

ARBITRATION CLAUSES: QUICK TIPS

Instead of resolving a dispute through the court system, parties can agree to submit their disputes to arbitration. Arbitration is essentially private litigation. In Colorado, arbitration is a favored method of dispute resolution. However, before you include, or agree to, an arbitration clause in your next contract, here are some things you should consider:

Advantages of Arbitration Clauses

- ◆ Arbitration can be faster than litigation
- ◆ Arbitration can be less expensive than litigation
- ◆ There is no official court record to be made public
- ◆ Arbitrators tend to be more sophisticated and knowledgeable than juries

Disadvantages of Arbitration Clauses

- ◆ If you get an unfavorable decision from the arbitrator, there is generally no ability to appeal that decision
- ◆ With many arbitrators, a significant case deposit must be paid at the time the demand for arbitration is filed
- ◆ There are no juries in arbitration and you may get stuck with a bad arbitrator
- ◆ You may have less chance to really investigate your case through discovery

Like any other provision of a contract, arbitration clauses can and should be negotiated. If you think arbitration is best for you, careful drafting of an arbitration clause in your contract will help you to capitalize on the “Advantages of Arbitration Clauses” and minimize some of the “Disadvantages of Arbitration Clauses.” Most importantly – be specific.

- ◆ Research various arbitration groups. There can be a huge disparity in the costs involved in arbitration based on the arbitration group you select (i.e. AAA, JAMS, JAG).
- In addition to identifying the specific arbitration group, you may want to identify a specific arbitrator and/or specify that the mutually agreed to expert must have expertise in the area of the dispute.
- Specify in the arbitration clause how initial costs of arbitration are to be paid (e.g. paid solely by the initiating party or split between the parties).
- Based on the complexity of the contract and issues, you can specify whether disputes will be heard before a single arbitrator or a panel of three arbitrators.

If your business may need assistance in this area or needs assistance in resolving other business disputes, please contact me to arrange for a consultation.

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