

Adopt Plc 2100 to read as follows:

CHAPTER Plc 2100 ALTERNATIVE DISPUTE RESOLUTION (ADR) PROGRAM

Statutory Authority: RSA 310:6, II

PART Plc 2101 PURPOSE; APPLICABILITY

Plc 2101.01 Purpose. The purpose of this chapter is to implement RSA 205-D:3, V by providing a dispute resolution program for the timely resolution of consumer complaints and of disputes between manufacturers, retailers, and installers of manufactured housing relative to the installation of manufactured housing and the correction or repair of defects in manufactured houses that are reported during the one-year period beginning on the date of installation.

Plc 2101.02 Applicability. The rules in this chapter shall apply to disputes arising from the need to correct or repair defects in manufactured houses that are reported during the one-year period beginning on the date of installation.

PART Plc 2102 DEFINITIONS

Plc 2102.01 “Arbitration” means a procedure in which a dispute is submitted, by agreement of the parties, to a neutral or panel of neutrals who make a decision on the dispute. The term includes “binding arbitration”, in which the parties are bound the decision, and “non-binding arbitration”, in which the parties are not bound by the decision.

Plc 2102.02 “Board” means the installation standards board established by RSA 205-D:2.

Plc 2102.03 “Mediation” means a voluntary, non-binding process using a neutral third party to help the parties reach a mutually-acceptable resolution of their dispute.

Plc 2102.04 “Neutral” as a noun means an impartial individual who does not represent or support the interests of any of the persons involved in the proceeding, who works with the parties to resolve the dispute. The term includes “neutral evaluator”, “mediator”, and “arbitrator”.

Plc 2102.05 “Neutral evaluation” means the review and evaluation of each party’s position, and the underlying support for that position, by a neutral who evaluates the information and provides an opinion, orally and in writing, that contains a suggested settlement or disposition and the reasons therefor.

PART Plc 2103 ADR AVAILABILITY AND IMPACT

Plc 2103.01 Availability.

(a) Any manufacturer, retailer, or installer may elect to pursue ADR to resolve disputes between the manufacturer, retailer, or installer, or any combination thereof, arising from the need to correct or repair defects in manufactured houses that are reported during the one-year period beginning on the date of installation.

(b) The board shall facilitate a choice of ADR mechanisms to encourage informal settlement.

(c) Participating in ADR shall not be mandatory for any party.

(d) Attempting to resolve a dispute using ADR shall not impair any party’s right to an adjudicative hearing before the board.

(e) The parties to a dispute shall be given the opportunity at a pre-hearing conference to discuss and decide whether or not they wish to engage in neutral evaluation, mediation, or non-binding arbitration.

(f) If neutral evaluation is chosen, the procedure shall be governed by Plc 2104.

(g) If mediation is chosen, the procedure shall be governed by Plc 2105.

(h) If non-binding arbitration is chosen the procedure shall be governed by Plc 2106.

Plc 2103.02 Location of ADR Sessions. ADR sessions shall be conducted at a neutral location, such as the OPLC offices, or at another location that is more convenient for the participants that all participants agree to use.

Plc 2103.03 Neutrals.

(a) A neutral shall be an attorney or administrative law judge approved by the OPLC based on the criteria in (b), below.

(b) To be approved as a neutral, an individual shall be an attorney admitted to practice in New Hampshire in good standing, who has:

(1) A minimum of 5 years of experience in litigation in the subject matter area(s) to which the individual may be assigned as a neutral;

(2) Training as a mediator or arbitrator; or

(3) Experience in performing quasi-judicial roles, including but not limited to 20 hours experience in ADR or 5 years in a quasi-judicial role such as presiding at administrative disciplinary or non-disciplinary remedial proceedings.

(c) Neutrals shall not be called as a witness in any subsequent proceeding relating to any party's negotiations or participation.

(d) The following criteria shall apply to the selection of a neutral of any kind:

(1) The neutral shall not have personal knowledge of any of the parties;

(2) The neutral shall disclose any circumstances that are likely to:

a. Create a conflict of interest or the appearance of a conflict of interest;

b. Present a reasonable inference of bias; or

c. Prevent the process from proceeding in a timely manner; and

(3) The neutral shall not act as a legal advisor to, or legal representative of, any of the parties in the proceeding or the board.

(e) If the parties use a neutral offered by the OPLC, no expenses of the neutral shall be charged to the parties. If the parties elect to use a private neutral, the parties shall bear all expenses of the ADR.

Plc 2103.04 Effect of ADR on Subsequent Proceedings.

(a) Information, evidence, or the admission of any party or the valuation placed on the case by any neutral shall not be disclosed or used in any subsequent adjudicative proceeding.

(b) Subject to (f), below, statements made and documents prepared by a party, party's representative, or any other participant in aid of the ADR proceeding shall be privileged and not disclosed to any judicial or quasi-judicial body for any purpose as an admission against interest.

(c) All ADR options shall be:

(1) Non-binding proceedings; and

- (2) Deemed equivalent to settlement conferences for purposes of RSA 91-A.
- (d) No record of any ADR proceeding shall be made.
- (e) The neutral shall:
 - (1) Destroy all notes immediately after the proceeding; and
 - (2) Not be called in any subsequent proceeding to testify about the ADR proceeding.
- (f) Evidence otherwise admissible at a trial or hearing shall not be rendered inadmissible as a result of its use in the ADR proceeding.
- (g) If an agreement between or among the parties is reached as a result of an ADR process, the parties shall inform the neutral and submit the agreement to the board in the same manner as a settlement agreement, to be issued by the board as a binding order.

PART Plc 2104 NEUTRAL EVALUATION

Plc 2104.01 Neutral Evaluation Preliminary Procedures.

(a) If the parties agree to attempt to settle differences through neutral evaluation, the board shall provide the parties with résumés of at least 3 neutral evaluators.

(b) The parties shall select one neutral evaluator to preside at the evaluation, and may select an alternate neutral evaluator to preside in the event the chosen neutral evaluator becomes unavailable.

(c) If the neutral evaluator withdraws, develops a conflict of interest, or otherwise becomes unavailable, and the parties did not preselect an alternate, the board shall appoint a neutral evaluator who meets the criteria in Plc 2103.02(b) and (d) to hear and decide the matter.

Plc 2104.02 Scheduling the Neutral Evaluation. Following the selection of a neutral evaluator, the parties shall:

(a) Schedule the neutral evaluation to occur within 30 days of the date the evaluator was selected;

(b) Agree to the time, date, and place of the neutral evaluation; and

(c) Specify the date by which the parties shall furnish the neutral evaluator with the information and documentation required by Plc 2104.03(a).

Plc 2104.03 Exchange of Case Statements; No Other Communication.

(a) Not less than 5 days prior to the scheduled date of the neutral evaluation, the parties shall submit to the neutral evaluator, and exchange with each other, a summary of the significant aspects of their case. The parties shall attach to the summary copies of all documents on which they rely. Such summaries shall be not longer than 4 pages, exclusive of the attached documents.

(b) Subject to (c), below, the parties shall not communicate with the neutral evaluator concerning the case outside of the neutral evaluation session.

(c) If the neutral evaluator deems it necessary, the neutral evaluator shall request additional written information prior to the neutral evaluation session from one or more party(ies).

Plc 2104.04 Conduct of Neutral Evaluation Session.

(a) At the neutral evaluation session, all parties shall be present with authority to approve a settlement.

(b) At the neutral evaluation session, the neutral evaluator:

(1) Shall allow each party no more than 30 minutes to supplement their written summaries with a brief oral statement; and

(2) May address questions to the parties.

(c) The session shall be limited to not more than 2 hours unless all parties agree to extend the time to allow a constructive discussion to continue.

Plc 2104.05 Issuance of Evaluator's Opinion.

(a) At the conclusion of the session, the neutral evaluator shall issue an oral opinion that contains a suggested settlement or disposition and the reasons therefor.

(b) The neutral evaluator shall mail a written report of the opinion and suggestion(s) to the parties within 48 hours of the session, excluding Saturdays, Sundays, and state or federal holidays.

Plc 2104.06 Results of Neutral Evaluation.

(a) If the neutral evaluation results in an agreement between or among the parties, the parties shall comply with Plc 2103.04(g) no later than 10 days after the evaluator's written opinion is received.

(b) If the neutral evaluation does not result in an agreement, the parties shall so inform the neutral evaluator, and the neutral evaluator shall:

(1) Document only the date and the participants at the meeting;

(2) Destroy all notes and written materials; and

(3) Advise the board that the neutral evaluation has taken place but did not result in an agreement.

Plc 2105 MEDIATION

Plc 2105.01 Mediation Preliminary Procedures.

(a) If mediation is selected, the board shall provide the parties with résumés of 3 individuals who meet the qualifications specified in Plc 2103.02(b).

(b) Within 10 days of receiving the résumés, the parties shall select a mediator to manage the mediation using the criteria in Plc 2103.02(d), and may select an alternate mediator in the event the chosen mediator becomes unavailable.

(c) If the mediator withdraws, has a conflict of interest, or is otherwise unavailable, and the parties did not preselect an alternate, the board shall appoint a mediator who meets the criteria in Plc 2103.02(d) to engage with the parties.

Plc 2105.02 Scheduling the Mediation; Exchange of Information.

(a) The initial mediation session shall be scheduled to occur within 30 calendar days after selection of the mediator.

(b) Not later than 10 days prior to the session, the parties shall submit to the mediator, and exchange with each other, a summary of the significant aspects of their case. The parties shall attach to the summary copies of all documents on which they rely. Such summaries shall be not longer than 4 pages, exclusive of the attached documents.

(c) Upon receipt of a party's submission, any party may send additional information responding to that submission. All such responsive submissions shall be exchanged with the opposing party and shall contain a statement of compliance with the exchange requirement.

(d) Subject to (e), below, the parties shall not communicate with the mediator concerning the case outside of the mediation session.

(e) If the mediator deems it necessary, the mediator shall request additional written information prior to the mediation session from one or more party(ies).

Plc 2105.03 Conduct of Mediation Session(s).

(a) The role of the mediator shall be to:

- (1) Facilitate communication between or among the parties;
- (2) Define the issues and explore possible resolutions to the dispute;
- (3) Remain neutral; and
- (4) Ensure that parties openly, freely, and candidly discuss the strengths and weaknesses of their positions with the mediator.

(b) At the initial mediation session, the mediator shall facilitate discussion to:

- (1) Determine issues;
- (2) Explore options; and
- (3) Attempt to reach an equitable resolution to the dispute.

(c) Information provided to the mediator in private discussion shall be confidential and shall not be divulged to the opposing side unless specifically authorized.

(d) The mediator shall not have the authority to render a decision or impose a settlement on the parties.

(e) The mediation conference shall consist of a session or sessions with the parties and their legal counsel, if available, to facilitate a settlement acceptable to the parties.

(f) If resolution cannot be achieved on the date assigned, the mediator shall continue the mediation process, either with additional in-person mediation sessions or telephone conferences, for not more than an additional 45 days.

(g) The mediator shall file a report with the board advising that the case has been settled or that mediation failed to resolve the dispute not later than the sooner of 50 days after the initial mediation session or 3 days after the final mediation session.

(h) If the case has been settled, the parties shall comply with Plc 2103.04(g) no later than 10 days after the final mediation session.

Plc 2106 NON-BINDING ARBITRATION

Plc 2106.01 Non-binding Arbitration Preliminary Procedures.

(a) If the parties select non-binding arbitration, the board shall provide the parties with résumés of 3 individuals who meet the qualifications specified in Plc 2103.02(b).

(b) Within 10 days of receiving the résumés, the parties shall select an arbitrator using the criteria in Plc 2103.02(d), and may select an alternate arbitrator in the event the chosen arbitrator becomes unavailable.

(c) If the arbitrator withdraws, has a conflict of interest, or is otherwise unavailable, and the parties did not preselect an alternate, the board shall appoint an arbitrator who meets the criteria in Plc 2103.02(d) to engage with the parties.

Plc 2105.02 Scheduling the Arbitration; Exchange of Information.

(a) The initial arbitration session shall be scheduled to occur within 30 calendar days after selection of the arbitrator.

(b) Not later than 10 days prior to the session, the parties shall submit to the arbitrator, and exchange with each other, a summary of the significant aspects of their case. The parties shall attach to the summary copies of all documents on which they rely. Such summaries shall be not longer than 4 pages, exclusive of the attached documents.

(c) Upon receipt of an opposing party's submission, the party may send additional information responding to that submission. All such responsive submissions shall be exchanged with the other party and shall contain a statement of compliance with the exchange requirements.

(d) At the session, the following shall apply:

- (1) Each party shall be limited to one hour to present his or her case;
- (2) Direct examination and cross-examination shall be limited to the parties or their representatives;
- (3) The arbitrator shall be permitted to ask questions;
- (4) Formal rules of evidence shall not apply; and
- (5) If the arbitrator permits closing arguments, each party shall be limited to 5 minutes.

(e) Within 5 days after the session, the arbitrator shall file a ruling with the parties and the board. The ruling shall include a brief explanation of the reasons for the arbitrator's conclusion.

(f) If the parties reach an agreement as a result of the arbitration, the parties shall comply with Plc 2103.04(g) no later than 10 days after the arbitrator's ruling is filed.

APPENDIX A: STATE STATUTES IMPLEMENTED

Rule	State Statute(s) Implemented
Plc 2100	RSA 205-D:3, V; 24 CFR Part 3288, Subpart D