

An Introduction to Dispute Resolution

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What is the job of the Dispute Resolution Professional?

- To help the parties understand and identify those issues that are in dispute (this may seem too obvious to consider, but there are often underlying unidentified issues that must be addressed);
- To help each individual assess his/her goals and ability to participate in both the resolution process and ultimate resolution;
- To help all parties to comfortably resolve the existing disputes, including reaching agreements on the hiring of other professionals (lawyers, accountants, contractors, maintenance companies, etc...) and the scope of work to be performed by each;
- To help the parties set up a formal process to address similar issues in the future before they rise to the level of dispute.

What kinds of Dispute Resolution professionals are available to assist the parties?

- Mediator – neutral party working with all parties to a dispute with the goal of enhancing communication and understanding of goals in order to bring parties to mutually satisfactory resolution of dispute.
- Arbitrator – a decision-maker who, after hearing all facts and evidence from all parties to a dispute, makes a decision, which the parties have agreed to be bound by. This is a good choice where there are issues, which the members of the Association cannot bring to resolution through any other means, but which must be determined before the Association can move forward and conduct business, and the members do not wish to commit the resources necessary to engage in litigation.
- Lawyer – advocate for a single party in a dispute, helps client accomplish goals by negotiating with others, litigating, advising on contracts, recommending other professional services, etc.

How do the parties choose which type of dispute resolution professional is appropriate for the conflict?

- Mediator – This is a good choice where there are disputes between parties regarding whether and/or how to handle issues both amongst themselves and with outside parties.
- Arbitrator – This is a good choice where there are issues, which the parties cannot bring to resolution through any other means, but which must be determined before they can move forward and conduct business, where they do not wish to commit the resources necessary to engage in litigation.
- Lawyer - This is the option if the parties refuse to entertain the possibility of working to resolve the dispute in a mutually satisfactory manner and need advocates to work on their behalf in resolving issues between them).

How much will this cost?

The real answer, as with most disputes is, it depends....

- You may be able to find someone who will quote a flat rate for resolution of the dispute, this will mean that you are either paying too much or too little, depending on the expertise of the professional, which could lead to problems and disappointment. However most professionals are far more likely to quote an hourly rate;
- Know what is included in that hourly rate (meetings, telephone conversations, correspondence, travel time, etc...); and
- Know what the professional intends to do for you.

Who pays for the professional?

Generally, regardless of whether you are involved in mediation and arbitration, all parties share equally in the cost of the professional. For the purpose of neutrality, it is most appropriate for all parties to share in the cost equally, rather than some parties and not others. This avoids the potential perception by any parties that the dispute resolution professional has lost neutrality.

On the other hand, where individuals or entities in conflict choose to hire their own attorneys, they must bear that cost independent of the other parties, at least until the conclusion of litigation and depending upon whether the particular dispute entitles them to an award of attorney's fees. Even then, awards of attorney's fees are based upon the "reasonableness" of the fees, rather than the actual amount of fees charged, and is left to the discretion of the Judge.

What kind of access do you (as an individual) have to the professional?

Mediator – All parties involved in the dispute have unlimited personal access to the mediator, within reason. It is important to understand before exercising this right, exactly how the mediator charges for his/her time, because you may be unwittingly incur significant fees, if the mediator charges for communications outside of actual mediation sessions.

Arbitrator – No party is permitted personal contact with an arbitrator, but may communicate only during hearing sessions and through documentary or other evidence.

Lawyer – Every client* should have unlimited access to his lawyer, but if the fee structure is not contingent or flat rate, the lawyer will likely be billing for every moment spent on the matter.

*You must clarify with the attorney at the outset of the representation who the client is (individuals or business entities) and how he/she will deal with individual within a business entity.

What kind of input do you want to have in the resolution of the dispute? Are you comfortable delegating your decisions to another party or do you wish to have complete control over any resolution involving you?

If you wish to have control over the process, mediation is the only appropriate choice for you. As with litigation, where you are subject to the whim of judge and jury, in arbitration, you give up power over the resolution to a decision made by a designated person. In mediation, the only binding decisions are those you and the other parties to the dispute reach of your own accord. Although this process requires more personal involvement of the parties, it is the only one in which the parties are in control of the result, and is the one most likely to end with the satisfaction of all. Clearly, in any dispute involving an ongoing relationship, this is the desired result.

How much time do you have to commit to the process?

- Physical time: This refers to your daily schedule and the amount of time you can commit to work through these issues.
 - Mediation is generally available to you when you are available for it (make sure your mediator is flexible).
 - Litigation is inflexible and is dictated by the court calendar.
 - Arbitration is somewhere in between.

- Chronological time: Length of time you are willing to allow for the resolution process to be completed. All of these choices involve processes that take time.
 - Mediation may take more physical time, depending on the issues to be resolved and motivation of the parties to reach resolution. It can be done in lengthy/intense sessions designed to bring about immediate resolution, spread out over time based on the schedules of the parties, or some combination of the two.
 - Arbitration is relatively quick once an arbitrator is chosen and evidence is ready. The time commitment depends on how much is to be decided, but generally it involves only the hearing sessions and the time in which it takes the arbitrator to render an award.
 - Litigation generally take a year or more, depending on when a complaint is filed, how many parties and lawyers are involved, and the complexity of the issues. (Keep in mind that most matters presently litigated in the Los Angeles Superior Court are ordered to mediation before trial).

Once you have evaluated the dispute in which you are involved based upon the above criteria, you should be fairly clear on which process and which type of Dispute Resolution professional you are most interested in retaining to assist you in resolving your dispute.
