

Mediating Small Claims Disputes

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It's the stuff of life. Bill remodels Mary's bathroom. Mary doesn't pay. The renter skips out on rent, or the landlord doesn't return a damage deposit. While you are owed a significant amount of money, it can cost even more to hire an attorney.

In Montana, if the amount in dispute is \$3,000 or less, you may be able to

recover your money in Small Claims Court. Advantages are that the process is cheap and accessible, and a judge will make a legally enforceable decision. Disadvantages are that while you may present your case well, the decision is out of your hands, and the judge may not rule in your favor. If your dispute is with a friend, a neighbor or someone you will have a continuing relationship with, taking

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it to court will escalate the conflict, making future disputes more likely.

Consider mediation.

In mediation, you and the other party meet with a neutral third person who helps you arrive at your own solution. Unlike a judge, the mediator has no power to impose a decision. Rather, a mediator will offer you a chance to be heard without interruption, and structure the conversation to help you and the other party, come to your own best solution. Mediation also is a chance to consider other issues that may not be relevant in a courtroom. For example, Nolo Press offers the example that a dispute over a tree may be really about a perceived slur about the neighbor's race, religion or taste in motorcycles.

Consider mediation to help you & the other party, arrive at your own solution.

Lasting anywhere from 30 minutes to several hours, Mediations are more relaxed and informal than a court proceeding. Typically, each side will be allowed to tell

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their story, the mediator summarizes each position. She or he may ask to meet with the parties separately to see if either party is willing

to settle for less. If there is room for compromise, the parties make offers to settle the case. Generally, the only rules are to be courteous, and not interrupt.

People often come to small claims mediation with elaborate evidence to prove their case. Don't bother. While this may be useful in a court hearing, the mediator will be paying more attention to the process than the content of the dispute. She or he will be ensuring that you and the other party are heard, your position summarized correctly, your feelings acknowledged, and that the dialog is respectful. The mediator will help frame the issues in a way the other side may hear them and move the parties towards a mutually acceptable solution.

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Mediation is completely voluntary and you may accept or reject any proposed solutions. If you and the other party do not settle, you are free to take the issue before a judge. What you have said in mediation is confidential and will not

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affect any court outcome. If you do not settle, there will be no report to the court, except perhaps that you did not reach a resolution. In jurisdictions such

as Bozeman that have a court centered mediation program, the mediators will only note that the parties did or did not settle, and outline any agreements made. In fact, mediators typically tear up their notes before the parties leave the room.

You may feel that the other party is completely unreasonable and settling the dispute together is next to impossible. Even when conflict is high, the majority of disputes are settled in a few hours and the parties are mostly satisfied with the outcome. Mediators have a toolbox of techniques to help transform conflict to cooperation, and it is not uncommon for parties to enter the room bickering and snarling, and leave on better terms. Agreement is most likely to happen when one or both parties are willing to accept a little less or pay a bit more to stop the battle. In a small community like Helena, an ongoing dispute can cost far more time, money and energy as a disagreement continues.

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Mediation has other benefits. According to a study by the National Center for

People who mediate are more likely to be satisfied with the outcome.

State Courts¹, people who agree to mediate their cases are more likely to be satisfied with the outcome than small

claims litigants who go directly to court. Besides having a say in the outcome, people who agree to a mediated settlement are, according to the study, more likely to pay up than people who lose at trial.

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More information about Small Claims Court can be found by googling “small claims court (your town).” The usual disclaimer applies here—nothing in this column is legal advice and if you have legal questions, kindly consult with an attorney.

¹Small Claims and Traffic Courts by John Goerdts can be downloaded at: <http://bit.ly/cNJxmi>.