

GOODBYE TO TRIAL BY JURY: CALIFORNIA HOME SALES CONTRACTS

By: Richard C. Wildman, Jr.

If you are buying or selling a home be aware that the California Association of Realtors® [CAR] residential purchase agreement makes provisions for dispute resolution. These provisions can affect your legal rights when you are involved in the purchase or sale of a home. These provisions set out what will happen if the parties to a purchase contract get into a dispute, either before or after the sale is closed.

Common disputes include undisclosed defects in the home, hazardous soils conditions, flooding, mold and improvements done without permits, all of which may be costly to repair and which affect the value and desirability of the property. If the buyer or the seller have a dispute over anything involving the sale of property they must first go to mediation to try to resolve their dispute. This means they must share the cost of a mediator.

If mediation is unsuccessful, the agreement provides for binding arbitration, providing that provision in the contract has been initialed by both buyer and seller. This is a mini trial before an arbitrator, usually a retired judge or an attorney who has practiced for five years or more in the area of residential real estate, or anyone else that the parties agree upon. The parties to the dispute must also pay the arbitrator's fees. This can amount to several thousand dollars, or more.

In addition, the parties to the dispute will have to pay their own attorneys for representation at the arbitration proceeding.

You must go to mediation, unless the mediation paragraph is struck from the agreement, even if you do not initial the arbitration provisions. By initialing arbitration section to give up your right to a trial by judge or jury. Another problem is that the arbitrator may be free to make up his or her own rules. Also, getting to arbitration can take a long time. In San Diego, Civil court cases come to trial within a year. Effectively, there is no time limitation for the completion of arbitration. Before signing a residential purchase or sale contract it is always wise to have it reviewed by a qualified attorney first, so that your legal rights and obligations can be explained to you.

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