



Dispute Resolution Options to Manage Claims

RLI[®]
DIFFERENT WORKS

RLI Design Professionals
DPLE 186
November 15, 2017

RLI Design Professionals is a Registered Provider with The American Institute of Architects Continuing Education Systems. Credit earned on completion of this program will be reported to CES Records for AIA members. Certificates of Completion for non-AIA members are available on request.

This program is registered with the AIA/CES for continuing professional education. As such, it does not include content that may be deemed or construed to be an approval or endorsement by the AIA of any material of construction or any method or manner of handling, using, distributing, or dealing in any material or product. Questions related to specific materials, methods, and services will be addressed at the conclusion of this presentation.



Copyright Materials

This presentation is protected by US and International Copyright laws.
Reproduction, distribution, display and use of the presentation without written
permission
of the speakers is prohibited.

© RLI Design Professionals

RLI[®]

DIFFERENT WORKS

RLI[®]

Course Description

Project disputes can be costly and time consuming. Project selection and careful contract execution are good first steps, but claims happen.

How you work with your client and what method of dispute resolution you select can influence your likelihood of a successful resolution.

Objectives

Learn steps you can take during contract negotiations to lessen the risk of a claim

Gain an understanding of different dispute resolution types and their benefits

Familiarize yourself with the basics of litigation

Review business cases of successful dispute resolution in complex situations

Keys in Project Negotiations

“An ounce of prevention is worth more than pound of cure!”

Well planned and
documented
negotiations

A clear and precisely
written contract

Right project selection
with the right team of
people who understand
the objective

Commitment to acting
reasonably and in good
faith

Keys to Avoiding Disputes

Don't avoid (or ignore!) a budding dispute

Document communications

Set realistic expectations

Be willing to compromise

Causes of Disputes



Construction Contract Disputes

Rank	Cause
1	Errors and/or omissions in the contract document
2	Differing site conditions
3	Employer, contractor, or subcontractor failing to understand and/or comply with contractual obligations
4	Failure to administer the contract
5	Poorly drafted or incomplete & unsubstantiated claims

Important Contract Provisions



AIA B101-2017

8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes, and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement...

8.2.3 The parties shall share the mediator's fee and any filings equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

AIA B101-2017

- 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other: (*Specify*)

American Arbitration Association

If a dispute arises out of or relates to this contract, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Construction Industry Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution technique.

Any controversy or claim arising out of or relating to this contract or breach thereof, shall be settled by mediation under the Construction Industry Mediation Procedures of the American Arbitration Association. If within 30 days after service of a written demand for mediation, the mediation does not result in settlement of the dispute, then any unresolved controversy or claim arising from or relating to this contract or breach thereof shall be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Giving Notice & Opportunity to Cure

Giving Notice:

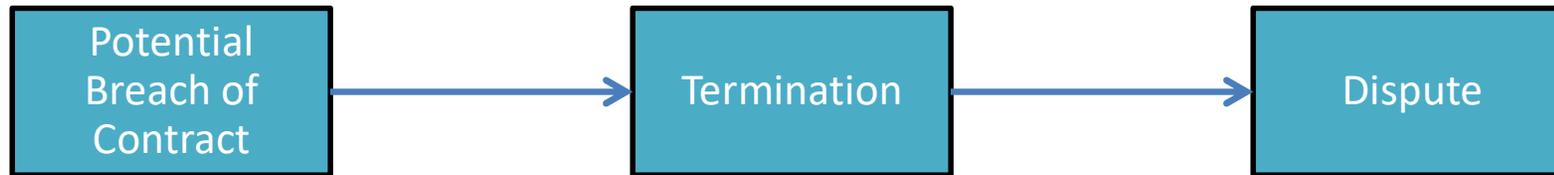
- Requiring written notice of a potential breach of contract is the single most important clause to prevent dispute from occurring

Opportunity to Cure:

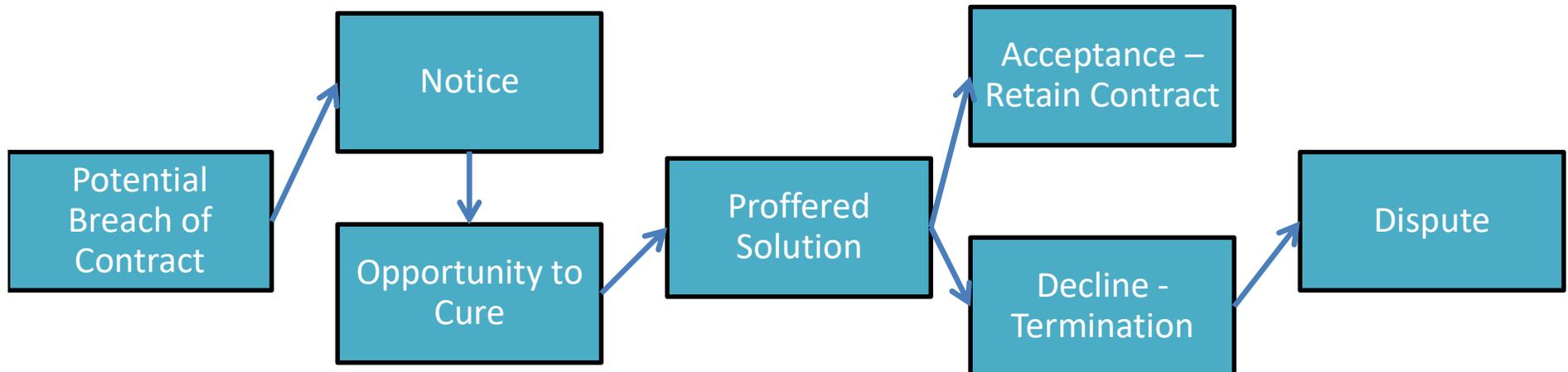
- Requires the dissatisfied party to contact the other party, explain what they are not satisfied with, and give time to resolve the issue before terminating the contract or filing a lawsuit

Requiring Notice – Dispute Timeline

Contractual dispute without notice requirement:



Contractual dispute with notice requirement:



Good Faith Negotiations

Elements of good faith negotiations:

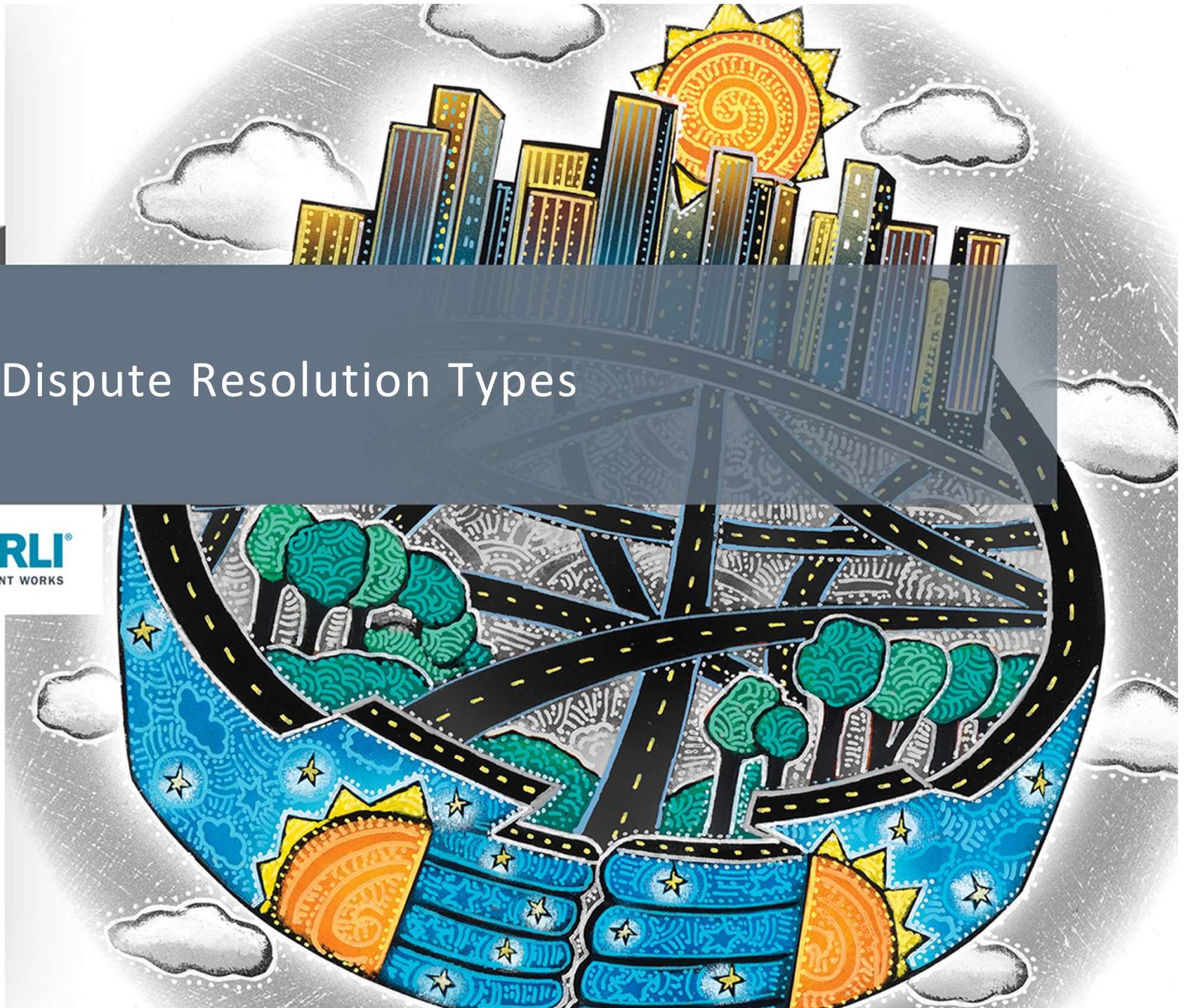
- Subject yourself to the process
- Have an open mind
 - Consider the other side's proposal
 - Provide your own option(s) for resolution

Negotiating in good faith doesn't mean you need to:

- act in the interests of the other party
- act otherwise than by having regard to self-interest

Dispute Resolution Types

RLI
DIFFERENT WORKS



Dispute Resolution Method

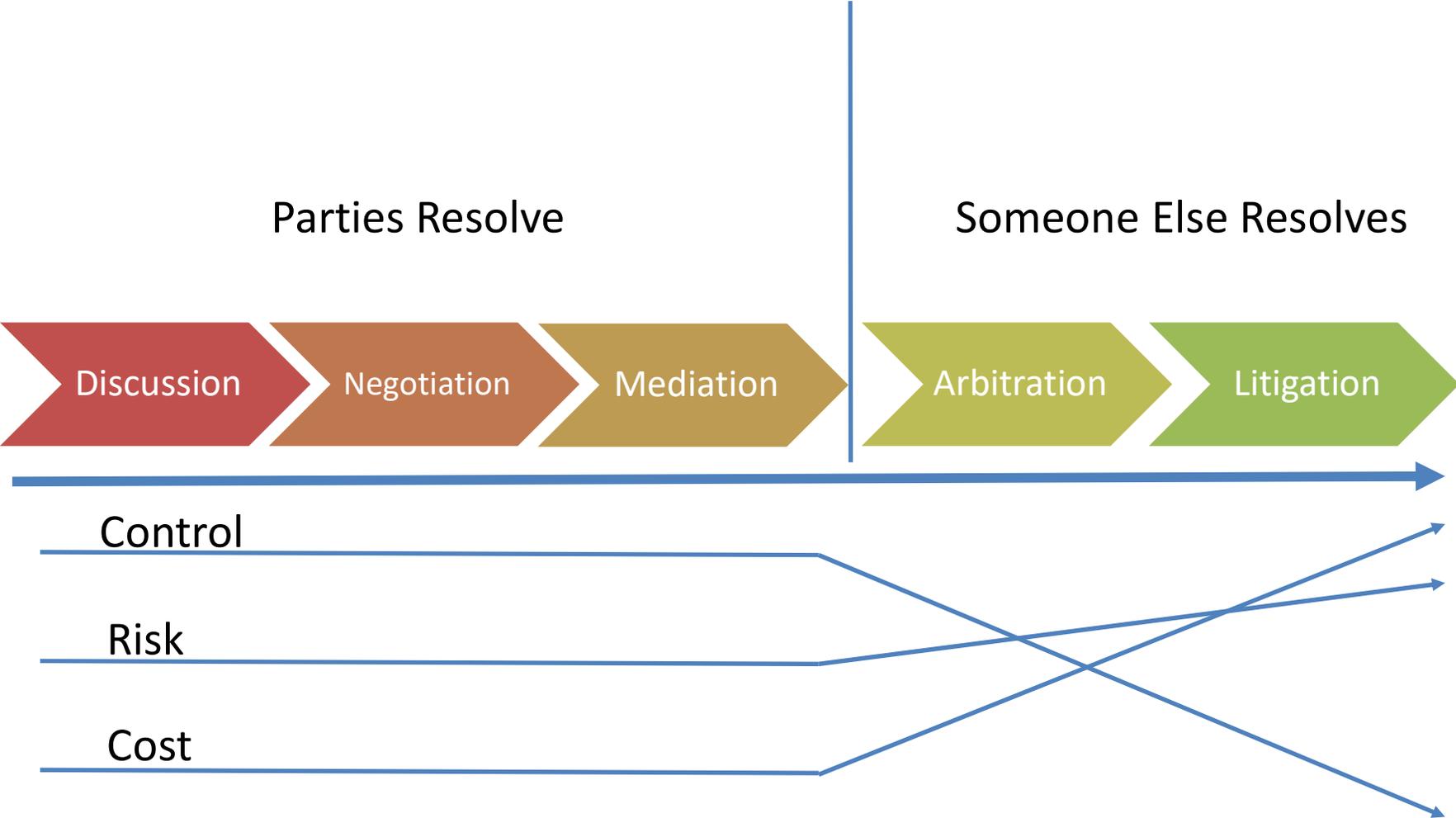
Party-to-Party

Mediation

Arbitration

Litigation

Cost, Risk, Control of Dispute Resolution Method

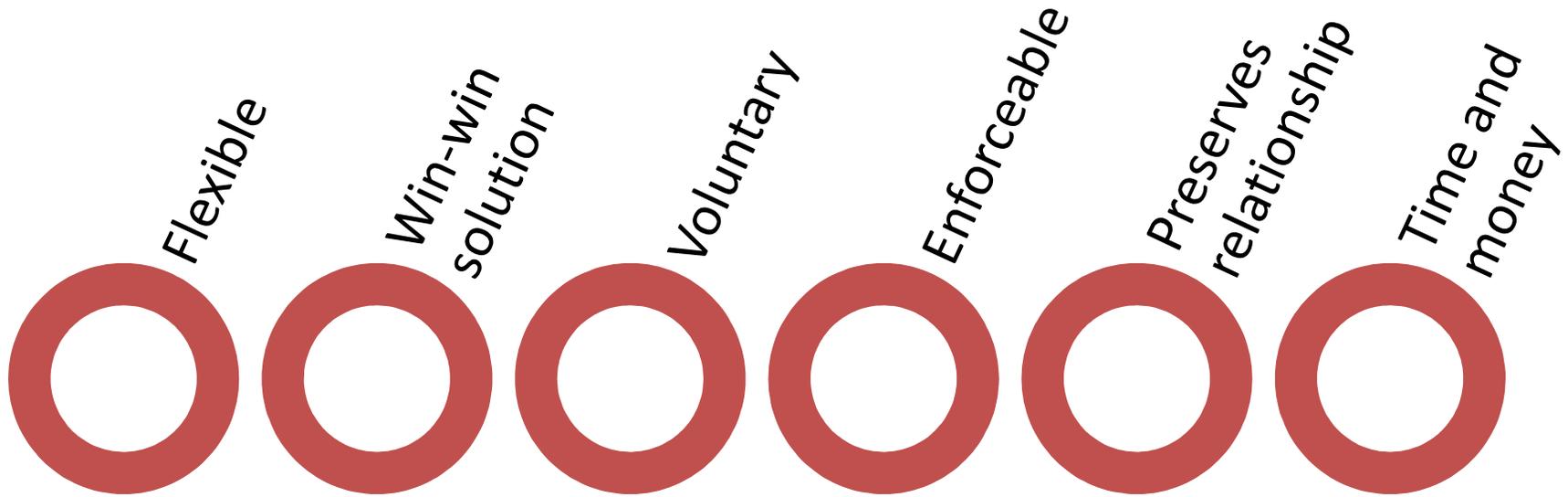


Party-to-Party Negotiations

The most basic means of settling differences.

It is back-and-forth communication between the parties of the conflict with the goal of finding a solution.

Party-to-Party Advantages



Party-to-Party Disadvantages

Imbalance of power

Negotiating authority

Absence of neutral third party

Lack of compelling reason to try

No guarantee of good faith

Stalling tactic

Mediation

Disputants/Representatives

Mediator

Issues

Needs

Options

Settlement

Mediation Advantages

Cost

- Least expensive formal method

Time

- Reach a resolution sooner

Environment

- Productive negotiations

Non-Binding

- Other avenues available

Relationship

- Preserved

Mediation Disadvantages

Deception

No discovery

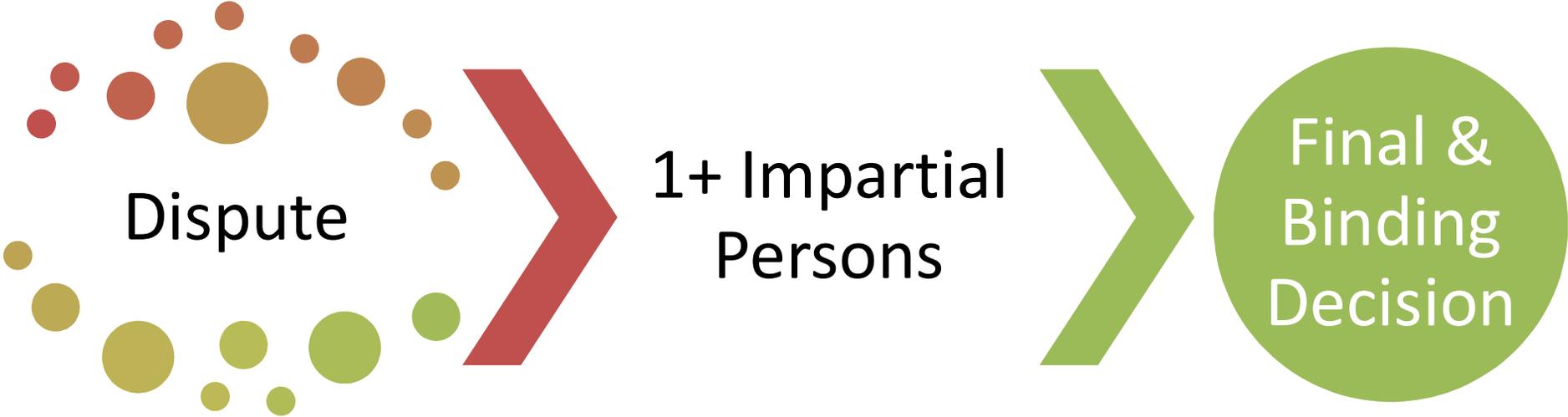
Money &
Time

Wasted if
unsuccessful

Power

Attendees

Arbitration



Arbitration Advantages

Cost

Control

Expertise

Closure

Confidentiality

Arbitration Disadvantages

Cost

Time

Binding

“Split the
Baby”

Litigation

"Traditional litigation is a mistake that must be corrected... For some disputes trials will be the only means, but for many claims trials by adversarial contest must in time go the way of the ancient trial by battle and blood. Our system is too costly, too painful, too destructive, too inefficient for really civilized people."

Chief Justice Warren E. Burger, (Ret.) U.S. Supreme Court.

Litigation Advantages

Rules of
Evidence

Appeal

Transparency

Jury

Testimony

Litigation Disadvantages

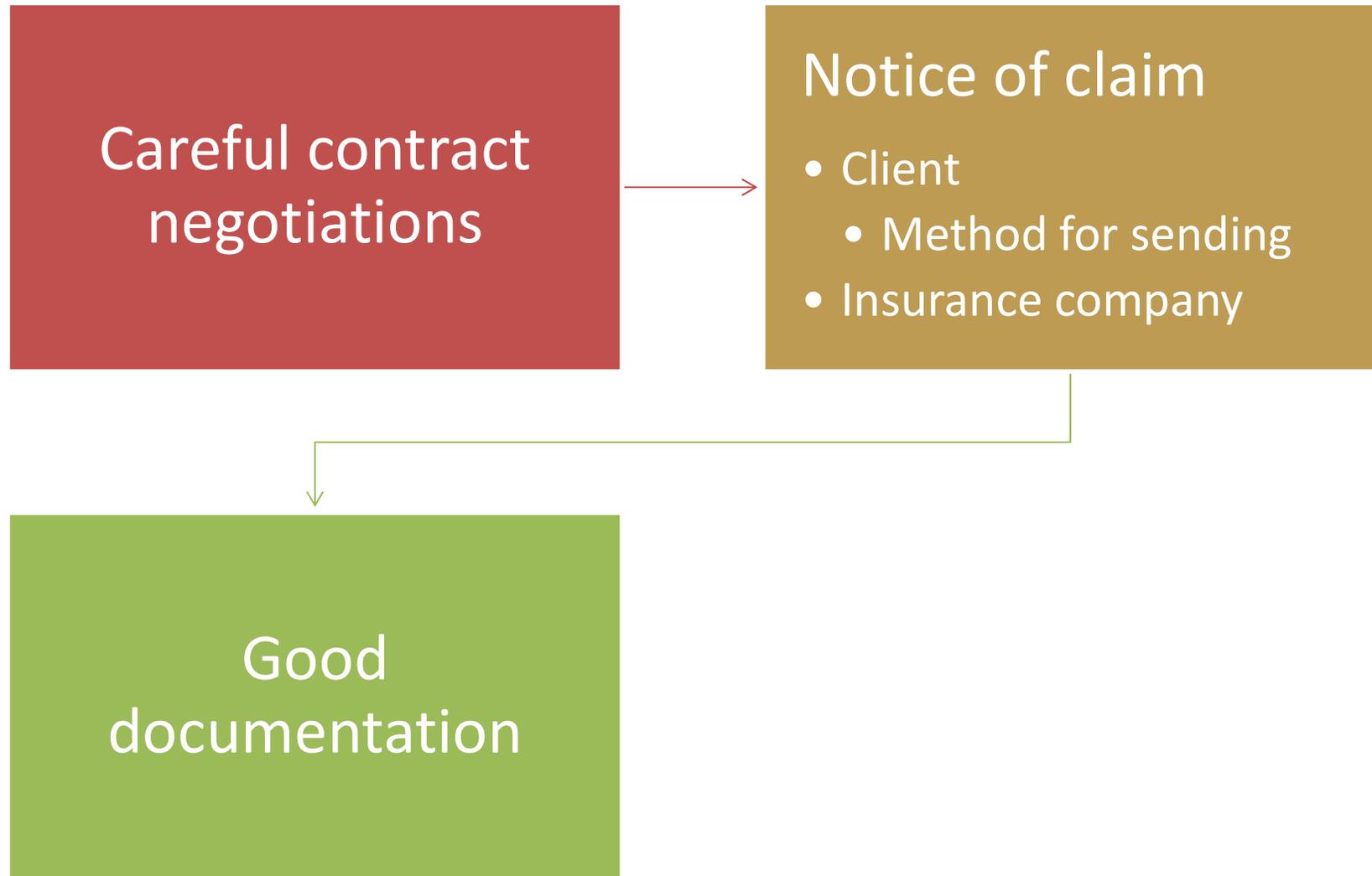
Hostility

Cost

Time

Delay

Preparing for Litigation

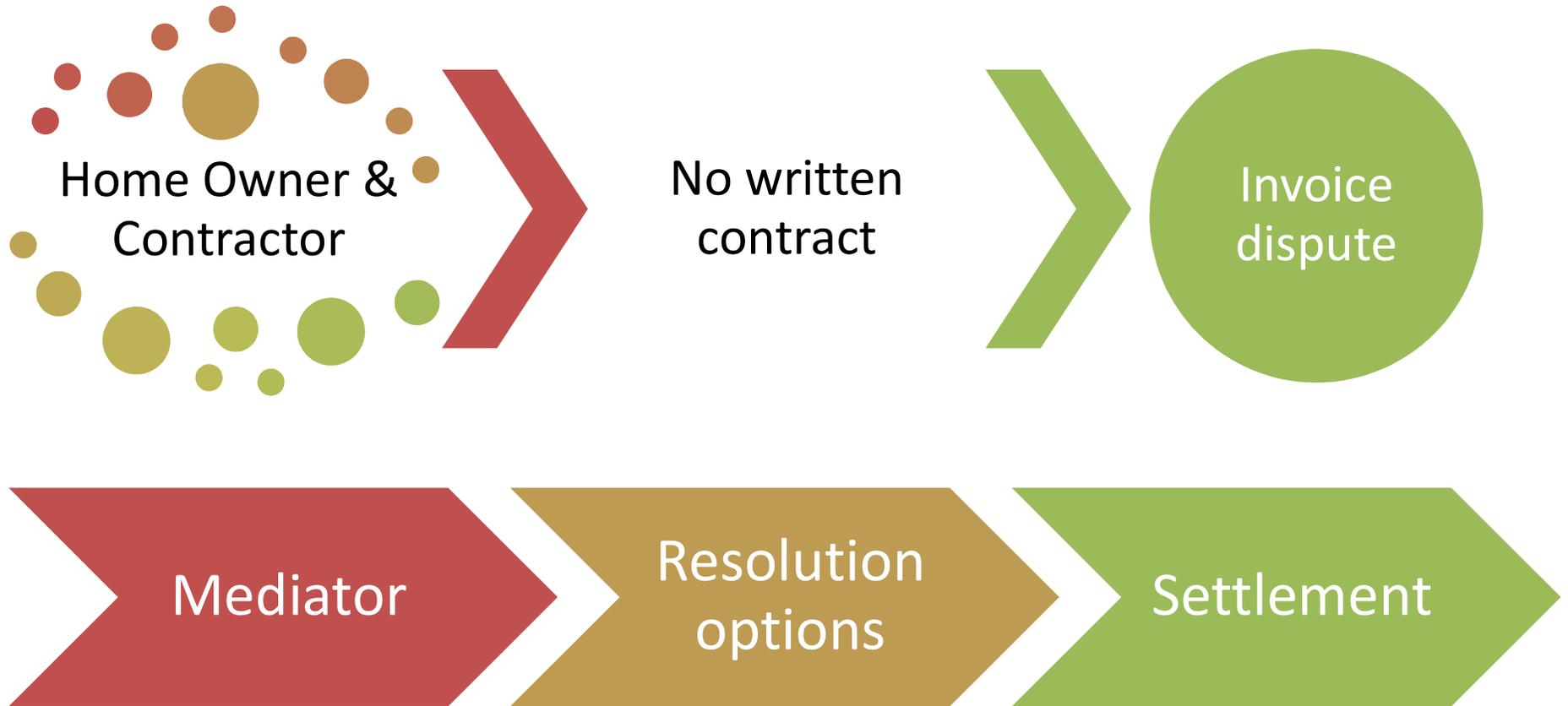


Case Studies

RLI
DIFFERENT WORKS



Residential Construction without a Contract



Mediation Advantages:

- Time and money value
- Circumstantial benefits
- Global settlement package

First-Hand Experience



Takeaway

Mediation works!

Thank you for your time!

QUESTIONS??

**This concludes The American Institute of Architects
Continuing Education Systems Program**

Alayne McDonald, Professional Development Coordinator

Alayne.McDonald@rlicorp.com

Abbey Johnson, Client Solutions Manager

Abbey.Johnson@rlicorp.com

RLI[®] DIFFERENT WORKS

RLI[®]