

## ARBITRATION

Arbitration is a form of Alternative Dispute Resolution (“ADR”), and is a legal technique for the resolution of disputes outside of the courts. When parties first become involved with each other in the formation of a contract, they can decide that if there are any disputes concerning their contractual arrangement, they can refer those disputes to arbitration. This normally occurs in commercial transactions and employment arrangements. However, arbitration provisions are also often used in consumer transactions, i.e. credit cards and broker agreements.

The arbitration can be before one (1) arbitrator or a panel of arbitrators (typically three [3]). The parties agree to be bound by the arbitrator’s decision. The arbitrator’s decision can be filed in a court of law for execution of judgment. Arbitration varies from another form of ADR called mediation. Mediation is a method for the parties to get together with a neutral third party in a non-binding setting in an attempt to resolve their dispute. Mediation is often part of civil litigation (where the parties actually filed a lawsuit).

Arbitration has an ancient history going back to English law and the Arbitration Act of 1697. The Jay Treaty of 1795 between Britain and the United States sent unresolved issues regarding debts and boundaries to arbitration.

The advantages of arbitration are:

- Arbitration is faster than litigation.
- It can be cheaper and more flexible for businesses.
- If the subject matter disputed is technical, e.g. a construction case, an arbitrator with the appropriate degree of expertise can be appointed.
- Arbitration proceedings are not public and therefore can be made confidential.
- There are limited avenues of appeal of an award.

However, there are also disadvantages which include:

- Arbitrations can be unfair to consumers or non-corporations.
- A party gives up their right to a jury trial.
- The payments to the arbitrators can add an additional expense to the legal costs.
- Arbitrators depend on repeat business from corporations; therefore, there are incentives to rule against consumers or employees.
- There are limited avenues of appeal.

In my experience, an arbitration provision in an agreement can have a dilatory effect on the consumer or employee based on the fact that there is typically an initial \$1,000.00 expense.

Arbitration is a good method to resolve certain types of disputes, such as construction cases and some employment cases. However, there are added expenses to pay private arbitrators and/or arbitrator forums.

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