

4781-10-01

Dispute resolution.**(A) Definitions. For purposes of this rule:**

- (1) "Defect" means any problem in the performance, construction, components, or material of the home that renders the home or any part of it not fit for the ordinary use for which it was intended including but not limited to a defect in the construction, safety, or installation of the home, or which does not meet accepted engineering practice, or acceptable workmanship reflecting journeyman quality of work in the various trades, or the norms and tolerances of the industry. A defect is not a minor cosmetic item.
- (2) "Date of installation" for a new manufactured home means the date the manufactured home has passed inspection and is ready for occupancy, and the first person purchasing the home in good faith for purposes other than resale takes possession. The date of installation for a used manufactured home means the date the manufactured home has passed inspection and is ready for occupancy and the person purchasing the home in good faith for purposes other than resale takes possession. For a relocated manufactured home, that has not changed hands, the date of installation means the date the manufactured home has passed inspection and is ready for occupancy.
- (3) "Warranty issue" for the purposes of dispute resolution, means any item covered by the original written warranty offered by the manufacturer, retailer, or installer related to the original purchase agreement or sales contract, but does not include any extended warranty on an item whether the extended warranty was offered by the manufacturer, installer or retailer, or others.

(B) Initiation of dispute resolution process.

- (1) The consumer, retailer, manufacturer, or installer may initiate the dispute resolution process regarding a new manufactured home that is one year or less from the date of installation of the home. A defect, or warranty issue may be considered appropriate for dispute resolution if a record exists that the defect, or warranty issue was reported to the manufacturer, retailer, installer, HUD, the better business bureau, or similar party, or this commission within one year from the date of installation, even if that year has now passed.
- (2) Requests for dispute resolution program services shall be made in writing and on the form provided by the commission.
- (3) Participation in mediation services is voluntary.
- (4) A used manufactured home is only eligible for dispute resolution in regard to its installation.

(C) Voluntary compliance.

If the commission staff reviewer determines that the complaint is appropriate for dispute resolution the staff reviewer shall:

- (1) Notify the parties that they have fifteen calendar days from the date of the notice for voluntary compliance to resolve the dispute.
- (2) If the dispute is not resolved, an inspection by a staff member or agent of the commission may be scheduled. The commission shall notify all parties of the date and time of inspection by regular mail postmarked no later than ten days before the inspection.
- (3) For complaints that involve an unreasonable risk of death or injury, the parties shall be notified that they shall have five days from the date of the notice in which to reach a settlement or an inspection shall be immediately scheduled.

(D) Mediation.

(1) Upon referral for mediation, all the parties shall receive notice that the matter must be resolved within thirty days from the date of referral to mediation. The notice shall include a copy of the original complaint. Notice of the time period for resolving the matter through mediation may be included in the original notice of complaint sent to all parties.

(2) Mediator selection.

(a) The commission shall approve any mediator before the mediator can be used in the dispute resolution process.

(b) The commission's approval of a person to mediate shall be based upon the person's experience and training in mediation.

(c) The commission may refer the matter to any mediator who is a member of the commission's mediation staff, a mediator from the state of Ohio commission on dispute resolution and conflict management, or any mediator that has previously been approved by the commission and maintained on a list of approved mediators.

(d) A mediator shall not mediate a matter if the mediator has:

(i) Reviewed the complaint to determine if the complaint is appropriate for dispute resolution;

(ii) A primary interest in the matter being mediated; or

(iii) A business or personal relationship with any of the parties to the dispute resolution.

(3) The mediator shall facilitate a settlement. A party to the mediation may request OMHC staff to inspect, or delegate an inspection, of the property and alleged defect(s), and provide a report to the parties. In the event that the mediator determines that such additional information is necessary, the mediation may be extended an additional thirty days, except where there is an unreasonable risk of death or injury involved.

(4) Mediation agreements.

(a) If the parties reach a mediation agreement, the mediator shall issue a written notice to the commission that the issue was resolved. The written notice shall include the apportionment of the commission fees for mediation and inspection services.

(b) If the parties are unable to reach a settlement through mediation, then within fifteen days of the issuance of written notice by the mediator that the matter was not resolved, any party may request that the commission arrange for non-binding arbitration.

(c) Arbitration is not available to those disputes which do not meet the requirements of paragraph (A) and (B) of this rule, even if inspection or mediation services were offered as a courtesy by the commission.

(E) Arbitration.

(1) A request for arbitration shall be made in writing to the commission on a form provided by the commission. Following the request for arbitration:

(a) The commission shall arrange for an approved arbitrator.

(b) All parties shall receive notice of the arbitration. The notice shall indicate that the matter must be resolved within forty-five days from the date of the request for arbitration.

(2) The arbitrator shall be approved in advance by the commission unless the arbitrator is approved by the American arbitration association. The arbitrator may not have an interest in the outcome of the dispute or a business or personal relationship to any party to the arbitration.

(3) Arbitrator's duties.

(a) The arbitrator may issue orders to compel the completion of the record, require onsite inspections, dismiss frivolous allegations, set hearing dates and deadlines, and may subpoena witnesses.

(b) Within forty-five days, the arbitrator shall issue a written recommendation

setting forth the findings of fact, and the apportionment of commission fees for inspection, mediation, and arbitration services. If there is a determination that a defect, or warranty issue exists the written recommendation shall include:

- (i) What action shall be taken;
- (ii) The time period in which the defect, or warranty issue, shall be corrected;
- (iii) Which party or parties are determined to have likely caused the defect or warranty issue; and
- (iv) Which party or parties are responsible to pay for or to perform the correction.

(4) Following an arbitrator's written non-binding decision, the home owner may elect that the arbitrator's non-binding decision be made binding on the parties by executing a written acknowledgement, provided by the commission. The written acknowledgement shall be received by the commission within ten days from the date of the arbitrator's decision.

(F) Nothing in this chapter shall be construed as prohibiting a homeowner from pursuing any legal action.

(G) This section shall not be applicable to resolve disputes regarding the licensing of an installer which is governed exclusively by the procedures set forth in rule 4781-8-03 of the Administrative Code. Information gathered from investigation inspections and during arbitration may be used by the commission to investigate disciplinary action against a licensee.

(H) Authority to charge fees.

- (1) The commission may charge a fee to the parties involved in dispute resolution for the costs of administering the program and providing dispute resolution services through fees.
- (2) Fees charged to the parties involved in dispute resolution shall be apportioned among the parties as stated in the mediation agreement, or as determined by the arbitrator's written recommendation.
- (3) Fees may be charged for investigation inspection(s), mediation, and arbitration in amounts as determined by the commission.
- (4) The first investigation inspection as part of dispute resolution shall not be charged to the homeowner, unless costs to the homeowner are apportioned in the mediation agreement or the arbitrator's written recommendation.

(I) Investigation inspection or mediation services may be offered for a fee by the commission, at the request of the parties, to assist in the resolution of disputes with regard to manufactured homes that are not covered by the dispute resolution program.

(J) Fees for dispute resolution services shall be:

(1) Investigation inspection. Actual direct cost of the inspection to the commission plus twenty-five per cent for administrative overhead.

(2) Mediation. Actual direct cost of mediation plus twenty-five per cent for administrative overhead.

(3) Arbitration. Actual direct cost of arbitration plus twenty-five per cent for administrative overhead.

(4) All fees shall be by check or money order payable to "Treasurer, State of Ohio" or by credit card. Any online credit card payment may be subject to an additional convenience fee in an amount charged to the commission.

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