

# Legal Brief



## Gain a Better Understanding of the Arbitration Rules in Construction Disputes

Problems frequently arise on construction projects leading to disputes among the owner, the architect, the general contractor, the subcontractor and/or the suppliers. When the disputes escalate to the point where they cannot be settled, one or more of the parties may bring a claim. Frequently, construction contracts provide a dispute resolution procedure that uses the American Arbitration Association's (AAA) Construction Industry Arbitration Rules. If you have been involved in a construction project, you may have signed a contract that incorporates these rules and, as with any provision in a contract, it is important to know how these rules apply.

### Procedural Tracks

The AAA Construction Industry Arbitration Rules may govern the entire arbitration process. The rules provide four different procedural tracks: 1) regular; 2) fast; 3) document submission; and, 4) the complex construction dispute. Other than the document submission track, the amount in dispute determines which track applies.

The fast track applies to cases involving claims between two parties, and the disputed amount is less than \$75,000. The regular track covers any claims between \$75,000 and \$1 million. The large complex construction track dispute rules govern claims of more than \$1 million. The document submission track, however, provides for no hearing and a decision by a single arbitrator based only on the submission of relevant documents

and written argument. If the parties all agree, this track can be used for claims involving any dollar amount.

The fast track procedures are aimed at minimizing the time and cost involved in the case. The entire hearing process is completed in 45 days by expediting the arbitrator appointment process, limiting the amount of discovery, and providing for only a one-day hearing. Fast track rules require that an award decision will be made within 14 days after the hearing's completion. If your dispute fits the requirements for a fast track proceeding, this approach can provide a relatively quick and inexpensive alternative to court-based litigation.

### Large, Complex Construction Dispute Procedures

At the other end of the spectrum are the large, complex construction dispute procedures that look very much like a traditional court case. These rules provide for the selection of a panel of arbitrators, provide them with broad authority to order and control discovery, and require a mandatory preliminary hearing with the arbitrators prior to conducting the actual fact hearing. The arbitrators usually make a written award decision, similar to a court opinion.

Regardless of the arbitration procedures that apply, there are a couple of key differences from standard court-based litigation worth noting. First is the limitation on the right to appeal the decision of the arbitrators. Absent a showing of fraud on the part of

the arbitrators, there is usually no right of appeal. The arbitration decision is final. Second, the parties typically share the arbitration cost. This includes a fee to the AAA to administer the arbitration, as well as the cost of the arbitrators. These costs can easily reach thousands of dollars, especially where a lengthy hearing is held.

Before you sign a contract with an arbitration clause calling for AAA arbitration under the Construction Industry Arbitration Rules, it is important to understand the applicable rules, which are available on the American Arbitration Association's website, [www.adr.org](http://www.adr.org). An attorney or other professionals familiar with the AAA arbitration process can help you determine if it will be appropriate for your construction contract situation, or to assist you in cases to which the rules apply.

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