

The Litigation Process and What it Means

Have you ever been in a dispute with someone and thought about going to court to resolve the issue? If so, the process in which you will possibly get involved in is called litigation. In most situations, one party will make a more or less informal demand of the other, who will then send a response. This may lead to informal discussions with or without an attorney. A lawyer can help you assess whether what you are requesting or offering is realistic, and help you avoid making admissions that can hurt you if you can't agree on terms.

If the issues can't be worked out, then one party usually has an attorney send a lawyer's letter. Having an attorney send a letter is a good way to get your issue to the forefront. It lets the other party know that you are serious about getting some type of resolution to the problem. Before a formal suit is filed there may be an informal pre-litigation settlement discussion involving the parties and their lawyers. Sometimes all it takes is a letter and phone call to straighten things out, particularly if the other side sees that you are serious.

If the issues can't be resolved in an informal format, then formal action may be started, either by filing suit or a demand for arbitration. At the point, the formal litigation has started. There are strict time limits requiring that actions be taken within a set time frame or your right to sue may be barred by the "statute of limitations".

Once you have served the opposing party with the lawsuit, then they must formally answer your claim within a prescribed time frame or default and lose the case.

Litigation may involve pre-trial discovery in which one or both parties attempt to get evidence as to what happened, perhaps by taking the testimony of witnesses, or examining documents or physical evidence.

In litigation, either side may make motions to try to narrow the issues, or compel the other side to do something, or even to have the court or arbitrator decide the matter without the need for a trial. Before a trial the court may order a pre-trial conference to narrow issues down still further, and perhaps to get the parties to agree to a settlement. If a suit is filed, the judge will usually order the parties to mediate, meaning to negotiate with the assistance of a trained mediator.

If no settlement can be reached outside the courtroom, then the case will go to trial to be heard by either by a judge alone or with a jury to decide the facts and the judge to decide the law. In arbitration the trial is called a hearing.

After the trial the court will enter judgment. An example is: "The plaintiff is entitled to recover \$10,000." In an arbitration the arbitrator will issue an award and the victorious party will go to court for confirmation of the award.

There may be post-trial motions in which the losing party tries to convince the original judge that something else is appropriate, perhaps more money, added relief, or a new

trial. After that, there may be an appeal by the losing party to a higher court. An arbitration award is much more difficult to appeal than a court's decision.

The victorious party may have received a judgment stating what he or she is entitled to recover. Then it is his or her job to collect the judgment. Collecting judgments can be difficult, especially if the defendant's assets are not easily located, or exempt from claims of creditors.

If you are successful in collecting everything that is due to you, then the judgment is said to have been satisfied. Until satisfaction, the judgment remains outstanding and unsatisfied.

Satisfaction of a money judgment occurs when the judgment debtor pays money to the judgment creditor. The satisfaction may be partial or the satisfaction may be in full. In the event of satisfaction, it is typically (under state law) the responsibility of the judgment creditor to file a declaration with the court and send a conformed copy (date stamped by the court) of this declaration to the judgment creditor that either partial or full satisfaction of the judgment has been made by the judgment debtor. Credit reports on judgment debtors issued by credit reporting agencies should reflect all partial and full satisfactions of judgments.

If you are thinking about going to trial call Yates and Mancini, experienced litigators in Fort Pierce, Florida at 772-465-7990.