

A Guide To The Home Buyer/Home Seller Dispute Resolution System (DRS)

This pamphlet is provided to you to better help you understand arbitration. If you have any questions concerning content, you should contact the American Arbitration Association (AAA) or an attorney.



American Arbitration Association
Dispute Resolution Services Worldwide

INTRODUCTION

Each year in Michigan tens of thousands of real estate transactions take place. Occasionally disputes develop over these business transactions. The Home Buyer/Home Seller Dispute Resolution System responds to the need for an efficient, voluntary arbitration procedure to resolve these disputes privately, promptly and economically.

The American Arbitration Association and the Michigan Association of Realtors have developed these arbitration procedures to meet consumer and real estate agents' needs in resolving disputes. The rules specify procedures for selecting experienced arbitrators, including both those affiliated and non-affiliated with the real estate industry. A unique feature of the process is the specification that the hearing take place at the property in question.

WHAT IS THE AMERICAN ARBITRATION ASSOCIATION?

The American Arbitration Association (AAA) is a not-for-profit, public service organization which offers a broad range of dispute resolution services through offices located in major cities throughout the United States. In addition, through its headquarters in New York City, the AAA provides education and training, specialized publications, and research on all forms of dispute settlement. The office located in Southfield, Michigan serves the entire state of Michigan.

WHAT IS ARBITRATION AND THE DRS?

Arbitration is the submission of a dispute to one or more impartial persons for a final and binding decision. It is an informal process for persons with a dispute to present their case to a neutral third party who will decide the matter for them.

The Dispute Resolution System, or DRS, is a voluntary alternative to litigation and refers to the arbitration procedure used to resolve home buyer/home seller and realtor disputes.

WHO MAY USE ARBITRATION?

Any party who initialed the arbitration clause may participate, or any party who stipulates to the arbitration process may participate.

WHO BENEFITS?

Everyone who voluntarily agrees to use the DRS will benefit. Their disputes will be resolved:

Fairly, Economically, Quickly, Privately

WHAT KINDS OF DISPUTES MAY BE SUBMITTED?

All types of disputes relating to the physical condition of the property may be submitted, including defects in the home such as water leaks, furnace problems, plumbing, electrical, *etc.* Other disputes include fraud, misrepresentation and deposit refunds.

HOW LONG DO I HAVE TO FILE?

The rules do not specify a time period within which to file these claims. The law concerning the statute of limitations varies depending on the nature of the claim. Michigan law governs.

HOW LONG DOES THE PROCESS TAKE?

It is estimated the process will be resolved within three months from time of filing to resolution.

WHAT IS THE ROLE OF THE AAA AND WHAT DOES THE CASE ADMINISTRATOR DO?

The AAA functions as the administrator of the arbitration process. The Case Administrators arrange for the appointment of the arbitrator and the scheduling of the hearing. They also handle all communications between the parties and the arbitrator except at the actual hearing. The Case Administrator also ensures that all parties receive a copy of the arbitrator's award. The Case Administrator is available to answer general and procedural questions concerning the arbitration process.

THE AAA, AS AN ADMINISTRATIVE AGENCY, DOES NOT EVALUATE THE VALIDITY OF CLAIMS SUBMITTED FOR ARBITRATION.

WHO IS THE ARBITRATOR?

The arbitrator is the impartial decision-maker whose authority comes from the Home Buyer/Home Seller

Arbitration Rules, the Michigan Arbitration Law and the arbitration agreement. The arbitrator is not an employee of the AAA. The arbitrator will have experience in a field related to real estate, *e.g.* real estate agent/broker, an attorney or someone in the construction industry with experience relative to the nature of the dispute.

The only direct communication the parties will have with the arbitrator is at the hearing. **AT NO TIME** should the parties contact the arbitrator directly. All correspondence for the arbitrator should be submitted to the AAA who will then forward it to the arbitrator.

HOW MANY ARBITRATORS WILL THERE BE?

One arbitrator will be appointed to hear the case. The arbitrator is compensated \$125 for his or her services. This fee is inclusive in the filing fee.

DO I NEED AN ATTORNEY?

No. Although you may choose to be represented by an attorney, it is not a requirement.

HOW DO I INITIATE THE PROCESS?

The arbitration process begins when a party files a Demand for Arbitration with the American Arbitration Association, enclosing a copy of the Arbitration Agreement and a check for the appropriate filing fee as indicated in the rules.

HOW DO I COMPLETE THE DEMAND FOR ARBITRATION FORM?

1. Provide the complete name(s), address and daytime telephone number of each person whom you are filing against. If you are also filing against either or both of the real estate brokers, attach a separate sheet of paper and include the name(s) of the broker (the real estate company), the broker's address and telephone number.
2. Fill in the date of the Arbitration Agreement.
3. Complete the Nature of Dispute with the specific physical defects. Identify the issues.
4. Complete the Claim of Relief Sought. State what you are asking the arbitrator to award to you. Be as specific as possible. If there is more than one claim or several parts to a claim, itemize each claim.
5. Provide your name, address and home and work telephone numbers. Indicate the times you are available at each phone number.
6. Complete the attorney section only if an attorney will be representing you at the hearing.
7. After completing these steps, sign and date the Demand form.

WHAT DO I NEED TO FILE AN ARBITRATION?

1. Three (3) copies of the Demand for Arbitration or Submission form (type or write legibly).
2. Three (3) complete and readable copies of the Arbitration Agreement.
3. The appropriate administrative fee made payable to the American Arbitration Association (please consult Rule 41, Administrative Fee Schedule of the Rules).
4. Mail or deliver all of the above to the AAA at:
Suite 1600, One Towne Square
Southfield, Michigan 48076-3728.

HOW IS THE RESPONDENT NOTIFIED OF THE ARBITRATION?

Rule 2(a) of the Home Buyer/Home Seller Arbitration Rules states that the person who intends to file the arbitration must send a copy of the Demand form to the person(s) they are filing against. The claimant is responsible for supplying the respondent(s) correct and complete address.

If the respondent's address is not known at the time of the filing, the AAA will not proceed with the arbitration.

WHAT HAPPENS IF I RECEIVE A DEMAND FOR ARBITRATION?

That means that someone is filing a claim against you and you have been named as a respondent in a case. Rule 2 states that the respondent(s) may file an

answering statement with the AAA within 10 days after notice from the AAA.

CAN A RESPONDENT FILE A COUNTERCLAIM?

Yes. A counterclaim must be submitted in writing and should also include the appropriate administrative fee.

CAN A CLAIM BE CHANGED?

According to Rule 7, a change of claim must be submitted in writing and the opposing party will be given 7 days to respond. However, if the arbitrator(s) has been appointed, no new or different claim can be submitted without the arbitrator's consent.

If the change in claim raises the claim amount to the next level of the administrative fee schedule, the additional fee must be included.

WHEN WILL MY HEARING BE HELD?

A calendar form will be sent to each party. Each party crosses off days that are unavailable to them. The arbitrator will set the date and time of hearing.

WHERE WILL THE HEARING BE HELD?

Almost all cases are scheduled at the property in question. In rare instances, the hearing may be scheduled at another location as decided by the arbitrator or agreed upon by the parties. The Notice of Hearing will tell you the location, date and time of the hearing.

WHAT IF I CAN'T ATTEND THE HEARING?

1. If you cannot attend the hearing because you now live out of town, you can have someone else represent you, submit your case in writing prior to the hearing or participate by speaker phone at your expense.
2. If you cannot attend the hearing for other reasons, you may want to request a postponement. Contact the Case Administrator who will then contact the other parties and ask if they will agree to the postponement request. If all parties agree, the Case Administrator will notify the arbitrator and a new date will be scheduled. If all parties do not agree, the Case Administrator will contact the arbitrator and the arbitrator will decide whether or not the hearing will be postponed. A \$50 fee will be charged to the party causing the postponement.

WHAT HAPPENS IF I DO NOT ATTEND THE HEARING?

According to Rule 22, the hearing can go ahead without all parties in attendance. A party who does not attend the hearing may send evidence to the AAA at least one week before the hearing. The AAA will forward all such evidence to the arbitrator. An Award shall not be made solely on the default of a party.

MAY I HAVE WITNESSES ATTEND THE HEARING?

Yes. Witnesses may appear if you think their

testimony is important to your case or if they have evidence which is important. If you need to subpoena a witness, contact your Case Administrator and the forms will be sent to you. Fill out the form, in triplicate, and return them to the AAA. The Case Administrator will forward them to the arbitrator who will sign them and send them back to you. You are responsible to see that the subpoena is delivered to the witness. The subpoena may not be served on a Sunday or legal holiday.

WHAT SHOULD I BRING TO THE HEARING?

Bring all evidence, proofs and witnesses necessary to prove your case on the assigned date. Include items such as estimates, bills, receipts, canceled checks, pictures and letters (please see the Party Checklists on pages 15 and 16 of this booklet.)

Arbitrators base their decisions on evidence. It is the responsibility of each party to provide the arbitrator with sufficient evidence regarding each part of his/her claim.

HOW IS THE HEARING CONDUCTED?

An arbitration hearing is informal. Any hearing will be conducted according to Michigan law and will meet all basic requirements of due process. Each party is given a full opportunity to present their case. Witnesses also may be called by any party to give testimony. These witnesses may be cross-examined by the other side. The arbitrator will usually give a brief introductory statement, in which s/he will instruct the parties on how the hearing will be conducted. All persons who will be testifying may be

sworn in. Each party will be given time to tell his/her side of the story and ask questions of the other persons there.

The arbitrator can ask as many questions as he or she thinks are necessary to clarify the issues. After all parties have finished their presentations, each is offered the chance to make a closing statement. These statements serve to summarize their positions and to conclude the hearing.

Once everyone has testified and the parties have given the arbitrator all the evidence they want to submit, the arbitrator will close the hearings. After the arbitrator has closed the hearings, no new or different evidence will be accepted by the arbitrator.

SUGGESTIONS FOR APPEARING AT THE HEARING.

1. Be on time. It shows respect for yourself and others who will be attending the hearing.
2. Do not interrupt. You will be given time to tell your side of the story and to respond to the other person's testimony.
3. Do not make personal attacks against the opposing party. Do not use profanity.
4. Write down your questions. This is helpful when you are given time to cross examine a witness.
5. Be brief and to the point. Be prepared for

your appearance. Arrange and prepare your evidence so that it can be presented with your testimony and try to make a short, organized presentation of the facts. Make sure you bring the appropriate number of copies of any document you intend to offer as evidence (one copy for the arbitrator and one copy for each party).

WHAT IS A PARTY'S ROLE AT THE HEARING?

The arbitrator usually requests that each party give a brief description of his or her position and make a short statement about how he or she intends to prove the case.

After the opening statements, each party has an opportunity to tell his or her side of the story to the arbitrator. The home buyer will be permitted to show each claimed defect in the house to the arbitrator and to the respondent. This is the advantage of conducting the hearing on site.

WHEN WILL I GET THE ARBITRATOR'S DECISION?

The arbitrator will not make an award at the time of the hearing. After hearing all the evidence, the arbitrator will close the hearing. The arbitrator has 10 days to make his/her decision.

All parties will receive the arbitrator's written decision (award) by mail. The award is final and binding. The rules and the law require the arbitrator to make his/her award in writing. Neither the rules nor the law require the arbitrator to provide reasons for the decision. The arbitrator, however, may provide his/her findings in summary form.

HOW ARE THE PARTIES NOTIFIED ABOUT THE ARBITRATOR'S DECISION?

The arbitrator's decision is called the award. It will be mailed to each party by the Case Administrator within ten days after completion of the hearing.

The award will contain a decision on each claim presented by the parties.

HOW AND WHEN DOES THE AWARD GET PAID?

The award payment is made directly to the person to be paid, as stated in the award.

Since the parties have agreed to use arbitration to resolve their dispute, they have agreed to abide by the arbitrator's decision. Once you receive the award, contact the other party, by phone or by mail, to arrange for payment.

IS THE AWARD LEGALLY BINDING ON BOTH PARTIES?

Yes. The award is binding upon the parties to the arbitration and can be enforced by the courts.

WILL THE AAA HELP ME COLLECT OR PAY AN AWARD?

The AAA is not a collection agency and cannot assist you in collecting or paying an award.

TO WHOM SHOULD A PARTY TURN IF THERE ARE PROBLEMS IN ENFORCING THE FINAL AWARD?

The AAA's function ends when it transmits the arbitrator's award to the parties. Subsequent inquiries regarding compliance should be made to the other party.

If the losing party refuses to comply with the terms of the award, the winning party may take the award to court and have a judgment filed against the losing party.

WHAT IF A PARTY WON'T PAY?

If a party refuses to pay the award, the court system may be used to enforce the award. For further information concerning this process, contact the district court in the county where the hearing was held.

MAY I APPEAL THE DECISION IN MY CASE?

An arbitrator's award is final and binding. There is no appeal process to an award through the American Arbitration Association. There are limited appeal rights through the court system which are outlined in the Michigan Arbitration Law.

ADMINISTRATIVE FEE SCHEDULE

| Amount of Claim | Fee |
|------------------------|------------|
| \$1 to \$2,500 | \$350 |
| \$2,501 to \$10,000 | \$500 |
| \$10,001 to \$20,000 | \$750 |
| \$20,001 and up | \$1,000 |

The filing party is responsible for paying the administrative fee at the time the request for arbitration is submitted. This fee may be allocated in the final arbitral award, either on the arbitrator's own motion, or at the specific request of the filing party. The allocation of fees may be in any amount based on the arbitrator's determination of what is fair and appropriate.

Mileage out-of-pocket expenses of the arbitrator shall be borne by the parties equally.

Postponement Fees: \$50.00 is payable by a party causing a postponement of any scheduled hearing.

Refund Schedule: A refund of \$100, plus the arbitrator's compensation of \$150, will be made by the AAA if the matter is withdrawn or settled by the parties prior to the scheduling of the first hearing, except in cases where the filing fee is \$350. In this instance, only the arbitrator's compensation of \$150 will be refunded.

CLAIMANT'S CHECKLIST

Items on this list are for example purposes only. This checklist is not meant to cover all possible situations but is meant to provide a basis for preparation of a case in arbitration. A party may find some items are not applicable to his or her case. Similarly, a party may find that he or she needs to include other information in the preparation of his or her own case to prove his or her own position.

1. What is the Problem?
 - A. Photographs of the problem
 - B. Bills from repair personnel
 - C. Estimates from repair personnel
 - D. Reports from experts
 - E. Surveys
 - F. Test reports
2. What is the remedy (how much will it cost to repair the problem or how much was the market value diminished by the defect(s))?
 - A. Repair bills, estimates, bids or proposals
 - B. Canceled checks
 - C. Receipts
3. Why is the seller and/or real estate company responsible?
 - A. Proof a problem was concealed
 - B. Neighbors who will testify that the seller(s) experienced the same problems

- C. Records from City Hall showing a history of the same problem
- D. Report from an expert that the problem has existed for a long period of time
- E. Language in the Purchase Agreement that the seller(s) warranted the defect to be in working order

RESPONDENT'S CHECKLIST

1. Proof that the seller(s) never had a problem or corrected the problem.
 - A. Photographs of the property
 - B. Neighbors who will testify
 - C. Letter from the previous owner stating that he/she never experienced the problem
 - D. Receipts for work done
2. Proof that the seller(s) and/or the real estate company disclosed the problem or that the buyer(s) knew of the problem.
 - A. Real estate Transfer Disclosure Statement
 - B. Purchase Agreement
 - C. Truth-in-Housing Report
3. Proof that the buyer(s) caused the problem or it was caused by nature
 - A. Improvements (e.g., landscaping, building additions) done by the buyer(s)
 - B. Rainfall data for period in question (if roof or basement leaks are an issue)
 - C. Remodeling done by the buyer(s)

Glossary

Adjournment - to delay or suspend until a later time. Also called a postponement or continuance.

Answering Statement - a written response of the Respondent(s) stating their position in the dispute.

Appeal - a request for a new hearing after the award has been rendered.

Arbitration - the process by which parties to a dispute submit their differences to an impartial party for a decision.

Arbitrator - an impartial person chosen to decide an issue between parties involved in a dispute or controversy.

Arbitrator Strike List - a list of names of potential arbitrators from which the parties will mark their choice for arbitrator(s).

Award - the written decision of the arbitrator.

Broker - a company which acts through an agent for a buyer or seller in a real estate transaction.

Calendar Form - a form used for scheduling the hearing.

Case Administrator - an employee of the AAA who manages a dispute through the arbitration process.

Claim or Relief Sought - sum of money or specific performance requested by the Claimant.

Claimant - the person(s) making the claim.

Continuance - a postponement or adjournment to a future time.

Cross-Examine - to question a witness who has testified for another party.

Demand - formal claim.

Dispute - a disagreement between two or more parties.

Evidence - documents or verbal statements on which a decision can be based.

Expert Witness - a person with specialized knowledge in a subject.

Findings - the written reasons given for a decision.

Hearing - an opportunity for parties in a dispute to present facts and evidence for a decision.

Mediation - to settle a dispute with the help of a neutral third party.

Nature of Dispute - a written itemization of what the disagreement is about.

Notice of Hearing - the document which is sent to each party stating the location, date and time of the hearing.

Party - a person or group involved in a legal proceeding or disagreement.

Postponement - to delay until a future time.

Purchase Agreement - the written agreement between two or more parties to buy-sell a property.

Rationale - the reasons for a decision.

Settle - to reach an agreement.

Settlement - the verbal or written agreement of two or more parties to settle a dispute.

Subpoena - a legal writ requiring appearance at a hearing to give testimony.

Subpoena Duces Tecum - a legal writ requiring the release of specific documents in one's possession.

Testimony - verbal statement of truth or fact under oath.

Vacate - to void an award in all or part.

Witness - a person who has seen or heard something and is called upon to testify.

IF YOU DO NOT UNDERSTAND THESE PROCEDURES, CONTACT AN ATTORNEY.

THE CASE ADMINISTRATORS ARE TRAINED TO ASSIST YOU BUT THEY CANNOT GIVE LEGAL ADVICE.

WHERE CAN I GET MORE INFORMATION?

Your real estate agent has a dispute resolution kit or you may call or write:

American Arbitration Association
Suite 1600
One Towne Square
Southfield, MI 48076

(810) 352-5500 or FAX (810) 352-3147