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## “Tip of the Month”

### **Contracts and Mandatory Arbitration Clauses: Should You Include/Accept Them?**

When it comes to signing a contract, no one wants to think about potential legal disputes that may arise. Arbitration has become one avenue in resolving legal disputes, but is it the best option for you.

To determine whether to include them in your contracts or to sign a contract that contains a mandatory arbitration clause, you need to know the advantages and disadvantages of mandatory arbitration.

The advantages of mandatory arbitration include possible avoidance of hostility, reduced cost compared to litigation, faster resolution than litigation, flexibility, simplified rules of evidence and procedure, and private. Hostility is avoided because the parties are more likely to work peaceably together to resolve the disputed issue. Because the arbitration is quicker and less complicated than a court proceeding, arbitration is usually less costly. Unlike trials in overcrowded court calendars, scheduling of arbitration hearings is more flexible because the hearings can be scheduled around the availabilities of those involved. The simplicity of procedure also contributes to faster resolution. Who will be called as a witness and what documents must be produced are typically handled with a phone call or email. Unlike court proceedings, arbitration is generally held in private with the option to keep the proceeding and terms of the final resolution confidential provided the parties mutually agree. The arbitrator selected usually has expertise in a particular industry and can comprehend terms of art, damages and claims common to that industry more than most trial judges.

The disadvantages of mandatory arbitration include limited recourse by either party if an arbitrator’s award is unfair or illogical since most arbitration awards are final and binding on the parties; choosing an arbitrator is not typically objective if picked by an arbitration agency from their own list; the arbitrator’s role is both as judge and jury; lack of transparency of the decision process because hearings are generally private; rising costs since the cost of initiating an arbitration is significantly higher than the cost of filing a law suit. For example, the American Arbitration Association (AAA) fees are based on the amount of the claim, and those fees can be very high – worth investigating before signing on to mandatory AAA arbitration.

Understanding the pros and cons of mandatory arbitration allows you to make an informed decision on choosing arbitration in your contracts or deciding to sign a contract that contains a mandatory arbitration clause.

If you have any questions about contracts, do not hesitate to call the attorneys at Mesmer & Deleault, PLLC by phone at (603) 668-1971 or send an email to [mailbox@biz-patlaw.com](mailto:mailbox@biz-patlaw.com).

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