



To set a case with  
**Ross W. Feinberg, Esq.**,  
visit  
[jamsadr.com/Feinberg](http://jamsadr.com/Feinberg)  
or call 714.939.1300.



5 Park Plaza,  
Suite 400  
Irvine, CA 92614

## **Complex, Multiparty Construction Mediation**

### **What makes you uniquely qualified to handle complex, multiparty construction lawsuits?**

Thirty-five years of experience in commercial and residential construction contractual matters, construction defect litigation, general contractor regulations, construction delay claims as well as mass tort and class actions. Whether the property and project at issue are large-scale commercial projects, luxury single-family homes, multiple homes or homeowners' associations, my 22 years of practice and 13 years of full-time devotion to mediation have borne witness to countless complex, multiparty lawsuits that I was able to resolve through mediation. I also have a passion for understanding the mindsets of multiple participants, whether they are parties, counsel, insurance professionals or experts.

Further, I have lectured extensively across the country in all aspects of construction litigation and have authored textbooks and articles relevant to the industry. Such lectures include those presented to the judiciary through the AEI-Brookings Institute as part of the National College. These seminars provided a forum for active judges across the country to spend two days in either Washington, D.C., or Orange County, CA, learning how to navigate multiparty, complex construction defect cases in their courtrooms. Each judge was provided my textbook, *Construction Defect Litigation*, for their participation in the annual seminars.

### **Are there particular types of construction cases you enjoy mediating?**

Absolutely. Commercial and residential matters with complex facts and multiple participants. While my legal practice and mediation career were founded upon construction defect cases involving statutory condominium associations and builders, they have grown to cover the most complex construction disputes. Specifically, my focus and specialty is studying, analyzing and resolving multiple-party construction cases. It is not uncommon for me to mediate cases with more than 100 people in attendance. My job is to quickly analyze the facts and the motivations of each and every participant, irrespective of whether they are parties, counsel, claims professionals or experts. I try to make every participant feel welcomed and understood prior to delivering news and opinions they may not want to hear but need to hear and absorb in order to evaluate their options.

### **Are you typically retained by one side, such as property owners or builders?**

This is such an interesting question because I exclusively represented property owners against builders during my 22 years in private practice. Though the builders were, by definition, adverse parties to my clients, it is the builders who, through their in-house counsel, encouraged me to enter mediation as a full-time practice. Further, the majority of case referrals to my mediation practice comes from builders, developers and general contractors, as well as the attorneys who represent them. When asked why they would want to hire me for their most challenging cases, the builders uniformly responded that they had developed a trust in me from cases where I was on the opposite side and that they also knew I could relate to the plaintiffs' bar. This is evidenced by the fact that I was privileged, when still in practice, to receive the Jerrold S. Oliver Award of Excellence at a national construction defect seminar, with the vast majority of members and participants being from the building industry. In other words, they chose to present an award for excellence in the construction defect industry to their adversary in the litigation world. I am beyond humbled to be the only person from the plaintiffs' bar to receive this award.

### What is your relationship like with former colleagues from the plaintiffs' bar?

As I mentioned earlier, the majority of my cases comes from the defense bar. However, I am fortunate to have strong relationships with my colleagues in the homeowners' association plaintiffs' bar. For many years, I served as an educator and officer in organizations serving common-interest developments. I am blessed to retain strong relationships with these firms, and many bring their cases to me because they are confident that I will understand and work well with their clients. During the initial years of my mediation practice, many colleagues, who were previously competitors, decided to put my engagement on hold until I could earn the respect of all sectors of the industry. However, for more than 10 years, each of these firms has brought their most complex construction cases to me for mediation.

### What makes you uniquely qualified to mediate construction cases involving homeowners' associations and condominiums?

When I was a practicing attorney, my career was devoted one hundred percent to the representation of, and education for, homeowners' associations in all aspects of their operations. For over 22 years, I worked with property owners, management companies and volunteer boards of directors, assisting them in their business judgment decisions and educating them as to the statutory and case law that governs operations of the community association entity.

Additionally, I served as an author, advisor and officer for industry organizations. Specifically, I was the national president for the Community Associations Institute, the largest organization in the world serving community and homeowners' associations. I authored and co-authored books and courses for community managers and served as a presenter and co-chair for numerous national law seminars on community association law and operations. My book, *Construction Defects: The Community Association's Guide to the Legal Process*, remains available on Amazon.com.

When mediating homeowners' association construction defect cases, I effectively utilize all of this experience by meeting with the board of directors to assist it in making business judgment decisions. If desired and helpful to the process, I assist counsel with discussing the wisdom of settlement with the board, including how to adjust its reserves in light of settlement funds to repair alleged construction deficiencies and how to document its decision to avoid any future claims relative to the basis for its approval of a settlement.

### Do complex construction cases often settle in one day? For those that don't, what follow-up strategies do you employ?

Several cases come to me via an executed case management order. These cases typically involve a series of predetermined pre-mediation dates for investigating the property through visual and invasive testing, as well as the serving by counsel of documents such as a defect list and cost of repair. Additionally, mediation dates are often set forth in the order. By definition, these cases require more than one session. Many of these cases involve multiple parties, often subcontractors, and my job is to analyze the claims, understand the participation level of all parties and carriers, and work through mediation sessions to achieve a global resolution.

When cases are not subject to a case management order, they are often set for one day of mediation.

I work from morning until late into the evening (and sometimes the next morning) to resolve the dispute in one day. One technique I use with regularity is the mediator's double-blind proposal so that the parties can put aside their emotions from the long day of mediation and analyze a recommended settlement.

The way such a proposal works is that the parties are asked to reply—only to me—either accepting or rejecting it within a certain time frame, typically 7 to 10 days. If all parties—whether there are two or several—accept my proposal, we have a settlement. Should any one party reject the proposal, we do not have a settlement, and the rejecting party will not be told if any of the other parties would have accepted it.

Finally, even if such a proposal is not successful, I will continue working to convince the most untrusting of parties that settlement is in their best interest. As an unsettled case keeps me up at night—and I do like my sleep—I am constantly working to resolve all of the cases before me.

### What do you enjoy most about being a JAMS neutral?

The opportunity to bring resolution to people who have been living with conflict is one of the greatest gifts I have ever been blessed with. Though it is my job to understand and relate to people with all types of personalities, I have never considered it work. Conversely, as I was taught by my parents, every person, regardless of background or personality, deserves to be understood. My profession places such understanding at its zenith. Finally, the JAMS brand brings the highest level of integrity and honor to the ADR profession, and it is a privilege to serve a myriad of clients as a proud member and owner within the JAMS organization.