

Home Improvement Arbitration Procedural Handbook

In 1992, the Home Improvement Contractor Law ([M.G.L. c. 142A](#)) was created to protect consumers and to regulate the practices of home improvement contractors. The law establishes a contractor registration requirement, an arbitration program for resolving disputes between homeowners and registered contractors and creates a Guaranty Fund to compensate consumers up to \$10,000 for unpaid judgments against home improvement contractors.

This handbook reviews the procedures for the operation of the arbitration program created by the Home Improvement Contractor Law ([M.G.L. c. 142A, §4](#)). It includes a summary of the arbitration procedures outlined in 201 CMR 14.00. Parties should not rely exclusively on the summary; all parties should review the arbitration regulations in 201 CMR 14.00. A copy of the regulations are included in this booklet.

The arbitration program is designed to promote the speedy, efficient and fair disposition of disputes arising out of the improvement of an owner-occupied, one-to-four family residential home by a registered contractor or subcontractor. It applies to home improvement transactions with a written contract between a homeowner and a contractor or subcontractor registered with the Office of Consumer Affairs and Business Regulation occurring on or after July 1, 1992.

Effective May 13, 2000, the Office of Consumer Affairs and Business Regulation will provide the daily administrative services for the program, and will serve as the "arbitration firm."

Questions about these procedures should be directed to:

HIC Program Coordinator
Office of Consumer Affairs and Business Regulation
10 Park Plaza, Room 5170
Boston, MA 02116
(617) 973-8700

The parties and their representatives are to have no direct communication with the arbitrator outside of the hearing.

Screening Arbitration Requests

Eligibility Requirements

The Office of Consumer Affairs and Business Regulation will review *Requests for Arbitration* for technical acceptability.

Homeowners may submit a *Request for Arbitration* only if the contractor was registered with the Office of Consumer Affairs and Business Regulation on the date of the contract with the homeowner. Under M.G.L. c. 142A, all registered contractors and subcontractors who enter into contracts for residential contracting impliedly consent to arbitration.

Contractors may submit a *Request for Arbitration* only if the parties' written agreement contains an arbitration clause that is signed by the homeowner, and the contractor was registered with the Office of Consumer Affairs and Business Regulation on the date of the contract with the homeowner.

Either party may file a *Counterclaim* in response to a *Request for Arbitration* that has been filed and accepted.

To be accepted for arbitration, the *Request for Arbitration* also must meet the following technical qualifications:

1. There must be a written contract for the residential contracting work, and that contract must be submitted with the *Request for Arbitration*.
- The program does not arbitrate disputes for which there is no written contract, even if the amount of the contract is below that (\$1,000) for which the law requires a written contract.
- If there are unwritten modifications to the initial written contract, the case may proceed to arbitration if all other requirements are met.
- The contractor was registered with the Office of Consumer Affairs and Business Regulation on the date of the contract with the homeowner.
- The contract date is the latest date on which both parties had signed the contract.

- In the absence of a homeowner signature, the contract date is the date of the first payment.
- A case is disqualified even if the contractor was required by the statute to be registered, but was not.
- The contract was for improvements, repairs, renovations, alteration, or additions to a pre-existing 1-4 unit residence.
- This program does not cover new construction.
- Condominium units located in buildings of more than 4 units do not qualify for arbitration.
- The property or residence at issue is in Massachusetts and is owner-occupied as a primary residence.
- A condominium association does not qualify as an owner.
- If the contracted work at issue prevented a homeowner from occupying the residence, the parties may still have access to the program.
- The *Request for Arbitration* must be on a completed form approved by the OCABR, and received within 2 years of the contract date.
- This deadline may be tolled in those instances where the parties entered into formal mediation proceedings.

The *Request for Arbitration* qualifies for acceptance based upon the filing party's assertions, which then must be proved in arbitration.

Processing of Requests for Arbitration

Generally, the Office of Consumer Affairs and Business Regulation (OCABR) will review the submitted *Request for Arbitration* within two weeks of receipt.

Incomplete Forms: These forms will be returned to the Claimant for completion. Completed forms must be received within thirty days or within the Claimant's period

of eligibility for filing the request, whichever is later. The OCABR may reject a request that is not filed by the appropriate deadline.

Ineligible Requests: *Requests* that do not meet the basic criteria of the law will be rejected. The Claimant will receive a notice from the OCABR indicating the reason that the *Request* is ineligible.

Eligible Requests: The OCABR will notify both parties that the *Request for Arbitration* meets the minimum criteria for the program, and will inform the parties of the arbitrator appointed for the case. Both parties must submit the Conflict Checklist within 10 days. Assuming the parties have no conflict with the arbitrator, the OCABR will send a notice to the parties that the case has been accepted. The Claimant then must pay the applicable fee within 10 days.

Counterclaims: The Respondent may file a *Counterclaim* within 10 days after notice that the filing party's *Request of Arbitration* has been accepted. The arbitrator may grant a party one 7-day extension to respond to a *Request for Arbitration* or to a *Counterclaim*. (Additional extensions may only be granted upon a showing of extraordinary circumstances.) The party filing a *Counterclaim* must pay a fee in accordance with the fee schedule. The fee is due when the *Counterclaim* is filed. Additional claims and amendments may not be submitted without permission from the arbitrator, and no new or different claim may be submitted once the time for filing has expired.

Timeline for Processing Requests for Arbitration

Review and Arbitrator Appointment Period:

Before the case is accepted, Day 1:

- The OCABR receives a *Request for Arbitration*.

Before the case is accepted, by Day 14:

- Within two weeks, the OCABR notifies the parties if the *Request* meets the basic qualifications, and informs the parties of the arbitrator appointed for the case.

Before the case is accepted, by Day 24:

- Both parties must submit a Conflict Checklist within 10 days after the parties are notified that a *Request* meets the minimum criteria.

Arbitration Period:

Day One:

- The OCABR notifies both parties that the *Request for Arbitration* has been accepted, triggering the 60-day period in which the hearing should be held and all evidence should be presented

Day Ten:

- The Claimant must pay the filing fee within 10 days after being notified that a *Request* has been accepted.
- If the Respondent chooses to file a *Counterclaim*, it must be filed no later than 10 days after the parties are notified that a *Request* has been accepted.

Day Sixty:

- All evidence has been presented to the arbitrator.

Day Seventy-Four:

- The arbitrator renders a decision.

Please note that the fee process has been changed since the regulations were enacted, and the arbitration fee is not due until after the arbitrator has been appointed.

The Arbitrator

Upon the determination that a *Request for Arbitration* meets the basic qualifications of the law, the Office of Consumer Affairs and Business Regulation (OCABR) will appoint an arbitrator.

Single Arbitrator:

A single arbitrator will conduct each hearing.

Approval of Arbitrator:

Arbitrators are chosen by the OCABR from a pool of specially trained arbitrators. The arbitrators are experienced professionals with expertise in the construction field. The choice of the arbitrator is not subject to the approval of either party. However, if the arbitrator is currently, or has been in the past, a contractor or a subcontractor, or if the arbitrator has been the Claimant or Respondent for any action pursuant to M.G.L. c. 142A, she or he must disclose that fact to the parties prior to the hearing. Either party may then request another arbitrator, as long as the request is made in writing to the OCABR no later than 10 days from the date the arbitrator is appointed.

Impartiality of Arbitrators:

Arbitrators cannot have a personal interest in the outcome of any hearing while they serve on home improvement program cases. Arbitrators are required to file a disclosure form with the OCABR stating any reasons which could affect their impartiality in hearing a case. Additionally, an arbitrator cannot know any of the participants involved in the scheduled hearing, except through the hearing process. Arbitrators also must not hold any prejudice or bias against any individual party or class of parties, which might be involved in the proceedings.

Arbitrator Disqualification:

If either party has a reasonable basis to believe that the arbitrator is biased or has failed to disclose potential conflicts (as outlined in 201 CMR 14.06 (3) or (4)), that party may request that the arbitrator be disqualified. This request must be in writing and submitted to the OCABR no later than 10 days from the date the arbitrator is appointed.

Arbitrators Decisions:

The arbitrator will hear the merits of the case and issue a written and binding decision. The arbitrator's decision is final. If a party believes that an arbitrator made an error in the application of the law or in the conduct of the hearing, they may make a complaint in writing to the OCABR. The complaint may **NOT** be considered an appeal of any kind.

Before the Hearing

Preliminary Telephone Conference

After the appointment of the arbitrator, the parties will participate in preliminary telephone conference, unless the arbitrator determines that the call is unnecessary. The arbitrator may use this call to specify the issues to be resolved, to schedule the hearing or a site view, or to consider other matters that may expedite the arbitration proceedings.

Scheduling of Hearings

Schedule: The Office of Consumer Affairs and Business Regulation (OCABR) and the arbitrator will attempt to schedule hearings according to the geographic and time of day needs of the parties. However, evening and weekend hours may be available for hearings only if justified and mutually agreed upon by the parties and the arbitrator.

Notice: The OCABR will mail a notice of the date, time and location of the hearing to both parties at least 21 days before the hearing. The arbitrator or the OCABR may call both parties to confirm the hearing date. A call placed at least 7 days before the hearing will be considered to be sufficient notice of the hearing, should any party claim that they did not receive the written notice.

Date: Generally, a hearing will be within 45 days of the acceptance of the *Request for Arbitration*. This deadline may be extended upon a showing of extraordinary circumstances, or upon the written consent of both of the parties.

Disclosure and Exchange of Information

Document Exchange: At least 2 days before the hearing, each party must provide the other party with any documents, exhibits, or information he or she intends to present at the hearing.

Site Inspections: The contractor may make a reasonable request to view the residence or property that is the subject of the arbitration. The contractor must make this request at least 7 days prior to the scheduled date of the hearing. The homeowner shall permit a reasonable inspection of the work that is the subject of the arbitration, and has the right to be present during the inspection. The contractor may not make any repairs or adjustments, but may use diagnostic tools.

The arbitrator may view the property at issue upon the request of a party or upon his or her own initiative. If a party wishes a site view, it is recommended that the party make a request far enough in advance of the hearing date to allow for the scheduling of a viewing. The site view may be held on the same day as the hearing. The arbitrator's site view is at the discretion of the arbitrator. The arbitrator may be accompanied by

both parties, their designated agent, or by any person or persons whom the arbitrator may deem necessary.

Discovery: With the exception of the exchange of documents before the hearing and the site view, there shall be no discovery, except as ordered by the arbitrator or if both parties consent. The parties are encouraged to cooperate with each other in the exchange of information relevant to the dispute. If a disagreement arises over whether certain items should be produced, the matter will be referred to the arbitrator. The arbitrator may order discovery only for the following reasons:

- the arbitrator finds that the discovery is likely to be necessary to render a proper arbitration decision; or
- the arbitration finds that the discovery is likely to be necessary for a party to present a material element of the case against the other party.

Arbitrator Information Requests: The parties must comply with the arbitrator's request for any additional information within 7 days, or within such period as the arbitrator designates.

Rescheduling Hearings

Either party may make one request that the arbitrator reschedule the hearing. The request must be made prior to the day of the hearing and will only be granted if the party has a good cause for making the request. A request to reschedule on the day of the hearing will be considered default. The arbitrator also may reschedule any hearing for good cause.

Whenever a hearing is rescheduled, the arbitrator will notify the parties of the reason for the delay as soon as practical. If possible, the hearing will still be held within 45 days of the case's acceptance date.

Withdrawals

Before the day of the hearing: A Claimant may withdraw his or her *Request for Arbitration* at any time prior to the day of the hearing, as long as notice is provided to the arbitrator and the other party. That party may reapply:

- Within the Claimant's eligibility period (2 years from the date of the contract); or

- Within two months, even if the original eligibility period has expired, if it is the Claimant's first withdrawal; or
- Within a reasonable time after a party fails to honor settlement terms, if the case was withdrawn as a result of a settlement agreement between the parties.

On or after the day of the hearing: A Claimant that withdraws his or her *Request for Arbitration* on or after the hearing, or a Claimant that defaults without good cause, may not reapply.

Arbitration for Claims of \$10,000 or Less:

The Written Hearing

Written Hearing Presumption

For claims of \$10,000 or less, there will NOT be an oral hearing, unless any party requests an oral hearing, or the arbitrator determines that an oral hearing is necessary. Instead, the arbitrator will review the merits of the case and issue a decision based upon a review of written documents submitted by the parties. This is called a written hearing. Any party requesting an oral hearing must notify the OCABR and the opposing side within 10 days of the notice of acceptance of the case. If a *Counterclaim* has been filed, this deadline is extended. In that situation, any party requesting an oral hearing must notify the OCABR and the opposing side within 5 days after notice of acceptance of the *Counterclaim*.

Written Hearing Procedures

1. The Office of Consumer Affairs and Business Regulation will mail a notice to the parties and request the parties to submit their respective contentions.
2. Within 10 days of the mailing of this notice, both the homeowner and the contractor shall submit 2 copies of the following information to the OCABR:
 - statement of facts of the case, signed under the pains and penalties of perjury.
 - any documents, proofs, briefs or written arguments that they wish to submit.

Any documents or proofs submitted must also be mailed to the other party.

3. The OCABR will issue a letter to the parties requesting replies to the information submitted. Each party may file one written reply to the statements and proofs submitted. This reply is due within 10 days of the mailing of the request for replies. **Any party that fails to reply within the specified time period will have waived the right to reply.**
4. When all the statements, proofs, and answers (if any) have been received by the OCABR, those documents will be transmitted to the arbitrator.
5. The arbitrator will examine the documents and may request further evidence from the parties, if necessary, within 10 days of receipt.
6. The arbitrator will close the hearing, and will have 14 days to issue a decision.

Important Note: A party may submit one (and no more than one) request for a 7 day extension for a document submission deadline. The party must make this request prior to the date of the submission deadline, and the request only will be granted if the party can demonstrate a good reason for the extension.

Arbitration For Claims Over \$10,000

The Hearing

Attendance at The Hearing

If a Claimant's *Request for Arbitration* is accepted, the parties or their designated agents must attend the arbitration. However, the arbitrator has the discretion to allow either party to offer written testimony only, as long as the arbitrator and the other party are informed that only written testimony will be submitted and that they receive the written evidence at least 7 days before the hearing.

Hearing Procedures

The hearing procedures for arbitration are less formal than court procedures. The arbitrator will administer an oath to each individual who will testify, and will arrange for the hearing to be tape-recorded.

The arbitrator will determine the order of testimony. In arbitration, the formal rules of evidence do not apply. The parties may introduce any relevant evidence that will assist the arbitrator in making a decision. Each party, however, should be concise and relevant to the matter before the arbitrator. In addition, all written statements shall include a statement signed by the witness under oath that his or her testimony is true. The arbitrator may accept or reject any evidence that he or she believes is or is not helpful in making a decision.

Each party may question the other after his or her presentation, and may question each witness after his or her testimony. The arbitrator may question any party or any witness at any time.

The arbitrator may consult with a building inspector or any other expert witness for technical advice or testimony. The arbitrator will provide a report of any such consultation to the parties. The arbitrator has the option of allowing the parties to respond to the report.

Generally, the hearing will be held within 45 days after a *Request for Arbitration* has been accepted, and generally all evidence will be presented within 60 days after the acceptance date. Once the oral hearing is complete and the evidence is presented, the arbitrator will declare the hearing closed.

Hearing Length

The hearing should last no longer than four hours. If the arbitrator determines that additional hearing time is necessary to obtain sufficient evidence to render an award, the arbitrator may extend the hearing time. The hearing also may be extended upon the agreement of each of the parties and the arbitrator.

Defaults

If a party does not attend the hearing or asks to reschedule the hearing on the day of the hearing, that is considered a default. In addition, after a warning, the arbitrator may end any hearing that becomes unmanageable due to the behavior of either party, and enter a judgment of default against the party's whose behavior became unmanageable.

If a party fails to attend the hearing, the arbitrator may still hold the hearing. If the party attending the hearing makes a sufficient showing of facts, the arbitrator may issue a judgment of default against the party who failed to appear.

If a defaulting party demonstrates good cause to the arbitrator for failing to appear, the arbitrator may set aside the default decision. A new hearing may then be scheduled. The defaulting party must make this request within a reasonable period of time after the hearing. This reasonable time period will be decided by the arbitrator.

The Decision

Decision Timeline

Generally, the arbitrator will submit an arbitration decision to the Office of Consumer Affairs and Business Regulation (OCABR) no later than 14 days after the hearing is closed. The OCABR will mail a copy of the decision to both parties.

Decision Format

The arbitrator's decision will be in writing, and will include a finding of facts, and a clear calculation of the monetary award or award for specific work performance, if either is ordered.

Attached to the arbitrator's decision will be an advisory opinion from the arbitrator to the OCABR on the homeowner's actual loss, if any, calculated pursuant to 201 CMR 14.14. This advisory opinion of the actual loss value is for the exclusive purpose of assigning a monetary value to determine a homeowner's potential guaranty fund award. The actual loss value may be different from the monetary award issued by the arbitrator. For example, an actual loss value may not include consequential damages or an arbitration fee, but an arbitration monetary award may include those costs.

Scope of Award

If the homeowner prevails, the arbitrator may require the contractor to complete, repair or replace the work, or pay the homeowner a monetary amount, or any other remedy the arbitrator sees fit to award. The arbitrator will not award a specific work performance by the contractor unless the homeowner provides written consent for the contractor to enter the homeowner's property. In such a case, the arbitrator will assign a monetary value to this award for the exclusive purpose of determining a homeowner's actual loss. The arbitrator will indicate whether or not the contractor may pay this monetary value to the homeowner as an alternative to performing the ordered work.

If the contractor prevails, the arbitrator may require the homeowner to pay the contractor a monetary amount.

Any monetary award may include contractual damages, consequential damages, and arbitration fees. The award may NOT include attorneys' fees or punitive damages. The arbitrator will indicate the date by which the monetary award must be paid or by which the work must be completed. If this date is more than 21 days from the mailing date of the decision, the arbitrator will provide an explanation of the good cause reason for extending this compliance deadline beyond 21 days.

Disputing the Decision

The arbitrator's decision is final and legally binding. The following procedures, however, may be followed if a party is dissatisfied with an arbitrator's decision.

Technical corrections: Technical corrections include computational corrections, typographical corrections, or other minor corrections. Technical corrections do not constitute an appeal of an arbitrator's decision.

Either party may request a technical correction within 14 days after the mailing of the arbitrator's written decision. A request for a technical correction must be in writing and must be received by the OCABR and the other party within this time period. A request for a technical correction will not stop or toll any award/appeal period.

The arbitrator or the OCABR may make a technical correction to a decision.

Appeals: A party dissatisfied with an arbitrator's decision may appeal the decision in court, pursuant to M.G.L. c. 142A §4. An appeal must be filed within 21 days of the mailing of the arbitrator's written decision. (NOTE: the appeal is governed by M.G.L. c. 142A §4. The arbitration proceeding between a homeowner and a registered contractor is NOT an agency adjudicatory proceeding, subject to appeal under M.G.L. c. 30A §10)

The party requesting the appeal must notify the OCABR if the appeal is allowed.