

Vacating or Modifying an Arbitration Award in Texas State Court

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A Practice Note explaining how to vacate or modify an arbitration award in Texas state courts, including procedural considerations and the grounds on which to challenge the award. This Note explains the form and content of an application to vacate or modify an arbitration award under the Texas Arbitration Act.

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The winning party in an [arbitration](#) often needs to have the arbitral award judicially confirmed and entered as a judgment if the losing party does not pay voluntarily. Conversely, the losing party may want to vacate the award. Either party may want to have the award modified to correct a computational or other ministerial error.

This Note explains the procedural steps and the grounds to vacate or modify an arbitral award under Texas the Texas Arbitration Act (TAA) in state or federal court ([Tex. Civ. Prac. & Rem. Code Ann. § 171.001 to 171.098](#)). Sections 172.001 to 172.215 apply to international arbitration conciliation and, in the case of conflict, supersede Subchapters B and C of section 171, but not Subchapters A and D of section 171 ([Tex. Civ. Prac. & Rem. Code Ann. § 172.001\(d\)](#)).

For information on enforcing arbitration awards in Texas courts, see [Practice Note, Enforcing Arbitration Awards in Texas](#).

Statutory Framework

Texas Arbitration Law

Texas's arbitration law is set out in the TAA, codified in the Texas Civil Practice and Remedies Code. The TAA is based on the Uniform Arbitration Act drafted by the National Conference of the Commissioners on Uniform State Laws in 1955 and adopted by the American Bar Association in 1956. The grounds for vacating an arbitral award under Texas law are codified in [Tex. Civ. Prac. & Rem. Code Ann. § 171.088](#). The grounds for modifying an arbitral award under Texas law are codified in [Tex. Civ. Prac. & Rem. Code Ann. § 171.091](#). Both provisions are found in Subsection D of Section 171 and therefore apply to both domestic and international disputes.

The TAA governs all Texas arbitration agreements except:

- Collective bargaining agreements.
- Agreements where total consideration is less than \$50,000.
- Certain personal injury claims.
- Claims for workers' compensation benefits.
- Agreements made before January 1, 1966.

([Tex. Civ. Prac. & Rem. Code Ann. § 171.002\(a\)](#).)

The Texas Supreme Court has reviewed the TAA several dozen times, including when it has come into conflict with the [Federal Arbitration Act](#) (FAA) ([9 U.S.C. §§ 1 to 16](#)).

Federal Arbitration Law

An application for vacatur or modification in a Texas district or county court may implicate federal substantive law. Chapter 1 of the FAA applies to domestic commercial and maritime arbitral awards but does not confer federal court [subject matter jurisdiction](#) (*Badgerow v. Walters*, 596 U.S. 1 (2022)). Unless there is an independent basis for federal court jurisdiction (such as admiralty or [diversity jurisdiction](#)), a party seeking vacatur or modification of a domestic arbitration award governed by the FAA must file the application in state court (*Badgerow*, 596 U.S. at 18-19) (see also *Ascension Data & Analytics, L.L.C. v. Pairprep, Inc.*, 2024 WL 3154797, at * 2-3 (5th Cir. 2024)).

The FAA also implements the [New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards](#) (New York Convention) (9 U.S.C. §§ 201 to 208) and the [Inter-American Convention on International Commercial Arbitration](#) (Panama Convention) (9 U.S.C. §§ 301 to 307). These conventions provide an independent basis for federal court jurisdiction for international arbitrations and awards. The conventions allow a party to bring an application for vacatur or modification of an award governed by one of the conventions in either federal or state court. When both the Panama Convention and the New York Convention may apply, the Panama Convention controls, unless otherwise expressly agreed, only if a majority of the parties to the arbitration agreement are citizens of a state or states that both:

- Have ratified or acceded to the Panama Convention.
- Are member states of the Organization of American States.

In all other cases, the New York Convention applies. (9 U.S.C. § 305.)

For more information on vacating or modifying an award under the FAA, see [Practice Notes, Enforcing Arbitration Awards in the US](#) and [Understanding the Federal Arbitration Act: Enforcement and Challenge of Arbitral Awards](#). For a sample petition to vacate, modify, or correct an arbitration award in federal court, see [Standard Document, Petition to Vacate, Modify, or Correct Arbitration Award \(Federal\)](#).

Interplay Between Federal and Texas Arbitration Law

If both the FAA and the TAA can apply to the enforcement of an arbitral award, the substantive provisions of the FAA preempt conflicting provisions in the TAA. However, where the FAA is consonant with the TAA, the TAA controls. (*In re D. Wilson Const. Co.*, 196 S.W.3d 774, 779-80 (Tex. 2006) (orig. proceeding).)

The TAA goes against the FAA's policies and goals and is therefore preempted by it only when the arbitration agreement:

- Is in writing.
- Involves interstate commerce.
- Can withstand scrutiny under traditional state law contract defenses.

- Is affected by state law with respect to its enforceability.

(*In re D. Wilson Const. Co.*, 196 S.W.3d at 780 (citing *In re Nexion Health at Humble, Inc.*, 173 S.W.3d 67, 69 (Tex. 2005) (orig. proceeding).) The enforceability factor is met if state law would "refuse to enforce an arbitration agreement that the FAA would enforce," either because:

The agreement is expressly exempted from the TAA's coverage.

The TAA imposes an enforceability requirement that the FAA does not.

Tex. Civ. Prac. & Rem. Code Ann. § 171.002 describes agreements expressly exempted from coverage so that the FAA preempts the TAA. One enforceability requirement that the TAA imposes but the FAA does not is adding the signature of a party's counsel to arbitration agreements in personal injury cases. (*In re D. Wilson Const. Co.*, 196 S.W.3d at 780.)

Procedural Framework

Commencing the Proceeding

Under the TAA, parties can seek to vacate or modify an arbitration award by an application in a Texas state court within 90 days of the delivery of the award (Tex. Civ. Prac. & Rem. Code Ann. §§ 171.082, 171.083, 171.088, and 171.091).

Contents and Form of the Application

A court may require that the application:

- Show the jurisdiction of the court.
- Attach a copy of the arbitration agreement.
- Define the issue subject to arbitration between the parties under the agreement.
- Specify the status of the arbitration before the arbitrators.
- Show the need for the court order sought by the applicant.

(Tex. Civ. Prac. & Rem. Code Ann. § 171.085.)

However, a court may not find an application inadequate for lacking one of these elements unless the court requires the applicant to amend its application and the court grants the applicant a ten-day period to comply.

Appeal of a Judgment or Interlocutory Order

Under [Tex. Civ. Prac. & Rem. Code Ann. § 51.016](#), a party may appeal a judgment or interlocutory order under the same circumstances as it would under the FAA, which includes a modification, correction, or vacatur of an award (*CMH Homes v. Perez*, 340 S.W.3d 444, 448 (Tex. 2011) (citing 9 U.S.C. § 16)).

Jurisdiction and Venue

Subject Matter Jurisdiction

Texas district courts have exclusive, appellate, and original jurisdiction over all actions that the Texas Constitution and Texas law confer onto the district courts ([Art. V, § 8, Tex. Const.](#)). Under [Tex. Civ. Prac. & Rem. Code Ann. § 171.081](#), an arbitration agreement that provides for arbitration in Texas "confers jurisdiction on the court to enforce the agreement and to render judgment on an award."

Unlike the FAA, the TAA does not limit the parties' ability to contract for expanded judicial review. Therefore, unlike the FAA, the TAA allows the parties to agree that an arbitrator's award is subject to judicial review on the merits (*Nafta Traders, Inc. v. Quinn*, 339 S.W.3d 84, 97 (Tex. 2011)).

Venue

Unless one of the three exceptions listed below applies, a party must file a petition for vacatur or modification in either the county in which an adverse party resides or has a place of business or if an adverse party does not have a residence or place of business in Texas, in any county ([Tex. Civ. Prac. & Rem. Code Ann. § 171.096](#)).

The three exceptions to this rule are:

- If the agreement to arbitrate provides that the arbitration hearing must be held in a county in Texas, a party must file the initial application in that county.
- If an arbitration hearing has been held, a party must file the initial application with the clerk of the court of the county where the hearing was held.
- Consistent with [Tex. Civ. Prac. & Rem. Code Ann. § 171.024](#), if a proceeding is pending in a court relating to arbitration of an issue subject to an arbitration agreement before the filing of the initial application, a party must file the initial application and any subsequent application relating to the arbitration in that court.

([Tex. Civ. Prac. & Rem. Code Ann. § 171.096](#).)

Personal Jurisdiction

A Texas court that has jurisdiction over the parties and the dispute may enforce an arbitration agreement and render judgment on the award ([Tex. Civ. Prac. & Rem. Code Ann. § 171.081](#)). To have jurisdiction, the court must have personal jurisdiction over the parties under Texas's long-arm statute, which extends as far as due process permits under the US Constitution (*BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 795 (Tex. 2002); see also [Tex. Civ. Prac. & Rem. Code Ann. §§ 17.041-17.045](#)). The parties may also contractually consent to personal jurisdiction in Texas (see *In re Fisher*, 433 S.W.3d 523, 532 (Tex. 2014)).

Grounds for Vacatur Under the TAA

Statutory Grounds

The court must vacate an award if:

- The award was procured by corruption, fraud, or other undue means.
- The rights of a party were prejudiced by:
 - evident partiality by an arbitrator appointed as a neutral arbitrator;
 - corruption in an arbitrator; or
 - misconduct or willful misbehavior of an arbitrator.
- The arbitrators:
 - exceeded their powers;
 - refused to postpone the hearing after the showing of sufficient cause for postponement;
 - refused to hear material evidence; or
 - conducted the hearing contrary to [Tex. Civ. Prac. & Rem. Code Ann. §§ 171.043-171.047](#) in a manner that substantially prejudiced the rights of a party to the arbitration proceeding.
- There was no agreement to arbitrate, the issue was not adversely determined in a proceeding to compel or stay arbitration, and the party did not participate in the arbitration hearing without raising the objection.

([Tex. Civ. Prac. & Rem. Code Ann. § 171.088\(a\)](#).)

The court must confirm the award if the application to vacate was denied and there is no pending motion to modify or correct the award ([Tex. Civ. Prac. & Rem. Code Ann. § 171.088\(c\)](#)).

Tex. Civ. Prac. & Rem. Code Ann. § 171.088 provides the only grounds for vacatur; there are no common law grounds on which an award may be vacated (*Hoskins v. Hoskins*, 497 S.W.3d 490 (Tex. 2016)). Further, the TAA does not expressly provide for the ability of a party to partially vacate an award.

No Agreement to Arbitrate

Whether an arbitration agreement exists is an initial matter that a court (not an arbitrator) decides. Likewise, whether an arbitration agreement binds a nonsignatory is also a gateway matter for a court to decide, unless the parties have "clearly and unmistakably provide[d] otherwise." (*In re Morgan & Co., Inc.*, 293 S.W.3d 182, 189 (Tex. 2009) (orig. proceeding)). For more information, see [Practice Note, Joining Nonsignatories to an Arbitration in the US](#).

When a party contests arbitrability before the arbitrator, the court must make an independent determination that the claims were arbitrable (*Southwinds Express Constr., LLC v. D.H. Griffin of Tex., Inc.*, 513 S.W.3d 66, 73 (Tex. App.—Houston [14th Dist.] 2016, no pet.)).

Corruption, Fraud, or Other Undue Means

Only in extreme cases will a court vacate an award for an arbitrator's misconduct (*Las Palmas Medical Center v. Moore*, 349 S.W.3d 57, 72 (Tex. App.—El Paso 2010, pet. denied)).

To vacate an arbitration award because of fraud, the movant must establish:

- Fraud by clear and convincing evidence.
- That the fraud was not discoverable by the exercise of due diligence before or during the arbitration.
- The fraud was materially related to an issue in the arbitration.

(*Las Palmas Medical Center*, 349 S.W.3d, at 67.)

"Fraud by nondisclosure is a subcategory of fraud" (*Las Palmas Medical Center*, 349 S.W.3d, at 72). In the context of arbitration, a movant can establish that an award was obtained because of fraud by nondisclosure by showing that an arbitrator failed to disclose "any circumstance likely to affect impartiality, including a bias or a financial or personal interest in the result of the arbitration or a past or present relationship with a party or a party's counsel or other authorized representative in accordance with the Code of Ethics for Arbitrators" (*Las Palmas Medical Center*, 349 S.W. 3d, at 68 (quoting Rule 2.05 of the American Health Law Association rules of Procedure for Arbitration)).

The TAA does not define the terms "undue means" or "corruption." However, to allege that an award was obtained by undue means, a party must show some evidence of immoral, illegal, or bad faith conduct by the arbitrator. Similarly, to vacate an award for corruption, a party must allege some facts that an arbitrator was bribed, guilty of dishonest practice, or lacking integrity. (*Las Palmas Medical Center*, 349 S.W. 3d at 69.)

Partiality

"A prospective neutral arbitrator exhibits partiality if he or she does not disclose facts which might, to an objective observer, create a reasonable impression of the arbitrator's partiality" (*Amoco D.T. Co. v. Occidental Petroleum Corp.*, 343 S.W.3d 837, 843 (Tex. App.—Houston [14th Dist.] 2011, pet. denied) (quoting *Burlington N. R.R. Co. v. TUCO, Inc.*, 960 S.W.2d 629, 636 (Tex. 1997))). This type of partiality is known as evident partiality.

There may be evident partiality where:

- A non-neutral arbitrator refers substantial litigation to a neutral arbitrator on the same panel (*Sousa v. Goldstein Faucett and Prebeg, LLP*, 2022 WL 2976820, at *8 (Tex.App.—Houston [14th Dist.] 2022, no pet.) (citing *Burlington N. R. Co. v. TUCO Inc.*, 960 S.W.2d 629, 631 (Tex. 1997))).
- An arbitrator fails to disclose having contact with one of the parties' attorneys to the arbitration while also owning stock in the litigation services company that is actively seeking business opportunities with the attorneys' firm (*Sousa*, 2022 WL 2976820, at *8, citing *Tenaska Energy, Inc. v. Ponderosa Pine Energy, LLC*, 437 S.W.3d 518, 525-27 (Tex. 2014)).
- An arbitrator fails to timely disclose whether any of the law firms in the case have appeared before her in past arbitrations (*Sousa*, 2022 WL 2976820, at *8, citing *Builders First Source-S. Tex., LP v. Ortiz*, 515 S.W.3d 451, 458-59 (Tex. App.—Houston [14th Dist.] 2017, pet. denied)).

For more information on arbitrator partiality as a ground for vacatur, see [Practice Note, Challenges Based on Arbitrator Bias in US Arbitration](#).

Manifest Disregard of the Law or Facts

A mistake that is merely factual or legal is not enough to warrant setting aside an arbitral award, the factual or legal mistake must result in "some great and manifest wrong and injustice" to warrant setting aside an arbitration award (*Nuno v. Pulido*, 946 S.W.2d 448, 452 (Tex. App.—Corpus Christi 1997, no pet.)). To overturn an arbitration award based on the miscalculation of numbers, the mistake must be "clear, concise, and conclusive from the record" (*Williams v. Flores*, 2004 WL 1797574, at *4 (Tex. App.—Corpus Christi Aug. 12, 2004, pet. denied) (mem. op.)).

Arbitrator Exceeded Authority

An arbitrator's authority comes from and is limited to the matters expressly or necessarily implied in the arbitration agreement. When an arbitrator determines a matter outside of that authority, the award is void. (*Gulf Oil Corp. v. Guidry*, 327 S.W.2d 406, 408 (Tex. 1959).) However, arbitrators do not exceed their authority by misinterpreting a contract or misapplying the law (*D.R. Horton-Texas, Ltd. v. Bernhard*, 423 S.W.3d 532, 534 (Tex. App.—Houston [14th Dist.] 2014, pet. denied)). Nor do arbitrators exceed their authority where the contract does not specifically define an arbitrator's authority and the arbitrator's decision is "not so irrational or devoid of authority that he was merely dispensing his own idea of justice" (*D.R. Horton-Texas, Ltd. v. Bernhard*, 423 S.W.3d at 546).

Conduct of Hearing

On review, a court may consider grounds that a trial court would find sufficient to support a motion for continuance when determining whether an arbitrator acted improperly in refusing to postpone a hearing (*Howerton v. Wood*, 2017 WL 710631, at *3 (Tex. App.—Fort Worth Feb. 23, 2017, no pet.) (mem. op.)). Inability to fully testify at a hearing, if that inability would not have deprived a party of a fair hearing, does not show sufficient cause such that an arbitration award must be vacated (*Howerton*, 2017 WL 710631, at *4). Likewise, "mere exclusion of evidence, without more, does not demonstrate partiality" (*Tex. Health Mgmt., LLC v. Healthspring Life & Health Ins. Co.*, 2020 WL 3071729, at *9 (Tex. App.—Dallas June 10, 2020, no pet.) (mem. op.)). The exclusion of evidence must "so affect [] the rights of a party that it may be said he was deprived of a fair hearing" (*Las Palmas Medical Center*, 349 S.W.3d at 73).

Grounds for Modification Under the TAA

Statutory Grounds

A party seeking to modify an arbitral award must make the motion within 90 days after the date of delivery of a copy of the award to the applicant (Tex. Civ. Prac. & Rem. Code Ann. § 171.091(b)).

A court may modify or correct an award if:

- There is an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award.
- The arbitrators have made an award based on a matter not submitted in the arbitration and the award can be corrected without affecting the merits of the decision on the issues submitted.
- The award is imperfect as a matter of form, not affecting the merits of the controversy.

(Tex. Civ. Prac. & Rem. Code Ann. § 171.091(a).)

If the court grants the motion, it modifies or corrects the award and confirms it as modified or corrected. If the court denies the motion, it confirms the award (Tex. Civ. Prac. & Rem. Code Ann. § 171.091(c)).

A motion to modify or correct an award may be joined in the alternative with a motion to vacate the award (Tex. Civ. Prac. & Rem. Code Ann. § 171.091(d)).