

Groupe d'Arbitrage - Juste Décision (GAJD)

SIMPLIFIED GUIDE TO THE ARBITRATION PROCESS

You are a legal entity or a person who has entered into a contract with a contractor for the sale or construction of a new residential building

and

You have filed a claim as part of the Guarantee Plan for New Residential Buildings

OR

You are a contractor

and

You have been prosecuted in connection with the Guarantee Plan for New Residential Buildings or your membership has been refused or cancelled by the manager

AND

You are DISSATISFIED with a decision made by the manager of the Guarantee Plan

YOU MAY CHALLENGE THIS DECISION AND REQUEST THAT IT BE ALTERED

By making a request for arbitration to the GAJD which has authorization from the Régie du Bâtiment (or to any other arbitration body which has authorization).

WITHIN WHAT TIME LIMIT?

Within 30 days from the receipt of the manager's decision by registered mail.

or

Upon notice of the mediator noting the failure of the mediation.

HOW?

By sending a REQUEST FOR ARBITRATION to the GAJD by registered mail with the following information:

- 1) A copy of the decision you are contesting;
- 2) The names and addresses of the parties or the parties' representatives;
- 3) The outcomes you are looking for and the amount of your claim;

- 4) If necessary, request to take measures to ensure the conservation of the building or to inspect the property or visit the site.

Upon receipt of a request for arbitration, the GAJD notifies the other interested parties and the manager. The latter sends the file relating to the decision which is the subject of the arbitration to the GAJD.

WHAT IS THE GAJD AND WHO ARE THE ARBITRATORS?

The GAJD, Groupe d'Arbitrage – Juste Décision is a general partnership that brings together professionals from among those who are the most engaged in mediation and arbitration in Quebec.

The GAJD sees to the appointment of the arbitrator from their list of selected arbitrators that was provided to the Régie du bâtiment du Québec.

The arbitrators on this list are required to comply with the GAJD's Code of Ethics: honesty, integrity and impartiality are essential qualities required of any arbitrator.

The arbitrators appointed by the GAJD are, in accordance with the Regulations for Guarantee Plans for New Residential Buildings, professionals with experience in guarantee plans or with training in matters relating to questions raised during arbitration, in particular in finance, accounting, construction technology or law. In addition, they have all undergone training on the guarantee plan.

In the event of recusal, revocation, death or incapacity of the arbitrator, the GAJD replaces him/her with another arbitrator who decides to resume or continue the hearing.

The designated arbitrator will send you the GAJD's Arbitration Code, which describes the procedure followed during the course of the arbitration.

DEADLINES FOR HEARING OF THE REQUEST FOR ARBITRATION

- Thirty(30) days from receipt of the request

When the request relates to the membership of a contractor, the deadline is 15 days.

REPRESENTATION

At the hearing, you may represent yourself or have another person of your choice represent you.

CONVENING THE HEARING

The arbitrator shall send to the parties or to their representatives and to the manager a written notice of the date, time and place of the hearing and, if applicable, of the date that the property inspection or site visit will take place, at least five (5) days prior to the hearing date.

BEFORE THE HEARING

Gather all the evidence and documents that will help you prove to the arbitrator that you are in the right.

PREPARATORY CONFERENCE CALL

Before the day of the hearing, the arbitrator may hold a preparatory conference call, during which each of the parties makes a summary statement of the facts and presents their claims and comments on the position of the other party. On this occasion, each party informs the arbitrator of the names of ordinary witnesses or expert witnesses whom they wish to summon to testify on the facts or to produce a document.

If you know that one of your witnesses will refuse to appear voluntarily at the hearing, ask the arbitrator to summon them.

If you want to file documents other than the documents that you have already filed with the manager, you will also have to notify the arbitrator.

If you want a site visit or property inspection to be made, please notify the arbitrator. If, according to the arbitrator, such a visit is useful or necessary, you will then be informed of the date and time of such a visit or inspection.

Once the arbitration decision is rendered, the GAJD draws up an account of the costs of the arbitration (fees, room rental costs, etc.), according to the rate structure found in the appendix which is attached to the Arbitration Code. The account is sent to the concerned parties.

PROCEDURE FOR THE HEARING

You must prove, to the satisfaction of the arbitrator, the facts you put forward.

You can file documents and call witnesses. With the exception of expert witnesses, a person must have witnessed the facts in order to testify.

The arbitrator may conduct the examination himself or herself and attempt to reconcile the interests of the parties.

After the evidence is heard, the parties present their statement of claims, namely the pleas.

ARBITRATOR'S DECISION

The arbitrator will make his/her decision on the principle of the balance of proof, which means that he/she will agree with the party who, in his/her opinion, has gathered the most convincing evidence.

The arbitrator rules in accordance with the rules of law and also appeals to fairness when the circumstances justify it.

A written and reasoned decision must be sent to the parties and to the manager within 30 days of the date of the hearing. Fifteen(15) days in the case of a membership request. The parties may, by consent, agree on an additional delay. A copy of the decision is sent to the GAJD.

The arbitrator's decision is final and cannot be appealed.

ENFORCEMENT OF THE DECISION

The decision is enforceable and, as soon as it is rendered, it will normally be enforced voluntarily. If this is not the case, you may obtain the enforced execution of the decision after having it approved at the Court of Quebec or the Superior Court (procedures provided for in articles 946 to 946.6 of the Code of Civil Procedure). It is a simple procedure, but you may require the help of a lawyer.

AGREEMENT OR WITHDRAWAL

If there is an agreement between the parties and the manager after the request for arbitration or, if the claim is withdrawn, notice must be given to the arbitrator, who will record the agreement or the withdrawal in an arbitral decision.

If the agreement or withdrawal occurs before the appointment of the arbitrator, written notice must be given to the GAJD.

INFORMATION ON AGREEMENT AND WITHDRAWAL

Important information on agreements and withdrawals for beneficiaries of the guarantee (under the *Regulations on Guarantee Plans for New Residential Buildings*).

Three situations can justify interrupting the arbitration process:

1. The first occurs when you change your mind about your request for arbitration. In this case, you notify the arbitrator or the arbitration body that you want to withdraw your request for arbitration. However, it should be noted that you may have to pay arbitration fees, an amount that will be decided by the GAJD that will distribute the fees between you and the manager.

In addition, certain precautions may be necessary before withdrawing your request for arbitration. If you withdraw your request for arbitration without having entered into an agreement with the contractor or the manager, you lose all rights to contest the merits of the decision of the manager once the 30-day deadline to do so has elapsed. The arbitration appeal must therefore be exercised within 30 days of receipt of the administrator's decision by registered mail.

2. The second occurs once the agreement has been reached by the contractor and the manager or with the manager only and you may be asked to withdraw your claims. Precautions are necessary in this case.

If you withdraw your request for arbitration following an agreement with the contractor and the manager, or with the manager only, it is prudent to notify the arbitrator of the result of your

agreement, and to ask him/her to record the agreement reached as an arbitral decision and to issue an order directing the parties to comply with it. This makes it possible to apply for ratification in the event that the agreement is not respected.

3. The third situation occurs when an agreement is reached with the contractor only.

If a withdrawal of your request for arbitration is required to conclude the agreement, this means that you could lose your rights for recourse once the 30-day period has elapsed after receipt of the manager's decision. In order to preserve your right to arbitration, you could ask the arbitrator to postpone the hearing to a date subsequent to that provided for in the agreement for the execution of the work. In this way, you can ensure compliance with the agreement before withdrawing from your right to arbitration. Hence, if the agreement is not respected, you could request to resume the arbitration process.

EXPERT'S FEES

The arbitrator rules on the quantum of reasonable costs of relevant experts that the manager must reimburse to the claimant when the outcome of the arbitration is completely or partially in the claimant's favour (does not apply to a dispute over the membership of a contractor).

ANY QUESTIONS?

We hope that this explanatory document has answered your questions regarding the arbitration process that is part of the Guarantee Plan for New Residential Buildings. If you have any other questions, please do not hesitate to contact the GAJD.

You can also obtain the Arbitration Code for free, which describes in detail the GAJD's entire arbitration process.

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