



Home Construction Arbitration Rules Fact Sheet for Arbitrators

As the AAA's residential construction caseload continues to grow, a new set of rules has been implemented specifically for residential construction--the *Home Construction Arbitration Rules and Mediation Procedures*. These Rules have been put in place to address more specifically issues and disputes between builders and homeowners. The Rules incorporate the *Consumer Due Process Protocol*, a set of principles that establish clear benchmarks for conflict resolution processes involving consumers.

These Rules provide all parties with fair and cost-effective mediation and/or arbitration of their disputes. Every effort should be made to stay within these Rules. *Home Construction Rules and Mediation Procedures* may be obtained on the AAA website at www.adr.org.

Q. Why did the AAA develop the Home Construction Rules?

- A. The AAA has developed these Rules to provide parties who have homebuilding disagreements with expeditious, fair and cost-effective processes for the resolution of their disputes.

Q. When are the Home Construction Rules applied?

- A. These Rules shall apply in any case involving home construction of a single- family, duplex, triplex, quadplex, town home, modular or manufactured home or a unit in a multi-unit residential structure in which title to the individual unit is transferred to the owners under a condominium or cooperative system. The Rules apply if the parties' arbitration agreement refers to arbitration specifically under these Rules or when parties mutually agree to utilize these Rules to resolve a dispute relating to home construction. [Rule ARB-1 (a)]

Q. How is Discovery handled?

- A. For Level 1 & 2 disputes:

- There is no discovery.
- All submissions are due five days prior to hearing.
- Arbitrator resolves disputes regarding submissions.
- Arbitrator shall direct parties and experts to site for inspection at least five business days prior to hearing.
- Arbitrator resolves disputes regarding site inspection.

For Level 3 Disputes:

- Five days prior to the hearing, the arbitrator directs production of:
 - I. Relevant documents and other information.
 - II. Names and addresses of witnesses.
 - III. Brief summaries of testimony of witnesses.
- Arbitrator resolves disputes concerning the exchange of information.
- There is no other discovery (other than submission of documents and interviews) except what is authorized by arbitrator if necessary.
- For matters being heard on documents (this level only)
 - I. Submission of documents is due 15 days after answering statement or 20 days after demand filed (if no answering statement filed).



- II. After the timeline has lapsed, the arbitrator decides on submission of documents.
- III. Parties may not admit or use documents or exhibits that were not produced to all parties and arbitrator 5 days prior to hearing, except if the parties agree or the arbitrator determines that such document or exhibit is necessary.
- Interviews (this level only)
 - I. Parties may take recorded and transcribed interviews of each respondent and/or claimant at the interviewer's own expense; they must produce a copy of the recording or transcription for the other party.
 - II. Statements made by the parties shall be admissible in the arbitration hearing. (Rule ARB-22)

Q. What are the most significant differences between the Home Construction Rules and the Fast Track and Regular Construction Rules?

A. The significant differences are:

- You are not able to opt out of the *Home Construction Rules* regardless of changes to claims or the number of parties to the case.
- Only one arbitrator is appointed to hear the case—unless the AAA determines the need for three.
- The parties may request an interim ruling, and the AAA has the authority to appoint a separate arbitrator to make the ruling if deemed necessary.
- Arbitrator shall specifically ask parties if any further proof is to be offered or witnesses need to be heard prior to closing hearings.
- Awards are limited to five pages.

Q. How is the scheduling of the Hearings handled?

A. For Level 1 & 2 disputes: Arbitrator sets hearing within 30 days of appointment.
For Level 3 disputes: Hearing dates are sent out to parties for their agreement.

(Notice is sent out 10 days prior to hearing.) (Rule ARB-23)

Q. What are the key elements of the Award?

A. The arbitrator shall apply any pertinent contract terms, statutes or legal precedents. Also, the arbitrator may grant any remedy, relief or outcome the parties could have received in court. The biggest difference from the regular Construction Rules is that the Awards are limited to 5 pages in length. Level 1 & 2 disputes allow 14 days for the arbitrator to render the award, whereas Level 3 disputes allow 30 days. (Rule ARB-43)

Q. Are post-Award modifications and clarifications still allowed?

A. Yes, at the request of a party and for the same reasons as in the regular Construction Rules. However, the arbitrator may no longer modify an Award at his or her own volition. (Rule ARB-46)

Q. What is the arbitrator compensation for serving on these cases?



- A. The compensation shall be paid at the rate established within the Rules, but the rate varies depending on the size of the claim. When an in-person hearing is held, the rates contemplate one day of hearing. The established rate as stated in the fee charts on pages 8 & 9 of the Rules shall apply to all hearings dates.
Compensation rates for three-member panels remain as outlined in Level 1, Level 2 and Level 3 claims. The rates are not different for three-member panels.

The established rates are as follows:

- Level 1 claims under \$10,000 with a desk or telephone hearing: \$250
- Level 1 claims under \$10,000 with an in-person hearing: \$750
- Level 2 claims above \$10,000 to \$75,000 with an in-person hearing: \$1,000
- Level 3 claims above \$75,000 to \$300,000 with an in-person hearing: \$1,800
- Level 3 claims above \$300,000 with an in-person hearing: \$2,000
- Level 3 claims that are non-monetary or specific performance with an in-person hearing: \$2,000

Q. What will my compensation be if there are subsequent days of hearing?

- A. The established rate as stated in the fee charts on pages 8 & 9 of the Rules shall apply to all hearings dates. If there are two days of hearing, you will receive the established rate times 2, for three days of hearing you will receive the established rate times 3, etc. There is no allowance for study time on Level 1 & 2 cases.

Q. What will my compensation be if the case settles before hearing?

- A. Should the matter be settled or withdrawn after the preliminary hearing but before the evidentiary hearing is held, the arbitrator shall be paid at one half the established rate.

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