

Mandatory Arbitration

PROGRAM GUIDE

**CONTRACTORS STATE
LICENSE BOARD**

California Department of Consumer Affairs





MANDATORY ARBITRATION PROGRAM GUIDE

What is Arbitration?

Arbitration is when disputing parties submit their differences to a neutral third party professional who makes a final award for financial damages, if any.

Many disputes between consumers and contractors can be resolved efficiently and in a timely manner through arbitration.



The Contractors State License Board (CSLB) offers arbitration to resolve disputes that meet certain criteria. CSLB will pay for the hearing, the Arbitrator and one state-appointed expert witness if appropriate. **Only contractors in good standing with CSLB qualify to participate in arbitration.** CSLB will investigate complaints involving deceptive or fraudulent practices.

Why Arbitration?

- Arbitration is fast; it can take as little as 45 days to receive an award.
- Arbitration provides an informal program to resolve a dispute.
- Arbitrators are professionally trained to hear construction-related disputes.
- Arbitration is binding.
- An award may be enforced in court.

... to the Consumer

- Payment from the contractor, if awarded, is required within 30 days of the arbitrator's decision. If the contractor fails to comply with any final award, his or her license may be subject to administrative discipline.

... to the Contractor

- A contractor's license will not be suspended or revoked for a complaint referred to arbitration unless the contractor fails to comply with the arbitrator's award.
- With arbitration, a complaint filed against a contractor will not be disclosed to the public unless the contractor fails to comply with the award and an investigation into the alleged failure to comply is initiated and/or the license is suspended or revoked.
- Disputes between contractors, including prime contractor vs. sub-contractor, can be resolved through this program.

What is Mandatory Arbitration?

Mandatory arbitration is when CSLB or its arbitration provider appoints an arbitrator to make a final decision in a dispute between two or more parties. CSLB uses mandatory arbitration, when appropriate, to resolve complaints where the financial remedy will be \$25,000 or less.

Participation by the Contractor is mandatory if a case is referred by CSLB to the arbitration program and certain conditions are met.

If the complainant (the person filing the complaint) chooses not to participate in arbitration, CSLB may close the complaint and take no further action. If the complainant chooses to participate, the respondent (the party the complaint was filed against) is

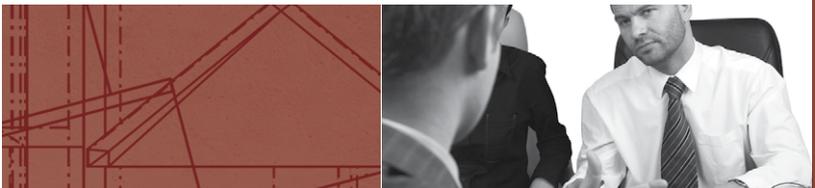
obligated to participate. If the respondent refuses and the complainant obtains an award against the respondent, the award will be enforced as though the respondent had participated in all of the proceedings.

Arbitration is binding; both parties must comply with the decision. Parties who refuse to comply may be subject to judicial action, where the award could be confirmed and turned into a civil judgment. In addition, a licensed contractor who fails to comply with a court-ordered award may have his or her license suspended or revoked.

Is My Case Subject to Mandatory Arbitration?

A case qualifies for mandatory arbitration under Business and Professions Code (BPC) section 7085, if:

- (1) The final financial damages, inclusive of all offsets, does not exceed \$25,000;
- (2) The contractor's license was in good standing at the time of the alleged violation;
- (3) The contractor does not have a history of repeated or similar violations;
- (4) The contractor does not currently have a disciplinary action pending; and
- (5) The parties have not previously entered into a contractual agreement to privately arbitrate the dispute.



Additional Considerations:

CSLB's arbitration program only resolves workmanship and contract issues. Disciplinary issues, such as a lack of workers' compensation insurance, and civil remedies, such as a pending civil suit and attorney fees, are not within this program's jurisdiction. Neither party may be in active bankruptcy proceedings.

When to Consider Arbitration

Parties to a construction contract should consider arbitration when communication has broken down, when a complainant has filed a complaint with CSLB, and when CSLB has determined that the dispute could be effectively handled through arbitration.

Next Steps

Once CSLB determines that a complaint qualifies for arbitration, a representative will send a "Submission to Mandatory Arbitration" form to the two parties. Each party fills in their name(s) and address, and the specific contract-related claims and damages they are seeking. This form advises both parties of the consequences of failing to participate in arbitration.

CSLB will send copies of the signed submission forms to the other party, so that each will know exactly what issues are in dispute and what remedies are being sought, and to the arbitration provider.

If the complainant does not return a completed and properly executed submission form to CSLB within 30 calendar days of CSLB's mailing date, the complaint may be closed and CSLB may take no further action.

If the respondent does not return a properly executed submission form to CSLB within 30 calendar days, and the complainant does, the complaint will be resolved through arbitration. Any award

rendered against the respondent will be enforced as if both parties had been present at all of the proceedings.

The Arbitration Provider

CSLB's arbitration provider has professional arbitrators throughout California who are trained to resolve construction-related disputes in accordance with CSLB requirements. All have undergone extensive training to ensure that both parties receive a fair, neutral, and thorough hearing. The provider will contact each party after CSLB refers the dispute for arbitration.



The arbitration provider selects an arbitrator to conduct the hearing, as well as the hearing date and time, and will notify the parties involved in writing of these details. Hearings are typically conducted via telephone or videoconference.

Preparing Your Case

Each party is responsible for presenting his or her own case and providing relevant documents to the opposing party and the arbitrator. Documents previously sent to CSLB for the complaint file will not be forwarded to the arbitration provider.

Parties may hire an attorney to represent them, at their own expense, or present their own case. Parties should be prepared to prove their case with photographs, contract documents, proof of financial injury and correction estimates. Both parties should thoroughly understand all of the issues as preparation for gathering relevant evidence.

Please Note: Attorney fees cannot be awarded in CSLB arbitration. Pursuant to BPC section 7085.3 and the intent of the CSLB arbitration program, each party shall bear the cost of his or her own attorney fees, which may not be recovered in these proceedings.

Consider the following list when gathering evidence to exchange with the opposing party and Arbitrator. You should present all evidence you consider relevant, even if it is not on this list.

Contract

- Gather the contract, plans and/or specifications, proposals, change orders or any other evidence of an agreement with the other party that tends to prove the services, materials, etc., that were to be provided and at what price.

Payment

- Include checks, receipts, and ledgers that prove what was paid, what is owed, and what services or materials were provided.

Performance

- Collect evidence that proves the services, materials, etc., were or were not provided in accordance with the contract, plans, and specifications or agreement. If the state has paid for an expert witness, CSLB will send that expert's report to the arbitration provider. Photographs—both perspective and close-up views—are especially helpful in establishing an alleged defect.

Financial Injury

- Submit evidence of the financial injury caused by deficient, defective, or incomplete work. Financial injury may be established by presenting correction/completion cost estimates provided by an expert witness or by other contractors.

- Present the contract, the amount of money you have paid, and value of services, materials, etc., you have received or provided.
- Identify the amount owed on the contract and the amount of money that it will cost to correct/complete the job.

Expert Witnesses

CSLB will pay for one state-appointed expert witness per case, if appropriate.

An expert witness is someone with extensive work experience and who is competent to evaluate the work in dispute. If an expert witness is needed, CSLB will hire one prior to referring the dispute to arbitration. This person will become the state-appointed expert for the dispute.

When a state-appointed expert is retained, both parties will receive a copy of the report before the dispute is referred to the arbitration provider. Either party may use the report and expert witness' testimony at the arbitration hearing but will be responsible for making arrangements with the expert to ensure his or her attendance. Arrangements to have a state-appointed expert testify should be made at least 15 days prior to the scheduled hearing.

Either party may use an expert not appointed by the state; however, that party must arrange and pay for the services of that expert witness.



To locate an expert not appointed by the state, consult local sources, references, trade associations, builders exchanges, or the telephone directory.

The Hearing

Arbitration hearings are usually conducted via teleconference or video conference and are designed to bring out the facts in each case.

The complainant typically presents his or her claims, evidence, and witnesses first, and the respondent follows with his or her claims, evidence, and witnesses. **Parties may be represented by legal counsel if they wish, but at their own expense.** The rules that govern arbitration hearings under this program are found in BPC section 7085.5.

After a hearing is completed, the arbitrator will render a decision within 30 calendar days unless the parties agree otherwise. The arbitrator has the authority to rule on the asserted claims and to award monetary damages, as well as the release of a mechanics lien. Arbitrators do not have authority to rule on licensee disciplinary issues or civil remedies.

The Award

The arbitrator's award is final and binding; **both parties must** comply with its terms. If either party does not comply, the other may petition the court to have the award confirmed and made a judgment of the court. The procedure for enforcing awards can be found in the Code of Civil Procedure section 1285. If court enforcement is necessary, an attorney should be consulted.

After an arbitration award is rendered, those who wish for recourse through the courts must do so at their own expense.

A consumer's or contractor's refusal to accept the terms of an award will not preclude CSLB from taking action after an award is rendered.

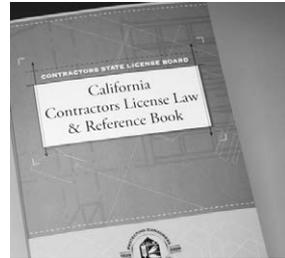
CSLB has the authority to discipline contractors who do not comply with an arbitration award. **The parties must comply with arbitration awards within 30 days.** If the award is against the contractor and he or she does not comply within the time specified in the award, the consumer should notify CSLB's Northern California

Case Management Office at P.O. Box 26888, Sacramento, CA 95826. CSLB will investigate the report of noncompliance and, if appropriate, suspend the contractor's license. If the contractor complies with the award within 90 days, his or her license may be reinstated; otherwise, it will be revoked.

NOTE: Civil Code section 2855 states, "An arbitration award rendered against a principal alone shall not be, be deemed to be, or be utilized as, an award against his surety." If a consumer receives a favorable award through CSLB's arbitration program a surety company does not have to pay the consumer from the proceeds of a contractor's license bond.

Points to Remember about Mandatory Arbitration

- CSLB may order both parties to partake in arbitration as part of complaint resolution.
- The complainant must return a properly executed Submission to Mandatory Arbitration form to CSLB within 30 calendar days of the date it was mailed to the complainant.



- Once the complainant returns a properly executed Submission to Mandatory Arbitration form, the complaint will be referred to arbitration whether or not the contractor returns the form.
- CSLB will pay for the hearing, the arbitrator, and the services of one CSLB-appointed expert witness, if appropriate, per complaint.
- Arbitration hearings are informal and are typically conducted via teleconference or video conference.
- Only selected cases involving contractors in good standing with CSLB may be referred to arbitration.
- Both parties are responsible for preparing their respective cases and exchanging documents with the opposing party and arbitrator.
- If parties want a record of the hearing, they may pay for a court reporter or make other arrangements to record the proceedings.
- If parties want to be represented by an attorney, they may hire one at their own expense. **Pursuant to BPC section 7085.3 and the intent of the CSLB arbitration program, each party shall bear their own costs and attorney fees.**
- If parties need additional expert witnesses (beyond the CSLB-paid expert witness) to assist in the presentation of their case, then they may hire them at their own expense.
- A civil suit should not be filed in court regarding the same issues that have been decided through arbitration.
- Grounds for correcting or otherwise altering an arbitration award, once rendered, are very limited.

- An arbitration decision rendered against a contractor does not necessarily result in a payout from the license bond.
- If a contractor files for bankruptcy, CSLB or the arbitration provider must be notified immediately.
- There is no appeal process for an arbitration award; however, there are very limited grounds for correction to an arbitration award.

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