

FTC FACTS for Consumers

Resolving Consumer Disputes: Mediation and Arbitration



How frustrating! You buy a product and it breaks. You try to return it or have the company fix it, but don't succeed. You talk with the salesperson, speak with the manager, and write letters to the company, and still you're not satisfied with the company's response.

Maybe it's time to try an alternative dispute resolution (ADR) program — an option that businesses, private organizations, and government agencies use. Dispute resolution programs can be quicker, cheaper, and less stressful than going to court.

Mediation and Arbitration

The two most popular types of dispute resolution are mediation and arbitration. In mediation, a neutral third party — a mediator — helps you and the other party try to resolve the problem through facilitated dialogue. However, it's up to you and the other party to reach an agreement.

Arbitration is less formal than court, though you and the other party may appear at hearings, present evidence, or call and question each other's witnesses. Unlike mediation, an arbitrator or panel makes a decision or award once you've presented your case. The decision may be legally binding.

Finding a Dispute Resolution Program

The following organizations can help you locate programs in your area:

- your state attorney general or local consumer protection agency;
- small claims courts and court systems;
- nonprofit dispute resolution organizations;
- bar associations and law school clinics;
- Better Business Bureaus;
- the Conflict Resolution Education Network at 1527 New Hampshire Avenue, NW, Washington, DC 20036; 202-667-9700; www.crenet.org.

Choosing the Right Program

Contact and compare several ADR programs to find the one best suited to your needs.

- **Is the program voluntary or mandatory?** Many dispute resolution programs are completely voluntary. Whether to use them is your decision. In some states, however, a court may order you to try arbitration or mediation. Some companies require consumers to arbitrate their disputes and waive their right to go to court. Check your contract or product packaging for details.
- **What's required and how long will it take?** It varies. Mediation requires meetings; arbitration uses hearings. Either may take place in person, by phone, or by video

conferencing. However, some programs resolve disputes based solely on written statements — sometimes called "desktop" arbitrations. In some cases, you'll begin with mediation, and if no decision is reached, you'll progress to arbitration.

One of the benefits of ADR is that disputes are usually resolved more quickly than a court proceeding.

- **Can I help select the mediator or arbitrator?** Maybe. Many programs offer lists of neutral third parties from which to choose. Be aware that your ADR provider or your state may have ethics rules for third parties to assure impartiality. For example, the third party cannot get personally involved in the dispute or benefit from the resolution. Ask the the program administrator for a copy of the rules.
- **How confidential is the program?** Find out if the program guarantees confidentiality. Mediation generally is confidential; arbitration sometimes is. If confidentiality is important to you, make sure you get the specifics before committing to the program.
- **How neutral is the program?** To get a sense of neutrality, ask who pays for it, and whether it is administered by an independent agency.
- **What are the costs?** Some programs are free. Others charge a flat fee or a rate based on your ability to pay. Of course, if you have an attorney or other representation, you also pay their fees.
- **Is the decision binding — that is, must both parties accept it?** Mediation is non-binding; arbitration may be binding on the company, both parties, or neither. If the arbitrator's decision is nonbinding, you can reject it and try other avenues, including small claims court in some areas.

Preparing for an ADR Program

The program will progress more easily and effectively if you are well prepared.

- **Understand and follow the program's rules.** Make sure you meet all the preliminary requirements. For example, first try to resolve the problem with the company.
- **File your claim promptly.** The earlier you submit your claim or written statement and have the meeting or hearing, the less likely you are to forget important details.
- **Outline the important facts of the case.** You'll need to be able to tell when and where you bought the product or service, what the specific problem is, and what you've done to try to resolve the problem.
- **Document your claims.** Make copies of receipts, repair orders, warranties, cancelled checks, contracts, or any other supporting documents.
- **Ask if you're allowed to have witnesses.** If so, make sure you know what they'll say or submit in writing.
- **Know what you want from the company.** Decide whether you want a refund, exchange, repair, or reimbursement on expenses you've incurred, including repair costs. At the same time, be flexible. You may have to compromise.

Going to Court

If a dispute resolution program does not settle the problem, you may want to sue. If the right to sue is important to you, check contracts carefully — before you sign — to see if they waive your right to sue. If you enter into an arbitration program that's binding on both parties, you've given up your right to sue. Agreements to resolve disputes through binding arbitration are generally enforceable, even if

you did not sign a contract and the agreement to arbitrate is on the product packaging. Time constraints also can be a problem. Know the jurisdiction's time limitations on filing a suit.

For More Information

The **Consumer's Resource Handbook** offers tips on buying products and services, and lists contacts for information and assistance. For a free copy, write: Consumer Information Center, Pueblo, Colorado 81009. Or visit them at www.pueblo.gsa.gov.

For concerns about privately-run programs, write: the Conflict Resolution Education Network at 1527 New Hampshire Avenue, NW, Washington, DC 20036; 202-667-9700, or visit them at www.crenet.org.

If you have complaints or comments about programs run by your state or local government, contact your state attorney general or local consumer protection office.

You also may consider contacting the Federal Trade Commission (FTC). The FTC works for the consumer to prevent fraudulent, deceptive and unfair business practices in the marketplace and to provide information to help consumers spot, stop and avoid them. To file a complaint or to get free information on consumer issues, visit www.ftc.gov or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. The FTC enters Internet, telemarketing, identity theft and other fraud-related complaints into Consumer Sentinel, a secure, online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

Facts for Consumers



Federal Trade Commission
Bureau of Consumer Protection
Office of Consumer and Business Education

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