

North Carolina Association Bureau (“NCAB”) Expedited HOA Arbitration Rules

1. Applicability of Rules

These Rules, as in effect at the time of initiating the arbitration, shall apply to all cases. They may be varied only with the written consent of the Administrator and the arbitrator

2. Administration by NCAB

Parties who agree to arbitrate under these Rules authorize NCAB to administer the arbitration. NCAB may carry out its duties and responsibilities through its staff or an independent contractor selected in NCAB's sole discretion (the “Administrator”). NCAB may decline to administer any matter for any reason.

3. Agreement to Submit to Arbitration

Parties may initiate proceedings with NCAB by sending a completed and signed NCAB Agreement to Arbitrate along with a check or checks in payment of the fee. Once this information is received from all parties, the Administrator will notify the parties of the date by which they must provide a Statement of Position and Claims. All claims asserted are deemed denied by all other parties.

4. Arbitration Fees

a. The fee for the arbitration is \$1,500.00, which includes both administration and arbitrator services. The arbitration fee must be paid in full at the time the completed and signed NCAB Agreement to Arbitrate is sent to the Administrator to initiate arbitration proceedings. The arbitration fee is non-refundable.

b. If the case involves a condominium or planned community association and one of its members, the association's share of the arbitration fee shall be \$1,000.00 and the member's share of the arbitration fee shall be \$500.00. In all other cases, the parties shall pay an equal share of the arbitration fee.

c. The award issued by the arbitrator pursuant to Rule 27 may require one party to reimburse another party for all or a portion of the arbitration fee paid as the arbitrator determines, in his or her sole discretion, is reasonable and just under the facts of the case. Additional fees may be charged should any party request a hearing with the arbitrator related to the Exchange of Information and Exhibits under Rule 14 or for Interim Measures under Rule 23.

5. Changes of Claim

With the agreement of the other party, any party's claim or counterclaim may be increased in amount or the party may add a new or different claim or counterclaim. After the arbitrator is appointed, however, no new or different claim or counterclaim may be submitted except with the arbitrator's consent.

6. Jurisdiction

Prior to the appointment of the arbitrator, the Administrator shall have the power to hear and rule upon any issues or objections raised in the arbitration. The arbitrator shall have the power to rule on

his or her own jurisdiction, as well as all other issues or objections raised, including any objections with respect to the scope of the arbitration agreement.

7. Mediation

At any stage of the arbitration, the parties may request that the arbitration be suspended for up to sixty (60) days to allow for mediation. The mediator shall not be the arbitrator. The parties shall notify the Administrator at or prior to the end of the suspension period as to whether any issues remain for resolution by arbitration. If issues designated in the Agreement to Arbitrate are not fully resolved in mediation, the arbitration shall resume and the Administrator shall issue a revised time schedule for its completion.

8. Location, Date and Time of the Arbitration

The arbitration hearing will be held on the date and at the time and location designated by the Administrator. The location will be in the district where the condominium or planned community involved is located.

9. Appointment of Arbitrator

a. Any arbitrator appointed under these Rules shall be independent and impartial. The arbitrator shall be appointed by the Administrator. All arbitrators appointed will be attorneys licensed to practice law in the State of North Carolina who have demonstrated experience in arbitration and who have not less than ten (10) years of experience in the practice of condominium and planned community association law. The Administrator will not appoint an arbitrator to a case that would be heard in any district where the arbitrator or the arbitrator's firm maintains an office. The parties may submit objections to the arbitrator nominated by the Administrator 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.

b. Lawyers serving as arbitrators under these Rules will not represent any party or provide the parties with legal advice such as they would receive were they to seek legal advice from an independent attorney. Further, lawyers serving as arbitrators agree that neither they nor their firms will represent or be retained or employed by any party for a period of one (1) year after the decision and award is issued or the arbitration is otherwise terminated.

c. By accepting appointment, the arbitrator agrees to be bound by these Rules and represents that he or she has the time available to devote to the expeditious process contemplated by these Rules, and to conducting the hearing on the date and at the time and location designated by the Administrator.

d. At the time of his or her appointment and promptly upon their arising during the course of the arbitration, the arbitrator shall disclose in writing to the Administrator any circumstances that might give rise to justifiable doubt regarding the arbitrator's independence or impartiality. Such circumstances include bias, interest in the result of the arbitration, and past or present relations with a party or its counsel. Upon receipt of such information from the arbitrator or another source, the Administrator shall communicate the information to the parties and, if it deems it appropriate to do so, to the arbitrator and others. The parties may, upon receiving disclosure of actual or potential conflicts of interest of the arbitrator, waive such conflicts and proceed with the appointed arbitrator.

e. Parties and counsel also have a duty to disclose any information about any circumstance likely to affect the impartiality or independence of the arbitrator, including any bias or any financial or personal interest in the result of the arbitration, or any past or present relationship with the arbitrator.

f. If any party objects to the continued service of an arbitrator, the Administrator shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

g. If for any reason the arbitrator is unable to perform the duties of the office, the Administrator may, on proof satisfactory to it, declare the office vacant and appoint a substitute. If a substitute arbitrator is appointed, the substitute arbitrator shall determine, in his or her sole discretion, whether it is necessary to repeat all or part of any prior hearings.

10. Arbitrator Compensation & Expenses

The arbitrator's compensation and expenses will be paid from the Arbitration Fee collected from the parties as provided in Rule 4. The only additional fees paid to the Arbitrator will be those charged should any party request a ruling from the Arbitrator relating to the Exchange of Information and Exhibits under Rule 14 or for Interim Measures under Rule 23.

11. Communication with Arbitrator

No party and no one acting on behalf of any party shall communicate unilaterally with the arbitrator. Unless the parties agree or the arbitrator directs otherwise, all communications between the parties and the arbitrator shall be transmitted through the Administrator.

12. Application of Law

The arbitrator shall take into consideration any North Carolina, federal, or local laws that the parties bring to the arbitrator's attention or that the arbitrator concludes are applicable to the facts of the case.

13. Preliminary Hearing

The arbitrator shall conduct a preliminary hearing with the parties and/or their representatives. The preliminary hearing shall be conducted by telephone. The purpose of the hearing is to discuss all elements of the arbitration and to plan for its future conduct.

14. Exchange of Information and Exhibits

a. Within fourteen (14) days after the preliminary hearing, any party may serve a written request for documents or other information to the opposing party. If the opposing party objects to providing any of the information or documents requested, that party shall deliver a written objection to the requesting party within ten (10) days after the date the request was made. Objections communicated will be deemed valid unless the requesting party requests a ruling from the arbitrator within ten (10) days after the objection was made. Information and documents not subject to objection must be provided and produced within forty-five (45) days after the request was made.

b. The arbitrator is authorized to resolve any disputes concerning the exchange of information. Should any party request that the arbitrator rule on the propriety of an objection made, that party shall make the request in writing to the Administrator and shall deliver a non-refundable hearing fee in the amount of \$350.00. At the conclusion of the hearing, the arbitrator shall have the power and authority to require other parties to reimburse the requesting party for all or part of the hearing fee based on how the arbitrator determines, in his or her absolute discretion, the propriety of the parties' respective positions. Hearings will be conducted by telephone or other electronic means

with the arbitrator who will hear from the parties and rule on the dispute. The hearing will be limited to thirty (30) minutes.

c. At least ten (10) business days prior to the hearing, the parties shall exchange copies of all affidavits and all exhibits they intend to submit at the hearing and shall identify all witnesses that may be called to testify in person.

d. Except as indicated in paragraphs a through c above, there shall be no discovery. The arbitrator may order or allow additional discovery in extraordinary cases or when the demands of justice require it. However, any further discovery ordered or allowed must be completed within a period not to exceed 45 calendar days.

15. The Hearing

a. The parties may agree to waive oral hearings in any case. In such instances, the dispute shall be resolved by submission of affidavits, documents, exhibits and briefs to the arbitrator.

b. In cases in which an oral hearing is to be held, the hearing shall not exceed two hours.

c. Each party shall have fifty (50) minutes to submit its proof and present its case and then ten (10) minutes to present a final statement of position and request for relief to the arbitrator. The arbitrator shall determine the order of the hearing, and may require further submission of documents after the hearing.

d. Generally, there will be no stenographic record. Any party desiring a stenographic record may arrange for one at its own cost and shall notify the Administrator and all other parties of these arrangements at least three calendar days in advance of the hearing. Such stenographic record is not to be considered to be the official record of the hearing. Video and/or audio recordings using any form of technology are prohibited unless the parties and the arbitrator consent to such recordings in writing.

e. The arbitrator shall declare the hearing closed when the parties have completed their presentations of all evidence and testimony.

16. Attendance at Hearings

All parties and/or their representatives are entitled to attend the arbitration hearings. The arbitrator shall determine whether or not other persons shall be allowed to attend. The arbitrator shall also have the power to sequester any witness, other than a party or other essential person, during the testimony of any other witness.

17. Confidentiality

a. Unless the parties agree otherwise, all aspects of the arbitration, including discovery, testimony and the decisions of the arbitrator, shall be kept confidential by the parties, the arbitrator and NCAB; provided, however, that this confidentiality commitment shall not apply (i) to judicial proceedings ancillary to the arbitration, including a judicial challenge to or request for enforcement of an award, (ii) or in situations where disclosure is required by law or necessary to protect a legal right of a party.

b. Specific issues of confidentiality arising during the course of the arbitration should be raised with and shall be resolved by the arbitrator.

c. The parties may not compel the Administrator or the arbitrator to divulge any documents or to testify in regard to the arbitration in any judicial or adversarial proceeding, whether by personal testimony, deposition, written interrogatory, or sworn affidavit.

d. The Administrator may divulge appropriate and necessary information to appropriate civil authorities when it deems it necessary to prevent a person from being harmed.

18. Representation by Counsel

The parties may be represented or assisted by persons of their choice. Arbitration can affect substantial legal rights and responsibilities. Therefore, parties have the right to be assisted or represented by independent legal counsel throughout the arbitration process. Each party shall communicate the name, address and function of such persons in writing to all the other parties and to the Administrator at least five (5) calendar days prior to the date set for the hearing at which that person is first to appear.

19. Oaths or Vows

The arbitrator has discretion to require parties or witnesses to testify under oath or vow. If any party requests that witnesses be sworn, the arbitrator shall do so provided that making an oath or vow does not violate the person's sincerely held religious beliefs. Oaths or vows may be administered by the arbitrator.

20. Postponements

The arbitrator may postpone any hearing upon request of a party or upon the arbitrator's own initiative. In order to promote the expeditious disposition of cases, postponements are not favored and will be given only for compelling reasons.

21. Arbitration in the Absence of a Party or Representative

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An arbitrator may not make an award based solely on the fact that one or more of the other parties failed to attend the scheduled hearing. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

22. Evidence

- a. Conformity to legal rules of evidence is not required.
- b. The arbitrator shall determine the admissibility, relevance, and materiality of the evidence offered and may exclude evidence deemed by the arbitrator to be cumulative or irrelevant.
- c. The parties may offer such evidence as the arbitrator deems to be relevant and material to the dispute and shall produce such evidence as the arbitrator deems necessary to an understanding and determination of the dispute.
- d. The arbitrator may receive and consider the testimonial evidence from witnesses by declaration or affidavit, but shall give it only such weight as the arbitrator deems it appropriate after consideration of any objection made to its admission.

- e. The arbitrator may request or consider briefs or position papers that set forth the parties' understandings of the legal or factual issues.
- f. All evidence shall be taken in the presence of the arbitrator and all of the parties, except where any of the parties is absent, in default, or has waived the right to be present.
- g. The arbitrator or other person authorized by law may issue subpoenas for witnesses or documents at the request of any party or independently.
- h. If the parties agree or the arbitrator directs that documents or other evidence be submitted to the arbitrator after the hearing, the documents or other evidence shall be filed with NCAB for transmission to the arbitrator. All parties shall be afforded an opportunity to examine and respond to such documents or other evidence.

23. Interim Measures

- a. At the request of a party, the arbitrator may take such interim measures as he or she deems necessary, including measures for the preservation of assets, the conservation of goods or the sale of perishable goods. The arbitrator may require appropriate security as a condition of ordering such measures.
- b. Should any party request that the arbitrator take interim measures, that party shall make the request in writing to the Administrator and shall deliver a non-refundable hearing fee in the amount of \$350.00. At the conclusion of the hearing, the arbitrator shall have the power and authority to require other parties to reimburse the requesting party for all or part of the hearing fee based on how the arbitrator determines, in his or her absolute discretion, the propriety of the parties' respective positions. Hearings will be conducted by telephone or other electronic means with the arbitrator who will hear from the parties and rule on the dispute. The hearing will be limited to thirty (30) minutes.
- c. A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

24. Waiver of Rules

Any party who proceeds with the arbitration after learning of a failure to comply with any provision of these Rules, or with any requirement of the arbitration agreement or with any direction of the arbitrator and who fails to promptly raise an objection, waives any objection thereto.

25. Extensions of Time

The Administrator or the arbitrator may for good cause extend any period of time established by these Rules, except the time for making the award. In order to promote the expeditious disposition of cases, extensions are not favored and will be given only for compelling reasons. The Administrator shall notify the parties of any extension.

26. Communications and Notices

- a. The primary means of communication, including giving any notices required under these Rules, shall be by email to the email addresses provided by the parties, the arbitrator, and the Administrator. Notices and communications may also be given by registered mail, courier, telex, facsimile transmission, or any other means of telecommunication that provides a record thereof. Notices and communications shall be deemed to be effective as of the date of receipt.

Proof of transmission shall be deemed sufficient proof of receipt of any notice or communication given under these Rules.

- b. Unless otherwise instructed by the Administrator or by the arbitrator, any papers or documents submitted by any party to the Administrator or to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.

27. The Award

- a. The award shall be in writing and signed by the arbitrator. It shall be executed in the manner required by law.
- b. If the parties settle their dispute during the course of the arbitration and if the parties so request, the arbitrator may set forth the terms of the settlement in a "consent award."
- c. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance of a contract.
- d. The arbitrator may, but need not, inform the parties of the reasoning by which the decision was reached.
- e. The arbitrator shall also assess the fees, expenses, and compensation as provided for in Sections 4, 14 and 23 of these Rules in the final award. The arbitrator may apportion such fees, expenses, and compensation among the parties in such amounts as the arbitrator determines is appropriate.
- f. The award may include: (i) interest at such rate and from such date as the arbitrator may deem appropriate; and (ii) an award of attorneys' fees if all parties have requested such an award or it is authorized by law or their arbitration agreement.
- g. The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than 30 calendar days from the date of closing the hearing, or, if oral hearings have been waived, from the date of the Administrator's transmittal of the case documents and proof to the arbitrator.
- h. In addition to a final award, the arbitrator may make other decisions, including interim, interlocutory, or partial rulings, orders, and awards. In any interim, interlocutory, or partial award, the arbitrator may assess and apportion the fees, expenses, and compensation related to such award as the arbitrator determines is appropriate.
- i. The Administrator shall transmit the award to the parties by placing a true copy in the U.S. mail addressed to the parties or their representatives at the last known addresses, by personal or electronic service of the award, or by the filing of the award in any other manner that is permitted by law.
- j. Parties to any arbitration under these Rules consent and agree that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

28. Modification of Award

Within 20 calendar days after the transmittal of the award, any party may request that the arbitrator correct any clerical, typographical, or computational errors in the award. The other parties shall be given 10 calendar days to respond to the request. The arbitrator shall dispose of the request within

20 calendar days after the arbitrator's receipt of the request and any response from the Administrator. The arbitrator is not empowered to reconsider the merits of any claim or counterclaim already decided.

29. Release of Documents for Judicial Proceedings

Upon the written request of a party, the Administrator shall copy and furnish to the requesting party, at that party's expense, certified copies of any papers in the Administrator's possession that may be required in judicial proceedings relating to the arbitration.

30. Applications to Court and Exclusion of Liability

- a. Neither the Administrator nor any arbitrator in a proceeding under these Rules is a necessary party in judicial proceedings relating to the arbitration.
- b. Neither the Administrator nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these Rules.
- c. No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

31. Expenses

The witness expenses shall be paid by the party who calls the witness. All other expenses of the arbitration are included in the arbitration fee required in Rule 4.

32. Interpretation and Application of Rules

The arbitrator shall interpret and apply these Rules insofar as they relate to the arbitrator's powers and duties and the conduct of the hearing. When there is more than one arbitrator and a difference arises among them concerning the meaning or application of these Rules, it shall be decided by a majority vote. If that is not possible, any arbitrator or any party may refer the question to the Administrator for a final decision. All other Rules shall be interpreted and applied by the Administrator.

33. Conflicts with other Statutes or Rules

Should these Rules vary from state or Federal arbitration rules or statutes, these Rules shall control except where the state or Federal rules or statutes specifically indicate that they may not be superseded.