



Arbitration for the Consumer

Mediation Comes First; Arbitration or Litigation Later

Nobody likes to be involved in a real estate dispute, but sometimes it is unavoidable. If you are the buyer or seller using a C.A.R. Residential Purchase Agreement (RPA) and you cannot resolve a dispute with the other party directly or through your broker, the RPA requires you attempt to mediate before taking any further action.

Mediation involves a third party who helps facilitate a negotiation and settlement. If mediation does not result in a settlement, then you must go to court (litigation) or arbitration to finally resolve the dispute. Going to court usually involves hiring a lawyer and ultimately presenting your case to a judge or jury. Arbitration is both similar and different.

Reasons Why Arbitration is like Litigation:

- you typically hire an attorney to represent you
- you gather information about your case
- you present evidence to a neutral third party who will decide if you or the other side is right, and
- the decision is binding

Reasons Why Arbitration is Different from Litigation:

- The decision maker will not be a sitting judge or jury but rather a trusted person that the parties pick
- there is almost no right to appeal the decision (called an Award)
- the hearing will be conducted in an office or conference room rather than a court,
- it is a private hearing and results are not open to the public, and
- the arbitrator needs to be paid

Arbitrate or Litigate: The Choice is Yours

Making the decision to initial an arbitration clause in the RPA is personal. Statistically, few civil cases that are filed in court are ever heard before a judge and fewer before a jury, and not many cases that are appealed overturn the results of a trial; however, your case, if there is one, is not a statistic and if having those choices is important to you then that is a legitimate concern. If you are unsure about whether to initial the arbitration clause in the RPA then you should discuss the matter with an attorney. Your REALTOR® cannot make the decision for you.