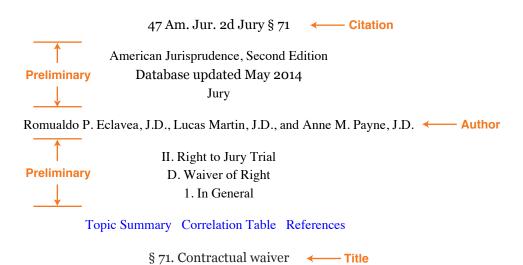
## § 71. Contractual waiver, 47 Am. Jur. 2d Jury § 71



West's Key Number Digest

West's Key Number Digest, Jury - 27, 27.1

References

A.L.R. Library

Contractual jury trial waivers in state civil cases, 42 A.L.R.5th 53 Contractual jury trial waivers in federal civil cases, 92 A.L.R. Fed. 688

The validity of contractual provisions for waiving a jury trial, made independently of any pending litigation, has been recognized or assumed in a number of cases which have considered such provisions. On the other hand, a contractual waiver of a jury trial in an agreement has been deemed unenforceable where such contractual waiver violated the state constitutional right to a jury trial in civil cases absent legislative authorization and the state statute authorizing the waiver of jury trial did not authorize a predispute waiver of that right <sup>2</sup> or where the state constitutional guarantee of right to a jury trial referred to only two exceptions: when no issuable defense was filed and when the parties failed to demand a jury trial, plainly contemplating a pendency of litigation at the time of waiver. <sup>3</sup>

**Text** 

Since the right to a jury trial is highly favored, a waiver of the right to a jury trial will be strictly construed and will not be lightly inferred or extended.<sup>4</sup> Accordingly, a party seeking to enforce such a provision must demonstrate that consent is both knowing and voluntary.<sup>5</sup> Where the waiver clause is buried inconspicuously in a contract such that the party's waiver could neither be knowing or intentional, the waiver is deemed invalid.6 Thus, a never-discussed, inconspicuous three-line jury trial waiver clause in a six-page form loan agreement may not be