



CONSTRUCTION ARBITRATION PROGRAM

for

HOME | WARRANTY | CONSTRUCTION

COMPLEX CASE PROGRAM RULES

ADMINISTERED BY DEMARS & ASSOCIATES, LTD.

RULES EFFECTIVE JULY 1, 2019



TABLE OF CONTENTS

1. <i>Agreement of the Parties</i>	3
2. <i>Initiating the Process</i>	3
3. <i>Appointment of Arbitrator</i>	3
4. <i>Qualifications of an Arbitrator</i>	4
5. <i>Waiver of Rules</i>	4
6. <i>Serving of Notice</i>	4
7. <i>Time and Place of Hearing</i>	4
8. <i>Representation</i>	5
9. <i>Attendance</i>	5
10. <i>Postponements</i>	5
11. <i>Confidentiality</i>	5
12. <i>Judicial Proceedings and Immunity</i>	5
13. <i>Proceedings and Communication with the Arbitrator</i>	5
14. <i>Arbitration in the Absence of a Party</i>	6
15. <i>Evidence</i>	6
16. <i>Evidence by Filing of Documents</i>	6
17. <i>Subpoenas</i>	6
18. <i>Close of Hearing</i>	6
19. <i>Form of Award</i>	6
20. <i>Scope of Award</i>	7
21. <i>Modification and/or Clarification</i>	7
22. <i>Confirmation of Award</i>	7
23. <i>Interpretation and Application of Rules</i>	7
24. <i>Arbitration Fee Schedule</i>	7



CAP-Home Complex Case Rules for Arbitration

Definitions and Explanations

Complex Case: When the issues in dispute include complicated legal claims, contractual claims, financial claims or a combination of construction defect or deficiency claims along with complicated legal, contractual, and/or financial claims, attorney-arbitrators are appointed and the case is considered to be a “complex” case.

1. Agreement of the Parties

These rules shall apply under any contract, warranty, insurance, or similar dispute settlement program managed by DeMars & Associates, Ltd. or whenever the parties agree to utilize them. The rules shall be applied as provided in the application for home enrollment, certificate of participation, insurance policy, sales contract or other applicable documents. The rules apply to the extent that they are not inconsistent with applicable statutes or with the agreement of the parties. The parties are deemed to have agreed to the rules in the form in effect when the request for arbitration is received by DeMars & Associates, Ltd. in its Administration Office.

2. Initiating the Process

Request for Arbitration

Arbitration is initiated by the filing of a request for arbitration (Request) with DeMars & Associates, Ltd. in accordance with the contract, the applicable warranty documents or as provided under the application for home enrollment, certificate of participation, insurance policy, sales contract or other controlling document. A clear statement of the issues to be arbitrated and all relevant documents supporting requesting party’s position must accompany the Request along with the advanced deposit (as defined in the fee schedule). All Requests must be submitted to DeMars & Associates (Arbitration Administration) for processing and distribution to involved parties or authorized representatives.

Answer

The responding party(ies) (Respondent) has thirty (30) days following actual receipt of a Request within which to file an answer with Arbitration Administration. The Answer shall be submitted to Arbitration Administration by certified mail, return receipt requested. Respondent’s answer (Answer) shall explain the Respondent’s position and include supporting documentation and the matter shall proceed to arbitration.

If the Respondent fails to file an Answer within thirty (30) days, the factual assertions in the Request shall be deemed denied and the matter shall proceed to arbitration.

3. Appointment of the Arbitrator

Arbitration Administration appoints an arbitrator based on geographic location and qualifications.

When the issues in dispute include complicated legal claims, contractual claims, financial claims or a combination of construction defect or deficiency claims along with complicated legal, contractual, and/or financial claims, attorney-arbitrators are appointed and the case is considered to be a “complex” case.

Attorney-arbitrators have the option of consulting with an industry professional, such as a Home Inspector, Engineer, Architect, Certified Public Accountant, or other qualified professional. Arbitration Administration identifies and appoints



the industry professional who is available as a neutral, technical resource for the arbitrator and does not participate in the hearing as an expert witness. Parties to the dispute are responsible for paying the professional's fees in equal portion.

An industry professional may also be available for the arbitrator's consultation at the request of a party. Such request must be made in writing to the Administration Office no less than 20 days prior to the scheduled hearing date, if the party is requesting the professional attend the hearing. The requesting party is responsible for paying the industry professional's fees.

When the case involves structural claims along with contractual, financial, construction defect and/or deficiency, Arbitration Administration will appoint a two-member panel to include an attorney-arbitrator who will chair the panel, conduct the hearing and write the decision, as well as a licensed architect or engineer who will serve as the industry professional.

4. Qualification of an Arbitrator

A person appointed as an arbitrator will demonstrate the ability to remain impartial and must comply with all disclosure requirements. In addition, no person may serve as an arbitrator in any proceeding in which that person has any financial or personal interest. The arbitrator is responsible for notifying Arbitration Administration of any other issues that may cause a party to reasonably consider that he/she cannot be impartial. Upon receipt of any such information from the arbitrator or any other party, Arbitration Administration will notify all parties in writing. If a party objects to the service of an arbitrator, Arbitration Administration determines if the arbitrator shall be disqualified. All parties are notified of the decision in writing. If an arbitrator is disqualified, if a vacancy occurs, or if an appointed arbitrator is unable to complete their duties in a timely manner, Arbitration Administration appoints a replacement arbitrator. Parties retain the right to object to the appointed replacement arbitrator for reasons listed above. All decisions by Arbitration Administration are final.

5. 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 his or her objections in writing to DeMars & Associates, Ltd., waives his or her right to object.

6. Serving of Notice

Unless DeMars & Associates, Ltd. is notified otherwise, the parties agree that any notices or documents required to start or to continue arbitration under these rules will be served to the parties at the last known address of record. A person receives notice when it comes to the person's attention or when the notice is delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery for such communications. Arbitration Administration and/or the arbitrator are considered to have given adequate notice by taking action reasonably necessary to inform the parties, whether or not the party acquires actual knowledge of the notice. Acceptable forms of communication include facsimile, letter, or other written forms of electronic communication. These provisions also apply to notice requirements for any court action or the entry of a judgment on any award made under these rules.

7. Time & Place of Hearing

Arbitration Administration sets the date, time and location of the hearing. Notice of the date, time and location are provided to the parties a minimum of 14 calendar days prior to the hearing date. Whenever possible, in disputes in which one party is the homeowner the hearing is held at the location of the complaint to allow the arbitrator and the parties the opportunity to examine the claimed defects. If the site is not an available location and when the homeowner is not a party to the dispute, the arbitrator will designate another location.



8. Representation

Any party may attend the arbitration or be represented at the hearing by another person. If a party is represented by an attorney or another individual, the party being represented by an attorney or another individual must notify Arbitration Administration and the other parties of the identity of their representative at least 14 calendar days prior to the conference or hearing. Failure to provide the required notification may result in postponement of the scheduled conference or hearing.

9. Attendance

Any person who is a party to the arbitration may attend. Representatives and witnesses are also allowed to attend. The arbitrator has the authority to determine whether any other person(s) may attend the hearing. The arbitrator may also exclude a non-party or other witness from other witnesses' testimony. Whenever possible, requests for non-party attendance at a hearing must be submitted prior to the hearing.

10. Postponements

Hearings shall only be postponed by the arbitrator, and only for good cause. Any requests for postponement must be submitted in writing through Arbitration Administration who transmits the request to the arbitrator for a final decision. A fee may be assessed if postponement is granted.

11. Confidentiality

Arbitration is intended to be confidential. The parties may take appropriate notes during the proceeding, but audio or video recordings are strictly prohibited. These are informal proceedings, and no stenographic record or transcript is provided. Any party may, at their own expense, make provisions for a certified court stenographer to record the arbitration proceedings. In such situations, copies of the transcript must be provided to Arbitration Administration for the arbitrator and other party(s) at the expense of the party providing the stenographer.

12. Judicial Proceedings and Immunity

This program is intended as a fair and expeditious means of resolving disputes. If any party initiates a judicial proceeding before or during the arbitration process, it will not be considered a waiver of any party's right to arbitrate.

DeMars & Associates, Ltd., Arbitration Administration and the Arbitrator are exempt from civil liability as a result of any act or omission in connection with the arbitration held under the Program. The parties are prohibited from calling the arbitrator or any employee or agent of DeMars & Associates, Ltd. or Arbitration Administration as a witness or expert in any proceeding involving the parties related to a dispute subject to this Program. Further, no party can subpoena any notes or other materials generated by the arbitrator, DeMars & Associates, Ltd. or Arbitration Administration.

13. Proceedings and Communication with the Arbitrator

The arbitrator may conduct the hearing in any manner that the arbitrator considers appropriate for a fair and efficient resolution of the matters in dispute. The arbitrator is responsible for the orderly conduct of the arbitration and will coordinate and resolve any discovery disputes. Formal rules of evidence will not apply and the arbitrator shall be governed by principles of equity and fairness in ruling on all procedural and substantive matters raised at all stages of the arbitration. Each party will have an adequate opportunity to present its argument to the arbitrator, including the presentation of witnesses and documentary evidence. The parties are entitled to cross-examine witnesses and the arbitrator may ask questions of the parties or their witnesses at any time.



There shall be no direct communication between the parties and the arbitrator before or after the hearing unless initiated by the arbitrator in keeping with scheduling requirements. All communications should be made through DeMars & Associates, Ltd., Arbitration Administration.

14. Arbitration in the Absence of a Party

If a party or a party's representative fails to appear at the hearing after adequate notice, or fails to obtain an adjournment after adequate notice, the arbitrator may proceed with the hearing. The arbitrator requires the present party to submit evidence, and weighs all information provided before making an award. There are no default decisions; therefore, the decision cannot be against the absent party simply for failure to appear at the scheduled date and time.

15. Evidence

To make the determination, the arbitrator reviews any information submitted by the parties and may request that a party provide additional information the arbitrator deems necessary for a fair and expeditious resolution of the dispute. The arbitrator may also request additional witnesses or documents based on the request of any party. The arbitrator determines the relevance of any information offered, but is not required to apply the formal rules of evidence. All information will be taken in the presence of all parties unless a party fails to appear or if the parties agree on a documents-only review. Any expense associated with witnesses, expert witnesses or reports is the responsibility of the party producing that information.

16. Evidence by Filing of Documents

The arbitrator receives and reviews written evidence. Any written information must be submitted through DeMars & Associates, Ltd. to be distributed to all parties for review prior to the hearing. Unless both parties expressly agree, it is presumed no new information or claims will be accepted after the Arbitration Administration has distributed the files to the parties for review prior to the hearing. The arbitrator has the discretion to determine the scope of review of any information submitted at the hearing that was not previously provided for distribution to the other parties.

For other physical evidence that cannot be copied, the party intending to use the material must make it reasonably available to the other party for inspection. Any such material not presented to the other party for review prior to the hearing shall not be considered by the arbitrator in reaching the decision. Challenges regarding reasonableness of availability of materials or a site for inspection must be submitted to the arbitrator at least 14 calendar days prior to the hearing. A decision regarding reasonableness of availability of materials or site for inspection is made within 3 business days.

17. Subpoenas

The arbitrator may issue (cause to be issued) subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas shall be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action. The arbitrator may permit a deposition to be taken of a witness who cannot be subpoenaed or is unable to attend the hearing.

18. Close of Hearing

Prior to ending the hearing, the arbitrator specifically asks the parties if they have any further information, testimony or witnesses to present. Once the parties inform the arbitrator that no more information will be offered, and the arbitrator is satisfied the record is complete; the arbitrator declares the hearing closed. The time limit for the arbitrator to make the award begins to run when the hearing is closed.



19. Form of Award

The award is in writing and includes an explanation regarding each issue decided by the arbitrator. The award is not final until the arbitrator signs it. The arbitrator's award is transmitted to all parties in writing within 28 calendar days of the hearing. The awards are sent to the parties or their representatives (if applicable) via first class mail through the U.S. Postal Service to the last known address of record.

20. Scope of the Award

The arbitrator makes a determination that is fair and equitable within the parameter of the contract, the warranty and/or other controlling documents. If applicable, the award determines the specific contractual and financial responsibility, if any, of each party to resolve each individual financial issue in dispute, and the basis for the decision. If applicable, the award determines the existence of an eligible, properly covered warranty defect or deficiency and the time in which the builder, anyone acting on behalf of the builder, the sub-contractor or the insurer will perform corrective action. If the contract, applicable warranty or controlling document so provides, the arbitrator assesses any expenses in favor of any party and any arbitration fees in the award. If the contract, warranty or controlling document is silent on expenses, the arbitrator adjusts the fees in a manner the arbitrator feels is fair and equitable. If any administration fees or expenses are due to DeMars & Associates, Ltd. the arbitrator makes a determination in favor of DeMars & Associates, Ltd. identifying fees due and apportionment amongst the parties. Each party incurs its own witness and/or attorney's fees. The parties agree to be bound and abide by any decision rendered pursuant to the arbitration process.

21. Modification or Clarification of Award

Within thirty (30) days of receiving a copy of the award, either party may seek to have the arbitrator modify or correct the award, or seek to have a court modify or correct the award, where: 1) there was an evident miscalculation of figures; or 2) the arbitrator has awarded upon a matter not submitted for arbitration and the award may be corrected without affecting the merits of the decision upon the issues submitted; or 3) other issues that may require modification or clarification.

The request must specify the portion or portions of the award subject to the request, and must be submitted in writing along with the required fees. Requests may be submitted by mail, facsimile or other written forms of electronic communication.

The Administration Office provides a copy of the request to the arbitrator and the opposing party within 2 business days of receipt of the request and fees. Any objections to the request for modification or clarification of the award must submit in writing within 14 calendar days after the Administration Office notifies the parties of the request. The arbitrator makes a final determination regarding the request within 21 calendar days of receipt of the request.

22. Confirmation of Award

Either party may seek to have a court confirm an award and upon such confirmation a judgment shall be entered in conformity and be docketed and enforced as any other judgment.

23. Interpretation and Application of Rules

The arbitrator interprets and applies these rules insofar as they relate to the arbitrator's powers and duties. All other rules shall be interpreted and applied by Arbitration Administration, DeMars & Associates, Ltd.

24. The Fee Schedule

1. ADMINISTRATION CASE FEES

Administrative services will be billed at an hourly rate of \$125/hour from the parties' advanced deposit of \$5,000 (split equally amongst the parties).



Arbitrator services will be billed at the arbitrator's stated hourly rate from the parties' advanced deposit of \$5,000 (split equally amongst the parties).

The advanced deposit is due and payable when the request for arbitration is filed with DeMars & Associates, Ltd. Additional fees to cover projected costs may be billed and are due and payable before the hearing or meeting takes place.

Any fees due above the \$5000 will be billed to the parties equally. Any unused portion of the advanced deposit will be refunded to the parties equally or as apportioned by the arbitrator.

A monthly statement will be mailed to each party. The statement lists the costs accumulated during the preceding month and the remaining balance of the advanced deposit.

2. MODIFICATION OR CLARIFICATION FEE

The requesting party advances an Administrative fee of \$150 when applying for Modification or Clarification, which is paid to DeMars & Associates, Ltd. at the time the request is transmitted to DeMars & Associates, Ltd.

3. ADJOURNMENT FEES

\$100 is payable to DeMars & Associates, Ltd. by any party causing an adjournment of any scheduled hearing more than 48 hours prior to the hearing. \$200 is payable to DeMars & Associates, Ltd. by any party causing an adjournment at or less than 48 hours before any scheduled hearing. The party shall also pay any reasonably incurred expenses of the arbitrator in connection with the scheduled hearing.

-End of document-