

# Compelling and Staying Arbitration in Michigan

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A Practice Note explaining how to request judicial assistance in Michigan state court to compel or stay arbitration. This Note describes the issues counsel should consider before seeking judicial assistance, and explains the steps counsel must take to obtain a court order compelling or staying arbitration in Michigan.

## SCOPE OF THIS NOTE

When a party commences a lawsuit in defiance of an arbitration agreement, the opposing party may need to seek a court order to stay the litigation and compel arbitration. When a party starts an arbitration proceeding in the absence of an arbitration agreement, the opposing party likewise may need to seek a court order staying the arbitration. This Note describes the key issues counsel should consider when asking a court to compel or stay arbitration in Michigan, including the applicable law, threshold factual issues, and procedural concerns.

For information on compelling or staying arbitration in federal courts, see Practice Note, Compelling and Enjoining Arbitration in US Federal Courts ([6-574-8707](#)).

## PRELIMINARY CONSIDERATIONS WHEN COMPELLING OR STAYING ARBITRATION

Before seeking judicial assistance to compel or stay arbitration, parties must determine whether the Federal Arbitration Act (FAA) or the Michigan Uniform Arbitration Act (MUAA) applies to the arbitration agreement (see Determine the Applicable Law). Parties must also consider:

- The threshold factual issues courts consider when evaluating a request to compel or stay arbitration (see Threshold Issues for the Court to Decide).
- The issues specific to requests to compel arbitration (see Considerations When Seeking to Compel Arbitration).

- The issues specific to requests to stay arbitration (see Considerations When Seeking to Stay Arbitration).
- Whether to apply for provisional remedies such as a preliminary injunction when seeking to compel or stay arbitration (see Considerations When Seeking Provisional Remedies).

## DETERMINE THE APPLICABLE LAW

When evaluating a request for judicial assistance in arbitration proceedings, the court must determine whether the arbitration agreement is enforceable under the FAA or MUAA.

### The FAA

An arbitration agreement falls under the FAA if the agreement:

- Is in writing.
- Relates to a commercial transaction or maritime matter.
- States the parties' agreement to arbitrate a dispute.

(9 U.S.C. § 2.)

The FAA applies to all arbitrations arising from maritime transactions or to any other contract involving "commerce," a term the courts define broadly. Parties may, however, contemplate enforcement of their arbitration agreement under state law (see *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 590 (2008); *Savers Prop. & Cas. Ins. Co. v. Nat'l Union Fire Ins. Co.*, 748 F.3d 708, 715-16 (6th Cir. 2014); *Martis v. Dish Network Serv., L.L.C.*, 597 F. App'x 301, 303-04 (6th Cir. 2015) (holding that the FAA controls where the arbitration agreement stated that it was governed by both Michigan law and the FAA and the parties did not unambiguously express an intent to displace the FAA with Michigan law)).

If the agreement falls under federal law, state courts apply the FAA, which preempts conflicting state law only "to the extent that [state law] 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. of Leland Stanford Junior Univ.*, 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 also *Savers Prop. & Cas. Ins. Co.*, 748 F.3d at 715-16).

For more information on compelling arbitration when an arbitration agreement falls under the FAA, see Practice Note, *Compelling and Enjoining Arbitration in US Federal Courts: Agreement Must Fall Under Federal Arbitration Act* ([6-574-8707](#)).

### Michigan State Law

The MUAA, codified at MCL §§ 691.1681 to 691.1713, governs arbitral proceedings started on or after July 1, 2013, regardless of the date of the arbitration agreement (MCL § 691.1683).

The MUAA provisions regarding compelling and staying arbitration do not apply to arbitrations between members of a voluntary organization, such as a labor union, if the organization both:

- Requires arbitration of member disputes.
- Administers the arbitration.

(MCL § 691.1683(2).)

The MUAA is based on the Revised Uniform Arbitration Act (RUAA), which is similar to the FAA. For information about the RUAA and a list of the states that have adopted it, see Practice Note, *Revised Uniform Arbitration Act: Overview* ([w-004-5167](#)).

Michigan public policy favors arbitration. When considering an application to compel or stay arbitration, Michigan courts generally place the burden on the party seeking to avoid arbitration, not the party seeking to arbitrate (see *Altobelli v. Hartmann*, 884 N.W.2d 537, 543, *reh'g denied*, 881 N.W.2d 474 (2016), and *cert. denied*, 137 S. Ct. 580 (2016) (citing *McKinstry v. Valley Obstetrics–Gynecology Clinic, PC*, 405 N.W.2d 88 (1987))).

### INTERSECTION OF THE FAA AND MICHIGAN LAW

Because the FAA preempts state law only to the extent that state law contradicts federal law, the FAA does not prevent Michigan state courts from, among other things, applying state contract law to determine whether the parties have entered into an arbitration agreement (see *Altobelli*, 884 N.W.2d at 542-43 (applying Michigan contract law principles to determine scope of arbitration clause)).

If an agreement falls under the FAA, the Michigan state courts apply the federal standard for arbitrability when determining whether to compel or stay arbitration, rather than evaluating these threshold questions under Michigan state law (see *Southland v. Keating Corp.*, 465 U.S. 1, 12-13 (1984); see also Practice Note, *Compelling and Enjoining Arbitration in US Federal Courts: Arbitrability* ([6-574-8707](#))).

Michigan state courts apply state law to determine enforceability of the arbitration agreement if, for example, the agreement:

- Does not affect interstate commerce (see Practice Note, *Compelling and Enjoining Arbitration in US Federal Courts: Agreements Covered by Chapter 1 of the FAA* ([6-574-8707](#))).
- Contains a choice of law provision specifying that Michigan law governs the arbitration agreement and its enforcement (see *Savers Prop. & Cas. Ins. Co.*, 748 F.3d at 715-16; *Martis*, 597 F. App'x at 303-04).

For additional explanation of various states' procedural rules relating to arbitration, see Practice Note, *Choosing an Arbitral Seat in the US* ([6-574-8707](#)).

### THRESHOLD ISSUES FOR THE COURT TO DECIDE

When deciding an application to stay or compel arbitration, the court may not rule on the merits of the claims underlying the arbitration. Instead, the court plays a gatekeeping role that is limited to determining whether:

- There is a valid arbitration agreement (see *Valid Arbitration Agreement*).
- The scope of the agreement covers the parties' dispute (see *Scope of Arbitration Agreement*).
- The parties' agreement expressly exempts the specific dispute from the scope of the arbitration clause.

(MCL § 691.1686(2); see also *Spence Bros. v. Kirby Street, Inc.*, 2017 WL 1010471, at \*3 (Mich. App. Mar. 14, 2017); *Detroit Auto. Inter-Insurance Exchange v. Reck*, 282 N.W.2d 292, 294 (Mich. App. 1979).)

A party may raise any of these questions as a basis for either:

- An application to compel or stay arbitration.
- A defense in an opposition to an application to compel or stay.

Once the court has ruled on these issues, all remaining questions in the dispute, are for the arbitrator to decide, including procedural issues such as:

- The parties' satisfaction of any conditions precedent to arbitration.
- The enforceability of the contract containing the arbitration clause.
- Whether any party waived the right to arbitrate.

(MCL § 691.1686(3); see *Issues for the Arbitrator to Decide*.)

### VALID ARBITRATION AGREEMENT

Under the MUAA, an arbitration agreement is valid, enforceable, and irrevocable unless there is a legal or equitable ground for revocation of the agreement under Michigan law. Like any contract, an arbitration agreement is unenforceable unless it is a contract that binds both parties (see *Heurtebise v. Reliable Business Computers*, 550 N.W.2d 243, 247 (1996); *Miller-Webb v. Genesee County*, 2016 WL 1579016, at \*3 (Mich. App. Apr. 19, 2016)).

The general state contract defenses that may invalidate an arbitration agreement include:

- Fraud.
- Duress.
- Unconscionability.

(See *Elete Enter. L.L.C. v. Gen. Steel Corp.*, 2008 WL 4649113, at \* 4 (Mich. App. Oct. 21, 2008).)

### SCOPE OF ARBITRATION AGREEMENT

When interpreting an arbitration agreement, Michigan courts apply state contract principles to determine the parties' intent based on the plain and ordinary meaning of the agreement's language (see *Altobelli*, 884 N.W.2d at 542; *Scodeller v. Compo*, 2017 WL 2791452, at \*2 (Mich. App. Jun. 27, 2017)).

Michigan courts construe an arbitration agreement to determine:

- The scope of the matters the parties intended to submit to arbitration.

- What matters, if any, the parties agreed to exempt from the arbitration agreement.

(See *In re Nestorovski Estate*, 769 N.W.2d 720, 735 (2009); *Scodeller*, 2017 WL 2791452, at \*2.)

### ISSUES FOR THE ARBITRATOR TO DECIDE

Once a court determines a dispute is covered by a valid arbitration agreement, the arbitrator determines all substantive issues in dispute as well as any remaining procedural issues, such as issues involving:

- Conditions precedent.
- Timeliness of the claim under the applicable statute of limitations.
- Notice.
- Laches.
- Estoppel.
- Waiver.

(See *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 85 (2002) (quoting RUA, § 6, cmt. 2; see also *Bienenstock & Assoc., Inc. v. Lowry*, 887 N.W.2d 237, 242-43 (Mich. App. 2016).)

Under Michigan law, it is the job of the court, not the arbitrator, to determine whether a dispute is arbitrable. Courts have questioned whether parties may contractually divest the court of jurisdiction to determine the arbitrability of a claim by agreeing that the arbitrator decides this issue. (See *C&L Ward Bros. v. Outsource Sols., Inc.*, 2014 WL 4347502, at \*5 (Mich. App. Sept. 2, 2014).)

### CONSIDERATIONS WHEN PREPARING THE APPLICATION

Before making an application to compel or stay arbitration in a Michigan court, counsel should take into account several factors.

#### CONSIDERATIONS WHEN SEEKING TO COMPEL ARBITRATION

Under the MUAA, a party may ask the court to compel arbitration when the opposing party commences a lawsuit or otherwise expresses the intention to avoid arbitration of a dispute even though the dispute is subject to a valid arbitration agreement (MCL § 691.1687).

If there is no lawsuit pending, a party may ask a court to compel the other party to arbitrate the dispute by filing and serving a complaint with an initial motion seeking to compel arbitration (MCL §§ 691.1685(2) and 691.1687). If there is already a lawsuit pending between the parties, the party seeking to compel arbitration submits a motion to compel in the pending litigation (MCL §§ 691.1685(2) and 691.1687(5)). Once a party moves to compel arbitration, the court must stay any pending court litigation of the arbitrable claims pending disposition of the motion to compel (MCL § 691.1687(6)). If the court compels arbitration, it must stay the pending litigation of any arbitrable claims (MCL § 691.1687(7)).

If the claims subject to the arbitration are severable, the court may stay only the arbitrable claims and allow the litigation of the non-arbitrable claims to proceed (MCL § 691.1687(7)).

#### CONSIDERATIONS WHEN SEEKING TO STAY ARBITRATION

If an arbitration claimant threatens or demands arbitration against a party not bound to arbitrate the dispute, the party may ask a court to stay arbitration by filing a motion.

As with motions to compel arbitration, if there is no civil action pending between the parties, a party seeking to stay arbitration must file and serve a complaint with an initial motion seeking to stay arbitration (MCL §§ 691.1685(2) and 691.1687(5)). If a civil action is pending between the parties, however, the party seeking to stay arbitration files the motion in that action (MCL §§ 691.1685(2) and 691.1687(5)).

### CONSIDERATIONS WHEN SEEKING PROVISIONAL REMEDIES

Before an arbitrator is appointed, a party may ask a court for provisional remedies in connection with an application to compel arbitration (MCL § 691.1688). Michigan law recognizes the court's jurisdiction to order preliminary injunctive relief in aid of arbitration (see *Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am. v. State*, 491 N.W.2d 855, 863, appeal denied, cause remanded sub nom. *Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am., UAW v. Dep't of Mental Health*, 486 N.W.2d 686 (1992) (court may issue injunction to preserve status quo pending arbitration); *Am. Fed'n of State, Cty. & Mun. Employees Council 25 v. City of Detroit*, 2007 WL 1342628, at \*2 (Mich. Ct. App. May 8, 2007) (same)).

After the appointment of an arbitrator, the arbitrator must decide the propriety of a provisional remedy (MCL § 691.1688(2); see also RUA § 8 cmt. 3).

A party making a motion for provisional remedies under the MUAA does not waive the right to arbitrate (MCL § 691.1688(3)).

For more information on seeking interim relief in aid of arbitration, see Practice Note, Interim, Provisional, and Conservatory Measures in US Arbitration: Seeking Interim Relief Before Courts and Arbitrators ([0-587-9225](#)).

### ADDITIONAL PROCEDURAL CONSIDERATIONS

Before commencing a litigation related to an arbitrable dispute in a Michigan court, counsel also should consider other factors that may affect the contents of the request for judicial assistance, the manner in which to bring it, and the likelihood of obtaining the desired relief. These factors include:

- Whether the court has subject matter jurisdiction over the case and a basis to exercise personal jurisdiction over the respondent (see Court Jurisdiction).
- The proper venue in which to bring the request (see Venue).
- Whether a party has waived arbitration through either explicit or implicit waiver (see Waiver).
- Whether to request discovery, which arbitration practitioners refer to as disclosure (see Disclosure When Seeking to Compel or Stay Arbitration).

#### Court Jurisdiction

Under the MUAA, Michigan courts have subject matter jurisdiction to enforce an arbitration agreement (MCL § 691.1706(1)).

Proper bases for the court to exercise personal jurisdiction over a party include:

- General jurisdiction, which applies to parties that either consent or have a presence or domicile in Michigan (MCL §§ 600.701, 600.711, 600.721, and 600.731).

- Specific or limited jurisdiction, which is based on the party's actions in Michigan giving rise to the claim (MCL §§ 600.705, 600.715, 600.725, and 600.735).

### Venue

Michigan courts generally enforce the contractual forum selection clause in a contract (MCL § 600.745(3); see *Turcheck v. Amerifund Fin. Inc.*, 725 N.W.2d 684, 689 (Mich. App. 2006); *Offerdahl v. Silverstein*, 569 N.W.2d 834, 835 (Mich. 1997)). Parties may specify in their arbitration agreement a county for conducting the arbitration.

Under the MUAA, a party can file a motion to stay or compel arbitration in the court of the county:

- The arbitration agreement specifies for the arbitration hearing.
- Where the arbitration hearing is occurring.
- Where the adverse party resides or has a place of business, if the agreement does not specify the place of the arbitration hearing and no hearing is underway.

A party can also file a motion in any Michigan county, if no other basis for venue applies. (MCL § 691.1707.)

### Waiver

Michigan courts disfavor waiver of the contractual right to arbitrate (see *Universal Academy v. Berkshire Dev., Inc.*, 2017 WL 2664789, at \*5 (Mich. App. June 20, 2017); *Madison Dist. Pub. Sch. v. Myers*, 637 N.W.2d 526, 529 (2001)). A party resisting arbitration based on the other party's alleged waiver bears a heavy burden of proof and must demonstrate the other party:

- Knew of its exiting right to arbitrate or compel arbitration.
- Acted inconsistently with the right to arbitrate.
- Caused prejudice to the party.

(See *Madison Dist.*, 637 N.W.2d at 529 (citing *Burns v. Olde Discount Corp.*, 538 N.W.2d 686 (1995)).)

A party may waive the right to arbitrate either:

- Explicitly, by affirmatively stating it will not arbitrate (see *Nexteer Auto. Corp. v. Mando Am. Corp.*, 886 N.W.2d 906, 909 (2016), appeal denied, 891 N.W.2d 474 (2017), reconsideration denied, 894 N.W.2d 550 (Mich. 2017)).
- Implicitly, by engaging in court litigation (see *Madison Dist.*, 637 N.W.2d at 529).

The more actively a party participates in litigation, the greater the risk of implicitly waiving the right to arbitrate. A party may implicitly waive its right to arbitrate by failing to demand or assert the right to arbitration when the party, for example:

- Files pleadings in court.
- Engages in litigation discovery.

(See *Madison Dist.*, 637 N.W.2d at 529-30, 533.)

### Disclosure When Seeking to Compel or Stay Arbitration

The MUAA contains no provisions on the availability of discovery before arbitration begins. Michigan courts have recognized that parties may conduct limited discovery in aid of arbitration without waiving the right to arbitrate, for example by seeking discovery regarding the existence

of an arbitration agreement (see *SCA Servs., Inc. v. Gen. Mill Supply Co.*, 341 N.W.2d 480, 483 (Mich. App. 1983) (party does not waive right to arbitrate if party conducts discovery to defend against motion to stay arbitration); *Flint Auto-Auction, Inc. v. William B. Williams Sr. Trust*, 2011 WL 5870070, at \*2 (Mich. App. Nov. 22, 2011); *City of Dearborn v. Freeman-Darling, Inc.*, 326 N.W.2d 831, 834 (1982)).

Discovery requests should therefore be limited to those documents necessary to establish or refute the existence or validity of the arbitration agreement, as opposed to information to establish or refute the underlying claim (see *Hendrickson v. Moghissi*, 404 N.W.2d 728, 733 (Mich. App. 1987); *Crown by Comfort v. Shafadeh*, 403 N.W.2d 465, 466 (1986); *Lowry v. Lauren Bienenstock & Assocs. Inc.*, 2014 WL 7338880, at \*7 (Mich. App. Dec. 23, 2014) (motion to compel arbitration granted despite claims of need for discovery where discovery unnecessary to determine issue of enforceability of agreement)).

After the arbitrator's appointment, the arbitrator controls the nature and extent of permissible discovery (MCL § 691.1697).

### APPLICATION TO COMPEL OR STAY ARBITRATION

A party asks a court to compel or stay arbitration in a Michigan state court by filing a motion. If no civil action is already pending between the two parties, the party seeking relief must first file a complaint as in other civil actions (MCL §§ 691.1685 and 691.1687; MCR 3.602(B)).

When bringing a motion to stay or compel arbitration, counsel should be familiar with:

- The procedural and formatting rules for motions (see Procedural and Formatting Rules for the Application).
- The documents necessary to bring the application to compel or stay arbitration (see Documents Required for the Motion).
- How to file and serve the documents (see Filing the Application and Serving the Application).

### PROCEDURAL AND FORMATTING RULES FOR THE APPLICATION

Counsel should be familiar with applicable procedure and formatting rules for applications in the Michigan courts. The same rules govern the formatting of motions and complaints in Michigan (MCR 1.109(C)).

Counsel also should check the relevant court websites and local rules for additional information on procedural and formatting rules.

#### Procedural Rules

Michigan's procedural rules for the filing of a motion or complaint to compel or stay arbitration are set out in:

- MCL § 691.1685 (governing requests for judicial relief under the MUAA).
- MCL § 691.1687 (governing applications to compel or stay arbitration under the MUAA).
- MCR 2.119 (governing motion practice).
- MCR 3.602(B) (governing applications to court regarding arbitration).

If there is no lawsuit pending between the parties, a party moving to compel or stay arbitration must start an action by:

- Filing and serving a complaint in the same manner as in other civil actions.

- Serving notice of an initial motion with the summons and complaint in the same manner as a summons in a civil action. (MCL § 691.1685 (2); MCR 3.602(B)(1).)

If there is a court action pending between the parties, a party moving to compel or stay arbitration files a motion in that action (MCL § 691.1685(2); MCR 3.602(B)(1)).

### Formatting Rules

The Michigan rules for formatting motions apply to a motion to stay or compel arbitration. Generally, the papers must:

- Have a caption.
- State the name of the court and the parties.
- State the pleading attorney's name, business address, telephone number, and state bar number.
- State the case number.
- State the name and state bar number of each other attorney who has appeared in the action.

(MCR 2.113.)

The technical formatting rules require that motions and complaints be:

- On 8-1/2" by 11" white paper.
- Typed with a font of no less than ten characters per inch (nonproportional) or 12-point (proportional).

(MCR 1.109(C).)

### DOCUMENTS REQUIRED FOR THE MOTION

A motion to compel or stay arbitration must include the same documents as any motion. These documents include:

- The motion.
- A memorandum of law in support of the motion.
- Any accompanying affidavits or exhibits, such as a copy of the parties' arbitration agreement.
- A notice of hearing.
- Proof of service.

(MCR 2.119.)

### FILING THE APPLICATION

Counsel must file the motion and any complaint with the court clerk (see Procedural Rules).

Michigan courts permit both paper and electronic filing but these rules vary by local jurisdiction. Counsel should check the local court rules and the judge's individual rules for any additional filing requirements.

### SERVING THE APPLICATION

If the application to compel or stay arbitration starts an action, the moving party must serve the notice of motion and complaint with the summons in the same manner as in other civil actions (MCR 3.602(B)(1)).

If a lawsuit is already pending between the parties, they may stipulate to electronic service of the motion by email (MCR 2.107(C)). If the parties do not stipulate to electronic service, they must serve

the motion papers and responses by mailing or personally delivering a hard copy to:

- Counsel for the opposing party at the attorney's work address.
- An unrepresented party at the individual's residence. (MCR 2.107(C).)

Counsel should check the local court rules and the judge's individual rules for any additional service requirements.

### APPEALING AN ORDER TO COMPEL OR STAY ARBITRATION

In federal court, federal law, such as the prohibition on interlocutory appeals (28 U.S.C. § 1291), the final judgment rule (28 U.S.C. § 1292), and the FAA limit appeals of orders compelling FAA governed arbitration (see Practice Note, Compelling and Enjoining Arbitration in US Federal Courts: Appealing an Order to Compel or Enjoin Arbitration (6-574-8707)). An order granting or denying a request to compel arbitration is not considered a final judgment. Under the FAA, however, litigants may immediately appeal federal court orders denying arbitration, but not orders favorable to arbitration. US appellate courts therefore have jurisdiction over orders:

- Denying requests to compel and stay litigation pending arbitration (9 U.S.C. § 16(a)(1)).
- Granting, continuing, or modifying an injunction against an arbitration (9 U.S.C. § 16(a)(2)).

Likewise, under the MUAA, orders unfavorable to arbitration are immediately appealable in the Michigan courts, but orders favorable to arbitration are not. A party may therefore appeal as of right an order that:

- Denies a motion to compel arbitration (MCL § 691.1708(1)(a)).
- Grants a motion to stay arbitration (MCL § 691.1708(1)(b)).

(See also *Rozanski v. Findling*, 2017 WL 1011530, at \*6 (Mich. Ct. App. Mar. 14, 2017) (noting that order granting motion to compel arbitration is not a final order and therefore not immediately appealable).)

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