

Enforcing Arbitration Awards in Virginia

WILLIAM F. KREBS AND BLAKE W. FRIEMAN, BEAN, KINNEY & KORMAN PC, WITH PRACTICAL LAW ARBITRATION

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A Practice Note explaining how to enforce arbitral awards in Virginia state and federal courts. This Note explains the procedure for confirming an arbitration award in Virginia and the grounds on which a party may challenge enforcement under Virginia and federal law, including the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the Federal Arbitration Act (FAA), and Virginia arbitration law, including the Virginia Uniform Arbitration Act (VUAA). This Note also briefly explains the procedure for vacating, modifying, and correcting an arbitral award in Virginia.

SCOPE OF THIS NOTE

The prevailing party in an arbitration may need to ask a court to confirm the award to turn it into an enforceable judgment if the loser refuses to pay or voluntarily comply. In the arbitration context, enforcement generally refers to judicial confirmation, modification, or correction of an arbitration award and entry of a judgment on it.

This Note explains how a party may enforce an arbitration award in Virginia state or federal court. It describes the relevant state and federal statutes, including the Virginia Uniform Arbitration Act (VUAA), jurisdictional and venue considerations, the procedure for confirming an award in state and federal court, and the potential challenges to enforcement. This Note also briefly explains the legal standards and procedure for vacating, modifying, correcting, or appealing an arbitration award in Virginia state or federal court.

This Note does not cover the mechanics of debt collection once a party obtains a judgment. For information about enforcing a federal judgment, see Practice Note, Enforcing Federal Court Judgments: Basic Principles ([1-531-5966](#)).

For more information about enforcing or challenging arbitration awards generally, see Enforcing or Challenging Arbitration Awards in the US Toolkit ([w-002-9420](#)).

STATUTORY FRAMEWORK

A party seeking to enforce an arbitration award in Virginia must determine which law governs the confirmation proceeding. There are several choices, including:

- The Federal Arbitration Act (FAA) (see Federal Arbitration Act).
- Virginia arbitration law, including the VUAA (see Virginia Arbitration Law).

FEDERAL ARBITRATION ACT

US arbitration law greatly favors the enforcement of arbitration awards, including those rendered outside US territory. The FAA is the federal statute that governs arbitration. The FAA:

- Governs domestic US arbitrations and applies to maritime disputes and contracts involving commerce, which is defined broadly (9 U.S.C. §§ 1 to 16) (Chapter 1).
- Implements the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), subject to reciprocity and commercial reservations (9 U.S.C. §§ 201 to 208) (Chapter 2).
- Implements the Inter-American Convention on International Commercial Arbitration (Panama Convention) (9 U.S.C. §§ 301 to 307) (Chapter 3).

The FAA applies to an exceedingly broad range of awards (see *Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52 (2003)). Together with the New York Convention, the FAA covers the enforcement of most arbitral awards in the US. The FAA applies to arbitrations even if the contract containing the arbitration clause also contains a choice of law provision specifying that state law governs that contract.

Therefore, if the parties want Virginia law to govern enforcement of their arbitration agreement or award, they must expressly state so in the contract (see *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 590 (2008)).

For more information on the FAA, see Practice Note, Understanding the Federal Arbitration Act ([0-500-9284](#)).

Domestic Arbitrations Under FAA Chapter 1

Chapter 1 of the FAA applies to arbitrations and awards that involve:

- Maritime matters.
- Interstate or foreign commerce.

(9 U.S.C. § 2.)

For more information on enforcing domestic arbitration awards under Chapter 1 of the FAA, see Practice Note, Enforcing Arbitration Awards in the US: Enforcement of Arbitration Awards Under Chapter 1 of the FAA for Non-New York Convention Awards ([9-500-4550](#)).

New York Convention

Chapter 2 of the FAA implements the New York Convention and provides federal court jurisdiction for the enforcement of international awards that are governed by the New York Convention (9 U.S.C. §§ 201 to 208). The New York Convention applies to arbitration agreements and awards arising out of a legal commercial relationship, whether or not contractual, including a transaction, contract, or agreement described in Chapter 1 of the FAA (9 U.S.C. § 2). The New York Convention applies to international disputes, meaning disputes that involve non-US parties or property, even if the arbitration is held in the US (see *Bergesen v. Joseph Muller Corp.*, 710 F.2d 928, 932 (2d Cir. 1983)).

The statute does not deem an agreement arising out of a relationship entirely between US citizens to fall under the New York Convention unless that relationship:

- Involves property located abroad.
- Contemplates performance or enforcement abroad.
- Has some other reasonable relation to one or more foreign states.

(9 U.S.C. § 202.)

If there is a conflict between the New York Convention and the FAA, the New York Convention applies (9 U.S.C. § 208). An arbitration award issued in a country that is a signatory to the New York Convention is generally enforceable in the US, subject to the New York Convention's provisions for refusal of enforcement and recognition (see Article, Fifty years of the New York Convention on Arbitral Awards: success and controversy ([3-384-4388](#))).

For more information on enforcing international arbitration awards under the New York Convention, see Practice Note, Enforcing Arbitration Awards in the US: Enforcement of Arbitration Awards Under Chapter 2 of the FAA Implementing the New York Convention ([9-500-4550](#)).

The Panama Convention

The Panama Convention applies to arbitrations arising from a commercial relationship between citizens of nations that have signed the Panama Convention if, with certain exceptions, the parties

are not all US citizens (9 U.S.C. §§ 301 to 307). Chapter 3 of the FAA incorporates the Panama Convention into US law (9 U.S.C. §§ 203 and 302). If both the Panama Convention and the New York Convention apply to an international arbitration, the New York Convention controls unless:

- The parties expressly agree that the Panama Convention applies.
- A majority of the parties to the arbitration agreement are citizens of a nation or nations that:
 - have ratified or acceded to the Panama Convention; and
 - are member states of the Organization of American States. (9 U.S.C. § 305.)

Because parties most often enforce arbitration awards under the New York Convention or the FAA's domestic arbitration provisions, this Note does not provide a detailed analysis of the Panama Convention.

VIRGINIA ARBITRATION LAW

The public policy of Virginia favors arbitration (*TM Delmarva Power, L.L.C. v. NCP of Va., L.L.C.*, 557 S.E.2d 199, 202 (Va. 2002)). Virginia's arbitration law, codified in Chapter 21 of Title 8.01 of the Virginia Code, consists of:

- Article 1, which sets out the general provisions identifying who may submit a dispute to arbitration (Va. Code Ann. §§ 8.01-577 to 8.01-581.06).
- Article 2, which sets out the VUAA (Va. Code Ann. §§ 8.01-581.01 to 8.01-581.016).

The VUAA is based on the Uniform Arbitration Act of 1956, which the National Conference of Commissioners on Uniform State Laws revised in 2000 when it promulgated the Revised Uniform Arbitration Act (RUAA). To date, the Virginia legislature has not introduced legislation to adopt the RUAA. For more information on the RUAA and a list of states that have adopted it, see Practice Note, Revised Uniform Arbitration Act: Overview ([w-004-5167](#)).

INTERPLAY BETWEEN FEDERAL AND VIRGINIA ARBITRATION LAW

Federal law preempts conflicting state law only "to the extent that it stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" (*Volt Info. Scis., Inc. v. Bd. of Trs.*, 489 U.S. 468, 476-77 (1989) (there is no federal policy favoring arbitration under a certain set of procedural rules; the federal policy behind the FAA is simply to ensure that arbitration agreements are enforceable); see *Chorley Enters., Inc. v. Dickey's Barbecue Rests., Inc.*, 807 F.3d 553, 570 (4th Cir. 2015)).

The FAA governs the construction of an arbitration agreement unless the agreement expressly provides that state law governs (see *Baltimore County v. Balt. Cty. Deputy Sheriffs*, 2016 WL 687503, at *4 (Md. Ct. Spec. App. Feb. 18, 2016); *Porter Hayden Co. v. Century Indem. Co.*, 136 F.3d 380, 383-84 n.6 (4th Cir. 1998); see also *Saturn Distrib. Corp. v. Williams*, 905 F.2d 719, 727 (4th Cir. 1990) (parties may incorporate state law restrictions into their arbitration agreement that would otherwise be preempted by the FAA)). If the arbitration clause is silent about choice of law, the FAA applies to the arbitration and award even if the contract contains a choice of law provision specifying that state law governs that contract. Therefore,

if the parties want Virginia law to govern enforcement of their arbitration agreement or award, they must expressly state so in the arbitration clause of the contract (see *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 590 (2008); *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 60 (1995)).

Although the FAA's substantive provisions apply regardless of whether a party seeks enforcement in state or federal court, the FAA's procedural provisions do not preempt state procedures in Virginia state courts (see *Trs. of Asbury United Methodist Church v. Taylor & Parrish, Inc.*, 452 S.E.2d 847, 852 (Va. 1995); *Marks v. Marks*, 548 S.E.2d 919, 922 (Va. Ct. App. 2001)). Therefore, counsel should carefully consider the differences between state and federal procedure before filing a petition for confirmation.

CONFIRMING AWARDS

To confirm an arbitration award under either the FAA or Virginia law, a party must move for confirmation in a court of competent jurisdiction (9 U.S.C. § 9; Va. Code Ann. § 8.01-581.09). Because it is intended to be a summary, expedited proceeding, a confirmation proceeding usually is faster than a typical lawsuit on the merits, especially if no party challenges the award.

CONFIRMING AWARDS UNDER THE FAA

Section 9 of the FAA governs the confirmation of arbitral awards. For the FAA to apply to the enforcement proceedings, the parties' agreement must state that a court may enter judgment on the award (9 U.S.C. § 9).

Standard for Confirmation Under the FAA

The court must confirm the award unless it finds grounds to vacate, modify, or correct the award (9 U.S.C. § 9). A federal court has no jurisdiction to vacate an arbitration award simply because it may reach a different conclusion on the same facts (see *Long John Silver's Rest. v. Cole*, 514 F.3d 345, 349 (4th Cir. 2008) (citing *United Paperworks Int'l Union v. Misco, Inc.*, 484 U.S. 29, 38 (1987))). As long as an arbitrator arguably construes or applies the parties' contract in rendering the award, the court may not vacate the award (see *Upshur Coals Corp. v. United Mine Workers of Am., Dist. 31*, 933 F.2d 225, 229 (4th Cir. 1991)). A court's full scrutiny of an arbitration award would frustrate the purpose of arbitration in providing a speedy and inexpensive resolution of disputes (see *MCI Constructors, LLC v. City of Greensboro*, 610 F.3d 849, 857 (4th Cir. 2010)).

Federal Jurisdiction

Although the FAA is federal substantive law that requires parties to honor arbitration agreements, Chapter 1 of the FAA does not create any independent federal subject matter jurisdiction (see *Southland Corp. v. Keating*, 465 U.S. 1, 16 n.9 (1984) (citing *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 25 n.32 (1983))). Before a federal court may enforce an award under Chapter 1 of the FAA, the petitioner must show that the court has either:

- Diversity jurisdiction.
- Federal question jurisdiction.

(See *Vaden v. Discover Bank*, 556 U.S. 49, 65-66 (2009)).

Courts are split on whether they may "look through" to the arbitration claims in determining subject matter jurisdiction. Some courts have held that, in light of the reasoning in *Vaden*, courts may look through to the underlying arbitration claims to determine if a petition to confirm, vacate, or modify an arbitration award under § 9, 10, or 11 of the FAA presents a federal question (see *Doscher v. Sea Port Grp. Sec., LLC*, 832 F.3d 372, 388 (2d Cir. 2016)). In other courts, the fact that the underlying arbitration involved federal claims does not confer federal jurisdiction for the petition to confirm or vacate (see *Goldman v. Citigroup Global Mkts. Inc.*, 834 F.3d 242, 353-55 (3d Cir. 2016); *Magruder v. Fid. Brokerage Servs. LLC*, 818 F.3d 285, 288 (7th Cir. 2016)). The US Court of Appeals for the Fourth Circuit has not yet ruled on this issue, but at least one district court in the circuit has held that the court may not determine whether it has federal question jurisdiction based on the claims asserted in the underlying arbitration (see *Crews v. S & S Serv. Ctr. Inc.*, 848 F. Supp. 2d 595, 599-600 (E.D. Va. 2012)).

The New York and Panama Conventions provide federal courts with subject matter jurisdiction to enforce foreign arbitration awards to which these conventions apply (9 U.S.C. §§ 203 and 302). These conventions provide federal subject matter jurisdiction for international arbitrations even if the arbitrations occur in the US (see *Indus. Risk Insurers v. M.A.N. Gutehoffnungshütte GmbH*, 141 F.3d 1434, 1441 (11th Cir. 1998)).

To establish personal jurisdiction in cases involving foreign awards, the petitioner may invoke personal jurisdiction, in rem jurisdiction, or quasi in rem jurisdiction as applicable if their use under the circumstances also comports with due process standards.

Where applicable, a court also may base jurisdiction over the defendant on an aggregation of state or national contacts under Federal Rule of Civil Procedure (FRCP) 4(k)(2). The moving party must serve international parties under FRCP 4, because neither the FAA nor the New York Convention provides direction on how to properly serve international parties. Under the 2016 amendment to FRCP 4(m), the 90-day time limit for serving process does not apply to service abroad on corporations, partnerships, or associations. For information on serving international parties, see Practice Note, International Litigation: US Laws Governing Cross-Border Service of Process ([9-531-3925](#)).

Under the FAA, once the moving party serves a notice of a petition for confirmation on all parties, the federal court has personal jurisdiction over those parties (9 U.S.C. § 9).

Federal Venue

Arbitration agreements may contain forum selection clauses specifying the venue for an arbitration award's enforcement. The FAA, the New York Convention, and the Panama Convention generally give effect to the forum the parties specify (9 U.S.C. §§ 9, 204, and 302).

For domestic arbitrations under Chapter 1 of the FAA, a party seeking enforcement must file the application for judicial confirmation in either:

- The court the parties specified for entering judgment on the award in the arbitration agreement, if any.

- Any court in the district where the arbitrator issued the award, if the arbitration agreement does not identify a particular court for entry of judgment on the award.

(9 U.S.C. § 9.)

If the parties consent to final and binding arbitration and fully participate in the arbitration process, the courts deem their consent and participation to evidence their consent to having a court confirm the resulting award. In the Fourth Circuit, courts deem parties to consent to the entry of judgment even if the arbitration agreement does not expressly provide for entry of judgment, if:

- The parties participate in the arbitration.
- The parties' agreement requires arbitration under institutional rules that provide for a final and binding award.

(See *Rainwater v. Nat'l Home Ins. Co.*, 944 F.2d 190, 192-94 (4th Cir. 1991); *Qorvis Commc'ns, LLC v. Wilson*, 549 F.3d 303 307-08 (4th Cir. 2008).)

Under the New York and Panama Conventions, a party may file a petition for judicial confirmation in either:

- Any court in which the parties could have brought the underlying dispute if there had been no agreement to arbitrate.
- A location specified for arbitration in the arbitration agreement if that location is within the US.

(9 U.S.C. §§ 204 and 302.)

Timing Under the FAA

A party to the arbitration may apply for an order confirming the award within one year after the arbitrator makes the award (9 U.S.C. § 9). The federal courts of appeals are split on whether this time limitation is mandatory. Some courts, including the US Court of Appeals for the Second Circuit, have interpreted Section 9 as a strictly enforced, one-year statute of limitations (see *Photopaint Techs., LLC v. Smartlens Corp.*, 335 F.3d 152 (2d Cir. 2003)). Other courts, including the Fourth Circuit, have relied on the ordinary meaning of "may" to conclude that the one-year limitations period is permissive (*Sverdrup Corp. v. WHC Constructors, Inc.*, 989 F.2d 148 (4th Cir. 1993); *Val-U Constr. Co. of S.D. v. Rosebud Sioux Tribe*, 146 F.3d 573 (8th Cir. 1998)).

For international arbitration awards, any party seeking confirmation of an award under the New York or Panama Conventions must file its application with the court within three years from the date the arbitrator makes the award (9 U.S.C. §§ 207 and 302).

Confirmation Procedure in Federal Court

A party applies to confirm an award by serving and filing in the federal district court either:

- A petition to confirm. A party uses a petition if there is no lawsuit already pending about the arbitration. A petition to confirm an arbitration award allows the petitioner to request that the court confirm an award without first filing a complaint. When a party commences an action in federal court by filing a petition without an accompanying complaint, the court treats the petition as a motion to confirm an arbitration award. (9 U.S.C. § 6; *D.H. Blair & Co. v. Gottdiener*, 462 F.3d 95 (2d Cir. 2006).)

- A motion to confirm. If a lawsuit involving the arbitration is already pending (for example, because a party moved to compel or stay arbitration at the start of the case), a party seeking to confirm the arbitration award does not need to start a new proceeding by filing a petition to confirm. The party instead files a motion to confirm the award in the same case.

The party seeking confirmation must also file with the petition or motion:

- The arbitration agreement, including the parties' agreement, if any, on:
 - selecting an arbitrator; and
 - any extension of time, such as an agreement extending the deadline for the arbitrator to issue the award.
- A copy of the award.
- Any documents a party submitted in connection with any application to modify or correct the award.

The moving party must serve notice of the confirmation application on the adverse party, at which point the court assumes jurisdiction over the adverse party as though it had appeared generally in the proceeding. If the adverse party is:

- A resident of the district in which the arbitrator made the award, the moving party must serve either the party or its attorney in the same manner that a party must service notice of a motion in that court.
- Not a resident of the district, the moving party may serve notice by the marshal of any district in which the adverse party is located in the same way as it serves any other process of court.

(9 U.S.C. § 9.)

An application to confirm an arbitration award is a summary proceeding. The court may hear argument but does not hold a hearing with witnesses. Parties do not present evidence. The court confirms the arbitration award based on the parties' submissions and argument, if any. If no party challenges the enforcement and the court finds no grounds for modifying or vacating the award, the court confirms it and enters judgment (see *Vacating an Award Under the FAA*).

For more information on confirming an arbitration award in federal court, see Practice Note, *Enforcing Arbitration Awards in the US: General Confirmation Procedure: Application by Motion or Petition* ([9-500-4550](#)). For a sample petition to confirm an arbitration award in federal court with integrated notes and detailed drafting tips, see Standard Document, *Petition to Confirm Arbitration Award (Federal)* ([w-000-5309](#)). For a sample petition to confirm a foreign arbitral award in federal court with integrated notes and detailed drafting tips, see Standard Document, *Petition to Confirm Foreign Arbitration Award (Federal)* ([w-000-7469](#)).

For detailed information on the technical requirements for moving to confirm an arbitration award in the US District Court for the Eastern District of Virginia, see E.D. Va. Formatting Checklist: *Motion to Confirm Arbitration Award* ([6-585-2845](#)).

CONFIRMING AWARDS UNDER THE VUAA

A party seeking to confirm an arbitration award in Virginia state court must file a motion to confirm (Va. Code Ann. § 8.01-581.09).

Standard for Confirmation Under the VUAA

Virginia courts construe an arbitration award liberally and uphold it whenever possible (see *Trs. of Asbury United Methodist Church*, 452 S.E.2d at 852; *Howerin Residential Sales Corp. v. Century Realty of Tidewater, Inc.*, 365 S.E.2d 767, 770 (Va. 1988)).

Under the VUAA, a court must grant a motion to confirm an arbitration award unless another party moves to vacate, modify, or correct the award within 90 days after the arbitrator issues the award (Va. Code Ann. § 8.01-581.09; see *Vacating an Award Under the VUAA and Modifying or Correcting an Award Under the VUAA*).

Virginia State Court Jurisdiction

Under the VUAA, parties may move for judicial assistance involving an arbitration in the state circuit court or general district court if the court has jurisdiction over the subject matter of the underlying controversy, regardless of where the parties held the arbitration hearing (Va. Code Ann. § 8.01-581.014; see *Sohn v. Wasabi Sys., Inc.*, 2009 WL 7388837, at *1 (Va. Cir. Ct. Jan. 18, 2009)).

Virginia Venue

Under the VUAA, venue for a motion to confirm or vacate an arbitration award is proper in the circuit or general district court of the city or county where the parties either:

- Agreed to hold the hearing.
- Held the hearing.

(Va. Code Ann. § 8.01-581.015.)

Virginia law recognizes and enforces forum selection clauses (Va. Code Ann. § 8.01-581.015). Therefore, the parties' agreement on a forum dictates venue for a motion to vacate or confirm an arbitration award.

If the parties have no forum selection agreement and did not hold the arbitration hearing in Virginia, the general Virginia venue statutes govern venue for an application to confirm or vacate an arbitration award (Va. Code Ann. § 8.01-581.015). Under Virginia's venue statutes, there are both mandatory and permissive venues, depending on the type of action and parties (Va. Code Ann. §§ 8.01-261 and 8.01-262).

The mandatory venue statute usually applies when a party is a government actor or a fiduciary (Va. Code Ann. § 8.01-261). The permissive venue statute applies to most cases. The permissive venue statute generally determines venue based on, among other things:

- The defendant's residence.
- The defendant's principal place of business.
- The location of property in dispute.
- The location of witnesses and other parties.

(Va. Code Ann. § 8.01-262.)

Timing Under the VUAA

The VUAA does not impose a deadline by which a party must move to confirm an arbitration award. A party may move to confirm the award at any time after the arbitrator issues the award (Va. Code Ann. § 8.01-581.09).

Confirmation Procedure Under the VUAA

A party moves to confirm an arbitration award by submitting a motion, which the court hears in the same manner and on the same notice as it hears any motion (Va. Code Ann. §§ 8.01-581.09 and 8.01-581.13). Unless the parties agree otherwise, when a party's motion to confirm is the initial application to a court involving the arbitration, the moving party must serve notice to the other party in the same manner provided by law for service of a summons in a civil action (Va. Code Ann. § 8.01-581.013).

Although the VUAA does not identify the specific papers the movant must file, the motion to confirm an arbitration award generally should:

- Attach a copy of:
 - the arbitration agreement; and
 - the award.
- Identify the parties.
- State the relief the movant seeks.

Once the court issues an order that confirms, modifies, or corrects an arbitration award under the VUAA, the court must enter judgment on the order. The judgment is as enforceable as any other judgment. (Va. Code Ann. § 8.01-581.012.)

VACATING, MODIFYING, OR CORRECTING AN AWARD

Both the FAA and the VUAA permit a party to challenge, or request modification or correction of, an arbitration award. For detailed information on vacating, modifying, or correcting arbitration awards in federal court, see Practice Note, *Vacating, Modifying, or Correcting an Arbitration Award in Federal Court* ([w-000-6340](#)). For a sample petition to vacate an arbitration award in federal court with integrated notes and detailed drafting tips, see Standard Document, *Petition to Vacate, Modify, or Correct Arbitration Award (Federal)* ([w-000-5608](#)).

VACATING AWARDS UNDER THE FAA

Standard for Vacating Awards Under the FAA

Under the FAA, a court may vacate an award if:

- A party obtained an award by corruption, fraud, or undue means.
- The arbitrator was partial or corrupt.
- The arbitrator engaged in misconduct by:
 - refusing to postpone the hearing on sufficient cause shown;
 - refusing to hear evidence pertinent and material to the controversy; or
 - any other behavior that has prejudiced the rights of any party.
- The arbitrator exceeded his powers or so imperfectly executed them that he did not make a mutual, final, and definite award on the matters the parties submitted to arbitration.

(9 U.S.C. § 10.)

Some US courts also have held that courts may vacate arbitral awards governed by the FAA on the common law ground of manifest disregard of the law. However, the continued viability of this holding as a ground for vacatur is uncertain after the US Supreme Court's decision in *Hall Street Associates LLC v. Mattel, Inc.*, which held that:

- The FAA lists the exclusive grounds for refusing to enforce an award, and it does not list manifest disregard of the law as one of the grounds.
- Parties may not agree to expand the scope of judicial review of arbitral awards.

(552 U.S. 576, 586 (2008).)

The federal courts of appeals are split on whether manifest disregard remains a proper ground for vacatur after *Hall Street*, but the Fourth Circuit continues to recognize manifest disregard of law as a ground for vacatur (see *Dewan v. Walia*, 544 F. App'x 240, 246 n.5 (4th Cir. 2013) (citing *Wachovia Sec., LLC v. Brand*, 671 F.3d 472, 478 (4th Cir. 2012))).

Although the New York Convention does not expressly provide for vacating awards, it provides grounds for opposing the enforcement of awards. These grounds include challenges to the validity of:

- The award.
- The arbitral panel.
- The arbitration agreement.
- The arbitration process.

(New York Convention, Art. V(1), (2).)

For information on opposing enforcement of awards under the New York Convention, see Practice Note, Enforcing Arbitration Awards in the US: Defending Against Enforcement ([9-500-4550](#)).

Procedure to Vacate Awards Under the FAA

A party seeking to vacate an arbitral award under the FAA must serve an application to vacate on the adverse party or its attorney within three months after the arbitrator delivers the award (9 U.S.C. § 12).

If a party previously filed a lawsuit relating to the arbitration, such as a proceeding to compel arbitration or confirm the award, the party seeking to vacate the award must file the vacatur application as a motion in the same case (see *IDS Life Ins. Co. v. Royal All. Assocs., Inc.*, 266 F.3d 645, 653 (7th Cir. 2001)).

If there is no lawsuit already pending involving the arbitration, a party seeking to vacate, modify, or correct an arbitration award must commence an action by filing a petition, as required by a court before confirming the award (see Procedure for Confirming an Award in Federal Court).

The application to vacate is a summary proceeding. The court may hear oral argument but does not hold a hearing with witnesses. The court decides the application on the parties' submissions and argument, if any. If the court finds sufficient grounds for vacatur and the time to issue the award, as required under the agreement, has not yet expired, the court may direct a rehearing by the same arbitrators (9 U.S.C. § 10(b)).

VACATING AWARDS UNDER THE VUAA

Standard for Vacating Awards Under the VUAA

Under the VUAA, the party attacking an arbitrator's award bears the burden of proving the invalidity of the award (see *Trs. of Asbury United Methodist Church*, 452 S.E.2d at 852).

The court may vacate an arbitration award under the VUAA if the party seeking vacatur shows that:

- The award was procured by fraud or corruption.
- The arbitrator was partial and biased.
- The arbitrator exceeded his powers.
- The arbitrator:
 - refused to postpone the hearing;
 - refused to hear evidence material to the controversy; or
 - conducted the hearing in a way that prejudiced the rights of a party.
- There was no arbitration agreement.

(Va. Code Ann. § 8.01-581.010.)

Procedure to Vacate Under the VUAA

A party requests vacatur of an award under the VUAA by filing a motion to vacate. The party seeking to vacate an award must file the motion to vacate within 90 days after the arbitrator issues the award. However, if the grounds to vacate are corruption, fraud, or other undue means, the party challenging the award must file the motion within 90 days after the movant learns or should have learned of those grounds. (Va. Code Ann. § 8.01-581.010.)

The procedure is generally the same as the procedure to confirm an arbitration award (see Procedure for Confirming an Award Under the VUAA).

If the court denies the motion to vacate and there is no pending motion to modify or correct the award, the court must confirm the award (Va. Code Ann. § 8.01-581.010). If the court vacates the award on any ground other than that there is no arbitration agreement, the court may order a rehearing before either:

- The same arbitrator.
- A new arbitrator, if the court vacates the award on the grounds of arbitrator misconduct.

(Va. Code Ann. § 8.01-581.010.)

MODIFYING OR CORRECTING AWARDS UNDER THE FAA

Standard for Modifying or Correcting Awards Under the FAA

A court may modify or correct an award under the FAA if:

- There was an evident material mistake in:
 - the calculation of figures; or
 - the description of any person, thing, or property the award references.
- The arbitrator entered an award on a matter that the parties did not submit to arbitration, unless it does not affect the merits of the decision on the matter that the parties submitted to arbitration, in which case the court confirms the award uncorrected.

- There is an issue in the award's form that does not affect the controversy's merits.

(9 U.S.C. § 11.)

The FAA also authorizes courts to modify or correct an award to effect the award's intent and promote justice between the parties (9 U.S.C. § 11).

Neither the New York Convention nor the Panama Convention identifies any grounds for modifying or correcting an award. Courts may have some leeway under the New York Convention, but only if the modification or correction does not interfere with the New York Convention's clear preference for confirming awards (see *Admart AG v. Stephen & Mary Birch Found., Inc.*, 457 F.3d 302, 309 (3d Cir. 2006)).

Procedure to Modify or Correct Under the FAA

A party seeking to modify or correct an award must serve an application on the adverse party or its attorney within three months after the arbitrator's filing or delivery of the award (9 U.S.C. § 12). The proceedings are substantially similar to the proceedings on an application to vacate (see Procedure for Vacating an Award Under the FAA).

MODIFYING OR CORRECTING AWARDS UNDER THE VUAA

The VUAA permits a party to ask the court to modify or correct an arbitration award.

Standard for Modifying or Correcting Awards Under the VUAA

Under the VUAA, a court may modify or correct an award on the grounds that:

- There was an evident miscalculation in figures or an evident mistake in the description of any person, thing, or property.
- The arbitrator issued an award on a matter that the parties did not submit to arbitration, if the court can correct the award without affecting the merits of the decision.

- The award is imperfect in a matter of form not affecting the merits of the controversy.

(Va. Code Ann. § 8.01-581.011.)

Procedure for Modifying or Correcting Awards Under the VUAA

A party asks a court to modify or correct an award under the VUAA by filing a motion within 90 days after the arbitrator issues the award (Va. Code Ann. § 8.01-581.011).

The procedure is generally the same as the procedure to confirm an arbitration award (see Procedure for Confirming an Award Under the VUAA).

In the same filing, the party also may ask the court in the alternative to vacate the award (Va. Code Ann. § 8.01-581.011; see Vacating an Award Under the VUAA). If the court grants the motion to modify or correct, the court must modify or correct the award and confirm it as modified or corrected. If the court denies the motion, the court must confirm the uncorrected award. (Va. Code Ann. § 8.01-581.011.)

AWARDS AND ORDERS SUBJECT TO APPEAL

Both the FAA and the VUAA permit a party to appeal certain arbitration orders, including:

- An order:
 - confirming an award or denying a summary action to confirm an award;
 - modifying or correcting an award; or
 - vacating an award without directing a rehearing.
- Any final decision under the FAA, including a court's entry of judgment.

(9 U.S.C. § 16; Va. Code Ann. § 8.01-581.016.)

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