Arbitration has become increasingly common among contractors. Many contracts, for both businesses and consumers, now include a provision that requires disputes be resolved through arbitration.

While arbitration is a very cost-effective way to resolve disputes, there are inherent risks involved. One who chooses to bypass the court system also is choosing to bypass the risks involved. One who chooses to bypass arbitration and has a contract with an arbitration provision?

Learn risks of arbitration before signing contracts.

DIRT LAW
Roger Lenneberg

subsection (1) and (2) of this section, an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for referring a claim to arbitration. Instead of defining the criteria that arbitrators must use to make decisions, chapter 36 is concerned with the rules of how and in what circumstances a dispute moves to mediation or arbitration. The court only decides to move the dispute to arbitration and enforces the arbitration decision. All other matters are referred to

by the arbitrator. Grounds for appealing an arbitration decision exist but are limited. The reason they are limited is that arbitration is designed as an alternative to court trials. It would defeat the purpose of arbitration to have the courts heavily involved in decisions made by arbitrators.

Let’s look at an example in real estate law, which relies heavily on boilerplate documents. One of these documents, the earnest money agreement, is used in almost every real estate transaction. An earnest money agreement is a show of good faith similar to a security deposit. It requires a potential buyer to deposit a certain sum of money, oftentimes in an escrow account, to let the seller know that he or she is serious about purchasing the property.

The form commonly used in Oregon contains a provision specifying that arbitration will be administered by the Arbitration Service of Portland. However, the provision does not indicate what the internal rules of the arbitration service are, nor does it specify exactly what the arbitrator is required to follow the law. Most alarming of all, there is no warning that the parties may not be given the protections of the disclaimers and waivers contained in the earnest money agreement. Depending on opinion, the arbitrator, moving to arbitration could undo a large part of what a party believed it was entitled to by the agreement.

So what does one do upon reception of a contract with an arbitration provision? Revisit it instead of signing it. Be careful about signing any arbitration agreement, particularly if the provision does not state that the arbitrator must be bound by the law, and failure to do so is grounds to vacate the award. I encourage parties to consult an attorney to learn how to best revise arbitration provisions to protect themselves from unwanted surprises.

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