

**6. Settle Home-buying Disputes Without the Costly and Overloaded Court Systems... 23 Arbitration Points and Procedures.** (8 Minutes)

Q1. I understand that there are procedures in use to avoid getting involved in costly lawsuits and also lengthy lawsuits that may outlive the lifetime of the parties involved in the lawsuit. Is that true?

A1. Yes that is true. The process is called arbitration.

Q2. Well, when do people get involved in arbitration?

A2. Arbitration is agreed upon between the two parties and put into an agreement or contract before the deal is finalized.

Fortunately, I have gained a lot of knowledge taught by the American Arbitration Association in seminars and classes through the local Board of Realtors. They have a national company with major offices throughout the country. They have allowed me to include a 4-page booklet explaining the workings of arbitration, which is included in the glossary of my book. Obviously, this comes about if there is an agreement between the parties. Hopefully it is not needed, but it's there if it is necessary. Your real estate attorney or buyer representative is most likely familiar with this process. It is quicker, cheaper, and seems to be a very equitable process, especially for home buyers.

Let's go through and highlight the points in the 4-page brochure by the American Arbitration Association.

Q3. Is it a voluntary procedure?

A3. Yes it is voluntary, and it resolve problems quickly, cheaply and without public notice.

Q4. Is the American Arbitration Association a public service organization?

A4. Yes it is. Its main headquarters are located in New York City, and there are many regional offices.

Q5. What is the arbitration process?

A5. It is the tendering of a disagreement to one or several impartial persons to reach a final decision. This person is a neutral party, not acquainted with either one.

Q6. Who can use the process?

A6. Any person who had agreed to arbitration in a contract can initiate this process.

Q7. Who benefits?

A7. The benefits are to both parties, actually both to the complaining party and also to the defendant. It is a private situation, it is very economical, it is not subject to publicity, and it is resolved much quicker than the court system.

- Q8. What type of problems can be submitted?
- A8. It can be for a variety of reasons, such as structural problems such as roof leaks, basement leaks, plumbing leaks, electrical problems, water leaks. They could even be involved in disputes involving fraud and misrepresentation.
- Q9. How long is the time period in which they have to file for a complaint?
- A9. Usually the state law with the statute of limitations is the governing device. So if the State of Michigan has a law that says you must present a complaint within 3 years or within 1 year, that is the governing rule.
- Q10. Is this a lengthy process? How long does it take?
- A10. Many times these matters can be resolved within 2 to 4 months, versus court situations which may take years and years and years, and the aggravation and expense that goes with that long process.
- Q11. What does the American Arbitration and the case administrator do??
- A11. The duties include the appointment of an arbitrator, the scheduling of the hearing, and the handling of all communication between the complainant and the defendant and the arbitrator except at the actual hearing. It is made certain that all parties receive copies of the arbitrator's award. The case administrator, during regular business hours, is able to answer general and procedural questions concerning the process. It does not get involved in the evaluation of the validity of a problem or a claim.
- Q12. Who is the arbitrator?
- A12. It is a neutral, impartial decision maker who is not an employee of the American Arbitration Association. They are people that are selected from a qualified list, particularly people that have experience related to real estate and building issues.
- Q13. Will there be several arbitrators?
- A13. There is one arbitrator appointed to a case. That person is paid a fee for their services which is included in the filing fee.
- Q14. Is an attorney needed?
- A14. It is not necessary, but you are welcome to be represented by an attorney.
- Q15. How is this process started?
- A15. It is started when a party to the contract files a demand for arbitration, also including a copy of the contract involved in the dispute.
- Q16. Where will the hearing be held?
- A16. Usually the hearing is held at the property address involved.

Q17. What items, documents should be brought to a hearing?

A17. Each party should put together paperwork and documents to prove their claim, including a Purchase Agreement in the home sale, or the contract, a Seller's Disclosure Statement, and any other estimates.

Q18. How is the hearing conducted? Is it like a formal court setting?

A18. The hearing is very informal and it will be conducted according to State laws and the procedures for due process. Each party is given a chance to present his or her case, and witnesses may be called to testify. These witnesses may be cross examined or questioned by the other side. The arbitrator will give a brief introductory statement in which he instructs the parties of the procedure of the hearing. All of the parties involved will be sworn in and allowed to give their version of the story. After all these testimonies are given, each party is offered a chance to make a closing statement. No new evidence is allowed after the hearing is closed.

Q19. What is a party expected to do at the hearing?

A19. Each individual gives a brief description of their problem and makes a short statement of how they intend to prove their case. The home buyer will be permitted to show the problems to the house to the arbitrator and the other party. The arbitrator can ask as many questions as he or she feels is necessary to clear up their questions.

Q20. When will the arbitrator's decision be made?

A20. There will not be a final decision at the time of the hearing. The arbitrator has 10 days in which to make his or her decision. It has to be a written decision, and they are not required to give the reasons why. The parties will receive the decision by mail. This decision is final and binding.

Q21. When and how does the award get paid?

A21. The award payment is directly made to the individual as stated in the award. Once they receive the award, they are to contact the other party to arrange for payment.

Q22. Is the award legally binding on both parties?

A22. The award is binding and can be enforced by the court system.

Q23. What happens if there are problems enforcing the award?

A23. If this does occur, the winning party may take the award to the court system and have a judgment filed against the other party.

Q24. Can the decision be appealed?

A24. An arbitrator's award is final and binding. There is no appeal process. There may be limited appeal rights through the court system which should be researched with your attorney.

Q25. Is this a very expensive process?

A25. In claims from \$1 to \$10,000 the fee is \$500. From \$10,001 to \$20,000 the fee is \$750. In claims involving \$20,001 and upward, the fee is \$1,100. There is also the possibility of mileage and out-of-pocket expenses by the arbitrator which must be split between the parties. There are also fees if there is a postponement by either party. There is no refunding of administrative fees. This is per the 4-page document booklet copywrited 2004 as provided by the American Arbitration Association.