Alternative Dispute Resolution

With the increasing amount of litigation in our society, it is important to give some consideration to alternative ways of dealing with disputes other than in the courtroom.

What is Alternative Dispute Resolution?

More and more, lawyers are recommending that their clients consider pursuing methods other than lawsuits as a way to settle disputes.

Alternative dispute resolution (ADR) includes a number of techniques. Some of these methods, such as conducting a trial in a private court system, tend to be fairly expensive and lend themselves more to disputes between businesses than to disputes between individuals or between an individual and a business.

However, some individuals use other ADR techniques to save time and money.

Mediation

One increasingly popular method of ADR is mediation. In mediation, the two parties select an impartial person trained in negotiation techniques to help them arrive at a mutually satisfactory settlement of their problem.

The mediator's role is not to impose a solution, but to help the parties understand the other side's position and find areas of mutual agreement. A good mediator also helps each side determine what it really wants to receive to come away satisfied with the settlement, rather than seeking the most it may be legally entitled to receive.

Mediation usually is conducted in a very informal matter, and the procedures mediators use vary.

Some mediators like to have both parties in the same room, while some shuttle back and forth between the parties in an attempt to keep personality conflicts to a minimum. Because mediation is a voluntary process, either party may decide to end its participation at any time.

In many parts of the country, courts now require couples involved in certain kinds of disputes, such as those concerning child custody and visitation privileges, to attempt to resolve their differences through mediation before bringing their dispute into the courtroom.

In a few states, judges can order parties to almost any lawsuits to take part in mediation proceedings before going to trial.

If deciding to try mediation as a means of resolving a dispute, be sure to find a well-trained and qualified mediator to assist you. Although a number of lawyers, former judges and social workers have established firms offering mediation services, almost anyone can claim to be a mediator.

If possible, both parties in the dispute should interview several mediators before settling on the one to assist.

In many states, courts have established programs that allow individuals to become certified as mediators. An attorney or the clerk of the local court can provide information about certification programs in the state and help obtain the names of mediators who have undergone court-approved training.

Arbitration

Another, somewhat different method of ADR is arbitration.

With arbitration, one or more arbitrators who are selected by mutual agreement of the parties hear the dispute. Although the procedures still are not quite as formal as those used in the courtroom, they are much more formal than those used in mediation.

Witnesses are sworn in, examined and cross-examined as they would be during a trial. Each side gets to make
opening and closing statements, and the party whose complaint led to arbitration gets to rebut the defendant's claims.

After hearing all the evidence, the arbitrators take the case under consideration; in most cases they issue a decision within a few weeks of the hearing. Typically the arbitrator's decision is final, and the only basis for an appeal is that the arbitrator somehow violated the rules of arbitration in reaching his or her decision. However, since arbitrators do not issue explanations of their rulings, establishing a basis for an appeal is a difficult and daunting task.

A growing number of contracts (such as the one you have with your stock brokerage or the warranty on a new car or major appliance) include arbitration provisions.

Under this provision, if the parties involved cannot arrive at an acceptable resolution of a problem, it is necessary to take the claim to arbitration rather than filing a lawsuit.

In many of these contracts, however, the decision of the arbitrator is binding only on the company. If one of the parties is unhappy with the outcome, it is possible to still pursue your claim in court.

Be sure to understand the terms of the arbitration clause in any consumer contract, however, as some clauses do require both parties to abide by the arbitrator's decision.

Additional Information
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