

# THE ROLE OF PROPERTY MANAGEMENT IN MEDIATION

by Marc Bhalla

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Over the years, I have experienced property managers participating in mediation in a variety of different ways. As they are often not a party directly involved in a dispute, some question if there is any merit in having property management at the table during mediation. In my practice, I tend to leave the attendance of property management as optional, to be determined based upon the comfort of the parties and the nature of the conflict; however, on many occasions, I have found the presence of property management at mediation to be instrumental in reaching a positive outcome.

For a property manager's participation at mediation to be helpful, it is important for all participants to be clear on the role of the manager in the process. What follows are some do's and don'ts in respect of the approach that property managers can take to mediation:

## ***DON'Ts***

**1. Don't Play Mediator.** A property manager attending a mediation should not feel as though he/she needs to facilitate the session. While increasingly property managers are taking on a mediator-like role when conflict initially emerges in a condominium community, by the time the dispute has escalated to the point of requiring a neutral third party facilitator, it can be important for the manager to step back from such role. This is often important because it can be difficult for a property manager to be viewed as unbiased in light of their ties to the community, so genuine good faith efforts to facilitate resolution risks being perceived as including a hidden agenda.

**2. Don't Give Testimony.** Often, property management has knowledge of and involvement in the history of the conflict. Examples include compiling security logs, issuing compliance letters or investigating concerns that have been brought to their attention. If the dispute proceeds to court, property management may be required to take the stand and give testimony. Mediation is not trial. While it is often worthwhile for parties participating in mediation to re-visit events of the past, the process does not exist to decide whose recount of the past is most accurate. Accordingly, a property manager should not participate in mediation to vouch for the recollections of another participant or to provide a heap of paperwork to support certain allegations. That effort can be saved for trial.

**3. Don't Replace the Board.** While it may be a mistake to suggest that a property manager has no influence as to the operation of a condominium community, at the end of the day he/she takes direction from the Board. Accordingly, it can be a mistake to have a property manager participate in mediation in place of directors. Even if the plan going in is for any settlement to be taken back to the Board for ratification, the property manager should not step into the shoes of directors at mediation. There may be important information disclosed in the course of mediating that the Board should understand first hand, and take into account in determining how to address the situation.

## DO's

1. **Help Build a Bridge.** As management is typically on the “front lines” when it comes to operating a condominium community, the property manager can often be instrumental in helping carry out next steps agreed to at mediation. Whether it be providing a point of contact for expressing future concerns, assisting in scheduling follow-up meetings or collecting records for inspection, property management can be very effective in nudging an issue toward peaceful resolution. The presence that the manager has in the community provides great opportunity to help establish shared expectations and speak to practical considerations for next steps.

2. **Share Knowledge.** While property managers are often unable to present themselves as neutral or unbiased due to their involvement in a condominium community, their understanding of the operation of condominiums and experience are often what makes them an asset to the community. In mediation, this can be utilized to assist quarreling parties find sustainable resolution. In many of my mediations, property management positively and practically sharing their experience and knowledge has been instrumental in reaching a successful conclusion.

3. **Keep The Entire Community in Mind.** We often hear that the best decisions made for a condominium are those made with the entire community in mind. It is not uncommon for the subject matter at mediation to become emotional for those involved – particularly those personally affected by the subject matter (and cost) of the dispute. While, on occasion, property managers can find themselves tempted to also succumb to the emotion of the situation, they are equipped by virtue of their day job to put the community first. When appropriate, property managers can often contribute to exchanges by subtly reminding participants that while it may be the case that only those present at the mediation can speak, considerations beyond those in the room should be taken into account.

When property managers are given the opportunity to participate in mediation, I encourage them to consider the circumstances at hand and the role that they could play in helping to find a sustainable solution to the issue. It may be the case that their past involvement in the dispute may distort perceptions of their intentions; yet, taking part in a session to better understand the perspectives of those involved and to contribute, where appropriate, to improving the situation can be beneficial to everyone.



**Marc Bhalla, Hons. B.A., Q. Med.** is a mediator who specializes in condo conflict management.

He can be reached at [mbhalla@elia.org](mailto:mbhalla@elia.org).