

Arbitration Group - Just Decision

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 administrator

AND

You are DISSATISFIED with a decision by the administrator 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 administrator'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) 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 administrator. 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 et de médiation Justes décisions, (in English, Arbitration and Mediation Group - Just Decisions) is a general partnership that brings together professionals from among those who are most engaged in mediation and arbitration in Quebec.

The GAJD sees to the appointment of the arbitrator from a list of people previously drawn up by it and sent 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, natural persons with experience in guarantee plans or professional training in matters relating to questions raised by arbitration, in particular in finance, accounting, construction technology or law. In addition, they have all had to undergo training on guarantee plans.

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

The designated arbitrator will send you the GAJD's Arbitration Code; there you will find the procedure to be followed throughout the arbitration.

DEADLINES FOR HEARING OF THE REQUEST FOR ARBITRATION

- 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 can represent yourself or have yourself represented by the person of your choice.

CONVENING THE HEARING

The arbitrator shall send the parties or their representatives and the administrator at least 5 days' 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.

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

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 gives their point of view on their claims and those 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 those you have filed with the administrator, you will 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 price list which is attached to the Arbitration Code. The account is sent to the people who have to pay for it.

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. Except for expert witnesses, a person must have witnessed the facts in order to testify to them.

The arbitrator may conduct the examination themselves and attempt to reconcile the interests of the parties.

After the evidence, there is a statement of the parties' claims, namely the pleas.

ARBITRATOR'S DECISION

The arbitrator will make their decision on the principle of the balance of evidence, which means that they will agree with the party who, in their opinion, has gathered the most convincing evidence.

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

A written and reasoned decision must be sent to the parties and to the administrator within 30 days of the date of the hearing. (15 days in the case of a membership request). The parties may, by consent, agree on an additional deadline. 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 it is possible that the help of a lawyer may be necessary.

AGREEMENT OR WITHDRAWAL

If there is an agreement between the parties and the administrator after the request for arbitration or, if there is a withdrawal, 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 an interruption of the arbitration process:

1. The first is simple and occurs when you change your mind about your request for arbitration. In this case, you notify the arbitrator or the arbitration company 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 between you and the administrator by the GAJD. In addition, certain precautions may be necessary before withdrawing your request for arbitration because

If you withdraw your request for arbitration without agreement with the contractor or the administrator, you lose all right to contest the merits of the decision of the administrator who is behind the appeal when the deadline for 30 days to do so has elapsed (the arbitration appeal must therefore be exercised within 30 days of receipt of the administrator's decision by registered post).

2. The second occurs when there is an agreement with the contractor and the administrator or with the administrator only. In this case, you may be asked to withdraw in return for the agreement. Here, precautions are necessary:

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

If a withdrawal from your request for arbitration is required at the time of the agreement, this means that you could lose your rights of recourse once the 30-day period has elapsed, after receipt of the administrator's decision of the guarantee. 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. If the agreement was not respected, you could resume the arbitration process.

EXPERT'S FEES

The arbitrator rules on the quantum of reasonable costs of relevant experts that the administrator must reimburse to the claimant when they have total or partial success (does not apply to a dispute over the membership of a contractor).

ANY QUESTIONS?

We hope that this explanatory document has answered your questions on arbitration as part of Guarantee Plans for New Residential Buildings. If you have any 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.