

A.: The California Association of Realtors revised its Residential Purchase Agreement form in October of 2002. Paragraph 17 of this form is entitled, "Dispute Resolution, and contains provisions concerning both mediation and arbitration. Bravo!

"Mediation" is a confidential process, which is generally less formal and less expensive than arbitration. Mediation fees, if any, are divided equally among the parties. Moreover, mediation provides the parties with more flexibility as far as settlement terms are concerned.

A mediator does not decide who wins or loses. Instead, a neutral mediator provides a process to facilitate communication between the parties in order to assist them in reaching a mutually acceptable agreement. By signing the Residential Purchase Agreement, both the seller and the buyer automatically agree to "mediate any dispute or claim between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action." If a party, thereafter, refuses to attend mediation, there are stiff consequences. On the other hand, if the parties and/or their attorneys come to the mediation thoroughly prepared and with "open minds," there is an excellent chance that any and all disputes can be resolved in a relatively short period of time. And if the parties are able to come to an agreement, the mediator immediately prepares a written settlement agreement, which is enforceable in the same manner as any other out of court settlement.

"Arbitration" is more like the court process. Unlike mediation, the parties present their arguments and evidence to an arbitrator, who renders a decision akin to the decision which a judge or jury would render in court. A strong policy favors arbitration as a procedure for the settlement of real estate disputes, if mediation fails. As compared to lawsuits, arbitration is relatively expeditious and inexpensive. Public policy also favors arbitration, because it avoids the delays of litigation and relieves court congestion. In addition, because arbitrations under the Residential Purchase Agreement are "binding," arbitration provides finality and conclusiveness, and an avoidance of the uncertainty arising from appealability of the decision of the trier.

Note that arbitration is not automatic, as it is with mediation. In order for the provisions to be effective, the buyer and seller must submit to arbitration by initialing paragraph 17B. Prior to initialing paragraph 17B, however, the parties should consider whether they want an arbitrator (instead of an active judge) to determine their dispute (if mediation is not successful). Because such arbitrations are "binding," the arbitrator's decision is substantially insulated from later judicial review. So, choose your arbitrator carefully.

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