



MEDIATION INNOVATION

Mediation ♦ Arbitration ♦ Dispute Resolution

OVER 50 YEARS OF TRANSACTIONAL BUSINESS EXPERIENCE

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PRACTICAL EXPERIENCE



PRACTICAL SOLUTIONS

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Welcome to the inaugural newsletter of **MEDIATION INNOVATION**.

Discouraged by traditional mediation, we formed **MEDIATION INNOVATION**.

We apply a business-centric, rather than a litigation-centric, approach to resolving business disputes. Participants are encouraged to develop synergistic, win-win solutions that create additional value for both parties.

Each month, we will offer information highlighting alternatives to traditional mediation techniques.

We welcome your feedback and look forward to assisting you.

Sincerely,

Edward G. Milgrim and Stuart A. Kramer

MOVING BEYOND COMPROMISE

“Are you willing to explore solutions that are better than what either side has proposed?” Mediations should begin with that question, which is the basis of a problem-solving process Stephen Covey describes as *The 3rd Alternative*. It is also the question being posed in a transaction when a “deal-breaker” is hit and someone asks ask “Can we work this out?”

Business people shun compromise as a “lose-lose” result. Dictionaries define compromise as “mutual concessions”, “lowering of principles for supposed gain”, and “endangering of reputation”. Who wants to be seen, or see themselves, in this light? Negotiation is defined as to “deal or bargain with another”, and “to confer with another to arrive at a settlement”. While the terms compromise and negotiate may be seen by some as synonyms, for business people, this is not the case.

As a participant, I dreaded mediations for the same reasons. Mediators shuttled dollar amounts back and forth and attempted to convince me to “meet in the middle.” Rarely did they ask “What is really at issue in this dispute?”, “Are there solutions beyond the transfer of money?”, “Can you trade items you each value differently?”, and “Can we create an agreement where each party gets what it really needs?” Surprising, since these issues are addressed in any successful transaction.

Entrepreneurs have a mindset of abundance – believing they can create an ever-expanding pie. However, traditional mediations create a feeling of scarcity – that participants have no alternative to compromising and dividing-up the existing pie.

Mediation of a business dispute is really no different than the negotiation of a deal - other than (i) the parties have been unable to develop a mutually beneficial resolution, and (ii) they have enlisted a disinterested third-party to assist them.

The success of mediation depends on the participants’ answer to the question: “Are you willing to explore solutions that are better than what either side has proposed?” and on the ability of the mediator to help the participants develop those solutions by discerning and then keeping the participants focused on their underlying business interests, individual priorities and common goals.



A REAL LIFE EXAMPLE

In the early 2000’s, sellers of land refused to lock-in sales prices because they were afraid of leaving money on the table in an escalating market. Homebuilders knew that if they paid too much for land, trusting that home prices would continue to climb, they would not make their margins.

Compromise was an alternative. The parties could have agreed upon a price somewhere in the middle. However, this approach was generally rejected as not addressing either side’s concerns.

The solution was to give the seller a “participation interest” based on the actual sales price of the homes. Homebuilders paid a base price that would allow them to make their margins if home prices remained constant. Land sellers received a portion of the amount by which the homebuilder’s actual margins exceeded their “standard” margins due to an increase in home prices.

Rather than compromising by dividing-up the existing pie, the parties created an opportunity for each to make more money.

This same innovative approach can be used by mediators to solve disputes.

AT MEDIATION INNOVATION - We approach mediation like successful negotiators approach deal-making.

Most mediators are litigators trained to operate in the adversarial arena.

Splitting the difference and shuttling offers back and forth, techniques utilized in traditional mediations, fail to consider the parties' business interests and frustrate the participants.

MEDIATION INNOVATION mediators have practical business and transactional experience.

The **MEDIATION INNOVATION** process:

- Rejects traditional tactics that create an adversarial environment
 - ❖ Excludes opening statements and rarely use joint caucuses
 - Generally used to establish the strength of a party's position
 - Drive parties apart, not toward resolution
 - ❖ Avoids imposing unrealistic time constraints
- Determines parties' *underlying business interests*
 - ❖ Communicates with decision-makers one-on-one
 - ❖ Develops mutual respect and trust
 - ❖ Elicits candid information
- Encourages solutions that address *underlying business interests*.
 - ❖ Applies evaluative techniques
 - ❖ Advocates for each party in the exchange of information
 - ❖ Leverages dissimilar priorities to develop bargaining zones

About Our Team

Edward Milgrim is a Florida Supreme Court Certified Circuit Mediator and respected attorney with over 25 years' experience in wide-ranging real estate and commercial transactions, including as in-house counsel for two Fortune 150 Companies – Disney and Centex Homes. With experience in acquisitions, dispositions, workouts, financing, development, construction, leasing, sales, marketing and business relationships, he applies a practical yet innovative approach to solving legal and business challenges. Mr. Milgrim earned his undergraduate degree in Accounting/Business Administration at the State University of New York in Albany and his J.D. at the New York University School of Law.

Stuart Kramer received his undergraduate and J.D. degrees from Tulane University. He is certified in Circuit and Family Mediation by the Florida Supreme Court. From December 1977 to March 1981, he was an attorney for the United States General Accounting Office (now known as the United States Government Accountability Office). He began working for Kana Development, Inc. in May 1981, where he has been intimately involved in the day-to-day operations of the business. With over 30 years of experience in the real estate industry Stuart has overseen and been involved in all facets of the business, including land acquisition, entitlement, permitting, development, financing, construction and disposition of over 12,000 single and multifamily units as well as 300 acres of commercial property. He has also been involved in the establishment of homeowner associations and community development districts and has served on those boards. Mr. Kramer has also served as a member of Orange County's Development Advisory Board, Seminole County's Board of Zoning Adjustment and as a Governor's appointee to the East Central Florida Regional Planning. He presently serves as a member of Orange County School Board's COVE Committee.

Contact Us Today

For more information or to schedule a consultation with Mr. Milgrim or Mr. Kramer, please call (407) 790-4110 or email info@MediationInnovation.com.

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