



12400 Coit Road, Suite 1230, Dallas, TX 75251
Toll Free 800-936-4303 • Facsimile 972-807-9919

National Center for Dispute Settlement Michigan Residential Real Property Arbitration Rules (Including Mobile Homes)

Adopted by National Center for Dispute Settlement and the Michigan Association of REALTORS®.

Effective July 1, 2009

1. *Agreement of Parties*

These rules have been adopted by National Center for Dispute Settlement (NCDS) and the Michigan Association of REALTORS® (MAR) to govern arbitration of disputes between seller(s), buyer(s) and licensees representing or assisting buyers and sellers arising out of or relating to the physical condition of the property covered by a purchase agreement executed by the parties. These rules shall apply whenever all parties have signed the Arbitration Disclosure and Residential Real Property Arbitration Agreement (the "Agreement") as presented with the MAR Purchase Agreement or as otherwise agreed to by all parties. For purposes of these rules, "All parties" include the buyer(s), seller(s), licensee representing or assisting the seller(s) and licensee representing or assisting the buyer(s). These rules shall be applied as set forth in the Agreement. They apply to the extent that they are not inconsistent with applicable statutes or the Agreement of the parties. The parties shall be deemed to have agreed to these rules in the form in effect when the request for arbitration is received by NCDS and shall be acknowledged and confirmed by the parties in the NCDS process.

2. *Initiation of Proceedings*

- a. Arbitration is initiated by the filing of a Demand for Arbitration or Submission Agreement with NCDS in accordance with the Agreement of the parties. The initiating party shall:
 - i. Prepare a written notice to the other party of its intention to arbitrate ("Demand"), which notice shall contain a statement setting forth the nature of the dispute, the amount involved (if any) and the remedy sought; and;
 - ii. File four (4) copies of the Demand, together with two (2) copies of the complete Purchase Agreement, two (2) copies of the Arbitration Disclosure and Residential Real Property Arbitration Agreement and the appropriate administrative fee as provided in the Administrative Fee Schedule. These documents must be filed by mailing to NCDS at 12400 Coit Road, Suite 1230, Dallas, TX 75251. Any request for arbitration must be filed within the time stated in the Agreement.
- b. When arbitration is initiated by a Submission Agreement, the Provisions of 2.a.ii shall apply except that no Demand is required.

- c. NCDS shall serve a copy of the Demand upon all of the respondents named.
- d. After initiation of the proceeding and filing of any reply documents, if any party desires to make any new or different claim or add a party who has signed the Agreement such claim shall be made in writing and filed with NCDS in accordance with Section 2.a hereof. The party or parties against whom the claim is asserted shall have a period of seven (7) days from the date of mailing by NCDS within which to file an answer with NCDS. Within fourteen (14) days prior to the arbitration hearing, no new or different claim may be submitted without the written agreement of all parties and the arbitrator. With the Demand for Arbitration or Submission Agreement or any reply document or counterclaim, any party may elect, in writing, to have the case heard by three (3) arbitrators.
- e. The party initiating arbitration may select a hearing by a single, NCDS designated arbitrator based upon the submission of documents only. The provisions of these rules shall apply only to the extent they are consistent with that process.

3. *Appointment of Arbitrator*

National Center for Dispute Settlement shall appoint arbitrators from its panel of persons knowledgeable in residential construction.

- a. The dispute shall be heard and determined by one arbitrator, except as provided in Section 3.b. The arbitrator shall be appointed in the following manner: Immediately after the filing of the demand or submission, NCDS shall submit simultaneously to each party to the dispute an identical list containing an odd number of names of persons chosen from the panel. The number shall be determined by the number of parties to the dispute and shall include one more name than the number of parties. Each party to the dispute shall have ten (10) days from the mailing date in which to strike one name, number the remaining names to indicate the order of preference, and return the list to NCDS. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable to that party. From among the persons who have been approved on all lists, and in accordance with the designated order of mutual preference, NCDS shall invite the acceptance of an arbitrator to serve. If acceptable arbitrators are unable or unwilling to act, for any reason, NCDS shall submit simultaneously another identical list of names of persons chosen from the panel allowing the parties an additional seven (7) days from the second mailing date in which to strike one name, number the remaining names to indicate the order of preference and return the list to NCDS. If the parties fail to agree to any of the persons named or if acceptable arbitrators are unable or unwilling to act, for any reason, after the second selection process, NCDS shall have the power to make the appointment from among other members of the panel without the submission of any additional list.
- b. At the written request of any party to the dispute as set forth in Section 2.d and upon payment of the additional fee by the requesting party, a panel of three arbitrators will be appointed to decide the dispute. NCDS shall increase the number of persons on the list submitted, as described above. All other provisions remain the same as set forth above.

4. *Qualifications of an Arbitrator*

No person shall serve as an arbitrator in any arbitration in which that person has any financial or personal interest in the result of the arbitration. A person appointed as arbitrator shall disclose to NCDs any fact or circumstance likely to affect impartiality, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their counsel. Upon receipt of such information from the arbitrator or other source, NCDS shall communicate the information to the parties and, if it deems appropriate to do so, to the arbitrator. Any party to the arbitration that has a factual objection to the service of any arbitrator shall notify NCDS as promptly as possible. NCDS shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

5. *Vacancy*

In the event of a vacancy of an appointed arbitrator occurs or if an appointed arbitrator is unable to serve promptly, NCDS shall submit another list of names of persons chosen from the panel allowing the parties an additional seven (7) days from that mailing date in which to strike one name, number the remaining names to indicate the order of preference and return the list to NCDS. If the parties fail to agree to any of the persons named after that selection process, NCDS shall have the power to make the appointment from among other members of the panel without the submission of any additional list. The arbitrator shall be subject to disqualification for the reasons specified in Section 4.

6. *Time and Place of Hearing*

NCDS shall submit a 90-day calendar to the parties allowing each party to strike the dates they are unavailable. Upon receiving the calendars from the parties, the arbitrator shall fix the date, time and location of the hearing, notice of which must be given to the parties at least fourteen (14) days in advance unless waived by the parties. The hearing will be held at the site of the residential real property, to better allow the arbitrator and the parties to consider the subject of the claim. Under compelling circumstances or if all parties agree, an alternate location may be utilized. In the event an alternative location is required, the hearing will be held at such other suitable place as the arbitrator may designate. If all parties agree, the Arbitrator may consider the case on submitted documents only or may conduct a hearing in which one or more parties participate by telephone.

7. *Representation*

Any party to the proceeding may attend the hearing or be represented at the hearing by another person. In the case of representation by an attorney, in the interest of fairness to all parties, the party retaining counsel or their attorney must advise NCDS and the other parties of the identity of their representative at least five (5) days prior to the date of the hearing. Failure to follow this rule with regard to notice may result in an adjournment of the scheduled hearing with any costs borne by the party failing to give timely notice.

8. *Attendance at Hearings*

All persons who are parties to the arbitration agreement, as well as representatives and witnesses, are entitled to attend hearings. The arbitrator shall determine whether any other person may attend the hearing.

9. *Postponements*

Hearings shall be postponed by the arbitrator only for good cause. All requests for postponements shall be communicated to the arbitrator through NCDS.

10. *Confidentiality and Record of the Hearing*

The proceedings are intended to be confidential. As an informal proceeding, there is no requirement that a stenographic record be taken of the hearing. Any party who wishes to, may make such a provision for a certified court stenographer at that party's own expense. A copy of the transcript must be provided to the arbitrator. The parties may make appropriate notes of the proceedings, but audio or video recording are strictly prohibited.

11. *Oaths*

The arbitrator(s) has discretion to require witnesses to testify under oath administered by any duly qualified person or, if required by law or demanded by either party, shall do so.

12. *Proceedings and Communication with Arbitrator*

The hearing shall be conducted by the arbitrator in any manner which will permit full and expeditious presentation of the case by both parties. Normally the hearing shall be completed in one day but the arbitrator may, for good cause, schedule an additional hearing, normally within five (5) days. A hearing shall be opened by the recording of the place, time and date of the hearing, the presence of the arbitrator(s) and parties, and counsel, if any, and by the receipt by the arbitrator(s) of the statement of the claim and answer, if any. The arbitrator(s) may, at the beginning of the hearing, ask for statements clarifying the issues involved. The complaining party shall then present its claim and proofs and its witnesses, who shall submit to questions or other examination. The arbitrator(s) has discretion to vary this procedure but shall afford full and equal opportunity to all parties for the presentation of any material and relevant proofs. Exhibits, when offered by either party, may be received in evidence by the arbitrator(s). The names and addresses of all witnesses and a list of exhibits in the order received shall be made a part of the record. There shall be no direct communications between the parties and the arbitrator other than at the hearing except when initiated by the arbitrator pursuant to Section 6 and limited to the time and place of the hearing. In addition, the parties agree to protect the arbitrator(s) from involuntary communications or testimony, other than the actual time and place of the hearing, in any other forum.

13. *Arbitration in the Absence of a Party*

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made solely on the absence of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

14. *Evidence*

The parties may offer such evidence as is relevant and material to the controversy and shall produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. An arbitrator authorized by law to subpoena witnesses or

documents may do so upon the request of any party or independently. The arbitrator shall be the judge of the admissibility of the evidence offered. Conformity to the formal legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of the parties, except as provided under Section 13 and Section 15. The expense of witnesses, expert witnesses or reports for either side shall be paid by the party producing such witnesses and reports.

15. *Evidence by Filing of Documents*

The arbitrator may receive and consider documentary evidence. Documents to be considered by the arbitrator may be submitted prior to the hearing or as directed by the arbitrator provided a copy is simultaneously transmitted to all other parties and to NCDS for transmittal to the arbitrator.

16. *Closing of Hearings*

The arbitrator shall ask whether the parties have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or when satisfied that the record is complete, the arbitrator shall declare the hearings closed.

17. *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 objections thereto in writing to NCDS shall be deemed to have waived the right to object.

18. *Right to Object*

Any party who becomes aware of a violation of these rules during the arbitration process may file a written request for an administrative review of the violation with NCDS, which shall investigate and take any necessary action to provide for the proper implementation of these rules. Such a request must be made as soon as practicable or the violation shall be deemed waived.

19. *Serving of Notice*

Each party shall be deemed to have consented that any papers, notices or process necessary or proper for the initiation or continuation of an arbitration under these rules or for any court action in connection therewith; or for the entry of judgment on any award made under these rules may be served on such parties by regular mail addressed to the party or its attorney at the last known address or by personal service, in or outside Michigan. The service requirements may be met by facsimile machine, telex, telegram or other written forms of electronic communication.

20. *Time of Award*

The award shall be rendered promptly by the arbitrator and, unless otherwise agreed by the parties, not later than thirty (30) days from the date of the closing of the hearing.

21. *Scope of Award*

The arbitrator may make any award that is just and equitable within the scope of the contract. The arbitrator, in the award, may allocate or assess the arbitration fees and expenses against any party. In the event that any administration fees or expenses are due to NCDS, the arbitrator may provide for payment to NCDS in the Award. Each party shall bear its own attorney's fees.

22. *Form of Award*

The award shall be in writing and shall be signed by the arbitrator. It shall be executed in the manner required by law.

23. *Award upon Settlement*

If the parties settle their dispute during the course of the arbitration, the arbitrator(s), upon request of the parties, may set forth the terms of the agreed settlement in an award.

24. *Delivery of the Award to Parties/Collection of the Award*

Parties shall accept as legal delivery of the award, the placing of the award or a true copy thereof, in the mail addressed to a party or its attorney at the last known address, personal service of the award or the filing of the award in any other manner that may be permitted by law. NCDS can offer no direction on the collection of an arbitration award. Please consult legal counsel for information on how to enforce payment of an arbitration award.

25. *Modification and/or Clarification*

Within twenty (20) days of the date of mailing of the award, either party may request modification and/or clarification of the award. Application for modification and/or clarification must be sent to NCDS for transmittal to the arbitrator and all other parties along with the proper administrative fee. A Request for Modification and/or Clarification must set forth the specific portion or portions of the award which are subject to the request. The arbitrator is not empowered to redetermine the merits of any claim already decided, but may modify the Award to correct typographical errors or ministerial omissions or clarify the Award to eliminate internal inconsistencies or ambiguities. Written objections to modification and/or clarification must be delivered to NCDS for transmittal to the arbitrator and simultaneously sent to all parties within ten (10) days of the application. The arbitrator shall dispose of an application for modification and/or clarification within ten (10) days from receipt of an objection or the expiration of time to make objections, whichever is earlier.

26. *Application to Court and Exclusion of Liability*

- a. No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.
- b. Neither NCDS, MAR nor any arbitrator in a proceeding under these rules is a necessary party in judicial proceedings relating to the arbitration.
- c. NCDS shall, upon the written request of a party furnish to such party, at the party's expense, certified facsimiles of any papers in NCDS' possession that may be required in judicial proceedings relating to the arbitration.

- d. Unless the applicable law or the Agreement provides otherwise, the parties to these rules shall be deemed to have consented that judgment upon any arbitration award may be entered in any federal or state court having jurisdiction thereof.
- e. Neither NCDS, MAR nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.
- f. These rules are not intended to apply to commission disputes. Any commission disputes between real estate brokers or agents who are members of the Michigan Association of REALTORS® shall be resolved in the manner provided in Article 17 of the REALTORS® Code of Ethics.

27. *Interpretation and Application of Rules*

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. All other rules shall be interpreted and applied by NCDS, as administrator.

28. *Arbitration Fee Schedule*

See separate fee schedule.