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Mediation of Real Estate Disputes

By Andrew J. Wiegel

Mediation is a process undertaken with the objective of helping the parties reach a voluntary compromise in the event of a dispute. Mediation is a useful form of Alternative Dispute Resolution (ADR). Most real estate 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 a 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 aggregate cost which the parties spend on the litigation process is sometimes 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.

At mediation, the mediator normally introduces the process and then allows the attorneys for the parties, or the parties themselves, to briefly state their position with regard to the dispute. The parties are often invited to 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.

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.

Mediation has proven itself to be a valuable technique in the 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.

Andrew J. Wiegel is a partner at Wiegel & Fried, LLP. The information contained in this article is not intended to be exhaustive - instead it is provided to inform the real estate community of some important features of California law. The information in this article is general in nature; consult with an attorney for legal advice on any particular matter. © Copyright 2004, Wiegel & Fried, LLP.