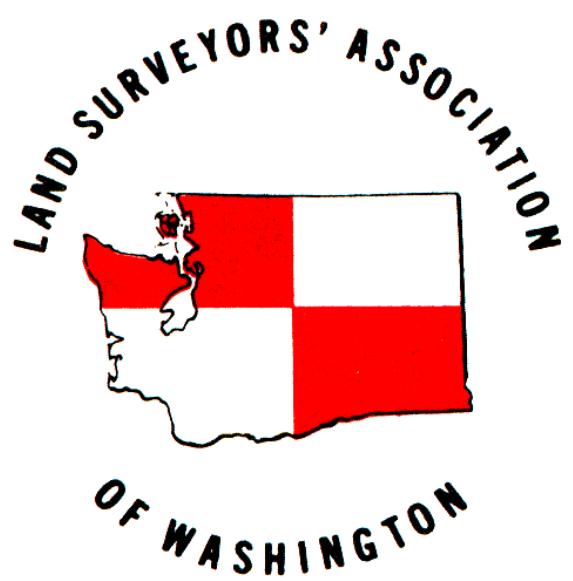


ARBITRATION HANDBOOK



Land Surveyors' Association of Washington

Arbitration Handbook

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INTRODUCTION

Surveyors want to survey boundaries, not argue about them. But in the practice of a profession which involves mathematically precise measurements between non-precise positions and the application of professional opinion in numerous situations, disputes are inevitable. Parties may disagree as to their individual observations no matter how carefully each is achieved. This may lead to complaints about performance, and similar misunderstandings.

These controversies seldom involve great legal issues. On the contrary, they concern the same evaluation of facts and interpretations that surveyors are accustomed to dealing with every day. Consequently, when differences arise out of everyday affairs, parties often prefer to settle them privately and informally in the kind of professional way that encourages continued professional relationships. This is what Survey Arbitration is for.

Arbitration is the referral of a dispute to one or more impartial professionals for quick and binding determination. It is private and informal, designed for quick, practical and inexpensive settlements. But at the same time, arbitration is an orderly proceeding, governed by rules of procedure and standards of conduct. This is so, especially when proceedings are administered by an impartial professional organization. Such an organization is the Land Surveyors' Association of Washington.

The rules and procedures for using the Land Surveyors' Association of Washington Board of Arbitration are described in the following pages.

INITIATION

The Land Surveyors' Association of Washington Board of Arbitration procedures may be initiated by any two professional land surveyors who find that they are in conflict concerning a boundary or corner location. The area of concern must be within Washington State. A professional land surveyor does not have to be a member of the Land Surveyors' Association of Washington to be a party to arbitration, but must be practicing within the requirements of the Washington State Registration Act for Civil Engineers, and Land Surveyors as prescribed by the Revised Code of Washington, at the time of involvement in the situation. Arbitration will only apply to conflicts which occur concerning location of corners, lines and/or land boundaries which do not involve a contest of unwritten rights such as adverse possession or acquiescence.

Arbitration procedures may be initiated pursuant to accomplishment of the following:

1. Certification by the requesting parties that they have attempted to discuss and resolve the conflict.
2. Certification by the requesting parties that the conflict has been submitted to a third party for a review and recommendations, and that the recommendations received were not acceptable. This paragraph may be waived with the consent of both parties.
3. A written request, signed by both parties, requesting initiation of arbitration procedures by the Land Surveyors' Association of Washington. A deposit in the amount of \$5,000 from each party must accompany the request for Arbitration. If, in the course of the proceedings it becomes apparent that the amount on deposit will be insufficient to cover all costs, the administrator may require that additional funds be deposited as a contingency.

FIRST STEP - THE AGREEMENT TO ARBITRATE

Upon receipt of a REQUEST FOR ARBITRATION (see attached sample, Exhibit 1), by the Land Surveyors' Association of Washington State Arbitration Chairman or Chapter Arbitration Chairman, an ARBITRATION AGREEMENT (see attached sample, Exhibit 2) will be prepared by the chairman who will then act as the Administrator for the Board of Arbitration. A copy of the ARBITRATION AGREEMENT will be sent to each of the parties for their completion and execution. The ARBITRATION AGREEMENT will name the parties, contain a brief statement of the nature and location of the conflict, and contain a statement of submittal of the conflict to binding arbitration. The statement, which may include the owners of the property involved, will be executed by the requesting parties. Upon receipt of the executed ARBITRATION AGREEMENT and appropriate fees, the Administrator will proceed to empanel a Board of Arbitrators.

SECOND STEP - SELECTION OF ARBITRATORS

Upon receiving the Arbitration Agreement, unless the parties have indicated another method, the Land Surveyors' Association of Washington will follow this simple and effective system for selecting the arbitrators.

A list of six potential arbitrators, each technically qualified to resolve the controversy, will be provided to the parties from which they may indicate their preferences or objections. If three mutually acceptable names are not selected, another list of six names will be provided. If three mutually acceptable names still cannot be found, the Administrator will make the selection.

A full and specific procedure can be found in the Land Surveyors' Association of Washington Arbitration Rules, Section 12. Appointment from Panel.

THIRD STEP - PREPARING FOR THE HEARING

The Administrator will consult the parties to determine a mutually convenient day and time for the hearing and communicate this information to the arbitrators who will make the date official. (Note: In this, as, in all administrative matters, the Administrator manages details and arrangements. This has a two-fold advantage: It relieves the arbitrators of the burden, and eliminates the necessity of direct communication between the parties and the arbitrators except at the hearing. Specifically forbidding communications with the arbitrators, except in the presence of both parties avoids the danger that one side may offer arguments or evidence that the other had no opportunity to rebut.)

Since the arbitrators will make a finding on the basis of facts and exhibits presented at the hearing, it is essential that the parties carefully prepare for arbitration.

1. Each party will be supplied with a copy of the Board of Arbitration Procedures at the time of official notification of the hearing date.
2. Assemble all documents and papers you will need at the hearing. Where feasible, make photostatic copies or blueprints of all documents and/or drawings for the arbitrators and the other party. If some of the documents you need are in the possession of the other party, ask that they be brought to the arbitration or copies furnished to you prior to the arbitration so that they may be included in your presentation. Although no party may be forced to furnish information, documents or drawings to the other party upon request for same, to withhold such requested information might be considered by the arbitrators to show an uncooperative or unprofessional attitude.
3. If it may be necessary for the arbitrators to visit a site for on-the-spot investigations, make plans in advance. The arbitrators will be accompanied by representatives of both parties, unless either one of the parties specifically authorize that the investigation be conducted without their presence.

4. As witnesses may be presented, alert them to be available for the hearing date.
5. A cassette tape recording of the hearings will be available to the parties for transcription, or if a stenographic record was made, a copy of the transcription will be available. Arrangements will be made in advance by the Administrator of the Board of Arbitration, of the method of recording/transcription and for the necessary equipment and material.
6. The right to representation by counsel in arbitration is guaranteed by the rules of the Land Surveyors' Association of Washington. A party who desires to be represented should notify the other party of the name and address of counsel and file a copy of such notice with the Administrator at least 30 days before the hearing. When arbitration is initiated by counsel, or when the respondent replies through an attorney, however, such notice is deemed to have been given.

FOURTH STEP - PRESENTATION OF THE CASE

Arbitration hearings are conducted somewhat like court trials, except they are more informal. Hearings will be conducted so as to correspond with the printed LSAW Board of Arbitration Procedures. Arbitrators are not required to follow strict rules of evidence. They must hear all the evidence material to the issue but they may determine for themselves what is relevant. Arbitrators are therefore inclined to accept evidence that might not be allowed by judges. This does not mean however, that all evidence will be considered of equal weight.

Either party may proceed first with its case, followed by the other. If no preference is designated by either party, or a conflict as to which party shall initiate the presentation, designates no preference, the order of presentation will be decided by a flip of a coin. In any event, the "burden of proof" is not on one side more than the other, for each party must try to convince the arbitrators of the correctness of its position and no hearing is closed until both have had a full opportunity to do so.

That is why it is equally the responsibility of the parties to present their cases to the arbitrators in an orderly and logical manner. This includes, but is not limited to:

1. An opening statement that clearly but briefly describes the controversy and indicates what is to be proved. Such a statement lays the ground work and helps the arbitrators understand the relevance of testimony to be presented.
2. A discussion of the conclusion sought. This is important because the arbitrator's power is conferred by the agreement of the parties. Each party should try to show that the solution it requests is within the arbitrator's authority to grant.
3. Introduction of witnesses in a systematic order to clarify the nature of the controversy and to identify documents and exhibits. Cross-examination of witnesses is permissible, but each party should plan to establish its case by its own witnesses.

4. A closing statement that should include a summary of the evidence arguments and a refutation of points made by the opposition.

Above all, a cooperative attitude is essential for effective arbitration. Over emphasis and exaggeration, concealing of facts, introduction of legal technicalities with the object of delaying proceedings, or, in general, disregard for ordinary rules of courtesy and decorum, may have an adverse effect on the arbitrators.

After both sides have had equal opportunity to present all their evidence, the Board of Arbitrators will declare the hearing closed. The arbitrators have 30 days from that time within which to render their Final Report, unless the agreement provides otherwise.

FINAL REPORT

The Final Report is a decision of the Board of Arbitration concerning the matter submitted to it under the Arbitration Agreement. A majority decision is required. The Final Report will contain a synopsis of the evidence presented and a conclusion based upon the Board's findings. It will be made within the limits of the Arbitration Agreement and its Rules, and based upon evidence as submitted to the Board of Arbitration. The Board of Arbitration may find that insufficient information has been presented upon which to base a Final Report conclusion and finding. The Board of Arbitration may require either or both parties to perform certain specific items in connection with the conclusion and Final Report findings.

The power of the Board of Arbitration ends with the filing of the Final Report. The Final Report may not be changed by the arbitrators once it is made, unless the parties mutually agree to reopen the proceedings and to restore the power to the arbitrators.

When the parties agree to request that the arbitrators reopen a proceeding in order to obtain a clarification or interpretation of a disputed ruling, the agreement to reopen must be in writing. The agreement will be filed with the Administrator, who will then proceed to make the necessary arrangements with the arbitrators.

LAND SURVEYORS' ASSOCIATION OF WASHINGTON RULES FOR SURVEY ARBITRATION

Section 1 - AGREEMENT OF PARTIES - The parties shall be deemed to have made these Rules a part of their Arbitration Agreement whenever they request arbitration by the Land Surveyors' Association of Washington. (LSAW). These Rules and any amendment thereof, shall apply in the form at the time the arbitration is initiated.

Section 2 - NAME OF BOARD - Any board constituted by the parties for the settlement of their dispute under these Rules shall be called the Board of Arbitration.(Board)

Section 3 - ADMINISTRATOR - When parties agree to arbitrate under these Rules and arbitration is initiated there under, they hereby constitute the Land Surveyors' Association of Washington as the Administrator of the arbitration. The authority and obligations of the Administrator are prescribed in the Arbitration Agreement and in these Rules.

Section 4 - DELEGATION OF DUTIES - The duties of the Land Surveyors' Association of Washington under these Rules may be carried out through the LSAW State Arbitration Chairman and/or a LSAW Chapter Arbitration Chairman, or such other officers or committees as the LSAW may direct, or by an arbitrator mutually selected by the parties.

Section 5 - PANEL OF ARBITRATORS - The LSAW will establish and maintain a Panel of Arbitrators and shall appoint arbitrators therefrom as hereinafter provided.

Section 6 - OFFICE OF ADMINISTRATOR - The general office of the Administrator (Arbitration Chairman) is the headquarters of the LSAW, which may however, assign the administration of an arbitration to any of its chapters, or to an arbitrator mutually selected by the parties.

Section 7 - CHANGE OF CLAIM - After filing of the request for arbitration, if either party desires to make any new or different claims, such claim shall be made in writing and filed with the Administrator, and a copy thereof shall be mailed to the other Party, who shall have a period of ten (10) days from the date of receipt of such mailing in which to file an answer with the Administrator. After the arbitrators are appointed however, no new or

different claim may be submitted except with the arbitrator's consent.

Section 8 - INITIATION UNDER REQUEST FOR ARBITRATION - Parties to any existing dispute may commence an arbitration under these Rules by filing at the general office of the LSAW, or with the State or Chapter Arbitration Chairman, two copies of a written agreement to arbitrate under these Rules, signed by the parties. It shall contain a statement of the matter in dispute and the remedy sought, together with the appropriate fees as provided in the fee schedule.

Section 9 - PRE-HEARING CONFERENCE - At the request of the parties or at the discretion of the Administrator, a pre-hearing conference with the Administrator and the parties or their counsel will be scheduled in appropriate cases to arrange for an exchange of information and a stipulation of uncontested facts so as to expedite the arbitration proceedings.

Section 10 - FIXING OF LOCALE - The parties may mutually agree on the locale where the arbitration is to be held. If the locale is not designated within ten (10) days of the filing of the Agreement to Arbitrate, the Administrator shall have the power to determine the locale. The decision of the Administrator shall be final and binding. If any party requests that the hearing be held in a specific locale and the other party files no objection thereto within seven (7) days after receipt of the notice of request, the locale shall be the one requested.

Section 11 - QUALIFICATIONS OF ARBITRATORS - Any arbitrator appointed pursuant to Section 12 or Section 14 shall be neutral, and subject to disqualification for the reasons specified in Section 18. If the Arbitration Agreement names arbitrators or specifies any other method of appointing arbitrators, or if the parties specifically agree in writing, such arbitrators shall not be subject to disqualification for any said reasons.

Section 12 - APPOINTMENT FROM PANEL - If the parties have not provided any other method of appointment, the arbitrators shall be appointed in the following manner:

- (a) Immediately after the filing of the Agreement to Arbitration, the Administrator shall submit simultaneously to each party to the dispute, an identical list of

names of 6 persons chosen from the Panel.

- (b) Each party to the dispute shall have ten (10) days from the mailing date in which to cross off any names objected to, number the remaining names to indicate the order of preference, and return the list to the Administrator.
- (c) If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable.
- (d) From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the Administrator shall invite the acceptance of the arbitrators to serve.
- (e) If the parties fail to agree upon any of the persons' named, or if acceptable arbitrators are unable to act, or if for any other reason the appointments cannot be made from the submitted list, the Administrator shall submit an additional list of 6 persons to the parties. If the parties again fail to agree upon any of the persons named, or if acceptable arbitrators are unable to act, or if for any other reason the appointments cannot be made from the submitted list, the Administrator shall have the power to make the appointment from among other members of the Panel without the submission of any additional lists.

Section 13 - DIRECT APPOINTMENT BY THE PARTIES - If the agreement of the parties names arbitrators or specifies a method of appointing arbitrators, that designation method shall be followed. Notice of appointment, with the name and address of each arbitrator, shall be filed with the Administrator by the appointing party. Upon the request of any such appointing party, the Administrator shall submit a list of members of the Panel from which the party may, if it so desires, make the appointment.

If the agreement specifies a period of time within which the arbitrators shall be appointed and any party fails to make such an appointment within that period, the Administrator shall make the appointments.

If no period of time is specified in the agreement, the Administrator shall notify the

parties to make the appointment and, if within ten (10) days thereafter, such arbitrators have not been appointed, the Administrator shall make the appointments.

Section 14 - APPOINTMENTS OF NEUTRAL ARBITRATORS BY PARTY-

APPOINTED ARBITRATORS - If the parties have appointed their arbitrators or if either or both of them have made appointments as provided in Section 13, and have authorized such arbitrators to appoint a neutral arbitrator within a specified time and no appointment is made within such time, or any agreed extension thereof, the Administrator shall appoint a neutral arbitrator who shall act as Chairman of the Arbitrators.

If no period of time is specified for the appointment of the neutral arbitrator and the parties do not make the appointment within ten (10) days of the date of appointment of the last party-appointed arbitrator, the Administrator shall appoint such neutral arbitrator who shall act as Chairman of the Arbitrators.

If the parties have agreed that their arbitrators shall appoint the neutral arbitrator from the Panel, the Administrator shall furnish to the party-appointed arbitrators, in a manner prescribed in Section 12, a list selected from the Panel, and the appointment of the neutral arbitrator shall be made as prescribed in such section.

Section 15 - NUMBER OF ARBITRATORS - If the Arbitration Agreement does not specify the number of arbitrators, the dispute shall be heard and determined by three arbitrators, unless the LSAW, in its discretion, directs that a greater number of the arbitrators be appointed.

Section 16 - NOTICE TO ARBITRATORS OF APPOINTMENT - Notice of the appointment of the arbitrators, whether appointed by the parties or by the LSAW, shall be mailed to the arbitrators by the Administrator, together with a copy of these Rules, and the signed acceptance of the arbitrators shall be filed prior to the opening of the first hearing.

Section 17 - DISCLOSURE AND CHALLENGE PROCEDURE - A person appointed as an arbitrator shall disclose to the LSAW any circumstances likely to affect impartiality, including any biased, financial or personal interests in the result of the arbitration, or past or

present relationship with the parties or their counsel. Upon receipt of such information from an arbitrator or other source, the Administrator shall communicate such information to the parties, and, if it is deemed appropriate to do so, to the arbitrators and others. Thereafter, the LSAW shall determine whether the arbitrators should be disqualified and shall inform the parties of its decision, which shall be conclusive.

Section 18 - VACANCIES - If any arbitrator should resign, die, withdraw, refuse, be disqualified, or be unable to perform the duties of the office, the Administrator may, on proof satisfactory to them, declare the office vacant. Vacancy shall be filled in accordance with applicable provisions of these Rules and the matter shall be reheard unless the parties shall agree otherwise.

Section 19 - TIME AND PLACE - The Administrator, after consulting the parties, shall fix the time and place of the initial hearing. The Chairman of the Board of Arbitrators shall fix the time and place of any continuation of the initial hearing. The Administrator shall mail to each party notice thereof, at least ten (10) days in advance, unless the parties, by mutual agreement, waive such notice or modify the terms thereof.

Section 20 - REPRESENTATION BY COUNSEL - Any party may be represented by counsel. A party intending to be so represented shall notify the other party and the Administrator of the name and address of counsel at least thirty (30) days prior to the date set for the hearing at which counsel is first to appear. When arbitration is initiated by counsel, or when an attorney replies for a party, such notice is deemed to have been given.

Section 21 - RECORD - The LSAW Administrator shall make the necessary arrangements for a stenographic record and transcript, or the taking of a cassette recording as a record of the proceedings. The cost of such recording transcription shall be paid by the parties as provided in Section 46. If, in the case of cassette recording any party wishes a written transcript of said recordings, copies of the original tapes will be made available at cost as provided in said Section 46.

Section 22 - ATTENDANCE AT HEARINGS - The arbitrators shall maintain the

privacy of the hearings unless provided otherwise. Any person having a direct interest in the arbitration is entitled to attend hearings. The arbitrators shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witnesses. It shall be discretionary with the arbitrators to determine the propriety of the attendance of any other person.

Section 23 - ADJOURNMENTS - The arbitrators may take adjournments upon the request of a party or upon the arbitrator's own initiative and shall take such adjournment only when all the parties agree thereto.

Section 24 - OATHS - Each arbitrator shall take an oath of office. The arbitrators have the discretion to require witnesses to testify under oath administered by any duly qualified person. If demanded by either party, the Arbitrator shall do so.

Section 25 - DECISIONS - The decision of the arbitrators must be made by at least a majority unless the concurrence of all is expressly required by the Arbitration Agreement.

Section 26 - ORDER OF PROCEEDINGS - A hearing shall be opened by the filing of the oath of the arbitrators, and by the recording of the place, time and date of the hearing, the presence of the arbitrators, the parties, and counsel, if any, and by the receipt of the arbitrators of the statement of the claim and answer, if any.

The arbitrators may, at the beginning of the hearing, ask for statements clarifying the issues involved.

Each of the parties to the arbitration shall be given an opportunity to submit written evidence, drawings, testimony and call witnesses in order to present an explanation of their position to the Board. Witnesses shall submit to questions or other examination. In the event that the parties do not agree as to which will make first presentation, the order of presentation shall be determined by the Chairman of the Board of Arbitration by flip of a coin. The arbitrators have discretion to vary this procedure, but shall afford full and equal opportunity to all parties for the presentation of any material or relevant proof.

Exhibits, when offered by either party, may be received in evidence by the

administrators.

The names and addresses of all witnesses and exhibits in the order received, shall be made a part of the record.

Section 27 - ARBITRATION IN THE ABSENCE OF A PARTY - The arbitration may proceed in the absence of any party which, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made solely on default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrators may require for the making of a Final Report.

Section 28 - EVIDENCE - The parties may offer such evidence as they desire and shall produce such additional evidence as the Arbitrators may deem necessary for a full understanding and determination of the dispute. The arbitrators, if authorized by law to subpoena witnesses or documents, may do so upon the arbitrator's initiative or upon the request of any party. The arbitrators shall be the judge of the relevancy and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all the arbitrators and of all the parties except where any of the parties is absent, in default or has waived right to be present.

Section 29 - EVIDENCE BY AFFIDAVIT AND FILING OF DOCUMENTS - The arbitrators shall receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as the arbitrators deem it entitled to after consideration of any objections made to its admission.

All documents not filed with the arbitrators at the hearing, but arranged for at the hearing or subsequently by agreement of the parties, shall be filed with the Administrator for transmission to the arbitrators. All parties shall be afforded an opportunity to examine such documents.

Section 30 - INSPECTION OR INVESTIGATION - Whenever requested by the parties, or if the arbitrators deem it necessary to make an inspection or investigation in connection with the arbitration, the arbitrators shall direct the Administrator to advise the

parties of such intention. The arbitrators shall set the time and the Administrator shall notify the parties thereof. Any party who so desires may request to be present at such inspection or investigation. Requesting parties presence at the inspection shall be at the discretion of the Board. However, no party to the arbitration shall be excluded from any inspection. In the event that one or more parties are not present at the inspection or investigation, the arbitrators shall make a verbal or written report, to the absent parties and afford them an opportunity to comment.

Section 31 - CLOSING OF HEARING - The arbitrators shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the arbitrators shall declare the hearings closed and minutes thereof shall be recorded. If briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrators for the receipt of briefs. If the documents are to be filed as provided for in Section 29, and the date set for their receipt is later than that set for the receipt of the briefs, the latter date shall be the date of closing the hearing. The time limit within which the arbitrators are required to make the award shall commence to run, in the absence of other agreements by the parties, upon the closing of the hearings.

Section 32 - REOPENING OF HEARINGS - The hearings may be reopened by the arbitrators own motion or upon application of a party at any time before the Final Report is made. If the reopening of the hearings would prevent the making of the Final Report within the specific time agreed upon by the parties in the contract out of which the controversy has arisen, the matter may not be reopened, unless the parties agree upon the extension of such time limit. Where no specific date is fixed in the Arbitration Agreement, the arbitrators may reopen hearings and the arbitrators shall have thirty (30) days from the closing of the reopened hearings within which to make a Final Report.

Section 33 - WAIVER OF ORAL HEARINGS - The parties may provide, by written, agreement, for the waiver of oral hearings. If the parties are unable to agree as to the procedure, the Administrator shall specify a fair and equitable procedure.

Section 34 - WAIVER OF RULES - Any party who proceeds with the arbitration after knowledge that any provision or requirement of these Rules has not been complied with and fails to state objection thereto in writing, within five (5) days of the close of the hearings, shall be deemed to have waived the right to object.

Section 35 - EXTENSIONS OF TIME - The parties may modify any period of time by mutual agreement. The LSAW, for good cause, may extend any period of time established by these rules. The Administrator shall notify the parties of any such extension of time and its reasons therefore.

Section 36 - COMMUNICATION WITH ARBITRATORS AND SERVING OF NOTICES -

- (a) There shall be no communication between the parties and the arbitrators other than at oral hearings. Any other oral or written communications from the parties to the arbitrators shall be directed to the Administrator for transmittal to the arbitrators.
- (b) Each party to an agreement which provides for arbitration under these Rules shall be deemed to have consented that any papers, notices or process necessary or proper for the initiation or continuation of an arbitration under these Rules and for any court action incidental to, or in conjunction therewith, or for the entry of judgment on any award made hereunder, may be served upon such party by mail addressed to each party or its attorney at its last known address or by personal service within or without Washington State, wherein the arbitration is to be held provided that reasonable opportunity to be heard with regard thereto has been granted such party.

Section 37 - TIME OF FINAL REPORT - The Final Report shall be made promptly by the Arbitrators and, unless otherwise agreed by the parties, no later than thirty (30) days from the closing of the hearings or if all hearings have been waived, from the date of transmitting the final statements and proofs to the arbitrators.

Section 38 - FORM OF FINAL REPORT - The Final Report shall be in writing and shall be signed by at least a majority of the arbitrators. It shall be executed by the arbitrators and bear their registration number and professional seal.

Section 39 - SCOPE OF FINAL REPORT - The arbitrators may state any conclusion which the arbitrators deem just and equitable and within the scope of an agreement of the parties, including but not limited to, specific performance of specific items. The arbitrators, in the Final Report, shall assess arbitration fees and expenses in equal amounts to each party, and, in the event of any administrative fees or expenses that are due LSAW, in favor of LSAW, and/or the Administrator.

Section 40 - AWARD UPON SETTLEMENT - If the parties settle their dispute during, the course of the arbitration, the arbitrators, upon their request, may set forth the terms of the agreed settlement in a Final Report.

Section 41 - DELIVERY OF FINAL REPORT - Parties shall accept as legal delivery of the Final Report, the placing of the Final Report or a true copy thereof, in the mail by the Administrator, addressed to each party at its last known address, or to its attorney or personal service, of the Final Report, or the filing of the Final Report in any manner which may be deemed acceptable by each party at the hearing.

Section 42 - RELEASE OF DOCUMENTS - The Administrator shall, upon the written request of a party, furnish to such party, at its expense, certified facsimiles of any papers documents or tape recordings of the hearing in the Administrator's possession that may be required.

Section 43 - APPLICATIONS TO COURT -

- (a) No judicial proceedings by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.
- (b) The LSAW is not a necessary party in judicial proceedings relating to the arbitration.
- (c) The parties to these Rules shall be deemed to have consented that the Final

Report of the arbitration may be entered in any Federal or State Court.

(d) Parties to these Rules shall be deemed to have consented that the arbitration Final Report has been given in an undisputable condition in regard to the action of the arbitrators and the Land Surveyors' Association of Washington or any member thereof, and that the arbitrators, the Land Surveyors' Association of Washington or any member thereof, cannot be held liable either individually or collectively, for any action.

Section 44 - ADMINISTRATIVE FEES - As a non-profit organization, the Land Surveyors' Association of Washington shall prescribe an administrative fee schedule to compensate it and the arbitrators for the costs of providing administrative services. The schedule in effect at the time of filing shall be applicable.

Section 45 -FEE WHEN ALL HEARINGS ARE WAIVED - When all oral Hearings are waived under Section 33, administrative and arbitrators' fees shall apply.

Section 46 - EXPENSES - The expenses of witnesses for either side shall be paid by the party producing such witnesses. The cost of tape recordings and/or stenographic recording/transcription services shall be prorated equally among all parties. Copies of the Hearing tape recordings shall be paid for by the party requesting the same.

All other expenses of the arbitration, including required traveling and other expenses of the arbitrators and the Administrator, and the expenses of any witness or the cost of any proofs produced at the direct request of the arbitrators, shall be borne equally by the parties, unless they agree otherwise.

Section 47 - ARBITRATORS FEE - Members of the Land Surveyors' Association Panel of Arbitrators serve with fee in surveying arbitration.

Any arrangements for the compensation of a neutral arbitrator shall be made through the Administrator and not directly by the arbitrator with the parties.

Section 48 - DEPOSITS - The Administrator shall determine, based on the current fee schedule, the amount of money, including Arbitrators fees deemed necessary to defray the

expense of the arbitration, and may require the parties to deposit such sums in advance. The Administrator shall render an accounting to the parties, and return any unexpended balance within 45 days of the final report.

Section 49 -INTERPRETATION AND APPLICATION OF RULES - The arbitrators shall interpret and apply these Rules in so far as they relate to the arbitrators powers and duties. When a difference arises among the arbitrators concerning meaning or application of any such rules, it shall be decided by a majority vote. If that is unattainable, the arbitrators may refer the question to the LSAW State Arbitration Chairman for final decision. All other rules shall be interpreted and applied by the Administrator.

BOARD OF ARBITRATION PROCEDURES

1. The Board shall, from among its members, select a Chairman who will preside at the hearing. He shall act as moderator, and exercise the duties of a presiding officer and act on all procedural matters. The Chairman shall also be responsible for providing the parties to the arbitration with a final written report as to the Board's conclusion.
2. Each of the parties to the arbitration hearing shall have an opportunity to submit written evidence, drawings, testimony and call witnesses in order to present an explanation of their position to the Board. In the event that the parties do not agree as to which will make first presentation, the presentation shall be determined by the Chairman by flip of a coin.
3. Each of the parties will be allowed a brief opening statement prior to their presentation.
4. Members of the Board of Arbitration may, during a presentation, address a witness to extract clarification of a statement or evidence presented. Each party shall be allowed to make their full presentation free of interference or debate by the other party. Challenges to statements made by witness shall be confined to rebuttal only.
5. Upon completion of the presentation by each party, the Chairman shall entertain a request by either or both parties to make an onsite inspection of physical evidence. If either party requests such an inspection, the Board shall do so. If no request for an onsite inspection is made by either party, the Board may, by the determination of the majority of the Board members, initiate an inspection. Any site inspection will be made by all members of the Board, and the company of the parties and any additional witnesses or persons whom the parties may request to accompany the Board, provided, that a majority of the Board members determine that said witnesses or persons will be of an aid and/or assistance in their examination.
6. Upon the conclusion of the site inspection, the Board shall reconvene with the parties.

Members of the Board shall, at this time, request any additional information or clarification from any of the parties.

7. At such time as the members of the Board are satisfied that the matters of the presentation and inspection have been clarified, the Chairman shall call upon the parties, in the order of presentation, to present rebuttal statements to the Board. Rebuttal may be made by more than one person representing each party, but by no more than one person at a time. The Chairman shall request rebuttal of the first party, and then of the second. Either party may request permission of the Chairman, at the end of the other party's rebuttal statement, to further address the Board in rebuttal. The Chairman's decision as to whether or not further rebuttal will be accepted by the Board, shall be binding. The Chairman shall have the right to limit and/or terminate any rebuttal.
8. Upon the conclusion of rebuttal by the Chairman, he shall allow each party, in order of original presentation, to make a final summary statement to the Board. The Chairman may limit the time for said summary.
9. At the conclusion of the summary statements and with the acknowledgment of all parties that all evidence has been presented to the Board, the Chairman shall adjourn the hearing.
10. The Chairman shall, upon adjournment, set a time and place for the Board to privately reconvene for consideration of the evidence. The Board's considerations may be made at one or more such meetings. The Board may, at the conclusion of their deliberations, advise the parties by memo of their findings. Within thirty (30) days of the conclusion of the hearing, a final report shall be filed with both, parties as well as the Administrator. If possible, said report should include the following:
 - a. References to any court cases, written authorities (i.e. Clark, Brown, Instruction for the Survey of the Public Lands, etc.), as the same were utilized by the Board in conjunction with their determinations.

- b. If the Board is able to determine that either or both parties were or were not competent in the execution of their work, a statement indicating the same may be included in the report.
 - c. If the Board is able to determine that either or both of the parties were or were not negligent in the execution of their work, a statement indicating the same may, be included in the report.
- 11. Upon submittal of the Final Report to all parties, a statement for the expenses, of the Board members fees with any incurred expenses by the Board members shall be formulated by the Administrator. The Administrator shall prepare a statement for expenses incurred by or on behalf of the Land Surveyors' Association of Washington and forward the statements to each of the parties. If either of the parties question any of the sums requested, such questions shall be presented to the Executive Committee of the Land Surveyors' Association of Washington for consideration. The Executive Committee's decision shall be final and binding.
- 12. If the Final Report requires the preparation by either or both of the parties of any documents, drawings, corner records, etc. the parties so designated shall prepare same and promptly submit same to the Administrator. The Administrator shall distribute and/or file for record with the County Auditor within the County in which the conflict occurred, under the auspices of the Washington State Survey Recording Act, all such appropriate items, together with, a copy of the Final Report, if appropriate. Any reasonable expenses incurred in accomplishing said distribution and/or recording shall be shared jointly by the parties.

August 1998

FEE SCHEDULE

Each of the arbitrators shall be reimbursed for all time spent attending hearings, site inspections, Final Report conferences, and preparation of the Final Report.

Such time will be individually reported to the administrator and each arbitrator shall receive compensation for the time reported at the rate of \$110.00 per hour. No additional reimbursement may be requested by any arbitrator unless arrangements for specific items are presented to the Administrator at least ten (10) days prior to the hearing, and acknowledged and consented to in writing by both parties.

The Administrator for the Board of Arbitration shall be reimbursed for time spent managing details and arrangements such as preparation of submission agreement, appointment of arbitrators, consultation with the parties, etc. The administrator shall receive compensation at the rate of \$60.00 per hour.

Expenses chargeable by the Land Surveyor's Association of Washington, the Administrator and Arbitrator's shall be reimbursed as follows:

1. Transportation expenses (office to hearings round trip, site inspections, etc.)
 - a. Auto mobile travel \$0.325 per mile
 - b. Commercial hire actual cost
 - c. Tolls, parking, etc. actual cost
2. Typing and secretarial services \$18.00 per hour
3. Telephone tolls; postage; copier service; hearing room rentals, cassette tapes, stenographic recording/transcription services and incidental items as may be necessary or required by the final report actual cost.
4. Overnight lodging (if required) and meal expense actual cost.
5. Incidental, items as may be required for the proper execution of the hearing, but not to exceed \$100.00 unless specifically authorized in writing by the parties.

DEPOSITS - Each party shall submit a deposit of \$5,000.00 at the time of filing of the Request for Arbitration. Any unexpended funds will be rebated equally to each party within forty-five (45) days of the conclusion of the hearing.

Exhibit 1**REQUEST FOR ARBITRATION**

This request entered into this _____ day of _____ 2_____, by and between the undersigned parties.

1 PARTIES - The parties to this request are:

a. _____ P.L.S. (_____) and
Deposit Attached

b. _____ P.L.S. (_____)
Deposit Attached

Both parties are currently registered by the Washington State Board of Registration for Professional Engineers and Land Surveyors to practice land surveying in said state.

2. CONTROVERSY - A controversy has arisen between the parties concerning the location of:

(Give a brief description of the controversy noting location by County, Section, Township and Range)

This controversy does not involve a contest of unwritten rights.

3. RECONCILIATION - The parties to this request hereby certify that:

- a. They have attempted to discuss and resolve the conflict.
- b. They have attempted to submit the conflict to a third party for review and recommendations.
- c. They have fully disclosed to each other, all information pertinent to the conflict.

4. REQUESTS - The parties do hereby request the (name of chapter if applicable), Land Surveyors Association of Washington to prepare and submit to each party, an Arbitration Agreement pursuant to the Land Surveyors' Association of Washington Rules for Arbitration.

IN WITNESS WHEREOF, the parties hereto, have set their hands and seals the day

and year first above written.

by: _____ P.L.S. by: _____ P.L.S.

(Firm) _____ (Firm) _____

(Address) _____ (Address) _____

(Phone) _____ (Phone) _____

Exhibit 2

ARBITRATION AGREEMENT

THIS AGREEMENT entered into this _____ day of _____, 2_____
by and between the undersigned parties.

1. **PARTIES** - The parties to this agreement are:

- a. _____ P.L.S. and
- b. _____ P.L.S.

Both parties are currently licensed by and/or acknowledged to practice land surveying
by the Washington State Board of Registration of Professional Engineers and Land
Surveyors.

- c. _____ and
- d. _____

Parties being the fee owners of the lands affected herein.

2. **CONTROVERSY** - A controversy has arisen between the parties concerning the
location of:

(Give a brief description of the controversy noting location by County, Section,
Township and Range)

3. **ARBITRATION** - The parties hereby agree to submit the controversy to a Board of
Arbitration consisting of (____) Land Surveyors, each of whom is a fully qualified and
currently licensed Land Surveyor in the State of Washington.

4. **PROCEDURE**

- (a) The procedure before the Board of Arbitration shall be consistent with the
Land Surveyors' Association of Washington Rules for Survey Arbitration as
the same are currently published, The Board of Arbitration will promote the
complete and equitable disclosure of all facts and evidence concerning the
above controversy. Evidence submitted to the Board of Arbitrators shall be

limited to evidence relevant to the controversy.

(b) All evidence shall be given under oath administered by the Chairman of the Board of Arbitration and shall be recorded by electronic or stenographic means.

5. DECISIONS

(a) The decision of the Board of Arbitration shall be presented in a written Final Report signed by at least _____(____) members thereof, and shall be based solely upon the evidence as presented at the hearing or as otherwise directed by the Board of Arbitration. Said Final Report shall recite the supporting facts and conclusions and shall include instructions to the parties concerning the steps the Board of Arbitration deems necessary. The Final Report of the Board of Arbitration shall be mailed to the parties hereto by certified mail, within thirty (30) days following the close of the hearing.

(b) The decision of the Board of Arbitration shall be binding upon the parties hereto and no party hereto shall attempt to obtain reversal or circumvention thereof through legal or other action. However, the decision shall not be binding to any owner's claim to unwritten rights.

(c) The parties shall prepare, execute and forward to the Land Surveyors' Association of Washington Arbitration Administrator, all papers, documents, diagrams and/or other items as may be required by the Board of Arbitration in the Final Report for the proper disposition thereof.

6 COSTS - Each party shall bear its own costs incurred in preparation for this arbitration. The costs of arbitration, including the fees of the Board of Arbitration members and any supporting or associated expenses incurred by the Board of Arbitration, the Land Surveyors' Association of Washington and the Administrator, shall be borne equally by the parties hereto and shall be paid within ten (10) days

following receipt of a statement of charges therefore. The Board of Administration shall, as nearly as possible, apportion the costs and all efforts required to comply with paragraph 5(c) equally between the parties.

7. It is the intent of this agreement to fully, fairly and professionally settle the disputes hereby submitted and parties shall cooperate toward that end.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year
first above written.

by (a) _____

by (b) _____

by (c) _____

by (d) _____

This is to certify that on this _____ day of _____, 2_____, before
me, a Notary Public, personally appeared (a),(b),(c) and (d)_____

to me known to be the individuals who executed the within and foregoing instrument, and acknowledged to me that they signed and sealed the same as their voluntary act and deed for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Notary Public in and for the State of

, residing at