

## **Georgia Arbitration Code**

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### **CODE OF GEORGIA TITLE 9. CIVIL PRACTICE CHAPTER 9. ARBITRATION ARTICLE 1. GENERAL PROVISIONS PART 1. ARBITRATION CODE**

**9-9-1** Short title.

This part shall be known and may be cited as the "Georgia Arbitration Code."

(Code 1933, § 7-301, enacted by Ga. L. 1978, p. 2270, § 1; Code 1981, 9-9-80; Code 1981, 9-9-1, as redesignated by Ga. L. 1988, p. 903, § 1.)

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**9-9-2** Applicability; exclusive method.

(a) Part 3 of Article 2 of this chapter, as it existed prior to July 1, 1988, applies to agreements specified in subsection (b) of this Code section made between July 1, 1978, and July 1, 1988. This part applies to agreements specified in subsection (b) of this Code section made on or after July 1, 1988, and to disputes arising on or after July 1, 1988, in agreements specified in subsection (c) of this Code section.

(b) Part 3 of Article 2 of this chapter, as it existed prior to July 1, 1988, shall apply to construction contracts, contracts of warranty on construction, and contracts involving the architectural or engineering design of any building or the design of alterations or additions thereto made between July 1, 1978, and July 1, 1988, and on and after July 1, 1988, this part shall apply as provided in subsection (a) of this Code section and shall provide the exclusive means by which agreements to arbitrate disputes arising under such contracts can be enforced.

(c) This part shall apply to all disputes in which the parties thereto have agreed in writing to arbitrate and shall provide the exclusive means by which agreements to arbitrate disputes can be enforced, except the following, to which this part shall not apply:

(1) Agreements coming within the purview of Article 2 of this chapter, relating to arbitration of medical malpractice claims;

(2) Any collective bargaining agreements between employers and labor unions representing employees of such employers;

(3) Any contract of insurance, as defined in paragraph (1) of Code Section 33-1-2; provided, however, that nothing in this paragraph shall impair or prohibit the enforcement of or in any way invalidate an arbitration clause or provision in a contract between insurance companies;

(4) Any other subject matters currently covered by an arbitration statute;

(5) Any loan agreement or consumer financing agreement in which the amount of indebtedness is \$25,000.00 or less at the time of execution;

(6) Any contract for the purchase of consumer goods, as defined in Title 11, the "Uniform Commercial Code," under subsection (1) of Code Section 11-2-105 and subsection (1) of Code Section 11-9-109;

(7) Any contract involving consumer acts or practices or involving consumer transactions as such terms are defined in paragraphs (2) and (3) of subsection (a) of Code Section 10-1-392, relating to definitions in the "Fair Business Practices Act of 1975";

(8) Any sales agreement or loan agreement for the purchase or financing of residential real estate unless the clause agreeing to arbitrate is initialed by all signatories at the time of the execution of the agreement. This exception shall not restrict agreements between or among real estate brokers or agents;

(9) Any contract relating to terms and conditions of employment unless the clause agreeing to arbitrate is initialed by all signatories at the time of the execution of the agreement;

(10) Any agreement to arbitrate future claims arising out of personal bodily injury or wrongful death based on tort.

(Code 1933, § 7-302, enacted by Ga. L. 1978, p. 2270, § 1; Ga. L. 1979, p. 393, § 1; Code 1981, 9-9-81; Code 1981, 9-9-2, as redesignated by Ga. L. 1988, p. 903, § 1; Ga. L. 1997, p. 1556, § 1.)

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### **9-9-3** Effect of arbitration agreement.

A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit any controversy thereafter arising to arbitration is enforceable without regard to the justiciable character of the controversy and confers jurisdiction on the courts of the state to enforce it and to enter judgment on an award.

(Code 1933, 7-303, enacted by Ga. L. 1978, p. 2270, § 1; Code 1981, 9-9-82; Code 1981, 9-9-3, as redesignated by Ga. L. 1988, p. 903, § 1.)

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### **9-9-4** Application to court; venue; service of papers; scope of court's consideration; application for order of attachment or preliminary injunction.

(a) (1) Any application to the court under this part shall be made to the superior court of the county where venue lies, unless the application is made in a pending court action, in which case it shall be made to the court hearing that action. Subsequent applications shall be made to the court hearing the initial application unless the court otherwise directs.

(2) All applications shall be by motion and shall be heard in the manner provided by law and rule of court for the making or hearing of motions, provided that the motion shall be filed in the same manner as a complaint in a civil action.

(b) Venue for applications to the court shall lie:

(1) In the county where the agreement provides for the arbitration hearing to be held; or

(2) If the hearing has already been held, in the county where it was held; or

(3) In the county where any party resides or does business; or

(4) If there is no county as described in paragraph (1), (2), or (3) of this subsection, in any county.

(c) (1) A demand for arbitration shall be served on the other parties by registered or certified mail or statutory overnight delivery, return receipt requested.

(2) The initial application to the court shall be served on the other parties in the same manner as a complaint under Chapter 11 of this title.

(3) All other papers required to be served by this part shall be served in the same manner as pleadings subsequent to the original complaint and other papers are served under Chapter 11 of this title.

(d) In determining any matter arising under this part, the court shall not consider whether the claim with respect to which arbitration is sought is tenable nor otherwise pass upon the merits of the dispute.

(e) The superior court in the county in which an arbitration is pending, or, if not yet commenced, in a county specified in subsection (b) of this Code section, may entertain an application for an order of attachment or for a preliminary injunction in connection with an arbitrable controversy, but only upon the ground that the award to which the applicant may be entitled may be rendered ineffectual without such provisional relief.

(Code 1933, 7-305, enacted by Ga. L. 1978, p. 2270, § 1; Code 1981, 9-9-84 NrepealedV; Code 1981, 9-9-4, as redesignated by Ga. L. 1988, p. 903, § 1; Ga. L. 2000, p. 1589, § 3.)

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#### **9-9-5** Limitation of time as bar to arbitration.

(a) If a claim sought to be arbitrated would be barred by limitation of time had the claim sought to be arbitrated been asserted in court, a party may apply to the court to stay arbitration or to vacate the award, as provided in this part. The court has discretion in deciding whether to apply the bar. A party waives the right to raise limitation of time as a bar to arbitration in an application to stay arbitration by that party's participation in the arbitration.

(b) Failure to make this application to the court shall not preclude a party from asserting before the arbitrators limitation of time as a bar to the arbitration. The arbitrators, in their sole discretion, shall decide whether to apply the bar. This exercise of discretion shall not be subject to review of the court on an application to confirm, vacate, or modify the award except upon the grounds hereafter specified in this part for vacating or modifying an award.

(Code 1933, 7-306, enacted by Ga. L. 1978, p. 2270, § 1; Code 1981, 9-9-85; Code 1981, 9-9-5, as redesignated by Ga. L. 1988, p. 903, § 1.)

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#### **9-9-6** Application to compel or stay arbitration; demand for arbitration; consolidation of proceedings.

(a) A party aggrieved by the failure of another to arbitrate may apply for an order compelling arbitration. If the court determines there is no substantial issue concerning the validity of the agreement to submit to arbitration or compliance therewith and the claim sought to be arbitrated is not barred by limitation of time, the court shall order the parties to arbitrate. If a substantial issue is raised or the claim is barred by limitation of time, the court shall summarily hear and determine that issue and, accordingly, grant or deny the application for an order to arbitrate. If an issue claimed to be arbitrable is involved in an action pending in a court having jurisdiction to hear a motion to compel arbitration, the application shall be made by motion in that action. If the application is granted, the order shall operate to stay a pending or subsequent action, or so much of it as is referable to arbitration.

(b) Subject to subsections (c) and (d) of this Code section, a party who has not participated in the arbitration and who has not made an application to compel arbitration may apply to stay arbitration on the grounds that:

- (1) No valid agreement to submit to arbitration was made;
- (2) The agreement to arbitrate was not complied with; or
- (3) The arbitration is barred by limitation of time.

(c) A party may serve upon another party a demand for arbitration. This demand shall specify:

- (1) The agreement pursuant to which arbitration is sought;
- (2) The name and address of the party serving the demand;
- (3) That the party served with the demand shall be precluded from denying the validity of the agreement or compliance therewith or from asserting limitation of time as a bar in court unless he makes application to the court within 30 days for an order to stay arbitration; and
- (4) The nature of the dispute or controversy sought to be arbitrated; provided, however, that the demand for arbitration

may be amended by either party to include disputes arising under the same agreement after the original demand is served.

(d) After service of the demand, or any amendment thereof, the party served must make application within 30 days to the court for a stay of arbitration or he will thereafter be precluded from denying the validity of the agreement or compliance therewith or from asserting limitation of time as a bar in court. Notice of this application shall be served on the other parties. The right to apply for a stay of arbitration may not be waived, except as provided in this Code section.

(e) Unless otherwise provided in the arbitration agreement, a party to an arbitration agreement may petition the court to consolidate separate arbitration proceedings, and the court may order consolidation of separate arbitration proceedings when:

(1) Separate arbitration agreements or proceedings exist between the same parties or one party is a party to a separate arbitration agreement or proceeding with a third party;

(2) The disputes arise from the same transactions or series of related transactions; and

(3) There is a common issue or issues of law or fact creating the possibility of conflicting rulings by more than one arbitrator or panel of arbitrators.

(f) If all the applicable arbitration agreements name the same arbitrator, arbitration panel, or arbitration tribunal, the court, if it orders consolidation under subsection (e) of this Code section, shall order all matters to be heard before the arbitrator, panel, or tribunal agreed to by the parties. If the applicable arbitration agreements name separate arbitrators, panels, or tribunals, the court, if it orders consolidation under subsection (e) of this Code section, shall, in the absence of an agreed method of selection by all parties to the consolidated arbitration, appoint an arbitrator.

(g) In the event that the arbitration agreements in proceedings consolidated under subsection (e) of this Code section contain inconsistent provisions, the court shall resolve such conflicts and determine the rights and duties of various parties.

(h) If the court orders consolidation under subsection (e) of this Code section, the court may exercise its discretion to deny consolidation of separate arbitration proceedings only as to certain issues, leaving other issues to be resolved in separate proceedings.

(Code 1933, 7-307, enacted by Ga. L. 1978, p. 2270, § 1; Code 1981, 9-9-86; Code 1981, 9-9-6, as redesignated by Ga. L. 1988, p. 903, § 1.)

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#### **9-9-7** Appointment of arbitrators.

(a) If the arbitration agreement provides for a method of appointment of arbitrators, that method shall be followed. If there is only one arbitrator, the term "arbitrators" shall apply to him.

(b) The court shall appoint one or more arbitrators on application of a party if:

(1) The agreement does not provide for a method of appointment;

(2) The agreed method fails;

(3) The agreed method is not followed for any reason; or

(4) The arbitrators fail to act and no successors have been appointed.

(c) An arbitrator appointed pursuant to subsection (b) of this Code section shall have all the powers of one specifically named in the agreement.

(Code 1933, 7-308, enacted by Ga. L. 1978, p. 2270, § 1; Code 1981, 9-9-87; Code 1981, 9-9-7, as redesignated by Ga. L. 1988, p. 903, § 1.)

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#### **9-9-8** Time and place for hearing; notice; application for prompt hearing; conduct of hearing; right to counsel; record; waiver.

(a) The arbitrators, in their discretion, shall appoint a time and place for the hearing notwithstanding the fact that the arbitration agreement designates the county in which the arbitration hearing is to be held and shall notify the parties in writing, personally or by registered or certified mail or statutory overnight delivery, not less than ten days before the hearing. The arbitrators may adjourn or postpone the hearing. The court, upon application of any party, 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 pleadings, documents, testimony, and other matters; and to cross-

examine witnesses. The arbitrators may hear and determine the controversy upon the pleadings, documents, testimony, and other matters produced notwithstanding the failure of a party duly notified to appear.

(c) A party has the right to be represented by an attorney and may claim such right at any time as to any part of the arbitration or hearings which have not taken place. This right may not be waived. If a party is represented by an attorney, papers to be served on the party may be served on the attorney.

(d) The hearing shall be conducted by all the arbitrators unless the parties otherwise agree; but a majority may determine any question and render and change an award, as provided in this part. 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.

(e) The arbitrators shall maintain a record of all pleadings, documents, testimony, and other matters introduced at the hearing. The arbitrators or any party to the proceeding may have the proceedings transcribed by a court reporter.

(f) Except as provided in subsection (c) of this Code section, a requirement of this Code section may be waived by written consent of the parties or by continuing with the arbitration without objection.

(Code 1933, 7-309, enacted by Ga. L. 1978, p. 2270, § 1; Code 1981, 9-9-88; Code 1981, 9-9-8, as redesignated by Ga. L. 1988, p. 903, § 1; Ga. L. 2000, p. 1589, § 3.)

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**9-9-9** Power of subpoena; enforcement; use of discovery; opportunity to examine documents; compensation of witnesses.

(a) The arbitrators may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence. These subpoenas shall be served and, upon application to the court by a party or the arbitrators, enforced in the same manner provided by law for the service and enforcement of subpoenas in a civil action.

(b) Notices to produce books, writings, and other documents or tangible things; depositions; and other discovery may be used in the arbitration according to procedures established by the arbitrators.

(c) A party shall have the opportunity to obtain a list of witnesses and to examine and copy documents relevant to the arbitration.

(d) Witnesses shall be compensated in the same amount and manner as witnesses in the superior courts.

(Code 1933, 7-310, enacted by Ga. L. 1978, p. 2270, § 1; Code 1981, 9-9-89; Code 1981, 9-9-9, as redesignated by Ga. L. 1988, p. 903, § 1.)

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**9-9-10** Award to be in writing; copies furnished; time of making award; waiver.

(a) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy of the award to each party personally or by registered or certified mail or statutory overnight delivery, 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 30 days following the close of the hearing or within such time as the court orders. The parties may extend in writing the time either before or after its expiration. A party waives the objection that an award was not made within the time required unless he notifies in writing the arbitrators of his objection prior to the delivery of the award to him.

(Code 1933, 7-311, enacted by Ga. L. 1978, p. 2270, § 1; Code 1981, 9-9-90; Code 1981, 9-9-10, as redesignated by Ga. L. 1988, p. 903, § 1; Ga. L. 2000, p. 1589, § 3.)

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**9-9-11** When award changed; application for change; objection thereto; time for disposition of application.

(a) Pursuant to the procedure described in subsection (b) of this Code section, the arbitrators may change the award upon the following grounds:

(1) There was a miscalculation of figures or a 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) (1) An application to the arbitrators for a change in the award shall be made by a party within 20 days after delivery of the award to the applicant. Written notice of this application shall be served upon the other parties.

- (2) Objection to a change in the award by the arbitrators must be made in writing to the arbitrators within ten days of service of the application to change. Written notice of this objection shall be served upon the other parties.
- (3) The arbitrators shall dispose of any application made under this Code section in a written, signed order within 30 days after service upon them of objection to change or upon the expiration of the time for service of this objection. The parties may extend, in writing, the time for this disposition by the arbitrators either before or after its expiration.
- (4) An award changed under this Code section shall be subject to the provisions of this part concerning the confirmation, vacation, and modification of awards by the court.

(Code 1933, 7-312, enacted by Ga. L. 1978, p. 2270, § 1; Code 1981, 9-9-91; Code 1981, 9-9-11, as redesignated by Ga. L. 1988, p. 903, § 1.)

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#### **9-9-12** Confirmation of award by court.

The court shall confirm an award upon application of a party made within one year after its delivery to him, unless the award is vacated or modified by the court as provided in this part.

(Code 1933, 7-313, enacted by Ga. L. 1978, p. 2270, § 1; Code 1981, 9-9-92; Code 1981, 9-9-12, as redesignated by Ga. L. 1988, p. 903, § 1.)

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#### **9-9-13** Vacation of award by court; application; grounds; rehearing; appeal of order.

(a) An application to vacate an award shall be made to the court within three months after delivery of a copy of the award to the applicant.

(b) The award shall be vacated on the application of a party who either participated in the arbitration or was served with a demand for arbitration if the court finds that the rights of that party were prejudiced by:

- (1) Corruption, fraud, or misconduct in procuring the award;
- (2) Partiality of an arbitrator appointed as a neutral;
- (3) An overstepping by the arbitrators of their authority or such imperfect execution of it that a final and definite award upon the subject matter submitted was not made; or
- (4) A failure to follow the procedure of this part, unless the party applying to vacate the award continued with the arbitration with notice of this failure and without objection.

(c) The award shall be vacated on the application of a party who neither participated in the arbitration nor was served with a demand for arbitration or order to compel arbitration if the court finds that:

- (1) The rights of the party were prejudiced by one of the grounds specified in subsection (b) of this Code section;
- (2) A valid agreement to arbitrate was not made;
- (3) The agreement to arbitrate has not been complied with; or
- (4) The arbitrated claim was barred by limitation of time, as provided by this part.

(d) 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.

(e) Upon vacating an award, the court may order a rehearing and determination of all or any of the issues either before the same arbitrators or before new arbitrators appointed as provided by this part. In any provision of an agreement limiting the time for a hearing or award, time shall be measured from the date of such order or rehearing, whichever is appropriate, or a time may be specified by the court. The court's ruling or order under this Code section shall constitute a final judgment and shall be subject to appeal in accordance with the appeal provisions of this part.

(Code 1933, 7-314, enacted by Ga. L. 1978, p. 2270, § 1; Code 1981, 9-9-93; Code 1981, 9-9-13, as redesignated by Ga. L. 1988, p. 903, § 1.)

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#### **9-9-14** Modification of award by court; application; grounds; subsequent confirmation of award.

(a) An application to modify the award shall be made to the court within three months after delivery of a copy of the award to the applicant.

(b) The court shall modify the award if:

(1) There was a miscalculation of figures or a mistake in the description of any person, thing, or property referred to in the award;

(2) The arbitrators awarded on 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 manner of form, not affecting the merits of the controversy.

(c) If the court modifies the award, it shall confirm the award as modified. If the court denies modification, it shall confirm the award made by the arbitrators.

(Code 1933, 7-315, enacted by Ga. L. 1978, p. 2270, § 1; Code 1981, 9-9-94; Code 1981, 9-9-14, as redesignated by Ga. L. 1988, p. 903, § 1.)

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#### **9-9-15** Judgment on award.

(a) Upon confirmation of the award by the court, judgment shall be entered in the same manner as provided by Chapter 11 of this title and be enforced as any other judgment or decree.

(b) The judgment roll shall consist of the following:

(1) The agreement and each written extension of 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 judgment.

(Code 1933, 7-316, enacted by Ga. L. 1978, p. 2270, § 1; Code 1981, 9-9-95; Code 1981, 9-9-15, as redesignated by Ga. L. 1988, p. 903, § 1.)

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#### **9-9-16** Appeals authorized.

Any judgment or any order considered a final judgment under this part may be appealed pursuant to Chapter 6 of Title 5.

(Code 1933, 7-317, enacted by Ga. L. 1978, p. 2270, § 1; Code 1981, 9-9-96; Code 1981, 9-9-16, as redesignated by Ga. L. 1988, p. 903, § 1.)

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#### **9-9-17** Arbitrators' fees and expenses.

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.

(Code 1933, 7-318, enacted by Ga. L. 1978, p. 2270, § 1; Code 1981, 9-9-97; Code 1981, 9-9-17, as redesignated by Ga. L. 1988, p. 903, § 1.)

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#### **9-9-18** Commencement or continuation of proceedings upon death or incompetency of party.

Where a party dies or becomes incompetent after making a written agreement to arbitrate, the proceedings may be begun or continued upon the application of, or upon notice to, his executor or administrator or trustee or guardian or, where it relates to real property, his distributee or devisee who has succeeded to his interest in the real property. 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 verdict.

(Code 1981, 9-9-18, enacted by Ga. L. 1988, p. 903, § 1.)