

## Minnesota Residential Real Property Arbitration RULES

(Excluding Mobile Homes, Trailers, and Recreational Vehicles)

Adopted by the American Arbitration Association and the Minnesota Association of REALTORS..

As Amended and in Effect June 15, 1997 (Administrative Fee Schedule Amended July 1, 2003)

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## INTRODUCTION

Each year in Minnesota tens of thousands of real estate transactions take place. Occasionally disputes develop over these business transactions. The Residential Real Property Arbitration Rules have been prepared in response to an expressed need for an efficient voluntary arbitration procedure to resolve these disputes privately, promptly, and economically.

The American Arbitration Association and the Minnesota Association of REALTORS. have developed these arbitration procedures to meet the needs of consumers and real estate agents in resolving disputes. The rules contain specific procedures for the selection of arbitrators with appropriate expertise, including both those affiliated with the real estate industry and those who are not. Another feature is that the system is less formal than litigation. In addition, each arbitration is held at the property in question.

These features, as well as others contained in the rules, will assist parties in resolving disputes fairly and efficiently.

To Initiate the Arbitration of Disputes:

All parties must sign the arbitration agreement as presented with the purchase agreement:

THIS IS AN OPTIONAL, VOLUNTARY AGREEMENT. READ THE ARBITRATION DISCLOSURE ABOVE IN FULL BEFORE SIGNING.

## RESIDENTIAL REAL PROPERTY ARBITRATION AGREEMENT

For the property located at: \_\_\_\_\_, City of \_\_\_\_\_, County of \_\_\_\_\_, State of Minnesota.

Any dispute between the undersigned parties, or any of them, about or relating to the physical condition of the property covered by the purchase agreement dated \_\_\_\_\_, including claims of fraud, misrepresentation, warranty and negligence, shall be settled by binding arbitration. The American Arbitration Association shall be the arbitration service provider. The rules, then in effect, adopted by the American Arbitration Association and the Minnesota Association of REALTORS. shall govern the proceeding(s). This agreement shall survive the delivery of the deed or contract for deed in the purchase agreement. This agreement is only enforceable if all parties to the purchase agreement and brokers/agents have agreed to arbitrate as acknowledged by signatures below.

THE RESIDENTIAL REAL PROPERTY ARBITRATION AGREEMENT IS A LEGALLY BINDING CONTRACT BETWEEN BUYERS, SELLERS AND BROKERS/AGENTS. IF YOU DESIRE LEGAL ADVICE CONSULT A LAWYER.

## Residential Real Property Arbitration Rules

### 1. Agreement of Parties

These rules have been adopted by the American Arbitration Association (AAA) and the Minnesota Association of REALTORS. (MAR) to govern arbitration of disputes between seller(s), buyer(s), and agent(s) arising out of or relating to the physical condition of property covered by a purchase agreement executed by the parties. These rules shall also apply whenever the parties have agreed to arbitrate under them. They apply to the extent that they are not inconsistent with applicable statutes or with the agreement of the parties. The parties shall be deemed to have agreed to these rules in the form obtained at the time the arbitration is initiated.

### 2. Initiation of Arbitration Proceedings

The party seeking arbitration must first obtain a Request for Arbitration form from the AAA by calling (612) 332-6545.

Arbitration under an arbitration provision in a contract may be initiated in the following manner:

- a. The initiating party shall 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, the remedy sought, and
- b. Shall file at the Minneapolis office of the AAA, located at 700 Pillsbury Center, 200 South Sixth Street, Minneapolis, MN 55402-1092, four (4) copies of the Demand for Arbitration, together with two (2) copies of the complete Purchase Agreement, two (2) copies of the Arbitration Disclosure/Agreement form together with the appropriate administrative fee as provided in the Administrative Fee Schedule.

The AAA shall give notice of such filing to the other party. If they so desire, the party upon whom the Demand for Arbitration is made may file an Answering Statement in duplicate with the AAA in ten (10) days after notice from the AAA, in which event said party shall simultaneously send a copy of the answer to the other party. If no answer is filed within the stated time, it will be assumed that the claim is denied. Failure to file an answer shall not operate to delay the arbitration.

### 3. Appointment of Arbitrator

The dispute shall be heard by one arbitrator. At the request of a party as provided in Rule 4(b), or at the discretion of the AAA, a greater number of arbitrators may be appointed.

### 4. Number of Arbitrators

- a. The dispute shall be heard and determined by one arbitrator unless the AAA, in its discretion, directs that a greater number of arbitrators be appointed.
- b. At the request of any party to the dispute and upon payment of the additional fee by the requesting party, three arbitrators, at least one of whom shall be an attorney, will be appointed to decide the dispute. Each arbitrator shall be compensated as provided in Rule 39. Each party shall have ten (10) days from the date of notification, by the AAA, to request the additional arbitrators.

### 5. 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.

Prior to accepting an appointment, the prospective arbitrator shall disclose any circumstances likely to prevent a prompt hearing or to create a presumption of bias. Any party to the arbitration that has a factual objection to the service of any arbitrator shall notify the AAA of that objection, in writing, at the earliest opportunity. Upon receipt of such information the AAA shall immediately replace the arbitrator or communicate the information to the parties for their comments.

## 6. Appointment from Panel

- a. The arbitrator shall be appointed in the following manner: Immediately after the filing of the demand or submission, the AAA shall submit simultaneously to each party to the dispute an identical list of three (3) names of persons chosen from the panel. 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 the AAA. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an arbitrator to serve. If the parties fail to agree on any of the persons named, or if acceptable arbitrators are unable or unwilling to act, for any reason, the AAA shall have the power to make the appointment from among other members of the panel without the submission of any additional list. (In the event of multiparty arbitration, the AAA may increase the number of potential arbitrators and divide the strikes so as to afford an equal number of strikes to each adverse interest.)

In the event that a panel of three arbitrators is to hear a case, the AAA shall send simultaneously to each party to the dispute two lists of names of persons chosen from the panel. The first list, from which one arbitrator will be appointed, will contain names of arbitrators who are attorneys. The second list, from which two arbitrators will be appointed, will contain names of arbitrators who are non-attorneys.

## 7. Notice to Arbitrator(s) of Appointment

Notice of the appointment of the arbitrator(s) shall be mailed to the arbitrator(s) by the AAA, together with a copy of these rules, and the signed acceptance of the arbitrator shall be filed prior to the opening of the first hearing.

## 8. Administrator

When parties agree to arbitrate under these rules, they thereby constitute the AAA the administrator of the arbitration. The authority and the obligations of the administrator are prescribed in the agreement of the parties and in these rules.

## 9. Delegation of Duties

The duties of the AAA under these rules may be carried out through case managers or such other officers or committees as the AAA may direct.

## 10. Office of Tribunal

The general office of this Tribunal is the Minneapolis office of the AAA.

## 11. Change of Claim

After filing of the claim, if either party desires to make any new or different claim, such claim

shall be made in writing and filed with the AAA and a copy thereof shall be mailed to the other party, who shall have a period of seven (7) days from the date of such mailing within which to file an answer with the AAA. 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.

## 12. Initiation Under Submission

Parties to any existing dispute may commence an arbitration under these rules by filing at the Minneapolis office of the AAA two (2) copies of a written agreement to arbitrate under these rules (Submission), signed by the parties. It shall contain a statement of the matter in dispute, the amount of money involved, if any, and the remedy sought, together with the appropriate administrative fee.

## 13. Time and Place of Hearing

The hearing will be held at the home site whenever possible or at such other suitable place as the arbitrator(s) may designate. The arbitrator(s) shall fix the time of hearing, notice of which must be given to the parties at least fourteen (14) days in advance.

## 14. Vacancies

The AAA is authorized to appoint another arbitrator if a vacancy occurs or if an appointed arbitrator is unable to serve promptly.

## 15. Representation by Counsel

Any party may be represented by counsel. A party intending to be so represented shall notify the other party and the AAA, in writing, of the name and address of counsel at least five (5) business days prior to the date set for the hearing at which counsel is first to appear.

## 16. Record of Hearing

Any party wishing a stenographic record shall make such arrangements and shall notify the other parties of such arrangements in advance of the hearing. The requesting party or parties shall pay the cost of such record.

## 17. Attendance at Hearings

The arbitrator(s) shall maintain the privacy of the hearings unless the law provides to the contrary.

All persons having a direct interest in the arbitration as well as representatives are entitled to attend hearings. The arbitrator(s) shall have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness.

## 18. Adjournments

The arbitrator(s) may take adjournments upon the request of a party or upon the arbitrator's own initiative and shall take such adjournment when all of the parties agree thereto.

#### 19. Oaths

Before proceeding with the first hearing or with the examination of the file, each arbitrator may take an oath of office, and, if required by law, shall do so. 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.

#### 20. Order of Proceedings

A hearing shall be opened by the filing of the oath of the arbitrator(s) where required, and 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 or 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 exhibits in order received shall be made a part of the record.

#### 21. Arbitration in the Absence of a Party

The arbitration may proceed in the absence of any party which, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made solely on the default of a party. The arbitrator(s) shall require the party who is present to submit such supporting evidence as the arbitrator(s) may require for the making of an award.

#### 22. Evidence

The parties may offer such evidence as is relevant and material to the dispute and shall produce such additional evidence as the arbitrator(s) may deem necessary to an understanding and determination of the dispute. An arbitrator(s) may subpoena witnesses, documents or other evidence upon the request of any party, or independently.

The arbitrator(s) shall be the judge of the relevance and the materiality of the evidence offered. All evidence shall be taken in the presence of the arbitrator(s) and all of the parties, except where any of the parties is absent, in default or has waived the right to be present.

Upon application and good cause shown by any party, the arbitrator(s) may permit any discovery allowable under the Minnesota Rules of Civil Procedure for the District Courts.

### 23. Evidence of Affidavit and Filing of Documents

The arbitrator(s) may receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as the arbitrator(s) deems it entitled to after consideration of any objections made to its admission.

All documents not filed with the arbitrator(s) at the hearing, but arranged for at the hearing or subsequently by agreement of the parties, shall be filed with the AAA for transmission to the arbitrator(s). All parties shall be afforded an opportunity to examine such documents.

### 24. Applicable Law

These rules shall be subject to the Minnesota Arbitration Law, Chapter 572.

### 25. Inspection or Investigation

Whenever the arbitrator(s) deems it necessary to make an inspection in connection with the arbitration, the arbitrator(s) shall direct the AAA to advise the parties of such intention. The arbitrator(s) shall set the time and the AAA shall notify the parties thereof. Any party who so desires may be present at such inspection. In the event that one or both parties are not present at the inspection, the arbitrator(s) shall make an oral or written statement identifying the sites inspected to the parties and afford them an opportunity to comment.

### 26. Conservation of Property

The arbitrator(s) may issue such orders as may be deemed necessary to safeguard the property which is the subject matter of the arbitration without prejudice to the rights of the parties or to the final determination of the dispute.

### 27. Close of Hearing

The arbitrator(s) shall ask whether parties have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the arbitrator(s) shall declare the hearing closed.

### 28. 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 shall be deemed to have waived the right to object.

### 29. Serving of Notices

Any papers or process necessary or proper for the initiation or continuation of an arbitration under these rules may be served upon any party (a) by mail addressed to such party or its attorney at its last known address, (b) by personal service, or (c) by telephone followed by written

confirmation.

### 30. Time of Award

- a. The award shall be rendered promptly by the arbitrator and, unless otherwise agreed by the parties, not later than ten (10) business days from the date the hearing is closed.
- b. When three arbitrators hear a dispute, the award shall be rendered promptly but not later than thirty (30) days from the date the hearing is closed.

### 31. Form of Award

The award shall be in writing and shall be signed by the arbitrator(s).

### 32. Scope of Award

The arbitrator(s) may grant any remedy or relief which the arbitrator(s) deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance of a contract.

### 33. 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.

### 34. Delivery of Award to Parties

Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail by the AAA, addressed to such party at its last known address or to its attorney, or personal service of the award, or the filing of the award in any manner, which may be prescribed by law.

### 35. Release of Documents for Judicial Proceedings

The AAA shall, upon the written request of a party, furnish to such party, at the party's expense, certified facsimiles of any papers in the AAA's possession that may be required in judicial proceedings relating to the arbitration.

### 36. Expenses

The expenses of witnesses, expert witnesses, or reports for either side shall be paid by the party producing such witnesses or reports.

### 37. Interpretations and Application of Rules

The arbitrator(s) 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 the AAA, as administrator.

### 38. Limitation of Actions

Any request for arbitration must be filed within the time stated in the Arbitration Disclosure and Residential Real Property Arbitration agreement.

### 39. Administrative Fee Schedule

The administrative fees of the AAA are based on the amount of the claim or counterclaim. Arbitrator compensation is not included in this schedule. Arbitrators will receive compensation at a rate to be suggested by the AAA. Unless the parties agree otherwise, arbitrator compensation and administrative fees are subject to allocation by the arbitrator in the award.

An initial filing fee is payable in full by a filing party when a claim, counterclaim or additional claim is filed. A case service fee will be incurred for all cases that proceed to their first hearing. This fee will be payable in advance at the time that the first hearing is scheduled. This fee will be refunded at the conclusion of the case if no hearings have occurred. However, if the Association is not notified at least 24 hours before the time of the scheduled hearing, the case service fee will remain due and will not be refunded.

These fees will be billed in accordance with the following schedule:

Amount of Claim	Initial Filing Fee	Case Service Fee
Above \$0 to \$10,000	\$500	\$200
Above \$10,000 to \$75,000	\$750	\$300
Above \$75,000 to \$150,000	\$1,500	\$750
Above \$150,000 to \$300,000	\$2,750	\$1,250
Above \$300,000 to \$500,000	\$4,250	\$1,750
Above \$500,000 to \$1,000,000	\$6,000	\$2,500
Above \$1,000,000 to \$5,000,000	\$8,000	\$3,250
Above \$5,000,000 to \$10,000,000	\$10,000	\$4,000
Above \$10,000,000	*	*

Nonmonetary Claims**	\$3,250	\$1,250
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\*Contact your local AAA office for fees for claims in excess of \$10 million.

\*\* This fee is applicable only when a claim or counterclaim is not for a monetary amount. Where a monetary claim amount is not known, parties will be required to state a range of claims or be subject to the highest possible filing fee.

Fees are subject to increase if the amount of a claim or counterclaim is modified after the initial filing date. Fees are subject to decrease if the amount of a claim or counterclaim is modified before the first hearing.

The minimum fees for any case having three or more arbitrators are \$2,750 for the filing fee, plus a \$1,250 case service fee.

Parties on cases held in abeyance for one year by agreement, will be assessed an annual abeyance fee of \$300. If a party refuses to pay the assessed fee, the other party or parties may pay the entire fee on behalf of all parties, otherwise the matter will be closed.

#### Refund Schedule

The AAA offers a refund schedule on filing fees. For cases with claims up to \$75,000, a minimum filing fee of \$300 will not be refunded. For all other cases, a minimum fee of \$500 will not be refunded. Subject to the minimum fee requirements, refunds will be calculated as follows:

- \* 100% of the filing fee, above the minimum fee, will be refunded if the case is settled or withdrawn within five calendar days of filing.
- \* 50% of the filing fee, in any case with filing fees in excess of \$500, will be refunded if the case is settled or withdrawn between six and 30 calendar days of filing. Where the filing fee is \$500, the refund will be \$200.
- \* 25% of the filing fee will be refunded if the case is settled or withdrawn between 31 and 60 calendar days of filing.

No refund will be made once an arbitrator has been appointed (this includes one arbitrator on a three-arbitrator panel). No refunds will be granted on awarded cases.

Note: The date of receipt of the demand for arbitration with the AAA will be used to calculate refunds of filing fees for both claims and counterclaims.

#### 40. Applications to Court and Exclusions of Liability

- a. No judicial proceeding commenced by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's obligation to arbitrate.
- b. Neither the AAA nor any arbitrator in a proceeding under these rules is a necessary party in judicial proceedings relating to the arbitration.
- c. Parties to these rules shall be deemed to have consented that judgment on the arbitration award may be entered in any federal or state court having jurisdiction thereof.
- d. Neither the AAA, MAR, nor any arbitrator shall be liable to any party for any act or omission in connection conducted under these

rules.

- e. These rules are not intended to apply to commission disputes. Any commission disputes between Real Estate brokers or agents, who are members of the Minnesota Association of REALTORS, shall be resolved in the manner provided in Article 14 of the REALTORS. Code of Ethics.

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Rules, forms, procedures and guides are subject to periodic change and updating.