



RESOLUTION SERVICES

CONSTRUCTION DISPUTE RESOLUTION SERVICES, LLC

SPECIALIZING IN MEDIATION & ARBITRATION & DISPUTE REVIEW BOARDS

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March 15, 2021

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

MARCH 15, 2021

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***THESE HOME WARRANTY ARBITRATION RULES SHALL GOVERN ALL ARBITRAITONS FILED WITH CDRS BY A HOME WARRANTY COMPANY AFTER MARCH 15, 2021***

THESE HOME WARRANTY ARBITRATION RULES AND PROCEDURES SHALL BE UTILIZED WHEN THE ARBITRATION IS A RESULT OF A DISPUTE INVOLVING A HOME WARRANTY COMPANY OR BEING ADMINSTRATED BY A HOME WARRANTY COMPANY. THESE RULES AND PROCEDURES 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 HOME WARRANTY ARBITRATION RULES AND PROCEDURES.

NOTE THAT THERE MAY BE ALTERNATE RULES AND PROCEDURES THAT MUST BE FOLLOWED IN CERTAIN STATES, SUCH AS IN NEW JERSEY, MARYLAND, CALIFORNIA, ETC.

**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.

CDRS MAY MODIFY OR CHANGE THESE RULES AFTER THEY HAVE BEEN POSTED TO THE CDRS WEBSITE WITHOUT PHYSICALLY CHANGING THESE RULES.

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

- (a) A party may initiate the standard home warranty arbitration process, as authorized by the warranty documents, by fully executing the required arbitration request form(s) from their home warranty company in a timely manner as specified by the Home Warranty Company and transmitting the required form(s) 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 arbitration fee made payable to CDRS or as specified by the Home Warranty Company. The party requesting the arbitration shall be the "Claimant". The Other party to the arbitration shall be referred to as the "Respondent". CDRS receives all home warranty arbitration requests from the Home Warranty Company. Parties may not directly file for home warranty arbitration with CDRS.
- (b) A party may file for arbitration according to the time limits specified by the warranty company. Should the warranty company not specify a time limit to file for arbitration subsequent to the expiration of the applicable warranty period, a request for arbitration must be submitted to the warranty company no later than 90 days after the applicable warranty period has expired.
- (c) Should a party, the Home Warranty Company, or CDRS notice that a homeowner has filed their "Request for Arbitration" form outside of or subsequent to the allowable period to file for arbitration as specified in the applicable warranty booklet or as specified in section WA3(b), CDRS may set up a "documents only" arbitration to first determine the timeliness of the filing for arbitration prior to scheduling the arbitration hearing to address the construction defects claims of the homeowner. The arbitrator will issue an arbitration award, ruling or opinion based on the document submissions of the parties and information from the Home Warranty Company related to the timeliness of the filing for arbitration as specified in the Home Warranty Booklet. The arbitrator will either decide to terminate the case or to allow the construction defects arbitration to proceed.
- (d) A party may request a "Compliance Arbitration" according to the terms and conditions of the warranty company. Should the warranty company not specify a time period to file for a request for compliance arbitration with the Home Warranty Company, the homeowner can file for compliance arbitration with the Home Warranty Company in a timely manner no later than 90 days subsequent to the expiration of the period of time that was specified in the previous arbitration award or signed Agreement between the parties for the builder to properly address the covered claims in the previous arbitration award.
- (e) Should a party to the arbitration determine that they need to file a "Method of Addressing The Covered Items or Cost Settlement" or a "Quality of Corrective Action" arbitration as specified on the CDRS website in the "Home Warranty Arbitration Procedures" section, the CDRS case manager shall specify the process to be followed along with the applicable fees required.
- (f) Should the parties request that other than home warranty claims such as breach of contract, negligence, fraud, liability, not following plans, etc. should be settled through arbitration to be addressed in the same arbitration hearing as the home warranty arbitration, a consolidated arbitration can be requested which will require a separate CDRS Request for Arbitration Services along with the applicable additional fees. The request for a consolidated arbitration should be made directly to CDRS as the non-warranty claims of the consolidated arbitration do not relate to the warranty program. The arbitrator for a consolidated arbitration shall issue two arbitration awards; one that addresses the warranty claims and a separate arbitration award that

relates only to the non-warranty claims. Should the parties request arbitration for non-warranty claims that will not be handled as part of the Home Warranty arbitration hearing, the parties will need to file the standard CDRS arbitration forms and pay the fees required for a standard arbitration hearing.

#### **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 prior to or at the arbitration hearing, they may be added only if the date of the arbitration hearing is within the coverage period or within the allowable time to file for arbitration as specified in the home warranty booklet. Those new claims should be submitted to the Home Warranty Company who will forward those claims to CDRS. Both parties and the arbitrator must agree to add those new claims.
- (c) The claims of a compliance arbitration must directly relate to the covered claims of a prior issued arbitration award or written agreement between the parties as allowed by the Home Warranty Company. No new claims may be submitted unless it is within the allowable time period to file claims as specified in the Home Warranty Company booklet.
- (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, 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. A Home Warranty Company may authorize that the arbitration process address additional claims for workmanship above the contracted for price when the warranty was obtained.

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

There shall be one arbitrator assigned to the case by the CDRS case manager. The CDRS case manager 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 and appointing 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 prior to filing for arbitration, agreeable to the CDRS case manager and is available to conduct the arbitration. If applicable, there may be additional arbitrator fees required by the specified arbitrator requested.

- (a) The CDRS case manager may find it necessary to appoint a different arbitrator during the arbitration process.
- (b) If a consolidated arbitration is requested, the CDRS case manager may allow the parties to participate in the selection of the arbitrator.

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

- (a) CDRS will confirm with the arbitrator that they have no conflicts with any of the parties or their representatives or attorneys prior to appointing the arbitrator.
- (b) Although it is not mandatory, the parties will be requested to notify CDRS and the opposing party of who they might have attend the arbitration hearing prior to the hearing.
- (c) If the arbitrator is dismissed, a new arbitrator shall be appointed according to RULE-WA8. (replaces RULE-A9(d))
- (d) If an arbitrator becomes ill, resigns or is unable to continue with the arbitration, a new arbitrator shall be appointed according to RULE-WA8.

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

The arbitration hearing 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. .

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

CDRS and the appointed arbitrator 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) The CDRS case manager or the arbitrator shall determine if the scheduling of the arbitration hearing should be delayed due to good cause such as conditions created by a medical condition of one of the parties, a family matter, a scheduled vacation, the unavailability of a party or prime expert or witness, a pandemic, etc.
- (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 manager 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 manager and/or by the arbitrator, the case manager 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 by CDRS unless there is good cause for a postponement beyond the one year period, to be determined by the arbitrator or CDRS case manager. CDRS shall establish the date the case was received. The one year period may be put on hold and recommenced by the CDRS case manager should the parties agree to attempt to settle their dispute through mediation or other approved settlement process. Should an arbitration hearing not be held within one year of the date of filing for arbitration with CDRS, unless a delay or continuance has been granted by the arbitrator as per WA11 (a) – (c) above, the case will be considered closed by CDRS.

- (e) After the arbitration process has been commenced, if the CDRS case manager 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 manager or arbitrator decides that a postponement is necessary, the CDRS case manager will notify the parties as soon as practicable as to the postponement and the date(s) of the rescheduled arbitration hearing. The CDRS case manager 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) 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.
- (g) Should a compliance arbitration, method of repair arbitration, determination of costs arbitration, etc., be requested subsequent to the conclusion of the previous arbitration hearing, the one year requirements mentioned above shall be in effect from the date of the filing for the new arbitration hearing. The CDRS case manager and/or arbitrator may modify the one-year rule as they deem to be appropriate.

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

If the arbitrator or CDRS case manager determines that it is necessary or if a request is submitted to CDRS by either party, 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 or other method of call, such as Zoom, at the discretion of the arbitrator. An Administrator's conference with the CDRS case manager can be arranged between the parties and the case manager if requested by either party. 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, if applicable, the CDRS case manager 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.

#### **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 manager, 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 CDRS case manager 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, and e-mail address of the attorney at the time of submission of the request for arbitration to the Home Warranty Company. If a decision to utilize the services of an attorney is made after the submission of the request for arbitration has been filed with CDRS, the parties must notify CDRS, the Home Warranty Company, 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.

- (a) CDRS will send all emails only to the attorney representing a party unless CDRS receives a request from the attorney requesting additional parties to be copied.

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

- (a) 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 no later than 60 days from the date that the Arbitration Award is issued by CDRS unless otherwise stated in the Arbitration Award.
- (b) 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 removal and replacement of the personal property of the homeowner shall be the responsibility of the homeowner.
- (c) Should the homeowner purchase and have installed any materials such as tile, flooring, lighting, or other items that are purchased by the homeowner that are not included in the purchase price of the home related to obtaining the warranty, should the repair of any covered claim require the removal and re-installing of the items purchased by the homeowner, the homeowner shall have the responsibility to remove and replace those items prior to the covered claims being addressed by the builder or the Home Warranty Company as appropriate unless the warranty and/or local or state laws require the builder or Home Warranty Company to remove and replace these items..
- (d) For a compliance arbitration, the arbitrator shall issue the award specifying the compliance award options as specified in the home warranty booklet or as the arbitrator deems to be appropriate.

#### **RULE-WA24 CORRECTION, MODIFICATION OR CLARIFICATION OF THE AWARD**

In addition to the correction and/or modification of the award as addressed by CDRS General Arbitration Rule A-24, for home warranty cases only, CDRS will allow for the following clarification or additional reasoning of the arbitration award.

- (a) Should a party or the Home Warranty Company request a further explanation of the reasoning of how the arbitrator rendered his/her award, a request for clarification or additional reasoning can be submitted to CDRS within 60 days of the issuance of the arbitration award from CDRS. The CDRS case manager will determine the fees to be paid to CDRS depending on the complexity of the request.
- (b) The request must be filed by the requesting party with the Home Warranty Company who will forward the request to CDRS.

- (c) The CDRS case manager shall determine if the request shall be honored. .
- (d) The response of the arbitrator to the request shall be final. There can be no additional request for further clarification or reasoning.

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

- (a) 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. RULE-A26 of the CDRS General Arbitration Rules and Procedures shall be in effect except as stipulated in RULE-WA26 herein.
- (b) The cost of the arbitration, as to which party(s) is responsible to pay the initial costs of the arbitration, should be as specified in the appropriate home warranty company document or as specified by state law, regulation, act, etc. If the warranty documents do not specify which party is responsible for the initial costs of the arbitration, the costs shall be equally shared by the parties.
- (c) There shall be a \$450.00 (\$600.00 in California and Maryland) non-refundable case filing fee that is payable to CDRS.
- (d) The CDRS minimum non-refundable arbitration fee for the arbitrator shall be \$600.00 for up to the first two hours of the arbitrator's time. Each additional hour expended by the arbitrator shall be billed at the rate of \$300.00/hour. This \$600.00 arbitration fee that covers up to two hours of arbitrator time and the CDRS case filing fee 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 and paid to CDRS in any manner that they deem appropriate and as agreed to by CDRS. Arbitrator time includes travel time to and from the arbitration hearing in excess of 45 minutes each way, time expended on the telephone reviewing the case with CDRS, reviewing the documents and paperwork submitted by the Home Warranty Company, submittals by the parties, reviewing the applicable warranty booklet related to the claims, conducting the hearing, reviewing post-arbitration submissions (if applicable), writing the arbitration award, and any other time expended by the arbitrator related to the case. Travel time is billable at \$150.00/hour. Other reimbursable direct out of pocket expenses are specified in the "Fees and Costs" section of the CDRS website.
- (e) If there is any claim that can't be addressed by the arbitrator at the time of the arbitration hearing such as a heating claim or air conditioning claim that will need to be addressed in the next heating or cooling season, there will be an additional \$450.00 fee due to CDRS payable in advance by the party responsible for the payment, prior to CDRS scheduling the arbitrator to revisit the homeowner's residence.
- (f) Should an arbitrator expend additional time beyond the two-hours covered by the minimum arbitration fee, CDRS will invoice the party(s) responsible for the additional fees as specified by the Home Warranty Companies which shall be due and payable to CDRS prior to the issuance of the arbitration award by CDRS. Should a party not make the requested additional fee within 90 days of the request from CDRS, the warranty company shall be responsible to make the payment to CDRS.



- (g) If the parties agree to hold the arbitration hearing at a location other than at the residence covered by the Home Warranty policy and there is a need for a jobsite visit before or after the arbitration hearing, 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 be invoiced 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 arbitration award from CDRS.
- (h) 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 CDRS 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 in accordance with the Home Warranty Booklet. Should the arbitrator not address the reimbursement of the parties for their expenses related to the arbitration process, the payments will remain as paid to CDRS by the parties or the home warranty company.
- (i) The fees for a clarification or additional reasoning of an arbitration award shall be determined by the CDRS case manager as specified in Rule WA24.
- (j) Should a party to the arbitration determine that they need to file a "Method of Addressing The Covered Items" or "Cost Settlement" or a "Quality of Corrective Action" arbitration as specified on the CDRS website in the "Home Warranty Arbitration Procedures" section, the CDRS case manager shall specify the applicable fees required.
- (k) Should an arbitration hearing be postponed or cancelled within 72 hours of a scheduled arbitration hearing, the party responsible for the cancellation shall pay a \$300.00 cancellation fee to CDRS unless the CDRS case manager determines that there is good cause for the postponement or cancellation of the arbitration hearing.