

ARBITRATION IN FAMILY LAW CASES

We do have a reported case dealing with arbitration.

Hughes v Hughes, 123 Idaho 711, 851 P.2d 1007 (Ct. App. 1993).

- The parties have stipulated pursuant to I.C. § 7-901 to submit all matters encompassed in their divorce case for arbitration by a former district judge. The parties stipulated that the decision would be binding and the award would be confirmed by the magistrate assigned to the case thereby reducing the award to a judgment. After the arbitrator reached the decision and it was submitted to the court, Mr. Hughes objected, claiming that the award failed to assign values to property or purport to make a finding that the division was an inequitable division of property. The court of appeals held that I.C. § 32-712 and the cases holding that values having to be assigned in certain situations did not apply where the division resulted from binding arbitration.

Uniform Arbitration Act. I.C. § 7-901 et seq.

- § 7-901 – Validity of Arbitration Agreement. The written agreement to submit any existing controversy to arbitration or provision in a written contract to submit to arbitration any controversy is valid, enforceable and irrevocable.
- § 7-902 – Proceedings to Compel or Stay Arbitration. In a divorce case, the arbitration agreement and order would be presented to the divorce Court.
- § 7-903 – Appointment of Arbitrators by Court. This section governs the appointment of an arbitrator. The method of appointment can be set forth in the written agreement. If the agreed arbitrator cannot act, the Court can appoint a substitute arbitrator.
- § 7-904 – Majority Action by Arbitrators. If you have more than one arbitrator, the powers can be exercised by a majority unless the agreement provides otherwise.
- § 7-905 – Hearing. The arbitrator is to appoint a time and place for the hearing and cause notification to the parties by personally serving notice or by registered mail not less than five (5) days before the hearing appearance at the hearing when parties are entitled to present evidence and cross-examine witnesses. There is nothing in the act saying this cannot be waived. There is also nothing in the act directing that any portion of the arbitration be electronically recorded.
- § 7-906 – Representation by Attorney. The party has a right to be represented by an attorney. The waiver of this right prior to the proceeding or hearing is ineffective.
- § 7-907 – Subpoenas. The arbitrator can issue Subpoenas.

- § 7-908 – Award. An award must be in writing and signed by the arbitrator.
- § 7-909 – Change of Award by Arbitrators. The award can be modified. The request to modify must be made within twenty (20) days.
- § 7-910 – Fees and Expenses of Arbitration. Unless otherwise provided in the agreement to arbitrate, the arbitrator’s expenses and fees together with other expenses that include lawyer fees incurred in the conduct of the arbitration shall be paid as provided in the award.
- § 7-911 – Confirmation of an Award. On application of a party, the Court shall confirm an award unless within the time limits stated in the act. Grounds are set forth for vacating or modifying or correcting the award.
- § 7-912 – Vacating an Award. This section sets forth the basis for a party to have a court vacate an award:
 - (1) The award was procured by corruption, fraud or other undue means;
 - (2) There was evident partiality by the arbitrator, or corruption in any of the arbitrators, or misconduct prejudicing the rights of a party;
 - (3) The arbitrator exceeded the powers they had;
 - (4) The arbitrator refused to postpone the hearing upon sufficient cause being shown;
 - (5) There was no arbitration agreement and the issue was not adversely determined.

An application made under this section has to be made within ninety (90) days after the delivery of the copy of the award unless it is predicated upon corruption, fraud, or other undue means, it shall be made within ninety (90) days after such grounds are known.

If the award is vacated, the Court may order rehearing before a new arbitrator chosen as provided in the agreement or selected by the Court.

If the application to vacate is denied, or no motion to modify or correct is pending the Court shall confirm the award.

- § 7-913 – Modification or Correction of Award. Upon application made within ninety (90) days after the delivery of the award, the Court shall modify or correct the award where the Court finds:
 - (1) There was an evident miscalculation of figures or evident mistake in the description of any person, thing or property referred to in the award;

- (2) The arbitrator made an award on a matter not submitted to the arbitrator;
 - (3) The award is imperfect in the matter of form not affecting the merit of the controversy.
- § 7-914 – Judgment or Decrees of Award. Upon granting of an award confirming modifying or correcting an award, judgment or decree shall be entered and be enforceable as any other judgment and decree. Costs of the application and of the proceedings subsequent thereto, may be awarded by the Court.
 - § 7-915 – Judgment Roll – Docketing. Upon entry of a judgment, the clerk shall prepare a judgment consisting, to the extent filed, of the following:
 - (1) The agreement and each written extension of the time within which to make the award;
 - (2) The award;
 - (3) A copy of the order confirming, modifying or correcting the award; and
 - (4) A copy of the judgment or decree.
 - § 7-916 – Applications to Court. An application to the court shall be made by motion and shall be held in the same manner as other motions. Notice of the initial application for award shall be served in the same manner as service of a summons in an action.
 - § 7-917 – Jurisdiction. “Court” means any court of competent jurisdiction of this state. An agreement providing for arbitration in Idaho confers jurisdiction on the court to enforce the agreement to enter a judgment on an award.
 - § 7-918 – Venue. Venue is to be in the county in which the agreement provides the arbitration hearing shall be held or if the hearing has been held, in the county in which it was held. Otherwise, the application shall be made in the county where the adverse party resides or a has a place of business or if he has no residence or place of business in Idaho, to the court of any county. All subsequent applications shall be made in the court hearing of the initial application unless the court otherwise directs.
 - § 7-919 – Appeals. An appeal may be taken from:
 - (1) An order denying an 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 judgment or decree entered pursuant to the provisions of the actThe appeal should be taken in the manner and to the same extent as from orders or judgments in a civil action.