

Heading to Arbitration? Here's What You Should Know

November 30, 2022



If a dispute is not solved by mediation, arbitration is often the next step in the dispute resolution process. Many standard construction agreements, including the AIA's, include a provision providing for arbitration as an alternate dispute resolution process. There are many benefits to arbitration versus the traditional litigation process. All parties to the agreement should be aware of how arbitration works as well as the benefits of complying with the agreement's arbitration provision.

In essence, arbitration is a hybrid of mediation and litigation. Arbitration is a process of dispute resolution that, like mediation, utilizes a neutral third-party to assist the parties in resolving the claims at issue. Also, like mediation, it has less formalities than litigation. However, the arbitrator's ruling is binding on the parties whereas mediation is non-binding. Just as in litigation, the parties present evidence and witnesses to the arbitrator. After hearing the evidence, the arbitrator will render a judgment that is final and typically cannot be appealed.

One of the main benefits is the selection of the arbitrator. Once arbitration has been initiated, both parties will work together to select an arbitrator that they both agree on. This fosters a fairer process than litigation in which neither party has any input as to the judge or jury that will decide their case. Additionally, the parties ordinarily will select an arbitrator with expertise in the particular area of their dispute. This is especially important for construction claims that often involve highly technical issues.

Another benefit of arbitration is the amount of time and costs saved compared to litigation. The arbitration process takes significantly less time due to flexibility in scheduling hearings with the arbitrator compared to a judge who has a calendar full of hearings. Arbitration also has less formal procedural requirements that help to expedite discovery and depositions. These time saving aspects of arbitration result in decreased costs as well. Over the course of litigation, legal fees are constantly being incurred. Speeding up the process and simplifying the more formal requirements of litigation results in less attorneys' fees for the client.

When confronted with a dispute and potential arbitration, parties should take care in following the requirements for enforcing the agreement's arbitration provision. Failure to do so could result in costly legal fees and the loss of the benefits of arbitration discussed above.

AIA Contract Documents has provided this article for general informational purposes only. The information provided is not legal opinion or legal advice and does not create an attorney-client relationship of any kind. This article is also not intended to provide guidance as to how project parties should interpret their specific contracts or resolve contract disputes, as those decisions will need to be made in consultation with legal counsel, insurance counsel, and other professionals, and based upon a multitude of factors.