

Understanding Arbitration

Many home improvement contracts contain a mandatory arbitration clause. Prior to signing a contract, it is important that you know what arbitration is and what it means for you. By entering into a contract that has an arbitration clause, you may be giving up important rights, such as going to court and being able to present your evidence to a judge or having a Guaranty Fund hearing before the Home Improvement Commission in the event a dispute arises between you and the contractor.

What is Arbitration?

Arbitration is a process for settling disputes related to the contract. Many contracts contain a mandatory arbitration clause. Arbitration is usually conducted by a person who is not a judge or an organization that provides arbitration. Typically arbitration that is required by a contract can be either appealed to a court for review or converted into a legal judgment following a petition to the court.

Mandatory Arbitration

The Maryland Home Improvement Regulations require that a mandatory arbitration clause in a home improvement contract contain the following information:

1. the name of the person or organization that will conduct the arbitration;
2. whether any mandatory fees will be charged to the parties for the arbitration and list the fee schedule;
3. whether the arbitrator's findings are binding; and
4. a disclosure that a claim against the Guaranty Fund will be stayed until completion of the mandatory arbitration proceeding.

In addition, the MHIC Regulations require that each party to the contract sign their initials and write the date next to any mandatory arbitration clause contained in a home improvement contract.

Arbitration Clause Is Enforceable Even If It Does Not Comply

Please note that even if an arbitration clause does not comply with the MHIC requirements, it nonetheless is enforceable between the parties. MHIC has the discretion to take regulatory action against any contractor who uses a home improvement contract that contains an arbitration clause that does not meet the MHIC requirements.

MHIC and Arbitration

When MHIC receives a complaint or claim against the Guaranty Fund based upon a contract that contains an arbitration clause, the parties will be notified that they must submit their dispute to arbitration prior to proceeding to a Guaranty Fund hearing.

Even though MHIC will stay a claim against the Guaranty Fund because of the arbitration clause, the parties still have the option of participating in MHIC's free and voluntary **mediation program**. If the parties are able to resolve the dispute through mediation, then MHIC will close the complaint.

Effective March 2011, each complaint that is based upon a contract that contains an arbitration clause is a public record and is part of the contractor's complaint history.

If the homeowner prevails at the arbitration proceeding and files a claim against the Guaranty Fund, MHIC may issue an award from the Guaranty Fund in favor of the homeowner and against the contractor based upon the arbitrator's decision. If the arbitrator's decision is not clear or lacks a specific finding of "actual loss" as defined in the Home Improvement Law, then MHIC may schedule an administrative hearing based on the Guaranty Fund claim.

If the contractor prevails in arbitration, then MHIC will dismiss the homeowner's Guaranty Fund claim. However, MHIC still may pursue regulatory charges against the contractor regardless of whether the Guaranty Fund claim was dismissed.

The information contained in this flyer is not legal advice. If you have questions regarding arbitration, you may want to consult an attorney. MHIC staff cannot provide legal advice.