

Adopted by Construction Arbitration Services and the  
Minnesota Association of REALTORS®



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**For Use in the State of Minnesota**

## **A Guide to Residential Real Property Arbitration**



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This pamphlet is provided to potential parties solely for the purpose of helping them to better understand the arbitration process endorsed by MNAR and administered by Construction Arbitration Services (CAS). If a reader has any questions about the contents of this pamphlet, he or she should contact CAS or an attorney.

### What is arbitration?

Arbitration is the submission of a dispute, relating to the material facts of the property, to one or more impartial persons for a final and binding determination. In arbitration, the claimant is the person(s) who files the claim. The respondent is the person(s) against whom the claim is filed.

The Arbitration system is a private dispute resolution system offered as an alternative to the court system. It is not government sponsored. If you agree to arbitration using the Arbitration Disclosure and Residential Real Property Arbitration Agreement (Agreement), you must use the arbitration services of Construction Arbitration Services, Inc. (CAS).

Your purchase agreement will still be valid whether or not you sign the Arbitration Agreement.

### What is Construction Arbitration Services, Inc.?

Construction Arbitration Services (CAS) is a private, impartial organization endorsed by the Minnesota Association of REALTORS® (MNAR) that is dedicated to helping individuals and companies resolve disputes through the use of arbitration.

### Should I arbitrate?

Arbitration, like the court system, should be used as a last resort to resolve a dispute. At any time during the dispute, before filing arbitration or during the arbitration process, the Association encourages the parties to try and settle the dispute through mediation. If the parties are unable to reach a settlement, an arbitration claim can be filed. The decision to file an arbitration is one which a party to the Agreement must make.

Unless the applicable law or the Agreement provides otherwise, the parties to the Rules shall be deemed to have consented that judgment upon any arbitration award may be entered in any federal or state court having jurisdiction thereof.

Neither CAS, MNAR nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under the Rules.

The 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 17 of the REALTORS® Code of Ethics.

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

No. Parties are making a choice as to what dispute resolution system they want to employ. Either they use the court system or the arbitration system. Once they have chosen the arbitration system the court system is no longer available to them either during the time period in the arbitration agreement or after that time period expires.



### **What happens if the arbitrator makes an award and the party assessed does not pay the award?**

Minnesota Statute 572.21 provides for a Court proceeding in which the District Court will confirm the arbitration award and enter judgment against the party assessed in favor of the successful party based on the arbitration award.

The successful party can then enforce the award like any District Court judgment, including garnishment, levy against assets, etc.

### **Will the initiating party be awarded the filing fee back if they win?**

The CAS rules provide that the “arbitrator in the award may allocate or assess the arbitration fees and expenses against any party.” Though not required it is probably more likely the arbitrator will award fees to the party who “wins.” However if the award contains no clear cut winner, the arbitrator may well split the costs between the two parties.

### **Application to Court and Exclusion of Liability**

No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party’s right to arbitrate.

Neither CAS, MNAR nor any arbitrator in a proceeding under the Rules is a necessary party in judicial proceedings relating to the arbitration.

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

### **Who may use arbitration?**

In order to use the CAS Arbitration system endorsed by MNAR, all parties, including all buyers, sellers and licensees representing or assisting the seller and the buyer, sign the Agreement. Any party who signed the Agreement may participate.

### **How long do I have to file?**

Any request for arbitration must be filed within the time stated in the Agreement.

### **Can parties commence arbitration before closing on the property?**

Yes. There is nothing in the Agreement that limits when arbitration may be commenced. Thus arbitration can be commenced before or after the closing

### **Can a buyer submit a demand for arbitration after they have subsequently sold the property?**

Yes. The Agreement does not limit when a demand for arbitration can be served except for the provision that requires that 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...”



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

CAS functions as the administrator of the arbitration program. The Case Administrators arrange for the appointment of the arbitrator(s) and the scheduling of the 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.

CAS, 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 Arbitrator Review in order to have an arbitrator review the demand for arbitration to determine whether the issue is arbitrable under the terms of the Agreement.

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

The arbitrator is the impartial decision-maker whose authority comes from the Residential Real Property Arbitration Rules (Rules), the Minnesota Arbitration Law, and the Agreement. The arbitrator is not an employee of Construction Arbitration Services (CAS). The arbitrator will have experience in a field related to real estate, e.g. building inspection, property management or engineering. After accepting testimony and evidence presented by the parties, the arbitrator makes a decision.

The only direct communication the parties will have with the arbitrator is at the hearing or prehearing. At no time should the parties contact the arbitrator directly. All correspondence for the arbitrator should be submitted to CAS, who will then forward it to the arbitrator.

### **Interpretation and Application of Rules**

The arbitrator shall interpret and apply the Rules insofar as they relate to the arbitrator's powers and duties. All other Rules shall be interpreted and applied by CAS, as administrator.

The Rules shall be subject to the Minnesota Arbitration Law,  
Chapter 572

### **When will the arbitrator make an award?**

The award shall be rendered promptly by the arbitrator and, unless otherwise agreed by the parties, not later than thirty (30) days from the date of the closing of the hearing.

### **What is the scope of the arbitrators award?**

The arbitrator may make any award that is just and equitable within the scope of the Purchase Agreement. The arbitrator, in the award, may allocate or assess the arbitration fees and expenses against any party. In the event that any administration fees or expenses are due to CAS, the arbitrator may provide for payment to CAS in the Award. Each party shall bear its own attorneys' fees.

### **Form of Award and Settlement**

The award shall be in writing and shall be signed by the arbitrator(s). It shall be executed in the manner required by law.

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.

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

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

CAS shall serve a copy of the Demand upon all respondents named. The claimant is responsible for supplying the correct and complete address and telephone number of the respondent(s).

If the address of the respondent(s) is not known at the time of the filing, CAS will not proceed with the arbitration.

**What happens if I receive a demand for arbitration?**

That means that someone is filing a claim against you and you have been named as a respondent in the case.

**Can a claim be changed?**

A change of claim must be submitted in writing up to fourteen (14) days prior to the hearing. No new or different claim may be submitted without the written agreement of all parties and the arbitrator within fourteen days prior to the hearing.

**When will my hearing be held?**

A 90-day calendar form shall be submitted to each of the parties. Each party crosses off days that are unavailable to them. Once appointed and after reviewing these calendars, the arbitrator will set the date and time of the hearing.

**Where will the hearing be held?**

Almost all cases are scheduled at the property in question. In rare instances, the hearing may be scheduled at another location, as described by the arbitrator. The Notice of Hearing will tell you the location, date and time of the hearing at least fourteen (14) days in advance unless waived by the parties.

**May I have legal representation at the hearing?**

Any party to the proceedings may be represented at the hearings by another person. In the case of representation by an attorney, in the interest of fairness to all parties, the party retaining counsel or their attorney must advise CAS and the other parties of the identity of their representative at least five (5) days prior to the date of the hearing. Failure to follow this rule with regard to notice may result in an adjournment of the scheduled hearing with any costs borne by the party failing to give timely notice.

**What about evidence?**

The parties may offer such evidence as is relevant and material to the controversy and shall produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. An arbitrator authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently.

The arbitrator shall determine the admissibility of the evidence offered. Conformity to the formal legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of the parties, except in the absence of a party as outlined in Rule #13 of the Rules. The expense of witnesses, expert witnesses or reports for either side shall be paid by the party producing such witnesses or reports.

The arbitrator may receive and consider documentary evidence. Documents to be considered by the arbitrator may be submitted prior to the hearing or as directed by the arbitrator provided a copy is simultaneously transmitted to all parties and to CAS for transmittal to the arbitrator.

### When is the Hearing closed?

The arbitrator shall ask whether the parties have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or when satisfied that the record is complete, the arbitrator shall declare the hearings closed.

### Waiver of Rules

Any party who proceeds with the arbitration after knowledge that any provision or requirement of the Rules has not been complied with and who fails to state objections thereto in writing to CAS shall be deemed to have waived the right to object.

### Do I have a Right to Object?

Any party who becomes aware of a violation of the Rules during the arbitration process may file a written request for an administrative review of the violation with CAS, which shall investigate and take necessary action to provide for the proper implementation of the Rules. Such a request must be made as soon as practicable or the violation shall be deemed waived.



### How many arbitrators will there be?

One arbitrator will be appointed to hear the case. However, any party can request that a panel of three arbitrators hear the case. The panel will consist of one arbitrator who will be an attorney and two arbitrators who will be non-attorneys. There is an additional fee for the panel of three.

### Do I need an attorney?

No. Although you may choose to be represented by an attorney, it is not a requirement.

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

Contact CAS to request a Demand for Arbitration or Submission form as well as the Rules and the Fee Schedule at (866) 727-8119 ext. 103 or you can download this information from the CAS website at [www.cas-usa.org](http://www.cas-usa.org) or write them at CAS, MCG Building, 22500 Metropolitan Parkway, Suite 200, Clinton Township, MI 48035.

### What do I need to file an arbitration?

Four (4) copies of the Demand for Arbitration or Submission form (type or write legibly).

Two (2) complete and readable copies of the Purchase Agreement.

Two (2) final copies of the Residential Real Property Arbitration Agreement.

The appropriate administrative fee (please consult administrative fee schedule).

Mail or deliver these documents to CAS at MCG Building, 22500 Metropolitan Parkway, Suite 200, Clinton Township, MI 48035. Any request for arbitration must be filed within the time stated in the Agreement.