

# The Legal Strategist

S. BARRETT & ASSOCIATES, P.C.

[WWW.SBARRETTLAW.COM](http://WWW.SBARRETTLAW.COM)

SECOND QUARTER 2010

**WE HAVE MOVED!! - S. Barrett & Associates, PC has relocated into our new offices at 4824 Bissonnet in Bellaire, Texas, 77401. Please stop by anytime for a tour.**

This quarter's Feature Topic explores the pros and cons of arbitration. It is more and more common for contracts to contain arbitration clauses, thus restricting your access to a judge and jury in the case of a legal dispute. There is a misconception that arbitration is the same as mediation. While closely linked, arbitration and mediation have significant differences. Arbitration uses a neutral third party to make a (typically) binding finding where as mediation uses a neutral third party to facilitate the resolution of a dispute.

The Feature Topic is a cursory review. If you would like more information on this, or any other topic previously covered in our newsletter (which can be viewed on [The Legal Strategist](#) tab of our web site), please contact our office to set up a consultation.

*Scott Barrett*

## TEXAS ESOTERIC FACTS

- ◆ In Clarendon, Texas, there is reportedly a law on the books that lawyers must accept eggs, chickens, or other produce, as well as money, as payment of legal fees.
- ◆ Sam Houston was governor of Texas from 1859 to 1861, but was disposed when he refused to take the oath of allegiance to the confederate States of America.
- ◆ Collegiate football is banned at Lamar University.

## FEATURE TOPIC:

## PROS AND CONS OF ARBITRATION

In arbitration, a neutral third party is employed to resolve the conflict instead of bringing it before a judge or jury. Arbitration is typically a binding procedure (though there are exceptions), and arbitrators function like both judge and jury in that they make decisions about evidence and submit written statements about the case. Like with anything, there are pros and cons to the arbitration process.

### PROS:

- ◆ Ability to choose an arbiter: You can hand-pick your neutral party instead of relying on a random judge or jury. Arbitrators can be chosen based on their expertise on a subject, or for their personal disposition.
- ◆ Ability to influence awards: In arbitration, parties can formulate pre-arranged conditions about the amount and nature of the award, setting high-low caps or otherwise customizing the procedural options.
- ◆ Fairness: The arbitrator is generally more concerned with what's fair than with legal minutiae and technicalities.
- ◆ Maintaining privacy: Because arbitration is a choice made by private agreement between parties, arbitration hearings are not open to the public and awards are not considered public record.
- ◆ Saving time and money: Arbitration procedures have more relaxed rules and less formality than those of the court system, which often means it takes less time and money to bring a case to resolution. Similarly, setting up arbitration is much easier than bringing a case to court and it avoids the long waits and hassles associated with traditional litigation.

### CONS:

- ◆ An arbitrator's power: The arbiter of a case has more discretionary and decision-making power than a judge or jury. As a result, if you make the wrong choice or accidentally elect an unskilled arbitrator, the ramifications are more profound. Because of the nature of arbitration, there is less chance to overturn or appeal your arbitrator's decision.
- ◆ Cost: Arbitration is not always cheaper and more efficient than going to court. The informality that makes arbitration so appealing on many levels can also have less pleasing ramifications: Cases can drag on indefinitely when other parties won't cooperate or there are scheduling difficulties. Such complications may result in unexpected expenses, due to the fact that each meeting or review includes the cost of renting a space and paying your arbitrator's bill.
- ◆ Fewer formalities: The fewer procedural safeguards and formalities in arbitration mean that it's easier for the other party to misbehave or act unethically without repercussions. There is no judge present to enforce proper proceedings.
- ◆ Inability to appeal: Arbitration lacks the regular system of appeals found in litigation proceedings. If something goes wrong in a case or there's an obvious mistake made by an arbitrator, it's very unlikely to be readdressed. Arbitration cases are considered binding, and generally cannot be brought to court. In some extreme cases, however, courts do have the option to avoid enforcing unconscionable arbitration clauses.
- ◆ Need for cooperation: In arbitration, you are more dependent on the cooperation of the other party. Therefore, it's more difficult to make discoveries than in cases tried through traditional litigation.
- ◆ Undefined rules: The rules for arbitration are less well-defined, and there are rarely verbatim accounts recorded for proceedings as there are in regular litigation. This means there is a wider margin for error, and sometimes parties have a harder time proving what was agreed upon after a case terminates.

Personally, I dislike arbitration; it often costs more than traditional litigation and produces less than optimal results. Proceed with caution when entering into a contract with a mandatory, binding arbitration clause. Once you agree to arbitration, you have locked yourself out of the courthouse.

If you would like more information on the impact of arbitration clauses in your contracts, please contact [Scott Barrett](#) to set up a consultation.

Resource: [Arbitration-and-Mediation.com](http://Arbitration-and-Mediation.com)

TO REMOVE YOUR NAME FROM OUR MAILING LIST, PLEASE [CLICK HERE](#). QUESTIONS OR COMMENTS? EMAIL US AT [SAB@SBARRETTLAW.COM](mailto:SAB@SBARRETTLAW.COM) OR CALL 713.526.1883.