

# Mediation: An Alternative to Litigation

by Michael L. Kelly



Florida has one of the most liberal eminent domain laws in the nation because the governing body is responsible for the payment of landowners' attorney fees and expert witness costs. Due to the

eminent domain laws, the system of acquiring property for public purposes in Florida encourages litigation. In many cases, litigation is a costly and ineffective means to achieve property settlements.

In an effort to reduce eminent domain costs, and to provide a forum for addressing landowners' concerns, the Hillsborough County Real Estate Department recently negotiated an agreement for mediation services with the 13th Judicial Circuit of Florida. The agreement provides a framework for establishing a voluntary "pre-suit" mediation program. The program is administered by Mediation Diversion Services, which is a department within the Judicial Circuit, and becomes part of the county's real estate acquisition process.

Through the agreement, the county is obligated to pay an administrative fee of \$25 per case, plus the hourly rate charge for the mediator. The mediators used in the program are certified attorneys who are circuit-court mediators. The maximum rate the



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county pays for a mediator is \$90 per hour. Mediators are assigned to cases on a rotation basis or by agreement between the respective parties.

The mediator is an impartial third party. His or her role is to assist the parties in resolving the dispute. The mediator facilitates communication between the parties. A mediator has no decision-making power, but does control the mediation process. Settlements achieved through mediation require the consent of both parties. Usually, the settlement is reduced to writing by the mediator.

The typical cost per case is estimated at \$275 to \$350. Implementing a voluntary pre-suit mediation program has significant benefits:

- Direct negotiations or litigation are presently the only alternatives available to landowners to reach a property settlement. Voluntary mediation provides landowners with an additional option to reach an early property settlement.

- When a fair settlement can be reached quickly through mediation, the landowner does not have to deal with the stresses and delays of prolonged litigation.

- Mediation provides a forum for landowners to present their position and concerns to an unbiased third party.

- An experienced mediator uses techniques to enhance the parties' ability to settle and to create a win/win situation. A win/win situation can be

preferable to win/lose situation through litigation.

- The mediation program is expected to enhance the image of the county.

- Cases that settle before litigation relieve the burden on the courts and reduce administrative court expenses.

- It is easier for the Real Estate Department to justify settlements reached through mediation to our elected officials.

- Eminent domain attorney fees and expert witness costs paid by the county should be reduced.

In many instances, the fees and costs paid by the county after lengthy litigation outweigh the additional benefit that the landowner receives.

Court-ordered mediation just before trial is common practice in most eminent domain suits in Hillsborough County. At this late point in the litigation process, significant legal

expenses and expert witness costs have been generated by both parties processing legal documents, meeting with witnesses and preparing valuation reports. The intent of the voluntary pre-suit mediation program is to advance the mediation process to encourage the parties to explore settlements before suit is initiated. Early settlements can result in benefits for the landowner and the county. □

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