



AMERICAN
ARBITRATION
ASSOCIATION®

INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION®

ALTERNATIVE DISPUTE RESOLUTION:

A CONVERSATION WITH THE AMERICAN ARBITRATION ASSOCIATION (AAA)

Speaker



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Agenda

- What is the American Arbitration Association (AAA)?
- What is alternative dispute resolution (ADR)?
- Court vs. Arbitration
- Advantages/Disadvantages of Arbitration
- Advantages/Disadvantages of Litigation
- The Arbitration Process
- Incorporate ADR in Business Contracts



**What is the American
Arbitration Association (AAA)?**

1926 – ALMOST 100 YEARS OF DISPUTE RESOLUTION



***Merger of two
early arbitration
organizations in
NYC***

*Arbitration Society
of America and
Arbitration
Foundation.*



What is the AAA?

- Created in 1926 in response to the Federal Arbitration Act – law allowing parties to settle their disputes outside of court
- Non-profit organization that acts as a third-party neutral to help parties resolve claims by “administering cases” following time-tested rules
- Headquartered in New York City with 26 offices nationwide & Asia Case Management Center (Singapore)
- Administered over 8 million cases since 1926
- Maintains a roster of approximately 6,000 arbitrators and 1,100 mediators
- Provides ADR Services in various practice areas, which have different rules, such as: Commercial, Construction, Consumer, Labor, Employment, International
- Administers Elections
- Administers Disaster Relief Mediation programs like Hurricane Katrina and Super Storm Sandy.



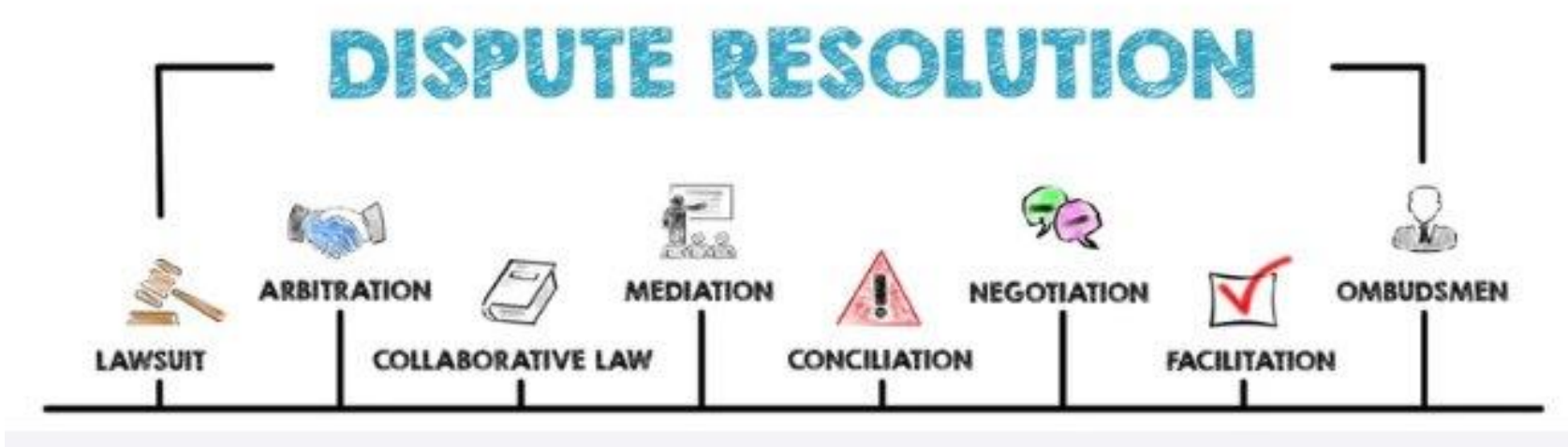
Did you know?

- The first President of the AAA in 1926 was Thomas Burchard, President of General Electrics
- The smallest commercial award rendered in AAA history is six cents – awarded to actor, choreographer, dancer and director of Cabaret – Bob Fosse
- The AAA-ICDR is the largest provider of ADR services in the world
- The AAA-ICDR Foundation has provided \$8.1 million in funding to projects since 2015



What is Alternative Dispute Resolution (ADR)?

Alternatives to litigation (lawsuits), including:



- Conciliation
- Mediation
- Neutral evaluation

- Negotiation
- **ARBITRATION**



Negotiation

Disputants communicate their differences to one another and with this knowledge try to resolve them.

Mediation

A neutral assists the parties in reaching their own settlement but does not have the authority to make a binding decision.

Arbitration

A referral of a dispute to one or more impartial persons for a private and binding determination.



Why should small businesses consider ADR and avoid litigation (court)?

- Save time and costs
- Avoid publicity; can be confidential
- More control over the process
- Desire to preserve the on-going business relations



Court vs. Arbitration



Who can file a case?

COURT

- Individuals or companies who believe their contractual rights have been breached.

ARBITRATION

- Individuals or companies who have an arbitration clause in a contract who believe that contract has been breached.



Decision Maker

Court

- Judge
- Jury
- Random Assignment without regard for subject matter expertise

Arbitration

- Arbitrator(s)
- Often chosen by the parties
- Subject matter expertise



Advantages and Disadvantages of Arbitration

Advantages of Arbitration



Faster



Less
Expensive



Private



Arb Selection



Expertise



Flexible



Final & Binding



Disadvantages of Arbitration



Final & Binding



Less Formal



Ltd Discovery



Can be Costly



Enforcement



No Precedent



Advantages and Disadvantages of Litigation

Advantages of Litigation



Appeals process



Enforcement



Traditional



Precedent



Remedies



Public Record



Disadvantages of Litigation



Time Consuming



Costly



Adversarial



Public



Ltd Control



Lack of expertise



Appeals process



The Arbitration Process



Filing and Initiation

Cost: For certain caseloads - filing fees are based on claim amounts and are paid by the party that asserts the claim or counterclaim.

Average Time: Day 1-15





Arbitrator Selection and Preliminary Hearing

Expected Cost: Parties will incur compensation charges by each arbitrator for time spent before and during the Preliminary Hearing and in preparation of the Scheduling Order. *Expedited: Standard flat rate compensation schedules for arbitrators.*

Average Time: Day 15 – 44 (Expedited – 20-35)





Information Exchange

Expected Cost: The time spent by the arbitrator in this phase is proportional to the number of procedural matters needing resolution. The arbitrator will spend time reviewing the parties' pre-hearing submissions, if any. *Expedited: costs included in the arbitrator's flat rate.*

Average Time: Day 85 – 222 (Expedited Day 50-95)



AAA Fixed Rate Mediation program

Cost-effective approach to resolving two-party disputes where claim amount(s) does not exceed \$100,000.

Benefits of Fixed-Rate Mediation

- Flat rate (fixed, up-front disclosed cost) with expedited timeframes.
 - o \$300 admin fee; \$1200 mediator compensation
- Access to AAA Mediators from the AAA National Roster
- Potential to reduce the transactional costs (time, money, emotions) while achieving an amicable resolution of the dispute.
- Considerable cost savings when compared to hourly or ad-hoc Mediators.
- One day of mediation conference, intended to be scheduled within 30 days of the Mediator's appointment.



Final Hearing

Expected Cost: The arbitrator is compensated for time spent in hearings, reviewing evidence, and reasonable expenses.

Expedited: Included in the arbitrator's flat fee. There is an administrative charge (Final Fee) for an in-person hearing. Another potential cost is hearing room rental at the AAA or other facility. Please note: if the parties request or need a second day of hearing, the arbitrator's hourly rate will apply from that time forward.

Average Time: Day 222 – 223 (Expedited Day 95-125)





Post-Hearing Submissions

Expected Cost: The arbitrator is compensated for reviewing evidence and any post-hearing submissions, as well as drafting the award. Any unused deposits are returned to the parties. *Expedited – not anticipated.*

Average Time: Day 223 - 258





The Award

The arbitrator may apportion arbitrator compensation and expenses and AAA fees among the parties.

Average Time: Day 258 – 288 (Expedited - Day 120-135)

SUMMARY

How the AAA can help small business owners with their disputes

- **Cost Structure**
- **Streamlined Process**
- **Roster of Arbitrators**
- **Administrative Services**
- **Neutrality**
- **Education and Resources**
- **Binding Awards**

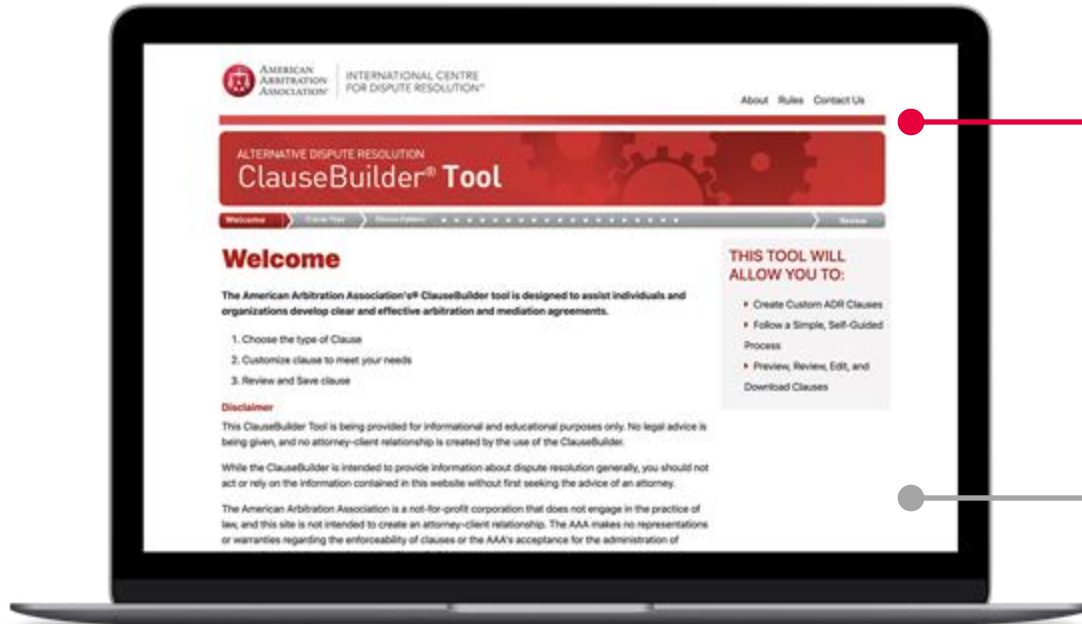
How to incorporate ADR in business contracts

AAA ClauseBuilder® Tool

Free, On-demand online tool created to help parties draft efficient and **enforceable** arbitration clauses with **clear, concise language**.

Industry-specific versions:

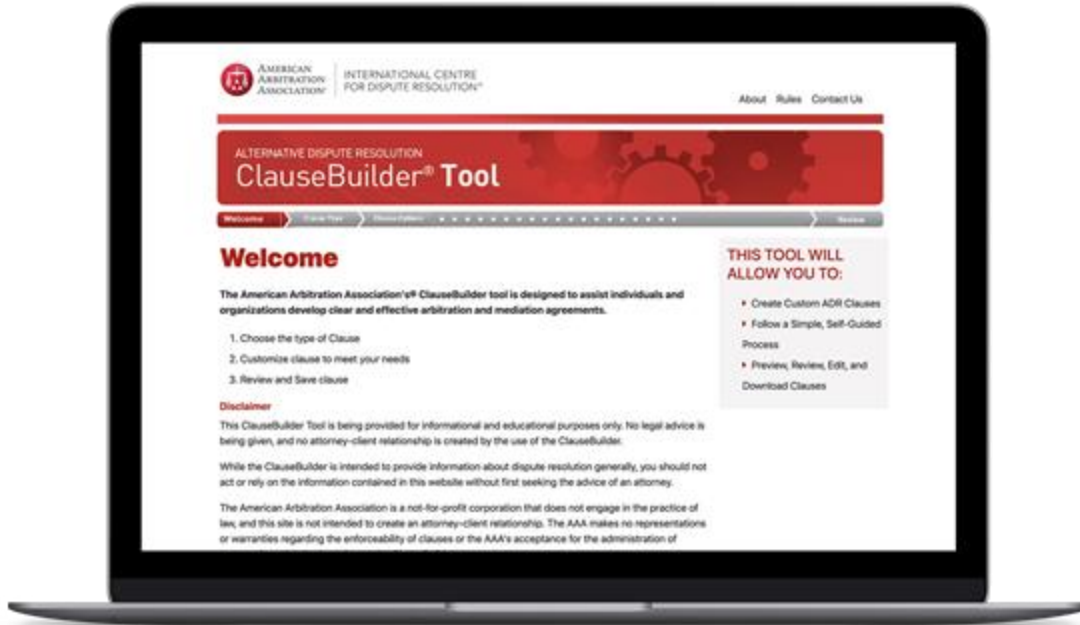
- Commercial
- Construction
- Employment (both Executive and Employer Plan)
- International
- Healthcare



Putting Arbitration in Your Contract

www.clausebuilder.org

<https://clausebuilder.ai>



Selections Include:

- Number of Arbitrators
- Method of Arbitration Selection
- Arbitrator Qualifications
- Locale Provisions
- Governing Law
- Discovery
- Documents Only Hearing
- Duration
- Remedies
- Attorneys' Fees
- And more.....



Drafting Arbitration Clauses - Options



Mediation



Law



Locale



Arb Selection



Confidentiality



Discovery



Arbitration Rules



Atty Fees
and Costs



Award Type



Resources:

<https://go.adr.org/small-business-entrepreneurs.html>



Small Businesses and Entrepreneurs Choose the American Arbitration Association® (AAA®)

Running a small business is demanding enough without getting entangled in lengthy and costly legal battles. When disputes arise with customers, employees, or partners, traditional litigation can drain time, resources, and peace of mind. That is why smart business owners and entrepreneurs turn to alternative dispute resolution (ADR) with the AAA.

What is ADR?

ADR encompasses various methods for resolving disputes outside of the courtroom. These methods are designed to be faster, more affordable, and less adversarial than litigation. Two common ADR methods are:

For more information ↻

Contact Angela Romero Valedon at 305-358-7777 or SBE@adr.org or fill out the form below.

First Name:

Last Name:

Categories



<https://www.aaeducation.org>







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