I. Are pre-injury waivers/releases of claims for injury or death enforceable in Alaska?


To prevent the risk of invalidation, the drafting party should comply with all of the following as appropriate:

1. The risk being waived must be specifically and clearly set forth (e.g. death, bodily injury, and property damage); 2. A waiver of negligence must be specifically set forth using the word ‘negligence’; 3. These factors must be brought home to the releasor in clear, emphasized language by using simple words and capital letters; 4. The release must not violate public policy; 5. If a release seeks to exculpate a defendant from liability for acts of negligence unrelated to inherent risks, the release must suggest an intent to do so; and 6. The release agreement must not represent or insinuate standards of safety or maintenance.


II. Are pre-injury waivers of jury trials enforceable in Alaska?

Yes. While Article I, Section 16, of the Alaska Constitution provides the right to a jury trial on all claims exceeding $250, a party may enter into a pre-injury agreement waiving this right. *Diedrich v. City of Ketchikan*, 805 P.2d 362, 367 (Alaska 1991). Like in the injury release context, a court will not find the right to a jury trial waived unless it is clearly the intent of the waiving party. In determining intent, the court will focus on whether the party has “prior notice of the consequences of his action” that “justifies the court in finding a waiver.” *Haines v. Comfort Keepers, Inc.*, 393 P.3d 422, 433-34 (Alaska 2017).

III. Are agreements restricting claims for injury or death to binding arbitration enforceable in Alaska?

Yes. For contracts entered into after 2004, Alaska has adopted the Revised Uniform Arbitration Act (RUAA), which broadly states:

(a) An agreement contained in a record to submit to arbitration an existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract, and except as provided by (b) of this section.

(b) To the extent an agreement that contains an arbitration provision is invalidated on the grounds that a party was induced into entering into the agreement by fraud,
the arbitration provision in the agreement is not enforceable, and the party is not required to prove that the party was induced into entering into the arbitration provision by fraud.

AS 09.43.330.¹

AS 09.43.310 sets forth in detail all of the aspects of the RUAA that may and may not be altered by agreement of the parties, and/or waived.

To the extent one or more of the specific provisions within an arbitration agreement are determined to be unconscionable, the court will usually sever those specific clauses as opposed to invalidating the entire agreement. *Gibson v. Nye Frontier Ford, Inc.*, 205 P.3d 1091, 1098-99 (Alaska 2009).

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¹ This law is consistent with the Federal Arbitration Act (FAA), which sets a national policy of enforcing arbitration agreements, and which – unlike most Federal laws – is equally applicable in both state and federal courts. *Southland Corp. v. Keating*, 465 U.S. 1, 12 (1984). Because of this, even grounds for overturning or revoking contracts will be scrutinized to be sure they do not “stand as an obstacle to the accomplishment” of “ensur[ing] that private arbitration agreements are enforced according to their terms.” *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 343 (2011).