

mediation with joe salama



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What is Mediation? - September 7, 2009
by Joe Salama

Mediation is a process of resolving a dispute where two or more parties come to a neutral third party, the mediator, who helps them work through their dispute. The dispute itself can be a lawsuit on the eve of trial, a workplace dispute, a business dispute between two companies, a divorce case, or two neighbors arguing over where the property line should be drawn, to name just a few examples. The mediator facilitates between the parties and helps them communicate with each other to help them reach an agreement.

The agreement reached through mediation is legally binding and fully enforceable by the parties. The agreement may be entered in court and have the same force and effect as a court order.



Mediation is usually voluntary, which means that the parties are willing participants who choose to sit down together to try to find a better outcome to their dispute instead of arguing with one another. They know that if their dispute continues, one of them will win and the others will lose. Continuing the dispute therefore means taking a risk. Mediating avoids this risk. Also, the cost of continuing the dispute is often more than the parties can bear - whether it is the actual costs of attorneys fees, or the emotional costs of the ongoing conflict. These costs can also be avoided by mediating rather than continuing the dispute.

Mediation also presents a way that the parties can solve their dispute and have a larger role in the outcome. In mediation, no outcome can be reached unless everyone agrees to it. At any point in the mediation, any party can stop it or walk away with no loss whatsoever. When a party looks at the options available - (1) going to court and having a judge or jury decide their fate for them; (2) doing nothing and letting the dispute continue; (3) going to mediation and putting together a solution that they are happy with - it is clear why parties often choose mediation.

Finally, mediation is a confidential process. This means that what is said during mediation, and all documents produced in connection with the mediation, are kept secret (with a few exceptions). This encourages the parties to be candid with one another without fear of exposing their legal positions should their cases go to trial. This has been proven to increase the chances that a dispute will resolve through mediation.

Mediation is not appropriate for every dispute. However, its high success rate continues to make it an attractive form of dispute resolution.

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