Background Information on Common Methods of Dispute Resolution:

**Negotiation:** Negotiation is back-and-forth communication between two or more parties who are trying to reach an agreement. Negotiations can be formal (ex. haggling over the price of a car, discussing a job offer/salary) or informal (ex. working out a conflict with a neighbor, bargaining with a child over bedtime). “Like it or not, you are a negotiator … Everyone negotiates something every day.” *Getting to Yes: Negotiating Agreement Without Giving In* by Roger Fisher, William Ury, and Bruce Patton. Negotiation is the logical first step in any dispute resolution.

**Mediation:** Mediation is a type of negotiation in which a neutral 3rd party helps the parties resolve their dispute. Mediation is non-binding: the mediator cannot force the parties to agree, but rather assists them with reaching their own agreement. In assisting the parties, the mediator works with them together and sometimes separately to achieve a resolution. Settlement in mediation is always voluntary, but parties can be required to participate in mediation by their contract or a court. Even if not required, parties can agree to mediate their dispute at any time.

**Arbitration:** Arbitration is a “private trial” in which one or more neutral decision makers act as judges to resolve a dispute. Arbitration is more formal than mediation; it is a lot like court. Each side presents evidence to the arbitrator, who renders a binding decision that can be reduced to a legal judgment. An arbitrator’s decision usually is confidential and cannot be appealed. Arbitration typically is quicker, more flexible, and less costly than litigation. Also, the parties can choose their own arbitrator, which is useful for complex issues requiring specialized knowledge (e.g., construction). A disadvantage is that the parties must pay for the arbitrator’s time (versus court, where the parties do not pay for the judge’s time).

**Litigation (Court):** Litigation occurs when either party sues the other in court. Litigation can expensive and protracted. Additionally, court records are public, so the details of the dispute and judgment are not confidential. Parties have little control over which judge is assigned to their case, so for complex technical matters, it is unlikely their judge has the type of specialized knowledge necessary to understand the dispute (e.g., construction). Juries similarly lack such specialized knowledge and regardless can be extremely unpredictable.
Additional Information on Mediation:

American Arbitration Association Mediation page: https://www.adr.org/Mediation

Four Tricks That Make Mediation Work: https://www.forbes.com/sites/forbesleadershipforum/2012/07/25/four-tricks-that-make-mediation-work/#537d79a71514


Winning at Mediation: The Strategies for Effective Dispute Resolution: https://www.americanbar.org/groups/young_lawyers/publications/the_101_201_practice_series/winning_at_mediation_the_strategies_for_effective_dispute_resolution.html


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