

## Resolving business disputes in the construction industry

In any high-stakes contractual relationship, disputes between the parties are bound to happen. Most of those disputes get resolved through discussions with mid-level or upper-level management. Bigger disagreements, however, often need dispute resolution assistance from a disinterested party. This is particularly true on commercial construction projects, where it is common to see disputes between or among a project owner, contractor, design professional, subcontractor or others — each sometimes pointing a finger at the other parties involved.



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the judge or a jury. Because of the detailed rules in place to assist these neutrals in reaching decisions, litigation can be time consuming and expensive. It can also take years for the trial to be heard and for all appeals to be exhausted.

In an arbitration, however, the parties hire an arbitrator — a private judge — who often has experience in the subject matter at stake in the dispute. Consequently, arbitrators may be better equipped in some cases at handling the nuances of a complex dispute, understanding the issues and processing the evidence. Arbitration rules are more relaxed than those in litigation, often resulting in a process that is quicker and less expensive than litigation. Unlike court decisions, arbitration decisions are rarely appealable.

The potential for dispute during or after a large construction project is so great that the construction industry has adopted detailed dispute avoidance and resolution procedures for its standard form contracts. Virtually all major form construction contracts require mediation as the first step in the process, and many of them prefer arbitration over litigation as the next step. The general business community can learn from the construction industry on how to effectively manage the potential for disputes and how to include workable dispute resolution mechanisms that save time and money.

People often confuse mediation, arbitration and litigation, and they even mistakenly use these terms interchangeably. They are very different. A mediation is a facilitated discussion between the parties with the goal of reaching an agreement. The parties to the dispute hire a neutral party — a mediator — to work on finding a common ground. The mediator's job is to help the parties reach an agreement, not to decide who wins or loses. If the parties are unable to reach an agreement, discussions simply end and the parties are back where they began.

In an arbitration or litigation, by contrast, a third-party actually decides who wins and loses. Each party takes turns presenting evidence through documents and witnesses, after which the neutral decides who wins. Almost everyone is familiar with litigation, in which the neutral is either

The construction industry has come to rely on arbitration to resolve disputes. Several of the nation's leading arbitration services have adopted special rules for handling construction disputes and have access to arbitrators who know the industry. That benefit is also available for general business disputes, as the same arbitration services have deep rosters of arbitrators who have experience in the specific issues at stake in most disputes.

Contracting parties should not wait until a dispute arises to decide how that dispute should be resolved. Like the construction industry has already done, private enterprises should incorporate a dispute resolution mechanism right in the contract, starting with negotiations with management, followed by mediation and ending with either arbitration or litigation. Reaching such an agreement at the beginning of the relationship can save time, money and frustration once disputes inevitably arise.

*This article is intended solely to provide broad, general information, not legal advice. Readers should seek advice from a licensed attorney with regard to any specific legal issues. Statements or opinions expressed are those of the author and do not necessarily reflect those of the Columbus Bar Association, its officers, board, or staff.*

## Mechanics' lien provides legal protection for unpaid contractors and suppliers



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You just finished that major kitchen remodel project. You're proud of your work, and the customer is thrilled with the results. You wait on the final payment, yet it never comes. What can you do?

In Ohio, you can file a mechanics' lien to create the incentive to receive that final payment. What is a mechanics' lien? It is a legal claim on property for the benefit of those who have completed work or provided materials and improved such property. A mechanics' lien creates a cloud on the title of the property, creating a powerful incentive for the owner of the property to get the issue resolved. Ohio's mechanics' lien laws are statutory. As detailed in Ohio Revised Code Chapter 1311, these laws form a policy intended to protect unpaid contractors and suppliers by creating a legal mechanism to secure payment if certain procedures are followed.

Strict deadlines apply, and contractors often forfeit their lien rights by failing to

follow certain procedural requirements.

For example, a residential contractor must file an affidavit of mechanics' lien with the county recorder in the county in which the property is situated within 60 days from the date on which the last labor was performed. Other requirements apply for residential liens. Different deadlines and additional requirements apply for commercial projects, including understanding the significance of a notice of commencement and a notice of furnishings. In short, mechanics' liens offer a viable option for contractors seeking payment on delinquent projects, provided certain rules are followed.

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### ATTORNEYS AROUND THE BAR:

#### Barbara Jordan

CONSTRUCTION LAW CHAIR

The Columbus Bar Association's Construction Law Committee is being restored after a few years of inactivity, and attorney Barbara Jordan is excited to lead the committee for the upcoming year.

Already armed with ideas for upcoming meetings, Jordan looks forward to reinvigorating the committee and working with members to guide planning for the year. "This is an excellent time in the Construction Law Committee's history to attend a

meeting, get involved and benefit from the dialogue of colleagues and industry leaders," Jordan said.

As an associate with Dinsmore & Shohl, Jordan practices in the areas of construction law, real estate development, commercial financing, corporate law and business acquisitions. Before attending law school, she worked as a professional engineer, managing teams of surveyors, architects and engineers.

## Website educates voters on judicial candidates

We frequently hear complaints from voters who feel ill-prepared to vote for judicial candidates. So, a few years ago, the Columbus Bar created a website that gathers the credentials for each of the judicial candidates in Franklin County. The site, JudgeTheCandidates.org, is a non-partisan voter education portal designed to help voters make informed decisions at the ballot box.

The site includes profile information about each candidate, as well as historical data regarding sitting judges who are running as incumbents. In addition, the site contains reports generated by the CBA Judicial Screening Committee, which interviews each of the candidates and has the option to find candidates highly recommended, acceptable or not recommended. This information is shared with the candidates and voters by the Judicial Screening Committee as part of its ongoing effort to preserve and promote the equal and fair administration of

justice in Franklin County.

The Supreme Court of Ohio offers a similar service through its JudicialVotesCount.org website, which includes information about judicial candidates throughout the entire state. The site also offers an overview of Ohio's court system, the judicial selection process and the role judges play in preserving our democracy.

For November's election, there are 14 candidates vying for nine seats on the Franklin County Court of Common Pleas, five of which are contested races. All of those campaigns add up to a lot of information, particularly during a presidential election year. As voters analyze ads and news reports about each of the candidates, it may be easy to overlook the judicial races. It is important to remember the role that our judiciary plays in our everyday lives and for every voter to learn more about the judicial candidates.

Enroll now - classes begin soon

### Morning Meetups with Mediators

Held at the Columbus Bar, this 4-part series provides education and mentoring to lawyers and others interested in conflict resolution.

- SEPT 21 GETTING CLIENTS READY
- OCT 5 WHAT'S ON THE MEDIATOR'S MIND
- OCT 19 ADVOCACY IN MEDIATION
- NOV 2 GIVING YOUR CLIENT GOOD ADVICE

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