

Mediation of Real Estate Disputes

Mediation is a process undertaken with the objective of helping the parties reach a voluntary compromise of a dispute. Mediation is a useful form of Alternative Dispute Resolution (ADR). Most real estate sales contracts now require the parties to mediate a dispute before commencing litigation or arbitration.

In the mediation process, the parties select a neutral mediator who acts as a facilitator of communication. A mediator does not issue a decision about who is right or who is wrong. The mediator's opinion is not binding on the parties. If the mediation process does not result in an agreement of the parties for settlement, nothing that was said by the parties, their attorneys, or the mediator may be used to prove the case at trial or arbitration. The mediation proceeding is considered confidential.

Real estate disputes can be very expensive to litigate through either arbitration or court process. The cost which parties will incur in litigation can be greater than what it would take to settle the case at the beginning. Mediation can be useful in resolving cases early to avoid that expense.

Having a decision from a court or arbitrator generally means one party wins and one party loses, but it is not within the control of either. In the mediation process the parties themselves participate in fashioning the outcome, and the money which would otherwise be spent on attorneys can be factored into the resolution.

PROCEEDURE

At mediation, the mediator normally explains the process, confirms that decision makers are present, and then allows the attorneys for the parties, or the parties themselves, to briefly state their position with regard to the dispute. The parties often submit mediation statements in advance of the hearing to familiarize the mediator and the opposing party with their position.

During the mediation process, the mediator will usually separate the parties into different conference rooms and then speak privately with each group in turn. The mediator employs a form of shuttle diplomacy to try to bring the parties to agreement while avoiding the acrimony and posturing which might occur if the disputing parties were kept in the same conference room.

During the mediation, the mediator will explore the strengths and weaknesses of their respective positions with the parties and help them realistically consider their interests and their options. By helping the parties recognize the options they actually have, as opposed to what they may desire, a good mediator can guide the parties in reaching a productive and sensible result short of litigation.

Mediation is particularly helpful in disputes where the parties will have an ongoing future relationship. For example, co-owner disputes and disputes between adjoining owners can result in a more comprehensive resolution and improved prospects for the future of the relationship when they are resolved through the cooperative process of mediation.

Parties should not however attempt to mediate legal relationships and consequences without qualified legal representation. It is critical that parties understand the nuances of the legal rights which are the subject of the mediation and pay careful attention to the legal effectiveness of any agreement which is reached through the mediation process.

CONCLUSION

Mediation has proven itself to be a valuable technique in a resolution of real estate disputes. But the effectiveness of the process depends on the willingness of the parties to genuinely seek compromise, the skills and experience of the mediator, and the experience and creativity of the attorneys for the parties. It is definitely successful enough of the time to make it a worthwhile mechanism to use for resolving disputes.

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