



Overview

Typically, when organizations develop operating agreements for collaborative work, an approach to settling disputes without accessing court proceedings, is considered best practice. There are many approaches to drafting these sections of the operating agreement. I have included three that are typically used. For collaborations that involve great risk and/or great expense, access to arbitration, even binding arbitration, is typical. For lesser risk ventures, the other models generally suffice.

CREATE A PERMANENT HIERARCHY THAT SETTLES DISPUTES

Intractable disputes: The parties agree that in the case of intractable disputes regarding THE PROJECT, in which, despite their best efforts, they are unable to agree, they will bring the dispute to the Advisory Committee of THE PROJECT and the matter will be decided by majority vote of the members present when the matter is discussed. Within that discussion and prior to voting, each party will have the opportunity to make its views and perspectives known to the larger group.

USE OF A MEDIATOR

Intractable disputes If, after a good faith effort to resolve the problem without resolution, the parties agree to jointly appoint a mutually acceptable mediator to mediate the dispute. If the parties are unable to agree on a mutually acceptable mediator within twenty days of the conclusion of negotiations, then the parties shall request American Arbitration Association to assist the parties in finding a mutually acceptable mediator. Each party will bear its own costs incurred in the mediation and shall bear one half the costs and expenses of the mediator and any third parties selected to identify an acceptable mediator.

The parties agree to participate in the mediation in good faith for a period of thirty days. If the parties do not resolve the dispute through mediation within such period, either Party may submit the matter to binding arbitration, in accordance with the arbitration rules of the Arbitration Organization.

USE OF OTHER PARTNERS

1. To the greatest degree possible, conflicts will stay at the practice level for resolution with consumer inclusion in that process.
2. If the conflict can't be resolved, a member who is party to the conflict may request mediation of the dispute.
3. For intractable disputes, each party will choose the CEO of a noninvolved member. The parties will also choose a CEO who is acceptable to all parties. This group will "hear" the conflict and work out an agreement.