respect to the seller, the purchaser, the listing broker, and any other cooperating brokers involved in the transaction?
 - (a) Was the buyer represented by a party with whom the broker had previously dealt?
 - (b) Is the primary shareholder of the buyer-corporation a party with whom the broker had previously dealt?
 - (c) Was a prior prospect a vital link to the buyer?
- (7) Are all appropriate parties to the matter joined?

(*Revised 5/03*)

Initial contact with the purchaser

- (1) Who first introduced the purchaser or tenant to the property?
- (2) When was the first introduction made?
 - (a) Was the introduction made when the buyer had a specific need for that type of property?
 - (b) Was the introduction instrumental in creating the desire to purchase?
 - (c) Did the buyer know about the property before the broker contacted him? Did he know it was for sale?
 - (d) Were there previous dealings between the buyer and the seller?
 - (e) Did the buyer find the property on his own?
- (3) How was the first introduction made?
 - (a) Was the property introduced as an open house?
 - (b) What subsequent efforts were made by the broker after the open house? (Refer to Factor #1)
 - (c) Was the introduction made to a different representative of the buyer?
 - (d) Was the “introduction” merely a mention that the property was listed?
 - (e) What property was first introduced?

Conduct of the brokers

- (1) Were all required disclosures complied with?
- (2) Was there a faithful exercise of the duties a broker owes to his client/principal?
- (3) If more than one cooperating broker was involved, was either (or both) aware of the other’s role in the transaction?
- (4) Did the broker who made the initial introduction to the property engage in conduct (or fail to take some action) which caused the purchaser or tenant to utilize the services of another broker? (Refer to Factor #4)
- (5) Did the cooperating broker (or second cooperating broker) initiate a separate series of events, unrelated to and not dependent on any other broker’s efforts, which led to the successful transaction—that is, did the broker perform services which assisted the buyer in making his decision to purchase? (Refer to Factor #4)
 - (a) Did the broker make preparations to show the property to the buyer?
 - (b) Did the broker make continued efforts after showing the property?
 - (c) Did the broker remove an impediment to the sale?
 - (d) Did the broker make a proposal upon which the final transaction was based?
 - (e) Did the broker motivate the buyer to purchase?
- (6) How do the efforts of one broker compare to the efforts of another?
 - (a) What was the relative amount of effort by one broker compared to another?
 - (b) What was the relative success or failure of negotiations conducted by one broker compared to the other?
- (7) If more than one cooperating broker was involved, how and when did the second cooperating broker enter the transaction?

Continuity and breaks in continuity (abandonment and estrangement)

- (1) What was the length of time between the broker’s efforts and the final sales agreement?
- (2) Did the original introduction of the purchaser or tenant to the property start an uninterrupted series of events leading to the sale or lease, or was the series of events hindered or interrupted in any way?
 - (a) Did the buyer terminate the relationship with the broker? Why? (Refer to Factor #4)
 - (b) Did negotiations break down?
- (3) If there was an interruption or break in the original series of events, how was it caused, and by whom?
 - (a) Did the seller change the listing agreement from an open listing to an exclusive listing agreement with another broker?
 - (b) Did the purchaser’s motive for purchasing change?
 - (c) Was there interference in the series of events from any outside or intervening cause or party?
- (4) Did the broker who made the initial introduction to the property maintain contact with the purchaser or tenant, or could the broker’s inaction have reasonably been viewed by the buyer or tenant as a withdrawal from the transaction?
- (5) Was the entry of any cooperating broker into the transaction an intrusion into an existing relationship between the purchaser and another broker, or was it the result of abandonment or estrangement of the purchaser, or at the request of the purchaser?

Conduct of the buyer

- (1) Did the buyer make the decision to buy independent of the broker’s efforts/information?
- (2) Did the buyer negotiate without any aid from the broker?
- (3) Did the buyer seek to freeze out the broker?
 - (a) Did the buyer seek another broker in order to get a lower price?
 - (b) Did the buyer express the desire not to deal with the broker and refuse to negotiate through him?
 - (c) Did the contract provide that no brokers or certain brokers had been involved?

Conduct of the seller

- (1) Did the seller act in bad faith to deprive the broker of his commission?
 - (a) Was there bad faith evident from the fact that the difference between the original bid submitted and the final sales price equaled the broker’s commission?
 - (b) Was there bad faith evident from the fact that a sale to a third party was a straw transaction (one in which a non-involved party posed as the buyer) which was designed to avoid paying commission?
 - (c) Did the seller freeze out the broker to avoid a commission dispute or to avoid paying a commission at all?
- (2) Was there bad faith evident from the fact that the seller told the broker he would not sell on certain terms, but did so via another broker or via the buyer directly?

Leasing transactions

- (1) Did the cooperating broker have a tenant representation agreement?
- (2) Was the cooperating broker working with the “authorized” staff member of the tenant company?
- (3) Did the cooperating broker prepare a tenant needs analysis?
- (4) Did the cooperating broker prepare a market analysis of available properties?
- (5) Did the cooperating broker prepare a tour book showing alternative properties and conduct a tour?
- (6) Did the cooperating broker show the tenant the property leased?
- (7) Did the cooperating broker issue a request for proposal on behalf of the tenant for the property leased?
- (8) Did the cooperating broker take an active part in the lease negotiations?
- (9) Did the cooperating broker obtain the tenant’s signature on the lease document?
- (10) Did the tenant work with more than one broker; and if so, why? (*Revised 11/96*)

Other information

Is there any other information that would assist the Hearing Panel in having a full, clear understanding of the transaction giving rise to the arbitration request or in reaching a fair and equitable resolution of the matter?

These questions are typical, but not all-inclusive, of the questions that may assist Hearing Panels in understanding the issues before them. The objective of a panel is to carefully and impartially weigh and analyze the whole course of conduct of the parties and render a reasoned peer judgment with respect to the issues and questions presented and to the request for award.

Sample Fact Situation Analysis

The National Association’s Professional Standards Committee has consistently taken the position that arbitration awards should not include findings of fact or rationale for the arbitrators’ award. Among the reasons for this are the fact that arbitration awards are not appealable on the merits but generally only on the limited procedural bases established in the governing state arbitration statute; that the issues considered by Hearing Panels are often myriad and complex, and the reasoning for an award may be equally complex and difficult to reduce to writing; and that the inclusion of written findings of fact or rationale (or both) would conceivably result in attempts to use such detail as “precedent” in subsequent hearings which might or might not involve similar facts. The end result might be elimination of the careful consideration of the entire course of events and conduct contemplated by these procedures and establishment of local, differing arbitration “templates” or predeterminants of entitlement inconsistent with these procedures and Interpretation 31.

Weighed against these concerns, however, was the desire to provide some model or sample applications of the factors, questions, and issues set forth in these Arbitration Guidelines.

The following “fact situations” and analyses are provided for informational purposes and are not intended to carry precedential weight in any hearing.

Fact Situation #1

Listing Broker L placed a listing in the MLS and offered compensation to subagents and to buyer agents. Broker Z, not a participant in the 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

Same as #1, except Broker Z is the buyer’s agent.

Analysis: Same result, since there was no contractual relationship between Broker L and Broker Z and no issue to arbitrate.

Fact Situation #3

Broker L placed a listing in the MLS and offered compensation to subagents and to buyer agents. Broker S (a subagent) showed the property to Buyer #1 on Sunday and again on Tuesday. On Wednesday, Broker A (a subagent) 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, subagency 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 #4

Same as #3, except Broker S filed the arbitration request against Broker L (the listing broker).

Analysis: This is an arbitrable matter, since Broker L promised to compensate the procuring cause of sale. Broker L, to avoid the possibility of having to pay two cooperating brokers in the same transaction, should join Broker A in arbitration so that all competing claims can be resolved in a single hearing. The Hearing Panel will consider, among other things, why Buyer #1 made the offer to purchase through Broker A instead of Broker S. If it is determined that Broker S initiated a series of events which

were unbroken in their continuity and which resulted in the sale, Broker S will likely prevail.

Fact Situation #5

Same as #3, except Broker L offered compensation only to subagents. Broker B (a buyer agent) requested permission to show the property to Buyer #1, wrote an offer which was accepted, and subsequently claimed to be the procuring cause of sale.

Analysis: Since Broker L did not make an offer of compensation to buyer brokers, there was no contractual relationship between Broker L and Broker B and no arbitrable issue to resolve.

If, on the other hand, Broker L had offered compensation to buyer brokers either through MLS or otherwise and had paid Broker A, then arbitration could have been conducted between Broker B and Broker A pursuant to Standard of Practice 17-4. Alternatively, arbitration could occur between Broker B and Broker L.

Fact Situation #6

Listing Broker L placed a listing in the MLS and made an offer of compensation to subagents and to buyer agents. Broker S (a subagent) 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 L, claiming to be the procuring cause. Broker L joined Broker B in the request so that all competing claims could be resolved in one hearing.

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 #7

Same as #6, except that Broker S (a subagent) 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 #8

Similar to #6, except Buyer #1 asked Broker S for a comparative market analysis as the basis for making a purchase offer. Broker S reminded Buyer #1 that he (Broker S) had clearly disclosed his status as subagent, and that he could not counsel Buyer #1 as to the property's market value. Broker B based his claim to entitlement on the grounds that he had provided Buyer #1 with information that Broker S could not or would not provide.

Analysis: The Hearing Panel should consider Broker S's initial introduction of the buyer to the property; that Broker S had made early and timely disclosure of his status as a subagent; whether adequate alternative market information was available to enable Buyer #1 to make an informed purchase decision; and whether Broker S's inability to provide a comparative market analysis of the property had clearly broken the chain of events leading to the sale. If the panel determines that the buyer did not have cause to leave Broker S for Broker B, they may conclude that the series of events initiated by Broker S remained unbroken, and Broker S will likely prevail.

Fact Situation #9

Similar to #6, except Broker S made no disclosure of his status as subagent (or its implications) until faced with Buyer #1's request for a comparative market analysis.

Analysis: The Hearing Panel should consider Broker S's initial introduction of the buyer to the property; Broker S's failure to clearly disclose his agency status on a timely basis; whether adequate alternative market information was available to enable Buyer #1 to make an informed purchase decision; and whether Broker S's belated disclosure of his agency status (and its implications) clearly broke the chain of events leading to the sale. If the panel determines that Broker S's failure to disclose his agency status was a reasonable basis for Buyer #1's decision to engage the services of Broker B, they may conclude that the series of events initiated by Broker S had been broken, and Broker B will likely prevail.

Fact Situation #10

Listing Broker L placed a property on the market for sale or lease and offered compensation to brokers inquiring about the property. Broker A, acting as a subagent, showed the property on two separate occasions to the vice president of manufacturing for ABC Corporation. Broker B, also acting as a subagent but independent of Broker A, 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 with Broker L, 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. To avoid the possibility of having to pay two commissions, Broker L joined Broker B in arbitration so that all competing claims could be resolved in a single hearing. 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*)

Fact Situation #11

Broker A, acting as the agent for an out-of-state corporation, listed for sale or lease a 100,000 square foot industrial facility. The property was marketed offering compensation to both subagents and buyer/tenant agents. Over a period of several months, Broker A made the availability of the property known to XYZ Company and, on three (3) separate occasions, showed the property to various operational staff of XYZ Company. After the third showing, the vice president of finance asked Broker A to draft a lease for his review with the president of XYZ Company and its in-house counsel. The president, upon learning that Broker A was the listing agent for the property, instructed the vice president of finance to secure a tenant representative to ensure that XYZ Company was getting "the best deal." One week later, tenant representative Broker T presented Broker A with the same lease that Broker A had previously drafted and the president of XYZ Company had signed. The lease was accepted by the out-of-state corporation. Upon payment of the lease commission to Broker A, Broker A denied compensation to Broker T and Broker T immediately requested arbitration claiming to be the procuring cause.

Analysis: The Hearing Panel should consider Broker A's initial introduction of XYZ Company to the property, Broker A's contact with XYZ Company on an on-going basis, and whether Broker A initiated the series of events which led to the successful lease. Given the above facts, Broker A will likely prevail. Agency relationships are not synonymous with nor determinative of procuring cause. Representation and entitlement to compensation are separate issues.

Fact Situation #12

Broker A has had a long-standing relationship with Client B, the real estate manager of a large, diversified company. Broker A has acquired or disposed of twelve (12) properties for Client B over a five (5) year period. Client B asks Broker A to locate a large warehouse property to consolidate inventories from three local plants. Broker A conducts a careful evaluation of the operational and logistical needs of the plants, prepares a report of his findings for Client B, and identifies four (4) possible properties that seem to meet most of Client B's needs. At Client B's request, he arranges and conducts inspections of each of

these properties with several operations level individuals. Two (2) of the properties were listed for sale exclusively by Broker C. After the inspections, Broker A sends Broker C a written registration letter in which he identifies Client B's company and outlines his expectation to be paid half of any commission that might arise from a transaction on either of the properties. Broker C responds with a written denial of registration, but agrees to share any commission that results from a transaction procured by Broker A on either of the properties. Six (6) weeks after the inspections, Client B selects one of the properties and instructs Broker A to initiate negotiations with Broker C. After several weeks the negotiations reach an impasse. Two (2) weeks later, Broker A learns that Broker C has presented a proposal directly to Client B for the other property that was previously inspected. Broker A then contacts Broker C, and demands to be included in the negotiations. Broker C refuses, telling Broker A that he has "lost control of his prospect," and will not be recognized if a transaction takes place on the second property. The negotiations proceed, ultimately resulting in a sale of the second property. Broker A files a request for arbitration against Broker C.

Analysis: This would be an arbitrable dispute as a compensation agreement existed between Broker A and Broker C. The Hearing Panel will consider Broker A's introduction of the property to Client B, the property reports prepared by Broker A, and the time between the impasse in negotiations on the first property and the sale of the second property. If the Hearing Panel determines that Broker A initiated the series of events that led to the successful sale, Broker A will likely prevail. (*Adopted 11/96*)

Arbitration Worksheet

NOTE: Transmit to all parties. This worksheet is intended to assist Hearing Panels in identifying relevant issues and facts in determining questions of entitlement to disputed funds. It is intended to supplement—and not replace—the comprehensive list of questions found in Factor #6 in the Arbitration Guidelines. These questions are not listed in order of priority and are not weighted equally.

Question	Answer	Favors Complainant	Favors Respondent	Favors Neither	Other
1. Was an offer of compensation made through the MLS or otherwise?					
2. Is the claimant a party to whom the listing broker's offer of compensation was extended?					
3. What was the nature of any buyer representation agreement(s)? Was the agreement(s) exclusive or non-exclusive? What capacity(ies) was the cooperating broker(s) functioning in, e.g., agent, legally-recognized non-agent, other?					
4. Were any of the brokers acting as subagents? As buyer brokers? In another legally recognized capacity?					
5. How was the first introduction to the property that was sold/leased made?					
(a) Did the buyer/tenant find that property on their own?					
(b) Who first introduced the purchaser or tenant to that property?					
(c) Was the introduction made to a different representative of the buyer/tenant?					
(d) Was the "introduction" merely a mention that the property was listed?					
(e) Was the property introduced as an open house?					
(f) What subsequent efforts were made by the broker after the open house?					
(g) What property was first introduced?					
6. When was the first introduction to the property that was sold/leased made?					

Arbitration Worksheet (continued)

NOTE: This worksheet is intended to assist Hearing Panels in identifying relevant issues and facts in determining questions of entitlement to disputed funds. It is intended to supplement—and not replace—the comprehensive list of questions found in Factor #6 in the Arbitration Guidelines. These questions are not listed in order of priority and are not weighted equally.

Question	Answer	Favors Complainant	Favors Respondent	Favors Neither	Other
(a) Was the introduction made when the buyer/tenant had a specific need for that type of property?					
(b) Was the introduction instrumental in creating the desire to purchase/lease?					
(c) Did the buyer know about the property before the broker contacted him? Did he know it was for sale/lease?					
(d) Were there previous dealings between the buyer and the seller?					
7. What efforts subsequent to the first introduction to the property were made by the broker introducing the property that was sold or leased?					
8. If more than one cooperating broker was involved, how and when did the second cooperating broker enter the transaction?					
9. Did the broker who made the initial introduction to the property engage in conduct (or fail to take some action) which caused the purchaser or tenant to utilize the services of another broker (estrangement)?					
(a) Were agency disclosures made? When?					
(b) Was the potential for dual agency disclosed? When?					
10. Did the broker who made the initial introduction to the property maintain contact with the purchaser or tenant, or could the brokers inaction have reasonably been viewed by the buyer or tenant as a withdrawal from the transaction (abandonment)?					

Arbitration Worksheet (continued)

NOTE: This worksheet is intended to assist Hearing Panels in identifying relevant issues and facts in determining questions of entitlement to disputed funds. It is intended to supplement—and not replace—the comprehensive list of questions found in Factor #6 in the Arbitration Guidelines. These questions are not listed in order of priority and are not weighted equally.

Question	Answer	Favors Complainant	Favors Respondent	Favors Neither	Other
11. Was the entry of any cooperating broker into the transaction an intrusion into an existing relationship between the purchaser and another broker, or was it the result of abandonment or estrangement of the purchaser?					
12. Did the buyer make the decision to buy independent of the broker's efforts/information?					
13. Did the seller act in bad faith to deprive the broker of his commission?					
(a) Was there bad faith evident from the fact that the difference between the original bid submitted and the final sales price equaled the broker's commission?					
(b) Was there bad faith evident from the fact that a sale to a third party was a straw transaction (one in which a non-involved party posed as the buyer) which was designed to avoid paying commission?					
(c) Did the seller freeze out the broker to avoid a commission dispute or to avoid paying a commission at all?					
14. Did the buyer seek to freeze out the broker?					
(a) Did the buyer seek another broker in order to get a lower price?					
(b) Did the buyer express the desire not to deal with the broker and refuse to negotiate through him?					
(c) Did the contract provide that no brokers or certain brokers had been involved?					

Arbitration Worksheet (continued)

NOTE: This worksheet is intended to assist Hearing Panels in identifying relevant issues and facts in determining questions of entitlement to disputed funds. It is intended to supplement—and not replace—the comprehensive list of questions found in Factor #6 in the Arbitration Guidelines. These questions are not listed in order of priority and are not weighted equally.

Question	Answer	Favors Complainant	Favors Respondent	Favors Neither	Other
15. Did the original introduction of the purchaser or tenant to the property start an uninterrupted series of events leading to the sale or lease, or was the series of events hindered or interrupted in any way?					
16. If there was an interruption or break in the original series of events, how was it caused, and by whom?					
(a) Did the seller change the listing agreement from an open listing to an exclusive listing agreement with another broker?					
(b) Did the buyer terminate the relationship with the broker? Why?					
(c) Was there interference in the series of events from any outside or intervening cause or party?					
(d) Was there abandonment or estrangement?					
17. Did the cooperating broker (or second cooperating broker) initiate a separate series of events, unrelated to and not dependent on any other broker's efforts, which led to the successful transaction—that is, did the broker perform services which assisted the buyer in making his decision to purchase?					
(a) Did the broker make preparations to show the property to the buyer?					
(b) Did the broker make continued efforts after showing the property?					
(c) Did the broker remove an impediment to the sale?					
(d) Did the broker make a proposal upon which the final transaction was based?					
(e) Did the broker motivate the buyer to purchase?					(Adopted 11/03)

Appendix III to Part Ten

Rationale of Declaratory Relief and of Judicial Enforcement in Matters of Arbitration

With respect to arbitration awards rendered by Member Boards, it is important that the Board utilize the powers of local courts to support and enforce its arbitration awards and any Board actions contemplated in connection with arbitration by the Board. Both the Petition for Declaratory Relief and Petition for Judicial Enforcement should be employed by the Board where it will confirm the propriety of the Board's actions and will minimize legal vulnerability and liability to the Board and its members. These legal procedures, or similar legal devices available in a given state, should be employed in the following circumstances:

- (1) **Refusal to Arbitrate:** If a membership obligation to arbitrate disputes is permitted by applicable law, it is required of members in accordance with the Board's professional standards procedures. Refusal of a member to arbitrate, or mediate if required by the Board, shall be determined by a hearing by the Board of Directors as specified in **Part Ten, Section 49, Initial Action of Directors.** *(Revised 05/15)*

Upon determination of the sole question of fact that a Board Member has refused to arbitrate or mediate a properly arbitrable matter, the Board of Directors may direct the implementation of appropriate sanction, and should, if it has reason to believe that the imposition of sanction will become the basis of litigation and a claim for damages consequent to such sanction, delay the effective date of implementing the sanction to a date following receipt by the Board of a judicial decision in a petition for declaratory relief filed by the Board to confirm the propriety of its action. *(Revised 05/15)*

- (2) **Refusal to, within Ten (10) Days of Transmittal of Award, Abide by Award or Deposit a Like Amount with Board Staff:** Consistent with Section 53, The Award, the non-prevailing party must, within ten (10) days following transmittal of the award, either pay the award to the party(ies) named in the award or deposit the funds with the Professional Standards Administrator to be held in an escrow or trust account maintained for that purpose. Failure to satisfy the award or deposit the funds in the escrow or trust account within the time specified may be considered a violation of a membership duty and may subject the member to disciplinary action at the discretion of the Board of Directors, consistent with Section 53, The Award. *(Adopted 05/15)*

Requiring the non-prevailing party to, within ten (10) days, either pay the award or deposit the funds with the Board reduces instances of non-prevailing parties refusing to pay arbitration awards by shifting the burden of initiating litigation from the prevailing party to the non-prevailing party. *(Adopted 05/15)*

With respect to a party agreeing and submitting to arbitration but then refusing to abide by the award, the Board should encourage the award recipient to seek enforcement of the award in the courts, and suggest that a request be made for payment of legal costs incurred in seeking judicial enforcement. *(Amended 05/15)*

Although the primary responsibility for the enforcement of the award rests with the beneficiary of that award (with the support, financial or otherwise, of the Board), the Board may consider reimbursing the recipient of the award for any cost incurred in seeking the judicial enforcement when such costs are not reimbursed by the court. *(Revised 05/15)*

Appendix IV to Part Ten

Rationale for No Findings of Fact in Awards

Arbitration awards, unlike ethics decisions, are not subject to appeal and do not include findings of fact or rationale. While arbitration awards may, at times, involve significant sums of money, they differ from the decisions rendered by ethics hearing panels in two significant ways. First, the fact that a party in arbitration does not prevail is in no way an indication that the non-prevailing party behaved in anything other than an ethical manner. It simply means that they were not entitled to a particular sum of money with respect to a particular transaction. Second, the determinations rendered through arbitration have no effect on a REALTOR®'s continued good standing in the association or in the real estate community generally, whereas an adverse decision in a matter involving ethics demonstrates that the respondent has, in some way, failed to live up to the standards expected of REALTORS® and may result in discipline being imposed, including the possibility of suspension or expulsion from membership.

Arbitration awards are based on the hearing panel's analysis of the entire course of conduct giving rise to a dispute as demonstrated by the evidence and testimony presented in the course of the arbitration hearing. There is generally not a single act (or in some cases failure to act), statement, or particular event, but rather the entire course of conduct or events related to a transaction that forms the basis for the hearing panel making its arbitration award. Reducing, to a comprehensive writing, the grounds on which an arbitration award was made, could frequently be far more complex—and difficult—than formulating the findings of fact (which may involve a single act or disclosure, or failure to act or disclose) which results in a determination that the Code of Ethics has been violated.

Consider that the obligations imposed by the Code of Ethics are, in most instances, clearly articulated in the Articles themselves, in the Standards of Practice, or in the official case interpretations. Thus, it is frequently readily apparent what a REALTOR® must do or say or, alternatively, must avoid saying or doing to ensure compliance with the Code. Arbitrable disputes, on the other hand, are very often (though not always) determined on the basis of procuring cause, a concept that cannot readily be reduced to a prescribed or proscribed action or event.

It is not uncommon for a non-prevailing party in arbitration to request an explanation or justification of a hearing panel's rationale for making an award. While this might be beneficial, at least in the sense that the non-prevailing party might understand, if not appreciate, the basis on which the award was based, there has been an on-going concern that, given the task of comprehensively and accurately articulating all of the acts and factors that are taken into account by an arbitration panel in rendering its award, there might be an understandable (and possibly unavoidable) tendency to oversimplify or generalize the basis on which an award was made, with the resulting explanation or rationale or "findings", whether written or oral, being relied on by the non-prevailing party (and likely by others) as "precedent" to be introduced and relied on at future arbitration hearings. The unintended consequence

of providing explanations or rationale or "findings" is contrary to the policy embodied in Official Interpretation 31 of Article I, Section 2 of the National Association's bylaws which prohibits any rule or policy predetermining awards in arbitration. Arbitrable matters must be decided not on the basis of a single aspect of the total transaction, such as making the first showing, or writing the contract, but rather on careful, deliberate consideration of all relevant facts and circumstances.

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®.

(Adopted 11/06)

Appendix V to Part Ten

Arbitration Hearing Checklist

(1) **Arbitration of disputes.** “Dispute” and “arbitrable matter” refer to those contractual issues and questions, and certain specific non-contractual issues and questions outlined in Standard of Practice 17-4, including entitlement to commissions and compensation in cooperative transactions between REALTORS® and between REALTORS® and their clients and customers. (See **Part Ten**, Section 43 of this Manual.) (*Revised 11/96*)

Requests for arbitration must be filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later. Boards may provide mediation even if arbitration has not been requested provided the mediation is requested within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later.

Suspension of filing deadlines: If the Board’s informal dispute resolution processes (e.g., ombudsmen, mediation, etc.) are invoked or initiated by a complainant (or potential complainant) with respect to an otherwise potentially arbitrable matter that becomes the subject of a subsequent arbitration request, the one hundred eighty (180) day filing deadline shall be suspended beginning with the date of the complainant’s (or potential complainant’s) request for informal dispute resolution service or assistance and shall resume when the informal dispute resolution procedures are concluded or terminated. Questions about when informal dispute resolution began or ended will be determined by the Board President or the President’s designee. (*Revised 11/00*)

(2) **Must be consistent with state law.** All arbitration hearings must be conducted in a manner consistent with state law.

(3) **Three (3) or more arbitrators necessary.** No arbitration may proceed without three (3) or more arbitrators not disqualified pursuant to the provisions of paragraphs (a) through (f) of **Part Seven**, Section 27 of this Manual.

(4) **Substitute arbitrator.** If an arbitrator is disqualified, the President (or other individual) shall appoint another member qualified to serve as an arbitrator.

(5) **Duty and privilege to arbitrate.** By becoming and remaining a member, and by signing or having signed the agreement to abide by the bylaws of the Board, every member, where consistent with applicable state law, binds himself or herself and agrees to submit to arbitration (and mediation if required) by the Board all disputes as defined in **Part Ten**, Section 44 of this Manual. Refer to Section 44 to determine the types of arbitration that are mandatory obligations upon members where not precluded by state law, and those types that should be offered as a service of the Board but are not mandatory obligations upon members. (*Revised 11/11*)

(6) **Conformity to state law.** Refer to **Part Ten**, Section 43 of this Manual for important information concerning the necessity to know the applicable state statutes or case law governing arbitration and to conform the Board’s arbitration procedures to the law. Board or State Association legal counsel may advise the Board in this respect.

(7) **Board’s right to decline arbitration.** The Board should be aware of its right to decline to arbitrate a dispute between members or between members and nonmembers. If either the Grievance Committee or the arbitration Hearing Panel determines that the matter should not be arbitrated because of the amount involved (too little or too much), or because of the legal complexity of the matter, the arbitration automatically terminates unless either of the parties appeals the decision to the Board of Directors within twenty (20) days of the date of the notice of the Grievance Committee’s or arbitration Hearing Panel’s decision using Form #A-20, Appeal of Grievance Committee Dismissal or Classification of Arbitration Request; however, no additional information may be added or attached to the form. The Hearing Panel can also dismiss the arbitration request if the Hearing Panel concludes the matter is not arbitrable. If the Board declines to arbitrate the matter, any deposits shall be returned to the parties. If the Board of Directors decides that arbitration should proceed, the matter is remanded to the Grievance Committee or arbitration Hearing Panel for further processing. (*Amended 5/97*)

If an appeal is filed, the President may appoint a panel to hear the appeal composed of at least five (5) Directors or a quorum of the Board of Directors, whichever is less. (Alternatively, the appeal may be heard by the Board’s Executive Committee.) The decision of the appeal panel (or Executive Committee) is final and not subject to further review by the Board of Directors. (*Revised 11/91*)

If an otherwise arbitrable matter is the subject of civil litigation, arbitration shall not take place unless the litigation is withdrawn or referred to the Board by the court for arbitration in accordance with Article 17. In instances where the arbitration is mandatory (as defined in **Part Ten**, Section 44 of this Manual) the failure to arbitrate may result in a charge alleging violation of Article 17.

(8) **Duty to arbitrate before State Association.** As a member of a local Board, the Board Member is obligated to arbitrate a dispute with a member of another Board or a member who is directly a member of the State Association. (State Association bylaws have provisions of professional standards procedures as they relate to ethics and arbitration proceedings.)

(9) **Interstate arbitration.** The procedures described in **Part Eleven** of this Manual may be used for arbitrating disputes between REALTOR® members of Boards located in different states, subject to the parties’ voluntary agreement in advance to the place, date, and time established by the arbitration Hearing Panel, and agreement to pay all costs of the arbitration as may be directed

by the panel, and further subject to the applicable law of the state in which the arbitration is held.

(10) **Manner of invoking arbitration.** Any Board Member, client, or customer authorized to do so may request arbitration by the Board. The request shall be in writing, indicating the nature of the dispute and the amount in dispute, and must be accompanied by the required arbitration filing fee (deposit). The request may be on a Board form or other form permitted by law. The Professional Standards Administrator shall refer the request to the Grievance Committee for determination within the time specified by the Board's professional standards procedures as to whether the matter is properly subject to arbitration, and as to whether the circumstances impose a mandatory obligation to arbitrate or arbitration is voluntary (to be conducted only if all parties voluntarily agree to arbitrate and be bound by the decision).

(11) **Dismissal of request for arbitration.** If the request for arbitration is dismissed by the Grievance Committee or the Hearing Panel, the complainant (requester) shall be informed of the dismissal and the reasons for the dismissal, and may appeal to the Board of Directors within the time specified in the Board's procedures using Form #A-20, Appeal of Grievance Committee Dismissal or Classification of Arbitration Request. The arbitration request and any attachments to the request may not be revised, modified, or supplemented. The complainant may, however, explain in writing why the complainant disagrees with the Grievance Committee's conclusion that the request should be dismissed. With the appeal, the Directors shall consider only the same information that was available to the Grievance Committee or Hearing Panel at the time of dismissal of the request for arbitration. The complainant and respondent do not have the right to be present at the Directors' meeting. (*Revised 5/07*)

(12) **Function of Grievance Committee.** The function of the Grievance Committee is to make only such preliminary review as is required to determine proper disposition of the request for arbitration. In reviewing a request for arbitration, the purpose of the review is to determine (1) if the requester is authorized to invoke arbitration by the professional standards procedures in the Board's bylaws; (2) if the requested arbitration is mandated by the Board's bylaws or is voluntary on the part of the parties; (3) if the dispute described is an arbitrable matter; and (4) if the matter, either as to monetary amount (too small or too large) or as to legal complexity, is such that the Board should decline to arbitrate the matter and release the Board Members from their obligation to arbitrate, and thus free the members to seek other recourse to resolve the dispute.

(13) **Director on Grievance Committee.** A member of the Grievance Committee who is a member of the Board of Directors may not sit as a Director during an appeal to the Board of Directors of the Grievance Committee's decision to dismiss a request for arbitration, and may not vote on such appeal.

(14) **If matter referred for arbitration.** If the request for arbitration is referred for hearing, the Chairperson of the Grievance Committee shall refer it to the Professional Standards Administrator with instructions to arrange an arbitration hearing.

The Professional Standards Administrator shall notify the other party within the time specified in the Board's procedures, except that a reasonable delay does not invalidate the procedure. The Professional Standards Administrator shall mail a copy of the complaint to the respondent and provide forms for reply by the respondent, with directions to complete the forms, including the "Arbitration Agreement," and return them to the Professional Standards Administrator within the time specified in the Board's procedures.

(15) **Obligation to arbitrate.** The Board Member is obligated to arbitrate under certain circumstances if mandatory arbitration is permitted by state law. The member, by becoming and remaining a member, has entered into a prior agreement to arbitrate and acknowledges this prior agreement by signing an agreement to arbitrate and abide by the award in each case. If the applicable state law does not permit prior agreements to arbitrate, then arbitration may be voluntarily agreed to by the parties after the dispute arises.

(16) **Content of agreement to arbitrate.** The Arbitration Agreement shall acknowledge the membership duty voluntarily accepted when the party sought and received membership in the Board, and shall specify that the party does now, in accordance with the prior agreement to arbitrate, acknowledge and enter into such agreement and agree to abide by the award. The Arbitration Agreement shall be accompanied by a concise statement of the matter in dispute. Each party must sign and file the Agreement with the Professional Standards Administrator, along with any required deposit. The deposit may be returned to the recipient of the arbitration award. (*Amended 11/95*)

(17) **Refusal of respondent to appear and/or sign the Arbitration Agreement.** The circumstances under which Member Boards may conduct arbitration will vary based on state arbitration statutes and case law. In some states, arbitration may be conducted only if both parties sign the Arbitration Agreements, deposit the required amounts, and appear and take part in the hearing. In other states, arbitration may proceed in the absence of signed Arbitration Agreements and deposits if the parties appear and take part in the hearing. In still other states, arbitration may take place and a valid award may be rendered even if the respondent refuses to sign the Arbitration Agreement and refuses to take part in the hearing. Refer to **Part Ten, Section 48(b)** of this Manual for important information on the need to determine whether state law permits arbitration to proceed if the respondent refuses to appear at the hearing and/or refuses to sign the Arbitration Agreement.

(18) **Reply from respondent.** No sooner than fifteen (15) days nor later than twenty-one (21) days after transmitting notice of hearing and a copy of the complaint to the respondent, the Professional Standards Administrator shall transmit a copy of any reply by the respondent to the complainant within five (5) days from receipt of the response. A Board may ask for a response to an arbitration request but may not require one. (*Revised 11/14*)

(19) **Opportunity for challenge of possible arbitrators.** When the Professional Standards Administrator transmits a copy of the reply, if any, from the respondent, the Professional Standards

Administrator shall also transmit to the parties a list of members of the Professional Standards Committee from whom an arbitration Hearing Panel of at least three (3) members will be appointed, and advise of their right to challenge for cause the qualification of any member to serve as an arbitrator if such list has not already been transmitted to the parties with notification of the Grievance Committee's referral for hearing. Any disqualification must be filed within ten (10) days from the date the list of names was transmitted to the parties. Within fifteen (15) days from the date the list of names is transmitted to the parties, the arbitration Hearing Panel members shall be appointed by the Professional Standards Committee Chairperson from the members of the Professional Standards Committee who are not successfully challenged by the complainant or respondent for cause. A majority must be REALTORS®, and if a REALTOR-ASSOCIATE® or REALTOR® other than a principal has invoked the arbitration through the REALTOR® principal, or is affiliated with the respondent, and has a vested interest in the outcome of the proceeding, one (1) of the arbitrators shall be a REALTOR-ASSOCIATE® or REALTOR® other than a principal. The Chairperson shall also select one (1) of the panel members to serve as Chairperson of the Hearing Panel. *(Revised 11/14)*

If the arbitration involves issues related to areas of the real estate business such as commercial, investment, industrial, etc., and there is not a sufficient number of qualified practitioners on the Board's Professional Standards Committee to constitute a representative peer panel, the President shall appoint other Board Members qualified in that field to serve on the panel. If other qualified members cannot be identified, that fact is reported by the President to the Board of Directors, and if the Directors concur, the matter is referred to the State Association as outlined in **Part Fourteen** of this Manual. If the State Association cannot impanel a qualified peer panel, the complainant and respondent are released from their obligation to arbitrate. *(Revised 11/98)*

(20) Date, time, and place of hearing. The arbitration Hearing Panel will establish the date, time, and place for the arbitration hearing. Notice shall be given at least twenty-one (21) days prior to the date of hearing. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. (However, appearance by a party at an arbitration hearing waives the right to such notice.) The arbitration request and response, if any, shall be provided to Hearing Panel members prior to the hearing. Such time period shall be _____ (as determined by the Board of Directors) and shall be adhered to for all hearings. *(Revised 11/14)*

(21) Written statements and proof. In addition to the request for arbitration and the response to the arbitration request, the parties to the arbitration shall, upon notice of the hearing, present to the arbitrators, in writing, such statements and proof as they deem necessary to support their claims. The Hearing Panel may require statements to be verified by affidavit and/or that the accuracy or authenticity of documents or papers be verified by affidavit. In addition to written statements and proof provided to the arbitrators prior to the hearing, the Hearing Panel may, at the hearing, receive any further written statements, documents, or other papers, and shall

hear oral testimony as described in **Part Ten**, Section 51 of this Manual.

(22) Arbitrators to regulate hearing. The Hearing Panel determines (1) date, time, and place of hearing; (2) what appearances are to be made by the parties; (3) what evidence it will receive and consider, including the evidence of accountants and other experts; and (4) interpretations of Board bylaw provisions. Each party is responsible for the expenses of his/her expert witnesses and legal counsel. Arbitration hearings should be conducted in accordance with the Chairperson's Procedural Guide, **Part Ten**, Section 51 and **Part Twelve** of this Manual.

(23) Witnesses sworn or affirmed. Prior to testifying, all parties and witnesses shall be sworn or affirmed by the Chairperson as described in the Chairperson's Procedural Guide in **Part Twelve** of this Manual.

(24) Witnesses present only as necessary to hearing. Witnesses shall be present during the arbitration hearing only as necessary to receive instructions, to be sworn or affirmed, to give testimony, and to respond to cross-examination. Witnesses should be excused during other parts of the hearing.

(25) Opening statement by parties or attorneys. Each party or the party's attorney-at-law shall be given an opportunity for an opening statement which shall briefly outline the basic premise of the party's position in respect of the matter to be arbitrated.

(26) Testimony of character or general business reputation of party. No testimony may be admitted related to the character or general business reputation of any party unless such testimony has a direct bearing on the matter being heard.

(27) Testimony. The complainant may give testimony and present evidence as deemed appropriate to the arbitration by the Hearing Panel. Following presentation by the complainant, the respondent shall testify. The parties shall present to the arbitrators their oral testimony and such written statements and proof as the arbitrators may require. Proof may be by affidavit or other form acceptable to the arbitrators.

(28) Right to cross-examine. At the conclusion of testimony by each party, or by a witness, the opposing party and/or his/her counsel may cross-examine the party or witness.

(29) Arbitrators' examination of parties or witnesses. Upon completion of testimony and cross-examination of any party or witness, the arbitrators may examine the party or witness.

(30) Summary of each party. Upon completion of all testimony, each party or party's attorney may summarize the proceedings for the Hearing Panel. The complainant's summary shall be presented first, and the respondent's summary follows.

(31) Parties excused for executive session and decision by arbitrators. After the summary by each party, the parties shall

be excused from the hearing room, and the arbitrators shall, in executive session, render their decision. The arbitrators shall be guided in the evaluation of all the evidence by the Arbitration Guidelines in **Part Ten**, Appendix II of this Manual.

(32) **Parties' settlement of the issue at any time.** The parties to the arbitration may settle the issue between them at any time. If they settle, they shall advise the Professional Standards Administrator, and the arbitration shall be terminated and so recorded in the file.

(33) **The award.** The award shall be made as soon as possible after the evidence is presented. The award shall be in writing and signed by the arbitrators or a majority of them, and shall state only the amount of the award, and when transmitted to each of the parties shall not be subject to review or appeal. Notwithstanding the foregoing, a party may appeal to the Board of Directors only on the basis of alleged irregularity(ies) of the proceeding as may have deprived the party of fundamental due process. The Directors shall not receive or review evidence offered as to the merits of the award, except as such evidence may bear upon a claim of deprivation of due process. After the award has been transmitted to each of the parties, they have twenty (20) days to request procedural review of the arbitration hearing by the Board of Directors. If no such review is requested, the award becomes final and binding following the twenty (20) day period. However, if procedural review is requested, the award is not considered final and binding until after the Board of Directors has concluded that the hearing had been conducted in a manner consistent with the Board's procedures and the parties had been afforded due process. (See **Part Ten**, Sections 53 and 55 of this Manual.) (Revised 11/14)

(34) **Escrowing of arbitration awards.** Boards must adopt procedures that require the nonprevailing party to either pay the award or deposit the amount with the Board within ten (10) days of transmittal of the award. Please refer to **Part Ten**, Section 53 of this Manual. (Revised 05/15)

In the event a party fails to, within ten (10) days of the date the award is transmitted, either pay the award to the party(ies) named in the award or deposit the funds with the Professional Standards Administrator of the Board administering the arbitration consistent with Section 53, The Award, Code of Ethics and Arbitration Manual, that failure shall be brought before the Directors. The Directors, consistent with Section 53, may, at their discretion, impose discipline, including but not limited to termination of Board membership and/or MLS access/use, or may give the party an additional period to make the required deposit. The directors may also stipulate appropriate discipline to be automatically imposed if the party fails to make the deposit within the time established by the Directors. (Adopted 05/15)

(35) **Request for procedural review.** The appeal may be heard by a panel of Directors appointed by the President or heard by the Board's Executive Committee. The request for procedural review shall be reviewed by the Board President or the President's designee only for the purpose of determining whether the request states any legitimate basis for consideration by the Board of Directors. Any appeal panel must be comprised of five

(5) Directors or a quorum of the Board of Directors, whichever is less. The decision of the appeal panel (or Executive Committee) is final and binding and is not subject to further review by the Board of Directors. All requests for procedural review received by the Board must be considered by the Board of Directors and only the bases raised in the written request for procedural review may be raised during the review before the Directors. (Amended 11/94)

(36) **If a REALTOR® refuses to arbitrate.** If a REALTOR® is charged in an ethics complaint of improperly refusing to submit a dispute to arbitration (or mediation if required by a Board) as specified in **Part Ten**, Section 49 of this Manual, the complaint shall not be referred to the Grievance Committee or a Hearing Panel, but shall be brought before the Board of Directors at the next regularly scheduled meeting or at a special meeting called by the President for that purpose. The procedures for notice, time of notice, and hearing prescribed for matters before a Hearing Panel shall apply. The sole question of fact for the Directors to decide will be whether the respondent failed to submit an arbitrable matter (as defined in **Part Ten**, Sections 43 and 44 of this Manual) to arbitration or mediation in violation of Article 17. Upon determination that the member has refused to arbitrate or mediate a properly arbitrable matter, the Directors may direct the imposition of appropriate sanction and should, if they have reason to believe that the imposition of sanction will become the basis for litigation and a claim for damages consequent to such sanction, delay the effective date of implementing the sanction to a date following receipt by the Board of a judicial decision in a petition for declaratory relief filed by the Board to confirm the propriety of its action. (Amended 11/11)

(37) **Enforcement of award.** If a party refuses to abide by an award in arbitration or the terms of a mediated settlement agreement, such refusal should not be referred to the Grievance Committee as a violation of the Code of Ethics unless it reflects an established pattern or practice of noncompliance with the commitment to arbitrate/mediate. The award recipient, or the beneficiary of a settlement agreement reached by the parties in mediation, should be advised by the Board to seek judicial enforcement of the award/agreement by a local court of competent jurisdiction and to request reimbursement of legal fees incurred in seeking enforcement. (Refer to **Part Ten**, Section 56 of this Manual.) If the court does not award reimbursement of legal fees, the Board of Directors may, at its discretion, reimburse the award recipient/beneficiary for legal fees incurred in seeking enforcement. (See **Part Ten**, Appendix III of this Manual for the rationale of judicial enforcement of awards in arbitration.) (Revised 11/14)

Summary of Administrative Time Frames—Arbitration Proceedings

Situation

Time Table

Grievance

Request filed	180 days . . .
Response required/# of days to submit	Optional/15 days from transmitting request to respondent if response solicited
Appeal dismissal to Directors	20 days from transmitting dismissal notice
Appeal of mandatory vs. voluntary classification	20 days from transmittal of decision

Hearing

Notification to respondent of request	5 days from transmittal of Grievance Committee's instruction
Response required	15 days from transmitting request to respondent; staff transmits response to complainant within 5 days from receipt
Challenge forms	10 days to challenge from date forms transmitted
Panel named	15 days from transmitting challenge forms
Hearing notice*	21 days before hearing
Arbitration case to panel	Board option
Notice of witnesses and attorney	15 days before hearing to Board and other party

Procedural Review

Request filed	20 days from transmitting award
Preliminary review	Optional number of days
Amendment received	Within 10 days of notice
Review held by Directors	Next/special meeting giving not less than 10 days notice but not later than 30 days after receipt of procedural review request; Directors transmit written decision within 5 days from the procedural review hearing

(Revised 11/17)

* Notice of hearing should be transmitted to the parties with the Outline of Procedure (Form #A-10 or Form #A-10a, as appropriate) and the Arbitration Guidelines (including the Worksheet contained in Appendix II to **Part Ten**).