

Lawsuits, given legal fees and those of experts, are expensive. They often take years to resolve. The courts are times, their budgets are stretched. If the only justice you a doctoral degree in patience.

A relatively small portion of lawsuits today actually results in a trial. Before any merits hearing is held, most cases settle. Sometimes the parties just agree to drop the suit. Sometimes the parties work out their differences directly, without the involvement of the court or a mediator. But many cases that settle do so after mediation.

Most Vermont courts mandate mediation for all civil and mediator, share the fees for the process, and complete a mediation session, on a timeline set by the court. Mediation has many advantages: it is usually less expensive than taking a case to trial; it can result in resolution of a dispute far more expeditiously than a trial would; and it can lead to remedies which might not be available in court. A judge will decide a case one way or another, but not necessarily in a way that is good for either party. In mediation, it's possible to achieve that end.

Being prepared for mediation is at least as important as being prepared for a trial. Knowing what to expect, exploring the possible outcomes in advance of the session, and understanding how the process works, you can only help yourself to achieve the best settlement. That is the purpose of this pamphlet.

How It Works

The parties and their lawyers sit down with the mediator for a joint session at the beginning of most mediations. The mediator explains the process, states plainly that a mediator is not a judge and cannot bind the parties to any
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ality, and then invites each side to outline its position to

Privilege

Vermont law addresses mediation in two ways. The Vermont Mediation Act is found in Title 12, Sections 5711 to 5723. The Vermont Rules of Evidence address mediation in Rule 408.

At the heart of both of these laws is privilege. This is the right of all parties to keep what is said at mediation out of court, not only for what they tell the mediator but also what

ality of the parties' offers to resolve the dispute. The mediator will not testify at a hearing or otherwise disclose what the parties say to each other or what an individual party wants kept from the opposing party during or after mediation is over. Nor can either party use an offer or acceptance of an offer to settle a claim as evidence to support proof of liability or lack of liability. Courts are directed to declare that information inadmissible.

This does not mean that information gleaned from the conduct of mediation, which is subject to the process of discovery, escapes introduction in court, par40(d)7(u)4(c)-12(t)-17(2)(.)-11c

arguing over whether or not something should happen, the process can bog down. The party who can introduce a whole new idea or approach to settlement has an advantage. That party knows how to bargain.

You do yourself a disfavor if you can only see your own case. A judge will look at both sides, and you should too, if only to understand the ambition of your adversary and predict how strong or clear your case is if it goes to court.

This Isn't Arbitration

Arbitration is another process used to resolve disputes. Unlike mediation, the result is determined by the arbitrator, not the participants. There is a hearing, and the chance to appeal to the courts (with a minor exception relating to the conduct of the

board decides, appealing to the environmental court. The court orders mediation.

You sit in one room; the town is in the other. You want a

grant you a permit violates the bylaws. It believes that if it gets out that you got a permit on appeal without having to follow the rules, no one will take zoning in your town seriously again. Is there no hope for this to settle?

more diligent search for a middle ground. Perhaps the setback is arbitrarily too wide for the neighborhood, and the town can commit to changing the bylaw. Perhaps the

the town's expenses and the offense, thereby acknowledging the mistake, in exchange for a permit for the porch, implicitly granting a variance.

Because the authority to represent the town in a zoning

officials in a town, there will always be a necessary tension. selectboards that settle zoning disputes without consulting the board and the zoning administrator are asking for

time of mediation, and call those involved to discuss possible settlements during the day.

a little appreciation for what is most important, is indispensable to mediation of such cases.

Who Succeeds in Mediation

Those most successful in mediation share common

all day and into the night if it takes that long to reach a

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This pamphlet is one in a series of VIG publications on Vermont local issues. For more information and additional resources, please visit the Vermont Institute for Government website: vtinstituteforgovt.org.