



What is an arbitration agreement?

Arbitration agreements require that persons who signed them resolve any disputes by 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 hears the case and makes a decision. Arbitration takes the place of a trial before a judge or jury. Additionally, the grounds for appealing or setting aside the arbitration decision are very limited and many times may not be available at all. If a person signs a contract that has a mandatory, binding arbitration agreement, he or she gives up the right to go to court.

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. The consumer will probably have to go to arbitration even if he or she did not read the agreement or know that the contract contained an arbitration agreement.

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

The cost of arbitration includes filing fees and the arbitrator's charge. Filing fees for an arbitration may be higher than the fees to file a case in court, and can vary based on the amount of the claim. Some arbitration providers charge a smaller filing fee for consumer cases. Arbitrators usually charge an hourly or daily fee, and the amount of the fee may depend on the type of issues and the experience of the arbitrator.

Because people in a court case are not required to pay for the judge or jury, the requirement of paying the decision-maker applies only in arbitration or in private judging. Arbitrators usually have the right to make the losing person pay the costs of the arbitration, or to divide the costs.

What can the consumer expect at an arbitration?

An arbitration hearing is less formal and usually shorter than a trial. The persons present their version of the facts, using witnesses and documents in a way that is similar to a trial, but the rules of evidence and other court procedures usually do not apply.

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 hard for a consumer to purchase new products, such as mobile homes and automobiles, unless he or she signs an arbitration agreement.

If the consumer is not willing to sign a pre-dispute arbitration agreement, the consumer should ask that the arbitration clause be removed.

If the merchant will not remove the arbitration agreement from the contract, the consumer may consider other ways to buy



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 difficult to find a lawyer who will represent the consumer on other than an hourly fee basis
- provides finality, but limits the 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 the consumer has this information, he or she should make an informed decision about whether or not to sign the contract.



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Arbitration Agreements

–the Consumer's Perspective



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