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

47 Am. Jur. 2d Jury § 71 ← Citation

↑
Preliminary American Jurisprudence, Second Edition
↓ Database updated May 2014
Jury

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Preliminary II. Right to Jury Trial
↓ D. Waiver of Right
1. In General

[Topic Summary](#) [Correlation Table](#) [References](#)

§ 71. Contractual waiver ← Title

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](#)

Text

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.¹ 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 right² 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.³

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.⁴ Accordingly, a party seeking to enforce such a provision must demonstrate that consent is both knowing and voluntary.⁵ 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