

Crafting Harmony: Building Effective Alternative Dispute Resolution Clauses

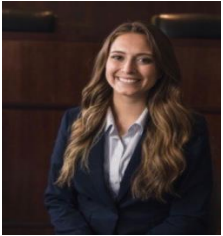
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AMERICAN ARBITRATION ASSOCIATION®

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WHAT IS AN ADR CLAUSE AND WHY IS IT IMPORTANT?

- Provides for effective dispute resolution before/alternative to litigation.
- Provides a guide to solving disputes during the ADR process.
- Cost-and-time effective procedures.

AAA® ARBITRATION ROAD MAP
REACHING RESOLUTION

Arbitration is the out-of-court submission of a dispute to an impartial third party or parties for a binding decision. The AAA arbitration administration process comprises a well-defined set of steps by which most commercial cases proceed.



FILED AND INITIATION	ARBITRATOR SELECTION	PRELIMINARY HEARING	INFORMATION EXCHANGE AND PREPARATION	MEDIATION STEP	HEARING	POST-HEARING SUBMISSIONS	THE AWARD
DAY 1 - 15	DAY 15 - 44	DAY 44 - 85	DAY 85 - 222		DAY 222-223	DAY 223 - 258	DAY 258 - 288
The AAA typically commences administration of an arbitration case when one party submits a Demand for Arbitration , a copy of the arbitration provision from the contract between the parties, and the appropriate filing fee to the AAA. The AAA acknowledges receipt to all parties and sets a deadline for the respondent to answer and/or to file a counterclaim. If no arbitration clause exists or the AAA is not named as the resolution provider in the parties' contract, cases may commence with the consent of all parties, a filed Submission to Dispute Resolution , and the appropriate filing fee to the AAA.	Based upon the parties' expressed criteria of qualifications, the AAA identifies arbitrators from the AAA National Roster of Arbitrators and provides their curriculum vitae to the parties. If parties are unable to agree upon the arbitrator(s), the AAA establishes a deadline for each party to independently state its preferences from the list. The AAA invites the most mutually agreeable arbitrator(s) to serve on the case.	Conducted by the arbitrator often via conference call, this management meeting is the first time the parties and arbitrator discuss the substantive issues of the case and procedural matters, such as exchange of information, witness lists, and dates. The Scheduling Order , which serves as the framework for hearing preparations, is established.	The parties work within the time frames set forth at the Preliminary Hearing to exchange information and prepare their presentations. The arbitrator addresses any impasses or challenges related to information sharing.	Subject to the right of any party to opt out, in cases where a claim or counterclaim exceeds \$75,000, the rules provide that the parties shall mediate their dispute with the AAA concurrently with arbitration, at no additional fee. The mediator assists parties in reaching a settlement but has no authority to make a binding decision or award.	Parties present testimony and evidence to the arbitrator.	If the arbitrator allows, parties may submit additional documentation, usually shortly after the hearing.	The arbitrator closes the record and, no more than 30 days later, issues a decision addressing all claims raised in the arbitration. The award may direct one or more parties to pay another party a monetary amount, or it may direct parties to take specific actions. Aside from any administrative matters unrelated to the merits of the case, the services of the arbitrator and the AAA are completed when the award is issued.
EXPECTED COSTS AT THIS STAGE Filing fees are based on claim amounts and are paid by the party that asserts the claim or counterclaim.	EXPECTED COSTS Partial refunds of filing and counterclaim fees are available under some AAA fee schedules. No refunds are available after an arbitrator has been appointed.	EXPECTED COSTS Parties will incur compensation charges by each arbitrator for time spent before and during the Preliminary Hearing and in preparation of the Scheduling Order.	EXPECTED COSTS The time spent by the arbitrator in this phase is proportional to the number of procedural matters needing resolution. Additionally, the arbitrator will spend time reviewing the parties' pre-hearing submissions, if any.	EXPECTED COSTS The parties are responsible for the mediator's compensation plus an AAA fee of \$75 for each hour charged by the mediator.	EXPECTED COSTS The arbitrator is compensated for time spent in hearings, reviewing evidence, and reasonable expenses, such as mileage and tolls.	EXPECTED COSTS The arbitrator is compensated for reviewing evidence and any post-hearing submissions, as well as drafting the award. Any unused deposits are returned to the parties.	EXPECTED COSTS The arbitrator apportions arbitrator compensation and expenses and AAA fees among the parties.



WHAT TO CONSIDER WHEN DRAFTING AN ADR CLAUSE

- To arbitrate or not?
- Administered vs. Non-Administered
- Locale of the Dispute/Hearing
 - Remote?
- Conditions Precedent
- Confidentiality of the Proceeding
- Governing Law



WHAT TO CONSIDER WHEN DRAFTING AN ADR CLAUSE

- Arbitrator Qualification and Selection
- Discovery and ESI Protocols
- Joinder and Consolidation
- Remedies Available to the Parties



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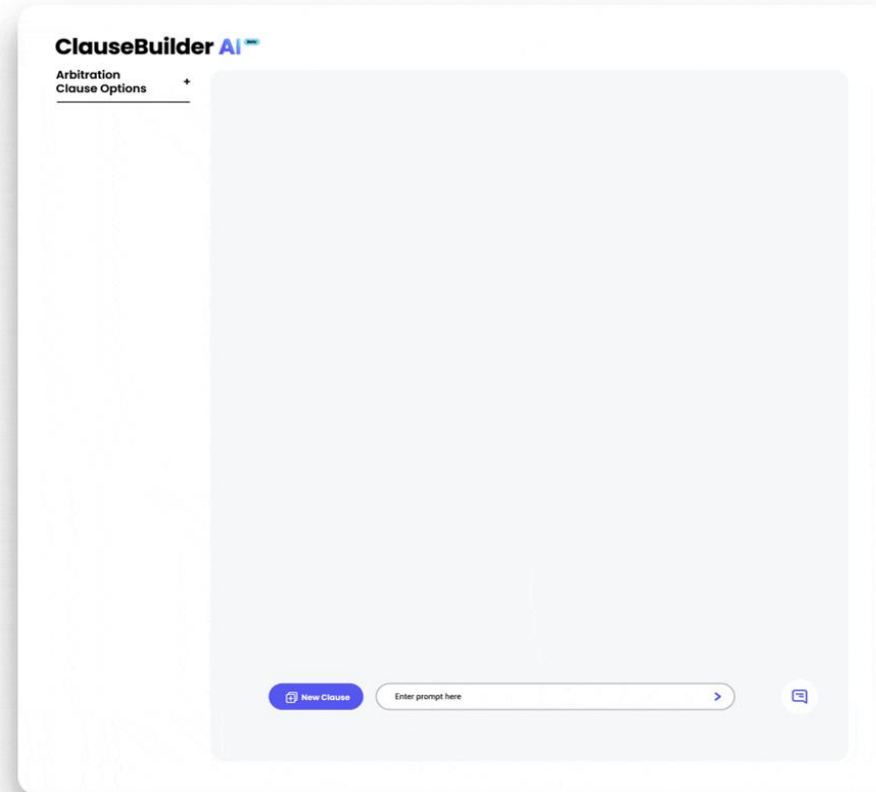
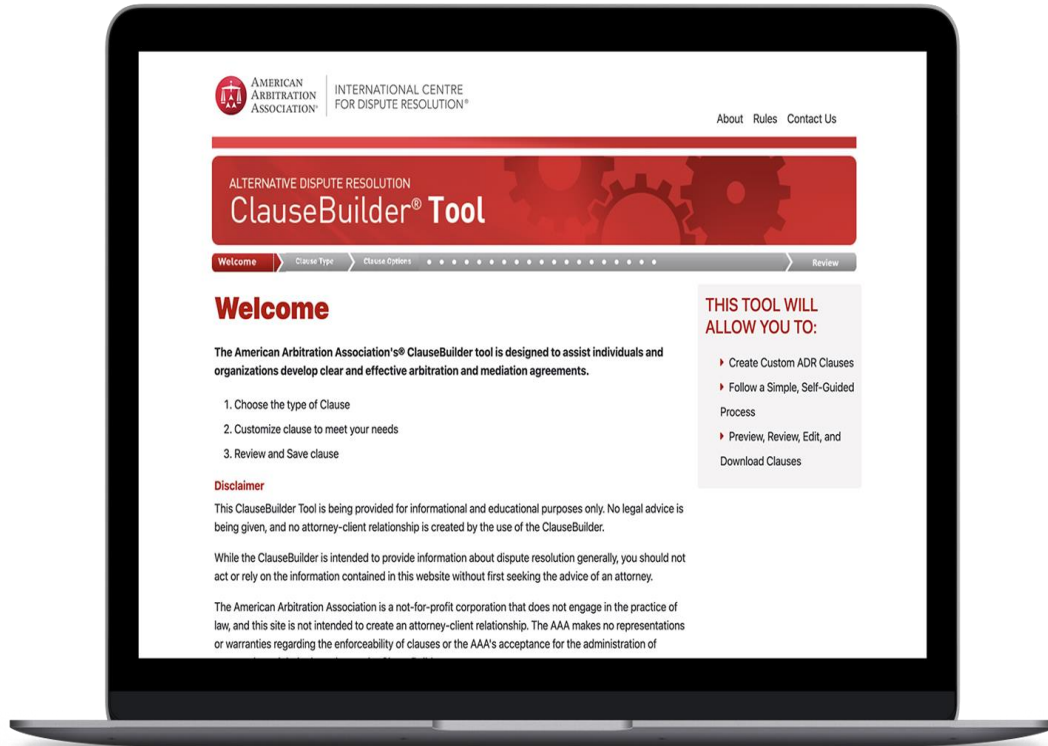
- Scope of dispute to submit to arbitration.
- Binding or non-binding arbitration.
- Include mediation?



WHAT TO CONSIDER WHEN DRAFTING AN ADR CLAUSE

- One or three arbitrators?
 - How should three arbitrators be appointed?
 - All party-appointed or should the parties appoint one arbitrator apiece and let those arbitrators appoint the third?
 - Rank and Strike Process
 - Streamline Panel Options
- Which AAA rule set should apply?
 - Commercial or Construction
 - Fast Track, Regular or Large Complex
 - Specialized procedural rules?

AAA CLAUSEBUILDER AND CLAUSEBUILDER AI



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TOP 10 WAYS TO CONTROL TIME & COST IN COMMERCIAL OR CONSTRUCTION CASES

1. Pay Attention to Your **Arbitration Clause**
2. Select Attorneys **Experienced in Arbitration**
3. Request and **Enforce Budgets**
4. Choose an **Arbitrator with Experience**
5. Limit Discovery to **What is Essential for the Arbitration**
6. Participate in the **Preliminary Hearing**
7. Limit **Motion Practice**
8. Remain **Open to Settlement**
9. Trust the **Expertise of the Arbitrator**
10. Present the Case **Efficiently and Professionally**



Thank You For Attending



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