

## Arbitration & Dispute Resolution



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- Arbitration often involves a binding agreement and occurs when an arbitrator, often a lawyer, applies law and facts to the case resulting in a reward or solution.
- Mediation, which is non-binding, involves a mediator assisting both parties with communication, in hopes of coming to a shared agreement.
- Mediation is often used when one or more parties want to preserve the relationship, especially between business partners.

Feedback

Source: [Arbitration vs. Mediation](#)  (Pepperdine, 2022)

There are pros and cons to both mediation and arbitration – your situation and desired outcome will determine which alternative dispute resolution is best for you.

wish to remain friends, partners, and will perhaps work together in the future. Mediators are neutral third parties, and mediations are often not binding.

Alternative dispute resolution refers to the methods of dispute resolution that do not escalate to court. Unlike mediation, which often results in an agreement, arbitration usually involves coming to a reward or decision of some sort at the end of resolution. Arbitrators are often lawyers, and the agreements made during arbitration are usually binding.

Arbitration and mediation are affected by the world around them, from current court cases to COVID-19. Just like in every other field, mediators and arbitrators had to turn virtual, which both highlighted issues and made way for new and innovative means of alternative dispute resolution.

See References for more information.

## Latest on this topic

### Court of Appeals Reinstates Previously Vacated Arbitration Award

November 1, 2022



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### **Previously Featured / Arbitration Award / Among Real Estate Commission Dispute**

April 14, 2022

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### **Mediator/Mediation Training**

January 13, 2021



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### **How to Steer Your Association Through a CRISIS**

February 20, 2020



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### **No Losers in Mediation**

November 13, 2018

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### **Guidelines for Considering, Adopting, and Implementing a DRS Arbitration Program**

April 4, 2012

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### **NAR Member Code of Conduct**

April 3, 2012

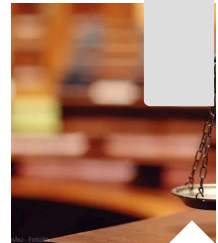
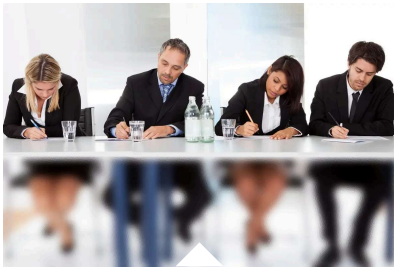


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**NAR Library & Archives** has already done the research for you.

References (formerly Field Guides) offer links to articles, eBooks, websites, statistics, and more to provide a comprehensive overview of perspectives. EBSCO articles (**E**) are available only to NAR members and require the member's nar.realtor login.

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- Pro: Arbitration offers the finality and legally binding outcome of a trial, but is typically more affordable, faster and less complicated than a court proceeding.
- Con: The scope of discovery can be limited as key information such as depositions, requests for documents, interrogatories, medical examinations, and inspections of property are sometimes curtailed.
- Pro: Arbitration is flexible. The parties have a say in the structure, process, and setting of the arbitration.
- Con: Arbitration clauses may offer an unfair advantage to bigger, wealthier parties (employers or large corporations, for instance) when challenged by an employee or consumer with fewer resources.
- Pro: Unlike court proceedings, which are open to public scrutiny, parties can agree to keep the arbitration private and confidential.

## Pros & Cons of Mediation

- Pro: The parties retain control of the process, and are able to make suggestions and reach a mutually beneficial decision.
- Con: Mediation requires that both parties agree to follow through on the proposed solution. The lack of binding resolution means there is no guarantee that both parties will abide by any decisions made.
- Pro: Mediation makes it easier to preserve the relationship between parties. Both parties may be satisfied and benefit from the final decision.
- Con: The perceptions, biases, and attitudes of the mediator can inadvertently impact the decision of the disputing parties.
- Pro: The mediation process is extremely flexible. Participants can choose the mediator, time, place, and structure of the proceedings.

Source: [Arbitration vs Mediation vs Conciliation: Differences, Pros and Cons, Applications](#)  (Kompass, Aug. 4, 2022)

[Mediation and the Conflict Resolution Process](#)  (*Harvard Law School Program on Negotiation*, Jan. 13, 2025)

“It’s often the case that when two people or organizations try to resolve a dispute by determining who is right, they get stuck. That’s why so many disputes end up in court. There is a better way to resolve your dispute: mediation by hiring an expert mediator who focuses not on rights but on interests—the needs, desires, or concerns that underlie each side’s positions. If someone asks you why a dispute is important to you, your answer will reveal your interests.”

[What is Mediation and Arbitration?](#)  (*Harvard Law School Program on Negotiation*, Jan. 16, 2023)

“What’s the difference between mediation and arbitration? In a mediation process, a neutral, trained mediator works to help disputants come to a consensus on their own. In arbitration, a neutral, trained arbitrator serves as a judge who is responsible for resolving the dispute. Mediation is appealing because it allows parties to reach a collaborative settlement, but it could end in impasse. Arbitration, on the other hand, can wrap up a dispute conclusively, but it doesn’t give disputants much say in the outcome.”

[Arbitration vs. Litigation: What's the Difference?](#)  (*The Balance*, Oct. 26, 2021)

“Litigation is an ancient process that involves determining issues through a court with a judge or jury. Arbitration, on the other hand, involves two parties in a dispute who agree to work with a neutral

## Common Ways to Resolve Disputes and Deadlocks in a 50/50 Business (*The National Law Review*, Jan. 26, 2021)

When companies are owned equally, resolving conflicts that have gotten stuck in standoff mode can prove difficult. In addition to arbitration and mediation, business owners can try an independent, third-party swing vote, exercising put/call rights, or offering equity to the other owner. Finally, owners can decide to dissolve the business completely.

## Alternative Dispute Resolution

### From Code to Court and Beyond: Alternative Dispute Resolution On and Off the Blockchain (*Dispute Resolution Journal*, Nov/Dec 2024) **E**

“Smart contracts are a revolutionary step in the digital and legal worlds. While not every smart contract is a legal contract, a smart contract is often a streamlined, digital expression of consent that happens to be stored on a blockchain. The growing popularity of smart contracts raises the question of not whether disputes will arise from their use but how breaches of smart contracts will be resolved. Users of smart contracts have already identified arbitration as a mechanism well suited to the novel needs of blockchain disputes. This article explores the role of alternative dispute resolution (ADR) in smart contract disputes, with a focus on the United States.”

### What is Med-Arb? (*Harvard Law School Program on Negotiation*, Sep. 16, 2024)



because arbitration may be involved in some way, the agreement is binding, unlike in most mediations. Mediation is attempted, but if an impasse is reached, the mediator can assume the role of an arbitrator.

### [It's Worth Trying ADR to Save Real Estate Relationships](#)

(*HousingWire*, Jun. 26, 2024)

“Implemented smartly, ADR offers litigating parties an expert mediator or arbitrator to listen to each side’s story and either guide them to a workable settlement (mediation) or make an informed, relatively quick decision about who is legally right (arbitration)...Even if a relationship is strained beyond the parties working together again, ADR can reduce the animosity and resentment that can linger after a legal fight. It also can save time, energy and money, and because it’s private, it can prevent or limit bad publicity.”

### [An Examination of Institutional Arb-Med-Arb Protocols and Practices](#) (*Dispute Resolution Journal*, 2022) **E**

“The combination of mediation and arbitration can take many forms and go by many names. The form addressed here—the incorporation of a mediation window into the arbitral process and the recording of any negotiated settlement as an arbitral award—is most commonly referred to by its procedural sequence, Arb-Med-Arb. If the parties are successful in resolving the entire dispute during the mediation window, the arbitration is reconvened simply to enter the negotiated settlement as a consent award. If the parties are unsuccessful, or successful only in part, then the arbitration is resumed to resolve remaining issues and to issue an arbitral decision and award. This

dispute resolution (“ADR”).”

## Arbitration & Mediation Issues

[The Benefits and Challenges to Having Artificial Intelligence in Alternative Dispute Resolution](#)  (*Dispute Resolution Journal*, Jul/Aug 2024) **E**

“In the area of alternative dispute resolution (ADR) conflicts are viewed or examined in different ways. With the evolution of technology comes increased flexibility that has removed the necessity for physically being present in the location where a mediation or arbitration takes place with platforms like Zoom and Microsoft Teams. 2 The newest challenge to providing dispute resolution services is the addition of artificial intelligence (AI). AI is a tool. As with any new technology there are benefits and challenges. The benefits of AI can include a simplification of gathering data and an increase in efficiency for the process as a whole. In contrast, the challenges may include legal and ethical concerns.”

[How to Prepare for a Real Estate Arbitration?](#)  (*ADR Times*, Feb. 14, 2022)

Alternative dispute resolution can be useful in many phases of the home buying and selling process, but especially during and after closing. Sometimes issues arise that cannot be quickly resolved – often issues or misunderstandings with the inspection and fixes that may or may not follow. Be sure to consult not only the rules in your state but also the National Association of REALTORS® Code of Ethics.

Not everyone put in a position of mediation has professional experience as a mediator – even if one does, the personal nature of the work allows for things like lack of confidence to sneak in. In addition to lack of confidence, make sure to watch also retain an air of authority over the situation, and accept any communication training available to you.

## Useful Websites

[Association for Conflict Resolution](#) 

[Center for Alternative Dispute Resolution](#) 

[Code of Ethics and Arbitration Manual](#)  (*National Association of REALTORS®*)

[Mediate](#) 

[Resources from NAR's Mediation Training Seminars](#)  (*National Association of REALTORS®*)

[National Association for Community Mediation](#) 

[OnlineArbitrators.com](#) 

[OnlineMediators.com](#) 

[Professional Standards Training & Mediation Resources Database](#)  (*National Association of REALTORS®*)

## Books, eBooks & Other Resources

### eBooks.realtor.org

The following eBooks and digital audiobooks are available to NAR members:

*Advanced Facilitation Strategies*  (eBook)

*The Anatomy of Peace*  (eBook)

*The Art of Constructive Confrontation*  (eBook)

*Breakthrough Business Negotiation*  (eBook)

*Conflict Resolution*  (eBook)

*The Coward's Guide to Conflict*  (Audiobook)

*Facilitating With Ease!*  (eBook)

*Good for You, Great for Me*  (eBook, Audiobook)

*The Handbook of Dispute Resolution*  (eBook)

*Have a Nice Conflict*  (eBook)

*Improviseational Negotiation*  (eBook)

*Legal Negotiation*  (eBook, Audiobook)

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*Negotiating Success* [🔗](#) (eBook)

*Negotiating the Impossible* [🔗](#) (eBook)

*Resolving Conflicts at Work* [🔗](#) (eBook)

*Settling the Unsettling* [🔗](#) (eBook)

*The Triangle of Truth* [🔗](#) (eBook)

## Books, Videos, Research Reports & More

As a member benefit, the following resources and more are available for loan through the NAR Library. Items will be mailed directly to you or made available for pickup at the REALTOR® Building in Chicago.

*Disagreements, Disputes, and All-Out War: 3 Simple Steps for Dealing with Any Kind of Conflict* [🔗](#) (New York, NY: Amacom, 2008) HD 42 SC03

*Handling Conflict* [🔗](#) (Cincinnati, OH: South-Western, 2002) HD 42 G65

*The Mediator's Handbook: Advance Practice Guide for Civil Litigation* [🔗](#) (Cincinnati, OH: South-Western, 2002) KF 9084 C77

*Leaders Working Together: Five Steps to Conflict Resolution* [🔗](#)  
(Washington, DC: American Society of Association Executives, 2001)  
HF 294 A1

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