

HOW  
CAN I  
RESOLVE  
MY  
DISPUTE  
WITHOUT  
A TRIAL?

GET THE  
LEGAL  
FACTS  
OF LIFE

# How can I **resolve** my **dispute** without a trial?

- 1** *How can I resolve my dispute without a trial?*
- 2** *What are the most common forms of ADR?*
- 3** *What are the potential advantages of ADR?*
- 4** *What are the potential drawbacks of ADR?*
- 5** *When should I consider ADR?*
- 6** *What should I consider before choosing ADR?*
- 7** *If I choose ADR, can I later file a lawsuit?*
- 8** *Do I need an attorney to participate in ADR?*
- 9** *How do I select the appropriate ADR process for my case?*
- 10** *How much will ADR cost?*
- 11** *How do I find an ADR provider for my dispute?*
- 12** *How can I find a lawyer to assist me with ADR?*

© 2006, 2008 The State Bar of California. No part of this work may be reproduced, stored in a retrieval system, or transmitted in any medium, without prior written permission.

---

*The State Bar of California's Committee on Alternative Dispute Resolution developed and edited this pamphlet.*

---

## 1 How can I resolve my dispute without a trial?

You can use *alternative dispute resolution*, generally called *ADR*. *ADR* refers to a number of ways of resolving conflicts without a lawsuit or, if you have filed a lawsuit, without a trial.

These alternative ways are used for many types of disputes including, for example, divorces, business and real estate disputes, landlord/tenant disputes, disputes with contractors, financial disputes, employer-employee disputes, inheritance disputes, and conflicts between neighbors. It is appropriate to consider *ADR* for almost any kind of dispute.

## 2 What are the most common forms of ADR?

While there are many kinds of *ADR*, the most common are *negotiation*, *mediation*, *arbitration* and *neutral evaluation*.

- In *negotiation*, those involved in the dispute (or their attorneys) directly communicate with each other to try to reach an agreement. If no agreement is reached, those involved may try alternative ways of resolving the dispute.

- In *mediation*, a neutral *mediator* helps those on both sides of the dispute work out their differences through a confidential process. Typically, both sides participate in discussions and negotiations aimed at finding a way to resolve the conflict. If no agreement is reached, the mediator has no power to decide the case and those involved may seek to resolve the dispute in other ways.

- In *arbitration*, a neutral *arbitrator* reviews presentations from both sides and makes a decision. Such presentations could include documents related to the dispute and witness testimony provided during the arbitration. The arbitrator's decision may or may not be *binding*. If the decision is *binding*, it generally is final and cannot be *appealed* (challenged). If the arbitrator's decision is *non-binding*, however,

you could take your case to trial if you do not agree with the decision.

- In *neutral evaluation*, each side makes a brief presentation to a neutral *evaluator*. The evaluator then offers an evaluation of the dispute – *not* a decision. An evaluator’s neutral perspective can sometimes help those in the dispute reach an agreement. Negotiations may follow such an evaluation, with or without the evaluator’s assistance.

In mediation, arbitration and neutral evaluation, there may be more than one neutral person involved in the process. And in all of these processes, you can hire an attorney to represent you (see #12) or you can choose to handle the matter on your own.

In addition, there are other less common forms of dispute resolution available. One of them is the *collaborative law* process. In this type of ADR, those on both sides of the dispute agree to use *collaborative* attorneys committed to resolving the dispute through cooperative, out-of-court negotiations. If the dispute is not settled, however, and those involved want legal help in pursuing litigation, they would have to hire new attorneys.

### **3** *What are the potential advantages of ADR?*

- **ADR can save time and money.** ADR, especially when used early in a dispute, can save a lot of time and money. Even when ADR does not result in an immediate resolution, it can produce savings by clarifying and narrowing the scope of the dispute.

- **ADR provides increased flexibility and control.** ADR typically gives you greater flexibility and control in the dispute resolution process – in the procedures followed, the interests considered and the remedies adopted – than you would have in a court trial. In mediation, for example, you can work out a resolution that may not be available in court.

- **ADR is generally confidential.**

Confidentiality encourages openness and candor, and is considered an important factor in the effectiveness of ADR.

- **ADR can improve communication and preserve relationships.** Some ADR processes are designed to reduce the hostility created by the dispute and to help each side communicate with the other. This is particularly true of mediation. The aim of mediation is to create a cooperative atmosphere in which both sides can find “win-win” solutions that will preserve or improve, rather than further damage, the relationship.

- **ADR can give you a chance to tell your side of the story.** Some ADR processes will permit you to tell your side of the story in a way that cannot be done in court. This opportunity for both sides to be heard can make the difference between a satisfying or frustrating dispute resolution process.

- **ADR can reduce stress and increase satisfaction.** Litigation can be highly stressful. Lack of control over the process and outcome, prolonged uncertainty and mounting costs all contribute to such stress. The benefits of many ADR processes — reduced expense, confidentiality, a quicker process, an out-of-court setting and greater control for those involved, for example — often make them less stressful.

## **4** *What are the potential drawbacks of ADR?*

- **There may be fewer legal protections.** With ADR, some of the procedural protections of a court trial may be given up in exchange for a potentially faster, more cost-effective and more flexible process. This trade-off is likely to be of most concern when the ADR process is binding.

- **The formal process for gathering evidence may be limited.** ADR participants may not have the same right to *discovery* — an extensive pre-trial,

fact-finding process — as they would in a case being prepared for trial.

- **Evidence or strategy may be revealed.** If not prohibited by confidentiality rules, the other side might be able to use information and strategies revealed during the ADR process.

- **Non-binding ADR could add time and cost.** If a non-binding ADR process does not lead to a resolution of the dispute, you may wind up paying the additional cost of taking your case to trial.

- **You usually cannot appeal an unfavorable decision in a binding ADR process.** With limited exceptions, the outcome of a binding ADR process is final.

- **ADR processes do not provide a legal precedent.** If you are seeking to set a legal precedent, litigation through a trial is the appropriate option.

- **The deadline for filing your lawsuit may not be extended.** Even if you are trying to resolve your case through ADR first, the legal time limits for filing a lawsuit (known as the *statutes of limitations*) still apply. If you have not ruled out filing a lawsuit, you must be careful not to miss the filing deadline while you are participating in ADR.

- **The neutral person may charge a fee.** The neutral person — mediator, arbitrator or evaluator — may charge a fee for his or her services.

## **5** *When should I consider ADR?*

- **Consider ADR when you are involved in a dispute or are concerned that one may arise.**

- **Consider ADR as early as possible.** If you consider ADR early, you will have a greater range of dispute resolution options open to you. In addition, if a lawsuit is filed, it is likely that the court will order or encourage ADR.

- **Consider ADR again as appropriate.** Throughout the dispute, periodically reevaluate

whether an ADR process would be necessary or appropriate. A change in circumstances might make ADR more attractive at a later point, even after a trial or during or after an appeal.

## **6** *What should I consider before choosing ADR?*

- **Consider your interests, needs, concerns, motivations and goals.** Consider, for example, what importance you place on resolving the matter quickly, on procedural protections, on confidentiality, on establishing legal precedent or on maintaining a relationship with the other party. In addition, how likely is it that you will get the results you want if you go to trial? And what are the risks, costs, time and stress involved in continued litigation?

- **Consider the appropriate dispute resolution process.** Many factors can affect your choice of a process. Such factors might include, for example, your financial situation, the value of the case in relation to the cost, and whether you and the others involved still have a relationship or will be working with each other in the future. Other factors might include whether the dispute centers around technical issues and what role, if any, the court system might play in the process.

- **Consider hiring an attorney with ADR experience.** Attorneys with ADR experience can discuss the appropriate use of ADR for your dispute (see #12).

- **Consider other issues.** For example, how will you approach the other side about using ADR? What roles will you and your lawyer (if one is assisting you) play in the ADR process? How will you obtain the information needed for the ADR process? How will the neutral person be selected and paid?

## **7** *If I choose ADR, can I later file a lawsuit?*

In most cases, taking part in an ADR process will not prevent you from taking your case to trial

later if an agreement cannot be reached. You can use dispute resolution before or after you have filed a case in court. However, binding arbitration is usually final and will prevent you from pursuing a trial.

## **8** *Do I need an attorney to participate in ADR?*

You may have an attorney present in an ADR process as an advocate or advisor, but you are not required to do so. If you have an attorney, the attorney's role will depend on the nature of the dispute and the type of dispute resolution process.

## **9** *How do I select the appropriate ADR process for my case?*

Ask your attorney to recommend the best process for your case. If you do not have an attorney, contact one of the resources discussed in the answer to question #11.

## **10** *How much will ADR cost?*

It depends on the nature of the dispute and the amount of time that the ADR provider will need to spend on your case. ADR providers generally charge for their services on an hourly basis. Then, typically, those on both sides of the dispute pay an equal share of the cost.

## **11** *How do I find an ADR provider for my dispute?*

ADR providers vary widely in their specialization, expertise and ability. The appropriate ADR provider for a particular dispute will depend on the nature of the dispute, the parties, the amount of money involved, the expertise needed and how far the dispute has progressed.

The following resources may assist you in locating an ADR provider:

- California's Department of Consumer Affairs maintains a list of local mediation

programs. Visit the department's Web site at: [dca.ca.gov/consumer/mediation\\_programs.shtml](http://dca.ca.gov/consumer/mediation_programs.shtml). Or call 916-574-8220.

- California courts, found in local phone directories, also maintain lists of ADR providers. For additional ADR resources, visit the courts' self-help center on the Judicial Council's Web site at: [courinfo.ca.gov/selfhelp/lowcost/adr.htm](http://courinfo.ca.gov/selfhelp/lowcost/adr.htm).

- Some local bar associations (listed in phone directories) may provide ADR services or help you locate such services.

- In addition, some ADR providers may be listed in local phone directories or may have Web sites.

Ask the ADR provider about his or her training and knowledge related to the issues in dispute and about any conflicts of interest that might affect his or her ability to be neutral. If you choose mediation, it is appropriate to discuss any concerns with the ADR provider. If you choose a process in which the ADR provider decides the outcome of the case (an arbitration, for example), you should discuss your concerns with the organization or court that initially referred you to the provider.

## **12** *How can I find a lawyer to assist me with ADR?*

If you do not know a lawyer, ask a friend, co-worker, employer or business associate to recommend one. You may want to ask if the lawyer has any experience with ADR.

Or, call a local State Bar-certified lawyer referral service. For an online list of certified lawyer referral services, visit the State Bar's Web site at [www.calbar.ca.gov/lrs](http://www.calbar.ca.gov/lrs). For a recorded message that can provide you with the phone numbers of certified services in your county, call 1-866-44-CA-LAW (442-2529). If you are out of state, you can call 415-538-2250 to hear the same recorded message. Or check the Yellow Pages of your telephone directory for a listing under the heading *Attorney Referral Service*.

State Bar-certified lawyer referral services, which must meet minimum standards established by the California Supreme Court, can assist you in finding the right lawyer for your particular problem. Most of these services offer half-hour consultations for a modest fee.

Attorneys who are members of certified lawyer referral services must carry insurance, agree to fee arbitration for fee disputes, meet standards of experience and be State Bar members in good standing.

Lawyer referral service fees do vary. Don't forget to ask whether there is a fee for the referral or consultation. And if you decide to hire a lawyer, make sure you understand what you will be paying for, how much it will cost and when you will be expected to pay your bill. You may want to talk to several attorneys before you hire one.

In addition, there are alternatives to hiring a lawyer who will represent you throughout all stages of your legal matter. You could, for example, choose *limited representation* instead — hiring an attorney who will assist you at particular stages of your case. Whether this would be a good option for you could depend on the complexity of your case and your financial situation. Generally, limited representation involves less cost.

While some attorneys will not work solely on portions of a case, others will agree to act as *collaborative attorneys* (see #2) or *consulting attorneys* (also called *coaches* or *providers of unbundled legal services*).

What if you do not have enough money to pay for legal advice? You may belong to a “legal insurance plan” that covers the kind of services you need. Or, if your income is very low, you may qualify for free or low-cost legal help. You could ask your county bar association if its State Bar-certified lawyer referral service offers free legal advice to those with little income or if it can direct you to a no-cost legal services organization. (California's statewide legal services Web site — [www.LawHelpCalifornia.org](http://www.LawHelpCalifornia.org) — can help you locate a local program and provide you with additional resources as well.)

For more information, see the State Bar pamphlet *How Can I Find and Hire the Right Lawyer?* To find out more about ordering a free copy of this pamphlet and other State Bar consumer education

pamphlets, call 1-888-875-LAWS (5297) or send an e-mail to [pamphlets@calbar.ca.gov](mailto:pamphlets@calbar.ca.gov). Or visit the State Bar's Web site — [www.calbar.ca.gov](http://www.calbar.ca.gov) — where you'll find the bar's consumer education pamphlets, as well as information on ordering them. The pamphlets also can be ordered in bulk.

**The purpose of this pamphlet is to provide general information on the law, which is subject to change. It is not legal advice. Consult a lawyer if you have a specific legal problem.**

**The State Bar of California**  
**Office of Media and Information Services**

180 Howard Street

San Francisco, CA 94105-1639

415-538-2000

Publications: 1-888-875-LAWS (5297)

[pamphlets@calbar.ca.gov](mailto:pamphlets@calbar.ca.gov)

[www.calbar.ca.gov](http://www.calbar.ca.gov)



THE STATE BAR OF CALIFORNIA

Office of Media and Information Services

180 Howard Street

San Francisco, CA 94105-1639

Place  
Stamp  
Here