

FTC FACTS for Consumers

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FOR THE CONSUMER

FEDERAL TRADE COMMISSION

1-877-FTC-HELP

Resolving Consumer Disputes: Mediation and Arbitration



How frustrating! You buy a product and it breaks. You try to return it or have the company fix it, but don't succeed. You talk with the salesperson, speak with the manager, and write letters to the company, and still you're not satisfied with the company's response.

Maybe it's time to try an alternative dispute resolution (ADR) program — an option that businesses, private organizations, and government agencies use. Dispute resolution programs can be quicker, cheaper, and less stressful than going to court.

MEDIATION AND ARBITRATION

The two most popular types of dispute resolution are mediation and arbitration. In mediation, a neutral third party — a mediator — helps you and the other party try to resolve the problem through facilitated dialogue. However, it's up to you and the other party to reach an agreement.

Arbitration is less formal than court, though you and the other party may appear at hearings, present evidence, or call and question each other's witnesses. Unlike mediation, an arbitrator or panel makes a decision or award once you've presented your case. The decision may be legally binding.

Facts for Consumers

FINDING A DISPUTE RESOLUTION PROGRAM

The following organizations can help you locate programs in your area:

- your state attorney general or local consumer protection agency;
- small claims courts and court systems;
- nonprofit dispute resolution organizations;
- bar associations and law school clinics;
- Better Business Bureaus;

CHOOSING THE RIGHT PROGRAM

Contact and compare several ADR programs to find the one best suited to your needs.

- **Is the program voluntary or mandatory?** Many dispute resolution programs are completely voluntary. Whether to use them is your decision. In some states, however, a court may order you to try arbitration or mediation. Some companies require consumers to arbitrate their disputes and waive their right to go to court. Check your contract or product packaging for details.
- **What's required and how long will it take?** It varies. Mediation requires meetings; arbitration uses hearings. Either may take place in person, by phone, or by video conferencing. However, some programs resolve disputes based solely on written statements — sometimes called “desktop” arbitrations. In some cases, you'll begin with mediation, and if no decision is reached, you'll progress to arbitration.

One of the benefits of ADR is that disputes are usually resolved more quickly than a court proceeding.

- **Can I help select the mediator or arbitrator?** Maybe. Many programs offer lists of neutral third parties from which to choose. Be aware that your ADR provider or your state may have ethics rules for third parties to assure impartiality. For example, the third party cannot get personally involved in the dispute or benefit from the resolution. Ask the the program administrator for a copy of the rules.
- **How confidential is the program?** Find out if the program guarantees confidentiality. Mediation generally is confidential; arbitration sometimes is. If confidentiality is important to you, make sure you get the specifics before committing to the program.
- **How neutral is the program?** To get a sense of neutrality, ask who pays for it, and whether it is administered by an independent agency.
- **What are the costs?** Some programs are free. Others charge a flat fee or a rate based on your ability to pay. Of course, if you have an attorney or other representation, you also pay their fees.
- **Is the decision binding — that is, must both parties accept it?** Mediation is nonbinding; arbitration may be binding on the company, both parties, or neither. If the arbitrator's decision is nonbinding, you can reject it and try other avenues, including small claims court in some areas.

PREPARING FOR AN ADR PROGRAM

The program will progress more easily and effectively if you are well prepared.

- **Understand and follow the program's rules.** Make sure you meet all the preliminary requirements. For example, first try to resolve the problem with the company.
- **File your claim promptly.** The earlier you submit your claim or written statement and have the meeting or hearing, the less likely you are to forget important details.
- **Outline the important facts of the case.** You'll need to be able to tell when and where you bought the product or service, what the specific problem is, and what you've done to try to resolve the problem.
- **Document your claims.** Make copies of receipts, repair orders, warranties, cancelled checks, contracts, or any other supporting documents.
- **Ask if you're allowed to have witnesses.** If so, make sure you know what they'll say or submit in writing.
- **Know what you want from the company.** Decide whether you want a refund, exchange, repair, or reimbursement on expenses you've incurred, including repair costs. At the same time, be flexible. You may have to compromise.

GOING TO COURT

If a dispute resolution program does not settle the problem, you may want to sue. If the right to sue is important to you, check contracts carefully — before you sign — to see if they waive your right to sue. If you enter into an arbitration program that's binding on both parties, you've given up your right to sue.

Agreements to resolve disputes through binding arbitration are generally enforceable, even if you did not sign a contract and the agreement to arbitrate is on the product packaging. Time constraints also can be a problem. Know the jurisdiction's time limitations on filing a suit.

FOR MORE INFORMATION

The Consumer Action Handbook offers tips on buying products and services, and lists contacts for information and assistance. For a free copy, write: Federal Citizen Information Center, Pueblo, Colorado 81009. Or visit them at www.pueblo.gsa.gov.

If you have complaints or comments about programs run by your state or local government, contact your state attorney general or local consumer protection office.

The FTC works for the consumer to prevent fraudulent, deceptive, and unfair business practices in the marketplace and to provide information to help consumers spot, stop, and avoid them. To file a complaint or to get free information on consumer issues, visit ftc.gov or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. The FTC enters Internet, telemarketing, identity theft, and other fraud-related complaints into Consumer Sentinel, a secure online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

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The Federal Trade Commission (FTC) is the nation's consumer protection agency. Here are some tips from the FTC to help you be a more savvy consumer.

1. Know who you're dealing with. Do business only with companies that clearly provide their name, street address, and phone number.
2. Protect your personal information. Share credit card or other personal information only when buying from a company you know and trust.
3. Take your time. Resist the urge to "act now." Most any offer that's good today will be good tomorrow, too.
4. Rate the risks. Every potentially high-profit investment is a high-risk investment. That means you could lose your investment — all of it.
5. Read the small print. Get all promises in writing and read all paperwork before making any payments or signing any contracts. Pay special attention to the small print.
6. "Free" means free. Throw out any offer that says you have to pay to get a gift or a "free" gift. If something is free or a gift, you don't have to pay for it. Period.
7. Report fraud. If you think you've been a victim of fraud, report it. It's one way to get even with a scam artist who cheated you. By reporting your complaint to 1-877-FTC-HELP or ftc.gov, you are providing important information to help law enforcement officials track down scam artists and stop them!

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Federal Trade Commission
Bureau of Consumer Protection
Division of Consumer and Business Education

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