

# ARBITRATION RULES

## Commercial Brokers Association

1. **Conduct of Hearings.**

All hearings shall be conducted in accordance with these Rules, and any procedures and forms approved by the Board of Directors.

2. **Small Claims.**

All disputes involving \$5000 or less shall be heard before a Pre-Hearing Officer, or such other person as shall be designated by the CEO or Chairperson of the Arbitration Committee, rather than before an Arbitration Panel. The award in such case shall have the same force and effect as that of an Arbitration Panel.

3. **Definitions.**

Whenever the term "*send*" or similar words are used herein, it shall mean electronic delivery (with a read receipt) and/or mailing (certified with a return receipt), of the document to the office of the party. If mailed, three (3) additional days shall be added to any time for response by the member.

4. **Arbitration Committee.**

The Board President shall appoint an Arbitration Chair each year. The Arbitration Chair shall be responsible for working with the CEO to identify panel members to hear Arbitration disputes. Upon receipt of a request for Arbitration, the CEO will contact the Arbitration Chair to determine names of appropriate panel members. An effort will be made to identify potential panel members based on company size, product or geographic specialty or other criteria deemed appropriate for the specific dispute. Regardless of the specifics of the dispute, all potential panel members must be members of CBA in good standing, be an experienced commercial real estate broker, and have no pending licensing or ethics complaints.

5. **Complaint and Filing Fee.**

In the event that a member of CBA desires to have a controversy arbitrated, he or she shall submit a written complaint (on the standard CBA form) to CBA setting forth in detail the nature of the controversy and the award sought. The Complaint must be accompanied by a \$2000 filing fee. In the event that either party plans to be represented by an attorney at the hearing, please review paragraph 22 below regarding adjustment of fees.

6. **Time Limit for Complaint.**

A complaint for arbitration shall be barred unless received by CBA within three (3) months of whichever of the following is applicable: (i) closing of the sale; (ii) the due date of the commission or other payment; or (iii) discovery of the claim by the member, where it is concealed (whether intentionally or not) by the other member.

If failure to file within the above time limit is occasioned by fraud or by justifiable reliance on a member's promise to pay the amount claimed, or there has been a documented, good faith ongoing attempt by at least one of the parties to resolve the dispute, CBA or the Panel may, in its discretion, waive the above time limit.

If arbitration is barred, no member may institute legal action on the claim or submit the same to any other forum for arbitration.

**7. Sale Must Be Closed.**

If a pending sale is involved, it must be closed before the matter will be heard, unless the Board of Directors, on written application by one of the parties, rules otherwise. If a sale does not close or materialize and the Complainant claims the fault is the Respondent's, the matter may be heard without special permission of the Board.

**8. Service of Complaint.**

CBA shall "send" a copy of the Complaint to the other party or parties to the controversy. Notice will usually be sent within 30 business days of receipt of the complaint by CBA.

**9. Answer.**

The other party or parties to the controversy shall file a written Answer to the Complaint with CBA within ten (10) business days of sending of the Complaint. Whether or not an Answer is received, the arbitration proceedings, including pre-hearing, shall continue unaffected. The Panel may, however, take the failure to file an Answer into account in deciding the matter.

**10. Service of Answer.**

Upon receipt of an Answer, CBA shall "send" a copy of it to the other party or parties to the controversy within 10 business days of receipt of the complaint by CBA.

**11. Copies to Pre-Hearing Officer.**

After filing a complaint, the CEO or Arbitration Chair shall appoint a Pre-Hearing Officer. If both parties appear to indicate that there has been an attempt to settle the dispute prior to the Arbitration filing, it is at the discretion of the CEO or Arbitration Chair to waive this step of the process.

Criteria used for panel member selection also applies to the selection of a Pre-Hearing Officer. Copies of the Complaint, any Answer, any evidence or other material submitted therewith, shall be referred to the Pre-Hearing Officer. The Pre-Hearing Officer shall immediately contact the parties and attempt to mediate the matter.

**12. Cooperation with Pre-Hearing Officer.**

It shall be the duty of all members, including but not limited to the parties to the controversy, to comply with all requests of the Pre-Hearing Officer for information, data, documents, and attendance at a mediation conference.

**13. Authority of Pre-Hearing Officer.**

The Pre-Hearing Officer's powers shall be purely those of mediation, and he or she shall have no authority to compel or coerce the parties to settle their differences.

**14. No Pre-Hearing Report or Recommendation.**

The Pre-Hearing Officer shall not make any written report of his or her findings. The Pre-Hearing Officer is prohibited from any discussion of anything related to the controversy with the Arbitration Panel or any members thereof and shall not make any written or other report of his or her efforts, other than that the matter was or was not settled.

**15. Filing Fee/Request for Hearing.**

If the controversy is settled or the Complaint withdrawn at the pre-hearing stage, then CBA shall refund one-half of the filing fee to the Complainant.

**16. No Settlement or Withdrawal at Pre-Hearing.**

If the controversy is not settled at the pre-hearing stage, the Pre-Hearing Officer shall so advise the Arbitration Chair or CEO.

**17. Appointment of Panel.**

If not settled at pre-hearing, the CEO or Arbitration Chair shall appoint an Arbitration Panel consisting of three (3) or more members who meet the criteria identified above for serving on an arbitration panel, and shall designate one (1) member as the Panel Chairperson.

If it is an Inter-Multiple arbitration, the Multiple conducting the arbitration shall appoint three (3) Panelists and shall designate one (1) as a Chairperson. The other Multiple shall appoint an additional three (3) panel members.

***The Pre-Hearing Officer may not be a member of the Panel.***

**18. Notice of Hearing.**

CBA shall "send" notice to each of the parties, and each Panel Member, of the date, time and place that the Panel will hear the controversy.

**19. Date of Hearing.**

The date of the hearing shall not be less than ten (10) days or more than 30 days following the date of "sending" the Notice of Hearing.

**20. Postponement of Hearing Date.**

In the case of illness or other compelling reason, the CEO may postpone the hearing by phone or other notice to the parties. No party shall be entitled to more than two (2) such postponements, regardless of the reason.

**21. Default Award.**

If either or both parties fail to appear before the Arbitration Panel at the time and place of hearing, the Panel may make an award by default.

**22. Right to Counsel/Notice of Counsel.**

Any party shall have the right to be represented by an attorney at any stage of the proceedings, except pre-hearing. A party who is to be represented by counsel at the hearing must "send" notice of this fact to CBA and the other party, at least five (5) days in advance of the hearing. In the event of failure to do so, the hearing will -- at the written request of the other party -- be continued to allow the other party to obtain an attorney.

If either or both parties to the dispute choose to be represented by an attorney during the Arbitration Panel hearing resulting in CBA's representation by Counsel, CBA will be entitled to recover its attorneys' fees and costs incurred in connection therewith. The party requesting representation will be required to submit a \$2,500 fee to cover the costs of CBA's attorney's fees. If the fees are not paid out, all or a portion of the fee will be returned.

**23. Right to Subpoena Witnesses.**

Any party to an arbitration has the right to request the CEO to ask one of the panel members hearing the matter to sign a properly prepared subpoena. Pursuant to RCW 7.04.110, the CEO shall obtain approval of a majority of the members of the panel prior to requesting signature of the subpoena. Arbitration Form No. A17 (Subpoena) may be used for a subpoena requiring a witness to appear and testify. Arbitration Form No. A18 (Subpoena Duces Tecum) may be used for requiring a witness to appear, testify and produce documents. A panel member will, in proper cases, sign the subpoena. The subpoena will then be delivered to the party requesting it. It is the responsibility of that party (and not CBA) to obtain proper service of the subpoena. See *Rules for Superior Court No. 45 on who may serve a subpoena; RCW 4.28.080 on how the subpoena is to be served; RCW 36.18.040 on sheriff's fee's on service of a subpoena; and RCW 5.56.010 on where service may be made and fees to be paid a witness.*

**24. Appearance of Fairness.**

No Panelist may discuss anything related to the arbitration with the parties or with CBA staff, either prior to or after the hearing. No Panelists may advise as to how or why the decision was arrived at by the Panel. The fact that a Panelist violated the foregoing shall not automatically void the Panel's decision. However, the court is entitled to order arbitration only if it determines that the discussion caused or proves bias or prejudice on the part of the Panel member and, also, this affected the outcome of the arbitration.

The fact that a prospective panelist has discussed anything related to the arbitration with one of the parties will result in disqualification of the panelist upon a challenge for cause made at the beginning of, or prior to, the arbitration.

**25. Challenges -- With Cause.**

Any party to an arbitration may, as hereinafter specified, challenge any member of the Arbitration Panel for cause.

Challenges for cause shall include such things as ill will or hostility toward the party; that there is a controversy between the Panelist and the party; and/or any other justifiable reason which would tend to cause bias or otherwise influence the Panelist's judgment. When a Panel Member is challenged for cause, the Panel Chairperson shall decide whether or not the challenge is justified. The Chairperson's decision shall be decisive of the matter. There shall be no limit on the number of challenges for cause.

**26. Challenge -- Without Cause.**

In addition to challenges for cause, each party shall have the right to challenge one (1) member of the Panel without stating a reason. In such case, the challenged Panelist shall be dismissed.

**27. Challenges -- Time Limit and Replacements.**

Any challenges must be in writing and sent to CBA within five (5) days of sending of notice of the Panelists' names. If a challenge is sustained, the CEO shall appoint a replacement Panelist(s) and send the name(s) to the parties. The parties shall then have another five (5) days to challenge as above.

If the Panelists' names are not given in advance of the hearing, challenges shall be made orally at the beginning of the hearing.

**28. Quorum.**

Three (3) members of the appointed Panel, present at the hearing, shall constitute a quorum and the Panel shall proceed to hear the matter. If less than three (3) are present, then the hearings shall be delayed (or continued to a definite time) until additional Panelists can be appointed and be present. The CEO or Arbitration Chair may appoint other CBA member(s) to serve as Panelists.

**29. Hearing Procedure.**

The hearing shall be conducted, to the extent possible, in accordance with the procedure approved by the Board of Directors.

**30. Hearing -- Member Present.**

The Designated (Voting) Representative or someone else authorized in writing by the member to act for the member must be present and must sign all documents requiring the member's signature.

**31. Evidence/Letter and Statements.**

The Panel is not bound by any courtroom or other rules of evidence.

No letter, written statement or affidavit of any person which is solicited or obtained for use at the hearing, may be admitted into evidence or considered by the Panel. However, letters or other documents executed at the time of, and in the normal course of the transaction itself, are admissible.

**32. Award -- Basis.**

An Arbitration Panel shall determine a controversy in accordance with the Rules of CBA; real estate customs and practices; and general principles of fairness. Although the Panel is not bound by the law, the Panel is entitled to take the law into account.

**33. Disposition of Arbitration Filing Fee.**

In the event of the Complainant is successful in establishing all or any part of the claim, the Arbitration Panel shall add to its award the filing fee paid to CBA. In no event shall CBA itself be required to refund or disburse the filing fee. Any deposition costs may also be included in the award if the Panel determines they are necessary and reasonable.

**34. Award -- Form and Time Limit.**

The Award shall be in writing, on CBA's standard form, and signed by at least a majority of the Panel Members. The Panel shall send its Award to CBA within three business (3) days of the hearing.

**35. Award -- Copies to Parties.**

Upon receipt of the Award from the Panel, the CEO or Arbitration Chair shall promptly "send" copies thereof to the parties and shall file the original with CBA.

**36. Award -- Delinquency.**

Any amount due pursuant to an arbitration award shall become "delinquent" if not paid in full within ten business (10) days of sending of the Award, unless the parties or the Panel fix a different time.

**37. Award -- Stay Pending Appeal.**

In the event of appeal to the Superior court, payment of the Award (and interest) shall be stayed pending the appeal. If the court confirms the Award, the Award and interest from the date of delinquency shall be paid in full within ten (10) days thereafter.

**38. Award -- Interest.**

A "delinquent" Award shall bear interest at eighteen percent (18%) per annum from the date of delinquency.

**39. Award -- Attorney's Fees and Costs.**

In the event of petition to the Superior Court (and any appeal thereof to an appellate court) for confirmation or vacation of an award, the court (including an appellate court) shall, if the Petitioner is successful in whole or in part, include in its judgment or order: interest at the above rate; court costs (including any deposition and brief printing expenses); and a reasonable amount for the Petitioner's attorneys' fees.

If CBA (or any CBA officer or employee) is joined as a party in any petition and/or appeal, it shall be entitled to a judgment for its attorneys' fees and costs incurred in connection therewith.

**40. Earnest Money -- Deposit with CBA.**

CBA may accept custody of disputed commission money on the following terms:

- The money will not be accepted unless the only claimants to it are CBA members, and the Buyer and Seller have waived any claim to the money.
- The money will be deposited to CBA's general fund, and no interest will be paid on it.
- Either a CBA arbitration is pending, or the person depositing the money presents proof that written notice of deposit with CBA has been given to the members claiming the same.
- If no arbitration is filed within the time limits in these Rules, the money will become the property of CBA.
- CBA will pay the money to the successful party within three business (3) days after the award, provided the party receiving payment agrees to refund the payment immediately if the award is reversed on appeal.