



RULES FOR BIA CONCILIATION

ARTICLE 1 - Application of the Rules

- a. These Rules apply to conciliation of disputes arising out of or relating to a Building Industry Association of Greater Louisville ("BIA) Home Owners' Limited Warranty issued by a BIA builder or remodeler in good standing at the time the conciliation was filed and all through the conciliation process.
- b. BIA conciliation process is a voluntary non-binding, informal dispute resolution program. The BIA will only conciliate construction defect issues that are covered by the Home Owners' Limited Warranty.
- c. Parties to the conciliation must have complied with the terms of the BIA Home Owners' Limited Warranty.
- d. Before a homeowner can submit a request for conciliation of a construction defect to the BIA, the homeowner must give written notice and opportunity to remedy to the builder/remodeler, in accordance with Kentucky law, the BIA's Conciliation Rules, and the Home Owners' Limited Warranty. A request for conciliation of a construction defect that is submitted to the BIA must contain proof that the notice and opportunity to remedy requirements have been satisfied.
- e. The BIA will not conciliate issues relating to commissions.
- f. Conciliation is not available if either party has commenced legal action.
- g. The BIA's conciliation jurisdiction consists of Jefferson, Bullitt, Oldham, Shelby, Henry, Spencer and Trimble

counties. The Association does not conciliate contracts or property located outside of its jurisdiction.

ARTICLE 2 – Prior to conciliation of alleged construction defects- “Notice and Opportunity to Remedy”

- 1) Prior to submitting a request for conciliation of alleged construction defects covered by the Limited Warranty, the homeowner must submit a written notice to the builder outlining the alleged defects as per KRS 411.258. Upon receiving the initial written notice, the builder will have 21 days to respond and 30 calendar days (from receiving the notice) to make an inspection of the home. The BIA will not schedule repairs or transmit messages between the parties during this time. If at the end of the 30 days, the inspection has not been conducted by the builder, or if the parties disagree on the results of the inspection, either party may request conciliation from the BIA.
- 2) As per KRS 411.258, if the inspection reveals that repairs or adjustments covered by the Limited Warranty are required, builder will have 90 calendar days to make the necessary repairs or adjustments, weather and labor conditions permitting and emergencies excepted, or pay in lieu of repairs. If making repairs, the builder must schedule repairs within the required timeframe and communicate with the homeowner. The BIA will not schedule repairs or transmit messages between the parties during this time. If at the end of the 90 days, the required repairs are not completed by the builder, or payment in lieu of repairs is not made, either party may request conciliation from the BIA.
 - a. The builder/remodeler may petition the Builder Committee (“BC”) for an extension of the 30-day inspection window and/or the 90-day remedy window.
 - b. The Builder Committee will consider the builder’s/remodeler’s request on a case-by-case basis. Any granted extensions will be memorialized in writing.

ARTICLE 3 - Commencement of Conciliation Proceedings

- 1) After the conclusion of the “Notice and Opportunity to Remedy” time period as stated in Article 2 above, a party may initiate conciliation proceedings by filing a written request for conciliation on BIA’s website at: <https://www.bialouisville.com/request-for-conciliation.html>
 - a. The written conciliation request shall include, but is not limited to:
 - i. Identifying information about the parties;
 - ii. Identifying information about the property in dispute;
 - iii. Closing date and/or date of possession of the home;
 - iv. An itemized list of issues;
 - v. A place to upload supporting documents;
 - vi. Proof that the requirements in Article 2 above and KRS 411.258 have been satisfied.
 - vii. Payment information; and
 - viii. Waiver/indemnification of liability against BIA and the conciliators.
- 2) BIA will then forward a copy of the complaint to the builder to respond, and the builder will be given an opportunity to respond.
- 3) If the party initiating the conciliation does not receive a reply within 14 calendar days from the date on which it sent the invitation, or within such period of time as specified in the invitation, it may elect to treat this as a rejection of the invitation to conciliate. If it so elects, it informs the other party accordingly.
- 4) If the other party rejects the invitation, or if the BIA determines that the dispute is not covered under the Home Owners’ Limited Warranty, there will be no conciliation hearings.
- 5) If conciliation is not available, the parties may follow the steps in the Purchase Contract and the Limited Warranty.

ARTICLE 4 - Number of Conciliators and Appointments

- 1) Once it is determined that the parties are eligible for conciliation, two (2) members of the Builder Committee will be appointed as conciliators.
 - a. A lead conciliator will be designated, and that lead conciliator shall handle the scheduling with all parties.

ARTICLE 5 - Role of Conciliator

- 1) The conciliators shall assist the parties in an independent and impartial manner in their attempt to reach an amicable resolution of their dispute.
- 2) The conciliator shall use the Residential Construction Performance Guidelines – Consumer Reference to determine whether a construction defect is “industry standard” or “builder responsibility”.
 - a. If the construction defect is determined to be “industry standard,” no further action shall be necessary.
 - b. If the construction defect is determined to be “builder responsibility,” the conciliators will help the parties negotiate the date by which the builder will make the repairs or an in lieu of payment.
- 3) The conciliators shall conduct the conciliation proceedings in such a manner as they consider appropriate, taking into account the Residential construction Performance Guidelines, the circumstances of the dispute, the wishes expressed by the parties, and their own personal knowledge, skills, and experience as builders/remodelers and members of the BC.
- 4) The conciliators shall not identify or comment on any other construction matters, defects, or code violations not identified in the request for conciliation regardless of how obvious or substantial they may be.

- 5) Construction defects not covered by the Limited Warranty and not listed in the itemized list submitted by the requesting party in the initial Request for Conciliation, will not be considered by the conciliators.
- 6) If a defect is found during the conciliation process but is not listed in the original conciliation request, and the parties request conciliation of this later-discovered defect, the parties must first follow Article 2 and submit a new request for conciliation.
- 7) The conciliator shall not be liable for any act or omission arising from his or her role as a conciliator.

ARTICLE 6 - Communication Between Conciliator and Parties

- 1) The lead conciliator will schedule a time to meet with the parties at the property in dispute.
 - a. At the time of the conciliation, all parties to the contract must be present, including the builder, all homeowners, and builder staff if applicable.
 - b. No additional parties may be present.
 - c. Pets must be put safely away.
- 2) The conciliation process is a resolution process discussion and will not be admissible in arbitration or court if the dispute proceeds further. Additionally, neither the homeowner nor the builder shall be permitted to present the contents or existence of the Conciliation Agreement or recommendations of the conciliators in arbitration and/or court.

ARTICLE 7 - Cooperation of Parties with the Conciliator

- 1) The parties will in good faith cooperate with the conciliators and, in particular, will endeavor to comply with requests by the conciliators

to provide documents or photographs, requests for additional information, and to attend meetings.

- 2) If the conciliators have reason to believe that either or both parties are unduly delaying the conciliation proceeding, the conciliators have the authority to terminate the conciliation.
- 3) If for any reason the conciliators believe the conciliation is dangerous or the parties act uncivilly or unprofessionally toward the conciliators or BIA staff, the conciliators and/or BIA have the authority to terminate conciliation immediately.
- 4) Each party shall be present at all conciliation meetings.

ARTICLE 8 - Conciliation Agreement

- a. If it appears the parties have come to an agreement, the conciliators may present to the parties a Conciliation Agreement.
- b. The builder/remodeler agrees that he or she will perform the remedial steps listed in the Conciliation Agreement by the dates indicated therein and/or be subject to the rules and recommendations of the Builder Committee.
- c. The parties may request an extension to pay and/or repair from the Builder Committee. The Builder Committee will consider the request on a case-by-case basis. Any granted extensions will be memorialized in writing.
- d. If money is being withheld by the homeowner when the parties reach a Conciliation Agreement relating to a construction defect covered by the Limited Warranty, the withheld funds must be placed in escrow before the agreed upon repairs/remedial steps will be made and taken by the builder/remodeler. The BIA will keep the funds in its escrow account until the subject repairs have been made and/or remedial steps have been taken as called for by the Conciliation Agreement. The appointed conciliators will make the determination of whether the repairs have been made and/or remedial steps have been taken as called for

by the Conciliation Agreement. If the appointed conciliators determine that the builders/remodeler's actions do not satisfy the Conciliation Agreement, the withheld funds in the escrow account will be refunded to the original depositor. If the appointed conciliators determine that the builders/remodeler's actions satisfy the Conciliation Agreement, the withheld funds in the escrow account will be transferred from the BIA to the builder/remodeler.

If homeowner refuses to place withheld funds in escrow as described above, the builder/remodeler will not be required to make the repairs or take the remedial steps as called for by the Conciliation Agreement. In that event, parties may proceed according to the terms of their Contract and/or Limited Warranty.

- e. The parties may follow the steps in the Purchase Contract and the Limited Warranty if a party is dissatisfied with the results of the conciliation and/or if a Conciliation Agreement is not reached between the parties.

ARTICLE 9- Confidentiality

The conciliator and the parties must keep confidential all matters relating to the conciliation proceedings. Confidentiality extends also to the Conciliation Agreement, except where its disclosure is necessary for purposes of implementation and enforcement by the Builder Committee. The BC will have access to information and matters relating to the conciliation proceedings.

ARTICLE 10 - Termination of Conciliation Proceedings

The conciliation proceedings are terminated:

- a. By signing of the Conciliation Agreement by the parties, on the date of the agreement; or

- b. By the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or
- c. By the parties to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or
- d. By one party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.
- e. Nothing prohibits BIA or the conciliators from terminating conciliation for any reason at any time, including but not limited to uncivil behavior; threats of any form against BIA, conciliators or any of the parties (including legal threats, physical threats, and/or threatening statements that might cast BIA or any of the parties in bad light, etc.); statements indicating an intent not to act in good faith or cooperate with the conciliation process; etc.
- f. After conciliation proceedings are terminated, neither homeowner nor builder shall contact the conciliators or the BIA about the conciliation.
- g. After conciliation proceedings are terminated, the parties may follow the procedures outlined in their Purchase Contract and Limited Warranty if necessary.

ARTICLE 11 - Resort to Arbitral or Judicial Proceedings

The parties agree not to initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject of the conciliation proceedings, except that a party may initiate arbitral or judicial proceedings where, in its opinion, such proceedings are necessary for protecting its rights.

ARTICLE 12 - Costs

- 1) A non-refundable administrative fee of \$250 will be charged to the homeowners.
- 2) If this is the first conciliation for the builder/remodeler in 12 months, the builder/remodeler will be charged a \$500 administrative fee.
- 3) For each conciliation after the first conciliation in 12 months, the builder will be charged \$1,000. If the assigned conciliators find no “builder responsibility”, \$500 of the builder fee will be refunded.
- 4) Charges are billed to the parties at the time conciliators are assigned.
- 5) The conciliation fee is non-refundable for any reason.

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