**Arbitrable or Not Arbitrable? Mandatory or Voluntary?**

**Directions:** Review the following scenarios. Work with your tablemates to determine if the arbitration request is arbitrable and, if so:

1. is it a type of dispute that can be arbitrated consistent with Article 17 and *Code of Ethics and Arbitration Manual,* and
2. should the request be classified as mandatory or voluntary.
3. REALTOR® principal Corrie of ABC Realty and REALTOR® principal Theo of XYZ Realty are next door neighbors on lake front property. As friends for over 10 years, they agree to split the cost of a $10,000 pier and share the use of the pier with Corrie’s water “toys” docked/stored on the left of the pier and Theo’s water “toys” docked/stored on the right side of the pier. Theo purchases the pier. Corrie’s life circumstances change a week after the purchase of the pier. She is forced to sell her home, and she does not pay Theo $5,000. Corrie remains the REALTOR® principal at ABC Realty. When it becomes clear to Theo that Corrie will not pay him pursuant to their written agreement, Theo files for arbitration against Corrie and ABC Realty, requesting $5,000.

❒ Arbitrable ❒ Non-Arbitrable ❒ Mandatory ❒ Voluntary

1. REALTOR® non-principal Sarah, a licensee at company A, has an excellent relationship with a buyer that she represents as an exclusive buyer broker. Prior to leaving company A, she and her broker, Bill, agree that he will release the buyer from the buyer broker agreement when Sarah leaves company A the following week, and that should that buyer purchase a property with Sarah’s assistance during the next year after Sarah affiliates with another company, that Sarah will pay Bill $3,000. After Sarah leaves company A and affiliates with another company, the buyer purchases a property through Sarah within three months. Sarah does not pay Bill at the time of the closing, and does not pay Bill when Bill reminds her of their agreement after learning of the sale. Bill files an arbitration request against Sarah’s current broker who was paid the cooperating broker’s portion of the commission on the sale, requesting to be paid the $3,000.

❒ Arbitrable ❒ Non-Arbitrable ❒ Mandatory ❒ Voluntary

1. Listing agent, REALTOR® principal Amy, and selling agent, REALTOR® principal Bonnie, were in a successful cooperative transaction on REALTOR® Amy’s listing at 456 Jones Street. Amy is an MLS participant only in MLS A and is affiliated with firm A. Bonnie is an MLS participant only in MLS B and is affiliated with firm B. REALTOR® Bonnie contacted REALTOR® Amy when she saw the property advertised on social media, knowing she had a buyer for the property. Subsequent to closing, REALTOR® Amy declined to pay Bonnie. Bonnie filed an arbitration request against Amy at Amy’s local association, requesting the cooperating broker’s portion of the commission that Amy offered through MLS.

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1. REALTOR® principal Joyce inherited a property approximately 500 miles from her home and her firm, Joyce Realty. After visiting the inherited property on a family vacation, she decided to sell it, listing it with REALTOR® principal Paul of Paul Realty because he was a participant in the MLS where the inherited property was located. Joyce did not participate in that MLS. Paul did not participate in the MLS that Joyce participated in. At closing, Joyce instructed the closing officer to disburse to Paul only half of the commission called for in the listing contract. Joyce stated that because the offer that was ultimately successful was from a member of Paul’s family and that it was an “in-house” sale, it was only fair for Paul to reduce his commission. Paul disagreed and filed an arbitration request directly at the board where REALTOR® principal Joyce was a member and MLS participant, requesting to be paid the balance of his commission as the listing broker.

❒ Arbitrable ❒ Non-Arbitrable ❒ Mandatory ❒ Voluntary

1. REALTOR® principal Trish believes she is entitled to the selling portion of the commission given the offer of compensation to potential cooperating brokers made via the MLS in which she participates. She does not notify the listing broker, REALTOR® Tom, or selling agent, REALTOR® principal Charlie who was paid the cooperative compensation, of her claim prior to or subsequent to the property closing. She does not want to invoke arbitration or mediation at the board so Trish waits 180 days to file litigation against REALTOR® Tom, the listing broker. Upon receipt of the notice of litigation, but well beyond 180 days after closing, REALTOR® Tom files an arbitration request against both REALTOR® Charlie who was paid the cooperative compensation and REALTOR® Trish.

Tom versus Charlie

❒ Arbitrable ❒ Non-Arbitrable ❒ Mandatory ❒ Voluntary

Tom versus Trish

❒ Arbitrable ❒ Non-Arbitrable ❒ Mandatory ❒ Voluntary

1. REALTOR® principal Martha is a member of board A and is an MLS participant in both board A’s MLS and in board B’s MLS. Martha is not a member in board B. REALTOR® principal Kathy is only a member of board B and only participates in board B’s MLS. Martha enters an offer of cooperative compensation into both board A’s MLS and board B’s MLS for property located at 123 Main Street. A non-principal affiliated with Kathy is ultimately successful in submitting an offer on behalf of a buyer client for 123 Main Street. REALTOR® principal Martha declines to pay REALTOR® Kathy the cooperative compensation offered in board B’s MLS. REALTOR® Kathy files for arbitration against REALTOR® Martha at board B for the amount of compensation offered in board B’s MLS.

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1. REALTOR® principal Matthew is primarily a commercial broker, but some of the non-principals affiliated with him also do residential sales, so Matthew is a member of board A and participates in board A’s residential MLS. Broker principal Andrew (a non-member commercial broker) is not an MLS participant in Board A’s MLS, but an offer of compensation is made by Matthew to Andrew outside the MLS. Specifically, Matthew orally offers to pay Andrew the equivalent of the first month’s rent if Andrew finds a tenant that executes a lease for the commercial space that Matthew manages at 24 Academy Way. Andrew finds a tenant that executes a lease and moves her business into 24 Academy Way. Matthew declines to remit to Andrew the equivalent of the first month’s rent. Andrew files for arbitration at board A, requesting that Matthew be required to remit the monies as promised.

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1. REALTOR® Rob with Rob Realty participates in MLS A, as does REALTOR® Tommy of Tommy Realty and REALTOR® Adam of Adam Realty. Rob offers cooperative compensation via the MLS on his listing located at 4545 Flowers Street. REALTOR® Tommy’s licensee submits an offer on behalf of a buyer client, Joe, which is accepted. The property closes and REALTOR® Rob pays REALTOR® Tommy the cooperating broker’s portion of the commission. REALTOR® Adam becomes aware that his buyer client, Joe, purchased 4545 Flowers Street through REALTOR® Tommy. REALTOR® Adam files an arbitration request directly against REALTOR® Tommy for the amount of money that Rob paid Tommy, arguing that his licensee procured the purchaser.

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1. REALTOR® principal Charlie of ABC Realty and REALTOR® principal Ted of XYZ Realty each had an exclusive listing agreement with seller Conrad relating to the same property at different times. Conrad paid REALTOR® Charlie the listing broker’s portion of the commission when his property closed while listed with REALTOR® Charlie. REALTOR® Ted believes that he should have been paid the listing broker’s commission, and he files an arbitration request against REALTOR® Charlie.

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1. Selling agent REALTOR® principal Tammy rejected the offer of compensation offered in the MLS by REALTOR® principal Joseph on his listing at 646 Staysail Drive. REALTOR® Tammy’s buyer client has agreed to compensate Tammy directly. As a result, REALTOR® Joseph agrees to reduce the commission owed by the seller and the transaction closes. Two hundred days after closing, REALTOR® principal Jamie, also an MLS participant in the same MLS, files an arbitration request against REALTOR® Joseph, claiming to be procuring cause of the sale. REALTOR® Jamie did not know the buyers had purchased the property until the tax records were updated two months ago. Upon receiving the arbitration request, REALTOR® Joseph named REALTOR® Tammy as a third-party respondent.

REALTOR® Jamie vs. REALTOR® Joseph’s dispute:

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REALTOR® Joseph vs. REALTOR® Tammy’s dispute:

❒ Arbitrable ❒ Non-Arbitrable ❒ Mandatory ❒ Voluntary

1. Listing agent, REALTOR® principal Arlene, and selling agent, REALTOR® principal Susan, were in a cooperative transaction on REALTOR® Arlene’s listing at 362 Marine Street with buyer Shirley. However, buyer Shirley was unable to obtain financing so that transaction fell apart. REALTOR® Arlene’s listing expired. REALTOR® Susan then listed the property. Subsequently, buyer Shirley inherited money and submitted a new offer to REALTOR® Susan, now able to qualify for a loan. That transaction closed. REALTOR® Arlene believes she is entitled to the listing broker’s portion of the commission from REALTOR® Susan.

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1. Buyer client Keegan enters into an exclusive representation agreement with REALTOR® non-principal, Kevin. REALTOR® Kevin introduced Keegan to an unrepresented seller’s property at 600 Southwinds Drive. Keegan went directly to the seller and negotiated a contract. REALTOR® Kevin’s principal broker put client Keegan on notice that he expected him to compensate their firm in accordance with the exclusive buyer representation agreement. Keegan disagreed that REALTOR® Kevin was entitled to compensation and hired an attorney. The attorney told him he could resolve the issue by filing an arbitration request at the board. Buyer Keegan files an arbitration request against REALTOR® Kevin.

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1. Non-member broker principal Alex is not an MLS participant but an offer of compensation is made to him by the listing broker outside the MLS on property located at 78 Fairway Drive. Alex believes he is the procuring cause of a sale for that property when it closes. He files a request for arbitration against REALTOR® principal Ariana who was the selling agent of 78 Fairway Drive and who was paid the cooperating broker’s portion of the commission by the listing broker.

❒ Arbitrable ❒ Non-Arbitrable ❒ Mandatory ❒ Voluntary

1. REALTOR® principal Connie believes she is entitled to the selling portion of the commission at 500 Mountainside Drive given the offer of compensation to potential cooperating brokers made via the MLS in which she is an MLS participant. She does not notify the listing broker, REALTOR® Sam, or selling agent, REALTOR® principal Tony, of this claim prior to or subsequent to the property closing. She does not want to invoke arbitration at the board so waits 180 days to file litigation against REALTOR® Tony who was paid the cooperating broker’s portion of the commission subsequent to closing. Upon receipt of the notice of litigation, REALTOR® Tony files a request for arbitration against REALTOR® Connie.

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1. REALTOR® nonprincipal Ericka has a disagreement with her broker principal, Tom, relating to the cooperative compensation she is entitled to pursuant to her independent contractor’s agreement with Tom. She is unsuccessful in working out the disagreement with Tom. Ericka ultimately affiliates with REALTOR® principal Luke at a different brokerage company who is appalled at how Ericka was treated by her former broker. Luke files for arbitration against Tom, requesting compensation on Ericka’s behalf.

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1. REALTOR® principal Sam lives in Florida and is affiliated with Sam Realty, Inc. REALTOR® principal Oscar lives in New York and is affiliated with Oscar Realty, LLC. Sam is visiting family in New York and through mutual friends meets Oscar at a summer wedding. Oscar and Sam strike up a conversation at the wedding and their conversation quickly turns to the real estate business. Oscar verbally offers Sam a referral fee relating to a high-end property he is having difficulty selling. Sam refers a buyer to Oscar who ultimately purchases the high-end property. Shortly after closing, the buyer called Sam and thanks Sam for referring her to Oscar. She loves her summer home in NY. Oscar then calls Sam who relays that he cannot pay Oscar any monies for referring the buyer because of financial difficulties. Sam files for arbitration at Oscar’s board, requesting the referral fee.

❒ Arbitrable ❒ Non-Arbitrable ❒ Mandatory ❒ Voluntary

1. REALTOR® principal Mary is a member of board A and is an MLS participant in both board A’s MLS and in board B’s MLS. Mary is not a member at board B. REALTOR® principal Kris is only a member of board B and only participates in board B’s MLS. Mary enters an offer of cooperative compensation into board A’s MLS for property located at 123 Main Street. This property is not listed in board B’s MLS. A non-principal affiliated with Kris is ultimately successful in submitting an offer on behalf of a buyer client for 123 Main Street. REALTOR® principal Mary declines to pay REALTOR® Kris the cooperative compensation offered in board A’s MLS. REALTOR® Kris files for arbitration at board B for the amount of compensation offered in board A’s MLS.

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1. REALTOR® Sky and REALTOR® Forrest are partners in a building company and members of the same board. After many successful years, they decide to terminate their partnership, REALTOR® Sky deciding to continue to run the company and REALTOR® Forrest deciding to open a competing company. As part of their termination agreement, REALTOR® Forrest agrees not to build new homes in the board’s jurisdiction for a period of 12 months. Four months later, REALTOR® Sky files an arbitration request against REALTOR® Forrest, outlining their termination agreement and the fact that REALTOR® Forrest continues to build homes in violation of that agreement.

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