Avoiding bankruptcy through neutral facilitation

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As a U.S. bankruptcy judge and appellate panel judge over the past 40 years, I have handled a large number of bankruptcy and adversary proceedings cases. One of the common themes in these proceedings is the need for alternative dispute resolution (ADR). In the context we’re discussing, the courts refer to ADR as “workouts.” A workout is a voluntary settlement of claims in bankruptcy, outside of any court filing.

There are multiple advantages to a workout, including the ability to settle a dispute quickly and efficiently, without the costs and delays associated with litigation. In many cases, a workout can be more cost-effective than litigation because it allows parties to avoid the costs and delays associated with filing a lawsuit and going through a long and expensive legal process. Additionally, a workout can be more efficient than litigation because it allows parties to settle a dispute quickly and without the need for a formal hearing or trial.

Neutral facilitation

Neutral facilitation is a key component of successful workouts. A neutral is a third-party facilitator who helps parties reach agreement on a settlement or other resolution. Neutral facilitation can be used in a variety of contexts, including bankruptcy proceedings, contract disputes, and other types of disputes.

The role of a neutral facilitator is to help parties reach a resolution by facilitating open and honest communication. The neutral will work with the parties to identify their interests, concerns, and goals, and help them find a solution that meets all of their needs.

There are many different types of neutral facilitators, including mediators, arbitrators, and conciliators. Each type of neutral facilitator has their own unique approach and methodology, but they all share the common goal of helping parties reach a resolution.

When a neutral facilitator is used in a workout, the process typically involves several steps. First, the neutral will meet with each party to understand their perspective and interests. Then, the neutral will meet with both parties together to facilitate open and honest communication.

Throughout the process, the neutral will work to help the parties identify potential solutions and find a resolution that meets all of their needs. The neutral will also help parties identify any potential roadblocks and work to overcome them.

Once a resolution is identified, the neutral will work with the parties to formalize the agreement and ensure that it is enforceable. The neutral will also help parties to implement the agreement and ensure that it is followed.

The benefits of neutral facilitation

Using a neutral facilitator in a workout can provide numerous benefits for all parties involved. Some of these benefits include:

- Increased efficiency and cost savings: A workout can be more cost-effective than litigation because it allows parties to avoid the costs and delays associated with filing a lawsuit and going through a long and expensive legal process.
- Improved resolution: A workout can be more efficient than litigation because it allows parties to settle a dispute quickly and without the need for a formal hearing or trial.
- Enhanced cooperation: A workout can enhance cooperation between parties and help to prevent future disputes.
- Improved outcomes: A workout can lead to better outcomes for all parties involved.

In conclusion, neutral facilitation can be an effective and efficient tool for resolving disputes outside of bankruptcy proceedings. By working with a neutral facilitator, parties can reach a resolution quickly and efficiently, without the costs and delays associated with litigation.

References: