

ARBITRATION SUMMARY

What is Arbitration? Arbitration is a semi-formal dispute resolution process in which one or possibly three trained, impartial and neutral persons (who may but do not have to be attorneys) hear evidence and arguments presented by each party, consider in private the evidence and arguments presented, and decide the outcome. The decision usually will be rendered in a written document called an award, and in general is binding, is not subject to appeal and may be enforced through the courts.

Format. The arbitrator(s) and participants typically will convene for a hearing at which each party will present their case, much as would be done in court except that formal rules of procedure and evidence usually serve only as guidelines. The parties may not communicate with the arbitrator(s) separately concerning the substance of the dispute at any time, and in general may only communicate with the arbitrator(s) before or after the hearing concerning non-substantive matters such as logistics.

Arbitrator Role. The arbitrator(s) will preside over the hearing and will make any necessary rulings, as a judge would do. Once the hearing has been concluded, the arbitrator(s) will consider in private the evidence and arguments presented and will decide the outcome and render any necessary written award within the time frame required by applicable law and rules. The arbitrator(s) will not conduct, participate in, or even listen to, settlement discussions that may occur among the parties but usually will allow the parties time and privacy in which to discuss settlement if they wish. The arbitrator(s) will not act as advocate or legal advisor for any participant and will not undertake any independent investigation of the facts of the case.

Participant Role. Each party is responsible for investigating, developing, collecting, organizing and presenting all evidence and any legal or other arguments that party wants the arbitrator(s) to consider. Typically, the parties will be required to disclose to one another in advance all evidence to be presented and no, or only limited, formal discovery activities, such as document productions or witness depositions, will be permitted. The participants must conduct themselves in a civil and professional manner at all times and must follow rulings made by the arbitrator(s). Arbitrator(s) in general have the authority to exclude from the hearing any person who behaves in a hostile, disruptive or otherwise counterproductive manner.

Confidentiality. Unless the parties agree otherwise, the arbitration process is private and confidential. As a general rule, no audio or video recording is permitted and often no transcript or other record is made of the hearing. Any written award, together with any agreement to arbitrate among the parties, often will be the only written record pertaining to the arbitration and may be filed with a court as a matter of public record if one party determines that enforcement of the award is necessary. Information disclosed to the arbitrator(s) in the course of the arbitration will not be divulged by the arbitrator(s) unless the arbitrator(s) are required by law to make disclosure. Examples of circumstances that could require arbitrator disclosure include child abuse or neglect, abuse or neglect of the elderly or of an adult handicapped person, crimes committed, or when the arbitrator(s) are under a court order that requires disclosure. All notes, records and other documents kept or received by an arbitrator while serving in that capacity are confidential. As a general rule, an arbitrator may not be requested or compelled to produce or divulge such items or to testify in regard to the arbitration in any legal proceeding or forum.

Timeframe. The time required for an arbitration will vary, depending on the complexity of the dispute and the amount of preparation that will be required before the hearing. Arbitrators are trained to keep proceedings moving, and usually arbitrations are concluded in much less time than would be required for a formal court proceeding – arbitrations typically are measured in weeks or months, rather than years.

Resolution. An arbitration will produce a result, in the form of the decision of the arbitrator(s). Agreement among, or acceptance by, the parties is not required.