

NEFA DISPUTE RESOLUTION PROCEDURES

Section 1. Duties of Membership

The following are among the duties of membership in the NEFA for all members (regardless of category) and their representatives:

- A. To abide by the NEFA Standards of Professional Practice ("Standards"); and
- B. To submit to hearings and/or other proceedings through the NEFA concerning alleged violations of the Standards in any commercial finance or equipment lease transaction, as described in these NEFA Dispute Resolution Procedures ("Procedures") and as the same may be amended from time to time.

Section 2. Standards Committee

- A. There shall be a committee, known as the Standards Committee ("Committee"), which shall have seven (7) members (each of whom shall be a representative of a NEFA member). The seven (7) Committee members shall consist of the following: Chairperson; Vice Chairperson, NEFA Board Liaison; Immediate Past President of

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NEFA; and three (3) other individuals, one (1) of whom shall be an attorney and no more than two of whom may be members of the NEFA Board of Directors ("Board"). The President shall appoint all Committee members, subject to confirmation by the Board. If a Committee member must disqualify himself or herself from a particular case, the President shall appoint a qualified replacement from the appropriate category to satisfy these requirements for that particular case.

- B. Only one person connected with any one NEFA member may serve on the Committee.
- C. A quorum shall consist of five (5) Committee members. The majority vote at any meeting at which a quorum is present shall constitute the determination or decision of the Committee. The Committee may conduct meetings in person, by teleconferences, or by correspondence.

Section 3. Privilege to File Complaints and to Complain Verbally

- A. Any member or representative of a member may file a Complaint under the Procedures. A Complaint should only address any alleged violation(s) of the Standards by a member firm.
- B. Also, any person or firm, including but not limited to, a member or representative of a member may make a verbal communication to the NEFA headquarters complaining that a NEFA member may have violated the Standards. NEFA headquarters shall promptly make and maintain a record of such communications, containing the date, time and content of such communication, and the person and firm from whom such communications were received. Upon receipt by the NEFA headquarters of three such communications concerning the same NEFA member, the Committee may initiate its own review and may refer the matter to the Board with a recommendation as to whether formal proceedings against such NEFA member should be initiated under the Procedures. If the Committee recommends that a Complaint may be filed under the Procedures, then the Board, in its discretion, is authorized to file a Complaint under the Procedures against such member on behalf of the membership of the NEFA.
- C. Also, for repeat verbal communications by any persons or firms to the NEFA headquarters complaining that a NEFA member may have violated the Standards, NEFA shall send a letter to the principal contact person of that member on record with the NEFA, stating that such member may have violated one or more of the Standards, a sample of which is set forth below.

Sample Letter:

This letter is to serve notice that the NEFA has received multiple communications complaining that your firm may have violated one or more of the NEFA Standards of Professional Practice ("the Standards"). The NEFA believes you should be aware of these communications and as a NEFA member be mindful of your agreement to the Standards that NEFA upholds. At this point there has been no written Complaint. No

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action is required on your part. If a written Complaint is received, you will be asked to respond in writing within a specific time. The communications received have been regarding (specify applicable Standard(s)).

Section 4. Initiating a Complaint

- A. A filing fee of \$250 must accompany the Complaint, unless the Complaint is made by the Board, in which case there is no fee.
- B. The Complaint must be signed by the Complainant, and must do all of the following: (i) concisely state the facts supporting the alleged violation(s) of the Standards; (ii) attach the basic documents in Complainant's possession (which may include declarations) supporting the alleged violation(s); (iii) specify whether or not the Complainant agrees to have the matter resolved by a single decision maker pursuant to Section 10 below; and (iv) contain a statement in substantially the following form:

Sample Statement:

The undersigned hereby requests that a hearing on the within Complaint be held through the National Equipment Finance Association. The undersigned hereby agrees to abide by the decision and findings of the Standards Committee, the NEFA Board of Directors, and, if applicable, any single decision maker. We further agree to abide by the NEFA Dispute Resolution Procedures, including without limitation the Section 12 waiver of further action against the NEFA and others.

- C. The Complaint must be filed by sending same, certified mail with return receipt requested, to the Committee Chairperson at the NEFA headquarters, or by personal delivery at said location.
- D. The Chairperson shall promptly send a copy of the Complaint to the Committee members to determine whether the Complaint may involve a Standards violation. Based on that determination, the Committee may (i) dismiss the Complaint, (ii) request further information from the Complainant, (iii) proceed with plans for a hearing, (iv) conduct a proceeding based solely on written submissions, or (v) take any other action not inconsistent with these Procedures.
- E. A person shall automatically be disqualified to serve on the Committee for any case in which he/she (i) is a party, or (ii) is related by blood or marriage (to the fourth degree in either case) to, or is an employer, employee, partner or other business associate of a party, or (iii) has any monetary interest. Promptly after receiving a copy of any Complaint pursuant to Section 4(d) above, and before considering anything other than qualification on any case, each member of the Committee shall sign a statement that he/she is not disqualified for any of the foregoing reasons, and

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that he/she knows of no other reason that might prevent him/her from rendering an impartial decision.

- F. The Complainant may withdraw the Complaint, subject to forfeiture of the filing fee, if any.

Section 5. Notification

When the Complaint is sent to the Committee members, the NEFA shall inform the principal contact person on record with the NEFA that a Complaint was filed against that member. All members shall abide by these Procedures, including without limitation, the Preamble, and shall be bound thereby with respect to any dispute arising during the term of such membership.

Section 6. Pre-Hearing and Other Proceedings

- A. After the Committee receives the Complaint, and before the Committee determines whether the Complaint may involve a Standards violation, the Chairperson may assign the case to a Committee member (a "Facilitator") to analyze whether the Complaint contains enough written information for the Committee to make such a determination. To assist the Facilitator's analysis, the Complainant must give the Facilitator all such additional documents and written information as the Facilitator requests. When the Facilitator believes he/she has enough written information to make a determination whether the Complaint may involve a Standards violation, the Facilitator shall advise the Chairperson, and also send all such additional documents and written information (received from the Complainant) to the Chairperson. The Chairperson shall promptly send copies of all such additional documents and written information to the Committee members.
- B. If the Committee determines the Complaint does not involve a Standards violation, the Chairperson, shall send appropriate notification to the Complainant and each party named in the Complaint (each a "Respondent"), and no further action shall be taken.
- C. If the Committee determines the Complaint may involve a Standards violation, the Chairperson shall send a copy of the Complaint and supporting materials to each Respondent, by certified mail with return receipt requested, with notification that the Respondent should file an Answer with the Committee, within ten (10) working days after mailing such notice, and that if no Answer is made, the charges may be deemed admitted. If no Answer is received within twenty-two (22) calendar days, a second notice shall be mailed to each Respondent, stating that if no Answer is received within ten (10) calendar days, Respondent may be held to be in violation of the Standards and the Procedures, and subject to action by the Committee pursuant to Section 9(b) below. If the Complaint specifies that the Complainant agrees to have the matter resolved by a single decision maker, each notice referenced in the preceding two sentences shall also state that each Respondent shall also specify on its Answer whether such Respondent agrees to have the matter resolved by a single

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decision maker. If any Respondent does not expressly so agree, then the entire Committee shall resolve the matter.

- D. The Answer must be signed by the Respondent, and must do both of the following: (i) concisely state the facts showing that no violation of the Standards has occurred; and (ii) attach the basic documents in Respondent's possession (which may include declarations) supporting the position that no such violation has occurred. The Answer must be sent by certified mail with return receipt requested to the Committee Chairperson, or be personally delivered. The Chairperson shall promptly send a copy of any Answer to the Committee members.
- E. The Chairperson shall promptly send a copy of the Answer and all supporting materials to the Complainant by certified mail with return receipt requested, and notify Complainant that Complainant may file a written Reply within twenty (20) working days after mailing such notice. The Reply shall be filed in the same manner as the Complaint, and the Chairperson shall send copies to Committee members and Respondent.
- F. After the Committee receives the Complaint, Answer and any Reply, the Chairperson may assign the case to a Committee member to facilitate further analysis (a "Facilitator"). This Facilitator may be the same person assigned pursuant to Section 6(a) above, if one was assigned. The Complainant and each Respondent must give the Facilitator such information and documents as the Facilitator requests. Based on the Facilitator's analysis of the Complaint, Answer, Reply, and input from the parties, the Facilitator shall prepare and present a confidential written or oral report to the Committee as a whole, with a recommendation for the further action to be taken. The Committee shall promptly vote on what action to take in response to the Facilitator's recommendation.
- G. The Committee may expedite matters by resolving disputes solely upon the Complaint, Answer, Reply, other documents from the parties, and any Facilitator's recommendation.
- H. If a dispute is not otherwise resolved pursuant to the foregoing provisions of these Procedures, the Committee may decide to hold a hearing or other proceeding, shall set a date therefore and mail reasonable notice to all parties to the dispute. Said notices shall be sent by certified mail with return receipt requested, and shall include the names of the Committee members or the appropriate replacements and a complete copy of the Procedures.
- I. If the Complaint involves parties and issues in litigation (or administrative proceedings), or which subsequently are in such litigation or proceedings, the

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Committee may stay its proceedings pending a final determination of the issues by a court or administrative agency.

- J. The Committee may prescribe any other procedure not inconsistent with these Procedures.

Section 7. Committee Representation at Hearings and Other Proceedings

- A. The Committee will be represented at the hearing or other proceedings by a minimum of five (5) of its members.
- B. Every Committee member shall endeavor to avoid discussing the case with anyone other than Committee members. If he/she does engage in such discussion before the hearing or other proceeding, he/she must disclose the fact to the parties and to the other members of the Committee immediately. After the hearing or other proceeding and before decision, no Committee member shall discuss the merits of the case with any person, other than in formal Committee session; to do so shall be a violation of a membership duty.
- C. Any party may file a request with the Committee to disqualify any member(s) from serving at a hearing or other proceeding, stating the grounds for disqualification. Any such request shall be filed at least ten (10) working days before the hearing or proceeding. If a majority of a Committee quorum finds any automatic ground of disqualification to be present or finds any other fact which in the majority's judgment may prevent the member from rendering an impartial decision, or appear to do so, that member shall be disqualified.

Section 8. Conduct of Hearing

- A. Counsel may be present to advise a party but may not participate at the hearing. Counsel may be called as a witness if appropriate.
- B. Hearings will be conducted informally. Each party must try to convince the Committee of the correctness of its position and no hearing will be closed until each party has had a full opportunity to do so.
- C. Each party will present its case as follows: (i) an opening statement to describe the controversy; (ii) presentation of testimony and other evidence and arguments in support of the party's position; and (iii) a closing statement to summarize evidence and arguments, and to refute points made by the opposing party.
- D. Every party has the right to present witnesses, pertinent evidence, and submit questions for the Committee to examine witnesses. There will be no cross-examination; the Committee shall conduct all questioning of witnesses. Evidence

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shall be oral testimony, declarations, authenticated documents, or other papers verified to the Committee's satisfaction.

- E. If summoned by the Committee, it shall be a membership duty of every member to appear at the hearing and to testify truthfully.
- F. Witnesses giving oral testimony shall be sworn by the Committee Chairperson. Any testimony given by a representative of a member firm which is proven to be knowingly false will be considered a violation under the Standards.
- G. When the Committee, through the Chairperson, has determined that all parties have had a fair opportunity to present all their evidence, the Chairperson will declare the hearing closed.

Section 9. Decision

- A. The Committee shall make its decision in writing, signed by the Chairperson, within ten (10) working days after the hearing is declared closed.
- B. The Committee's decision shall state whether a Standards violation has occurred, and the disciplinary or other action, if any, to be taken. Such action may be one or more of the following: (i) dismissal of the Complaint; (ii) private censure consisting of attaching the decision to the Respondent's NEFA membership records; (iii) public censure consisting of NEFA's publication of the decision; (iv) probationary membership with the conditions set by the Committee; (v) suspension of membership for a term determined by the Committee; and/or (vi) expulsion from membership.
- C. The Committee shall send a copy of the decision to the Complainant and each Respondent within five (5) working days after the decision is filed.

Section 10. Option to Have Complaint Resolved by a Single Decision Maker

- A. The Complainant and Respondent(s) have the option to agree to have an authorized Complaint be resolved by a single decision maker, with this option operating as stated in subsections 10(b)-(g) below.
- B. The NEFA will have a panel of available decision makers, a list of whom should exist in writing, and which panel will consist of all members of the then existing Committee

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and any other volunteer representative of a NEFA member (or past representative of such a member), who is approved by the existing Committee.

- C. At the time of filing the Complaint, the Complainant shall specify (on the Complaint) whether or not the Complainant agrees to have the matter resolved by a single decision maker.
- D. If the Complaint specifies that the Complainant agrees to a single decision maker, then, at the time of filing its Answer to the Complaint, each Respondent shall specify (on the Answer) whether such Respondent agrees to have the matter resolved by a single decision maker.
- E. If the Complainant and all Respondents expressly so agree to have the matter resolved by a single decision maker, then the Chairperson of the Committee shall send each party a list of nine (9) potential decision makers from the panel referenced above. Each party has the right to strike three people from the list, and shall rank the remaining people on the list in order of preference, and shall deliver their respective altered lists to the Chairperson within ten (10) business days after such mailing.
- F. The Chairperson will select the decision maker from the altered lists based first on a weighted average of the parties' preferences, and thereafter on the availability of the person selected. The Chairperson shall advise all parties of the selected decision maker.
- G. Thereafter, the selected decision maker shall (i) resolve the matter pursuant to Sections 6(f)-(i) and 7 through 9 of the Procedures, with the single decision maker being substituted for the entire Committee, (ii) keep the Chairperson promptly advised of all developments, and (iii) be free to ask the Chairperson any questions about the matter and Procedures.

The foregoing provisions of this Section 10 notwithstanding, Sections 1 through 6(a)-(e) and 11 through 13 shall remain applicable to the matter and shall remain in full force and effect.

Section 11. Appeals

- A. Any party to a case not satisfied with the Committee's decision, may file a written appeal to the Board by filing same within sixty (60) days after the Committee's decision is filed. A filing fee of \$100 must accompany the appeal.
- B. If an appeal is filed, the hearing on it will occur at the next scheduled Board meeting, which is not less than fifteen (15) working days after the appeal is filed.
- C. The Board shall send notice to all parties to the case, by certified mail with return receipt requested, within ten (10) working days after an appeal is filed, of the time

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and place of the appeal hearing by the Board. At the same time, the Board shall send to each Board member an entire copy of the file with respect to the case.

- D. Counsel may be present to advise any party but may not participate at the Appeal Hearing. Counsel may be called as a witness if appropriate.
- E. At the hearing before the Board, the Committee Chairperson shall present a summary of the case. Each party shall be heard to correct the summary, if he/she wishes to do so. Each party may present to the Board his/her reasons why the Committee's decision should be followed or not, but no new evidence shall be presented.
- F. The Board shall render its decision within ten (10) working days of said hearing and shall send a copy to each party. The appeal decision may adopt, reject or modify the Committee decision. The Board's decision shall be final.

Section 12. Waiver

Each member firm and its employees and representatives, by virtue of membership, waive any right of redress against the NEFA, the Board, the Committee, its members, and each single decision maker, for any action taken in implementation of the Standards or Procedures.

Section 13. Effect on Rights and Obligations

Neither an alleged violation of these Standards nor any determination that an actual violation has occurred shall delay, impair or otherwise affect the rights, remedies or obligations of the parties to a commercial finance or an equipment leasing transaction.