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National Center for Dispute Settlement  
Minnesota Residential Real Property Arbitration Rules  
(Including Mobile Homes)

Adopted by National Center for Dispute Settlement and the Minnesota Association of REALTORS®.

Effective August 1, 2018

*1. Agreement of Parties*

These rules have been adopted by National Center for Dispute Settlement (NCDS) and the Minnesota Association of REALTORS® (MAR) to govern arbitration of disputes between seller(s), buyer(s) and licensees representing or assisting buyers and sellers arising out of or relating to the material facts affecting the use or enjoyment of the property. These rules shall apply whenever all parties have signed the Arbitration Disclosure and Residential Real Property Arbitration Agreement (the “Agreement”) as presented with the MAR Purchase Agreement or as otherwise agreed to by all parties. For purposes of these rules, “All parties” include the buyer(s), seller(s), licensee representing or assisting the seller(s) and licensee representing or assisting the buyer(s). These rules shall be applied as set forth in the Agreement. They apply to the extent that they are not inconsistent with applicable statutes or the Agreement of the parties. The parties shall be deemed to have agreed to the rules in the form in effect when the Agreement was entered into by the parties.

*2. Initiation of Proceedings*

- a. Arbitration is initiated by the filing of a Demand for Arbitration or Submission Agreement with NCDS in accordance with the Agreement of the parties. The initiating party shall:
  - i. Prepare a written notice to the other party of its intention to arbitrate (“Demand”), which notice shall contain a statement setting forth the nature of the dispute, the amount involved (if any) and the remedy sought; and;
  - ii. File four (4) copies of the Demand, together with two (2) copies of the complete Purchase Agreement, two (2) copies of the Arbitration Disclosure and Residential Real Property Arbitration Agreement, two (2) copies of any and all inspection reports prepared for claimant, and the appropriate administrative fee as provided in the Administrative Fee Schedule. These documents must be filed by mailing to NCDS at 12900 Hall Road, Suite 401, Sterling Heights, MI 48313. Any request for arbitration must be filed within the time stated in the Agreement.

- b. When arbitration is initiated by a Submission Agreement, the Provisions of 2a. (ii) shall apply except that no Demand is required.
- c. NCDS shall serve a copy of the Demand upon all of the respondents named. NCDS thereafter shall serve upon all parties and the Arbitrator(s) copies of all additional documents and communications to or received from any other party to the proceeding.
- d. After initiation of the proceeding and filing of any reply documents, if any party desires to make any new or different claim or add a party who has signed the Agreement such claim shall be made in writing and filed with NCDS in accordance with Section 2a hereof. The party or parties against whom the claim is asserted shall have a period of fourteen (14) days from the date of the mailing by NCDS within which to file an answer with NCDS. Within fourteen (14) days prior to the arbitration hearing, no new or different claim may be submitted without the written agreement of all parties and the Arbitrator(s). With the Demand for Arbitration or Submission Agreement or any reply document or counterclaim, any party may elect, in writing, to have the case heard by three (3) Arbitrators. With any Demand for Arbitration or Submission Agreement or any reply document or counterclaim, any party may elect, in writing, to have all case communications sent electronically by providing the appropriate email address.
- e. The Arbitrator(s) may request clarification of the allegations in and/or the timeliness of the Demand or any counterclaim, in which case the Arbitrator(s) may request that the appropriate party make such clarification(s) within fourteen (14) days, and the Arbitrator(s) may, if the party does not sufficiently clarify within that time, dismiss the claim and/or entire Demand against any party based on lack of clarification. Any party may request that the Arbitrator(s) request such clarification on the basis of unclear and/or lack of allegations against a party or based on timeliness. \$500.00 the filing fee shall be retained regardless of such a disposition to cover the administration costs of the case.
- f. NCDS shall process any Demand received beyond the 24-month limitation period and allow the appointed Arbitrator(s) to evaluate the Demand. The Arbitrator(s) shall have the ability to issue a decision disposing of the arbitration if it is found to be untimely and does not allege fraud, in which case \$500.00 of the filing fee shall be retained.

### 3. *Appointment of Arbitrator(s)*

National Center for Dispute Settlement shall appoint Arbitrators from its panel of persons knowledgeable in residential real estate disputes.

- a. The dispute shall be heard and determined by one Arbitrator, except as provided in Section 3b. The Arbitrator shall be appointed in the following manner: Immediately after the filing of the demand or submission, NCDS shall submit simultaneously to each party to the dispute an identical list containing an odd number of names of persons chosen from the panel. The number shall be determined by the number of parties to the dispute and shall include one more name than the number of parties. Each party to the dispute shall have fourteen (14) days from the mailing date in which to strike one name, number the remaining names to indicate the order of preference, and return the list to NCDS. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable to that party. From among the persons who have been

approved on all lists, and in accordance with the designated order of mutual preference, NCDS shall invite the acceptance of an Arbitrator to serve. If acceptable Arbitrators are unable or unwilling to act, for any reason, NCDS shall submit simultaneously another identical list of names of persons chosen from the panel allowing the parties an additional seven (7) days from the second mailing date in which to strike one name, number the remaining names to indicate the order of preference and return the list to NCDS. If acceptable Arbitrators are unable or unwilling to act, for any reason, after the second selection process, NCDS shall repeat the selection process until an acceptable Arbitrator who is able and willing to act has been chosen.

- b. At the written request of any party to the dispute as set forth in Section 2d and upon payment of the additional fee by the requesting party, a panel of three Arbitrators will be appointed to decide the dispute. NCDS shall increase the number of persons on the list submitted, as described above. All other provisions remain the same as set forth above. NCDS shall appoint Arbitrators from its panel of persons knowledgeable in residential real estate disputes.

#### 4. *Qualifications of an Arbitrator(s)*

No person shall serve as Arbitrator(s) in any arbitration in which that person has any financial or personal interest in the result of the arbitration. A person appointed as Arbitrator shall disclose to NCDs any fact or circumstance likely to affect impartiality, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their counsel. Upon receipt of such information from the Arbitrator or other source, NCDS shall communicate the information to the parties and, if it deems appropriate to do so, to the Arbitrator. Any party to the arbitration that has a factual objection to the service of any Arbitrator shall notify NCDS as promptly as possible. NCDS shall determine whether the Arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

#### 5. *Vacancy*

In the event of a vacancy of an appointed Arbitrator occurs or if an appointed Arbitrator is unable to serve promptly, NCDS shall submit another list of names of persons chosen from the panel allowing the parties an additional seven (7) days from that mailing date in which to strike one name, number the remaining names to indicate the order of preference and return the list to NCDS. If the parties fail to agree to any of the persons named after that selection process, NCDS shall have the power to make the appointment from among other members of the panel without the submission of any additional list. The Arbitrator shall be subject to disqualification for the reasons specified in Section 4.

#### 6. *Time and Place of Hearing*

NCDS shall submit a 90-day calendar to the parties allowing each party to strike the dates they are unavailable. Upon receiving the calendars from the parties, the Arbitrator(s) shall fix the date, time and location of the hearing within 30 days of receipt of the parties' calendars, notice of which hearing must be given to the parties at least fourteen (14) days in advance unless waived by the parties. The hearing will be held at the site of the residential real property, to better allow the Arbitrator(s) and the parties to consider the subject of the claim. Under compelling circumstances or if all parties agree, an alternate location may be utilized. In the event an alternative location is required, the hearing will be held at such other suitable place as the Arbitrator(s) may designate. If all parties agree, the Arbitrator(s) may consider

the case on submitted documents only.

In the event of a multiple day hearing at the mutual request of the parties, the Arbitrator(s) can impose an additional fee to be shared equally by the parties; if only one party is seeking the additional day of hearing, they are responsible for the additional fee and the Arbitrator's decision shall address responsibility for the additional fees. The additional fee is not to exceed the initial administrative fee.

## *7. Representation*

Any party to the proceeding may attend the hearing or be represented at the hearing by another person. In the case of representation by an attorney, in the interest of fairness to all parties, the party retaining counsel or their attorney must advise NCDS and the other parties of the identity of their representative at least five (5) days prior to the date of the hearing. Failure to follow this rule with regard to notice may result in an adjournment of the scheduled hearing with any costs borne by the party failing to give timely notice.

## *8. Attendance at Hearings*

All persons who are parties to the arbitration agreement, as well as representatives, are entitled to attend hearings. Parties are entitled to have witnesses attend hearings with proper notice, but witnesses may be sequestered at the discretion of the Arbitrator(s). The Arbitrator(s) shall determine whether any other person may attend the hearing.

## *9. Postponements*

Hearings shall be postponed by the Arbitrator(s) only for good cause. All requests for postponements shall be communicated to the Arbitrator(s) through NCDS.

## *10. Confidentiality and Record of the Hearing*

The proceedings are intended to be confidential. As an informal proceeding, there is no requirement that a stenographic record be taken of the hearing. Any party who wishes to, may make such a provision for a certified court stenographer at that party's own expense. A copy of the transcript must be provided to the Arbitrator(s). The parties may make appropriate notes of the proceedings, but audio or video recording are strictly prohibited.

## *11. Oaths*

The Arbitrator(s) shall require witnesses to testify under oath or affirmation administered by any duly qualified person.

## *12. Proceedings and Communication with Arbitrator(s)*

The hearing shall be conducted by the Arbitrator in any manner which will permit full and expeditious presentation of the case by both parties. Any person in attendance shall defer to the Arbitrator regarding any rules of decorum or other procedural issues that arise during the Hearing.

Normally the hearing shall be completed in one day but the Arbitrator(s) may, for good cause, schedule an additional hearing. A hearing shall be opened by the recording of the place, time and date of the hearing, the presence of the Arbitrator(s) and parties, and counsel, if any, and by the receipt by the Arbitrator(s) of the statement of the claim and answer, if any. The Arbitrator(s) may, at the beginning of the hearing, ask for statements clarifying the issues involved. The complaining party shall then present its claim and proofs and its witnesses, who shall submit to questions or other examination. The Arbitrator(s) has discretion to vary this procedure but shall afford full and equal opportunity to all parties for the presentation of any material and relevant proofs. Exhibits, when offered by either party, may be received in evidence by the Arbitrator(s). The names and addresses of all witnesses and a list of exhibits in the order received shall be made a part of the record. There shall be no direct communications between the parties and the Arbitrator other than at the hearing except when initiated by the Arbitrator pursuant to Section 6 and limited to the time and place of the hearing.

### *13. Arbitration in the Absence of a Party*

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made solely on the absence of a party. The Arbitrator shall require the party who is present to submit such evidence as the Arbitrator may require for the making of an award.

### *14. Evidence*

The parties may offer such evidence as is relevant and material to the controversy and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the dispute. Upon the request of any party or independently, an Arbitrator authorized by law may, but shall not be required to, subpoena witnesses or documents. The Arbitrator shall be the judge of the admissibility of the evidence offered. Conformity to the formal legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of the parties, except as provided under Section 13 and Section 15. The expense of witnesses, expert witnesses or reports for either side shall be paid by the party producing such witnesses and reports. Upon application by any party, the Arbitrator(s) shall have the sole discretion to permit any reasonable discovery allowable under the Minnesota Rules of Civil Procedure for the District Courts.

All witness lists (with expected testimony of each party) and exhibits shall be provided by the parties to NCDS and all other parties no later than fourteen (14) days prior to the scheduled hearing, or as directed by the Arbitrator(s). If a party presents any witness lists, exhibits, or witnesses fewer than fourteen (14) days prior to the scheduled hearing, the Arbitrator shall have the sole discretion regarding the resolution of Rules violation.

### *15. Evidence by Filing of Documents*

The Arbitrator shall receive and consider documentary evidence. Documents to be considered by the Arbitrator may be submitted prior to the hearing or as directed by the Arbitrator provided a copy is simultaneously transmitted to all other parties and to NCDS for transmittal to the Arbitrator.

#### *16. Closing of Hearings*

The Arbitrator shall ask whether the parties have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or when satisfied that the record is complete, the Arbitrator shall declare the hearings closed.

#### *17. Waiver of Rules*

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state objections thereto in writing to NCDS shall be deemed to have waived the right to object.

#### *18. Right to Object*

Any party who becomes aware of a violation of these rules during the arbitration process may file a written request for an Arbitrator review of the violation with NCDS or raise the issue verbally at the hearing, if the issue occurs during the hearing. If NCDS receives a written request, it shall forward the request for review to the case Arbitrator(s) to investigate and take any necessary action to provide for the proper implementation of these rules. If the issue is raised at the hearing, the Arbitrator(s) shall address the issue then. Such a request must be made as soon as practicable or the violation shall be deemed waived.

#### *19. Serving of Notice*

Each party shall be deemed to have consented that any papers, notices or process necessary or proper for the initiation or continuation of an arbitration under these rules or for any court action in connection therewith; or for the entry of judgment on any award made under these rules may be served on such parties by regular mail addressed to the party or its attorney at the last known address or by personal service, in or outside Minnesota. The service requirements may be met by any written form of communication, including facsimile, letter, electronic mail, text message, or other written forms of electronic communication. It is the obligation of the filing party to submit the current address(es) and telephone number(s) of the other parties on the Demand Form.

#### *20. Time of Award*

The award shall be rendered promptly by the Arbitrator and, unless otherwise agreed by the parties, not later than thirty (30) days from the date of the closing of the hearing. The thirty (30) day timeframe may be extended by the Arbitrator for submission of post-hearing documents by the parties. If that is the case, the thirty (30) day timeframe will commence after the final post-hearing document submission has been received by the Arbitrator(s).

#### *21. Scope of Award*

The Arbitrator may make any award that is just and equitable and consistent with the Minnesota Uniform Arbitration Act, Chapter 572B. The Arbitrator, in the award, may allocate or assess the arbitration fees and expenses against any party. In the event that any administration fees or expenses are due to NCDS, the Arbitrator may provide for payment to NCDS in the Award. Each party shall bear its own attorney's fees, except that the Arbitrator shall be allowed to award a prevailing party attorney's fees if allowed by statute.

## *22. Form of Award*

The award shall be in writing and shall be signed by the Arbitrator. It shall be executed in the manner required by law.

## *23. Award upon Settlement*

If the parties settle their dispute during the course of the arbitration, the Arbitrator(s), upon request of the parties, may set forth the terms of the agreed settlement in an award.

## *24. Delivery of the Award to Parties*

Parties shall accept as legal delivery of the award, the placing of the award or a true copy thereof, in the mail addressed to a party or its attorney at the last known address, personal service of the award or the filing of the award in any other manner that may be permitted by law.

## *25. Modification and/or Clarification*

Within twenty (20) days of the date of mailing of the award, either party may request modification and/or clarification of the award. Application for modification and/or clarification must be sent to NCDS for transmittal to the Arbitrator and all other parties along with the proper administrative fee. A Request for Modification and/or Clarification must set forth the specific portion or portions of the award which are subject to the request. The Arbitrator is not empowered to redetermine the merits of any claim already decided, but may modify the Award to correct typographical errors or ministerial omissions or clarify the Award to eliminate internal inconsistencies or ambiguities. Written objections to modification and/or clarification must be delivered to NCDS for transmittal to the Arbitrator and simultaneously sent to all parties within ten (10) days of the application. The Arbitrator shall dispose of an application for modification and/or clarification within ten (10) days from receipt of an objection or the expiration of time to make objections, whichever is earlier.

## *26. Application to Court and Exclusion of Liability*

- a. No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.
- b. Neither NCDS, MAR nor any Arbitrator may be named as parties in a judicial proceeding based upon the arbitration.
- c. NCDS shall, upon the written request of a party furnish to such party, at the party's expense, certified copies of any papers in NCDS' possession that may be required in judicial proceedings relating to the arbitration.
- d. Unless the applicable law or the Agreement provides otherwise, the parties to these rules shall be deemed to have consented that judgment upon any arbitration award may be entered in any federal or state court having jurisdiction thereof.
- e. Neither NCDS, MAR nor any Arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.



- f. These rules are not intended to apply to commission disputes. Any commission disputes between real estate brokers or agents who are members of the Minnesota Association of REALTORS® shall be resolved in the manner provided in Article 17 of the REALTORS® Code of Ethics.

#### *27. Interpretation and Application of Rules*

The Arbitrator shall interpret and apply these rules insofar as they relate to the Arbitrator's powers and duties. All other rules shall be interpreted and applied by NCDS, as administrator. These rules shall be subject to the Minnesota Uniform Arbitration Act, Chapter 572B.

#### *28. Collection of Arbitration Award.*

Any award is payable by the parties directly to the claimant(s). NCDS can offer no direction on the collection of an arbitration award. Please consult legal counsel for information on how to enforce payment of an arbitration award.

#### *29. Arbitration Fee Schedule*

See separate fee schedule.



<p style="text-align: center;"><b>Fee Schedule</b> <b>(Minnesota Real Property Arbitration Rules)</b></p>
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- (a) A **non-refundable** administration fee shall be paid by the party requesting arbitration or asserting a counterclaim based upon this schedule:

**Two Party Case, Single Arbitrator:**

Claims or Counterclaims \$15,000 and under are exempt from the Arbitration Agreement. All Claims and Counterclaims for \$15,000 and less shall be addressed in a court with proper jurisdiction. Claims or Counterclaims between

\$15,001 and \$25,000	\$1,250.00
Claims or Counterclaims between \$25,001 and \$50,000	\$1,500.00
Claims or Counterclaims over \$50,000	\$2,000.00

Cases with more than two (2) parties **ADD** \$200.00 to the fees shown above

**Two Party Case, 3-Member Panel:**

Claims or Counterclaims \$15,000 and under are exempt from the Arbitration Agreement. All Claims and Counterclaims for \$15,000 and less shall be addressed in a court with proper jurisdiction. Claims or Counterclaims between

\$15,001 and \$25,000	\$2,400.00
Claims or Counterclaims between \$25,001 and \$50,000	\$2,850.00
Claims or Counterclaims over \$50,000	\$3,750.00

Cases with more than two (2) parties **ADD** \$200.00 to the fees shown above

All Claims and Counterclaims must specify the amount demanded by the filing party. If an amount is NOT specified, it will be presumed that the Claim or Counterclaim is for more than \$50,000 and the party shall pay the highest administrative fee. Moreover, if the Award exceeds the initial stated claim amount, increasing the administrative fee required, the increased amount of the administrative fee shall be charged.

- (b) These fees are due and payable upon the filing of the Demand for Arbitration, Submission Agreement, Reply, Counterclaims or a request for a 3-member panel. Under Rule 21, any party may request that the Arbitrator allocate or assess the administrative fees in the Award. This request shall be in writing.
- (c) **Request for Modification and/or Clarification of Award:** Any party making application in filing a Request for Modification and/or Clarification of the Award shall pay an administrative fee of \$150.00.

- (d) **Adjournment Fees:** \$100.00 is payable to NCDS by any party causing an adjournment of any scheduled hearing more than forty-eight (48) hours in advance (\$300.00 is due for a 3-member panel).

\$300.00 is payable to NCDS by any party causing an adjournment at or less than forty-eight (48) hours before any scheduled hearing (\$600.00 for a 3-member panel).

The requesting party shall also pay any reasonably incurred expenses of the Arbitrator(s) in connection with the cancellation of the previously scheduled hearing.

# A Guide to Residential Real Property Arbitration

## *For Use in the State of Minnesota*

This pamphlet is provided solely for the purpose of helping potential parties to arbitration better understand the process endorsed by Minnesota REALTORS® and administered by National Center for Dispute Settlement ("NCDS"). If questions arise, contact legal counsel.

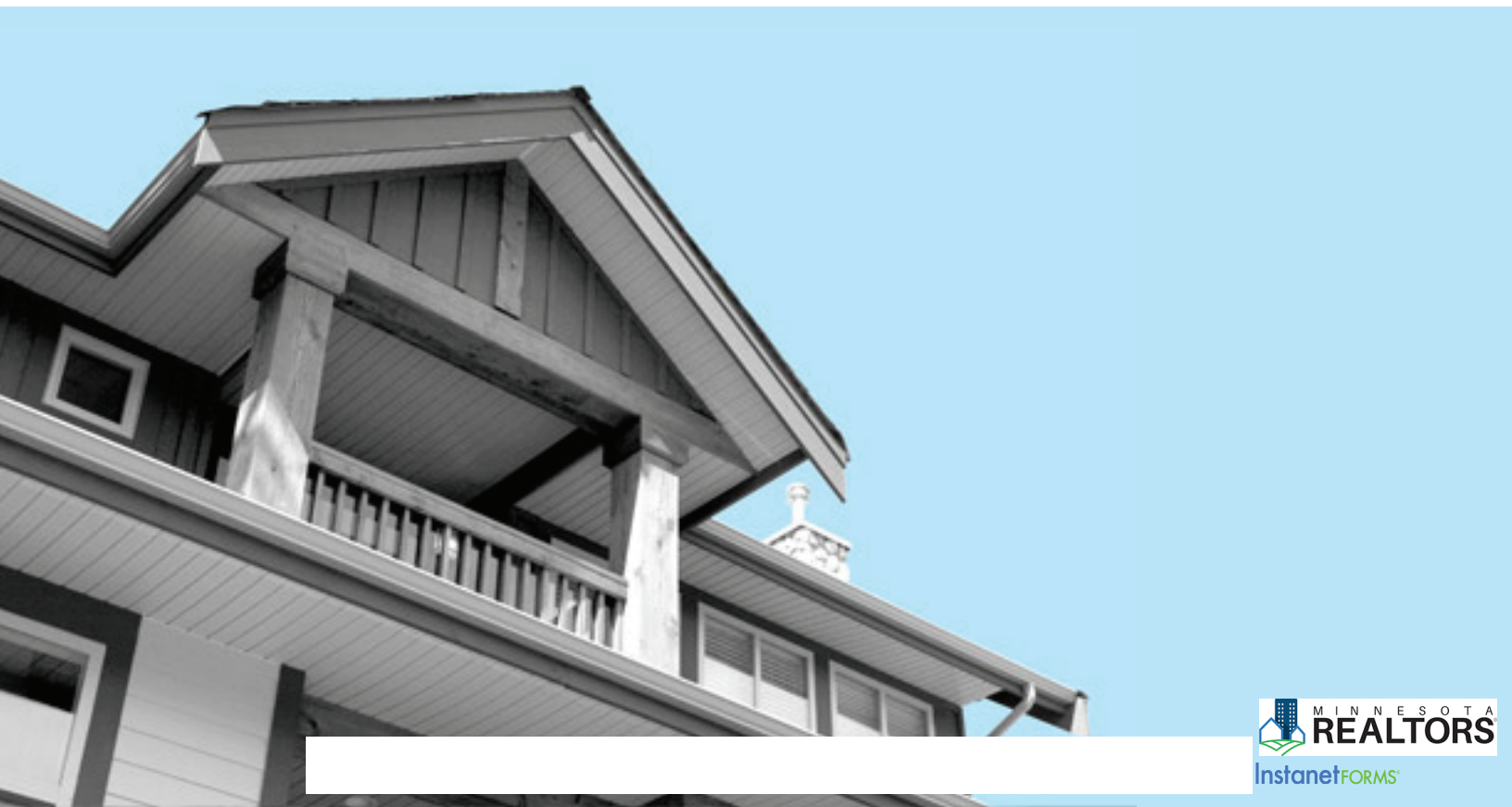
Adopted by the National Center for Dispute Settlement and the Minnesota REALTORS®.



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## A Guide to Residential Real Property Arbitration

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Minnesota REALTORS® endorses the Residential Real Property Arbitration program administered through the National Center for Dispute Settlement ("NCDS"). NCDS is a private, impartial organization that provides arbitration services. The following is an explanation of the program, how it works, and the pros and cons of utilizing arbitration. THIS EXPLANATION IS NOT LEGAL ADVICE. SHOULD YOU HAVE QUESTIONS ABOUT ARBITRATION, CONSULT WITH YOUR LEGAL COUNSEL.

### **Deciding if Arbitration is Right for You:**

#### **What is arbitration?**

Arbitration is dispute resolution process that is used as an alternative to the court system. Rather than suing the opposing party in a court of law, a complainant would file a demand for arbitration with NCDS, and an arbitrator would be assigned to the case. The arbitrator would oversee the procedural and substantive issues that arise and issue a decision that is binding upon all parties.

#### **What's the difference between arbitration and the courts for dispute resolution?**

Arbitration is typically less complex, less expensive, and faster; however, these are generalizations. Conciliation court can be more expeditious for claims under \$15,000 (the current limit) and be less expensive and complex even than arbitration. (That is why the Minnesota REALTORS® program excludes claims under the current Conciliation Court limit (\$15,000); see below for more information). Be sure to do your own comparison of costs (filing fees, attorneys fees, etc.) before deciding. An attorney can be useful in helping determine whether arbitration is right for you.

#### **Is there a minimum or a limit for the dollar amount of the Demand in an Arbitration?**

There is no limit to the amount that a claimant can make in a Demand; however, no Demand for less than \$15,000, or the current Conciliation Court limit in Minnesota, can be heard through the NCDS arbitration process. The Arbitration Agreement specifically excludes any claims that are less than the Conciliation Court limit because Conciliation Court is often even simpler and less expensive than arbitration in those cases.

#### **If I have a claim for \$2,500 against a seller who failed to disclose a problem, would this go through arbitration if I sign the Arbitration Agreement?**

No. Any claim for \$15,000 or less, or the current Conciliation Court limit, would be brought in Conciliation Court instead. Only claims more than \$15,000 could be submitted to arbitration through NCDS.

### **Can arbitration decisions be appealed?**

Typically, there is no right to appeal an arbitration decision in the same way that a decision from a district court can be appealed to a higher court. However, there are limited appeal rights related to certain procedural failures that might have denied a party a fair hearing, or other issues. Typically, decisions issued by arbitrators are final.

### **What is the scope of the disputes that could be resolved through the Minnesota REALTORS® arbitration program?**

The Minnesota REALTORS® program is solely related to the disclosure of material facts relating to the property that is the subject of the *Purchase Agreement*.

Material facts could include anything from those contemplated in [Minn. Stat. § 513.55](#) to failure to make other mandatory disclosures under other law (e.g., Wells, Septic, Methamphetamine, etc.).

### **What would I have to prove to win an arbitration?**

You would have to prove that:

1. There is fact about the property that is material (affecting the ordinary purchaser's using or enjoyment of the property, generally)
2. That the seller and/or licensee knew about this fact; and
3. That the seller and/or licensee did not disclose this fact (despite knowledge).

### **When do I have to decide whether I'll use arbitration?**

The *Disclosure Statement: Arbitration Disclosure and Residential Real Property Arbitration Agreement* ("Arbitration Agreement") may be presented at the time when a consumer enters into a representation or facilitation agreement with a REALTOR® to give the consumer time to review the form and ask an attorney any questions they might have. That way, when it comes time to sign a Purchase Agreement, the consumer knows whether he or she wishes to participate in the voluntary arbitration program. In order to have a binding agreement to arbitration, it must be fully executed at the time that the *Purchase Agreement* is executed.

### **Can I use an attorney if I chose arbitration?**

Yes. Choosing arbitration is simply choosing a dispute resolution process. Just like in the court system, you can choose to hire an attorney to assist you in your claim, or in defending you, or you can represent yourself. However, like the court system, an attorney is not required to proceed.

### **Who must sign the Arbitration Agreement to make it valid and binding?**

Both the buyer and the seller, and both licensees representing or assisting the buyer and seller must sign to have a valid agreement to arbitrate. If one party is not represented by a licensee, then only the party's signature is necessary. However, if a party is working with a licensee, the licensee must also sign. If only the buyer and seller sign, then the agreement will not be binding. Parties may still voluntarily elect to arbitrate rather than utilize the court system at any time once a dispute arises.

### **When would I file an arbitration claim?**

An arbitration claim, just like any legal claim, should be a last resort. You may want to reach out to the opposing party prior to filing to see if you can work out your dispute. Often, settlements leave both parties feeling better about the resolution, rather than taking a chance that the arbitrator will decide against you in an all-or-nothing type of decision. The Minnesota REALTORS® also provides mediation services to parties in advance of an arbitration, should they decide that a mediator might help foster a settlement.

In any case, if an arbitration is filed, it is after the purchaser identifies a material fact that was not disclosed and identifies that the seller and/or licensee was aware of this fact and failed to make the proper disclosure. Typically, this is after the closing. In any case, all claims must be filed within 24 months of the closing, except if fraud is alleged.

### **What is the deadline to file an arbitration claim?**

An arbitration must be filed within 24 months of the closing date on the property, unless fraud is alleged. Seek legal advice regarding whether you may still have a claim if more than 24 months have passed since your closing. This is the deadline regardless of any longer applicable statute of limitations that might be given in Minnesota Law.

### **Can parties go to court after the arbitration time period expires?**

No. The parties elect their remedy at the time of the purchase agreement: court or arbitration. Once arbitration is chosen, a party cannot decide instead to wait until the 24 months has run and start a court action instead.

### **If I've since sold the property that I purchased from the seller, can I still file an arbitration without being the current owner?**

Yes, so long as you are within the 24-month deadline.

### **What if I am the seller and/or licensee, and a purchaser files an arbitration against me and loses? Can I recover some of my expenses for having to participate?**

Yes, it's possible to file a counterclaim. You'll want to talk with legal counsel about whether the counterclaim makes sense in your case.



## What are the pros and cons, generally, of arbitration vs. court?

PROS OF ARBITRATION	CONS OF ARBITRATION
<ul style="list-style-type: none"><li>• Less formal and not as complex as litigation.</li><li>• Decided by an arbitrator (private citizen).</li><li>• Generally less expensive than litigation, except in cases of Conciliation Court.</li><li>• Discovery of documents is restricted, so it will be less cumbersome.</li><li>• The decision of the arbitrator is final and binding, with very limited appeal rights.</li><li>• Decisions in arbitrations made more quickly than in court (hearing is usually scheduled within 90 days of the receipt of demand + 30 days for arbitrator's decision).</li><li>• Party can participate in choosing the arbitrator(s).</li></ul>	<ul style="list-style-type: none"><li>• Give up your right to go to court.</li><li>• Give up your right to have a judge/jury.</li><li>• Give up access to the courts/appeals/rules.</li><li>• Discovery of documents is restricted, so it may be harder to access all of the evidence you might want to discover.</li><li>• Give up rights to an appeal.</li><li>• Court hearing and appeal process can take many months, if not years, to be final.</li><li>• Assigned a judge to hear the matter.</li></ul>

## Do the Rules cover commission disputes?

No. The Rules are solely for residential real property arbitration. Article 17 of the Code of Ethics provides for the resolution of arbitrations related to commissions as between REALTOR® members. The Minnesota REALTORS® administers this process. Commission disputes between brokerages and their clients must be settled outside of the arbitration process as well and may be settled by the Minnesota REALTORS® if the client agrees.





### **Deciding if Arbitration is Right for You:**

#### **What is the role of NCDS, and what does the case administrator do?**

NCDS functions as the administrative agency for the arbitration program. The case administrators arrange for the appointment of the arbitrator(s) and the scheduling of hearing(s). They also handle all communications between the parties and the arbitrator, except at the actual hearing(s). The case administrator is available to answer general and procedural questions concerning the arbitration process. NCDS does not evaluate the validity of claims or make any substantive decisions about a case.

#### **Who is the arbitrator?**

The arbitrator(s) is the impartial decision-maker whose authority comes from the Residential Real Property Arbitration Rules ("Rules"), the Minnesota arbitration law, and the Arbitration Agreement. The arbitrator(s) is not an employee of NCDS; rather, he or she will have experience in a field related to real estate (e.g., real estate law, architecture, building inspection, property management, etc.). After accepting testimony and evidence presented by the parties, the arbitrator(s) makes the decision.

The only direct communication the parties will have with the arbitrator(s) is at the hearing. At no time should the parties contact the arbitrator(s) directly. All correspondence must go through NCDS, who will forward it to the arbitrator(s).

#### **How many arbitrators will there be?**

One will be appointed to hear the case. However, any party can request a panel of three to hear the case, in which case an additional fee will be charged.

#### **How do I file a demand for arbitration?**

Contact NCDS to request a submission form and other basic information about the process. NCDS contact information can be found at [www.ncdsusa.org](http://www.ncdsusa.org) or by calling 866.727.8119.

#### **What do I need to file?**

- 4 copies of the demand for arbitration or submission form.
- 2 copies of the Purchase Agreement.
- 2 copies of the fully executed Arbitration Agreement.
- 2 copies of any and all inspection reports prepared for the claimant.
- The appropriate administrative fee (as described in the NCDS fee schedule).

These documents must be filed by mailing to NCDS at 12900 Hall Road, Suite 401, Sterling Heights, MI 48313.

**How is the respondent notified of the arbitration?**

NCDS will serve a copy of the demand to all respondents named. The claimant is required to provide up to date contact information (address and telephone number) for the respondent(s). NCDS will not proceed if the respondent(s) cannot be found. After the initial service of the demand on the respondent(s), if the parties wish to proceed by email notice, the parties may do so.

**Can the respondent ask the arbitrator to review a demand to see if it is deficient or unable to be arbitrated?**

Yes. NCDS, as an administrative agency, does not evaluate the validity of claims submitted for arbitration. However, arbitrator(s) themselves can evaluate a demand based on whether it is untimely or whether it lacks specificity with respect to allegations made by the claimant. An arbitrator may make this review with or without the request of a respondent. If a respondent makes the request, it must be made through NCDS, who will notify the arbitrator. The arbitrator may give the claimant an opportunity to modify or clarify the demand, and may ultimately dismiss a demand prior to a hearing in the event it is deemed untimely or lacking in allegations against one or more respondents.

**Can a claim be changed after it is submitted?**

Yes, it may be changed, in writing, up to 14 days prior to the hearing. Within 14 days of the hearing, any new or different information may only be submitted with an agreement of the parties.

**When will the hearing occur?**

A hearing date will be set within 90 days and within 30 days of receipt of the parties' calendars of conflicts. Each party will be given the opportunity to provide his or her availability, and a hearing date will be scheduled on a day everyone is available.

**Where is the arbitration hearing?**

Almost all of the time, the hearing is held at the property in question. However, on occasion, the arbitrator(s) may name a different location. The date, time and location of the hearing will be provided at least 14 days in advance of the hearing, unless late notice is waived by the parties.



### **How does arbitration deal with evidence?**

The parties may offer evidence (both exhibits and witness testimony) that is relevant and material to the controversy presented. Parties may also be required to produce evidence specifically requested by the arbitrator if the arbitrator(s) deems that evidence necessary to understand the case and make a determination. An arbitrator(s) is also legally authorized to subpoena witnesses, and may do so independently or upon a request from a party who wants the witness present.

The arbitrator(s) determines the admissibility of evidence; the court rules of evidence do not apply. Evidence must be taken in the presence of the parties, except in accordance with Rule 13. Expenses related to witnesses or reports must be paid by the party producing the witness or report.

All witness lists (with expected testimony of each party) and exhibits must be provided by the parties to NCDS and all other parties no later than fourteen (14) days prior to the scheduled hearing, or as directed by the arbitrator(s). If a party presents any witness lists, exhibits, or witnesses fewer than fourteen (14) days prior to the scheduled hearing, the arbitrator shall have the sole discretion regarding the resolution of Rules violation.

### **When is the hearing closed?**

The hearing is closed when both parties have had adequate opportunity to present all witnesses and other proof they wish to submit.

### **Could the Rules ever be waived by a party?**

Yes, if a party proceeds with the arbitration after having knowledge that a Rule has not been followed. If the party fails to object to the fact that the Rule was not followed (in writing to NCDS), then the party has waived the right to object.

### **Do I have the right to object?**

Any party who becomes aware of a violation of these rules during the arbitration process may file a written request for an arbitrator review of the violation with NCDS or raise the issue verbally at the hearing, if the issue occurs during the hearing. If NCDS receives a written request, it shall forward the request for review to the case arbitrator(s) to investigate and take any necessary action to provide for the proper implementation of these Rules. If the issue is raised at the hearing, the arbitrator(s) shall address the issue then. Such a request must be made as soon as practicable or the violation shall be deemed waived.

### **How are the Rules interpreted?**

The arbitrator(s) shall interpret and apply the Rules as they apply to the arbitrator's powers and duties. Otherwise, NCDS will do so, as administrator of the process. The Rules are also subject to Minnesota arbitration law, found in [Chapter 572B of the Minnesota Statutes](#).

**When will I be notified of an award made by the arbitrator and what will the award contain?**

Not later than 30 days from the date the hearing is closed. The award will be given in writing and will be signed by the arbitrator(s). If the parties settle their dispute during the course of the arbitration case, the parties may request that the arbitrator set forth the settlement in a settlement award. The arbitrator may make any award that is just and equitable and consistent with the Minnesota Uniform Arbitration Act, [Chapter 572B](#). The award may be delivered by mail to the party or attorney at the last known address, by personal service, or by filing of the award in any other legally allowable manner.

**How is the award determined?**

The arbitrator(s) determines the award based on what is just and equitable, and within the scope of the purchase agreement. The arbitrator(s) may assess the arbitration fees and expenses against any party; generally, each party must bear its own attorney's fees, except that the arbitrator shall be allowed to award a prevailing party attorney's fees if allowed by statute. Although it's within the arbitrator's discretion, often the winning party is awarded their costs from the losing party.

**What happens with an arbitrator makes an award and the party doesn't pay?**

Minn. Stats. §§ [572B.22](#) through [572B.25](#) state that the award may be filed and confirmed in district court, and then a judgment may be granted by the court. After a judgment is in place, a party can collect the judgment in numerous ways, including wage garnishment, levying bank accounts, and more. Collection of the award is outside of the scope of the arbitration, and neither Minnesota REALTORS®, the arbitrator(s), nor NCDS will assist in collection of the award.

**What should I know about the court actions pertaining to the arbitration?**

No court proceeding related to the subject matter of the arbitration shall be a waiver of the party's right to arbitrate. Neither NCDS, Minnesota REALTORS®, nor any arbitrator may be named in any court proceeding related to the arbitration. And none of the same shall be liable to any party for an act or omission in connection with any arbitration conducted under the Rules.

NCDS will provide certified copies of the papers related to the arbitration for use in a court proceeding. Any party wishing to do this must make a request in writing and pay for NCDS' expenses.

Unless applicable law or the arbitration agreement states otherwise, the parties are deemed to have consented to entry of an arbitration award as a judgment in a federal or state court with jurisdiction.

Adopted by the National Center for Dispute Settlement and the Minnesota REALTORS®.



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