

Get all the Facts About
La Garantie des maisons neuves de l'APCHQ



Everything You Need
to Know About
Arbitration

Since January 1, 1999, most new residential buildings in Québec are covered by a mandatory warranty plan. This plan is supervised by the Régie du bâtiment du Québec (RBQ), under a government decree.

La Garantie des maisons neuves (GMN) de l'Association provinciale des constructeurs d'habitations du Québec (APCHQ)*, which is the private administrator of this mandatory plan, acts as guarantor for the legal and contractual obligations of the building contractor under the guarantee. Basically, the contractor is required to build homes that comply with the current *Building Code* and that respect certain quality standards, while also ensuring that customers are properly informed of the various steps involved in buying a new home.

As part of the management of the warranty plan, the APCHQ new home guarantee program must then necessarily render decisions.

Dissatisfied with a decision rendered?

If you are a **beneficiary or a contractor** who is **dissatisfied with the decision rendered** by the APCHQ new home guarantee program following a claim made under the Guarantee Plan for New Residential Buildings, you may challenge it by **submitting the dispute to arbitration**.

* La Garantie des bâtiments résidentiels neufs de l'APCHQ inc., commonly known as **La Garantie des maisons neuves de l'APCHQ**, or in English as the APCHQ new home guarantee program or the Québec home builders association new home guarantee program, is a plan administrator authorized by the Régie du bâtiment du Québec (RBQ).

What is arbitration?

Arbitration is the last step in the dispute-settlement mechanism, enabling the interested parties, namely the beneficiary and the contractor, to submit their dispute to an arbitrator. The latter, after hearing the evidence and arguments of both parties, rules on the validity of the arbitration request and issues a final decision that may not be appealed.

Arbitration is managed and supervised by three bodies duly authorized by the RBQ to perform this task. Throughout the arbitration process, these bodies indicate to each party the procedure to follow: request for arbitration, response from the other parties, appointment of the arbitrator, hearing, issuing of the arbitration award, and payment of the fees requested.

Who arbitrates?

Pursuant to the *Règlement sur le plan de garantie des bâtiments résidentiels neufs* (regulation respecting the guarantee plan for new residential buildings), arbitrators are individuals with experience in warranty plans or professionally trained in areas related to the questions raised by the arbitration (e.g., finance, accounting, law or construction techniques). Each has also received training in the guarantee plan. Arbitrators are designated by the arbitration bodies.

The three arbitration bodies duly authorized by the RBQ are:

> **Canadian Commercial Arbitration Centre (CCAC)**

215 Caron Street
Suite 006
Québec, Québec
G1K 5V6
Phone: 418-649-1374
Toll-free: 1-877-909-3794
Fax: 418-649-0845
Website: www.ccac-adr.org

> **Le Groupe d'Arbitrage et de Médiation sur Mesure (GAMM)**

Head Office
31 Françoise Langlois Street
Montréal, Québec
H1A 5B5

Secretariat
1453 Duvernay Street
Chambly, Québec
J3L 6G3
Phone: 450-658-1438
Toll-free: 1-877-677-2722
Fax: 450-447-0032
Website: www.legamm.com

> **Soreconi**

800 René-Lévesque Boulevard West
Suite 2500
Montréal, Québec
H3B 2K4
Phone: 514-395-8048
Toll-free: 1-866-998-8048
Fax: 514-875-8967
Website: www.arbitrage.soreconi.ca

How do I apply for arbitration?

You must file your application with one of the three arbitration bodies **within 30 days following receipt by registered mail of the decision by the APCHQ new home guarantee program or 30 days following receipt of the mediator's report.** That body appoints the arbitrator.

What needs to go in the application?

Your application for arbitration must contain the key documents and information that demonstrate the facts in the case:

1. A copy of the decision being challenged;
2. The names and addresses of the parties or representatives of the parties, if applicable;
3. The conclusions sought (points sent to arbitration);
4. As needed, a request concerning the measures required to ensure preservation of the building or proceed to inspect the property or visit to the site.

As soon as the application for arbitration is received by the designated body, it notifies the interested parties (contractor and beneficiary) and the APCHQ new home guarantee program. Each party shall acknowledge receipt of the application for arbitration.

The APCHQ new home guarantee program then transmits to the arbitrator, the contractor and the beneficiary, a copy of the case file relative to the decision being submitted to arbitration.

How long does it take to get a hearing?

In the case of a claim, the arbitration hearing must begin within 30 days following filing of the application for arbitration. The arbitrator sends to all parties or their representatives **at least five days' written notice of the date, time, and place of the arbitration hearing.** Usually, the arbitrator will contact the parties to agree on a date when the parties and their witnesses will all be available.

Before the arbitration hearing

Before the arbitration hearing, it is extremely important to **assemble all documents and testimonies** that might help you express your point of view in accordance with the rules of evidence.

Documents

If you wish to file documents other than those filed by the APCHQ new home guarantee program, it is required to send copies to the above and other concerned parties (contractor or beneficiary). You must also bring these documents with you to the arbitration hearing and introduce them in accordance with the rules of evidence. Examples of documents that you can file include cheques, invoices, an expert report, an agreement, and photographs. You should be aware, however, that the opposing party is entitled to object to the filing of those documents.

Lay witnesses

Participation by lay witnesses, testifying to what they have seen, may be required to help establish your evidence. It is up to you to inform the arbitrator of the names of any witnesses you intend to call. If called, they are obligated to appear before the arbitrator. In the event that a witness refuses to appear, you must request that the arbitrator summon that witness.

Expert witnesses

In order for an expert witness to testify at the arbitration hearing, you must transmit copies of the expert's report to the arbitrator, the contractor or beneficiary and the APCHQ new home guarantee program before the arbitration hearing is held.

Preparatory meeting

Before the scheduled arbitration hearing date, the arbitrator may decide to hold a preparatory meeting with the parties, during which you will be asked to express your point of view, and briefly explain the facts, the names of your witnesses, the length of their testimonies, and any additional documents you will be presenting.

Visit of the premises

It may be necessary to visit the premises or inspect the property, depending on the arbitrator or the parties. If so, the arbitrator will rule on the suitability of those actions and transmit to the parties, if necessary, written notice of the date and time of the visit or inspection.

During the arbitration hearing

Burden of proof

It is up to the person who is taking a decision to arbitration to demonstrate the validity of the claim.

Representation

At the arbitration hearing, you are free to represent yourself or be represented by a lawyer.

Arbitration hearing procedure

You must prove, to the satisfaction of the arbitrator, the facts that you put forward. You may file written documents in accordance with the rules of evidence, and call witnesses. To testify, a person must have witnessed the facts in question, except in the case of an expert witness.

The arbitrator may lead the examination him/herself. The submissions on each of the points in dispute begin after the presentation of the evidence.

Decision by the arbitrator

The arbitrator rules in accordance with the warranty contract, using the rules of evidence, and may also invoke fairness if circumstances warrant.

The arbitration award, which is final and not subject to appeal, is handed down by the arbitrator and must be transmitted to the parties (contractor and beneficiary) as well as to the APCHQ new home guarantee program within 30 days following the date of the arbitration hearing. If the parties consent, they may agree on a longer time period for transmission. A copy of the award is transmitted to the designated arbitration body.

Agreement or discontinuance

Before the arbitration hearing or even once arbitration has begun, there may be agreement between the parties or discontinuance of the application for arbitration. In either case, the parties must notify the APCHQ new home guarantee program as well as the arbitrator, who will confirm the agreement when handing down the arbitration award. If the arbitrator has not yet been appointed at the time of agreement or discontinuance, the parties must notify the arbitration body.

Compulsory execution

As soon as it is handed down, the arbitration award obliges the parties and the APCHQ new home guarantee program to execute it immediately.

One party may obtain compulsory execution of the award once it has been homologated by the appropriate court. Although homologation is a simple procedure, a lawyer's assistance may be necessary.

Costs of arbitration

As a beneficiary, if you apply for arbitration and the arbitrator does not find in your favour on any of the points of your claim, you must bear the costs as split by the arbitrator. If you win on one or more points, the costs are assumed by the APCHQ new home guarantee program.

If you are a contractor who applies for arbitration, you must share the costs of the procedure in equal parts with the APCHQ new home guarantee program.

Expert fees

Expenses for expert opinions are assumed by each of the parties, but the arbitrator may ask that the APCHQ new home guarantee program reimburse certain amounts to the applicant (beneficiary or contractor) if the latter obtains a total or partial favourable decision on any or all points.

Expenses

Personal expenses incurred by the beneficiary, the contractor, and the APCHQ new home guarantee program (such as legal fees, transportation expenses, photocopying, and so on) for the arbitration are assumed by each one of them.



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Arbitration

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