

**These are generalizations only! Nothing herein creates an attorney-client relationship. Consult a Florida attorney for specific advice. PLEASE DO NOT SEND UNSOLICITED MATERIAL OR CONFIDENTIAL INFORMATION.**

**Question 3 What is Alternative Dispute Resolution (ADR)?**

**Answer:**

This term refers to **MEDIATION** and **ARBITRATION**. There are different types of each; and different sets of rules which may be applied, so be careful. This is a general, abbreviated discussion only!

**MEDIATION**: This is a controlled settlement negotiation process. A certified mediator listens to the parties and tries to get them to come to a settlement. The mediator cannot force you to do anything (other than attend and stay for a period of time) and he cannot make decisions or findings of fact. He is strictly a facilitator. All proceedings are confidential. Statements you make at mediation cannot be used later in court proceedings. The Mediator can report only whether the case settled or not. He does this by checking a box on a form that is filed with the Court. The Mediator cannot talk to the Judge or in any way tell the Court his feelings about the parties or the issues. Mediation can be set up through the courts, independently or through various state agencies. The Bureau of Condominiums has its own mediation rules and approved mediators located around the State of Florida.

**ARBITRATION**: This is a hearing or mini trial before a lawyer, retired judge, or another qualified person, or panel of persons, who make decisions on the merits of the case. That decision can be enforced by the Court.

**There are two basic types of arbitration in Florida:**

- (1) Voluntary Binding Arbitration,
- (2) Involuntary Non-Binding Arbitration.

There are many different arbitration organizations, each with their own set of rules. Florida law also sets out arbitration rules, which may or may not control, depending on the type of dispute. You should consult an attorney to assist you with any arbitration. Many contracts these days have arbitration clauses. It's important to remember that such contracts generally cannot strip you of statutory remedies provided by law. For instance, a contract may provide that the parties must arbitrate their dispute and each must pay their own attorney fees and/or that there is no right of appeal. IF an applicable statute gives attorney fees to the prevailing party, you still may have that right, regardless of the contract. You might also retain the right to appeal certain aspects of the arbitrator's ruling to the Court. However, like everything else, you must ACT to protect these rights.

Similarly, you may want to carefully examine ANY contract that says you waive rights or remedies. Although many waivers are indeed effective, certain things cannot be waived

or can only be waived if done in a certain manner. Under some laws, such as the federal Interstate Land Sales Full Disclosure Act, you are assured a right of action in the courts. It's questionable whether an arbitration provision can take away from you that right to sue. [CLICK HERE FOR MORE INFORMATION ON CONTRACT LAW IN FLORIDA](#)

Celia E. Deifik, Esq. – Fla. Bar No.: 252182  
[cdeifik@naplesattorney.net](mailto:cdeifik@naplesattorney.net)  
ROSS LANIER & DEIFIK, P.A.  
599 Ninth Street North, Suite 300  
Naples, Fl. 34109  
[www.naplesattorney.net](http://www.naplesattorney.net)

Naples, FL 34102

**These are generalizations only! Nothing herein creates an attorney-client relationship. Consult a Florida attorney for specific advice.**

**Ross Lanier & Deifik PA 239 262-2874 or 262-6161** serves Collier & Lee counties (Naples, Fort Myers, Bonita Springs, Marco Island, Cape Coral, Estero).

Deposit Recovery – Preconstruction Contracts—Two Year Construction Completion –Interstate Land Sales Full Disclosure Act – ILSA-- Cancel Condominium Purchase Contract—Rescind Real Estate Purchase And Sale Agreement –Condominium Preconstruction Required Disclosures--Revocation Of Real Estate Sales Contract – Deposit Recovery--Cancel Purchase Contract-- Recover deposit– HUD Property Report –Florida Condominium Mandatory Disclosures—Homeowner Association Disclosure Summary Required- Rescind Cancel Revoke --Mandatory HOA disclosure --Mandatory Florida condominium disclosures

~ **FLORIDA ONLY May 2008** ~

The hiring of a lawyer is an important decision that should not be based solely upon advertisements. Before you decide, ask the attorney to send you free written information about the individual's qualifications and experience.