



Article provided by Richard C. Rahnema
at the law offices of Wachtel Biehn &
Malm. Visit www.wbmlaw.com
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Ask an ATTORNEY

ARBITRATION

What is an Arbitration clause?

If you haven't heard of an Arbitration clause, you might want to read the contracts you have signed: cell phone, bank account, credit card, downloaded "apps", gym membership, sale agreement of your home or car. Pretty much every contract! So, what is it? Arbitration is a private process of resolving a dispute in which a neutral third party will hear both sides of the dispute, review evidence or documentation and then make a decision. Essentially, they are the judge and jury combined into a private forum. This decision can be final. In the examples above, you agree to the terms of the contract (by signing the contract or clicking the online box); therefore, you are bound to those terms. If the contract has an Arbitration clause, then you lose the ability to have a judge or jury hear your dispute.

What is an example of an Arbitration clause?

Check out the terms and conditions on Netflix, Amazon, Paypal, Ebay or Instagram. A very basic example is "Any and all claims and/or disputes arising out of, or relating to this agreement, are required to be settled by Binding Arbitration in Mohave County, Arizona."

How else are conflicts/disputes resolved?

The four main ways a dispute can be resolved are: Negotiation, Mediation, Arbitration and Litigation. The first three are categorized as Alternative Dispute Resolutions, because they are alternates to litigation (fighting in court). Litigation is the process of filing a document (usually a Complaint) in the judicial system; which

typically ends when the judge or jury make a final decision after a trial. Litigation is extremely expensive and is a lengthy process. There is a common misperception of how many cases end up at trial. If you base this on TV shows and movies, all disputes end in a trial; however, realistically only 10% end in a trial.

Is Arbitration different than Mediation?

Yes. The neutral third party in an Arbitration makes a "judgment" or "decision" on the merits of the case. Mediation is a process where parties utilize the service of a neutral third party to "facilitate a settlement". It is important to note the parties have the "power to settle" in Mediation; not the mediator, which is the fundamental difference between the two processes. The role of the mediator is to inform each side of their weaknesses if the case escalates and moves forward into Litigation. Their goal is finding middle ground with both parties to reach a settlement. Most "fair settlements" result with both parties being "unhappy" with the settlement.

Why do contracts have an Arbitration clause?

Typically, this is one of the quickest and least expensive forms of dispute resolution. These clauses are designed to limit a company's exposure of expensive litigation because they have to pay lawyers to fight each conflict/complaint/dispute. Also, these clauses usually limit a group of

consumers from forming a "class action". This could be considered a disadvantage to consumers because companies can evade accountability. Many of the safety requirements and changes from product based companies were a result of Litigation. Even more frightening, the clause could appoint a specific person who handles all of the company's arbitrations. What happens if that arbitrator does not find in favor of the company? Do you think the company will choose that person as an arbitrator again?

What can I do?

You have a decision to make. A contract is a legally binding agreement between you and the other party. You have the power to enter into the contract or say no thank you. But, if you agree, then all of the terms become included into the contract. You are bound by these terms. There is no coercion involved,

even though it may seem that way. If you do not believe in Arbitration, then you do not have to click "agree"

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to the terms and conditions. Almost all of us will agree to the terms and conditions because we want to utilize their product. We will most likely do this without thinking about it, as if it is an automatic response. Sometimes it is easier to lie to yourself when the contract is printed out because you scan through the pages (but we both know you didn't understand every word). However, think about your Netflix or Amazon account... did you know all of the terms that you "agreed" to? Chances are you didn't even scan through the terms on your smart phone, tablet, or computer... you simply clicked whatever button was required before gaining access to their product.

Richard Rahnema received a specialization in Alternative Dispute Resolution while attending law school at Bond University in Australia. This article is provided for general educational and informational purposes only. This article does not constitute legal advice. Publication of this information is not intended to create, and the receipt does not constitute, an attorney-client relationship between publisher and reader. These materials are intended, but not promised or guaranteed to be current, complete, or up-to-date. You should not act or rely on any information in this article without first seeking the advice of an attorney.