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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~~ standards set forth in the Manufactured Home Construction and Safety Standards (MHCSS), 24 C.R.R. 3280. 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.
- (4) "Division" means the division of industrial compliance in the Ohio department of commerce.

(B) ~~Initiation of~~ Request for dispute resolution process.

- (1) The consumer, retailer, manufacturer, or installer may ~~initiate the request~~ 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 dated 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~~ the division within one year from the date of installation, even if that year has now passed. A person who reports an alleged defect or warranty issue by telephone should make a contemporaneous note of the telephone call, including date, time, the name of the person who received the report, the name of the business contacted, and the telephone number called.
- (2) Requests for dispute resolution ~~program services~~ shall be made in writing and on the form provided by the ~~commission~~ division.
- (3) Participation in mediation services is voluntary for all parties.
- (4) A used manufactured home is only eligible for dispute resolution ~~in regard~~ for issues relating to its installation.

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(C) ~~Voluntary compliance~~ Screening dispute resolution requests.

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

- (1) When a request for dispute resolution has been received by the division, it will be reviewed to ensure sufficient information has been provided, and it will be determined if the dispute resolution process should proceed.
- (2) When the request for dispute resolution lacks sufficient information necessary to determine if the dispute resolution process should proceed, the division will contact the requesting party and ask for supplemental information. If information necessary to qualify the request is not received within a reasonable time established by the division, the request for dispute resolution will be considered withdrawn.
- ~~(1)~~ (1) Notify the parties that they have fifteen calendar days from the date of the notice for voluntary compliance to resolve the dispute,
- ~~(2)~~ (3) 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. If the division determines that the request for dispute resolution is sufficient, the division shall refer the request to a mediator.
- ~~(3)~~ (4) For complaints requests for dispute resolution 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. If the parties fail to reach a settlement, the division shall refer the request to a mediator after the scheduled inspection.

(D) Mediation.

- (1) Upon referral for mediation, all the parties shall receive notice that the matter shall be scheduled for mediation, and the matter must be ~~resolved~~ concluded within thirty days from the date ~~of the mediator receives the~~ referral to mediation. The notice shall include a copy of the original ~~complaint~~ request for dispute resolution. ~~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~~ Except a mediator who is an employee of the division of real estate and professional licensing, the superintendent of the division of industrial compliance shall approve any mediator before the mediator can be used in the dispute resolution process.
 - ~~(b)~~ (b) The commission's approval of a person to mediate shall be based upon the person's experience and training in mediation.
 - ~~(c)~~ (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

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~~on a list of approved mediators.~~

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

- (i) Reviewed the ~~complaint~~ requests for dispute resolution to determine if the ~~complaint~~ request 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)~~ (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)~~ (3) Mediation agreements.

(a) If the parties reach a mediation agreement, the homeowner may elect that the mediation agreement be binding on the parties by executing a written acknowledgement, provided by the division. The written acknowledgement shall be received by the division within ten days from the date of the mediator's notice that the issue was resolved.

If the parties reach a mediation agreement for corrective repairs, those repairs must be completed no later than thirty days after the date the division receives the executed written acknowledgement from the homeowner. Parties to the mediation agreement and the homeowner may agree to a longer period for corrective repairs by a separate signed, written agreement.

~~(a)~~ (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~~ division arrange for non-binding arbitration. When arbitration is not requested, the division may review the original request for dispute resolution to determine whether or not an investigation will be initiated.

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

~~(d)~~ (d) ~~Following the mediator's written notice to the commission that the issue was resolved, the homeowner may elect that the mediation agreement 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 mediator's notice that the issue was resolved.~~

(E) Arbitration.

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- (1) A request for arbitration shall be made in writing to the [commissiondivision](#) on a form provided by the [commissiondivision](#). Following ~~the~~ [a timely](#) request for arbitration:
 - (a) The [commissiondivision](#) 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 [commissiondivision](#) 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 [commissiondivision](#) 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 [commissiondivision](#). The written acknowledgement shall be received by the [commissiondivision](#) within ten days from the date of the [division receiving the](#) arbitrator's decision. [\[HUD issues order accepting/modifying/rejecting arbitrator's decision, see C.F.R. 3288.45\]](#)
- (F) Nothing in this chapter shall be construed as prohibiting a homeowner from pursuing any legal action.
- (G) ~~This rule 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~~[Except for the request for dispute resolution and any written mediation agreement, all other documents and communications provided during mediation will be confidential in accordance with Chapter 2710. of the Revised Code.](#)
- (H) Authority to charge fees.
 - (1) ~~The commission may charge a fee to the parties involved in dispute resolution for the costs of~~

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~~administering the program and providing dispute resolution services through fees.~~

- ~~(2)~~ (1) 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)~~ (2) Fees may be charged for ~~investigation~~ inspection(s) conducted in accordance with this rule, mediation, and arbitration in amounts as ~~determined by the commission~~ set forth in this rule.
- ~~(4)~~ (3) 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~~ division, 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~~ Inspection. Actual direct cost of the inspection to the ~~commission~~ division 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~~ a convenience fee ~~in an amount~~ as charged to the ~~commission~~ division.