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Mandatory Arbitration Clauses Strip Homebuyers of Suitable Recourse

Buying a home is, no doubt, one of the largest and most important investments you will make in your life. With good reason then, you will naturally want to do everything you can to insure that you are making a wise purchase and that you fully understand the terms of your mortgage contract. One term you may be inclined to simply skip over is the phrase “binding mandatory arbitration.” This is a term often included in home loan contracts prohibiting from borrowers from taking the mortgage lender to court in the event of a dispute. The borrower is restricted to the use of arbitration, basically a forum of mediation conducted by a third party corporation.

While this type of dispute resolution may work out fine in most cases, the advantage is definitely on the side of the lender. The problem is that some unscrupulous mortgage lenders hide behind these “arbitration” clauses as a way to protect themselves from litigation because of their shady practices. Since you can never be completely sure, whether your lender has your best interest at heart or not, you should really look into what arbitration clauses might mean for you if a problem arose.

The Possible Pitfalls of Arbitration

- Favors Lenders Over Borrowers

Lenders are the ones who write up the clauses, sometimes allowing themselves greater privileges, like the right to take the issue to court even though you are not allowed to do so. They may also put verbiage into the clause that prevents you from challenging certain (probably dubious) practices altogether. What is more, the arbitration system gives advantage to the lenders who have gone through the process before, giving them experience with the procedures and best techniques.

- No Guarantee of ‘Qualified’ Arbitrator

The arbitrators are not legally required to be licensed as attorneys or even to meet any qualification requirements. That means instead of bringing your grievances before a legally appointed judge or jury, you are left to deal with whatever individual the mediation company digs up.

- Provides Limited Settlement Options

Most homeowners do not even think to question the arbitration clause. The lender basically requires the borrower to accept such terms if he or she wants the loan. If a legal issue does surface in the course of your home loan, you will be forced to enter into this usually confidential process that does not create any public records.

- May End Up Costing You More

If you are truly dealing with a less-than-upright lender, the arbitration process may end up costing you substantially more in the end. Supposedly, this method is the lower-cost alternative, yet you still have to pay fees for filing and administration of the arbitration. If the process does not end up settling your dispute, you may then have to resort to the traditional court proceedings which will also cost more you in attorney’s fees.

In order to prevent such predatory lending schemes and to protect your right to properly defend



yourself, be sure you read through your mortgage contract before signing and protest any arbitration clauses if you feel it necessary. It would probably be a good idea to have your attorney review the contract with you to make sure you understand exactly what you are signing and to be sure there are no unfair clauses camouflaged anywhere in the document. While you will have to pay your attorney for this service, hopefully it will end up saving you from larger fees or problems associated with a bad contract.