

ARBITRATION MANUAL

(Adopted November 8, 1989)
(Revised June 28, 2006)



AIR COMMERCIAL REAL ESTATE ASSOCIATION

800 SOUTH FLOWER STREET, SUITE 800

LOS ANGELES, CA 90017

TEL: (213)687-8777

FAX: (213)687-8616

[HTTP://WWW.AIREA.COM](http://www.airea.com)

AIR COMMERCIAL REAL ESTATE ASSOCIATION

ARBITRATION MANUAL

INTRODUCTION AND OBJECTIVES

Membership in the AIR Commercial Real Estate Association (“AIR”) is a valuable property right. The right to retain membership in the Association may not be terminated without the member being given adequate “due process” in controversies involving arbitration. The AIR Commercial Real Estate Association therefore sets forth the following objectives to be achieved through the use of this Arbitration Manual:

1. To provide procedures that will earn public respect, judicial acceptance, and the confidence of members.
2. To provide uniform procedures that assures due process to all parties.
3. To provide thorough training, knowledge and experience to qualified members to enable them to hear and resolve disputes.
4. To provide a forum permitting a prompt resolution of monetary disputes, without incurring excessive legal expenses.

The code of Professional Conduct of The MULTIPLE of the AIR Commercial Real Estate Association states:

ARTICLE IX

Arbitration of Disputes

“Any money-related dispute, not purely a matter of professional conduct, between Accredited Firms, non-Accredited Firms or Associates, shall be submitted to binding arbitration upon written application of either or both parties to the dispute, subject to the willingness of the AIR to hear the arbitration, in accordance with the Bylaws of the AIR and The MULTIPLE. Every Accredited Firm, on behalf of all licensees at that location including associates of the same brokerage company who are not associated with an industrial division, and whether such licensees are members of the AIR or not, shall be bound to submit to such binding arbitration with respect to any property offered through The MULTIPLE. However, AIR will only arbitrate such disputes to the extent of the amount(s) claimed to be due and owing to a Member Firm. The decision of the arbitration panel shall be final. The party against whom the decision is made shall comply promptly with any arbitration award made by the panel. The award rendered by the Arbitrators may be confirmed pursuant to Section 1285 of the California Code of Civil Procedure.”

AIR COMMERCIAL REAL ESTATE ASSOCIATION

ARBITRATION MANUAL

TABLE OF CONTENTS

Section 1. Definitions..... 1

Section 2. Privilege and Duty to Arbitrate..... 1

Section 3. Association’s Right to Decline Arbitration 2

Section 4. Manner of Invoking Arbitration and Submission 2

Section 5. Mediation..... 3

Section 6. Arbitration Hearing Process..... 5

Section 7. Qualification for Tribunal 6

Section 8. Duty to Give Evidence 8

Section 9. Right to Counsel..... 8

Section 10. Witnesses..... 8

Section 11. Evidence..... 9

Section 12. Conduct of Hearing 9

Section 13. Notices 9

Section 14. Interpretation of Bylaws 10

Section 15. Waiver 10

Section 16. Communication and Clerical..... 10

Section 17. Attempts to Influence Tribunal/Ex Parte Communication 10

Section 18. Continuance Fees 11

Section 19. Subpoenas 11

Section 20. Arbitration Hearing 11

Section 21. Cost of Arbitration..... 12

Section 22. Settlement 12

Section 23. The Award 13

Section 24. Enforcement 13

Section 25. Addendum 14

Appendix A – Sample Forms:

- A-1** Arbitration Agreement Application
- A-2** Notice to Respondent
- A-3** Arbitration Response
- A-4** Notice of Arbitration Hearing
- A-5** Award of Arbitrators
- A-6** Requested Arbitration Costs
- A-7** Reasons for Challenging Qualification of Arbitrator
- AH-1** Outline of Procedure for Arbitration Hearing
- AH-2** Acknowledgement of Receipt of Outline Procedure for Arbitration Hearing
- AH-3** Certificate of Qualification
- MED-1** Mediation Confidentiality Agreement
- MED-2** Mediation Resolution Agreement

Appendix B - Outline of Arbitration Procedure

AIR COMMERCIAL REAL ESTATE ASSOCIATION

ARBITRATION MANUAL

(Adopted November 8, 1989/Rev. June 28, 2006)

Section 1. Definitions

Section 1.1

As used in this Manual,

- (a) “Dispute” means a controversy arising out of the industrial or non-residential commercial real estate business.
- (b) “Association” means the AIR Commercial Real Estate Association.
- (c) “Members” means the Active and Management Members of the AIR Commercial Real Estate Association.
- (d) “Directors” means the Board of Directors of the Association.
- (e) “Hearing” means an arbitration hearing involving a controversy arising out of the industrial or non-residential commercial real estate business.
- (f) “Member of Tribunal” means a person serving on an arbitration-hearing panel as duly appointed by the Arbitration Chair in consultation with the Chief Operating Officer.
- (g) “Party” means any member authorized by the provisions of Section 2.
- (h) “Principal Broker” means an owner, partner, and corporate officer or manager of the Accredited Firm with authority to bind the Accredited Firm with respect to the Bylaws, Rules of Professional Conduct, regulations, and operating policies of the Association.

Section 2. Privilege and Duty to Arbitrate

Section 2.1

By becoming and remaining a member of the AIR Commercial Real Estate Association (AIR or “Association”) and by signing or having signed the agreement to abide by the Bylaws and Rules of Professional Conduct, every member binds himself or herself and the corporation or firm for which he or she acts, and agrees to submit to arbitration by the Association’s facilities all disputes with any other member subject to the conditions or exceptions listed below and in Section 4.3. This shall be deemed an arbitration agreement within the meaning of Part 3, Title IX of the California Code of Civil Procedure (Sections 1280 et seq).

Section 2.2

For purposes of this Section, the duty to arbitrate arises and membership shall be determined when facts giving rise to the dispute occur. Termination of membership from the Association for any reason or cause shall not relieve the terminated member from the duty to arbitrate under this Section for disputes that arose when the person was a member of the Association.

Section 2.3

The Association will not arbitrate disputes between members of the same firm. The Association will not arbitrate any dispute, to the extent that a claim, or a portion thereof is being asserted by a non-member firm.

Section 2.4

Notwithstanding any other provisions of this Manual, if any member enters into a binding agreement (either before or after a dispute arises) with non-members or other members to arbitrate a dispute utilizing non-Association facilities, such member is not bound to arbitrate the dispute covered by such agreement utilizing Association facilities, or its Rules of Arbitration.

Section 3. Association's Right to Decline Arbitration

Section 3.1

If the arbitration tribunal selected in the manner hereinafter provided determines that because of the magnitude of the amount involved, the legal complexity of the controversy, or pending litigation, the dispute should not be arbitrated, it shall so report to the Board of Directors, and if the Board of Directors concurs, the arbitration shall terminate and the parties shall be relieved of their arbitration agreement. The decision of the Board of Directors shall be final and binding upon the parties. In this event, any filing fees paid by parties shall be returned to the parties. If the Board of Directors does not concur, the matter shall be referred back to the Professional Conduct and Arbitration Committee for hearing before a new tribunal.

Section 3.2

If an otherwise arbitrable matter is the subject of pending civil litigation, arbitration shall not take place unless the litigation is stayed, dismissed or a judgment is rendered, or the matter is referred to the Association by the court for arbitration in accordance with these procedures.

Section 4. Manner of Invoking Arbitration and Submission

Section 4.1

Submission of a dispute to arbitration by the Association shall consist of signing and delivering to the Chief Operating Officer either a complaint (Form A-1) provided by the Association or any other similar writing permitted by law.

Section 4.2

An administrative fee of \$750.00 payable to the Association must accompany the request for arbitration. This fee is payable by the Complainant only.

Section 4.3

A complaint must be filed within one (1) year from the close of transaction or from the date of discovery of the problem, whichever comes later.

Section 4.4

Any party authorized by the provisions of Section 2 of this Manual desiring arbitration by the Association shall submit a completed and signed complaint with the appropriate filing fee to the Chief Operating Officer. The complaint shall include a statement describing the controversy and the amount in dispute. The Chief Operating Officer shall determine preliminarily whether the dispute is properly subject to arbitration by the Association. Once determined, the Chief Operating Officer shall notify the other party to the dispute by mailing copies of the Complaint, Notice to Respondent (Form A-2), and Arbitration Response (Form A-3) to the respondent with directions to return the written response within fourteen (14) days from the date of mailing to the respondent(s).

Section 4.5

The respondent(s) may submit a response but, regardless of whether the respondent does so or not, he or she is bound to arbitrate according to the Association rules set forth in this Manual. The arbitration hearing may be scheduled and conducted in the absence of either party and the decision shall be rendered solely on the written evidence and submittals.

Section 4.6

Not later than twenty-one (21) days after mailing notice to respondent of complainant's request for arbitration, the Chief Operating Officer shall mail to the complainant a copy of the response and respondent's affirmative claim if any.

Section 5. Mediation

Section 5.1

The Complainant's and Respondent's forms and documents will then be forwarded to the Arbitration Chair, who will determine, in his/her sole discretion, whether the dispute is appropriate for mediation. If the Arbitration Chair determines that the dispute is appropriate for mediation, then within twenty-one (21) days of receipt, the Arbitration Chair will initiate a phone call to both parties to schedule a mediation conference to attempt to reach a mutually agreeable resolution. The Arbitration Chair may request documents and further information that may be needed to resolve the dispute.

Section 5.2

The Arbitration Chair may choose to serve as the mediator, or may appoint a qualified mediator to serve. Normally, a single mediator will be appointed unless the parties otherwise agree or the Arbitration Chair determines otherwise. If the parties agree upon a mediator who is willing to serve in such capacity, or they specify a method of appointing a mediator, that designation or method shall be followed.

Section 5.3

Prior to accepting an appointment, the prospective mediator selected by the Arbitration Chair shall disclose any circumstances likely to create the appearance of bias or prevent a prompt meeting with the parties. The Arbitration Chair shall appoint another mediator if the appointed mediator is unable to serve.

Section 5.4

The parties shall not be permitted to disqualify the mediator. Third parties or witnesses shall be permitted at the mediation conference at the mediator's sole discretion. If a party elects to have counsel present, he or she may act in an advisory capacity only and may not act as a spokesperson for the disputant. Individual counsel may review any settlement agreement prior to execution.

Section 5.5

The mediator appointed by the Arbitration Chair shall fix the date, time and place of each mediation session. The mediation shall be held at any convenient location agreeable to the mediator and the parties, as the mediator shall determine.

Section 5.6

At least ten (10) days prior to the first scheduled mediation session, each party shall provide the mediator with a brief memorandum setting forth its position with regard to the issues in dispute. At the discretion of the mediator, such memoranda may be mutually exchanged by the parties. At the first session, the parties shall produce all information reasonably required by the mediator to understand the issues presented. The mediator may require any party to supplement such information.

Section 5.7

Once a date for the mediation conference has been determined, there shall be no postponement except at the discretion of the mediator. If any party fails to appear, an arbitration hearing shall be scheduled to hear the dispute between the parties as herein outlined.

Section 5.8

The expenses of any witness for either side to attend a mediation session shall be paid by the party producing such witness. All other expenses of the mediation, including required traveling and other expenses of the mediator and

representatives of the AIR Commercial Real Estate Association, and the expenses of any expert witness and the cost of any proof of expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise.

Section 5.9

The mediation conference shall remain confidential, unless otherwise agreed to in writing by all parties to the dispute. This will ensure that the mediator involved in the conference will not be required to testify or appear in subsequent arbitration hearing or lawsuits involving the same dispute.

Section 5.10

If the parties come to an agreement, they shall execute a Mediation Agreement and Stipulated Arbitration Award (Form MED-2). This agreement specifically states that the agreement itself may be used in court for enforcement purposes. The mediator shall forward the form to the Chief Operating Officer of the Association. If the mediation is successful, the Association will cancel any arbitration filed and refund the arbitration filing fee according to the usual procedures.

Section 5.11

If the parties do not settle their dispute at the mediation conference, they shall maintain their right to an arbitration hearing under the Bylaws and this Arbitration Manual. The matter will be referred back to the Chief Operating Officer to initiate a formal arbitration process as herein outlined.

Section 5.12

Neither the AIR Commercial Real Estate Association nor any mediator shall be deemed a necessary party in judicial proceedings relating to the mediation. Neither the AIR Commercial Real Estate Association nor any mediator shall be liable to any party for any act or omission in connection with any mediation conducted under these rules.

Section 6. Arbitration Hearing Process

Section 6.1

The Chief Operating Officer, in consultation with the Arbitration Chair, shall appoint three (3) qualified members as arbitration tribunal members who will hear the dispute. It will be a membership duty of anyone so appointed to serve on an arbitration tribunal unless otherwise disqualified. If the parties agree upon three (3) arbitrators and they are willing to serve in such capacity, or the parties agree upon a method of selecting the three (3) arbitrators, then the parties' designation or method of selection shall be followed.

Section 6.2

Any arbitrator selected by the Arbitration Chair shall comply with the disclosure and other requirements of Division VI of the Appendix to the California Rules of Court. Additionally, prior to accepting an appointment, the prospective arbitrators selected by the Arbitration Chair shall disclose any circumstances likely to create the appearance of bias or prevent a prompt meeting with the parties. The Arbitration Chair shall appoint another arbitrator if an appointed arbitrator is unable to serve promptly.

Section 6.3

The Chief Operating Officer or Arbitration Chair shall select one (1) of the arbitration tribunal members to be the Presiding Officer, who shall possess the powers of the “neutral arbitrator” within the meaning of Part 3, Title IX, of the California Code of Civil Procedure. (Section 1282, et seq.)

Section 6.4

Except as the parties may agree, and as provided in Section 7.8, no arbitration may proceed without three (3) arbitration tribunal members.

Section 6.5

The Chief Operating Officer or Arbitration Chair shall give written notice to the parties of the date, time, and place of the hearing established by the arbitration tribunal (Form A-4). Each party shall be given at least twenty-one (21) days prior notice of the hearing, but appearance at the hearing waives the right to such notice. The arbitration tribunal may recess the hearing from time to time as necessary and, on request of a party or upon the tribunal’s own motion, may postpone the hearing for not less than fourteen (14) days nor more than thirty (30) days, unless otherwise agreed to by the parties.

Section 6.6

The Chief Operating Officer or Arbitration Chair shall send to each party the Outline of Procedure for Arbitration Hearing (Form AH-1) twenty one (21) days prior to the hearing.

Section 7. Qualification for Tribunal

Section 7.1

Only one person associated with the same firm, business, partnership or corporation may serve on the same tribunal.

Section 7.2

A person shall automatically be disqualified to be a member of a tribunal in any case in which he/she is 1) a party; 2) related by blood or marriage (to the fourth degree) to a party; or 3) an employer, employee, partner or other business associate of any party.

Section 7.3

Before the hearing is convened, each member of the tribunal shall sign a statement (Form AH-3) that they are not disqualified for any of the foregoing reasons and they know of no other reason that might prevent them from rendering an impartial decision.

Section 7.4

Each member of the tribunal shall avoid, so far as possible, discussing the case with any person associated with any party to the arbitration prior to the hearing. If the member does engage in any such discussion prior to the hearing, they must disclose the fact to the parties and to the other members of the tribunal as soon as practicable but no later than at the beginning of the hearing. Upon such disclosure, any party may challenge that member of the tribunal, and if the tribunal agrees, at the option of the tribunal, that tribunal member shall be dismissed, and a new tribunal member shall be selected unless otherwise agreed to by the parties as described in Section 7.8. A party waives any objection under this section by failure to object prior to the commencement of the hearing.

Section 7.5

All members of a tribunal shall have the affirmative obligation to maintain and protect the confidentiality of the proceedings and deliberations of the tribunal before, during, and after its determinations and recommendations. The tribunal members shall not discuss the tribunal, proceedings and deliberations with any person(s) other than the other members of the tribunal, except as required by the Board of Directors, the Bylaw provisions of the Association, or as may be required by law.

Section 7.6

Actions inconsistent with this Section shall be a violation of membership duty. However, failure of confidentiality shall not invalidate any decision made by a tribunal.

Section 7.7

Any party must file with the Chief Operating Officer or Arbitration Chair a written request for disqualification, of a member of a tribunal, stating the grounds assigned for disqualification (Form A-7). A party shall be deemed to have waived any ground of disqualification of which they then have knowledge unless the request is filed not less than ten (10) days prior to the date set for the Hearing. However, any member of the tribunal may be disqualified at any time if a majority of the members of the tribunal find any automatic ground of disqualification to be present under this Section, or find any other facts, which, in their judgment, may prevent the member from rendering an impartial decision or appearing to do so.

Section 7.8

If a member of the tribunal fails to participate in a hearing, or is unable to do so, the remaining members of the tribunal may, at their option, but only with the

express consent of all parties, proceed with the hearing. Only the remaining members of the tribunal may participate in the hearing and the determination thereof. Should any member of the tribunal absent themselves during the progress of the actual hearing, that individual shall likewise not participate in the deliberations or determinations thereof. If all parties do not agree to proceeding without the full number of the tribunal originally designated, the Chairman of the tribunal will recess the hearing to a date on which all members of the tribunal can be present. If the Chairman cannot at the time designate a new date, notice of a subsequent date shall be served on all parties as herein provided.

Section 8. Duty to Give Evidence

Section 8.1

When requested by subpoena in an arbitration hearing, giving not less than ten (10) days notice or when summoned by the tribunal to do so, it shall be a membership duty of the parties and every member of the Association to appear at the hearing, produce any records or data pertinent to the case as designated by the tribunal, and to testify truthfully. Refusal of a party to appear at an arbitration hearing, to submit himself or herself or his/her records to examination or to comply with a request of the tribunal for relevant information may be deemed an admission of the truth of the claim against him/her/them.

Section 9. Right to Counsel

Section 9.1

Each party may be represented by legal counsel at any hearing. Notice must be given to all parties and the tribunal at least fourteen (14) days before the hearing of intention to have counsel. In the event of a failure to comply with this notice requirement the tribunal shall, at its discretion, take all steps, including continuance of the matter, if necessary, to guarantee the rights of all parties to representation by counsel. The tribunal may have counsel present to advise it on issues of procedure and/or seek the advice of counsel on matters of procedure. The cost of the Association's legal counsel shall be borne equally by both parties, or by the party who chooses to bring legal counsel when the other party does not.

Section 10. Witnesses

Section 10.1

Every party must have their own witnesses present at the hearing, and the tribunal may summon its own witnesses. All witnesses, except the parties to the hearing, will be excused from the hearing room except while testifying.

Section 11. Evidence

Section 11.1

The parties may offer such evidence as is relevant and material to the issues in dispute and shall produce such evidence as the tribunal may deem necessary for an understanding and determination of the issues in dispute. Conformity to the [California] Rules of Evidence shall not be necessary. Evidence shall be taken in the presence of all members of the tribunal and all the parties, except when any of the parties is absent, in default or has waived the right to be present. The tribunal shall determine the admissibility, relevance and materiality of the evidence offered and may exclude evidence deemed to be cumulative, irrelevant, or unduly prejudicial. The tribunal shall take into account applicable principles of legal privilege, such as those involving confidentiality of communications between attorney and client.

Section 12. Conduct of Hearing

Section 12.1

At any hearing every party has the right to present any witnesses, to submit any oral or written evidence pertinent to the case, and to cross-examine witnesses of others. Witnesses giving oral testimony shall be sworn by the Presiding Officer. Before permitting testimony relating to the character or general reputation of anyone, the tribunal shall satisfy itself that the testimony has a direct bearing on the case at issue. The Association or any party may, at their own expense, have a court reporter present at the hearing, and if a transcript is prepared at the request of any party, such party shall provide and pay for a copy for the Association.

Section 12.2

The hearings may be reopened on the initiative of the tribunal, or upon application of a party, at any time before an award is made. In the event hearings are reopened, the tribunal shall have thirty (30) days from the closing of the reopened hearings within which to make an award.

Section 12.3

Any party who proceeds with an arbitration with knowledge that any provision or requirement of these rules has not been complied with and fails to state an objection in writing, shall be deemed to have waived their right to object to such non-compliance.

Section 13. Notices

Section 13.1

Any notice or paper required to be served may be served by personally handing it to the party to be served, or by first class mail, Certified, return receipt

requested, addressed to the mailing address of the party on the records of the Association. If mailed, notice shall be deemed served when mailed.

Section 13.2

Notice of any hearing shall include the names of the members of the tribunal at the time said notice is served and, except for an adjourned hearing, be served not less than twenty-one (21) days prior to the date of the hearing. Without express agreement of all parties, no hearing shall be set for a time not permitting at least twenty-one (21) days notice.

Section 14. Interpretation of Bylaws

Section 14.1

If any provision of the Bylaws or Rules or Regulations relative to the procedure of a tribunal's handling of a matter is involved, the interpretation by the tribunal of the Bylaw or Rule or Regulation, including any interpretation of this Manual, shall be conclusive and final.

Section 15. Waiver

Section 15.1

Each member, by virtue of and in consideration of membership, waives and releases any right of personal redress of any type or nature whatsoever, against the Association, Association employees, any member, including, but not limited to, members of the tribunal or witness. Neither the Association, nor any arbitrator/mediator, shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.

Section 16. Communication and Clerical

Section 16.1

All communications shall be directed to the Chief Operating Officer or Arbitration Chair. The Chief Operating Officer or Arbitration Chair shall render all necessary assistance to the parties, shall on request furnish required forms, shall receive and file all documents or other papers and shall receive all fees and disburse all monies payable to the Association.

Section 17. Attempts to Influence Tribunal/Ex Parte Communication

Section 17.1

All ex parte communications by any party or their representative to a member of a tribunal in strictly prohibited. Any attempt, directly or indirectly, to communicate with or to influence a member of a tribunal in any matter before it, other than by giving evidence and argument in an open hearing or by writing submitted to the entire tribunal, is a breach of the duty of membership.

Section 18. Continuance Fees

Section 18.1

Each party shall be entitled to one continuance of a hearing without assessment of a continuance fee unless the continuance is because of failure to adequately notify the Association and opposing party of representation by counsel. If any party requests a second continuance or a continuance because of failure to adequately notify the Association and opposing party in writing of representation by counsel, it shall be in writing, and accompanied by a non-refundable fee of \$1,000. The Board of Directors shall from time to time establish a schedule of continuance fees. Requested continuances shall be granted by the tribunal as the tribunal in its sole discretion, determines it to be for sufficient cause. If the continuance is not granted, the fee will be returned to the party requesting the continuance.

Section 19. Subpoenas

Section 19.1

A subpoena requires the attendance of witnesses or the production of books, records, documents and other evidence at an arbitration hearing only, and not pre-hearing discovery.

Section 19.2

Subpoenas shall be signed by the Chief Operating Officer or Arbitration Chair, but otherwise issued in blank to the party requesting them. The party serving the subpoena shall complete the subpoena before service and is responsible for proper service of the subpoenas.

Section 19.3

Parties being served subpoenas by personal service must be given fourteen (14) days notice for appearance at a hearing. If service is by first class mail, five (5) days must be added. Subpoenas shall be enforced pursuant to California Code of Civil Procedure (Section 1985, et seq).

Section 20. Arbitration Hearing

Section 20.1

At the beginning of the hearing, each party shall sign a statement to the effect that they have received and read the Outline of Procedure and either that they understand them and have no objections or questions concerning them or else specify what objections or questions they have and what changes they desire (Form AH-2). The tribunal shall act upon any such objection or request, as they deem appropriate in their sole discretion.

Section 20.2

The parties to the dispute shall with diligence present to the arbitration tribunal in writing such statements and proofs, as they desire. Proofs may be submitted in the form of affidavits or otherwise. The tribunal shall require that all statements be verified by affidavit or that the accuracy or authenticity of any documents or other papers submitted be verified by affidavit. The tribunal shall receive oral testimony if any party to the arbitration requests, or if in the tribunal's opinion, it is necessary or desirable. The tribunal may determine what personal appearance should be made by the parties and witnesses, and regulate the holding of hearings. The tribunal may receive and consider any evidence it deems material and proper, including evidence of accountants and other experts, the expenses of such witnesses to be charged to the parties in such ratio as determined by the tribunal.

Section 21. Cost of Arbitration

Section 21.1

The award may include costs of the prevailing party including an amount equal to the arbitration fee, witness fees, cost of service of subpoenas and interest at the rate provided by law, unless another rate is specified by a contract between the parties. The award shall designate the date from which interest is to be computed. Where the dispute arises out of a contract which provides for attorney's fees, the award may include attorney's fees. Each party shall complete a statement of costs at the conclusion of the hearing and present it to the arbitrators for consideration should they prevail (Form A-6).

Section 21.2

All postponement requests shall be made not less than two (2) weeks prior to a scheduled hearing date unless a true emergency situation exists, as determined by the Arbitration Chair [Arbitration Tribunal] at its [their] sole discretion. The cost of witnesses (including expert witnesses) incurred as a result of a hearing postponement shall be borne by the party requesting the postponement.

Section 21.3

If a continuance of a hearing has been caused by an untimely request by a party to be represented by counsel as set forth in Section 9 of this Manual or for other reasons, such costs occasioned by the continuance may be levied against the party making the request, even though they may be the prevailing party.

Section 22. Settlement

Section 22.1

The parties to an arbitration proceeding may settle the issue between them by mutual agreement at any time. In such event, upon notification to the Chief Operating Officer or Arbitration Chair in writing and signed by both parties the arbitration proceedings shall be terminated and termination shall be recorded in the file.

Section 23. The Award

Section 23.1

The Arbitration Award (Form A-5) shall be made as soon as practicable after the close of the Hearing, but not more than thirty (30) days after the close of the Hearing. The Award shall be in writing and signed by the arbitration tribunal or a majority of them and, when so signed and served on each of the parties by Certified mail, return receipt requested, shall be valid and binding, and shall not be subject to review or appeal, except as required in Part 3, Title IX of the California Code of Civil Procedure (commencing with Section 1285). The tribunal may grant any remedy or relief that they deem just and equitable, including, but not limited to, specific performance of a contract. The award may include: (a) interest at such rate and from such date as the tribunal may deem appropriate; and (b) an award of attorneys' fees if all parties have requested such relief, or it is authorized by law, or by agreement. Any party may request that the tribunal issue a detailed, reasoned, written Award, within two (2) business days after receipt of the Arbitration Award, setting forth the tribunal's analysis of the pertinent issues of fact and law on which the Award is based, provided, however, that the requesting party shall pay to the Association all costs of rendering such detailed Award, including, but not limited to, reimbursement of any legal fees incurred by the Association for obtaining advice of counsel.

Section 23.2

At the sole discretion of the AIR Commercial Real Estate Association, the award in any arbitration may be published to the membership via the Association's newsletter and/or website, thirty (30) days after such an award is rendered to the parties. If deemed necessary or appropriate by the Association, fictitious names may be substituted for the parties' real names.

Section 24. Enforcement

Section 24.1

Parties to an arbitration under these rules shall be deemed to have consented to judgment based upon the arbitration award, which may be entered in any federal or state court having jurisdiction thereof.

Section 24.2

The judgment of any court of competent jurisdiction in the State of California may be rendered upon the award. In the event it is necessary for any party to the arbitration to obtain judicial confirmation and enforcement of the arbitration award against any other party, the party failing to abide by the arbitration award shall pay to the party obtaining such confirmation the costs and reasonable attorney's fees incurred in such actions as determined by the court hearing the motion for confirmation and/or enforcement.

Section 24.3

Neither the Association, nor any arbitrator/mediator in a proceeding under these rules, is a necessary party in judicial proceedings relating to the arbitration or any motion to confirm or enforce any award rendered pursuant to these rules.

345516.4/16711.930

**AIR COMMERCIAL REAL ESTATE ASSOCIATION
ARBITRATION AGREEMENT
(APPLICATION)**

1. The undersigned, by becoming and remaining a member of the AIR Commercial Real Estate Association (herein "AIR"), has previously consented to arbitration through AIR under its Rules and Regulations.
2. I am informed that each person named below is a member in good standing of AIR, or was a member of said AIR at the time the facts gave rise to the dispute.
3. A dispute arising out of the Industrial or Non-Residential Commercial real estate business exists between me and (list all persons you wish to name as Respondents to this arbitration):

Name (Principal Broker)	Address
-------------------------	---------

Name	Address
------	---------

4. The above named person(s) owe me the sum of \$_____. My claim is predicated upon the statement attached, marked "Exhibit 1" and incorporated by reference into this application.
5. I request and consent to arbitration within the meaning of Part 3, Title IX of the California Code of Civil Procedure through AIR in accordance with its Arbitration Manual. I agree on my behalf and on behalf of any firm for which I am designated broker of record to abide by the arbitration to obtain judicial confirmation and enforcement of the arbitration award against me or my firm. My firm and I agree to pay the party obtaining such confirmation the costs and reasonable attorney's fees incurred in obtaining such confirmation and enforcement.
- 6. I enclose my check in the sum of \$750.00 for the arbitration filing fee.**
7. I understand that I may be represented by counsel, provided I give written notice no less than fourteen (14) days before the hearing, of the name, address, and phone number of my attorney to all parties and the Association.
8. I understand that, by virtue of and in consideration of my membership, I waive and release any right of personal redress of any type or nature whatsoever, against the Association, Association employees, any member, including, but not limited to, members of the tribunal or witnesses. Neither the Association, nor any arbitrator/mediator, shall be liable for any act or omission in connection with this arbitration conducted under these rules.

9. I understand that, at the sole discretion of the AIR Commercial Real Estate Association, the award may be published to the membership via the Association's newsletter and/or website, thirty (30) days after such an award is rendered to the parties. If deemed necessary or appropriate by the Association, fictitious names may be substituted for the parties' real names.
10. I declare under the penalty and perjury of the laws of the State of California, that this application and the allegations contained herein are true and correct to the best of my knowledge and belief.

Date

Complainant (Print Name)

Complainant (Signature)

Firm

Address

City State Zip

Complainant (Print Name) Managing Broker

Complainant (Signature)

Firm

Address

City State Zip

Complainant (Print Name)

Complainant (Signature)

Firm

Address

City State Zip

Complainant (Print Name) Head of Firm

Complainant (Signature)

Firm

Address

City State Zip

9. I understand that, at the sole discretion of the AIR Commercial Real Estate Association, the award may be published to the membership via the Association's newsletter and/or website, thirty (30) days after such an award is rendered to the parties. If deemed necessary or appropriate by the Association, fictitious names may be substituted for the parties' real names.

10. I declare under penalty of perjury under the laws of the State of California, that this Arbitration Response and the allegations contained herein are true and correct to the best of my knowledge and belief.

Date

Respondent (Print Name)

Respondent (Print Name)

Respondent (Signature)

Respondent (Signature)

Firm

Firm

Address

Address

City

State

Zip

City

State

Zip

**AIR COMMERCIAL REAL ESTATE ASSOCIATION
NOTICE OF ARBITRATION HEARING**

Case No. _____, _____ vs. _____
Complainant(s) Respondent(s)

The above parties are hereby notified that the Presiding Officer of the Hearing Panel has set a Hearing date and place for the above matter as follows:

_____ 20 _____ o'clock ____ .M.
Month Day

You are hereby notified to appear at the time and place so designated.

The appointed Arbitrators in this case are:

Presiding Officer

Arbitrator

Arbitrator

Either party may be represented by legal counsel, provided that notice of intention to do so is transmitted in writing to all parties and the Association not less than fourteen (14) days prior to the date set for hearing. The tribunal may have counsel present to advise it on issues of procedure and/or seek the advice of counsel on matters of procedure. The cost of the Association's legal counsel shall be borne equally by both parties, or by the party who chooses to bring legal counsel when the other party does not.

Each party shall arrange for his witnesses to be present at the time and place designated.

The parties shall not discuss the case with any tribunal member or the Board of Directors prior to the hearing or after the hearing.

Any party may file with the Chief Operating Officer a written request for disqualification of a tribunal member, stating the grounds for disqualification provided the request is filed not less than ten (10) days prior to the date set for the Hearing.

Date

Signature

Joy De La Cruz

Chief Operating Officer

**AIR COMMERCIAL REAL ESTATE ASSOCIATION
REQUESTED ARBITRATION COSTS**

Case No. _____, _____ vs. _____
Complainant(s) Respondent(s)

I claim the following costs in the above referenced arbitration under the Arbitration Manual of the Association:

WITNESS FEES

	FEES	MILEAGE	SUBTOTAL
_____ \$ _____	_____	_____	_____
Name _____	\$ _____	_____	_____
Name _____	\$ _____	_____	_____
Name _____	\$ _____	_____	_____
Name _____	\$ _____	_____	_____
		TOTAL:	\$ _____

SERVICE OF SUBPOENAS

	FEES	MILEAGE	SUBTOTAL
_____ \$ _____	_____	_____	_____
Name _____	\$ _____	_____	_____
Name _____	\$ _____	_____	_____
Name _____	\$ _____	_____	_____
Name _____	\$ _____	_____	_____
		TOTAL:	\$ _____

ARBITRATION FILING FEE: \$ _____

ATTORNEY'S FEE (When the contract of the parties or statute so provides): \$ _____

CONTINUANCE FEES: \$ _____

INTEREST:

_____ % per annum on \$ _____ from _____ to _____

= INTEREST TOTAL: \$ _____

TOTAL AMOUNT REQUESTED: \$ _____

_____ Date

_____ Complainant / Respondent (Print Name)

_____ Complainant / Respondent (Signature)

**AIR COMMERCIAL REAL ESTATE ASSOCIATION
OUTLINE OF PROCEDURE FOR ARBITRATION HEARING**

To the Parties and Their Attorneys, if any:

In accordance with the Arbitration Manual of the Association, a Presiding Officer has been selected for the hearing. In addition to presiding at the hearing, he or she will rule on the admission and exclusion of evidence and questions of hearing procedure.

Subject to objections or suggestions of the parties prior to the commencement of the hearing, and the Presiding Officer ruling thereon, the hearing procedures will be:

1. Each party or their attorney shall be given the opportunity to make an opening statement if he or she so wishes. If the respondent wishes to wait until conclusion of the complainant's evidence, that will be permitted.
2. Prior to the giving of any testimony, all parties and witnesses shall be sworn by the Presiding Officer.
3. The complainant may present such evidence, or give such testimony as is deemed applicable to the matter being heard. In this regard, the parties are reminded that no testimony is to be admitted relating to the character or general reputation of anyone unless such testimony has a direct bearing on the matter being heard.
4. At the conclusion of direct examination, the other party may cross-examine the witness.
5. Witnesses will be excused from the hearing room both prior to and after giving testimony.
6. When both parties have concluded their examination or cross-examination of a witness, members of the tribunal may question the witness.
7. Upon completion of all testimony, each party or their attorney may make a closing statement, first the complainant followed by the respondent.

The forgoing is not intended to restrict or limit the parties in their presentation or defense of the dispute. The tribunal is not bound by the rules of evidence applied in a court of law; the primary concern of the tribunal is to hear facts upon which a decision may be made affording all parties a fair hearing.

The outline is intended to provide an orderly, uniform format for hearings and to afford the parties sufficient advance notice thereof as may enable them to be prepared for the hearing.

**AIR COMMERCIAL REAL ESTATE ASSOCIATION
ACKNOWLEDGMENT OF RECEIPT OF OUTLINE OF
PROCEDURES FOR ARBITRATION HEARING**

Case No. _____, _____ vs. _____
Complainant(s) Respondent(s)

I acknowledge having previously received an Outline of Procedures for the above-designated hearing.

_____ I have read the Outline of Procedures For Hearing, understand it and have no objection to it.

_____ I have read the Outline of Procedures For Hearing, understanding and object to it.
I request the following changes or additions:

Date

Complainant (Print Name)

Respondent (Print Name)

Complainant (Signature)

Respondent (Signature)

Complainant (Print Name)

Respondent (Print Name)

Complainant (Signature)

Respondent (Signature)

Attorney for Complainant(s)
(If Applicable)

Attorney for Respondent(s)
(If Applicable)

**AIR COMMERCIAL REAL ESTATE ASSOCIATION
MEDIATION CONFIDENTIALITY AGREEMENT**

In order to preserve the confidentiality of the mediation, the Association and the parties to the mediation agree that the provisions of California Evidence Code section 1152.5 apply to this mediation.

The above paragraph means that, if you agree in writing, everything said in and all papers prepared for or during the mediation session cannot be used in any civil action unless all parties to the mediation consent to disclosure.

The text of the pertinent part of California Evidence Code section 1152.5:

(a) When persons agree to conduct and participate in a mediation for the purpose of compromising, settling, or resolving a dispute in whole or in part:

(1) Evidence of anything said or of any admission made in the course of the mediation is not admissible in evidence or subject to discovery, and disclosure of this evidence shall not be compelled, in any civil action or proceeding in which, pursuant to law, testimony can be compelled to be given.

(2) Except as otherwise provided in this section, unless the document otherwise provides, no document prepared for the purpose of, or in the course of, or pursuant to, the mediation, or copy thereof, is admissible in evidence or subject to discovery, and disclosure of such a document shall not be compelled, in any civil action or proceeding in which, pursuant to law, testimony can be compelled to be given.

(e) Paragraph (2) of subdivision (a) does not limit the effect of an agreement not to take a default in a pending civil action.

The parties also agree that the above provisions apply to any arbitration before the Association.

Agreed this _____ day of _____, 20____ at _____, California

Complainant (Print Name)

Respondent (Print Name)

Complainant (Signature)

Respondent (Signature)

Mediator (Print Name)

Mediator (Signature)

**AIR COMMERCIAL REAL ESTATE ASSOCIATION
MEDIATION RESOLUTION AGREEMENT**

This Agreement is entered into by and between the parties listed below with reference to the following facts:

- A. The names and addresses of the parties to this agreement are as follows (attach separate page if necessary):

Complainant(s) (Print Name)	Respondent(s) (Print Name)
Firm	Firm
Address	Address
City	City
State	State
Zip	Zip

- B. A dispute arose out of an Industrial or Non-Residential Commercial real estate transaction between the above named parties.
- C. On _____, 20____, the parties voluntarily attended a mediation session for the purpose of settling any and all claims regarding their dispute.

Now, therefore, in consideration of the mutual promises and conditions set forth herein voluntarily intending to be bound, the parties agree as follows:

1. _____ agrees to pay the total sum of dollars (\$_____) as full and final settlement of their dispute. Payment will be made according to the following schedule:

2. _____ agrees to accept the total sum as indicated in paragraph 1 as the full and final settlement of any and all claim against _____ .

3. The parties agree that this Agreement is admissible in evidence to enforce the full performance of this agreement according to California Evidence Code Section 1152.5 and the parties also hereby stipulate that this Agreement is a binding agreement and

is a stipulated arbitration award and shall be construed as being arbitration award under Part 3, Title IX of the California Code of Civil Procedure.

4. In the event it is necessary for any party to obtain judicial confirmation and enforcement of this Agreement and award, the party obtaining such confirmation shall be entitled to recover costs and reasonable attorneys fees incurred from any party not complying with this Agreement and award.

5. The parties acknowledge that this Agreement is intended to be a full and final settlement of a disputed claim, and is not an admission of liability.

Executed this _____ day of _____, 20__ at _____, California

Complainant(s) Signature

Respondent(s) Signature

Complainant(s) Signature

Respondent(s) Signature

The undersigned, as Mediator of the AIR Commercial Real Estate Association, do attest that I was present during the mediation process and that the above resolution agreement was voluntarily entered into by the parties to the dispute.

Date

Mediator (Signature)

Mediator (Print Name)

AIR COMMERCIAL REAL ESTATE ASSOCIATION ARBITRATION PROCEDURES

The following is a basic outline of the Arbitration Procedures. For further information, please see the AIR Commercial Real Estate Association Arbitration Manual.

To File Arbitration:

1. Submit Arbitration Agreement Application form (A-1) provided by the Association.
2. Enclose a filing fee of \$750.00
3. Include a statement describing the controversy and the amount in dispute.

The Chief Operating Officer, after determining whether the dispute is properly subject to arbitration by the Association, will notify the other party or parties, and request them to submit their response within fourteen (14) days of receipt of Complaint.

The Respondent(s) are not required to submit a response but, regardless of whether the Respondent(s) does so or not, he or she is bound to arbitrate according to the Association rules set forth in the Arbitration Manual under the Bylaws of the Association. The arbitration hearing may be scheduled and conducted in the absence of the Respondent(s).

Both the Complaint and Response will be forwarded to the Arbitration Chair within twenty-one (21) days. The Arbitration Chair will initiate a phone call to both parties to attempt to bring the parties together to mediate the dispute in order to reach a mutually agreeable resolution. Either party may elect to bypass the mediation conference, in which case the matter will be scheduled for an arbitration hearing.

Mediation:

Should the mediation be successful, the parties shall execute a Mediation Agreement and Stipulated Arbitration Award form (MED-2). This agreement specifically states that the agreement itself may be used in court for enforcement purposes. The Association will cancel any arbitration field and refund the arbitration filing fee.

If the parties do not settle their dispute at the mediation conference, they shall maintain their right to an arbitration hearing under the Bylaws and the Arbitration Manual.

Arbitration Hearing:

Three or more qualified members will be appointed as members of the arbitration tribunal. One will be designated as Presiding Officer. All parties have the right to challenge a tribunal member as provided in Section 7 of the Arbitration Manual.

The hearing will be scheduled giving all parties at least twenty-one (21) days written notice.

All parties may be represented by legal counsel. Notice must be given at least fourteen (14) days before the hearing.

The arbitration tribunal will hear and determine the controversy. The arbitration award will be made as soon as practicable after the Hearing, but not more than thirty (30) days after the close of the Hearing. **The award is valid and binding and is not, and shall not, be subject to review or appeal.** The decision will be sent via certified mail to all parties. Arbitration decisions will not be provided by telephone.

The judgment of any court of competent jurisdiction in the State of California may be rendered upon the award.



NOTICE

To: AIR Members

From: Arbitration Chair

The Board of Directors of the AIR Commercial Real Estate Association voted at a recent Board Meeting to amend the arbitration procedure of the AIR. In essence, the arbitration procedure has been amended to read as follows:

The arbitration procedure allows either party the option of requesting arbitration proceedings be conducted by an independent arbitration service from a list approved by the Arbitration Chair subject to the following conditions:

- a) Participation in mandatory mediation;
- b) The claim must be \$50,000 or more;
- c) The Arbitration Chair shall provide “friend of court” brief to the Arbitrator(s) to educate them as to the Rules of Professional conduct;
- d) The accredited firm requesting the option of conducting the arbitration proceedings by an independent arbitration service shall incur all initial costs attributed to the arbitration; excluding legal fees.
- e) The losing party at the arbitration shall pay for the cost of the arbitration and each party shall be responsible for their own legal fees, and under no circumstances shall any prevailing party be awarded legal fees.

N
O
T
I
C
E