

METROPOLITAN BUILDERS ASSOCIATION

Construction Arbitration Board

Member vs. Member

Complaint Processing Procedures

1. The matter is reviewed by Metropolitan Builders Association of Greater Milwaukee, Inc. (“MBA”) staff to determine whether the following criteria are met requiring the Members to arbitrate:
 - a. The Members would be required to arbitrate provided:
 - i. The participants are both members of the MBA, and
 - ii. All complaints have been submitted to each defending Member (“Defendant”) in writing by the complaining Member (“Complainant”) listing each item in dispute and any notification requirements of Wisconsin’s Right to Repair law have been met, and
 - iii. No other arbitration procedure was provided for in their contractual relationship.
2. Arbitration may also occur under the following circumstances:
 - a. The matter was referred to the Construction Arbitration Board (“CAB”) of the MBA by the Court system.
 - b. There is a mutual agreement to arbitrate at the CAB of the MBA between the parties and the MBA agrees to arbitrate the matter.
3. A copy of the written Complaint sent to the Defendant shall be reviewed by the MBA staff to determine whether the notification and time requirements of the Right to Repair law have been satisfied by both parties, if applicable. If not applicable, the Defendant has at least fifteen (15) working days to respond to the Complaint
4. If no agreement is reached between the parties for the voluntary resolution of the issues during the time frame required by the Right to Repair law, the Complainant, upon request, is provided a formal Complaint Form and Arbitration Agreement to complete and return to the MBA. If either party desires Mediation services, this service should be requested before the date of the Inspection. Failure to ask for mediation prior to the date of the Inspection, may waive either parties’ right to mediation. If a mediation request comes on or after the date of the Inspection, the CAB Chairman has the sole authority to grant or deny the request based on the particular circumstances surrounding the request and the issues presented in the arbitration Complaint.
 - a. In all cases, the Complainant must sign an Arbitration Agreement stating that he/she will accept the decision of the CAB and submit the required service fee. At that time, six copies of plans, specifications, contract and/or offer to purchase, a detailed and specific listing of all items in dispute, a listing of all individuals who will likely be present at the Inspection and any other documentation having a bearing on the Complaint must be submitted by the Complainant. If contractual or financial items are in dispute, parties are required to submit six copies of all draw requests, payment records, change orders, closing statements, etc. All documents to support any monetary claim must be submitted. The CAB may also request any other information it believes is necessary or relevant.
 - b. Within twenty (20) working days after receipt of notice of the arbitration filing from the MBA, the Defendant must sign and return the Arbitration Agreement, stating that the decision of the CAB will be accepted and submit six copies of a written Response to the Complaint, a listing of all individuals who will likely be present at the Inspection and, if applicable, a Counterclaim with a list of the defending

Member's complaints. If a Counterclaim is asserted, the Complainant will have ten (10) working days to respond. The Defendant may also submit six copies of any other documentation having a bearing on the case at that time. If contractual or financial items are in dispute, parties are required to submit six copies of all draw requests, payment records, change orders, closing statements, etc. All documentation to support any claim must be submitted. The CAB may also request any other information it believes is necessary or relevant. A copy of the Response will be provided to Complainant.

c. Cost (Based on a 12-month period):

<u>MBA Members</u>	<u>Non-Members</u>
• \$ 950 1 st case	• \$3000 1 st case
• \$1000 2 nd case	• \$3000 2 nd case
• \$1250 3 rd case	• \$6000 3 rd case
• \$1500 4 th & up	• \$6000 4 th & up

d. Copies of Materials – six copies of all Complaints and all documentation must be submitted to the MBA and organized in a manner that will expedite the Inspection Team's (Arbitrator's) ability to locate the documentation for each particular item of the complaint.

5. The CAB is comprised of the following four elements:

- a. Chairman – Oversees the hearing to run an efficient meeting.
- b. Inspection Team – These individuals are the Arbitrators. They will conduct an Inspection and will attend the Hearing at which time additional questions may be asked of the parties to the dispute. The Inspection Team will listen to questions and input from the Advisory Panel before a Decision is made.
- c. Advisory Panel – 35-40 members of the MBA from all aspects of the industry. They ask questions and provide additional expertise to aid the Arbitrators in making their Decision. The Inspection Team (Arbitrators) may poll the panel members for their comments and opinions.
- d. MBA Staff – The staff is responsible for coordinating the day-to-day operations and processes of the arbitration service. Staff has no input into the factual findings of the Arbitrators.

It should be emphasized that all members serving on the CAB are volunteers and take their responsibility seriously. They are all dedicated individuals with an interest in maintaining the industry standards for residential construction. Members of the CAB include builders, subcontractors, trade suppliers, lenders, attorneys, etc. All are members of the MBA. Representatives of the Southeastern Building Inspectors Association also serve in a volunteer capacity. No member of the CAB will serve as an Inspection Team member (Arbitrator) or on the Advisory Panel where a current business relationship exists. No member of the Advisory Panel is permitted to serve as an inspector (arbitrator) or as a member of the Advisory Panel for a particular case where a conflict of interest exists. A conflict of interest is defined as a business or personal relationship with one or more of the parties to an arbitration that would affect the person's ability to objectively and fairly decide the issues in the proceeding, or create an appearance of bias. All CAB members attending a Hearing are required to sign a non-conflict disclosure form. **CAB members do voluntarily recuse themselves from the proceedings if they feel that there may be a possibility of a conflict of interest.**

6. When all items in #4 are completed, an Inspection Team (Arbitrators) is assigned and the MBA staff will notify all parties of the Hearing date, the names of the Inspection Team (Arbitrators), a list of the potential members of the Arbitration Panel and a copy of the MBA's Conflict of Interest Disclosure Form.
7. After the notification in Paragraph #6 has occurred, the parties will have ten (10) working days from the

mailing of the notification to object in writing to any member of the Inspection Team and to any potential member of the Advisory Panel. The objection must specifically state the alleged conflict of interest. The CAB Chairman has the sole authority to determine whether a conflict of interest exists that would preclude an individual from attending the proceedings. Individual members of the Inspection Team and Arbitration Panel may also voluntarily recuse themselves from the proceedings.

8. During the ten (10) working day period mentioned in Paragraph #7, a party may request that an additional individual(s) attend the Inspection. The request must indicate why it is necessary for this individual to attend the Inspection. The Lead Inspector (Lead Arbitrator) has the sole authority to grant the request for an additional individual(s) to attend the Inspection if the Lead Inspector (Lead Arbitrator) determines an individual(s) would assist in the Inspection Team's (Arbitrators') findings.
9. The Inspection Team (Arbitrators) will contact both parties and set an appointment for the Inspection. The Inspection Team (Arbitrators) will meet with the parties to discuss and inspect ONLY THOSE ITEMS LISTED IN THE COMPLAINT, RESPONSE AND COUNTERCLAIM. Any items not originally listed in the Complaint, Response or Counterclaim will not be considered unless agreed to by both parties.
10. The Inspection Team (Arbitrators) will report its findings to the CAB prior to the Hearing. These findings shall not be released or discussed with either party.
11. Following a review of the relevant documents and the Inspection referred to in Paragraph 9 above, the Inspection Team (Arbitrators) may determine that it is necessary to hire an outside consultant(s). Although the hiring of an outside consultant(s) happens rarely, the Inspection Team (Arbitrators) shall determine if it is necessary to retain a consultant. If the Inspection Team (Arbitrators) determines that an outside consultant is necessary to assist in resolving the dispute, the MBA staff shall inform both parties in writing of this decision and shall advise the parties of the estimated cost of such services. If either party objects to the hiring of an outside consultant, that party may state their objections in writing within ten (10) working days of being advised of the decision and request that the CAB reconsider its decision. The Inspection Team (Arbitrators) and the CAB Chairman shall then make a final decision on whether to hire an outside consultant. If it is decided that such services are necessary, both parties shall enter into an Expert Consultation Escrow Agreement and shall make the required escrow deposit, as determined by the Inspection Team (Arbitrators), with the MBA within 10 working days. A consultant shall then be retained to assist the Inspection Team (Arbitrators) as may be required. Following the Decision, any unused excess funds in escrow shall be returned to the parties. The Inspection Team's (Arbitrators') Decision may include an award for the costs of the outside consultant to the party prevailing on that issue.
12. Both the Defendant and the Complainant are requested to attend the Hearing. This gives the Inspection Team (Arbitrators) and the Advisory Panel the opportunity to ask questions of both parties concerning the items in dispute. The CAB may, at its sole discretion, hold the Hearing or Inspection even if one or both of the parties does not attend.
13. The Inspection Team's (Arbitrators') Decision shall be in writing and communicated to the parties via the United States Postal Service. The Decision will be signed by the Inspection Team (Arbitrators) and the Chairman of the CAB. Disbursement of any funds will be addressed in the Decision. The Decision is typically issued within two weeks from the Hearing's conclusion unless further information or discussion is necessary. All parties will be advised of any delay in writing.
14. The Inspection Team's (Arbitrators') Decision may require a party or both parties to place monies into escrow with the MBA. Escrow amounts shall be determined in the Decision and are typically ordered to ensure compliance.

15. The Defendant shall be given the opportunity to make repairs if required by the Decision. All repairs are subject to reinspection by the Inspection Team (Arbitrators), if requested. The Complainant is to allow the Defendant access to complete repairs during normal working hours (Monday-Friday, 8:00 a.m. - 4:30 p.m.). If the Complainant fails to provide access to the Defendant, the Defendant's employees or the Defendant's subcontractors, the CAB retains the authority and jurisdiction to make a Supplemental Decision, including requiring no further action by the Defendant.
16. The CAB retains jurisdiction and may take any action it deems necessary in order to enforce its Decision. If either party fails to complete any items required as part of the Decision within the time frame specified in the Decision, the CAB retains the authority and jurisdiction to make a Supplemental Decision. In addition, the CAB reserves the right to assign dollar values for any items of work, order payment for items to be made within a specified time frame, which could include legal and collection fees, interest, and any other damages that may occur.
17. Any Decision or Award represents the final arbitration decision after having considered all issues and claims presented by the parties. A monetary Award may not necessarily reflect the actual dollar amount requested by either party. The CAB will not provide a detailed explanation of the Decision or provide a break down of any monetary Award given. All Decisions are based upon a thorough discussion and review of all the information presented. All issues presented will be carefully reviewed before a Decision is rendered.
18. There is no appeal by the Defendant and/or Complainant to either the CAB or the MBA Board of Directors in any case processed under the above procedures. ALL DECISIONS ARE FINAL AND BINDING.
19. Any Decision requiring the payment of money may be entered as a judgment by a court of competent jurisdiction if payment is not made pursuant to the ruling of the Arbitrators. Additionally, if an MBA Member does not comply with the Decision, they are subject to disciplinary action, including suspension and/or termination from the Association in accordance with the MBA By-Laws. In the event that any party to the arbitration fails to comply with the requirements of the CAB Arbitration Decision, then the party who successfully pursues judicial relief to enforce the Decision shall be entitled to the reimbursement of its actual attorney fees and costs incurred in enforcing the Decision. Furthermore, in the event any party seeks to have the CAB Arbitration Decision vacated or in any way modified, and that party is unsuccessful, the prevailing party under such circumstances shall be entitled to its costs, expenses and reasonable attorney fees incurred in defending against such proceedings. The undersigned parties agree to hold harmless and release the MBA, its officers, employees, staff members, representatives, arbitrators, arbitration inspectors, attorneys, agents, 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 and/or any claims, litigation or arbitration pursued by or on behalf of the parties arising out of or relating to the Arbitration Decision and any aspect of the arbitration process. Each party agrees to reimburse and indemnify the MBA for all costs, expenses, damages and actual attorney fees incurred by the MBA resulting from the party's breach of this hold harmless and release provision.
20. The MBA's arbitration process is governed by the applicable provisions of Wisconsin Law, subject to the CAB's procedures.
21. The MBA reserves the right to refuse to arbitrate a particular case, depending on circumstances involved in the case, unless referred by the Court system.
22. Any reference to days refers to working days unless otherwise noted.
23. The MBA reserves the right to modify time frames or procedures under certain circumstances as it deems appropriate, provided notice is given to both parties.

Summary of Arbitration Process

1. Requirements of the Wisconsin Right to Repair Law have been met.
2. Complaining Member submits a copy of formal arbitration Complaint and all required materials to the MBA office.
3. Upon receipt of Complainant's arbitration submittal, Defendant is given twenty (20) working days to respond, including the right to file a Counterclaim if applicable. If a Counterclaim is asserted, Complainant has ten (10) working days to respond.
4. Inspection Team (Arbitrators) is assigned and Hearing date communicated to all parties.
5. Lead inspector (Arbitrator) contacts the parties to set the Inspection time/date.
6. Hearing before entire CAB will be held.
7. Decision is typically issued within two weeks from Hearing's conclusion unless further information or discussion is necessary. All parties will be advised of any delay in writing.