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## **Widely used arbitration quietly closes doors of protest for consumers**

### **Such clauses in consumer contracts may become a thing of the past**

By Eileen Ambrose, The Baltimore Sun

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Lease a car, enroll in a cell phone plan or finance the purchase of a major appliance, and you're likely signing away your rights.

Most consumer contracts include clauses that require you to take any disputes with the auto dealership, phone company or retailer to an arbitrator — one chosen by the business. You can't take the business to court. You might not even be able to take part in a class action lawsuit with others who have similar complaints.

And the arbitrator's decision — with no explanation — is generally final.

Consumers often aren't aware of this because the clauses are buried in the fine print of contracts. And even those who know what to look for say it's almost impossible to avoid arbitration mandates when signing up for a product or service.

Chicago attorney David Leibowitz says he unsuccessfully tried to get out of an arbitration clause before signing a lease for a Toyota, a few months before the manufacturer's acceleration problems came to light.

"I was signing under protest," he says. "If I can't get it changed, I doubt any consumer could."

Maryland lawmakers considered — and failed this year — to pass legislation making arbitration more transparent, and problems with the process have caught the attention of federal officials, who are taking a hard look at making consumers agree in advance to arbitration and ways to give them a fairer shake.

The recently enacted Wall Street reform law requires that the new Bureau of Consumer Financial Protection study arbitration clauses on financial products or services, giving the agency the power to restrict or ban them if necessary to protect consumers.

Bills pending in Congress also seek to bar such clauses in consumer products and services as well as in nursing home contracts.

The Federal Trade Commission published a study on arbitration and litigation of debt collection cases last month and concluded that the process was broken. One commissioner even recommended that Congress suspend mandatory arbitration in debt cases until it becomes fair, transparent and optional.

The nation's arbitration law goes back to the 1920s, and for many decades mandatory arbitration was used to settle disputes between businesses to avoid the cost and time of going to court.

But the clauses started appearing in consumer contracts in the early 1990s, and by 2005 they were everywhere, says **Paul Bland, a senior attorney at Public Justice, a public interest law firm.**

Now you can't take out an auto loan, spend a night at a hotel, purchase a computer or buy anything on the Internet without agreeing to binding arbitration if things don't work out, Bland says. The clauses are also found in credit card agreements, although several major issuers have suspended them for a few years as part of a lawsuit settlement.

Arbitration terms vary. T-Mobile's contract, for example, requires binding arbitration if you and the company can't work out your problems within 30 days. You agree to no jury trial and no participation in a class action lawsuit, except in limited situations. Verizon Wireless is more consumer-friendly. If your dispute is under \$10,000, you can choose small-claims court instead of arbitration. Or you can opt for Verizon's free in-house mediation.

Arbitration can cost the customer nothing or thousands of dollars to pay for the arbitrator's time. The arbitration may take place near you, or a few time zones away.

Towson consumer lawyer Jane Santoni says the paperwork to send her 14-year-old daughter to field hockey camp in Maryland this year required disputes to be arbitrated — in California. Santoni says consumers have a constitutional right to jury by trial, but that's forfeited under arbitration clauses.

"Can you imagine buying a car and having to give up your right to free speech?" she says.

Kieron Quinn, another Towson consumer lawyer, says an arbitration clause gives shady businesses a free pass to overcharge by small amounts because consumers don't typically arbitrate over a few dollars. And when clauses don't allow consumers to join a class action lawsuit, hundreds of people might be overcharged but unable to take the business to court, Quinn says.

Proponents say that arbitration done right — meaning the playing field is level — can be a quicker and cheaper way for consumers and businesses to resolve problems than going to court.

If arbitration clauses are abolished, "people will have to go to court," which can be an arduous process for people with modest claims, says Richard Naimark, a senior vice president with the American Arbitration Association, a not-for-profit group that provides arbitration services.

Many agree arbitration works when businesses have disputes with each other. But critics say consumers are often no match for companies with deep pockets and layers of lawyers.

"It's not appropriate for consumers. And I'm an arbitrator," says Mark Bunim, who arbitrates disputes between businesses for the firm Case Closure. "Consumers don't know what they are getting into. They are signing these agreements. They don't read them. They don't have a lawyer," Bunim says. "It's grossly unfair."

How often arbitrators side with business over consumers isn't clear. Few states require arbitration results to be made public. Maryland considered legislation this year to take the veil off arbitration results, but the bill died.

One of the recommendations in the FTC debt collection report is that arbitrators need to eliminate bias or the appearance of it, pointing to a Minnesota lawsuit last year against the National Arbitration Forum.

Minnesota contended that the NAF — the arbitrator of choice in millions of credit card agreements — promoted itself as an impartial arbitrator while hiding extensive ties to the collection industry. (A 2007 Public Citizen report of 34,000 NAF cases in California — which requires disclosure of results — found that arbitrators ruled for businesses 94 percent of the time.)

The NAF settled the Minnesota lawsuit by agreeing to stop taking new consumer arbitrations, and since then, debt-collection arbitration has been virtually suspended industrywide, lawyers say. This also contributed to the collapse of Rockville-based law firm Mann Bracken, which handled many of the debt-collection cases heard by NAF arbitrators.

Consumers can take steps to avoid the pitfalls of arbitration. You can choose to do business with smaller companies that often don't have arbitration clauses. Credit unions, for example, tend not to require arbitration, while the big banks do, Bland says.

And read credit agreements. Some companies will allow you to opt out of mandatory arbitration in the first 30 days, he says.

But until Congress or the new consumer protection bureau acts, most consumers will have few options if they don't want to give up their right to settle a dispute in court.

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