

CAP  **HOME**

CONSTRUCTION ARBITRATION PROGRAM

Administered by DeMars & Associates, Ltd.

CAP  **HOME**

CONSTRUCTION ARBITRATION PROGRAM

Administered by DeMars & Associates, Ltd.

Construction Arbitration Program



Program Rules



DeMars & Associates, Ltd.
Innovative Dispute Resolution

P.O. Box 1424 Phone 1.800.279.5343
Waukesha, WI 53187 info@demarsassociates.com
www.demarsassociates.com



DeMars & Associates, Ltd.
Innovative Dispute Resolution

1. Agreement of the parties

These rules shall apply whenever the parties agree to utilize them, or under any warranty, insurance, or similar dispute settlement program administered by DeMars & Associates, Ltd. The rules shall be applied as provided in the application for home enrollment, certificate of participation, insurance policy, or other applicable warranty documents. The rules apply to the extent that they are not inconsistent with applicable statutes or with the agreement of the parties. The parties are deemed to have agreed to the rules in the form in effect when the request for arbitration is received by DeMars & Associates, Ltd.

2. Initiating the Process

Arbitration is initiated by the filing of a request for arbitration with DeMars & Associates, Ltd. in accordance with the applicable warranty documents or as provided under the application for home enrollment, certificate of participation, insurance policy, or other applicable warranty documents. After the case is opened, no new or different claims can be added without 1) first complying with all pre-arbitration notice requirements, 2) obtaining written agreement of the parties and 3) the consent of the arbitrator. DeMars & Associates, Ltd. administers all requests for the addition of new or different claims.

3. Appointment of Arbitrator

DeMars & Associates, Ltd. appoints an arbitrator, from its panel, who is knowledgeable in residential construction.

4. Qualifications of an Arbitrator

A person appointed as an arbitrator must demonstrate the ability to remain impartial and must comply with all disclosure requirements. In addition, no person may serve as an arbitrator in any arbitration in which that person has any financial or personal interest. The arbitrator is responsible for notifying DeMars & Associates, Ltd. of any other issues that may cause a party to reasonably consider that he/she cannot be impartial. Upon receipt of any information from the arbitrator or other party, DeMars & Associates, Ltd. will notify all parties in writing. If a party objects to the service of an arbitrator, DeMars & Associates, Ltd. determines if the arbitrator should be disqualified. All parties are notified of the decision in writing. If an arbitrator is disqualified, if a vacancy occurs, or if an appointed arbitrator is unable to complete their duties in a timely manner, DeMars & Associates, Ltd. appoints a replacement arbitrator. Parties retain the right to object to the appointed replacement arbitrator for the reasons listed above.

5. 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 his or her objections in writing to DeMars & Associates, Ltd., waives his or her right to object.

6. Serving of Notice

Unless DeMars & Associates, Ltd. is notified otherwise, the parties agree that any notices or documents required to start or continue arbitration under these rules will be served to the parties at the last known address of record. A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery for such communications. DeMars & Associates, Ltd. and/or the arbitrator are considered to have given adequate notice by taking action reasonably necessary to inform the parties, whether or not the party acquires actual knowledge of the notice. Acceptable forms of communication include facsimile, letter, or other written forms of electronic communication. These provisions also apply to notice requirements for any court action or the entry of a judgement on any award made under these rules.

7. Time and Place of Hearing

DeMars & Associates, Ltd. sets the date, time and location of the hearing. Notice of the date, time and location are provided to the parties a minimum of 10 calendar days prior to the hearing date. Whenever possible, the hearing is held at the location of the complaint to allow the arbitrator and the parties the opportunity to examine the claimed defects. If the housing site is not an available location, the arbitrator will designate another location.

8. Representation

Any party may attend the hearing or be represented at the hearing by another person. If a party is represented by an attorney, the party retaining an attorney must notify DeMars & Associates, Ltd. and the other parties of the identity of their representative at least 5 calendar days prior to the hearing. Failure to provide the required notification may result in postponement of the scheduled hearing.

9. Attendance

Any person who is a party to the arbitration may attend. Representatives and witnesses are also allowed to attend. The arbitrator has the authority to determine whether any other person(s) may attend the hearing. The arbitrator may also exclude a non-party or other witness from other witnesses' testimony. Whenever possible, requests for non-party attendance at a hearing must be submitted prior to the hearing.

10. Postponements

Hearings shall only be postponed by the arbitrator, and only for good cause. Any requests for postponement must be submitted through DeMars & Associates, Ltd. who transmits the request to the arbitrator for a final decision.

11. Confidentiality

The hearing is intended to be confidential. The parties may take appropriate notes during the hearing, but audio or video recordings are strictly prohibited. These are informal proceedings, and no stenographic record or transcript is provided. Any party may, at their own expense, make provisions for a certified court stenographer to record the proceedings. In such situations, a copy of the transcript must be provided to the arbitrator at the expense of the party providing the stenographer.

12. Proceedings and Communication with the Arbitrator

The arbitrator may conduct the hearing in any manner that the arbitrator considers appropriate for a fair and efficient resolution of the matters in dispute. In most cases the hearing will take no more than one day. For good cause, the arbitrator may schedule an additional hearing date, typically within 5 days of the initial hearing. There shall be no direct communication between the parties and the arbitrator unless initiated by the arbitrator in keeping with scheduling requirements. All other communications should be made through DeMars & Associates, Ltd., the Arbitration Administrator.

13. Arbitration in the Absence of a Party

If a party or a party's representative fails to appear at the hearing after adequate notice, or fails to obtain an adjournment after adequate notice, the arbitrator may proceed with the hearing. The arbitrator requires the present party to submit evidence, and weighs all information provided before making an award. There are no

default decisions; therefore, the decision cannot be against the absent party simply for failure to appear at the scheduled date and time.

14. Evidence

To make the determination, the arbitrator reviews any information submitted by the parties and may request that a party provide additional information the arbitrator feels is necessary for a fair and expeditious resolution of the dispute. The arbitrator may also request additional witnesses or documents based on the request of any party. The arbitrator determines the relevance of any information offered, but is not required to apply the rules of evidence. All information will be taken in the presence of all parties unless a party fails to appear or if the parties agree on a documents only review. Any expense associated with witnesses, expert witnesses or reports is the responsibility of the party producing that information.

15. Evidence by Filing of Documents

The arbitrator receives and reviews written evidence. Any written information must be submitted through DeMars & Associates, Ltd. to be distributed to all parties for review prior to the hearing. The arbitrator has the discretion to determine the scope of review of any information submitted at the hearing that was not previously provided for distribution to the other parties.

16. Close of Hearing

Prior to ending the hearing, the arbitrator specifically asks the parties if they have any further information, testimony or witnesses to present. Once the parties inform the arbitrator that no more information will be offered, and the arbitrator is satisfied the record is complete; the arbitrator declares the hearing closed. The time limit for the arbitrator to make the award begins to run when the hearing is closed.

17. Form of Award

The award is in writing and includes an explanation regarding each issue decided by the arbitrator. The award is not final until the arbitrator signs it. The arbitrator's award is transmitted to all parties in writing within 14 calendar days of the hearing. The awards are sent to the parties and their attorneys (if applicable) via first class mail through the U.S. Postal Service to the last known address of record.

18. Scope of the Award

The arbitrator makes a determination that is fair and equitable within the parameter of the warranty or other

applicable documents. If applicable, the award determines the existence of an eligible and non-excluded defect or deficiency covered by the warranty and the time in which the builder or insurer will perform corrective action. If the applicable warranty so provides, the arbitrator assesses any expenses in favor of any party and any arbitration fees in the award. If any administration fees or expenses are due to DeMars & Associates, Ltd. the arbitrator makes a determination in favor of DeMars & Associates, Ltd. Each party incurs its own attorney's fees.

19. Modification and/or Clarification

The request must be sent to the Arbitration Administrator along with the required filing fee within 20 calendar days of the date of the mailing of the award. The request must specify the portion or portions of the award subject to the request, and must be submitted in writing. Requests may be submitted by mail, facsimile or other written forms of electronic communication.

The Arbitration Administrator provides a copy of the clarification or modification request to the arbitrator and the opposing party within 2 business days of receipt of the request. Any objections to the request for clarification or modification of the award must be submitted in writing within 10 calendar days after the Arbitration Administrator notifies the parties of the request.

The arbitrator may only modify the award if he or she determines the award is not within the scope of the warranty or its coverage. The arbitrator makes a final determination regarding the request within 10 calendar days of receipt of the request or 7 days after an objection is received.

20. Appeals

A party has 20 calendar days from the transmission of the award or the answer to a modification request. The appeal must be submitted to the Program Administrator in writing via mail, fax or email.

The Arbitration Administrator will appoint an appellate arbitrator. A copy of the appeal is transmitted to both parties along with information regarding the appellate arbitrator. Responses to the appeal or objections to the appellate arbitrator must be submitted in writing within 10 calendar days from the date the appeal request is transmitted to the parties. Requests for an appeal and any responses will be forwarded to the appellate arbitrator.

The appellate arbitrator has the discretion to handle the

appeal in whatever manner will result in a fair and expeditious resolution. The appellate arbitrator may conduct a documents only review or may hold an additional hearing. If the appellate arbitrator decides a hearing is necessary, he or she will ask the Program Administrator to contact the parties to set a hearing date. The program has 10 days from receipt of the appeal to set a date for a hearing. Whenever possible, the hearing takes place at the site giving rise to the complaint.

The appellate arbitrator has 7 calendar days from receipt of the appeal documents or 10 days from the date of a hearing to render a final written decision. The decision is transmitted to all parties in writing.

21. Judicial Proceedings and Immunity

This program is intended as a fair and expeditious means of resolving home warranty disputes. If any party initiates a judicial proceeding before or during the arbitration process, it will not be considered a waiver of any party's right to arbitrate.

The Arbitration Administrator and the arbitrator are not necessary parties in a judicial proceeding related to the arbitration.

Unless applicable law or the warranty program, insurance policy or another applicable document provides otherwise, the parties are deemed to have consented that the judgement may be entered in any federal or state court having jurisdiction.

Neither the Arbitration Administrator nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules. The parties may not call any arbitrator or employee of the Arbitration Administrator as a witness or expert in any informal proceeding or legal action involving the parties related to a dispute subject to this program. In addition, the parties may not subpoena any notes or other materials created by the arbitrator.

22. Interpretation and Application of Rules

The arbitrator interprets and applies these rules insofar as they relate to the arbitrator's powers and duties. All other rules shall be interpreted and applied by the Arbitration Administrator, DeMars & Associates, Ltd.

23. The Arbitration Fee Schedule

Attached is a copy of the fee schedule that outlines the costs involved for the Construction Arbitration Program for Home Warranty Disputes.

23. Arbitration Fee Schedule

1. ADMINISTRATION CASE FEES

Cases filed with DeMars & Associates, Ltd. may be:

- Single award cases (e.g. initial determinations of whether a warrantable defect exists, or a determination of method of repair or a determination of cost of repair)
or
- Combined award cases (e.g. where determinations of the existence of warrantable defects and/or a method and/or cost of repair are considered**).

Either type of case can be “complex” based on the issues, number of parties, or other considerations.

- Single Arbitration Case Fee \$1000*
- Combined Arbitration Case Fee \$1250*

These fees include arbitrator compensation except as provided in Section 2.

- Complex cases may involve additional administrative services which will be billed at an hourly rate of \$125/hour from the parties advanced deposit of \$2,500 (see Section 2).
- No refund of arbitration case fees will be made if the case is withdrawn after the Request for Arbitration is filed with DeMars & Associates, Ltd. Arbitration case fees are due and payable when the request for arbitration is filed with DeMars & Associates, Ltd.

2. ADDITIONAL FEES

The arbitrating parties pay \$200* for each additional day of hearing scheduled after the first day. Additional fees are due if the number of items to be arbitrated are excessive.

The following is a schedule for payment:

51-100 items	\$175 Additional payment*
101-150 items	\$275 Additional payment*
151-200 items	\$375 Additional payment*
201 and above items	\$475 Additional payment*

In the event the hearing site is more than 50 miles from the Arbitrator’s residence, additional fees will be assessed based on travel. The Arbitrator may also be entitled to additional reimbursement for reasonable expenses incurred in connection with the arbitration.

(see reverse side)

3. MODIFICATION AND/OR CLARIFICATION FEE

The party advances an Administrative fee of \$150 when applying for Modification and/or Clarification, which is paid to DeMars & Associates, Ltd. at the time the application for Modification and/or Clarification is transmitted to DeMars & Associates, Ltd. (New Jersey Homeowner's fee is \$75).

4. APPEAL FEE

The party advances an arbitration fee of \$1000 when applying for the appeal, which is paid to DeMars & Associates, Ltd. at the time the application for appeal is transmitted to DeMars & Associates, Ltd.

5. COMPLIANCE INSPECTION FEE

The requesting party pays \$1000 per case to DeMars & Associates, Ltd., which is due with the request for a compliance inspection. The request for a compliance inspection must be received within one year of the date of the arbitrator's decision.

6. CLIMATIC DEFERRAL FEE

The requesting party pays \$200* per case to DeMars & Associates, Ltd., which is due with the request for a climatic deferral which includes item(s) to be resubmitted.

7. ADJOURNMENT FEES

Any party causing an adjournment of any scheduled hearing is responsible for an adjournment fee payable to DeMars & Associates, Ltd. The fee increases if the adjournment occurs at or less than 48 hours prior to a scheduled hearing.

	>48 hrs prior	<48 hrs prior
First request by the party	\$100	\$200
Second request by the party	\$250	\$350
Third request by the party	\$350	\$450

The requesting party shall also pay any reasonably incurred expenses of the arbitrator in connection with the scheduled hearing.

*(1), (2), and (6) fees are not applicable to New Jersey Homeowners in accordance with State Statute.

**Method of repair, cost of repair, and appellate arbitrations are not available to New Jersey Homeowners with warranties starting after January 1, 2006, per Governor's Executive Order 33.

Rev. October 2007



CAP HOME
CONSTRUCTION ARBITRATION PROGRAM
Administered by DeMars & Associates, Ltd.