

Voluntary Arbitration

PROGRAM GUIDE

**CONTRACTORS STATE
LICENSE BOARD**

California Department of Consumer Affairs





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VOLUNTARY ARBITRATION PROGRAM GUIDE

What is Arbitration?

Arbitration is when disputing parties submit their differences to an impartial neutral person who makes a final award or decision.

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 the services of one state-appointed expert witness per complaint. **Only contractors in good standing with CSLB qualify to participate in arbitration.** Complaints involving deceptive or fraudulent practices will be investigated by CSLB.

Why Arbitration?

- Arbitration is fast; it can take as little as 45 days to resolve a dispute.
- Arbitration provides an informal setting 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 following the arbitrator's decision, unless the decision is appealed. If the contractor fails to comply with any final award, the contractor's license may be suspended or revoked.

... to the Contractor

- Under current complaint disclosure laws and policies, 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.
- A contractor's license will not be suspended or revoked for a complaint allegation that is referred to arbitration unless the contractor fails to comply with the arbitrator's award.

What is Voluntary Arbitration?

Voluntary arbitration is when CSLB or its arbitration provider appoints an arbitrator to make a final decision in a dispute between two or more parties. Both parties must agree to participate and to abide by the arbitrator's decision.

CSLB uses the voluntary arbitration process, when appropriate, to resolve complaints of financial remedy between \$15,000 and \$50,000.

Does My Case Qualify?

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

- (1) The dispute involves a financial remedy between \$15,000 and \$50,000;

- (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 against him or her; and
- (5) The parties have not previously entered into a contract to privately arbitrate the matter.

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.

Voluntary and Binding Arbitration

"Voluntary" and "binding" are key terms to understand before entering into arbitration. Participation in this program is **voluntary** for both parties; if either party chooses not to participate, the dispute in question will not be arbitrated but, instead, investigated by CSLB.

Arbitration is **binding**; both parties must comply with the arbitrator's decision. In binding arbitration, parties who refuse to comply with the arbitrator's award may be taken to court, where the arbitration 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.

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 CSLB has determined that the dispute could be effectively handled through arbitration.

Once both parties agree to arbitration, and a CSLB representative determines that a complaint qualifies for arbitration, the representative will send a "Submission to Voluntary Arbitration" form to the two parties. Each party fills in their name(s) and address, and the specific contract-related claims and financial remedy they are seeking.

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. Both can then prepare their cases for presentation at the arbitration hearing.

CLSB will also send a copy of the signed submission forms to the arbitration provider responsible for managing the arbitration hearing.

The Arbitration Provider

CSLB has selected an arbitration provider to perform arbitration proceedings. The 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 resolution.

After the provider receives the signed Submission to Voluntary Arbitration forms, the parties will receive a list of arbitrators and a request for availability. Statutory law requires this information be returned to the agency within seven (7) days, at which time a written hearing notice with a date, time, and place will be sent to the parties.



Preparing Your Case

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

Parties may hire an attorney, at their own expense, to represent them or present their own case. Case preparation is very important and parties should arrive at the hearing ready to prove their case with photographs, contract documents, proof of financial injury damages, and correction estimates. Both parties should review the submission forms and hearing notices to thoroughly understand all of the issues, and 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.

Each party must provide copies of any documents and photos for the arbitrator and the opposing party. Consider the following list when gathering evidence to present to the

arbitrator at the hearing. This list is not intended to limit you from presenting other evidence that you deem relevant.

Contract

- Gather the contract, plans and/or specifications, proposals, 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 from an expert witness 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 a 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, or 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, or the amount of money still owed.

Expert Witnesses

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

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

When a state-appointed expert is used, both parties will receive a copy of the report before the dispute is referred to the arbitration provider. Either party may use the expert witness at the arbitration hearing. A party who wishes to use the testimony of the state-appointed expert at the hearing will be responsible for making arrangements with the expert to ensure his or her attendance at the hearing. **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 who is not appointed by the state; however, that party will be responsible for arranging and paying for the services of that expert witness.

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



The Hearing

Arbitration hearings are conducted in a professional office setting 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 the authority to rule on licensee disciplinary issues or other civil remedies.

The Award

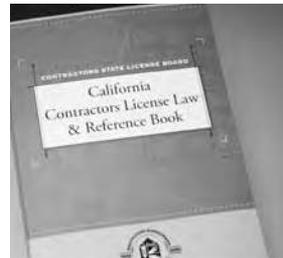
The arbitrator's award is final and binding; **both parties must** abide by its terms. If either party does not comply, the other may petition the court to have the award confirmed and made a judgment of the court. The court can then enforce the award as a civil judgment.

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.

Consumers who wish further recourse through the courts after an arbitration award is rendered must do so at their own expense. A consumer 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. **Arbitration award compliance must be met within 30 days**, unless an appeal is filed. If the award is against the contractor and the contractor does not comply within the award's specified time, 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 arbitrator's 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." The fact that a consumer receives a favorable award through CSLB's arbitration program does not mean that a surety company must pay the consumer from the proceeds of a contractor's license bond.



Points to Remember about Voluntary Arbitration

- Arbitration is voluntary and must be agreed to by both parties.
- Both parties must return a properly executed "Submission to Voluntary Arbitration" form to CSLB within 30 calendar days from the date the form was mailed to the parties involved.
- CSLB will pay for the hearing, the arbitrator, and the services of one CSLB-appointed expert witness per complaint.
- Arbitration hearings are informal and held at a business office location near the project site.

- Only selected cases involving contractors in good standing with CSLB may be referred to arbitration.
- Both parties are responsible for preparing their cases and presenting them at the hearing.
- 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 the cost of his or her own attorney fees, which may not be recovered in these civil proceedings.**
- If parties need an additional expert witness (beyond the services provided by the CSLB-paid expert witness) to assist in the presentation of their case, they may hire one 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.



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