



# Summary of Changes Home Construction Arbitration Rules and Mediation Procedures

Amended and Effective August 1, 2018

## Significant Changes:

### 1. Applicability

**ARB-1(a). Agreement of Parties:** Previously, the Home Construction Rules (“Rules”) were only applicable when the parties named the Rules in their contract or provided written consent to apply the Rules post dispute. The Rules have been updated so that the Home Construction Rules are also applicable whenever the parties have provided for arbitration of a home construction dispute pursuant to the Rules of the AAA without designating a particular set of AAA Rules and the contract is dated on or after the effective date of these Rules.

**ARB-2. Applicability:** The Rules now apply only to two-party cases with claims or counterclaims less than \$1,000,000 involving a homeowner and a homebuilder. Cases with claims or counterclaims of \$1,000,000 or greater or involving more than two parties or with issues involving joinder or consolidation (see ARB-12) will now be heard under the Construction Industry Arbitration Rules.

**ARB-4. Declining or Ceasing Arbitration:** This new Rule allows the AAA to decline to administer cases in which the arbitration agreement substantially and materially deviates from the Rules. The AAA will give the parties the opportunity to remedy the material deviation before declining to administer the case. In addition, the Rule allows the AAA in its sole discretion to decline to accept a Demand for Arbitration or stop the administration of an ongoing arbitration due to a party’s improper conduct, including threatening or harassing behavior towards any AAA staff, an arbitrator, or a party or party’s representative. Also, if either the arbitrator or the AAA suspends or terminates the proceedings, the parties may submit their dispute to an appropriate court.

**ARB-12. Consolidation or Joinder:** As it has been determined that these Rules shall only apply to cases involving two parties (see ARB-2), this Rule clarifies that any case in which a party seeks joinder or consolidation will be administered under the Construction Industry Arbitration Rules. It also clarifies that the party seeking joinder or consolidation is responsible for any AAA administrative fees and arbitrator costs and fees greater than those incurred under the Home Construction Rules.

### 2. Procedural Issues

**ARB-7. Panel of Home Construction Arbitrators (previously ARB-15):** This rule specifies that the method of selection shall be pursuant to the rules. The parties may only agree to an alternative method for arbitrator selection post dispute.



**ARB-15. Fixing of Locale (previously ARB-14):** This Rule specifies that the locale will be the city nearest the site of the project in dispute. The parties may only agree to an alternate locale other than the nearest city to the project site post dispute.

**ARB-17. Number of Arbitrators:** As these Rules now apply only to two-party cases with claims or counterclaims less than \$1,000,000 (see ARB-2), this Rule specifies that disputes shall be heard by one arbitrator. If for any reason the matter is to be heard by more than one arbitrator, the dispute will be administered under the Construction Industry Arbitration Rules.

### 3. Levels of Dispute

**ARB-3(a). Level 1:** Disputes where the claim or counterclaim is less than \$25,000 are considered Level 1 Disputes. This is an increase from the previous cap of \$10,000.

**ARB-3(b). Level 2:** Disputes where the claim or counterclaim is \$25,000 to less than \$100,000 are Level 2 Disputes. Previously claims above \$10,000 to \$75,000 were Level 2 Disputes.

**ARB-3(c). Level 3:** Disputes where the claim or counterclaim is \$100,000 to less than \$1,000,000 are Level 3 Disputes. Claims above \$1,000,000 will now be heard under the Construction Industry Arbitration Rules (see ARB-2). Non-Monetary Disputes will continue to be considered Level 3 Disputes. Previously, claims above \$75,000 and Non-Monetary Disputes were considered Level 3 Disputes.

### 4. Award and Fees

**ARB-43(c). Form and Scope of Award:** This new subsection allows the arbitrator to allocate compensation, expenses and administrative fees only if the arbitrator determines that a party filed the claim or counterclaim for purposes of harassment or it is patently frivolous.

**ARB-50. Administrative Fees, Arbitrator Fees and Expenses and Suspension for Non-Payment:** This Rule clarifies that if either the arbitrator or the AAA suspends or terminates the proceedings due to non-payment, the parties may submit their dispute to an appropriate court. It also provides for notification to the parties that should a builder fail to pay its share of fees, the AAA may elect to not administer future cases involving that builder.

### 5. Home Construction Mediation Procedures

Amended to mirror AAA Construction Industry Mediation Procedures.



### Additional Changes:

**ARB-8. Initiation under an Arbitration Provision in a Contract (previously ARB-7):** Amended to mirror current Construction Industry Arbitration Rule R-4.

**ARB-10. Changes of Claim (previously ARB-9):** Amended to be consistent with current Construction Industry Arbitration Rule R-6.

**ARB-18. Disclosure (previously ARB-17):** Amended to mirror current Construction Industry Arbitration Rule R-19.

**ARB-19. Disqualification of Arbitrator (previously ARB-18):** Amended to mirror current Construction Industry Arbitration Rule R-20.

**ARB-23(a). Exchange of Information (previously ARB-22):** Amended language for Level 1 and 2 disputes to be consistent with Level 3.

**ARB-41. Serving of Notice (previously ARB-40):** Amended to mirror current Construction Industry Arbitration Rule R-44.

**ARB-48(e). Applications to Court and Exclusions of Liability:** Amended to mirror current Construction Industry Arbitration Rule R-54(e).