

**Adopt Inst 800, previously effective 4/14/12 as Inst 700 (Document #10115), expired 4/14/22, to read as follows:**

CHAPTER Inst 800 ALTERNATIVE DISPUTE RESOLUTION PROGRAM

PART Inst 801 PURPOSE

Inst 801.01 Purpose. The purpose of this chapter is to provide a dispute resolution program for the timely resolution of disputes between manufacturers, retailers, installers, and consumers 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.

PART Inst 802 ALTERNATIVE DISPUTE RESOLUTION

Inst 802.01 Availability.

(a) Any manufacturer, retailer, consumer, or installer may request an alternative dispute resolution for the resolution of disputes between a manufacturer, retailer, or installer, including but not limited to neutral evaluation and mediation as methods of resolving the matter.

(b) In accordance with RSA 541-A:31 and 38, the board shall provide a choice of alternative dispute resolutions, including but not limited to those identified in this part in order to encourage informal settlement.

(c) Methods of alternative dispute resolution shall not be mandatory for any party, nor shall such evaluation impair either party's right to a due process hearing. At a pre-hearing conference the parties shall be given the opportunity to discuss and decide whether or not they wish to submit to alternative dispute resolution.

(d) If neutral evaluation is chosen the procedure shall be governed by Inst 802.04.

(e) If mediation is chosen the procedure shall be governed by Inst 802.05.

(f) If non-binding arbitration is chosen the procedure shall be governed by Inst 802.06.

Inst 802.02 Neutrals.

(a) For the purpose of this section, "a neutral" means neutral evaluators, mediator, or arbitrators.

(b) All neutrals shall be attorneys or hearing examiners provided by the OPLC. If a private neutral is employed the parties shall bear all expense of alternative dispute resolution.

(c) In approving neutrals, the board shall require:

(1) All neutrals evaluators, mediators, arbitrators shall be attorneys admitted to practice in New Hampshire in good standing;

(2) Neutral evaluators shall be attorneys who have a minimum of 5 years' experience in litigation in the subject matter areas to which they may be assigned as neutral evaluators;

**Commented [RM1]:** Why is the hearings bureau not used? Should that be considered here? Should check with Agency counsel on this section.

**Commented [RM2]:** Remove the s

**Commented [RM3]:** Are we talking 5 years experience in the law? If we are talking about 5 years experience in manufactured housing installation standards I do not think this works. I think this needs to be reviewed by agency counsel and or the hearings bureau.

**Commented [RM4]:** Is this an "and" or "or" after this semi colon?

(3) Experience in performing quasi-judicial roles, including but not limited to 20 hours experience in alternative dispute resolution or 5 years in quasi-judicial role.

(d) Each neutral shall perform under the auspices of the board. Neutrals may not be called as a witness in any subsequent proceeding relating to the party's negotiations and their participation.

**Commented [RM5]:** What is the intent of this?

Inst 802.03 Admissibility.

**Commented [RM6]:** Should look to the PLC 200s. Consult with agency counsel and the hearings bureau

(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 proceeding. Statements made and documents prepared by a party, attorney, or other participant in aid of such proceeding shall be privileged and not disclosed to any court or arbitrator for any purpose as an admission against interest.

(b) All the alternative dispute resolution options shall be non-binding alternative dispute resolution proceedings and shall be deemed settlement conferences. There shall be no record of any proceedings under alternative dispute resolution and the mediator or evaluator shall destroy all notes immediately after the proceedings.

(c) Evidence otherwise admissible at trial shall not be rendered inadmissible as a result of its use in the ADR proceeding.

Inst 802.04 Neutral Evaluation Procedure.

(a) For the purposes of this rule, a "neutral evaluator" means a person not engaged as a party on either side of the dispute and not aligned with a political or ideological grouping with a special interest in the matters being evaluated.

(b) If both parties agree to attempt to settle differences through neutral evaluation, the board shall schedule such evaluation.

(c) There shall be no record made of the neutral evaluation except only the date and names of the participants shall be recorded.

(d) Once the neutral evaluation process has been selected, the board shall provide the parties with resumes of 3 neutral evaluators. The parties shall agree to the selection of one neutral evaluator to preside at the evaluation.

**Commented [RM7]:** Is this a board function or an office function?

(e) The following criteria shall apply to the selection of a neutral evaluator:

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

(2) The neutral evaluator shall disclose any circumstances likely to create a conflict of interest, the appearance of a conflict of interest, a reasonable inference of bias, or likely to prevent the process from proceeding as scheduled.

(f) If the neutral evaluator withdraws, has a conflict of interest, or is otherwise unavailable, a replacement neutral evaluator shall be appointed by the board to hear and decide the issue.

**Commented [RM8]:** Is this a board function or an office function

(g) The neutral evaluator shall not act as a legal advisor or legal representative.

(h) Following the selection of a neutral evaluator, the board shall:

- (1) Schedule the neutral evaluation;
- (2) Provide the parties with the neutral evaluator's name and address;
- (3) Provide the time, date, and place of the neutral evaluation; and
- (4) Specify the date by which the parties shall furnish the neutral evaluator with required information and documentation.

(i) Not less than **5 days** prior to the neutral evaluation, the parties shall submit to the neutral evaluator and exchange 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 more than **4 pages**.

**Commented [RM9]:** Business or calendar days?

(j) Parties shall not communicate with the neutral evaluator concerning their case outside of the neutral evaluation.

**Commented [RM10]:** Any margins, spacing, font parameters?

(k) At the neutral evaluation, the parties shall be present and **shall** have authority to approve settlement.

**Commented [RM11]:** Should this be ... the neutral shall have the authority...?

(l) If the neutral evaluator deems it necessary, such neutral evaluator shall request additional written information prior to the evaluation from either party.

(m) At the neutral evaluation, the neutral evaluator may address questions to the parties and shall allow each party no more than 30 minutes to complement their written summaries with a brief oral statement. The evaluation shall be limited to not more than 2 hours.

(n) The neutral evaluator shall issue an oral opinion following the conference with a written report mailed to the parties within 48 hours of the conference excluding Saturday, Sunday, or a holiday. The opinion shall contain a suggested settlement or disposition and the reasons therefor.

**Commented [RM12]:** The timing and immediate judgment is different than what we have now.

(o) If the neutral evaluation results in agreement, the conclusions shall be incorporated into a written binding agreement signed by each party.

(p) If the neutral evaluation does not result in agreement, the neutral evaluator shall document only the date and the participants at the meeting.

(q) The neutral evaluator shall advise the board that the neutral evaluation has taken place.

#### Inst 802.05 Mediation Procedure.

(a) A request for mediation shall be made in writing by either party to the board. The mediation request shall specify the issue or issues in dispute and the relief sought.

(b) Once the mediation procedure is selected, the board shall provide the parties with the name and address of a mediator who has a minimum of 20 hours of mediation training or a hearings examiner with 5 years' experience in a quasi-judicial role.

**Commented [RM13]:** Should consult with OPLC if this will be contracted out

(c) All mediation sessions shall be conducted at the **joint board office**. The board shall establish the time and date for the session.

**Commented [RM14]:** Change to the OPLC office. Use consistent language.

(d) A mediation conference shall be conducted within 30 calendar days after receipt of a written request in order to:

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

(e) The role of the mediator shall be:

- (1) To facilitate communication;
- (2) To define the issues and explore possible resolutions to the dispute;
- (3) To remain neutral; and
- (4) To ensure that parties openly, freely, and candidly discuss the strengths and weaknesses of their positions with the mediator.

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

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

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

(i) Not later than 10 days prior to the session the parties shall submit to the mediator and exchange 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 more than 4 pages.

Commented [RM15]: Business or calendar days?

Commented [RM16]: Any margins, spacing, font parameters?

(j) 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.

(k) 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.

(l) Within 30 days of the initial mediation session, the mediator shall file a report with the board advising that the case has been settled, that mediation is ongoing, or that mediation failed to resolve the dispute.

Commented [RM17]: Business or calendar days?

(m) The mediator shall file a final report with the board within 3 days of the final mediation session.

Commented [RM18]: Business or calendar days?

Inst 802.06 Non-binding Arbitration Procedure.

(a) A request for non-binding arbitration shall be made in writing by either party to the board. The arbitration request shall specify the issue or issues in dispute and the relief sought. If both parties agree to arbitration, it shall be used to attempt to resolve the dispute.

(b) Once non-binding arbitration is selected, the board shall provide the parties with the name and address of the arbitrator, who has a minimum of 20 hours of arbitration training. The board shall also establish the time and date for the session. The session shall be conducted at the joint board office.

Commented [RM19]: Change the wording

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

- (1) Each party shall be limited to one hour to present their 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.

(d) Not less than 10 days prior to the session, the parties shall submit to the arbitrator and exchange 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 more than 4 pages.

Commented [RM20]: Calendar or business?

Commented [RM21]: Any margins, spacing, font parameters?

(e) 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.

(f) 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.

Commented [RM22]: Business or calendar days?

#### APPENDIX

RULE	STATUTE
Inst 801	RSA 541-A:7
Inst 802	RSA 205-D:20, XI

Commented [R23]: This does not seem applicable.