

Stevens & Kuss S.C.

Attorneys at Law

THE ARBITRATION PROCESS

Most home now have an arbitration clause in their contract. Many home inspectors do not fully understand what the arbitration process involves. An arbitration clause prohibits a homebuyer from filing a civil lawsuit against the home inspector. There are both risks and benefits from the arbitration process.

In the arbitration process, an arbitrator or organization may be specified in the contract. This means that this arbitrator or organization will make a binding decision in the case. It is important to have an arbitrator who is familiar with both the law and with the home inspection process. A good arbitrator understands the limitations that home inspectors operate under.

I recommend arbitrators who are also lawyers. The home inspector usually has several legal defenses. The most important being those specified in Wisconsin statutes. A home inspector is also protected by ASHI standards. A lawyer is more likely to look at the standards and apply the standards to the acts. A lawyer is more likely to look at the standards and apply the standards to the acts of the home inspector than a non-lawyer. A lawyer is more likely to make a technical and unemotional decision based upon very specific standards as opposed to an equitable decision based upon sympathy for a homebuyer.

The arbitration process is much like the process that goes on in a courtroom only in an abbreviated manner. Witnesses are called, experts are questioned and evidence is presented. Usually the home inspector and the homebuyer both testify. Frequently one or both parties will call an expert witness to testify also. Sometimes expert testimony is put in through reports where the experts don't testify.

In arbitration the rules of evidence are somewhat relaxed and usually the arbitrator allows each side to present all of the evidence that is even barely relevant. Objections that are often sustained in a courtroom are usually not sustained in arbitration. The arbitrator wants both sides to have a full opportunity to present their entire case.

The arbitrator will usually decide the case within two weeks. He or she will send a written decision to the attorneys involved. If the arbitrator awards money, he will specify that

Stevens & Kuss S.C.

Attorneys at Law

in the decision. Frequently in the decisions don't go into much detail, but merely indicate who wins and who loses and also the amount of the award.

If the home inspector loses and the homebuyer is awarded money, the home inspector must pay this award; otherwise, the homebuyer can go into court and have a judgment entered against the home inspector. This is a judgment that is recorded at the courthouse and will earn interest at the rate of 12% per year if not paid.

There are generally no appeal rights from the arbitration process. If a party loses at the arbitration process, that is the end of the road. The only exception would be if it could establish that the arbitrator was clearly biased. It is very important to know about the arbitrator who is arbitrating the case. Certain arbitrators have certain biases or prejudices, as does everyone. Having an arbitrator who is familiar with the home inspection process and who is also familiar with the standards of the industry is a great benefit to any home inspector who is going through the arbitration process.