



NATIONAL ASSOCIATION OF REALTORS®

The Voice For Real Estate®

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June 22, 2010

The Honorable John Conyers, Jr.
Chair, House Committee on the Judiciary
2426 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Conyers:

On behalf of the 1.1 million members of the National Association of REALTORS®, we wish to share our significant concerns with H.R. 1020, the Arbitration Fairness Act of 2009. Realtors® oppose H.R. 1020 because it would fundamentally alter the way disputes arising from real estate transactions are resolved. Pre-dispute agreements serve useful purposes that benefit real estate consumers. Banning the use of these agreements will harm consumers by limiting their choices and lessening the leverage that pre-dispute agreements give the aggrieved party.

It is commonly understood that unless parties agree to arbitration up front, i.e. pre-dispute arbitration, they will rarely reach an agreement to arbitrate after a dispute arises. This is true because one party or the other will perceive a strategic advantage in leveraging the expense and burden of the court system. For this reason, we believe that eliminating pre-dispute arbitration as an option for consumers effectively eliminates arbitration as a tool for dispute resolution.

The underlying assumption of H.R. 1020 is that parties to arbitration necessarily possess unequal bargaining power. However, in the real estate context, the parties to a sales agreement are generally transacting on a level playing field, i.e. both the buyer and seller are individual consumers. In most real estate sales contract standard forms, consumers are given the option to choose whether to include a pre-dispute arbitration clause as part of their offer. In the vast majority of real estate sales contracts, arbitration is only relied upon if mediation of the dispute has failed. Moreover, if the parties choose not to include an arbitration clause in the sales contract, the transaction often may proceed to conclusion. In other words, the transaction is not necessarily contingent upon an agreement to arbitrate.

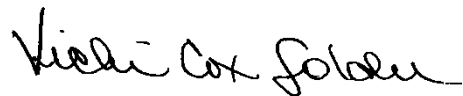
Pre-dispute agreements to arbitrate are used throughout the real estate industry to bring about timely and cost-effective resolution of disputes that commonly arise, such as repair and inspection issues, claims of misrepresentation about the condition of property and earnest money disputes. In most cases, these are cases which would be cost prohibitive to litigate but that may be satisfactorily resolved via the less expensive alternative of arbitration. We fear that without the ability to utilize pre-dispute arbitration agreements, many small disputes that arise in the context of a real estate transaction will not be pursued by the aggrieved party – most typically the buyer - thereby leaving certain consumers without legal redress.

For example, if the buyer of a home learns after the closing that the washing machine is malfunctioning and this condition was not disclosed, the buyer is unlikely to litigate such a small matter. Without the threat of arbitration, the seller has no incentive to settle the dispute. In this situation, the buyer may determine that their only option is to accept the loss. If arbitration is available, the buyer may choose to pursue this faster and cheaper option thereby encouraging the resolution of the dispute.

In another example, when a buyer refuses to complete a purchase after a contract is in place, the seller may wish to sue for the deposit amount but a lawsuit for recovery of the small deposit will often be cost-prohibitive. There are many instances such as this where the existence of an arbitration clause in a contract helps to ensure that a dispute is resolved before it goes to arbitration. In other words, it forces both parties to reach agreement on their own.

The National Association of REALTORS® opposes any legislation which would revoke the longstanding recognition of arbitration as a fair and cost effective alternative to the court system and would alter the consumer's ability to agree to alternative dispute resolution. NAR is happy to further discuss the impact of H.R. 1020, as written, on the real estate industry. We hope Congress will carefully consider the impact this legislation could have on millions of American homeowners and homebuyers.

Sincerely,

A handwritten signature in black ink that reads "Vicki Cox Golder". The signature is written in a cursive, flowing style.

Vicki Cox Golder, CRB
2010 President, National Association of REALTORS®

Cc: Members, House Committee on the Judiciary