



American Arbitration Association

*Dispute Resolution Services Worldwide*

## Michigan Home Buyer Home Seller Arbitration RULES

Revised and in Effect on February 15, 2000

Adopted by the American Arbitration Association and the Michigan Association of Realtors

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### Introduction

Each year in Michigan tens of thousands of real estate transactions take place. Occasionally disputes develop

over these business transactions. The Home Buyer/Home Seller Arbitration Rules have been prepared in response to an express need for an efficient voluntary arbitration procedure to resolve disputes privately, promptly, and economically.

The American Arbitration Association, a not-for-profit and impartial organization, has developed these arbitration procedures to meet consumer and real estate agent needs in resolving disputes. The rules contain specific procedures for selecting arbitrators with appropriate expertise, presenting evidence, and concluding the proceeding. To ensure fairness, arbitrations are conducted at the home site.

The parties can provide for arbitration by including the following language directly into their purchase agreement or in a separate agreement or addendum to the purchase agreement.

Arbitration. Any claim or demand of SELLER(S), BUYER(S), BROKER(S) or AGENT(S), or any of them, arising out of the BUY AND SELL AGREEMENT but limited to any dispute over the disposition of any earnest money deposits or arising out of or related to the physical condition of any property covered by the BUY AND SELL AGREEMENT, including without limitation, claims of fraud, misrepresentation, warranty and negligence, shall be settled by arbitration administered by the American Arbitration Association under its Home Buyer/Home Seller Arbitration Rules. This is a separate voluntary agreement, between the BUYER(S), SELLER(S), and/or BROKER(S). Failure to agree to arbitrate does not affect the validity of the BUY AND SELL AGREEMENT. A judgment of any circuit court shall be rendered upon the award or determination made pursuant to this Agreement. This Agreement is specifically made subject to and incorporates the provisions of Michigan law governing arbitrations, MCL 600.5001; MSA 27A.5001, as amended, and the applicable court rules, MCR 3.602, as amended. This agreement is enforceable as to all parties and brokers/agents who have agreed to arbitrate as acknowledged by their signatures. The terms of this agreement shall survive the closing.

#### Section 1. Agreement of Parties

These rules have been adopted by the American Arbitration Association (AAA) and the Michigan Association of Realtors (MAR) to govern arbitration of disputes between seller(s), buyer(s) and agent(s) arising out of or relating to the physical condition of property or pertaining to earnest -money deposits covered by a purchase agreement or in an addendum executed by the parties. These rules also apply whenever the parties have agreed to arbitrate under them. They apply to the extent that they are not inconsistent with applicable statutes or with the agreement of the parties. The parties shall be deemed to have made these rules a part of their arbitration agreement whenever they have provided for arbitration by AAA or under its Home Buyer Home Seller Arbitration Rules. 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.

#### Section 2. Name of Tribunal

Any tribunal constituted by the parties for the settlement of their dispute under these rules shall be called the Home Buyer/Home Seller Arbitration Tribunal.

#### Section 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 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.

#### Section 4. Michigan Roster of Neutrals

The AAA shall establish and maintain a Michigan Roster of Real Estate Industry Neutrals and shall appoint arbitrators as provided in these rules.

#### Section 5 . Initiation Under an Arbitration Provision in a Contract

The party seeking arbitration must first obtain a request for arbitration form (demand) from the AAA by calling (248) 352-5500 OR the MAR by calling (517) 372-8890 OR by contacting the Local Board of Realtors in your area.

Arbitration may be initiated in the following manner:

- a. The initiating party shall prepare a written notice to the other party 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
- b. Shall file at the Michigan Office of the AAA, located at 27777 Franklin Road, Suite 1150, Southfield, MI 48034-8208, two (2) copies of the notice, two (2) copies of the arbitration provisions of the contract, and the appropriate filing fee as provided in the schedule of administrative fees.

The AAA shall give notice of such filing to the other party. If so desired, the party upon whom the demand is made may file an answering statement in duplicate with the AAA within ten (10) days after notice from the AAA, in which event this party shall simultaneously send a copy of the answer to the other party. 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 shall be forwarded to the AAA with the answering statement. If no answer is filed within the stated time, it will be assumed that the claim is denied. Failure to file an answering statement shall not operate to delay the arbitration.

#### Section 6. Initiation Under a Submission

Parties to any existing dispute may commence an arbitration under these rules by filing at the Michigan Office of the AAA two (2) copies of a written agreement to arbitrate under these rules (submission), signed by the parties. It shall contain a statement of the matter in dispute, the amount of money involved, if any, and the remedy sought, together with the appropriate filing fee as provided in the schedule of administrative fees.

#### Section 7. Changes of Claim

A party may at any time prior to the close of the hearing increase or decrease the amount of its claim or counterclaim. Any new or different claim or counterclaim, as opposed to an increase or decrease in the amount of a pending claim or counterclaim, 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 often (10) days from the date of such mailing within which to file an answer with the AAA. After the arbitrator is appointed no new or different claim or counterclaim may be submitted to that arbitrator except with the arbitrator's consent.

#### Section 8. Qualifications of an Arbitrator

Arbitrators constituting the Roster of Real Estate Industry Neutrals must be knowledgeable in the sale of residential real estate. Attorneys, architects, builders and engineers will be part of the roster.

Any neutral arbitrator appointed under these rules, or selected by mutual choice of the parties or their appointees, shall be subject to disqualification for the reasons specified in [Section 12](#). If the parties specifically so agree in writing, the arbitrator shall not be subject to disqualification for those reasons.

#### Section 9. Appointment from Roster

The arbitrator shall be appointed in the following manner:

Immediately after the filing of (a) the demand or (b) the submission, the AAA shall submit simultaneously to each party to the dispute an identical list of three (3) names of persons chosen from the Roster of Neutrals. Each party to the dispute shall have ten (10) days from the mailing date in which to strike out one (1) name, number the remaining names to indicate the order of preference, and return the list to the AAA. If a party does not return the list within the time specified, all named persons 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 an arbitrator to serve. If the parties fail to agree on any of the named persons or if acceptable arbitrators are unable or unwilling to act for any reason, the AAA shall have the power to make the appointment from among other members of the Roster of Neutrals without the submission of any additional lists.

In the event of a multi-party arbitration, the AAA may increase the number of potential arbitrators and divide the strikes so as to afford an equal number of strikes to each adverse interest.

#### Section 10. 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.

## Section 11. 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.

## Section 12. 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.

## Section 13. 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.

## Section 14. Date, Time, and Place of Hearing

The arbitrator shall set the date, time, and place for each hearing. The hearing will be held at the home site unless the arbitrator directs otherwise. The AAA shall send a notice of hearing to the parties at least ten (10) days in advance of the hearing date, unless otherwise agreed by the parties.

## Section 15. 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 five (5) days prior to the date set for the hearing at which counsel is first to appear. Failure to do so will not operate as a bar to legal representation. When such a representative initiates an arbitration or responds for a party, notice is deemed to have been given.

## Section 16. 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.

## Section 17. Interpreters

Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service. An exception will be made for those persons who qualify as handicapped under the Michigan Handicapper's Civil Rights Act, M.C.L. ' 37.1101 et seq.

## Section 18. 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.

## Section 19. Postponements

The arbitrator for good cause shown may take adjournments upon the request of a party or upon the arbitrator's

own initiative and shall take such adjournment when all of the parties agree. Any party causing a postponement of any scheduled hearing date will be assessed a fee in accordance with the Administrative Fee Schedule.

#### Section 20. Oaths

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

#### Section 21. Order of Proceedings and Communication with Arbitrator

A hearing shall be opened by the filing of the oath of the arbitrator.

The Claimant shall then present evidence to support its claim. The Respondent 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 and shall afford a full and equal opportunity to all parties to be heard. Exhibits, when offered by either party, may be received in evidence by the arbitrator.

The arbitrator shall control the proceedings with a view to expediting the resolution of the dispute. In order to expedite the proceedings the arbitrator may control the order of proof, bifurcate proceedings, exclude cumulative or irrelevant testimony or evidence, and direct the parties to focus the presentation of evidence on decisive issues. The arbitrator shall entertain motions, including motions that dispose of all or part of a claim, or that may expedite the proceedings, and may also make preliminary rulings and enter interlocutory orders.

There shall be no direct communication between the parties and a neutral arbitrator other than at the 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.

#### Section 22. 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.

#### Section 23. 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. The arbitrator may request offers of proof, and may reject evidence deemed by the arbitrator to be cumulative, unreliable, unnecessary, or of slight value compared to the time and expense involved. All evidence shall be taken in the presence of the arbitrator and all of the parties, except where: 1) any of the parties is absent, in default, or has waived the right to be present, or 2) the parties and the arbitrator agree otherwise.

#### Section 24. 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, unless otherwise agreed by the parties and the arbitrator, shall be filed with the AAA for transmission to the arbitrator. All parties shall be afforded an opportunity to examine and respond to such documents or other evidence.

#### Section 25. Inspection or Investigation

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

#### Section 26. Interim Measures of Protection

(a) At the request of any party, the tribunal may take whatever interim measures it deems necessary with respect to the dispute, including measures for the conservation of property.

(b) Such interim measures may be taken in the form of an interim award and the tribunal may require security for the costs of such measures.

#### Section 27. Closing of Hearing

When satisfied that the presentation of the parties is complete, the arbitrator shall declare the hearing closed.

If documents or a response are to be filed as provided in Section 24, or 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 documents, response, or briefs. 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 and the arbitrator, upon the closing of the hearing.

#### Section 28. Re-Opening 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 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 ten (10) days from the closing of the re-opening hearing within which to make an award.

#### Section 29. Waiver of Oral Hearing

The parties may provide, by written agreement, for the waiver of oral hearings. If the parties agree to waive oral hearings after the appointment of the arbitrator, the consent of the arbitrator must be obtained.

#### Section 30. 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 objections in writing shall be deemed to have waived the right to object.

#### Section 31. 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.

#### Section 32. Serving of Notices

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 with the arbitration; 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 has been granted to the party.

The AAA and the parties also may use facsimile transmission, telex, telegram, or other written forms of electronic communication to give the notices required by these rules. Where all parties and the arbitrator agree, notices may be transmitted by electronic mail ("E-mail"), or other method of communication.

### Section 33. Time of Award

The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than ten (10) days from the date of closing 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.

### Section 34. Form of Award

The award shall be in writing and shall be signed by the arbitrator. It shall be executed in the manner required by law. The arbitrator shall provide a concise, written breakdown of the award. The award shall be accompanied by a written explanation, unless the parties agree to waive this requirement. Any such waiver must be written.

### Section 35. Scope of Award

The arbitrator may grant any remedy or relief which 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 41, 42 and 43](#) in favor of any party and, in the event that any administrative fees or expenses are due the AAA, in favor of the AAA.

### Section 36. Modification of Award

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

The other parties shall be given ten (10) days to respond to the request. The arbitrator shall dispose of the request within twenty (20) days after transmittal by the AAA to the arbitrator of the request and any response thereto.

If applicable law provides a different procedural time frame, that procedure shall be followed.

### Section 37. Award Upon Settlement

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

### Section 38. Delivery of Award to Parties

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

### Section 39. Release of Documents for Judicial Proceedings

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

### Section 40. Applications to Court and Exclusion of Liability

These rules are not intended to apply to commission disputes. Any commission disputes between real estate brokers or agents, who are members of the Michigan Association of Realtors, shall be resolved in the manner provided in the Realtors Code of Ethics.

- a. No judicial proceedings commenced by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's objection to arbitrate.
- b. Neither the AAA nor any arbitrator in a proceeding under these rules is a necessary party in judicial proceedings relating to the arbitration.
- c. Parties to these rules shall be deemed to have consented that judgment on the arbitration award may be entered in any federal or state court having jurisdiction.
- d. Neither the AAA, MAR nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.
- e. These rules are not intended to apply to commission disputes. Any commission disputes between real estate brokers or agents, who are members of the Michigan Association of Realtors, shall be resolved in the manner provided in Article 14 of the Realtors Code of Ethics.

#### Section 41. Administrative Fee Schedule

A nonrefundable filing fee is payable in full by a filing party when a claim, counterclaim or additional claim is filed, as provided below:

Amount of Claim	Fees
\$1 to \$10,000	\$500
\$10,001 to \$20,000	\$750
\$20,001 and up	\$1,100

The filing party is responsible for paying the administrative fee at the time the request for arbitration is submitted. The filing fee may be allocated in the final award, as deemed appropriate by the arbitrator. The allocation of fees may be in any amount based on the arbitrator's determination of what is fair and appropriate.

Mileage out-of-pocket expenses of the arbitrator shall be borne by the parties equally.

Postponement Fees: \$75 is payable by a party causing a postponement of any scheduled hearing.

Refund Schedule: There are no refunds of administrative fees.

#### Section 42. 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 of the total against any specified party or parties.

#### Section 43. Neutral Arbitrator's Compensation

The arbitrator will be compensated \$150 for each day of hearing. The arbitrator's fee for the first day of hearing is included within the filing fee. For each additional day of hearing, the parties will split the compensation of the arbitrator equally. Deposits must be made prior to the commencement of each additional hearing.

If the matter is withdrawn or settled by the parties prior to the scheduling of the first hearing, the arbitrator compensation of \$150 will be refunded. All other filing and administrative fees will be retained by the Association as payment for services rendered.

#### Section 44. Interpretation and Application of Rules

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

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