

Where Present and Future Generations Unite for Success

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"It's not personal, it's just business." Whoever invented this oft-repeated cliché must not have worked for a family business. In fact, when owners or employees of a business are part of the same family, conflict resolution is almost always personal. As a result, many family business disputes can prove to be extremely difficult to resolve short of expensive litigation.

The good news is that with a little bit of planning, most family businesses can avoid costly public disputes by using Alternative Dispute Resolution, or ADR. ADR is a procedure for settling a dispute by means other than litigation. The most common forms of ADR are mediation and arbitration.

Mediation involves an impartial third person, often a neutral lawyer or retired judge, who facilitates discussion and negotiation between the parties and makes suggestions about how to resolve the dispute. The mediator, however, does not impose any decision upon the parties. The goal of successful mediation is for the parties to reach a mutually agreeable solution to their dispute. However, there is no requirement that the parties reach a mediated agreement.

Mediation is often used as a first step in conflict resolution. If a family business dispute cannot be resolved through mediation, parties can submit unresolved disputes to arbitration.

Arbitration is a process where the parties present evidence and argument to an impartial arbitrator or panel of arbitrators. Unlike the process of mediation, an arbitrator makes a final and binding determination of the dispute. In many ways, an arbitration is like a "mini-trial." However, the arbitration process is far more streamlined than litigation, and is generally conducted in a confidential manner.

Family businesses generally prefer ADR to litigation. Although each business and each dispute is different, ADR is usually quicker, cheaper, and more private than litigation in court. It allows for creative solutions to be mediated, or if mediation is unsuccessful, binding decisions to be reached quickly and relatively inexpensively.

In order to be effective, though, it is important for businesses to establish a clear ADR plan before a dispute arises. First, businesses should have each employee, owner, or other interested party execute a formal agreement to mediate and/or arbitrate. This can be done when an employee is hired, an owner acquires an interest in the business, or a vendor relationship is started. The key is for an ADR agreement to be executed before a conflict arises.

Second, the ADR agreement should establish a procedure for choosing a mediator or arbitrator, dividing costs, and selecting a venue. Many businesses elect to use a third party (such as the American Arbitration Association) to manage the ADR process. In that situation, AAA can provide the parties with a list of available arbitrators, rules of procedure, and a timeline in which to resolve the dispute. But while these services are helpful, they are not free - AAA's administrative fees can be quite expensive.

Finally, the ADR agreement should require that any mediation or arbitration be conducted confidentially and any negotiated agreement or arbitration decision be final and binding.

Legal disputes are never pleasant, and there is often more at stake than mere dollars and cents with a family owned business. However, a well-crafted ADR plan can help most businesses minimize long, expensive, and yes, "personal" litigation.