



Mandatory Arbitration Isn't All Bad, if. . .



In the past week or so mandatory arbitration has been all the rage. From those that argue that [arbitration is becoming more burdensome than litigation](#), to my friend and fellow construction attorney [Scott Wolfe](#) who gives great advice on [how to make arbitration worth it again](#). You can place me in the camp of those that think that mandatory arbitration clauses of the type typically found in contracts can add

a layer of expense that can be unnecessary.

However, if [an arbitration clause is carefully drafted](#), and properly used, these clauses can be helpful in assuring that the streamlining effect for which arbitration was created actually occurs. Because the [contract is king](#) in Virginia, these provisions can essentially create the rule of civil procedure used to resolve any dispute relating to the project.

Anything from the number and method of appointing the arbitrators, to the ability to use attorneys, to the time between notice and arbitration hearing and whether [mediation is a requirement](#), to the documents and other pre-arbitration exchanges can and should be specifically outlined. The construction contract can also state who decides between court or arbitration. This can be one party or both. The possibilities are almost endless.

Because [Murphy was an optimist](#) and the fact that even the most carefully managed project can lead to litigation, the provisions of your construction contract are highly important. Please discuss these provisions with an [experienced construction attorney](#) prior to presenting or signing a construction contract. If you are careful, even the most cynical of us could find arbitration helpful.

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Please check out my [Construction Law Musings Blog](#) for more on Virginia construction law and other topics.