

ABRAMS POINTE HOMEOWNERS' ASSOCIATION

DISPUTE RESOLUTION PROGRAM POLICIES AND PROCEDURES

Effective July 1, 2023

SECTION 1. PROVISIONS APPLICABLE TO BOTH MEDIATION AND ARBITRATION PROCEEDINGS.

A. Background and Program Authority

At the Association's Annual Member Meeting held on November 10, 2021, more than 60% of the Members present, evidenced by their sworn signatures, voted in favor of adopting an Amendment to the Restrictive Covenants contained in the Deeds of Subdivision, Dedication, Easement and Declaration of Abrams Pointe, Phases 1A and 1B ("Amendment"). Thereafter, the President of the Association provided a written Certification of the vote with notarized signature. The purpose of the Amendment was to authorize the establishment of an Alternative Dispute Resolution Program ("Program") in order to provide a less expensive process for resolving certain disputes between the Association and Members as an alternative to court-filed litigation.

Subsequently, on January 14, 2022, the adopted Amendment was filed in the Land Records of the Circuit Court for Frederick County, Virginia and made effective upon filing.

At the Association's Annual Member Meeting on November 10, 2022, the Members present and by proxy voted unanimously, with no abstentions, to authorize the expenditure of funds for the development of a Program with the understanding that the Members would be provided with copies of the proposed Program before the Board formally voted on the program and that the Members would be given an opportunity to submit written comments for the Board's consideration in advance of any vote.

The authority for the Program is derived from the 1) the Virginia Code, including §55-515 C and §55.1-1828, 2) the Deeds of Subdivision, as amended, and 3) the corporate powers and authority of the Board to adopt policies and procedures pursuant to the Association's governing documents. The adoption of this Dispute Resolution Program, with the agreement of the Association's Members through their elected directors, will be binding on the Association and each Member, as well as their respective successors and assigns, unless and until amended or rescinded by the Board.

B. Alternative Dispute Resolution Program Policy and Limitations.

The Program has been established by the Board for the limited purpose of providing the Association with a low-cost option for reviewing and enforcing, when necessary, the various Restrictive Covenants and Easements contained in the various Deeds of Subdivision, Dedication, Easement and Declaration of Abrams Pointe, Phases 1A and 1B, property over which the Association has enforcement responsibility. That said, there is nothing contained herein that would prohibit the use of this ADR Program by the Association and its Members for any other disputes between them provided that both parties agree in writing.

The Program contains two elements: 1) a non-binding mediation process, and 2) a binding arbitration process.

The Program is not intended to serve as means for the Association to collect any unpaid assessments owed by any Member to the Association unless the assessments are directly related to the arbitration; for example, an arbitration award with a restoration assessment component.

Due, in part, to the limited scope of the Program, the dispute resolution process can only be initiated by the Board upon a majority vote in connection with its review and enforcement role. It cannot be initiated by any Member of the Association against the Association, or any other Member, or the Board, or any Officer of the Association regarding their duties and actions on behalf of the Association.

Notwithstanding, nothing contained in these documents or this Program shall limit the ability of the Association or any Member from exercising their respective rights to pursue any claims they may have through any court-filed litigation authorized by the various Deeds of Subdivision and the Virginia Code. Nor would it prevent participation in any other similar dispute resolution program, mutually agreed-upon in writing, to resolve any disputes between the Members and the Association.

The Program is not intended to operate simultaneously with any litigation pending between the Member and the Association. Notwithstanding, the Board of Directors has the option of proceeding with the arbitration and requesting a stay of the litigation to the extent the issues in dispute overlap with the scope of the exclusive remedy provided by an arbitration pursuant to the Program.

C. Amendments to the Program.

The Board has the authority to adopt amendments to this Program as circumstances and experience directs. However, any amendments cannot be implemented and applied to any case pending in the process without the written consent of both parties. Notwithstanding, the parties may, by written mutual agreement, adjust these procedures to fit particular circumstances with respect to any one mediation or arbitration.

SECTION 2. MEDIATION POLICIES AND PROCEDURES

The central purpose of the non-binding mediation process is to establish an informal forum for exploring the possibility of settling any disputes between the Association and a Member over any claimed violations of the restrictive covenants or easements as described above. This would serve as a preliminary step before invocation of the more formal binding arbitration proceeding, should mediation prove unsuccessful.

The mediation is a prerequisite to initiation of the binding arbitration process except 1) where the Association and the Member have agreed, in writing, to waive this requirement or 2) the Member has refused to participate in, and in accordance with, the mediation process and, thereafter, the Board has voted to proceed to binding arbitration.

A Member's refusal to abide by the rules of mediation set forth below including, but not limited to, timely responding with written submissions or failing to appear or otherwise allowing for the

completion of the mediation process shall constitute a refusal to mediate, thereby allowing the Association to proceed directly to binding arbitration. The mediator shall have the sole authority for determining whether or not the Member has refused to participate in the mediation process in a way that is unlikely to lead to a settlement. If no mediator has been appointed, the Board shall have the sole authority to decide whether to proceed directly with binding arbitration in those limited circumstances.

A. Initiating the Dispute Resolution Process.

1. The Association shall initiate the mediation process by sending a Notice to Invoke Alternative Dispute Program and Agreement, to the Member that it intends to utilize the dispute resolution program for resolving a covered dispute in a timely, cost-effective manner.
2. The Association shall identify and contact a mediator consistent with Paragraph C below.
3. The Association shall provide the following information to the mediator with a copy of the participating Member:
 - a. A copy of these Alternative Dispute Resolution Policies and Procedures.
 - b. A copy of the Notice to Invoke Alternative Dispute Program and Agreement that was sent to the Member, including the names, regular mail addresses, email addresses (if available), and telephone numbers of all parties to the dispute and representatives, if any, in the mediation.
 - c. A brief statement of the nature of the dispute and the relief requested.
 - d. A copy of relevant covenants contained in the Deeds of Subdivision.

B. Representation.

Any party may participate in the mediation without representation, or by any representative of that party's choosing, or by designated legal counsel. A party designating a representative shall promptly provide the name, telephone number and address, and email address of the representative to the other party and the mediator.

C. Appointment of a Mediator.

The Association shall select and appoint a mediator in consultation with the Member. The selected mediator shall be certified in the state of Virginia as a mediator and qualified by actual experience with mediation procedures generally. Any conflicts or potential conflicts of interest should be avoided. The date, time and place for the mediation shall be set by the mediator within the time limits and parameters of these procedures.

D. Role of the Mediator.

The chosen mediator shall have no authority to decide the issues in dispute; rather, the mediator's role is to:

1. Assist the parties with identifying the issues that are in dispute;
2. Facilitate a discussion between the parties about alternatives for potentially resolving their disputes; and
3. Memorializing the outcome of the mediation whether a settlement is reached or not.

It is not the role of the mediator to give any party legal advice. The mediator is a neutral party.

E. Mediator's Responsibilities.

The Mediator's conduct shall be consistent with the standards set forth in the current "*Model Standards of Conduct for Mediators*," ("Model Standards") published by the American Bar Association and in effect at the time of the mediation. The Mediator should be a "Stranger" to the Members -- that is, neither a Member, nor a relative, nor a business associate, nor a friend, nor any other person substantially known by any party/Member, in any capacity. This latter requirement can be waived only if both parties agree in writing.

Specific Responsibilities of the Mediator:

1. The mediator shall conduct the mediation based on the principle that, by sharing information and ideas, the parties may come to an uncoerced decision to settle. However, each party is free to make informed choices as to the outcome. At the beginning of the mediation session, the mediator will explain the process, go over the paperwork, and answer any questions.
2. The mediator is authorized and encouraged to convene separate *ex parte* meetings, as needed, and other communications with the parties and/or their representatives, during any scheduled mediation session.
3. The parties shall voluntarily exchange all documents pertinent to the matter in dispute in advance of the mediation with copies to the mediator at the same time.
4. The mediator does not have the authority to force a settlement on the parties but will use best efforts in attempting to help the parties reach a satisfactory resolution of their dispute. That said, the mediator, may make oral or written recommendations for settlement to a party privately, or, if the parties agree, to all parties jointly.
5. The mediator is not a representative of any party, legal or otherwise, and owes no fiduciary duty to any party.
6. The mediator shall set the date, time, and place for each session of the mediation in consultation with the parties. Notwithstanding, **the mediation session shall be held within thirty (30) days of the date the mediator is appointed**, unless a different time period is agreed to by both parties in writing.

7. Unless otherwise agreed to by the parties or required by applicable law, confidential information disclosed to a mediator by the parties or by other participants (witnesses) in the course of the mediation shall not be divulged by the mediator.

8. Unless otherwise agreed to by the parties or required by applicable law, the mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any other proceeding.

9. The mediator shall interpret and apply these procedures insofar as they relate to the mediator's duties and the conduct of the mediation process.

F. Confidentiality Required.

In order to foster open communication during the mediation process, the parties shall commit to maintaining confidentiality of the settlement discussions by signing the Notice and Agreement accompanying this document.

All information relating to the mediation and all documents generated in or obtained during the mediation cannot be disseminated or used outside the mediation except as permitted by the Notice and Agreement.

Unless the parties agree otherwise, neither party may rely in any other proceeding on any views expressed or admissions or offers of settlement made by the other party. Any such expressions are for settlement purposes only.

G. Location:

Unless otherwise agreed to in writing, the mediation shall be in person and take place within the geographic limits of Frederick County, Virginia. However, the mediation may be conducted via electronic, telephonic or other technical means so long as the method used allows the mediator to engage in private communications with each of the parties separately, as well as all together.

H. Mediation Costs.

All expenses of the mediation, including required travel for the mediator, advanced deposits and other expenses or charges of the mediator, shall be shared equally by the parties unless they agree otherwise in writing.

I. Responsibilities of the Parties.

1. Each of the parties shall ensure that an individual will be present at the mediation conference with authority to bind that party to the terms of any settlement that may be reached. Only the parties and their representatives may attend the mediation unless otherwise agreed upon by both parties in writing.

2. All parties and their representatives shall conduct themselves with civility and it is within the sole discretion of the mediator to end the mediation session if any uncivil conduct remains uncorrected.

3. Any views expressed or admissions made by a party in the mediation session may not be used against that party in any other proceeding.

J. Recording of Mediation Session Prohibited.

There shall be no electronic recording of the proceedings in any form including, but not limited to, the creation of a stenographic record of the mediation process.

K. The Conclusion of the Mediation Process.

The mediation shall be concluded:

1. Upon the execution of a written settlement agreement by the parties; or
2. By a written or verbal declaration of the mediator, or both parties, to the effect that further efforts at mediation will not result in a resolution of the parties' dispute.
3. Unless agreed upon by both parties in writing, the mediation session shall end after five (5) hours maximum excluding any lunch and restroom breaks.

L. Post-Mediation.

1. The mediator shall not be liable to any party for any error, act or omission in connection with any mediation conducted under these procedures.
2. The mediator is not a necessary party in judicial or other proceedings relating the mediation and the parties to a mediation under these procedures may not call the mediator as a witness in litigation or any other proceeding relating to the subject of the mediation.

SECTION 3. BINDING ARBITRATION POLICIES AND PROCEDURES.

A. General Guidance.

Given the limited scope of the subjects to be arbitrated, and the desire to keep costs down, the procedures for conducting the arbitration under this Program have been adjusted accordingly in order to provide a fair, prompt, and final resolution of the covered disputes. There is a presumption that most disputes to be arbitrated under this program can be done via document submission only, without the necessity of a hearing, as may be determined by the parties and the mediator, as described in subparagraph B 2, below.

Statements, written and oral, submitted by the parties shall be under oath and included in the record. Documentary evidence can be proffered as authentic, but subject to challenge with a final determination made by the arbitrator.

The arbitrator shall oversee the document exchanges between the parties and other discovery issues with the object of achieving an efficient and economical resolution of

the dispute, while promoting equality of treatment and giving both parties a fair opportunity to present their claims and defenses.

The arbitration may be conducted through the offices of the American Arbitration Association (“AAA”); however, the parties may also agree to use another private company as an alternative so long as the arbitrator is certified as such. If conducted through the AAA, the arbitration shall be conducted in accordance with the Commercial Rules of the American Arbitration Association, then in effect, as modified by the Policies and Procedures contained herein.

B. Limits on Arbitration Procedures.

1. There shall be a single arbitrator.
2. There is a presumption that the disputes covered by this Program can be resolved by submission of documents. Whether a hearing will be held shall be determined either a) by the arbitrator or b) upon the agreement of both parties confirmed in writing. A single party cannot trigger a hearing.
3. While discovery will be managed by the arbitrator, the discovery will be limited to the production of documents. Absent a written agreement by the parties, there will be no interrogatories, depositions, requests for admissions or any other traditional forms of discovery utilized in court-filed litigation.
4. The parties shall voluntarily produce relevant documents, including anticipated exhibits, to the other party within ten (10) business days of the appointment of the arbitrator. Notwithstanding, at the request of either party to the arbitrator, a limited request for additional documents may be ordered by the arbitrator if the arbitrator finds that the requested documents are relevant, reasonable, and necessary for a final decision to be reached.
5. An arbitration hearing, if held, shall take place in Frederick County, Virginia, unless otherwise agreed-upon in writing by the parties in order to, for instance, save costs of time and travel for the arbitrator. Alternatively, upon written agreement of the parties and with the consent of the arbitrator, the arbitration hearing may be conducted via electronic means such as a Zoom conference call. Unless the parties agree otherwise, any other witnesses to be called beyond the parties shall be excluded from the conference call proceeding except when those witnesses are offering testimony.
6. A single arbitration hearing, if held, shall be limited to a maximum of six (6) hours, unless otherwise agreed-upon in writing by the parties or as determined by the arbitrator.
7. The arbitration, if held, may proceed to completion in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award may be made by the Arbitrator, if supported by the evidence in the record, against the defaulting party. The arbitrator shall require the participating party who is present to submit such evidence as the arbitrator may require for the making of an award.

C. Representation by Legal Counsel.

Either party may be represented by legal counsel, at their choice, or may proceed without legal representation. A party intending to engage legal representation shall notify the other party and the arbitrator of the name, telephone number and address, and email address if available, of the counsel promptly when retained. Notice is effective when such legal counsel initiates an arbitration or responds for a party.

D. Selection and Qualifications of the Arbitrator.

The arbitrator shall be qualified based on education level with a minimum of a bachelor's degree and professional experience with familiarity and experience in arbitration proceedings. The arbitrators need not be attorneys if they are registered with the National Roster of Arbitrators maintained by the AAA. The arbitrator shall commit to abiding by the Code of Ethics for Arbitrators in Commercial Disputes promulgated by the AAA. The Arbitrator should be a "Stranger" to the Members -- that is, neither a Member, nor a relative, nor a business associate, nor a friend, nor any other person substantially known by any party/Member, in any capacity. This latter requirement can be waived only if both parties agree in writing.

The arbitration may utilize the services of the AAA; however, it is not a requirement so long as the arbitration process mirrors the process followed by the AAA, allowing for each side to present their case fairly with witnesses testifying as to their relevant knowledge on the record and under oath with relevant documents admitted.

1. Selection of Arbitrator and Financial Arrangements.

The parties should reach an agreement where possible on a candidate to conduct the arbitration that meets the requirements above.

Unless otherwise agreed to by the parties, confirmed in writing, the following steps should be followed:

- a. The Association sends **Notice of Intent to Arbitrate** to the Member and, within 10 business days thereafter, proposes two qualified candidates to the Member. The Member selects one arbitrator within 5 business days of receipt of the two names.
- b. The Association will then make arrangements with the arbitrator candidate, confirming his or her qualifications, checking availability, and clearing conflicts checks.
- c. The costs of the arbitration shall be borne equally. Any advance deposits required will be divided in half and each party shall remit its share directly to the arbitrator promptly or to the AAA if that route is followed. Any balance on all invoices from the arbitrator also shall be divided equally and paid separately. However, each party will bear the fees and costs of its own legal counsel, if any.
- d. Within ten (10) business days of the appointment of the arbitrator, each party will provide copies of all documents relevant to the dispute, to the arbitrator and each other along with a designation as to which documents the party intends to request be admitted formally into evidence. Any objections by one party to the documents of the other party must be in writing and submitted to the arbitrator within ten (10) business days from the

date mailed or transmitted to the objecting party. The arbitrator shall decide whether the challenged documents can be admitted and/or how much evidentiary weight should be given to the document.

2. Evidence to be Offered.

The parties may present such evidence as is relevant and material to the dispute and, in addition to what the parties present initially, they shall produce any additional evidence as the arbitrator may deem necessary for an understanding and determination of the dispute. Strict conformity to rules of evidence shall not be required yet the arbitrator shall determine the admissibility, relevance, and materiality of the evidence offered. The arbitrator may exclude evidence determined by the arbitrator to be cumulative or irrelevant and is given the discretion to weigh all the evidence for its probative value.

3. Authority and Obligations of the Arbitrator.

a. The arbitrator has the authority to determine whether the dispute is subject to this arbitration procedure.

b. The arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently as allowed by law.

c. The arbitrator may issue any interim orders he or she deems necessary, including, but not limited to, providing injunctive relief and orders for the protection or conservation of property until a final order is issued in an arbitration award.

d. The arbitrator shall recognize and abide by any privilege claims asserted with respect to any particular documents in terms of production or possible admission into the record, unless waived.

e. Within five (5) business days after sending notice from the Association to the Member as to its intent to appoint a specific arbitrator, the parties and their representatives, shall disclose to the Association and the proposed arbitrator, any circumstance likely to give rise to justifiable doubt as to the arbitrator's impartiality or independence, or any past or present relationship with the parties or their representatives as described above in Section 3.D. Failure on the part of a party or a representative to comply with the requirement of this subparagraph shall result in the waiver of the right to object to the appointed arbitrator. The arbitrator shall have the authority to rule on this question of impartiality or independence.

f. The arbitrator shall have the authority to rule on any objections with respect to the existence, applicability, scope, or validity of the arbitration process or to the arbitrability of any claim or counterclaim, without any need to refer such matters first to a court.

g. The arbitrator shall interpret and apply these procedures insofar as they relate to the arbitrator's powers and duties.

h. No party or their representative shall communicate *ex parte*

with an arbitrator, except that a party, or someone acting on behalf of a party, may communicate *ex parte* with a candidate in order to advise the candidate of the general nature of the controversy as well as the anticipated proceedings and to discuss the candidate's qualifications, availability, or independence in relation to the parties.

4. Procedure in Cases Without a Hearing.

The Association/claimant will submit a written Statement, under oath, to the arbitrator with a copy to the Member. The Statement will not exceed five (5) pages, doubled-spaced, unless the arbitrator decides more is needed. The Statement will be accompanied by copies of all documents that the Association is offering for inclusion in the record as evidence if they have not already been provided.

Within fifteen (15) business days, the Member shall submit a responsive Statement, under oath, to the arbitrator with the same page limitations as described in the preceding paragraph and the Statement shall be accompanied by all documents identified and offered into evidence as set forth in the preceding paragraph.

Upon reviewing the Statements and documents submitted by the parties, should the arbitrator determine that a hearing is needed to clarify an argument or to take testimony, he or she can make an appropriate order. If the arbitrator deems the record complete, he or she will promptly notify the parties that the record is closed.

The arbitrator shall issue a decision and award within twenty (20) business days from when the notice was sent to the parties, closing the record.

5. Procedure in Cases With a Hearing.

a. If there is a hearing, the arbitrator shall set the date, time, place, and method (including video, audio or other electronic means when appropriate) for such hearing. The parties shall cooperate in scheduling such a hearing in a timely manner for the earliest practical date and abide by the established date. The arbitrator shall send a notice of hearing to the parties at least ten (10) calendar days in advance of the hearing date, unless otherwise agreed by the parties.

b. Testimonial evidence shall be taken in the presence of the arbitrator and parties, except where any party is absent and has therefore waived the right to be present by default.

c. The hearing will begin with the identification of the case and the parties present by the arbitrator and an explanation of the process by the arbitrator. Thereafter, the Association will present its claim along with its evidence, both documentary and any testimony to support its claim. The Member shall then present evidence and any testimony to support its defenses. Witnesses for each party also shall be subject to examination by the arbitrator and the adverse party. The arbitrator has the discretion to alter this procedure, provided that the parties are treated equally and are given a fair opportunity to present their respective cases.

d. The parties shall each be permitted, but not required, to make a brief opening statement of what they intend to prove and a brief closing statement; the time allowed for statements to be determined by the arbitrator.

e. The arbitrator may also allow for the presentation of evidence by alternative means including video, audio or other electronic means other than an in-person presentation. Any approved alternative shall allow for a full opportunity for all parties to present any evidence that the arbitrator deems admissible and, with witnesses, provide an opportunity for cross-examination by the adverse party.

f. Any person having a direct interest in the arbitration may attend a hearing. Separately, it is within the sole discretion of the arbitrator to determine the “direct interest” in the arbitration of the non-witness who wishes to attend the hearing. In addition, the arbitrator shall also have the authority to issue a “rule on witnesses” and require the exclusion of all witnesses, other than a party or other essential person, during the testimony being provided by any other witness.

6. Official Record of Proceedings

A party desiring a transcribed record of a hearing shall make arrangements directly with a court reporting or other transcription service and shall notify the arbitrator and the other parties of these arrangements at least five (5) business days in advance of the hearing.

The requesting party or parties shall pay any appearance fee required and, if the transcript is ordered, the party requesting the transcript shall pay the cost of the original and the non-requesting party shall pay the cost for a copy. Alternatively, the parties may agree to split the costs of transcription equally if the agreement is confirmed in writing. If the transcription or other recording is designated by the arbitrator as the official record of the proceeding, a copy shall be made available to the arbitrator with the parties to split the cost of that copy equally. The final award of the arbitrator may include a re-allocation of all recording costs as determined in his or her sole discretion.

No other means of recording any proceeding will be permitted without the agreement of the parties and the arbitrator.

7. Close of Hearing and Award.

When satisfied that the hearing record is complete, the arbitrator shall declare the hearing closed. Notwithstanding, if the arbitrator determines that additional briefing on any legal points is required, the record shall be kept open until those briefs are submitted or within twenty (20) business days, whichever comes first. If a party fails to file such a brief timely, the right to do so is waived.

The time limit within which the arbitrator shall make a decision and award will begin on the date the hearing record is closed. The award shall be made within twenty (20) business days of the date the record is closed, whether the dispute is being resolved with or without a hearing, unless extended by the written agreement of the parties.

8. Form and Scope of Award.

a. Any award shall be in writing and signed by the arbitrator. The signature may be executed in electronic or digital form as well.

b. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of these procedures, as allowed by law, including, but not limited to, specific performance and the imposition of a restoration assessment if applicable.

c. In the final award, the arbitrator shall include an assessment of reasonable attorneys' fees, if any are incurred, as allowed by the Association's governing documents and the law, in favor of the party who has substantially prevailed in the arbitration. Any monetary award of the arbitrator shall include a provision that the amounts due shall bear interest at the statutory rate, then in effect, until paid.

d. The arbitrator shall deliver the award to the parties by placing the award or a true copy thereof in the mail addressed to the parties or their representatives at their last known addresses, or by personal delivery or electronic service of the award, or by any other manner that is permitted by law.

9. Finality of Award.

a. The award may not be appealed to any court for reversal. In any case where a party seeks to either enjoin the ADR procedure contained herein or challenge the award once finalized, the court shall impose reasonable attorneys' fees and costs on the party initiating the challenge, payable as they are incurred, regardless of the outcome of the challenge.

b. Notwithstanding, the parties shall be deemed to have consented to the entry of a judgment upon the arbitration award in the appropriate State court for the limited purpose of enforcing the award.

c. The parties to an arbitration under these procedures shall be deemed to have waived any claims of liability in any action for damages, or injunctive or other relief, for any act or omission in connection with any arbitration conducted under this Program.

d. The parties shall also be deemed to have consented that any mediator or arbitrator participating in this Program shall not be liable to any party in any action for damages, or injunctive or other relief, for an act or omission in connection with their participation in this ADR Program.

e. The parties to a dispute covered by these procedures may not call the arbitrator as a witness in litigation or any other proceeding relating to the arbitration. The arbitrator is not a necessary or proper party to any judicial proceeding and may not be called to testify as a witness about the arbitration in any such proceeding.

10. Sanctions

The arbitrator may, upon a party's request, order appropriate non-monetary, where a party fails to comply with its obligations under these procedures or with an order of the arbitrator. In the event that the arbitrator enters a sanction that limits any party's participation in the arbitration or results in an adverse determination of an issue or issues, the arbitrator shall provide the reasoning in writing after giving the offending party an opportunity to avoid the sanction. The arbitrator also shall provide a party subject to a sanction the opportunity to respond prior to imposing the sanctions.