

Counselors Especially Qualified to Offer Alternatives to Resolve Real Estate Disputes
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“See you in Court!” While that exit line may give instant gratification to a party to a dispute as the negotiations crash to a halt, that gratification will have long since faded to insignificance as that party contemplates, and then experiences, the downside of traditional dispute resolution through litigation. There is the expense, the time it takes to get to a conclusion, the distraction from other more profitable and rewarding endeavors, the airing of dirty linen in a public forum and, perhaps worst of all, the fear that a highly technical dispute will be resolved by a judge or jury with little or no experience beyond what education the battling lawyers can provide. To avoid or minimize those drawbacks, parties have increasingly turned to Alternate Dispute Resolution (“ADR”).

ADR follows two principal formats: mediation and arbitration.

- In mediation, a neutral party acts as an objective facilitator. He listens to the facts as seen by the parties, poses targeted questions, identifies areas of commonality to assist the parties to reach their own solution.
- In arbitration, a neutral (or a panel of several neutrals), like a judge or jury, hears the parties, weighs the evidence and issues a decision.

The parties can agree to variations of either format to suit their needs. No matter what format is used, the parties retain a great deal of control over the process and it can go much more quickly than can be accomplished in a court proceeding. That almost always results in a lower cost and quicker resolution. Moreover, the process is confidential and, even in arbitration, the solution can be better tailored to the objectives and needs of the parties.

Where the dispute is real estate-related, the Counselors of Real Estate Alternative Dispute Resolution Program offers enhanced value. The CRE designation is proof that the Counselor has demonstrated experience and expertise in one or more facets of the business of real estate, be it property valuation, partnerships and joint ventures, investment advice and evaluation or some other specialty. CRE neutrals bring to the process not only their experience and expertise, but also their judgment and understanding of the basics of real estate deals: identification and allocation of risk, knowledge of special concerns affecting specific property types or specific types of transactions. The disputants receive a list of potential neutrals indicating the qualifications and skill set of each. The parties can then select a neutral or panel of neutrals with whom they are comfortable based, among other things, on the qualifications of the neutral.

Whether acting as a mediator or as an arbitrator, the CRE neutral’s experience and substantive expertise means that he does not need to be educated about the basic nature of a disputed real estate transaction. The parties can take advantage of the CRE neutral’s understanding of the technical words and acronyms to communicate their positions clearly. CRE neutrals are skilled in the art of negotiation. Having that skill enables the CRE neutral, when acting as a mediator, to understand the motivations of the parties and to isolate key issues and manage the process to enable the parties to reach their own solution. When acting as an arbitrator, that same skill in negotiation allows the CRE neutral to frame and focus the evidence

to reach a prompt and fair decision. Where the dispute is real estate-related, the CRE neutral adds a measure of reliability to the process on account of his real estate background experience and expertise.

Where there is a dispute, ADR should be considered for its cost and time-effectiveness and other benefits. Where the dispute is real estate-related, the addition of the experience, expertise and skill of a CRE neutral makes ADR even more attractive.

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