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## Arbitration in Real Estate Contracts

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Arbitration provisions are now commonplace. Because every real estate deal involves a mountain of paperwork, it is easy to skim or skip over the provision and hope that you'll never have to use it. Unfortunately, after a dispute arises is too late to find out that your arbitration provision is problematic. It is worthwhile at the outset to consider whether an arbitration provision is appropriate, and if so, to make sure the terms work for you.

Some advantages and disadvantages of arbitration:

- ▶ It generally takes less time from start to finish than court litigation.
- ▶ It can be less expensive, particularly if there are limits on pre-hearing discovery. But it still can be costly, as filing fees, arbitrator fees, and attorney fees all add up.
- ▶ It is private and confidential; court filings are public records.
- ▶ Arbitration typically includes only those who have agreed to arbitrate. If you have disputes with additional persons or entities, you might have to bring another action in court to get full relief.



If arbitration is desirable, the next step is to make sure that you have an arbitration clause that best suits your needs. The effectiveness, speed and expense of arbitration often depend upon the terms of the arbitration provision. There are many issues to consider, including:

- ▶ What procedural rules should apply? There are differences among the various arbitration providers in their rules governing important issues such as the cost of initiating arbitration, arbitrator selection and compensation, and the availability of discovery.
- ▶ The scope of issues to be arbitrated. For example, you could limit arbitration to disputes up to a certain dollar amount or decide you only want to arbitrate certain types of disputes.

In the end, whether or not to include an arbitration provision in your contract and how that provision should be drafted depends upon your view of the advantages and disadvantages of arbitration and your particular needs. There is no one "right" answer. If you have questions about an arbitration provision, it is always a good idea to consult litigation counsel.

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