

# **Wills and Trusts Arbitration RULES**

Rules Amended and Effective June 1, 2009

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#### Introduction

Every year billions of dollars are administered by executors and trustees. Occasionally disputes arise about whether those funds are being properly administered and whether the governing will or trust is being interpreted correctly by the fiduciary. Many of these disputes can be resolved by the use of arbitration, the voluntary submission of a dispute to a disinterested lawyer or lawyers with substantial experience in the area of trusts and estates for final and binding determination. Arbitration is an effective way to resolve these disputes privately, promptly, and economically.

The American Arbitration Association (AAA) is a public service, not-for-profit organization offering a broad range of dispute resolution services to business executives, attorneys, individuals, trade associations, unions, management, consumers, families, communities, and all levels of government. Services are available through AAA headquarters in New York City and through offices located in major cities throughout the United States. Hearings may be held at locations convenient for the parties and are not limited to cities with AAA offices. In addition, the AAA serves as a center for education and training, issues specialized publications, and conducts research on all forms of out-of-court dispute settlement.

Executors and trustees, and beneficiaries of estates and trusts, can voluntarily agree to arbitrate an existing dispute under these rules. However, they should review state law to determine whether a guardian *ad litem* is necessary to represent any minor, incapacitated, or unborn beneficiary. Testators or settlors can require that future disputes be arbitrated by inserting the following clause into their wills and trusts.

#### Standard Arbitration Clause

In order to save the cost of court proceedings and promote the prompt and final resolution of any dispute regarding the interpretation of my will (or my trust) or the administration of my estate or any trust under my will (or my trust), I direct that any such dispute shall be settled by arbitration administered by the American Arbitration Association under its Arbitration Rules for Wills and Trusts then in effect. Nevertheless the following matters shall not be arbitrable questions regarding my competency, attempts to remove a fiduciary, or questions concerning the amount of bond of a fiduciary. In addition, arbitration may be waived by all *sui juris* parties in interest.

The arbitrator(s) shall be a practicing lawyer licensed to practice law in the state whose laws govern my will (or my trust) and whose practice has been devoted primarily to wills and trusts for at least ten years. The arbitrator(s) shall apply the substantive law (and the law of remedies, if applicable) of the state whose laws govern my will (or my trust). The arbitrator's decision shall not be appealable to any court, but shall be final and binding on any and all persons who have or may have an interest in my estate or any trust under my will (or my trust), including unborn or incapacitated persons, such as minors or incompetents. Judgment on the arbitrator's award may be entered in any court having jurisdiction thereof.

#### Administrative Fees

The AAA's administrative fees are based on service charges. The fees cover AAA administrative services; they do not cover arbitrator compensation or expenses, if any, reporting services, or any post-award charges incurred by the parties in enforcing the award.

There is no additional administrative fee where parties to a pending arbitration attempt to mediate their dispute under the AAA's auspices.

#### Mediation

The parties might wish to submit their dispute to mediation prior to arbitration. In mediation, the neutral mediator assists the parties in reaching a settlement but does not have the authority to make a binding decision or award. Mediation is administered by the AAA in accordance with its Commercial Mediation Rules.

If the parties want to use a mediator to resolve an existing dispute, they can enter into the following submission.

The parties hereby submit the following dispute to mediation administered by the American Arbitration Association under its Commercial Mediation Rules. (The clause may also provide for the qualifications of the mediator(s), the method of payment, locale of meetings, and any other item of concern to the parties.)

The services of the AAA are generally concluded with the transmittal of the award. Although there is voluntary compliance with the majority of awards, judgment on the award can be entered in a court having appropriate jurisdiction if necessary.

#### Arbitration Rules for Wills and Trusts

## 1. Incorporation of These Rules into a Will or Trust \*

A testator or settlor shall be deemed to have made these rules a part of the will or trust whenever the will or trust has provided for arbitration by the American Arbitration Association (hereinafter AAA) or under its Arbitration Rules for Wills and Trusts. These rules and any amendment of them shall apply in the form obtaining when the demand for arbitration or submission agreement is received by the AAA. The parties, by written agreement, may vary the procedures set forth in these Rules.

\* The AAA applies the *Supplementary Procedures for Consumer-Related Disputes* to arbitration clauses in agreements between individual consumers and businesses where the business has a standardized, systematic application of arbitration clauses with customers and where the terms and conditions of the purchase of standardized, consumable goods or services are non-negotiable or primarily non-negotiable in most or all of its terms, conditions, features, or choices. The product or service must be for personal or household use. The AAA will have the discretion to apply or not to apply the Supplementary Procedures and the parties will be able to bring any disputes concerning the application or non-application to the attention of the arbitrator. Consumers are not prohibited from seeking relief in a small claims court for disputes or claims within the scope of its jurisdiction, even in consumer arbitration cases filed by the business.

## 2. Administrator and Delegation of Duties

When a will or trust provides for arbitration under these rules, the AAA is authorized to administer the arbitration. The authority and duties of the AAA are established in the will or trust and in these rules, and may be carried out through such of the AAA's representatives as it may direct. The AAA may, in its discretion, assign the administration of an arbitration to any of its regional offices.

## 3. National Roster of Arbitrators

The AAA shall establish and maintain a National Roster of Commercial Arbitrators ("National Roster") and shall appoint arbitrators as provided in these rules. The term "arbitrator" in these rules refers to the arbitration panel, constituted for a particular case, whether composed of one or more arbitrators, or to an individual arbitrator, as the context requires.

## 4. Initiation under a Submission

Parties to any existing dispute may start an arbitration under these rules by filing at any regional office of the AAA three copies of a written submission to arbitrate under these rules, signed by the parties. It shall contain a statement of the matter in dispute, the amount involved, if any, the remedy sought, and the hearing locale requested, together with the appropriate filing fee.

## 5. Initiation under an Arbitration Provision in a Will or Trust

Arbitration under an arbitration provision in a will or trust shall be initiated by the claimant in the following manner.

The initiating party shall give written notice to all other parties (hereinafter respondent) of its intention to arbitrate (demand), which notice shall contain a statement setting forth the nature of the dispute, the amount involved, if any, the remedy sought, and the hearing locale requested, and shall file at any regional office of the AAA three copies of the notice and three copies of the arbitration provisions of the will or trust, together with the appropriate filing fee. The AAA shall give notice of such filing to the respondents named by the claimant.

## 6. Answer

A respondent may file an answering statement in duplicate with the AAA within ten days after notice from the AAA, in which event the respondent shall at the same time send a copy of the answering statement to the claimant. If a counterclaim is asserted, it shall contain a statement setting forth the nature of the counterclaim, the amount involved, if any, and the remedy sought. If a counterclaim is made, the appropriate fee shall be forwarded to the AAA with the answering statement. If no answering statement is filed within the stated time, it will be treated as a denial of the claim. Failure to file an answering statement shall not operate to delay the arbitration.

## 7. Changes of Claims

After filing of a claim, if either party desires to make any new or different claim or counterclaim, it shall be made in writing and filed with the AAA. Simultaneously, a copy must be sent to the other party, who shall have a period of ten days from the date of such transmittal within which to file an answer with the AAA. After the arbitrator is appointed, however, no new or different claim may be submitted except with the arbitrator's consent.

## 8. Procedures for Large, Complex Disputes

The AAA's Supplementary Procedures for Large, Complex Disputes shall apply where (1) the parties agree to have those procedures apply or (2) where the disclosed claim or counterclaim exceeds \$1 million, one party has requested that those procedures apply, and the AAA in its discretion determines that those procedures will apply.

## 9. Administrative Conferences and Mediation

At the request of any party or at the discretion of the AAA, an administrative conference with the AAA and the parties and/or their representatives will be scheduled in appropriate cases to expedite the arbitration proceedings. There is no administrative fee for this service.

Unless the parties agree otherwise, the AAA at any stage of the proceeding may arrange a mediation conference under the Commercial Mediation Rules, in order to facilitate settlement. The mediator shall not be an arbitrator appointed to the case. Where the parties to a pending arbitration agree to mediate under the AAA's rules, no additional administrative fee is required to initiate the mediation.

## 10. Fixing of Locale

The parties may agree on the locale where the arbitration is to be held. If any party requests that

the hearing be held in a specific locale and the other party files no objection thereto within ten days after notice of the request has been sent to it by the AAA, the locale shall be the one requested. If a party objects to the locale requested by the other party, the AAA shall have the power to determine the locale in the state whose law governs the will or trust, and its decision shall be final and binding.

#### 11. Appointment from the Panel

If the parties have not appointed an arbitrator and have not provided any other method of appointment, the arbitrator shall be appointed in the following manner: the AAA shall send simultaneously to each party to the dispute an identical list of names of persons chosen by the AAA from its National Roster of Arbitrators.

Each party to the dispute shall have ten days from the transmittal date in which to strike any names objected to, number the remaining names in order of preference, and return the list to the AAA. In a single-arbitrator case, each party may strike three names on a peremptory basis. In a multi-arbitrator case, each party may strike five names on a peremptory basis. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an arbitrator to serve. If the parties fail to agree on any of the persons named, or if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the AAA shall have the power to make the appointment from among other members of the panel without the submission of additional lists.

#### 12. The Number of Arbitrators

If the will or trust has not specified the number of arbitrators or if the parties have not agreed to the number of arbitrators, the dispute shall be heard and determined by one arbitrator, unless the AAA, in its discretion, directs that a greater number of arbitrators be appointed.

#### 13. Notice to Arbitrator of Appointment

Notice of the appointment of the arbitrator, whether appointed mutually by the parties or by the AAA, shall be sent to the arbitrator by the AAA, together with a copy of these rules. The signed acceptance of the arbitrator shall be filed with the AAA prior to the opening of the first hearing.

#### 14. Disclosure and Challenge Procedure

Any person appointed as arbitrator shall disclose to the AAA any circumstance likely to affect impartiality, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives. Upon receipt of such information from the arbitrator or another source, the AAA shall communicate the information to the parties and, if it deems it appropriate to do so, to the arbitrator and others. Upon objection of a party to the continued service of an arbitrator, the AAA shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

#### 15. Vacancies

If for any reason an arbitrator is unable to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled by the AAA.

In the event of a vacancy in a panel of arbitrators after the hearings have commenced, unless the parties agree otherwise, the vacancy shall be filled as provided above, and the newly constituted panel shall determine whether all or part of any prior hearing shall be repeated.

#### 16. Preliminary Hearing

At the request of any party or at the discretion of the arbitrator or the AAA, a preliminary hearing with the parties and/or their representatives and the arbitrator may be scheduled by the arbitrator to specify issues to be resolved, to stipulate uncontested facts, to schedule hearings to resolve the dispute, and to consider other matters that will expedite the arbitration proceedings. There is no administrative fee for the first preliminary hearing.

Consistent with the expedited nature of arbitration, the arbitrator may establish (i) the extent of and schedule for production of documents and other information, (ii) identification of any witnesses to be called, and (iii) a schedule for further hearings to resolve the dispute. The arbitrator is authorized to resolve any dispute over this information exchange.

#### 17. Date, Time, and Place of Hearing

The arbitrator shall set the date, time, and place for each hearing. The AAA shall send a notice of hearing to the parties at least ten days in advance of the hearing date, unless otherwise agreed by the parties.

#### 18. Representation

Any party may be represented by counsel or other authorized representative. A party intending to be represented shall notify the other party and the AAA of the name, address and telephone number of the representative at least three days prior to the date set for the hearing at which that person is first to appear. When a representative initiates an arbitration or responds for a party, notice of representation is deemed to have been given.

#### 19. Stenographic Records

Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements in advance of the hearing. The requesting party or parties shall pay the cost of the record.

If the transcript is agreed by the parties to be, or determined by the arbitrator to be, the official record of the proceeding, it must be made available to the arbitrator and to the other parties for inspection, at a date, time and place determined by the arbitrator.

#### 20. Interpreters

Any party wishing an interpreter shall make all arrangements directly with the interpreter and

shall assume the costs of the service.

#### 21. Attendance at Hearings; Experts

The arbitrator shall maintain the privacy of the hearings unless the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend hearings. Although expert witnesses are generally permitted to attend the hearing, the arbitrator shall have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

#### 22. Postponements

The arbitrator for good cause shown may postpone any hearing upon the request of a party or upon the arbitrator's own initiative, and shall grant a postponement when all of the parties agree.

#### 23. Oaths

Before proceeding with the first hearing, each arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if it is required by law or requested by any party, shall do so.

#### 24. Majority Decision

All decisions of the arbitrators, including the award, shall be by a majority.

#### 25. Order of Proceedings and Communication with the Arbitrator

A hearing shall be opened by the filing of the oath of the arbitrator, where required; by the recording of the date, time and place of the hearing, and the presence of the arbitrator, the parties and their representatives, if any; and by the receipt by the arbitrator of the statement of the claim and the answering statement, if any.

The arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved. In some cases, part or all of the above will have been accomplished at the preliminary hearing conducted by the arbitrator pursuant to Section 16.

The complaining party shall then present evidence to support its claim. The defending party shall then present evidence supporting its defense. Witnesses for each party shall submit to questions or other examination. The arbitrator has the discretion to vary this procedure but shall afford a full and equal opportunity to all parties for the presentation of any material and relevant evidence.

Exhibits, when offered by either party, may be received in evidence by the arbitrator.

The names and addresses of all witnesses and a description of the exhibits in the order received shall be made a part of the record.



There shall be no direct communication between the parties and the arbitrator other than at oral hearing, unless the parties and the arbitrator agree otherwise. Any other oral or written communication from the parties to the arbitrator shall be directed to the AAA for transmittal to the arbitrator.

#### 26. 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 award shall not be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

#### 27. Evidence

The parties may offer evidence that is relevant and material to the dispute, and shall produce such evidence as the arbitrator deems necessary to an understanding and determination of the dispute. An arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently.

The arbitrator shall be the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all the arbitrators and all the parties, except where any of the parties is absent in default or has waived the right to be present.

#### 28. Evidence by Affidavit and Posthearing Filing of Documents or Other Evidence

The arbitrator may receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission.

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 the AAA for transmission to the arbitrator. All parties shall be afforded an opportunity to examine such documents or other evidence.

#### 29. Inspection or Investigation

An arbitrator finding it necessary to make an inspection or investigation in connection with the arbitration shall direct the AAA to so advise the parties. The arbitrator shall set the date and time and the AAA shall notify the parties. Any party who so desires may be present at such an inspection or investigation. In the event that one or all parties are not present at the inspection or investigation, the arbitrator shall make a verbal or written report to the parties and afford them an opportunity to comment.

#### 30. Interim Measures

The arbitrator may direct whatever interim measures are deemed necessary with respect to the

dispute, including measures for the conservation of property, without prejudice to the rights of the parties or to the final determination of the dispute. Such interim measures may be taken in the form of an interim award and the arbitrator may require security for the costs of such measures.

### 31. Closing of Hearing

The arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare the hearing closed.

If briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If documents are to be filed as provided in Section 28 and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearing. The time limit within which the arbitrator shall endeavor to make the award shall start to run, in the absence of other agreements by the parties, upon the closing of the hearing.

### 32. Reopening of Hearing

The hearing may be reopened on the arbitrator's initiative, or upon application of a party, at any time before the award is made.

### 33. Waiver of Oral Hearing

The parties may provide, by written agreement, for the waiver of oral hearings in any case. If the parties are unable to agree as to the procedure, the AAA shall specify a fair and equitable procedure.

### 34. Waiver of Rules

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection in writing shall be deemed to have waived the right to object.

### 35. Extensions of Time

The parties may modify any period of time by mutual agreement. The AAA or the arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. The AAA shall notify the parties of any extension.

### 36. Serving of Notice

Each party shall be deemed to have consented that any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules; for any court action in connection therewith; or for the entry of judgment on any award made under these rules may be served on a party by mail addressed to the party or its representative at the last known address or by personal service, in or outside the state where the arbitration is to be held, provided that

reasonable opportunity to be heard with regard thereto has been granted to the party.

The AAA and the parties may also use facsimile transmission, telex, telegram or other written forms of electronic communication to give the notices required by these rules.

### 37. The Award

- a. The arbitrator shall endeavor to issue the award within thirty days from the date of closing of the hearing or, if oral hearings have been waived, from the date of the AAA's transmittal of the final statements and proofs to the arbitrator.
- b. The award shall be in writing, shall be signed by a majority of the arbitrators, and shall be executed in the manner required by law. The award shall contain the names of the parties and representatives, if any, a summary of the issues, the damages and/or other relief requested and awarded, a statement of any other issues resolved, a statement regarding the disposition of any statutory claim, the names of arbitrators, the date when the case was filed, the date of the award, the number and dates of hearings, the location of the hearings, and the signatures of the arbitrators concurring in or dissenting from the award.
- c. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable within the scope of the claims or counterclaims being arbitrated including, but not limited to, specific performance. The arbitrator shall, in the award, assess arbitration fees, expenses, and compensation as provided in Sections 41, 42, and 43 in favor of any party and, in the event that any administrative fees or expenses are due the AAA, in favor of the AAA.
- d. If the parties settle their dispute during the course of the arbitration, the arbitrator may, upon the written agreement of those parties, set forth the terms of the agreed settlement in an award. Such an award is called a consent award.
- e. Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail addressed to a party or its representative at the last known address, personal service of the award, or the filing of the award in any other manner that is permitted by law.

### 38. Correction of the Award

Within twenty days after the transmittal of an award, any party, upon notice to the other parties, may request that the arbitrator correct any clerical, typographical, technical, or computational error in the award. The arbitrator is not empowered to redetermine the merits of any claim already decided.

The other parties shall be given 10 days to respond to the request. The arbitrator shall dispose of the request within twenty days after transmittal by the AAA to the arbitrator of the request and any response thereto.

### 39. Release of Documents for Judicial Proceedings

The AAA shall, upon the written request of a party, furnish to the party, at its expense, certified copies of any papers in the AAA's possession that may be required in judicial proceedings relating to the arbitration.

### 40. Applications to Court and Exclusion of Liability

- a. 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.
- b. Neither the AAA nor any arbitrator in a proceeding under these rules is a necessary party in judicial proceedings relating to the arbitration.
- c. Parties to these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

- d. Neither the AAA nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.

#### 41. Administrative Fees

As a not-for-profit organization, the AAA shall prescribe filing and other administrative fees to compensate it for the cost of providing administrative services. The fees in effect when the fee or charge is incurred shall be applicable.

The filing fee shall be advanced by the initiating party or parties, subject to final apportionment by the arbitrator in the award.

The AAA may, in the event of extreme hardship on the part of any party, defer or reduce the administrative fees.

#### 42. Expenses

The fees and expenses of witnesses shall be paid by the party producing the witnesses. Unless the parties agree otherwise, all other expenses of the arbitration not specifically provided for in these Rules, including required travel and other expenses of the arbitrator, and AAA representatives and the cost of any proof produced at the direct request of the arbitrator, shall be borne equally by the parties, subject to final allocation by the arbitrator as provided in Section 37(c).

#### 43. Arbitrator's Compensation

Unless the parties agree otherwise, an arbitrator will receive compensation at his or her customary hourly rate, advanced equally by the parties.

#### 44. Deposits

The AAA may require the parties to deposit at any time or times such sums of money as it deems necessary to cover the expense of the arbitration, including the arbitrator's fee, if any, and shall render an accounting to the parties and return any unexpended balance at the conclusion of the case.

#### 45. Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. 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, either an arbitrator or a party may refer the question to the AAA for final decision. All other rules shall be interpreted and applied by the AAA.

#### Large, Complex Disputes

#### 46. Applicability

- a. The Supplementary Procedures for Large, Complex Disputes shall apply to the Arbitration Rules for Wills and Trusts as provided in

Section 8 thereof. The procedures are designed to complement the Wills and Trusts rules selected by the parties to govern their dispute. To the extent that there is any variance between such rules and the procedures, the procedures shall control. Any such cases are herein referred to as "Large, Complex Cases."

- b. The parties to any arbitration proceeding that is to be subject to the procedures may, by consent of all parties, agree to eliminate, modify or alter any of the procedures, and, in such case, the procedures as so modified or altered shall apply to that particular case.

#### 47. Administrative Conferences

Prior to the dissemination of a list of potential arbitrators, the AAA shall, unless it determines the same to be unnecessary, conduct an administrative conference with the parties or their attorneys or other representatives, either in person or by conference call, at the discretion of the AAA. The administrative conference shall be conducted for the following purposes and for such additional purposes as the parties or the AAA may deem appropriate:

- a. to obtain additional information about the nature and magnitude of the dispute and the anticipated length of hearing and scheduling;
- b. to discuss the views of the parties about the technical and other qualifications of the arbitrators;
- c. to consider, with the parties, whether mediation or other nonadjudicative methods of dispute resolution might be appropriate.

#### 48. Arbitrators

- a. Large, Complex Disputes shall be heard and determined by three arbitrators, or as may be otherwise agreed upon by the parties. If the parties are unable to agree upon the number of arbitrators, then three arbitrators shall hear and determine the case unless the AAA shall determine otherwise.

#### 49. Management of Proceedings

- a. Arbitrators shall take such steps as they may deem necessary or desirable to avoid delay and to achieve a just, speedy and cost-effective resolution of Large, Complex Disputes.
- b. Parties shall cooperate in the exchange of documents, exhibits, and information within their control if the arbitrators consider such production to be consistent with the goal of achieving a just, speedy, and cost-effective resolution of a Large, Complex Dispute.
- c. At the request of a party, the arbitrators may order the conduct of the deposition of, or the propounding of interrogatories to, such persons who may possess information determined by the arbitrators to be necessary to a determination of a Large, Complex Dispute and who will not be available to testify at the hearings.

#### 50. Form of Award

If requested by all parties, the award of the arbitrators shall be accompanied by a statement of the reasons upon which such award is based. If requested by one party the arbitrators may, in their discretion, issue such a statement.

#### 51. Interest, Fees and Costs

The award of the arbitrators may include: (a) interest at such rate and from such date as the arbitrators may deem appropriate; (b) an apportionment between the parties of all or part of the fees and expenses of the AAA and the compensation and expenses of the arbitrators; and (c) an award of attorneys' fees if all parties have requested or authorized such an award.

#### ADMINISTRATIVE FEES

The administrative fees of the AAA are based on the amount of the claim or counterclaim.

Arbitrator compensation is not included in this schedule. Unless the parties agree otherwise, arbitrator compensation and administrative fees are subject to allocation by the arbitrator in the award.

In an effort to make arbitration costs reasonable for consumers, the AAA has a separate fee schedule for consumer-related disputes. Please refer to Section C-8 of the *Supplementary Procedures for Consumer-Related Disputes* when filing a consumer-related claim.

The AAA applies the *Supplementary Procedures for Consumer-Related Disputes* to arbitration clauses in agreements between individual consumers and businesses where the business has a standardized, systematic application of arbitration clauses with customers and where the terms and conditions of the purchase of standardized, consumable goods or services are non-negotiable or primarily non-negotiable in most or all of its terms, conditions, features, or choices. The product or service must be for personal or household use. The AAA will have the discretion to apply or not to apply the Supplementary Procedures and the parties will be able to bring any disputes concerning the application or non-application to the attention of the arbitrator.

Consumers are not prohibited from seeking relief in a small claims court for disputes or claims within the scope of its jurisdiction, even in consumer arbitration cases filed by the business.

#### Pilot Flexible Fee Schedule

Recognizing the continued fragility of the business environment and wishing to provide cost-saving alternatives to parties filing an arbitration case, the American Arbitration Association is offering an optional fee payment schedule that parties may choose instead of the Standard Fee Schedule. It is a pilot that will be available on cases filed through May 30, 2010<sup>(1)</sup>, and is intended to give parties added flexibility in both filing and in selection of arbitrators. Please call 1-800-778-7879 or your nearest office if you have questions.

A non-refundable Initial Filing Fee is payable in full by a filing party when a claim, counterclaim, or additional claim is filed. Upon receipt of the Demand for Arbitration, the AAA will promptly initiate the case and notify all parties as well as establish the due date for filing of an Answer, which may include a Counterclaim. In order to proceed with the further administration of the arbitration and appointment of the arbitrator(s), the appropriate, non-refundable Proceed Fee outlined below must be paid. If a Proceed Fee is not submitted within ninety (90) days of the filing of the Claimant's Demand for Arbitration, the Association will administratively close the file and notify all parties. *No refunds or refund schedule will apply to the Filing or Proceed Fees once received.*

**Savings for Mutual Arbitrator Appointment by Parties:** Proceed Fees may be reduced by fifty (50) percent where parties mutually select and appoint their arbitrator(s) without the AAA providing a list of arbitrators and an appointment process. Parties must provide the Case Manager with the appropriate stipulations and information pertaining to arbitrator(s) that have been mutually selected and have accepted their appointment(s). Forms for confirmation of arbitrators mutually selected and appointed by the parties are available through the Case Manager or AAA regional office.

The Flexible Fee Schedule below also may be utilized for the filing of counterclaims. However,

as with the Claimant's claim, the counterclaim will not be presented to the arbitrator until the Proceed Fee is paid.

A Final Fee will be incurred for all claims and/or counterclaims that proceed to their first hearing. This fee will be payable in advance when the first hearing is scheduled, but will be refunded at the conclusion of the case if no hearings have occurred. However, if the Association is not notified of a cancellation at least 24 hours before the time of the scheduled hearing, the Final Fee will remain due and will not be refunded.

All fees will be billed in accordance with the following schedule:

Amount of Claim	Initial Filing Fee	Proceed Fee	Final Fee
Above \$0 to \$10,000	\$300	\$550*	\$200
Above \$10,000 to \$75,000	\$500	\$600*	\$300
Above \$75,000 to \$150,000	\$500	\$1,500*	\$750
Above \$150,000 to \$300,000	\$500	\$2,525*	\$1,250
Above \$300,000 to \$500,000	\$1,000	\$3,750*	\$1,750
Above \$500,000 \$1,000,000	\$1,000	\$5,600*	\$2,500
Above \$1,000,000 to \$5,000,000	\$1,000	\$7,800*	\$3,250
Above \$5,000,000 to \$10,000,000	\$2,000	\$9,000*	\$4,000
Above \$10,000,000	\$2,500	\$11,500* plus .01% of claim amount over \$10,000,000 up to \$65,000	\$6,000
Non-Monetary**	\$1,000	\$2,750*	\$1,250

Consent Award***			
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*(1) The Pilot Flexible Fee Schedule is subject to change or cancellation at any time prior to the date of May 30, 2010.*

*\*Where an arbitrator has been pre-selected and appointed by the parties, the Proceed Fee will be reduced by fifty percent (50%).*

*\*\*This fee is applicable only when a claim or counterclaim is not for a monetary amount. Where a monetary claim amount is not known, parties will be required to state a range of claims or be subject to the highest possible filing fee (see fee range for claims above \$10,000,000.00).*

*\*\*\*The AAA may assist the parties with the appointment of an arbitrator for the sole purpose of having their Consent Award signed. For more information, please contact your local AAA office, case management center or our Customer Service desk at 1-800-778-7879.*

All fees are subject to increase if the amount of a claim or counterclaim is modified after the initial filing date. Fees are subject to decrease if the amount of a claim or counterclaim is modified before the first hearing.

The minimum fees for any case having three or more arbitrators are \$1,000 for the Initial Filing Fee; \$3,750 for the Proceed Fee; and \$1,750 for the Final Fee.

Under the Flexible Fee Schedule, a party's obligation to pay the Proceed Fee shall remain in effect regardless of any agreement of the parties to stay, postpone or otherwise modify the arbitration proceedings. Parties that, through mutual agreement, have held their case in abeyance for one year will be assessed an annual abeyance fee of \$300. If a party refuses to pay the assessed fee, the other party or parties may pay the entire fee on behalf of all parties, otherwise the matter will be closed.

Note: The date of receipt by the AAA of the demand/notice for arbitration will be used to calculate the ninety-day (90) time limit for payment of the Proceed Fee.

**Standard Fee Schedule**

An initial filing fee is payable in full by a filing party when a claim, counterclaim or additional claim is filed.

A case service fee will be incurred for all cases that proceed to their first hearing. This fee will be payable in advance at the time that the first hearing is scheduled. This fee will be refunded at the conclusion of the case if no hearings have occurred.

However, if the Association is not notified at least 24 hours before the time of the scheduled hearing, the case service fee will remain due and will not be refunded.

These fees will be billed in accordance with the following schedule:



Amount of Claim	Initial Filing Fee	Case Service Fee
Above \$0 to \$10,000	\$750	\$200
Above \$10,000 to \$75,000	\$950	\$300
Above \$75,000 to \$150,000	\$1,800	\$750
Above \$150,000 to \$300,000	\$2,750	\$1,250
Above \$300,000 to \$500,000	\$4,250	\$1,750
Above \$500,000 to \$1,000,000	\$6,000	\$2,500
Above \$1,000,000 to \$5,000,000	\$8,000	\$3,250
Above \$5,000,000 to \$10,000,000	\$10,000	\$4,000
Above \$10,000,000	*	*
Nonmonetary Claims **	\$3,250	\$1,250

*\*Contact your local AAA office for fees for claims in excess of \$10 million.*

*\*\* This fee is applicable when a claim or counterclaim is not for a monetary amount. Where a monetary claim amount is not known, parties will be required to state a range of claims or be subject to the highest possible filing fee.*

Fees are subject to increase if the amount of a claim or counterclaim is modified after the initial filing date. Fees are subject to decrease if the amount of a claim or counterclaim is modified before the first hearing.

The minimum fees for any case having three or more arbitrators are \$2,750 for the filing fee, plus a \$1,250 case service fee.

Parties on cases filed under either the Pilot Flexible Fee Schedule or the Standard Fee Schedule that are held in abeyance for one year by agreement, will be assessed an annual abeyance fee of

\$300. If a party refuses to pay the assessed fee, the other party or parties may pay the entire fee on behalf of all parties, otherwise the matter will be closed.

## Refund Schedule

The AAA offers a refund schedule on filing fees connected with the Standard Fee Schedule. For cases with claims up to \$75,000, a minimum filing fee of \$300 will not be refunded. For all other cases, a minimum fee of \$500 will not be refunded. Subject to the minimum fee requirements, refunds will be calculated as follows:

- 100% of the filing fee, above the minimum fee, will be refunded if the case is settled or withdrawn within five calendar days of filing.
- 50% of the filing fee will be refunded if the case is settled or withdrawn between six and 30 calendar days of filing.
- 25% of the filing fee will be refunded if the case is settled or withdrawn between 31 and 60 calendar days of filing.

No refund will be made once an arbitrator has been appointed (this includes one arbitrator on a three arbitrator panel). No refunds will be granted on awarded cases.

Note: the date of receipt of the demand for arbitration with the AAA will be used to calculate refunds of filing fees for both claims and counterclaims.

## Hearing Room Rental

The fees described above do not cover the cost of hearing rooms, which are available on a rental basis. Check with the AAA for availability and rates.

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