

# **Arbitration Agreements — the Consumer's Perspective**

## ***What is an arbitration agreement?***

Arbitration agreements, which are often found in pre-printed consumer contracts, require that the parties to the contract resolve disputes that arise in binding arbitration, rather than in court before a judge and/or jury.

## ***What is binding arbitration?***

Binding arbitration involves the submission of a dispute to a neutral party who renders a decision following a hearing. Arbitration takes the place of a trial before a judge or jury. Because the arbitration is binding, grounds for appealing or setting aside the arbitration decision are very limited and may frequently not be available at all. If a person signs a contract containing a mandatory, binding arbitration agreement, he or she gives up the right to go to court to have his or her claim resolved.

## ***When are consumers most likely to encounter arbitration agreements?***

Arbitration agreements are frequently found in pre-printed consumer contracts with banks, credit card companies, financial service providers and brokers, home builders, insurance companies, communications providers, automobile and mobile home dealers, and manufacturers of various products. The arbitration clauses in these pre-printed contract forms are almost always mandatory, which means if the consumer signs the contract, he or she must go to arbitration to resolve disputes, and cannot go to court. Such arbitration agreements will probably be enforceable regardless of whether the consumer actually reads the agreement and regardless of whether the consumer actually knows the contract contains such an arbitration agreement.

## ***How much does it cost the consumer to go to arbitration?***

The costs of arbitration include filing fees and the arbitrator's charge. Filing fees for an arbitration are frequently higher than the fees to file a case in court, and can vary depending on the amount of the claim. Arbitrators usually charge an hourly or daily fee, with the amount of the fee varying depending upon the nature of the issues and the experience of the arbitrator.

Because the parties in a court case are not required to pay for the services of the judge or jury, the requirement of paying the decision-maker applies only in arbitration. Arbitrators usually have the discretion to assess the costs of the arbitration against the losing party, or to distribute the costs between the parties.

## ***What can the consumer expect at an arbitration?***

An arbitration hearing is less formal and usually shorter than a trial. The parties present their version of the facts through evidence, using witnesses and documents in a way that is similar to a trial, but without some of the evidentiary and other rules and procedures that are used in court. After considering the evidence, the arbitrator makes a decision. The decision may be announced immediately, but usually is made within 30 days.

## ***What if the consumer can't buy a product without signing an arbitration agreement?***

Sometimes it is difficult for a consumer to purchase new products, such as mobile homes and automobiles, unless he or she is willing to sign an arbitration agreement. If the consumer is not willing to sign a pre-dispute arbitration agreement, the consumer should request that the arbitration clause be stricken. If the

merchant is not willing to remove the arbitration agreement from the contract, the consumer may consider other avenues for purchasing the product. There may be other dealers in the area, or elsewhere, who will not insist on arbitration provisions in their contracts.

***What are some of the advantages and disadvantages to the consumer of mandatory, binding arbitration?***

Binding arbitration

- is less formal and technical than court
- may result in quicker resolution of the dispute
- can be more expensive than court
- waives the consumer's right to have his or her claim decided in court
- in some cases makes it extremely hard to find a lawyer who will represent the consumer on other than an hourly fee basis
- provides finality, but severely limits right to appeal
- provides a private forum

**Conclusion**

When a consumer contract contains a binding arbitration agreement, it is important that the consumer know this fact in advance of signing or accepting the contract. Consumers should carefully read all documents before they sign them to find out whether the document contains an agreement for binding arbitration. Consumers also need to read revisions or addendums to contracts already signed which may add an arbitration agreement to an existing contract. Once this consumer has this information, he or she should make an informed decision about whether or not to sign the contract.



415 Dexter Avenue  
Montgomery, Alabama 36104  
(334) 269-1515  
1-800-354-6154

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