



DISPUTE RESOLUTION

What's in your best interest?

THE THREE METHODS OF DISPUTE RESOLUTION

Just about every contract has a dispute resolution provision...

No matter how often they see it, many contractors don't really understand what it says.

More than that, most contractors don't understand their options, how they differ and what's best for their company.

You may think the terms are "boilerplate," but how you settle a dispute may make a real difference in whether you win or lose...and how much you spend getting there.

Let's highlight the three methods of dispute resolution.

Mediation

Mediation is a settlement conference, usually facilitated by an experienced lawyer or retired judge. It's non-binding, meaning all that the parties are obligated to do is talk in good faith and try to resolve their dispute.

The mediator is not authorized to issue a ruling, and either party is free to walk away without reaching agreement. Nothing said by either party in mediation can be used against it down the road if no settlement is reached.

More importantly, because this is not a court proceeding, you can get creative with settlement options, including payment over time or even future business arrangements.



THE THREE METHODS OF DISPUTE RESOLUTION

Arbitration

Unlike mediation, arbitration is binding. The arbitrator, usually a retired judge or experienced lawyer chosen by agreement of the parties, hears evidence from both sides and issues a ruling that is binding on the parties. Sometimes, contracts provide for a panel of three arbitrators, rather than a single arbitrator, but that is relatively rare and always expensive. Importantly, the parties are able to pick an arbitrator familiar with the issues in the case, unlike litigation where you may be assigned a judge who knows little to nothing about construction.

Arbitration is a much less formal proceeding than a trial. It usually takes place in a courtroom and, although witnesses are called, there are usually no objections and each side can enter any evidence it wants – virtually without restriction. The arbitrator's ruling can be enrolled as a judgment and carries all the power of a ruling from a trial court judge. In fact, many argue that an arbitrator's ruling is even more powerful than one issued by a judge, because it is much more difficult to appeal the decision of an arbitrator.



Every contract has a dispute resolution clause.

What do you want it to say?



THE THREE METHODS OF DISPUTE RESOLUTION

Litigation

When the contract states that disputes will be handled via litigation, or if the contract is silent, disputes are filed and argued in court before a judge, and possibly before a jury. Litigation is usually, though not always, a longer and more expensive process than arbitration...though it may have some advantages depending upon your position. The evidence the judge is entitled to see is much more limited than what can be shown in arbitration and it is much easier to appeal a decision reached in trial. Unlike arbitration, the system decides who the judge will be as well as dictates the schedule.



Which method of dispute resolution is right for you?

Well, I'll give you a lawyer's answer, "It depends."

Figuring out whether you're better off resolving disputes through arbitration or litigation depends on your answers to a number of questions including:

- Do you want the contract to be enforced word-for-word or do you want the decision-maker to have some leeway?
- Do you want a jury to make the decision?
- Do you need to learn more about the other side's documents and what their witnesses have to say or do you already know the evidence they're going to want to present?

To find out what goes into answering these questions for your company and how the answers would impact the kind of dispute resolution you'd want built into your contract, check out our online courses designed just for construction professionals.



PROTECT YOUR BUSINESS TODAY.

Want more training on contract review and negotiation?

Check out our online courses & live workshop opportunities.

 firstruletraining.com

