

**CONSUMER LAW** **SECRETS**

*by Daraine Delevante*

# THE COMPLETE GUIDE TO ARBITRATION



**A STEP-BY-STEP PROCESS FOR PRE, DURING, AND POST ARBITRATION**

# The Complete Guide to Arbitration: A Step-by-Step Process for Pre, During, and Post Arbitration

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# **Chapter 1: Introduction**

## **1.1 The Importance of Arbitration**

Arbitration is an alternative dispute resolution process that allows parties to resolve their disputes without resorting to litigation. It offers a range of benefits, including cost-effectiveness, efficiency, flexibility, and confidentiality. This chapter will discuss the reasons why parties choose arbitration over litigation and the various types of arbitration available.

## **1.2 Types of Arbitration**

Different types of arbitration include ad hoc arbitration, institutional arbitration, and administered arbitration. Each type has its advantages and disadvantages, which will be discussed in this chapter to help parties decide which method best suits their needs.

*by Darave Defante*

# **Chapter 2: Preparing for Arbitration**

## **2.1 Identifying the Need for Arbitration**

Before engaging in arbitration, parties must determine if it is the most appropriate method to resolve their dispute. This chapter will guide parties in identifying factors to consider when deciding whether to proceed with arbitration.

## **2.2 Choosing an Arbitration Method**

After identifying the need for arbitration, parties must choose the most suitable arbitration method based on their specific needs and preferences. This chapter will provide an overview of the various methods and the factors to consider when making this decision.

## **2.3 Drafting an Arbitration Agreement**

A well-drafted arbitration agreement is essential to ensure a smooth arbitration process. This chapter will discuss the key components of an arbitration agreement, including the scope of disputes, the selection of arbitrators, and the applicable procedural rules.

## **2.4 Selecting an Arbitrator**

The choice of an arbitrator can significantly impact the outcome of the arbitration process. This chapter will guide on selecting an arbitrator, including qualifications, expertise, and potential conflicts of interest.

## **2.5 Pre-Arbitration Meetings**

Pre-arbitration meetings allow the parties and arbitrators to discuss procedural issues and schedule the arbitration process. This chapter will outline the importance of these meetings and guide how to prepare for them.

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*by Darlene DeFavre*

# **Chapter 3: Pre-Arbitration**

## **3.1 Initiating the Arbitration Process**

To initiate arbitration, the claimant must send a notice of arbitration to the respondent. This chapter will discuss the key components of a notice of arbitration and the procedural steps in initiating the process.

## **3.2 Responding to an Arbitration Notice**

Upon receipt of the notice of arbitration, the respondent must submit a response. This chapter will outline the necessary elements of an effective response and the appropriate steps to take when responding to a notice of arbitration.



### **3.3 Organizing and Exchanging Documents**

The exchange of relevant documents is essential to the pre-arbitration phase. This chapter will guide identifying, organizing, and exchanging documents to ensure a fair and efficient arbitration process.

### **3.4 Preparing Witness Statements**

Witness statements provide essential evidence in the arbitration process. This chapter will offer guidance on preparing effective witness statements, including gathering relevant information, presenting facts clearly, and addressing potential challenges.

### **3.5 Scheduling the Arbitration Hearing**

Coordinating schedules and setting a date for the arbitration hearing can be a challenging task. This chapter will discuss strategies for scheduling hearings efficiently and minimizing delays.



## **Chapter 4: The Arbitration Process**

### **4.1 The Arbitration Hearing**

The arbitration hearing is the central event of the arbitration process. This chapter will provide a detailed overview of the hearing process, including the following sub-sections:

#### **4.1.1 Opening Statements**

An effective opening statement sets the stage for the arbitration process. This chapter will discuss the opening statements' purpose, structure, and key components.

#### **4.1.2 Presenting Evidence**

Evidence is crucial in supporting each party's claims and defenses. This chapter will guide presenting evidence effectively, including organizing exhibits, using expert witnesses, and addressing objections.

### **4.1.3 Witness Examination**

Witness examination allows parties to question witnesses and challenge their statements. This chapter will outline the process of direct examination, cross-examination, and re-direct examination, as well as strategies for effective questioning.

### **4.1.4 Closing Arguments**

Closing arguments offer parties a final opportunity to persuade the arbitrator. This chapter will discuss the structure and content of effective closing arguments, as well as techniques for presenting a compelling case.

## **4.2 The Arbitrator's Decision-Making Process**

Understanding the arbitrator's decision-making process is crucial for a successful outcome. This chapter will explore the factors that influence arbitrators' decision-making, including the applicable law, procedural rules, and persuasive arguments.

## **4.3 The Arbitration Award**

The arbitration award is the final and binding decision of the arbitrator. This chapter will discuss the components of an arbitration award, the process of drafting the award, and the timeline for its issuance.

# **Chapter 5: Post-Arbitration**

## **5.1 Enforcing the Arbitration Award**

Once the arbitration award is issued, parties must ensure its enforcement. This chapter will provide guidance on enforcing arbitration awards, including the recognition and enforcement process, as well as potential challenges and obstacles.

## **5.2 Challenging the Arbitration Award**

In some cases, parties may seek to challenge the arbitration award. This chapter will discuss the grounds for challenging an arbitration award, the process for filing a challenge, and the potential outcomes of a challenge.

## **5.3 The Role of Courts in the Arbitration Process**

Courts play a limited but important role in the arbitration process. This chapter will explore the interaction between arbitration and the courts, including court assistance in enforcing or challenging arbitration awards and the role of courts in the appointment of arbitrators.

## **5.4 Settlements and Negotiations**

The Arbitration may lead parties to reach a settlement or negotiate new terms. This chapter will discuss strategies for effective negotiation during and after the arbitration process, as well as the benefits of reaching a settlement.

# **Chapter 6: Tips for Successful Arbitration**

## **6.1 Effective Communication**

Clear and concise communication is crucial for a successful arbitration outcome. This chapter will provide tips on effectively communicating your case to the arbitrator, opposing counsel, and witnesses and the importance of active listening.

## **6.2 Gathering Evidence**

Strong evidence is the foundation of a persuasive arbitration case. This chapter will guide gathering and organizing evidence, including identifying relevant documents, obtaining expert opinions, and preserving the chain of custody.

## **6.3 Choosing the Right Legal Representation**

The right to legal representation can significantly impact the outcome of an arbitration process. This chapter will discuss factors to consider when choosing legal counsel, including expertise, experience, and compatibility.

## **6.4 Avoiding Common Pitfalls**

Arbitration can be complex, and parties may encounter challenges throughout the process. This chapter will identify common pitfalls and provide strategies to avoid or overcome these obstacles, ensuring a more efficient and successful arbitration process.

## Chapter 7: Conclusion

The arbitration process can be a highly effective method for resolving disputes, offering numerous advantages over litigation. Understanding the key steps and strategies in pre-arbitration, during the arbitration process, and post-arbitration is essential for achieving a favorable outcome. By following the guidance provided in this book, parties can navigate the arbitration process confidently and efficiently, ensuring a fair and just resolution to their disputes.

### Key steps in the arbitration

The key steps in the arbitration process can be summarized as follows:

1. Preparing for arbitration: a. Identifying the need for arbitration b. Choosing an arbitration method c. Drafting an arbitration agreement d. Selecting an arbitrator, e. Pre-arbitration meetings
2. Pre-arbitration: a. Initiating the arbitration process by sending a notice of arbitration b. Responding to the notice of arbitration c. Organizing and exchanging documents d. Preparing witness statements e. Scheduling the arbitration hearing
3. The arbitration process: a. Conducting the arbitration hearing, which includes: i. Opening statements ii. Presenting evidence iii. Witness examination (direct, cross, and re-direct) iv. Closing arguments b. The arbitrator's decision-making process c. Issuance of the arbitration award
4. Post-arbitration: a. Enforcing the arbitration award b. Challenging the arbitration award, if necessary c. The role of courts in the arbitration process d. Settlements and negotiations, if applicable

**By following these key steps, parties can ensure a structured and efficient arbitration process, ultimately leading to a fair resolution of their disputes.**



## **Arbitration resolutions**

Arbitration resolutions, also known as arbitration awards, are the final decisions made by the arbitrator(s) in an arbitration proceeding. These awards resolve the dispute between the parties and are legally binding. Arbitration awards can take different forms, depending on the nature of the dispute and the relief sought by the parties:

1. **Monetary Awards:** The arbitrator may award a specific amount of money to be paid by one party to the other as compensation for damages, losses, or other financial claims.
2. **Declaratory Awards:** The arbitrator may issue a decision declaring the rights and obligations of the parties under a contract or a specific legal relationship without ordering any specific action or monetary compensation.
3. **Specific Performance:** The arbitrator may order a party to perform a particular action or obligation, such as fulfilling a contractual obligation, as a means of resolving the dispute.
4. **Injunctive Relief:** The arbitrator may issue an order prohibiting a party from engaging in a particular activity or conduct that may cause harm or further disputes.
5. **Restitution:** The arbitrator may order a party to return property, goods, or funds that were wrongfully taken or withheld from the other party.
6. **Interest and Costs:** The arbitrator may award interest on monetary awards and allocate the costs of the arbitration proceedings, such as arbitrator fees, administrative costs, and legal expenses, between the parties.
7. **Settlements:** In some cases, the arbitration process may lead the parties to reach a negotiated settlement, in which they mutually agree on the terms and conditions to resolve their dispute. The arbitrator may then issue a consent award, reflecting the terms of the settlement agreed upon by the parties.

Arbitration awards are generally considered final and binding, subject to limited grounds for challenging or appealing the award in court. Enforcement of arbitration awards is typically governed by national laws and international treaties, such as the New York Convention, which facilitates the recognition and enforcement of arbitration awards across its signatory countries.

## **Challenging or appealing the award in court**

Challenging or appealing an arbitration award in court is typically limited to specific grounds and is not as extensive as appealing a court judgment. The grounds for challenging an arbitration award vary depending on the jurisdiction and the arbitration rules governing the dispute. However, some common grounds for challenging an arbitration award include:

1. **Lack of a valid arbitration agreement:** A party may challenge the award if it can demonstrate that there was no valid arbitration agreement between the parties, or that the agreement was not applicable to the dispute in question.
2. **Improper constitution of the arbitral tribunal:** A challenge can be made if the appointment of the arbitrator(s) did not follow the procedure outlined in the arbitration agreement or the applicable arbitration rules.

3. Arbitrator bias or conflict of interest: An arbitration award can be challenged if there is evidence of bias or a conflict of interest involving the arbitrator(s) that may have affected their impartiality or independence.
4. Excess of authority or jurisdiction: A party may challenge the award if the arbitrator(s) exceeded their authority or decided on issues that were not within the scope of the arbitration agreement.
5. Violation of due process: A challenge can be made if the arbitration proceedings did not follow proper due process, such as denying a party the opportunity to present its case or failing to provide adequate notice of the proceedings.
6. Public policy considerations: An arbitration award may be challenged if its enforcement violates the public policy of the jurisdiction in which enforcement is sought. This may include awards that involve illegal activities, fraud, or a violation of fundamental principles of justice.

To challenge or appeal an arbitration award in court, a party must follow the procedure outlined in the relevant national laws or arbitration rules. This often involves filing a petition or application with the competent court within a specified time frame, usually a few months from the date the award was issued. The court will then review the challenge and decide whether to set aside, modify, or confirm the award. It is important to note that courts generally have a limited role in reviewing arbitration awards and tend to respect the finality and binding nature of the arbitration process.

Keep in mind that the specific grounds for challenging an arbitration award and the procedures for doing so may vary depending on the jurisdiction and the applicable arbitration rules. Consult with legal counsel to determine the appropriate steps and requirements for challenging an arbitration award in your specific situation.

### **Appropriate steps required for a challenging arbitration award**

The appropriate steps for challenging an arbitration award can vary depending on the jurisdiction and the applicable arbitration rules. However, the following general steps can serve as a guideline for challenging an arbitration award:

1. Identify the grounds for a challenge: Review the arbitration award and determine the specific grounds on which you intend to challenge it. As mentioned previously, common grounds include lack of a valid arbitration agreement, the improper constitution of the arbitral tribunal, arbitrator bias, excess of authority or jurisdiction, violation of due process, and public policy considerations.
2. Review the applicable rules and laws: Consult the arbitration agreement, the applicable arbitration rules, and the national laws of the jurisdiction where the award was issued to understand the procedural requirements for challenging the award.
3. Determine the competent court: Identify the court that has jurisdiction to hear the challenge. This is typically specified in the arbitration agreement, arbitration rules, or the national laws governing the arbitration proceedings.

4. Meet the deadline for filing the challenge: Be aware of the time limit for filing the challenge, which is usually a few months from the date the award was issued. Failing to meet the deadline may result in losing the right to challenge the award.
5. Prepare the challenge application: Draft the application or petition for challenging the arbitration award, clearly outlining the grounds for the challenge and providing any supporting evidence or documentation. This may require the assistance of legal counsel experienced in arbitration matters.
6. File the challenge application: Submit the application or petition to the competent court, along with any required filing fees and supporting documents. Ensure that you comply with the court's procedural requirements, such as format, service of documents, and communication with the opposing party.
7. Participate in the court proceedings: Attend any hearings or conferences scheduled by the court, present your arguments, and respond to any counter-arguments raised by the opposing party. This may involve oral arguments, submission of written briefs, or examination of witnesses.
8. Await the court's decision: After reviewing the challenge, the court will issue a decision to either set aside, modify, or confirm the arbitration award. Depending on the jurisdiction and the applicable laws, the court's decision may be subject to further appeal.
9. Enforce or resist enforcement of the award: If the court confirms the arbitration award, you may need to enforce it or resist enforcement in the relevant jurisdiction(s), depending on whether you are the prevailing or losing party. If the court sets aside or modifies the award, the parties may need to resume the arbitration process, initiate a new arbitration, or seek an alternative means of resolving their dispute.

It is essential to consult with legal counsel experienced in arbitration matters to navigate the process of challenging an arbitration award effectively, as the specific steps and requirements may vary depending on the jurisdiction and the applicable arbitration rules.

## **Arbitration RoadMap**

A pre-arbitration roadmap is essential to ensure that both parties are well-prepared for the arbitration process. It outlines the steps to take before entering into arbitration to resolve a dispute. Here's a suggested roadmap:

1. Identify the dispute: Clearly define the issues and concerns that led to the disagreement between parties.
2. Gather documentation: Collect all relevant documents, contracts, correspondence, and evidence that may support your position in the dispute.
3. Review arbitration agreement: Carefully review any existing arbitration agreement or clause within a contract to ensure compliance with the stipulated process, rules, and requirements.
4. Select an arbitration institution: If the arbitration agreement does not specify an institution, research and choose one based on factors such as reputation, expertise in the subject matter, and cost.

5. Engage legal counsel: Seek advice from a lawyer experienced in arbitration to help you navigate the process and protect your interests.
6. Internal assessment: Conduct a thorough assessment of the strengths and weaknesses of your case, and determine the best strategy to resolve the dispute.
7. Attempt negotiation or mediation: Before proceeding to arbitration, try to resolve the dispute through negotiation or mediation, which are less formal and often less costly methods of dispute resolution.
8. Prepare a notice of arbitration: Draft a notice of arbitration that outlines the dispute, the legal basis for the claim, the relief sought, and any other relevant information.
9. Appoint an arbitrator: If the arbitration agreement does not specify an arbitrator, the parties should agree on one, or follow the institution's rules for appointing an arbitrator.
10. Develop a timeline: Create a timeline for the arbitration process, including deadlines for the submission of documents, witness statements, and expert reports, as well as a date for the hearing.
11. Communication with the opposing party: Maintain open lines of communication with the opposing party to facilitate the arbitration process and potentially reach a settlement before the hearing.
12. Prepare for the hearing: Work with your legal counsel to develop arguments, prepare witness statements, gather evidence, and anticipate potential counter-arguments.
13. Budget and costs: Develop a budget for the arbitration process, including legal fees, arbitrator fees, and other expenses. Consider strategies to minimize costs, such as streamlining the process or reaching a settlement.

By following this pre-arbitration roadmap, you'll be better prepared to engage in the arbitration process and work toward a fair resolution of the dispute.

#### Notice of Arbitration Template

[Your Name or Company Name] [Your Address] [City, State, Zip Code] [Email Address] [Phone Number]  
[Date]

[Opposing Party's Name or Company Name] [Opposing Party's Address] [City, State, Zip Code]

Subject: Notice of Arbitration

Dear [Opposing Party's Name or Representative],


Pursuant to the arbitration agreement/clause found in [identify the contract, agreement or document containing the arbitration provision], we hereby serve notice that [Your Name or



Company Name] intends to commence arbitration proceedings against [Opposing Party's Name or Company Name]. This notice is provided in accordance with the rules of the [Name of the Arbitration Institution], which governs the arbitration.

**The following is an outline of the dispute and the claims that will be presented during the arbitration process:**

1. **Description of the Dispute:** Provide a brief summary of the dispute, including relevant background information, the nature of the disagreement, and the events leading up to the dispute.
2. **Legal Basis for the Claim(s):** Identify the specific provisions of the contract or agreement that have allegedly been breached, along with any relevant laws or regulations that may apply to the case.
3. **Relief Sought:** Detail the specific remedies or relief being sought, such as monetary damages, specific performance, or declaratory relief.
4. **Amount in Dispute (if applicable):** Specify the monetary amount in dispute or the estimated value of the claim.
5. **Relevant Documents and Evidence:** List any documents or evidence that will be submitted to support your claims (s), such as contracts, correspondence, invoices, or witness statements.
6. **Proposed Arbitrator(s) (if applicable):** If the arbitration agreement allows for party-appointed arbitrators, propose one or more potential arbitrators, including their names, qualifications, and contact information.
7. **Details of the Arbitral Tribunal:** Specify the number of arbitrators and the process for appointing them as outlined in the arbitration agreement. If the agreement allows for party-appointed arbitrators, provide your appointed arbitrator's name, qualifications, and contact information.
8. **Preferred Language and Seat of Arbitration:** Indicate the preferred language for the arbitration proceedings and the desired location (seat) for the arbitration, based on the arbitration agreement or the rules of the arbitration institution.
9. **Applicable Rules and Governing Law:** Identify the rules governing the arbitration process, such as the rules of a specific arbitration institution, and the law that will govern the interpretation and enforcement of the contract or agreement.
10. **Confidentiality:** If applicable, request that the arbitration proceedings be kept confidential and that any documents or information exchanged during the process be treated as confidential.
11. **Submission of Pleadings and Documents:** Outline the timeline for submitting initial pleadings, witness statements, and expert reports, as well as the process for exchanging documents between parties, based on the arbitration agreement or the rules of the arbitration institution.
12. **Pre-Arbitration Meeting or Conference:** Propose a date and time for a pre-arbitration meeting or conference with the opposing party and the arbitral tribunal to discuss procedural matters, such as the exchange of documents, witness statements, and the hearing schedule.



Please be advised that we are prepared to proceed with the arbitration process as required by the arbitration agreement and the rules of the [Name of the Arbitration Institution]. In the interest of resolving this matter efficiently, we remain open to the possibility of settlement discussions or mediation prior to the commencement of the arbitration proceedings.

We kindly request that you acknowledge receipt of this notice and provide any response or counterclaim within the timeframe specified in the arbitration agreement or the rules of the [Name of the Arbitration Institution].


Sincerely,

[Your Name or Authorized Representative] [Your Title or Position, if applicable]

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#### Bonus Information

Please note that the contents of the notice of arbitration should be tailored to the specific dispute and the requirements of the arbitration agreement, and the rules of the arbitration institution. Consult with legal counsel to ensure the notice of arbitration complies with all applicable requirements.











# AAA® ARBITRATION ROAD MAP

## REACHING RESOLUTION



AMERICAN ARBITRATION ASSOCIATION®

Arbitration is the out-of-court submission of a dispute to an impartial third party or parties for a binding decision. The AAA arbitration administration process comprises a well-defined set of steps by which most commercial cases proceed.

							
FILING AND INITIATION	ARBITRATOR SELECTION	PRELIMINARY HEARING	INFORMATION EXCHANGE AND PREPARATION	MEDIATION STEP	HEARING	POST-HEARING SUBMISSIONS	THE AWARD
<b>DAY 1 - 15</b>	<b>DAY 15 - 44</b>	<b>DAY 44 - 85</b>	<b>DAY 85 - 222</b>		<b>DAY 222-223</b>	<b>DAY 223 - 258</b>	<b>DAY 258 - 288</b>
The AAA typically commences administration of an arbitration case when one party submits a <b>Demand for Arbitration</b> , a copy of the arbitration provision from the contract between the parties, and the appropriate filing fee to the AAA. The AAA acknowledges receipt to all parties and sets a deadline for the respondent to answer and/or to file a counterclaim. If no arbitration clause exists or the AAA is not named as the resolution provider in the parties' contract, cases may commence with the <b>consent of all parties, a filed Submission to Dispute Resolution</b> , and the appropriate filing fee to the AAA.	Based upon the parties' expressed criteria of qualifications, the AAA identifies arbitrators from the <b>AAA National Roster of Arbitrators</b> and provides their curriculum vitae to the parties. If parties are unable to agree upon the arbitrator(s), the AAA establishes a deadline for each party to independently state its preferences from the list. The AAA invites the most mutually agreeable arbitrator(s) to serve on the case.	Conducted by the arbitrator often via conference call, this management meeting is the first time the parties and arbitrator discuss the substantive issues of the case and procedural matters, such as exchange of information, witness lists, and dates. The <b>Scheduling Order</b> , which serves as the framework for hearing preparations, is established.	The parties work within the time frames set forth at the Preliminary Hearing to exchange information and prepare their presentations. The arbitrator addresses any impasses or challenges related to information sharing.	<i>Subject to the right of any party to opt out, in cases where a claim or counterclaim exceeds \$75,000, the rules provide that the parties shall mediate their dispute with the AAA concurrently with arbitration, at no additional fee. The mediator assists parties in reaching a settlement but has no authority to make a binding decision or award.</i>	Parties present testimony and evidence to the arbitrator.	If the arbitrator allows, parties may submit additional documentation, usually shortly after the hearing.	The arbitrator closes the record and, no more than 30 days later, issues a decision addressing all claims raised in the arbitration. The award may direct one or more parties to pay another party a monetary amount, or it may direct parties to take specific actions. Aside from any administrative matters unrelated to the merits of the case, the services of the arbitrator and the AAA are completed when the award is issued.
<b>EXPECTED COSTS AT THIS STAGE</b>  Filing fees are based on claim amounts and are paid by the party that asserts the claim or counterclaim.	<b>EXPECTED COSTS</b>  Partial refunds of filing and counterclaim fees are available under some AAA fee schedules. No refunds are available after an arbitrator has been appointed.	<b>EXPECTED COSTS</b>  Parties will incur compensation charges by each arbitrator for time spent before and during the Preliminary Hearing and in preparation of the Scheduling Order.	<b>EXPECTED COSTS</b>  The time spent by the arbitrator in this phase is proportional to the number of procedural matters needing resolution. Additionally, the arbitrator will spend time reviewing the parties' pre-hearing submissions, if any.	<b>EXPECTED COSTS</b>  The parties are responsible for the mediator's compensation plus an AAA fee of \$75 for each hour charged by the mediator.	<b>EXPECTED COSTS</b>  The arbitrator is compensated for time spent in hearings, reviewing evidence, and reasonable expenses, such as mileage and tolls.	<b>EXPECTED COSTS</b>  The arbitrator is compensated for reviewing evidence and any post-hearing submissions, as well as drafting the award. Any unused deposits are returned to the parties.	<b>EXPECTED COSTS</b>  The arbitrator apportions arbitrator compensation and expenses and AAA fees among the parties.

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