

Strata and community mediation

Under the *Strata Schemes Management Act 1996* and the *Community Land Management Act 1989*, mediation is the preferred way to resolve disputes once the parties involved have made every effort to achieve resolution.

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.

Mediation is confidential

The Acts ensure privacy and confidentiality. Any offers or admissions made during the mediation session cannot be referred to in any later proceedings.

Mediators are impartial

Mediators do not make decisions for people. They are skilled in assisting 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 and is not based on what a 'judge' thinks is best for them. It also means a decision will not be imposed on them.

The mediator's role

The mediator's 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 mediators who are skilled in dealing with community and strata schemes disputes.

Other mediation services approved by the Commissioner for Fair Trading may also be used, such as a Community Justice Centre.

Why mediate?

Under the *Strata Schemes Management Act 1996* and *Community Land Management Act 1989*, mediation must generally be attempted to resolve a dispute.

What matters are suitable for mediation?

Any dispute that an order can be applied for under the Acts is suitable for mediation. This includes, but is not restricted to, disputes about :

- alterations to common property
- appointment of managing agents
- repairs to walls, ceilings and bathrooms
- noise problems
- validity of meetings
- keeping pets
- water penetration problems
- use of air conditioners
- parking on common property
- insurance matters
- caretakers.

What matters are excluded?

Appointment of a compulsory strata managing agent, compensation, allocation of unit entitlements and penalty disputes.

What are the results?

Any settlement reached at the end of a mediation is binding for those involved. The settlement may be made into an enforceable order by an Adjudicator where the parties agree. If no settlement is reached or an agreement breaks down, one side can apply for an order by an Adjudicator or the NSW Civil and Administrative Tribunal (NCAT).

An Adjudicator can make decisions on disputes or complaints which cannot be resolved by mediation.

The NCAT is a specialist, independent, low cost tribunal for the fair and timely resolution of disputes according to law.

Information about the options available for resolving a dispute when mediation has failed can be found in the *Strata and community disputes* fact sheet.

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 as well as a solicitor if you feel it is necessary and will assist the discussion.

Preparing for mediation

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

You will also need to bring any relevant plans, documents or photographs to the mediation session.

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

What happens during mediation?

Everyone involved will be encouraged to participate. It begins with each side briefly telling the mediator about the dispute and what they are hoping to achieve from the 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. In certain circumstances an Adjudicator may make the settlement into an enforceable order.

How to apply for mediation

Download an application form from the Fair Trading website, pick one up from your nearest Fair Trading Centre or call us on 13 32 20 and we will post one to you.

You can lodge your application for mediation by mail or with any Fair Trading Centre.

Upon receipt of an application for mediation accompanied by the current fee, 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.

The cost

The fee for mediation services provided by NSW Fair Trading is specified by regulation under the Acts. For details, visit Community land management fees and Strata fees pages on the Fair Trading website.

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