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Warning – Read Your Binding Arbitration Agreements Carefully

Many contracts have a provision requiring parties to submit disputes to binding arbitration. Some people say arbitrating disputes is more advantageous than litigating in court because the process is faster, cheaper, and confidential. However, before signing away your right to a day in court, be aware of arbitration pitfalls.

Unless your contract provides otherwise, arbitrators do not have to follow the law. This makes predicting an outcome difficult. Overturning an arbitration award is virtually impossible, unless you can prove the arbitrator exceeded his/her power (e.g., the arbitrator remade a contract or violated a party's statutory right). Thus, arbitrators can misapply the law and leave you stuck with a decision that would not survive appellate review, were it available.



There is no guarantee that arbitration will be faster, cheaper, or even confidential. Arbitrators are not bound by court rules regarding timing so they are free to set any schedule they want. Arbitrators charge for their time, and their fees, which would be avoided in litigation, add up quickly. Confidentiality can be a mirage if a party challenges the arbitrator's decision in court because the arbitration proceedings enter the public record.

There are steps you can take to avoid these drawbacks. Arbitration is a creature of contract, and so whatever the parties state in their contract governs how the arbitration will proceed. The parties can agree that the arbitrator must follow the law and errors are subject to appellate review. They can agree to limit depositions to keep the proceedings swift and inexpensive. The potential arbitration provisions are limited only by your imagination.

Arbitration provisions are tucked at the back of most contracts. Before blindly agreeing to submit potential disputes to arbitration, be sure you fully understand the arbitration provision and consider alternatives. Otherwise, you may find yourself in a dispute forum that will not provide you the relief you expected.

Call us at 949.631.3300 when you have a business dispute. We are trial lawyers with a winning record of more than 90 percent.