

REAL
ESTATE

Real Estate Industry Arbitration Rules

(Including a Mediation Alternative)



AMERICAN ARBITRATION ASSOCIATION®

Available online at adr.org/realestate

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Real Estate Industry Arbitration Rules

(Including a Mediation Alternative)



Resolving Real Estate Disputes

Real estate disputes may be submitted to a special program providing alternatives to litigation.

How the Program Works

Any party to an existing real estate dispute may ask the AAA® to ascertain whether the other party or parties are willing to submit the dispute to alternative dispute resolution (ADR). Cases that are new or pending litigation are eligible.

An AAA representative will explain the various dispute resolution techniques and assist the parties in choosing one that meets their needs. Once the AAA has the parties' agreement to submit a dispute to alternative resolution, it will administer the case under its applicable rules or procedures.

ADR may take the form of any of the following processes or any variation of these procedures on which the parties agree.

Arbitration is a process in which each side presents its case at a hearing to a neutral for a final and binding decision.

Mediation is a process under which the parties submit their dispute to an impartial person the mediator. The mediator may suggest ways of settling the dispute, but may not impose a settlement on the parties.

Mediation-arbitration (med-arb), as the name implies, is a blend of both mediation and arbitration. The parties agree to first attempt to resolve the dispute through mediation. If this fails to produce a settlement within a specified time period, then the matter is referred to arbitration for a final-and-binding decision by an arbitrator who, based on the agreement of the parties, may be the person who served as the mediator.

Advisory arbitration in most respects mirrors traditional arbitration, described above. It differs, however, in that it focuses on specific issues in a dispute and decides them in an award that is not binding on the parties.

Fact finding is investigation of the dispute by a third party who examines the issues and facts in a case and then issues a report on his findings, which might or might not recommend settlement procedures. The fact-finder's report is nonbinding.

Mini-trial is a structured settlement procedure in which attorneys present their best case in an abbreviated form with experts, if appropriate, before senior executives of the companies involved and a neutral who chairs the presentation. After the presentation, the senior executives meet for a settlement discussion. In the event that the senior executives are unable to settle the dispute, the neutral may be empowered to mediate and or provide a nonbinding advisory opinion regarding the likely outcome if the case were litigated.

Mediators and arbitrators selected for this program from the AAA's panel are qualified, experienced neutrals with an understanding of current legal and business practices. The parties select the neutral best qualified to hear their controversy.

Filing

Filing instructions for mediation and arbitration are detailed in this brochure. Filing instructions for other ADR processes may be obtained by contacting the nearest AAA regional office.

Introduction

Each year, millions of real estate valuations and transactions take place. Occasionally, disagreements occur. Many of these disputes are resolved by arbitration, the voluntary submission of a dispute to a disinterested person or persons for final and binding determination. Arbitration has proven to be an effective way to resolve these disputes privately, promptly, and economically.

The American Arbitration Association® (AAA) is a public-service, not-for-profit organization offering a broad range of dispute resolution services to business executives, attorneys, individuals, trade associations, unions, management, consumers, families, communities, and all levels of government. Services are available through AAA headquarters in New York City and through offices

located in major cities throughout the United States. Hearings may be held at locations convenient for the parties and are not limited to cities with AAA offices. In addition, the AAA serves as a center for education and training, issues specialized publications, and conducts research on all forms of out-of-court dispute settlement.

Arbitration Rules for the Real Estate Industry have been prepared in response to an express need for an efficient voluntary arbitration procedure designed for the unique problems involved in real estate. These rules are sponsored by the AAA and its National Real Estate Industry Dispute Resolution Council. Issues to be arbitrated under the terms of legal agreements regarding real estate or by subsequent mutual agreement of the parties include but are not limited to:

1. the land value, percentage rate of return, and or economic land rent for a renewal period of a land lease agreement;
2. the economic rent for a renewal term for office, retail, industrial, or special-purpose space when the renewal period is to be set at the "going rate",
3. the market value of land, improvements, or both, as provided in a lease agreement that grants the lessee a purchase option at an unspecified price;
4. the market value of a fractional interest in a property in order to arrive at a "buyout" price under the terms of a partnership or other joint-ownership agreement;
5. the appropriate remedy for office, retail, industrial, and special-purpose lease disputes involving revenue issues, expense-escalation reimbursements, and operational and occupancy and use issues;
6. the appropriate remedy concerning disputes about the terms and conditions of real estate contracts and partnership agreements;
7. a decision on whether or not a real estate commission has been earned and is payable;
8. the appropriate remedy in title disputes;
9. the appropriate remedy in disputes about the terms and conditions of real estate loans or loan defaults;
10. a decision rendered in a condominium, cooperative, or owners association dispute;
11. a decision in tax certiorari disputes in certain jurisdictions;
12. a decision involving a dispute between real estate investors residing in different countries;
13. resolution of a dispute involving land use and zoning issues (generally by mediation); and
14. a decision concerning disputes involving hotels, motel, clubs or casinos.

The parties can provide for arbitration of future disputes by inserting the following clause into their contracts:

Standard Arbitration Clause

Any controversy or claim arising from or relating to this contract or the breach thereof shall be settled by arbitration administered by the American Arbitration Association under its Arbitration Rules for the Real Estate Industry and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Arbitration of existing disputes can be accomplished by use of the following.

We, the undersigned parties, hereby agree to submit to arbitration administered by the American Arbitration Association under its Arbitration Rules for the Real Estate Industry the following controversy (cite briefly). We further agree that the above controversy be submitted to (one) (three) arbitrator(s). We further agree that we will faithfully observe this agreement and the rules, that we will abide by and perform any award rendered by the arbitrator(s), and that a judgment of the court having jurisdiction may be entered on the award.

The services of the AAA are generally concluded with the transmittal of the award. Although there is voluntary compliance with the majority of awards, judgment on the award can be entered in a court having appropriate jurisdiction if necessary.

Administrative Fees

The AAA charges a filing fee based on the amount of the claim or counterclaim. This fee information, which is contained later in these rules, allows the parties to exercise control over their administrative fees. The fees cover AAA administrative services; they do not cover arbitrator compensation or expenses, if any, reporting services, or post- award charges incurred by the parties in enforcing the award.

Mediation

If the parties want to use a mediator to resolve an existing dispute, they can enter into the following submission:

The parties hereby submit the following dispute to mediation administered by the American Arbitration Association under its Commercial Mediation Rules. (The clause may also provide for the qualifications of the mediator(s), method of payment, locale of meetings, and any other item of concern to the parties.)

The parties may wish to submit their dispute to mediation prior to arbitration. In mediation, the neutral mediator assists the parties in reaching a settlement, but does not have the authority to make a binding decision or award. Mediation is administered by the AAA in accordance with its mediation rules. There is no additional administrative fee where parties to a pending arbitration attempt to mediate their dispute under the AAA's auspices.

If the parties want to adopt mediation as an integral part of their contractual dispute-settlement procedure, they can insert the following mediation clause into their contract in conjunction with a standard arbitration provision:

If a dispute arises out of or relates to this contract, or the breach thereof and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to arbitration, litigation, or some other dispute resolution procedure.

Real Estate Industry Arbitration Rules (Including a Mediation Alternative)

Mediation Procedures

M-1. Agreement of Parties

Whenever, by stipulation or in their contract, the parties have provided for mediation or conciliation of existing or future disputes under the auspices of the American Arbitration Association (AAA) or under these procedures, the parties and their representatives, unless agreed otherwise in writing, shall be deemed to have made these procedural guidelines, as amended and in effect as of the date of filing of a request for mediation, a part of their agreement and designate the AAA as the administrator of their mediation.

The parties by mutual agreement may vary any part of these procedures including, but not limited to, agreeing to conduct the mediation via telephone or other electronic or technical means.

M-2. Initiation of Mediation

Any party or parties to a dispute may initiate mediation under the AAA's auspices by making a request for mediation to any of the AAA's regional offices or case management centers via telephone, email, regular mail or fax. Requests for mediation may also be filed online via WebFile at **www.adr.org**.

The party initiating the mediation shall simultaneously notify the other party or parties of the request. The initiating party shall provide the following information to the AAA and the other party or parties as applicable:

- i. A copy of the mediation provision of the parties' contract or the parties' stipulation to mediate.
- ii. The names, regular mail addresses, email addresses, and telephone numbers of all parties to the dispute and representatives, if any, in the mediation.
- iii. A brief statement of the nature of the dispute and the relief requested.
- iv. Any specific qualifications the mediator should possess.

Where there is no preexisting stipulation or contract by which the parties have provided for mediation of existing or future disputes under the auspices of the AAA, a party may request the AAA to invite another party to participate in

“mediation by voluntary submission”. Upon receipt of such a request, the AAA will contact the other party or parties involved in the dispute and attempt to obtain a submission to mediation.

M-3. Representation

Subject to any applicable law, any party may be represented by persons of the party’s choice. The names and addresses of such persons shall be communicated in writing to all parties and to the AAA.

M-4. Appointment of the Mediator

Parties may search the online profiles of the AAA’s Panel of Mediators at **www.mediation.org** in an effort to agree on a mediator. If the parties have not agreed to the appointment of a mediator and have not provided any other method of appointment, the mediator shall be appointed in the following manner:

- i. Upon receipt of a request for mediation, the AAA will send to each party a list of mediators from the AAA’s Panel of Mediators. The parties are encouraged to agree to a mediator from the submitted list and to advise the AAA of their agreement.
- ii. If the parties are unable to agree upon a mediator, each party shall strike unacceptable names from the list, number the remaining names in order of preference, and return the list to the AAA. If a party does not return the list within the time specified, all mediators on the list shall be deemed acceptable. From among the mediators who have been mutually approved by the parties, and in accordance with the designated order of mutual preference, the AAA shall invite a mediator to serve.
- iii. If the parties fail to agree on any of the mediators listed, or if acceptable mediators are unable to serve, or if for any other reason the appointment cannot be made from the submitted list, the AAA shall have the authority to make the appointment from among other members of the Panel of Mediators without the submission of additional lists.

M-5. Mediator’s Impartiality and Duty to Disclose

AAA mediators are required to abide by the *Model Standards of Conduct for Mediators* in effect at the time a mediator is appointed to a case. Where there is a conflict between the *Model Standards* and any provision of these Mediation Procedures, these Mediation Procedures shall govern. The Standards require mediators to (i) decline a mediation if the mediator cannot conduct it in an impartial manner, and (ii) disclose, as soon as practicable, all actual and potential

conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality.

Prior to accepting an appointment, AAA mediators are required to make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for the mediator. AAA mediators are required to disclose any circumstance likely to create a presumption of bias or prevent a resolution of the parties' dispute within the time-frame desired by the parties. Upon receipt of such disclosures, the AAA shall immediately communicate the disclosures to the parties for their comments.

The parties may, upon receiving disclosure of actual or potential conflicts of interest of the mediator, waive such conflicts and proceed with the mediation. In the event that a party disagrees as to whether the mediator shall serve, or in the event that the mediator's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, the mediator shall be replaced.

M-6. Vacancies

If any mediator shall become unwilling or unable to serve, the AAA will appoint another mediator, unless the parties agree otherwise, in accordance with section M-4.

M-7. Duties and Responsibilities of the Mediator

- i. The mediator shall conduct the mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome.
- ii. The mediator is authorized to conduct separate or ex parte meetings and other communications with the parties and/or their representatives, before, during, and after any scheduled mediation conference. Such communications may be conducted via telephone, in writing, via email, online, in person or otherwise.
- iii. The parties are encouraged to exchange all documents pertinent to the relief requested. The mediator may request the exchange of memoranda on issues, including the underlying interests and the history of the parties' negotiations. Information that a party wishes to keep confidential may be sent to the mediator, as necessary, in a separate communication with the mediator.
- iv. The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution of their

dispute. Subject to the discretion of the mediator, the mediator may make oral or written recommendations for settlement to a party privately or, if the parties agree, to all parties jointly.

- v. In the event a complete settlement of all or some issues in dispute is not achieved within the scheduled mediation session(s), the mediator may continue to communicate with the parties, for a period of time, in an ongoing effort to facilitate a complete settlement.
- vi. The mediator is not a legal representative of any party and has no fiduciary duty to any party.

M-8. Responsibilities of the Parties

The parties shall ensure that appropriate representatives of each party, having authority to consummate a settlement, attend the mediation conference. Prior to and during the scheduled mediation conference session(s) the parties and their representatives shall, as appropriate to each party's circumstances, exercise their best efforts to prepare for and engage in a meaningful and productive mediation.

M-9. Privacy

Mediation sessions and related mediation communications are private proceedings. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator.

M-10. Confidentiality

Subject to applicable law or the parties' agreement, confidential information disclosed to a mediator by the parties or by other participants (witnesses) in the course of the mediation shall not be divulged by the mediator. The mediator shall maintain the confidentiality of all information obtained in the mediation, and all records, reports, or other documents received by a mediator while serving in that capacity shall be confidential.

The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum.

The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding the following, unless agreed to by the parties or required by applicable law:

- i. Views expressed or suggestions made by a party or other participant with respect to a possible settlement of the dispute;
- ii. Admissions made by a party or other participant in the course of the mediation proceedings;
- iii. Proposals made or views expressed by the mediator; or
- iv. The fact that a party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

M-11. No Stenographic Record

There shall be no stenographic record of the mediation process.

M-12. Termination of Mediation

The mediation shall be terminated:

- i. By the execution of a settlement agreement by the parties; or
- ii. By a written or verbal declaration of the mediator to the effect that further efforts at mediation would not contribute to a resolution of the parties' dispute; or
- iii. By a written or verbal declaration of all parties to the effect that the mediation proceedings are terminated; or
- iv. When there has been no communication between the mediator and any party or party's representative for 21 days following the conclusion of the mediation conference.

M-13. Exclusion of Liability

Neither the AAA nor any mediator is a necessary party in judicial proceedings relating to the mediation. Neither the AAA nor any mediator shall be liable to any party for any error, act or omission in connection with any mediation conducted under these procedures.

M-14. Interpretation and Application of Procedures

The mediator shall interpret and apply these procedures insofar as they relate to the mediator's duties and responsibilities. All other procedures shall be interpreted and applied by the AAA.

M-15. Deposits

Unless otherwise directed by the mediator, the AAA will require the parties to deposit in advance of the mediation conference such sums of money as it, in consultation with the mediator, deems necessary to cover the costs and expenses of the mediation and shall render an accounting to the parties and return any unexpended balance at the conclusion of the mediation.

M-16. Expenses

All expenses of the mediation, including required traveling and other expenses or charges of the mediator, shall be borne equally by the parties unless they agree otherwise. The expenses of participants for either side shall be paid by the party requesting the attendance of such participants.

M-17. Cost of the Mediation

*FOR THE CURRENT ADMINISTRATIVE FEE SCHEDULE, PLEASE VISIT **www.adr.org/feeschedule**.*

Arbitration Rules

1. Agreement of Parties

The parties shall be deemed to have made these rules a part of their arbitration agreement whenever they have provided for arbitration by the American Arbitration Association (hereinafter AAA) or under its Arbitration Rules for the Real Estate Industry. These rules and any amendment of them shall apply in the form obtaining at the time the demand for arbitration or submission agreement is received by the AAA. The parties, by written agreement, may vary the procedures set forth in these rules.

2. Name of Tribunal

Any tribunal constituted by the parties for the settlement of their dispute under these rules shall be called the Real Estate Industry Arbitration Tribunal.

3. Administrator and Delegation of Duties

When parties agree to arbitrate under these rules, or when they provide for arbitration by the AAA and an arbitration is initiated under these rules, they thereby authorize the AAA to administer the arbitration. The authority and duties of the AAA are prescribed in the agreement of the parties and in these rules, and may be carried out through such of the AAA's representatives as it may direct.

4. National Panel of Arbitrators

The AAA shall establish and maintain a National Panel of Real Estate Industry Arbitrators and shall appoint arbitrators as provided in these rules.

5. Regional Offices

The AAA may, in its discretion, assign the administration of an arbitration to any of its regional offices.

6. Initiation under an Arbitration Provision in a Contract

Arbitration under an arbitration provision in a contract shall be initiated in the following manner:

- a. The initiating party (hereinafter claimant) shall, within the time period, if any, specified in the contract(s), give written notice to the other party (hereinafter

respondent) of its intention to arbitrate (demand), which notice shall contain a statement setting forth the nature of the dispute, the amount involved, if any, the remedy sought, and the hearing locale requested, and

- b.** shall file at any regional office of the AAA three copies of the notice and three copies of the arbitration provisions of the contract, together with the appropriate filing fee as provided in the schedule.

The AAA shall give notice of such filing to the respondent or respondents. A respondent may file an answering statement in duplicate with the AAA within ten days after notice from the AAA, in which event the respondent shall at the same time send a copy of the answering statement to the claimant. If a counterclaim is asserted, it shall contain a statement setting forth the nature of the counterclaim, the amount involved, if any, and the remedy sought. If a counterclaim is made, the appropriate fee provided in the schedule shall be forwarded to the AAA with the answering statement. If no answering statement is filed within the stated time, it will be treated as a denial of the claim. Failure to file an answering statement shall not operate to delay the arbitration. The demand or answer may assert a third-party claim against another party, if the third party is obliged to arbitrate the subject of that party's claim under these rules. The arbitrator is authorized to resolve any dispute over such joinder.

7. Initiation under a Submission

Parties to any existing dispute may commence an arbitration under these rules by filing at any regional office of the AAA three copies of a written submission to arbitrate under these rules, signed by the parties. It shall contain a statement of the matter in dispute, the amount involved, if any, the remedy sought, and the hearing locale requested, together with the appropriate filing fee as provided in the schedule.

8. Changes of Claim

After filing of a claim, if either party desires to make any new or different claim or counterclaim, it shall be made in writing and filed with the AAA, and a copy shall be mailed to the other party, who shall have a period of ten days from the date of such mailing within which to file an answer with the AAA. After the arbitrator is appointed, however, no new or different claim may be submitted except with the arbitrator's consent.

9. Applicable Procedures

Unless the AAA in its discretion determines otherwise, the Expedited Procedures shall be applied in any case where no disclosed claim or counterclaim exceeds \$50,000, exclusive of interest and arbitration costs. Parties may also agree to using the Expedited Procedures in cases involving claims in excess of \$50,000. The Expedited Procedures shall be applied as described in Sections 56 through 60 of these rules, in addition to any other portion of these rules that is not in conflict with the Expedited Procedures.

All other cases shall be administered in accordance with Sections 1 through 55 of these rules.

10. Administrative Conference, Preliminary Hearing, and Mediation Conference

At the request of any party or at the discretion of the AAA, an administrative conference with the AAA and the parties and/or their representatives will be scheduled in appropriate cases to expedite the arbitration proceedings. There is no case service fee for this service.

At the request of any party or at the discretion of the arbitrator or the AAA, a preliminary hearing with the parties and or their representatives and the arbitrator may be scheduled by the arbitrator to specify the issues to be resolved, to stipulate to uncontested facts, to schedule hearings to resolve the dispute, and to consider other matters that will expedite the arbitration proceedings. There is no case service fee for the first preliminary hearing.

Unless the parties agree otherwise, the AAA at any stage of the proceeding may arrange a mediation conference under its mediation rules, in order to facilitate settlement. The mediator shall not be an arbitrator appointed to the case. Where the parties to a pending arbitration agree to mediate under the AAA's rules, no additional administrative fee is required to initiate the mediation.

11. Exchange of Information

Consistent with the expedited nature of arbitration, the arbitrator may establish (i) the extent of and schedule for production of documents and other information and (ii) identification of witnesses to be called. The arbitrator is authorized to resolve any dispute over this information exchange.

12. Arbitration Submission and Attachments

Any party may attach exhibits. Said exhibits shall be consecutively numbered and labeled with the name of the submitting party for easy identification and reference. Such attachments may include, if deemed relevant, items such as, but not limited to:

- a. appraisal reports;
- b. a survey of the parcel;
- c. zoning ordinances, maps, and other appropriate public documents;
- d. real estate assessed valuation, appropriate local tax rates, and aggregate tax charges;
- e. building plans and specifications;
- f. evidence concerning construction costs, both "hard" and "soft" (if improvements are of recent vintage);
- g. executed copies of leases in force for office, retail, industrial, and special-purpose properties; operating agreement (if any) for large multifamily properties; a rent roll; and annual income and expense statements carrying, if possible, the endorsement of a certified public accountant; for shopping centers, financial statement arranged, if possible, in accordance with the Urban Land Institute's Standard Manual of Accounting for Shopping Centers;
- h. the Phase I environmental audit and, if in existence, the Phase II environmental audit and the Phase III environmental remediation plan (these reports are sometimes known as environmental site assessments);
- i. information concerning the initial principal amount, interest rate, amortization pattern, commencement date, current outstanding balance, balloon payment (if any), and expiration date of any mortgage in force;
- j. any feasibility, market, or other advisory reports;
- k. mortgages, notes, commitment letters, and other loan documents;
- l. real estate contracts or partnership agreements;
- m. real estate agency and other documents relevant to commission disputes;
- n. real estate title policies and abstracts;
- o. condominium prospectuses, bylaws and declarations with amendments to date; cooperative prospectuses, bylaws and proprietary leases with amendments to date; and house rules and relevant board resolutions or policy statements;
- p. evidence relevant to tax certiorari disputes;
- q. master plan, environmental impact studies, traffic studies, demographic studies, and other appropriate studies and reports;

- r. additional documents appropriate in hospitality disputes such as management agreements, franchise agreements, and financial statements arranged, if possible, in accordance with the Uniform System of Accounts for Hotels prepared by the Hotel Association of New York City and adopted by the American Hotel and Motel Association; and
- s. other material having a substantive effect on the matter at issue.

13. Fixing of Locale

The parties may mutually agree on the locale where the arbitration is to be held. If any party requests that the hearing be held in a specific locale and the other party files no objection thereto within ten days after notice of the request has been sent to it by the AAA, the locale shall be the one requested. If a party objects to the locale requested by the other party, the AAA shall have the power to determine the locale and its decision shall be final and binding.

14. Qualifications of an Arbitrator

Any neutral arbitrator appointed pursuant to Section 15, 16, 17, or 57 or selected by mutual choice of the parties or their appointees shall be subject to disqualification for the reasons specified in Section 21. If the parties specifically so agree in writing, the arbitrator shall not be subject to disqualification for those reasons. Unless the parties agree otherwise, an arbitrator selected unilaterally by one party is a party-appointed arbitrator and is not subject to disqualification pursuant to Section 21.

The term "arbitrator" in these rules refers to the arbitration panel, whether composed of one or more arbitrators and whether the arbitrators are neutral or party-appointed.

15. Appointment from Panel

If the parties have not appointed an arbitrator and have not provided any other method of appointment, the arbitrator shall be appointed in the following manner: immediately after the filing of the demand or submission, the AAA shall send simultaneously to each party to the dispute an identical list of names of persons chosen from the panel. Each party to the dispute shall have ten days from the transmittal date in which to strike names objected to, number the remaining names in order of preference, and return the list to the AAA. In a single-arbitrator case, each party may strike three names on a peremptory basis. In a multiarbitrator case, each party may strike five names on a peremptory basis. If a party does

not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an arbitrator to serve. If the parties fail to agree on any of the persons named, or if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the AAA shall have the power to make the appointment from among other members of the panel without the submission of additional lists.

16. Direct Appointment by a Party

If the agreement of the parties names an arbitrator or specifies a method of appointing an arbitrator, that designation or method shall be followed. The notice of appointment, with the name and address of the arbitrator, shall be filed with the AAA by the appointing party. Upon the request of any appointing party, the AAA shall submit a list of members of the panel from which the party may, if it so desires, make the appointment.

If the agreement specifies a period of time within which an arbitrator shall be appointed and any party fails to make the appointment within that period, the AAA shall make the appointment. If no period of time is specified in the agreement, the AAA shall notify the party to make the appointment. If within ten days thereafter an arbitrator has not been appointed by a party, the AAA shall make the appointment.

17. Appointment of Neutral Arbitrator by Party-Appointed Arbitrators or Parties

If the parties have selected party-appointed arbitrators, or if such arbitrators have been appointed as provided in Section 16, and the parties have authorized them to appoint a neutral arbitrator within a specified time and no appointment is made within that time or any agreed extension, the AAA may appoint a neutral arbitrator, who shall act as chairperson.

If no period of time is specified for appointment of the neutral arbitrator and the party-appointed arbitrators or the parties do not make the appointment within ten days from the date of the appointment of the last party-appointed arbitrator, the AAA may appoint the neutral arbitrator, who shall act as chairperson.

If the parties have agreed that their party-appointed arbitrators shall appoint the neutral arbitrator from the panel, the AAA shall furnish to the party-appointed arbitrators, in the manner provided in Section 15, a list selected from the panel,

and the appointment of the neutral arbitrator shall be made as provided in that section.

18. Nationality of Arbitrator in International Arbitration

Where the parties are nationals or residents of different countries, any neutral arbitrator shall, upon the request of either party, be appointed from among the nationals of a country other than that of any of the parties. The request must be made prior to the time set for the appointment of the arbitrator as agreed by the parties or set by these rules.

19. Number of Arbitrators

If the arbitration agreement does not specify the number of arbitrators, the dispute shall be heard and determined by one arbitrator, unless the AAA, in its discretion, directs that a greater number of arbitrators be appointed.

20. Notice to Arbitrator of Appointment

Notice of the appointment of the neutral arbitrator, whether appointed mutually by the parties or by the AAA, shall be sent to the arbitrator by the AAA, together with a copy of these rules, and the signed acceptance of the arbitrator shall be filed with the AAA prior to the opening of the first hearing.

21. Disclosure and Challenge Procedure

Any person appointed as neutral arbitrator shall disclose to the AAA any circumstance likely to affect impartiality, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives. Upon receipt of such information from the arbitrator or another source, the AAA shall communicate the information to the parties and, if it deems it appropriate to do so, to the arbitrator and others. Upon objection of a party to the continued service of a neutral arbitrator, the AAA shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

22. Vacancies

If for any reason an arbitrator is unable to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these rules. In the event of a vacancy in a panel of neutral arbitrators after the hearings have commenced,

the remaining arbitrator or arbitrators may continue with the hearing and determination of the controversy, unless the parties agree otherwise.

23. Date, Time, and Place of Hearing

The arbitrator shall set the date, time, and place for each hearing. The AAA shall send a notice of hearing to the parties at least ten days in advance of the hearing date, unless otherwise agreed by the parties.

24. Representation

Any party may be represented by counsel or other authorized representative. A party intending to be so represented shall notify the other party and the AAA of the name and address of the representative at least three days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates an arbitration or responds for a party, notice is deemed to have been given.

25. Stenographic Record

Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements in advance of the hearing. The requesting party or parties shall pay the cost of the record. If the transcript is agreed by the parties to be, or determined by the arbitrator to be, the official record of the proceeding, it must be made available to the arbitrator and to the other parties for inspection, at a date, time, and place determined by the arbitrator.

26. Interpreters

Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

27. Attendance at Hearings

The arbitrator shall maintain the privacy of the hearings unless the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend hearings. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

28. Postponements

The arbitrator for good cause shown may postpone any hearing upon the request of a party or upon the arbitrator's own initiative, and shall also grant such postponement when all of the parties agree.

29. Oaths

Before proceeding with the first hearing, each arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if it is required by law or requested by any party, shall do so.

30. Majority Decision

All decisions of the arbitrators must be by a majority. The award must also be made by a majority unless the concurrence of all is expressly required by the arbitration agreement or by law.

31. Order of Proceedings and Communication with Arbitrator

A hearing shall be opened by the filing of the oath of the arbitrator, where required; by the recording of the date, time, and place of the hearing, and the presence of the arbitrator, the parties, and their representatives, if any; and by the receipt by the arbitrator of the statement of the claim and the answering statement, if any.

The arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved. In some cases, part or all of the above will have been accomplished at the preliminary hearing conducted by the arbitrator pursuant to Section 10.

The complaining party shall then present evidence to support its claim. The defending party shall then present evidence supporting its defense. Witnesses for each party shall submit to questions or other examination. The arbitrator has the discretion to vary this procedure but shall afford a full and equal opportunity to all parties for the presentation of any material and relevant evidence.

Exhibits, when offered by either party, may be received in evidence by the arbitrator. The names and addresses of all witnesses and a description of the exhibits in the order received shall be made a part of the record.

There shall be no direct communication between the parties and a neutral arbitrator other than at oral hearing, unless the parties and the arbitrator agree otherwise. Any other oral or written communication from the parties to the neutral arbitrator shall be directed to the AAA for transmittal to the arbitrator.

32. Arbitration in the Absence of a Party or Representative

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

33. Evidence

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

The arbitrator shall be the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where any of the parties is absent in default or has waived the right to be present.

34. Evidence by Affidavit and Posthearing Filing of Documents or Other Evidence

The arbitrator may receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission.

If the parties agree or the arbitrator directs that documents or other evidence be submitted to the arbitrator after the hearing, the documents or other evidence shall be filed with the AAA for transmission to the arbitrator. All parties shall be afforded an opportunity to examine such documents or other evidence.

35. Inspection or Investigation

An arbitrator finding it necessary to make an inspection or investigation in connection with the arbitration shall direct the AAA to so advise the parties. The arbitrator shall set the date and time and the AAA shall notify the parties. Any party who so desires may be present at such an inspection or investigation. In the event that one or all parties are not present at the inspection or investigation, the arbitrator shall make a verbal or written report to the parties and afford them an opportunity to comment.

36. Interim Measures

- a.** The arbitrator may direct whatever interim measures are deemed necessary with respect to the dispute, including measures for the conservation of property, without prejudice to the rights of the parties or to the final determination of the dispute. Such interim measures may be taken in the form of an interim award and the arbitrator may require security for the costs of such measures.
- b.** A request for interim measures addressed by a party to a judicial authority, or seeking a judicial order mandating action under an agreement, or the foreclosure against real or personal property, or the exercise of self-help remedies relating to collateral or proceeds of collateral such as offset or repossession, shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

37. Closing of Hearing

The arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare the hearing closed.

If briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If documents are to be filed as provided in Section 34 and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearing. The time limit within which the arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties, upon the closing of the hearing.

38. Reopening of Hearing

The hearing may be reopened on the arbitrator's initiative, or upon application of a party, at any time before the award is made. If reopening the hearing would prevent the making of the award within the specific time agreed on by the parties in the contract(s) out of which the controversy has arisen, the matter may not be reopened unless the parties agree on an extension of time. When no specific date is fixed in the contract, the arbitrator may reopen the hearing and shall have 30 days from the closing of the reopened hearing within which to make an award.

39. Waiver of Oral Hearing

The parties may provide, by written agreement, for the waiver of oral hearings in any case. If the parties are unable to agree as to the procedure, the AAA shall specify a fair and equitable procedure.

40. 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 an objection in writing shall be deemed to have waived the right to object.

41. Extensions of Time

The parties may modify any period of time by mutual agreement. The AAA or the arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. The AAA shall notify the parties of any extension.

42. Serving of Notice

Each party shall be deemed to have consented that any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules; for any court action in connection therewith; or for the entry of judgment on any award made under these rules may be served on a party by mail addressed to the party or its representative at the last known address or by personal service, in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard thereto has been granted to the party.

The AAA and the parties may also use facsimile transmission, telex, telegram, or other written forms of electronic communication to give the notices required by these rules.

43. Time of Award

The arbitrator shall endeavor to issue the award promptly and, unless otherwise agreed by the parties, within 30 days from the date of closing of the hearing or, if oral hearings have been waived, from the date of the AAA's transmittal of the final statements and proofs to the arbitrator.

44. Form of Award

The award shall be in writing and shall be signed by a majority of the arbitrators. It shall be executed in the manner required by law.

45. Scope of Award

The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance of a contract. The arbitrator shall, in the award, assess arbitration fees, expenses, and compensation as provided in Sections 51, 52, and 53 in favor of any party and, in the event that any administrative fees or expenses are due the AAA, in favor of the AAA.

46. Award upon Settlement

If the parties settle their dispute during the course of the arbitration, the arbitrator may, upon the written agreement of those parties, set forth the terms of the agreed settlement in an award. Such an award is referred to as a consent award.

47. Delivery of Award to Parties

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

48. Correction of Award

Within 20 days after the transmittal of an award, any party, upon notice to the other parties, may request that the arbitrator correct any clerical, typographical, technical, or computational error in the award. The arbitrator is not empowered to redetermine the merits of any claim already decided.

The other parties shall be given ten days to respond to the request. The arbitrator shall dispose of the request within twenty days after transmittal by the AAA to the arbitrator of the request and any response thereto.

49. Release of Documents for judicial Proceedings

The AAA shall, upon the written request of a party, furnish to the party, at its expense, certified copies of any papers in the AAA's possession that may be required in judicial proceedings relating to the arbitration.

50. Applications to Court and Exclusion of Liability

- a.** 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.
- b.** Neither the AAA nor any arbitrator in a proceeding under these rules shall be a party in judicial proceedings relating to the arbitration.
- c.** Parties to these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.
- d.** Neither the AAA nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.

51. Administrative Fees

As a not-for-profit organization, the AAA shall prescribe an initial filing fee and a case service fee to compensate it for the cost of providing administrative services. The fees in effect when the fee or charge is incurred shall be applicable. The filing fee shall be advanced by the initiating party or parties, subject to final apportionment by the arbitrator in the award.

The AAA may, in the event of extreme hardship on the part of any party, defer or reduce the administrative fees.

52. Expenses

The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the arbitration, including required travel and other expenses of the arbitrator, AAA representatives, and any witness and the cost of any proof produced at the direct request of the arbitrator, shall be borne equally by the parties, unless they agree otherwise or unless the arbitrator in the award assesses such expenses or any part thereof against any specified party or parties.

53. Neutral Arbitrator's Compensation

The *per-diem* fee for each neutral arbitrator shall appear on the arbitrator's biographical information card and shall be agreed upon by the parties and the arbitrator prior to commencement of activities by the arbitrator.

Any arrangement for the compensation of a neutral arbitrator shall be made through the AAA and not directly between the parties and the arbitrator.

If, in the opinion of the AAA, the parties do not reach agreement on the *per-diem* fee within a reasonable time, the AAA will have the sole power to determine the *per-diem* fee and will communicate it in writing to the parties and the arbitrator.

54. Deposits

The AAA may require the parties to deposit in advance of any hearings such sums of money as it deems necessary to cover the expense of the arbitration, including the arbitrator's fee, if any, and shall render an accounting to the parties and return any unexpended balance at the conclusion of the case.

55. Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. When there is more than one arbitrator and a difference arises among them concerning the meaning or application of these rules, it shall be decided by a majority vote. If that is not possible, either an arbitrator or a party may refer the question to the AAA for final decision. All other rules shall be interpreted and applied by the AAA.

Expedited Procedures

56. Notice by Telephone

The parties shall accept all notices from the AAA by telephone. Such notices by the AAA shall subsequently be confirmed in writing to the parties. Should there be a failure to confirm in writing any notice hereunder, the proceeding shall nonetheless be valid if notice has, in fact, been given by telephone.

57. Appointment and Qualifications of Arbitrator

- a. Where no disclosed claim or counterclaim exceeds \$50,000, exclusive of interest and arbitration costs, the AAA shall appoint a single arbitrator, from the National Panel of Real Estate Industry Arbitrators, without submission of lists of proposed arbitrators.
- b. Where all parties request that a list of proposed arbitrators be sent, the AAA upon payment of the service charge as provided in the Administrative Fees shall submit simultaneously to each party an identical list of five proposed arbitrators, drawn from the National Panel of Real Estate Industry Arbitrators, from which one arbitrator shall be appointed. Each party may strike two names from the list on a peremptory basis. The list is returnable to the AAA within seven days from the date of the AAA's mailing to the parties.

If for any reason the appointment of an arbitrator cannot be made from the list, the AAA may make the appointment from among other members of the panel without the submission of additional lists.

The parties will be given notice by telephone by the AAA of the appointment of the arbitrator, who shall be subject to disqualification for the reasons specified in Section 21. The parties shall notify the AAA, by telephone, within seven days of any objection to the arbitrator appointed. Any objection by a party to the arbitrator shall be confirmed in writing to the AAA with a copy to the other party or parties.

58. Date, Time, and Place of Hearing

The arbitrator shall set the date, time, and place of the hearing. The AAA will notify the parties by telephone, at least seven days in advance of the hearing date. A formal notice of hearing will also be sent by the AAA to the parties.

59. The Hearing

Generally, the hearing shall be completed within one day, unless the dispute is resolved by submission of documents under Section 39. The arbitrator, for good cause shown, may schedule an additional hearing to be held within seven days.

60. Time of Award

Unless otherwise agreed by the parties, the award shall be rendered not later than 14 days from the date of the closing of the hearing.

Administrative Fee Schedules (Standard and Flexible Fees)

FOR THE CURRENT ADMINISTRATIVE FEE SCHEDULE, PLEASE VISIT www.adr.org/feeschedule.

