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Alternative Dispute Resolution and Arizona Businesses

Increasingly, businesses are including alternative dispute resolution (ADR) clauses in standard business-to-business and consumer contracts, and even businesses without ADR clauses opt for ADR procedures to resolve disputes while keeping court and legal costs to a minimum. At The Law Offices of Donald W. Hudspeth, we effectively translate our decades of business law and litigation expertise into powerful ADR advocacy for all of our business clients, no matter the issue.

Mediation

Most **Arizona alternative dispute resolution attorneys** prefer to start the ADR process with mediation. In fact, many standard ADR clauses require the parties to a dispute to submit to mediation before moving to binding arbitration or litigation. In mediation, both parties submit a short brief or position paper to the mediator before the process begins.

Depending on party agreement, the mediator may share these briefs with the other side. At the mediation, all parties gather in one room, and the mediation usually begins with a plaintiff presentation, followed by a defendant presentation. Then the mediator submits both parties to a question and answer session in an attempt to more fully understand the position, goals, and points of compromise of each party.

At this point, the parties retreat to private rooms and the mediator begins a period of shuttle diplomacy, asking further questions and probing values and willingness to compromise of each party. Here, the experience of the mediator with the law and knowledge of the industry involved in the dispute become especially invaluable. The mediator tries to drive both parties into a settlement range that the mediator believes fair and reasonable given the facts, the law, and the industry. If the parties reach that range, the mediator proposes a settlement to the parties, but the recommendations of the mediator are not binding.

Arbitration

Two sets of law govern arbitration in Arizona: the Federal Arbitration Act, and—as of January 1, 2011—the Arizona Revised Uniform Arbitration Act. If you are required to or choose to submit your business dispute to alternative dispute resolution by arbitration, you need an Arizona lawyer who knows both sets of laws and how they interact with each other.

Arbitrations more closely resemble court proceedings than mediations, without subjecting disputants to the full costs of court proceedings. Arbitration is strictly a matter of contract between the two parties, but public policy favors arbitration, so courts will generally resolve doubts about the applicability of arbitration provisions in favor of arbitration.

Once referred to arbitration, the parties to the dispute select an arbitrator or arbitrators following the procedures established in their contract, frequently relying on rules promulgated by the American Arbitration Association or the International Institute for Conflict Prevention & Resolution. As a general rule, arbitration allows for more limited discovery than traditional state and federal discovery rules, without being bound by standard rules of evidence. This allows for a cheaper and simultaneously more effective discovery process.

Parties may appeal the award of the arbitrator only under very limited circumstances, unless both parties have agreed to non-binding arbitration. Under the Arizona Revised Uniform Arbitration Act, parties may modify or waive applicability of most, but not all, provisions of the law as best suits their contractual needs.

Whether to have an arbitration clause in a contract should be discussed on a business-by-business. The parties may waive rights in arbitration (e.g. punitive damages and/or jury trial) and arbitration has fees that a normal litigation case does not have (e.g. the case administration and arbitrator fees).

Arizona alternative dispute resolution lawyers

If your business faces alternative dispute resolution of any kind in Arizona, work with a [business law attorney in Phoenix](#) who understands the law, your industry, and ADR procedures and requirements. [Contact](#) The Law Offices of Donald W. Hudspeth today to arrange an initial consultation on any business-related alternative dispute resolution matter.

The Law Offices of Donald W. Hudspeth, P.C.

Business Law & Commercial Litigation

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