

Co-op and Condo Disputes: Mediation Offers Flexible, Quick Solutions

By Nancy Kramer

New Yorkers are used to communal living. Hundreds of thousands of New York City residents live in co-ops and condos. They are scattered throughout the five boroughs and the buildings come in many sizes, shapes and flavors. They include multi-building complexes; big or medium-sized or small buildings; subsidized, limited-equity, middle-class and luxury communities. But they share one characteristic. They all have conflicts—Noise! Smoke! Nasty behavior by neighbors! Unmanageable boards! Disputes arise among residents; between groups of residents; among board members. The variations and permutations are endless.

Life may be full of conflict, but co-op and condo conflicts are uniquely stressful because in most instances the parties to the problem will continue to live near and be financially intertwined with each other.

Managing agents and board members are sometimes able to

resolve smaller disputes. If they can do that, it is the quickest, lowest-cost way to go. But what about the problems, often the more complex ones, that are not so easily worked out?

Litigation is usually a very poor option, if one at all. In addition to the drawbacks of expense, lengthiness and unpredictability, it can make life at home very difficult. So, what can you do when informal dispute-resolution attempts have failed?

The answer is very clear to me, but it is not one that is utilized as frequently as it should be—mediation.

A mediation is a negotiation session conducted by a trained dispute resolution professional who has no stake in the outcome. Having no stake in the result is essential—as those who try to resolve issues in their own buildings learn.

The mediator's role is to assist the participants in working out a mutually-agreed-upon resolution. She is not a judge or an arbitrator who will render a decision about what should be done about a problem.



An experienced mediator, though, has skills and techniques to help parties move toward a solution and may propose ways of dealing with the situation.

A mediation session usually begins with both or all parties meeting with the mediator together. A conference call and individual, confidential telephone calls with parties may have preceded the meeting. The mediator often then meets separately with each side for any number of times or meets in further plenary sessions or only with counsel (if any—shareholder to shareholder mediations are often held with just the parties).

Every mediation is different, but, the good news is that most do settle—and much more quickly and at far lower cost than if litigated. There is typically a mediator's hourly fee and perhaps case management costs. Often the co-op will pay this; if not, the parties typically split the fee. Also, unlike court proceedings, mediations are private—no transcript, no open sessions and no public decisions.

A mediation can be a single session and may be brief. This is usually the case if it is an individual shareholder to shareholder dispute. Some are continued in further sessions (especially those involving board issues or substantial monetary claims). Others are resolved after a single session with phone call and e-mail follow-up. Because mediation is voluntary, the process always ends whenever one side wants to stop but people have great patience when they see the possibility of getting the problem resolved.

Disputes involving the board are usually more complex than those involving two shareholders, but they, too, can often be resolved through mediation. One recent case involved a landmarked and well-known co-op that contracted for major and necessary roof renovations to its premises. Tenants were displaced temporarily from part or all of their apartments. One prominent shareholder

claimed physical repercussions from the displacement and lengthy uninhabitability caused by the alleged incompetence of the management. Much time and effort had been spent on trying to accommodate her. Emotions and their expression were running high, but everyone involved wanted to avoid the publicity of litigating. After two tense mediation sessions and interim negotiating, facilitated by the mediator, the conflict was put to rest.

This example highlights one of the unsung benefits of mediation—the ability to preserve or restore cordial relationships among those involved. A skilled mediator can often guide parties to creative and win-win (or at least not win-lose) settlements, of a kind that would not be available in the court system. Where parties share the same staff and elevator, using a mediator to direct a nonconfrontational process can be quite beneficial.

A very different case resolved through mediation involved a modest Brooklyn condo. Most of the unit owners had purchased their apartments as investments and many rented them on a long-term basis to stable families, which was permitted. But one owner couple used the unit as a short-term rental cash cow, creating much noise and security concerns for the residents. The condo sued the owners and its attorney

urged mediation. This required several sessions, but resulted in the other unit owners eventually buying the troublesome unit.

The success stories are endless. There is so much to gain and very little to lose in trying mediation to end co-op and condo conflicts.

Nancy Kramer, Esq. is a veteran mediator, arbitrator and facilitator at JAMS. She is known for her aptitude bridging gaps in communication, identifying obstacles to settlement, and pursuing creative solutions to complex issues. Ms. Kramer has mediated more than 650 cases including many co-op/condo matters.

