

# A Guide to Residential Real Property Arbitration

## *For Use in the State of Minnesota*

This pamphlet is provided solely for the purpose of helping potential parties to arbitration better understand the process endorsed by Minnesota REALTORS® and administered by National Center for Dispute Settlement ("NCDS"). If questions arise, contact legal counsel.

Adopted by the National Center for Dispute Settlement and the Minnesota REALTORS®.



Minnesota REALTORS®  
5750 Lincoln Drive  
Edina, MN 55436  
Phone: 952.935.8313 | [www.mnrealtor.com](http://www.mnrealtor.com)



National Center for Dispute Settlement  
12900 Hall Road, Suite 401  
Sterling Heights, MI 58313  
Phone: 866.727.8119 | [www.ncdsusa.org](http://www.ncdsusa.org)



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Minnesota REALTORS® endorses the Residential Real Property Arbitration program administered through the National Center for Dispute Settlement ("NCDS"). NCDS is a private, impartial organization that provides arbitration services. The following is an explanation of the program, how it works, and the pros and cons of utilizing arbitration. THIS EXPLANATION IS NOT LEGAL ADVICE. SHOULD YOU HAVE QUESTIONS ABOUT ARBITRATION, CONSULT WITH YOUR LEGAL COUNSEL.

### **Deciding if Arbitration is Right for You:**

#### **What is arbitration?**

Arbitration is dispute resolution process that is used as an alternative to the court system. Rather than suing the opposing party in a court of law, a complainant would file a demand for arbitration with NCDS, and an arbitrator would be assigned to the case. The arbitrator would oversee the procedural and substantive issues that arise and issue a decision that is binding upon all parties.

#### **What's the difference between arbitration and the courts for dispute resolution?**

Arbitration is typically less complex, less expensive, and faster; however, these are generalizations. Conciliation court can be more expeditious for claims under \$15,000 (the current limit) and be less expensive and complex even than arbitration. (That is why the Minnesota REALTORS® program excludes claims under the current Conciliation Court limit (\$15,000); see below for more information). Be sure to do your own comparison of costs (filing fees, attorneys fees, etc.) before deciding. An attorney can be useful in helping determine whether arbitration is right for you.

#### **Is there a minimum or a limit for the dollar amount of the Demand in an Arbitration?**

There is no limit to the amount that a claimant can make in a Demand; however, no Demand for less than \$15,000, or the current Conciliation Court limit in Minnesota, can be heard through the NCDS arbitration process. The Arbitration Agreement specifically excludes any claims that are less than the Conciliation Court limit because Conciliation Court is often even simpler and less expensive than arbitration in those cases.

#### **If I have a claim for \$2,500 against a seller who failed to disclose a problem, would this go through arbitration if I sign the Arbitration Agreement?**

No. Any claim for \$15,000 or less, or the current Conciliation Court limit, would be brought in Conciliation Court instead. Only claims more than \$15,000 could be submitted to arbitration through NCDS.

### **Can arbitration decisions be appealed?**

Typically, there is no right to appeal an arbitration decision in the same way that a decision from a district court can be appealed to a higher court. However, there are limited appeal rights related to certain procedural failures that might have denied a party a fair hearing, or other issues. Typically, decisions issued by arbitrators are final.

### **What is the scope of the disputes that could be resolved through the Minnesota REALTORS® arbitration program?**

The Minnesota REALTORS® program is solely related to the disclosure of material facts relating to the property that is the subject of the *Purchase Agreement*.

Material facts could include anything from those contemplated in [Minn. Stat. § 513.55](#) to failure to make other mandatory disclosures under other law (e.g., Wells, Septic, Methamphetamine, etc.).

### **What would I have to prove to win an arbitration?**

You would have to prove that:

1. There is fact about the property that is material (affecting the ordinary purchaser's using or enjoyment of the property, generally)
2. That the seller and/or licensee knew about this fact; and
3. That the seller and/or licensee did not disclose this fact (despite knowledge).

### **When do I have to decide whether I'll use arbitration?**

The *Disclosure Statement: Arbitration Disclosure and Residential Real Property Arbitration Agreement* ("Arbitration Agreement") may be presented at the time when a consumer enters into a representation or facilitation agreement with a REALTOR® to give the consumer time to review the form and ask an attorney any questions they might have. That way, when it comes time to sign a *Purchase Agreement*, the consumer knows whether he or she wishes to participate in the voluntary arbitration program. In order to have a binding agreement to arbitration, it must be fully executed at the time that the *Purchase Agreement* is executed.

### **Can I use an attorney if I chose arbitration?**

Yes. Choosing arbitration is simply choosing a dispute resolution process. Just like in the court system, you can choose to hire an attorney to assist you in your claim, or in defending you, or you can represent yourself. However, like the court system, an attorney is not required to proceed.

### **Who must sign the Arbitration Agreement to make it valid and binding?**

Both the buyer and the seller, and both licensees representing or assisting the buyer and seller must sign to have a valid agreement to arbitrate. If one party is not represented by a licensee, then only the party's signature is necessary. However, if a party is working with a licensee, the licensee must also sign. If only the buyer and seller sign, then the agreement will not be binding. Parties may still voluntarily elect to arbitrate rather than utilize the court system at any time once a dispute arises.

### **When would I file an arbitration claim?**

An arbitration claim, just like any legal claim, should be a last resort. You may want to reach out to the opposing party prior to filing to see if you can work out your dispute. Often, settlements leave both parties feeling better about the resolution, rather than taking a chance that the arbitrator will decide against you in an all-or-nothing type of decision. The Minnesota REALTORS® also provides mediation services to parties in advance of an arbitration, should they decide that a mediator might help foster a settlement.

In any case, if an arbitration is filed, it is after the purchaser identifies a material fact that was not disclosed and identifies that the seller and/or licensee was aware of this fact and failed to make the proper disclosure. Typically, this is after the closing. In any case, all claims must be filed within 24 months of the closing, except if fraud is alleged.

### **What is the deadline to file an arbitration claim?**

An arbitration must be filed within 24 months of the closing date on the property, unless fraud is alleged. Seek legal advice regarding whether you may still have a claim if more than 24 months have passed since your closing. This is the deadline regardless of any longer applicable statute of limitations that might be given in Minnesota Law.

### **Can parties go to court after the arbitration time period expires?**

No. The parties elect their remedy at the time of the purchase agreement: court or arbitration. Once arbitration is chosen, a party cannot decide instead to wait until the 24 months has run and start a court action instead.

### **If I've since sold the property that I purchased from the seller, can I still file an arbitration without being the current owner?**

Yes, so long as you are within the 24-month deadline.

### **What if I am the seller and/or licensee, and a purchaser files an arbitration against me and loses? Can I recover some of my expenses for having to participate?**

Yes, it's possible to file a counterclaim. You'll want to talk with legal counsel about whether the counterclaim makes sense in your case.

## What are the pros and cons, generally, of arbitration vs. court?

PROS OF ARBITRATION	CONS OF ARBITRATION
<ul style="list-style-type: none"><li>• Less formal and not as complex as litigation.</li><li>• Decided by an arbitrator (private citizen).</li><li>• Generally less expensive than litigation, except in cases of Conciliation Court.</li><li>• Discovery of documents is restricted, so it will be less cumbersome.</li><li>• The decision of the arbitrator is final and binding, with very limited appeal rights.</li><li>• Decisions in arbitrations made more quickly than in court (hearing is usually scheduled within 90 days of the receipt of demand + 30 days for arbitrator's decision).</li><li>• Party can participate in choosing the arbitrator(s).</li></ul>	<ul style="list-style-type: none"><li>• Give up your right to go to court.</li><li>• Give up your right to have a judge/jury.</li><li>• Give up access to the courts/appeals/rules.</li><li>• Discovery of documents is restricted, so it may be harder to access all of the evidence you might want to discover.</li><li>• Give up rights to an appeal.</li><li>• Court hearing and appeal process can take many months, if not years, to be final.</li><li>• Assigned a judge to hear the matter.</li></ul>

## Do the Rules cover commission disputes?

No. The Rules are solely for residential real property arbitration. Article 17 of the Code of Ethics provides for the resolution of arbitrations related to commissions as between REALTOR® members. The Minnesota REALTORS® administers this process. Commission disputes between brokerages and their clients must be settled outside of the arbitration process as well and may be settled by the Minnesota REALTORS® if the client agrees.



### **Deciding if Arbitration is Right for You:**

#### **What is the role of NCDS, and what does the case administrator do?**

NCDS functions as the administrative agency for the arbitration program. The case administrators arrange for the appointment of the arbitrator(s) and the scheduling of hearing(s). They also handle all communications between the parties and the arbitrator, except at the actual hearing(s). The case administrator is available to answer general and procedural questions concerning the arbitration process. NCDS does not evaluate the validity of claims or make any substantive decisions about a case.

#### **Who is the arbitrator?**

The arbitrator(s) is the impartial decision-maker whose authority comes from the Residential Real Property Arbitration Rules ("Rules"), the Minnesota arbitration law, and the Arbitration Agreement. The arbitrator(s) is not an employee of NCDS; rather, he or she will have experience in a field related to real estate (e.g., real estate law, architecture, building inspection, property management, etc.). After accepting testimony and evidence presented by the parties, the arbitrator(s) makes the decision.

The only direct communication the parties will have with the arbitrator(s) is at the hearing. At no time should the parties contact the arbitrator(s) directly. All correspondence must go through NCDS, who will forward it to the arbitrator(s).

#### **How many arbitrators will there be?**

One will be appointed to hear the case. However, any party can request a panel of three to hear the case, in which case an additional fee will be charged.

#### **How do I file a demand for arbitration?**

Contact NCDS to request a submission form and other basic information about the process. NCDS contact information can be found at [www.ncdsusa.org](http://www.ncdsusa.org) or by calling 866.727.8119.

#### **What do I need to file?**

- 4 copies of the demand for arbitration or submission form.
- 2 copies of the Purchase Agreement.
- 2 copies of the fully executed Arbitration Agreement.
- 2 copies of any and all inspection reports prepared for the claimant.
- The appropriate administrative fee (as described in the NCDS fee schedule).

These documents must be filed by mailing to NCDS at 12900 Hall Road, Suite 401, Sterling Heights, MI 48313.



**How is the respondent notified of the arbitration?**

NCDS will serve a copy of the demand to all respondents named. The claimant is required to provide up to date contact information (address and telephone number) for the respondent(s). NCDS will not proceed if the respondent(s) cannot be found. After the initial service of the demand on the respondent(s), if the parties wish to proceed by email notice, the parties may do so.

**Can the respondent ask the arbitrator to review a demand to see if it is deficient or unable to be arbitrated?**

Yes. NCDS, as an administrative agency, does not evaluate the validity of claims submitted for arbitration. However, arbitrator(s) themselves can evaluate a demand based on whether it is untimely or whether it lacks specificity with respect to allegations made by the claimant. An arbitrator may make this review with or without the request of a respondent. If a respondent makes the request, it must be made through NCDS, who will notify the arbitrator. The arbitrator may give the claimant an opportunity to modify or clarify the demand, and may ultimately dismiss a demand prior to a hearing in the event it is deemed untimely or lacking in allegations against one or more respondents.

**Can a claim be changed after it is submitted?**

Yes, it may be changed, in writing, up to 14 days prior to the hearing. Within 14 days of the hearing, any new or different information may only be submitted with an agreement of the parties.

**When will the hearing occur?**

A hearing date will be set within 90 days and within 30 days of receipt of the parties' calendars of conflicts. Each party will be given the opportunity to provide his or her availability, and a hearing date will be scheduled on a day everyone is available.

**Where is the arbitration hearing?**

Almost all of the time, the hearing is held at the property in question. However, on occasion, the arbitrator(s) may name a different location. The date, time and location of the hearing will be provided at least 14 days in advance of the hearing, unless late notice is waived by the parties.



### **How does arbitration deal with evidence?**

The parties may offer evidence (both exhibits and witness testimony) that is relevant and material to the controversy presented. Parties may also be required to produce evidence specifically requested by the arbitrator if the arbitrator(s) deems that evidence necessary to understand the case and make a determination. An arbitrator(s) is also legally authorized to subpoena witnesses, and may do so independently or upon a request from a party who wants the witness present.

The arbitrator(s) determines the admissibility of evidence; the court rules of evidence do not apply. Evidence must be taken in the presence of the parties, except in accordance with Rule 13. Expenses related to witnesses or reports must be paid by the party producing the witness or report.

All witness lists (with expected testimony of each party) and exhibits must be provided by the parties to NCDS and all other parties no later than fourteen (14) days prior to the scheduled hearing, or as directed by the arbitrator(s). If a party presents any witness lists, exhibits, or witnesses fewer than fourteen (14) days prior to the scheduled hearing, the arbitrator shall have the sole discretion regarding the resolution of Rules violation.

### **When is the hearing closed?**

The hearing is closed when both parties have had adequate opportunity to present all witnesses and other proof they wish to submit.

### **Could the Rules ever be waived by a party?**

Yes, if a party proceeds with the arbitration after having knowledge that a Rule has not been followed. If the party fails to object to the fact that the Rule was not followed (in writing to NCDS), then the party has waived the right to object.

### **Do I have the 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 arbitrator review of the violation with NCDS or raise the issue verbally at the hearing, if the issue occurs during the hearing. If NCDS receives a written request, it shall forward the request for review to the case arbitrator(s) to investigate and take any necessary action to provide for the proper implementation of these Rules. If the issue is raised at the hearing, the arbitrator(s) shall address the issue then. Such a request must be made as soon as practicable or the violation shall be deemed waived.

### **How are the Rules interpreted?**

The arbitrator(s) shall interpret and apply the Rules as they apply to the arbitrator's powers and duties. Otherwise, NCDS will do so, as administrator of the process. The Rules are also subject to Minnesota arbitration law, found in [Chapter 572B of the Minnesota Statutes](#).



**When will I be notified of an award made by the arbitrator and what will the award contain?**

Not later than 30 days from the date the hearing is closed. The award will be given in writing and will be signed by the arbitrator(s). If the parties settle their dispute during the course of the arbitration case, the parties may request that the arbitrator set forth the settlement in a settlement award. The arbitrator may make any award that is just and equitable and consistent with the Minnesota Uniform Arbitration Act, [Chapter 572B](#). The award may be delivered by mail to the party or attorney at the last known address, by personal service, or by filing of the award in any other legally allowable manner.

**How is the award determined?**

The arbitrator(s) determines the award based on what is just and equitable, and within the scope of the purchase agreement. The arbitrator(s) may assess the arbitration fees and expenses against any party; generally, each party must bear its own attorney's fees, except that the arbitrator shall be allowed to award a prevailing party attorney's fees if allowed by statute. Although it's within the arbitrator's discretion, often the winning party is awarded their costs from the losing party.

**What happens with an arbitrator makes an award and the party doesn't pay?**

Minn. Stats. §§ [572B.22](#) through [572B.25](#) state that the award may be filed and confirmed in district court, and then a judgment may be granted by the court. After a judgment is in place, a party can collect the judgment in numerous ways, including wage garnishment, levying bank accounts, and more. Collection of the award is outside of the scope of the arbitration, and neither Minnesota REALTORS®, the arbitrator(s), nor NCDS will assist in collection of the award.

**What should I know about the court actions pertaining to the arbitration?**

No court proceeding related to the subject matter of the arbitration shall be a waiver of the party's right to arbitrate. Neither NCDS, Minnesota REALTORS®, nor any arbitrator may be named in any court proceeding related to the arbitration. And none of the same shall be liable to any party for an act or omission in connection with any arbitration conducted under the Rules.

NCDS will provide certified copies of the papers related to the arbitration for use in a court proceeding. Any party wishing to do this must make a request in writing and pay for NCDS' expenses.

Unless applicable law or the arbitration agreement states otherwise, the parties are deemed to have consented to entry of an arbitration award as a judgment in a federal or state court with jurisdiction.

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