

MEDIATION AND ARBITRATION FOR THE ENTREPRENEUR

by

Lee Hornberger

This article explains how to use mediation and arbitration and the differences between them.

The entrepreneur can use dispute resolution procedures such as mediation and arbitration to resolve situations before they become expensive and time-consuming court litigation.

Mediation is a process in which a trained mediator facilitates dialogue between the parties with the goal of reaching a mutually acceptable resolution. In arbitration, a neutral arbitrator listens to both sides and renders a decision.

MEDIATION

Mediation is an effective tool for resolving disputes. Mediation provides a confidential means that is consistent with the entrepreneur's interests and needs to resolve a dispute.

Mediation provides confidentiality, collaboration, mediator neutrality and impartiality, and the fact that an outsider will not impose a decision.

Process is important in mediation. Slower is usually faster in the long run. Patience, curiosity, and imagination are important. The participants should be willing to listen, consider compromise and be reasonable. The parties have interests in settlement which should be recognized. The focus is on the future, not the past. The parties are at mediation to listen to each other.

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 settlement agreement. If not, the mediation should end with an understanding of what will happen next. This might be another session, a partial agreement, a reconsideration period, or selection of a method to decide the remaining issues.

ARBITRATION

Arbitration is another form of dispute resolution to help parties confidentially resolve a situation short of getting involved with court litigation. Arbitration can be agreed to before a dispute actually arises or during a court proceeding.

The parties mutually select a neutral person to be the arbitrator. Usually there is a written agreement providing for arbitrator selection, procedure, issues, confidentiality, and authority. Arbitration can be conducted in private without publicity. The parties are free to select an arbitrator with subject matter expertise and the availability to quickly hear the case and render a final and binding decision.

CONCLUSION

Mediation and arbitration provide means of quickly and confidentially resolving disputes without the need for court litigation. Mediation is a facilitated discussion with the goal of reaching a mutually agreeable resolution. Arbitration is the selection of a neutral arbitrator who will quickly and confidentially hear the evidence and render a final and binding decision.