

**METROPOLITAN BUILDERS ASSOCIATION**  
**CONSTRUCTION MEDIATION & ARBITRATION PROCEDURES**

**Introduction**

As a service to our community, the Metropolitan Builders Association has provided dispute resolution services, including mediation and arbitration of residential construction matters, for decades. The MBA's mediation and arbitration services have assisted hundreds of homeowners and MBA member builders to resolve their disputes privately, professionally, and cost-effectively. MBA dispute resolution services also are available to resolve residential construction disputes between construction industry professionals where one or both parties are MBA members.

MBA members are involved in every aspect of the MBA's Mediation and Arbitration Process. Each is a volunteer who takes their responsibility seriously to assist in the fair resolution of disputes consistent with established construction industry standards of quality. Our panel of mediators and arbitrators include builders, building inspectors, subcontractors, suppliers, lenders, title company representatives, attorneys, and insurance industry professionals, and others whose professional work includes significant residential construction experience.

Our MBA volunteers are not permitted to serve as a mediator or arbitrator if they have a conflict of interest. A conflict of interest means they have a prior or existing personal or business relationship with any of the parties, or there is any other reason that could affect the person's ability to fairly and impartially act as a mediator or arbitrator. Each MBA volunteer signs a disclosure form verifying their commitment to impartiality and fairness, and confirming that they do not have a conflict of interest with any of the parties before they begin. The MBA carefully scrutinizes the volunteer disclosures before assigning volunteers to a case as mediators or arbitrators.

**1. Case Submittal Process**

**A. Claims**

To begin the dispute resolution process, a Claim must be uploaded to the MBA website. [mbabuilds.org/dispute-resolution](http://mbabuilds.org/dispute-resolution). The MBA will provide a claim form as Exhibit E to be used to identify each specific issue. The MBA will then contact the party and send a link to a shared folder for the party to upload any supporting document relating to the claim. The materials should include the following:

- (1) A copy of any written contract between the parties, together with any amendments, modifications, change orders, plans, drawings, or other written agreements of the parties that are relevant to the dispute, indicating the builder or associate was, at the time the contract was executed, an MBA member or a member of Wisconsin Builders Association
- (2) The party that initiates the process must file a detailed list of complaints that briefly and clearly summarizes each issue to be decided or pursued in the dispute resolution process, regardless of whether the case goes to mediation or arbitration. The MBA will provide you with an excel form to fill out. Once completed, it will need to be uploaded into the website

portal. A description of each separate issue, together with any relevant supporting written documentation related to the issue. This may include portions of the project specifications,

- (3) plans, invoices, change orders, e-mails, expert reports, surveys, proposals, bids, photographs, repair invoices, project records, weather reports or other documents. If an issue involves a financial dispute, submit copies of all draw requests, payment records, change orders, closing statements, and other financial data pertinent to the issue. Financial documentation supporting any payment claim similarly must be submitted. The supporting documentation must also be submitted by uploading it to the MBA Dispute Resolution website portal.
- (4) Identification of the name, address, e-mail address and telephone number of each person who will participate in the dispute resolution process on behalf of the party. This may, but is not required to, include attorneys, fact witnesses or persons providing expert analysis of issues.
- (5) Proof that the parties:
  - (a) have agreed in their written construction contract to resolve their dispute using MBA Mediation and/or Arbitration, OR
  - (b) have agreed in a separate written agreement Exhibit F to resolve their dispute using MBA Mediation and/or Arbitration, OR
  - (c) have a Court Order from a Wisconsin Circuit Court or other Court having jurisdiction, referring their case to MBA Mediation or Arbitration.
- (5) If the dispute involves a homeowner and builder, proof of compliance with the notice and inspection requirements of Wisconsin's Right to Repair Law, sec. 895.07(2)(a), Wis. Stats. ((if applicable to the claims)) (a summary of these statutes is attached at Exhibit C).
- (6) Designate whether Mediation or Arbitration is being requested (or both, if applicable). [Note: For those cases to which the Right to Repair Law applies, if no agreement is reached by the parties for the voluntary resolution of the Claim issues during the inspection and cure period provided by the Right to Repair Law, the Claim may only be submitted to Mediation.] Include the party's Mediation or Arbitration fee, payable to the MBA. Fees are as follows:
  - a. For MBA Mediation, the fee is \$500 per party if one of the parties is a member of MBA at the time the Claim is filed, and \$1000 per party, if none of the parties is currently a member of the MBA.
  - b. For MBA Arbitration cases the fee is \$2100 per party if one of the parties is an MBA member at the time the Claim is filed, and \$4200 per party, if none of the parties is currently a member of the MBA.
  - c. Please note that any fees paid for mediation services will not be applied to an arbitration case should a solution not be determined.
  - e. Refunds for Mediation and Arbitration fees:
    1. The MBA Mediation fee is non-refundable.
    2. The MBA Arbitration fee will be refunded 50% if the issue is resolved prior to any involvement by the appointed arbitrator(s).

- (7) Proof of delivery of a copy of the materials submitted under sec. A(1) through (7) above to the other party or parties involved in the case by electronic delivery, hand delivery (confirmed by affidavit of service) or certified mail (confirmed by return receipt signed by the other party).

#### **B. Claim Response**

Response to the Claim by the opposing party or parties is due within twenty-one (21) days after the Claim is delivered pursuant to sec. A(8) above. The MBA will provide a claim form as Exhibit E to be used to identify each specific issue. The Claim Response must be uploaded (with all supporting materials) to the MBA Dispute Resolution website portal and include all of the following:

- (1) Using the original order of Claim issues as submitted under sec. A(2) above, a written response to each, including any additional relevant supporting documents.
- (2) Any Counterclaims, including a written description of each separate counterclaimed issue, together with any relevant supporting documentation related to the issue.
- (3) The name, address, e-mail address and telephone number of each person who will participate in the dispute resolution process on behalf of the party including all witnesses who will either appear in person or will submit a letter or report.
- (4) The party's Mediation and/or Arbitration fee, payable to the MBA. See section A(7) above for the appropriate fees.
- (5) Proof of delivery of a copy of the materials submitted under sec. B(1) through (4) above to the other party or parties by electronic delivery, hand delivery (confirmed by affidavit of service) or certified mail (confirmed by return receipt signed by the other party).

#### **C. Counterclaim Response**

Response to Counterclaims, if any, is due within (14) days after the Counterclaim is delivered pursuant to Sec. B(5) above. The MBA will provide a claim form as Exhibit E to be used to identify each specific issue. One copy of this Counterclaim Response, responding to each issue in the order originally submitted in the Counterclaim, together with any additional supporting documentation separated by issue, should be conveyed to the MBA, plus one copy to each of the other parties in the case, with proof of delivery to those parties by electronic delivery, hand delivery (affidavit of service) or certified mail (return receipt signed by the respective party) conveyed to MBA. If a party will not be furnishing a response or documents to a Counterclaim, they should instead send a letter to the MBA and the other parties advising of this.

#### **D. Supplemental Submittals**

For cases that begin in Mediation but where all issues are not fully resolved by through the mediation process, and (a) the parties' contract requires that they resolve the remainder of their dispute via MBA Arbitration OR (b) they agree in writing at the end of the Mediation to submit their dispute to MBA Arbitration using the Agreement to Arbitrate form attached as Exhibit B, the case will proceed to Arbitration.

- (1) The parties may supplement their Claim, Claim Response, Counterclaim and/or Counterclaim Response, including clarifying or withdrawing issues and furnishing additional documentation about them, using the original numbering of their original submittals. A copy shall be uploaded to the MBA Dispute Resolution website portal of the complete Supplemental submittal that will be involved in the Arbitration within fourteen (14) days after the Agreement to Arbitrate is received by MBA.
- (2) Each party will pay their respective Arbitration fee to the MBA before the Arbitrator(s) will be assigned. The MBA Arbitration fee is \$2100 per party, if one or more of the parties is a member of the MBA at the time the Claim is filed. For MBA Arbitration where no party is an MBA member, the arbitration fee is \$4200 per party. Fees paid for mediation services will not be applied to the arbitration case.

**E. Additional Submittal Procedures**

- (1) Parties will provide additional copies of their Claim, Claim Response, Counterclaim, Counterclaim Response, or any additional Supplemental materials, upon request of the MBA.
- (2) Upon the request of any party, the MBA may shorten or lengthen a party's applicable time period for conveying a Claim, Claim Response, Counterclaim, Counterclaim Response, or additional Supplement submittals upon good cause shown. A written request should be submitted to the MBA, with copy to the other parties, before the applicable submittal deadline, explaining the need for an extension and the proposed extension period. The MBA will balance the need for full and complete assembly of relevant information with the need for reasonable promptness in completing the dispute resolution process in making its decision, which will be conveyed in writing to and binding on all the parties.
- (3) The MBA will send a written inquiry to a party who does not respond to a request to mediate, or to respond to a claim or counter-claim, informing the party of their default and the possible consequences. In the case of mediation, the defaulting party may be required to reimburse and pay the non-defaulting party's mediation fee. In the case of arbitration, the defaulting party will be given one last opportunity to comply with the process or face the possibility of a default Arbitration Award and an award of the arbitration fee to the non-defaulting party. MBA members who fail to cooperate with the Dispute Resolution process may be subject to MBA ethics proceedings, on a case by case basis. An MBA Member who fails to respond or does not comply with an Arbitration Decision or Supplemental Decision, may be subject to disciplinary action, including possible suspension and/or termination from the MBA in accordance with the MBA Bylaws. The MBA may recommend to the non-defaulting party that they pursue a Motion to Compel Compliance in Circuit Court.

**F. Multiple Case Filings and Abusive Claims.**

All parties must submit all of their claims and issues in their initial or amended case submittals, claims or counter-claims. The parties are required to include all of their claims or counter-claims in one case to prevent abuse of the MBA Dispute Resolution process to prevent unfair or repetitive

claims from being asserted against an opposing party. Another goal of this policy is to prevent excessive or inefficient use of the arbitration process, the arbitrators and MBA staff. This policy is intended to prevent multiple complaints and prevent unreasonable or abusive claims from being by any party. An exception may be made for legitimate, unforeseen, or latent conditions that were truly not known – undiscovered – and not reasonably discoverable. Claims or issues that are known, or reasonably should have been known, must be made part of the initial or amended submittals for a case or they will be deemed waived or unenforceable. The policy covers known claims or those which reasonably should have been discovered in an effort to prevent multiple or abusive filings with the MBA Dispute Resolution service.

## 2. Case Processing

### A. Mediation and Arbitration Intake Review

Once all Claims, Claim Responses, Counterclaims, Counterclaim Responses (and Supplements, if applicable) are fully submitted for a case, they are reviewed by MBA's Dispute Resolution Service.

#### (1) Case Review & Assignment

The MBA will initially review the case to confirm compliance with the requirements of Section 1 above. Where submittals are complete, they will obtain and review MBA volunteer conflict of interest statements, and, consistent with the parties' initial requested designation, will assign the case based on the nature of the issues presented as follows:

- (a) For cases initially requesting Mediation, a single MBA Mediator will be assigned.
- (b) For cases requesting Arbitration or proceeding to Arbitration after Mediation, appointment will be made as follows:
  - (i) For cases under \$10,000 in dispute, regardless of the nature of the issues involved, a single MBA Arbitrator will be assigned by the MBA (who will be the Lead Arbitrator for this case). **The MBA Dispute Resolution Service reserves the authority, within its sole discretion, to refer cases that are within the Wisconsin Small Claims Court jurisdictional dollar amounts to the Wisconsin Circuit Court – Small Claims Division.**
  - (ii) For cases over \$10,000 in dispute, the case will be assigned to MBA Arbitration to three Arbitrators appointed by the MBA which shall designate one as the Lead Arbitrator for the case.

#### (2) Objection to Mediator or Arbitrator

The parties each will have ten (10) days from the date notification of appointment of a Mediator or Arbitrator(s) is made to object in writing to the MBA, with a copy conveyed to the other parties involved in the case. The objection must specifically describe the conflict of interest or other grounds for disqualification. The CAB Chairperson will review the objection and determine whether a conflict of interest or other reasonable grounds exist that preclude the individual from being appointed to serve and/or participate in the proceedings and will advise all the parties in writing to as to the decision on appointment. Failure to timely object using this process shall be deemed acceptance by a party of the appointment(s).

### **3. MBA Mediation Procedures**

In MBA Mediation, a Mediator will work to assist the parties to reach a mutually acceptable agreement to resolve their dispute by reviewing issues with the parties, examining possible bases for agreement, and explaining the consequences of failing to settle. The Mediator will encourage each party to listen to, and accommodate the concerns and interests of, the other parties. It is important that the parties remain as open-minded as possible as they participate in the Mediation process.

- A.** Once appointment is confirmed by the CAB, the MBA will set a Mediation date, establish procedures for mediating the issues in dispute, including setting the location for the Mediation, and thereafter confirm these in writing to the parties.
- B.** The Mediation process will include site inspection at the home before the Mediation Date, if requested by one or more parties, and may include exchange of additional documentation, if deemed useful by the Mediator.
- C.** If the parties agree to and request it, the Mediation may be continued in one or more additional sessions at mutually acceptable date(s) and time(s) after the initial Mediation date.
- D.** The Mediator will assist the parties in documenting in writing the agreed upon resolution of all or any part of their dispute. The parties will then sign a binding settlement agreement regarding the items that are resolved.

### **4. MBA Arbitration Procedures**

#### **A. Controlling Precedents**

MBA dispute resolution proceedings are governed by the MBA's policies, rules and procedures, the MBA Construction Industry Quality Standards, and the applicable provisions of Wisconsin Law.

#### **B. Inspection Process**

- (1) Once appointment is confirmed by the MBA, the Arbitrator(s) will review the Claim, Claim Response, and any Counterclaim and Counterclaim Response, as well as all related documentation furnished by the parties.
- (2) The Lead Arbitrator will then schedule (i) a date and time for inspection of the home by the Arbitrator(s) and the parties ("Inspection") unless all parties mutually agree the nature of their case does not require such an Inspection and will also set (ii) a date and time for final Arbitration hearing ("Arbitration Hearing"). The parties will be cooperative in scheduling the earliest practicable dates and adhering to this established schedule but will promptly notify the MBA if there is any subsequent issue that precludes them due to good cause from participating as scheduled and the Lead Inspector will reschedule as needed. The parties are required to attend both the Inspection and final Arbitration Hearing.
- (3) At the Inspection, the Arbitrator(s) will inspect, and provide an opportunity for each party to comment about, each of the issues listed in the Claim and in the Counterclaim, if any. Issues not listed in the Claim or Counterclaim will not be considered unless all parties agree to add them no later than at the time of Inspection.
- (4) If Inspection is waived by all parties, the Arbitrator(s) will meet with the parties at the MBA Offices to make an initial review each of the issues listed in the Claim and Counterclaim, if any.

- (5) If further exchange of project records or other documentary information would aid the Arbitrator(s) in understanding the issues in dispute, the Lead Arbitrator may direct the parties to furnish this information to the Arbitrator(s) and the other parties involved in the case so that it is exchanged before the Arbitration Hearing. The Arbitrators will establish due dates for such materials.

**C. Outside Consultants.**

- (1) Following the Inspection on cases in excess of \$5,000, the Arbitrators may determine that it is necessary to hire outside consultant(s). Although this need for outside consultant(s) happens rarely, the Arbitrators may determine, in their discretion, that it is necessary to assist them in resolving the issues raised by the parties. In such an event, the Lead Arbitrator will inform the parties in writing of this decision and advise the parties of the estimated cost to retain the outside consultant(s)' services.
- (2) If either party objects to the hiring of an outside consultant, that party may raise their objections in writing delivered to the Arbitrators within ten (10) days of being advised of the decision to hire the consultant(s) and request that the Arbitrators reconsider their decision to do so. The Arbitrators and the CAB Chairperson will then make a final decision on whether to hire the outside consultant(s).
- (3) If the final decision is that outside consultant services are necessary, the parties shall be required to enter into an Expert Consultation Escrow Agreement in the form attached as Exhibit D and shall make an escrow deposit with the MBA in an amount as determined by the Arbitrators within ten (10) days of receipt of notice of the decision sufficient to hire the consultant(s). The consultant(s) shall then be retained by the MBA to assist the Arbitrators in analyzing the Claims and Counterclaims.
- (4) Following completion of the consultant(s) services and payment for them from the escrow fund, any unexpended funds in the escrow shall be returned to the parties, divided in the same proportion as their originally submitted funds.
- (5) The Arbitration Decision may include an award of outside consultant(s)' fees in favor of the party prevailing on the issue for which the consultant(s) are hired.

**D. Arbitration Hearing**

- (1) The Arbitration Hearing will be held at the MBA offices and led by the Construction Arbitration Board Chairperson or Chairperson's designee. The Arbitrator(s) will ask additional questions of the parties at this Final Hearing and the parties will be permitted to provide closing statements. At the Chairperson's discretion, up to five additional Construction Arbitration Board Members may attend as a non-voting advisory panel. This panel of Board Members may only participate if they have signed a conflict-of-interest statement confirming they have no conflict of interest with the parties.
- (2) Not all issues may be specifically discussed by the Arbitrator(s) at this Arbitration Hearing, particularly where the Arbitrator(s) feel that sufficient evidence was obtained at the Inspection or through the written submittals of the parties.
- (3) The Arbitrator(s) may request further information or discussion at the Arbitration Hearing and may adjourn and reconvene the Arbitration Hearing as needed to permit the parties to provide this supplemental information or produce parties for requested discussion.

- (4) At the beginning of the arbitration hearing, the parties will be asked to introduce themselves and any witnesses or representatives who are present. Each party will be given an opportunity to make an opening statement, which will typically be five minutes in length and subject to the arbitrator's discretion as to the time limit permitted. At the end of the Arbitration hearing, each party will have an opportunity to summarize their respective positions in a closing argument. The closing argument will typically be limited to ten minutes in length and subject to the arbitrators' discretion as to the time limit permitted. The Lead Arbitrator will advise the parties in advance of the hearing as to any time limits on the length of this closing argument, which will take into consideration the number and complexity of issues raised in the case.

#### **E. Arbitration Decision**

- (1) The Arbitration Decision shall be in writing and signed by the Arbitrator(s). It will be mailed to the parties simultaneously by the MBA using US Mail, with a copy sent to each party at the e-mail address each has furnished. The MBA arbitrators shall have the discretion, if they so decide, to award the prevailing party the reimbursement of its arbitration fee. A decision as to which party is the prevailing party will be decided by the MBA arbitrators, in their sole discretion.
- (2) The Arbitration Decision will typically be issued within two (2) weeks after the conclusion of the Arbitration Hearing. The parties will be advised if there will be a delay in the issuance of the written Arbitration Decision.
- (3) The Arbitration Decision may require one or more parties to place money into escrow with the MBA to ensure compliance with the Arbitration Decision. It will specify any terms and conditions for the allocation and/or disbursement of money that is placed into escrow.
- (4) The Arbitrator(s) may order a party to make repairs as part of their Decision. In such event, the parties agree to give the party ordered to make repairs reasonable access and opportunity to make repairs at the home as required by the Decision.
  - a. Access for a party ordered to make repairs must be allowed during normal working hours (Monday thru Friday, 8:00 a.m. - 4:30 p.m.), unless the parties mutually agree to different day/time for access. If a party fails to provide access to a party ordered to make repairs, or their employees, subcontractors or representatives, the Arbitrator(s) may issue a Supplemental Decision, including requiring no further action by the party that was required to make repairs under the initial Arbitration Decision.
  - b. A party who has been ordered to make repairs under an Arbitration Decision must make repairs pursuant to applicable building codes and Construction Industry Quality Standards, as applicable. Neither the MBA nor the Arbitrators will prescribe the specific repair(s) or the means or methods for performing any repair(s).
  - c. All repair(s) are subject to re-inspection by the Arbitrator(s), if requested, at a date set by the Lead Arbitrator, at which all parties are required to be present. A written Supplemental Decision will be sent to the parties confirming the Arbitrator(s)' determinations at the reinspection. The Arbitrator(s) will retain jurisdiction and may take any action they deem necessary in order to enforce their Arbitration Decision via Supplemental Decision until full compliance is achieved. If any party fails to complete item(s) required within the time required, the



- (5) Arbitrator(s) may make a Supplemental Decision relieving a party from all or a portion of their required performance as specified in the original Arbitration Decision. Alternatively, the Arbitrator(s) may assign dollar values for any items and order payment for them to be made within a specified time frame in lieu of repair, which may include an additional award of reasonable legal fees and collection costs, interest, and such other damages as the Arbitrator(s) deem appropriate given the severity of the failure to comply with the Arbitration Decision.
- (6) The Arbitration Decision represents the final and binding determination of the issues of the case after the Arbitrator(s) thoroughly consider all information and documents presented by the parties and obtained during the Inspection and Final Hearing by the Arbitrator(s). It may be modified only by a Supplemental Decision consistent with the process required under these Mediation and Arbitration Procedures. Requests of the CAB for reconsideration of a Decision must be made within thirty (30) days of the date of the Arbitration Decision. Requests for further action of the CAB based upon a party's non-compliance or poor performance must be made within six (6) months after the CAB Award is issued.
- (7) A monetary award in an Arbitration Decision or Supplemental Decision may not necessarily be identical to the dollar amount requested by a party for the item. Additionally, the Arbitrator(s) need not provide a detailed breakdown of their monetary award. The Arbitrator(s) are not required to fully explain their rationale or reasoning for a holding on any item or the Decision as a whole.
- (8) The Arbitration Decision or Supplemental Decision will include a reasonable time for payment, performance, or other action, as the Arbitrator(s) determine is necessary and appropriate. A party seeking modification of the time set in the Arbitration Decision or Supplemental Decision may submit a written request to the Arbitrator(s) and the other part(ies) setting forth reasons explaining good cause for the request. The Arbitrator(s) will respond in writing and their decision as to the requested adjustment shall be final.
- (9) There is no internal appeal of an MBA Arbitration by any party to the MBA Arbitrator(s), the MBA CAB, the MBA Construction Arbitration Board Chairperson, Vice Chairperson, or the MBA Board of Directors, except as provided in these Mediation and Arbitration Procedures. ALL DECISIONS ARE BINDING UPON ISSUANCE unless a timely request for review or reconsideration is made as provided in these Mediation and Arbitration Procedures.
- (10) Within one (1) year from the date of an Arbitration Decision or Supplemental Decision requiring the payment of money or other action, a party may seek to enforce the Decision as a judgment in a court of competent jurisdiction. Additionally, if an MBA Member does not comply with an Arbitration Decision or Supplemental Decision, that party will be subject to disciplinary action, including possible suspension and/or termination from the Association in accordance with the MBA Bylaws.
- (11) In the event that any party to the Arbitration fails to comply with the requirements of the Arbitration Decision, then the party who successfully pursues judicial relief to enforce the Decision shall be entitled to the reimbursement of its reasonable attorney fees and costs as

determined by the Court that the party incurs in enforcing the Arbitration Decision.

- (12) In the event a party seeks to have the Arbitration Decision vacated or in any way modified outside of the MBA Arbitration process, and that party is unsuccessful, the prevailing party shall be entitled to costs, expenses and reasonable attorney fees incurred in defending against such proceedings.
- (13) By participating in the MBA Mediation or Arbitration dispute resolution process, the parties agree to hold harmless and release the MBA, its officers, employees, staff, representatives, CAB and its Chairperson, Arbitrator(s), Mediator(s), attorneys, agents, consulting experts and other parties acting through or on behalf of the MBA (the "Released Parties"), from any and all liabilities, claims, damages, costs, expenses and reasonable attorney fees incurred as a result of the Arbitration Decision, Supplemental Decisions and/or any claims, litigation or arbitration pursued by or on behalf of the parties against the Released Parties arising out of or relating to the Mediation and Arbitration Process or any aspect of it, except intentional misconduct of any of the Released Parties. Each party agrees to reimburse and indemnify the MBA for all costs, expenses, damages, and reasonable attorney fees incurred by the Released Parties, or any of them, resulting from the party's breach of this provision.
- (14) Statements made during, and documents submitted as part of, the dispute resolution process are confidential. They may not be used as evidence in any subsequent proceedings absent the written agreement of all parties that specifically identifies those items that may later be used, or unless as ordered by a court having jurisdiction of the subsequent proceedings. For these reasons, video, audio and written recording of the Inspection, Arbitration Hearing or other mediation and arbitration proceedings is **NOT** permitted. All CAB members, the Chairperson, Mediators and Arbitrators are obligated to maintain the confidentiality of the proceedings, any agreements reached by the parties in Mediation, and/or any Arbitration Decisions rendered.

#### **F. Procedural Questions.**

Any party that has questions about these Mediation and Arbitration Procedures may submit a written request for further information or clarification to the MBA Construction Arbitration Board, which oversees both Mediation cases and Arbitration proceedings. The CAB will provide an answer that will be shared with all the parties involved in the same case, and further reserves the right to clarify and update its Mediation and Arbitration Procedures from time to time. These changes will become effective upon adoption by the MBA Board of Directors for all cases commenced after the date of adoption. If all parties to a then-pending Mediation or Arbitration agree, they will also be applied to their case.



Exhibit A

# Construction Arbitration Board Mediation Submittal Form

2120 Pewaukee Road, Suite 103, Waukesha, WI 53188 • 262-436-1122 • www.mbabuilds.org

Owner Information

Contractor Information

Name(s): \_\_\_\_\_

Company & Contact: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

City, St., Zip: \_\_\_\_\_

City, St., Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Email: \_\_\_\_\_

Address of property in dispute, if other than above: \_\_\_\_\_

Directions to property in dispute: \_\_\_\_\_

Date of occupancy: \_\_\_\_\_

Was the home built from contract?  Yes  No

Was the home an existing model?  Yes  No

Did the Contractor sell lot to Owner?  Yes  No

Was any work on the property performed by Owner or Owner's subcontractors?  Yes  No

If yes, please list: \_\_\_\_\_

Did you report the complaint in writing to the Owner?  Yes  No Dates: \_\_\_\_\_

Did you receive and review information about Wisconsin's "Right to Cure" law?  Yes  No

Is this a remodeling project?  Yes  No

Please list who will be attending the Mediation: \_\_\_\_\_

This form along with the complaint and any supporting documents must be uploaded into the MBA website. You will receive a confirmation email and someone from the MBA office will contact you after it is completed. Please mail a check The Metropolitan Builders Association, 2120 Pewaukee Rd., Suite 103, Waukesha, WI 53188. Attn: CAB, or you can call the MBA with a CC payment. There will be a 3.5% fee on all CC payments.

- For MBA Mediation, the fee is **\$500 per party** if one of the parties is a member of the MBA at the time the Claim is filed. **This fee is non-refundable. The MBA will not process or schedule a case until the fee is paid.**
- If neither of the parties is currently a member of the MBA, the Mediation fee is **\$1000 per party. This fee is non-refundable.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_

\_\_\_\_\_



Exhibit B

# Construction Arbitration Board Arbitration Submittal Form

2120 Pewaukee Road, Suite 103, Waukesha, WI 53188 • 262-436-1122 • www.mbabuilds.org

Owner Information

Contractor Information

Name(s): \_\_\_\_\_

Company & Contact: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

City, St., Zip: \_\_\_\_\_

City, St., Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Email: \_\_\_\_\_

Address of property in dispute, if other than above: \_\_\_\_\_

Directions to property in dispute: \_\_\_\_\_

Date of occupancy: \_\_\_\_\_

Was the home built from contract?  Yes  No

Was the home an existing model?  Yes  No

Did the Contractor sell lot to Owner?  Yes  No

Was any work on the property performed by Owner or Owner's subcontractors?  Yes  No

If yes, please list: \_\_\_\_\_

Did you report the complaint in writing to the Owner?  Yes  No Dates: \_\_\_\_\_

Did you receive and review information about Wisconsin's "Right to Cure" law?  Yes  No

Do you have any special needs the MBA would need to accommodate for the arbitration hearing?  
If yes, please list \_\_\_\_\_

Please list who will be attending the Arbitration Hearing: \_\_\_\_\_

This form along with the complaint and any supporting documents must be uploaded into the MBA website. You will receive a confirmation email and someone from the MBA office will contact you after it is completed. Please mail a check The Metropolitan Builders Association, 2120 Pewaukee Rd., Suite 103, Waukesha, WI 53188. Attn: CAB, or you can call the MBA with a CC payment. There will be a 3.5% fee on all CC payments.

- For MBA Arbitration, the fee is **\$2100 per party** if one of the parties is a member of the MBA at the time the Claim is filed. **This fee is non-refundable. The MBA will not process or schedule a case until the fee is paid.**
- If neither of the parties is currently a member of the MBA, the Arbitration fee is **\$4200 per party. This fee is non-refundable.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_

\_\_\_\_\_

## EXHIBIT C

### Information About Wisconsin “Right to Cure” Law

The “Right to Cure Law” provides the steps and timetables to be followed in resolving any claims of dwelling construction defects by consumers against contractors or suppliers. Claims must be pursued through the “Right to Cure Law” process before arbitration or before legal action.

- The 2005 Wisconsin Act 201, the “Right to Cure Law,” says that consumers at the time of contracting for construction or remodeling work for dwellings must be provided with information describing requirements for making any future claims of construction defects.
- People who feel they have a claim concerning defective workmanship or materials need to provide written notice to contractors or suppliers before any legal action may be filed. The contractors and suppliers have the opportunity and the responsibility to respond to claims.
- Construction defects can involve workmanship, materials, or code requirements in new construction or remodeling, but not maintenance or repairs. Claims may be made by owners, tenants, or property associations.
- This document highlights some of the provisions of the “Right to Cure Law”, and is not a complete description of the law, and is not a substitute for legal representation.

#### Notice Concerning Construction Defects

Wisconsin law contains important requirements consumers must follow before they file a lawsuit for defective construction against a contractor who constructed their dwelling or completed the remodeling project or against a window or door supplier or manufacturer. Section 895.07 (2) and (3) of the Wisconsin statutes requires consumers to deliver to the contractor a written notice of any construction conditions alleged to be defective before filing a lawsuit, and consumers must provide the contractor or window or door supplier the opportunity to make an offer to repair or remedy the alleged construction defects. Consumers are not obligated to accept any offer made by the contractor or window or door supplier. All parties are bound by applicable warranty provisions.

#### Chronology of the step-by-step claim and response interaction between consumers and contractors/suppliers

Step One Notice of Claim—At least 90 working days before commencing an action against a contractor or window or door supplier or manufacturer, a claimant must deliver a written notice of the alleged defect to the contractor.

Step Two: Contractor’s Response—The contractor will have 15 working days (or 25 working days if it involves a defect involving a window or door supplier) to provide the claimant with a written: (1) offer to repair or remedy the defect; (2) offer to settle the claim with a monetary payment; (3) offer of a combination of (1) and (2); (4) statement that the contractor rejects the claim and the reasons for rejecting the claim; or (5) proposal to inspect the alleged defect or perform any necessary testing.

Step Three: Claimant’s Response—If the contractor rejects the claim, the claimant may proceed to commence an action against the contractor. The claimant must serve written notice on the contractor within 15 working days if he or she either accepts any offer or rejects an offer. Note that if the claimant has a claim against a window or door supplier or manufacturer, the claimant should contact the supplier to ensure that the supplier received a notice of the claim from the contractor.

Step Four: Contractor’s Supplemental Response—If the claimant rejects the offer, the contractor has five working days to provide a written supplemental offer or a notice that no additional offer will be made.

Step Five: Claimant’s Response—If the contractor has provided the claimant written notice that no additional offer will be made, the claimant may commence a lawsuit or other action against the contractor. If the claimant has received a supplemental offer from the contractor, the claimant must respond within 15 working days.

#### Additional Points

- Claimants may accept settlement offers, accept them in part, or reject offers, doing so via detailed written notice.
- The law does not apply where there is no contract to construct, as in the case of purchasing an existing home.
- Contractors and suppliers have the right to inspect and, as appropriate, test alleged defects.
- Access must be provided in a timely fashion for inspections, tests, and repairs.
- Additional claims made or discovered after an original claim, are treated as separate in terms of time and process.
- There is a different timetable and process for the claims and responses if a contractor seeks contribution from a supplier.
- Failure by the claimant, contractor, or supplier to follow the “Right to Cure Law” can result in delay or dismissal of legal or arbitration actions.

**Source:** This information was collected from the Department Safety and Professional Services, who does not investigate, arbitrate, or judge consumer-contractor/supplier disputes. Those disputes are solved through the “Right to Cure Law” process, by the state’s court system, and, for alterations and additions, the Home Improvement Practices Code, ATCP 110, of the state Department of Agriculture, Trade, and Consumer Protection. Rev 9/14

**EXHIBIT D - Expert Consultation Agreement**

METROPOLITAN BUILDERS ASSOCIATION

EXPERT CONSULTATION AGREEMENT

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between

\_\_\_\_\_ (the "Builder"),

\_\_\_\_\_ (the "Owner"),

and the Construction Arbitration Board of the Metropolitan Builders Association (the "CAB").

Builder and Owner each hereby deposit the sum of \$ \_\_\_\_\_ with the CAB connection with an arbitration proceeding relating to a dispute between the Builder and Owner (the "Proceeding") which is being processed by the Board. The escrowed funds shall be used by the CAB to pay the actual costs of retaining expert consultation services provided in connection with the Proceeding.

Builder and Owner agree that the CAB shall hold the escrowed funds until a final decision in connection with the Proceeding has been made by an arbitration panel of the CAB. As part of the written decision of the arbitration panel, such panel may direct the unsuccessful party in the Proceeding to pay the actual cost of the expert consultation services provided. Upon the issuance of such a decision, the CAB shall release to the prevailing party identified in the decision the funds escrowed by it hereunder. The CAB shall deduct the cost of the expert consultation services from the escrowed funds of the unsuccessful party identified in the decision, pay for such services and return any excess to such party. If such escrowed funds are not sufficient to pay the full cost of such services, the unsuccessful party agrees to pay any such deficiency promptly upon being requested to do so by the CAB. The unsuccessful party further agrees to pay all costs, including reasonable attorneys' fees, associated with the enforcement of its obligations under this agreement.

Executed in \_\_\_\_\_, Wisconsin on the date first written above.

BUILDER: By: \_\_\_\_\_

Title: \_\_\_\_\_

OWNERS: \_\_\_\_\_

\_\_\_\_\_

CONSTRUCTION ARBITRATION BOARD: By: \_\_\_\_\_

Metropolitan Builders Association - Construction Arbitration Board - Issues List  
Exhibit E

Directions: Please be specific but to the point in your information. Only write in the column that is highlighted in yellow. If you need extra rows for additional issues, please continue numbering.

Case Number: XX-X-XX  
Complainant's Name: XXX  
Respondent's Name: XXX

ISSUE #	Complaint	Response	Counterclaim Response	Inspection Note	Decision / Agreement		
					Details of repair / work	Monetary Award	Due Date
1							
2							
3							
4							
5							
6							
7							
8							



# METROPOLITAN BUILDERS ASSOCIATION

2120 Pewaukee Rd., Suite 103, Waukesha, WI 53188

Phone: (262) 436-1122 • [www.MBAbuilds.org](http://www.MBAbuilds.org)

Exhibit F

## AGREEMENT TO MEDIATE/ARBITRATE

Date:

Complainant:

Respondent:

Case No.:

I agree to resolve the dispute between the parties listed above using the Metropolitan Builders Association **Mediation/Arbitration** Services as brought forth in the **Metropolitan Builders Association Construction Mediation & Arbitration Procedures**.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Date