

Statutory Revision Committee  
Proposed Subcommittee

September 18, 2008

FLORIDA PROBATE CODE  
General Provisions

731.401 **Arbitration of disputes.**-- (1) A provision in a will or trust requiring the arbitration of disputes, other than disputes of the validity of all or a part of a will or trust, between or among the beneficiaries and a fiduciary under the will or trust, or any combination of such persons or entities, is enforceable.,

(2) Unless otherwise specified in the will or trust, a will or trust provision requiring arbitration shall be presumed to require binding arbitration under s. 44.104.

This Florida Probate Code provision accommodates an Arizona case, *Schoneberger v. Oelze*, 208 Ariz. 591, 93 P.3d 1078 (Ariz. App. Div. 1 2004), which holds that the terms of a trust agreement providing for binding arbitration of disputes do not satisfy the requirement of a contract or agreement for binding arbitration under the uniform arbitration act.

The uniform arbitration act has been adopted by most states including Arizona, Florida and Colorado. The provision of the uniform arbitration act addressed by the case states that "a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable..."

The Arizona case reasoned that the trust agreement, created a trust relationship rather than a contractual relationship so that the trust agreement did fill the requirement of the uniform arbitration act that the obligation to arbitrate was not part of a "written contract." The words of the revised uniform arbitration act adopted in Colorado effective August, 2004, have shifted from "written contract" to "agreement contained in a record" which are apparently intended to have, more or less, the same meaning as the prior act. See section 13-22-206, C.R.S.

UNIFORM ARBITRATION ACT  
Part 2, Article 22, Title 13, CRS

13-22-206. **Validity of agreement to arbitrate.** (1) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except on a ground that exists at law or in equity for the revocation of a contract.