



THE FLOYD LAW FIRM PC

**Legal
Sense**

The Floyd Law Firm PC
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Resolving Disputes—Without Going to Court

Disputes arise every day—at work, at home, and in the marketplace. In a single day you might have a dispute with your boss about a promised promotion; a dispute with your ex-spouse about child support; a dispute with your phone company about being overcharged; and a dispute with a neighbor about who should fix the wall dividing your properties. Depending on the circumstances, each of these disputes could potentially end in court.

Litigation, however, is both time-consuming and expensive. The process can also place pressure on relationships, which can be problematic for divorced parents who need to continue raising their kids together, neighbors who need to continue living next to each other, and business partners who have an interest in continuing to work together. Many disputes, large and small, can be resolved quickly, cheaply, and amicably without going to court—through negotiation, mediation, or arbitration. These processes for resolving disputes are discussed in more detail below; your lawyer can give you information about the best strategy for resolving your dispute.

Negotiation

Negotiation takes place every time two or more people bargain for what they want. Most adults negotiate every day. Negotiations offer great flexibility. Parties are free to negotiate an issue as far as they wish, and can walk away without investing a great deal of time or money if they cannot reach agreement. If two people successfully negotiate, they may wish to formalize their agreement in a contract. For example, in an employment negotiation in which a salary is negotiated, the parties often put the agreement in writing. Such a written agreement is usually legally enforceable. This means that, if one party does not comply with the terms of the contract, the other party can sue him or her either to enforce the agreement or to collect money damages. Your lawyer may be able to help you formalize an agreement after a successful negotiation. Not all successful negotiations end in a contract. For instance, if you are purchasing a bicycle from a store or a yard sale, you might bargain over the price, money may change hands, and you might ride the bike away without ever signing a contract. Similarly, if the tenants in an office building negotiate a 10 percent discount with a local coffee shop, a contract is probably unnecessary. Negotiations are a natural first step in resolving a dispute. Because the parties are in control of the negotiation, there are many potential outcomes. When you negotiate, you can focus on your own interests while also accommodating the interests of others. Negotia-

tions are a natural first step in resolving a dispute. Because the parties are in control of the negotiation that is facilitated—but not decided—by a neutral third party. In the mediation process, parties meet jointly with a neutral mediator, and each party presents his or her side of the dispute. The mediator then meets with each party separately and facilitates discussion to encourage them to reach an agreement. The mediator can help focus the discussion on each party's needs and interests. However, the parties are ultimately in control of the agreement reached, if an agreement is reached at all.

Mediation

Mediation is both cheaper and faster than litigation and also offers a broader range of settlement opportunities than a traditional trial. Mediation offers parties the chance to create a mutually beneficial outcome. For example, suppose that neighbors Luis and Steve have a

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Steve's house. Steve sues Luis for \$5,000, which is half the amount that it will cost to fix Steve's house. If Luis ends up in court, a judge will issue a decision. Depending on Steve and the judge's decision, Steve will either get \$5,000, a smaller amount, or nothing. Mediation, on the other hand, would give Steve and Luis the opportunity to try to come up with a mutually agreeable solution that both can live with. They could agree to work on the house together or decide to split some costs.

If they are able to reach a solution that both can agree on, their relationship at the end of the dispute will be a lot better than if one wins and the other loses in a court.

Many common disputes can be mediated, including workplace disputes, neighbor disagreements, family custody issues, and business disputes. Sometimes mediation is appropriate if parties have been negotiating and reach an impasse. Your lawyer may suggest that



—Continued from Page One—

you try mediating a dispute before progressing with a law suit. Sometimes contracts specify that any disputes under the contract must be taken to a mediator. Sometimes judges will order mediation before a case goes to trial, in the hope that the parties will be able to reach agreement. Mediation is generally a voluntary process: you choose whether to come to an agreement through mediation, and the mediator cannot force you to reach an agreement.

Any agreement reached in mediation may be submitted to the court, or it may be kept private between the parties. Most mediation agreements are as enforceable as any other contract, meaning a party can ask a court to enforce the agreement if one of the parties does not comply.

The parties normally share the cost of the mediator, and in many regions you can obtain free or sliding-scale mediation at a community center. The costs of mediation are higher than the costs of negotiation, because mediation involves a third person, but they are still considerably less than either arbitration or litigation.

Arbitration

In arbitration, the parties to a dispute agree to participate in a private hearing with a neutral third person, the arbitrator. The parties may agree in advance on the rules that will apply during the arbitration hearing and the selection of the arbitrator.

In an arbitration hearing, the arbitrator listens to the details of a dispute between the parties, considers all evidence presented, and issues a ruling. In **binding arbitration** the arbitrator's decision is filed with a court within twelve months. The court then confirms it, and the decision becomes an order of the court. This means that, if a person refuses to follow the decision, he or she can be found in contempt of court and fined or imprisoned. Appeal from a binding decision is only allowed in very limited circumstances, for example, if the arbitrator was obviously biased. In **non-binding arbitration**, the arbitrator's opinion is only advisory, and parties may adhere to the opinion, continue to litigate the dispute, or settle under different terms.

Usually both parties to arbitration have lawyers to represent them. The arbitrator controls the process, which is very similar to a trial, and decides the outcome in a role very similar to that of a judge. The arbitrator's final decision is based on the evidence and testimony of all parties at the hearing. Unlike mediation, in which the parties are not obliged to reach an agreement, the arbitrator will come to a decision. Unlike court proceedings, arbitration is held in a closed and private court, and the parties can keep the outcome confidential. This confidentiality necessarily means that the decision only binds the

parties in that particular case—the decision has no value as a precedent in subsequent cases, even in cases with identical facts.

These characteristics of arbitration make it an attractive dispute-resolution process for many commercial parties. Your lawyer can give you more information about arbitration and whether it might be an appropriate means of resolving your dispute.

Arbitration Clauses in Contracts

An arbitration clause is a section of a contract requiring disputes to be resolved through arbitration. If you have agreed to the terms of a credit card, insurance policy, or bank loan, you have probably agreed to an arbitration clause. Often the arbitration clause is included in the fine print of an agreement.

Unfortunately, arbitration is not always in the interests of consumers. Consumer rights groups claim that mandatory arbitration circumvents the protections of the legal system, such as the ability to file class-action lawsuits. Moreover, consumers rarely voluntarily agree to arbitration, but do so in ignorance, when they sign lengthy contracts with mandatory arbitration clauses buried in legalese.

If you are involved in a dispute and are facing mandatory arbitration, talk to your lawyer about how best to proceed.

COMPUTER CRACKING

We increasingly use computers like filing cabinets—as secure places to store financial records, tax returns, and sensitive information. But unlike filing cabinets, computer files are not protected by a physical key, but by a private password.

Password-protected files can cause a problem when a person passes away. Often, the person has not told anyone his or her private passwords, and computer files are inaccessible to relatives. They must work with a lawyer to figure out how to get into the password protected files, or hire someone to do it for them.

For some people, it is not worth the time and energy to access password-protected computer files. Often they simply erase the hard drive and get rid of the computer without ever knowing what was on it.

If loved ones do want to try and access protected computer files, they may face legal issues. Small mom-and-pop computer services may break into a machine without asking for any proof of death. But larger companies may ask to see a death certificate before sharing e-mail messages or data stored on their servers with survivors.

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Home Renovation: Completing the Project

You've carefully planned and budgeted your home improvement project and have engaged your contractor. Now come the hard parts—living through the mess and making sure that your project is completed according to the terms of your contract.

This article, the third and final in a series on home renovation, discusses some of the problems that can arise as your project moves to completion. It looks at some of the most common pitfalls in home renovation and then considers how you can resolve your dispute if your project goes wrong.

Common Pitfalls in Home Renovation

Few projects stay exactly on time or on budget, but no project should become a nightmare. Here are some common problems that you should be aware of as work begins.

Failure to Start

Your contract should specify an exact start date for the project; such a stipulation makes it more likely that work will start on time. However, situations can still arise that delay the start date: bad weather, for example, or delays in supplies of materials. Whatever the reason for a failure to start your project on time, you should expect your contractor to notify you of the reason for the delay.

If your project does not begin on time and you haven't heard from your contractor, contact him immediately. If your contract has specified an exact start date, you should insist that the project start right away. If an exact start date was not specified, establish a definite date in the future by which you expect work to begin.

If your contractor continues to fail to respond, consider talking to your lawyer. He or she will be able to help you determine whether your contractor's failure to respond constitutes a breach of contract and can draft a letter to the contractor spelling out what remedies you will expect in the event of a breach.

Delays and Failure to Complete

Your contractor's responsibility is to do his best to keep the job moving forward and to apprise you of any foreseeable problems or delays. You should also be diligent in keeping the lines of communication open with your contractor. Do not hesitate to call if you are concerned about the progress your contractor is making. Remember that in construction, as in most businesses, the squeaky wheel gets the most attention.

If delays stretch into weeks or months, you may be facing a failure to complete. Failure to complete can be far worse than failure to start. You may be living in a torn-up home with no sign as to when the project will end. Your contract should provide for a completion date as well as a start date and also provide for penalties if the project is not completed in a timely manner.

If it seems clear that your contractor has abandoned the job, see a lawyer and begin the process of forcing the contractor off the job. **Your lawyer will be able to help protect you against the possibility of mechanic's liens being filed against your property by subcontractors and suppliers.**

Shoddy Workmanship

Your contractor's work must meet certain standards, most of which are established by states and municipalities in building codes. A local building inspector will ensure that your project is in compliance with these standards.

As the homeowner, you should be alert to signs of shoddy workmanship that do not amount to a code violation. The signs of shoddy workmanship will probably be apparent: corners that do not meet, for example, or appliances that do not quite fit in their spaces. When you see signs of such workmanship, talk to your contractor immediately and request that the problem be fixed.

Your contract should provide you with the right to an independent inspection over the course of the project. If your contractor won't take responsibility for shoddy workmanship, insist on taking advantage of this right. Ask the inspector to provide a report detailing the problem, its cause, how it can be fixed, and the likely cost of repairs.

If your contractor still refuses to fix a problem after receiving an independent inspector's report, you'll probably have to prepare for the possibility of going to court. Talk to a lawyer right away so that you will know what sort of evidence you should gather and how you should proceed with your contractor.

Resolving Your Disputes

The best way to resolve disputes that arise during a home renovation project is to maintain a good relationship with your contractor and stay on top of your project. Ask questions as they come to mind and work with the contractor to negotiate solutions to the problems as they happen.

If problems escalate and you face an unresponsive contractor, you may need to take more serious steps to resolve your dispute. If you believe you are facing a breach of contract, let the contractor know in a phone call or, even better, in a face-to-face conversation. Keep notes of your conversation. If this doesn't produce a satisfactory response, you will want to talk to a lawyer. A simple letter may be all that is required—it will give the contractor notice that you are prepared to take whatever steps are necessary to resolve the problem.

The terms of your contract and a conversation with your lawyer will help you decide if further steps need to be taken. Your contract may allow, or require, alternative dispute resolution in the event of a dispute. This may take the form of arbitration or mediation (discussed in the cover story). If alternative dispute resolution is not an option, you may be able to resolve the matter in small-claims court, depending on the estimated cost of resolving the problem. Or you may need to pursue a lawsuit against the contractor. Your lawyer will be able to help you decide which means of dispute resolution is best for you.

In any case, you will be seeking either specific performance of the contract, which forces the contractor to do the agreed-upon work, or damages that will cover the cost of repairing the problem.



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Word About Our Firm

The Floyd Law Firm PC is a general practice law firm established in 1973. We have three attorneys who can handle almost every type of legal work which you, your family or your business may require. We take great pride in our team of lawyers, legal assistants, legal secretaries, and staff members. Each attorney, legal assistant and legal secretary is an expert in one or more fields. This expertise allows us to provide superior legal services in a number of fields of law such as Personal Injury Claims, Community Association, General Trial Work, Golf Industry, Estate Planning, Estate Administration, Elder Law, Real Estate Transactions, Family Law, Worker's Compensation, Wills and Trusts and Criminal Law. We hope you will meet our well-qualified team and allow them to work together for your benefit.

Website:

www.floydlaw.com

NEWS FROM THE FLOYD LAW FIRM

The following have celebrated anniversaries with The Floyd Law Firm: Congratulations to all!

Frank J. Bryan—12 years on June 1.

Dundee W. Carter —1 year on May 31.

Linda S. Davis—3 years on April 22.

Evon P. Morris—39 years on April 1.

Peggy Sue Ross—2 years on April 7.

Dalton B. Floyd, Jr. was recently named President of The Huntington Society of Brookgreen Gardens.

The Floyd Law Firm has attained for 2006, certification in the Bar of Preeminent Lawyers. This register is sponsored by Martindell-Hubbell and is limited to only the firms that have attained the highest rating of "AV". The "A" signifies the highest level of ability, while the "V" denotes "very high" adherence to the professional standards of conduct, ethics reliability and diligence.