

HBAGFV ARBITRATION

Guidelines and Policies.

Section 1: 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 under the Home Builders of Greater Fox Valley (hereinafter called HBAGFV) Arbitration Rules. These Rules and any amendment thereof shall apply in the form obtained at the time the arbitration is initiated.

Section 2: Name of Tribunal.

Any Tribunal constituted by the parties for the settlement of their dispute under these Rules shall be called the HBAGFV Arbitration Tribunal, hereinafter called the Tribunal.

Section 3: Administrator.

When parties agree to arbitrate under these Rules, and an arbitration is initiated hereunder, they thereby constitute HBAGFV the administrator of the arbitration. The authority and duties of the administrator are prescribed in the agreement of the parties and in these Rules.

Section 4: Delegation of Duties.

The duties of the HBAGFV under these Rules may be carried out through Tribunal Administrators, or such other officers or committees as the HBAGFV may direct.

Section 5: Panel of Arbitrators.

The HBAGFV shall establish and maintain an Panel of Construction Arbitrators, hereinafter called the Panel, and shall appoint an arbitrator or arbitrators there from as hereinafter provided. A neutral arbitrator selected by mutual choice of both parties or their appointees or appointed by the HBAGFV, is hereinafter called the arbitrator, whereas an arbitrator selected unilaterally by one party is hereinafter called the party-appointed arbitrator. The term arbitrator may hereinafter be used to refer to one arbitrator or to a Tribunal of multiple arbitrators.

Section 6: Office of Tribunal.

The general office of a Tribunal is the headquarters of the HBAGFV, which may, however assign the administration of an arbitration to any other convenient location.

Section 7: Initiation Under an Arbitration Provision In A Contract.

The initiating party shall, within the time specified by the contract, if any, file with the other party a notice of an intention to arbitrate (Demand), which notice shall obtain a statement setting forth the nature of the dispute, the amount invoiced, if any, and the remedy sought; and shall file two (2) copies of said notice together with two (2) copies of the arbitration provision of the contract and the appropriate filing fee as provided in Section Forty-seven (47) hereunder at the Office of the HBAGFV, PO Box 548 Hampshire Illinois, 60140 or such other address as may, from time to

time, obtain.

The HBAGFV shall give notice of such filing to the other party. A party upon whom the demand for arbitration is made may file an answering statement in duplicate with the HBAGFV within seven (7) days after notice of the HBAGFV, simultaneously sending a copy to the other party. If a monetary claim is made in the answer, the appropriate administrative fee provided in the Fee Schedule shall be forwarded to the HBAGFV with the answer. If no answer is filed within the stated time, it will be treated as a denial of the claim. Failure to file an answer shall not operate to delay the arbitration.

Section 8: Change of Claim or Counterclaim.

After filing of the claim or counterclaim, if either party desires to make any new or different claim or counterclaim, same shall be made in writing and filed with the HBAGFV, and a copy thereof shall be mailed to the other party who shall have a period of seven (7) days from the date of such mailing within which to file an answer with the HBAGFV. However, after the arbitrator is appointed no new or different claim or counterclaim may be submitted without the arbitrator's consent.

Section 9: Initiation Under a Submission.

Parties to any existing dispute may commence an arbitration under these Rules by filing at the HBAGFV General Office 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 Fee Schedule.

Section 10: Pre-Hearing Conference.

At the request of the parties or either party or the discretion of the HBAGFV, a pre-hearing conference with the administrator and the parties or their council will be scheduled in appropriate cases to arrange for an exchange of information and the stipulation of uncontested facts so as to expedite the arbitration proceedings.

Section 11: Fixing of Locale.

The parties may mutually agree on the locale where the arbitration is to be held. If any party requests that the hearing be held in a specific locale and the other party files no objection thereto within seven (7) days after notice of the request is mailed to such party, the locales shall be the one requested. If a party objects to the locales requested by the other party, the HBAGFV shall have power to determine the locale and its decision shall be final and binding.

Section 12: Qualifications of Arbitrator.

Any arbitrator appointed pursuant to Section Thirteen (13) or Section Fifteen (15) shall be neutral, subject to disqualification for the reasons specified in Section Eighteen (18). If the parties directly appoint the arbitrator, as provided in Section Fourteen (14), or if the parties specifically agree in writing, such arbitrator shall not be subject to disqualification for said reasons.

Section 13: Appointment from Panel.

In the event the parties do not appoint an arbitrator as provided in Section Fourteen (14) then immediately after the filing of the Demand or Submission, the HBAGFV shall submit simultaneously to each party to the dispute an identical list of names of persons chosen from the Panel. Each party to the dispute shall have seven (7) days from the mailing date in which to cross off any names to which it objects, number of remaining names indicating the order of preference, and return the list to the HBAGFV. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the HBAGFV shall invite the acceptance of an arbitrator to serve. If the parties fail to agree upon any of the persons named, or if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the HBAGFV shall have the power to make the appointment from other members of the Panel without the submission of any additional lists.

Section 14: Direct Appointment by Parties.

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

If the agreement specifies a period of time within which an arbitrator shall be appointed, any party fails to make such appointment within that period, the HBAGFV shall make the appointment.

If no period of time is specified in the agreement, the HBAGFV shall notify the parties to make the appointment and if within seven (7) days after mailing of such notice such arbitrator has not been so appointed, the HBAGFV shall make the appointment.

Section 15: Appointment of Arbitrator by Party Approved Arbitrators.

If the parties have appointed their party-appointed arbitrators or if either or both of them have been appointed as provided in Section Fourteen (14), and have authorized such arbitrator to appoint an arbitrator within a specified time and no appointment is made within such time or any agreed extension thereof, the HBAGFV shall appoint an arbitrator who shall act as Chairperson.

If no period of time is specified for appointment of the third arbitrator and the party-appointed arbitrators do not make the appointment within seven (7) days from the date of the appointment of the last party-appointed arbitrator, the HBAGFV shall appoint the arbitrator who shall act as Chairperson.

If the parties have agreed that their party-appointed arbitrators shall appoint the arbitrator from the Panel, the HBAGFV shall furnish to the party-appointed arbitrators, in the manner prescribed in Section Thirteen (13), a list selected from the Panel, and the appointment of the arbitrator shall be made as prescribed in such Section.

Section 16: Number of Arbitrators.

The number of Arbitrators per claim is based on dollar amount. \$0 to \$15,000.00 will have a single arbitrator. Any amount over \$15,000.00 will require 3 arbitrators.

Section 17: Notice to Arbitrator of Appointment.

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

Section 18: Disclosure and Challenge Procedure.

A person appointed as neutral arbitrator shall disclose to the HBAGFV any circumstances likely to affect his or her impartiality, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationships with the parties or their counsel. Upon receipt of such information from such arbitrator or other source, the HBAGFV shall communicate such information to the parties, and, if it deems it appropriate to do so, to the arbitrator and others. Thereafter, the HBAGFV shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

Section 19: Vacancies.

If any arbitrator should resign, die, withdraw, refuse, to be disqualified or be unable to perform the duties of office, the HBAGFV shall, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these Rules and the matter shall be heard unless the parties shall agree otherwise.

Section 20: Time and Place.

The arbitrator shall fix the time and place for each hearing. The HBAGFV shall mail to each party notice thereof at least five (5) days in advance, unless the parties by mutual agreement waive such notice or modify the terms thereof.

Section 21: Representation of Counsel.

Any party may be represented by Counsel. A party intending to be so represented shall notify the other party and the HBAGFV of the name and address of counsel at least three (3) days prior to the date set for the hearing at which counsel is first to appear. When an arbitration is initiated by counsel, or where any attorney replies for the other party, such notice is deemed to have been given.

Section 22: Stenographic Record.

The HBAGFV shall make the necessary arrangements for the taking of a stenographic record whenever such record is requested by a party. The requesting party or parties shall pay the cost of such record as provided in Section Forty Nine (49).

Section 23: Interpreter.

The HBAGFV shall make the necessary arrangements for the services of an interpreter upon the request of one or both parties, who shall assume the cost of such services.

Section 24: Attendance at Hearings.

Persons having a direct interest in the arbitration are entitled to attend hearings. The arbitrator shall otherwise have the power to require the retirement of any witnesses or witnesses during

the testimony of other witnesses. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other persons.

Section 25: Adjournments.

The arbitrator may adjourn the hearing, and must make such adjournment when all parties agree hereto.

Section 26: 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 may 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 27: Majority Decision.

Whenever there is more than one arbitrator, all decisions of the arbitrators must be by at least a majority. The award must also be made by at least a majority unless the concurrence of all is expressly required by the arbitration agreement or by law.

Section 28: Order of Proceedings.

A hearing shall be opened by the filing of the oath of the arbitrator, where required, and by the recording of the place, time and date of the hearing, the present of the arbitrator and parties, and counsel, if any, and by the receipt by the arbitrator of the statement of the claim and answer, if any.

The arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved.

The complaining party shall then present its claims, proofs and witnesses, who shall submit to questions or other examination. The defending party shall then present its defenses, proofs and witnesses, who shall submit to questions or other examination. The arbitrator may vary this procedure but shall afford full and equal opportunity to the parties for the presentation of any material or relevant proofs.

Exhibits, when offered by either party, may be received in evidence by the arbitrator.

The names and addresses of all witnesses and exhibits in order received shall be made a part of the record.

Section 29: Arbitration in the Absence of a Party.

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party, who, after due notice fails to be present or fails to obtain an adjournment. 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 deemed necessary for the making of an award.

Section 30: Evidence.

The parties may offer such evidence as they desire and shall produce such additional evidence

as the arbitrator may deem necessary to an understanding and determination of the dispute. An arbitrator 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 admissibility of the evidence offered and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the arbitrator and all of the parties, except where any of the parties is absent in default or has waived his or her right to be present.

Section 31: Evidence by Affidavit and Filing of Document.

The arbitrator may receive and consider the evidence of witnesses by affidavit, giving it such weight as seems appropriate after consideration of any objections made to its admission.

All documents not filed with the arbitrator at the hearing, but arranged for at the hearing or subsequently by agreement of the parties, shall be filed with the HBAGFV for transmission to the arbitrator. All parties shall be afforded opportunity to examine such documents.

Section 32: Inspection or Investigation.

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

Section 33: Conservation of Property.

The arbitrator may issue such orders as may be deemed necessary to safeguard the property which is the subject matter of the arbitration without prejudice to the rights of the parties or to the final determination of the dispute.

Section 34: Closing of Hearings.

The arbitrator shall specifically inquire of the parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the arbitrator shall declare the hearings closed and the minutes thereof shall be recorded. If briefs are to be filed, the hearings shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If documents are to be filed as provided for in Section Thirty One (31) and the date set for their receipt is later than that set for the receipt of the briefs, the later date shall be the date of closing the hearing. The time limit within which the arbitrator is required to make an award shall commence to run in the absence of other agreements by the parties, upon the closing of the hearing.

Section 35: Reopening of Hearings.

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

reopened hearings within which to make an award.

Section 36: Waiver of Oral Hearings.

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

Section 37: Waiver of Rules.

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these Rules has not been complied with and who fails to state an objection thereto in writing, shall be deemed to have waived the right to object.

Section 38: Extension of Time.

The parties may modify any period of time by mutual agreement. The HBAGFV for good cause may extend any period of time established by these Rules, except the time for making the award. The HBAGFV shall notify the parties of any such extension of time and its reason thereof.

Section 39: Communication with Arbitrator and Serving of Notice.

There shall be no communication between the parties and an arbitrator other than at oral hearings. Any other oral or written communications from the parties to the arbitrator shall be directed to the HBAGFV for the transmittal to the arbitrator.

Each party to an agreement which provides for arbitration under these Rules 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 and for any court action in connection therewith or for the entry or judgment on any award made thereunder may be served upon such party by mail addressed to such party or its attorney at the last known address or by person serve, within or without the state wherein the arbitration is to be held (whether such party be within or without the United States of America), provided that reasonable opportunity to be heard with regard thereto has been granted such party.

Section 40: Time of Award.

The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties, or specified by law, not later than thirty (30) days from the date of closing the hearings, or if oral hearings have been waived, from the date of transmitting the final statements and proofs to the arbitrator.

Section 41: Form of Award.

The award shall be in writing shall be signed either by the sole arbitrator or by at least a majority if there be more than one. It shall be executed in the manner required by law.

Section 42: Scope of Award.

The arbitrator may grant any remedy or relief which is just and equitable and within the terms of the agreement of the parties. The arbitrator, in the award, shall assess arbitration fees and expenses as provided in Sections Forty Seven (47) and Forty Nine (49) equally or in favor of

any party and, in the event any administrative fees or expenses are due the HBAGFV, in favor of the HBAGFV.

Section 43: 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.

Section 44: Delivery of Award to Parties.

Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail by the HBAGFV, addressed to such party or its attorney at the last known address or by personal service, within or without the state within the arbitration is to be held (whether such party be within or without the United States of America), provided that reasonable opportunity to be heard with regard thereto has been granted such party.

Section 45: Release of Documents for Judicial Proceedings.

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

Section 46: Applications to Court.

No judicial proceedings by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

The HBAGFV is not a necessary party in judicial proceedings relating to the arbitration.

Parties to the Rules shall be deemed to have consented that judgment of the award rendered by the arbitrator(s) may be entered in any Federal or State Court having jurisdiction thereof.

Section 47: Administrative Fees.

As a non-profit organization, the HBAGFV shall prescribe an administrative fee schedule and a refund schedule to compensate it for the cost of providing administrative services. The schedule in effect at the time of filing or the time of refund shall be applicable.

The administrative fees shall be advanced by the initiated party or parties in accordance with the administrative fee schedule, subject to final apportionment by the arbitrator in the award.

When a matter is withdrawn or settled, the refund shall be made in accordance with the refund schedule.

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

Section 48: Fee When Oral Hearings are Waived.

Where all oral hearings are waived under Section Thirty Six (36) the Administrative Fee Schedule shall apply.

Section 49: Expenses.

The expenses of witnesses for either side shall be paid by the party producing such witnesses.

The cost of the stenographic record, if any, is made, and all transcripts thereof, shall be prorated equally between the parties ordering copies unless they shall otherwise agree and shall be paid for by the responsible parties directly to the reporting agency.

All other expenses of the arbitration, including required traveling and other expenses of the arbitrator and of HBAGFV representatives, and the expenses of any witness or the cost of any proofs produced at the direct request of the arbitrator shall be borne equally by the parties, unless they agree otherwise, or unless the arbitrator in the award assesses such expenses or any part thereof against any specified party or parties.

Section 50: Arbitrator's Fees.

The Minimum Daily Fee for each Arbitrator is \$250, which is to be paid prior to each day or service.

Compensation shall be based upon the amount of service involved and the number of hearings. An appropriate daily rate and other arrangements will be discussed by the administrator with the parties and the arbitrator(s). If the parties fail to agree to the terms of compensation, an appropriate rate shall be established by the HBAGFV, and communicated in writing to the parties.

Any arrangement for the compensation of an arbitrator shall be made through the HBAGFV and not directly by the arbitrator with the parties. The terms of compensation of neutral arbitrators on the Tribunal shall be identical.

Section 51: Deposits.

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

Section 52: Interpretation and Application of Rules.

The arbitrator shall interpret and apply these Rules insofar as they relate to the arbitrator's powers and duties. When there is more than one arbitrator and a difference arise among them concerning the meaning or application of any such Rules, it shall be decided by a majority vote. If that is unobtainable, either an arbitrator or a party may refer the question to the HBAGFV for final decision. All other Rules shall be interpreted and applied by the HBAGFV.