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Alternatives to Litigation: Arbitration and Mediation



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Lawyers and their clients often find that litigation can be expensive and time consuming. In an effort to decrease the cost of litigation and shorten the time within which a decision is reached, many litigants are using arbitration and mediation as an alternative form of dispute resolution (ADR). Often, contracts will provide for arbitration or mediation to settle a dispute before litigation. If a contract does not provide for these alternatives a judge can order the parties to mediation or, the parties themselves may voluntarily agree to arbitration. This article will explore the differences between arbitration and mediation and the benefits and disadvantages of each.

What is Arbitration?

Arbitration is defined in Florida Statutes as a process whereby a neutral third person or panel, called an Arbitrator or an Arbitration Panel, considers the facts and arguments presented by the parties and renders a decision which, in most cases, is binding on the parties. The arbitrators (usually a one or three member panel) act as judge and jury of the case and determine the issues of liability (fault) and damages. The arbitrator(s) decision is reduced to writing and, in almost all cases, is binding and non-appealable. The most common arbitration agreements can be found in construction contracts and insurance agreements. However, even without a prior written agreement to arbitrate, the parties may voluntarily agree to enter into binding arbitration.

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New Requirements in Foreclosure Judgements



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Florida law dealing with surplus funds following a judicial sale was amended as of July 1, 2006 to provide for new requirements in foreclosure judgments and notices of judicial sales.

First, Foreclosure Judgments must now contain notice to persons entitled to claim surplus funds that there is a 60-day time limit to make a claim and advise the homestead owner that the owner may claim surplus funds

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What is Mediation?

Mediation is defined as a process whereby a neutral third person called a Mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and non-adversarial process with the objective of helping the parties in the dispute reach a mutually acceptable and voluntary agreement. Mediation in Florida can occur at any time during the term of the dispute – including appeal – of any civil, family or dependency case. In most cases in Florida, the court will refer the parties to mediation before the matter is scheduled for trial. If the parties agree to a settlement, it is reduced to writing and the parties are bound by its terms and conditions.

What are the Advantages and Disadvantages of Arbitration?

Because arbitration has fewer formal rules of evidence and procedure, it can, in some instances, be more cost efficient and less time consuming. However, the procedures for obtaining documents from opposing parties or witnesses is far more restricted and may lead to an award that is based on less than all of the evidence.

Arbitration is almost always binding on the parties and is rarely appealable. Thus, arbitration awards are seldom reviewed by an appellate court.

What are the Advantages and Disadvantages of Mediation?

Because mediation proceedings, by statute, are confidential in nature, the parties are free to discuss the negatives and positives of their cases without fear that anything they disclose during mediation can be used against them in the event the dispute is not settled and proceeds to trial.

There are disadvantages to mediation. Since mediation is a confidential process it does not create a public record regarding the resolution of a dispute. If publicity is an important element to a dispute, the resolution of the dispute by mediation may not be in the best interest of a party.

Summary

When entering into a contract you should consider whether or not it provides for arbitration and/or mediation to resolve a dispute. Because litigation can be time consuming and expensive, arbitration and mediation may present a more efficient method of resolving a dispute. However, it is always in your best interest to discuss your options with your attorney prior to entering into any agreement. ■

Trenam Kemker Shareholder Running For Circuit Court Judge

Trenam Kemker is pleased to announce that shareholder Bernard Silver has qualified to run for a vacant seat on the Circuit Court of Hillsborough County.



A practicing attorney in Tampa since 1971, Bernie became one of Florida's first board-certified civil trial

lawyers in 1983. He is a certified mediator at the state and federal levels and has mediated hundreds of cases in the Florida court system. His practice includes personal injury, eminent domain and condemnation, as well as commercial litigation. From 1978 through 2003 he represented the City of Tampa in personal injury and police liability litigation.

Bernie is an active participant in The Florida Bar, having served on a variety of committees including the Judicial Nominating Rules Committee, the Individual Rights and Responsibilities Commission and the Code & Rules of Evidence Committee. Currently, he is a member of the Civil Rules Committee which reviews proposed rule changes and makes recommendations to the Florida Supreme Court. In addition, Bernie is a member of the Florida Academy of Professional Mediators Inc.

and a past chairman of the nominating committee for the Second District Court, the appellate court for fourteen counties on Florida's West Coast, which screens applicants for judicial vacancies and nominates suitable candidates for gubernatorial review and selection.

When asked why he is running for office, Bernie will tell you "Our system of justice is the best in the world. It is because I care deeply about this system that I am seeking election as a Circuit Court Judge. "

"I believe in the sacred obligation of the courts to do what is fair and right to enforce our laws and to do justice, not just for some but for all, not just most of the time, but always."

We are proud to have Bernie as a member of our firm.

Bernie has been endorsed by the Tampa Tribune ■

If you have questions or concerns about any of these topics please call 813-223-7474 or contact the author directly.

Trenam Kemker Adds Two Intellectual Property Attorneys



Heather R. Schwarz and Abby R. Dritz

Trenam Kemker is pleased to announce the addition of Heather R. Schwarz and Abby R. Dritz to our team of attorneys.

Heather joined the firm in June and will work as an associate in our Business Transactions Practice Group. Her practice will

focus primarily on corporate matters and intellectual property transactional matters, namely trademark and copyright issues.

Heather received her B.S. degree, *summa cum laude*, and a Master of Arts from the University of Florida, where she graduated with distinction. She received her J.D. from the University of Florida Levin College of Law in 2002.

Heather is a member of The Florida Bar and the Hillsborough County Bar Association.

Abby joined the firm in August 2006 as an associate in the Commercial Litigation Practice Group. Her practice focuses primarily on intellectual property matters. Prior to joining the firm, Abby spent 3 years at the intellectual property law firm of Lott & Friedland, P.A. in South Florida where she counseled clients on intellectual property strategies, including development of intellectual property, licensing programs and prosecution of federal trademark applications. Most recently, Abby was with Fowler White where she provided litigation support on intellectual property matters as well as products liability and professional liability matters.

Abby received her B.S.C. degree from the University of Miami in 1999 and her J.D. from The Ohio State University Michael E. Mortiz College of Law in 2002.

Abby is a member of The Florida Bar, the Ohio State Bar and the Hillsborough County Bar Associations. She is also a member of the American Intellectual Property Law Association, the Business Law Section and the Entertainment and Sports Law Section of The Florida Bar, the Hillsborough Association for Women Lawyers, and the Young Lawyers Division of the Hillsborough County Bar.

Please join us in welcoming Heather and Abby to our firm! ■

