



Where to look for answers when you can't agree over what the contract means

A well-written contract is worth its weight in gold! Many projects hit impasses because the parties can't agree on the meaning of a provision or term within the contract. Contract disputes arise for many reasons, but perhaps the most common are over what the contracting parties each thought the contract meant.

Disagreeing about the meaning of the contract may lead to the failure of performance of the contract or the failure of either or both parties to receive the benefit of the bargain of the contract. Disagreeing about a contract's terms requires that the contract be interpreted, but because contracts are written, binding agreements, the person who interprets its meaning may only look to the document itself, and not to what the parties say the contract means.

When contracting parties disagree about what the contract actually means or states, the contract must be interpreted, but who interprets a contract or contract provisions and determines the contract's meaning? Construction contracts include provisions that answer that question: "In the event of a disagreement over the interpretation of a term or terms of this contract, the parties must..."

What the parties "must" do when a disagreement arises varies. Parties may be required to renegotiate the terms they disagree over, with or without legal counsel. They may be required to renegotiate the disputed terms of the contract, attend mediation or present evidence to a mandatory arbitration (a mini trial). Frequently, contract provisions stipulate to the mediator or arbiter that must be hired in the event of an irresolvable dispute. The various means for settling disputes outside of litigation are collectively known as alternative dispute resolution, or ADR.

The purpose of requiring the parties to present their disagreement to a mediator or arbiter is to attempt to resolve the dispute in the most efficient manner possible rather than to endure costly litigation that could take months or even years to settle.

The most effective contracts are those that are fully negotiated and which contain provisions for all types of potential problems that may arise during the contract's performance. The ability to refer back to the contract for answers to all of the "what ifs" saves time, money and aggravation.