

Table of Contents

Volume 1

CHAPTER 1. THE ARBITRATION SYSTEM

- § 1:1 What is arbitration
- § 1:2 Nonbinding arbitration
- § 1:3 Reference agreements
- § 1:4 Modern arbitration statutes
- § 1:5 Arbitration agreements
- § 1:6 Oral arbitration agreements
- § 1:7 Unsigned arbitration agreement
- § 1:8 Validity of agreements
- § 1:9 Submission agreements
- § 1:10 Common law arbitration
- § 1:11 Appointment of the arbitrator
- § 1:12 Selection of the arbitrator
- § 1:13 Compelling arbitration
- § 1:14 Multiple parties
- § 1:15 Waiver
- § 1:16 Hearing
- § 1:17 Participation of lawyers
- § 1:18 Evidence
- § 1:19 Discovery
- § 1:20 Award
- § 1:21 Sanctions
- § 1:22 Provisional remedies
- § 1:23 Equitable remedies
- § 1:24 Attack on award
- § 1:25 Enforcement of award
- § 1:26 Appeal
- § 1:27 Judicial attitudes
- § 1:28 Dispute review boards

CHAPTER 2. CONFLICTS OF LAW

- § 2:1 Applicable law
- § 2:2 Simultaneous applicability of FAA and state law
- § 2:3 Federal cases holding FAA applicable
- § 2:4 State court cases applying FAA

- § 2:5 Federal cases holding FAA inapplicable
- § 2:6 State cases holding FAA inapplicable
- § 2:7 State or Federal Law
- § 2:8 Choice of law provisions
- § 2:9 Contracts that involve commerce; *Allied-Bruce Terminix*
- § 2:10 Interstate commerce found
- § 2:11 Interstate commerce not found
- § 2:12 Federal jurisdiction
- § 2:13 Removal to federal court
- § 2:14 Personal jurisdiction
- § 2:15 Convention on the Recognition and Enforcement of Foreign Arbitral Award

CHAPTER 3. ENFORCEABILITY OF ARBITRATION AGREEMENTS

- § 3:1 Drafting the arbitration clause
- § 3:2 Mutual agreement to essential terms required
- § 3:3 Reasonable expectation of the parties
- § 3:4 Special statutory requirements
- § 3:5 Notice
- § 3:6 “Judgment shall be entered on the award”
- § 3:7 Restrictive agreements
- § 3:8 Choice of law clauses
- § 3:9 Conflicting arbitration clauses
- § 3:10 Consolidation
- § 3:11 Attorney fees
- § 3:12 Interest
- § 3:13 Decision by a single arbitrator
- § 3:14 Delegation and consultation
- § 3:15 Appraisal
- § 3:16 Provisional remedies
- § 3:17 Assignment
- § 3:18 Rescission of contract as rescinding arbitration clause
- § 3:19 Qualifications of the arbitrator
- § 3:20 Rules of evidence
- § 3:21 Cumulative evidence
- § 3:22 Limitations
- § 3:23 Discovery
- § 3:24 Following the law
- § 3:25 Following the arbitration agreement
- § 3:26 Determination by court, arbitrator, or jury
- § 3:27 Particular issues determined by court or arbitrator—
Scope of arbitration clause—Determined by court

TABLE OF CONTENTS

§ 3:28	— —Determined by arbitrator
§ 3:29	—“Procedural” arbitrability
§ 3:30	—“Substantive” arbitrability
§ 3:31	—Existence of agreement to arbitrate
§ 3:32	—Waiver of right to arbitrate
§ 3:33	—Waiver of objection to arbitration
§ 3:34	—Conditions precedent to arbitration
§ 3:35	—Formation of the contract
§ 3:36	—Validity of the contract
§ 3:37	—Formation of the arbitration agreement
§ 3:38	—Cancellation of contract
§ 3:39	—Fraud in the inducement and fraud in the execution
§ 3:40	—Consumer arbitration
§ 3:41	—Unconscionable arbitration agreements
§ 3:42	—Due process
§ 3:43	—Limitations
§ 3:44	—Res judicata
§ 3:45	—Illegality
§ 3:46	—Parties
§ 3:47	—Availability of class arbitration
§ 3:48	Conditions precedent to arbitration
§ 3:49	Option to arbitrate
§ 3:50	Interpretation of arbitration agreements
§ 3:51	Incorporation of arbitration agreement by reference
§ 3:52	Merger of arbitration clause into successive agreement
§ 3:53	Arbitration not required by incorporation clause
§ 3:54	American Arbitration Association (AAA) rules
§ 3:55	Scope of arbitration agreement
§ 3:56	Self-executing arbitration agreements
§ 3:57	Rescission, cancellation, revocation
§ 3:58	Common law arbitration
§ 3:59	Assignment of arbitration contract
§ 3:60	Stay orders
§ 3:61	Arbitration of statutory claims
§ 3:62	Inarbitrable matters and illegality
§ 3:63	Public agency arbitration
§ 3:64	Sovereign immunity
§ 3:65	Waiver of right to enforce arbitration
§ 3:66	Litigation not a waiver
§ 3:67	Waiver of right to litigate
§ 3:68	Breach of ADR contract
§ 3:69	Bankruptcy of party
§ 3:70	Effect of arbitration agreement on third parties
§ 3:71	Vouching in

- § 3:72 Alter ego
- § 3:73 Third-party beneficiary
- § 3:74 Arbitration clause incorporated into subcontract
- § 3:75 Insurer
- § 3:76 Surety
- § 3:77 The Miller Act
- § 3:78 Guarantor
- § 3:79 Successive arbitrations
- § 3:80 Arbitration at option of a party
- § 3:81 Oral modification of arbitration agreement
- § 3:82 Obliteration of arbitration provision
- § 3:83 Enforcement of arbitration agreement denied
- § 3:84 Unconscionability
- § 3:85 Risk of inconsistent rulings
- § 3:86 Common interest developments
- § 3:87 Mutuality of obligation
- § 3:88 Contractor licensing
- § 3:89 Non-binding arbitration
- § 3:90 Provisions void
- § 3:91 Parties to the arbitration agreement
- § 3:92 Arbitration against architect
- § 3:93 Waiver of objection to arbitration
- § 3:94 Wholly groundless exception
- § 3:95 Nonsignatories to arbitration agreement
- § 3:96 Equitable estoppel
- § 3:97 Severability
- § 3:98 Prejudice may not be considered when determining waiver
- § 3:99 Ratification

Volume 2

CHAPTER 4. PROVISIONAL REMEDIES

- § 4:1 Attachment
- § 4:2 Injunction
- § 4:3 Mechanics' liens
- § 4:4 —Waiver
- § 4:5 Miller Act
- § 4:6 Stop notices
- § 4:7 Receivers
- § 4:8 Declaratory relief
- § 4:9 Stopping the work

TABLE OF CONTENTS

CHAPTER 5. CONSOLIDATION AND JOINDER

- § 5:1 Multiple parties
- § 5:2 Voluntary participation
- § 5:3 Joinder clauses
- § 5:4 Vouching in
- § 5:5 Incorporation of arbitration clause by reference to other documents
- § 5:6 Consolidation of arbitration proceedings
- § 5:7 Decisions ordering and refusing to order consolidation
- § 5:8 Severance

CHAPTER 6. SELECTION OF THE ARBITRATOR

- § 6:1 Agreement of the parties
- § 6:2 Judicial appointment
- § 6:3 Party-appointed arbitrators select a neutral arbitrator
- § 6:4 Strike-off procedures
- § 6:5 Termination of arbitrator

CHAPTER 7. THE ARBITRATOR

- § 7:1 Minimum standards of fairness
- § 7:2 Misconduct
- § 7:3 Bias
- § 7:4 Party or person closely identified with party as arbitrator
- § 7:5 Immunity
- § 7:6 Scope of arbitrator's powers
- § 7:7 Ethics standards

CHAPTER 8. PREPARING FOR THE HEARING

- § 8:1 Interviewing the client
- § 8:2 Discovery
- § 8:3 Investigation
- § 8:4 Documents
- § 8:5 Drawings
- § 8:6 Specifications
- § 8:7 Damages
- § 8:8 Chronological digest
- § 8:9 Witness sheets
- § 8:10 Documentary exhibits
- § 8:11 Wall exhibits

- § 8:12 Videotape
- § 8:13 Expert witnesses
- § 8:14 Argument, briefs, and proposed award

CHAPTER 9. CONDUCT OF THE HEARINGS

- § 9:1 Counsel
- § 9:2 Transcript
- § 9:3 Oaths
- § 9:4 Due process
- § 9:5 —Exclusion of evidence
- § 9:6 —Hearing requirement
- § 9:7 —Independent investigation, *ex parte* communication, jury trial, notices
- § 9:8 Confidentiality; litigation privilege
- § 9:9 Venue
- § 9:10 Arbitration fees
- § 9:11 Opening statement
- § 9:12 Witnesses—Subpoenas
- § 9:13 —Direct examination
- § 9:14 —Cross-examination
- § 9:15 —Other witness issues
- § 9:16 — —Production of documents
- § 9:17 —Deciding whether to cross-examine
- § 9:18 Rules of evidence
- § 9:19 —Objections
- § 9:20 —Argumentative questions
- § 9:21 —Cumulative evidence
- § 9:22 Visiting the job site
- § 9:23 Change of claim
- § 9:24 Counterclaims
- § 9:25 Third-party claims
- § 9:26 Argument
- § 9:27 Exhibits
- § 9:28 Briefs
- § 9:29 Submission
- § 9:30 Advice to arbitrators
- § 9:31 Summary judgment
- § 9:32 Trial court intervention

CHAPTER 10. THE AWARD

- § 10:1 Time
- § 10:2 Correction of the award
- § 10:3 Form of the award

TABLE OF CONTENTS

§ 10:4	Costs and attorney fees
§ 10:5	Attorney fees in court proceedings related to arbitration
§ 10:6	Interest
§ 10:7	Punitive damages
§ 10:8	Res judicata and collateral estoppel
§ 10:9	Error of law
§ 10:10	Grossly irrational
§ 10:11	Manifest disregard
§ 10:12	Palpable mistakes
§ 10:13	Evident partiality
§ 10:14	Error on face of award
§ 10:15	Award beyond the scope
§ 10:16	Motion to vacate
§ 10:17	Award against public policy
§ 10:18	Interim award
§ 10:19	Stay of award
§ 10:20	Award exceeded arbitrator's powers
§ 10:21	Piercing the corporate veil to collect award
§ 10:22	Vacating award
§ 10:23	Vacation limited to grounds specified in statute

CHAPTER 11. APPEALABLE AND NONAPPEALABLE ORDERS

§ 11:1	Order compelling arbitration not appealable
§ 11:2	Order refusing to enjoin arbitration not appealable
§ 11:3	Motion to compel arbitration denied
§ 11:4	Federal decisions
§ 11:5	Order confirming or refusing to confirm an award
§ 11:6	Motion to consolidate arbitration proceedings
§ 11:7	Venue orders
§ 11:8	Waiver of right to appeal
§ 11:9	Scope of review expanded by agreement
§ 11:10	Interlocutory orders
§ 11:11	Court's jurisdiction to review or modify award

CHAPTER 12. LIMITATIONS

§ 12:1	Decision by court or arbitrator
§ 12:2	Conditions precedent—Decision by court
§ 12:3	Statute of limitations—Decision by court
§ 12:4	—Decision by arbitrator
§ 12:5	Contractual time limits—Decision for court
§ 12:6	—Decision for arbitrator
§ 12:7	Laches—Decision for arbitrator

- § 12:8 Commencement of arbitration proceedings
- § 12:9 Demand for arbitration—Timely
- § 12:10 —Untimely
- § 12:11 Rendering the award
- § 12:12 Enforcement of award
- § 12:13 Attack on award

CHAPTER 13. OPTING FOR ARBITRATION

- § 13:1 When the decision is made
- § 13:2 Speed
- § 13:3 Venue
- § 13:4 Limitations
- § 13:5 Expertise
- § 13:6 Cost
- § 13:7 Law and motions
- § 13:8 Provisional remedies
- § 13:9 Rules of evidence
- § 13:10 Discovery
- § 13:11 Damages
- § 13:12 Appealability
- § 13:13 Multiple parties
- § 13:14 Rules of law
- § 13:15 Proposals regarding combatting arbitration
inefficiency

CHAPTER 14. MEDIATION

- § 14:1 Enforceability of agreements
- § 14:2 Privileges and confidentiality
- § 14:3 Authority of court to order mediation
- § 14:4 Mediation costs recoverable

APPENDICES

- Appendix A. American Arbitration Association Forms
- Appendix B. Uniform Arbitration Act (1956)
- Appendix C. Revised Uniform Arbitration Act of 2000
- Appendix D. Federal Arbitration Act
- Appendix E. Construction Industry Arbitration Rules and
Mediation Procedures (Including Procedures
for Large, Complex Construction Disputes)
- Appendix E.1. Summary of Changes—Construction Industry
Arbitration Rules
- Appendix F. Home Construction Arbitration Rules and
Mediation Procedures

TABLE OF CONTENTS

Appendix G.	The AAA Guide to Drafting Alternative Dispute Resolution Clauses for Construction Contracts
Appendix H.	Construction Industry Initial Decision Maker (IDM) Procedures
Appendix I.	Supplementary Rules for Fixed Time and Cost Construction Arbitration
Appendix J.	AAA-ICDR Optional Appellate Arbitration Rules
Appendix K.	Commercial Arbitration Rules and Mediation Procedures
Appendix L.	Expedited Arbitration Procedures for Small Claims Can Save Contractors Time and Money

Table of Laws and Rules

Table of Cases

Index