

# **Insurance Arbitration RULES**

## A Supplement to the Commercial Arbitration Rules

Effective January 1, 2000

### INTRODUCTION

Effective January 1, 2000, the American Arbitration Association amends and restates the Title Insurance Arbitration Rules (1987). As amended, the Title Insurance Arbitration Rules incorporate by reference the Commercial Arbitration Rules.

Effective September 1, 1999, title insurance disputes are administered by the Association's Case Management Center in Atlanta. Hearings, however, may be held at locations convenient for the parties.

#### 1. Incorporation of the Commercial Arbitration Rules

As amended, the Title Insurance Arbitration Rules incorporate by reference the Commercial Arbitration Rules. To the extent there is any variance between the Title Insurance Arbitration Rules (as amended) and the Commercial Arbitration Rules, the amended Title Insurance Arbitration Rules shall take precedent. The expedited procedures of the Commercial Arbitration Rules shall not apply absent the agreement of all parties to the dispute.

#### 2. Applicability

The Title Insurance Arbitration Rules (as amended) shall apply whenever the parties' arbitration agreement refers to the Title Insurance Arbitration Rules of the American Arbitration Association, or where the parties mutually agree to use the Title Insurance Arbitration Rules (as amended).

#### 3. Place of Administration

Disputes administered in accordance with the Title Insurance Arbitration Rules (as amended) are administered by the Association's Case Management Center in Atlanta, unless the Association in its discretion determines otherwise.

#### 4. National Panel

The Association shall establish and maintain a National Panel of Title Insurance Arbitrators. The Association shall appoint arbitrators either from this Panel as provided for in the Commercial Arbitration Rules or by written agreement of the parties.

#### 5. Fixing of Locale

In cases where parties fail to mutually agree on the locale, the Association shall have the power to determine the locale in the state in which the land is located.

## 6. Number of Arbitrators

Disputes shall be heard and determined by one arbitrator unless all parties to the arbitration agree otherwise.

## 7. Consolidation of Arbitrations

Consolidation of two or more arbitrations, to be heard in joint proceedings under the Title Insurance Arbitration Rules (as amended) shall be had where either each of the parties to the arbitrations to be consolidated has agreed to arbitrate under the Title Insurance Arbitration Rules, or consolidation has been ordered by an arbitrator appointed in accordance with this section of the Title Insurance Arbitration Rules to hear and determine the issue of consolidation, and a reasonable number of the following circumstances exist:

(a) Either (i) the title insurance policies on which the arbitrations are based or (ii) the parties or subject matters of the arbitrations are related in some other way so that consolidation will result in a more economical or efficient disposal of the issues presented in all of the arbitrations.

(b) There exist common issues of fact that will be required to be determined in each of the arbitrations to be consolidated, the proof of which will or could be substantially the same. However, neither incomplete identity of factual issues nor varying policy terms or measures of damages shall be a reason for refusing consolidation, unless the differences are of a number and complexity that will make the determination of the liabilities by the arbitrator unwieldy or difficult.

A party to an arbitration being conducted under the Title Insurance Arbitration Rules who wishes to consolidate the arbitration with another, or wishes to add to the arbitration another party who is a signatory to an arbitration agreement providing for arbitration under the Title Insurance Arbitration Rules, shall notify in writing all interested parties and the Association of the desire to consolidate. Any party who does not object to consolidation within 14 days after receipt of the notice shall be deemed to have agreed to the consolidation.

If any of the parties objects to the consolidation within the 14-day period, the Association shall (i) appoint one arbitrator pursuant to the pertinent rule in the Commercial Arbitration Rules to hear the issue of the appropriateness of the requested consolidation and (ii) shall fix a time for the filing of written Submissions by the parties, dealing with the issue of consolidation only. An arbitrator may order an oral hearing in exceptional cases. The arbitrator may rule for or against consolidation of any two or more arbitrations, and that determination shall be final as to the issues of consolidation.

Arbitrations that are not consolidated with other arbitrations shall continue to be heard by the arbitrator previously appointed for that arbitration, or, if no arbitrator shall have been appointed, then an arbitrator shall be appointed pursuant to the pertinent rule in the Commercial Arbitration Rules.

If two or more arbitrations are consolidated, the arbitrator hearing the issue of consolidation shall decide whether a new arbitrator to hear the consolidated arbitrations shall be selected and

appointed pursuant to the pertinent rule in the Commercial Arbitration Rules or which of any arbitrators previously appointed for the separate arbitrations shall hear the consolidated arbitration.

Notwithstanding the foregoing, if a request is received later than seven days before the first date on which hearings in any of the arbitrations sought to be consolidated are scheduled to commence, there shall be no consolidation (other than consolidations already in effect).

An arbitrator hearing consolidated arbitrations shall consider differences in contractual terms and differences in parties' claims and actions. The awards, although rendered in one document, shall reflect to the extent possible each separate contractual relationship.

## 8. Evidence

The arbitrator shall not limit the rights and obligations under the policy concerning proof of loss or damage. The arbitrator may order reasonable discovery of evidence upon the request of a party and upon a determination that the request is reasonable and necessary for the party to prepare and present its case. The arbitrator must apply the attorney work product doctrine of the applicable state to prohibit the discovery of or introduction into evidence of attorney work product, irrespective of whether under the law of the particular state the attorney work product doctrine is considered to be a legal privilege or a procedural discovery rule.

## 9. Applicable Law

The law and rules of equity of the situs of the land shall apply to every arbitration involving title insurance disputes, except the arbitrator shall have the power pursuant to the pertinent rules in the Commercial Arbitration Rules to rule on his or her own jurisdiction.

## 10. Scope of the Award

The arbitrator may grant any remedy or relief that the arbitrator determines to be just and equitable according to the applicable laws and the terms of the policy. The award may not exceed the amount of any claim or counterclaim as disclosed when filed or as later changed in accordance with the pertinent rule of the Commercial Arbitration Rules. If the insured in an arbitration is the owner of the estate or interest covered by the title insurance policy and the estate or interest is subject to a mortgage insured by the insurer under that policy or any title insurance policy when arbitration is commenced, the arbitrator shall provide for payment of the award (or any part thereof) directly to the owner of the mortgage (and not to the insured), pursuant to written instructions signed by the insurer and received by the arbitrator prior to the closing of the hearing.

## 11. Administrative Fees and Arbitrator's Compensation

The insurer shall pay the filing fees associated with the filing of a claim by either the insured or the insurer. Filing fees for counterclaims shall be paid by the party filing the counterclaim. The filing fee for claims or counterclaims up to \$5,000,000 shall be as set forth in the Commercial Arbitration Rules. For claims or counterclaims between \$5,000,000 and \$20,000,000, the filing fee shall be a total of 0.15% (i.e., 0.0015) of the claim or counterclaim amount. The filing fee

shall not increase for claims or counterclaims exceeding \$20,000,000. All filing fees paid to the Association shall be credited to any consolidation. Filing fees paid in excess of the amount due for consolidated claims or consolidated counterclaims shall be refundable. All other filing fees shall be non-refundable. The moving party bears the costs of additional administrative fees listed in the Commercial Arbitration Rules.

Where a claim is initiated by the insured, each insured party shall pay a non-refundable processing fee of \$200.00. The processing fee shall be credited to any non-refundable filing fee payable in full when initiating a counterclaim.

The compensation of the arbitrators, as set forth in the Commercial Arbitration Rules, shall be split equally between/among the parties.

Rules, forms, procedures and guides are subject to periodic change and updating.