

BBB® Moving and Storage Rules of Binding Arbitration

BBB ARBITRATION

Your Better Business Bureau® (BBB) is a nonprofit organization supported by local businesses. BBB promotes trust in the marketplace by fostering the highest ethical relationship between businesses and the public.

Your BBB assists in the resolution of disputes between movers and shippers. BBBs have a national reputation for fairness because they remain impartial in a dispute. They do not take sides but work to get the problem settled as quickly as possible.

If you have a moving and/or storage dispute, BBB can offer you several ways to resolve it. Arbitration is one dispute resolution (DR) option: BBB provides a professionally trained arbitrator who will listen to both sides, weigh the evidence and make a decision about the dispute.

What is arbitration?

Arbitration is an informal process in which two parties present their views of a dispute to an impartial third party, an arbitrator, who will decide how to resolve the dispute.

Some movers participating in BBB DR programs have agreed to arbitrate disputes with their customers within defined limits. Other movers ask BBB to provide arbitration on a case-by-case basis.

The issues and the types of awards that the arbitrator may consider in your case will be outlined in a document called the Agreement to Arbitrate. BBB will work with you to write the Agreement to Arbitrate so it is based on the facts of your case. The arbitrator will be asked to make a decision that he or she believes is fair based on the facts of your case.

Who is the arbitrator?

BBB arbitrators are individuals from your community who have been approved as arbitrators by BBB. Arbitrators do not necessarily have specific expertise in the matter to be arbitrated, but can call upon the assistance of an expert when necessary. Arbitrators pledge to make an impartial decision, and do not have any affiliation with either party in the dispute.

The arbitration hearing

BBB will consult with the parties and the arbitrator(s) in scheduling an arbitration hearing. While most cases require only a single hearing, additional hearings may be scheduled if the arbitrator deems it necessary.

Do I need an attorney?

You may choose to consult with an attorney about arbitration under these Rules, the remedies that may be awarded in arbitration, and how to best present your case in arbitration. While you do not need to be represented by an attorney in the arbitration process, you may decide that it is in your best interests to do so.

How to prepare for arbitration

Before coming to your arbitration hearing, you should prepare an outline of your argument to help you in your presentation. You may want to use the checklist at the end of this section to assist you in your preparation.

Also before coming to the hearing, you should prepare a list of questions you want to ask the other party.

What will happen at the hearing?

You will have an opportunity to state the facts as you see them. Each party also will have the opportunity to ask questions of the other party.

The arbitrator may also ask questions to clear up uncertain areas and to gain a fuller understanding of the dispute.

After each side has presented its case and the questioning is completed, you should be prepared to give a summary of your position. Deal with any questions that have not been answered and tell the arbitrator exactly what you think the decision should be and why.

Remember that the sole purpose of the hearing is to allow the arbitrator to gather and sort the facts in order to make a fair decision. You should be prepared to convince the arbitrator that your position is right and that it supports the remedies/outcome you seek from the arbitration process.

A cooperative, good faith approach works best. You are there because a disagreement exists, but keep that disagreement factual and within the bounds of normal courtesy and conventional language. Arbitrators may not have technical expertise, so your presentation may be more productive if you can use layman's terms to describe what happened.

An arbitration checklist

This checklist will help you prepare for your arbitration hearing. Use whichever items are appropriate to your case; some may not apply.

- 1.** Organize your materials in the order you wish to present them. This will help you present your case clearly and logically.
- 2.** Clearly state what the problem is and why you think the other party is responsible.

3. List in chronological order the actions you took to resolve the dispute, including:

- o individuals with whom you spoke;
- o when you spoke with them;
- o what they told you and/or what actions they took;
- o other business/service persons involved:
 - § Who were they?
 - § When did they get involved?
 - § How did they become involved?
 - § What did they tell you and/or what actions did they take? Written statements or the presence of witnesses can help substantiate the facts of your case.

4. Collect and bring to the hearing all available written information relating to your dispute. Bring original documents, if possible, and bring copies for the arbitrator and the other party. If you do not have certain documents, you may be able to get copies from the mover, bank or credit card company. Documents that might be useful include:

- o Any estimates, written agreement, purchase order, and proof of payment.
- o Correspondence between you and the other party.
- o Other documents which may support your case, e.g., newspaper/magazine articles, photographs, court decisions and legal documents, consumer group information, and brochures.

5. List any witnesses who may have information about your complaint. Try to contact them and ask them to testify in person or to submit written statements. You are responsible for your witness' submission of information. If you want them to testify in person, keep them informed about the time and place of the hearing.

The arbitrator will accept all relevant evidence presented at the hearing. The arbitrator will decide the importance of each piece of evidence after the hearing is closed. **It is better to be over prepared than under prepared.**

Evidence will not be accepted after the hearing if it was possible to present that evidence at the hearing, or if the arbitrator has already rendered a decision.

In summary

- Organize your case.
- Back up your position with evidence.

A clear, concise and well-organized presentation supported by relevant facts and good documentation will help the arbitrator fulfill his or her responsibility.

BBB[®] Moving and Storage Rules of Binding Arbitration

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1. DEFINITIONS

The following list defines key words as they are used in these Rules:

- Arbitration** is a process in which two or more persons agree to let an impartial person decide their dispute.
- Arbitrator** refers to the individual selected to conduct your arbitration and make a decision in your dispute. Any action taken or decision made by a panel shall be by majority vote.
- BBB** refers to the Better Business Bureau that is administering the arbitration.
- Days** refers to calendar days.
- Decision** refers to the written document signed by the arbitrator and sent to the parties.
- Parties** refers to the shipper, the moving company and any other person or company that has committed to arbitrate or has signed an Agreement to

Arbitrate under these Rules. These rules often refer to the individual parties in an arbitration as the "shipper" and the "moving company."

- G. **Shall** is mandatory; may is discretionary.
- H. **Shipper** is the person whose goods are transported by the moving company.
- I. **You** refers to the parties involved in the dispute being arbitrated.

2. SCOPE OF ARBITRATION

Disputes involving a complaint of a deficiency or problem in the service involved in the commercial transaction between the parties may be arbitrated under these Rules, as long as the parties agree to arbitrate the dispute after it arises. If an agreement between a mover and a shipper is signed before the dispute arises and requires that both parties arbitrate disputes through BBB or under any BBB binding arbitration rules, then any arbitration under that agreement will be conducted using BBB Rules of Binding Arbitration for Disputes Subject to Pre-Dispute Binding Arbitration Clauses. The following claims shall not be considered unless specifically agreed in writing by all parties that the arbitrator may consider them:

- Claims seeking criminal penalties;
- Claims seeking compensation for damages or injuries caused by a defective product;
- Claims for personal injuries;
- Claims where no deficiency or problem is alleged in the product or services involved in the transaction;
- Claims that are the subject of a lawsuit filed by the shipper, or that have been resolved by a previous court action, arbitration or settlement between the parties.

The decision as to whether your dispute (or any part of it) can be arbitrated rests solely with BBB or the arbitrator.

Before commencing the arbitration process, BBB will notify the parties of any fees that may be required.

3. REMEDIES

The following remedies may be awarded in an arbitration proceeding: a) release of contractual obligations between the parties; b) full or partial refund of the cost of the service involved in the transaction, including sales tax and other direct incidental costs associated with the sale of the service; c) completion of promised work or fulfillment of contractual obligations; and/or d) the amount of any actual out of pocket loss or property damage, not to exceed \$10,000, caused by the provision of the service.

Additional remedies may be awarded in an arbitration proceeding only if the remedy is included in the mover's commitment with BBB or the parties agree in writing that the arbitrator may award the specific remedy. The following may not be awarded in BBB arbitration unless it is specifically agreed by all parties that the

arbitrator may award them: compensation for loss of wages or income, compensation for mental anguish, punitive damages or legal fees.

4. AGREEMENT TO ARBITRATE

BBB shall prepare an Agreement to Arbitrate that briefly describes the nature of the dispute and the decision sought as they are viewed by you and any other party.

The Agreement to Arbitrate shall include only those claims that fall within the scope of these Rules, unless both parties agree to arbitrate additional claims in your case.

The Agreement to Arbitrate is intended to be a general outline of the dispute, not an argument of your case.

BBB shall give the Agreement to Arbitrate to each party prior to the hearing. Each party shall sign the Agreement to Arbitrate and return it to BBB within five days of receiving it. Failure to return the signed Agreement within this time period may result in a delay of the resolution of your case.

You should contact the BBB at once if you disagree with the general description of your case and/or the decision you are seeking.

Parties should **not** contact BBB if they think the description of the other party's case is in error; that is an issue for the arbitrator to decide.

5. SELECTING YOUR ARBITRATOR

BBB shall select the arbitrator in a procedure designed to avoid any conflict of interest and to provide the parties with an impartial arbitrator to hear their case.

BBB maintains a pool of qualified, experienced arbitrators, from which BBB shall select the arbitrator who will decide your dispute. BBB shall inform the arbitrator(s) of the identities of the parties and the attorneys, if any. If an arbitrator finds that he or she has a conflict of interest with any party or attorney, the arbitrator(s) shall recuse himself or herself.

At BBB's option, BBB may appoint a panel of three arbitrators. BBB shall determine which arbitrator will serve as the chair of the panel to preside over the hearing.

BBB may use variations of this selection process, provided that the alternative procedure shall also result in the appointment of an impartial arbitrator.

6. QUALIFYING THE ARBITRATOR

The arbitrator shall sign an oath pledging to make an impartial decision in your dispute. If the arbitrator believes that he or she cannot make an impartial decision, the arbitrator shall refuse to serve.

If a financial, competitive, professional, family or social relationship exists between the arbitrator and one of the parties (even if the arbitrator believes the relationship is so minor as to have no effect on the decision), it shall be revealed to all parties, and you may decide that this arbitrator should not serve in your case.

BBB reserves the right to reject any arbitrator for any reason that it believes will affect the credibility of the arbitration process.

7. COMMUNICATING WITH THE ARBITRATOR

You or anyone representing you shall not communicate in any way with the arbitrator about your dispute except (a) at an inspection or hearing for which the other party has received notice but does not appear, or (b) when all other parties are present or have given their written permission.

All other communication with the arbitrator must be sent through BBB.

Violation of this rule may result in your case being discontinued.

8. YOUR REPRESENTATIVE

You may present your own case or have someone represent you.

If your representative is a lawyer, you must give the lawyer's name and address to BBB at least 21 days before the hearing. BBB shall notify the other parties to give them an opportunity to obtain lawyers if they want. Your failure to give BBB advance notice of legal representation may result in a rescheduling of your hearing.

You are responsible for any fees charged by your representative.

9. HEARING NOTICE

BBB shall set a date, time (during normal business hours) and place for your arbitration hearing. The hearing shall be set with due regard for the schedule of the parties and the arbitrator. Notice of the date, time, and place of the hearing shall be sent to you at least 10 days in advance of the hearing unless the parties agree otherwise.

Contact BBB immediately if you object to the date, time or place stated in your notice. If an unforeseen emergency arises that prevents you from attending a hearing, call BBB before the scheduled hearing time. The arbitrator shall decide whether to reschedule the arbitration hearing or maintain the current hearing date permitting the absent party to present the case in accordance with Rule 11.

To the extent practical, BBB shall arrange for the hearing to be held at a BBB location convenient to the shipper.

BBB reserves the right to make the final decision as to the date, time and place for

the arbitration hearing.

10. MANNER IN WHICH HEARING IS CONDUCTED

Most arbitrations involve in-person hearings. However, BBB, at a party's request or at BBB's option, may arrange to have one or both parties participate by telephone, in writing, or by electronic communication.

11. YOUR ABSENCE FROM THE HEARING

If one party does not attend a hearing after receiving proper notice from BBB, the arbitrator shall proceed with the hearing and receive evidence from the other party.

One party's absence will not result in an automatic decision against that party. The party who did not attend the hearing shall be given an opportunity to present its position in writing within time limits set by BBB. All evidence will be provided to the other party for review and comments within specified time limits. If parties do not submit evidence within the time limits, the arbitrator shall make a decision without this additional documentation.

12. ATTENDANCE AT HEARING

BBB staff may attend the hearing in an administrative capacity.

The parties, any representatives, and their witnesses may attend the hearing, although the arbitrator may determine that one or more non-party witnesses should be present in the hearing room only while that witness is giving testimony.

For any observer to attend a hearing, BBB will first determine that reasonable accommodations exist and then make sure that the parties and the arbitrator have no objection to the presence of an observer. If there is room and no objection, the observer shall be permitted to attend the hearing subject to BBB's directions regarding the proper conduct.

13. CAMERAS AND RECORDING DEVICES

Unless there is approval of all parties and the arbitrator, no one is permitted to bring cameras, lights, recording devices, or any other equipment into the hearing. However, BBB may make an audio recording of the hearing if requested by the arbitrator, and any such audio recording may only be used by the arbitrator for the sole purpose of assisting the arbitrator in writing his/her decision and reasons, or by BBB for training and administrative purposes.

14. OATH OF PARTICIPANTS

You and your witnesses shall be placed under oath at the hearing by the arbitrator or BBB staff administering your hearing.

15. HEARING PROCEDURES

The arbitrator will decide on the order and the procedures to follow for you to present your side of the dispute.

You shall be given an opportunity to make a personal presentation of your case, and you may present witnesses and evidence in support of your case. You shall also be given the opportunity to question the other parties, their witnesses and their evidence. After everyone has presented his or her case, each party shall be given the opportunity to make a closing statement.

If the arbitrator determines that additional information is necessary in order to make a fair decision, the arbitrator may direct that this additional evidence be submitted at a subsequent hearing or in any manner deemed appropriate by the arbitrator. If the arbitrator directs that written evidence be submitted after the initial hearing, the evidence shall be sent to BBB within the time frame specified by the arbitrator. BBB shall send a copy to the other party and solicit a response. Both the written evidence and any response shall be submitted by BBB to the arbitrator.

When the arbitrator is satisfied that all testimony and evidence have been presented, your hearing will be closed.

16. ADMISSION OF EVIDENCE AT THE HEARING

You may present your case without being restricted by courtroom rules of evidence. **However, you should be sure your evidence is relevant to your case.**

The arbitrator may limit your presentation if it is repetitious or irrelevant.

17. INSPECTION BY THE ARBITRATOR

The arbitrator may request an inspection of the subject of your dispute.

If possible, the inspection will be performed as part of the hearing; otherwise, the inspection will be scheduled for a later date and all parties shall receive at least three days notice unless such notice is waived by all parties.

18. TECHNICAL EXPERTS

At the request of the arbitrator, BBB shall make reasonable efforts to obtain a volunteer impartial technical expert to inspect the subject of the dispute. If BBB is unable to obtain a volunteer technical expert, BBB shall inform the parties and may give them the opportunity to incur the cost of a compensated technical expert.

The expert's findings shall be presented in writing or in person, at BBB's option, either before, during or after the hearing. In any case, you shall have an opportunity to evaluate and comment on the qualifications and findings of the

expert.

You also have the right to have your own technical expert serve as a witness at your own expense.

19. WRITTEN STATEMENTS/DOCUMENTS

If you have a witness who cannot attend the hearing, you may present that person's written statement to the arbitrator. You must make a copy for the other party to read and use for response.

If you present your case by telephone, you should submit to BBB at least seven days before your hearing any written documents on which you will rely. BBB shall provide these documents to the other party before the hearing.

20. SUBPOENAS

You may send BBB a request that the arbitrator subpoena witnesses or evidence that are relevant to your case. Any request shall include a statement as to why the witness or evidence is relevant and why you believe a subpoena is necessary. If the arbitrator agrees with your request, a subpoena shall be signed by the arbitrator.

The party requesting the subpoena shall be responsible for serving the subpoena, including any expenses involved, and also for enforcement of the subpoena in court if necessary. BBB and the arbitrator do not have power to enforce a subpoena, but the arbitrator may consider any failure to produce subpoenaed evidence in the decision.

21. ADMISSION OF EVIDENCE AFTER INITIAL HEARING

During the hearing, you may ask the arbitrator to give you a reasonable number of days to respond to evidence presented by the other party at the hearing. The arbitrator may grant your request at his or her discretion. If granted, BBB shall send your response to the other party for comment and then forward all information to the arbitrator.

Before a decision is made, an arbitrator may schedule new or additional hearings or otherwise request new or additional evidence to get all possible facts relating to your dispute.

Before a decision is made, you may send BBB new information that was impossible to present at your original hearing and request that it be considered. BBB shall send it to the other parties for their response and then forward the information and any response to the arbitrator.

After the arbitrator has made a decision in your case, no more arguments or evidence may be presented, even if newly discovered or not available at the time of the hearing.

22. CLOSING THE HEARING

The arbitrator shall close the hearing when he or she determines that the parties have had sufficient opportunity to present all relevant evidence. The arbitrator will normally render a decision within five days after the hearing is closed.

23. SETTLEMENT

If all parties voluntarily decide to settle the dispute before the hearing, the settlement will end the dispute and no hearing will be held.

If a voluntary settlement is reached during the hearing, the arbitrator shall include the settlement in a final or interim decision. If a settlement is reached after the hearing but before the arbitrator's final decision, be sure to notify BBB at once.

24. TIME LIMITS

BBB shall make reasonable efforts to obtain a resolution of the dispute within 60 days, unless state or federal law provides otherwise. BBB may extend this time at its sole discretion.

25. THE DECISION

When the arbitrator has reached a decision in your case, BBB shall send to all parties a written decision accompanied by the arbitrator's brief statement of reasons for the decision. BBB will not read a decision to you over the phone.

A. Scope of decision

A decision shall be one that:

- the arbitrator considers fair; and
- falls within the scope of these Rules and your Agreement to Arbitrate.

Unless otherwise provided by agreement of the parties, the arbitrator is not bound to apply legal principles in reaching what the arbitrator considers to be a fair resolution of the dispute.

The decision may order an action to be performed, money to be paid or a combination of these remedies. The arbitrator may award all or part of what you seek or may decide to award no payment or performance at all.

B. Types of decisions

The arbitrator may render either a final or an interim decision.

- If the arbitrator renders a **final decision**, the arbitrator has no further authority over the execution of the decision unless a valid request is made pursuant to Rule 25(C), Clarifying the decision;

Rule 25(D), Correcting the decision or reasons for decision; or
Rule 25(E), Decision is impossible to perform or to perform timely.

- An **interim decision** may be written when the decision requires some action to be taken. If the arbitrator renders an interim decision, the arbitrator maintains continuing authority over the execution of the decision in accordance with the specific terms set out in the decision.

Interim decisions will state a time within which the shipper must notify BBB if the action ordered in the interim decision was not performed or was performed unsatisfactorily. If an interim decision has been rendered and a reconvening is requested and in accordance with the terms of the decision, BBB shall schedule a further hearing. In addition to the evidence presented at that hearing, the arbitrator may request additional evidence from the parties or from an impartial technical expert. The arbitrator will normally render a decision within five days after the hearing is closed.

C. **Clarifying the decision**

You may request that the arbitrator clarify a decision if you do not understand the decision, or if you and the other parties disagree about the specific action required by the decision. Requests for clarification must be sent in writing and must be received by BBB prior to the time that performance is required under the decision.

BBB will not accept a clarification request that attempts only to reargue your case or that is based solely upon your disagreement or disappointment with the decision.

If your written statement to BBB is an appropriate request for clarification of the decision, BBB shall send the request to the other parties, solicit their views, and send the request and any response to the arbitrator. The arbitrator may either clarify the decision or reject the request for clarification and let the decision stand as written.

You may not ask the arbitrator to clarify the reasons for decision.

D. **Correcting the decision or reasons for decision**

You may request correction of the decision or the reasons for decision if you believe the decision or reasons contain a mistake of fact, a miscalculation of figures, or exceed the arbitrator's authority. Requests for correction of a decision or reasons must be in writing and received by BBB prior to the time performance is required under the decision.

A mistake of fact is not a conclusion of the arbitrator with which you disagree; it is a true error in such things as a date, time, place, or name, and may justify a correction only if it concerns the essence of the decision.

A miscalculation of figures is not a dollar figure you consider to be unfair; it

is a mathematical error.

The arbitrator's authority is limited to the scope of these Rules and the Agreement to Arbitrate.

BBB will not accept a correction request that attempts only to reargue your case or that is based solely upon your disagreement or disappointment with the decision.

If your written statement to BBB is an appropriate request for correction, BBB shall send the request to the other parties, solicit their views, and send the request and any response to the arbitrator. The arbitrator may either correct the decision or reasons or reject the request for correction and let the decision or reasons stand as written.

E. Decision is impossible to perform or to perform timely

Unless otherwise specified in the decision, the time for performance shall generally be no longer than 30 days from the date BBB forwards the awards to the parties. If you believe in good faith you cannot perform the arbitrator's decision within the established time limit, you should immediately inform BBB in writing. BBB will process your submission in the same manner as a request for correction.

The arbitrator may request additional evidence, request another hearing, or do anything necessary to confirm or deny your claim of impossibility of performance. If the arbitrator confirms such impossibility, the original decision may then be changed to include any remedy falling within the scope of the Agreement to Arbitrate.

If a party has exceeded the time for performance, the other party should notify BBB in writing.

F. Suspending the time to perform

If you submit to BBB a written statement relating to correction, clarification or impossibility of performing the decision, the time for performance of a decision shall be suspended until the issue is resolved by the arbitrator or by BBB.

G. After the decision is issued

Once a decision in your case has been issued:

- The parties will be legally bound to abide by the decision and must comply with the decision's terms (subject to modification/correction under these Rules or to any limited right of review that may be provided by federal or state law).
- Each party gives up any right to sue the other party in court on any claim that has been resolved at the arbitration hearing, unless a party

fails to perform according to the arbitrator's decision.

If a party fails to perform the decision, notify BBB and it will try to resolve the matter. In addition, you may have the right to enforce the decision in court or pursue other legal remedies under state or federal law.

H. Verification of performance

All parties must do what the decision requires within the time limits set by the arbitrator.

Unless otherwise stated in the decision, the time for performance shall begin when you receive the decision. Approximately two weeks after the performance date, BBB shall contact the parties to see if the decision has been performed.

26. TIMELY OBJECTIONS

Any failure to follow these Rules that may significantly affect the independence, impartiality, or fairness of the arbitration process must be raised with BBB at the earliest opportunity. BBB shall make a final decision on the appropriate action to be taken if BBB determines that a failure to follow these Rules has significantly affected the independence, impartiality, or fairness of the arbitration process.

27. CHANGE OF TIME

You and the other parties to the arbitration may jointly agree in writing to change any period of time stated in these Rules.

28. CONFIDENTIALITY

The dispute resolution process and any records of that process are private and confidential.

BBB may include in its reports on the moving company an indication of the moving company's failure to arbitrate or to perform an award in your individual case, excluding personally identifying information about any individual. Otherwise, BBB shall not release the terms of the arbitration decision to any person or group that is not a party to the arbitration unless all parties agree or unless such release is required by law or pertinent to judicial or governmental administrative proceedings.

BBB will maintain basic file information on your arbitration hearing for one year or longer, if required by law. This information will include the witnesses' names and documents presented as evidence at the hearing. Copies of this and other official arbitration forms relating to your case will be given to the parties upon request. A reasonable copying fee may be charged.

29. JUDICIAL PROCEEDINGS/ EXCLUSION OF LIABILITY

In submitting to arbitration under these Rules, the parties agree that, other than for exclusive purposes of authentication by staff of BBB, BBB and the arbitrator shall not be subpoenaed by either party in any subsequent legal proceeding. The parties further agree that BBB (including its staff), Council of Better Business Bureaus (including its staff), and/or the arbitrator shall not be liable for any act or omission in connection with your arbitration.

30. INTERPRETATION OF RULES/RIGHT TO DISCONTINUE ARBITRATION

BBB shall make the final decision on procedural questions, the scope of the agreements, a claim's eligibility for arbitration, and any other question concerning the application and interpretation of these Rules.

BBB at all times reserve the right to decline or discontinue administration of arbitration for any case(s) due to a conflict with any BBB Policy or state/federal law or regulation, the conduct of a party, or failure to pay any fees required by BBB.