

## **NORTH CAROLINA ASSOCIATION BUREAU**

### **HOA EXPEDITED ARBITRATION PROGRAM FOR THE RESOLUTION OF HOMEOWNER ASSOCIATION DISPUTES**

#### **Overview**

Conflicts and disputes are a fact of life. Residential communities and neighborhoods are not exempt. Traditionally, conflicts and disputes have been addressed through the civil court system.<sup>1</sup> To inevitably produce a resolution by decision or through settlement, the process is often lengthy and expensive. In addition, formal rules of procedure and evidence apply making the dispute resolution process difficult to navigate without the assistance of an attorney. All of these factors often make it practically and economically unfeasible to look to the courts to resolve conflicts and disputes for which a resolution is desperately needed. The HOA Expedited Arbitration Program will provide a private alternative to the courts that offers the following benefits:

1. An opportunity for all of the parties involved to have their positions and perspectives heard and the matter decided by a knowledgeable decision maker.
2. A prompt resolution and closure of the dispute within a target time frame of 180 days.
3. The opportunity to appear and present your case with or without the assistance of counsel as each party chooses.
4. The economic certainty of a fixed fee<sup>2</sup> of \$1500.00 for administration and arbitrator services.

In order to reap these benefits, there are tradeoffs. Paperwork filed is formalized to the greatest extent possible. Traditional discovery is curtailed with the arbitration rules requiring a full exchange of documents and information and possible sanctions for failure to do so. Hearings are scheduled at designated hearing locations in seven districts across the State of North Carolina on specified days so that arbitrators may hear several cases on a single hearing day.

Not all cases are suitable for expedited arbitration. Collection actions and disputes will not be accepted because the North Carolina statutes provide a clear and efficient process for collection. NCAB reserves the to decline any case if it determines, in its sole discretion, that the case is not suitable for resolution through the program. Fees paid will be refunded in full if a case is declined.

Call 704-945-4950 to speak to our program administrator if you have questions or need more information.

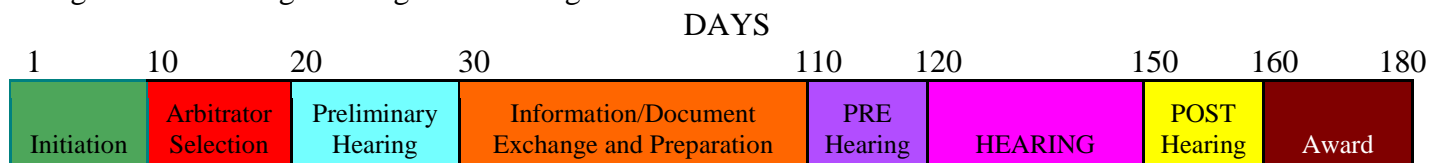
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<sup>1</sup> While some homeowner association documents contain Alternate Dispute Resolution provisions, they are often complex and as time consuming and expensive to pursue and administer than civil actions through the courts.

<sup>2</sup> Costs are fixed provided the parties comply with the rules regarding information exchanges and preparation so arbitrator involvement is predictable. Additional charges may be incurred if non-standard requests are made or non-standard hearings are necessary in which cases the arbitrator is empower to charge the costs resulting among the parties. See Stage IV for an example.

## **The Arbitration Road Map**

The following road map shows how cases will proceed, from beginning to end, when using the Program and the target timing for each stage.



### **Arbitration Stage Details**

#### **I. Initiation**

All parties to the dispute must agree to its resolution through the Program. The parties do so by signing an Arbitration Agreement form in which they agree to a final resolution of their dispute through the Program, consent and agree to abide by the arbitration rules that govern the program and specify the issues for resolution by the arbitrator. The signed Arbitration Agreement is submitted to NCAB or its designee<sup>3</sup> (“Administrator”). The signed Arbitration Agreement must be accompanied by the fee specified in the agreement. In association/member cases, the association’s portion of the fees is \$1,000.00 and the member’s portion is \$500.00. In member/member cases, each member’s portion is \$750.00. These fees must be paid with the submission of the Arbitration Agreement.

Upon receipt of the signed Arbitration Agreement with the required fees, the administrator will establish the target time line for the case and set the date and location for the hearing. The parties will be advised of the case time line and of the initial deadline for filing Statements of Claims and Responses.

#### **II. Arbitrator Selection**

All Program arbitrators will be attorneys licensed to practice law in the State of North Carolina who have demonstrated experience in arbitration and not less than ten (10) years experience in the practice of condominium and community association law. Arbitrators will not be assigned to hear cases in any district where they or their firm maintain an office. Further, in accepting appointment as an arbitrator, each attorney will agree not to represent any of the parties to a dispute he or she hears for a period of at least one year following the date on which the case is closed, by award or otherwise. This “covenant not to represent” will extend to all members of the arbitrator’s firm, as well. A biography of the arbitrator will be provided to the parties. The parties may submit objections to the arbitrator nominated but the decision of the administrator as to whether or not the nominated arbitrator will serve or an alternate will be selected will be final.

#### **III. Preliminary Hearing**

The preliminary hearing is for the purpose of scheduling and other administrative matters. It is conducted by the arbitrator and will be held by telephone or other acceptable electronic means. The parties and the arbitrator will discuss the exchange of documents and information required by the rules and the arbitrator will consider any request by the parties in this regard.

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<sup>3</sup> NCAB shall have the right to delegate arbitration administration duties to a law firm or specified dispute resolution agency.

#### **IV. Information/Document Exchange and Preparation**

The parties are expected to promptly and voluntarily exchange information and documents with each other. Document and information requests shall be made in writing. The parties are encouraged to cooperatively resolve any disagreements that may arise regarding the exchange of information and documents. Should they be unable to do so, they may submit a request to the Administrator for resolution by the arbitrator. Upon receipt of such a request, the Administrator will schedule a hearing by telephone or other electronic means with the arbitrator who will hear from the parties and rule on the dispute. This hearing will be limited to 30 minutes. Such hearings are expected to be the exception and are not covered by the standard arbitration fees paid by the parties at the commencement of the case. The party requesting an information exchange dispute hearing will be required to pay a hearing fee of \$350.00. At the conclusion of the hearing, the arbitrator shall have the power and authority to allocate responsibility for final payment of the hearing fee among the parties based on how the arbitrator determines, in his or her absolute discretion, the propriety of the parties' respective positions.

#### **V. Pre-Hearing Submissions**

Not less than ten (10) days prior to the hearing the parties must file a final witness list and a final exhibit list with the administrator and provide a copy to all of the parties. The parties may request the issuance of subpoenas by the arbitrator. The arbitrator will issue subpoenas within three days after a request is submitted to the administrator but the requesting party is solely responsible for the proper service and delivery of the subpoena to the witness designated.

#### **VI. Hearing**

The Hearing is limited to two hours, with each party allotted 50 minutes for the presentation of their evidence and testimony. The parties may use the time allotted to them in any way they choose. They may have counsel present to assist them or may appear without counsel. They may submit oral testimony, written affidavits, or other evidence in support of their position. Formal rules of evidence do not apply. After each party has presented all of its evidence or information or used the 50 minutes allotted for doing so, the arbitrator will allow each party ten (10) minutes for closing comments. Time limits established for the hearing will be strictly observed.

#### **VII. Post-Hearing Submissions.**

The arbitrator may request additional information from the parties at or after the conclusion of a hearing. If post-hearing submissions are requested, they will be provided within fifteen (15) days of the arbitrator's request.

#### **VIII. Award**

The award is due Thirty (30) days after the arbitrator closes the hearing or days after the date specified by the arbitrator for providing post-hearing submissions. The award will address all claims raised in the arbitration. It may direct one or more parties to pay another party a monetary amount. It may direct parties to take specific actions based on how the arbitrator decided the matters in the case. The award will be in writing and may or may not include a statement of the arbitrator's reasons for deciding the matter. The services of the arbitrator and of the Program are completed when the award is issued. Although parties should and usually do comply with the award, enforcement is accomplished through a court proceeding.

## Arbitration District Map

