



DEFUSING DISPUTES

BY PAULA CHIN
ILLUSTRATION BY MARCELLUS HALL

THE WHAT, WHY,
AND HOW OF
MEDIATION

They say good fences make good neighbors, but that's one amenity co-ops and condos don't have. Living in such close quarters, conflicts inevitably crop up, tempers flare, and nasty lawsuits can result. "People are becoming less tolerant of one another, and there are more disagreements than ever," says Claudine Gruen, vice president and director of operations at Garthchester Realty. Every shareholder has an interest in keeping the peace, but when disputes prove intractable, there's a tried-and-true remedy available to boards: mediation. Got a dispute that needs defusing? Here's everything you need to know.



What is mediation?

It's an informal, voluntary approach to settling disputes, in which a neutral third party – usually a professional mediator or an attorney – assists the disagreeing parties in resolving conflicts. Mediation can work when there is friction between owners, between an owner and the board and, in newly constructed buildings, between owners and the developer.

Compared with lawsuits, mediation saves money and time, and it can result in amicable settlements without any festering resentments. "It's underused, but more co-op and condo boards are realizing it's the best way to resolve disputes that don't belong in courts, like noise and odors or people who aren't paying common charges," says Michael Graff, principal at Graff Dispute Resolution, who says he has had a 70 percent success rate mediating condo disputes over the last decade. "With mediation, you have nothing to lose and a great deal to gain."

How does it work?

Typically, a managing agent who gets a complaint from a resident will try to stop the problem before it starts – for example, getting someone to carpet 80 percent of their floor to mute the sound of footsteps, or install a fan to vent cooking odors. If that doesn't work, the next step is having the parties talk it out in a controlled environment.

At Deepdale Gardens, a 1,396-unit co-op in Queens, disputing sides meet onsite with the board's five-member mediation committee. "We let them speak and listen to each other, and then we make suggestions," says Fran Heaslip, the board secretary, who chairs the committee. In the two disputes she's presided over during the past year, matters were settled after a single meeting. "With quality-of-life issues, getting things out in the open so they don't escalate is sometimes all it takes," she says. "Anything more serious, though, would be handled by our attorney."

HABITAT

week by week

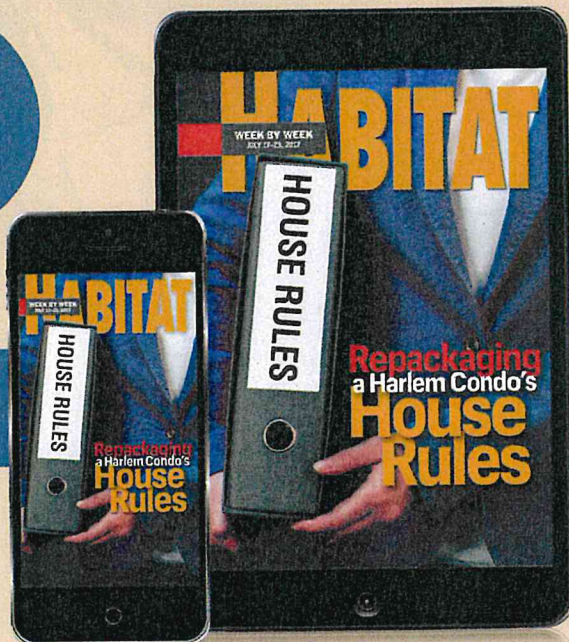
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Gruen, of Garthchester, brings the parties together with a lawyer, Mark Hankin, a partner at Hankin & Mazel, right from the get-go. "I'm always present, taking notes, so it's on record that the co-op or condo is fulfilling its obligation to remedy the situation," she explains. For Hankin, the goal is to get people – "even when they come in hating each other" – to come to an agreement after a 40- to 60-minute session, which he says happens more often than not. "Ideally, the parties will also sign a written agreement," he says. "Otherwise, eventually they might sue each other, and then possibly sue the co-op or condo for not enforcing the regulations."

Another option for boards is the New York City Bar Association's (NYCBA) Co-op and Condo Mediation Project, which provides trained private mediators in a more formal setting. "We hardly ever keep people in the same room," says Graff, a member of the NYCBA panel. "Instead, we start in the same room so each side can express

their feelings, then the mediator goes back and forth between them. They're kept apart until there is a resolution."

Richard Brewster, another mediator, adds: "It's extraordinary how stoked up people get – they feel angry and betrayed and just dig their heels in. When parties aren't ready to have a civil conversation, mediation can help them move forward."

How much does it cost?

The hourly rate for mediators ranges from \$150 to \$400. NYCBA will provide two panel members, along with their résumés, to select from. Other agencies, such as the American Arbitration Association and JAMS New York Resolution Center, also provide mediators, but their rates can be higher. Mediator fees are generally split by both parties, but there has been a recent trend of boards paying the entire cost in order to get feuding neighbors to come to the table.

"Whether a co-op or condo is big or small, mediation is quick



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and cost-effective, since litigation can absolutely exhaust a property's reserve funds," Brewster says. "With smaller buildings of just a few units, a legal dispute could be ruinous for all."

What are the advantages?

Mediation is particularly appropriate for co-op and condo disputes because residents are likely to have continuing relationships with one another. "Not wanting to run into your neighbor in the lobby, elevator, other common areas is a terrible way to live," says Graff, who adds that festering hostility is toxic for the whole building.

Trained to handle tinder box situations, a mediator can help parties come up with more creative solutions than those provided by a court. "Talking conversationally instead of in legalese, asking open-ended questions. Summarizing and reflecting people's views are all part of our tool kit," says Diane Rosen, a real estate attorney with Ortolini Rosenstadt who is also on the NYCBA panel. "In mediation-speak, we talk about 'positions,' which is the position a person is taking and the outcome they want, and 'interests,' which is what they want or need, like a desire for fairness and respect. A good mediator calibrates the parties' expectations, which a lawsuit can't do, so we can meet their needs and satisfy their interests."

Because the process is strictly confidential, it's also valuable when resolving disputes with developers in new buildings. "Once a case is filed in court, it becomes a matter of public record," says Hankin, the attorney. "That can adversely affect the value of the building's apartments and scare away prospective purchasers and lenders." For that reason, Hankin, who is currently mediating disputes in at least 11 different properties, says that the majority of the developers he's dealt with in the past 10 years has settled. "They avoid a trial, which is expensive, and avoid the risk of getting dinged by a jury. Developers have a reputation to protect."

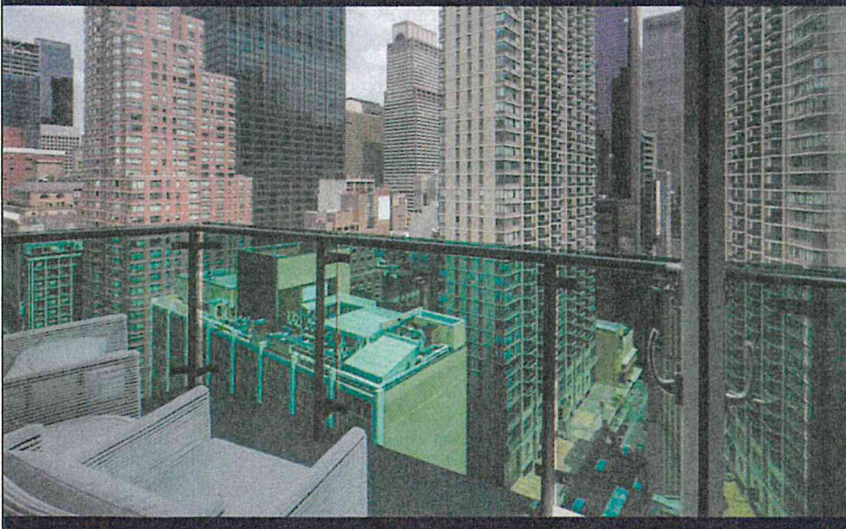
What are the limitations?

Hankin will not mediate disputes that involve more than two parties. "I tell

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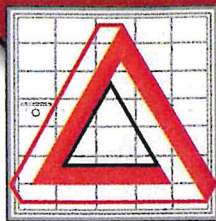
HOW TO FIND A MEDIATOR

Even though mediation has not yet been heavily utilized by the co-op and condo community, there are many choices for effective mediators.

- Request one through the New York City Bar Association's Co-op and Condo Mediation Project by contacting Eli Cohen at (212) 382-6660 or ecohen@nycbar.org.
- The Community Dispute Resolution Centers Program — Unified Court System website has a directory of CDRCP providers. (www.nycourts.gov)
- Law school clinics and solo practitioners offer mediation services. You can also turn to your building attorney as a mediator, should you want someone familiar with your community.
- Local mediators can be found online. Some resources are:
 - the American Arbitration Association (www.adr.org)
 - JAMS (www.jamsadr.com)
 - National Arbitration & Mediation (www.namadr.com)
 - www.mediation.com
 - www.mediate.com
- Your board may also want to set up a committee of board members, residents, or both to mediate disputes.

all my board clients they're fine for a one-on-one situation where no one else is involved," he says. "But if there are three units complaining about the noise or odor from one apartment, I will pursue a lawsuit because that person is interfering in the rights of other shareholders, which the proprietary lease says you can't do."

Ideally, dispute resolutions should result in a signed document that becomes a binding contract. The absence of such a document can cause problems to fester. "That happens about half the time," Hankin says, "and often the parties are feuding again after six months." In that case, a board can try to re-mediate, or the complaining party has the choice to try to enforce the agreement in court. ■



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