

Guide to Mediation

About Mediation

Mediation is an alternative dispute resolution process that enables people to resolve their conflicts through open communication and creative problem solving. Mediators are neutral and bring parties in conflict together in a respectful, guided conversation so they can communicate effectively with each other to better-understand each other's perspective and needs. Parties collaborate and work towards solutions that are acceptable to each of them. Mediation empowers individuals to determine their own outcomes.

Advantages of Mediation

Mediation can address many different types of disputes including interpersonal disputes, such as between neighbors and roommates, and transactional disputes, such as those involving money or possessions. Ignoring a conflict can often make the problem worse and even lead to police involvement or law suits. Going to court can be a long, complicated and costly process with procedural requirements that must be fulfilled before a hearing can be set. There is usually a filing fee and sometimes service fees and other administrative fees. Many times it is necessary to hire an attorney to help you with your case and navigate the legal system. The court process can take a large financial and emotional toll on everyone involved. Our legal system is adversarial, so one party usually prevails over the other. Often people report that even after they have prevailed in court, they don't feel as if they have actually "won."

Mediation gives each party an opportunity to meet their needs. Because the outcome in mediation is determined by the parties themselves, the final agreement can be as unique and creative as the situation requires. There are many conflicts that can't be fully addressed in court. For instance, in a neighborhood dispute, one party might have been charged with a municipal violation for disrupting the peace with loud music. The court will give a ruling on that charge, but will not impose any requirements to prevent loud music from being played in the future. Nor will they address solutions to other problems, such as parking or general hostility between neighbors.

About 90% of all mediated cases are resolved. Sometimes it takes more than one session to work through all the issues and reach an agreement. Studies have shown that there is a higher compliance rate with mediation agreements than there is with court orders but if one party feels the other is not complying with the agreement, or the mediation does not result in an agreement, parties still have the option of going to court.

How Mediation Works

Mediation is a consensual process, meaning both parties must voluntarily agree to mediate the dispute. One exception to this is court-ordered mediation, where a dispute has already been taken to court and the judge or magistrate orders the parties to attempt to mediate before they will hear the case.

The mediator is a trained neutral party who facilitates the mediation process. Mediators are not judges. Their role is to help the individuals or groups involved in the conflict isolate their issues, identify possible solutions to each of those issues and then choose mutually acceptable solutions to create a final agreement.

Time and Place

Though business days are preferred, we can schedule a two-hour session in the morning, afternoon or evening, any day of the week. The sessions take place on the Zoom video conference platform. Any parties needing access to a computer and private room to participate will be accommodated if possible. In-person mediations may be available upon request in a municipal building or community space that is available to all parties. We do not offer mediation in private homes.

Types of Mediation Services

Mediation is available to residents of the City of Boulder for the following parties or types of disputes:

Landlord-tenant, roommates, neighbors, seniors age 60 or older (at least one party must be a senior), parents and their children, teens, school-related conflicts (BVSD), community groups, homeowners associations (HOAs), non-profit agencies, City of Boulder employees,

clients and staff of homeless services, race and cross-cultural relations and human rights.

Additionally, landlord-tenant mediation is offered for parts of Boulder County including: Nederland, Superior, Louisville, Gunbarrel and unincorporated West Boulder County. If the property is in Lafayette, Lyons, unincorporated East Boulder County or Longmont call Longmont Mediation Service at 303-651-8444.

Cost

There is currently no charge for this service for eligible participants (see above).

Process

Mediators speak to all parties prior to the mediation meeting in private, confidential conversations to help them identify their goals for the mediation and prepare them for the process. All parties attending will be asked to sign an agreement to mediate. At CMRC we usually use a co-mediation model, so there will be two mediators present to assist you in the resolution of your dispute. At the start of the mediation, your mediators will introduce themselves and briefly go over the mediation process. They will make sure everyone understands that the process is voluntary and confidential and establish some ground rules for respectful communication.

Both sides are given a chance share their perspective on the situation without interruption. The mediators will create a list of issues that emerge as both sides state their perspective. After a list of issues and/or needs is established, the mediators will facilitate a group conversation to help parties come up with possible solutions to each issue. The group will evaluate which ideas would best meet their needs. Mediators will meet privately in caucus with each party if necessary. Any mutually acceptable solutions and commitments will be written up in an agreement.

Confidentiality and Enforceability

Colorado Revised Statute § 13-22-307 protects the confidentiality of information disclosed in mediations unless all parties consent otherwise, with the exception of a few extreme circumstances. However, mediation

agreements are legally binding, admissible in court and may be enforced by a court. CMRC does not enforce mediation agreements.

Ways to Propose Mediation

There are several ways to bring up the option of mediation to a party with whom you are having a dispute. How you choose to do this might depend on several factors such as the level of hostility between you and them, whether or not the other party is an individual or a company, or your comfort with explaining the mediation process. Options are:

- Call them or approach them in person and ask them if they are familiar with mediation and if they would be willing to try it.
- Refer them to our website or print information from the website to give to them.
- Ask them to call our office and share their perspective on the situation with our staff. Our staff will explain the mediation process and answer any questions they may have. It's important that they understand the mediation service is neutral and is not acting as an advocate for any one party or taking sides in the dispute.
- Write them a letter asking them to mediate. There is an "Invitation to Mediate" template on the website. The letter may refer them to our website or ask them to call us directly.
- Have our office contact the other party and invite them to mediation with you. After our initial conversation with you, we would call or write the other party and explain that we have been contacted by you regarding the dispute (stated in a general way e.g... security deposit, barking dog, payment of a utility bill, etc.), and that you would like to use our services to resolve your conflict. We explain the process and its benefits and clarify that participation is voluntary. Conversations with all parties are confidential and no information is shared without permission. If they agree to mediate, we work with the parties to schedule the two-hour mediation meeting.

Preparing for Mediation: Helpful Things

A willingness to listen

Conflict often results from miscommunication or a lack of communication. Mediation is an opportunity for all parties to communicate clearly and fully without interruption, removed from the immediacy of the conflict situation. Oftentimes in mediation people are truly hearing the other side's perspective for the first time.

An open mind

Bring creative ideas for resolution to the mediation table, and be open to the ideas of others. Regardless of what has happened in the past mediation is an opportunity to discover effective solutions for long-lasting peace.

A summary and chronology of events

For the sake of time, it is recommended that parties prepare a bullet point list of important things they want to communicate and a brief timeline of events for reference if needed.

Any necessary paperwork, pictures, etc.

Although the outcome of a mediation session does not depend on physical evidence, it is often helpful for parties to share documentation that helps the other person understand their perspective. Documentation may include such items as: leases or other agreements parties may have entered into prior to mediation, check in/out sheets, photographs, police reports, land surveys, and/or written communications such as emails, letters and text messages. Laws and municipal codes relating to the conflict may be taken into consideration in the mediation process but parties who wish to determine outcomes solely on legalities will be better served in court. Mediators do not give legal advice and do not act as judges or arbitrators or otherwise influence outcomes.

Other affected parties

Mediation agreements sometimes affect the lives of other people not directly involved in the conflict. For this reason, it is suggested that all parties potentially impacted by an agreement be included in the mediation session (such as property managers, family members, neighbors, etc.). Additionally, those who are in a position to make decisions, such as Homeowner's Association boards, should be asked to participate. ALL

mediation participants need to be pre-screened before attending any scheduled meetings. All parties will be informed prior to the meeting of who will be coming to the meeting for the sake of fairness to all involved.

Support

Parties may bring a friend, relative, partner, or other person to the mediation for support. This is allowable by consent of all participants and the mediators. Mediation staff must be notified ahead of time, have spoken with all parties, and have given approval prior to the mediation session.