

Options for Dispute Resolution



While the court system is the way disputes have traditionally been resolved, there are different ways of resolving conflict, ways that give more control over the outcome to the parties themselves. The term used to describe the various options for dispute resolution is *alternative dispute resolution* (ADR). Some examples include:

Conciliation - An informal process in which an impartial, unbiased individual trained in dispute resolution, a third-party neutral (“neutral”), assists in resolution, often without having the parties meet together.

Mediation - A more structured process than conciliation in which a neutral facilitates a meeting of the parties so they may reach a mutually acceptable solution to their dispute.

Early Neutral Evaluation - A process in which the parties present their case to a neutral, and the neutral provides a non-binding assessment of the likely court outcome. With an objective evaluation, the parties have a realistic view of the court outcome, which may lead to settlement.

Arbitration - A more formal process in which a neutral hears arguments by the parties, but does not facilitate negotiation between them, and has the authority to make a decision. It is up to the parties to decide whether the decision is binding or non-binding.

While all these processes involve a neutral and are effective ways to resolve conflict, the process that has been the fastest growing and the most popular in Virginia is **mediation**.

What Is Mediation?

- A negotiation facilitated by a neutral.
- A chance to speak about what is important to you and listen to what is important to the other person.
- A way for you to take control of your own dispute.
- A voluntary process.
- A confidential process.
- A process that can result in a binding agreement.

What Are the Advantages of Mediation?

- Mediation, generally, has a high success rate in achieving a mutually agreeable settlement between the parties and avoiding the burdens of a trial.
- The parties themselves choose and agree on the resolution.
- Mediation may be faster than waiting months or years for trial preparation, trial, and appeals.
- Mediation is often less expensive than preparing for and going to court.
- Negotiation is facilitated by a neutral who has training and experience in helping people to resolve their disputes by mutual agreement.
- The parties control the outcome and often have a “win-win” result as opposed to having the issues in dispute resolved by a judge or jury. Parties understand their dispute better than anyone and can address details that a

court might not.

- Mediation preserves relationships by improving communication between the parties.
- Produces lasting agreements as the parties are directly involved in creating them.

How Does the Mediation Process Work?

There are no rigid rules governing the process of mediation; however, there are some common elements to the process.

Introduction

First, mediators will describe the process and their role. They will discuss the Agreement to Mediate form which states specifically that the mediator will not give legal advice, the parties should seek the advice of independent counsel, and the process is confidential.

Information Gathering

Mediators will ask each of the parties to describe their view of the dispute and what they may want out of any solution. The parties are given a chance to vent emotions and express views in a safe environment.

Issue Identification

Mediators assist the parties in identifying the main issues in dispute. Mediators will help the parties in understanding each other’s interests and needs with respect to each issue.

Generating Solutions

Mediators will then encourage the parties to become problem solvers, look objectively at the issues, and identify and discuss possible solutions. At times, mediators may use a technique called “caucus” in which they meet with the parties separately and in confidence. This can lead to fuller revelation of the parties’ needs and to the development of options for a solution.

Agreement

Once the parties have reached an agreement, the mediator or the parties’ attorneys may record the terms of agreement. If the mediator drafts the agreement, the parties will be encouraged to have an attorney review the agreement prior to signing it. A signed agreement may be enforceable as a contract. If a case is pending in court, the judge may resolve the case by entering a court order consistent with the agreement.



How Can I Prepare for Mediation?

Successful mediation depends on the parties’ willingness to negotiate in good faith and work out a solution. Before beginning the mediation process, it is good to know what your interests are and to think about possible mutually satisfactory solutions. Both before and during the mediation, it is good to get legal advice and other professional advice regarding the law, your rights and obligations, the likely litigated outcome of your dispute, and the cost of achieving that outcome in terms of time and money.

What Kinds of Disputes Can Be Mediated?

Almost any kind of dispute can be mediated. Some types include: family issues like child custody, visitation, support, and property settlement; community disputes like neighborhood, environmental, landlord-tenant, or land use complaints; insurance related cases; construction disputes; personal injury; commercial disputes ranging from small business partnership problems to multi-party corporate disputes; workplace related disputes and special education disputes.

Cases Not Appropriate for Mediation Include:

- Matters for which you want to establish legal precedent.
- Family cases where there has been physical or psychological abuse that would jeopardize a party's ability to negotiate without fear or duress.
- Cases where there is an extreme inequality of knowledge or sophistication of the parties.

Do I Give Up My Options If I Choose Mediation?

No. In fact, if you have a case pending in court when you begin mediation, you have the option to either withdraw from the mediation process or conclude it without a resolution. You then still have the opportunity to pursue your case in court as scheduled.

How Do I Choose a Mediator?

1. Decide what you want from mediation.

Do you want a mediator who will suggest options and evaluate the merits of your case? Or, do you want a mediator who facilitates communication and empowers you to make your own decision? Mediator styles vary and you should clarify what type of process you prefer with the mediator prior to beginning the mediation. Determine whether it is important that the mediator be familiar with the subject matter of the dispute.

2. Compile a list of possible mediators.

To find mediators in your area, you may access a list of court-certified mediators (by cir-



cuit) and a searchable mediator directory on Virginia's Judicial System Web site at www.courts.state.va.us.

The Web site also provides contact information for Community Mediation Centers and other alternative dispute resolution organizations in Virginia.

Mediator listings can also be found in your local telephone directory.

3. Interview the mediator.

- Request the mediator's resume, promotional materials, sample memoranda and references.
- Inquire about the mediator's training and active certification status with the Office of the Executive Secretary of the Supreme Court of Virginia.
- Find out what type and amount of experience the mediator has.
- Discuss the mediator's style.
- Establish what the cost of the mediation services will be.
- Inquire whether the mediator adheres to Virginia's Standards of Ethics and Professional Responsibility for Certified Mediators.
- Ask whether the mediator has a prior relationship with any of the parties or a personal bias that would affect his performance.
- Verify the mediator's knowledge of the subject matter of the dispute.



4. Determine the cost.

Generally, mediation is less expensive than going to trial. Court-referred mediation may be provided free of cost in some jurisdictions. Community Mediation Centers provide low cost or sliding scale fee mediation services. Private mediators

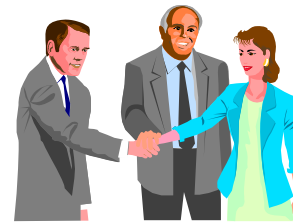
either charge a fee per hour or have a flat fee.

In Virginia, mediators must provide a dispute resolution orientation session free of cost in court-referred cases. This is a preliminary meeting in which the neutral helps the parties assess whether their case is appropriate for a dispute resolution process like mediation.

5. Evaluate information and make a decision.

Determine which mediator has the qualities, skills, and qualifications you want. Consider whether you can afford the services, whether the mediator can work with your time frame, and whether the other party or parties will agree to the mediator.

How Is the Mediator Different From a Lawyer?



The mediator is a neutral person trained specifically in facilitating the process of dispute resolution. Many mediators are professionals in other areas such as law, social work, counseling, education, or psychology. In their role as mediator, however, professionals cannot give legal advice or any other professional advice.

The role of an attorney representing a party in mediation is to provide legal advice and to advocate for his client. The mediator's role is to assist both parties in working through the issues in the dispute to come to a successful resolution of the dispute. The mediator and lawyer(s) work in concert to ensure that the parties enter into an agreement that is in their best interest and based on informed decision making.

**For more information, contact:
The Office of the Executive Secretary
Dispute Resolution Services
804-786-6455**

MEDIATION: A Consumer Guide



Virginia