

*In Community Management, We're Superior*

## **MEDIATION**

**What should we do?**

**Who goes to Mediation?**

**Are decisions made at Mediation?**

**Can our attorney represent our association at Mediation?**

*These questions and more will be answered to alleviate your apprehension. Don't let the word "Mediation" put your decisions as a Board in jeopardy and we here is why.*

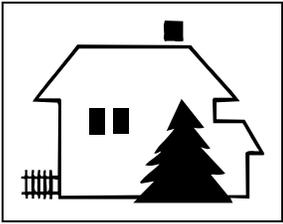
**What should we do?**

At some point in time the Board will either request mediation or they will be requested to mediate. With only a few exceptions, whenever a homeowners association and an owner are on the opposite sides of a dispute, Oregon Law requires an offer to use "alternative dispute resolution" ADR, of which mediation is one form, before either side can file a lawsuit against the other party. Since most HOA'S participate in mediation at some time or another, most often the courts will, if you have been sued, request mediation before going to court so let's try to prepare you.

1. First get all the documentation in order (with pictures if available)
2. Make sure your information is factually correct and current
3. Do not deviate from the point of mediation—in other words if you are mediating on a specific issue keep to that issue only.
4. Put together a strategy
5. Stick to short answers
6. Do not allow either party to tape the session.
7. Be calm and try to keep your emotions out of the mediation

**Who goes to mediation?**

Any Board member(s) may attend mediation. However it is especially important for those Board members who are fluent on the issue at hand to attend mediation. . It is also OK to have management and/or your attorney present to guide you.



Continued from page one

### **Are decisions made at Mediation?**

Yes and no—if the Board member who is representing the board has the authority (must have been approved at a previous meeting) then some times you can come to a resolution. Most often this is not the case, and any resolution is conditioned on the Board's ratification and approval at a subsequent meeting. It is what the mediator and the courts would like to have happen. Just remember any decision must be presented to the Board.

The reality is, resolution will not occur. What then? It depends on who asked for the mediation –are they satisfied? Do they have a real cause? Will you take the information back to the Board and then return to mediation after the Board makes a decision? Do you go to Court?

### **Should legal counsel be present?**

If you are prepared to offer a settlement (if you have the Boards authority) then yes it would be advisable.

Mediation is a non-binding process of trying to get the parties together to reach a compromise and thus stay out of court. That being said, it is quite possible you have already heard the case in a hearing before the Board and thus you know it is not possible to resolve the issue.

Again the most important thing is know why you are being asked to mediate and be prepared with all the documentation to substantiate your position.

You will be told by the mediator that at any time you may walk out---you do not need a reason. You may stop the mediation at any point to talk to your legal counsel or manager

Questions please call Superior Community Management