

Washington

Are mandatory arbitration provisions recognized in your state? If so, are there any limitations to its enforcement?

Yes, Washington generally recognizes mandatory arbitration is available in most counties in Washington State for cases with a total value of less than \$100,000.00 or when the plaintiff waives any claim above \$100,000.00. Transfer to the Arbitration Program is at the election of the plaintiff, and generally, cannot be opposed or objected to by a defendant. The goal of the Arbitration Program is to provide litigants who have a civil case, other than an appeal from a court of limited jurisdiction, a simplified and economical procedure for obtaining the prompt and equitable resolution of disputes that have been filed in Superior Court.

Mandatory arbitration rules can be found in 1) Chapter 7.06 RCW, 2) the state's Superior Court Civil Arbitration Rules, and 3) each county superior court's local rules on mandatory arbitrations. Discovery is streamlined and limited, and timing of the litigation is compressed (generally an arbitration hearing is set within three months of the election to arbitrate). Upon completion of a mandatory arbitration hearing, the arbitrator must file his or her written decision/award with the superior court and serve it upon the parties. A party who disagrees with the award has a right to a trial de novo to review it. The request must be filed with the superior court within 20 days of the arbitrator filing his or her award. If neither party requests a trial de novo, either party can file a motion to have the superior court confirm the arbitration award as a superior court order or judgment.

When a party seeks a trial de novo after mandatory arbitration and fails to improve her position, she must pay the other party's reasonable attorney fees. Washington courts have held that a party's position prior to trial should be interpreted as an ordinary person would, and that the trial court should only compare the jury verdict and the arbitrator's initial award. Because Washington courts will not conclude that a party has improved its position when the party did so only by prevailing on a claim that was not arbitrated, the trial court must consider only the portion of a jury's verdict attributable to claims, cost and fees that were arbitrated.ⁱ

What is your state's law, if any, regarding gift cards, subscription services and loyalty programs?

Washington law recognizes that a gift card has value that someone has paid. Gift cards and certificates have no expiration date or dormancy fees.ⁱⁱ Therefore, it is "unlawful for any person or entity to issue, or to enforce against a bearer, a gift certificate that contains: (a) An expiration date; (b) Any fee, including a service fee; or (c) A dormancy or inactivity charge."ⁱⁱⁱ Section 19.240.020(1) applies to gift certificates issued with the sale of tangible personal property or services.^{iv} If the gift certificate is used in an amount less than the full value, the issuer must make the remaining balance available

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to the bearer in cash or as a gift certificate at the option of the issuer.^v Unless required by law, the issuers of a gift certificate is not required to replace a lost or stolen gift certificate.^{vi}

Gift certificates may carry an expiration date so long as the following conditions are met: 1) The gift certificate is issued pursuant to an awards or loyalty program for the gift certificate; 2) The gift certificate is donated to a charitable organization without any money or other thing of value being given in exchange for the gift certificate if the gift certificate is used by a charitable organization solely to provide charitable services; and 3) the expiration date must be disclosed clearly and legibly.^{vii}

II. Loyalty Programs

A loyalty card has no cash value and is an incentive to shop at a particular retailer for special deals and discounts. Loyalty cards/programs can have an expiration date so that a retailer can roll out a new program or cancel one that has little interest

III. Subscription Services

We could not identify any state laws or case law on subscription services.

ⁱ See *Nelson v. Erickson*, 186 Wn.2d 385 (2016); *Bearden v. McGill*, 193 Wn.App. 235 (2016).

ⁱⁱ R.C.W. § 19.240 *et. seq.*

ⁱⁱⁱ R.C.W. § 19.240.020(1).

^{iv} *Id.* at § 19.240.020(2).

^v *Id.* at § 19.240.020(3).

^{vi} *Id.* at § 19.240.020(4).

^{vii} R.C.W. § 19.240.030.