

Experts Offer Input on Pros and Cons of Mediation vs. Arbitration

When it comes to profitability, a lot can be said for the way a company manages information. That's been the overall theme of the Construction Specification Institute's three-part webinar series, "Maintaining Profitability in Your Construction Business" (see April 2009 *USGlass*, page 20, for related story).

"There is always the possibility that someone will file a claim against you for almost anything," said Bill Dexter, a risk-management consultant and trainer, during the webinar. "And we've already established that [construction] is a high risk/low margin business and it's full of disputes. Lawsuits are expensive and time-consuming and we also know that a satisfied customer is easier to deal

with than one who is unsatisfied."

When facing risks and disputes, Dexter said there are a lot of alternate dispute resolutions (ADR) that can help. While there are several types of ADR, the session focused primarily on two: mediation and arbitration.

"With mediation, no one can force a decision upon you; a mediator is only the facilitator of the process and not a judge," said Marge Mellody, a mediator specializing in real estate-related disputes, in explaining that with arbitration the parties actually meet with a "private judge."

"Arbitration is a voluntary submission of dispute for final and binding judgment. The judge has ultimate control over the outcome," Mellody added.

Mellody explained that mediation is a very informal process and in many cases it simply allows both parties the opportunity to tell their sides of the case.

"The mediator helps get them over the past and to move forward," Mellody explained. "But they have to have a cooperative mindset; attitude is very important."

She added that while the goal is to reach an agreement, it's not binding until both parties sign it.

"If you're going through a mediation, do not leave until you have that agreement signed," said Dexter, who explained that if the parties leave before the agreement is signed they could come back and change their minds.

While mediation is rather informal, arbitration is a more formal process. When it comes to arbitration, one of the most important features is that it is very rare that the decision could be appealed. As Dexter explained, the courts are reluctant to hear an appeal because they know that the parties had agreed to resolve their dispute through arbitration and are therefore accepting of whatever that decision may be.

When it comes to arbitration, the panel pointed out that everything comes down to the cost of the job itself. In other words, the amount of the dispute will determine how much time actually needs to be involved. For example, if the dispute is under \$10,000 the individual involved may prefer to represent him or herself rather than investing in the cost of an attorney.

Whether going with mediation or arbitration, that decision must be written into every contract—between the architect and the owner; the owner and the general contractor; the general contractor and subcontractors. ■

Minnesota Puts Funds Toward Energy-Efficient Windows

Minnesota Senators LeRoy Stumpf and Kathy Saltzman have introduced a bill that, if made into law, would authorize state agencies to use federal stimulus funds dedicated to energy projects for the installation of energy-efficient windows in government and residential buildings.

According to SF0961, the Department of Administration and the Office of Energy Security would develop a plan and procedures to select, fund and implement projects using eligible federal energy-efficiency conservation block grant funds to install energy-efficient windows in government buildings owned by the state, counties, local units of government and school districts.

In addition, the bill also calls on the Office of Energy Security to develop a plan and procedures to select, fund and implement weatherization and installation of energy-efficient windows in residential buildings, including multi-family housing developments.

"We are excited about the release of funds in the State of Minnesota for energy-efficient construction projects for schools and other government buildings," says Michele Eggenberger, national account representative for Harmon Inc.'s Glass Services division and leader of the company's Green Team.

The Senate's finance committee is currently reviewing the bill.