AN OVERVIEW OF PENNSYLVANIA'S NEW ARBITRATION LAW

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Construction Alert

Effective July 1, 2019, Pennsylvania has joined 20 other states in adopting the Revised Uniform Arbitration Act (RUAA) as the most current law governing agreements to arbitrate in Pennsylvania. The RUAA was originally promulgated by the Uniform Law Commission in 2000, which replaced the original Uniform Arbitration Act (UAA) enacted by the Commission in 1956. Recognizing the need to replace an outdated UAA, Pennsylvania adopted the RUAA as a more thorough and robust arbitration law to meet the needs of modern disputes. Now, the RUAA provides specific guidance on various aspects of arbitration, including but not limited to the initiation of arbitration proceedings, impartiality of arbitrators, arbitrator immunity, discovery proceedings, and sanctions.

- **Mandatory Application and Optional Retroactivity**. The RUAA applies to all agreements to arbitrate signed after July 1, 2019 but permits parties who have executed agreements before that date to voluntarily agree to follow the RUAA's provisions. For arbitration agreements executed prior to July 1, 2019, for which the parties do not elect to be governed by the RUAA, the UAA will continue to apply.
- **Initiation of Arbitration**. The RUAA establishes procedures for the initiation of arbitration. Notice must be given in writing or by an electronic record describing the nature of the controversy and the remedy sought. Notice must be given to all parties to the arbitration agreement, not just to the party against which a claim is filed. A court may vacate an arbitration award for failure to give proper notice of the initiation of arbitration.
- **Arbitrator's Duty to Disclose**. Prior to accepting the appointment and after making a reasonable inquiry, the RUAA requires that an arbitrator discloses to all parties and to other appointed arbitrators any known fact that a reasonable person would consider likely to affect impartiality. Such required disclosures include personal or financial interests in the outcome of a proceeding and any existing or past relationship with parties, their counsel or representatives, witnesses, and other appointed arbitrators. Likewise, after accepting an appointment, arbitrators have a continuing duty to disclose facts to the same extent as required prior to acceptance. If an arbitrator makes a required disclosure, a timely objection to the arbitrator's service may provide grounds to vacate an arbitration award for evidence of impartiality. If an arbitrator fails to disclose a required fact, a court may later vacate any award.
- **Immunity for Arbitrator**. The RUAA makes clear that those serving as an arbitrator are now afforded the same level of immunity as a judge acting in a judicial capacity. This immunity applies even if an arbitrator fails to make a required disclosure regarding facts that may affect their impartiality.
- **Discovery**. The RUAA provides arbitrators with broad discovery powers, allowing discovery "as appropriate in the circumstances, taking into consideration the needs of the parties to the arbitration proceeding and other affected parties and the desirability of making the proceeding fair, expeditious and

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cost-effective." In this regard, the RUAA allows arbitrators to permit discovery from non-parties, decide conditions under which depositions are taken, issue protective orders, and take action against a party noncompliant with a discovery order to the same extent a court can.

- **Punitive Damages and Sanctions**. The RUAA allows an arbitrator to order any remedies the arbitrator considers appropriate under the circumstances, including punitive damages and attorneys' fees if such awards are authorized by law in civil proceedings. However, if the arbitrator awards punitive damages, the arbitrator must specify in the award the basis in both law and fact for authorizing the award.
- **Waiver**. The RUAA enables parties to waive or modify many of its provisions. The statute specifically itemizes those sections that may not be waived or modified by a party to an arbitration agreement or proceeding. All other provisions are waivable. For example, the parties can agree (1) that the arbitrator, not the court, will decide whether a case is subject to arbitration, (2) to restrict or enlarge discovery proceedings, and (3) to modify the type of available remedies.

Overall, the RUAA should provide clarity with respect to most aspects of an arbitration proceeding. Moreover, because arbitration provisions are found in most construction contracts and arbitration often results when mediation ends in an impasse, it is vital that parties and their counsel maintain a familiarity with the procedural and substantive aspects of this alternative dispute resolution process.

For more details on the new arbitration law, please click here.

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