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## **States' Alternative Dispute Resolution Statutes**

### **State of Delaware**

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## States' Alternative Dispute Resolution Statutes

### STATE OF DELAWARE

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#### **Uniform Arbitration Act** Title 10, Part IV, Chapter 57.

*Current through 2008*

#### § 5701. Effect of arbitration agreement

A written agreement to submit to arbitration any controversy existing at or arising after the effective date of the agreement is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract, without regard to the justiciable character of the controversy, and confers jurisdiction on the Chancery Court of the State to enforce it and to enter judgment on an award. In determining any matter arising under this chapter, the Court shall not consider whether the claim with respect to which arbitration is sought is tenable, or otherwise pass upon the merits of the dispute. This chapter also applies to arbitration agreements between employers and employees or between their respective representatives, except as otherwise provided in § 5725 hereunder.

#### § 5702. Jurisdiction; applications; venue; statutes of limitations

(a) Jurisdiction of the Court; applications to the Court.--The term "Court" means the Court of Chancery of this State, except where otherwise specifically provided. The making of an agreement described in § 5701 providing for arbitration in this State confers jurisdiction on the Court to enforce the agreement under this chapter and to enter judgment on an award thereunder, except as provided in § 5718. Action shall be commenced by an initial complaint and shall be heard in the manner and upon the notice provided by law or rule of court on any civil action. Notice of an initial complaint shall be served in the manner provided by law for the service of summons in an action.

(b) Venue--An initial complaint shall be made to the Court with the Register in Chancery in and for the county in which the agreement provides the arbitration hearing shall be held or, if the hearing has been held, in the county in which it was held. Otherwise the complaint shall be filed with the Register in Chancery in the county where the adverse party resides or has a place of business or, if the adverse party has no residence or place of business in this State, to the Register in and for any county. All subsequent pleadings or applications for an order made under this chapter shall be filed in the Court hearing the initial complaint unless the Court otherwise directs.

(c) Limitation of time.--If, at the time that a demand for arbitration was made or a notice of intention to arbitrate was served, the claim sought to be arbitrated would have been barred by limitation of time had it been asserted in a court of the State, a party may assert the limitation as a bar to the arbitration on complaint to the Court as provided in § 5703(b) or by way of defense in an existing case. The failure to assert such bar through complaint to the Court or by way of a defense in Court shall not preclude its assertion before the arbitrators, who may, in their sole discretion, apply or not apply the bar. Except as provided in § 5714(a)(5) such exercise of discretion by the arbitrators shall not be subject to review by a court on a complaint or on an application in an existing case to confirm, vacate or modify the award.

(d) Jurisdiction of the Court of Common Pleas.--Notwithstanding anything to the contrary in this Chapter 57 of this title, the term "Court" in this chapter shall refer to the Court of Common Pleas with respect to all actions arising from an arbitration agreement in or relating to a contract to provide consumer credit, and the making of such an agreement to arbitrate issues arising from the extension of consumer credit shall confer jurisdiction on the Court of Common Pleas, and not the Court of Chancery, to enforce the agreement and to enter judgment on an award. Any action brought under this Chapter 57 of this title relating to an agreement to arbitrate issues arising from the extension of consumer credit filed in the Court of Chancery shall not therefore be dismissed, but shall be transferred to the Court of Common Pleas for resolution there as though filed originally in that Court.

§ 5703. Proceedings to compel or enjoin arbitration; notice of intention to arbitrate

(a) Proceeding to compel arbitration.--A party aggrieved by the failure of another to arbitrate may file a complaint for an order compelling arbitration. Where there is no substantial question whether a valid agreement to arbitrate in this State was made or complied with, and the claim sought to be arbitrated is not barred by limitation under § 5702(c), the Court shall order the parties to proceed with arbitration. Where any such question is raised it shall be tried forthwith in said Court. If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in the Court of Chancery in the State the application shall be made therein. If the application is granted, the order shall operate to stay the pending or any subsequent action, or so much of it as is referable to arbitration. Any action or proceeding in any other court of the State, involving an issue subject to arbitration, shall be stayed if an order for arbitration or a complaint or an application therefor has been made in the Court of Chancery under this chapter or, if the issue is severable, the stay may be with respect thereto only.

(b) Application to enjoin arbitration.--Subject to subsection (c) of this section, a party who has not participated in the arbitration and who has not been made or served with an application to compel arbitration may file its complaint with the Court seeking to enjoin arbitration on the ground that a valid agreement was not made or has not been complied with or that the claim sought to be arbitrated is barred by limitation of § 5702(c).

(c) Notice of intention to arbitrate.--A party must serve upon another party a notice of intention to arbitrate, specifying the agreement pursuant to which arbitration is sought and the name and address of the party serving the notice, or of an officer or agent thereof if such party is an association or corporation, and stating that unless the party served applies to enjoin the arbitration within 20 days after such service such party shall thereafter be precluded from objecting that a valid agreement was not made or has not been complied with and from asserting in Court the bar of a limitation of time. Such notice shall be served in the same manner as a summons or by registered or certified mail, return receipt requested. A complaint seeking to enjoin arbitration must be made by the party served within 20 days after service of the notice or the party shall be so precluded. Notice of the filing of such complaint shall be served in the same manner as a summons or by registered or certified mail, return receipt requested.

#### § 5704. 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 the arbitrator's successor has not been duly appointed, the Court on complaint or on application in an existing case of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

#### § 5705. Majority action by arbitrators

The powers of the arbitrators shall be exercised by a majority unless otherwise provided by the agreement.

#### § 5706. Hearing

Unless otherwise provided by the agreement:

(1) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered or certified mail, return receipt requested, not less than 5 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 complaint or on application in an existing action, may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

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

(3) 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 arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

#### § 5707. Representation by attorney

A party has the right to be represented by an attorney, and may claim such right at any time at any proceeding or hearing under this chapter. A waiver thereof prior to the proceeding or hearing is ineffective. If a party is represented by an attorney, papers to be served on the party shall be served upon the party's attorney.

§ 5708. Witnesses; subpoenas; depositions

(a) The arbitrators may compel the attendance of witnesses and the production of books, records, contracts, papers, accounts, and all other documents and evidence, and shall have the power to administer oaths. An arbitrator and any attorney of record in any arbitration proceeding shall have the power to issue subpoenas in his or her own name. Subpoenas so issued shall be served by any sheriff, deputy sheriff, constable or other person, in the manner provided by law for the service and enforcement of subpoenas in a civil action and in accordance with the provisions of Chapter 21 of this title.

(b) 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.

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

(d) Fees for attendance as a witness shall be in accordance with § 8903 of this title.

§ 5709. Award generally

(a) 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 or certified mail, return receipt requested, or as provided in the agreement.

(b) 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 complaint or application of a party in an existing case. 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 the party notifies the arbitrators of such objection prior to the delivery of the award. The arbitrators shall deliver a copy of the award to each party in the manner provided in the agreement, or if no provision is so made, personally or by registered or certified mail, return receipt requested.

§ 5710. Award by confession

(a) When available.--An award by confession may be made for money due or to become due at any time before an award is otherwise made. The award shall be based upon a statement, verified by each party, containing an authorization to make the award, the sum of the award or the method of ascertaining it, and the facts constituting the liability.

(b) Time of award.--The award shall be made at any time within 3 months after the statement is verified and has been served upon the arbitrators or the agency or person or persons named by the parties to designate the arbitrators. Such service shall be made personally or by registered or certified

mail, return receipt requested.

(c) Persons or agency making award.--The award may be made and entered on the judgment roll by the arbitrators or by the agency or person or persons named by the parties to designate the arbitrators.

#### § 5711. Modification of award by arbitrators

On written application of a party to the arbitrators within 20 days after delivery of the award to the applicant, or, if an application to the Court is pending under § 5713, 5714 or 5715, 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 subdivisions (1) and (3) of subsection (a) of § 5715, or for the purpose of clarifying the award. Written notice of such application to the arbitrators shall be given forthwith to the opposing party, delivered personally or by registered or certified mail, return receipt requested, stating that the party must serve his or her objections thereto, if any, within 10 days from the date of the notice. The arbitrators shall dispose of any application made under this section in writing, signed and acknowledged by them, within 30 days after either written objection to modification has been served on them or the time for serving such objection has expired, whichever is earlier. The parties may in writing extend the time for such disposition either before or after its expiration. The award so modified or corrected by the arbitrators is subject to the provisions of §§ 5713, 5714 and 5715.

#### § 5712. Fees and expenses of arbitration

Unless otherwise provided in the agreement to arbitrate, the arbitrators' 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. The Court, on complaint or on application in an existing case, may reduce or disallow any fee or expense which it finds excessive, or may allocate it as justice requires.

#### § 5713. Confirmation of an award

The Court shall confirm an award upon complaint or application of a party in an existing case made within one year after its delivery to the party, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the Court shall proceed as provided in §§ 5714 and 5715.

#### § 5714. Vacating an award

(a) Upon complaint or application of a party in an existing case, the Court shall vacate an award where:

- (1) The award was procured by corruption, fraud or other undue means;
- (2) There was evident partiality by an arbitrator appointed as a neutral except where the award was by confession, or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
- (3) The arbitrators exceeded their powers, or so imperfectly executed them that a final and definite award upon the subject matter submitted was not made;
- (4) 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 § 5706, or failed to follow the procedures set forth in this chapter, so as to prejudice

substantially the rights of a party, unless the party applying to vacate the award continued with the arbitration with notice of the defect and without objection; or

(5) There was no valid arbitration agreement, or the agreement to arbitrate had not been complied with, or the arbitrated claim was barred by limitation under § 5702(c), and the issue was not adversely determined in proceedings under § 5703 and the party applying to vacate the award did not participate in the arbitration hearing without raising the objection;

But 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.

(b) An application under this section shall be made within 90 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 90 days after such grounds are known or should have been known.

(c) In vacating the award on grounds other than stated in subdivision (5) of subsection (a) of this section, the Court may order a rehearing and determination of all or any of the issues, before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the Court in accordance with § 5704, or, if the award is vacated on grounds set forth in subdivisions (3) and (4) of such subsection (a), the Court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with § 5704. 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.

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

#### § 5715. Modification or correction of award by Court

(a) Upon complaint or on application in an existing case made within 90 days after delivery of a copy of the award to the applicant, the Court shall modify or correct the award where:

(1) 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;

(2) The arbitrators have 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,

(3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

(b) 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.

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

#### § 5716. Judgment or decree on award

Upon the granting of an order confirming, modifying or correcting an award, except in cases where the award is for money damages, a final 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 disbursements may be awarded by the Court.

§ 5717. Judgment roll; docketing with Register in Chancery

(a) On entry of judgment or decree in cases other than an award for money damages, the Register shall prepare the judgment roll consisting, to the extent filed, of the following:

- (1) The agreement and each written extension of the time within which to make the award;
- (2) The award;
- (3) A copy of the order confirming, modifying or correcting the award; and
- (4) A copy of the final judgment or decree.

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

§ 5718. Transfer of money damage award to Superior Court; lien on real estate

(a) Upon the granting of an order confirming, modifying or correcting an award for money damages, a duly certified copy of the award and of the order confirming, modifying or correcting the award shall be filed with the Prothonotary of the Superior Court in the county where the arbitration was conducted and the award made. The Prothonotary shall enter in his or her judgment docket the names of the parties, the amount of the award, the time from which interest, if any, runs, and the amount of the costs, with the true date of such filing and entry. A confirmed award, so entered, shall constitute a judgment or decree on the docket with the same force and effect as if rendered in an action at law.

(b) Any confirmed award so transferred as authorized by subsection (a) of this section, shall, from that date, become and be a lien on all the real estate of the debtor in the county, in the same manner and as fully as judgments rendered in the Superior Court are liens, and may be executed and enforced in the same way as judgments of that Court.

§ 5719. Appeals

(a) Appeals may be taken from:

- (1) A final order denying a complaint seeking to compel arbitration made under § 5703(a);
- (2) An order granting an application to enjoin arbitration made under § 5703(b);
- (3) A final order confirming or denying confirmation of an award;
- (4) A final order modifying or correcting an award;
- (5) A final order vacating an award without directing a rehearing; or
- (6) A final judgment or decree entered pursuant to the provisions of this chapter.

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

§ 5720. Uniformity of interpretation

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

§ 5721. Short title



This chapter may be cited as the Uniform Arbitration Act.

§ 5722. Death or incompetency of a party

Where a party dies after making a written agreement to submit a controversy to arbitration, the proceedings may be begun or continued upon the application of, or upon notice to, the party's executor or administrator, or, where it relates to real property, the party's distributee or devisee who has succeeded to the party's interest in the real property. Where a committee of the property or of the person of a party to such an agreement is appointed, the proceedings may be continued upon the application of, or notice to, the committee. Upon the death or incompetency of a party, the Court may extend the time within which an application to confirm, vacate or modify the award or to stay arbitration must be made. Where a party has died since an award was delivered, the proceedings thereupon are the same as where a party dies after a judgment or decree has been rendered.

§ 5723. Arbitration of contracts of State and municipalities

It shall be lawful to include in any contract hereinafter executed by or on behalf of the State, or any department or agency thereof or by or on behalf of any county, municipal corporation, or other division of the State, a provision that any matter in dispute arising under the said contract shall be submitted to arbitration in accordance with this chapter or such sections thereof as may be set forth in such contract, except as provided in § 5725 hereunder.

§ 5724. Application of chapter to state and municipal contracts

This chapter applies to any written contract to which the State or any agency or subdivision thereof, or any municipal corporation or political division of the State shall be a party, except as provided in § 5725 hereunder.

§ 5725. Exclusion of collective bargaining labor contracts with public and private employers

Notwithstanding anything contained in this chapter by word or inference to the contrary, this chapter shall not apply to labor contracts with either public or private employers where such contracts have been negotiated by, or the employees covered thereby are represented by, any labor organization or collective bargaining agent or representative.

**Voluntary Alternative Dispute Resolution**

Title 6, Subtitle IV, Chapter 77.

*Current through 2008*

§ 7701. Short title; purpose

(a) This chapter shall be known and may be cited as the “Delaware Voluntary Alternative Dispute Resolution Act.”

(b) The purposes of the Delaware Voluntary Alternative Dispute Resolution Act are to provide a means to resolve business disputes without litigation and to permit parties to agree, prior to any

disputes arising between them, to utilize alternative dispute resolution techniques if a dispute occurs. An interpretation of the provisions of this chapter shall seek to achieve these purposes.

#### § 7702. Definitions

As used in this chapter, unless the context otherwise requires:

- (1) “ADR” means the alternative dispute resolution method provided for by this chapter unless the parties to a dispute adopt by written agreement some other method of ADR in which event “ADR” shall refer to the method they adopt.
- (2) “ADR Specialist” means an individual who has the qualifications provided for in § 7708 of this title to conduct an ADR proceeding.
- (3) A “dispute subject to ADR” means any dispute that (1) involves at least \$100,000 in contention, and (2) is not a summary proceeding under § 211, 215, 220 or 225 of Title 8.
- (4) “Person” means any individual, corporation, association, partnership, statutory trust, business trust, limited liability company or other entity whether or not organized for profit.

#### § 7703. How ADR is selected

(a) Any person, by filing the certificate provided for in § 7704 of this title, shall be deemed to have agreed to submit all disputes subject to ADR to the ADR provided for by this chapter. Upon the filing of such certificate, the filer shall be bound by the provisions of this chapter until a certificate of revocation has become effective under § 7707 of this title.

(b) In addition to persons covered by subsection (a), any person who enter into a written agreement with a person who has filed the certificate provided for in § 7704 of this title, when such agreement incorporates (by reference or otherwise) the ADR requirements of this chapter, will be bound by the ADR requirements of this chapter with regard to disputes arising out of the subject matter of such written agreement. For purposes of compliance with this provision, it shall be sufficient for such writing to state: “The undersigned hereby agree to be bound by the provisions of the Delaware Voluntary Alternative Dispute Resolution Act with respect to any dispute which arises out of the subject matter of this agreement.”

#### § 7704. Contents of certificate

(a) The certificate of agreement to submit to ADR shall set forth (1) the name of the person filing the certificate, (2) the address of such person (which shall include the street, number, city and state) at which it shall be given notice of any dispute, and (3) the agreement of such person that by filing the certificate that person is bound to follow the provisions of this chapter and submits to the power of any court with jurisdiction over it to require it to participate in ADR with any other person who invokes the provisions of this chapter for any dispute subject to ADR.

(b) Any provision in a certificate that purports to limit the disputes that are subject to ADR shall be of no force or effect.

#### § 7705. Place of filing

(a) The certificate accepting ADR shall be filed with the Secretary of State of the State of Delaware and shall be executed and acknowledged by the chairperson or vice-chairperson of the board of directors or by the president or vice-president of any corporation, by a general partner of any partnership, or by a person with equivalent authority in any other entity.

(b) The Secretary of State shall keep such records as are required to determine who has filed a certificate accepting ADR or revoking such a certificate, together with the date of any such filing.

§ 7706. Filing fee

No certificate accepting ADR or revoking ADR shall be filed unless it shall be accompanied by the payment of \$1,000 to the State, except that the filing fee shall be \$100 for every corporation, limited partnership, statutory trust, limited liability company or other entity organized under the laws of the State.

§ 7707. Revocation of ADR

A certificate accepting ADR may be revoked by the filing of a certificate stating that it revokes a previously filed certificate. A certificate of revocation shall be executed and acknowledged in the same manner as a certificate accepting ADR. A certificate of revocation shall be effective upon filing and payment of the filing fee, except with respect to disputes arising under contracts requiring ADR and which were entered into prior to the filing of the certificate of revocation.

§ 7708. Qualifications of ADR Specialist

The ADR proceedings shall be conducted by any individual meeting one of the following criteria:

(a) Successful completion of 25 hours of training in resolving civil disputes in a course approved by the department or division of the government authority charged with responsibility over adult education in the jurisdiction where that individual resides, or

(b) Admission to the bar of the jurisdiction in which that individual resides, together with a minimum of 5 years experience as a practicing attorney.

§ 7709. Selection of ADR Specialist

(a) In the case of ADR proceedings that are to be held in the State, the party who initiates the proceedings shall select a panel of 3 ADR Specialists in Delaware to be considered by the parties. Unless the parties otherwise agree in writing, the ADR Specialist shall thereafter be chosen in accordance with the procedures set forth in subsections (c) through (f) of this section below.

(b) In all disputes not to be submitted to ADR in the State and unless the parties otherwise agree in writing, the ADR Specialist shall be selected by the following procedure:

(1) When there are 2 parties to the dispute, the party who initiates the ADR proceedings shall choose a panel of 3 ADR Specialists from those qualified persons who reside or have an office in either (i) the state of incorporation or domicile of the other party to the dispute, or (ii) the jurisdiction where the other party to the dispute resides as determined from the address stated on the ADR certificate on file with the Secretary of State.

(2) When there are more than 2 parties to the dispute, the party who initiates the ADR proceedings shall choose a panel of 3 ADR Specialists from those qualified persons who reside or have an office in the jurisdiction where the greatest number of the other parties to the ADR proceeding (i) are incorporated or domiciled, or (ii) reside as determined from the address stated on any ADR certificate on file with the Secretary of State. If no jurisdiction has the greatest number of parties then the person

initiating ADR shall choose panelists from any of the states of incorporation, domicile or residence of the other parties.

(c) The identity of the panel of the ADR Specialists shall be included in the ADR notice provided for in § 7710 of this title.

(d) Within 14 days of receiving the ADR notice provided for in § 7710 of this title a person receiving such notice shall:

(1) Select one of the members of the panel of ADR Specialists contained in the notice by advising the person initiating the ADR in writing of the selection; or

(2) Advise the party initiating the ADR that none of the members of the panel are acceptable.

When more than 2 persons are involved in the ADR proceedings, the ADR Specialist shall be the person chosen by the greatest number of parties and in the case of a tie in a vote, the person initiating the ADR proceedings shall choose the ADR Specialist from the ADR Specialists who received the same number of votes.

(e) Upon receiving the selection of the ADR Specialist by the other person or persons to the dispute, the person initiating the ADR proceedings shall promptly notify the ADR Specialist of that person's selection and send copies of such notice to the other parties. If a party receiving an ADR notice provided for in § 7710 of the title does not select an ADR Specialist in a timely manner, or advise that none of the members of the panel are acceptable, the person sending the ADR notice (1) may select the ADR Specialist, or (2) in the case of more than 2 parties to a dispute, may cast a vote for the ADR Specialist on behalf of the party who failed to respond to the ADR notice.

(f) If none of the ADR Specialists selected by the party initiating the ADR proceedings are acceptable to the other parties to the dispute, in the ADR proceedings that are to be held in Delaware the ADR Specialist shall be selected in accordance with the rules of the Superior Court of the State as may be adopted by that Court and approved by the Delaware Supreme Court. In ADR proceedings to be conducted outside of Delaware, in the case of a failure of the parties to agree on the ADR Specialist the Specialist shall be selected in accordance with such rules as may apply in the jurisdiction where the ADR proceedings are to be conducted or, if no such rules have been adopted, then by the American Arbitration Association.

#### § 7710. Initiation of ADR proceeding

ADR proceedings are initiated by written notice to the other parties to a dispute who have filed an ADR certificate in accordance with § 7704 of this title or who have agreed to be bound by the ADR requirements of this chapter. The notice shall state in summary form: (1) the dispute is subject to the provisions of this chapter, (2) the nature of the dispute to be submitted to ADR and (3) the identities of the members of the panel of ADR Specialists chosen pursuant to § 7709 of this title. A failure to send such a notice to a person who has an interest in the dispute shall not prevent the ADR proceedings from going forward between or among parties who did receive such notice.

#### § 7711. Participation by other parties

When not all the parties to a dispute have filed an ADR certificate or have agreed to be bound by the Delaware Voluntary Dispute Resolution Act, such other parties may be given the opportunity to participate in the ADR proceedings by delivering to them the notice provided for in § 7710 of this title. Parties to the dispute who are not bound to participate in the ADR proceedings may elect to participate in the ADR by selecting an ADR Specialist in accordance with § 7709 of this title. Such selection shall

constitute the agreement of the party to be subject to the provisions of this chapter for purposes of the dispute in which the election to participate is made. After the passage of the time for selection of the ADR Specialist, the ADR shall proceed without further notice to or involvement by those parties to the dispute who have not elected ADR.

#### § 7712. Scheduling of ADR proceedings

Promptly after notification of appointment, the ADR Specialist shall: (a) advise the parties of a willingness to serve as the ADR Specialist for this dispute, (b) notify the parties of the expected rate of compensation, and (c) set the time and date of the ADR proceedings which shall be within 60 days of notice of appointment unless the parties and the ADR Specialist agree to another date. Unless otherwise agreed, the ADR proceedings shall be held in the offices of the ADR Specialist.

#### § 7713. Compensation of ADR Specialist

(a) The ADR Specialist shall be reimbursed for all reasonable out-of-pocket expenses. The ADR Specialist shall be compensated on the basis of the Specialist's regular hourly fees for professional services for time spent during the day of the actual ADR proceeding and for any subsequent continuation of the proceedings agreed to by parties. In addition to this compensation for the actual ADR proceeding, the ADR Specialist may charge for up to 10 hours spent in preparing for the ADR proceeding, unless the parties agree to additional preparation time.

(b) The ADR Specialist may require the parties, on a pro rata basis, to advance the Specialist's fees for preparation and the actual proceeding within 10 days of the notice of the scheduling of the ADR proceedings.

(c) Unless otherwise agreed, the fees and expenses of the ADR Specialist shall be divided among the parties to the proceedings on a pro rata basis.

(d) The parties and the ADR Specialist may agree on any method or rate of compensation other than as set forth in this section, provided that such agreement is in a writing signed by the parties to the agreement.

#### § 7714. Conduct of the ADR proceedings

Subject to any agreement of the parties to adopt different rules of proceeding and the power of the ADR Specialist to modify these procedures in appropriate instances, the ADR shall be conducted as follows:

(a) No later than 7 days prior to the commencement of the ADR, each party shall submit to the ADR Specialist and the other parties a statement of its position in the dispute and such supporting documents as it deems appropriate, provided that such statement of position shall not exceed 25 pages in length.

(b) Upon the commencement of the ADR, each party shall have no more than 1 hour to present its position to the ADR Specialist in the presence of the other parties. This presentation may be made by counsel, by examining witnesses or by any other means that is reasonable under the circumstances. Upon conclusion of any party's presentation, the ADR Specialist may permit the other parties to have up to 1 hour to ask questions of the presenting party, with such hour to be divided among the other parties as determined by the ADR Specialist.

(c) Upon conclusion of the initial presentations of positions by all the parties and such questioning of the parties as thereafter occurs pursuant to subsection (b), the ADR Specialist as soon as possible shall attempt to resolve the dispute by meeting with the parties, either separately or as a group as the Specialist determines is appropriate. Such meetings shall conclude when the dispute is resolved or at the regular close of business on the day the ADR commenced, whichever first occurs.

(d) If the parties thereafter agree, the ADR Specialist may continue to discuss the resolution of the dispute with them, either separately or together, until any party notifies the ADR Specialist that such discussions are at an impasse.

#### § 7715. Conclusion of ADR

Any settlement of the dispute submitted to ADR shall be reduced to writing as soon as possible after the settlement is reached, with such writing to be prepared by the ADR Specialist (unless the parties otherwise agree as part of their settlement that they will prepare the writing) and shall be signed by the parties to be valid and binding upon them. If no settlement is reached at the close of business on the day the ADR is commenced or after further mediation at the parties request until an impasse is declared, the ADR Specialist shall declare the ADR has concluded by advising the parties in writing.

#### § 7716. Confidentiality

All ADR proceedings shall be confidential and any memoranda submitted to the ADR Specialist, any statements made during the ADR and any notes or other materials made by the ADR Specialist or any party in connection with the ADR shall not be subject to discovery or introduced into evidence in any proceeding and shall not be construed to be a waiver of any otherwise applicable privilege. Nothing in this section shall limit the discovery or use as evidence of documents that would have otherwise been discoverable or admissible as evidence but for the use of such documents in the ADR proceeding.

#### § 7717. Immunity

The ADR Specialist shall have such immunity as if the Specialist were a judge acting in a court with jurisdiction over the subject matter and the parties involved in the dispute that led to ADR.

#### § 7718. Attendance at ADR

A person may be represented by counsel in all stages of the ADR proceeding. In addition to its counsel, each party must attend the initial ADR proceeding in which the parties make their presentations and submit to questioning and meet with the ADR Specialist. A person may attend through its chief executive officer (or person holding an equivalent position in such entity) or through any other person authorized in writing by the entity's governing body to so attend, provided such authorized person files a written authorization to attend with the ADR Specialist. The authorization shall state that the representative has the authority to settle the dispute (subject to any limits that are deemed appropriate by the governing body and which limits need not be revealed) and such person is charged with the responsibility of reporting to the party's governing body on what occurred during the ADR proceedings. Any such report shall be confidential in accordance with § 7716 of this title.

#### § 7719. Enforcement of ADR rights

(a) The right to ADR provided for under this chapter may be enforced by any court with jurisdiction over the parties. Any person who files a certificate under § 7704 of this title thereby consents to the

jurisdiction of the Court of Chancery of the State for the purpose of enforcing in a summary proceeding the rights provided for by this chapter.

(b) In addition to the right to compel ADR provided by subsection (a), any party to an ADR proceeding to be conducted pursuant to this chapter shall be entitled to reasonable attorneys' fees incurred in compelling ADR.

(c) Any party failing to pay the reasonable fees and expenses of an ADR Specialist shall be subject to suit by the ADR Specialist for 3 times the amount of such fees and expenses, together with the attorneys' fees and other costs incurred in such litigation.

#### § 7720. Tolling of limitations

The initiation of ADR under § 7710 of this title shall suspend the running of the statute of limitations applicable to the dispute that is the subject of the ADR until 14 days after the ADR is concluded in accordance with § 7715 of this title.

#### § 7721. Effect of commencing litigation

Other than a proceeding to require ADR under § 7719 of this title, this chapter and the procedures provided for herein shall cease to have any force or effect upon the commencement of litigation concerning the dispute that is the subject of the ADR proceedings. The parties to any such litigation shall be exclusively subject to the rules of the tribunal in which such litigation has been commenced and nothing in this chapter shall be construed to infringe upon or otherwise affect the jurisdiction of the courts over such disputes.

### **General Jurisdiction and Powers**

Title 10, Part I, Chapter 3, Subchapter III.

*Current through 2008*

#### § 347. Mediation proceedings for business disputes

(a) Without limiting the jurisdiction of any court of this State, the Court of Chancery shall have the power to mediate business disputes when:

- (1) The parties have consented to the mediation by the Court of Chancery by agreement or by stipulation;
- (2) At least one party is a business entity as defined in § 346 of this title;
- (3) At least one party is a business entity formed or organized under the laws of this State or having its principal place of business in this State;
- (4) No party is a consumer, as that term is defined in § 2731 of Title 6, with respect to the business dispute; and
- (5) In the case of disputes involving solely a claim for monetary damages, the amount in controversy is no less than one million dollars or such greater amount as the Court of Chancery determines by rule. A mediation pursuant to this section shall involve a request by parties to have a member of the Court of Chancery, or such other person as may be authorized under rules of the Court, act as a mediator to assist the parties in reaching a mutually satisfactory resolution of their dispute. Mediation proceedings shall be considered confidential and not of public record.

(b) By rule, the Court of Chancery may define those types of cases that are eligible for submission as a business dispute mediation. This section is intended to encourage the Court of Chancery to include complex corporate and commercial disputes, including technology disputes, within the ambit of the business dispute mediation rules. The Court of Chancery should interpret its rule-making authority broadly to effectuate that intention.

§ 348. Disputes involving deed covenants or restrictions

(a) Without limiting the jurisdiction of any court of this State, the Court of Chancery shall, through a Master in Chancery or such other person as may be appointed his or her designee, mediate disputes involving the enforcement of deed covenants or restrictions when:

(1) An action involving the enforcement of deed covenants or restrictions has been filed with the Court;

(2) At least 1 party is an association or other entity representing the homeowners or lot owners of a subdivision, if such an association or entity exists; and

(3) At least 1 party is a homeowner or lot owner in that subdivision. The mediator shall assist the parties in trying to reach a mutually satisfactory resolution of their dispute. Mediation proceedings under this section are confidential and not of public record.

(b) By rule, the Court of Chancery may further define those types of deed covenant or restriction cases which must be mediated.

(c) Upon the filing of an action involving the enforcement of deed covenants or restrictions, the court shall schedule a mandatory mediation hearing to be held within 60 days of the filing. If the parties fail to resolve the dispute, the court shall schedule a trial to be held within 120 days of the failed attempt to mediate the dispute, unless for good cause shown the court in its discretion concludes that a longer period of time is warranted. A Master in Chancery shall preside over the trial.

(d) The parties to a dispute mediated pursuant to the provisions of this section are not required to be represented by an attorney during a mandatory mediation proceeding.

(e) The nonprevailing party at a trial held pursuant to the provisions of this section must pay the prevailing party's attorney fees and court costs, unless the court finds that enforcing this subsection would result in an unfair, unreasonable, or harsh outcome.

**Mediation**  
Delaware Rules of Court

*Current with amendments received through October of 2008*

RULE 93. Scope of Rules

(a) These rules shall govern the procedure in mediation proceedings for technology disputes and business disputes pursuant to 10 Del. C. §§ 346 and 347.



(b) In the case of disputes involving solely a claim for monetary damages, a matter will be eligible for mediation only if the amount in controversy exceeds one million dollars.

(c) The parties with the consent of the Mediator may change any of these mediation rules by agreement.

(d) Definitions. (1) "Mediation" means the process by which a Mediator assists and facilitates two or more parties to a controversy in reaching a mutually acceptable resolution and includes all contacts between the Mediator and any party or parties, until such time as a resolution is agreed to by the parties or the parties discharge the Mediator.

(2) "Mediator" means a judge or master sitting permanently in the Court.

(3) "Mediation conference" means that process, which may consist of one or more meetings or conferences, pursuant to which the Mediator assists the parties in seeking a mutually acceptable resolution of their dispute through discussion and negotiation.

(4) "Consent to Mediate," means a written or oral agreement to engage in mediation in the Court of Chancery. Provided that the parties and the amount in controversy meet the eligibility requirements in 10 Del. C. § 347, a consent to mediate is acceptable if it contains the following language: "The parties agree that any dispute arising under this agreement shall be mediated in the Court of Chancery of the State of Delaware, pursuant to 10 Del. C. § 347."

#### RULE 94. Commencement of Mediation

(a) Petition. (1) Mediation is commenced by submitting to the Register in Chancery a petition for mediation (hereinafter a "petition") and the filing fee specified by the Register in Chancery. The petition must be signed by Delaware counsel, as defined in Rule 170(b). Sufficient copies shall be submitted so that one copy is available for delivery to each party as hereafter provided, unless the Court directs otherwise.

(2) The petition shall be sent by the Register in Chancery, via next-day delivery, to either a person specified in the applicable agreement between the parties to receive notice of the petition or, absent such specification, to each party's principal place of business or residence. The petitioning party shall provide the Register in Chancery with addresses of each party.

(3) The petition will identify the issues to be mediated and specify the method by which the parties shall attempt to resolve the issues. The petition must also contain a statement that all parties have consented to mediation by agreement or stipulation, that at least one party is a business entity, that at least one party is a business entity formed or organized under the laws of Delaware or having its principal place of business in Delaware, and that no party is a consumer with respect to the dispute. In the case of disputes involving solely a claim for monetary damages, the petition must contain a statement of the amount in controversy.

(4) Confidentiality. The petition and any supporting documents are considered confidential and not of

public record. The Register in Chancery will not include the petition as part of the public docketing system.

(b) Appointment of the Mediator. Upon receipt of a petition, the Court will appoint a Mediator.

(c) Date, Time, and Place of Mediation. The Mediator will set the date, time, and place of the mediation conference within 15 days following receipt of the petition. The mediation conference generally will occur no later than 60 days following receipt of the petition.

(d) Submission of Documents. There shall be no formal discovery in connection with a mediation proceeding under these Rules. The Mediator may request parties to exchange or provide to the Mediator documents or other material necessary to understand the dispute or facilitate a settlement. The parties may agree to exchange any documents or other material in the possession of the other that may facilitate a settlement.

#### RULE 95. Mediation of Conference

(a) Participation. At least one representative of each party with an interest in the issue or issues to be mediated and with authority to resolve the matter must participate in the mediation conference. Delaware counsel, as defined in Rule 170 (b), shall also attend the mediation conference on behalf of each party.

(b) Confidentiality. Mediation conferences are private proceedings such that only parties and their representatives may attend, unless all parties agree otherwise. A Mediator may not be compelled to testify in any judicial or administrative proceeding concerning any matter relating to service as a Mediator. All memoranda and work product contained in the case files of a Mediator are confidential. Any communication made in or in connection with the mediation that relates to the controversy being mediated, whether made to the Mediator or a party, or to any person if made at a mediation conference, is confidential. Such confidential materials and communications are not subject to disclosure in any judicial or administrative proceeding with the following exceptions: (1) Where all parties to the mediation agree in writing to waive the confidentiality, or (2) where the confidential materials and communications consist of statements, memoranda, materials, and other tangible evidence otherwise subject to discovery, which were not prepared specifically for use in the mediation conference. A mediation agreement, however, shall not be confidential unless the parties otherwise agree in writing.

(c) Civil Immunity. Mediators shall be immune from civil liability for or resulting from any act or omission done or made in connection with efforts to assist or facilitate a mediation, unless the act or omission was made or done in bad faith, with malicious intent, or in a manner exhibiting a willful, wanton disregard of the rights, safety, or property of another.

(d) Mediation Agreement. If the parties involved in the mediation conference reach agreement with regard to the issues identified in the petition, their agreement shall be reduced to writing and signed by the parties and the Mediator. The agreement shall set forth the terms of the resolution of the issues and the future responsibility of each party.

(e) Termination of Mediation Conference. (1) The Mediator shall officially terminate the mediation conference if the parties are unable to agree. The termination shall be without prejudice to either party

in any other proceeding. The Mediator shall have no authority to make or impose any adjudication, sanction, or penalty upon the parties. No party shall be bound by anything said or done at the conference unless an agreement is reached.

(2) The Mediator is ineligible to adjudicate any subsequent litigation arising from the issues identified in the petition.

(f) Compensation for Mediation. The Court will be compensated by the parties to the mediation in accordance with the schedule of fees maintained by the Register in Chancery.