

REVISED LAWS

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taking another appeal in the same cause, within the time limited by law. (6152)

4378. Death of respondent—Substitution—If the respondent dies, after notice of the appeal and before it has been heard, the appellant shall apply to the supreme court, if in session, otherwise to a justice thereof, to have the legal representative or successor in interest of such deceased respondent substituted as respondent. In case the appellant fails to cause substitution to be made within sixty days from such death, upon the filing of an affidavit, by his legal representative or successor in interest, with the clerk of the supreme court, showing the taking of the appeal, the death of the respondent, and that the appellant has failed to cause such substitution to be made, the appeal shall be deemed abandoned, and the clerk of the supreme court shall enter an order dismissing the same. Upon the filing of a certified copy of such order with the clerk of the court below, such court shall proceed in the action as if no appeal had been taken. (6153)

Court may reinstate appeal dismissed under this section (28-68, 9+79). Duty to have administrator substituted (92-42, 99+357).

4379. Death of party after submission of appeal—Whenever an appeal has been taken and submitted to the supreme court, and either party shall die before entry of judgment therein, and the surviving party, or the legal representative or successor in interest of the deceased party, shall file with the clerk of the supreme court an affidavit showing such death, said clerk shall substitute the name of such legal representative or successor in interest, and the action shall thereupon proceed and judgment be entered for or against such representative or successor in interest. (6154)

CHAPTER 81

ARBITRATION AND AWARD

4380. What may be submitted—Submission irrevocable—Except as in this section provided, every controversy which can be the subject of a civil action may be submitted to the decision of one or more arbitrators in the manner prescribed in this chapter, but nothing herein shall preclude the arbitration of controversies according to the common law. No submission shall be made of a claim to any estate in fee or for life in real estate, but a claim to an interest for a term of years, or for a lesser term, and controversies respecting a partition of lands, or concerning the boundaries thereof, may be submitted. When a controversy has been submitted, no party thereto shall have power to revoke the submission without the consent of all the others; and, if any of them neglect to appear after due notice, the cause may nevertheless be heard and determined by the arbitrators upon the evidence produced. (6210, 6211, 6214, 6228)

At common law commission may be revoked at any time before award is made (59-290, 61+143; 39-360, 40+259). Common law arbitration not abolished (81-472, 84+332). Necessity of notice of time and place of meeting of arbitrators (52-428, 54+481).

4381. Agreement—The agreement of submission shall be in writing, signed and acknowledged by the parties or their agents or attorneys, and shall be, in substance, as follows:

Know all men, that of and of have agreed to submit the demand described in the statement hereunto annexed (or, all demands existing between them, as the case may be) to the determination of (here insert the names of the arbitrators), the award of whom (or a majority of whom), being made and reported within days from this date to the district court for the county of, the judgment thereon shall be final.

Dated this day of 19.... (6212, 6213)

The jurisdiction of arbitrators is special and can only be created by a compliance with the statutes (27-403, 7+823). The agreement for submission must name the arbi-

trators (39-360, 40+259), and their names must be inserted before the acknowledgment (53-269, 55+121). The description of the subject matter submitted need not be as specific as would be required in a pleading (30-38, 14+57). The parties may stipulate against an appeal (7-374, 295).

4382. Powers and duties of arbitrators—Filing of award—The arbitrators shall appoint a time and place for the hearing, and, for good cause shown, may postpone the same from time to time within the period limited in the submission agreement. No award made after that time shall be valid, unless the period be extended by consent of parties, or unless made upon a recommitment ordered by the court. They shall hear and receive the sworn testimony of all witnesses appearing before them. Unless otherwise provided in the submission agreement, they shall make such award as they deem reasonable concerning the costs of the proceeding, including their own compensation; but such compensation may be reduced by the court if excessive. The award shall be subscribed by the arbitrators joining therein, and immediately delivered or mailed by one of them to the clerk of the court designated in the agreement, who shall note on the envelope the date and hour of its receipt, and preserve the same, sealed, until opened by the court. (6215-6219, 6227)

Time of hearing may be extended without the formalities prescribed by § 4381 (30-38, 14+57). An award not attested is a nullity. Need not be filed in term (11-92, 57). Court acquires jurisdiction of proceedings by the filing (39-360, 40+259).

4383. Procedure after filing—When the award has been so delivered to the clerk, any party to the proceeding may notice the same for hearing before the court, or a judge thereof, as in the case of a civil action. The award may be accepted or rejected by the court for any legal reason, or it may be recommitment to the arbitrators for a rehearing, or with directions to make any finding more specific, or the parties, by stipulation, may authorize the clerk to enter judgment on the award without submission to the court. (6220, 6223)

All objections to the award must be made on the motion to confirm or sooner (23-64). Court may send matter back to arbitrators for reconsideration and for a new award. It may require findings of arbitrators to be made more specific (22-17). Authority to recommit for a rehearing is enabling, not restrictive, and does not forbid a recommitment where a rehearing is unnecessary (11-92, 57). Motion to confirm may be brought on in vacation (11-92, 57; 30-38, 14+57). Filing of award gives court jurisdiction and it is competent for parties to waive all objections to award on account of formal errors and irregularities and to authorize clerk to enter judgment thereon at once without confirmation by court (11-92, 57).

4384. Grounds of vacating award—Upon motion, the court may vacate an award upon any of the following grounds:

1. That it was procured by corruption, fraud, or other undue means.
2. That there was partiality or corruption on the part of the arbitrators, or any one of them.
3. That the arbitrators were guilty of misconduct in refusing postponement, in refusing to hear evidence material to the controversy, or in other matters whereby the rights of the party were prejudiced.
4. That they exceeded their powers, or executed them so imperfectly that a mutual, final, and definite award was not made.
5. That the award is contrary to law and evidence. (6221)

Motion must be made before award confirmed or at time of motion to confirm. Confirmation may be set aside to enable party to move to vacate (23-64. See 23-46). Courts favor awards and every presumption is indulged in favor of their fairness. Burden of proof is on party seeking to set them aside and they will not be set aside for fraud, partiality or misconduct, except on clear and strong evidence (50-341, 52+932; 66-138, 149, 68+855; 84-526, 63+16). Exclusion of material evidence is ordinarily fatal to an award and the party attacking an award on this ground is only required to prove the exclusion by a fair preponderance of evidence (50-341, 52+932). Scope of subd. 5 not well defined (See 40-164, 41+659). An award may be set aside on the ground that it was procured by false testimony and fraudulent practices (23-46). It will not be set aside on the ground that the arbitrators have not acted on all matters submitted to them or that they have exceeded their powers unless party complaining has been prejudiced (7-374, 295. See 14-153, 120). An arbitrator cannot impeach his own award but he may impeach an award in which he took no part and give evidence of misconduct on the part of other arbitrators (66-138, 68+855). Every reasonable in-

tendment will be indulged in favor of the finality and validity of an award, but if it is clearly not final and certain it may be set aside (81-356, 84+48). It may be set aside in part (57-490, 59+547).

4385. Modification of the award—The court, upon motion, may modify or correct an award in the following cases:

1. Where there is a miscalculation of figures, or an evident mistake in the description of any person or thing referred to therein.

2. Where the arbitrators have awarded upon a matter not submitted to them, or not affecting the merits of the decision upon any matter submitted.

3. Where the award is imperfect in a matter of form which does not affect the merits, and where, if it had been a verdict, such defect could have been amended or disregarded by the court. (6222)

4386. Judgment—Contents and effect—Appeals—Upon confirmation or modification of the award, the court shall order judgment in accordance therewith, and the clerk shall enter the same forthwith, unless a stay be granted. Costs not included in the award shall be taxed as in civil actions. The judgment shall be docketed as in other cases, shall have the same force and effect in all respects, and be subject to all provisions of law relating to judgments in civil actions, including appeals therefrom. It shall recite the submission, the hearing before the arbitrators, their award, and the action of the court thereon. (6224-6227)

Judgment must conform to award (57-490, 59+547). Judgment on award has same effect as judgment in ordinary civil actions and can only be impeached, reviewed or set aside in same manner as such judgment (23-46). Scope of review on appeal (30-38, 14+57; 23-64). Parties may stipulate against an appeal (7-374, 295).

CHAPTER 82

ACTIONS RELATING TO REAL PROPERTY

GENERAL PROVISIONS

4387. Agent of non-resident to accept service—Any non-resident person or corporation owning or claiming any interest or lien in or upon lands in the state may file with the secretary of state a writing, executed and acknowledged in the manner of a conveyance, appointing a resident agent, whose place of residence shall be stated, to accept service of process or summons in any action or proceeding in the courts of the state concerning such interest or lien, except actions or proceedings for the collection of taxes, and consenting that service of such process or summons upon such agent shall be binding upon the person executing the same. Such writing shall be recorded by the secretary. No service by publication of summons shall be made upon any such non-resident who has complied with the provisions hereof, but in all such cases service of such process or summons, or of any writ or notice in the action or proceedings, shall be made upon such agent in the manner provided by law for such service upon residents of the state, and shall have the same effect as personal service within the state upon such owner or claimant; but, if such party appears by attorney therein, the service of papers shall thereafter be upon such attorney. The authority of such agent may be revoked by writing similarly executed and acknowledged and recorded, but no revocation shall affect any action or proceeding then pending. For filing and recording such papers the secretary shall be entitled to fifteen cents for each folio. (5816)

Applicable only to foreign corporation (36-85, 30+432). Cited (55-386, 57+134).

4388. Actions against unknown heirs—In any action relating to real property, when the heirs of a deceased person are proper parties defendant and their names are unknown, upon the filing of an affidavit of the plaintiff, his