



CONSTRUCTION ARBITRATION PROGRAM

for

HOME | WARRANTY | CONSTRUCTION

GENERAL PROGRAM RULES

ADMINISTERED BY DEMARS & ASSOCIATES, LTD.

RULES EFFECTIVE JULY 1, 2019



TABLE OF CONTENTS

1. <i>Agreement of the Parties</i>	3
2. <i>Initiating the Process</i>	3
3. <i>Appointment of Arbitrator</i>	3
4. <i>Qualifications of an Arbitrator</i>	3
5. <i>Waiver of Rules</i>	3
6. <i>Serving of Notice</i>	4
7. <i>Time and Place of Hearing</i>	4
8. <i>Representation</i>	4
9. <i>Attendance</i>	4
10. <i>Postponements</i>	4
11. <i>Confidentiality</i>	4
12. <i>Proceedings and Communication with the Arbitrator</i>	5
13. <i>Arbitration in the Absence of a Party</i>	5
14. <i>Evidence</i>	5
15. <i>Evidence by Filing of Documents</i>	5
16. <i>Close of Hearing</i>	5
17. <i>Form of Award</i>	5
18. <i>Scope of Award</i>	5
19. <i>Modification and/or Clarification</i>	6
20. <i>Appeals</i>	6
21. <i>Judicial Proceedings and Immunity</i>	6
22. <i>Interpretation and Application of Rules</i>	6
23. <i>Arbitration Fee Schedule</i>	7



CAP-Home Rules for Arbitration

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 (“Administrator”). 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 the Administrator.

2. Initiating the Process

Arbitration is initiated by the filing of a request for arbitration with the Administrator, 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. The Administrator will administer all requests for the addition of new or different claims.

3. Appointment of Arbitrator

The Administrator will appoint an arbitrator or a panel of arbitrators, who are knowledgeable to render a final decision based on the submitted claims. For example:

- ❖ An attorney arbitrator may be appointed to the case if the claims involve contractual issues or legal questions.
- ❖ A structural engineer may be appointed to the case if the claims involve questions of structural integrity.
- ❖ A home inspector may be appointed to the case if the claims involve questions of workmanship, installation, and other non-structural components.
- ❖ An architect may be appointed to the case if the claims involve issues involving the design and build of the home.

If the claims involved need a different type of professional than listed above, the Administrator will make the appropriate determination.

Please note an arbitrator other than a home inspector will have pass through fees. The parties will be provided the arbitrator’s hourly rate, fee structure, or flat fee prior to the appointment. The arbitrator will address any and all pass-through fees in the final decision letter and will determine who is responsible for paying the fees. A retainer may be collected from the parties prior to arbitration. This retainer will be due before the hearing; failure to pay can lead to the hearing being postponed.

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 the Administrator 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, the Administrator will notify all parties in writing. If a party objects to the service of an arbitrator, the Administrator 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, the Administrator appoints a re-placement 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 to arbitration with 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 the Administrator Prior to the hearing, waives his or her right to object.



6. Serving of Notice

Unless the Administrator 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. Administrator 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 judgment on any award made under these rules.

7. Time and Place of Hearing

The Administrator sets the date, time and location of the hearing. Notice of the date, time and location are provided to the parties a minimum of ten (10) business 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 view the claimed defects. If the housing site is not an available location or if the parties cannot mutually agree on a location, the Administrator will assign a suitable location convenient to the homeowner.

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 the Administrator and the other parties of the identity of their representative at least five (5) business days prior to the hearing. Failure to provide the required notification may result in postponement of the scheduled hearing. Any party being represented by counsel must disclose counsel information to all parties. Administrator will direct communication to the appropriate person.

9. Attendance

Any person who is a party to the arbitration may attend. Representatives and witnesses are also allowed to attend. 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 at least five (5) days prior to the hearing.

The arbitrator has the authority to determine whether any person(s) may attend the hearing. The arbitrator may also exclude a non-party or other witness from other witnesses' testimony.

10. Postponements

Hearings shall only be postponed by the arbitrator, and only for good cause. Any requests for postponement must be submitted through the Administrator, who will transmit the request to the arbitrator for a final decision.

In the event of protracted scheduling difficulties, for example, when a hearing is rescheduled more than once or when a hearing cannot be scheduled after more than ninety (90) days since the case is opened, an administrative fee of \$200 to \$500 may be assessed to the party responsible for the delays. The Administrator will determine the party responsible for the delay.

If unavoidable circumstances prevent you from being available for the hearing within the forty (40) day timeframe, please advise the Administrator and your case may be eligible to be put in abeyance for a specified period of time. The Administrator will determine the appropriate abeyance period and whether any administrative fees shall apply.

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 generally 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 and other parties at the expense of the party providing the stenographer.



12. Proceeding 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; scheduling for the additional hearing date will be facilitated by the Administrator and all parties will be placed on notice. There shall be no direct communication between the parties and the arbitrator unless initiated by the arbitrator in keeping with scheduling requirements. All email communications should be made through the 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 will require the present party to submit evidence and will weigh all information provided when making the 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 all information submitted by the parties and may request that a party provide additional information should the arbitrator feel it necessary for a fair and equitable resolution of the dispute. The arbitrator may also request additional witnesses or documents be provided based on the request of a party. The arbitrator determines the relevance of any information provided and is not required to apply the rules of evidence. All information will be presented in the presence of all parties unless a party fails to appear or if the arbitrator decides to hold a documents-only review. Each party is responsible for any expenses associated with witnesses, expert witnesses or reports.

Any request pertaining to expanded rules of evidence will be decided upon by the arbitrator, who may request a preliminary conference or scheduling order.

15. Evidence by Filing of Documents

The arbitrator receives, and reviews written evidence. Any written evidence must be submitted through the Administrator 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 evidence submitted at the hearing that was not previously provided for distribution to the other parties. All parties shall be supplied with copies of any additional evidence presented at the hearing.

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 when the hearing is closed and/or when all additional requested documents have been received by the Administrator and transmitted to the arbitrator.

17. Form of Award

The award is in writing and includes an explanation regarding each claim 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 fourteen (14) business days of the hearing. The awards are sent to the parties and their attorneys (if applicable) via e-mail and priority mail through the U.S. Postal Service to the last known address of record.

Should there be any pass-through fees for arbitrator services the fees will be addressed in the final decision letter and the parties will be billed appropriately. If a retainer was collected prior to the arbitration any unused funds will be refunded accordingly.

18. Scope of Award

The arbitrator makes a determination that is fair and equitable within the parameters 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, contract, or CAP-Home rules so provide,



the arbitrator assesses any expenses in favor of any party and any additional arbitrator or administrative fees in the award. If any administration fees or expenses are due to the Administrator, the arbitrator will decide in favor of the Administrator. Each party incurs its own attorney's fees.

19. Modification and/or Clarification

The request must be sent to the Administrator along with the required filing fee within twenty (20) business days of the date the award is transmitted to the parties. 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 Administrator provides a copy of the clarification or modification request to the arbitrator and the opposing party within two (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 ten (10) business days after the Administrator notifies the parties of the request.

Modification will be limited to computational errors, corrections of a party's name or information regarding the warranty, and typographical or spelling errors.

Clarifications will be limited to a further explanation of a section(s) of the final award.

The arbitrator makes a final determination regarding the request within ten (10) business days of receipt of the request or seven (7) business days after an objection is received.

20. Appeals

A party has twenty (20) business days from the transmission of the award or the answer to a modification request to request an appeal. The appeal must be submitted to the Administrator in writing via mail, fax or e-mail. Payment for the appeal must be submitted to the Administrator within the twenty (20) business day timeframe. The Administrator will appoint an appellate arbitrator(s). 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 ten (10) business 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 in-person hearing. If the appellate arbitrator decides a hearing is necessary, he or she will ask the Administrator to contact the parties to set a hearing date. The Administrator has ten (10) business days from receipt of the appeal to set a date for a hearing. The appellate arbitrator has seven (7) business days from receipt of the appeal documents or ten (10) business days from the date of a hearing to render a final written decision. The decision is transmitted to all parties via e-mail and priority mail through the U.S. Postal Service to the last known address of record.

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 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 judgment may be entered in any federal or state court having jurisdiction.

Neither the 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 DeMars & Associates, Ltd. 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 Administrator



23. 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.

A. 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. The Administrator makes the determination on which cases will be deemed “Complex”.

- ❖ Single Arbitration Case Fee \$1250*
- ❖ Combined Arbitration Case Fee \$1500 *
- ❖ Contractual Case Fee \$1750

These fees include arbitrator compensation except as provided in Section 2. Any and all additional arbitrator fees will be addressed in the final decision letter, and the parties will be billed appropriately.

- ❖ Complex cases may involve additional administrative services which will be billed at an hourly rate of \$125/hour from the parties’ advanced deposit of \$2,500.00 each, less any initial filing fee. Complex cases operate under the “complex” case rules.
- ❖ Refund of arbitration case fees will be made on a case-by-case bases. Arbitration case fees are due and payable when the request for arbitration is filed with DeMars & Associates, Ltd.

B. 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:

1-24 items	No Additional fee
25-50 items	\$100 Additional 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 fifty (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.

C. 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 to be paid by the Warranty Administrator).



D. APPEAL FEE

The party advances an arbitration fee of \$1250 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.

E. COMPLIANCE INSPECTION FEE

The requesting party pays \$1250 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.

F. 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.

G. 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.

Request number	>48 hours prior	<48 hours prior
First request	\$100	\$200
Second request	\$250	\$350
Third request	\$350	\$450

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

*(1), (2), (3), (4), (5) and (6) fees are not applicable to New Jersey Homeowners in accordance with State Statute.

**Appellate arbitrations are not available to New Jersey Homeowners with warranties starting after January 1, 2006, per Governor's Executive Order 33.

***The Administrator reserves the right to charge the parties additional administration fees and postpone a hearing if any retainer invoices have not been paid by the outlined deadline.

****Additional retainer or administrative fees will be billed in accordance with the needs of each case.

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