

# Business arbitration in Florida requires detailed knowledge

**W**ith the Florida Legislature's recent overhaul of the Arbitration Code, Southwest Florida business owners should consider adding arbitration provisions to their contracts and/or purchase order tickets.

There are several advantages to arbitration versus going to court over business disputes. Some business owners distrust the judicial system as they see more and more news releases referencing large jury verdicts for individuals taking on corporations in court. Generally too, arbitrations move matters to resolution much more quickly than courts do. Including appeals, court cases can take many years to come to an end. With arbitration, the business owner can choose his judge as well as the procedural rules that will be followed at the arbitration hearing. Also, with the speed of arbitration, and the minimal discovery involved with it, there is less out-of-pocket expense for the business owner to resolve the dispute. Finally, unlike court proceedings, arbitrations



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are confidential. Adverse decisions are not put out there on the internet with the resulting bad publicity and potential copy-cat cases being filed against the losing business owner.

Some of the highlights of the Revised Florida Arbitration Code (RFAC) are set out below.

The RFAC applies to all agreements to arbitrate that are made on or after July 11, 2013. With respect to agreements to arbitrate entered into before July 2013 the parties can agree to follow the RFAC; otherwise the rules existing at the time of the agreement apply. Beginning July 1, 2016, however, all arbitration agreements will be governed by

the RFAC regardless of when they were originally put in place.

One new section of the RFAC allows a party to an arbitration proceeding to go to the arbitrator and see provisional remedies, including interim awards, under the same conditions as if the controversy was in court. These remedies could include an injunction.

Another new section of the RFAC allows a party to an arbitration agreement to ask a court to consolidate separate arbitration proceedings in certain circumstances. This would help a business owner in situations where different claims arose from the same transaction or if there was a risk of conflicting decisions in separate arbitration proceedings.

Section 682.041 of the RFAC sets forth the disclosures required by the arbitrator(s). Before accepting an appointment as arbitrator, the individual has to make a "reasonable inquiry" and then disclose to all parties (and to any other arbitrators if the agreement called for more than one arbitrator) any known facts that

a reasonable person would consider likely to affect his impartiality in the proceeding. This would include such things as existing or past relationships with any of the parties or their counsel. Under the statute they also have a "continuing obligation" to disclose such things that he/she learns after accepting the appointment.

Finally, the RFAC now allows arbitrators to award reasonable attorney fees if such fees are either authorized by law in a civil action involving the same claim or if allowed in the agreement between the parties to the arbitration.

By consulting with a Florida attorney well-versed in the RFAC, any Southwest Florida business owner can take advantage of these revised arbitration procedures.

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