YOUR CO-OP/CONDO RESIDENTIAL DISPUTE

THROUGH THE SERVICES AVAILABLE FROM THE

NEW YORK CITY BAR

42 West 44th Street • New York, NY 10036 • (212) 382-6660 • www.nycbar.org

Mediation

Constructive, mutual effort to resolve your co-op/condo residential dispute

between

owners, renters, sponsors, boards of directors, managing agents, contactors, insurers, and others

Quickly

Efficiently

Fairly

Inexpensively

and

Sensibly

What is Mediation?

Mediation is a fairly informal, usually voluntary approach to settling disputes instead of going to court or having a co-op or condo board impose a decision. A neutral person – a trained mediator – facilitates negotiations between parties to help them find a mutually acceptable resolution to their issues. Mediation is confidential and non-binding; either party or the mediator may stop the process at any time. If the parties do reach a resolution, a settlement agreement will be signed and is binding on both parties.

Who's Involved?

The parties to the dispute and a selected mediator are the key people. A party may, but need not, have an attorney present; the parties themselves are the owners and drivers of the process. Occasionally, a witness or expert may be called to participate.

Why Mediate?

Most (70-80%) cases brought to mediation settle, and the process is quicker and cheaper than litigation.

So What Do I Do?

- Read this brochure completely.
- Have the parties to the dispute sign the Agreement to Mediate in the back of this brochure, and return it and the $100 per party administration fee to the Bar Association.
- The Bar Association will provide you with two names of mediators from which you will mutually select your mediator.
- Your mediator will then contact you to arrange your first mediation session.

Read on!

Mediation or Litigation

Significant Differences

Mediation	**Litigation**
Parties drive the settlement process and keep control of the outcome.	Parties give up control to a third party -a judge and/or jury.
Mediator cannot impose a settlement or decide issues.	Judge and/or jury decides for or against you.
Process may be stopped prior to signing a settlement agreement.	Once process is started, your participation is mandatory.
Parties may tell their whole story; engage in give & take to find a resolution.	Parties may only answer questions asked
Mediator guides the process by identifying core issues and common interests, exploring alternative interpretations, and generating offers and counteroffers	Jury and judge hear only the evidence allowed in, and judge is bound by court procedural rules and laws.
Restores communication; rigid positions give way to finding a mutually acceptable resolution.	Each side postures heavily in hopes of "winning."
Involves joint meetings, but also individual sessions where a party can really open up.	Only joint, public evidentiary hearings.
Process is private and confidential.	Process is open to the public and a stenographic record is made.
Settlement agreement can be based on views, opinions, tolerances, timing factors, etc.	Judge's decision must be based strictly on the law applied to evidence presented.
Is FORWARD LOOKING - Aims for a resolution that is mutually satisfactory and thus allows both parties to move on.	Looks backward -- "he said/she said" and "he did/she did" approach. Losing party may appeal, possibly for years.
Allows for continued or salvaged relationships between the parties	Often results in long-term distrust, animosity or worse
Low cost - may involve only a few hours or a single session	Costly - often years in preparation, trial and possible appeals

Mediation Rules and Procedures

1. Agreement of the Parties

Parties who agree to mediate their dispute under the auspices of the New York City Bar Association (the "Bar Association") are deemed to have adopted these procedures.

2. Initiation of Mediation

The parties to a dispute may initiate mediation by filing with the Bar Association the form Agreement to Mediate signed by both parties (and their lawyers, if any), together with a non-refundable administration fee of $100 per party. It is the responsibility of the parties to obtain each other's signature to the Agreement to Mediate (and that of their lawyers, if any).

3. Selection of your Mediator

Upon receipt of the signed Agreement to Mediate and the administrative fee, the Bar Association Coordinator will provide the names of two qualified mediators, along with the mediators' disclosure reports. The parties must together select one of the mediators and return the selection form to the Coordinator. If the parties cannot agree on a name, the Coordinator will provide the names and reports for two more mediators, until the parties can agree on a mediator.

4. Date, Time and Place of Mediation

After consulting with the parties (who shall be responsible for coordinating with their lawyers, if any), the mediator shall fix the date, time and place of the initial mediation session.

5. Identification of Matters in Dispute

If the matter is not in litigation, the parties may provide the mediator in advance of the first mediation session a brief summary (not more than ten pages) of the issues in dispute and of attempts at settlement so far.

If the dispute is already in litigation, at least ten days prior to the first mediation session, the parties shall submit to the mediator a copy of the complaint and answer, plus any counterclaim, affidavits and rulings on motions, if any (but not discovery documents unless requested by the mediator).

At the first session, the parties will be expected to present all relevant information and documentation.

6. What Your Mediator Can and Cannot Do

The mediator will attempt to help the parties analyze their issues and positions with the goal of coming to a mutually agreeable resolution of their dispute. The mediator may eventually suggest paths toward resolution or offer an opinion, but has no authority to decide any issue, or to impose a settlement on the parties, or rule in any way that one party is right or wrong. The mediator will conduct joint meetings with all parties present, but may also choose to conduct separate meetings with each party and "shuttle" between the parties as the session progresses.

The mediator may suggest that a party bring in an expert if certain technical aspects of the dispute merit that. Any fees payable for such outside expert advice/opinion will be the responsibility of the party who chooses to bring such person into the mediation, unless the parties agree to share the cost.

The mediator shall have the sole authority to interpret and apply these rules.

7. Avoiding Ethical Problems

The parties to the mediation are advised that the mediator is NOT representing either party, and that no attorney-client relationship or privilege exists between the mediator and the parties. The mediator is not providing legal services to the parties, but is acting as an independent, neutral facilitator to the disputants in order to assist them in resolving their own dispute.

8. Party Participation vs. Representation

Mediation is effective only when the persons to the dispute who have settlement authority participate in the mediation session. Consequently, the parties must attend the mediation session(s) even if they are represented by someone else or by counsel. Attendance of lawyers for the parties is permitted, but not necessary. Other persons, including witnesses, may attend the mediation if requested by a party.

9. Confidentiality

All documents and verbal information disclosed to a mediator during the course of mediation under these Procedures shall be deemed confidential and private and shall not be divulged by the mediator to the other party unless the relevant party authorizes disclosure, or to any third party except as required by law and in response to a court order. In case of any subsequent proceeding, the mediator may not be subpoenaed by either party to furnish documents presented during mediation, nor to reveal the nature or content of any information discussed or revealed during mediation. Further to that end, the mediator shall not keep any documents or any copies thereof presented during the course of mediation.

The parties (and their lawyers, if any) understand and agree that everything that occurs during the mediation process is in the nature of settlement discussions. Therefore, all statements made or notes taken by either party or the mediator, as well as any documentation presented during the mediation are non-discoverable, inadmissible, and without prejudice in any subsequent or concurrent litigation or arbitration, except that evidence otherwise discoverable and/or admissible under the relevant rules of the other adjudicating body shall not be rendered inadmissible because of its prior use in mediation.

The parties (and their lawyers, if any) shall respect and maintain the confidentiality of the mediation session(s) undertaken, and shall not rely on or introduce as evidence in any subsequent or concurrent litigation or arbitration:

a. Views expressed or suggestions made by another party regarding a possible settlement of the dispute;

b. Admissions or offers or counteroffers made by another party in the course of the mediation;

c. Suggestions made or views expressed by the mediator in the course of the mediation; or

d. Proposals made or views expressed by a lawyer or other party representative in the course of the mediation.

10. No Stenographic Record

There shall be no stenographic, tape or video recording of the mediation. The mediator and parties may take notes during the mediation.

11. Ending the Mediation

The mediation may end:

a. By the parties signing a settlement agreement;

b. By a statement by the mediator that further efforts at mediation are not worthwhile at this time; or

c. By a statement by a party that they choose to terminate the mediation prior to settlement.

12. Exclusion of Liability

The parties (and their lawyers, if any) agree that neither the Bar Association and its staff, nor any mediator provided under this program shall be deemed a “necessary party” in any judicial proceeding which may refer to this mediation.

Neither the Bar Association and its staff, nor any mediator provided under this program shall be liable to any party for any act or omission in connection with any mediation conducted under these Procedures.

13. Expenses

The expenses of representatives, experts or witnesses for a party shall be paid by the party bringing such persons into the mediation. All other expenses, including the mediator's hourly fees and the administrative fee of the Bar Association, shall be borne equally by the parties, unless they agree otherwise.

AGREEMENT TO MEDIATE

We (and our lawyers, if any) wish to used the mediation services of the New York City Bar Association in order to seek a resolution of our dispute.

We understand that the Bar Association will assign a qualified and neutral mediator. We understand that the mediator, if a lawyer, will not be providing legal services to us and that no attorney-client relationship will exist between the mediator and the parties.

We confirm that each party has received and read the brochure on mediation provided to us by the Bar Association, and agree that the Mediation Rules and Procedures set forth in that brochure shall govern our mediation.

We further agree:

- To coordinate with the mediator to select a mutually convenient time and place for the initial mediation session.
- To pay a non-refundable administrative fee of $100 per party to the Bar Association.
- To pay the mediator's fee apportioned equally among the parties (unless the parties expressly agree otherwise), payable at the time(s) as the mediator may require.
- To work diligently for a mutually acceptable resolution to our dispute directly, without threat of litigation.
- To provide the other party and mediator all relevant documents and information.
- To LISTEN, really listen, to the other side's input and seek to find common interests that may lead to a resolution of our dispute.
- To be courteous and respectful to the other party and the mediator.
- To maintain confidentiality of all information, verbal or written, exchanged during the mediation, irrespective of its outcome. This includes our agreement not to disclose any proposals, offers, admissions, or opinions made during the mediation process as evidence in any subsequent lawsuit, administrative procedure, hearing or arbitration, unless compelled to by law. We also commit not to subpoena the mediator or otherwise seek to have him/her as a witness in any subsequent lawsuit or arbitration.

We also confirm that neither the mediator nor the New York City Bar Association will be liable to any party for any act or omission made in connection with the mediation conducted under this Agreement.

Party 1: _____ _____
Print Signature
Address: _____

Telephone: _____ Date: _____

Attorney (if any) for Party 1: _____ _____
Print Signature

Telephone: _____ Date: _____

Party 2: _____ _____
Print Signature

Address: _____

Telephone: _____ Date: _____

Attorney (if any) for Party 2: _____ _____
Print Signature
Telephone: _____ Date:_____

Party 3 (if any):_____ _____
Print Signature
Address: _____

Telephone: _____ Date: _____

Attorney (if any) for Party 3: _____ _____
Print Signature
Telephone: _____ Date: _____

Party 4 (if any):_____ _____
Print Signature
Address: _____

Telephone: _____ Date: _____

Attorney (if any) for Party 4: _____ _____
Print Signature
Telephone: _____ Date: _____

RETURN THIS AGREEMENT TO MEDIATE FULLY COMPLETED TOGETHER WITH A CHECK FOR $100 PER PARTY PAYABLE TO THE NEW YORK CITY BAR TO:

New York City Bar Association
42 West 44th Street
New York, NY 10036
Attn: Lauren Axelrod, Senior Legal Counsel

Alternatively, this form can be completed electronically and emailed to Ms. Axelrod at laxelrod@nycbar.org and a hardcopy check mailed to her attention at the address above.

Ms. Axelrod can be reached at (212) 382-6674.

No Court — Rather, Collaboration

Did you know that 70-80% of lawsuits are settled prior to or during the actual trial?

So why spend so much time and money in a litigation mode when statistically you are most likely to settle your dispute eventually?

Why turn over your dispute to a third party to decide for you?

Mediate Your Settlement Now!

Quickly & Inexpensively-

Get this Matter Behind You!