

Consumer Arbitration Basics

BY RICHARD M. ALDERMAN

If you have a dispute with another party, you may want to sue. In many cases, however, your contract contains an arbitration clause that requires you to arbitrate the claim. Arbitration clauses are becoming more and more common in consumer contracts. Here are some of the more common questions regarding consumer arbitration.

What is arbitration?

Arbitration is a form of alternative dispute resolution — a legal alternative to litigation — whereby the parties to a dispute agree to allow the dispute to be resolved by a neutral third party, called an arbitrator. Arbitration can be used for any dispute. It is common in consumer, labor, and securities matters.

What is the difference between arbitration and mediation?

In arbitration, the arbitrator hears evidence and makes a decision resolving the dispute that is final and binding. In mediation, a third-party mediator helps the parties reach a settlement of their dispute. The mediator does not render a decision, and if the parties do not reach an agreement, the matter may proceed to a trial before a judge or jury.

Who can be an arbitrator?

Anyone may be an arbitrator. It is impossible to give a definitive statement regarding the credentials or experience of arbitrators. In most cases, however, arbitration is held through one of the national arbitration associations, such as the American Arbitration Association, which offers

arbitrator training programs and, in effect, credentials. Generally speaking, however, the credibility of an arbitrator rests upon his or her reputation, experience level in arbitrating particular issues, or expertise/experience in a particular field. Arbitrators are not required to be attorneys.

What are the benefits of arbitration?

In many cases, arbitrators have special knowledge of the subject matter that allows them to better resolve the dispute. Arbitration uses procedural and evidentiary rules that are less formal than those followed in trial courts, which can lead to a faster, less-expensive resolution. Because decisions are binding and generally cannot be appealed, matters are fully resolved following arbitration.

What is the downside of arbitration?

Arbitration, particularly consumer arbitration, has been criticized because it denies the parties the right to a jury and precludes an appeal of the arbitrator's decision. Although arbitration is often less expensive for larger disputes, it can be substantially more expensive than the judicial system when used in smaller consumer disputes. There also are concerns about the secrecy of decisions, the fact that decisions are not binding on other arbitrators, the fact that arbitrators are not bound by the same rules as judges, and the impartiality of arbitrators.

Do I have to arbitrate?

Arbitration must be agreed to by the parties in a contract. If you do not agree,

you cannot be forced to arbitrate. In most consumer contracts, however, the consumer is not given a choice whether to arbitrate. Arbitration clauses are often included in a form contract hidden online or in the small print of a document received by the consumer. For example, most credit card companies, home-builders, car dealers, and banks require customers to arbitrate all disputes.

Am I entitled to a jury?

In arbitration, the arbitrator or arbitrators make the decision. There is no right to a jury.

Can I appeal the arbitrator's decision?

In most cases, the decision of the arbitrator is binding on the parties and cannot be appealed. Appeal is allowed only when the arbitrator has “manifestly disregarded” the law.

Who pays the costs of arbitration?

Who pays the costs of arbitration is determined by the contract. In most cases the costs will be equally divided between the parties. In some consumer contracts, however, the merchant agrees to pay all the costs. Arbitration in consumer cases can be expensive when compared with our judicial system, especially small claims court. If the costs to the consumer are “excessive,” the arbitration clause may not be enforceable and the consumer may have the right to go to court. If cost is an issue, look into arbitration through the Better Business Bureau or local “Justice Centers” that provide free or low-cost arbitration.

How do I collect if I win?

Collection of an arbitrator's decision is basically the same as any lawsuit. If the arbitrator rules in your favor, the decision can easily be turned into a court judgment that can be enforced in the same manner as a decision of a court of law.

RICHARD M. ALDERMAN has taught at the University of Houston Law Center since 1973. He holds the Dwight Olds Chair in Law and serves as director of the Consumer Law Project, a community outreach arm of the Law Center. For information about various consumer law topics, visit Alderman's website, www.peopleslawyer.net.