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Is California Exempt from the Federal Arbitration Act (FAA)?

The California legislature has just passed and Governor Jerry Brown just signed, an amendment to Code of Civil Procedure section 1281.2 that provides an additional reason when a court may refuse to order a dispute to binding arbitration.

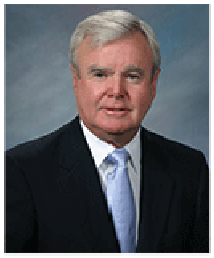
The new legislation provides that any state or federally chartered depository institution [e.g. Bank] that has "forced" a consumer to be a party to a written agreement to arbitrate, such agreement is deemed unenforceable under California law.

The U.S. Supreme Court has consistently ruled that [a] the Federal Arbitration Act [FAA] preempts and controls any contrary state legislation designed to defeat an agreement to arbitrate and, [b] that a contract that calls for disputes to be subject to arbitration must be enforced like any other contract. The new legislation appears to be a direct rejection of the multiple US Supreme Court decisions

Expect litigation in California from the financial institutions challenging the new

legislation as being in conflict with the FAA. The conflict will arise because we assume that virtually every banking institution in California demands arbitration under the Federal Arbitration Act, and not the California Code of Civil Procedure. ***Stay tuned.***

Manufactured Housing Practice Group



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