

The Mediation Process

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SUMMARY

At the heart of the matter, mediation is a negotiation assisted by a neutral third person in the presence of the decision makers for each side. Varying factors such as solutions, selection of participants, and costs determine which negotiation strategy is most suitable for a particular situation.

THE ADVANTAGES OF MEDIATION

One essential difference between mediation and court proceedings or arbitration is that the mediator remains neutral throughout and does not decide on the merits of the dispute.

Several factors must be considered when formulating an approach or strategy to the mediation process:

- **Mediation broadens the range of possible remedies.** In litigation the law defines the range of solutions. In mediation (as in any negotiated resolution), the range of solutions is potentially limitless.
- **All interests are taken into account.** In litigation the broader interests of the parties—financial and otherwise—may be irrelevant to the dispute, however vital to the business of the parties. In mediation, outside interests can be brought into the equation to satisfy both parties.
- **Any interested parties may partake.** In multiparty disputes, particular contractual arrangements may exclude certain persons who have an interest in the issues at stake. In mediation, any person who is interested and willing can potentially take part.
- **Mediation costs less.** The cost of resolving a complex dispute in terms of time, money, lost opportunity, and psychological wear and tear—not to mention the uncertainty of the result—is far greater in litigation than in mediation.

RESOURCES

More Best Practices

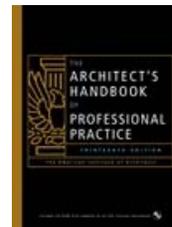
The following AIA Best Practices provide additional information related to this topic

- 17.04.07 Dealing with Aggressive Negotiators
- 09.03.01 Damage Control: Managing Claims to Minimize Risk
- 09.03.03 Mediation for Conflict Resolution

For More Information on This Topic

See also “Managing Disputes” by Frank Musica, Esq, Assoc. AIA, in *The Architect’s Handbook of Professional Practice*, 13th edition, page 345.

See also the 14th edition of the *Handbook*, which can be ordered from the AIA Bookstore by calling 800-242-3837 (option 4) or by email at bookstore@aia.org.



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Key Terms

- Practice
- Legal management
- Disputes
- Mediation claims