

ARTICLES

WWW.INDIANA-ATTORNEYS.COM

***Disclaimer:** These materials have been prepared by Thrasher Buschmann Griffith & Voelkel, P.C. All rights reserved. The information and content provided in this document is for informational purposes and are not legal advice. Transmission of the information is not intended to create an attorney-client relationship. The information contained in this document may or may not reflect the most current legal developments in a particular area or to substitute for obtaining legal advice from an attorney licensed in your state.*

Should Your Contracts Include An Arbitration Provision?

By Matthew A. Griffith, Esq.

As the costs of litigating disputes continue to increase, litigants are increasingly settling their disputes through arbitration. Arbitration is a process in which a neutral third person (arbitrator) or panel, usually of three persons, considers the facts and arguments presented by the parties and then renders a decision. By utilizing arbitration, litigants can avoid trial, and the lengthy and expensive process of getting to trial. Arbitration usually results in a quicker decision than could be had by going to court. After the arbitrator renders a decision, that decision can be enforced by the courts. However, the courts cannot hear an appeal of an arbitration decision, except in the case fraud.

Arbitration is often preferable for the plaintiff who wants quick redress for the harm he or she has suffered, but defendants may prefer the longer and slower processes of trial and appeal in the courts. The rules of evidence in arbitration differ from those in trial. There are other differences between the two processes. Consequently, before a party agrees to submit to arbitration, thereby waiving the right to trial, careful consideration should be made as to which process is more likely to yield the better result.

How do parties choose arbitration over trial? They simply agree to arbitrate, usually in a written agreement. Written agreements to submit a dispute to arbitration can be signed before or after a dispute arises. So, for example, an employment agreement might include a provision requiring an employee to submit a wage dispute to arbitration. Nearly any agreement can contain an arbitration provision. Agreements can even be written to require mandatory arbitration only if requested by one but not the other party to the agreement.

Whether arbitration is right for you depends on a number of factors particular to your circumstances. However, all parties to an agreement in which significant disputes might arise should consider whether arbitration is a preferable alternative to resolving those potential disputes. Thrasher Buschmann Griffith & Voelkel, P.C. Attorneys At Law