

## Are Mandatory Arbitration Clauses Enforceable Against Trustees and Beneficiaries?



Parties agree to mandatory arbitration for various reasons. These may include a desire for a rapid decision, avoidance of appeals, relaxed rules of evidence, opportunity to select the arbitrator, reduced costs and confidentiality.

When settlors are preparing trusts, however, other factors may heighten these motivations to arbitrate rather than to litigate. The settlor may seek to create a less contentious relationship among members of a family or business, to avoid costly litigation that will reduce the assets of a family trust, or to shield from public view confidential matters such as personal family activities and the financial status of family members or other parties. Plus, the settlor may want to have relaxed rules of evidence that typically apply in arbitration proceedings so the arbitrator can consider otherwise inadmissible (in court) evidence relating to past practices, traditions or understandings of family members or other parties.

Accordingly, a settlor may include a mandatory arbitration clause to cover disputes among the trustee and beneficiaries. But what if a trustee or beneficiary objects and wants to proceed in court? Will arbitration be required, nonetheless?

This issue was recently addressed by the Virginia Supreme Court in *Boyle v. Anderson*, 871 S.E. 2d 226 (Va. 2022). The question before the court was whether the Virginia Uniform Arbitration Act (VUAA) or the Federal Arbitration Act, 9 U.S.C. 1-16 (FAA), compels enforcement of an arbitration clause in a trust over the objection of a beneficiary.

In *Boyle*, the settlor had created an inter vivos irrevocable trust to be divided into three shares, one for his daughter, Sarah, one for his son, John, and one for the children of a third son, Jerry. Upon the settlor's death, the daughter, Sarah, became the trustee as well as one of the beneficiaries of the trust.

After John died, his widow, Linda, serving as administrator of his estate, filed a complaint in court against Sarah alleging that she had breached her duty as trustee and seeking her removal or, in the alternative, her compliance with the terms of the trust.

In response, Sarah, relying upon the VUAA, filed a motion to compel arbitration based upon an unambiguous clause in the trust document providing “any dispute that is not amicably resolved by mediation or otherwise, shall be resolved by arbitration ... .” [READ MORE..](#)

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