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JANUARY 1, 2007

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## **HOME WARRANTY COMPANY** **ARBITRATION RULES AND PROCEDURES**

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**THESE HOME WARRANTY COMPANY ARBITRATION RULES AND PROCEDURES SHALL BE UTILIZED WHEN THE ARBITRATION IS A RESULT OF A DISPUTE INVOLVING A HOME WARRANTY COMPANY, BUILDER, SUBCONTRACTOR OR ANY OTHER PARTY WHO HAS A DIRECT INTEREST IN THE RESIDENCE THAT IS SUBJECT TO THE ARBITRATION PROCESS, THAT IS STIPULATED AS THE DISPUTE RESOLUTION PROCESS IN A HOME WARRANTY COMPANY POLICY OR RELATED DOCUMENT. THE RULES AND PROCEDURES SPECIFIED BELOW SHALL REPLACE THE STANDARD CDRS ARBITRATION RULES AND PROCEDURES. THE STANDARD CDRS ARBITRATION RULES AND PROCEDURES SHALL BE UTILIZED UNLESS THERE IS A CORRESPONDING RULE OR PROCEDURE SPECIFIED BELOW IN THESE RULES AND PROCEDURES.**

***THE HOME WARRANTY ARBITRATION RULE (WA) CORRESPONDS TO THE STANDARD CDRS ARBITRATION RULE (A).***

### **RULE-WA3 INITIATION OF ARBITRATION**

A party may initiate the arbitration process, as authorized by the warranty document, by fully executing a CDRS *Request for Dispute Resolution Services* and the required arbitration request form from their home warranty company and transmitting them to CDRS by US Mail, Fed-Ex or similar recognized delivery service, along with the required filing fee. The party requesting the arbitration shall be the "Claimant". The Claimant shall send a copy of the *Request for Dispute Resolution Services* and a copy of the warranty company arbitration request form to the warranty company and/or builder, as applicable, by certified or registered mail, return receipt requested. The Other party to the arbitration shall be referred to as the "Respondent".

### **RULE-WA8 APPOINTMENT OF ARBITRATOR**

There shall be one arbitrator, experienced in residential construction, assigned to the case by the CDRS administrator. The CDRS Administrator will consider the construction-related expertise of the arbitrator required to handle the arbitration, the location of the arbitrator and the fees of the arbitrator in selecting the arbitrator to handle the dispute. Neither the Claimant nor Respondent shall participate in the selection of the arbitrator.

### **RULE-WA9 ARBITRATOR DISCLOSURE AND DISQUALIFICATION**

- (a) If the arbitrator is dismissed, a new arbitrator shall be appointed according to RULE-WA8. (replaces RULE-A9(d))
  - (b) If an arbitrator becomes ill, resigns or is unable to continue with the arbitration, a new arbitrator shall be appointed according to RULE-WA8. (Replaces RULE-A9(e))
- (All other provisions of RULE-A9 shall remain in effect)

### **RULE-WA10 LOCATION OF ARBITRATION**

The arbitration shall be held at the residence of the claimant that is the subject residence of the arbitration that is covered by the warranty unless both the claimant and respondent agree to hold the arbitration at a different location.

### **RULE-WA11 DATE(S) OF ARBITRATION HEARING**

CDRS shall select and specify the date(s) of the arbitration hearing. CDRS shall make every effort to accommodate the requests of the parties as to a convenient date(s) to conduct the arbitration hearing with the concurrence of the arbitrator.

- (a) If additional time shall be required to complete the hearing, the arbitrator shall select and specify the additional date(s) for the continuance of the arbitration hearing. The arbitrator shall make every effort to accommodate the requests of the parties as to a convenient date(s) to conduct the continuance of the arbitration hearing.
- (b) By mutual consent of the parties and the arbitrator, any scheduled arbitration event may be rescheduled.
- (c) Upon a request by either of the parties, the CDRS case administrator and/or the arbitrator, if appointed, shall determine if there is good cause or compelling circumstances that would merit a postponement or cancellation of the arbitration proceeding. If the request for a postponement is approved by the case administrator and/or by the arbitrator, the case administrator and/or the arbitrator shall select and specify the rescheduled date(s) of the arbitration hearing. The arbitrator shall make every effort to accommodate the requests of the parties as to a convenient date(s) to conduct the rescheduled arbitration hearing.
- (d) If the CDRS case administrator or the arbitrator determines that a case needs to be postponed due to an illness or injury to one of the parties or the arbitrator, due to inclement weather, due to non-payment of fees due to CDRS, due to travel arrangement problems or due to any other reason where the case administrator or arbitrator decides that a postponement is necessary, the case administrator will notify the parties as soon as practicable as to the postponement and the date(s) of the rescheduled arbitration hearing. The case administrator and arbitrator shall make every effort to accommodate the requests of the parties as to a convenient date(s) to conduct the rescheduled arbitration hearing.

### **RULE-WA14 PRE-HEARING ARBITRATOR'S CONFERENCE**

If the arbitrator determines that it is necessary, a pre-hearing arbitrator's conference shall be held between the arbitrator(s) and all of the parties or their representatives to the arbitration prior to the arbitration hearing. The conference may be held in person or may be held by teleconference phone call at the discretion of the arbitrator(s). Items to be discussed shall include but not be limited to the following: claims and counterclaims, opening statements,

closing statements, witnesses, depositions, the issuance of subpoenas, rules and procedures to be followed during the hearing, dates and location for the hearing, arbitrator disclosure information, and other related items at the discretion of the arbitrator(s) or at the request of the parties. The arbitrator shall be empowered to schedule additional pre-hearing arbitrator conferences if deemed necessary by the arbitrator(s) or requested by one or more of the parties, with the approval of the arbitrator(s).

At the conclusion of the pre-hearing conference, the CDRS Administrator shall issue to the parties, an *Arbitration Pre-Hearing Order* specifying the particulars of the arbitration as agreed to by the parties or specified by the arbitrator during the pre-hearing conference.

#### **RULE-WA15 PARENT OR SUBSIDIARY INVOLVEMENT**

If a party to the arbitration is a subsidiary of a parent company, corporation or like entity, the parent organization may not be named as a party to the arbitration, even if the subsidiary is insolvent.

#### **RULE-WA16 PARTY REPRESENTATION**

A party to an arbitration may be represented by themselves, their attorney(s), or any individual(s) that the party designates to be their representative(s). The party must notify the CDRS case administrator, and the other named parties to the arbitration, if they are to have any other individual serve as their representative. The representative's name, address, phone number, fax number, e-mail and any pertinent information about the representative must be supplied in writing to the case administrator and to the other named parties to the arbitration, as soon as possible. Parties who choose to not represent themselves and/or will utilize the assistance of an attorney, must notify CDRS, and the other named parties to the arbitration, of the name, address, telephone number, fax number and e-mail address of the attorney at the time of submission of the *Request for Dispute Resolution Services*. If a decision to utilize the services of an attorney is made after the submission of the *Request for Dispute Resolution Services* has been filed with CDRS, the parties must notify CDRS, and the other named parties to the arbitration, of the attorney's information, as stipulated above, as soon as the decision has been made to utilize the services of an attorney.

#### **RULE-WA20 THE AWARD**

- (a) The arbitrator(s) shall consider evidence that he/she (they) finds relevant and material to the dispute, giving the evidence such weight as is appropriate. The arbitrator(s) may be guided in their determination of the award by the principles contained in the *Federal Rules of Evidence* or any other applicable rules of evidence. The decision of the arbitrator shall be based on the home warranty booklet that was in effect at the time of the Effective Date of the Warranty.

(All other information contained in Rule-A20 shall remain in effect.)

#### **RULE-WA26 FEES, COSTS AND EXPENSES**

All fees, costs and expenses of the arbitration should be specified and agreed upon in the *Agreement to Arbitrate* and in other CDRS or Home Warranty Company documents related to the arbitration.

- (a) The cost of the arbitration, as to which party is responsible to pay the costs of the arbitration, shall be as specified in the appropriate home warranty company document.

- (b) Prior to the arbitration award, any payments for the arbitration process shall be made according to the payment process as stipulated in the appropriate home warranty company document.
- (c) If specified and allowed in the appropriate home warranty company document, the arbitrator shall, as part of the arbitration award, stipulate and allocate as to which party is responsible to pay the costs related to the arbitration process. If allowed in the home warranty documents, the arbitrator may choose to have one party pay the entire cost of the arbitration process or may allocate a percentage of the costs to each of the parties.
- (d) A deposit shall be required in all arbitrations as specified in the *CDRS Agreement to Arbitrate* unless there is a written agreement specifying other payment procedures. Non-payment of the required deposit may necessitate the postponement or cancellation of the arbitration.
- (e) At the conclusion of the arbitration hearing, the parties will be invoiced for their applicable portion of the arbitration fees, costs and expenses. Failure to pay when due may delay the issuance of the certified copy of the arbitration award.
- (f) If the parties agree to hold the arbitration at a location other than at the residence and there is a need for a jobsite visit after the arbitration hearing has concluded, if the arbitrator requests post hearing briefs, or any other reason why the arbitration is not concluded at the end of the arbitration hearing, the parties will receive an invoice at the end of the arbitration hearing and another at the conclusion of the arbitration process after the arbitration award has been written and forwarded to CDRS. Failure to pay when due may delay the issuance of the certified copy of the arbitration award from CDRS.

### **RULE-WA30 OBSERVERS**

CDRS has the authority, with the approval of the arbitrator, to allow up to three CDRS ADR Specialists to attend all meetings or hearings as observers, for educational purposes only. These CDRS ADR Specialists will not participate or be involved with the arbitration in any way, unless the parties and the arbitrator mutually agree to allow the observer(s) to participate in the arbitration process.