

THE COUNSELORS OF REAL ESTATE

CRE

REAL ESTATE
DISPUTE
RESOLUTION
PROGRAM

Rules

ABOUT THE COUNSELORS OF REAL ESTATE

The Counselors of Real Estate, established in 1953, is an international group of high profile professionals, including members of prominent real estate, financial, legal and accounting firms as well as leaders of government and academia, who provide expert, objective advice on complex real property situations and land-related matters.

Membership is selective and extended by invitation only. The organization's CRE Designation (Counselor of Real Estate) is awarded to all members in recognition of superior problem-solving ability in various areas of specialization, such as dispute resolution, litigation support, real estate analysis, asset management, strategic planning, valuation, feasibility studies, acquisitions/dispositions, debt/equity placement and real estate law. Counselors also serve as project managers, identifying and linking a variety of specialists analyzing a problem and/or executing its solution.

CREs achieve results, acting as key players in major transactions and/or real estate decisions. The majority of Fortune 500 companies retain CREs for advice on real estate holdings and investments. CREs also serve public and private property owners, developers, investors, attorneys, accountants, financial institutions, nonprofit and religious organizations, educational institutions and health care facilities.

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WHAT IS A COUNSELOR OF REAL ESTATE?

A Counselor of Real Estate is a real estate professional whose primary business is providing expert advisory services to clients. Compensation is generally structured on an hourly, daily or fixed fee basis although other payment terms are sometimes arranged in high value impact assignments. Any possibility of actual or perceived conflict of interest is resolved before acceptance of an assignment. A Counselor always places the interests of the client first and foremost in any advice provided, regardless of the method of compensation. CREs have acquired a broad range of experience in the real estate field and generally possess technical competency in more than one real estate discipline.

Serving as sole practitioners, CEOs or other senior executives of consulting firms or leaders of the real estate departments of major corporations, CREs are committed to creating real estate solutions of economic value to clients. CREs assess the real estate situation by gathering the facts behind the issue, thoroughly analyzing the collected data, and recommending the key course of action that best fits the client's objectives.

The extensive CRE network stays a step ahead of the ever-changing real estate industry by reflecting the professional diversity of all providers of counseling services. CREs honor the confidentiality and fiduciary responsibility of the client-counselor relationship and adhere to a strict Code of Ethics and stringent Standards of Professional Practice.

Approximately 1,100 real estate practitioners throughout the world carry the CRE designation, denoting the highest recognition in the real estate industry. With CRE members averaging 20 years of distinguished industry experience, individuals, institutions, corporations or government entities should consider engaging a CRE to resolve their real estate disputes.

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RULES

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RULES

GENERAL PROVISIONS FOR ALL DISPUTE RESOLUTION PROCESSES

GP1. Conflict or Inconsistency Between the Protocol and the Rules

In any case of actual or perceived conflict or inconsistency between the Protocol and the Rules, the text of the Rules will govern.

GP2. Definitions

As utilized in the text of these Rules the pronoun “he” has been used to denote “he” or “she.”

The term “panel” refers to the neutral or neutrals assigned to a given case under the auspices of the CRE Real Estate Dispute Resolution Program.

GP3. Manner of Submission

Initiation of a dispute resolution process may have its source in a court order, a contract, lease or other pre-dispute agreement between or among the parties, or in a post-dispute agreement of the parties. The parties shall execute the standard CRE Submission Agreement for the process selected to use the CRE Real Estate Dispute Resolution Program. If a party fails to execute a CRE Submission Agreement but the dispute comes to the CRE Real Estate Dispute Resolution Program because of a clause citing the Program in a pre-dispute agreement or because of a court order binding such a party, the party will be bound by the terms of the relevant CRE Submission Agreement as well as by these Rules in effect at the time a proceeding commences.

GP4. Acceptance of Rules and Interpretation

The parties agree to be bound by these Rules once they participate in the CRE Real Estate Dispute Resolution Program. Special instructions previously agreed to by the parties will be honored unless they are inconsistent with the philosophy of these Rules and/or possibly against public policy. The panel shall be the sole interpreter of such issues and of these Rules in any given case.

GP5. Confidentiality of Proceedings

All records, reports, evidence or other documents received by the panel shall be confidential and not to be disclosed by the neutral(s). The issue of confidentiality is further covered in the Submission Agreement which adopts the provisions of any applicable confidentiality laws or regulations for dispute resolution proceedings.

GP6. Case Administration

The CRE Real Estate Dispute Resolution Program is authorized to administer arbitration proceedings undertaken subject to these Rules and may designate a case administrator to represent it in such activities.

GP7. Notices

All notices will be sent by the parties by a mode of transmittal chosen by the case administrator or neutral(s). All awards will be transmitted to respective counsel or to the parties directly if acting *pro se*, by U.S. mail certified mail return receipt requested or by U.S. mail registered mail return receipt requested.

GP8. The Neutral(s)

Arbitrators, mediators and other neutrals selected for the lists submitted to the parties consist of senior real estate professionals who are members of The Counselors of Real Estate. These neutrals have a wide range of experience in the real estate field and have been screened for their suitability to be neutrals on the CRE panel based on their training and experience in dispute resolution.

In composing lists of neutrals to be submitted to the parties, or when the Program directly selects a neutral under these Rules, consideration is given to the real estate functional specialties most relevant to a particular case together with the dispute resolution credentials needed. Although proximity of a neutral's domicile is a factor to be considered, more weight is usually given to the specialized knowledge that is desirable than to the geographic locale of the dispute.

GP9. Selecting a Neutral

The parties may agree on the neutral(s) to be selected from the CRE panel at the time the dispute is submitted to the Program. Otherwise, arbitrators, a mediator or other neutral will be selected by the parties from identical lists of candidates submitted by the case administrator. The names will be accompanied by background information describing the real estate and dispute resolution education, training and experience of each potential candidate. Each party will strike the names of those neutrals that are unacceptable, and will rank the remaining names and return the list to the case administrator within ten (10) days of receipt.

In major cases, the parties may seek additional services from the case administrator such as lists of neutrals by field of expertise, longer and more detailed resumes, disclosure pre-screening, scheduling availability, and special requests that are fair to all parties and consistent with these Rules. For these additional services, additional charges may be imposed. The case administrator will select one or more neutrals from the list based upon the preferences of the parties and will attempt to secure the services of those selected.

If the annotated lists contain no name or an insufficient number of names in common, the process will be repeated if a mediator is to be selected. The mediator(s) selected must be acceptable to the parties. If a single arbitrator or panel of three is to be selected, and there is no name, or an insufficient number of names, in common, the Program is authorized to choose the sole neutral or panel. The Chair of a panel, or sole arbitrator, must be certified as "Chair Qualified" by the Program. Thereafter, arbitrators are subject to challenge as provided herein.

GP10. Disclosures by Parties and by Neutrals

The parties shall disclose in writing on the forms provided any and all relationships, conflicts of interest, whether substantive or casual, real or apparent, with neutrals not stricken by them from the list of potential candidates. Every party has a continuing obligation to make additional disclosures as they come to the attention of a party.

Similarly, after a neutral has been notified by the case administrator of initial selection to serve in a specific case, and has been provided with copies of the claim form, response, and initial witness list, the neutral shall declare that there are no disclosures necessary, or shall make disclosures in writing of any and all relationships, conflicts or potential conflicts of interest on the forms provided, whether substantive or casual, real or apparent. Even after proceedings are underway, neutrals have a continuing responsibility to make new disclosures if such relationships or conflicts come to their attention.

If the laws of any relevant jurisdiction require additional disclosure, those additional requirements must also be met.

GP11. Neutral Oath

In executing the Oath form and disclosure checklist and any attached letter providing any additional disclosures and further details of any disclosures already made on the checklist, the neutral is attesting that he has reviewed the materials submitted by the parties and is not aware of any relationships or conflicts with the parties, counsel or other neutrals that are not thereby disclosed.

GP12. Vacancy

Where it is determined by the Program that there is a neutral vacancy caused by death, disability, disqualification, inability to serve, non-performance, or by the inability of the parties to agree on any of the names on the list of potential neutrals or other circumstances, the case administrator, with the approval of the Program, will take the steps necessary to fill the vacancy in accordance with the Rules herein for selecting neutrals.

In arbitrations and in appraisal proceedings where there is a three-person neutrally selected panel and a vacancy occurs, the parties may agree to continue to the conclusion with the remaining two neutrally selected members of a panel deciding, preparing and executing the award. In this circumstance, if the two remaining neutrals are not in agreement as to an award, the dispute resolution process must be repeated with a new panel of neutrals.

GP13. Location

If an agreement between and among the parties specifies the geographic location where the dispute resolution process is to take place, then that location will be selected. Otherwise, after consultation with the parties, the neutral(s) in consultation with the case administrator will choose the geographic location, the facility, the dates and the starting time.

GP14. Consolidation

If there are a number of related claims of a similar nature in a mandatory dispute resolution process, they may be consolidated in one proceeding upon the agreement of all affected parties and the panel.

GP15. Bifurcation

Upon motion no later than sixty (60) days prior to the commencement of the hearings, a mandatory dispute resolution proceeding may be bifurcated or divided into two phases with liability established in the first phase and damages and other remedies determined in the second phase.

GP16. Code of Ethics

The current edition of The Model Standards of Conduct for Mediators or the Code of Ethics for Arbitrators in Commercial Disputes, bearing the endorsement of the American Bar Association, will govern the conduct of neutrals participating in cases under the CRE Real Estate Dispute Resolution Program.

For the purpose of this section appraisers (in a dispute resolution context) chosen in neutral fashion shall be governed by the Code of Ethics for Arbitrators in Commercial Disputes. Individual party-appointed arbitrators or appraisers (in a dispute resolution context) chosen by individual parties will also have certain ethical obligations as described in the Code of Ethics for Arbitrators in Commercial Disputes including a statement whether they will or will not be neutral during the specific dispute resolution process and whether and to what extent they will communicate with the selecting party during the course of a specific dispute resolution proceeding.

GP17. Exculpation

The Counselors of Real Estate, its agents, members, neutrals and associates, and the respective successors, assigns, heirs and personal representatives of all of the foregoing (collectively, “Protected Entities and Persons”) shall have no liability whatever to anyone for any act or omission in connection with any proceeding under the auspices of the CRE Real Estate Dispute Resolution Program.

It is a condition precedent to a party’s participation in any such proceeding that this exculpation is accepted and each and every such party relinquishes any and all rights to sue the Protected Entities and Persons, or any of them, on the basis of any such claim.

Without limiting the generality of the foregoing, the Protected Entities and Persons shall be reimbursed by the party or parties bringing suit for any and all costs (including time at their respective hourly or per diem rates), legal fees and other expenses incurred by them in resisting, defending or participating in any action prohibited by this section.

GP18. Fees and Expenses

The case administrator and the panel will make preliminary estimates of all administrative fees, out-of-pocket expenses and all hourly or daily professional fees likely to be charged by the panel, and the case administrator will advise the parties of the initial deposits that are required under the current Fee Schedule of the Program and for the estimated fees and expenses of the panel. Thereafter, if it appears to the case administrator or the panel that the deposits are likely to be depleted before the conclusion of all services in a specific case, additional deposits may be required of the parties. The Program reserves the right to suspend any proceeding if initial or additional deposits are not received in a timely fashion. When one party does not forward its share of estimated deposits or earned fees and expenses, the counter-party may remit the amount if it chooses so that the selected dispute resolution process can proceed.

Neutrals provide professional services based on individual per hour or per diem rates published by each neutral and made available to the parties when a list of neutral candidates are disclosed to the parties. Professional fees are charged for time expended by neutrals at hearings and for time expended for preparation and study and for telephone calls. When neutrals serve at a locale beyond a commutable distance [more than fifty (50) miles] from a given neutral's primary domicile, additional charges for out-of-pocket expenses for travel, hotel, meals, and related expenses may be charged. Some neutrals charge, in addition, an hourly rate for travel time.

GP19. Severability

If any portion of these Rules shall be declared void or unenforceable by any court, the remainder of these Rules shall remain in full force and effect and shall be applied in accordance with their terms.

MEDIATION

M1. No Transcript

There will be no court reporter present during the mediation process nor any official record kept of the proceedings.

M2. Communication with the Mediator

A party may be involved in joint and *ex parte* communications with the mediator.

M3. Mediation Brief

Prior to the first session mediators often will request a confidential statement of issues from each party together with documents and other information.

M4. Confidentiality

Mediation is intended to be private and confidential. The parties and the mediator agree not to disclose, transmit, introduce, or otherwise use opinions, suggestions, proposals, offers, or admissions obtained or disclosed during the mediation by any party or the mediator as evidence in any action at law, or other proceeding, including a lawsuit or arbitration, unless authorized in writing by all other parties to the mediation or compelled by law, except the fact that a mediation has occurred shall not be considered confidential.

All written and oral communications, negotiations and statements made in the course of the mediation will be treated as privileged settlement discussions, and are absolutely private and confidential unless they are otherwise available to the other side. The parties shall not call the mediator as a witness in any proceeding, and if any party serves a subpoena on the mediator he may move to quash it and, whether he is successful or not, the party serving the subpoena shall promptly reimburse the CRE Real Estate Dispute Resolution Program for any costs, expenses and time incurred by the program and the mediator at his hourly rate specified spent in pursuing any such motion or in responding to any such subpoena.

M5. Agreement: Documentation and Execution

If a settlement is reached, a written agreement containing all the essential items usually is prepared and executed by the parties undertaking to be bound, even if it contemplates that a more detailed agreement will be prepared and executed later.

A mediator's involvement in this phase of the mediation, whether he is or is not a lawyer, shall not constitute the practice of law.

M6. Termination of the Mediation

If either one or all parties, or the mediator believe that continuing the mediation process would be fruitless, the process will be terminated. Normally, that judgment is left to the mediator, who usually knows better than the parties if a settlement is likely.

Neither the CRE Real Estate Dispute Resolution Program nor the mediator is obligated to go forward with any further proceedings if an impasse is reached and the mediation is terminated.

M7. Co-Mediation Option

Subject to an agreement of the parties, there may be two or more mediators with different areas of expertise in a complex matter. From time to time permission of the parties may be requested for a mediator in training to observe the process. Such participation is subject to the approval of the parties.

ARBITRATION

A1. Claim

A claim must explicitly state reasons for the action and whether the claim is monetary or non-monetary in nature, or both. If the claim is monetary in nature, the claimant should specify the principal monetary amount of the claim and should deal with issues such as interest, legal fees and out-of-pocket expenses.

A2. Amendment of Claim

A claim may be amended as of right in instances of error and/or when new facts come to light before the beginning of evidentiary hearings. Once a panel has been appointed and evidentiary hearings have commenced, any subsequent motion, written or oral, to amend claims or counter-claims shall require the consent of the panel which may be granted or denied in its sole discretion. Before a panel acts on such a motion, the counter-party shall be given the opportunity to respond to the motion within ten (10) days of receipt of the motion.

A3. Challenges to Service of an Arbitrator

Disclosure statements prepared by the arbitrators are submitted to the parties who have the right to challenge for cause the continued service of a particular arbitrator within ten (10) days of the submission of the arbitrator's disclosures to them. The CRE Real Estate Dispute Resolution Program will be the sole judge as to whether or not the arbitrator in question will be allowed to continue to serve in a particular case.

A4. Challenges to a Proceeding

A party may challenge either the right of a panel to arbitrate all or a portion of the claims or counter-claims in a specific case and/or the jurisdiction of the panel. Such a party's challenges must be asserted no later than the date of filing of the statement answering the claim and/or replying to a counter-claim, as the case may be.

The panel shall have the authority to rule on the existence and the validity of a contract between the parties and whether it provides for the arbitration of any or all of the claims submitted in a specific case.

The panel may make its rulings on the issues referred to in this section either at an early point in time or in the text of the final award.

A5. Role of Individual Party-Appointed Arbitrators

Many agreements specify that each party will designate a party-appointed arbitrator with the third decision-maker being neutrally selected by the impartial process previously described in these Rules.

Under the revised Code of Ethics for Arbitrators in Commercial Disputes effective March 1, 2004, prepared by the American Bar Association and the American Arbitration Association, the party-appointed arbitrators have the responsibility of responding to a number of procedural issues including but not necessarily limited to the following:

(1) Party-appointed arbitrators also have a duty to disclose interests and relationships that could affect impartiality or the appearance of partiality.

(2) Subsequent to selection, the party-appointed arbitrators must declare whether they are converting their roles to that of arbitrators acting in a neutral mode or continuing to represent the interests of the respective parties who appointed them.

(3) Any limitations on communications of the party-appointed arbitrators with the parties who selected them should be made explicit prior to the commencement of the formal hearings unless the party-appointed arbitrators will be acting as neutrals, in which case *ex parte* communications are not permitted.

In addition, regardless of the manner of selection of the party-appointed arbitrators, cases that are administered by the CRE Real Estate Dispute Resolution Program must otherwise follow the above procedures described in these Rules regarding the current edition of the Code of Ethics for Arbitrators in Commercial Disputes.

A6. Designation of Chair

When two of the arbitrators are appointed by the respective parties and the third arbitrator is neutrally selected, the third arbitrator will serve as chair; when there are three neutrals, the chair will be designated by the CRE Real Estate Dispute Resolution Program.

All chairmen or sole arbitrators must be certified as “Chair Qualified” by the CRE Real Estate Dispute Resolution Program.

Any administrative or other responsibilities delegated to the chair require the unanimous consent of the panel.

A7. Mode of Communication with Panel

All communications between the parties and the panel will be made through the case administrator acting for the CRE Real Estate Dispute Resolution Program unless other arrangements have been agreed upon by all the parties and the panel. Representatives of the parties are free to communicate with each other at will. *Ex parte* communication with the panel or an individual arbitrator is not permitted except as provided below.

A8. Expedited Direct Exchange of Documents

By specific agreement of all the parties and the panel, there may be direct transmission of documents from a party to the panel but not other direct *ex parte* communications with the panel. Any document sent to the panel, whether directly by a party or through the case administrator as intermediary, must contemporaneously provide for transmission to all counter-parties.

A9. Pre-Hearing Conference

A pre-hearing conference will be held in every case to respond to initial questions posed by the parties and to decide appropriate deadlines for each phase of the arbitral process. All parties will be given notice of, and a realistic opportunity to participate in, such a pre-hearing conference, but it may proceed in the absence of a party.

Following the hearing, the chair of the panel will prepare a scheduling order in letter form setting forth the decisions reached at the pre-hearing conference and transmit it to the case administrator for transmission to a representative of each party.

A10. Timeline and Extensions of Time

During the preliminary hearing, the panel, after hearing the views of the parties, may establish a timeline for activities such as exchanges of information, pre-hearing briefs (if any), submission of exhibits, evidentiary hearings and other necessary deadlines. In case of disagreements the panel has the final authority to set deadlines.

If a party requests an extension of a deadline, the panel will either grant it for reasonable cause or will deny it.

A11. Scope of Information To Be Exchanged

In real estate matters the exchange of a range of information is often appropriate depending on the nature of the proceeding. Examples of (but not limitations on) the types of information that are exchanged and submitted to the panel may include the following:

(1) Basic Property Data: site survey, plot plan, zoning ordinance and map, building plans, building specifications and/or summary description, property tax assessment and property tax information, income and expense statements, construction costs for new or relatively new buildings and similar information.

(2) Legal Agreements and Contracts: purchase and sale agreements, partnership agreements, leases, mortgages and notes, title policies and abstracts, loan commitment letters, service contracts, agency agreements, condominium and cooperative documents and similar materials.

(3) Expert Reports: market studies, marketability reports, feasibility reports and appraisals, environmental reports and impact studies, traffic studies and similar reports.

(4) Other Documentation: business correspondence, book and periodical citations, charts illustrating key issues and other information that the panel requests. With the approval of the parties, and at their expense, the panel may select an expert in a specialized field to provide findings of fact.

The panel or sole arbitrator is the only judge of the relevance, admissibility, materiality and weight of documents and other evidence offered by any party except when a panel of three neutrals delegates such specific authority to the chair alone. In such a case the chair shall decide discovery motions.

A12. Modes of Obtaining Information Exchange

Information may be obtained by a party in several ways, including the following:

(1) Voluntary Exchange of Information: The usual method of receiving information is on a voluntary and mutual basis. In reaching agreement on the specifics of such an information exchange, the test to be met is what information is relevant and reasonable to request in light of the particular issues in an arbitration proceeding.

(2) Discovery: There is no absolute right to discovery under these Rules but only such discovery, if any, as the panel in its sole discretion deems appropriate.

(3) Affidavits, Declarations, Telephonic Testimony, Depositions and Interrogatories: Such modes of obtaining information are not commonly permitted in most arbitration proceedings. They should be requested only in unusual circumstances (for example, when a potential witness is located at a great geographic distance from the locale of the arbitration proceeding, or where the potential witness cannot easily appear at the proceeding because of serious and prolonged illness, or where an interrogatory is the only reasonable vehicle for identifying sources of critical information).

The panel is the sole judge of whether such procedures are to be permitted and the relevance, admissibility, materiality and weight, if any, to be given to the documents and other evidence elicited by such procedures.

A13. Interim Protective Measures

If a party applies to the panel for an interim protective order to protect assets, prevent waste or damages from occurring and/or to prevent the arbitration proceeding from being rendered materially less effective or moot, the panel, after hearing the views of both parties, may grant such interim relief if the panel believes it is appropriate. The panel may require appropriate collateral or other security from one or more parties if the panel believes it to be appropriate.

Any application by a party to a court of competent jurisdiction to issue and/or enforce a protective measure shall not be deemed a waiver of the obligation to arbitrate or an interruption of the arbitral process, except to the extent reasonably necessary under the circumstances.

A14. Subpoenas

If a party believes it has been frustrated in its attempt to obtain access to relevant witnesses or documents, it may request the panel chair to execute the relevant form of subpoena to obtain such access.

The chair of a panel has sole authority to determine that the substance of such a request is reasonable and appropriate. If the chair so determines, he will execute the appropriate subpoena form which has been filled out by the requesting party. The requesting party will be responsible for the service of the subpoena in accordance with the requirements of state law, and will be responsible for any expenses incurred in the preparation or service of the subpoena.

A15. Attendance at Hearings

Both claimant(s) and respondent(s) and respective counsel are entitled to be present at the hearing sessions. It is within the discretion of the panel to put a limit on the number of persons present from each side at any point in time.

Fact witnesses, except if they are principals, are not to be present during the testimony of other fact witnesses except by permission of the panel with consent of the parties.

Expert witnesses may be present during the testimony of other expert witnesses.

A16. Absence of a Party

If a party is either non-responsive or explicitly states that it will not participate, the arbitration may nevertheless go forward after appropriate notification. Non-responsiveness will be considered a denial of the counter-party's allegation but the panel may still proceed with hearings. In such a case the panel will require the party who is present to offer evidence supporting its position.

A17. Telephonic Testimony and Testimony by Teleconferencing

At the discretion of the panel, telephonic testimony and testimony by teleconferencing may be permitted in exceptional circumstances for demonstrated good cause.

A18. Interpreter

Any party at its own expense may make individual arrangements for the presence of an interpreter to aid understanding of the proceedings. At least ten (10) days' prior notice must be provided and the counter-party has the option of having a second interpreter present with at least five (5) days' prior notice.

A19. Exhibits

Exhibits must be submitted to the panel and counter-parties not fewer than ten (10) days prior to the commencement of evidentiary hearings or the commencement of a “documents only” process. Usually such exhibits include:

(1) Core Exhibits consist of the key documents or what is frequently termed “the common bundle.” Typically, the parties or counsel, working together, assemble, tab and index such documents in a notebook. These documents are identified as Joint (J) and numbered in a sequential order.

(2) Evidentiary Exhibits consist of those exhibits beyond the core documents. Each party or counsel identifies, assembles, tabs and indexes such documents and puts them in a notebook as Claimant (C) or Respondent (R) and numbers them in sequential order. Any documents to be utilized by a party except those to be used for impeachment of witness credibility are included.

(3) Demonstrative Exhibits consist of graphs, maps, photographic enlargements, charts, data summaries, samples, Power Point presentations and similar items.

For good cause shown, the panel may grant exceptions to the ten-day requirement for advance submission. In such cases exhibits will not usually be permitted to be used unless they are made available to counter-parties at least twenty-four (24) hours in advance of the evidentiary hearing. Violations of the rules requiring advance submission may cause sanctions to be issued by the panel in accordance with these rules.

A20. Evidentiary Hearing Sessions or Waiver of Such Sessions

Parties may agree to request that the formal evidentiary hearings be waived and that the panel be authorized to proceed on a “documents only” basis and to render a final award.

The panel may or may not accept such an agreement and, if it does not, full evidentiary hearings will be held.

A21. Transcripts of Hearings

If transcripts of the formal hearings are desired by all parties, a court reporter will be present and the expenses of employing the reporter and producing the transcripts will be shared equally as between the claimant(s) on the one hand and the respondent(s) on the other.

If only one party wishes to obtain a transcript, that party will pay all the expenses for this work. Such a transcript ordered by a party shall not be the official record of the arbitration proceeding unless so ordered by the panel and the panel has the sole authority to decide what document or recording, if any, shall serve as the official record. In addition, the panel has the right to receive a copy of any transcript or other recording created by any person at the evidentiary hearings without charge.

A22. Order of Case Presentation

Unless the parties agree otherwise or the panel decides to vary the order of the case presentation, opening statements will first be made by counsel (usually the claimant first and then the respondent) followed by the parties' presentations of their respective cases in the same order.

Each presentation may provide for direct examination, cross-examination, re-direct examination as to matters first put in evidence on cross-examination, and re-cross examination as to matters first put in evidence on re-direct examination.

Either summations or post-hearing briefs or both will be provided by respective counsel at the discretion of and in the order and on the time schedule directed by the panel.

A23. Rules of Evidence

In arbitration, the rules of evidence, except for privilege, need not be observed but the panel must be mindful of the need to provide basic fairness to all parties. Each party should focus on substance and avoid a plethora of technical objections. The weight to be afforded each element of evidence shall be decided by the panel in its deliberation based on relevance, materiality, source and perceived credibility.

A24. Inspections

When a panel believes that inspection of the real estate is important to its understanding of the dispute, the panel will visit the site(s) and will give each side the opportunity to have at least one representative present. Any party may waive the right to be present or represented either explicitly or by not attending after appropriate notice. The cost of transportation and related expenses are to be equally shared as between the claimant(s) on the one hand and the respondent(s) on the other.

Any party to the arbitration who controls access to such a property or relevant comparable property is responsible for making arrangements to facilitate such an inspection.

The panel is under no obligation to provide a written report upon completion of such an inspection whether or not one or both of the parties are present or represented during the inspection.

A25. Investigations

At the panel's initiative, the panel may hire its own experts in unusual, highly specialized areas typically in a specialty outside the scope of the real estate industry. Such experts will assist the panel in a manner determined by the panel. The fees and expenses of such experts shall be paid in equal shares by the parties.

A26. Sanctions

Sanctions are provided to prompt a party to respond to orders of the panel; for example, orders regarding the production of relevant information and regarding appropriate conduct by parties or counsel.

A party or counsel to a party who is uncooperative or disruptive may be sanctioned in a form and manner in the sole discretion of the panel.

Such sanctions may variously include but are not limited to the awarding of costs and legal fees to the party damaged by such behavior, the dismissal of some or all of the claims or counter-claims of the uncooperative party or rendering an award by default to another party.

A27. Closing of Hearings

After the summations of the respective parties and/or the submission of post-hearing briefs by the date established by the panel, and after the panel has had the opportunity, if necessary, to ask and have answered any questions that arise, the panel will declare the hearings closed. The arbitration panel shall endeavor to serve or transmit the award to the parties within thirty (30) days from the date of the formal notification of the closing of the hearings. An adjournment of the hearings is not a closing of the hearings.

If thirty days has elapsed after the close of the hearing (or where applicable, the re-opened hearing), without issuance of an award, it is the obligation of the panel chair, through the conduit of the CRE Real Estate Dispute Resolution Program, to inform the parties as to the factors causing the delay.

A28. Re-Opening of Hearings

A request to re-open the hearings may be made at any point before the rendering of the award for good cause shown. Such a request may be made upon the initiative of the panel, or any of the parties for good cause shown. If such a request is initiated by motion of a party, there will be the opportunity for response to the motion by other parties. The panel has the sole discretion to decide if the hearings are to be re-opened.

If re-opening of the hearings does occur, the panel will endeavor to transmit the award within thirty (30) days after the re-closing of the hearings.

A29. Voluntary Settlement

If the parties agree to a settlement of their dispute in the course of the arbitration proceeding, they may petition the panel to incorporate their voluntary settlement as the official arbitration award (“the consent award”).

Besides detailing the allocation of principal amounts awarded in their settlement, the parties should decide, as part of the consent award, whether or not there are to be any specific allocations of interest (simple or compounded), administrative costs, and/or fees and expenses of the arbitrators.

In the absence of any specific allocation of such expenses in the consent award, administrative costs and arbitrators' fees are to be shared equally as between the claimant(s) on the one hand and the respondent(s) on the other, and all other expenses are paid by the party who initiated or incurred the same.

In case of serious illness or emergency, an extension of time will be granted at the sole discretion of the CRE Real Estate Dispute Resolution Program. In all other circumstances the case administrator will consult with the parties about the future course of action. After this consultation the CRE Real Estate Dispute Resolution Program shall render a decision as to the extension of time to be allowed to transmit the final award. Notwithstanding such obligation to consult with the parties, the decision as to any such extension shall, after such consultation, be made at the sole discretion of the CRE Real Estate Dispute Resolution Program.

A30. Awards: Form and Scope

In a typical case, a simple, general award without reasons specified shall be issued. If the parties agree on another form of award and it is agreeable to the arbitrators, it may be provided. Unless other arrangements have been agreed upon before the neutrals accept appointment, the panel has sole authority to determine which form of award it will execute and transmit to the parties.

Arbitrators may grant any remedy or relief that they believe is just and equitable and within the scope of the agreement between the parties. If a panel's powers are expanded by subsequent agreement of all the parties, the arbitrators may even go beyond the formal contracts between the parties.

Awards may be monetary or non-monetary in nature or both. It is within the authority of the panel to award to the prevailing party principal monetary amounts and, if the panel believes it to be appropriate, punitive damages, simple or compound interest, and reimbursement of reasonable attorney's fees, all fees paid to the CRE Real Estate Dispute Resolution Program and the fees and out-of-pocket expenses of the panel.

A31. Unanimous or Majority Decision

When there are three arbitrators, any award rendered or any other decision of the panel must be the decision of at least two of the arbitrators. A dissenting vote may be recorded.

A32. Agreed Limitations on Arbitral Decision-Making

If the parties agree or if the dispute resolution clause that triggers the arbitral proceeding so provides, limitations may be placed on the method of arriving at the final award.

Examples of such limitations include but are not limited to the following:

Final Offer or “Baseball” Arbitration: Each side submits a proposal and, after a full hearing, the panel’s authority is limited to picking exactly one or the other of these proposals exactly as submitted.

“Night Baseball” Arbitration: After a full hearing the panel arrives at a decision. The panel then reads the previously sealed proposals of the parties and chooses that proposal that is the closest to the panel’s initial decision. If the panel’s decision is at the midpoint of the proposals, the panel’s decision becomes the written award that is transmitted to the parties.

“Bounded” Arbitration: All parties agree on minimum and maximum dollar amounts framing the range within which the monetary award must be formulated. If the panel’s preliminary award is within the limits of this established range the panel’s conclusion becomes the final award. If the panel’s preliminary award is not within that range, it is raised to be identical to the low point of the range or reduced to be identical to the high point of the range, as the case may be, and then becomes the final award.

A33. Agreed Expansion of Arbitral Decision-Making

If the parties agree, the powers of the arbitral panel may be expanded. An example of such expansion follows:

Ex Aequo Et Bono (“According to What Is Just and Good”) Arbitration references a proceeding in which a panel is instructed to decide a dispute on the basis of good faith and fair dealing and thus sanctioning the panel’s going beyond agreements between the parties to fulfill such an instruction. This instruction is rare but may occur especially between members of the same family or between friends.

A34. Application for Modification of Award

Within thirty (30) days of the transmission of an award to the parties, one or more of the parties may make application to the panel through the case administrator for modification of the award, specifying what changes are requested and the reasoning supporting such changes. Absent special circumstances calling for an extension in time (which will be dealt with in the manner provided for delays in rendering an award), the panel will respond to such an application within thirty (30) days.

The panel chair has the authority to modify the panel's decision for typographical or mathematical errors or to clarify the meaning of the award. Absent an application for modification which is granted by the panel the essential substance of an award which has already been issued may not be re-considered.

A35. Termination of Panel's Authority

Once a panel has executed and transmitted its award in a specific case and reviewed and decided any application for modification of the award submitted, the panel's authority is considered finite and is terminated under the doctrine of *functus officio* translated as "having performed its office" and thus having fulfilled its responsibilities.

MEDIATION/ARBITRATION (MED/ARB)

If the Med/Arb dispute resolution sequence is chosen by the parties, first-phase mediation is conducted by a mediator. If the mediation fails to result in a voluntary agreement resolving the dispute in question, the parties proceed to a second phase arbitration which will result in a final and binding resolution of the matter.

The mediator is typically prohibited from subsequently serving as an arbitrator in the same dispute. This prohibition guards against the first phase neutral being influenced in the second phase arbitration by any confidential information imparted to him by one or another of the parties to the first phase mediation.

Sometimes, however, all parties have confidence that the mediator, already acquainted with the issues in their dispute, is the appropriate neutral to resolve their dispute in the second phase arbitration. In such an instance, if all the parties and the mediator agree, the original mediator becomes the second-stage arbitrator or, if the parties prefer, the chair of a three arbitrator panel for second stage arbitration. If the parties agree to continued involvement of the first phase mediator in the second phase arbitration, they must all sign a stipulation authorizing either arrangement and waiving their rights to subsequently object.

If an agreement of the parties overrides the prohibition against continuing service contained in the first paragraph of this section of the Rules, the parties, by such agreement, stipulate that the original neutral and the CRE Real Estate Dispute Resolution Program will not incur any liability by serving as a neutral in the second phase arbitration.

APPRAISAL PROCEEDING

If an agreement between the parties utilizes the word “appraiser” instead of the word “arbitrator,” the dispute resolution proceeding shall be designated as an appraisal proceeding rather than an arbitration proceeding.

Aside from this substitution in these Rules of the word “appraiser” for the word “arbitrator” and the specific qualifications of such a neutral, the rules set forth in the arbitration section of the Rules together with the “General Provisions for All Dispute Resolution Processes” will govern an appraisal proceeding.

The term “appraiser” as used herein, generally, does not denote the meaning of that word in the usual sense of estimating market value and then embodying the applicable data and thought process in a fully documented written report, but rather denotes decision-making authority of a scope identical to that possessed by an arbitrator including an option of rendering an “unreasoned” award. For purposes of an appraisal proceeding the term “appraiser” (in a dispute resolution context) is being utilized.

Sometimes, the use of the word “appraiser” in a dispute resolution clause implies or may state that formal hearings are not contemplated or are dependent on the agreement of both parties. If there are no formal evidentiary hearings, then the appraisal proceeding will be a “documents only” process with only the appraisers in attendance and participating in the proceeding or a sole appraiser deciding the matter without hearings.

In such a proceeding any neutral chosen under the auspices of the CRE Real Estate Dispute Resolution Program will have experience and credentials in the appraisal field.

When a panel consisting of three neutrally selected persons is selected, a lawyer and/or a real estate professional from a non-appraisal background may serve if all the parties agree.

MEDIATION/APPRAISAL PROCEEDING (MED/APP)

If this dispute resolution sequence is chosen by the parties, a first phase mediation is conducted by a mediator. If mediation fails to result in a voluntary agreement between the parties resolving the dispute in question, the parties proceed to a second phase, an appraisal proceeding (in a dispute resolution context) resulting in a final and binding resolution of the matter.

A mediation/appraisal proceeding (Med/App) is identical in design to a mediation/arbitration (Med/Arb) except that an appraisal proceeding, not an arbitration, follows the mediation and the neutrals are designated as appraisers (in a dispute resolution context), not arbitrators.

The mediator is typically prohibited from subsequently serving as an appraiser (in a dispute resolution context) in the same dispute. This prohibition guards against the first phase neutral being influenced in the second phase appraisal proceeding by any confidential information imparted to him by one or another of the parties to the first phase mediation.

Sometimes, however, all parties have confidence that the mediator, already acquainted with the issues in their dispute, is the appropriate neutral to resolve their dispute in the second phase appraisal proceeding. In such an instance, if all the parties and the mediator agree, the original mediator becomes the second stage appraiser (in a dispute resolution context) or, if the parties prefer, the chair of a three appraiser (in a dispute resolution context) panel. If the parties agree to continued involvement of the first phase mediator in the second phase appraisal proceeding, they must all sign a stipulation authorizing either arrangement and waiving their rights to subsequently object.

If an agreement of the parties overrides the prohibition against continued service contained in the first paragraph of this section of the Rules, the parties, by such agreement, stipulate that the original neutral and the CRE Real Estate Dispute Resolution Program will not incur any liability by serving as a neutral in the second phase appraisal proceeding.

OTHER DISPUTE RESOLUTION METHODS

Parties wishing to utilize other methods such as **Arbitration/Mediation (Arb/Med)**, **Conflict Review Board or Mediation/Arbitration2 (Med/Arb2)** described in the separate Protocol document and should contact the case administrator of the CRE Real Estate Dispute Resolution Program to request guidance on how to proceed.

OPTIONAL INITIAL DIAGNOSTIC METHODS

Parties trying to avoid more formal dispute resolution processes may choose **Fact Finding** or **Early Case Evaluation**, which are also described in the Protocol document, and should contact the case administrator to request guidance on how to proceed.

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