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## **FAMILY LAW ARBITRATION ACT**

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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MEETING IN ITS ONE-HUNDRED-AND-TWENTY-FOURTH YEAR  
WILLIAMSBURG, VIRGINIA  
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## **FAMILY LAW ARBITRATION ACT**

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ON UNIFORM STATE LAWS

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May 27, 2015

## **FAMILY LAW ARBITRATION ACT**

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# FAMILY LAW ARBITRATION ACT

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1 **FAMILY LAW ARBITRATION ACT**

2 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Family Law Arbitration

3 Act.

4 **SECTION 2. DEFINITIONS.** In this [act]:

5 (1) “Arbitration under this [act]” means the determination of a family law dispute by an  
6 arbitrator.

7 (2) “Arbitration agreement” means a voluntary written agreement under this [act] signed  
8 by the parties submitting a family law dispute to binding arbitration.

9 (3) “Arbitrator” means one or more neutral individuals selected or appointed to make an  
10 award in a family law dispute that is subject to an arbitration agreement

11 (4) “Award” means a written decision or determination by an arbitrator.

12 (5) “Confirmation” means a court order affirming an arbitration award or incorporating it  
13 in a judgment.

14 (6) “Court” means [the family court] [insert name of a tribunal authorized by law of this  
15 state other than this [act] to hear a family law dispute].

16 (7) “Custodial responsibility” means a power or duty relating to caretaking authority or  
17 decision-making authority for a child. The term includes physical custody, legal custody,  
18 parenting time, right to access, and visitation.

19 (8) “Family law dispute” means a contested issue arising under the family or domestic  
20 relations law of this state regarding:

21 (A) characterization, valuation, or division of property or debt;

22 (B) [maintenance], [alimony], or [spousal support];

23 (C) custodial responsibility;

1 (D) child support;  
2 (E) rights or obligations arising from a premarital, marital, [or] [separation] [or]  
3 [property settlement][marital settlement] [or] [cohabitation] agreement; [or]

4 (F) attorney’s fees, costs, and expenses[;] [; or]

5 [(G) a marital tort [;] [; or]

6 [H] [rights or obligations arising from [cohabitation] [,] [, or domestic  
7 partnership[;] [; or] [civil union.]]

8 (9) “Order of protection” means an order issued by a court in this state or any other  
9 jurisdiction under the domestic-violence, family-violence, or anti-stalking laws of the state that  
10 issued the order to prevent an individual from engaging in a violent or threatening act against,  
11 harassing, contacting, communicating with, or being in physical proximity to, another individual  
12 who is a party or a child under the custodial responsibility of a party.

13 (10) “Party” means an individual who signs an arbitration agreement and whose rights  
14 will be determined by an award.

15 (11) “Person” means an individual, estate, business or nonprofit entity, [public  
16 corporation, government or governmental subdivision, agency, or instrumentality,] or other legal  
17 entity. [The term does not include a public corporation, government or governmental  
18 subdivision, agency, or instrumentality.]

19 (12) “Record” means information that is inscribed on a tangible medium or that is stored  
20 in an electronic or other medium and is retrievable in perceivable form.

21 (13) “Sign” means, with present intent to authenticate or adopt a record:

22 (A) to execute or adopt a tangible symbol; or

23 (B) to attach to or logically associate with the record an electronic symbol, sound,

1 or process.

2 (14) “State” means a state of the United States, the District of Columbia, Puerto Rico,  
3 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction  
4 of the United States. The term includes a federally recognized Indian tribe.

5 **SECTION 3. SCOPE.**

6 (a) This [act] governs the arbitration of a family law dispute pursuant to an arbitration  
7 agreement.

8 (b) An arbitration agreement is unenforceable to the extent it authorizes an arbitrator to:

9 (1) grant a [divorce] [dissolution of marriage];

10 (2) terminate parental rights;

11 (3) grant an adoption or guardianship of a minor or incapacitated individual;

12 (4) determine the status of [dependency] [a child in need of protection]; [or]

13 (5) determine juvenile-offender status[.] [; or

14 [(6) insert other status determination to be excluded from arbitration].

15 **SECTION 4. APPLICABLE LAW.**

16 (a) Unless otherwise provided in this [act], arbitration under this [act] is governed by  
17 [insert state law referencing Revised Uniform Arbitration Act, Uniform Arbitration Act, or other  
18 state law on binding arbitration].

19 (b) The law of this state other than this [act], including its choice-of-law principles,  
20 governs the family law dispute subject to arbitration under this [act].

21 **SECTION 5. PROTECTION OF PARTY OR CHILD.**

22 (a) If a party, before or during arbitration under this [act], is subject to an order of  
23 protection or the arbitrator determines there is a reasonable basis to believe that a party’s safety

1 or ability to participate effectively in the arbitration is at risk, the arbitration may not proceed  
2 unless each party affirms the agreement to arbitrate in a record and the arbitrator or court finds  
3 that:

4 (1) the affirmance is informed and voluntary; and

5 (2) reasonable procedures are in place to protect the party at risk from harm,  
6 harassment, or intimidation.

7 (b) If an arbitrator determines there is a reasonable basis to believe that a child under the  
8 custodial responsibility of a party is abused or neglected under the law of this state other than  
9 this [act], the arbitrator shall suspend the arbitration and report the abuse or neglect to the [state  
10 child protection authority]. The arbitration may not proceed unless each party affirms the  
11 agreement to arbitrate in a record and the arbitrator determines that:

12 (1) the affirmance is informed and voluntary; and

13 (2) reasonable procedures are in place to protect the child from risk of harm.

14 (c) An arbitrator may make a temporary award as necessary under subsection (a) or (b)  
15 to protect a party or child from harm, harassment, or intimidation.

16 (d) A party may apply to the court for a stay of arbitration and review of any  
17 determination or award made by an arbitrator under this section.

18 **SECTION 6. ARBITRATION AGREEMENT.**

19 (a) An arbitration agreement that does not comply with this [act] is unenforceable.

20 (b) Parties may agree to submit to binding arbitration an existing family law dispute or,  
21 to the extent permitted under subsection (c), a family law dispute that may arise in the future.

22 (c) Parties may agree to submit to binding arbitration a family law dispute  
23 that may arise after the parties have entered into a [parenting], [marital settlement], [domestic

1 partnership settlement], [civil union settlement], or [cohabitation settlement] agreement that  
2 provides for arbitration of future disputes relating to the subject matter of the agreement,  
3 including a family law dispute under Section 20 or 21.

4 (d) An arbitration agreement must:

5 (1) be in a record signed by the parties;

6 (2) identify the arbitrator or a method of selecting an arbitrator;

7 (3) identify the family law dispute the parties intend to arbitrate; and

8 (4) include in a record an acknowledgment by each party that the following  
9 disclosures or the substantial equivalent have been made in plain language:

10 (A) Once the parties voluntarily sign a valid agreement to arbitrate, the  
11 agreement is binding. An objection to the agreement to arbitrate must be raised before a party  
12 participates in the arbitration hearing.

13 (B) Arbitration may not be appropriate for a dispute involving domestic  
14 violence because arbitration does not offer the same protections as the judicial system.

15 (C) A party may hire an attorney before agreeing to arbitrate and may be  
16 represented by an attorney throughout the arbitration.

17 (D) Parties are responsible for all the costs of arbitration, including the  
18 fees of the arbitrator.

19 (E) An arbitration award is effective immediately and is enforceable as a  
20 judgment when the court confirms the award.

21 (F) An arbitration award may be vacated only on limited grounds.

22 (e) If there is a dispute as to whether an enforceable agreement to arbitrate exists, the  
23 court shall decide the issue.



1           **SECTION 7. QUALIFICATION AND SELECTION OF ARBITRATOR.**

2           (a) If the parties have agreed on an arbitrator or the method of selection of an arbitrator,  
3 the agreement controls.

4           (b) If a selected arbitrator is unable to act or if the agreed-upon method for selecting an  
5 arbitrator fails, on motion of a party, the court shall appoint an arbitrator.

6           (c) Unless waived by the parties in a signed record, an arbitrator appointed by the court:

7                   (1) must be either:

8                           (A) an attorney in good standing currently admitted to practice [or an  
9 attorney or judge on retired status] in a state:

10                                   (i) that has jurisdiction to confirm an award under Section 17; or

11                                   (ii) in which the arbitration is pending; or

12                           (B) a licensed professional in a field relevant to the family law dispute that  
13 is being arbitrated; and

14                   (2) must have training in identifying domestic violence and child abuse  
15 [according to standards established under law of this state other than this [act] for a judicial  
16 officer assigned to hear a family law dispute].

17           **SECTION 8. DISCLOSURE BY ARBITRATOR; DISQUALIFICATION.**

18           (a) Before accepting selection or appointment as an arbitrator, the arbitrator shall  
19 disclose to the parties any circumstance that a reasonable individual would believe is likely to  
20 affect:

21                   (1) the arbitrator's impartiality, including bias, a financial or personal interest in  
22 the outcome of the arbitration, or a past or present personal, business, or professional relationship  
23 with a party or a party's attorney; or

24                   (2) the arbitrator's ability to make a timely award.

1 (b) An arbitrator, the parties, and the parties' attorneys have a continuing obligation to  
2 disclose to parties any fact reasonable individual would believe is likely to affect the arbitrator's  
3 impartiality.

4 (c) Not later than [14] days after disclosure under subsection (a) or (b), a party may  
5 object to the arbitrator's selection, appointment, or continued service and may request that the  
6 arbitrator be recused.

7 (d) If the arbitrator refuses to be recused, a party move the court for a stay of arbitration  
8 and disqualification of the arbitrator. The court shall hear a motion for disqualification not later  
9 than [30] days after the motion is made. If the court, based on a circumstance that a reasonable  
10 individual would believe is likely to affect the arbitrator's impartiality, finds that the arbitrator is  
11 disqualified, the court shall appoint another arbitrator agreed to by the parties or, if the parties  
12 have not agreed, on motion of either party, the court shall appoint another arbitrator.

13 (e) If the parties agree to discharge the arbitrator, the arbitrator is recused, or a court  
14 disqualifies the arbitrator, the parties shall select a new arbitrator by agreement or may request  
15 the court to appoint another arbitrator.

## 16 **SECTION 9. IMMUNITY OF ARBITRATOR.**

17 (a) An arbitrator and an arbitrator's employer, partnership or organization, is immune  
18 from civil liability to the same extent as a judge acting in a judicial capacity.

19 (b) Immunity under this section supplements immunity under law of this state other than  
20 this [act].

21 (c) An arbitrator's failure to make a disclosure required by Section 8 does not cause the  
22 arbitrator to lose immunity under this section.

23 (d) An arbitrator is not competent to testify, and may not be required to produce records,  
24 in a judicial, administrative, or similar proceeding about a statement, conduct, decision, or ruling

1 occurring during the arbitration, to the same extent as a judge of a court acting in a judicial  
2 capacity. This subsection does not apply:

3 (1) to the extent disclosure is necessary to determine a claim by the arbitrator  
4 against a party to the arbitration; and

5 (2) to a hearing on a motion under Section 19(a)(2) or (3) to vacate an award if  
6 there is prima facie evidence that a ground for vacating the award exists.

7 (e) If a person commences a civil action against an arbitrator arising from the services of  
8 the arbitrator or if a person seeks to compel the arbitrator to testify or produce records in  
9 violation of subsection (d), and the court decides that the arbitrator is immune from civil liability  
10 or is not competent to testify, the court shall award the arbitrator reasonable attorney's fees,  
11 costs, and reasonable expenses of litigation.

12 **SECTION 10. TEMPORARY AWARD OR COURT ORDER.**

13 (a) On motion of a party, the arbitrator may make a temporary award under [insert this  
14 state's statutes or rules governing a temporary order in a family law dispute] to the same extent  
15 as the court may order in a family law dispute and any other award necessary to protect the  
16 effectiveness of the arbitration.

17 (b) On motion of a party, the court may confirm, correct, or vacate under Section 17, 18,  
18 or 19 a temporary award made under subsection (a) at any time before the court considers the  
19 final award.

20 (c) Before an arbitrator is selected or appointed and authorized to act, the court, on  
21 motion of a party, may enter a temporary order under [insert this state's statutes or rules  
22 governing issuance of a temporary order in a family law dispute] and any other necessary order.

23

1           **SECTION 11. PARTY PARTICIPATION**

2           (a) A party may:

3           (1) be represented by an attorney; and

4           (2) be accompanied by an individual who will not be called as a witness.

5           (b) A party may not communicate ex parte with the arbitrator except to the same extent  
6 allowed in a family law dispute for communication with a judge.

7           **SECTION 12. CONFIDENTIALITY AND SEALING**

8           (a) Unless otherwise required by law of this state other than this [act], parties may agree  
9 that the arbitration is confidential.

10          (b) On agreement of the parties and absent good cause to the contrary, the arbitrator may  
11 seal or redact an arbitration record and award.

12          (c) On motion of a party, the court may order that an arbitration record and the  
13 award be sealed or redacted under law of this state under than this [act].

14          **SECTION 13. POWERS OF ARBITRATOR.**

15          (a) An arbitrator may conduct an arbitration in a manner the arbitrator considers  
16 appropriate for a fair and expeditious disposition and, unless otherwise agreed by the parties,  
17 may select the rules for conducting the arbitration.

18          (b) Unless otherwise provided in an agreement to arbitrate, the arbitrator may do any of  
19 the following to the same extent as a court in a family law dispute under law of this state other  
20 than this [act]:

21           (1) hold conferences with the parties;

22           (2) determine the date, time, and location of a hearing;

23           (3) appoint an expert;

1 (4) administer an oath or affirmation and issue a subpoena for the attendance of a  
2 witness and for the production of documents and other evidence at a hearing;

3 (5) compel discovery concerning an issue being arbitrated and determine the  
4 date, time, and place of discovery;

5 (6) determine the admissibility, relevance, materiality, and weight of evidence;

6 (7) permit a deposition of a witness for use as evidence at the hearing;

7 (8) prohibit a party from disclosing trade secrets and privileged, confidential, or  
8 other information protected from disclosure;

9 (9) appoint an attorney, guardian ad litem, or other representative for a child;

10 (10) allocate arbitration fees, attorney's fees, expert witness fees, and other costs  
11 between the parties or to one party; and

12 (11) require each party to provide information, including:

13 (A) a copy of any relevant court order;

14 (B) information required to be disclosed in a family law dispute under law  
15 of this state other than this [act]; and

16 (C) a proposed award that addresses each issue in arbitration.

17 (c) On motion of a party, the court may enforce a subpoena or other award issued by the  
18 arbitrator as in a family law dispute.

19 **SECTION 14. RECORD OF HEARING.**

20 (a) A recording, transcript, or other record must be made of any part of an arbitration  
21 hearing concerning custodial responsibility, parental status, or child support, in the manner  
22 required by law of this state other than this [act] for a court in a family law dispute.

23 (b) Except as otherwise provided by an arbitration agreement or subsection (a), an

1 arbitration hearing need not be recorded or transcribed unless ordered by the arbitrator or  
2 requested by a party.

3 **SECTION 15. AWARD.**

4 (a) The award shall be in a record, dated and signed by the arbitrator, with a statement  
5 of the place where the arbitration was conducted and the place where the award was made. The  
6 arbitrator shall deliver a copy of the award to each party personally or by registered or certified  
7 mail, return receipt requested, or as otherwise agreed by the parties. Time of receipt is the date  
8 of personal delivery, mail receipt, or other receipt agreed on by the parties.

9 (b) Except as provided in subsection (c), parties may agree in a record that the award  
10 need not state the reasons on which it is based.

11 (c) An award regarding custodial responsibility [, parental status,] or child support,  
12 shall state the reasons on which it is based as required by law of this state other than this [act] for  
13 a court order in a family law dispute.

14 (d) The award is effective when received by the parties.

15 **SECTION 16. CHANGE OF AWARD BY ARBITRATOR.**

16 (a) On motion of a party filed not later than [20] days after receiving a copy of a final  
17 award, the arbitrator may change the award:

18 (1) to correct a mathematical miscalculation or a mistake in the description of a  
19 person, thing, or property referred to in the award;

20 (2) to conform the award to requirements of form not affecting the merits of the  
21 decision on the family law dispute; or

22 (3) to clarify the award.

23 (b) A party shall give notice of an objection to the motion not later than [ten] days after

1 receipt of notice of the motion made under subsection (a).

2 (c) If a motion is pending under Section 18, 19, or 20, the court may submit the motion  
3 to the arbitrator to consider whether to change the award.

4 **SECTION 17. CONFIRMATION OF AWARD.**

5 (a) After receiving a copy of an award, including an award changed under Section 16, a  
6 party may move for confirmation in the court with jurisdiction to enforce the award.

7 (b) Except as provided in subsection (c), the court shall issue a confirmation if the time  
8 for making a motion to correct or vacate the award under Section 18 or 19 has expired and no  
9 motion to correct or vacate is pending.

10 (c) A court shall not confirm an award involving custodial responsibility [, parental  
11 status,] or child support under subsection (b) unless the court determines that the award on its  
12 face complies with law of this state other than this [act].

13 (d) The court may confirm an arbitration award from another state if the award was  
14 entered in an arbitration process consistent with this [act] and confirmation is appropriate under  
15 the standards of this [act].

16 (e) On confirmation, an award is enforceable as a judgment.

17 **SECTION 18. CORRECTION OF AWARD BY COURT.**

18 (a) Not later than [30] days after a party receives a copy of an award or changed award  
19 under Section 16, a party may move the court to correct the award.

20 (b) The court may correct the award on a ground stated in Section 16(a) (1) or (2) and  
21 shall confirm the corrected award under Section 17 unless a motion to vacate the award under  
22 Section 19 is pending.

23

1           **SECTION 19. VACATION OF AWARD.**

2           (a) On motion of a party, the court shall vacate an award only on one or more of the  
3 following grounds:

4                   (1) the award determines custodial responsibility[, parental status,] or child  
5 support and a party demonstrates that the award is clearly erroneous under law of this state other  
6 than this [act] based on the record of the arbitration hearing and any facts that have arisen since  
7 the hearing;

8                   (2) the award was obtained by corruption, fraud, or other undue means;

9                   (3) there was:

10                           (A) evident partiality by the arbitrator;

11                           (B) corruption by the arbitrator; or

12                           (C) misconduct by the arbitrator prejudicing the rights of a party or  
13 harming the interests of a child;

14                   (4) the arbitrator exceeded the arbitrator's powers;

15                   (5) the arbitrator refused to postpone the arbitration hearing on showing of  
16 sufficient cause for postponement, refused to consider evidence material to the controversy, or  
17 otherwise conducted the hearing in a manner that substantially prejudiced the rights of a party;

18                   (6) there was no agreement to arbitrate, unless the party participated in the  
19 arbitration without objecting not later than the beginning of the arbitration hearing; [or]

20                   (7) the arbitration was conducted without proper notice of initiation of arbitration  
21 so as to prejudice substantially the rights of a party to the arbitration proceeding[.] [; or

22                   (8) any other basis for vacating the award under [insert state statutory reference  
23 to Revised Uniform Arbitration Act, Uniform Arbitration Act, or other state law on binding



1 arbitration].

2 (b) A motion under this section to vacate an award must be filed not later than [30] days  
3 after the party filing the motion receives a copy of the award or a changed or corrected award, or  
4 not later than [30] days after the ground of corruption, fraud, or undue means is known or by the  
5 exercise of reasonable care could have been known to the party filing the motion.

6 (c) If the court vacates an award on a ground other than under subsection (a)(6), it may  
7 order a rehearing. If the award is vacated under subsection (a)(2) or (3), the rehearing must be  
8 before a new arbitrator. If the award is vacated on any other ground, the rehearing may be before  
9 the arbitrator who made the award.

10 (d) If the court denies a motion to vacate an award, it shall confirm the award under  
11 Section 17 unless a motion to correct the award under Section 18 is pending.

12 **SECTION 20. CLARIFICATION OF CONFIRMED AWARD.** If the meaning or  
13 effect of an award confirmed under Section 17 is in dispute, the parties may:

14 (1) request a clarification from the arbitrator;

15 (2) agree to arbitrate the dispute before the original arbitrator or a new arbitrator; or

16 (3) proceed in court under law of this state other than this [act] regarding clarification of  
17 a court decree in a family law dispute.

18 **SECTION 21. MODIFICATION BASED ON CHANGE IN CIRCUMSTANCE.** If  
19 a dispute arises as to whether an award confirmed under Section 17 should be modified  
20 prospectively based on a change in circumstance occurring after confirmation of the award  
21 affecting a party or a child under the custodial responsibility of a party, the parties may:

22 (a) agree to arbitrate the dispute before the original arbitrator or a new  
23 arbitrator; or

1 (b) proceed in court under law of this state other than this [act] regarding modification of  
2 a court decree in a family law dispute.

3 **SECTION 22. RIGHT OF APPEAL.**

4 (a) A party may appeal a final judgment entered under this [act] or a court order under  
5 this [act]:

- 6 (1) denying a motion to compel arbitration;
- 7 (2) granting a motion to stay arbitration;
- 8 (3) confirming or denying confirmation of an award;
- 9 (4) revising the award; or
- 10 (5) vacating the award without ordering a rehearing.

11 (b) An appeal under this section must be taken in the same manner as from a judgment or  
12 order in a civil action.

13 **SECTION 23. ENFORCEMENT OF CONFIRMED AWARD.**

14 (a) The court shall enforce an award confirmed by the court, including a temporary  
15 award, in the manner and to the same extent as any other order or judgment entered by a court.

16 (b) The court shall enforce an arbitration award in a family law dispute which has been  
17 confirmed by a court in another state to the same extent as any other order or judgment from  
18 another state.

19 **SECTION 24. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

20 applying and construing this uniform act, consideration must be given to the need to promote  
21 uniformity of the law with respect to its subject matter among states that enact it.

22 **SECTION 25. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**  
23 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the Electronic

1 Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not  
2 modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize  
3 electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C.  
4 Section 7003(b).

5 **SECTION 26. APPLICABILITY.** This [act] applies to an arbitration of a family law  
6 dispute pursuant to an arbitration agreement made on or after [the effective date of this [act]]. If  
7 the agreement was made before [the effective date of this [act]], the parties may agree in a record  
8 that this [act] applies to the arbitration.

9 **SECTION 27. EFFECTIVE DATE.** This [act] takes effect . . . .