

# Introduction To Arbitration

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In order to be an effective advocate in Alternative Dispute Resolution (ADR), a lawyer must understand the system, its strengths and its weaknesses. As with a court, there may be jurisdictional limits that have an impact on how a case proceeds. Knowing those limits is crucial for effective use of any form of ADR.

**What is Arbitration?** The United States Supreme Court noted in *United Steelworkers of America v. Warrior & Gulf Navigation Company*, 363 U.S. 574, 582 (1963) that "arbitration is a matter of contract." Parties to a contract can agree to resolve disputes privately through arbitration, rather than through a judicial system.

Public policy encourages resolution of disputes through arbitration. The United States Supreme Court has spoken clearly over the last seven years that arbitration is to be favored as a means of dispute resolution. *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001); *C & L Enterprises, Inc. v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 532 U.S. 411 (2001); *Green Tree Financial Corp. - Alabama v. Randolph*, 531 U.S. 79 (2000). These cases only reflect a longer-term view that arbitration is to be encouraged.

The State of Colorado, as well as most jurisdictions, has a long history of encouraging resolution of disputes through arbitration. *Hughley v. Rocky Mountain Health Maintenance Organization, Inc.*, 927 P.2d 1325 (Colo. 1996); *Lambdin v. District Court*, 903 P.2d 1126 (Colo. 1995); *Mountain Plains Constructors, Inc. v. Torrez*, 785 P.2d 928 (Colo. 1990); *Ezell v. Rocky Mountain Bean & Elevator Co.*, 76 Colo. 409, 232 P. 680 (1925); *Rains v. Foundation Health Systems Life & Health*, 23 P.3d 1249 (Colo.App. 2001). A valid and enforceable arbitration clause in a contract divests a trial court of jurisdiction to determine the merits of a dispute. *Mountain Plains Constructors, Inc. v. Torrez*, 785 P.2d at 930; *McCord v. Affinity Ins. Group, Inc.*, 13 P.3d 1224 (Colo.App. 2000); *Gibson v. Wal-Mart Stores, Inc.*, 181 F.3d 1163 (10<sup>th</sup> Cir. 1999).

The Colorado General Assembly enacted the Uniform Arbitration Act (UAA) in 1975. *C.R.S. §13-22-201, et seq.* This act provided a means of resolving initial disputes as to what issues are subject to arbitration for contracts entered into before August 4, 2004. It also provided for limited review by a court after completion of the arbitration.

In 2004, the Colorado General Assembly enacted a version of the Revised Uniform Arbitration Act (RUAA). This act applies to all arbitration agreements entered into after August 4, 2004. Parties to a contract entered into prior to August 4, 2004 may agree to application of the RUAA to their contract.

Congress has enacted the Federal Arbitration Act (FAA). *9 U.S.C. § 1, et seq.* The FAA is applicable to contracts that involve interstate commerce.

***Examination of a Contractual Basis for Arbitration.*** Parties must agree to resolve disputes by arbitration. Absent such an agreement, there is no basis to compel arbitration of any issue.

A lawyer must allow the client to determine if an arbitration clause should be included in a contract. The parameters of the clause should spell out what disputes, if any, will be excluded from the clause. Otherwise, it is possible that a court may determine that all disputes are to be resolved by arbitration. *Eychner v. VanFleet*, 870 P.2d 486 (Colo.App. 1993) (broad language required district court to determine what issues were to be arbitrated).

***Contents of an Arbitration Clause:*** Any provision in a contract that requires arbitration of issues should be clear and delineate what the agreement is between the parties. As with other parts of the contract, the parties have great freedom to structure an arbitration clause in any way that they choose. Once that clause is agreed upon, it then becomes enforceable. The following are several things to consider when preparing an arbitration clause in a contract:

- a. An arbitration clause can be extremely broad, providing submission to arbitration of all disputes. Make sure that this is what your client wants in lieu of court litigation. Second, make sure the client understands that there will be cost involved in arbitration.

b. Delineate what issues are to be arbitrated. The parties to a contract can limit the extent of the arbitration clause to only certain types of issues. If issues are limited, then an arbitrator is limited on what can be decided in the arbitration proceeding. If there is any ambiguity in the arbitration clause, it most probably will be resolved in favor of arbitration of disputes, rather than litigation.

c. Delineate who is to determine what issues are to be arbitrated. The parties may agree that the arbitrator is to determine the arbitrability of an issue. Any such agreement must be stated with clear language and unmistakable evidence that this was the intent of the parties. *AT&T Technologies, Inc. v. Communications Workers*, 475 U.S. 643 (1986); *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938 (1995); *Galbraith v. Clark*, 122 P.3d 1061 (Colo.App. 2005). Absent a clear indication that an agreement exists for the arbitrator to determine what issues are subject to an arbitration clause, a court will be required to make such a determination. *Kaplan at p. 945* ("We conclude that, because the Kaplans did not clearly agree to submit the question of arbitrability to arbitration, the Court of Appeals was correct in finding that the arbitrability of the Kaplan/First Options dispute was subject to independent review by the courts."). Where the parties have agreed to allow the arbitrator to determine what will be subject to arbitration, then the parties will be bound by that. *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79 (2002).

d. The Colorado Court of Appeals has ruled in *Cabus v. Dairyland Insurance Company*, 656 P.2d 54, 56 (Colo.App. 1982) that "[g]enerally, arbitrators are not bound by either substantive or procedural rules of law, except as required under the terms of the arbitration agreement." Include in the arbitration clause a choice of law provision, which may apply the law of a different state or jurisdiction. The parties may include also a provision

that the arbitrator will be bound by decisions of the jurisdiction's appellate courts.

e. The number of arbitrators will need to be spelled out in the arbitration clause. Absent such an agreement, it will be assumed that one arbitrator is to determine all issues.

f. The method for appointment of the arbitrator/s should be set forth. The UAA and RUAA provide that the selected method of appointment shall be followed. If that method cannot be followed, then a court shall appoint the arbitrators. *UAA - C.R.S. § 13-22-205; RUAA - 13-22-211*. The parties have the right to set forth how the court shall appoint an arbitrator/s, even if they cannot agree on someone to be appointed.

g. The UAA in Colorado did not provide for pre-hearing discovery. *C.R.S. § 13-22-209*. If the parties desired such discovery, then a provision had to be set forth in the arbitration clause or agreement. *Rains v. Foundation Health Systems Life & Health, supra*. Under the RUAA, an arbitrator may allow discovery to the extent deemed appropriate. *C.R.S. §13-22-217(3)*.

***Making and Enforcing a Demand for Arbitration:*** Enforcement of an arbitration provision involves a two-step process. If a dispute has arisen under a contract, the aggrieved party must make a demand on the other party to arbitrate that dispute. If the other party refuses, then the aggrieved party must file an application in the appropriate district court for an order compelling arbitration. *UAA - C.R.S. § 13-22-204; RUAA - C.R.S. §13-22-207*.

A district court may not refuse to issue an order compelling arbitration on the basis that the claim lacks merit. *UAA - C.R.S. § 13-22-204(5); RUAA - C.R.S. §13-22-207(4)*. The issue of whether merit exists is to be left to the arbitrator.

The UAA and RUAA direct a district judge to summarily determine the issue of whether an issue is subject to arbitration. Please note that any order by the district court to deny arbitration or stay an arbitration is immediately appealable. *UAA - C.R.S. § 13-22-221(a)*

& (b); RUA - C.R.S. §13-22-228(1)(a) & (b). An order compelling arbitration is *not* appealable immediately. *Gergel v. High View Homes, LLC*, 58 P.3d 1132 (Colo.App. 2002).

**Contesting an Application for Enforcement of an Arbitration Clause:** UAA - C.R.S. § 13-22-204 and RUA - C.R.S. §13-22-207 provide the mechanism for contesting the validity or extent of an arbitration clause in a contract. The UAA and RUA both provide that the matter shall be determined summarily, and this places upon the party opposing arbitration a duty to convince the district court that the clause should not be enforced. There are a number of ways to attack agreements to arbitrate. Please note that these attacks need to be made prior to the arbitration and to a district court if an application is made for an order compelling arbitration. It is not appropriate to proceed with the arbitration and then argue after the fact that the agreement to arbitrate was void. A court may hold that such acquiescence is a ratification of the arbitration and the party is bound by the result. There are ways to oppose an application for arbitration.

a. If no contract exists or there was no inclusion of an arbitration clause, then the application cannot be granted. The UAA, RUA and FAA require that any agreement be in writing to be enforceable. An oral agreement to arbitrate, absent some conduct thereafter, is not enforceable.

b. If a provision to arbitrate was added after the fact, then there must be clear evidence that both sides agreed to the change. A number of credit card companies have added arbitration provisions in existing contracts through use of bulk mailings. The burden is on the party claiming that a modification of an existing contract occurred and is now binding. See *e.g.*, *McCoy v. Blue Cross Blue Shield of Utah*, 20 P.3d 901 (Utah 2001).

c. If the agreement to arbitrate was negotiated unconscionably, then a district court should not enforce the agreement. See *e.g.*, *Sosa v. Paulos*, 924 P.2d 357 (Utah 1996).

d. If the application to compel arbitration is too broad, then the district court can be requested to limit the arbitration to those issues or parties set forth in the agreement. For example, an agreement to arbitrate between two corporations would not necessarily include corporate officers in private capacities. *First Options of Chicago, Inc. v. Kaplan, supra*. If the agreement only relates to certain aspects of the contract, then other aspects cannot be compelled to be arbitrated. An example would be an agreement to arbitrate uninsured motorist claims, but the agreement would not extend to compel arbitration of personal property claims arising from an automobile accident.

e. If the overall agreement of the parties is void as against public policy, then the arbitration clause also would fail. *Dudding v. Norton Frickey & Associates*, 11 P.3d 441 (Colo. 2000). Please note that the FAA may affect contracts involving interstate commerce and limit a public policy argument, unless it applies to all contracts, not just those involving arbitration. *Doctor's Associates, Inc. v. Casarotto*, 517 U.S. 681 (1996).

f. If the cost to arbitrate is excessive, then an argument can be made that the arbitration agreement is unenforceable. That argument was rejected on a *per se* basis by the United States Supreme Court in *Green Tree Financial Corporation-Alabama v. Randolph*, 531 U.S. 79 (2000). The Court left open the door for individual challenges. An example of an individual challenge that was successful is found in *Mendez v. Palm Harbor Homes, Inc.*, 45 P.3d 594 (Wash.App. 2002), as modified \_\_\_P.3d\_\_\_, 2002 WL 1330667 (costs of arbitration would preclude access to an arbitral forum). Colorado courts have rejected similar attacks in two cases. *Gergel v. High View Homes, LLC, supra*; *Rains v. Foundation Health Systems Life & Health, supra*. These two cases reject a *per se* rule, and evidence could be presented that would preclude enforcement of an arbitration provision based on cost.

The Tenth Circuit has ruled that arbitration clauses in employment contracts are unenforceable if the cost of the arbitration is to be shared by the employee. *Shankle v. B-G Maintenance Management of Colorado, Inc.*, 163 F.3d 1230 (10<sup>th</sup> Cir. 1999).

**Selecting an Arbitrator:** Appointment of an arbitrator(s) is to be in conformity with the agreement of the parties. If the parties cannot agree upon an arbitrator or the agreed upon method cannot be followed, then an application may be made to an appropriate district court for appointment of an arbitrator. *UAA - C.R.S. § 13-22-205; RUAA - C.R.S. §13-22-211*. Once the court appoints the arbitrator, that person then has all the powers conferred by the agreement of the parties.

**The Arbitration Hearing:** The arbitrator is given latitude to set a hearing upon, at least, thirty days notice served personally or by registered mail. Notice is not necessary if a party appears voluntarily for the hearing.

Under the UAA, party is entitled to be heard, present evidence, and cross-examine witnesses. *C.R.S. § 13-22-207*. The right to a hearing may be waived by the parties to allow a summary resolution by the arbitrator. *Carson v. Painewebber, Inc.*, 62 P.3d 996 (Colo.App. 2002).

Under the RUAA, an arbitrator may grant summary disposition of a claim, if requested by one of the parties to the arbitration. *C.R.S. §13-22-215(2)*. The RUAA provides that the arbitrator must order a hearing. *C.R.S. §13-22-215(3)*.

Arbitrators do have the authority to issue subpoenas for the hearing. *UAA- C.R.S. § 13-22-209;RUAA - C.R.S. §13-22-217*. Subpoenas may be enforced through an application to a district court. An arbitrator may permit a deposition of a witness who is not subject to a subpoena or is unable to attend the hearing.

**The Arbitration Award:** After completion of the arbitration hearing, an arbitrator is required to issue and sign a written award that resolves all pending claims. A copy of the award must then be served on the parties or mailed to them by the arbitrator. Mailing in Colorado must be by registered or certified mail.

There is no requirement by statute that the award detail any reasoning for the resolution of the dispute. If the parties want some detail, then that should be included in the arbitration agreement or relayed to the arbitrator.

**Modification of an Award:** A party may request that an arbitrator modify an award if there was a miscalculation of figures or description of the party or property; the award was imperfect as to form; or for purposes of clarifying the award. *UAA - C.R.S. § 13-22-211; RUAA - C.R.S. §13-22-220*. Application must be made within twenty days of receipt or delivery of the arbitration award under the UAA and ten days under the RUAA.

**Vacation or Correction of an Award:** A party to the arbitration may seek a court order vacating the award. In Colorado, such application under the UAA must be made within thirty days after receipt of the award. If fraud, corruption or other undue means are alleged, then the motion to vacate must be filed within thirty days after such grounds are known or should have been known.

The UAA grants to a district court the power to vacate an award for the following reasons: (1) corruption, fraud, or other undue means; (2) evident partiality by a neutral arbitrator or corruption or misconduct by any of the arbitrators; (3) exceeding the powers granted by the arbitration agreement; (4) refusal to postpone the hearing when good cause existed, refusal to hear evidence material to the controversy, or conducting of the hearing in such a way as to prejudice substantially the rights of a party; or (5) no arbitration agreement existed. *UAA - C.R.S. § 13-22-214*.

A district court may correct an arbitration award for the following reasons: (1) there was an evident miscalculation of figures or an evident mistake in the description of any person or property; (2) the arbitrators awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision; or (3) the award is imperfect as to form, but not affecting the merits of the decision. *UAA - C.R.S. § 13-22-215*.

The RUAA provides the following grounds for vacating an award:

- (1) Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if the court finds that:

(a) The award was procured by corruption, fraud, or other undue means;

(b) There was:

(I) Evident partiality by an arbitrator appointed as a neutral arbitrator;

(II) Corruption by an arbitrator; or

(III) Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(c) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to section 13-22-215, so as to prejudice substantially the rights of a party to the arbitration proceeding;

(d) An arbitrator exceeded the arbitrator's powers;

(e) There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under section 13-22- 215(3) no later than the beginning of the arbitration hearing; or

(f) The arbitration was conducted without proper notice of the initiation of an arbitration as required in section 13-22-209 so as to substantially prejudice the rights of a party to the arbitration proceeding.

(1.5) Notwithstanding the provisions of subsection (1) of this section, the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

A motion to vacate under the RUAA must be filed within ninety days of receipt of notice of the award. *C.R.S. §13-22-223(2)*.

**Confirmation and Entry of Judgment:** An arbitration award may be confirmed by a district court upon application of the party receiving the award. *UAA - C.R.S. §13-22-216; RUAA - C.R.S. 13-22-225(1)*. Unless set aside or modified by a district court within the time limits set forth in the UAA and RUAA, the confirmed award becomes a judgment that may be enforced as any other judgment. *UAA - C.R.S. § 13-22-217; RUAA - C.R.S. 13-22-225(2)*.

**Appeals:** An appeal may be taken to the Colorado Court of Appeals or Colorado Supreme Court on the grounds set forth. *UAA - C.R.S. § 13-22-221; RUAA - C.R.S. §13-22-228*.

**Injunctive Relief prior to Arbitration Hearing:** As to the UAA, the Colorado Supreme Court dealt with this issue in *Hughley v. Rocky Mountain Health Maintenance Organization*, 927 P.2d 1325 (Colo. 1996). In that case, an HMO denied a claim for cancer medical care. The HMO contract had an arbitration clause which was valid. The plaintiff sought a preliminary injunction requiring continued medical care until the arbitration panel could resolve the case. The court had determined that such authority did exist in order to preserve the status quo. Once the arbitration award was entered, the injunction would be set aside.

The RUAA specifically provides that a district court may grant preliminary relief to "protect the effectiveness of the arbitration proceeding..." *RUAA - C.R.S. §13-22-208(1)*. After the arbitrator is appointed, then the arbitrator has the authority to issue preliminary orders. *RUAA - C.R.S. §13-22-208(2)*.

**Final Thoughts:** In light of the *Circuit City* case, arbitration clauses will probably proliferate in employment and other contracts. It is important to understand the framework of arbitration and how it can best be used.

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## Colorado Revised Uniform Arbitration Act

(Applicable to contracts entered into after August, 2004)

### **13-22-201. Short Title**

As used in this part 2, unless the context otherwise requires:

- (1) "Arbitration organization" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration proceeding or is involved in the appointment of an arbitrator.
- (2) "Arbitrator" means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.
- (3) "Court" means a court of competent jurisdiction in this state.
- (4) "Knowledge" means actual knowledge.
- (5) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision; agency; or instrumentality; public corporation; or any other legal or commercial entity.
- (6) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

### **13-22-202. Notice**

- (1) Except as otherwise provided in this part 2, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.
- (2) A person has notice if the person has knowledge of the notice or has received notice.
- (3) A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery or such communication.

### **13-22-203. Applicability**

(1) Except as otherwise provided in subsection (2) of this section, this part 2 shall govern an agreement to arbitrate made on or after August 4, 2004.

(2) This part 2 shall govern an agreement to arbitrate made before August 4, 2004, if all parties to the agreement or to the arbitration proceeding so agree in a record.

**13-22-204. Effect of Agreement to Arbitrate - Non-waivable Provisions**

(1) Except as otherwise provided in subsections (2) and (3) of this section, a party to an agreement to arbitrate or to an arbitration proceeding may waive, or, the parties may vary the effect of, the requirements of this part 2 to the extent permitted by law.

(2) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

(a) Waive or agree to vary the effect of the requirements of section 13-22-205(1), 13-22-206(1), 13-22-208, 13-22-217(1) or (2), 13-22-206, or 13-22-228;

(b) Agree to unreasonably restrict the right under section 13-22-209 to notice of the initiation of an arbitration proceeding;

(c) Agree to unreasonably restrict the right under section 13-22-212 to disclosure of any facts by a neutral arbitrator; or

(d) Waive the right under section 13-33-216 of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under this part 2, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.

(3)(a) Except as otherwise provided in paragraph (b) of this subsection (3), a party to an agreement to arbitrate or arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements of this section or section 13-22-203(1), 13-22-207, 13-22-214, 13-22-218, 13-22-220(4) or (5), 13-22-222, 13-22-223, 13-22-224; 13-22-225(1) or (2), or 13-22-229.

(b) If the parties to an agreement to arbitrate or to an arbitration proceeding are a government, governmental subdivision, governmental agency, governmental instrumentality, public corporation, or any commercial entity, the parties may waive the requirements of section 13-22-223 except if the award was procured by fraud or corruption.

**13-22-205. Application for Judicial Relief**

(1) Except as otherwise provided in section 13-22-228, an application for judicial relief under this part 2 must be made by motion to the court and heard in the manner provided by law or court rule for making and hearing motions.

(2) Unless a civil action involving the agreement to arbitrate is pending, notice of an initial motion to the court under this part 2 must be served in the manner otherwise provided by law for the service of a summons in a civil action. Otherwise, notice of the motion must be given in the manner provided by law or court rule for serving motions in pending cases.

**13-22-206. Validity of Agreement to Arbitrate**

(1) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except on a ground that exists at law or in equity for the revocation of a contract.

(2) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(3) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

(4) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

**13-22-207. Motion to compel or stay arbitration**

(1) On the motion of a person showing an agreement to arbitrate and alleging another's refusal to arbitrate pursuant to the agreement:

- (a) If the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate; and
- (b) If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.
- (2) On the motion of a person alleging that an arbitration proceeding has been initiated or threatened but there is not an agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.
- (3) If the court finds that there is no enforceable agreement, it may not invoke the provisions of subsection (1) or (2) of this section to order the parties to arbitrate.
- (4) The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or because one or more grounds for the claim have not been established.
- (5) If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in a court, a motion made under this section shall be filed with that court. Otherwise, a motion made under this section may be filed in any court pursuant to section 13-22-227.
- (6) If a party files a motion with the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the ordering court renders a final decision under this section.
- (7) If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

**13-22-208. Provisional Remedies**

- (1) Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.
- (2) After an arbitrator is appointed and is authorized and able to act:

(a) The arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

(b) A party to an arbitration proceeding may request the court to issue an order for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

(3) A party does not waive a right of arbitration by making a motion under subsection (1) or (2) of this section.

### **13-22-209. Initiation of Arbitration**

(1) A person may initiate an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of an agreement, by certified or registered mail, return receipt requested and obtained, or by service as authorized by law for the commencement of a civil action. The notice shall describe the nature of the controversy and the remedy sought.

(2) Unless a person objects to the lack of notice or the insufficiency of notice under section 13-22-215(3) not later than the beginning of the arbitration hearing, a person who appears at the arbitration hearing waived any objection to the lack of notice or sufficiency of notice.

### **13-22-210. Consolidation of Separate Arbitration Proceedings**

(1) Except as otherwise provided in subsection (3) of this section, upon motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if all parties in the arbitration proceedings consent and:

(a) There are separate agreements to arbitrate or separate arbitration proceedings between or among the same persons or one of the persons is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;

(b) The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

(c) The existence of a common issue of law or fact create the possibility of conflicting decisions in the separate arbitration proceedings; and

(d) Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

(2) The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

(3) The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prevents consolidation.

### **13-22-211. Appointment of Arbitrator - Service as Neutral Arbitrator**

(1) If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, the method shall be followed unless the method fails. If the parties have not agreed on a method, or the agreed method fails, or an appointed arbitrator fails to act or is unable to act and a successor has not been appointed, the court, on the motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator appointed pursuant to this subsection (1) shall have all the powers of an arbitrator designated in an agreement to arbitrate or appointed pursuant to an agreed method.

(2) An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party may not serve as an arbitrator if the agreement requires the arbitrator to be neutral.

### **13-22-212. Disclosure by Arbitrator**

(1) Before accepting an appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

(a) A financial or personal interest in the outcome of the arbitration proceeding; and

(b) A current or previous relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness, or another arbitrator.

(2) An arbitrator shall have a continuing obligation to disclose to all parties to the agreement to arbitrate and to the arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment that a reasonable person would consider likely to affect the impartiality of the arbitrator.

(3) If an arbitrator discloses a fact required to be disclosed by subsection (1) or (2) of this section and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under section 13-22-223(1)(b) for vacating an award made by an arbitrator.

(4) If the arbitrator does not disclose a fact as required by subsection (1) or (2) of this section, upon timely objection by a party, the court may vacate an award under section 13-22-223(1)(b).

(5) An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party shall be presumed to act with evident partiality under section 13-22- 223(1)(b).

(6) If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under section 13-22-223(1)(b).

**13-22-213. Action by Majority.**

If there is more than one arbitrator, the powers of an arbitrator shall be exercised by a majority of the arbitrators, except that all of the arbitrators shall conduct the hearing under the provisions of section 13-22-215(2).

**13-22-214. Immunity of Arbitrator - competency to testify - attorney fees and costs**

(1) An arbitrator or an arbitration organization acting in the capacity of an arbitrator is immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.

(2) The immunity afforded by this section is in addition to, and not in lieu of, or in derogation of, immunity conferred under any other provision of law.

(3) The failure of an arbitrator to make a disclosure required by section 13-22-212 shall not cause any loss of immunity that is granted under this section.

(4)(a) In a judicial proceeding, administrative proceeding, or other similar proceeding, an arbitrator or representative of an arbitration organization shall not be competent to testify and may not be required to produce records as to any statement, conduct, decision, or ruling that occurred during the arbitration proceeding, to the same extent as a judge of a court of this state acting in a judicial capacity.

(b) This subsection (4) shall not apply:

(I) To the extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the arbitration organization against a party to the arbitration proceeding; or

(II) To a hearing on a motion to vacate an award under section 13-22- 223(1)(a) or (1)(b) if the movant makes a prima facie showing that a ground for vacating the award exists.

(5) If a person commences a civil action against an arbitrator, arbitration organization, or representative of an arbitration organization arising from the services of the arbitrator, organization, or representative, or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of subsection (4) of this section, and the court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization, or representative reasonable attorney fees and reasonable expenses of litigation.

### **13-22-215. Arbitration Process**

(1) An arbitrator may conduct an arbitration in a manner that the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator by this part 2 shall include, but not be limited to, the power to hold conferences with the parties to the arbitration proceeding before the hearing and the power to determine the admissibility, relevance, materiality, and weight of any evidence.

(2) An arbitrator may decide a request for summary disposition of a claim or particular issue:

(a) If all interested parties agree; or

(b) Upon request of one or more parties to the arbitration proceeding if that party gives notice to all other parties to the proceeding and the other parties have a reasonable opportunity to respond.

(3) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing shall waive the objection. Upon the request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced even if a party who was duly notified of the arbitration proceeding does not appear. The court, on motion, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

(4) At a hearing under subsection (3) of this section, a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(5) If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator shall be appointed in accordance with section 13-22-211 to continue the proceeding and to resolve the controversy.

#### **13-22-216. Representation by Attorney**

A party to an arbitration proceeding may be represented by an attorney.

#### **13-22-217. Witnesses - subpoenas - depositions - discovery**

(1) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena issued under this section shall be served in the manner for service of

subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or by the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

(2) In order to make the proceedings fair, expeditious, and cost effective, upon the request of a party or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for a hearing or who is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

(3) An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost effective.

(4) If an arbitrator permits discovery under subsection (3) of this section, the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a non-complying party to the extent a court could take such action if the controversy were the subject of a civil action; except that the arbitrator shall not have the power of contempt.

(5) An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action.

(6) All provisions of law that compel a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness shall apply to an arbitration proceeding in the same manner as if the controversy were the subject of a civil action.

(7) The court may enforce a subpoena or discovery-related order for the attendance of a witness within this state and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious, and cost effective. A subpoena or discovery-related order issued by an

arbitrator in another state shall be served in the manner provided by law for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action.

**13-22-218. Judicial Enforcement of Pre-Award Ruling by Arbitrator.**

If an arbitrator makes a pre-award ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under section 13-22-219. A prevailing party may make a motion to the court for an expedited order to confirm the award under section 13-22-222, in which case the court shall summarily decide the motion. The court shall issue an order to confirm the award unless the court vacates, modifies, or corrects the award under section 13-22-223 or 13- 22-224.

**13-22-219. Award.**

(1) An arbitrator shall make a record of an award. The record shall be signed or otherwise authenticated by an arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

(2) An award must be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend the time or the parties to the arbitration proceeding may agree in a record to extend the time. The court or the parties may do so within or after the time specified or ordered. A party shall be deemed to have waived any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

**13-22-220. Change of Award by Arbitrator.**

(1) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

(a) Upon a ground stated in section 13-22-224(1)(a) or (1)(c);

(b) If the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(c) To clarify the award.

(2) A motion made under subsection (1) of this section shall be made and notice shall be given to all parties within twenty days after the movant receives notice of the award.

(3) A party to the arbitration proceeding shall give notice of any objection to the motion within ten days after receipt of the notice.

(4) If a motion to the court is pending under section 13-22-222, 13-22- 223, or 13-22-224, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(a) Upon a ground stated in section 13-22-224(1)(a) or (1)©;

(b) If the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(c) To clarify the award.

(5) An award modified or corrected pursuant to this section is subject to the provisions of sections 13-22-219(1), 13-22-222, 13-22-223, and 13- 22-224.

#### **13-22-221. Remedies - Fees and Expenses of Arbitration Proceeding**

(1) An arbitrator may award reasonable attorney fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

(2) An arbitrator's expenses and fees, together with other expenses, shall be paid as provided in the award.

(3) Nothing in this section shall be construed to alter or amend the provisions of section 13-21-102(5).

#### **13-22-222. Confirmation of Award.**

(1) After a party to an arbitration proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award at which time the court shall issue a confirming order unless the award is modified or corrected pursuant to section 13-22-220 or 13-22-224 or is vacated pursuant to section 13-22-223.

(2) Repealed by Laws 2005, Ch. 217, § 20, eff. June 1, 2005.

#### **13-22-223. Vacating Award**

(1) Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if the court finds that:

(a) The award was procured by corruption, fraud, or other undue means;

(b) There was:

(I) Evident partiality by an arbitrator appointed as a neutral arbitrator;

(II) Corruption by an arbitrator; or

(III) Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(c) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to section 13-22- 215, so as to prejudice substantially the rights of a party to the arbitration proceeding;

(d) An arbitrator exceeded the arbitrator's powers;

(e) There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under section 13-22- 215(3) not later than the beginning of the arbitration hearing; or

(f) The arbitration was conducted without proper notice of the initiation of an arbitration as required in section 13-22-209 so as to substantially prejudice the rights of a party to the arbitration proceeding.

(1.5) Notwithstanding the provisions of subsection (1) of this section, the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(2) A motion made under this section shall be filed within ninety days after the movant receives notice of the award pursuant to section 13-22-219 or within ninety days after the movant receives notice of a modified or corrected award pursuant to section 13-22-220, unless the movant alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion must be made within ninety days after either the ground is known or by the exercise of reasonable care should have been known by the movant.

(3) If the court vacates an award on a ground other than that set forth in paragraph (e) of subsection (1) of this section, it may order a rehearing. If the award is vacated on a ground stated in paragraph (a) or (b) of subsection (1) of this section, the rehearing shall be held before a new arbitrator. If the award is vacated on a ground stated in paragraph (c), (d), or (f) of subsection (1) of this section, the rehearing may be held before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time as that provided in section 13-22-219(2) for an award.

(4) If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award is pending.

#### **13-22-224. Modification or Correction of Award**

(1) Upon motion made within ninety days after the movant receives notice of the award pursuant to section 13-22-219 or within ninety days after the movant receives notice of a modified or corrected award pursuant to section 13-22-220, the court shall modify or correct the award if:

(a) There is an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;

(b) The arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or

(c) The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

(2) If a motion made under subsection (1) of this section is granted, the court shall modify or correct and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court shall confirm the award.

(3) A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award.

#### **13-22-225. Judgment on Award - Attorney Fees and Litigation Expenses**

(1) Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment in conformity therewith. The

judgment may be recorded, docketed, and enforced as any other judgment in a civil action.

(2) A court may award the reasonable costs of the motion and subsequent judicial proceedings.

(3) On the application of a prevailing party to a contested judicial proceeding under section 13-22-222, 13-22-223, or 13-22-224, the court may add reasonable attorney fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award.

#### **13-22-226. Jurisdiction**

(1) A court having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.

(2) An agreement to arbitrate providing for arbitration in this state confers jurisdiction on the court to enter judgment on an award under this part 2.

#### **13-22-227. Venue**

A motion pursuant to 13-22-205 shall be made in a court of the county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in a court of the county in which it was held. Otherwise, a motion pursuant to 13-22-205 may be made in the court of any county in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this state, in a court of any county in this state. All subsequent motions must be made in the court hearing the initial motion unless the court otherwise directs.

#### **13-22-228. Appeals.**

(1) An appeal may be taken from:

(a) An order denying a motion to compel arbitration;

(b) An order granting a motion to stay arbitration;

(c) An order confirming or denying confirmation of an award;

(d) An order modifying or correcting of an award;

(e) An order vacating an award without directing a rehearing; or

(f) a final judgment entered pursuant to this part 2.

(2) An appeal under this section shall be taken in the same manner as an appeal of an order of judgment in a civil action.

**13-22-229. Uniformity of Application and Construction**

In applying and construing this part 2, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**13-22-230. Savings Clause**

This part 2 shall not affect an action or proceeding commenced or a right accrued before this part 2 takes effect. Except as otherwise provided in section 13-22-203, an arbitration agreement made before August 4, 2004, is governed by the "Uniform Arbitration Act of 1975".

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**Colorado Uniform Arbitration Act**

**13-22-201. Short title.** This part 2 shall be known and may be cited as the "Uniform Arbitration Act of 1975."

**13-22-202. Legislative Declaration.** The purpose of this part 2 is to validate voluntary written arbitration agreements, make the arbitration process effective, provide necessary safeguards, and provide an efficient procedure when judicial assistance is necessary. This part 2 is enacted pursuant to the mandate contained in section 3 of article VXIII of the state constitution.

**13-22-203. Arbitration Agreement.** A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable, and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. This part 2 also applies to arbitration agreements between employers and employees or between their respective representatives unless otherwise provided in the agreement.

**13-22-204. Proceedings to compel or stay arbitration.** (1) On application of a party showing an agreement described in section 13-22-203 and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but, if the

opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party; otherwise, the application shall be denied.

(2) On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be forthwith and summarily tried and the stay ordered if found for the moving party. If found for the opposing party, the court shall order the parties to proceed to arbitration.

(3) If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subsection (1) of this section, the application shall be made in that court. Otherwise and subject to section 13-22-220, the application may be made in any court of competent jurisdiction.

(4) Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made under this section, or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

(5) An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated have not been shown.

**13-22-205. Appointment of arbitrators by court.** If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails or is unable to act and his successor has not been duly appointed, the court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

**13-22-206. Majority action by arbitrators.** The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or this part 2.

**13-22-207. Hearing.** (1) Unless otherwise provided by the agreement:

(a) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause or upon their own motion, may postpone the hearing to a time not later than the date fixed by the agreement for making the award, unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced, notwithstanding the failure of a party duly notified to appear. The court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

(b) The parties are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(c) The hearing shall be conducted by all the arbitrators, but a majority may determine any question and render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

(d) The arbitrator shall not give undue weight to hearsay or other improper or unsubstantiated evidence.

**13-22-208. Representation by attorney.** A party has the right to be represented by an attorney at any proceeding or hearing under this part 2. A waiver thereof prior to the proceeding or hearing is ineffective.

**13-22-209. Witnesses, subpoenas, depositions.** (1) The arbitrators may issue (or cause to be issued) subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and have the power to administer oaths. Subpoenas so issued shall be served and, upon application to the court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in civil actions.

(2) On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators,

of a witness who cannot be subpoenaed or is unable to attend the hearing.

(3) All provisions of law compelling a person under subpoena to testify are applicable.

(4) Fees for attendance as a witness shall be the same as for a witness in the district court.

**13-22-210. Award.** (1) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail or as provided in the agreement.

(2) An award shall be made within the time fixed therefor by the agreement or, if not so fixed, within such time as the court orders on application of a party. The parties may extend the time in writing, either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.

**13-22-211. Change of award by arbitrators.** On application of a party or, if an application to the court is pending under section 13-22-213, 13-22-214, or 13-22-215, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in section 13-22-215 (1) (a) and (1) © or for the purpose of clarifying the award. The application shall be made within twenty days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party stating that he must serve his objections thereto, if any, within ten days after the notice. The award so modified or corrected is subject to the provisions of sections 13-22-213 to 13-22-215.

**13-22-212. Fees and expenses of arbitration.** Unless otherwise provided in the agreement to arbitrate, the arbitrator's expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration shall be paid as provided in the award.

**13-22-213. Confirmation of an award.** Upon application of a party, the court shall confirm an award, unless within the time limits imposed in this part 2 grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in sections 13-22-214 and 13-22-215.

**13-22-214. Vacating an award.** (1) (a) Upon application of a party, the court shall vacate an award where:

(I) The award was procured by corruption, fraud, or other undue means;

(II) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;

(III) The arbitrators exceeded their powers;

(IV) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of section 13-22-207, as to prejudice substantially the rights of a party; or

(V) There was no arbitration agreement and the issue was not adversely determined in proceedings under section 13-22-204 and the party did not participate in the arbitration hearing without raising the objection.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (1), the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(2) An application under this section shall be made within thirty days after delivery of a copy of the award to the applicant; except that, if predicated upon corruption, fraud, or other undue means, it shall be made within thirty days after such grounds are known or should have been known.

(3) In vacating the award on grounds other than those stated in subparagraph (V) of paragraph (a) of subsection (1) of this section, the court may order a rehearing before new arbitrators chosen as provided in the agreement or, in the absence thereof, by the court in accordance with section 13-22-205; or, if the award is vacated on grounds set forth in subparagraphs (III) and (IV) of paragraph (a) of subsection (1) of this section, the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with section 13-22-205. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(4) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

**13-22-215. Modification or correction of award.** (1) Upon application made within thirty days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

- (a) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award;
- (b) The arbitrators awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
- (c) The award is imperfect in a matter of form, not affecting the merits of the controversy.

(2) If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

(3) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

**13-22-216. Judgment or decree on award.** Upon the granting of an order confirming, modifying, or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application, and of the proceedings subsequent thereto, and disbursement may be awarded by the court.

**13-22-217. Judgment roll - docketing.** (1) On entry of judgment or decree, the clerk shall prepare the judgment roll consisting, to the extent filed, of the following:

- (a) The agreement and each written extension of the time in which to make the award;
- (b) The award;
- (c) A copy of the order confirming, modifying, or correcting the award; and
- (d) A copy of the judgment or decree.

(2) The judgment or decree may be docketed as if rendered in an action.

**13-22-218. Applications to court.** Except as otherwise provided, an application to the court under this part 2 shall be by motion and shall be heard in the manner and upon

the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for service of a summons in an action.

**13-22-219. Court - jurisdiction.** The term "court", as used in this part 2, means any court of competent jurisdiction of this state. The making of an agreement described in section 13-22-203 providing for arbitration in this state, pursuant to the choice of the parties or pursuant to the choice of arbitration, mediation, or conciliation rules under which this state is determined to be appropriate, confers jurisdiction on the court to enforce the agreement under this part 2 and to enter judgment on an award under this part 2.

**13-22-220. Venue.** An initial application shall be made to any court within the county specific by the agreement or, if the hearing has already been held, within the county in which it was held. Otherwise, application shall be made in the county where the adverse party resides or has a place of business or, if he has no residence or place of business in this state, to the court of any county. All subsequent applications shall be made to the court hearing the initial application unless the court directs otherwise.

**13-22-221. Appeals.** (1) An appeal may be taken from:

(a) An order denying an application to compel arbitration made under section 13-22-204;

(b) An order granting an application to stay arbitration made under section 13-22-204(2);

(c) An order confirming or denying confirmation of an award.

(d) An order modifying or correcting an award.

(e) An order vacating an award without directing a rehearing.

(f) A judgment or decree entered pursuant to the provisions of this part 2.

(2) The appeal shall be taken in the manner and to the same extent as from orders or judgments in civil actions.

**13-22-222. Applicability.** This part 2 applies only to agreements made on or after July 14, 1975.

**13-22-223. Uniformity of interpretation.** This part 2 shall be so construed as to effectuate its general purpose to make uniform the law of the states that enact it.