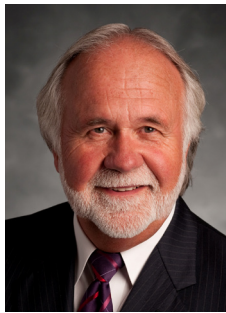




REAL ESTATE



*Brief Primer On Real Estate Arbitrations*



*By: Christopher R. Jones, Esq. and Gary G. Fuchs, Esq.*

Homeowners frequently contact our office with a story that is all too common. They bought a house and after a few months discover some property condition that was not disclosed by the seller. They discover conditions that appear to have been covered up or concealed. They question what rights and remedies they may have against the former owner. In many home sales, the buyer, seller and real estate agent sign an Arbitration Agreement requiring that certain types of claims go through an arbitration process rather than court litigation.

Unfortunately, many buyers, sellers and real estate agents do not fully understand the arbitration process, how best to pursue claims and the recovery available in that process. The purpose of this article is to provide owners and agents with some basic information on the real estate arbitration process.

**1. To Arbitrate or not to arbitrate**

Whenever we are contacted with a similar story, the first question we ask is whether or not an Arbitration Agreement was signed.

Often the importance and meaning of that Arbitration Agreement is not discussed prior to signing. The Arbitration Agreement can be lost in the large number of documents signed in a real estate transaction. Whether or not an Arbitration Agreement is signed by the buyer and seller is the key issue in determining how claims of non-disclosure can be pursued. If no Arbitration Agreement was signed, the buyer or seller has options (including a formal lawsuit) which are beyond the scope of this article. If an Arbitration Agreement was signed, the buyer and seller are bound to the arbitration process to resolve the dispute.

**2. Commencement of claims**

Most arbitration agreements contain a time limitation within which claims for non-disclosure and similar issues must be commenced. Typically, this is 18 or 24 months from the date of closing. Thus, a buyer who discovers issues that may not have been disclosed by the seller has 18 or 24 months from the date of closing to commence a claim against the seller, or risk losing such claim entirely. There can be circumstances when such time limitation is not applicable, but such circumstances are extremely limited and not covered in this article. Because specific time limitations exist as to when these claims can be pursued, it is very important that quick action be taken when such conditions are discovered.

For a buyer, commencing a claim through the arbitration process is typically done by submitting a formal "Demand for Arbitration," with the arbitration service who serves a copy of it on the seller and/or real estate agents involved. This starts the process going forward to an arbitration hearing scheduled at a later date.

Commencing arbitration can be done in a formal or informal fashion. In our experience, commencement of the arbitration process in a more formal fashion can lead to better results at the arbitration hearing. Providing a formal well drafted "Demand for Arbitration" setting

forth the claims and issues serves to put the opposing side on notice of the seriousness of the issues, and helps the arbitrator have a better understanding of the nature of the claims involved.


### 3. The Arbitration Hearing

Typically, an arbitration hearing will be scheduled within 90 days from the initial commencement of the arbitration process. Most times, that arbitration hearing occurs at the property which is the subject of the dispute. Both sides in the dispute bring witnesses necessary to prove their claims and/or defenses in the case. In addition, the parties also submit documentation necessary to effectively show their side of the claim. This can be photographs, repair estimates, opinions from experts as well as additional information that can assist the parties in proving or defending against these claims. For a buyer, such documentation may also include evidence of past repairs, or similar evidence intended to show that a seller may have had knowledge of a particular issue in the property, but failed to disclose it to the buyer.

While there is no specific requirement for what type of evidence needs to be submitted in an arbitration hearing, a well organized presentation can be a significant factor in whether arbitration is won or lost. It is very important to understand the types of claims and defenses which are made in the arbitration process and to submit evidence relevant to those issues. Submitting information in an orderly form such as a three-ring binder at or before the arbitration hearing is of significant help to the arbitrator in understanding the issues. Usually, the first time the arbitrator will hear of the claims will be on the day of the arbitration hearing. Thus, most arbitrators find it helpful to have the information organized to allow a better understanding of the issues and a quick means of referring to important documents during an arbitration hearing.

In addition, submitting formal legal documents in connection with the arbitration process, including pre-arbitration memorandums, witness lists, exhibit lists, etc., can again establish the seriousness of the claims/defenses, the level of organization and attention to detail, as well as provide the arbitrator with an overview of the case and an outline of the evidence and documents which will be presented by both sides.

Ultimately, the arbitrator will hear and receive all information from witnesses and documents and take the matter under advisement. Sometime after the date of the hearing, usually within in 90 days or so, the arbitrator will issue a ruling on the claims being made. Under Minnesota law, such a ruling is binding upon both parties and there are limited bases to dispute a decision of an arbitrator, which emphasizes the need for an organized presentation and assistance by someone experienced with the arbitration process to avoid pitfalls which can occur in the process.

Understanding the legal requirements and the arbitration process overall are key to a successful outcome whether pursuing or defending against such claims. A future article will discuss some common pitfalls of real estate arbitrations and additional insights into arbitration hearings. 

### *H&J Adds New Attorneys*

Hellmuth & Johnson, PLLC is pleased to announce that Katheryn Andresen, Edward Beckmann, and Michael McNamara have joined the firm.

**Kate Andresen** joins the firm as Partner and has over 15 years of experience in the areas of information technology, eCommerce, intellectual property and general corporate law.

**Ed Beckmann** has represented parties involved in disputes arising from several industries, including aviation, construction, energy, reinsurance and others. He is also uniquely qualified to represent individuals and businesses whose reputations have been tarnished by libel, slander, or exposure of private information.

**Michael McNamara** practices in the firm's litigation and insurance practice groups. Michael received his law degree from William Mitchell College of Law and is licensed to practice in the State of Minnesota.

To learn more about our new attorneys, please view their biographies on our website at [www.hjlawfirm.com](http://www.hjlawfirm.com).

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(Approved for 2 Credit Hours)

**Tuesday, May 3 9:30-11:30 a.m.** Register online at [www.agentsguide2.ezregister.com](http://www.agentsguide2.ezregister.com)

**Thursday, July 28 9:30-11:30 a.m.** Register online at [www.agentsguide3.ezregister.com](http://www.agentsguide3.ezregister.com)

**Thursday, October 13 9:30-11:30 a.m.** Register online at [www.agentsguide4.ezregister.com](http://www.agentsguide4.ezregister.com)

### *“Know & Tell: Sound Strategies to Meet Today’s Complex Real Estate Disclosure Requirements”*

(Approved for 1 Credit Hour)

**Thursday, May 5 9:30-10:30 a.m.** Register online at [www.knowandtell2.ezregister.com](http://www.knowandtell2.ezregister.com)

**Tuesday, August 2 9:30-10:30 a.m.** Register online at [www.knowandtell3.ezregister.com](http://www.knowandtell3.ezregister.com)

**Tuesday, October 4 9:30-10:30 a.m.** Register online at [www.knowandtell4.ezregister.com](http://www.knowandtell4.ezregister.com)

### *“Fair Housing & Dual Agency for Real Estate Agents”*

(Approved for 2 Credit Hours - 1 each of Fair Housing and Agency Law)

**Thursday, May 12 9:30-11:30 a.m.** Register online at [www.fhda2.ezregister.com](http://www.fhda2.ezregister.com)

**Thursday, July 14 9:30-11:30 a.m.** Register online at [www.fhda3.ezregister.com](http://www.fhda3.ezregister.com)

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(Approved for 2 Credit Hours)

**Tuesday, May 17 9:30-11:30 a.m.** Register online at [www.foreclosures2.ezregister.com](http://www.foreclosures2.ezregister.com)

**Thursday, July 7 9:30-11:30 a.m.** Register online at [www.foreclosures3.ezregister.com](http://www.foreclosures3.ezregister.com)

**Thursday, October 6 9:30-11:30 a.m.** Register online at [www.foreclosures4.ezregister.com](http://www.foreclosures4.ezregister.com)

### *“Foreclosures & Short Sales: What Every Real Estate Professional Should Know”*

(Approved for 2 Credit Hours)

**Thursday, April 7 9:30-11:30 a.m.** Register online at [www.shortcutsales2.ezregister.com](http://www.shortcutsales2.ezregister.com)

**Tuesday, July 19 9:30-11:30 a.m.** Register online at [www.shortcutsales3.ezregister.com](http://www.shortcutsales3.ezregister.com)

**Tuesday, October 18 9:30-11:30 a.m.** Register online at [www.shortcutsales4.ezregister.com](http://www.shortcutsales4.ezregister.com)

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