

Savvy arbitrators, mediators needed to settle hotel disputes

These days, it seems that many litigants are choosing to resolve their matters through "alternative dispute resolution," a fancy term for arbitration or mediation. In fact, many courts now require parties to mediate before allowing their matters to proceed to trial.



The hotel industry is not immune from this trend. Most franchise agreements and management contracts these days provide for arbitration or mediation or both for various disputes. These provisions also can be found in some employment contracts, vendor contracts and service agreements. Nevertheless, most hotel owners are not very familiar with what it means to submit a matter to arbitration or mediation and the importance of selecting the right person with hotel industry knowledge and expertise to resolve their disputes.

Arbitration is a method by which two sides to a dispute present their case to one or more persons (often three) for resolution. The arbitrator acts as a judge and usually will take written submissions from the parties and also might hear testimony from live witnesses. The agreement under which the arbitration occurs sometimes will spell out the extent of the evidence the arbitrator will consider. However, often it is left to the discretion of the arbitrator. The more the arbitration looks like a trial—such as when parties are allowed to take discovery—the more expensive and time-consuming it will be for the parties. After hearing the evidence, the arbitrator will issue an award to one of the sides.

Arbitration can be binding or nonbinding, depending on what the parties have agreed. If it is binding, the prevailing party simply has to present the arbitration award to a judge to confirm the award. The award then has the force of any other civil judgment.

Unlike arbitration, mediation is a much less formal method of trying to resolve disputes, and its goal is not to rule for one side, but rather to bring both sides together for an agreement. The mediator usually will only allow the parties to submit brief written statements of their position and will not consider any evidence. The mediator then will meet with the parties in the hopes of leading them to a consensual resolution. Mediation is nonbinding, meaning that either side is free not to settle and instead can continue on with its litigation.

The benefit of mediation is that it brings a third party (the mediator) into a dispute to provide some fresh perspective and get the parties talking. When both parties are amenable to settling, mediation proves to be very successful.

The most important aspect of arbitration or mediation is the selection of the person who will resolve the dispute. Until recently, the choices were fairly standard and unremarkable. Contracts routinely would designate the arbitrator or mediator as a member of the American Arbitration Assn.; JAMS, which formerly was known as Judicial Arbitration and Mediation Services; the International Chamber of Commerce; or a similar organization that provides arbitrators and mediators. More enlightened parties in the hotel industry started to change their agreements to require the arbitrator to have a minimum number of years in the hospitality practice. The

problem with those provisions is that few people with hospitality experience were certified to be arbitrators or mediators.

In an attempt to provide a better choice, the International Society of Hospitality Consultants instituted a program, administered by The Institute of Conflict Management, to certify ISHC members as arbitrators or mediators. The ISHC has an active roster of 18 members who have been certified as arbitrators and/or mediators and is expected to grow to more than 30 in the next year. The experience of these ISHC members should make the process even more successful for the hotel industry.



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