



## New Optional Appellate Arbitration Rules

Effective November 1, 2013

The **Optional Appellate Arbitration Rules**, available November 1, 2013, provides parties with the option of a stream-lined and standardized appellate arbitration process. The features of arbitration as a cost-effective and expedited dispute resolution process are maintained in the rules as well.

These new rules provide for an appeal *within* the arbitration process. The appellate arbitral panel applies a standard of re-view that is similar to the standard applied by an appellate court when reviewing a trial court's decision. Because case law from the Supreme Court of the United States clarified that parties are limited in their ability to modify the narrow grounds for court review of an arbitration award, the **Optional Appellate Arbitration Rules** were developed for the types of large, complex cases where the parties agree that the ability to appeal is particularly important.

### Quick Facts about the Optional Appellate Arbitration Rules

- The **Optional Appellate Arbitration Rules** will apply only when there is an agreement of the parties, either by contract or stipulation.
- Parties are permitted to appeal on the grounds that the underlying award is based on errors of law that are material and prejudicial and/or on determinations of fact that are clearly erroneous.
- Appeals will be determined upon the written documents submitted by the parties with no oral argument, unless the appeal tribunal directs otherwise.
- The **Optional Appellate Arbitration Rules** anticipate a process that can be completed in about three months.
- The Appellate Panel consists of former federal and state judges and other arbitrators with strong appellate backgrounds.
- Parties may provide for the **Optional Appellate Arbitration Rules** whether or not the underlying award was conducted pursuant to the AAA®'s or ICDR®'s rules.

### Selected Provisions of the Optional Appellate Arbitration Rules

#### Agreement of the Parties

Utilization of these rules is predicated upon agreement of the parties, either by contract or stipulation. A party may not unilaterally appeal an arbitration award under the **Optional Appellate Arbitration Rules** absent such agreement with the other party. The Introduction to the **Optional Appellate Arbitration Rules** provides sample language for inclusion in the parties' agreement.



### Appeal Tribunal's Decision

The appeal tribunal may (1) adopt the underlying award as its own, or (2) substitute its own award for the underlying award (incorporating those aspects of the underlying award that are not vacated or modified); or (3) request additional information and notify the parties of the tribunal's exercise of an option to extend the time to render a decision, not to exceed thirty (30) days. The appeal tribunal may not order a new arbitration hearing or send the case back to the original arbitrator(s) for corrections or further review.

### Appellate Arbitrator Panel

The appeal tribunal will be selected from the AAA's Appellate Panel that consists of former federal and state judges and other arbitrators with strong appellate backgrounds. A panel of three appellate arbitrators will be appointed unless the parties agree to utilize a single arbitrator.

### Effect of Filing Notice of Appeal on Underlying Award

Upon the filing of a Notice of Appeal under the **Optional Appellate Arbitration Rules**, the parties agree that the underlying award will not be considered final for purposes of any court actions to modify, enforce, correct or vacate the underlying award, and the time period for commencement of judicial enforcement proceedings is tolled during the pendency of the appeal. The parties also agree to stay any already-initiated judicial enforcement proceedings until the conclusion of the appeal process.

### Sample Clause

The **Optional Appellate Arbitration Rules** provide sample appellate clause language for inclusion in the parties' agreement. Parties should consider requiring the underlying award to be a reasoned award. Parties should consider what type of record of the underlying arbitration they would like to have in place for the purposes of any appeal.

### Standard of Review

The **Optional Appellate Arbitration Rules** permit a party to appeal on the grounds that the underlying award is based upon (1) an error of law that is material and prejudicial; or (2) determinations of fact that are clearly erroneous.

For more information about the AAA's **Optional Appellate Arbitration Rules**, including information about costs, please visit [go.adr.org/appellaterules](https://go.adr.org/appellaterules).