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Memorial Day

“Tip of the Month”

Arbitration

Arbitration is a form of alternative dispute resolution (ADR). It is different from mediation, another form of ADR designed to settle the dispute by discussions leading to compromise. Arbitration is adversarial like a trial. It results in a decision or judgment made by the arbitrator ruling in favor of one party or the other. The judgment is usually binding, though it is also possible to have non-binding arbitration, which is rare.

The arbitrator is usually a lawyer or a retired judge, though it is also possible in some instances to have an expert on the particular field or topic serve as arbitrator, also rare. The arbitration might be held in a courtroom, but more likely in a conference room with all the parties and their lawyers present. Either party can hire a stenographer, though there is usually little opportunity for appeal from arbitration.

While the rules of evidence apply in arbitration, the arbitrator might receive the evidence in a more relaxed fashion than might be required in a court trial. There is no jury. The witnesses are examined and cross-examined, and the exhibits are entered into the record after the exhibits are properly authenticated by the witnesses. Arbitration can be used in simple or very complex cases. For example, many very large construction disputes are resolved through arbitration.

That’s because arbitration is often the required form of dispute resolution in construction contracts. Those contracts and many other kinds of contracts will often specify that disputes be arbitrated through the American Arbitration Association (AAA). The AAA has been around for a long time and has developed a strong framework for administration of arbitration including lists of arbitrators who are expert in various fields like construction.

Arbitration was once thought to be quicker, cheaper and easier than going to court, but that is not always the case anymore. AAA fees, for example, are based on a sliding scale tied to the value of the dispute. These filing fees can seem astronomical when compared to court filing fees. Sometimes, parties will decide to have their dispute handled outside of AAA to avoid these fees, but to do this, the parties have to agree.

A reason arbitration can be quicker is because it usually does not involve discovery, which is a procedure in court trials that requires the parties to reveal their evidence in advance of trial. Court-based discovery is usually done through interrogatories and depositions that are often not part of the arbitration process. As a result, parties are sometimes unsure of their position relative to that of their opponent going into arbitration.

In New Hampshire, the Supreme Court’s Office of Mediation and Arbitration (OMA) was set up to assist parties with ADR. The OMA keeps lists of mediators and arbitrators who can assist parties resolve their disputes.

If you need any help resolving disputes, please do not hesitate to give us a call at 603-668-1971, or contact us by e-mail at mailbox@biz-patlaw.com to schedule an appointment.

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