



Mediation for Small Businesses

by Attorney Emily Doskow

Are you a small business owner with a dispute? Mediation might be for you.

Suppose your small business is affected by noise or smells or parking lot litter from a neighboring business, and your attempts to talk it out with your neighbor lead to each of you loudly proclaiming your own point of view. You may feel that your options are limited to calling in the law or living with the situation. But the law may not exactly address your situation. Or, your legal rights may be too costly to pursue. On the other hand, you may not be willing or able to live with the situation as it is.

Small business owners are just as likely as major corporations to run into conflict -- with neighboring businesses, employees, customers, or vendors -- and among business partners. But small businesses are far less likely to have public relations, human resources, and legal departments to help them deal with these conflicts.

In fact, it may be overwhelming for a small business to come up with the time, money, and expertise to cope with even a relatively minor dispute through legal means. What's more, unless the situation is resolved amicably, the leftover hostility will likely affect the quality of life of a small business proprietor who may be bumping up against the unfriendly party personally on a day-to-day basis.

The Mediation Alternative

Mediation offers another way to resolve conflict -- in this example, one that could help you and your neighbor come to a genuine understanding and come up with a resolution that takes both of your needs and interests into account. In mediation, a neutral third person -- the mediator -- meets with parties who are having a conflict to help them try to work it out together. Because you and the other party make the agreement together, you are both more likely to keep it. And the process of working things out in mediation is an experience you and your neighbor can draw upon if you run into problems again in the future.

Costs of Mediation

Mediation is usually much less expensive than hiring a lawyer. Community mediation centers offer low-cost services, and even if you hire a private mediator who charges by the hour, you'll be sharing the cost with the other party instead of paying a lawyer on your own. And mediation only lasts a few hours, compared to the many hours a lawyer would spend preparing your case and arguing with the other side.

Finding a Mediator

If you think you might want to mediate a dispute, the first step is to find a mediator or mediation service. Lots of places have community mediation centers that use volunteer mediators and offer very low-cost mediation services. Look in your local phone book under "mediation" or "conflict resolution." That's also where you'll find private mediators. Some mediators are lawyers, so you can also look under "attorneys" if you want to use a lawyer-mediator.

If you belong to a small business association like a chamber of commerce or the Better Business Bureau, check to see whether they have a mediation program tailored to small businesses -- lots of them do.

The Results of Mediation

The vast majority of mediations result in a settlement. If your mediation is successful, you'll leave with a signed agreement or, at the very least, a signed memorandum setting out what you and the other party have agreed to. You have the choice of making the agreement enforceable in court or not -- many people want to be able to ask a judge to enforce the settlement in the future if the other party doesn't live up to the agreement.

If you don't reach a resolution in mediation, you haven't lost anything, and you've probably learned a lot about how the other person sees the problem. You still have the option of taking legal action if that's what you feel you need to do.

In short, mediation is an efficient, effective way to resolve disputes and build community among small business people and their customers and neighbors. If you have a dispute, we encourage you to give it a try. To learn more detail about the process of mediation, you can check out *Mediate, Don't Litigate*, by Peter Lovenheim and Lisa Guerin (Nolo).