

Residential Construction Disputes Supplementary PROCEDURES
Effective July 1, 2003

INTRODUCTION

Each year, many thousands of homes are sold. Occasionally, disagreements develop over these transactions. Many of these disputes are resolved by arbitration, the voluntary submission of a dispute to a neutral person or persons for final and binding determination. Arbitration has proven to be an effective way to resolve disputes fairly, promptly, and economically.

These Supplementary Procedures have been designed to address some of the unique characteristics of residential construction disputes. The procedures address mediation and arbitration. In addition, the procedures provide for an optional pre-closing dispute arbitration system that was designed for disputes that may arise prior to the closing or settlement on a home.

By agreement, the parties may submit their dispute to non-binding mediation prior to arbitration under the mediation portion of these Procedures. Mediation consists of the effort of an individual, or several individuals, to assist the parties in reaching the settlement of a controversy or claim by direct negotiations between or among themselves. The neutral third-party mediator participates impartially in the negotiations, advising and consulting the various parties involved. The result of the mediation should be an agreement that the parties find acceptable. The mediator cannot impose a settlement, but can only guide the parties toward achieving their own settlement. Where the parties to a pending arbitration agree to mediate under the AAA's rules, no additional administrative fee is required to initiate the mediation.

GLOSSARY OF TERMS

ADR Agreement

An ADR agreement is an agreement between a business and an owner to submit disputes to mediation, arbitration, or other ADR processes.

ADR Process

An ADR (Alternative Dispute Resolution) process is a method of resolving a dispute out of court. Mediation and Arbitration are the most widely used ADR processes.

ADR Program

An ADR program is any program or service set up or used by a business to resolve disputes out of court.

Arbitration

In arbitration, the parties submit disputes to an impartial person (the arbitrator) for a decision. Each party can present evidence to the arbitrator. Arbitrators decide cases with written decisions or "awards." An award is binding on the parties. A court may enforce an arbitration award, but

the court's review of arbitration awards is limited.

Business

A Business is a firm that contracts with an owner to provide residential construction goods or services.

Case Manager

The Case Manager is the AAA's employee assigned to handle the administrative aspects of the case. He or she does not decide the case. He or she only manages the case's administrative steps, such as exchanging documents, matching schedules, and setting up hearings. The Case Manager is the parties' contact point for almost all aspects of the case outside of any hearings.

Claimant

A Claimant is the party who files the claim or starts the arbitration. Either the owner or the business may be the Claimant.

Desk Arbitration

In a desk arbitration, the parties submit their arguments and evidence to the arbitrator in writing. The arbitrator then makes an award based only on the documents. No hearing is held.

In-Person Hearing

During an in-person hearing, the parties and the arbitrator meet in a conference room or office and the parties present their evidence in a process that is similar to going to court. However, an in-person hearing is not as formal as going to court.

Independent ADR Institution

An independent ADR institution is an organization that provides independent and impartial administration of ADR programs for owners and businesses. The American Arbitration Association is an independent ADR institution.

Mediation

In mediation, an impartial person (the mediator) helps the parties try to settle their dispute by reaching an agreement together. A mediator's role is to help the parties come to an agreement. A mediator does not arbitrate or decide the outcome.

Neutral

A Neutral is a word that is used to describe someone who is a mediator, arbitrator, or other independent, impartial person selected to serve as the independent third party in an ADR process.

Owner

An Owner means a homeowner, including a subsequent purchaser, tenant, or association, or a subrogee or assignee of the homeowner.

Pre-Closing Disputes

A pre-closing dispute is a dispute that arises prior to the closing or settlement of a home.

Residential Construction

Construction of a single family, duplex, triplex, quadruplex, modular, or manufactured home or a unit in a multi-unit residential structure in which title to the individual units is transferred to the owners under a condominium or cooperative system.

Respondent

A Respondent is the party against whom the claim is filed. If a Respondent states a claim in arbitration, it is called a counterclaim. Either the owner or the business may be the Respondent.

Telephone Hearing

In a telephone hearing, the parties have the opportunity to tell the arbitrator about their case during a conference call. Often this is done after the parties have sent in documents for the arbitrator to review. A telephone hearing can be cheaper and easier than an in-person hearing.

SUPPLEMENTARY MEDIATION PROCEDURES FOR RESIDENTIAL CONSTRUCTION DISPUTES

SM-1.Applicability

The Construction Industry Mediation Rules of the AAA, together with these Supplementary Mediation Procedures, shall apply whenever the parties' mediation agreement refers to the AAA's Supplementary Procedures for Residential Construction Disputes, or where the parties mutually agree to utilize these Procedures to resolve a dispute relating to residential construction. To the extent that there is any variance between the Construction Industry Mediation Rules and the Supplementary Mediation Procedures for Residential Construction Disputes, the Supplementary Mediation Procedures shall apply.

SM-2.Request for Mediation

A request for mediation shall contain a brief statement of the nature of the dispute including any alleged deficiencies and damages.

SM-3.Supplemental Disclosure

Any party who will be relying upon an expert report or repair estimate at the mediation shall provide the mediator and the other parties with a copy of the reports. If one or more issues directly or indirectly relate to alleged deficiencies in design, materials or construction, all parties and their experts shall be allowed to inspect, document (by photograph, videotape or otherwise)

and test the alleged deficiencies prior to mediation.

SUPPLEMENTARY ARBITRATION PROCEDURES FOR RESIDENTIAL CONSTRUCTION DISPUTES

SR-1.Applicability

The Construction Industry Arbitration Rules of the AAA, together with these Supplementary Arbitration Procedures, shall apply whenever the parties' arbitration agreement refers to the AAA's Supplementary Procedures for Residential Construction Disputes, or where the parties mutually agree to utilize these Procedures to resolve a dispute relating to residential construction. To the extent that there is any variance between the Construction Industry Arbitration Rules and the Supplementary Arbitration Procedures for Residential Construction Disputes, the Supplementary Arbitration Procedures shall apply.

SR-2.Dispute Levels

- a) Level 1 disputes shall be those disputes in which no claim or counterclaim exceeds \$10,000. The parties can also resolve their Level 1 disputes through a small claims court if the claim or counterclaim is within the jurisdictional limits of such court.
- b) Level 2 disputes shall be those disputes in which a claim or counterclaim is greater than \$10,000 but not more than \$75,000.
- c) Level 3 disputes shall be those disputes in which a claim or counterclaim is greater than \$75,000 or the claim or counterclaim is non-monetary.

SR-3.Expedited Hearing Procedures

- a) Level 1 and Level 2 disputes will utilize the Construction Industry Arbitration Rules Fast Track Procedures, as modified herein, unless the parties otherwise agree.
- b) Level 1 disputes shall be resolved by submission of documents. Any party, however, may ask for a hearing. The arbitrator may also decide that a hearing is necessary.
- c) Level 2 and Level 3 disputes shall have a hearing unless the parties agree not to have one.
- d) The hearing may be by telephone or in person. The hearing may occur even if the other party does not attend. For Level 1 disputes, a request for a hearing should be made in writing within ten calendar days after the AAA acknowledges receipt of a claimant's demand for arbitration. Requests received after that date will be allowed at the discretion of the arbitrator.

SR-4.Changes of Claim

A party may at any time prior to the close of the hearing increase or decrease the amount of its claim or counterclaim. Any new or different claim or counterclaim, as opposed to an increase or decrease in the amount of a pending claim or counterclaim, shall be made in writing and filed

with the AAA, and a copy shall be mailed to the other party, who shall have a period of ten (10) calendar days from the date of such mailing within which to file an answer with the AAA. After the arbitrator is appointed no new or different claim or counterclaim may be submitted to the arbitrator except with the arbitrator's consent and for good cause shown. The arbitrator shall take such action as is necessary to minimize prejudice to the other party.

SR-5. Jurisdiction

- a) The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement.
- b) The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause.
- c) A party must object to the jurisdiction of the arbitrator or to the arbitrability of a claim or counterclaim no later than the filing of the answering statement to the claim or counterclaim that gives rise to the objection. The arbitrator may rule on such objections as a preliminary matter or as part of the final award.

SR-6. Consolidation

If the parties' contractual agreement or the law provides for consolidation or joinder of related arbitrations, all involved parties will endeavor to agree on a process to effectuate the consolidation or joinder. If they are unable to agree on the process to effectuate the consolidation or joinder, the Association shall directly appoint a single arbitrator for the limited purpose of establishing a fair and appropriate process for consolidation or joinder. The AAA may take reasonable administrative action to accomplish the consolidation or joinder as directed by the arbitrator.

SR-7. Exchange of Information (specifically outlines information also available under R-24 in the Construction Rules)

a) Fast Track Cases (Level 1 and Level 2 cases)

At least five (5) business days prior to the hearing, the parties shall (a) exchange copies of all exhibits, affidavits and any other information they intend to submit at the hearing, and (b) identify all witnesses they intend to call at the hearing. The arbitrator is authorized to resolve any disputes concerning the exchange of exhibits. If one or more issues directly or indirectly relate to alleged deficiencies in design, materials or construction, the arbitrator shall direct that all parties and their experts be allowed to inspect, document (by photographs, videotape or otherwise) and test the alleged deficiencies at least two (2) business days prior to the arbitration hearing. The arbitrator shall have the authority to resolve any disputes relating to the inspection, documentation and testing of the alleged deficiencies.

b) Regular Track and Large, Complex Track Cases

If one or more issues directly or indirectly relate to alleged deficiencies in design, materials or construction, the arbitrator shall direct that all parties and their experts be allowed to inspect, document (by photograph, videotape or otherwise) and test the alleged deficiencies. The arbitrator shall have the authority to resolve any disputes relating to the inspection, documentation and testing of the alleged deficiencies. Consistent with the expedited nature of arbitration, the arbitrator shall direct (i) the production of relevant documents and other information to be used in the arbitration (including expert reports and information relied upon by the experts), and (ii) the name and address of any witnesses to be called, and (iii) a brief summary of the testimony expected from each witness. At least five (5) business days prior to the hearing, the parties shall exchange copies of all exhibits, affidavits and any other information they intend to submit at the hearing. The arbitrator is authorized to resolve any disputes concerning the exchange of information or objections to such information. There shall be no other discovery, except as indicated below or as ordered by the arbitrator in extraordinary cases when the demands of justice require it.

Documents

- ' No later than fifteen (15) days after the answering statement is filed or 20 days after the claim is filed if no answering statement is filed, whichever is later, Claimant(s) and Respondent(s) shall produce all documents which are relevant to their claim, counterclaim or defense. Both Claimant(s) and Respondent(s) shall have a continuing obligation to supplement the production in the event new or additional relevant documents are created or identified during the arbitration.
- ' If any party believes additional documents should be produced, the arbitrator shall rule on the party's request, having heard or read the parties' arguments.
- ' Absent extraordinary circumstances and a showing that the other party is not prejudiced, no party may admit or otherwise use any document or exhibit which was not produced to all other parties to the arbitration more than five (5) days prior to the arbitration hearing, except if the parties agree or the arbitrator determines that the document or exhibit is necessary.

Interviews

- ' The Claimant(s) may take the recorded and transcribed interview of each Respondent. The Claimant(s) shall, at its cost, produce a copy of the recording or transcription to each Respondent. Subject to the rules governing admissibility of evidence as set forth herein, statements made by the Respondent shall be admissible in the arbitration hearing.
- ' The Respondent(s) may take the recorded and transcribed interview of each Claimant. The Respondent(s) shall, at its cost, produce a copy of the recording or transcription to each Claimant. Subject to the rules governing admissibility of evidence as set forth herein, statements made by the Claimant shall be admissible in the arbitration hearing.
- ' The Claimant(s) or Respondent(s) may take the recorded and transcribed interview of each expert witness identified by the other party. The Claimant(s) or Respondent(s) shall, at its cost, produce a copy of the recording or transcription to each party in the arbitration. No later

than five (5) days prior to the deposition or interview, the party sponsoring the expert witness shall produce a written report or, if no written report will be used in the arbitration or the expert, a written summary of the expert opinions which will be given by the expert witness in the arbitration hearing. Subject to the rules governing admissibility of evidence as set forth herein, statements made by the expert witnesses shall be admissible in the arbitration hearing.

' Additional interviews may be agreed to by the parties or ordered by the arbitrator. Disputes concerning interviews will be resolved by the arbitrator.

SR-9. Form and Scope of Award

- a) The arbitrator may grant any legally available remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, equitable relief and specific performance of a contract.
- b) In addition to the final award, the arbitrator may make other decisions, including interim, interlocutory, or partial rulings, orders, and awards. In any interim, interlocutory, or partial award, the arbitrator may assess and apportion the fees, expenses and compensation related to such award as the arbitrator determines is appropriate but in compliance with the Allocation of Fees and Deposits section of these Procedures.
- c) For Level 2 and Level 3 cases (see SR-2), in the final award, the arbitrator shall assess administrative and arbitrator fees as provided in the Construction Industry Arbitration Rules. The arbitrator may apportion such fees among the parties in such amounts as the arbitrator determines is appropriate or in accordance with the parties' arbitration agreement if such agreement provides otherwise.
- d) To the extent authorized by law and the arbitration agreement, the award of the arbitrator may include:
 - ' interest as the arbitrator may deem appropriate; and
 - ' an award of attorneys' fees.
- e) In the award, the arbitrator shall apply any pertinent contract terms, statutes, and legal precedents. The arbitrator may grant any remedy, relief or outcome the parties could have received in court. The award shall be final and binding. The award is subject to review in accordance with applicable statutes governing arbitration awards.
- f) The award shall be in writing and shall be executed in the manner required by law. The arbitrator shall provide a concise, written breakdown of the award. For Level 3 Cases, if requested in writing by any party, or if the arbitrator believes it is appropriate to do so, the arbitrator shall provide a written explanation of the award, including the legal and factual basis thereof.

OPTIONAL RULES FOR PRE-CLOSING DISPUTES

OR-1.Applicability

Where parties by contractual or other agreement have adopted these Optional Rules for Pre-Closing Disputes, these Rules shall apply.

OR-2.Limitation on Extensions

In the absence of extraordinary circumstances, there shall be no deviations from, or extensions to, the timeframes set forth herein.

OR-3.Initiation

The claimant shall give to the respondent written notice of its intention to arbitrate (the "demand"), which demand shall contain a statement setting forth the nature of the dispute (including any alleged deficiencies in the home), the amount involved, if any, and the remedy sought. The claimant shall file with the AAA two copies of the demand, together with the appropriate filing fee. The AAA shall confirm notice of such filing to the parties.

OR-4.Responsive Statements

Respondent may, but is not required to, file an answering statement in duplicate with the AAA within seven (7) days after receipt of the demand. The respondent shall, at the time of any such filing, send a copy of the answering statement to the claimant. If a counterclaim is asserted, it shall contain a statement setting forth the nature of the counterclaim, the amount involved, if any, and the remedy sought. The respondent shall forward any counterclaim to the AAA with the answering statement and the appropriate fee.

OR-5.Appointment of Arbitrator

Within fourteen (14) days after receipt of the demand, the AAA shall appoint a single arbitrator from its panel of arbitrators. The appointed arbitrator shall be knowledgeable in residential construction. The arbitrator shall immediately disclose any circumstances likely, on the basis of the facts disclosed in the demand, to affect such arbitrator's impartiality or independence. Any challenge to the appointment of the arbitrator must be made within two (2) business days of the communication by the AAA to the parties of the appointment of the arbitrator and the circumstances disclosed.

OR-6.Submission of Documents

Within twenty-one (21) days after receipt of the demand, each party shall provide to the arbitrator and the other party all written evidence that such party deems necessary to an understanding and determination of the dispute. The parties waive all other discovery.

OR-7.The Award

The dispute will be resolved by submission of documents to the arbitrator unless one or more issues directly or indirectly relate to alleged deficiencies in design, materials or construction, or

substantial completion of the home, in which case the arbitrator will hold a hearing at the home with the parties present. The hearing at the home shall take place within twenty-eight (28) days after receipt of the demand. The arbitrator's award shall be in writing and rendered within seven (7) days after the close of the hearing.

OR-8. Time Standards

The arbitration shall be completed by settlement or award within thirty-five (35) calendar days of the filing of the demand with the AAA, unless all parties and the arbitrator agree otherwise or the arbitrator extends this time in extraordinary cases when the demands of justice require it. The Administrator will relax these time standards in the event the arbitration is stayed pending mediation.

Administrative Fees and Arbitrator Fees*

(Parties should review SR-2 and SR-3 for an explanation of Level 1, Level 2 and Level 3 disputes.)

Administrative fees and arbitrator compensation deposits are due from the claimant at the time a demand is filed. They are due from the respondent at the time the answer is due.

Administrative fees and arbitrator compensation deposits are based on the size of the claim and counterclaim in a dispute. They are based only on the actual damages and not on any additional damages, such as attorneys' fees or punitive-type damages. The amounts paid by the owner and the business are set forth below.

*Pursuant to Section 1284.3 of the California Code of Civil Procedure, consumers with a gross monthly income of less than 300% of the federal poverty guidelines are entitled to a waiver of arbitration fees and costs, exclusive of arbitrator fees. This law applies to all consumer agreements subject to the California Arbitration Act, and to all consumer arbitrations conducted in California. If you believe that you meet these requirements, you must submit to the AAA a declaration under oath regarding your monthly income and the number of persons in your household. Please contact the AAA's Western Case Management Center at 1-877-528-0879, if you have any questions regarding the waiver of administrative fees.

Arbitrator Fees (reference SR-2)

For Level 1 disputes, arbitrators are paid based on the type of proceeding that is used. The parties make deposits as set forth below. Any unused deposits are returned at the end of the case.

Desk Arbitration or Telephone Hearing \$250 for service on the case

In Person Hearing \$750 per day of hearing

For Level 2 and Level 3 disputes arbitrators are compensated at the rates set forth on their panel biographies.

Allocation of Fees and Deposits

For Level 1 disputes, the owner is responsible for an arbitrator compensation deposit of \$125. The business is responsible for (i) a filing fee of \$500 and a case service fee of \$200 if a hearing is held (ii) an arbitrator compensation deposit of \$125 for a desk arbitration/telephonic hearing or \$625 for an in person hearing. If the claim is settled prior to any work by the arbitrator, the arbitrator compensation deposits will be refunded. If the hearing lasts more than one day, the arbitrator shall assess any additional costs against the business.

For Level 2 and Level 3 disputes, the owner and business must pay any administrative fees and deposit for arbitrator compensation fees in accordance with the Construction Industry Fee Schedule, as may be amended by the parties' agreement.

The allocation of fees and deposits is set based on the initial dispute level. Even if a counterclaim is filed that moves the dispute to a higher or lower level, the fee allocation and deposits requested will still be based on the dispute level of the initial filing.

If a party fails to pay its share of the administrative fee or the arbitrator compensation deposit, the other party may advance such funds. The arbitrator may assess these costs in the award.

Rules, forms, procedures and guides are subject to periodic change and updating.