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HOUSING MANAGEMENT BUREAU MEMORANDUM #2012-E-01

To: All Housing Authority Executive Directors/Chairpersons;
All Housing Company Owners, Managing Agents &
Site Managers
All HCR Housing Providers
Other Interested Organizations and Parties

From: Robert Damico, Director
Office of Housing Management

Date: February 14, 2012

Subject: Mediation / Dispute Resolution Services

HCR staff recently attended several dispute resolution workshops in an effort to find a more effective method of addressing the wide range of conflicts that occur within the HCR portfolio. It quickly became apparent that mediation is an underutilized resource which can aid in the resolution of disputes which normally arise in the management of housing companies and housing authorities. The New York State Unified Court System partners with Community Dispute Resolution Centers (CDRC's) to provide mediation and other dispute resolution options.

As noted in the attached memo from a local CDRC, mediation can be a time-saving and low cost alternative to litigation. Examples of common housing issues which may be amenable to mediation include: noise and harassment complaints; landlord-manager-tenant-shareholder concerns of warranty of habitability and repairs; security deposits; landlord-tenant issues, evictions, rent arrears and fee disputes; and disputes involving tenants, shareholders, managers, employees and members of the board of directors.

Please review the attached memo, *Mediation in Housing*, and consider sharing such information with the residents and your staff. The memo is a straightforward outline of mediation from a CDRC that serves Manhattan and Brooklyn. It includes a hyperlink for state-wide contact information to help find the CDRC nearest you. You can find more information about mediation, the CDRC program and other forms of alternative dispute resolution at <http://www.nycourts.gov/ip/adr/>.

The time collectively we can save and the harmony we can lend to our developments by using these inexpensive services are compelling and worth our attention.

Sincerely,

A handwritten signature in black ink, appearing to be "R. Damico", written over a horizontal line.

Robert Damico

Att.

Mediation in Housing

The Concept

There are many opportunities in multi-family housing for successful mediation to address a host of management and resident conflicts. Mediation is a non-adversarial alternative to litigation where the parties decide on the resolution, not the mediator. It is a voluntary, confidential process where a neutral person called a mediator acts to encourage and facilitate a resolution.

In contrast to a judge or an arbitrator who decides for the parties how a dispute will be resolved, mediation helps the parties reach their own mutually acceptable agreement. Upon the consent of the parties, an agreement resolving the dispute will be written by mediation staff outlining a settlement of the issues involved in the dispute and the future responsibilities of each party.

In mediation the involved parties have mutual control over the outcome and can withdraw from the process at any point and pursue other options. Also, mediation participants can choose to limit or broaden the scope of the issues, often going beyond the initial complaint to address larger, long-standing issues between the parties. However, matters relating to domestic abuse or child abuse or neglect, or any situation where one or more parties' safety is at risk, are not appropriate for mediation.

The Mediators

Mediators are professionally trained and certified by Community Dispute Resolution Centers (CDRC). They come from a variety of backgrounds and are recruited by the centers from their local community. All mediators complete at least 30 hours of basic mediation training, fulfill a supervised apprenticeship and participate in continuing education. They are proficient in specific ways of looking at disputes, uncovering what interests are driving the dispute, helping parties understand each other's needs, and using communication techniques to de-escalate conflict. A mediator cannot impose a solution on the parties. To find the nearest CDRC across New York state use the link, www.nycourts.gov/ip/adr/ProgramList.shtml.

The Process

A typical mediation starts with a phone call to a CDRC from any interested party including the disputants themselves, a resident, board member, managing agent or even outside counsel. When contacting a local CDRC, staff will ask for some general information about the nature of the conflict and explain the processes that are available to help. If the case is appropriate for mediation, staff will then contact both disputants and invite them to meet with the mediator. Not all parties involved need to agree to mediate before a CDRC is contacted. After one person has made contact, mediation staff will reach out to others involved and encourage them to participate.

At the first meeting rules are defined to give the mediation process structure. Both parties are then asked to separately air the grievance from their point of view. The mediator reframes the problem in a way that helps both parties better understand the issues. With the assistance of the mediator, both parties will identify issues, discuss options, and explore potential solutions.

In the next step the disputants themselves propose solutions that might meet both their needs. Finally, if a settlement is reached, the mediator draws up a detailed agreement that specifies each party's obligations and incorporates any agreed-upon solutions.

The Deliverables

Mediation sessions are handled promptly and generally last from one to three hours, a sharp contrast from the court system or unsupervised negotiations. Additionally, participants can promptly schedule their own mediation at a CDRC approved by the New York State Unified Court System. The fast turnaround helps enable housing staff to concentrate more on maintaining good housing and residents to sustain a better quality of life in their homes and communities.

All communication in mediation is confidential. Whatever happens in meditation remains strictly confidential, barring cases involving child abuse. No communications in mediation can be disclosed to any third party or court without the parties' consent. Moreover, mediation avoids public disclosure of private problems and therefore minimizes risk to the parties. The only record of mediation is the written agreement approved by both parties.

Mediation works because the parties themselves have complete control of the process, and the resolution is unique to the dispute; that is, a settlement is not imposed on them by a judge or jury. Mediation is a voluntary process in which conflicts are resolved only with the mutual assent of the parties. If the parties fail to reach a resolution through mediation, they may still pursue their case in court in most instances. There is no obligation to go to mediation, but in some cases, any settlement agreement signed by the parties to a dispute will be binding on them. Parties are able to state their positions fully and ultimately determine their resolution and how to implement it.

Studies have verified that parties who work out their own solution are generally more satisfied with their resolution, indicating that individuals are more likely to abide by their own decisions rather than decisions imposed on them by others.

Mediated settlements have a higher compliance rate than other forms of settlement. Research reveals that approximately 80 percent of mediations result in a signed agreement, likely because the result is attained by the parties working together and is mutually agreeable. In comparison to adjudicated resolutions, mediated agreements are almost always honored by both parties.

All CDRCs are non-profit organizations which must provide their services at little or no cost. They are part of a state wide network of mediation centers, established under Article 21 (A) of the New York State Judiciary Law and funded by the New York State Unified Court System.