

Alternative Dispute Resolution Processes – Definitions and Descriptions

This document identifies and describes various dispute resolution processes which are alternatives to litigation, violence and avoidance.

Alternative Dispute Resolution:

Generally, alternative dispute resolution (ADR) refers to any process or collection of processes established to resolve disputes without trial or violence. The term “ADR” is often used to refer to a broad category of “ADR processes” such as negotiation, conciliation, mediation, settlement conferences, arbitration, consensus building, and community conferencing. In addition, ADR includes conflict management and prevention systems, such as an ombuds office, which can help people decide what dispute resolution process they want to use. Often, one or more ADR processes may be appropriate for resolving certain kinds of disputes. Generally, ADR is not appropriate if someone wants to prosecute serious crime, create a legal precedent, or air an issue publicly.

ADR Processes:

Negotiation, sometimes called “direct” or “unassisted” negotiation, refers to any dialogue involving two or more people in an effort to resolve a dispute or reach an agreement. People negotiate all the time, and negotiation is often the first step in attempting to resolve disputes. However, people also can and do seek relief from the court system or from other dispute resolution processes without first attempting to negotiate with one another. People may also choose to have an attorney or other expert to negotiate on their behalf.

Conciliation is a process in which a neutral person functions as a “go between” in an attempt to resolve a dispute involving two or more people. The conciliator may have multiple private conversations with the people in dispute in hopes of identifying shared interests and reaching an agreement that meets the needs of the participants and resolves their dispute. The conciliator does not generally bring the people in dispute together or create an opportunity for them to talk directly to each other. The conciliator must remain neutral and has no decision making authority.

Mediation is a process in which one or two neutral mediators help people in a dispute to communicate with one another, understand each other, and if possible, reach agreements that satisfy the participants’ needs. Mediators do not provide legal advice or recommend the terms of an agreement. Instead, the mediator helps people reach their own agreements, rebuild their relationships, and, if possible, find lasting solutions to their disputes. In mediation, people speak for themselves and make their own decisions. Participants in mediation may or may not be represented by counsel. In Maryland, mediation is available in the private sector, through community-based mediation services, and in many courts. At the community programs, two trained volunteer mediators are assigned to each case. In the private market, people select their own mediators based on background and experience. In most court programs, a mediator will be assigned to a case unless the participants select someone on their own.

Settlement conference refers to a process in which people in a dispute in court present their views to a knowledgeable neutral person who evaluates their case and suggests ways to settle it without trial. The settlement conference facilitator is usually a judge or experienced lawyer who is able to give informed opinions about how the court might decide the case, to indicate how similar cases have been settled, to provide advice, and to suggest the terms of an agreement. In most Maryland circuit courts, complex civil cases are routinely scheduled for a settlement conference prior to trial.

Arbitration is a quasi-judicial process in which people in a dispute present their views to one or more knowledgeable neutral people who decide how the dispute will be resolved. Arbitrators review evidence, hear arguments, and make a decisions, often in the form of a monetary “arbitration award” paid by one person to the other. Arbitration is generally a binding process, which means that the participants agree up front to abide by the arbitrators’ decision. In “high/low” binding arbitration, the participants may negotiate in advance an upper and lower limit for the arbitrators’ award.

Consensus Building is a process in which a neutral person brings stakeholder groups and individuals together and facilitates their efforts to solve a problem or address a complex issue in a way that best meets the participants’ needs. Consensus building resembles mediation because the process is about people making their own decisions, opening lines of communication, and developing agreements that everyone can support. Consensus building, however, usually involves a much larger group of people than can be accommodated in mediation and is generally used to prevent or resolve disputes about public policy or other complex issues affecting many people.

Community conferencing is a process in which a neutral person brings together everyone in a community who as been affected by an action resulting in serious harm. During the meeting, the participants hear what happened, talk about how they have been personally affected, and work together on a plan to repair the harm. Although most frequently used in response to incidents of crime and delinquency, the process can be used for a wide variety of community conflicts.

Ombuds Offices provide a confidential, neutral and informal process for people in conflict. The ombudsperson may provide advice about resolving the conflict and may help arrange for the people in conflict to use any of the above-mentioned ADR services. The ombuds usually reports to the highest ranking official in an organizations, provides statistical data on service delivery, and makes recommendations for systemic changes aimed at preventing and managing conflict.

Contact:

For more information, call the Maryland Mediation and Conflict Resolution Office at 410-841-2260.

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