

ADR clauses in Family and Trust & Estate documents

Dispute resolution clauses from a divorce agreement

Mediation/Parenting Coordinator. In the event of a dispute arising between the parties concerning any matter related to the unemancipated children (other than financial support issues), the parties shall attempt to resolve the matter with the help of a neutral person to be designated as parenting coordinator. (In the event that the parties cannot agree on who shall serve as the parenting coordinator, either party may request appointment of a parenting coordinator by the president of the Massachusetts Council on Family Mediation.) The parenting coordinator (a) shall be entitled to speak with each of the parties separately or together, (b) shall, if necessary, be entitled to speak with other relevant individuals, and (c) shall, if necessary, speak with the children if they are at an appropriate age for such a discussion. If after making a good faith effort to resolve the matter with the parenting coordinator, the disagreement remains unresolved, either party may request that the parenting coordinator make a recommendation. The parenting coordinator's recommendation shall be binding on the parties, provided however that either party may seek review of the parenting coordinator's recommendation by a court of competent jurisdiction if that party believes that the recommendation is not in the child(ren)'s best interest. If the court substantially agrees with or approves the recommendation, the party seeking such review shall pay the other party's reasonable attorney's fees and costs. For purposes of this Agreement, the question of whether the parties have made a good faith effort to resolve the matter with the parenting coordinator shall be determined, if it is in dispute, by the parenting coordinator. In any proceedings with the parenting coordinator, the parties shall share the fee for the parenting coordinator in a manner determined by the parenting coordinator, who shall take into account the amount of time spent with each of the parties and, if the amount of time is disparate, the reasons for the disparity.

Dispute Resolution. Any dispute arising out of or relating to this Agreement, other than those provisions or issues that relate to the unemancipated Children which shall be resolved with the assistance of a parenting coordinator, shall be resolved in accordance with the procedures specified in this section, which shall be the sole and exclusive procedures for the resolution of any such disputes.

1. Negotiation. The parties shall attempt in good faith to resolve promptly any dispute arising out of or relating to this Agreement by negotiation.

2. Mediation. If the dispute has not been resolved by negotiation, the parties will attempt to resolve the dispute through mediation under the auspices of the American Arbitration Association, or with any mutually agreeable mediator. The cost of the mediator's fee shall be borne equally by the parties.

3. Arbitration. Any dispute arising out of or relating to this Agreement (or the breach, termination or validity thereof) which has not been resolved by mediation shall be settled by binding arbitration in Boston, or any mutually agreeable location, in accordance with the then-current Rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The cost of the arbitrator's fee and any administrative fees shall be borne equally by the parties.

Agreement to be executed by beneficiaries under a will or trust that does not
contain a dispute resolution provision:

The undersigned beneficiaries under [insert name of trust or identify the will] hereby agree to resolve any dispute arising between or among them, or with the [executor(s)/trustee(s)], with respect to their rights and obligations under the [insert name of trust or identify the will] in accordance with the provisions set forth below. The undersigned [trustee(s)/executor(s)] also hereby agree(s) to resolve any dispute arising between or among us, or with the beneficiaries, with respect to our rights and obligations under the [insert name of trust or identify the will] in accordance with the provisions set forth below.

(a) If the dispute cannot be resolved by direct negotiation between or among the parties, the dispute shall be submitted to mediation under the then-current rules of the American Arbitration Association. The cost of the mediation shall be borne equally by the parties participating in the mediation.

(b) If the dispute is not resolved by mediation, the dispute, including any dispute about arbitrability, shall be submitted to binding arbitration under the then-current rules of the American Arbitration Association. Judgment on the arbitration award may be entered by any court of competent jurisdiction. The cost of the arbitration shall be borne equally by the parties participating in the arbitration; however, the arbitrator(s) shall have the power to award all or part of the costs of the arbitration, including reasonable attorney's fees, to the prevailing party.

Pre-dispute provision for a will

As a condition of his or her acceptance of any portion of my estate, each beneficiary (including the trustee(s) of any trust receiving all or a portion of my estate, and the beneficiaries of said trust) shall execute an agreement providing that (a) any dispute arising between or among the beneficiaries, trustee(s) and the executor(s) shall be resolved in accordance with the provisions set forth below (the "Dispute Resolution Agreement"). The executor shall also, as a condition of his or her service as executor, execute the Dispute Resolution Agreement.

(a) If the dispute cannot be resolved by direct negotiation between or among the parties, the dispute shall be submitted to mediation under the then-current rules of the American Arbitration Association. The cost of the mediation shall be borne equally by the parties participating in the mediation.

(b) If the dispute is not resolved by mediation, the dispute, including any dispute about arbitrability, shall be submitted to binding arbitration under the then-current rules of the American Arbitration Association. Judgment on the arbitration award may be entered by any court of competent jurisdiction. The cost of the arbitration shall be borne equally by the parties participating in the arbitration; however, the arbitrator(s) shall have the power to award all or part of the costs of the arbitration, including reasonable attorney's fees, to the prevailing party.

Pre-dispute provision for a trust

As a condition of his or her acceptance of any benefit under this trust, each beneficiary shall execute an agreement providing that any dispute arising between or among the trustee(s) and the beneficiaries relating to the [insert name of trust] shall be resolved in accordance with the provisions set forth below (the “Dispute Resolution Agreement”). The trustee (and any successor trustee) shall likewise, as a condition of his or her service as trustee, execute the Dispute Resolution Agreement.

(a) If the dispute cannot be resolved by direct negotiation between or among the parties, the dispute shall be submitted to mediation under the then-current rules of the American Arbitration Association. The cost of the mediation shall be borne equally by the parties participating in the mediation.

(b) If the dispute is not resolved by mediation, the dispute, including any dispute about arbitrability, shall be submitted to binding arbitration under the then-current rules of the American Arbitration Association. Judgment on the arbitration award may be entered by any court of competent jurisdiction. The cost of the arbitration shall be borne equally by the parties participating in the arbitration; however, the arbitrator(s) shall have the power to award all or part of the costs of the arbitration, including reasonable attorney’s fees, to the prevailing party.

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Clause from George Washington’s will: “all disputes (if unhappily any should arise) shall be decided by three impartial and intelligent men known for their probity and understanding; two to be chosen by the disputants, each having the choice of one, and the third by those two -- which three men thus chosen, shall unfettered by law, or legal constructions, declare their sense of the Testator’s intention; and such decision is, to all intents and purposes, to be as binding on the parties as if it had been given in the Supreme Court of the United States.” (Source: AAA, Arbitration News, No. 2 (1963).)