

The Arbitration Hearing -- An Overview

Participation in a professional standards hearing - arbitration or ethics - can be an intimidating experience for first time participants, witnesses and even new panel members. Knowing what will likely happen can make it a less stressful experience.

Although the arbitration hearing process is based on the judicial model of a civil trial, there are important differences between a trial and an arbitration hearing. While parties to any professional standards proceeding are entitled to fundamental due process, technical rules of evidence and procedure do not apply in an arbitration hearing. While the burden of proof rests with the parties, arbitration panel members can ask questions (directly or through the chair) to ensure that they have a clear understanding of relevant issues and facts. This is key to rendering a fair decision.

Parties are entitled to have legal counsel present but must respond to questions asked by panel members - or asked by other parties or their counsel when directed to respond by the chair.

Prior to the hearing, parties have the opportunity to challenge potential panel members for cause. While there are no preemptory or "automatic" challenges, boards/associations make all reasonable efforts to ensure that panel members will be impartial, unbiased, and fair.

At the beginning of arbitration hearing the chair introduces themselves and the other panel members and explains the procedures that will be followed. The chair also introduces the parties and their counsel, and others who may be present to assist the panel, which might be board legal counsel, a court reporter, or board/association staff.

Following the chair's introductory comments, the parties and their witnesses are sworn or affirmed. Witnesses are then excused from the hearing room until it is time for them to testify.

The complainant(s) testifies first. Complainants can introduce evidence and call witnesses to support their case. The respondent or the respondent's attorney can cross-examine the complainant and witnesses who testify for the complainant. After the complainant(s) finishes his presentation, respondents have the opportunity to present their evidence and testimony.

After the parties have had their chance to conduct cross-examination, panel members can ask questions of anyone who testifies. This differs from a trial in that while each party is primarily responsible for making their case, hearing panelists will want to clearly understand the events leading up to the dispute so that they can make an informed and fair decision. The fact that panel members can ask questions, is no substitute for thorough advance preparation by the parties.

Following the parties' presentations and any subsequent questions from panel members, each party or their counsel is entitled to make a closing statement, succinctly summarizing the salient points of their case.

After the closing statements, the chair adjourns the hearing and the hearing panel then (either immediately or at a future time) goes into executive session to determine the award. Awards may be for the amount requested or for a lesser amount. Hearing panels are not authorized to award more than was requested or to award punitive damages. Attorneys' fees and interest may be part of an award only if such amounts were part of the underlying contractual agreement that is the subject of the dispute.

Parties to arbitration are entitled to due process. For that reason, parties may request procedural review of the arbitration hearing process if they believe they did not get a fair hearing. A review of the hearing process must be distinguished from review of the award itself. Disagreement with the decision of the hearing panel is **not** a basis to institute a procedural review. For an arbitration award to be overturned, it is necessary for a party to demonstrate that he or she was denied a fundamentally fair hearing.

It is the arbitration statutes of the respective states that permit bodies such as boards/associations of REALTORS® to conduct arbitration, and it is the courts of each state, and not boards/associations of REALTORS® that have legal authority to compel payment of arbitration awards. It is, however, anticipated that REALTORS®, as professional business people, will meet their obligations, including payment of arbitration awards, promptly. In the event a REALTOR® does not pay an arbitration award, the board may assist the prevailing party in seeking judicial enforcement in the courts. Some boards/associations have adopted rules that require payment of awards within a specified period or payment of an equivalent amount to be held in escrow by the board/association pending the outcome of procedural review or legal challenge to the arbitration process. In those boards/associations, if the award is not paid, or an equivalent amount is not deposited with the board/association, the member may be subject to disciplinary action, including suspension or termination of membership, at the discretion of the Board of Directors.

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