

ARBITRATION OR MEDIATION?

by

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INTRODUCTION

Are you looking for a way to quickly and confidentially resolve a business, family, neighborhood, or other dispute? Arbitration or mediation may be the answer.

Arbitration and mediation are alternative dispute resolution procedures that are used to resolve disagreements before they become expensive, public, and time-consuming court litigation. In arbitration, a neutral arbitrator selected by the parties listens to both sides and renders a decision. In mediation, a trained facilitator helps the parties talk directly with each other with the goal of the parties reaching a mutually acceptable resolution.

ARBITRATION

Arbitration is an alternative dispute resolution method that helps parties confidentially resolve a situation without getting involved with court litigation. Arbitration can be agreed to before a dispute actually arises as well as after a dispute has arisen or a court proceeding has started.

The parties mutually select a neutral person to be the arbitrator. Usually there is a written agreement providing for arbitrator selection, procedure, issues, confidentiality, arbitrator authority, and award enforcement. Arbitration is usually conducted in private. The parties are free to select an arbitrator with subject matter expertise, the availability to quickly hear the case, the confidence of the parties, and the authority to render a final and binding decision.

MEDIATION

Mediation is an effective tool for resolving disputes. It provides a confidential and informal process that is consistent with the parties' interests and needs to resolve a dispute. Mediation provides confidentiality, collaboration, mediator neutrality and impartiality. As opposed to arbitration or court

litigation where an arbitrator or a judge makes the decision, in mediation, the parties craft their own resolution. Mediation can resolve existing disagreements while preserving or even strengthening the relationships between the parties.

Process is important in mediation. Patience, curiosity, and imagination are important. The participants should be willing to listen, consider compromise and be reasonable. The parties have interests in settlement. The focus is on the future, not the past. The parties are at mediation to listen to each other in a safe, mutually respectful environment. In addition, in mediation the parties can frame a mutually agreeable resolution that provides elements and remedies that a contested court decision might not provide.

Mediation includes (1) having an open mind, (2) taking sufficient time to let the process work, (3) careful listening, and (4) using the opportunity to directly persuade the other side of the merits of the case while keeping an open mind to the other party's viewpoint.

Hopefully the mediation results in a mutually acceptable solution to the dispute. If not, the mediation can end with an understanding of what will happen next. There might be another mediation session, a partial agreement, a reconsideration period, or selection of an alternative method to decide the remaining issues.

CONCLUSION

Arbitration and mediation are efficient and confidential means to resolve disputes without the need for court litigation. Arbitration is the utilization of a neutral arbitrator who quickly and confidentially hears the evidence and renders a final and binding decision. Mediation is a facilitated discussion with the goal of reaching a mutually agreeable resolution.

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