

ITSO ARBITRATION POLICY

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I. General Sections

1. Application of Policy

- a) This Policy applies to all users of the ITSO MLS® System including REALTORS® that belong to member associations and REALTORS® that belong to non-member associations who have agreed to the ITSO End User License Agreement (EULA).
- b) This Policy will apply to disputes involving the division of fees related to a real estate transaction including referral fees.
- c) All Member Associations must either:
 - i. Handle disputes at their Association using the procedures substantially similar to the ones set out in this Policy; or
 - ii. Forward Claimants to ITSO if they are contacted regarding a commission or fee dispute where:
 - 1. The dispute involves two Brokerages that belong to their Association and their Association is delegating enforcement of this Policy to ITSO; or
 - 2. The dispute involves one Brokerage that belongs to an Association that is delegating enforcement of this Policy to ITSO and one Brokerage that belongs to an Association that is enforcing the Policy at their Association or that is not a member of ITSO.

2. Definitions

- a) “Appellant” means the Party that has filed an Appeal Application.
- b) “Arbitration Act” means Arbitration Act, 1991, S.O. 1991, c. 17 as amended from time to time and any successor legislation.
- c) “Brokerage” means a brokerage that belongs to a Member Association or a brokerage that belongs to a non-Member Association but is bound by this Policy as a result of using the ITSO MLS® System and agreeing to the ITSO EULA.
- d) “Claim” means a dispute between two Brokerages relating to the division, distribution, or disposition of commission or fee paid or to be paid in respect of a transaction or transactions, and shall also mean the written notice of such Claim as submitted by the Claimant.
- e) “Claimant” means the Brokerage that has a Claim against another Brokerage.
- f) “Member Association” means all Associations participating in ITSO and have entered into the MLS® Services Agreement.
- g) “days” means business days, which excludes Saturdays, Sundays, and days which are statutory holidays in the Province of Ontario.
- h) “in writing” means on paper or email.

- i) "OREA" means the Ontario Real Estate Association.
- j) "Parties" means the Claimant and the Respondent or the Appellant and Respondent.
- k) "Professional Standards Manager" means the person designated by ITSO to oversee execution of this Policy.
- l) "Response" means the Respondent's written reply to the Claim or the Respondent's written reply to the appeal application.
- m) "Respondent" means the Brokerage against which a Claimant has filed a Claim or the Party involved in an appeal that did not file the Appeal Application.

3. Binding Arbitration

- a) The provisions of this Policy shall constitute a binding arbitration agreement between the Brokerages involved in a Claim.
- b) All Brokerages must submit Claims to their Member Association or to the Professional Standards Manager for resolution unless the Parties have mutually agreed not to arbitrate the Claim, in which case their Member Association and the Professional Standards Manager must be notified of that agreement in writing.
- c) All disputes that fall within this Policy shall be submitted to the arbitration process described herein. Where a Brokerage has failed to do so, this Policy may be pleaded and shall constitute an absolute defence in any other action or proceeding.
- d) All Brokerages are bound by the provisions of the Arbitration Act. If there are any inconsistencies between this Policy and the Arbitration Act then the provisions of this Policy will take precedent, unless the Arbitration Act specifically provides that Brokerage cannot contract out of the particular provision of the Arbitration Act.

II. Claim Process

1. Filing a Claim

- a) All Claims must be in writing, signed by the Claimant, and must include:
 - i. A filing fee of \$1000;
 - ii. The amount in dispute or the basis on which the amount is to be calculated;
 - iii. A detailed statement of all facts relied on to support the Claim;
 - iv. All supporting documentation; and
 - v. An undertaking of the Claimant to be subject to and to abide by the decision of the Arbitration Panel.
- b) The filing fee may be used to offset the costs of the arbitration. If the Claim is resolved without a hearing the Arbitration Committee Chair may decide, in their sole discretion, that the filing fee or a portion of the fee is to be returned to the Claimant.

- c) The Claim must be filed with the Professional Standards Manager no more than 180 days following the date upon which the circumstances giving rise to the Claim arose.
- d) The Professional Standards Manager may decline to take action if it is apparent on the face of the Claim that ITSO does not have jurisdiction to hear the matter, or there is no merit to the contention of the Claim. In this case, the Claimant shall be advised that the matter cannot proceed.
- e) If the Professional Standards Manager decides there is jurisdiction and merit to the claim, they will forward a copy of the Claim to the Respondent within 5 days of making that determination.

2. Filing a Response

- a) The Respondent will have 10 days after receiving the Claim to file a Response with the Professional Standards Manager.
- b) The Response must be in writing, signed by the Respondent, and include:
 - i. A statement of those allegations in the Claim which are admitted, those which are denied, and those of which the Respondent has no knowledge;
 - ii. A detailed explanation of the facts relied on by the Respondent to support the Response;
 - iii. All supporting documentation; and
 - iv. An undertaking of the Respondent to be subject to and to abide by the decision of the Arbitration Panel.
- c) The Professional Standards Manager shall forward a copy of the Response to the Claimant within 1 day of receiving the Response.
- d) The Professional Standards Manager may decline to take action if the Response makes it clear that ITSO does not have jurisdiction to hear the matter, that the Claim was not filed within 180 days following the date upon which the circumstances giving rise to the Claim arose, or there is no merit to the contention of the Claim. In this case, the Claimant and Respondent shall be advised that the matter cannot proceed.
- e) If the Respondent fails to deliver a Response within the 10 days, or fails or refuses to appear at an arbitration hearing, the Arbitration Panel may still proceed with a hearing and hand down an award based on the Claim and the evidence presented at the hearing.

3. Amendments and Supplemental Arguments

- a) A Claim or Response may be amended or supplemented at any time prior to the Notice of Hearing being sent to the Parties. The amended or supplemented Claim or Response (the “amended filing”) must be provided to the Professional Standards Manager.
- b) The amended filing will be provided to the other Party within 1 day of the Professional Standards Manager receiving it.

- c) The Party that is provided with the amended filing will have 10 days to amend their Claim or Response and to address any new arguments made in the amended filing and provide it to the Professional Standards Manager.
- d) The amended filing will be provided to the other Party within 1 day of the Professional Standards Manager receiving it.
- e) The Parties are not permitted to amend or supplement their Claim or Response after the Notice of Hearing has been sent out or during an Arbitration Hearing.

III. Arbitration Committee

1. Composition of the Committee

- a) The Arbitration Committee shall consist of 15 to 20 people.
- b) The committee members must all be:
 - i. Brokers from different Brokerages; and
 - ii. Have belonged to an Ontario real estate association for at least 5 years.
- c) All committee members must complete the training sessions required by ITSO.

2. Appointment of a Mediator

- a) After receiving a Claim and a Response the Professional Standards Manager will appoint a member of the Arbitration Committee to act as mediator.
- b) The mediator must not:
 - i. Have any direct or indirect personal or financial interest in the Claim or in the matter involving the Claimant or the Respondent;
 - ii. Be related to the Claimant or Respondent or any officer, director, shareholder, partner, or employee of the Claimant or Respondent through blood, marriage, common law partnership, or adoption;
 - iii. Belong to the same franchise or real estate brand of either the Claimant or the Respondent; or
 - iv. Be involved in any other circumstance that could give rise to a reasonable apprehension of bias.

3. Mediation Process

- a) The Parties must try to resolve the dispute by mediation prior to arbitration.
- b) The mediator shall endeavor to resolve the dispute and arrive at a settlement between the Parties.
- c) The mediator may take any reasonable steps to effect a settlement, including contacting the Parties and any witnesses and arranging for a mediation meeting.

- d) The mediator may, in their sole discretion, decide if the mediation meeting will be held in person or electronically.
- e) The Parties are not permitted to be represented by another person at mediation meetings.
- f) At the end of a mediation meeting the mediator may make recommendations, which are not binding on the Claimant and Respondent.

4. Confidentiality of Mediation

- a) All discussions between the Parties and the mediator during the mediation process are confidential and privileged.
- b) If the dispute proceeds to arbitration:
 - i. Neither Party may introduce statements made during mediation as evidence;
 - ii. The mediator's report will not be made available to the Arbitration Panel or to the OREA Appeal Panel if appealed;
 - iii. The mediator cannot participate in the arbitration hearing or appeal hearing in any manner; and
 - iv. The mediator shall not discuss with anyone the statements made or the positions taken by either party during the mediation process.

5. Conclusion of Mediation

- a) If a settlement of the dispute is reached, the terms shall be reduced to writing by the mediator, and shall be signed by both the Claimant and the Respondent. A copy of the settlement agreement shall be given to the Professional Standards Manager.
- b) If no settlement of the dispute is reached within a reasonable amount of time, as determined by the mediator, the mediator shall advise the Professional Standards Manager and the dispute shall proceed to arbitration.

6. Arbitration Panel

- a) When a Claim is referred to the Arbitration Committee by the Professional Standards Manager the Chair of the Arbitration Committee will appoint an Arbitration Panel.
- b) The Arbitration Panel will consist of 3 members of the Arbitration Committee, one of which will be appointed the Arbitration Panel Chair.
- c) The committee members on the Arbitration Panel must not:
 - i. Have any direct or indirect personal or financial interest in the Claim or in the matter involving the Claimant or the Respondent;
 - ii. Be related to the Claimant or Respondent or any officer, director, shareholder, partner, or employee of the Claimant or Respondent through blood, marriage, common law partnership, or adoption; or

- iii. Be involved in any other circumstance that could give rise to a reasonable apprehension of bias.

7. Notice of Arbitration Hearing and Hearing Package

- a) The Professional Standards Manager will coordinate with the Arbitration Panel Chair to determine a date for the hearing.
- b) The Professional Standards Manager will prepare the Notice of Hearing and provide it to the Parties at least 30 days prior to the date of the hearing.
- c) The Notice of Hearing will include:
 - i. The date and time of the hearing;
 - ii. The location of the hearing;
 - iii. The Claim;
 - iv. The Response if there is one;
 - v. The names of the committee members on the Arbitration Panel; and
 - vi. Copies of relevant policies and procedures or links to where they may be found.
- d) Either Party may object to the composition of the Arbitration Panel within 5 days of receiving the Notice of Hearing. The objection must be provided to the Professional Standards Manager in writing and provide reasons for the objection. The Professional Standards Manager will coordinate with the Arbitration Committee Chair, who will have the right to:
 - i. Accept the objection;
 - ii. Reject the objection; or
 - iii. Appoint another committee member to the Arbitration Panel.
- e) Either Party may request a postponement of hearing due to:
 - i. Illness, incapacity, or inability of the Party to attend on the date set for some reasonable cause beyond the control of the Party;
 - ii. Inability of an essential witness to attend on the date set;
 - iii. Some other reasonable factor which would prevent the Party from presenting its case fully and completely.
- f) The Party seeking a postponement must notify the Professional Standards Manager as soon as possible, who will take the request to the Arbitration Panel Chair. The Arbitration Panel Chair will decide whether or not to set a new date.
- g) The Parties will have 10 days after receiving the Notice of Hearing to provide documentary evidence and the names of any witnesses they plan to call to the Professional Standards Manager to include in the Hearing Package. All documentary evidence the Parties plan to introduce at the hearing must be provided during this 10 day period.
- h) The Hearing Package will include the Notice of Hearing, the names of witnesses, and all evidence provided by the Parties.
- i) The Professional Standards Manager will provide the Hearing Package to the Parties and to the Arbitration Panel at least 7 days prior to the hearing.

8. Hearing Procedures

- a) The Parties may be represented at the hearing. If either Party will be represented by a lawyer they must notify the Professional Standards Manager at least 5 days prior to the hearing, which will be communicated to the other Party and to the Hearing Panel.
- b) The Arbitration Panel may also have a lawyer at the hearing to advise them on legal matters or procedure only. The Arbitration Panel lawyer will not be permitted to participate in the deliberations or decision making process.
- c) Hearings may be held in person or electronically.
- d) The Parties and witnesses may testify to provide oral evidence in addition to the evidence in the Hearing Package.
- e) The Arbitration Panel will follow the procedures set out in Schedule A of this Policy. Any requested change to the procedure in Schedule A must be submitted to Professional Standards Manager at least 5 days prior to the hearing. The Arbitration Panel Chair will decide whether or not to allow the change to the procedure.
- f) Failure of the Respondent to attend the hearing shall not prevent the Arbitration Panel from holding the hearing and making a determination on the matter.
- g) If a hearing exceeds 1 day the Arbitration Panel will be entitled to reasonable compensation for all time after the first day spent at the hearing and finalizing the decision.

9. Hearing Decision

- a) At the conclusion of the hearing the Arbitration Panel will deliberate to arrive at a decision. If there is not a majority decision from the Arbitration Panel the decision of the Chair of the Arbitration Panel shall govern.
- b) The Arbitration Panel may:
 - i. Dismiss the Claim;
 - ii. Order the Respondent to pay to the Claimant the amount or any part of the amount set out in the Claim;
 - iii. Order that all or a portion of the filing fee be returned to the Claimant;
 - iv. Order the Respondent to reimburse the Claimant all or a part of the filing fee;
 - v. Order either Party or both Parties to pay the Arbitration Panel's costs that exceed the filing fee; and/or
 - iv. Make any other Order that the Arbitration Panel feels is fair and just in the circumstances.
- c) The Professional Standards Manager will provide the Arbitration Panel decision to the Parties as soon as reasonably possible after the hearing, which will be in writing, signed by the Arbitration Panel Chair, and will contain the reasons for the decision.

- d) The decision of the Arbitration Panel shall be binding upon the Parties and shall be considered effective as of the date of the decision unless otherwise set out in the decision.

V. Appeal to OREA

1. Appeal Application

- a) Either Party may choose to appeal the Arbitration Panel decision, after which they will be referred to as the Appellant. The other Party will then be referred to as the Respondent.
- b) The only acceptable grounds for appeal are:
 - i. That there was a denial of natural justice; or
 - ii. The Arbitration Panel did not have jurisdiction to make the arbitration award.
- c) The Appellant must file the Appeal Application with OREA within 30 days of receiving the Arbitration Panel's decision and provide a copy of the Appeal Application to the Professional Standards Manager.
- d) The Appeal Application must be:
 - i. In the form required by OREA set out in Schedule B;
 - ii. Accompanied by the filing fee established by OREA.
- e) The Appellant shall reimburse ITSO for any costs incurred creating a transcript for the appeal hearing.
- f) The decision of the Arbitration Panel will be stayed pending the appeal.

2. Filing a Response

- a) OREA will provide a copy of the Appeal Application to the Respondent and will notify them of the prescribed time period for filing a Response, which will be at least 15 days.
- b) When OREA receives the Response they will provide a copy to the Appellant.
- c) If the Respondent fails to deliver a Response within the prescribed time period, or fails or refuses to appear at the appeal hearing, the OREA Appeal Panel may still proceed with a hearing and hand down a decision based on the Appeal Application, the Response if there is one, and the Appellant's testimony at the appeal hearing.

3. Notice of Appeal and Appeal Package

- a) OREA will notify the Parties in writing of the date, time, and place of the appeal hearing, which will be at least 30 days after the Appeal Application was filed.
- b) The Professional Standards Manager will coordinate with OREA to prepare the appeal package, which will include:

- i. The Arbitration Hearing Package;
- ii. A transcript of the Arbitration Hearing; and
- iii. The decision from the Arbitration Panel.

4. OREA Appeal Panel

- a) There shall be an OREA Appeal Panel consisting of at least 20 brokers that belong to OREA. The Chief Executive Officer of OREA will appoint 3 people from the OREA Appeal Panel to act as arbitrators at the appeal hearing.
- b) The arbitrators for the appeal hearing must not:
 - i. Either directly or indirectly have any personal or financial interest in either of the Parties to the Appeal;
 - ii. Be related by blood, marriage, common law partnership, or adoption to either Party or to any officer, director, shareholder, partner, or employee of either Party; or
 - iii. Be involved in any other circumstance that could give rise to a reasonable apprehension of bias.
- c) The arbitrators at the appeal hearing shall have all the powers of arbitrators under the Arbitration Act.

5. Appeal Procedures

- a) Both Parties may be represented at the Appeal. If either Party will be represented by a lawyer they must notify OREA and the other Party at least 5 days prior to the appeal hearing.
- b) The OREA Appeal Panel may also have a lawyer at the appeal hearing to advise them on legal matters or procedure only. The OREA Appeal Panel lawyer will not be permitted to participate in the deliberations or decision making process.
- c) Both Parties will be given the opportunity to present both oral and written arguments at the appeal hearing.
- d) No new evidence may be introduced at the appeal hearing.

6. Appeal Decision

- a) The arbitrators of the appeal hearing may decide to:
 - i. Dismiss the appeal and uphold the Arbitration Panel decision;
 - ii. Grant the appeal;
 - iii. Amend the decision of the Arbitration Panel as they deem appropriate;
 - iv. Remit the matter back to the Arbitration Committee for a new hearing in whole or in part, and at their discretion by a differently constituted Arbitration Panel;
 - v. Order that all or a portion of the filing fee be returned to the Appellant; and/or
 - vi. Order the Respondent to reimburse the Appellant all or a part of the filing fee.
- b) The decision of the appeal panel arbitrators will:
 - i. Be in writing;

- ii. Be signed by the arbitrators; and
 - iii. Contain the reasons for the decision.
- c) OREA will provide a copy of the appeal decision to both Parties and to the Professional Standards Manager immediately after the Chief Executive Officer of OREA receives a copy of the decision.
- d) No Brokerage may prefer charges or sue for damages any agent or employee of OREA, or any arbitrator on the OREA Appeal Panel, for any reason, for what they did or failed to do in the administration of the provisions of this Policy, and this section is hereby confirmed as an absolute defence against such charges or suit, and each Brokerage hereby waives his right to file such charges or suit.

VI. Miscellaneous

1. Discontinuing Proceedings

- a) If either Party resigns or is terminated from their Association at any time during arbitration proceedings, and consequently does not belong to any Member Association, the Arbitration Committee may:
- i. Hold the Claim and process in abeyance until the Party re-joins a Member Association, at which time the process can resume; or
 - ii. Close the file.
- b) If either Party resigns or is terminated from their Association but belongs to another Member Association, or joins another Member Association immediately after leaving the other Association, then the proceedings will continue.
- c) Any time prior to an arbitration hearing, with agreement from both the Complainant and the Respondent in writing, a Claim can be withdrawn and the file will be closed. Should either Party wish to re-open the Claim they must apply in writing to the Arbitration Committee who will decide whether the Claim should be re-opened.
- d) If either Party resigns or has their membership terminated from all Member Associations after an arbitration hearing decision but before an Appeal Application is filed, or at any time during the appeal process, the Party shall be deemed to have waived all rights of appeal.

2. Communication of Awards and Failure to Comply with Arbitration Award

- a) The Professional Standards Manager will notify a Member Association if an arbitration award has been issued that involves a Brokerage belonging to their Association.
- b) If a Member Association is handling arbitration at their Association then they must communicate the outcome of those incidents to ITSO.

- c) If a Brokerage fails to comply with the decision of an Arbitration Panel the ITSO board of directors may, without any further proceedings, suspend all ITSO services or permanently ban the Brokerage from accessing ITSO services.
- d) All Member Associations must cooperate with ITSO and take any steps that are necessary to uphold decisions of Arbitration Panels that affect Brokerages belonging to their Association.

3. Documents and Correspondence

- a) All letters, notices, or other documents required to be sent to a Brokerage will be sent via email unless the Brokerage indicates they would rather receive correspondence by personal delivery, courier, or registered mail.
- b) All files, documents, correspondence, reports and records pertaining to a Claim shall be in the custody, care and control of the Professional Standards Manager on behalf of the Arbitration Committee and shall be considered confidential, not subject to access by any persons except as necessary to carry out proceedings set out in this Policy.

4. Indemnity

No action or proceeding, either at law or in equity, may be brought by any Member Association or Brokerage against ITSO, any ITSO director, or any Arbitration Committee member for any act or omission in relation to the administration or enforcement of this Policy. This section may be pleaded as, and shall constitute, an absolute defence to any such claim or action.

Schedule A: Hearing Procedures

1. Hearing Procedure

The hearing will proceed in the following order:

- a) Chair makes opening remarks;
- b) Introduction of the Arbitration Panel and confirmation of no conflicts;
- c) Swearing in of Parties and witnesses;
- d) Witnesses leave room;
- e) Claimant presents evidence and calls witnesses if any;
- f) Cross examination from Respondent;
- g) Respondent presents evidence and calls witnesses if any;
- h) Cross examination from the Claimant;
- i) Questions from Arbitration Panel;
- j) Closing statement from Claimant;
- k) Closing statement from Respondent.

2. Recording of Hearing

The hearing will be recorded by any means deemed appropriate by ITSO, which may include but is not limited to audio recording or video recording. The hearing may not be recorded by the Parties.

3. Witnesses and Evidence

- a) The Parties may call anyone as a witness including people who do not belong to a Member Association.
- b) Hearsay evidence is not permitted.
- c) The Arbitration Panel is not bound by the rules of evidence or any other legal rules, but shall consider the best evidence available.

4. Representation

If the Parties will be represented at the hearing then the Arbitrators may require all communication to come from the representative other than when the Parties testifying to give oral evidence.

5. Powers of Arbitrators

- a) The Arbitrators shall possess all of the powers of arbitrators under the Arbitration Act.
- b) The Arbitration Panel may adjourn any hearing from time to time.

Schedule B: Appeal Application Form

FORM A

NOTICE OF APPEAL

BETWEEN:

(APPELLANT)

- and -

(RESPONDENT)

1. The Appellant hereby Appeals the Award of the Arbitrators of the _____ Real Estate Board dated the _____ day of _____, 20____.
2. The Arbitration Panel Chair was _____.
3. The address of the Appellant is _____.
4. The address of the Respondent is _____.
5. The Appellant is a Member of the following Real Estate Board(s):

6. The Appellant Appeals the award for the following reasons:

[Note: If more space is required, attach additional sheets. Please ensure that your reasons for Appeal are complete and detailed.]

DATED this _____ day of _____, 20__.

Firm Name

per: _____

Signature