



## **Mediation Explained**

Mediation is a non-binding dispute resolution process, in which a neutral person – a mediator – facilitates negotiations between parties to help them resolve their dispute. The parties select the mediator and agree upon the ground rules for the mediation. The process is usually voluntary and the parties control the outcome. When the parties reach a settlement of their dispute, it is documented in a settlement agreement that is enforceable in court.

Mediation can also be a binding process. In [binding mediation](#), the parties agree to first try to settle their dispute through mediation. If they are unable to reach agreement through mediation, they may agree to give the mediator the power to make a decision and settle the dispute based on what the mediator learned through the informal mediation process.

### *Role of the Mediator*

The mediator's primary role is to facilitate negotiations between the parties – with the exception of binding mediation, the mediator is not a decision maker. The mediator works to establish constructive communication between the parties and remove obstacles to settlement. The mediator helps the parties explore interests behind their stated positions, while moderating and guiding the process to avoid unproductive confrontation. The mediator may assist the parties with brainstorming potential options for settlement, and ultimately will seek necessary concessions from all parties to settle the dispute.

### *Benefits of Mediation*

#### Cost

The cost to litigate can exceed the benefits. Mediation is a cost-effective alternative to litigation that allows the parties to streamline discovery, and settle their dispute in a timelier manner.

#### Control

Mediation is a party-driven process. Parties select the mediator, date, time and location of the session and have the ability to shape the mediation process with the mediator. The parties determine the outcome of the mediation and the terms of any settlement agreement.

## Confidentiality

Confidentiality specifies that the mediation communications are not to be disclosed, in contrast to court proceedings, which are public. The mediation privilege is a rule providing that confidential communications are not admissible in court. Thus, settlement discussions occurring during a mediation enjoy some level of confidentiality. Once parties reach agreement in mediation, attorneys on both sides can create enforceable settlement agreements to ensure that the process remains confidential and privileged.

## Compliance

Mediation allows the parties to craft their own settlement. When parties control the settlement terms, there is a higher degree of compliance.

## *Other Resources*

### [Illinois Uniform Mediation Act](#)