

Expand Your Practice: Arbitration Do's and Don'ts

Online Syllabus

Introduction

- Welcome and introduction preview
- Program requirements
- Meet your instructor and introduce yourself
- Learning enhancements
- Detailed program information
- Introduction review

Module 1: What is Arbitration?

- Module 1 preview
 - Learning objectives
- Process for Resolving Disputes
 - Discussion: What is a Dispute?
- Disputes and how they are resolved
 - Arbitration vs Litigation
- Example arbitration statute
- History of alternative dispute resolution (ADR)
- Negotiation and Mediation
- Arbitration
- Need for more professionals in ADR
- Arbitration is controlled by contract
- Federal and state arbitration laws
- ADR organizations
- Ad hoc arbitrations
- Module 1 review
 - Looking back at Module 1
 - Review of learning objectives
- Module 1 quiz

Module 2: What Areas of Service Might Valuers Provide?

- Module 2 preview
 - Learning objectives
- 2-2 Discussion: Arbitration Services
- Three ways for appraisers to be involved in arbitration
- Lease language can cause confusion
 - Baseball Arbitration
- Lease language examples
 - Discussion: Baseball example 1
 - Discussion: Baseball example 2
- Three-person panel example
- Your role in arbitration
 - Expert witness
 - Arbitrator
 - Consultant
- Clarifying your role
- Expectations of intended users

- American Arbitration Association (AAA) requirement of neutrality
- Exception to AAA requirement of neutrality
- Neutrality and ex parte communications
- How state law can affect arbitration process
- Module 2 review
 - Looking back at Module 2
 - Review of learning objectives
- Module 2 quiz

Module 3: Arbitration and Standards

- Module 3: preview
 - Learning objectives
- Get clear on your role
- Acting as an appraiser
 - Discussion: Acting as an appraiser
- Valuation services
- Providing valuation services and not acting as an appraiser
- Appraisal practice
- More on intended user expectations
 - Discussion: Intended user expectations
- When the valuer is not acting as an appraiser in arbitration
- Consulting and independence
- Discussion: Your experience as a consultant
- Not acting as an appraiser
- When not acting as an appraiser, do not mislead
- Is it a review or not?
- Module 3 review
 - Looking back at Module 3
 - Review of learning objectives
- Module 3 quiz

Module 4: The Valuation Professional Serving as an Expert Witness

- Module 4 preview
 - Learning objectives
- Determining what the client really needs
- What is expert testimony?
- Look first to the lease for problem identification in arbitration
- The subject of the assignment
- Lease language unclear on date of value
- Parties have some control over the scope of work
 - Discussion: Example of lease controlling scope of work
- Courts interpret rent re-set clauses
- 1996 case doesn't follow Ruth v. S.Z.B.
- Overnight can cause problems for appraisers
- Writing the expert report
- Drafts of reports
- Preparing a rebuttal report
- Presenting oral testimony
- Testimony at deposition
- Discussion: Assisting counsel
- Testimony at hearings
- Charging for your services as an expert valuation witness
- Module 4 review
 - Looking back at Module 4
 - Review of learning objectives
- Module 4 quiz

Module 5: The Valuation Professional Serving as a Consultant in Arbitration Matters

- Module 5 preview
 - Learning objectives
- Consulting services: independent or advocate for client
- Consulting is not part of serving as a testifying Expert or as an Arbitrator
 - Appraiser roles in arbitration
- The line between independence and advocacy
- Why consultants are retained in arbitration
- Outcome could be different if consultant is independent or advocate
- When an appraiser “Reads” an appraisal or review report
- The line between advocate consulting and appraisal review
- Advocate versus independent consulting expert
- Module 5 review
 - Looking back at Module 5
 - Review of learning objectives
- Module 5 quiz

Module 6: The Valuation Professional Serving as an Arbitrator: Getting Started

- Module 6 preview
 - Learning objectives
- Disclosure of potential conflicts
- What to disclose
- The advice of arbitration associations
- Disclosures
- Arbitrators and social media
 - Discussion: Arbitrators and social media
- Ex parte communication
- Neutral versus advocate arbitrators
- Tri-partite panels and neutrality
- Non-neutral arbitrators
 - Discussion: non-neutrality
- The importance of non-neutrality
- Why this history is important today
- How being a non-neutral arbitrator is different
- Investigation or research by the arbitrator
- Module 6 review
 - Looking back at Module 6
 - Review of learning objectives
- Module 6 quiz

Module 7: The Valuation Professional Serving as an Arbitrator: The Preliminary Hearing and Arbitrator Oath

- Module 7 preview
 - Learning objectives
- The effect of COVID-19 on arbitration
- Arbitration via videoconference
- First step: preliminary hearing
- Discussion: Where to hold an in-person preliminary hearing
- Arbitrator oath of office
- Where does the arbitrator sit if in person?
- Preliminary hearing on zoom
- Hybrid hearings
- Create an agenda
- Items to be addressed at the preliminary hearing

- If the date of value is unclear
- Keeping track of preliminary hearing decisions
- The interim order
- Discussions: Issues to address after the preliminary hearing
- The scheduling calendar
- Module 7 review
 - Looking back at Module 7
 - Review of learning objectives
- Module 7 quiz

Module 8: The Arbitration Hearing and Final Award

- Module 8 preview
 - Learning objectives
- In-person and videoconference hearings
- Where does the arbitrator sit if in person?
 - Arbitration in Motion
- Videoconference comparison
- Caucus rooms
- How To start the proceedings
- Timekeeping
- Impartiality and questioning witnesses
- To take notes or watch and listen as intently as possible
- Going on the record; going off the record
- Is that evidence admissible?
- Why arbitrators admit most evidence
- Opening and closing arguments
- The final award
- Discussion: Your potential challenge
- Getting paid
- Module 8 review
 - Looking back at Module 8
 - Review of learning objectives
- Module 8 quiz

Module 9: Vacatur

- Module 9 preview
 - Learning objectives
- What is vacatur?
 - Discussion: What are the grounds for vacatur?
- The Federal Arbitration Act and vacatur
- State arbitration laws
- The four issues that support vacatur
- Non-disclosure supports more vacaturs
- Not postponing hearings and not admitting evidence
- Arbitrators exceeding authority
- Lease language examples
- Three-person panel example
- Module 9 review
 - Looking back at Module 9
 - Review of learning objectives
- Module 9 quiz

Module 10: Valuation Professionals Make Good Arbitrators

- Module 10 preview
 - Learning objectives

- Concerns about arbitration
 - Discussions: Concerns about arbitration
- You don't need legal training
- Keeping control of the process
- How to get started as an arbitrator
 - Sources of information
 - Arbitration administration organizations
 - Networking
- Opportunities for new arbitrators
- Everyone has a first time
- Common errors in arbitration and how to avoid them
- Ex parte communication: prohibited
- Module 10 review
 - Looking back at Module 10
 - Review of learning objectives
- Module 10 quiz

Module 11: What Are My Liability Risks?

- Module 11 Preview
 - Learning objectives
- What are my liability risks?
- The concept of arbitral immunity
- Boundaries of arbitral immunity
- Where have arbitrators exceeded the boundaries of the immunity?
- Suggestions for decreasing arbitrator risk
 - Discussion: Decreasing arbitrator risk
- Expert witness liability in arbitration
- Limits of witness immunity
- Examples of actual claims against experts
- Risk management suggestions for experts
- Module 11 review
 - Looking back at Module 11
 - Review of learning objectives
- Module 11 quiz

Conclusion

- Conclusion Preview
- Concluding Thoughts
- Program Quality Evaluation
- Conclusion Review and Program Completion