

Sotomayor Law

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Mediation & Arbitration Services

5 Reasons to Put a “Mediate First” Clause in Any Contract

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Mediation works. All businesses seem to know that is true. Most individuals also seem to know that almost every civil case settles before trial, either before or after considerable dollars are spent on lawsuits, discovery, endless pre-trial motions, and the are-you-kidding-it-cost-HOW-much preparation for trial.

The essential question is just HOW can we achieve the real goal of resolving the dispute as quickly, efficiently, and inexpensively as possible. In reality, most people don't go to mediation unless they're forced to do so. This is because neither the parties nor their attorneys want to suggest in any way that they lack confidence in their position. Especially early on in the dispute. Traditionally, parties (and their lawyers) are forced into mediation because a court orders them to do so.

But, there is another way to compel mediation, and it's really simple. Just put a “mediate first” provision in your business contracts.

What is that? It's a requirement that before any party to a contract (of any kind) brings an action (of any kind) based on a dispute arising out of that contract, the parties must engage in mediation to try to resolve the dispute.

The reasons to do so suddenly seem obvious, don't they? Here are five:

1. If a dispute is resolved before a formal action is begun, then time, money, personnel, and productivity resources are saved. Translate – reduction of red ink on the financial statement.
2. The proceeding is entirely confidential and is never a matter of public record.
3. Early, informal, even joint, fact-finding overcomes communication failures that are typically the root causes of disputes in the first place, or at least lead quickly to escalation of the conflict.

Contact us for your ADR needs today.

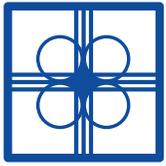
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4. "Mediate first" provisions allow the parties to control the process by being as basic or detailed as desired. If you worry about being manipulated by your opponent even in the mediation process, you have the opportunity – right up front – to manage and resolve those concerns, long before a dispute might even arise.

5. No matter whether the parties are individuals or businesses (which can only act through individuals), the personal toll of disputes is enormous. Every dispute has an emotional component. Resolving the dispute can and will alleviate this great burden.

So, as the Roloids folks famously asked, "How do YOU spell relief?"

The answer is, "Mediate first."

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