

IV. DISPUTE RESOLUTION (MSC-2030)

MSC-2030 should be used where both parties wish to have disputes relating to the physical condition, nature, value, appearance or use of the Property, including fraud, misrepresentation, warranty and negligence claims, settled by an alternative dispute resolution procedure. In addition to offering binding arbitration according to the specified rules of the American Arbitration Association (“AAA”), as its section headings suggest, the Dispute Resolution form offers additional options for voluntary mediation and Small Claims Court actions. Disputes involving the Broker(s) are not intended to be covered by MSC-2030. It also does not apply to (and thus excludes) disputes pertaining to the condition of title (see lines 8-9). If the parties did not agree upon and sign/attach the Dispute Resolution rider simultaneously with the Contract, they may still later agree to submit a dispute to a Small Claims Court action, voluntary mediation or arbitration by using this form.

MSC-2030 does not include a schedule of filing fees (which was previously based on the amount of the claim involved). In response to a U.S. Supreme Court decision regarding the possibility that an arbitration provision in a contract could be unenforceable if high fees imposed on a consumer made arbitration “virtually inaccessible”, the AAA adopted (effective 3/1/02) certain new Supplementary Procedures for Consumer-Related Disputes, and a wholly revamped pricing structure. Based on these new rules, brokers, as sellers of services, could arguably be drawn into disputes, even if such disputes were truly only between the actual parties to the Contract, and yet be forced to pay the great majority of the costs to arbitrate. Accordingly, the Dispute Resolution rider is no longer designed for a Broker to sign (and thereby submit itself to the dispute resolution procedures set forth therein).

There are many pros (*e.g.*, generally quicker and less expensive, but not always; preservation of privacy; less formal and contentious) and many cons (*e.g.*, virtually unappealable, even if a “wrong” decision is issued; no application of traditional “discovery” or rules of evidence; legal arguments which might support a summary judgment are generally not available; no jury) associated with deciding whether or not to submit to arbitration. Realtors should advise their clients to seek legal advice regarding the benefits and disadvantages of arbitration and/or any suggested changes to make to the Dispute Resolution rider. A summary of arbitration procedures, time frames and fees, and additional information can be obtained from the AAA at the address set forth on the second page of MSC-2030 or at www.adr.org. The particulars of the Dispute Resolution rider are discussed below.

PAGE 1

A.	Complete the Reference (identification) line consistent with the Contract.
B.	Insert the Effective Date at the space indicted by “B”.
10-12	Arbitration is governed by the Uniform Arbitration Act (as adopted in Missouri at §435.012 RSMo. <i>et. seq.</i>) and the AAA Construction Industry Dispute Resolution Procedures then in effect. Those procedures are available from the AAA office listed on page 2 or on-line. They include a mediation alternative and are fully incorporated by reference into MSC-2030 (as they are very lengthy). Realtors providing the Dispute Resolution rider are still encouraged to download a copy of the latest rules from the AAA website and provide them to the parties along with the form, although that is not considered to be necessary.
13-18	The Small Claims Court option was added as that may be a more efficient and cost effective manner of resolving disputes than mediation/arbitration in some situations.



Dispute Resolution

This document has legal consequences. If you do not understand it, consult your attorney.

1 The undersigned Seller(s) and Buyer(s), for good and valuable consideration, the receipt and sufficiency of which
2 are hereby expressly acknowledged, agree that any claim or demand of the undersigned Seller(s) or Buyer(s)
3 arising out of or relating to the physical condition, nature, value, appearance or use of the real property covered
4 by the contract for sale between the Seller(s) and Buyer(s) dated _____, 20____ (the
5 “**Contract**”), a copy of which is attached hereto and incorporated herein as if set forth verbatim, and the
6 improvements thereon, including, without limitation, any claim for fraud, negligence, misrepresentation, implied or
7 express warranty coverage, and the like, shall be resolved either **(1)** in Small Claims Court; or **(2)** by the
8 Mediation/Arbitration procedures described below; provided, however, this agreement shall not apply to disputes
9 pertaining to the condition of title as between Seller(s) and Buyer(s).

10 The undersigned Seller(s) and Buyer(s) acknowledge that the American Arbitration Association’s Construction
11 Industry Dispute Resolution Procedures include a mediation alternative, which is incorporated herein as if set
12 forth verbatim. A current version of such procedures can be found on the web at <http://www.adr.org>.

13 **1. SMALL CLAIMS COURT.** If any party hereto files a claim in Small Claims Court prior to the filing of a
14 notice of mediation, then his or her claim shall be heard in Small Claims Court. Any other claims arising out of or
15 relating to the physical condition, nature, value, appearance or use of the real property covered by the Contract
16 shall be resolved by mediation/arbitration. A party who files an action in Small Claims Court after notice of
17 arbitration has been filed agrees to dismiss the Small Claims Court action, with prejudice, at the request of the
18 opposing party, and to proceed to arbitration.

19 **2. MEDIATION/ARBITRATION.** If a dispute arises out of or is related to the physical condition, nature, value,
20 appearance or use of the real property covered by the Contract, and a prior Small Claims Court action has not
21 been filed, then the parties agree to proceed as follows:

22 **A. Voluntary Mediation.** If the dispute cannot be settled through negotiation, the parties signing below
23 may agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration
24 Association under its Construction Industry Mediation Rules, then in effect, before resorting to arbitration. The
25 parties agree that the first mediation session shall be held no later than fifteen (15) days after service of the notice
26 of mediation on all parties who have agreed to mediate.

27 **B. Binding Arbitration.** If the dispute was not settled through negotiation or mediation, then the parties
28 signing below agree to submit their dispute to binding arbitration administered by the American Arbitration
29 Association under its Construction Industry Dispute Resolution Procedures, then in effect.

30 **3. GOVERNING LAW.** The mediation/arbitration proceedings shall be governed by and conducted in
31 accordance with the laws of the State of Missouri and the Construction Industry Dispute Resolution Procedures,
32 then in effect, of the American Arbitration Association and is specifically made subject to and incorporates the
33 provisions of the Uniform Arbitration Act as codified in the Missouri Revised Statutes, Section 435.012, *et seq.*

34 **4. SURVIVAL OF TERMS.** All of the terms and conditions hereof shall survive the closing and delivery of the
35 deed as provided for in the Contract for the period of limitation under Missouri law for the particular claim or
36 demand possessed by the parties hereto, at which time such terms and conditions shall expire and be null and
37 void.

38 **5. PARTIES BOUND.** This dispute resolution system is voluntary and is enforceable as to the parties who
39 sign below.

40 **6. CHOICE OF MEDIATOR AND ARBITRATOR.** It is requested that the American Arbitration Association
41 attempt to appoint, whenever possible, a mediator and an arbitrator from within the county where the property in
42 dispute is located. The number of arbitrators shall be one. The arbitrator shall be a different person than the
43 mediator, unless otherwise agreed by the parties.

22-26	A voluntary mediation step was also added to the dispute resolution process. The AAA reports that <u>mandatory</u> mediation reduces the percentage of cases that are actually resolved in mediation (15-20% of cases are resolved in mandatory mediation, whereas 70-80% are resolved in voluntary mediation).
30-33	According to AAA representatives, its Construction Industry Dispute Resolution Procedures (the governing procedures of the mediation/arbitration) are (1) updated more often, (2) provide a more cost effective fee structure for disputes under \$75,000, and (3) are better suited for disputes involving the physical condition, nature, value, appearance or use of real property. Because these rules/fee schedules are regularly updated (and would be difficult if not impossible to keep up to date), the Dispute Resolution rider does not include summaries thereof.
34-37	The Dispute Resolution rider survives Closing of the Contract. In other words, any dispute subject to its terms which arises <u>after</u> the Closing is still subject to arbitration. The applicable statute of limitation governing such dispute (<i>i.e.</i> , the time frame by which a claim must be submitted or is forever lost) is controlled by the Missouri statutes, which are incorporated by reference for this purpose.
38-39	The Dispute Resolution rider is enforceable only against those parties who agree to submit disputes to its alternative resolution procedures (as evidenced by their signature). Realtors are advised to encourage their clients to seek legal advice, particularly if less than all parties intend to submit disputes to these alternative dispute resolution procedures. Unexpected, and perhaps expensive, adverse consequences may result if the same issue must be decided in different forums against different (or overlapping parties).
40-43	AAA mediators and arbitrators are located throughout the State. A mediator (or arbitrator, as the case may be) from the County where the Property is located will be chosen if possible. In order to reduce potential costs, a single mediator (and arbitrator, if necessary) is to be used. In order to reduce bias that may arise during a failed mediation session, the Dispute Resolution rider requires the arbitrator to be a different person than the mediator. The parties may, of course, always differently agree (<i>e.g.</i> , to more than one arbitrator or mediator, or to have the mediator also be the arbitrator.) Realtors should not attempt to provide advice in this regard.

PAGE 2

C.	Obtain the signatures (and date thereof) of the Buyer and Seller at the spaces indicated by “C”.
-----------	--

44
45
46

**THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION
WHICH MAY BE ENFORCED BY THE PARTIES.**

Acceptance hereof and receipt of a copy is hereby acknowledged by:

47
48

49
50

C	C
_____ Buyer	_____ Seller
Date	Date
C	C
_____ Buyer	_____ Seller
Date	Date

51
52
53
54
55
56
57
58
59
60
61
62
63

64
65
66
67

HOME BUYER/HOME SELLER DISPUTE RESOLUTION ALTERNATIVE: The foregoing language is part of an agreement between the Missouri Association of Realtors and the American Arbitration Association (“AAA”) and may not be altered. The AAA is neither affiliated with nor an agent of the Missouri Association of Realtors. The Missouri Association of Realtors and the AAA have joined to provide home buyers and home sellers with an alternative in settling disputes. Mediation/Arbitration, as the name implies, is a blend of both mediation and arbitration. Mediation is a process by which the parties submit their dispute to an impartial person – the mediator. The mediator may suggest ways of settling the dispute, but may not impose a settlement on the parties. If mediation is not voluntarily agreed to or fails to produce a settlement within a specified time period, then the matter is referred to arbitration for a final and binding decision by an arbitrator. Mediation sessions and Arbitration hearings are conducted by trained, impartial professionals experienced in areas regarding real estate and construction. The outcome is private and confidential. The Home Buyer/Home Seller Mediation/Arbitration Program is designed to allow the parties to settle disputes regarding material property defects in a fast, fair and affordable manner.

DISCLAIMER: *This form is provided as a service of the Missouri Association of Realtors. Those who use this form are expected to review both the form and the details of the particular transaction to ensure that each section of this form is appropriate for the transaction. The Missouri Association of Realtors is not responsible for the use or misuse of this form, or for misrepresentations or warranties made in connection with this form.*

68
69
70
71
72

For more information, you may contact the American Arbitration Association at :
100 North Broadway, Suite 1820
St. Louis, MO 63102
(314) 621-7175
Fax (314) 621-3730

Approved by legal counsel for use exclusively by members of the Missouri Association of Realtors, P. O. Box 1327, Columbia, Missouri 65205. No warranty is made or implied as to the legal validity or adequacy of this document, or that it complies in every respect with the law or that its use is appropriate for all situations. Local law, current AAA procedures, customs and practice, and differing circumstances in each transaction, may each dictate that amendments hereto be made. Last Revised 12/31/07. ©2004 Missouri Association of Realtors