

NORTHERN ARAPAHO CODE

TITLE 1. ARBITRATION

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Section 101 - Short Title. 1 N.A.C. 101 through 1 N.A.C. 119 may be cited as the Northern Arapaho Arbitration Act.

COMMENT - This Act is modeled on the Uniform Arbitration Act.

Section 102 - "Court" Defined; Jurisdiction. "Court" means the Northern Arapaho Tribal Court or other Tribal Court duly authorized by the Northern Arapaho Tribe.

Section 103 - Written Agreement to Submit Controversy to Arbitration Valid. A written agreement to submit any existing or future controversy to arbitration is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of the contract. This includes arbitration agreements between employers and employees or between their respective representatives unless otherwise provided in the agreement.

Section 104 - Duty of Court on Application of Party to Arbitrate.

(a) On application of a party showing an arbitration agreement and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration. If the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to determine the issue raised and shall order or deny arbitration accordingly.

(b) 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 to compel arbitration, the application shall be made therein. Otherwise, the application shall be made in the court of proper venue.

(c) 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 or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

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

Section 105 - When Court to Appoint Arbitrators. If the arbitration agreement provides a method of appointment of arbitrators this method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator fails or is unable to act and his successor has not been appointed, the court on application of a party shall appoint one (1) or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

Section 106 - Powers of Arbitrators. The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by law.

Section 107 - Notice of Hearing.

(a) The arbitrators shall appoint a time and place for the hearing and serve the parties with notice either personally or by registered mail not less than five (5) days before the hearing. Appearance at the hearing waives the notice. The arbitrators may adjourn the hearing from time to time as necessary, and on request of a party 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 are entitled 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 may continue with the hearing and determination of the controversy.

Section 108 - Right to be Represented by Attorney; Effect of Waiver. A party may be represented by an attorney at any arbitration proceeding or hearing. A waiver of representation prior to the proceeding is ineffective.

Section 109 - Authority of Arbitrators to Issue Subpoenas and Administer Oaths; Service of Subpoenas; Deposition; Compelling Person to Testify; Witness Fees.

(a) The arbitrators may issue subpoenas for the attendance of witnesses, for the production of books, records, documents and other evidence and may administer oaths. Subpoenas 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 of a witness who cannot be subpoenaed or is unable to attend the hearing, in the manner designated by the arbitrators.

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

(d) The same fees for attendance as a witness shall be paid as for a witness in the court.

Section 110 - Award of Arbitrators.

(a) The award shall be in writing and signed by the arbitrators joining in the decision. A copy shall be delivered to each party personally, by registered mail or as provided in the agreement.

(b) An award shall be made within the time fixed by the agreement, or if not so fixed, within such time as the court orders on application of a party. The parties may extend the time in writing either before or after the expiration thereof. A party waives 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.

Section 111 - Modification of Award.

(a) On application of a party or an order of the court, the arbitrators may modify the award:

(1) When there was an evident miscalculation of figures or description of a person or property referred to in the award;

(2) When the award is imperfect as to form not affecting the merits of the controversy; or

(3) For the purpose of clarifying the award.

(b) The application shall be made within twenty (20) days after delivery of the award to the applicant. Written notice shall be given promptly to the opposing party, stating he must serve his objections within ten (10) days from receipt of the notice. The award as modified is subject to the provisions of Sections 113, 114 and 115 of this Act.

Section 112 - Expenses and Fees for Arbitrators. The arbitrators' expenses, fees and other costs, not including counsel fees, incurred in the arbitration shall be paid as provided in the award, unless otherwise provided in the arbitration agreement.

Section 113 - Confirmation of Award by Court. Upon application of a party, the court shall confirm the award unless within the time limits allowed grounds are urged for vacating or modifying the award.

Section 114 - When Court to Vacate Award.

(a) Upon application of a party, the court shall vacate an award where:

(1) The award was procured by corruption, fraud or other undue means;

(2) There was evident partiality by an arbitrator appointed as a neutral, corruption of 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, refused to hear evidence material to the controversy, or otherwise conducted the hearing as to prejudice substantially the rights of a party; or

(5) There was no arbitration agreement, the issue was not adversely determined by a court as provided by law, and the applicant did not participate in the arbitration hearing without raising the objection. 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 a ground for vacating or refusing to confirm the award.

(b) An application for vacating an award shall be made within ninety (90) days after delivery of a copy of the award to the applicant, or if predicated upon corruption, fraud or other undue means, it shall be made within ninety (90) days after the grounds are known or should have been known.

(c) In vacating the award on grounds other than stated in subsection (a)(5), the court may order a rehearing before new arbitrators chosen as provided in the agreement or by the court in accordance with Section 105 of this Act. If the award is vacated on grounds set forth in paragraph (a)(3) or (4) of this section, the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with Section 105 of this Act. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

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

Section 115 - When Court to Modify or Correct Award.

(a) Upon application made within ninety (90) days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

(1) There was an evident miscalculation of figures or an evident mistake in the description of any person or property referred to in the award;

(2) The arbitrators 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 as to 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.

Section 116 - Judgment Upon Granting Order Confirming, Modifying or Correcting Award; Costs and Disbursements. Upon the granting of an order confirming, modifying or correcting an award, the judgment shall conform and be enforced as any other judgment. Costs of the application, proceedings and disbursements may be awarded by the court.

Section 117 - Application to Court to be By Motion; Notice and Hearing to be in Manner Provided by Law. An application to the court for relief shall be by motion and shall be heard in the manner provided by law or rule of court. Notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action unless otherwise specified by the parties.

Section 118 - Venue upon initial and subsequent applications. An initial application shall be made to the Northern Arapaho Tribal Court or other Tribal Court duly authorized by the Northern Arapaho Tribe. All subsequent applications shall be made to the court hearing the initial application unless the court otherwise directs.

Section 119 - Appeals.

(a) An appeal may be taken from:

(1) An order denying the application to compel arbitration;

(2) An order granting an application to stay arbitration;

(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 final judgment or decree entered by the court.

(b) The appeal shall be taken in the manner of a civil action.

History: Title 1. The Arbitration Code was enacted by the Northern Arapaho Tribe by resolution of the Northern Arapaho Business Council dated March 21, 2000, Resolution No. 2000-8253. The Code was re-codified as Title 1. of the Northern Arapaho Code (N.A.C.) without substantive change on June 6, 2000, by NABC Resolution No. 2000-8291. Technical amendments for the purpose of clarifying references to tribal courts and correcting certain section numbering were enacted on August 17, 2016, by Resolution No. NABC-2016-702, and additional technical amendments were enacted on August 31, 2016, by Resolution No. NABC-2016-713.