

***CONSUMERS' GUIDE TO ELDER MEDIATION***

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## **I. Introduction**

Persons in Maryland and across the country are increasingly using mediation and other related approaches to resolve conflicts with family members, neighbors, businesses, agencies, services providers and others rather than going to court or using other formal legal approaches. In other instances, similar approaches are being used to facilitate decision-making and avoid conflicts before they arise.

With leadership from the Maryland Department of Aging and support from Maryland's Mediation and Conflict Resolution Office ("MACRO") and in collaboration with mediators, court leaders, elder law attorneys, and others, "elder" or "senior" mediation services have been developed recently in this state to assist older persons and their families and other interested parties with planning, conflict avoidance, and conflict resolution in a wide range of age related and other issues. The purpose of this guide is to help interested persons understand mediation and related alternative dispute resolution ("ADR") approaches, determine when they may wish to use such services, and be able to locate and select a qualified mediator or related professional for their use.

Parts II, III, VII and VIII of this Guide are substantially taken with some modifications from Mediation and Conflict Resolution Office, **Consumers' Guide: Alternative Dispute Resolution (ADR) Services in Maryland** (5th Edition, 2009), <http://www.marylandmacro.org/>, which we recommend for further reading; and we state our appreciation for permission to use portions of the MACRO Guide. Other resources specifically concerning elder mediation are listed in Section IX to this Elder Mediation Guide.

## **II. What is Mediation?**

**Mediation is a process** in which a trained neutral, a mediator, helps people in a dispute communicate and understand each other, and if possible, to reach agreement.

Mediation is one of several **Alternative Dispute Resolution ("ADR") processes** which have been developed as alternatives for resolving disputes without going to trial, including community conferencing, settlement conferences, arbitration, ombuds services, and other approaches involving facilitated decision-making and conflict resolution.

**Mediation is a voluntary process.** In all mediations, if the participants cannot come up with a solution that meets their needs, they cannot be forced to agree to anything. Agreements reached in mediation are only final when all of the participants are satisfied and willing to sign their names to the agreement. While a court may require parties to attend mediation, it cannot order them to reach an agreement. If the parties in court-ordered mediation do not reach an agreement, they can still proceed with their case

in court. Mediators cannot be called to testify about any mediation communications, and mediators are expected to keep information confidential.

**Mediation is a confidential process**, which means that anything discussed in mediation cannot be used in court. There are a few exceptions when it comes to child or elder abuse, imminent threats of harm to a person, or allegations of duress or fraud. But any discussions, if all parties choose, even some agreements reached, can be kept confidential.

**Mediation revolves around the central principle of self-determination.** That means that the participants with the dispute decide what solutions will work for them. The mediator does not act as a judge. The mediator remains neutral throughout the process and will not give legal advice or make decisions about the dispute.

**The cost of mediation varies upon the program.** In some court, government and community mediation programs, the service will be free or based on a sliding fee scale depending upon the income or resources of the participants, and will be discussed before services are initiated. In other court mediations and in mediations provided by private mediators, the cost likely will be on an hourly basis and is typically divided by the participants.

**In some instances a mediator may be an attorney, but does not serve as an attorney within the mediation.** Mediators and attorneys have different roles. Attorneys represent the interests of their clients and advise them on the best way to present their case. Attorneys may discuss what could happen in court. Mediators do not represent either side of a dispute, even if the mediator is also an attorney. Mediators assist people in conflict to communicate with each other and resolve conflict. In mediation you may speak for yourself rather than having an attorney speak for you, although in some instances participants are represented by attorneys in mediation.

### **III. Benefits of Mediation**

Mediation allows the participants to search for a satisfactory settlement before expending unnecessary resources. One of the key advantages of mediation is that it is a collaborative, not adversarial, process. People in a conflict work together to find a solution, instead of spending their time and money fighting to win a victory by defeating their opponent.

Mediation often can save the participants time and money.

Mediation can reduce stress.

Mediation, which is a confidential process, protects your privacy and helps avoid bad publicity.

Participants report high rates of satisfaction because they are directly involved in creating solutions.

Agreements reached in mediation are more likely to be followed because the participants helped create them, rather than having a decision imposed upon them.

Mediation encourages the participants to explore creative options for resolution that may not be considered without going through the mediation process.

In some cases, mediation helps repair personal and/or business relationships.

In mediation you do not risk being a loser. It is a win/win process where all of the participants must be satisfied with any agreement reached.

Even if the participants do not reach a full agreement, many report that they still benefit from going to mediation. They may reach a partial settlement of their dispute, streamline the issues in their dispute or at least have a better understanding of each other's issues and perspectives.

No rights are given up by the participants. If mediation does not end a dispute, the participants still have all the other avenues for resolution available to them.

**Note: Mediation may not be appropriate in cases involving domestic violence.** The mediation process presumes that, with the help of the mediator, the participants can negotiate without fear of retaliation, which may not be possible in relationships that have a history or ongoing presence of domestic violence. As such, Rule 9-205(b)(2) of the Maryland Rules of Procedure states that a court shall not order mediation in cases where physical or sexual abuse has been alleged in good faith.

#### **IV. What is Elder Mediation?**

The terms "elder" or "senior" mediation refer to the use of the mediation process in instances where one or more of the participants is at least 60 years of age. Mediators involved in elder mediations must be aware of and seek to counter-balance possible age discrimination or "ageism," whether by the mediator, by the participants, or other persons involved in the matter under consideration. A primary focus of elder mediation training and practice is the **potential** need to make appropriate accommodations within the mediation process for any possible physical, mental, cognitive or social limitations that may accompany aging so as to promote maximum effective participation of all partici-

pants to make informed self-determination. (See, Appendix, Maryland Program for Mediation Excellence, “Standards of Conduct for Mediators,” hereinafter “Standards.”)

Elder mediation is also frequently concerned with conflicts and decision-making involving issues that may accompany aging, such as preservation of independence, caregiving needs, estate planning (including powers of attorney and advanced directives), guardianship and alternatives, housing changes (including publicly subsidized housing, assisted living, and nursing homes), health care, insurance, social security and other public services, in addition to other family, consumer, commercial, employment, and neighbor conflicts. Much of elder mediation practice has focused on family decision-making over caregiving arrangements for older persons experiencing varying levels of need for assistance.

Such caregiver decision-making is often multi-generational and may involve from two or three participants to ten or fifteen parties, and often encounters intense long-term family dynamics. Elder mediators should have an awareness and basic understanding of senior programs, services, legal frameworks, and elder service providers; and the mediation may involve courts, doctors, lawyers, and geriatric social workers and other specialists. (See, “Standards,” above.)

## **V. Maryland Senior Mediation Project**

In 2005 Maryland’s Mediation and Conflict Resolution Office (“MACRO”) provided a grant to the Maryland Department of Aging (“MDoA”) to develop the “Maryland Senior Mediation Project” to support the promotion, development, and use of mediation services by older persons and their families and others in appropriate matters in Maryland. Robert Rhudy developed the project proposal and served as consultant to MDoA to develop and implement the project. The project was developed collaboratively by the Maryland Department of Aging, local departments of aging, leading Maryland community, private, court and other public mediators, the court, elder law and other attorneys, and other stakeholders.

At the outset of the project, it was determined to seek to develop elder mediation services so that all persons throughout the State of Maryland should have access to high quality services regardless of their ability to pay through the provision of training and support to community, private, court and other public mediators. For a description of the initiation of the project, see, [www.marylandmediation.org](http://www.marylandmediation.org), clicking “Senior Mediation.”

The project sought to assess and implement best practices in elder mediation by working with other programs throughout the United States that had been involved in creating elder mediation services, including AARP, The Center for Social Gerontology,

the American Bar Association's Commission on Law and Aging, the National Association for Community Mediation, and other national, state and local organizations.

Since December 2007 the project has continued under MACRO support to Senior Mediation and Decision-Making, Inc. ("SMDM"), a nonprofit organization established by Bob Rhudy, Carolyn Rodis and others to promote, support, and provide elder mediation services in Maryland and around the country. Since February 2005, the project has provided trainings and workshops on elder mediation to more than three hundred mediators in Maryland, as well as many other staff persons from state and local departments of aging, courts, and other agencies and organizations; and SMDM has provided trainings, workshops, consulting and technical support to mediators and organizations around the United States and in Canada. For an overview of the project, Senior Mediation and Decision-Making, Inc., and elder mediation generally, see [www.senior-mediation.org](http://www.senior-mediation.org).

## **VI. Uses and Benefits of Elder Mediation**

The Maryland Senior Mediation Project's experiences have determined that older adults, their families and care providers can benefit with help in decision-making or conflict resolution in conflicts involving:

- Siblings disagreeing over the care of a frail, elderly parent.
- Conflict over selling the family home or moving a loved one to a new setting.
- Problems regarding care or visitation by grandparents with grandchildren.
- Tensions caused by parents, children and grandparents living together.
- Residents in assisted living or long-term care facilities over service or changes in level of care or problems with other residents.
- Conflicts regarding financial and estate matters.
- Health care providers and seniors and/or their families disagreeing over medical treatment.
- Disputes between tenants and management or landlords.
- Guardianship decisions.
- Conflicts with neighbors over noise, trash, maintenance or other issues.

The project has demonstrated that mediation can increase the role of older adults in the decisions that impact their quality of life. Specific benefits of elder mediation that have been identified include:

- Helping older adults and all participants express their needs, feelings, preferences and concerns.
- Improving understanding between older adults and the important people in their lives.

- Decreasing the stress associated with conflict.
- Supporting collaboration between older adults and their health care and other service providers to improve quality of care.
- Providing consensual agreements to courts and agencies on optimal care arrangements for at-need seniors.

## **VII. How to Find a Mediator**

Mediation services are provided in Maryland by private mediators, community mediation programs, court-based staff mediators in some jurisdictions, and public agency staff and volunteer mediators in some state and local agencies. Maryland mediators are not “licensed” or “certified” as are some professions, nor is there a test or any required course work, but some mediators may be voluntarily certified by a statewide membership organization, and in some instances they will have to demonstrate certain training and experience for court-referred mediations or other purposes.

Some private mediators are also attorneys, retired judges, psychologists, social workers, or have other backgrounds in addition to their mediation training and experience. Maryland’s community mediation services, with funding from MACRO and other sources, are implemented by volunteers who are professionally trained and are recruited to represent the diversity of the neighborhoods they serve.

MACRO’s **Consumers’ Guide to Alternative Dispute Resolution (ADR) Services in Maryland** provides a listing of court-based and public agency and community mediation programs county by county throughout Maryland. Community Mediation Maryland, which is the nonprofit association of Maryland’s eighteen community mediation programs, also provides contact information on its website, [www.marylandmediation.org](http://www.marylandmediation.org)., for each community mediation program. Community mediation services are implemented by volunteers who are professionally trained and are recruited to represent the diversity of the neighborhoods they serve.

Private mediators are available around the state. You can review the People’s Law Library of Maryland website at [www.peoples-law.info](http://www.peoples-law.info) for information on mediation and a web-based directory of mediators spanning the entire state. The People’s Law Library is a project of the Maryland Legal Services Corporation, and it provides legal information on its website with support from Maryland’s 35 nonprofit legal services providers in partnership with the Maryland Judiciary.

Other online web-based information links to private mediators include Association for Conflict Resolution, Maryland Chapter, [www.mediate.com/marylandacr](http://www.mediate.com/marylandacr); Maryland Council for Dispute Resolution, [www.mcdr.org](http://www.mcdr.org); and Maryland State Bar Association, Alternative Dispute Resolution Section, [www.msba.org](http://www.msba.org).

You may also check your local telephone directory's yellow pages under "Mediation."

Most of the local Circuit Courts in Maryland have approved mediator lists for cases which the court may choose to refer to mediation. As indicated above, the court mediation programs are listed county by county in MACRO's **Consumers' Guide**. You may go to the Clerk's Office of the Circuit Court in your county and Baltimore City and ask to review the mediator list and the application materials of the approved mediators for that court. From the application forms, you can ascertain the training, background and level of experience of each of those mediators.

### **VIII. How to Interview and Choose a Qualified Elder Mediator**

Mediation can help you avoid and resolve conflicts and can be custom designed to serve all participants' needs. While mediation is very useful to help you resolve disputes, however, not all mediators are the same. As with other conflict areas, some elder mediations are best served by persons with specialized training and experience. Regardless of the mediator or mediation program you use, you may wish to interview the mediator first by phone or in person if possible, and ask several questions to help you assess that person's or program's suitability for your needs.

In most instances, persons using community mediation services and public agency mediations will not have an opportunity to have contact with their mediator before the initial mediation session, and should direct their questions about qualifications of the person who will be assigned to their conflict to the program administrator, and should feel free to ask further questions of the mediator(s) at the time of the initial meeting.

Some of the types of questions to help guide your selection of a qualified mediator include the following:

#### **1. Do you specialize in mediating any particular subject matter?**

Some mediators often specialize in particular kinds of disputes. Some mediators, for example, primarily mediate divorce cases or child custody disputes or employment disputes. Others, particularly those at community mediation centers, have extensive experience in mediating neighbor to neighbor issues or landlord/tenant conflicts. You may ask if the mediator has experience mediating cases involving older persons and in conflict areas similar to your case.

#### **2. What kinds of training have you had and when was it?**

Most mediators have taken at least 40 hours of basic mediation training. Some

have taken substantially more, including additional training in advanced techniques or concentrated subject areas. You may want to ask the mediator if he/she has taken any specialized training in elder mediation, such as mental and physical aspects of aging, guardianship and family caregiver mediation, health care mediation, or other specialized training that fits the type of dispute in which you are involved. How recently has the mediator received such trainings? You may also ask if the mediator has provided trainings, teaching, or workshops regarding mediation generally or elder mediation and elder services.

**3. What kind and how much mediation experience do you have? How many cases have you mediated?**

Asking about a mediator's experience may also help you determine if you are hiring or working with an experienced and skilled mediator. You may want to ask the mediator how many mediations he/she has mediated, the kinds of cases they were, and the average length of those mediations. You may want the mediator to define what he/she means by "elder" or "senior" mediations, and to indicate how many such cases he/she has mediated. You can also ask if the mediator or mediation program has handled similar disputes to your conflict, and if so, what were the results.

**4. Other than as a mediator, tell me about your background and areas of expertise.**

Mediators may have very diverse backgrounds, and having a certain background does not guarantee a skilled mediator. Some may have backgrounds as attorneys, social workers, teachers, or mental health professionals. Others may not have a specific professional background. Some persons are being drawn to elder mediation because of their professional or academic backgrounds in various areas of geriatric services, elder law, gerontology, nursing home administration, or related fields which may not attest to their mediation skills but may suggest some understanding of the issues, resources, and alternatives that may be encountered in your conflict.

**5. Do you participate in the Maryland Program for Mediator Excellence (MPME)?**

Maryland mediators may voluntarily join the Maryland Program for Mediator Excellence, which is a program designed to provide mediators of all levels of experience and all backgrounds with resources to improve their mediation skills. Mediators who have chosen to participate show a commitment to continue to improve their skills to the benefit of their clients. Some mediation programs may require their mediators to participate.

## **6. What is your approach to mediation or your mediation philosophy?**

You can ask a mediator about his/her approach to mediation or their mediation style. Some mediators let the participants guide the process, while others guide the participants through a process. Some mediators help the participant generate all of the options, while others may suggest options. You can also ask if the mediator belongs to any professional organizations, and what (if any) standards of practice they adhere to in their practice or program. You should feel comfortable with the approach your mediator uses.

## **7. Can you give me any references?**

You may want to ask for references, especially past clients who have used their services. Because mediation is a confidential process, some mediators may not be able to provide you with references, while others may have previous mediation clients who have agreed to serve as references. In other instances, the mediator may provide names of other professionals or organizational directors or managers who he/she has worked with and who has some basis to know the mediator's qualifications, services, and reputation.

## **IX. Resources for Additional Information**

### **A. Websites—Maryland**

Alternative Dispute Resolution Section, Maryland State Bar Association  
[www.msba.org](http://www.msba.org)

Association for Conflict Resolution, Maryland Chapter  
[www.acrnet.org](http://www.acrnet.org), then follow to Maryland Chapter information.

Community Mediation Maryland  
[www.marylandmediation.org](http://www.marylandmediation.org)

Maryland Council for Dispute Resolution  
[www.mcdr.org](http://www.mcdr.org)

Maryland Mediation and Conflict Resolution Office  
[www.marylandmacro.org](http://www.marylandmacro.org)

Senior Mediation and Decision-Making, Inc.  
[www.senior-mediation.org](http://www.senior-mediation.org)

People's Law Library  
[www.peoples-law.info](http://www.peoples-law.info)

## **B. Websites--National**

AARP, *Prepare to Care Planning Guides*  
[www.aarp.org/foundation/preparetocare](http://www.aarp.org/foundation/preparetocare)

American Bar Association, Dispute Resolution Section  
[www.abanet.org/dispute/home.html](http://www.abanet.org/dispute/home.html)

American Bar Association, Commission on Law and Aging  
[www.abanet.org/aging](http://www.abanet.org/aging)

Association for Conflict Resolution  
[www.acrnet.org](http://www.acrnet.org)

Mediate.com The World's Dispute Resolution Channel  
[www.mediate.com](http://www.mediate.com)

National Association for Community Mediation  
[www.nafcm.org](http://www.nafcm.org)

National Eldercare Mediator Network  
[www.eldercaremediator.com](http://www.eldercaremediator.com)

The Center for Social Gerontology  
[www.tcsg.org](http://www.tcsg.org), click "Mediation and Aging" on home page  
[www.tcsg.org/emresourcelibrary.pdg](http://www.tcsg.org/emresourcelibrary.pdg) for "Elder Mediation Annotated Resource Library"

## **C. Books and articles**

Barrocas, Janice & Diane Persson, *Mediating Disputes in Long-Term Care*, Bifocal, Summer 2005, 36-37.

Beane, Loena, *Should Mediation be Available as an Option to Reduce Litigation in Contested Guardianship Cases*, New York State Bar Journal, June 2002, 27-31

Bertschler, John & Patricia Bertschler, Elder Mediation: A New Solution to Age-Old Problems (2009).

Dubler, Nancy & Carol Liebman, Bioethics Mediation: A Guide to Shaping Shared Solutions (2004).

Gage, David & Dawn Martin, *The Benefits of Mediated Family Estate-Planning Retreats*, 4 ACResolution 18-21, Summer 2004.

Gage, David, John Gromala & Edward Kopf, *Holistic Estate Planning and Integrating Mediation in the Planning Process*, Real Property, Probate and Trust Journal, Fall 2004.

Gray, Robert, *Mediation in Guardianship Practice*, Guardianship Practice in New York State (Robert Abrams, ed., 2004).

Hoffman, Diane & Naomi Karp, *Mediating Bioethical Disputes*, ABA Dispute Resolution Magazine, Spring 1996, 10-12.

Kardasis, Arline & Rikk Larsen, *When Aging Issues Lead to Family Conflict*, Massachusetts Lawyer Weekly, April 11, 2005

Kelly, Elizabeth A., *Mediating Disputes Involving Elder Adults and People with Disabilities*, Colorado Elder Law Handbook, 2006, 7-1 – 7-16.

Larsen, Rikk & Crystal Thorpe, *Elder Mediation: Optimizing Major Family Transitions*, 7 Marquette Elder's Advisor 293-312, Spring 2006.

Leis, H. Patrick III, *The Model Guardianship Part: A Novel Approach*, New York State Bar Association Journal, June 2006, Vol 78, 3.

Mariani, Kathryn, *Developing Ethical Standards for Elder Mediation: Questions Along the Way*, Bifocal, August 2007.

Mcwhinney, Kate, *North Carolina Tries Mediation for Estate and Guardianship Disputes*, Bifocal, February 2007, 35-37.

Radford, Mary, *Is the Use of Mediation Appropriate in Adult Guardianship Cases?* 31 Stetson Law Review, Spring 2002.

Rhudy, Robert & Carolyn Rodis, *Expanding Mediation for Seniors and Their Families in Maryland*, ACResolution, Summer 2005, 20-31.

Rhudy, Robert, *Senior Mediation: Reaching the Tipping Point*, 41 Maryland Bar Journal 12-19, March/April 2008.

Rhudy, Robert & Carolyn Rodis, eds., Elder Mediation Today: Manual and Resource Guide (2009).

Senft, Louise Phipps, *What to Do About Mom's Failing Health? Mediation and Elder Care*, 5 Family Mediation Quarterly, Fall 2006.

Wood, Erica, *Dispute Resolution and Dementia: Seeking Solutions*, 35 Georgia Law Review 785-833, Winter 2001.

## Senior Mediation and Decision-Making, Inc.

Senior Mediation and Decision-Making, Inc., (SMDM), formed in August 2007, is a nonprofit organization that promotes the development and provision of mediation, facilitation, coaching and related approaches to assist older persons, their families and others with planning, decision-making, conflict prevention, and conflict resolution regarding maintenance, caregiving, housing, health care, employment, estate planning, guardianship and other issues. We can provide the names of qualified senior/elder mediators in Maryland and some other states and Canadian provinces, some of whom may provide mediation services on a sliding fee or pro bono basis in appropriate circumstances. SMDM provides training to mediators, lawyers, aging service professionals, court personnel and others in the development and provision of such services. SMDM conducts research and supports demonstration projects concerning elder mediation, and promotes public understanding, acceptance and use of elder mediation and related decision-making services through presentations, publications and other approaches. Our website is at [www.senior-mediation.org](http://www.senior-mediation.org). Our 171-page publication, Robert Rhudy & Carolyn Rodis, "Elder Mediation Today: Manual and Resource Guide" (2009) is available for \$17.50, postage and handling included. For additional information or to order publications, contact SMDM president Bob Rhudy at [bobrhudy@yahoo.com](mailto:bobrhudy@yahoo.com), (410) 669-7587, or by mail at Senior Mediation and Decision-Making, Inc., c/o Robert Rhudy, 1204 Bolton Street, Baltimore, MD 21217.