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How Arbitration Agreements will affect Your Rights in Disputes and Claims.

By Michael L. Roberts

During the last years, "arbitration agreement" clauses have begun to appear in mailouts to customers of banks, credit card companies, insurance companies, and other companies, as well as in contracts that customers are often required to sign when buying cars or in other transactions.

An arbitration agreement is a document that requires the parties to give up their rights to sue in courts in the event of a dispute or legal problems. The agreement requires a private arbitrator will make all the final decisions regarding the claim. The "private arbitrator" may be selected by company the dispute is against giving the consumer no say in the matter. More importantly, the consumer has given away their right to a trial.

Rights under Arbitration and Court Cases

There are many differences between arbitration and a court case, but some of the most important one is that the final decision is made by a private arbitrator, rather than an elected judge or by a jury of your fellow citizens. Depending upon the type of agreement and the type of arbitration institution involved, it can be considerably more expensive to begin an arbitration than to pay court costs to file suit in a state court. An arbitrator's decision is generally final, and there are very few rights to appeal, as there may be in court. Discovery (that is, procedures that allow each side to find out information, obtain documents, and question witnesses, before trial) is much more limited in arbitration than it is in court.

Legal Decisions take away the right to a trial.

Before 1995, two parties could agree *after* a dispute to resolve it through arbitration. The law did not permit most arbitration contracts, presented or signed *before* a dispute arose, to take away someone's rights to go to court. However, beginning in 1995, a series of decisions from the United States Supreme Court and the Alabama Supreme Court have radically changed the law concerning these types of documents.

"Arbitration agreements" began appearing in contracts *even before there was a dispute*. The new laws supported these clauses by generally removing the consumers' rights to go to court.

What if you do not want an arbitration clause in your contract?

If, for example you are buying a car, you can ask the seller to remove the arbitration clause from your contract. If the seller refuses to sell you the car without an arbitration clause, then you will need to decide whether you want to do business with that particular seller for this particular car. If the seller agrees to remove the arbitration clause, you should be careful that you do not sign any documents that include the arbitration clause; and you should consider marking it out of the contract and initialing where it has been marked out, and have the seller also initial where it has been marked out.

Before signing an Arbitration Clause.

If you are considering whether to accept an arbitration clause in your contract, be sure to:

1. Determine what institution would provide the arbitrators. For example, if it requires you to accept only arbitrators appointed by the business you are dealing with or an industry or trade association that this business belongs to, you should find out as much as you can about that business or association
2. Make sure that the documents describe clearly, and make sure you understand, whether you, or the business, would be responsible for the costs and fees of the arbitrator and the arbitration institution.

Michael L. Roberts has practiced law in Gadsden for twenty-five years. He is the author of the two-volume book *Alabama Tort Law*, published by LEXIS November, 2004. This book's first edition was originally published in 1990, and it is used as a resource in law offices, law schools, and in other legal fields.

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