

Using Mediation to Settle Business Disputes

If you've ever been involved in a business dispute with another real estate professional, you will appreciate the Society's dispute resolution system. In fact, if you're an Active Society member (SIOR designee) or a Candidate, you are obliged to mediate or arbitrate most disputes with other Society members or Candidates rather than litigate.

Principle 16 of the Society's *Code of Ethics Principles and Standards of Professional Practice* states: "Unless all affected parties agree otherwise, Adherents are required to resolve compensation and related financial disputes that arise from their real estate-related professional and business activities through mediation and/or binding arbitration. Further, unless the disputes involve claims that extend substantially beyond a disagreement over compensation or the fulfillment of the terms of a contract (such as allegations of unlawful conduct), Adherents will not litigate such disputes."

When a contractual business dispute arises between or among Society members or Candidates, one party should file a Request for Arbitration with the Society's Washington Headquarters. Once a request has been filed, the Society's Grievance and Professional Standards Committee determines whether the controversy is appropriate for the Society's dispute resolution system.

Mediating Disputes

The first attempt to resolve the dispute is mediation. Mediation generally settles about 90 percent of disputes. It is, by far, the preferred means for dispute resolution; but if mediation fails, the matter goes to an arbitration hearing. Hearing panels composed of Society members make arbitration decisions. Their decisions are final, generally legally binding, and enforceable in court.

A volunteer mediation officer is assigned to each dispute. The mediation officer is an experienced Society member whose job is to attempt to get the complainant and respondent to settle the dispute. The mediation officer's role is to facilitate communication, to enhance all parties' ability to understand and satisfy their own and each others' needs, and to help the parties understand the alternatives to settlement.

The mediator is merely a facilitator who makes no judgments or decisions. The parties to the dispute have total influence over the mediation process. This is the key distinction between mediation and arbitration. In the former, the parties have complete control over the outcome—in the latter, a hearing panel makes the decisions. Arbitration decisions are almost always determined on an all-or-nothing basis, resulting in clear winners and losers. Mediations often result in "win/win" settlements. Participation in mediation is voluntary and the parties may end the mediation process at any time and initiate arbitration.

The entire mediation process and all statements, communications, discussions, and documents exchanged or generated in connection with a mediation are confidential. Evidence or information generated, submitted, or exchanged in the course of a mediation may be used in arbitration only to the extent that it was obtained independently of the mediation process. Neither the parties nor the mediation officer are required to report potential ethical violations that come to light during a mediation. Parties to a mediation may share information with the mediator that they want to be kept confidential from the other party. Mediators may not be called to testify in any subsequent arbitration or ethics hearings. All these safeguards help to ensure that the mediation process remains confidential.

Because mediations are not fact-finding procedures, most mediation officers discourage participation by attorneys, and witnesses are rarely necessary or helpful. However, affidavits or letters from outside parties can be used to illustrate certain issues.

Why Mediation Works

Why does mediation work so well? The process is fast, inexpensive, and flexible. It usually results in maintaining or improving relationships between the parties. By inviting the parties to come together and take a rational approach to solving a problem, mediation often improves poor communication and clarifies misunderstandings. Mediation often moves beyond different views of law and fact and allows creative solutions to problems. It settles cases with something other than a "win/lose" solution.

Limitations

Mediation does have limitations. It conveys no power to enforce participation or ensure due process safeguards. A resulting settlement is non-binding and cannot be enforced (except by a subsequent arbitration). However, if the parties are motivated to settle a dispute quickly and inexpensively and want to maintain control over the possible outcome, mediation is definitely the preferred means for settling business disputes. ❖

More information about the Society's Code of Ethical Principles and Standards of Professional Practice may be found on the SIOR Web site, www.sior.com/members/ethics.html.

All SIOR designees and Candidates must fulfill a mandatory ethics education requirement by either completing the Society's half-day ethics seminar or SIOR Course 200 (which includes an ethics module) by December 31, 2002. Seminars or courses taken before July 1999 do not fulfill the requirement. New members approved after January 2000 must complete the ethics requirement within their first three-year recertification cycle. The SIOR ethics seminar also fulfills the NAR ethics requirement but the NAR ethics seminar does not fulfill the SIOR requirement.

The ethics seminar is offered periodically by Society chapters and will be offered twice as a pre-conference program at the Fall Professional Conference in Boston, on either October 25 (afternoon) or 26 (morning), 2001. Visit the SIOR Web site for more information on chapter-sponsored seminars, www.sior.com/courses/calendar.html, or the Boston offering, www.sior.com/boston/geninfobos.html.