

# ARBITRATION MANUAL



IDAHO SOCIETY OF PROFESSIONAL LAND SURVEYORS

**ARBITRATION MANUAL**

INDEX	PAGES
ARBITRATION HANDBOOK - (General Procedures)	1 - 6
REQUEST FOR ARBITRATION FORM	7
ARBITRATION AGREEMENT FORM	8 - 10
SURVEY ARBITRATION RULES	11 - 19
FEE SCHEDULE	19
BOARD OF ARBITRATION PROCEDURES	20 - 21

Prepared by

State Arbitration Committee

Adapted from the Land Surveyors Association of Washington Manual.

This Manual or parts thereof may be reprinted with due credit given to the source.

1986 Edition

Revised June 1999

## **INTRODUCTION**

Surveyors want to survey boundaries, not argue about them.

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 reference 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 IDAHO SOCIETY OF PROFESSIONAL LAND SURVEYORS (ISPLS).

The rules and procedures for using the ISPLS Board of Arbitration are described in the following pages.

## **INITIATION**

The ISPLS 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 the State of Idaho. A professional land surveyor does not have to be a member of the ISPLS to be a party to arbitration, but must be practicing within the requirements of the Idaho State Registration Act for Civil Engineers and Land Surveyors as prescribed by the Revised Code of Idaho, 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 position 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.
3. A written request, signed by both parties, requesting initiation of arbitration procedures by the ISPLS.

## **FIRST STEP - THE AGREEMENT TO ARBITRATE**

Upon receipt of a REQUEST FOR ARBITRATION (see attached sample, Exhibit 1) by the ISPLS Arbitration Chairman or Chapter Arbitration Chairman, a SUBMISSION AGREEMENT (see attached sample, Exhibit 2) will be prepared by the chairman. The Chairman, a Registered Land Surveyor mutually selected by the parties, will act as the Administrator for the Board of Arbitration. A copy of the SUBMISSION AGREEMENT will be sent to each of the parties for their completion and execution. The SUBMISSION 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 will be executed by the requesting parties, and may be executed by the owners of the properties involved. Upon receipt of the executed SUBMISSION AGREEMENT and appropriate fees, the Administrator will proceed to impanel a Board of Arbitrators.

## **SECOND STEP - SELECTION OF ARBITRATORS**

Unless the parties have indicated another method, the ISPLS will follow this simple and effective system for selecting the Arbitrators:

1. Upon receiving the SUBMISSION AGREEMENT, the Administrator sends each party a copy of the same specially prepared list of at least six proposed arbitrators, technically qualified to resolve the controversy. In drawing up the list, the Administrator is guided by the nature of the dispute.
2. The parties are allowed ten days to study the list, cross off any names objected to, and number the remaining names in order of preference. Where the parties want more information about a proposed arbitrator, such information will be furnished by the Administrator upon request.
3. When these lists are returned, the Administrator will compare indicated preferences and make note of the mutual choices. Where parties are unable to find mutual choice on a list, an additional list of six names may be submitted at the request of both parties.
4. If the parties cannot agree upon the arbitrators, the Administrator will make an administrative appointment, but in no case will an arbitrator whose name has been crossed out by either party be so appointed.

## **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. By specifically forbidding communications with the arbitrators, except in the presence of both parties, ISPLS rules avoid 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 Suggested Rules of Conduct for the Board of Arbitration 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. Arrangements will be made in advance by the Administrator of the Board of Arbitration for the necessary equipment and material.
6. The right to representation by counsel in arbitration is guaranteed by the rules of the ISPLS. A party who desires to be represented should notify the other party 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 Suggested Rules of Conduct. 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, 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 agreement provides otherwise.

## **FINAL REPORT**

The Final Report is a decision of the arbitrators concerning the matter submitted to them 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 Arbitrators 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.

**Exhibit I**

**REQUEST FOR ARBITRATION**

This request entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_ by and between the undersigned parties.

1. PARTIES - The parties to this request are:

a. \_\_\_\_\_ L.S. and

b. \_\_\_\_\_ L.S.

Both parties are currently registered by the State of Idaho Board of 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), ISPLS to prepare and submit to each party, an Arbitration Agreement pursuant to the ISPLS Rules for Arbitration.

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

by: \_\_\_\_\_, PLS by: \_\_\_\_\_, PLS

(Firm) \_\_\_\_\_ (Firm) \_\_\_\_\_

(Address) \_\_\_\_\_ (Address) \_\_\_\_\_

(Phone) \_\_\_\_\_ (Phone) \_\_\_\_\_

**Exhibit 2**

**IDAHO SOCIETY OF PROFESSIONAL LAND SURVEYORS**

**ARBITRATION AGREEMENT**

THIS AGREEMENT entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between the undersigned parties.

1. **PARTIES** - The parties to this agreement are:
  - a. \_\_\_\_\_, L.S.
  - b. \_\_\_\_\_, L.S.

Both parties are currently licensed by and/or acknowledged to practice land surveying by the State of Idaho Board of Professional Engineers and Professional 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 three (3) Land Surveyors, each of whom are fully qualified and currently licensed Land Surveyors in the State of Idaho.
4. **PROCEDURE** - (a) The procedure before the Board of Arbitration shall be consistent with the ISPLS Rules for Survey Arbitration as the same are currently published, as said Rules are further defined by the Suggested Procedures for the Conduct of the Board of Arbitration. 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 a majority thereof, and shall be based solely upon the evidence as presented at the hearing or as otherwise directed by the Board of Arbitration.
- (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 ISPLS 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.
- (d) The Final Report of the Board of Arbitration shall be made in writing. 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 for compliance with Subparagraph 5(c) above. The written 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.
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 ISPLS 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) \_\_\_\_\_

STATE OF IDAHO )  
 ) ss:  
COUNTY OF )

This is to certify that on this \_\_\_\_\_ day of \_\_\_\_\_

19\_\_\_\_, before me, a Notary Public, personally appeared (a), (b), (c), and

(d) \_\_\_\_\_ 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  
Idaho, residing at \_\_\_\_\_ -

# IDAHO SOCIETY OF PROFESSIONAL LAND SURVEYORS

## ARBITRATION RULES

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 ISPLS. 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 an arbitration is initiated thereunder, they hereby constitute the ISPLS as the Administrator of the arbitration. The authority and obligations of the Administrator are prescribed in the agreement of the parties and in these Rules.

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

Section 5 - **PANEL OF ARBITRATORS** - The ISPLS 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 ISPLS 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) day 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 A SUBMISSION** - Parties to any existing dispute may commence an arbitration under these Rules by filing at the general office of the ISPLS, 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 preheating conference with the Administrator and the parties or their counsel will be scheduled in appropriate cases to arrange for an exchange for 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 then (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 agreement of the parties 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 names 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' names, 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 names, 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.

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 Arbitrator shall appoint such neutral arbitrator who shall act as chairman.

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 ISPLS, 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 ISPLS, 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 ISPLS 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 ISPLS 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 fifteen (15) 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 ISPLS Administrator shall make the necessary arrangements for the taking of a cassette recording as a record of the proceedings. The cost of such recording shall be paid by the parties as provided in Section 46. If 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 arbitrators 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 the 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 arbitrator's 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, they 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 ISPLS, 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 judgement 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 Idaho 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 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 ISPLS, in favor of ISPLS, 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 ISPLS is not a necessary party in judicial proceedings relating to the arbitration. (c) The parties to these Rules shall be deemed to have consent 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 indisputable condition in regard to the action of the arbitrators and the ISPLS or any member thereof, and that the arbitrators, the ISPLS 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 ISPLS 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.

Administrative fees and arbitrators' fees, or a portion thereof as determined by the Administrator, shall be advanced by the parties at the time of initiation, subject to final apportionment by the arbitrators in the Final Report.

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 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 - **ARBITRATOR'S FEE** - Members of the ISPLS 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 may require the parties to deposit in advance, such sums of money as are deemed necessary to defray the expense of the arbitration, including the arbitrators' fees, and shall render an accounting to the parties, and shall return any unexpended balance.

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 ISPLS Arbitration Chairman for final decision. All other rules shall be interpreted and applied by the Administrator.

## **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 Chairman and all three arbitrators shall receive compensation at the rate of \$25 per hour reported. 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.

Reimbursable expenses chargeable by the ISPLS, Administrator and arbitrators shall be as follows: 1. Transportation expenses (office to hearings, site inspections, etc.); 2. Telephone tolls; postage; typing and secretarial services; 3. Overnight lodging, if required; 4. Hearing room rentals; 5. Cassette tapes; 6. Incidental items as may be necessary or as required by the Final Report; 7. Incidental items as may be required for the proper execution of the hearing, but not to exceed \$50. unless specifically authorized in writing by the parties.

**DEPOSITS** - Each party shall submit a deposit of \$500. 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.

# IDAHO SOCIETY OF PROFESSIONAL LAND SURVEYORS

## **CONDUCT OF BOARD OF ARBITRATION SUGGESTED 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 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. 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 by a 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 of 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 site 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 written 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 Chairman and forwarded to the Administrator. The Administrator shall prepare a statement for expenses incurred by or on behalf of the ISPLS 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 ISPLS 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 Recorder within the Idaho 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.