

# Strata and community mediation

Strata and community living often brings people of diverse interests and backgrounds close together, and disagreements can sometimes arise.

The *Strata Schemes Management Act 2015* and the *Community Land Management Act 1989* both set out processes for resolving disputes.

## What is mediation?

Mediation is an informal negotiation process in which a neutral mediator assists those involved in a dispute to achieve their own settlement.

## Why mediate?

From time to time in strata schemes disputes may occur that involve lot owners, lot occupants and/or the owners corporation. If matters are unable to be resolved via discussion or through the governance and decision making powers of the owners corporation, mediation may assist in achieving a resolution.

Mediation is compulsory under the Act before a strata or community scheme matter can be taken to the NSW Civil and Administrative Tribunal (the Tribunal). In some instances, an application can be made directly to the Tribunal without attempting mediation. Please refer to excluded matters that are listed below.

## Mediation is confidential

Privacy and confidentiality is ensured during mediation. Any offers or admissions made during the mediation session cannot be referred to in any later proceedings.

## Mediators are impartial

Mediators assist those involved to find their own solutions based on the issues of real concern. This means that the agreement reached best suits the present situation of both parties. The mediator does not impose a decision on the parties.

The mediators role is to:

- help the parties identify the issues in dispute

- assist the parties to raise and consider options and strategies by which the issues may be addressed
- assist the parties to discuss the issues and options with a view to negotiating a settlement they can all live with.

## Who are the mediators?

NSW Fair Trading has qualified specialist mediators who are skilled in dealing with community and strata scheme disputes.

## What matters are suitable for mediation?

Any dispute that an order (Tribunal ruling) can be applied for under *Strata Schemes Management Act 2015* or *Community Land Management Act 1989* is suitable for mediation. This includes, but is not restricted to, disputes about:

- issues with repairs and maintenance
- water penetration problems
- alterations and additions to common property
- air conditioners
- by-laws
- noise problems
- parking on common property
- pets
- validity of meetings
- insurance matters, or
- building managers.

## What matters are excluded?

Not all matters are suitable for mediation. Lot owners/ residents or the owners corporation can lodge certain disputes directly with the Tribunal without attempting mediation first. This includes:

- appointment of a compulsory strata managing agent
- allocation of unit entitlements
- access to a lot by an owners corporation to inspect or repair common property
- penalty disputes, or
- inspection of strata records.

The Commissioner for Fair Trading may dismiss an application for mediation if the Commissioner believes

that the application is frivolous, vexatious, misconceived or lacking in substance.

### Who attends the mediation?

It is important that all the relevant people involved in the dispute attend the session. Parties may bring a support person with the agreement of the mediator. A party to a dispute may be represented by another person, such as a solicitor, however the other parties must consent to the representation.

### Preparing for mediation

It is essential that you are fully prepared for the mediation session. This includes getting your own legal or other advice (for example, financial or technical). Information about the legislation covering your matter is available from Fair Trading. Fair Trading does not provide legal advice.

You will need to bring any relevant plans, documents or photographs.

The mediator will arrange for an interpreter to attend if required.

### What happens during the mediation?

All parties will be encouraged to participate. Each party will firstly have an opportunity to briefly describe the dispute and state what they are hoping to achieve from mediation.

The mediator will help those involved to discuss the issues and explore what is in dispute, and to then identify options and negotiate possible settlements.

When an agreement is reached, the mediator may help with drafting a written agreement.

A mediator may terminate mediation at any time.

Any party may terminate mediation at any time by giving notice of the termination to the mediator and each other party.

### What are the results?

Any settlement reached during mediation may be made into a written agreement by the mediator. The settlement may also be made into an enforceable order if both parties consent. If no settlement is reached or an agreement breaks down, parties may be able to apply to the Tribunal for an order.

For more information about strata and community matters and mediation, visit the Fair Trading website.

### The cost

There is no fee charged by NSW Fair Trading for mediation services.

Each party to the mediation is fully responsible for their own costs.

### How to apply for mediation

Download an application form from the Fair Trading website. Application forms are available at Service NSW or by calling Fair Trading on 13 32 20 to have a form posted to you.

You can lodge your application for mediation by email, mail or at any Service NSW centre.

Upon receipt of an application for mediation, a mediator will contact those involved and arrange a time and place for all to attend the mediation session. Parties must agree to attend the mediation session before it can go ahead.