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# Confirming an Arbitration Award

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CONFIRMING AN ARBITRATION AWARD

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I. INTRODUCTION

Arbitration is a method of dispute resolution being used with increasing frequency as a substitute for litigation. Often, parties prefer arbitration over litigation because arbitration is expedient and typically less expensive, the procedures are uniform nationwide, there are expert decision makers available to decide complex cases, and the procedural rules are more flexible than those em-

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ployed in the trial setting.<sup>1</sup> With arbitration, parties can resolve their disputes fairly and privately by having an arbitrator issue a binding award following a hearing.<sup>2</sup> In addition, a dissatisfied party can challenge an award only on very limited grounds.<sup>3</sup>

The result of a binding arbitration is the same as the result in litigation: a decision that is enforceable as a judgment.<sup>4</sup> An arbitration award is as effective as a civil judgment, provided that it is confirmed as a judgment.<sup>5</sup> Arbitration acts in all fifty states allow a party to confirm an arbitration award,<sup>6</sup> and the Federal Arbitration Act (FAA) similarly provides a confirmation process in federal court.<sup>7</sup> "A party simply has to follow applicable procedures in the court which has proper jurisdiction, and the confirmed award becomes an enforceable judgment."<sup>8</sup> The basic confirmation process is simple and involves answering three basic questions: (1) Where can this award be confirmed?<sup>9</sup> (2) When can this award be confirmed?<sup>10</sup> and (3) How can this award be confirmed?<sup>11</sup>

This Article explains how to confirm a valid and binding arbitration award by answering the aforementioned questions and, thus, is meant to assist practitioners in enforcing an arbitration award by converting it into a state or federal court judgment. The Appendix to this Article includes forms for use in confirming an

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1. See Susan C. Rabasca, *Venue for Motions to Confirm or Vacate Arbitration Awards Under the Federal Arbitration Act*, 57 *FORDHAM L. REV.* 653, 653 (1989) (explaining the Federal Arbitration Act and how it is applied in the court system).

2. See ROGER S. HAYDOCK ET AL., *LAWYERING – PRACTICE AND PLANNING* 117 (1996). The term "award" is used to describe the arbitrator's decision.

3. See *id.* at 118. While in some cases, the losing party may attempt to vacate, modify, or correct an award entered against it, the grounds for such actions are extremely narrow and quite specific. See *infra* note 51 for a list of the specified grounds.

4. See STEPHEN PATRICK DOYLE & ROGER SILVE HAYDOCK, *WITHOUT THE PUNCHES – RESOLVING DISPUTES WITHOUT LITIGATION* 8-12 (1991) (explaining various methods of alternative dispute resolution).

5. See 9 U.S.C. § 13 (1994) ("The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.").

6. See *infra* note 19 and statutes cited therein.

7. 9 U.S.C. § 9 (1994).

8. DOYLE & HAYDOCK, *supra* note 4, at 9. It also is relevant to note that once the award is rendered, the prevailing party can use any means available to collect on any judgment, including garnishment, attachment, execution, and any other available collection methods. See *id.* at 66.

9. See *infra* Part II.A.

10. See *infra* Part II.B.

11. See *infra* Part II.C.

award and a Table which summarizes the laws applicable to the confirmation process in federal court and in courts of all fifty states. A practitioner should review these laws before bringing a confirmation proceeding. In addition, because local rules in some jurisdictions also may govern aspects of the confirmation process, a practitioner should review any applicable local rules.

## II. THE PROCESS

### A. *Where*

#### 1. *State Courts*

Arbitration awards routinely are confirmed in state courts. The FAA controls the enforceability of arbitration awards issued in cases involving interstate commerce.<sup>12</sup> The United States Supreme Court has held that a state court must confirm an arbitration award rendered pursuant to the FAA because this Act supersedes any contrary state acts.<sup>13</sup> This holding requires a state court judge to enforce an arbitration award issued by an arbitrator in another state.<sup>14</sup> This is true even if the state court judge dislikes arbitration awards or a state law declares the arbitration award to be unenforceable.<sup>15</sup>

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12. 9 U.S.C. §§ 1-16 (1994). The FAA provides that written agreements to arbitrate involving interstate commerce shall be enforceable. *See id.* § 1 (providing that "commerce as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation").

13. *Doctor's Assocs., Inc. v. Casarotto*, 116 S. Ct. 1652, 1654 (1996). The Montana Supreme Court ruled that the parties' dispute was not subject to arbitration because the state's statutory notice requirement had not been met. *See id.* at 1654-55. The United States Supreme Court held that "Montana's § 27-5-114(4) directly conflicts with § 2 of the FAA because the State's law conditions the enforceability of arbitration agreements on compliance with a special notice requirement not applicable to contracts generally. The FAA thus displaces the Montana statute with respect to arbitration agreements covered by the Act." *Id.* at 1656.

14. *See Doctor's Assocs., Inc.*, 116 S. Ct. at 1657.

15. *See Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 270 (1995) ("[T]he basic purpose of the Federal Arbitration Act is to overcome courts' refusals to enforce agreements to arbitrate."); *Southland Corp. v. Keating*, 465 U.S. 1, 15-16 (1984) (holding that the FAA preempts state law and that state courts cannot apply state statutes that invalidate arbitration agreements). In *Southland Corp.*, the Court decided that Congress would not have wanted state and federal courts to reach different outcomes about the validity of arbitration in similar cases. *See* 465 U.S. at 13-14.

The FAA controls and requires all state and federal judges to recognize the enforceability of an award issued pursuant to the Act.<sup>16</sup> The FAA governs all awards where the arbitration matter involves interstate commerce.<sup>17</sup> This broad standard encompasses virtually all transactions and relationships and effectively governs all arbitration cases.<sup>18</sup> The United States Supreme Court has made it clear that federal law is supreme on this issue and that no judge can refuse to enforce an arbitration award governed by the FAA.<sup>19</sup>

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16. See *Southland Corp.*, 465 U.S. at 12 (holding that section two of the FAA applies in state and federal courts; citing *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983)).

17. See *id.* at 12-13 (discussing the legislative history of the FAA).

18. Section two of the FAA has been the subject of much controversy because of the seemingly ambiguous meaning of "interstate commerce." See 9 U.S.C. § 2 (1994) ("[A] contract evidencing a transaction involving commerce to settle by arbitration a controversy . . . arising out of such contract . . . shall be . . . enforceable."). However, the Supreme Court in *Southland* decided that the FAA established a "broad principle of enforceability." 465 U.S. at 11. Furthermore, the Court subsequently reaffirmed its decision in *Allied-Bruce Terminix Cos.*, holding that section two's interstate commerce language should be read broadly to extend the Act's reach to the limits of Congress' Commerce Clause power. 513 U.S. at 274-75. The use of the words "evidencing" and "involving" does not restrict the Act's application and does not allow a state to apply its anti-arbitration law or policy. *Id.* at 838-43.

19. See *Doctor's Assocs., Inc.*, 116 S. Ct. at 1657 ("The 'goals and policies' of the FAA, this Court's precedent indicates, are antithetical to threshold limitations placed specifically and solely on arbitration provisions. Section 2 'mandate[s] the enforcement of arbitration agreements.'") (citation omitted). In rare cases, where the arbitration matter does not involve interstate commerce, a state arbitration act may apply. See *Perry v. Thomas*, 482 U.S. 483, 493 n.9 (1987) (stating that section two of the FAA provides that state law may be applied "if that law arose to govern issues concerning the validity, revocability, and enforceability of contracts generally"). Every state has a separate arbitration act. See ALA. CODE §§ 6-6-1 to -16 (1993 & Supp. 1996); ALASKA STAT. §§ 09.43.010-43.180 (Michie 1994 & Supp. 1996); ARIZ. REV. STAT. ANN. §§ 12-1501 to -1518 (West 1994); ARK. CODE ANN. §§ 16-108-201 to -224 (Michie 1987 & Supp. 1996); CAL. CIV. PROC. CODE §§ 1280-1295 (West 1982 & Supp. 1997); COLO. REV. STAT. ANN. §§ 13-22-201 to -223 (West 1989 & Supp. 1996); CONN. GEN. STAT. ANN. §§ 52-408 to -424 (West 1991 & Supp. 1996); DEL. CODE ANN. tit. 10, §§ 5701-5725 (1975 & Supp. 1996); D.C. CODE ANN. §§ 16-4301 to -4319 (1989 & Supp. 1996); FLA. STAT. ANN. §§ 682.01-22 (West 1990 & Supp. 1997); GA. CODE ANN. §§ 9-9-1 to -84 (1982 & Supp. 1996); HAW. REV. STAT. ANN. §§ 658-1 to -15 (Michie 1995 & Supp. 1996); IDAHO CODE §§ 7-901 to -922 (1990); 710 ILL. COMP. STAT. ANN. §§ 5/1-23 (West 1992); IND. CODE ANN. §§ 34-4-2-1 to -22 (West 1983); IOWA CODE ANN. §§ 679A.1-19 (West 1987); KAN. STAT. ANN. §§ 5-401 to -422 (1991 & Supp. 1996); KY. REV. STAT. ANN. §§ 417.045-.240 (Michie 1992 & Supp. 1996); LA. REV. STAT. ANN. §§ 9:4201-4217 (West 1991 & Supp. 1997); ME. REV. STAT. ANN. tit. 26, §§ 931-960 (West 1988 & Supp. 1996); MD. CODE ANN., CTS. & JUD. PROC. §§ 3-201 to -234 (1995 & Supp. 1996); MASS. GEN. LAWS ANN. ch. 251, §§ 1-19 (West 1988 & Supp. 1996); MICH. COMP. LAWS ANN. §§ 600.5001-5065 (West 1987 & Supp. 1996); MINN. STAT. ANN. §§ 572.08-30

## 2. Federal Courts

If an arbitration results in an award which meets the diversity or federal question requirements of jurisdiction, the federal court has jurisdiction to confirm the arbitration award.<sup>20</sup> Diversity jurisdiction requires complete diversity between the parties to the arbitration and an amount in controversy exceeding \$75,000.<sup>21</sup> There is no definitive answer as to whether the arbitration case must involve an amount in excess of \$75,000 or whether the arbitration award itself must exceed \$75,000. The better analysis suggests that

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(West 1988 & Supp. 1997); MISS. CODE ANN. §§ 11-15-1 to -37 (1972 & Supp. 1996); MO. ANN. STAT. §§ 435.350-470 (West 1996); MONT. CODE ANN. §§ 27-5-111 to -324 (1995); NEB. REV. STAT. ANN. §§ 25-2601 to -2622 (Michie 1995); NEV. REV. STAT. ANN. §§ 38.015 to -360 (Michie 1995); N.H. REV. STAT. ANN. §§ 542:1, :11 (1974 & Supp. 1996); N.J. STAT. ANN. §§ 2A:24-1 to -11 (West 1987 & Supp. 1996); N.M. STAT. ANN. §§ 44-7-1 to -22 (Michie 1978 & Supp. 1996); N.Y. C.P.L.R. 7501-7514 (McKinney 1980 & Supp. 1997); N.C. GEN. STAT. §§ 1-567.1-20 (1992 & Supp. 1995); N.D. CENT. CODE §§ 32-29.2-01 to -20 (1996); OHIO REV. CODE ANN. §§ 2711.01-16 (Anderson 1992); OKLA. STAT. ANN. tit. 15, §§ 801-818 (West 1993); OR. REV. STAT. §§ 36.300-365 (Supp. 1996); 42 PA. CONS. STAT. ANN. §§ 7301-7320 (West 1982 & Supp. 1996); R.I. GEN. LAWS §§ 10-3-1 to -21 (1985 & Supp. 1996); S.C. CODE ANN. §§ 15-48-10 to -240 (Law Co-op. Supp. 1996); S.D. CODIFIED LAWS §§ 21-25A-1 to -32 (Michie 1987 & Supp. 1996); TENN. CODE ANN. §§ 29-5-301 to -320 (Supp. 1996); TEX. REV. CIV. STAT. ANN. arts. 224 to 238-6 (West 1973 & Supp. 1997); UTAH CODE ANN. §§ 78-31a-1 to -20 (1996); VT. STAT. ANN. tit. 12, §§ 5651-5681 (Supp. 1996); VA. CODE ANN. §§ 8.01-581.01 to -581.016 (Michie 1992 & Supp. 1996); WASH. REV. CODE ANN. §§ 7.04.010-220 (West 1992 & Supp. 1997); W. VA. CODE §§ 55-10-1 to -8 (1994); WIS. STAT. ANN. §§ 788.01-18 (West 1981 & Supp. 1996); WYO. STAT. ANN. §§ 1-36-101 to -119 (Michie 1988 & Supp. 1996). In addition, state acts typically codify the provisions of the Uniform Arbitration Act and require the enforcement of an arbitration award made by an arbitrator. See UNIF. ARBITRATION ACT §§ 1-25, 7 U.L.A. 1 (1997) (setting forth the provisions currently codified in 34 states and the District of Columbia).

20. See IAN R. MACNEIL ET AL., *FEDERAL ARBITRATION LAW AGREEMENTS, AWARDS, AND REMEDIES UNDER THE FEDERAL ARBITRATION ACT* § 9.2.3.5 (1996) (describing how to confirm, vacate, or modify awards in federal court).

21. See 28 U.S.C.A. § 1332 (1993 & Supp. 1997). Title 28, section 1332 provides:

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between –

- (1) citizens of different States;
- (2) citizens of a State and citizens or subjects of a foreign state;
- (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and
- (4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

*Id.*; see also 9 U.S.C. § 4 (1994) (stating that parties to an arbitration “may petition any United States district court which . . . would have jurisdiction under title 28”).

the award for which confirmation is sought must exceed \$75,000. In an arbitration case involving a federal question, an award based on the determination of that question would be subject to federal jurisdiction.<sup>22</sup> Another ground for federal jurisdiction might be a specific federal statute permitting the issuance of an arbitration award and allowing a federal judge to confirm an award and convert it into a federal civil judgment.<sup>23</sup>

### 3. *Proper Venue*

An arbitration clause commonly includes the sentence: "An award may be entered in any court which has jurisdiction."<sup>24</sup> This provision allows a party to seek to confirm an award in any state or federal court which has jurisdiction over the other party.<sup>25</sup>

Typically, venue to confirm an award will be proper in those jurisdictions where the hearing was conducted, the award was signed, the award was issued by the arbitration organization, the losing party resides or does business, a forum has minimum contacts with a party, and where a statute authorizes a court to enter judgment.<sup>26</sup>

### B. *When*

The FAA requires that if any party to the arbitration wishes to confirm an arbitration award, the party must do so within one year after the arbitrator makes the award.<sup>27</sup> The Uniform Arbitration

22. See 28 U.S.C. § 1331 (1994) ("The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.").

23. See, e.g., *Dorn v. Dorn Transp., Inc.*, 562 F. Supp. 822, 824 (S.D.N.Y. 1983).

24. See DOYLE & HAYDOCK, *supra* note 4, at 25.

25. See *id.* at 25-26.

26. See MACNEIL ET AL., *supra* note 20, § 38.3.1.1-3. The FAA provides:

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, . . . the court . . . must grant such an order unless the order is vacated. . . . If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made . . . .

9 U.S.C. § 9 (1994).

27. See 9 U.S.C. § 9 (stating that at "any time within one year after the award is made[,] any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected").

Act,<sup>28</sup> adopted in the District of Columbia and thirty-four states,<sup>29</sup> similarly requires confirmation action within such time as fixed by agreement or as ordered by a court.<sup>30</sup> Finally, the arbitration acts of the remaining sixteen states establish different statutes of limitations for the issuance of an award and its subsequent confirmation.<sup>31</sup>

### C. How

The confirmation process involves a court action, usually initiated by a motion or petition, depending upon the jurisdiction.<sup>32</sup> This process is a formal request to the court for the entry of a judgment based on the arbitrator's award.<sup>33</sup>

#### 1. Necessary Documents

MOTION OR PETITION. A motion or petition establishes the identity of the parties, a description of the arbitration agreement, a reference to the arbitration award, and a statement of the relief

28. UNIF. ARBITRATION ACT §§ 1-25, 7 U.L.A. 1 (1997).

29. These states are: Alaska, Arizona, Arkansas, Colorado, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, and Wyoming.

30. Section 8 of the Uniform Arbitration Act provides:

(a) The award shall be in writing and signed by the arbitrators joining in the award. . . .

(b) An award shall be made within the time fixed therefor by agreement or, if not so fixed, within such time as the court orders on application of a party. 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 he notifies the arbitrators of his objection prior to the delivery of the award to him.

UNIF. ARBITRATION ACT § 8, 7 U.L.A. 202 (1997).

31. See ALA. CODE §§ 6-6-12, -15 (1993); CAL. CIV. PROC. CODE § 1288 (West 1982); CONN. GEN. STAT. ANN. §§ 52-416 to -417 (West 1991); GA. CODE ANN. §§ 9-9-90, -92 (1982); HAW. REV. STAT. ANN. § 658-8 (Michie 1995); LA. REV. STAT. ANN. § 9:4209 (West 1991); MISS. CODE ANN. §§ 11-15-19, -21 (1972); N.H. REV. STAT. ANN. § 542:8 (1974); N.J. STAT. ANN. § 2A:24-7 (West 1987); N.Y. C.P.L.R. 7507 (McKinney Supp. 1997); OHIO REV. CODE ANN. § 2711.09 (Anderson 1992); OR. REV. STAT. § 36.425 (Supp. 1996); R.I. GEN. LAWS § 10-3-11 (Supp. 1996); WASH. REV. CODE ANN. § 7.04.150 (West 1992); W. VA. CODE § 55-10-3 (1994); WIS. STAT. ANN. § 788.09 (West 1981 & Supp. 1996).

32. See DOYLE & HAYDOCK, *supra* note 4, at 66.

33. See *id.*



sought.<sup>34</sup> Some jurisdictions require an attorney to submit this document on behalf of a client.<sup>35</sup> Other jurisdictions allow a party, whether an individual or corporation, to submit this document.<sup>36</sup>

**ARBITRATION AWARD.** The person submitting the motion or petition also must submit a copy of the arbitration award.<sup>37</sup> The arbitration award may be in the form of a summary award or a detailed award.<sup>38</sup> A summary award includes conclusions and a decision.<sup>39</sup> A detailed award usually includes findings of fact and conclusions of law, or an explanation of the basis for the award.<sup>40</sup> Either the code of rules applicable to the arbitration or the agreement of the parties determines whether an award will be in the form of a summary award or a detailed award. For example, the National Arbitration Forum Code of Procedure states that "[a]n award shall not include any reasons, findings of fact or conclusions of law unless required by prior written agreement of the parties."<sup>41</sup> A copy of the original award usually is sufficient, although some jurisdictions may require the original award or a certified copy. Any party can obtain the original document from the arbitration organization which administered the award, such as the National Arbitration Forum or the American Arbitration Association.<sup>42</sup>

**AFFIDAVIT.** Some jurisdictions may require a separate affidavit setting forth the facts of the arbitration agreement, the arbitration hearing, and the arbitration award.<sup>43</sup> In most jurisdictions, a party may include this information in the motion or petition, which also may be "verified" (the signature notarized by a notary).

**PROPOSED ORDER.** Many courts require the party seeking confirmation to submit a proposed order which the judge may sign to confirm the arbitration award. The order converts the arbitration

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34. See Appendix, *infra*, for a sample motion.

35. See DOYLE & HAYDOCK, *supra* note 4, at 157-61.

36. See *id.*

37. See Appendix, *infra*, for a sample arbitration award from the National Arbitration Forum.

38. See DOYLE & HAYDOCK, *supra* note 4, at 65.

39. See *id.*

40. See *id.*

41. NATIONAL ARBITRATION FORUM CODE OF PROFESSIONALISM Rule 37G (1996).

42. See *id.* Rule 39 ("The Forum shall furnish, at the written request and expense of a requesting party, official copies of any papers in its possession required for a judicial proceeding . . .").

43. See Appendix, *infra*, for a sample affidavit.

award to a judgment.<sup>44</sup>

**MEMORANDUM OF LAW.** Some jurisdictions may require a memorandum of law to support the request for confirmation. The memo should contain a concise summary of the applicable law which makes clear to the presiding judge that the judge has the power and the obligation readily to confirm the arbitration award, thereby converting it into a civil judgment. The party seeking confirmation must follow the applicable procedural requirements of a jurisdiction regarding form and also must include the applicable substantive law.<sup>45</sup>

## 2. *Confirmation Fee*

Confirmation fees vary in amount from jurisdiction to jurisdiction. Some jurisdictions have reduced fees for confirmation proceedings while others require the party seeking confirmation to file a motion or petition under the same procedures that apply to civil actions. The filing fee for a confirmation process varies from \$25 to \$150.<sup>46</sup>

## 3. *Service*

The party seeking confirmation must serve confirmation documents on all parties against whom confirmation is sought to give them an opportunity to respond, if they wish, or to appear at a hearing if one is held. Service by mail usually is sufficient. Some jurisdictions may require personal service. The time and other requirements for service vary widely among jurisdictions. The time periods vary from five days to thirty days.<sup>47</sup>

## 4. *Hearing*

Most jurisdictions do not require a hearing before a judge unless the other side submits a response or requests a hearing for confirmation of the award. If there is no opposition to the confirmation, there may be no need for a hearing. Some jurisdictions require a judge to review and consider the motion or petition at a

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44. See Appendix, *infra*, for a sample order.

45. See Appendix, *infra*, for a sample memorandum of law.

46. The clerk of court in the jurisdiction in which the arbitrator issued the award will know the exact amount of the filing fee.

47. See the Table, *infra*, which provides each jurisdiction's service requirements.

hearing. In these jurisdictions a notice of the hearing must accompany the arbitration documents and the party seeking confirmation must serve these upon the opposing party. The party seeking the confirmation may rely on the documents submitted and should answer any questions posed by the judge. In an unusual case, the judge may need testimony from a witness regarding the arbitration process and the award. In some jurisdictions, parties may represent themselves and appear without an attorney at the hearing.<sup>48</sup>

### 5. *Determination*

In all jurisdictions, a court official must review the arbitration documents to determine the propriety of issuing an order of confirmation. In many jurisdictions, a court clerk or administrator may review the documents and prepare an order. Other jurisdictions require that a judge review the arbitration documents. If a party challenges a confirmation motion or petition, a judge will need to review the request and challenge at a hearing. If there is no opposition or response, a court clerk or administrator may have the power to authorize an order, similar to the process used in issuing a default civil judgment pursuant to the rules of civil procedure.<sup>49</sup>

### 6. *Filing*

After finding that an arbitration award should be converted into a civil judgment, the administrator or clerk of court proceeds to enter the award as a judgment. Typically, this is done by filing the order and issuing a judgment which is entered as a final judgment. This mechanical process varies depending on the docket or filing system used.

### 7. *Defenses*

Ordinarily, there is no defense offered to the confirmation of an arbitration award and subsequent entry of judgment. An oppos-

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48. See the Table, *infra*, to determine whether a particular jurisdiction requires an attorney.

49. See, e.g., FED. R. CIV. P. 55(a) ("When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.").

ing party usually cannot challenge an arbitration award decided after a proper hearing and notice. The United States Supreme Court has held that courts are required to confirm an arbitration award readily unless there exists a statutory challenge under the Federal Arbitration Act or an applicable state arbitration act.<sup>50</sup> The FAA limits challenges to a few grounds, including fraud, corruption, procedural misconduct, evident material mistake, or excessive power.<sup>51</sup> These defenses to the entry of a judgment are very limited, however.<sup>52</sup>

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50. See *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 220 (1985) (stating that Congress intended the courts to “enforce [arbitration] agreements into which parties had entered”).

51. 9 U.S.C. § 10 (1994). The FAA provides limited grounds for vacation, modification, or correction of an award. An order vacating an award will only issue:

- (1) Where the award was procured by corruption, fraud, or undue means.
- (2) Where there was evident partiality or corruption in the arbitrators, or either of them.
- (3) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.
- (4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.
- (5) Where an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct rehearing by the arbitrators.

*Id.* To modify or correct an award any party to the arbitration must show:

- (a) [T]here was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.
- (b) [T]he arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.
- (c) [T]he award is imperfect in matter of form not affecting the merits of the controversy.

*Id.* § 11; see also UNIF. ARBITRATION ACT §§ 12-13, 7 U.L.A. 280-81, 409 (requiring similar grounds for vacating, modifying, or correcting an arbitration award); MACNEIL ET AL., *supra* note 20, §§ 40:1-41:18 (describing in detail the proof needed to vacate, modify, or correct an award).

52. Under the FAA, the Uniform Arbitration Act, and any separate state act, a party may seek to vacate, modify, or correct an award, but the grounds for doing so are very narrow. “[T]he scope of judicial review is extremely limited and courts will not examine the merits of the decision except to the extent that the award exceeds the agreement of the parties.” Joseph Colagiovanni & Thomas W. Hartmann, *Enforcing Arbitration Awards*, DISP. RESOL. J., Jan. 1995, at 16 (citing *Coast Trading Co. v. Pacific Molasses Co.*, 681 F.2d 1195, 1197-98 (9th Cir. 1982)); see

### III. CONCLUSION

The confirmation process can be as simple and straightforward as this Article presents. Interested parties can direct questions about procedures in a specific court to the responsible court clerk or administrator. Some court officials and judges have had little experience with the confirmation process. Thus, parties and lawyers in these forums may need to explain the simplicity of the confirmation process. As arbitration awards become more common, the confirmation process will become more familiar to all.

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also Alan I. Widiss, *Judicial Enforcement and Review of Arbitration Awards*, BRIEF, Spring 1985, at 38 (“[A]rbitration decisions [are given] a high degree of finality – typically, it is more difficult to successfully attack an arbitrator’s decision than it would be to reverse a judgment by a trial judge or a jury.”).

**APPENDIX****MOTION TO CONFIRM ARBITRATION AWARD**

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Petitioner(s),

vs.

**MOTION TO CONFIRM  
ARBITRATION AWARD**

Respondent(s).

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Based upon the award of the Arbitrator, reflected in the attached documents, Petitioner requests that the Court confirm the arbitration award as a judgment and enter judgment against the Respondent(s) in the amount(s) of \$\_\_\_\_\_.

Respectfully submitted,

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Petitioner

**ARBITRATION AWARD**

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Petitioner(s),

vs.

AWARD

Respondent(s).

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The undersigned arbitrator:

1. Acknowledges that all documents and evidence submitted in this arbitration have been read.
2. Finds that the Petitioner has filed with [arbitrator's name] and served on Respondent an arbitration claim.
3. Finds that Respondent has responded to this claim as required by the [arbitrator's name] code of procedure.
4. Finds that the documents submitted support the issuance of an award as set out herein.
5. Issues an Award in favor of the Petitioner and against Respondent in the amount of \$\_\_\_\_\_, which includes the filing fee.

Dated: \_\_\_\_\_

---

Arbitrator

**AFFIDAVIT**

---

Petitioner(s),

vs.

**AFFIDAVIT**

Respondent(s).

---

Affiant, being duly sworn under oath, states:

1. I am [name and title].
2. An arbitration award was issued on \_\_\_\_\_, \_\_\_\_ by Arbitrator [arbitrator's name] in [location of arbitration]. An exact copy of this award is attached to this affidavit as Exhibit A.
3. This arbitration involved the following parties: [names of parties]. These parties signed and agreed to this arbitration as evidenced by an arbitration agreement attached as Exhibit B to this affidavit.
4. The arbitration award was obtained pursuant to the agreement of the parties, the rules of the arbitration organization, and the law.

Notary Subscription

Signature \_\_\_\_\_



**ORDER**

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Petitioner(s),

vs.

**ORDER**

Respondent(s).

---

This Court has considered the request of Petitioner to confirm an arbitration award and has reviewed all documents.

THIS COURT ORDERS that the arbitration award issued in this case in the amount of \$ \_\_\_\_\_ be confirmed and that a judgment be entered immediately in the amount of \$ [same amount] in favor of [Petitioner's name] and against [Respondent's name].

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge

**MEMORANDUM OF LAW**

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Petitioner(s),

vs.

**MEMORANDUM IN SUPPORT OF MOTION  
TO CONFIRM ARBITRATION AWARD**

Respondent(s).

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This memorandum is submitted on behalf of Petitioner [name of Petitioner] in support of its motion, pursuant to 9 U.S.C. § 9, to confirm an arbitration award. This motion should be granted and the award confirmed into a judgment because the arbitration was in all respects proper and the award is final and binding.

*Statement of Facts*

On or about [date] Petitioner and Respondent entered into an agreement which provided that the parties would settle any dispute arising out of the agreement by arbitration according to [arbitrator's name].

*Procedural Background*

On or about [date] Petitioner filed an arbitration claim with the [arbitrator's name] claiming \$\_\_\_\_\_ in damages due to Respondent. On [date] the arbitrators issued Petitioner an award of \$\_\_\_\_\_. Petitioner now moves to confirm this award.

*Explanation*

The Federal Arbitration Act, 9 U.S.C. § 9, provides that “within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected.” Accordingly, the court has the obligation to confirm Petitioner's arbitration award into a

judgment. See *Doctor's Assocs., Inc. v. Casarotto*, 116 S. Ct. 1652, 1657 (1996) (stating the purpose of the Federal Arbitration Act is to ensure that private agreements to arbitration are enforced); *Allied-Bruce Terminix Cos. v. Dobson*, 115 S. Ct. 834, 838 (1995) ("[T]he basic purpose of the Federal Arbitration Act is to overcome courts' refusals to enforce agreements to arbitrate."); *Southland Corp. v. Keating*, 465 U.S. 1, 15-16 (1984) (holding the Federal Arbitration Act preempts state law and state courts cannot apply state statutes that invalidate arbitration agreements).

The standard of review of an arbitrator's decision by the court is very narrow. The scope of review is limited and the court will not examine the validity of the decision except to the extent that the award exceeds the agreement of the parties. See *Burchell v. Marsh*, 58 U.S. 344, 349 (1854) (stating the appropriate scope of judicial review is whether the award is the honest decision of the arbitrator, made within the scope of the arbitrator's power, and that a court will not otherwise set aside an award for error, either in law or fact); *Coast Trading Co. v. Pacific Molasses Co.*, 681 F.2d 1195, 1197-98 (9th Cir. 1982).

Here, the arbitrator(s), having considered the pleadings and other evidence presented at the hearing, determined that Respondent was liable to Petitioner for \$\_\_\_\_\_. There are no grounds for vacating, modifying, or correcting an arbitration award enumerated in 9 U.S.C. §§ 10-11 which exist, and Respondent has not made any motion to vacate, modify, or correct the award.

### *Conclusion*

Petitioner respectfully requests an order confirming an arbitration award into a judgment the amount of \$ \_\_\_\_\_ for Petitioner [name of Petitioner and against Respondent [name of Respondent]].

Dated: \_\_\_\_\_

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Petitioner

## TABLE

The following Table summarizes the procedures to confirm arbitration awards in all fifty states and the District of Columbia.<sup>53</sup>

### TABLE KEY

**Jur.** = Jurisdiction

**Column A = Initial Service by Mail.** Describes whether initial service of process to initiate arbitration or a civil action can be served by certified mail but does not include instances where defendant must sign and return an acknowledgment.

\$ = whether initial service is required is determined by the amount in controversy

**Column B = Confirmation Procedure.** Type of service required to initiate confirmation procedure.

M = motion

C.A. = civil action

F = filing

S.A. = summary action

P = petition

S.P. = special process

**Column C = Confirm Service.**

M = first class mailing by U. S. Postal Service

P = personal, which is same as is required for a service complaint

**Column D = Attorney Required.** Whether an attorney is required for the proceeding.

\$ = whether an attorney is required is determined by the amount in controversy

**Column E = Attorney Fees Recovery.** Whether attorney fees incurred in collection are recoverable.

\$ = whether attorney fees are potentially recoverable is determined by the amount in controversy

**Column F = Statute of Limitations.** Time after award has been made within which to apply for confirmation.

Y = year

M = month

**Column G = Waiting Period.** Minimum time after award made be-

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53. These materials were originally prepared by Gregory Aube, Esq., and his staff and appeared in DOYLE & HAYDOCK, *supra* note 4, at 157-61 app.

fore confirmation action can be brought.

N = none

D = days

**Column H = Notice Required.** Number of days before confirmation hearing that advance notice must be given, using service of notice by mail when allowed. States with "not specified" usually have time periods determined by the court's calendaring system (i.e., time determined by when the motion is scheduled for hearing).

D = days

N.S. = not specified

**Column I = State Law Note.** Indicates whether there are significant restrictions on applicability of the state arbitration act.

Jur.	A	B	C	D	E	F	G	H	I
Fed.	No	M	M	Yes	see state	1 Y	N	8 D	Yes
Ala.	Yes	F	None	No	\$	None	10 D	None	Yes
Alaska	Yes	M	M	Yes	Yes	None	N	13 D	No
Ariz.	No	M	P	Yes	Yes	None	N	20 D	No
Ark.	Yes	M	M	Yes	No	None	N	13 D	No
Cal.	No	P	M	Yes	Yes	4 Y	10 D	10 D	No
Colo.	No	M	M	\$	Yes	None	N	8 D	No
Conn.	No	M	M	Yes	Yes	1 Y	N	N.S.	No
Del.	No	C.A.	P	Probably Yes	Yes	1 Y	N	20 D	No
D.C.	Yes	M	M	Yes	Yes	None	N	N.S.	No
Fla.	No	M	M	Yes	Yes	None	N	N.S.	Yes
Ga.	No	M	P	No	Yes	1 Y	N	8 D	Yes
Haw.	No	M	M	Yes	Yes	1 Y	N	5 D	No
Idaho	No	M	M	Yes	\$	None	N	8 D	No
Ill.	No	M	M	\$	Yes	None	N	N.S.	No
Ind.	Yes	M	M	Yes	\$	None	90 D	8 D	Yes
Iowa	No	M	M	Yes	No	None	N	13 D	Yes
Kan.	No	M	M	Yes	No	None	N	10 D	No
Ky.	Yes	M	M	Yes	No	None	N	N.S.	No
La.	No	M	P	Probably Yes	Yes	1 Y	N	5 D	No
Me.	No	M	M	Yes	No	None	N	10 D	No
Md.	Yes	P	M	Yes	Yes	None	N	15 D	No

Jur.	A	B	C	D	E	F	G	H	I
Mass.	No	M	M	Yes	Yes	None	N	10 D	No
Mich.	No	C.A.	P	Yes	Yes	1 Y	N	21 D	No
Minn.	No	M	M	Yes	No	None	N	8 D	No
Miss.	No	M	P	Yes	Yes	1 Y	N	8 D	Yes
Mo.	No	M	M	Yes	Yes	None	N	8 D	Yes
Mont.	No	M	M	Yes	Yes	None	N	8 D	Yes
Neb.	Yes	M	M	Yes	No	None	N	N.S.	Yes
Nev.	No	M	M	Yes	Yes	1 Y	N	8 D	No
N.H.	No	P	P	Yes	Yes	1 Y	N	30 D	No
N.J.	No	S.A.	P	Yes	Yes	3 M	N	10 D	No
N.M.	No	M	M	Yes	Yes	None	N	8 D	No
N.Y.	No	S.P.	P	Yes	Yes	1 Y	N	8 D	No
N.C.	Yes	M	M	No	Yes	None	N	8 D	Yes
N.D.	Yes	M	M	Yes	\$	None	N	8 D	No
Ohio	Yes	M	M	Yes	No	1 Y	N	8 D	No
Okla.	Yes	M	M	Yes	\$	None	N	8 D	No
Or.	No	F	None	Yes	Yes	None	N	20 D	Yes
Pa.	No	P	M	Yes	Yes	None	N	N.S.	No
R.I.	No	M	M	Yes	Yes	1 Y	N	11 D	No
S.C.	Yes	M	M	Yes	\$	None	N	15 D	Yes
S.D.	No	M	M	Yes	Probably No	None	N	8 D	No
Tenn.	Yes	M	M	Yes	Yes	None	N	8 D	No
Tex.	Yes	C.A.	M	Yes	Yes	None	N	27 D	Yes
Utah	No	M	M	Yes	Yes	None	N	23 D	No
Vt.	No	M	M	Yes	Yes	None	N	N.S.	Yes
Va.	No	M	M	Yes	Yes	None	N	24 D	No
Wash.	No	M	M	Yes	Yes	1 Y	N	8 D	No
W.Va.	No	C.A.	P	Yes	No	None	N	13 D	Yes
Wis.	\$	M	M	Yes	No	1 Y	N	5 D	No
Wyo.	No	M	M	Yes	\$	None	N	8 D	No

