

## Conflict Resolution

**A**lternative dispute resolution (ADR), which includes negotiation, mediation and arbitration, provides community associations with a means to resolve conflict more quickly, economically—and sometimes more fairly—than the traditional justice system.

Negotiation is the first step in conflict resolution. It allows associations to work independently, requires the least amount of time and resources and does not require assistance from a professional mediator or attorney. Mediation is the next step in escalating ADR due to its collaborative nature and minor investment of time and money. Arbitration is the least preferred alternative, although it has its place in resolving complex legal issues.

A constructive view of conflict is that it's neither good nor bad; it's merely feedback from the association. Conflict can clarify—and even improve—relationships, and it strengthens associations through mutual dialog. As association managers and volunteer leaders improve their ability to manage conflict, they gravitate toward ADR strategies, which offer proactive, people-oriented approaches to conflict resolution that strengthen and preserve working relationships.

In **negotiation**, participants identify the issues in dispute, educate each other about their needs and interests, generate settlement options and bargain over final agreement terms. Negotiation is an informal, cooperative, problem-solving approach. Negotiation can be initiated at any time and has no monetary cost. Negotiated agreements are created by the people involved and are not legally binding unless they're formalized into a legal contract or court order.

In negotiation, each party must make a serious effort to use a constructive approach, generate and evaluate options, establish rapport, clarify their

perceptions, identify their interests and desired outcomes, select options that best satisfy everyone's interests and agree to move forward.

**Mediation** is an informal, cooperative, problem-solving approach to conflict resolution. It relies on a trained third person (who has no personal stake in the outcome) to facilitate the negotiation. The mediator ensures constructive interchange between people and won't allow the parties to stoop to adversarial posturing or name-calling.

Mediated settlement agreements are created by the parties involved and aren't legally binding unless formalized by contract or court order.

Mediation is an attractive alternative to legal action for cases involving construction defect litigation, covenants and rules enforcement, delinquencies, neighbor disputes, contractor performance issues and a number of other problems.

**Arbitration** is a formal, rule-oriented process that is more expensive and takes more time than mediation, but less than a court case. In arbitration, a neutral party renders a legal decision based on evidence and testimony and makes a final award in favor of one party. The arbitrator's office is quasi-judicial in nature, making final awards enforceable in court.

Though arbitrated decisions are legal and final, they should not be confused with litigated decisions. Arbitration differs from litigation in several important ways—procedures are informal, costs are reasonable and arbitrators are selected by the participants. In addition, arbitration is private: all hearings are closed and do not become public record. Arbitration is also efficient: ninety percent of all cases conclude in two or fewer days.

Unlike negotiation or mediation, arbitration can be adversarial and may not preserve relationships, and should be used as a last resort.