WHAT ARE MEDIATION AND ARBITRATION IN CALIFORNIA?

“When disputes or disagreements arise in the business world, sometimes the parties cannot just walk away but instead must solve the problem”
When disputes or disagreements arise in the business world, sometimes the parties cannot just walk away but instead must solve the problem. For example, business partners or a company and its suppliers may become involved in a disagreement over a business decision or over the terms of a sales contract. The dispute will need to be resolved so the companies can move forward. The goal may be for the parties to come to a compromise; for one party to prevail; or for one of the parties to receive compensation or compel the other to act.

The legal system provides a way for individuals and businesses to get help resolving disagreements when a decision must be made. Litigation is one very common way for disputes to be resolved, but it is adversarial and there is a winner and a loser when a case is litigated. This means that litigation is not always the best way to
resolve problems. Mediation and arbitration both provide an alternative which may be preferable, depending upon the circumstances.

Mediation and arbitration are classified as forms of *alternative dispute resolution*. Although the parties who resolve issues through mediation or arbitration generally hope to avoid going to court, they still should have lawyers advising them of their legal rights and obligations. An experienced attorney can help to facilitate negotiations during mediation and can assist in presenting your side during an arbitration proceeding. You should be sure to find a lawyer who has experience with alternative dispute resolution so you will have the best chance of a successful resolution.

**Understanding Mediation and Arbitration**

When a dispute ends up in court, the plaintiff and the defendant each much make arguments and the judge or jury will then make a legally binding decision. If the disagreement is over highly technical issues that are industry-specific, the judge or jury may not have detailed knowledge of the issues at stake. The process of litigating a dispute can be stressful and contentious as each side tries to present a case against the other. There may be high costs associated with litigation and the adversarial
nature of the process can cause a further breakdown of the relationship between the plaintiff and the defendant. This is a big problem if the parties wish to work together in the future, or will need to continue to cooperate and work collaboratively for the good of the business.

Both mediation and arbitration solve some of the problems associated with litigation by providing an alternative to going to court. Mediation and arbitration, however, work very differently.

Mediation involves a process that facilitates communication among the parties to the disagreement. The mediator is typically trained in negotiations, behavior or psychology. The mediator helps the parties involved in the dispute to talk to each other openly; to clarify their desired outcome; and to work together to find compromise or consensus. Mediation is typically voluntary, although the court may sometimes order that disagreeing parties try mediation as a prerequisite to litigation. The parties involved in the mediation process can walk away at any time during mediation, so the process will work only if both parties are truly willing to work together and try to resolve their differences amicably.
Mediation can help to preserve relationships, which is very important in situations where business partners disagree or where the parties to a dispute otherwise want to maintain cordial relations. Mediation can also result in a solution that everyone is happier with, since the parties to a disagreement have the best understanding of what is important to them. The mediator never takes sides and does not issue binding decisions, so it is up to the parties if they want to agree to a negotiated settlement.

Arbitration, on the other hand, is more similar to litigation in some important ways. During the arbitration process, each party to a disagreement presents his or her side and makes arguments. The process of presenting information to an arbitrator may be less formal than the court process and the arbitrator may be selected because he or she has industry-specific knowledge that will facilitate an informed decision. After the arbitrator has listened to arguments from both sides, the arbitrator will make a legally binding decision. The parties must abide by it unless they can successfully appeal, just like when a judge makes a decision. However, arbitration can be kept private and is often less costly than litigation.
Deciding if mediation or arbitration is right for you can be a complicated process and you need to ensure that you protect your rights as your disagreement is resolved. An experienced attorney can help you with resolving disputes through mediation, arbitration or litigation.
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- The services of a certified trial specialist
- Award-winning lawyers with real-world business experience
- Competitive rates and a focus on cost-effective legal solutions
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- Evening & weekend hours by appointment
- Free initial consultations for personal injury cases

In every case we handle, our focus is on finding solutions that work for our clients. Our versatile practice is equipped to meet this objective, whether through transactional law, negotiation, or trial advocacy.

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