



MEDIATION

COSTA RICA MEDIATION - ALTERNATIVE CONFLICT RESOLUTION - COSTA RICA LITIGATION AND MEDIATION ATTORNEYS - By: Rogelio Navas Rodríguez, Costa Rica Litigation Attorney and Certified Mediator - In 1997, Law 7727 became effective in Costa Rica. This law, known as Law on Alternative Conflict Resolution and Promotion of Social Peace (Ley Sobre Resolución Alternativa de Conflictos y Promoción de la Paz Social, in Spanish) or “Ley RAC”, was enacted to regulate the different procedures that can be used to resolve a conflict without having to engage judicial litigation. Among said mechanisms are arbitration and mediation (also referred to as conciliation). In the following lines we will provide a brief explanation on what mediation is and how it can help you find a fast and effective solution to a conflict.

WHAT IS MEDIATION? Different from other legal systems around the world, conciliation and mediation are the same thing in Costa Rica. It is an alternative conflict resolution mechanism by means of which the parties of a conflict can jointly find a solution to certain situation that is keeping them apart. This is achieved by appointing an impartial third party (conciliator/mediator) who will make communication more effective by applying certain special techniques. The conciliator will systematically and orderly guide the parties through a specially designed mediation process that allows them to jointly find and design their own solution to their conflict.

THE SETTLEMENT: Once the parties agree on the solution they think is best for their interests, they execute a formal agreement, which, by law, has the same authority of a final court ruling. This means that the matters that were resolved by mediation are now considered *res iudicata*, and if any of the parties should not comply, the other can immediately request enforcement of what was agreed.

WHAT ARE THE ADVANTAGES OF A MEDIATION / CONCILIATION PROCESS? Mediation provides many advantages to the parties involved in a conflict. As follows we mention a few of said benefits:

- The parties can decide their differences by means of conciliation at any moment, even when there is a pending judicial or arbitration process, and even when a final decision or award has been given.
- The parties of a mediation process are the ones who truly know how their situation affects them, therefore, they are the ones who decide what is the best solution to their conflict.



- The conciliator is impartial and does not impose a solution, only guides the parties for them to be able to communicate effectively towards finding a solution.
- Everything discussed during a conciliation process is confidential and cannot be used to substantiate a claim in case the parties should not reach an agreement.
- A conciliation process is much more economic and faster than judicial proceedings.
- The settlement has the same authority of a final court ruling. The matters that were settled, cannot be discussed anymore in other venues.

LIMITATIONS: Despite of the many benefits that mediation represents, it has certain limitations. For instance, there are certain matters that, by law, cannot be conciliated, for instance, certain criminal behaviors or domestic violence. Also, there are rights and benefits, such as the ones deriving from an employment relationship, that cannot be waived, therefore are not subject to negotiation. Additionally, in some cases the parties are limited once certain stage of a judicial process has been reached. In the criminal process, for instance, the parties are not allowed to conciliate anymore once the preliminary hearing has started. The conflicts that can be decided by mediation must be patrimonial and of such nature that the parties can freely dispose of them.

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