

Is the arbitration clause in my credit card agreement enforceable?

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It depends on where you live, how the card is used (commercial or personal), and what kind of claim you seek to bring. For example, if you live in Massachusetts (or otherwise Massachusetts law applies), use your card primarily as a consumer, and seek to bring a claim under the Massachusetts Consumer Protection Act (Mass. Gen. Laws ch. 93A, § 9) then the answer is that the arbitration clause is not enforceable. Hannon v. Original Gunite Aquatech Pools, Inc., 385 Mass. 813, 826 (1982). Again in Massachusetts, if you are either a business or consumer, and wish to bring a class action for entities that would otherwise have insignificant actual damages individually, once more, the arbitration clause is not enforceable. Feeney v. Dell, Inc., 454 Mass. 192 (2009). There are also other types of claims in Massachusetts where an arbitration clause would presumably not be enforceable, or at least would require a heightened degree of notice for the waiver of rights before they are. See e.g., Warfield v. Beth Israel Deaconess Medical Center, 454 Mass. 390 (2009) (finding arbitration clause in employer-employee contract not enforceable against employee's gender discrimination claim because the employee's agreement to the clause was not expressed clearly enough).

However, generally, both the United States Supreme Court and the Supreme Judicial Court in Massachusetts have expressed a presumption in favor of arbitration. Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24 (1983) (Federal); Miller v. Cotter, 448 Mass. 671, 676 (2007) (Massachusetts). So, in most other cases, an arbitration clause is probably enforceable. In those situations, you must decide if you want to try to be a trailblazer and appeal the matter to the highest court possible to establish new law.

Why does this matter? This is because the arbitration forum has traditionally been thought to favor the credit industry and award conservative amounts of damages to plaintiffs.

There are federal and state statutory schemes dedicated to the application and governance of arbitration. (9 U.S.C. §§ 1 et seq.); (Mass. Gen. Laws ch. 251, §§1 et seq.). The question of whether an arbitration clause is enforceable, or under what specific circumstances it might be, has been a frequent question posed to the courts throughout this country over the past number of decades. Many of these court decisions have been contradictory, which suggests that presenting a sound, strong argument could make the difference between winning and losing. If you are facing the question of whether an arbitration clause applies in a particular situation, we suggest you engage competent counsel, and invite you to contact our office for a consultation.

Contact: George E. Bourguignon, Jr., Esq.

(413) 746-8008

[www.bourguignonlaw.com](http://www.bourguignonlaw.com)

[gbourguignon@bourguignonlaw.com](mailto:gbourguignon@bourguignonlaw.com)

enforcement of arbitration clause in Massachusetts; Massachusetts arbitration clause; is arbitration required in Massachusetts; is arbitration required under Massachusetts law; is arbitration ok in Massachusetts; should I chose to go to arbitration