

Why You Shouldn't Buy a Vehicle From Any Seller That Requires a "Mandatory Binding Arbitration Agreement"

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Mandatory Binding Arbitration Agreements are the newest scam in the arsenal of unethical dealership weapons used to protect dealerships from accountability when they defraud consumers.

More and more automobile dealerships across the country are adding mandatory binding arbitration agreements, also called "dispute resolution mechanisms," to contracts for new and used vehicles as well as to financing contracts. By signing the contract, the consumer is agreeing to binding arbitration to settle any future dispute and also waiving the right to sue or appeal-even if the dealership committed fraud

Such Dealership Mandatory Arbitration Agreements are almost always designed to protect the seller and to make it nearly impossible for the consumer to receive a fair hearing-even when the fraud committed against the consumer is clear and highly destructive.

But dealers themselves don't think that mandatory binding arbitration is fair. Dealers lobbied for a federal law (passed in November 2002) to prevent automobile and truck manufacturers from requiring the use of mandatory binding arbitration to resolve franchise disputes with dealers.

What frauds do binding mandatory arbitration agreements allow dealerships to get away with?

Consider these instances:

- A dealership buys wrecked vehicles, repairs them, and then sells them to unsuspecting consumers without disclosing the damage. When the vehicles become repair nightmares for the consumer, the dealer refuses to accept any responsibility.
- A dealership employee forges your credit statement and forces you into an auto loan you can never afford. When the forgery is discovered, you are sued by the finance company. Your credit is ruined.
- A dealership trades in your old car, but never pays off the loan on the old car. You are sued by the finance company, and forced to pay thousands in damages.

- A dealership buys lemon vehicles from the manufacturer, destroys the paper which shows the vehicles' histories, and sells the cars to consumers. How and why do mandatory binding arbitration agreements allow this to happen?
- The arbitration agreement may be mentioned briefly or at the last minute (if mentioned at all) with no explanation of what rights the consumer is giving up.
- The consumer's only choice to resolve a dispute is the mandatory binding arbitration.
- Consumers can't sue the dealer but usually the dealer can sue the consumer.
- Consumers have no or limited right to "discovery"--the ability to obtain necessary evidence from the dealer or third parties to support their claim. In available, the consumer must pay for obtaining the evidence.
- The arbitration company is specified in the contract by the dealership which can lead to the company favoring the dealer.
- Initiating arbitration typically costs the consumer more than initiating a lawsuit.
- Review or appeal of the arbitrator's decision by the consumer is limited or not allowed.

What do you do when scams like these happen to you?

If you have bought from a dealership with a Mandatory Binding Arbitration Agreement, you can't do much.

To prevent these scams from happening to you, don't deal with seller requiring mandatory binding arbitration agreements

There are plenty of good dealerships that refuse to require mandatory binding arbitration. Deal with these good dealerships-don't deal with dealerships that require mandatory binding arbitration. Follow these steps to find a good dealership:

Before you waste any time with an auto seller-whether in person or online-ask the seller if they require a mandatory binding arbitration agreement. If the seller requires such an agreement, don't buy from them. Don't even visit them. And tell the seller why you won't deal with them. Tell your friends to always ask about mandatory binding arbitration agreements before shopping or buying a vehicle.

Mandatory Binding Arbitration Frequently Asked Questions

What is arbitration?

Arbitration is an alternative method of resolving disputes in which two parties present their individual sides of a complaint to an arbitrator or panel of arbitrators. The arbitrator, who is supposed to be neutral, then weighs the facts and arguments of both parties and decides the dispute. Arbitration may be voluntary or mandatory.

What is voluntary arbitration?

In voluntary arbitration, both sides in the dispute voluntarily agree to submit their disagreement to arbitration after it arises and after they have an opportunity to investigate their best options for resolving their claim.

What is mandatory binding arbitration?

In mandatory binding arbitration, a company requires a consumer to agree to submit any dispute that may arise to binding arbitration prior to completing a transaction with the company. The consumer is required to waive their right to sue, to participate in a class action lawsuit, or to appeal.

What's wrong with arbitration?

Nothing! Consumers always have a right to submit a problem to arbitration. Dealerships are trying to use mandatory binding arbitration to protect themselves from costly court judgments.

Do dealers use mandatory binding arbitration in their own disputes with each other and the automobile manufacturers?

No, they use voluntary arbitration. As a matter of fact, a federal law (passed in 2002) prohibits automobile manufacturers from requiring mandatory binding arbitration in disputes related to dealership franchise agreements.

Why are so many consumer groups opposing mandatory arbitration in automotive transactions?

Many mandatory binding arbitration agreements are written to protect the dealer. Here are problems and dangers noted by consumer advocates.

- Consumers are often unaware they've agreed to binding arbitration. Whether the mandatory binding arbitration agreement is tucked in a paragraph of fine print or provided as a separate form, dealerships often don't mention it until the consumer is ready to sign and take the new vehicle home. A few dealers may "forget" to mention the arbitration

requirement at all. These tactics deprive consumers of their right to make an informed decision.

- Mandatory binding arbitration severely limits consumer options for resolving a dispute. Before any problem arises, you lock yourself into only one option--binding arbitration--for resolving all future disputes or problems. The contract typically also names the arbitration company that must be used.
- Mandatory binding arbitration clauses generally bind the consumer-not the dealership. The way most mandatory arbitration agreements are written, the seller retains its rights to take any complaint to court while the consumer can only initiate arbitration.
- Arbitration does not follow clear, well-established, consistent rules and procedures such as those required for litigation in the court system. For example, arbitrators aren't required to follow procedures that enable one side in a dispute to request information from the other (what the courts call "discovery"). The result is that consumers, who usually have limited resources, may have difficulty getting information needed to support their claims. In addition, nothing absolutely requires arbitrators to take the law and legal precedent into account in making their decisions although they are supposed to do so. Most decisions cannot be appealed, and there are generally no review bodies or other oversight to ensure that arbitrators follow fair procedure or the law.
- The dealership generally picks the arbitration company-"the judge." In theory, both parties agree to the selection of a neutral, independent arbitrator. In reality, the dealership designates the arbitration company in the contract. This situation can definitely affect the impartiality of the arbitrator. Studies show that any time one company depends on another company for a large percentage of their business livelihood, some systematic bias in favor of that company may develop.
- Mandatory binding arbitration frequently costs more than taking a case to court. One of the benefits usually claimed for binding arbitration is that it costs less than litigation. Frequently this is not true. In many cases, for instance, a consumer may have to pay a large fee simply to initiate the arbitration process. This can deter a consumer from even bringing a complaint. Or on a small claim total fees for arbitration can easily exceed the amount you might be awarded if you win the dispute. (For details see "The Costs of Arbitration," prepared by Public Citizen's Congress Watch in the information resources below.)(available <http://www.citizen.org/congress/civjus/arbitration/>)

Do dealerships require mandatory binding arbitration even with cash purchases?

Yes.

Are there dealerships that don't require mandatory arbitration agreements?

Yes. There are plenty of good dealerships that refuse to require mandatory binding arbitration. These are usually the dealerships with the fewest consumer complaints.

What can I do about the problem?

Don't deal with any dealerships that require a mandatory binding arbitration agreement. Before spending time with any dealership or buying service-whether in person or online-ask the seller if they require a mandatory binding arbitration agreement. If the seller does require an agreement, tell the seller you won't buy from them and why.

If a seller requires that you sign a mandatory binding arbitration agreement, refuse to sign it. Stick with your decision. Be prepared to leave without completing the purchase.

For more information on mandatory binding arbitration agreements in auto contracts:

The arbitration trap: How consumers pay for 'low cost' justice

http://www.consumerreports.org/main/detailv2.jsp?CONTENT%3C%3Ecnt_id=19279&FOLDER%3C%3Efolder_id=18151

Consumer Reports discusses issues related to arbitration and what consumers can do to protect themselves.

Auto Dealers and Consumers Agree: Mandatory Arbitration is Unfair

<http://www.citizen.org/congress/civjus/arbitration/articles.cfm?ID=650>

Public Citizen takes the arguments that auto dealers made to Congress about why they should be protected from manufacturer's requirements for mandatory binding arbitration and shows how and why consumer arguments for the same protections are similar. At the end of this article, Public Citizen offers links to a number of other articles related to arbitration.

Automobile Dealers Push to Arbitrate: Buyer Would Give Up Right to

Lawsuit http://www.tlpj.org/8-12-02_In_news_arbitration.htm

This article by Christopher Jensen of Newhouse News Services as printed in the Times-Picayune is reprinted by the Trial Lawyers for Public Justice. It quotes authorities and experts on both sides of the issue.

For more information about mandatory binding arbitration issues in other types of contracts such as employment, credit, telecommunications services, and insurance

Consumer Due Process Protocol from the American Arbitration Association

http://www.adr.org/index2.1.jsp?JSPssid=15711&JSPsrc=upload\LIVESITE\focusArea\consumer\...\Resources\EduResources\consumer_protocol.html

The American Arbitration Association, one of the big three administrative agencies, processes arbitration cases in a number of areas including "finance,

construction, labor and employment, insurance and technology." This document sets forth the standards this agency believes should be met in business-to-consumer arbitration agreements.

Fact Sheet: Mandatory Arbitration-Taking away big rights with small print
http://www.atla.org/ConsumerMediaResources/Tier3/press_room/FACTS/mandarb/mand%20arb%20fact%20sheet%2011.01.aspx

A summary of potential problems with mandatory arbitration from the Association of Trial Lawyers of America.

The Costs of Arbitration

<http://www.citizen.org/publications/release.cfm?ID=7173>

Prepared by Public Citizen's Congress Watch, details the various potential costs of arbitration, shares case stories, and compares arbitration and court costs for similar cases.

Mandatory Arbitration Clauses: Undermining the Rights of Consumers, Employees, and Small Businesses

<http://www.citizen.org/congress/civjus/arbitration/articles.cfm?ID=7360>

From Public Citizen's Congress Watch describes several unique characteristics of mandatory arbitration that makes it harder for individuals to prevail in a dispute with a business.

Arbitration Q&A

<http://www.citizen.org/congress/civjus/arbitration/articles.cfm?ID=7490>

From Public Citizen's Congress Watch provides answers to questions such as: Isn't arbitration a cheaper alternative than filing suit in court?, Why do businesses use arbitration clauses?, and What are the differences between a judge and a private arbitrator hearing a case?

Consumer and Media Alert: The Small Print That's Devastating Major Consumer Rights

Most Consumers Never Even Notice "Mandatory Arbitration Clauses" Now Being Slipped Into Everything from Bills to Contracts

<http://www.consumerlaw.org/initiatives/model/arbitration.shtml>

From the National Consumer Law Center describes the impacts of mandatory arbitration clauses on consumers.

Resolving Consumer Disputes: Mediation and Arbitration

<http://www.ftc.gov/bcp/online/pubs/general/dispute.htm>

From the FTC describes mediation and voluntary arbitration in general.