

# Consumer Arbitration

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Commercial arbitration clauses are becoming increasingly common place. Typically, arbitration agreements are contained in a contract entered into prior to the existence of a dispute. Such clauses are now routinely part of the contracts of many businesses, ranging from banks, car dealers, credit card companies, manufactured home dealers, builders, and hospitals to exterminating companies.

For example, First USA amended its credit card agreement to include, in very small print, a clause that would force any claim, dispute, or controversy to binding arbitration. Mandatory arbitration generally precludes the consumer's choice to litigate in a class action. Bank of America, Kaiser Permanente, and Gateway all require arbitration in some of their consumer contracts.

When enforcing an arbitration provision in a consumer transaction, it is only necessary to show that the agreement exists, that it is written, and that the consumer apparently has consented to the agreement. Given the current trend favoring enforcement of arbitration provisions, only those agreements that are truly induced by fraud, duress, or incapacity are likely to be found unenforceable.

Arbitration agreements can be used in any commercial contract. For example, the Texas Supreme Court upheld an arbitration agreement in *Re First Merit Bank*, wherein a mobile home buyer brought action against the lender for breach of contract, breach of warranty, negligence, and fraud in connection with the condition of the mobile home.

The purchase agreement contained an arbitration agreement which required a binding arbitration for "all disputes, claims, or other matters in question arising out of or relating to this loan, its interpretation, validity...". The arbitration agreement further stated that "the scope of arbitrability is broad and includes, without limitation, contractual, tort, statutory, and case law claims." The Texas Supreme Court upheld the arbitration agreement stating, "Because state and Federal policies continue to favor arbitration, a presumption exists favoring agreements to arbitrate under the FAA, and courts must resolve any doubts about an arbitration agreement scope in favor of arbitration."

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