



# A Guide to AAA-ICDR™ Disaster Recovery Claims Mediation Procedures

## Stages of a Mediation

- The Agreement to Mediate
- Selection of the Mediator
- Preparation for the Mediation Session
- The Mediation Conference
- The Settlement

## Mediation

The mediation conference is essentially a meeting between disputants, their representatives and a mediator to discuss settlement. The mediator's role is to help the disputants to explore issues, needs and settlement options. The mediator may offer suggestions and point out issues that the disputants may have overlooked, but resolution of the dispute rests with the disputants themselves. A mediation conference can be scheduled quickly and requires a relatively small amount of preparation time. The conference usually begins with a joint discussion of the case, followed by the mediator working with the disputants both together and separately, if appropriate, to resolve the case. Mediation is an effective dispute settlement tool. Statistics have shown that 85% of commercial matters and 95% of personal injury matters end in written settlement agreements.

## The National Roster of Neutrals

In order to provide clients and parties with mediators and arbitrators that represent most all fields of specialization, the AAA® maintains a national roster of approximately 8,000 trained experts throughout the United States and abroad. A number of these highly experienced neutrals serve on the special Disaster Recovery Claims Resolution Services panel.

To be considered for addition to the National Roster, the AAA requires that applicants have a minimum of 8 to 10 years of experience in their fields of expertise.

Following are qualities for which the AAA looks in prospective arbitrators and mediators:

- Commitment to impartiality and objectivity
- Dispute management skills
- Judicious temperament: impartiality, patience, and courtesy
- Respect by bar or business community for integrity, patience and courtesy
- Strong academic background and professional or business credentials



The American Arbitration Association® is committed to ongoing reviews of the quality of its roster of neutrals. Current panelists and new applicants are evaluated by regional office committees to guarantee neutrals' possession of superior management skills, commitment, ethics, training and suitability to the caseload. Then, external review committees evaluate the neutrals according to a number of criteria including substantive expertise, preeminence in the field, fairness and the manner in which they conduct proceedings. A final internal review by the Association monitors the integrity of the process, the quality of roster composition and also the balance that exists in terms of gender, racial and ethnic diversity. The AAA's National Roster of Neutrals is managed in a fashion that is designed to meet the needs of the parties.

## The Benefits of Mediation

The benefits of successfully mediating and settling a dispute vary, depending on the needs and interests of the parties. The most common advantages of mediation are that:

- parties are directly engaged in the negotiation of the settlement;
- the mediator, as a neutral third party, can view the dispute objectively and can assist the parties in exploring alternatives that they might not have considered on their own;
- mediation can be scheduled at an early stage in the dispute so that a settlement can be reached much more quickly than in litigation;
- parties generally save money through reduced legal costs and less staff time;
- parties enhance the likelihood of continuing their relationship;
- creative solutions or accommodations to special needs of the parties can become a part of the settlement.

## The Mediators

AAA mediators are carefully selected attorneys, retired judges and experts in various professional and business fields. Each candidate has been trained by the AAA in mediation skills and closely evaluated to determine the level of skills attained. Only highly respected and experienced individuals are selected and trained by the AAA to be mediators.

## Scheduling a Mediation

Once parties have agreed to submit their dispute to mediation and have executed the appropriate forms or filed online using AAASWebFile®, a mediation session may be scheduled for and conducted on the first mutually available date. Of course, the parties may agree to have their mediation date set for a later time depending on the circumstances of their case.



## Stages of a Mediation

### I. The Agreement to Mediate

As mediation is a voluntary process, the parties must agree in writing that their dispute will be conducted under the applicable mediation rules of the AAA. If a pre-dispute (or contractual) agreement to mediate does not exist, this is readily accomplished through the completion of a Submission to Mediation.

**Submission to Mediation:** Where the parties did not provide in advance for mediation, they may submit an existing dispute to mediation by the filing of a submission form that has been duly executed by the parties or their authorized representatives. A Submission to Dispute Resolution form can be found on the Association's Web site at [www.adr.org](http://www.adr.org).

### II. Selection of the Mediator

Upon receipt of the Submission to Mediation, the AAA will appoint a qualified mediator or provide the parties with a list of qualified mediators to rank in order of preference to serve on the case. The parties will be provided with a biographical sketch of the mediator(s). The parties are instructed to review the sketch closely and advise the Association of any objections they may have to the appointment. Since it is essential that the parties have complete confidence in the mediator's ability to be fair and impartial, the Association will replace any mediator not acceptable to the parties.

### III. Preparation for the Mediation Session

To prepare for mediation:

1. define and analyze the issues involved in the dispute;
2. recognize the parameters of the given situation (what you can realistically expect, time constraints, available resources);
3. identify your needs and interests in settling the dispute;
4. prioritize the issues in light of your needs;
5. determine course of action, positions and tradeoffs and explore a variety of possible solutions;
6. seek to make your proposals reasonable and legitimate and be willing to accommodate needs of the other party;
7. ascertain the strengths and weaknesses of your case;
8. ready facts, documents and sound reasoning to support your claims;
9. anticipate the other party's needs, demands, strengths and weaknesses, positions and version of facts;
10. focus on the interests, not the position, of each party;
11. develop your strategies and tactics through discussion of issues, presentation of proposals and testing of the other party's positions.



#### IV. The Mediation Conference

Prior to the mediation conference the parties may provide the mediator with the evidence and documentation they feel will be necessary to discuss their respective cases. If the documentation is not available, the mediator may take this information over the telephone on the initial contact with the parties. Parties are, of course, entitled to representation by counsel.

At the outset, mediators describe the procedures and ground rules covering each party's opportunity to talk, order of presentations, decorum, discussion of unresolved issues, use of caucuses and confidentiality of proceedings.

After these preliminaries, each party describes its respective views of the dispute. The initiating party discusses his/her understanding of the issues, the facts surrounding the dispute, what he/she wants and why. The other party then responds and makes similar presentations to the mediator. The mediator tries to understand the perceptions of each party, their interests and their positions on the issues.

When joint discussions have reached a stage where no further progress is being made, the mediator often meets with each party in caucuses. While holding separate sessions with each party, the mediator may shuttle back and forth between parties and bring them back to joint sessions at appropriate intervals.

An effective mediator knows that demands and priorities shift as ideas meet opposition, different facts are considered, and underlying circumstances change as parties reappraise and modify positions. In effect, the mediator increases the parties' perceptions of their cases in order to construct a settlement. At appropriate times, the mediator makes suggestions about a final settlement, stresses the consequences of failure to reach agreement, emphasizes the progress which has been made and formalizes offers to gain an agreement.

The mediator acts as a facilitator to keep discussions focused and avoid new outbreaks of disagreement. The mediator will often have the parties negotiate the final terms of a settlement in a joint session. The mediator will then verify the specifics of an agreement and make sure that the terms are clear in the final session.

#### V. The Settlement

When the parties reach an agreement, they should reduce the terms to writing and exchange releases.

If the mediation fails to reach a settlement of any or all of the issues, the parties may submit to binding arbitration. Such arbitration would be administered under the appropriate arbitration rules. In accordance with the AAA's Commercial Mediation Procedures, the information offered in mediation may not be used in arbitration (or in subsequent litigation).