

## **A Policyholders Guide to Mediation**

**Mediation** is an informal, voluntary, non-binding process for conducting settlement negotiations between you and your insurance company, either in the context of you, as a homeowner involved in a coverage dispute with your home insurer, or if you've been sued under your liability coverage and want to use the mediation process to determine your insurance company's obligation to indemnify you. Mediation can be a fast and cheap way to resolve insurance claim and coverage disputes. The mediator's skills and experience make a big difference.

Generally speaking, insurance company employees are trained in negotiation, mediation and litigation techniques and policyholders are not. So it is important that the mediator be fair and "level the playing field" as much as possible. You and the insurance company can use mediation as a way of "checking out" the strength of each others arguments, evidence and credibility. Mediation can be a preview to a lawsuit. A mediation can take anywhere from an hour to a day or series of days.

It is important to remember that mediation is non-binding. If you think the insurance company is not offering enough during mediation, you are not obligated to accept the offer. The better you prepare for mediation, the better your chances are of settling. Be prepared to walk away. Many cases settle days or weeks after a mediation. Mediators use a variety of techniques to bring parties together on a settlement amount. A common technique is for the mediator to start by having everyone in the same room, then isolate each side in a different room and go back and forth to minimize confrontations and maximize constructive dialogue.

### **Here are your mediation options:**

1. Private, professional mediator
2. Court-appointed mediator
3. Mediation program sponsored by your state insurance regulator's office.

### **Who pays the mediator's fee?**

1. Fee can be split equally between you and the insurer.

2. Insurer pays the fee.
3. Insurer advances the fee; you agree to reimburse them for your half out of a settlement. Try and get them to agree to absorb the fee if you don't settle.
4. Look at your policy. There may be a payment provision covering claim adjustment expenses that you can use to get your insurer to pay for mediation fees.

### **Pre-Mediation “TO DO” list:**

1. Find a mediator with experience in litigating or resolving insurance coverage and bad faith cases.
2. Only agree to a mediator that has no financial stake in the outcome.
3. Insist that the insurance company representative who attends must have sufficient dollar authority to pay what you are owed.
4. Request copies of “all claim related documents” in your insurer’s files **prior to the mediation.** (CA. residents have this legal right, see Ins. Code sec. 2071)
5. Consult with or bring an attorney, especially if the insurance company is bringing one.
6. Keep your expectations low and be ready to walk away without settling. Many disputes settle after the initial mediation, so you may only be laying the groundwork for a future settlement.
7. Prepare, Prepare, Prepare. Role-playing may be an effective exercise for adjusting your expectations and determining where you might be willing to compromise.
8. Giving the mediator *and the other side* a written summary of your position in advance of the mediation is essential. It is advisable to seek an attorney’s help with this task.
9. Don’t be intimidated. You paid good money for your insurance protection and you are entitled the full benefits your policy and the law provide.

### **Mediation Downsides:**

- Insurance company may not be seriously interested in settling but wants to use the proceeding to gather evidence and test the strength of your legal case.
- Insurance company may send a representative with low dollar authority.
- Mediator may inappropriately discourage/scare the policyholder to force a settlement.
- Mediator may tell insurance company things you ask them to keep secret.
- Mediator may have a financial stake in keeping the insurance company happy. Check references and past experience mediating for your insurance company.
- Insurance rep may take advantage of your inexperience with the mediation process and legal

concepts.

- You may leave the mediation feeling it was a waste of time and money.

**Mediation Positives:**

- Inexpensive, informal, non-binding. If you don't like the result, you can walk away.
- A very efficient way to put disputes behind you and move forward.
- Educates both sides about the strengths and weaknesses of their positions and helps people and/or insurance company be more realistic.
- Prompt payment of agreed-upon amounts.
- Can be done without hiring a lawyer.

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