

What is Alternative Dispute Resolution (ADR)?



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Going to court is not the only way to resolve your business or personal disputes. There are a number of other options that can be quicker and less expensive than filing a lawsuit and taking a case to trial. Alternative Dispute Resolution (ADR) is a category of problem solving options that use impartial third parties to help you settle disputes without going to court. Instead of presenting your case to a judge (and jury), you sit down at a table and attempt to negotiate, mediate or arbitrate a solution that resolves the problem.

Negotiation systems create a structure to encourage and facilitate direct negotiation between parties to a dispute, without the intervention of a third party.

Mediation systems are very similar in that they interject a third party between the disputants, either to mediate a specific dispute or to reconcile differences in their relationship. Mediators may simply facilitate communication, or may help direct and structure a settlement, but they do not have the authority to decide or rule on a

settlement. Arbitration systems authorize a third party to decide how a dispute should be resolved.

It is important to distinguish between binding and non-binding forms of ADR. Negotiation and mediation processes are non-binding, and depend on the willingness of the parties to reach a voluntary agreement. The Arbitration process is usually binding, having the force of a Supreme Court judgment.

Although the characteristics of negotiated settlements, mediation and arbitration vary, all share a few common elements of distinction from the formal judicial structure. These elements permit them to address development objectives in a manner different from judicial systems.

Informality

Fundamentally, ADR processes are less formal than judicial processes. In most cases, the rules of procedure are flexible, without formal pleadings, extensive written documentation, or rules of evidence. This informality is appealing and important for increasing access to dispute resolution for parts of the population who may be intimidated by or unable to participate in more formal systems. It is also important for reducing the delay and cost of dispute resolution. Most systems operate without formal representation.

Application of Equity

Equally important, ADR processes are instruments for the application of equity rather than the rule of law. Each case is decided by a third party, or negotiated between disputants themselves, based on principles and terms that seem equitable in the particular case, rather than on uniformly applied legal standards. ADR systems cannot be expected to establish legal precedent or implement changes in legal and social norms. ADR systems tend to achieve efficient settlements at the expense of consistent and uniform justice.

Direct Participation and Communication between Disputants

Other characteristics of ADR systems include more direct participation by the disputants in the process and in designing settlements, more direct dialogue and opportunity for reconciliation between

disputants in the process and in designing settlements, more direct dialogue and opportunity for reconciliation between disputants, potentially higher levels of confidentiality since public records are not typically kept, more flexibility in designing creative settlements, less power to subpoena information, and less need for direct power of enforcement.

ADR is quicker and less expensive than litigation. Most court systems are backlogged. It can take months or even years before a case is heard. The cost of paying a lawyer for so long can hurt your business. Typically, parties do not want to conduct further business together until the problem is resolved. ADR processes can usually be conducted and concluded within weeks, so you can get back to what matters most- your business.

CARYL A. E. LASHLEY is a Barrister and of more than 35 years' standing with experience in Litigation, Family, Corporate and Trust matters. A Fellow of the Chartered Institute of Arbitrators, she is proficient both as an Arbitrator and a Mediator.

Her professional memberships include: FIDA (International Federation of Women Lawyers); The Society of Trust & Estate Practitioners (STEP) 1996 – Present; International Bar Association; Bahamas Bar Association, where she served as Secretary from 1992 – 1995, and as Chairperson of Ethics Committee, 2000 – Present. She has been a Fellow of the Chartered Institute of Arbitrators since 2012, and in 2014 she obtained an advanced certificate in Trust and Estate Mediation from STEP. She is also a member of B.R.E.A (Bahamas Real Estate Association).



ADR (Alternative Dispute Resolution) Bahamas utilizes various techniques to resolve conflict outside of court using a neutral third party.

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