

# STATE OF NEW YORK

10393

## IN ASSEMBLY

April 18, 2018

Introduced by M. of A. WEINSTEIN -- read once and referred to the  
Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to the  
appointment of an arbitrator

The People of the State of New York, represented in Senate and Assem-  
bly, do enact as follows:

1 Section 1. Section 7504 of the civil practice law and rules is amended  
2 to read as follows:

3 § 7504. [~~Court appointment~~] Appointment of arbitrator. (a) If an  
4 arbitration agreement provides for the method of appointment of an arbi-  
5 trator, such arbitrator must be a neutral third-party arbitrator;  
6 provided, however, that any portion of an agreement or contract requir-  
7 ing the controversy concerning employment be submitted to an arbitrator  
8 or arbitration organization that is not a neutral third-party arbitra-  
9 tor, shall be deemed void. The requirement that the controversy be  
10 heard by a neutral third-party arbitrator may not be waived by a party  
11 prior to the service on such party of a demand for arbitration.

12 (b) If the arbitration agreement does not provide for a method of  
13 appointment of an arbitrator, or if the agreed method fails or for any  
14 reason is not followed, or if an arbitrator fails to act and his or her  
15 successor has not been appointed, the court, on application of a party,  
16 shall appoint [~~an~~] a neutral third-party arbitrator. Appointment of any  
17 arbitrator shall reasonably ensure the personal objectivity of the arbi-  
18 trator.

19 (c) 1. Before the appointment of an individual who is requested to  
20 serve as an arbitrator, and after making a reasonable inquiry, such  
21 individual shall disclose to all parties to the agreement to arbitrate  
22 and the arbitration proceeding, and to any other arbitrators, any known  
23 facts that a reasonable person would consider likely to affect the  
24 impartiality of the arbitrator in the arbitration proceeding, including:

25 (i) a financial or personal interest in the outcome of the arbitration  
26 proceeding; or

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[~~-~~] is old law to be omitted.

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1 (ii) an existing or past relationship with any of the parties to the  
2 agreement to arbitrate or the arbitration proceeding, his or her counsel  
3 or representatives, a witness, or another arbitrator.

4 2. An arbitrator has a continuing obligation to disclose to all  
5 parties to the agreement to arbitrate and any arbitration proceeding,  
6 and to any other arbitrators any facts that the arbitrator learns after  
7 accepting appointment which a reasonable person would consider likely to  
8 affect the impartiality of the arbitrator.

9 3. If an arbitrator discloses a fact required by paragraph one or two  
10 of this subdivision and a party timely objects to the appointment or  
11 continued service of the arbitrator based upon the fact disclosed, the  
12 objection may be a ground for vacating an award made by the arbitrator  
13 pursuant to subparagraph (ii) of paragraph one of subdivision (b) of  
14 section seventy-five hundred eleven of this chapter.

15 4. If the arbitrator did not disclose a fact as required by paragraph  
16 one or two of this subdivision, upon timely objection by a party, the  
17 court may vacate an award based on such non-disclosure pursuant to  
18 section seventy-five hundred eleven of this chapter.

19 5. An arbitrator appointed as a neutral arbitrator who does not  
20 disclose a known, direct and material interest in the outcome of the  
21 arbitration proceeding or a known, existing and substantial relationship  
22 with a party is presumed to act with evident partiality in rendering an  
23 award.

24 (d) Upon disclosure pursuant to subdivision (c) of this section, a  
25 party shall be deemed to have waived any objection to the arbitrator or  
26 composition of any arbitration panel, by failing to raise same prior to  
27 the commencement of the arbitration hearing.

28 § 2. Section 7506 of the civil practice law and rules is amended to  
29 read as follows:

30 § 7506. Hearing. (a) Oath of arbitrator. Before hearing any testimony,  
31 an arbitrator shall be sworn to hear and decide the controversy faith-  
32 fully and fairly by an officer authorized to administer an oath.

33 (b) Time and place. The arbitrator shall appoint a time and place for  
34 the hearing and notify the parties in writing personally or by regis-  
35 tered or certified mail not less than eight days before the hearing. The  
36 arbitrator may adjourn or postpone the hearing. The court, upon applica-  
37 tion of any party, may direct the arbitrator to proceed promptly with  
38 the hearing and determination of the controversy.

39 (c) Evidence. The parties are entitled to be heard, to present  
40 evidence and to cross-examine witnesses.

41 (d) Postponements and adjournments. The arbitrator may for good cause  
42 postpone or adjourn the hearing upon request of a party or upon the  
43 arbitrator's own initiative. Notwithstanding the failure of a party duly  
44 notified to appear, the arbitrator may hear and determine the controver-  
45 sy upon the evidence produced. If a party to an arbitration intends to  
46 present testimony from a witness at the hearing, absent good cause  
47 shown, the identity of such witness must be provided to all parties at  
48 least seven calendar days prior to the hearing.

49 ~~[(d)]~~ (e) Representation by attorney. A party has the right to be  
50 present, and be represented by an attorney and may claim such right at  
51 any time as to any part of the arbitration or hearings which have not  
52 yet taken place. This right may not be waived. If a party is represented  
53 by an attorney, papers to be served on the party shall be served upon  
54 his or her attorney. It shall be within the arbitrator's discretion to  
55 permit the attendance of any other persons.

1    [~~(e)~~] (f) Determination by majority. The hearing shall be conducted by  
2 all the arbitrators, but a majority may determine any question and  
3 render an award.

4    [~~(f)~~] (g) Waiver. Except as provided in subdivision [~~(d)~~] (e) of this  
5 section, a requirement of this section may be waived by written consent  
6 of the parties and it is waived if the parties continue with the arbi-  
7 tration without objection.

8    § 3. Section 7507 of the civil practice law and rules, as amended by  
9 chapter 952 of the laws of 1981, is amended to read as follows:

10    § 7507. Award; form; time; delivery. (a) Except as provided in section  
11 7508, the award shall be in writing, and shall state the issues in  
12 dispute and contain the arbitrator's findings of fact and conclusions of  
13 law. Such award shall contain a decision on all issues submitted to the  
14 arbitrator, and shall be [~~signed and affirmed~~] executed under oath or  
15 affirmed pursuant to rule twenty-one hundred six of this chapter if  
16 applicable by the arbitrator making it within the time fixed by the  
17 agreement, or, if the time is not fixed, within such time as the court  
18 orders.

19    (b) The parties may in writing extend the time either before or after  
20 its expiration. A party waives the objection that an award was not made  
21 within the time required unless he or she notifies the arbitrator in  
22 writing of his or her objection prior to the delivery of the award to  
23 him or her.

24    (c) The arbitrator shall deliver a copy of the award to each party in  
25 the manner provided in the agreement, or, if no provision is so made,  
26 personally or by registered or certified mail, return receipt requested.

27    § 4. Subparagraph (iv) of paragraph 1 of subdivision (b) of section  
28 7511 of the civil practice law and rules is amended and a new subpara-  
29 graph (v) is added to read as follows:

30    (iv) failure to follow the procedure of this article, unless the party  
31 applying to vacate the award continued with the arbitration with notice  
32 of the defect and without objection~~[-]~~; or

33    (v) the arbitrator evidenced a manifest disregard of the law in  
34 rendering the award.

35    § 5. This act shall take effect immediately and shall apply to all  
36 arbitration proceedings held on or after such effective date.