SANDBERG PHOENIX

PROFESSIONAL LIABILITY BLOG

Arbitration Requirements in Architectural and Engineering Contracts

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It is typical that any contract for architectural or engineering services contains a requirement for disputes to be arbitrated. A contract provision typically says something like the provision below:

> BINDING DISPUTE RESOLUTION If the matter is unresolved after direct discussions, the Parties shall submit the matter to arbitration using the current Construction Industry Arbitration Rules of the American Arbitration Association, or the Parties may mutually agree to select another set of arbitration rules. The administration of the arbitration shall be as mutually agreed by the parties.

If the work under the contract involves interstate commerce (which is broadly interpreted), then the Federal Arbitration Act (FAA) governs the contract. The FAA, 9 U.S.C. Section 1, *et seq.* (2006), "governs the applicability and enforceability of arbitration agreements in all contracts involving interstate commerce." *Eaton v. CMH Homes, Inc.*, 461 S.W.3d 426, 431 (Mo. banc 2015) (citing 9 U.S.C. Section 2).

In Missouri, state law requires that every contract with an arbitration provision contain the following:

> "THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES."

It must be in all capitals and in at least 10-point type. Section 435.360 RSMo. The failure to have this language means that the arbitration provision is unenforceable. However, this language requirement is only effective when the contract is not interstate in nature, in other words, Missouri contacts only.

So, in drafting contracts that have a Missouri role include the language of Section 435.360 RSMo. but realize it may not be effective.