

# Is pre-suit mediation right for me ?

What is pre-suit mediation and is it right for your business.

Mediation is a less structured and more intimate process than litigation. There are no rules of evidence and procedure as there are in a lawsuit in court. Mediation is generally required in all civil cases in Florida unless excused by the Court. There is no limit to the number of times parties in a commercial lawsuit can mediate during the course of their dispute. Depending on the circumstances of the matter and complexities of the dispute, mediation can greatly benefit the parties and usually does not have a significant negative impact on the overall process.

Prior to the Mediation, the parties select the Mediator but, if they are unable to do so, the Court may do. The parties are usually equally responsible for the Mediator's fees. The Mediator is ordinarily an experienced attorney or even a retired judge and is certified by the Florida Supreme Court. At the Mediation, the parties start in the same room where the attorneys present opening remarks to frame their client's perception of the situation. The parties then separate and the Mediator meets privately with each party several times, acting as something of a go-between. Everything said and presented in the Mediation is confidential under Florida law, which confidentiality is subject to very narrow exceptions.

Pre-suit mediation by agreement and consent in a written contract between businesses can alleviate litigation costs and provide an opportunity for the parties to objectively review their blossoming dispute with the aid of a neutral, third-party mediator. Because, unlike with arbitration, the parties retain their right to subsequently litigate their dispute, pre-suit mediation clauses provide them with a less formal and less costly opportunity to attempt to amicably resolve the situation to the advantage of both sides. The most obvious drawback is the cost of the mediation, which can be easily born by both parties equally and which is generally much less than the costs even to initiate litigation.

Whether you should include a pre-suit mediation provision in a contract or whether one proposed to you is right for your business and the particular situation is something for you to discuss with your attorney. Board Certified Business Litigation attorneys are those lawyers recognized by the Florida Bar for their expertise and experience. We have tried a significant number of jury and non-jury trials involving business disputes, have been recommended by peer lawyers and judges, and have passed a lengthy examination testing our knowledge and analysis of Florida business laws.

## **David Steinfeld, Esq.**

### **Florida Bar Board Certified Business Litigation Lawyer**

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WEBSITE: [www.kslattorneys.com](http://www.kslattorneys.com)  
FACEBOOK: <http://www.facebook.com/pages/David-Steinfeld-Esq/193459194021369#!>  
TWITTER: [DSteinfeldEsq](https://twitter.com/DSteinfeldEsq)  
LINKEDIN: <http://www.linkedin.com/in/davidsteinfeld>  
AVVO: <http://www.avvo.com/attorneys/34996-fl-david-steinfeld-1244715.html>  
MARTINDALE: <http://www.martindale.com/David-Steinfeld/2444967-lawyer.htm>

KRAMER, SOPKO & LEVENSTEIN, P.A.

2300 SE Monterey Road, Suite 100, Stuart, Florida 34996

E-Mail: [dsteinfeld@kslattorneys.com](mailto:dsteinfeld@kslattorneys.com)

Telephone: (772) 288-0048

Facsimile: (772) 220-4931