

Mediation - What it is and How it Works (Condominium)

What is Mediation: Mediation is a process where the disputing parties meet together with an outside professional (the mediator) to discuss and attempt to resolve their differences on terms that all parties can agree. Mediation is voluntary, informal, convenient, and successful in over 80% of cases. Parties usually share the costs of the mediator's fees and expenses.

Role of the Mediator: The mediator is an independent impartial professional trained and experienced in this type of work. The mediator oversees the process and work with the parties to encourage the sharing of information and views as they work towards developing a mutually satisfactory resolution. The mediator will not give advice to any party on their rights nor will the mediator make judgements about the resolution reached or options for resolution generated in the discussions.

Mediation and the Alberta Condominium Property Act

The Condominium Property Act states:

Alternate dispute resolution

- 69(1) Any dispute respecting any matter arising under this Act or in respect of the bylaws of a corporation may, with the agreement of the parties to the dispute,
- (a) be dealt with by means of mediation, conciliation or similar techniques to encourage settlement of the dispute, or
 - (b) be arbitrated under the *Arbitration Act*.
- (2) Nothing in subsection (1) shall be construed so as to prohibit a dispute from being arbitrated subsequent to an unsuccessful attempt to deal with the dispute by means of mediation, conciliation or a similar technique.

The Regulation says:

77 If the parties to a dispute referred to in section 69 of the Act wish to deal with the dispute under section 69 of the Act but are unable to agree on a mediator or an arbitrator, as the case may be, the Alberta Arbitration and Mediation Society is, subject to any agreement between the parties, authorized to appoint a person as a mediator or an arbitrator in respect of that dispute.

Role of the Parties: To prepare and to then enter the mediation discussions with an open mind, honestly state their information and reasons, and work towards understanding the other party. To assist the mediator and the other parties in the process.

Steps in the Process:

Step 1 - Parties talk and agree to go to mediation and choose the mediator

If you wish to start the mediation process, contact the other side (verbally or by letter, fax or email) outlining what you see as the dispute, what your view is and what you see as the potential outcome. The attached Request to Mediate is a sample. Invite the other side to join with you to appoint an mediator to work with both of you. Suggest possible names of mediators you would

find acceptable. Ask the other party to review and choose from the names you provide or to provide alternate names. Go back and forth until you agree on a mediator.

If you cannot agree on the name of a mediator, consult an agreeable outside source to select one for you. Sometimes a mediator can help you bring the other person to the table.

Step 2 - Parties contact the chosen mediator and the mediator agrees to act

One or both of the parties then contacts the agreed mediator to see if the mediator is willing and available. After being contacted by the parties to serve as mediator, the mediator:

The mediator will set up a meeting or telephone interview with each party separately to:

- a) introduce the mediator
- b) outline the process for structuring the joint discussions between the parties and the time lines
- c) assist each party/group to identify who should be present at the mediation table and the items that need to be resolved
- d) identify dates for the joint meetings.

Step 3 - Parties and mediator meeting in joint mediation sessions

Joint meetings of all parties (with any support or representation they wish) will begin at a date and time identified by the mediator, after meeting with all the parties. These joint meetings continue on times and dates agreed by all parties as required. All joint meetings will be held at a neutral location.

At the joint meetings, the parties and mediator:

- a) discuss the guidelines required to assist in positive, collaborative discussions
- b) discuss any concerns about confidentiality of the discussions
- c) develop the agenda for the joint discussions and determine the order for addressing those agenda items
- d) discuss the times for future meetings
- e) proceed to discuss the matters (one by one) to share information and create understanding of the importance of those matters to the parties
- f) once a level of understanding is reached, explore creative options to resolve the matters in dispute which satisfy all parties
- g) select the option(s) that work for all and detail the settlement
- h) document the settlement (the mediator may help the parties draft the settlement document).

Additional Information: The Mediator will prepare and send to each party some information about how you can prepare for the joint mediation sessions. The Mediator will also forward a draft "Agreement to Mediate" for parties to review. The parties and mediator will discuss this document, make any changes and then everyone participating will be asked to sign it before we begin to discuss the details of the dispute.

Code of Ethics, Confidentiality and Privacy of Personal Information

The Mediator adheres to the ADR Institute of Canada Inc. Code of Ethics available at <http://www.adrinstitute.ca/>. Mediators treat the information in the mediation process as confidential. High Clouds Incorporated protects the privacy of any personal information under its Privacy Policy.

If you have any questions on the mediation process, please feel free to contact us at 780-466-8250.

Deborah M. Howes, C. Med.
Mediator
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July 18, 2006

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How to Start the Mediation Process: (Condominium)

Under section 69 of the Condominium Property Act and Regulation 77, mediation is an accepted dispute resolution procedure in condominium. This document provides some information on how to start a mediation and sample forms to use. First, read An Introduction to Mediation (Condominium) which also appears on this website. If you have questions about whether your case should be arbitrated or the merits of your case, contact your legal advisor. Mediators will provide information about the process, but do not comment on the merits for one party and do not provide representation to any party. One party alone cannot choose the mediator or hire the mediator.

1. Consult your condominium bylaws / contract to see if there is a mediation provision. If there is a provision, read it and follow it.
2. Complete the Invitation to Mediate form. It will help you clarify what you see as the dispute and what you want.
3. Research who you want to be the mediator. Check with others you know who have used mediators. Check with various mediator associations for available mediators – www.aams.ab.ca or <http://www.amic.org/aboutus.html> or <http://www.cnetwork.ca/> or www.ADRWeb.ca. You may call several possible mediators to ensure there are no conflicts of interest and that they have the time to do the mediation. Just like when hiring another professional, be sure to check:
 - o qualifications, training as a mediator, experience as a mediator, insurance coverage, commitment to a code of ethics, cost, availability, knowledge in condominium or the topic of your dispute, neutrality, professional memberships, etc.
4. Finish completing the Invitation to Mediate form and send it to the other party(s) in your dispute. Keep copies of all the documents for your own files.
5. Follow up on the times – welcome a response from the other side in the form of a letter or the Reply to Invitation to mediate.
6. When you get the response, see if both of you have agreed to a mediator or do you have to exchange a new list of potential mediators or use an outsider under Regulation 77 to appoint a mediator for you.
7. When you have the mediator's name as agreed or appointed by the outsider, one or both of you need to contact the mediator to confirm the hiring of / appointment of the mediator.
8. From that point the mediator generally takes over the arrangements and will work with both parties to keep the process moving forward.

Invitation to Mediate (Condominium)

To: _____
(name of the other party)

(address of the other party) (postal code)

From: _____
(your name)

(your address) (postal code)

(your phone #) (your fax #) (your email)

Date: _____

I/We notify you that I/We wish to mediate the following dispute with you under section 69 of the Condominium Property Act and Regulation 77 and our bylaws/contract.

1. What is the Dispute?

How I describe the dispute: (provide a summary of who, what, where, when, how of the events leading to the dispute)

2. *Relevant sections of the Condominium Property Act:* _____

3. *Relevant sections of the Condominium Bylaws:* _____

4. *What I/We want as a result: (describe what you seek at the end)*



5. Who should mediate?

(Choose a) or b)). Under section 69 of the Condominium Property Act and Regulation 77, we have to agree on the mediator. I/We wish to have:

a) _____ a single mediator help us or b) _____ a team of two-co-mediators help us

I/We suggest the following persons as the mediator(s): (list name, contact information and provide a bio, if you have it)

i) _____

ii) _____

iii) _____

6. Your side of the dispute:

I/We am also interested in seeing how you describe the dispute between us and what you want as a result. I invite you to provide the information to me in the same way I have given this to you by completing the Response to Request to Mediate and sending it back to me within seven (7) calendar days.

Signature

Printed name



Response to Invitation to Mediate (Condominium)

To: _____
(name of the other party)

(address of the other party) (postal code)

From: _____
(your name)

(your address) (postal code)

(your phone #) (your fax #) (your email)

Date: _____

This is our Response to the Invitation to Mediate sent by you under section 69 of the Condominium Property Act and Regulation 77 and our bylaws/contract.

1. What is the Dispute?

How I describe the dispute: (provide a summary of who, what, where, when, how of the events leading to the dispute)

2. Relevant sections of the Condominium Property Act: _____

3. Relevant sections of the Condominium Bylaws: _____

4. What I/We want as a result: (describe what you seek at the end)

5. Who should mediate?

(Choose a) or b) or c)). Under section 69 of the Condominium Property Act and Regulation 77, I/We wish to have:

a) _____ a single mediator help us or b) _____ a team of two-co-mediators help us

(please check one of the following and complete the information)

I/We agree to the following mediator(s) suggested by you: _____

I/We do not agree to any of the mediators suggested by you. I/We suggest one of the following persons as the mediator: (list name, contact information and provide a bio, if you have it)

i) _____

ii) _____

c) _____ we should ask the Alberta Arbitration and Mediation Society to appoint a mediator for us for this dispute.

Signature

Printed name

