



*A Subsidiary of the Real Estate Bar Association for Massachusetts*

## ***Arbitration Guidelines with Option for Right of Review***

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### **General Statement:**

These Guidelines are the REBA Dispute Resolution, Inc. (REBA/DR) procedures for arbitration proceedings. They have been developed to assist parties in handling arbitrations in the most efficient and cost effective manner and shall govern arbitrations conducted by REBA/DR unless otherwise agreed by all parties. Where parties wish to amend any of these Guidelines, they may do so by a written agreement prior to the commencement of the hearing. Any such amendments shall be also subject to the approval of REBA/DR and the selected Arbitrator.

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### **Definition of Process:**

Arbitration is a process in which a neutral renders an award after hearing arguments and reviewing evidence. All awards are binding unless the parties agree otherwise in writing before the hearing.

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### **Initiation of Action:**

A request for arbitration is submitted by either independent or jointly-executed case submission request, on a form provided to the parties by REBA/DR. The submission request reflects the names, addresses and telephone numbers of all parties and their counsel, if represented, a brief summary of the nature of the claim, and the name of the Arbitrator selected by the parties. The current administrative fee is due with the filing of the case submission request.

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### **Administrative Procedures:**

If cases involve unusual complexities, or extenuating circumstances, REBA/DR will suggest a pre-hearing conference to be attended by a REBA/DR representative and a representative of each party. At the conference, several issues will be addressed including: the appointment and qualifications of the Arbitrator, compensation matters, the exchange of information and discovery needs, scheduling and time requirements, a summary of the issues and any damages claimed by each party, the filing of a joint memorandum of uncontested facts, identification and background of expert witnesses, if any, any potential conflicts between the Arbitrator and any parties, and any special accommodations/facilities that may be needed.

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### **Arbitration Process:**

The hearing is conducted by the Arbitrator in an impartial manner. The Arbitrator discloses any circumstances that might have developed that the parties might perceive to affect his/her neutrality, and, if that is the case, a substitute arbitrator is assigned with the agreement of the parties. The Arbitrator hears the controversy and makes an award based upon the evidence submitted. The

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Arbitrator shall determine the relevancy and admissibility of the evidence, accept deposition testimony, require the submission of briefs and rule on motions. The Arbitrator may also establish additional, impartial, ground rules, so long as the manner in which the hearing will be conducted allows for all parties to make a fair presentation of their positions and to present witnesses and permit cross examination.

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### **Length of Hearing:**

The usual hearing will last approximately three hours. Parties may elect an accelerated hearing permitting only oral testimony by party witnesses, and excluding the testimony of others.

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### **Attendance:**

Non-party witnesses are excluded from the hearing except while testifying. The testimony of all parties and witnesses is sworn or affirmed.

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### **Confidentiality:**

All memoranda and other work product prepared by the Arbitrator are confidential and not subject to disclosure in any judicial, administrative or private proceeding involving any of the parties to which these materials apply. Should any party violate this provision, the party shall indemnify the Arbitrator and REBA/RD for all costs incurred.

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### **Discovery:**

REBA/DR recognizes that certain cases require discovery to insure a complete and fair process. The parties may take depositions and request documents be produced on an expedited basis, and shall be subject to the same requirements and obligations in this regard as provided by the Massachusetts Rules of Court and Chapter 251 of the General Laws.

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### **Information Filing:**

At least ten days prior to the hearing, together with the case submission request, each party will submit to the others, including REBA/DR, a list of documents to be offered and witnesses to be presented at the hearing. Any document or witness not so identified, may be excluded if the Arbitrator so determines.

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### **Case Default/Dismissal:**

If all parties have been properly notified of a hearing and one or more parties fails to appear, the Arbitrator may conduct the hearing if one or more parties are present and enter an award or grant a continuance, depending on his/her judgment. The parties may move to terminate the arbitration without prejudice before an award is issued by filing with the Arbitrator a writing to that effect signed by all parties.

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### **Adjournment:**

Once each party present has been given an opportunity to present his/her case and offer proof of claims, unless the Arbitrator otherwise determines the Arbitrator shall close the hearing and no further proof shall be accepted. Should the Arbitrator allow the submission of documentation or briefs after the close of the hearing, the same additional time shall be offered to each party.

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### **Award:**

The Arbitrator's award, in writing, shall be rendered within 14 days of the hearing, unless otherwise determined by the Arbitrator. The Arbitrator shall deliver a copy of the award, signed by the Arbitrator, to each party personally, or by registered, certified or regular mail, addressed to the party directly, or in care of the party's attorney, if any. The award may include an assessment of the issues, findings of material fact and rulings of law. The Arbitrator shall be guided by the principles of law in making the award. Unless the parties have agreed to the contrary in writing prior to the hearing, the award (as it may be affected after review if a review has been claimed) will bind the parties and is not subject to appeal or review by any judicial or administrative process (except as provided in Chapter 251, Sections 9, 11, 12 and 13 of the General Laws). A judgment may be entered in court for the enforcement of the award (as it may have been so affected.)

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### **Option of Right of Review:**

If, in the Agreement to Arbitrate, the parties have elected to have a right of review, the following provisions apply, and the Agreement to Arbitrate and these Guidelines shall be construed accordingly.

All reviewers shall be members of the panel of neutrals of REBA/DR. Within twenty days of the date of the Arbitrator's award, either party may claim a review of it, indicating whether the review shall be by one person or three. If one person, that person shall be named by REBA/DR, unless the parties have within the twenty days agreed on the reviewer. If the party claiming review wishes three persons, he or she shall, in the claim for review, name one reviewer; the other party shall within forty days of the date of the award name a second reviewer; and the two thus named shall within sixty days of the date of the award, name the third reviewer. If the reviewers named by the parties do not name the third on time, the third shall be named by REBA/DR; if the other party does not name the second reviewer on time, the second and third reviewers shall be named by REBA/DR. If a party has claimed review by one reviewer and the other has claimed review by three, review shall be by three persons. Review shall be claimed, and any reviewer named, in a writing delivered personally or by registered, certified or regular mail, addressed to the other party directly or in care of the party's attorney, if any, and copied to REBA/DR.

Until the review is completed, the Arbitrator's award shall be provisional and shall not constitute an award for purposes of Chapter 251 of the General Laws. The reviewer(s) shall confirm, vacate, reverse, or modify the award. Unless vacated, the award as affected by the action of the reviewer(s) shall be the award for purposes of Chapter 251.

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The review shall be limited to the record generated by the Arbitrator, including any exhibits. The award shall be confirmed unless the reviewer(s) conclude that there was not substantial evidence to support the Arbitrator's findings of fact or that there was an outcome-determinative error of law. If there are three reviewers, they shall act by majority vote.

The cost of the review shall be: borne by the party opposing the award, if the award is confirmed; borne by the other party if it is vacated or reversed; and borne, or allocated, as determined by the reviewer(s) if it is revised or if both parties have claimed review. The same per hour/per party fees set forth in the Agreement to Arbitrate shall apply for each reviewer.

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## **Multiple Arbitrators:**

If the parties wish to have more than one Arbitrator, the provisions of the Agreement to Arbitrate and these Guidelines shall apply to all the Arbitrators, except that there shall be no right of review of an award rendered by multiple Arbitrators.