



RESOLUTION SERVICES

SPECIALIZING IN MEDIATION & ARBITRATION & DISPUTE REVIEW BOARDS

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March 15, 2019

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HOME WARRANTY **ARBITRATION RULES AND PROCEDURES**

MARCH 15, 2019

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THESE HOME WARRANTY ARBITRATION RULES SHALL GOVERN ALL ARBITRAITONS FILED WITH CDRS AFTER MARCH 15, 2019

THESE HOME WARRANTY 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 POLICY, BOOKLET OR RELATED DOCUMENT. THE RULES AND PROCEDURES SPECIFIED BELOW SHALL REPLACE THE GENERAL CDRS ARBITRATION RULES AND PROCEDURES. THE GENERAL CDRS ARBITRATION RULES AND PROCEDURES SHALL BE UTILIZED UNLESS THERE IS A CORRESPONDING RULE OR PROCEDURE SPECIFIED BELOW IN THESE RULES AND PROCEDURES.

NOTE THAT THERE MAY BE ALTERNATE RULES AND PROCEDURES THAT MUST BE FOLLOWED IN CERTAIN STATES, SUCH AS IN NEW JERSEY. THE APPLICABLE RULES AND PROCEDURES WILL BE SPECIFIED BY THE CDRS CASE MANAGER PRIOR TO THE COMMENCEMENT OF THE ARBITRATION PROCESS.

IF THERE IS A CONFLICT BETWEEN THESE RULES AND PROCEDURES AND THE RULES AND PROCEDURES AS IS STATED IN THE HOME WARRANTY COMPANY WARRANTY BOOKLET, THE WARRANTY BOOKLET SHALL SUPERSEDE THESE RULES AND PROCEDURES.

THE HOME WARRANTY ARBITRATION RULE (WA) CORRESPONDS TO THE CDRS GENERAL ABITRATION RULES AND PROCEDURES (A RULES).

PLEASE KEEP IN MIND THAT THERE MAY BE SLIGHT ADMINISTRATIVE CHANGES TO THESE RULES AS NOT ALL HOME WARRANTY COMPANIES HANDLE THEIR ARBITRATION REQUESTS UTILIZING THE SAME ADMINISTRATIVE PROCEEDURES.

RULE-WA3 INITIATION OF ARBITRATION

A party may initiate the arbitration process, as authorized by the warranty documents, by fully executing a CDRS *Home Warranty Request for Dispute Resolution Services* and the required arbitration request form from their home warranty company and transmitting them to the Home Warranty Company as instructed by the Home Warranty Company by US Mail, Fed-Ex or similar recognized delivery service, along with the required filing fee made Payable to CDRS. Note that for certain approved Home Warranty Companies, there may be no paperwork required to be filled out for CDRS, only the paperwork required by the Home Warranty Company. 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 or as instructed by the Home Warranty Company. The Other party to the arbitration shall be referred to as the "Respondent"

RULE-WA5 CLAIMS AND COUNTERCLAIMS

Only the claims filed by the Claimant through the Home Warranty Company will be addressed by the arbitration process. The Claimant must specify the claim and the applicable section of the warranty booklet at the time of filing for arbitration.

- (a) The initial filing of claims during the applicable filing period does not extend the coverage period as specified by the Home Warranty Company to file new claims.
- (b) Should a homeowner wish to add new claims at the arbitration hearing, they may be added only if the date of the arbitration hearing is within the coverage period as specified in the home warranty booklet and with the agreement of both parties and the arbitrator.
- (c) The claims of a compliance arbitration must directly relate to a prior issued arbitration award. No new claims may be submitted.
- (d) Should there exist a "Certificate of Participation", "Certificate of Warranty Coverage", "Application for enrollment" or any other document that specifies the sale price of the home that is utilized for the purchase of the warranty and there exists change orders or other documents adding to the sale price of the home after the Warranty has been obtained by the builder, claims related to the additional items above the sale price of the home shall not be considered as the warranty coverage was obtained only for the amount established at the time of purchase of the warranty.

RULE-WA8 APPOINTMENT OF ARBITRATOR

There shall be one arbitrator assigned to the case by the CDRS Senior Case Administrator. The CDRS Senior Case 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 or their representatives or attorneys shall participate in the selection of the arbitrator although CDRS will try to accommodate a specific request for an arbitrator if that arbitrator is mutually agreed to by the parties and is available to conduct the arbitration.

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. Should an alternate location be selected to hold the arbitration hearing, the arbitrator may request a jobsite visit prior to or subsequent to the arbitration hearing.

- (a) The arbitrator shall determine all details concerning a documents only arbitration.

RULE-WA11 DATE(S) AND COMMENCEMENT TIME OF ARBITRATION HEARING

CDRS shall select and specify the date(s) and commencement time of the arbitration hearing. CDRS shall make every effort to accommodate the requests of the parties as to a convenient date(s) and time 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) The arbitration hearing must be held within one year from the date the case was received and recorded by CDRS unless there is good cause for a postponement, to be determined by the arbitrator. CDRS shall establish the date the case was received. The one year period may be put on hold and recommenced by the CDRS case administrator should the parties agree to attempt to settle their dispute through mediation or other approved settlement process by CDRS. Should an arbitration hearing not be held within one year of the date of filing for arbitration with CDRS, unless a continuance has been granted by the arbitrator as per WA11 (a) – (c) above, the case will be considered closed by CDRS.
- (e) 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.

- (f) Should a compliance arbitration, method of repair arbitration, determination of costs arbitration, etc., be requested subsequent to the previous arbitration hearing, the one year requirements mentioned above shall be in effect. The CDRS Senior Case Manager and/or arbitrator may modify the one-year rule as they deem to be appropriate.

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 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. 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 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 or requested by one or more of the parties, with the approval of the arbitrator. 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 as specified by the arbitrator during the pre-hearing conference.

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 *Home Warranty Request for Dispute Resolution Services*. If a decision to utilize the services of an attorney is made after the submission of the *Home Warranty 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 attorneys information, as stipulated above, as soon as the decision has been made to utilize the services of an attorney.

RULE-WA20 THE AWARD

- (e) The arbitrator shall render an Arbitration Award in which one party completely prevails over the other party should the facts so warrant. The arbitrator may choose to make a final Arbitration Award that represents a compromise between the parties if the facts and evidence so warrant. All covered warranty claims shall be addressed by the builder within 60 days of the issuance of the

Arbitration Award by CDRS unless otherwise stated in the Arbitration Award. Any monies owed to either party shall be paid by the other party 30 days from the date that the Arbitration Award is issued by CDRS unless otherwise stated in the Arbitration Award.

- (f) Should the repair of any covered claim require the moving, removal or handling of any personal property, etc., of the homeowner such as a table and chairs, hutch, sideboard, buffet, bed, dresser, bookcase or any other furniture. or rugs, etc., the handling of the personal property of the homeowner shall be the responsibility of the homeowner. The homeowner shall also bear the responsibility of replacing their personal items subsequent to the repair being completed by the builder.

RULE-WA26 FEES, COSTS AND EXPENSES

All fees, costs and expenses of the arbitration should be specified in the CDRS or Home Warranty Company documents related to the arbitration. If there is no formal document specifying the fees and costs of the arbitration process, the CDRS case administrator will specify the fees and costs as is appropriate.

- (a) The cost of the arbitration, as to which party is responsible to pay the initial costs of the arbitration, should be as specified in the appropriate home warranty company document.
- (b) There shall be a \$350.00 (\$600.00 in California and Maryland) non-refundable case filing fee that is payable to CDRS and should be forwarded to CDRS along with the CDRS Home Warranty Request for Arbitration Services.
- (c) The CDRS Arbitration Fee for the arbitrator shall be \$600.00 for up to the first two hours of the arbitrator's time. Each additional hour shall be billed according to the arbitrator's personal fee schedule. Administrative time by CDRS will be covered in the fees of the arbitrator unless there is administrative time spent by CDRS prior to any time spent by the arbitrator on the case should the case be cancelled. This \$600.00 arbitration fee that covers up to two hours of arbitrator time is due to CDRS along with the Home Warranty Request for Arbitration Services or shortly thereafter as specified by the CDRS case administrator. Note that these fees may be collected by a Home Warranty Company in any manner that they deem appropriate.
- (d) 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 or as otherwise specified by CDRS.
- (e) 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 before or 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 appropriate 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.
- (f) At the conclusion of the arbitration hearing, the parties will be invoiced for their applicable portion of any extra arbitrator fees above the allowed two hours of arbitrator time. Failure to pay when due may delay the issuance of the arbitration award.

- (g) 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. The arbitrator may allocate the costs of the CDRS arbitration process to the parties as he/she deems it to be appropriate.
- (h) Should the arbitration process be cancelled after the case has been filed with CDRS, prior to the arbitration hearing, the CDRS case filing fee is non-refundable and at least one hour of arbitrator time shall be non-refundable should the arbitrator have been involved in any manner related to this case which may include the arbitrator reviewing the case information, doing a conflicts check, providing arbitration hearing dates, etc. Should the arbitrator have expended in excess of one hour of time related to the case, there will be no refund of the pre-paid two-hour arbitrator's fees. Should the CDRS case administrator have expended in excess of the standard hours required for a home warranty arbitration, CDRS shall invoice the parties as is appropriate for the excess administrative time expended by CDRS.
- (a) Should a clarification of an award be requested, the fee for the clarification shall be the standard arbitrator's hourly fee unless there is another fee as specified in an agreement between the parties and CDRS which shall be payable to CDRS prior to the clarification being issued by CDRS.. .
- (b) RULE-A26 of the CDRS General Arbitration Rules and Procedures shall be in effect except as stipulated in RULE-WA26 herein.