

Resolving Real Estate Disputes

The Pinnacle

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Real estate is often one of the most important investments that a person or people can make. Buying a house has become the embodiment of the “American Dream.” Television usually depicts new homeowners as a smiling family of four with their dog and cat standing behind a white picket fence in the front yard next to a “SOLD” sign. However, what you don’t see on television is the hard work the buyers put in and the costly long-term commitment they have made to purchase the house. So when a dispute arises from a real estate transaction, it is typically a difficult and stressful time.

There are many different types of disputes that can arise from a real estate transaction, including: 1) concealment of known damage or fault with the property; 2) nondisclosure of a permit or code violation; 3) misrepresentation of ownership or title; and 4) old-fashioned breach of the purchase and sale contract. Often times these are detected during escrow, and sometimes they become evident only after the transaction has closed and the buyer has moved in.

No matter the type of dispute, the first place to look for a solution, is that ten thousand page form that you probably signed (and likely may not have fully reviewed) when you made or accepted the offer to purchase the property, labeled “California Residential Purchase Agreement and Joint Escrow Instructions.” Section 17, which is on page 5, is labeled “Dispute Resolution” and deals with solving disputes that may arise between a buyer and seller from the sale.

Section 17(A) states that a buyer and seller, by signing the Agreement, have agreed to first try to mediate any disputes between them arising from the transaction. Mediation is a process where the parties pick a neutral person (usually an attorney or retired judge) to try to assist the parties in coming to a mutual voluntary agreement to resolve the matter. Mediation by its very nature is non-binding and the parties cannot be forced to agree or even to mediate. However, to comply with Section 17(A), all you have to do is try to mediate. If the aggrieved party does not try to mediate first, then they forfeit the right to recover attorneys fees if they win, which can be a costly expense.

If attempts to mediate are unsuccessful, then the next step is to review Section 17(B) to see if litigation or arbitration is required. If the Buyer and Seller have initialed that provision, then they have agreed to waive their rights to sue in court and to settle any and all disputes through binding arbitration. If not, then the claimant party can file a lawsuit to resolve the dispute.

Binding arbitration is kind of like an informal trial. The parties select a neutral third party

(usually another attorney or retired judge) to listen to the arguments of each side and render a binding decision to resolve the dispute. The decision is binding and may be enforced by a court if one or more of the parties fails to comply.

There are advantages to binding arbitration (its cheaper, faster, confidential, and less formal than court) and disadvantages as well (limitations on evidence and testimony, and no jury option). These considerations should be taken into account before you sign the “California Residential Purchase Agreement and Joint Escrow Instructions.” If you have any questions regarding the transaction, don’t be afraid to ask your realtor or to seek the assistance of an attorney.