

# General Laws of Massachusetts - Chapter 251 Uniform Arbitration Act for Commercial Disputes

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*Last modified: September 11, 2015*

# General Laws of Massachusetts - Chapter 251 Uniform Arbitration Act for Commercial Disputes - Section 1 Validity of agreements; non-applicability to collective bargaining agreements

Section 1. A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties shall be valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. The provisions of this chapter shall not apply to collective bargaining agreements to arbitrate, which are subject to the provisions of chapter one hundred and fifty C, except as provided by the provisions of chapter one hundred and fifty-two.

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*Last modified: September 11, 2015*

# General Laws of Massachusetts - Chapter 251 Uniform Arbitration Act for Commercial Disputes - Section 2 Refusal to arbitrate; application to superior court

Section 2. (a) A party aggrieved by the failure or refusal of another to proceed to arbitration under an agreement described in section one may apply to the superior court for an order directing the parties to proceed to arbitration. If the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall, if it finds for the applicant, order arbitration; otherwise, the application shall be denied.

(b) Upon application, the superior court may stay an arbitration proceeding commenced or threatened if it finds that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be forthwith and summarily determined, and if the court finds for the applicant it shall order a stay of arbitration; otherwise the court shall order the parties to proceed to arbitration.

(c) If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under paragraph (a), the application shall be made therein, otherwise and subject to section seventeen, the application may be made in any court of competent jurisdiction.

(d) Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made under this section or, if the issue is severable, the stay may be with respect to such issue only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

(e) An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated have not been shown.

# General Laws of Massachusetts - Chapter 251 Uniform Arbitration Act for Commercial Disputes - Section 2A Consolidation or severance of arbitration proceedings; application; determination

Section 2A. A party aggrieved by the failure or refusal of another to agree to consolidate one arbitration proceeding with another or others, for which the method of appointment of the arbitrator or arbitrators is the same, or to sever one arbitration proceeding from another or others, may apply to the superior court for an order for such consolidation or such severance. The court shall proceed summarily to the determination of the issue so raised. If a claimant under section twenty-nine of chapter one hundred and forty-nine applies for an order for consolidation or severance of such proceedings, the issue shall be decided under the applicable provisions of said section twenty-nine of said chapter one hundred and forty-nine governing consolidation or severance of such actions; otherwise the issue shall be decided under the Massachusetts Rules of Civil Procedure governing consolidation and severance of trials and the court shall issue an order accordingly. No provision in any arbitration agreement shall bar or prevent action by the court under this section.

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*Last modified: September 11, 2015*

# General Laws of Massachusetts - Chapter 251 Uniform Arbitration Act for Commercial Disputes - Section 3 Appointment of arbitrators

Section 3. If the arbitration agreement provides a method of appointment of arbitrators, such method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or if an arbitrator appointed fails or is unable to act and his successor has not been duly appointed, the court on application of a party shall appoint an arbitrator. An arbitrator so appointed shall have all the powers of an arbitrator specifically named in the agreement.

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*Last modified: September 11, 2015*

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# General Laws of Massachusetts - Chapter 251 Uniform Arbitration Act for Commercial Disputes - Section 4 Powers of arbitrators

Section 4. The powers of the arbitrators may be exercised by a majority thereof unless otherwise provided by the agreement or by this chapter.

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*Last modified: September 11, 2015*

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# General Laws of Massachusetts - Chapter 251 Uniform Arbitration Act for Commercial Disputes - Section 5 Hearings; time and place; rights of parties; conduct of hearings

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## Section 5. Unless otherwise provided by the agreement:—

(a) The arbitrators shall appoint a time and place for the hearing and cause written notice to the parties to be served personally or by registered mail not less than five days before the hearing. Appearance at the hearing shall constitute a waiver of such notice. The arbitrators may adjourn the hearing from time to time and, on request of a party and for good cause, or upon their own motion may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

(b) The parties shall have the right to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

(c) The hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

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*Last modified: September 11, 2015*

# General Laws of Massachusetts - Chapter 251 Uniform Arbitration Act for Commercial Disputes - Section 6

## Representation by counsel

Section 6. A party shall have the right to be represented by an attorney at any proceeding or hearing under this chapter, notwithstanding any waiver of such right prior to the proceeding or hearing.

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*Last modified: September 11, 2015*

# General Laws of Massachusetts - Chapter 251 Uniform Arbitration Act for Commercial Disputes - Section 7 Witnesses; production of documents and things; entry on land for inspection

Section 7. (a) The arbitrators may cause to be issued subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the court by a party or the arbitrators, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action.

(b) On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

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

(d) Fees for attendance as a witness shall be the same as for a witness in the superior court.

(e) Any party in an arbitration proceeding may serve upon any other party a request for the production of documents and things and for entry upon land for inspection and other purpose as permitted by and in accordance with the procedure set forth in rule thirty-four of the Massachusetts Rules of Civil Procedure in effect at the time the request is made. The enforcement and objections of such request shall be made to the arbitrators and the arbitrators only shall issue such orders as they deem necessary on objections and on requests for enforcement of production both prior to and after the commencement of the hearing.

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*Last modified: September 11, 2015*

# General Laws of Massachusetts - Chapter 251 Uniform Arbitration Act for Commercial Disputes - Section 8 Award; form; delivery; time; waiver of objections

Section 8. (a) The award shall be in writing and signed by the arbitrators concurring in the award. The arbitrators shall deliver a copy of the award to each party personally or by registered mail, or as provided in the agreement.

(b) An award shall be made within the time fixed therefor by the agreement or, if said time is not so fixed, within such time as the court orders upon application of a party. The parties may by an agreement in writing extend the time either before or after the expiration thereof. A party shall be deemed to have waived 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.

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*Last modified: September 11, 2015*

# General Laws of Massachusetts - Chapter 251 Uniform Arbitration Act for Commercial Disputes - Section 9 Award; modification by arbitrators

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Section 9. Upon application of a party or, if an application to the court is pending under sections eleven, twelve or thirteen, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in (1) and (3) of subdivision (a) of section thirteen, or for the purpose of clarifying the award. The application shall be made within twenty days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating he must serve his objections thereto, if any, within ten days from the notice. The award so modified or corrected shall be subject to the provisions of sections eleven, twelve and thirteen.

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*Last modified: September 11, 2015*

# General Laws of Massachusetts - Chapter 251 Uniform Arbitration Act for Commercial Disputes - Section 10 Costs and expenses

Section 10. 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.

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*Last modified: September 11, 2015*

# General Laws of Massachusetts - Chapter 251 Uniform Arbitration Act for Commercial Disputes - Section 11 Award; confirmation by court

Section 11. Upon application of a party, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in sections twelve and thirteen.

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*Last modified: September 11, 2015*

# General Laws of Massachusetts - Chapter 251 Uniform Arbitration Act for Commercial Disputes - Section 12 Vacation of award; grounds; time for application; rehearing; confirmation

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Section 12. (a) Upon application of a party, the court shall vacate an award if:—

- (1) the award was procured by corruption, fraud or other undue means;
  - (2) there was evident partiality by an arbitrator appointed as a neutral, or corruption in any of the arbitrators, or misconduct prejudicing the rights of any party;
  - (3) the arbitrators exceeded their powers;
  - (4) the arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of section five, as to prejudice substantially the rights of a party; or
  - (5) there was no arbitration agreement and the issue was not adversely determined in proceedings under section two and the party did not participate in the arbitration hearing without raising the objection; but the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.
- (b) An application under this section shall be made within thirty days after delivery of a copy of the award to the applicant, but, if such application is predicated upon corruption, fraud, or other undue means, it shall be made within thirty days after such grounds are known or should have been known.
- (c) In vacating the award on grounds other than stated in clause (5) of paragraph (a) the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the court in accordance with section three, or if the award is vacated on grounds set forth in clauses (3) and (4) of paragraph (a) the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with section three. The time within which the agreement requires the award to be made shall be applicable to the rehearing and shall commence from the date of the order.

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

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*Last modified: September 11, 2015*

# General Laws of Massachusetts - Chapter 251 Uniform Arbitration Act for Commercial Disputes - Section 13 Award; modification by court; time for application; grounds; joinder with application to vacate

Section 13. (a) Upon application made within thirty days after delivery of a copy of the award to the applicant, the court shall modify or correct the award if:—

- (1) there was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;
  - (2) the arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
  - (3) the award is imperfect in a matter of form, not affecting the merits of the controversy.
- (b) If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected; otherwise, the court shall confirm the award as made.
- (c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

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*Last modified: September 11, 2015*

# General Laws of Massachusetts - Chapter 251 Uniform Arbitration Act for Commercial Disputes - Section 14 Judgment or decree; costs

Section 14. Upon the granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements in connection therewith may be awarded by the court.

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*Last modified: September 11, 2015*

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# General Laws of Massachusetts - Chapter 251 Uniform Arbitration Act for Commercial Disputes - Section 15 Applications to court

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Section 15. Except as otherwise provided, an application to the court under this chapter shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of an original writ of summons.

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*Last modified: September 11, 2015*

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# General Laws of Massachusetts - Chapter 251 Uniform Arbitration Act for Commercial Disputes - Section 16 Court; jurisdiction

Section 16. The term "court" means any court of competent jurisdiction of this state. The making of an agreement described in section one providing for arbitration in this state confers jurisdiction on the court to enforce the agreement under this chapter and to enter judgment on an award thereunder.

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*Last modified: September 11, 2015*

# General Laws of Massachusetts - Chapter 251 Uniform Arbitration Act for Commercial Disputes - Section 17 Venue

Section 17. An initial application shall be made to the superior court for the county in which the agreement provides the arbitration hearing shall be held or, if the hearing has been held, in the county in which it was held. Otherwise the application shall be made in the county where the adverse party resides or has a place of business or, if he has no residence or place of business in this state, to the superior court for any county. All subsequent applications shall be made to the court hearing the initial application unless the court otherwise directs.

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*Last modified: September 11, 2015*

# General Laws of Massachusetts - Chapter 251 Uniform Arbitration Act for Commercial Disputes - Section 18 Appeals

Section 18. (a) An appeal may be taken from:—

- (1) an order denying an application to compel arbitration made under paragraph (a) of section two;
- (2) an order granting an application to stay arbitration made under paragraph (b) of section two;
- (3) an order confirming or denying confirmation of an award;
- (4) an order modifying or correcting an award;
- (5) an order vacating an award without directing a rehearing; or
- (6) a judgment or decree entered pursuant to the provisions of this chapter. Such appeal shall be taken in the manner and to the same extent as from orders or judgments in an action.

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*Last modified: September 11, 2015*

# General Laws of Massachusetts - Chapter 251 Uniform Arbitration Act for Commercial Disputes - Section 19 Uniformity of interpretation

Section 19. This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

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