

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®.



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What is arbitration?

Arbitration is a private, alternative dispute resolution process that does not involve the court system. It is typically less complex, less expensive, and faster than a lawsuit. After hearing both the claimant and respondent, one or more arbitrators makes a final and binding determination.

Residential real property arbitration encompasses all disputes related to disclosure of material facts affecting the use or enjoyment of the property purchased, with the exception of title issues. Parties and agents agree to arbitration by signing the Minnesota REALTORS® Disclosure Statement: Arbitration Disclosure and Residential Real Property Arbitration Agreement; all parties and agents must sign the Agreement at the time of the purchase agreement in order to form a binding arbitration agreement. If the agreement is binding, then National Center for Dispute Settlement (NCDS) must be utilized for the arbitration. However, the decision to sign the Agreement is voluntary; agreeing to arbitration is not required in order to have a valid purchase agreement.

What is NCDS?

NCDS is a private, impartial organization that provides arbitration services. It is endorsed by the Minnesota REALTORS®.

Should I sign the Arbitration Agreement?

As with the court system, there are both positive and negative aspects of arbitration. If a party is unsure whether to sign, the party needs to talk to legal counsel about what would be best for that particular party's situation.

When should I arbitrate?

Arbitration, like the court system, should be used as a last resort for resolving a dispute. The Association encourages parties to try to work out their dispute prior to arbitrating it. One way to facilitate a settlement is to participate in mediation. The Association arranges for mediations upon request, but the parties may choose to find a mediator on their own as well. If disputes cannot be settled, then filing an arbitration may be appropriate. Talk to legal counsel to find out more about when filing one may be necessary. Any party to the Arbitration Agreement may decide to commence the arbitration.

Who may utilize NCDS arbitration services?

The Association has arranged for NCDS to arbitrate disputes between buyers, sellers, and real estate licensees who have signed the Arbitration Agreement.

How long do I have to file?

Any arbitration request must be filed within the time specified in that arbitration agreement. The Minnesota REALTORS® Arbitration Agreement states, "A request for arbitration must be filed within 24 months of the date of closing on the property or else the claim cannot be pursued. In some cases of fraud, a court or arbitrator(s) may extend the 24-month limitation period provided herein."

Can parties commence arbitration prior to the closing of the transaction?

Yes. Nothing in the Arbitration Agreement limits when an arbitration may be commenced.

Can a buyer submit a request for arbitration after the buyer has subsequently sold the property?

Yes, so long as the filing is timely. Nothing in the Arbitration Agreement limits when an arbitration may be commenced.

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, as an administrative agency, does not evaluate the validity of claims submitted for arbitration. However, there is a process allowing the respondent to make a request for an arbitrator(s) review in order to have an arbitrator(s) determine whether the issue presented is arbitrable under the terms of the Arbitration Agreement.

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., 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 or prehearing. At no time should the parties contact the arbitrator(s) directly. All correspondence must go through NCDS, who will forward it to the arbitrator.

How many arbitrators will there be?

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

Do I need any attorney?

No, an attorney is not required. However, any party may choose to be represented by an attorney. If a party intends to be accompanied by an attorney at the hearing, notice must be provided to NCDS of the identity of the attorney at least 5 days prior to the hearing. Failure of a party to follow this rule may result in a delay of the hearing and costs associated with it being borne by the party.

How do I file a demand for arbitration?

Contact NCDS to request a submission form and other basic information about the process. You may contact NCDS at 866.727.8119 or National Center for Dispute Settlement, 12900 Hall Road, Suite 401, Sterling Heights, MI 48313. Additional information can be found at www.ncdsusa.org.

What do I need to file an arbitration?

- 4 copies of the Demand for Arbitration or Submission Agreement form.
- 2 copies of the Purchase Agreement.
- 2 copies of the fully executed Arbitration Agreement.
- The appropriate administrative fee (as described in the [NCDS fee schedule](#)).

These documents must be transmitted to NCDS. Please contact NCDS for transmittal instructions.

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.

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 approximately 90 days. Each party will be given a 90-day calendar and the opportunity to provide his or her availability on the calendar, striking days that don't work, 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 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.

Documentary evidence should be produced prior to the hearing or as directed by the arbitrator. Any documentary evidence must be submitted to the arbitrator, NCDS, and all other parties simultaneously by the party wishing to enter the evidence.

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 the Rules may object. To do so, a written request for administrative review of the Rule violation must be submitted to NCDS. NCDS will investigate and take necessary actions. Such a request should be filed as soon as possible to avoid waiver.

How are the Rules interpreted?

The arbitrator(s) shall interpret and apply the Rules if 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?

No 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 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; however, each party must bear its own attorney's fees. Although it's within the arbitrator's discretion, often the winning party is awarded their costs from the losing party.

What happens when 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 maybe 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.

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 is a necessary party to a 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.

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.

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. The Minnesota REALTORS® administers this process.



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